

2008

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Water Amendment Bill 2008**

**No.     , 2008**

*(Climate Change and Water)*

**A Bill for an Act to amend the *Water Act 2007*, and  
for related purposes**



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1     **A Bill for an Act to amend the *Water Act 2007*, and**  
2     **for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5             This Act may be cited as the *Water Amendment Act 2008*.

6     **2 Commencement**

7             (1) Each provision of this Act specified in column 1 of the table  
8                 commences, or is taken to have commenced, in accordance with  
9                 column 2 of the table. Any other statement in column 2 has effect  
10                according to its terms.

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	Immediately after the commencement of the provision(s) covered by table item 3.	
3. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
4. Schedule 3	Immediately after the commencement of the provision(s) covered by table item 3.	

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by both Houses of the Parliament and assented to. It will not be  
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

### 7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.

1  
2 **Schedule 1—Amendments based on referrals**  
3 **of power**  
4

5 *Water Act 2007*

6 **1 After Part 1**

7 Insert:

8 **Part 1A—The Murray-Darling Basin Agreement**

9 **Division 1—Preliminary**

10 **18A Definitions**

11 In this Act:

12 *Agreement* means the Murray-Darling Basin Agreement, as  
13 amended from time to time in accordance with that agreement and  
14 as set out in Schedule 1.

15 Note: The Murray-Darling Basin Agreement operates as an agreement  
16 between the parties. The text of the Agreement is set out in  
17 Schedule 1, and as such it has further effect as provided for by this Act  
18 (for example, see sections 18E and 18F).

19 *Authority* means the Murray-Darling Basin Authority established  
20 by section 171.

21 *Basin Officials Committee* means the committee established under  
22 the Agreement.

23 *Murray-Darling Basin* means the area falling within the boundary  
24 described in the dataset that:

- 25 (a) is titled Murray-Darling Basin Boundary—*Water Act 2007*;  
26 and  
27 (b) has a dataset scale of 1:250,000; and  
28 (c) specifies the boundary of the Murray-Darling drainage  
29 division derived from the dataset that is titled “Australia’s  
30 River Basins 1997” and is dated 30 June 1997; and  
31 (d) is held by the Commonwealth.

1 Note 1: An indicative map of this area is set out in Schedule 1A.

2 Note 2: A copy of the dataset can be obtained from the Department's website:  
3 see section 252A.

4 ***Murray-Darling Basin Ministerial Council*** has the same meaning  
5 as ***Ministerial Council*** in the Agreement.

6 **18B Meaning of *referring State***

7 *Reference of matters by State Parliament to Commonwealth*  
8 *Parliament*

- 9 (1) A State is a ***referring State*** if the Parliament of the State has  
10 referred the matters covered by subsections (3) and (4) in relation  
11 to the State to the Parliament of the Commonwealth for the  
12 purposes of paragraph 51(xxxvii) of the Constitution:  
13 (a) if and to the extent that the matters are not otherwise included  
14 in the legislative powers of the Parliament of the  
15 Commonwealth (otherwise than by a reference under  
16 paragraph 51(xxxvii) of the Constitution); and  
17 (b) if and to the extent that the matters are included in the  
18 legislative powers of the Parliament of the State.

19 This subsection has effect subject to subsections (5) and (6).

- 20 (2) A State is a ***referring State*** even if a law of the State provides that  
21 the reference to the Parliament of the Commonwealth of either or  
22 both of the matters covered by subsections (3) and (4) is to  
23 terminate in particular circumstances.

24 *Reference covering initial provisions of this Act*

- 25 (3) This subsection covers the matters to which the referred provisions  
26 for the State in question relate to the extent of making laws with  
27 respect to those matters by including the referred provisions in this  
28 Act.

29 *Reference covering amendments of this Act*

- 30 (4) This subsection covers:  
31 (a) if the State in question is a Basin State—the referred subject  
32 matters; and  
33 (b) in any case—the matter of the application, in relation to  
34 water resources that are not Basin water resources, of



1 provisions of this Act dealing with the subject matters  
2 specified in paragraphs (c) and (d) of the definition of  
3 **referred subject matters** in subsection (9) (being an  
4 application of a kind that is authorised by the law of the State  
5 in question);  
6 to the extent of the making of laws with respect to those matters by  
7 making express amendments of this Act.

8 *Effect of termination of reference*

- 9 (5) A State ceases to be a **referring State** if the State's initial reference  
10 terminates.
- 11 (6) Subject to subsections (7) and (8), a State ceases to be a **referring**  
12 **State** if the State's amendment reference terminates.
- 13 (7) A State does not cease to be a **referring State** because of the  
14 termination of its amendment reference if:  
15 (a) the termination is effected by the Governor of that State  
16 fixing a day by proclamation as the day on which the  
17 reference terminates; and  
18 (b) the day fixed is no earlier than the first day after the end of  
19 the period of 6 months beginning on the day on which the  
20 proclamation is published; and  
21 (c) that State's amendment reference, and the amendment  
22 reference of every other referring State, terminate on the  
23 same day.
- 24 (8) A State does not cease to be a **referring State** because of the  
25 termination of its amendment reference if:  
26 (a) a Bill is introduced into a House of the Parliament that  
27 includes a proposed amendment of the referred provisions, or  
28 that would, if enacted, have the effect that this Act would no  
29 longer contain:  
30 (i) subsections 22(10), (11) and (12), or provisions having  
31 substantially the same effect; or  
32 (ii) Part 11A, or provisions having substantially the same  
33 effect; and  
34 (b) the Governor of the State, by proclamation, issues a notice  
35 stating that:  
36 (i) the State has not agreed to the amendment; and
-

- 1 (ii) this subsection will apply in relation to the State from a  
2 day specified in the notice; and  
3 (c) the State Minister of that State who is a member of the  
4 Murray-Darling Basin Ministerial Council informs the other  
5 members of the Murray-Darling Basin Ministerial Council  
6 that the notice was issued; and  
7 (d) the Governor does not revoke the notice before:  
8 (i) the day specified in the notice passes; or  
9 (ii) the Bill is enacted in a form that includes that  
10 amendment or a substantially similar amendment;  
11 whichever happens later.

12 *Definitions*

13 (9) In this section:

14 **amendment** includes the insertion, omission, repeal, substitution,  
15 addition or relocation of words or matter.

16 **amendment reference** of a State means the reference by the  
17 Parliament of the State to the Parliament of the Commonwealth of  
18 the matters covered by subsection (4).

19 **express amendment** of this Act means the direct amendment of:

- 20 (a) the referred provisions; or  
21 (b) definitions in this Act of terms used in the referred  
22 provisions;

23 but does not include the enactment by a Commonwealth Act of a  
24 provision that has, or will have, substantive effect otherwise than  
25 as part of the text of the referred provisions or those definitions.

26 **initial reference** of a State means the reference by the Parliament  
27 of the State to the Parliament of the Commonwealth of the matters  
28 covered by subsection (3).

29 **referred provisions**, for a State, means:

- 30 (a) if the State is a Basin State—this Part and Parts 2A, 4, 4A,  
31 10A and 11A, as originally enacted by the *Water Amendment*  
32 *Act 2008*, to the extent to which they deal with matters that  
33 are included in the legislative powers of the Parliament of the  
34 State; or

1 (b) if the State is not a Basin State—Parts 4A and 11A, as  
2 originally enacted by the *Water Amendment Act 2008*, to the  
3 extent to which they deal with matters that are included in the  
4 legislative powers of the Parliament of the State.

5 *referred subject matters* means any of the following:

- 6 (a) the powers, functions and duties conferred on  
7 Commonwealth agencies that:  
8 (i) relate to Basin water resources; and  
9 (ii) are conferred by or under the Agreement;  
10 (b) the management of Basin water resources to meet critical  
11 human water needs;  
12 (c) water charging in relation to Basin water resources (other  
13 than for urban water supply after the removal of the water  
14 from a Basin water resource);  
15 (d) the transformation of entitlements to water from a Basin  
16 water resource to enable trading in those water entitlements;  
17 (e) the transfer of assets, rights and liabilities of the  
18 Murray-Darling Basin Commission to the Authority, and  
19 other transitional matters relating to the replacement of the  
20 Murray-Darling Basin Commission.

21 (10) A reference in this section to a Part of this Act includes a reference  
22 to any Schedule to this Act that contains provisions enacted for the  
23 purposes of that Part.

24 **Division 2—The Murray-Darling Basin Agreement**

25 **18C Amendment of Schedule 1**

26 (1) The regulations may make amendments to Schedule 1 by  
27 incorporating into the Agreement amendments made to, and in  
28 accordance with, the Murray-Darling Basin Agreement.

29 Note 1: The Murray-Darling Basin Agreement requires the agreement of the  
30 Murray-Darling Basin Ministerial Council to any amendments of the  
31 Murray-Darling Basin Agreement.

32 Note 2: Amendments of the Murray-Darling Basin Agreement, made in  
33 accordance with that agreement, operate as an agreement between the  
34 parties. The text of the Agreement as set out in Schedule 1 will be  
35 amended accordingly, and as such it has further effect as provided for  
36 by this Act (for example, see sections 18E and 18F). The amendment

1 of the Schedule by itself cannot amend the agreement between the  
2 parties.

3 (2) A reference in subsection (1) to amendment includes a reference to  
4 the insertion, omission, repeal, substitution, addition or relocation  
5 of words or matter.

6 (3) Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not  
7 apply to regulations made for the purposes of this section.

8 **18D Protocols made by the Authority**

9 A protocol made by the Authority under a Schedule to the  
10 Agreement is a legislative instrument, but neither section 42  
11 (disallowance) nor Part 6 (sunsetting) of the *Legislative*  
12 *Instruments Act 2003* applies to the protocol.

13 **Division 3—Functions, powers and duties under the**  
14 **Agreement**

15 **18E Additional functions, powers and duties of the Authority**

16 (1) Without limiting sections 172 and 173, the Authority has, in a  
17 referring State or the Australian Capital Territory, the functions,  
18 powers and duties that:

19 (a) are expressed to be conferred on it by or under the  
20 Agreement; and

21 (b) relate to the water and other natural resources of the  
22 Murray-Darling Basin.

23 (2) In performing these functions and duties and exercising these  
24 powers, the Authority must comply with any requirements under  
25 the Agreement.

26 (3) The Authority has, in connection with:

27 (a) the performance of its functions and duties under this Part;  
28 and

29 (b) the exercise of its powers under this Part;

30 such powers in a referring State or the Australian Capital Territory  
31 as it has in connection with the performance of its other functions  
32 under this Act.

- 1 (4) However, the application of subsection (3) to the Authority's  
2 powers under Part 10 is limited to the Authority's powers under:  
3 (a) Subdivision A of Division 2 of that Part (Authorised  
4 officers); and  
5 (b) Subdivision B of Division 2 of that Part (Powers to enter land  
6 etc. other than for compliance purposes); and  
7 (c) Division 3 of that Part (Information gathering).
- 8 (5) Part 10 so applies as if:  
9 (a) the application of that Part in relation to premises in, or  
10 information held in, a referring State or the Australian  
11 Capital Territory were not limited by section 216 or 219 or  
12 by subsection 238(1); and  
13 (b) references in section 221 to the Authority's functions under  
14 section 219 included references to the Authority's functions  
15 under this Part.
- 16 (6) However:  
17 (a) an authorised officer must not enter premises under  
18 Subdivision B of Division 2 of that Part as applied by this  
19 section unless he or she reasonably believes this is necessary  
20 for the performance of any of the Authority's functions under  
21 this Part; and  
22 (b) Subdivision B of Division 2 of that Part as applied by this  
23 section does not extend to entering premises for the purposes  
24 of:  
25 (i) monitoring compliance with this Part or regulations  
26 made for the purposes of this Part; or  
27 (ii) searching for evidential material; and  
28 (c) the Authority must not require a person to give information  
29 under Division 3 of that Part as applied by this section unless  
30 the Authority has reason to believe that information relating  
31 to a matter:  
32 (i) relevant to the performance of the Authority's functions  
33 under this Part; and  
34 (ii) specified in regulations made for the purposes of this  
35 paragraph;  
36 is in the person's possession, custody or control (whether  
37 held electronically or in any other form).

1 Note: The conferral of functions, powers and duties on the Authority by this  
2 section does not otherwise give the Agreement any effect as a law of  
3 the Commonwealth.

4 **18F Additional functions, powers and duties of the Basin**  
5 **Community Committee**

6 (1) Without limiting section 202, the Basin Community Committee  
7 has, in a referring State or the Australian Capital Territory, the  
8 functions, powers and duties that:

- 9 (a) are expressed to be conferred on it by or under the  
10 Agreement; and  
11 (b) relate to the water and other natural resources of the  
12 Murray-Darling Basin.

13 (2) In performing these functions and duties and exercising these  
14 powers, the Basin Community Committee must comply with any  
15 requirements under the Agreement.

16 Note: The conferral of functions, powers and duties on the Basin  
17 Community Committee by this section does not otherwise give the  
18 Agreement any effect as a law of the Commonwealth.

19 **18G Management of money and assets**

20 The Authority must deal with:

- 21 (a) any money under the Agreement; and  
22 (b) any assets it acquires with that money; and  
23 (c) any assets that vest in the Authority under section 239C;  
24 in a way that is in accordance with the Agreement and consistent  
25 with the purposes of the Agreement.

26 **18H Managing water access rights etc. for the Living Murray**  
27 **Initiative**

28 (1) The Authority must, if the Living Murray Initiative so provides,  
29 manage the rights and interests that:

- 30 (a) are:  
31 (i) water access rights, water delivery rights, irrigation  
32 rights or other similar rights relating to water; or  
33 (ii) interests in, or in relation to, such rights; and  
34 (b) are held for the purposes of the Living Murray Initiative;

1 in accordance with and in a way that gives effect to the Living  
2 Murray Initiative.

3 (2) The *Living Murray Initiative* is the Intergovernmental Agreement  
4 on Addressing Water Overallocation and Achieving Environmental  
5 Objectives in the Murray-Darling Basin of 25 June 2004 read  
6 together with:

7 (a) the Supplementary Intergovernmental Agreement on  
8 Addressing Water Overallocation and Achieving  
9 Environmental Objectives in the Murray-Darling Basin of  
10 14 July 2006; and

11 (b) arrangements referred to in clause 3.9.2 of the Agreement on  
12 Murray-Darling Basin Reform-Referral.

## 13 **2 After Part 2**

14 Insert:

## 15 **Part 2A—Critical human water needs**

16

### 17 **86A Critical human water needs to be taken into account in** 18 **developing Basin Plan**

19 (1) Without limiting section 21, the Basin Plan must be prepared  
20 having regard to the fact that the Commonwealth and the Basin  
21 States have agreed:

22 (a) that critical human water needs are the highest priority water  
23 use for communities who are dependent on Basin water  
24 resources; and

25 (b) in particular that, to give effect to this priority in the River  
26 Murray System, conveyance water will receive first priority  
27 from the water available in the system.

28 (2) *Critical human water needs* are the needs for a minimum amount  
29 of water, that can only reasonably be provided from Basin water  
30 resources, required to meet:

31 (a) core human consumption requirements in urban and rural  
32 areas; and

33 (b) those non-human consumption requirements that a failure to  
34 meet would cause prohibitively high social, economic or  
35 national security costs.

- 1 (3) The *River Murray System* is the aggregate of:  
2 (a) the main course of the River Murray upstream of the eastern  
3 boundary of South Australia; and  
4 (b) all tributaries entering that part of the main course upstream  
5 of Doctors Point (near Albury); and  
6 (c) all effluents and anabranches of that part of the main course;  
7 and  
8 (d) the watercourses connecting Lake Victoria to the main  
9 course; and  
10 (e) the Darling River downstream of the Menindee Lakes  
11 Storage; and  
12 (f) the upper River Murray storages, namely:  
13 (i) Lake Victoria; and  
14 (ii) the Menindee Lakes Storage; and  
15 (iii) the storages formed by Dartmouth Dam and Hume  
16 Dam; and  
17 (iv) the storages formed by the weirs, and weirs and locks,  
18 described in Schedule A to the Agreement that are  
19 upstream of the eastern boundary of South Australia;  
20 and  
21 (g) the River Murray in South Australia.
- 22 (4) *Conveyance water* is water in the River Murray System required to  
23 deliver water to meet critical human water needs as far downstream  
24 as Wellington in South Australia.

25 **86B Basin Plan to provide for critical human water needs**

- 26 (1) The Basin Plan must:  
27 (a) include a statement of the amount of water required in each  
28 Basin State that is a referring State (other than Queensland)  
29 to meet the critical human water needs of the communities in  
30 the State that are dependent on the waters of the River  
31 Murray System; and  
32 (b) include a statement of the amount of conveyance water  
33 required to deliver the water referred to in paragraph (a); and  
34 (c) specify water quality trigger points and salinity trigger points  
35 at which water in the River Murray System becomes  
36 unsuitable for meeting critical human water needs.



- 1 (2) The reference in paragraph (1)(a) to communities in a Basin State  
2 who are dependent on the waters of the River Murray System does  
3 not include a reference to communities dependent on the waters of  
4 the Edward-Wakool System downstream of Stevens Weir.

5 **86C Additional matters relating to monitoring, assessment and risk**  
6 **management**

- 7 (1) The Basin Plan must also specify:  
8 (a) arrangements for monitoring matters relevant to critical  
9 human water needs, including monitoring the quality,  
10 quantity and flows of surface water, the health of ecosystems  
11 and social impacts on communities; and  
12 (b) the process for assessing, and managing risks to critical  
13 human water needs associated with, inflow prediction:  
14 (i) in the River Murray System; and  
15 (ii) in relation to works that are under the control of the  
16 body that is entitled, under the *Snowy Hydro*  
17 *Corporatisation Act 1997* of New South Wales, to the  
18 Snowy water licence within the meaning of that Act;  
19 and  
20 (c) the risk management approach for inter-annual planning  
21 relating to arrangements for critical human water needs in  
22 future years.
- 23 (2) The risk management approach referred to in paragraph (1)(c) must  
24 address the making of decisions about whether water is:  
25 (a) made available, in a particular year, for uses other than  
26 meeting critical human water needs; or  
27 (b) set aside for critical human water needs in future years.

28 **86D Additional matters relating to Tier 2 water sharing**  
29 **arrangements**

- 30 (1) The Basin Plan must also:  
31 (a) specify the conditions under which, due to the likelihood that  
32 the State water sharing arrangements that would apply but for  
33 this Part (*Tier 1 water sharing arrangements*) will not  
34 ensure that there is enough water to meet conveyance water  
35 needs:

- 1 (i) the Tier 1 water sharing arrangements cease to apply;  
2 and  
3 (ii) other State water sharing arrangements (***Tier 2 water***  
4 ***sharing arrangements***), provided for in the Agreement,  
5 commence; and  
6 (b) specify the conditions under which Tier 2 water sharing  
7 arrangements cease to apply and Tier 1 water sharing  
8 arrangements recommence; and  
9 (c) include a reserves policy that, for periods during which Tier 2  
10 water sharing arrangements apply:  
11 (i) specifies the annual volume of water required to be  
12 reserved to meet the shortfall in conveyance water  
13 worked out under subsection (2); and  
14 (ii) specifies the extent to which this volume may vary  
15 between years; and  
16 (iii) specifies the arrangements that are to apply to ensure  
17 that the volume of water required to meet the shortfall in  
18 conveyance water will be reserved and provided; and  
19 (iv) takes into account the potential inputs from the  
20 Murrumbidgee, Darling and Goulburn Rivers; and  
21 (d) specify arrangements for carrying water over in storage from  
22 one year to another for New South Wales, Victoria and South  
23 Australia; and  
24 (e) provide for any other matters necessary to give effect to  
25 arrangements for sharing water in the River Murray System  
26 and in the Murrumbidgee, Darling and Goulburn Rivers in  
27 order to provide conveyance water.
- 28 (2) The shortfall in conveyance water is worked out for the purposes  
29 of subparagraph (1)(c)(i) by subtracting:  
30 (a) the amount of conveyance water referred to in paragraph  
31 86B(1)(b); from  
32 (b) the minimum inflow sequence to the River Murray System  
33 from:  
34 (i) natural flows; and  
35 (ii) works that are under the control of the body that is  
36 entitled, under the *Snowy Hydro Corporatisation Act*  
37 *1997* of New South Wales, to the Snowy water licence  
38 within the meaning of that Act.
-

- 1 (3) The arrangements referred to in paragraph (1)(d) must:  
2 (a) recognise South Australia's right, as provided for in  
3 clauses 91 and 130 of the Agreement, to store its entitlement  
4 to water; and  
5 (b) recognise that each of New South Wales, Victoria and South  
6 Australia is responsible for meeting the critical human water  
7 needs of that State, and will decide how water from its share  
8 is used.

- 9 (4) *State water sharing arrangements* are the provisions of the  
10 Agreement that deal with the sharing of surface water in the River  
11 Murray System.

12 Note: The rules and accounting arrangements in the Agreement partition the  
13 shared surface water resource of the River Murray System between  
14 New South Wales and Victoria, and detail the entitlements to this  
15 water by South Australia. The Agreement includes provisions about  
16 the way in which the shares are defined, transferred and accounted for,  
17 access to and sharing of the storages, access to flows at different times  
18 and accounting for losses and overflows. All these provisions are used  
19 to determine the quantity of water in each State's share at any given  
20 time.

21 **86E Additional matters relating to Tier 3 water sharing**  
22 **arrangements**

- 23 (1) The Basin Plan must also:  
24 (a) specify the conditions under which, due to one or more of the  
25 circumstances referred to in subsection (2):  
26 (i) Tier 2 water sharing arrangements cease to apply; and  
27 (ii) other arrangements (*Tier 3 water sharing*  
28 *arrangements*), provided for in the Agreement,  
29 commence; and  
30 (b) specify the conditions under which Tier 3 water sharing  
31 arrangements cease to apply and Tier 2 water sharing  
32 arrangements recommence.
- 33 (2) For the purposes of paragraph (1)(a), the circumstances are:  
34 (a) there are extreme and unprecedented low levels of water  
35 availability in the River Murray System; or  
36 (b) there is extreme and unprecedented poor water quality in the  
37 water available in the River Murray System to meet critical  
38 human water needs; or

- 1 (c) there is an extremely high risk that water will not be available  
2 in the River Murray System to meet critical human water  
3 needs during the next 12 months.

4 **86F Emergency responses to the reaching of trigger points**

- 5 (1) If a water quality trigger point or salinity trigger point referred to in  
6 paragraph 86B(1)(c) is reached, the Authority must:  
7 (a) in consultation with the Basin Officials Committee,  
8 formulate an emergency response to ensure that water in the  
9 River Murray System that is available to meet critical human  
10 water needs is returned to a state suitable for meeting critical  
11 human water needs; and  
12 (b) subject to subsection (2), take the action necessary to  
13 implement the emergency response.
- 14 (2) The Authority must not take any action under paragraph (1)(b) that  
15 affects State water sharing arrangements or Border Rivers water  
16 sharing arrangements unless the Murray-Darling Basin Ministerial  
17 Council has agreed to the action.
- 18 (3) ***Border Rivers water sharing arrangements*** are the agreements  
19 ratified by:  
20 (a) the *New South Wales-Queensland Border Rivers Act 1947* of  
21 New South Wales; and  
22 (b) the *New South Wales-Queensland Border Rivers Act 1946* of  
23 Queensland;  
24 that deal with the distribution and use of surface water.

25 **86G Effect of this Part on Authority and other agencies of the**  
26 **Commonwealth**

- 27 (1) The Authority and other agencies of the Commonwealth must  
28 perform their functions, and exercise their powers, consistently  
29 with, and in a manner that gives effect to, the matters included or  
30 specified in the Basin Plan under this Part.
- 31 (2) Subsection (1) does not apply to the performance of a function, or  
32 the exercise of a power, that affects State water sharing  
33 arrangements or Border Rivers water sharing arrangements, unless:

- 1 (a) the Murray-Darling Basin Ministerial Council has agreed to  
2 the Basin Plan applying to the performance of the function or  
3 the exercise of the power; or  
4 (b) the performance of the function or the exercise of the power  
5 takes place at a time when, under clause 135 of the  
6 Agreement, the provisions of the Basin Plan required by this  
7 Part are taken to be a Schedule to the Agreement.
- 8 (3) To avoid doubt, subsection (1) does not apply to the Authority's  
9 functions and powers under this Part.

10 **86H Effect of this Part on other agencies and persons**

- 11 (1) The Basin Officials Committee, an agency of a Basin State that is a  
12 referring State or an agency of the Australian Capital Territory  
13 must not:  
14 (a) do an act in relation to Basin water resources if the act is  
15 inconsistent with any of the matters included or specified in  
16 the Basin Plan under this Part; or  
17 (b) fail to do an act in relation to Basin water resources if the  
18 failure to do that act is inconsistent with any of those matters.
- 19 (2) Subsection (1) applies to an act of the Basin Officials Committee,  
20 an agency of a Basin State that is a referring State or an agency of  
21 the Australian Capital Territory only if the act is one that relates to  
22 the use or management of the Basin water resources.
- 23 (3) An operating authority, an infrastructure operator or the holder of a  
24 water access right must not, in a Basin State that is a referring  
25 State, or in the Australian Capital Territory:  
26 (a) do an act in relation to Basin water resources if the act is  
27 inconsistent with any of the matters included or specified in  
28 the Basin Plan under this Part; or  
29 (b) fail to do an act in relation to Basin water resources if the  
30 failure to do that act is inconsistent with any of those matters.
- 31 (4) Subsection (1) or (3) does not apply to an act, or failure to act, that  
32 affects State water sharing arrangements or Border Rivers water  
33 sharing arrangements, unless:  
34 (a) the Murray-Darling Basin Ministerial Council has agreed to  
35 the Basin Plan applying to the act or failure; or

- 1 (b) the act or failure takes place at a time when, under clause 135  
2 of the Agreement, the provisions of the Basin Plan required  
3 by this Part are taken to be a Schedule to the Agreement.

4 **86J Additional powers of the Authority**

- 5 (1) The Authority has, in connection with:  
6 (a) the performance of its functions and duties under this Part;  
7 and  
8 (b) the exercise of its powers under this Part;  
9 such powers in a Basin State that is a referring State, or in the  
10 Australian Capital Territory, as it has in connection with the  
11 performance of its other functions under this Act.
- 12 (2) The application of subsection (1) to the Authority's powers under  
13 Part 10 in relation to premises in, or information held in, a referring  
14 State or the Australian Capital Territory is not limited by  
15 section 216 or 219 or by subsection 223(1) or 238(1).
- 16 (3) Part 10 so applies as if:  
17 (a) references in section 221 to the Authority's functions under  
18 section 219 included references to the Authority's functions  
19 under this Part; and  
20 (b) for the purposes of Subdivision C of Division 2 of that Part,  
21 references in the definition of *evidential material* in  
22 subsection 4(1) to Part 2 included references to this Part; and  
23 (c) references in subsections 224(3) and 225(2) to Part 2  
24 included references to this Part.
- 25 (4) However:  
26 (a) an authorised officer must not enter premises under  
27 Subdivision B of Division 2 of that Part as applied by this  
28 section unless he or she reasonably believes this is necessary  
29 for the performance of any of the Authority's functions under  
30 this Part; and  
31 (b) Subdivision B of Division 2 of that Part as applied by this  
32 section does not extend to entering premises for the purposes  
33 of:  
34 (i) monitoring compliance with this Part or regulations  
35 made for the purposes of this Part; or  
36 (ii) searching for evidential material; and

- 1 (c) an authorised officer must not:
- 2 (i) enter premises under Subdivision C of Division 2 of that
- 3 Part as applied by this section; or
- 4 (ii) exercise any of the powers described in subsection
- 5 223(2);
- 6 except to the extent that this is reasonably necessary to
- 7 monitor compliance with provisions of this Part or
- 8 regulations made for the purposes of this Part; and
- 9 (d) the Authority must not require a person to give information
- 10 under Division 3 of that Part as applied by this section unless
- 11 the Authority has reason to believe that information relating
- 12 to either of the following matters:
- 13 (i) the preparation and implementation of the Basin Plan in
- 14 the way provided for in this Part;
- 15 (ii) a matter that is relevant to the performance of the
- 16 Authority's functions under this Part and that is
- 17 specified in regulations made for the purposes of this
- 18 paragraph;
- 19 is in the person's possession, custody or control (whether
- 20 held electronically or in any other form).

21 **3 After Part 3**

22 Insert:

23 **Part 4—Basin water charge and water market rules**

24 **Division 1—Water charge rules**

25 **91 Regulated water charges**

- 26 (1) This Division applies to the following kinds of charges:
- 27 (a) fees or charges (however described) payable to an irrigation
- 28 infrastructure operator for:
- 29 (i) access to the operator's irrigation network (or services
- 30 provided in relation to that access); or
- 31 (ii) changing access to the operator's irrigation network (or
- 32 services provided in relation to that access); or
- 33 (iii) terminating access to the operator's irrigation network
- 34 (or services provided in relation to that access); or

- 1 (iv) surrendering to the operator a right to the delivery of  
2 water through the operator's irrigation network;  
3 (b) bulk water charges;  
4 (c) charges for water planning and water management activities;  
5 (d) a fee or charge (however described) that relates to:  
6 (i) access to water service infrastructure; or  
7 (ii) services provided in relation to access to water service  
8 infrastructure; or  
9 (iii) services provided through the operation of water service  
10 infrastructure; or  
11 (iv) the taking of water from a water resource;  
12 and is of a kind prescribed by the regulations for the purposes  
13 of this paragraph.
- 14 (2) This Division applies to a charge of the kind referred to in  
15 subsection (1) only to the extent to which the charge relates to:  
16 (a) Basin water resources; or  
17 (b) water service infrastructure that carries Basin water  
18 resources; or  
19 (c) water service infrastructure that carries water that has been  
20 taken from a Basin water resource; or  
21 (d) water access rights, irrigation rights or water delivery rights  
22 in relation to Basin water resources.
- 23 (3) However, this Division does not apply to charges in respect of  
24 urban water supply activities beyond the point at which the water  
25 has been removed from a Basin water resource.
- 26 (4) Charges to which this Division applies are *regulated water*  
27 *charges* for the purposes of this Act.

## 28 **92 Water charge rules**

- 29 (1) The Minister may make rules (to be called *water charge rules*),  
30 applying in Basin States that are referring States and in the  
31 Australian Capital Territory, that:  
32 (a) relate to regulated water charges; and  
33 (b) deal with one or more of the matters referred to in  
34 subsection (3); and
-



- 1 (c) contribute to achieving the Basin water charging objectives  
2 and principles set out in Schedule 2.
- 3 (2) Water charge rules are legislative instruments.
- 4 (3) Water charge rules may deal with the following matters:
- 5 (a) the rules that must be applied in determining the amount of:  
6 (i) regulated water charges generally; or  
7 (ii) regulated water charges of a particular kind;
- 8 (b) the terms and conditions that may, or must not, be imposed in  
9 relation to:  
10 (i) regulated water charges generally; or  
11 (ii) regulated water charges of a particular kind;
- 12 (c) the determination, or approval, by the ACCC of regulated  
13 water charges;
- 14 (d) the process to be followed in applying for, and making or  
15 giving, determinations or approvals of the kind referred to in  
16 paragraph (c);
- 17 (e) the accreditation by the ACCC of arrangements under which  
18 regulated water charges are determined or approved by  
19 agencies of the States (instead of by the ACCC);
- 20 (f) the process to be followed in applying for, and making or  
21 giving, accreditation of the kind referred to in paragraph (e);
- 22 (g) the terms and conditions on which arrangements are  
23 accredited under rules made for the purposes of paragraph (e)  
24 (including the determination of some or all of those terms  
25 and conditions by the ACCC);
- 26 (h) the obligations to be imposed in relation to the accreditation  
27 of arrangements under rules made for the purposes of  
28 paragraph (e) (including the determination of some or all of  
29 those obligations by the ACCC);
- 30 (i) the prohibition of regulated water charges of a particular kind  
31 in the circumstances specified in the rules;
- 32 (j) the imposition of a requirement on the person determining  
33 the amount of regulated water charges to publish:  
34 (i) the details of the charges; and  
35 (ii) the process for determining the amount of the charges;
- 36 (k) transitional arrangements for the introduction of, or changes  
37 to, water charge rules;
- 38 (l) any matter that was dealt with in:
-

- 1 (i) paragraph 15(3)(c) of Schedule E to the former MDB  
2 Agreement; or  
3 (ii) the Access and Exit Fees Protocol to the former MDB  
4 Agreement made under paragraph 6(1)(f) of Schedule E  
5 to the former MDB Agreement.
- 6 (4) Without limiting paragraph (3)(c), water charge rules may specify  
7 the effect, and duration, of a determination or approval of the kind  
8 referred to in that paragraph.
- 9 (5) Without limiting paragraph (3)(d), water charge rules may specify:  
10 (a) the information that an applicant for a determination or  
11 approval of the kind referred to in paragraph (3)(c) must give  
12 the ACCC in relation to the application; and  
13 (b) the timing of the steps in the process in which:  
14 (i) the application is made; and  
15 (ii) the determination is made or the approval is given.
- 16 (6) Without limiting paragraph (3)(e), the rules made for the purposes  
17 of that paragraph may provide for the circumstances in which:  
18 (a) an accreditation may be revoked; or  
19 (b) the terms and conditions on which an accreditation is given  
20 may be varied.
- 21 (7) Without limiting subsection (3), particular water charge rules may  
22 be limited to either or both of the following:  
23 (a) particular kinds of regulated water charges;  
24 (b) regulated water charges in relation to particular water  
25 resources.
- 26 (8) Without limiting subsection (3), water charge rules may provide  
27 that a particular provision of the rules is a civil penalty provision.
- 28 (9) The civil penalty for a contravention of a provision specified under  
29 subsection (8) is 200 penalty units.
- 30 (10) Without limiting subsection (3), water charge rules may provide  
31 that a person who suffers loss or damage as a result of conduct, or  
32 an omission, of another person that contravenes the water charge  
33 rules may recover the amount of the loss or damage by action  
34 against that other person or against any person involved in the  
35 contravention.
-

1 **93 Process for making water charge rules**

- 2 (1) The Minister must ask the ACCC for advice about water charge  
3 rules the Minister proposes to make, or about proposed  
4 amendments or revocations of rules.
- 5 (2) The ACCC must give the Minister advice about the proposed water  
6 charge rules, or proposed amendments or revocations.
- 7 (3) In giving advice to the Minister about proposed water charge rules,  
8 or proposed amendments or revocations, in relation to regulated  
9 water charges payable to infrastructure operators, the ACCC must  
10 have regard to:  
11 (a) the governance arrangements of those operators; and  
12 (b) the current charging arrangements of those operators; and  
13 (c) the history of the charging arrangements of those operators.
- 14 (4) The Minister must have regard to the ACCC's advice in making,  
15 amending or revoking the water charge rules.
- 16 (5) The regulations must provide for the process that the Minister is to  
17 follow in making, amending or revoking water charge rules.
- 18 (6) Without limiting subsection (5), the regulations must provide for:  
19 (a) consultations with the Basin States and with infrastructure  
20 operators; and  
21 (b) public consultations;  
22 as part of the process of making, amending or revoking water  
23 charge rules.
- 24 (7) If:  
25 (a) the Minister makes, amends or revokes water charge rules;  
26 and  
27 (b) the rules do not reflect the advice that the ACCC gave the  
28 Minister under subsection (2) in relation to the rules, or the  
29 amendments or revocations;  
30 the Minister must, when the rules, amendments or revocations are  
31 laid before a House of the Parliament under the *Legislative*  
32 *Instruments Act 2003*, also lay before that House a document that  
33 sets out:  
34 (c) the respects in which the rules, amendments or revocations  
35 do not reflect the advice given by the ACCC; and

1 (d) the Minister's reasons for departing from that advice.

2 **94 ACCC to monitor water charges and compliance**

- 3 (1) The ACCC is to monitor:  
4 (a) regulated water charges; and  
5 (b) compliance with the water charge rules.
- 6 (2) The ACCC must give the Minister a report on the results of such  
7 monitoring.
- 8 (3) The reports under subsection (2) must be given to the Minister in  
9 accordance with an agreement between the Minister and the  
10 ACCC.

11 **95 Minister may formulate model water charge rules**

- 12 (1) The Minister may formulate, in writing, model rules for regulated  
13 water charges.
- 14 Note: The model rules do not have any legal effect under this Act but are  
15 available for adoption by States, Territories, infrastructure operators  
16 and other persons.
- 17 (2) Model rules formulated under subsection (1) are not legislative  
18 instruments.

19 **96 Transitional provisions relating to water charge rules**

- 20 (1) A request that the Minister made to the ACCC before the  
21 commencement of this section, under subsection 93(1) as in force  
22 before that commencement, is taken after that commencement to  
23 be a request that the Minister made under that subsection as in  
24 force after that commencement.
- 25 (2) Regulations made before the commencement of this section for the  
26 purposes of subsection 93(5) or (6) as in force before that  
27 commencement continue in force after that commencement as if  
28 they were made for the purposes of that subsection as in force after  
29 that commencement.

1 **Division 2—Water market rules**

2 **97 Water market rules**

- 3 (1) The Minister may make rules (to be called *water market rules*),  
 4 applying in Basin States that are referring States and in the  
 5 Australian Capital Territory, that:
- 6 (a) relate to an act that an irrigation infrastructure operator does,  
 7 or fails to do, in a way that prevents or unreasonably delays  
 8 arrangements being made that would reduce the share  
 9 component of a water access entitlement of the operator to  
 10 allow:
    - 11 (i) a person’s entitlement to water under an irrigation right  
 12 against the operator; or
    - 13 (ii) a part of that entitlement;  
 14 to be permanently transformed into a water access  
 15 entitlement that is held by someone other than the operator;  
 16 and
  - 17 (b) contribute to achieving the Basin water market and trading  
 18 objectives and principles set out in Schedule 3.
- 19 Arrangements of the kind referred to in paragraph (a) are referred  
 20 to in this section as *transformation arrangements*.

- 21 (2) Water market rules are legislative instruments.
- 22 (3) Without limiting subsection (1), water market rules may deal with  
 23 the restrictions that an irrigation infrastructure operator may, or  
 24 may not, impose in relation to:
- 25 (a) transformation arrangements; or
  - 26 (b) the trading or transferring, by a person who had an irrigation  
 27 right against the operator, of a water access entitlement, or  
 28 part of such an entitlement, obtained as a result of  
 29 transformation arrangements.
- 30 (4) Without limiting subsection (3), the restrictions referred to in that  
 31 subsection include:
- 32 (a) restrictions imposed by including provisions in a contract,  
 33 arrangement or understanding between an irrigation  
 34 infrastructure operator and:
    - 35 (i) a person who has an irrigation right against the operator;  
 36 or

- 1 (ii) a person who has a water access entitlement, or part of  
2 such an entitlement, that the person obtained as a result  
3 of transformation arrangements in relation to an  
4 irrigation right the person had against the operator; and  
5 (b) restrictions imposed by the way in which an irrigation  
6 infrastructure operator conducts its operations.
- 7 (5) Without limiting subsection (1), water market rules may:  
8 (a) permit an irrigation infrastructure operator to require security  
9 before allowing:  
10 (i) a person who holds an irrigation right against the  
11 operator to obtain a water access entitlement, or part of  
12 such an entitlement, through transformation  
13 arrangements in relation to the irrigation right; or  
14 (ii) a person who has obtained a water access entitlement, or  
15 part of such an entitlement, as a result of transformation  
16 arrangements in relation to an irrigation right the person  
17 had against the operator to trade or transfer the water  
18 access entitlement, or part, obtained; and  
19 (b) provide for transitional arrangements in relation to contracts  
20 that have been entered into between an irrigation  
21 infrastructure operator and another person before water  
22 market rules are made or amended.
- 23 (6) Water market rules must not prevent an irrigation infrastructure  
24 operator from:  
25 (a) imposing, or requiring the payment of, a regulated water  
26 charge; or  
27 (b) requiring the approval of a person who holds a legal or  
28 equitable interest in an irrigation right that a person has  
29 against the operator before allowing transformation  
30 arrangements in relation to that irrigation right.
- 31 (7) Without limiting subsection (1), water market rules may provide  
32 that a particular provision of the rules is a civil penalty provision.
- 33 (8) The civil penalty for a contravention of a provision specified under  
34 subsection (7) is 200 penalty units.
- 35 (9) Without limiting subsection (1), water market rules may provide  
36 that a person who suffers loss or damage as a result of conduct, or  
37 an omission, of another person that contravenes the water market
-

1 rules may recover the amount of the loss or damage by action  
2 against that other person or against any person involved in the  
3 contravention.

4 (10) No claim, action or demand may be made, asserted or taken against  
5 an irrigation infrastructure operator for anything done by the  
6 operator solely for the purpose of complying with water market  
7 rules.

8 (11) Before the Basin Plan first takes effect, this section applies in  
9 relation to any entitlement that is a perpetual or ongoing  
10 entitlement, by or under a law of a State or Territory, to exclusive  
11 access to a share of the Basin water resources as if the entitlement  
12 were a water access entitlement.

### 13 **98 Process for making water market rules**

14 (1) The Minister must ask the ACCC for advice about water market  
15 rules the Minister proposes to make, or about proposed  
16 amendments or revocations of rules.

17 (2) The ACCC must give the Minister advice about the proposed water  
18 market rules, or proposed amendments or revocations.

19 (3) The Minister must have regard to the ACCC's advice in making,  
20 amending or revoking the water market rules.

21 (4) The regulations must provide for the process that the Minister is to  
22 follow in making, amending or revoking water market rules.

23 (5) Without limiting subsection (4), the regulations must provide for:  
24 (a) consultations with the Basin States and with infrastructure  
25 operators; and  
26 (b) public consultations;  
27 as part of the process of making, amending or revoking water  
28 market rules.

29 (6) If:  
30 (a) the Minister makes, amends or revokes water market rules;  
31 and  
32 (b) the rules do not reflect the advice that the ACCC gave the  
33 Minister under subsection (2) in relation to the rules, or the  
34 amendments or revocations;

1 the Minister must, when the rules, amendments or revocations are  
2 laid before a House of the Parliament under the *Legislative*  
3 *Instruments Act 2003*, also lay before that House a document that  
4 sets out:

- 5 (c) the respects in which the rules, amendments or revocations  
6 do not reflect the advice given by the ACCC; and  
7 (d) the Minister's reasons for departing from that advice.

8 **99 ACCC to monitor transformation arrangements and compliance**

- 9 (1) The ACCC is to monitor:  
10 (a) transformation arrangements; and  
11 (b) compliance with the water market rules.  
12 (2) The ACCC must give the Minister a report on the results of such  
13 monitoring.  
14 (3) The reports under subsection (2) must be given to the Minister in  
15 accordance with an agreement between the Minister and the  
16 ACCC.

17 **100 Transitional provisions relating to water market rules**

- 18 (1) A request that the Minister made to the ACCC before the  
19 commencement of this section, under subsection 98(1) as in force  
20 before that commencement, is taken after that commencement to  
21 be a request that the Minister made under that subsection as in  
22 force after that commencement.  
23 (2) Regulations made before the commencement of this section for the  
24 purposes of subsection 98(4) or (5) as in force before that  
25 commencement continue in force after that commencement as if  
26 they were made for the purposes of that subsection as in force after  
27 that commencement.

28 **Division 3—Miscellaneous**

29 **100A Functions and powers of the ACCC**

30 The ACCC has, for the purposes of this Part:

- 31 (a) the functions and powers conferred on it under Part 8 as an  
32 appropriate enforcement agency; and
-



1 (b) the functions and powers conferred on it under section 155 of  
2 the *Trade Practices Act 1974*.

3 **4 Before Part 5**

4 Insert:

5 **Part 4A—Extended operation of Basin water**  
6 **charge and water market rules**  
7

8 **100B Extended operation of Basin water charge rules**

- 9 (1) Water charge rules, and Division 1 of Part 4, apply in relation to all  
10 of the water resources in a referring State, or part of a referring  
11 State, that are not Basin water resources if:  
12 (a) a law of the State provides that this section applies to the  
13 State, or that part of the State; and  
14 (b) the regulations provide that this section applies to the State,  
15 or that part of the State.
- 16 (2) Water charge rules, and Division 1 of Part 4, apply in relation to all  
17 of the water resources in the Northern Territory, or part of the  
18 Territory, if:  
19 (a) a law of the Northern Territory provides that this section  
20 applies to the Territory, or that part of the Territory; and  
21 (b) the regulations provide that this section applies to the  
22 Northern Territory, or that part of the Territory.
- 23 (3) However, water charge rules, and Division 1 of Part 4, do not  
24 apply in relation to:  
25 (a) water resources that are prescribed by the regulations for the  
26 purposes of this paragraph; and  
27 (b) urban water supply activities beyond the point at which the  
28 water has been removed from a water resource in the  
29 referring State, or the Northern Territory.
- 30 (4) This section has effect despite subsection 91(2).
- 31 (5) This section does not affect the operation of Part 4 in relation to  
32 Basin water resources.

1       **100C Extended operation of Basin water market rules**

- 2               (1) Water market rules, and Division 2 of Part 4, apply in relation to  
3               all the non-Basin water access entitlements in a referring State, or  
4               in a particular area of a referring State, if:  
5               (a) a law of the State provides that this section applies in relation  
6               to the non-Basin water access entitlements in the State, or in  
7               that area of the State; and  
8               (b) the regulations provide that this section applies in relation to  
9               the non-Basin water access entitlements in the State, or in  
10              that area of the State.
- 11             (2) Water market rules, and Division 2 of Part 4, apply in relation to  
12             all the non-Basin water access entitlements in the Northern  
13             Territory, or in a particular area of the Northern Territory if:  
14             (a) a law of the Northern Territory provides that this section  
15             applies in relation to the non-Basin water access entitlements  
16             in the Territory, or in that area of the Territory; and  
17             (b) the regulations provide that this section applies in relation to  
18             the non-Basin water access entitlements in the Territory, or in  
19             that area of the Territory.
- 20             (3) However, water market rules, and Division 2 of Part 4, do not  
21             apply in relation to non-Basin water access entitlements that are  
22             prescribed by the regulations for the purposes of this subsection.
- 23             (4) Water market rules, and Division 2 of Part 4, apply for the  
24             purposes of this section as if non-Basin water access entitlements  
25             were water access entitlements.
- 26             (5) A *non-Basin water access entitlement* is a perpetual or ongoing  
27             entitlement, by or under a law of a State or Territory, to exclusive  
28             access to a share of the water resources of an area in the State or  
29             Territory that are not Basin water resources.
- 30             (6) This section does not affect the operation of Part 4 in relation to  
31             Basin water resources.

32       **100D Functions and powers of the ACCC**

- 33               The ACCC has, for the purposes of this Part:  
34               (a) the functions and powers conferred on it under Part 8 as an  
35               appropriate enforcement agency; and
-

1 (b) the functions and powers conferred on it under section 155 of  
2 the *Trade Practices Act 1974*.

3 **5 After Part 10**

4 Insert:

5 **Part 10A—Transitional matters relating to the**  
6 **Murray-Darling Basin Commission**

7 **Division 1—Preliminary**

8 **239A Definitions**

9 In this Act:

10 *former MDB Agreement* has the same meaning as *Agreement* had  
11 in the *Murray-Darling Basin Act 1993* immediately before the  
12 commencement of Schedule 2 to the *Water Amendment Act 2008*,  
13 including all of the changes to that agreement that the former  
14 Murray-Darling Basin Ministerial Council had agreed to before the  
15 commencement of that Schedule.

16 *former Murray-Darling Basin Ministerial Council* has the same  
17 meaning as *Murray-Darling Basin Ministerial Council* had in this  
18 Act immediately before the commencement of Schedule 2 to the  
19 *Water Amendment Act 2008*.

20 *Murray-Darling Basin Commission* has the same meaning as  
21 *Commission* had in the *Murray-Darling Basin Act 1993*  
22 immediately before the commencement of Schedule 2 to the *Water*  
23 *Amendment Act 2008*.

24 **239B Application of this Part**

25 This Part applies if each of the Basin States (other than the  
26 Australian Capital Territory) is a referring State.

1 **Division 2—Assets, liabilities and legal proceedings**

2 **239C Vesting of assets of Murray-Darling Basin Commission**

- 3 (1) On the commencement of this Part, the transitional assets of the  
4 Murray-Darling Basin Commission immediately before that  
5 commencement:  
6 (a) cease to be assets of the Murray-Darling Basin Commission;  
7 and  
8 (b) become assets of the Authority without any conveyance,  
9 transfer or assignment.
- 10 (2) The Authority becomes the successor in law in relation to the  
11 transitional assets.
- 12 (3) A *transitional asset* is:  
13 (a) any legal or equitable estate or interest in real or personal  
14 property, whether actual, contingent or prospective; or  
15 (b) any right, power, privilege or immunity, whether actual,  
16 contingent or prospective;  
17 but does not include a right, power, privilege or immunity  
18 conferred by:  
19 (c) an Act; or  
20 (d) regulations or other subordinate legislation made under an  
21 Act; or  
22 (e) the *Murray-Darling Basin Act 1992* of New South Wales; or  
23 (f) the *Murray-Darling Basin Act 1993* of Victoria; or  
24 (g) the *Murray-Darling Basin Act 1996* of Queensland; or  
25 (h) the *Murray-Darling Basin Act 1993* of South Australia; or  
26 (i) the former MDB Agreement.

27 **239D River Murray Operations assets unaffected**

- 28 (1) This Part does not affect:  
29 (a) the ownership or control of River Murray Operations assets;  
30 or  
31 (b) the application of the Agreement in relation to River Murray  
32 Operations assets.
- 33 (2) *River Murray Operations assets* are:

- 1 (a) the works set out in Schedule A to the former MDB  
2 Agreement; and  
3 (b) any other works the construction of which was authorised  
4 under subclause 50(1) of the former MDB Agreement  
5 (including any works authorised under Schedule C to the  
6 former MDB Agreement); and  
7 (c) any other assets purchased with amounts paid by the  
8 Murray-Darling Basin Commission under subclause 73(1) of  
9 the former MDB Agreement.

10 Note: The Agreement provides for how these assets are to be dealt with  
11 (including in accordance with directions given by the Authority).

12 **239E Living Murray Initiative assets unaffected**

- 13 (1) This Part does not affect:  
14 (a) the ownership or control of Living Murray Initiative assets;  
15 or  
16 (b) the application of the Living Murray Initiative in relation to  
17 Living Murray Initiative assets.
- 18 (2) *Living Murray Initiative assets* are:  
19 (a) water access rights, water delivery rights, irrigation rights or  
20 other similar rights relating to water; or  
21 (b) interests in, or in relation to, such rights;  
22 that are held by a person for the purposes of the Living Murray  
23 Initiative, but do not include the legal title to such rights or  
24 interests if the legal title was held by the Murray-Darling Basin  
25 Commission in its own name immediately before the  
26 commencement of this Part.

27 **239F Vesting of liabilities of Murray-Darling Basin Commission**

- 28 (1) On the commencement of this Part, the transitional liabilities of the  
29 Murray-Darling Basin Commission immediately before that  
30 commencement:  
31 (a) cease to be liabilities of the Murray-Darling Basin  
32 Commission; and  
33 (b) become liabilities of the Authority without any conveyance,  
34 transfer or assignment.

- 1 (2) The Authority becomes the successor in law in relation to the  
2 transitional liabilities.
- 3 (3) A **transitional liability** is any liability, duty or obligation, whether  
4 actual, contingent or prospective, but does not include a liability,  
5 duty or obligation imposed by:
- 6 (a) an Act; or  
7 (b) regulations or other subordinate legislation made under an  
8 Act; or  
9 (c) the *Murray-Darling Basin Act 1992* of New South Wales; or  
10 (d) the *Murray-Darling Basin Act 1993* of Victoria; or  
11 (e) the *Murray-Darling Basin Act 1996* of Queensland; or  
12 (f) the *Murray-Darling Basin Act 1993* of South Australia; or  
13 (g) the former MDB Agreement.
- 14 (4) To avoid doubt, this section does not apply to liabilities that relate  
15 to River Murray Operations assets or Living Murray Initiative  
16 assets, except to the extent that they are liabilities of the  
17 Murray-Darling Basin Commission immediately before the  
18 commencement of this Part.
- 19 Note: The Agreement provides for the Basin States to indemnify the  
20 Authority for liabilities that were, before the commencement of this  
21 Part, liabilities of the Murray-Darling Basin Commission relating to  
22 River Murray Operations assets.

23 **239G Certificates relating to vesting of land etc.**

- 24 (1) This section applies if:
- 25 (a) any legal or equitable estate or interest in real property,  
26 whether actual, contingent or prospective (a **real property**  
27 **asset**), vests in the Authority under this Part; and  
28 (b) there is lodged, with the Registrar of Titles or other proper  
29 officer of the State or Territory in which the real property  
30 asset is situated, a certificate that:
- 31 (i) is signed by the Minister; and  
32 (ii) identifies the real property asset, whether by reference  
33 to a map or otherwise; and  
34 (iii) states that the real property asset has become vested in  
35 the Authority under this Part.
- 36 (2) The Registrar of Titles or other officer may:
-

- 1 (a) register the matter in a way that is the same as, or similar to,  
2 the way in which dealings in real property assets of that kind  
3 are registered; and  
4 (b) deal with, and give effect to, the certificate.
- 5 (3) A certificate made under paragraph (1)(b) is not a legislative  
6 instrument.

7 **239H Certificates relating to vesting of assets other than land etc.**

- 8 (1) This section applies if:  
9 (a) any transitional asset other than a real property asset vests in  
10 the Authority under this Part; and  
11 (b) there is lodged, with the person or authority who, under a law  
12 of the Commonwealth, a State or a Territory, under a trust  
13 instrument or otherwise, has responsibility for keeping a  
14 register in relation to assets of the kind concerned, a  
15 certificate that:  
16 (i) is signed by the Minister; and  
17 (ii) identifies the transitional asset; and  
18 (iii) states that the transitional asset has become vested in the  
19 Authority under this Part.
- 20 (2) The person or authority may:  
21 (a) deal with, and give effect to, the certificate as if it were a  
22 proper and appropriate instrument for transactions in relation  
23 to assets of that kind; and  
24 (b) make such entries in the register as are necessary having  
25 regard to the effect of this Part.
- 26 (3) A certificate made under paragraph (1)(b) is not a legislative  
27 instrument.

28 **239J Substitution of Authority as a party to pending proceedings**

- 29 (1) If any proceedings to which:  
30 (a) the Murray-Darling Basin Commission; or  
31 (b) a person in the person's capacity as the President or a  
32 Commissioner;  
33 was a party were pending in any court or tribunal immediately  
34 before the commencement of this Part, from that commencement

1 the Authority is substituted for the Murray-Darling Basin  
2 Commission or the person as a party to the proceedings.

3 (2) The *President* is the person appointed in accordance with  
4 subclause 20(1) of the former MDB Agreement, and includes a  
5 Deputy President appointed under subclause 20(3) (in the capacity  
6 of Deputy President or acting President).

7 (3) A *Commissioner* is a person appointed in accordance with  
8 subclause 20(2) of the former MDB Agreement, and includes a  
9 Deputy Commissioner appointed under that subclause.

10 Note: The Agreement provides for the Basin States to indemnify the  
11 Authority for a share of the costs associated with, or arising from,  
12 proceedings covered by this section.

13 **239K Rights to sue President or Commissioner become rights to sue**  
14 **Authority**

15 If a right to sue a person, in the person's capacity as the President  
16 or a Commissioner, existed immediately before the commencement  
17 of this Part, but had not been exercised, from that commencement  
18 the right to sue:

- 19 (a) ceases to be a right to sue the person; and  
20 (b) becomes a right to sue the Authority.

21 Note: The Agreement provides for the Basin States to indemnify the  
22 Authority for a share of the costs associated with rights covered by  
23 this section.

24 **239L President's or Commissioner's rights to sue become rights of**  
25 **Authority**

26 If a person's right to sue, in the person's capacity as the President  
27 or a Commissioner, existed immediately before the commencement  
28 of this Part, but had not been exercised, from that commencement  
29 the right to sue:

- 30 (a) ceases to be a right of the person; and  
31 (b) becomes a right of the Authority.



1 **239M Transfer of custody of Murray-Darling Basin Commission**  
2 **records**

- 3 (1) On the commencement of this Part, each record or document that  
4 was in the custody of the Murray-Darling Basin Commission  
5 immediately before that commencement is to be transferred into  
6 the custody of the Authority.
- 7 (2) If, immediately before the commencement of this Part, the  
8 Murray-Darling Basin Commission owed a duty of confidence to a  
9 person in relation to a record or document transferred under this  
10 section, the Authority owes the same duty of confidence to the  
11 person after the transfer.

12 **Division 3—Effect on instruments and things done**

13 **239N References in certain instruments to Murray-Darling Basin**  
14 **Commission etc.**

- 15 (1) If a transitional instrument is one or more of the following:  
16 (a) an instrument that was made by the Murray-Darling Basin  
17 Commission;  
18 (b) an instrument to which the Murray-Darling Basin  
19 Commission was a party;  
20 (c) an instrument that was given to, or in favour of, the  
21 Murray-Darling Basin Commission;  
22 (d) an instrument under which any right or liability accrues or  
23 may accrue to the Murray-Darling Basin Commission;  
24 (e) any other instrument in which a reference is made to the  
25 Murray-Darling Basin Commission;  
26 it continues to have effect from the commencement of this Part as  
27 if:  
28 (f) references in the transitional instrument to the  
29 Murray-Darling Basin Commission (however described)  
30 were references to the Authority; and  
31 (g) references in the transitional instrument to the former  
32 Murray-Darling Basin Ministerial Council (however  
33 described) were references to the Murray-Darling Basin  
34 Ministerial Council; and  
35 (h) references in the transitional instrument to the contracting  
36 governments under the former MDB Agreement (however

- 1 described) were references to the contracting governments  
2 under the Agreement; and
- 3 (i) in the case of a protocol made under a Schedule to the former  
4 MDB Agreement:
- 5 (i) references in the protocol to the former MDB  
6 Agreement were references to the Agreement; and
- 7 (ii) references in the protocol to provisions of, or Schedules  
8 to, the former MDB Agreement were references to the  
9 corresponding provisions of, or Schedules to, the  
10 Agreement; and
- 11 (iii) references in the protocol to other protocols made under  
12 Schedules to the former MDB Agreement were  
13 references to the corresponding protocols made under  
14 Schedules to the Agreement.
- 15 (2) However, subsection (1) does not apply to a transitional instrument  
16 specified in the regulations.
- 17 (3) If the regulations specify a transitional instrument for the purposes  
18 of subsection (2), the regulations may also provide one or more of  
19 the following:
- 20 (a) that the transitional instrument has effect as if references in  
21 the transitional instrument to the Murray-Darling Basin  
22 Commission (however described) were references as  
23 specified in the regulations;
- 24 (b) that the transitional instrument has effect as if references in  
25 the transitional instrument to the former Murray-Darling  
26 Basin Ministerial Council (however described) were  
27 references as specified in the regulations;
- 28 (c) that the transitional instrument has effect as if references in  
29 the transitional instrument to the contracting governments  
30 (however described) were references as specified in the  
31 regulations;
- 32 (d) in the case of a protocol made under a Schedule to the former  
33 MDB Agreement—that the transitional instrument has effect  
34 as if references to one or more of the following:
- 35 (i) the former MDB Agreement;
- 36 (ii) provisions of, or Schedules to, the former MDB  
37 Agreement;
- 38 (iii) other protocols made under Schedules to the former  
39 MDB Agreement;
-

1 were references as specified in the regulations.

2 (4) A *transitional instrument* is:

3 (a) an instrument of a legislative character; or

4 (b) an instrument of an administrative character (including a  
5 resolution made by the Murray-Darling Basin Commission);  
6 or

7 (c) a contract, arrangement or understanding;

8 that was in force immediately before the commencement of this  
9 Part, but does not include an Act, a State Act or an Act of a  
10 Territory.

11 **239P Things done by, or in relation to, the Murray-Darling Basin**  
12 **Commission etc. under Acts and instruments**

13 (1) If, before the commencement of this Part, a thing was done by or in  
14 relation to the Murray-Darling Basin Commission, or a committee  
15 of the Murray-Darling Basin Commission, under:

16 (a) a provision (the *authorising provision*) of an Act, other than  
17 a provision of the MDB Act; or

18 (b) a provision (the *authorising provision*) of an instrument  
19 made under a provision of an Act, other than a provision of  
20 the MDB Act;

21 then the thing done has effect from that commencement as if it had  
22 been done by or in relation to the Authority, or the corresponding  
23 committee of the Authority, under the authorising provision as in  
24 force from that commencement.

25 (2) However, if the thing done is included in a class of things specified  
26 in the regulations, it has effect from that commencement as if it  
27 had been done by or in relation to the person or body specified in  
28 the regulations under the authorising provision as in force from that  
29 commencement.

30 (3) This section does not change the time at which the thing was  
31 actually done.

32 (4) The regulations may:

33 (a) provide that this section does not apply to a specified class of  
34 things done; or

35 (b) clarify how a thing has effect as mentioned in subsection (1)  
36 or (2).

1 **239Q Things done under the former MDB Agreement**

2 (1) If:

3 (a) a thing was done before the commencement of this Part  
4 under a provision of the former MDB Agreement, by or in  
5 relation to, or pursuant to a resolution of, a body or person;  
6 and

7 (b) the thing still had effect immediately before that  
8 commencement; and

9 (c) the regulations specify:

10 (i) a provision of the Agreement to be the corresponding  
11 provision to the provision referred to in paragraph (a);  
12 and

13 (ii) in relation to that corresponding provision, a body or  
14 person to be the corresponding body or person to the  
15 body or person referred to in that paragraph;

16 the thing done has effect from that commencement as if it had been  
17 done under the corresponding provision by or in relation to, or  
18 pursuant to a resolution of, the corresponding body or person.

19 (2) Regulations made for the purposes of paragraph (1)(c):

20 (a) may specify:

21 (i) a part of a provision of the Agreement to be the  
22 corresponding provision to a provision referred to in  
23 paragraph (1)(a); or

24 (ii) a provision of the Agreement, or a part of a provision of  
25 the Agreement, to be the corresponding provision to a  
26 part of a provision referred to in paragraph (1)(a); and

27 (b) may specify different corresponding bodies or persons in  
28 relation to different parts of a provision of the Agreement.

29 This subsection may be applied in relation to the different ways in  
30 which a provision can operate as if each of those ways were a  
31 different part of the provision.

32 (3) If:

33 (a) a thing was done before the commencement of this Part  
34 under a provision of the former MDB Agreement, by or in  
35 relation to, or pursuant to a resolution of, the Murray-Darling  
36 Basin Commission; and

37 (b) the thing still had effect immediately before that  
38 commencement; and

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- 1 (c) the provision has a corresponding provision in the  
2 Agreement; and  
3 (d) subsection (1) does not apply;  
4 the thing done has effect from that commencement as if it had been  
5 done under the corresponding provision by or in relation to, or  
6 pursuant to a resolution of, the Authority.
- 7 (4) However, subsection (3) does not apply to a thing specified in the  
8 regulations.
- 9 (5) The application of subsection (1), (2) or (3) to the making of an  
10 instrument is not taken, for the purposes of the *Legislative*  
11 *Instruments Act 2003*, to constitute the making of a legislative  
12 instrument by:  
13 (a) in the case of subsection (1) or (2)—the corresponding body  
14 or person referred to in that subsection; or  
15 (b) in the case of subsection (3)—the Authority.
- 16 (6) This section applies to protocols to the former MDB Agreement as  
17 if they were provisions of the former MDB Agreement, and applies  
18 to protocols to the Agreement as if they were provisions of the  
19 Agreement.

20 **239R Continuation of committees established by Murray-Darling**  
21 **Basin Commission**

22 If:

- 23 (a) the Murray-Darling Basin Commission established a  
24 committee before the commencement of this Part; and  
25 (b) the committee was in existence immediately before that  
26 commencement;  
27 the committee continues in existence after that commencement as  
28 if the Authority had, on that commencement, established it under  
29 section 203 and appointed its members under section 204.

30 **239S Continuation of Murray-Darling Basin Commission's**  
31 **corporate plan**

- 32 (1) For the purposes of this Act and the Agreement, the corporate plan  
33 of the Murray-Darling Basin Commission in force immediately  
34 before the commencement of this Part (the *Commission's*  
35 *corporate plan*) is taken, from that commencement:

- 1 (a) to be a corporate plan approved by the Murray-Darling Basin  
2 Ministerial Council under clause 34 of the Agreement; and  
3 (b) to be included, under paragraph 213A(3)(a), in any corporate  
4 plan of the Authority that was in force immediately before  
5 that commencement.
- 6 (2) The Authority must, as soon as practicable after that  
7 commencement:  
8 (a) review the Commission's corporate plan; and  
9 (b) if the Authority considers it necessary or desirable for there  
10 to be a significant variation to the plan—prepare a draft  
11 amendment, and provide it to the Basin Officials Committee,  
12 in accordance with the Agreement.

## 13 **Division 4—Financial matters**

### 14 **239T Financial matters**

- 15 (1) The following amounts (the *transitional amounts*) must be  
16 credited to the Murray-Darling Basin Special Account:  
17 (a) amounts that, immediately before the commencement of this  
18 Part, are in bank accounts referred to in subclause 79(1) of  
19 the former MDB Agreement;  
20 (b) all other amounts in the Murray-Darling Basin Commission's  
21 possession, custody or control immediately before that  
22 commencement.
- 23 (2) If:  
24 (a) under an arrangement (other than the former MDB  
25 Agreement), a State paid the Murray-Darling Basin  
26 Commission an amount for the purposes of the performance  
27 of the Murray-Darling Basin Commission's functions; and  
28 (b) all or part of that amount is a transitional amount;  
29 then:  
30 (c) for the purposes of spending the transitional amount, the  
31 functions of the Authority include those functions of the  
32 Murray-Darling Basin Commission; and  
33 (d) the Authority must spend the transitional amount in  
34 accordance with that arrangement and not otherwise.
- 35 (3) Sections 210 and 211 have effect subject to this section.

1 **Division 5—Miscellaneous**

2 **239U Exemption from stamp duty and other State or Territory taxes**

- 3 (1) No stamp duty or other tax is payable under a law of a State or a  
4 Territory in respect of either of the following matters (*exempt*  
5 *matters*):  
6 (a) the vesting of a transitional asset or transitional liability  
7 under this Part;  
8 (b) the operation of this Part in any other respect;  
9 or anything connected with an exempt matter.
- 10 (2) The Minister may certify in writing:  
11 (a) that a specified matter is an exempt matter; or  
12 (b) that a specified thing is connected with a specified exempt  
13 matter.
- 14 (3) A certificate made under subsection (2) is not a legislative  
15 instrument.
- 16 (4) The Minister may, by legislative instrument, certify in writing:  
17 (a) that matters included in a specified class are exempt matters;  
18 or  
19 (b) that things included in a specified class are connected with  
20 exempt matters included in a specified class.
- 21 (5) In all courts, and for all purposes (other than for the purposes of  
22 criminal proceedings), a certificate under subsection (2) or (4) is  
23 prima facie evidence of the matters stated in the certificate.

24 **239V Certificates taken to be authentic**

25 A document that appears to be a certificate made or issued under a  
26 particular provision of this Part:  
27 (a) is taken to be such a certificate; and  
28 (b) is taken to have been properly made or issued;  
29 unless the contrary is established.

1 **239W Regulations**

- 2 (1) The regulations may provide for other transitional measures  
3 relating to the replacement of:  
4 (a) the Murray-Darling Basin Commission; or  
5 (b) the former MDB Agreement; or  
6 (c) the former Murray-Darling Basin Ministerial Council.
- 7 (2) Without limiting subsection (1), regulations under that subsection  
8 may provide for powers of the Murray-Darling Basin Commission  
9 or the former Murray-Darling Basin Ministerial Council:  
10 (a) that were exercisable under the former MDB Agreement; and  
11 (b) that are not otherwise provided for in this Act;  
12 to be exercised by the Authority, the Basin Officials Committee or  
13 the Murray-Darling Basin Ministerial Council.
- 14 (3) Without limiting subsection (1), regulations under that subsection  
15 may provide for the ownership or control of weir no.5 Redbank  
16 and weir no.7 Maude.
- 17 (4) Regulations made for the purposes of subsection (3) have effect  
18 despite section 239D.

19 **6 After Part 11**

20 Insert:

21 **Part 11A—Interactions with State laws**  
22

23 **250A Meaning of *Commonwealth water legislation***

24 In this Act:

25 ***Commonwealth water legislation*** means this Act, the regulations  
26 or any other instrument made under this Act.

27 **250B Concurrent operation intended**

- 28 (1) The Commonwealth water legislation is not intended to exclude or  
29 limit the concurrent operation of any law of a State.
- 30 (2) If:



- 1 (a) an act or omission of a person is both an offence against the  
2 Commonwealth water legislation and an offence against the  
3 law of a State; and  
4 (b) the person is convicted of either of those offences;  
5 the person is not liable to be convicted of the other of those  
6 offences.
- 7 (3) This section does not apply to a law of a State if there is a direct  
8 inconsistency between the Commonwealth water legislation and  
9 that law of a State.

10 Note: Section 250D avoids direct inconsistency arising in some cases by  
11 limiting the operation of the Commonwealth water legislation.

12 **250C Commonwealth water legislation does not apply to matters**  
13 **declared by law of referring State to be excluded matters**

- 14 (1) Subsection (2) applies if a provision of a law of a referring State  
15 declares a matter to be an excluded matter for the purposes of this  
16 section in relation to:  
17 (a) the whole of the Commonwealth water legislation; or  
18 (b) a specified provision of the Commonwealth water legislation;  
19 or  
20 (c) the Commonwealth water legislation other than a specified  
21 provision; or  
22 (d) the Commonwealth water legislation otherwise than to a  
23 specified extent.
- 24 (2) By force of this subsection:  
25 (a) none of the provisions of the Commonwealth water  
26 legislation (other than this section) applies in or in relation to  
27 the State with respect to the matter if the declaration is one to  
28 which paragraph (1)(a) applies; and  
29 (b) the specified provision of the Commonwealth water  
30 legislation does not apply in or in relation to the State with  
31 respect to the matter if the declaration is one to which  
32 paragraph (1)(b) applies; and  
33 (c) the provisions of the Commonwealth water legislation (other  
34 than this section and the specified provisions) do not apply in  
35 or in relation to the State with respect to the matter if the  
36 declaration is one to which paragraph (1)(c) applies; and

1 (d) the provisions of the Commonwealth water legislation (other  
2 than this section and otherwise than to the specified extent)  
3 do not apply in or in relation to the State with respect to the  
4 matter if the declaration is one to which paragraph (1)(d)  
5 applies.

6 (3) Subsection (2) does not apply to the declaration to the extent to  
7 which the regulations provide that that subsection does not apply to  
8 that declaration.

9 (4) In this section:

10 *matter* includes act, omission, body, person or thing.

11 **250D Avoiding direct inconsistency arising between the**  
12 **Commonwealth water legislation and laws of referring**  
13 **States**

14 *Section overrides other provisions of the Commonwealth water*  
15 *legislation*

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

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

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

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

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

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

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

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

8                    *Other cases*

- 9                    (5) The Commonwealth provision does not operate in or in relation to  
10                    the State to the extent necessary to ensure that no inconsistency  
11                    arises between:  
12                         (a) the Commonwealth provision; and  
13                         (b) the State provision to the extent to which the State provision  
14                         would, but for this subsection, be inconsistent with the  
15                         Commonwealth provision.

16                    Note 1:    The State provision is not covered by this subsection if subsection (4)  
17                    applies to the State provision: if that subsection applies there would be  
18                    no potential inconsistency to be dealt with by this subsection.

19                    Note 2:    The operation of the State provision will be supported by  
20                    section 250B to the extent to which it can operate concurrently with  
21                    the Commonwealth provision.

- 22                    (6) Subsections (4) and (5) do not apply in relation to the State  
23                    provision to the extent to which the regulations provide that those  
24                    subsections do not apply in relation to the State provision.

25                    **250E Regulations may modify operation of the Commonwealth**  
26                    **water legislation to deal with interaction between that**  
27                    **legislation and laws of referring States**

- 28                    (1) The regulations may modify the operation of the Commonwealth  
29                    water legislation so that:  
30                         (a) provisions of the Commonwealth water legislation do not  
31                         apply to a matter that is dealt with by a law of a referring  
32                         State specified in the regulations; or  
33                         (b) no inconsistency arises between the operation of a provision  
34                         of the Commonwealth water legislation and the operation of  
35                         a provision of a law of a referring State specified in the  
36                         regulations.

- 1 (2) Without limiting subsection (1), regulations made for the purposes  
2 of that subsection may provide that a provision of the  
3 Commonwealth water legislation:  
4 (a) does not apply to:  
5 (i) a person specified in the regulations; or  
6 (ii) a body specified in the regulations; or  
7 (iii) circumstances specified in the regulations; or  
8 (iv) a person or body specified in the regulations in the  
9 circumstances specified in the regulations; or  
10 (b) does not prohibit an act to the extent to which the prohibition  
11 would otherwise give rise to an inconsistency with a law of a  
12 referring State; or  
13 (c) does not require a person to do an act to the extent to which  
14 the requirement would otherwise give rise to an  
15 inconsistency with a law of a referring State; or  
16 (d) does not authorise a person to do an act to the extent to which  
17 the conferral of that authority on the person would otherwise  
18 give rise to an inconsistency with a law of a referring State;  
19 or  
20 (e) does not impose an obligation on a person to the extent to  
21 which complying with that obligation would require the  
22 person not to comply with an obligation imposed on the  
23 person under a law of a referring State; or  
24 (f) authorises a person to do something for the purposes of the  
25 Commonwealth water legislation that the person:  
26 (i) is authorised to do under a law of a referring State; and  
27 (ii) would not otherwise be authorised to do under the  
28 Commonwealth water legislation; or  
29 (g) will be taken to be satisfied if a law of a referring State is  
30 satisfied.  
31 (3) In this section:  
32 *matter* includes act, omission, body, person or thing.

## 33 7 Before Schedule 2

34 Insert:

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

3 Note: See section 18A.  
4

5  
6 **MURRAY-DARLING BASIN**  
7 **AGREEMENT**

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3           2.     Application  
4           3.     Definitions and interpretation  
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- 2     **PART II — ADJUSTING FOR ENTITLEMENTS TRANSFERRED**
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- 4           3.     Cap adjustment for tagged trade
- 5     **PART III — ADJUSTING FOR ENTITLEMENTS TRANSFERRED**
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- 7     **EXCHANGE RATES**
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- 9           5.     Adjusting annual diversion targets
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- 12    **EXCHANGE RATES**
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- 14           7.     Operation of Part
- 15           8.     Calculating increases in cap required
- 16           9.     Adjusting annual diversion targets
- 17    **SCHEDULE E — CAP ON DIVERSIONS**
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- 19           2.     Definitions
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- 22           5.     Long-term diversion cap for New South Wales
- 23           6.     Long-term diversion cap for Victoria
- 24           7.     Long-term diversion cap for South Australia
- 25           8.     Long-term diversion cap for Queensland
- 26           9.     Long-term diversion cap for the Australian Capital
- 27                 Territory
- 28           10.    Power of Authority to alter long-term diversion caps
- 29           11.    Developing Analytical Models
- 30           12.    Calculation of annual diversion targets
- 31           13.    Monitoring and Reporting
- 32           14.    Appointment of Independent Audit Group
- 33           15.    Annual audit by the Independent Audit Group
- 34           16.    Power to require a special audit of a designated river
- 35                 valley
- 36           17.    Special audit by Independent Audit Group
- 37           18.    Declaration that diversion cap has been exceeded
- 38           19.    Advice to Ministerial Council on remedial actions

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- 2 1. New South Wales
- 3 2. Queensland
- 4 3. Victoria
- 5 4. South Australia
- 6 5. Australian Capital Territory

7 SCHEDULE E - APPENDIX 2 — River Valleys

- 8 1. New South Wales
- 9 2. Queensland
- 10 3. Victoria
- 11 4. South Australia
- 12 5. Australian Capital Territory

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- 15 1. Purpose
- 16 2. Definitions

17 PART II — CALCULATING WATER VOLUMES

- 18 3. The Snowy Scheme And The River Murray
- 19 4. The Snowy Scheme And The Murrumbidgee River
- 20 5. Excess Snowy River Releases
- 21 6. Snowy River Release Shortfalls
- 22 7. Accounting For Water Releases

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- 24 8. Entitlements Of New South Wales And Victoria To Use  
25 Water
- 26 9. Water Estimated To Be Under The Control Of The  
27 Authority
- 28 10. Allocation of Water to New South Wales and Victoria
- 29 11. Tributary Inflows
- 30 12. Use By New South Wales And Victoria Of Allocated  
31 Water
- 32 13. Required Annual Release Shortfalls
- 33 14. Other Water Accounting Provisions

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

- 36 15. Translation Factors
- 37 16. Apportionment Of Environmental Entitlements
- 38 17. Valley Accounts

- 1           18.    Long Term Diversion Caps  
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13           24.    Snowy Scheme Annual Water Operating Plan  
14           25.    Notifications Required  
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16           26.    Developing Analytical Models  
17   PART VIII — OTHER PROVISIONS  
18           27.    Inter-Valley Water Transfers



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# MURRAY-DARLING BASIN AGREEMENT

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**THIS AGREEMENT IS ENTERED INTO ON                      2008 BY:**

5

**THE COMMONWEALTH OF AUSTRALIA** (the “Commonwealth”),

6

**THE STATE OF NEW SOUTH WALES** (“New South Wales”),

7

**THE STATE OF VICTORIA** (“Victoria”),

8

**THE STATE OF QUEENSLAND** (“Queensland”),

9

**THE STATE OF SOUTH AUSTRALIA** (“South Australia”), and

10

**THE AUSTRALIAN CAPITAL TERRITORY** (“Australian Capital Territory”).

11

12

**THE PARTIES AGREE AS FOLLOWS:**

13

## **PART I - INTERPRETATION**

14

### **1. Purpose**

15

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.

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### **2. Definitions**

22

In this Agreement save where inconsistent with the context:

23

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

24

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

25

- 1           **“asset management plan”** means the asset management plan, including  
2           any amendment to it, approved under clause 53.
- 3           **“Authority”** means the Murray-Darling Basin Authority established by  
4           the Water Act.
- 5           **“Authority Chair”** has the meaning given by the Water Act.
- 6           **“Basin Community Committee”** has the meaning given by the Water  
7           Act.
- 8           **“Basin Plan”** has the meaning given by the Water Act.
- 9           **“Chief Executive”** means the Chief Executive of the Authority.
- 10          **“Commission”** has the same meaning as “Murray-Darling Basin  
11          Commission” under the Water Act.
- 12          **“Committee”** means the Basin Officials Committee established by  
13          Part IV.
- 14          **“Committee member”** means a Committee member for a State or for the  
15          Commonwealth, appointed in accordance with this Agreement.
- 16          **“Constructing Authority”** means:
- 17               (a)    the Contracting Government by which:
- 18                   (i)    any works authorised by this Agreement or the former  
19                   Agreement have been, or are being, or are to be  
20                   constructed;
- 21                   (ii) any measures authorised under this Agreement or the  
22                   former Agreement have been, or are being, or are to be  
23                   executed; or
- 24               (b)    any public authority or any Minister constituted or appointed  
25                   for the purpose of constructing such works or executing such  
26                   measures.
- 27          **“Contracting Government”** means any of the Governments of the  
28          Commonwealth, New South Wales, Victoria, South Australia,  
29          Queensland and the Australian Capital Territory.
- 30          **“conveyance water”** has the meaning given by the Water Act.
- 31          **“corporate plan”** means a corporate plan approved under clause 34 and  
32          includes any amendment to that plan approved under clause 35.
- 33          **“critical human water needs”** has the meaning given by the Water Act.
- 34          **“diversions”** includes abstractions, impoundings and appropriations of  
35          water that reduce the flow of a river.

1       **“Doctors Point”** means the location of the Doctors Point stream gauging  
2 station.

3       **“E.C.”** means a unit of electro-conductivity of water, measured in  
4 micro-siemens per centimetre at 25 degrees Celsius.

5       **“financial year”** means the twelve months beginning on 1 July.

6       **“former Agreement”** has the same meaning as “former MDB  
7 Agreement” in the Water Act.

8       **“former Ministerial Council”** means the Ministerial Council under the  
9 former Agreement;

10       **“Full Supply Level”** means the full supply water level:

- 11               (a) defined by reference to Australian Height Datum specified  
12 by the design drawings for any structure subject to this  
13 Agreement; or
- 14               (b) in the case of Menindee Lakes Storage, as defined under  
15 clause 137.

16       **“land”** includes:

- 17               (a) Crown lands;
- 18               (b) buildings; and
- 19               (c) any interest, right or privilege in, over or affecting any land.

20       **“maintenance”** includes the execution of all work of any description  
21 which is necessary to keep an existing work in the state of utility in which  
22 it was upon:

- 23               (a) its original completion; or
- 24               (b) the completion of any improvement thereto or replacement  
25 thereof,
- 26               but does not include -
- 27               (i) the execution of any improvement to the design or  
28 function of that work; or
- 29               (ii) the replacement of the whole of that work; or
- 30               (iii) work to remedy the extraordinary failure of part or all  
31 of that work.

32       **“major storages”** means Lake Victoria, the Menindee Lakes Storage and  
33 the storages formed by Dartmouth Dam and Hume Dam.

1           **“measures”** includes strategies, plans and programs (including any  
2 activities for the purpose of conserving or enhancing the environment)  
3 but does not include any river operations.

4           **“minimum operating level”** means the water level in a storage, as  
5 determined from time to time by the Ministerial Council, below which  
6 water must not be released.

7           **“Minister”** means a Minister of a Contracting Government who has been  
8 appointed to the Ministerial Council by that Contracting Government  
9 under clause 8.

10          **“Ministerial Council”** means the Ministerial Council established by  
11 Part III.

12          **“Murray-Darling Basin”** has the meaning given by the Water Act.

13          **“Murray-Darling Basin Special Account”** means the special account of  
14 the Authority established under Part 9 Division 5 of the Water Act.

15          **“natural flow”** means the quantity of water that would have flowed in a  
16 river past a particular point in a particular period but for the effect during  
17 that period of diversions to or from, and impoundments on, the river  
18 upstream of that point.

19          **“officer”** means a person who is a member of the staff of the Authority  
20 within the meaning of the Water Act.

21          **“period of special accounting”** means a period of special accounting  
22 declared under clause 123(1).

23          **“prescribed rate”** means either:

24               (a) a rate of 2% per annum above the maximum overdraft rate  
25               fixed by the Reserve Bank of Australia for amounts of  
26               \$100,000 or less which is applicable at the time a payment  
27               becomes due, or, if no such rate is fixed;

28               (b) a rate of 4% per annum above the rate payable on  
29               Commonwealth securities of the longest term offered for  
30               public subscription in Australia for the Commonwealth cash  
31               loan opened next before the time a payment becomes due.

32          **“public authority”** means a body, whether incorporated or not,  
33 established for a public purpose by or under a law of the Commonwealth  
34 or a State and includes any local government body.

35          **“regulated flow”** is the flow resulting from the release of stored water at  
36 the direction of the Authority other than during, or in anticipation of,  
37 floods.

1           **“reserve”** means water available for release from major storages at the  
2           direction of the Authority.

3           **“river”** and **“tributary”** respectively include any affluent, effluent creek,  
4           anabranch or extension of, and any lake or lagoon connected with, the  
5           river or tributary.

6           **“river operations”** means activities under this Agreement relating to:

7                   (a)   the construction, operation, maintenance and renewal of  
8                   works on, adjacent to, or connected to the upper River  
9                   Murray or the River Murray in South Australia; and

10                   (b)   the execution of the provisions of this Agreement  
11                   concerning sharing water between State Contracting  
12                   Governments; and

13                   (c)   the provision of other services relating to water, to State  
14                   Contracting Governments and other persons.

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

16                   (a)   transitional RMO assets; and

17                   (b)   —

18                           (i)   works constructed under clause 56 including works  
19                           constructed for the purposes of Schedule B; and

20                           (ii)  assets purchased with amounts paid to a Constructing  
21                           Authority by the Authority under clause 78,

22                   that are, or relate to:

23                           (iii) works on, adjacent to or connected to the upper River  
24                           Murray or the River Murray in South Australia; or

25                           (iv)  the execution of provisions of this Agreement  
26                           concerning sharing water between South Australia,  
27                           New South Wales and Victoria.

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

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

34           **“State MDB Act”** means any of the following Acts: the *Murray-Darling*  
35           *Basin Act 1992* (New South Wales); the *Murray-Darling Basin Act 1993*  
36           (Victoria); the *Water (Commonwealth Powers) Act 2008* (Queensland);

1 the *Murray-Darling Basin Act 1993* (South Australia); and the  
2 *Murray-Darling Basin Agreement Act 2007* (Australian Capital  
3 Territory).

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

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

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

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

- 14 (a) the works set out in Schedule A to the former Agreement  
15 (other than Weir No. 5 Redbank and Weir No. 7 Maude);  
16 and
- 17 (b) any other works the construction of which was authorised  
18 under sub-clause 50(1) of the former Agreement including  
19 works authorised for the purposes of Schedule C of the  
20 former Agreement; and
- 21 (c) any other assets purchased with amounts paid by the  
22 Commission under sub-clause 73(1) of the former  
23 Agreement.

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

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

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

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

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

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

13          **“weir”** includes:

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

17          **3. Interpretation**

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

- 19                         (a) a reference to any Act includes any Act amending, or in  
20                                 substitution for, that Act;
- 21                         (b) a reference to this Agreement includes a reference to -
  - 22                                         (i) the Schedules to this Agreement, and
  - 23                                         (ii) any amendment of or addition to this Agreement or  
24                                                 the Schedules hereto;
- 25                         (c) words importing the singular include the plural and vice  
26                                 versa;
- 27                         (d) words importing any gender include any other gender;
- 28                         (e) a reference to a Committee member for the Commonwealth  
29                                 or a State includes a person who is acting as a Committee  
30                                 member for the Commonwealth or that State pursuant to an  
31                                 appointment under clause 21;
- 32                         (f) a reference to a power, function or duty of the Authority is a  
33                                 reference to a power, function or duty of the Authority:
  - 34                                         (i) under this Agreement; or

- 1 (ii) under the Water Act for the purposes of this  
2 Agreement,  
3 but does not include any other power, function or duty  
4 conferred on it by the Water Act;
- 5 (g) a reference to a power, function or duty of the Ministerial  
6 Council or the Committee is a reference to a power, function  
7 or duty of that body:
- 8 (i) under this Agreement; or  
9 (ii) for the purposes of the Agreement because of the  
10 operation of Part 10A of the Water Act,  
11 but does not include any other power, function or duty  
12 conferred on it by the Water Act.
- 13 (2) No explanatory note or heading to a clause is part of this  
14 Agreement.
- 15 (3) In interpreting a provision of this Agreement, a construction that  
16 would promote the purpose or object underlying the Agreement  
17 (whether or not that purpose or object is expressly stated in the  
18 Agreement) shall be preferred to a construction that would not  
19 promote that purpose or object.

20 **PART II — APPROVAL, AMENDMENT AND ENFORCEMENT**

21 **4. Revocation of Former Agreement**

22 The former Agreement is hereby revoked.

23 **5. Commencement of Agreement and Amendments to Agreement**

- 24 (1) This Agreement comes into effect upon commencement of  
25 Schedule 1 of the *Water Amendment Act 2008* of the  
26 Commonwealth, which amends the Water Act so as to set out the  
27 text of the Agreement as a schedule to the Water Act.
- 28 (2) An amendment to this Agreement will take effect upon the  
29 registration of a legislative instrument, in accordance with the  
30 *Legislative Instruments Act 2003* (Commonwealth), that amends  
31 the schedule referred to in sub-clause (1) by incorporating into the  
32 Agreement amendments that have been agreed by the Ministerial  
33 Council.



- 1 (3) For the purposes of sub-clause (2), the Commonwealth  
2 Government:
- 3 (a) may only register an instrument that incorporates into the  
4 Agreement amendments that have been agreed by the  
5 Ministerial Council; and
- 6 (b) will register an instrument that incorporates such  
7 amendments as soon as practicable after they have been  
8 agreed by the Ministerial Council.
- 9 (4) A reference in sub-clause (2) to an amendment includes a reference  
10 to the insertion, omission, repeal, substitution, addition or  
11 relocation of words or matter.

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

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

16 **PART III - THE MINISTERIAL COUNCIL**

17 **7. Establishment of Ministerial Council**

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

22 **8. Membership of the Ministerial Council**

- 23 (1) The Council consists of a Minister of each of the Contracting  
24 Governments who is appointed in writing by that Contracting  
25 Government.
- 26 (2) Whenever a member of the Ministerial Council representing a  
27 Contracting Government is:
- 28 (a) absent from Australia or from duty;
- 29 (b) unable for any reason to attend a meeting of the Ministerial  
30 Council; or

- 1 (c) otherwise unable to perform the duties of a member of the  
2 Ministerial Council,  
3 that Contracting Government may appoint another Minister to act  
4 in the place of that member, and while so acting that other Minister  
5 shall have all the powers and perform all the duties of that member.
- 6 (3) A member of the Ministerial Council ceases to be a member if:  
7 (a) the member ceases to be a Minister; or  
8 (b) another Minister of the Contracting Government is  
9 appointed in substitution for the member.
- 10 (4) Anything done by or in relation to a person purporting to act under  
11 an appointment under this clause is not invalid merely because  
12 there was a defect or irregularity in connection with the  
13 appointment.

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

15 The functions of the Ministerial Council are:

- 16 (a) to consider and determine outcomes and objectives on major  
17 policy issues of common interest to the Contracting  
18 Governments in relation to the management of the water and  
19 other natural resources of the Murray-Darling Basin,  
20 including in relation to its role in the provision of critical  
21 human water needs, but otherwise only in so far as those  
22 issues are not provided for in the Basin Plan;
- 23 (b) to make determinations about the matters specified in this  
24 Agreement;
- 25 (c) to approve the annual corporate plan and budget, and asset  
26 management plan, prepared by the Authority for the  
27 purposes of this Agreement;
- 28 (d) to agree upon amendments to this Agreement including  
29 amendments to, or removal or addition of, Schedules to this  
30 Agreement as the Ministerial Council considers desirable  
31 from time to time;
- 32 (e) to exercise such other functions as may be conferred on the  
33 Council by or under this Agreement or the Water Act.

1       **10. Ministerial Council May Direct Committee**

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

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

6               (1)    The Ministerial Council may confer any of its functions and  
7               powers on the Committee or the Authority.

8               (2)    The conferral of a function or power under this clause:

9                     (a)    may be subject to such conditions or limitations as the  
10                    Ministerial Council may specify; and

11                   (b)    may be varied or revoked by the Ministerial Council  
12                    (whether or not constituted by the persons constituting the  
13                    Ministerial Council at the time when the power or function  
14                    was conferred); and

15                   (c)    does not derogate from the ability of the Ministerial Council  
16                    to act in any matter.

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

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

21       **13. Proceedings of the Ministerial Council**

22               (1)    The Ministerial Council shall meet at least once in each year but  
23               otherwise at such times as it sees fit and shall, subject to this  
24               Agreement, determine its own procedure.

25               (2)    Subject to sub-clauses (3) and (4), the quorum for a meeting of the  
26               Ministerial Council shall be a Minister for each Contracting  
27               Government, appointed under clause 8.

28               (3)    The quorum of the Ministerial Council for debating any issue, or  
29               considering or making any resolution on an issue related to any  
30               provision of the Agreement, or to any policy, determination or  
31               decision of the Ministerial Council, which does not apply, in whole  
32               or in part, to either or both of Queensland and the Australian  
33               Capital Territory by virtue of Part VI, does not include the Minister

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

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

- 25 (1) A decision of the Ministerial Council may be made other than at a  
26 meeting of the Ministerial Council if made in accordance with this  
27 clause.
- 28 (2) If:
- 29 (a) the text of a proposed resolution is sent or given in writing  
30 by facsimile or other transmission by an officer authorised  
31 by the Authority to a Minister appointed under clause 8 or if  
32 that Minister is unavailable a Minister for the same  
33 Contracting Government authorised for the purpose by that  
34 Government; and

- 1 (b) such Minister approves the proposed resolution and notifies  
2 that officer in writing sent or given by facsimile or other  
3 transmission,  
4 the proposed resolution is deemed to have been approved by the  
5 Minister appointed under clause 8.
- 6 (3) When a Minister from each Contracting Government has approved  
7 a resolution in accordance with sub-clause (2) the resolution shall  
8 be deemed to have become a decision of the Ministerial Council at  
9 the date and time the last of those Ministers has approved the  
10 resolution.
- 11 (4) Any decision of the Ministerial Council made in accordance with  
12 this clause, must be recorded by an officer authorised by the  
13 Authority and a copy of the decision sent to each member of the  
14 Ministerial Council within 21 days after the decision is made.
- 15 (5) The record made pursuant to sub-clause (4) shall be confirmed at  
16 the next meeting of the Ministerial Council.
- 17 (6) The text of a resolution for which approval is sought under this  
18 clause, relating to any provision of this Agreement, or to any issue  
19 in respect of the Ministerial Council's functions under the Water  
20 Act, which does not apply to either or both of Queensland and the  
21 Australian Capital Territory by virtue of the provisions of Part VI  
22 or sub-clause 13(4), need not be referred to or approved by any  
23 Minister from the Government of Queensland or the Australian  
24 Capital Territory or both (as the case requires).

25 **15. Appointment of Committees**

- 26 (1) The Ministerial Council may from time to time appoint such  
27 temporary or standing committees as it sees fit.
- 28 (2) A committee shall have such members, terms of reference, powers  
29 and functions as the Ministerial Council determines.
- 30 (3) A member of a committee shall hold office on such terms as the  
31 Ministerial Council may determine.
- 32 (4) A member of a committee shall receive such allowances and  
33 expenses as the Authority may from time to time determine.

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

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

8       **PART IV — THE COMMITTEE**

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

11       **17. Establishment of Basin Officials Committee**

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

16       **18. Membership of the Committee**

17           The Committee consists of:

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

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

- 22           (1) The Chair of the Committee is to be appointed by the  
23           Commonwealth Minister by written instrument.
- 24           (2) The appointment of the Chair of the Committee is not invalidated  
25           merely because of a defect or irregularity in connection with the  
26           appointment.

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

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

7     **21. Acting Members of the Committee**

- 8           (1) The Commonwealth Minister may, by written instrument, appoint  
9           an individual to act as the Chair of the Committee.
- 10          (2) The Minister of a State Contracting Government may, by written  
11          instrument, appoint an individual to act as the Committee member  
12          for that Contracting Government.
- 13          (3) An individual's appointment under sub-clause (1) or (2) to act as a  
14          Committee member:
- 15               (a) does not cease to have effect merely because the Committee  
16               member's appointment ceases to have effect; and
- 17               (b) if that Committee member is replaced by the appointment of  
18               another Committee member—continues in effect in relation  
19               to the new Committee member.
- 20          (4) An individual appointed to act as a Committee member may act as,  
21          and perform the functions and exercise the powers of, the  
22          Committee member:
- 23               (a) during a vacancy in the office of the Committee member,  
24               whether or not an appointment has previously been made to  
25               the office; or
- 26               (b) during any period, or during all periods, when the  
27               Committee member:
- 28                       (i) is absent from duty or Australia; or
- 29                       (ii) is, for any reason, unable to attend a meeting of the  
30                       Committee; or
- 31                       (iii) is, for any reason, unable to perform the duties of the  
32                       office.
- 33          (5) Anything done by or in relation to an individual purporting to act  
34          under an appointment is not invalid merely because:

- 1 (a) the occasion for the appointment had not arisen; or  
2 (b) there was a defect or irregularity in connection with the  
3 appointment; or  
4 (c) the appointment had ceased to have effect; or  
5 (d) the occasion to act had not arisen or had ceased.

6 **22. Period of Appointment**

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

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

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

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

- 17 (2) Disclosure is required whether or not there is any particular matter  
18 under consideration that gives rise to an actual conflict of interest.

- 19 (3) The disclosure must be by written notice given:

- 20 (a) if the member is the Chair of the Committee—to the Chair  
21 of the Ministerial Council; or  
22 (b) if the member is not the Chair of the Committee—to the  
23 Chair of the Committee.

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

- 26 (4) Sub-clause (1) applies to interests:

- 27 (a) whether direct or indirect, and whether or not pecuniary; and  
28 (b) whether acquired before or after the member's appointment.

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

- 31 (1) If:
-



- 1 (a) a member of the Committee (including an acting member)  
2 has an interest in a matter being considered or about to be  
3 considered by the Committee; and
- 4 (b) the interest is an interest that could conflict with the proper  
5 performance of the functions of the member's office, as  
6 those functions give the member a role in deciding the  
7 matter;
- 8 the member must disclose the nature of the interest to a meeting of  
9 the Committee.
- 10 (2) The disclosure must be made as soon as possible after the relevant  
11 facts have come to the member's knowledge.
- 12 (3) The disclosure must be recorded in the minutes of the meeting of  
13 the Committee.
- 14 (4) Sub-clause (1) applies to interests:
- 15 (a) whether direct or indirect, and whether or not pecuniary; and  
16 (b) whether acquired before or after the member's appointment.

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

- 18 (1) The Chief Executive and Authority Chair:
- 19 (a) may attend, and participate in, any meeting of the  
20 Committee; and
- 21 (b) are entitled to access to any documents of the Committee  
22 that are relevant to such a meeting.
- 23 (2) However, the Chief Executive and the Authority Chair are not  
24 entitled to vote on a matter to be decided in the meeting.
- 25 (3) If:
- 26 (a) the Chief Executive or Authority Chair has an interest in a  
27 matter being considered or about to be considered by the  
28 Committee; and
- 29 (b) the interest is an interest that could conflict with the proper  
30 performance of the functions of his or her office, as those  
31 functions relate to his or her attendance at, or participation  
32 in, a meeting of the Committee,

- 1 he or she must disclose the nature of the interest to the meeting of  
2 the Committee.
- 3 (4) The disclosure must be made as soon as possible after the relevant  
4 facts have come to his or her knowledge.
- 5 (5) The disclosure must be recorded in the minutes of the meeting of  
6 the Committee.
- 7 (6) Sub-clause (3) applies to interests:
- 8 (a) whether direct or indirect, and whether or not pecuniary; and  
9 (b) whether acquired before or after the appointment of the  
10 Chief Executive or Authority Chair.

11 **DIVISION 2 — FUNCTIONS AND POWERS OF THE**  
12 **COMMITTEE**

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

- 14 (1) The functions of the Committee are:
- 15 (a) to advise the Ministerial Council in relation to outcomes and  
16 objectives on major policy issues of common interest to the  
17 Contracting Governments in relation to the management of  
18 the water and other natural resources of the Murray-Darling  
19 Basin, including in relation to the Ministerial Council's role  
20 in the provision of critical human water needs, but otherwise  
21 only in so far as those issues are not provided for in the  
22 Basin Plan;
- 23 (b) to give effect to any policy or decision of the Ministerial  
24 Council, as required by the Ministerial Council;
- 25 (c) to exercise responsibility for high level decision making in  
26 relation to river operations, including by setting objectives  
27 and outcomes to be achieved by the Authority in relation to  
28 river operations;
- 29 (d) to exercise the powers and discharge the duties conferred on  
30 it by or under this Agreement or the Water Act.
- 31 (2) Paragraphs (1)(b) and (c) do not operate:

- 1 (a) to confer any powers on the Committee in addition to  
2 powers conferred by other provisions of this Agreement or  
3 the Water Act;
- 4 (b) to enable the Committee to —  
5 (i) do anything; or  
6 (ii) require the Authority to do anything,  
7 for which Part VII and subsequent Parts provide, otherwise  
8 than as provided for by those Parts as amended from time to  
9 time.
- 10 (3) The advice referred to in paragraph (1)(a) shall be determined by  
11 majority vote of the Committee members who constitute a quorum.  
12 In the event of a unanimous decision not being reached, each  
13 Committee member may tender separate advice to the Ministerial  
14 Council.

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

16 **27. Proceedings of the Committee**

- 17 (1) The Committee members may meet together for the transaction of  
18 the Committee's business and may adjourn any meeting.
- 19 (2) Any Committee member may at any time call a meeting of the  
20 Committee.
- 21 (3) Each Committee member shall have one vote.
- 22 (4) Subject to sub-clauses (5) and (6), one Committee member for  
23 each Contracting Government shall constitute a quorum.
- 24 (5) The quorum of the Committee for debating any issue, or  
25 considering or making any resolution on an issue, related to any  
26 provision of the Agreement, or to any policy, determination or  
27 decision of the Ministerial Council or the Committee, which does  
28 not apply, in whole or in part, to either or both of Queensland and  
29 the Australian Capital Territory by virtue of Part VI, does not  
30 include the Committee member for Queensland or the Committee  
31 member for the Australian Capital Territory, or both (as the case  
32 requires).

- 1 (6) The quorum of the Committee for debating any issue, or  
2 considering or making any resolution on an issue in respect of its  
3 functions under the Water Act:
- 4 (a) includes the Committee member for Queensland unless the  
5 matter relates to Part 2A of the Water Act, in which case the  
6 quorum includes that member only if the issue relates to  
7 critical human water needs in a way that affects Queensland,  
8 or affects the sharing of Basin water resources between  
9 Queensland and New South Wales;
- 10 (b) includes the Committee member for the Australian Capital  
11 Territory unless the matter relates to Part 2A of the Water  
12 Act, in which case the quorum includes that member only if  
13 the issue relates to critical human water needs in a way that  
14 affects the Australian Capital Territory.
- 15 (7) A person who is not included in a quorum may not vote on any  
16 resolution referred to in sub-clause (5) or (6).
- 17 (8) Except as provided in sub-clauses 26(3) and 99(2) a resolution  
18 before the Committee will be carried only:
- 19 (a) by a unanimous vote of all Committee members present who  
20 constitute a quorum; or
- 21 (b) by majority vote of the Committee members present who  
22 constitute a quorum, if those members by a unanimous vote  
23 agree that the resolution will be carried in that way.
- 24 (9) The Committee must, subject to this Agreement, determine its own  
25 procedure.
- 26 (10) The Committee must keep proper minutes of its proceedings.

27 **28. Resolutions Other than at Meetings**

- 28 (1) The Committee may make a resolution other than at a duly  
29 convened meeting.
- 30 (2) Before a resolution is made pursuant to sub-clause (1):
- 31 (a) subject to sub-clause (4), the text of the proposed resolution  
32 must be referred to the Committee member appointed by  
33 each Contracting Government; and
- 34 (b) that Committee member must approve the text of the  
35 proposed resolution.
-

- 1 (3) Subject to sub-clause (4), a resolution under this clause shall be  
2 made at the time when each Committee member referred to in  
3 sub-clause (2) has signified approval of the resolution to an officer  
4 authorised by the Authority.
- 5 (4) The text of a resolution for which approval is sought under this  
6 clause, relating to any provision of this Agreement, or to any issue  
7 in respect of the Committee's functions under the Water Act,  
8 which does not apply to either or both of Queensland and the  
9 Australian Capital Territory by virtue of the provisions of Part VI  
10 or sub-clause 27(6), need not be referred to or approved by either  
11 or both the Committee member for Queensland or the Committee  
12 member for the Australian Capital Territory (as the case requires).
- 13 (5) A Committee member may signify approval of a resolution by any  
14 means, provided that:
- 15 (a) approval by telephone must be signified in person by the  
16 Committee member; and
- 17 (b) approval in writing must be by letter or facsimile  
18 transmission which has been dated and signed by the  
19 Committee member.
- 20 (6) A resolution made under this clause must be duly recorded and a  
21 copy sent to each Committee member within 21 days of the  
22 resolution being made.

23 **PART V - THE AUTHORITY**

24 **29. Functions, Powers and Duties of the Authority**

- 25 (1) The functions of the Authority are:
- 26 (a) to give effect to any decision of the Ministerial Council,  
27 including any decision made under sub-clause (3);
- 28 (b) to give effect to any high level decision of the Committee in  
29 relation to river operations;
- 30 (c) to provide advice to the Ministerial Council and the  
31 Committee as required to fulfil their functions;
- 32 (d) to provide administrative support to the Ministerial Council  
33 and the Committee; and

- 1 (e) to exercise the powers and discharge the duties conferred on  
2 it by or under this Agreement.
- 3 (2) Subject to a decision of the Ministerial Council made under  
4 sub-clause (3), in carrying out its functions the Authority is to act  
5 in accordance with:
- 6 (a) the provisions of this Agreement;  
7 (b) the corporate plan;  
8 (c) the asset management plan;  
9 (d) the asset agreement; and  
10 (e) in relation to river operations, the requirements of clause 30.
- 11 (3) The Ministerial Council may, if it agrees that an emergency exists,  
12 decide that the Authority should carry out functions or exercise  
13 powers for the purposes of this Agreement:
- 14 (a) that are in addition to functions or powers conferred by the  
15 other provisions of this Agreement; or  
16 (b) otherwise than as required by sub-clause (2).

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

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

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

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

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

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

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

- 33           (1) The Authority must refer to the Committee any matter relating to  
34           carrying out river operations:

- 1 (a) that the document approved under clause 31 requires the  
2 Authority to refer; or
- 3 (b) that two or more members of the Committee have notified  
4 the Authority and the Committee in writing a matter that  
5 should be referred to the Committee because the document  
6 approved under clause 31 has not made relevant  
7 specifications about the matter, and the matter has the  
8 potential to have a material effect on State water  
9 entitlements.
- 10 (2) A notification made under paragraph (1)(b) may be withdrawn at  
11 any time before a determination is made under this clause, by  
12 notice in writing given to the Authority and the Committee by the  
13 members of the Committee who made the notification.
- 14 (3) The Authority must refer to the Committee any decision that the  
15 Authority proposes to make in relation to river operations that has  
16 the potential to have a material effect on State water entitlements,  
17 unless the decision is authorised by the document approved under  
18 clause 31 or a previous determination made under this clause.
- 19 (4) The Authority may, before the Committee has approved a  
20 document under clause 31, refer to the Committee a proposal by  
21 the Authority to carry out its functions in relation to river  
22 operations in a manner other than in accordance with the  
23 resolutions, practices and procedures referred to in clause 32.
- 24 (5) If the Authority refers a matter to the Committee under this clause,  
25 the Committee must consider the matter and may make a  
26 determination in relation to it.
- 27 (6) A determination under sub-clause (5) will be made:
- 28 (a) by a unanimous vote of all Committee members present who  
29 constitute a quorum; or
- 30 (b) by majority vote of the Committee members present who  
31 constitute a quorum, if those members by a unanimous vote  
32 agree that the resolution will be carried in that way.
- 33 (7) If the Committee cannot make a determination in relation to a  
34 referred matter, the matter must be referred to the Ministerial  
35 Council as if it were a motion submitted by a Committee member  
36 for the purposes of clause 140.



- 1 (8) After a matter has been referred to the Committee under this  
2 clause, the Authority must:
- 3 (a) continue to carry out its functions in relation to river  
4 operations in accordance with resolutions, practices and  
5 procedures that were in effect before the matter was referred;  
6 and
- 7 (b) in the case of a proposed decision, must not make the  
8 decision, until such time as the Committee makes a  
9 determination under this clause.

10 **34. Annual Corporate Plan**

- 11 (1) The Authority must, each year and by the date determined by the  
12 Ministerial Council, prepare a draft corporate plan.
- 13 (2) The draft corporate plan must:
- 14 (a) set out the activities of the Authority for the next ensuing  
15 four years, including the activities through which the  
16 Authority intends to achieve the outcomes and objectives —
- 17 (i) set by the Ministerial Council; and  
18 (ii) in respect of river operations, set by the Committee;
- 19 (b) set out new capital works and operational and maintenance  
20 programs to be undertaken or required under Part VIII of  
21 this Agreement, including as may be required to implement  
22 the asset management plan; and
- 23 (c) include the budget for the activities, works and programs,  
24 which must be developed in accordance with clause 74.
- 25 (3) The draft corporate plan may include any other matters relevant to  
26 the Authority's functions as the Authority sees fit.
- 27 (4) The Authority must provide the draft corporate plan to the  
28 Committee.
- 29 (5) After considering the draft corporate plan, the Committee must  
30 submit the draft plan and the Committee's advice in relation to it,  
31 to the Ministerial Council.
- 32 (6) After receiving the plan and the advice of the Committee, the  
33 Ministerial Council may:
- 34 (a) approve the plan with or without amendment; or

1 (b) refer the plan back to the Authority for further consideration.

2 **35. Amendment of Annual Corporate Plan**

3 (1) If the Authority considers that it is necessary or desirable for there  
4 to be a significant variation to the corporate plan, the Authority  
5 must prepare a draft amendment to the corporate plan and provide  
6 it to the Committee.

7 (2) After considering the draft amendment, the Committee must  
8 submit the draft amendment and the Committee's advice in relation  
9 to it, to the Ministerial Council.

10 (3) After receiving the draft amendment and the advice of the  
11 Committee, the Ministerial Council may:

12 (a) approve the amendment of the corporate plan with or  
13 without further amendment; or

14 (b) refer the draft amendment back to the Authority for further  
15 consideration.

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

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

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

21 (a) for those provisions declared not to apply by this Part; and

22 (b) to the extent that provisions are modified by this Part; and

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

25 **37. Provisions Not Applying to Queensland**

26 (1) Parts XII, XIII and XIV of the Agreement do not apply to the State  
27 of Queensland.

28 (2) Clause 145 of the Agreement only applies to the State of  
29 Queensland in respect of an act, omission or loss incurred, in  
30 relation to the bona fide execution of powers:

- 1 (a) in or related to the State of Queensland; or  
2 (b) under a provision of the Agreement as it applies to the State  
3 of Queensland.
- 4 (3) Insofar as any provision of the Agreement bears on a matter set out  
5 in sub-clause (4), that provision does not apply to the State of  
6 Queensland.
- 7 (4) Sub-clause (3) applies to:
- 8 (a) any issue concerning the design, execution, construction,  
9 funding, operation, maintenance, alteration or replacement  
10 of any works, measures, policies or strategies solely  
11 associated with the management of the upper River Murray  
12 and the River Murray in South Australia;
- 13 (b) any liability of the Committee or Authority, any Contracting  
14 Government or any Constructing Authority in respect of -
- 15 (i) any matter referred to in paragraph (4)(a); or  
16 (ii) any matter arising under a provision of the Agreement  
17 which the Ministerial Council or Committee has  
18 determined does not apply to the State of Queensland  
19 under clause 39.
- 20 (5) Nothing in the Agreement requires the State of Queensland:
- 21 (a) to contribute to the costs of, or associated with, remedying  
22 any actual or anticipated damage referred to in paragraph  
23 57(c) of the Agreement; or
- 24 (b) to meet any compensation for damage paid under clause 84  
25 of the Agreement,
- 26 except where the State of Queensland has contributed to the  
27 construction, maintenance or operation expenses of the works to  
28 which the costs or compensation relate.

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

- 30 (1) Parts XII, XIII and XIV of the Agreement do not apply to the  
31 Australian Capital Territory.
- 32 (2) Clause 145 of the Agreement only applies to the Australian Capital  
33 Territory in respect of an act, omission or loss incurred in relation  
34 to the bona fide execution of powers:
-

- 1 (a) in or related to the Australian Capital Territory; or  
2 (b) under a provision of the Agreement as it applies to the  
3 Australian Capital Territory.
- 4 (3) Insofar as any provision of the Agreement bears on any of the  
5 following matters, it does not apply to the Australian Capital  
6 Territory:
- 7 (a) any matter concerning the design, execution, construction,  
8 funding, operation, maintenance, alteration or replacement  
9 of any works, measures, policies or strategies solely  
10 associated with the management of the upper River Murray  
11 and River Murray in South Australia;
- 12 (b) any liability of the Committee or Authority, any Contracting  
13 Government or any Constructing Authority in respect of:
- 14 (i) any matter referred to in paragraph (3)(a); or  
15 (ii) any matter arising under a provision of the Agreement  
16 which the Ministerial Council or Committee has  
17 determined does not apply to the Australian Capital  
18 Territory under clause 39.
- 19 (4) Nothing in the Agreement requires the Australian Capital  
20 Territory:
- 21 (a) to contribute to the costs of or associated with remedying,  
22 any actual or anticipated damage referred to in paragraph  
23 57(c) of the Agreement; or
- 24 (b) to meet any compensation for damage paid under clause 84  
25 of the Agreement,

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

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

- 31 (1) The Ministerial Council or the Committee, as the case may be,  
32 may:
- 33 (a) determine that a provision of the Agreement does not apply  
34 to the State of Queensland or the Australian Capital

- 1 Territory, or both, either generally or in relation to a  
2 particular matter or class of matters; and
- 3 (b) revoke any such determination made by it, or any similar  
4 such determination made by the former Ministerial Council  
5 under the former Agreement.
- 6 (2) The Ministerial Council may, at any time, direct that any  
7 determination made:
- 8 (a) by the Committee under sub-clause (1); or  
9 (b) by the Commission or the former Ministerial Council under  
10 clause 4 of Schedule D or clause 6 of Schedule H of the  
11 former Agreement,
- 12 is to be deemed to have been either revoked, or altered in any way  
13 directed by the Ministerial Council.
- 14 (3) The Committee and, if the case requires, the Authority, must give  
15 effect to any determination made by the Ministerial Council under  
16 sub-clause (1).

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

- 18 (1) In making a determination under clause 39, the Ministerial Council  
19 or the Committee must apply the guidelines set out in this clause,  
20 unless the Ministerial Council or the Committee, as the case may  
21 be, determines otherwise.
- 22 (2) A provision should apply to the State of Queensland if:
- 23 (a) issues arising under that provision are likely to cause a  
24 significant benefit or a significant detriment to Queensland;
- 25 (b) any decisions or actions taken within Queensland without  
26 reference to that provision might cause significant benefit or  
27 significant detriment to any part of the Murray-Darling  
28 Basin within Queensland;
- 29 (c) the Government of Queensland has incurred or may incur  
30 any financial obligation as a result of that provision.
- 31 (3) A provision should not apply to the State of Queensland if issues  
32 arising under that provision are only likely to concern that portion  
33 of the Murray-Darling Basin delineated in the plan comprising  
34 Schedule C to this Agreement.

- 1 (4) A provision should not apply to the Australian Capital Territory  
2 unless:
- 3 (a) issues arising under that provision are likely to cause a  
4 significant benefit or a significant detriment to the  
5 Australian Capital Territory; or
- 6 (b) any decisions or actions taken within the Australian Capital  
7 Territory without reference to that provision might cause  
8 significant benefit or significant detriment to any part of the  
9 Murray-Darling Basin within the Australian Capital  
10 Territory; or
- 11 (c) the Government of the Australian Capital Territory has  
12 incurred or may incur any financial obligation as a result of  
13 that provision.

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

- 15 (1) The Ministerial Council may affirm that a policy, determination or  
16 decision of the former Ministerial Council applies to the State of  
17 Queensland.
- 18 (2) Any such policy, determination or decision shall apply to the State  
19 of Queensland in whole or in part, or with such modification, as the  
20 Ministerial Council decides.
- 21 (3) This clause applies only to policies, determinations or decisions  
22 made by the former Ministerial Council between 27 August 1986  
23 and the first meeting of the former Ministerial Council after  
24 Schedule D of the former Agreement came into force.
- 25 (4) Any policy, determination or decision referred to in sub-clause (3)  
26 which is not affirmed by the Ministerial Council under sub-clause  
27 (1) does not apply to Queensland.

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

- 30 (1) Except as provided in this clause, every policy, determination or  
31 decision made by the former Ministerial Council before it  
32 approved Schedule H of the former Agreement, in relation to any  
33 provision or matter which, by virtue of this Part, applies in whole  
34 or in part to the Australian Capital Territory, applies to the  
35 Australian Capital Territory.

- 1 (2) If the Ministerial Council allows, the Australian Capital Territory  
2 may propose to the Committee that a policy, determination or  
3 decision of the former Ministerial Council referred to in sub-clause  
4 (1):
- 5 (a) should apply to the Australian Capital Territory; or  
6 (b) should only apply to the Australian Capital Territory with  
7 modifications; or  
8 (c) should not apply to the Australian Capital Territory.
- 9 (3) The Committee shall consider any proposal made under sub-clause  
10 (2) and may make such recommendations to the Ministerial  
11 Council about the proposal, as it thinks fit.
- 12 (4) The Ministerial Council, after considering any recommendations  
13 made by the Committee, may either:
- 14 (a) adopt the proposal, with or without amendments; or  
15 (b) reject the proposal.
- 16 (5) Any policy, determination or decision referred to in sub-clause (1),  
17 which is not mentioned in a proposal as adopted by the Ministerial  
18 Council under sub-clause (4), ceases to apply to the Australian  
19 Capital Territory on the day on which that proposal is adopted by  
20 the Ministerial Council.

21 **PART VII - INVESTIGATION, MEASUREMENT AND MONITORING**

22 **43. Investigations and Studies**

- 23 (1) The Authority may co-ordinate, carry out or cause to be carried out  
24 surveys, investigations and studies regarding the desirability and  
25 practicability of works or measures for the equitable, efficient and  
26 sustainable use of water and other natural resources of the  
27 Murray-Darling Basin, including but not limited to works or  
28 measures for:
- 29 (a) the conservation and regulation of river water;  
30 (b) the protection and improvement of the quality of river water;  
31 (c) the conservation, protection and management of aquatic and  
32 riverine environments; and

- 1 (d) the control and management of groundwater which may  
2 affect the quality or quantity of river water.
- 3 (2) The Authority may, without further approval of any Contracting  
4 Government, carry out, or cause to be carried out surveys,  
5 investigations or studies pursuant to sub-clause (1) on or adjacent  
6 to:
- 7 (a) the upper River Murray; and  
8 (b) the River Murray in South Australia.
- 9 (3) Except as provided in sub-clause (2) or as authorised under the  
10 Water Act, the Authority must not carry out or cause to be carried  
11 out surveys, investigations or studies within the territory of any  
12 State without obtaining the consent of that State Contracting  
13 Government.

14 **44. Monitoring**

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

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

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

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

- 25 (a) for making and recording continuous measurements of -  
26 (i) the flow of the River Murray, and tributaries of the  
27 River Murray within the boundaries of each State; and  
28 (ii) the volume of stored water,  
29 at such locations as the Authority deems necessary to  
30 determine the volume of the intake from the several portions  
31 of the drainage area of the River Murray, the flow at selected  
32 locations along the River Murray and the losses from  
33 selected reaches of the River Murray, with their positions  
34 and modes of occurrence;



- 1 (b) for making and recording continuous measurements of all  
2 diversions, whether natural or artificial, or partly natural and  
3 partly artificial, from the River Murray and its tributaries;  
4 and  
5 (c) for measuring and monitoring the quality of -  
6 (i) River Murray water;  
7 (ii) water in tributaries of the River Murray at such  
8 locations at or near the confluence of each of those  
9 tributaries with the River Murray as the Authority,  
10 after consultation with the appropriate authorities of  
11 each of the Contracting Governments, deems  
12 necessary; and  
13 (iii) stored water.

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

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

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

- 28 Instead of establishing, maintaining or operating systems and means  
29 referred to in clauses 44 and 45, the Authority may:  
30 (a) adopt the results of any measurements or monitoring made  
31 by any Contracting Government; or

- 1 (b) request a State Contracting Government to carry out any  
2 monitoring or measurement within its territory in such  
3 manner as the Authority considers necessary.

4 **48. Water Quality Objectives**

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

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

- 11 (1) Whenever a Contracting Government or a public authority is  
12 considering any proposal which may significantly affect the flow,  
13 use, control or quality of any water in the upper River Murray and  
14 in the River Murray in South Australia, that Contracting  
15 Government must, or must ensure that the public authority shall:  
16 (a) inform the Authority of the proposal; and  
17 (b) provide the Authority with all necessary information and  
18 data to permit it to assess the anticipated effect of the  
19 proposal on the flow, use, control or quality of the water.  
20 (2) The necessary information and data must be provided in sufficient  
21 time to allow the Authority:  
22 (a) to assess the possible effect of the proposal on the flow, use,  
23 control or quality of that water; and  
24 (b) to make representations thereon to that Contracting  
25 Government or public authority,  
26 before the Contracting Government or public authority decides if  
27 the proposal will proceed.  
28 (3) The Authority shall consult with each Contracting Government,  
29 and with any public authority responsible to a Contracting  
30 Government which that Contracting Government or the Authority  
31 considers is likely to consider a proposal of the type referred to in  
32 sub-clause (1), with a view to reaching agreement with that  
33 Contracting Government, or that public authority, as to:

- 1 (a) the types of proposals to which sub-clause (1) shall apply;  
2 and  
3 (b) the criteria to be used in assessing those proposals to which  
4 sub-clause (1) applies.  
5 (4) Despite sub-clause (3), sub-clauses (1) and (2) apply to any  
6 proposal referred to in clause 23 of Schedule F.

7 **50. Environmental Assessment**

8 The Authority must, in exercising its powers or functions, or in  
9 implementing works or measures under this Agreement, examine and  
10 take into account any possible effects which the exercise of those powers  
11 or functions or those works or measures may have on water and other  
12 natural resources within the Murray-Darling Basin.

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

- 14 (1) The State Contracting Governments of New South Wales and  
15 Victoria must take effective measures to protect the portions of the  
16 catchment of the Hume Reservoir within their respective States  
17 from erosion.  
18 (2) Each of those Contracting Governments must, before the end of  
19 June in each year, forward a report to the Authority on:  
20 (a) the condition of the portion of the catchment of the Hume  
21 Reservoir within its territory;  
22 (b) the measures taken and work carried out during the twelve  
23 months to the end of March immediately preceding; and  
24 (c) particulars of the measures and works proposed for the next  
25 twelve months.  
26 (3) The Authority must, from time to time, inspect or cause to be  
27 inspected such portions of the catchment of the Hume Reservoir as  
28 it thinks fit and may indicate at any time whether in its opinion the  
29 measures taken and works carried out are effective. If, on any  
30 inspection, the Authority considers that any of those measures or  
31 works are ineffective, it must notify the Contracting Government  
32 concerned which must, to the extent that it may be practicable, take  
33 action to make those measures and works effective.

- 1 (4) Measures, works and action taken or carried out by a Contracting  
2 Government pursuant to sub-clause (1) or (3) shall be paid for by  
3 that Contracting Government.
- 4 (5) If at any time the Authority considers that there is need for special  
5 action to protect the catchment of the Hume Reservoir from  
6 erosion, other than, or in addition to, the measures, works and  
7 action taken or carried out under sub-clauses (1) and (3), the  
8 Authority may, in consultation with the Committee, require the  
9 Contracting Government, in whose territory the special action is to  
10 be carried out, to investigate the position and to take such special  
11 action as may be required by the Authority.

12 **PART VIII - CONSTRUCTION, OPERATION AND MAINTENANCE**  
13 **OF WORKS**

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

- 15 (1) Works or measures from time to time included in a Schedule to this  
16 Agreement or authorised pursuant to clause 56 must be  
17 constructed, operated, maintained or implemented (as the case may  
18 require):
- 19 (a) in accordance with -
- 20 (i) the provisions of this Agreement and any State MDB  
21 Act;
- 22 (ii) the corporate plan; and
- 23 (iii) in respect of works —
- 24 (A) the asset management plan; and
- 25 (B) the asset agreement that relates to those works,  
26 unless determined otherwise by the Ministerial  
27 Council;
- 28 (b) by the Contracting Government from time to time nominated  
29 under sub-clause 56(5) for the purpose.
- 30 (2) A Contracting Government:
- 31 (a) described as a 'Nominated Government' in Schedule A with  
32 respect to a work; or

- 1 (b) nominated under the former Agreement with respect to a  
2 work,  
3 is deemed to have been nominated under paragraph (1)(b) to  
4 construct, operate, maintain and renew that work, until the  
5 corporate plan nominates another Contracting Government for one  
6 or more of those purposes, with respect to that work.

7 **53. Asset Management Plan**

- 8 (1) The Authority must, as soon as practicable after this Agreement  
9 comes into effect, prepare a draft asset management plan.
- 10 (2) The draft asset management plan must set out, for each work  
11 referred to in sub-clause 52(1), the way in which the work will be  
12 managed, maintained, repaired, renewed or replaced.
- 13 (3) The Authority must provide the draft asset management plan to the  
14 Committee.
- 15 (4) After considering the draft asset management plan, the Committee  
16 must submit the draft plan and the Committee's advice in relation  
17 to it, to the Ministerial Council.
- 18 (5) After receiving the draft plan and the advice of the Committee, the  
19 Ministerial Council may:
- 20 (a) approve the plan with or without amendment; or  
21 (b) refer the plan back to the Authority for further consideration.
- 22 (6) The Committee must monitor the implementation of the asset  
23 management plan and may advise the Ministerial Council or the  
24 Authority in respect of that plan as the Committee thinks fit.
- 25 (7) The Authority must review the asset management plan annually.
- 26 (8) The Authority:
- 27 (a) may prepare a draft amendment to the asset management  
28 plan as a consequence of the annual review or at any other  
29 time; and
- 30 (b) must prepare a draft amendment to the asset management  
31 plan —
- 32 (i) in respect of each new work authorised under  
33 clause 56; and

1 (ii) if the Committee recommends an amendment to the  
2 plan.

3 (9) Sub-clauses (3), (4) and (5) apply to a draft amendment as if it  
4 were a draft asset management plan.

5 **54. Control and Management of RMO assets**

6 (1) RMO assets are not under the ownership or control of the  
7 Authority; however, the Authority manages the assets in  
8 accordance with sub-clause (3).

9 (2) RMO assets are controlled jointly by the Commonwealth  
10 Government and the Governments of South Australia, New South  
11 Wales and Victoria (“the asset controlling governments”) for the  
12 purposes of this Agreement, in the manner described in the asset  
13 agreement.

14 (3) The asset controlling governments agree that the Authority is to  
15 manage the RMO assets on behalf of the asset controlling  
16 governments for the purposes of this Agreement, as required by  
17 clause 29 of this Agreement.

18 (4) For the purposes of this clause, the Authority must maintain books  
19 of account and records in relation to the RMO assets that comply  
20 with applicable statutory requirements and are consistent with  
21 standard accounting and auditing requirements.

22 (5) Without limiting sub-clause (4), books of account maintained by  
23 the Authority for the purposes of this clause must:

24 (a) be maintained separately from the accounts required to be  
25 kept by the Authority for the purposes of the Murray-Darling  
26 Basin Special Account;

27 (b) include an asset register and asset revaluations;

28 (c) be made available to an asset controlling government upon  
29 request.

30 (6) The Authority must report on the books of account in the manner  
31 and at the times specified in the asset agreement.

32 (7) The books of account maintained by the Authority for purposes of  
33 sub-clause (4) will be audited by the Australian National Audit  
34 Office or other such body as agreed from time to time by the  
35 Ministerial Council.

1       **55. Asset Agreement**

- 2           (1) The Authority must as soon as practicable after this Agreement  
3           comes into effect make an asset agreement with the asset  
4           controlling governments referred to in clause 54 regarding the  
5           management by the Authority of the RMO assets, which is to  
6           reflect asset controlling governments' requirements for accounting  
7           for the assets, recording, reporting and audit as well as specific  
8           high level requirements in relation to construction, maintenance  
9           and operation of assets.
- 10          (2) The asset agreement must include provisions about accounting for,  
11          reporting on and managing the RMO assets.
- 12          (3) The asset agreement must not be inconsistent with any provision of  
13          this Agreement.
- 14          (4) The asset agreement may be reviewed and amended by agreement  
15          between the parties.

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

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

- 20           (1) The Ministerial Council and, subject to sub-clause (3), the  
21           Authority, may, to promote the equitable, efficient and sustainable  
22           use of the water and other natural resources of the Murray-Darling  
23           Basin, authorise:
- 24           (a) the construction of any works in addition to works set out in  
25           Schedule A;
- 26           (b) the improvement of any works constructed under this  
27           Agreement;
- 28           (c) the replacement of any works constructed under this  
29           Agreement;
- 30           (d) work to remedy the extraordinary failure of part or all of any  
31           work constructed under this Agreement; and
- 32           (e) the implementation of any measures.
- 33           (2) Unless the Ministerial Council decides that a work or measure is  
34           required to address an emergency, a work or measure authorised by

- 1 the Ministerial Council is authorised by a corporate plan that  
2 includes such a work or measure.
- 3 (3) The Authority may authorise the execution of any work or the  
4 implementation of any measure pursuant to this clause which is  
5 estimated to cost not more than \$2,000,000 or such other amount  
6 determined by the Ministerial Council from time to time.
- 7 (4) All provisions of this Agreement apply mutatis mutandis to any  
8 work or measure approved under this clause.
- 9 (5) When any work or measure is authorised pursuant to this clause the  
10 Ministerial Council, the Authority or the corporate plan, as the case  
11 may be, must nominate which of the Contracting Governments  
12 shall be responsible for:
- 13 (a) the construction, operation and maintenance of such work;  
14 or
- 15 (b) the implementation of such measure,  
16 in whole or in part.
- 17 (6) The Ministerial Council may:
- 18 (a) resolve to include any works or measures authorised  
19 pursuant to sub-clause (1) in a Schedule to the Agreement;  
20 and
- 21 (b) approve any Schedule prepared or amended pursuant to  
22 paragraph (a).
- 23 (7) When a Schedule is approved by the Ministerial Council under  
24 paragraph (6)(b) it:
- 25 (a) becomes part of the Agreement; and  
26 (b) takes effect as provided for in sub-clause 5(2).

27 **57. Ancillary, Preventative and Remedial Works**

28 On the application of a Committee member and subject to the corporate  
29 plan, the Authority may meet, or contribute to the costs of, or associated  
30 with:

- 31 (a) the construction, operation or maintenance of-
-



- 1 (i) any works of a Contracting Government ancillary to  
2 the works constructed pursuant to this Agreement or  
3 the former Agreement; and  
4 (ii) any preventative or remedial works of a Contracting  
5 Government necessitated by, or arising from, the  
6 construction or operation of works constructed  
7 pursuant to this Agreement or the former Agreement;  
8 (b) the acquisition by a Contracting Government of any interest  
9 in land necessary for the construction, operation or  
10 maintenance of those ancillary, preventative or remedial  
11 works, or for the provision of flood easements; and  
12 (c) remedying any actual or anticipated damage or injury  
13 occasioned by the construction, operation or maintenance of  
14 any works provided for in this Agreement or the former  
15 Agreement.

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

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

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

- 34 (1) A Contracting Government nominated to implement any measure  
35 pursuant to this Agreement:
-

- 1 (a) must submit -  
2 (i) a general description of the measure and of the  
3 method of implementing it; and  
4 (ii) the estimated cost of implementing the measure,  
5 to the Authority for its approval; and  
6 (b) must submit proposed arrangements for sharing the costs of  
7 implementing the measure among the Contracting  
8 Governments to the Authority for the Authority to consider  
9 in the preparation of a recommendation to the Ministerial  
10 Council for the purposes of clause 72.  
11 (2) The Contracting Government must implement an authorised  
12 measure in accordance with:  
13 (a) those matters approved by the Authority under sub-clause  
14 (1);  
15 (b) any directions given by the Authority pursuant to clause 61.

16 **60. Authority Approval of Certain Tenders**

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

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

2           (1) The Authority may give directions, as required to give effect to the  
3           corporate plan and asset management plan, or to give effect to a  
4           decision of the Ministerial Council under sub-clause 29(3), to  
5           ensure:

6           (a) the efficient construction, operation, maintenance and  
7           required performance of any work; and

8           (b) the efficient implementation of any measures,  
9           authorised pursuant to this or the former Agreement.

10          (2) A Constructing Authority must give effect to any directions given  
11          to it by the Authority under sub-clause (1).

12          (3) The Authority may direct:

13          (a) if necessary, what shall be regarded as:

14               (i) investigations, construction and administration; or

15               (ii) major or cyclic maintenance; or

16               (iii) operation and maintenance,  
17               for the purpose of clause 71; and

18          (b) the doing of such acts or things as it considers necessary to  
19          ensure that the provisions of this Part are observed.

20          (4) In exercising its power under paragraph (3)(a), the Authority must  
21          not direct that any of the following description of work shall be  
22          regarded as operation and maintenance:

23          (a) the execution of any improvement to the design or function  
24          of any existing work;

25          (b) the replacement of the whole of any existing work;

26          (c) work to remedy the extraordinary failure of part or all of any  
27          existing work.

28       **62. States to Facilitate Construction and Operation Within Their**  
29       **Territories**

30       A State Contracting Government must grant all powers, licences or  
31       permissions with respect to its territory as may be necessary for:

32       (a) the construction, operation or maintenance of any works;

---

- 1 (b) the implementation of any measures; or  
2 (c) the carrying out of any operation,  
3 required to be undertaken by any other Contracting Government or a  
4 public authority pursuant to this Agreement.

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

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

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

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

6       **65. Maintenance of Works**

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

10      **66. Procedures for Operation of Works**

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

14      **67. Dredging and Snagging**

15           (1) The Authority may, to the extent provided for in the corporate plan  
16           or in an emergency, from time to time direct that the River Murray  
17           upstream of any weir constructed pursuant to this or the former  
18           Agreement be dredged or snagged for such distance as the  
19           Authority may determine.

20           (2) The distance determined pursuant to sub-clause (1) must not  
21           exceed the distance to which the navigability of the River Murray  
22           is affected by the weir.

23           (3) The Contracting Government which constructed the weir must  
24           carry out the Authority's direction and meet the cost involved,  
25           unless the corporate plan provides that the Authority will meet the  
26           whole or part of the cost.

27      **68. Operation of Works**

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

30           (a) operate it in accordance with any procedures determined by  
31           the Authority under clause 66;

- 1 (b) if the work is a lock, maintain immediately downstream of  
2 the lock such depth of water -  
3 (i) as is sufficient for navigation of vessels drawing 1.4  
4 metres of water; or  
5 (ii) such other depth determined by the Authority under  
6 clause 124,  
7 except when the lock is closed for maintenance or when  
8 there is an emergency.  
9 (2) Paragraph (1)(b) does not apply to Weir and Lock No.26  
10 Torrumbarry nor to Weir and Lock No.15 Euston.

11 **69. Performance of Joint Duties**

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

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

18 **70. Ineffective Works**

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

25 **PART IX - FINANCE**

26 **71. Definitions**

27 In this Part:

- 28 “**annuity contribution**” has the meaning set out in sub-clause 73(1);  
29 “**investigations, construction and administration costs**” means the  
30 costs of:

- 1 (a) investigating and constructing works set out in Schedule A;  
2 and
- 3 (b) investigating and constructing any other works and  
4 implementing measures authorised under this Agreement;  
5 and
- 6 (c) studies, programs, surveys and investigations carried out  
7 pursuant to clause 43; and
- 8 (d) establishing systems referred to in clause 45; and
- 9 (e) systems established pursuant to a request made under  
10 paragraph 47(b); and
- 11 (f) special action taken under sub-clause 51(5) which the  
12 Authority has determined to be investigations, construction  
13 and administration costs; and
- 14 (g) any payment by the Authority in respect of the construction  
15 of works under clause 57; and
- 16 (h) complying with the direction given under sub-clause 60(3);  
17 and
- 18 (i) dismantling works referred to in sub-clause 70(2); and
- 19 (j) any payment by the Authority under paragraph 138(a); and
- 20 (k) administrative and other expenses of the Committee, Basin  
21 Community Committee, Authority and the Ministerial  
22 Council in respect of their functions, powers and duties;
- 23 **“major or cyclic maintenance”** has a meaning determined by reference  
24 to the guidelines established by the Authority under sub-clause 73(3);  
25 **“operation and maintenance costs”** means the costs of:
- 26 (a) operating and maintaining works set out in Schedule A; and  
27 (b) operating and maintaining any other works authorised under  
28 this Agreement; and
- 29 (c) operating and maintaining systems referred to in clause 45;  
30 and
- 31 (d) operating and maintaining systems established pursuant to a  
32 request made under paragraph 47(b); and

- 1 (e) special action taken under sub-clause 51(5) which the  
2 Authority has determined to be operation and maintenance  
3 costs; and
- 4 (f) any payment made by the Authority in respect of the  
5 operation or maintenance of works under clause 57; and
- 6 (g) such dredging or snagging carried out under clause 67 which  
7 the corporate plan provides will be met by the Authority;  
8 and
- 9 (h) any payment made by the Authority under paragraph 138(b).

10 **72. Apportionment of Costs**

- 11 (1) The Ministerial Council, after considering any recommendation of  
12 the Authority, must determine:
- 13 (a) what contribution, if any, is to be made by Queensland or the  
14 Australian Capital Territory, or both; and
- 15 (b) whether some or all of that contribution is to be made as a  
16 lump sum or in a comparable manner to a manner provided  
17 for in sub-clause (3) or (4) or sub-clause 73(1).
- 18 (2) Subject to sub-clause (1), the Ministerial Council:
- 19 (a) may, on the recommendation of the Authority, from time to  
20 time determine which proportion of the services provided by  
21 river operations is attributable to each State Contracting  
22 Government; and
- 23 (b) must, at intervals not exceeding five years, reconsider the  
24 proportions determined under paragraph (2)(a); and
- 25 (c) may, on the recommendation of the Authority, alter the  
26 proportions determined under paragraph (2)(a).
- 27 (3) Unless the Ministerial Council decides otherwise and subject to  
28 any decision of the Ministerial Council under sub-clause (1), a  
29 State Contracting Government must contribute to operation and  
30 maintenance costs in the relevant proportion determined under  
31 sub-clause (2).
- 32 (4) Unless the Ministerial Council decides otherwise and subject to  
33 any decision by the Ministerial Council under sub-clause (1) and  
34 the provisions of clause 73:



- 1 (a) the Commonwealth Government must contribute one-quarter  
2 of all investigations, construction and administration costs  
3 after first deducting any contribution to those costs made by:  
4 (i) Queensland and the Australian Capital Territory; or  
5 (ii) any State pursuant to any understanding reached  
6 between that State and the Contracting Governments;  
7 and  
8 (b) the State Contracting Governments must together contribute  
9 three-quarters of all investigations, construction and  
10 administration costs:  
11 (i) relating to river operations, in the relevant proportions  
12 determined under sub-clause (2); and  
13 (ii) relating to measures implemented under this  
14 Agreement, in equal shares.  
15 (5) The Ministerial Council, after considering any recommendation by  
16 the Authority, must determine whether the costs of any special  
17 action taken under sub-clause 51(5) are investigations, construction  
18 and administration costs or operation and maintenance costs.

19 **73. Annuity Contributions**

- 20 (1) The Ministerial Council, on the recommendation of the Authority,  
21 may from time to time determine that a Contracting Government  
22 must make an annual annuity contribution in respect of either or  
23 both of:  
24 (a) investigations, construction and administration costs; and  
25 (b) major or cyclic maintenance costs,  
26 which the Contracting Government might otherwise be required to  
27 contribute under sub-clause 72(1), (3), paragraph 72(4)(a) or  
28 sub-paragraph 72(4)(b)(i), in any future year.  
29 (2) In fixing any annuity contribution under sub-clause (1), the  
30 Ministerial Council must have regard to the Authority's estimate of  
31 costs which will be incurred during the next ensuing 30 years (or  
32 such other period as the Authority determines), as provided in the  
33 asset management plan, in relation to either or both of:  
34 (a) the construction or renewal; and  
35 (b) major or cyclic maintenance,
-

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

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

9 **74. Annual and forward estimates**

10 (1) The Authority must prepare:

- 11 (a) detailed annual estimates of its known and anticipated  
12 expenditure for the next financial year; and  
13 (b) forward estimates of its known and anticipated expenditure  
14 for the three successive financial years following the next  
15 financial year.

16 (2) Annual and forward estimates must:

- 17 (a) show the estimated amount to be contributed by each  
18 Contracting Government; and  
19 (b) be sent to each Contracting Government as soon as  
20 practicable in each year; and  
21 (c) be included in the corporate plan for approval by the  
22 Ministerial Council.

23 (3) Annual and forward estimates may be amended by amendments to  
24 the corporate plan as provided in clause 35.

25 **Note** — the Contracting Governments note their agreement of May 2006 to at least maintain their  
26 2006-07 contributions to the Murray-Darling Basin Commission in real terms for the  
27 four years to 2010-2011. The Contracting Governments recommit to that agreement for  
28 the purpose of making their funding contributions to the Authority to the end of  
29 2010-2011, for the functions the Authority performs that were previously performed by  
30 the Murray-Darling Basin Commission.

31 **75. Payments by Contracting Governments**

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

1 **76. Authority to Account**

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

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

- 9 (1) Subject to sub-clause (3), the Authority must apply money paid by  
10 the Contracting Governments in accordance with the relevant  
11 estimates referred to in paragraph 74(1)(a), the corporate plan and  
12 the other provisions of this Agreement.
- 13 (2) In any financial year, the Authority may:
- 14 (a) spend any anticipated savings on an item in the estimates  
15 prepared or revised under paragraph 74(1)(a) on any item  
16 which it anticipates will be overspent;
- 17 (b) advance sums to any Constructing Authority, public  
18 authority or person for expenditure in accordance with those  
19 estimates in that, or any subsequent financial year;
- 20 (c) advance working capital to a Constructing Authority and  
21 replenish amounts expended from that advance from time to  
22 time.
- 23 (3) The Authority may accumulate:
- 24 (a) any sums received under sub-clause 72(3) or (4) for the  
25 purposes of river operations, but not expended in any year;  
26 and
- 27 (b) any annuity contributions received under clause 73,  
28 for use in subsequent years.
- 29 (4) Any sum referred to in sub-clause (3) and any interest thereon  
30 must:
- 31 (a) in the case of sums received under sub-clause 72(3), only be  
32 expended on operation and maintenance costs; and

- 1 (b) in the case of sums received under sub-clause 72(4), only be  
2 expended on investigations, construction and administration  
3 costs; and
- 4 (c) in the case of annuity contributions received under  
5 clause 73:
- 6 (i) from a State Contracting Government, only be  
7 expended on either:
- 8 (A) investigations, construction and administration  
9 costs; or
- 10 (B) major or cyclic maintenance costs,  
11 of river operations, as the case requires; or
- 12 (ii) from the Commonwealth, only be expended on  
13 investigations, construction and administration costs  
14 of river operations.

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

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

1       **79. Contracting Governments to Account**

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

5       **80. Unexpended Balances**

6           (1) Any unexpended balance of moneys paid to the Authority by  
7           Contracting Governments must only be expended under this  
8           Agreement in accordance with the corporate plan.

9           (2) The Authority must notify Contracting Governments of any  
10          unexpended balances of moneys referred to in sub-clause (1) held  
11          by it at the end of any financial year.

12      **81. List of Assets**

13          (1) Except as provided in sub-clause (2) the Authority must keep a list  
14          of assets acquired by:

15              (a) the Authority;

16              (b) a Constructing Authority with funds provided by the  
17              Authority.

18          (2) The Authority need not keep a list of assets referred to in  
19          paragraph (1)(b) if it is satisfied that:

20              (a) proper records of those assets are kept by the Constructing  
21              Authority; and

22              (b) copies of those records will be provided to the Authority at  
23              its request.

24      **82. Disposal of Surplus Assets**

25          (1) The Authority may, with the approval of the Committee, direct  
26          when and how surplus assets acquired by a Constructing Authority  
27          with funds provided by the Authority, shall be disposed of.

28          (2) Subject to sub-clause (3), the Committee must determine how  
29          proceeds from the disposal of surplus assets are:

30              (a) to be paid to the Authority and credited against future capital  
31              and renewal contributions by; or

- 1 (b) to be distributed among,  
2 the Contracting Governments, having regard to the contributions  
3 made by each Contracting Government to the acquisition of those  
4 assets.
- 5 (3) A determination under sub-clause (2) that relates to RMO assets  
6 must be consistent with the asset agreement.

7 **83. Revenue**

- 8 (1) Any money received by a Contracting Government or a public  
9 authority from the use of works subject to this Agreement must be  
10 paid to the Authority.
- 11 (2) The Authority may provide and charge for goods and services  
12 incidental to its functions which are not otherwise provided for in  
13 this Agreement.
- 14 (3) Money paid to the Authority under this clause must either:  
15 (a) be expended on investigations, construction and  
16 administration costs; or  
17 (b) applied in accordance with sub-clause 80(1).

18 **84. Compensation for Damage by Works**

- 19 The Contracting Governments must meet, in equal shares, any  
20 compensation for damage paid by a Constructing Authority pursuant to  
21 the Water Act or a State MDB Act:
- 22 (a) caused or arising from anything done by it in constructing,  
23 operating or maintaining any works or executing any  
24 measures provided for in this Agreement; and  
25 (b) which has not been met or contributed to by the Authority  
26 under paragraph 57(c).

27 **PART X - REPORTS**

28 **85. Preparation of Reports**

- 29 As soon as practicable after the end of each financial year, the Chief  
30 Executive must prepare and give to the Ministerial Council a report as
-

1 required under section 214 of the Water Act, which will include a report  
2 on the Authority's proceedings and activities during that year.

3 **PART XI - PROCEEDINGS IN DEFAULT**

4 **86. Failure to Perform Works or Contribute Cost**

5 (1) The Authority must immediately notify the Committee, the  
6 Ministerial Council and each other Contracting Government if any  
7 Contracting Government fails, after being so required by the  
8 Authority to:

- 9 (a) do anything in relation to any works or measures; or  
10 (b) pay any money to the Authority,  
11 which it is obliged to do or pay under this Agreement.

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

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

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

- 20 (a) may enter the territory of the defaulting Contracting  
21 Government to do whatever it has been authorised to do by  
22 the Authority;  
23 (b) shall be deemed to have all powers, licences and permissions  
24 as are required from the defaulting Contracting Government  
25 to do whatever it has been authorised to do by the Authority;  
26 (c) shall be deemed to have all the rights and powers of a  
27 Constructing Authority, including the right to receive any  
28 payment due under clause 78, in respect of whatever it has  
29 been authorised to do by the Authority; and  
30 (d) may, in a court of competent jurisdiction, recover, as a debt  
31 due from the defaulting Contracting Government, all money  
32 reasonably expended by it in doing whatever it has been

- 1 authorised to do by the Authority and which has not been  
2 paid to it by the Authority by virtue of the right conferred by  
3 paragraph (3)(c), together with interest at the prescribed rate.
- 4 (4) A defaulting Contracting Government shall once more be deemed  
5 to be the Constructing Authority when:
- 6 (a) any failure referred to in paragraph (1)(a) has been made  
7 good; and
- 8 (b) it has paid all money payable by it under paragraph (3)(d).
- 9 (5) Unless the Authority, in consultation with the Committee, decides  
10 otherwise in any particular case, a Contracting Government which  
11 fails to pay money due under clause 75 to the Authority by the due  
12 date is liable to pay interest on any outstanding balance at the  
13 prescribed rate.
- 14 (6) Any other Contracting Government:
- 15 (a) may pay the outstanding balance owed by a Contracting  
16 Government under clause 75, together with interest at the  
17 prescribed rate; and
- 18 (b) may recover the amount so paid in a court of competent  
19 jurisdiction as a debt due from the defaulting Contracting  
20 Government.
- 21 (7) Any interest payable under this clause shall be calculated from the  
22 due date to the date of actual payment.

23 **PART XII — DISTRIBUTION OF WATERS**

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

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

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

29 **87. Application of Division 1**

30 This Division applies subject to:

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

3 ***SUBDIVISION B - STATE ENTITLEMENTS TO WATER***

4 **88. South Australia's Monthly Entitlement**

5 South Australia is entitled to receive:

- 6 (a) the following monthly quantities of River Murray water -  
7 July..... 50 500 megalitres  
8 August..... 66 000 megalitres  
9 September ..... 77 000 megalitres  
10 October ..... 112 500 megalitres  
11 November ..... 122 000 megalitres  
12 December ..... 159 000 megalitres  
13 January ..... 159 000 megalitres  
14 February ..... 136 000 megalitres  
15 March ..... 128 000 megalitres  
16 April ..... 77 000 megalitres  
17 May ..... 35 000 megalitres  
18 June ..... 32 000 megalitres  
19 except as provided in clause 128; and  
20 (b) 58,000 megalitres per month for dilution and losses, unless  
21 the Ministerial Council determines otherwise; and  
22 (c) such additional quantities for dilution as the Ministerial  
23 Council determines from time to time.

24 **89. Measurement of South Australia's Entitlement**

- 25 (1) Each month South Australia is deemed to receive the sum of the  
26 water flowing in that month in:  
27 (a) the River Murray between the confluences of the Rufus and  
28 Lindsay Rivers with the River Murray; and  
29 (b) the Lindsay River near its confluence with the River Murray.

- 1           (2) The Authority must determine the flows referred to in sub-clause  
2           (1) in such manner as it sees fit.

3           **90. Variation of South Australia's Entitlements**

4           The Authority may from time to time, at the request of the Committee  
5           member for South Australia, vary for a specified sequence of months any  
6           of the monthly quantities which that State is entitled to receive under  
7           clause 88 without increasing the total of those quantities for that  
8           sequence.

9           **91. South Australia's Storage Right**

- 10          (1) South Australia may store any part of its entitlement under  
11          clause 88 (as adjusted for interstate trade) for the purposes of  
12          meeting critical human water needs in the upper River Murray  
13          storage or storages of its choice, beyond the time at which that part  
14          of its entitlement would otherwise have been delivered under this  
15          Agreement, provided such storage does not affect water  
16          availability for New South Wales or Victoria that would otherwise  
17          have existed under this Agreement had it not been for the exercise  
18          by South Australia of its right under this clause.
- 19          (2) South Australia may store any part of its entitlement under  
20          clause 88 (as adjusted for interstate trade) for the purpose of  
21          private carry-over in the upper River Murray storage or storages of  
22          its choice, beyond the time at which that part of its entitlement  
23          would otherwise have been delivered under this Agreement,  
24          provided such storage does not affect water availability or storage  
25          access for New South Wales or Victoria that would otherwise have  
26          existed under this Agreement had it not been for the exercise by  
27          South Australia of its right under this clause.
- 28          (3) During the period before a Schedule is made under Subdivision F  
29          of Division 1 of this Part, the Authority is to account for water  
30          stored pursuant to this clause, as far as possible, consistently with  
31          Subdivisions D and E of this Division.

32          **92. Use of Lake Victoria**

33          If the Authority decides that the flow or prospective flow of the River  
34          Murray downstream of its junction with the Great Darling Anabranch is,  
35          or will be for any month in excess of the sum of:

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- 1 (a) the quantities which South Australia is entitled to receive in  
2 that month under clause 88 or 90;
- 3 (b) any quantities which, in the opinion of the Authority, ought  
4 to be and can be impounded in Lake Victoria during that  
5 month with the object of filling that storage at some time  
6 before the end of the next ensuing month of May; and
- 7 (c) any quantities required for use by New South Wales and  
8 Victoria, downstream of the junction of the River Murray  
9 and the Great Darling Anabranh,
- 10 South Australia may receive that excess in addition to the quantity of  
11 water which it is entitled to receive under clause 88 or 90.

12 **93. Surplus Flow to South Australia**

13 The quantity of water that South Australia is entitled to receive in any  
14 month shall not be reduced if it has received a greater quantity than it was  
15 entitled to receive under clause 88 or 90 in any previous month.

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

- 17 (1) Except as otherwise expressly provided in Subdivision D of this  
18 Division and subject to South Australia's entitlement under  
19 clause 88 or 90, New South Wales and Victoria are each entitled to  
20 use:
- 21 (a) all the water in tributaries of the upper River Murray  
22 downstream of Doctors Point within its territory, before it  
23 reaches the River Murray;
- 24 (b) half the natural flow at Doctors Point;
- 25 (c) half the water entering the Menindee Lakes from the Darling  
26 River, subject to the prior entitlement of New South Wales  
27 to use water from the Menindee Lakes Storage as provided  
28 in clause 95;
- 29 (d) subject to paragraph (1)(c), an amount of water from the  
30 upper River Murray equivalent to any water contributed by  
31 any tributary or any outfall approved by the Ministerial  
32 Council entering the upper River Murray from its territory  
33 downstream of Doctors Point; and

- 1 (e) half the volume of water calculated in accordance with  
2 clause 8 of Schedule F.
- 3 (2) Entitlements under sub-clause (1) shall not be affected by the  
4 declaration of a period of special accounting except as specifically  
5 provided in Subdivision E of this Division.

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

- 7 (1) Whenever water in the Menindee Lakes Storage falls below 480  
8 000 megalitres, New South Wales may use the stored water as it  
9 requires until the volume next exceeds 640 000 megalitres.
- 10 (2) Whenever sub-clause (1) does not apply, New South Wales may:
- 11 (a) divert from -
- 12 (i) the Menindee Lakes Storage; or
- 13 (ii) the Darling River below the Menindee Lakes Storage;  
14 or
- 15 (iii) the River Murray, below its junction with the Darling  
16 River; or
- 17 (b) release from the Cawndilla outlet regulator,  
18 a total of up to 100,000 megalitres in any 12 month period  
19 commencing on 1 April.
- 20 (3) Whenever the Ministerial Council determines that:
- 21 (a) releases from the Menindee Lakes Storage exceed the water  
22 required for storage in Lake Victoria and to supply South  
23 Australia's entitlement; or
- 24 (b) water in the Menindee Lakes Storage exceeds 1 680 000  
25 megalitres and the amount of the excess plus the estimated  
26 water currently in the River Murray and Darling River below  
27 the Menindee Lakes Storage is sufficient to supply South  
28 Australia's entitlement and to fill Lake Victoria,
- 29 any of that water used by New South Wales or released to provide  
30 for the retention of floodwaters shall not be deemed to be part of its  
31 entitlement under sub-clause (2).

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

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

5       **97. Limitations on Use by New South Wales and Victoria**

6               Unless the Ministerial Council determines otherwise, New South Wales  
7               or Victoria must not use water from the upper River Murray to an extent  
8               which may result in less than half the minimum reserve determined under  
9               clause 103 being held in upper River Murray storages and allocated to  
10              that State at the end of the following May.

11       ***SUBDIVISION C - CONTROL BY AUTHORITY***

12       **98. Authority's Role in Operation of Storages**

- 13              (1) The Authority may give directions for the release of water from  
14              upper River Murray storages and water must be released in  
15              accordance with any such directions.
- 16              (2) The Authority may give directions under sub-clause (1) in the form  
17              of standing procedures, which it may amend or suspend at any  
18              time, except as provided in clause 100.
- 19              (3) In giving directions under this clause the Authority must have  
20              regard to -
- 21                      (i) maintaining supply to South Australia of the quantities of  
22                      water which that State is entitled to receive;
- 23                      (ii) facilitating the exercise by South Australia of its right under  
24                      clause 91, including the delivery of water stored in exercise  
25                      of that right;
- 26                      (iii) maintaining a minimum reserve of water as provided for in  
27                      clause 103; and
- 28                      (iv) facilitating the exercise by New South Wales and Victoria of  
29                      their respective rights to use water from the upper River  
30                      Murray, as they require.
- 31              (4) In giving directions under this clause the Authority may also have  
32              regard to -

- 1 (i) the improvement or maintenance of water quality in the  
2 River Murray (including the upper River Murray); and  
3 (ii) other water management and environmental objectives  
4 consistent with this Agreement.

5 **99. Limitation on Menindee Lakes Operation**

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

12 **100. Procedures for Dartmouth Dam Operation**

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

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

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

- 20 (a) water stored in the Hume and Dartmouth Reservoirs above  
21 their minimum operating levels;  
22 (b) water stored in Lake Victoria above its minimum operating  
23 level;  
24 (c) water available for release from the Menindee Lakes Storage  
25 at the direction of the Authority in accordance with  
26 clause 99, after allowing for New South Wales’ prior  
27 entitlements under clause 95;  
28 (d) the estimated natural flow of the River Murray at Doctors  
29 Point before the end of the following May;  
30 (e) water calculated in accordance with clause 9 of Schedule F;

- 1 (f) the difference between the estimated amount of water in  
2 transit in the upper River Murray and the estimated amount  
3 of water in transit at the end of the following May.

4 **102. Available Water**

5 From time to time the Authority must:

- 6 (a) determine the minimum amount of water estimated to be  
7 under the control of the Authority;
- 8 (b) determine the allowance to be made until the end of the  
9 following May for -
- 10 (i) losses by evaporation and other means in the upper  
11 River Murray; and
- 12 (ii) the entitlements of South Australia under paragraphs  
13 88(b) and 88(c);
- 14 (c) having regard to its determinations under paragraphs 102(a)  
15 and 102(b) determine the water available -
- 16 (i) for distribution to New South Wales, Victoria and  
17 South Australia before the end of the following May;  
18 and
- 19 (ii) for holding in reserve at the end of the following May.

20 **103. Minimum Reserve**

- 21 (1) From time to time the Authority must determine, in accordance  
22 with the formula set out in sub-clauses (2) and (3), the minimum  
23 reserve to be held at the end of the following May.
- 24 (2) Unless the Ministerial Council determines otherwise, the minimum  
25 reserve shall be the lesser of:
- 26 (a) One third of the water available determined under paragraph  
27 102(c)
- 28 **less**
- 29 The sum of the monthly entitlements of South Australia  
30 under paragraph 88(a) up to the end of the following May
- 31 **plus**

- 1                                   The sum of any imbalance of use during a period of special  
2                                   accounting calculated under clause 126; and
- 3                                   (b) 835,000 megalitres.
- 4                                   (3) If the minimum reserve determined under paragraph (2)(a) is less  
5                                   than zero, then the minimum reserve shall be deemed to be zero.
- 6                                   (4) Unless the Ministerial Council determines otherwise, the first  
7                                   250,000 megalitres of any minimum reserve shall be held in Lake  
8                                   Victoria.
- 9                                   (5) When considering:
- 10                                  (a) whether to make a determination under either of sub-clauses  
11                                  (2) or (4); and
- 12                                  (b) the substance of any determination under either of  
13                                  sub-clauses (2) or (4),
- 14                                  the Ministerial Council:
- 15                                  (c) must have regard to the provisions of the Basin Plan, and in  
16                                  particular, to such of those provisions that are required by  
17                                  Part 2A of the Water Act;
- 18                                  (d) before the Basin Plan first takes effect, must take into  
19                                  account the requirements for conveyance water and seek the  
20                                  advice of the Authority in relation to those requirements.

21                                  **104. Use of State Works to Convey Murray Water**

22                                  The Authority may arrange for water to be conveyed from one part of the  
23                                  upper River Murray to another via works under the control of a State  
24                                  Contracting Government, on such terms as may be agreed between the  
25                                  Authority and that State Contracting Government.

26                                  ***SUBDIVISION D - WATER ACCOUNTING***

27                                  **105. General**

28                                  The following provisions give effect to the principles set out in the  
29                                  preceding Subdivisions of this Division.



1 **106. Allocation of Water to New South Wales and Victoria**

2 (1) In respect of any period:

- 3 (a) the natural flow of the River Murray at Doctors Point; and  
4 (b) the volume of water calculated in accordance with clause 10  
5 of Schedule F,

6 must be allocated between New South Wales and Victoria as  
7 provided in sub-clause (2).

8 (2) The quantity of water estimated for any month in accordance with  
9 sub-clause (1) shall be allocated as follows:

10 (a) for any of the months from May through to August  
11 inclusive, the whole quantity shall be allocated half each to  
12 New South Wales and Victoria; and

13 (b) for any of the months from September through to April  
14 inclusive -

- 15 (i) whenever Victoria is subject to a period of special  
16 accounting, the first 12,900 megalitres per month  
17 (being equivalent to the ceding by Victoria to New  
18 South Wales of a volume of 6,450 megalitres per  
19 month); and  
20 (ii) at any other time, the first 16,700 megalitres per  
21 month (being equivalent to the ceding by Victoria to  
22 New South Wales of a volume of 8,350 megalitres per  
23 month),

24 shall be allocated to New South Wales, and the remainder  
25 shall be allocated half each to New South Wales and  
26 Victoria.

27 **107. Allocation of Water in Menindee Lake Storage**

28 (1) Half the water entering the Menindee Lakes Storage from the  
29 Darling River is allocated to New South Wales and half to  
30 Victoria.

31 (2) Of the water allocated to Victoria and stored in the Menindee  
32 Lakes Storage, Victoria must cede 4,170 megalitres each month to  
33 New South Wales.

1 **108. Tributary Inflows**

- 2 (1) The quantity of water which in any period enters the upper River  
3 Murray downstream of Doctors Point from a tributary, or from any  
4 artificial outfall approved by the Ministerial Council for the  
5 purposes of this clause, other than quantities referred to in  
6 clause 107, is allocated to the State from which the water enters the  
7 upper River Murray.
- 8 (2) The volume of water calculated in accordance with  
9 sub-clause 11(1) of Schedule F is allocated to New South Wales.
- 10 (3) The volume of water calculated in accordance with  
11 sub-clause 11(2) of Schedule F is allocated to Victoria.

12 **109. Use by New South Wales and Victoria of Allocated Water**

13 New South Wales and Victoria are respectively deemed to use the  
14 quantity of water:

- 15 (a) diverted from the upper River Murray by an offtake under  
16 the jurisdiction of that State, unless the Ministerial Council  
17 determines otherwise; and
- 18 (b) calculated under sub-clause 12(1) of Schedule F, in the case  
19 of New South Wales; and
- 20 (c) calculated under sub-clause 12(2) of Schedule F, in the case  
21 of Victoria.

22 **110. Losses**

- 23 (1) Any water which is lost by evaporation or other means from the  
24 upper River Murray is deemed to have been used by New South  
25 Wales or Victoria.
- 26 (2) Unless otherwise determined by the Ministerial Council:
- 27 (a) losses attributable to evaporation from a major storage will  
28 be deemed to have been used in proportion to the quantities  
29 of water allocated to New South Wales or Victoria in that  
30 storage;
- 31 (b) losses attributable to an unregulated flow in any part of the  
32 upper River Murray will be deemed to have been used in  
33 proportion to the flow allocated to New South Wales or  
34 Victoria in that part of the river;

- 1 (c) all other losses will be deemed to have been used half each  
2 by New South Wales and Victoria.
- 3 (3) For the purposes of this clause an “unregulated flow” means a flow  
4 which has not been planned by the Authority.

5 **111. New South Wales’ and Victoria’s Supply to South Australia**

6 For the purposes of this Subdivision any water supplied in any month to  
7 South Australia which it is entitled to receive under clause 88 or 90 is  
8 deemed to be supplied half each by New South Wales and Victoria and  
9 the Authority must make appropriate adjustments to allocations between  
10 New South Wales and Victoria of water in the upper River Murray so as  
11 to give effect to those States’ obligations under clause 96.

12 **112. Commencement of Continuous Accounting of Carryover of Stored**  
13 **Water**

14 Half the water in each major storage on 1 December 1989 is deemed to  
15 have been allocated to New South Wales and half to Victoria.

16 **113. Reallocation of Water Between New South Wales and Victoria**

- 17 (1) By agreement between New South Wales and Victoria, any  
18 quantity of water allocated to one of those States and in store in  
19 any of the upper River Murray storages or in transit in a specified  
20 part of the upper River Murray, may be exchanged for a quantity of  
21 water allocated to the other State and in store in another of the  
22 upper River Murray storages or in transit in another specified part  
23 of the upper River Murray, if such an exchange of water does not  
24 prejudice the entitlement of South Australia.
- 25 (2) The Authority may at any time, with the consent of either New  
26 South Wales or Victoria, determine that certain quantities of water  
27 in transit in the upper River Murray are surplus to the requirements  
28 of that State and reallocate the whole or part of such quantities  
29 from that State to the other State.

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

31 Any water used by either New South Wales or Victoria or supplied to  
32 South Australia by either of those States is deemed to be provided from  
33 water allocated to that State and the Authority may, as necessary to

1 ensure the availability of appropriately allocated water at the place of  
2 such use or supply, reallocate quantities of water in the upper River  
3 Murray but must not thereby alter the total quantities of water allocated to  
4 New South Wales or Victoria respectively, in the upper River Murray.

5 **115. Accounting Procedures**

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

- 9 (a) to increase in any period by the quantity of water allocated  
10 to that State flowing into that part in that period; and
- 11 (b) to decrease in any period by any quantities of water -
- 12 (i) used by that State by way of diversion or loss from  
13 that part in that period; or
- 14 (ii) passed from that part in that period for -
- 15 • downstream use by that State,
  - 16 • supply by that State to South Australia,
  - 17 • conveyance to another part of the upper River  
18 Murray as water allocated to that State; or
- 19 (iii) released from that part in that period and determined  
20 under clause 122 to be a release of water allocated to  
21 that State; or
- 22 (iv) spilled from that part in that period and deemed under  
23 clause 117 to be a spill of water allocated to that State.

24 **116. Internal Spills**

- 25 (1) In any major storage, water allocated either to New South Wales or  
26 Victoria must be re-allocated to the other State to prevent the  
27 quantity of water allocated to either State in the storage exceeding  
28 half the lesser of:
- 29 (a) the target capacity of the storage; or
- 30 (b) the quantity of water stored when releases are being made  
31 for flood mitigation.
- 32 (2) In Hume and Lake Victoria, “target capacity” means the capacity  
33 of the reservoir at the Full Supply Level.

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

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

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

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

- 27 (1) Whenever the storage level in Dartmouth Reservoir is above the  
28 level determined for the purposes of this sub-clause by the  
29 Ministerial Council, releases made from Dartmouth Reservoir  
30 through the hydro-electric power station will be deemed to be spills  
31 and will be accounted for as provided in clause 117.
- 32 (2) No release from Dartmouth Reservoir will be attributable to the  
33 allocation of water to New South Wales or Victoria if the quantity  
34 of water in Dartmouth Reservoir allocated to that State is less than  
35 or equal to half the minimum operating storage in the reservoir.

- 1 (3) Releases from Dartmouth Reservoir other than those covered by  
2 sub-clauses (1) and (2) will be attributable to the allocation of  
3 water to New South Wales or Victoria in such proportions as tend  
4 most to equalize the quantities of water allocated to those States in  
5 Hume Reservoir.

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

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

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

- 18 (1) For the purposes of this clause releases from Menindee Lakes  
19 Storage consist of:
- 20 (a) water required to maintain a flow throughout the main  
21 course of the Darling River downstream of Menindee Lakes;
- 22 (b) water released to satisfy use by New South Wales in the  
23 main course of the Darling River downstream of Menindee  
24 Lakes;
- 25 (c) water released through the Lake Cawndilla Outlet Regulator;
- 26 (d) water released down the main course of the Darling River  
27 downstream of Menindee Lakes Storage to satisfy directions  
28 given by the Authority under sub-clause 98(1);
- 29 (e) any other water released from the Menindee Lakes Storage  
30 which can be used either to supply South Australia's  
31 entitlement under clause 88 or 90 or to supply water to Lake  
32 Victoria.
- 33 (2) Whenever New South Wales is using water pursuant to  
34 sub-clause 95(1) all release from Menindee Lakes Storage will be  
35 attributed to the allocation of water to New South Wales.
-

- 1 (3) Whenever sub-clause 95(1) does not apply to the use of water by  
2 New South Wales from the Menindee Lakes Storage:
- 3 (a) releases under paragraph (1)(a) will be attributed equally to  
4 the allocations of water to New South Wales and Victoria;
- 5 (b) releases under paragraph (1)(b) and (1)(c) will be attributed  
6 to the allocation of water to New South Wales;
- 7 (c) releases under paragraph (1)(d) and (1)(e) will be attributed  
8 to the respective allocations of New South Wales and  
9 Victoria in such proportions as tend most to equalize the  
10 water in Lake Victoria allocated to each State, provided that  
11 such proportions do not -
- 12 (i) cause the water allocated either to New South Wales  
13 or to Victoria to fall below 240,000 megalitres;
- 14 (ii) cause water to be re-allocated between the States  
15 under clause 116.

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

17 At the conclusion of any period during which New South Wales is using  
18 water pursuant to sub-clause 95(1), the quantities of water stored in the  
19 Menindee Lakes Storage and allocated respectively to New South Wales  
20 and Victoria must be adjusted so that the difference between those  
21 quantities is the same as the difference in the allocated quantities at the  
22 beginning of that period.

23 **122. Accounting for Dilution Flows**

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

1 (c) to supply storages downstream of that point.

2 ***SUBDIVISION E - PERIODS OF SPECIAL ACCOUNTING***

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

4 (1) Unless the Authority is satisfied that the reserve allocated to either  
5 New South Wales or Victoria at the end of the following May will  
6 be greater than 1,250,000 megalitres, the Authority must declare a  
7 period of special accounting between that State and South  
8 Australia.

9 (2) A period of special accounting:

10 (a) may be declared at any time after the end of July in any year  
11 and before the end of May in the following year;

12 (b) unless the Ministerial Council decides otherwise, will be  
13 deemed to have commenced on 1 August in that year,  
14 whenever it is in fact declared.

15 **124. Variation of Navigation Depths During Restrictions**

16 The Authority may vary the depth of water to be maintained immediately  
17 downstream of a lock under sub-paragraph 68(1)(b)(i), during any period  
18 of special accounting.

19 **125. Special Accounts to be Kept**

20 Throughout any period of special accounting declared for New South  
21 Wales or Victoria, separate accounts must be kept by the Authority of:

22 (a) all water diverted from the upper River Murray by the State;

23 (b) the difference between -

24 (i) the sum of all water entering the Upper River Murray  
25 downstream of Doctors Point from -

26 • any tributary within that State other than the River  
27 Darling, and

28 • any artificial outfall from that State approved by  
29 the Ministerial Council for the purposes of  
30 clause 108; and



1 (ii) any water allocated to that State which flows to South  
2 Australia in excess of South Australia's entitlement  
3 under clause 88 or 90.

4 If (ii) exceeds (i), the account kept under this paragraph must  
5 be set at zero;

6 (c) all water allocated to that State which is supplied by it to  
7 meet South Australia's entitlement under paragraph 88(a).

8 **126. Imbalance in Use**

9 The imbalance in use between either New South Wales or Victoria and  
10 South Australia in a period of special accounting is to be calculated as  
11 follows:

12 One-third of the amount calculated under paragraph 125(a)

13 **less:**

14 One-third of the amount calculated under paragraph 125(b)

15 **less:**

16 Two-thirds of the amount calculated under paragraph 125(c).

17 **127. Limits on Imbalance in Use**

18 On May 31 in any period of special accounting, the accounts kept under  
19 clause 125 must be adjusted by the Authority to ensure that the imbalance  
20 in use calculated under clause 126 is:

21 (a) less than one-third; and

22 (b) greater than minus two-thirds,

23 of the difference between 1,250,000 megalitres and the reserve allocated  
24 to New South Wales or Victoria, as the case may require.

25 **128. Restrictions on South Australia's Entitlement**

26 (1) In a period of special accounting, instead of the amounts set out in  
27 paragraph 88(a), South Australia is entitled to receive, before the  
28 end of the following May, the lesser of:

29 (a) the sum of the monthly quantities set out in paragraph 88(a);  
30 and

- 1 (b) the sum of -  
2 (i) one-third of the available water determined under  
3 paragraph 102(c); and  
4 (ii) any imbalance in use calculated under clause 126.  
5 (2) South Australia may decide how to apportion any entitlement  
6 under sub-clause 128(1) between each month provided that the  
7 quantity in any month must not exceed that specified in paragraph  
8 88(a).

9 **129. Termination of Periods of Special Accounting**

10 The Authority must terminate a period of special accounting declared for  
11 New South Wales or Victoria whenever it is satisfied that the reserve  
12 allocated to that State at the end of the following May will be greater than  
13 1,250,000 megalitres.

14 ***SUBDIVISION F — ACCOUNTING FOR SOUTH AUSTRALIA'S***  
15 ***STORAGE RIGHT***

16 **130. Accounting for South Australia's Storage Rights**

- 17 (1) The Authority must, as soon as practicable after this Agreement  
18 comes into effect, prepare a draft Schedule to this Agreement in  
19 accordance with this clause.  
20 (2) The Authority must provide the draft Schedule to the Committee.  
21 (3) After considering the draft Schedule, the Committee must submit  
22 the draft Schedule and the Committee's advice in relation to it, to  
23 the Ministerial Council.  
24 (4) After receiving the draft Schedule and the advice of the  
25 Committee, the Ministerial Council may:  
26 (a) approve the Schedule with or without amendment; or  
27 (b) refer the draft Schedule back to the Authority for further  
28 consideration.  
29 (5) When the Schedule is approved by the Ministerial Council under  
30 paragraph (4)(a) it:  
31 (a) becomes part of the Agreement; and

- 1 (b) takes effect as provided for in sub-clause 5(2).
- 2 (6) The Schedule made for the purposes of this clause must:
- 3 (a) set out rules for giving effect to and accounting for South  
4 Australia's storage rights under clause 91; and
- 5 (b) define what constitutes an effect on water availability and  
6 storage access for the purposes of clause 91.
- 7 (7) Without limiting sub-clause (6), the Schedule made for the  
8 purposes of this clause must contain such rules as may be required  
9 to ensure:
- 10 (a) that South Australia can exercise its storage right for the  
11 purposes of meeting critical human water needs pursuant to  
12 sub-clause 91(1) in a manner that does not affect the water  
13 availability for New South Wales or Victoria that would  
14 have existed under this Agreement had it not been for the  
15 exercise by South Australia of its rights under that clause;  
16 and
- 17 (b) that South Australia can exercise its storage right for the  
18 purpose of private carry-over pursuant to sub-clause 91(2) in  
19 a manner that does not affect the water availability or storage  
20 access for New South Wales or Victoria that would have  
21 existed under this Agreement had it not been for the exercise  
22 by South Australia of its rights under that clause; and
- 23 (c) that, wherever possible, water stored pursuant to clause 91  
24 that is spilled from a storage, is re-regulated for subsequent  
25 use by South Australia; and
- 26 (d) that, subject to paragraphs (a) and (b), each State is able to  
27 carry over a volume of water equivalent to 150% of its  
28 annual critical human needs requirements (eighteen months  
29 supply); and
- 30 (e) that South Australia bears only incremental evaporative  
31 losses in respect of its stored entitlement.
- 32 (8) A rule referred to in sub-clause (7) may have the effect of adding  
33 to, derogating from or otherwise altering any provision of this  
34 Division.
- 35 (9) The Ministerial Council may at any time as it sees fit request the  
36 Authority to prepare a draft amendment.
-

- 1 (10) Sub-clauses (2), (3), (4) and (5) apply to a draft amendment as if it  
2 were a draft Schedule.
- 3 (11) The Authority must keep separate accounts in respect of the  
4 application of rules set out under the Schedule made for the  
5 purposes of this clause, including an account that maintains a  
6 continuous record of the water that is stored, spilled, debited for  
7 evaporation, and delivered to South Australia in accordance with  
8 the Schedule.

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

11 **131. Application of Division 2**

- 12 (1) This Division applies:
- 13 (a) in the circumstances specified in the Basin Plan; and
- 14 (b) in a period before the Basin Plan first takes effect, if the  
15 Ministerial Council declares in accordance with sub-clause  
16 (3) that this Division applies; and
- 17 (c) from the time this Agreement comes into effect.
- 18 (2) Once this Division has commenced application in accordance with  
19 sub-clause (1), it will cease to apply:
- 20 (a) once the conditions specified in the Basin Plan are satisfied;  
21 or
- 22 (b) in the period before the Basin Plan first takes effect, at a  
23 time declared by the Ministerial Council.
- 24 (3) The Ministerial Council may declare that this Division applies  
25 during a period before the Basin Plan first takes effect if the  
26 Ministerial Council is satisfied that during that period, the  
27 provisions of Division 1 of this Part will not or are not likely to  
28 ensure that there will be enough water to meet conveyance water  
29 needs.

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

32 While this Division applies, the provisions of:

---

- 1 (a) Division 1 of this Part; and  
2 (b) Part XIV of this Agreement and Schedule F,  
3 apply subject to:  
4 (c) the provisions of the Schedule made under clause 135, and  
5 any determination of the Ministerial Council made in  
6 accordance with that Schedule; or  
7 (d) during the period before the Schedule is made under  
8 clause 135 and before the Basin Plan first takes effect, any  
9 agreement by First Ministers of the Contracting  
10 Governments.

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

13 **133. Application of Division 3**

- 14 (1) This Division applies:  
15 (a) in the circumstances specified in the Basin Plan; and  
16 (b) in a period before the Basin Plan first takes effect, if the  
17 Ministerial Council declares in accordance with sub-clause  
18 (3) that this Division applies.  
19 (2) Once this Division has commenced application in accordance with  
20 sub-clause (1), it will cease to apply:  
21 (a) once the conditions specified in the Basin Plan are satisfied;  
22 or  
23 (b) in the period before the Basin Plan first takes effect, at a  
24 time declared by the Ministerial Council.  
25 (3) The Ministerial Council may declare that this Division applies  
26 during a period before the Basin Plan is adopted, but may only do  
27 so if satisfied that during that period, any one or more of the  
28 following applies:  
29 (a) there are extreme and unprecedented low levels of water  
30 availability; or  
31 (b) there is extreme and unprecedented poor water quality in the  
32 water available to meet critical human water needs; or

- 1 (c) there is an extremely high risk that water will not be  
2 available to meet critical human water needs during the next  
3 12 months.

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

- 6 (1) While this Division applies, the provisions of Division 1 of this  
7 Part, and of Part XIV and Schedule F of this Agreement, apply  
8 subject to:  
9 (a) the Schedule made under clause 135; and  
10 (b) any determination of the Ministerial Council made in  
11 accordance with this clause.  
12 (2) For the purposes of this Division, the Ministerial Council may  
13 make determinations about the way in which State water  
14 entitlements will be determined, delivered and accounted for.  
15 (3) The Ministerial Council:  
16 (a) may determine that any provision of —  
17 (i) Division 1 of this Part; or  
18 (ii) Part XIV or Schedule F of this Agreement; or  
19 (iii) the Schedule made under clause 135,  
20 applies, or does not apply, or applies to a specified extent or  
21 in specified circumstances; or  
22 (b) may make a determination about any matter the subject of a  
23 provision referred to in paragraph (a) that is additional to,  
24 substituted for or contrary to any such provision.

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

26 **135. Schedule for Water Sharing**

- 27 (1) The Authority must, as soon as practicable after this Agreement  
28 comes into effect, prepare a draft Schedule to this Agreement in  
29 accordance with this clause.  
30 (2) The Authority must provide the draft Schedule to the Committee.

- 1 (3) After considering the draft Schedule, the Committee must submit  
2 the draft Schedule and the Committee's advice in relation to it, to  
3 the Ministerial Council.
- 4 (4) After receiving the draft Schedule and the advice of the  
5 Committee, the Ministerial Council may:
- 6 (a) approve the Schedule with or without amendment; or  
7 (b) refer the draft Schedule back to the Authority for further  
8 consideration.
- 9 (5) When the Schedule is approved by the Ministerial Council under  
10 paragraph (4)(a) it:
- 11 (a) becomes part of the Agreement; and  
12 (b) takes effect as provided for in sub-clause 5(2).
- 13 (6) The Schedule made for the purposes of this clause must:
- 14 (a) set out the way in which State water entitlements will be  
15 determined, delivered and accounted for; and  
16 (b) provide for South Australia's storage right under  
17 sub-clause 91(1),  
18 during a period in which either Division 2 or Division 3 of this Part  
19 applies.
- 20 (7) Without limiting other provisions of this clause, the Schedule made  
21 for the purposes of this clause may provide that:
- 22 (a) any provision of —  
23 (i) Division 1 of this Part; or  
24 (ii) Part XIV or Schedule F of this Agreement,  
25 does not apply, or applies to a specified extent or in  
26 specified circumstances; or  
27 (b) any provision referred to in paragraph (a) may be determined  
28 by the Ministerial Council to apply, or to apply to a specified  
29 extent or in specified circumstances; or  
30 (c) the Ministerial Council:  
31 (i) must exercise a discretion provided in Division 1 of  
32 this Part in a specified way or at a specified time; or

- 1 (ii) may make a determination about any matter the  
2 subject of a provision of Division 1 of this Part or  
3 Part XIV or Schedule F of this Agreement that is  
4 additional to, substituted for or contrary to any such  
5 provision.
- 6 (8) The Schedule made for the purpose of this clause must be prepared  
7 on the basis of the fact that the Contracting Governments have  
8 agreed:
- 9 (a) that critical human water needs are the highest priority water  
10 use for communities who are dependent on Basin water  
11 resources;
- 12 (b) in particular that, to give effect to this priority in the upper  
13 River Murray, the upper River Murray storages and the  
14 River Murray in South Australia (the system), water  
15 (conveyance water) in the system required to deliver water  
16 to meet critical human water needs will receive first priority  
17 from the water available in the system;
- 18 (c) that each State Contracting Government will be responsible  
19 for meeting critical human water needs in its State, and will  
20 decide how water from its entitlement is used.
- 21 (9) After the Basin Plan takes effect, the Schedule made for the  
22 purposes of this clause, and any amendment to it, must be prepared  
23 having regard to the provisions of the Basin Plan, and in particular,  
24 to such of those provisions that are required by Part 2A of the  
25 Water Act.
- 26 (10) If the Schedule required by this clause has not been made at the  
27 time the Basin Plan first takes effect, then those provisions of the  
28 Basin Plan required by Part 2A of the Water Act are taken to be the  
29 Schedule for the purposes of this Division until the Schedule is  
30 made by the Ministerial Council in accordance with this clause.
- 31 (11) The Ministerial Council must review the Schedule made for the  
32 purposes of this clause:
- 33 (a) from time to time; and  
34 (b) at least once in respect of each period in which Division 3 of  
35 this Part applies.
- 36 (12) The Ministerial Council may, at any time as it sees fit, request the  
37 Authority to prepare a draft amendment.
-



1 (13) Sub-clauses (2), (3), (4) and (5) apply to a draft amendment as if it  
2 were a draft Schedule.

3 **PART XIII - MENINDEE LAKES STORAGE**

4 **136. Maintenance of Menindee Lakes Storage**

5 New South Wales must maintain the Menindee Lakes Storage and  
6 associated works in the good order and condition necessary to meet the  
7 full supply levels and storage capacities referred to in clause 137.

8 **137. Full Supply Levels**

9 For the purposes of this Agreement, and unless otherwise agreed between  
10 New South Wales and the Authority by the exchange of letters between  
11 them, the full supply levels of the Menindee Lakes Storage will be:

- 12 Lake Wetherell - Elevation 61.7 Australian Height Datum
- 13 Lake Pamamaroo - Elevation 60.4 Australian Height Datum
- 14 Lake Menindee - Elevation 59.8 Australian Height Datum
- 15 Lake Cawndilla - Elevation 59.8 Australian Height Datum

16 corresponding to a total storage capacity of approximately 1 680 000  
17 megalitres.

18 **138. Financial Contributions of Authority**

19 Each year the Authority must pay New South Wales:

- 20 (a) \$320,000 in equal instalments at the end of each quarter; and
- 21 (b) three quarters of the costs of operating and maintaining the  
22 Menindee Lakes storage,

23 or such other amounts as may be specified in the approved corporate  
24 plan, from time to time.

1 **PART XIV - EFFECT OF SNOWY SCHEME**

2 **139. Effect of Snowy Scheme**

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

7 **PART XV - MISCELLANEOUS**

8 **140. Resolution of Disputes**

- 9 (1) If the Committee fails to agree on any motion submitted by a  
10 Committee member within two months, that Committee member  
11 may refer the matter to the Ministerial Council.
- 12 (2) If the Ministerial Council fails to resolve the matter within six  
13 months, any member may refer it to an arbitrator.
- 14 (3) When a matter is referred to an arbitrator, any Contracting  
15 Government may give the other Contracting Governments written  
16 notice to agree to appoint an arbitrator to decide the matter.
- 17 (4) If an arbitrator is not appointed within two months of notice being  
18 given, the Chief Justice of the Supreme Court of Tasmania, or the  
19 person acting in that office, may appoint an arbitrator at the request  
20 of the Contracting Government giving notice under sub-clause (3).
- 21 (5) The decision of any arbitrator appointed under this clause:  
22 (a) is deemed to be the decision of the Committee; and  
23 (b) binds the Committee, the Ministerial Council and the  
24 Contracting Governments.
- 25 (6) This clause does not apply to a resolution:  
26 (a) on a question of law; or  
27 (b) which has been decided by a majority vote of the Committee  
28 pursuant to a provision of this Agreement.

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

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

17 **142. Proposals to Amend Agreement**

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

27 **143. Giving Information to the Authority**

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

31 **144. Authorities to Observe Agreement**

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

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

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

- 4 (1) Subject to sub-clauses 37(2) and 38(2), any payment made by the  
5 Commonwealth of Australia in respect of losses or costs incurred  
6 by it arising:
- 7 (a) from any act or omission of the Authority in the bona fide  
8 execution of the powers vested in the Authority by or under  
9 this Agreement;
- 10 (b) because of the operation of section 239F of the Water Act;
- 11 (c) because of the operation of either of sections 239J or 239K  
12 of the Water Act in respect of proceedings relating to the  
13 Commission or a person who was appointed as a President  
14 or Deputy President; or
- 15 (d) because of an indemnity in either of items 7(1) or 7(3) of  
16 Schedule 3 to the *Water Amendment Act 2008*  
17 (Commonwealth),
- 18 must be borne by the Contracting Governments in equal shares.
- 19 (2) Sub-clause (1) does not apply to a payment made by the  
20 Commonwealth of Australia under paragraph (1)(a) in its capacity  
21 as a Contracting Government under this Agreement.
- 22 (3) In this clause, the terms “President” and “Deputy President” have  
23 the same meanings as under the former Agreement.

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

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

- 28 (1) Any payment made by the Commonwealth of Australia in respect  
29 of:
- 30 (a) a liability arising because of the operation of either of  
31 sections 239J or 239K of the Water Act in respect of  
32 proceedings relating to a person who was appointed as a  
33 Commissioner or Deputy Commissioner; or

- 1 (b) losses or costs incurred by it because of the indemnity in  
2 item 7(2) of Schedule 3 to the *Water Amendment Act 2008*  
3 (Commonwealth),  
4 must be borne by the Contracting Government which had  
5 appointed that Commissioner or Deputy Commissioner.  
6 (2) In this clause, the terms “Commissioner” and “Deputy  
7 Commissioner” have the same meanings as under the former  
8 Agreement.

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

- 10 (1) Upon receiving notice of a claim to which either of clauses 145 or  
11 146 may apply, the Commonwealth must give written notice of the  
12 claim to each State Contracting Government or Governments  
13 which may be liable, because of the operation of either of those  
14 clauses, to bear any part of a payment made in respect of that  
15 claim.  
16 (2) Before settling a claim to which sub-clause (1) refers, the  
17 Commonwealth must obtain the agreement of the State Contracting  
18 Government or Governments which will be liable to bear any part  
19 of a payment made in respect of that settlement because of the  
20 operation of either of clauses 145 or 146.

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

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

27 **PART XVII - TRANSITIONAL PROVISIONS AND REVIEW OF**  
28 **SCHEDULES, RESOLUTIONS AND ACTIVITIES**

29 **149. Definitions**

30 In this Part:  
31 “commencing day” means the day on which this Agreement comes into  
32 effect;

- 1           **“current financial year”** means the financial year during which this  
2 Agreement comes into effect;  
3           **“next financial year”** means the financial year following the current  
4 financial year;  
5           **“transitional provisions”** means transitional provisions contained in this  
6 Agreement and transitional provisions contained in or made under the  
7 Water Act that relate to the former Agreement.

8           **150. Transitional Provisions**

- 9           (1) Acts or things consistent with this Agreement done by or on behalf  
10 of a Contracting Government or the Authority, the Committee or  
11 the Commission in anticipation of this Agreement are deemed to  
12 have been done under and in accordance with its provisions.
- 13           (2) Without limiting the generality of sub-clause (2):
- 14               (a) any estimates for the current financial year sent by the  
15 Commission to the Contracting Governments before the  
16 commencing day are deemed to be estimates sent by the  
17 Authority in respect of that year;
- 18               (b) any moneys paid by a Contracting Government to the  
19 Commission before the commencing day are deemed to have  
20 been paid to the Authority under clause 75 for the current  
21 financial year;
- 22               (c) any moneys spent by the Commission before the  
23 commencing day in accordance with estimates referred to in  
24 paragraph (a) are deemed to have been spent pursuant to the  
25 Agreement for the current financial year;
- 26               (d) if the commencing day falls between 31 March and 30 June  
27 in any year, any estimates sent by the Commission to the  
28 Contracting Governments before that day for the next  
29 financial year are deemed to be estimates sent by the  
30 Authority for that next financial year.
- 31           (3) Money of a kind referred to in clause 83 paid by a Contracting  
32 Government to the Commission in the current financial year is  
33 deemed to have been paid under that clause.
- 34           (4) At the commencing day, the shares of the control of the transitional  
35 RMO assets will be retained by the Commonwealth, South  
36 Australia, New South Wales and Victoria, in the following shares:

1	Commonwealth	20%
2	South Australia	26.67%
3	New South Wales	26.67%
4	Victoria	26.67%

5 (5) The shares referred to in sub-clause (4) may be altered by the asset  
6 agreement.

7 **151. Review of resolutions, directions, procedures and measures and other**  
8 **activities**

- 9 (1) As soon as practicable after the commencing day and before the  
10 Basin Plan first takes effect, the Ministerial Council is to undertake  
11 a review of:
- 12 (a) resolutions of the former Ministerial Council that continue to  
13 have effect by virtue of the transitional provisions; and
  - 14 (b) such of the resolutions, directions or procedures of the  
15 Commission that continue to have effect, by virtue of the  
16 transitional provisions, as if they were resolutions of the  
17 Ministerial Council under this Agreement.
- 18 (2) As soon as practicable after the commencing day and before the  
19 Basin Plan first takes effect, the Authority is to undertake a review  
20 of such of the resolutions, directions, procedures, measures and  
21 other activities of the Commission that continue to have effect by  
22 virtue of the transitional provisions as if they were resolutions,  
23 directions, procedures, measures and other activities of the  
24 Authority under this Agreement.

25 **152. Review of Schedules**

- 26 (1) Without limiting clause 142 the Authority must, in consultation  
27 with the Committee and before the Basin Plan first takes effect,  
28 review the operation of:
- 29 (a) each of Schedules B, D, E and F of this Agreement; and
  - 30 (b) the Schedules made under clauses 130 and 135 of this  
31 Agreement,
- 32 to assess the extent to which each Schedule is consistent with the  
33 proposed Basin Plan.

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- (2) If as a result of such a review the Authority forms the view that any change to any of the Schedules (including the removal of a Schedule or a change in the way a Schedule is administered) is necessary or desirable to improve consistency with the Basin Plan, the Authority must:
- (a) recommend to the Ministerial Council that such change be made; and
  - (b) in so far as it is possible and appropriate for a change to be effected through a change in the corporate plan, include such change in a revised corporate plan for the approval of the Ministerial Council.

**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 )

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 )



**AMENDMENTS BASED ON REFERRALS OF POWER Schedule 1**

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

1 **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
<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

**AMENDMENTS BASED ON REFERRALS OF POWER Schedule 1**

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

SCHEDULE 1 Amendments based on referrals of power

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Boundary	Boundary Creek Channel	South Australia
Ewe Island	Ewe Island Channel	South Australia
Tauwitchere	Tauwitchere Island	South Australia

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1       **SCHEDULE B - BASIN SALINITY MANAGEMENT**

2       **PART I — PRELIMINARY**

3       **1. Purpose**

4       The purpose of this Schedule is to implement certain aspects of the *Basin*  
5       *Salinity Management Strategy 2001-2015*, or any subsequent strategy  
6       approved by the Ministerial Council to manage salinity:

- 7               (a) by promoting joint works, measures and other action to  
8               reduce or limit the rate at which salinity increases within the  
9               Murray-Darling Basin;
- 10              (b) by providing for the adoption of salinity targets;
- 11              (c) by establishing Registers to record salinity impacts and to  
12              allocate salinity credits and salinity debits to Contracting  
13              Governments; and
- 14              (d) by providing for monitoring, assessing, auditing and  
15              reporting on matters set out in this Schedule and on progress  
16              in implementing the Strategy.

17       **2. Definitions**

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

- 19              (a) “**Accountable Action**” means an action that:
- 20                      (i) is undertaken after a relevant Baseline Date; and
- 21                      (ii) the Authority has decided will have a Significant  
22                      Effect under paragraph 18(1)(b); and
- 23                      (iii) the Authority has entered in a Register.

24              “**action**” means:

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

28              relevant to the purposes of this Schedule.

- 1                   “**average salinity**” means the average daily salinity of the  
2 River Murray calculated in accordance with protocols made  
3 by the Authority under clause 40;
- 4                   “**average salinity costs**” means the average costs to users of  
5 water from the upper River Murray and the River Murray in  
6 South Australia incurred because of the salinity of the water  
7 used, as calculated in accordance with protocols made by the  
8 Authority under clause 40;
- 9                   “**Baseline Conditions**” means the baseline conditions  
10 approved for the purposes of clause 5 of the former  
11 Schedule, or amended by the Authority in accordance with  
12 clause 5 of this Schedule;
- 13                   “**Baseline Date**” means:  
14 (i) with respect to New South Wales, Victoria and South  
15 Australia — 1 January 1988; and  
16 (ii) with respect to Queensland and the Australian Capital  
17 Territory — 1 January 2000;
- 18                   “**Basin Salinity Target**” means the target referred to in  
19 clause 7;
- 20                   “**Benchmark Period**” means the period from 1 May 1975 to  
21 30 April 2000, or such other period as the Authority may  
22 from time to time determine;
- 23                   “**Delayed salinity impact**” means a salinity impact which  
24 occurs after 1 January 2000, but which:  
25 (i) in the case of New South Wales, Victoria or South  
26 Australia, is attributable to an action taken or decision  
27 made in that State before 1 January 1988; and  
28 (ii) in the case of Queensland or the Australian Capital  
29 Territory, is attributable to an action taken or decision  
30 made in that State before 1 January 2000;
- 31                   “**End-of-Valley Target**” means a target set out in Appendix  
32 1 as amended from time to time by the Ministerial Council  
33 under clause 9 and includes a reference to the site at which  
34 the degree to which the relevant Government achieves that  
35 target is to be measured;
- 36                   “**Former salinity and drainage work**” means any work or  
37 measure entered on the Register maintained under the  
38 Salinity and Drainage Strategy, immediately before this  
39 Schedule took effect;
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1                   “**former Schedule**” means Schedule C of the former  
2                   Agreement;  
3                   “**Joint work or measure**” means a work or measure  
4                   authorised under clause 56 of the Agreement for the  
5                   purposes of this Schedule;  
6                   “**Joint Program**” means the program of Joint works or  
7                   measures referred to in sub-clause 10(1);  
8                   “**Program of actions**” means a Program of actions referred  
9                   to in clause 6;  
10                  “**Proposal**” means any proposal relevant to the  
11                  subject-matter of this Schedule, for any action.  
12                  “**Register A**” means the register referred to in  
13                  sub-clauses 15(1), (2) and (3);  
14                  “**Register B**” means the register referred to in  
15                  sub-clauses 15(1), (2) and (4);  
16                  “**Salinity and Drainage Strategy**” means Schedule C of the  
17                  former Agreement immediately prior to the amendment of  
18                  the former Agreement by replacing that Schedule with the  
19                  former Schedule;  
20                  “**salinity cost effect**” means a change in average salinity  
21                  costs resulting from an action, as calculated by the  
22                  Authority;  
23                  “**salinity credit**” means the reduction in average salinity  
24                  costs estimated by the Authority in accordance with  
25                  clause 20;  
26                  “**salinity debit**” means an increase in average salinity costs  
27                  estimated by the Authority in accordance with clause 20;  
28                  “**salinity effect**” means a change in the average salinity at  
29                  Morgan resulting from any action, as estimated by the  
30                  Authority;  
31                  “**salinity impact**” means both the salinity effect and the  
32                  salinity cost effect;  
33                  “**Significant Effect**” has the meaning set out in  
34                  sub-clause 18(3);  
35                  “**State Action**” means any Accountable Action that is not a  
36                  Joint work or measure;

- 1                                   “**Strategy**” means the *Basin Salinity Management Strategy*  
2                                   2001-2015 as adopted and amended by the Ministerial  
3                                   Council from time to time;  
4                                   “**undertake**”, in relation to:  
5                                   (i)    a work, includes investigating, designing,  
6                                                 constructing, operating and maintaining that work;  
7                                                 and  
8                                   (ii)   a measure, includes investigating, developing and  
9                                                 implementing that measure;  
10                                  “**valley**” means a valley or other geographic area specified in  
11                                  the first column of Appendix 1.  
12                                  (b)   a reference to a Part, clause, sub-clause, paragraph, or  
13                                  Appendix is a reference to a Part, clause, sub-clause,  
14                                  paragraph or Appendix of this Schedule.  
15                                  (2)   When a Contracting Government informs the Authority of a  
16                                  Proposal under sub-clause 17(1), it must be taken also to have  
17                                  informed the Authority under paragraph 49(1)(a) of the  
18                                  Agreement.
- 19       **3.   Application to Queensland and Australian Capital Territory**
- 20                                  (1)   Subject to sub-clause 3(2), the whole of this Schedule applies to  
21                                  Queensland and the Australian Capital Territory.  
22                                  (2)   If a provision of this Schedule states that it:  
23                                                 (a)   does not apply to Queensland or the Australian Capital  
24                                                 Territory; or  
25                                                 (b)   applies to Queensland or the Australian Capital Territory  
26                                                 only in part, or subject to specified conditions,  
27                                  that provision takes effect according to its terms.  
28                                  (3)   Unless otherwise indicated, a reference to a State Contracting  
29                                  Government includes a reference to the Government of the State of  
30                                  Queensland and the Government of the Australian Capital  
31                                  Territory.  
32                                  (4)   The Governments of the State of Queensland and the Australian  
33                                  Capital Territory will share equally with other Contracting  
34                                  Governments such investigations, construction and administration



- 1 costs, as defined in clause 71 of the Agreement, as are attributable  
2 to implementing this Schedule, except:
- 3 (a) where the Committee determines otherwise, under  
4 sub-clause 72(1) of the Agreement; or
- 5 (b) to the extent that this Schedule provides otherwise in  
6 clauses 13 and 48; or
- 7 (c) for such of those costs that are referred to in paragraphs (a),  
8 (f) and (j) of the definition of “investigations, construction  
9 and administration costs” in clause 71 of the Agreement; or
- 10 (d) where the cost is attributable to a matter set out in  
11 sub-clause 37(4) of the Agreement.

12 **PART II — ACCOUNTABILITY FOR SALINITY IMPACTS**

13 **4. Accountability for Salinity Impacts**

- 14 (1) A Contracting Government must not, and must ensure that any  
15 public authority responsible to it does not undertake, alter or cease,  
16 or permit the undertaking, alteration or cessation of, any action that  
17 may have a Significant Effect except in accordance with this  
18 Schedule.
- 19 (2) Each State Contracting Government must undertake actions in  
20 accordance with this Schedule necessary to meet that  
21 Government’s End-of-Valley Targets.

22 **5. Determining Baseline Conditions**

- 23 (1) This clause establishes the process for determining the baseline  
24 conditions contributing to the movement of salt through land and  
25 water upstream of:
- 26 (a) an End-of-Valley Target site determined under this clause;  
27 and
- 28 (b) the Basin Salinity Target site at Morgan,  
29 but does not refer to the baseline conditions defined in clause 2 of  
30 Schedule E of the Agreement.
- 31 (2) The estimated baseline conditions relating to the salinity, salt load  
32 and flow regime —

- 1 (a) at the Basin Salinity Target site at Morgan as at 1 January  
2 2000; and
- 3 (b) at each site at which each State Contracting Government  
4 proposes to measure that Government's compliance with an  
5 End-of-Valley Target (if adopted) for the portion of the  
6 Murray-Darling Basin within that State, as at 1 January  
7 2000,
- 8 are those approved —
- 9 (c) under clause 5 of the former Schedule; or
- 10 (d) by the Authority in accordance with this clause.
- 11 (3) The Australian Capital Territory must, as soon as practicable,  
12 prepare and give to the Authority estimated baseline conditions  
13 relating to the salinity, salt load and flow regime at each site at  
14 which it proposes to measure that Government's compliance with  
15 an End-of-Valley Target (if adopted) for the portion of the  
16 Murray-Darling Basin within that State, as at 1 January 2000.
- 17 (4) Sub-clauses 5(6), (7) and (8) apply to estimated baseline conditions  
18 prepared by the Australian Capital Territory under sub-clause 5(3)  
19 as if they were an amendment proposed under sub-clause 5(5).
- 20 (5) A State Contracting Government or the Authority (as the case  
21 requires) may, from time to time, propose an amendment to any  
22 estimate of a baseline condition, using the best information  
23 available to the State Contracting Government or the Authority at  
24 the time the amendment is proposed.
- 25 (6) The Authority must appoint an appropriately qualified panel,  
26 which shall include at least one representative from each State  
27 Contracting Government, to review and advise the Authority about  
28 any proposed amendment to any estimate of baseline conditions  
29 made by a State Contracting Government or the Authority.
- 30 (7) After considering the advice of the panel, the Authority may:
- 31 (a) approve a proposed amendment; or
- 32 (b) approve that proposed amendment, subject to the relevant  
33 Government modifying it in any way agreed between the  
34 Authority and the relevant Government; or
- 35 (c) refuse to approve the proposed amendment.

- 1 (8) Within 6 months after the Authority and the relevant Government  
2 agree on a modification under paragraph 5(7)(b), the relevant  
3 Government must:
- 4 (a) modify the estimate in accordance with that agreement; and  
5 (b) give the Authority a copy of the modified estimate.
- 6 (9) An estimate of baseline conditions, in the form initially given to  
7 the Authority, may be used temporarily for the purposes of this  
8 Schedule until the relevant Government has complied with  
9 sub-clause 5(8).

10 **6. Meeting End-of-Valley Targets**

- 11 (1) Each State Contracting Government must, by 31 March 2004 and  
12 thereafter at intervals of not more than 5 years, give the Authority  
13 its proposed Program of actions to meet End-of-Valley Targets  
14 adopted for that State.
- 15 (2) A proposed Program of actions must include the following  
16 information about the salinity, salt load and, where relevant, the  
17 flow regime at each site at which compliance with an  
18 End-of-Valley Target is to be measured:
- 19 (a) the Baseline Conditions; and  
20 (b) the Government's estimate of Delayed salinity impacts in  
21 each of 2015, 2050 and 2100 if no action were taken to  
22 reduce or limit such salinity impacts; and  
23 (c) the relevant End-of-Valley Target; and  
24 (d) the predicted effect of implementing the proposed Program  
25 of actions in each of 2015, 2050 and 2100.
- 26 (3) The Authority must estimate (using the best information available  
27 to the Authority at the time the estimate is made) whether a  
28 proposed Program of actions, if undertaken in accordance with its  
29 terms, is reasonably certain to meet each End-of-Valley Target for  
30 the relevant State.
- 31 (4) A State Contracting Government must give the Authority sufficient  
32 information about its proposed Program of actions:
- 33 (a) to enable the Authority to make the estimate referred to in  
34 sub-clause 6(3); and

- 1 (b) in sufficient time to allow the Authority, having made that  
2 estimate, to make representations to that Contracting  
3 Government before the Contracting Government decides  
4 whether to proceed with the proposed Program of actions.
- 5 (5) A State Contracting Government may, from time to time, propose  
6 an amendment to a Program of actions to meet End-of-Valley  
7 Targets adopted for that State
- 8 (6) Sub-clauses 6(3) and (4) apply to any amendment proposed under  
9 sub-clause 6(6) as if it were a Program of actions referred to in  
10 sub-clause 6(1).
- 11 (7) A State Contracting Government must prepare reports about  
12 undertaking a Program of actions, as set out in clause 30.

13 **PART III — SALINITY TARGETS**

14 **7. Basin Salinity Target**

- 15 (1) The Basin Salinity Target is to maintain the average daily salinity  
16 at Morgan at a simulated level of less than 800 E.C. for at least  
17 95% of the time, during the Benchmark Period.
- 18 (2) Achievement of the Basin Salinity Target must be assessed by the  
19 Authority from time to time, using one or more of the models  
20 developed under clause 36, adapted to simulate the land and water  
21 management conditions at the time the assessment is made.

22 **8. End-of-Valley Targets for the Australian Capital Territory**

- 23 (1) The Australian Capital Territory must, as soon as practicable,  
24 nominate to the Authority an End-of-Valley Target for each valley  
25 within the State designated as requiring such a target in Appendix  
26 1.
- 27 (2) The Authority must refer each nominated End-of-Valley Target to  
28 the Ministerial Council, together with:
- 29 (a) the Authority's estimate of the likely effects of meeting the  
30 nominated target on:
- 31 (i) significant environmental, economic, social and other  
32 characteristics in the upper River Murray and the  
33 River Murray in South Australia; and

- 1 (ii) meeting the Basin Target;
- 2 (b) the Authority's advice about whether the nominated target is
- 3 contributing adequately to achieving the objectives of the
- 4 Strategy; and
- 5 (c) the Authority's opinion on what, if any, additional works or
- 6 measures are necessary, desirable or convenient to meet the
- 7 Basin Target.
- 8 (3) The Ministerial Council:
- 9 (a) after considering the matters referred to it by the Authority,
- 10 may adopt an End-of-Valley Target; and
- 11 (b) must resolve to amend Appendix 1 to include any target
- 12 which it adopts.

13 **9. Reviewing and amending End-of-Valley Targets**

- 14 (1) The Authority must, at intervals of not more than 5 years, review
- 15 the adequacy and appropriateness of each End-of-Valley Target.
- 16 (2) The Authority, or the relevant State Contracting Government
- 17 which nominated an End-of-Valley Target, may request the
- 18 Ministerial Council to amend that target.
- 19 (3) Where a State Contracting Government requests the Ministerial
- 20 Council to amend an End-of-Valley Target, the Authority must
- 21 consult that Government and the Committee before the Authority
- 22 makes any recommendation under sub-clause 9(4).
- 23 (4) The Authority must recommend to the Ministerial Council whether
- 24 or not the Ministerial Council should adopt a request made under
- 25 sub-clause 9(2).
- 26 (5) In any recommendation made under sub-clause 9(4), the Authority
- 27 must set out:
- 28 (a) the Authority's estimate of the likely effects of meeting the
- 29 nominated target on:
- 30 (i) significant environmental, economic, social and other
- 31 characteristics in the upper River Murray and the
- 32 River Murray in South Australia; and
- 33 (ii) meeting the Basin Salinity Target;

- 1 (b) the Authority's advice about whether the nominated target is  
2 contributing adequately to achieving the objectives of the  
3 Strategy;
- 4 (c) the Authority's opinion on what, if any, additional works or  
5 measures are necessary, desirable or convenient to meet the  
6 Basin Salinity Target; and
- 7 (d) any new information about any of those matters which has  
8 become available to the Authority, since the relevant  
9 End-of-Valley Target was adopted by the Ministerial  
10 Council, including information that has become available to  
11 the Authority due to the discharge of functions and exercise  
12 of powers under the Water Act.
- 13 (6) The Ministerial Council:
- 14 (a) may, after considering the matters set out in any  
15 recommendation made to it by the Authority, amend an  
16 End-of-Valley Target; and
- 17 (b) must resolve to amend Appendix 1 to include any amended  
18 End-of-Valley Target.

19 **PART IV — JOINT WORKS AND MEASURES**

20 **10. Joint program**

- 21 (1) Subject to Part VIII of the Agreement, the Contracting  
22 Governments must implement a Joint Program of Joint works and  
23 measures under this Schedule:
- 24 (a) to maintain the quality of the upper River Murray and the  
25 River Murray in South Australia for agricultural,  
26 environmental, urban, industrial and recreational uses; and
- 27 (b) which is sufficient to have the cumulative effect of offsetting  
28 predicted future increases in average daily salinity at  
29 Morgan, arising from Accountable Actions and Delayed  
30 salinity impacts, by 61 E.C. (or by such other figure  
31 determined by the Ministerial Council from time to time)  
32 before 31 December 2007.
- 33 (2) Subject to Part VIII of the Agreement, after 31 December 2007, the  
34 Ministerial Council must authorise, and the Contracting

1 Governments must undertake, any further Joint works or measures  
2 that the Ministerial Council decides are necessary, desirable or  
3 convenient to maintain salinity at or below the Basin Salinity  
4 Target.

5 (3) The Authority must enter any Joint work or measure undertaken  
6 under this clause on a Register as an Accountable Action, in  
7 accordance with Part V.

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

10 Subject to clause 13, unless the Ministerial Council decides otherwise,  
11 any salinity credits or salinity debits arising from any Joint work or  
12 measure undertaken under clause 10 will be attributed to a Contracting  
13 Government to offset salinity debits due to:

- 14 (a) Accountable Actions entered on Register A; and  
15 (b) Delayed salinity impacts entered on Register B,

16 according to the following formula:

17 **Register A**

- 18 (a) New South Wales 16.39%  
19 (b) South Australia 16.39%  
20 (c) Victoria 16.39%

21 **Register B**

- 22 (a) New South Wales 8.61%  
23 (b) South Australia 8.61%  
24 (c) Victoria 8.61%  
25 (d) Commonwealth 25.00%

26 **12. Authorised Joint works and measures**

- 27 (1) The Ministerial Council must:  
28 (a) set out in Appendix 2 a list of Joint works and measures  
29 authorised for the purposes of each of the former Schedule  
30 (as it existed immediately before this Schedule commenced)  
31 and this Schedule; and

- 1 (b) amend Appendix 2 whenever a new Joint work or measure is  
2 authorised.
- 3 (2) Any work or measure from time to time included in Appendix 2  
4 must be taken:
- 5 (a) to have been authorised under clause 56 of the Agreement;  
6 and
- 7 (b) to have been declared effective under clause 64 of the  
8 Agreement; and
- 9 (c) to be a Joint work or measure for the purposes of this  
10 Schedule.
- 11 (3) If a Joint work or measure included in Appendix 2 was completed  
12 before the former Schedule came into force, it is a Former salinity  
13 and drainage work for the purposes of this Schedule.
- 14 (4) The Authority may, in accordance with the asset management plan  
15 approved under clause 53 of the Agreement, declare the whole or  
16 part of any Joint works or measures to be ineffective, pursuant to  
17 sub-clause 70(1) of the Agreement.
- 18 (5) The Ministerial Council may, upon the recommendation of the  
19 Committee:
- 20 (a) declare that any Joint works or measures must be treated as a  
21 State Action, in whole or in part; and
- 22 (b) amend Appendix 2 to the extent necessary to implement any  
23 declaration made under sub-clause 12(4) or paragraph  
24 12(5)(a).

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

- 26 (1) Subject to sub-clause 13(2), the Government of Queensland or the  
27 Australian Capital Territory (as the case requires) is not required to  
28 contribute to the costs of, nor will salinity credits or salinity debits  
29 be attributed to that Government in relation to:
- 30 (a) any joint work or measure undertaken under the Joint  
31 Program; or
- 32 (b) any Former salinity and drainage work.
- 33 (2) The Committee may determine whether, and if so what:
- 34 (a) costs; or



- 1 (b) salinity credits or salinity debits,  
2 relating to a Joint work or measure undertaken after 1 January  
3 2008 must be contributed by, or will be attributed to, the  
4 Government of Queensland or the Australian Capital Territory; and  
5 (c) consequential adjustment may be necessary to the formula  
6 set out in clause 11.

7 **14. Co-ordinating Joint Works and Measures**

8 The Authority must co-ordinate the activities of each State Contracting  
9 Government and its relevant Constructing Authority in undertaking a  
10 Joint work or measure.

11 **PART V — THE REGISTERS**

12 **15. Establishing the Registers**

- 13 (1) Register A and Register B established under the former Schedule  
14 are continued in existence in the form in which they were held, and  
15 containing the information they contained, immediately prior to  
16 commencement of this Schedule.
- 17 (2) The Authority must maintain Register A and Register B in  
18 accordance with this Schedule and any protocols made by the  
19 Authority under clause 40.
- 20 (3) The Authority must include the following matters on Register A:  
21 (a) all Former salinity and drainage works; and  
22 (b) except as provided in paragraph 15(4)(b), any action  
23 undertaken after a relevant Baseline Date that the Authority  
24 has declared has had, or may have, a Significant Effect.
- 25 (4) The Authority must include the following matters on Register B:  
26 (a) every Delayed salinity impact which the Authority considers  
27 may have a Significant Effect; and  
28 (b) any action undertaken under this Schedule, expressly for the  
29 purpose of off-setting a Delayed salinity impact which the  
30 Authority determines may otherwise occur, in accordance  
31 with any protocols made by the Authority under clause 40.

1       **16. Obligations of State Contracting Governments**

- 2           (1) A State Contracting Government must take whatever action may  
3           be necessary:
- 4           (a) to keep the total of any salinity credits in excess of, or equal  
5           to, the total of any salinity debits, attributed to it in Register  
6           A; and
- 7           (b) to keep the cumulative total of all salinity credits in excess  
8           of, or equal to, the cumulative total of all salinity debits,  
9           attributed to it in both Register A and Register B.
- 10          (2) For the purpose of calculating the total of any salinity credits under  
11          sub-clause 16(1), any salinity credits which may in future be  
12          attributed to a State Contracting Government must not be included  
13          in the calculation, unless the Authority determines otherwise.
- 14          (3) Despite sub-clause 16(2) and any provision in clause 20 or 22, for  
15          the purposes of any calculation under sub-clause 16(1) and on the  
16          application of a State Contracting Government, the Authority may  
17          decide:
- 18          (a) to postpone the attribution of any salinity debit which might  
19          otherwise be attributed to that Government in Register A or  
20          Register B, in respect of an Accountable Action that the  
21          Government proposes to undertake; or
- 22          (b) to allow any salinity credit which might otherwise be  
23          attributed to that Government in Register A or Register B, in  
24          respect of an Accountable Action after it is declared  
25          effective or complete in accordance with sub-clause 22(1) or  
26          22(3) to be used in the calculation to off-set any salinity  
27          debit already attributed to that Government in Register A or  
28          Register B.
- 29          (4) The Authority:
- 30          (a) must only make a decision under sub-clause 16(3); and  
31          (b) may attach any condition to such a decision,  
32          in accordance with any relevant protocols made by the Authority  
33          under clause 40.

1 **17. Operating Registers**

- 2 (1) A Contracting Government must inform the Authority of any  
3 Proposal which the Government, acting reasonably, considers is  
4 likely to have a Significant Effect.
- 5 (2) The Authority must decide, in accordance with any relevant  
6 protocols made by the Authority under clause 40, whether the  
7 Proposal:
- 8 (a) is to be entered on either or both of Register A and Register  
9 B, or neither of them; and
- 10 (b) must be treated in whole or in part as either or both of a  
11 State Action and a Joint work or measure.
- 12 (3) The Authority must:
- 13 (a) estimate the salinity impacts of an Accountable Action; and  
14 (b) determine any salinity credits or salinity debits arising from  
15 that Accountable Action; and
- 16 (c) attribute those salinity credits or salinity debits to one or  
17 more of the Contracting Governments in the relevant  
18 Register, in accordance with clause 11 and any protocols  
19 adopted by the Authority under clause 40.
- 20 (4) The Authority must review and amend each item on Register A  
21 and Register B in accordance with clause 24.

22 **18. Determining whether a Proposal has a Significant Effect**

- 23 (1) If a Contracting Government informs the Authority of a Proposal,  
24 the Authority must:
- 25 (a) investigate that Proposal; and  
26 (b) decide whether the Proposal, either on its own or  
27 cumulatively with similar past actions or projected similar  
28 future actions, may have a Significant Effect.
- 29 (2) If the Authority becomes aware of an action undertaken within a  
30 State after the relevant Baseline Date, of which the Authority has  
31 not previously been informed as a Proposal, but which the  
32 Authority considers has had or may have a Significant Effect,  
33 either on its own or cumulatively with similar past actions or  
34 projected similar future actions, it may direct the relevant State

- 1 Contracting Government to inform the Authority of the action as a  
2 Proposal under sub-clause 17(1).
- 3 (3) A Significant Effect is:
- 4 (a) a change in average daily salinity at Morgan which the  
5 Authority estimates will be at least 0.1 E.C. within 100 years  
6 after the estimate is made; or
- 7 (b) a salinity impact which the Authority estimates will be  
8 significant.
- 9 (4) To make an estimate referred to in sub-clause 18(3), the Authority  
10 must use any relevant method for making that estimate set out in  
11 any protocols made by the Authority under clause 40.

12 **19. Assessing Salinity Impacts**

- 13 (1) If the Authority decides that:
- 14 (a) a Proposal referred to in sub-clause 18(1); or  
15 (b) an action referred to in sub-clause 18(2),  
16 has or may have a Significant Effect, the Authority must:
- 17 (c) declare the Proposal or action to be an Accountable Action;  
18 and
- 19 (d) provisionally designate the Accountable Action to be in  
20 whole or in part either or both of a Joint work or measure  
21 and a State Action; and
- 22 (e) estimate the salinity impacts of the Accountable Action,  
23 using any relevant method for assessing salinity impacts set  
24 out in any protocols made by the Authority under clause 40.
- 25 (2) If the Authority declares a Proposal or action to be an Accountable  
26 Action, the relevant Contracting Government must give to the  
27 Authority:
- 28 (a) all relevant information about the Accountable Action which  
29 may assist the Authority accurately to assess its salinity  
30 impacts;
- 31 (b) in such form as the Authority may require.

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

- 2           (1) After the Authority has estimated the salinity impacts of an action  
3           which the Authority considers may be an Accountable Action  
4           under clause 19, it must:
- 5           (a) subject to sub-clause 20(2), estimate the prospective salinity  
6           credits or salinity debits arising from that action; and
- 7           (b) designate that action to be either a Joint work or measure or  
8           a State Action; and
- 9           (c) determine whether the prospective salinity credits or salinity  
10          debits will be entered in Register A or Register B; and
- 11          (d) enter the action in the relevant Register.
- 12          (2) If the action referred to in sub-clause 20(1) is a permanent transfer  
13          of an entitlement within the meaning of Schedule D of this  
14          Agreement, the Authority must estimate any prospective salinity  
15          credits or salinity debits arising from that action in accordance with  
16          clause 10 of that Schedule.
- 17          (3) The Authority must make an estimate referred to in paragraph  
18          20(1)(a) or sub-clause 20(2) by reference either:
- 19          (a) to the average annual salinity impacts over the 30 years  
20          following the date of the estimate; or
- 21          (b) some other basis for estimating salinity impacts adopted by  
22          the Authority from time to time.

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

- 24          (1) The Authority must attribute salinity credits or salinity debits:
- 25          (a) arising from a Joint work or measure, in accordance with  
26          clause 11; or
- 27          (b) arising from a State Action, to the State Contracting  
28          Government which undertakes that action, subject to  
29          sub-clause 21(2).
- 30          (2) Despite paragraph 21(1)(b), where:
- 31          (a) there is an agreement referred to in clause 23, the Authority  
32          must attribute any salinity credits or salinity debits in  
33          accordance with that agreement;

- 1 (b) two or more Contracting Governments together undertake  
2 the relevant State Action, the Authority must attribute any  
3 salinity credits or salinity debits arising from that action in  
4 the manner agreed between those Contracting Governments;
- 5 (c) the relevant State Action is a permanent transfer of an  
6 entitlement within the meaning of Schedule D of this  
7 Agreement, the Authority must attribute any salinity credits  
8 or salinity debits arising from that action in Register A and  
9 in accordance with clause 10 of that Schedule.

10 **22. When Salinity Credits and Salinity Debits must be entered on a**  
11 **Register**

- 12 (1) Subject to sub-clause 16(3), when the Authority has estimated that  
13 a salinity credit will arise from an Accountable Action and either:
- 14 (a) the Authority declares that Accountable Action to be  
15 effective under clause 64 of the Agreement; or
- 16 (b) if the Accountable Action is to be undertaken in stages, the  
17 Authority declares a stage to be effective under clause 64 of  
18 the Agreement,
- 19 the Authority must:
- 20 (c) attribute salinity credits arising from the Accountable Action  
21 to one or more Contracting Government, in accordance with  
22 clause 21; and
- 23 (d) enter the salinity credits on the relevant Register,  
24 in accordance with any relevant protocols made by the Authority  
25 under clause 40.
- 26 (2) Subject to sub-clause 16(3), when the Authority has estimated that  
27 salinity debits will arise from an Accountable Action, before any  
28 Contracting Government:
- 29 (a) commences to undertake the Accountable Action; or
- 30 (b) if the Accountable Action is to be undertaken in stages,  
31 commences to undertake any stage,
- 32 the Authority must:

- 1 (c) attribute the prospective salinity debits arising from the  
2 Accountable Action or stage to one or more Contracting  
3 Governments in accordance with clause 21; and
- 4 (d) enter the salinity debits on the relevant Register,  
5 in accordance with any relevant protocols made by the Authority  
6 under clause 40.
- 7 (3) Despite sub-clauses 22(1) and 22(2), if an Accountable Action is a  
8 State Action:
- 9 (a) which is not required to be declared effective under  
10 clause 64 of the Agreement, the Authority must:
- 11 (i) attribute any salinity credits arising from that State  
12 Action at the time when the Authority considers that  
13 the Accountable Action is substantially complete; and  
14 (ii) enter the salinity credits on the relevant Register; or
- 15 (b) which comprises one or more permanent transfers of an  
16 entitlement within the meaning of Schedule D of this  
17 Agreement, the Authority must attribute any salinity credits  
18 or salinity debits arising from that Accountable Action:
- 19 (i) in the case of the permanent transfer of one  
20 entitlement, at the time when the transfer occurs; or  
21 (ii) in the case of the permanent transfer of more than one  
22 entitlement, in such proportions and at such times  
23 determined by the Authority,
- 24 in accordance with any relevant protocols made by the  
25 Authority under clause 40.

26 **23. Trading and Transfers between Registers**

- 27 (1) A Contracting Government may agree to assign any or all of the  
28 salinity credits or salinity debits attributed to that Government in  
29 Register A, to one or more of the other Contracting Governments.
- 30 (2) When the parties to an agreement referred to in sub-clause 23(1)  
31 inform the Authority in writing of that agreement and its effect, the  
32 Authority must:
- 33 (a) attribute salinity credits or salinity debits in accordance with  
34 the agreement; and

- 1 (b) amend Register A accordingly.
- 2 (3) A Contracting Government, with the prior written approval of the  
3 Authority, may agree to assign any or all of the salinity credits or  
4 salinity debits attributed to that Government in Register B, to one  
5 or more of the other Contracting Governments.
- 6 (4) The Authority must:
- 7 (a) attribute salinity credits and salinity debits in accordance  
8 with any agreement approved by the Authority under  
9 sub-clause 23(3); and
- 10 (b) amend Register B accordingly.
- 11 (5) The Authority may give effect to any written request by a  
12 Contracting Government to transfer a salinity credit attributed to  
13 that Government:
- 14 (a) in Register A, to Register B; or  
15 (b) in Register B, to Register A,  
16 in accordance with any relevant protocols made by the Authority  
17 under clause 40.

18 **24. Review and amendment of Register entries**

- 19 (1) The Authority:
- 20 (a) must, at intervals of no more than 5 years, and may at any  
21 other time, re-estimate the salinity impacts of each  
22 Accountable Action; and
- 23 (b) if the re-estimated salinity impacts differ from the  
24 Authority's most recent previous estimate of the salinity  
25 impacts, must:
- 26 (i) alter the calculation and attribution of either or both of  
27 the salinity credits and salinity debits; and  
28 (ii) make any consequential amendment to a Register,  
29 to reflect the re-estimated salinity impacts.
- 30 (2) The Authority may, at any time:
- 31 (a) designate a Joint work or measure to be a State Action; or  
32 (b) designate a State Action to be Joint work or measure; or



- 1 (c) remove an Accountable Action from a Register; or  
2 (d) determine that an Accountable Action must, in future, be  
3 treated as more than one Accountable Action.
- 4 (3) Whenever the Authority takes any action referred to in  
5 sub-clause 24(1) or 24(2) it must:
- 6 (a) review the calculation and attribution of salinity credits or  
7 salinity debits arising from the relevant Accountable Action;  
8 and  
9 (b) make any consequential amendment to a Register,  
10 in accordance with any relevant protocols made by the Authority  
11 under clause 40.

## 12 **PART VI — MONITORING**

### 13 **25. Monitoring obligations**

- 14 (1) The Authority and each State Contracting Government must carry  
15 out such monitoring as it is required to undertake:
- 16 (a) to fulfil its respective reporting obligations under Part VII;  
17 and  
18 (b) by this Part,  
19 in accordance with any relevant protocols made by the Authority  
20 under clause 40.
- 21 (2) A State Contracting Government must give the Authority the  
22 results of monitoring carried out by it:
- 23 (a) since it last gave such results to the Authority, at any time  
24 reasonably requested by the Authority; and  
25 (b) during a financial year, by 30 November of the following  
26 financial year.

### 27 **26. End-of-Valley Targets**

- 28 A State Contracting Government must monitor:
- 29 (a) the degree to which it is achieving an End-of-Valley Target;

1 (b) at the relevant site at which compliance with that target is to  
2 be measured,

3 in accordance with any protocols adopted by the Authority under  
4 clause 40.

5 **27. Program to monitor Accountable Actions**

6 (1) A State Contracting Government nominated under  
7 sub-clause 56(5) of the Agreement, in respect of a Joint work or  
8 measure that is an Accountable Action, must give the Authority a  
9 proposed program to monitor the salinity impacts of that  
10 Accountable Action within 3 months after the Government is  
11 nominated.

12 (2) A Contracting Government must give to the Authority a proposed  
13 program to monitor the salinity impacts of any State Action  
14 undertaken by that Government within 3 months after the State  
15 Action has been completed.

16 (3) The Authority may:

17 (a) accept a program given to it under sub-clause 27(1) or 27(2);  
18 or

19 (b) accept that program with any amendment made by the  
20 Authority; or

21 (c) decline to accept the program, setting out its reasons.

22 (4) The Authority may, from time to time, either:

23 (a) give directions to a Constructing Authority under paragraph  
24 61(1)(a) of the Agreement; or

25 (b) make protocols under clause 40,

26 to ensure that any Joint work or measure or any Former salinity  
27 and drainage work is monitored efficiently and effectively.

28 **28. Monitoring Accountable Actions**

29 (1) A Contracting Government nominated under sub-clause 56(5) of  
30 the Agreement in respect of a Joint work or measure must monitor  
31 the salinity impacts of that Joint work or measure in accordance  
32 with a program accepted by the Authority under clause 27.

- 1 (2) A State Contracting Government must monitor the salinity impacts  
2 of a State Action in the relevant State, in accordance with a  
3 program accepted by the Authority under clause 27.

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

5 **29. State Contracting Governments**

- 6 (1) A State Contracting Government must prepare and give to the  
7 Authority a Report under this clause in respect of each financial  
8 year, as soon as practicable after the end of that financial year and,  
9 in any case, by 30 November in the following financial year.
- 10 (2) A Report under sub-clause 29(1) must include:
- 11 (a) information about the progress of the relevant Government  
12 in undertaking:
- 13 (i) any Accountable Action; and  
14 (ii) any Proposal of which the Authority has been  
15 informed; and  
16 (iii) any Joint work or measure; and  
17 (iv) any other element of the Strategy,  
18 for which that Government is responsible; and
- 19 (b) a report about each valley in the State for which an  
20 End-of-Valley Target has been adopted, which sets out the  
21 information required by clause 30; and
- 22 (c) a report on the reviews undertaken in the financial year of:
- 23 (i) any valley referred to in paragraph 29(2)(b); and  
24 (ii) any State Action undertaken by the relevant  
25 Government,  
26 as required by clause 33.

27 **30. Valley Reports**

- 28 (1) A report about a valley referred to in paragraph 29(2)(b) must:
- 29 (a) explain how the relevant Government is implementing the  
30 Program to meet the End-of-Valley Target for that valley;  
31 and
-

- 1 (b) describe the effect which:  
2 (i) implementing that Program; and  
3 (ii) undertaking any other existing or proposed significant  
4 action in the valley,  
5 has had, or will have on the salinity, salt load and, where relevant,  
6 flow regime at each site at which compliance with the  
7 End-of-Valley Target is to be measured.  
8 (2) A Government must comply with any relevant protocols made by  
9 the Authority under clause 40 when preparing a valley report under  
10 paragraph 29(2)(b).

11 **31. Commonwealth**

12 The Commonwealth Government must prepare and give to the Authority  
13 a report in respect of each financial year, as soon as practicable after the  
14 end of that financial year, and in any case by 30 November in the  
15 following financial year, which includes information about the progress  
16 of the Commonwealth in undertaking any work or measure for the  
17 purposes of this Schedule, for which it has been nominated as the  
18 responsible Government under sub-clause 56(5) of the Agreement.

19 **32. Authority**

20 As soon as practicable after it receives a report from each State  
21 Contracting Government made under sub-clause 29(1) and where  
22 required by clause 31, from the Commonwealth Government, and in any  
23 case by 31 March in any year, the Authority must give to the Ministerial  
24 Council a report which includes:

- 25 (a) a copy of each report made by a Government; and  
26 (b) a consolidated summary of all valley reports referred to in  
27 paragraph 29(2)(b); and  
28 (c) a consolidated summary of the results of, and any  
29 recommendations made in the report of, an audit conducted  
30 under clause 34; and  
31 (d) a program setting out the matters to be reviewed and  
32 reported on pursuant to sub-clause 33(1) in the next financial  
33 year; and

- 1 (e) a copy of the contents of Register A and Register B as at  
2 30 November in the preceding calendar year; and
- 3 (f) details of other activities which have been taken to meet the  
4 objectives of the Strategy since the last report made under  
5 this clause; and
- 6 (g) a report on:
- 7 (i) the operation and implementation of existing Joint  
8 works and measures; and
- 9 (ii) the progress of any proposed new Joint works or  
10 measures; and
- 11 (h) the results of each review carried out by a State Contracting  
12 Government or the Authority in the preceding financial year  
13 under clause 33; and
- 14 (i) a list of each report made by the Authority under clause 44  
15 or 45 in the preceding financial year.

16 **33. Rolling Five-Year Reviews**

- 17 (1) A State Contracting Government must adopt and implement a  
18 program to review and report upon each:
- 19 (a) valley for which an End-of-Valley Target has been set out in  
20 Appendix 1; and
- 21 (b) State Action undertaken by that Government,  
22 at least once in every five years.
- 23 (2) A report prepared under paragraph 33(1)(a) must:
- 24 (a) be based on the best information available to the State  
25 Contracting Government at the time the report is prepared,  
26 about the salinity, salt load and, where relevant, the flow  
27 regime at each site at which compliance with an  
28 End-of-Valley Target is to be measured; and
- 29 (b) include:
- 30 (i) a current estimate of Delayed salinity impacts in each  
31 of 2015, 2050 and 2100 if no further action were taken  
32 to reduce or limit such salinity impacts;

- 1 (ii) an estimate of the effect that the already completed  
2 elements of the Program of actions will have in the  
3 current year and in each of 2015, 2050 and 2100; and
- 4 (c) the predicted effect that further implementing the Program of  
5 actions will have in each of 2015, 2050 and 2100; and
- 6 (d) the current End-of-Valley Target for that valley.
- 7 (3) A report prepared under sub-clause 33(1)(b) must include the  
8 Authority's estimate (based on the best information available to the  
9 Authority at the time the report is prepared) of the cumulative  
10 effect of the State Action on the salinity, salt load and, where  
11 relevant, the flow regime in the upper River Murray and the River  
12 Murray in South Australia in the current year and in each of 2015,  
13 2050 and 2100.
- 14 (4) The Authority must adopt and implement a program to review and  
15 report upon each Joint work and measure at least once in every five  
16 years.
- 17 (5) A report prepared under sub-clause 33(4) must include the  
18 Authority's estimate (based on the best information available to the  
19 Authority at the time the report is prepared) of the cumulative  
20 effect of the Joint Work on the salinity, salt load and, where  
21 relevant, the flow regime in the upper River Murray and the River  
22 Murray in South Australia in the current year and in each of 2015,  
23 2050 and 2100.
- 24 (6) Any review conducted and any report prepared under this clause  
25 must comply with any relevant protocols adopted by the Authority  
26 under clause 40.

27 **34. Audit**

- 28 (1) The Authority must appoint independent auditors for the purpose  
29 of carrying out an annual audit under this clause.
- 30 (2) A person who is appointed as one of the independent auditors  
31 referred to in sub-clause 34(1):
- 32 (a) is appointed for such period and on such terms as are set out  
33 in that person's instrument of appointment; and
- 34 (b) may resign by written notice addressed to the President; and

- 1 (c) may only be removed from office during the period of that  
2 person's appointment by the Ministerial Council, on the  
3 recommendation of the Authority.
- 4 (3) The independent auditors must together carry out an annual audit  
5 of:
- 6 (a) the report of each review conducted in the preceding  
7 financial year by each State Contracting Government and by  
8 the Authority under sub-clause 33(1) and 33(3),  
9 respectively; and
- 10 (b) Register A and Register B.
- 11 (4) The independent auditors must, in each audit, reach a view by  
12 consensus about:
- 13 (a) the performance of each State Contracting Government and  
14 of the Authority in implementing the provisions of this  
15 Schedule in the relevant year; and
- 16 (b) whether the Authority has fairly and accurately recorded the  
17 salinity impacts of each action entered in Register A or  
18 Register B during the relevant year.
- 19 (5) The independent auditors must prepare a report setting out:
- 20 (a) the findings of each audit; and
- 21 (b) any recommendations made by the independent auditors  
22 arising from that audit.
- 23 (6) Without limiting sub-clause 34(5), a report:
- 24 (a) must set out the view reached on each of the matters referred  
25 to in sub-clause 34(4); and
- 26 (b) may recommend to the Authority that the salinity impacts  
27 entered in Register A or Register B for an Accountable  
28 Action be varied; and
- 29 (c) may set out a finding that the total salinity credits are not  
30 equal to, or do not exceed, the total salinity debits attributed  
31 to a State Contracting Government in Register A, contrary to  
32 paragraph 16(1)(a).

1       **35. Review of Schedule**

- 2           (1) The Authority, by 31 December 2014 and at intervals of no more  
3           than 7 years thereafter, must prepare and give to the Ministerial  
4           Council a report upon the operation of this Schedule.
- 5           (2) Without limiting the contents of any report prepared under  
6           sub-clause 35(1), the Authority must include:
- 7               (a) a summary of:
- 8                     (i) the Delayed salinity impacts; and  
9                     (ii) the salinity impacts of every Accountable Action  
10                    undertaken before the date of the report,  
11                    within the Murray-Darling Basin, based on the reports  
12                    prepared under clause 33 during the preceding 5 years; and
- 13               (b) a description of any additions to, or alterations of, the Joint  
14               Program proposed to ensure that the Basin Salinity Target is  
15               met, since the Authority's last report made under  
16               sub-clause 35(1).
- 17           (3) A report prepared under sub-clause 35(1) may conclude that a State  
18           Contracting Government has not complied with one or more of its  
19           obligations under this Schedule.

20       **PART VIII — MODELS**

21       **36. Models to be developed by the Authority**

- 22           (1) Using the relevant Benchmark Period, the Authority must develop  
23           one or more models to simulate:
- 24               (a) the salinity, salt load and flow regime, each on a daily basis;  
25               and  
26               (b) the economic effects on water users of the simulated salinity,  
27               salt load and flow regime,  
28               in the Upper River Murray and the River Murray in South  
29               Australia.
- 30           (2) Any model developed under sub-clause 36(1) must be capable of  
31           predicting:



- 1 (a) any salinity impacts of Joint works and measures and State  
2 Actions; and
- 3 (b) any Delayed salinity impacts,  
4 at Morgan and such other relevant locations as the Authority may  
5 determine.
- 6 (3) A State Contracting Government must give the Authority such data  
7 about Joint works and measures, State Actions and Delayed  
8 salinity impacts, within that State, and in such form, as the  
9 Authority may from time to time request, to assist it in developing  
10 a model referred to in sub-clause 36(1).
- 11 (4) The Authority may, from time to time, alter a model developed  
12 under sub-clause 36(1).

13 **37. Models developed by State Contracting Governments**

- 14 (1) Each State Contracting Government must develop one or more  
15 models to simulate, under Baseline Conditions, the daily salinity,  
16 salt load and flow regime, over the Benchmark Period, at each site  
17 at which compliance with an End-of-Valley Target is to be  
18 measured.
- 19 (2) A model developed by a State Contracting Government must be  
20 capable of predicting the effect of:
- 21 (a) all Accountable Actions undertaken in the State ; and  
22 (b) any Delayed salinity impacts,  
23 on the salinity, salt load and flow regime at each site at which  
24 compliance with an End-of-Valley Target is to be measured in each  
25 of 2015, 2050, 2100 and in such other years as the Authority may  
26 determine.
- 27 (3) A State Contracting Government may, from time to time, alter a  
28 model developed under sub-clause 37(1).

29 **38. Assessment and Approval of Certain Models**

- 30 (1) A model, or any alteration to that model, developed to help the  
31 Authority or a State Contracting Government meet reporting  
32 obligations under this Schedule, must be assessed in accordance  
33 with this clause and any relevant protocols made by the Authority  
34 under clause 40.

- 1 (2) The Authority must assess any model, or any alteration to a model,  
2 made by a State Contracting Government.
- 3 (3) The Authority must appoint an appropriately qualified panel to  
4 assess any model, or alteration to a model, made by the Authority.
- 5 (4) An assessment of any alteration to a model must set out the  
6 assessor's prediction of the consequences of the alteration on  
7 salinity, salt load and the flow regime, each on a daily basis, at  
8 each site at which compliance with an End-of-Valley Target is to  
9 be measured, which may be affected by the alteration.
- 10 (5) After considering the assessment made by the panel, the Authority  
11 may:
- 12 (a) approve the model or alteration; or  
13 (b) approve that model or alteration, subject to:
- 14 (i) in the case of a model or alteration prepared by a  
15 Government, the relevant Government modifying the  
16 model or alteration in a way agreed between it and the  
17 Authority; or  
18 (ii) in the case of a model prepared by the Authority, the  
19 Authority modifying the model or alteration in a way  
20 it determines; or
- 21 (c) decline to approve the model or alteration ,setting out its  
22 reasons.
- 23 (6) Within 3 months after the Authority approves a model or alteration  
24 under paragraph 38(5)(b):
- 25 (a) the relevant Government or the Authority must modify the  
26 model, or alteration to a model, as required under that  
27 paragraph; and  
28 (b) in the case of a State Contracting Government, give a copy  
29 of the modified model, or alteration to a model, to the  
30 Authority.
- 31 (7) A model in the form initially assessed under this clause may be  
32 used temporarily for the purposes of this Schedule until any  
33 modification to the model agreed upon or determined under  
34 paragraph 38(5)(b) (as the case requires) has been:
- 35 (a) made by the Authority or the relevant Government; and

- 1 (b) approved by the Authority.  
2 (8) When an alteration to a model:  
3 (a) is approved under paragraph 38(5)(a); or  
4 (b) modified under sub-clause 38(6),  
5 the relevant model is altered accordingly.

6 **39. Review of Models**

- 7 (1) A State Contracting Government must:  
8 (a) review any model, and any amended model, developed by it  
9 and approved by the Authority, before 31 December 2014  
10 and thereafter at intervals of not more than 7 years; and  
11 (b) propose any amendment to a model, or amended model,  
12 which that review identifies as appropriate.  
13 (2) The Authority must:  
14 (a) review any model, and any amended model, developed by it,  
15 or developed by the Commission for the purposes of the  
16 former Schedule and in operation immediately prior to  
17 commencement of this Schedule, before 31 December 2014  
18 and thereafter at intervals of not more than 7 years; and  
19 (b) propose any amendment to a model, or amended model,  
20 which that review identifies as appropriate.

21 **PART IX — PROTOCOLS**

22 **40. Authority's power to make protocols**

- 23 (1) The Authority may, in consultation with the Committee, from time  
24 to time make, amend or revoke such protocols as it considers  
25 necessary, desirable or convenient to give effect to this Schedule.  
26 (2) The Authority must notify each Contracting Government:  
27 (a) whenever it is considering making, amending or revoking a  
28 protocol; and  
29 (b) of the subject matter of the proposed protocol or  
30 amendment.

- 1 (3) A Contracting Government may nominate a person with relevant  
2 expertise and experience to give advice to the Authority in  
3 developing the proposed protocol or amendment.
- 4 (4) The Authority must consider any advice given by any person  
5 nominated under sub-clause 40(3), before it adopts the proposed  
6 protocol or amendment.
- 7 (5) Protocols made under this clause must not be inconsistent with any  
8 provision of the Agreement (including its Schedules) and are void  
9 to the extent of any inconsistency.
- 10 (6) The Authority may not delegate any power conferred on it by  
11 sub-clause 40(1) or clause 41.

12 **41. Examples of possible protocols**

13 Without limiting sub-clause 40(1), the Authority may make protocols:

- 14 (a) about assessing Proposals;
- 15 (b) about the nature and form of information which a State  
16 Contracting Government must give to the Authority to  
17 enable it to estimate salinity impacts;
- 18 (c) establishing a common method to be used to estimate the  
19 salinity impacts of both any Proposal and any Accountable  
20 Action;
- 21 (d) establishing a method, using Baseline Conditions, to  
22 estimate Delayed salinity impacts;
- 23 (e) establishing a method to determine any salinity credits or  
24 salinity debits arising from a salinity impact;
- 25 (f) for administering Register A and Register B, including:
- 26 (i) deciding whether an Accountable Action should be  
27 entered on Register A or Register B;
- 28 (ii) how to estimate the salinity impact of an action, for  
29 the purposes of Register B;
- 30 (iii) how any salinity credits or salinity debits are to be  
31 apportioned between, and attributed to, Contracting  
32 Governments;
- 33 (g) about monitoring:
- 34 (i) the salinity impacts of an Accountable Action;
-

- 1 (ii) progress made under this Schedule in meeting the  
2 Basin Salinity Target;
- 3 (iii) progress made by a State Contracting Government in  
4 meeting any End-of-Valley Target within that State;
- 5 (h) about developing and assessing models referred to in  
6 Part VIII and using those models;
- 7 (i) about preparing, presenting and the required content of a  
8 valley report referred to in paragraph 29(2)(b);
- 9 (j) about preparing a program for, conducting, preparing and  
10 the required content of, a report on a review of valleys, State  
11 Actions and Joint works and measures, referred to in  
12 clause 33;
- 13 (k) about making sure that reporting obligations and the nature  
14 and content of reports prepared under this Schedule are  
15 consistent with the reporting requirements of other national  
16 or regional resource management strategies relevant to the  
17 Strategy.

18 **PART X — DEFAULT**

19 **42. Relationship with Part XI of the Agreement**

20 The provisions of this Part are in addition to, and do not derogate from,  
21 any provision in clause 86 of the Agreement.

22 **43. Default by a State Contracting Government**

- 23 (1) The Authority must determine that a State Contracting Government  
24 is in default for the purpose of this clause if the Authority:
- 25 (a) decides; or
- 26 (b) receives a report of an audit under sub-clause 34(5) which  
27 finds,
- 28 that the total salinity credits do not exceed, or are not equal to, the  
29 total salinity debits attributed to that Government in Register A,  
30 contrary to paragraph 16(1)(a).
- 31 (2) If the Authority determines that a State Contracting Government is  
32 in default, the Authority must:

- 1 (a) forthwith declare that the State is in default of its obligations  
2 under this Schedule; and  
3 (b) report the matter to the next meeting of the Ministerial  
4 Council.

5 **44. Exception Reports**

- 6 (1) The Authority may determine:  
7 (a) that the combined total of all salinity credits does not exceed  
8 the combined total of all salinity debits attributed to a State  
9 Contracting Government in both Register A and Register B,  
10 contrary to paragraph 16(1)(b);  
11 (b) that a State Contracting Government has not met, or is  
12 unlikely to meet, any End-of-Valley Target set out in the  
13 Appendix;  
14 (c) that a State Contracting Government has not complied with  
15 one or more of its obligations under this Schedule, on the  
16 basis of a conclusion in a review report, referred to in  
17 sub-clause 35(3).  
18 (2) If the Authority makes a determination under sub-clause 44(1) it  
19 must report that fact to the next meeting of the Ministerial Council.  
20 (3) The Authority may revoke a determination made under  
21 sub-clause 44 (1) if it is satisfied that the circumstances which led  
22 to the determination no longer exist.

23 **45. Proposal for remedial action**

- 24 The Authority must:  
25 (a) upon making a determination under sub-clause 43(1) or  
26 44(1), consult with the relevant State Contracting  
27 Government, with a view to remedying the situation leading  
28 to that determination; and  
29 (b) include in the relevant report to the Ministerial Council, the  
30 Authority's proposal for remedying that situation.

1       **46. Action by a State Contracting Government**

2       A State Contracting Government which has been the subject of a report  
3       made by the Authority to the Ministerial Council under either paragraph  
4       43(2)(b) or sub-clause 44(2), must:

- 5               (a)   give a report to the next meeting of the Ministerial Council,  
6               setting out:
- 7                       (i)   an explanation of the circumstances leading to the  
8                       Authority's determination; and
- 9                       (ii)  what action the Government has taken, or proposes to  
10                      take, to remedy that situation; and
- 11                      (iii) if the circumstances leading to the Authority's  
12                      determination were a situation referred to in paragraph  
13                      44(1)(a), how long the Government predicts it will be  
14                      before that Government complies with paragraph  
15                      16(1)(b); and
- 16               (b)   report annually thereafter to the Ministerial Council on the  
17               action it has taken, or proposes to take, to remedy the  
18               situation, until:
- 19                      (i)   in the case of a determination made under  
20                      sub-clause 43(1), the Authority is satisfied that the  
21                      Government once more complies with paragraph  
22                      16(1)(a) and reports that fact to the Ministerial  
23                      Council; or
- 24                      (ii)  in the case of a determination made under  
25                      sub-clause 44(1), the Authority revokes that  
26                      determination.

27       **PART XI — FINANCE**

28       **47. State Actions**

29       (1)   Subject to sub-clause 47(2), the cost of undertaking and monitoring  
30       a State Action must either:

- 31               (a)   be met by the Contracting Government which undertakes it;  
32               or

- 1 (b) if the State Action is undertaken by more than one  
2 Contracting Government, be met by them in such  
3 proportions as they may agree.
- 4 (2) Where a Contracting Government agrees to assign to another  
5 Contracting Government any salinity credits or salinity debits  
6 under clause 23, any financial obligation of the Government  
7 making the assignment under sub-clause 47(1) will be allocated  
8 between the parties to the agreement, in such proportions as they  
9 may agree.

10 **48. Joint works or measures**

- 11 (1) Subject to sub-clause 48(2), the provisions of clause 72 of the  
12 Agreement apply to every Joint work or measure undertaken under  
13 this Schedule.
- 14 (2) The share of the cost of any Joint work or measure attributable to a  
15 Contracting Government under sub-clause 48(1) may be varied by  
16 an agreement made under clause 23.

17 **PART XII — TRANSITIONAL PROVISIONS**

18 **49. Former salinity and drainage works**

- 19 (1) A monitoring program approved for a Former salinity and drainage  
20 work under clause 12 of the former Schedule must be carried out  
21 according to its terms, unless and until the Authority alters it.
- 22 (2) A Contracting Government nominated under sub-clause 56(5) of  
23 the Agreement with respect to a Former salinity and drainage work  
24 must meet the cost of operating, maintaining and monitoring that  
25 work, unless an agreement made by that Government under  
26 clause 23 provides otherwise.  
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SCHEDULE B - APPENDIX 1 — END OF VALLEY TARGETS

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Version - 15 September 2008

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 Ev/ Site ID
	Salinity (EC µS/cm)		Silt Load (t/yr)		Salinity (EC µS/cm)		Silt Load (t/yr)		Salinity (EC µS/cm)		Silt Load (t/yr)			
	Median (50%/ile)	Peak (80%/ile)	Mean	Mean	Median (50%/ile)	Peak (80%/ile)	Mean	Mean	Median (50%/ile)	Peak (80%/ile)	Mean	Mean		
<b>AU PARTNER GOVERNMENTS</b>														
Murray-Darling Basin	570	920	1,600,000	110%	87%	110%	110%	627	800*	1,760,000			42654	96
		(95%/ile)			(95%/ile)				(95%/ile)				42692	
<b>SOUTH AUSTRALIA</b>														
S.A. Border	380	470	1,300,000	-	88%	-	-	-	412	-	-	-	42620	92
Lock 6 to Berri	450	600	1,500,000	-	91%	-	-	-	543	-	-	-	42653	94
Below Morgan	600	820	1,600,000	-	94%	-	-	-	770	-	-	-	42657	98
<b>NEW SOUTH WALES</b>														
Cambridge	130	230	1,600,000	108%	112%	108%	108%	162	238	1,600,000			410130	35
Leich	430	660	250,000	102%	105%	103%	103%	460	603	257,500			412084	55
Bogan	440	490	27,000	132%	93%	129%	129%	581	456	34,830			421013	78
Miscamrie	480	610	23,000	105%	122%	112%	112%	504	744	25,760			421012	77
Castlereagh	350	390	9,000	105%	-	99%	-	368	-	8,910			420020	76
Shoib	440	650	110,000	108%	110%	116%	116%	475	715	127,600			419026	75
Gwydir	400	540	7,000	103%	101%	100%	100%	412	545	7,000			418958	74
NSW Border Rivers	250	330	50,000	100%	100%	100%	100%	250	330	50,000			416001	70
NSW Darling	520	570	100,000	100%	100%	100%	100%	520	570	100,000			42002	71
NSW Macintyre	520	570	100,000	100%	100%	100%	100%	520	570	100,000			42002	71
NSW Riverina Plains	310	360	1,100,000	-	-	117%	-	389	473	376,200			414704	10
NSW Murrumbidgee	380	470	1,300,000	-	-	-	-	-	-	-			414704	10
NSW Murrumbidgee Zone	380	470	1,300,000	-	-	-	-	-	-	-			426200	92
<b>VICTORIA</b>														
Wimmera	1,380	1,720	31,000	100%	100%	100%	100%	1,380	1,720	31,000			415200	34
Avoca	2,060	5,290	37,000	102%	-	-	-	2,096	-	-			408203	32
Loddon	750	1,090	88,000	95%	-	-	-	711	-	-			407203	24
Campanie	530	670	54,000	78%	-	-	-	412	-	-			406218	22
Goulburn	100	152	165,000	99%	-	-	-	99	-	-			405299	16
Ovens	80	140	140,000	104%	100%	100%	100%	72	100	84,540			403241	14
Kiewa	47	55	19,000	100%	100%	100%	100%	47	55	19,000			402205	12
Vic. Upper Murray	54	59	150,000	-	-	-	-	-	-	-			409016	10
Vic. Riverina Plains	270	380	650,000	-	-	-	-	-	-	-			409204	30
Vic. Mallee Zone	380	470	1,300,000	-	-	-	-	-	-	-			426200	92
<b>QUEENSLAND</b>														
Old Border Rivers	250	330	50,000	100%	100%	100%	100%	250	330	50,000			416001 #	70
Mieque	140	150	8,700	100%	100%	100%	100%	140	150	8,700			417024	83
Condamine-Balonne	170	210	5,400	100%	100%	100%	100%	170	210	5,400			422206A	84
	150	280	6,500	100%	100%	100%	100%	150	280	6,500			422211A	84
	170	210	29,000	100%	100%	100%	100%	170	210	29,000			422015 #	85
Paroo	160	210	10,000	100%	100%	100%	100%	160	210	10,000			422030 #	81
Paroo	90	100	24,000	100%	100%	100%	100%	90	100	24,000			424201A	88
Wareago	101	110	4,800	100%	100%	100%	100%	101	110	4,800			423004 #	86
Wareago	100	130	5,500	100%	100%	100%	100%	100	130	5,500			423005 #	87
<b>AUSTRALIAN CAPITAL TERRITORY</b>														
ACT													410777	52

Notes  
\* 95th percentile target. The Basin Salinity Target at Morgan is less than 800 EC for 95% of the time.  
# - These sites are operated by New South Wales on behalf of Queensland.

1 **SCHEDULE B - APPENDIX 2 — AUTHORISED JOINT WORKS AND**  
 2 **MEASURES**  
 3

Description of works	Location	Nominated Government	Status
<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	Former Salinity and Drainage Work
<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	Former Salinity and Drainage Work
<b>Mallee Cliffs Salt Interception Scheme</b> Groundwater pumping with disposal to evaporation basin adjacent to Mallee Cliffs National Park	Southwest New South Wales on the River Murray approximately 30 km east of Mildura opposite Lambert Island in Victoria	New South Wales	Former Salinity and Drainage Work
<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	Former Salinity and Drainage Work
<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	Former Salinity and Drainage Work
<b>Waikerie Salt Interception Scheme</b> Groundwater pumping with disposal to Stockyard Plain evaporation basin	Southern side of the River Murray from Holder Bend (River distance 392 km) to the Toolunka Reach (River distance 371 km)	South Australia	Former Salinity and Drainage Work

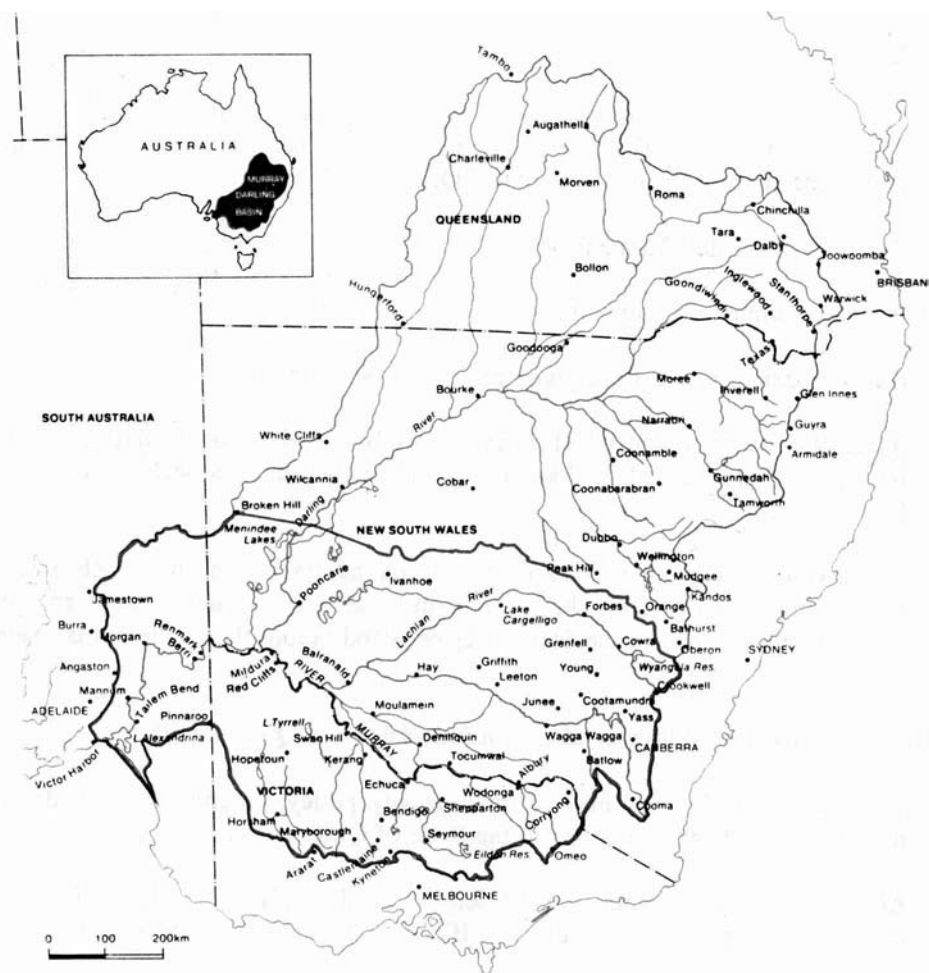
**AMENDMENTS BASED ON REFERRALS OF POWER Schedule 1**

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<b>Description of works</b>	<b>Location</b>	<b>Nominated Government</b>	<b>Status</b>
<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	Former Salinity and Drainage Work
<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	Basin Salinity Management Strategy Work
<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	Basin Salinity Management Strategy Work

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1 **SCHEDULE C - APPLICATION OF AGREEMENT TO QUEENSLAND**  
2 **Plan for the purposes of clause 40 of the Agreement**  
3



4

1 SCHEDULE D - TRANSFERRING WATER ENTITLEMENTS AND  
2 ALLOCATIONS

3 **PART I - PRELIMINARY**

4 **1. Purposes**

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

- 8 (a) to co-ordinate the transfer between States and between  
9 valleys within the Murray-Darling Basin, of such water  
10 entitlements and allocations as are, from time to time,  
11 determined by the Ministerial Council and specified in  
12 Appendix 1, in a way which minimises any detrimental  
13 effects upon the environment and upon other water users;
- 14 (b) to set out principles to be applied to such transfers by the  
15 Authority, State Contracting Governments and licensing  
16 authorities;
- 17 (c) to allow protocols to be made under this Schedule to  
18 supplement its provisions; and
- 19 (d) to require a State Contracting Government to notify the  
20 Authority of any intervalley transfer made within that State.

21 **2. Application**

22 Subject to the laws of each State, this Schedule applies to transfers  
23 referred to in paragraph 1(a), relating to water within:

- 24 (a) the upper River Murray and the River Murray in South  
25 Australia; and
- 26 (b) regulated reaches of the Goulburn, Campaspe, Loddon and  
27 Murrumbidgee river systems; and
- 28 (c) such other sources from time to time specified in Appendix  
29 1,
- 30 (d) for the purposes of either or both of exchange rate trade and  
31 tagged trade, as the Ministerial Council may determine from  
32 time to time.

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**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, 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;

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

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

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

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

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

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

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

- 17                   (i) the transfer of an allocation already made in a State of  
18 origin to a State of destination, in accordance with this  
19 Schedule; and  
20                   (ii) the transfer of an allocation within a State, according  
21 to the laws of that State;

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

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

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

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

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

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

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

18 **PART II — GENERAL PRINCIPLES**

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

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

23 **5. Suspension of Schedule**

- 24 (1) Subject to sub-clause 19(10), a State Contracting Government may,  
25 from time to time, after consulting the Ministerial Council, suspend  
26 or limit the operation of this Schedule in that State, if the State  
27 Contracting Government considers that:
- 28 (a) the use or management of water comprised in entitlements or  
29 allocations transferred under this Schedule have increased or  
30 accelerated environmental degradation; or
- 31 (b) any other State has made inadequate progress towards  
32 pricing water to recover full costs, in accordance with



- 1 principles adopted by the Council of Australian  
2 Governments; or
- 3 (c) the policies or practices applying within any other State do  
4 not achieve the objectives of the National Water Initiative  
5 relating to reducing barriers to trading entitlements and  
6 allocations and ensuring competitive neutrality in the market  
7 for such entitlements and allocations.
- 8 (2) The Ministerial Council may, from time to time, having regard to  
9 the National Water Initiative, by resolution, suspend or limit the  
10 operation of this Schedule in relation to a State or States.

11 **6. Power to make protocols**

- 12 (1) The Authority may, in consultation with the Committee, from time  
13 to time make protocols:
- 14 (a) to implement the provisions for adjusting the cap on  
15 diversions set out in Appendix 3;
- 16 (b) about calculating salinity debits and credits for the purposes  
17 of clause 10;
- 18 (c) defining valleys for the purposes of this Schedule and about  
19 maintaining, crediting, debiting and giving directions for  
20 releases to be debited to, valley accounts, pursuant to  
21 clause 11;
- 22 (d) determining one or more conversion factors and exchange  
23 rates; about applying and using any conversion factor or  
24 exchange rate so determined; and defining trading zones, for  
25 the purposes of clause 12;
- 26 (e) about any matter referred to in clause 13 (Restrictions on  
27 Transfers);
- 28 (f) about any matter referred to in clause 15 (Procedures and  
29 Principles for Transfers);
- 30 (g) about any matter referred to in clause 17 (Monitoring and  
31 Reporting);
- 32 (h) to implement either or both of exchange rate trade and  
33 tagged trade; and
- 34 (i) implementing any resolution of the Ministerial Council  
35 about transferring environmental entitlements.

- 1           (2) The Authority must notify each Contracting Government:  
2           (a) whenever it is considering making, amending, reviewing or  
3           revoking a protocol; and  
4           (b) of the subject matter of any proposed protocol, amendment,  
5           review or revocation.
- 6           (3) A Contracting Government may nominate a person with relevant  
7           expertise and experience to give advice to the Authority in  
8           preparing, amending, reviewing or revoking a protocol.
- 9           (4) The Authority must consider any advice given by a person  
10          nominated under sub-clause 6(3), before it makes, amends or  
11          revokes a protocol.
- 12          (5) A protocol made under this clause:  
13          (a) must, subject to clause 2, indicate whether it applies to  
14          exchange rate trade, tagged trade or both; and  
15          (b) must not be inconsistent with any provision of the  
16          Agreement (including its Schedules) and is void to the extent  
17          of any inconsistency.
- 18          (6) The Authority may:  
19          (a) amend, review or revoke any protocol made under  
20          sub-clause 6(1); and  
21          (b) review any such protocol at the request of a Contracting  
22          Government.
- 23          (7) The Authority may not delegate any power conferred on it by  
24          sub-clauses 6(1) and (6).

25           **PART III — MATTERS RELATING TO ADMINISTRATION OF**  
26           **THE AGREEMENT**

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

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

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

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

12       **9.    Adjustment of State financial contributions**

- 13           (1)    In every year, the Authority must, based on information contained  
14                   in the Transfer Register, calculate the amount by which any sum  
15                   payable by a State Contracting Government in any year under  
16                   Part IX of the Agreement, should be varied to reflect transfers of  
17                   entitlements made by exchange rate trade from river reaches  
18                   regulated by works subject to the Agreement, into or out of that  
19                   State in the preceding year and inform the Ministerial Council of  
20                   that amount for the purposes of clause 72 of the Agreement.
- 21           (2)    The Ministerial Council may add or subtract, as the case requires,  
22                   any amount determined under sub-clause 9(1) to or from the sum  
23                   payable by a State Contracting Government in the next following  
24                   year, under Part IX of the Agreement.
- 25           (3)    Despite the provisions of Part IX of the Agreement, a State  
26                   Contracting Government must pay any sum as varied in  
27                   accordance with sub-clause 9(2).

28           **Note:**

29                   (a) Where an interstate transfer, made either by exchange rate trade or tagged  
30                   trade, relates to water in a tributary of the River Murray, the recovery of State  
31                   bulk water charges relating to that water is a matter for agreement between the  
32                   relevant States.

33                   (b) Where tagged trade occurs, a transferee in the State of destination holds an  
34                   entitlement which continues to exist in the State of origin. A State of origin  
35                   might recover bulk water charges either directly from the holder of the  
36                   entitlement in the State of destination, or through the relevant water authority  
37                   in that State, as agreed between the parties.

1       **10. Accounting for salinity impacts**

- 2           (1) An entitlement or allocation can only be transferred under this  
3           Schedule if the proposed transfer is consistent with Schedule B.
- 4           (2) Consistently with the law of the relevant State, a licensing  
5           authority within that State must attach such conditions to any  
6           transfer into or out of that State which the licensing authority  
7           considers necessary or desirable to ensure that the State meets its  
8           obligations under Schedule B.
- 9           (3) The Authority must attribute salinity credits and debits arising  
10          from the dilution effects of interstate transfers of entitlements or  
11          allocations to the State of origin and State of destination, in equal  
12          shares and in accordance with any protocol made under paragraph  
13          6(1)(b).
- 14          (4) The Authority must attribute salinity credits and debits arising  
15          from changes to salt accession attributable to any transfer of  
16          entitlements or allocations, or changes to the use of water arising  
17          from such transfers, to the State in which the change occurs and in  
18          accordance with any protocol made under paragraph 6(1)(b).

19       **PART IV — OPERATIONAL PRINCIPLES AND**  
20       **ADMINISTRATION**

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

- 22           (1) The Authority must ensure that water made available in each valley  
23           reflects the transfers of entitlements and allocations made under  
24           this Schedule, in accordance with any protocol made under  
25           paragraph 6(1)(c).
- 26           (2) The valley accounts maintained under sub-clause 11(2) of the  
27           former Schedule immediately prior to commencement of this  
28           Schedule are continued in existence.
- 29           (3) For the purpose of this clause, the Authority must maintain a valley  
30           account referred to in sub-clause (2):
- 31           (a) for each tributary in respect of which there are entitlements  
32           or allocations which may be traded under this Schedule; and
- 33           (b) in accordance with any protocol made under paragraph  
34           6(1)(c).

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

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

- 15 (1) Subject to sub-clause 12(2), the Authority may, by a protocol made
- 16 under paragraph 6(1)(d), determine or alter one or more:
- 17 (a) conversion factors to be applied when converting an
- 18 entitlement of one type into an entitlement of another type,
- 19 in the same valley; and
- 20 (b) exchange rates to be applied under this Schedule:
- 21 (i) to any transfer of an entitlement by exchange rate
- 22 trade; and
- 23 (ii) to any transfer of an entitlement by tagged trade or to
- 24 any transfer of an allocation,
- 25 and must publish any such conversion factors and exchange
- 26 rates in such manner as it thinks fit.
- 27 (2) An exchange rate referred to in subparagraph 12(1)(b)(ii) must
- 28 only be made to take into account either or both of:
- 29 (a) any changes in distribution losses; and
- 30 (b) any differences in utilization,
- 31 resulting from the transfer.
- 32 (3) A conversion factor and an exchange rate determined or altered by
- 33 the Authority operates prospectively and cannot be used to alter:

- 1 (a) a previous entry made in any valley account; or  
2 (b) any previous adjustment made to State entitlements or the  
3 cap on diversions, or the previous calculation of State  
4 financial contributions,  
5 under this Schedule.
- 6 (4) A protocol referred to in sub-clause 12(1):  
7 (a) must specify how any conversion factor or exchange rate is  
8 to be applied; and  
9 (b) may establish one or more zones within which an exchange  
10 rate will not be applied to specified types of entitlement; and  
11 (c) must attempt to minimise any adverse effect that any  
12 conversion or any type of transfer may have on:  
13 (i) water users, other than the transferor or transferee; and  
14 (ii) the environment; and  
15 (d) may provide for taking account of:  
16 (i) any losses which may occur during transmission of an  
17 entitlement; and  
18 (ii) any change in the level of reliability of supply of an  
19 entitlement resulting from the conversion or transfer;  
20 and  
21 (iii) the extent to which the volume of water represented  
22 by an entitlement has been used; and  
23 (iv) any adverse effect which the conversion or transfer  
24 may have on the environment; and  
25 (v) any other matter which the Authority considers  
26 appropriate.
- 27 (5) Each State Contracting Government must ensure that any licensing  
28 authority within the State applies any relevant conversion factor or  
29 exchange rate determined under this clause, in accordance with any  
30 protocol made under paragraph 6(1)(d).

31 **13. Restrictions on transfers**

- 32 (1) Subject to sub-clause 13(4), a protocol made under paragraph  
33 6(1)(e) may prohibit, restrict or regulate the transfer of a specified  
34 type of entitlement.
-

- 1 (2) Without limiting sub-clause 13(1), a protocol:
- 2 (a) must, subject to other provisions of this clause, facilitate the
- 3 transfer of entitlements or allocations between
- 4 hydrologically connected systems, in accordance with this
- 5 Schedule; and
- 6 (b) must be consistent with any principles relating to markets in,
- 7 and trading of, water entitlements and allocations, from time
- 8 to time adopted by the Ministerial Council; and
- 9 (c) must not hinder the ability of the Authority to regulate and
- 10 manage the flow of water within the upper River Murray and
- 11 the River Murray in South Australia, in accordance with the
- 12 Agreement; and
- 13 (d) must not purport to affect or interfere with State
- 14 responsibilities for managing water resources, except as
- 15 provided for in the Agreement.
- 16 (3) Until the Ministerial Council resolves otherwise an entitlement
- 17 must not be transferred into or out of the Lower Darling Valley.
- 18 (4) A State Contracting Government may, consistently with the law of
- 19 that State, from time to time prohibit, restrict or regulate the
- 20 transfer of any type of entitlement or allocation in a way which is
- 21 consistent with any principles relating to markets in, and trading of,
- 22 water entitlements, from time to time adopted by the Ministerial
- 23 Council.
- 24 (5) Each State Contracting Government must, consistently with the
- 25 law of that State, take such action within the State as may be
- 26 necessary to ensure that any prohibition, restriction or regulation
- 27 made or imposed by the Authority or the State Contracting
- 28 Government is complied with and observed by each authority and
- 29 other person in that State.

30 **14. Environmental and supply considerations**

- 31 (1) The Authority must maintain a record of the environmental
- 32 assessment criteria and processes from time to time applied by
- 33 each Contracting Government in respect of applications to transfer
- 34 entitlements or allocations.
- 35 (2) Each Contracting Government must:

- 1 (a) notify the Authority of any change to the environmental  
2 assessment criteria and processes contained in the record  
3 referred to in sub-clause 14(1) with respect to that  
4 Government, as soon as practicable after that change is  
5 made; and
- 6 (b) propose any consequential alterations to the record referred  
7 to in sub-clause 14(1) which it considers necessary or  
8 desirable.
- 9 (3) Each Contracting Government must, by 31 July in every year, give  
10 the Authority a report setting out all changes referred to in  
11 paragraph 14(2)(a) with respect to that Government, made in the  
12 previous year.
- 13 (4) The Authority may, from time to time, amend the record referred  
14 to in sub-clause 14(1) in any way it considers necessary or  
15 desirable, in order to reflect the relevant environmental assessment  
16 criteria and processes of a Contracting Government.
- 17 (5) Each State Contracting Government must ensure that any licensing  
18 authority within the State:
- 19 (a) takes into account any policies from time to time adopted by  
20 the Ministerial Council about:
- 21 (i) managing environmental flows; and  
22 (ii) managing the delivery of State entitlements, in the  
23 light of limits to the capacity of the River Murray  
24 system; and  
25 (iii) any other matters relevant to the purposes of this  
26 Schedule, when considering whether or not to approve  
27 any application to transfer an entitlement or allocation  
28 under this Schedule; and
- 29 (b) submits any such application to the relevant environmental  
30 assessment criteria and processes from time to time set out  
31 in the record referred to in sub-clause 14(1); and
- 32 (c) decides whether or not to grant the application in accordance  
33 with:
- 34 (i) the policies referred to in paragraph 14(5)(a); and  
35 (ii) the results of applying the criteria and processes  
36 referred to in paragraph 14(5)(b); and
-



- 1 (d) imposes comparable conditions about environmental matters  
2 on any entitlement or allocation transferred into that State  
3 under this Schedule as it would impose on an entitlement or  
4 allocation granted or transferred within that State to use the  
5 same amount of water for the same purpose at the same  
6 location.

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

- 8 (1) The Authority may, by a protocol made under paragraph 6(1)(f),  
9 specify processes and principles to be followed by the Authority  
10 and, consistently with State law, each State Contracting  
11 Government and licensing authority, to record and to facilitate the  
12 transfer of entitlements and allocations, subject to the other  
13 provisions of this Schedule.
- 14 (2) Each State Contracting Government must, consistently with the  
15 law of that State, take such action within the State as may be  
16 necessary to ensure that processes and principles referred to in this  
17 Schedule and in any protocol made under paragraph 6(1)(f) are  
18 applied and observed by each authority and other person in that  
19 State.
- 20 (3) Without limiting sub-clause 15(1), a protocol made under  
21 paragraph 6(1)(f) may:
- 22 (a) apply to:
- 23 (i) interstate transfers;
- 24 (ii) intervalley transfers;
- 25 (iii) transfers made across the Barmah Choke; and
- 26 (b) specify procedures, which are consistent with State law, for:
- 27 (i) ensuring, where appropriate, that an entitlement in a  
28 State of origin is cancelled or extinguished before, or  
29 at the same time as, an equivalent entitlement is  
30 created in the State of destination;
- 31 (ii) processing applications to transfer entitlements and  
32 allocations;
- 33 (iii) confirming the ability of the Authority to deliver  
34 water pursuant to any proposed transfer;
- 35 (iv) notifying the Authority when a transfer has occurred;  
36 and

- 1 (c) subject to clause 16, require the keeping of registers and  
2 accounts of transfers.

3 **16. Transfer Register**

- 4 (1) In this clause:

5 “base valley” means a valley referred to in sub-clause 3(2)  
6 of Schedule E.

- 7 (2) The transfer register kept under clause 16 of the former Schedule  
8 immediately prior to commencement of this Schedule is continued  
9 in existence.

- 10 (3) The Authority must maintain the register referred to in sub-clause  
11 (2) so that it sets out the following information with respect to  
12 conversion of entitlements and each intervalley transfer of an  
13 entitlement (and, if the Authority so resolves, each allocation)  
14 occurring within the area referred to in clause 2:

- 15 (a) The following information about the place of origin:

- 16 (i) The volume in megalitres and type of any entitlement  
17 converted into an entitlement of another type.  
18 (ii) The volume in megalitres of any entitlement created  
19 by such conversion, after applying the relevant  
20 conversion factor, and the type of the new entitlement.  
21 (iii) The volume in megalitres of any allocation or  
22 entitlement transferred.  
23 (iv) The identifying number of the allocation or  
24 entitlement transferred.  
25 (v) The type of entitlement to which the transfer relates.  
26 (vi) The base valley from which the transfer was made.  
27 (vii) The designated river valley from which the transfer  
28 was made.  
29 (viii) The date on which either:  
30 • the entitlement transferred was cancelled,  
31 extinguished or suspended at the place of origin; or  
32 • any allocation under an entitlement is permanently  
33 made available in the State of destination; or  
34 • the transfer of the allocation was authorised,  
35 as a result of the transfer, as the case requires.
-

- 1 (b) The following information about the place of destination:  
2 (i) The exchange rate applied to any transfer.  
3 (ii) The volume in megalitres of the allocation or  
4 entitlement transferred, after applying the relevant  
5 exchange rate.  
6 (iii) The type of entitlement into which the allocation or  
7 entitlement transferred has been converted.  
8 (iv) The base valley into which the transfer was made.  
9 (v) The designated river valley into which the transfer  
10 was made.  
11 (vi) The date upon which either:  
12 • any new entitlement was created at the place of  
13 destination; or  
14 • the use of the transferred allocation was authorised,  
15 as a result of the transfer, as the case requires.  
16 (vii) The identifying number of any new entitlement.  
17 (viii) If the transfer was made between States, an  
18 identifying interstate transfer number, allocated to the  
19 transfer by the Authority.  
20 (c) The effective date of the transfer, being the later of the dates  
21 referred to in sub-paragraphs 16(3)(a)(viii) and 16(3)(b)(vi).  
22 (4) Pursuant to the obligations set out in paragraph 13(1)(c) of  
23 Schedule E, each State Contracting Government must ensure that  
24 the Authority promptly receives all such information relating to  
25 transfers within, to or from the territory of that State, as may be  
26 necessary to keep the Transfer Register up-to-date.  
27 (5) The Authority must, after the end of each year, arrange for an  
28 independent auditor:  
29 (a) to examine whether there is any discrepancy between  
30 information provided by each State Contracting Government  
31 under sub-clause 16(4), information provided under clause 8  
32 of Appendix 3 to this Schedule and information set out in the  
33 Transfer Register; and  
34 (b) to make recommendations to the Ministerial Council, on or  
35 before September 30 in the following year, about any  
36 amendment to the Transfer Register as the auditor thinks  
37 desirable, in view of any such discrepancy.
-

1 (6) After considering any recommendation made by an independent  
2 auditor under paragraph 16(5)(b), the Ministerial Council may  
3 require the Authority to make any alteration to the Transfer  
4 Register, which the Ministerial Council considers appropriate.

5 (7) The Authority must recalculate:

6 (a) any adjustment to the cap on diversions or any annual  
7 diversion target, pursuant to clause 8; or

8 (b) any calculation pursuant to clause 9,

9 in respect of which relevant alteration has been made to the  
10 Transfer Register under sub-clause 16(6).

11 **17. Monitoring and reporting**

12 (1) Unless the Authority determines otherwise, by 30 June in every  
13 year, commencing in 2007, each State Contracting Government  
14 must, in accordance with any protocol made under paragraph  
15 6(1)(g), prepare and give to the Authority a report on measures  
16 taken in that State in the preceding year:

17 (a) to manage any adverse environmental effects attributable to  
18 interstate transfers of entitlement or allocations into and out  
19 of that State; and

20 (b) to implement and monitor environmental assessment criteria  
21 and procedures for the use of water transferred into the State  
22 on land at its destination.

23 (2) By 31 December in every year, the Authority must, in accordance  
24 with any protocol made under paragraph 6(1)(g), prepare and give  
25 to each State Contracting Government a report setting out the  
26 following information for the preceding year:

27 (a) the total volume of transfers of entitlements and allocations  
28 into and out of each State; and

29 (b) the exchange rates applied to interstate transfers referred to  
30 in paragraph 17(2)(a); and

31 (c) any adjustment to the delivery of a State's entitlement made  
32 under clause 7; and

33 (d) any adjustment to the contribution of a State Contracting  
34 Government approved by the Ministerial Council under  
35 sub-clause 9(2); and

- 1 (e) any adjustment to the cap on diversions for a designated  
2 river valley made under clause 8.

3 **18. Review of interstate transfers**

- 4 (1) The Authority must prepare and give to the Ministerial Council and  
5 the Basin Community Committee a report on:  
6 (a) the operation of this Schedule; and  
7 (b) the markets for interstate transfers of entitlements and  
8 allocations,  
9 respectively, by 1 July 2010 and thereafter, either:  
10 (c) by the end of every third year; or  
11 (d) in the case of the market for entitlements, promptly after at  
12 least 8% of the volume of entitlements to use water for  
13 irrigation in any area has been permanently transferred  
14 interstate since the last report on that market was made  
15 under this clause; or  
16 (e) in the case of the market for allocations, promptly after at  
17 least 8% of the volume of allocations to use water for  
18 irrigation in any area has been transferred interstate in the  
19 preceding 12 months,  
20 whichever is sooner.  
21 (2) A report referred to in sub-clause 18(1) must deal with delivery  
22 losses, the accuracy or otherwise of water accounting measures and  
23 any other matter which the Ministerial Council may, from time to  
24 time direct, or which the Authority considers appropriate.  
25 (3) For the purpose of sub-clause 18(1), “area” means any irrigation  
26 area administered by a relevant water authority, or any part of such  
27 an area which is separately administered from other parts.

28 **19. Dispute resolution**

- 29 (1) This clause applies to any dispute arising under this Schedule  
30 between:  
31 (a) one or more of the State Contracting Governments; and  
32 (b) one or more State Contracting Government and the  
33 Authority,
-

- 1 (c) each of whom is a party for the purpose of this clause.
- 2 (2) A dispute arises at the time when one party notifies the other party  
3 or parties in writing that there is a dispute about a matter specified  
4 in the notice.
- 5 (3) If a dispute arises, the parties must seek, in good faith, to resolve  
6 the dispute expeditiously by negotiations between them.
- 7 (4) If a dispute is not resolved within 60 days, a party to the dispute  
8 may give written notice to the other party or parties requiring the  
9 matter to be referred to a dispute panel:
- 10 (a) comprising at least two members agreed between the parties;  
11 or
- 12 (b) if they cannot agree, comprising an equal number of  
13 members appointed by each party to the dispute.
- 14 (5) A dispute panel must meet within 7 days after it is appointed, or  
15 within such other period agreed by the parties.
- 16 (6) A unanimous decision of the dispute panel is binding upon the  
17 parties.
- 18 (7) If the dispute panel does not reach a unanimous decision:
- 19 (a) any dispute to which the Authority is a party must be  
20 referred to the Ministerial Council for resolution; and
- 21 (b) any dispute between State Contracting Governments may be  
22 referred by a party to an arbitrator, as if it were a matter  
23 requiring resolution by an arbitrator under clause 140 of the  
24 Agreement.
- 25 (8) Each party must meet its own costs in relation to any dispute.
- 26 (9) Each party must contribute equally to the cost of any dispute panel  
27 or arbitrator, unless the dispute panel or arbitrator, as the case  
28 requires, directs otherwise.
- 29 (10) Each State Contracting Government undertakes to try to resolve  
30 any difference between it and any other State Contracting  
31 Government about a matter referred to in paragraph 5(1)(a), (b) or  
32 (c), in accordance with sub-clauses 19(1) — 19(6) before  
33 consulting the Ministerial Council under sub-clause 5(1).

1 **SCHEDULE D — APPENDIX 1 — ENTITLEMENTS AND**  
 2 **ALLOCATIONS**

3 (see clause 4)

<b>LEGISLATION</b>	<b>CATEGORY</b>	<b>SOURCE</b>
<b>Water Management Act 2000 (NSW)</b>	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	
<b>Water Act 1989 (Vic)</b>	Water licence granted under section 51	River Murray and Goulburn, Campaspe and Loddon river systems
	Irrigation water right	
	Bulk entitlement	
	Sales allocation	
<b>Water (Resource Management) Act 2005 (Vic)</b>	High-reliability water share	
	Lower reliability water share	
	Allocation under a water share	
	Allocation under an environmental entitlement	
<b>Natural Resources Management Act 2004 (SA)</b>	Water licence	River Murray Prescribed Watercourse
	Water allocation under a water licence	

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

3 (see clause 7)

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

5 **1. Interstate transfers of entitlements**

- 6 (1) Subject to sub-clause 1(2), the Authority must adjust the delivery  
7 of a State entitlement as a result of each interstate transfer of an  
8 entitlement, in accordance with Rules 1-4:
- 9 (a) in the case of exchange rate trade, by the volume of the  
10 allocations which would have been made to that entitlement  
11 in the State of origin in every year, if the entitlement had not  
12 been transferred; and
- 13 (b) in the case of tagged trade, by the volume of water used by  
14 the transferee in each year.
- 15 (2) For the purpose of calculating the volume referred to in paragraph  
16 1(1), for exchange rate trade, if the transferor seeks to transfer an  
17 entitlement with lower reliability, the Authority must first apply the  
18 relevant conversion factor that would be applied to convert that  
19 entitlement into a type of entitlement with higher reliability, in the  
20 valley of origin.
- 21 (3) An adjustment made under sub-clause 1(1), must be calculated  
22 from the effective date of the relevant transfer.
- 23 (4) The Authority must alter its procedures for delivering State  
24 entitlements to reflect any adjustments made under sub-clause 1(1),  
25 in the manner set out in any protocol made under paragraph  
26 6(1)(e).

27 **Rule 1: Transfers into South Australia**

28 The Authority must *increase*:

- 29 (a) water deliveries to South Australia; and



- 1 (b) the volume provided to South Australia by the State out of  
2 which the transfer was made,  
3 but must not increase the priority of delivering the volume  
4 represented by any transfer.

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

6 The Authority must *decrease*:

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

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

11 The Authority must, in relation to Hume Reservoir:

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

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

16 The Authority must, in relation to Hume Reservoir:

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

21 **2. Interstate transfers of allocations**

- 22 (1) The Authority must adjust a State entitlement as a result of each  
23 interstate transfer of an allocation:  
24 (a) by the adjusted volume of that transfer; and  
25 (b) in accordance with Rules 5 — 8 set out below.  
26 (2) The Authority must alter its procedures for delivering State  
27 entitlements to reflect any adjustment made under  
28 sub-clause 2(1), in accordance with any protocol made under  
29 paragraph 6(1)(f) of this Schedule.

1           **Rule 5:** Transfers into South Australia

2                   The Authority must *increase*:

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

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

7                   The Authority must *decrease*:

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

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

12                  The Authority must, in relation to Hume Reservoir:

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

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

17                  The Authority must, in relation to Hume Reservoir:

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

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

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

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

- 27                  (a)    under paragraph 125(a) of the Agreement, in accordance  
28                  with Rules 9 and 10 set out below; and

- 1 (b) under paragraph 125(b) of the Agreement, in accordance  
2 with Rules 11 and 12 set out below.

3 **Rule 9: New South Wales**

4 The Authority must:

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

9 **Rule 10: Victoria**

10 The Authority must:

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

15 **Rule 11: New South Wales**

16 The Authority must:

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

21 **Rule 12: Victoria**

22 The Authority must:

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

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

2       **(see clause 8)**

3       **1. Definitions**

4           For the purposes of this Appendix:

5

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

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

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

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

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

19       **PART II — ADJUSTING FOR ENTITLEMENTS TRANSFERRED**  
20       **BY TAGGED TRADE**

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

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

24           (a)   increased by the volume of water diverted in that designated  
25                river valley in that year, which is attributable to entitlements  
26                tagged to another designated river valley; and

- 1 (b) reduced by the volume of water attributable to entitlements  
2 tagged to that designated river valley, which is diverted in  
3 any other designated river valley in that year.

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

7 **4. Interim register**

8 The Authority must establish and maintain an interim register which  
9 records the volume of any entitlement transferred from a designated river  
10 valley to another designated river valley during each year between 1 July  
11 1994 and the effective date.

12 **5. Adjusting annual diversion targets**

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

- 16 (a) *multiplying* the cumulative volume of every entitlement of a  
17 particular type transferred into the designated river valley  
18 between 1 July 1994 and the earlier of the beginning of that  
19 year and the effective date, by the appropriate cap transfer  
20 rate set out in Table 2 of a protocol made under paragraph  
21 6(1)(a) of the Schedule; and

- 1 (b) *multiplying* the cumulative volume of every entitlement of a  
2 particular type transferred out of the designated river valley  
3 between 1 July 1994 and the earlier of the beginning of that  
4 year and the effective date, by the appropriate cap transfer  
5 rate; and  
6 (c) *subtracting* the product of (b) from the product of (a).

7 **PART IV — ADJUSTING FOR ENTITLEMENTS**  
8 **TRANSFERRED OR CONVERTED AFTER THE EFFECTIVE**  
9 **DATE, USING EXCHANGE RATES**

10 **6. Object of Part**

11 The object of this Part is, subject to sub-clause 8(1) of the Schedule, to  
12 minimise the impact of transfers or conversion of entitlements on  
13 entitlements held by third parties, by endeavouring to ensure that:

- 14 (a) the proportion of the cap associated with each unit of a  
15 particular type of entitlement remains the same after an  
16 entitlement has been transferred or converted as it was  
17 before that transfer or conversion; and  
18 (b) the annual diversion target for each State and designated  
19 river valley referred to in sub-clause 12(1) of Schedule E is  
20 adjusted accordingly.

21 **7. Operation of Part**

22 This Part applies to entitlements transferred or converted after the  
23 effective date.

24 **8. Calculating increases in cap required**

25 Based on information set out in the Transfer Register, the Authority must  
26 make the following calculations for every year, in respect of each  
27 designated river valley, as a consequence of transfers between that  
28 designated river valley and every other designated river valley:

- 29 (a) The **volume of each type of entitlement** into which former  
30 entitlements were transferred or converted, as recorded  
31 under sub-paragraphs 16(3)(b)(ii) and 16(3)(a)(ii) of this  
32 Schedule.

- 1 (b) The **net increase in each type of entitlement**, by  
2 subtracting the volume of that type of entitlement recorded  
3 under sub-paragraphs 16(3)(a)(iii) and 16(3)(a)(i) of this  
4 Schedule from the volume of that type of entitlement  
5 calculated under paragraph 8(a).
- 6 (c) The **net increase in the cap required** for each type of  
7 entitlement , by multiplying the result of the calculation in  
8 paragraph 8(b) by the relevant cap factor set out in Table 3  
9 of a protocol made under paragraph 6(1)(a) of the Schedule.

10 **9. Adjusting annual diversion targets**

- 11 (1) The Authority must, in each year, alter each long-term diversion  
12 cap to reflect the results of transferring entitlements, pursuant to  
13 paragraph 10(2)(a) of Schedule E, by adjusting annual diversion  
14 targets.
- 15 (2) The Authority must adjust each annual diversion target by  
16 following any protocol made by the Authority under paragraph  
17 6(1)(a) of the Schedule, to implement the Stages set out below.

18 **Stage 1**

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

1       **Stage 2**

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

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

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

17       **Stage 3**

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

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

32       **Stage 4**

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

36



1       **SCHEDULE E — CAP ON DIVERSIONS**

2       **1. Purposes**

3       The purposes of this Schedule are:

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

15       **2. Definitions**

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

17               **“baseline conditions”** means:

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

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

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

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

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

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

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

19 “**historical data**” means data relevant to the period from  
20 1 July 1983 to 30 June 1994, or such other period as the  
21 Authority may from time to time determine.

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

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

28 (2) In this Schedule:

29 (a) a reference to the “Government of a State” includes a  
30 reference to the Government of the Australian Capital  
31 Territory;

- 1 (b) a reference to a “State Contracting Government” includes a  
2 reference to the Government of the Australian Capital  
3 Territory;
- 4 (c) a reference to “State” includes the Australian Capital  
5 Territory.

6 **3. River Valleys and Designated River Valleys**

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

20 **4. Diversion Formula Register**

- 21 (1) The Authority must:
- 22 (a) determine a formula for calculating diversions within each  
23 river valley for the purposes of this Schedule; and
- 24 (b) maintain a Diversion Formula Register which records each  
25 formula determined under paragraph (a) and the river valley  
26 to which the formula relates.
- 27 (2) The Authority or States, as may be appropriate, must use the  
28 formula entered in the Diversion Formula Register with respect to  
29 a river valley for the purpose of:
- 30 (a) developing or approving any analytical model under  
31 clause 11;
- 32 (b) making any calculation under clause 12;

- 1 (c) preparing any report required under clause 13; and  
2 (d) maintaining the Cap Register.  
3 (3) The Authority may from time to time amend:  
4 (a) any formula determined under paragraph 4(1)(a); and  
5 (b) any entry in the Diversion Formula Register.

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

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

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

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

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

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

- 1 Bridge-Onkaparinga pipeline systems do not exceed a total  
2 diversion of 650 GL over any period of 5 years;
- 3 (b) for Lower Murray Swamps irrigation do not exceed 94.2 GL  
4 per year;
- 5 (c) for water supply purposes for Country Towns do not exceed  
6 50 GL per year; and
- 7 (d) for all other purposes do not exceed a long-term average  
8 annual diversion of 449.9 GL.
- 9 (2) The Government of South Australia must ensure that:
- 10 (a) no part of any entitlement created in South Australia with  
11 respect to the diversion referred to in paragraph 7(1)(a) is  
12 either used, or transferred for use, for any purpose other than  
13 use in Metropolitan Adelaide and associated country areas;  
14 and
- 15 (b) at least 22.2 GL of the diversion referred to in paragraph  
16 7(1)(b) is reserved for environmental purposes and is not  
17 transferred,
- 18 unless the Ministerial Council determines otherwise.
- 19 (3) If the Government of South Australia supplies any of the  
20 diversions referred to in paragraph 7(1)(d) through the Swan  
21 Reach-Stockwell, Mannum-Adelaide and Murray  
22 Bridge-Onkaparinga pipeline systems in any year, it must:
- 23 (a) record the volume of water so delivered for that purpose in  
24 that year; and
- 25 (b) account for that volume against the long-term average  
26 annual diversion referred to in paragraph 7(1)(d), when  
27 monitoring and reporting to the Authority under clause 13.

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

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

1       **9. Long-term diversion cap for the Australian Capital Territory**

2           (1) The Government of the Australian Capital Territory must ensure  
3           that diversions from the designated river valley in the Australian  
4           Capital Territory do not exceed 40 GL per annum (being 42 GL  
5           minus 2GL saving allocated to the Living Murray), varied as  
6           required by sub-clause (2).

7           (2) The long-term diversion cap referred to in sub-clause (1) is to be  
8           annually adjusted:

9           (a) for the prevailing climate during the water year by reference  
10           to the model developed under sub-clause 11(4); and

11           (b) to account for growth in population, in accordance with the  
12           following formula:

13                       0.75

14                               multiplied by:

15                               2006/07 per capita consumption of the population of  
16                               Canberra and Queanbeyan

17                               multiplied by:

18                               the difference between the population of Canberra and  
19                               Queanbeyan in 2006/07 and the population of Canberra and  
20                               Queanbeyan for each year in consideration.

21           (3) The Government of the Australian Capital Territory must ensure  
22           that no water or water entitlement that is used for urban purposes  
23           will be transferred for use outside the Australian Capital Territory  
24           unless that water or water entitlement has been transferred for use  
25           within the Australian Capital Territory from another State.

26           (4) If demand for water for industrial uses or uses by the  
27           Commonwealth grows beyond the level of demand in 2006/07, that  
28           growth in demand will be met by transferring water or water  
29           entitlements from another State.

30           (5) The Authority must, for the purposes of maintaining the Cap  
31           Register referred to in sub-clauses 13(7) and 13(8), take into  
32           account 107 GL of cumulative Cap credit existing at the end of  
33           2006/07.

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

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

14 **11. Developing Analytical Models**

- 15 (1) The Authority must develop analytical models for determining the  
16 annual diversion targets for the upper River Murray.
- 17 (2) Subject to sub-clause 11(1), the Governments of New South  
18 Wales, Victoria, Queensland and the Australian Capital Territory  
19 must each develop analytical models for determining the annual  
20 diversion target for each designated river valley within the territory  
21 of that State.
- 22 (3) The Government of South Australia must develop analytical  
23 models for determining the annual diversion target for diversions  
24 referred to in paragraph 7(1)(d).
- 25 (4) An analytical model developed under this clause:
- 26 (a) must simulate the long-term diversion cap in the relevant  
27 designated river valley; and
- 28 (b) must be tested against relevant historical data to determine  
29 the accuracy of the model in estimating the annual diversion;  
30 and
- 31 (c) must be approved by the Authority before it is used to  
32 determine an annual diversion target under this Schedule;  
33 and
- 34 (d) may, from time to time, be modified in such ways as the  
35 Authority may approve; and

- 1 (e) must be used to determine the average annual diversion  
2 under the conditions of the relevant long-term diversion cap  
3 determined under this Schedule for either:
- 4 (i) the period between the start of the 1891 water year  
5 and the end of the 1997 water year; or
- 6 (ii) such other period as may be approved by the  
7 Authority.
- 8 (5) The Authority may only approve an analytical model or a  
9 modification to an analytical model if the Authority considers that  
10 the model, when approved or modified, will fairly determine the  
11 relevant annual diversion target given the climatic conditions  
12 experienced in any year.

13 **12. Calculation of annual diversion targets**

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

32 **13. Monitoring and Reporting**

- 33 (1) Each State Contracting Government must, for each water year and  
34 in relation to each river valley specified in Appendix 2 within its  
35 territory, monitor and report to the Authority upon:
-



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

- 1 (b) may publish any such report, or a summary thereof, in such  
2 manner as it may determine.
- 3 (6) A water audit monitoring report under sub-clause 13(4) must be  
4 produced by 31 December following the conclusion of each  
5 relevant water year, or by such other time as the Authority may  
6 determine.
- 7 (7) The Register maintained under sub-clause 13(7) of the former  
8 Schedule is continued in existence in the form in which it was held,  
9 and containing the information it contained, immediately prior to  
10 commencement of this Schedule until altered by the Authority in  
11 accordance with sub-clause (8).
- 12 (8) The Authority must maintain the Cap Register referred to in  
13 sub-clause 13(7) so that it records:
- 14 (a) for each designated river valley; and  
15 (b) for each State,  
16 the cumulative difference between actual annual diversions and the  
17 annual diversion targets calculated under this Schedule.
- 18 (9) The Cap Register must:
- 19 (a) for New South Wales, Victoria and South Australia, include  
20 information for every water year concluding after  
21 1 November 1997; and  
22 (b) for Queensland, include information about each designated  
23 river valley in every water year commencing after the  
24 Resource Operations Plan first adopted by the Government  
25 of Queensland for that designated river valley is published in  
26 the Queensland Government Gazette; and  
27 (c) for the Australian Capital Territory, include information  
28 about its designated river valley in every water year; and  
29 (d) if cumulative actual diversions for any designated river  
30 valley or for any State are less than the cumulative annual  
31 diversion targets calculated under this Schedule, as the case  
32 requires, record the difference as a credit; and

- 1 (e) if cumulative actual diversions for any designated river  
2 valley or for any State are greater than the cumulative annual  
3 diversion targets calculated under this Schedule, as the case  
4 requires, record the difference as a debit.
- 5 (10) The Authority must include a report on the operation of this  
6 Schedule in any report made to the Ministerial Council under  
7 clause 85 of the Agreement.

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

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

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

- 16 (1) The Independent Audit Group must, until 31 December 2009,  
17 annually audit the performance of each State Contracting  
18 Government in implementing the long-term diversion cap in each  
19 water year which concludes on or between 1 June 1999 and  
20 1 November 2009.
- 21 (2) The Authority may direct the Independent Audit Group to audit the  
22 performance of any State Contracting Government in  
23 implementing the long-term diversion cap in any water year  
24 concluding after 1 November 2009.
- 25 (3) The Independent Audit Group must report to the Authority on any  
26 audit conducted under this clause.

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

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

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

- 1 (b) the diversion in the Warrego, Paroo, Moonie or Nebine  
2 designated river valley has exceeded the annual diversion  
3 target for that valley, determined under paragraph 12(1)(b);  
4 or  
5 (c) the cumulative debit recorded in the Cap Register exceeds  
6 20 % of the average annual diversion determined under  
7 paragraph 11(4)(e) for a particular designated river valley  
8 within that State,

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

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

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

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

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

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

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

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

13 (1) The Government of a State referred to in paragraph 18(a) must  
14 report to the next Ministerial Council after a declaration is made  
15 under that paragraph, setting out:

- 16 (a) the reasons why diversions exceeded the Murray-Darling  
17 Basin diversion cap; and  
18 (b) action taken, or proposed to be taken by it to ensure that  
19 cumulative diversions recorded in the Cap Register are  
20 brought back into balance with the cap; and  
21 (c) the period within the relevant model referred to in clause 11  
22 predicts that the cumulative diversions recorded in the Cap  
23 Register will be brought back into balance with the cap.

24 (2) The Government of a State that has been required to report to the  
25 Ministerial Council under sub-clause 19(1) must report to each  
26 subsequent meeting of the Ministerial Council on action taken, or  
27 proposed to be taken by it to ensure that cumulative diversions  
28 recorded in the Cap Register are brought back into balance with the  
29 cap, until the Authority revokes a declaration pursuant to  
30 sub-clause 19(3).

- 1 (3) When the Authority is satisfied that a State in respect of which a  
2 declaration has been made under paragraph 18(a) has brought the  
3 cumulative diversions recorded in the Cap Register back into  
4 balance with the cap and is once more complying with the  
5 Murray-Darling Basin diversion cap in all respects, it must:
- 6 (a) revoke the declaration; and  
7 (b) report that fact to the next meeting of the Ministerial  
8 Council.

9 **SCHEDULE E - APPENDIX 1 — DESIGNATED RIVER VALLEYS**

10 **1. New South Wales**

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

14  
15 The New South Wales portion of the following catchments: Moonie, Big  
16 Warrnambool, the Culgoa/Birrie/Bokhara/Narran, Warrego, Paroo and  
17 Nebine.

18  
19 Gwydir catchment, including the portion of the Gil Gil Creek below the  
20 Carole Creek confluence and the Boomi River below the Gil Gil Creek  
21 confluence.

22  
23 Namoi catchment.

24  
25 The Macquarie/Castlereagh/Bogan catchments.

26  
27 The Barwon/Upper Darling river system and the Lower Darling river  
28 system, from the furthest upstream reach of the Menindee Lakes to the  
29 furthest upstream reach of the Wentworth Weir Pool.

30  
31 Lachlan catchment.  
32

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

4

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

7 **2. Queensland**

8 The portion of the Condamine and Balonne catchments in Queensland.

9

10 The portion of the Border Rivers catchment in Queensland.

11

12 The portion of the Moonie catchment in Queensland.

13

14 The portion of the Warrego catchment in Queensland.

15

16 The portion of the Paroo catchment in Queensland.

17

18 The portion of the Nebine catchment in Queensland.

19 **3. Victoria**

20 The Goulburn/Broken/Loddon water supply system.

21

22 The Campaspe/Coliban water supply system.

23

24 The Wimmera/Mallee water supply system.

25

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

28 **4. South Australia**

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

31

- 1 Lower Murray Swamps irrigation.  
2  
3 Country Towns water use.  
4  
5 Water Use for All Other Purposes from the Murray within South  
6 Australia.
- 7 **5. Australian Capital Territory**  
8 That part of the Murrumbidgee River that flows through the Australian  
9 Capital Territory, its sub-catchments in that Territory and the Canberra  
10 Water Supply System.

11 **SCHEDULE E - APPENDIX 2 — RIVER VALLEYS**

- 12 **1. New South Wales**  
13 The portion of the Border Rivers catchment in New South Wales,  
14 excluding the portion of Gil Gil Creek below the Carole Creek  
15 confluence and the Boomi River below the Gil Gil Creek confluence.  
16  
17 The portion of the Moonie catchment in New South Wales.  
18  
19 The portion of the Big Warrnambool catchment in New South Wales.  
20  
21 The portion of the Culgoa/Birrie/Bokhara/Narran catchments in New  
22 South Wales.  
23  
24 The portion of the Warrego catchment in New South Wales.  
25  
26 The portion of the Paroo catchment in New South Wales.  
27  
28 That portion of the Nebine catchment in New South Wales.  
29



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

4

5 Namoi catchment.

6

7 The Macquarie/Castlereagh/Bogan water catchments.

8

9 The Barwon/Upper Darling river system.

10

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

14

15 Lachlan catchment.

16

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

20

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

23 **2. Queensland**

24 The portion of the Condamine and Balonne catchments in Queensland.

25

26 The portion of the Border Rivers catchment in Queensland.

27

28 The portion of the Moonie catchment in Queensland.

29

30 The portion of the Warrego catchment in Queensland.

31

32 The portion of the Paroo catchment in Queensland.

33

34 The portion of the Nebine catchment in Queensland.

- 1     **3.   Victoria**
- 2         Kiewa catchment.
- 3
- 4         Ovens catchment.
- 5
- 6         Goulburn catchment.
- 7
- 8         Broken catchment.
- 9
- 10        Campaspe catchment.
- 11
- 12        Loddon catchment.
- 13
- 14        Wimmera/Mallee catchment.
- 15
- 16        The Victorian portion of the Murray Valley catchment.
- 17     **4.   South Australia**
- 18        The pumps on the Murray within South Australia used to supply
- 19        Metropolitan Adelaide and associated country areas.
- 20
- 21        Lower Murray Swamps irrigation.
- 22
- 23        Country Towns water use.
- 24
- 25        Water use for All Other Purposes from the Murray within South
- 26        Australia.
- 27     **5.   Australian Capital Territory**
- 28        That part of the Murrumbidgee River that flows through the Australian
- 29        Capital Territory, its sub-catchments in that Territory and the Canberra
- 30        Water Supply System.

1       **SCHEDULE F — EFFECT OF THE SNOWY SCHEME**

2       **PART I — PRELIMINARY**

3       **1. Purpose**

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

8       **2. Definitions**

9           In this Schedule:

10          (1)    “**Baseline Conditions**” means:

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

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

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

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

- 22               (a)   a category of environmental water referred to in section 8 of  
23               the *Water Management Act 2000 (NSW)*; and

- 1 (b) a bulk entitlement granted under the *Water Act* 1989 (Vic)  
2 that includes conditions relating to environmental purposes,  
3 in both cases comprising a volume of water derived from either or  
4 both of Water Savings and Water Entitlements;
- 5 (4) **“Goulburn River System”** means the Broken, Goulburn,  
6 Campaspe and Loddon Rivers and the water supply systems  
7 supplied by those rivers;
- 8 (5) **“Licensee”** means the licensee under the Snowy Water Licence;
- 9 (6) **“Long Term Diversion Cap”** means the long term diversion cap  
10 for the State of New South Wales or the State of Victoria under  
11 clauses 5 and 6 respectively of Schedule E;
- 12 (7) **“Lower Darling River System”** means the Darling River and its  
13 anabranch system from the upstream extent of the Menindee Lakes  
14 Storage and downstream and the water supply systems supplied by  
15 that River;
- 16 (8) **“Month”** means calendar month and **“Monthly”** means each  
17 calendar month;
- 18 (9) **“Mowamba Borrowings Account”** means the water account to be  
19 maintained by the Licensee under the Snowy Water Licence to  
20 account for flows made under the Snowy Water Licence from the  
21 Mowamba River and Cobbon Creek in the first three years after the  
22 Corporatisation Date;
- 23 (10) **“Murrumbidgee River System”** means the Murrumbidgee River  
24 and the water supply systems supplied by that river;
- 25 (11) **“Relaxation Volume”** has the same meaning as in the Snowy  
26 Water Licence as at the Corporatisation Date;
- 27 (12) **“Reliability”** with respect to a supply of water means the statistical  
28 probability of being able to supply a particular volume in any  
29 Water Year;
- 30 (13) **“Required Annual Release”** has the same meaning as in the  
31 Snowy Water Licence taken as a whole as at the Corporatisation  
32 Date. For the avoidance of doubt, “Required Annual Release” is  
33 not a reference to “Agreed Annual Release” under that Licence and  
34 a change to the Snowy Water Licence after the Corporatisation  
35 Date will not affect the calculation of Required Annual Releases  
36 for the purposes of this Schedule;
-

- 1 (14) **“Required Annual Release Shortfall”** means, in any Water Year,  
2 the volume by which the Required Annual Release from the  
3 Snowy-Murray Development in that Water Year exceeds the actual  
4 release from the Snowy Scheme to the catchment of the River  
5 Murray upstream of Hume Dam in that Water Year;
- 6 (15) **“River Murray Above Target Releases”** means, in any Water  
7 Year, water that is released from the Snowy Scheme to the  
8 catchment of the River Murray upstream of Hume Dam in excess  
9 of the Required Annual Release from the Snowy-Murray  
10 Development in that Water Year;
- 11 (16) **“River Murray Annual Allocation”** with respect to each Water  
12 Year means the annual allocation from the River Murray  
13 Apportioned Entitlement determined by New South Wales;
- 14 (17) **“River Murray Apportioned Entitlement”** means the volume of  
15 water from the Environmental Entitlements that is apportioned to  
16 the River Murray Increased Flows by New South Wales;
- 17 (18) **“River Murray Increased Flows”** means releases of water from  
18 major storages made by the Authority in accordance with Part V of  
19 this Schedule;
- 20 (19) **“River Murray Increased Flows Accounts”** means the water  
21 accounts to be maintained by the Authority under clause 21 of this  
22 Schedule;
- 23 (20) **“River Murray Increased Flows in Authority Storages  
24 Account”** means the water account to be maintained by the  
25 Authority under paragraph 21(1)(b) of this Schedule;
- 26 (21) **“River Murray System”** means the aggregate of:  
27 (a) the River Murray;  
28 (b) all tributaries entering the River Murray upstream of Doctors  
29 Point;  
30 (c) the Ovens River; and  
31 (d) the Lower Darling River System;
- 32 (22) **“Seasonal Availability”** with respect to the water to which an  
33 entitlement refers means:  
34 (a) for that part of the entitlement whose availability is  
35 determined by reference to seasonal allocations: the final

- 1 seasonal allocation announcement of the relevant State  
2 during the previous Water Year; and
- 3 (b) for that part of the entitlement whose availability is  
4 determined by reference to the entitlement of South  
5 Australia: the allocated volume received during the previous  
6 Water Year by South Australia as a proportion of its  
7 entitlement during that Water Year under this Agreement;
- 8 (23) **“Snowy Montane Rivers External Increased Flows”** means  
9 releases of water made by the Licensee to montane rivers under the  
10 environmental flow requirements of the Snowy Water Licence  
11 which would have flowed through either:
- 12 (a) the Murray 1 Power Station in the case of the  
13 Snowy-Murray Development; or
- 14 (b) Jounama Pondage in the case of the Snowy-Tumut  
15 Development,  
16 if it were not released for environmental purposes;
- 17 (24) **“Snowy-Murray Development”** means the component of the  
18 Snowy Scheme comprising works that regulate the waters of the  
19 Upper Snowy River, the Geehi River and Bogong Creek;
- 20 (25) **“Snowy-Murray Development Annual Allocation”** means the  
21 annual allocation for any Water Year for the Snowy-Murray  
22 Development determined by New South Wales by reference to the  
23 Seasonal Availability of the water contained in the Snowy-Murray  
24 Development Designated Entitlement;
- 25 (26) **“Snowy-Murray Development Designated Entitlement”** means  
26 that part of the Environmental Entitlements designated against the  
27 Snowy-Murray Development by New South Wales;
- 28 (27) **“Snowy-Murray Development (River Murray) Environmental  
29 Entitlements”** means both:
- 30 (a) a category of environmental water referred to in section 8 of  
31 the *Water Management Act 2000* (NSW); and
- 32 (b) a bulk entitlement granted under the *Water Act 1989* (Vic)  
33 that includes conditions relating to the protection of the  
34 environment,

- 1 in both cases comprising a volume of water derived from either or  
2 both of Water Savings and Water Entitlements sourced from the  
3 River Murray System or the Goulburn River System;
- 4 (28) **“Snowy Notional Spill”** means:
- 5 (a) **in the case of the Snowy-Murray Development:** the  
6 calculated active volume of water belonging to the  
7 Snowy-Murray Development stored in Eucumbene  
8 Reservoir exceeding 2,019 GL and accounted as a loss from  
9 the Snowy-Murray Development and a gain to the  
10 Snowy-Tumut Development;
- 11 (b) **in the case of Snowy-Tumut Development:** the calculated  
12 active volume of water belonging to the Snowy-Tumut  
13 Development stored in Eucumbene Reservoir exceeding  
14 2,348 GL and accounted as a loss from the Snowy-Tumut  
15 Development and a gain to the Snowy-Murray  
16 Development;
- 17 (29) **“Snowy River”** means the Snowy River downstream of Jindabyne  
18 Dam;
- 19 (30) **“Snowy River Annual Allocation”** means the annual allocation  
20 from the Snowy River Apportioned Entitlement for any Water  
21 Year, determined by New South Wales;
- 22 (31) **“Snowy River Apportioned Entitlement”** means the volume of  
23 water from the Environmental Entitlements apportioned to  
24 environmental flows from the Snowy Scheme to the Snowy River,  
25 by New South Wales;
- 26 (32) **“Snowy Scheme”** means the dams, tunnels, power stations,  
27 aqueducts and other structures that comprise the Snowy-Murray  
28 Development and the Snowy-Tumut Development, that together  
29 are known as the Snowy Mountains Hydro-electric Scheme;
- 30 (33) **“Snowy-Tumut Development”** means the component of the  
31 Snowy Scheme comprising works that regulate the waters of the  
32 Eucumbene River, the Tooma River, the Upper Murrumbidgee  
33 River and the Upper Tumut River;
- 34 (34) **“Snowy-Tumut Development Annual Allocation”** with respect  
35 to each Water Year means the annual allocation for the  
36 Snowy-Tumut Development determined by New South Wales by  
37 reference to the Seasonal Availability of the water contained in the  
38 Snowy-Tumut Development Designated Entitlement;
-

- 1 (35) **“Snowy-Tumut Development Designated Entitlement”** means  
2 that part of the Environmental Entitlements designated against the  
3 Snowy-Tumut Development by New South Wales;
- 4 (36) **“Snowy Water Licence”** means the licence issued under Part 5 of  
5 the *Snowy Hydro Corporatisation Act 1997 (NSW)*;
- 6 (37) **“Strategy”** means the strategy for retaining and releasing River  
7 Murray Increased Flows referred to in clause 20 of this Schedule;
- 8 (38) **“Translation Factors”** means the translation factors used to  
9 convert Water Savings and Water Entitlements into an  
10 Environmental Entitlement with specified Reliability;
- 11 (39) **“Upper Snowy River”** means the Snowy River upstream of  
12 Jindabyne Dam (including the Mowamba River and the Cobbon  
13 Creek) but excluding the Eucumbene River;
- 14 (40) **“Water Entitlement”** means:  
15 (a) an access licence granted under the *Water Management Act*  
16 *2000 (NSW)*; and  
17 (b) a water right, licence to take and use water or bulk  
18 entitlement under the *Water Act 1989 (Vic)* together with  
19 any transferable allocation of sales water made to the holder  
20 of such a water right or licence,  
21 in either case purchased for the purpose of achieving either or both  
22 of:  
23 (c) environmental flows from the Snowy Scheme; and  
24 (d) River Murray Increased Flows;
- 25 (41) **“Water Market”** means, with respect to a Water Entitlement, the  
26 market from which the relevant Water Entitlement is drawn;
- 27 (42) **“Water Savings”** means the volume of water saved through one or  
28 more projects that saves water:  
29 (a) by reducing transmission losses, evaporation or system  
30 inefficiencies; or  
31 (b) by achieving either or both of water management and  
32 environmental improvements,  
33 (c) for diversions from the River Murray System and either or  
34 both of Murrumbidgee River System and the Goulburn  
35 River System for the purpose of achieving;
-



- 1 (d) environmental flows from the Snowy Scheme; and  
2 (e) River Murray Increased Flows;  
3 (43) **“Water Year”** means the period of 12 Months commencing on  
4 1 May in each year.

5 **PART II — CALCULATING WATER VOLUMES**

6 **3. The Snowy Scheme And The River Murray**

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

9 Water of the Upper Snowy River regulated by the Snowy  
10 Scheme

11 **PLUS** water of the Geehi River and Bogong Creek regulated  
12 by the Snowy Scheme

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

15 **PLUS** the transfer from the Snowy-Tumut Development to  
16 the Snowy-Murray Development of the Snowy-Tumut  
17 Development Annual Allocation

18 **PLUS** 4.5 GL per Water Year transferred from the  
19 Snowy-Tumut Development to the Snowy-Murray  
20 Development

21 **PLUS** half of the balance of the Mowamba Borrowing  
22 Account

23 **MINUS** Snowy Notional Spill from the Snowy-Murray  
24 Development to the Snowy-Tumut Development.

- 25 (2) In this Agreement, **“Net Snowy-Murray Development**  
26 **Diversions to the River Murray”** means the volume of water  
27 calculated as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

29           **5.    Excess Snowy River Releases**

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

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

1                                   **MINUS** 9 GL  
2                                   **MINUS** the Snowy River Annual Allocation in the relevant  
3                                   Water Year  
4                                   **MINUS** the change in the balance of the Mowamba  
5                                   Borrowings Account during the relevant Water Year.

6       **6. Snowy River Release Shortfalls**

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

9                                   The Snowy River Annual Allocation in the relevant Water  
10                                  Year

11                                 **PLUS** 9 GL

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

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

18       **7. Accounting For Water Releases**

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

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

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

5 **PART III — WATER ACCOUNTING**

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

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

- 9 The Net Snowy-Murray Development Diversions to the  
10 River Murray  
11 **PLUS** Murray to Murrumbidgee Inter-Valley Transfers  
12 **PLUS** the Required Annual Release Shortfall  
13 **PLUS** the Snowy-Murray Development Annual Allocation  
14 **PLUS** Excess Snowy River Releases in excess of the  
15 volume of the Snowy River Release Shortfall in the previous  
16 Water Year  
17 **MINUS** at the discretion of the Authority, Murrumbidgee to  
18 Murray Inter-Valley Transfers  
19 **MINUS** the Required Annual Release Shortfall from the  
20 previous Water Year  
21 **MINUS** River Murray Above Target Releases allocated to  
22 the River Murray Increased Flows received by Hume  
23 Reservoir.

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

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

- 27 The Net Snowy-Murray Development Diversions to the  
28 River Murray  
29 **PLUS** Murray to Murrumbidgee Inter-Valley Transfers  
30 **PLUS** the Required Annual Release Shortfall

1                   **PLUS** the Snowy-Murray Development Annual Allocation  
2                   **PLUS** Excess Snowy River Releases in excess of the  
3                   volume of the Snowy River Release Shortfall in the previous  
4                   Water Year  
5                   **MINUS** at the discretion of the Authority, Murrumbidgee to  
6                   Murray Inter-Valley Transfers  
7                   **MINUS** the Required Annual Release Shortfall from the  
8                   previous Water Year  
9                   **MINUS** River Murray Above Target Releases allocated to  
10                  the River Murray Increased Flows received by Hume  
11                  Reservoir,  
12                  in each case before the end of the following May.

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

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

16                         The Net Snowy-Murray Development Diversions to the  
17                         River Murray  
18                         **PLUS** Murray to Murrumbidgee Inter-Valley Transfers  
19                         **PLUS** the Required Annual Release Shortfall  
20                         **PLUS** the Snowy-Murray Development Annual Allocation  
21                         **PLUS** Excess Snowy River Releases in excess of the  
22                         volume of the Snowy River Release Shortfall in the previous  
23                         Water Year  
24                         **MINUS** at the discretion of the Authority, Murrumbidgee to  
25                         Murray Inter-Valley Transfers  
26                         **MINUS** the Required Annual Release Shortfall from the  
27                         previous Water Year  
28                         **MINUS** River Murray Above Target Releases allocated to  
29                         the River Murray Increased Flows received by Hume  
30                         Reservoir.

1       **11. Tributary Inflows**

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

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

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

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

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

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

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

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

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

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

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

31                      Murray to Murrumbidgee Inter-Valley Transfers

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

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

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

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

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

10                               The Snowy-Murray Development Annual Allocation  
11                               sourced from Victoria

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

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

22                   **13. Required Annual Release Shortfalls**

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

1  
2  
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**TABLE ONE: WATER ACCOUNTING AND REQUIRED ANNUAL RELEASE SHORTFALLS**

TYPE OF WATER YEAR	ARRANGEMENT WITH RESPECT TO REQUIRED ANNUAL RELEASE SHORTFALL	WATER ACCOUNTING OUTCOMES
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

4  
5  
6  
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8

(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.

9  
10  
11  
12  
13

**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.



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

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

10 **15. Translation Factors**

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

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

9 **16. Apportionment Of Environmental Entitlements**

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

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

14 **17. Valley Accounts**

15 If:

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

21 New South Wales or Victoria (as the case may be) must notify the  
22 Authority of the volume and reliability of the entitlement required to be  
23 added to the relevant valley account to generate the Environmental  
24 Entitlement.

25 **18. Long Term Diversion Caps**

- 26 (1) Prior to New South Wales or Victoria transferring either or both of  
27 Water Savings and Water Entitlements to an Environmental  
28 Entitlement, the relevant State must calculate the equivalent  
29 volume by which its Long Term Diversion Cap must be reduced.  
30 (2) If New South Wales or Victoria transfers either or both of Water  
31 Savings and Water Entitlements to an Environmental Entitlement,  
32 at the same time the relevant State must advise the Authority and

- 1 the Committee of its calculation as to the volume by which its  
2 Long Term Diversion Cap must be reduced.
- 3 (3) If the Committee is satisfied with the appropriateness of a  
4 calculation advised under sub-clause 18(2), it must recommend to  
5 the Ministerial Council that the relevant Long Term Diversion Cap  
6 be amended in accordance with the calculation.
- 7 (4) If the Committee is not satisfied with the appropriateness of a  
8 calculation advised under sub-clause 18(2), the Authority must  
9 arrange for the relevant volume referred to in sub-clause 18(1) to  
10 be re-calculated in consultation with the relevant State.
- 11 (5) If a majority of the Committee members is satisfied with the  
12 appropriateness of a calculation made under sub-clause 18(4), the  
13 Committee must recommend to the Ministerial Council that the  
14 relevant Long Term Diversion Cap be amended in accordance with  
15 the calculation.
- 16 (6) Despite clause 10 of Schedule E, the Ministerial Council must  
17 amend a Long Term Diversion Cap in accordance with any  
18 recommendation made by the Committee under sub-clause 18(3) or  
19 18(5).

20 **PART V — RIVER MURRAY INCREASED FLOWS**

21 **19. Obligation Of Authority To Make River Murray Increased Flows**

22 Subject to this Part, the Authority must release River Murray Increased  
23 Flows.

24 **20. Environmental Objectives And Strategy For River Murray Increased  
25 Flows**

- 26 (1) The document entitled “*The Living Murray Environmental*  
27 *Watering Plan 2006-2007*” approved by the former Ministerial  
28 Council under the former Agreement on 5 December 2006 is taken  
29 to be the Strategy referred to in this Schedule.

- 1           (2) Subject to sub-clauses (3) and (4), the Ministerial Council may  
2           from time to time by resolution amend the Strategy.
- 3           (3) Any amended Strategy:
- 4           (a) must include a provision to the effect that River Murray  
5           Increased Flows have first priority from River Murray  
6           Above Target Releases;
- 7           (b) may provide that water credited to the River Murray  
8           Increased Flows in Authority Storages Account need not be  
9           released during the Water Year in which it is credited;
- 10          (c) unless the Ministerial Council otherwise determines, must  
11          not have a significant adverse impact upon the security of  
12          entitlements to water;
- 13          (d) must include the environmental objectives for the River  
14          Murray Increased Flows and integrate those objectives with  
15          other environmental initiatives on the River Murray;
- 16          (e) must include adaptive management principles to allow the  
17          ability to optimise environmental benefits; and
- 18          (f) must prescribe appropriate environmental reporting and  
19          monitoring conditions.
- 20          (4) The Ministerial Council must determine any amended  
21          environmental objectives and Strategy in accordance with the  
22          following principles:
- 23          (a) Natural diversity of habitats and biota within the river  
24          channel, riparian zone and the floodplain should be  
25          maintained or enhanced.

- 1 (b) Natural linkages between the river and the floodplain should  
2 be maintained or enhanced.
- 3 (c) Natural metabolic functioning of aquatic ecosystems should  
4 be maintained or enhanced.
- 5 (d) Elements of the natural flow regime, in particular,  
6 seasonality should be retained or enhanced as far as possible,  
7 in the interests of conserving a niche for native rather than  
8 invasive exotic species and in maintaining the natural  
9 functions of the river.
- 10 (e) Consistent and constant flow and water level regimes should  
11 be avoided where practical, as this is contrary to the  
12 naturally variable flow regime of the River Murray.
- 13 (f) The general principles of ecosystem services should be  
14 recognised.
- 15 (g) Environmental benefit should be optimised.
- 16 (5) As soon as practicable after the end of each Water Year, the  
17 Authority must report to the Contracting Governments on the  
18 environmental outcomes of the River Murray Increased Flows  
19 during that Water Year, in the light of the objectives determined by  
20 the Ministerial Council for those Increased Flows.

21 **21. Authority To Maintain River Murray Increased Flows Accounts**

- 22 (1) The continuous water accounts for the River Murray Increased  
23 Flows known as:
- 24 (a) the Initial River Murray Increased Flows Account; and  
25 (b) the River Murray Increased Flows in Authority Storages  
26 Account,
- 27 maintained under sub-clause 21(1) of Schedule G of the former  
28 Agreement immediately prior to commencement of this Schedule  
29 are continued in existence.

- 1 (2) The Authority must maintain the continuous water accounts of the  
2 River Murray Increased Flows referred to in sub-clause 21(1) in  
3 the manner required by this clause.
- 4 (3) The Authority must:
- 5 (a) credit the Initial River Murray Increased Flows Account  
6 with the River Murray Annual Allocation notified by New  
7 South Wales;
- 8 (b) transfer from the Initial River Murray Increased Flows  
9 Account to the River Murray Increased Flows in Authority  
10 Storages Account, River Murray Above Target Releases  
11 allocated to the River Murray Increased Flows in accordance  
12 with the Strategy;
- 13 (c) record in the River Murray Increased Flows in Authority  
14 Storages Account the transfer of water in that account  
15 between Authority storages; and
- 16 (d) record in the River Murray Increased Flows in Authority  
17 Storages Account the release of River Murray Increased  
18 Flows from Authority storages.
- 19 (4) The River Murray Increased Flows Accounts must be  
20 independently audited unless the Authority by resolution declares  
21 otherwise.
- 22 (5) As soon as practicable after the completion of each audit, the  
23 Authority must send a copy of the audited River Murray Increased  
24 Flows Accounts to the Contracting Governments.

25 **22. Binding Effect of Strategy**

- 26 Despite any other provision in this Agreement but subject to Divisions 2  
27 and 3 of Part XII of the Agreement, the Authority must:
- 28 (1) allocate River Murray Above Target Releases to the River Murray  
29 Increased Flows Accounts; and
- 30 (2) manage the water in and releases of water from the River Murray  
31 Increased Flows in Authority Storages Account,  
32 in accordance with the Strategy.

1 **PART VI — NOTIFICATION AND CONSULTATION**  
2 **PROVISIONS**

3 **23. Authority To Be Informed Of New Proposals**

4 A Contracting Government must inform the Authority of any proposal:

5 (1) to achieve Water Savings or to purchase Water Entitlements for the  
6 purpose of transferring those Water Savings or Water Entitlements  
7 to the Environmental Entitlements; or

8 (2) to modify the reliability of a supply of water pursuant to an  
9 Environmental Entitlement,

10 in accordance with sub-clause 49(4) of the Agreement.

11 **24. Snowy Scheme Annual Water Operating Plan**

12 (1) The parties acknowledge that as a result of provisions in the Snowy  
13 Water Licence and a deed between the Commonwealth, New South  
14 Wales and Victoria as at the Corporatisation Date, the Licensee is  
15 bound to consult with others, including the Authority, while  
16 developing each Annual Water Operating Plan and any variation to  
17 each Plan.

18 (2) The Commonwealth, New South Wales and Victoria must:

19 (a) ensure the direct participation by the Authority in each  
20 consultation referred to in sub-clause 24(1) or held under  
21 any varied consultation arrangements; and

22 (b) consult with the Authority before varying existing  
23 consultation arrangements.

24 **25. Notifications Required**

25 (1) Each Contracting Government must, at the time specified by the  
26 Authority, notify the Authority of such water volumes and  
27 estimates as are reasonably requested by the Authority to enable it  
28 to make calculations referred to in this Schedule.

- 1           (2) The Authority must, at any time specified by New South Wales,  
2           notify New South Wales of such water volumes and estimates  
3           calculated by the Authority by reference to the Baseline Conditions  
4           as are reasonably requested by New South Wales, to enable New  
5           South Wales to calculate the Required Annual Release.

6           **PART VII — ANALYTICAL MODELS**

7           **26. Developing Analytical Models**

- 8           (1) The Authority must develop an analytical model for determining,  
9           in the case of the River Murray System:  
10           (a) storage volumes; and  
11           (b) total diversions,  
12           that would have occurred under Baseline Conditions.
- 13           (2) New South Wales must develop an analytical model for  
14           determining, in the case of the Murrumbidgee River System:  
15           (a) storage volumes; and  
16           (b) total diversions,  
17           that would have occurred under Baseline Conditions.
- 18           (3) An analytical model developed under this clause:  
19           (a) must be the best model available to the Authority or New  
20           South Wales, from time to time, for the purpose of  
21           calculating the timing and quantity of the Relaxation  
22           Volume under Baseline Conditions; and  
23           (b) must be tested against relevant historical data to determine  
24           the accuracy of the model.
- 25           (4) New South Wales may at its own cost engage an independent  
26           auditor to evaluate whether the model developed under  
27           sub-clause 26(1) of this Schedule is:  
28           (a) the best available to the Authority; and



1 (b) accurate.

2 **PART VIII — OTHER PROVISIONS**

3 **27. Inter-Valley Water Transfers**

4 (1) To facilitate water transfers, the Authority may request New South  
5 Wales to release:

6 (a) Water Available to the Snowy-Murray Development to each  
7 or both of the Tumut River catchment and the  
8 Murrumbidgee River catchment; or

9 (b) Water Available to the Snowy-Tumut Development to the  
10 River Murray catchment upstream of Hume Dam.

11 (2) If New South Wales agrees with the request made under  
12 sub-clause 27(1) of this Schedule, any inter-valley transfer referred  
13 to in sub-clause 27(1) must be converted into an allocation to New  
14 South Wales of water in Hume Reservoir.

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## Schedule 1A—The Murray-Darling Basin

3

Note: See section 18A.

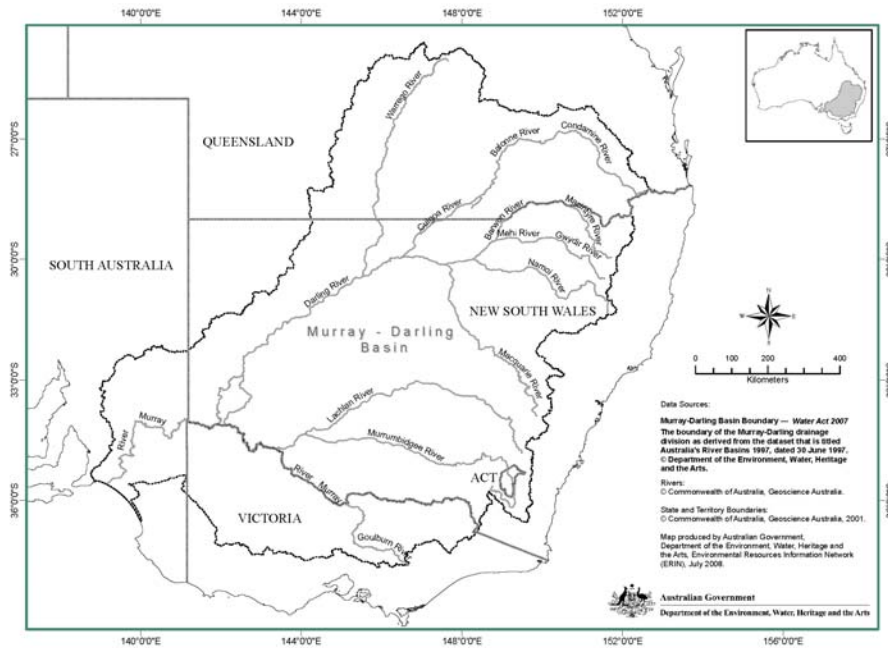
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The map set out in this Schedule delineates the boundaries of the Murray-Darling Basin but does not show all of the water resources within the Murray-Darling Basin that are covered by this Act.

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## **Schedule 2—Other amendments**

### **Part 1—Repeal**

#### *Murray-Darling Basin Act 1993*

##### **1 The whole of the Act**

Repeal the Act.

1

2 **Part 2—Amendments**

3 *Legislative Instruments Act 2003*

4 **2 Subsection 7(1) (table item 11)**

5 Repeal the item.

6 *Trade Practices Act 1974*

7 **3 Paragraph 155(9A)(a)**

8 After “Part 4”, insert “or 4A”.

9 **4 Paragraphs 155(9A)(b) and (c)**

10 Omit “that Part”, substitute “Part 4 of that Act”.

11 **5 Subsection 155AAA(21) (after paragraph (e) of the**  
12 **definition of *protected information*)**

13 Insert:

14 ; or (f) information that:

15 (i) was obtained by the Commission under section 155; and

16 (ii) relates to a designated water matter within the meaning  
17 of that section.

18 *Water Act 2007*

19 **6 Division 1 of Part 1 (heading)**

20 Repeal the heading.

21 **7 Subsection 4(1)**

22 Insert:

23 *Agreement* has the meaning given by section 18A.

24 **8 Subsection 4(1) (definition of *Authority*)**

25 Repeal the definition, substitute:

26 *Authority* has the meaning given by section 18A.

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1 **9 Subsection 4(1) (definition of *Authority member*)**

2 After “and includes”, insert “the Chief Executive and”.

3 **10 Subsection 4(1) (definition of *Basin Officials Committee*)**

4 Repeal the definition, substitute:

5 *Basin Officials Committee* has the meaning given by section 18A.

6 **11 Subsection 4(1)**

7 Insert:

8 *Border Rivers water sharing arrangements* has the meaning given  
9 by subsection 86F(3).

10 **12 Subsection 4(1)**

11 Insert:

12 *Chief Executive* means the Chief Executive of the Authority.

13 **13 Subsection 4(1)**

14 Insert:

15 *Commissioner* has the meaning given by subsection 239J(3).

16 **14 Subsection 4(1)**

17 Insert:

18 *Commonwealth water legislation* has the meaning given by  
19 section 250A.

20 **15 Subsection 4(1)**

21 Insert:

22 *conveyance water* has the meaning given by subsection 86A(4).

23 **16 Subsection 4(1)**

24 Insert:

25 *critical human water needs* has the meaning given by subsection  
26 86A(2).

27 **17 Subsection 4(1)**

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1                   Insert:

2                                 *former MDB Agreement* has the meaning given by section 239A.

3         **18 Subsection 4(1)**

4                   Insert:

5                                 *former Murray-Darling Basin Ministerial Council* has the  
6                                 meaning given by section 239A.

7         **19 Subsection 4(1)**

8                   Insert:

9                                 *law of a referring State* means a law of, or in force in, a referring  
10                                 State but does not include a law of the Commonwealth in force in  
11                                 the referring State.

12         **20 Subsection 4(1)**

13                   Insert:

14                                 *law of a State* means a law of, or in force in, a State but does not  
15                                 include a law of the Commonwealth in force in the State.

16         **21 Subsection 4(1)**

17                   Insert:

18                                 *Living Murray Initiative* has the meaning given by subsection  
19                                 18H(2).

20         **22 Subsection 4(1)**

21                   Insert:

22                                 *Living Murray Initiative assets* has the meaning given by  
23                                 subsection 239E(2).

24         **23 Subsection 4(1) (definition of *MDB Act*)**

25                   Repeal the definition.

26         **24 Subsection 4(1) (definition of *MDB Agreement*)**

27                   Repeal the definition.

28         **25 Subsection 4(1) (definition of *Murray-Darling Basin*)**

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1 Repeal the definition, substitute:

2 *Murray-Darling Basin* has the meaning given by section 18A.

3 **26 Subsection 4(1) (definition of *Murray-Darling Basin***  
4 ***Commission*)**

5 Repeal the definition, substitute:

6 *Murray-Darling Basin Commission* has the meaning given by  
7 section 239A.

8 **27 Subsection 4(1) (definition of *Murray-Darling Basin***  
9 ***Ministerial Council*)**

10 Repeal the definition, substitute:

11 *Murray-Darling Basin Ministerial Council* has the meaning given  
12 by section 18A.

13 **28 Subsection 4(1)**

14 Insert:

15 *non-Basin water access entitlement* has the meaning given by  
16 subsection 100C(5).

17 **29 Subsection 4(1)**

18 Insert:

19 *President* has the meaning given by subsection 239J(2).

20 **30 Subsection 4(1) (definition of *referring State*)**

21 Omit “section 5”, substitute “section 18B”.

22 **31 Subsection 4(1)**

23 Insert:

24 *River Murray Operations assets* has the meaning given by  
25 subsection 239D(2).

26 **32 Subsection 4(1)**

27 Insert:

1                    *River Murray System* has the meaning given by subsection  
2                    86A(3).

3                    **33 Subsection 4(1) (definition of State)**

4                    Before “includes”, insert “(except in section 18B)”.

5                    **34 Subsection 4(1) (definition of State water sharing**  
6                    **arrangement)**

7                    Repeal the definition, substitute:

8                    *State water sharing arrangement* has the meaning given by  
9                    subsection 86D(4).

10                  **35 Subsection 4(1)**

11                  Insert:

12                  *transitional asset* has the meaning given by subsection 239C(3).

13                  **36 Subsection 4(1)**

14                  Insert:

15                  *transitional instrument* has the meaning given by subsection  
16                  239N(4).

17                  **37 Subsection 4(1)**

18                  Insert:

19                  *transitional liability* has the meaning given by subsection 239F(3).

20                  **38 Section 5**

21                  Repeal the section, substitute:

22                  **5 Application of the Acts Interpretation Act 1901 to Parts 1A, 2A, 4,**  
23                  **4A, 10A and 11A**

24                  (1) The *Acts Interpretation Act 1901*, as in force on the day on which  
25                  Schedule 1 to the *Water Amendment Act 2008* commences, applies  
26                  to Parts 1A, 2A, 4, 4A, 10A and 11A.

27                  (2) Amendments of the *Acts Interpretation Act 1901* made after that  
28                  day do not apply to those Parts.



1 **39 Subsection 9(1)**

2 Omit “(1) This Act”, substitute “This Act (other than Parts 1A, 2A, 4,  
3 4A, 10A and 11A)”.

4 **40 Subsection 9(1) (notes 3 and 4)**

5 Repeal the notes.

6 **41 Subsection 9(2)**

7 Repeal the subsection.

8 **42 After section 9**

9 Insert:

10 **9A Constitutional basis of Parts 1A, 2A, 4, 4A, 10A and 11A**

11 *Operation in a Basin State*

12 (1) The operation of Parts 1A, 2A, 4, 4A, 10A and 11A in a referring  
13 State that is a Basin State is based on:

14 (a) the legislative powers that the Commonwealth Parliament has  
15 under section 51 of the Constitution (other than paragraph  
16 51(xxxvii)); and

17 (b) the legislative powers that the Commonwealth Parliament has  
18 in respect of matters to which those Parts relate because those  
19 matters are referred to it by the Parliament of the referring  
20 State under paragraph 51(xxxvii) of the Constitution.

21 Note: The State reference fully supplements the Commonwealth  
22 Parliament’s other powers by referring the matters to the  
23 Commonwealth Parliament to the extent to which they are not  
24 otherwise included in the legislative powers of the Commonwealth  
25 Parliament.

26 (2) The operation of Parts 1A, 2A, 4 and 11A in a Basin State (other  
27 than the Australian Capital Territory) that is not a referring State is  
28 based on the legislative powers that the Commonwealth Parliament  
29 has under section 51 of the Constitution (other than paragraph  
30 51(xxxvii)).

31 *Operation in a State that is not a Basin State*

32 (3) The operation of Parts 4A and 11A in a referring State that is not a  
33 Basin State is based on:

- 1 (a) the legislative powers that the Commonwealth Parliament has  
2 under section 51 of the Constitution (other than paragraph  
3 51(xxxvii)); and  
4 (b) the legislative powers that the Commonwealth Parliament has  
5 in respect of matters to which those Parts relate because those  
6 matters are referred to it by the Parliament of the referring  
7 State under paragraph 51(xxxvii) of the Constitution.
- 8 Note: The State reference fully supplements the Commonwealth  
9 Parliament's other powers by referring the matters to the  
10 Commonwealth Parliament to the extent to which they are not  
11 otherwise included in the legislative powers of the Commonwealth  
12 Parliament.

13 *Operation in the Australian Capital Territory*

- 14 (4) The operation of Parts 1A, 2A, 4 and 10A in the Australian Capital  
15 Territory is based on:  
16 (a) the legislative powers that the Commonwealth Parliament has  
17 under section 122 of the Constitution to make laws for the  
18 government of that Territory; and  
19 (b) the legislative powers that the Commonwealth Parliament has  
20 under section 51 of the Constitution (other than paragraph  
21 51(xxxvii)).

22 *Operation in the Northern Territory*

- 23 (5) The operation of Part 4A in the Northern Territory is based on:  
24 (a) the legislative powers that the Commonwealth Parliament has  
25 under section 122 of the Constitution to make laws for the  
26 government of that Territory; and  
27 (b) the legislative powers that the Commonwealth Parliament has  
28 under section 51 of the Constitution (other than paragraph  
29 51(xxxvii)).

30 **43 After subparagraph 10(1)(a)(ii)**

31 Insert:

- 32 (ia) water service infrastructure that carries water that has  
33 been taken from a Basin water resource; or

34 **44 After section 12**

35 Insert:

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1 **12A Actions of the Murray-Darling Basin Ministerial Council**

2 If this Act requires or permits the Murray-Darling Basin  
3 Ministerial Council to do a thing, the Murray-Darling Basin  
4 Ministerial Council is required or permitted to do the thing in  
5 accordance with any requirements specified in the Agreement.

6 **45 Division 2 of Part 1**

7 Repeal the Division.

8 **46 Subsection 21(2) (note)**

9 Repeal the note, substitute:

10 Note 1: See Articles 7 and 8 of the Biodiversity Convention.

11 Note 2: The Basin Plan must also be prepared having regard to critical human  
12 water needs (see Part 2A).

13 **47 At the end of subsection 21(3) (before the note)**

14 Add:

15 ; and (c) take account of the ecological character descriptions of:

16 (i) all declared Ramsar wetlands within the Murray-Darling  
17 Basin; and

18 (ii) all other key environmental sites within the  
19 Murray-Darling Basin;

20 prepared in accordance with the National Framework and  
21 Guidance for Describing the Ecological Character of  
22 Australia's Ramsar Wetlands endorsed by the Natural  
23 Resource Management Ministerial Council.

24 **48 Subsection 21(3) (note)**

25 Repeal the note, substitute:

26 Note 1: See Article 3 of the Ramsar Convention.

27 Note 2: A copy of the National Framework and Guidance for Describing the  
28 Ecological Character of Australia's Ramsar Wetlands may be found  
29 on the Department's website.

30 **49 At the end of paragraph 21(4)(c)**

31 Add:

32 ; and (x) any other arrangements between States for the sharing  
33 of water.

1 **50 Subsection 21(5)**

2 After “Basin Plan” (last occurring), insert “first”.

3 **51 At the end of subsection 22(1)**

4 Add:

5 Note: The Basin Plan must also include matters relating to critical human  
6 water needs (see Part 2A).

7 **52 Paragraph 26(1)(j)**

8 Repeal the paragraph, substitute:

9 (j) any matter that was dealt with in:

- 10 (i) Schedule E to the former MDB Agreement (other than  
11 paragraph 15(3)(c) of that Schedule); or  
12 (ii) the Protocols to the former MDB Agreement made  
13 under Schedule E to the former MDB Agreement (other  
14 than the Protocol on Access and Exit Fees).

15 **53 After subsection 34(1)**

16 Insert:

17 (1A) Subsection (1) does not apply in relation to any of the matters  
18 included or specified in the Basin Plan under Part 2A (Critical  
19 human water needs).

20 Note: For the effect of the Basin Plan on the Authority and other agencies of  
21 the Commonwealth in relation to these matters, see section 86G.

22 **54 Subsection 35(1)**

23 Omit “The Murray-Darling Basin Commission”, substitute “The Basin  
24 Officials Committee”.

25 **55 After subsection 35(1)**

26 Insert:

27 (1A) Subsection (1) does not apply in relation to any of the matters  
28 included or specified in the Basin Plan under Part 2A (Critical  
29 human water needs).

30 Note: For the effect of the Basin Plan on other agencies and persons in  
31 relation to these matters, see section 86H.

32 **56 Subsection 36(5)**

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1 Repeal the subsection.

2 **57 Subsection 36(6)**

3 Omit “, (4) and (5)”, substitute “and (4)”.

4 **58 Subsection 37(6)**

5 Repeal the subsection.

6 **59 Subsection 37(7)**

7 Omit “, (5) and (6)”, substitute “and (5)”.

8 **60 After section 43**

9 Insert:

10 **43A Authority to seek comments from Murray-Darling Basin**  
11 **Ministerial Council on proposed Basin Plan**

- 12 (1) This section applies once the Authority has complied with  
13 section 43 in relation to a proposed Basin Plan.
- 14 (2) Without limiting subsection 42(1), the Authority must give each  
15 member of the Murray-Darling Basin Ministerial Council a copy of  
16 the proposed Basin Plan (incorporating any alterations it has made  
17 under paragraph 43(10)(b)).
- 18 (3) The copy must be given together with the Authority’s advice to the  
19 Murray-Darling Basin Ministerial Council on the likely  
20 socio-economic implications of any reductions in the long-term  
21 average sustainable diversion limits proposed in the proposed  
22 Basin Plan.
- 23 (4) The Murray-Darling Basin Ministerial Council must, within 6  
24 weeks after the Authority complied with subsection (2), give the  
25 Authority a written notice:
- 26 (a) stating that neither the Murray-Darling Basin Ministerial  
27 Council nor any of its members have any comments on the  
28 proposed Basin Plan; or
- 29 (b) stating that the Murray-Darling Basin Ministerial Council, or  
30 one or more of its members, disagrees with one or both of the  
31 following:

- 1 (i) the long-term average sustainable diversion limits  
2 proposed in the proposed Basin Plan;  
3 (ii) any other aspect of the proposed Basin Plan in relation  
4 to which the Minister may give a direction under  
5 subparagraph 44(3)(b)(ii);  
6 and specifying the nature of the disagreement.

7 Note: Subsection 44(5) specifies matters in relation to which the Minister  
8 must not give a direction.

9 (5) If the Murray-Darling Basin Ministerial Council does not give the  
10 Authority such a notice within that period of 6 weeks, the  
11 Murray-Darling Basin Ministerial Council and its members are  
12 taken not to have any comments on the proposed Basin Plan.

- 13 (6) If the Murray-Darling Basin Ministerial Council gives the  
14 Authority a notice that states under paragraph (4)(b) matters with  
15 which the Murray-Darling Basin Ministerial Council, or one or  
16 more of its members, disagrees, the Authority must:  
17 (a) consider the matters; and  
18 (b) undertake such consultations in relation to the matters as the  
19 Authority considers necessary or appropriate; and  
20 (c) either:  
21 (i) confirm the proposed Basin Plan, and give each member  
22 of the Murray-Darling Basin Ministerial Council a copy  
23 of the unaltered proposed Basin Plan, together with the  
24 Authority's views on the matters; or  
25 (ii) alter the proposed Basin Plan, and give each member of  
26 the Murray-Darling Basin Ministerial Council a copy of  
27 the altered proposed Basin Plan, together with the  
28 Authority's views on the matters; and  
29 (d) prepare a document that summarises:  
30 (i) any submissions it received in response to the  
31 consultations referred to in paragraph (b); and  
32 (ii) how it addressed those submissions; and  
33 (iii) the extent (if any) to which its consideration of those  
34 submissions has affected the version of the Plan, or the  
35 views, given to the members of the Murray-Darling  
36 Basin Ministerial Council under paragraph (c); and  
37 (e) publish on its website a copy of the document prepared under  
38 paragraph (d).
-

- 1 (7) The Murray-Darling Basin Ministerial Council must, within 3  
2 weeks after the Authority complied with paragraph (6)(c), give the  
3 Minister a written notice:
- 4 (a) stating that neither the Murray-Darling Basin Ministerial  
5 Council nor any of its members express any further views on  
6 the proposed Basin Plan; or
- 7 (b) setting out the views of the Murray-Darling Basin Ministerial  
8 Council, or one or more of its members, on one or both of the  
9 following:
- 10 (i) the long-term average sustainable diversion limits  
11 proposed in the proposed Basin Plan;
- 12 (ii) any other aspect of the proposed Basin Plan in relation  
13 to which the Minister may give a direction under  
14 subparagraph 44(3)(b)(ii).
- 15 Note: Subsection 44(5) specifies matters in relation to which the Minister  
16 must not give a direction.
- 17 (8) If the Murray-Darling Basin Ministerial Council does not give the  
18 Minister such a notice within that period of 3 weeks, the  
19 Murray-Darling Basin Ministerial Council and its members are  
20 taken not to express any further views on the proposed Basin Plan.

21 **61 Subsection 44(1)**

22 Omit “60 days”, substitute “12 weeks”.

23 **62 Subsection 44(3)**

24 Omit “30 days”, substitute “6 weeks”.

25 **63 After subsection 44(5)**

26 Insert:

- 27 (5A) To avoid doubt, subsections 43A(5) and (8) do not affect the  
28 Minister’s power to give suggestions or directions to the Authority  
29 under this section.

30 **64 After section 47**

31 Insert:

1 **47A Authority to seek comments from Murray-Darling Basin**  
2 **Ministerial Council on proposed amendment of Basin**  
3 **Plan**

- 4 (1) This section applies once the Authority has complied with  
5 section 47 in relation to a proposed amendment of the Basin Plan.
- 6 (2) Without limiting subsection 46(1), the Authority must give each  
7 member of the Murray-Darling Basin Ministerial Council a copy of  
8 the proposed amendment of the Basin Plan (incorporating any  
9 alterations it has made under paragraph 47(10)(b)).
- 10 (3) The Murray-Darling Basin Ministerial Council must, within 6  
11 weeks after the Authority complied with subsection (2), give the  
12 Authority a written notice:
- 13 (a) stating that neither the Murray-Darling Basin Ministerial  
14 Council nor any of its members have any comments on the  
15 proposed amendment; or
- 16 (b) stating that the Murray-Darling Basin Ministerial Council, or  
17 one or more of its members, disagrees with one or both of the  
18 following:
- 19 (i) the long-term average sustainable diversion limits  
20 proposed in the proposed amendment;
- 21 (ii) any other aspect of the proposed amendment in relation  
22 to which the Minister may give a direction under  
23 subparagraph 48(3)(b)(i);
- 24 and specifying the nature of the disagreement.
- 25 Note: Subsection 48(5) specifies matters in relation to which the Minister  
26 must not give a direction.
- 27 (4) If the Murray-Darling Basin Ministerial Council does not give the  
28 Authority such a notice within that period of 6 weeks, the  
29 Murray-Darling Basin Ministerial Council and its members are  
30 taken not to have any comments on the proposed amendment.
- 31 (5) If the Murray-Darling Basin Ministerial Council gives the  
32 Authority a notice that states under paragraph (3)(b) matters with  
33 which the Murray-Darling Basin Ministerial Council, or one or  
34 more of its members, disagrees, the Authority must:
- 35 (a) consider the matters; and
- 36 (b) undertake such consultations in relation to the matters as the  
37 Authority considers necessary or appropriate; and



- 1 (c) either:  
2 (i) confirm the proposed amendment, and give each  
3 member of the Murray-Darling Basin Ministerial  
4 Council a copy of the unaltered proposed amendment,  
5 together with the Authority's views on the matters; or  
6 (ii) alter the proposed amendment, and give each member of  
7 the Murray-Darling Basin Ministerial Council a copy of  
8 the altered proposed amendment, together with the  
9 Authority's views on the matters; and  
10 (d) prepare a document that summarises:  
11 (i) any submissions it received in response to the  
12 consultations referred to in paragraph (b); and  
13 (ii) how it addressed those submissions; and  
14 (iii) the extent (if any) to which its consideration of those  
15 submissions has affected the version of the Plan, or the  
16 views, given to the members of the Murray-Darling  
17 Basin Ministerial Council under paragraph (c); and  
18 (e) publish on its website a copy of the document prepared under  
19 paragraph (d).
- 20 (6) The Murray-Darling Basin Ministerial Council must, within 3  
21 weeks after the Authority complied with paragraph (5)(c), give the  
22 Minister a written notice:  
23 (a) stating that neither the Murray-Darling Basin Ministerial  
24 Council nor any of its members express any further views on  
25 the proposed amendment; or  
26 (b) setting out the views of the Murray-Darling Basin Ministerial  
27 Council, or one or more of its members, on one or both of the  
28 following:  
29 (i) the long-term average sustainable diversion limits  
30 proposed in the proposed amendment;  
31 (ii) any other aspect of the proposed Basin Plan in relation  
32 to which the Minister may give a direction under  
33 subparagraph 48(3)(b)(ii).
- 34 Note: Subsection 48(5) specifies matters in relation to which the Minister  
35 must not give a direction.
- 36 (7) If the Murray-Darling Basin Ministerial Council does not give the  
37 Minister such a notice within that period of 3 weeks, the  
38 Murray-Darling Basin Ministerial Council and its members are  
39 taken not to express any further views on the proposed amendment.
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1 **65 Subsection 48(1)**

2 Omit “60 days”, substitute “12 weeks”.

3 **66 After subsection 48(5)**

4 Insert:

5 (5A) To avoid doubt, subsections 47A(4) and (7) do not affect the  
6 Minister’s power to give suggestions or directions to the Authority  
7 under this section.

8 **67 Before section 50**

9 Insert:

10 **49A Authority to advise Murray-Darling Basin Ministerial Council**  
11 **on impacts of Basin Plan**

12 (1) The Authority must give advice to the Murray-Darling Basin  
13 Ministerial Council on the impacts of the Basin Plan as soon as  
14 possible after the end of the first 5 years after the Basin Plan takes  
15 effect.

16 (2) The Authority must make a copy of the advice available on the  
17 Authority’s website.

18 **68 Paragraph 50(1)(a)**

19 After “Basin Plan” (second occurring), insert “first”.

20 **69 Subsection 50(4)**

21 After “Basin Plan” (first occurring), insert “first”.

22 **70 Paragraph 56(2)(a)**

23 After “Basin Plan” (first occurring), insert “first”.

24 **71 Subsection 59(1)**

25 Omit “The Murray-Darling Basin Commission”, substitute “The Basin  
26 Officials Committee”.

27 **72 Subsection 60(5)**

28 Repeal the subsection.

1 **73 Subsection 60(6)**

2 Omit “, (4) and (5)”, substitute “and (4)”.

3 **74 Subsection 61(6)**

4 Repeal the subsection.

5 **75 Subsection 61(7)**

6 Omit “, (5) and (6)”, substitute “and (5)”.

7 **76 Subsection 74(2) (note 1)**

8 Omit “, for reductions that occur on or after 1 January 2015,”.

9 **77 After section 74**

10 Insert:

11 **74A States applying the risk assignment framework**

12 (1) The Minister must, in writing, determine that a Basin State is a  
13 State to which this section applies if the Minister is satisfied that a  
14 State water management law of the State:

15 (a) has applied the risk assignment framework provided for in  
16 clauses 48 to 50 of the National Water Initiative, read in  
17 conjunction with clause 10.1.3 of the Agreement on  
18 Murray-Darling Basin Reform of 3 July 2008; and

19 (b) has applied that framework by, and at all times since:

20 (i) 30 June 2009; or

21 (ii) a later day specified in the regulations.

22 Note: Clauses 48 to 50 of the National Water Initiative and clause 10.1.3 of  
23 the Agreement on Murray-Darling Basin Reform of 3 July 2008 are  
24 set out in Schedule 3A.

25 (2) The day specified in regulations made for the purposes of  
26 subparagraph (1)(b)(ii) must not be later than the day on which the  
27 Basin Plan first takes effect.

28 (3) The Minister must, in writing, revoke a determination made under  
29 subsection (1) if satisfied that there is no longer a State water  
30 management law of the State that gives effect to that framework.

1 (4) In considering whether to make a determination under  
2 subsection (1), or revoke it under subsection (3), the Minister may  
3 ask the National Water Commission for advice.

4 (5) A determination made under subsection (1), or a revocation under  
5 subsection (3), is not a legislative instrument.

6 **78 After subsection 75(1)**

7 Insert:

8 (1A) In working out the amount of the Commonwealth Government  
9 policy component or the new knowledge component, any reduction  
10 that is a result of matters referred to in clause 48 of the National  
11 Water Initiative is to be disregarded.

12 Note: Clause 48 of the National Water Initiative is set out in Part 1 of  
13 Schedule 3A.

14 **79 Paragraph 75(2)(b)**

15 After “if” (first occurring), insert “the Basin State in which the water  
16 resource plan area is located is not a State to which section 74A applies,  
17 and”.

18 **80 At the end of subsection 75(2)**

19 Add:

20 ; and (c) if the Basin State in which the water resource plan area is  
21 located is a State to which section 74A applies—the  
22 Commonwealth’s share of the reduction also includes so  
23 much of the new knowledge component (if any) as is worked  
24 out under subsection (3A).

25 **81 After subsection 75(3)**

26 Insert:

27 (3A) The amount to be included in the Commonwealth’s share of the  
28 reduction under paragraph (2)(c) is to be worked out on the basis  
29 that, for reductions in the long-term average sustainable diversion  
30 limit for the water resources, or that part of the water resources, of  
31 the water resource plan area in any 10 year period, the  
32 Commonwealth’s share of the reductions:

- 1 (a) does not include so much of new knowledge components of  
2 those reductions as does not exceed (in aggregate) 3% of the  
3 relevant diversion limit; and  
4 (b) includes all of so much of the new knowledge components of  
5 those reductions as exceeds (in aggregate) 3% of the relevant  
6 diversion limit.

7 **82 Subsection 75(4)**

8 After “subsection (3)”, insert “or (3A)”.

9 **83 Paragraph 75(4)(b)**

10 Repeal the paragraph, substitute:

- 11 (b) on or after:  
12 (i) if the Basin State in which the water resource plan area  
13 is located is a State to which section 74A applies, and a  
14 transitional water resource plan or an interim water  
15 resource plan has effect for the area—the day on which  
16 that plan ceases to have effect; or  
17 (ii) in any other case—1 January 2015.

18 **84 Subparagraph 77(1)(b)(iii)**

19 After “Basin Plan”, insert “first”.

20 **85 Subparagraph 77(1)(b)(iv)**

21 After “Basin Plan” (first occurring), insert “first”.

22 **86 Paragraphs 77(4)(a) and (b) and 79(2)(f)**

23 Before “value”, insert “market”.

24 **87 After subsection 81(3)**

25 Insert:

26 (3A) In working out the amount of the Commonwealth Government  
27 policy component or the new knowledge component, any reduction  
28 that is a result of matters referred to in clause 48 of the National  
29 Water Initiative is to be disregarded.

30 Note: Clause 48 of the National Water Initiative is set out in Part 1 of  
31 Schedule 3A.

32 **88 Subparagraph 83(1)(b)(iii)**

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1 After “Basin Plan”, insert “first”.

2 **89 Subparagraph 83(1)(b)(iv)**

3 After “Basin Plan” (first occurring), insert “first”.

4 **90 Paragraphs 83(6)(a) and (b) and 85(2)(e)**

5 Before “value”, insert “market”.

6 **91 Part 4**

7 Repeal the Part.

8 **92 At the end of section 105**

9 Add:

10 (5) Paragraph (4)(a) does not prevent the Commonwealth  
11 Environmental Water Holder making available water from the  
12 Commonwealth environmental water holdings for the purposes of  
13 protecting or restoring the environmental assets of an area outside  
14 the Murray-Darling Basin so as to:

15 (a) give effect to an agreement between the Commonwealth and  
16 one or more States; and

17 (b) return water to the Snowy River.

18 **93 Subsection 108(3)**

19 Repeal the subsection, substitute:

20 (3) However, *Commonwealth environmental water holdings* do not  
21 include:

22 (a) water access rights, water delivery rights, irrigation rights or  
23 other similar rights relating to water; or

24 (b) interests in, or in relation to, such rights;

25 that:

26 (c) the Commonwealth holds for the purpose of the use of water  
27 by the Commonwealth in the performance of functions that  
28 are not related to its functions of water management under  
29 this Act; or

30 (d) the Authority holds for the purposes of the Living Murray  
31 Initiative (including rights or interests that vested in the  
32 Authority under section 239C having been held for that

1 purpose by the Murray-Darling Basin Commission before the  
2 commencement of Part 10A).

3 **94 Paragraph 123(2)(b)**

4 Omit “a person’s”, substitute “an individual’s”.

5 **95 Subparagraph 123(2)(b)(ii)**

6 Omit “person’s”, substitute “individual’s”.

7 **96 Section 125 (definition of *water information*)**

8 Repeal the definition, substitute:

9 *water information* means:

10 (a) any raw data, or any value added information product, that  
11 relates to:

12 (i) the availability, distribution, quantity, quality, use,  
13 trading or cost of water; or

14 (ii) water access rights, water delivery rights or irrigation  
15 rights; or

16 (b) any metadata relating to data of a kind referred to in  
17 paragraph (a);

18 and includes contextual information relating to water (such as land  
19 use information, geological information and ecological  
20 information).

21 **97 Paragraph 137(b)**

22 After “Part 4” (wherever occurring), insert “or 4A”.

23 **98 Paragraphs 172(1)(b) and (c) (note)**

24 Repeal the notes, substitute:

25 Note: The Authority may adopt Basin State records, and request the  
26 Basin States to take these measurements etc. (see subsection (2)).

27 **99 After paragraph 172(1)(e)**

28 Insert:

29 (ea) to develop, in consultation with the Basin States, an  
30 integrated water model for the Murray-Darling Basin;

31 **100 Paragraph 172(1)(g)**

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1 Repeal the paragraph, substitute:  
2 (g) to make recommendations to:  
3 (i) the Commonwealth; or  
4 (ii) a Basin State; or  
5 (iii) an agency of the Commonwealth or a Basin State;  
6 about any matter (including the carrying out of any works or  
7 other measures by the Commonwealth, State or agency) that  
8 the Authority considers could in any way affect the quality or  
9 quantity of the Basin water resources;

10 **101 At the end of subsection 172(1)**

11 Add:

12 Note: The Authority also has the functions conferred on it by Part 1A (The  
13 Murray-Darling Basin Agreement) and Part 2A (Critical human water  
14 needs).

15 **102 Paragraph 172(2)(a)**

16 Omit “the Murray-Darling Basin Commission,”.

17 **103 Paragraph 172(2)(b)**

18 Repeal the paragraph.

19 **104 Subsection 172(3)**

20 Omit “the Basin Officials Committee”, substitute “the other members of  
21 the Murray-Darling Basin Ministerial Council, and inform the Basin  
22 Officials Committee,”.

23 **105 Section 173**

24 Repeal the section, substitute:

25 **173 Authority’s powers**

26 (1) The Authority has power to do anything that is necessary or  
27 convenient to be done for or in connection with the performance of  
28 its functions.

29 Note 1: The Authority’s functions are set out in section 172, and in Part 1A  
30 (The Murray-Darling Basin Agreement) and Part 2A (Critical human  
31 water needs).

32 Note 2: The Authority also has the powers conferred on it by Parts 1A and 2A.



1 (2) The Authority's powers include, but are not limited to, the  
2 following powers:

3 (a) the power to acquire, hold and dispose of real and personal  
4 property;

5 (b) the power to enter into contracts.

6 Note 1: Under paragraph 176(1)(c), the Authority may also sue and be sued in  
7 its corporate name.

8 Note 2: Acquisitions of interests in land will be done in accordance with the  
9 *Lands Acquisition Act 1989* and the *Financial Management and*  
10 *Accountability Act 1997*.

11 Note 3: The Chief Executive of the Authority may also enter into contracts on  
12 behalf of the Commonwealth. See section 44 of the *Financial*  
13 *Management and Accountability Act 1997*.

14 (3) Any real or personal property held by the Authority is held for and  
15 on behalf of the Commonwealth.

16 Note: This subsection does not have the effect of transferring property to the  
17 Authority.

18 (4) Any money received by the Authority is received for and on behalf  
19 of the Commonwealth.

20 Note: This subsection does not have the effect of transferring money to the  
21 Authority.

22 (5) To avoid doubt, a right to sue is taken not to be personal property  
23 for the purposes of subsection (3).

24 **106 At the end of subsection 174(1)**

25 Add:

26 Note: Clause 145 of the Agreement provides for the Commonwealth to  
27 recover from the Basin States a proportion of any payment made by  
28 the Commonwealth in respect of any act or omission of the Authority  
29 in the execution in good faith of the powers vested in the Authority by  
30 or under the Agreement.

31 **107 At the end of subsection 175(2)**

32 Add:

33 ; (e) the performance of a function that is conferred under Part 1A  
34 or 2A.

35 **108 Before paragraph 177(a)**

36 Insert:

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1 (aa) a Chief Executive;

2 **109 Subsections 178(5) and (6)**

3 Omit “Authority Chair”, substitute “Chief Executive”.

4 **110 At the end of section 178**

5 Add:

6 (8) An act of the Authority is not invalid because of a defect or  
7 irregularity in connection with the appointment of the Chief  
8 Executive, Authority Chair or any other member of the Authority.

9 **111 Section 179**

10 Before “An Authority member”, insert “(1)”.

11 **112 At the end of section 179 (before the note)**

12 Add:

13 (2) The sum of an Authority member’s first appointment period and  
14 any period or periods of re-appointment must not exceed 8 years  
15 (not including any periods of acting appointment).

16 **113 Before subsection 180(1)**

17 Insert:

18 *Acting Chief Executive*

19 (1A) The Minister may appoint a member of the Authority staff who is  
20 an SES employee to act as the Chief Executive:

21 (a) during a vacancy in the office of the Chief Executive,  
22 whether or not an appointment has previously been made to  
23 the office; or

24 (b) during any period, or during all periods, when the Chief  
25 Executive:

26 (i) is absent from duty or Australia; or

27 (ii) is, for any reason, unable to perform the duties of the  
28 office.

29 **114 Subsection 180(2)**

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1 After “other than” (wherever occurring), insert “the Chief Executive  
2 or”.

3 Note: The heading to subsection 180(2) is altered by inserting “*Chief Executive or*” after  
4 “*other than*”.

5 **115 Subsections 184(1) and (2)**

6 Omit “Authority Chair”, substitute “Chief Executive”.

7 **116 Section 185**

8 Omit “Authority Chair”, substitute “Chief Executive”.

9 **117 Section 187**

10 Omit “Authority Chair” (wherever occurring), substitute “Chief  
11 Executive”.

12 **118 Paragraph 189(2)(c)**

13 Omit “Authority Chair”, substitute “Chief Executive”.

14 **119 Paragraph 189(2)(d)**

15 Omit “if the member is not the Authority Chair—”.

16 **120 Paragraph 189(2)(e)**

17 Omit “Authority Chair”, substitute “Chief Executive”.

18 **121 After paragraph 189(2)(e)**

19 Insert:

20 (ea) if the member is not the Chief Executive—the member  
21 engages, except with the Minister’s approval, in paid  
22 employment that conflicts or could conflict with the proper  
23 performance of the duties of his or her office; or

24 **122 Subdivision D of Division 3 of Part 9 (heading)**

25 Repeal the heading, substitute:

26 **Subdivision D—Basin Officials Committee**

27 **123 Subsection 201(1)**

28 Repeal the subsection.

1 **124 Subsection 201(2)**

2 Omit “(2) The”, substitute “In addition to the functions that the  
3 Agreement confers on the Basin Officials Committee, the”.

4 Note: The heading to subsection 201(2) is deleted.

5 **125 Paragraph 201(2)(b)**

6 Omit “resources;”, substitute “resources.”.

7 **126 Paragraphs 201(2)(c) and (d)**

8 Repeal the paragraphs.

9 **127 Subsections 201(3) to (6)**

10 Repeal the subsections.

11 **128 After section 201**

12 Insert:

13 **201A Appointment of Chair of the Basin Officials Committee**

14 (1) The Chair of the Basin Officials Committee is to be appointed by  
15 the Minister by written instrument.

16 Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation*  
17 *Act 1901*.

18 (2) To be eligible for appointment as the Chair of the Basin Officials  
19 Committee, an individual must be the Secretary of the Department  
20 or an SES employee.

21 (3) The appointment of the Chair of the Basin Officials Committee is  
22 not invalidated merely because of a defect or irregularity in  
23 connection with the appointment.

24 **201B Acting Chair of the Basin Officials Committee**

25 (1) The Minister may, by written instrument, appoint an individual to  
26 act as the Chair of the Basin Officials Committee.

27 (2) To be eligible for appointment to act as the Chair of the Basin  
28 Officials Committee, an individual must be the Secretary of the  
29 Department or an SES employee.

- 1           (3) An individual’s appointment to act as the Chair of the Basin  
2           Officials Committee:  
3               (a) does not cease to have effect merely because the Chair’s  
4               appointment ceases to have effect; and  
5               (b) if the Chair is replaced by the appointment of another  
6               Chair—continues in effect in relation to the new Chair.
- 7           (4) An individual appointed to act as the Chair of the Basin Officials  
8           Committee may act as, and perform the functions and exercise the  
9           powers of, the Chair:  
10               (a) during a vacancy in the office of the Chair, whether or not an  
11               appointment has previously been made to the office; or  
12               (b) during any period, or during all periods, when the Chair:  
13                   (i) is absent from duty or Australia; or  
14                   (ii) is, for any reason, unable to attend a meeting of the  
15                   Basin Officials Committee; or  
16                   (iii) is, for any reason, unable to perform the duties of the  
17                   office.
- 18           (5) Anything done by or in relation to an individual purporting to act  
19           under an appointment is not invalid merely because:  
20               (a) the occasion for the appointment had not arisen; or  
21               (b) there was a defect or irregularity in connection with the  
22               appointment; or  
23               (c) the appointment had ceased to have effect; or  
24               (d) the occasion to act had not arisen or had ceased.

25           **201C Period of appointment for Chair of the Basin Officials**  
26           **Committee**

- 27           (1) The Chair of the Basin Officials Committee (including an acting  
28           Chair) holds office for the period specified in his or her instrument  
29           of appointment.
- 30           (2) This section does not affect the operation of section 33A of the  
31           *Acts Interpretation Act 1901*.

32           **Subdivision E—Other advisory committees**

33           **129 At the end of subsection 202(2)**

34           Add:

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1 Note: The Basin Community Committee also has the functions conferred on  
2 it by the Agreement (see section 18F).

3 **130 Subsection 202(7) (at the end of the definition of *water***  
4 ***user*)**

5 Add:  
6 ; or (e) is engaged in interception activities with a significant impact  
7 (whether on an activity-by-activity basis or cumulatively) on  
8 water resources.

9 **131 Subsection 204(1)**

10 After “advisory committee”, insert “(other than the Basin Officials  
11 Committee)”.

12 **132 Subsection 204(2)**

13 Repeal the subsection.

14 **133 Subsection 204(3)**

15 After “an individual must”, insert “be nominated by the Murray-Darling  
16 Basin Ministerial Council and must”.

17 **134 Subsection 205(1)**

18 After “advisory committee”, insert “(other than the Basin Officials  
19 Committee)”.

20 **135 After subsection 205(1)**

21 Insert:  
22 (1A) However, the Basin Community Committee is not subject to  
23 direction under subsection (1) in relation to its functions, powers  
24 and duties under section 18F.

25 **136 Subsection 205(2)**

26 Omit “the Basin Officials Committee or”.

27 **137 Subsection 206(2)**

28 Omit “Authority Chair” (wherever occurring), substitute “Chief  
29 Executive”.

30 **138 Section 207 (note)**

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1 Omit “Authority Chair”, substitute “Chief Executive”.

2 **139 Section 208**

3 Omit “Authority Chair”, substitute “Chief Executive”.

4 Note: The heading to section 208 is altered by omitting “Chair” and substituting “Chief  
5 Executive”.

6 **140 Section 208**

7 Omit “Chair’s”, substitute “Chief Executive’s”.

8 **141 Paragraph 210(b)**

9 Omit “Commonwealth”, substitute “Authority”.

10 **142 Paragraph 210(c)**

11 Repeal the paragraph.

12 **143 Paragraph 210(d)**

13 Omit “Commonwealth”, substitute “Authority”.

14 **144 After paragraph 210(d)**

15 Insert:

16 (da) interest received by the Commonwealth from the investment  
17 of an amount standing to the credit of the Account;

18 **145 Paragraph 210(e)**

19 Omit “Commonwealth”, substitute “Authority”.

20 **146 After paragraph 210(e)**

21 Insert:

22 (ea) amounts received by the Authority in relation to assets that  
23 vest in the Authority under section 239C;

24 (eb) amounts received by the Authority as refunds or repayments  
25 of the whole or part of amounts paid by the Murray-Darling  
26 Basin Commission before the commencement of Schedule 1  
27 to the *Water Amendment Act 2008*;

28 **147 At the end of section 210 (before the note)**

29 Add:

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1 ; (g) amounts not otherwise covered by this section that are  
2 received by the Authority in connection with the performance  
3 of the Authority's functions under this Act or the regulations.

4 **148 Paragraph 211(2)(a)**

5 Omit "Commonwealth", substitute "Authority".

6 **149 Subsection 212(5)**

7 Repeal the subsection, substitute:

8 (5) A fee must not be such as to amount to taxation.

9 **150 After Subdivision C of Division 5 of Part 9**

10 Insert:

11 **Subdivision CA—Corporate plan**

12 **213A Corporate plan**

13 (1) The Authority must prepare a corporate plan at least once a  
14 financial year and give it to the Minister.

15 (2) The corporate plan must cover a period of 4 financial years.

16 (3) The corporate plan for a financial year must:

17 (a) include the corporate plan approved by the Murray-Darling  
18 Basin Ministerial Council under the Agreement in relation to  
19 that year; and

20 (b) set out:

21 (i) the objectives of the Authority; and

22 (ii) the planned activities of the Authority for the 4 financial  
23 years relating to its functions under this Act (other than  
24 Part 1A); and

25 (iii) the budget for those planned activities.

26 (4) The Authority must keep the Minister informed about matters that  
27 might significantly affect the achievement of the objectives set out  
28 in the corporate plan.



1 **213B Variation of corporate plan**

- 2 (1) The Authority may at any time vary the corporate plan on its own  
3 initiative.
- 4 (2) The Authority must not vary the part of the plan that is the  
5 corporate plan approved by the Murray-Darling Basin Ministerial  
6 Council under the Agreement, unless the variation has been  
7 approved in accordance with the Agreement.
- 8 (3) The Authority must give a copy of the variation to the Minister.

9 **151 Subsection 214(1)**

10 Omit "Authority Chair", substitute "Chief Executive".

11 **152 Subsection 214(1)**

12 After "the Minister", insert ", and to each other member of the  
13 Murray-Darling Basin Ministerial Council,".

14 **153 Subsection 214(2)**

15 Omit "Authority Chair", substitute "Chief Executive".

16 **154 At the end of subsection 214(2)**

17 Add:

- 18 ; (e) information about the Authority's activities during the year,  
19 including information about:
- 20 (i) implementation of the Authority's corporate plan; and  
21 (ii) any other matters on which the Authority is required to  
22 report under the Agreement.

23 **155 Subsection 214(4)**

24 Repeal the subsection.

25 **156 Paragraphs 216(3)(b) and (4)(b)**

26 Omit "or a referring State".

27 **157 Part 11 (heading)**

28 Repeal the heading, substitute:

1 **Part 11—Other transitional matters**

2 **158 Subsection 246(2)**

3 Omit “Subsection 55(2)”, substitute “Subsection 65(6)”.

4 **159 Section 248 (note)**

5 Omit “the Basin’s”.

6 **160 After section 252**

7 Insert:

8 **252A Dataset for Murray-Darling Basin to be publicly available**

9 The Commonwealth must make a copy of the dataset referred to in  
10 the definition of *Murray-Darling Basin* in section 18A available  
11 on the Department’s website.

12 **161 After section 255**

13 Insert:

14 **255A Application of water charge rules in Basin States that are not**  
15 **referring States**

- 16 (1) If a Basin State is not a referring State, water charge rules apply in  
17 the State to a regulated water charge if one or more of the  
18 paragraphs in subsection (2) are satisfied.
- 19 (2) This subsection applies if:
- 20 (a) the person imposing the charge, or making the demand, is a  
21 constitutional corporation; or
  - 22 (b) the person on whom the charge is imposed, or from whom  
23 the charge is demanded, is a constitutional corporation; or
  - 24 (c) the charge is imposed, or payment of the charge is demanded,  
25 in the course of trade and commerce between the States or  
26 between a State and a Territory; or
  - 27 (d) the person who imposes, or demands payment of, the charge  
28 does so in a Territory; or
  - 29 (e) the charge relates to:
    - 30 (i) a water resource in a Territory; or
    - 31 (ii) water service infrastructure in a Territory; or
-

- 1 (iii) tradeable water rights in relation to a water resource in a  
2 Territory; or  
3 (f) the charge is imposed, or payment of the charge is demanded,  
4 using a postal, telegraphic, telephonic or other like service  
5 (within the meaning of paragraph 51(v) of the Constitution).
- 6 (3) Subsection (2), and the paragraphs of that subsection, do not limit  
7 the operation (if any) that the water charge rules validly have apart  
8 from this section.

9 **255B Application of water market rules in Basin States that are not**  
10 **referring States**

- 11 (1) If a Basin State is not a referring State, water market rules apply in  
12 the State to an act, or a failure to do an act, by an infrastructure  
13 operator that has an effect on:  
14 (a) the ability of a person who holds an irrigation right against  
15 the operator to obtain a water access entitlement; or  
16 (b) the ability of a person who held an irrigation right against the  
17 operator to trade or transfer a water access entitlement;  
18 if one or more of the paragraphs in subsection (2) are satisfied.
- 19 (2) This subsection applies if:  
20 (a) the infrastructure operator or the person who holds, or held,  
21 the irrigation right is a constitutional corporation; or  
22 (b) the act is done, or the failure to do the act occurs, in the  
23 course of trade and commerce between the States or between  
24 a State and a Territory; or  
25 (c) the act is done, or the failure to do the act occurs, in a  
26 Territory; or  
27 (d) the water access right, or the irrigation right, relates to a  
28 water resource in a Territory; or  
29 (e) the act is done, or the failure to do the act occurs, using a  
30 postal, telegraphic, telephonic or other like service (within  
31 the meaning of paragraph 51(v) of the Constitution).
- 32 (3) Subsection (2), and the paragraphs of that subsection, do not limit  
33 the operation (if any) that the water market rules validly have apart  
34 from this section.

35 **162 At the end of section 256**

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- Add:
- (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 *Legislative Instruments 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.

**163 Schedule 1**  
Repeal the Schedule.

**164 Subparagraph 2(a)(ii) of Schedule 2 (second occurring)**  
Re-number as subparagraph (iii).

**165 After Schedule 3**  
Insert:

**Schedule 3A—Risk assignment framework**

Note: See section 74A.

1 **Part 1—Clauses 48 to 50 of the National Water**  
2 **Initiative**

- 3 48. *Water access entitlement* holders are to bear the risks of any reduction  
4 or less reliable water allocation, under their *water access entitlements*,  
5 arising from reductions to the consumptive pool as a result of:
- 6 (i) seasonal or long-term changes in climate; and
  - 7 (ii) periodic natural events such as bushfires and drought.
- 8 49. The risks of any reduction or less reliable water allocation under a *water*  
9 *access entitlement*, arising as a result of bona fide improvements in the  
10 knowledge of water systems' capacity to sustain particular extraction  
11 levels are to be borne by users up to 2014. Risks arising under  
12 comprehensive *water plans* commencing or renewed after 2014 are to  
13 be shared over each ten year period in the following way:
- 14 i) *water access entitlement* holders to bear the first 3% reduction in  
15 water allocation under a *water access entitlement*;
  - 16 ii) State/Territory governments and the Commonwealth Government  
17 to share one-third and two-thirds respectively reductions in water  
18 allocation under *water access entitlements* of between 3% and 6%;  
19 and
  - 20 iii) State/Territory and Commonwealth governments to equally share  
21 reductions in water allocation under *water access entitlements*  
22 greater than 6%.
- 23 50. Governments are to bear the risks of any reduction or less reliable water  
24 allocation that is not previously provided for, arising from changes in  
25 government policy (for example, new environmental objectives). In  
26 such cases, governments may recover this water in accordance with the  
27 principles for assessing the most efficient and cost effective measures  
28 for water recovery.

29 **Part 2—Clause 10.1.3 of the Agreement on**  
30 **Murray-Darling Basin Reform of 3 July**  
31 **2008**

- 32 10.1.3 Commonwealth undertakes to use its best endeavours to enact  
33 legislation to amend Division 4 of Part 2 of the Water Act so that:

- 1           In respect of those Basin States who choose to apply the National Water  
2           Initiative risk assignment framework:
- 3           a)   the Commonwealth's share of a reduction in a long-term average  
4           sustainable diversion limit includes, in any 10 year period, all of  
5           the new knowledge components of the reductions that exceed three  
6           per cent of the relevant diversion limit; and
- 7           b)   for a water resource plan area in the Murray-Darling Basin with a  
8           transitional or interim water resource plan, the Commonwealth will  
9           take responsibility for its share of the new knowledge component  
10          of a reduction in the long-term average sustainable diversion limit  
11          for the water resources of that plan area arising after the  
12          transitional or interim water resource plan ceases to have effect.

1  
2 **Schedule 3—Transitional provisions**

3 **Part 1—Staff**

4 **1 Accrued leave (other than long service leave)**

5 (1) If:

- 6 (a) a person's employment by the Murray-Darling Basin  
7 Commission ended on the commencement of Schedule 1; and  
8 (b) the person became an employee of the Authority on that  
9 commencement;

10 then:

- 11 (c) the Murray-Darling Basin Commission is not required to pay  
12 the person an amount in relation to accrued leave that the  
13 person has not taken as at that commencement; and  
14 (d) the Authority must recognise that accrued leave, in relation to  
15 the person's employment with the Authority, as if it were  
16 leave in relation to periods of service with the Authority.

17 (2) This item does not apply in relation to long service leave.

18 (3) This item applies despite subsection 235(2) of the *Workplace Relations*  
19 *Act 1996*.

20 **2 Long service leave**

21 If a person's employment by the Murray-Darling Basin Commission  
22 ended on the commencement of Schedule 1, and the person became an  
23 employee of the Authority on that commencement:

- 24 (a) sections 11A, 11B and 11C of the *Long Service Leave Act*  
25 *1976* of the Australian Capital Territory do not apply in  
26 relation to the person's employment by the Murray-Darling  
27 Basin Commission that ended on that commencement; and

28 Note: This means the person's long service leave entitlements are  
29 carried over to the person's employment by the Authority (and  
30 not paid out under section 11A, 11B or 11C of the *Long Service*  
31 *Leave Act 1976* of the Australian Capital Territory).

- 32 (b) the *Long Service Leave (Commonwealth Employees) Act*  
33 *1976* does not apply in relation to the person's employment  
34 by the Authority that started on that commencement; and

- 1 (c) the *Long Service Leave Act 1976* of the Australian Capital  
2 Territory (the **ACT law**) applies in relation to the person's  
3 employment by the Authority that started on that  
4 commencement; and
- 5 (d) for the purposes of applying the ACT law:
- 6 (i) the person's period of service with the Murray-Darling  
7 Basin Commission that ended on that commencement;  
8 and
- 9 (ii) any other period of service of the person that,  
10 immediately before that commencement, was counted as  
11 service with the Murray-Darling Basin Commission for  
12 the purposes of the application of the ACT law in  
13 relation to the person;
- 14 are taken to be the person's period of service with the  
15 Murray-Darling Basin Commission.

16 **3 Authority staff engaged after the commencement of**  
17 **Schedule 1**

- 18 (1) If:
- 19 (a) immediately after the commencement of Schedule 1, the  
20 Authority is, because of section 585 of the *Workplace*  
21 *Relations Act 1996*, bound by a collective agreement (within  
22 the meaning of that Act) that, immediately before that  
23 commencement, bound the Commission; and
- 24 (b) a person is engaged as a member of the Authority staff after  
25 that commencement but before the Authority ceases, under  
26 that Act, to be bound by the collective agreement; and
- 27 (c) the person is not engaged as an SES employee; and
- 28 (d) the person is not a transferring employee within the meaning  
29 of Part 11 of that Act;
- 30 that Part applies in relation to the person as if the person were such a  
31 transferring employee in relation to the collective agreement.
- 32 (2) However:
- 33 (a) this section does not apply to the extent (if any) that the  
34 person's terms and conditions of employment are provided  
35 for under a law of the Commonwealth; and
- 36 (b) this section ceases to apply to the person if the person  
37 becomes an SES employee of the Authority.



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2 **Part 2—Appointments etc.**

3 **4 Appointment of the Chief Executive**

4 The person who, immediately before the commencement of Schedule 2,  
5 was acting as the Authority Chair is taken, from that commencement, to  
6 be the Chief Executive as if he or she had been appointed under  
7 section 178 of the *Water Act 2007* as amended by this Act.

8 **5 Performance of Authority functions etc. before a quorum is**  
9 **appointed**

- 10 (1) Until this item ceases to apply under subitem (2):
- 11 (a) the Chief Executive may perform any of the functions of the  
12 Authority and exercise any of its powers; and
- 13 (b) anything done by the Chief Executive in performing those  
14 functions or exercising those powers is taken to have been  
15 done by the Authority.
- 16 (2) This item ceases to apply:
- 17 (a) at the end of the period of 6 months, or such longer period  
18 specified in the regulations, after the commencement of  
19 Schedule 2; or
- 20 (b) when sufficient members of the Authority have been  
21 appointed to constitute a quorum of members at a meeting of  
22 the Authority;
- 23 whichever happens first.
- 24 (3) Regulations for the purposes of paragraph (2)(a) must not specify a  
25 period exceeding 12 months.

26 **6 Authorised officers**

- 27 (1) After the commencement of Schedule 1, a person who:
- 28 (a) is a member of the Authority staff; and
- 29 (b) was, immediately before that commencement, a person:
- 30 (i) authorised by the Murray-Darling Basin Commission  
31 under section 14 of the *Murray-Darling Basin Act 1992*  
32 of New South Wales; or

- 1 (ii) authorised by the Murray-Darling Basin Commission  
2 under section 13 of the *Murray-Darling Basin Act 1993*  
3 of Victoria; or  
4 (iii) authorised by the Murray-Darling Basin Commission  
5 under section 13 of the *Murray-Darling Basin Act 1993*  
6 of South Australia;  
7 is taken to be an authorised officer.

- 8 (2) However, unless the person is appointed as an authorised officer under  
9 section 217 of the *Water Act 2007* as amended by this Act, he or she can  
10 only exercise the powers of an authorised officer to the extent that the  
11 powers are exercised in relation to the Authority's functions under  
12 Part 1A of that Act.

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2 **Part 3—Miscellaneous**

3 **7 Delegation to the Chief Executive**

4 The Authority is taken, immediately after the commencement of  
5 Schedule 1, to have delegated under section 199 of the *Water Act 2007*  
6 as amended by this Act all of its functions and powers under that Act  
7 (other than its functions and powers under Subdivisions E, F and G of  
8 Division 1 of Part 2) to the Chief Executive.

9 **8 Indemnity**

- 10 (1) The Commonwealth must indemnify:  
11 (a) a person appointed in accordance with subclause 20(1) of the  
12 former MDB Agreement as the President; or  
13 (b) a person appointed in accordance with subclause 20(3) of the  
14 former MDB Agreement as the Deputy President of the  
15 Murray-Darling Basin Commission;

16 for any liability that he or she incurs for an act or omission of the  
17 person, before the commencement of Schedule 1, in the course of  
18 performing his or her duties as the President or Deputy President  
19 (including, in the case of the Deputy President, his or her duties when  
20 acting as the President).

21 Note: The Agreement provides for the Basin States to indemnify the Commonwealth for a  
22 share of the costs associated with any indemnity covered by this subitem.

- 23 (2) The Commonwealth must indemnify a Commissioner for any liability:  
24 (a) to which subitem (1) does not apply; and  
25 (b) that the Commissioner incurs for an act or omission of the  
26 Commissioner, before the commencement of Schedule 1, in  
27 the course of performing his or her duties as a Commissioner.

28 Note: The Agreement provides for the State in relation to whom the Commissioner was  
29 appointed to indemnify the Commonwealth for the costs associated with any indemnity  
30 covered by this subitem.

- 31 (3) The Commonwealth must indemnify an officer (within the meaning of  
32 the former MDB Agreement) for any liability that the officer incurs for  
33 an act or omission of the officer, before the commencement of  
34 Schedule 1, in the course of performing his or her duties as an officer.

35 Note: The Agreement provides for the Basin States to indemnify the Commonwealth for a  
36 share of the costs associated with any indemnity covered by this subitem.

- 1 (4) This item only applies if the liability arose from an act or omission in  
2 good faith.

3 **9 Regulations**

- 4 (1) Without limiting subsection 256(1) of the *Water Act 2007*, regulations  
5 under that subsection may provide for:  
6 (a) the transfer of employees from the Murray-Darling Basin  
7 Commission to the Authority, including the preservation of  
8 some or all of the entitlements and obligations of the  
9 employees of the Murray-Darling Basin Commission; or  
10 (b) staffing procedures of the Murray-Darling Basin Commission  
11 to apply, or to continue to apply, in relation to:  
12 (i) processes begun before, but not completed by, the time  
13 this Part commences; or  
14 (ii) things done by, for or in relation to the Murray-Darling  
15 Basin Commission or an employee of the  
16 Murray-Darling Basin Commission before that time; or  
17 (c) staffing procedures of the Authority to apply in relation to:  
18 (i) processes begun before, but not completed by, that time;  
19 or  
20 (ii) things done by, for or in relation to the Murray-Darling  
21 Basin Commission before that time.
- 22 (2) Regulations made for the purposes of this item have effect despite the  
23 *Public Service Act 1999*.
- 24 (3) In this item:  
25 *staffing procedures* includes procedures and policies related to:  
26 (a) recruitment, promotion or performance management; or  
27 (b) inefficiency, misconduct, forfeiture of position, fitness for  
28 duty or loss of essential qualifications; or  
29 (c) disciplinary action, grievance processes or reviews of or  
30 appeals against staffing decisions; or  
31 (d) transfers, resignations or termination of employment; or  
32 (e) leave.