

# MURRAY-DARLING BASIN AGREEMENT



**June 2006**

# ARRANGEMENT OF CLAUSES

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# MURRAY-DARLING BASIN AGREEMENT

The *Murray-Darling Basin* Agreement made this **twenty fourth** day of **June** One thousand nine hundred and ninety two between -

THE COMMONWEALTH OF AUSTRALIA ("the Commonwealth"),  
THE STATE OF NEW SOUTH WALES ("New South Wales"),  
THE STATE OF VICTORIA ("Victoria"), and  
THE STATE OF SOUTH AUSTRALIA ("South Australia").

WHEREAS the Commonwealth, New South Wales, Victorian and South Australian Governments wish to promote and co-ordinate effective planning and management for the equitable efficient and sustainable use of the water, land and environmental resources of the Murray-Darling Basin:

AND WHEREAS those Governments have agreed that this Agreement should be substituted for an Agreement made between the parties on the first day of October 1982 and amended by Agreements of the 30th day of October 1987 and the 4th day of October 1990, each of which was subsequently approved by the Parliament of each party:

NOW IT IS HEREBY AGREED by the parties to this Agreement as follows -

## PART I—INTERPRETATION

### Purpose

1. 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, land and other environmental resources of the Murray-Darling Basin.

### Definitions

2. In this Agreement save where inconsistent with the context:

"annual estimates" means estimates prepared under paragraph 67(1)(a).

"Commission" means the Murray-Darling Basin Commission.

"Commissioner for the Commonwealth" means a Commissioner appointed by the Governor-General pursuant to clause 20.

"Commissioner for New South Wales" means a Commissioner appointed by the Governor of New South Wales pursuant to clause 20.

"Commissioner for South Australia" means a Commissioner appointed by the Governor of South Australia pursuant to clause 20.

"Commissioner for Victoria" means a Commissioner appointed by the Governor of Victoria pursuant to clause 20.

"Commonwealth auditor" means the Auditor-General of the Commonwealth or such other person as may be appointed by the Governor-General for the purpose of carrying out the inspection and audit referred to in paragraph 78(1)(a).

"Contracting Government" means any of the Governments of the Commonwealth, New South Wales, Victoria, South Australia and of any other State becoming a party pursuant to clause 134.

"Constructing Authority" means -

- (a) the Contracting Government by which
  - (i) any works authorised by this Agreement or the former Agreement have been, or are being, or are to be constructed;
  - (ii) any measures authorised under this Agreement or the former Agreement have been, or are being, or are to be executed; or
- (b) any public authority or any Minister constituted or appointed for the purpose of constructing such works or executing such measures.



"Deputy Commissioner for the Commonwealth" means a Deputy Commissioner appointed by the Governor-General pursuant to clause 20.

"Deputy Commissioner for New South Wales" means a Deputy Commissioner appointed by the Governor of New South Wales pursuant to clause 20.

"Deputy Commissioner for South Australia" means a Deputy Commissioner appointed by the Governor of South Australia pursuant to clause 20.

"Deputy Commissioner for Victoria" means a Deputy Commissioner appointed by the Governor of Victoria pursuant to clause 20.

"diversions" includes abstractions, impoundings and appropriations of water that reduce the flow of a river.

"Doctors Point" means the location of the Doctors Point stream gauging station.

"E.C." means a unit of electro-conductivity of water, measured in micro-siemens per centimetre at 25 degrees celsius.

"former Agreement" means the Agreement made on 9 September 1914 between the Prime Minister of the Commonwealth of Australia and the Premiers of the States of New South Wales, Victoria and South Australia as amended by further Agreements dated 10 August 1923, 23 July 1934, 26 November 1940, 2 November 1954, 11 September 1958, 8 October 1963, 26 February 1970, 1 October 1982, 30 October 1987 and 4 October 1990.

"Full Supply Level" means the full supply water level:

- (a) defined by reference to Australian Height Datum specified by the design drawings for any structure subject to this Agreement; or
- (b) in the case of Menindee Lakes Storage, as defined under clause 130.

"Governor-General" means Governor-General acting with the advice of the Executive Council.

"Governor" means Governor acting with the advice of the Executive Council.

"land" includes:

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

"maintenance" includes the execution of all work of any description which is necessary to keep an existing work in the state of utility in which it was upon:

- (a) its original completion; or
- (b) the completion of any improvement thereto or replacement thereof,

but does not include -

- (i) the execution of any improvement to the design or function of that work; or
- (ii) the replacement of the whole of that work; or
- (iii) work to remedy the extraordinary failure of part or all of that work.

"major storages" means Lake Victoria, the Menindee Lakes Storage and the storages formed by Dartmouth Dam and Hume Dam.

"measures" includes strategies, plans and programs.

"minimum operating level" means the water level in a storage, as determined from time to time by the Commission, below which water must not be released.

"Ministerial Council" means the Ministerial Council established by Part III.

"Murray-Darling Basin" means so much of the area within the boundaries of the map shown in Schedule B as forms part of the territory of the Contracting Governments.

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

"officer" means a person employed by the Commission under paragraph 36(a).

"period of special accounting" means a period of special accounting declared under clause 122(1).

"prescribed rate" means either:

- (a) a rate of 2% per annum above the maximum overdraft rate fixed by the Reserve Bank of Australia for amounts of \$100,000 or less which is applicable at the time a payment becomes due, or, if no such rate is fixed; or
- (b) a rate of 4% per annum above the rate payable on Commonwealth securities of the longest term offered for public subscription in Australia for the Commonwealth cash loan opened next before the time a payment becomes due.

"President" means the President of the Commission appointed under sub-clause 20(1).

"public authority" means a body, whether incorporated or not, established for a public purpose by or under a law of the Commonwealth or a State and includes any local government body.

"regulated flow" is the flow resulting from the release of stored water at the direction of the Commission other than during, or in anticipation of, floods.

"reserve" means water available for release from major storages at the direction of the Commission.

"river" and "tributary" respectively include any affluent, effluent creek, anabranch or extension of, and any lake or lagoon connected with, the river or tributary.

"State" means the State of New South Wales, the State of Victoria, the State of South Australia or any State becoming a party pursuant to clause 134.

"State auditor" means a person appointed by the Governor of any of New South Wales, Victoria, South Australia and of any State becoming a party pursuant to clause 134, for the purpose of carrying out the inspection and audit referred to in paragraph 78(1)(b).

"State Contracting Government" means any of the Governments of New South Wales, Victoria, South Australia, or of any State becoming a party pursuant to clause 134.

"stored water" means water stored in or by:

- (a) any of the works described in Schedule A; and
- (b) subject to sub-clause 92(1), the Menindee Lakes Storage; and
- (c) any of the works for storing water authorised under clause 50.

"supplementary estimates" means estimates prepared under sub-clause 68(1).

"upper River Murray" means the aggregate of:

- (a) the main course of the River Murray upstream of the eastern boundary of the State of South Australia;
- (b) all tributaries entering that part of the main course upstream of Doctors Point;
- (c) all effluents and anabranches of that part of the main course, other than those excepted by the Commission;
- (d) the watercourses connecting Lake Victoria to that main course;
- (e) the Darling River downstream of the Menindee Lakes Storage; and
- (f) the upper River Murray storages.

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

"water available for release at the direction of the Commission" means water which can physically be released from a storage if the Commission so directs, other than water which must not be released because of sub-clause 96(1).

"weir" includes:

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

## **Interpretation**

3. (1) In this Agreement, unless the contrary intention appears:
- (a) a reference to any Act includes any Act amending, or in substitution for, that Act;
  - (b) a reference to this Agreement includes a reference to -
    - (i) the Schedules to this Agreement, and
    - (ii) any amendment of or addition to this Agreement or the Schedules hereto;
  - (c) words importing the singular include the plural and vice versa;
  - (d) words importing any gender include any other gender;
  - (e) a reference to a Commissioner includes a Deputy Commissioner who is acting as a Commissioner; and
  - (f) a reference to the President includes the Deputy President when acting as President.
- (2) In interpreting a provision of this Agreement, a construction that would promote the purpose or object underlying the Agreement (whether or not that purpose or object is expressly stated in the Agreement) shall be preferred to a construction that would not promote that purpose or object.

## **PART II— APPROVAL AND ENFORCEMENT**

### **Substitution**

4. Except as otherwise provided in this Agreement, this Agreement replaces the former Agreement.

### **Approval**

5. This Agreement, other than clause 6, is subject to approval by the Parliaments of the Commonwealth, New South Wales, Victoria and South Australia and shall come into effect when so approved.

### **Submission to Parliament**

6. The Contracting Governments hereby agree:
  - (a) to submit for the approval of the respective Parliaments of the Commonwealth of Australia and of the States -
    - (i) this Agreement,
    - (ii) any amendment to this Agreement which may be agreed to by the Ministerial Council from time to time (other than an amendment to or addition of a Schedule to this Agreement),
    - (iii) any legislation necessary to give effect to this Agreement or any Amendment to this Agreement;as soon as practicable after such agreement is reached; and
  - (b) to lay before the House or Houses of the respective Parliaments of the Commonwealth and of the States, any Schedule to this Agreement approved by the Ministerial Council from time to time under clause 50 or clause 134.

### **Parties to Provide for Enforcement of Agreement and Acts**

7. Each of the Contracting Governments so far as its jurisdiction extends and so far as it may be necessary shall provide for or secure the execution and enforcement of the provisions of this Agreement and any Acts approving it.

## **PART III — THE MINISTERIAL COUNCIL**

### **Constitution of Ministerial Council**

8. (1) The Ministerial Council constituted under the former Agreement is continued in existence.
- (2) The Ministerial Council shall have such status and such powers and duties and enjoy such privileges and immunities as may be conferred upon it by this Agreement and any Acts approving the same.
- (3) The Ministerial Council shall consist of up to three Ministers from each Contracting Government who have prime responsibility for matters relating to water, land and environment.
- (4) Whenever a member of the Ministerial Council representing a Contracting Government is:
- (a) absent from Australia or from duty;
  - (b) unable for any reason to attend a meeting of the Ministerial Council; or
  - (c) otherwise unable to perform the duties of a member of the Ministerial Council,
- that Contracting Government may appoint another Minister of State to act in the place of that member, and while so acting that other Minister of State shall have all the powers and perform all the duties of that member.

### **Functions of the Ministerial Council**

9. The functions of the Ministerial Council are:
- (a) generally to consider and determine major policy issues of common interest to the Contracting Governments concerning effective planning and management for the equitable efficient and sustainable use of the water, land and other environmental resources of the Murray-Darling Basin;
  - (b) to develop, consider and, where appropriate, to authorise measures for the equitable, efficient and sustainable use of such water, land and other environmental resources;
  - (c) to authorise works as provided for in Part VI;
  - (d) to agree upon amendments to this Agreement including amendments to or addition of Schedules to this Agreement as the Ministerial Council considers desirable from time to time;
  - (e) to exercise such other functions as may be conferred on the Council by this Agreement or any amendment or any Act approving the same.

## **Ministerial Council May Direct Commission**

10. The Ministerial Council may give directions to the Commission concerning the performance of the functions of the Commission and the exercise of its powers and the Commission shall comply with those directions.

## **Ministerial Council May Require Commission to Report**

11. The Ministerial Council may require a report from the Commission on any of the Commission's operations.

## **Proceedings of the Ministerial Council**

12. (1) The Ministerial Council shall meet at least once in each year but otherwise at such times as it sees fit and shall, subject to this Agreement, determine its own procedure.  
  
(2) The quorum for a meeting of the Ministerial Council shall be each Minister nominated under clause 15 or, in the absence of that Minister, a Minister from the same Contracting Government authorised for this purpose by that Government.  
  
(3) A resolution before the Ministerial Council will be carried only by a unanimous vote of all Ministers present who constitute a quorum.  
  
(4) The Chairperson of the Ministerial Council shall be one of the Commonwealth Ministers who is a member of the Council and is at the relevant time the member nominated for this purpose by the Prime Minister.

## **Resolutions Other than at Meetings**

13. (1) A decision of the Ministerial Council may be made other than at a meeting of the Ministerial Council if made in accordance with this clause.  
  
(2) If:
  - (a) the text of a proposed resolution is sent or given in writing by facsimile or other transmission by an officer of the Commission authorised by the Ministerial Council to a Minister nominated under clause 15 or if that Minister is unavailable a Minister for the same Contracting Government authorised for the purpose by that Government; and
  - (b) such Minister approves the proposed resolution and notifies that officer in writing sent or given by facsimile or other transmission,the proposed resolution is approved by the Minister.

(3) When a Minister from each Contracting Government has approved a resolution in accordance with sub-clause 13(2) the resolution shall be deemed to have become a decision of the Ministerial Council at the date and time the last of those Ministers has approved the resolution.

(4) Any decision of the Ministerial Council made in accordance with this clause, must be recorded by an officer of the Commission authorised by the Ministerial Council and a copy of the decision sent to each member of the Ministerial Council within 21 days after the decision is made.

(5) The record made pursuant to sub-clause 13(4) shall be confirmed at the next meeting of the Ministerial Council.

### **Appointment of Committees**

14. (1) The Ministerial Council -

(a) must appoint a Community Advisory Committee; and

(b) may from time to time appoint such temporary or standing committees as it sees fit.

(2) A committee shall have such members, terms of reference, powers and functions as the Ministerial Council determines.

(3) A member of a committee shall hold office on such terms as the Ministerial Council may determine.

(4) A member of a committee shall receive such allowances and expenses as the Ministerial Council may from time to time determine.

### **Nomination of Responsible Minister**

15. The Prime Minister and the Premier of each other Contracting Government shall from time to time each nominate one of the Ministers representing it on the Ministerial Council to be the Minister responsible to the Ministerial Council for the responses of that Minister's government.

## **PART IV — THE COMMISSION**

### **Constitution**

16. (1) The Murray-Darling Basin Commission constituted under the former Agreement is continued in existence.

(2) The Commission shall have such status and such powers and duties and enjoy such privileges and immunities as may be conferred upon it by this Agreement and any Acts approving the same.



## **Functions and Powers of the Commission**

17. (1) The functions of the Commission are:
- (a) to advise the Ministerial Council in relation to the planning, development and management of the water, land and other environmental resources of the Murray-Darling Basin;
  - (b) to assist the Ministerial Council in developing measures for the equitable efficient and sustainable use of water, land and other environmental resources of the Murray-Darling Basin;
  - (c) to co-ordinate the implementation of or, where the Ministerial Council so requires, to implement any measures authorised by the Ministerial Council under paragraph 9(b);
  - (d) to give effect to any policy or decision of the Ministerial Council, which the Ministerial Council requires the Commission to implement; and
  - (e) to exercise the powers and discharge the duties conferred on it by this Agreement, or any Act approving the same.
- (2) Paragraph 17(1)(d) does not operate:
- (a) to confer any powers on the Commission in addition to powers conferred by other provisions of this Agreement, or any Act approving the same;
  - (b) to enable the Commission to do anything for which Part V and subsequent Parts provide, otherwise than as provided for by those Parts as amended from time to time.
- (3) The advice referred to in paragraph 17(1)(a) shall be determined by majority vote of the Commissioners present who, with the presiding member, constitute a quorum. In the event of a unanimous decision not being reached, the presiding member and each Commissioner may tender separate advice to the Ministerial Council.
- (4) In addition to any powers conferred upon it by other provisions of this Agreement, or any Act approving the same, the Commission has power, under the name of the Commission:
- (a) to contract; and
  - (b) to acquire, hold, deal with or dispose of property,
- for the purpose of performing its functions and exercising its powers.

## **Composition of Commission**

18. The Commission shall consist of the President and the Commissioners appointed pursuant to clause 20.

## **Declaration of Interests**

19. (1) Each Commissioner, other than the President, and each Deputy Commissioner shall disclose to the President any direct or indirect pecuniary interest held or acquired by that person in a business carried on in Australia or in a body corporate carrying on such a business that could conflict with that person's duties as a Commissioner or Deputy Commissioner.
- (2) The President shall give written notice to the Chairperson of the Ministerial Council of all direct and indirect pecuniary interests held or acquired by the President in any business carried on in Australia or in any body corporate carrying on any such business.

## **Appointment of President, Deputy President, Commissioners and Deputy Commissioner**

20. (1) The Ministerial Council shall, after seeking and considering the advice of the Commission, appoint a President by a unanimous vote of members of the Ministerial Council.
- (2) Two Commissioners who, between them, represent water, land and environmental resource management and two Deputy Commissioners shall be appointed by each of the Governor-General, the Governor of New South Wales, the Governor of Victoria, the Governor of South Australia, and the Governor of any State becoming a party to this Agreement pursuant to clause 134.
- (3) The Ministerial Council shall appoint one of the Commissioners appointed pursuant to sub-clause 20(2) to be Deputy President.

## **Terms of Appointment**

21. (1) The President, each Commissioner and Deputy Commissioner shall be appointed for a term not exceeding five years and be eligible for re-appointment.
- (2) The Deputy President shall be appointed for a term not exceeding the term for which the Commissioner so appointed has been appointed a Commissioner pursuant to sub-clause 21(1).

## **Continuation in Office**

22. Where, immediately before the date of this Agreement a person holds office as the President, a Commissioner or Deputy Commissioner under the former Agreement, that person continues on and after that date to hold office for the remainder of that person's term of office.

## **When Deputy President or Deputy Commissioner May Act**

23. (1) Whenever:
- (a) the President is -
- (i) absent from Australia or from duty, or

- (ii) unable for any reason to attend a meeting of the Commission, or
- (iii) otherwise unable to perform the duties of the President, or
- (b) there is a vacancy in the office of the President,

the Deputy President shall act in the place of the President, and while so acting, shall have all the powers and perform all the duties of the President.

(2) Whenever:

- (a) a Commissioner for a party is -
  - (i) absent from Australia or from duty,
  - (ii) unable for any reason to attend a meeting of the Commission, or
  - (iii) acting in the place of the President as Deputy President, or
  - (iv) otherwise unable to perform the duties of a Commissioner; or
- (b) there is a vacancy in the office of a Commissioner,

a Deputy Commissioner for that party shall act in the place of that Commissioner, and while so acting, shall have all the powers and perform all the duties of that Commissioner.

## **Powers and Duties of the President**

24. (1) The President has such powers and duties as may be specified or conferred upon the President by:
- (a) this Agreement;
  - (b) the Ministerial Council; and
  - (c) the Commission,

or as may be delegated to the President under sub-clause 34(1).

(2) Powers or duties specified or conferred upon the President:

- (a) by the Ministerial Council may be revoked by the Ministerial Council;
- (b) by the Commission may be revoked by a majority vote of the Commissioners.

(3) Specifying or conferring a power on the President under this clause does not prevent the exercise of that power by the Ministerial Council or the Commission, as the case may be.

(4) When the President exercises a power specified or conferred under this clause it is deemed to have been exercised by the Ministerial Council or the Commission, as the case may be.

## **Powers of Commissioners**

25. Except as provided in this Agreement or any Schedule, Commissioners have equal powers.

## **Conditions of Appointment and Remuneration of the President**

26. (1) The Ministerial Council may, from time to time:
- (a) determine the terms of employment or engagement and remuneration of the President; and
  - (b) if necessary, provide for the superannuation of the President.
- (2) The President shall be responsible to the Ministerial Council for the proper execution of the President's powers and duties.
- (3) Any payments made pursuant to sub-clause 26(1) shall be borne by the Contracting Governments in equal shares.

## **Remuneration of Commissioners and Deputy Commissioners**

27. Each Commissioner or Deputy Commissioner shall be paid by the Contracting Government by whose Governor-General or Governor (as the case may be) the Commissioner or Deputy Commissioner has been appointed such remuneration, allowances or expenses (if any) as shall be determined by or under any applicable law, or, in the absence of such law, by that Contracting Government.

## **Removal from Office**

28. (1) The President or Deputy President may at any time be removed from office by the unanimous vote of the Ministerial Council.
- (2) A Commissioner or Deputy Commissioner for the Commonwealth may at any time be removed from office by the Governor General.
- (3) A Commissioner or a Deputy Commissioner for a State may at any time be removed from office by the Governor of that State.

## **Resignation**

29. (1) The President or Deputy President may at any time tender resignation of that appointment in writing addressed to the Chairperson of the Ministerial Council.
- (2) A Commissioner or a Deputy Commissioner for the Commonwealth may at any time tender resignation of that appointment in writing addressed to the Governor General.
- (3) A Commissioner or Deputy Commissioner for a State may at any time tender resignation of that appointment in writing addressed to the Governor of that State.

(4) Resignation tendered under this clause shall only take effect upon its acceptance by the Chairperson of the Ministerial Council, the Governor-General or the Governor, as the case may be.

## **Vacancies**

30. (1) Whenever a vacancy occurs in the office of the President or Deputy President, the Ministerial Council shall appoint a person to the vacant office.
- (2) Wherever a vacancy occurs in the office of a Commissioner or Deputy Commissioner the Governor-General or the Governor of a State shall appoint a person to the vacant office, as the case requires.

## **Validity of Proceedings**

31. No act, proceeding or determination of the Commission shall be invalid on the ground only of any defect in the appointment of the President, the Deputy President, any Commissioner or Deputy Commissioner.

## **Meetings of the Commission**

32. (1) The President and the Commissioners may meet together for the transaction of the Commission's business and may adjourn any meeting.
- (2) The President or any Commissioner may at any time call a meeting of the Commissioners.
- (3) The President shall preside at all meetings of the Commission at which the President is present.
- (4) The Deputy President shall preside at any meeting of the Commission at which the President is not present.
- (5) The presiding member shall not have a deliberative vote but shall have a casting vote as provided in sub-clauses 34(2) and 96(2).
- (6) The two Commissioners for a Contracting Government shall have a joint vote, exercisable in the absence of one by the other.
- (7) The presiding member and one Commissioner for each Contracting Government shall be a quorum.
- (8) Except as provided on sub-clauses 17(3), 34(2) and 96(2) a resolution before the Commission will be carried only by a unanimous vote of all Commissioners present who, with the presiding member, constitute a quorum.
- (9) The Commission must, subject to this Agreement, determine its own procedure.
- (10) The Commission must keep proper minutes of its proceedings.

## **Resolutions Other than at Meetings**

33. (1) The Commission may make a resolution other than at a duly convened meeting.
- (2) Before a resolution is made pursuant to sub-clause 33(1):
- (a) the text of the proposed resolution must be referred to one or more Commissioners nominated by each Contracting Government; and
- (b) that Commissioner or those Commissioners must approve the text of the proposed resolution.
- (3) A resolution under this clause shall be made at the time when each Commissioner referred to in sub-clause 33(2) has signified approval of the resolution to an officer authorised by the Commission.
- (4) A Commissioner may signify approval of a resolution by any means, provided that:
- (a) approval by telephone must be signified in person by the Commissioner; and
- (b) approval in writing must be by letter or facsimile transmission which has been dated and signed by the Commissioner.
- (5) Notwithstanding the provisions of sub-clause 33(2)(b) approval to a proposed resolution by the Deputy Commissioner acting under clause 23 shall be valid for all purposes.
- (6) A resolution made under this clause must be duly recorded and a copy sent to each Commissioner within 21 days of the resolution being made.

## **Delegation**

34. (1) The Commission may either generally or in relation to a matter or class of matters by resolution of the Commission delegate to the President, any Commissioner or any officer any of its powers under this Agreement, except this power of delegation.
- (2) A delegation under sub-clause 34(1) may be revoked by a majority vote of the Commissioners or, if the voting is equally divided, by the casting vote of the presiding member.
- (3) A delegation of any power pursuant to this clause shall not prevent the exercise of that power by the Commission.
- (4) A power so delegated, when exercised by the delegate, shall, for the purposes of this Agreement, be deemed to have been exercised by the Commission.

## **Appointment of Committees**

35. (1) The Commission may, from time to time, appoint such temporary or standing committees as it shall see fit.
- (2) A committee shall have such members, terms of reference, powers and functions as the Commission determines.

## **Employees of the Commission**

36. The Commission may, from time to time, as it sees fit:
- (a) employ and dismiss people;
  - (b) engage employment agencies to provide staffing services;
  - (c) engage consultants;
  - (d) determine the terms and manner of employment of people or engagement of consultants and their remuneration; and
  - (e) provide for the superannuation of people employed by it.

### **Employment of Officers in Public Service or in Statutory Authorities**

37. (1) The Commission may, with the consent of the Minister controlling any Department of the Public Service of any Contracting Government and on such terms as may be mutually arranged, make use of the services of any of the officers of that Department.
- (2) The Commission may, with the approval of a public authority and on such terms as may be mutually arranged, make use of the services of any officer of that public authority.

### **Liability for Acts of the President, the Commissioners and Officers**

38. (1) The Contracting Governments shall jointly indemnify the President or the Deputy President, in respect of any act or omission of the President or Deputy President, and for any losses or costs incurred by either of them, in the bona fide execution of the powers vested in the President, the Deputy President or the Commission by or under this Agreement or any Act approving the same.
- (2) Each Contracting Government must indemnify the Commissioners and Deputy Commissioners appointed by the Governor-General or the Governor of its State, as the case may be, in respect of any act or omission of any of those Commissioners or those Deputy Commissioners, and for any losses or costs incurred by any of them, in the bona fide execution of the powers vested in the Commission by or under this Agreement or any Act approving the same.
- (3) The Contracting Governments must jointly indemnify each officer in respect of any act or omission of, and for any losses incurred by that officer in the bona fide execution of that person's duties as an officer of the Commission.
- (4) Any payments made pursuant to sub-clause 38(1) or 38(3) must be borne by the Contracting Governments in equal shares.

## PART V — INVESTIGATION, MEASUREMENT AND MONITORING

### Investigations and Studies

39. (1) The Commission may co-ordinate, carry out or cause to be carried out surveys, investigations and studies regarding the desirability and practicability of works or measures for the equitable, efficient and sustainable use of water, land and other environmental resources of the Murray-Darling Basin, including but not limited to works or measures for:
- (a) the conservation and regulation of river water;
  - (b) the protection and improvement of the quality of river water;
  - (c) the conservation, protection and management of aquatic and riverine environments; and
  - (d) the control and management of groundwater which may affect the quality or quantity of river water.
- (2) The Commission may, without further approval of any Contracting Government, carry out, or cause to be carried out surveys, investigations or studies pursuant to sub-clause 39(1) on or adjacent to:
- (a) **the upper River Murray; and**
  - (b) the River Murray in South Australia.
- (3) Except as provided in sub-clause 39(2), the Commission must not carry out or cause to be carried out surveys, investigations or studies within the territory of any State without:
- (a) informing the Ministerial Council of the proposed surveys, investigations and studies; and
  - (b) obtaining the consent of that State Contracting Government.
- (4) The Commission may initiate proposals for works or measures resulting from surveys, investigations or studies carried out under this clause.
- (5) If the implementation of any proposal is likely significantly to affect water, land or other environmental resources under the control, supervision or protection of a Contracting Government or a public authority responsible to that Contracting Government, the Commission must -
- (a) inform the Ministerial Council of the likelihood;
  - (b) consider any submissions made by that or any other Contracting Government, or public authority; and
  - (c) report to the Ministerial Council on any such submissions and the result of the Commission's consideration thereof.



## **Monitoring**

40. The Commission:
- (a) must, from time to time, advise the Ministerial Council on the adequacy and effectiveness of the arrangements for monitoring; and
  - (b) subject to Clause 42, may establish, maintain and operate effective means for monitoring:
    - the quality, extent, diversity and representativeness of water, land and other environmental resources of the Murray-Darling Basin, including but not limited to -
      - (i) aquatic and riverine environments, and
      - (ii) the effect of groundwater on water, land and other environmental resources.

## **Measurements of Water Quantity and Quality**

41. The Commission must establish, maintain and operate an effective and uniform system:
- (a) for making and recording continuous measurements of -
    - (i) the flow of the River Murray, and tributaries of the River Murray within the boundaries of each State, and
    - (ii) the volume of stored water,at such locations as the Commission deems necessary to determine the volume of the intake from the several portions of the drainage area of the River Murray, the flow at selected locations along the River Murray and the losses from selected reaches of the River Murray, with their positions and modes of occurrence;
  - (b) for making and recording continuous measurements of all diversions, whether natural or artificial, or partly natural and partly artificial, from the River Murray and its tributaries; and
  - (c) for measuring and monitoring the quality of -
    - (i) River Murray water,
    - (ii) water in tributaries of the River Murray at such locations at or near the confluence of each of those tributaries with the River Murray as the Commission, after consultation with the appropriate authorities of each of the Contracting Governments, deems necessary, and
    - (iii) stored water.

## **Need for Approval in Certain Cases**

42. (1) The Commission may, without further approval of any Contracting Government, establish, maintain and operate any system or means referred to in clauses 40 and 41 on or adjacent to:
- (a) the upper River Murray; and

- (b) the River Murray in South Australia.
- (2) Except as provided in sub-clause 42(1), the Commission must not establish, maintain or operate any system or means referred to in clauses 40 and 41 within the territory of any State without:
  - (a) informing the Ministerial Council of the proposed system or means; and
  - (b) obtaining the consent of that State Contracting Government.

### **Power to Arrange Data in Lieu**

- 43. Instead of establishing, maintaining or operating systems and means referred to in clauses 40 and 41, the Commission may:
  - (a) adopt the results of any measurements or monitoring made by any Contracting Government; or
  - (b) request a State Contracting Government to carry out any monitoring or measurement within its territory in such manner as the Commission considers necessary.

### **Water Quality Objectives**

- 44. The Commission must formulate water quality objectives for the River Murray and make recommendations with respect thereto to the Ministerial Council.

### **Recommendations re Water Quantity and Quality**

- 45. The Commission may make recommendations to the Contracting Governments, any authority, agency or tribunal of a Contracting Government, or the Ministerial Council, concerning any matter, including the carrying out of any works or measures by a Contracting Government, which, in the opinion of the Commission, may in any way affect the quality or quantity of the waters of the River Murray or the stored water and shall inform the Ministerial Council of the recommendations at the time they are made.

### **Commission to be Informed of New Proposals**

- 46. (1) Whenever a Contracting Government or a public authority is considering any proposal which may significantly affect the flow, use, control or quality of any water in the upper River Murray and in the River Murray in South Australia, that Contracting Government must, or must ensure that the public authority shall:
  - (a) inform the Commission of the proposal; and
  - (b) provide the Commission with all necessary information and data to permit it to assess the anticipated effect of the proposal on the flow, use, control or quality of the water.

(2) The necessary information and data must be provided in sufficient time to allow the Commission:

- (a) to assess the possible effect of the proposal on the flow, use, control or quality of that water; and
- (b) to make representations thereon to that Contracting Government or public authority,

before the Contracting Government or public authority decides if the proposal will proceed.

(3) The Commission shall consult with each Contracting Government, and with any public authority responsible to a Contracting Government which that Contracting Government or the Commission considers is likely to consider a proposal of the type referred to in sub-clause 46(1), with a view to reaching agreement with that Contracting Government, or that public authority, as to:

- (a) the types of proposals to which sub-clause 46(1) shall apply; and
- (c) the criteria to be used in assessing those proposals to which sub-clause 46(1) applies.

(4) Despite sub-clause 46(3), sub-clauses 46(1) and 46(2) apply to any proposal referred to in clause 24 of Schedule G.

## **Environmental Assessment**

47. The Commission must, in exercising its powers or functions, or in implementing works or measures under this Agreement, examine and take into account any possible effects which the exercise of those powers or functions or those works or measures may have on water, land and other environmental resources within the Murray-Darling Basin.

## **Protection of Catchment of Hume Reservoir**

48. (1) The State Contracting Governments of New South Wales and Victoria must take effective measures to protect the portions of the catchment of the Hume Reservoir within their respective States from erosion.
- (2) Each of those Contracting Governments must, before the end of June in each year, forward a report to the Commission on:
- (a) the condition of the portion of the catchment of the Hume Reservoir within its territory;
  - (b) the measures taken and work carried out during the twelve months to the end of March immediately preceding; and
  - (c) particulars of the measures and works proposed for the next twelve months.

(3) The Commission must, from time to time, inspect or cause to be inspected such portions of the catchment of the Hume Reservoir as it thinks fit and may indicate at any time whether in its opinion the measures taken and works carried out are effective. If, on any inspection, the Commission considers that any of those measures or works are ineffective, it must notify the Contracting Government concerned which must, to the extent that it may be practicable, take action to make those measures and works effective.

(4) Measures, works and action taken or carried out by a Contracting Government pursuant to sub-clause 48(1) or 48(3) shall be paid for by that Contracting Government.

(5) If at any time the Commission considers that there is need for special action to protect the catchment of the Hume Reservoir from erosion, other than, or in addition to, the measures, works and action taken or carried out under sub-clauses 48(1) and 48(3), the Commission may require the Contracting Government, in whose territory the special action is to be carried out, to investigate the position and to take such special action as may be required by the Commission.

## **PART VI — CONSTRUCTION, OPERATION AND MAINTENANCE OF WORKS**

### **Works and Measures Subject to the Agreement**

49. Works or measures from time to time included in a Schedule to this Agreement or authorised pursuant to clause 50 must be constructed, operated, maintained or implemented (as the case may require) in accordance with the provisions of this Agreement and any Acts approving the same.

### **Authorisation of Further Works or Measures**

50. (1) The Ministerial Council, or the Commission may authorise:
- (a) the construction of any works in addition to works set out in Schedule A;
  - (b) the improvement of any works constructed under this Agreement;
  - (c) the replacement of any works constructed under this Agreement;
  - (d) work to remedy the extraordinary failure of part or all of any work constructed under this Agreement; and
  - (e) the implementation of any measures, to promote the equitable efficient and sustainable use of the water, land and environmental resources of the Murray-Darling Basin, as provided in this clause.
- (2) The Commission may authorise the execution of any work or the implementation of any measure pursuant to this clause which is estimated to cost not more than \$2,000,000.
- (3) The Ministerial Council may authorise the execution of any work or the implementation of any measure pursuant to this clause which is estimated to cost more than \$2,000,000.

(4) All provisions of this Agreement apply mutatis mutandis to any work or measure approved under this clause.

(5) When any work or measure is authorised pursuant to sub-clauses 50(2) or 50(3), the Commission or the Ministerial Council, as the case may be, must nominate which of the Contracting Governments shall be responsible for:

(a) the construction, operation and maintenance of such work; or

(b) the implementation of such measure, in whole or in part.

(6) The Ministerial Council may:

(a) resolve to include any works or measures authorised pursuant to sub-clause 50(1) in a Schedule to the Agreement; and

(b) approve any Schedule prepared or amended pursuant to paragraph 50(6)(a).

(7) When a Schedule is approved by the Ministerial Council under paragraph 50(6)(b) it thereupon becomes part of the Agreement, which is deemed to have been amended accordingly.

(8) Paragraph 6(b) applies to any amendment of the Agreement made pursuant to sub-clause 50(7).

## **Ancillary, Preventative and Remedial Works**

51. (1) On the application of a Commissioner, the Commission may meet, or contribute to the costs of, or associated with:

(a) the construction, operation or maintenance of-

(i) any works of a Contracting Government ancillary to the works constructed pursuant to this Agreement or the former Agreement, and

(ii) any preventative or remedial works of a Contracting Government necessitated by, or arising from, the construction or operation of works constructed pursuant to this Agreement or the former Agreement;

(b) the acquisition by a Contracting Government of any interest in land necessary for the construction, operation or maintenance of those ancillary, preventative or remedial works, or for the provision of flood easements, and

(c) remedying any actual or anticipated damage or injury occasioned by the construction, operation or maintenance of any works provided for in this Agreement or the former Agreement.

(2) Before meeting, or contributing to the costs of, or associated with the construction of any works or the acquisition of any interest in land estimated to cost more than \$1,000,000 pursuant to sub-clause 51(1), the Commission must obtain the consent of the Ministerial Council.

## **Preparation and Submission of Designs etc of Works for Commission Approval**

52. (1) A Contracting Government nominated to construct a work pursuant to this Agreement must submit a general scheme of the work to the Commission for its approval.
- (2) Before beginning to construct that work, the Contracting Government must submit designs, specifications and estimates of the work to the Commission for its approval.
- (3) The Commission may approve the general scheme, designs, specifications or estimates with or without alterations or additions, or may, from time to time, refer any of them for amendment to the Contracting Government submitting them.
- (4) The Contracting Government must carry out an authorised work in accordance with:
- (a) the designs and specifications approved by the Commission; and
  - (b) any directions given by the Commission pursuant to clause 55.
- (5) Where any work is estimated to cost more than \$2,000,000:
- (a) the Commission must inform the Ministerial Council of the general scheme of the work and the general method of its proposed construction; and
  - (b) the work shall not proceed unless the general scheme of the work and the general method of its proposed construction accord with the purposes for which the work was authorised.

## **Submission of Details of Measures for Commission Approval**

53. (1) A Contracting Government nominated to implement any measure pursuant to this Agreement must submit:
- (a) a general description of the measure and of the method of implementing it;
  - (b) the estimated cost of implementing the measure; and
  - (c) proposed arrangements for sharing the costs of implementing the measure among the Contracting Governments, to the Commission for its approval.
- (2) The Contracting Government must implement an authorised measure in accordance with:
- (a) those matters approved by the Commission under sub-clause 53(1);
  - (b) any directions given by the Commission pursuant to clause 55.

## **Commission and Ministerial Council Approval of Certain Tenders**

54. (1) A Constructing Authority must obtain approval of the Ministerial Council before accepting any tender relating to this Agreement for any amount exceeding \$2,000,000.
- (2) If the concept or design of any work or measure or any changes thereto cause the total estimated cost of the work or measure to rise by more than 10% of the amount of the accepted tender, the Commission must:
- (a) immediately notify the Ministerial Council; and
  - (b) if the Ministerial Council does not agree that the work or measure should proceed within one month of being notified of the increased estimated cost, direct the Constructing Authority to suspend further action on that work or measure.

### **Directions for the Efficient Construction etc of Works**

55. (1) The Commission may give directions to ensure:
- (a) the efficient construction, operation, maintenance and required performance of any work; and
  - (b) the efficient implementation of any measures, authorised pursuant to this or the former Agreement.
- (2) A Constructing Authority must give effect to any directions given to it by the Commission under sub-clause 55(1).
- (3) The Commission may direct:
- (a) if necessary, what shall be regarded as construction or maintenance for the purpose of clause 65; and
  - (b) the doing of such acts or things as it considers necessary to ensure that the provisions of this Part are observed.
- (4) In exercising its power under paragraph 55(3)(a), the Commission must not direct that any of the following description of work shall be regarded as maintenance:
- (a) the execution of any improvement to the design or function of any existing work;
  - (b) the replacement of the whole of any existing work;
  - (c) work to remedy the extraordinary failure of part or all of any existing work.

### **States to Facilitate Construction and Operation Within Their Territories**

56. A State Contracting Government must grant all powers, licences or permissions with respect to its territory as may be necessary for:
- (a) the construction, operation or maintenance of any works;
  - (b) the implementation of any measures; or

(c) the carrying out of any operation,

required to be undertaken by any other Contracting Government or a public authority pursuant to this Agreement.

### **Works for Benefit of State Contracting Governments**

57. (1) Any State Contracting Government which, either alone or jointly with another Contracting Government, proposes to carry out any work not provided for by this Agreement within the banks of the River Murray in South Australia or the upper River Murray, must submit particulars of the proposal, including plans of the proposed work, to the Commission.

(2) Sub-clause 57(1) does not apply to the Great Darling Anabranch.

(3) The Commission may approve the plans of the proposed work with or without alteration.

(4) The Commission may from time to time stipulate conditions for the operation of any work constructed under this clause which:

(a) provides for the storage of water; or

(b) will affect the flow, use, control or quality of the water of the River Murray, in so far as that operation may affect regulation of the flow or the quality of the water.

(5) The cost of constructing, operating and maintaining works proposed pursuant to this clause must be borne by:

(a) the State Contracting Government proposing the work; or

(b) the Contracting Governments jointly proposing the work in such proportion as may be agreed between those Contracting Governments.

(6) A State Contracting Government must operate any work carried out pursuant to this clause in such manner as the Commission may require from time to time.



## **Declaration that Works or Measures are Effective**

58. At any time after construction of any work or implementation of any measure authorised pursuant to sub-clause 50(1) has commenced, the Commission may declare that work or measure to be effective for the purposes of this Agreement.

## **Maintenance of Works**

59. A Contracting Government nominated to construct a work pursuant to this or the former Agreement must maintain it and keep it effective for its original purpose, unless it has been declared ineffective pursuant to clause 64.

## **Procedures for Operation of Works**

60. The Commission may, from time to time, determine procedures for the operation of works constructed or measures implemented pursuant to this or the former Agreement.

## **Dredging and Snagging**

61. (1) The Commission may from time to time direct that the River Murray upstream of any weir constructed pursuant to this or the former Agreement be dredged or snagged for such distance as the Commission may determine.
- (2) The distance determined pursuant to sub-clause 61(1) must not exceed the distance to which the navigability of the River Murray is affected by the weir.
- (3) The Contracting Government which constructed the weir must, carry out the Commission's direction and meet the cost involved, unless the Commission resolves to meet the whole or part of the cost.

## **Operation of Works**

62. (1) The Contracting Government which constructed a work under this or the former Agreement must:
- (a) operate it in accordance with any procedures determined by the Commission under clause 60;
- (b) if the work is a lock, maintain immediately downstream of the lock such depth of water -
- (i) as is sufficient for navigation of vessels drawing 1.4 metres of water, or
- (ii) such other depth determined by the Commission under clause 123,
- except when the lock is closed for maintenance or when there is an emergency.

(2) Paragraph 62(1)(b) does not apply to Weir and Lock No.26 Torrumbarry nor to Weir and Lock No.15 Euston.

### **Performance of Joint Duties**

63. Where Contracting Governments are jointly under a duty to operate or maintain any works or implement any measures or to carry out any operation, any questions as to which Government is to perform that duty or carry out that operation shall be resolved:
- (a) by mutual agreement; or
  - (b) if agreement is not possible, by the Commission.

### **Ineffective Works**

64. (1) The Commission may at any time declare ineffective the whole or part of any work or measure which is subject to this or the former Agreement.
- (2) The State Contracting Government which operates or maintains any work declared to be ineffective must dismantle so much of that work as the Commission may require.

## **PART VII — FINANCE**

### **Apportionment of Costs**

65. (1) The Ministerial Council, after considering any recommendation by the Commission, must determine what contribution, if any, is to be made by any State becoming a party pursuant to clause 134 to the costs referred to in sub-clauses 65(2) and 65(3).
- (2) Unless the Ministerial Council decides otherwise, the Contracting Governments, other than the Government of any State becoming a party pursuant to clause 134, must share equally the cost of:
- (a) executing works set out in Schedule A;
  - (b) studies, programmes, surveys and investigations carried out pursuant to clause 39,
  - (c) establishing systems referred to in clause 41;
  - (d) systems established pursuant to a request made under paragraph 43(b);
  - (e) special action taken under sub-clause 48(5) which the Ministerial Council has determined pursuant to sub-clause 65(4) is to be borne by Contracting Governments in equal shares;
  - (f) constructing works and implementing measures authorised under sub-clause 50(1);
  - (g) any payment made by the Commission in respect of the construction of works under sub-clause 51(1);

- (h) complying with a direction given under sub-clause 54(2);
- (i) dismantling works referred to in sub-clause 64(2);
- (j) any payment made by the Commission under paragraph 131(a); and
- (k) administrative and other expenses of the Commission, the Ministerial Council and the Community Advisory Committee constituted under sub-clause 14(1), less any contributions to those costs determined by the Ministerial Council under sub-clause 65(1).

(3) Unless the Ministerial Council decides otherwise, the State Contracting Governments, other than the Government of any State becoming a party pursuant to clause 134, must share equally the cost of:

- (a) operating and maintaining works set out in Schedule A;
- (b) operating and maintaining systems referred to in clause 41;
- (c) operating and maintaining systems established pursuant to a request made under paragraph 43(b);
- (d) operating and maintaining works authorised under sub-clause 50(1);
- (e) special action taken under sub-clause 48(5) which the Ministerial Council has determined pursuant to sub-clause 65(4) is to be borne by each State Contracting Government in equal shares;
- (f) any payment made by the Commission in respect of the operation or maintenance of works under sub-clause 51(1);
- (g) such dredging or snagging carried out under clause 61 which the Commission has resolved to meet; and
- (h) any payment made by the Commission under paragraph 131(b), less any contributions to those costs determined by the Ministerial Council under sub-clause 65(1).

(4) The Ministerial Council, after considering any recommendation by the Commission, must determine whether the cost of any special action taken under sub-clause 48(5) is to be borne in equal shares by:

- (a) each Contracting Government; or
- (b) each State Contracting Government, other than the Government of any State becoming a party pursuant to clause 134.

## **Financial Year**

66. The financial year of the Commission is from 1 July to 30 June.

## **Annual and Forward Estimates**

67. (1) The Commission must prepare:
- (a) detailed annual estimates of its known and anticipated expenditure for the next financial year; and
  - (b) forward estimates of its known and anticipated expenditure for the two successive financial years following the next financial year.
- (2) Annual and forward estimates must:
- (a) be in such form as may from time to time be agreed between the Commission and the Ministerial Council;
  - (b) show the estimated amount to be contributed by each Contracting Government;
  - (c) be sent to each Contracting Government before the end of March in each year;
  - (d) be approved by the Ministerial Council.

## **Supplementary Estimates**

68. (1) The Commission must prepare supplementary estimates of any expenditure projected by the Commission which:
- (a) will exceed the amount set out in the annual estimates; and
  - (b) cannot be provided for under sub-clause 72(2).
- (2) Supplementary estimates must:
- (a) be in such form as may from time to time be agreed between the Commission and the Ministerial Council;
  - (b) show the estimated amount to be contributed by each Contracting Government;
  - (c) be sent to each Contracting Government;
  - (d) be approved by the Ministerial Council.

## **Payments by Contracting Governments**

69. (1) Each Contracting Government must pay its share of the annual and supplementary estimates, as and when required by the Commission.
- (2) The Commission must not require payment of moneys relating to the construction of any works or implementation of any measures referred to in sub-clause 50(1) until construction or implementation has been authorised in accordance with that sub-clause.

## **Proper Accounts to be Kept**

70. The Commission must ensure that:
- (a) proper accounts and records are kept of its transactions and affairs;
  - (b) all payments from its moneys are properly authorised and made;
  - (c) assets of, or in the custody of, the Commission are adequately controlled; and
  - (d) the incurring of liabilities by the Commission is adequately controlled.

### **Commission to Account**

71. The Commission must account to the Ministerial Council and each Contracting Government for all moneys received from the Contracting Governments under this Agreement.

### **Application of Moneys by Commission**

72. (1) Except as provided in this clause and clause 75, the Commission must apply money received under clause 69 in accordance with the annual or supplementary estimates, as the case may be.
- (2) In any financial year, the Commission may, as it sees fit:
- (a) spend any anticipated savings on an item in the annual or supplementary estimates on any item which it anticipates will be overspent;
  - (b) advance sums to any Constructing Authority, public authority or person for expenditure in accordance with the annual or supplementary estimates in that, or any subsequent financial year;
  - (c) advance working capital to a Constructing Authority and replenish amounts expended from that advance from time to time.
- (3) Anticipated savings on any item to which all Contracting Governments contributed must only be expended on another item to which all Contracting Governments would be obliged to contribute under sub-clause 65(2).
- (4) Anticipated savings on any item to which only the State Contracting Governments contributed must only be expended on another item to which only the State Contracting Governments would be obliged to contribute under sub-clause 65(3).

### **Payments by Commission to Constructing Authorities**

73. (1) The Commission must each year, and in accordance with the annual and supplementary estimates, pay to any Constructing Authority required by the Agreement:
- (a) to construct, operate or maintain any works;
  - (b) to carry on any operation;
  - (c) to implement any measures,
- an amount sufficient to defray either -

(i) the whole cost, or  
(ii) in the case of the cost referred to in paragraph 131(b), three quarters of the cost,  
to be incurred by the Constructing Authority for those purposes in that year.

(2) The Commission must make the payments required under sub-clause 73(1) at such times and in such manner as is agreed between the Commission and the Constructing Authority.

(3) The Commission must not make any payment relating to the construction of any works or implementation of any measures referred to in sub-clause 50(1) until construction or implementation has been authorised in accordance with that sub-clause.

## **Contracting Governments to Account**

74. Each Contracting Government and any public authority must account to the Commission for all moneys received from the Commission under this Agreement.

## **Unexpended Balances**

75. (1) The unexpended balance of moneys paid to the Commission by Contracting Governments pursuant to sub-clause 69(1) in any financial year:

- (a) shall, with the approval of the Ministerial Council, be available for expenditure during the ensuing financial year upon any item in the annual or supplementary estimates for -
- (i) the year in which the moneys have not been expended,  
(ii) that ensuing financial year;
- (b) may be used to reduce the amounts which would otherwise be payable by each Contracting Government under sub-clause 69(1) in that ensuing financial year.

(2) The Commission must notify Contracting Governments of any unexpended balances held by it at the end of any financial year.

(3) The unexpended balance of moneys contributed by a Contracting Government must only be expended on items to which that Contracting Government is obliged to contribute under clause 65.

## **List of Assets**

76. (1) Except as provided in sub-clause 76(2) the Commission must keep a list of assets acquired by:

- (a) the Commission;  
(b) a Constructing Authority with funds provided by the Commission.

(2) The Commission need not keep a list of assets referred to in paragraph 76(1)(b) if it is satisfied that:

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

- (b) copies of those records will be provided to the Commission at its request.

## **Disposal of Surplus Assets**

- 77. (1) The Commission may direct when and how surplus assets acquired by the Commission, or by a Constructing Authority with funds provided by the Commission, shall be disposed of.
  - (2) The Commission must determine how proceeds from the disposal of surplus assets are to be distributed among the Contracting Governments, having regard to the contributions made by each Contracting Government to the acquisition of those assets.

## **Audit**

- 78. (1) The Commission's accounts, financial records and records of assets:
  - (a) must, subject to sub-clause 78(2), be audited annually by the Commonwealth auditor;
  - (b) may be audited at any reasonable time by a State auditor.
- (2) The Commonwealth auditor may choose to dispense with all or any of the audit required by paragraph 78(1)(a).
- (3) The Commonwealth auditor must promptly inform each Contracting Government of any significant irregularity revealed by an audit under paragraph 78(1)(a).
- (4) The Commission must, at all reasonable times, make all its relevant accounts and records available to an auditor or any person acting on behalf of the auditor acting under sub-clause 78(1).
- (5) An auditor acting under sub-clause 78(1) or any person acting on behalf of the auditor, may copy, or take extracts from, any relevant accounts or records of the Commission.
- (6) The Commission and its officers must provide an auditor acting under sub-clause 78(1) or any person acting on behalf of the auditor, with such information to which the Commission or its officers have access, as the auditor considers necessary for that audit.
- (7) An auditor acting under sub-clause 78(1) must report to each Contracting Government, to the Ministerial Council and to the Commission.

## **Bank Accounts**

79. (1) The Commission may open and operate such bank accounts with such banks as it sees fit.
- (2) The Commission must pay all money received by it into an account referred to in sub-clause 79(1).

## **Investment**

80. (1) The Commission may invest money not immediately required for the purposes of the Agreement on fixed deposit with such banks as it sees fit.
- (2) Interest received under sub-clause 80(1) may be:
- (a) spent by the Commission on items included in the annual or supplementary estimates for the year in which it is received; or
  - (b) applied in accordance with clause 75.
- (3) Interest received on money contributed by all Contracting Governments, or by a State Contracting Government under clause 81, may be:
- (a) expended on items in the annual or supplementary estimates for the year in which it is received, to which all Contracting Governments are obliged to contribute under sub-clause 65(2); or
  - (b) applied in accordance with clause 75.
- (4) Interest received on money contributed only by State Contracting Governments, or by one of them under clause 82, may be:
- (a) expended on items in the annual or supplementary estimates for the year in which it is received, to which only the State Contracting Governments are obliged to contribute under sub-clause 65(3); or
  - (b) applied in accordance with clause 75.

## **Revenue**

81. (1) Any money received by a Contracting Government or a public authority from the use of works subject to this Agreement (other than tolls referred to in clause 82) must be paid to the Commission.
- (2) The Commission may provide and charge for goods and services incidental to its functions which are not otherwise provided for in this Agreement.
- (3) Money paid to the Commission under this clause may be:



- (a) expended on items in the annual or supplementary estimates for the year in which it is received, to which all Contracting Governments are obliged to contribute under sub-clause 65(2); or
- (b) applied in accordance with clause 75.

## **Tolls**

82. (1) Tolls prescribed by the Commission for the use of weirs and locks subject to this Agreement must be collected by the State Contracting Government which operates the weir and lock.
- (2) Except as provided in sub-clause 82(1), tolls must not be collected in respect of navigation on the River Murray.
- (3) Any moneys collected under sub-clause 82(1) must be paid to the Commission.
- (4) Money paid to the Commission under sub-clause 82(3) may be:
- (a) expended on items in the annual or supplementary estimates for the year in which it is received, to which all State Contracting Governments are obliged to contribute under sub-clause 65(3); or
  - (b) applied in accordance with clause 75.

## **Compensation for Damage by Works**

83. The Contracting Governments must meet, in equal shares, any compensation for damage paid by a Constructing Authority pursuant to an Act approving this Agreement:
- (a) caused or arising from anything done by it in constructing, operating or maintaining any works or executing any measures provided for in this Agreement; and
  - (b) which has not been met or contributed to by the Commission under paragraph 51(1)(c).

## **PART VIII — REPORTS**

### **Preparation of Reports**

84. (1) As soon as practicable after the end of each financial year, the Commission must send to the Ministerial Council:
- (a) a report on -
    - (i) the proceedings and activities of the Commission for that year,
    - (ii) the extent to which the objectives, policies or plans of the Commission have been achieved or realised in that year, and
    - (iii) the objectives, policies or plans of the Commission for future years; and
  - (b) its audited financial statements for that year.

- (2) The Commission may send the report referred to in paragraph 84(1)(a) and its financial statements for any year to the Ministerial Council at the same time or at different times.
- (3) The Commission must send its financial statements to the Commonwealth auditor.
- (4) The Commonwealth auditor must report to the Ministerial Council:
  - (a) whether, in the auditor's opinion, the statements are based on proper accounts and records;
  - (b) whether the statements are in agreement with the accounts and records;
  - (c) whether, in the auditor's opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Agreement; and
  - (d) as to such other matters arising out of the statements as the Commonwealth auditor considers should be reported to the Ministerial Council.

## **PART IX — PROCEEDINGS IN DEFAULT**

### **Failure to Perform Works or Contribute Cost**

- 85. (1) The Commission must immediately notify the Ministerial Council and each other Contracting Government if any Contracting Government fails, after being so required by the Commission to:
  - (a) do anything in relation to any works or measures; or
  - (b) pay any money to the Commission,
 which it is obliged to do or pay under this Agreement.
- (2) The Commission may authorise one or more of the Contracting Governments which is not in default wholly or partly to make good any failure which relates to:
  - (a) the construction, operation or maintenance of any works;
  - (b) the carrying on of any operation; and
  - (c) the implementation of any measures.
- (3) A Contracting Government authorised by the Commission under sub-clause 85(2):
  - (a) may enter the territory of the defaulting Contracting Government to do whatever it has been authorised to do by the Commission;

- (b) shall be deemed to have all powers, licences and permissions as are required from the defaulting Contracting Government to do whatever it has been authorised to do by the Commission;
  - (c) shall be deemed to have all the rights and powers of a Constructing Authority, including the right to receive any payment due under clause 73, in respect of whatever it has been authorised to do by the Commission; and
  - (d) may, in a court of competent jurisdiction, recover, as a debt due from the defaulting Contracting Government, all money reasonably expended by it in doing whatever it has been authorised to do by the Commission and which has not been paid to it by the Commission by virtue of the right conferred by paragraph 85(3)(c), together with interest at the prescribed rate.
- (4) A defaulting Contracting Government shall once more be deemed to be the Constructing Authority when:
- (a) any failure referred to in paragraph 85(1)(a) has been made good; and
  - (b) it has paid all money payable by it under paragraph 85(3)(d).
- (5) Unless the Commission decides otherwise in any particular case, a Contracting Government which fails to pay money due under clause 69 to the Commission by the due date is liable to pay interest on any outstanding balance at the prescribed rate.
- (6) Any other Contracting Government:
- (a) may pay the outstanding balance owed by a Contracting Government under clause 69, together with interest at the prescribed rate; and
  - (b) may recover the amount so paid in a court of competent jurisdiction as a debt due from the defaulting Contracting Government.
- (7) Any interest paid to the Commission in respect of outstanding amounts due under sub-clause 65(2) must be paid to the Contracting Governments not in default in equal shares.
- (8) Any interest paid to the Commission in respect of outstanding amounts due under sub-clause 65(3) must be paid to the State Contracting Governments not in default in equal shares.
- (9) Any interest payable under this clause shall be calculated from the due date to the date of actual payment.

## **PART X — DISTRIBUTION OF WATERS**

### **DIVISION 1 — STATE ENTITLEMENTS TO WATER**

#### **South Australia's Monthly Entitlement**

86. South Australia is entitled to receive:

(a) the following monthly quantities of River Murray water -

July .....	50 500 megalitres
August .....	66 000 megalitres
September .....	77 000 megalitres
October .....	112 500 megalitres
November .....	122 000 megalitres
December .....	159 000 megalitres
January .....	159 000 megalitres
February.....	136 000 megalitres
March.....	128 000 megalitres
April.....	77 000 megalitres
May .....	35 000 megalitres
June.....	32 000 megalitres

except as provided in clause 127; and

(b) 58,000 megalitres per month for dilution and losses, unless the Commission determines otherwise; and

(c) such additional quantities for dilution as the Commission determines from time to time.

#### **Measurement of South Australia's Entitlement**

87. (1) Each month South Australia is deemed to receive the sum of the water flowing in that month in -

(a) the River Murray between the confluences of the Rufus and Lindsay Rivers with the River Murray, and

(b) the Lindsay River near its confluence with the River Murray.

(2) The Commission must determine the flows referred to in sub-clause 87(1) in such manner as it sees fit.

#### **Variation of South Australia's Entitlements**

88. The Commission may from time to time, at the request of a Commissioner for South Australia, vary for a specified sequence of months any of the monthly quantities which that State is entitled to receive under clause 86 without increasing the total of those quantities for that sequence.

## **Use of Lake Victoria**

89. If the Commission decides that the flow or prospective flow of the River Murray downstream of its junction with the Great Darling Anabranch is, or will be for any month in excess of the sum of:
- (a) the quantities which South Australia is entitled to receive in that month under clause 86 or 88;
  - (b) any quantities which, in the opinion of the Commission, ought to be and can be impounded in Lake Victoria during that month with the object of filling that storage at some time before the end of the next ensuing month of May; and
  - (c) any quantities required for use by New South Wales and Victoria, downstream of the junction of the River Murray and the Great Darling Anabranch,

South Australia may receive that excess in addition to the quantity of water which it is entitled to receive under clause 86 or 88.

## **Surplus Flow to South Australia**

90. The quantity of water that South Australia is entitled to receive in any month shall not be reduced if it has received a greater quantity than it was entitled to receive under clause 86 or 88 in any previous month.

## **Entitlements of New South Wales and Victoria**

91. (1) Except as otherwise expressly provided in Division 3 of this Part and subject to South Australia's entitlement under clause 86 or 88, New South Wales and Victoria are each entitled to use:
- (a) all the water in tributaries of the upper River Murray downstream of Doctors Point within its territory, before it reaches the River Murray;
  - (b) half the natural flow at Doctors Point;
  - (c) half the water entering the Menindee Lakes from the Darling River, subject to the prior entitlement of New South Wales to use water from the Menindee Lakes Storage as provided in clause 92;
  - (d) subject to paragraph 91(1)(c), an amount of water from the upper River Murray equivalent to any water contributed by any tributary or any outfall approved by the Commission entering the upper River Murray from its territory downstream of Doctors Point; and
  - (e) half the volume of water calculated in accordance with clause 8 of Schedule G.
- (2) Entitlements under sub-clause 91(1) shall not be affected by the declaration of a period of special accounting except as specifically provided in Division 4 of this Part.

## **New South Wales' Entitlement to Water from Menindee Lakes**

92. (1) Whenever water in the Menindee Lakes Storage falls below 480 000 megalitres, New South Wales may use the stored water as it requires until the volume next exceeds 640 000 megalitres.

(2) Whenever sub-clause 92(1) does not apply, New South Wales may:

- (a) divert from -
  - (i) the Menindee Lakes Storage, or
  - (ii) the Darling River below the Menindee Lakes Storage, or
  - (iii) the River Murray, below its junction with the Darling River; or
- (b) release from the Cawndilla outlet regulator,

a total of up to 100,000 megalitres in any 12 month period commencing on 1 April.

(3) Whenever the Commission determines that:

- (a) releases from the Menindee Lakes Storage exceed the water required for storage in Lake Victoria and to supply South Australia's entitlement; or
- (b) water in the Menindee Lakes Storage exceeds 1 680 000 megalitres and the amount of the excess plus the estimated water currently in the River Murray and Darling River below the Menindee Lakes Storage is sufficient to supply South Australia's entitlement and to fill Lake Victoria,

any of that water used by New South Wales or released to provide for the retention of floodwaters shall not be deemed to be part of its entitlement under sub-clause 92(2).

## **New South Wales' and Victoria's Supply to South Australia**

93. New South Wales and Victoria must provide, in equal proportions, South Australia's entitlement under clause 86 or 88 from the water available to them under clauses 91 and 92.

## **Limitations on Use by New South Wales and Victoria**

94. Unless the Commission determines otherwise, New South Wales or Victoria must not use water from the upper River Murray to an extent which may result in less than half the minimum reserve determined under clause 100 being held in upper River Murray storages and allocated to that State at the end of the following May.

## **DIVISION 2 — CONTROL BY COMMISSION**

### **Commission's Role in Operation of Storages**

95. (1) The Commission may give directions for the release of water from upper River Murray storages and water must be released in accordance with any such directions.

(2) The Commission may give directions under sub-clause 95(1) in the form of standing procedures, which it may amend or suspend at any time, except as provided in clause 97.

(3) In giving directions under this clause the Commission must have regard to -

- (i) maintaining supply to South Australia of the quantities of water which that State is entitled to receive,
- (ii) maintaining a minimum reserve of water as provided for in clause 100, and
- (iii) facilitating the exercise by New South Wales and Victoria of their respective rights to use water from the upper River Murray, as they require.

(4) In giving directions under this clause the Commission may also have regard to -

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

### **Limitation on Menindee Lakes Operation**

96. (1) The Commission must not direct that water be released from Menindee Lakes Storage after its volume falls below 480,000 megalitres and before it next exceeds 640,000 megalitres.

(2) Subject to sub-clause 96(1), a direction to release water from Menindee Lakes Storage may be given by a majority vote of the Commission or, if the Commission is equally divided, by the casting vote of the presiding member.

### **Procedures for Dartmouth Dam Operation**

97. The Commission must not amend or, except in an emergency, suspend any standing procedures affecting the release of water through the power station of Dartmouth Reservoir without first consulting the State Electricity Commission of Victoria and the Constructing Authority for Victoria.

### **Water Estimated to be Under the Control of the Commission**

98. "Water estimated to be under the control of the Commission" means the aggregate of:

- (a) water stored in the Hume and Dartmouth Reservoirs above their minimum operating levels;
- (b) water stored in Lake Victoria above its minimum operating level;
- (c) water available for release from the Menindee Lakes Storage at the direction of the Commission in accordance with clause 96, after allowing for New South Wales' prior entitlements under clause 92;

- (d) the estimated natural flow of the River Murray at Doctors Point before the end of the following May;
- (e) water calculated in accordance with clause 9 of Schedule G;
- (f) the difference between the estimated amount of water in transit in the upper River Murray and the estimated amount of water in transit at the end of the following May.

## **Available Water**

99. From time to time the Commission must:
- (a) determine the minimum amount of water estimated to be under the control of the Commission;
  - (b) determine the allowance to be made until the end of the following May for -
    - (i) losses by evaporation and other means in the upper River Murray, and
    - (ii) the entitlements of South Australia under paragraphs 86(b) and 86(c);
  - (c) having regard to its determinations under paragraphs 99(a) and 99(b) determine the water available -
    - (i) for distribution to New South Wales, Victoria and South Australia before the end of the following May, and
    - (ii) for holding in reserve at the end of the following May.

## **Minimum Reserve**

100. (1) From time to time the Commission must determine the minimum reserve to be held at the end of the following May.
- (2) Unless the Commission determines otherwise, the minimum reserve shall be the lesser of:
- (a) One third of the water available determined under paragraph 99(c)
    - less  
The sum of the monthly entitlements of South Australia under paragraph 86(a) up to the end of the following May
    - plus  
The sum of any imbalance of use during a period of special accounting calculated under clause 125; and
  - (b) 835,000 megalitres.
- (3) If the minimum reserve determined under paragraph 100(2)(a) is less than zero, then the minimum reserve shall be deemed to be zero.
- (4) Unless the Commission determines otherwise, the first 250,000 megalitres of any minimum reserve shall be held in Lake Victoria.

## **Use of State Works to Convey Murray Water**



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

### **DIVISION 3 — WATER ACCOUNTING**

#### **General**

102. The following provisions give effect to the principles set out in the preceding Divisions of this Part.

#### **Allocation of Water to New South Wales and Victoria**

103. (1) In respect of any period –
- (a) the natural flow of the River Murray at Doctors Point; and
  - (b) the volume of water calculated in accordance with clause 10 of Schedule G, must be allocated between New South Wales and Victoria as provided in sub-clause 103(2).
- (2) The quantity of water estimated for any month in accordance with sub-clause 103(1) shall be allocated as follows:
- (a) for any of the months from May through to August inclusive, the whole quantity shall be allocated half each to New South Wales and Victoria; and
  - (b) for any of the months from September through to April inclusive -
    - (i) whenever Victoria is subject to a period of special accounting, the first 12,900 megalitres per month (being equivalent to the ceding by Victoria to New South Wales of a volume of 6,450 megalitres per month), and
    - (ii) at any other time, the first 16,700 megalitres per month (being equivalent to the ceding by Victoria to New South Wales of a volume of 8,350 megalitres per month) shall be allocated to New South Wales, and the remainder shall be allocated half each to New South Wales and Victoria.

## **Allocation of Water in Menindee Lake Storage**

104. (1) Half the water entering the Menindee Lakes Storage from the Darling River is allocated to New South Wales and half to Victoria.
- (2) Of the water allocated to Victoria and stored in the Menindee Lakes Storage, Victoria must cede 4,170 megalitres each month to New South Wales.

## **Tributary Inflows**

105. (1) The quantity of water which in any period enters the upper River Murray downstream of Doctors Point from a tributary, or from any artificial outfall approved by the Commission for the purposes of this clause, other than quantities referred to in clause 104, is allocated to the State from which the water enters the upper River Murray.
- (2) The volume of water calculated in accordance with sub-clause 11(1) of Schedule G is allocated to New South Wales.
- (3) The volume of water calculated in accordance with sub-clause 11(2) of Schedule G is allocated to Victoria.

## **Use by New South Wales and Victoria of Allocated Water**

106. New South Wales and Victoria are respectively deemed to use the quantity of water – diverted from the upper River Murray by an offtake under the jurisdiction of that State, unless the Commission determines otherwise; and  
calculated under sub-clause 12(1) of Schedule G, in the case of New South Wales;  
and  
calculated under sub-clause 12(2) of Schedule G, in the case of Victoria.
107. [Deleted]

## **Losses**

108. (1) Any water which is lost by evaporation or other means from the upper River Murray is deemed to have been used by New South Wales or Victoria.
- (2) Unless otherwise determined by the Commission:
- (a) losses attributable to evaporation from a major storage will be deemed to have been used in proportion to the quantities of water allocated to New South Wales or Victoria in that storage;
- (b) losses attributable to an unregulated flow in any part of the upper River Murray will be deemed to have been used in proportion to the flow allocated to New South Wales or Victoria in that part of the river;
- (c) all other losses will be deemed to have been used half each by New South Wales and Victoria.

(3) For the purposes of this clause an "unregulated flow" means a flow which has not been planned by the Commission.

### **New South Wales' and Victoria's Supply to South Australia**

109. For the purposes of this Division any water supplied in any month to South Australia which it is entitled to receive under clause 86 or 88 is deemed to be supplied half each by New South Wales and Victoria and the Commission must make appropriate adjustments to allocations between New South Wales and Victoria of water in the upper River Murray so as to give effect to those States' obligations under clause 93.

### **Commencement of Continuous Accounting of Carryover of Stored Water**

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

### **Reallocation of Water Between New South Wales and Victoria**

111. (1) By agreement between a Commissioner for New South Wales and a Commissioner for Victoria, any quantity of water allocated to one of those States and in store in any of the upper River Murray storages or in transit in a specified part of the upper River Murray, may be exchanged for a quantity of water allocated to the other State and in store in another of the upper River Murray storages or in transit in another specified part of the upper River Murray, if such an exchange of water does not prejudice the entitlement of South Australia.

(2) The Commission may at any time, with the consent of either New South Wales or Victoria, determine that certain quantities of water in transit in the upper River Murray are surplus to the requirements of that State and reallocate the whole or part of such quantities from that State to the other State.

112. [Deleted]

### **Efficient Regulation of the Murray River**

113. Any water used by either New South Wales or Victoria or supplied to South Australia by either of those States is deemed to be provided from water allocated to that State and the Commission may, as necessary to ensure the availability of appropriately allocated water at the place of such use or supply, reallocate quantities of water in the upper River Murray but must not thereby alter the total quantities of water allocated to New South Wales or Victoria respectively, in the upper River Murray.

## Accounting Procedures

114. Subject to clauses 110, 111, 112, 113, 115 and 120, the quantity of water in any part of the upper River Murray and which is allocated to either New South Wales or Victoria is deemed:
- (a) to increase in any period by the quantity of water allocated to that State flowing into that part in that period; and
  - (b) to decrease in any period by any quantities of water -
    - (i) used by that State by way of diversion or loss from that part in that period, or
    - (ii) passed from that part in that period for -
      - downstream use by that State,
      - supply by that State to South Australia,
      - conveyance to another part of the upper River Murray as water allocated to that State, or
    - (iii) released from that part in that period and determined under clause 121 to be a release of water allocated to that State, or
    - (iv) spilled from that part in that period and deemed under clause 116 to be a spill of water allocated to that State.

## Internal Spills

115. (1) In any major storage, water allocated either to New South Wales or Victoria must be re-allocated to the other State to prevent the quantity of water allocated to either State in the storage exceeding half the lesser of:
- (a) the target capacity of the storage; or
  - (b) the quantity of water stored when releases are being made for flood mitigation.
- (2) In Hume and Lake Victoria, "target capacity" means the capacity of the reservoir at the Full Supply Level.
- (3) In Dartmouth "target capacity" means the lesser of:
- (a) the capacity of the reservoir at the Full Supply Level; or
  - (b) the quantity of water stored when water is being released through the hydro-electric power station and the storage level is above the level specified by the Commission for the operation of the power station.
- (4) In Menindee Lakes "target capacity" means the greater of the capacity:
- (a) at the Full Supply Level, or
  - (b) at such higher level as may be determined from time to time by the Commission.
- (5) When water in Dartmouth Reservoir is to be re-allocated under sub-clause 115(1) and there is capacity in Hume Reservoir available to the State from which water is to be re-allocated to store some or all of the re-allocated water, a compensating adjustment must be made in Hume Reservoir so that the accounts of the State from which the water is to be re-allocated in Dartmouth Reservoir are not thereby reduced.

## **Accounting for Spill from Storages**

116. Any quantity of water spilled from any of the upper River Murray storages, including water released solely to provide space for the retention of floodwaters, is deemed to be water spilled out of the waters allocated to New South Wales or Victoria respectively, in such proportions as minimizes the re-allocation of water under sub-clause 115(1).

## **Accounting for Releases from Dartmouth Reservoir**

117. (1) Whenever the storage level in Dartmouth Reservoir is above the level determined for the purposes of this sub-clause by the Commission, releases made from Dartmouth Reservoir through the hydro-electric power station will be deemed to be spills and will be accounted for as provided in clause 116.
- (2) No release from Dartmouth Reservoir will be attributable to the allocation of water to New South Wales or Victoria if the quantity of water in Dartmouth Reservoir allocated to that State is less than or equal to half the minimum operating storage in the reservoir.
- (3) Releases from Dartmouth Reservoir other than those covered by sub-clauses 117(1) and 117(2) will be attributable to the allocation of water to New South Wales or Victoria in such proportions as tend most to equalize the quantities of water allocated to those States in Hume Reservoir.

## **Accounting for Releases from Hume Reservoir**

118. (1) Any release made from Hume Reservoir for the deliberate purpose of transferring water to Lake Victoria for use at a later date will be attributable to the allocation of water to New South Wales or Victoria in such proportions as tend most to equalize the quantities of water allocated to the respective States in Lake Victoria and the Menindee Lakes Storage.
- (2) Releases from Hume Reservoir other than those covered by sub-clause 118(1) will be attributable to the allocation of water to New South Wales or Victoria in such proportions as satisfy the expected downstream water requirements of each State.

## **Accounting for Releases from Menindee Lakes Storage**

119. (1) For the purposes of this clause releases from Menindee Lakes Storage consist of:
- (a) water required to maintain a flow throughout the main course of the Darling River downstream of Menindee Lakes;
  - (b) water released to satisfy use by New South Wales in the main course of the Darling River downstream of Menindee Lakes;
  - (c) water released through the Lake Cawndilla Outlet Regulator;
  - (d) water released down the main course of the Darling River downstream of Menindee Lakes Storage to satisfy directions given by the Commission under sub-clause 95(4);

- (e) any other water released from the Menindee Lakes Storage which can be used either to supply South Australia's entitlement under clause 86 or 88 or to supply water to Lake Victoria.
  
- (2) Whenever New South Wales is using water pursuant to sub-clause 92(1) all release from Menindee Lakes Storage will be attributed to the allocation of water to New South Wales.
  
- (3) Whenever sub-clause 92(1) does not apply to the use of water by New South Wales from the Menindee Lakes Storage:
  - (a) releases under paragraph 119(1)(a) will be attributed equally to the allocations of water to New South Wales and Victoria;
  - (b) releases under paragraph 119(1)(b) and 119(1)(c) will be attributed to the allocation of water to New South Wales;
  - (c) releases under paragraph 119(1)(d) and 119(1)(e) will be attributed to the respective allocations of New South Wales and Victoria in such proportions as tend most to equalize the water in Lake Victoria allocated to each State, provided that such proportions do not -
    - (i) cause the water allocated either to New South Wales or to Victoria to fall below 240,000 megalitres,
    - (ii) cause water to be re-allocated between the States under clause 115.

### **Reallocation of Water in Menindee Lakes Storage**

120. At the conclusion of any period during which New South Wales is using water pursuant to sub-clause 92(1), the quantities of water stored in the Menindee Lakes Storage and allocated respectively to New South Wales and Victoria must be adjusted so that the difference between those quantities is the same as the difference in the allocated quantities at the beginning of that period.

### **Accounting for Dilution Flows**

121. (1) Whenever the Commission directs under clause 95 that the flow of water is to exceed the water order at a particular point, unless the Commission determines otherwise, the proportion of the water order attributed respectively to New South Wales and Victoria must be increased by such amounts as tend most to equalise the respective allocations to New South Wales and Victoria of the total flow at that point.
- (2) For the purpose of this clause the "water order" is the flow of water at a particular point which is necessary:
- (a) to meet diversions by New South Wales and Victoria, losses and dilution flows downstream of that point;
  - (b) to meet South Australia's entitlement; and
  - (c) to supply storages downstream of that point.

## **DIVISION 4— PERIODS OF SPECIAL ACCOUNTING**

### **Declaration of Periods of Special Accounting**

122. (1) Unless the Commission is satisfied that the reserve allocated to either New South Wales or Victoria at the end of the following May will be greater than 1,250,000 megalitres, the Commission must declare a period of special accounting between that State and South Australia.
- (2) A period of special accounting:
- (a) may be declared at any time after the end of July in any year and before the end of May in the following year;
  - (b) unless the Commission decides otherwise, will be deemed to have commenced on 1 August in that year, whenever it is in fact declared.

### **Variation of Navigation Depths During Restrictions**

123. The Commission may vary the depth of water to be maintained immediately downstream of a lock under sub-paragraph 62(1)(b)(i), during any period of special accounting.

### **Special Accounts to be Kept**

124. Throughout any period of special accounting declared for New South Wales or Victoria, separate accounts must be kept by the Commission of:
- (a) all water diverted from the upper River Murray by the State;
  - (b) the difference between -
    - (i) the sum of all water entering the Upper River Murray downstream of Doctors Point from -
      - any tributary within that State other than the River Darling, and
      - any artificial outfall from that State approved by the Commission for the purposes of clause 105, and
    - (ii) any water allocated to that State which flows to South Australia in excess of South Australia's entitlement under clause 86 or 88.
- If (ii) exceeds (i), the account kept under this paragraph must be set at zero;
- (c) all water allocated to that State which is supplied by it to meet South Australia's entitlement under paragraph 86(a).

## **Imbalance in Use**

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

- One-third of the amount calculated under paragraph 124(a)
- less
- One-third of the amount calculated under paragraph 124(b)
- less
- Two-thirds of the amount calculated under paragraph 124(c).

## **Limits on Imbalance in Use**

126. On May 31 in any period of special accounting, the accounts kept under clause 124 must be adjusted by the Commission to ensure that the imbalance in use calculated under clause 125 is:

- (a) less than one-third; and
- (b) greater than minus two-thirds

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

## **Restrictions on South Australia's Entitlement**

127. (1) In a period of special accounting, instead of the amounts set out in paragraph 86(a), South Australia is entitled to receive, before the end of the following May, the lesser of:

- (a) the sum of the monthly quantities set out in paragraph 86(a); and
- (b) the sum of -
  - (i) one-third of the available water determined under paragraph 99(c), and
  - (ii) any imbalance in use calculated under clause 125.

(2) South Australia may decide how to apportion any entitlement under sub-clause 127(1) between each month provided that the quantity in any month must not exceed that specified in paragraph 86(a).

## **Termination of Periods of Special Accounting**

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



## **PART XI — MENINDEE LAKES STORAGE**

### **Maintenance of Menindee Lakes Storage**

129. New South Wales must maintain the Menindee Lakes Storage and associated works in the good order and condition necessary to meet the full supply levels and storage capacities referred to in clause 130.

### **Full Supply Levels**

130. For the purposes of this Agreement, and unless otherwise agreed between the Department of Water Resources of New South Wales and the Commission by the exchange of letters between them, the full supply levels of the Menindee Lakes Storage will be:

Lake Wetherell	—	Elevation 61.7 Australian Height Datum
Lake Pamamaroo	—	Elevation 60.4 Australian Height Datum
Lake Menindee	—	Elevation 59.8 Australian Height Datum
Lake Cawndilla	—	Elevation 59.8 Australian Height Datum

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

### **Financial Contributions of Commission**

131. Each year the Commission must pay New South Wales:
- (a) \$320,000 in equal instalments at the end of each quarter; and
  - (b) three quarters of the costs of operating and maintaining the Menindee Lakes storage,
- or such other amounts as may be determined by the Commission from time to time.

## **PART XII — EFFECT OF SNOWY SCHEME**

### **Effect of Snowy Scheme**

132. The Commission must determine the respective allocations to New South Wales and Victoria of water made available from the Snowy Scheme for the purposes of this Agreement, in the manner set out in Schedule G.

## PART XIII — MISCELLANEOUS

### Resolution of Disputes

133. (1) If the Commission fails to agree on any motion submitted by a Commissioner within two months, that Commissioner may refer the matter to the Ministerial Council.
- (2) If the Ministerial Council fails to resolve the matter within six months, any member may refer it to an arbitrator.
- (3) When a matter is referred to an arbitrator, any Contracting Government may give the other Contracting Governments written notice to agree to appoint an arbitrator to decide the matter.
- (4) If an arbitrator is not appointed within two months of notice being given, the Chief Justice of the Supreme Court of Tasmania, or the person acting in that office, may appoint an arbitrator at the request of the Contracting Government giving notice under sub-clause 133(3).
- (5) The decision of any arbitrator appointed under this clause:
- (a) is deemed to be the decision of the Commission; and
  - (b) binds the Commission, the Ministerial Council and the Contracting Governments.
- (6) This clause does not apply to a resolution:
- (a) on a question of law;
  - (b) before the Commission under clause 135; or
  - (c) which has been decided by a majority vote of the Commission or the casting vote of the chairman pursuant to a provision of this Agreement.

### Accession by New Parties

134. (1) Any State of the Commonwealth may become a party to this Agreement:
- (a) with the consent of the existing parties; and
  - (b) on such terms and conditions as may be prescribed by the existing parties in a Schedule to this Agreement.
- (2) Without limiting the generality of paragraph 134(1)(b), the terms and conditions prescribed may include provision for:
- (a) those Parts or provisions of the Agreement or its Schedules which apply to any new party and those which do not;

- (b) any qualification to any provision of the Agreement or its Schedules which applies to any new party;
  - (c) the number, appointment, functions, powers, duties and voting rights of representatives (if any) of any new party on the Ministerial Council or the Commission;
  - (d) the financial contributions to be made by any new party for the purposes of this Agreement.
- (3) The Ministerial Council may approve any Schedule prepared pursuant to paragraph 134(1)(b).
- (4) When a Schedule is approved by the Ministerial Council under sub-clause 134(3) it thereupon becomes part of the Agreement, which is deemed to have been amended accordingly.
- (5) This Agreement will not apply to any new State party until:
- (a) a copy of the Agreement incorporating the Schedule provided for in sub-clause 134(1) has been signed on behalf of that State;
  - (b) the Government of that State has notified each existing Contracting Government of that signature and its date;
  - (c) the Parliament of that State has approved this Agreement, including the Schedule provided for in sub-clause 134(1).
- (6) Any Schedule approved by the Ministerial Council under sub-clause 134(3) must be laid before the House or Houses of Parliament of each of the parties to this Agreement within 15 sitting days of that House after the Ministerial Council has approved that Schedule.
- (7) A Schedule which is not laid before the House or Houses of Parliament of each of the parties in accordance with sub-clause 134(6) is void and has no effect.
- (8) If any House of Parliament of any of the parties, pursuant to a motion of which notice has been given within 15 sitting days after a Schedule has been laid before that House, passes a resolution disallowing that Schedule, the Schedule thereupon ceases to have effect.
- (9) If, at the expiration of 15 sitting days after notice of a motion to disallow any Schedule has been given in a House of Parliament of any of the parties in the manner envisaged by sub-clause 134(8):
- (a) the notice has not been withdrawn and the motion has not been called on; or
  - (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the Schedule is to be deemed to have been disallowed.

(10) Where any Schedule:

- (a) is disallowed, deemed to have been disallowed or is void by virtue of the provisions of this clause; and
- (b) the Schedule purported to amend any provision of the Agreement,

the disallowance of the Schedule or the operation of sub-clause 134(7), as the case may be, has the effect of reviving that other provision of the Agreement from the date on which the Schedule is disallowed, deemed to have been disallowed or becomes void.

(11) For the purposes of this clause and any reference to this clause in this Agreement:

"State" includes "Territory";

"Governor" includes the Australian Capital Territory Executive.

### **Proposals to Amend Agreement**

135. The Commission must review this Agreement from time to time and may recommend any amendments it thinks necessary or desirable to the Ministerial Council.

### **Giving Information to the Commission**

136. Each Contracting Government must give all the information it can to the Commission for the purposes of this Agreement, whenever the Commission requests it.

### **Authorities to Observe Agreement**

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

### **Transitional Provisions**

138. (1) In this clause:

"commencing day" means the day on which this Agreement comes into effect;

"current financial year" means the financial year during which this Agreement comes into effect;

"next financial year" means the financial year following the current financial year.

(2) Acts or things consistent with this Agreement done by or on behalf of a Contracting Government or the Commission in anticipation of this Agreement are deemed to have been done under and in accordance with its provisions.

(3) Without limiting the generality of sub-clause 138(2):

- (a) any estimates for the current financial year sent by the Commission to the Contracting Governments before the commencing day are deemed to be estimates sent in respect of that year;
  - (b) any money paid by a Contracting Government to the Commission before the commencing day are deemed to have been paid under clause 69 for the current financial year;
  - (c) any money spent by the Commission before the commencing day in accordance with estimates referred to in paragraph 138(3)(a) are deemed to have been spent pursuant to the Agreement for the current financial year;
  - (d) if the commencing day falls between 31 March and 30 June in any year, any estimates sent by the Commission to the Contracting Governments before that day for the next financial year are deemed to be estimates for that next financial year.
- (4) Clause 80 applies to any interest received by the Commission on fixed deposit in the current financial year.
- (5) Money of a kind referred to in clause 81 and 82 paid by a Contracting Government in the current financial year is deemed to have been paid under those clauses.
- (6) The Ministerial Council must determine any other transitional arrangements.

## SCHEDULE A — WORKS

Description of Works	Location	Nominated Government
<p><b>DARTMOUTH DAM</b> Capacity of approximately 4,000,000 megalitres.</p>	Mitta Mitta River upstream of the town of Dartmouth, north-eastern Victoria.	Victoria
<p><b>HUME DAM</b> Capacity of approximately 3,038,000 megalitres.</p>	River Murray upstream of the city of Albury, New South Wales.	New South Wales and Victoria, jointly
<p><b>LAKE VICTORIA WORKS</b> Regulation reservoir with a storage capacity of approximately 700,000 megalitres.</p>	Lake Victoria, New South Wales connected with main stream of River Murray by Rufus River and Frenchman's Creek.	South Australia
<p><b>YARRAWONGA WEIR</b> Storage of about 120,000 megalitres.</p>	River Murray near the town of Yarrawonga, Victoria.	Victoria
<p><b>WEIR AND LOCKS</b> Construction of thirteen weirs and locks in the course of the River Murray from its mouth to Echuca, namely:</p>	River distance from Murray mouth in kilometres.	
No 1 Blanchetown	274	South Australia
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

**WEIRS**

Construction of two weirs in the course of the Murrumbidgee River from its junction with the River Murray to Hay, namely:

River distance upstream from the Junction with the River Murray in kilometres

No 5 Redbank	193	New South Wales
No 7 Maude	290	New South Wales

**MURRAY MOUTH BARRAGES:**

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





## SCHEDULE C - BASIN SALINITY MANAGEMENT PART 1 – PRELIMINARY

### Purpose

1. The purpose of this Schedule is to implement certain aspects of the *Basin Salinity Management Strategy 2001-2015*, or any subsequent strategy approved by the Ministerial Council to manage salinity:
  - (a) by promoting joint works, measures and other action to reduce or limit the rate at which salinity increases within the Murray-Darling Basin;
  - (b) by providing for the adoption of salinity targets;
  - (c) by establishing Registers to record such salinity impacts and to allocate salinity credits and salinity debits to Contracting Governments; and
  - (d) by providing for monitoring, assessing, auditing and reporting on matters set out in this Schedule and on progress in implementing the Strategy.

### Definitions

2. (1) In this Schedule, unless the contrary intention appears:
  - (a) "**Accountable Action**" means an action that:
    - (i) is undertaken after a relevant Baseline Date; and
    - (ii) the Commission has decided will have a Significant Effect under paragraph 18(1)(b); and
    - (iii) the Commission has entered in a Register.

"**action**" means:

  - (i) any work or measure; and
  - (ii) any alteration to, or cessation of, any work or measure, relevant to the purposes of this Schedule.

"**average salinity**" means the average daily salinity of the River Murray calculated in accordance with protocols made by the Commission under clause 40;

"**average salinity costs**" means the average costs to users of water from the upper River Murray and the River Murray in South Australia incurred because of the salinity of the water used, as calculated in accordance with protocols made by the Commission under clause 40;

"**Baseline Conditions**" means the baseline conditions adopted by the Commission under clause 5;

"**Baseline Date**" means:

- (i) with respect to New South Wales, Victoria and South Australia – 1 January 1988; and
- (ii) with respect to Queensland – 1 January 2000;

**"Basin Salinity Target"** means the target referred to in clause 7;

**"Benchmark Period"** means the period from 1 May 1975 to 30 April 2000, or such other period as the Commission may from time to time determine;

**"Delayed salinity impact"** means a salinity impact which occurs after 1 January 2000, but which:

- (i) in the case of New South Wales, Victoria or South Australia, is attributable to an action taken or decision made in that State before 1 January 1988; and
- (ii) in the case of Queensland, is attributable to an action taken or decision made in that State before 1 January 2000;

**"End-of-Valley Target"** means a target adopted by the Ministerial Council under clause 8 and includes a reference to the site at which the degree to which the relevant Government achieves that target is to be measured;

**"Former salinity and drainage work"** means any work or measure:

- (i) entered on the Register maintained under the former Schedule, immediately before this Schedule took effect; or
- (ii) completed under sub-clause 49(4).

**"former Schedule"** means Schedule C as it existed immediately before this Schedule took effect;

**"Joint work or measure"** means a work or measure authorised under clause 50 of the Agreement for the purposes of this Schedule;

**"Joint Program"** means the program of Joint works or measures referred to in sub-clause 10(1);

**"Program of actions"** means a Program of actions referred to in clause 6;

**"Proposal"** means any proposal relevant to the subject-matter of this Schedule, for any action.

- (a) **"Register A"** means the register referred to in sub-clause 15(2);
- (b) **"Register B"** means the register referred to in sub-clause 15(3);

"**salinity cost effect**" means a change in average salinity costs resulting from an action, as calculated by the Commission;

"**salinity credit**" means the reduction in average salinity costs estimated by the Commission in accordance with clause 20;

"**salinity debit**" means an increase in average salinity costs estimated by the Commission in accordance with clause 20;

"**salinity effect**" means a change in the average salinity at Morgan resulting from any action, as estimated by the Commission;

"**salinity impact**" means both the salinity effect and the salinity cost effect;

"**Significant Effect**" has the meaning set out in sub-clause 18(3);

"**State Action**" means any Accountable Action that is not a Joint work or measure;

"**Strategy**" means the *Basin Salinity Management Strategy 2001-2015* as adopted and amended by the Ministerial Council from time to time;

"**undertake**", in relation to:

- (i) a work, includes investigating, designing, constructing, operating and maintaining that work; and
- (ii) a measure, includes investigating, developing and implementing that measure;

"**valley**" means a valley or other geographic area specified in the first column of Appendix 1.

- (b) a reference to a Part, clause, sub-clause, paragraph, or Appendix is a reference to a Part, clause, sub-clause, paragraph or Appendix of this Schedule.
- (2) When a Contracting Government informs the Commission of a Proposal under sub-clause 17(1), it must be taken also to have informed the Commission under paragraph 46(1)(a) of the Agreement.

### **Application to Queensland**

3. (1) Subject to sub-clause 3(2), the whole of this Schedule applies to Queensland.
- (2) If a provision of this Schedule states that it:
- (a) does not apply to Queensland; or
  - (b) applies to Queensland only in part, or subject to specified conditions, that provision takes effect according to its terms.

(3) Unless otherwise indicated, a reference to a State Contracting Government includes a reference to the Government of the State of Queensland.

(4) The Government of the State of Queensland will share equally with other Contracting Governments such costs referred to in sub-clause 65(2) of the Agreement as are attributable to implementing this Schedule, except:

- (a) where the Ministerial Council determines otherwise, under sub-clause 65(1) of the Agreement; or
- (b) to the extent that this Schedule provides otherwise in clauses 13 and 48; or
- (c) for those costs referred to in paragraphs 65(2)(a), (e) and (j) of the Agreement; or
- (d) where the cost is attributable to a matter set out in sub-clause 3(4) of Schedule D to the Agreement.

## **PART II – ACCOUNTABILITY FOR SALINITY IMPACTS**

### **Accountability for Salinity Impacts**

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

### **Determining Baseline Conditions**

5. (1) This clause establishes the process for determining the baseline conditions contributing to the movement of salt through land and water upstream of:
- (a) an End-of-Valley Target site determined under this clause; and
  - (b) the Basin Salinity Target site at Morgan,
- but does not refer to the baseline conditions defined in clause 2 of Schedule F of the Agreement.
- (2) Each State Contracting Government must, by 31 March 2004, prepare and give to the Commission estimated baseline conditions relating to the salinity, salt load and flow regime at each site at which it proposes to measure that Government's compliance with an End-of-Valley Target (if adopted) for the portion of the Murray-Darling Basin within that State, as at 1 January 2000.
- (3) The Commission must, by 31 March 2003, prepare estimated baseline conditions relating to the salinity, salt load and flow regime at the Basin Salinity Target site at Morgan, as at 1 January 2000.

(4) The Commission must appoint an appropriately qualified panel, which shall include at least one representative from each State Contracting Government, to review and advise the Commission about any estimate of baseline conditions made by a State Contracting Government or the Commission.

(5) After considering the advice of the panel, the Commission may:

- (a) approve an estimate of baseline conditions; or
- (b) approve that estimate, subject to the relevant Government modifying it in any way agreed between the Commission and the relevant Government; or
- (c) refuse to approve the estimate.

(6) Within 6 months after the Commission and the relevant Government agree on a modification under paragraph 5(5)(b), the relevant Government must:

- (a) modify the estimate in accordance with that agreement; and
- (b) give the Commission a copy of the modified estimate.

(7) An estimate of baseline conditions, in the form initially given to the Commission, may be used temporarily for the purposes of this Schedule until the relevant Government has complied with sub-clause 5(6).

(8) A State Contracting Government or the Commission (as the case requires) may, from time to time, propose an amendment to any estimate of a baseline condition prepared under sub-clause 5(2) or 5(3) and approved by the Commission under sub-clause 5(5), using the best information available to the State Contracting Government or the Commission at the time the amendment is proposed.

(9) Sub-clauses 5(4), (5), (6) and (8) apply to any amendment proposed under sub-clause 5(8), as if it were an estimate prepared under sub-clause 5(2) or 5(3).

### **Meeting End-of-Valley Targets**

6. (1) Each State Contracting Government must, by 31 March 2004 and thereafter at intervals of not more than 5 years, give the Commission its proposed Program of actions to meet End-of-Valley Targets adopted for that State.

(2) A proposed Program of actions must include the following information about the salinity, salt load and, where relevant, the flow regime at each site at which compliance with an End-of-Valley Target is to be measured:

- (a) the Baseline Conditions; and
- (b) the Government's estimate of Delayed salinity impacts in each of 2015, 2050 and 2100 if no action were taken to reduce or limit such salinity impacts; and
- (c) the relevant End-of-Valley Target adopted under clause 8(3); and

- (d) the predicted effect of implementing the proposed Program of actions in each of 2015, 2050 and 2100.
- (3) The Commission must estimate (using the best information available to the Commission at the time the estimate is made) whether a proposed Program of actions, if undertaken in accordance with its terms, is reasonably certain to meet each End-of-Valley Target for the relevant State.
- (4) A State Contracting Government must give the Commission sufficient information about its proposed Program of actions:
  - (a) to enable the Commission to make the estimate referred to in sub-clause 6(3); and
  - (b) in sufficient time to allow the Commission, having made that estimate, to make representations to that Contracting Government before the Contracting Government decides whether to proceed with the proposed Program of actions.
- (5) A State Contracting Government may, from time to time, propose an amendment to a Program of actions to meet End-of-Valley Targets adopted for that State
- (6) Sub-clauses 6(3), and (4) apply to any amendment proposed under sub-clause 6(6) as if it were a Program of actions referred to in sub-clause 6(1).
- (7) A State Contracting Government must prepare reports about undertaking a Program of actions, as set out in clause 30.

### **PART III – SALINITY TARGETS**

#### **Basin Salinity Target**

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

#### **End-of-Valley Targets**

- 8. (1) Each State Contracting Government must, by 31 March 2004, nominate to the Commission an End-of-Valley Target for each valley within the State designated as requiring such a target in Appendix 1
- (2) The Commission must refer each nominated End-of-Valley Target to the Ministerial Council, together with:
  - (a) the Commission's estimate of the likely effects of meeting the nominated target on:

- (i) significant environmental, economic, social and other characteristics in the upper River Murray and the River Murray in South Australia; and
    - (ii) meeting the Basin Target;
  - (b) the Commission's advice about whether the nominated target is contributing adequately to achieving the objectives of the Strategy; and
  - (c) the Commission's opinion on what, if any, additional works or measures are necessary, desirable or convenient to meet the Basin Target.
- (3) The Ministerial Council:
- (a) after considering the matters referred to it by the Commission, may adopt an End-of-Valley Target; and
  - (b) must resolve to amend Appendix 1 to include any target which it adopts.

### **Reviewing and amending End-of-Valley Targets**

9. (1) The Commission must, at intervals of not more than 5 years, review the adequacy and appropriateness of each End-of-Valley Target adopted by the Ministerial Council under clause 8.
- (2) The Commission, or the relevant State Contracting Government which nominated an End-of-Valley Target, may request the Ministerial Council to amend that target.
- (3) Where a State Contracting Government requests the Ministerial Council to amend an End-of-Valley Target, the Commission must consult that Government before the Commission makes any recommendation under sub-clause 9(4).
- (4) The Commission must recommend to the Ministerial Council whether or not the Ministerial Council should adopt a request made under sub-clause 9(2).
- (5) In any recommendation made under sub-clause 9(4), the Commission must set out:
- (a) the matters referred to in sub-clause 8(2); and
  - (b) any new information about any of those matters which has become available to the Commission, since the relevant End-of-Valley Target was adopted by the Ministerial Council.
- (6) The Ministerial Council:
- (a) may, after considering the matters set out in any recommendation made to it by the Commission, amend an End-of-Valley Target; and

- (b) must resolve to amend Appendix 1 to include any amended End-of-Valley Target.

#### **PART IV – JOINT WORKS AND MEASURES**

##### **Joint Program**

- 10. (1) Subject to clause 50 of the Agreement, the Contracting Governments must implement a Joint Program of Joint works and measures under this Schedule:
  - (a) to maintain the quality of the upper River Murray and the River Murray in South Australia for agricultural, environmental, urban, industrial and recreational uses; and
  - (b) which is sufficient to have the cumulative effect of offsetting predicted future increases in average daily salinity at Morgan, arising from Accountable Actions and Delayed salinity impacts, by 61 E.C. (or by such other figure determined by the Ministerial Council from time to time) before 31 December 2007.
- (2) After 31 December 2007, the Ministerial Council must authorise, and the Contracting Governments must undertake, any further Joint works or measures that the Ministerial Council decides are necessary, desirable or convenient to maintain salinity at or below the Basin Salinity Target.
- (3) The Commission must enter any Joint work or measure undertaken under this clause on a Register as an Accountable Action, in accordance with Part V.

##### **Attribution of salinity credits or salinity debits for Joint works or measures**

- 11. Subject to clause 13, unless the Ministerial Council decides otherwise, any salinity credits or salinity debits arising from any Joint work or measure undertaken under clause 10 will be attributed to a Contracting Government to offset salinity debits due to:
  - (a) Accountable Actions entered on Register A; and
  - (b) Delayed salinity impacts entered on Register B,

according to the following formula:

##### **Register A**

- (c) New South Wales 16.39%
- (b) South Australia 16.39%
- (c) Victoria 16.39%



## **Register B**

(a)	New South Wales	8.61%
(b)	South Australia	8.61%
(c)	Victoria	8.61%
(d)	Commonwealth	25.00%

### **Authorised Joint works and measures**

12. (1) The Ministerial Council must:
- (a) set out in Appendix 2 a list of Joint works and measures authorised for the purposes of each of the former Schedule and this Schedule; and
  - (b) amend Appendix 2 whenever a new Joint work or measure is authorised.
- (2) Any work or measure from time to time included in Appendix 2 must be taken:
- (a) to have been authorised under clause 50 of the Agreement; and
  - (b) to have been declared effective under clause 58 of the Agreement; and
  - (c) to be a Joint work or measure for the purposes of this Schedule.
- (3) If a Joint work or measure included in Appendix 2 was completed before this Schedule came into force, it is a Former salinity and drainage work for the purposes of this Schedule.
- (4) The Commission may declare the whole or part of any Joint works or measures to be ineffective, pursuant to sub-clause 64(1) of the Agreement.
- (5) The Ministerial Council may, upon the recommendation of the Commission:
- (a) declare that any Joint works or measures must be treated as a State Action, in whole or in part; and
  - (b) amend Appendix 2 to the extent necessary to implement any declaration made under sub-clause 12(4) or paragraph 12(5)(a).

### **Participation by Queensland**

13. (1) The Government of Queensland is not required to contribute to the costs of, nor will salinity credits or salinity debits be attributed to that Government in relation to:
- (a) any joint work or measure undertaken under the Joint Program; or
  - (b) any former salinity and drainage work.
- (2) The Ministerial Council may determine whether, and if so what:

- (a) costs; or
- (b) salinity credits or salinity debits,

relating to a Joint work or measure undertaken after 1 January 2008 must be contributed by, or will be attributed to, the Government of Queensland; and

- (c) consequential adjustment may be necessary to the formula set out in paragraph 11(a).

### **Co-ordinating Joint Works and Measures**

14. The Commission must co-ordinate the activities of each State Contracting Government and its relevant Constructing Authority in undertaking a Joint work or measure.

## **PART V – THE REGISTERS**

### **Establishing the Registers**

15. (1) The Commission must establish and maintain Register A and Register B in accordance with this Schedule and any protocols made by the Commission under clause 40.
- (2) The Commission must include the following matters on Register A:
- (a) all Former salinity and drainage works; and
  - (b) except as provided in paragraph 15(3)(b), any action undertaken after a relevant Baseline Date that the Commission has declared has had, or may have, a Significant Effect.
- (3) The Commission must include the following matters on Register B:
- (a) every Delayed salinity impact which the Commission considers may have a Significant Effect; and
  - (b) any action undertaken under this Schedule, expressly for the purpose of off-setting a Delayed salinity impact which the Commission determines may otherwise occur, in accordance with any protocols made by the Commission under clause 40.

### **Obligations of State Contracting Governments**

16. (1) A State Contracting Government must take whatever action may be necessary:
- (a) to keep the total of any salinity credits in excess of, or equal to, the total of any salinity debits, attributed to it in Register A; and
  - (b) to keep the cumulative total of all salinity credits in excess of, or equal to, the cumulative total of all salinity debits, attributed to it in both Register A and Register B.
- (2) For the purpose of calculating the total of any salinity credits under sub-clause 16(1), any salinity credits which may in future be attributed to a

State Contracting Government must not be included in the calculation, unless the Commission determines otherwise.

- (3) Despite sub-clause 16(2) and any provision in clause 20 or 22, for the purposes of any calculation under sub-clause 16(1) and on the application of a State Contracting Government, the Commission may decide:
  - (a) to postpone the attribution of any salinity debit which might otherwise be attributed to that Government in Register A or Register B, in respect of an Accountable Action that the Government proposes to undertake; or
  - (b) to allow any salinity credit which might otherwise be attributed to that Government in Register A or Register B, in respect of an Accountable Action after it is declared effective or complete in accordance with sub-clause 22(1) or 22(3) to be used in the calculation to off-set any salinity debit already attributed to that Government in Register A or Register B.
- (4) The Commission:
  - (a) must only make a decision under sub-clause 16(3); and
  - (b) may attach any condition to such a decision,in accordance with any relevant protocols made by the Commission under clause 40.

### **Operating Registers**

17. (1) A Contracting Government must inform the Commission of any Proposal which the Government, acting reasonably, considers is likely to have a Significant Effect.
- (2) The Commission must decide, in accordance with any relevant protocols made by the Commission under clause 40, whether the Proposal:
  - (a) is to be entered on either or both of Register A and Register B, or neither of them; and
  - (b) must be treated in whole or in part as either or both of a State Action and a Joint work or measure .
- (3) The Commission must:
  - (a) estimate the salinity impacts of an Accountable Action; and
  - (b) determine any salinity credits or salinity debits arising from that Accountable Action; and
  - (c) attribute those salinity credits or salinity debits to one or more of the Contracting Governments in the relevant Register, in accordance with clause 11 and any protocols adopted by the Commission under clause 40.

- (4) The Commission must review and amend each item on Register A and Register B in accordance with clause 24.

### **Determining whether a Proposal has a Significant Effect**

18. (1) If a Contracting Government informs the Commission of a Proposal, the Commission must:
  - (a) investigate that Proposal; and
  - (b) decide whether the Proposal, either on its own or cumulatively with similar past actions or projected similar future actions, may have a Significant Effect.
- (2) If the Commission becomes aware of an action undertaken within a State after the relevant Baseline Date, of which the Commission has not previously been informed as a Proposal, but which the Commission considers has had or may have a Significant Effect, either on its own or cumulatively with similar past actions or projected similar future actions, it may direct the relevant State Contracting Government to inform the Commission of the action as a Proposal under sub-clause 17(1).
- (3) A Significant Effect is:
  - (a) a change in average daily salinity at Morgan which the Commission estimates will be at least 0.1 E.C. within 100 years after the estimate is made; or
  - (b) a salinity impact which the Commission estimates will be significant.
- (4) To make an estimate referred to in sub-clause 18(3), the Commission must use any relevant method for making that estimate set out in any protocols made by the Commission under clause 40.

### **Assessing Salinity Impacts**

19. (1) If the Commission decides that:
  - (a) a Proposal referred to in sub-clause 18(1); or
  - (b) an action referred to in sub-clause 18(2),
- (d) has or may have a Significant Effect, the Commission must:
  - (c) declare the Proposal or action to be an Accountable Action; and
  - (d) provisionally designate the Accountable Action to be in whole or in part either or both of a Joint work or measure and a State Action; and
  - (e) estimate the salinity impacts of the Accountable Action, using any relevant method for assessing salinity impacts set out in any protocols made by the Commission under clause 40.

- (2) If the Commission declares a Proposal or action to be an Accountable Action, the relevant Contracting Government must give to the Commission:
  - (a) all relevant information about the Accountable Action which may assist the Commission accurately to assess its salinity impacts;
  - (b) in such form as the Commission may require.

### **Estimating Salinity Credits and Salinity Debits**

- 20. (1) After the Commission has estimated the salinity impacts of an action which the Commission considers may be an Accountable Action under clause 19, it must:
  - (a) subject to sub-clause 20(2), estimate the prospective salinity credits or salinity debits arising from that action; and
  - (b) designate that action to be either a Joint work or measure or a State Action; and
  - (c) determine whether the prospective salinity credits or salinity debits will be entered in Register A or Register B; and
  - (d) enter the action in the relevant Register.
- (2) If the action referred to in sub-clause 20(1) is a permanent transfer of an entitlement within the meaning of Schedule E of this Agreement, the Commission must estimate any prospective salinity credits or salinity debits arising from that action in accordance with clause 13 of that Schedule.
- (3) The Commission must make an estimate referred to in paragraph 20(1)(a) or sub-clause 20(2) by reference either:
  - (a) to the average annual salinity impacts over the 30 years following the date of the estimate; or
  - (b) some other basis for estimating salinity impacts adopted by the Commission from time to time.

### **Attributing Salinity Credits or Salinity Debits**

- 21. (1) The Commission must attribute salinity credits or salinity debits:
  - (a) arising from a Joint work or measure, in accordance with clause 11; or
  - (b) arising from a State Action, to the State Contracting Government which undertakes that action, subject to sub-clause 21(2).
- (2) Despite paragraph 21(1)(b), where:
  - (a) there is an agreement referred to in clause 23, the Commission must attribute any salinity credits or salinity debits in accordance with that agreement;

- (b) two or more Contracting Governments together undertake the relevant State Action, the Commission must attribute any salinity credits or salinity debits arising from that action in the manner agreed between those Contracting Governments;
- (c) the relevant State Action is a permanent transfer of an entitlement within the meaning of Schedule E of this Agreement, the Commission must attribute any salinity credits or salinity debits arising from that action in Register A and in accordance with clause 13 of that Schedule.

**When Salinity Credits and Salinity Debits must be entered on a Register**

22. (1) Subject to sub-clause 16(3), when the Commission has estimated that a salinity credit will arise from an Accountable Action and either:
- (a) the Commission declares that Accountable Action to be effective under clause 58 of the Agreement; or
  - (b) if the Accountable Action is to be undertaken in stages, the Commission declares a stage to be effective under clause 58 of the Agreement,
- (e) the Commission must:
- (c) attribute salinity credits arising from the Accountable Action to one or more Contracting Government, in accordance with clause 21; and
  - (d) enter the salinity credits on the relevant Register,
- (f) in accordance with any relevant protocols made by the Commission under clause 40.
- (2) Subject to sub-clause 7(3), when the Commission has estimated that salinity debits will arise from an Accountable Action, before any Contracting Government:
- (a) commences to undertake the Accountable Action; or
  - (b) if the Accountable Action is to be undertaken in stages, commences to undertake any stage,
- (g) the Commission must:
- (c) attribute the prospective salinity debits arising from the Accountable Action or stage to one or more Contracting Governments in accordance with clause 21; and
  - (d) enter the salinity debits on the relevant Register,
- (h) in accordance with any relevant protocols made by the Commission under clause 40.
- (3) Despite sub-clauses 22(1) and 22(2), if an Accountable Action is a State Action:

- (a) which is not required to be declared effective under clause 58 of the Agreement, the Commission must:
  - (i) attribute any salinity credits arising from that State Action at the time when the Commission considers that the Accountable Action is substantially complete; and
  - (ii) enter the salinity credits on the relevant Register; or
- (b) which comprises one or more permanent transfers of an entitlement within the meaning of Schedule E of this Agreement, the Commission must attribute any salinity credits or salinity debits arising from that Accountable Action:
  - (i) in the case of the permanent transfer of one entitlement, at the time when the transfer occurs; or
  - (ii) in the case of the permanent transfer of more than one entitlement, in such proportions and at such times determined by the Commission,

in accordance with any relevant protocols made by the Commission under clause 40.

### **Trading and Transfers between Registers**

23. (1) A Contracting Government may agree to assign any or all of the salinity credits or salinity debits attributed to that Government in Register A, to one or more of the other Contracting Governments.
- (2) When the parties to an agreement referred to in sub-clause 23(1) inform the Commission in writing of that agreement and its effect, the Commission must:
  - (a) attribute salinity credits or salinity debits in accordance with the agreement; and
  - (b) amend Register A accordingly.
- (3) A Contracting Government, with the prior written approval of the Commission, may agree to assign any or all of the salinity credits or salinity debits attributed to that Government in Register B, to one or more of the other Contracting Governments.
- (4) The Commission must:
  - (a) attribute salinity credits and salinity debits in accordance with any agreement approved by the Commission under sub-clause 23(3); and
  - (b) amend Register B accordingly.
- (5) The Commission may give effect to any written request by a Contracting Government to transfer a salinity credit attributed to that Government:
  - (a) in Register A, to Register B; or

(b) in Register B, to Register A,

in accordance with any relevant protocols made by the Commission under clause 40.

### **Review and amendment of Register entries**

24. (1) The Commission:

(a) must, at intervals of no more than 5 years, and may at any other time, re-estimate the salinity impacts of each Accountable Action; and

(b) if the re-estimated salinity impacts differ from the Commission's most recent previous estimate of the salinity impacts, must:

(i) alter the calculation and attribution of either or both of the salinity credits and salinity debits; and

(ii) make any consequential amendment to a Register, to reflect the re-estimated salinity impacts.

(2) The Commission may, at any time:

(a) designate a Joint work or measure to be a State Action; or

(b) designate a State Action to be Joint work or measure; or

(c) remove an Accountable Action from a Register; or

(d) determine that an Accountable Action must, in future, be treated as more than one Accountable Action.

(3) Whenever the Commission takes any action referred to in sub-clause 24(1) or 24(2) it must:

(a) review the calculation and attribution of salinity credits or salinity debits arising from the relevant Accountable Action; and

(b) make any consequential amendment to a Register,

(i) in accordance with any relevant protocols made by the Commission under clause 40.

## **PART VI – MONITORING**

### **Monitoring obligations**

25. (1) The Commission and each State Contracting Government must carry out such monitoring as it is required to undertake:

(a) to fulfil its respective reporting obligations under Part VII; and

(b) by this Part,



in accordance with any relevant protocols made by the Commission under clause 40.

- (2) A State Contracting Government must give the Commission the results of monitoring carried out by it:
  - (a) since it last gave such results to the Commission, at any time reasonably requested by the Commission; and
  - (b) during a financial year, by 30 November of the following financial year.

### **End-of-Valley Targets**

26. A State Contracting Government must monitor:

- (a) the degree to which it is achieving an End-of-Valley Target;
- (b) at the relevant site at which compliance with that target is to be measured,

in accordance with any protocols adopted by the Commission under clause 40.

### **Program to monitor Accountable Actions**

27. (1) A State Contracting Government nominated under sub-clause 50(5) of the Agreement, in respect of a Joint work or measure that is an Accountable Action, must give the Commission a proposed program to monitor the salinity impacts of that Accountable Action within 3 months after the Government is nominated.
- (2) A Contracting Government must give to the Commission a proposed program to monitor the salinity impacts of any State Action undertaken by that Government within 3 months after the State Action has been completed.
- (3) The Commission may:
  - (a) accept a program given to it under sub-clause 27(1) or 27(2); or
  - (b) accept that program with any amendment made by the Commission; or
  - (c) decline to accept the program, setting out its reasons.
- (4) The Commission may, from time to time, either:
  - (a) give directions to a Constructing Authority under paragraph 55(1)(a) of the Agreement; or
  - (b) make protocols under clause 40,

to ensure that any Joint work or measure or any Former salinity and drainage work is monitored efficiently and effectively.

### **Monitoring Accountable Actions**

28. (1) A Contracting Government nominated under sub-clause 50(5) of the Agreement in respect of a Joint work or measure must monitor the salinity impacts of that Joint work or measure in accordance with a program accepted by the Commission under clause 27.
- (2) A State Contracting Government must monitor the salinity impacts of a State Action in the relevant State, in accordance with a program accepted by the Commission under clause 27.

## **PART VII – REPORTING, AUDIT AND REVIEW**

### **State Contracting Governments**

29. (1) A State Contracting Government must prepare and give to the Commission a Report under this clause in respect of each financial year, as soon as practicable after the end of that financial year and, in any case, by 30 November in the following financial year.
- (2) A Report under sub-clause 29(1) must include:
- (a) information about the progress of the relevant Government in undertaking:
    - (i) any Accountable Action; and
    - (ii) any Proposal of which the Commission has been informed; and
    - (iii) any Joint work or measure; and
    - (iv) any other element of the Strategy,  
for which that Government is responsible; and
  - (b) a report about each valley in the State for which an End-of-Valley Target has been adopted, which sets out the information required by clause 30; and
  - (c) a report on the reviews undertaken in the financial year of:
    - (i) any valley referred to in paragraph 29(2)(b); and
    - (ii) any State Action undertaken by the relevant Government,  
as required by clause 33.

### **Valley Reports**

30. (1) A report about a valley referred to in paragraph 29(2)(b) must:
- (a) explain how the relevant Government is implementing the Program to meet the End-of-Valley Target for that valley; and
  - (b) describe the effect which:
    - (i) implementing that Program; and

- (ii) undertaking any other existing or proposed significant action in the valley,

has had, or will have on the salinity, salt load and, where relevant, flow regime at each site at which compliance with the End-of-Valley Target is to be measured.

- (2) A Government must comply with any relevant protocols made by the Commission under clause 40 when preparing a valley report under paragraph 29(2)(b).

### **Commonwealth**

- 31. The Commonwealth Government must prepare and give to the Commission a report in respect of each financial year, as soon as practicable after the end of that financial year, and in any case by 30 November in the following financial year, which includes information about the progress of the Commonwealth in undertaking any work or measure for the purposes of this Schedule, for which it has been nominated as the responsible Government under sub-clause 50(5) of the Agreement.

### **Commission**

- 32. As soon as practicable after it receives a report from each State Contracting Government made under sub-clause 29(1) and where required by clause 31, from the Commonwealth Government, and in any case by 31 March in any year, the Commission must give to the Ministerial Council a report which includes:
  - (a) a copy of each report made by a Government; and
  - (b) a consolidated summary of all valley reports referred to in paragraph 29(2)(b); and
  - (c) a consolidated summary of the results of, and any recommendations made in the report of, an audit conducted under clause 34; and
  - (d) a program setting out the matters to be reviewed and reported on pursuant to sub-clause 33(1) in the next financial year; and
  - (e) a copy of the contents of Register A and Register B as at 30 November in the preceding calendar year; and
  - (f) details of other activities which have been taken to meet the objectives of the Strategy since the Commission's last report made under this clause; and
  - (g) a report on:
    - (i) the operation and implementation of existing Joint works and measures; and
    - (ii) the progress of any proposed new Joint works or measures; and

- (h) the results of each review carried out by a State Contracting Government or the Commission in the preceding financial year under clause 34; and
- (i) a list of each report made by the Commission under clause 44 or 45 in the preceding financial year.

**Rolling Five-Year Reviews**

- 33. (1) A State Contracting Government must adopt and implement a program to review and report upon each:
  - (a) valley for which an End-of-Valley Target has been adopted under sub-clause 8(3); and
  - (b) State Action undertaken by that Government,  
  
at least once in every five years.
- (2) A report prepared under sub-clause 33(1)(a) must:
  - (a) be based on the best information available to the State Contracting Government at the time the report is prepared, about the salinity, salt load and, where relevant, the flow regime at each site at which compliance with an End-of-Valley Target is to be measured; and

- (b) include:
    - (i) a current estimate of Delayed salinity impacts in each of 2015, 2050 and 2100 if no further action were taken to reduce or limit such salinity impacts;
    - (ii) an estimate of the effect that the already completed elements of the Program of actions will have in the current year and in each of 2015, 2050 and 2100; and
  - (c) the predicted effect that further implementing the Program of actions will have in each of 2015, 2050 and 2100; and
  - (d) the current End-of-Valley Target for that valley.
- (3) A report prepared under sub-clause 33(1)(b) must include the Commission's estimate (based on the best information available to the Commission at the time the report is prepared) of the cumulative effect of the State Action on the salinity, salt load and, where relevant, the flow regime in the upper River Murray and the River Murray in South Australia in the current year and in each of 2015, 2050 and 2100.
  - (4) The Commission must adopt and implement a program to review and report upon each Joint work and measure at least once in every five years.
  - (5) A report prepared under sub-clause 33(4) must include the Commission's estimate (based on the best information available to the Commission at the time the report is prepared) of the cumulative effect of the Joint Work on the salinity, salt load and, where relevant, the flow regime in the upper River Murray and the River Murray in South Australia in the current year and in each of 2015, 2050 and 2100.
  - (6) Any review conducted and any report prepared under this clause must comply with any relevant protocols adopted by the Commission under clause 40.

## **Audit**

- 34. (1) The Commission must appoint independent auditors for the purpose of carrying out an annual audit under this clause.
- (2) A person who is appointed as one of the independent auditors referred to in sub-clause 34(1):
  - (a) is appointed for such period and on such terms as are set out in that person's instrument of appointment; and
  - (b) may resign by written notice addressed to the President; and
  - (c) may only be removed from office during the period of that person's appointment by the Ministerial Council, on the recommendation of the Commission.

- (3) The independent auditors must together carry out an annual audit of:
  - (a) the report of each review conducted in the preceding financial year by each State Contracting Government and by the Commission under sub-clause 33(1) and 33(3), respectively; and
  - (b) Register A and Register B.
- (4) The independent auditors must, in each audit, reach a view by consensus about:
  - (a) the performance of each State Contracting Government and of the Commission in implementing the provisions of this Schedule in the relevant year; and
  - (b) whether the Commission has fairly and accurately recorded the salinity impacts of each action entered in Register A or Register B during the relevant year.
- (5) The independent auditors must prepare a report setting out:
  - (a) the findings of each audit; and
  - (b) any recommendations made by the independent auditors arising from that audit.
- (6) Without limiting sub-clause 34(5), a report:
  - (a) must set out the view reached on each of the matters referred to in sub-clause 34(4); and
  - (b) may recommend to the Commission that the salinity impacts entered in Register A or Register B for an Accountable Action be varied; and
  - (c) may set out a finding that the total salinity credits are not equal to, or do not exceed, the total salinity debits attributed to a State Contracting Government in Register A, contrary to paragraph 16(1)(a).

### **Review of Schedule**

- 35. (1) The Commission must, by 31 December 2007 and at intervals of no more than 7 years thereafter, prepare and give to the Ministerial Council and the Community Advisory Committee, a report upon:
  - (a) the operation of this Schedule; and
  - (b) its usefulness and effectiveness in implementing aspects of the Strategy.
- (2) Without limiting the contents of any report prepared under sub-clause 35(1), the Commission must include:
  - (a) a summary of:

- (i) the Delayed salinity impacts; and
- (ii) the salinity impacts of every Accountable Action undertaken before the date of the report,

within the Murray-Darling Basin, based on the reports prepared under clause 33 during the preceding 5 years; and

- (b) a description of any additions to, or alterations of, the Joint Program proposed to ensure that the Basin Salinity Target is met, since the Commission's last report made under sub-clause 35(1).
- (3) A report prepared under sub-clause 35(1) may conclude that a State Contracting Government has not complied with one or more of its obligations under this Schedule.

## **PART VIII – MODELS**

### **Models to be developed by the Commission**

36. (1) Using the relevant Benchmark Period, the Commission must develop one or more models to simulate:
- (a) the salinity, salt load and flow regime, each on a daily basis; and
  - (b) the economic effects on water users of the simulated salinity, salt load and flow regime,
- in the Upper River Murray and the River Murray in South Australia.
- (2) Any model developed under sub-clause 36(1) must be capable of predicting:
- (a) any salinity impacts of Joint works and measures and State Actions; and
  - (b) any Delayed salinity impacts,
- at Morgan and such other relevant locations as the Commission may determine.
- (3) A State Contracting Government must give the Commission such data about Joint works and measures, State Actions and Delayed salinity impacts, within that State, and in such form, as the Commission may from time to time request, to assist it in developing a model referred to in sub-clause 36(1).
- (4) The Commission may, from time to time, alter a model developed under sub-clause 36(1).

### **Models developed by State Contracting Governments**

37. (1) Each State Contracting Government must develop one or more models to simulate, under Baseline Conditions, the daily salinity, salt load and flow regime, over the Benchmark Period, at each site at which compliance with an End-of-Valley Target is to be measured.

(2) A model developed by a State Contracting Government must be capable of predicting the effect of:

(a) all Accountable Actions undertaken in the State ; and

(b) any Delayed salinity impacts,

on the salinity, salt load and flow regime at each site at which compliance with an End-of-Valley Target is to be measured in each of 2015, 2050, 2100 and in such other years as the Commission may determine.

(3) A State Contracting Government may, from time to time, alter a model developed under sub-clause 37(1).

### **Assessment and Approval of Certain Models**

38. (1) A model, or any alteration to that model, developed to help the Commission or a State Contracting Government meet reporting obligations under this Schedule, must be assessed in accordance with this clause and any relevant protocols made by the Commission under clause 40.

(2) The Commission must assess any model, or any alteration to a model, made by a State Contracting Government.

(3) The Commission must appoint an appropriately qualified panel to assess any model, or alteration to a model, made by the Commission.

(4) An assessment of any alteration to a model must set out the assessor's prediction of the consequences of the alteration on salinity, salt load and the flow regime, each on a daily basis, at each site at which compliance with an End-of-Valley Target is to be measured, which may be affected by the alteration.

(5) After considering the assessment made by the panel, the Commission may:

(a) approve the model or alteration; or

(b) approve that model or alteration, subject to:

(i) in the case of a model or alteration prepared by a Government, the relevant Government modifying the model or alteration in a way agreed between it and the Commission; or

(ii) in the case of a model prepared by the Commission, the Commission modifying the model or alteration in a way it determines; or

(c) decline to approve the model or alteration ,setting out its reasons.

(6) Within 3 months after the Commission approves a model or alteration under paragraph 38(5)(b):

(a) the relevant Government or the Commission must modify the model, or alteration to a model, as required under that paragraph; and



- (b) in the case of a State Contracting Government, give a copy of the modified model, or alteration to a model, to the Commission.
- (7) A model in the form initially assessed under this clause may be used temporarily for the purposes of this Schedule until any modification to the model agreed upon or determined under paragraph 38(5)(b) (as the case requires) has been:
- (a) made by the Commission or the relevant Government; and
  - (b) approved by the Commission.
- (8) When an alteration to a model:
- (a) is approved under paragraph 38(5)(a); or
  - (b) modified under sub-clause 38(6),
- the relevant model is altered accordingly.

### **Review of Models**

39. A State Contracting Government and the Commission must respectively:
- (a) review any model, and any amended model, developed by it and approved by the Commission, before 31 December 2007 and thereafter at intervals of not more than 7 years; and
  - (b) propose any amendment to a model, or amended model, which that review identifies as appropriate.

## **PART IX – PROTOCOLS**

### **Commission's power to make protocols**

40. (1) The Commission may, from time to time, make, amend or revoke such protocols as it considers necessary, desirable or convenient to give effect to this Schedule.
- (2) The Commission must notify each Contracting Government:
- (a) whenever it is considering making, amending or revoking a protocol; and
  - (b) of the subject matter of the proposed protocol or amendment.
- (3) A Contracting Government may nominate a person with relevant expertise and experience to give advice to the Commission in developing the proposed protocol or amendment.
- (4) The Commission must consider any advice given by any person nominated under sub-clause 40(3), before it adopts the proposed protocol or amendment.

(5) Protocols made under this clause must not be inconsistent with any provision of the Agreement (including its Schedules) and are void to the extent of any inconsistency.

(6) Despite sub-clause 34(1) of the Agreement, the Commission may not delegate any power conferred on it by sub-clause 40(1) or clause 41.

### **Examples of possible protocols**

41. Without limiting sub-clause 40(1), the Commission may make protocols:
- (a) about assessing Proposals;
  - (b) about the nature and form of information which a State Contracting Government must give to the Commission to enable it to estimate salinity impacts;
  - (c) establishing a common method to be used to estimate the salinity impacts of both any Proposal and any Accountable Action;
  - (d) establishing a method, using Baseline Conditions, to estimate Delayed salinity impacts;
  - (e) establishing a method to determine any salinity credits or salinity debits arising from a salinity impact;
  - (f) for administering Register A and Register B, including:
    - (i) deciding whether an Accountable Action should be entered on Register A or Register B;
    - (ii) how to estimate the salinity impact of an action, for the purposes of Register B;
    - (iii) how any salinity credits or salinity debits are to be apportioned between, and attributed to, Contracting Governments;
  - (g) about monitoring:
    - (i) the salinity impacts of an Accountable Action;
    - (ii) progress made under this Schedule in meeting the Basin Salinity Target;
    - (iii) progress made by a State Contracting Government in meeting any End-of-Valley Target within that State;
  - (h) about developing and assessing models referred to in Part VIII and using those models;
  - (i) about preparing, presenting and the required content of a valley report referred to in paragraph 29(2)(b);

- (j) about preparing a program for, conducting, preparing and the required content of, a report on a review of valleys, State Actions and Joint works and measures, referred to in clause 33;
- (k) about making sure that reporting obligations and the nature and content of reports prepared under this Schedule are consistent with the reporting requirements of other national or regional resource management strategies relevant to the Strategy.

## **PART X – DEFAULT**

### **Relationship with Part IX of the Agreement**

42. The provisions of this Part are in addition to, and do not derogate from, any provision in clause 85 of the Agreement.

### **Default by a State Contracting Government**

43. (1) The Commission must determine that a State Contracting Government is in default for the purpose of this clause if the Commission:
- (a) decides; or
  - (b) receives a report of an audit under sub-clause 34(5) which finds, that the total salinity credits do not exceed, or are not equal to, the total salinity debits attributed to that Government in Register A, contrary to paragraph 16(1)(a).
- (2) If the Commission determines that a State Contracting Government is in default, the Commission must:
- (a) forthwith declare that the State is in default of its obligations under this Schedule; and
  - (b) report the matter to the next meeting of the Ministerial Council.

### **Exception Reports**

44. (1) The Commission may determine:
- (a) that the combined total of all salinity credits does not exceed the combined total of all salinity debits attributed to a State Contracting Government in both Register A and Register B, contrary to paragraph 16(1)(b);
  - (b) that a State Contracting Government has not met, or is unlikely to meet, any End-of-Valley Target adopted under sub-clause 8(2);
  - (c) that a State Contracting Government has not complied with one or more of its obligations under this Schedule, on the basis of a conclusion in a review report, referred to in sub-clause 35(3).

- (2) If the Commission makes a determination under sub-clause 44(1) it must report that fact to the next meeting of the Ministerial Council.
- (3) The Commission may revoke a determination made under sub-clause 44 (1) if it is satisfied that the circumstances which led to the determination no longer exist.

### **Proposal for remedial action**

45. The Commission must:

- (a) upon making a determination under sub-clause 43(1) or 44(1), consult with the relevant State Contracting Government, with a view to remedying the situation leading to that determination; and
- (b) include in the relevant report to the Ministerial Council, the Commission's proposal for remedying that situation.

### **Action by a State Contracting Government**

46. A State Contracting Government which has been the subject of a report made by the Commission to the Ministerial Council under either paragraph 43(2)(b) or sub-clause 44(2), must:

- (a) give a report to the next meeting of the Ministerial Council, setting out:
  - (i) an explanation of the circumstances leading to the Commission's determination; and
  - (ii) what action the Government has taken, or proposes to take, to remedy that situation; and
  - (iii) if the circumstances leading to the Commission's determination were a situation referred to in paragraph 44(1)(a), how long the Government predicts it will be before that Government complies with paragraph 16(1)(b); and
- (b) report annually thereafter to the Ministerial Council on the action it has taken, or proposes to take, to remedy the situation, until:
  - (i) in the case of a determination made under sub-clause 43(1), the Commission is satisfied that the Government once more complies with paragraph 16(1)(a) and reports that fact to the Ministerial Council; or
  - (ii) in the case of a determination made under sub-clause 44(1), the Commission revokes that determination.

## **PART XI – FINANCE**

### **State Actions**

47. (1) Subject to sub-clause 47(2), the cost of undertaking and monitoring a State Action must either:
- (a) be met by the Contracting Government which undertakes it; or
  - (b) if the State Action is undertaken by more than one Contracting Government, be met by them in such proportions as they may agree.
- (2) Where a Contracting Government agrees to assign to another Contracting Government any salinity credits or salinity debits under clause 23, any financial obligation of the Government making the assignment under sub-clause 47(1) will be allocated between the parties to the agreement, in such proportions as they may agree.

### **Joint works or measures**

48. (1) Subject to sub-clause 48(2), the provisions of sub-clause 65(1) and paragraphs 65(2)(f) and (i) and 65(3)(d) of the Agreement apply to every Joint work or measure undertaken under this Schedule.
- (2) The share of the cost of any Joint work or measure attributable to a Contracting Government under sub-clause 48(1) may be varied by an agreement made under clause 23.

## **PART XII – TRANSITIONAL PROVISIONS**

### **Former salinity and drainage works**

49. (1) When this Schedule comes into effect, the Commission must:
- (a) enter each Former salinity and drainage work on Register A as an Accountable Action;
  - (b) enter on Register A, and attribute to a State Contracting Government any salinity credit or salinity debit with respect to a Former salinity and drainage work that was attributed to that Government in the Register maintained under the former Schedule; and
  - (c) recalculate salinity credits and salinity debits attributed under the former Schedule, in accordance with sub-clause 20(3).
- (2) A monitoring program approved for a Former salinity and drainage work under clause 12 of the former Schedule must be carried out according to its terms, unless and until the Commission alters it.
- (3) A Contracting Government nominated under sub-clause 50(5) of the Agreement with respect to a Former salinity and drainage work must meet the

cost of operating, maintaining and monitoring that work, unless an agreement made by that Government under clause 23 provides otherwise.

(4) If a Joint work:

- (a) has been authorised under the former Schedule; but
- (b) has not been declared effective under clause 58 of the Agreement,

when this Schedule comes into effect, it must be constructed and the costs of investigating, designing and constructing it met, in accordance with the provisions of the former Schedule.

(5) When a work referred to in sub-clause 49(4) is declared effective under clause 58 of the Agreement:

- (a) it must be considered to be a Former salinity and drainage work for the purposes of this Schedule; and
- (b) the Commission must enter the work in Register A as an Accountable Action.

## Appendix 1. End-of-Valley Salinity and Salt Load Targets

Valley	End-of-Valley Targets (% of Baseline Conditions)			Valley Reporting Site	ARWC no.
All PARTNER GOVERNMENTS	Salinity		Salt load		
	Median	95%ile	Average		
Murray-Darling Basin	110%	98%	110%	Murray @ Morgan	426554
<b>SOUTH AUSTRALIA</b>					
SA Border	tba	tba	tba	<i>Flow to SA</i>	426200
Lock 6 to Berri	tba	tba	tba	<i>Murray @ Lock 4</i>	426514
Berri to Morgan	tba	tba	tba	<i>Murray @ Morgan</i>	426554
Below Morgan	tba	tba	tba	<i>Murray @ Murray Bridge</i>	426522
<b>NSW</b>					
Murrumbidgee	108%	112%	tba	Murrumbidgee @ d/s Balranald Weir	410130
Lachlan	108%	106%	103%	Lachlan @ Forbes (Cottons Weir)	412004
Bogan	137%	93%	133%	Bogan @ Gongolgon	421023
Macquarie	108%	126%	114%	Macquarie @ Carinda (Bells Bridge)	421012
Castlereagh	tba	tba	tba	Castlereagh @ Gungahman Bridge	420020
Namoi	108%	110%	116%	Namoi @ Goangra	419026
Gwydir	tba	tba	tba	Mehi @ Bronte	418058
Barwon	tba	tba	tba	Barwon @ Mungindi	416001
NSW Upper Murray				<i>Murray at Heywoods</i>	409016
Barwon-Darling				<i>Darling at Wilcannia Main Channel</i>	
NSW Riverine Plains				<i>Murray at Redcliffs</i>	414204
NSW Mallee Zone				<i>Flow to SA</i>	426200
<b>VICTORIA</b>					
Wimmera	tba	tba	tba	Wimmera @ Horsham Weir	415200
Avoca	102%	102%	102%	Avoca @ Quambatook	
Loddon	103%	101%	101%	Loddon @ Laanecoorie	407203
Campaspe	101%	101%	101%	Campaspe @ Pumps	406202
Goulburn	100%	100%	100%	Goulburn @ Murchison	405200
Broken	136%	136%	136%	Broken @ Casey's Weir	
Ovens	100%	100%	101%	Ovens @ Peechelba-East	403241
Kiewa	100%	100%	100%	Kiewa @ Bandiana	402205
Vic Upper Murray				<i>Murray at Heywoods</i>	409016
Vic Riverine Plains				<i>Murray at Swan Hill</i>	409204
Vic Mallee Zone				<i>Flow to SA</i>	426200
<b>QUEENSLAND</b>					
Moonie	tba	tba	tba	Moonie @ Fenton	417204A
Ballandool	tba	tba	tba	Ballandool @ Woolerbilla-Hebel Rd	422207A
Bohkara	tba	tba	tba	Bohkara @ Hebel	422209A
Briarie Ck	tba	tba	tba	Briarie @ Woolerbilla-Hebel Rd	422211A
Paroo	tba	tba	tba	Paroo @ Caiwarro	424201A
<b>Other Qld sites but operated by NSW</b>					
Cuttaburra Channel	tba	tba	tba	Cuttaburra @ Turra	423005
Warrego	tba	tba	tba	Warrego @ Barrington No.2	423004
Culgoa	tba	tba	tba	Culgoa @ Brenda	422015
Narran	tba	tba	tba	Narran @ New Angeldool	422012
<b>AUSTRALIAN CAPITAL TERRITORY</b>					
ACT				<i>Murrumbidgee at Hall's Crossing</i>	

tba = to be advised

## **SCHEDULE D — APPLICATION OF AGREEMENT TO QUEENSLAND**

### **Queensland to be a Contracting Party**

1. The State of Queensland shall become a party to the Agreement on the terms set out in this Schedule.

### **Application of Agreement to Queensland**

2. The provisions of the Agreement apply to the State of Queensland except:
  - (a) for those provisions declared not to apply by this Schedule; and
  - (b) to the extent that provisions are modified by this Schedule; and
  - (c) where the Ministerial Council or the Commission determines that a provision does not apply pursuant to clause 4.

### **Provisions Not Applying to Queensland**

3.
  - (1) Parts X, XI and XII of the Agreement do not apply to the State of Queensland.
  - (2) Schedule C of the Agreement does not apply to the State of Queensland unless and until the Ministerial Council decides otherwise.
  - (3) Insofar as any provision of the Agreement bears on a matter set out in clause 3(4), that provision does not apply to the State of Queensland.
  - (4) Clause 3(3) applies to:
    - (a) any issue concerning the design, execution, construction, funding, operation, maintenance, alteration or replacement of any works, measures, policies or strategies solely associated with the management of the upper River Murray and the River Murray in South Australia;
    - (b) any liability of the Commission, any Commissioner or Deputy Commissioner, any officer of the Commission, any Contracting Government or any Constructing Authority in respect of -
      - (i) any matter referred to in clause 3(4)(a), or
      - (ii) any matter arising under a provision of the Agreement which the Ministerial Council or Commission has determined does not apply to the State of Queensland under clause 4.



## **Powers of Ministerial Council and Commission to make Determinations**

4. (1) The Ministerial Council or the Commission, as the case may be, may:
  - (a) determine that a provision of the Agreement does not apply to the State of Queensland, either generally or in relation to a particular matter or class of matters; and
  - (b) revoke any such determination made by it.
- (2) The Ministerial Council may, at any time, direct that any determination made by the Commission under sub-clause 4(1) is to be deemed to have been:
  - (a) revoked; or
  - (b) altered in any way directed by the Ministerial Council.
- (3) The Commission must give effect to any determination made by the Ministerial Council under sub-clause 4(1).

## **Factors to be Considered by Ministerial Council or Commission**

5. (1) In making a determination under sub-clause 4(1)(a), the Ministerial Council or the Commission must apply the guidelines set out in this clause, unless the Ministerial Council or the Commission, as the case may be, determines otherwise.
- (2) A provision should apply to the State of Queensland if:
  - (a) issues arising under that provision are likely to cause a significant benefit or a significant detriment to Queensland;
  - (b) any decisions or actions taken within Queensland without reference to that provision might cause significant benefit or significant detriment to any part of the Murray-Darling Basin within Queensland;
  - (c) the Government of Queensland has incurred or may incur any financial obligation as a result of that provision.
- (3) A provision should not apply to the State of Queensland if issues arising under that provision are only likely to concern that portion of the Murray-Darling Basin delineated in red in the plan comprising the Annexure to this Schedule.

## **Quorum Where Provisions Do Not Apply to Queensland**

6. (1) The quorum of the Ministerial Council for:
  - (a) debating any issue; or
  - (b) considering or making any resolution on an issue, related to any provision which does not apply, in whole or in part, to Queensland by virtue of this Schedule does not include any Minister from the Government of Queensland.

(2) The text of any resolution relating to such an issue and for which approval is sought under clause 13 of the Agreement need not be referred to or approved by any Minister from the Government of Queensland.

(3) The quorum of the Commission for:

(a) debating any issue; or

(b) considering or making any resolution on an issue,

related to any provision which does not apply, in whole or in part, to Queensland by virtue of this Schedule does not include any Commissioner from the State of Queensland.

(4) The text of any resolution relating to such an issue and for which approval is sought under clause 33 of the Agreement need not be referred to or approved by any Commissioner from the State of Queensland before the resolution is made.

### **Application of Previous Ministerial Council Decisions to Queensland**

7. (1) The Ministerial Council may affirm that any policy, determination or decision of the Ministerial Council applies to the State of Queensland.

(2) Any such policy, determination or decision shall apply to the State of Queensland in whole or in part, or with such modification, as the Ministerial Council decides.

(3) This clause applies only to policies, determinations or decisions made by the Ministerial Council between 27 August 1986 and the first meeting of the Ministerial Council after this Schedule comes into force.

(4) Any policy, determination or decision referred to in clause 7(3) which is not affirmed by the Ministerial Council under clause 7(1) does not apply to Queensland.

**Annexure to Schedule D of Murray-Darling Basin Agreement**



IN WITNESS WHEREOF this agreement, incorporating Schedule D, had been signed for and on behalf of the State of Queensland on this *sixteenth* day of *May* One thousand nine hundred and ninety six.

SIGNED by the Honourable )

ROBERT EDWARD BORBIDGE, Premier )

of the State of Queensland )

in the presence of )



*Miss. M...*  
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**SCHEDULE E**  
**TRANSFERRING WATER ENTITLEMENTS AND ALLOCATIONS**  
**PART I - PRELIMINARY**

**Purposes**

1. The purposes of this Schedule are, consistently with the laws of each State, the Agreement, the National Water Initiative and policies from time to time adopted by the Ministerial Council:
  - (a) to co-ordinate the transfer between States and between valleys within the Murray-Darling Basin, of such water entitlements and allocations as are, from time to time, determined by the Ministerial Council and specified in Appendix 1, in a way which minimises any detrimental effects upon the environment and upon other water users;
  - (b) to set out principles to be applied to such transfers by the Commission, State Contracting Governments and licensing authorities;
  - (c) to allow protocols to be made under this Schedule to supplement its provisions; and
  - (d) to require a State Contracting Government to notify the Commission of any intervalley transfer made within that State.

**Application**

2. Subject to the laws of each State, this Schedule applies to transfers referred to in paragraph 1(a), relating to water within:
  - (a) the upper River Murray and the River Murray in South Australia; and
  - (b) regulated reaches of the Goulburn, Campaspe, Loddon and Murrumbidgee river systems; and
  - (c) such other sources from time to time specified in Appendix 1,
  - (d) for the purposes of either or both of exchange rate trade and tagged trade, as the Ministerial Council may determine from time to time.

**Definitions and interpretation**

3. (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 F) pursuant to the law of a State;  
"**cap on diversions**" has the same meaning as in Schedule F;  
"**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 F;  
"**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;

**"interstate transfer"** means a transfer of an entitlement or allocation made between States in accordance with this Schedule;

**"intervalley transfer"** means a transfer of an entitlement or allocation made out of a valley:

into another valley; or

into the River Murray, or vice versa;

**"licensing authority"** means the authority within a State with power to make a final decision whether a transfer may be made into or out of that State;

**"relevant water authority"** in relation to an entitlement or allocation within an irrigation district, means the body responsible for administering that entitlement or allocation in that district;

**"State entitlement"** means the entitlement of a State to water, determined in accordance with Part X of the Agreement;

**"State of destination"** means the State into which a transfer of an entitlement or allocation is, or is to be, made;

**"State of origin"** means the State out of which a transfer of an entitlement or allocation is, or is to be made;

**"transfer"**, in relation to an allocation, includes:

the transfer of an allocation already made in a State of origin to a State of destination, in accordance with this Schedule; and

the transfer of an allocation within a State, according to the laws of that State;

**"transfer"**, in relation to an entitlement, includes:

the transfer of an entitlement, by either exchange rate trade or tagged trade, between States, in accordance with this Schedule; and

the transfer of an entitlement within a State, according to the laws of that State;

**"Transfer Register"** means the register referred to in clause 16;

**"valley"** means a river valley defined in a protocol made under paragraph 6(1)(b);

"**valley account**" has the meaning set out in sub-clause 11(2);

"**year**" means the 12 months beginning on 1 July;

- (b) a reference to a clause, sub-clause, paragraph or Appendix is a reference to a clause, sub-clause, paragraph or Appendix of this Schedule;
  - (c) a reference to the cap on diversions for a designated river valley is to the long-term diversion cap for that designated river valley, fixed in accordance with Schedule F;
  - (d) a reference to "**exchange rate trade**" is to an arrangement under which an entitlement in a State of origin is cancelled, extinguished or suspended and an equivalent entitlement is created in a State of destination, either permanently or for a fixed term;
  - (e) a reference to "**tagged trade**" is to an arrangement under which every allocation made under an entitlement in a State of origin is made available for use in a State of destination, either permanently or for a fixed term.
- (2) For the purposes of this Schedule, the Ministerial Council may determine the geographic extent and limits of the Barmah Choke.

## **PART II – GENERAL PRINCIPLES**

### **Power to alter entitlements and allocations to which Schedule applies**

4. On the recommendation of the Commission, the Ministerial Council may, from time to time, alter the entitlements and allocations to which this Schedule applies, by amending Appendix 1.

### **Suspension of Schedule**

5. (1) Subject to sub-clause 19(10), a State Contracting Government may, from time to time, after consulting the Ministerial Council, suspend or limit the operation of this Schedule in that State, if the State Contracting Government considers that:
- (a) the use or management of water comprised in entitlements or allocations transferred under this Schedule have increased or accelerated environmental degradation; or
  - (b) any other State has made inadequate progress towards pricing water to recover full costs, in accordance with principles adopted by the Council of Australian Governments; or
  - (c) the policies or practices applying within any other State do not achieve the objectives of the National Water Initiative relating to reducing barriers to trading entitlements and allocations and ensuring competitive neutrality in the market for such entitlements and allocations.
- (2) The Ministerial Council may, from time to time, having regard to the National Water Initiative, by resolution, suspend or limit the operation of this Schedule in relation to a State or States.

### **Power to make protocols**

6. (1) The Commission may, from time to time, make protocols:

- (a) to implement the provisions for adjusting the cap on diversions set out in Appendix 3;
  - (b) about calculating salinity debits and credits for the purposes of clause 10;
  - (c) defining valleys for the purposes of this Schedule and about maintaining, crediting, debiting and giving directions for releases to be debited to, valley accounts, pursuant to clause 11;
  - (d) determining one or more conversion factors and exchange rates; about applying and using any conversion factor or exchange rate so determined; and defining trading zones, for the purposes of clause 12;
  - (e) about any matter referred to in clause 13 (Restrictions on Transfers);
  - (f) about any matter referred to in clause 15 (Procedures and Principles for Transfers);
  - (g) about any matter referred to in clause 17 (Monitoring and Reporting);
  - (h) to implement either or both of exchange rate trade and tagged trade; and
  - (i) implementing any resolution of the Ministerial Council about transferring environmental entitlements.
- (2) The Commission must notify each Contracting Government:
- (a) whenever it is considering making, amending, reviewing or revoking a protocol; and
  - (b) of the subject matter of any proposed protocol, amendment, review or revocation.
- (3) A Contracting Government may nominate a person with relevant expertise and experience to give advice to the Commission in preparing, amending, reviewing or revoking a protocol.
- (4) The Commission must consider any advice given by a person nominated under sub-clause (3), before it makes, amends or revokes a protocol.
- (5) A protocol made under this clause:
- (a) must, subject to clause 2, indicate whether it applies to exchange rate trade, tagged trade or both; and
  - (b) must not be inconsistent with any provision of the Agreement (including its Schedules) and is void to the extent of any inconsistency.
- (6) The Commission may:
- (a) amend, review or revoke any protocol made under sub-clause 6(1); and
  - (b) review any such protocol at the request of a Contracting Government.
- (7) Despite sub-clause 34(1) of the Agreement (Delegation), the Commission may not delegate any power conferred on it by sub-clauses 6(1) and (6).



## **PART III – MATTERS RELATING TO ADMINISTRATION OF THE AGREEMENT**

### **Adjustment of delivery of State entitlements**

7. The Commission must, from time to time, adjust the delivery of State entitlements under Part X of the Agreement to take into account, and to give effect to, transfers of entitlements and allocations between States, in accordance with Appendix 2.

### **Adjustment of cap on diversions**

8. (1) Subject to paragraph 16(6)(a), the Commission must, from time to time, adjust the cap on diversions for each designated river valley to reflect interstate and intervalley transfers of entitlements or allocations under this Schedule, in order to ensure that diversions within the Murray-Darling Basin do not exceed the total diversions under baseline conditions referred to in Schedule F.
- (2) For the purpose of making any calculation under clause 10 of Schedule F, the relevant annual diversion target for that year must either be increased or reduced, as the case requires, by the volume determined in accordance with Appendix 3.

### **Adjustment of State financial contributions**

9. (1) In every year, the Commission must, based on information contained in the Transfer Register, calculate the amount by which any sum payable by a State Contracting Government in any year under Part VII of the Agreement, should be varied to reflect transfers of entitlements made by exchange rate trade from river reaches regulated by works subject to the Agreement, into or out of that State in the preceding year.
- (2) If the Ministerial Council so approves, either generally or in a particular case, the Commission may add or subtract, as the case requires, any amount determined under sub-clause 9(1) to or from the sum payable by a State Contracting Government in the next following year, under Part VII of the Agreement.
- (3) Despite the provisions of Part VII of the Agreement, a State Contracting Government must pay any sum as varied in accordance with sub-clause 9(2).

#### *Note:*

- (a) *Where an interstate transfer, made either by exchange rate trade or tagged trade, relates to water in a tributary of the River Murray, the recovery of State bulk water charges relating to that water is a matter for Agreement between the relevant States.*
- (b) *Where tagged trade occurs, a transferee in the State of destination holds an entitlement which continues to exist in the State of origin. A State of origin might recover bulk water charges either directly from the holder of the entitlement in the State of destination, or through the relevant water authority in that State, as agreed between the parties.*

### **Accounting for salinity impacts**

10. (1) An entitlement or allocation can only be transferred under this Schedule if the proposed transfer is consistent with Schedule C.

- (2) Consistently with the law of the relevant State, a licensing authority within that State must attach such conditions to any transfer into or out of that State which the licensing authority considers necessary or desirable to ensure that the State meets its obligations under Schedule C.
- (3) The Commission must attribute salinity credits and debits arising from the dilution effects of interstate transfers of entitlements or allocations to the State of origin and State of destination, in equal shares and in accordance with any protocol made under paragraph 6(1)(b).
- (4) The Commission must attribute salinity credits and debits arising from changes to salt accession attributable to any transfer of entitlements or allocations, or changes to the use of water arising from such transfers, to the State in which the change occurs and in accordance with any protocol made under paragraph 6(1)(b).

## **PART IV – OPERATIONAL PRINCIPLES AND ADMINISTRATION**

### **Delivery of water and valley accounts**

- 11. (1) The Commission must ensure that water made available in each valley reflects the transfers of entitlements and allocations made under this Schedule, in accordance with any protocol made under paragraph 6(1)(c).
- (2) For this purpose of this clause, the Commission must maintain a valley account:
  - (a) for each tributary in respect of which there are entitlements or allocations which may be traded under this Schedule; and
  - (b) in accordance with any protocol made under paragraph 6(1)(c).
- (3) The Commission may:
  - (a) in accordance with any protocol made under paragraph 6(1)(c), direct that water standing to the credit of a valley account for any valley be used for any purpose to which the Commission may have regard under sub-clause 95(3) or 95(4) of the Agreement; and
  - (b) amend or cancel any such direction at any time.
- (4) A State Contracting Government must implement any direction given under paragraph 11(3)(a) in accordance with any protocol made under paragraph 6(1)(c).
- (5) With the consent of the State Contracting Government to whom a direction is given under sub-clause 11(3), a direction may result in a valley account being overdrawn.

### **Conversion factors and exchange rates**

- 12. (1) Subject to sub-clause 12(2), the Commission may, by a protocol made under paragraph 6(1)(d), determine or alter one or more:
  - (a) conversion factors to be applied when converting an entitlement of one type into an entitlement of another type, in the same valley; and
  - (b) exchange rates to be applied under this Schedule:
    - (i) to any transfer of an entitlement by exchange rate trade; and

- (ii) to any transfer of an entitlement by tagged trade or to any transfer of an allocation,  
and must publish any such conversion factors and exchange rates in such manner as it thinks fit.
- (2) An exchange rate referred to in subparagraph 12(1)(b)(ii) must only be made to take into account either or both of:
  - (a) any changes in distribution losses; and
  - (b) any differences in utilization,  
resulting from the transfer.
- (3) A conversion factor and an exchange rate determined or altered by the Commission operates prospectively and cannot be used to alter:
  - (a) a previous entry made in any valley account; or
  - (b) any previous adjustment made to State entitlements or the cap on diversions, or the previous calculation of State financial contributions,  
under this Schedule.
- (4) A protocol referred to in sub-clause 12(1):
  - (a) must specify how any conversion factor or exchange rate is to be applied;  
and
  - (b) may establish one or more zones within which an exchange rate will not be applied to specified types of entitlement; and
  - (c) must attempt to minimise any adverse effect that any conversion or any type of transfer may have on:
    - (i) water users, other than the transferor or transferee; and
    - (ii) the environment; and
  - (d) may provide for taking account of:
    - (i) any losses which may occur during transmission of an entitlement; and
    - (ii) any change in the level of reliability of supply of an entitlement resulting from the conversion or transfer; and
    - (iii) the extent to which the volume of water represented by an entitlement has been used; and
    - (iv) any adverse effect which the conversion or transfer may have on the environment; and
    - (v) any other matter which the Commission considers appropriate.
- (5) Each State Contracting Government must ensure that any licensing authority within the State applies any relevant conversion factor or exchange rate determined under this clause, in accordance with any protocol made under paragraph 6(1)(d).

## **Restrictions on transfers**

13. (1) Subject to sub-clause 13(4), a protocol made under paragraph 6(1)(e) may prohibit, restrict or regulate the transfer of a specified type of entitlement.
- (2) Without limiting sub-clause 13(1), a protocol:
  - (a) must, subject to other provisions of this clause, facilitate the transfer of entitlements or allocations between hydrologically connected systems, in accordance with this Schedule; and
  - (b) must be consistent with any principles relating to markets in, and trading of, water entitlements and allocations, from time to time adopted by the Ministerial Council; and
  - (c) must not hinder the ability of the Commission to regulate and manage the flow of water within the upper River Murray and the River Murray in South Australia, in accordance with the Agreement; and
  - (d) must not purport to affect or interfere with State responsibilities for managing water resources, except as provided for in the Agreement.
- (3) Until the Ministerial Council resolves otherwise an entitlement must not be transferred into or out of the Lower Darling Valley.
- (4) A State Contracting Government may, consistently with the law of that State, from time to time prohibit, restrict or regulate the transfer of any type of entitlement or allocation in a way which is consistent with any principles relating to markets in, and trading of, water entitlements, from time to time adopted by the Ministerial Council.
- (5) Each State Contracting Government must, consistently with the law of that State, take such action within the State as may be necessary to ensure that any prohibition, restriction or regulation made or imposed by the Commission or the State Contracting Government is complied with and observed by each authority and other person in that State.

## **Environmental and supply considerations**

14. (1) The Commission must maintain a record of the environmental assessment criteria and processes from time to time applied by each Contracting Government in respect of applications to transfer entitlements or allocations.
- (2) Each Contracting Government must:
  - (a) notify the Commission of any change to the environmental assessment criteria and processes contained in the record referred to in sub-clause 14(1) with respect to that Government, as soon as practicable after that change is made ; and
  - (b) propose any consequential alterations to the record referred to in sub-clause 14(1) which it considers necessary or desirable.
- (3) Each Contracting Government must, by 31 July in every year, give the Commission a report setting out all changes referred to in paragraph 14(2)(a) with respect to that Government, made in the previous year.

- (4) The Commission may, from time to time, amend the record referred to in sub-clause 14(1) in any way it considers necessary or desirable, in order to reflect the relevant environmental assessment criteria and processes of a Contracting Government.
- (5) Each State Contracting Government must ensure that any licensing authority within the State:
  - (a) takes into account any policies from time to time adopted by the Ministerial Council about:
    - (i) managing environmental flows; and
    - (ii) managing the delivery of State entitlements, in the light of limits to the capacity of the River Murray system; and
    - (iii) any other matters relevant to the purposes of this Schedule, when considering whether or not to approve any application to transfer an entitlement or allocation under this Schedule; and
  - (b) submits any such application to the relevant environmental assessment criteria and processes from time to time set out in the record referred to in sub-clause 14(1); and
  - (c) decides whether or not to grant the application in accordance with:
    - (i) the policies referred to in paragraph 14(5)(a); and
    - (ii) the results of applying the criteria and processes referred to in paragraph 14(5)(b); and
  - (d) imposes comparable conditions about environmental matters on any entitlement or allocation transferred into that State under this Schedule as it would impose on an entitlement or allocation granted or transferred within that State to use the same amount of water for the same purpose at the same location.

**Procedures and principles for transfers**

- 15. (1) The Commission may, by a protocol made under paragraph 6(1)(f), specify processes and principles to be followed by the Commission and, consistently with State law, each State Contracting Government and licensing authority, to record and to facilitate the transfer of entitlements and allocations, subject to the other provisions of this Schedule.
- (2) Each State Contracting Government must, consistently with the law of that State, take such action within the State as may be necessary to ensure that processes and principles referred to in this Schedule and in any protocol made under paragraph 6(1)(f) are applied and observed by each authority and other person in that State.
- (3) Without limiting sub-clause 15(1), a protocol made under paragraph 6(1)(f) may:
  - (a) apply to:
    - (i) interstate transfers;

- (ii) intervalley transfers;
  - (iii) transfers made across the Barmah Choke; and
- (b) specify procedures, which are consistent with State law, for:
- (i) ensuring, where appropriate, that an entitlement in a State of origin is cancelled or extinguished before, or at the same time as, an equivalent entitlement is created in the State of destination;
  - (ii) processing applications to transfer entitlements and allocations;
  - (iii) confirming the ability of the Commission to deliver water pursuant to any proposed transfer;
  - (iv) notifying the Commission when a transfer has occurred; and
- (c) specify principles, which are consistent with State law, for determining access and exit fees relating to irrigation infrastructure; and
- (d) subject to clause 16, require the keeping of registers and accounts of transfers.

### **Transfer Register**

16. (1) In this clause:

**base valley** means a valley referred to in sub-clause 3(2) of Schedule F.

- (2) The Commission must keep and maintain a register which sets out the following information with respect to conversion of entitlements and each intervalley transfer of an entitlement (and, if the Commission so resolves, each allocation) occurring within the area referred to in clause 2:
- (a) The following information about the place of origin:
    - (i) The volume in megalitres and type of any entitlement converted into an entitlement of another type.
    - (ii) The volume in megalitres of any entitlement created by such conversion, after applying the relevant conversion factor, and the type of the new entitlement.
    - (iii) The volume in megalitres of any allocation or entitlement transferred.
    - (iv) The identifying number of the allocation or entitlement transferred.
    - (v) The type of entitlement to which the transfer relates.
    - (vi) The base valley from which the transfer was made.
    - (vii) The designated river valley from which the transfer was made.
    - (viii) The date on which either:

- the entitlement transferred was cancelled, extinguished or suspended at the place of origin; or
  - any allocation under an entitlement is permanently made available in the State of destination; or
  - the transfer of the allocation was authorised,
- as a result of the transfer, as the case requires.
- (b) The following information about the place of destination:
- (i) The exchange rate applied to any transfer.
  - (ii) The volume in megalitres of the allocation or entitlement transferred, after applying the relevant exchange rate.
  - (iii) The type of entitlement into which the allocation or entitlement transferred has been converted.
  - (iv) The base valley into which the transfer was made.
  - (v) The designated river valley into which the transfer was made.
  - (vi) The date upon which either:
    - any new entitlement was created at the place of destination; or
    - the use of the transferred allocation was authorised,

as a result of the transfer, as the case requires.
  - (vii) The identifying number of any new entitlement.
  - (viii) If the transfer was made between States, an identifying interstate transfer number, allocated to the transfer by the Commission.
- (c) The effective date of the transfer, being the later of the dates referred to in sub-paragraphs 16(a)(vii) and 16(b)(vi).
- (3) Pursuant to the obligations set out in paragraph 11(1)(c) of Schedule F, each State Contracting Government must ensure that the Commission promptly receives all such information relating to transfers within, to or from the territory of that State, as may be necessary to keep the Transfer Register up-to-date.
- (4) The Commission must, after the end of each year, arrange for an independent auditor:
- (a) to examine whether there is any discrepancy between information provided by each State Contracting Government under sub-clause 16(3), information provided under clause 8 of Appendix 3 to this Schedule and information set out in the Transfer Register; and

- (b) to make recommendations to the Ministerial Council, on or before September 30 in the following year, about any amendment to the Transfer Register as the auditor thinks desirable, in view of any such discrepancy.
- (5) After considering any recommendation made by an independent auditor under paragraph 16(4)(b), the Ministerial Council may require the Commission to make any alteration to the Transfer Register, which the Ministerial Council considers appropriate.
- (6) The Commission must recalculate:
  - (a) any adjustment to the cap on diversions or any annual diversion target, pursuant to clause 8; or
  - (b) any calculation pursuant to clause 9,
    - in respect of which relevant alteration has been made to the Transfer Register under sub-clause 16(5).

### **Monitoring and reporting**

- 17. (1) Unless the Commission determines otherwise, by 30 June in every year, commencing in 2007, each State Contracting Government must, in accordance with any protocol made under paragraph 6(1)(g), prepare and give to the Commission a report on measures taken in that State in the preceding year:
  - (a) to manage any adverse environmental effects attributable to interstate transfers of entitlement or allocations into and out of that State; and
  - (b) to implement and monitor environmental assessment criteria and procedures for the use of water transferred into the State on land at its destination.
- (2) By 31 December in every year, the Commission must, in accordance with any protocol made under paragraph 6(1)(g), prepare and give to each State Contracting Government a report setting out the following information for the preceding year:
  - (a) the total volume of transfers of entitlements and allocations into and out of each State; and
  - (b) the exchange rates applied to interstate transfers referred to in paragraph 17(2)(a); and
  - (c) any adjustment to the delivery of a State's entitlement made under clause 7; and
  - (d) any adjustment to the contribution of a State Contracting Government approved by the Ministerial Council under sub-clause 9(2); and
  - (e) any adjustment to the cap on diversions for a designated river valley made under clause 8.

### **Review of interstate transfers**



18. (1) The Commission must prepare and give to the Ministerial Council and the Community Advisory Committee a report on:
- (a) the operation of this Schedule; and
  - (b) the markets for interstate transfers of entitlements and allocations, respectively, by 1 July 2007 and thereafter, either:
  - (c) by the end of every third year; or
  - (d) in the case of the market for entitlements, promptly after at least 8% of the volume of entitlements to use water for irrigation in any area has been permanently transferred interstate since the last report on that market was made under this clause; or
  - (e) in the case of the market for allocations, promptly after at least 8% of the volume of allocations to use water for irrigation in any area has been transferred interstate in the preceding 12 months,
- whichever is sooner.
- (2) A report referred to in sub-clause 18(1) must deal with delivery losses, the accuracy or otherwise of water accounting measures and any other matter which the Ministerial Council may, from time to time direct, or which the Commission considers appropriate.
- (3) For the purpose of sub-clause 18(1), "area" means any irrigation area administered by a relevant water authority, or any part of such an area which is separately administered from other parts.

### **Dispute resolution**

19. (1) This clause applies to any dispute arising under this Schedule between:
- (a) one or more of the State Contracting Governments; and
  - (b) one or more State Contracting Government and the Commission,
  - (c) each of whom is a party for the purpose of this clause.
- (2) A dispute arises at the time when one party notifies the other party or parties in writing that there is a dispute about a matter specified in the notice.
- (3) If a dispute arises, the parties must seek, in good faith, to resolve the dispute expeditiously by negotiations between them.
- (4) If a dispute is not resolved within 60 days, a party to the dispute may give written notice to the other party or parties requiring the matter to be referred to a dispute panel:
- (a) comprising at least two members agreed between the parties; or

- (b) if they cannot agree, comprising an equal number of members appointed by each party to the dispute.
- (5) A dispute panel must meet within 7 days after it is appointed, or within such other period agreed by the parties.
- (6) A unanimous decision of the dispute panel is binding upon the parties.
- (7) If the dispute panel does not reach a unanimous decision:
  - (a) any dispute to which the Commission is a party must be referred to the Ministerial Council for resolution; and
  - (b) any dispute between State Contracting Governments may be referred by a party to an arbitrator, as if it were a matter requiring resolution by an arbitrator under clause 133 of the Agreement.
- (8) Each party must meet its own costs in relation to any dispute.
- (9) Each party must contribute equally to the cost of any dispute panel or arbitrator, unless the dispute panel or arbitrator, as the case requires, directs otherwise.
- (10) Each State Contracting Government undertakes to try to resolve any difference between it and any other State Contracting Government about a matter referred to in paragraph 5(1)(a), (b) or (c), in accordance with sub-clauses 19(1) – 19(6) before consulting the Ministerial Council under sub-clause 5(1).

**APPENDIX 1**

(See clause 4)

**ENTITLEMENTS AND ALLOCATIONS**

<b>LEGISLATION</b>	<b>CATEGORY</b>	<b>SOURCE</b>
Water Management Act 2000 (NSW)	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	
Water Act 1989 (Vic)	Water licence granted under section 51	River Murray and Goulburn, Campaspe and Loddon river systems
	Irrigation water right	
	Bulk entitlement	
	Sales Allocation	
Water (Resource Management Act 2005 (Vic)	High-reliability water share	
	Lower reliability water share	
	Allocation under a water share	
	Allocation under an environmental entitlement	
Natural Resources Management Act 2004 (SA)	Water licence	River Murray Prescribed Watercourse

LEGISLATION	CATEGORY	SOURCE
	Water allocation under a water licence	

## APPENDIX 2

(See clause 7)

### ADJUSTING DELIVERY OF STATE ENTITLEMENTS UNDER PART X OF THE AGREEMENT

#### PART I - RULES WHICH APPLY AT ALL TIMES

##### Interstate transfers of entitlements

1. (1) Subject to sub-clause 1(2), the Commission must adjust the delivery of a State entitlement as a result of each interstate transfer of an entitlement, in accordance with Rules 1-4:
  - (a) in the case of exchange rate trade, by the volume of the allocations which would have been made to that entitlement in the State of origin in every year, if the entitlement had not been transferred; and
  - (b) in the case of tagged trade, by the volume of water used by the transferee in each year.
- (2) For the purpose of calculating the volume referred to in paragraph 1(1), for exchange rate trade, if the transferor seeks to transfer an entitlement with lower reliability, the Commission must first apply the relevant conversion factor that would be applied to convert that entitlement into a type of entitlement with higher reliability, in the valley of origin.
- (3) An adjustment made under sub-clause 1(1), must be calculated from the effective date of the relevant transfer.
- (4) The Commission must alter its procedures for delivering State entitlements to reflect any adjustments made under sub-clause 1(1), in the manner set out in any protocol made under paragraph 6(1)(e).

##### **Rule 1:** *Transfers into South Australia*

The Commission must *increase*:

- (a) water deliveries to South Australia; and
- (b) the volume provided to South Australia by the State out of which the transfer was made,

but must not increase the priority of delivering the volume represented by any transfer.

##### **Rule 2:** *Transfers out of South Australia*

The Commission must decrease:

- (a) water deliveries to South Australia; and
- (b) the volume provided to South Australia by the State into which the transfer was made.

**Rule 3:** *Transfers out of New South Wales into Victoria*

The Commission must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to New South Wales; and
- (b) *increase* the volume which may be delivered to Victoria.

**Rule 4:** *Transfers out of Victoria into New South Wales*

The Commission must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to Victoria; and
- (b) *increase* the volume which may be delivered to New South Wales.

**Interstate transfers of allocations**

- 2. (1) The Commission must adjust a State entitlement as a result of each interstate transfer of an allocation:
  - (a) by the adjusted volume of that transfer; and
  - (b) in accordance with Rules 5 – 8 set out below.
- (2) The Commission must alter its procedures for delivering State entitlements to reflect any adjustment made under sub-clause 2(1), in accordance with any protocol made under paragraph 6(1)(f) of this Schedule.

**Rule 5:** *Transfers into South Australia*

The Commission must *increase*:

- (a) water deliveries to South Australia; and
- (b) the volume provided to South Australia by the State out of which the transfer was made.

**Rule 6:** *Transfers out of South Australia*

The Commission must *decrease*:

- (a) water deliveries to South Australia; and
- (b) the volume provided to South Australia by the State into which the transfer was made.

**Rule 7:** *Transfers out of New South Wales into Victoria*

The Commission must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to New South Wales; and
- (b) *increase* the volume which may be delivered to Victoria.

**Rule 8:** *Transfers out of Victoria into New South Wales*

The Commission must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to Victoria; and
- (b) *increase* the volume which may be delivered to New South Wales.

**PART II -RULES WHICH ONLY APPLY IN PERIODS WHEN THERE IS SPECIAL ACCOUNTING**

**Accounting under clause 124 of the Agreement**

3. During any period of special accounting, the Commission, in each month, must increase and decrease the account kept for a State:
- (a) under paragraph 124(a) of the Agreement, in accordance with Rules 9 and 10 set out below; and
  - (b) under paragraph 124(b) of the Agreement, in accordance with Rules 11 and 12 set out below.

**Rule 9:** *New South Wales*

The Commission must:

- (a) *increase* the account by the sum of adjustments made in that month for New South Wales under rules 1, 3, 5 and 7; and
- (b) *decrease* the account by the sum of adjustments made in that month for New South Wales under rules 2, 4, 6 and 8.

**Rule 10:** *Victoria*

The Commission must:

- (a) *increase* the account by the sum of adjustments made in that month for Victoria under rules 1, 4, 5 and 8; and
- (b) *decrease* the account by the sum of adjustments made in that month for Victoria under rules 2, 3, 6 and 7.

**Rule 11:** *New South Wales*

The Commission must:

- (a) *increase* the account by the sum of adjustments made in that month for New South Wales under rules 2 and 6; and
- (b) *decrease* the account by the sum of adjustments made in that month for New South Wales under rules 1 and 5.

**Rule 12:** *Victoria*

The Commission must:

- (a) *increase* the account by the sum of adjustments made in that month for Victoria under rules 2 and 6; and
- (b) *decrease* the account by the sum of adjustments made in that month for Victoria under rules 1 and 5.



## APPENDIX 3

(See clause 8)

### ADJUSTING CAP ON DIVERSIONS

#### Definitions

1. For the purposes of this Appendix:

**cap required**, with respect to a unit of a type of entitlement, means the product of that unit *multiplied* by the appropriate cap factor referred to in paragraph 9(c).

**effective date** means the beginning of the year in which this Appendix comes into effect.

#### PART I – ADJUSTING FOR TRANSFERRED ALLOCATIONS

##### Adjusting cap for transferred allocations

2. The annual diversion target for a designated river valley, referred to in sub-clause 10(1) of Schedule F, must either be increased or reduced, as the case requires, by the volume of any interstate or intervalley transfers of allocations into or out of that designated river valley in that year, multiplied by the appropriate cap transfer rate set out in Table 1 of a protocol made under paragraph 6(1)(a) of the Schedule.

#### PART II – ADJUSTING FOR ENTITLEMENTS TRANSFERRED BY TAGGED TRADE

##### Cap adjustment for tagged trade

3. The annual diversion target for a designated river valley referred to in sub-clause 10(1) of Schedule F must be:
  - (a) increased by the volume of water diverted in that designated river valley in that year, which is attributable to entitlements tagged to another designated river valley; and
  - (b) reduced by the volume of water attributable to entitlements tagged to that designated river valley, which is diverted in any other designated river valley in that year.

#### PART III – ADJUSTING FOR ENTITLEMENTS TRANSFERRED BETWEEN 1 JULY 1994 AND THE EFFECTIVE DATE, USING EXCHANGE RATES

##### Interim register

4. The Commission must establish and maintain an interim register which records the volume of any entitlement transferred from a designated river valley to another designated river valley during each year between 1 July 1994 and the effective date.

##### Adjusting annual diversion targets

5. Each year, the Commission must calculate the adjustment to the annual diversion target for a designated river valley for transfers recorded on the interim register referred to in clause 4, by:

- (a) *multiplying* the cumulative volume of every entitlement of a particular type transferred into the designated river valley between 1 July 1994 and the earlier of the beginning of that year and the effective date, by the appropriate cap transfer rate set out in Table 2 of a protocol made under paragraph 6(1)(a) of the Schedule; and
- (b) *multiplying* the cumulative volume of every entitlement of a particular type transferred out of the designated river valley between 1 July 1994 and the earlier of the beginning of that year and the effective date, by the appropriate cap transfer rate; and
- (c) *subtracting* the product of (b) from the product of (a).

#### **PART IV – ADJUSTING FOR ENTITLEMENTS TRANSFERRED OR CONVERTED AFTER THE EFFECTIVE DATE, USING EXCHANGE RATES**

##### **Object of Part**

- 6. The object of this Part is, subject to sub-clause 8(1) of the Schedule, to minimise the impact of transfers or conversion of entitlements on entitlements held by third parties, by endeavouring to ensure that:
  - (a) the proportion of the cap associated with each unit of a particular type of entitlement remains the same after an entitlement has been transferred or converted as it was before that transfer or conversion; and
  - (b) the annual diversion target for each State and designated river valley referred to in sub-clause 10(1) of Schedule F is adjusted accordingly.

##### **Operation of Part**

- 7. This Part applies to entitlements transferred or converted after the effective date.

##### **Calculating increases in cap required**

- 8. Based on information set out in the Transfer Register, the Commission must make the following calculations for every year, in respect of each designated river valley, as a consequence of transfers between that designated river valley and every other designated river valley:
  - (a) The **volume of each type of entitlement** into which former entitlements were transferred or converted, as recorded under sub-paragraphs 16(2)(b)(ii) and 16(2)(a)(ii) of this Schedule.
  - (b) The **net increase in each type of entitlement** , by subtracting the volume of that type of entitlement recorded under sub-paragraphs 16(2)(a)(iii) and 16(2)(a)(i) of this Schedule from the volume of that type of entitlement calculated under paragraph 8(a).
  - (c) The **net increase in the cap required** for each type of entitlement , by multiplying the result of the calculation in paragraph 8(b) by the relevant cap factor set out in Table 3 of a protocol made under paragraph 6(1)(a) of the Schedule.

## **Adjusting annual diversion targets**

9. (1) The Commission must, in each year, alter each long-term diversion cap to reflect the results of transferring entitlements, pursuant to paragraph 8(a) of Schedule F, by adjusting annual diversion targets.
- (2) The Commission must adjust each annual diversion target by following any protocol made by the Commission under paragraph 6(1)(a) of the Schedule, to implement the Stages set out below.

### **Stage 1**

Adjust annual diversion targets, as far as possible by allocating to the cap required in a designated river valley of destination, so much of the volume of cap no longer required in the designated river valley of origin as is required in the designated river valley of destination. A separate calculation must be made for the interaction between each designated river valley and every other designated river valley, based on information collated from the Transfer Register.

### **Stage 2**

Pool any cap surpluses and deficits calculated under Stage 1 in relation to each designated river valley, in order to reduce any shortfalls in each designated river valley.

Where lower reliability entitlements have been converted to higher reliability entitlements within a designated river valley, the net effect of that conversion on the cap attributable to that valley must be included in the pool. However:

- (a) a shortfall within a designated river valley caused by such conversions cannot be reduced by attributing a surplus existing in another designated river valley; and
- (b) the volume pooled with respect to a designated river valley cannot exceed the sum of the deficits arising in other designated river valleys, as a result of transfers between that designated river valley and other designated river valleys.

### **Stage 3**

- (a) Calculate any cap surplus resulting from Stage 2 for each designated river valley.
- (b) Then allocate any of that cap surplus that is attributable to interstate transfers into or from that designated river valley to the environment, by
- (c) reducing the annual diversion target for that designated river valley by the portion of the surplus referred to in paragraph (b).

The allocation referred to in paragraph (b) must only apply in the year in which it is made and will not create an entitlement to draw a comparable volume of water from any storage in the Basin. Progressively reducing annual diversion targets will, however, eventually allow more water to flow downstream.

**Stage 4**

Calculate the adjustment to each annual diversion target for each designated river valley by determining the sum of the total adjustments made under Stages 1, 2 and 3.

## SCHEDULE F CAP ON DIVERSIONS

### Purposes

1. The purposes of this Schedule are:
  - (a) to establish long-term diversion caps from rivers within the Murray-Darling Basin, in order to protect and enhance the riverine environment; and
  - (b) to set out action to be taken by the Ministerial Council, the Commission and State Contracting Governments to quantify and comply with annual diversion targets; and
  - (c) to prescribe arrangements for monitoring and reporting upon action taken by State Contracting Governments to comply with annual diversion targets.

### Definitions

2. In this Schedule, except where inconsistent with the context:

**"baseline conditions"** means the level of water resource development for rivers within the Murray-Darling Basin as at 30 June 1994 determined by reference to:

- (a) the infrastructure supplying water; and
- (b) the rules for allocating water and for operating water management systems applying; and
- (c) the operating efficiency of water management systems; and
- (d) existing entitlements to take and use water and the extent to which those entitlements were used; and
- (e) the trend in the level of demand for water within and from the Murray-Darling Basin

at that date.

**"designated river valley"** means a river valley or water supply system referred to in, or designated under, sub-clause 3(1).

**"historical data"** means data relevant to the period from 1 July 1983 to 30 June 1994, or such other period as the Commission may from time to time determine.

**"Register"** means the Register referred to in sub-clause 11(7).

**“river valley”** means a river valley within the Murray-Darling Basin referred to in sub-clause 3(2).

**"water year"** in relation to a river valley or a water supply system means the relevant 12 month period applicable to the allocation of water entitlements and measurement of diversions in that river valley or water supply system.

### **River Valleys and Designated River Valleys**

3. (1) Subject to sub-clause 3(3), the river valleys or water supply systems listed at Schedule 1 are "designated river valleys" for the purposes of this Schedule.

(2) Subject to sub-clause 3(3), the river valleys listed at Schedule 2 are “river valleys” for the purposes of this Schedule.

(3) The Ministerial Council may, from time to time, on the recommendation of the Commission:

- (a) amend the description of:
  - (i) any designated river valley described in Schedule 1; or
  - (ii) any river valley in Schedule 2;
- (b) designate, for the purposes of this Schedule, any river valley or water supply system not referred to in Schedule 1; or
- (c) add any river valley to those set out in Schedule 2.

### **Long-term diversion cap for New South Wales**

4. (1) The Government of New South Wales must ensure that diversions within each designated river valley in New South Wales do not exceed diversions under baseline conditions in that designated river valley, as determined by reference to the model developed under sub-clause 9(4).

(2) In calculating baseline conditions for the Border Rivers, allowance must be made for such annual volume as the Ministerial Council may, from time to time, determine in view of the special circumstances applying to Pindari Dam.

### **Long-term diversion cap for Victoria**

5. (1) The Government of Victoria must ensure that diversions within each designated river valley in Victoria (including the upper River Murray) do not exceed diversions under baseline conditions in that designated river valley, as determined by reference to the model developed under sub-clause 9(4).

(2) In calculating baseline conditions for the Goulburn/Broken/Loddon and/or the Murray Valley water supply systems, allowance must be made for an additional 22 GL per year, or such other annual volume as the Ministerial Council may, from time to time, determine in view of the special circumstances applying to Lake Mokoan.

## **Long-term diversion cap for South Australia**

6. (1) The Government of South Australia must ensure that diversions from the River Murray within South Australia:
  - (a) for water supply purposes delivered to Metropolitan Adelaide and associated country areas through the Swan Reach-Stockwell, Mannum-Adelaide and Murray Bridge-Onkaparinga pipeline systems do not exceed a total diversion of 650 GL over any period of 5 years;
  - (b) for Lower Murray Swamps irrigation do not exceed 83.4 GL per year;
  - (c) for water supply purposes for Country Towns do not exceed 50 GL per year; and
  - (d) for all other purposes do not exceed a long-term average annual diversion of 440.6 GL.
- (2) Subject to sub-clause 6(3), the Ministerial Council may alter the annual diversion cap set out in:
  - (a) paragraph 6(1)(b) after considering a submission from the Government of South Australia on the 1993/94 level of diversions for the purposes referred to in that paragraph; and
  - (b) paragraph 6(1)(c) after considering the outcome of modelling studies.
- (3) The Ministerial Council may only alter an annual diversion cap under sub-clause 6(2) in order to represent more accurately diversions under baseline conditions.
- (4) The Government of South Australia must ensure that no part of any entitlement created in South Australia with respect to the diversion referred to in paragraph 6(1)(a) is either used, or transferred for use, for any purpose other than use in Metropolitan Adelaide and associated country areas, unless the Ministerial Council determines otherwise.
- (5) If the Government of South Australia supplies any of the diversions referred to in paragraph 6(1)(d) through the Swan Reach-Stockwell, Mannum-Adelaide and Murray Bridge-Onkaparinga pipeline systems in any year, it must:
  - (a) record the volume of water so delivered for that purpose in that year; and
  - (b) account for that volume against the long-term average annual diversion referred to in paragraph 6(1)(d), when monitoring and reporting to the Commission under clause 11.

## **Long-term diversion cap for Queensland**

7. (1) The Government of Queensland must ensure that diversions from each designated river valley in Queensland do not exceed such long-term diversion caps as may be fixed by the Ministerial Council on the recommendation of the Commission.
- (2) Until December 2002 –
  - (a) a long-term diversion cap fixed under sub-clause 7(1) may be expressed in terms of a long-term pattern of flow to be maintained at the end of a designated river valley; and
  - (b) if the long-term diversion cap is so expressed, in order to determine whether the cap has been complied with in Queensland:
    - (i) the expressions “diversion” or “diversions” occurring in clauses 9-17 must be read as if they referred to “end-of-valley flow” or “end-of-valley flows” respectively; and
    - (ii) the expression “credit” in paragraph 11(8)(b) must be read as if it referred to “debit”; and
    - (iii) the expression “debit” in paragraph 11(8)(c) must be read as if it referred to “credit”.
- (3) On or before 30 June 2000, the Government of Queensland will prepare and publish water management plans and water allocation management plans for all river valleys in Queensland.
- (4) After considering the plans referred to in sub-clause 7(3), the Commission must make the recommendations referred to in sub-clause 7(1).

## **Power of Ministerial Council to alter long-term diversion caps**

8. A long-term diversion cap referred to in clause 4, 5, 6 or 7 from time to time:
  - (a) must be altered by the Commission, to reflect the result of trading water entitlements within a State or between States; and
  - (b) may be altered by the Ministerial Council, on the recommendation of the Commission, for any other reason.

## **Developing Analytical Models**

9. (1) The Commission must develop analytical models for determining the annual diversion targets for the upper River Murray.
- (2) Subject to sub-clause 9(1), the Governments of New South Wales, Victoria and Queensland must each develop analytical models for determining the annual diversion target for each designated river valley within the territory of that State.



(3) The Government of South Australia must develop analytical models for determining the annual diversion target for diversions referred to in paragraph 6(1)(d).

(4) An analytical model developed under this clause:

- (a) must simulate the long-term diversion cap in the relevant designated river valley; and
- (b) must be tested against relevant historical data to determine the accuracy of the model in estimating the annual diversion; and
- (c) must be approved by the Commission before it is used to determine an annual diversion target under this Schedule; and
- (d) may, from time to time, be modified in such ways as the Commission may approve; and
- (e) must be used to determine the average annual diversion under the conditions of the relevant long-term diversion cap determined under clause 4, 5, 6 or 7 for either:
  - (i) the period between the start of the 1891 water year and the end of the 1997 water year; or
  - (ii) such a lesser period as may be approved by the Commission.

(5) The Commission may only approve an analytical model or a modification to an analytical model if the Commission considers that the model, when approved or modified, will fairly determine the relevant annual diversion target given the climatic conditions experienced in any year.

### **Calculation of annual diversion targets**

10. (1) Within two months after the end of the relevant water year and using the analytical models developed and approved under clause 9:
- (a) the Commission must calculate the annual diversion targets for New South Wales and Victoria for that year for the upper River Murray; and
  - (b) subject to paragraph (a), the Governments of New South Wales, Victoria, South Australia and Queensland must, for each designated river valley within the territory of that State, calculate the annual diversion target for that year.
- (2) The Commission must promptly inform the Governments of New South Wales and Victoria of the results of every calculation made under paragraph 10(1)(a) with respect to the upper River Murray.
- (3) The Government of New South Wales, Victoria, South Australia and Queensland, respectively, must each promptly inform the Commission of the results of every calculation made by it under paragraph 10(1)(b).

## Monitoring and Reporting

11. (1) Each State Contracting Government must, for each water year and in relation to each river valley specified in Schedule 2 within its territory, monitor and report to the Commission upon:
  - (a) diversions made within and to; and
  - (b) water entitlements, announced allocations of water and declarations which permit the use of unregulated flows of water within; and
  - (c) trading of water entitlements within, to or from the territory of that State in that water year.
- (2) Each State Contracting Government must, for each water year and in relation to each designated river valley within its territory, monitor and report to the Commission upon:
  - (a) the compliance by that State with each relevant annual diversion target calculated under this Schedule for that water year; and
  - (b) such actions which the State proposes to take to ensure that it does not exceed the annual diversion targets calculated under this Schedule for every ensuing water year.
- (3) For the purpose of sub-clauses 11(1) and (2) the expression "river valley within its territory" in relation to Victoria, includes that portion of the upper River Murray forming the border between Victoria and New South Wales.
- (4) A report under sub-clause 11(1) or (2) must be given to the Commission within two months of the end of each relevant water year or by such other time as the Commission may determine.
- (5) On the basis of the calculations referred to in sub-clause 10(1) and reports given to it under sub-clauses 11(1) and (2) the Commission:
  - (a) must, in relation to each State Contracting Government, produce a water audit monitoring report which includes information about that Government's compliance with the annual diversion target calculated for each designated river valley in the territory of that State and for the whole of the State in the relevant water year; and
  - (b) may publish any such report, or a summary thereof, in such manner as it may determine.
- (6) A water audit monitoring report under sub-clause 11(4) must be produced by 31 December following the conclusion of each relevant water year, or by such other time as the Commission may determine.
- (7) The Commission must maintain a Register which records:
  - (a) for each designated river valley; and

- (b) for each State,

the cumulative difference between actual annual diversions and the annual diversion targets calculated under this Schedule.

- (8) The Register must:

- (a) include information about every water year concluding after:
- (i) 1 November 1997 for each State other than Queensland; and
  - (ii) for Queensland, a date determined by the Ministerial Council when it fixes long-term diversion caps under sub-clause 7(1); and
- (b) if cumulative actual diversions for any designated river valley or for any State are less than the cumulative annual diversion targets calculated under this Schedule, as the case requires, record the difference as a credit; and
- (c) if cumulative actual diversions for any designated river valley or for any State are greater than the cumulative annual diversion targets calculated under this Schedule, as the case requires, record the difference as a debit.

- (9) The Commission must include a report on the operation of this Schedule in any report made to the Ministerial Council under clause 84 of the Agreement.

### **Appointment of Independent Audit Group**

12. The Commission must appoint an Independent Audit Group for the purpose of this Schedule.

### **Annual audit by the Independent Audit Group**

13. (1) The Independent Audit Group must, until 31 December 2004, annually audit the performance of each State Contracting Government in implementing the long-term diversion cap in each water year which concludes on or between 1 June 1999 and 1 November 2004.
- (2) The Commission may direct the Independent Audit Group to audit the performance of any State Contracting Government in implementing the long-term diversion cap in any water year concluding after 1 November 2004.
- (3) The Independent Audit Group must report to the Commission on any audit conducted under this clause.

### **Power to require a special audit of a designated river valley**

14. If, after receiving a report from a State Contracting Government under sub-clause 11(2) for any year, the Commission calculates that either:
- (a) the diversion for water supply to Metropolitan Adelaide and associated country areas over the last five years has exceeded 650 GL; or
  - (b) the cumulative debit recorded in the Register exceeds 20 % of the average annual diversion determined under paragraph 9(4)(e) for a particular designated river valley within that State,

the Commission must direct the Independent Audit Group to conduct a special audit of the performance of that State Contracting Government in implementing the long-term diversion cap in the relevant designated river valley.

### **Special audit by Independent Audit Group**

15. (1) In conducting a special audit under clause 14, the Independent Audit Group must consider:
- (a) data on diversions and annual diversion targets recorded on the Register; and
  - (b) data submitted by the relevant State Contracting Government, including, for example, data about areas under irrigation, storage capacities, crop production, irrigation technology and the conjunctive use of groundwater in the designated river valley; and
  - (c) the impact that policies implemented by the State Contracting Government may have on the expected pattern of annual diversions; and
  - (d) whether the diversion for all years on the Register exceeds the diversion expected under the long-term diversion cap for those years, and
  - (e) any other matter which the Independent Audit Group considers relevant.
- (2) The Independent Audit Group must:
- (a) determine whether the long-term diversion cap has been exceeded in the designated river valley; and
  - (b) report to the Commission on the special audit and advise the Commission of its determination within six months after a direction given under clause 14.

### **Declaration that diversion cap has been exceeded**

16. If the Commission receives a report under sub-clause 15(2) which determines that a State has exceeded the long-term diversion cap in a designated river valley, the Commission must:
- (a) forthwith declare that the State has exceeded the Murray-Darling Basin diversion cap; and
  - (b) report the matter to the next meeting of the Ministerial Council.

### **Advice to Ministerial Council on remedial actions**

17. (1) The Government of a State referred to in sub-clause 16(a) must report to the next Ministerial Council after a declaration is made under that sub-clause, setting out:
- (a) the reasons why diversions exceeded the Murray-Darling Basin diversion cap; and
  - (b) action taken, or proposed to be taken by it to ensure that cumulative diversions recorded in the Register are brought back into balance with the cap; and
  - (c) the period within the relevant model referred to in clause 9 predicts that the cumulative diversions recorded in the Register will be brought back into balance with the cap.
- (2) The Government of a State that has been required to report to the Ministerial Council under sub-clause 17(1) must report to each subsequent meeting of the Ministerial Council on action taken, or proposed to be taken by it to ensure that cumulative diversions recorded in the Register are brought back into balance with the cap, until the Commission revokes a declaration pursuant to sub-clause 17(3).
- (3) When the Commission is satisfied that a State in respect of which a declaration has been made under paragraph 16(a) has brought the cumulative diversions recorded in the Register back into balance with the cap and is once more complying with the Murray-Darling Basin diversion cap in all respects, it must:
- (a) revoke the declaration; and
  - (b) report that fact to the next meeting of the Ministerial Council.

## Schedule 1

### Designated River Valleys

1. New South Wales

The New South Wales portion of the Border Rivers.

The New South Wales portion of the following river valleys

Moonie, Big Warrambool, the Culgoa/Birrie/Bokhara/Narran water supply system, Warrego, Paroo.

Gwydir.

Namoi.

The Macquarie/Castlereagh/Bogan water supply system.

The Barwon/Upper Darling water supply system and the Lower Darling from the furthest upstream reach of the Menindee Lakes to the furthest upstream reach of the Wentworth Weir Pool.

Lachlan.

Murrumbidgee.

The New South Wales portion of the Murray Valley including the portion of the Lower Darling influenced by the Wentworth Weir Pool.

2. Queensland

The Condamine/Balonne water supply system.

The portion of the Border Rivers in Queensland.

The portion of the Moonie in Queensland.

The portion of the Warrego in Queensland.

The portion of the Paroo in Queensland.

3. Victoria

The Goulburn/Broken/Loddon water supply system.

Campaspe

The Wimmera/Mallee water supply system.

The Victorian portion of the Murray Valley including the Kiewa and Ovens.

4. South Australia

The pumps on the Murray within South Australia used to supply Metropolitan Adelaide and associated country areas.

Lower Murray Swamps irrigation.

Country Towns water use.

All other uses of water from the Murray within South Australia.

5. In this Schedule, "Border Rivers" has the same meaning as in the Border Rivers Agreement between New South Wales and Queensland.

## **Schedule 2**

### **River Valleys**

1. New South Wales

The portion of the Border Rivers in New South Wales.

The portion of the Moonie in New South Wales.

The portion of the Big Warrambool in New South Wales.

The portion of the Culgoa/Birrie/Bokhara/Narran water supply system in New South Wales.

The portion of the Warrego in New South Wales.

The portion of the Paroo in New South Wales.

Gwydir.

Namoi.

The Macquarie/Castlereagh/Bogan water supply system.

The Barwon/Upper Darling water supply system.

Lower Darling from the furthest upstream reach of the Menindee Lakes to the furthest upstream reach of the Wentworth Weir Pool.

Lachlan.

Murrumbidgee.

The New South Wales portion of the Murray Valley including the portion of the Lower Darling influenced by the Wentworth Weir Pool.

2. Queensland

The Condamine/Balonne water supply system.

The portion of the Border Rivers in Queensland.

The portion of the Moonie in Queensland.

The portion of the Warrego in Queensland.

The portion of the Paroo in Queensland.

3. Victoria

Kiewa.



Ovens.

Goulburn.

Broken.

Campaspe.

Loddon.

Wimmera/Mallee

The Victorian portion of the Murray Valley.

4. South Australia

The pumps on the Murray within South Australia used to supply Metropolitan Adelaide and associated country areas.

Lower Murray Swamps irrigation.

Country Towns water use.

All other uses of water from the Murray within South Australia.

5. In this Schedule, "Border Rivers" has the same meaning as in the Border Rivers Agreement between New South Wales and Queensland.

## SCHEDULE G – EFFECT OF THE SNOWY SCHEME

### PART I: PRELIMINARY

#### 1. *Purpose*

The purpose of this Schedule is to make arrangements for sharing between New South Wales, South Australia and Victoria of water made available in the catchment of River Murray above Hume Dam by the Snowy Scheme.

#### 2. *Definitions*

In this Schedule:

- (1) **"Baseline Conditions"** means:
  - (a) the infrastructure supplying water;
  - (b) the rules for allocating water and for water management systems applying;
  - (c) the operating efficiency of water management systems; and
  - (d) existing entitlements to take and use water and the extent to which those entitlements were used,  
within the Murray-Darling Basin as at the Corporatisation Date;
- (2) **"Corporatisation Date"** means the date on which the Snowy Mountains Hydro- electric Power Act 1949 (Cth) is repealed by the Snowy Hydro Corporatisation Act 1997 (Cth);
- (3) **"Environmental Entitlement"** means:
  - (a) a category of environmental water referred to in section 8 of the *Water Management Act 2000 (NSW)*; and
  - (b) a bulk entitlement granted under the *Water Act 1989 (Vic)* that includes conditions relating to environmental purposes,in both cases comprising a volume of water derived from either or both of Water Savings and Water Entitlements;
- (4) **"Goulburn River System"** means the Broken, Goulburn, Campaspe and Loddon Rivers and the water supply systems supplied by those rivers;
- (5) **"Licensee"** means the licensee under the Snowy Water Licence;
- (6) **"Long Term Diversion Cap"** means the long term diversion cap for the State of New South Wales or the State of Victoria under clauses 4 and 5 respectively of Schedule F;
- (7) **"Lower Darling River System"** means the Darling River and its anabranch system from the upstream extent of the Menindee Lakes Storage and downstream and the water supply systems supplied by that River;
- (8) **"Month"** means calendar month and **"Monthly"** means each calendar month;

- (9) **"Mowamba Borrowings Account"** means the water account to be maintained by the Licensee under the Snowy Water Licence to account for flows made under the Snowy Water Licence from the Mowamba River and Cobbon Creek in the first three years after the Corporatisation Date;
- (10) **"Murrumbidgee River System"** means the Murrumbidgee River and the water supply systems supplied by that river;
- (11) **"Relaxation Volume"** has the same meaning as in the Snowy Water Licence as at the Corporatisation Date;
- (12) **"Reliability"** with respect to a supply of water means the statistical probability of being able to supply a particular volume in any Water Year;
- (13) **"Required Annual Release"** has the same meaning as in the Snowy Water Licence taken as a whole as at the Corporatisation Date. For the avoidance of doubt, "Required Annual Release" is not a reference to "Agreed Annual Release" under that Licence and a change to the Snowy Water Licence after the Corporatisation Date will not affect the calculation of Required Annual Releases for the purposes of this Schedule;
- (14) **"Required Annual Release Shortfall"** means, in any Water Year, the volume by which the Required Annual Release from the Snowy-Murray Development in that Water Year exceeds the actual release from the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam in that Water Year;
- (15) **"River Murray Above Target Releases"** means, in any Water Year, water that is released from the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam in excess of the Required Annual Release from the Snowy-Murray Development in that Water Year;
- (16) **"River Murray Annual Allocation"** with respect to each Water Year means the annual allocation from the River Murray Apportioned Entitlement determined by New South Wales;
- (17) **"River Murray Apportioned Entitlement"** means the volume of water from the Environmental Entitlements that is apportioned to the River Murray Increased Flows by New South Wales;
- (18) **"River Murray Increased Flows"** means releases of water from major storages made by the Commission in accordance with Part V of this Schedule;
- (19) **"River Murray Increased Flows Accounts"** means the water accounts to be maintained by the Commission under clause 21 of this Schedule;
- (20) **"River Murray Increased Flows in Commission Storages Account"** means the water account to be maintained by the Commission under paragraph 21(1)(b) of this Schedule;

- (21) **"River Murray System"** means the aggregate of:
- (a) the River Murray;
  - (b) all tributaries entering the River Murray upstream of Doctors Point;
  - (c) the Ovens River; and
  - (d) the Lower Darling River System;
- (22) **"Seasonal Availability"** with respect to the water to which an entitlement refers means:
- (a) for that part of the entitlement whose availability is determined by reference to seasonal allocations: the final seasonal allocation announcement of the relevant State during the previous Water Year; and
  - (b) for that part of the entitlement whose availability is determined by reference to the entitlement of South Australia: the allocated volume received during the previous Water Year by South Australia as a proportion of its entitlement during that Water Year under this Agreement;
- (23) **"Snowy Montane Rivers External Increased Flows"** means releases of water made by the Licensee to montane rivers under the environmental flow requirements of the Snowy Water Licence which would have flowed through either:
- (a) the Murray 1 Power Station in the case of the Snowy-Murray Development; or
  - (b) Jounama Pondage in the case of the Snowy-Tumut Development,
- if it were not released for environmental purposes;
- (24) **"Snowy-Murray Development"** means the component of the Snowy Scheme comprising works that regulate the waters of the Upper Snowy River, the Geehi River and Bogong Creek;
- (25) **"Snowy-Murray Development Annual Allocation"** means the annual allocation for any Water Year for the Snowy-Murray Development determined by New South Wales by reference to the Seasonal Availability of the water contained in the Snowy-Murray Development Designated Entitlement;
- (26) **"Snowy-Murray Development Designated Entitlement"** means that part of the Environmental Entitlements designated against the Snowy-Murray Development by New South Wales;
- (27) **"Snowy-Murray Development (River Murray) Environmental Entitlements"** means both:
- (a) a category of environmental water referred to in section 8 of the *Water Management Act 2000* (NSW); and

- (b) a bulk entitlement granted under the *Water Act 1989* (Vic) that includes conditions relating to the protection of the environment,

in both cases comprising a volume of water derived from either or both of Water Savings and Water Entitlements sourced from the River Murray System or the Goulburn River System;

- (28) **"Snowy Notional Spill"** means:
  - (a) **in the case of the Snowy-Murray Development:** the calculated active volume of water belonging to the Snowy-Murray Development stored in Eucumbene Reservoir exceeding 2,019 GL and accounted as a loss from the Snowy-Murray Development and a gain to the Snowy-Tumut Development;
  - (b) **in the case of Snowy-Tumut Development:** the calculated active volume of water belonging to the Snowy-Tumut Development stored in Eucumbene Reservoir exceeding 2,348 GL and accounted as a loss from the Snowy-Tumut Development and a gain to the Snowy-Murray Development;
- (29) **"Snowy River"** means the Snowy River downstream of Jindabyne Dam;
- (30) **"Snowy River Annual Allocation"** means the annual allocation from the Snowy River Apportioned Entitlement for any Water Year, determined by New South Wales;
- (31) **"Snowy River Apportioned Entitlement"** means the volume of water from the Environmental Entitlements apportioned to environmental flows from the Snowy Scheme to the Snowy River, by New South Wales;
- (32) **"Snowy Scheme"** means the dams, tunnels, power stations, aqueducts and other structures that comprise the Snowy-Murray Development and the Snowy-Tumut Development, that together are known as the Snowy Mountains Hydro-electric Scheme;
- (33) **"Snowy-Tumut Development"** means the component of the Snowy Scheme comprising works that regulate the waters of the Eucumbene River, the Tooma River, the Upper Murrumbidgee River and the Upper Tumut River;
- (34) **"Snowy-Tumut Development Annual Allocation"** with respect to each Water Year means the annual allocation for the Snowy-Tumut Development determined by New South Wales by reference to the Seasonal Availability of the water contained in the Snowy-Tumut Development Designated Entitlement;
- (35) **"Snowy-Tumut Development Designated Entitlement"** means that part of the Environmental Entitlements designated against the Snowy-Tumut Development by New South Wales;

- (36) **"Snowy Water Licence"** means the licence issued under Part 5 of the *Snowy Hydro Corporatisation Act 1997 (NSW)*;
- (37) **"Strategy"** means the strategy for retaining and releasing River Murray Increased Flows determined under paragraph 20(1)(a) of this Schedule;
- (38) **"Translation Factors"** means the translation factors used to convert Water Savings and Water Entitlements into an Environmental Entitlement with specified Reliability;
- (39) **"Upper Snowy River"** means the Snowy River upstream of Jindabyne Dam (including the Mowamba River and the Cobbon Creek) but excluding the Eucumbene River;
- (40) **"Water Entitlement"** means:
- (a) an access licence granted under the *Water Management Act 2000 (NSW)*; and
  - (b) a water right, licence to take and use water or bulk entitlement under the *Water Act 1989 (Vic)* together with any transferable allocation of sales water made to the holder of such a water right or licence,
- in either case purchased for the purpose of achieving either or both of:
- (c) environmental flows from the Snowy Scheme; and
  - (d) River Murray Increased Flows;
- (41) **"Water Market"** means, with respect to a Water Entitlement, the market from which the relevant Water Entitlement is drawn;
- (42) **"Water Savings"** means the volume of water saved through one or more projects that saves water:
- (a) by reducing transmission losses, evaporation or system inefficiencies; or
  - (b) by achieving either or both of water management and environmental improvements,
  - (c) for diversions from the River Murray System and either or both of Murrumbidgee River System and the Goulburn River System for the purpose of achieving:
  - (d) environmental flows from the Snowy Scheme; and
  - (e) River Murray Increased Flows;
- (43) **"Water Year"** means the period of 12 Months commencing on 1 May in each year.

## PART II: CALCULATING WATER VOLUMES

### 3. *The Snowy Scheme And The River Murray*

- (1) In this Agreement, "Water Available to the Snowy-Murray Development" means:
- Water of the Upper Snowy River regulated by the Snowy Scheme
  - PLUS** water of the Geehi River and Bogong Creek regulated by the Snowy Scheme
  - PLUS** any Snowy Notional Spill from the Snowy-Tumut Development to the Snowy-Murray Development
  - PLUS** the transfer from the Snowy-Tumut Development to the Snowy-Murray Development of the Snowy-Tumut Developer Annual Allocation
  - PLUS** 4.5 GL per Water Year transferred from the Snowy-Tumut Development to the Snowy-Murray Development
  - PLUS** half of the balance of the Mowamba Borrowing Account
  - MINUS** Snowy Notional Spill from the Snowy-Murray Development to the Snowy-Tumut Development.
- (2) In this Agreement, "**Net Snowy-Murray Development Diversions to the River Murray**" means the volume of water calculated as follows:
- Water Available to the Snowy-Murray Development released by the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam
  - MINUS** the water of the Tooma River regulated by the Snowy Scheme
  - MINUS** the natural flows of the Geehi River and Bogong Creek regulated by the Snowy Scheme.
- (3) In this Agreement, "**Murray to Murrumbidgee Inter-Valley Transfer**" means the volume of Water Available to the Snowy-Murray Development released by the Snowy Scheme to the catchment of the Murrumbidgee River.

### 4. *The Snowy Scheme And The Murrumbidgee River*

- (1) In this Agreement, "Water Available to the Snowy-Tumut Development" means:
- water of the Eucumbene River, the Tooma River, the Upper Murrumbidgee River and the Upper Tumut River regulated by

the Snowy Scheme

**PLUS** any Snowy Notional Spill from the Snowy-Murray Development to the Snowy-Tumut Development

**MINUS** half of the balance of the Mowamba Borrowings Account

**MINUS** any Snowy Notional Spill from the Snowy-Tumut Development to the Snowy-Murray Development

**MINUS** the transfer from the Snowy-Tumut Development to the Snowy-Murray Development of the Snowy-Tumut Development Annual Allocation

**MINUS** 4.5 GL per Water Year transferred from the Snowy-Tumut Development to the Snowy-Murray Development.

(2) In this Agreement, "**Murrumbidgee to Murray Inter-Valley Transfer**" means the volume of Water Available to the Snowy-Tumut Development released by the Snowy Scheme to the catchment of the River Murray upstream of Hume Dam.

5. ***Excess Snowy River Releases***

In this Agreement, "**Excess Snowy River Releases**" means the greater of zero and the volume of water calculated as follows:

The regulated releases made to the Snowy River in the relevant Water Year, measured immediately below the confluence of the Snowy River and the Mowamba River

**MINUS** 9 GL

**MINUS** the Snowy River Annual Allocation in the relevant Water Year

**MINUS** the change in the balance of the Mowamba Borrowings Account during the relevant Water Year.

6. ***Snowy River Release Shortfalls***

In this Agreement, "**Snowy River Release Shortfalls**" means the greater of zero and the volume of water calculated as follows:

The Snowy River Annual Allocation in the relevant Water Year

**PLUS** 9 GL

**PLUS** the change in the balance of the Mowamba Borrowings Account from the commencement to the end of the relevant Water Year



**MINUS** the regulated releases made to the Snowy River in the relevant Water Year, measured immediately below the confluence of the Snowy River and the Mowamba River.

7. Accounting For Water Releases

For the purposes of this Agreement, water releases from the Snowy-Murray Development to the catchment of the River Murray upstream of Hume Dam are to be accounted as:

- (1) water releases as at Murray 1 Power Station; and
- (2) any water that would have passed through the Murray 1 Power Station but does not:
  - (a) for operational reasons; or
  - (b) because it is released from the Snowy Scheme as Snowy Montane Rivers External Increased Flows,

and that flows into the catchment of the River Murray upstream of Hume Dam.

### **PART III: WATER ACCOUNTING**

#### **8. *Entitlements Of New South Wales And Victoria To Use Water***

The volume of water referred to in paragraph 91(1)(e) of the Agreement is calculated as follows:

	The Net Snowy-Murray Development Diversions to the River Murray
<b>PLUS</b>	Murray to Murrumbidgee Inter-Valley Transfers
<b>PLUS</b>	the Required Annual Release Shortfall
<b>PLUS</b>	the Snowy-Murray Development Annual Allocation
<b>PLUS</b>	Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year
<b>MINUS</b>	At the discretion of the Commission, Murrumbidgee to Murray Inter-Valley Transfers
<b>MINUS</b>	the Required Annual Release Shortfall from the previous Water Year
<b>MINUS</b>	River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir.

#### **9. *Water Estimated To Be Under The Control Of The Commission***

Water referred to in paragraph 98(e) of the Agreement is estimated as follows:

	The Net Snowy-Murray Development Diversions to the River Murray
<b>PLUS</b>	Murray to Murrumbidgee Inter-Valley Transfers
<b>PLUS</b>	the Required Annual Release Shortfall
<b>PLUS</b>	the Snowy-Murray Development Annual Allocation
<b>PLUS</b>	Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year
<b>MINUS</b>	at the discretion of the Commission, Murrumbidgee to Murray Inter-Valley Transfers
<b>MINUS</b>	the Required Annual Release Shortfall from the previous Water Year
<b>MINUS</b>	River Murray Above Target Releases allocated to the River Murray Increased

Flows received by Hume Reservoir,  
in each case before the end of the following May.

**10. *Allocation of Water to New South Wales and Victoria***

The volume of water referred to in paragraph 103(1)(b) of the Agreement is calculated as follows:

	The Net Snowy-Murray Development Diversions to the River Murray
<b>PLUS</b>	Murray to Murrumbidgee Inter-Valley Transfers
<b>PLUS</b>	the Required Annual Release Shortfall
<b>PLUS</b>	the Snowy-Murray Development Annual Allocation
<b>PLUS</b>	Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year
<b>MINUS</b>	at the discretion of the Commission, Murrumbidgee to Murray Inter-Valley Transfers
<b>MINUS</b>	the Required Annual Release Shortfall from the previous Water Year
<b>MINUS</b>	River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir.

**11. *Tributary Inflows***

(1) The volume of water referred to in sub-clause 105(2) of the Agreement is calculated as follows:

	The component of the Required Annual Release Shortfall from the previous Water Year allocated to New South Wales under sub-clause 13(2) of this Schedule
<b>PLUS</b>	half of the River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir
<b>PLUS</b>	half of the Excess Snowy River Release up to the volume of half of the Snowy River Release Shortfall in the previous Water Year for which an adjustment was made under sub-clauses 11(2) and 12(1) of this Schedule in the previous Water Year
<b>PLUS</b>	at the discretion of the Commission, Murrumbidgee to Murray Inter-Valley

Transfers.

- (2) The volume of water referred to in sub-clause 105(3) of the Agreement is calculated as follows:

The component of the Required Annual Release Shortfall from the previous Water Year allocated to Victoria under sub-clause 13(2) of this Schedule

**PLUS** half of the River Murray Above Target Releases allocated to the River Murray Increased Flows received by Hume Reservoir

**PLUS** half of the Snowy River Release Shortfall, unless Victoria has previously advised the Commission that Victoria waives this element of its allocation in any Water Year.

**12. *Use By New South Wales And Victoria Of Allocated Water***

- (1) The quantity of water referred to in paragraph 106(b) of the Agreement is calculated as follows:

Murray to Murrumbidgee Inter-Valley Transfers

**PLUS** Excess Snowy River Releases in excess of the volume of the Snowy River Release Shortfall in the previous Water Year

**PLUS** the Snowy-Murray Development Annual Allocation sourced from New South Wales

**PLUS** the component of the Required Annual Release Shortfall allocated to New South Wales under sub-clause 13(1) of this Schedule

**PLUS** unless otherwise agreed with Victoria, half of the Snowy River Release Shortfall.

- (2) The quantity of water referred to in paragraph 106(c) of the Agreement is calculated as follows:

The Snowy-Murray Development Annual Allocation sourced from Victoria

**PLUS** the component of the Required Annual Release Shortfall allocated to Victoria under sub-clause 13(1) of this Schedule

**PLUS** half of the Excess Snowy River

Release up to the volume of half of the Snowy River Release Shortfall in the previous Water Year for which an adjustment was made under sub-clauses 11(2) and 12(1) of this Schedule in the previous Water Year, (such adjustments to reflect any waiver or agreement with Victoria as referred to in those sub-clauses).

**13. Required Annual Release Shortfalls**

- (1) If at the end of a Water Year there is a Required Annual Release Shortfall, the Required Annual Release Shortfall is to be accounted for by the Commission in accordance with Table One.

**TABLE ONE: WATER ACCOUNTING AND REQUIRED ANNUAL RELEASE SHORTFALLS**

<b>TYPE OF WATER YEAR</b>	<b>ARRANGEMENT WITH RESPECT TO REQUIRED ANNUAL RELEASE SHORTFALL</b>	<b>WATER ACCOUNTING OUTCOMES</b>
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 Commission 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 Commission does not agree to the Required Annual Release Shortfall	New South Wales deemed to have used the whole of the Required Annual Release Shortfall

- (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.

**14. Other Water Accounting Provisions**

- (1) Where under this Schedule the Commission is required to adjust accounts in connection with the Snowy-Murray Development Annual Allocation, it must make those adjustments in equal Monthly quantities.
- (2) Where under this Schedule the Commission is required to adjust accounts in connection with inter-valley transfer, it must make those adjustments in equal Monthly quantities during the balance of the Water Year in which New South Wales notifies the Commission of the relevant inter-valley transfer.
- (3) Each release of River Murray Increased Flows must be allocated half to New South Wales and half to Victoria.

**PART IV: SNOWY-MURRAY DEVELOPMENT (RIVER MURRAY)  
ENVIRONMENTAL ENTITLEMENTS**

**15. *Translation Factors***

- (1) New South Wales and Victoria must each transfer Water Savings and Water Entitlements to its respective Snowy-Murray Development (River Murray) Environmental Entitlement in accordance with Translation Factors agreed between each of them and the Commission.
- (2) New South Wales, Victoria and the Commission must ensure that:
  - (a) the Translation Factors are determined in a manner consistent with the principles used to determine exchange rates in the relevant Water Market at the time of each transfer under sub-clause 18(2) of this Schedule; and
  - (b) the use of Translation Factors to transfer Water Savings and Water Entitlements to a Snowy-Murray Development (River Murray) Environmental Entitlement will not have a significant adverse impact on:
    - (i) the level of Reliability of entitlements to water diverted from the River Murray System, the Murrumbidgee River System and the Goulburn River System;
    - (ii) the environmental benefits related to the quantity and timing of water flows for environmental purposes in the River Murray System, the Murrumbidgee River System and the Goulburn River System;
    - (iii) the Seasonal Availability of the entitlement to be received during that Water Year by South Australia under this Agreement; and
    - (iv) water quality in the River Murray in South Australia.

**16. *Apportionment Of Environmental Entitlements***

New South Wales and Victoria must notify the Commission of how each Environmental Entitlement has been apportioned between:

- (1) the Snowy River Apportioned Entitlement; and
- (2) the River Murray Apportioned Entitlement.

**17. *Valley Accounts***

If:

- (1) New South Wales or Victoria transfers either or both of Water Savings and Water Entitlements to an Environmental Entitlement; and
- (2) the source of that water is from a valley for which the Commission maintains a valley account,

New South Wales or Victoria (as the case may be) must notify the Commission of the volume and reliability of the entitlement

required to be added to the relevant valley account to generate the Environmental Entitlement.

**18. *Long Term Diversion Caps***

- (1) Prior to New South Wales or Victoria transferring either or both of Water Savings and Water Entitlements to an Environmental Entitlement, the relevant State must calculate the equivalent volume by which its Long Term Diversion Cap must be reduced.
- (2) If New South Wales or Victoria transfers either or both of Water Savings and Water Entitlements to an Environmental Entitlement, at the same time the relevant State must advise the Commission of its calculation as to the volume by which its Long Term Diversion Cap must be reduced.
- (3) If the Commission is satisfied with the appropriateness of a calculation advised under sub-clause 18(2), it must recommend to the Ministerial Council that the relevant Long Term Diversion Cap be amended in accordance with the calculation.
- (4) If the Commission is not satisfied with the appropriateness of a calculation advised under sub-clause 18(2), the Commission must arrange for the relevant volume referred to in sub-clause 18(1) to be re-calculated in consultation with the relevant State.
- (5) If a majority of the Commissioners is satisfied with the appropriateness of a calculation made under sub-clause 18(4), the Commission must recommend to the Ministerial Council that the relevant Long Term Diversion Cap be amended in accordance with the calculation.
- (6) Despite paragraph 8(b) of Schedule F, the Ministerial Council must amend a Long Term Diversion Cap in accordance with any recommendation made by the Commission under sub-clause 18(3) or 18(5).



## **PART V: RIVER MURRAY INCREASED FLOWS**

19. ***Obligation Of Commission To Make River Murray Increased Flows***  
Subject to this Part, the Commission must release River Murray Increased Flows.
20. ***Environmental Objectives And Strategy For River Murray Increased Flows***
- (1) Before the commencement of the second complete Water Year after the Corporatisation Date, the Ministerial Council must determine:
- (a) a strategy for retaining and releasing River Murray Increased Flows to be implemented by the Commission; and
  - (b) the environmental objectives for the River Murray Increased Flows,
- in accordance with the provisions of this clause.
- (2) The Strategy:
- (a) must include a provision to the effect that River Murray Increased Flows have first priority from River Murray Above Target Releases;
  - (b) may provide that water credited to the River Murray Increased Flows in Commission Storages Account need not be released during the Water Year in which it is credited;
  - (c) unless the Ministerial Council otherwise determines, must not have a significant adverse impact upon the security of entitlements to water;
  - (d) must integrate the environmental objectives for the River Murray Increased Flows with other environmental initiatives on the River Murray;
  - (e) must include adaptive management principles to allow the ability to optimise environmental benefits; and
  - (f) must prescribe appropriate environmental reporting and monitoring conditions.
- (3) The Ministerial Council must determine the environmental objectives and Strategy in accordance with the following principles:
- (a) Natural diversity of habitats and biota within the river channel, riparian zone and the floodplain should be maintained or enhanced.
  - (b) Natural linkages between the river and the floodplain should be maintained or enhanced.
  - (c) Natural metabolic functioning of aquatic ecosystems should be maintained or enhanced.
  - (d) Elements of the natural flow regime, in particular, seasonality should be retained or enhanced as far as possible, in the interests of conserving a niche for native rather than invasive exotic species and in maintaining the natural functions of the river.

- (e) Consistent and constant flow and water level regimes should be avoided where practical, as this is contrary to the naturally variable flow regime of the River Murray.
  - (f) The general principles of ecosystem services should be recognised.
  - (g) Environmental benefit should be optimised.
- (4) The Ministerial Council may from time to time by resolution amend the environmental objectives and the Strategy.
  - (5) As soon as practicable after the end of each Water Year, the Commission must report to the Contracting Governments on the environmental outcomes of the River Murray Increased Flows during that Water Year, in the light of the objectives determined by the Ministerial Council for those Increased Flows.

**21. *Commission To Maintain River Murray Increased Flows Accounts***

- (1) The Commission must maintain continuous water accounts of the River Murray Increased Flows to be known as:
  - (a) the Initial River Murray Increased Flows Account; and
  - (b) the River Murray Increased Flows in Commission Storages Account.
- (2) The Commission must:
  - (a) credit the Initial River Murray Increased Flows Account with the River Murray Annual Allocation notified by New South Wales;
  - (b) transfer from the Initial River Murray Increased Flows Account to the River Murray Increased Flows in Commission Storages Account, River Murray Above Target Releases allocated to the River Murray Increased Flows in accordance with the Strategy;
  - (c) record in the River Murray Increased Flows in Commission Storages Account the transfer of water in that account between Commission storages; and
  - (d) record in the River Murray Increased Flows in Commission Storages Account the release of River Murray Increased Flows from Commission storages.
- (3) The River Murray Increased Flows Accounts must be independently audited unless the Commission by resolution declares otherwise.
- (4) As soon as practicable after the completion of each audit, the Commission must send a copy of the audited River Murray Increased Flows Accounts to the Contracting Governments.

**22. *Implementing the Strategy***

- The Commission must commence to implement the Strategy on the later of:
- (1) the beginning of the second complete Water Year occurring after the Corporatisation Date; and

- (2) the receipt by Hume Reservoir from the Snowy Scheme of River Murray Above Target Releases allocated to the River Murray Increased Flows.

**23. *Binding Effect of Strategy***

Despite any other provision in this Agreement, the Commission must:

- (1) allocate River Murray Above Target Releases to the River Murray Increased Flows Accounts; and
- (2) manage the water in and releases of water from the River Murray Increased Flows in Commission Storages Account,

in accordance with the Strategy.

## **PART VI: NOTIFICATION AND CONSULTATION PROVISIONS**

### **24. *Commission To Be Informed Of New Proposals***

A Contracting Government must inform the Commission of any proposal:

- (1) to achieve Water Savings or to purchase Water Entitlements for the purpose of transferring those Water Savings or Water Entitlements to the Environmental Entitlements; or
- (2) to modify the reliability of a supply of water pursuant to an Environmental Entitlement,

in accordance with sub-clause 46(4) of the Agreement.

### **25. *Snowy Scheme Annual Water Operating Plan***

- (1) The parties acknowledge that as a result of provisions in the Snowy Water Licence and a deed between the Commonwealth, New South Wales and Victoria as at the Corporatisation Date, the Licensee is bound to consult with others, including the Commission, while developing each Annual Water Operating Plan and any variation to each Plan.
- (2) The Commonwealth, New South Wales and Victoria must:
  - (a) ensure the direct participation by the Commission in each consultation referred to in sub-clause 25(1) or held under any varied consultation arrangements; and
  - (b) consult with the Commission before varying existing consultation arrangements.

### **26. *Notifications Required***

- (1) Each Contracting Government must, at the time specified by the Commission, notify the Commission of such water volumes and estimates as are reasonably requested by the Commission to enable it to make calculations referred to in this Schedule.
- (2) The Commission must, at any time specified by New South Wales, notify New South Wales of such water volumes and estimates calculated by the Commission by reference to the Baseline Conditions as are reasonably requested by New South Wales, to enable New South Wales to calculate the Required Annual Release.

## **PART VII: ANALYTICAL MODELS**

### **27. *Developing Analytical Models***

- (1) The Commission must develop an analytical model for determining, in the case of the River Murray System:
  - (a) storage volumes; and
  - (b) total diversions,  
that would have occurred under Baseline Conditions.
- (2) New South Wales must develop an analytical model for determining, in the case of the Murrumbidgee River System:
  - (a) storage volumes; and
  - (b) total diversions,  
that would have occurred under Baseline Conditions.
- (3) An analytical model developed under this clause:
  - (a) must be the best model available to the Commission or New South Wales, from time to time, for the purpose of calculating the timing and quantity of the Relaxation Volume under Baseline Conditions; and
  - (b) must be tested against relevant historical data to determine the accuracy of the model.
- (4) New South Wales may at its own cost engage an independent auditor to evaluate whether the model developed under sub-clause 27(1) of this Schedule is:
  - (a) the best available to the Commission; and
  - (b) accurate.

## **PART VIII: OTHER PROVISIONS**

### **28. *Inter-Valley Water Transfers***

- (1) To facilitate water transfers, the Commission may request New South Wales to release:
  - (a) Water Available to the Snowy-Murray Development to each or both of the Tumut River catchment and the Murrumbidgee River catchment; or
  - (b) Water Available to the Snowy-Tumut Development to the River Murray catchment upstream of Hume Dam.
- (2) If New South Wales agrees with the request made under sub-clause 28(1) of this Schedule, any inter-valley transfer referred to in sub-clause 28(1) must be converted into an allocation to New South Wales of water in Hume Reservoir.

## **SCHEDULE H**

### **APPLICATION OF AGREEMENT TO AUSTRALIAN CAPITAL TERRITORY**

#### **Interpretation**

1. (1) A reference to a State, a State Government or a public authority of a State in a clause of the Agreement which, by this Schedule, applies to the Australian Capital Territory, includes a reference to the Australian Capital Territory or the Australian Capital Territory Government or a public authority of the Australian Capital Territory, as the case requires.
- (2) Sub-clause 1(1) applies, subject to this Schedule.

#### **Australian Capital Territory to be a contracting party**

2. The Australian Capital Territory shall become a party to the Agreement on the terms set out in this Schedule.

#### **Application of Agreement to the Australian Capital Territory**

3. The provisions of the Agreement apply to the Australian Capital Territory except:
  - (a) for those provisions declared not to apply by this Schedule; and
  - (b) to the extent that provisions are modified by this Schedule; and
  - (c) where the Ministerial Council or the Commission determines that a provision does not apply, pursuant to clause 6 of this Schedule.
4. For the purposes of this Schedule, a reference in clause 3 or 13 of Schedule C to "Queensland" or "the State of Queensland" must be taken as including a reference to the Australian Capital Territory.

#### **Provisions not applying to the Australian Capital Territory**

5. (1) Parts X, XI and XII of the Agreement do not apply to the Australian Capital Territory.
- (2) Sub-clauses 38(1) and 38(3) of the Agreement only apply to the Australian Capital Territory in respect of an act, omission or loss incurred in relation to the bona fide execution of powers:
  - (a) in or related to the Australian Capital Territory; or
  - (b) under a provision of the Agreement as it applies to the Australian Capital Territory.
- (3) Insofar as any provision of the Agreement bears on any of the following matters, it does not apply to the Australian Capital Territory:

- (c) Any matter concerning the design, execution, construction, funding, operation, maintenance, alteration or replacement of any works, measures, policies or strategies solely associated with the management of the River Murray and River Murray in South Australia.
- (d) Any liability of the Commission, any Commissioner or Deputy Commissioner, any officer of the Commission, any Contracting Government or any Constructing Authority in respect of:
  - (i) any matter referred to in paragraph 5(3)(a); or
  - (ii) any matter arising under a provision of the Agreement which the Ministerial Council or Commission has determined does not apply to the Australian Capital Territory under clause 6 or clause 10.

*[Explanatory note: The parties intend that the Australian Capital Territory should not be involved in, contribute financially towards, or incur any liability resulting from, the water management activities of River Murray Water or similar activities by or for the Ministerial Council under that Intergovernmental Agreement. On the other hand, the parties do intend that the Australian Capital Territory should be involved in, contribute financially towards and may incur liabilities resulting from, the Living Murray Initiative except to the extent that such liabilities are otherwise negated by the Agreement including this Schedule H and the Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin dated 25 June 2004 and the Living Murray Business Plan.]*

- (4) Nothing in the Agreement requires the Australian Capital Territory:
  - (e) to contribute to the costs of or associated with remedying, any actual or anticipated damage referred to in paragraph 51(1)(c) of the Agreement; or
  - (f) to meet any compensation for damage paid under clause 83 of the Agreement,

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

#### **Powers of Ministerial Council and Commission to make determinations**

- 6. (1) The Ministerial Council or the Commission, as the case may be, may:
  - (a) determine that a provision of the Agreement does not apply to the Australian Capital Territory, either generally or in relation to a particular matter or class of matter; and



- (b) revoke any such determination made by it.
- (2) The Ministerial Council may, at any time, direct that any determination made by the Commission under paragraph 6(1)(a) is deemed to have been:
  - (c) revoked; or
  - (d) altered in any way directed by the Ministerial Council.
- (3) The Commission must give effect to any determination made by the Ministerial Council under paragraph 6(1)(a).

**Factors to be considered by Ministerial Council or Commission**

- 7. (1) In making a determination under sub-clause 6(1) or 6(2), the Ministerial Council or the Commission must apply the guidelines set out in subclause 7(2), unless the Ministerial Council or the Commission, as the case may be, determines otherwise.
- (2) A provision should not apply to the Australian Capital Territory unless:
  - (a) issues arising under that provision are likely to cause a significant benefit or a significant detriment to the Australian Capital Territory; or
  - (b) any decisions or actions taken within the Australian Capital Territory without reference to that provision might cause significant benefit or significant detriment to any part of the Murray-Darling Basin within the Australian Capital Territory; or
  - (c) the Government of the Australian Capital Territory has incurred or may incur any financial obligation as a result of that provision.

**Australian Capital Territory appointments**

- 8. (1) The reference in clause 15 of the Agreement to "the Premier of each other Contracting Government" shall be taken to include a reference to the Chief Minister of the Australian Capital Territory.
- (2) Sub-clause 20(2) of the Agreement shall not apply to the Australian Capital Territory. Instead, the Executive of the Australian Capital Territory shall appoint one Commissioner who represents water, land and environmental resource management and two Deputy Commissioners who, between them, represent water, land and environmental resource management.
- (3) For the purposes of this Schedule, a reference in sub-clause 28(3), 29(3), 29(4), 30(2) and 38(2) of this Agreement to the Governor of a State shall be taken to be a reference to the Executive of the Australian Capital Territory.

### **Quorum where provisions do not apply to the Australian Capital Territory**

9. (1) The quorum of the Ministerial Council for debating any issue, or considering or making any resolution on an issue, related to:
- (a) any provision of the Agreement; or
  - (b) to any policy, determination or decision of the Ministerial Council,
  - (c) which does not apply, in whole or in part, to the Australian Capital Territory by virtue of this Schedule, does not include any Minister from the Government of the Australian Capital Territory.
- (2) The quorum of the Commission for debating any issue, or considering or making any resolution on an issue, related to:
- (d) any provision of the Agreement; or
  - (e) to any policy, determination or decision of the Ministerial Council or the Commission,
- which does not apply, in whole or in part, to the Australian Capital Territory by virtue of this Schedule, does not include any Commissioner appointed by the Executive of the Australian Capital Territory
- (3) A person who is not included in a quorum may not vote on any resolution referred to in sub-clause 9(1) or 9(2), as the case requires.
- (4) The text of any resolution referred to in:
- (f) sub-clause 9(1) for which approval is sought under clause 13 of the Agreement, need not be referred to or approved by any Minister from the Government of the Australian Capital Territory; or
  - (g) sub-clause 9(2) for which approval is sought under clause 33 of the Agreement, need not be referred to or approved by any Commissioner appointed by the Executive of the Australian Capital Territory.

### **Application of previous Ministerial Council decisions to the Australian Capital Territory**

10. (1) Except as provided in this clause, every policy, determination or decision made by the Ministerial Council before the Ministerial Council approves this Schedule, in relation to any provision or matter which, by virtue of the Schedule, applies in whole or in part to the Australian Capital Territory, applies to the Australian Capital Territory.
- (2) Within 12 months after the date upon which the Ministerial Council approves this Schedule, or such longer period as the Ministerial Council may allow, the Australian Capital Territory may propose to the

Commission that a policy, determination or decision of the Ministerial Council referred to in sub-clause 10(1):

- (a) should apply to the Australian Capital Territory; or
  - (b) should only apply to the Australian Capital Territory with modifications; or
  - (c) should not apply to the Australian Capital Territory.
- (3) The Commission shall consider any proposal made under sub-clause 10(2) and may make such recommendations to the Ministerial Council about the proposal, as it thinks fit.
- (4) The Ministerial Council, after considering any recommendations made by the Commission, may either:
- (a) adopt the proposal, with or without amendments; or
  - (b) reject the proposal.
- (5) Any policy, determination or decision referred to in sub-clause 10(1), which is not mentioned in a proposal as adopted by the Ministerial Council under sub-clause 10(4), ceases to apply to the Australian Capital Territory on the day on which that proposal is adopted by the Ministerial Council.



IN WITNESS WHEREOF this agreement has been respectively signed for and on behalf of the parties on the date first set out above.

SIGNED by the Honourable  
PAUL JOHN KEATING, Prime  
Minister of the Commonwealth  
of Australia in the presence of -



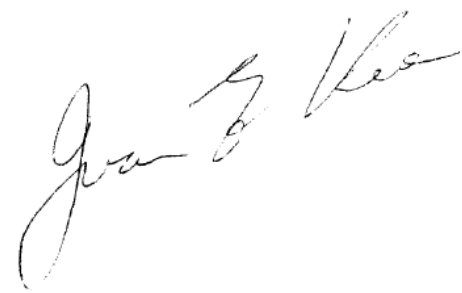
*H. H. S. S.*

SIGNED by the Honourable  
NICHOLAS FRANK GREINER, Premier  
of the State of New South  
Wales, in the presence of -



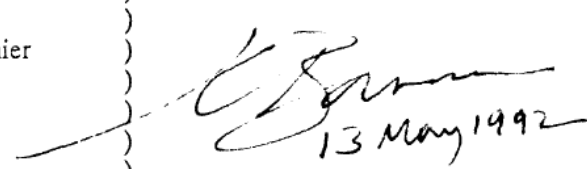
*N. F. Greiner*  
04 P1901

SIGNED by the Honourable  
JOAN ELIZABETH KIRNER, Premier  
of the State of Victoria, in the  
presence of -



*Joan E. Kirner*  
(P. E. Kirby)

SIGNED by the Honourable  
JOHN CHARLES BANNON, Premier  
of the State of South  
Australia, in the presence of -

  
13 May 1992

*C. B. Schonfeldt*  
C B SCHONFELDT