

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 285

(Issued by the Authority of the Minister for Climate Change and Water)

Subject: *Water Act 2007*

Water Amendment Regulations 2008 (No. 3)

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.

The purpose of the Regulations is to provide for transitional arrangements to ensure business continuity as the Murray-Darling Basin Authority (the Authority) takes on the functions of the Murray-Darling Basin Commission (the Commission) under the new Murray-Darling Basin Agreement (the Agreement).

A key outcome of the recently passed *Water Amendment Act 2008* (the Amendment Act), and of the negotiation of the new Murray-Darling Basin Agreement, is the transfer of the functions of the Commission, established under the former Murray-Darling Basin Agreement (former MDB Agreement), to the Authority, a Commonwealth authority established under the *Water Act 2007* (the Act).

The new Murray-Darling Basin Agreement also makes a number of governance changes to the co-operative scheme for the promotion and coordination of effective planning and management for the equitable, efficient and sustainable use of the water and other natural resources of the Murray-Darling Basin set out in the former MDB Agreement. These changes include the establishment of:

- a new Ministerial Council with a slightly different role to the former Murray-Darling Basin Ministerial Council (including a focus on high level decision-making and setting outcomes and objectives on major policy issues); and
- a new body, the Basin Officials Committee (the Committee). The Committee is to have an important advisory role to the Ministerial Council and is also responsible for setting objectives and outcomes to be achieved by the Authority in relation to river operations.

Part 10A of the Act sets out the transitional arrangements that are to apply to ensure business continuity as the Murray-Darling Basin takes on the functions of the former Murray-Darling Basin Commission. In particular:

In light of the changed governance arrangements, the direct transfer of responsibility from the Commission to the Authority, from the former Murray-Darling Basin Ministerial Council to the new Murray-Darling Basin Ministerial Council, and from the contracting governments under the former MDB Agreement to the contracting governments under the new Agreement does not conform with the distribution of functions, duties and powers under the new Agreement in all cases.

For this reason both sections 239N and 239Q provide for regulations to be made to alter the application of these sections as necessary to reflect the new distribution of functions, powers and duties under the Agreement. Further, subsection 239W enables regulations to be made in respect of any other transitional measures relating to the replacement of the Commission, the former MDB Agreement and the former Murray-Darling Basin Ministerial Council.

The Regulations have been drafted in reliance on these three sections of the Act. Subsection 256(1)(a) of the Act provides that the Governor-General with the substantive power to make these Regulations.

The Department undertook consultation specifically on these Regulations by providing drafts to, and discussing them with officials of the state and territory governments within the Murray-Darling Basin and Murray-Darling Basin Commission Staff.

Details of the Regulations are set out in the Attachment.

In addition, in accordance with the requirements of the intergovernmental *Agreement on Murray-Darling Basin Reform - Referral*, the Regulations, which are supported by powers referred by the Parliaments of New South Wales, Victoria, South Australia and Queensland, have been approved by first ministers of these Basin States. The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations will commence immediately after the commencement of Schedule 1 to the Amendment Act. Schedule 1 to the Amendment Act will commence immediately after Schedule 2 to the Amendment Act, which is a day to be fixed by Proclamation. That day is expected to be 15 December 2008.

<u>Authority:</u>	Subsection 256(1) of the <i>Water Act 2007</i>
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Water Amendment Regulations 2008 (No. 3)

The details of the Regulations are:

1 Name of Regulations

These Regulations are the *Water Amendment Regulations 2008 (No. 3)*.

2 Commencement

The Regulations would commence immediately after the commencement of Schedule 1 to the *Water Amendment Act 2008*. The commencement of Schedule 1 to the *Water Amendment Act 2008* is the time at which the functions of the Commission will transfer to the Authority and is described as 'the transition time' or 'transition' in this Explanatory Statement.

3 Amendment of Water Regulations 2008

Schedule 1 amends the *Water Regulations 2008*.

Schedule 1 Amendment
(regulation 3)

[1] After Part 10 this item inserts a new part 10A Transitional Matters relating to the Murray Darling Basin Commission

Division 10A.1 PreliminaryRegulation 10A.01 - Purposes of Part

This regulation sets out the purpose of Part 10A, which is to provide for transitional matters relating to the former MDB Agreement.

Regulation 10A.02 - References to various persons or bodies

This regulation provides that if any regulation mentions the Murray-Darling Basin Commission, the former Murray-Darling Basin Ministerial Council, a State Contracting Government or a Contracting Government as being referred to in an instrument made before transition, the reference includes a reference to the person or body however described.

This is to ensure, for example, that a reference in a document to “the Ministerial Council” or the “Commission” will be captured by the regulations.

Division 10A.2 General — effect on instruments and things done**Subdivision 10A.2.1 References in certain instruments to
Murray-Darling Basin Commission etc**Regulation 10A.03 Effect on certain transitional instruments

Subsection 239N(1) of the Act provides for instruments which are relevant to the operations of the Commission to continue to have effect under the new arrangements as if:

- references to the Commission were references to the Authority;
- references to the former Murray-Darling Basin Ministerial Council were references to the new Murray-Darling Basin Ministerial Council; and
- references to the contracting governments under the former MDB Agreement were references to the contracting governments under the new Agreement

This regulation alters, under subsections 239N(2) and (3) of the Act, the general effect of subsection 239N(1), where a direct mapping of references from the former bodies to the new bodies as specified in subsection 239N(1) would not be appropriate because of a modification of the bodies' respective functions under the new Agreement as compared to the former MDB Agreement.

For example in some circumstances, it is appropriate for references to the Commission to be read as references to the new Ministerial Council or the Basin Officials Committee, or for references to the Ministerial Council to be read as references to the Authority or the Basin Officials Committee.

Section 239N also provides for references to the former MDB Agreement, Schedules to the former MDB Agreement, and protocols made under the former MDB Agreement, in protocols to the former MDB Agreement to be read as references to the new Agreement, Schedules to the new Agreement and protocols made under the new Agreement. This ensures that protocols made under the former Agreement can continue to operate under the new Agreement.

This regulation specifies in column 2 of the table, transitional instruments that are not to be covered by transitional provisions in subsection 239N(1) of the Act. It then sets out in respect of each instrument specified, that where the instrument currently refers to a person or body mentioned in an item in column 3, that instrument is to continue to have effect as if the reference were a reference to the person or body mentioned in column 4 of the item.

Regulation 10A.04 Certain instruments not being continued under transitional arrangements

This regulation, made under subsection 239N(2) of the Act, also alters the general effect of subsection 239N(1). The effect of the regulation is that subsection 239N(1) will not have any effect on the transitional instruments in column 2 of the table.

A mapping of references to former bodies to references to new bodies is not necessary in respect of these instruments because these instruments will not have any continuing operation under the new arrangements, either because the Authority will be entering into new instruments in respect of the subject matter covered (for example contracts of employment or delegations) or because the instrument deals with matters that will become redundant because of the change in governance arrangements (for example the appointment of Commissioners).

Regulation 10A.05 Effect on Intergovernmental Agreement

This regulation, made under subsection 239N(2) and (3) of the Act, provides that the Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin of 25 June 2004 (Intergovernmental Agreement) is not covered by the transitional provision in subsection 239N(1) of the Act.

The regulation then provides for the Intergovernmental Agreement to continue to have effect in accordance with the mapping of former bodies to new bodies provided for in subsection 239N(1), except that references to the former Murray-Darling Basin Ministerial Council in clause 3 of the Intergovernmental Agreement are to remain as references to the former Murray-Darling Basin Ministerial Council.

This is because clause 3 of the Intergovernmental Agreement refers to a decision made by the Commission in 2003 and it does not make sense for this to be read as a reference to the new Murray-Darling Basin Ministerial Council which did not exist at that time.

Regulation 10A.06 Effect on Supplementary Intergovernmental Agreement

Similarly to regulation 10A.05 above, this regulation, made under subsection 239N(2) and (3) of the Act, provides that the Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin of 14 July 2006 (Supplementary Intergovernmental Agreement) is not covered by the transitional provision in subsection 239N(1) of the Act.

The regulation provides for the Supplementary Intergovernmental Agreement to continue to have effect in accordance with the mapping of former bodies to new bodies provided for in subsection 239N(1), except for references to the former Murray-Darling Basin Commission in clause 1 of the Supplementary Intergovernmental Agreement which are to remain as references to the Commission.

This is because clause 1 of the Supplementary Intergovernmental Agreement refers to events relating to the Commission which occurred in 2005-2006 before the Authority was established. It, therefore, does not make sense to read this reference to the Commission as a reference to the Authority.

Subdivision 10A.2.2 Things done under former MDB Agreement

Regulation 10A.07 Effect of things done

Subsection 239Q(3) provides for things done under the former MDB Agreement, or a protocol to the Agreement, by or in relation to, or pursuant to a resolution of the Commission, to continue in effect as if the thing had been done by or in relation to, or pursuant to a resolution of the Authority under the corresponding clause in the new Agreement, or a protocol to the new Agreement.

However, in light of changed governance arrangements, the mapping of Commission to Authority provided for under subsection 239Q(3) will not always be appropriate.

Further, this subsection does not cover situations where:

- other bodies, such as the former Murray-Darling Basin Ministerial Council or a contracting government have done something under the former MDB Agreement that does not relate to the Commission and the thing done needs to be continued in effect;
- things done by a former body other than the Commission under the former MDB Agreement in relation to or pursuant to a resolution of the Commission need to be continued in effect as if they had been done by one of the bodies provided for under the new Agreement.

Subsections 239Q(1) and (2) provide for regulations to be made to cover these situations.

A table setting out which clause in the new Agreement corresponds to which clause in the former MDB Agreement is set out at the end of the Attachment to assist in interpreting the application of section 239Q.

This regulation sets out a table covering a number of the circumstances where such regulations are required.

The thing done under the former MDB Agreement is described in column 2 of the table together with a reference to the clause under which it was done. The body by or in relation to, or pursuant to a resolution of which the thing was done is specified in column 3. Column 4 sets out the corresponding provision under the new Agreement and column 5 sets out the body in by or in relation to or pursuant to a resolution of which the thing is to be taken to have been done under that corresponding clause in the new Agreement.

For example, item 5 provides that the granting of approval for a tender under subclause 54(1) of the former MDB Agreement by the former Murray-Darling Basin Ministerial Council is to continue in effect as if the granting of approval had occurred under subclause 60(2) of the new Agreement and the approval had been granted by the Authority.

Division 10A.3 Other transitional matters

Regulations under this Division are broadly dealt with sequentially, however, two groups of regulations – Group A and Group B – have been identified and explanations of regulations that fall within these groups have been set out together.

Regulation 10A.08 Business continuity

Subsection 239W(1) of the Act enables the making of regulations to provide for other transitional matters relating to the replacement of the Commission, the former MDB Agreement, or the former Murray-Darling Basin Ministerial Council.

Regulation 10A.08 is made under subsection 239W(1) of the Act. Subregulations 10A.08(2) and (3) provide for the Authority to perform its functions and exercise its powers, consistently with:

- resolutions made by the Commission and in force immediately before the transfer of its functions to the Authority; and
- directions given to the Commission by the former Murray-Darling Basin Ministerial Council;

until the Authority determines by resolution to perform its functions and exercise its powers in another manner.

The purpose of this regulation is to ensure business continuity when the current functions of the Commission are transferred to the Authority, but to ensure that the Authority has the necessary freedom to alter its practices in accordance with the new Agreement in the future.

The Authority's power to alter the manner in which it performs its functions and powers is limited by the Agreement, and in particular by clause 32 which provides a role for the Basin Officials Committee in determining how the Authority undertakes its functions in relation to river operations (subregulation 10A.08(1) refers).

The Authority is required to notify the Murray-Darling Basin Ministerial Council when it proposes to alter the effect of a direction of the former Murray-Darling Basin Ministerial Council by resolution, or if it only becomes aware that it has made a resolution with this effect after the resolution is passed, as soon as it becomes aware of this fact. This is to give the new Murray-Darling Basin Ministerial Council the opportunity to make a new resolution should the matter fall within the scope of its functions under the new Agreement (subregulations 10A.08(4) and (5)). A failure to notify will, however, not invalidate the Authority's resolution (subregulation 10A.08(6)).

Regulation 10A.09 Clause 10 of former MDB Agreement

This regulation specifies directions given under clause 10 of the former MDB Agreement by the former Murray-Darling Basin Ministerial Council for the purposes of both subsection 239N(2) and 239Q(4) of the Act.

The directions are specified in this manner because these directions are not to continue in effect as if they were directions given by the new Murray-Darling Basin Ministerial Council, or to be read as if they had been made by the new Murray-Darling Basin Ministerial Council.

These directions are only to be transitioned as practice with which the Authority must comply until it decides otherwise as provided for in regulation 10A.08 described above.

10A.10 Paragraph 14(1) (b) of former MDB Agreement

This regulation, made under subsection 239W(1) of the Act, provides for the continuation in existence of the Living Murray Community Reference Group, which was appointed under paragraph 14(1)(b) of the former MDB Agreement. It is to continue in existence as if it had been appointed by the new Murray-Darling Basin Ministerial Council under subclause 15(1) of the new Agreement.

The terms of reference of the Living Murray Community Reference Group are also transitioned but are to be read as if:

- a reference to the Commission were a reference to the Authority; and
- a reference to the former Murray-Darling Basin Ministerial Council were a reference to the Murray-Darling Basin Ministerial Council; and
- a reference to the Community Advisory Committee were a reference to the Basin Community Committee.

10A.11 Clause 34 of former MDB Agreement

This regulation, made under subsection 239W(1) of the Act, covers situations where the Commission has appointed a delegate to undertake certain of its functions and that delegate has, in exercising those functions, made any instrument.

The regulation ensures that the exercise of those functions by the delegate, and any instruments made pursuant to the delegation, are subject to the same transitional provisions in sections 239N and 239Q of the Act as are functions exercised and instruments made directly by the Commission.

Group A regulations

10A.12 Paragraph 42(2)(a) of former MDB Agreement

10A.25 Clause 105 of the former MDB Agreement

10A.26 Clause 106 of the former MDB Agreement

10A.27 Subclause 108(2) of the former MDB Agreement

10A.45 Subclause 10(1) of Schedule F to former MDB Agreement – resolutions

10A.47 Subclause 18(3) of Schedule G to former MDB Agreement

10A.48 Subclause 18(4) of Schedule G to former MDB Agreement

10A.49 Subclause 18(5) of Schedule G to former MDB Agreement

These regulation are all made under subsections 239N(2) and (3) and 239Q(1) of the Act. These regulations will be referred to in this Explanatory Statement as Group A regulations

As mentioned above in respect of regulation 10A.03, subsection 239N(1) of the Act provides for instruments which are relevant to the operations of the Commission to continue to have effect under the new arrangements as if:

- references to the Commission were references to the Authority;
- references to the former Murray-Darling Basin Ministerial Council were references to the new Murray-Darling Basin Ministerial Council; and
- references to the contracting governments under the former MDB Agreement were references to the contracting governments under the new Agreement

All of the Group A regulations alter, under subsections 239N(2) and (3) of the Act, the general effect of subsection 239N(1). In respect of instruments made under these clauses, a direct mapping of references from the former bodies to the new bodies specified in subsection 239N(1) would not be appropriate because of a modification of the bodies' respective functions under the new Agreement as compared to the former MDB Agreement.

As mentioned above, in respect of regulation 10A.07, subsection 239Q(3) provides for things done under the former MDB Agreement, or a protocol to that Agreement, by or in relation to, or pursuant to a resolution of the Commission, to continue in effect as if the thing had been done by or in relation to, or pursuant to a resolution of the Authority under the corresponding clause in the new Agreement, or a protocol to the new Agreement.

However, in light of the changed governance arrangements, the mapping of Commission to Authority provided for under subsection 239Q(3), is not appropriate for things done under the clauses in the new Agreement corresponding to clause 105 (regulation 10A.25), clause 106 (regulation 10A.26), subclause 108(2) (regulation 10A.27), subclause 10(1) of Schedule F (regulation 10A.45), subclause 18(3) of the Schedule G (regulation 10A.47), subclause 18(4) of Schedule G (regulation 10A.48) and subclause 18(5) of Schedule G (regulation 10A.49) to the former MDB Agreement.

Further, subsection 239Q(3) does not cover situations where things done by a former body other than the Commission under the former MDB Agreement need to be continued in effect as if they had been done by a different body provided for under the new Agreement. This is the case for paragraph 42(2)(a) of the former MDB Agreement (regulation 10A.12).

The Group A regulations, therefore, make provision under subsection 239Q(1) to accurately transition things done under the clauses specified in those regulations.

By way of example of how these regulations are structured, subregulations 10A.12(1) and (2) provide that a resolution made by the Commission informing the former Murray-Darling Basin Ministerial Council of a proposed system or means for monitoring or measuring water quality or quantity given under paragraph 42(2)(a) of the former MDB Agreement is to be read after transition as if a reference in that resolution to the Commission were a reference to the Authority and a reference to the former Murray-Darling Basin Ministerial Council were a reference to the Basin Officials Committee.

Subregulations 10.12(3) and (4) provide that where the Commission has prior to transition, informed the former Murray-Darling Basin Ministerial Council under paragraph 42(2)(a) of the former MDB Agreement of a proposed system or means for monitoring or measuring water quantity or quality, the Authority is to be taken to have informed the Basin Officials Committee of such a system or means under paragraph 46(2)(a) of the new Agreement.

Using this same structure, the other Group A regulations provide:

- for the Murray-Darling Basin Ministerial Council to be taken to have approved artificial outfalls that may be taken into account in the calculation of tributary inflows under subclause 108(1) of the new Agreement where such artificial outfalls had been approved prior to transition by the Commission under subclause 105(1) of the former MDB Agreement and the approval was still in effect (regulation 10A.25);
- for the Murray-Darling Basin Ministerial Council to be taken to have determined that an alternative amount has been used by New South Wales or Victoria under paragraph 109(a) of the new Agreement where such a determination had been made prior to transition by the Commission under clause 106 of the former MDB Agreement and the determination was still in effect (regulation 10A.26);
- for the Murray-Darling Basin Ministerial Council to be taken to have determined an alternative allocation of losses by evaporation or other means under subclause 110(2) of the new Agreement where such a determination had been made prior to transition by the Commission under subclause 108(2) of the former MDB Agreement and the determination was still in effect (regulation 10A.27);
- for the Basin Officials Committee to be taken to have made recommendations to the new Murray-Darling Basin Ministerial Council (about protocols determining how the Authority should alter the long-term diversion cap) under subclause 10(1) of Schedule E to the new Agreement where such recommendations had been given prior to transition by the Commission (about protocols determining how the Commission should alter the long-term diversion cap) under subclause 10(1) of Schedule F to the former MDB Agreement and those recommendations had not been superseded (regulation 10A.45);
- for the Basin Officials Committee to be taken to have made a recommendation that the relevant Long Term Diversion Cap be amended under subclause 18(3) of Schedule F to the new Agreement where such a recommendation had been given prior to transition by the Commission under subclause 18(3) of Schedule G to the former MDB Agreement and that recommendations was still in force (regulation 10A.47);
- for the Basin Officials Committee to be taken to not be satisfied with a calculation of the amount by which the Long Term Diversion Cap must be reduced under subclause 18(4) of Schedule F to the new Agreement where the Commission was not satisfied with such a calculation under subclause 18(4) of Schedule G to the former MDB Agreement. The consequence of this will be that the Authority will need to arrange for a re-calculation (regulation 10A.48);
- for the Basin Officials Committee to be taken to have made a recommendation to the new Murray-Darling Basin Ministerial Council to amend the Long Term Diversion Cap under subclause 18(5) of Schedule F to the new Agreement where the Commission had made such a recommendation under subclause 18(5) of Schedule G to the former MDB Agreement and that recommendation was still in force (regulation 10A.49); and
- for all instruments made in respect of these approvals, determinations and recommendations to be read consistently with the allocation of roles and responsibilities under the new Agreement.

Group B regulations

- 10A.13 Subclause 50 (2) of former MDB Agreement
- 10A.15 Subclause 54(1) of former MDB Agreement
- 10A.17 Clause 65 of former MDB Agreement – investigations, construction and administration costs
- 10A.18 Clause 65 of former MDB Agreement – operation and maintenance costs
- 10A.19 Subclause 66(1) of former MDB Agreement
- 10A.20 Subclause 66(2) of former MDB Agreement
- 10A.21 Subclauses 66(3), (4) or (5) of former MDB Agreement
- 10A.22 Subclause 67(2) of former MDB Agreement
- 10A.28 Subclause 111(1) of former MDB Agreement
- 10A.29 Paragraph 2(1)(a) of Schedule C to former MDB Agreement – Strategy
- 10A.30 Subclause 10(2) of Schedule C to former MDB Agreement
- 10A.31 Clause 11 of Schedule C to former MDB Agreement
- 10A.32 Subclause 13(2) of Schedule C to former MDB Agreement
- 10A.33 Clause 4 of Schedule D to former MDB Agreement
- 10A.34 Clause 7 of Schedule D to former MDB Agreement
- 10A.35 Paragraph 2(d) of Schedule E to former MDB Agreement
- 10A.36 Subclause 3(2) of Schedule E to former MDB Agreement
- 10A.37 Subclause 5(2) of Schedule E to former MDB Agreement
- 10A.38 Paragraph 13(2)(b) of Schedule E to former MDB Agreement
- 10A.39 Subclause 13(3) of Schedule E to former MDB Agreement
- 10A.40 Paragraph 14(5)(a) of Schedule E to former MDB Agreement
- 10A.41 Subclause 5(2) of Schedule F to former MDB Agreement
- 10A.42 Subclause 6(2) of Schedule F to former MDB Agreement
- 10A.43 Subclause 7(2) of Schedule F to former MDB Agreement
- 10A.50 Clause 6 of Schedule H to former MDB Agreement
- 10A.51 Paragraph 10(4)(a) of Schedule H to former MDB Agreement

These regulation are all made under subsections 239Q(1) and subsection 239W(1) of the Act. These regulations will be referred to in this Explanatory Statement as Group B regulations

In a similar manner to Group A regulations, Group B regulations cover clauses of the former MDB Agreement where, as a result of the new governance arrangements, the general operation of subsection 239Q(3) does not lead to things done by bodies under clauses of the former MDB Agreement being taken to be done by the correct bodies under the corresponding clauses of the new Agreement.

Group B regulations also cover clauses under which instruments may be made which are not covered by the subsection 239N(1) or the regulation making power in subsections 239N(1) and (2) because the instruments made do not relate directly to the operations of the Commission.

In order to make a regulation providing for references to bodies in those instruments to be read in a manner consistent with the new governance arrangements after transition, it is therefore necessary to rely on section 239W of the Act, which sets out a power to make regulations about other transitional matters.

By way of example of how these regulations are structured, subregulation 10A.13(2) sets out the circumstances in which the regulation applies. In this case that circumstance is where the former Murray-Darling Basin Ministerial Council had prior to the transition time determined that the Commission could authorise a further work or measure for an amount exceeding \$2 million and that determination was still in effect at the transition time. Such a determination would be made under subclause 50(2) of the former MDB Agreement.

Subregulations 10.13(3) and (4) provide that after transition, the new Murray-Darling Basin Ministerial Council is to be taken to have made such a determination under subclause 56(3) of the new Agreement.

Further, subregulation 10A.13(5) provides that such a determination is to be read after transition as if a reference in that resolution to the Commission were a reference to the Authority and a reference to the former Murray-Darling Basin Ministerial Council were a reference to the new Murray-Darling Basin Ministerial Council.

Using this same structure, the other Group B regulations provide:

- for the Authority to be taken to have determined an alternative limit above \$2 million as the limit beyond which Authority approval must be sought for tenders under subclause 60(2) of the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a determination under subclause 54(1) of the former MDB Agreement and that determination was still in force immediately prior to transition (regulation 10A.15);
- for the Authority to be taken to have determined that certain special action to protect portions of the catchment of the Hume Reservoir is to be classified as investigations, construction and administration costs under the paragraph (f) of the definition of *investigations, construction and administration costs* in clause 71 of the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a determination under paragraph (f) of the definition of *investigations, constructions and administration costs* in clause 65 of the former MDB Agreement and that determination was still in force immediately prior to transition (regulation 10A.17);
- for the Authority to be taken to have determined that certain special action to protect portions of the catchment of the Hume Reservoir is to be classified as *operation and maintenance costs* under paragraph (e) of the definition of *operation and maintenance costs* in clause 71 of the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a determination under paragraph (e) of the definition of *operation and maintenance costs* in clause 65 of the former MDB Agreement and that determination was still in force immediately prior to transition (regulation 10A.18);
- for the new Murray-Darling Basin Ministerial Council to be taken to have resolved the contribution to be made by Queensland or the Australian Capital Territory and the form of that contribution under subclause 72(1) of the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a resolution under subclause 66(1) of the former MDB Agreement and that resolution was still in force immediately prior to transition (regulation 10A.19);
- for the new Murray-Darling Basin Ministerial Council to be taken to have determined which proportion of services provided by river operations is attributable to each State Contracting Government under subclause 72(2) of the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a determination in respect of the Commission's water business under subclause 66(2) of the former MDB Agreement and that determination was still in force immediately prior to transition (regulation 10A.20);
- for the new Murray-Darling Basin Ministerial Council to be taken to have made determinations in relation to the apportionment of costs under subclauses 72(3), (4) and (5) of the new Agreement where the former Murray-Darling Basin Ministerial

Council had made such determinations under subclauses 66(3), (4) and (5) of the former MDB Agreement and these determinations were still in force immediately prior to transition (regulation 10A.21);

- for the new Murray-Darling Basin Ministerial Council to be taken to have made a determination that a Contracting Government must make an annual annuity contribution towards investigation construction and administration costs and major or cyclic maintenance costs under subclause 73(1) of the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a determination under subclause 67(2) of the former MDB Agreement and that determination was still in force immediately prior to transition (regulation 10A.22);
- for Victoria and New South Wales to be taken to have entered into an agreement in relation to the reallocation of water in any of the upper River Murray storages or in transit in a specified part of the upper Murray River between the two States under subclause 113(1) of the new Agreement where the Commissioners for Victoria and New South Wales had entered into such an agreement under subclause 111(1) of the former MDB Agreement and that agreement was still in force immediately prior to transition (regulation 10A.28);
- for the new Murray-Darling Basin Ministerial Council to be taken to have adopted or amended the Basin Salinity Management Strategy 2001-2015 under the definition of *Strategy* in paragraph 2(1)(a) of Schedule B to the new Agreement where the former Murray-Darling Basin Ministerial Council had adopted or amended the Strategy under the definition of *Strategy* in paragraph 2(1)(a) of Schedule C to the former MDB Agreement and the Strategy as adopted or amended was still in force immediately prior to transition (regulation 10A.29);
- for the new Murray-Darling Basin Ministerial Council to be taken to have decided that further Joint works or measures are necessary, desirable or convenient to maintain salinity at or below the Basin Salinity Target under subclause 10(2) of Schedule B to the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a decision under subclause 10(2) of Schedule C to the former MDB Agreement and that decision was still in force immediately prior to transition (regulation 10A.30);
- for the new Murray-Darling Basin Ministerial Council to be taken to have decided upon a variation from the standard attribution of salinity credits or debits set out in clause 11 of Schedule B to the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a decision under clause 11 of Schedule C to the former MDB Agreement and that decision was still in force immediately prior to transition (regulation 10A.31);
- for the Basin Officials Committee to be taken to have determined the attribution of costs or salinity credits or debits to the Queensland Government under subclause 13(2) of Schedule B to the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a determination under subclause 13(2) of Schedule C to the former MDB Agreement and that determination was still in force immediately prior to transition (regulation 10A.32);
- for the new Murray-Darling Basin Ministerial Council to be taken to have determined that a provision of the new Agreement does not apply to the State of Queensland under clause 39 of the new Agreement, or to have altered or revoked such a determination where the former Murray-Darling Basin Ministerial Council had made such a determination, or altered or revoked such a determination under clause 4 of

Schedule D to the former MDB Agreement, and the determination, alteration or revocation was still in force immediately prior to transition (regulation 10A.33);

- for the new Murray-Darling Basin Ministerial Council to be taken to have affirmed that a policy, determination or decision applies to the State of Queensland under clause 41 of the new Agreement where the former Murray-Darling Basin Ministerial Council had made such an affirmation under clause 7 of Schedule D to the former MDB Agreement, and the affirmation was still in force immediately prior to transition (regulation 10A.34);
- for the new Murray-Darling Basin Ministerial Council to be taken to have determined that Schedule D applies for the purposes of either or both of exchange rate trade and tagged trade under paragraph 2(d) of Schedule D to the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a determination under paragraph 2(d) of Schedule E to the former MDB Agreement, and the determination was still in force immediately prior to transition (regulation 10A.35);
- for the new Murray-Darling Basin Ministerial Council to be taken to have determined the geographic extent and limits of the Barmah Choke under subclause 3(2) of Schedule D to the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a determination under subclause 3(2) of Schedule E to the former MDB Agreement, and the determination was still in force immediately prior to transition (regulation 10A.36);
- for the new Murray-Darling Basin Ministerial Council to be taken to have resolved under subclause 5(2) of Schedule D to the new Agreement to suspend or limit the operation of Schedule D in relation to a State or States where the former Murray-Darling Basin Ministerial Council had made such a resolution under subclause 5(2) of Schedule E to the former MDB Agreement, and the resolution was still in force immediately prior to transition (regulation 10A.37);
- for the new Murray-Darling Basin Ministerial Council to have adopted principles relating to markets in, and the trading of water entitlements and allocations under paragraph 13(2)(b) of Schedule D to the new Agreement where the former Murray-Darling Basin Ministerial Council had adopted such principles under paragraph 13(2)(b) of Schedule E to the former MDB Agreement, and the principles were still in effect immediately prior to transition (regulation 10A.38);
- for the new Murray-Darling Basin Ministerial Council to have resolved that an entitlement may be transferred into or out of the Lower Darling Valley under subclause 13(3) of Schedule D to the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a resolution under subclause 13(3) of Schedule E to the former MDB Agreement, and the resolution was still in force immediately prior to transition (regulation 10A.39);
- for the new Murray-Darling Basin Ministerial Council to have adopted a policy relating to trade and environmental and supply considerations under paragraph 14(5)(a) of Schedule D to the new Agreement where the former Murray-Darling Basin Ministerial Council had adopted such a policy under paragraph 14(5)(a) of Schedule E to the former MDB Agreement, and the policy was still in force immediately prior to transition (regulation 10A.40);
- for the new Murray-Darling Basin Ministerial Council to have determined an annual volume allowance to be applied to the calculation of baseline conditions for the Border Rivers in view of the special circumstances applying to Pindari Dam under

subclause 5(2) of Schedule E to the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a determination under subclause 5(2) of Schedule F to the former MDB Agreement, and the determination was still in force immediately prior to transition (regulation 10A.41);

- for the new Murray-Darling Basin Ministerial Council to have determined an annual volume allowance to be applied to the calculation of baseline conditions for either or both of the Goulburn/Broken/Loddon water supply system and the Murray Valley Water supply systems in view of the special circumstances applying to Mokoan under subclause 6(2) of Schedule E to the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a determination under subclause 6(2) of Schedule F to the former MDB Agreement, and the determination was still in force immediately prior to transition (regulation 10A.42);
- for the new Murray-Darling Basin Ministerial Council to have determined alternative uses for certain portions of South Australia's in-cap diversions under subclause 7(2) of Schedule E to the new Agreement where the former Murray-Darling Basin Ministerial Council had made such a determination under subclause 7(2) of Schedule F to the former MDB Agreement, and the determination was still in force immediately prior to transition (regulation 10A.43)
- for the new Murray-Darling Basin Ministerial Council to be taken to have determined that a provision of the new Agreement does not apply to the Australian Capital Territory under clause 39 of the new Agreement, or to have altered or revoked such a determination where the former Murray-Darling Basin Ministerial Council had made such a determination, or altered or revoked such a determination under clause 6 of Schedule H to the former MDB Agreement, and the determination, alteration or revocation was still in force immediately prior to transition (regulation 10A.50);
- for the new Murray-Darling Basin Ministerial Council to be taken to have adopted a proposal relating to the application of Ministerial Council decisions to the Australian Capital Territory under paragraph 42(4)(a) of the new Agreement where the former Murray-Darling Basin Ministerial Council had adopted such a proposal under paragraph 10(4)(a) of Schedule H to the former MDB Agreement, and the adoption was still in force immediately prior to transition (regulation 10A.51); and
- for all instruments made in respect of these, decisions, determinations, resolutions, affirmations, adoptions, amendments and agreements to be read consistently with the allocation of roles and responsibilities under the new Agreement.

Regulation 10A.14 Subclause 51(2) of former MDB Agreement

This regulation, made under subsection 239W(1) of the Act, provides for a situation where the former Murray-Darling Basin Ministerial Council has approved the Commission meeting, or contributing to the costs of, or associated with the construction of any ancillary, preventative or remedial works or the acquisition of any related interest in land estimated to cost more than \$1 million under subclause 51(2) of the former MDB Agreement prior to transition.

The regulation provides for the approval to continue in effect from the transition time, as if the new Murray-Darling Basin Ministerial Council had approved the Authority contributing to or meeting such costs as part of a budget under the Authority's corporate plan.

Regulation 10A.16 Subclauses 55(1) and (2) of the former MDB Agreement

Under clause 55 of the former MDB Agreement, the Commission had an unfettered power to give directions to ensure the efficient construction, operation, maintenance and required performance of any work; and the efficient implementation of any measures, authorised pursuant to the former MDB Agreement.

The corresponding clause to clause 55 in the new Agreement is clause 61. This clause provides for the Authority to give directions directed to the same outcome but only as required to give effect to the corporate plan and asset management plan.

The Commission's current corporate plan, which is to be transitioned as the Authority's first corporate plan under section 239S of the Act, was not prepared with this restriction on the directions making power in mind.

In order to avoid a situation where the Authority is unable to give necessary directions for the period until the corporate plan is revised to take this new requirement into account, this regulation, made under subsection 239W(1) of the Act, gives the Authority the capacity to continue making directions in accordance with clause 55 of the former MDB Agreement until such time as the corporate plan has been revised or replaced.

Regulation 10A.23 Clause 83 of former MDB Agreement

Under clause 83 of the former MDB Agreement, Contracting Governments were under an obligation to meet in equal shares, compensation for damage paid by a Constructing Authority caused or arising from constructing, operating or maintaining any works or executing any measures provided for under the Agreement, if such compensation had not been met or contributed to by the Commission.

This obligation is continued under the new Agreement in clause 84, with the Authority taking on the Commission's former role under this clause.

This regulation, made under subsection 239W(1) of the Act, ensures that where a Contracting Government has made or makes a payment of a kind mentioned in clause 83 of the former MDB Agreement, this payment is taken to be payment under clause 84 of the new Agreement after transition (subregulations (2) and (4)).

The regulation also ensures that where a Contracting Government was required to make a payment under clause 83 of the former MDB Agreement prior to transition and that payment had not yet been made, the requirement to pay continues in effect as if it were a requirement to pay under clause 84 of the new Agreement after transition (subregulation (1)).

Regulation 10A.24 Clause 84 of former MDB Agreement

This regulation, made under subsection 239W(1) of the Act, gives the Authority responsibility for completing the Commission's annual report and audited financial statements for the 2007-2008 financial year, if they have not been completed or sent to the former Murray-Darling Basin Ministerial Council by the transition time. The Authority must complete the report and financial statements and send them to the new Murray-Darling Basin Ministerial Council, as soon as practicable, after transition.

The regulation also requires the Authority to prepare and submit to the new Murray-Darling Basin Ministerial Council a report and audited financial statements relating to the activities of the Murray-Darling Basin Commission for so much of the 2008-2009 financial year that occurs before transition.

Because the Authority cannot be held responsible for activities that occurred prior to it taking on the functions of the Commission, the reports and audited financial statements provided for under this regulation must be approved and signed by a representative of each Contracting Government prior to being forwarded to the new Murray-Darling Basin Ministerial Council.

Regulation 10A.44 Subclause 10(1) of Schedule F to former MDB Agreement - protocols

This regulation, made under subsection 239W(1) of the Act, provides for a protocol determining how to alter any long term diversion cap made under subclause 10 (1) of Schedule F to the former MDB Agreement by the former Murray-Darling Basin Ministerial Council before transition, to continue to have effect as if it had been made by the new Murray-Darling Basin Ministerial Council under subclause 10(1) of Schedule E to the new Agreement after transition.

10A.46 Subclause 18(2) of Schedule G to former MDB Agreement

This regulation is made in relation to advice given by New South Wales or Victoria to the Murray-Darling Basin Commission under subclause 18 (2) of Schedule G to the former MDB Agreement in relation to the relevant State's calculation of the volume by which the Long-Term Diversion Cap must be reduced as a result of an increase in Environmental Entitlements.

Under subparagraphs 239Q(1)(c)(i) and (ii) of the Act, this regulation prescribes that advice given to the Commission by New South Wales or Victoria under subclause 18(2) of Schedule G to the former MDB Agreement continues to have effect from transition, as if it had been advice given to the Basin Officials Committee and the Authority under subclause 18(2) of Schedule F to the new Agreement.

Under the new Agreement, such advice must be provided to both of these bodies, as opposed to only being provided to the Commission under the former MDB Agreement.

Regulation 10A.52 Things done under protocols made under Schedules to former MDB Agreement

Subsection 239Q(3) of the Act provides for things done by or in relation to or pursuant to a resolution of the Commission under protocols made under the former MDB Agreement to taken to have been done after transition by the Authority (where the thing done has continuing effect).

State governments are, however, also important actors under the protocols and some of their actions will not be covered by subsection 239Q(3) because the action is not related to a Commission action.

This regulation, made under subsection 239W(1) of the Act provides for things with continuing effect done by or in relation to, or pursuant to a resolution of, a State Contracting government or an agency of a State Contracting government under protocols to the former MDB Agreement to be taken to have been done after transition by the same State Contracting government or agency of a State Contracting government but under protocols to the new Agreement.

Regulation 10A.53 References to River Murray Water in protocols made under Schedules to former MDB Agreement

Paragraph 239N(1)(i) of the Act provides for protocols made under the former MDB Agreement to be read after transition as if they were protocols made under the new Agreement.

This regulation, made under subsection 239W(1) of the Act, provides for references to River Murray Water in protocols made under the former MDB Agreement to be read after transition, as if they were references to the Authority.

This is because River Murray Water will become a division of the new Authority under the new governance arrangements.

Regulation 10A.54 Vesting of certain assets of Murray-Darling Basin Commission

Under the former MDB Agreement, weir no.5 Redbank or weir no.7 Maude were listed as works under Schedule A and were therefore joint assets of the parties to the former MDB Agreement and managed in accordance with that Agreement. The full management and control of these two weirs was, however, recently handed back to New South Wales.

This regulation, made under subsection 239W(1) of the Act, ensures the effectiveness of this handing back of management and control by providing for any legal or equitable interest in weir no.5 Redbank or weir no.7 Maude held by the Murray-Darling Basin Commission immediately before transition to vest in New South Wales after transition rather than in the Authority.

Regulation 10A.55 Agreements between Contracting Governments

This regulation, made under subsection 239W(1) of the Act, provides for an agreement made between two or more Contracting Governments under a clause of the former MDB Agreement which is in effect immediately before transition to continue in effect after transition as if it had been made under the corresponding provision in the new Agreement.

Table setting out which clause in the new Agreement corresponds to which clause in the former MDB Agreement

Clause in the Agreement	Corresponding clause in former MDB Agreement
<i>Body of Agreement</i>	<i>Body of Agreement</i>
1	1
2	2
3	3
4	4
5	5 & 6
6	7
7 & 8	8
9	9
10	10
11	none
12	11
12	13
13	12 Schedule D, cl 6 Schedule H, cl 9
14	13
15	14
16	none
17	none
18	none
19	none
20	none
21	none
22	none
23	none
24	none
25	none
26	none
27	none
28	none
29	17
30	none
31	none
32	none
33	none
34	none
35	none
36	Schedule D, cl 2 Schedule H, cl 3
37	Schedule D, cl 3
38	Schedule H, cl 5
39	Schedule D, cl 4 Schedule H, cl 6
40	Schedule D, cl 5 Schedule H, cl 6
41	Schedule D, cl 7
42	Schedule H, cl 10
43	39

Clause in the Agreement	Corresponding clause in former MDB Agreement
<i>Body of Agreement</i>	<i>Body of Agreement</i>
44	40
45	41
46	42
47	43
48	44
49	46
50	47
51	48
52	49
53	none
54	none
55	none
56	50
57	51
58	52
59	53
60	54
61	55
62	56
63	57
64	58
65	59
66	60
67	61
68	62
69	63
70	64
71	65
72	66
73	67
74	68
75	69
76	71
77	72
78	73
79	74
80	75
81	76
82	77
83	81
84	83
85	84
86	85
87	none
88	86
89	87
90	88

Clause in the Agreement	Corresponding clause in former MDB Agreement
<i>Body of Agreement</i>	<i>Body of Agreement</i>
91	none
92	89
93	90
94	91
95	92
96	93
97	94
98	95
99	96
100	97
101	98
102	99
103	100
104	101
105	102
106	103
107	104
108	105
109	106
110	108
111	109
112	110
113	111
114	113
115	114
116	115
117	116
118	117
119	118
120	119
121	120
122	121
123	122
124	123
125	124
126	125
127	126
128	127
129	128
130	none
131	none
132	none
133	none
134	none
135	none
136	129
137	130
138	131
139	132
140	133

Clause in the Agreement	Corresponding clause in former MDB Agreement
<i>Body of Agreement</i>	<i>Body of Agreement</i>
141	none
142	135
143	136
144	137
145	38(1) and (3) (in part)
146	38(2)
147	none
148	none
149	138 (in part)
150	138 (in part)
151	none
152	none
<i>Schedule A</i>	<i>Schedule A</i>
Table of Works	Table of Works
<i>Schedule B</i>	<i>Schedule C</i>
1	1
2	2
3	3 Schedule H, cl 4
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13 Schedule H, cl 4
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
26	26
27	27
28	28
29	29
30	30
31	31
32	32

Clause in the Agreement	Corresponding clause in former MDB Agreement
<i>Schedule B</i>	<i>Schedule C</i>
33	33
34	34
35	35
36	36
37	37
38	38
39	39
40	40
41	41
42	42
43	43
44	44
45	45
46	46
47	47
48	48
49	none
Schedule B, Appendix 1	Schedule C, Appendix 1
Schedule B, Appendix 2	Schedule C, Appendix 2
<i>Schedule C</i>	<i>Schedule D</i>
Plan for the purposes of clause 40 of the Agreement	Annexure to schedule D of the <i>Murray-Darling Basin Agreement</i>
<i>Schedule D</i>	<i>Schedule E</i>
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
Schedule D, Appendix 1	Schedule E, Appendix 1
Schedule D, Appendix	Schedule E, Appendix

Clause in the Agreement	Corresponding clause in former MDB Agreement
2	2
<i>Schedule D</i>	<i>Schedule E</i>
Schedule D, Appendix 3	Schedule E, Appendix 3
<i>Schedule E</i>	<i>Schedule F</i>
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
Schedule E, Appendix 1	Schedule E, Appendix 1
Schedule E, Appendix 2	Schedule E, Appendix 2
<i>Schedule F</i>	<i>Schedule G</i>
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21

Clause in the Agreement	Corresponding clause in former MDB Agreement	Clause in the Agreement	Corresponding clause in former MDB Agreement
22	23	<i>Schedule F</i>	<i>Schedule G</i>
<i>Schedule F</i>	<i>Schedule G</i>	25	26
23	24	26	27
24	25	27	28

A number of clauses in the former MDB Agreement do not have a corresponding clause in the new Agreement as follows:

- clause 15 of the former MDB Agreement (Nomination of Responsible Minister) has no corresponding clause in the new Agreement because the new Ministerial Council only includes one representative from each jurisdiction;
- clauses 16 and 18 to 37 of the former MDB Agreement relating to the composition and proceedings of the Commission have no corresponding clause in the new Agreement because provisions dealing with the composition and proceedings of the Authority, which is assuming the current role of the Commission, are provided for in Part 9 of the Act;
- clause 45 of the former MDB Agreement (Recommendations re water quantity and quality) has no corresponding clause in the new Agreement because this is now provided for in section 172(1)(g) of the Act;
- clause 78 of the former MDB Agreement (Audit) has no corresponding clause in the new Agreement because audits are provided for under section 214 of the Act;
- clauses 79 and 80 of the former MDB Agreement (Bank Accounts and Investment) have no corresponding clauses in the new Agreement because bank accounts and investment are covered by the Commonwealth financial management framework to which the Authority, as a Commonwealth agency, is subject;
- clause 82 of the former MDB Agreement (Tolls) has no corresponding clause in the new Agreement because no tolls have ever been charged and this clause was considered redundant;
- clauses 107 and 112 had already been deleted from the former MDB Agreement;
- clause 134 of the former MDB Agreement (Accession by new parties) has no corresponding clause in the new Agreement because all jurisdictions with Territory within the Murray-Darling Basin are now parties to the Agreement;
- the map in Schedule B to the former MDB Agreement has no corresponding map in the new Agreement because a map of the Murray-Darling Basin is now set out in Schedule 1A of the Act;
- Schedules D and H of the former MDB Agreement (Application of Agreement to Queensland and Application of Agreement to the Australian Capital Territory) have no corresponding Schedules in the new Agreement because the substance of those Schedules has been incorporated into the body of the Agreement'
- clause 22 of Schedule G of the former MDB Agreement (Implementing the Strategy) has no corresponding clause in the new Agreement because it requires the Commission to commence implementing the Strategy and implementation of the Strategy has in fact already commenced.