

SOUTH AUSTRALIA

MURRAY-DARLING BASIN ACT 1993

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MURRAY-DARLING BASIN ACT 1993

being

Murray-Darling Basin Act 1993 No. 67 of 1993
[Assented to 26 August 1993]¹

¹ Came into operation 6 October 1993: *Gaz.* 30 September 1993, p. 1340.

N.B. The amendments effected to this Act by the *River Murray Act 2003* have not been brought into operation.

An Act to approve and provide for carrying out an agreement entered into between the Commonwealth, New South Wales, Victoria and South Australia with regard to the water, land and other environmental resources of the Murray-Darling Basin; to repeal the Murray-Darling Basin Act 1983; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Murray-Darling Basin Act 1993*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Purpose

3. The purpose of this Act is to approve and provide for carrying out an agreement entered into between the Commonwealth, New South Wales, Victoria and South Australia with regard to the water, land and other environmental resources of the Murray-Darling Basin.

Interpretation

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

"**Agreement**" means the agreement a copy of which is set out in the Schedule;

"**authorised person**" means a person authorised under section 13;

"**Commission**" means the Murray-Darling Basin Commission;

"**Commissioner**" except in section 6(1), means the President or a Commissioner of the Commission or a Deputy Commissioner of the Commission when acting as a Commissioner of the Commission;

"**land**" includes an estate or interest in land;

"**State member**" means a Commissioner or Deputy Commissioner appointed under section 6;

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

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

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix.

3.

PART 2
THE AGREEMENT AND THE COMMISSIONERS

Approval of Agreement

5. The agreement is approved.

Appointment of Commissioners and Deputy Commissioners

6. (1) For the purposes of clause 20(2) of the Agreement, the Governor may appoint two Commissioners and two Deputy Commissioners.

(2) A State member is appointed for such period, not exceeding five years, as is specified in the instrument appointing the member.

(3) A State member is eligible for re-appointment.

(4) A State member is not, in respect of that office, subject to the *Government Management and Employment Act 1985*.

Terms and conditions of appointment

7. In respect of matters not provided for by this Act or another law of the State or by the Agreement, a State member holds office on such terms and conditions as are determined by the Governor.

Defect or irregularity not to invalidate appointment

8. The appointment of a State member is not invalidated merely because of a defect or irregularity in or in connection with the member's appointment.

Remuneration

9. A State member is entitled to the remuneration and allowances fixed by the Governor.

Resignation

10. A State member may resign from office in accordance with clause 29 of the Agreement.

Termination of appointment

11. The Governor may at any time remove a State member from office.

PART 3
THE COMMISSION AND ITS OPERATIONS

Powers, functions and duties of the Commission

12. The Commission has the powers, functions and duties expressed to be conferred on it by the Agreement.

Authorisation of persons to enter and occupy land

13. (1) The Commission may authorise a person in writing to enter and occupy land for the purposes of this Act and the Agreement.

(2) The Commission must provide an authorised person with a certificate of authority.

(3) A certificate must—

(a) state that it is issued under the *Murray-Darling Basin Act 1993*; and

(b) give the name of the person to whom it is issued; and

(c) describe the nature of the powers conferred and their source; and

(d) state the date, if any, on which it expires; and

(e) bear the seal of the Commission or the signature of a person duly authorised by the Commission to provide the certificate.

(4) An authorised person, when entering land, must produce the certificate if requested to do so by a person apparently in occupation of the land.

Entry and occupation of land

14. (1) For the purposes of the Agreement, a Commissioner or an authorised person may, after giving seven days' notice in writing to the owner or occupier, enter and occupy any land and is entitled to free access to all works.

(2) A Commissioner or an authorised person may not enter residential premises except with the consent of the occupier.

(3) The requirement to give seven days' notice in writing does not apply in an emergency or if the owner or occupier consents to entry on, and occupation of, land within a shorter period.

(4) In exercising the powers under this section, a Commissioner or authorised person—

(a) must cause as little harm and inconvenience as possible; and

(b) must not occupy the land for any longer than is reasonably necessary; and

(c) must remove from the land on completing any works all equipment or structures brought onto the land by the Commissioner or authorised person, other than anything that the owner or occupier of the land agrees may be left there; and

5.

- (d) must leave the land as nearly as possible in the condition in which the Commissioner or authorised person found it; and
- (e) must co-operate as much as practicable with the owner and occupier of the land.

Offence—obstruction of Commissioner or authorised person

15. A person must not without reasonable excuse obstruct or hinder a Commissioner or authorised person exercising powers under section 14.

Penalty: Division 6 fine.

Construction of works

16. Subject to this Act and the Agreement—

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

are authorised.

Acquisition of land

17. (1) The Minister may acquire, whether compulsorily or otherwise, any land necessary for—

- (a) the construction, maintenance, operation and control of the works; or
- (b) the protection of those works; or
- (c) preserving or improving the quality or purity of the water to be supplied from those works,

or any other land necessary for or relating to or connected with the carrying out by the Commission of its functions or duties or the exercise by the Commission of its powers.

(2) The compulsory acquisition of land by the Minister is subject to and must be undertaken in accordance with the *Land Acquisition Act 1969*.

Construction and other powers of Minister

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

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

Authorisation to pay compensation

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

6.

- (a) constructing, maintaining, operating and controlling any works; or
- (b) carrying out operations referred to in the Agreement; or
- (c) implementing measures referred to in the Agreement.

Powers to dispose of certain lands

20. (1) The Minister—

- (a) may dispose of any lands acquired under section 17 or under a corresponding previous enactment that are no longer required for the purpose for which they were acquired; or
- (b) may grant a lease of any lands acquired under section 17 or under a corresponding previous enactment for purposes, including recreational purposes, consistent with the purpose for which the lands were acquired.

(2) Any money paid to the Minister on the disposal of land under subsection (1)(a) or in respect of a lease granted under subsection (1)(b) must be paid by the Minister to the Commission.

Land dedicated under the Crown Lands Act 1929

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

Resumption of Crown lease land

22. (1) The Minister for the time being administering the *Crown Lands Act 1929* may resume land subject to a perpetual lease or a miscellaneous lease or an agreement to purchase pursuant to s. 53 of that Act for the purposes of the Agreement.

(2) The Minister for the time being administering the *Pastoral Land Management and Conservation Act 1989* may resume land subject to a pastoral lease pursuant to s. 32 of that Act for the purposes of the Agreement.

Tolls on locks

23. (1) A contracting Government, or an authority or person so authorised under the Agreement, who has the control of any lock may demand and receive in respect of vessels passing through the lock the tolls prescribed under the Agreement, by order of the Commission.

(2) Tolls received under subsection (1) must be paid to the Commission.

PART 4
MISCELLANEOUS

Supreme Court

24. (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 and as if the Commissioners were South Australian officers.

(2) If a court of the Commonwealth or another State that is a party to the Agreement exercises a power under a law corresponding to subsection (1), the Commission and Commissioners must comply with an order or decision of that court.

Appropriation

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

Exemption from taxes and charges

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

- (a) in respect of any act or thing done by or on behalf of the Commission; or
- (b) in respect of any works; or
- (c) in respect of any property used or held by a Contracting Government or a Constructing Authority for the purposes of any works.

Evidence

27. (1) Every minute or record of the proceedings of the Commission that is signed by the President of the Commission, or a copy of such a minute or record certified as correct under the hand of the President, is presumed to be correct unless the contrary is proved.

(2) A document signed by, and containing a decision of, an arbitrator appointed under the Agreement is, in any proceedings, evidence of the decision unless the contrary is proved.

(3) A document purporting to be—

- (a) a minute or record, or copy, referred to in subsection (1); or
- (b) a document referred to in subsection (2),

will be taken, unless the contrary is proved, to be such a minute or record, copy or document, as the case may be.

Certain documents to be laid before Parliament

28. (1) The Minister must cause a copy of each report and statement submitted by the Commission to the Ministerial Council under clause 84 of the Agreement to be laid before each House of Parliament within 15 sitting days after submission to the Ministerial Council.

(2) The Minister must cause a copy of each Schedule approved under clause 50 of the Agreement to be laid before each House of Parliament within 15 sitting days after approval by the Ministerial Council.

Accession by new parties

29. (1) If the Ministerial Council approves a schedule prepared under clause 134 of the Agreement for another State to become a party to the Agreement, the Minister must cause a copy of the schedule to be laid before each House of the Parliament within 15 sitting days after the Ministerial Council has approved the schedule.

(2) A schedule referred to in subsection (1) has no effect if—

- (a) it is disallowed as mentioned in clause 134 of the Agreement; or
- (b) it is void or has ceased to have effect for any other reason mentioned in that clause.

Penalty for injuring works

30. A person must not unlawfully and maliciously destroy or damage or attempt to destroy or damage any works constructed or operated under this Act or the Agreement.

Penalty: \$100 000 or Division 2 imprisonment.

Regulation

31. (1) The Governor may make regulations for or with respect of any matter or thing required or permitted by this Act to be prescribed or that is necessary or convenient to be prescribed to give effect to this Act.

(2) Regulations under subsection (1) may prescribe penalties not exceeding a Division 8 fine for a first offence or a Division 7 fine for a second or subsequent offence against the regulations.

Repeal and transitional

32. (1) The *Murray-Darling Basin Act 1983* is repealed.

(2) A person who, immediately before the commencement of this section, held office as a Commissioner or Deputy Commissioner appointed under section 6 of the *Murray-Darling Basin Act 1983* continues to hold office for the remainder of the person's term of office as if the person had been appointed as a Commissioner or Deputy Commissioner, as the case may be, under section 6 of this Act.

(3) Land reserved or dedicated under the *Murray-Darling Basin Act 1983*, or a corresponding previous enactment, may be resumed under the *Crown Lands Act 1929* by the Minister for the time being administering that Act as though it had been dedicated by the Minister under that Act.

9.

THE SCHEDULE

MURRAY DARLING BASIN AGREEMENT

1992

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MURRAY-DARLING BASIN AGREEMENT

The Murray-Darling Basin Agreement made this day of One thousand nine hundred and ninety two between—

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

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

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

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

**PART I
INTERPRETATION**

Purpose

1. The purpose of this Agreement is to promote and co-ordinate effective planning and management for the equitable efficient and sustainable use of the water, land and other environmental resources of the Murray-Darling Basin.

Definitions

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

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

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

"Commission" means the Murray-Darling Basin Commission.

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

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

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

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

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

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

"Constructing Authority" means—

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

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

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

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

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

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

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

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

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

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

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

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

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

"land" includes

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

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

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

but does not include—

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

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

"measures" includes strategies, plans and programs.

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

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

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

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

"period of restriction" means a period of restriction declared under clause 122(3).

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

"prescribed rate" means either—

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

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

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

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

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

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

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

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

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

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

"stored water" means water stored in or by—

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

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

"upper River Murray" means the aggregate of—

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

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

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

"weir" includes—

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

Interpretation

3. (1) In this Agreement, unless the contrary intention appears—

- (a) a reference to any Act includes any Act amending, or in substitution for, that Act.
- (b) a reference to this Agreement includes a reference to—
 - (i) the Schedules to this Agreement; and
 - (ii) any amendment of or addition to this Agreement or the Schedules hereto.
- (c) words importing the singular include the plural and vice versa.
- (d) words importing any gender include any other gender.
- (e) a reference to a Commissioner includes a Deputy Commissioner who is acting as a Commissioner.
- (f) a reference to the President includes the Deputy President when acting as President.

(2) In interpreting a provision of this Agreement, a construction that would promote the purpose or object underlying the Agreement (whether or not that purpose or object is expressly stated in the Agreement) shall be preferred to a construction that would not promote that purpose or object.

PART II
APPROVAL AND ENFORCEMENT

Substitution

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

Approval

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

Submission to Parliament

6. The Contracting Governments hereby agree—

(a) to submit for the approval of the respective Parliaments of the Commonwealth of Australia and of the States—

(i) this Agreement;

(ii) any amendment to this Agreement which may be agreed to by the Ministerial Council from time to time (other than an amendment to or addition of a Schedule to this Agreement);

(iii) any legislation necessary to give effect to this Agreement or any Amendment to this Agreement,

as soon as practicable after such agreement is reached; and

(b) to lay before the House or Houses of the respective Parliaments of the Commonwealth and of the States, any Schedule to this Agreement approved by the Ministerial Council from time to time under clause 50 or clause 134.

Parties to provide for enforcement of Agreement and Acts

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

PART III—THE MINISTERIAL COUNCIL

Constitution of Ministerial Council

8. (1) The Ministerial Council constituted under the former Agreement is continued in existence.

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

(3) The Ministerial Council shall consist of up to three Ministers from each Contracting Government who have prime responsibility for matters relating to water, land and environment.

(4) Whenever a member of the Ministerial Council representing a Contracting Government is—

- (a) absent from Australia or from duty,
- (b) unable for any reason to attend a meeting of the Ministerial Council, or
- (c) otherwise unable to perform the duties of a member of the Ministerial Council,

that Contracting Government may appoint another Minister of State to act in the place of that member, and while so acting that other Minister of State shall have all the powers and perform all the duties of that member.

Functions of the Ministerial Council

9. The functions of the Ministerial Council are—

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

Ministerial Council may direct Commission

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

Ministerial Council may require Commission to report

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

Proceedings of the Ministerial Council

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

(2) The quorum for a meeting of the Ministerial Council shall be each Minister nominated under clause 15 or, in the absence of that Minister, a Minister from the same Contracting Government authorised for this purpose by that Government.

(3) A resolution before the Ministerial Council will be carried only by a unanimous vote of all Ministers present who constitute a quorum.

(4) The Chairperson of the Ministerial Council shall be one of the Commonwealth Ministers who is a member of the Council and is at the relevant time the member nominated for this purpose by the Prime Minister.

Resolutions other than at meetings

13. (1) A decision of the Ministerial Council may be made other than at a meeting of the Ministerial Council if made in accordance with this clause.

(2) If—

(a) the text of a proposed resolution is sent or given in writing by facsimile or other transmission by an officer of the Commission authorised by the Ministerial Council to a Minister nominated under clause 15 or if that Minister is unavailable a Minister for the same Contracting Government authorised for the purpose by that Government; and

(b) such Minister approves the proposed resolution and notifies that officer in writing sent or given by facsimile or other transmission,

the proposed resolution is approved by the Minister.

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

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

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

Appointment of Committees

14. (1) The Ministerial Council—

(a) must appoint a Community Advisory Committee; and

23.

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

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

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

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

Nomination of responsible Minister

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

**PART IV
THE COMMISSION**

Constitution

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

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

Functions and Powers of the Commission

17. (1) The functions of the Commission are—

- (a) to advise the Ministerial Council in relation to the planning, development and management of the water, land and other environmental resources of the Murray-Darling Basin;
- (b) to assist the Ministerial Council in developing measures for the equitable efficient and sustainable use of water, land and other environmental resources of the Murray-Darling Basin;
- (c) to co-ordinate the implementation of or, where the Ministerial Council so requires, to implement any measures authorised by the Ministerial Council under paragraph 9(b);
- (d) to give effect to any policy or decision of the Ministerial Council, which the Ministerial Council requires the Commission to implement;
- (e) to exercise the powers and discharge the duties conferred on it by this Agreement, or any Act approving the same.

(2) Paragraph 17(1)(d) does not operate—

- (a) to confer any powers on the Commission in addition to powers conferred by other provisions of this Agreement, or any Act approving the same;
- (b) to enable the Commission to do anything for which Part V and subsequent Parts provide, otherwise than as provided for by those Parts as amended from time to time.

(3) The advice referred to in paragraph 17(1)(a) shall be determined by majority vote of the Commissioners present who, with the presiding member, constitute a quorum. In the event of a unanimous decision not being reached, the presiding member and each Commissioner may tender separate advice to the Ministerial Council.

(4) In addition to any powers conferred upon it by other provisions of this Agreement, or any Act approving the same, the Commission has power, under the name of the Commission—

- (a) to contract;

- (b) to acquire, hold, deal with or dispose of property,

for the purpose of performing its functions and exercising its powers.

Composition of Commission

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

Declaration of interests

19. (1) Each Commissioner, other than the President, and each Deputy Commissioner shall disclose to the President any direct or indirect pecuniary interest held or acquired by that person in a business carried on in Australia or in a body corporate carrying on such a business that could conflict with that person's duties as a Commissioner or Deputy Commissioner.

(2) The President shall give written notice to the Chairperson of the Ministerial Council of all direct and indirect pecuniary interests held or acquired by the President in any business carried on in Australia or in any body corporate carrying on any such business.

Appointment of President, Deputy President, Commissioners and Deputy Commissioner

20. (1) The Ministerial Council shall, after seeking and considering the advice of the Commission, appoint a President by a unanimous vote of members of the Ministerial Council.

(2) Two Commissioners who, between them, represent water, land and environmental resource management and two Deputy Commissioners shall be appointed by each of the Governor-General, the Governor of New South Wales, the Governor of Victoria, the Governor of South Australia, and the Governor of any State becoming a party to this Agreement pursuant to clause 134.

(3) The Ministerial Council shall appoint one of the Commissioners appointed pursuant to sub-clause 20(2) to be Deputy President.

Terms of Appointment

21. (1) The President, each Commissioner and Deputy Commissioner shall be appointed for a term not exceeding five years and be eligible for re-appointment.

(2) The Deputy President shall be appointed for a term not exceeding the term for which the Commissioner so appointed has been appointed a Commissioner pursuant to sub-clause 21(1).

Continuation in Office

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

When Deputy President or Deputy Commissioner may act

23. (1) Whenever—

- (a) the President is—

(i) absent from Australia or from duty, or

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

- (iii) otherwise unable to perform the duties of the President, or
- (b) there is a vacancy in the office of the President,

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

(2) Whenever—

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

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

Powers and duties of the President

24. (1) The President has such powers and duties as may be specified or conferred upon the President by—

- (a) this Agreement,
- (b) the Ministerial Council,
- (c) the Commission,

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

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

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

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

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

Powers of Commissioners

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

Conditions of appointment and remuneration of the President

26. (1) The Ministerial Council may, from time to time—

- (a) determine the terms of employment or engagement and remuneration of the President;
- (b) if necessary, provide for the superannuation of the President.

(2) The President shall be responsible to the Ministerial Council for the proper execution of the President's powers and duties.

(3) Any payments made pursuant to sub-clause 26(1) shall be borne by the Contracting Governments in equal shares.

Remuneration of Commissioners and Deputy Commissioners

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

Removal from office

28. (1) The President or Deputy President may at any time be removed from office by the unanimous vote of the Ministerial Council.

(2) A Commissioner or Deputy Commissioner for the Commonwealth may at any time be removed from office by the Governor-General.

(3) A Commissioner or a Deputy Commissioner for a State may at any time be removed from office by the Governor of that State.

Resignation

29. (1) The President or Deputy President may at any time tender resignation of that appointment in writing addressed to the Chairperson of the Ministerial Council.

(2) A Commissioner or a Deputy Commissioner for the Commonwealth may at any time tender resignation of that appointment in writing addressed to the Governor-General.

(3) A Commissioner or Deputy Commissioner for a State may at any time tender resignation of that appointment in writing addressed to the Governor of that State.

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

Vacancies

30. (1) Whenever a vacancy occurs in the office of the President or Deputy President, the Ministerial Council shall appoint a person to the vacant office.

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

Validity of proceedings

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

Meetings of the Commission

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

(2) The President or any Commissioner may at any time call a meeting of the Commissioners.

(3) The President shall preside at all meetings of the Commission at which the President is present.

(4) The Deputy President shall preside at any meeting of the Commission at which the President is not present.

(5) The presiding member shall not have a deliberative vote but shall have a casting vote as provided in sub-clauses 34(2) and 96(2).

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

(7) The presiding member and one Commissioner for each Contracting Government shall be a quorum.

(8) Except as provided on sub-clauses 17(3), 34(2) and 96(2) a resolution before the Commission will be carried only by a unanimous vote of all Commissioners present who, with the presiding member, constitute a quorum.

(9) The Commission must, subject to this Agreement, determine its own procedure.

(10) The Commission must keep proper minutes of its proceedings.

Resolutions other than at meetings

33. (1) The Commission may make a resolution other than at a duly convened meeting.

(2) Before a resolution is made pursuant to sub-clause 33(1)—

(a) the text of the proposed resolution must be referred to one or more Commissioners nominated by each Contracting Government; and

(b) that Commissioner or those Commissioners must approve the text of the proposed resolution.

(3) A resolution under this clause shall be made at the time when each Commissioner referred to in sub-clause 33(2) has signified approval of the resolution to an officer authorised by the Commission.

(4) A Commissioner may signify approval of a resolution by any means, provided that—

- (a) approval by telephone must be signified in person by the Commissioner;
- (b) approval in writing must be by letter or facsimile transmission which has been dated and signed by the Commissioner.

(5) Notwithstanding the provisions of sub-clause 33(2)(b) approval to a proposed resolution by the Deputy Commissioner acting under clause 23 shall be valid for all purposes.

(6) A resolution made under this clause must be duly recorded and a copy sent to each Commissioner within 21 days of the resolution being made.

Delegation

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

(2) A delegation under sub-clause 34(1) may be revoked by a majority vote of the Commissioners or, if the voting is equally divided, by the casting vote of the presiding member.

(3) A delegation of any power pursuant to this clause shall not prevent the exercise of that power by the Commission.

(4) A power so delegated, when exercised by the delegate, shall, for the purposes of this Agreement, be deemed to have been exercised by the Commission.

Appointment of Committees

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

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

Employees of the Commission

36. The Commission may, from time to time, as it sees fit—

- (a) employ and dismiss people;
- (b) engage employment agencies to provide staffing services;
- (c) engage consultants;
- (d) determine the terms and manner of employment of people or engagement of consultants and their remuneration;
- (e) provide for the superannuation of people employed by it.

Employment of officers in public service or in statutory authorities

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

(2) The Commission may, with the approval of a public authority and on such terms as may be mutually arranged, make use of the services of any officer of that public authority.

Liability for acts of the President, the Commissioners and officers

38. (1) The Contracting Governments shall jointly indemnify the President or the Deputy President, in respect of any act or omission of the President or Deputy President, and for any losses or costs incurred by either of them, in the bona fide execution of the powers vested in the President, the Deputy President or the Commission by or under this Agreement or any Act approving the same.

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

(3) The Contracting Governments must jointly indemnify each officer in respect of any act or omission of, and for any losses incurred by that officer in the bona fide execution of that person's duties as an officer of the Commission.

(4) Any payments made pursuant to sub-clause 38(1) or 38(3) must be borne by the Contracting Governments in equal shares.

PART V
INVESTIGATION, MEASUREMENT AND MONITORING

Investigations and studies

39. (1) The Commission may co-ordinate, carry out or cause to be carried out surveys, investigations and studies regarding the desirability and practicability of works or measures for the equitable, efficient and sustainable use of water, land and other environmental resources of the Murray-Darling Basin, including but not limited to works or measures for—

- (a) the conservation and regulation of river water;
- (b) the protection and improvement of the quality of river water;
- (c) the conservation, protection and management of aquatic and riverine environments;
- (d) the control and management of groundwater which may affect the quality or quantity of river water.

(2) The Commission may, without further approval of any Contracting Government, carry out, or cause to be carried out surveys, investigations or studies pursuant to sub-clause 39(1) on or adjacent to—

- (a) the upper River Murray;
- (b) the River Murray in South Australia.

(3) Except as provided in sub-clause 39(2), the Commission must not carry out or cause to be carried out surveys, investigations or studies within the territory of any State without—

- (a) informing the Ministerial Council of the proposed surveys, investigations and studies; and
- (b) obtaining the consent of that State Contracting Government.

(4) The Commission may initiate proposals for works or measures resulting from surveys, investigations or studies carried out under this clause.

(5) If the implementation of any proposal is likely significantly to affect water, land or other environmental resources under the control, supervision or protection of a Contracting Government or a public authority responsible to that Contracting Government, the Commission must—

- (a) inform the Ministerial Council of the likelihood; and
- (b) consider any submissions made by that or any other Contracting Government, or public authority; and
- (c) report to the Ministerial Council on any such submissions and the result of the Commission's consideration thereof.

Monitoring

40. The Commission—

- (a) must, from time to time, advise the Ministerial Council on the adequacy and effectiveness of the arrangements for monitoring; and
- (b) subject to Clause 42, may establish, maintain and operate effective means for monitoring

the quality, extent, diversity and representativeness of water, land and other environmental resources of the Murray-Darling Basin, including but not limited to—

- (i) aquatic and riverine environments;
- (ii) the effect of groundwater on water, land and other environmental resources.

Measurements of water quantity and quality

41. The Commission must establish, maintain and operate an effective and uniform system—

- (a) for making and recording continuous measurements of—
 - (i) the flow of the River Murray, and tributaries of the River Murray within the boundaries of each State, and
 - (ii) the volume of stored water,

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

Need for approval in certain cases

42. (1) The Commission may, without further approval of any Contracting Government, establish, maintain and operate any system or means referred to in clauses 40 and 41 on or adjacent to—

- (a) the upper River Murray;

- (b) the River Murray in South Australia.

(2) Except as provided in sub-clause 42(1), the Commission must not establish, maintain or operate any system or means referred to in clauses 40 and 41 within the territory of any State without—

- (a) informing the Ministerial Council of the proposed system or means; and
- (b) obtaining the consent of that State Contracting Government.

Power to arrange data in lieu

43. Instead of establishing, maintaining or operating systems and means referred to in clauses 40 and 41, the Commission may—

- (a) adopt the results of any measurements or monitoring made by any Contracting Government, or
- (b) request a State Contracting Government to carry out any monitoring or measurement within its territory in such manner as the Commission considers necessary.

Water quality objectives

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

Recommendations re water quantity and quality

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

Commission to be informed of new proposals

46. (1) Whenever a Contracting Government or a public authority is considering any proposal which may significantly affect the flow, use, control or quality of any water in the upper River Murray and in the River Murray in South Australia, that Contracting Government must, or must ensure that the public authority shall—

- (a) inform the Commission of the proposal, and
- (b) provide the Commission with all necessary information and data to permit it to assess the anticipated effect of the proposal on the flow, use, control or quality of the water.

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

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

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

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

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

Environmental Assessment

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

Protection of catchment of Hume Reservoir

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

(2) Each of those Contracting Governments must, before the end of June in each year, forward a report to the Commission on—

- (a) the condition of the portion of the catchment of the Hume Reservoir within its territory,
- (b) the measures taken and work carried out during the twelve months to the end of March immediately preceding, and
- (c) particulars of the measures and works proposed for the next twelve months.

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

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

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

PART VI
CONSTRUCTION, OPERATION AND MAINTENANCE OF WORKS

Works and measures subject to the Agreement

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

Authorisation of further works or measures

50. (1) The Ministerial Council, or the Commission may authorise—

- (a) the construction of any works in addition to works set out in Schedule A,
- (b) the improvement of any works constructed under this Agreement,
- (c) the replacement of any works constructed under this Agreement,
- (d) work to remedy the extraordinary failure of part or all of any work constructed under this Agreement,
- (e) the implementation of any measures,

to promote the equitable efficient and sustainable use of the water, land and environmental resources of the Murray-Darling Basin, as provided in this clause.

(2) The Commission may authorise the execution of any work or the implementation of any measure pursuant to this clause which is estimated to cost not more than \$2,000,000.

(3) The Ministerial Council may authorise the execution of any work or the implementation of any measure pursuant to this clause which is estimated to cost more than \$2,000,000.

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

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

- (a) the construction, operation and maintenance of such work, or
- (b) the implementation of such measure,

in whole or in part.

(6) The Ministerial Council may—

- (a) resolve to include any works or measures authorised pursuant to sub-clause 50(1) in a Schedule to the Agreement;
- (b) may approve any Schedule prepared or amended pursuant to paragraph 50(6)(a).

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

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

Ancillary, preventative and remedial works

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

- (a) the construction, operation or maintenance of—
 - (i) any works of a Contracting Government ancillary to the works constructed pursuant to this Agreement or the former Agreement, and
 - (ii) any preventative or remedial works of a Contracting Government necessitated by, or arising from, the construction or operation of works constructed pursuant to this Agreement or the former Agreement,
- (b) the acquisition by a Contracting Government of any interest in land necessary for the construction, operation or maintenance of those ancillary, preventative or remedial works, or for the provision of flood easements, and
- (c) remedying any actual or anticipated damage or injury occasioned by the construction, operation or maintenance of any works provided for in this Agreement or the former Agreement.

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

Preparation and submission of designs, etc. of works for Commission approval

52. (1) A Contracting Government nominated to construct a work pursuant to this Agreement must submit a general scheme of the work to the Commission for its approval.

(2) Before beginning to construct that work, the Contracting Government must submit designs, specifications and estimates of the work to the Commission for its approval.

(3) The Commission may approve the general scheme, designs, specifications or estimates with or without alterations or additions, or may, from time to time, refer any of them for amendment to the Contracting Government submitting them.

(4) The Contracting Government must carry out an authorised work in accordance with—

- (a) the designs and specifications approved by the Commission, and
- (b) any directions given by the Commission pursuant to clause 55.

(5) Where any work is estimated to cost more than \$2,000,000—

- (a) the Commission must inform the Ministerial Council of the general scheme of the work and the general method of its proposed construction, and
- (b) the work shall not proceed unless the general scheme of the work and the general method of its proposed construction accord with the purposes for which the work was authorised.

Submission of details of measures for Commission approval

53. (1) A Contracting Government nominated to implement any measure pursuant to this Agreement must submit—

- (a) a general description of the measure and of the method of implementing it;
- (b) the estimated cost of implementing the measure;
- (c) proposed arrangements for sharing the costs of implementing the measure among the Contracting Governments

to the Commission for its approval.

(2) The Contracting Government must implement an authorised measure in accordance with—

- (a) those matters approved by the Commission under sub-clause 53(1);
- (b) any directions given by the Commission pursuant to clause 55.

Commission and Ministerial Council approval of certain tenders

54. (1) A Constructing Authority must obtain approval of the Ministerial Council before accepting any tender relating to this Agreement for any amount exceeding \$2,000,000.

(2) If the concept or design of any work or measure or any changes thereto cause the total estimated cost of the work or measure to rise by more than 10% of the amount of the accepted tender, the Commission must—

- (a) immediately notify the Ministerial Council and
- (b) if the Ministerial Council does not agree that the work or measure should proceed within one month of being notified of the increased estimated cost, direct the Constructing Authority to suspend further action on that work or measure.

Directions for the efficient construction etc. of works

55. (1) The Commission may give directions to ensure—

- (a) the efficient construction, operation, maintenance and required performance of any work,
- (b) the efficient implementation of any measures

authorised pursuant to this or the former Agreement.

(2) A Constructing Authority must give effect to any directions given to it by the Commission under sub-clause 55(1).

(3) The Commission may direct—

- (a) if necessary, what shall be regarded as construction or maintenance for the purpose of clause 65,
- (b) the doing of such acts or things as it considers necessary to ensure that the provisions of this Part are observed.

(4) In exercising its power under paragraph 55(3)(a), the Commission must not direct that any of the following description of work shall be regarded as maintenance—

- (a) the execution of any improvement to the design or function of any existing work;
- (b) the replacement of the whole of any existing work;
- (c) work to remedy the extraordinary failure of part or all of any existing work.

States to facilitate construction and operation within their territories

56. A State Contracting Government must grant all powers, licences or permissions with respect to its territory as may be necessary for—

- (a) the construction, operation or maintenance of any works;
- (b) the implementation of any measures; or
- (c) the carrying out of any operation

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

Works for benefit of State Contracting Governments

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

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

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

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

- (a) provides for the storage of water; or
- (b) will affect the flow, use, control or quality of the water of the River Murray,

in so far as that operation may affect regulation of the flow or the quality of the water.

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

- (a) the State Contracting Government proposing the work; or
- (b) the Contracting Governments jointly proposing the work in such proportion as may be agreed between those Contracting Governments.

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

Declaration that works or measures are effective

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

Maintenance of works

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

Procedures for operation of works

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

Dredging and snagging

61. (1) The Commission may from time to time direct that the River Murray upstream of any weir constructed pursuant to this or the former Agreement be dredged or snagged for such distance as the Commission may determine.

(2) The distance determined pursuant to sub-clause 61(1) must not exceed the distance to which the navigability of the River Murray is affected by the weir.

(3) The Contracting Government which constructed the weir must, carry out the Commission's direction and meet the cost involved, unless the Commission resolves to meet the whole or part of the cost.

Operation of works

62. (1) The Contracting Government which constructed a work under this or the former Agreement must—

- (a) operate it in accordance with any procedures determined by the Commission under clause 60;
- (b) if the work is a lock, maintain immediately downstream of the lock such depth of water—
 - (i) as is sufficient for navigation of vessels drawing 1.4 metres of water; or
 - (ii) such other depth determined by the Commission under clause 123,

except when the lock is closed for maintenance or when there is an emergency.

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

Performance of joint duties

63. Where Contracting Governments are jointly under a duty to operate or maintain any works or implement any measures or to carry out any operation, any questions as to which Government is to perform that duty or carry out that operation shall be resolved—

- (a) by mutual agreement, or
- (b) if agreement is not possible, by the Commission.

Ineffective works

64. (1) The Commission may at any time declare ineffective the whole or part of any work or measure which is subject to this or the former Agreement.

(2) The State Contracting Government which operates or maintains any work declared to be ineffective must dismantle so much of that work as the Commission may require.

**PART VII
FINANCE**

Apportionment of costs

65. (1) The Ministerial Council, after considering any recommendation by the Commission, must determine what contribution, if any, is to be made by any State becoming a party pursuant to clause 134 to the costs referred to in sub-clauses 65(2) and 65(3).

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

- (a) executing works set out in Schedule A;
- (b) studies, programmes, surveys and investigations carried out pursuant to clause 39;
- (c) establishing systems referred to in clause 41;
- (d) systems established pursuant to a request made under paragraph 43(b);
- (e) special action taken under sub-clause 48(5) which the Ministerial Council has determined pursuant to sub-clause 65(4) is to be borne by Contracting Governments in equal shares;
- (f) constructing works and implementing measures authorised under sub-clause 50(1);
- (g) any payment made by the Commission in respect of the construction of works under sub-clause 51(1);
- (h) complying with a direction given under sub-clause 54(2);
- (i) dismantling works referred to in sub-clause 64(2);
- (j) any payment made by the Commission under paragraph 131(a); and
- (k) administrative and other expenses of the Commission, the Ministerial Council and the Community Advisory Committee constituted under sub-clause 14(1),

less any contributions to those costs determined by the Ministerial Council under sub-clause 65(1).

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

- (a) operating and maintaining works set out in Schedule A;
- (b) operating and maintaining systems referred to in clause 41;
- (c) operating and maintaining systems established pursuant to a request made under paragraph 43(b);

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

less any contributions to those costs determined by the Ministerial Council under sub-clause 65(1).

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

- (a) each Contracting Government; or
- (b) each State Contracting Government,

other than the Government of any State becoming a party pursuant to clause 134.

Financial year

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

Annual and forward estimates

67. (1) The Commission must prepare—

- (a) detailed annual estimates of its known and anticipated expenditure for the next financial year;
- (b) forward estimates of its known and anticipated expenditure for the two successive financial years following the next financial year.

(2) Annual and forward estimates must—

- (a) be in such form as may from time to time be agreed between the Commission and the Ministerial Council;
- (b) show the estimated amount to be contributed by each Contracting Government;
- (c) be sent to each Contracting Government before the end of March in each year;
- (d) be approved by the Ministerial Council.

Supplementary estimates

68. (1) The Commission must prepare supplementary estimates of any expenditure projected by the Commission which—

- (a) will exceed the amount set out in the annual estimates; and
- (b) cannot be provided for under sub-clause 72(2).

(2) Supplementary estimates must—

- (a) be in such form as may from time to time be agreed between the Commission and the Ministerial Council;
- (b) show the estimated amount to be contributed by each Contracting Government;
- (c) be sent to each Contracting Government;
- (d) be approved by the Ministerial Council.

Payments by Contracting Governments

69. (1) Each Contracting Government must pay its share of the annual and supplementary estimates, as and when required by the Commission.

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

Proper accounts to be kept

70. The Commission must ensure that—

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

Commission to account

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

Application of moneys by Commission

72. (1) Except as provided in this clause and clause 75, the Commission must apply money received under clause 69 in accordance with the annual or supplementary estimates, as the case may be.

(2) In any financial year, the Commission may, as it sees fit—

- (a) spend any anticipated savings on an item in the annual or supplementary estimates on any item which it anticipates will be overspent;

44.

- (b) advance sums to any Constructing Authority, public authority or person for expenditure in accordance with the annual or supplementary estimates in that, or any subsequent financial year;
- (c) advance working capital to a Constructing Authority and replenish amounts expended from that advance from time to time.

(3) Anticipated savings on any item to which all Contracting Governments contributed must only be expended on another item to which all Contracting Governments would be obliged to contribute under sub-clause 65(2).

(4) Anticipated savings on any item to which only the State Contracting Governments contributed must only be expended on another item to which only the State Contracting Governments would be obliged to contribute under sub-clause 65(3).

Payments by Commission to Constructing Authorities

73. (1) The Commission must each year, and in accordance with the annual and supplementary estimates, pay to any Constructing Authority required by the Agreement—

- (a) to construct, operate or maintain any works;
- (b) to carry on any operation;
- (c) to implement any measures;

an amount sufficient to defray either—

- (i) the whole cost; or
- (ii) in the case of the cost referred to in paragraph 131(b), three quarters of the cost,

to be incurred by the Constructing Authority for those purposes in that year.

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

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

Contracting Governments to account

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

Unexpended balances

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

- (a) shall, with the approval of the Ministerial Council, be available for expenditure during the ensuing financial year upon any item in the annual or supplementary estimates for

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- (i) the year in which the moneys have not been expended;
 - (ii) that ensuing financial year;
- (b) may be used to reduce the amounts which would otherwise be payable by each Contracting Government under sub-clause 69(1) in that ensuing financial year.

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

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

List of assets

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

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

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

- (a) proper records of those assets are kept by the Constructing Authority; and
- (b) copies of those records will be provided to the Commission at its request.

Disposal of surplus assets

77. (1) The Commission may direct when and how surplus assets acquired by the Commission, or by a Constructing Authority with funds provided by the Commission, shall be disposed of.

(2) The Commission must determine how proceeds from the disposal of surplus assets are to be distributed among the Contracting Governments, having regard to the contributions made by each Contracting Government to the acquisition of those assets.

Audit

78. (1) The Commission's accounts, financial records and records of assets—

- (a) must, subject to sub-clause 78(2), be audited annually by the Commonwealth auditor;
- (b) may be audited at any reasonable time by a State auditor.

(2) The Commonwealth auditor may choose to dispense with all or any of the audit required by paragraph 78(1)(a).

(3) The Commonwealth auditor must promptly inform each Contracting Government of any significant irregularity revealed by an audit under paragraph 78(1)(a).

(4) The Commission must, at all reasonable times, make all its relevant accounts and records available to an auditor or any person acting on behalf of the auditor acting under sub-clause 78(1).

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(5) An auditor acting under sub-clause 78(1) or any person acting on behalf of the auditor, may copy, or take extracts from, any relevant accounts or records of the Commission.

(6) The Commission and its officers must provide an auditor acting under sub-clause 78(1) or any person acting on behalf of the auditor, with such information to which the Commission or its officers have access, as the auditor considers necessary for that audit.

(7) An auditor acting under sub-clause 78(1) must report to each Contracting Government, to the Ministerial Council and to the Commission.

Bank accounts

79. (1) The Commission may open and operate such bank accounts with such banks as it sees fit.

(2) The Commission must pay all money received by it into an account referred to in sub-clause 79(1).

Investment

80. (1) The Commission may invest money not immediately required for the purposes of the Agreement on fixed deposit with such banks as it sees fit.

(2) Interest received under sub-clause 80(1) may be—

- (a) spent by the Commission on items included in the annual or supplementary estimates for the year in which it is received; or
- (b) applied in accordance with clause 75.

(3) Interest received on money contributed by all Contracting Governments, or by a State Contracting Government under clause 81, may be—

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

(4) Interest received on money contributed only by State Contracting Governments, or by one of them under clause 82, may be—

- (a) expended on items in the annual or supplementary estimates for the year in which it is received, to which only the State Contracting Governments are obliged to contribute under sub-clause 65(3); or
- (b) applied in accordance with clause 75.

Revenue

81. (1) Any money received by a Contracting Government or a public authority from the use of works subject to this Agreement (other than tolls referred to in clause 82) must be paid to the Commission.

(2) The Commission may provide and charge for goods and services incidental to its functions which are not otherwise provided for in this Agreement.

(3) Money paid to the Commission under this clause may be—

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

Tolls

82. (1) Tolls prescribed by the Commission for the use of weirs and locks subject to this Agreement must be collected by the State Contracting Government which operates the weir and lock.

(2) Except as provided in sub-clause 82(1), tolls must not be collected in respect of navigation on the River Murray.

(3) Any moneys collected under sub-clause 82(1) must be paid to the Commission.

(4) Money paid to the Commission under sub-clause 82(3) may be—

- (a) expended on items in the annual or supplementary estimates for the year in which it is received, to which all State Contracting Governments are obliged to contribute under sub-clause 65(3); or
- (b) applied in accordance with clause 75.

Compensation for damage by works

83. The Contracting Governments must meet, in equal shares, any compensation for damage paid by a Constructing Authority pursuant to an Act approving this Agreement—

- (a) caused or arising from anything done by it in constructing, operating or maintaining any works or executing any measures provided for in this Agreement; and
- (b) which has not been met or contributed to by the Commission under paragraph 51(1)(c).

**PART VIII
REPORTS**

Preparation of reports

84. (1) As soon as practicable after the end of each financial year, the Commission must send to the Ministerial Council—

- (a) a report on—
 - (i) the proceedings and activities of the Commission for that year;
 - (ii) the extent to which the objectives, policies or plans of the Commission have been achieved or realised in that year;
 - (iii) the objectives, policies or plans of the Commission for future years.
- (b) its audited financial statements for that year.

(2) The Commission may send the report referred to in paragraph 84(1)(a) and its financial statements for any year to the Ministerial Council at the same time or at different times.

(3) The Commission must send its financial statements to the Commonwealth auditor.

(4) The Commonwealth auditor must report to the Ministerial Council—

- (a) whether, in the auditor's opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether, in the auditor's opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Agreement; and
- (d) as to such other matters arising out of the statements as the Commonwealth auditor considers should be reported to the Ministerial Council.

**PART IX
PROCEEDINGS IN DEFAULT**

Failure to perform works or contribute cost

85. (1) The Commission must immediately notify the Ministerial Council and each other Contracting Government if any Contracting Government fails, after being so required by the Commission,

- (a) to do anything in relation to any works or measures; or
- (b) to pay any money to the Commission,

which it is obliged to do or pay under this Agreement.

(2) The Commission may authorise one or more of the Contracting Governments which is not in default wholly or partly to make good any failure which relates to—

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

(3) A Contracting Government authorised by the Commission under sub-clause 85(2)—

- (a) may enter the territory of the defaulting Contracting Government to do whatever it has been authorised to do by the Commission;
- (b) shall be deemed to have all powers, licences and permissions as are required from the defaulting Contracting Government to do whatever it has been authorised to do by the Commission;
- (c) shall be deemed to have all the rights and powers of a Constructing Authority, including the right to receive any payment due under clause 73, in respect of whatever it has been authorised to do by the Commission;
- (d) may, in a court of competent jurisdiction, recover, as a debt due from the defaulting Contracting Government, all money reasonably expended by it in doing whatever it has been authorised to do by the Commission and which has not been paid to it by the Commission by virtue of the right conferred by paragraph 85(3)(c), together with interest at the prescribed rate.

(4) A defaulting Contracting Government shall once more be deemed to be the Constructing Authority when—

- (a) any failure referred to in paragraph 85(1)(a) has been made good; and
- (b) it has paid all money payable by it under paragraph 85(3)(d).

(5) Unless the Commission decides otherwise in any particular case, a Contracting Government which fails to pay money due under clause 69 to the Commission by the due date is liable to pay interest on any outstanding balance at the prescribed rate.

(6) Any other Contracting Government—

- (a) may pay the outstanding balance owed by a Contracting Government under clause 69, together with interest at the prescribed rate; and
- (b) may recover the amount so paid in a court of competent jurisdiction as a debt due from the defaulting Contracting Government.

(7) Any interest paid to the Commission in respect of outstanding amounts due under sub-clause 65(2) must be paid to the Contracting Governments not in default in equal shares.

(8) Any interest paid to the Commission in respect of outstanding amounts due under sub-clause 65(3) must be paid to the State Contracting Governments not in default in equal shares.

(9) Any interest payable under this clause shall be calculated from the due date to the date of actual payment.

**PART X
DISTRIBUTION OF WATERS**

DIVISION 1—STATE ENTITLEMENTS TO WATER

South Australia’s monthly entitlement

86. South Australia is entitled to receive—

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

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

except as provided in clause 127; and

- (b) 58,000 megalitres per month for dilution and losses, unless the Commission determines otherwise; and
- (c) such additional quantities for dilution as the Commission determines from time to time.

Measurement of South Australia’s entitlement

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

- (a) the River Murray between the confluences of the Rufus and Lindsay Rivers with the River Murray; and
- (b) the Lindsay River near its confluence with the River Murray.

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

Variation of South Australia's entitlements

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

Use of Lake Victoria

89. If the Commission decides that the flow or prospective flow of the River Murray downstream of its junction with the Great Darling Anabranch is, or will be for any month in excess of the sum of—

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

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

Surplus flow to South Australia

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

Entitlements of New South Wales and Victoria

91. (1) Except as otherwise expressly provided in Division 3 of this Part and subject to South Australia's entitlement under clause 86 or 88, New South Wales and Victoria are each entitled to use—

- (a) all the water in tributaries of the upper River Murray downstream of Doctors Point within its territory, before it reaches the River Murray,
- (b) half the water in the upper River Murray upstream of Doctors Point, including any water diverted thereto by the Authority,
- (c) half the water entering the Menindee Lakes from the Darling River, subject to the prior entitlement of New South Wales to use water from the Menindee Lakes Storage as provided in clause 92; and
- (d) subject to paragraph 91(1)(c), an amount of water from the upper River Murray equivalent to any water contributed by any tributary or any outfall approved by the Commission entering the upper River Murray from its territory downstream of Doctors Point.

(2) Entitlements under sub-clause 91(1) shall not be affected by the declaration of a period of special accounting except as specifically provided in Division 4 of this Part.

New South Wales' entitlement to water from Menindee Lakes

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

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

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

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

(3) Whenever the Commission determines that—

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

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

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

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

Limitations on use by New South Wales and Victoria

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

DIVISION 2—CONTROL BY COMMISSION

Commission's role in operation of storages

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

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

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

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

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

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

Limitation on Menindee Lakes operation

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

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

Procedures for Dartmouth Dam operation

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

Water estimated to be under the control of the Commission

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

- (a) water stored in the Hume and Dartmouth Reservoirs above their minimum operating levels;
- (b) water stored in Lake Victoria above its minimum operating level;
- (c) water available for release from the Menindee Lakes Storage at the direction of the Commission in accordance with clause 96, after allowing for New South Wales' prior entitlements under clause 92;
- (d) the estimated runoff from the catchment of the upper River Murray above Doctors Point before the end of the following May, 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 estimated to be diverted to the upper River Murray above Doctors Point by works of the Authority before the end of the following May;
- (f) the difference between the estimated amount of water in transit in the upper River Murray and the estimated amount of water in transit at the end of the following May.

Available water

99. From time to time the Commission must—

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

Minimum Reserve

100. (1) From time to time the Commission must determine the minimum reserve to be held at the end of the following May.

(2) Unless the Commission determines otherwise, the minimum reserve shall be the lesser of—

- (a) One third of the water available determined under paragraph 99(c)

less

The sum of the monthly entitlements of South Australia under paragraph 86(a) up to the end of the following May

plus

The sum of any imbalance of use during a period of special accounting calculated under clause 125;

and

- (b) 835,000 megalitres.

(3) If the minimum reserve determined under paragraph 100(2)(a) is less than zero, then the minimum reserve shall be deemed to be zero.

(4) Unless the Commission determines otherwise, the first 250,000 megalitres of any minimum reserve shall be held in Lake Victoria.

Use of State works to convey Murray water

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

DIVISION 3—WATER ACCOUNTING

General

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

Allocation of water to New South Wales and Victoria

103. (1) In respect of any period, a 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 Murray upstream of Doctors Point from beyond the natural boundaries of the catchment thereof shall be allocated between New South Wales and Victoria as provided in sub-clause 103(2).

(2) The quantity of water estimated for any month in accordance with sub-clause 103(1) shall be allocated as follows—

- (a) for any of the months from May through to August inclusive, the whole quantity shall be allocated half each to New South Wales and Victoria;
- (b) for any of the months from September through to April inclusive;
 - (i) whenever Victoria is subject to a period of special accounting, the first 12 900 megalitres per month (being equivalent to the ceding by Victoria to New South Wales of a volume of 6 450 megalitres per month), and
 - (ii) at any other time, the first 16 700 megalitres per month (being equivalent to the ceding by Victoria to New South Wales of a volume of 8 350 megalitres per month) shall be allocated to New South Wales, and the remainder shall be allocated half each to New South Wales and Victoria.

Allocation of water in Menindee Lakes Storage

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

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

Tributary inflows

105. The quantity of water which in any period enters the upper River Murray downstream of Doctors Point from a tributary, or from any artificial outfall approved by the Commission for the purposes of this clause, other than quantities referred to in clause 104, is allocated to the State from which the water enters the upper River Murray.

Use by New South Wales and Victoria of allocated water

106. Any quantity of water diverted from the upper River Murray by offtakes under the jurisdiction of either New South Wales or Victoria is deemed to be used by that State, unless otherwise determined by the Commission.

Snowy diversions out of Murray catchment

107. 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 is deemed to be used half each by New South Wales and Victoria.

Losses

108. (1) Any water which is lost by evaporation or other means from the upper River Murray is deemed to have been used by New South Wales or Victoria.

(2) Unless otherwise determined by the Commission,

- (a) losses attributable to evaporation from a major storage will be deemed to have been used in proportion to the quantities of water allocated to New South Wales or Victoria in that storage;
- (b) losses attributable to an unregulated flow in any part of the upper River Murray will be deemed to have been used in proportion to the flow allocated to New South Wales or Victoria in that part of the river;
- (c) all other losses will be deemed to have been used half each by New South Wales and Victoria.

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

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

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

Commencement of continuous accounting of carryover of stored water

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

Reallocation of water between New South Wales and Victoria

111. (1) By agreement between a Commissioner for New South Wales and a Commissioner for Victoria, any quantity of water allocated to one of those States and in store in any of the upper River Murray storages or in transit in a specified part of the upper River Murray, may be

exchanged for a quantity of water allocated to the other State and in store in another of the upper River Murray storages or in transit in another specified part of the upper River Murray, if such an exchange of water does not prejudice the entitlement of South Australia.

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

Accounting for Snowy Scheme

112. The Commission may adjust the quantities of water allocated to New South Wales and Victoria under paragraph 103(1)(b) having regard to any extraordinary aspects of operation of the Snowy Scheme.

Efficient regulation of the Murray River

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

Accounting procedures

114. Subject to clauses 110, 111, 112, 113, 115 and 120, the quantity of water in any part of the upper River Murray and which is allocated to either New South Wales or Victoria is deemed—

- (a) to increase in any period by the quantity of water allocated to that State flowing into that part in that period; and
- (b) to decrease in any period by any quantities of water—
 - (i) used by that State by way of diversion or loss from that part in that period; or
 - (ii) passed from that part in that period for
 - downstream use by that State,
 - supply by that State to South Australia,
 - conveyance to another part of the upper River Murray as water allocated to that State; or
 - (iii) released from that part in that period and determined under clause 121 to be a release of water allocated to that State; or
 - (iv) spilled from that part in that period and deemed under clause 116 to be a spill of water allocated to that State.

Internal Spills

115. (1) In any major storage, water allocated either to New South Wales or Victoria must be re-allocated to the other State to prevent the quantity of water allocated to either State in the storage exceeding half the lesser of:

- (a) the target capacity of the storage; or
- (b) the quantity of water stored when releases are being made for flood mitigation.

(2) In Hume and Lake Victoria, "target capacity" means the capacity of the reservoir at the Full Supply Level.

(3) In Dartmouth "target capacity" means the lesser of:

- (a) the capacity of the reservoir at the Full Supply Level; or
- (b) the quantity of water stored when water is being released through the hydro-electric power station and the storage level is above the level specified by the Commission for the operation of the power station.

(4) In Menindee Lakes "target capacity" means the greater of the capacity:

- (a) at the Full Supply Level; or
- (b) at such higher level as may be determined from time to time by the Commission.

(5) When water in Dartmouth Reservoir is to be re-allocated under sub-clause 115(1) and there is capacity in Hume Reservoir available to the State from which water is to be re-allocated to store some or all of the re-allocated water, a compensating adjustment must be made in Hume Reservoir so that the accounts of the State from which the water is to be re-allocated in Dartmouth Reservoir are not thereby reduced.

Accounting for spill from storages

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

Accounting for releases from Dartmouth Reservoir

117. (1) Whenever the storage level in Dartmouth Reservoir is above the level determined for the purposes of this sub-clause by the Commission, releases made from Dartmouth Reservoir through the hydro-electric power station will be deemed to be spills and will be accounted for as provided in clause 116.

(2) No release from Dartmouth Reservoir will be attributable to the allocation of water to New South Wales or Victoria if the quantity of water in Dartmouth Reservoir allocated to that State is less than or equal to half the minimum operating storage in the reservoir.

(3) Releases from Dartmouth Reservoir other than those covered by sub-clauses 117(1) and 117(2) will be attributable to the allocation of water to New South Wales or Victoria in such proportions as tend most to equalise the quantities of water allocated to those States in Hume Reservoir.

Accounting for releases from Hume Reservoir

118. (1) Any release made from Hume Reservoir for the deliberate purpose of transferring water to Lake Victoria for use at a later date will be attributable to the allocation of water to New South Wales or Victoria in such proportions as tend most to equalise the quantities of water allocated to the respective States in Lake Victoria and the Menindee Lakes Storage.

(2) Releases from Hume Reservoir other than those covered by sub-clause 118(1) will be attributable to the allocation of water to New South Wales or Victoria in such proportions as satisfy the expected downstream water requirements of each State.

Accounting for releases from Menindee Lakes Storage

119. (1) For the purposes of this clause releases from Menindee Lakes Storage consist of—

- (a) water required to maintain a flow throughout the main course of the Darling River downstream of Menindee Lakes;
- (b) water released to satisfy use by New South Wales in the main course of the Darling River downstream of Menindee Lakes;
- (c) water released through the Lake Cawndilla Outlet Regulator;
- (d) water released down the main course of the Darling River downstream of Menindee Lakes Storage to satisfy directions given by the Commission under sub-clause 95(4);
- (e) any other water released from the Menindee Lakes Storage which can be used either to supply South Australia's entitlement under clause 86 or 88 or to supply water to Lake Victoria.

(2) Whenever New South Wales is using water pursuant to sub-clause 92(1) all release from Menindee Lakes Storage will be attributed to the allocation of water to New South Wales.

(3) Whenever sub-clause 92(1) does not apply to the use of water by New South Wales from the Menindee Lakes Storage:

- (a) releases under paragraph 119(1)(a) will be attributed equally to the allocations of water to New South Wales and Victoria;
- (b) releases under paragraph 119(1)(b) and 119(1)(c) will be attributed to the allocation of water to New South Wales;
- (c) releases under paragraph 119(1)(d) and 119(1)(e) will be attributed to the respective allocations of New South Wales and Victoria in such proportions as tend most to equalise the water in Lake Victoria allocated to each State, provided that such proportions do not—

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- (i) cause the water allocated either to New South Wales or to Victoria to fall below 240,000 megalitres;
- (ii) cause water to be re-allocated between the States under clause 115.

Reallocation of water in Menindee Lakes Storage

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

Accounting for dilution flows

121. (1) Whenever the Commission directs under clause 95 that the flow of water is to exceed the water order at a particular point, unless the Commission determines otherwise, the proportion of the water order attributed respectively to New South Wales and Victoria must be increased by such amounts as tend most to equalise the respective allocations to New South Wales and Victoria of the total flow at that point.

(2) For the purpose of this clause the "water order" is the flow of water at a particular point which is necessary—

- (a) to meet diversions by New South Wales and Victoria, losses and dilution flows downstream of that point;
- (b) to meet South Australia's entitlement; and
- (c) to supply storages downstream of that point.

DIVISION 4—PERIODS OF SPECIAL ACCOUNTING

Declaration of periods of special accounting

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

(2) A period of special accounting—

- (a) may be declared at any time after the end of July in any year and before the end of May in the following year;
- (b) unless the Commission decides otherwise, will be deemed to have commenced on 1 August in that year, whenever it is in fact declared.

(3) Unless it decides otherwise, the Commission must declare a period of restriction for the purposes of the Snowy Mountains Agreement if both New South Wales and Victoria are subject to periods of special accounting.

Variation of navigation depths during restrictions

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

Special Accounts to be kept

124. Throughout any period of special accounting declared for New South Wales or Victoria, separate accounts must be kept by the Commission of—

- (a) all water diverted from the upper River Murray by the State;
- (b) the difference between—
 - (i) the sum of all water entering the upper River Murray downstream of Doctors Point from
 - . any tributary within that State other than the River Darling,
 - and
 - . any artificial outfall from that State approved by the Commission for the purposes of clause 105;
 - and
 - (ii) any water allocated to that State which flows to South Australia in excess of South Australia's entitlement under clause 86 or 88.

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

- (c) all water allocated to that State which is supplied by it to meet South Australia's entitlement under paragraph 86(a).

Imbalance in use

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

One-third of the amount calculated under paragraph 124(a)

less

One-third of the amount calculated under paragraph 124(b)

less

Two-thirds of the amount calculated under paragraph 124(c).

Limits on imbalance in use

126. On May 31 in any period of special accounting, the accounts kept under clause 108 must be adjusted by the Commission to ensure that the imbalance in use calculated under clause 125 is—

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

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

Restrictions on South Australia's entitlement

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

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

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

Termination of periods of special accounting

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

PART XI
MENINDEE LAKES STORAGE

Maintenance of Menindee Lakes Storage

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

Full supply levels

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

Lake Wetherell—Elevation 61.7 Australian Height Datum,

Lake Pamamaroo—Elevation 60.4 Australian Height Datum,

Lake Menindee—Elevation 59.8 Australian Height Datum,

Lake Cawndilla—Elevation 59.8 Australian Height Datum,

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

Financial contributions of Commission

131. Each year the Commission must pay New South Wales—

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

or such other amounts as may be determined by the Commission from time to time.

PART XII
EFFECT OF SNOWY MOUNTAINS AGREEMENT

Reconciliation with Snowy Mountains Agreement

132. (1) The provisions of this Agreement as to sharing of water apply to the exclusion of the provisions of sub-clause 12(2) of the Snowy Mountains Agreement.

(2) Any provision of this Agreement conferring rights to water on South Australia prevails over any inconsistent provision of the Snowy Mountains Agreement.

(3) In clause 11 of the Snowy Mountains Agreement—

- (a) the reference to "the River Murray Commission" is deemed to refer to the Commission;
- (b) the references to "a declared period of restriction within the meaning of clause 51 of the River Murray Agreement" and "the declared period of restriction" are deemed to refer to a period of restriction declared under sub-clause 122(3) of this Agreement.

(4) The Snowy Mountains Agreement continues to have effect except as provided in this clause.

**PART XIII
MISCELLANEOUS**

Resolution of disputes

133. (1) If the Commission fails to agree on any motion submitted by a Commissioner within two months, that Commissioner may refer the matter to the Ministerial Council.

(2) If the Ministerial Council fails to resolve the matter within six months, any member may refer it to an arbitrator.

(3) When a matter is referred to an arbitrator, any Contracting Government may give the other Contracting Governments written notice to agree to appoint an arbitrator to decide the matter.

(4) If an arbitrator is not appointed within two months of notice being given, the Chief Justice of the Supreme Court of Tasmania, or the person acting in that office, may appoint an arbitrator at the request of the Contracting Government giving notice under sub-clause 133(3).

(5) The decision of any arbitrator appointed under this clause—

- (a) is deemed to be the decision of the Commission;
- (b) binds the Commission, the Ministerial Council and the Contracting Governments.

(6) This clause does not apply to a resolution—

- (a) on a question of law;
- (b) before the Commission under clause 135; or
- (c) which has been decided by a majority vote of the Commission or the casting vote of the chairman pursuant to a provision of this Agreement.

Accession by new parties

134. (1) Any State of the Commonwealth may become a party to this Agreement—

- (a) with the consent of the existing parties; and
- (b) on such terms and conditions as may be prescribed by the existing parties in a Schedule to this Agreement.

(2) Without limiting the generality of paragraph 134(1)(b), the terms and conditions prescribed may include provision for—

- (a) those Parts or provisions of the Agreement or its Schedules which apply to any new party and those which do not;
- (b) any qualification to any provision of the Agreement or its Schedules which applies to any new party;
- (c) the number, appointment, functions, powers, duties and voting rights of representatives (if any) of any new party on the Ministerial Council or the Commission;

- (d) the financial contributions to be made by any new party for the purposes of this Agreement.

(3) The Ministerial Council may approve any Schedule prepared pursuant to paragraph 134(1)(b).

(4) When a Schedule is approved by the Ministerial Council under sub-clause 134(3) it thereupon becomes part of the Agreement, which is deemed to have been amended accordingly.

(5) This Agreement will not apply to any new State party until—

- (a) a copy of the Agreement incorporating the Schedule provided for in sub-clause 134(1) has been signed on behalf of that State;
- (b) the Government of that State has notified each existing Contracting Government of that signature and its date;
- (c) the Parliament of that State has approved this Agreement, including the Schedule provided for in sub-clause 134(1).

(6) Any Schedule approved by the Ministerial Council under sub-clause 134(3) must be laid before the House or Houses of Parliament of each of the parties to this Agreement within 15 sitting days of that House after the Ministerial Council has approved that Schedule.

(7) A Schedule which is not laid before the House or Houses of Parliament of each of the parties in accordance with sub-clause 134(6) is void and has no effect.

(8) If any House of Parliament of any of the parties, pursuant to a motion of which notice has been given within 15 sitting days after a Schedule has been laid before that House, passes a resolution disallowing that Schedule, the Schedule thereupon ceases to have effect.

(9) If, at the expiration of 15 sitting days after notice of a motion to disallow any Schedule has been given in a House of Parliament of any of the parties in the manner envisaged by sub-clause 134(8)—

- (a) the notice has not been withdrawn and the motion has not been called on; or
- (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the Schedule is to be deemed to have been disallowed.

(10) Where any Schedule—

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

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

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

"State" includes "Territory";

"Governor" includes the Australian Capital Territory Executive.

Proposals to amend Agreement

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

Giving information to the Commission

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

Authorities to observe agreement

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

Transitional provisions

138. (1) In this clause—

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

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

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

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

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

(a) any estimates for the current financial year sent by the Commission to the Contracting Governments before the commencing day are deemed to be estimates sent in respect of that year;

(b) any money paid by a Contracting Government to the Commission before the commencing day are deemed to have been paid under clause 69 for the current financial year;

(c) any money spent by the Commission before the commencing day in accordance with estimates referred to in paragraph 138(3)(a) are deemed to have been spent pursuant to the Agreement for the current financial year;

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

SCHEDULE A**WORKS**

Description of Works Nominated	Location	Government
DARTMOUTH DAM with a capacity of approximately 4 000 000 megalitres.	Mitta Mitta River upstream of the town of Dartmouth, north-eastern Victoria.	Victoria
HUME DAM with a capacity of approximately 3 038 000 megalitres.	River Murray upstream of the city of Albury, New South Wales.	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.	South Australia.
YARRAWONGA WEIR - storage of about 120 000 megalitres.	River Murray near the town of Yarrawonga, Victoria.	Victoria.
WEIR AND LOCKS:		
Construction of thirteen weirs and locks in the course of the River Murray from its mouth to Echucha, namely:	River distance from Murray mouth in kilometres.	
No. 1 Blanchetown	274	South Australia
No. 2 Waikerie	362	South Australia
No. 3 Overland Corner	431	South Australia
No. 4 Bookpurnong	516	South Australia
No. 5 Renmark	562	South Australia
No. 6 Murtho	620	South Australia
No. 7 Rufus River	697	South Australia
No. 8 Wangumma	726	South Australia
No. 9 Kulnine	765	South Australia
No. 10 Wentworth	825	New South Wales

NO. 11 Mildura	878	Victoria
No. 15 Euston	1 110	New South Wales
No. 26 Torrumbarry	1 368	Victoria

WEIRS

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

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

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

MURRAY MOUTH BARRAGES:

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

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SCHEDULE B

MURRAY-DARLING BASIN

SCHEDULE C

SALINITY AND DRAINAGE STRATEGY

PART 1—INTERPRETATION

Purpose

1. The purposes of this Schedule are—

- (a) to promote works and measures by the Contracting Governments to reduce average salinity in the River Murray at Morgan;
- (b) to ensure that actions taken under the Agreement do not have a cumulative effect of increasing River Murray salinity;
- (c) to provide for assessment of the potential and actual impact of works and measures in terms of their salinity effects;
- (d) to provide a system of salinity credits and debits to allow a State Contracting Government, which has contributed to the cost of works or measures decreasing average salinity costs, to construct works or implement measures which increase average salinity costs within agreed limits;
- (e) to provide for monitoring of effects of works and measures on River Murray Salinity and the consequential adjustment of salinity credits or debits.

Definitions

2. In this Schedule save where inconsistent with the context—

"average salinity" means the average salinity of the River Murray calculated in accordance with procedures determined by the Commission from time to time;

"average salinity costs" means the average costs to users of water from the River Murray incurred because of the salinity of the water used, as calculated in accordance with procedures determined by the Commission from time to time;

"joint proposal" means a proposal for works or measures which are approved for the purposes of this Schedule under clause 50 and "joint works or measures" has a corresponding meaning;

"prospective credit" or "debit" is the estimated value of that credit or debit, as determined from time to time, to apply at the declared effective date;

"register" means the Register provided for in sub-clause 3(4) of this Schedule;

"salinity cost effect" means the increase in average salinity costs resulting from any proposal, work or measure;

"salinity credit" means the reduction in average salinity costs resulting from any work or measure attributed to a State Contracting Government pursuant to Part III of this Schedule;

"salinity debit" means the increase in average salinity costs resulting from any work or measure attributed to a State Contracting Government pursuant to Part III of this Schedule;

"salinity effect" means the increase in the average salinity at Morgan resulting from any proposal, work or measure;

"significant effect" means a significant effect on average salinity at Morgan determined pursuant to sub-clause 3(3) of this Schedule;

"State proposal" means a proposal for works or measures, other than joint works or measures, to be constructed or implemented by a State Contracting Government for the purposes of this Schedule, and "State works or measures" has a corresponding meaning.

PART II—APPROVAL AND EXECUTION OF WORKS AND MEASURES

Advice of proposals which may have a significant effect

3. (1) Subclause 46(1) applies to all proposals for works or measures which may have a significant effect.

(2) If a Contracting Government notifies the Commission of a proposal under sub-clause 3(1) of this Schedule, the Commission must investigate the proposal and decide whether or not it is likely to have a significant effect.

(3) The following will be deemed to have a significant effect—

- (a) all proposals for works or measures which, alone or, where the Commission so determines, in combination with other works or measures nominated by the Commission, may result in an alteration of not less than 0.1 EC in the average salinity at Morgan;
- (b) any other proposals for works or measures which may result in an alteration of less than 0.1 EC in the average salinity at Morgan which the Commission decides may have a significant effect.

(4) If the Commission decides that a proposal is likely to have a significant effect, it must—

- (a) provisionally designate the proposal as a joint or State proposal;
- (b) enter the proposal in a Register; and
- (c) carry out an assessment as required by clause 7 of this Schedule.

Other Works constructed or measures implemented after 1 January 1988

4. If the Commission decides that a work constructed or a measure implemented after 1 January 1988, which has not previously been entered in the Register, has a significant effect, it may—

- (a) designate that work or measure to be either a joint or State work or measure;
- (b) determine the salinity effect and salinity cost effect of the work or measure and enter them in the Register.

Increase in Salinity effect of constructed drains as a result of works constructed or measures implemented before 1 January 1988

5. Any increase in the salinity cost effect of a drain—

- (a) constructed since 1 January 1988; or
- (b) affected by any works or change to the management of the water regime since 1 January 1988,

will be attributed to the State in which the drain is situated.

Provision of information

6. (1) Subclauses 50(5), 52(1), 52(2) and 52(3) apply to joint proposals included in the Register.

(2) Sufficient information must be supplied by a Contracting Government in regard to all State proposals included in the Register to enable the Commission to assess the salinity effects of such proposals for the purposes of this Schedule.

(3) For the purpose of sub-clause 42(2), the State Contracting Government in whose territory a prospective joint proposal would be executed is to be deemed to have consented to the Commission carrying out such surveys, investigations or studies of the desirability, practicability or probable effects of the proposal as the Commission may determine.

Commission to evaluate designs and determine salinity costs effects

7. If the Commission is satisfied with the data, methodology, result of feasibility studies, and preliminary designs of any proposal entered in the Register, the Commission—

- (a) must determine the prospective salinity effect and prospective salinity cost effect of that proposal and enter them in the Register; and
- (b) may, subject to clause 50, authorise the construction or implementation of any joint proposal.

Attribution of salinity credits and salinity debits

8. (1) When any work or measure that reduces average salinity costs—

- (a) is declared effective under clause 58; or
- (b) if the work or measure is completed in stages, when each stage is declared effective,

the Commission must attribute salinity credits arising from that work, measure or stage to State Contracting Governments in accordance with Part III of this Schedule and enter those salinity credits in the Register.

(2) Before any work or measure which may increase average salinity costs

- (a) is commenced; or
- (b) if the work or measure is to be implemented in stages, before each stage is commenced,

the Commission must attribute salinity debits arising from that work, measure or stage to a State Contracting Government in accordance with Part III of this Schedule and enter those salinity debits in the Register.

Review of effects of a proposal

9. (1) The Commission may, at any time—

- (a) decide that a joint proposal should become a State proposal;
- (b) delete a proposal from the Register.

(2) The Commission may, at any time before a proposal is declared effective pursuant to clause 58, re-estimate its salinity effect and salinity cost effect and enter the revised effects in the Register.

Initial Program

10. Subject to clause 50, the State Contracting Governments must implement an initial program of cost effective joint works or measures to reduce average salinity at Morgan by 80 E.C.

State proposals which increase average salinity costs only to be executed within available salinity credits

11. (1) A Contracting Government must not, and must ensure that any public authority responsible to it does not—

- (a) construct any works or implement any measures; or
- (b) permit any works to be constructed or any measures to be implemented

which may increase average salinity costs, except in accordance with this Schedule.

(2) A Contracting Government must not—

- (a) construct any works or implement any measures; or
- (b) permit any works to be constructed or any measures to be implemented

which may have a significant effect unless the total prospective salinity debits attributable to that Government and entered in the Register resulting from—

- (i) both those works and measures; together with
- (ii) works or measures within the territory of that Contracting Government already undertaken under this Schedule

are less than, or equal to—

- (c) the total accumulated salinity credits attributed to that Government from works or measures already declared effective; or
- (d) the total prospective salinity credits attributable to that State from all works and measures on the Register, including those not yet declared effective, if the Commission so agrees.

(3) A State Contracting Government will not proceed with State works or measures under paragraph 11(2)(b) of this Schedule if the combined salinity cost effect of those works or measures and all other works or measures undertaken under this Schedule and entered in the Register would result in an increase in average salinity costs.

Monitoring of works and measures

12. (1) A Contracting Government nominated under clause 50(5) in respect of works or measures must submit a proposed program for monitoring their salinity effects to the Commission.

(2) The Commission may approve a proposed monitoring program, with or without amendment, or may refer it for amendment to the Contracting Government submitting it.

(3) The Commission may, from time to time, determine procedures for monitoring works or measures approved for the purposes of this Schedule.

(4) The Commission may, from time to time, give directions to ensure the efficient monitoring of any works or measures operated or implemented under this Schedule.

PART III—ASSESSMENT AND APPORTIONMENT OF SALINITY EFFECTS

Assessment techniques

13. The salinity cost effects of any proposal, work or measure must be calculated by using the simulation techniques and benchmark conditions adopted by the Commission from time to time.

Determination of Salinity Credits for initial joint works or measures

14. (1) The salinity credits to be attributed to New South Wales and Victoria in respect of any joint works or measures in the initial program referred to in clause 10 of this Schedule which are declared effective under clause 58 shall be calculated as follows—

$$\text{Salinity credits (\$)} = 15/80 \times E$$

Where E = The salinity cost effects of the works or measures.

(2) Salinity credits generated under this clause will not be attributed to a State Contracting Government unless that Government has paid all sums thus far required to be paid by it for the initial program of joint works or measures.

Determination of Salinity Credits or Debits for other works or measures

15. (1) The salinity credits to be attributed respectively to New South Wales, Victoria or South Australia in respect of any other joint or State works or measures included in the Register which are declared effective in accordance with clause 58 shall be calculated as follows—

$$\text{Salinity credits \$} = S/T \times E$$

Where S = The amount contributed by that State to the cost of investigating, designing and constructing the works or implementing the measures plus the amount committed by that State to the estimated costs of operating, maintaining and monitoring the effects of those works or measures throughout their effective life.

T = the total amount contributed by all States to the costs of investigating, designing, and constructing the works or implementing the measures plus the total amount committed by all States to the estimated costs of operating, maintaining and monitoring the effects of those works or measures throughout their effective life.

E = the total salinity cost effects of the works or measures.

(2) For the purpose of sub-clause 15(1) of this Schedule, the Commission must estimate the costs of operating, maintaining and monitoring the effects of those works or measures throughout their effective life.

(3) The salinity debits to be attributed respectively to New South Wales, Victoria or South Australia in respect of works or measures subject to this clause are the total of the salinity cost effects of those works or measures which have been entered in the Register.

Review of salinity cost effects

16. At intervals of not more than five years, or such other period as may be determined by the Commission, the salinity cost effects of all works or measures declared to be effective for the purposes of this Schedule must be calculated, in the light of data produced by the monitoring program for those works or measures and any other relevant data.

Revision of salinity credits or debits

17. Whenever the salinity cost effects of any works or measures are altered pursuant to sub-clause 9(2) or clause 16 of this Schedule, the Commission must revise the salinity credits or salinity debits in respect of those works as provided in clauses 14 or 15 of this Schedule as appropriate, and amend the Register accordingly.

PART IV—FINANCE

Apportionment of costs of joint works and measures

18. The provisions of sub-clause 65(1) and paragraphs 65(2)(f) and (i) and 65(3)(d) apply to all joint works and measures authorised pursuant to this Schedule.

Apportionment of costs of State works and measures

19. Subject to sub-clause 20(3) of this Schedule, the Contracting Government nominated under sub-clause 50(5) for any State work or measure must arrange to meet the cost of investigating, designing, constructing, operating, maintaining and monitoring that work or measure.

Sharing costs and trading salinity credits

20. (1) Any two or more State Contracting Governments may at any time by agreement assign any or all of the salinity credits or salinity debits attributed in the Register to a State Contracting Government in respect of a work or measure to another State Contracting Government, on such terms as the parties determine.

(2) When the parties to any such agreement advise the Commission in writing as to its effect, the Commission must attribute the salinity credits or salinity debits in respect of that work or measure in accordance with the effect of that agreement and must amend the Register accordingly.

(3) Any such agreement may alter the manner in which the costs referred to in clauses 18 or 19 of this Schedule are to be apportioned between the parties to that agreement.

IN WITNESS WHEREOF this agreement has been respectively signed for and on behalf of the parties on the date first set out above.

SIGNED by the Honourable)
)
PAUL JOHN KEATING, Prime)
)
Minister of the Commonwealth)
)
of Australia in the presence of—)
)
)
)

SIGNED by the Honourable)
)
NICHOLAS FRANK GREINER, Premier)
)
of the State of New South)
)
Wales, in the presence of—)
)
)
)

SIGNED by the Honourable)
)
JOAN ELIZABETH KIRNER, Premier)
)
of the State of Victoria, in the)
)
presence of—)
)
)
)

SIGNED by the Honourable)
)
JOHN CHARLES BANNON,)
)
Premier of the State of South)
)
Australia, in the presence of—)
)
)
)

APPENDIX**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of assent to this Act divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.