

## RIVER MURRAY WATERS ACT AMENDMENT ACT (No. 2), 1971

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River Murray Waters Act Amendment Act (No. 2), 1971, No. 50 of 1971 [Assented to 26th August, 1971]<sup>1</sup>.

**An Act to Ratify and Approve an Agreement for the further Variation of the Agreement entered into between the Prime Minister of the Commonwealth and the Premiers of the States of New South Wales, Victoria and South Australia respecting the River Murray and Lake Victoria and other Waters, to repeal the River Murray Waters Act Amendment Act, 1971, and for other purposes.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "River Murray Waters Act Amendment Act (No. 2), 1971". Short titles.

(2) The River Murray Waters Act, 1935-1963, as amended by this Act, may be cited as the "River Murray Waters Act, 1935-1971".

(3) The River Murray Waters Act, 1935-1963, is hereinafter referred to as "the principal Act".

2. This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup> which may be made when the Governor is satisfied— Commence-  
ment.

(a) that the Parliament of the Commonwealth and the Parliament of each of the States of New South Wales and Victoria have passed an Act ratifying the agreement, a copy of which is set out in the Schedule to this Act;

and

(b) that the Government of the Commonwealth and the Governments of the States of New South Wales and Victoria have agreed with the Government of this State to request The River Murray Commission to make a study of the River Murray system, including the proposed Chowilla Reservoir, with a view to ascertaining where the next River Murray Commission storage is to be situated to meet the needs of persons using the waters of the river.

3. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.

4. This Act binds the Crown.

Act to bind the  
Crown.

<sup>1</sup> Came into operation 30th March, 1972: *Gaz.* 16th March, 1972, p.889.

Ratification of  
agreement.

5. The agreement, a copy of which is set out in the Schedule to this Act, is hereby ratified and approved and shall take effect upon the coming into operation of this Act.

Meaning of  
"the  
agreement".

6. A reference to the agreement in the principal Act, as amended, shall be construed as a reference to the agreement as set out in the first schedule to the River Murray Waters Act, 1935, and as amended by all subsequent agreements amending the same which have been ratified by the Parliaments of the Commonwealth and of the States of New South Wales, Victoria and South Australia.

Repeal of River  
Murray Waters  
Act Amendment  
Act, 1971.

7. The River Murray Waters Act Amendment Act, 1971, is repealed.

## THE SCHEDULE

AN AGREEMENT made the twenty-sixth day of February, One thousand nine hundred and seventy between THE RIGHT HONOURABLE JOHN GREY GORTON, Prime Minister of the Commonwealth of Australia for and on behalf of the Commonwealth of Australia of the first part, THE HONOURABLE ROBIN WILLIAM ASKIN, Premier of the State of New South Wales for and on behalf of that State, of the second part, THE HONOURABLE SIR HENRY EDWARD BOLTE, Premier of the State of Victoria for and on behalf of that State, of the third part and THE HONOURABLE RAYMOND STEELE HALL, Premier of the State of South Australia for and on behalf of that State, of the fourth part:

WHEREAS on the ninth day of September One thousand nine hundred and fourteen an agreement was entered into by the Prime Minister of the Commonwealth of Australia and the Premiers of the States of New South Wales, Victoria and South Australia with regard to the economical use of the waters of the River Murray and its tributaries for irrigation and navigation and to the reconciling of the interest of the Commonwealth of Australia and the said States, which agreement was ratified by the Parliament of the Commonwealth of Australia and the Parliaments of the said States and is in this Agreement referred to as "the Principal Agreement":

AND WHEREAS by further agreements dated the tenth day of August One thousand nine hundred and twenty-three, the twenty-third day of July One thousand nine hundred and thirty-four, the twenty-sixth day of November One thousand nine hundred and forty-eight, the second day of November One thousand nine hundred and fifty-four, the eleventh day of September One thousand nine hundred and fifty-eight and the eighth day of October One thousand nine hundred and sixty-three (in this Agreement respectively referred to as "the first Amending Agreement", "the second Amending Agreement", "the third Amending Agreement", "the fourth Amending Agreement", "the fifth Amending Agreement" and "the sixth Amending Agreement") all made between the Prime Minister of the Commonwealth of Australia and the Premiers of the States of New South Wales, Victoria and South Australia certain provisions of the Principal Agreement were modified:

AND WHEREAS the first Amending Agreement, the second Amending Agreement, the third Amending Agreement, the fourth Amending Agreement, the fifth Amending Agreement and the sixth Amending Agreement were all subsequently ratified by the Parliament of the Commonwealth of Australia and by the Parliaments of the said States:

NOW IT IS HEREBY FURTHER AGREED as follows:—

### I. RATIFICATION AND ENFORCEMENT

1. This Agreement, other than clause 2, is subject to ratification by the Parliaments of the Commonwealth of Australia and of the States of New South Wales, Victoria and South Australia, and shall come into effect when so ratified.

2. The Contracting Governments hereby agree to submit this Agreement for ratification to the respective Parliaments of the Commonwealth of Australia and of the said States during the present or next following sitting of any such Parliament or if any such Parliament is not sitting at the date of this Agreement then at the first or next following sitting of such Parliament held after the date of this Agreement.

3. 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 ratifying it.

4. On and after the date on which this Agreement comes into effect, the Principal Agreement, as amended by the first Amending Agreement, the second Amending Agreement, the third Amending Agreement, the fourth Amending Agreement, the fifth Amending Agreement and the sixth Amending Agreement, shall be read and construed as if the amendments made by this Agreement were incorporated in the Principal Agreement as so amended.

## II. AMENDMENT OF PRINCIPAL AGREEMENT AS AMENDED BY FIRST, SECOND, THIRD, FOURTH, FIFTH AND SIXTH AMENDING AGREEMENTS

4A. In this part of this Agreement, "the Agreement" means the Principal Agreement as amended by the first, second, third, fourth, fifth and sixth Amending Agreements.

5. After Clause 11 of the Agreement the following clause and marginal note are inserted:—

"11A. (1) The Contracting Governments shall indemnify the officers and servants of the Commission in respect of any claims against them or any of them not occasioned by their negligence or wilful misconduct, arising out of the *bona fide* execution of their duties as officers and servants of the Commission.

Indemnity of officers and servants.

(2) Any payments made pursuant to this clause shall be borne by the Contracting Governments in equal shares."

6. Clause 15 of the Agreement is omitted.

7. Clause 16 of the Agreement is omitted.

8. Clause 19 of the Agreement is amended by inserting after paragraph (iii) the following paragraph:—

"(iv) shall when appropriate determine the time and manner of disposal of surplus assets acquired with funds made available by the Commission."

9. After Clause 19 of the Agreement the following clause and marginal note are inserted:—

"19A. (1) The Commission may either generally or in relation to a matter or class of matters by resolution of the Commission delegate to the Commissioner or the Deputy Commissioner appointed by the Governor-General or an officer any of its powers under this Agreement (except this power of delegation).

Delegation.

(2) A delegation under this Agreement is revocable at will and no delegation prevents the exercise of any power by the Commission."

10. Clause 20 of the Agreement is amended—

(a) by deleting in paragraph (ii) all words after the words "Lake Victoria" and inserting in their stead the words "with inlet and outlet works that are of a size that will, in the opinion of the Contracting Governments, ensure the effectiveness of the system of storage in the regulation of the River Murray (including operations after the Dartmouth Reservoir has become effective for the purpose of this Agreement)";

(b) by inserting after paragraph (iia) the following paragraph:—

"(iib) the provision of a storage (in this Agreement referred to as 'the Dartmouth Reservoir') on the Mitta Mitta River upstream of Dartmouth with an active capacity of approximately three million acre feet of water, at an estimated cost of Fifty-seven million dollars;" and

(c) by inserting in paragraph (vi) after the words "those two points" the words "and on the River Murray between the Hume Reservoir and the upstream limit of the water impounded by Yarrawonga Weir".

11. Clause 21 of the Agreement is amended—

(a) by adding at the end of the clause the words "The works for the Dartmouth Reservoir shall be constructed by the Government of Victoria"; and

(b) by substituting for the marginal note the following marginal note "Construction of Works".

12. Clause 23 of the Agreement is amended—

(a) by deleting the words "designs and estimates of such work", and inserting in their stead the words "the necessary designs specifications and estimates of such work";

(b) by adding the words "and specifications" after the word "designs" at the end of the second paragraph;

(c) by adding the word "specifications" after the word "designs" wherever else occurring; and

(d) by adding after the second paragraph the following paragraph—

"The Commission shall furnish information to the Contracting Governments in relation to the design and construction of any work estimated to cost more than Five hundred thousand dollars and work shall not proceed unless the Contracting Governments are satisfied that the design and construction of such work are in accordance with the purposes for which the work was proposed. For the purposes of this paragraph 'design' means general design which illustrates the nature and

extent of the work and 'construction' implies construction in accordance with the said design."

13. Clause 24 of the Agreement is amended—

(a) by adding at the end of the clause the words "However, completion of the construction of the Chowilla Reservoir shall be deferred until the Contracting Governments agree that the work shall proceed. Furthermore, in the case of any work for which the estimated cost at the time of approval exceeds Five hundred thousand dollars, if a revised estimated cost rises more than ten per centum above the estimated cost at the time the work was approved, the Commission shall forthwith notify the Contracting Governments accordingly and shall direct the Constructing Authority to suspend further work unless the Contracting Governments have within six months of the Commission's notification agreed to proceed."; and

(b) by deleting from the marginal note the word "continuous".

14. Clause 25 of the Agreement is amended by substituting for sub-clause (1) the following sub-clause:—

"(1) The Commission may from time to time declare that any of the works referred to in clause 20 of this Agreement have become ineffective for the purposes of this Agreement, whereupon the Commission may request a State Contracting Government to dismantle so much of those works as the Commission thinks fit."

15. Clause 27 of the Agreement is amended by inserting after the words "by such Government" the words "in accordance with procedures laid down by the Commission".

16. Clause 28 of the Agreement is amended—

(a) by omitting the words "the Commission shall have full power to give directions to secure the uniformity stability and durability of works and to order and direct—" and inserting in their stead the words "The Commission shall have full power to give directions to ensure the efficient construction and required performance of the works and to order and direct—"; and

(b) by adding at the end of the clause the words "Furthermore, in the case of works estimated to cost more than Five hundred thousand dollars the Constructing Authority shall obtain the approval of the Commission for the acceptance of any tender exceeding Five hundred thousand dollars, and the approval of the Commission shall not be given without the approval of the Contracting Governments."

17. Sub-clause (1) of Clause 28 (B) is amended by omitting the words "by the Constructing Authorities".

18. Clause 30 of the Agreement is amended by omitting the marginal note and inserting in its stead the marginal note "Works for benefit of State Contracting Governments".

19. Clause 32 of the Agreement is amended by omitting the words "is estimated at Seventy-two million dollars and".

20. Clause 34 of the Agreement is amended by omitting the words "the same to" wherever occurring and inserting in their stead the words "so much of the same as is required by".

21. Clause 44 of the Agreement is amended by omitting—

(a) the words "the Chowilla Dam" and inserting in their stead the words "any particular work or works provided for under Clause 20 of this Agreement";

(b) the words "that the Chowilla Reservoir has become" and inserting after the word "declare" the words "that work or those works to be"; and

(c) from the marginal note the words "Chowilla Reservoir" and inserting in their stead the words "Works".

22. After Clause 45 of the Agreement the following clause is inserted—

"45A. Unless otherwise directed by the Commission—

(a) the flow passing Torrumbarry Weir shall as far as possible be regulated so as to prevent salinity in the river water at Swan Hill exceeding three hundred parts per million total dissolved solids, but such flow shall not be required to exceed One thousand six hundred cusecs except when needed to meet downstream water requirements; and

(b) the flow passing Euston Weir shall as far as possible be regulated so as to prevent salinity in the river water at Merbein exceeding three hundred parts per million total dissolved solids, but such flow shall not be required to exceed One thousand cusecs plus the combined diversion requirements of the pumping districts of Red Cliffs, First Mildura Irrigation Trust, Merbein, Coomealla and Curlwaa except when needed to meet downstream water requirements."

23. Clause 46 of the Agreement is amended by inserting—

(a) at the beginning the words “(1) Except as provided for in Clause 60b hereof and subject to sub-clause (2) of this clause”; and

(b) at the end of the sub-clause the following sub-clause:—

“(2) After the Dartmouth Reservoir is declared to have become effective and except in a year during which there is a period of restriction declared under Clause 51 of this Agreement the State of Victoria agrees to cede to the State of New South Wales the right to use Forty-five thousand acre feet annually of water contributed to the River Murray below Albury by Victorian tributaries.”

24. Clause 49 of the Agreement is deleted and the following clause inserted in its stead:—

“49. (1) The total quantity of water to which the State of South Australia is entitled shall be measured at a point in the River Murray immediately below the confluence of the Rufus River, or, at a time to be decided by the Commission after the commencement of the construction of the Chowilla Dam, at a point immediately downstream of that dam.

(2) Except as provided in Clause 51 of this Agreement the minimum monthly quantities of water to be allowed to pass for supply to the State of South Australia shall be as scheduled in sub-clauses (3) and (4) of this clause, provided that the Commission may, from time to time, at the request of the Commissioner representing the State of South Australia, vary any of the monthly quantities set out in sub-clauses (3) and (4) over a specific period subject to the sum of the quantities passed to the State of South Australia at the request of that State for any year not exceeding the sum of the monthly quantities shown in the appropriate part of sub-clauses (3) and (4). Monthly quantities in excess of the monthly quantities stated in sub-clauses (3) and (4), or in excess of those last mentioned monthly quantities as varied by the Commission at the request of the Commissioner representing the State of South Australia, shall not be included for the purpose of computing the annual delivery to the State of South Australia.

(3) Until such time as the Dartmouth Reservoir is declared to have become effective for the purposes of this Agreement, and except during a period of restriction declared under Clause 51 of this Agreement, the minimum monthly quantities to be allowed to pass for supply to the State of South Australia shall be—

July .....	47,000 acre feet
August .....	94,000 acre feet
September .....	114,000 acre feet
October .....	114,000 acre feet
November .....	134,000 acre feet
December .....	134,000 acre feet
January .....	134,000 acre feet
February .....	134,000 acre feet
March .....	114,000 acre feet
April .....	94,000 acre feet
May .....	94,000 acre feet
June .....	47,000 acre feet

being an annual sum of minimum monthly quantities of 1,254,000 acre feet.

(4) After the Dartmouth Reservoir is declared to have become effective for the purposes of this Agreement and except during a period of restriction declared under Clause 51 of this Agreement the minimum monthly quantities to be allowed to pass for supply to the State of South Australia shall be—

July .....	85,000 acre feet
August .....	98,000 acre feet
September .....	107,000 acre feet
October .....	135,000 acre feet
November .....	149,000 acre feet
December .....	178,000 acre feet
January .....	178,000 acre feet
February .....	150,000 acre feet
March .....	147,000 acre feet
April .....	113,000 acre feet
May .....	80,000 acre feet
June .....	80,000 acre feet

being an annual sum of minimum monthly quantities of 1,500,000 acre feet.”

25. Clause 50 of the Agreement is amended as follows:—

(a) by deleting from sub-clause (1) the words “After the completion of the works specified in Clause 20 of this Agreement other than those specified in paragraph (iia) and those specified in paragraph (vi) of that clause, the discharge from the Hume Reservoir and the inflow to and discharge from the Lake Victoria Storage” and inserting in their stead the words “Until such time as the Dartmouth Reservoir has been declared to be effective for the purposes of this Agreement the storages under the control of the Commission”; and

(b) by deleting sub-clause (2) and substituting the following sub-clause:—

“(2) After the Dartmouth Reservoir has been declared to have become effective for the purposes of this Agreement the storages under the control of the Commission shall be regulated to provide a reserve of water in storage for use in dry years, that reserve to be fixed from time to time by the Commission and drawn on at the discretion of the Commission, but the quantity of water so held in reserve in the Hume and Dartmouth Reservoirs and Lake Victoria Storage shall not be less than two million acre feet at the thirtieth day of April in any year of which not less than two hundred thousand acre feet shall be in the Lake Victoria Storage unless it is otherwise decided by the Commission.”

26. Clause 51 of the Agreement is amended as follows:—

(a) by deleting from paragraph (a) of sub-clause (2) the word “Chowilla” and inserting in its stead the word “Dartmouth”.

(b) by deleting from paragraph (b) of sub-clause (2) the word “Chowilla” and inserting in its stead the word “Dartmouth” and by deleting the words “the Hume Reservoir and in the Chowilla Reservoir” and inserting in their stead the word “storage”.

(c) by deleting from paragraph (a) of sub-clause (3) the words “in the Hume Reservoir and the Lake Victoria storage or the Chowilla Reservoir as the case may be” and inserting in their stead the words “as provided in Clause 50 of this Agreement”.

(d) by deleting from paragraph (a) of sub-clause (5) the word “Reservoir” and inserting in its stead the words “and Dartmouth Reservoirs”.

(e) paragraph (b) of sub-clause (5) is amended as follows:—

(i) by deleting the letter “(b)” and inserting in its stead the letters “(ba)”;

and

(ii) by inserting a sub-paragraph “(bb) The water available to the Commission in the Menindee Lakes Storage;”

(f) by omitting paragraph (d) of sub-clause (5) and inserting the following paragraph in its stead:—

“(d) the flow during the period of restriction of the River Murray above the Hume Reservoir and its tributaries above Albury excluding water diverted from the Tooma River to the Adaminaby Storage and the Tumut River but including any waters coming into the River Murray and its tributaries above Albury by reason of the permanent works of the Authority.”

(g) sub-clause (6) is amended by deleting the word “Chowilla” wherever occurring and inserting in its stead the word “Dartmouth”.

(h) sub-clause (7) is amended—

(i) by inserting the letter “(a)” after the figure “(7)”;

(ii) by adding a paragraph—

“(b) Notwithstanding the provisions of paragraph (a) of this sub-clause the State of Victoria will, during a declared period of restriction after the Dartmouth Reservoir has been declared to have become effective for the purposes of this Agreement, cede to the State of New South Wales the right to use a volume of four thousand acre feet of water per month with a maximum of thirty thousand acre feet of water in any period from the first day of September to the following thirtieth day of April (in this sub-clause called “the irrigation season”) in which there has been continuous restriction. When there has been a period of restriction for part of the irrigation season the quantity of water made available to the State of New South Wales shall be—

(i) during the months of unrestricted supply or part thereof five thousand five hundred acre feet of water per month;

and

(ii) during the months of restricted supply, four thousand acre feet of water per month.”

(i) sub-clause (9) is amended by deleting paragraph (a) and the paragraph reference letter “(b)” and by inserting at the end of the sub-clause the words “which quantity unless otherwise determined by the Commission shall be forty seven thousand acre feet of water per month.”

(j) sub-clause (11) is amended—

(i) by deleting the words “volumes of” and inserting in their stead the word “available”;

(ii) by omitting the words “in the Hume Reservoir and the Lake Victoria storage or the Chowilla Reservoir as the case may be”; and

(iii) by deleting the words “paragraphs (a) and (b)” and inserting in their stead the words “paragraph (a)”.

27. Clause 57 of the Agreement is amended by omitting the words "at Lake Victoria outlet".

28. Clause 61 of the Agreement is amended by inserting after the definition of "Maintenance" the following definition:—

" 'Menindee Lakes Storage Agreement' means clauses four to fourteen inclusive of the Agreement made between the Commonwealth, New South Wales, Victoria and South Australia on the eighth day of October One thousand nine hundred and sixty-three set out in the Schedule to the Menindee Lakes Storage Agreement Act 1963 of the Commonwealth."

### III. OPERATION OF THIS AGREEMENT

29. The Principal Agreement is amended by inserting next after Part IXA the following new Part:—

#### "IXB. EFFECT OF MENINDEE LAKES STORAGE AGREEMENT"

60B. (1) The Contracting Governments agree that this Agreement shall be read and construed as if the Menindee Lakes Storage Agreement as amended in sub-clause (2) of this clause were incorporated in this Agreement.

(2) The hereinafter mentioned clauses of the Menindee Lakes Storage Agreement are amended as follows:—

(a) Clause 4 is amended by omitting the words "and without prejudice to the later operation of Clauses 9 and 12, shall remain in force for a period of seven years from that date";

(b) Clauses 7 and 8 are amended by substituting for the number "90,000" the number "100,000" wherever occurring;

(c) Clause 9 is amended by omitting the words "during which this Agreement remains in force"; and

(d) Clause 13 is omitted."

IN WITNESS WHEREOF the said parties to these presents have set their hands and seals the day and year first above written.

SIGNED SEALED AND DELIVERED by the above-named JOHN GREY GORTON in the presence of C. L. HEWITT } (I.S.) J. G. GORTON

SIGNED SEALED AND DELIVERED by the above-named ROBIN WILLIAM Askin in the presence of G. M. GRAY } (I.S.) R. W. ASKIN

SIGNED SEALED AND DELIVERED by the above-named SIR HENRY EDWARD BOLTE in the presence of I. G. BAKER } (I.S.) HENRY BOLTE

SIGNED SEALED AND DELIVERED by the above-named RAYMOND STEELE HALL in the presence of J. S. WHITE } (I.S.) STEELE HALL

