

South Australia

Murray-Darling Basin (Amending Agreement) Amendment Act 2007

An Act to amend the *Murray-Darling Basin Act 1993*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Murray-Darling Basin (Amending Agreement) Amendment Act 2007*.

2—Commencement

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

3—Amendment provisions

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

Part 2—Amendment of *Murray-Darling Basin Act 1993*

4—Amendment of section 4—Interpretation

(1) Section 4(1), definition of *Agreement*—after paragraph (b) insert:

and

(c) amended by the Amending Agreement 2006;

(2) Section 4(1)—after the definition of *Amending Agreement* insert:

Amending Agreement 2006 means the Murray-Darling Basin Agreement Amending Agreement 2006 that was made on 14 July 2006 (as revised by the Ministerial Council on 29 September 2006), the text of which is set out in Schedule 3;

5—Insertion of section 5B

After section 5A insert:

5B—Approval of Amending Agreement 2006

The Amending Agreement 2006 is approved.

Note—

The copy of the Murray-Darling Basin Agreement Amending Agreement 2006 set out in Schedule 3 incorporates the revisions that were endorsed by the Ministerial Council on 29 September 2006. Those revisions were—

- (a) in proposed new sub-clause 75(3), set out in paragraph 18(3), "Agreement" to be substituted for "agreement";
- (b) paragraph 20(2) to omit both sub-clauses (2) and (3) of clause 78 instead of only omitting sub-clause (2).

6—Insertion of Schedule 3

After Schedule 2 insert:

Schedule 3—Murray-Darling Basin Agreement Amending Agreement 2006

MURRAY-DARLING BASIN AGREEMENT AMENDING AGREEMENT 2006

AGREEMENT made this fourteenth day of July 2006 between
THE COMMONWEALTH OF AUSTRALIA (the
"Commonwealth"),
THE STATE OF NEW SOUTH WALES ("New South Wales"),
THE STATE OF VICTORIA ("Victoria"),
THE STATE OF QUEENSLAND ("Queensland"),

THE STATE OF SOUTH AUSTRALIA ("South Australia"), and
THE AUSTRALIAN CAPITAL TERRITORY ("Australian
Capital Territory").

WHEREAS on 24 June 1992, the Commonwealth, New South
Wales, Victoria and South Australia entered into the Murray-Darling
Basin Agreement which:

- (a) was approved by the Parliament of the Commonwealth and
the Parliaments of the said States; and
- (b) has subsequently been deemed to be amended from time to
time under clause 50 or 134 of that Murray-Darling Basin
Agreement; and
- (c) was amended by the Murray-Darling Basin Amending
Agreement made on 3 June 2002,

(together called the "**Principal Agreement**"):

AND WHEREAS under the provisions of clause 134 of the
Principal Agreement, Queensland became a party to the Principal
Agreement on the terms set out in Schedule D to the Principal
Agreement:

AND WHEREAS under the provisions of clause 134 of the
Principal Agreement, that Agreement was amended in May 2006 by
the decision of the Murray-Darling Basin Ministerial Council to
consent to the Australian Capital Territory becoming a party to the
Principal Agreement;

AND WHEREAS the parties wish to further amend the Principal
Agreement to facilitate the operation of the Murray-Darling Basin
Commission's water business on appropriate commercial principles
and for other reasons;

AND WHEREAS the Murray-Darling Basin Ministerial Council has
approved the provisions set out below on 23 July 2003 and
30 September 2005:

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

In this agreement, a reference to a clause, sub-clause, paragraph, sub-
paragraph, Schedule or Appendix is a reference to a clause, sub-
clause, paragraph, sub-paragraph, Schedule or Appendix of or to the
Principal Agreement, respectively.

2. **CLAUSE 2**

- (1) Omit "67(1)(a)" from the definition of "annual estimates." Insert
instead "68(1)(a)".

- (2) Insert in alphabetical order:
- "Commission's water business"** means those activities of the Commission relating to:
- (a) the construction, operation, maintenance and renewal of works on, adjacent to, or connected to the upper River Murray or the River Murray in South Australia; and
 - (b) the execution of the provisions of this Agreement concerning sharing water between State Contracting Governments; and
 - (c) the provision of other services relating to water, to State Contracting Governments and other persons;
- "financial year"** means the twelve months beginning on 1 July;".
- (3) Omit all the words after "out" in the definition of "Commonwealth auditor". Insert instead "an audit referred to in subparagraph 78(1)(a)(i)".
- (4) After the word "programs" in the definition of "measures" insert "(including any activities for the purpose of conserving or enhancing the environment) but does not include any activities of the Commission's water business".
- (5) Omit all the words after "out" in the definition of "State auditor". Insert instead "an audit referred to in paragraph 78(1)(b)".
- (6) Omit the definition of "supplementary estimates".
3. **CLAUSE 49**
- Omit clause 49. Insert instead:
- "49—
- (1) 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, renewed or implemented (as the case may require):
 - (a) in accordance with the provisions of this Agreement and any Acts approving the same; and
 - (b) by the Contracting Government from time to time nominated by the Ministerial Council for the purpose.

- (2) A Contracting Government described as a "Nominated Government" in Schedule A with respect to a work is deemed to have been nominated by the Ministerial Council under paragraph 49(1)(b) to construct, operate, maintain and renew that work, until the Ministerial Council nominates another Contracting Government for one or more of those purposes, with respect to that work."

4. **CLAUSE 50**

- (1) After "\$2,000,000" in sub-clause (2) insert ", or such other amount determined by the Ministerial Council from time to time".
- (2) After "\$2,000,000" in sub-clause (3) insert ", or such other amount determined by the Ministerial Council from time to time".

5. **CLAUSE 51**

After "\$1,000,000" in sub-clause (2) insert ", or such other amount determined by the Ministerial Council from time to time,".

6. **CLAUSE 52**

After "\$2,000,000" in sub-clause (5) insert ", or such other amount determined by the Ministerial Council from time to time".

7. **CLAUSE 54**

After "\$2,000,000" in sub-clause (1) insert ", or such other amount determined by the Ministerial Council from time to time".

8. **CLAUSE 55**

- (1) Omit the words "construction or maintenance" from paragraph (3)(a). Insert instead:

":

- (i) investigations, construction and administration; or
- (ii) major or cyclic maintenance; or
- (iii) operation and maintenance,".

- (2) After "as" in sub-clause (4) insert "operation and".

9. **CLAUSE 59**

Omit "this or the former Agreement". Insert instead "paragraph 49(1)(b)".

10. **CLAUSE 62**

Omit the words "which constructed a work under this or the former Agreement". Insert instead "nominated to operate a work pursuant to paragraph 49(1)(b)".

11. **CLAUSE 65**

Omit clause 65. Insert instead:

"65. **Definitions**

In this Part:

"**annuity contribution**" has the meaning set out in sub-clause 67(2);

"**financial accommodation**" means a financial benefit or assistance to obtain a financial benefit arising from or as a result of:

- (a) a loan;
- (b) issuing, endorsing or otherwise dealing in promissory notes;
- (c) drawing, accepting, endorsing or otherwise dealing in bills of exchange;
- (d) issuing, purchasing or otherwise dealing in securities;
- (e) granting or taking a lease of any real or personal property for financing but not for operating purposes;
- (f) any other arrangement approved by the Ministerial Council;

"**investigations, construction and administration costs**" means the costs of:

- (a) investigating and constructing works set out in Schedule A; and
- (b) investigating and constructing any other works and implementing measures authorised under this Agreement; and
- (c) studies, programs, surveys and investigations carried out pursuant to clause 39; and
- (d) establishing systems referred to in clause 41; and
- (e) systems established pursuant to a request made under paragraph 43(b); and
- (f) special action taken under sub-clause 48(5) which the Ministerial Council has determined to be investigations, construction and administration costs; and
- (g) any payment by the Commission in respect of the construction of works under sub-clause 51(1); and

- (h) complying with the direction given under sub-clause 54(2); and
- (i) dismantling works referred to in sub-clause 64(2); and
- (j) any payment 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);

"**major or cyclic maintenance**" has a meaning determined by reference to the guidelines established by the Commission under sub-clause 67(4);

"**operation and maintenance costs**" means the costs of:

- (a) operating and maintaining works set out in Schedule A; and
- (b) operating and maintaining any other works authorised under this Agreement; and
- (c) operating and maintaining systems referred to in clause 41; and
- (d) operating and maintaining systems established pursuant to a request made under paragraph 43(b); and
- (e) special action taken under sub-clause 48(5) which the Ministerial Council has determined to be operation and maintenance costs; and
- (f) any payment made by the Commission in respect of the operation or maintenance of works under sub-clause 51(1); and
- (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);

"**security**" includes inscribed stock and debenture, bond, debenture stock, note or any other document creating, evidencing or acknowledging indebtedness in respect of financial accommodation, whether constituting a charge on property of the Commission or not."

12. **CLAUSE 66**

Omit clause 66. Insert instead:

"66. **Apportionment of Costs**

- (1) The Ministerial Council, after considering any recommendation of the Commission, must determine:
 - (a) what contribution, if any, is to be made by any State or Territory becoming a party pursuant to clause 134; and
 - (b) whether some or all of that contribution is to be made as a lump sum or in a comparable manner to a manner provided for in sub-clause 66(3), (4) or 67(2).
- (2) Subject to sub-clause 66(1), the Ministerial Council:
 - (a) may, on the recommendation of the Commission, from time to time determine which proportion of the services provided by the Commission's water business is attributable to each State Contracting Government; and
 - (b) must, at intervals not exceeding five years, reconsider the proportions determined under paragraph 66(2)(a); and
 - (c) may, on the recommendation of the Commission, alter the proportions determined under paragraph 66(2)(a).
- (3) Unless the Ministerial Council decides otherwise and subject to any decision of the Ministerial Council under sub-clause 66(1), a State Contracting Government must contribute to operation and maintenance costs in the relevant proportion determined under sub-clause 66(2).
- (4) Unless the Ministerial Council decides otherwise and subject to any decision by the Ministerial Council under sub-clause 66(1) and the provisions of clause 67:
 - (a) the Commonwealth Government must contribute one-quarter of all investigations, construction and administration costs after first deducting any contribution to those costs made by any State or Territory:
 - (i) becoming a party pursuant to clause 134; or

- (ii) pursuant to any understanding reached between that State or Territory and the Contracting Governments; and
- (b) the State Contracting Governments must together contribute three-quarters of all investigations, construction and administration costs:
 - (i) relating to the Commission's water business, in the relevant proportions determined under sub-clause 66(2); and
 - (ii) relating to measures implemented under this Agreement, in equal shares.
- (5) The Ministerial Council, after considering any recommendation by the Commission, must determine whether the costs of any special action taken under sub-clause 48(5) are investigations, construction and administration costs or operation and maintenance costs."

13. **CLAUSE 67**

Omit clause 67. Insert instead:

"67. **Borrowings and Annuity Contributions**

- (1) The Commission may, with the prior approval of the Ministerial Council, obtain financial accommodation with respect to any:
 - (a) investigations, construction and administration costs; and
 - (b) major or cyclic maintenance costs, incurred, or which the Commission proposes to incur, for the purposes of the Commission's water business.
- (2) The Ministerial Council, on the recommendation of the Commission, may from time to time determine that a Contracting Government must make an annual annuity contribution in respect of either or both of:
 - (a) investigations, construction and administration costs; and
 - (b) major or cyclic maintenance costs,

which the Contracting Government might otherwise be required to contribute under sub-clause 66(1), (3), paragraph 66(4)(a) or sub-paragraph 66(4)(b)(i), in any future year.

- (3) In fixing any annuity contribution under sub-clause 67(2), the Ministerial Council must have regard to the Commission's estimate of costs which will be incurred during the next ensuing 30 years (or such other period as the Commission determines) in relation to either or both of:

- (a) the construction or renewal; and
- (b) major or cyclic maintenance,

of works constructed, operated, maintained or renewed for the purposes of the Commission's water business (as the case requires) including any interest or other sums receivable or payable in respect of any income received, or any financial accommodation obtained, by the Commission from time to time in relation to those works.

- (4) For the purposes of this Part, the Commission must establish guidelines for determining what is, and what is not, major or cyclic maintenance."

14. **CLAUSE 68**

Omit clause 68. Insert instead:

"68. **Annual and forward estimates**

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

and may be revised from time to time with the approval of the Ministerial Council."

15. **CLAUSE 69**

Omit clause 69. Insert instead:

"69. Each Contracting Government must pay any amount payable by it under clause 66 or 67 as and when required by the Commission."

16. **CLAUSE 72**

(1) Omit sub-clause (1). Insert instead:

"(1) Subject to sub-clause 72(3), the Commission must apply money paid by the Contracting Governments in accordance with the relevant estimates referred to in paragraph 68(1)(a)."

(2) In sub-clause (2):

- (a) omit "annual or supplementary" from paragraph (a). Insert after "estimates", "prepared or revised under paragraph 68(1)(a)";
- (b) omit "the annual or supplementary" from paragraph (b). Insert instead "those";
- (c) after "financial year;" in paragraph (b) insert "and".

(3) Omit sub-clause (3). Instead insert:

"(3) The Commission may accumulate:

- (a) any sums received under sub-clause 66(3) or (4) for the purposes of the Commission's water business, but not expended in any year; and
- (b) any annuity contributions received under clause 67,

for use in subsequent years."

(4) Omit sub-clause (4). Instead insert:

"(4) Any sum referred to in paragraph 72(3) and any interest thereon must:

- (a) in the case of sums received under sub-clause 66(3), only be expended on operation and maintenance costs; and
- (b) in the case of sums received under sub-clause 66(4), only be expended on investigations, construction and administration costs; and
- (c) in the case of annuity contributions received under clause 67:

- (i) from a State Contracting Government, only be expended on either:
 - (A) investigations, construction and administration costs; or
 - (B) major or cyclic maintenance costs,of the Commission's water business, as the case requires; or
- (ii) from the Commonwealth, only be expended on investigations, construction and administration costs of the Commission's water business."

17. **CLAUSE 73**

In sub-clause (1):

- (a) omit "annual and supplementary"; and
- (b) insert after "estimates", "referred to in paragraph 68(1)(a)",

18. **CLAUSE 75**

(1) Omit sub-clause (1). Insert instead:

"(1) The unexpended balance of moneys paid to the Commission by Contracting Governments for implementing measures in any financial year:

- (a) shall, with the approval of the Ministerial Council, be available for expenditure in a subsequent financial year upon any item in the annual estimates approved by the Ministerial Council for the relevant year; or
- (b) may be used to reduce the amounts which would otherwise be payable by each Contracting Government under clause 69 in that subsequent financial year."

(2) In sub-clause (2):

- (a) omit "any". Insert instead "the".
- (b) after "balances" insert "of moneys referred to in sub-clause 75(1)".

(3) Omit sub-clause (3). Insert instead:

"(3) Any unexpended balance referred to in sub-clause 75(1) must only be expended on implementing measures under this Agreement."

19. **CLAUSE 77**

Omit sub-clause (2). Insert instead:

"(2) The Commission must determine how proceeds from the disposal of surplus assets are:

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

(b) to be distributed among,

the Contracting Governments, having regard to the contributions made by each Contracting Government to the acquisition of those assets."

20. **CLAUSE 78**

(1) Omit paragraphs (a) and (b) from sub-clause (1). Insert instead:

"(a) must be audited annually by:

(i) an auditor appointed by the Ministerial Council; or

(ii) if no appointment is made under subparagraph 78(1)(a)(i), the Commonwealth auditor; and

(b) may be audited at any reasonable time by an auditor appointed by a Contracting Government."

(2) Omit sub-clauses (2) and (3). Insert instead:

"(2) An auditor referred to in paragraph 78(1)(a) must promptly inform each Contracting Government of any significant irregularity revealed by an audit."

(3) Omit sub-clause (4). Insert instead:

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

(4) Renumber sub-clauses (5) and (6) as (4) and (5), respectively.

(5) —

(a) Renumber sub-clause (7) as sub-clause (6).

(b) Omit "sub-clause 78(1)" from sub-clause (6). Insert instead "paragraph 78(1)(a)".

21. **CLAUSE 80**

Omit clause 80. Insert instead:

"80. The Commission may invest money received by it:

(a) in accordance with any guidelines established by the Ministerial Council; or

- (b) in such manner as may be directed by the Ministerial Council,

but not otherwise."

22. **CLAUSE 81**

Omit sub-clause (3). Insert instead:

"(3) Money paid to the Commission under this clause must either:

- (a) be expended on investigations, construction and administration costs; or
(b) applied in accordance with sub-clause 75(1)."

23. **CLAUSE 82**

Omit sub-clause (4). Insert instead:

"(4) Money paid to the Commission under this clause must either:

- (a) be expended on investigations, construction and administration costs; or
(b) applied in accordance with sub-clause 75(1)."

24. **SCHEDULE C, CLAUSE 22**

Omit "7(3)" from sub-clause (2). Insert instead "16(3)".

25. **SCHEDULE C, APPENDIX 2**

After Appendix 1 to Schedule C insert:

"APPENDIX 2

AUTHORISED JOINT WORKS AND MEASURES

| Description of works | Location | Nominated Government | Status |
|--|--|----------------------|-----------------------------------|
| Barr Creek Drainage Diversion Scheme Saline water diversion from Barr Creek with disposal to the Tutchewop Lakes | Northern Victoria approximately 20 km north of the township of Kerang | Victoria | Former Salinity and Drainage Work |
| Buronga Salt Interception Scheme (part) Groundwater pumping with disposal to Mourquong basin | Southwest New South Wales on the River Murray between Mildura Weir and Mourquong | New South Wales | Former Salinity and Drainage Work |

| Description of works | Location | Nominated Government | Status |
|--|--|----------------------|---|
| Mallee Cliffs Salt Interception Scheme Groundwater pumping with disposal to evaporation basin adjacent to Mallee Cliffs National Park | Southwest New South Wales on the River Murray approximately 30 km east of Mildura opposite Lambert Island in Victoria | New South Wales | Former Salinity and Drainage Work |
| Mildura-Merbein Salt Interception Scheme (part) Groundwater pumping with disposal to Wargan evaporation basins | Northwest Victoria on the southern side of the River Murray between Mildura and Merbein | Victoria | Former Salinity and Drainage Work |
| Rufus River Groundwater Interception Scheme Groundwater pumping with disposal to evaporation basins on the western side of lake Victoria | On both sides of Rufus River between the outlet from Lake Victoria and the River Murray | South Australia | Former Salinity and Drainage Work |
| Waikerie Salt Interception Scheme Groundwater pumping with disposal to Stockyard Plain evaporation basin | Southern side of the River Murray from Holder Bend (River distance 392 km) to the Toolunka Reach (River distance 371 km) | South Australia | Former Salinity and Drainage Work |
| Woolpunda Salt Interception Scheme Groundwater pumping with disposal to Stockyard Plain evaporation basin | Both sides of the River Murray from Overland Corner to Holder Bend in South Australia | South Australia | Former Salinity and Drainage Work |
| Pyramid Creek Salt Interception Scheme Groundwater pumping with disposal to a salt harvesting pond complex | Along Pyramid Creek for 12 km from Flannery's Bridge to the Box Creek Regulator | Victoria | Basin Salinity Management Strategy Work |

26. **SCHEDULE D, CLAUSE 3**

To avoid doubt and to allow the Parties to comply with sub-clause 134(6) of the Principal Agreement:

(1) After sub-clause 3(1) insert:

"(1A) Sub-clauses 38(1) and 38(3) of the Agreement only apply to the State of Queensland in respect of an act, omission or loss incurred, in relation to the bona fide execution of powers—

- (a) in or related to the State of Queensland; or
- (b) under a provision of the Agreement as it applies to the State of Queensland."

(2) After sub-clause 3(4) insert:

"(5) Nothing in the Agreement requires the State of Queensland—

- (a) to contribute to the costs of, or associated with, remedying any actual or anticipated damage referred to in paragraph 51(1)(c) of the Agreement; or
- (b) to meet any compensation for damage paid under clause 83 of the Agreement,

except where the State of Queensland has contributed to the construction, maintenance or operation expenses of the works to which the costs or compensation relate."

EXECUTED as an agreement

SIGNED by The Honourable John
Winston Howard MP **Prime
Minister for the Commonwealth of
Australia** in the presence of—

Ron Perry

}

John Howard

SIGNED by The Honourable Morris
Iemma MP **Premier of New South
Wales** in the presence of—

Ron Perry

}

Morris Iemma

SIGNED by The Honourable Steve
Bracks MP **Premier of Victoria** in
the presence of—

Ron Perry

}

Steve Bracks

SIGNED by The Honourable Peter
Beattie MP **Premier of Queensland**
in the presence of—

Ron Perry

}

Peter Beattie

SIGNED by The Honourable Mike
Rann MP **Premier of South
Australia** in the presence of—
Ron Perry

}

Mike Rann

SIGNED by Jon Stanhope MLA
**Chief Minister of the Australian
Capital Territory** in the presence
of—
Ron Perry

}

Jon Stanhope