EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 184

(Issued by the Authority of the Minister for the Environment, Heritage and the Arts)

Subject: Murray-Darling Basin Agreement

Water Amendment (Murray-Darling Basin Agreement) Regulations 2009 (No. 1)

Subsection 256(1) of the Water Act 2007 (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Amendments to the text of the Murray-Darling Basin Agreement (MDB Agreement), set out in Schedule 1 to the Act, may be made by regulation under section 18C of that Act if the amendments have been agreed to by the Murray-Darling Basin Ministerial Council (Ministerial Council).

The purpose of the Regulations is to amend the MDB Agreement in accordance with the Ministerial Council decisions of 12 June 2009. These decisions revise the Schedules to the MDB Agreement by amending:

- Schedule B to insert an additional joint work to assist in reducing or limiting the rate at which salinity increases within the Murray-Darling Basin;
- Schedule D to update the references to categories of entitlement and allocation under state legislation for transfer and trade purposes to reflect recent amendments to state legislation;
- Schedule E to enable South Australia to use a model to manage the cap for metropolitan Adelaide; and
- Schedule F to modify the formula to reduce the required release from the Snowy Scheme during dry periods.

The details of these Regulations are set out in the Attachment.

The conditions specified in the Act, which require the agreement of the Ministerial Council to any amendments to the MDB Agreement, have been met.

These Regulations are a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The Murray-Darling Basin Authority, the Office of Legislative Drafting and Publications, the Secretariat of the Murray-Darling Basin Authority Ministerial Council and the Australian Government Solicitor were consulted in preparing these Regulations.

There are no significant negative financial implications of these Regulations, with some positive implications for ACT and South Australian water entitlement owners who have increased access to interstate trade.

These Regulations commenced on the day they were registered on the Federal Register of Legislative Instruments.

Authority: Sections 256 and 18C of the Water Act 2007
The details of the Regulations are as follows:

**Regulation 1** provides that the name of the Regulations is the *Water Amendment (Murray-Darling Basin Agreement) Regulations 2009 (No. 1)*.

**Regulation 2** provides that the Regulations commence on the day that they are registered on the Federal Register of Legislative Instruments.

**Regulation 3** provides that Schedule 1 amends the *Water Regulations 2008* (the Principal Regulations).

### Schedule 1 - Amendments

Item 1 inserts a new Part 1A into the Principal Regulations and also inserts regulations 1A.01 and 1A.02. The purpose of these regulations is to clarify that Part 1A and Schedule 1A of the Principal Regulations are made in reliance on section 18C of the Act and incorporate into the text of the MDB Agreement (which is set out in Schedule 1 of the Act) the amendments to the MDB Agreement agreed to by the Ministerial Council.

Item 2 inserts a Schedule 1A into the Principal Regulations which sets out the amendments to the MDB Agreement.

### Schedule 1A – Amendments to the Murray-Darling Basin Agreement

**Item 170**

Appendix 2 to Schedule B of the MDB Agreement lists joint works authorised under Schedule B of the Agreement to assist in reducing or limiting the rate at which salinity increases within the Murray-Darling Basin in accordance with the Basin Salinity Management Strategy 2001-2015. This Regulation amends the MDB Agreement by inserting the Loxton Salt Interception Scheme into Appendix 2 as an authorised joint work.

**Item 180**

Appendix 1 to Schedule D of the MDB Agreement lists the categories of water entitlements and allocation under relevant state legislation for the purposes of clause 7 of Schedule D. Clause 7 of Schedule D provides that the delivery of State entitlements under Part XII of the Agreement must be adjusted by the Authority to take into account, and to give effect to transfers of certain entitlements and allocations between States.

This Regulation amends the MDB Agreement by inserting relevant Australian Capital Territory legislation and corresponding categories of entitlement and allocation, as well amending the name of South Australian entitlements and allocations as a result of changes to the *Natural Resources Management Act 2004 (SA)*.
Item 190

Schedule E of the MDB Agreement establishes long-term caps on the volume of surface water used for consumptive purposes within the Murray-Darling Basin. The Regulation amends Schedule E to require the South Australian government to develop an analytical model to determine annual diversion targets for water supply to Metropolitan Adelaide and associated country areas. This amendment enables South Australia to use a model to manage the cap for Metropolitan Adelaide.

Item 200

The Snowy Water licence (SWL) establishes a requirement for a Snowy Hydro Limited (SHL) to release a guaranteed minimum volume to the Murray catchment each year. This guaranteed minimum volume is referred to as the required annual release (RAR). Schedule F makes New South Wales (NSW) responsible for any shortfalls in the supply of the RAR that result from changes made to the SWL.

Subclause 2(13) of this Schedule defines Required Annual Release (RAR). This Regulation amends the MDB Agreement by altering the definition to allow for the modification of the formula for the required annual release from the Snowy Scheme to allow better management during dry periods.

Item 201

This amendment also inserts new clauses 7A and 7B into Schedule F of the MDB Agreement. These Regulations amend the MDB Agreement by addressing issues experienced in 2003-04 with the application of the formula in the SWL for reducing the guaranteed volume when inflows less than those in the drought originally modelled are experienced. The volume by which the observed and forecast inflows are less than the modelled drought is referred to as the Dry Inflow Sequence Volume (DISV) and this volume is subtracted from the RAR. Subclause 2(13) allows for the formula in the SWL at Corporatisation Date to be modified as set out in Clauses 7A and 7B without making NSW solely responsible for the change.

The DISV was determined in part from historical inflows and in part from forecast inflows for the remainder of the season. The original Snowy Water Licence was not clear in specifying the basis for making these forecasts but specified that once a RAR had been determined it could not be increased later in the season if inflows exceeded the original forecasts. If low forecasts were made early in the season then the supply from the Snowy could not be increased if conditions improved, and, if higher flows were forecast then allocations made to users could decrease if conditions were dry. Both of these outcomes are undesirable and is addressed by the amendments. The regulation also corrects an error in the original formula which better reflects the attribution of losses and passing flows between the resource used to meet the RAR and above target water (ATW) which can be released at the discretion of SHL.

The Regulation amendments specifies that:
- inflows and losses are forecast based on the most extreme dry historical conditions (paragraph 7B(1)(a) and subparagraph 7B(1)(b)(i) refer);
- the RAR can increase up until 1 March if inflows are greater than the extreme dry forecasts in any year (subregulation 7B(2) refers);
- base passing flows in the Snowy River downstream of Jindabyne are not supplied from ATW (paragraph 7B(1)(c) refers);
- evaporation losses are allocated to ATW in proportion to the volume of ATW water stored (subparagraph 7B(1)(b)(ii) and paragraph 7B(1)(d) refer);
- the Mowamba Borrowings Account is not attributed to ATW (paragraph 7B(1)(e) refers); and
- SHL is not penalised if it delivers more water than the RAR provided that the excess does not exceed the calculated DISV (regulation 7A refers).