

**Agreement on
Murray-Darling Basin Reform - Referral**

2008

Recitals		2
Part I	Preliminary	2
1.1.	Definitions	2
Part 2	Effect and operation of agreement	3
2.1.	Commencement	3
2.2.	Amendment of Agreement	3
Part 3	Legislative mechanism for achieving Murray-Darling Basin reform	4
3.1.	Purpose of this Part	4
3.2.	Nature of the legislative scheme	4
3.3.	Timing of the legislative scheme	6
3.4.	Enactment of amendments to the Water Act	6
3.5.	Commonwealth legislation affecting referred provisions or referred regulations	7
3.6.	Basin State legislation	8
3.7.	Displacement provisions	8
3.8.	Other amending legislation	9
3.9.	Arrangements relating to Living Murray Initiative assets	9
Part 4	Withdrawal of a party	10
Part 5	Review	10

This Agreement is entered into on

2008 by:

The Commonwealth of Australia;
The State of New South Wales;
The State of Victoria;
The State of Queensland;
The State of South Australia; and
The Australian Capital Territory.

RECITALS

1. On 3 July 2008, the Commonwealth and the Basin States – New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory – signed the Agreement on Murray-Darling Basin Reform.
2. The Agreement on Murray-Darling Basin Reform sets out mechanisms for the cooperative, efficient and effective planning and management of the Basin's water and other natural resources.
3. This Agreement gives effect to clause 2.4 of the Agreement on Murray-Darling Basin Reform (Mechanism for achieving Murray-Darling Basin reform). It sets out the amendments to the Water Act that the Parties agree are required to give effect to the Agreement on Murray-Darling Basin Reform and specifies which of these amendments are to be included in the referring Basin States' referral of powers to the Commonwealth. It also sets out the agreed referral process and the mechanics that will be applied for making future amendments to the referred text.

THE PARTIES AGREE:

PART I PRELIMINARY

1.1. Definitions

1.1.1. Unless expressly stated, the terms in this intergovernmental Agreement have the same meaning as in the Water Act.

1.1.2. In this Agreement, unless otherwise indicated:

Commonwealth means the Commonwealth of Australia;

Commonwealth Minister means the Minister that administers the Water Act;

Murray-Darling Basin Acts means the *Murray-Darling Basin Act 1992* (NSW), the *Murray-Darling Basin Act 1993* (Vic), the *Murray-Darling Basin Act 1993* (SA), the *Murray-Darling Basin Act 1996* (Qld), and the *Murray-Darling Basin Agreement Act 2007* (ACT);

non-referred provisions means provisions of the Water Act that are not referred provisions;

Party means a party to this Agreement;

referred provisions means provisions of the Water Act dealing with those aspects of the amendments to the Water Act listed in clause 3.2.3;

referred regulations mean regulations made under the referred provisions but do not include the Basin Plan, water resource plans, water charge rules or water market rules;

referring Basin State means New South Wales, Victoria, South Australia or Queensland; and

regulations includes rules and other legislative instruments;

revised Murray-Darling Basin Agreement means the Murray-Darling Basin Agreement revised as agreed in the Agreement on Murray-Darling Basin Reform;

Territory means the Australian Capital Territory;

Water Act means the *Water Act 2007* (Cth).

- 1.1.3. In this Agreement, a reference to an Act or subordinate legislation, whether of the Commonwealth or a Basin State, includes a reference to:
- (a) that Act or subordinate legislation as amended and in force for the time being; and
 - (b) an Act or subordinate legislation passed in substitution for the Act or subordinate legislation.

PART 2 EFFECT AND OPERATION OF AGREEMENT

2.1. Commencement

- 2.1.1. This Agreement comes into operation once it has been signed by the Commonwealth and all the Basin States.

2.2. Amendment of Agreement

- 2.2.1. This Agreement may be varied only by the unanimous agreement of the Parties.

PART 3 LEGISLATIVE MECHANISM FOR ACHIEVING MURRAY-DARLING BASIN REFORM

3.1. Purpose of this Part

- 3.1.1. The purpose of this Part is to promote the legislative scheme that the Parties are enacting for the cooperative, efficient and effective planning and management of the Murray-Darling Basin's water and other natural resources.
- 3.1.2. This Part establishes procedures for consultation and agreement between the Parties before the enactment of any legislation that would amend or alter the referred sections of the Water Act.
- 3.1.3. This Part also establishes a process to deal with unintended inconsistencies between the referred provisions of the Water Act and referring Basin State laws.

3.2. Nature of the legislative scheme

- 3.2.1. The legislative scheme agreed to by the Parties involves:
 - (a) the Parties agreeing on a revised Murray-Darling Basin Agreement which distributes the functions currently exercised by the former Murray-Darling Ministerial Council, the Murray-Darling Basin Commission and the Community Advisory Committee between the Authority, the Murray-Darling Basin Ministerial Council, the Basin Officials Committee and the Basin Community Committee, and gives effect to the Agreement on Murray-Darling Basin Reform;
 - (b) the Commonwealth introducing into the Commonwealth Parliament amendments to the Water Act, which give effect to the Agreement on Murray-Darling Basin Reform;
 - (c) the enactment by the referring Basin State Parliaments of legislation referring the power to make certain aspects of these amendments to the Commonwealth Parliament in accordance with paragraph 51(xxxvii) of the Constitution;
 - (d) the enactment by the Commonwealth Parliament of the amendments to the Water Act, partly in reliance on the referring Basin State referrals mentioned in paragraph 3.2.1(c);
 - (e) the repeal by the Commonwealth of the *Murray-Darling Basin Act 1993* (Cth) and the consequential amendment by the referring State Parliaments and the Territory Legislative Assembly of the Murray-Darling Basin Acts;

- (f) where necessary, the making of other amendments to certain Basin State legislation by the referring State Parliaments and the Territory Legislative Assembly; and
- (g) the possible amendment from time to time of the referred aspects of the Water Act, and the revised Murray-Darling Basin Agreement, in accordance with this Agreement.

3.2.2. The amendments to the Water Act will give effect to the Agreement on Murray-Darling Basin Reform by:

- (a) making the revised Murray-Darling Basin Agreement a Schedule to the Water Act;
- (b) expanding the functions and powers of the Authority and the Basin Community Committee to include those set out in the revised Murray-Darling Basin Agreement and providing that these functions must be exercised in accordance with that Agreement;
- (c) changing the structure and function of relevant bodies, including by:
 - (i) amending provisions relating to the establishment and composition of the Authority;
 - (ii) giving new functions in relation to the development of the Basin Plan and the appointment of the Basin Community Committee to the Murray-Darling Basin Ministerial Council; and
 - (iii) amending the special account so it may earn interest (this account will hold all funds of the Authority including in relation to its revised Murray-Darling Basin Agreement functions, which will be expended in accordance with the corporate plan);
- (d) inserting a new Part 2A to the Water Act which requires the Basin Plan to deal with the provision of conveyance water and critical human water needs;
- (e) amending Division 4 of Part 2 of the Water Act to adjust the risk allocation provisions;
- (f) re-enacting Part 4 of the Water Act to extend the reach of the water charge and water market rules within the Basin to cover, respectively, all bodies that charge regulated water charges and all irrigation infrastructure operators;
- (g) inserting a new Part 4A into the Water Act which allows a referring State to opt-in to apply the water charge and/or water market rules in its jurisdiction beyond the Murray-Darling Basin; and
- (h) providing for the staff and assets (other than River Murray Operations assets and Living Murray Initiative assets) and liabilities of the Murray-Darling Basin Commission to be transferred to the Authority in

accordance with the Agreement on Murray-Darling Basin Reform, and other transitional matters.

- 3.2.3. Referring Basin State legislation will refer the power to make the following aspects of these amendments to the Commonwealth Parliament in accordance with paragraph 51(xxxvii) of the Constitution:
- (a) making the revised Murray-Darling Basin Agreement a Schedule to the Water Act;
 - (b) expanding the functions and powers of the Authority and the Basin Community Committee to include those set out in the revised Murray-Darling Basin Agreement and providing that these functions must be exercised in accordance with the Agreement;
 - (c) inserting a new Part 2A to the Water Act which requires the Basin Plan to deal with the provision of conveyance water and critical human water needs;
 - (d) re-enacting Part 4 of the Water Act to extend the reach of the water charge and water market rules within the Basin to cover, respectively, all bodies that charge regulated water charges and all irrigation infrastructure operators;
 - (e) inserting a new Part 4A into the Water Act which allows a referring State to opt-in to apply the water charge and/or water market rules in its jurisdiction beyond the Murray-Darling Basin, and
 - (f) providing for the staff and assets (other than River Murray Operations assets and Living Murray Initiative assets) and liabilities of the Murray-Darling Basin Commission to be transferred to the Authority in accordance with the Agreement on Murray-Darling Basin Reform, and other transitional matters.

3.3. Timing of the legislative scheme

- 3.3.1. The Parties undertake to use their best endeavours to pass the legislation and to co-ordinate the commencement of the legislation forming part of this legislative scheme so that the reforms agreed to in the Agreement on Murray-Darling Basin Reform can commence on 1 November 2008.

3.4. Enactment of amendments to the Water Act

- 3.4.1. The Commonwealth undertakes to use its best endeavours to ensure the Commonwealth Parliament enacts the amendments to the Water Act listed in clause 3.2.2 above and, in respect of the amendments listed in clause 3.2.3 above, does so in accordance with the referrals of power contemplated by this Agreement.

3.4.2. If a State applies the risk assignment framework referred to in s 74A of the Water Amendment Bill 2008 before the Bill is passed by the House of Representatives of the Commonwealth Parliament, the Commonwealth undertakes to use its best endeavours to include a transitional provision in the Bill providing that the Minister is taken to have determined, under subsection 74A(1) that the State is a State to which section 74A of the Bill applies.

3.4.3. In relation to NSW, the Commonwealth accepts that NSW complies with the current risk assignment framework provided for under the National Water Initiative, and that the question of whether it has applied the risk assignment framework referred to in s 74A of the Bill will only be a question of whether it has adjusted its legislation to take into account clause 10.1.3 of the Agreement on Murray-Darling Basin Reform.

3.5. Commonwealth legislation affecting referred provisions or referred regulations

3.5.1. The approval mechanism for the amendment or repeal of the referred provisions of the Water Act, and for the making, amendment or repeal of referred regulations, is as follows:

- (a) the Commonwealth is not obliged to introduce, make or support any legislation, or proceed with any legislative proposal, with which it does not concur.
- (b) the Commonwealth will not introduce or support a Bill that would repeal or amend any referred provision, or a definition used in a referred provision, or make, repeal or amend any referred regulation (the legislative proposal), unless all referring Basin States affected by the legislative proposal first approve the legislative proposal.
- (c) the Commonwealth will consult with all referring Basin States before making a regulation referred to in clause 3.7.4 but, despite paragraph (b), may do so without the agreement of all referring Basin States.

3.5.2. If approval is sought for a legislative proposal for the referred provisions of the Water Act or referred regulations, then the other relevant referring Basin States will use their best endeavours to respond within a time frame nominated by the Commonwealth.

3.5.3. Approval for legislative proposals within the terms of this clause must be provided through the Premiers of the referring Basin States.

3.6. Basin State legislation

- 3.6.1. The referring Basin States undertake to use their best endeavours to ensure their State Parliaments enact legislation referring the power to make the referred provisions to the Commonwealth Parliament in accordance with paragraph 51(xxxvii) of the Constitution.
- 3.6.2. The Basin States undertake to use their best endeavours to ensure their State Parliaments and the Territory Legislative Assembly enact legislation to amend their respective Murray-Darling Basin Acts.

3.7. Displacement provisions

Declared excluded matters and displacement provisions

- 3.7.1. The Water Act will provide for the operation of legislation of a referring Basin State that:
- (a) is directly inconsistent with the Commonwealth water legislation; and
 - (b) includes a legislative declaration that the matter is an excluded matter in relation to the whole or specified parts of the Commonwealth water legislation; or
 - (c) includes a legislative declaration that a provision is a Commonwealth water legislation displacement provision.
- 3.7.2. Referring Basin States will not introduce or support a Bill that includes a legislative declaration of the kind referred to in 3.7.1(b) or (c), or amend an Act to include a legislative declaration of the kind referred to in 3.7.1(b) or (c), unless the relevant Basin State gives the Commonwealth and other Basin States reasonable notice of the inconsistent provisions.
- 3.7.3. The referring Basin States undertake to avail themselves of the mechanism referred to in 3.7.1 only in relation to inconsistencies between the Commonwealth water legislation and legislation of a referring Basin State that are unintended and where the legislation of the referring Basin State is not inconsistent with the objects of the Water Act.
- 3.7.4. The Water Act will provide for a mechanism by which the Commonwealth can make regulations to override a legislative declaration of the kind referred to in 3.7.1(b) or (c).

Modifying regulations

- 3.7.5. The Water Act will also provide for a mechanism whereby regulations made under the Water Act may modify the operation of the Water Act, or instruments made under the Water Act, to avoid inconsistencies with particular laws of a

referring Basin State. The referring Basin States may request the Commonwealth to make such regulations.

3.7.6. Where such a request is made the Commonwealth undertakes to inform the Basin State making the request whether it consents to the making of the regulations or not within six weeks of the making of the request. The Commonwealth must not refuse such a request where it is made to deal with an unintended inconsistency and where acceding to such a request would be consistent with the objects of the Water Act.

3.7.7. If the Commonwealth accedes to a request referred to in 3.7.5, the Commonwealth undertakes to prepare a draft regulation for comment within four weeks.

3.8. Other amending legislation

3.8.1. The Parties undertake to use their best endeavours to amend relevant legislation, regulations, and any instrument of an administrative character or any contract, arrangement or understanding so as to substitute existing references to the Murray-Darling Basin Commission and existing Murray-Darling Basin Ministerial Council with references to the Authority and new Murray-Darling Basin Ministerial Council, to the extent necessary in addition to 3.2.3(f).

3.8.2. The Parties undertake to use their best endeavours to amend relevant legislation, regulations, and any instrument of an administrative character or any contract, arrangement or understanding so as to provide that anything done by, or in relation to, the Murray-Darling Basin Commission is taken to have been done by, or in relation to, the Authority, from the point at which the Murray-Darling Basin Commission ceases operating and the Authority assumes its functions.

3.9. Arrangements relating to Living Murray Initiative assets

3.9.1. The Water Act will not affect the ownership or control of water entitlements held for the purposes of the Living Murray Initiative, except for transferring to the Authority the legal title only of such entitlements that are held by the Murray-Darling Basin Commission in its own name immediately before the commencement of the new arrangements.

3.9.2. The Parties will put in place further arrangements in the context of the Living Murray Initiative to clarify how entitlements held by the Parties for the purposes of the Living Murray Initiative are to be controlled, managed and accounted for.

PART 4 WITHDRAWAL OF A PARTY

- 4.1.1. A Party may withdraw from this Agreement by written notice to all other Parties.
- 4.1.2. The withdrawal of a Party does not terminate this Agreement which will remain in force in relation to the remaining Parties.
- 4.1.3. Following the withdrawal of a Party, the remaining Parties will, within three months, convene a meeting for the purpose of negotiating any necessary or convenient variations to this Agreement (including variations relating to the voting arrangements).

PART 5 REVIEW

- 5.1.1. This Agreement will be reviewed by the Parties in 2018.

SIGNED FOR AND ON BEHALF OF EACH OF THE PARTIES BY:

The Honourable Kevin Rudd MP)
Prime Minister of Australia)

In the presence of -

The Honourable Nathan Rees MP)
Premier of the State of New South Wales)

In the presence of -

The Honourable John Brumby MP)
Premier of the State of Victoria)

In the presence of -

The Honourable Anna Bligh MP)
Premier of the State of Queensland)

In the presence of -

The Honourable Mike Rann MP)
Premier of the State of South Australia)

In the presence of -

Jon Stanhope MLA)
Chief Minister of the Australian Capital Territory)