

EXPLANATORY STATEMENT

Issued by authority of the Murray-Darling Basin Authority

Water Act 2007

Murray-Darling Basin Agreement (Schedule D – Permissible Transfers between Trading Zones) Amendment (ACT Trading Zone) Protocol 2025

Legislative authority

Section 18E of the *Water Act 2007* (Cth) (Water Act) confers on the Murray-Darling Basin Authority (the Authority), in a referring State or the Australian Capital Territory, the functions, powers and duties that are expressed to be conferred on it by or under the Murray-Darling Basin Agreement (Agreement), and relate to the water and other natural resources of the Murray-Darling Basin.

Paragraph 6(1)(e) of Schedule D to the Agreement provides that the Authority may, in consultation with the Basin Officials Committee (BOC), from time to time make protocols about any matter referred to in clause 13 (Restrictions on Transfers). Under subclause 6(6) of Schedule D, the Authority may amend any protocol made under subclause 6(1).

Purpose

The *Murray-Darling Basin Agreement (Schedule D - Permissible Transfers between Trading Zones) Protocol 2010* (Trade Protocol) specifies trading zones relating to areas of the River Murray System and regulates the transfer of entitlements and allocations between those trading zones (see paragraph 3(1)(a) of Schedule D to the Agreement for the definitions of ‘allocation’, ‘entitlement’ and ‘transfer’).

The trading of water entitlements and allocations in and out of the ACT was not considered when the Trade Protocol was developed.

The purpose of the *Murray-Darling Basin Agreement (Schedule D - Permissible Transfers between Trading Zones) Amendment (ACT Trading Zone) Protocol 2025* (Amendment Protocol) is to amend the Trade Protocol to facilitate opportunities for transfers of allocations and entitlements between the areas of the Murrumbidgee in NSW, and the areas of the Murrumbidgee and tributaries in the ACT.

Background

Schedule D to the Agreement governs arrangements for accounting, administration, and coordination of interstate and intervalley water trade in the southern Murray-Darling Basin (sMDB). It provides agreed structures and mechanisms for water trade between valleys and States to support efficient and effective water markets within the sMDB.

Clause 6 of Schedule D to the Agreement allows the Authority to make protocols in relation to various matters relevant to Schedule D. The Trade Protocol sets out what trading zones exist and regulates the transfer of entitlements and allocations between particular specified zones. In addition to transfers that are already allowed under the Trade Protocol, the Amendment Protocol amends the Trade Protocol to allow trade between areas of the Murrumbidgee in NSW and the Murrumbidgee and tributaries in the ACT.

The Amendment Protocol establishes a new ACT water trading zone to enable trade between the ACT and NSW, as agreed between the ACT and NSW governments. The enablement of water trading between the ACT and NSW will also allow for environmental water, bought by the Commonwealth, to be effectively and efficiently used by the Commonwealth Environmental Water Holder.

Consultation

Subclause 6(2) of Schedule D to the Agreement requires that the Authority must notify each Contracting Government when it is considering amending a protocol and of the subject matter of any proposed amendment. The Authority complied with requirement, giving notice to BOC members (each of whom represents a different State Contracting Government) and the Commonwealth Environmental Water Holder.

Subclause 6(3) of Schedule D provides that 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. Subclause 6(4) requires the Authority to consider any advice given by a person nominated under subclause 6(3), before it makes, amends or revokes a protocol.

The Authority considered the advice given by the nominated representatives of Contracting Governments in preparing the Amendment Protocol, noting that representatives endorsed the changes proposed through the making of the Amendment Protocol.

Details

Details of the Amendment Protocol are set out in Attachment A.

Other

Under section 18D of the Water Act, a protocol made by the Authority under a Schedule to the Agreement is a legislative instrument, but is not subject to disallowance under section 42 of the *Legislation Act 2003* or sunseting under Part 4 of Chapter 3 of that Act.

As this legislative instrument is not subject to disallowance, paragraph 15J(2)(f) of the *Legislation Act 2003* provides that a Statement of Compatibility with Human Rights is not required.

Details of the *Murray-Darling Basin Agreement (Schedule D – Permissible Transfers between Trading Zones) Amendment (ACT Trading Zone) Protocol 2025*

Section 1 – Name

This section provides that the name of the Protocol is the *Murray-Darling Basin Agreement (Schedule D – Permissible Transfers between Trading Zones) Amendment (ACT Trading Zone) Protocol 2025*.

Section 2 – Commencement

This section provides for the Protocol to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section states that the Protocol is made under clause 6 of Schedule D to the Murray-Darling Basin Agreement and section 18E of the *Water Act 2007*.

Section 4 – Schedules

This section gives effect to Schedule 1, which provides for the amendments to the *Murray-Darling Basin Agreement (Schedule D – Permissible Transfers between Trading Zones) Protocol 2010* (Trade Protocol).

Schedule 1 – Amendments

Item 1: Subsection 6(6) (cell at table item 13, column headed “Column 1”)

This item repeals column 1 of item 13 of the table at subsection 6(6) of the Trade Protocol and substitutes the description of trading zone 13 in column 1 with: “Murrumbidgee consisting of Murrumbidgee Irrigation and Colleambally Irrigation areas; Murrumbidgee and Tumut below Burrinjuck and Blowering reservoirs (including Yanko, Colombo and Billabong Creek systems) only”.

The effect of this item is to amend the area described for trading zone 13 to clarify that it does not include the Murrumbidgee and tributaries to the extent these are within the ACT (which are the subject of new trading zone 15).

Item 2: Subsection 6(6) (cell at table item 13, column headed “Column 2”)

This item amends column 2 of item 13 of the table at subsection 6(6) of the Trade Protocol to add a reference to ‘15’, in addition to the existing trading zones.

The effect of this item is to add trading zone 15 as a trading zone in relation to which a person diverting or using water within trading zone 13 is permitted to make transfers of entitlements and allocations to.

Item 3: Subsection 6(6) (cell at table item 13, column headed “Column 3”)

This item amends column 3 of item 13 of the table at subsection 6(6) of the Trade Protocol to omit ‘back trade only’ and to add a reference to: ‘15’ and ‘back trade only’.

The effect of this item is to add trading zone 15 as a trading zone in relation to which a person diverting or using water within trading zone 13 is permitted to receive transfers of entitlements and allocations from.

Item 4: Subsection 6(6) (cell at table item 14, column headed “Column 2”)

This item repeals the cell at column 2 of item 14 of the table at subsection 6(6) of the Trade Protocol and substitutes a new cell including wording to amend a prior drafting inconsistency.

Item 5: Subsection 6(6) (after table item 14)

This item adds a new item 15 to the table at subsection 6(6) of the Trade Protocol, being a new trading zone 15 for the Murrumbidgee and tributaries within the ACT.

Columns 2 and 3 of item 15 specify trading zone 13 as the sole trading zone to and from which transfers may be made from trading zone 15.