

South Australia

Murray-Darling Basin Bill 2008

A BILL FOR

An Act to facilitate the operation of an agreement entered into between the Commonwealth, New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory to promote and co-ordinate effective planning and management for the equitable, efficient and sustainable use of the water and other natural resources of the Murray-Darling Basin; to make related amendments to the *Development Act 1993*, the *Ground Water (Qualco-Sunlands) Control Act 2000*, the *Natural Resources Management Act 2004*, the *River Murray Act 2003* and the *Waterworks Act 1932*; to repeal the *Murray-Darling Basin Act 1993*; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Murray-Darling Basin Act 2008*.

2—Commencement

- 5 (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

10 *Agreement* means the Murray-Darling Basin Agreement, a copy of which is set out in Schedule 1 of the *Water Act 2007* of the Commonwealth, as in force from time to time;

authorised person means a person authorised under section 13;

15 *Authority* means the Murray-Darling Basin Authority established under the *Water Act 2007* of the Commonwealth;

Basin Officials Committee means the committee of that name established under the Agreement;

former Agreement means the agreement approved under the *Murray-Darling Basin Act 1993* and includes—

- 20 (a) all the amendments to that agreement agreed to by the Ministerial Council under that agreement before the commencement of this Act; and
- (b) any agreement that constituted a former Agreement under that agreement before the commencement of this Act;

land includes an estate or interest in land;

25 *works* means works constructed under a former Agreement or constructed, or to be constructed, under the Agreement.

- (2) Words used in this Act have the same respective meanings as in the Agreement.

Part 2—Provisions relating to Basin Officials Committee

4—Appointment of member of Basin Officials Committee

- 30 (1) The Minister is authorised to appoint—
- (a) a person as a member of the Basin Officials Committee representing the State; and
- (b) a person to act as the member of the Basin Officials Committee in place of a member appointed under paragraph (a) under the terms of the Agreement.

- (2) To be eligible for appointment under subsection (1), a person must be a person employed in the Public Service.
- (3) The appointment of a person under this section is not invalidated merely because of a defect or irregularity in connection with the appointment.
- 5 (4) A person's appointment to act as a member of the Committee—
- (a) does not cease to have effect merely because the relevant member's appointment ceases to have effect; and
 - (b) if that member is replaced by the appointment of another member—continues in effect in relation to the new member.
- 10 (5) A person appointed to act as a member of the Committee may act as, and perform the functions and exercise the powers of, the relevant member—
- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the member—
- 15 (i) is absent from duty or Australia; or
- (ii) is, for any reason, unable to attend a meeting of the Committee; or
- (iii) is, for any reason, unable to perform the duties of the office.
- (6) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because—
- 20 (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

5—Conditions and period of appointment

- 25 (1) A person appointed by the Minister as a member of the Basin Officials Committee (including to act as a member) will hold office on conditions determined by the Minister for a period, not exceeding 3 years, specified in the instrument of appointment and will, at the expiration of a term of office, be eligible for reappointment.
- 30 (2) The Minister may, as the Minister thinks fit, terminate the appointment of a person before the expiration of a term of office under subsection (1).
- (3) The office of a person appointed by the Minister as a member of the Basin Officials Committee (including to act as a member) becomes vacant by force of this subsection if the person ceases to be employed in the Public Service.

Part 3—Construction and management of works

6—Construction of works

Subject to this Act and the Agreement—

- 5
- (a) the construction, maintenance, operation and control in the State of any works; and
 - (b) the carrying out of any of the operations referred to in the Agreement; and
 - (c) the implementation of any of the measures referred to in the Agreement, are authorised.

7—Acquisition of land

- 10
- (1) The Minister may acquire, whether compulsorily or otherwise—
- (a) any land necessary for—
 - (i) the construction, maintenance, operation and control of the works; or
 - (ii) the protection of those works; or
 - (iii) preserving or improving the quality or purity of the water to be
 - (b) any other land necessary for or relating to or connected with the carrying out by the Authority of its functions or duties or the exercise by the Authority of its powers.
- 15
- (2) The compulsory acquisition of land by the Minister is subject to and must be undertaken in accordance with the *Land Acquisition Act 1969*.
- 20

8—Construction and other powers of Minister

The Minister may, in accordance with this Act and the Agreement—

- (a) construct, maintain, operate and control any works; and
 - (b) carry out operations referred to in the Agreement; and
 - (c) implement measures referred to in the Agreement.
- 25

9—Status of Minister

Without limiting any other provision—

- (a) the Minister may act on behalf of the State as a Contracting Government under the Agreement; and
 - (b) the Minister is appointed as a Constructing Authority under the Agreement for the purpose of constructing any works or executing any measures authorised by, or associated with, the Agreement.
- 30

10—Authorisation to pay compensation

The Minister is authorised to pay compensation for damage occasioned by, or arising out of, anything done by the Minister in—

- (a) constructing, maintaining, operating and controlling any works; or
- 35

- (b) carrying out operations referred to in the Agreement; or
- (c) implementing measures referred to in the Agreement.

11—Powers to dispose of certain lands

The Minister—

- 5 (a) may dispose of any lands acquired under section 7 or under a corresponding previous enactment that are no longer required for the purpose for which they were acquired; or
- (b) may grant a lease of any lands acquired under section 7 or under a
10 corresponding previous enactment for purposes, including recreational purposes, consistent with the purpose for which the lands were acquired.

12—Land dedicated under the *Crown Lands Act 1929*

Land dedicated under the *Crown Lands Act 1929* for the purposes of the Agreement may be used and occupied for those purposes by or on behalf of a Contracting Government.

15 Part 4—Authorisations to enter and occupy land

13—Authorisation of persons to enter and occupy land

- (1) The Minister may authorise a person in writing to enter and occupy land for the purposes of this Act or the Agreement.
- (2) The Minister must provide an authorised person with a certificate of authority.
- 20 (3) A certificate of authority must—
 - (a) state that it is issued under the *Murray-Darling Basin Act 2008*; and
 - (b) give the name of the person to whom it is issued; and
 - (c) describe the nature of the powers conferred; and
 - (d) state the date, if any, on which it expires.
- 25 (4) An authorised person, when entering land, must produce the certificate if requested to do so by a person apparently in occupation of the land.

14—Entry and occupation of land

- 30 (1) For the purposes of this Act or the Agreement, the Minister or an authorised person may, after giving 7 days notice in writing to the owner or occupier, enter and occupy any land and is entitled to free access to all works.
- (2) The Minister or an authorised person may not enter residential premises except with the consent of the occupier.
- (3) The requirement to give 7 days notice in writing does not apply in an emergency or if the owner or occupier consents to entry on, and occupation of, land within a shorter
35 period.
- (4) In exercising the powers under this section, the Minister or authorised person—
 - (a) must cause as little harm and inconvenience as possible; and

- (b) must not occupy the land for any longer than is reasonably necessary; and
- (c) must leave the land as nearly as possible in the condition in which the Minister or authorised person found it; and
- (d) must co-operate as much as practicable with the owner and occupier of the land.

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- (5) A person must not without reasonable excuse obstruct or hinder a person exercising powers under this section.

Maximum penalty: \$5 000.

Part 5—Miscellaneous

15—Exemption from taxes and charges

No rate, tax, charge or fee is payable under an Act or statutory instrument—

- (a) in respect of any works; or
- (b) in respect of any property used or held by a Contracting Government or a Constructing Authority for the purposes of any works.

16—Appropriation

All money required to be provided by the State under the Agreement is to be provided out of money appropriated by the Parliament for the purpose.

17—Certain documents to be laid before Parliament

The Minister must cause a copy of—

- (a) each annual report of the Authority received by the State Minister under section 214 of the *Water Act 2007* of the Commonwealth; and
- (b) each amendment of the Agreement that takes effect under the terms of the Agreement,

to be laid before each House of Parliament within 15 sitting days after the report is received or the amendment takes effect (as the case may be).

18—Power of delegation

- (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act, or under any other Act that, in the opinion of the Minister, is relevant to the operation or administration of this Act or the Agreement.
- (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the Minister to act in any matter; and
 - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

19—Offence to damage works

A person must not, without lawful excuse, destroy or damage any works constructed or operated under this Act or the Agreement.

Maximum penalty: \$100 000 or imprisonment for 5 years.

20—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) A regulation under this Act—
 - (a) may make different provision according to the matters or circumstances to which they are expressed to apply;
 - (b) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body prescribed by the regulations.

Schedule 1—Consequential amendments, repeal and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Development Act 1993*

2—Amendment of section 4—Interpretation

Section 4(1), definition of *Murray-Darling Basin*—delete the definition and substitute:

Murray-Darling Basin has the same meaning as in the *Water Act 2007* of the Commonwealth;

3—Amendment of section 48—Governor to give decision on development

Section 48(5)(da)(iv)—delete subparagraph (iv) and substitute:

- (iv) any obligations or requirements under the Murray-Darling Basin Agreement (a copy of which is set out in Schedule 1 of the *Water Act 2007* of the Commonwealth, as in force from time to time) or any resolution of the Ministerial Council under that agreement; and

Part 3—Amendment of *Ground Water (Qualco-Sunlands) Control Act 2000*

4—Amendment of section 3—Interpretation

5 Section 3(1), definition of *Murray-Darling Basin Agreement*—delete the definition and substitute:

Murray-Darling Basin Agreement means the Murray-Darling Basin Agreement, a copy of which is set out in Schedule 1 of the *Water Act 2007* of the Commonwealth, as in force from time to time;

5—Amendment of section 26—Amendment of salinity credits by Trust

10 Section 26(1)—delete "or from underground water lying above the layer of Blanchetown Clay"

Part 4—Amendment of *Natural Resources Management Act 2004*

6—Amendment of section 3—Interpretation

15 (1) Section 3(1), definition of *Interstate Water Entitlements Transfer Scheme*—delete "under the Agreement approved under the *Murray-Darling Basin Act 1993*" and substitute:

under the Murray-Darling Basin Agreement

20 (2) Section 3(1), definition of *Murray-Darling Basin*—delete the definition and substitute:

Murray-Darling Basin has the same meaning as in the *Water Act 2007* of the Commonwealth;

25 *Murray-Darling Basin Agreement* means the Murray-Darling Basin Agreement, a copy of which is set out in Schedule 1 of the *Water Act 2007* of the Commonwealth, as in force from time to time;

7—Amendment of section 4—Interaction with other Acts

Section 4(2)(a)—delete paragraph (a) and substitute:

(a) the Murray-Darling Basin Agreement;

8—Amendment of section 87—Promotion of River Murray legislation and IGA

30 Section 87(b)—delete paragraph (b) and substitute:

(b) be consistent with—

- 35 (i) the terms or requirements of the Murray-Darling Basin Agreement, and any relevant resolution of the Ministerial Council under that agreement; and
- (ii) any relevant provisions of the Basin Plan under the *Water Act 2007* of the Commonwealth,

9—Amendment of section 89—Amendment of plans without formal procedures

Section 89(2)(c)—delete paragraph (c) and substitute:

(c) to achieve greater consistency with—

- (i) the terms or requirements of the Murray-Darling Basin Agreement, or any relevant resolution of the Ministerial Council under that agreement; or
- (ii) the provisions of the Basin Plan under the *Water Act 2007* of the Commonwealth; or

10—Amendment of section 135—Permits

Section 135(7)—delete subsection (7) and substitute:

- (7) The relevant authority's decision on an application for a permit that relates to an area within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).

11—Amendment of section 146—Licences

Section 146(5)—delete subsection (5) and substitute:

- (5) The Minister's decision on an application for a licence that relates to a water resource within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).

12—Amendment of section 152—Basis of decisions as to allocations

Section 152(1)(d)—delete paragraph (d) and substitute:

- (d) if the licence relates to a water resource within the Murray-Darling Basin, be made after taking into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant); and

13—Amendment of section 156—Reduction of water allocations

Section 156(1)(d)—delete paragraph (d) and substitute:

- (d) because there has been, or is to be, a reduction in the quantity of water available—
 - (i) under or by virtue of the *Groundwater (Border Agreement) Act 1985*; or
 - (ii) on account of the operation of the Murray-Darling Basin Agreement, the operation or effect of a resolution of the Ministerial Council under that agreement, or the operation or effect of the Basin Plan under the *Water Act 2007* of the Commonwealth.

14—Amendment of section 160—Basis of decision as to transfer

Section 160(1)(c)—delete paragraph (c) and substitute:

- 5 (c) if the licence relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant); and

Part 5—Further amendment of *Natural Resources Management Act 2004*

10 **15—Amendment of section 3—Interpretation**

Section 3(1), definition of *Interstate Water Entitlements Transfer Scheme* or *IWETS*, (a)—delete paragraph (a) and substitute:

- (a) a scheme for the transfer of entitlements between 2 or more States under the Murray-Darling Basin Agreement; or

15 **16—Amendment of section 146—Nature of water licences**

Section 146(7)—delete "Agreement approved under the *Murray-Darling Basin Act 1993*, and any relevant resolution of the Ministerial Council under that Agreement" and substitute:

20 Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement

17—Amendment of section 147—Water licences—applications and matters to be considered

Section 147(5)—delete subsection (5) and substitute:

- 25 (5) The Minister's decision on an application for a water licence that relates to a water resource within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).

18—Amendment of section 149—Variation of water licences

30 Section 149(3)(c)—delete paragraph (c) and substitute:

- 35 (c) if the licence relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant); and

19—Amendment of section 150—Transfer of water licences

Section 150(8)(c)—delete paragraph (c) and substitute:

- 5 (c) if the licence relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant); and

20—Amendment of section 154—Water allocations—matters to be considered

Section 154(3)—delete subsection (3) and substitute:

- 10 (3) The Minister's decision on the grant or issue of a water allocation that relates to a water resource within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as may be relevant).

21—Amendment of section 155—Reduction of water allocation

Section 155(1)(d)—delete paragraph (d) and substitute:

- 15 (d) because there has been, or is to be, a reduction in the quantity of water available—
- 20 (i) under or by virtue of the *Groundwater (Border Agreement) Act 1985*; or
- 25 (ii) on account of the operation of the Murray-Darling Basin Agreement, the operation or effect of a resolution of the Ministerial Council under that agreement, or the operation or effect of the Basin Plan under the *Water Act 2007* of the Commonwealth.

22—Amendment of section 156—Variation of water allocations

Section 156(3)(c)—delete paragraph (c) and substitute:

- 30 (c) if the water allocation relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant); and

23—Amendment of section 157—Transfer of water allocations

Section 157(5)(c)—delete paragraph (c) and substitute:

- 35 (c) if the water allocation relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms or requirements of the Murray-Darling Basin Agreement, or any relevant resolution of the Ministerial Council under that agreement; and

**24—Amendment of section 159—Water resource works approvals—
applications and matters to be considered**

Section 159(5)—delete subsection (5) and substitute:

- 5 (5) The Minister's decision on an application for a water resource works approval that relates to a water resource within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).

25—Amendment of section 161—Variation of approvals

Section 161(3)(c)—delete paragraph (c) and substitute:

- 10 (c) if the approval relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant); and

**26—Amendment of section 164A—Site use approvals—applications and
matters to be considered**

Section 164A(5)—delete subsection (5) and substitute:

- 20 (5) The Minister's decision on an application for a site use approval that relates to a water resource within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).

27—Amendment of section 164C—Variation of approvals

Section 164C(3)(c)—delete paragraph (c) and substitute:

- 25 (c) if the approval relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant); and

**28—Amendment of section 164G—Delivery capacity entitlements—
applications and matters to be considered**

Section 164G(5)—delete subsection (5) and substitute:

- 35 (5) The Minister's decision on an application for a delivery capacity entitlement that relates to a water resource within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).
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29—Amendment of section 164J—Variation of delivery capacity entitlements

Section 164J(3)(c)—delete paragraph (c) and substitute:

- 5 (c) if the delivery capacity entitlement relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant); and

30—Amendment of section 164K—Transfer of delivery capacity entitlements

Section 164K(7)(c)—delete paragraph (c) and substitute:

- 10 (c) if the delivery capacity entitlement relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant); and

15 Part 6—Amendment of *River Murray Act 2003*

31—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *Murray-Darling Basin*—delete the definition and substitute:

20 *Murray-Darling Basin* has the same meaning as in the *Water Act 2007* of the Commonwealth;

Murray-Darling Basin Agreement means the Murray-Darling Basin Agreement, a copy of which is set out in Schedule 1 of the *Water Act 2007* of the Commonwealth, as in force from time to time;

- (2) Section 3(4)—delete subsection (4)

25 32—Amendment of section 5—Interaction with other Acts

Section 5(2)(l)—delete paragraph (l) and substitute:

- (1) *Murray-Darling Basin Act 2008*;

33—Amendment of section 9—Functions and powers of Minister

- (1) Section 9(3)—delete subsection (3)

- 30 (2) Section 9(5)(b)—delete "or the *Murray-Darling Basin Act 1993*"

- (3) Section 9(5)—after paragraph (c) insert:

or

- (d) furthering the objects of the *Murray-Darling Basin Act 2008* or giving effect to the terms or requirements of the Murray-Darling Basin Agreement; or

- 35 (e) furthering the purposes of the Basin Plan under the *Water Act 2007* of the Commonwealth.

(4) Section 9(6)(c)—delete paragraph (c) and substitute:

- (c) carry out projects in relation to the River Murray (including projects that are relevant to the implementation or operation of the Murray-Darling Basin Agreement, any resolution of the Ministerial Council under that agreement or the Basin Plan under the *Water Act 2007* of the Commonwealth); and

34—Amendment of section 22—Development of related policies and consideration of activities

(1) Section 22(4)(b)—delete paragraph (b) and substitute:

- (b) in the case of a statutory instrument—take into account—
- (i) the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant); and
- (ii) any relevant provision of the Basin Plan under the *Water Act 2007* of the Commonwealth; and

(2) Section 22(4)(c)(iv)—delete subparagraph (iv) and substitute:

- (iv) the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant); and

Part 7—Amendment of *Waterworks Act 1932*

35—Amendment of section 100—Save the River Murray Fund

Section 100(5)(b)—delete "Murray-Darling Basin Commission" and substitute:

Murray-Darling Basin Authority (established under the *Water Act 2007* of the Commonwealth)

Part 8—Repeal of *Murray-Darling Basin Act 1993*

36—Repeal of *Murray-Darling Basin Act 1993*

The *Murray-Darling Basin Act 1993* is repealed.

Part 9—Transitional provisions

37—References

- (1) A reference to the Murray-Darling Basin in any Act will be taken to be a reference to the Murray-Darling Basin within the meaning of the *Water Act 2007* of the Commonwealth.
- (2) A reference to the Murray-Darling Basin Commission in any Act will be taken to be a reference to the Murray-Darling Basin Authority established under the *Water Act 2007* of the Commonwealth.
- (3) However, subclause (2) does not apply in any circumstance specified in the regulations.

- (4) If the regulations specify any circumstances for the purposes of subclause (3), the regulations may also specify that a reference has effect as if a reference to the Murray-Darling Basin Commission were a reference as specified in the regulations.