

SOUTH AUSTRALIA

MURRAY-DARLING BASIN ACT, 1983

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 October 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision since its last reprinting on 16 January 1989.

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APPENDIX LEGISLATIVE HISTORY

MURRAY-DARLING BASIN ACT, 1983

being

River Murray Waters Act, 1983, No. 9 of 1983
[Assented to 28 April 1983]¹

as amended by

River Murray Waters Act Amendment Act, 1987, No. 89 of 1987 [Assented to 10 December 1987]²
Murray-Darling Basin Act Amendment Act, 1990, No. 84 of 1990 [Assented to 20 December 1990]³

¹ Came into operation 1 February 1984: *Gaz.* 26 January 1984, p. 175.

² Came into operation 1 January 1988: *Gaz.* 10 December 1987, p. 1796.

³ Came into operation 1 March 1991: *Gaz.* 21 February 1991, p. 594.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 2.

An Act to approve and provide for carrying out an Agreement entered into between the Prime Minister of the Commonwealth of Australia and the Premiers of the States of New South Wales, Victoria and South Australia with respect to the Murray-Darling Basin; and for other purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Murray-Darling Basin Act, 1983*.

* * * * *

Interpretation

3. (1) In this Act—

"the Agreement" means the agreement, a copy of which is set out in the first schedule as amended by two subsequent agreements, copies of which are set out in the second and third schedules:

"the repealed Act" means the *River Murray Waters Act, 1935-1971*, repealed by this Act.

(2) In this Act, unless the contrary intention appears, words and expressions defined in the Agreement have the same meaning as in the Agreement.

Act to bind the Crown

4. This Act binds the Crown.

Approval of the Agreement

5. The Agreement is approved.

Appointment of Commissioners

6. (1) The Governor may appoint two Commissioners and two Deputy Commissioners.

(2) The Commissioners and Deputy Commissioners appointed under this section hold office—

(a) on the terms and conditions specified in this Act and the Agreement;

and

(b) on such further terms and conditions (if any) as are determined by the Governor.

(3) The appointment of a Commissioner or Deputy Commissioner is not invalidated and cannot be called into question by reason of a defect or irregularity in or in connection with the appointment.

(4) No personal liability attaches to a Commissioner or Deputy Commissioner appointed under this section in respect of an act or omission in good faith and in the exercise of powers or functions as Commissioner or Deputy Commissioner.

(5) A liability that would, but for subsection (4), lie against a Commissioner or Deputy Commissioner lies instead against the Crown.

Remuneration

7. The Commissioners and Deputy Commissioners are respectively entitled to such remuneration, allowances and expenses (if any) as are fixed from time to time by the Governor.

Cessation of office

8. (1) A Commissioner or Deputy Commissioner appointed under this Act may resign from office by a signed notice of resignation addressed to the Governor but the resignation does not have effect unless and until it is accepted by the Governor.

(2) An appointment of a Commissioner or Deputy Commissioner made under this Act may be terminated at any time by the Governor.

Powers of the Commission

9. (1) The Commission has and may exercise all the powers conferred on it by the Agreement but those powers cannot be exercised except in accordance with this Act and the Agreement.

(2) Subject to this Act and the Agreement, the orders, determinations, decisions and declarations of the Commission made in the exercise of its powers and the discharge of its duties bind all persons and the Supreme Court may, on application of the Commission, make such orders as it thinks necessary in the circumstances for the enforcement of an order, determination, decision or declaration of the Commission.

Entry onto land

10. For the purposes of the Agreement, a Commissioner or a person authorized by the Commission may enter any land and is entitled to free access to all works.

Construction of works authorized

11. Subject to this Act and the Agreement, the construction, maintenance, operation and control in South Australia of any of the works and the carrying out of any of the operations referred to in the Agreement are authorized.

Authority to carry out terms of the Agreement

12. (1) The Minister is authorized and required to carry out, or cause to be carried out, on behalf of this State, the obligations of the Government of the State under the Agreement.

(2) Each Contracting Government (not being the Government of this State) and each Constructing Authority (not being the Minister) is authorized and empowered to carry out in South Australia its obligations under the Agreement insofar as they are to be carried out in this State.

(3) When acting in pursuance of subsection (2), a Contracting Government or Constructing Authority has the same privileges and immunities as the Minister.

Authorization to pay compensation

13. A Constructing Authority is authorized to pay compensation for damage occasioned by, or arising out of, anything done by it in constructing, maintaining, operating or controlling any works under the Agreement.

Acquisition of land

14. The Minister may, subject to and in accordance with the *Land Acquisition Act, 1969*, acquire land for the purposes of the Agreement.

Crown land

15. The Governor may, for the purposes of the Agreement—

(a) grant or confer any estate or interest in or in relation to unalienated Crown lands;

or

(b) make any reservation or dedication of unalienated Crown lands.

Power to charge prescribed tolls

16. A Contracting Government or any authority or person having pursuant to the Agreement the control of any lock may from time to time demand and receive in respect of vessels passing through that lock the tolls prescribed pursuant to the Agreement by order of the Commission.

Appropriation

17. All money required to be provided by the State of South Australia under the Agreement will be provided out of money appropriated by the Parliament for that purpose.

Exemption from taxes and charges

18. No rate, tax, charge or fee is payable under an Act or statutory instrument of the State of South Australia in respect of any works or in respect of any property used in or held for the purposes of any works by a Contracting Government or Constructing Authority.

Evidence

19. (1) Every minute or record of the proceedings of the Commission that is signed by the Commissioners or a copy of such a minute or record certified as correct under the hand of a Commissioner or the Secretary of the Commission will be taken to be correct until the contrary is proved.

(2) A document signed by and containing a decision of an arbitrator appointed under the Agreement is in any proceeding *prima facie* evidence of the decision.

(3) A document purporting to be a minute or record or copy referred to in subsection (1) or document referred to in subsection (2) will, unless the contrary is established, be taken to be such a minute, record, copy or document as the case may be.

Documents to be laid before Parliament

20. All reports, statements and estimates received under the Agreement by the Governor must be laid before both Houses of Parliament without delay.

Jurisdiction of Supreme Court over Commission

21. (1) The Supreme Court may exercise jurisdiction in relation to the Commission and the Commissioners in the same manner and to the same extent as if the Commission were a body representing the Crown in right of the State of South Australia and as if the Commissioners were South Australian officers.

(2) Where the Supreme Court of a State other than South Australia makes an order or decision under a law corresponding to subsection (1), the Commission and the Commissioners must comply with that order or decision.

Penalty for injuring works

22. A person who unlawfully and maliciously destroys or damages or attempts to destroy or damage any works or portion of works constructed or operated under this Act or the Agreement is guilty of an indictable offence.

Penalty: Imprisonment for a term not exceeding 10 years.

Regulations

23. The Governor may make regulations prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act or the Agreement and in particular prescribing penalties not exceeding a fine of \$500 for a first offence against the regulations or \$1 000 for a second or subsequent offence against the regulations.

* * * * *

THE SCHEDULE

AN AGREEMENT made the first day of October One thousand nine hundred and eighty-two between—

THE COMMONWEALTH OF AUSTRALIA of the first part,

THE STATE OF NEW SOUTH WALES of the second part,

THE STATE OF VICTORIA of the third part, and

THE STATE OF SOUTH AUSTRALIA of the fourth part.

WHEREAS on 9 September 1914 an Agreement was entered into by the Prime Minister of the Commonwealth of Australia and the Premiers of the States of New South Wales, Victoria and South Australia with regard to the economical use of the waters of the River Murray and its tributaries for irrigation and navigation and to the reconciling of the interests of the Commonwealth and the said States which Agreement was ratified and approved by the Parliament of the Commonwealth of Australia and the Parliaments of the said States and which Agreement is hereinafter referred to as the First Agreement:

AND WHEREAS by further Agreements dated 10 August 1923, 23 July 1934, 26 November 1948, 2 November 1954, 11 September 1958, 8 October 1963 and 26 February 1970, all made between the Prime Minister of the Commonwealth of Australia and the Premiers of the States of New South Wales, Victoria and South Australia certain provisions of the First Agreement were modified:

AND WHEREAS the further recited Agreements were all subsequently ratified and approved by the Parliaments of the Commonwealth of Australia and by the Parliaments of the said States:

AND WHEREAS it is desirable to consolidate the provisions of the First Agreement and further recited Agreements, and to incorporate certain recommendations concerning the quality of waters and to provide for certain other matters in addition to and in substitution for certain provisions of the First Agreement and the further recited Agreements:

NOW IT IS HEREBY AGREED as follows—

PART I

INTERPRETATION

Definitions

1. In this Agreement save where inconsistent with the context—

"Commission" means The River Murray Commission constituted under the former Agreement and continued in existence under clause 7.

"Commissioner for the Commonwealth" means the Commissioner appointed by the Governor-General pursuant to clause 9.

"Commissioner for New South Wales" means the Commissioner appointed by the Governor of New South Wales pursuant to clause 9.

"Commissioner for South Australia" means the Commissioner appointed by the Governor of South Australia pursuant to clause 9.

"Commissioner for Victoria" means the Commissioner appointed by the Governor of Victoria pursuant to clause 9.

"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 59(1)(a).

"Contracting Government" means any of the Governments of the Commonwealth, the State of New South Wales, the State of Victoria or the State of South Australia.

"Constructing Authority" means the Contracting Government or Governments by which any works authorised by this Agreement or the former Agreement have been or are being constructed or are to be constructed or any authority constituted or appointed for the purpose of such construction.

"Deputy Commissioner for the Commonwealth" means the Deputy Commissioner appointed by the Governor-General pursuant to clause 9.

"Deputy Commissioner for New South Wales" means the Deputy Commissioner appointed by the Governor of New South Wales pursuant to clause 9.

"Deputy Commissioner for South Australia" means the Deputy Commissioner appointed by the Governor of South Australia pursuant to clause 9.

"Deputy Commissioner for Victoria" means the Deputy Commissioner appointed by the Governor of Victoria pursuant to clause 9.

"diversions" includes abstractions, impoundings and appropriations of water that diminish or retard the volume of flow of a river.

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

"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 1948, 2 November 1954, 11 September 1958, 8 October 1963 and 26 February 1970.

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

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

"land" includes Crown lands and buildings, messuages, tenements and hereditaments of any tenure and any easement right or privilege in over or affecting any land.

"maintenance" includes repairs but does not include improvements to the design or function of a work or replacement of the whole of the work.

"officer" means a person in the employ of the Commission who has been appointed or employed by the Commission under subclause 22(1).

"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 or the State of South Australia.

"State auditor" means a person appointed by the Governor of any of the States of New South Wales, Victoria and South Australia for the purpose of carrying out the inspection and audit referred to in paragraph 59(1)(b).

"State Contracting Government" means any of the Governments of the State of New South Wales, the State of Victoria or the State of South Australia.

"stored water" means water stored in or by any of the works described in Schedule A or in or by any of the works authorised under clause 33.

"the Authority" means the Snowy Mountains Hydro-electric Authority.

"the Snowy Mountains Agreement" means the agreement made between the Commonwealth of Australia and the States of New South Wales and Victoria on 18 September 1957, and the agreement between the same parties made on 14 December 1957, both of which agreements are set out in Schedules to the Snowy Mountains Hydro-electric Power Act 1949 of the Commonwealth of Australia.

Interpretation

2. (1) Unless the contrary intention appears, a reference in this Agreement to any Act shall be read as including a reference to any Act amending, or in substitution for, that Act.

(2) The headings of Parts, Divisions and clauses shall not affect the interpretation of this Agreement.

9.

(3) Unless the contrary intention appears, words importing the singular shall include the plural and vice versa and words importing any gender shall include any other gender.

(4) Unless the contrary intention appears, a reference to a Commissioner shall be read as including a Deputy Commissioner who is acting as a Commissioner.

10.

PART II

APPROVAL AND ENFORCEMENT

Substitution

3. Except as otherwise provided in this Agreement and without affecting in any way the past operation of the former Agreement, this Agreement shall replace the former Agreement.

Approval

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

Submission to Parliament

5. The Contracting Governments hereby agree to submit this Agreement for approval to the respective Parliaments of the Commonwealth of Australia and of the said States as soon as practicable after the date of this Agreement.

Parties to provide for enforcement of Agreement and Acts

6. 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.

11.

PART III

THE COMMISSION

Constitution

7. The River Murray Commission constituted under the former Agreement shall continue to function for the purposes of this Agreement and of the Acts approving the same, and 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 the said Acts.

8. The Commission shall consist of four Commissioners.

Appointment of Commissioners and Deputy Commissioners

9. One Commissioner and one Deputy Commissioner shall be appointed by each of the Governor-General, the Governor of New South Wales, the Governor of Victoria and the Governor of South Australia.

Term of Appointment

10. Each Commissioner and Deputy Commissioner shall be appointed for a term not exceeding five years and shall be eligible for re-appointment.

Continuation in Office

11. Where, immediately before the date on which this Agreement comes into effect, a person holds office as a Commissioner or a Deputy Commissioner by virtue of a provision of the former Agreement, he continues on and after that date, but subject to this Agreement, to hold office for the remainder of his term of office as if he had been appointed under the corresponding provision of this Agreement, and any instrument by which his appointment was made continues in force accordingly.

When Deputy Commissioner may act

12. Whenever—

(a) the Commissioner for the Commonwealth or a State is

(i) absent from Australia or from duty,

(ii) unable for any reason to attend a meeting of the Commission, or

(iii) otherwise unable to perform the duties of his office, or

(b) there is a vacancy in the office of the Commissioner for the Commonwealth or a State,

the Deputy Commissioner for the Commonwealth or that State, as the case may be, shall act as Commissioner for the Commonwealth or that State, as the case may be, and while so acting, shall have all the powers and perform all the duties of that Commissioner.

Powers of Commissioners

13. Subject as provided in this Agreement the Commissioners shall have equal powers.

Remuneration of Commissioners and Deputy Commissioners

14. The Commission shall not be responsible for the payment of a Commissioner's or Deputy Commissioner's remuneration, allowances or expenses, but 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

15. A Commissioner or a Deputy Commissioner for the Commonwealth may at any time be removed from office by the Governor-General and a Commissioner or a Deputy Commissioner for a State may at any time be removed from office by the Governor of that State.

Resignation

16. A Commissioner or a Deputy Commissioner may at any time tender resignation of his appointment by writing under his hand, addressed, in the case of a Commissioner or a Deputy Commissioner for the Commonwealth, to the Governor-General, or in the case of a Commissioner or a Deputy Commissioner for a State, to the Governor of that State and such resignation shall take effect upon, and only upon, acceptance thereof by the Governor-General or the Governor as the case may be.

Vacancies

17. Whenever a vacancy occurs in the office of—

- (a) a Commissioner or a Deputy Commissioner for the Commonwealth, the Governor-General, or
- (b) a Commissioner or a Deputy Commissioner for a State, the Governor of that State,

shall appoint a person to the vacant office.

Validity of proceedings

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

Meetings of the Commission

19. (1) The Commissioners may meet together for the transaction of the Commission's business and may adjourn any meeting.

(2) A Commissioner may at any time call a meeting of the Commissioners.

(3) The Commissioner for the Commonwealth shall be the President of the Commission and shall be the chairman at all meetings of the Commission at which he is present.

(4) At any meeting of the Commission at which the Commissioner for the Commonwealth is not present, the Deputy Commissioner for the Commonwealth shall act as chairman of that meeting.

(5) The Commissioner for the Commonwealth shall have a deliberative vote but shall not have a casting vote, except as provided in sub-clauses 20(2), 82(2) and 116(5).

(6) The four Commissioners shall be a quorum and, except as provided in sub-clauses 20(2), 82(2) and 116(5), the concurrence of all of them shall be necessary for the transaction of the business of the Commission.

(7) Except as provided in this Agreement, the Commission shall regulate the conduct of its own proceedings.

(8) The Commission shall cause proper minutes of all its proceedings to be kept.

(9) A resolution in writing signed by all the Commissioners shall be as valid and effectual as if it had been passed at a meeting of the Commissioners duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more of the Commissioners. The date and time of affixing a signature as aforesaid shall be endorsed on the document to which it is affixed and, provided that all Commissioners have signed as aforesaid, the resolution shall be deemed to have been passed at the latest time so endorsed.

Delegation

20. (1) The Commission may either generally or in relation to a matter or class of matters by resolution of the Commission delegate to any Commissioner or any officer any of its powers under this Agreement, except this power of delegation.

(2) A delegation under sub-clause 20(1) may be revoked by a majority vote of the four Commissioners or, if the four Commissioners are equally divided, by the casting vote of the Commissioner for the Commonwealth.

(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

21. (1) The Commission may, from time to time, appoint such temporary or standing committees as it shall see fit.

(2) A committee shall have and perform such powers and functions as the Commission determines.

(3) The Commission may make arrangements with a Contracting Government with respect to which costs associated with the work of a committee shall be borne by the Commission and which shall be borne by that Contracting Government. Of the costs to be borne by the Commission, the Commission shall decide which costs shall be borne by the Contracting Governments and which costs shall be borne by the State Contracting Governments.

Officers of the Commission

22. (1) The Commission may from time to time—

(a) appoint or employ such officers as it thinks fit and may dismiss or remove officers so appointed or employed,

14.

(b) determine the terms and conditions of employment, including remuneration, of officers and, subject to any applicable law, provide for their superannuation, and

(c) subject to such terms and conditions as it may approve, engage consultants.

(2) All officers shall be subject to the sole control of the Commission.

Employment of officers in public service or in statutory authorities

23. (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 or employees 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 or employee of that public authority.

(3) In sub-clause 23(2), "public authority" means a body, whether incorporated or not, established for a public purpose by a law of the Commonwealth, a State or a Territory.

Liability for acts of Commissioners and officers

24. (1) Each Contracting Government shall indemnify the Commissioner and Deputy Commissioner appointed by the Governor-General or the Governor of its State, as the case may be, in respect of any act or omission of that Commissioner or that Deputy Commissioner, and for any losses or costs incurred by him, in the bona fide execution of the powers vested in the Commission by or under this Agreement or any Act approving the same.

(2) The Contracting Governments shall jointly indemnify each officer of the Commission in respect of any act or omission of that officer, and for any losses or costs incurred by him, in the bona fide execution of his duties as an officer of the Commission.

(3) Any payments made pursuant to sub-clause 24(2) shall be borne by the Contracting Governments in equal shares.

PART IV

WATER QUALITY AND CONTROL

Studies and investigations

25. (1) The Commission may from time to time co-ordinate, or carry out, or cause to be carried out, surveys investigations and studies regarding the desirability and practicability of works or measures for the better conservation and regulation of the waters of the River Murray or for the protection or improvement of the quality thereof.

(2) The Commission shall not carry out or cause to be carried out any surveys investigations or studies relating to works or measures on or adjacent to a tributary of the River Murray without obtaining the consent of the State in whose territory the tributary lies unless that tributary is a tributary above Doctors Point or is the Darling River below Menindee.

(3) (a) The Commission may from time to time initiate proposals for the better conservation and regulation of the waters of the River Murray or for the protection or improvement of the quality thereof.

(b) here the implementation of any such proposal would significantly affect the flow, use, control or quality of any water under the control, supervision or protection of a Contracting Government, or of an authority of a Contracting Government, the Commission shall so inform that Contracting Government or authority and consider any matters raised by that Contracting Government or authority in respect of the proposal.

Measurements of water quantity and quality

26. (1) The Commission shall establish, maintain and operate an effective and uniform system—

(a) for making and recording continuous measurements of—

(i) the volumetric flow of—

(A) the River Murray, and

(B) such of the tributaries of the River Murray as are within the boundaries of each of the States, and

(ii) the volume of—

(A) the stored water, and

(B) the water stored in the Menindee Lakes Storage,

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 volume of 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 from its said tributaries; and
- (c) for measuring and monitoring the quality of—
 - (i) the waters of the River Murray,
 - (ii) the waters of the 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,
 - (iii) the stored water, and
 - (iv) the water stored in the Menindee Lakes Storage.

(2) The Commission shall not establish, maintain or operate any of the systems referred to in sub-clause 26(1)—

- (a) on or adjacent to a tributary of the River Murray without obtaining the consent of the State in whose territory that tributary lies unless that tributary is a tributary above Doctors Point or is the Darling River below Menindee, or
- (b) on or adjacent to the Menindee Lakes without obtaining the consent of the State of New South Wales.

(3) Notwithstanding the provisions of sub-clause 26(1), the Commission may in lieu of establishing, maintaining, or operating the systems referred to in that sub-clause—

- (a) adopt the results of any measurements or monitoring made and recorded by any Contracting Government, or
- (b) request the State in whose territory the relevant tributary of the River Murray or the Menindee Lakes lies to carry out such measuring or monitoring as the Commission may consider necessary.

Water quality objectives and standards

27. The Commission may, in consultation with the appropriate responsible authorities of each of the Contracting Governments, formulate water quality objectives and, where appropriate, standards for any part of the River Murray and may make recommendations with respect thereto to the Contracting Governments.

Recommendations re water quantity and quality

28. The Commission may make recommendations to the Contracting Governments, or to any authority, agency or tribunal of a Contracting Government, concerning any matter, including the carrying out of any works or measures by a Contracting Government, which, in the opinion of the Commission, may improve, maintain or in any way affect the quality or quantity of the waters of the River Murray or the stored water.

Commission to be informed of new proposals

29. (1) Whenever a Contracting Government, or one of its authorities, is considering any proposal which may significantly affect the flow, use, control or quality of any water under the control or supervision of the Commission, that Contracting Government shall, or shall ensure that the authority shall, before deciding if the proposal shall proceed and at such a time as will enable the Commission to assess the possible effect of that proposal on the flow, use, control or quality of that water and to make representations thereon to that Contracting Government or that authority—

- (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 Commission shall consult with each of the Contracting Governments, and with any authority of a Contracting Government which that Contracting Government considers is likely to consider a proposal of the type referred to in sub-clause 29(1), with a view to reaching agreement with that Contracting Government, or that authority, as to—

- (a) the types of proposals to which sub-clause 29(1) shall be deemed to apply; and
- (b) the criteria to be used in assessing those proposals to which sub-clause 29(1) applies.

Regard to be had to river and water management objectives

30. In exercising its powers under this Agreement and in implementing the provisions of Part IX, the Commission may, at its discretion, have regard to the possible effects of its decisions on any river or water management objectives.

Protection of catchment of Hume Reservoir

31. (1) The Contracting Governments of the States of New South Wales and Victoria shall take effective measures to protect from erosion the portions of the catchment of the Hume Reservoir which lie within their respective States.

(2) Each of the said Contracting Governments shall before the end of June in each year forward a report to the Commission on the condition of the portion of the catchment of the Hume Reservoir within its territory, the measures taken and work carried out during the twelve months ending on the 31st day of March immediately preceding and particulars of the measures and works proposed for the next twelve months.

(3) The Commission shall, 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 by the said Contracting Governments for the protection from erosion of that catchment are effective or otherwise. If, on any inspection, the Commission considers that any of those measures or works are ineffective, it shall notify the Contracting Government concerned which shall, to the extent that it may be practicable to do so, take action to make those measures and works effective.

(4) The measures, works and action taken or carried out by a Contracting Government pursuant to sub-clause 31(1) or 31(3) shall be taken or carried out at the cost of that Contracting Government.

(5) If at any time the Commission considers that there is need for special action to be taken for the protection from erosion of the catchment of the Hume Reservoir other than, or in addition to, the measures, works and action taken or carried out by each of the said Contracting Governments under sub-clauses 31(1) and 31(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, and authorised, by the Commission.

PART V

CONSTRUCTION, OPERATION AND MAINTENANCE OF WORKS

Major works subject to the Agreement

32. Each of the works described in Schedule A or authorised under clause 33 shall be constructed (unless already constructed under the former Agreement), maintained, operated and controlled pursuant to the provisions of this Agreement and any Acts approving the same and the construction, maintenance, operation and control of each of those works shall, subject to the provisions of this Agreement, be undertaken, in the case of the works described in Schedule A, by the Contracting Government whose name is set opposite to that work under the heading "Nominated Government" in the said Schedule, and, in the case of works authorised under clause 33, by the Contracting Government nominated in accordance with that clause.

Authorisation of additional works

33. (1) In any case where the Commission is of the opinion that it is necessary for the purposes of this Agreement to construct a work in addition to those described in Schedule A, including a work which the Commission has determined is necessary to prevent the loss of the regulated flow of the River Murray and is to be constructed on or near the River Murray between the Hume Reservoir and the upstream limits of water impounded by Yarrawonga Weir or between Tocumwal and Echuca, the construction of that work may be authorised,

- (a) if the estimated cost of construction of that work is not in excess of \$1 000 000, by the Commission, or
- (b) in any other case, by the Contracting Governments jointly,

and the provisions of this Agreement shall apply *mutatis mutandis* in respect of that work.

(2) When the construction of a work is authorised under sub-clause 33(1), the Contracting Governments, or the Commission, as the case may be, shall also nominate which Contracting Government shall be responsible for the construction, maintenance, operation and control of that work.

Ancillary, preventative and remedial works

34. On the application of a Commissioner, the Commission may, at its discretion, meet, or contribute to, the costs of, or associated with—

- (a) the construction, maintenance, operation or control 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, maintenance, operation or control 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, maintenance, operation or control of any works provided for in this Agreement or the former Agreement,

provided that the Commission shall first obtain the consent of the Contracting Governments before meeting, or contributing to, the costs of, or associated with, the construction of any ancillary, preventative or remedial work estimated to cost in excess of \$250 000.

Preparation and submission of designs, etc. for Commission approval

35. (1) Whenever a Contracting Government is nominated to construct a work pursuant to this Agreement, that Contracting Government shall cause to be prepared and submitted to the Commission for its approval a general scheme of the work to be constructed, and before commencing the construction of that work shall cause to be prepared and submitted to the Commission for its approval the necessary designs, specifications and estimates of that work.

(2) The Commission may approve the said general scheme, designs, specifications or estimates with or without alterations or additions, or may, from time to time, refer them or any of them for amendment to the Contracting Government submitting them. The construction of the work shall be carried out in accordance with the designs and specifications approved by the Commission and with any directions given by the Commission pursuant to clause 37.

(3) The Commission shall furnish information to the Contracting Governments in relation to the design and construction of any work estimated to cost more than \$1 000 000 and work shall not proceed unless the Contracting Governments are satisfied that the design and construction of the work are in accordance with the purposes for which the work was proposed. For the purposes of this sub-clause, "design" means general design which illustrates the nature and extent of the work and "construction" implies construction in accordance with the said design.

Commission and Government approval of certain tenders

36. (1) A Constructing Authority shall obtain the approval of the Commission before accepting any tender exceeding \$1 000 000 in respect of any work to be constructed pursuant to this Agreement, and the approval of the Commission shall not be given without the prior approval of each of the Contracting Governments.

(2) If, after a tender referred to in sub-clause 36(1) has been accepted, changes in the concept or design, or the concept and design, of the works included in that tender cause the total estimated cost of those works at the time of acceptance of the tender to rise by more than 10% above that total estimated cost, the Commission shall forthwith notify the Contracting Governments accordingly and shall direct the Constructing Authority to suspend further work unless the Contracting Governments have within six months after the Commission's notification agreed that work should proceed.

Directions for the efficient construction etc. or works

37. The Commission shall have full power to give directions to ensure the efficient construction, operation and required performance of all works constructed pursuant to this Agreement or the former Agreement and to order and direct—

- (a) the rate of progress of works whether of construction or maintenance;
- (b) the method and extent of maintenance of works;

- (c) if necessary, what works shall be regarded as works of construction or of maintenance; and
- (d) such acts and things as it considers necessary for ensuring the due observance of this Agreement;

and any directions so given shall be carried out by the Constructing Authority.

Completion of Chowilla Reservoir

38. Completion of the construction of the Chowilla Reservoir referred to in Schedule A shall be deferred until the Contracting Governments agree that the work shall proceed.

States to facilitate construction and operation within their territories

39. A Contracting Government within whose State any works for the purposes of this Agreement are to be, or are being, or have been, constructed by another Contracting Government, or an authority constituted or appointed for the purpose of that construction by another Contracting Government, shall grant to the Contracting Government or Constructing Authority all such powers, licences and permissions in and to the use of, or with respect to, its territory as may be necessary for the construction, maintenance, operation and control of those works and for carrying out any operations authorised by this Agreement.

Works for benefit of State Contracting Governments

40. If any one of the State Contracting Governments desires to carry out on the bed of, or within the banks of, the River Murray any work other than the works provided for in this Agreement, either as a work of the State of that State Contracting Government, or as a joint work with another State Contracting Government, particulars of the proposal, including plans of the proposed work, shall be submitted by that State Contracting Government, or those State Contracting Governments, to the Commission. The Commission may approve the proposed work with or without alteration and if the proposed work provides for the storage of water or will affect the flow, use, control or quality of the water of the River Murray, the Commission may, from time to time, stipulate conditions under which the said work shall be operated or controlled insofar as regulation of the river flow, or the quality of water, may be affected, and the whole cost of construction, maintenance, operation and control of the said work shall be borne by the State Contracting Government or State Contracting Governments concerned, as may be agreed upon between them, and the State Contracting Government which operates and controls the work shall cause it to be operated and controlled in such manner as may, from time to time, be required by the Commission.

Declaration that works effective

41. At any time after the commencement of the construction of any work described in Schedule A or authorised pursuant to sub-clause 33(1), the Commission may declare that work to be effective for the purposes of this Agreement.

Maintenance of works

42. Where a Contracting Government has been nominated to construct a work pursuant to this Agreement or the former Agreement, that Contracting Government shall maintain the work so constructed and keep the same effective for the purpose for which it was designed, unless that work shall have been declared to have become ineffective in accordance with clause 47.

Procedures for operation and control of works

43. The Commission may, from time to time, determine procedures for the operation and control of works constructed pursuant to this Agreement, or the former Agreement.

Dredging and snagging

44. (1) Where any weir has been constructed pursuant to this Agreement, or the former Agreement, the Commission may from time to time, at its discretion, determine that dredging or snagging in the River upstream of that weir shall be carried out within such distance from that weir as the Commission shall determine, but not exceeding the distance to which the navigability of the River Murray is affected by that weir. The Contracting Government which constructed that weir shall, at its own cost, carry out such dredging or snagging as the Commission may determine.

(2) Notwithstanding the provisions of sub-clause 44(1), the Commission may, in its absolute discretion, agree to bear the whole or part of the cost of the said dredging and snagging.

(3) For the purposes of this clause, "weir" includes a weir and lock or a barrage in any of the channels at the mouth of the River Murray.

Operation and control of works

45. The works constructed by a Contracting Government under this Agreement, or the former Agreement, shall be operated and controlled by that Contracting Government in accordance with procedures determined by the Commission pursuant to clause 43; and that Contracting Government, in the case of a lock constructed pursuant to this Agreement, or the former Agreement, shall at all times maintain immediately upstream thereof a depth of water sufficient for navigation by vessels drawing 1.4 metres of water or such other depth of water as may be determined by the Commission under clause 105 provided that the requirement as to depth shall not apply during the time that lock is closed for maintenance or during a situation of emergency which renders it impracticable to maintain the required depth of water at that lock.

Performance of joint duties

46. Where, pursuant to this Agreement, the duty of maintaining, operating or controlling any works, or of carrying out any operation, is to be performed by any two Contracting Governments jointly, any questions which may arise as to which of those Contracting Governments is to perform that duty, or to carry out that operation, shall, unless mutually agreed upon between them, be determined by the Commission.

Ineffective works

47. The Commission may at any time declare that the whole or any part of any of the works constructed, maintained, operated or controlled pursuant to this Agreement, or the former Agreement, has become ineffective for the purposes of this Agreement, whereupon, if requested to do so by the Commission, the State Contracting Government responsible for the maintenance, operation and control of that work shall dismantle so much of that work as the Commission may require.

PART VI

FINANCE

Apportionment of costs

48. (1) The Contracting Governments shall share equally—

- (a) the cost of—
 - (i) carrying out, constructing or installing the works set out in Schedule A,
 - (ii) the studies, programmes, surveys and investigations carried out pursuant to clause 25,
 - (iii) establishing systems referred to in sub-clause 26(1) or systems established pursuant to a request made under paragraph 26(3)(b),
 - (iv) special action taken under sub-clause 31(5) which the Commission has determined pursuant to sub-clause 48(4) shall be borne by the Contracting Governments in equal shares,
 - (v) constructing the works authorised under sub-clause 33(1) unless the Contracting Governments have entered into an agreement under sub-clause 48(3),
 - (vi) complying with a direction given under sub-clause 36(2), and
 - (vii) dismantling the works referred to in clause 47,
- (b) the costs associated with the work of a committee which the Commission has decided under sub-clause 21(3) are to be borne by the Contracting Governments,
- (c) the amount of any payment made by the Commission
 - (i) under clause 34 but not including the amount of any payment made in respect of the maintenance, operation or control of the works of a Contracting Government referred to in paragraph 34(a), (b) or (c), and
 - (ii) under paragraph 114(a), and
- (d) the administrative and other expenses of the Commission which are not included under paragraphs 48(1)(a), (b) or (c).

(2) The State Contracting Governments shall share equally—

- (a) the cost of maintaining, operating and controlling—
 - (i) the works set out in Schedule A,
 - (ii) systems referred to in sub-clause 26(1) or systems established pursuant to a request made under paragraph 26(3)(b), and

- (iii) the works authorised under sub-clause 33(1) unless the Contracting Governments have entered into an agreement under sub-clause 48(3),
- (b) the costs associated with the work of a committee which the Commission has decided under subclause 21(3) are to be borne by the State Contracting Governments,
- (c) the cost of special action taken under sub-clause 31(5) which the Commission has determined pursuant to sub-clause 48(4) shall be borne by the State Contracting Governments in equal shares,
- (d) the amount of any payment made by the Commission in respect of the maintenance, operation or control of the works of a Contracting Government referred to in paragraph 34(a), (b) or (c),
- (e) such costs of dredging or snagging carried out under clause 44 as the Commission has agreed to pay, and
- (f) the amount of any payment made by the Commission under paragraph 114(b).

(3) The Contracting Governments may agree that the costs of constructing, maintaining, operating and controlling the works referred to in sub-clause 33(1) shall be borne by one or more of the Contracting Governments in such shares as may be agreed.

(4) Whenever any special action is taken under sub-clause 31(5), the Commission shall determine whether the cost of that special action is to be borne by the Contracting Governments in equal shares or by the State Contracting Governments in equal shares.

Financial year

49. The financial year of the Commission shall commence on the first day of July in one year and finish on the 30th day of June in the succeeding year.

Detailed estimates of expenditure

50. (1) In the month of March in each year the Commission shall prepare detailed estimates (being estimates in such form as may from time to time be agreed by the Commission and the Contracting Governments) of its known and anticipated expenditure for the forthcoming financial year under the following heads—

- (a) the matters referred to in paragraphs 48(1)(a), (b) and (c),
- (b) the matters referred to in sub-clause 48(2),
- (c) the matters referred to in paragraph 48(1)(d), and
- (d) all other expenses of the Commission not included under paragraphs 50(1)(a), (b) or (c).

(2) The detailed estimates of expenditure shall show the share to be contributed by each Contracting Government.

(3) Prior to the 31st day of March in each year, the Commission shall forward a copy of the detailed estimates of expenditure to each of the Contracting Governments.

Excess expenditure

51. (1) If, in the opinion of the Commission, it is necessary in any financial year to provide for any expenditure in excess of the amount set out in the detailed estimates of expenditure and for which provision cannot be made under sub-clause 64(2), the Commission shall prepare a detailed estimate of that excess expenditure (being an estimate in such form as may from time to time be agreed by the Commission and the Contracting Governments) showing the share to be contributed by each Contracting Government.

(2) A copy of the detailed estimate of excess expenditure shall be forwarded to each Contracting Government.

Forward estimates

52. (1) Whenever the Commission prepares a detailed estimate of expenditure under clause 50 in respect of a financial year, it shall, at the same time, prepare forward estimates of its known and anticipated expenditure in respect of the three year period comprising that financial year and the two financial years next ensuing after that financial year.

(2) Each forward estimate shall be in the same form as a detailed estimate of expenditure prepared under clause 50 and the Commission shall forward a copy thereof to each Contracting Government prior to the 31st day of March in each year.

Payments by Contracting Governments

53. Each Contracting Government shall provide the share to be contributed by it under the detailed estimates of expenditure or a detailed estimate of excess expenditure and shall pay so much of the same as is required by the Commission before the expiration of the twelve month period to which those estimates apply, provided that the Commission shall not require the payment of moneys relating to the construction of the works referred to in sub-clause 33(1) until the construction of those works has been authorised in accordance with that sub-clause.

Payments by Commission to States

54. (1) In accordance with the detailed estimates of expenditure or a detailed estimate of excess expenditure prepared by the Commission pursuant to clause 50 or 51, the Commission shall in each year pay to any Constructing Authority required by this Agreement to construct, maintain, operate or control any works or to carry on any operation an amount sufficient to defray the cost to be incurred by that Constructing Authority for those purposes in that year or, in the case of the cost referred to in paragraph 114(b), three-quarters of that cost.

(2) The amounts to be paid to a Constructing Authority pursuant to sub-clause 54(1) shall be paid at such times and in such manner as may be agreed between the Commission and that Constructing Authority provided that no amount shall be paid to a Constructing Authority for construction of works referred to in sub-clause 33(1) until the construction of those works has been authorised in accordance with that sub-clause.

Unexpended balances

55. (1) Whenever any moneys, which have been paid to the Commission by a Contracting Government pursuant to clause 53, remain unexpended at the end of the financial year in respect of which they were paid, those moneys shall be retained by the Commission but shall cease to be available for expenditure by the Commission in accordance with the estimates of expenditure for that financial year.

(2) The Commission shall, within a reasonable time after the commencement of the next financial year, furnish details of the unexpended moneys to that Contracting Government and notify that Contracting Government that it now holds the unexpended moneys as part of the share to be contributed under clause 53 by that Contracting Government for the next financial year.

(3) On giving the notice referred to in sub-clause 55(2), the unexpended moneys shall become available for expenditure in accordance with the estimates of expenditure for the next financial year.

(4) For the purposes of this clause:

"the estimates of expenditure" means a detailed estimate of expenditure, or a detailed estimate of excess expenditure, or both, as the case may require,

"the next financial year" means the financial year next following the financial year referred to in sub-clause 55(1), and

"the unexpended moneys" means the unexpended moneys referred to in sub-clause 55(1).

Disposal of surplus assets

56. The Commission shall, whenever appropriate, determine the time and manner of disposal of surplus assets acquired by the Commission, or by a Constructing Authority with funds made available by the Commission, and shall also determine the manner in which the proceeds from that disposal shall be distributed among the Contracting Governments.

Proper accounts to be kept

57. The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission.

List of assets

58. The Commission shall cause to be kept a list of the assets acquired by—

(a) the Commission, and

(b) a Constructing Authority with funds made available by the Commission,

provided that, if the Commission is satisfied that proper records of the assets acquired by a Constructing Authority with funds made available by the Commission are kept by that Constructing Authority and that copies of those records will be made available to the Commission whenever the Commission so requests, the Commission may decide not to keep a list of those assets.

Audit

59. (1) The accounts and records of financial transactions of the Commission and records relating to assets of, or in the custody of, the Commission

(a) shall, at least once in each year, be inspected and audited by the Commonwealth auditor, who shall forthwith draw the attention of each Contracting Government to any irregularity disclosed by the inspection and audit that is, in his opinion, of sufficient importance to justify his so doing, and

(b) may, at any reasonable time, be inspected and audited by a State auditor.

(2) The Commonwealth auditor may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-clause 59(1).

(3) The Commission shall, at all reasonable times, allow the Commonwealth auditor, or a State auditor, or a person authorised by either of them, to have full and free access to all accounts and records of the Commission relating directly or indirectly to the receipt or payment of moneys by the Commission or to the acquisition, receipt, custody or disposal of assets by the Commission.

(4) The Commission shall permit the Commonwealth auditor or a State auditor, or a person authorised by either of them, to make copies of, or take extracts from, any such accounts or records.

(5) The Commission shall, and shall ensure that its officers shall, furnish to the Commonwealth auditor, a State auditor, or a person authorised by either of them, such information in the possession of the Commission or any of its officers, or to which the Commission or that officer has access, as the Commonwealth auditor, a State auditor or authorised person considers necessary for the purposes of the functions of the Commonwealth auditor or a State auditor under this clause.

(6) A report of the result of any inspection and audit under this clause shall be furnished to each Contracting Government and to the Commission by the person making that inspection and audit.

Commission to account

60. The Commission shall account to the Contracting Governments for all moneys received by the Commission from the Contracting Governments under or for the purposes of this Agreement.

Contracting Governments to account

61. Each Contracting Government shall, and shall ensure that an authority of that Contracting Government shall, account to the Commission for all moneys received by that Contracting Government, or that authority, from the Commission under or for the purposes of this Agreement.

Bank accounts

62. (1) The Commission may open and maintain an account or accounts with a bank or banks selected by the Commission and shall maintain at all times at least one such account.

(2) The Commission shall pay all moneys received by it into an account referred to in sub-clause 62(1).

Investment

63. (1) Moneys of the Commission not immediately required for the purposes of this Agreement may be invested by the Commission on fixed deposit with a bank selected by the Commission.

(2) Any interest received by the Commission on moneys invested pursuant to sub-clause 63(1) shall be retained by the Commission until the end of the financial year in which it was received and,

- (a) if the moneys in respect of which that interest was received were contributed by all the Contracting Governments, or by a State Contracting Government pursuant to clause 65, distribute that interest to the Contracting Governments in equal shares, and
- (b) if the moneys in respect of which that interest was received were contributed only by the State Contracting Governments, or by one of them pursuant to clause 66, distribute that interest to the State Contracting governments in equal shares.

(3) The Commission may agree with a Contracting Government that, instead of distributing to that Contracting Government the moneys it would be entitled to receive under sub-clause 63(2), the Commission shall retain those moneys and set them off against the amounts to be paid under clause 53 by that Contracting Government to the Commission during the next financial year.

Application of moneys by Commission

64. (1) Subject as hereinafter provided in this clause, the Commission shall apply moneys received by it pursuant to clause 53 only in accordance with the detailed estimates of expenditure or the detailed estimates of excess expenditure, as the case may be.

(2) (a) For the purposes of this sub-clause—

"estimated amount" in respect of the first item or the second item means the amount set opposite to that item in a detailed estimate of expenditure as the amount to be expended on that item in the financial year to which that detailed estimate of expenditure relates,

"the first item" means an item appearing under one of the heads set out in sub-clause 50(1) in the same detailed estimate of expenditure in which the estimated amount appears, and

"the second item" means an item, not being the first item, appearing in the same detailed estimate of expenditure and under the same head as the first item.

- (b) If the Commission is satisfied that, in a financial year,
 - (i) the actual amount required to be expended on the first item shall be less than the estimated amount for that item, and
 - (ii) the actual amount required to be expended on the second item shall be greater than the estimated amount for that item,

the Commission may, at its discretion, expend on the second item so much of the estimated amount for the first item as is not required for expenditure on the first item.

(3) The Commission shall, at the end of each financial year, notify to the Contracting Government details of moneys it has expended pursuant to sub-clause 64(2) during that financial year.

(4) When, in any financial year, a detailed estimate of excess expenditure has been prepared and forwarded to each Contracting Government in accordance with clause 51 that detailed estimate of excess expenditure shall, for the purposes of sub-clause 64(2), be read as being incorporated in, and forming part of, the detailed estimate of expenditure for the same financial year.

Revenue

65. If a Contracting Government or an authority of that Contracting Government receives moneys (other than tolls referred to in clause 66) from any person arising out of the use by that person of any works constructed for the purposes of this Agreement, or the former Agreement, that Contracting Government shall, or shall ensure that that authority shall, pay those moneys to the Commission which shall retain them until the end of the financial year in which they were received by the Commission when the Commission shall distribute those moneys to the Contracting Governments in equal shares.

Tolls

66. (1) A State Contracting Government shall collect all tolls which are prescribed by the Commission for the use of weirs and locks which have been constructed for the purposes of this Agreement, or the former Agreement, and which are operated and controlled by that State Contracting Government pursuant to clause 45 and shall not otherwise collect tolls in respect of navigation on the River Murray.

(2) Whenever a State Contracting Government collects a toll prescribed by the Commission, it shall pay the amount collected without deduction to the Commission which shall retain that amount until the end of the financial year in which it was received by the Commission when the Commission shall distribute that amount to the State Contracting Governments in equal shares.

Compensation for damage by works

67. Where, pursuant to any Act approving this Agreement, a Constructing Authority has made compensation for any damage occasioned by, or arising out of, anything done by it in constructing, maintaining, operating or controlling any works provided for in this Agreement, the amount of that compensation, to the extent that it has not been met, or contributed to, by the Commission under paragraph 34(c), shall be contributed by the Contracting Governments in equal shares.

PART VII

REPORTS

Preparation of reports

68. (1) The Commission shall, as soon as practicable after the 30th day of June in each year, prepare and submit to each of the Contracting Governments in respect of the financial year ending on that date its financial statements together with a report as to—

- (a) its proceedings;
- (b) the operations carried on by it or under its orders, with particular reference to—
 - (i) the measurement of the flow of the River Murray and its tributaries,
 - (ii) the measurement and monitoring of the quality of water, and
 - (iii) deliveries of water;
- (c) the effect of the diversions to the said 30th day of June on the flow of the River Murray and its tributaries;
- (d) the construction, operation and maintenance of all works constructed pursuant to this Agreement or the former Agreement;
- (e) its administration generally; and
- (f) the condition of the catchment of the Hume Reservoir and any action taken by the Commission to protect from erosion the catchment thereof pursuant to clause 31.

(2) Before submitting financial statements to the Contracting Governments, the Commission shall submit them to the Commonwealth auditor who shall report to each of the Contracting Governments—

- (a) whether, in his 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 his 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 Contracting Governments.

(3) Reports and statements to be submitted pursuant to sub-clause 68(1) shall be addressed to the Governor-General or the Governor (as the case may require).

PART VIII

PROCEEDINGS IN DEFAULT

Failure to perform works or contribute cost

69. (1) If any Contracting Government (in this clause called "the defaulting Government") whose duty it is under this Agreement, or under any direction issued in accordance with this Agreement, to construct, or to continue the construction of, or to maintain, operate or control, any works, or to carry on any operation, or to make a payment to the Commission which it is required to make under clause 53, refuses or neglects to do so after being thereunto required by the Commission, the Commission shall immediately notify to each of the other contracting Governments particulars of the default.

(2) If the default relates to the construction of, or to the continuation of the construction of, or to the maintenance, operation or control of, any works, or to the carrying on of any operation, the Contracting Governments that are not in default and each of them, with the approval of the Commission,

- (a) may, without prejudice to their or its other rights under this Agreement, enter upon the territory of the defaulting Government and construct, or continue and complete the construction of, or maintain, operate or control, the whole of those works (or any part thereof specified by the Commission), or carry on that operation (or any part thereof specified by the Commission) and shall be deemed to have all such powers, licences and permissions as are required from the defaulting Government to construct, maintain, operate or control those works or to carry on that operation and shall be entitled, in place of the Constructing Authority required by this Agreement to construct, maintain, operate or control those works, or to carry on that operation, to receive the moneys payable to that Constructing Authority under clause 54 in respect of that construction, maintenance, operation, control or carrying on, and
- (b) may, in any court of competent jurisdiction, recover as a debt from the defaulting Government all moneys reasonably expended by them or it in doing any of the things referred to in paragraph 69(2)(a) in excess of the moneys paid to them or it by the Commission under that paragraph, together with interest thereon at the prescribed rate.

(3) For the purpose of any act or thing to be done under sub-clause 69(2), the Contracting Governments that are not in default and each of them shall have the rights and powers of a Constructing Authority, but the defaulting Government shall, on the completion of such act or thing and the payment of all moneys payable by it under sub-clause 69(2), be deemed to be the Constructing Authority.

(4) If the defaulting Government defaults in the payment by the due date for payment of a sum of money which it is required under clause 53 to pay to the Commission, the defaulting Government shall be liable to pay interest to the Commission on the amount of the overdue payment at the prescribed rate, and the Contracting Governments that are not in default and each of them shall have the right (but not the obligation) at any time to pay to the Commission any unpaid sum with accrued interest thereon on behalf of the defaulting Government. Any amount paid by a Contracting Government not in default on behalf of the defaulting Government (together with interest thereon at the prescribed rate calculated from the date of such payment to the Commission by the Contracting Government that is not in default) shall constitute a debt due and payable by the defaulting Government to the Contracting Government that made the payment and

shall be recoverable accordingly in any court of competent jurisdiction.

(5) Any interest received by the Commission under this clause shall be paid—

- (i) to the Contracting Governments not in default in equal shares, if the moneys in respect of which the interest was received were moneys which the defaulting Government was required to pay in respect of any of the matters referred to in sub-clause 48(1), or
- (ii) to the State Contracting Governments not in default in equal shares, if the moneys in respect of which the interest was received were moneys which the defaulting Government was required to pay in respect of any of the matters referred to in sub-clause 48(2).

(6) For the purposes of this clause, "the prescribed rate" shall be 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 and applicable at the time payment became due or, if no rate is so fixed, 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 the payment became due.

(7) Any interest payable under this clause shall be calculated from the due date for payment of the said sum to the date of actual payment, whether payment is made by the defaulting Government or on its behalf.

PART IX

DISTRIBUTION OF WATERS

DIVISION 1—INTERPRETATION

Definitions

70. For the purposes of this Part only—

"period of restriction" means a period of restriction declared under clause 104;

"upper river" 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 the said main course upstream of Doctors Point;
- (c) all effluents and anabranches of the said main course, excepting such as may be excepted by the Commission;
- (d) the water courses connecting Lake Victoria to the said main course;
- (e) the Darling River downstream of Menindee;
- (f) the Great Darling Anabranh; and
- (g) the upper river storages;

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

"upper States" means the States of New South Wales and Victoria;

"water available for release at the direction of the Commission" means water physically capable of being released from a storage other than water the release of which cannot be required by virtue of sub-clause 82(1).

Post Chowilla

71. Upon the Chowilla Reservoir being declared to have become effective for the purposes of this Agreement—

- (a) the provisions of this Part shall be construed as if—
 - (i) in the definition of "upper river", the words "Chowilla Reservoir outlet" were substituted for the words "eastern boundary of the State of South Australia";

- (ii) in sub-clause 72(1), the words "Water released from and water diverted by the State of South Australia from the Chowilla Reservoir" were substituted for the words "Water flowing in the River Murray past the eastern boundary of the State of South Australia";
 - (iii) sub-clause 72(2) and clause 75 were deleted;
 - (iv) in sub-clause 78(3) and clauses 85 and 104, the words "Chowilla Reservoir" were substituted for the words "Lake Victoria".
- (b) until the Lake Victoria works are declared to have become ineffective for the purposes of this Agreement, the provisions of this Part shall be construed as if—
- (i) in the definition of "upper river storages", the words "Chowilla Reservoir," were inserted before the words "Lake Victoria";
 - (ii) in paragraph 106(b), the words "the Chowilla Reservoir and" were inserted before the words "Lake Victoria"; and
- (c) upon the Lake Victoria works being declared to have become ineffective for the purposes of this Agreement, the provisions of this Part shall be construed as if—
- (i) in the definition of "upper river", paragraph (d) were deleted;
 - (ii) in the definition of "upper river storages", the words "Chowilla Reservoir" were substituted for the words "Lake Victoria";
 - (iii) in paragraph 106(b), the words "Chowilla Reservoir" were substituted for the words "Lake Victoria".

DIVISION 2—STATE ENTITLEMENTS TO WATER

Measurement of South Australia's entitlement

72. (1) Water flowing in the River Murray past the eastern boundary of the State of South Australia shall be deemed to be supplied to and received by that State.

(2) The quantity of water so flowing in any month shall be deemed to be the sum of the quantities, as determined by the Commission by appropriate measurements, flowing in the same month in—

- (i) the River Murray between the confluences of the Rufus and Lindsay Rivers with the River Murray, and
- (ii) the Lindsay River near its confluence with the River Murray

or shall be determined in such other manner as the Commission may from time to time decide.

South Australia's monthly entitlement

73. The State of South Australia shall be entitled to receive—

(a) at times other than a period of restriction, the following monthly quantities:

July	108 500 megalitres
August	124 000 megalitres
September	135 000 megalitres
October	170 500 megalitres
November	180 000 megalitres
December	217 000 megalitres
January	217 000 megalitres
February	194 000 megalitres
March	186 000 megalitres
April	135 000 megalitres
May	93 000 megalitres
June	90 000 megalitres

(b) during a period of restriction, monthly quantities equal to the lesser of:—

- (i) the monthly quantities to which the State of South Australia is entitled under clause 108, and
- (ii) the monthly quantities set out in paragraph 73(a) for the months occurring in that period.

Variation of South Australia's entitlements

74. The Commission may from time to time, at the request of the 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 73 without increasing the total of those quantities for that sequence.

Use of Lake Victoria

75. 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 the State of South Australia is entitled to receive in that month under clause 73 or 74;
- (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 the upper States, downstream of the junction of the River Murray and the Great Darling Anabranch,

the State of South Australia may receive that excess in addition to the quantity of water which it is entitled to receive under clause 73 or 74.

Surplus flow to South Australia

76. The quantity of water that the State of South Australia is entitled to receive in any month shall not be diminished by reason of it having received in any previous month a greater quantity than it was entitled to receive under clause 73 or 74.

Entitlements of New South Wales and Victoria

77. (1) Subject to the supply to the State of South Australia of the quantities of water that that State is entitled to receive under clause 73 or 74, each of the upper States shall, except as otherwise expressly provided in Division 4 of this Part, be entitled to:

- (a) the full use of all tributaries in its territory flowing to but not forming part of the upper river and shall have the right to divert, store and use the flows thereof, before their entry to the upper river;
- (b) half the waters of the upper river upstream of Doctors Point, including any waters diverted thereto by works of the Authority.
- (c) half the waters entering the Menindee Lakes from the Darling River, subject to the prior entitlement of the State of New South Wales to use water from the Menindee Lakes Storage as provided in clause 78; and
- (d) subject to paragraph 77(1)(c), the full use from the upper river of water arriving at the point of use and contributed by any tributary, or any outfall approved by the Commission, entering the upper river from its territory downstream of Doctors Point;

(2) Entitlements under sub-clause 77(1) shall not be affected by the declaration of a period of restriction except as specifically provided in clause 95 and Division 5 of this Part.

New South Wales' entitlement to water from Menindee Lakes

78. (1) At any time after the quantity of water stored in the Menindee Lakes Storage is reduced to less than 480 000 megalitres and until the quantity of water so stored next exceeds 640 000 megalitres, the State of New South Wales may use the water so stored as it requires.

(2) At any time when sub-clause 78(1) does not apply, the State of New South Wales may as it requires divert from or release from the water stored in the Menindee Lakes Storage 125 000 megalitres in any period of 12 months commencing on the first day of July.

(3) During any period for which the Commission determines that the spills from the Menindee Lakes Storage exceed the amount required by the Commission for storage in Lake Victoria and to supply the State of South Australia's entitlement, including any period when water is being released from the Menindee Lakes Storage solely to provide space for the retention of floodwaters, any water diverted by the State of New South Wales from the Menindee Lakes Storage or from water spilling therefrom or released therefrom to provide space for the retention of floodwaters shall not be considered as diverted from that State's entitlement under sub-clause 78(2).

New South Wales' and Victoria's supply to South Australia

79. From the waters available to them under clauses 77 and 78, the upper States shall contribute, in equal proportions, the quantities of water which the State of South Australia is entitled to receive under clause 73 or 74.

Limitations on use by New South Wales and Victoria

80. Unless the Commission otherwise agrees, neither of the upper States shall use water from the upper river to the extent that, at the 31st day of May next ensuing, the volume of water in the upper river storages and allocated to that State will be less than half the volume of the reserve determined under clause 85.

DIVISION 3—CONTROL BY COMMISSION

Commission's role in operation of storages

81. (1) Release of water from the upper river storages shall be in accordance with such directions as the Commission may issue from time to time. Without limiting the generality of clauses 43 and 45, the Commission may issue such directions in the form of standing procedures and, subject to clause 84, may at any time amend or suspend the whole or any part of such procedures.

(2) In determining any direction to be issued under this clause—

(a) the Commission shall have regard to—

- (i) maintaining the supply to the State of South Australia of the quantities of water that that State is entitled to receive,
- (ii) maintaining a reserve of water as provided for in clause 85, and
- (iii) facilitating the exercise by the upper States, as they require, of their respective rights to use water from the upper river, and

(b) subject to clause 83, the Commission may have regard to—

- (i) the improvement or maintenance of the quality of the waters in the upper river or in the River Murray downstream of the eastern boundary of the State of South Australia, and
- (ii) the pursuit of any other water management objectives consistent with this Agreement.

Limitations on Menindee Lakes operation

82. (1) No direction under clause 81 shall require the release of water from the Menindee Lakes Storage at any time after the volume of water stored therein is reduced to less than 480 000 megalitres until that volume next exceeds 640 000 megalitres.

(2) Any direction of the Commission requiring the release of water from the Menindee Lakes Storage when sub-clause 82(1) does not apply, shall be determined by a majority vote of the four Commissioners or, if the four Commissioners are equally divided, by the casting vote of the Commissioner for the Commonwealth.

Accounting for releases for dilution

83. (1) No direction under clause 81 issued solely for the purposes referred to in paragraph 81(2)(b) shall require the release of water from any upper river storage, unless—

(a) the release of water is in accordance with sub-clause 83(2) or 83(3), or

- (b) the Commission has determined how much of the volume to be released under its direction is to be contributed from water allocated respectively to the States of New South Wales and Victoria. In such a determination the Commission shall have consideration to the quality of the water entering the upper river below Doctors Point.

(2) The flow passing Torrumbarry Weir shall, as far as possible, be regulated so as to prevent the electro-conductivity of the river water at Swan Hill exceeding 500 microsiemens per centimetre at twenty-five degrees Celsius, but, unless the Commission directs otherwise, such flow shall not be required to exceed 3 900 megalitres per day except when needed to meet downstream water requirements.

(3) The flow passing Euston Weir shall, as far as possible, be regulated so as to prevent the electro-conductivity of the river water at Merbein exceeding 500 microsiemens per centimetre at twenty-five degrees Celsius, but, unless the Commission directs otherwise, such flow shall not be required to exceed 2 450 megalitres per day plus the combined diversion requirements of the pumping districts of Red Cliffs, First Mildura Irrigation Trust, Merbein, Coomealla and Curlwaa, except when needed to meet downstream water requirements.

Procedures for Dartmouth Dam operation

84. Insofar as procedures for the operation and control of Dartmouth Reservoir affect the release of water through the power station of that Reservoir, the Commission may not amend such procedures or, except in an emergency, suspend any part of such procedures, without prior consultation with the State Electricity Commission of Victoria and the Constructing Authority for Victoria.

Reserve storage

85. The Commission may from time to time determine the volume of a reserve of water to be held in the upper river storages at the 31st day of May next ensuing; provided that, unless the Commission otherwise determines, the volume of such reserve shall be 2 500 000 megalitres of which not less than 250 000 megalitres shall be in Lake Victoria.

Use of State works to convey Murray water

86. Subject to such terms and conditions as may be agreed between the Commission and an upper State, the Commission may arrange for the conveyance of water from one part to another of the upper river via works under the control of that State.

DIVISION 4—WATER ACCOUNTING

General

87. For the purpose of giving effect to the principles set out in the preceding Divisions of this Part, the following provisions shall apply.

Allocation of water to New South Wales and Victoria

88. (1) In respect of any period, a quantity of water estimated by the Commission as—

- (a) the quantity of water which would have flowed in the River Murray past Doctors Point in that period but for the effect during that period of diversions to or from, and impoundments on, the upper river upstream of Doctors Point, plus

- (b) the quantity of water diverted by works of the Authority to the upper river upstream of Doctors Point from beyond the natural boundaries of the catchment thereof

shall be allocated between the upper States as provided in sub-clause 88(2).

(2) The quantity of water estimated for any month in accordance with sub-clause 88(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 the States of New South Wales and Victoria;
- (b) for any of the months from September through to April inclusive;
- (i) during any period of restriction, the first 12 900 megalitres per month (being equivalent to the ceding by the State of Victoria to the State of 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 the State of Victoria to the State of New South Wales of a volume of 8 350 megalitres per month)

shall be allocated to the State of New South Wales, and the remainder shall be allocated half each to the States of New South Wales and Victoria.

Allocation of water in Menindee Lake Storage

89. Of the quantity of water which in any period enters the Menindee Lakes Storage from the Darling River, an amount shall be allocated to the State of New South Wales equal to the amount to which that State is entitled during that period under sub-clause 78(1) or 78(2) and the remainder shall be allocated half each to the States of New South Wales and Victoria.

Tributary inflows

90. The quantity of water which in any period enters the upper river 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 89, shall be allocated to the upper State from which the water enters the upper river.

Use by New South Wales and Victoria of allocated water

91. Any quantity of water diverted from the upper river by offtakes under the jurisdiction of an upper State shall be deemed to be used by that State, unless otherwise determined by the Commission.

Snowy diversions out of Murray catchment

92. Any quantity of water diverted by works of the Authority from the Tooma River to the Eucumbene Storage and the Tumut River or from the Geehi River to the Snowy River shall be deemed to be used half each by the upper States.

Losses

93. Any quantity of water which is lost by evaporation or percolation or other means from the upper river shall be deemed to be used by the upper States and, unless otherwise determined by the Commission, shall be deemed to be used half each by those States or in such proportions as the Commission may from time to time determine.

New South Wales' and Victoria's supply to South Australia

94. For the purposes of this Division, any quantity of water supplied to the State of South Australia in any month and which that State is entitled to receive under clause 73 or 74 shall be deemed to be supplied half each by the upper States and the Commission shall make appropriate adjustments to allocations between the upper States of water in the upper river so as to give effect to those States' obligations under clause 79.

Deferment of continuous accounting of carryover of stored water

95. Unless the Commission otherwise determines, the quantity of water in the upper river storages, being water available for release at the direction of the Commission—

- (a) at the commencement of any period of restriction, and
- (b) at the 1st day of July in every year in which a period of restriction does not exist on the 1st day of July

shall be deemed to be water allocated half each to the upper States.

Reallocation of water between upper States

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

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

Accounting for quality of inputs from State tributaries and for Snowy Scheme

97. (1) The quantities of water allocated to the upper States may be adjusted by the Commission having regard to the quality of each State's tributary inputs to the upper river. To this end, the Commission shall as soon as practicable bring into effect, and may from time to time amend, rules for the adjustment of the quantities of water allocated to the States of New South Wales and Victoria having regard to the quality of water entering the upper river downstream of Doctors Point from tributaries and from any artificial outfalls.

(2) The Commission may adjust the quantities of water allocated to the States of New South Wales and Victoria under paragraph 88(1)(b) having regard to any extraordinary aspects of operation of the Snowy Scheme.

To provide efficient regulation of the Murray River

98. Any water used by an upper State or supplied to the State of South Australia by an upper State shall be deemed to be provided from water allocated to that upper 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 but shall not thereby alter the total quantities of water allocated to the respective upper States in the upper river.

Accounting procedures

99. Subject to clauses 95, 96, 97 and 98, the quantity of water in any part of the upper river and which is allocated to an upper State shall be 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 the State of South Australia,
 - conveyance to another part of the upper river as water allocated to that State, or
 - (iii) released from that part in that period and determined or deemed under paragraph 83(1)(b) or clause 103 to be a release of water allocated to that State, or
 - (iv) spilled from that part in that period and deemed under clause 100 to be a spill of water allocated to that State.

Accounting for spill from storages

100. Any quantity of water which is spilled from any of the upper river storages, including water released solely to provide space for the retention of floodwaters, shall be deemed to be water spilled out of the waters allocated to the respective upper States, in such proportions as equalises or tends most to equalise the remaining quantities of water allocated to the respective upper States in that storage.

Accounting for releases through Dartmouth Dam Power Station

101. Any quantity of water which is released from Dartmouth Reservoir through the hydro-electric power station shall be deemed to be released from waters allocated to the respective upper States—

- (a) in such proportions as equalises, or tends most to equalise, the remaining quantities of water allocated to the respective upper States in that Reservoir, if the water is released when the storage level in Dartmouth Reservoir is above such level as the Commission may from time to time determine for the purposes of this paragraph, or

- (b) in equal proportions, if the water is released otherwise than in the circumstances referred to in paragraph 101(a).

Reallocation of water in Menindee Lakes Storage

102. At the conclusion of any period during which sub-clause 78(1) applies, the quantities of water stored in the Menindee Lakes Storage and allocated respectively to the States of New South Wales and Victoria shall be adjusted so that the difference between those quantities becomes the same as the difference in the allocated quantities as at the beginning of that period.

Dilution at Swan Hill and Merbein

103. Until rules have been brought into effect under sub-clause 97(1), any quantity of water released from an upper river storage in accordance with sub-clause 83(2) or 83(3) and in excess of requirements for use by the upper States and for supply to the State of South Australia shall be deemed to be released in equal proportions from water allocated to the upper States, unless otherwise determined by the Commission.

DIVISION 5—PERIODS OF RESTRICTION

Declaration of restrictions

104. The Commission may at any time declare a period of restriction for a specified period of whole months ending not before the 31st day of May next ensuing and may subsequently amend any such declaration, but the Commission shall declare a period of restriction unless it is satisfied that the quantities of water available for release at the direction of the Commission from the upper river storages will not be, at the 31st day of May then next ensuing, below 2 500 000 megalitres of which not less than 250 000 megalitres will be in Lake Victoria or unless it resolves that it is not necessary to do so.

Variation of navigation depths during restrictions

105. When a period of restriction has been declared by the Commission pursuant to clause 104, the Commission may vary the provisions of clause 45 respecting the depth of water to be maintained at the locks constructed pursuant to this Agreement or the former Agreement.

Water under the control of the Commission

106. For the purposes of this Division, "water under the control of the Commission" means the aggregate of—

- (a) the water stored in the Hume and Dartmouth Reservoirs at the commencement of the period of restriction;
- (b) the water stored in Lake Victoria at the commencement of the period of restriction;
- (c) the water available for release from the Menindee Lakes Storage at the direction of the Commission in accordance with clause 82 during the period of restriction, after allowing for New South Wales' prior entitlements under clause 78;
- (d) during the period of restriction the runoff from the catchment of the upper river above Doctors Point, excluding water diverted from the Tooma River to the Eucumbene Storage and the Tumut River and from the Geehi River to the Snowy River;
- (e) water diverted to the upper river above Doctors Point by works of the Authority during the period of restriction;

- (f) the difference between the amount of water in transit in the upper river at the beginning and end of the period of restriction.

Sharing of water during restrictions

107. As soon as practicable after a period of restriction has been declared, and from time to time during that period, the Commission shall—

- (a) determine the expected quantity of water under the control of the Commission;
- (b) determine the quantity of water which is to be allowed during the period of restriction for—
- (i) losses by evaporation, percolation, and other means in the upper river;
- (ii) losses by evaporation, percolation, and other means in the River Murray between the eastern boundary of the State of South Australia and the town of Wellington and for dilution in the State of South Australia, but the total quantity of water allowed for under this sub-paragraph shall be 58 000 megalitres per month, unless otherwise determined by the Commission;
- (c) determine the quantity to be held in the upper river storages at the end of the period of restriction and available for release at the direction of the Commission;
- (d) having regard to its determinations under paragraphs 107(a), 107(b) and 107(c), determine the quantity of water (hereinafter called "the available water") available for use by the upper States and for supply to the State of South Australia during the period of restriction.

South Australian share during restrictions

108. (1) Subject to paragraph 73(b), the restricted entitlement of the State of South Australia during a period of restriction shall be one third of the available water, which shall be distributed between the months of the period of restriction as the Commission determines, plus the monthly quantities described in sub-paragraph 107(b)(ii).

(2) The Commission may vary for a period not exceeding six months at any one time the proportion of one third prescribed in sub-clause 108(1).

PART X

LAKE VICTORIA WORKS

Power to store water in Lake Victoria

109. Subject to clause 75, the State of South Australia may at all times divert into Lake Victoria for impounding or storing therein, the waters of the River Murray flowing at the site or sites of the offtake or offtakes for diversion into Lake Victoria.

Water stored in Lake Victoria

110. Subject to this Agreement, the State of South Australia will, at the request of the State of New South Wales, permit the reasonable use of the water of the said lake by occupiers of land on the banks of Lake Victoria and by occupiers on the settlement of lands of a total area not exceeding 81 000 hectares in the vicinity of Lake Victoria for domestic purposes, for watering their cattle and other stock and for watering gardens not exceeding 2 hectares in connection with a dwelling house.

PART XI

MENINDEE LAKES STORAGE

Cessation of Menindee Lakes Storage Agreement

111. Upon the coming into effect of this Agreement, the Agreement made between the parties hereto on the 8th day of October 1963 and set out in the Schedule to the Menindee Lakes Storage Agreement Act 1963 of the Commonwealth of Australia shall cease to have effect.

Maintenance of Menindee Lakes Storage

112. The State of New South Wales shall carry out the maintenance necessary to keep the Menindee Lakes Storage and the works associated with it in good order and condition, having regard to the full supply levels and storage capacities referred to in clause 113.

Full supply levels

113. For the purposes of this Agreement, and unless otherwise agreed between the Water Resources Commission 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 1 794 000 megalitres.

Financial contributions of Commission

114. The Commission shall pay to the State of New South Wales in respect of each year commencing on the first day of January—

- (a) an amount at the rate of \$320 000 per annum to be paid by equal quarterly instalments at the end of each quarter, but no payment shall be made in respect of any day or days on which the effective capacity of the Menindee Lakes Storage is less than 740 000 megalitres and an appropriate proportionate deduction shall be made from the quarterly instalment for the quarter in which any such day or days occur; and
- (b) three-quarters of the cost during that year of operating the Menindee Lakes Storage and of carrying out the maintenance necessary to keep the said Storage and the works associated with it in good order and condition.

PART XII

EFFECT OF SNOWY MOUNTAINS AGREEMENT

Reconciliation with Snowy Mountains Agreement

115. (1) This Agreement shall operate according to its tenor to define the rights to water in the River Murray and its tributaries of the States of New South Wales, Victoria and South Australia.

(2) The provisions as to sharing of waters contained in this Agreement shall apply to the exclusion of the provisions contained in sub-clause 12(2) of the Snowy Mountains Agreement.

(3) To the extent to which any provision of this Agreement conferring rights on the State of South Australia to the use of water is inconsistent with the provisions of the Snowy Mountains Agreement, the first mentioned provision shall prevail, and the provisions of the Snowy Mountains Agreement shall be modified accordingly.

(4) Upon the coming into effect of this Agreement—

- (a) the reference in clause 11 of the Snowy Mountains Agreement to "the River Murray Commission" shall be deemed to refer to the Commission; and
- (b) the references in that clause to "a declared period of restriction within the meaning of clause 51 of the River Murray Agreement" and "the declared period of restriction" shall be deemed to refer to a period of restriction declared pursuant to clause 104 of this Agreement.

(5) Except to the extent provided in this clause, the Snowy Mountains Agreement shall continue in full force and effect.

PART XIII

MISCELLANEOUS

Arbitration

116. (1) Subject to sub-clause 116(6), if a difference of opinion arises among the Commissioners on any question, not being a question of law, that question, unless the Commissioners concur within the prescribed period after submission by a Commissioner of a resolution thereon, shall, as provided in this clause, be referred for decision to an arbitrator, who shall be appointed by the Contracting Governments.

(2) At the end of the prescribed period, a Contracting Government may give to the other Contracting Governments written notice to concur in the appointment of an arbitrator and to refer that question to that arbitrator for decision.

(3) If the appointment be not made within two months after the giving of that notice, the Chief Justice of the Supreme Court of Tasmania or the person for the time being discharging the duties of that office may, at the request of that Contracting Government, appoint an arbitrator, who shall have the like powers to act in the reference to decide the question as if he had been appointed by the Contracting Governments.

(4) The decision of an arbitrator appointed to decide the question shall be binding on the Commission and the Contracting Governments and shall be deemed to be the decision of the Commission.

(5) For the purposes of this clause, "the prescribed period" shall be a period of two months or such other period, not being more than six months, as is determined by a majority vote of the four Commissioners or, if the four Commissioners are equally divided, by the casting vote of the Commissioner for the Commonwealth.

(6) This clause shall not apply to a question—

(a) before the Commission pursuant to clause 117; or

(b) which has been decided by a majority vote of the four Commissioners, or by the casting vote of the Commissioner for the Commonwealth, pursuant to a provision of this Agreement.

Proposals to amend Agreement

117. The Commission shall from time to time review this Agreement, and if in the opinion of the Commission amendments thereto are necessary or desirable, make recommendations to the Contracting Governments accordingly.

Furnishing information and particulars

118. Each Contracting Government shall furnish or cause to be furnished, to the Commission, at such times as the Commission may require, all such information and particulars as the Commission may require for any of the purposes of this Agreement and as that Contracting Government is able to furnish.

Authorities to observe agreement

119. Whenever an authority of a Contracting Government is constituted or appointed for the purpose of constructing, maintaining, operating or controlling any works under this Agreement, that Contracting Government shall ensure that that authority shall observe the provisions of this Agreement.

Transitional provisions

120. (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;

"estimates" means detailed estimates of expenditure under clause 50 and includes, where the context admits, a detailed estimate of excess expenditure under clause 51; and

"next financial year" means the financial year next following the day on which this Agreement comes into effect.

(2) Acts or things consistent with the provisions of this Agreement that have been done by or on behalf of a Contracting Government or the Commission in anticipation of this Agreement coming into effect shall be regarded as having been done under and in accordance with its provisions.

(3) Without limiting the generality of sub-clause 120(2)—

- (a) any documents forwarded prior to the commencing day by the Commission to the Contracting Governments, being documents in the form of estimates for the current financial year, shall be deemed to be estimates forwarded in respect of that year;
- (b) any moneys provided prior to the commencing day by a Contracting Government to the Commission in accordance with a document referred to in paragraph 120(3)(a) shall be deemed to have been provided pursuant to clause 53 in respect of the current financial year;
- (c) any moneys expended by the Commission prior to the commencing day in accordance with a document referred to in paragraph 120(3)(a) shall be deemed to have been expended pursuant to this Agreement in respect of the current financial year; and
- (d) if this Agreement comes into effect on a day between the 31st day of March and the next ensuing 30th day of June, both dates inclusive, any documents forwarded prior to the commencing day by the Commission to the Contracting Governments, being documents in the form of estimates for the next financial year, shall be deemed to be estimates forwarded in respect of that year.

(4) If, during the current financial year and prior to the commencing day, any moneys of the Commission were invested on fixed deposit with a bank, any interest received by the Commission during the current financial year on those moneys shall be dealt with as if it was interest referred to in clause 63 and, for that purpose, moneys of a kind referred to in clause 65 or 66 and contributed by a State Contracting Government shall be deemed to have been contributed by that State Contracting Government pursuant to clause 65 or 66, as the case may be.

(5) Any other matters of a transitional nature concerning this Agreement shall be settled by agreement between the Contracting Governments.

SCHEDULE A

<i>Description of Works</i>	<i>Location</i>	<i>Nominated Government</i>
DARTMOUTH DAM with a capacity of approximately 4 000 000 megalitres.	Mitta Mitta River upstream of the town of Dartmouth, north-eastern Victoria.	Government of Victoria.
HUME DAM with a capacity of approximately 3 038 000 megalitres.	River Murray upstream of the city of Albury, New South Wales.	The Governments of New South Wales and Victoria, jointly.
LAKE VICTORIA WORKS—regulation reservoir with a storage capacity of approximately 700 000 megalitres	Lake Victoria, New South Wales connected with main stream of River Murray by Rufus River and Frenchman's Creek.	Government of South Australia.
YARRAWONGA WEIR—storage of about 120 000 megalitres.	River Murray near the town of Yarrawonga, Victoria.	Government of Victoria.
CHOWILLA DAM— with a capacity of approximately 5 900 000 megalitres.	River Murray between the towns of Renmark and Wentworth.	Government of South Australia.
WEIRS AND LOCKS:		
Construction of thirteen weirs and locks in the course of the River Murray from its mouth to Echuca, namely:	River distance from Murray mouth in kilometres.	
No. 1 Blanchetown	274	Government of South Australia
No. 2 Waikerie	362	" "
No. 3 Overland Corner	431	" "
No. 4 Bookpurnong	516	" "
No. 5 Renmark	562	" "
No. 6 Murtho	620	" "

No. 7 Rufus River	697	" "
No. 8 Wangumma	726	" "
No. 9 Kulnine	765	" "
No. 10 Wentworth	825	Government of New South Wales
No. 11 Mildura	878	Government of Victoria
No. 15 Euston	1 110	Government of New South Wales
No. 26 Torrumbarry	1 368	Government of 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	Government of New South Wales
No. 7 Maude	290	" "

MURRAY MOUTH BARRAGES:

Goolwa	Goolwa Channel	Government of South Australia
Mundoo	Mundoo Channel	" "
Boundary	Boundary Creek Channel	" "
Ewe Island	Ewe Island Channel	" "
Tauwitchere	Tauwitchere Island Channel	" "

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto as at the day and year first above-written.

SIGNED on behalf of THE COMMONWEALTH)
OF AUSTRALIA by the Right Honourable)
JOHN MALCOLM FRASER, Primer Minister) MALCOLM FRASER
of Australia, in the presence of:)
PETER ARNOLD)

SIGNED on behalf of THE STATE OF)
NEW SOUTH WALES by the Honourable)
NEVILLE KENNETH WRAN, Premier) NEVILLE WRAN
of New South Wales, in the presence of:)
M. HARKINS)

SIGNED on behalf of THE STATE OF)
VICTORIA by the Honourable JOHN) JOHN CAIN
CAIN, Premier of Victoria, in the)
presence of: J. B. JACK)

SIGNED on behalf of THE STATE OF)
SOUTH AUSTRALIA by the Honourable)
DAVID OLIVER TONKIN, Premier of) DAVID TONKIN
South Australia, in the presence of:)
PETER ARNOLD)

SECOND SCHEDULE

An agreement (to be called the "Murray-Darling Basin agreement") made this 30th day of October One thousand nine hundred and eighty seven between—

THE COMMONWEALTH OF AUSTRALIA (hereinafter referred to as "the Commonwealth") of the first part,

THE STATE OF NEW SOUTH WALES of the second part,

THE STATE OF VICTORIA of the third part, and

THE STATE OF SOUTH AUSTRALIA of the fourth part.

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 certain amendments should be made to an Agreement made between the parties on the first day of October 1982 and subsequently approved by the Parliaments of all those Governments (hereinafter referred to as "the principal agreement"):

NOW IT IS HEREBY AGREED by and between the parties to this agreement as follows—

1. Unless the contrary intention appears, expressions used in this agreement have the same meanings as they have in the principal agreement.

2. (1) This agreement, other than this sub-clause and sub-clauses (2) and (3) of this clause, is subject to approval by the Parliaments of the Commonwealth and of the States of New South Wales, Victoria and South Australia and shall come into effect when so approved.

(2) The Commonwealth, New South Wales, Victorian and South Australian Governments will submit this agreement for approval to their respective Parliaments as soon as practicable after the date of this agreement.

(3) A further approval of the Parliaments referred to in sub-clause 2(1) shall not be required where any other State becomes a party to this agreement pursuant to clause 117A.

3. Clause 1 of the principal agreement is amended by—

(a) deleting the definition of "Commission", and inserting the following:

"Commission" means the Commission continued in existence hereunder under the name Murray-Darling Basin Commission.

(b) deleting from the definitions of "Commissioner for the Commonwealth", "Commissioner for New South Wales", "Commissioner for South Australia" and "Commissioner for Victoria" the words "the Commissioner" and substituting the words "a Commissioner";

- (c) deleting from the definition of "Contracting Government" the words "or the State of South Australia" and adding the words ", the State of South Australia or, except for Parts V and VIII and sub-clauses 48(2), 48(3) and 48(4) and paragraphs 48(1)(a) and 48(1)(c) of Part VI, a State becoming a party pursuant to clause 117A.";
- (d) deleting from the definitions of "Deputy Commissioner for the Commonwealth", "Deputy Commissioner for New South Wales", "Deputy Commissioner for South Australia" and "Deputy Commissioner for Victoria" the words "the Deputy Commissioner" and substituting the words "a Deputy Commissioner";
- (e) inserting after the definition of "the Authority" the following:

"the Ministerial Council" means the Ministerial Council established by Part IIIA:

"the Murray-Darling Basin" means so much of the area within the boundaries of the map shown in the schedule to this agreement as forms part of the territory of the Contracting Governments.

4. The following Part shall be inserted in the principal agreement before Part III:

"PART IIIA—ESTABLISHMENT OF MINISTERIAL COUNCIL

7A. (1) There shall be a Ministerial Council consisting of up to three Ministers from each Contracting Government who have prime responsibility for matters relating to water, land and environment.

(2) A member of the Ministerial Council for the time being representing a party to this Agreement—

- (a) may appoint a delegate who is another Minister of State of that party to attend a meeting of the Ministerial Council in place of the member;

or

- (b) shall, while a Minister of State of the party is for the time being acting as the Minister who is referred to in sub-clause 7A(1), be the Minister who is so acting,

and references in this Agreement (other than in this clause) to a member of the Ministerial Council shall include a delegate in respect of attendance at any such meeting or a Minister who is so acting.

7B. The functions of the Ministerial Council shall be the general oversight and control over the major policy issues of common interest to the Contracting Governments in relation to the Murray-Darling Basin.

7C. 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.

7D. The Ministerial Council may require the Commission to furnish to it a report in relation to any of its operations.

7E. (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 7G or, in the absence of that Minister, a Minister from the same Contracting Government authorised for this purpose by the Minister so nominated.

(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.

7F. The Ministerial Council—

(a) shall constitute a Community Advisory Committee; and

(b) may constitute such other committees as it shall see fit,

to assist it in discharging its functions, with terms of reference, functions and membership determined by it from time to time.

7G. 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."

5. Clause 7 of the principal agreement is amended by deleting the words "shall continue to function" and substituting the words "is continued in existence under the name of the Murray-Darling Basin Commission".

6. Clause 8 of the principal agreement is deleted and the following clause substituted:

"8. The Commission shall consist of the Commissioners, appointed pursuant to clause 9."

7. The following clause shall be inserted before clause 9 of the principal agreement:

"9A. (1) A Commissioner, other than the President, shall disclose to the President any direct or indirect pecuniary interest that he has or acquires in a business carried on in Australia or in a body corporate carrying on such a business, being an interest that could be in conflict with his duties as a Commissioner.

(2) The President shall give written notice to the Minister responsible for administering on behalf of the Commonwealth this Agreement of all direct and indirect pecuniary interests that he has or acquires in any business carried on in Australia or in any body corporate carrying on any such business."

8. Clause 9 of the principal agreement is amended—

- (a) by deleting the words "One Commissioner and one Deputy Commissioner" and substituting the words "Two Commissioners who, between them, represent water, land and environmental resource management and two Deputy Commissioners";
- (b) by deleting the words "and the Governor" after the word "Victoria" and substituting the words ", the Governor";
- (c) by adding the words "and the Governor of any State becoming a party to this Agreement pursuant to clause 117A" after the words "South Australia".

9. Clause 11 of the principal agreement is deleted and the following clause substituted:

"11. (1) Where immediately before the variation date a person holds office as a Commissioner or Deputy Commissioner by virtue of a provision of this Agreement that person continues on and after that date to hold office for the remainder of his term of office as if he had been appointed to the Murray-Darling Basin Commission and any instrument by which that appointment was made continues in force accordingly.

(2) For the purposes of this clause, 'the variation date' means the date on which this Agreement was first amended."

10. Clause 12 is amended by deleting the words "the Commissioner" wherever appearing and substituting the words "a Commissioner" and by deleting the words "the Deputy Commissioner for the Commonwealth or that State, as the case may be, shall act as" and substituting the words "the Deputy Commissioner appointed for that Commissioner shall act as a".

11. Sub-clause 19(3) of the principal agreement is amended by deleting the words "The Commissioner for the Commonwealth shall be the President of the Commission and" and substituting "The Chairperson of the Ministerial Council shall, after consulting with the Ministerial Council, appoint from the Commissioners for the Commonwealth the President of the Commission who".

12. Sub-clause 19(4) of the principal agreement is amended by deleting the words "Commissioner for the Commonwealth is not present the Deputy Commissioner for the Commonwealth" and substituting the words "President of the Commission is not present, the person appointed the Deputy Commissioner for that Commissioner".

13. Sub-clause 19(5) of the principal agreement is deleted and the following sub-clause substituted:

"(5) The chairman shall have a deliberative vote but shall not have a casting vote except as provided in sub-clauses 20(2), 82(2) and 116(5)."

14. The following sub-clause shall be inserted before sub-clause 19(6) of the principal agreement:

"(6A) The two Commissioners for a Contracting Government shall have a joint vote, exercisable in the absence of one by the other."

15. Sub-clause 19(6) of the principal agreement is deleted and the following sub-clause substituted:

"(6) One Commissioner for each Contracting Government shall be a quorum. Except as provided in sub-clauses 20(2), 25A(2), 82(2) and 116(5), a unanimous vote shall be necessary for the transaction of the business of the Commission."

16. Sub-clause 20(2) of the principal agreement is deleted and the following sub-clause substituted:

"(2) A delegation under sub-clause 20(1) may be revoked by a majority vote of the Commissioners or, if the voting is equally divided, by the casting vote of the chairman."

17. Sub-clause 21(3) and paragraphs 48(1)(b) and 48(2)(b) of the principal agreement are deleted.

18. Sub-clause 24(1) of the principal agreement is amended by deleting—

- (a) the words "the Commissioner and Deputy Commissioner" and substituting the words "the Commissioners and Deputy Commissioners";
- (b) the words "that Commissioner or that Deputy Commissioner" and substituting the words "any of those Commissioners or those Deputy Commissioners";
- (c) the word "him" and substituting the words "any of them".

19. The following Part shall be inserted in the Agreement before Part IV:

"PART IVA—MURRAY-DARLING BASIN

25A. (1) The Commission shall advise the Ministerial Council in relation to the management of the water, land and environmental resources within the Murray-Darling Basin.

(2) Subject to this sub-clause, the advice referred to in sub-clause 25A(1) shall be determined by majority vote of the Commissioners for the Contracting Governments. In the event of a unanimous decision not being reached the Commissioners for each Contracting Government may jointly tender separate advice to the Ministerial Council.

25B. The Commission shall, to the extent to which its powers so extend, give effect to any policy or decision of the Ministerial Council whether or not the subject of advice under clause 25A which the Ministerial Council requires it to implement. Those powers however, shall not extend to enable the Commission to do anything for which Part IV and subsequent Parts provide otherwise than as provided for by those Parts."

20. (1) Sub-clause 25(2) of the principal agreement, is amended by adding the words—"The Commission shall inform the Ministerial Council of the proposed surveys, investigations or studies for which that consent is being sought."

(2) Paragraph 25(3)(b) of the principal agreement is amended by inserting the words "the Ministerial Council and either" after the word "inform" and by substituting the words "by any of them" for the words "by that Contracting Government or authority".

(3) Sub-clause 26(2) of the principal agreement is amended by adding the following words—"The Commission shall inform the Ministerial Council of the establishment, maintenance or operation of any of those systems for which a consent under either paragraph 26(2)(a) or 26(2)(b) is being sought."

(4) Clause 27 of the principal agreement is amended by deleting the words "to the Contracting Governments" and substituting the words "to the Ministerial Council".

(5) Clause 28 of the principal agreement is amended by:

(a) deleting the words "or to";

(b) inserting before the word "concerning" the words "or the Ministerial Council,"; and

(c) adding the words "and shall inform the Ministerial Council of the recommendation at the time it is made."

21. Paragraph 33(1)(b) and sub-clause 33(2) of the principal agreement are amended by deleting the words "Contracting Governments jointly" and "Contracting Governments" and substituting the words "Ministerial Council".

22. Clause 34 of the principal agreement is amended by deleting the words "of the Contracting Governments" and substituting the words "of the Ministerial Council".

23. (1) Sub-clause 35(3) of the principal agreement is amended by deleting the words "Contracting Governments" and "Contracting Governments are" and substituting the words "Ministerial Council" and "Ministerial Council is" respectively.

(2) Sub-clause 36(1) of the principal agreement is amended by deleting the words "each of the Contracting Governments" and substituting the words "the Ministerial Council".

(3) Sub-clause 36(2) of the principal agreement is amended by deleting the words "Contracting Governments" and "Contracting Governments have" and substituting respectively the words "Ministerial Council" and "Ministerial Council has".

(4) Clause 40 of the principal agreement is amended by deleting the words "agreed upon between them" and substituting the words "determined by the Ministerial Council".

(5) Sub-paragraph 48(1)(a)(iv) and paragraph 48(2)(c) of the principal agreement are amended by deleting the word "Commission" and substituting the words "Ministerial Council".

(6) Sub-paragraphs 48(1)(a)(v) and 48(2)(a)(iii) of the principal agreement are amended by deleting the words "Contracting Governments have entered into an agreement" and substituting the words "Ministerial Council has determined otherwise".

(7) Sub-clause 48(3) of the principal agreement is deleted and the following sub-clause substituted:

"(3) The Ministerial Council may determine the shares in which one or more of the Contracting Governments is to bear the costs of constructing, maintaining, operating and controlling the works referred to in sub-clause 33(1)."

(8) Sub-clause 48(4) of the principal agreement is amended by inserting before the word "determine" the following words "recommend to the Ministerial Council and the Ministerial Council shall".

(9) Sub-clauses 50(1) and 117 of the principal agreement are amended by deleting the words "Contracting Governments" and substituting the words "Ministerial Council".

(10) Sub-clauses 50(2) and 51(2) of the principal agreement are amended by inserting the words "which shall be subject to the approval of the Ministerial Council" after the word "expenditure".

(11) Sub-clause 52(1) of the principal agreement is amended by inserting after the word "prepare" the words "and submit to the Ministerial Council for its approval".

(12) Sub-clause 59(6) of the principal agreement is amended by inserting after the word "Government" the words ", the Ministerial Council".

(13) Clause 60 of the principal agreement is amended by inserting the words "to the Ministerial Council and" after the word "account".

(14) Sub-clause 64(4) of the principal agreement is amended by inserting the words "the Ministerial Council and" after the word "to".

(15) Sub-clauses 68(2) and 68(3) of the principal agreement are amended by deleting from each sub-clause the words "each of the Contracting Governments" and the words "Governor-General or the Governor (as the case may require)" and substituting in each case the words "the Ministerial Council".

(16) Sub-clause 69(1) of the principal agreement is amended by deleting the words "to each" and substituting the words "the Ministerial Council and each" and inserting the word "of" after the word "Governments".

(17) Clause 74 of the principal agreement is amended by deleting the words "the Commissioner" and substituting the words "a Commissioner".

(18) Sub-clauses 82(2) and 116(5) of the principal agreement are amended by deleting the words "the four Commissioners or, if the four Commissioners are equally divided, by the casting vote of the Commissioner for the Commonwealth" and substituting the words "the Commissioners or, if the voting is equally divided, by the casting vote of the chairman".

(19) Sub-clause 116(1) of the principal agreement is amended by deleting the words ", as provided in this clause be referred for decision to an arbitrator" and substituting the words "be referred to the Ministerial Council, one or more members of which, if it fails to resolve it within six months may, as provided in this clause, refer the question to an arbitrator".

(20) Sub-clause 116(2) of the principal agreement is amended by deleting the words "the end of the prescribed period" and substituting the words "or about the time the question is referred for decision to an arbitrator".

(21) Sub-clause 116(4) of the principal agreement is amended by inserting the words ", the Ministerial Council" immediately before the words "and the".

(22) Paragraph 116(6)(b) of the principal agreement is amended—

(a) by deleting the word "four"; and

(b) by deleting the words "Commissioner for the Commonwealth" and substituting the word "chairman".

24. The following clause shall be inserted in the principal agreement before clause 117:

"117A. (1) Subject to sub-clause 117A(2), a State of the Commonwealth not initially a party to this Agreement may, on the concurrence in writing of the existing parties, become a party by signature on its behalf of a copy of this Agreement and notifying each party to this Agreement in writing of the signature and date of signature.

(2) This Agreement shall have no force or effect in relation to a State to which sub-clause 117A(1) applies unless and until it is approved by the Parliament of that State."

25. The following Schedule is inserted after Schedule A to the principal agreement:

61.

SCHEDULE B

IN WITNESS WHEREOF this agreement has been respectively signed for and on behalf of the parties hereto on the day and year first above-written.

SIGNED by the Honourable ROBERT)
JAMES LEE HAWKE, Prime Minister of)
the Commonwealth of Australia in the) BOB HAWKE
presence of: ADRIENNE MARY JACKSON)

SIGNED by the Honourable BARRIE)
JOHN UNSWORTH, Premier of the State)
of New South Wales, in the presence of:) BARRIE UNSWORTH
GERALD GLEESON)

SIGNED by the Honourable JOHN CAIN,)
Premier of the State of Victoria, in the) JOHN CAIN
presence of: ANDREW McCUTCHEON)

SIGNED by the Honourable DONALD)
JACK HOPGOOD, Acting Premier of the)
State of South Australia, in the presence of:) DON HOPGOOD
LOU FREDRICK ZOLLO)

THIRD SCHEDULE

AN AGREEMENT made this fourth day of October One thousand nine hundred and ninety between—

THE COMMONWEALTH OF AUSTRALIA ("the Commonwealth") of the first part,

THE STATE OF NEW SOUTH WALES of the second part,

THE STATE OF VICTORIA of the third part, and

THE STATE OF SOUTH AUSTRALIA of the fourth part.

WHEREAS the Commonwealth, New South Wales, Victorian and South Australian Governments wish to amend the agreement made between the parties on 1 October 1982, as amended by the Murray-Darling Basin Agreement made on 30 October 1987 (which Agreement as so amended is herein called "the principal agreement"), in order to enable the Ministerial Council established thereunder to make decisions otherwise than at duly convened meetings.

NOW IT IS HEREBY AGREED by and between the parties to this Agreement as follows:

1. Unless the contrary intention appears, expressions used in this Agreement have the same meanings as in the principal agreement.

2. (1) This Agreement, other than this clause, is subject to approval by the Parliaments of the Commonwealth and of the States of New South Wales, Victoria and South Australia and comes into effect when so approved.

(2) The Commonwealth, New South Wales, Victorian and South Australian Governments will submit this Agreement for approval to their respective Parliaments as soon as practicable after the Agreement is made.

(3) A further approval of the Parliaments is not required if another State becomes a party to the Agreement in accordance with Clause 117A of the principal agreement.

3. The following clause shall be inserted before clause 7F of the principal agreement—

"7EA. (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 7G or if that Minister is unavailable a Minister for the same Contracting Government authorised for the purpose by the Minister so nominated; 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 subclause (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 subclause (4) shall be confirmed at the next meeting of the Ministerial Council."

IN WITNESS WHEREOF this Agreement has been respectively signed for and on behalf of the parties hereto on the day and year first abovewritten.

SIGNED by the Honourable ROBERT JAMES LEE HAWKE, Prime Minister of the Commonwealth of Australia, in the presence of: ROBERT DAVID HANNA)))) BOB HAWKE

SIGNED by the Honourable NICHOLAS FRANK GREINER, Premier of the State of New South Wales, in the presence of: RICHARD GEORGE HUMPHRY)))) NICK GREINER

SIGNED by the Honourable JOAN ELIZABETH KIRNER, Premier of the State of Victoria, in the presence of: DAVID ROBERT ESSINGTON LEWIS)))) JOAN KIRNER

SIGNED by the Honourable DONALD JACK HOPGOOD, Acting Premier of the State of South Australia, in the presence of: ANN LAMBERT)))) DON HOPGOOD

APPENDIX 1

THE CONSOLIDATED AGREEMENT

FIRST SCHEDULE

PART I

INTERPRETATION

Definitions

1. In this Agreement save where inconsistent with the context—

"Commission" means the Commission continued in existence hereunder under the name Murray-Darling Basin Commission.

"Commissioner for the Commonwealth" means a Commissioner appointed by the Governor-General pursuant to clause 9.

"Commissioner for New South Wales" means a Commissioner appointed by the Governor of New South Wales pursuant to clause 9.

"Commissioner for South Australia" means a Commissioner appointed by the Governor of South Australia pursuant to clause 9.

"Commissioner for Victoria" means a Commissioner appointed by the Governor of Victoria pursuant to clause 9.

"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 59(1)(a).

"Contracting Government" means any of the Governments of the Commonwealth, the State of New South Wales, the State of Victoria, the State of South Australia or, except for Parts V and VIII and sub-clauses 48(2), 48(3) and 48(4) and paragraphs 48(1)(a) and 48(1)(c) of Part VI, a State becoming a party pursuant to clause 117A.

"Constructing Authority" means the Contracting Government or Governments by which any works authorised by this Agreement or the former Agreement have been or are being constructed or are to be constructed or any authority constituted or appointed for the purpose of such construction.

"Deputy Commissioner for the Commonwealth" means a Deputy Commissioner appointed by the Governor-General pursuant to clause 9.

"Deputy Commissioner for New South Wales" means a Deputy Commissioner appointed by the Governor of New South Wales pursuant to clause 9.

"Deputy Commissioner for South Australia" means a Deputy Commissioner appointed by the Governor of South Australia pursuant to clause 9.

"Deputy Commissioner for Victoria" means a Deputy Commissioner appointed by the Governor of Victoria pursuant to clause 9.

"diversions" includes abstractions, impoundings and appropriations of water that diminish or retard the volume of flow of a river.

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

"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 1948, 2 November 1954, 11 September 1958, 8 October 1963 and 26 February 1970.

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

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

"land" includes Crown lands and buildings, messuages, tenements and hereditaments of any tenure and any easement right or privilege in or over or affecting any land.

"maintenance" includes repairs but does not include improvements to the design or function of a work or replacement of the whole of the work.

"officer" means a person in the employ of the Commission who has been appointed or employed by the Commission under subclause 22(1).

"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 or the State of South Australia.

"State auditor" means a person appointed by the Governor of any of the States of New South Wales, Victoria and South Australia for the purpose of carrying out the inspection and audit referred to in paragraph 59(1)(b).

"State Contracting Government" means any of the Governments of the State of New South Wales, the State of Victoria or the State of South Australia.

"stored water" means water stored in or by any of the works described in Schedule A or in or by any of the works authorised under clause 33.

"the Authority" means the Snowy Mountains Hydro-electric Authority.

"the Ministerial Council" means the Ministerial Council established by Part IIIA:

"the Murray-Darling Basin" means so much of the area within the boundaries of the map shown in the schedule to this agreement as forms part of the territory of the Contracting Governments.

"the Snowy Mountains Agreement" means the agreement made between the Commonwealth of Australia and the States of New South Wales and Victoria on 18 September 1957, and the agreement between the same parties made on 14 December 1957, both of which agreements are set out in Schedules to the Snowy Mountains Hydro-electric Power Act 1949 of the Commonwealth of Australia.

Interpretation

2. (1) Unless the contrary intention appears, a reference in this Agreement to any Act shall be read as including a reference to any Act amending, or in substitution for, that Act.

(2) The headings of Parts, Divisions and clauses shall not affect the interpretation of this Agreement.

(3) Unless the contrary intention appears, words importing the singular shall include the plural and vice versa and words importing any gender shall include any other gender.

(4) Unless the contrary intention appears, a reference to a Commissioner shall be read as including a Deputy Commissioner who is acting as a Commissioner.

PART II

APPROVAL AND ENFORCEMENT

Substitution

3. Except as otherwise provided in this Agreement and without affecting in any way the past operation of the former Agreement, this Agreement shall replace the former Agreement.

Approval

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

Submission to Parliament

5. The Contracting Governments hereby agree to submit this Agreement for approval to the respective Parliaments of the Commonwealth of Australia and of the said States as soon as practicable after the date of this Agreement.

Parties to provide for enforcement of Agreement and Acts

6. 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 IIIA—ESTABLISHMENT OF MINISTERIAL COUNCIL

7A. (1) There shall be a Ministerial Council consisting of up to three Ministers from each Contracting Government who have prime responsibility for matters relating to water, land and environment.

(2) A member of the Ministerial Council for the time being representing a party to this Agreement—

(a) may appoint a delegate who is another Minister of State of that party to attend a meeting of the Ministerial Council in place of the member;

or

(b) shall, while a Minister of State of the party is for the time being acting as the Minister who is referred to in sub-clause 7A(1), be the Minister who is so acting,

and references in this Agreement (other than in this clause) to a member of the Ministerial Council shall include a delegate in respect of attendance at any such meeting or a Minister who is so acting.

7B. The functions of the Ministerial Council shall be the general oversight and control over the major policy issues of common interest to the Contracting Governments in relation to the Murray-Darling Basin.

7C. 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.

7D. The Ministerial Council may require the Commission to furnish to it a report in relation to any of its operations.

7E. (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 7G or, in the absence of that Minister, a Minister from the same Contracting Government authorised for this purpose by the Minister so nominated.

(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.

7EA. (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 7G or if that Minister is unavailable a Minister for the same Contracting Government authorised for the purpose by the Minister so nominated; 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 subclause (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 subclause (4) shall be confirmed at the next meeting of the Ministerial Council."

7F. The Ministerial Council—

(a) shall constitute a Community Advisory Committee; and

(b) may constitute such other committees as it shall see fit,

to assist it in discharging its functions, with terms of reference, functions and membership determined by it from time to time.

7G. 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 III

THE COMMISSION

Constitution

7. The River Murray Commission constituted under the former Agreement is continued in existence under the name of the Murray-Darling Basin Commission for the purposes of this Agreement and of the Acts approving the same, and 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 the said Acts.

8. The Commission shall consist of the Commissioners, appointed pursuant to clause 9.

9A. (1) A Commissioner, other than the President, shall disclose to the President any direct or indirect pecuniary interest that he has or acquires in a business carried on in Australia or in a body corporate carrying on such a business, being an interest that could be in conflict with his duties as a Commissioner.

(2) The President shall give written notice to the Minister responsible for administering on behalf of the Commonwealth this Agreement of all direct and indirect pecuniary interests that he has or acquires in any business carried on in Australia or in any body corporate carrying on any such business.

Appointment of Commissioners and Deputy Commissioners

9. 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 117A.

Term of Appointment

10. Each Commissioner and Deputy Commissioner shall be appointed for a term not exceeding five years and shall be eligible for re-appointment.

Continuation in Office

11. (1) Where immediately before the variation date a person holds office as a Commissioner or Deputy Commissioner by virtue of a provision of this Agreement that person continues on and after that date to hold office for the remainder of his term of office as if he had been appointed to the Murray-Darling Basin Commission and any instrument by which that appointment was made continues in force accordingly.

(2) For the purposes of this clause, "the variation date" means the date on which this Agreement was first amended.

When Deputy Commissioner may act

12. Whenever—

- (a) a Commissioner for the Commonwealth or a State is
 - (i) absent from Australia or from duty,
 - (ii) unable for any reason to attend a meeting of the Commission, or
 - (iii) otherwise unable to perform the duties of his office, or
- (b) there is a vacancy in the office of a Commissioner for the Commonwealth or a State,

the Deputy Commissioner appointed for that Commissioner shall act as a Commissioner for the Commonwealth or that State, as the case may be, and while so acting, shall have all the powers and perform all the duties of that Commissioner.

Powers of Commissioners

13. Subject as provided in this Agreement the Commissioners shall have equal powers.

Remuneration of Commissioners and Deputy Commissioners

14. The Commission shall not be responsible for the payment of a Commissioner's or Deputy Commissioner's remuneration, allowances or expenses, but 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

15. A Commissioner or a Deputy Commissioner for the Commonwealth may at any time be removed from office by the Governor-General and a Commissioner or a Deputy Commissioner for a State may at any time be removed from office by the Governor of that State.

Resignation

16. A Commissioner or a Deputy Commissioner may at any time tender resignation of his appointment by writing under his hand, addressed, in the case of a Commissioner or a Deputy Commissioner for the Commonwealth, to the Governor-General, or in the case of a Commissioner or a Deputy Commissioner for a State, to the Governor of that State and such resignation shall take effect upon, and only upon, acceptance thereof by the Governor-General or the Governor as the case may be.

Vacancies

17. Whenever a vacancy occurs in the office of—

- (a) a Commissioner or a Deputy Commissioner for the Commonwealth, the Governor-General, or
- (b) a Commissioner or a Deputy Commissioner for a State, the Governor of that State,

shall appoint a person to the vacant office.

Validity of proceedings

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

Meetings of the Commission

19. (1) The Commissioners may meet together for the transaction of the Commission's business and may adjourn any meeting.

(2) A Commissioner may at any time call a meeting of the Commissioners.

(3) The Chairperson of the Ministerial Council shall, after consulting with the Ministerial Council, appoint from the Commissioners for the Commonwealth the President of the Commission who shall be the chairman at all meetings of the Commission at which he is present.

(4) At any meeting of the Commission at which the President of the Commission is not present, the person appointed the Deputy Commissioner for that Commissioner shall act as chairman of that meeting.

(5) The chairman shall have a deliberative vote but shall not have a casting vote except as provided in sub-clauses 20(2), 82(2) and 116(5).

(6A) The two Commissioners for a Contracting Government shall have a joint vote, exercisable in the absence of one by the other.

(6) One Commissioner for each Contracting Government shall be a quorum. Except as provided in sub-clauses 20(2), 25A(2), 82(2) and 116(5), a unanimous vote shall be necessary for the transaction of the business of the Commission.

(7) Except as provided in this Agreement, the Commission shall regulate the conduct of its own proceedings.

(8) The Commission shall cause proper minutes of all its proceedings to be kept.

(9) A resolution in writing signed by all the Commissioners shall be as valid and effectual as if it had been passed at a meeting of the Commissioners duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more of the Commissioners. The date and time of affixing a signature as aforesaid shall be endorsed on the document to which it is affixed and, provided that all Commissioners have signed as aforesaid, the resolution shall be deemed to have been passed at the latest time so endorsed.

Delegation

20. (1) The Commission may either generally or in relation to a matter or class of matters by resolution of the Commission delegate to any Commissioner or any officer any of its powers under this Agreement, except this power of delegation.

(2) A delegation under sub-clause 20(1) may be revoked by a majority vote of the Commissioners or, if the voting is equally divided, by the casting vote of the chairman.

(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

21. (1) The Commission may, from time to time, appoint such temporary or standing committees as it shall see fit.

(2) A committee shall have and perform such powers and functions as the Commission determines.

* * * * *

Officers of the Commission

22. (1) The Commission may from time to time—

- (a) appoint or employ such officers as it thinks fit and may dismiss or remove officers so appointed or employed,
- (b) determine the terms and conditions of employment, including remuneration, of officers and, subject to any applicable law, provide for their superannuation, and
- (c) subject to such terms and conditions as it may approve, engage consultants.

(2) All officers shall be subject to the sole control of the Commission.

Employment of officers in public service or in statutory authorities

23. (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 or employees 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 or employee of that public authority.

(3) In sub-clause 23(2), "public authority" means a body, whether incorporated or not, established for a public purpose by a law of the Commonwealth, a State or a Territory.

Liability for acts of Commissioners and officers

24. (1) Each Contracting Government shall 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.

(2) The Contracting Governments shall jointly indemnify each officer of the Commission in respect of any act or omission of that officer, and for any losses or costs incurred by him, in the bona fide execution of his duties as an officer of the Commission.

(3) Any payments made pursuant to sub-clause 24(2) shall be borne by the Contracting Governments in equal shares.

PART IVA—MURRAY-DARLING BASIN

25A. (1) The Commission shall advise the Ministerial Council in relation to the management of the water, land and environmental resources within the Murray-Darling Basin.

(2) Subject to this sub-clause, the advice referred to in sub-clause 25A(1) shall be determined by majority vote of the Commissioners for the Contracting Governments. In the event of a unanimous decision not being reached the Commissioners for each Contracting Government may jointly tender separate advice to the Ministerial Council.

25B. The Commission shall, to the extent to which its powers so extend, give effect to any policy or decision of the Ministerial Council whether or not the subject of advice under clause 25A which the Ministerial Council requires it to implement. Those powers however, shall not extend to enable the Commission to do anything for which Part IV and subsequent Parts provide otherwise than as provided for by those Parts.

PART IV

WATER QUALITY AND CONTROL

Studies and investigations

25. (1) The Commission may from time to time co-ordinate, or carry out, or cause to be carried out, surveys investigations and studies regarding the desirability and practicability of works or measures for the better conservation and regulation of the waters of the River Murray or for the protection or improvement of the quality thereof.

(2) The Commission shall not carry out or cause to be carried out any surveys investigations or studies relating to works or measures on or adjacent to a tributary of the River Murray without obtaining the consent of the State in whose territory the tributary lies unless that tributary is a tributary above Doctors Point or is the Darling River below Menindee. The Commission shall inform the Ministerial Council of the proposed surveys, investigations or studies for which that consent is being sought.

(3) (a) The Commission may from time to time initiate proposals for the better conservation and regulation of the waters of the River Murray or for the protection or improvement of the quality thereof.

(b) here the implementation of any such proposal would significantly affect the flow, use, control or quality of any water under the control, supervision or protection of a Contracting Government, or of an authority of a Contracting Government, the Commission shall so inform the Ministerial Council and either that Contracting Government or authority and consider any matters raised by any of them in respect of the proposal.

Measurements of water quantity and quality

26. (1) The Commission shall establish, maintain and operate an effective and uniform system—

- (a) for making and recording continuous measurements of—
 - (i) the volumetric flow of—
 - (A) the River Murray, and
 - (B) such of the tributaries of the River Murray as are within the boundaries of each of the States, and
 - (ii) the volume of—
 - (A) the stored water, and
 - (B) the water stored in the Menindee Lakes Storage,

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 volume of 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 from its said tributaries; and
- (c) for measuring and monitoring the quality of—
 - (i) the waters of the River Murray,
 - (ii) the waters of the 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,
 - (iii) the stored water, and
 - (iv) the water stored in the Menindee Lakes Storage.

(2) The Commission shall not establish, maintain or operate any of the systems referred to in sub-clause 26(1)—

- (a) on or adjacent to a tributary of the River Murray without obtaining the consent of the State in whose territory that tributary lies unless that tributary is a tributary above Doctors Point or is the Darling River below Menindee, or
- (b) on or adjacent to the Menindee Lakes without obtaining the consent of the State of New South Wales.

The Commission shall inform the Ministerial Council of the establishment, maintenance or operation of any of those systems for which a consent under either paragraph 26(2)(a) or 26(2)(b) is being sought.

(3) Notwithstanding the provisions of sub-clause 26(1), the Commission may in lieu of establishing, maintaining, or operating the systems referred to in that sub-clause—

- (a) adopt the results of any measurements or monitoring made and recorded by any Contracting Government, or
- (b) request the State in whose territory the relevant tributary of the River Murray or the Menindee Lakes lies to carry out such measuring or monitoring as the Commission may consider necessary.

Water quality objectives and standards

27. The Commission may, in consultation with the appropriate responsible authorities of each of the Contracting Governments, formulate water quality objectives and, where appropriate, standards for any part of the River Murray and may make recommendations with respect thereto to the Ministerial Council.

Recommendations re water quantity and quality

28. 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 improve, maintain or 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 recommendation at the time it is made.

Commission to be informed of new proposals

29. (1) Whenever a Contracting Government, or one of its authorities, is considering any proposal which may significantly affect the flow, use, control or quality of any water under the control or supervision of the Commission, that Contracting Government shall, or shall ensure that the authority shall, before deciding if the proposal shall proceed and at such a time as will enable the Commission to assess the possible effect of that proposal on the flow, use, control or quality of that water and to make representations thereon to that Contracting Government or that authority—

- (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 Commission shall consult with each of the Contracting Governments, and with any authority of a Contracting Government which that Contracting Government considers is likely to consider a proposal of the type referred to in sub-clause 29(1), with a view to reaching agreement with that Contracting Government, or that authority, as to—

- (a) the types of proposals to which sub-clause 29(1) shall be deemed to apply; and
- (b) the criteria to be used in assessing those proposals to which sub-clause 29(1) applies.

Regard to be had to river and water management objectives

30. In exercising its powers under this Agreement and in implementing the provisions of Part IX, the Commission may, at its discretion, have regard to the possible effects of its decisions on any river or water management objectives.

Protection of catchment of Hume Reservoir

31. (1) The Contracting Governments of the States of New South Wales and Victoria shall take effective measures to protect from erosion the portions of the catchment of the Hume Reservoir which lie within their respective States.

(2) Each of the said Contracting Governments shall before the end of June in each year forward a report to the Commission on the condition of the portion of the catchment of the Hume Reservoir within its territory, the measures taken and work carried out during the twelve months ending on the 31st day of March immediately preceding and particulars of the measures and works proposed for the next twelve months.

(3) The Commission shall, 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 by the said Contracting Governments for the protection from erosion of that catchment are effective or otherwise. If, on any inspection, the Commission considers that any of those measures or works are ineffective, it shall notify the Contracting Government concerned which shall, to the extent that it may be practicable to do so, take action to make those measures and works effective.

(4) The measures, works and action taken or carried out by a Contracting Government pursuant to sub-clause 31(1) or 31(3) shall be taken or carried out at the cost of that Contracting Government.

(5) If at any time the Commission considers that there is need for special action to be taken for the protection from erosion of the catchment of the Hume Reservoir other than, or in addition to, the measures, works and action taken or carried out by each of the said Contracting Governments under sub-clauses 31(1) and 31(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, and authorised, by the Commission.

PART V

CONSTRUCTION, OPERATION AND MAINTENANCE OF WORKS

Major works subject to the Agreement

32. Each of the works described in Schedule A or authorised under clause 33 shall be constructed (unless already constructed under the former Agreement), maintained, operated and controlled pursuant to the provisions of this Agreement and any Acts approving the same and the construction, maintenance, operation and control of each of those works shall, subject to the provisions of this Agreement, be undertaken, in the case of the works described in Schedule A, by the Contracting Government whose name is set opposite to that work under the heading "Nominated Government" in the said Schedule, and, in the case of works authorised under clause 33, by the Contracting Government nominated in accordance with that clause.

Authorisation of additional works

33. (1) In any case where the Commission is of the opinion that it is necessary for the purposes of this Agreement to construct a work in addition to those described in Schedule A, including a work which the Commission has determined is necessary to prevent the loss of the regulated flow of the River Murray and is to be constructed on or near the River Murray between the Hume Reservoir and the upstream limits of water impounded by Yarrawonga Weir or between Tocumwal and Echuca, the construction of that work may be authorised,

- (a) if the estimated cost of construction of that work is not in excess of \$1 000 000, by the Commission, or
- (b) in any other case, by the Ministerial Council,

and the provisions of this Agreement shall apply mutatis mutandis in respect of that work.

(2) When the construction of a work is authorised under sub-clause 33(1), the Ministerial Council, or the Commission, as the case may be, shall also nominate which Contracting Government shall be responsible for the construction, maintenance, operation and control of that work.

Ancillary, preventative and remedial works

34. On the application of a Commissioner, the Commission may, at its discretion, meet, or contribute to, the costs of, or associated with—

- (a) the construction, maintenance, operation or control 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, maintenance, operation or control 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, maintenance, operation or control of any works provided for in this Agreement or the former Agreement,

provided that the Commission shall first obtain the consent of the Ministerial Council before meeting, or contributing to, the costs of, or associated with, the construction of any ancillary, preventative or remedial work estimated to cost in excess of \$250 000.

Preparation and submission of designs, etc. for Commission approval

35. (1) Whenever a Contracting Government is nominated to construct a work pursuant to this Agreement, that Contracting Government shall cause to be prepared and submitted to the Commission for its approval a general scheme of the work to be constructed, and before commencing the construction of that work shall cause to be prepared and submitted to the Commission for its approval the necessary designs, specifications and estimates of that work.

(2) The Commission may approve the said general scheme, designs, specifications or estimates with or without alterations or additions, or may, from time to time, refer them or any of them for amendment to the Contracting Government submitting them. The construction of the work shall be carried out in accordance with the designs and specifications approved by the Commission and with any directions given by the Commission pursuant to clause 37.

(3) The Commission shall furnish information to the Ministerial Council in relation to the design and construction of any work estimated to cost more than \$1 000 000 and work shall not proceed unless the Ministerial Council is satisfied that the design and construction of the work are in accordance with the purposes for which the work was proposed. For the purposes of this sub-clause, "design" means general design which illustrates the nature and extent of the work and "construction" implies construction in accordance with the said design.

Commission and Government approval of certain tenders

36. (1) A Constructing Authority shall obtain the approval of the Commission before accepting any tender exceeding \$1 000 000 in respect of any work to be constructed pursuant to this Agreement, and the approval of the Commission shall not be given without the prior approval of the Ministerial Council.

(2) If, after a tender referred to in sub-clause 36(1) has been accepted, changes in the concept or design, or the concept and design, of the works included in that tender cause the total estimated cost of those works at the time of acceptance of the tender to rise by more than 10% above that total estimated cost, the Commission shall forthwith notify the Ministerial Council accordingly and shall direct the Constructing Authority to suspend further work unless the Ministerial Council has within six months after the Commission's notification agreed that work should proceed.

Directions for the efficient construction etc. or works

37. The Commission shall have full power to give directions to ensure the efficient construction, operation and required performance of all works constructed pursuant to this Agreement or the former Agreement and to order and direct—

- (a) the rate of progress of works whether of construction or maintenance;
- (b) the method and extent of maintenance of works;
- (c) if necessary, what works shall be regarded as works of construction or of maintenance; and
- (d) such acts and things as it considers necessary for ensuring the due observance of this Agreement;

and any directions so given shall be carried out by the Constructing Authority.

Completion of Chowilla Reservoir

38. Completion of the construction of the Chowilla Reservoir referred to in Schedule A shall be deferred until the Contracting Governments agree that the work shall proceed.

States to facilitate construction and operation within their territories

39. A Contracting Government within whose State any works for the purposes of this Agreement are to be, or are being, or have been, constructed by another Contracting Government, or an authority constituted or appointed for the purpose of that construction by another Contracting Government, shall grant to the Contracting Government or Constructing Authority all such powers, licences and permissions in and to the use of, or with respect to, its territory as may be necessary for the construction, maintenance, operation and control of those works and for carrying out any operations authorised by this Agreement.

Works for benefit of State Contracting Governments

40. If any one of the State Contracting Governments desires to carry out on the bed of, or within the banks of, the River Murray any work other than the works provided for in this Agreement, either as a work of the State of that State Contracting Government, or as a joint work with another State Contracting Government, particulars of the proposal, including plans of the proposed work, shall be submitted by that State Contracting Government, or those State Contracting Governments, to the Commission. The Commission may approve the proposed work with or without alteration and if the proposed work provides for the storage of water or will affect the flow, use, control or quality of the water of the River Murray, the Commission may, from time to time, stipulate conditions under which the said work shall be operated or controlled insofar as regulation of the river flow, or the quality of water, may be affected, and the whole cost of construction, maintenance, operation and control of the said work shall be borne by the State Contracting Government or State Contracting Governments concerned, as may be determined by the Ministerial Council, and the State Contracting Government which operates and controls the work shall cause it to be operated and controlled in such manner as may, from time to time, be required by the Commission.

Declaration that works effective

41. At any time after the commencement of the construction of any work described in Schedule A or authorised pursuant to sub-clause 33(1), the Commission may declare that work to be effective for the purposes of this Agreement.

Maintenance of works

42. Where a Contracting Government has been nominated to construct a work pursuant to this Agreement or the former Agreement, that Contracting Government shall maintain the work so constructed and keep the same effective for the purpose for which it was designed, unless that work shall have been declared to have become ineffective in accordance with clause 47.

Procedures for operation and control of works

43. The Commission may, from time to time, determine procedures for the operation and control of works constructed pursuant to this Agreement, or the former Agreement.

Dredging and snagging

44. (1) Where any weir has been constructed pursuant to this Agreement, or the former Agreement, the Commission may from time to time, at its discretion, determine that dredging or snagging in the River upstream of that weir shall be carried out within such distance from that weir as the Commission shall determine, but not exceeding the distance to which the navigability of the River Murray is affected by that weir. The Contracting Government which constructed that weir shall, at its own cost, carry out such dredging or snagging as the Commission may determine.

(2) Notwithstanding the provisions of sub-clause 44(1), the Commission may, in its absolute discretion, agree to bear the whole or part of the cost of the said dredging and snagging.

(3) For the purposes of this clause, "weir" includes a weir and lock or a barrage in any of the channels at the mouth of the River Murray.

Operation and control of works

45. The works constructed by a Contracting Government under this Agreement, or the former Agreement, shall be operated and controlled by that Contracting Government in accordance with procedures determined by the Commission pursuant to clause 43; and that Contracting Government, in the case of a lock constructed pursuant to this Agreement, or the former Agreement, shall at all times maintain immediately upstream thereof a depth of water sufficient for navigation by vessels drawing 1.4 metres of water or such other depth of water as may be determined by the Commission under clause 105 provided that the requirement as to depth shall not apply during the time that lock is closed for maintenance or during a situation of emergency which renders it impracticable to maintain the required depth of water at that lock.

Performance of joint duties

46. Where, pursuant to this Agreement, the duty of maintaining, operating or controlling any works, or of carrying out any operation, is to be performed by any two Contracting Governments jointly, any questions which may arise as to which of those Contracting Governments is to perform that duty, or to carry out that operation, shall, unless mutually agreed upon between them, be determined by the Commission.

Ineffective works

47. The Commission may at any time declare that the whole or any part of any of the works constructed, maintained, operated or controlled pursuant to this Agreement, or the former Agreement, has become ineffective for the purposes of this Agreement, whereupon, if requested to do so by the Commission, the State Contracting Government responsible for the maintenance, operation and control of that work shall dismantle so much of that work as the Commission may require.

PART VI

FINANCE

Apportionment of costs

48. (1) The Contracting Governments shall share equally—

- (a) the cost of—
 - (i) carrying out, constructing or installing the works set out in Schedule A,
 - (ii) the studies, programmes, surveys and investigations carried out pursuant to clause 25,
 - (iii) establishing systems referred to in sub-clause 26(1) or systems established pursuant to a request made under paragraph 26(3)(b),
 - (iv) special action taken under sub-clause 31(5) which the Ministerial Council has determined pursuant to sub-clause 48(4) shall be borne by the Contracting Governments in equal shares,
 - (v) constructing the works authorised under sub-clause 33(1) unless the Ministerial Council has determined otherwise under sub-clause 48(3),
 - (vi) complying with a direction given under sub-clause 36(2), and
 - (vii) dismantling the works referred to in clause 47,

* * * * *

- (c) the amount of any payment made by the Commission
 - (i) under clause 34 but not including the amount of any payment made in respect of the maintenance, operation or control of the works of a Contracting Government referred to in paragraph 34(a), (b) or (c), and
 - (ii) under paragraph 114(a), and
- (d) the administrative and other expenses of the Commission which are not included under paragraphs 48(1)(a), (b) or (c).

(2) The State Contracting Governments shall share equally—

- (a) the cost of maintaining, operating and controlling—
 - (i) the works set out in Schedule A,
 - (ii) systems referred to in sub-clause 26(1) or systems established pursuant to a request made under paragraph 26(3)(b), and
 - (iii) the works authorised under sub-clause 33(1) unless the Ministerial Council has determined otherwise under sub-clause 48(3),

* * * * *

- (c) the cost of special action taken under sub-clause 31(5) which the Ministerial Council has determined pursuant to sub-clause 48(4) shall be borne by the State Contracting Governments in equal shares,
- (d) the amount of any payment made by the Commission in respect of the maintenance, operation or control of the works of a Contracting Government referred to in paragraph 34(a), (b) or (c),
- (e) such costs of dredging or snagging carried out under clause 44 as the Commission has agreed to pay, and
- (f) the amount of any payment made by the Commission under paragraph 114(b).

(3) The Ministerial Council may determine the shares in which one or more of the Contracting Governments is to bear the costs of constructing, maintaining, operating and controlling the works referred to in sub-clause 33(1).

(4) Whenever any special action is taken under sub-clause 31(5), the Commission shall recommend to the Ministerial Council and the Ministerial Council shall determine whether the cost of that special action is to be borne by the Contracting Governments in equal shares or by the State Contracting Governments in equal shares.

Financial year

49. The financial year of the Commission shall commence on the first day of July in one year and finish on the 30th day of June in the succeeding year.

Detailed estimates of expenditure

50. (1) In the month of March in each year the Commission shall prepare detailed estimates (being estimates in such form as may from time to time be agreed by the Commission and the Ministerial Council) of its known and anticipated expenditure for the forthcoming financial year under the following heads—

- (a) the matters referred to in paragraphs 48(1)(a), (b) and (c),
- (b) the matters referred to in sub-clause 48(2),
- (c) the matters referred to in paragraph 48(1)(d), and
- (d) all other expenses of the Commission not included under paragraphs 50(1)(a), (b) or (c).

(2) The detailed estimates of expenditure which shall be subject to the approval of the Ministerial Council shall show the share to be contributed by each Contracting Government.

(3) Prior to the 31st day of March in each year, the Commission shall forward a copy of the detailed estimates of expenditure to each of the Contracting Governments.

Excess expenditure

51. (1) If, in the opinion of the Commission, it is necessary in any financial year to provide for any expenditure in excess of the amount set out in the detailed estimates of expenditure and for which provision cannot be made under sub-clause 64(2), the Commission shall prepare a detailed estimate of that excess expenditure (being an estimate in such form as may from time to time be agreed by the Commission and the Contracting Governments) showing the share to be contributed by each Contracting Government.

(2) A copy of the detailed estimate of excess expenditure which shall be subject to the approval of the Ministerial Council shall be forwarded to each Contracting Government.

Forward estimates

52. (1) Whenever the Commission prepares a detailed estimate of expenditure under clause 50 in respect of a financial year, it shall, at the same time, prepare and submit to the Ministerial Council for its approval forward estimates of its known and anticipated expenditure in respect of the three year period comprising that financial year and the two financial years next ensuing after that financial year.

(2) Each forward estimate shall be in the same form as a detailed estimate of expenditure prepared under clause 50 and the Commission shall forward a copy thereof to each Contracting Government prior to the 31st day of March in each year.

Payments by Contracting Governments

53. Each Contracting Government shall provide the share to be contributed by it under the detailed estimates of expenditure or a detailed estimate of excess expenditure and shall pay so much of the same as is required by the Commission before the expiration of the twelve month period to which those estimates apply, provided that the Commission shall not require the payment of moneys relating to the construction of the works referred to in sub-clause 33(1) until the construction of those works has been authorised in accordance with that sub-clause.

Payments by Commission to States

54. (1) In accordance with the detailed estimates of expenditure or a detailed estimate of excess expenditure prepared by the Commission pursuant to clause 50 or 51, the Commission shall in each year pay to any Constructing Authority required by this Agreement to construct, maintain, operate or control any works or to carry on any operation an amount sufficient to defray the cost to be incurred by that Constructing Authority for those purposes in that year or, in the case of the cost referred to in paragraph 114(b), three-quarters of that cost.

(2) The amounts to be paid to a Constructing Authority pursuant to sub-clause 54(1) shall be paid at such times and in such manner as may be agreed between the Commission and that Constructing Authority provided that no amount shall be paid to a Constructing Authority for construction of works referred to in sub-clause 33(1) until the construction of those works has been authorised in accordance with that sub-clause.

Unexpended balances

55. (1) Whenever any moneys, which have been paid to the Commission by a Contracting Government pursuant to clause 53, remain unexpended at the end of the financial year in respect of which they were paid, those moneys shall be retained by the Commission but shall cease to be available for expenditure by the Commission in accordance with the estimates of expenditure for that financial year.

(2) The Commission shall, within a reasonable time after the commencement of the next financial year, furnish details of the unexpended moneys to that Contracting Government and notify that Contracting Government that it now holds the unexpended moneys as part of the share to be contributed under clause 53 by that Contracting Government for the next financial year.

(3) On giving the notice referred to in sub-clause 55(2) the unexpended moneys shall become available for expenditure in accordance with the estimates of expenditure for the next financial year.

(4) For the purposes of this clause:

"the estimates of expenditure" means a detailed estimate of expenditure, or a detailed estimate of excess expenditure, or both, as the case may require,

"the next financial year" means the financial year next following the financial year referred to in sub-clause 55(1), and

"the unexpended moneys" means the unexpended moneys referred to in sub-clause 55(1).

Disposal of surplus assets

56. The Commission shall, whenever appropriate, determine the time and manner of disposal of surplus assets acquired by the Commission, or by a Constructing Authority with funds made available by the Commission, and shall also determine the manner in which the proceeds from that disposal shall be distributed among the Contracting Governments.

Proper accounts to be kept

57. The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission.

List of assets

58. The Commission shall cause to be kept a list of the assets acquired by—

(a) the Commission, and

(b) a Constructing Authority with funds made available by the Commission,

provided that, if the Commission is satisfied that proper records of the assets acquired by a Constructing Authority with funds made available by the Commission are kept by that Constructing Authority and that copies of those records will be made available to the Commission whenever the Commission so requests, the Commission may decide not to keep a list of those assets.

Audit

59. (1) The accounts and records of financial transactions of the Commission and records relating to assets of, or in the custody of, the Commission

(a) shall, at least once in each year, be inspected and audited by the Commonwealth auditor, who shall forthwith draw the attention of each Contracting Government to any irregularity disclosed by the inspection and audit that is, in his opinion, of sufficient importance to justify his so doing, and

(b) may, at any reasonable time, be inspected and audited by a State auditor.

(2) The Commonwealth auditor may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-clause 59(1).

(3) The Commission shall, at all reasonable times, allow the Commonwealth auditor, or a State auditor, or a person authorised by either of them, to have full and free access to all accounts and records of the Commission relating directly or indirectly to the receipt or payment of moneys by the Commission or to the acquisition, receipt, custody or disposal of assets by the Commission.

(4) The Commission shall permit the Commonwealth auditor or a State auditor, or a person authorised by either of them, to make copies of, or take extracts from, any such accounts or records.

(5) The Commission shall, and shall ensure that its officers shall, furnish to the Commonwealth auditor, a State auditor, or a person authorised by either of them, such information in the possession of the Commission or any of its officers, or to which the Commission or that officer has access, as the Commonwealth auditor, a State auditor or authorised person considers necessary for the purposes of the functions of the Commonwealth auditor or a State auditor under this clause.

(6) A report of the result of any inspection and audit under this clause shall be furnished to each Contracting Government, the Ministerial Council and to the Commission by the person making that inspection and audit.

Commission to account

60. The Commission shall account to the Ministerial Council and to the Contracting Governments for all moneys received by the Commission from the Contracting Governments under or for the purposes of this Agreement.

Contracting Governments to account

61. Each Contracting Government shall, and shall ensure that an authority of that Contracting Government shall, account to the Commission for all moneys received by that Contracting Government, or that authority, from the Commission under or for the purposes of this Agreement.

Bank accounts

62. (1) The Commission may open and maintain an account or accounts with a bank or banks selected by the Commission and shall maintain at all times at least one such account.

(2) The Commission shall pay all moneys received by it into an account referred to in sub-clause 62(1).

Investment

63. (1) Moneys of the Commission not immediately required for the purposes of this Agreement may be invested by the Commission on fixed deposit with a bank selected by the Commission.

(2) Any interest received by the Commission on moneys invested pursuant to sub-clause 63(1) shall be retained by the Commission until the end of the financial year in which it was received and,

(a) if the moneys in respect of which that interest was received were contributed by all the Contracting Governments, or by a State Contracting Government pursuant to clause 65, distribute that interest to the Contracting Governments in equal shares, and

(b) if the moneys in respect of which that interest was received were contributed only by the State Contracting Governments, or by one of them pursuant to clause 66, distribute that interest to the State Contracting governments in equal shares.

(3) The Commission may agree with a Contracting Government that, instead of distributing to that Contracting Government the moneys it would be entitled to receive under sub-clause 63 (2), the Commission shall retain those moneys and set them off against the amounts to be paid under clause 53 by that Contracting Government to the Commission during the next financial year.

Application of moneys by Commission

64. (1) Subject as hereinafter provided in this clause, the Commission shall apply moneys received by it pursuant to clause 53 only in accordance with the detailed estimates of expenditure or the detailed estimates of excess expenditure, as the case may be.

(2) (a) For the purposes of this sub-clause—

"estimated amount" in respect of the first item or the second item means the amount set opposite to that item in a detailed estimate of expenditure as the amount to be expended on that item in the financial year to which that detailed estimate of expenditure relates,

"the first item" means an item appearing under one of the heads set out in sub-clause 50(1) in the same detailed estimate of expenditure in which the estimated amount appears, and

"the second item" means an item, not being the first item, appearing in the same detailed estimate of expenditure and under the same head as the first item.

(b) If the Commission is satisfied that, in a financial year,

- (i) the actual amount required to be expended on the first item shall be less than the estimated amount for that item, and
- (ii) the actual amount required to be expended on the second item shall be greater than the estimated amount for that item,

the Commission may, at its discretion, expend on the second item so much of the estimated amount for the first item as is not required for expenditure on the first item.

(3) The Commission shall, at the end of each financial year, notify to the Contracting Government details of moneys it has expended pursuant to sub-clause 64(2) during that financial year.

(4) When, in any financial year, a detailed estimate of excess expenditure has been prepared and forwarded to the Ministerial Council and each Contracting Government in accordance with clause 51 that detailed estimate of excess expenditure shall, for the purposes of sub-clause 64(2), be read as being incorporated in, and forming part of, the detailed estimate of expenditure for the same financial year.

Revenue

65. If a Contracting Government or an authority of that Contracting Government receives moneys (other than tolls referred to in clause 66) from any person arising out of the use by that person of any works constructed for the purposes of this Agreement, or the former Agreement, that Contracting Government shall, or shall ensure that that authority shall, pay those moneys to the Commission which shall retain them until the end of the financial year in which they were received by the Commission when the Commission shall distribute those moneys to the Contracting Governments in equal shares.

Tolls

66. (1) A State Contracting Government shall collect all tolls which are prescribed by the Commission for the use of weirs and locks which have been constructed for the purposes of this Agreement, or the former Agreement, and which are operated and controlled by that State Contracting Government pursuant to clause 45 and shall not otherwise collect tolls in respect of navigation on the River Murray.

(2) Whenever a State Contracting Government collects a toll prescribed by the Commission, it shall pay the amount collected without deduction to the Commission which shall retain that amount until the end of the financial year in which it was received by the Commission when the Commission shall distribute that amount to the State Contracting Governments in equal shares.

Compensation for damage by works

67. Where, pursuant to any Act approving this Agreement, a Constructing Authority has made compensation for any damage occasioned by, or arising out of, anything done by it in constructing, maintaining, operating or controlling any works provided for in this Agreement, the amount of that compensation, to the extent that it has not been met, or contributed to, by the Commission under paragraph 34(c), shall be contributed by the Contracting Governments in equal shares.

PART VII

REPORTS

Preparation of reports

68. (1) The Commission shall, as soon as practicable after the 30th day of June in each year, prepare and submit to each of the Contracting Governments in respect of the financial year ending on that date its financial statements together with a report as to—

- (a) its proceedings;
- (b) the operations carried on by it or under its orders, with particular reference to—
 - (i) the measurement of the flow of the River Murray and its tributaries,
 - (ii) the measurement and monitoring of the quality of water, and
 - (iii) deliveries of water;
- (c) the effect of the diversions to the said 30th day of June on the flow of the River Murray and its tributaries;
- (d) the construction, operation and maintenance of all works constructed pursuant to this Agreement or the former Agreement;
- (e) its administration generally; and
- (f) the condition of the catchment of the Hume Reservoir and any action taken by the Commission to protect from erosion the catchment thereof pursuant to clause 31.

(2) Before submitting financial statements to the Contracting Governments, the Commission shall submit them to the Commonwealth auditor who shall report to the Ministerial Council—

- (a) whether, in his 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 his 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 Contracting Governments.

(3) Reports and statements to be submitted pursuant to sub-clause 68(1) shall be addressed to the Ministerial Council.

PART VIII

PROCEEDINGS IN DEFAULT

Failure to perform works or contribute cost

69. (1) If any Contracting Government (in this clause called "the defaulting Government") whose duty it is under this Agreement, or under any direction issued in accordance with this Agreement, to construct, or to continue the construction of, or to maintain, operate or control, any works, or to carry on any operation, or to make a payment to the Commission which it is required to make under clause 53, refuses or neglects to do so after being thereunto required by the Commission, the Commission shall immediately notify the Ministerial Council and each of the other contracting Governments of particulars of the default.

(2) If the default relates to the construction of, or to the continuation of the construction of, or to the maintenance, operation or control of, any works, or to the carrying on of any operation, the Contracting Governments that are not in default and each of them, with the approval of the Commission,

(a) may, without prejudice to their or its other rights under this Agreement, enter upon the territory of the defaulting Government and construct, or continue and complete the construction of, or maintain, operate or control, the whole of those works (or any part thereof specified by the Commission), or carry on that operation (or any part thereof specified by the Commission) and shall be deemed to have all such powers, licences and permissions as are required from the defaulting Government to construct, maintain, operate or control those works or to carry on that operation and shall be entitled, in place of the Constructing Authority required by this Agreement to construct, maintain, operate or control those works, or to carry on that operation, to receive the moneys payable to that Constructing Authority under clause 54 in respect of that construction, maintenance, operation, control or carrying on, and

(b) may, in any court of competent jurisdiction, recover as a debt from the defaulting Government all moneys reasonably expended by them or it in doing any of the things referred to in paragraph 69(2)(a) in excess of the moneys paid to them or it by the Commission under that paragraph, together with interest thereon at the prescribed rate.

(3) For the purpose of any act or thing to be done under sub-clause 69(2), the Contracting Governments that are not in default and each of them shall have the rights and powers of a Constructing Authority, but the defaulting Government shall, on the completion of such act or thing and the payment of all moneys payable by it under sub-clause 69(2), be deemed to be the Constructing Authority.

(4) If the defaulting Government defaults in the payment by the due date for payment of a sum of money which it is required under clause 53 to pay to the Commission, the defaulting Government shall be liable to pay interest to the Commission on the amount of the overdue payment at the prescribed rate, and the Contracting Governments that are not in default and each of them shall have the right (but not the obligation) at any time to pay to the Commission any unpaid sum with accrued interest thereon on behalf of the defaulting Government. Any amount paid by a Contracting Government not in default on behalf of the defaulting Government (together with interest thereon at the prescribed rate calculated from the date of such payment to the Commission by the Contracting Government that is not in default) shall constitute a debt due and payable by the defaulting Government to the Contracting Government that made the payment and shall be recoverable accordingly in any court of competent jurisdiction.

(5) Any interest received by the Commission under this clause shall be paid—

- (i) to the Contracting Governments not in default in equal shares, if the moneys in respect of which the interest was received were moneys which the defaulting Government was required to pay in respect of any of the matters referred to in sub-clause 48(1), or
- (ii) to the State Contracting Governments not in default in equal shares, if the moneys in respect of which the interest was received were moneys which the defaulting Government was required to pay in respect of any of the matters referred to in sub-clause 48(2).

(6) For the purposes of this clause, "the prescribed rate" shall be 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 and applicable at the time payment became due or, if no rate is so fixed, 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 the payment became due.

(7) Any interest payable under this clause shall be calculated from the due date for payment of the said sum to the date of actual payment, whether payment is made by the defaulting Government or on its behalf.

PART IX

DISTRIBUTION OF WATERS

DIVISION 1—INTERPRETATION

Definitions

70. For the purposes of this Part only—

"period of restriction" means a period of restriction declared under clause 104;

"upper river" 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 the said main course upstream of Doctors Point;
- (c) all effluents and anabranches of the said main course, excepting such as may be excepted by the Commission;
- (d) the water courses connecting Lake Victoria to the said main course;
- (e) the Darling River downstream of Menindee;
- (f) the Great Darling Anabranche; and
- (g) the upper river storages;

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

"upper States" means the States of New South Wales and Victoria;

"water available for release at the direction of the Commission" means water physically capable of being released from a storage other than water the release of which cannot be required by virtue of sub-clause 82(1).

Post Chowilla

71. Upon the Chowilla Reservoir being declared to have become effective for the purposes of this Agreement—

- (a) the provisions of this Part shall be construed as if—
 - (i) in the definition of "upper river", the words "Chowilla Reservoir outlet" were substituted for the words "eastern boundary of the State of South Australia";
 - (ii) in sub-clause 72(1), the words "Water released from and water diverted by the State of South Australia from the Chowilla Reservoir" were substituted for the words "Water flowing in the River Murray past the eastern boundary of the State of South Australia";
 - (iii) sub-clause 72(2) and clause 75 were deleted;
 - (iv) in sub-clause 78(3) and clauses 85 and 104, the words "Chowilla Reservoir" were substituted for the words "Lake Victoria".
- (b) until the Lake Victoria works are declared to have become ineffective for the purposes of this Agreement, the provisions of this Part shall be construed as if—
 - (i) in the definition of "upper river storages", the words "Chowilla Reservoir," were inserted before the words "Lake Victoria";

- (ii) in paragraph 106(b), the words "the Chowilla Reservoir and" were inserted before the words "Lake Victoria"; and
- (c) upon the Lake Victoria works being declared to have become ineffective for the purposes of this Agreement, the provisions of this Part shall be construed as if—
 - (i) in the definition of "upper river", paragraph (d) were deleted;
 - (ii) in the definition of "upper river storages", the words "Chowilla Reservoir" were substituted for the words "Lake Victoria";
 - (iii) in paragraph 106(b), the words "Chowilla Reservoir" were substituted for the words "Lake Victoria".

DIVISION 2—STATE ENTITLEMENTS TO WATER

Measurement of South Australia’s entitlement

72. (1) Water flowing in the River Murray past the eastern boundary of the State of South Australia shall be deemed to be supplied to and received by that State.

(2) The quantity of water so flowing in any month shall be deemed to be the sum of the quantities, as determined by the Commission by appropriate measurements, flowing in the same month in—

- (i) the River Murray between the confluences of the Rufus and Lindsay Rivers with the River Murray, and
- (ii) the Lindsay River near its confluence with the River Murray

or shall be determined in such other manner as the Commission may from time to time decide.

South Australia’s monthly entitlement

73. The State of South Australia shall be entitled to receive—

- (a) at times other than a period of restriction, the following monthly quantities:

July	108 500 megalitres
August	124 000 megalitres
September	135 000 megalitres
October	170 500 megalitres
November	180 000 megalitres
December	217 000 megalitres
January	217 000 megalitres
February	194 000 megalitres
March	186 000 megalitres
April	135 000 megalitres
May	93 000 megalitres
June	90 000 megalitres

- (b) during a period of restriction, monthly quantities equal to the lesser of:—
 - (i) the monthly quantities to which the State of South Australia is entitled under clause 108, and
 - (ii) the monthly quantities set out in paragraph 73(a) for the months occurring in that period.

Variation of South Australia’s entitlements

74. 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 73 without increasing the total of those quantities for that sequence.

Use of Lake Victoria

75. 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 the State of South Australia is entitled to receive in that month under clause 73 or 74;
- (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 the upper States, downstream of the junction of the River Murray and the Great Darling Anabranch,

the State of South Australia may receive that excess in addition to the quantity of water which it is entitled to receive under clause 73 or 74.

Surplus flow to South Australia

76. The quantity of water that the State of South Australia is entitled to receive in any month shall not be diminished by reason of it having received in any previous month a greater quantity than it was entitled to receive under clause 73 or 74.

Entitlements of New South Wales and Victoria

77. (1) Subject to the supply to the State of South Australia of the quantities of water that that State is entitled to receive under clause 73 or 74, each of the upper States shall, except as otherwise expressly provided in Division 4 of this Part, be entitled to:

- (a) the full use of all tributaries in its territory flowing to but not forming part of the upper river and shall have the right to divert, store and use the flows thereof, before their entry to the upper river;
- (b) half the waters of the upper river upstream of Doctors Point, including any waters diverted thereto by works of the Authority.
- (c) half the waters entering the Menindee Lakes from the Darling River, subject to the prior entitlement of the State of New South Wales to use water from the Menindee Lakes Storage as provided in clause 78; and
- (d) subject to paragraph 77(1)(c), the full use from the upper river of water arriving at the point of use and contributed by any tributary, or any outfall approved by the Commission, entering the upper river from its territory downstream of Doctors Point;

(2) Entitlements under sub-clause 77(1) shall not be affected by the declaration of a period of restriction except as specifically provided in clause 95 and Division 5 of this Part.

New South Wales' entitlement to water from Menindee Lakes

78. (1) At any time after the quantity of water stored in the Menindee Lakes Storage is reduced to less than 480 000 megalitres and until the quantity of water so stored next exceeds 640 000 megalitres, the State of New South Wales may use the water so stored as it requires.

(2) At any time when sub-clause 78(1) does not apply, the State of New South Wales may as it requires divert from or release from the water stored in the Menindee Lakes Storage 125 000 megalitres in any period of 12 months commencing on the first day of July.

(3) During any period for which the Commission determines that the spills from the Menindee Lakes Storage exceed the amount required by the Commission for storage in Lake Victoria and to supply the State of South Australia's entitlement, including any period when water is being released from the Menindee Lakes Storage solely to provide space for the retention of floodwaters, any water diverted by the State of New South Wales from the Menindee Lakes Storage or from water spilling therefrom or released therefrom to provide space for the retention of floodwaters shall not be considered as diverted from that State's entitlement under sub-clause 78(2).

New South Wales' and Victoria's supply to South Australia

79. From the waters available to them under clauses 77 and 78, the upper States shall contribute, in equal proportions, the quantities of water which the State of South Australia is entitled to receive under clause 73 or 74.

Limitations on use by New South Wales and Victoria

80. Unless the Commission otherwise agrees, neither of the upper States shall use water from the upper river to the extent that, at the 31st day of May next ensuing, the volume of water in the upper river storages and allocated to that State will be less than half the volume of the reserve determined under clause 85.

DIVISION 3—CONTROL BY COMMISSION

Commission's role in operation of storages

81. (1) Release of water from the upper river storages shall be in accordance with such directions as the Commission may issue from time to time. Without limiting the generality of clauses 43 and 45, the Commission may issue such directions in the form of standing procedures and, subject to clause 84, may at any time amend or suspend the whole or any part of such procedures.

(2) In determining any direction to be issued under this clause—

(a) the Commission shall have regard to—

- (i) maintaining the supply to the State of South Australia of the quantities of water that that State is entitled to receive,
- (ii) maintaining a reserve of water as provided for in clause 85, and
- (iii) facilitating the exercise by the upper States, as they require, of their respective rights to use water from the upper river, and

(b) subject to clause 83, the Commission may have regard to—

- (i) the improvement or maintenance of the quality of the waters in the upper river or in the River Murray downstream of the eastern boundary of the State of South Australia, and
- (ii) the pursuit of any other water management objectives consistent with this Agreement.

Limitations on Menindee Lakes operation

82. (1) No direction under clause 81 shall require the release of water from the Menindee Lakes Storage at any time after the volume of water stored therein is reduced to less than 480 000 megalitres until that volume next exceeds 640 000 megalitres.

(2) Any direction of the Commission requiring the release of water from the Menindee Lakes Storage when sub-clause 82(1) does not apply, shall be determined by a majority vote of the Commissioners or, if the voting is equally divided, by the casting vote of the chairman.

Accounting for releases for dilution

83. (1) No direction under clause 81 issued solely for the purposes referred to in paragraph 81(2)(b) shall require the release of water from any upper river storage, unless—

(a) the release of water is in accordance with sub-clause 83(2) or 83(3), or

(b) the Commission has determined how much of the volume to be released under its direction is to be contributed from water allocated respectively to the States of New South Wales and Victoria. In such a determination the Commission shall have consideration to the quality of the water entering the upper river below Doctors Point.

(2) The flow passing Torrumbarry Weir shall, as far as possible, be regulated so as to prevent the electro-conductivity of the river water at Swan Hill exceeding 500 microsiemens per centimetre at twenty-five degrees Celsius, but, unless the Commission directs otherwise, such flow shall not be required to exceed 3 900 megalitres per day except when needed to meet downstream water requirements.

(3) The flow passing Euston Weir shall, as far as possible, be regulated so as to prevent the electro-conductivity of the river water at Merbein exceeding 500 microsiemens per centimetre at twenty-five degrees Celsius, but, unless the Commission directs otherwise, such flow shall not be required to exceed 2 450 megalitres per day plus the combined diversion requirements of the pumping districts of Red Cliffs, First Mildura Irrigation Trust, Merbein, Coomealla and Curlwaa, except when needed to meet downstream water requirements.

Procedures for Dartmouth Dam operation

84. Insofar as procedures for the operation and control of Dartmouth Reservoir affect the release of water through the power station of that Reservoir, the Commission may not amend such procedures or, except in an emergency, suspend any part of such procedures, without prior consultation with the State Electricity Commission of Victoria and the Constructing Authority for Victoria.

Reserve storage

85. The Commission may from time to time determine the volume of a reserve of water to be held in the upper river storages at the 31st day of May next ensuing; provided that, unless the Commission otherwise determines, the volume of such reserve shall be 2 500 000 megalitres of which not less than 250 000 megalitres shall be in Lake Victoria.

Use of State works to convey Murray water

86. Subject to such terms and conditions as may be agreed between the Commission and an upper State, the Commission may arrange for the conveyance of water from one part to another of the upper river via works under the control of that State.

DIVISION 4—WATER ACCOUNTING

General

87. For the purpose of giving effect to the principles set out in the preceding Divisions of this Part, the following provisions shall apply.

Allocation of water to New South Wales and Victoria

88. (1) In respect of any period, a quantity of water estimated by the Commission as—

- (a) the quantity of water which would have flowed in the River Murray past Doctors Point in that period but for the effect during that period of diversions to or from, and impoundments on, the upper river upstream of Doctors Point, plus
- (b) the quantity of water diverted by works of the Authority to the upper river upstream of Doctors Point from beyond the natural boundaries of the catchment thereof

shall be allocated between the upper States as provided in sub-clause 88(2).

(2) The quantity of water estimated for any month in accordance with sub-clause 88(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 the States of New South Wales and Victoria;
- (b) for any of the months from September through to April inclusive;
 - (i) during any period of restriction, the first 12 900 megalitres per month (being equivalent to the ceding by the State of Victoria to the State of 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 the State of Victoria to the State of New South Wales of a volume of 8 350 megalitres per month)

shall be allocated to the State of New South Wales, and the remainder shall be allocated half each to the States of New South Wales and Victoria.

Allocation of water in Menindee Lake Storage

89. Of the quantity of water which in any period enters the Menindee Lakes Storage from the Darling River, an amount shall be allocated to the State of New South Wales equal to the amount to which that State is entitled during that period under sub-clause 78(1) or 78(2) and the remainder shall be allocated half each to the States of New South Wales and Victoria.

Tributary inflows

90. The quantity of water which in any period enters the upper river 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 89, shall be allocated to the upper State from which the water enters the upper river.

Use by New South Wales and Victoria of allocated water

91. Any quantity of water diverted from the upper river by offtakes under the jurisdiction of an upper State shall be deemed to be used by that State, unless otherwise determined by the Commission.

Snowy diversions out of Murray catchment

92. Any quantity of water diverted by works of the Authority from the Tooma River to the Eucumbene Storage and the Tumut River or from the Geehi River to the Snowy River shall be deemed to be used half each by the upper States.

Losses

93. Any quantity of water which is lost by evaporation or percolation or other means from the upper river shall be deemed to be used by the upper States and, unless otherwise determined by the Commission, shall be deemed to be used half each by those States or in such proportions as the Commission may from time to time determine.

New South Wales' and Victoria's supply to South Australia

94. For the purposes of this Division, any quantity of water supplied to the State of South Australia in any month and which that State is entitled to receive under clause 73 or 74 shall be deemed to be supplied half each by the upper States and the Commission shall make appropriate adjustments to allocations between the upper States of water in the upper river so as to give effect to those States' obligations under clause 79.

Deferment of continuous accounting of carryover of stored water

95. Unless the Commission otherwise determines, the quantity of water in the upper river storages, being water available for release at the direction of the Commission—

- (a) at the commencement of any period of restriction, and
- (b) at the 1st day of July in every year in which a period of restriction does not exist on the 1st day of July

shall be deemed to be water allocated half each to the upper States.

Reallocation of water between upper States

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

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

Accounting for quality of inputs from State tributaries and for Snowy Scheme

97. (1) The quantities of water allocated to the upper States may be adjusted by the Commission having regard to the quality of each State's tributary inputs to the upper river. To this end, the Commission shall as soon as practicable bring into effect, and may from time to time amend, rules for the adjustment of the quantities of water allocated to the States of New South Wales and Victoria having regard to the quality of water entering the upper river downstream of Doctors Point from tributaries and from any artificial outfalls.

(2) The Commission may adjust the quantities of water allocated to the States of New South Wales and Victoria under paragraph 88(1)(b) having regard to any extraordinary aspects of operation of the Snowy Scheme.

To provide efficient regulation of the Murray River

98. Any water used by an upper State or supplied to the State of South Australia by an upper State shall be deemed to be provided from water allocated to that upper 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 but shall not thereby alter the total quantities of water allocated to the respective upper States in the upper river.

Accounting procedures

99. Subject to clauses 95, 96, 97 and 98, the quantity of water in any part of the upper river and which is allocated to an upper State shall be deemed—

- (a) to increase in any period by the quantity of water allocated to that State flowing into that part in that period, and

100.

- (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 the State of South Australia,
 - conveyance to another part of the upper river as water allocated to that State, or
 - (iii) released from that part in that period and determined or deemed under paragraph 83(1)(b) or clause 103 to be a release of water allocated to that State, or
 - (iv) spilled from that part in that period and deemed under clause 100 to be a spill of water allocated to that State.

Accounting for spill from storages

100. Any quantity of water which is spilled from any of the upper river storages, including water released solely to provide space for the retention of floodwaters, shall be deemed to be water spilled out of the waters allocated to the respective upper States, in such proportions as equalises or tends most to equalise the remaining quantities of water allocated to the respective upper States in that storage.

Accounting for releases through Dartmouth Dam Power Station

101. Any quantity of water which is released from Dartmouth Reservoir through the hydro-electric power station shall be deemed to be released from waters allocated to the respective upper States—

- (a) in such proportions as equalises, or tends most to equalise, the remaining quantities of water allocated to the respective upper States in that Reservoir, if the water is released when the storage level in Dartmouth Reservoir is above such level as the Commission may from time to time determine for the purposes of this paragraph, or
- (b) in equal proportions, if the water is released otherwise than in the circumstances referred to in paragraph 101(a).

Reallocation of water in Menindee Lakes Storage

102. At the conclusion of any period during which sub-clause 78(1) applies, the quantities of water stored in the Menindee Lakes Storage and allocated respectively to the States of New South Wales and Victoria shall be adjusted so that the difference between those quantities becomes the same as the difference in the allocated quantities as at the beginning of that period.

Dilution at Swan Hill and Merbein

103. Until rules have been brought into effect under sub-clause 97(1), any quantity of water released from an upper river storage in accordance with sub-clause 83(2) or 83(3) and in excess of requirements for use by the upper States and for supply to the State of South Australia shall be deemed to be released in equal proportions from water allocated to the upper States, unless otherwise determined by the Commission.

DIVISION 5—PERIODS OF RESTRICTION

Declaration of restrictions

104. The Commission may at any time declare a period of restriction for a specified period of whole months ending not before the 31st day of May next ensuing and may subsequently amend any such declaration, but the Commission shall declare a period of restriction unless it is satisfied that the quantities of water available for release at the direction of the Commission from the upper river storages will not be, at the 31st day of May then next ensuing, below 2 500 000 megalitres of which not less than 250 000 megalitres will be in Lake Victoria or unless it resolves that it is not necessary to do so.

Variation of navigation depths during restrictions

105. When a period of restriction has been declared by the Commission pursuant to clause 104, the Commission may vary the provisions of clause 45 respecting the depth of water to be maintained at the locks constructed pursuant to this Agreement or the former Agreement.

Water under the control of the Commission

106. For the purposes of this Division, "water under the control of the Commission" means the aggregate of—

- (a) the water stored in the Hume and Dartmouth Reservoirs at the commencement of the period of restriction;
- (b) the water stored in Lake Victoria at the commencement of the period of restriction;
- (c) the water available for release from the Menindee Lakes Storage at the direction of the Commission in accordance with clause 82 during the period of restriction, after allowing for New South Wales' prior entitlements under clause 78;
- (d) during the period of restriction the runoff from the catchment of the upper river above Doctors Point, excluding water diverted from the Tooma River to the Eucumbene Storage and the Tumut River and from the Geehi River to the Snowy River;
- (e) water diverted to the upper river above Doctors Point by works of the Authority during the period of restriction;
- (f) the difference between the amount of water in transit in the upper river at the beginning and end of the period of restriction.

Sharing of water during restrictions

107. As soon as practicable after a period of restriction has been declared, and from time to time during that period, the Commission shall—

- (a) determine the expected quantity of water under the control of the Commission;
- (b) determine the quantity of water which is to be allowed during the period of restriction for—
 - (i) losses by evaporation, percolation, and other means in the upper river;
 - (ii) losses by evaporation, percolation, and other means in the River Murray between the eastern boundary of the State of South Australia and the town of Wellington and for dilution in the State of South Australia, but the total quantity of water allowed for under this sub-paragraph shall be 58 000 megalitres per month, unless otherwise determined by the Commission;
- (c) determine the quantity to be held in the upper river storages at the end of the period of restriction and available for release at the direction of the Commission;
- (d) having regard to its determinations under paragraphs 107(a), 107(b) and 107(c), determine the quantity of water (hereinafter called "the available water") available for use by the upper States and for supply to the State of South Australia during the period of restriction.

South Australian share during restrictions

108. (1) Subject to paragraph 73(b), the restricted entitlement of the State of South Australia during a period of restriction shall be one third of the available water, which shall be distributed between the months of the period of restriction as the Commission determines, plus the monthly quantities described in sub-paragraph 107(b)(ii).

(2) The Commission may vary for a period not exceeding six months at any one time the proportion of one third prescribed in sub-clause 108(1).

102.

PART X

LAKE VICTORIA WORKS

Power to store water in Lake Victoria

109. Subject to clause 75, the State of South Australia may at all times divert into Lake Victoria for impounding or storing therein, the waters of the River Murray flowing at the site or sites of the offtake or offtakes for diversion into Lake Victoria.

Water stored in Lake Victoria

110. Subject to this Agreement, the State of South Australia will, at the request of the State of New South Wales, permit the reasonable use of the water of the said lake by occupiers of land on the banks of Lake Victoria and by occupiers on the settlement of lands of a total area not exceeding 81 000 hectares in the vicinity of Lake Victoria for domestic purposes, for watering their cattle and other stock and for watering gardens not exceeding 2 hectares in connection with a dwelling house.

PART XI

MENINDEE LAKES STORAGE

Cessation of Menindee Lakes Storage Agreement

111. Upon the coming into effect of this Agreement, the Agreement made between the parties hereto on the 8th day of October 1963 and set out in the Schedule to the Menindee Lakes Storage Agreement Act 1963 of the Commonwealth of Australia shall cease to have effect.

Maintenance of Menindee Lakes Storage

112. The State of New South Wales shall carry out the maintenance necessary to keep the Menindee Lakes Storage and the works associated with it in good order and condition, having regard to the full supply levels and storage capacities referred to in clause 113.

Full supply levels

113. For the purposes of this Agreement, and unless otherwise agreed between the Water Resources Commission 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 1 794 000 megalitres.

Financial contributions of Commission

114. The Commission shall pay to the State of New South Wales in respect of each year commencing on the first day of January—

- (a) an amount at the rate of \$320 000 per annum to be paid by equal quarterly instalments at the end of each quarter, but no payment shall be made in respect of any day or days on which the effective capacity of the Menindee Lakes Storage is less than 740 000 megalitres and an appropriate proportionate deduction shall be made from the quarterly instalment for the quarter in which any such day or days occur; and
- (b) three-quarters of the cost during that year of operating the Menindee Lakes Storage and of carrying out the maintenance necessary to keep the said Storage and the works associated with it in good order and condition.

PART XII

EFFECT OF SNOWY MOUNTAINS AGREEMENT

Reconciliation with Snowy Mountains Agreement

115. (1) This Agreement shall operate according to its tenor to define the rights to water in the River Murray and its tributaries of the States of New South Wales, Victoria and South Australia.

(2) The provisions as to sharing of waters contained in this Agreement shall apply to the exclusion of the provisions contained in sub-clause 12(2) of the Snowy Mountains Agreement.

(3) To the extent to which any provision of this Agreement conferring rights on the State of South Australia to the use of water is inconsistent with the provisions of the Snowy Mountains Agreement, the first mentioned provision shall prevail, and the provisions of the Snowy Mountains Agreement shall be modified accordingly.

(4) Upon the coming into effect of this Agreement—

- (a) the reference in clause 11 of the Snowy Mountains Agreement to "the River Murray Commission" shall be deemed to refer to the Commission; and
- (b) the references in that clause to "a declared period of restriction within the meaning of clause 51 of the River Murray Agreement" and "the declared period of restriction" shall be deemed to refer to a period of restriction declared pursuant to clause 104 of this Agreement.

(5) Except to the extent provided in this clause, the Snowy Mountains Agreement shall continue in full force and effect.

PART XIII

MISCELLANEOUS

Arbitration

116. (1) Subject to sub-clause 116(6), if a difference of opinion arises among the Commissioners on any question, not being a question of law, that question, unless the Commissioners concur within the prescribed period after submission by a Commissioner of a resolution thereon, shall be referred to the Ministerial Council, one or more members of which, if it fails to resolve it within six months may, as provided in this clause, refer the question to an arbitrator, who shall be appointed by the Contracting Governments.

(2) At or about the time the question is referred for decision to an arbitrator, a Contracting Government may give to the other Contracting Governments written notice to concur in the appointment of an arbitrator and to refer that question to that arbitrator for decision.

(3) If the appointment be not made within two months after the giving of that notice, the Chief Justice of the Supreme Court of Tasmania or the person for the time being discharging the duties of that office may, at the request of that Contracting Government, appoint an arbitrator, who shall have the like powers to act in the reference to decide the question as if he had been appointed by the Contracting Governments.

(4) The decision of an arbitrator appointed to decide the question shall be binding on the Commission, the Ministerial Council and the Contracting Governments and shall be deemed to be the decision of the Commission.

(5) For the purposes of this clause, "the prescribed period" shall be a period of two months or such other period, not being more than six months, as is determined by a majority vote of the Commissioners or, if the voting is equally divided, by the casting vote of the chairman.

(6) This clause shall not apply to a question—

(a) before the Commission pursuant to clause 117; or

(b) which has been decided by a majority vote of the Commissioners, or by the casting vote of the chairman, pursuant to a provision of this Agreement.

117A. (1) Subject to sub-clause 117A(2), a State of the Commonwealth not initially a party to this Agreement may, on the concurrence in writing of the existing parties, become a party by signature on its behalf of a copy of this Agreement and notifying each party to this Agreement in writing of the signature and date of signature.

(2) This Agreement shall have no force or effect in relation to a State to which sub-clause 117A(1) applies unless and until it is approved by the Parliament of that State.

Proposals to amend Agreement

117. The Commission shall from time to time review this Agreement, and if in the opinion of the Commission amendments thereto are necessary or desirable, make recommendations to the Ministerial Council accordingly.

Furnishing information and particulars

118. Each Contracting Government shall furnish or cause to be furnished, to the Commission, at such times as the Commission may require, all such information and particulars as the Commission may require for any of the purposes of this Agreement and as that Contracting Government is able to furnish.

Authorities to observe agreement

119. Whenever an authority of a Contracting Government is constituted or appointed for the purpose of constructing, maintaining, operating or controlling any works under this Agreement, that Contracting Government shall ensure that that authority shall observe the provisions of this Agreement.

Transitional provisions

120. (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;

"estimates" means detailed estimates of expenditure under clause 50 and includes, where the context admits, a detailed estimate of excess expenditure under clause 51; and

"next financial year" means the financial year next following the day on which this Agreement comes into effect.

(2) Acts or things consistent with the provisions of this Agreement that have been done by or on behalf of a Contracting Government or the Commission in anticipation of this Agreement coming into effect shall be regarded as having been done under and in accordance with its provisions.

(3) Without limiting the generality of sub-clause 120(2)—

- (a) any documents forwarded prior to the commencing day by the Commission to the Contracting Governments, being documents in the form of estimates for the current financial year, shall be deemed to be estimates forwarded in respect of that year;
- (b) any moneys provided prior to the commencing day by a Contracting Government to the Commission in accordance with a document referred to in paragraph 120(3)(a) shall be deemed to have been provided pursuant to clause 53 in respect of the current financial year;
- (c) any moneys expended by the Commission prior to the commencing day in accordance with a document referred to in paragraph 120(3)(a) shall be deemed to have been expended pursuant to this Agreement in respect of the current financial year; and
- (d) if this Agreement comes into effect on a day between the 31st day of March and the next ensuing 30th day of June, both dates inclusive, any documents forwarded prior to the commencing day by the Commission to the Contracting Governments, being documents in the form of estimates for the next financial year, shall be deemed to be estimates forwarded in respect of that year.

(4) If, during the current financial year and prior to the commencing day, any moneys of the Commission were invested on fixed deposit with a bank, any interest received by the Commission during the current financial year on those moneys shall be dealt with as if it was interest referred to in clause 63 and, for that purpose, moneys of a kind referred to in clause 65 or 66 and contributed by a State Contracting Government shall be deemed to have been contributed by that State Contracting Government pursuant to clause 65 or 66, as the case may be.

(5) Any other matters of a transitional nature concerning this Agreement shall be settled by agreement between the Contracting Governments.

SCHEDULE A

<i>Description of Works</i>	<i>Location</i>	<i>Nominated Government</i>
DARTMOUTH DAM with a capacity of approximately 4 000 000 megalitres.	Mitta Mitta River upstream of the town of Dartmouth, north-eastern Victoria.	Government of Victoria.
HUME DAM with a capacity of approximately 3 038 000 megalitres.	River Murray upstream of the city of Albury, New South Wales.	The Governments of New South Wales and Victoria, jointly.
LAKE VICTORIA WORKS—regulation reservoir with a storage capacity of approximately 700 000 megalitres.	Lake Victoria, New South Wales connected with main stream of River Murray by Rufus River and Frenchman's Creek.	Government of South Australia.
YARRAWONGA WEIR—storage of about 120 000 megalitres.	River Murray near the town of Yarrawonga, Victoria.	Government of Victoria.
CHOWILLA DAM— with a capacity of approximately 5 900 000 megalitres.	River Murray between the towns of Renmark and Wentworth.	Government of South Australia.
WEIRS AND LOCKS:		
Construction of thirteen weirs and locks in the course of the River Murray from its mouth to Echuca, namely:	River distance from Murray mouth in kilometres.	
No. 1 Blanchetown	274	Government of South Australia
No. 2 Waikerie	362	" "
No. 3 Overland Corner	431	" "
No. 4 Bookpurnong	516	" "
No. 5 Renmark	562	" "
No. 6 Murtho	620	" "
No. 7 Rufus River	697	" "
No. 8 Wangumma	726	" "
No. 9 Kulnine	765	" "
No. 10 Wentworth	825	Government of New South Wales
No. 11 Mildura	878	Government of Victoria

No. 15 Euston	1 110	Government of New South Wales
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No. 26 Torrumbarry	1 368	Government of Victoria
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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.	
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No. 5 Redbank	193	Government of New South Wales
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No. 7 Maude	290	" "
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MURRAY MOUTH BARRAGES:

Goolwa	Goolwa Channel	Government of South Australia
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Mundoo	Mundoo Channel	" "
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Boundary	Boundary Creek Channel	" "
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Ewe Island	Ewe Island Channel	" "
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Tauwitchere	Tauwitchere Island Channel	" "
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109.

SCHEDULE B

APPENDIX 2

Legislative History

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 16 January 1989. A schedule of these alterations was laid before Parliament on 14 February 1989.

Long title:	amended by 89, 1987, s. 4
Section 1:	amended by 89, 1987, s. 5
Section 2:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 3(1):	definition of "the Agreement" substituted by 89, 1987, s. 6; amended by 84, 1990, s. 4
Section 6(1):	substituted by 89, 1987, s. 7(a)
Section 6(2):	amended by 89, 1987, s. 7(b)
Section 6(4):	amended by 89, 1987, s. 7(c)
Section 6(5):	amended by 89, 1987, s. 7(d)
Section 7:	amended by 89, 1987, s. 8
Section 24:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
The Schedule:	amended by 89, 1987, s. 9
Clause 1:	definition of "Commission" substituted by 89, 1987, 2nd Sched. clause 3(a) definition of "Commissioner for the Commonwealth" amended by 89, 1987, 2nd Sched. clause 3(b) definition of "Commissioner for New South Wales" amended by 89, 1987, 2nd Sched. clause 3(b) definition of "Commissioner for South Australia" amended by 89, 1987, 2nd Sched. clause 3(b) definition of "Commissioner for Victoria" amended by 89, 1987, 2nd Sched. clause 3(b) definition of "Contracting Government" amended by 89, 1987, 2nd Sched. clause 3(c) definition of "Deputy Commissioner for the Commonwealth" amended by 89, 1987, 2nd Sched. clause 3(d) definition of "Deputy Commissioner for New South Wales" amended by 89, 1987, 2nd Sched. clause 3(d) definition of "Deputy Commissioner for South Australia" amended by 89, 1987, 2nd Sched. clause 3(d) definition of "Deputy Commissioner for Victoria" amended by 89, 1987, 2nd Sched. clause 3(d) definition of "the Ministerial Council" inserted by 89, 1987, 2nd Sched. clause 3(e) definition of "the Murray-Darling Basin" inserted by 89, 1987, 2nd Sched. clause 3(e)
	Part IIIA comprising clauses 7A - 7G and heading inserted by 89, 1987, 2nd Sched. clause 4
Clause 7EA:	inserted by 84, 1990, 3rd Sched. clause 3
Clause 7:	amended by 89, 1987, 2nd Sched. clause 5
Clause 8:	substituted by 89, 1987, 2nd Sched. clause 6
Clause 9A:	inserted by 89, 1987, 2nd Sched. clause 7
Clause 9:	amended by 89, 1987, 2nd Sched. clause 8
Clause 11:	substituted by 89, 1987, 2nd Sched. clause 9
Clause 12:	amended by 89, 1987, 2nd Sched. clause 10
Clause 19(3):	amended by 89, 1987, 2nd Sched. clause 11
Clause 19(4):	amended by 89, 1987, 2nd Sched. clause 12
Clause 19(5):	substituted by 89, 1987, 2nd Sched. clause 13
Clause 19(6A):	inserted by 89, 1987, 2nd Sched. clause 14
Clause 19(6):	substituted by 89, 1987, 2nd Sched. clause 15
Clause 20(2):	substituted by 89, 1987, 2nd Sched. clause 16
Clause 21(3):	repealed by 89, 1987, 2nd Sched. clause 17

Clause 24(1):	amended by 89, 1987, 2nd Sched. clause 18
	Part IVA comprising clauses 25A, 25B and heading inserted by 89, 1987, 2nd Sched. clause 19
Clause 25(2):	amended by 89, 1987, 2nd Sched. clause 20(1)
Clause 25(3):	amended by 89, 1987, 2nd Sched. clause 20(2)
Clause 26(2):	amended by 89, 1987, 2nd Sched. clause 20(3)
Clause 27:	amended by 89, 1987, 2nd Sched. clause 20(4)
Clause 28:	amended by 89, 1987, 2nd Sched. clause 20(5)
Clause 33(1) and (2):	amended by 89, 1987, 2nd Sched. clause 21
Clause 34:	amended by 89, 1987, 2nd Sched. clause 22
Clause 35(3):	amended by 89, 1987, 2nd Sched. clause 23(1)
Clause 36(1):	amended by 89, 1987, 2nd Sched. clause 23(2)
Clause 36(2):	amended by 89, 1987, 2nd Sched. clause 23(3)
Clause 40:	amended by 89, 1987, 2nd Sched. clause 23(4)
Clause 48(1):	amended by 89, 1987, 2nd Sched. clause 23(5), (6)
Clause 48(1)(b):	repealed by 89, 1987, 2nd Sched. clause 17
Clause 48(2):	amended by 89, 1987, 2nd Sched. clause 23(5), (6)
Clause 48(2)(b):	repealed by 89, 1987, 2nd Sched. clause 17
Clause 48(3):	substituted by 89, 1987, 2nd Sched. clause 23(7)
Clause 48(4):	amended by 89, 1987, 2nd Sched. clause 23(8)
Clause 50(1):	amended by 89, 1987, 2nd Sched. clause 23(9)
Clause 50(2):	amended by 89, 1987, 2nd Sched. clause 23(10)
Clause 51(2):	amended by 89, 1987, 2nd Sched. clause 23(10)
Clause 52(1):	amended by 89, 1987, 2nd Sched. clause 23(11)
Clause 59(6):	amended by 89, 1987, 2nd Sched. clause 23(12)
Clause 60:	amended by 89, 1987, 2nd Sched. clause 23(13)
Clause 64(4):	amended by 89, 1987, 2nd Sched. clause 23(14)
Clause 68(2) and (3):	amended by 89, 1987, 2nd Sched. clause 23(15)
Clause 69(1):	amended by 89, 1987, 2nd Sched. clause 23(16)
Clause 74:	amended by 89, 1987, 2nd Sched. clause 23(17)
Clause 82(2):	amended by 89, 1987, 2nd Sched. clause 23(18)
Clause 116(1):	amended by 89, 1987, 2nd Sched. clause 23(19)
Clause 116(2):	amended by 89, 1987, 2nd Sched. clause 23(20)
Clause 116(4):	amended by 89, 1987, 2nd Sched. clause 23(21)
Clause 116(5):	amended by 89, 1987, 2nd Sched. clause 23(18)
Clause 116(6):	amended by 89, 1987, 2nd Sched. clause 23(22)
Clause 117A:	inserted by 89, 1987, 2nd Sched. clause 24
Clause 117:	amended by 89, 1987, 2nd Sched. clause 23(9)
Schedule B:	inserted by 89, 1987, 2nd Sched. clause 25
Second Schedule:	inserted by 89, 1987, s. 10
Third Schedule:	inserted by 84, 1990, s. 5