

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Murray-Darling Basin Authority

*Water Act 2007*

*Murray-Darling Basin Agreement (Schedule D – Permissible Transfers between Trading Zones) Protocol 2010*

The Murray-Darling Basin Agreement (**Agreement**) is Schedule 1 to the *Water Act 2007* (**Act**). The Agreement allows for the Murray-Darling Basin Authority (**Authority**) to make protocols in respect of certain matters.

The instrument to which this explanatory statement relates, the *Murray-Darling Basin Agreement (Schedule D - Permissible Transfers between Trading Zones) Protocol 2010* (**Protocol**), is made under section 18E of the Act and paragraph 6(1)(e) of Schedule D to the Agreement. The Protocol is a legislative instrument: see section 18D of the Act.

The purpose of the Protocol is to regulate the transfer of entitlements and allocations between particular specified zones.

Paragraph 3(1)(a) of Schedule D to the Agreement relevantly provides that:

...  
“**allocation**” means the volume of water allocated for use under an entitlement in any water year (as defined in clause 2 of Schedule E [to the Agreement]) pursuant to the law of a State;

...  
“**entitlement**” means:

- (i) an entitlement to a particular share of water within the upper River Murray, the River Murray in South Australia or regulated reaches of the Goulburn, Campaspe, Loddon and Murrumbidgee river systems or a source referred to in paragraph 2(c) [of Schedule D to the Agreement] 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;

...  
“**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 [Schedule D to the Agreement]; and
- (ii) the transfer of an entitlement within a State, according to the laws of that State;

Details of the Protocol are set out in the Attachment.

The Protocol commences on the day after it is registered on the Federal Register of Legislative Instruments.

The Protocol is not subject to disallowance by Parliament nor the sunseting rules in Part 6 of the *Legislative Instruments Act 2003*: see section 18D of the Act.

**Consultation**

The Contracting Governments to the Agreement have been consulted in the development of this Protocol.

The Office of Best Practice Regulation has also been consulted on this Protocol and has determined that regulatory impact statements will not be required for this Protocol.

**Details of the Murray-Darling Basin Agreement (Schedule D - Permissible Transfers between Trading Zones) Protocol 2010****Section 1 – Name of Protocol**

Section 1 provides that the name of the Protocol is the *Murray-Darling Basin Agreement (Schedule D - Permissible Transfers between Trading Zones) Protocol 2010*.

**Section 2 – Commencement**

Section 2 provides that the Protocol commences on the day after it is registered.

**Section 3 – Revocation**

Section 3 provides that all previous protocols made under paragraph 6(1)(e) of Schedule D to the Agreement are revoked.

**Section 4 – Application**

Section 4 provides that the Protocol applies to transfers of entitlements and allocations between States and between valleys by:

- (a) allocation transfer;
- (b) exchange rate trade; or
- (c) tagged trade.

Paragraph 3(1)(a) of Schedule D to the Agreement relevantly provides that:

...

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;

...

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.

**Section 5 – Definitions**

Section 5 defines certain terms used in the Protocol. Some terms used in the Protocol will take the meanings they have in the Act (including the Agreement): see section 13 of the *Legislative Instruments Act 2003*.

**Section 6 – Restriction on transfers**

Subsection 6(1) restricts the transfer of entitlements and allocations to and from a person diverting or using water within particular trading zones.

Subsection 6(2) restricts the transfer of entitlements and allocations to and from trading zones identified in Table 1 as "back trade only".

Subsection 6(3) restricts the transfer of entitlements and allocations to and from trading zones identified in Table 1 as "conditional".

Subsection 6(4) provides that each of subsections 6(1), (2), and (3) is separate and independent and is not to be read down by reference to any of the others of those subsections.

Subsection 6(5) imposes obligations on State Contracting Governments regarding approval of transfers by licensing authorities.

Subsection 6(6) contains a table specifying trading zones and the transfers that may be made to and from those zones. A map of the trading zones is at Appendix I.

In developing the restrictions imposed by Table 1, the following principles were applied:

- (a) transfers within a trading zone should not be restricted, except where local circumstances, such as salinity management, delivery channel capacity or environmental factors, so require;
- (b) downstream transfers between hydrologically connected systems should generally be possible;
- (c) where a downstream transfer is impeded by a physical constraint to channel capacity, it should only be approved as back trade;
- (d) where an upstream transfer is made into a separate hydrological system, it should only be approved as back trade;
- (e) transfers should be possible between the upper reaches of river systems which converge downstream, provided that any supply obligations of the transferor's river below the point of confluence, which may be affected by the transfer, are assumed by the transferee's river; and
- (f) upstream transfers from a location supplied by more than one source should be possible to a location supplied by only one of those sources, but may be subject to special limits and conditions.

The rules in the Protocol are based on the hydrological connections between different river reaches. Transfers may also be subject to other restrictions, based on channel capacity, salinity, environmental or other considerations

Further information about rules affecting transfers may be obtained from the following sources:

#### New South Wales

Department of Infrastructure, Planning and Natural Resources, *Water Sharing Plan for the Murrumbidgee Regulated River Water Source*, 1 July 2004.

Department of Infrastructure, Planning and Natural Resources, *Water Sharing Plan for the Murray and Lower Darling Regulated Rivers Water Sources*, 1 July 2006.

#### Victoria

*Trading Rule for Declared Water Systems*, at [www.waterregister.vic.gov.au](http://www.waterregister.vic.gov.au)

#### South Australia

<http://www.dwlbc.sa.gov.au/murray/trade/index.html>

### **Section 7 – Transfers across the Choke**

Subsection 7(1) specifies the manner in which environmental water entitlements derived from water savings made downstream of the Choke before 1 July 2007, for the purposes of the Snowy Water Enquiry Deed, must be accounted for. Paragraph 3(1)(a) of Schedule D to the Agreement relevantly provides that:

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

Section 5 of the Protocol provides that:

...  
**Choke** means the Barmah Choke.  
 ...

...  
**Snowy Water Enquiry Deed** means the *Snowy Water Enquiry Outcome Implementations Deed* executed between the Governments of the Commonwealth, New South Wales and Victoria on 3 June 2002.  
 ...

Subsection 7(2) specifies the way in which the volume of any transfer of water entitlements from below to above the Choke (subject to certain exceptions) may be counted and used for the purposes of the Protocol.

Subsection 7(3) provides that a water entitlement may not be transferred from above to below the Choke, except where the entitlement has previously been entered in the entitlement record as having been transferred from below to above the Choke.

Subsection 7(4) provides that, without limiting subsection 7(2), a transfer for the purposes of subsection 7(2) includes any transfer pursuant to:

- (a) an agreement between Governments (other than transfers referred to in paragraph 7(1)(a)) for the purpose of improving flows in the Snowy River; and
- (b) trading between the holders of entitlements.

### **Section 8 – Accounting for allocation transfers across the Choke**

Subsection 8(1) provides that the purpose of section 8 is to ensure that no net transfer of water allocations occurs from above to below the Choke in any year after 1 July 2007.

Subsection 8(2) imposes obligations on the Authority to establish and maintain:

- (a) an entitlement record with respect to particular States, which sets out certain specified information; and

- (b) an allocation account setting out certain specified information.

Subsection 8(3) provides that, for paragraph 8(2)(a), ***water entitlement***:

- (a) includes any environmental water entitlements derived from water savings made downstream of the Choke pursuant to the Snowy Water Enquiry Deed, to be used to improve flows in the Snowy River; and
- (b) does not include any such environmental water entitlements to be used to improve flows in the River Murray.

Subsection 8(4) imposes obligations on the Authority to add and remove certain water entitlements from the entitlement record for each State. Section 5 of the Protocol provides that:

...  
***entitlement record*** means an entitlement record under paragraph 8 (2) (a).  
 ...

Subsection 8(5) sets out requirements regarding the allocation account. Section 5 of the Protocol provides that:

...  
***allocation account*** means an allocation account under paragraph 8(2)(b).  
 ...

Subsection 8(6) provides that subsection 10(4) applies to any proposed transfer of an allocation referred to in paragraph 8(5)(d) if the transfer would result in a negative balance in the allocation account.

## **Section 9 – Exceptional circumstances for allocation transfers across the Choke**

Section 9 provides that, despite any other provision of the Protocol, in any year in which the Authority estimates that the level of certain specified water allocations will significantly reduce the usual constraints on channel capacity at the Choke, the Authority, after consulting the Committee, may make certain determinations regarding the transfer of water allocations from above to below the Choke. Section 9 also provides that the determinations may be subject to such conditions as the Authority may determine, after consulting the Committee. Clause 2 of the Agreement provides that:

...  
**“Committee”** means the Basin Officials Committee established by Part IV [of the Agreement].  
 ...

## **Section 10 – Co-operation between approval authority and the Authority**

Subsection 10(1) provides that, if an approval authority approves the transfer of a water entitlement, or the transfer of an allocation, from below to above the Choke, the approval authority must promptly advise the Authority. Section 5 of the Protocol provides that:

...  
***approval authority***, in relation to a transfer, means the relevant licensing authority or water authority.  
 ...

Paragraph 3(1)(a) of Schedule D to the Agreement relevantly provides that:

...  
**“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;

...

Subsection 10(2) provides that the relevant water authority for a district in which water is used pursuant to an allocation made under a water entitlement entered in an entitlement record must promptly advise the Authority of the volume of any water used pursuant to that allocation.

Subsection 10(3) provides that, before an approval authority approves any back trade of an allocation from above to below the Choke, the approval authority must advise the Authority of the proposed transfer.

Subsection 10(4) provides that the Authority, having regard to the relevant entitlement records and the allocation account, must promptly advise the approval authority whether the proposed transfer may be approved.

Subsection 10(5) provides that, if the Authority advises an approval authority under subsection 10(4) that a transfer may not be approved, the approval authority must refuse to approve the transfer.

Subsection 10(6) provides that, if the Authority advises an approval authority that a transfer may be approved, the Authority must promptly adjust the relevant entitlements record and the allocation account accordingly.

Subsection 10(7) provides that an approval authority that receives advice from the Authority under subsection 10(6) must notify the Authority within 7 days after the date of the Authority’s advice if the proposed transfer is approved.

Subsection 10(8) specifies what the Authority and an approval authority must do if the approval authority does not notify the Authority in accordance with subsection 10(7).

## **Section 11 – Transfers into and out of the Lower Darling**

Subsection 11(1) specifies when, for the purposes of the Protocol, the Menindee Lakes Storage is under ***Authority control*** and when it is under ***New South Wales control***.

Subsection 11(2) provides that, until the Ministerial Council resolves otherwise, an entitlement must not be transferred into or out of the Lower Darling Valley.

Subsection 11(3) specifies the circumstances in which allocations may be transferred either into or out of the Lower Darling Valley when the Menindee Lakes Storage is under Authority control.

Subsection 11(4) provides that allocations may not be transferred into or out of the Lower Darling Valley when the Menindee Lakes Storage is under New South Wales control unless certain specified circumstances exist. Those circumstances are that there would be no significant impacts on third parties or adverse impacts on State water entitlements.

**APPENDIX I**