



# Water Act 2007

No. 137, 2007

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This compilation is in 2 volumes

**Volume 1:** sections 1–239W

**Volume 2:** sections 241–256

**Schedules**

**Endnotes**

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Water Act 2007* that shows the text of the law as amended and in force on 31 May 2024 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Part 11—Transitional arrangements for water resource plans**

### **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.

### **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:

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- (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.



- (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.

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- (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
  - (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.

## 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

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Section 250C

- (b) a specified provision of the Commonwealth water legislation;  
or
  - (c) the Commonwealth water legislation other than a specified provision; or
  - (d) the Commonwealth water legislation otherwise than to a specified extent.
- (2) By force of this subsection:
- (a) none of the provisions of the Commonwealth water legislation (other than this section) applies in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(a) applies; and
  - (b) the specified provision of the Commonwealth water legislation does not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(b) applies; and
  - (c) the provisions of the Commonwealth water legislation (other than this section and the specified provisions) do not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(c) applies; and
  - (d) the provisions of the Commonwealth water legislation (other than this section and otherwise than to the specified extent) do not apply in or in relation to the State with respect to the matter if the declaration is one to which paragraph (1)(d) applies.
- (3) Subsection (2) does not apply to the declaration to the extent to which the regulations provide that that subsection does not apply to that declaration.
- (4) In this section:
- matter*** includes act, omission, body, person or thing.

Section 250D

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

*Section overrides other provisions of the Commonwealth water  
legislation*

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

*Section does not deal with provisions capable of concurrent  
operation*

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

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

*When this section applies to a provision of a State law*

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

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

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

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Section 250E

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*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:

Section 250E

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- (i) a person specified in the regulations; or
    - (ii) a body specified in the regulations; or
    - (iii) circumstances specified in the regulations; or
    - (iv) a person or body specified in the regulations in the circumstances specified in the regulations; or
  - (b) does not prohibit an act to the extent to which the prohibition would otherwise give rise to an inconsistency with a law of a referring State; or
  - (c) does not require a person to do an act to the extent to which the requirement would otherwise give rise to an inconsistency with a law of a referring State; or
  - (d) does not authorise a person to do an act to the extent to which the conferral of that authority on the person would otherwise give rise to an inconsistency with a law of a referring State; or
  - (e) does not impose an obligation on a person to the extent to which complying with that obligation would require the person not to comply with an obligation imposed on the person under a law of a referring State; or
  - (f) authorises a person to do something for the purposes of the Commonwealth water legislation that the person:
    - (i) is authorised to do under a law of a referring State; and
    - (ii) would not otherwise be authorised to do under the Commonwealth water legislation; or
  - (g) will be taken to be satisfied if a law of a referring State is satisfied.
- (3) In this section:
- matter*** includes act, omission, body, person or thing.



## **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 adopt an amendment of the Basin Plan under subsection 23B(6) or section 48 or 49AA; or
  - (ba) the power to give a direction under subsection 49AA(1); 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
  - (ea) the power to enter into an arrangement under subsection 86AF(1) that contains, or is to contain, terms and conditions referred to in subsection 86AF(2); 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; or
  - (k) the power to give directions to the Inspector-General under section 215D.

## Section 252

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### *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.

### **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 2027, 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.
- (1A) The review must also identify opportunities under this Act to promote the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples, being the Resolution adopted by the General Assembly of the United Nations on 13 September 2007.
- Note: The text of United Nations General Assembly resolutions could in 2023 be accessed through the United Nations' website (<https://www.un.org>).
- (2) The terms of reference for the review are to be determined by the Minister in consultation with the States.

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Section 254

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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

Section 255A

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of the Commonwealth to compulsorily acquire a water access right or an interest in a water access right.

**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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Section 255B**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.

**255C Transitional provisions relating to amendments**

Schedule 10 has effect.

Section 256

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**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
  - (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 *Legislation 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.

# **Schedule 1—The Murray-Darling Basin Agreement**

Note: See section 18A.

## **MURRAY-DARLING BASIN AGREEMENT**

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## MURRAY-DARLING BASIN AGREEMENT

THIS AGREEMENT IS ENTERED INTO ON 2008 BY:

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

THE PARTIES AGREE AS FOLLOWS:

### PART I—INTERPRETATION

#### 1. Purpose

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

#### 2. Definitions

In this Agreement save where inconsistent with the context:

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

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

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

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

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

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

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

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

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

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

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

**“Constructing Authority”** means:

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

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

**“conveyance 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.

**“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 -
- (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 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:

- (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.

**“service level agreement”** means the service level agreement referred to in clause 35A.

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

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

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

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

**“stored water”** means water stored in or by:

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

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

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



- (c) any other assets purchased with amounts paid by the Commission under sub-clause 73(1) of the former Agreement.

**“upper River Murray”** means the aggregate of:

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

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

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

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

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

**“weir”** includes:

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

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

### 3. Interpretation

- (1) In this Agreement, unless the contrary intention appears:
- (a) a reference to any Act includes any Act amending, or in substitution for, that Act;
  - (b) a reference to this Agreement includes a reference to -
    - (i) the Schedules to this Agreement, and
    - (ii) any amendment of or addition to this Agreement or the Schedules hereto;
  - (c) words importing the singular include the plural and vice versa;
  - (d) words importing any gender include any other gender;
  - (e) a reference to a Committee member for the Commonwealth or a State includes a person who is acting as a Committee member for the Commonwealth or that State pursuant to an appointment under clause 21;
  - (f) a reference to a power, function or duty of the Authority is a reference to a power, function or duty of the Authority:
    - (i) under this Agreement; or
    - (ii) under the Water Act for the purposes of this Agreement,but does not include any other power, function or duty conferred on it by the Water Act;
  - (g) a reference to a power, function or duty of the Ministerial Council or the Committee is a reference to a power, function or duty of that body:
    - (i) under this Agreement; or
    - (ii) for the purposes of the Agreement because of the operation of Part 10A of the Water Act,but does not include any other power, function or duty conferred on it by the Water Act.

- (2) No explanatory note or heading to a clause is part of this Agreement.
- (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 *Legislation Act 2003* (Commonwealth), that amends the schedule referred to in sub-clause (1) by incorporating into the Agreement amendments that have been agreed by the Ministerial Council.
- (3) For the purposes of sub-clause (2), the Commonwealth Government:
  - (a) may only register an instrument that incorporates into the Agreement amendments that have been agreed by the Ministerial Council; and
  - (b) will register an instrument that incorporates such amendments as soon as practicable after they have been agreed by the Ministerial Council.
- (4) A reference in sub-clause (2) to an amendment includes a reference to the insertion, omission, repeal, substitution, addition or relocation of words or matter.

**6. Parties to Provide for Enforcement of Agreement**

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

**PART III—THE MINISTERIAL COUNCIL**

**7. Establishment of Ministerial Council**

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

**8. Membership of the Ministerial Council**

- (1) The Council consists of a Minister of each of the Contracting Governments who is appointed in writing by that Contracting Government.
- (2) Whenever a member of the Ministerial Council representing a Contracting Government is:
  - (a) absent from Australia or from duty;
  - (b) unable for any reason to attend a meeting of the Ministerial Council; or
  - (c) otherwise unable to perform the duties of a member of the Ministerial Council,that Contracting Government may appoint another Minister to act in the place of that member, and while so acting that other Minister shall have all the powers and perform all the duties of that member.
- (3) A member of the Ministerial Council ceases to be a member if:
  - (a) the member ceases to be a Minister; or
  - (b) another Minister of the Contracting Government is appointed in substitution for the member.

- (4) Anything done by or in relation to a person purporting to act under an appointment under this clause is not invalid merely because there was a defect or irregularity in connection with the appointment.

## **9. Functions of the Ministerial Council**

The functions of the Ministerial Council are:

- (a) to consider and determine outcomes and objectives on major policy issues of common interest to the Contracting Governments in relation to the management of the water and other natural resources of the Murray-Darling Basin, including in relation to its role in the provision of critical human water needs, but otherwise only in so far as those issues are not provided for in the Basin Plan;
- (b) to make determinations about the matters specified in this Agreement;
- (c) to approve the annual corporate plan, the annual work plan, and the asset management plan, prepared by the Authority for the purposes of this Agreement;
- (ca) to approve any amendments to the annual corporate plan or the annual work plan in accordance with clause 35;
- (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;
- (da) to approve a statement of intent setting out collaborative arrangements under which the Ministerial Council will operate; and
- (e) to exercise such other functions as may be conferred on the Council by or under this Agreement or the Water Act.

**10. Ministerial Council May Direct Committee**

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

**11. Conferral of functions by Ministerial Council**

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

**12. Ministerial Council May Require Committee and Authority to Report**

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

**13. Proceedings of the Ministerial Council**

- (1) The Ministerial Council shall meet at least once in each year but otherwise at such times as it sees fit and shall, subject to this Agreement, determine its own procedure.
- (2) Subject to sub-clauses (3) and (4), the quorum for a meeting of the Ministerial Council shall be a Minister for each Contracting Government, appointed under clause 8.
- (3) The quorum of the Ministerial Council for debating any issue, or considering or making any resolution on an issue related to any provision of the Agreement, or to any policy, determination or

decision of the Ministerial Council, which does not apply, in whole or in part, to either or both of Queensland and the Australian Capital Territory by virtue of Part VI, does not include the Minister appointed by the Government of Queensland or the Minister appointed by the Australian Capital Territory or both of those Ministers (as the case requires).

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

#### **14. Resolutions Other than at Meetings**

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

that Minister is unavailable a Minister for the same Contracting Government authorised for the purpose by that Government; and

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

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

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

## **15. Appointment of Committees**

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



- (4) A member of a committee shall receive such allowances and expenses as the Authority may from time to time determine.

**16. Basin Community Committee to Advise Ministerial Council**

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

**PART IV—THE COMMITTEE**

**DIVISION 1—ESTABLISHMENT AND MEMBERSHIP OF THE COMMITTEE**

**17. Establishment of Basin Officials Committee**

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

**18. Membership of the Committee**

The Committee consists of:

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

**19. Appointment of Chair of the Committee**

- (1) The Chair of the Committee is to be appointed by the Commonwealth Minister by written instrument.

- (2) The appointment of the Chair of the Committee is not invalidated merely because of a defect or irregularity in connection with the appointment.

**20. Appointment of Other Members of the Committee**

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

**21. Acting Members of the Committee**

- (1) The Commonwealth Minister may, by written instrument, appoint an individual to act as the Chair of the Committee.
- (2) The Minister of a State Contracting Government may, by written instrument, appoint an individual to act as the Committee member for that Contracting Government.
- (3) An individual's appointment under sub-clause (1) or (2) to act as a Committee member:
  - (a) does not cease to have effect merely because the Committee member's appointment ceases to have effect; and
  - (b) if that Committee member is replaced by the appointment of another Committee member—continues in effect in relation to the new Committee member.
- (4) An individual appointed to act as a Committee member may act as, and perform the functions and exercise the powers of, the Committee member:
  - (a) during a vacancy in the office of the Committee member, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Committee member:
    - (i) is absent from duty or Australia; or

- (ii) is, for any reason, unable to attend a meeting of the Committee; or
  - (iii) is, for any reason, unable to perform the duties of the office.
- (5) Anything done by or in relation to an individual purporting to act under an appointment is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

## **22. Period of Appointment**

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

## **23. Standing Obligation to Disclose Interests**

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

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

- (2) Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
- (3) The disclosure must be by written notice given:
  - (a) if the member is the Chair of the Committee—to the Chair of the Ministerial Council; or
  - (b) if the member is not the Chair of the Committee—to the Chair of the Committee.

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

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

**24. Obligation to Disclose Interests Before Considering a Particular Matter**

- (1) If:
  - (a) a member of the Committee (including an acting member) has an interest in a matter being considered or about to be considered by the Committee; and
  - (b) the interest is an interest that could conflict with the proper performance of the functions of the member's office, as those functions give the member a role in deciding the matter;

the member must disclose the nature of the interest to a meeting of the Committee.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Committee.
- (4) Sub-clause (1) applies to interests:
  - (a) whether direct or indirect, and whether or not pecuniary; and
  - (b) whether acquired before or after the member's appointment.

**25. Chief Executive and Authority Chair May Attend Meetings**

- (1) The Chief Executive and Authority Chair:
  - (a) may attend, and participate in, any meeting of the Committee; and
  - (b) are entitled to access to any documents of the Committee that are relevant to such a meeting.
- (2) However, the Chief Executive and the Authority Chair are not entitled to vote on a matter to be decided in the meeting.

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

## **DIVISION 2—FUNCTIONS AND POWERS OF THE COMMITTEE**

### **26. Functions and Powers of the Committee**

- (1) The functions of the Committee are:
  - (a) to advise the Ministerial Council in relation to outcomes and objectives on major policy issues of common interest to the Contracting Governments in relation to the management of the water and other natural resources of the Murray-Darling Basin, including in relation to the Ministerial Council's role in the provision of critical human water needs, but otherwise only in so far as those issues are not provided for in the Basin Plan;
  - (b) to give effect to any policy or decision of the Ministerial Council, as required by the Ministerial Council;

- (c) to exercise responsibility for high level decision making in relation to river operations, including by setting objectives and outcomes to be achieved by the Authority in relation to river operations;
  - (d) to exercise the powers and discharge the duties conferred on it by or under this Agreement or the Water Act.
- (2) Paragraphs (1)(b) and (c) do not operate:
  - (a) to confer any powers on the Committee in addition to powers conferred by other provisions of this Agreement or the Water Act;
  - (b) to enable the Committee to—
    - (i) do anything; or
    - (ii) require the Authority to do anything,for which Part VII and subsequent Parts provide, otherwise than as provided for by those Parts as amended from time to time.
- (3) The advice referred to in paragraph (1)(a) shall be determined by majority vote of the Committee members who constitute a quorum. In the event of a unanimous decision not being reached, each Committee member may tender separate advice to the Ministerial Council.

### **DIVISION 3—DECISION MAKING BY THE COMMITTEE**

#### **27. Proceedings of the Committee**

- (1) The Committee members may meet together for the transaction of the Committee's business and may adjourn any meeting.
- (2) Any Committee member may at any time call a meeting of the Committee.
- (3) Each Committee member shall have one vote.
- (4) Subject to sub-clauses (5) and (6), one Committee member for each Contracting Government shall constitute a quorum.

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- (5) The quorum of the Committee for debating any issue, or considering or making any resolution on an issue, related to any provision of the Agreement, or to any policy, determination or decision of the Ministerial Council or the Committee, which does not apply, in whole or in part, to either or both of Queensland and the Australian Capital Territory by virtue of Part VI, does not include the Committee member for Queensland or the Committee member for the Australian Capital Territory, or both (as the case requires).
  - (6) The quorum of the Committee for debating any issue, or considering or making any resolution on an issue in respect of its functions under the Water Act:
    - (a) includes the Committee member for Queensland unless the matter relates to Part 2A of the Water Act, in which case the quorum includes that member only if the issue relates to critical human water needs in a way that affects Queensland, or affects the sharing of Basin water resources between Queensland and New South Wales;
    - (b) includes the Committee member for the Australian Capital Territory unless the matter relates to Part 2A of the Water Act, in which case the quorum includes that member only if the issue relates to critical human water needs in a way that affects the Australian Capital Territory.
  - (7) A person who is not included in a quorum may not vote on any resolution referred to in sub-clause (5) or (6).
  - (8) Except as provided in sub-clauses 26(3) and 99(2) a resolution before the Committee will be carried only:
    - (a) by a unanimous vote of all Committee members present who constitute a quorum; or
    - (b) by majority vote of the Committee members present who constitute a quorum, if those members by a unanimous vote agree that the resolution will be carried in that way.
  - (9) The Committee must, subject to this Agreement, determine its own procedure.
  - (10) The Committee must keep proper minutes of its proceedings.
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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.



## **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;
  - (ba) the work plan;
  - (c) the asset management plan;
  - (d) the asset agreement;
  - (da) the service level agreement; and
  - (e) in relation to river operations, the requirements of clause 30.
- (3) The Ministerial Council may, if it agrees that an emergency exists, decide that the Authority should carry out functions or exercise powers for the purposes of this Agreement:
  - (a) that are in addition to functions or powers conferred by the other provisions of this Agreement; or
  - (b) otherwise than as required by sub-clause (2).

**30. Authority's Functions in Relation to River Operations**

- (1) The Authority must not exercise any of its functions in relation to river operations in a manner that has the potential to have a material effect on State water entitlements unless it does so in accordance with a decision of the Committee made under this Agreement, or a provision of the document approved under clause 31.
- (2) Subject to sub-clause (3), the Authority must carry out its functions in relation to river operations in accordance with objectives and outcomes specified in the document approved under clause 31 or, during the period before that document has been approved, clause 32.
- (3) If clause 33 requires the Authority to refer to the Committee a matter relating to the Authority's functions in relation to river operations, the Authority must act in accordance with a determination made under that clause.

**31. Objectives and outcomes for river operations**

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

determine whether a matter has the potential to have a material effect on State water entitlements and thus needs to be referred.

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

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

**33. Referrals and Determinations in Relation to River Operations**

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

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

### **34. Annual Corporate Plan**

- (1) The Authority must prepare a draft corporate plan, by the date determined by the Ministerial Council, for each reporting period of the Authority under the *Public Governance, Performance and Accountability Act 2013* (Commonwealth).
- (2) The draft corporate plan must:

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- (a) state that it is prepared for the purposes of this Agreement; and
  - (b) subject to paragraph (a), include the same matters in relation to the Authority's functions under this Agreement as are required to be included in the corporate plan for the Authority prepared for the purposes of section 35 of the *Public Governance, Performance and Accountability Act 2013* (Commonwealth) for the reporting period; and
  - (c) cover the same period as the corporate plan mentioned in paragraph (b) is required to cover.

**Note**—The corporate plan prepared for section 35 of the *Public Governance, Performance and Accountability Act 2013* (Commonwealth) covers all of the Authority's functions, not just the Authority's functions under this Agreement. The corporate plan prepared for this clause will be included in the corporate plan prepared for that section (see section 213A of the Water Act).

- (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.

### **34A. Annual work plan**

- (1) The Authority must prepare a draft work plan, by the date determined by the Ministerial Council, for each reporting period of the Authority under the *Public Governance, Performance and Accountability Act 2013* (Commonwealth).
  - (2) The draft work plan must:
    - (a) set out the Authority's activities relating to this Agreement for the next 4 years, including the activities through which
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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; and
  - (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 work plan may include any other matters relevant to the Authority's functions under this Agreement as the Authority sees fit.
- (4) The Authority must provide the draft work plan to the Committee.
- (5) After considering the draft work plan, the Committee must submit the draft plan, and the Committee's advice in relation to it, to the Ministerial Council.
- (6) After receiving the plan and the advice of the Committee, the Ministerial Council may:
- (a) approve the plan with or without amendment; or
  - (b) refer the plan back to the Authority for further consideration.

**35. Amendment of Annual Corporate Plan and Annual Work Plan**

- (1) If the Authority considers that it is necessary or desirable for there to be a significant variation to the corporate plan or the work plan, the Authority must prepare a draft amendment to the relevant plan and provide it to the Committee.
- (1A) If the Ministerial Council requests the Authority to prepare a draft amendment to the corporate plan or the work plan to give effect to a decision of the Ministerial Council, the Authority must prepare the draft amendment and provide it to the Committee.
- (2) After considering a draft amendment provided to it under sub-clause (1) or (1A), 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 relevant plan with or without further amendment; or
  - (b) refer the draft amendment back to the Authority and request that the Authority make changes to the draft amendment.

### **35A. Service Level Agreement**

The service level agreement between the Ministerial Council and the Authority will set out the key elements of how the Authority will undertake its responsibilities for the joint programmes and other functions under this Agreement encompassing:

- (a) the work plan (deliverables, standards, costs, timelines, risk assessment and risk treatment); and
- (b) the asset management plan (annual review and delivery); and
- (c) the objectives and outcomes document; and
- (d) financial and performance reporting; and
- (e) management and decision making protocols; and
- (f) audit and review processes.

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

### **36. Application of Agreement to Queensland and the Australian Capital**

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

- (a) for those provisions declared not to apply by this Part; and
- (b) to the extent that provisions are modified by this Part; and

- (c) where the Ministerial Council or the Committee determines that a provision does not apply pursuant to clause 39.

**37. Provisions Not Applying to Queensland**

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



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

**38. Provisions not applying to the Australian Capital Territory**

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

- (b) to meet any compensation for damage paid under clause 84 of the Agreement,

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

**39. Powers of Ministerial Council and Committee to make determinations**

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

**40. Factors to be Considered by Ministerial Council or Committee**

- (1) In making a determination under clause 39, the Ministerial Council or the Committee must apply the guidelines set out in this clause, unless the Ministerial Council or the Committee, as the case may be, determines otherwise.

- (2) A provision should apply to the State of Queensland if:
  - (a) issues arising under that provision are likely to cause a significant benefit or a significant detriment to Queensland;
  - (b) any decisions or actions taken within Queensland without reference to that provision might cause significant benefit or significant detriment to any part of the Murray-Darling Basin within Queensland;
  - (c) the Government of Queensland has incurred or may incur any financial obligation as a result of that provision.
- (3) A provision should not apply to the State of Queensland if issues arising under that provision are only likely to concern that portion of the Murray-Darling Basin delineated in the plan comprising Schedule C to this Agreement.
- (4) A provision should not apply to the Australian Capital Territory unless:
  - (a) issues arising under that provision are likely to cause a significant benefit or a significant detriment to the Australian Capital Territory; or
  - (b) any decisions or actions taken within the Australian Capital Territory without reference to that provision might cause significant benefit or significant detriment to any part of the Murray-Darling Basin within the Australian Capital Territory; or
  - (c) the Government of the Australian Capital Territory has incurred or may incur any financial obligation as a result of that provision.

#### **41. Application of Previous Ministerial Council Decisions to Queensland**

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

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

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

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

Capital Territory on the day on which that proposal is adopted by the Ministerial Council.

## **PART VII—INVESTIGATION, MEASUREMENT AND MONITORING**

### **43. Investigations and Studies**

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

**44. Monitoring**

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

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

**45. Measurements of Water Quantity and Quality**

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

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

(iii) stored water.

**46. Need for Approval in Certain Cases**

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

**47. Power to Arrange Data in Lieu**

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

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

**48. Water Quality Objectives**

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

**49. Authority to be Informed of New Proposals**

- (1) Whenever a Contracting Government or a public authority is considering any proposal which may significantly affect the flow, use, control or quality of any water in the upper River Murray and in the River Murray in South Australia, that Contracting Government must, or must ensure that the public authority shall:
  - (a) inform the Authority of the proposal; and
  - (b) provide the Authority with all necessary information and data to permit it to assess the anticipated effect of the proposal on the flow, use, control or quality of the water.
- (2) The necessary information and data must be provided in sufficient time to allow the Authority:
  - (a) to assess the possible effect of the proposal on the flow, use, control or quality of that water; and
  - (b) to make representations thereon to that Contracting Government or public authority,before the Contracting Government or public authority decides if the proposal will proceed.
- (3) The Authority shall consult with each Contracting Government, and with any public authority responsible to a Contracting Government which that Contracting Government or the Authority considers is likely to consider a proposal of the type referred to in sub-clause (1), with a view to reaching agreement with that Contracting Government, or that public authority, as to:
  - (a) the types of proposals to which sub-clause (1) shall apply; and
  - (b) the criteria to be used in assessing those proposals to which sub-clause (1) applies.
- (4) Despite sub-clause (3), sub-clauses (1) and (2) apply to any proposal referred to in clause 23 of Schedule F.

**50. Environmental Assessment**

The Authority must, in exercising its powers or functions, or in implementing works or measures under this Agreement, examine

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and take into account any possible effects which the exercise of those powers or functions or those works or measures may have on water and other natural resources within the Murray-Darling Basin.

## **51. Protection of Catchment of Hume Reservoir**

- (1) The State Contracting Governments of New South Wales and Victoria must take effective measures to protect the portions of the catchment of the Hume Reservoir within their respective States from erosion.
- (2) Each of those Contracting Governments must, before the end of June in each year, forward a report to the Authority on:
  - (a) the condition of the portion of the catchment of the Hume Reservoir within its territory;
  - (b) the measures taken and work carried out during the twelve months to the end of March immediately preceding; and
  - (c) particulars of the measures and works proposed for the next twelve months.
- (3) The Authority must, from time to time, inspect or cause to be inspected such portions of the catchment of the Hume Reservoir as it thinks fit and may indicate at any time whether in its opinion the measures taken and works carried out are effective. If, on any inspection, the Authority considers that any of those measures or works are ineffective, it must notify the Contracting Government concerned which must, to the extent that it may be practicable, take action to make those measures and works effective.
- (4) Measures, works and action taken or carried out by a Contracting Government pursuant to sub-clause (1) or (3) shall be paid for by that Contracting Government.
- (5) If at any time the Authority considers that there is need for special action to protect the catchment of the Hume Reservoir from erosion, other than, or in addition to, the measures, works and action taken or carried out under sub-clauses (1) and (3), the Authority may, in consultation with the Committee, require the Contracting Government, in whose territory the special action is to be carried out, to investigate the position and to take such special action as may be required by the Authority.

## **PART VIII—CONSTRUCTION, OPERATION AND MAINTENANCE OF WORKS**

### **52. Works and Measures Subject to the Agreement**

- (1) Works or measures from time to time included in a Schedule to this Agreement or authorised pursuant to clause 56 must be constructed, operated, maintained or implemented (as the case may require):
  - (a) in accordance with -
    - (i) the provisions of this Agreement and any State MDB Act;
    - (ii) the corporate plan;
    - (ia) the work plan; and
    - (iii) in respect of works—
      - (A) the asset management plan; and
      - (B) the asset agreement that relates to those works, unless determined otherwise by the Ministerial Council;
  - (b) by the Contracting Government from time to time nominated under sub-clause 56(5) for the purpose.
- (2) A Contracting Government:
  - (a) described as a ‘Nominated Government’ in Schedule A with respect to a work; or
  - (b) nominated under the former Agreement with respect to a work,is deemed to have been nominated under paragraph (1)(b) to construct, operate, maintain and renew that work, until a work 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.

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- (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).
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- (2) RMO assets are controlled jointly by the Commonwealth Government and the Governments of South Australia, New South Wales and Victoria (“the asset controlling governments”) for the purposes of this Agreement, in the manner described in the asset agreement.
- (3) The asset controlling governments agree that the Authority is to manage the RMO assets on behalf of the asset controlling governments for the purposes of this Agreement, as required by clause 29 of this Agreement.
- (4) For the purposes of this clause, the Authority must maintain books of account and records in relation to the RMO assets that comply with applicable statutory requirements and are consistent with standard accounting and auditing requirements.
- (5) Without limiting sub-clause (4), books of account maintained by the Authority for the purposes of this clause must:
  - (a) be maintained separately from the accounts required to be kept by the Authority for the purposes of the Murray-Darling Basin Special Account;
  - (b) include an asset register and asset revaluations;
  - (c) be made available to an asset controlling government upon request.
- (6) The Authority must report on the books of account in the manner and at the times specified in the asset agreement.
- (7) The books of account maintained by the Authority for purposes of sub-clause (4) will be audited by the Australian National Audit Office or other such body as agreed from time to time by the Ministerial Council.

**55. Asset Agreement**

- (1) The Authority must as soon as practicable after this Agreement comes into effect make an asset agreement with the asset controlling governments referred to in clause 54 regarding the management by the Authority of the RMO assets, which is to reflect asset controlling governments’ requirements for accounting for the assets, recording, reporting and audit as well as specific

high level requirements in relation to construction, maintenance and operation of assets.

- (2) The asset agreement must include provisions about accounting for, reporting on and managing the RMO assets.
- (3) The asset agreement must not be inconsistent with any provision of this Agreement.
- (4) The asset agreement may be reviewed and amended by agreement between the parties.

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

## **56. Authorisation of Further Works or Measures**

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

- (4) All provisions of this Agreement apply mutatis mutandis to any work or measure approved under this clause.
- (5) When any work or measure is authorised pursuant to this clause the Ministerial Council, the Authority or the work 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 work plan, the Authority may meet, or contribute to the costs of, or associated with:

- (a) the construction, operation or maintenance of-
  - (i) any works of a Contracting Government ancillary to the works constructed pursuant to this Agreement or the former Agreement; and
  - (ii) any preventative or remedial works of a Contracting Government necessitated by, or arising from, the construction or operation of works constructed pursuant to this Agreement or the former Agreement;

- (b) the acquisition by a Contracting Government of any interest in land necessary for the construction, operation or maintenance of those ancillary, preventative or remedial works, or for the provision of flood easements; and
- (c) remedying any actual or anticipated damage or injury occasioned by the construction, operation or maintenance of any works provided for in this Agreement or the former Agreement.

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

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

**59. Submission of Details of Measures for Authority Approval**

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

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

**60. Authority Approval of Certain Tenders**

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



**61. Directions for the Efficient Construction etc of Works**

- (1) The Authority may give directions, as required to give effect to the work 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.

**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:

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

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

**63. Works for Benefit of State Contracting Governments**

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

**64. Declaration that Works or Measures are Effective**

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

**65. Maintenance of Works**

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

**66. Procedures for Operation of Works**

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

**67. Dredging and Snagging**

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

**68. Operation of Works**

- (1) The Contracting Government nominated to operate a work pursuant to paragraph 52(1)(b) must:

- (a) operate it in accordance with any procedures determined by the Authority under clause 66;
  - (b) if the work is a lock, maintain immediately downstream of the lock such depth of water -
    - (i) as is sufficient for navigation of vessels drawing 1.4 metres of water; or
    - (ii) such other depth determined by the Authority under clause 124,except when the lock is closed for maintenance or when there is an emergency.
- (2) Paragraph (1)(b) does not apply to Weir and Lock No.26 Torrumbarry nor to Weir and Lock No.15 Euston.

**69. Performance of Joint Duties**

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

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

**70. Ineffective Works**

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

## **PART IX—FINANCE**

### **71. Definitions**

In this Part:

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

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

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

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

**“operation and maintenance costs”** means the costs of:

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

## **72. Apportionment of Costs**

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

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

### **73. Annuity Contributions**

- (1) The Ministerial Council, on the recommendation of the Authority, may from time to time determine that a Contracting Government
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must make an annual annuity contribution in respect of either or both of:

- (a) investigations, construction and administration costs; and
- (b) major or cyclic maintenance costs,

which the Contracting Government might otherwise be required to contribute under sub-clause 72(1), (3), paragraph 72(4)(a) or sub-paragraph 72(4)(b)(i), in any future year.

- (2) In fixing any annuity contribution under sub-clause (1), the Ministerial Council must have regard to the Authority's estimate of costs which will be incurred during the next ensuing 30 years (or such other period as the Authority determines), as provided in the asset management plan, in relation to either or both of:

- (a) the construction or renewal; and
- (b) major or cyclic maintenance,

of works constructed, operated, maintained or renewed for the purposes of river operations (as the case requires) including any interest or other sums receivable or payable in respect of any income received, by the Authority from time to time in relation to those works.

- (3) For the purposes of this Part, the Authority must establish guidelines for determining what is, and what is not, major or cyclic maintenance.

#### **74. Annual and forward estimates**

- (1) The Authority must prepare:
  - (a) detailed annual estimates of its known and anticipated expenditure for the next financial year; and
  - (b) forward estimates of its known and anticipated expenditure for the three successive financial years following the next financial year.
- (2) Annual and forward estimates must:
  - (a) show the estimated amount to be contributed by each Contracting Government; and



- (b) be sent to each Contracting Government as soon as practicable in each year; and
  - (c) be included in the work plan for approval by the Ministerial Council.
- (3) Annual and forward estimates may be amended by amendments to the work plan as provided in clause 35.

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

## **75. Payments by Contracting Governments**

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

## **76. Authority to Account**

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

## **77. Application of Moneys by Authority**

- (1) Subject to sub-clause (3), the Authority must apply money paid by the Contracting Governments in accordance with the relevant estimates referred to in paragraph 74(1)(a), the work plan and the other provisions of this Agreement.
- (2) In any financial year, the Authority may:
  - (a) spend any anticipated savings on an item in the estimates prepared or revised under paragraph 74(1)(a) on any item which it anticipates will be overspent;

- (b) advance sums to any Constructing Authority, public authority or person for expenditure in accordance with those estimates in that, or any subsequent financial year;
  - (c) advance working capital to a Constructing Authority and replenish amounts expended from that advance from time to time.
- (3) The Authority may accumulate:
  - (a) any sums received under sub-clause 72(3) or (4) for the purposes of river operations, but not expended in any year; and
  - (b) any annuity contributions received under clause 73, for use in subsequent years.
- (4) Any sum referred to in sub-clause (3) and any interest thereon must:
  - (a) in the case of sums received under sub-clause 72(3), only be expended on operation and maintenance costs; and
  - (b) in the case of sums received under sub-clause 72(4), only be expended on investigations, construction and administration costs; and
  - (c) in the case of annuity contributions received under clause 73:
    - (i) from a State Contracting Government, only be expended on either:
      - (A) investigations, construction and administration costs; or
      - (B) major or cyclic maintenance costs, of river operations, as the case requires; or
    - (ii) from the Commonwealth, only be expended on investigations, construction and administration costs of river operations.

**78. Payments by Authority to Constructing Authorities**

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

**79. Contracting Governments to Account**

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

**80. Unexpended Balances**

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

**81. List of Assets**

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

**82. Disposal of Surplus Assets**

- (1) The Authority may, with the approval of the Committee, direct when and how surplus assets acquired by a Constructing Authority with funds provided by the Authority, shall be disposed of.
- (2) Subject to sub-clause (3), the Committee must determine how proceeds from the disposal of surplus assets are:
  - (a) to be paid to the Authority and credited against future capital and renewal contributions by; or
  - (b) to be distributed among,  
the Contracting Governments, having regard to the contributions made by each Contracting Government to the acquisition of those assets.
- (3) A determination under sub-clause (2) that relates to RMO assets must be consistent with the asset agreement.

**83. Revenue**

- (1) Any money received by a Contracting Government or a public authority from the use of works subject to this Agreement must be paid to the Authority.

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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.

### **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
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Contracting Government fails, after being so required by the Authority to:

- (a) do anything in relation to any works or measures; or
- (b) pay any money to the Authority,

which it is obliged to do or pay under this Agreement.

- (2) The Authority may, in consultation with the Committee, authorise one or more of the Contracting Governments which is not in default wholly or partly to make good any failure which relates to:

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

- (3) A Contracting Government authorised by the Authority under sub-clause (2):

- (a) may enter the territory of the defaulting Contracting Government to do whatever it has been authorised to do by the Authority;
- (b) shall be deemed to have all powers, licences and permissions as are required from the defaulting Contracting Government to do whatever it has been authorised to do by the Authority;
- (c) shall be deemed to have all the rights and powers of a Constructing Authority, including the right to receive any payment due under clause 78, in respect of whatever it has been authorised to do by the Authority; and
- (d) may, in a court of competent jurisdiction, recover, as a debt due from the defaulting Contracting Government, all money reasonably expended by it in doing whatever it has been authorised to do by the Authority and which has not been paid to it by the Authority by virtue of the right conferred by paragraph (3)(c), together with interest at the prescribed rate.

- (4) A defaulting Contracting Government shall once more be deemed to be the Constructing Authority when:

- (a) any failure referred to in paragraph (1)(a) has been made good; and

- (b) it has paid all money payable by it under paragraph (3)(d).
- (5) Unless the Authority, in consultation with the Committee, decides otherwise in any particular case, a Contracting Government which fails to pay money due under clause 75 to the Authority by the due date is liable to pay interest on any outstanding balance at the prescribed rate.
- (6) Any other Contracting Government:
  - (a) may pay the outstanding balance owed by a Contracting Government under clause 75, together with interest at the prescribed rate; and
  - (b) may recover the amount so paid in a court of competent jurisdiction as a debt due from the defaulting Contracting Government.
- (7) Any interest payable under this clause shall be calculated from the due date to the date of actual payment.

## **PART XII—DISTRIBUTION OF WATERS**

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

### **DIVISION 1—TIER 1 DISTRIBUTION OF WATERS**

#### ***SUBDIVISION A—APPLICATION OF DIVISION 1***

##### **87. Application of Division 1**

This Division applies subject to:

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

**SUBDIVISION B—STATE ENTITLEMENTS TO WATER**

**88. South Australia’s Monthly Entitlement**

South Australia is entitled to receive:

- (a) the following monthly quantities of River Murray water -
  - July .....50 500 megalitres
  - August.....66 000 megalitres
  - September .....77 000 megalitres
  - October .....112 500 megalitres
  - November .....122 000 megalitres
  - December.....159 000 megalitres
  - January.....159 000 megalitres
  - February.....136 000 megalitres
  - March.....128 000 megalitres
  - April.....77 000 megalitres
  - May .....35 000 megalitres
  - June.....32 000 megalitresexcept as provided in clause 128; and
- (b) 58,000 megalitres per month for dilution and losses, unless the Ministerial Council determines otherwise; and
- (c) such additional quantities for dilution as the Ministerial Council determines from time to time.

**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.

**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.

## **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

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than it was entitled to receive under clause 88 or 90 in any previous month.

#### **94. Entitlements of New South Wales and Victoria**

- (1) Except as otherwise expressly provided in Subdivision D of this Division and subject to South Australia's entitlement under clause 88 or 90, New South Wales and Victoria are each entitled to use:
  - (a) all the water in tributaries of the upper River Murray downstream of Doctors Point within its territory, before it reaches the River Murray;
  - (b) half the natural flow at Doctors Point;
  - (c) half the water entering the Menindee Lakes from the Darling River, subject to the prior entitlement of New South Wales to use water from the Menindee Lakes Storage as provided in clause 95;
  - (d) subject to paragraph (1)(c), an amount of water from the upper River Murray equivalent to any water contributed by any tributary or any outfall approved by the Ministerial Council entering the upper River Murray from its territory downstream of Doctors Point; and
  - (e) half the volume of water calculated in accordance with clause 8 of Schedule F.
- (2) Entitlements under sub-clause (1) shall not be affected by the declaration of a period of special accounting except as specifically provided in Subdivision E of this Division.

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

- (1) Whenever water in the Menindee Lakes Storage falls below 480 000 megalitres, New South Wales may use the stored water as it requires until the volume next exceeds 640 000 megalitres.
- (2) Whenever sub-clause (1) does not apply, New South Wales may:
  - (a) divert from -
    - (i) the Menindee Lakes Storage; or

- (ii) the Darling River below the Menindee Lakes Storage;  
or
  - (iii) the River Murray, below its junction with the Darling River; or
- (b) release from the Cawndilla outlet regulator,  
a total of up to 100,000 megalitres in any 12 month period  
commencing on 1 April.
- (3) Whenever the Ministerial Council determines that:
  - (a) releases from the Menindee Lakes Storage exceed the water  
required for storage in Lake Victoria and to supply South  
Australia's entitlement; or
  - (b) water in the Menindee Lakes Storage exceeds 1 680 000  
megalitres and the amount of the excess plus the estimated  
water currently in the River Murray and Darling River below  
the Menindee Lakes Storage is sufficient to supply South  
Australia's entitlement and to fill Lake Victoria,  
  
any of that water used by New South Wales or released to provide  
for the retention of floodwaters shall not be deemed to be part of its  
entitlement under sub-clause (2).

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

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

**97 Limitations on use by New South Wales and Victoria**

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.
- (2) The Authority may give directions under sub-clause (1) in the form of standing procedures, which it may amend or suspend at any time, except as provided in clause 100.
- (3) In giving directions under this clause the Authority must have regard to -
  - (i) maintaining supply to South Australia of the quantities of water which that State is entitled to receive;
  - (ii) facilitating the exercise by South Australia of its right under clause 91, including the delivery of water stored in exercise of that right;
  - (iii) maintaining a minimum reserve of water as provided for in clause 103; and
  - (iv) facilitating the exercise by New South Wales and Victoria of their respective rights to use water from the upper River Murray, as they require.
- (4) In giving directions under this clause the Authority may also have regard to -
  - (i) the improvement or maintenance of water quality in the River Murray (including the upper River Murray); and
  - (ii) other water management and environmental objectives consistent with this Agreement.

**99. Limitation on Menindee Lakes Operation**

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

**100. Procedures for Dartmouth Dam Operation**

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

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

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

- (a) water stored in the Hume and Dartmouth Reservoirs above their minimum operating levels;
- (b) water stored in Lake Victoria above its minimum operating level;
- (c) water available for release from the Menindee Lakes Storage at the direction of the Authority in accordance with clause 99, after allowing for New South Wales’ prior entitlements under clause 95;
- (d) the estimated natural flow of the River Murray at Doctors Point before the end of the following May;
- (e) water calculated in accordance with clause 9 of Schedule F;
- (f) the difference between the estimated amount of water in transit in the upper River Murray and the estimated amount of water in transit at the end of the following May.

## **102. Available Water**

From time to time the Authority must:

- (a) determine the minimum amount of water estimated to be under the control of the Authority;
- (b) determine the allowance to be made until the end of the following May for -
  - (i) losses by evaporation and other means in the upper River Murray; and
  - (ii) the entitlements of South Australia under paragraphs 88(b) and 88(c);
- (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.
- (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.



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- (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:
    - (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.

**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

- (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.

**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.

#### **114. Efficient Regulation of the River Murray**

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

#### **115. Accounting Procedures**

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

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

#### **116. Internal Spills**

- (1) In any major storage, water allocated either to New South Wales or Victoria must be re-allocated to the other State to prevent the

quantity of water allocated to either State in the storage exceeding half the lesser of:

- (a) the target capacity of the storage; or
  - (b) the quantity of water stored when releases are being made for flood mitigation.
- (2) In Hume and Lake Victoria, “target capacity” means the capacity of the reservoir at the Full Supply Level.
- (3) In Dartmouth “target capacity” means the lesser of:
- (a) the capacity of the reservoir at the Full Supply Level; or
  - (b) the quantity of water stored when water is being released through the hydro-electric power station and the storage level is above the level specified by the Ministerial Council for the operation of the power station.
- (4) In Menindee Lakes “target capacity” means the greater of the capacity:
- (a) at the Full Supply Level; or
  - (b) at such higher level as may be determined from time to time by the Ministerial Council.
- (5) When water in Dartmouth Reservoir is to be re-allocated under sub-clause (1) and there is capacity in Hume Reservoir available to the State from which water is to be re-allocated to store some or all of the re-allocated water, a compensating adjustment must be made in Hume Reservoir so that the accounts of the State from which the water is to be re-allocated in Dartmouth Reservoir are not thereby reduced.

#### **117. Accounting for Spill from Storages**

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



**118. Accounting for Releases from Dartmouth Reservoir**

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

**119. Accounting for Releases from Hume Reservoir**

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

**120. Accounting for Releases from Menindee Lakes Storage**

- (1) For the purposes of this clause releases from Menindee Lakes Storage consist of:
  - (a) water required to maintain a flow throughout the main course of the Darling River downstream of Menindee Lakes;

- (b) water released to satisfy use by New South Wales in the main course of the Darling River downstream of Menindee Lakes;
  - (c) water released through the Lake Cawndilla Outlet Regulator;
  - (d) water released down the main course of the Darling River downstream of Menindee Lakes Storage to satisfy directions given by the Authority under sub-clause 98(1);
  - (e) any other water released from the Menindee Lakes Storage which can be used either to supply South Australia's entitlement under clause 88 or 90 or to supply water to Lake Victoria.
- (2) Whenever New South Wales is using water pursuant to sub-clause 95(1) all release from Menindee Lakes Storage will be attributed to the allocation of water to New South Wales.
- (3) Whenever sub-clause 95(1) does not apply to the use of water by New South Wales from the Menindee Lakes Storage:
  - (a) releases under paragraph (1)(a) will be attributed equally to the allocations of water to New South Wales and Victoria;
  - (b) releases under paragraph (1)(b) and (1)(c) will be attributed to the allocation of water to New South Wales;
  - (c) releases under paragraph (1)(d) and (1)(e) will be attributed to the respective allocations of New South Wales and Victoria in such proportions as tend most to equalize the water in Lake Victoria allocated to each State, provided that such proportions do not -
    - (i) cause the water allocated either to New South Wales or to Victoria to fall below 240,000 megalitres;
    - (ii) cause water to be re-allocated between the States under clause 116.

#### **121. Reallocation of Water in Menindee Lakes Storage**

At the conclusion of any period during which New South Wales is using water pursuant to sub-clause 95(1), the quantities of water stored in the Menindee Lakes Storage and allocated respectively to

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New South Wales and Victoria must be adjusted so that the difference between those quantities is the same as the difference in the allocated quantities at the beginning of that period.

**122. Accounting for Dilution Flows**

- (1) Whenever the Authority directs under clause 98 that the flow of water is to exceed the water order at a particular point, unless the Ministerial Council determines otherwise, the proportion of the water order attributed respectively to New South Wales and Victoria must be increased by such amounts as tend most to equalise the respective allocations to New South Wales and Victoria of the total flow at that point.
- (2) For the purpose of this clause the “water order” is the flow of water at a particular point which is necessary:
  - (a) to meet diversions by New South Wales and Victoria, losses and dilution flows downstream of that point;
  - (b) to meet South Australia’s entitlement; and
  - (c) to supply storages downstream of that point.

***SUBDIVISION E—PERIODS OF SPECIAL ACCOUNTING***

**123. Declaration of Periods of Special Accounting**

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

- (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).

**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)

**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.
- (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
  - (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.

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

### **131. Application of Division 2**

- (1) This Division applies:
  - (a) in the circumstances specified in the Basin Plan; and
  - (b) in a period before the Basin Plan first takes effect, if the Ministerial Council declares in accordance with sub-clause (3) that this Division applies; and



- (c) from the time this Agreement comes into effect.
- (2) Once this Division has commenced application in accordance with sub-clause (1), it will cease to apply:
  - (a) once the conditions specified in the Basin Plan are satisfied; or
  - (b) in the period before the Basin Plan first takes effect, at a time declared by the Ministerial Council.
- (3) The Ministerial Council may declare that this Division applies during a period before the Basin Plan first takes effect if the Ministerial Council is satisfied that during that period, the provisions of Division 1 of this Part will not or are not likely to ensure that there will be enough water to meet conveyance water needs.

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

While this Division applies, the provisions of:

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

apply subject to:

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

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

### **133. Application of Division 3**

- (1) This Division applies:
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- (a) in the circumstances specified in the Basin Plan; and
  - (b) in a period before the Basin Plan first takes effect, if the Ministerial Council declares in accordance with sub-clause (3) that this Division applies.
- (2) Once this Division has commenced application in accordance with sub-clause (1), it will cease to apply:
  - (a) once the conditions specified in the Basin Plan are satisfied; or
  - (b) in the period before the Basin Plan first takes effect, at a time declared by the Ministerial Council.
- (3) The Ministerial Council may declare that this Division applies during a period before the Basin Plan is adopted, but may only do so if satisfied that during that period, any one or more of the following applies:
  - (a) there are extreme and unprecedented low levels of water availability; or
  - (b) there is extreme and unprecedented poor water quality in the water available to meet critical human water needs; or
  - (c) there is an extremely high risk that water will not be available to meet critical human water needs during the next 12 months.

**134. Distribution of Waters Subject to Schedule and Determinations of Ministerial Council**

- (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.

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- (3) The Ministerial Council:
    - (a) may determine that any provision of—
      - (i) Division 1 of this Part; or
      - (ii) Part XIV or Schedule F of this Agreement; or
      - (iii) the Schedule made under clause 135,
 applies, or does not apply, or applies to a specified extent or in specified circumstances; or
    - (b) may make a determination about any matter the subject of a provision referred to in paragraph (a) that is additional to, substituted for or contrary to any such provision.

## **DIVISION 4—SCHEDULE FOR WATER SHARING**

### **135 Schedule for water sharing**

- (1) 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, 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.
- (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.

## **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 work plan, from time to time.

## **PART XIV—EFFECT OF SNOWY SCHEME**

### **139. Effect of Snowy Scheme**

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

## **PART XV—MISCELLANEOUS**

### **140. Resolution of Disputes**

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

- (a) on a question of law; or
- (b) which has been decided by a majority vote of the Committee pursuant to a provision of this Agreement.

**141. Resolution of operational management and delivery inconsistencies**

- (1) If the Authority or the Committee is of the opinion that there are operational management and delivery inconsistencies between the application of the Basin Plan and any State's management and delivery of State water entitlements or of entitlements to water exercised within its territory, the Committee must consider and seek to resolve the matter in accordance with this clause.
- (2) If the Committee is unable to resolve a matter before it under this clause that is of strategic significance (including a matter that is of strategic significance because it relates to State water entitlements), the Committee may request the Ministerial Council to make a strategic direction in relation to the matter.
- (3) A request made by the Committee under sub-clause (2) must be accompanied by a statement that outlines the strategic significance of the relevant matter and details the question or questions on which the Committee seeks direction.

**142. Proposals to Amend Agreement**

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



**143. Giving Information to the Authority**

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

**144. Authorities to Observe Agreement**

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

**PART XVI—INDEMNITIES IN RESPECT OF COMMITTEE AND AUTHORITY**

**145. Indemnity in Respect of Payments Made by Commonwealth**

- (1) Subject to sub-clauses 37(2) and 38(2), any payment made by the Commonwealth of Australia in respect of losses or costs incurred by it arising:
  - (a) from any act or omission of the Authority in the bona fide execution of the powers vested in the Authority by or under this Agreement;
  - (b) because of the operation of section 239F of the Water Act;
  - (c) because of the operation of either of sections 239J or 239K of the Water Act in respect of proceedings relating to the Commission or a person who was appointed as a President or Deputy President; or
  - (d) because of an indemnity in either of items 7(1) or 7(3) of Schedule 3 to the *Water Amendment Act 2008* (Commonwealth),must be borne by the Contracting Governments in equal shares.
- (2) Sub-clause (1) does not apply to a payment made by the Commonwealth of Australia under paragraph (1)(a) in its capacity as a Contracting Government under this Agreement.

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

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

**146. Indemnity in Respect of Payments Relating to Former Commissioners**

- (1) Any payment made by the Commonwealth of Australia in respect of:
- (a) a liability arising because of the operation of either of sections 239J or 239K of the Water Act in respect of proceedings relating to a person who was appointed as a Commissioner or Deputy Commissioner; or
  - (b) losses or costs incurred by it because of the indemnity in item 7(2) of Schedule 3 to the *Water Amendment Act 2008* (Commonwealth),
- must be borne by the Contracting Government which had appointed that Commissioner or Deputy Commissioner.
- (2) In this clause, the terms “Commissioner” and “Deputy Commissioner” have the same meanings as under the former Agreement.

**147. Commonwealth to consult other Contracting Governments**

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

**148. Liability for Acts of Committee Members**

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

**PART XVII—TRANSITIONAL PROVISIONS**

**DIVISION 1—TRANSITION TO THIS AGREEMENT**

**149. Definitions**

In this Division:

**“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;

**150. Transitional provisions relating to coming into effect of this Agreement**

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

- (b) any moneys paid by a Contracting Government to the Commission before the commencing day are deemed to have been paid to the Authority under clause 75 for the current financial year;
  - (c) any moneys spent by the Commission before the commencing day in accordance with estimates referred to in paragraph (a) are deemed to have been spent pursuant to the Agreement for the current financial year;
  - (d) if the commencing day falls between 31 March and 30 June in any year, any estimates sent by the Commission to the Contracting Governments before that day for the next financial year are deemed to be estimates sent by the Authority for that next financial year.
- (3) Money of a kind referred to in clause 83 paid by a Contracting Government to the Commission in the current financial year is deemed to have been paid under that clause.
  - (4) At the commencing day, the shares of the control of the transitional RMO assets will be retained by the Commonwealth, South Australia, New South Wales and Victoria, in the following shares:

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

## **DIVISION 2—AMENDMENTS MADE BY THE WATER AMENDMENT (MURRAY-DARLING BASIN AGREEMENT) REGULATIONS 2017**

### **151. Definitions**

In this Division:

**“amending regulations”** means the *Water Amendment (Murray-Darling Basin Agreement) Regulations 2017*.

**“transition period”** means the period that:

- (a) starts at the commencement of the amending regulations;  
and
- (b) ends when the first work plan is approved by the Ministerial Council under clause 34A.

**152. Transitional provisions relating to amendments made by the *Water Amendment (Murray-Darling Basin Agreement) Regulations 2017***

- (1) Clauses 34, 34A and 35, as in force after the commencement of the amending regulations, apply in relation to reporting periods that start on or after that commencement.
- (2) During the transition period, a reference in a provision of this Agreement (other than clause 34A or subclause 52(2) or 56(2)) to the work plan includes a reference to the corporate plan most recently approved under clause 34 before the commencement of the amending regulations (including any amendments of that corporate plan approved under clause 35 before or after that commencement).
- (3) During and after the transition period, a reference in subclause 52(2) or 56(2) to a work plan is taken to include a reference to a corporate plan for any period that starts before the commencement of the amending regulations (including any amendments of that corporate plan approved under clause 35 before or after that commencement).

**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 )

## Schedule 1 The Murray-Darling Basin Agreement

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

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

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

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

**SCHEDULE A—WORKS**

<b>Description of Works</b>	<b>Location</b>	<b>Nominated Government</b>
<b>DARTMOUTH DAM</b> Capacity of approximately 4,000,000 megalitres.	Mitta Mitta River upstream of the town of Dartmouth, north-eastern Victoria.	Victoria
<b>HUME DAM</b> Capacity of approximately 3,038,000 megalitres.	River Murray upstream of the city of Albury, New South Wales.	New South Wales and Victoria, jointly
<b>LAKE VICTORIA WORKS</b> 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
<b>YARRAWONGA WEIR</b> Storage of about 120,000 megalitres.	River Murray near the town of Yarrawonga, Victoria.	Victoria

**Schedule 1** The Murray-Darling Basin Agreement

<b>WEIR AND LOCKS</b> 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
<b>MURRAY MOUTH BARRAGES:</b>		
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

## SCHEDULE B—BASIN SALINITY MANAGEMENT

### PART I—PRELIMINARY

#### 1. Purpose

- (1) The purpose of this Schedule is to implement certain aspects of the *Basin Salinity Management 2030*, or any subsequent strategy approved by the Ministerial Council to manage salinity, as follows:
  - (a) by promoting 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;

**Note**—Targets adopted under this Schedule also apply for some purposes under the Basin Plan.

- (c) by providing accountability arrangements for all actions (including environmental water recovery, delivery and use) that result in significant salinity impacts;
  - (d) by providing for monitoring, assessing, auditing and reporting on matters set out in this Schedule and on progress in implementing the *Basin Salinity Management 2030*.
- (2) The accountability arrangements mentioned in paragraph 1(1)(c) include maintaining Registers to:
  - (a) record salinity impacts; and
  - (b) allocate salinity credits and salinity debits to Contracting Governments.

#### 2. Definitions

**Note**—A number of expressions used in this Schedule are defined in clause 2 of the Agreement, including the following:

- (a) Authority;
- (b) Basin Plan;
- (c) Committee;

(d) Ministerial Council.

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

(a) **“Accountable Action”** means an action that:

- (i) is undertaken after a relevant Baseline Date; and
- (ii) the Authority has decided will have a Significant Effect under paragraph 18(1)(b); and
- (iii) the Authority has entered in a Register.

**“action”** means:

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

relevant to the purposes of this Schedule.

**“average salinity”** means the average daily salinity of the River Murray calculated in accordance with BSM procedures;

**“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 BSM procedures;

**“Baseline Conditions”** means the conditions that contributed to the movement of salt through land and water within the Murray-Darling Basin on 1 January 2000.

**“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 Plan Water”** means Commonwealth environmental water holdings or other held environmental water that is held by a State Contracting Government to offset the reduction in the long-term average sustainable diversion limit.

**Note**—For reductions in the long-term average sustainable diversion limit, see section 75 of the Act and subsection 6.13(3) of the Basin Plan.

**“Basin Salinity Management 2030”** means the strategy of that name adopted by the Ministerial Council on 27 November 2015, as amended from time to time.

**“Basin Salinity Management Strategy”** means:

- (i) before the replacement of the former Agreement on 15 December 2008—Schedule C to that former Agreement as in force on and after 1 November 2002 until immediately before the replacement of the former Agreement; and
- (ii) on and after the replacement of the former Agreement—Schedule B to the Agreement as in force immediately before the commencement of the *Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018*.

**“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, on the advice of the Committee, may from time to time determine;

**“BSM procedures”** has the meaning given by subclause 40A(1).

**“BSMS works or measures”** means works or measures entered on a Register maintained under the Basin Salinity Management Strategy as BSMS works or measures.

**“Collective Account”** means information included in Register A under the heading Collective Account.

**“Commonwealth Account”** means information included in Register A under the heading Commonwealth Account.

**“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 relevant End-of-Valley Target site;

**“End-of-Valley Target site”** means a site specified in Appendix 1 for an End-of-Valley Target.

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

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

**“Joint work or measure”** means either of the following:

- (i) a work or measure authorised under clause 56 of the Agreement for the purposes of the Basin Salinity Management Strategy;
- (ii) a work or measure authorised under clause 56 of the Agreement for the purposes of this Schedule on and after the commencement of the *Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018*.

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

**“protocol”** means a protocol made under subclause 40(1).

**“provisional entry”** has the meaning given by subclause 20A(2).

**“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);

**“Review Plan”** has the meaning given by subclause 32(1).

**“Salinity and Drainage Strategy”** means Schedule C to the former Agreement as in force immediately before 1 November 2002.

**“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;

**“S&DS works or measures”** means works or measures entered on the Register maintained under the Salinity and Drainage Strategy and includes the works or measures referred to in Appendix 2 as Waikerie Phase 2A SIS.

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

**“State Action”** means any Accountable Action that is designated wholly or partly as a State Action by the Authority in accordance with paragraph 20(1)(b) or 24(2)(a);

**“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 17A(1), it must be taken also to have informed the Authority under paragraph 49(1)(a) of the Agreement.
- (3) Expressions used in this Schedule and in:
  - (a) the Water Act; or
  - (b) the Agreement;
 that are not defined in this Schedule have the same meanings as in that Act or Agreement.

### **3. Application to Queensland and Australian Capital Territory**

- (1) Subject to sub-clause 3(2), the whole of this Schedule applies to Queensland and the Australian Capital Territory.
- (2) If a provision of this Schedule states that it:
  - (a) does not apply to Queensland or the Australian Capital Territory; or
  - (b) applies to Queensland or the Australian Capital Territory only in part, or subject to specified conditions,
 that provision takes effect according to its terms.
- (3) Unless otherwise indicated, a reference to a State Contracting Government includes a reference to the Government of the State of Queensland and the Government of the Australian Capital Territory.
- (4) The Governments of the State of Queensland and the Australian Capital Territory will share equally with other Contracting Governments such investigations, construction and administration costs, as defined in clause 71 of the Agreement, as are attributable to implementing this Schedule, except:
  - (a) where the Ministerial Council 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**

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.

### **5. Estimates of salinity and salt load under Baseline Conditions**

- (1) Estimates of salinity and salt loads under Baseline Conditions:
  - (a) at each End-of-Valley Target site; and
  - (b) at the Basin Salinity Target site at Morgan;are set out in Appendix 1 for those sites.
- (5) A State Contracting Government or the Authority (as the case requires) may, from time to time, propose an amendment to any estimate, 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 the Authority and each State Contracting Government, to review and advise the Authority about any proposed amendment to any estimate made by a State Contracting Government or the Authority.
- (7) On the advice of the Committee and after considering the advice of the panel, the Authority may:



- (a) endorse a proposed amendment; or
  - (b) endorse 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 endorse the proposed amendment.
- (7A) If the Authority endorses a proposed amendment to an estimate under paragraph 5(7)(a):
  - (a) the Authority must recommend to the Ministerial Council that Appendix 1 be amended in accordance with the endorsed amendment; and
  - (b) the relevant Government may, for the purposes of this Schedule, use the estimate from the day the Authority endorses 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) If the Authority, under paragraph 5(7)(b), endorses a proposed amendment to an estimate subject to the relevant Government modifying it in any way agreed between the Authority and the relevant Government, the following apply:
  - (a) the relevant Government may, for the purposes of this Schedule, use the estimate originally proposed under subclause 5(5) until the relevant Government:
    - (i) modifies the estimate in accordance with that agreement; and
    - (ii) gives the Authority a copy of the modified estimate;
  - (b) as soon as practicable after receiving the modified estimate, the Authority must recommend to the Ministerial Council that Appendix 1 be amended in accordance with the modified estimate;

- (c) the relevant Government may, for the purposes of this Schedule, use the modified estimate from the day it gives the Authority a copy of the modified estimate.

## 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, under the hydrologic conditions of the Benchmark Period.

Note: E.C. stands for Electrical Conductivity, measured in  $\mu\text{S}/\text{cm}$ .

- (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.

### 9. Amending End-of-Valley Targets

- (2) The Authority, or the relevant State Contracting Government which nominated an End-of-Valley Target, may, following a review under clause 33 or at any other time, 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 the following:
  - (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 *Basin Salinity Management 2030*;
  - (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 as a result of 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—AUTHORISED WORKS OR 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 ensure that salinity levels of the upper River Murray and the River Murray in South Australia are appropriate for agricultural, environmental, urban, industrial and recreational uses; 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 2014.

- (2) Subject to Part VIII of the Agreement, after 31 December 2014, the Ministerial Council must authorise, and the Contracting Governments must undertake, any further Joint works or measures that the Ministerial Council decides are necessary, desirable or convenient to maintain salinity at or below the Basin Salinity Target.
- (3) The Authority must enter any Joint work or measure undertaken under this clause on a Register as an Accountable Action, in accordance with Part V.

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

- (1) Subject to subclause 11(2) and 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%

- (2) Any salinity credits or salinity debits arising from any Joint work or measure undertaken under clause 10 must, if required by the Committee or BSM procedures, be attributed to all Contracting Governments in the Collective Account.

**12. Authorised works or measures**

- (1) The Ministerial Council must:
  - (a) set out in Appendix 2 a list of Joint works or measures and a list of S&DS works or measures; and
  - (b) amend Appendix 2 whenever a new Joint work or measure:
    - (i) is authorised; or
    - (ii) is designated in accordance with paragraph 24(2)(b).
- (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.
- (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 or any S&DS works or measures to be ineffective, pursuant to sub-clause 70(1) of the Agreement.
- (5) The Ministerial Council may, upon the recommendation of the Committee:
  - (a) declare that any Joint works or measures must be treated as a State Action, in whole or in part; and
  - (b) amend Appendix 2 to the extent necessary to implement any declaration made under sub-clause 12(4) or paragraph 12(5)(a).

**13. Participation by Queensland and Australian Capital Territory**

- (1) Subject to sub-clause 13(2), the Government of Queensland or the Australian Capital Territory (as the case requires) is not required to contribute to the costs of, nor will salinity credits or salinity debits be attributed to that Government in relation to:
  - (a) any Joint work or measure undertaken under the Joint Program; or
  - (b) any S&DS works or measures.
- (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 2015 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 authorised works or measures**

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

**PART V—THE REGISTERS**

**15. Registers A and B**

- (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 BSM procedures.
- (3) The Authority must include the following matters on Register A:

- (a) all S&DS works or measures; 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) Subject to any transfer under clause 23, 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 the former Schedule or this Schedule, expressly for the purpose of off-setting a Delayed salinity impact which the Authority determines may otherwise occur, in accordance with any BSM procedures.

## **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, in accordance with any BSM procedures, determines otherwise.
- (3) Despite sub-clause 16(2) and any provision in clause 20 or 22, for the purposes of any calculation under sub-clause 16(1) and on the application of a State Contracting Government, the Authority may decide:
  - (a) to postpone the attribution of any salinity debit which might otherwise be attributed to that Government in Register A or Register B, in respect of an Accountable Action that the Government proposes to undertake; or

- (b) to allow any salinity credit which might otherwise be attributed to that Government in Register A or Register B, in respect of an Accountable Action after it is declared effective or complete in accordance with sub-clause 22(1) or 22(3) to be used in the calculation to off-set any salinity debit already attributed to that Government in Register A or Register B.
- (4) The Authority:
  - (a) must only make a decision under sub-clause 16(3); and
  - (b) may attach any condition to such a decision, in accordance with any relevant BSM procedures.

#### **16A. Obligations of Contracting Governments jointly**

The Contracting Governments jointly must ensure that:

- (a) salinity credits are not transferred from the Commonwealth Account to the Collective Account or to a Contracting Government unless salinity credits are available in the Commonwealth Account; and
- (b) the Collective Account has salinity credits equal to or greater than its salinity debits.

**Note**—For transfers of salinity credits, see clause 23.

#### **17. Operating Registers**

- (1) This clause provides a simplified outline of the operation of the Registers under this Part.
- (1A) A Contracting Government must, and the Committee may, inform the Authority of any Proposal which may 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) Subject to subclause 17(4), the Authority must:
  - (a) estimate the salinity impacts of an Accountable Action; and
  - (b) determine any salinity credits or salinity debits arising from that Accountable Action; and
  - (c) attribute those salinity credits or salinity debits in accordance with clause 21 or 21A.
- (4) If the Authority is unable to confidently estimate the salinity impacts of an Accountable Action, the Authority must make a provisional entry in the relevant Register.
- (5) The Authority must, in accordance with clause 23, amend Register A or Register B to give effect to trading or transfer of salinity credits and salinity debits.
- (6) The Authority must re-estimate the salinity impacts of each item on Register A and Register B in accordance with clause 24.
- (7) The Authority may, in accordance with clause 24, make amendments to Register A or Register B.

#### **17A Informing the Authority of Proposals**

- (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 Committee may inform the Authority of any Proposal if the Committee, acting reasonably, considers that:
  - (a) the Proposal is likely to have a Significant Effect; and
  - (b) any salinity credits or salinity debits arising from the Proposal will be attributable to the Collective Account.

#### **18. Determining whether a Proposal or action has a Significant Effect**

- (1) If a Contracting Government informs the Authority under subclause 17A(1) of a Proposal, the Authority must:

- (a) assess that Proposal on the basis of information provided to the Authority by the Contracting Government; 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.
- (1A) If the Committee informs the Authority of a Proposal under subclause 17A(2), the Authority must:
  - (a) assess the Proposal on the basis of information provided to the Authority by the Contracting Government nominated by the Committee for the purposes of this paragraph; 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 17A(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. by the year 2100; 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 BSM procedures.

## **19. Assessing Salinity Impacts of Accountable Actions**

- (1) If the Authority decides that:
    - (a) a Proposal referred to in subclause 18(1) or (1A); or
-

- 
- (b) an action referred to in subclause 18(2);
  - has or may have a Significant Effect, the Authority:
  - (c) must declare the Proposal or action to be an Accountable Action; and
  - (d) if the Accountable Action is not the delivery of Basin Plan Water—must, as an interim measure, designate the Accountable Action to be in whole or in part either or both of the following:
    - (i) a Joint work or measure;
    - (ii) a State Action; and
  - Note**—If the delivery of Basin Plan Water has been declared an Accountable Action, it is not designated as either a State Action or a Joint work or measure: see subclause 20(2).
  - (e) if the Proposal is the delivery of Basin Plan Water—must not so designate the Accountable Action; and
  - (f) must either:
    - (i) estimate the salinity impacts of the Accountable Action, using a relevant method for assessing salinity impacts set out in any BSM procedures; or
    - (ii) if the Authority is unable to confidently estimate the salinity impacts of the Accountable Action—prepare a provisional entry.
  - (2) Subject to subclause 19(4), if the Authority declares a Proposal or action to be an Accountable Action, the relevant Contracting Government must give to the Authority, in accordance with any BSM procedures, all relevant information about the Accountable Action which may assist the Authority accurately to assess its salinity impacts.
  - (3) For the purposes of subclause 19(2), the relevant Contracting Government for an Accountable Action is as follows:
    - (a) if the Accountable Action is wholly or partly a Joint work or measure—the Contracting Government nominated by the Ministerial Council in accordance with subclause 56(5) of the Agreement;
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- (b) if the Accountable Action is wholly or partly a State Action—the relevant State or States;
  - (c) if the Accountable Action is wholly or partly a State Action in respect of which salinity credits or debits will be attributed to the Collective Account—the Contracting Government determined by the Committee in accordance with paragraph 21A(3)(a).
- (4) If the Accountable Action is the delivery of Basin Plan Water, a Contracting Government that has information in its possession that may assist the Authority accurately to assess the salinity impacts of the Accountable Action must, if requested in writing by the Authority, give the information to the Authority.

**20. Estimating Salinity Credits and Salinity Debits**

- (1) Subject to subclause 20(2), 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) estimate the prospective salinity credits or salinity debits arising from that action; and
  - (b) designate, in accordance with any BSM procedures, that action to be in whole or in part either or both of the following:
    - (i) a Joint work or measure;
    - (ii) a State Action; and

**Note**—Paragraph 20(1)(b) does not empower the Authority to authorise a Joint work or measure or a State Action.

- (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 is the delivery of Basin Plan Water, the Authority:
  - (a) must estimate the prospective salinity credits arising from that action; and
  - (b) must not designate the action to be in whole or in part either or both of the following:

- (i) a Joint work or measure;
  - (ii) a State Action; and
- (c) must enter the action in Register A.
- (3) Subject to clause 20A, the Authority must make an estimate referred to in paragraph 20(1)(a) or 20(2)(a) in accordance with a relevant method for assessing salinity impacts set out in any BSM procedures.

#### **20A. Provisional entries in Registers**

- (1) This clause applies if the Authority is unable to confidently estimate the salinity impacts of an Accountable Action, or a Delayed salinity impact, in accordance with any relevant method for assessing salinity impacts set out in any BSM procedures.
- (2) The Authority may, in accordance with any reasonable method for assessing salinity effects, make a **provisional entry** in Register A or Register B of the Authority's estimate of the salinity effects of the Accountable Action or Delayed salinity impact.
- (3) If the Authority makes a provisional entry in a Register in accordance with subclause 20A(2), the Authority must, as soon as practicable:
  - (a) estimate the salinity credits or salinity debits of the Accountable Action or Delayed salinity impact; and
  - (b) amend the relevant Register accordingly.
- (4) Each relevant Contracting Government must give to the Authority all relevant information to assist the Authority to make an estimate under paragraph 20A(3)(a).

#### **21. Attributing Salinity Credits or Salinity Debits**

- (1) Subject to subclause 21(2) and clause 21A, the Authority must, in accordance with any BSM procedures, 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; or
  - (c) arising from the delivery of Basin Plan Water, to the Commonwealth Account.
- (2) Despite paragraph 21(1)(b), where:
  - (a) there is an agreement referred to in clause 23, the Authority must, in accordance with any BSM procedures, attribute any salinity credits or salinity debits in accordance with that agreement; and
  - (b) two or more Contracting Governments together undertake the relevant State Action, the Authority must, in accordance with any BSM procedures, attribute any salinity credits or salinity debits arising from that action in the manner agreed between those Contracting Governments.

**21A. Attributing certain salinity credits or salinity debits to the Collective Account**

- (1) The Authority must, in accordance with any BSM procedures, attribute salinity credits and salinity debits to the Collective Account if the credits or debits arise from an Accountable Action that is designated for the purposes of this subclause by:
  - (a) any BSM procedures; or
  - (b) the Committee.
- (2) For the purposes of subclause 21A(1), an Accountable Action does not include the delivery of Basin Plan Water.
- (3) If subclause 21A(1) applies, the Committee must determine which Contracting Government is to be responsible for the following:
  - (a) providing all relevant information about the Accountable Action to the Authority for the purposes of subclause 19(2);
  - (b) monitoring and reviewing the Accountable Action for the purposes of clauses 27, 28 and 33.

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**21B. Establishing and maintaining a record of the proportions in which salinity credits and salinity debits are attributed**

The Authority must, in accordance with any BSM procedures, establish and maintain a record of the proportions in which salinity credits and salinity debits were attributed for Joint works or measures or S&DS works or measures under the following:

- (a) the Salinity and Drainage Strategy;
- (b) the Basin Salinity Management Strategy;
- (c) this Schedule as in force on and after the commencement of the *Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018*.

**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 in accordance with clause 21 or 21A; and
- (d) enter the salinity credits on the relevant Register, in accordance with any relevant BSM procedures.

- (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 in accordance with clause 21 or 21A; and
  - (d) enter the salinity debits on the relevant Register, in accordance with any relevant BSM procedures.
- (3) Despite sub-clauses 22(1) and 22(2), if an Accountable Action is a State Action that is not required to be declared effective under clause 64 of the Agreement, the Authority must, in accordance with any BSM procedures:
  - (a) attribute any salinity credits arising from that State Action at the time when the Authority considers that the Accountable Action is substantially complete; and
  - (b) enter the salinity credits on the relevant Register.

**23. Trading and transfers of salinity credits and salinity debits**

- (1) A Contracting Government may agree to assign any or all of the salinity credits or salinity debits attributed to that Government in Register A, to one or more of the other Contracting Governments.
- (2) When the parties to an agreement referred to in sub-clause 23(1) inform the Authority in writing of that agreement and its effect, the Authority must:
  - (a) attribute salinity credits or salinity debits in accordance with the agreement; and
  - (b) amend Register A accordingly.
- (2A) Unless the Committee directs otherwise, a Contracting Government may, if any BSM procedures permit and in accordance with any such procedures, assign to the Collective Account any or all of the salinity credits or salinity debits attributed to that Government on Register A. If a Contracting Government does so, the Authority must amend Register A accordingly.
- (2B) The Authority must, if required by any BSM procedures, transfer any salinity credits attributed to the Commonwealth Account to the Collective Account and amend Register A accordingly.



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- (2C) The Authority must, at the request of a State Contracting Government, and in accordance with any BSM procedures:
    - (a) transfer a State Contracting Government's share of salinity credits in the Collective Account to that State Contracting Government; and
    - (b) amend Register A accordingly.
  - (3) A Contracting Government, with the prior written approval of the Committee, 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 Committee under sub-clause 23(3); and
    - (b) amend Register B accordingly.
  - (5) The Authority may, in accordance with BSM procedures, 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.

**24. Re-estimating salinity impacts and amendment of Register entries**

- (1) The Authority:
  - (a) must re-estimate the salinity impacts of an Accountable Action or a Delayed salinity impact following a review of the Accountable Action or Delayed salinity impact in accordance with a Review Plan under clause 32; and
  - (aa) may, at any other time, re-estimate the salinity impacts of an Accountable Action or Delayed salinity impact; and
  - (b) if the re-estimated salinity impacts differ from the Authority's most recent previous estimate of the salinity impacts, must:

- (i) alter the calculation and attribution of either or both of the salinity credits and salinity debits; and
  - (ii) make any consequential amendment to a Register, to reflect the re-estimated salinity impacts.
- (1A) If the Authority considers that an estimate of the salinity cost effect on which a salinity credit or salinity debit of an Accountable Action or Delayed salinity impact was determined is not reliable, the Authority:
  - (a) may, in accordance with the advice of the Committee, remove the salinity credit or salinity debit and replace it with a provisional entry; and
  - (b) must, as soon as practicable, use its best efforts to make a reliable estimate and make a consequential amendment of the Register to reflect the re-estimated salinity impacts.
- (2) The Authority may, on the advice of the Committee:
  - (a) designate a Joint work or measure to be a State Action; or
  - (b) designate a State Action to be a 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 or Delayed salinity impact, as the case requires; and
  - (b) make any consequential amendment to a Register, in accordance with any relevant BSM procedures.

## **PART VI—MONITORING**

### **25. Monitoring obligations**

- (1) The Authority and each State Contracting Government must carry out such monitoring as it is required to undertake:
  - (a) to fulfil its respective reporting obligations under Part VII; and
  - (b) by this Part,in accordance with any relevant BSM procedures.
- (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. Monitoring at End-of-Valley Target sites**

A State Contracting Government must, in accordance with any BSM procedures, undertake continuous flow and salinity monitoring in respect of relevant End-of-Valley Target sites for which it is responsible.

### **27. Monitoring programs in relation to Accountable Actions and Delayed salinity impacts**

- (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 State Contracting Government must, within 3 months after a State Action undertaken by the Government has been completed, give to the Authority a proposed program:
  - (a) to monitor the salinity impacts of that State Action; and

- (b) to monitor for Delayed salinity impacts in that State.
- (2A) A State Contracting Government must give to the Authority a proposed program to monitor the salinity impacts of a Joint work or measure that is designated to be a State Action for that State in accordance with paragraph 24(2)(a) within 3 months after such designation.
- (2B) If salinity credits or salinity debits arising from an Accountable Action are attributed to the Collective Account in accordance with clause 21A, then the Contracting Government that the Committee, under paragraph 21A(3)(b), determines is responsible for monitoring the Accountable Action must give the Authority a proposed monitoring program to monitor the salinity impacts of the Accountable Action.
- (3) The Authority may, in accordance with any BSM procedures:
  - (a) accept a program given to it under sub-clause 27(1), 27(2) or 27(2A); or
  - (b) accept that program with any amendment made by the Authority; or
  - (c) decline to accept the program, setting out its reasons.
- (4) The Authority may, from time to time, give directions to a Constructing Authority under paragraph 61(1)(a) of the Agreement to ensure that any Joint work or measure or any S&DS work or measure is monitored efficiently and effectively.
- (5) The Committee may make BSM procedures to ensure that any Accountable Action or Delayed salinity impact is monitored efficiently and effectively.

**28. Monitoring Accountable Actions and monitoring for Delayed salinity impacts**

- (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, in accordance with a program accepted by the Authority under clause 27:

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- (a) monitor the salinity impacts of a State Action in the State; and
  - (b) monitor for Delayed salinity impacts in that State.
- (3) A Contracting Government mentioned in subclause 27(2B) must, in accordance with a program accepted by the Authority under clause 27, monitor the salinity impacts of an Accountable Action which the Committee determines it is responsible for monitoring.
  - (4) A Contracting Government nominated under subclause 56(5) of the Agreement in respect of an S&DS work or measure must monitor the salinity impacts of that S&DS work or measure in accordance with a program approved under clause 12 of the former Schedule, unless and until the Authority alters it, and thereafter in accordance with the altered program.

## **PART VII—REPORTING, AUDIT AND REVIEW**

### **29. Reports by State Contracting Governments**

- (1) A State Contracting Government must, in accordance with any BSM procedures, prepare:
  - (a) a status report for the financial year commencing on 1 July 2017 and every second financial year; and
  - (b) a comprehensive report for the financial year commencing on 1 July 2018 and every second financial year.
- (2) A State Contracting Government must give the report to the Authority as soon as practicable after the end of the financial year to which the report relates and, in any case, by 30 November in the following financial year.

### **30. Annual report by Commonwealth Government**

- (1) The Commonwealth Government must, after the end of each financial year, prepare a report in respect of that financial year in accordance with any BSM procedures.
  - (2) The Commonwealth Government must give the report to the Authority as soon as practicable after the end of the financial year
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to which the report relates and, in any case, by 30 November in the following financial year.

**31. Reports by the Authority**

- (1) The Authority must, in accordance with this clause and any BSM procedures, prepare the following:
  - (a) for the financial year commencing on 1 July 2017 and every second financial year:
    - (i) a status report; and
    - (ii) a summary report;
  - (b) for the financial year commencing on 1 July 2018 and every second financial year—a comprehensive report.

*Status report*

- (2) The Authority must give the status report to the Committee as soon as practicable after the end of the financial year to which the report relates and, in any case, by 31 December in the following financial year.
- (3) When the Authority gives the status report to the Committee, the Authority must also give to the Committee the following:
  - (a) a copy of each State Contracting Government's report prepared under paragraph 29(1)(a) for that financial year;
  - (b) a copy of the Commonwealth Government's annual report prepared under subclause 30(1) for that financial year.

*Comprehensive report*

- (4) The Authority must give the comprehensive report to the Ministerial Council as soon as practicable after the end of the financial year to which the report relates and, in any case, by 31 March in the following financial year.
- (5) A comprehensive report must, for the financial year to which it relates, include the following:
  - (a) a summary of each State Contracting Government's report prepared under paragraph 29(1)(b) for that financial year;

- (b) a summary of the Commonwealth Government's annual report prepared under subclause 30(1) for that financial year;
- (c) the executive summary and recommendations of the audit report prepared in relation to the financial year under subclause 34(5).

*Summary report*

- (6) The Authority must give each summary report to the Ministerial Council as soon as practicable after the end of the financial year to which the summary report relates and, in any case, by 31 March in the following financial year.
- (7) A summary report must include a summary of the information included in the reports prepared under paragraph 29(1)(a), subclause 30(1) and subparagraph 31(1)(a)(i) for the financial year.

*Publication of reports*

- (8) The Authority must publish each status report, comprehensive report and summary report prepared under this clause on its website.

## **32. Review Plan**

- (1) The Authority must prepare and approve a plan (the **Review Plan**) in accordance with this clause and any relevant BSM procedures.
- (2) The Review Plan must be:
  - (a) prepared on the basis of information and advice provided to the Authority by the Contracting Governments; and
  - (b) approved by the Authority on the advice of the Committee.
- (3) The Review Plan must provide for the review of the following matters:
  - (a) Register entries (including provisional entries);
  - (b) models or assessment methods associated with Register entries;
  - (c) End-of-Valley Targets, including, for each valley, a review of associated models and baseline data;

- (d) any other model used or approved by the Authority under clause 38 to estimate salinity impacts.
- (4) Unless otherwise determined by the Committee, the matters to be reviewed under subclause 32(3) are to be reviewed as follows:
  - (a) for Register entries (including provisional entries):
    - (i) for Joint works or measures and S&DS works or measures—by the Authority; and
    - (ii) for State Actions—by the relevant State Contracting Government or, if the action is shared between States, by the relevant State Contracting Governments; and
    - (iii) for salinity credits or salinity debits that are attributed to the Collective Account—as determined by the Committee in accordance with paragraph 21A(3)(b); and
    - (iv) for delivery of Basin Plan Water—by the Authority; and
    - (v) for Delayed salinity impacts—by the relevant State Contracting Government;
  - (b) for models or assessment methods associated with register entries—by the Authority or the Contracting Government responsible for reviewing the relevant register entry;
  - (c) for End-of-Valley Targets—by the State Contracting Government responsible for the relevant valley;
  - (d) for any other model used or approved by the Authority—by the Authority.
- (5) Each matter specified in the Review Plan must be reviewed at least once during the 10 year period commencing on 1 January 2016 and must be reviewed within 10 years of the previous review.
- (6) The Authority must review the Review Plan on an annual basis and may, in accordance with any BSM procedures, amend the Review Plan by changing the frequency of review of any matter specified in the Review Plan.
- (7) The Authority or a Contracting Government may, but is not required to, review a model underpinning one or more register



entries at the same time as the Authority or the Government, as the case may be, reviews the relevant register entry or entries.

**33. Review of matters in Review Plan by Contracting Governments and Authority**

- (1) Each Contracting Government and the Authority must review, and report on, matters for which the Contracting Government or the Authority is responsible under the Review Plan, in accordance with the Review Plan and any relevant BSM procedures.
- (2) A report arising from a review of matters under paragraph 32(4)(a) 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 Accountable Actions or Delayed salinity impacts 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 2000, 2015, 2030, 2050 and 2100.
- (3) A report arising from a review of matters under paragraph 32(4)(c) in relation to End-of-Valley Targets must include information about salinity trends, predictions and risk profile for the relevant valley.

**34. Audit and assessment**

- (1) The Authority must appoint independent auditors for the purpose of carrying out an audit and assessment 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 Authority; and
  - (c) may only be removed from office during the period of that person's appointment by the Committee, on the recommendation of the Authority.
- (2A) An audit and assessment is to commence by November after the end of the financial year mentioned in paragraph 31(1)(b).

- (3) The independent auditors must together carry out the following:
  - (a) an audit under this clause of the following:
    - (i) the report of each review conducted in the preceding 2 financial years by each Contracting Government and by the Authority under clause 33;
    - (ii) Register A and Register B;
  - (b) an assessment of the following:
    - (i) the implementation of the *Basin Salinity Management 2030*;
    - (ii) the implementation of the Review Plan, including the appropriateness of review periods.
- (3A) The Authority may, at any time, in consultation with the Contracting Governments, amend the terms of reference for an audit or assessment to include additional matters to be covered by the audit or assessment.
- (4) The independent auditors must, in each audit, reach a view by consensus about:
  - (a) the performance of each Contracting Government and of the Authority in implementing the provisions of this Schedule since the previous audit; and
  - (b) whether the Authority has fairly and accurately recorded the salinity impacts of each action entered in Register A or Register B.
- (5) The independent auditors must prepare a report setting out:
  - (a) the findings of each audit and assessment; and
  - (b) any recommendations made by the independent auditors arising from that audit or assessment.
- (6) Without limiting sub-clause 34(5), a report:
  - (a) must set out the view reached on each of the matters referred to in sub-clause 34(4); and
  - (b) may recommend to the Authority that the salinity impacts entered in Register A or Register B for an Accountable Action be varied; and

- (c) may set out a finding that the total salinity credits are not equal to, or do not exceed, the total salinity debits attributed to a State Contracting Government in Register A, contrary to paragraph 16(1)(a).

### **35. Review of Schedule**

- (1) The Authority must prepare and give to the Ministerial Council a report on the operation of this Schedule as follows:
  - (a) at such times as the Committee directs;
  - (b) at any time the Authority considers appropriate.
- (2) Without limiting the contents of any report prepared under sub-clause 35(1), the Authority may include in a report:
  - (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 since the last report prepared under subclause 35(1); 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 Contracting Government has not complied with one or more of its obligations under this Schedule.

### **35A. Review of the *Basin Salinity Management 2030***

- (1) The Authority must:
  - (a) by 31 December 2025—prepare, in consultation with Contracting Governments, a plan to review the *Basin Salinity Management 2030*; and

- (b) by 31 December 2026—commence a review of the *Basin Salinity Management 2030* in accordance with the plan.
- (2) The review must include a review of the following matters:
  - (a) matters required by any BSM procedures;
  - (b) matters mentioned in the *Basin Salinity Management 2030* as matters to be considered in the review;
  - (c) the operation of this Schedule.

## PART VIII—MODELS

### 36. Models to be developed by the Authority

- (1) Using the Benchmark Period, the Authority must develop and maintain one or more models to simulate:
  - (a) the salinity, salt load and flow, each on a daily basis; and
  - (b) the economic effects on water users of the simulated salinity, salt load and flow,in the Upper River Murray and the River Murray in South Australia.
- (2) Any model or models developed under subclause 36(1) must be capable of estimating, or supporting the estimation of, the following:
  - (a) any salinity impacts of Accountable Actions;
  - (b) any Delayed salinity impacts;at Morgan and such other relevant locations as the Authority may determine, for each of the years 2000, 2015, 2030, 2050, 2100 and for such other years as the Authority may determine.
- (3) A Contracting Government must give the Authority information about the matters referred to in paragraphs 36(2)(a) and (b) that is in the possession of the Contracting Government in order to assist the Authority to develop and maintain a model referred to in subclause 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 and maintain:
- (a) subject to subclause (3), one or more models to simulate, under Baseline Conditions, the daily salinity, salt load and flow, over the Benchmark Period, for each Valley specified in Appendix 1 for which the State Contracting Government is responsible; and
  - (b) one or more groundwater models to simulate, under Baseline Conditions, salt water accessions to the surface waters, where required for the assessment of Accountable Actions or Delayed salinity impacts for which the State Contracting Government is responsible.
- (2) Any model or models developed under subclause 37(1) must be capable of estimating or, in the case of groundwater, supporting the estimation of, the following:
- (a) any salinity impacts of Accountable Actions;
  - (b) any Delayed salinity impacts;
- for each Valley and each End-of-Valley Target site specified in Appendix 1 for each of the years 2000, 2015, 2030, 2050, 2100 and for such other years as the Authority determines.
- (3) A State Contracting Government is not required to develop and maintain a model for the purposes of paragraph 37(1)(a) if a model developed by the Authority under clause 36 is capable of simulating the matters required by a model under paragraph 37(1)(a).
- (4) A State Contracting Government may, from time to time, alter a model developed under subclause 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
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obligations under this Schedule, must be assessed in accordance with this clause and any relevant BSM procedures.

- (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 include any matter required by any BSM procedures, and must set out the assessor's estimation of the consequences of the alteration on salinity, salt load and flow, each on a daily basis, for each Valley and at each End-of-Valley Target site which may be affected by the alteration.
- (5) After completing the assessment of a model or alteration under subclause 38(2) or considering the assessment made by the panel under subclause 38(3), the Authority may:
  - (a) approve the model or alteration; or
  - (b) approve that model or alteration, subject to:
    - (i) in the case of a model or alteration prepared by a Government, the relevant Government modifying the model or alteration in a way agreed between it and the Authority; or
    - (ii) in the case of a model prepared by the Authority, the Authority modifying the model or alteration in a way it determines; or
  - (c) decline to approve the model or alteration, setting out its reasons.
- (6) Within 6 months (or such longer period agreed by the Committee) 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, if the Authority, in writing, requests the State Contracting Government to do so.

- (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.

## **PART IX—PROTOCOLS AND BSM PROCEDURES**

### **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).

**40A. BSM procedures**

- (1) The Committee may, from time to time, make, amend or revoke such procedures (***BSM procedures***) as it considers necessary, desirable or convenient to give effect to this Schedule.
- (2) BSM procedures must not be inconsistent with any provision of the Agreement (including its Schedules) and are of no effect to the extent of any inconsistency.
- (3) The Authority must publish BSM procedures on its website.

**41. Matters that may be dealt with in BSM procedures**

Without limiting subclause 40A(1), the Committee may make any BSM procedures as follows:

- (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;



- (iii) how any salinity credits or salinity debits are to be apportioned between, and attributed to, Contracting Governments;
- (iv) about the purpose and operation of the Collective Account, and the attribution of salinity credits or salinity debits to the Collective Account;
- (v) about the attribution or transfer of salinity credits to or from the Commonwealth Account;
- (vi) about a Contracting Government accessing its share of salinity credits attributed to the Collective Account;
- (vii) about provisional entries (including rules about the use of provisional entries);
- (g) about monitoring:
  - (i) the salinity impacts of an Accountable Action;
  - (ii) Delayed salinity impacts;
  - (iii) at End-of-Valley Target sites;
- (ga) about the form and content of reports under clauses 29, 30 and 31;
- (gb) about the form and content of the Review Plan (including any operational review undertaken as part of a register entry review);
- (gc) about the conduct of a review, and the content of a review report, under clause 33;
- (gd) about matters to be included in a review under clause 35 or 35A;
- (h) about developing and assessing models referred to in Part VIII and using those models;
- (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 the Basin Plan, land and water management plans and relevant statutory requirements.

## **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).
- (1A) The Authority must not make a determination under subclause 43(1) unless, before making the determination, it has, in accordance with any BSM procedures:
  - (a) made an assessment of risk to achieving the Basin Salinity Target; and
  - (b) consulted Contracting Governments.
- (2) If the Authority determines that a State Contracting Government is in default, the Authority must:
  - (a) forthwith declare that the State is in default of its obligations under this Schedule; and
  - (b) report the matter to the next meeting of the Ministerial Council.

### **44. Exception Reports**

- (1) The Authority may determine:
  - (a) that the combined total of all salinity credits does not exceed the combined total of all salinity debits attributed to a State

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

- (c) that a 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**

- (1) The Authority must:
  - (a) upon making a determination under sub-clause 43(1) or 44(1), consult with the relevant 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.
- (2) The Authority must not act under subclause 45(1) unless it has first consulted the Committee.

#### **46. Action by a Contracting Government**

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

- (a) give a report to the next meeting of the Ministerial Council, setting out:
  - (i) an explanation of the circumstances leading to the Authority's determination; and
  - (ii) what action the Government has taken, or proposes to take, to remedy that situation; and

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

## PART XI—FINANCE

### 47. State Actions

- (1) Subject to subclauses 47(2) and (3), the cost of undertaking and monitoring a State Action must either:
  - (a) be met by the Contracting Government which undertakes it; or
  - (b) if the State Action is undertaken by more than one Contracting Government, be met by them in such proportions as they may agree.
- (2) Where a Contracting Government agrees to assign to another Contracting Government any salinity credits or salinity debits under clause 23, any financial obligation of the Government making the assignment under sub-clause 47(1) will be allocated between the parties to the agreement, in such proportions as they may agree.
- (3) The costs of undertaking, monitoring and reviewing State Actions whose salinity credits and salinity debits will be attributed to the

Collective Account are to be shared between Contracting Governments in accordance with a determination of the Committee.

**48. Joint works or measures and S&DS works or measures**

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

**PART XII—TRANSITIONAL PROVISIONS**

**DIVISION 1—AMENDMENTS MADE BY THE WATER AMENDMENT (MURRAY—DARLING BASIN AGREEMENT—BASIN SALINITY MANAGEMENT) REGULATIONS 2018**

**50. Application of Division**

This Division applies in relation to amendments of this Schedule made by Schedule 1 to the amending regulations.

**51. Definitions**

In this Division:

“**amending regulations**” means the *Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018*.

“**commencement day**” means the day on which this Division commences.

“**new Schedule B**” means this Schedule as in force on and after the commencement of this Division.

“old Schedule B” means this Schedule as in force immediately before the commencement of this Division.

**52. Things started but not finished before commencement day**

- (1) This clause applies if:
  - (a) before the commencement day a Contracting Government, the Committee, the Authority or an auditor appointed under clause 34 of old Schedule B started doing a thing in accordance with old Schedule B; and
  - (b) immediately before that day the Contracting Government, Committee, Authority or auditor had not finished doing that thing.
- (2) The Contracting Government, Committee, Authority or auditor, as the case requires, must, on and after the commencement day, finish doing the thing in accordance with old Schedule B, unless the Contracting Government, Committee, Authority or auditor considers it more appropriate to finish doing the thing in accordance with new Schedule B.

**53. Things done in anticipation of new Schedule B**

Acts or things consistent with new Schedule B done by or on behalf of a Contracting Government, the Committee, the Authority or an auditor appointed under clause 34 of old Schedule B, before the commencement day in anticipation of new Schedule B are, on and after the commencement day, taken to have been done under and in accordance with new Schedule B.

**54. Things done by, or in relation to, the Committee or Authority**

If, before the commencement day, a thing was done by, or in relation to, the Committee or the Authority under old Schedule B, then the thing is taken, on and after that day, to have been done by, or in relation to, the Committee or the Authority, as the case requires, under new Schedule B.

**55. Things done under old Schedule B for particular purpose**

- (1) If:
- (a) a thing was done for a particular purpose under old Schedule B; and
  - (b) the thing could be done for that purpose under new Schedule B;
- the thing has effect for the purposes of new Schedule B as if it had been done under new Schedule B.
- (2) Without limiting subclause 55(1), a reference in that subclause to a thing being done includes a reference to an attribution, notice, report, plan or other instrument being given or made.

**56. Amendments have no effect on previous operation of old Schedule B**

The amendment of a provision (the *affected provision*) of this Schedule by Schedule 1 to the amending regulations does not:

- (a) affect the previous operation of the affected provision or anything duly done or suffered under the affected provision; or
- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred by a Contracting Government, the Committee or the Authority under the affected provision.

**57. Saving of protocols**

Protocols made by the Authority under clause 40 of old Schedule B and in force immediately before the commencement day continue to have effect on and after that day as if they were BSM procedures made by the Committee under clause 40A and may be amended or revoked by the Committee in accordance with clause 40A.

**58. Provisional entries**

An entry made by the Authority in Register A or Register B before the commencement day purporting to be a provisional entry is, on and after the commencement day, taken to be a provisional entry made by the Authority in accordance with clause 20A.

SCHEDULE B—APPENDIX 1—End of Valley Targets

Murray-Darling Basin Agreement – Schedule B, Appendix 1 Basin Salinity Management 2030 – End-of-Valley Salinity Targets														
Valley	Baseline Conditions (1 Jan 2000)				End-of-Valley Targets (as percentage of Baseline)				End-of-Valley Targets (as absolute value)				AWRC Site Number	Map EoV Site ID
	Salinity (EC µS/cm)		Salt Load (t/yr)		Salinity (EC µS/cm)		Salt Load (t/yr)		Salinity (EC µS/cm)		Salt Load (t/yr)			
	Median (50%ile)	Peak (80%ile)	Mean	Peak (80%ile)	Median (50%ile)	Peak (80%ile)	Mean	Peak (80%ile)	Median (50%ile)	Peak (80%ile)	Mean			
All PARTNER GOVERNMENTS														
Murray-Darling Basin	570	920	1,600,000	110%	87%	(95%ile)	110%	627	800 <sup>a</sup>	(95%ile)	1,760,000	426554	96	
SOUTH AUSTRALIA														
SA Border	380	470	1,300,000	-	88%	-	-	-	412	-	-	426200	92	
Lock 6 to Berri	450	600	1,500,000	-	91%	-	-	-	543	-	-	426534	94	
Below Morgan	600	820	1,600,000	-	94%	-	-	-	770	-	-	426522	98	
NEW SOUTH WALES														
Macintyre	150	230	160,000	108%	112%	106%	106%	162	258	-	-	410130	58	
Macintyre	430	660	250,000	107%	105%	103%	103%	460	693	-	-	412004	55	
Macintyre	480	490	27,000	104%	119%	129%	129%	456	581	-	-	421023	78	
Macintyre	480	610	23,000	104%	119%	129%	129%	456	581	-	-	421012	77	
Macintyre	350	390	9,000	105%	-	99%	99%	368	-	-	-	420020	76	
Macintyre	440	650	110,000	108%	116%	116%	116%	475	715	-	-	419026	75	
Macintyre	400	540	7,000	103%	101%	100%	100%	412	545	-	-	418058	74	
Macintyre	250	330	50,000	100%	100%	100%	100%	250	330	-	-	416001	70	
Macintyre	330	440	440,000	118%	103%	131%	131%	389	453	-	-	425008	90	
NSW Border Rivers	54	59	150,000	-	-	-	-	-	-	-	-	409016	10	
NSW Upper Murray	310	390	1,100,000	-	-	-	-	-	-	-	-	414204	60	
NSW Riverine Plains	380	470	1,300,000	-	-	-	-	-	-	-	-	426200	92	
VIC														
Wimmera	1,380	1,720	31,000	100%	100%	100%	100%	1,380	1,720	-	-	415200	34	
Avoca	2,060	5,290	57,000	102%	-	-	-	2,096	-	-	-	408203	32	
Lodden	1,090	88,000	95%	-	-	-	-	711	-	-	-	407203	25	
Campaspe	520	54,000	98%	-	-	-	-	412	-	-	-	406218	22	
Camargo	100	130	15,000	141%	-	-	-	99	-	-	-	404217	16	
Bois Creek	72	100	54,000	100%	100%	101%	101%	72	100	-	-	403241	14	
Ovens	47	55	19,000	100%	100%	100%	100%	47	55	-	-	402205	12	
Kiewa	54	59	150,000	-	-	-	-	-	-	-	-	409016	10	
Ure River	270	380	630,000	-	-	-	-	-	-	-	-	409204	30	
Ure Riverine Plains	380	470	1,300,000	-	-	-	-	-	-	-	-	426200	92	
QLD														
QLD Border Rivers	250	330	50,000	100%	100%	100%	100%	250	330	-	-	416001	70	
Moonee	140	150	8,700	100%	100%	100%	100%	140	150	-	-	417204	71	
Condamine-Balonne	170	210	4,200	100%	100%	100%	100%	170	210	-	-	422207	83	
Condamine-Balonne	150	280	6,500	100%	100%	100%	100%	150	280	-	-	422209	82	
Condamine-Balonne	170	210	29,000	100%	100%	100%	100%	170	210	-	-	422211	84	
Condamine-Balonne	160	210	10,000	100%	100%	100%	100%	160	210	-	-	422015	85	
Condamine-Balonne	90	100	24,000	100%	100%	100%	100%	90	100	-	-	422030	81	
Condamine-Balonne	101	110	4,800	100%	100%	100%	100%	101	110	-	-	423004	86	
Condamine-Balonne	100	130	5,500	100%	100%	100%	100%	100	130	-	-	423005	87	
ACT														
ACT	224	283	32,700	100%	100%	100%	100%	224	283	-	-	410777	52	
Notes														
* 95th percentile target. Clause 7 of this schedule describes the Basin Salinity Target at this location.														
# - These sites are operated by New South Wales on behalf of Queensland.														
* - The mean value for salt load (t/yr) exported from the ACT is the net difference between exports and imports														



**SCHEDULE B—APPENDIX 2—AUTHORISED WORKS OR MEASURES**

<b>Description of works</b>	<b>Location</b>	<b>Nominated Government</b>	<b>Status</b>
<b>Barr Creek Drainage Diversion Scheme</b> Saline water diversion from Barr Creek with disposal to the Tutchewop Lakes	Northern Victoria approximately 20 km north of the township of Kerang	Victoria	S&DS works or measures
<b>Buronga Salt Interception Scheme (part)</b> Groundwater pumping with disposal to Mourquong basin	Southwest New South Wales on the River Murray between Mildura Weir and Mourquong	New South Wales	S&DS works or measures
<b>Mallee Cliffs Salt Interception Scheme</b> Groundwater pumping with disposal to Mallee Cliffs evaporation basin	Southwest New South Wales on the River Murray approximately 30 km east of Mildura opposite Lambert Island in Victoria	New South Wales	S&DS works or measures
<b>Mildura-Merbein Salt Interception Scheme (part)</b> Groundwater pumping with disposal to Wargan evaporation basins	Northwest Victoria on the Southern side of the River Murray between Mildura and Merbein	Victoria	S&DS works or measures
<b>Rufus River Groundwater Interception Scheme</b> 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	S&DS works or measures

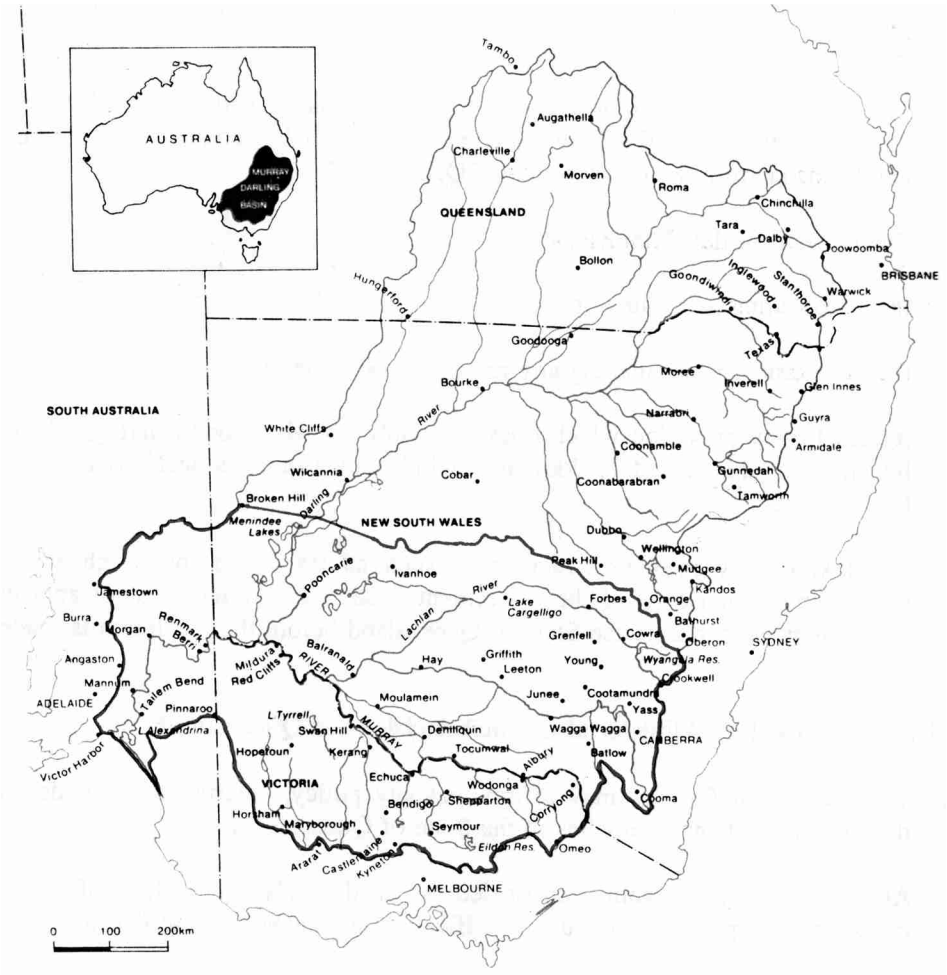
## Schedule 1 The Murray-Darling Basin Agreement

Description of works	Location	Nominated Government	Status
<b>Waikerie Salt Interception Scheme</b> Groundwater pumping with disposal to Stockyard Plain evaporation basin. The Waikerie Salt Interception Scheme consists of the following: (a) Waikerie SIS  (b) Waikerie Phase 2A SIS  (c) Waikerie Lock 2 SIS	Southern side of the River Murray from Holder Bend (River distance 392 km) to Hogwash Bend (River distance 351 km)	South Australia	(a) S&DS works or measures (b) S&DS works or measures (c) BSMS works or measures
<b>Woolpunda Salt Interception Scheme</b> 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	S&DS works or measures
<b>Pyramid Creek Salt Interception Scheme</b> 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	BSMS works or measures
<b>Bookpurnong Salt Interception Scheme</b> 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	BSMS works or measures
<b>Loxton Salt Interception Scheme</b> Groundwater pumping	Eastern side of the River Murray between Lock & Weir No 4 to the North and Loxton to the South	South Australia	BSMS works or measures

<b>Description of works</b>	<b>Location</b>	<b>Nominated Government</b>	<b>Status</b>
with disposal to Noora evaporation basin			
<b>Upper Darling Salt Interception Scheme</b> Groundwater pumping with disposal to Upper Darling SIS evaporation basin	Northern New South Wales on the eastern side of the Darling River approximately 30 km downstream of the township of Bourke	New South Wales	BSMS works or measures
<b>Murtho Salt Interception Scheme</b> Groundwater pumping with disposal to the Noora disposal basin	Eastern side of the River Murray between Lock and Weir 6 and the township of Paringa	South Australia	BSMS works or measures

SCHEDULE C—APPLICATION OF AGREEMENT TO QUEENSLAND

Plan for the purposes of clause 40 of the Agreement



## **SCHEDULE D—TRANSFERRING WATER ENTITLEMENTS AND ALLOCATIONS**

### **PART I—PRELIMINARY**

#### **1. Purposes**

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

- (a) to contribute to an efficient and effective water market by coordinating transfers of water entitlements and allocations described in clause 2 between States and between valleys within the Murray-Darling Basin; and
- (b) to set out principles for adjustments of intervalley and State transfer accounts; and
- (c) to set out principles to be applied by the Authority, State Contracting Governments and licensing authorities to transfers of water entitlements and allocations described in clause 2; and
- (d) to set out administrative and coordination arrangements, involving the Authority, State Contracting Governments and licensing authorities, to enable transfers of water entitlements and allocations described in clause 2 between States; and
- (e) to allow Protocols to be made under this Schedule to supplement its provisions; and
- (f) to require a State Contracting Government to notify the Authority of any intervalley transfer described in clause 2 made within that State.

#### **2. Application**

Subject to the laws of each State, this Schedule applies to transfers, 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, relating to water within:

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

for the purposes of exchange rate trade or tagged trade (or both), 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, Broken, Campaspe, Loddon and Murrumbidgee river

systems or a source referred to in paragraph 2(c)  
pursuant to the law of a State; or

- (ii) any other entitlement to divert water or to receive  
water diverted by another from those sources,

but does not include a State entitlement;

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

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

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

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

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

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

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

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

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

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

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

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

- (ii) the transfer of an allocation within a State, according to the laws of that State;

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

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

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

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

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

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

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



## **PART II—GENERAL PRINCIPLES**

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

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

### **5. Suspension of Schedule**

- (1) Subject to sub-clause 19(10), a State Contracting Government may, from time to time, after consulting the Ministerial Council, suspend or limit the operation of this Schedule in that State, if the State Contracting Government considers that:
  - (a) the use or management of water comprised in entitlements or allocations transferred under this Schedule have increased or accelerated environmental degradation; or
  - (b) any other State has made inadequate progress towards pricing water to recover full costs, in accordance with principles adopted by the Council of Australian Governments; or
  - (c) the policies or practices applying within any other State do not achieve the objectives of the National Water Initiative relating to reducing barriers to trading entitlements and allocations and ensuring competitive neutrality in the market for such entitlements and allocations.
- (2) The Ministerial Council may, from time to time, having regard to the National Water Initiative, by resolution, suspend or limit the operation of this Schedule in relation to a State or States.

### **6. Power to make protocols**

- (1) The Authority may, in consultation with the Committee, from time to time make protocols:
  - (a) to implement the provisions for adjusting the cap on diversions set out in Appendix 3;

- (b) about calculating salinity debits and credits for the purposes of clause 10;
  - (c) defining valleys for the purposes of this Schedule and about maintaining, crediting, debiting and giving directions for releases to be debited to, valley accounts, pursuant to clause 11;
  - (d) determining one or more conversion factors and exchange rates; about applying and using any conversion factor or exchange rate so determined; and defining trading zones, for the purposes of clause 12;
  - (e) about any matter referred to in clause 13 (Restrictions on Transfers);
  - (f) about any matter referred to in clause 15 (Procedures and Principles for Transfers);
  - (g) about any matter referred to in clause 17 (Monitoring and Reporting);
  - (h) to implement either or both of exchange rate trade and tagged trade; and
  - (i) implementing any resolution of the Ministerial Council about transferring environmental entitlements.
- (2) The Authority must notify each Contracting Government:
- (a) whenever it is considering making, amending, reviewing or revoking a protocol; and
  - (b) of the subject matter of any proposed protocol, amendment, review or revocation.
- (3) A Contracting Government may nominate a person with relevant expertise and experience to give advice to the Authority in preparing, amending, reviewing or revoking a protocol.
- (4) The Authority must consider any advice given by a person nominated under sub-clause 6(3), before it makes, amends or revokes a protocol.
- (5) A protocol made under this clause:

- (a) must, subject to clause 2, indicate whether it applies to exchange rate trade, tagged trade or both; and
  - (b) must not be inconsistent with any provision of the Agreement (including its Schedules) and is void to the extent of any inconsistency.
- (6) The Authority may:
  - (a) amend, review or revoke any protocol made under sub-clause 6(1); and
  - (b) review any such protocol at the request of a Contracting Government.
- (7) The Authority may not delegate any power conferred on it by sub-clauses 6(1) and (6).

### **PART III—MATTERS RELATING TO ADMINISTRATION OF THE AGREEMENT**

#### **7. Adjustment of delivery of State entitlements**

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

#### **8. Adjustment of cap on diversions**

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

**10. Accounting for salinity impacts**

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

**PART IV—OPERATIONAL PRINCIPLES AND ADMINISTRATION**

**11. Delivery of water and valley accounts**

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

- (b) in accordance with any protocol made under paragraph 6(1)(c).
- (4) The Authority may:
  - (a) in accordance with any protocol made under paragraph 6(1)(c), direct that water standing to the credit of a valley account for any valley be used for any purpose to which the Authority may have regard under sub-clause 98(3) or 98(4) of the Agreement; and
  - (b) amend or cancel any such direction at any time.
- (5) A State Contracting Government must implement any direction given under paragraph 11(4)(a) in accordance with any protocol made under paragraph 6(1)(c).
- (6) With the consent of the State Contracting Government to whom a direction is given under sub-clause 11(4), a direction may result in a valley account being overdrawn.

## **12. Conversion factors and exchange rates**

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

- (a) a previous entry made in any valley account; or
  - (b) any previous adjustment made to State entitlements or the cap on diversions,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
  - (d) may provide for taking account of:
    - (i) any losses which may occur during transmission of an entitlement; and
    - (v) any other matter which the Authority considers appropriate.
- (5) Each State Contracting Government must ensure that any licensing authority within the State applies any relevant conversion factor or exchange rate determined under this clause, in accordance with any protocol made under paragraph 6(1)(d).

**13. Restrictions on transfers**

- (1) Subject to sub-clause 13(4), a protocol made under paragraph 6(1)(e) may prohibit, restrict or regulate the transfer of a specified type of entitlement.
- (2) Without limiting sub-clause 13(1), a protocol:
  - (a) must, subject to other provisions of this clause, facilitate the transfer of entitlements or allocations between hydrologically connected systems, in accordance with this Schedule; and
  - (b) must be consistent with any principles relating to markets in, and trading of, water entitlements and allocations, from time to time adopted by the Ministerial Council; and
  - (c) must not hinder the ability of the Authority to regulate and manage the flow of water within the upper River Murray and

the River Murray in South Australia, in accordance with the Agreement; and

- (d) must not purport to affect or interfere with State responsibilities for managing water resources, except as provided for in the Agreement.
- (3) Until the Ministerial Council resolves otherwise an entitlement must not be transferred into or out of the Lower Darling Valley.
- (4) A State Contracting Government may, consistently with the law of that State, from time to time prohibit, restrict or regulate the transfer of any type of entitlement or allocation in a way which is consistent with any principles relating to markets in, and trading of, water entitlements, from time to time adopted by the Ministerial Council.
- (5) Each State Contracting Government must, consistently with the law of that State, take such action within the State as may be necessary to ensure that any prohibition, restriction or regulation made or imposed by the Authority or the State Contracting Government is complied with and observed by each authority and other person in that State.

## **15. Procedures and principles for transfers**

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

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

**16. Transfer Register**

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



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

- (viii) If the transfer was made between States, an identifying interstate transfer number, allocated to the transfer by the Authority.
- (c) The effective date of the transfer, being the later of the dates referred to in sub-paragraphs 16(3)(a)(viii) and 16(3)(b)(vi).
- (4) Pursuant to the obligations set out in paragraph 13(1)(c) of Schedule E, each State Contracting Government must ensure that the Authority promptly receives all such information relating to transfers within, to or from the territory of that State, as may be necessary to keep the Transfer Register up-to-date.
- (5) The Authority must arrange for an independent auditor to undertake an audit in accordance with sub-clauses 16(5A) and 16(5B) if:
  - (a) the Authority is not satisfied that any volumetric errors in the monthly reconciliation process between the States and the Authority can be rectified; or
  - (b) the Committee determines that the Authority is to arrange for the audit to be undertaken.
- (5A) The Authority must arrange for the auditor to examine whether there is any discrepancy between:
  - (a) information provided by each State Contracting Government under sub-clause 16(4); and
  - (b) information provided under clause 8 of Appendix 3 to this Schedule; and
  - (c) information set out in the Transfer Register.
- (5B) The Authority must arrange for the auditor to make recommendations to the Ministerial Council, as soon as practicable after the audit is completed, about any alteration of the Transfer Register that the auditor thinks desirable in view of any such discrepancy.
- (6) After considering any recommendation made by an independent auditor under sub-clause 16(5B), the Ministerial Council may require the Authority to make any alteration to the Transfer Register, which the Ministerial Council considers appropriate.

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- (7) The Authority must recalculate any adjustment to the cap on diversions or any annual diversion target, pursuant to clause 8, in respect of which a relevant alteration has been made to the Transfer Register under sub-clause 16(6).

## **17. Monitoring and reporting**

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(a); and
- (c) any adjustment to the delivery of a State's entitlement made under clause 7; 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 under this clause:
    - (a) as soon as practicable after the end of 2 years after the water trading rules (within the meaning of the Water Act) first come into effect; and
    - (b) at any other time that the Committee determines from time to time.
  - (2) The report must address:
    - (a) the operation of this Schedule; and
    - (b) the markets for interstate transfers of entitlements and allocations; and
    - (c) any other matter that the Committee directs; and
    - (d) any other matter that the Authority considers appropriate.
-

**19. Dispute resolution**

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

- (9) Each party must contribute equally to the cost of any dispute panel or arbitrator, unless the dispute panel or arbitrator, as the case requires, directs otherwise.
- (10) Each State Contracting Government undertakes to try to resolve any difference between it and any other State Contracting Government about a matter referred to in paragraph 5(1)(a), (b) or (c), in accordance with sub-clauses 19(1)—19(6) before consulting the Ministerial Council under sub-clause 5(1).

SCHEDULE D—APPENDIX 1—ENTITLEMENTS AND ALLOCATIONS

(see clause 4)

LEGISLATION	CATEGORY	SOURCE
Water Management Act 2000 (NSW)	High Security Access Licence	Murrumbidgee Regulated and Murray Valley Regulated
	General Security Access Licence	
	Conveyance Access Licence	
	Local Water Utility Access Licence	
	Allocation under any type of water access licence	
Water Act 1989 (Vic)	Water licence granted under section 51	River Murray and Goulburn, Broken, 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	Water access entitlement under a	River Murray

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<b>Resources Management Act 2004 (SA)</b>	water licence	Prescribed Watercourse
	Water allocation	
<b>Water Resources Act 2007 (ACT)</b>	Water access entitlement	Murrumbidgee and tributaries within the ACT
	Corresponding water access entitlement	

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

(see clause 7)

**PART I—RULES WHICH APPLY AT ALL TIMES**

**1. Interstate transfers of entitlements**

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

**Rule 1: Transfers into South Australia**

The Authority must *increase*:

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

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

**Rule 2: Transfers out of South Australia**

The Authority must *decrease*:

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

**Rule 3: Transfers out of New South Wales into Victoria**

The Authority must, in relation to Hume Reservoir:

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

**Rule 4: Transfers out of Victoria into New South Wales**

The Authority must, in relation to Hume Reservoir:

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

**2. Interstate transfers of allocations**

- (1) The Authority must adjust a State entitlement as a result of each interstate transfer of an allocation:
  - (a) by the adjusted volume of that transfer; and
  - (b) in accordance with Rules 5—8 set out below.
- (2) The Authority must alter its procedures for delivering State entitlements to reflect any adjustment made under

sub-clause 2(1), in accordance with any protocol made under paragraph 6(1)(f) of this Schedule.

**Rule 5: Transfers into South Australia**

The Authority must *increase*:

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

**Rule 6: Transfers out of South Australia**

The Authority must *decrease*:

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

**Rule 7: Transfers out of New South Wales into Victoria**

The Authority must, in relation to Hume Reservoir:

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

**Rule 8: Transfers out of Victoria into New South Wales**

The Authority must, in relation to Hume Reservoir:

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

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

**3. Accounting under clause 125 of the Agreement**

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

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

**Rule 9: New South Wales**

The Authority must:

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

**Rule 10: Victoria**

The Authority must:

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

**Rule 11: New South Wales**

The Authority must:

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

**Rule 12: Victoria**

The Authority must:

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

## **SCHEDULE D—APPENDIX 3—ADJUSTING CAP ON DIVERSIONS**

(see clause 8)

### **1. Definitions**

For the purposes of this Appendix:

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

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

## **PART I—ADJUSTING FOR TRANSFERRED ALLOCATIONS**

### **2. Adjusting cap for transferred allocations**

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

## **PART II—ADJUSTING FOR ENTITLEMENTS TRANSFERRED BY TAGGED TRADE**

### **3. Cap adjustment for tagged trade**

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

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

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

**4. Interim register**

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

**5. Adjusting annual diversion targets**

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

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

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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).

- (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.



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**Stage 1**

Adjust annual diversion targets, as far as possible by allocating to the cap required in a designated river valley of destination, so much of the volume of cap no longer required in the designated river valley of origin as is required in the designated river valley of destination. A separate calculation must be made for the interaction between each designated river valley and every other designated river valley, based on information collated from the Transfer Register.

**Stage 2**

Pool any cap surpluses and deficits calculated under Stage 1 in relation to each designated river valley, in order to reduce any shortfalls in each designated river valley.

Where lower reliability entitlements have been converted to higher reliability entitlements within a designated river valley, the net effect of that conversion on the cap attributable to that valley must be included in the pool. However:

- (a) a shortfall within a designated river valley caused by such conversions cannot be reduced by attributing a surplus existing in another designated river valley; and
- (b) the volume pooled with respect to a designated river valley cannot exceed the sum of the deficits arising in other designated river valleys, as a result of transfers between that designated river valley and other designated river valleys.

**Stage 3**

- (a) Calculate any cap surplus resulting from Stage 2 for each designated river valley.
- (b) Then allocate any of that cap surplus that is attributable to interstate transfers into or from that designated river valley to the environment, by
- (c) reducing the annual diversion target for that designated river valley by the portion of the surplus referred to in paragraph (b).

The allocation referred to in paragraph (b) must only apply in the year in which it is made and will not create an entitlement to draw a comparable volume of water from any storage in the Basin. Progressively reducing annual diversion targets will, however, eventually allow more water to flow downstream.

**Stage 4**

Calculate the adjustment to each annual diversion target for each designated river valley by determining the sum of the total adjustments made under Stages 1, 2 and 3.

## **SCHEDULE E—CAP ON DIVERSIONS**

### **1. Purposes**

The purposes of this Schedule are:

- (a) to establish long-term caps on the volume of surface water used for consumptive purposes in river valleys within the Murray-Darling Basin (including, without limitation, water from waterways and distributed surface waters) in order to protect and enhance the riverine environment; and
- (b) to set out action to be taken by the Ministerial Council, the Authority and State Contracting Governments to quantify and comply with annual diversion targets; and
- (c) to prescribe arrangements for monitoring and reporting upon action taken by State Contracting Governments to comply with annual diversion targets.

### **2. Definitions**

- (1) In this Schedule, except where inconsistent with the context:

**“baseline conditions”** means:

- (a) in the case of New South Wales and Victoria, means the level of water resource development for rivers within the Murray-Darling Basin as at 30 June 1994 determined by reference to:
  - (i) the infrastructure supplying water; and
  - (ii) the rules for allocating water and for operating water management systems applying; and
  - (iii) the operating efficiency of water management systems; and
  - (iv) existing entitlements to take and use water and the extent to which those entitlements were used; and
  - (v) the trend in the level of demand for water within and from the Murray-Darling Basin

at that date; and

- (b) in the case of Queensland, means the conditions set out for each river valley in the Resource Operation Plan first adopted by the Government of Queensland in that river valley and published in the Queensland Government Gazette.

**“Cap Register”** means the Register referred to in sub-clauses 13(7) and 13(8).

**“designated river valley”** means a river valley or water supply system referred to in, or designated under, sub-clause 3(1).

**“diversions”**, with respect to a river valley, means the volume of surface water used for consumptive purposes determined in accordance with the formula entered in the Diversion Formula Register for that river valley.

**“Diversion Formula Register”** means the Register referred to in paragraph 4(1)(b).

**“former Schedule”** means Schedule F of the former Agreement.

**“historical data”** means data relevant to the period from 1 July 1983 to 30 June 1994, or such other period as the Authority may from time to time determine.

**“river valley”** means a river valley within the Murray-Darling Basin referred to in sub-clause 3(2).

**“water year”** in relation to a river valley or a water supply system means the relevant 12 month period applicable to the allocation of water entitlements and measurement of diversions in that river valley or water supply system.

- (2) In this Schedule:

- (a) a reference to the “Government of a State” includes a reference to the Government of the Australian Capital Territory;
- (b) a reference to a “State Contracting Government” includes a reference to the Government of the Australian Capital Territory;

- (c) a reference to “State” includes the Australian Capital Territory.

### **3. River Valleys and Designated River Valleys**

- (1) Subject to sub-clause 3(3), the river valleys or water supply systems listed in Appendix 1 are “designated river valleys” for the purposes of this Schedule.
- (2) Subject to sub-clause 3(3), the river valleys listed in Appendix 2 are “river valleys” for the purposes of this Schedule.
- (3) The Ministerial Council may, from time to time:
  - (a) amend the description of:
    - (i) any designated river valley described in Appendix 1;  
or
    - (ii) any river valley in Appendix 2;
  - (b) designate, for the purposes of this Schedule, any river valley or water supply system not referred to in Appendix 1; or
  - (c) add any river valley to those set out in Appendix 2.

### **4. Diversion Formula Register**

- (1) The Authority must:
  - (a) determine a formula for calculating diversions within each river valley for the purposes of this Schedule; and
  - (b) maintain a Diversion Formula Register which records each formula determined under paragraph (a) and the river valley to which the formula relates.
- (2) The Authority or States, as may be appropriate, must use the formula entered in the Diversion Formula Register with respect to a river valley for the purpose of:
  - (a) developing or approving any analytical model under clause 11;
  - (b) making any calculation under clause 12;
  - (c) preparing any report required under clause 13; and

- (d) maintaining the Cap Register.
- (3) The Authority may from time to time amend:
  - (a) any formula determined under paragraph 4(1)(a); and
  - (b) any entry in the Diversion Formula Register.

**5. Long-term diversion cap for New South Wales**

- (1) The Government of New South Wales must ensure that diversions within each designated river valley in New South Wales do not exceed diversions under baseline conditions in that designated river valley, as determined by reference to the model developed under sub-clause 11(4).
- (2) In calculating baseline conditions for the Border Rivers, allowance must be made for such annual volume as the Ministerial Council may, from time to time, determine in view of the special circumstances applying to Pindari Dam.

**6. Long-term diversion cap for Victoria**

- (1) The Government of Victoria must ensure that diversions within each designated river valley in Victoria (including the upper River Murray) do not exceed diversions under baseline conditions in that designated river valley, as determined by reference to the model developed under sub-clause 11(4).
- (2) In calculating baseline conditions for either or both of the Goulburn/Broken/Loddon water supply system and the Murray Valley water supply system, allowance must be made for an additional 22 GL per year, or such other annual volume as the Ministerial Council may, from time to time, determine in view of the special circumstances applying to Lake Mokoan.

**7. Long-term diversion cap for South Australia**

- (1) The Government of South Australia must ensure that diversions from the River Murray within South Australia:
  - (a) for water supply purposes delivered to Metropolitan Adelaide and associated country areas through the Swan Reach-Stockwell, Mannum-Adelaide and Murray

- 
- Bridge-Onkaparinga pipeline systems do not exceed a total diversion of 650 GL over any period of 5 years;
  - (b) for Lower Murray Swamps irrigation do not exceed 94.2 GL per year;
  - (c) for water supply purposes for Country Towns do not exceed 50 GL per year; and
  - (d) for all other purposes do not exceed a long-term average annual diversion of 449.9 GL.
- (2) The Government of South Australia must ensure that:
- (a) no part of any entitlement created in South Australia with respect to the diversion referred to in paragraph 7(1)(a) is either used, or transferred for use, for any purpose other than use in Metropolitan Adelaide and associated country areas; and
  - (b) at least 22.2 GL of the diversion referred to in paragraph 7(1)(b) is reserved for environmental purposes and is not transferred,
- unless the Ministerial Council determines otherwise.
- (3) If the Government of South Australia supplies any of the diversions referred to in paragraph 7(1)(d) through the Swan Reach-Stockwell, Mannum-Adelaide and Murray Bridge-Onkaparinga pipeline systems in any year, it must:
- (a) record the volume of water so delivered for that purpose in that year; and
  - (b) account for that volume against the long-term average annual diversion referred to in paragraph 7(1)(d), when monitoring and reporting to the Authority under clause 13.

## **8. Long-term diversion cap for Queensland**

The Government of Queensland must ensure that diversions from each designated river valley in Queensland do not exceed diversions under baseline conditions in that designated river valley, as determined by reference to the model determined under sub-clause 11(4).

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**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:
$$2006/07 \text{ per capita consumption of the population of Canberra and Queanbeyan}$$
multiplied by:
$$\frac{\text{the difference between the population of Canberra and Queanbeyan in 2006/07 and the population of Canberra and Queanbeyan for each year in consideration.}}{2006/07 \text{ population of Canberra and Queanbeyan}}$$
- (3) The Government of the Australian Capital Territory must ensure that no water or water entitlement that is used for urban purposes will be transferred for use outside the Australian Capital Territory unless that water or water entitlement has been transferred for use within the Australian Capital Territory from another State.
- (4) If demand for water for industrial uses or uses by the Commonwealth grows beyond the level of demand in 2006/07, that growth in demand will be met by transferring water or water entitlements from another State.
- (5) The Authority must, for the purposes of maintaining the Cap Register referred to in sub-clauses 13(7) and 13(8), take into account 107 GL of cumulative Cap credit existing at the end of 2006/07.



**10. Power of Authority to alter long-term diversion caps**

- (1) Subject to sub-clause 10(2) the Ministerial Council may, on the recommendation of the Committee, make protocols determining how the Authority may alter any long-term diversion cap referred to in this Schedule.
- (2) The Authority, from time to time:
  - (a) must alter a long-term diversion cap to reflect the result of transferring water entitlements or allocations within a State or between States, in accordance with any protocols established under Schedule D; and
  - (b) may only alter a long-term diversion cap to account for environmental water under Cap in accordance with a protocol made under sub-clause 10(1).

**11. Developing Analytical Models**

- (1) The Authority must develop analytical models for determining the annual diversion targets for the upper River Murray.
- (2) Subject to sub-clause 11(1), the Governments of New South Wales, Victoria, Queensland and the Australian Capital Territory must each develop analytical models for determining the annual diversion target for each designated river valley within the territory of that State.
- (3) The Government of South Australia must develop analytical models for determining the annual diversion target for diversions referred to in 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.

**12. Calculation of annual diversion targets**

- (1) Within two months after the end of the relevant water year and using the analytical models developed and approved under clause 11:
  - (a) the Authority must calculate the annual diversion targets for New South Wales and Victoria for that year for the upper River Murray; and
  - (b) subject to paragraph (a), the Governments of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory must, for each designated river valley within the territory of that State, calculate the annual diversion target for that year.
- (2) The Authority must promptly inform the Governments of New South Wales and Victoria of the results of every calculation made under paragraph 12(1)(a) with respect to the upper River Murray.
- (3) The Government of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory, respectively, must each promptly inform the Authority of the results of every calculation made by it under paragraph 12(1)(b).

### **13. Monitoring and Reporting**

- (1) Each State Contracting Government must, for each water year and in relation to each river valley specified in Appendix 2 within its territory, monitor and report to the Authority upon:
  - (a) diversions made within and to; and
  - (b) water entitlements, announced allocations of water and declarations which permit the use of unregulated flows of water within; and
  - (c) trading of water entitlements within, to or from, the territory of that State in that water year.
- (2) Each State Contracting Government must, for each water year and in relation to each designated river valley within its territory, monitor and report to the Authority upon:
  - (a) the compliance by that State with each relevant annual diversion target calculated under this Schedule for that water year; and
  - (b) such actions which the State proposes to take to ensure that it does not exceed the annual diversion targets calculated under this Schedule for every ensuing water year.
- (3) For the purpose of sub-clauses 13(1) and (2) the expression “river valley within its territory” in relation to Victoria, includes that portion of the upper River Murray forming the border between Victoria and New South Wales.
- (4) A report under sub-clause 13(1) or (2) must be given to the Authority within four months after the end of each relevant water year or by such other time as the Authority may determine.
- (5) On the basis of the calculations referred to in sub-clause 12(1) and reports given to it under sub-clauses 13(1) and (2) the Authority:
  - (a) must, in relation to each State Contracting Government, produce a water audit monitoring report which includes information about that Government’s compliance with the annual diversion target calculated for each designated river valley in the territory of that State and for the whole of the State in the relevant water year; and

- (b) may publish any such report, or a summary thereof, in such manner as it may determine.
- (6) A water audit monitoring report under sub-clause 13(4) must be produced by 31 December following the conclusion of each relevant water year, or by such other time as the Authority may determine.
- (7) The Register maintained under sub-clause 13(7) of the former Schedule is continued in existence in the form in which it was held, and containing the information it contained, immediately prior to commencement of this Schedule until altered by the Authority in accordance with sub-clause (8).
- (8) The Authority must maintain the Cap Register referred to in sub-clause 13(7) so that it records:
  - (a) for each designated river valley; and
  - (b) for each State,  
the cumulative difference between actual annual diversions and the annual diversion targets calculated under this Schedule.
- (9) The Cap Register must:
  - (a) for New South Wales, Victoria and South Australia, include information for every water year concluding after 1 November 1997; and
  - (b) for Queensland, include information about each designated river valley in every water year commencing after the Resource Operations Plan first adopted by the Government of Queensland for that designated river valley is published in the Queensland Government Gazette; and
  - (c) for the Australian Capital Territory, include information about its designated river valley in every water year; and
  - (d) if cumulative actual diversions for any designated river valley or for any State are less than the cumulative annual diversion targets calculated under this Schedule, as the case requires, record the difference as a credit; and
  - (e) if cumulative actual diversions for any designated river valley or for any State are greater than the cumulative annual

diversion targets calculated under this Schedule, as the case requires, record the difference as a debit.

- (10) The Authority must include a report on the operation of this Schedule in any report made to the Ministerial Council under clause 85 of the Agreement.

#### **14. Appointment of Independent Audit Group**

- (1) The Authority must appoint an Independent Audit Group for the purposes of this Schedule.
- (2) A person who was appointed to the Independent Audit Group under the former Schedule is taken to have been appointed by the Authority for the purposes of this clause, on the conditions and for the term specified in the appointment under the former Schedule.

#### **15. Annual audit by the Independent Audit Group**

- (1) The Independent Audit Group must, until 31 December 2009, annually audit the performance of each State Contracting Government in implementing the long-term diversion cap in each water year which concludes on or between 1 June 1999 and 1 November 2009.
- (2) The Authority may direct the Independent Audit Group to audit the performance of any State Contracting Government in implementing the long-term diversion cap in any water year concluding after 1 November 2009.
- (3) The Independent Audit Group must report to the Authority on any audit conducted under this clause.

#### **16. Power to require a special audit of a designated river valley**

If, after receiving a report from a State Contracting Government under sub-clause 13(2) for any year, the Authority calculates that either:

- (a) the diversion for water supply to Metropolitan Adelaide and associated country areas over the last five years has exceeded 650 GL; or

- (b) the diversion in the Warrego, Paroo, Moonie or Nebine designated river valley has exceeded the annual diversion target for that valley, determined under paragraph 12(1)(b); or
- (c) the cumulative debit recorded in the Cap Register exceeds 20 % of the average annual diversion determined under paragraph 11(4)(e) for a particular designated river valley within that State,

the Authority must direct the Independent Audit Group to conduct a special audit of the performance of that State Contracting Government in implementing the long-term diversion cap in the relevant designated river valley.

**17. Special audit by Independent Audit Group**

- (1) In conducting a special audit under clause 16, the Independent Audit Group must consider:
  - (a) data on diversions and annual diversion targets recorded on the Cap Register; and
  - (b) data submitted by the relevant State Contracting Government, including, for example, data about areas under irrigation, storage capacities, crop production, irrigation technology and the conjunctive use of groundwater in the designated river valley; and
  - (c) the impact that policies implemented by the State Contracting Government may have on the expected pattern of annual diversions; and
  - (d) whether the diversion for all years on the Cap Register exceeds the diversion expected under the long-term diversion cap for those years, and
  - (e) any other matter which the Independent Audit Group considers relevant.
- (2) The Independent Audit Group must:
  - (a) determine whether the long-term diversion cap has been exceeded in the designated river valley; and

- (b) report to the Authority on the special audit and advise the Authority of its determination within six months after a direction given under clause 16.

**18. Declaration that diversion cap has been exceeded**

If the Authority receives a report under sub-clause 17(2) which determines that a State has exceeded the long-term diversion cap in a designated river valley, the Authority must:

- (a) forthwith declare that the State has exceeded the Murray-Darling Basin diversion cap; and
- (b) report the matter to the next meeting of the Ministerial Council.

**19. Advice to Ministerial Council on remedial actions**

- (1) The Government of a State referred to in paragraph 18(a) must report to the next Ministerial Council after a declaration is made under that paragraph, setting out:
  - (a) the reasons why diversions exceeded the Murray-Darling Basin diversion cap; and
  - (b) action taken, or proposed to be taken by it to ensure that cumulative diversions recorded in the Cap Register are brought back into balance with the cap; and
  - (c) the period within the relevant model referred to in clause 11 predicts that the cumulative diversions recorded in the Cap Register will be brought back into balance with the cap.
- (2) The Government of a State that has been required to report to the Ministerial Council under sub-clause 19(1) must report to each subsequent meeting of the Ministerial Council on action taken, or proposed to be taken by it to ensure that cumulative diversions recorded in the Cap Register are brought back into balance with the cap, until the Authority revokes a declaration pursuant to sub-clause 19(3).
- (3) When the Authority is satisfied that a State in respect of which a declaration has been made under paragraph 18(a) has brought the cumulative diversions recorded in the Cap Register back into

balance with the cap and is once more complying with the Murray-Darling Basin diversion cap in all respects, it must:

- (a) revoke the declaration; and
- (b) report that fact to the next meeting of the Ministerial Council.



## **SCHEDULE E—APPENDIX 1—DESIGNATED RIVER VALLEYS**

### **1. New South Wales**

The New South Wales portion of the Border Rivers catchment, excluding the portion of the Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

The New South Wales portion of the following catchments: Moonie, Big Warrnambool, the Culgoa/Birrie/Bokhara/Narran, Warrego, Paroo and Nebine.

Gwydir catchment, including the portion of the Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

Namoi catchment.

The Macquarie/Castlereagh/Bogan catchments.

The Barwon/Upper Darling river system and the Lower Darling river system, from the furthest upstream reach of the Menindee Lakes to the furthest upstream reach of the Wentworth Weir Pool.

Lachlan catchment.

Murrumbidgee catchment excluding that part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

The New South Wales portion of the Murray Valley including the portion of the Lower Darling influenced by the Wentworth Weir Pool.

**2. Queensland**

The portion of the Condamine and Balonne catchments in Queensland.

The portion of the Border Rivers catchment in Queensland.

The portion of the Moonie catchment in Queensland.

The portion of the Warrego catchment in Queensland.

The portion of the Paroo catchment in Queensland.

The portion of the Nebine catchment in Queensland.

**3. Victoria**

The Goulburn/Broken/Loddon water supply system.

The Campaspe/Coliban water supply system.

The Wimmera/Mallee water supply system.

The Victorian portion of the Murray Valley including the Kiewa and Ovens catchments.

**4. South Australia**

The pumps on the Murray within South Australia used to supply Metropolitan Adelaide and associated country areas.

Lower Murray Swamps irrigation.

Country Towns water use.

Water Use for All Other Purposes from the Murray within South Australia.

**5. Australian Capital Territory**

That part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

## **SCHEDULE E—APPENDIX 2—RIVER VALLEYS**

### **1. New South Wales**

The portion of the Border Rivers catchment in New South Wales, excluding the portion of Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

The portion of the Moonie catchment in New South Wales.

The portion of the Big Warrnambool catchment in New South Wales.

The portion of the Culgoa/Birrie/Bokhara/Narran catchments in New South Wales.

The portion of the Warrego catchment in New South Wales.

The portion of the Paroo catchment in New South Wales.

That portion of the Nebine catchment in New South Wales.

Gwydir catchment, including the portion of Gil Gil Creek below the Carole Creek confluence and the Boomi River below the Gil Gil Creek confluence.

Namoi catchment.

The Macquarie/Castlereagh/Bogan water catchments.

The Barwon/Upper Darling river system.

Lower Darling river system from the furthest upstream reach of the Menindee Lakes to the furthest upstream reach of the Wentworth Weir Pool.

Lachlan catchment.

Murrumbidgee catchment excluding that part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

The New South Wales portion of the Murray Valley including the portion of the Lower Darling influenced by the Wentworth Weir Pool.

## **2. Queensland**

The portion of the Condamine and Balonne catchments in Queensland.

The portion of the Border Rivers catchment in Queensland.

The portion of the Moonie catchment in Queensland.

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The portion of the Warrego catchment in Queensland.

The portion of the Paroo catchment in Queensland.

The portion of the Nebine catchment in Queensland.

**3. Victoria**

Kiewa catchment.

Ovens catchment.

Goulburn catchment.

Broken catchment.

Campaspe catchment.

Loddon catchment.

Wimmera/Mallee catchment.

The Victorian portion of the Murray Valley catchment.

**4. South Australia**

The pumps on the Murray within South Australia used to supply Metropolitan Adelaide and associated country areas.

Lower Murray Swamps irrigation.

Country Towns water use.

Water use for All Other Purposes from the Murray within South Australia.

**5. Australian Capital Territory**

That part of the Murrumbidgee River that flows through the Australian Capital Territory, its sub-catchments in that Territory and the Canberra Water Supply System.

## SCHEDULE F—EFFECT OF THE SNOWY SCHEME

### PART I—PRELIMINARY

#### 1. Purpose

The purpose of this Schedule is to make arrangements for sharing between New South Wales, South Australia and Victoria of water made available in the catchment of River Murray above Hume Dam by the Snowy Scheme.

#### 2. Definitions

In this Schedule:

(1) **“Baseline Conditions”** means:

- (a) the infrastructure supplying water;
- (b) the rules for allocating water and for water management systems applying;
- (c) the operating efficiency of water management systems; and
- (d) existing entitlements to take and use water and the extent to which those entitlements were used,

within the Murray-Darling Basin as at the Corporatisation Date;

(2) **“Corporatisation Date”** means the date on which the Snowy Mountains Hydro-electric Power Act 1949 (Cth) is repealed by the Snowy Hydro Corporatisation Act 1997 (Cth);

(3) **“Environmental Entitlement”** means:

- (a) a category of environmental water referred to in section 8 of the *Water Management Act 2000 (NSW)*; and
- (b) a bulk entitlement granted under the *Water Act 1989 (Vic)* that includes conditions relating to environmental purposes,



in both cases comprising a volume of water derived from either or both of Water Savings and Water Entitlements;

- (4) **“Goulburn River System”** means the Broken, Goulburn, Campaspe and Loddon Rivers and the water supply systems supplied by those rivers;
- (5) **“Licensee”** means the licensee under the Snowy Water Licence;
- (6) **“Long Term Diversion Cap”** means the long term diversion cap for the State of New South Wales or the State of Victoria under clauses 5 and 6 respectively of Schedule E;
- (7) **“Lower Darling River System”** means the Darling River and its anabranch system from the upstream extent of the Menindee Lakes Storage and downstream and the water supply systems supplied by that River;
- (8) **“Month”** means calendar month and **“Monthly”** means each calendar month;
- (9) **“Mowamba Borrowings Account”** means the water account to be maintained by the Licensee under the Snowy Water Licence to account for flows made under the Snowy Water Licence from the Mowamba River and Cobbon Creek in the first three years after the Corporatisation Date;
- (10) **“Murrumbidgee River System”** means the Murrumbidgee River and the water supply systems supplied by that river;
- (11) **“Relaxation Volume”** has the same meaning as in the Snowy Water Licence as at the Corporatisation Date;
- (12) **“Reliability”** with respect to a supply of water means the statistical probability of being able to supply a particular volume in any Water Year;
- (13) **“Required Annual Release”** has the same meaning as in the Snowy Water Licence taken as a whole as at the Corporatisation Date, subject to sub-clauses 7A and 7B of this Schedule. For the 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
  - (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

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- (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;
- (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;
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- (28) **“Snowy Notional Spill”** means:
- (a) **in the case of the Snowy-Murray Development:** the calculated active volume of water belonging to the Snowy-Murray Development stored in Eucumbene Reservoir exceeding 2,019 GL and accounted as a loss from the Snowy-Murray Development and a gain to the Snowy-Tumut Development;
  - (b) **in the case of Snowy-Tumut Development:** the calculated active volume of water belonging to the Snowy-Tumut Development stored in Eucumbene Reservoir exceeding 2,348 GL and accounted as a loss from the Snowy-Tumut Development and a gain to the Snowy-Murray Development;
- (29) **“Snowy River”** means the Snowy River downstream of Jindabyne Dam;
- (30) **“Snowy River Annual Allocation”** means the annual allocation from the Snowy River Apportioned Entitlement for any Water Year, determined by New South Wales;
- (31) **“Snowy River Apportioned Entitlement”** means the volume of water from the Environmental Entitlements apportioned to environmental flows from the Snowy Scheme to the Snowy River, by New South Wales;
- (32) **“Snowy Scheme”** means the dams, tunnels, power stations, aqueducts and other structures that comprise the Snowy-Murray Development and the Snowy-Tumut Development, that together are known as the Snowy Mountains Hydro-electric Scheme;
- (33) **“Snowy-Tumut Development”** means the component of the Snowy Scheme comprising works that regulate the waters of the Eucumbene River, the Tooma River, the Upper Murrumbidgee River and the Upper Tumut River;
- (34) **“Snowy-Tumut Development Annual Allocation”** with respect to each Water Year means the annual allocation for the Snowy-Tumut Development determined by New South Wales by reference to the Seasonal Availability of the water contained in the Snowy-Tumut Development Designated Entitlement;
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- (35) **“Snowy-Tumut Development Designated Entitlement”** means that part of the Environmental Entitlements designated against the Snowy-Tumut Development by New South Wales;
- (36) **“Snowy Water Licence”** means the licence issued under Part 5 of the *Snowy Hydro Corporatisation Act 1997 (NSW)*;
- (37) **“Strategy”** means the strategy for retaining and releasing River Murray Increased Flows referred to in clause 20 of this Schedule;
- (38) **“Translation Factors”** means the translation factors used to convert Water Savings and Water Entitlements into an Environmental Entitlement with specified Reliability;
- (39) **“Upper Snowy River”** means the Snowy River upstream of Jindabyne Dam (including the Mowamba River and the Cobbon Creek) but excluding the Eucumbene River;
- (40) **“Water Entitlement”** means:
- (a) an access licence granted under the *Water Management Act 2000 (NSW)*; and
  - (b) a water right, licence to take and use water or bulk entitlement under the *Water Act 1989 (Vic)* together with any transferable allocation of sales water made to the holder of such a water right or licence,
- in either case purchased for the purpose of achieving either or both of:
- (c) environmental flows from the Snowy Scheme; and
  - (d) River Murray Increased Flows;
- (41) **“Water Market”** means, with respect to a Water Entitlement, the market from which the relevant Water Entitlement is drawn;
- (42) **“Water Savings”** means the volume of water saved through one or more projects that saves water:
- (a) by reducing transmission losses, evaporation or system inefficiencies; or
  - (b) by achieving either or both of water management and environmental improvements,
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- (c) for diversions from the River Murray System and either or both of Murrumbidgee River System and the Goulburn River System for the purpose of achieving:
  - (d) environmental flows from the Snowy Scheme; and
  - (e) River Murray Increased Flows;
- (43) **“Water Year”** means the period of 12 Months commencing on 1 May in each year.

## PART II—CALCULATING WATER VOLUMES

### 3. The Snowy Scheme And The River Murray

- (1) In this Agreement, **“Water Available to the Snowy-Murray Development”** means:
- Water of the Upper Snowy River regulated by the Snowy Scheme
  - PLUS** water of the Geehi River and Bogong Creek regulated by the Snowy Scheme
  - PLUS** any Snowy Notional Spill from the Snowy-Tumut Development to the Snowy-Murray Development
  - PLUS** the transfer from the Snowy-Tumut Development to the Snowy-Murray Development of the Snowy-Tumut Development Annual Allocation
  - PLUS** 4.5 GL per Water Year transferred from the Snowy-Tumut Development to the Snowy-Murray Development
  - PLUS** half of the balance of the Mowamba Borrowing Account
  - MINUS** Snowy Notional Spill from the Snowy-Murray Development to the Snowy-Tumut Development.
- (2) In this Agreement, **“Net Snowy-Murray Development Diversions to the River Murray”** means the volume of water calculated as follows:

Water Available to the Snowy-Murray Development released by the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam

**MINUS** the water of the Tooma River regulated by the Snowy Scheme

**MINUS** the natural flows of the Geehi River and Bogong Creek regulated by the Snowy Scheme.

- (3) In this Agreement, “**Murray to Murrumbidgee Inter-Valley Transfer**” means the volume of Water Available to the Snowy-Murray Development released by the Snowy Scheme to the catchment of the Murrumbidgee River.

#### **4. The Snowy Scheme And The Murrumbidgee River**

- (1) In this Agreement, “**Water Available to the Snowy-Tumut Development**” means:

Water of the Eucumbene River, the Tooma River, the Upper Murrumbidgee River and the Upper Tumut River regulated by the Snowy Scheme

**PLUS** any Snowy Notional Spill from the Snowy-Murray Development to the Snowy-Tumut Development

**MINUS** half of the balance of the Mowamba Borrowings Account

**MINUS** any Snowy Notional Spill from the Snowy-Tumut Development to the Snowy-Murray Development

**MINUS** the transfer from the Snowy-Tumut Development to the Snowy-Murray Development of the Snowy-Tumut Development Annual Allocation

**MINUS** 4.5 GL per Water Year transferred from the Snowy-Tumut Development to the Snowy-Murray Development.

- (2) In this Agreement, “**Murrumbidgee to Murray Inter-Valley Transfer**” means the volume of Water Available to the Snowy-Tumut Development released by the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam.

**5. Excess Snowy River Releases**

In this Agreement, “**Excess Snowy River Releases**” means the greater of zero and the volume of water calculated as follows:

The regulated releases made to the Snowy River in the relevant Water Year, measured immediately below the confluence of the Snowy River and the Mowamba River

**MINUS** 9 GL

**MINUS** the Snowy River Annual Allocation in the relevant Water Year

**MINUS** the change in the balance of the Mowamba Borrowings Account during the relevant Water Year.

**6. Snowy River Release Shortfalls**

In this Agreement, “**Snowy River Release Shortfalls**” means the greater of zero and the volume of water calculated as follows:

The Snowy River Annual Allocation in the relevant Water Year

**PLUS** 9 GL

**PLUS** the change in the balance of the Mowamba Borrowings Account from the commencement to the end of the relevant Water Year

**MINUS** the regulated releases made to the Snowy River in the relevant Water Year, measured immediately below the confluence of the Snowy River and the Mowamba River.

**7. Accounting For Water Releases**

For the purposes of this Agreement, water releases from the Snowy-Murray Development to the catchment of the River Murray upstream of Hume Dam are to be accounted as:

- (1) water releases as at Murray 1 Power Station; and
- (2) any water that would have passed through the Murray 1 Power Station but does not:
  - (a) for operational reasons; or



- (b) because it is released from the Snowy Scheme as Snowy Montane Rivers External Increased Flows,  
and that flows into the catchment of the River Murray upstream of Hume Dam.

**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(1), 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.
- (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.

### **PART III—WATER ACCOUNTING**

#### **8. Entitlements Of New South Wales And Victoria To Use Water**

The volume of water referred to in paragraph 94(1)(e) of the Agreement is calculated as follows:

The Net Snowy-Murray Development Diversions to the River Murray  
**PLUS** Murray to Murrumbidgee Inter-Valley Transfers  
**PLUS** the Required Annual Release Shortfall  
**PLUS** the Snowy-Murray Development Annual Allocation  
**PLUS** Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year  
**MINUS** at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers  
**MINUS** the Required Annual Release Shortfall from the previous Water Year  
**MINUS** River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir.

**9. Water Estimated To Be Under The Control Of The Authority**

Water referred to in paragraph 101(e) of the Agreement is estimated as follows:

The Net Snowy-Murray Development Diversions to the River Murray  
**PLUS** Murray to Murrumbidgee Inter-Valley Transfers  
**PLUS** the Required Annual Release Shortfall  
**PLUS** the Snowy-Murray Development Annual Allocation  
**PLUS** Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year  
**MINUS** at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers  
**MINUS** the Required Annual Release Shortfall from the previous Water Year  
**MINUS** River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir,

in each case before the end of the following May.

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**10. Allocation of Water to New South Wales and Victoria**

The volume of water referred to in paragraph 106(1)(b) of the Agreement is calculated as follows:

The Net Snowy-Murray Development Diversions to the River Murray

**PLUS** Murray to Murrumbidgee Inter-Valley Transfers

**PLUS** the Required Annual Release Shortfall

**PLUS** the Snowy-Murray Development Annual Allocation

**PLUS** Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year

**MINUS** at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers

**MINUS** the Required Annual Release Shortfall from the previous Water Year

**MINUS** River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir.

**11. Tributary Inflows**

- (1) The volume of water referred to in sub-clause 108(2) of the Agreement is calculated as follows:

The component of the Required Annual Release Shortfall from the previous Water Year allocated to New South Wales under sub-clause 13(2) of this Schedule

**PLUS** half of the River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir

**PLUS** half of the Excess Snowy River Release up to the volume of half of the Snowy River Release Shortfall in the previous Water Year for which an adjustment was made under sub-clauses 11(2) and 12(1) of this Schedule in the previous Water Year

**PLUS** at the discretion of the Authority, Murrumbidgee to Murray Inter-Valley Transfers

- (2) The volume of water referred to in sub-clause 108(3) of the Agreement is calculated as follows:

The component of the Required Annual Release Shortfall from the previous Water Year allocated to Victoria under sub-clause 13(2) of this Schedule

**PLUS** half of the River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir

**PLUS** half of the Snowy River Release Shortfall, unless Victoria has previously advised the Authority that Victoria waives this element of its allocation in any Water Year.

## **12. Use By New South Wales And Victoria Of Allocated Water**

- (1) The quantity of water referred to in paragraph 109(b) of the Agreement is calculated as follows:

Murray to Murrumbidgee Inter-Valley Transfers

**PLUS** Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year

**PLUS** the Snowy-Murray Development Annual Allocation sourced from New South Wales

**PLUS** the component of the Required Annual Release Shortfall allocated to New South Wales under sub-clause 13(1) of this Schedule

**PLUS** unless otherwise agreed with Victoria, half of the Snowy River Release Shortfall.

- (2) The quantity of water referred to in paragraph 109(c) of the Agreement is calculated as follows:

The Snowy-Murray Development Annual Allocation sourced from Victoria

**PLUS** the component of the Required Annual Release Shortfall allocated to Victoria under sub-clause 13(1) of this Schedule

**PLUS** half of the Excess Snowy River Release up to the volume of half of the Snowy River Release Shortfall in the previous Water Year for which an adjustment was made under sub-clauses 11(2) and 12(1) of this Schedule in the previous Water Year, (such adjustments to reflect any waiver or agreement with Victoria as referred to in those sub-clauses).

### 13. Required Annual Release Shortfalls

- (1) If at the end of a Water Year there is a Required Annual Release Shortfall, the Required Annual Release Shortfall is to be accounted for by the Authority in accordance with Table One.

**TABLE ONE: WATER ACCOUNTING AND REQUIRED ANNUAL RELEASE SHORTFALLS**

<b>TYPE OF WATER YEAR</b>	<b>ARRANGEMENT WITH RESPECT TO REQUIRED ANNUAL RELEASE SHORTFALL</b>	<b>WATER ACCOUNTING OUTCOMES</b>
Water Year during which a period of special accounting is not in effect	Victoria agrees to the Required Annual Release Shortfall	New South Wales and Victoria deemed to each have used the Required Annual Release Shortfall as agreed
	Victoria does not agree to the Required Annual Release Shortfall	New South Wales deemed to have used the whole of the Required Annual Release Shortfall
Water Year during which a period of special accounting is in effect	Victoria and the Ministerial Council agree to the Required Annual Release Shortfall	New South Wales and Victoria deemed to each have used the Required Annual Release Shortfall as agreed
	The Ministerial Council does not agree to the Required Annual Release Shortfall	New South Wales deemed to have used the whole of the Required Annual Release Shortfall

- (2) The volume of any Required Annual Release Shortfall from the previous Water Year must be allocated equally between New South Wales and Victoria until the balance of Required Annual Release Shortfalls for either State is zero and thereafter wholly to the other State.

**14. Other Water Accounting Provisions**

- (1) Where under this Schedule the Authority is required to adjust accounts in connection with the Snowy-Murray Development Annual Allocation, it must make those adjustments in equal Monthly quantities.
- (2) Where under this Schedule the Authority is required to adjust accounts in connection with inter-valley transfer, it must make those adjustments in equal Monthly quantities during the balance of the Water Year in which New South Wales notifies the Authority of the relevant inter-valley transfer.
- (3) Each release of River Murray Increased Flows must be allocated half to New South Wales and half to Victoria.

**PART IV—SNOWY-MURRAY DEVELOPMENT (RIVER MURRAY)  
ENVIRONMENTAL ENTITLEMENTS**

**15. Translation Factors**

- (1) New South Wales and Victoria must each transfer Water Savings and Water Entitlements to its respective Snowy-Murray Development (River Murray) Environmental Entitlement in accordance with Translation Factors agreed between each of them and the Authority.
- (2) New South Wales, Victoria and the Authority must ensure that:
  - (a) the Translation Factors are determined in a manner consistent with the principles used to determine exchange rates in the relevant Water Market at the time of each transfer under sub-clause 18(2) of this Schedule; and
  - (b) the use of Translation Factors to transfer Water Savings and Water Entitlements to a Snowy-Murray Development (River Murray) Environmental Entitlement will not have a significant adverse impact on:
    - (i) the level of Reliability of entitlements to water diverted from the River Murray System, the Murrumbidgee River System and the Goulburn River System;



- (ii) the environmental benefits related to the quantity and timing of water flows for environmental purposes in the River Murray System, the Murrumbidgee River System and the Goulburn River System;
- (iii) the Seasonal Availability of the entitlement to be received during that Water Year by South Australia under this Agreement; and
- (iv) water quality in the River Murray in South Australia.

#### **16. Apportionment Of Environmental Entitlements**

New South Wales and Victoria must notify the Authority of how each Environmental Entitlement has been apportioned between:

- (1) the Snowy River Apportioned Entitlement; and
- (2) the River Murray Apportioned Entitlement.

#### **17. Valley Accounts**

If:

- (1) New South Wales or Victoria transfers either or both of Water Savings and Water Entitlements to an Environmental Entitlement; and
- (2) the source of that water is from a valley for which the Authority maintains a valley account,

New South Wales or Victoria (as the case may be) must notify the Authority of the volume and reliability of the entitlement required to be added to the relevant valley account to generate the Environmental Entitlement.

#### **18. Long Term Diversion Caps**

- (1) Prior to New South Wales or Victoria transferring either or both of Water Savings and Water Entitlements to an Environmental Entitlement, the relevant State must calculate the equivalent volume by which its Long Term Diversion Cap must be reduced.

- (2) If New South Wales or Victoria transfers either or both of Water Savings and Water Entitlements to an Environmental Entitlement, at the same time the relevant State must advise the Authority and the Committee of its calculation as to the volume by which its Long Term Diversion Cap must be reduced.
- (3) If the Committee is satisfied with the appropriateness of a calculation advised under sub-clause 18(2), it must recommend to the Ministerial Council that the relevant Long Term Diversion Cap be amended in accordance with the calculation.
- (4) If the Committee is not satisfied with the appropriateness of a calculation advised under sub-clause 18(2), the Authority must arrange for the relevant volume referred to in sub-clause 18(1) to be re-calculated in consultation with the relevant State.
- (5) If a majority of the Committee members is satisfied with the appropriateness of a calculation made under sub-clause 18(4), the Committee must recommend to the Ministerial Council that the relevant Long Term Diversion Cap be amended in accordance with the calculation.
- (6) Despite clause 10 of Schedule E, the Ministerial Council must amend a Long Term Diversion Cap in accordance with any recommendation made by the Committee under sub-clause 18(3) or 18(5).

## **PART V—RIVER MURRAY INCREASED FLOWS**

### **19. Obligation Of Authority To Make River Murray Increased Flows**

Subject to this Part, the Authority must release River Murray Increased Flows.

### **20. Environmental Objectives And Strategy For River Murray Increased Flows**

- (1) The document entitled “*The Living Murray Environmental Watering Plan 2006-2007*” approved by the former Ministerial Council under the former Agreement on 5 December 2006 is taken to be the Strategy referred to in this Schedule.

- (2) Subject to sub-clauses (3) and (4), the Ministerial Council may from time to time by resolution amend the Strategy.
  - (3) Any amended Strategy:
    - (a) must include a provision to the effect that River Murray Increased Flows have first priority from River Murray Above Target Releases;
    - (b) may provide that water credited to the River Murray Increased Flows in Authority Storages Account need not be released during the Water Year in which it is credited;
    - (c) unless the Ministerial Council otherwise determines, must not have a significant adverse impact upon the security of entitlements to water;
    - (d) must include the environmental objectives for the River Murray Increased Flows and integrate those objectives with other environmental initiatives on the River Murray;
    - (e) must include adaptive management principles to allow the ability to optimise environmental benefits; and
    - (f) must prescribe appropriate environmental reporting and monitoring conditions.
  - (4) The Ministerial Council must determine any amended environmental objectives and Strategy in accordance with the following principles:
    - (a) Natural diversity of habitats and biota within the river channel, riparian zone and the floodplain should be maintained or enhanced.
    - (b) Natural linkages between the river and the floodplain should be maintained or enhanced.
    - (c) Natural metabolic functioning of aquatic ecosystems should be maintained or enhanced.
    - (d) Elements of the natural flow regime, in particular, seasonality should be retained or enhanced as far as possible, in the interests of conserving a niche for native rather than invasive exotic species and in maintaining the natural functions of the river.
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- (e) Consistent and constant flow and water level regimes should be avoided where practical, as this is contrary to the naturally variable flow regime of the River Murray.
  - (f) The general principles of ecosystem services should be recognised.
  - (g) Environmental benefit should be optimised.
- (5) As soon as practicable after the end of each Water Year, the Authority must report to the Contracting Governments on the environmental outcomes of the River Murray Increased Flows during that Water Year, in the light of the objectives determined by the Ministerial Council for those Increased Flows.

**21. Authority To Maintain River Murray Increased Flows Accounts**

- (1) The continuous water accounts for the River Murray Increased Flows known as:
- (a) the Initial River Murray Increased Flows Account; and
  - (b) the River Murray Increased Flows in Authority Storages Account,
- maintained under sub-clause 21(1) of Schedule G of the former Agreement immediately prior to commencement of this Schedule are continued in existence.
- (2) The Authority must maintain the continuous water accounts of the River Murray Increased Flows referred to in sub-clause 21(1) in the manner required by this clause.
- (3) The Authority must:
- (a) credit the Initial River Murray Increased Flows Account with the River Murray Annual Allocation notified by New South Wales;
  - (b) transfer from the Initial River Murray Increased Flows Account to the River Murray Increased Flows in Authority Storages Account, River Murray Above Target Releases allocated to the River Murray Increased Flows in accordance with the Strategy;

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- (c) record in the River Murray Increased Flows in Authority Storages Account the transfer of water in that account between Authority storages; and
  - (d) record in the River Murray Increased Flows in Authority Storages Account the release of River Murray Increased Flows from Authority storages.
- (4) The River Murray Increased Flows Accounts must be independently audited unless the Authority by resolution declares otherwise.
  - (5) As soon as practicable after the completion of each audit, the Authority must send a copy of the audited River Murray Increased Flows Accounts to the Contracting Governments.

## **22. Binding Effect of Strategy**

Despite any other provision in this Agreement but subject to Divisions 2 and 3 of Part XII of the Agreement, the Authority must:

- (1) allocate River Murray Above Target Releases to the River Murray Increased Flows Accounts; and
  - (2) manage the water in and releases of water from the River Murray Increased Flows in Authority Storages Account,
- in accordance with the Strategy.

## **PART VI—NOTIFICATION AND CONSULTATION PROVISIONS**

### **23. Authority To Be Informed Of New Proposals**

A Contracting Government must inform the Authority of any proposal:

- (1) to achieve Water Savings or to purchase Water Entitlements for the purpose of transferring those Water Savings or Water Entitlements to the Environmental Entitlements; or
- (2) to modify the reliability of a supply of water pursuant to an Environmental Entitlement,

in accordance with sub-clause 49(4) of the Agreement.

**24. Snowy Scheme Annual Water Operating Plan**

- (1) The parties acknowledge that as a result of provisions in the Snowy Water Licence and a deed between the Commonwealth, New South Wales and Victoria as at the Corporatisation Date, the Licensee is bound to consult with others, including the Authority, while developing each Annual Water Operating Plan and any variation to each Plan.
- (2) The Commonwealth, New South Wales and Victoria must:
  - (a) ensure the direct participation by the Authority in each consultation referred to in sub-clause 24(1) or held under any varied consultation arrangements; and
  - (b) consult with the Authority before varying existing consultation arrangements.

**25. Notifications Required**

- (1) Each Contracting Government must, at the time specified by the Authority, notify the Authority of such water volumes and estimates as are reasonably requested by the Authority to enable it to make calculations referred to in this Schedule.
- (2) The Authority must, at any time specified by New South Wales, notify New South Wales of such water volumes and estimates calculated by the Authority by reference to the Baseline Conditions as are reasonably requested by New South Wales, to enable New South Wales to calculate the Required Annual Release.

**PART VII—ANALYTICAL MODELS**

**26. Developing Analytical Models**

- (1) The Authority must develop an analytical model for determining, in the case of the River Murray System:
  - (a) storage volumes; and
  - (b) total diversions,

that would have occurred under Baseline Conditions.

- (2) New South Wales must develop an analytical model for determining, in the case of the Murrumbidgee River System:

- (a) storage volumes; and
- (b) total diversions,

that would have occurred under Baseline Conditions.

- (3) An analytical model developed under this clause:

- (a) must be the best model available to the Authority or New South Wales, from time to time, for the purpose of calculating the timing and quantity of the Relaxation Volume under Baseline Conditions; and
- (b) must be tested against relevant historical data to determine the accuracy of the model.

- (4) New South Wales may at its own cost engage an independent auditor to evaluate whether the model developed under sub-clause 26(1) of this Schedule is:

- (a) the best available to the Authority; and
- (b) accurate.

## **PART VIII—OTHER PROVISIONS**

### **27. Inter-Valley Water Transfers**

- (1) To facilitate water transfers, the Authority may request New South Wales to release:
  - (a) Water Available to the Snowy-Murray Development to each or both of the Tumut River catchment and the Murrumbidgee River catchment; or
  - (b) Water Available to the Snowy-Tumut Development to the River Murray catchment upstream of Hume Dam.
- (2) If New South Wales agrees with the request made under sub-clause 27(1) of this Schedule, any inter-valley transfer referred

to in sub-clause 27(1) must be converted into an allocation to New South Wales of water in Hume Reservoir.



## **SCHEDULE 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.

**“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:
  - (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.

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**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
- (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:
    - (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.
-

- (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.
- (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.
- (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.
- (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 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 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.

**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.

#### **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
  - (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
  - (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.
- (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.

**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.

**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
  - (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

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.

**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.

## **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)
- *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.
- (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.

**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
  - (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.
- (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
  - (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.
- (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
  - (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
  - (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.

## **PART 5 – REVIEW OF SCHEDULE**

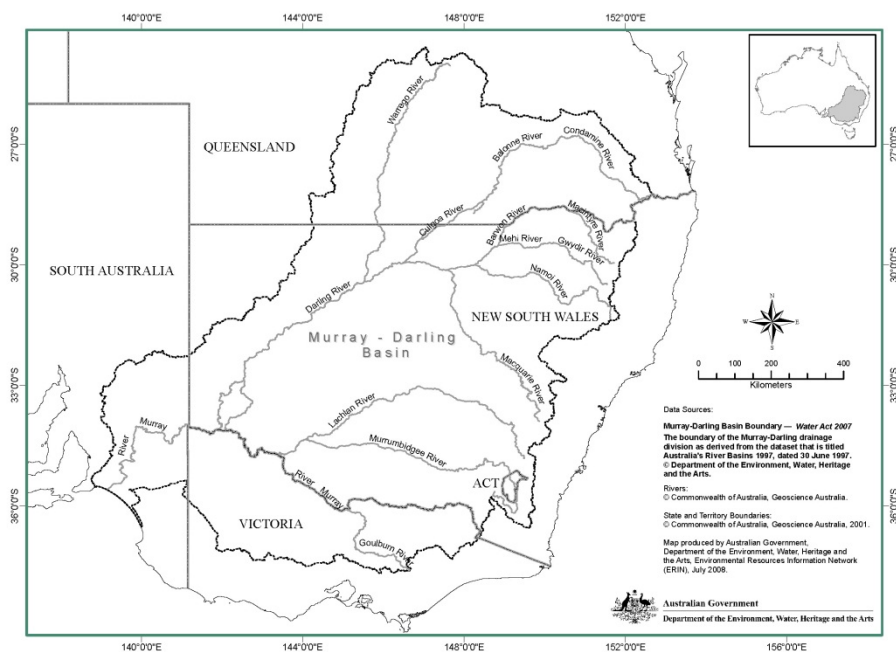
### **17. Review of Schedule**

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.

## 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.



## **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.



## **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.

## 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.

#### **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.

Clause 6

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- (2) The costs of operating these benchmarking and efficiency review systems are to be met through recovery of regulated water charges.

## 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)).

## Clause 3

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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.

### **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
  - (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.

**Clause 4**

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- (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.
- (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.



Clause 4

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- (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.

## Schedule 3A—Risk assignment framework

Note: See section 74A.

### Part 1—Clauses 48 to 50 of the National Water Initiative

48. *Water access entitlement* holders are to bear the risks of any reduction or less reliable water allocation, under their *water access entitlements*, arising from reductions to the consumptive pool as a result of:
- (i) seasonal or long-term changes in climate; and
  - (ii) periodic natural events such as bushfires and drought.
49. The risks of any reduction or less reliable water allocation under a *water access entitlement*, arising as a result of bona fide improvements in the knowledge of water systems' capacity to sustain particular extraction levels are to be borne by users up to 2014. Risks arising under comprehensive *water plans* commencing or renewed after 2014 are to be shared over each ten year period in the following way:
- i) *water access entitlement* holders to bear the first 3% reduction in water allocation under a *water access entitlement*;
  - ii) State/Territory governments and the Commonwealth Government to share one-third and two-thirds respectively reductions in water allocation under *water access entitlements* of between 3% and 6%; and
  - iii) State/Territory and Commonwealth governments to equally share reductions in water allocation under *water access entitlements* greater than 6%.
50. Governments are to bear the risks of any reduction or less reliable water allocation that is not previously provided for, arising from changes in government policy (for example, new environmental objectives). In such cases, governments may recover this water in accordance with the principles for assessing the most efficient and cost effective measures for water recovery.

## **Part 2—Clause 10.1.3 of the Agreement on Murray-Darling Basin Reform of 3 July 2008**

10.1.3 Commonwealth undertakes to use its best endeavours to enact legislation to amend Division 4 of Part 2 of the Water Act so that:

In respect of those Basin States who choose to apply the National Water Initiative risk assignment framework:

- a) the Commonwealth's share of a reduction in a long-term average sustainable diversion limit includes, in any 10 year period, all of the new knowledge components of the reductions that exceed three per cent of the relevant diversion limit; and
- b) for a water resource plan area in the Murray-Darling Basin with a transitional or interim water resource plan, the Commonwealth will take responsibility for its share of the new knowledge component of a reduction in the long-term average sustainable diversion limit for the water resources of that plan area arising after the transitional or interim water resource plan ceases to have effect.

## Schedule 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

<b>Transitional water resource plans</b>		
<b>Item</b>	<b>Plan (Basin State)</b>	<b>Date plan ceases to have effect</b>
12	Lower Macquarie Groundwater Sources 2003—Water Sharing Plan (New South Wales)	30 June 2017
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

**Schedule 4** Transitional water resource plans

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<b>Transitional water resource plans</b>		
<b>Item</b>	<b>Plan (Basin State)</b>	<b>Date plan ceases to have effect</b>
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
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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## Schedule 10—Transitional provisions relating to amendments

Note: See section 255C.

### Part 1—Transitional provisions relating to the Water Amendment Act 2018

#### 1 Application of amendments

The amendments made by Schedule 1 to the *Water Amendment Act 2018* apply whether the earlier amendment of the Basin Plan was disallowed (or is taken to have been disallowed) under subsection 42(1) or (2) of the *Legislation Act 2003* before, at or after the commencement of that Schedule.

Note: For the earlier amendment of the Basin Plan, see paragraph 49AA(1)(a) of this Act.

#### 2 Transitional

- (1) This clause applies if the Minister gives a direction under section 49AA for the Authority to prepare an amendment of the Basin Plan that is the same in effect as the *Basin Plan Amendment Instrument 2017 (No. 1)*.
- (2) For the purposes of (and without limiting) that section, including in the amendment one or more of the following changes does not prevent the amendment from being the same in effect as the *Basin Plan Amendment Instrument 2017 (No. 1)*:
  - (a) an additional requirement in the definition of ***re-allocation adjustment request*** in section 6.05 (as substituted by the amendment) of the Basin Plan that a request made before that substitution should be expressed to be made in anticipation of that substitution;
  - (b) an additional requirement in subsection 6.05(13) (as substituted by the amendment) of the Basin Plan that requires the Authority to publish on its website variations to the SDL

**Schedule 10** Transitional provisions relating to amendments

**Part 1** Transitional provisions relating to the Water Amendment Act 2018

Clause 2

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resource unit shared reduction amounts for SDL resource units in the relevant zones;

- (c) a change to section 7.14A (as inserted by the amendment) to reflect that the initial adjustments proposed in 2017 (as required by section 7.10 of the Basin Plan) have already occurred.



## **Part 2—Transitional provisions relating to the Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021**

### **Division 1—Amendments to Schedule 1 to this Act made by regulations**

#### **1 Application of amendments—amendments to Schedule 1 to this Act made by regulations**

Subsection 18C(2A) of this Act, as inserted by item 2 of  
Schedule 3 to the *Water Legislation Amendment  
(Inspector-General of Water Compliance and Other Measures) Act  
2021*, applies:

- (a) in relation to regulations made after the commencement of  
that subsection; and
- (b) in relation to regulations made before the commencement of  
that subsection as if that subsection had been in force when  
the regulations were made.

Clause 2

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## **Division 2—Other amendments**

### **2 Definitions**

In this Division:

**commencement day** means the day Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* commences.

### **3 Appropriate enforcement agency**

The amendment of paragraph 137(a) of this Act made by item 19 of Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* applies in relation to contraventions occurring before, on or after the commencement day.

### **4 Legal proceedings involving the Murray-Darling Basin Authority**

- (1) If, immediately before the commencement day:
  - (a) the Murray-Darling Basin Authority was a party to proceedings pending in any court or tribunal; and
  - (b) the proceedings:
    - (i) were brought as permitted by Part 8 of the Act, as in force before the commencement day; or
    - (ii) related to the exercise of powers under Part 10 of the Act, as in force before the commencement day;

the Inspector-General of Water Compliance is substituted for the Murray-Darling Basin Authority as a party to the proceedings on and after that day.
- (2) Subclause (1) does not apply in relation to pending proceedings relating to the payment of compensation to a person under section 233 or 254 of this Act arising from the exercise of powers under Part 10 of this Act, as in force before the commencement day.

## **5 Enforceable undertakings**

If:

- (a) before the commencement day, the Authority had accepted an undertaking given by a person under section 163 of this Act; and
- (b) the undertaking had not been withdrawn or cancelled before that day;

then the undertaking continues to have effect on and after the commencement day as if it were an undertaking accepted by the Inspector-General under that section.

## **6 Enforcement notices**

- (1) The amendments of section 165 of this Act made by items 36 to 42 of Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* apply in relation to contraventions, conduct and omissions occurring before, on or after the commencement day.
- (2) Section 166 of this Act, as substituted by item 43 of Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021*, applies in relation to a contravention of a notice that is given under subsection 165(2) of this Act on or after the commencement day.
- (3) The amendment of section 167 of this Act made by item 44 of Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* applies in relation to a notice given under section 165 of this Act before, on or after the commencement day.

## **7 Public warning notices**

Section 167A of this Act applies in relation to conduct occurring on or after the commencement day.

Clause 8

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**8 Offences and civil penalty provisions**

- (1) An offence provision or a civil penalty provision that was inserted into this Act by Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* applies in relation to an act or omission that occurs on or after the commencement day.
- (2) An offence provision or a civil penalty provision, as amended by Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021*, applies in relation to an act or omission that occurs on or after the commencement day.

**9 Credits to the Murray-Darling Basin Special Account**

The amendment of paragraph 210(1)(i) of this Act made by item 59 of Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* applies in connection with the performance of the Authority's functions under this Act or the regulations on or after the commencement day.

**10 Disclosure of information by the Authority**

Section 215A of this Act applies in relation to information obtained before, on or after the commencement day.

**11 Inquiry may relate to matters occurring before, on or after commencement day**

The Inspector-General may conduct an inquiry under section 239AA of this Act for the purpose of performing the function referred to in paragraph 215C(1)(a), (b) or (c) of this Act in relation to the performance of functions or obligations, exercise of powers or implementation of commitments referred to in those paragraphs by agencies of the Commonwealth, or agencies of the Basin States, before, on or after the commencement day.

## **12 Inspector-General's first annual work plan**

For the purposes of subsection 215E(1) of the Act, the Inspector-General must prepare a work plan for the financial year that includes the commencement day within 3 months after the commencement day.

## **13 Inspector-General's compliance powers**

- (1) The powers conferred on the Inspector-General by Subdivision B of Division 1 of Part 10AA of this Act may be exercised in relation to contraventions or acts or omissions occurring before, on or after the commencement day.
- (2) Subclause (1) has effect subject to clause 8 of this Schedule.

## **14 Declaration by the Authority before commencement day relating to restrictions on trading water access right**

- (1) If:
  - (a) a declaration was made by the Authority under subsection 12.20(1) of the Basin Plan before the commencement day; and
  - (b) the declaration was in force immediately before that day; the declaration continues in force on and after that day as if it had been made by the Inspector-General under that subsection.
- (2) If:
  - (a) before the commencement day, a Basin State had, under paragraph 12.20(1)(a) of the Basin Plan, requested the Authority to make a declaration; and
  - (b) no decision on the request had been made before the commencement day;the request is taken, on and after the commencement day, to be a request made under paragraph 12.20(1)(a) of the Basin Plan to the Inspector-General to make the declaration.

Clause 15

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**15 Declaration by the Authority before commencement day  
permitting application of exchange rate to trade of water  
access entitlement**

- (1) If:
- (a) a declaration was made by the Authority under subsection 12.22(3) of the Basin Plan before the commencement day; and
  - (b) the declaration was in force immediately before that day; the declaration continues in force on and after that day as if it had been made by the Inspector-General under that subsection.
- (2) If:
- (a) before the commencement day, a Basin State had, under subsection 12.22(2) of the Basin Plan, requested the Authority to make a declaration; and
  - (b) no decision on the request had been made before the commencement day;
- the request is taken, on and after the commencement day, to be a request made under subsection 12.22(2) of the Basin Plan to the Inspector-General to make the declaration.

**16 Audits**

*Inspector-General may conduct audit to assess compliance  
occurring before, on or after commencement day*

- (1) The Inspector-General may conduct an audit under section 73L of this Act to assess the extent of compliance with the Basin Plan or water resource plans occurring before, on or after the commencement day.

*Audits to assess compliance with Basin Plan in progress before  
commencement day*

- (2) If:

- (a) an audit was being conducted under Division 3 of Part 3 of Chapter 13 of the Basin Plan before the commencement day; and
  - (b) the audit had not been completed before that day;
- then, despite the repeal of Division 3 of Part 3 of Chapter 13 and section 13.20 of the Basin Plan (the ***Basin Plan audit provisions***) by items 18 and 20 of Schedule 2 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021*, the Basin Plan audit provisions continue to apply on and after the commencement day in relation to the audit.
- (3) Subsection 73M(2) of this Act applies in relation to an audit that is completed after the commencement day under Division 3 of Part 3 of Chapter 13 of the Basin Plan (as that Division continues to apply because of subclause (2) of this clause) if:
- (a) a report setting out the findings of the audit and any recommendations arising from the audit is published under section 13.20 of the Basin Plan (as that section continues to apply because of subclause (2) of this clause); and
  - (b) the report includes a recommendation that an agency of the Commonwealth, or an agency of a State or Territory, take certain action.

## **17 Regulations may provide for other transitional matters relating to the Inspector-General**

The regulations may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:

- (a) the establishment of the Inspector-General; and
- (b) the transfer of functions from the Authority to the Inspector-General.

## **Part 3—Application provision relating to the Water Amendment (Restoring Our Rivers) Act 2023**

### **1 Application of amendments**

The amendments of sections 177, 178 and 180 made by Part 6 of Schedule 1 to the *Water Amendment (Restoring Our Rivers) Act 2023* apply in relation to appointments made on or after the commencement of that Schedule.



## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

## Endnotes

### Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

## Endnote 2—Abbreviation key

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

#### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Water Act 2007	137, 2007	3 Sept 2007	s 3–256 and Sch 1–4: 3 Mar 2008 (s 2(1) item 2) Remainder: 3 Sept 2007 (s 2(1) item 1)	
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 1 (items 59–69): 3 Mar 2008 (s 2(1) items 33–43)	—
Water Amendment Act 2008	139, 2008	8 Dec 2008	Sch 1, 3 and 4: 15 Dec 2008 (s 2(1) items 2–4) Sch 2 (items 6–59, 59A, 59B, 60–63, 63A, 63B, 64–106, 106A, 107–161, 161A, 162–165): 15 Dec 2008 (s 2(1) item 3)	Sch 3
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 1 (items 256–265) and Sch 5 (items 127–134): 1 Mar 2010 (s 2(1) items 4, 37)	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 143): 1 Jan 2011 (s 2(1) items 3, 7)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 1 (items 118, 119): 22 Mar 2011 (s 2(1) item 2)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 1176–1183) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 2, 12)	Sch 3 (items 10, 11)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Act 2012	157, 2012	21 Nov 2012	21 Nov 2012 (s 2)	—
Water Amendment (Water for the Environment Special Account) Act 2013	3, 2013	15 Feb 2013	15 Feb 2013 (s 2)	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (item 557) and Sch 2 (item 2): 12 Apr 2013 (s 2(1) items 2, 3)	—
Australian Capital Territory Water Management Legislation Amendment Act 2013	147, 2013	17 Dec 2013	Sch 2 (items 1, 3): 21 Nov 2012 (s 2(1) items 3, 5) Sch 2 (items 2, 4–7): 18 Dec 2013 (s 2(1) items 4, 6)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 5 (items 93–98), Sch 12 (items 260–278) and Sch 14: 1 July 2014 (s 2(1) items 5, 6, 14)	Sch 5 (item 98) and Sch 14

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
<b>as amended by</b>				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 5 (item 83): 17 Oct 2014 (s 2(1) item 2)	—
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 5 (items 73–77) and Sch 7: 14 Apr 2015 (s 2)	Sch 5 (items 74–77) and Sch 7
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
National Water Commission (Abolition) Act 2015	63, 2015	16 June 2015	Sch 1 (items 2–11): 17 June 2015 (s 2)	Sch 1 (items 7–11)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Water Amendment Act 2015	133, 2015	13 Oct 2015	Sch 1 (items 1, 2): 13 Apr 2016 (s 2(1) item 2)	—
Water Amendment (Review Implementation and Other Measures) Act 2016	40, 2016	4 May 2016	Sch 1 (item 1): 1 Jan 2020 (s 2(1) item 2) Sch 1 (items 2–37) and Sch 2 (items 5–13): 5 May 2016 (s 2(1) items 3, 4, 6, 7) Sch 2 (items 1–4): 15 Dec 2008 (s 2(1) item 5)	Sch 1 (items 9, 20, 29)
Water Amendment Act 2018	53, 2018	27 June 2018	28 June 2018 (s 2(1) item 1)	—
Water Amendment (Indigenous Authority Member) Act 2019	80, 2019	2 Oct 2019	3 Oct 2019 (s 2(1) item 1)	—
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (items 798–800): 1 Sept 2021 (s 2(1) item 5)	—
Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021	74, 2021	30 June 2021	Sch 1 and 3: 5 Aug 2021 (s 2(1) item 1)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Water Amendment (Restoring Our Rivers) Act 2023	111, 2023	7 Dec 2023	Sch 1 and 5: 8 Dec 2023 (s 2(1) items 2, 11) Sch 3 (items 1–11) and Sch 6 (items 6–10, 17–33): <u>awaiting commencement (s 2(1) items 4–6, 12, 13)</u> Sch 3 (items 12–17) and Sch 6 (items 34–44): 1 July 2024 (s 2(1) items 7, 14)	—
Financial Framework (Supplementary Powers) Amendment Act 2024	27, 2024	30 May 2024	Sch 1 (item 16): 31 May 2024 (s 2(1) item 2)	—

Number and year	Registration	Commencement	Application, saving and transitional provisions
106, 2008	24 June 2008 (F2008L02170)	30 June 2008 (r 2)	—
as amended by			
184, 2009	9 July 2009 (F2009L02702)	9 July 2009 (r 2)	—
117, 2011	1 July 2011 (F2011L01396)	1 July 2011 (r 2)	—
75, 2014	17 June 2014 (F2014L00728)	Sch 1 (items 1–9): 17 June 2014 (s 2)	—
225, 2015	16 Dec 2015 (F2015L02034)	16 Dec 2015 (s 2(1) item 1)	—



## Endnote 3—Legislation history

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Water Amendment (Murray-Darling Basin Agreement) Regulations 2017	22 May 2017 (F2017L00569)	23 May 2017 (s 2(1) item 1)	—
Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018	7 Dec 2018 (F2018L01674)	7 Dec 2018 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
Division 1 heading.....	rep No 139, 2008
s 3.....	am No 111, 2023 ( <a href="#">Sch 3 item 12</a> )
s 4.....	am No 73, 2008; No 139, 2008; No 8, 2010; No 157, 2012; No 3, 2013; No 62, 2014; No 63, 2015; No 40, 2016; No 74, 2021; No 111, 2023 ( <a href="#">Sch 3 items 1, 3, 5, 13</a> ; <a href="#">Sch 6 items 17, 34</a> )
s 5.....	rs No 139, 2008
s 6A.....	ad <a href="#">No 111, 2023</a>
s 7.....	am No 40, 2016
s 9.....	am No 139, 2008; No 74, 2021; <a href="#">No 111, 2023</a>
s 9A.....	ad No 139, 2008
s 10.....	am No 139, 2008; <a href="#">No 111, 2023</a>
s 11.....	am No 73, 2008
s 12A.....	ad No 139, 2008
Division 2 .....	rep No 139, 2008
s 14.....	rep No 139, 2008
s 15.....	rep No 139, 2008
s 16.....	rep No 139, 2008
s 17.....	rep No 139, 2008
s 18.....	rep No 139, 2008
<b>Part 1A</b>	
Part 1A.....	ad No 139, 2008
<b>Division 1</b>	
s 18A.....	ad No 139, 2008
s 18B.....	ad No 139, 2008
	am No 40, 2016
<b>Division 2</b>	
s 18C.....	ad No 139, 2008

## Endnote 4—Amendment history

Provision affected	How affected
	am No 40, 2016; No 74, 2021
s 18D.....	ad No 139, 2008
	am No 40, 2016
<b>Division 3</b>	
s 18E .....	ad No 139, 2008
	am No 74, 2021
s 18F .....	ad No 139, 2008
s 18G.....	ad No 139, 2008
s 18H.....	ad No 139, 2008
<b>Part 2</b>	
<b>Division 1</b>	
<b>Subdivision B</b>	
s 20.....	am No 111, 2023
s 21.....	am No 139, 2008; No 8, 2010; No 111, 2023
s 22.....	am No 157, 2012; No 147, 2013; No 40, 2016; No 74, 2021
s 23.....	rs No 157, 2012
s 23A.....	ad No 157, 2012
s 23B.....	ad No 157, 2012
	am No 40, 2016; No 111, 2023
s 26.....	am No 139, 2008; No 8, 2010
<b>Subdivision D</b>	
s 33.....	am No 157, 2012; No 53, 2018
s 34.....	am No 139, 2008
s 35.....	am No 139, 2008
s 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
<b>Subdivision E</b>	
s 41.....	am No 139, 2008
s 43.....	am No 139, 2008

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 43A.....	ad No 139, 2008
s 44.....	am No 139, 2008; No 40, 2016
<b>Subdivision F</b>	
s 45.....	am No 139, 2008
s 46.....	am No 74, 2021
s 47.....	am No 139, 2008
s 47A.....	ad No 139, 2008
s 48.....	am No 139, 2008; No 40, 2016
s 49AA.....	ad No 53, 2018
<b>Subdivision G</b>	
s 49A.....	ad No 139, 2008
	am No 40, 2016
s 50.....	am No 139, 2008; No 40, 2016; No 111, 2023
s 51.....	am No 8, 2010
s 52.....	am No 40, 2016
<b>Subdivision H</b>	
Subdivision H.....	ad No 40, 2016
s 52A.....	ad No 40, 2016
<b>Division 2</b>	
<b>Subdivision B</b>	
s 56.....	am No 139, 2008; No 40, 2016
<b>Subdivision C</b>	
s 59.....	am No 139, 2008
s 60.....	am No 139, 2008
s 61.....	am No 139, 2008; No 5, 2011
s 62.....	am No 8, 2010
<b>Subdivision D</b>	
s 63.....	am No 73, 2008; No 147, 2013; No 40, 2016
s 63A.....	ad No 147, 2013
s 64.....	am No 40, 2016
s 65.....	am No 40, 2016

## Endnote 4—Amendment history

Provision affected	How affected
<b>Subdivision E</b>	
s 68.....	am No 8, 2010; No 147, 2013; No 40, 2016
s 69.....	am No 73, 2008; No 40, 2016
<b>Subdivision F</b>	
s 71.....	am No 147, 2013; No 74, 2021; No 111, 2023
<b>Division 3</b>	
s 73.....	am No 5, 2011
<b>Division 3A</b>	
Division 3A.....	ad No 74, 2021
<b>Subdivision A</b>	
s 73A.....	ad No 74, 2021
s 73B.....	ad No 74, 2021
s 73C.....	ad No 74, 2021
s 73D.....	ad No 74, 2021
s 73E.....	ad No 74, 2021
<b>Subdivision B</b>	
s 73F.....	ad No 74, 2021
s 73G.....	ad No 74, 2021
	rep <u>No 111, 2023</u>
s 73H.....	ad No 74, 2021
	rep <u>No 111, 2023</u>
s 73J.....	ad No 74, 2021
	am <u>No 111, 2023</u>
s 73K.....	ad No 74, 2021
	rep <u>No 111, 2023</u>
<b>Division 3B</b>	
Division 3B.....	ad No 74, 2021
s 73L.....	ad No 74, 2021
s 73M.....	ad No 74, 2021

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
<b>Division 4</b>	
<b>Subdivision A</b>	
s 74.....	am No 139, 2008; No 40, 2016
s 74A.....	ad No 139, 2008
	am No 63, 2015
s 75.....	am No 139, 2008; No 147, 2013; No 111, 2023
s 77.....	am No 139, 2008
s 77A.....	ad No 111, 2023
<b>Subdivision B</b>	
s 81.....	am No 139, 2008; No 8, 2010
s 83.....	am No 139, 2008
s 86.....	am No 73, 2008
	renum No 133, 2015
s 85A (prev s 86)	
<b>Division 4A</b>	
Division 4A.....	ad No 111, 2023
s 85AB .....	ad No 111, 2023
s 85ABA .....	ad No 111, 2023
<b>Division 4B</b>	
Division 4B.....	ad No 111, 2023
s 85AC .....	ad No 111, 2023
Division 5 .....	ad No 133, 2015
	rep No 111, 2023
s 85B .....	ad No 133, 2015
	rep No 111, 2023
s 85C .....	ad No 133, 2015
	rep No 111, 2023
s 85D.....	ad No 133, 2015
	rep No 111, 2023
<b>Division 6</b>	
Division 6 .....	ad No 111, 2023

## Endnote 4—Amendment history

Provision affected	How affected
s 85E .....	ad No 111, 2023
s 85F .....	ad No 111, 2023
<b>Part 2AA</b>	
Part 2AA .....	ad No 3, 2013
s 86AA .....	ad No 3, 2013
	am No 111, 2023
s 86AB .....	ad No 3, 2013
	am No 62, 2014
s 86AC .....	ad No 3, 2013;
	am No 62, 2014
s 86AD .....	ad No 3, 2013
	am No 111, 2023
s 86ADA .....	ad No 111, 2023
	rep No 27, 2024
s 86ADB .....	ad No 111, 2023
s 86AE .....	ad No 3, 2013
	am No 40, 2016
s 86AF .....	ad No 3, 2013
s 86AG .....	ad No 3, 2013
s 86AH .....	ad No 111, 2023
s 86AI .....	ad No 3, 2013
s 86AJ .....	ad No 3, 2013
	am No 111, 2023
<b>Part 2A</b>	
Part 2A .....	ad No 139, 2008
s 86A .....	ad No 139, 2008
s 86B .....	ad No 139, 2008
s 86C .....	ad No 139, 2008
s 86D .....	ad No 139, 2008
s 86E .....	ad No 139, 2008
s 86F .....	ad No 139, 2008

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 86G.....	ad No 139, 2008
s 86H.....	ad No 139, 2008
s 86J .....	ad No 139, 2008
	am No 74, 2021
s 86K.....	ad No 74, 2021
s 86L .....	ad No 74, 2021
<b>Part 3</b>	
Part 3.....	rs No 63, 2015
s 87.....	rs No 63, 2015
s 88.....	rs No 63, 2015
	am No 111, 2023
s 89.....	rs No 63, 2015
s 90.....	rep No 63, 2015
<b>Part 4</b>	
Part 4.....	rs No 139, 2008
<b>Division 1</b>	
s 91.....	rs No 139, 2008
s 92.....	am No 73, 2008
	rs No 139, 2008
	am No 40, 2016
s 93.....	am No 73, 2008
	rs No 139, 2008
	am No 40, 2016
s 94.....	rs No 139, 2008
s 95.....	rs No 139, 2008
s 96.....	rs No 139, 2008
<b>Division 2</b>	
s 97.....	rs No 139, 2008
s 98.....	rs No 139, 2008
	am No 40, 2016
s 99.....	rs No 139, 2008



## Endnote 4—Amendment history

Provision affected	How affected
s 100.....	rs No 139, 2008
<b>Division 3</b>	
s 100A.....	ad No 139, 2008 am No 103, 2010
<b>Part 4A</b>	
Part 4A.....	ad No 139, 2008
s 100B.....	ad No 139, 2008
s 100C.....	ad No 139, 2008
s 100D.....	ad No 139, 2008 am No 103, 2010
<b>Part 5</b>	
Part 5.....	rep No 40, 2016 ad <u>No 111, 2023</u>
<b>Division 1</b>	
s 100E.....	ad <u>No 111, 2023</u>
<b>Division 2</b>	
s 100F.....	ad <u>No 111, 2023</u>
<b>Division 3</b>	
s 100G.....	ad <u>No 111, 2023</u>
s 100H.....	ad <u>No 111, 2023</u>
s 100J.....	ad <u>No 111, 2023</u>
s 100K.....	ad <u>No 111, 2023</u>
s 100L.....	ad <u>No 111, 2023</u>
<b>Division 4</b>	
s 100M.....	ad <u>No 111, 2023</u>
s 100N.....	ad <u>No 111, 2023</u>
<b>Division 5</b>	
s 100P.....	ad <u>No 111, 2023</u>
s 100Q.....	ad <u>No 111, 2023</u>
s 100R.....	ad <u>No 111, 2023</u>
s 100S.....	ad <u>No 111, 2023</u>

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 100T .....	ad <a href="#">No 111, 2023</a>
s 100U .....	ad <a href="#">No 111, 2023</a>
s 100V .....	ad <a href="#">No 111, 2023</a>
s 100W .....	ad <a href="#">No 111, 2023</a>
s 100X .....	ad <a href="#">No 111, 2023</a>
s 100Y .....	ad <a href="#">No 111, 2023</a>
s 100Z .....	ad <a href="#">No 111, 2023</a>
	am <a href="#">No 111, 2023</a>
<b>Division 6</b>	
s 100ZA .....	ad <a href="#">No 111, 2023</a>
<b>Division 7</b>	
s 100ZB .....	ad <a href="#">No 111, 2023</a>
s 100ZC .....	ad <a href="#">No 111, 2023</a>
<b>Division 8</b>	
s 100ZD .....	ad <a href="#">No 111, 2023</a>
s 100ZE .....	ad <a href="#">No 111, 2023</a>
s 100ZF .....	ad <a href="#">No 111, 2023</a>
s 100ZG .....	ad <a href="#">No 111, 2023</a>
<b>Division 9</b>	
s 100ZH .....	ad <a href="#">No 111, 2023</a>
s 100ZJ .....	ad <a href="#">No 111, 2023</a>
s 100ZK .....	ad <a href="#">No 111, 2023</a>
<b>Part 5A</b>	
Part 5A heading .....	am <a href="#">No 111, 2023</a>
Part 5A .....	ad <a href="#">No 111, 2023</a>
<b>Division 1</b>	
s 101 .....	rep No 40, 2016
	ad <a href="#">No 111, 2023</a>
<b>Division 2</b>	
s 101A .....	ad <a href="#">No 111, 2023</a>
	am <a href="#">No 111, 2023</a>

## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 3</b>	
s 101B .....	ad <a href="#">No 111, 2023</a>
s 101C .....	ad <a href="#">No 111, 2023</a>
s 101D .....	ad <a href="#">No 111, 2023</a>
s 101E .....	ad <a href="#">No 111, 2023</a>
s 101F .....	ad <a href="#">No 111, 2023</a>
s 101G .....	ad <a href="#">No 111, 2023</a>
<b>Division 4</b>	
s 101H .....	ad <a href="#">No 111, 2023</a>
s 101J .....	ad <a href="#">No 111, 2023</a>
s 101JA .....	ad <a href="#">No 111, 2023</a>
s 101JB .....	ad <a href="#">No 111, 2023</a>
s 101JC .....	ad <a href="#">No 111, 2023</a>
s 101JD .....	ad <a href="#">No 111, 2023</a>
s 101JE .....	ad <a href="#">No 111, 2023</a>
s 101JF .....	ad <a href="#">No 111, 2023</a>
<b>Division 4A</b>	
Division 4A .....	ad <a href="#">No 111, 2023</a>
s 101JG .....	ad <a href="#">No 111, 2023</a>
s 101JH .....	ad <a href="#">No 111, 2023</a>
s 101JJ .....	ad <a href="#">No 111, 2023</a>
s 101JK .....	ad <a href="#">No 111, 2023</a>
<b>Division 5</b>	
s 101K .....	ad <a href="#">No 111, 2023</a>
	am <a href="#">No 111, 2023</a>
<b>Division 6</b>	
s 101L .....	ad <a href="#">No 111, 2023</a>
<b>Division 7</b>	
s 101M .....	ad <a href="#">No 111, 2023</a>
s 101N .....	ad <a href="#">No 111, 2023</a>
s 101P .....	ad <a href="#">No 111, 2023</a>

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Division 8</b>	
s 101Q.....	ad <u>No 111, 2023</u>
s 102.....	rep No 40, 2016
s 103.....	rep No 40, 2016
<b>Part 6</b>	
<b>Division 1</b>	
s 105.....	am No 139, 2008; No 3, 2013
s 106.....	rs No 40, 2016
s 108.....	am No 139, 2008
<b>Division 2</b>	
s 111.....	am No 62, 2014
<b>Division 3</b>	
s 114.....	am No 40, 2016
<b>Part 7</b>	
<b>Division 2</b>	
s 123.....	am No 139, 2008
<b>Division 3</b>	
s 125.....	am No 139, 2008
<b>Division 4</b>	
s 131.....	am No 40, 2016
<b>Division 5</b>	
s 135.....	am No 40, 2016
<b>Part 7A</b>	
Part 7A.....	ad <u>No 111, 2023</u>
<b>Division 1</b>	
s 135A.....	ad <u>No 111, 2023</u> am <u>No 111, 2023</u>
<b>Division 2</b>	
s 135B.....	ad <u>No 111, 2023</u>
<b>Division 3</b>	
s 135C.....	ad <u>No 111, 2023</u>

## Endnote 4—Amendment history

Provision affected	How affected
	am <u>No 111, 2023</u>
s 135D .....	ad <u>No 111, 2023</u>
	am <u>No 111, 2023</u>
<b>Division 4</b>	
s 135E .....	ad <u>No 111, 2023</u>
s 135F .....	ad <u>No 111, 2023</u>
s 135G .....	ad <u>No 111, 2023</u>
s 135H .....	ad <u>No 111, 2023</u>
<b>Division 5</b>	
s 135J .....	ad <u>No 111, 2023</u>
s 135K .....	ad <u>No 111, 2023</u>
s 135L .....	ad <u>No 111, 2023</u>
<b>Division 6</b>	
s 135M .....	ad <u>No 111, 2023</u>
s 135N .....	ad <u>No 111, 2023</u>
<b>Division 7</b>	
s 135P .....	ad <u>No 111, 2023</u>
	am <u>No 111, 2023</u>
s 135Q .....	ad <u>No 111, 2023</u>
s 135R .....	ad <u>No 111, 2023</u>
s 135S .....	ad <u>No 111, 2023</u>
s 135T .....	ad <u>No 111, 2023</u>
s 135U .....	ad <u>No 111, 2023</u>
s 135V .....	ad <u>No 111, 2023</u>
s 135W .....	ad <u>No 111, 2023</u>
s 135X .....	ad <u>No 111, 2023</u>
<b>Part 8</b>	
<b>Division 1</b>	
s 137 .....	am No 139, 2008; No 74, 2021; <u>No 111, 2023</u>
s 138 .....	am No 13, 2013; No 13, 2021
s 139 .....	am No 13, 2013; No 13, 2021

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Division 2</b>	
s 140.....	am No 74, 2021
<b>Division 4</b>	
<b>Subdivision A</b>	
s 146.....	am <u>No 111, 2023</u>
s 147.....	am No 74, 2021
s 148.....	rs No 74, 2021
s 148A.....	ad No 74, 2021
s 149.....	rs No 74, 2021
<b>Subdivision B</b>	
s 151.....	am No 74, 2021
s 152.....	am No 74, 2021
s 153.....	am No 74, 2021
s 154.....	am No 74, 2021
<b>Subdivision C</b>	
Subdivision C .....	ad No 74, 2021
s 154A.....	ad No 74, 2021
s 154B.....	ad No 74, 2021
s 154C.....	ad No 74, 2021
s 154D.....	ad No 74, 2021
s 154E.....	ad No 74, 2021
<b>Division 5</b>	
s 155A.....	ad No 74, 2021
s 156.....	am No 73, 2008; No 74, 2021; <u>No 111, 2023</u>
s 157.....	rs No 74, 2021
s 158.....	rs No 74, 2021
s 159.....	rs No 74, 2021
<b>Division 6</b>	
s 163.....	am No 74, 2021
<b>Division 6A</b>	
Division 6A.....	ad <u>No 111, 2023</u>

## Endnote 4—Amendment history

Provision affected	How affected
s 164A.....	ad <u>No 111, 2023</u> am <u>No 111, 2023</u>
<b>Division 7</b>	
s 165.....	am No 74, 2021
s 166.....	rs No 74, 2021
s 167.....	am No 74, 2021
<b>Division 7A</b>	
Division 7A.....	ad No 74, 2021
s 167A.....	ad No 74, 2021
<b>Division 8</b>	
s 168.....	am No 74, 2021
s 169.....	am No 73, 2008; No 74, 2021
<b>Division 9</b>	
s 170.....	am No 73, 2008; No 74, 2021
<b>Division 10</b>	
Division 10 .....	ad No 74, 2021
s 170A.....	ad No 74, 2021
s 170B .....	ad No 74, 2021
<b>Part 9</b>	
<b>Division 1</b>	
s 172.....	am No 139, 2008; No 40, 2016
s 173.....	rs No 139, 2008 am No 62, 2014
s 174.....	rs No 62, 2014 am No 139, 2008 rep No 62, 2014
s 175.....	am No 139, 2008; No 40, 2016; No 53, 2018; No 74, 2021
<b>Division 2</b>	
<b>Subdivision A</b>	
s 176.....	am No 62, 2014

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### Endnote 4—Amendment history

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Provision affected	How affected
<b>Subdivision B</b>	
s 177.....	am No 139, 2008; No 80, 2019; No 111, 2023
s 178.....	am No 139, 2008; No 46, 2011; No 40, 2016; No 80, 2019; No 111, 2023
s 179.....	am No 139, 2008; No 46, 2011
s 180.....	am No 139, 2008; No 46, 2011; No 80, 2019; No 111, 2023
<b>Subdivision C</b>	
s 182.....	rs No 62, 2014
s 183.....	rep No 62, 2014
s 184.....	am No 139, 2008; No 8, 2010 rep No 62, 2014
s 185.....	am No 139, 2008
s 187.....	am No 139, 2008
s 189.....	am No 139, 2008; No 62, 2014
<b>Division 3</b>	
<b>Subdivision A</b>	
s 193.....	am No 74, 2021
<b>Subdivision B</b>	
s 197.....	am No 74, 2021
<b>Subdivision C</b>	
s 200.....	am No 74, 2021
<b>Subdivision D</b>	
Subdivision D heading.....	rs No 139, 2008
s 201.....	am No 139, 2008
s 201A.....	ad No 139, 2008 am No 46, 2011
s 201B.....	ad No 139, 2008 am No 46, 2011
s 201C.....	ad No 139, 2008
<b>Subdivision E</b>	
Subdivision E heading.....	ad No 139, 2008



## Endnote 4—Amendment history

Provision affected	How affected
s 202.....	am No 139, 2008; No 40, 2016
s 204.....	am No 139, 2008; No 46, 2011
s 205.....	am No 139, 2008
<b>Division 4</b>	
s 206.....	am No 139, 2008
s 207.....	am No 139, 2008
	rep No 62, 2014
s 208.....	am No 139, 2008; No 62, 2014
s 208A.....	ad No 36, 2015
<b>Division 5</b>	
<b>Subdivision A</b>	
Subdivision A .....	rs No 62, 2014
s 209.....	rs No 62, 2014
s 210.....	am No 139, 2008
	rs No 62, 2014
	am No 74, 2021
s 211.....	am No 139, 2008
	rs No 62, 2014
s 211A.....	ad No 62, 2014
<b>Subdivision B</b>	
s 212.....	am No 139, 2008; No 40, 2016
<b>Subdivision CA</b>	
Subdivision CA.....	ad No 139, 2008
s 213A.....	ad No 139, 2008
	rs No 62, 2014
s 213B.....	ad No 139, 2008
	am No 62, 2014
<b>Subdivision D</b>	
s 214.....	am No 139, 2008
	rs No 62, 2014
	am No 40, 2016

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Division 6</b>	
s 215 .....	am No 74, 2021; <u>No 111, 2023</u>
s 215A .....	ad No 74, 2021
<b>Part 9A</b>	
Part 9A .....	ad No 74, 2021
<b>Division 1</b>	
s 215B .....	ad No 74, 2021
s 215C .....	ad No 74, 2021
	am <u>No 111, 2023</u>
s 215D .....	ad No 74, 2021
	am <u>No 111, 2023</u>
<b>Division 2</b>	
s 215E .....	ad No 74, 2021
s 215F .....	ad No 74, 2021
s 215G .....	ad No 74, 2021
<b>Division 3</b>	
s 215J .....	ad No 74, 2021
s 215JA .....	ad No 74, 2021
s 215K .....	ad No 74, 2021
s 215KA .....	ad No 74, 2021
s 215L .....	ad No 74, 2021
s 215LA .....	ad No 74, 2021
s 215M .....	ad No 74, 2021
s 215N .....	ad No 74, 2021
s 215P .....	ad No 74, 2021
s 215Q .....	ad No 74, 2021
s 215R .....	ad No 74, 2021
s 215S .....	ad No 74, 2021
<b>Division 4</b>	
s 215T .....	ad No 74, 2021
s 215TA .....	ad No 74, 2021

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## Endnote 4—Amendment history

Provision affected	How affected
s 215TB.....	ad No 74, 2021
<b>Division 5</b>	
s 215U.....	ad No 74, 2021
s 215UA.....	ad No 74, 2021
s 215UB.....	ad No 74, 2021
	am <u>No 111, 2023</u>
s 215UC.....	ad No 74, 2021
s 215UD.....	ad No 74, 2021
<b>Division 6</b>	
s 215V.....	ad No 74, 2021
s 215VA.....	ad No 74, 2021
	am <u>No 111, 2023</u>
s 215VB.....	ad No 74, 2021
<b>Division 7</b>	
s 215W.....	ad No 74, 2021
	am <u>No 111, 2023</u>
s 215X.....	ad No 74, 2021
s 215Y.....	ad No 74, 2021
	am <u>No 111, 2023</u>
s 215Z.....	ad No 74, 2021
<b>Part 10</b>	
Part 10.....	am No 74, 2021
Division 1.....	rep No 74, 2021
s 216.....	am No 139, 2008
	rep No 74, 2021
<b>Division 2</b>	
<b>Subdivision A</b>	
s 218.....	am No 74, 2021
<b>Subdivision B</b>	
Subdivision B heading.....	am No 74, 2021
s 219.....	am No 74, 2021

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### Endnote 4—Amendment history

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Provision affected	How affected
s 222.....	am No 74, 2021
<b>Subdivision C</b>	
Subdivision C heading.....	rep No 74, 2021
	ad No 74, 2021
Subdivision C .....	ad No 74, 2021
s 222A.....	ad No 74, 2021
s 222B .....	ad No 74, 2021
s 222C .....	ad No 74, 2021
<b>Division 3</b>	
Division 3 .....	ad No 74, 2021
s 222D.....	ad No 74, 2021
s 222E .....	ad No 74, 2021
<b>Part 10AA</b>	
Part 10AA .....	ad No 74, 2021
<b>Division 1</b>	
<b>Subdivision A</b>	
s 222G.....	ad No 74, 2021
s 222H.....	ad No 74, 2021
<b>Subdivision B</b>	
Subdivision B heading.....	ad No 74, 2021
s 223.....	am No 74, 2021
s 223A.....	ad No 74, 2021
s 223B .....	ad No 74, 2021
s 224.....	am No 74, 2021
s 224A.....	ad No 74, 2021
s 225.....	am No 74, 2021
s 226.....	am No 74, 2021
s 227.....	am No 74, 2021
s 227A.....	ad No 74, 2021
s 228.....	rep No 74, 2021
s 229.....	am No 74, 2021

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## Endnote 4—Amendment history

Provision affected	How affected
s 230.....	am No 74, 2021
s 231.....	rs No 74, 2021
s 232.....	rs No 74, 2021
s 232A.....	ad No 74, 2021
s 233.....	am No 74, 2021
s 233A.....	ad No 74, 2021
s 233B.....	ad No 74, 2021
s 233C.....	ad No 74, 2021
s 233D.....	ad No 74, 2021
s 233E.....	ad No 74, 2021
s 233F.....	ad No 74, 2021
s 233G.....	ad No 74, 2021
s 233H.....	ad No 74, 2021
s 234.....	am No 74, 2021
<b>Subdivision C</b>	
Subdivision C heading.....	ad No 74, 2021
s 235.....	rs No 74, 2021
<b>Subdivision D</b>	
s 236.....	am No 74, 2021
s 237.....	am No 74, 2021
s 237A.....	ad No 74, 2021
<b>Division 3</b>	
s 238.....	rs No 74, 2021
	am <u>No 111, 2023</u>
<b>Part 10AB</b>	
Part 10AB.....	ad No 74, 2021
s 239AA.....	ad No 74, 2021
s 239AB.....	ad No 74, 2021
s 239AC.....	ad No 74, 2021
s 239AD.....	ad No 74, 2021
s 239AE.....	ad No 74, 2021

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 239AF.....	ad No 74, 2021
s 239AG.....	ad No 74, 2021
s 239AH.....	ad No 74, 2021
<b>Part 10AC</b>	
Part 10AC.....	ad <u>No 111, 2023</u>
s 239AJ.....	ad <u>No 111, 2023</u>
	am <u>No 111, 2023</u>
s 239AK.....	ad <u>No 111, 2023</u>
s 239AL.....	ad <u>No 111, 2023</u>
s 239AM.....	ad <u>No 111, 2023</u>
s 239AN.....	ad <u>No 111, 2023</u>
<b>Part 10A</b>	
Part 10A.....	ad No 139, 2008
<b>Division 1</b>	
s 239A.....	ad No 139, 2008
s 239B.....	ad No 139, 2008
<b>Division 2</b>	
s 239C.....	ad No 139, 2008
s 239D.....	ad No 139, 2008
s 239E.....	ad No 139, 2008
s 239F.....	ad No 139, 2008
s 239G.....	ad No 139, 2008
s 239H.....	ad No 139, 2008
s 239J.....	ad No 139, 2008
s 239K.....	ad No 139, 2008
s 239L.....	ad No 139, 2008
s 239M.....	ad No 139, 2008
<b>Division 3</b>	
s 239N.....	ad No 139, 2008
s 239P.....	ad No 139, 2008
s 239Q.....	ad No 139, 2008

## Endnote 4—Amendment history

Provision affected	How affected
	am No 40, 2016
s 239R .....	ad No 139, 2008
s 239S .....	ad No 139, 2008
	am No 62, 2014
<b>Division 4</b>	
s 239T .....	ad No 139, 2008
<b>Division 5</b>	
s 239U .....	ad No 139, 2008
s 239V .....	ad No 139, 2008
s 239W .....	ad No 139, 2008
<b>Part 11</b>	
Part 11 heading .....	rs No 139, 2008; No 40, 2016
Division 1 heading .....	rep No 40, 2016
s 240 .....	rep No 40, 2016
s 244 .....	am No 73, 2008
s 246 .....	am No 139, 2008
Division 2 .....	rep No 40, 2016
s 248 .....	am No 139, 2008
	rep No 40, 2016
s 249 .....	rep No 40, 2016
Division 3 .....	rep No 40, 2016
s 250 .....	rep No 40, 2016
<b>Part 11A</b>	
Part 11A .....	ad No 139, 2008
s 250A .....	ad No 139, 2008
s 250B .....	ad No 139, 2008
s 250C .....	ad No 139, 2008
s 250D .....	ad No 139, 2008
s 250E .....	ad No 139, 2008
<b>Part 12</b>	
s 251 .....	am No 157, 2012; No 3, 2013; No 53, 2018; No 74, 2021

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
	ed C28
s 252A.....	ad No 139, 2008
s 253.....	am No 40, 2016; No 111, 2023
s 255AA (prev s 255A).....	ad No 139, 2008
	renum No 8, 2010
	rep No 109, 2014
s 255A.....	ad No 139, 2008
s 255B.....	ad No 139, 2008
s 255C.....	ad No 53, 2018
s 256.....	am No 139, 2008; No 40, 2016; <u>No 111, 2023</u>
<b>Schedule 1</b>	
Schedule 1.....	rs No 139, 2008
	am SLI No 106, 2008 (as am by SLI No 184, 2009; SLI No 117, 2011); SLI No 75, 2014; No 225, 2015; F2017L00569; F2018L01674 (Sch 1 item 79 md not incorp; Sch 1 item 138 md)
<b>Schedule 1A</b>	
Schedule 1A.....	ad No 139, 2008
<b>Schedule 2</b>	
Schedule 2.....	am No 139, 2008
<b>Schedule 3A</b>	
Schedule 3A.....	ad No 139, 2008
<b>Schedule 10</b>	
Schedule 10.....	ad No 53, 2018
<b>Part 1</b>	
c 1.....	ad No 53, 2018
c 2.....	ad No 53, 2018
	ed C28
<b>Part 2</b>	
Part 2.....	ad No 74, 2021
<b>Division 1</b>	
c 1.....	ad No 74, 2021



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Provision affected	How affected
<b>Division 2</b>	
Division 2 .....	ad No 74, 2021
c 2 .....	ad No 74, 2021
c 3 .....	ad No 74, 2021
c 4 .....	ad No 74, 2021
	ed C28
c 5 .....	ad No 74, 2021
c 6 .....	ad No 74, 2021
c 7 .....	ad No 74, 2021
c 8 .....	ad No 74, 2021
c 9 .....	ad No 74, 2021
c 10 .....	ad No 74, 2021
c 11 .....	ad No 74, 2021
c 12 .....	ad No 74, 2021
c 13 .....	ad No 74, 2021
c 14 .....	ad No 74, 2021
c 15 .....	ad No 74, 2021
c 16 .....	ad No 74, 2021
c 17 .....	ad No 74, 2021
<b>Part 3</b>	
Part 3 .....	ad No 111, 2023
c 1 .....	ad No 111, 2023