

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

3 July 2008

This Agreement is entered into on 3 July 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

## **Preamble**

1. The Murray-Darling Basin covers one-seventh of Australia. The Basin is one of our country's most important social, economic and environmental resources. The Murray, Murrumbidgee, Lachlan, Darling, Goulburn and Condamine-Balonne rivers are iconic parts of Australia's identity. Three million Australians, living within and outside the Basin, are directly dependent on its water. Economically, the Basin supports an agricultural industry worth more than \$9 billion per annum. Environmentally, the Murray-Darling Basin has 16 internationally recognised wetlands.
2. The parties recognise that the extreme drought has exacerbated the Basin's environmental stress. Continued low flows and lack of natural flooding to Ramsar and other important environmental sites, including the Lower Lakes, Coorong, the Murray Mouth and the Murray Red Gum Forests, are resulting in serious environmental degradation.
3. The current severe and prolonged drought, the onset of climate change and the consequences of past decisions and practices are all placing great strain on the Basin and its water and other natural resources.
4. These pressures must be addressed by effective action by Governments and the community to use water wisely for present and future generations.
5. Recognising these pressures, on 26 March 2008 the Commonwealth and the Basin States – New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory – agreed in principle to a Memorandum of Understanding for Murray-Darling Basin Reform.
6. The Memorandum of Understanding sets out principles for the co-operative, efficient and effective planning and management of the Basin's water and other natural resources.
7. The Memorandum of Understanding has been agreed in the context of the National Water Initiative, signed by all Governments. The principles of the Memorandum of Understanding build on the National Water Initiative. The objectives of the National Water Initiative are to increase the productivity and efficiency of Australia's water use, to service rural and urban communities and to ensure the health of river and groundwater systems.
8. This Agreement further progresses the objectives of the National Water Initiative, and in doing so reaffirms the commitment of the parties to the National Water Initiative.

9. The Memorandum of Understanding has also been agreed in the context of a history of over 90 years of collaborative management within the Basin by Governments. Governments recognise the benefits of past arrangements, but agree that a new approach is now required to deal with the pressures of climate change, economic development and environmental degradation.
10. The new approach is outlined in the Memorandum of Understanding. The central principle of the Memorandum of Understanding is to improve planning and management by addressing the Basin's water and other natural resources as a whole, in the context of a Federal-State partnership.
11. Responsibility for the Basin Plan will reside with the new Murray-Darling Basin Authority and the Commonwealth Minister. Basin States will have a clear and important advisory role in the preparation of the Basin Plan. As stated in the Memorandum of Understanding, the Basin States will, through the new Ministerial Council, have decision-making power in relation to matters such as State water shares and natural resource management programs. The new Basin Officials Committee will have an advisory role in relation to the Basin Plan, and decision-making roles provided for in clause 3.3.13 of this Intergovernmental Agreement.
12. The Basin Plan will, among other things, seek to improve the environmental health of all Ramsar and other key environmental sites in the Basin and secure important environmental outcomes, such as increasing environmental flows, healthier wetlands, and protection of floodplain areas and River Red Gums.
13. The Basin Plan will also seek to improve the use and management of the Basin water resources in a way that optimises economic, social and environmental outcomes.
14. The Memorandum of Understanding affirms the autonomy of the Basin States to manage water and other natural resources within their catchments.
15. Under the Memorandum of Understanding, Governments committed to sign an Intergovernmental Agreement, setting out the arrangements for implementing the Memorandum of Understanding.
16. This Intergovernmental Agreement is an undertaking by Governments to implement the reforms necessary to meet the current needs of the Basin and in the long term to protect and enhance its social, environmental and economic values.
17. Under the Intergovernmental Agreement, Governments commit to a new culture and practice of Basin wide management and planning, through new structures and partnerships. Key elements of the arrangements are the preparation of a whole of Basin Plan by an independent, expert Murray-Darling Basin Authority. Central to the Basin Plan will be sustainable diversion limits on water use in the Basin to ensure the long term future health and prosperity of the Murray-Darling Basin and to safeguard the water needs of the communities that rely on its water resources.

**THE PARTIES AGREE:**

**PART 1 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:

**ACCC** means the Australian Competition and Consumer Commission;

**Authority** means the Murray-Darling Basin Authority, established under the Water Act;

**Basin State** means the following:

- (a) New South Wales;
- (b) Victoria;
- (c) Queensland;
- (d) South Australia;
- (e) the Australian Capital Territory;

**Commonwealth** means the Commonwealth of Australia;

**Commonwealth Minister** means the Minister that administers the Water Act;

**conveyance water** means the volume of water required to distribute the critical human water needs to users that are supplied from the River Murray System to Wellington, South Australia;

**critical human water needs** means the needs for a minimum amount of water that can only reasonably be provided from Basin water resources to meet:

- (a) core human consumption requirements in urban and rural areas; and
- (b) those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs;

**Ministerial Council** means the Ministerial Council established under the Murray-Darling Basin Agreement, amended as agreed in this Agreement;

**MOU** means the Memorandum of Understanding on Murray-Darling Basin reform entered into at the 26 March 2008 Council of Australian Governments meeting in Adelaide by the Commonwealth and the Basin States;

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

**Murray-Darling Basin Agreement** means the Agreement within the meaning of the *Murray-Darling Basin Act 1993* (Cth), as if that Agreement had been amended by 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 to the *Murray-Darling Basin (Amending Agreement) Amendment Act 2007* (SA);

**Murray-Darling Basin Commission** has the same meaning as in the *Murray-Darling Basin Act 1993* (Cth);

**Murray-Darling Basin Ministerial Council** has the same meaning as *Ministerial Council* in the Murray-Darling Basin Agreement;

**natural resource programs** comprise the programs in place under the Murray-Darling Basin Ministerial Council at 31 October 2008 and those subsequently decided on by the Ministerial Council;

**party** means a party to this Agreement;

**River Murray System** 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 (near Albury);
- (c) all effluents and anabranches of that part of the main course;
- (d) the watercourses connecting Lake Victoria to that main course;
- (e) the Darling River downstream of the Menindee Lakes Storage;
- (f) the upper River Murray storages meaning 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 of the Murray-Darling Basin Agreement which are upstream of the eastern boundary of South Australia; and
- (g) the River Murray in South Australia.

**State water shares** means the sharing of surface water in the River Murray System as provided for in the Murray-Darling Basin Agreement. The rules and accounting arrangements in the Murray-Darling Basin Agreement partition the shared surface water resource of the River Murray System between New South Wales and Victoria, and details the entitlements to this

water by South Australia. The Agreement includes provisions about the way in which the shares are defined, transferred and accounted, access to and sharing of the storages, access to flows at different times and accounting for losses and overflows. All these provisions are used to determine the quantity of water in each State's share at any given time; and

**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 that 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.

### **2.3. Operation of Agreement**

- 2.3.1. This Agreement does not in any way affect the validity of any action taken or proposed to be taken, or any failure to take action, under the Water Act, the Murray-Darling Basin Acts, any other Basin State or Commonwealth Act, or regulations or other instruments made hereunder.

### **2.4. Mechanism for achieving Murray-Darling Basin reform**

- 2.4.1. The Basin States agree to use their best endeavours to give effect to Parts 3, 6 and 7 of this Agreement by passing legislation to provide for a limited text referral of powers to the Commonwealth to pass agreed amendments to the Water Act to:
- (a) transfer the current powers and functions of the Murray-Darling Basin Commission, the Murray-Darling Basin Ministerial Council and the Community Advisory Committee, as set out in the Murray-Darling Basin Agreement, to the Murray-Darling Basin

Authority, the new Ministerial Council, the Basin Officials Committee and the Basin Community Committee;

- (b) strengthen the role of the ACCC within the Basin by extending the application of the water market rules and water charge rules to cover, respectively, all irrigation infrastructure operators and all bodies that charge regulated water charges (within the definition of s 91 of the Water Act), not just those that fall within the scope of the Commonwealth's powers; and
- (c) enable the Basin Plan to provide for critical human water needs.

2.4.2. The Basin States agree to use their best endeavours to pass this legislation so that the Commonwealth can make amendments to the Water Act to have these reforms commence on 1 November 2008.

2.4.3. The Commonwealth agrees to use its best endeavours to make amendments to the Water Act, in accordance with this Intergovernmental Agreement, to:

- (a) implement the reforms referred to in clause 2.4.1(a)-(c); and
- (b) implement the other relevant reforms agreed to in this Intergovernmental Agreement;

so that the amended and new provisions commence on 1 November 2008.

2.4.4. Each Basin State may choose to enter into arrangements that cause the water market and/or water charge rules to be applied in its jurisdiction outside the Basin and the Commonwealth agrees to use its best endeavours to make appropriate amendments to the Water Act to enable such arrangements for that Basin State.

2.4.5. An outline of the key elements of the legal processes which will be required to implement these reforms is set out in Schedule A.

2.4.6. The parties note that clause 2.4 is subject to agreement by the Basin States on the amendments to the Water Act that will be the subject of the referral, which will be agreed in a separate intergovernmental agreement (Element 4 of Schedule A).

### **PART 3 INSTITUTIONAL STRUCTURE AND GOVERNANCE**

#### **3.1. Preamble**

3.1.1. The parties affirm that the objectives of the reforms in this Intergovernmental Agreement are to have a Basin Plan for sustainable water management for the whole Basin; and autonomy for the Authority to prepare the Basin Plan and deliver programs within the Basin, in the context of clear accountabilities to the Commonwealth Minister, the Ministerial Council and the Basin Officials Committee.

#### **3.2. Basin Plan**

##### *Primacy of the Basin Plan*

3.2.1. The parties affirm the primacy of the Basin Plan in relation to the matters it covers as provided for in the Water Act.

3.2.2. The parties recognise that the Basin Plan provided for in the Water Act, including each of its components, such as sustainable diversion limits, the environmental watering plan and the water quality and salinity management plan, will be a single, consistent and integrated plan for the Basin's water resources.

3.2.3. The Basin Plan will contain a range of provisions that will enable it to manage the water resources of the Basin as a whole. These include:

- (a) sustainable diversion limits (as defined in Part 2 of the Water Act);
- (b) the environmental watering plan;
- (c) the water quality and salinity management plan; and
- (d) provision of conveyance water to enable the provision of critical human water needs.

3.2.4. The parties recognise that the provisions of the Water Act require the Authority to consult widely in relation to making, amending and reviewing the Basin Plan.

3.2.5. The parties affirm the importance of the advisory role of the Ministerial Council that will be introduced as a result of this Agreement (clause 3.3.2).

3.2.6. The parties affirm that these arrangements will provide significant opportunities for all stakeholders to assess the impact of the Basin Plan on their activities, and the internal



consistency of the Plan, and to make representations in relation to any issues of concern.

- 3.2.7. State water shares prevail unless agreed to change by consensus of the Basin states as provided for in 3.2.8. The parties recognise there is potential for operational management and delivery inconsistencies to arise between the application of the Basin Plan and States' management and delivery of their water entitlements and allocations including State water shares. When an operational management and delivery inconsistency arises the Basin Officials Committee will resolve the inconsistencies, and will seek to optimise multiple benefits and maximise efficiency and flexibility and to minimise future conflicts. If sustained efforts by the Basin Officials Committee to resolve a matter are unsuccessful, and the matter is of strategic significance (including key issues in relation to State water shares), then it will be referred to the Ministerial Council for strategic direction.

#### *State Water Shares and Sustainable Diversion Limits*

- 3.2.8. The parties affirm the following in relation to State water shares and sustainable diversion limits:
- (a) State water shares only apply to surface water in the River Murray System and refer to the apportioning of the shared water resource between Victoria and New South Wales and the entitlement to South Australia. State water shares can only be changed by the unanimous decision of the Ministerial Council;
  - (b) Sustainable diversion limits in the Basin Plan (as defined in Part 2 of the Water Act) will set the quantity of water that can be taken from any part of the Basin water resources; and
  - (c) For surface water in the River Murray System, the Basin Plan will determine the quantity of water available to be taken by NSW, Victoria and South Australia from their State water shares, but not alter the State water shares themselves, which can only be changed by the unanimous decision of the Ministerial Council.

#### *Operation of the River Murray*

- 3.2.9. The parties note the considerable body of decisions and practice that determine the operation of the River Murray System, as part of the delivery of water under State water shares. The Authority will continue these arrangements unless otherwise agreed by all parties through the Ministerial Council or the Basin Officials Committee as appropriate.

- 3.2.10. The parties agree that South Australia will have access to storage capacity in Hume and Dartmouth Dams for the purpose of private carry-over, subject to this not affecting upstream states water availability and storage access.

*Ecological Character Descriptions*

- 3.2.11. The Basin Plan will draw on ecological character descriptions for all Ramsar Sites and other key environmental sites within the Basin, prepared in accordance with the National Framework and Guidance for Describing the Ecological Character of Australia's Ramsar Wetlands, agreed by the Natural Resource Management Ministerial Council.

**3.3. Roles and Responsibilities**

*Commonwealth Minister*

- 3.3.1. The parties note that, as provided for in the Water Act, the Commonwealth Minister will be the decision-maker on the Basin Plan. If the Commonwealth Minister decides not to adopt the Basin Plan, then the Commonwealth Minister would give the Basin Plan back to the Authority with suggestions for consideration by the Authority. If the Minister declines to accept the revised Basin Plan, then the Minister must provide to the Parliament reasons for directing the Authority to make modifications to that version of the Basin Plan.

*Ministerial Council*

- 3.3.2. The Ministerial Council will:

- (a) have an advisory role in relation to the Basin Plan as follows:

If all, or any, Basin State Minister(s) disagree with a long-term average sustainable diversion limit or other parts of the Basin Plan in relation to which the Commonwealth Minister has a power to make a decision (as provided for in s 44 of the Water Act), then these matters would be referred back to the Authority for reappraisal. The Authority would then return the Basin Plan to the Ministerial Council. The Ministerial Council would then consider the Basin Plan and submit its views on the Basin Plan to the Commonwealth Minister;

- (b) consider and determine outcomes and objectives on major policy issues, that are not addressed in the Basin Plan, for the management of the Basin's water and other natural resources; and

- (c) if sustained efforts by the Basin Officials Committee to resolve an operational management and delivery inconsistency matter are unsuccessful, and the matter is of strategic significance (including key issues in relation to State water shares), then it will be referred to the Ministerial Council for strategic direction.
- 3.3.3. The parties agree that within these functions the Ministerial Council will have the decision-making role for State water shares, the Living Murray Initiative, and, under certain circumstances, critical human needs and natural resource management programs.
- 3.3.4. The parties agree that, in relation to the functions of the Ministerial Council, the Authority will submit an annual corporate plan and budget for decision by the Ministerial Council. The corporate plan and budget will set out the activities of the Authority by which it intends to achieve the outcomes and objectives set by the Ministerial Council.
- 3.3.5. Where the Authority considers that there would be a significant variation to the corporate plan and budget approved by the Ministerial Council, the Authority will submit a revised corporate plan and budget to the Council for decision.

*Murray-Darling Basin Authority*

- 3.3.6. The Authority will have two roles. One role will be to prepare, implement, monitor and enforce the Basin Plan, including the environmental watering plan, as provided for in the Water Act. The other role will be the responsibility for implementing the decisions made by the Ministerial Council and the Basin Officials Committee.
- 3.3.7. The Authority will prepare an annual corporate plan and budget. The corporate plan and budget will cover its Basin Plan role and its role for the Ministerial Council. The part of the corporate plan and budget relating to the achievement of the outcomes and objectives set by the Ministerial Council will be submitted annually to the Council, as provided for in clause 3.3.4.
- 3.3.8. The Authority will provide advice to the Ministerial Council and the Basin Officials Committee.
- 3.3.9. When the Authority provides the draft Basin Plan to the Ministerial Council, it will also provide advice on the likely socio economic implications of any reductions in sustainable diversion limits proposed in the draft Basin Plan.

- 3.3.10. The Authority will provide advice to the Ministerial Council on the impacts of the Basin Plan as soon as possible after the fifth anniversary of the Basin Plan.
- 3.3.11. The Authority will provide the secretariat support to the Ministerial Council and the Basin Officials Committee.
- 3.3.12. The Authority will prepare the agenda for meetings of the Ministerial Council in relation to the Basin Plan, subject to the views of the Ministerial Council.

*Basin Officials Committee*

- 3.3.13. The Basin Officials Committee will:
  - (a) have an advisory role to the Authority on the Basin Plan, as provided for in the Water Act;
  - (b) advise the Ministerial Council in relation to outcomes and objectives on major policy issues, that are not addressed in the Basin Plan, for the management of the Basin's water and other natural resources;
  - (c) give effect to any policy or decision of the Ministerial Council, which the Ministerial Council delegates to the Basin Officials Committee;
  - (d) set objectives and outcomes in relation to River Murray operation by the Authority;
  - (e) be responsible for resolving operational management and delivery inconsistencies that arise between the application of the Basin Plan and States' management and delivery of their water entitlements and allocations including State water shares, seeking to optimise multiple benefits and maximise efficiency and flexibility and to minimise future conflicts;
  - (f) be responsible for high level decision making in relation to operation of the River Murray System; and
  - (g) be responsible for monitoring the asset management plan, approved by the Ministerial Council and implemented by the Authority.
- 3.3.14. Decisions by the Basin Officials Committee will be exercised consistent with the delegations received from the Ministerial Council. The delegations will relate to objectives and outcomes, consistent with those set by the Ministerial Council, and consistent with the Authority having the autonomy to decide on the matters set out in the corporate plan covering program design, delivery, monitoring and reporting arrangements required to implement the decisions of the Ministerial Council and the Basin Officials Committee.

- 3.3.15. The Basin Officials Committee will prepare the agenda for meetings of the Ministerial Council, other than in relation to the Basin Plan, and subject to the views of the Ministerial Council.
- 3.3.16. The Basin Officials Committee will provide advice to the Ministerial Council in relation to the Authority's annual corporate plan and budget in relation to the functions of the Ministerial Council, other than in relation to the Basin Plan.

*Basin Community Committee*

- 3.3.17. The Basin Community Committee will:
  - (a) provide advice to the Authority through the Authority member of the Committee; and
  - (b) provide advice to the Ministerial Council, on those matters for which the Council seeks the Committee's advice.

**3.4. The Murray-Darling Basin Authority**

*Transition of the Murray-Darling Basin Commission to the Murray-Darling Basin Authority*

- 3.4.1. The parties note the work underway by officials to manage the process for bringing the Authority and the Murray-Darling Basin Commission together as the new Authority. This work comprises transferring all Commission staff to the Authority; reviewing assets and liabilities of the Commission; identifying existing program commitments of the Murray-Darling Basin Ministerial Council; and ensuring business continuity on all operational matters.
- 3.4.2. The parties note that the transition of the Commission to the Authority is being managed according to the decision rules set out in Schedule D.
- 3.4.3. The parties agree to the following approach for assets and liabilities:
  - (a) For the purpose of transition to the Authority, the Murray-Darling Basin Commission assets and liabilities are those identified on the Financial Statement (Balance Sheet) of the Murray-Darling Basin Commission at the time of transfer.
  - (b) The parties agree that the new arrangements in relation to assets and liabilities should leave jurisdictions no worse off. In particular, the parties agree that any adverse accounting treatment consequences that arise from these new

arrangements will be addressed prior to them coming into effect.

*River Murray Operation Assets*

- 3.4.4. In recognising the joint interests of jurisdictions, the River Murray operation assets currently managed by the Murray-Darling Basin Commission will be managed by the Authority in accordance with the management agreements between the Authority and each Basin State, until otherwise decided by the Ministerial Council.
- 3.4.5. The parties agree that these management agreements will be such that the parties retain effective joint control of assets and liabilities.
- 3.4.6. The assets utilised by the Murray-Darling Basin Commission in River Murray operations and activities are disclosed on the Murray-Darling Basin Commission balance sheet and comprise Infrastructure assets (as listed in the Infrastructure Assets Register) and Property, Plant and Equipment purchased by Constructing Authorities.
- 3.4.7. The parties note that there are no financial liabilities relating to these assets. However, liabilities may be identified from a due diligence process or an engineering assessment of liabilities inherent in these assets.
- 3.4.8. The parties agree that the current non-financial assets and liabilities, as defined in clause 3.4.6, disclosed on the Commission's balance sheet for 2007-08 at the valuations disclosed in the 2007-08 balance sheet, remain with their existing owners. These assets and liabilities will be managed by the Authority on their behalf under terms and conditions to be set out in a management agreement, and within an asset retention structure agreed by the asset owners that effectively recognises their joint interest for accounting purposes.
- 3.4.9. Decisions on significant new capital works, and operational and maintenance programs will be made by the Ministerial Council in the context of its decision on the corporate plan and budget submitted by the Authority.
- 3.4.10. Further work will be undertaken regarding transition arrangements for Murray-Darling Basin Commission assets and liabilities other than those identified in clause 3.4.4.

*Commencement*

- 3.4.11. The parties note that the Authority was established on 3 March 2008.
- 3.4.12. Following the completion of the mechanism described in clause 2.4.1, the parties agree that the Murray-Darling Basin Ministerial Council, the Murray-Darling Basin Commission and the Community Advisory Committee will cease operating on 31 October 2008 and the Ministerial Council, the Murray-Darling Basin Authority, the Basin Officials Committee and the Basin Community Committee will assume their Murray-Darling Basin Agreement functions from 1 November 2008.

*Appointments to the Authority*

- 3.4.13. The Authority will have a separate Chair and Chief Executive with an accountability structure as provided for in the Water Act. The parties note that the Commonwealth Government appoints the Authority Chair and the Chief Executive, and that the Commonwealth will consult with Basin States on the appointment of the Chair.
- 3.4.14. The Water Act provides that the Authority consists of a Chair and Chief Executive and four part time members. The Water Act sets out an inclusive list of fields of expertise relevant to the Authority's functions. The Chief Executive will also be a member of the Authority.
- 3.4.15. The parties agree that the nomination process for appointment of the part time Authority members will be as follows:
- (a) The Commonwealth will call for expressions of interest in the four part time positions as Authority members. All Basin States will be provided with copies of the expressions of interest received by the Commonwealth, within two weeks of the call for expressions of interest closing, so as to enable all parties to examine those expressions of interest;
  - (b) The Commonwealth, and the Basin States collectively, may each nominate two persons (who may but need not have submitted an expression of interest) for appointment as Authority members. These nominations are to occur within 30 days of the receipt of copies of the expressions of interest by the Basin States or such longer period as may be agreed;
  - (c) If a Commonwealth nominee (or nominees) is not accepted by the Basin States collectively, the Commonwealth must put forward three alternative nominees for consideration by the

Basin States. The Basin States collectively must accept one (or two) of the three nominees within 30 days;

- (d) If a nominee (or nominees) of the Basin States is not accepted by the Commonwealth, the Basin States collectively must put forward three alternative nominees, for consideration by the Commonwealth. The Commonwealth must accept one (or two) of the three nominees within 30 days; and
- (e) The Commonwealth Minister must proceed with best endeavours to have the accepted nominees appointed by the Governor-General as soon as possible.

*Filling of vacancies*

- 3.4.16. Whenever a vacancy arises in the position of Authority Chair, after consultation with the Basin States, the Commonwealth Minister will recommend to the Governor-General a person for appointment to the vacant office.
- 3.4.17. Whenever a vacancy arises in respect of an Authority member other than the Authority Chair, the procedure set out in this Agreement for initial appointment of Authority members will be applicable to the filling of the vacancy. If the vacancy arises in respect of an Authority member's position where the Commonwealth nominated the former member or otherwise proposed the former member's appointment in accordance with this Agreement, the Commonwealth will be responsible for proposing the nominee (and, if he/she is not accepted by the Basin States, for proposing the three alternative nominees). If the vacancy arises in respect of an Authority member's position where the Basin States collectively nominated the former member or otherwise proposed the former member's appointment in accordance with this Agreement, the Basin States collectively will be responsible for proposing the nominee (and, if he/she is not accepted by the Commonwealth, for proposing the three alternative nominees).

*Re-appointment*

- 3.4.18. A previous Authority member may be eligible for reappointment, provided that no Authority member may serve a total of more than nine years consecutively (which allows for an acting appointment of one year and two full four year terms of appointment).



*Acting appointments*

- 3.4.19. The Commonwealth Minister may appoint an Authority member to act as Authority Chair in accordance with the provisions of the Water Act.
- 3.4.20. If an acting appointment is in respect of a Commonwealth-nominated Authority member, the Commonwealth will nominate and the Commonwealth Minister will duly appoint the person. If an acting appointment is in respect of a member nominated by Basin States, the Basin States collectively will nominate, within a month of the vacancy arising, and, subject to eligibility requirements set out in the Water Act, the Commonwealth Minister will duly appoint the person.
- 3.4.21. An acting appointment must not be made for a term longer than one year.

**3.5. Ministerial Council**

*Membership*

- 3.5.1. Each jurisdiction can nominate one Minister to the Ministerial Council to represent the jurisdiction's Government.
- 3.5.2. The Ministerial Council will be chaired by the Commonwealth Minister.

*Voting*

- 3.5.3. Decisions of the Ministerial Council will require unanimous support of all members.
- 3.5.4. All, or any, Basin State Minister(s) can refer the Basin Plan back to the Authority for reappraisal. Referral back to the Authority requires neither unanimity nor a majority view among Basin State Ministers. Likewise, the provision of views to the Commonwealth Minister on the Basin Plan can be by all, or any, Basin State Minister(s).
- 3.5.5. In situations that are not of specific interest to certain jurisdiction(s), the unanimous or simple majority provisions will apply to those jurisdictions in the Ministerial Council with a specific interest. Thus, current arrangements for decisions on State water shares will be maintained. This means decisions on State water shares require the unanimous vote of the Commonwealth, New South Wales, Victoria and South Australia. Queensland and the Australian Capital Territory will not participate in such decisions.

### 3.6. **Basin Officials Committee**

#### *Membership*

- 3.6.1. The Basin Officials Committee will have one representative from each jurisdiction, as nominated by the Government of each jurisdiction.
- 3.6.2. The Authority Chair will be a non-voting member of the Committee.
- 3.6.3. The Basin Officials Committee will be chaired by the Commonwealth representative.

#### *Voting*

- 3.6.4. Each jurisdiction will have one vote.
- 3.6.5. Decisions will require unanimous support of all jurisdictions, unless otherwise unanimously agreed by the Basin Officials Committee. A majority decision would be made by a simple majority vote of four or more of the six jurisdictions.
- 3.6.6. In situations that are not of specific interest to certain jurisdiction(s), the unanimous or simple majority provisions will apply to those jurisdictions in the Basin Officials Committee with a specific interest. Thus, current arrangements for decisions on State water shares will be maintained. This means decisions on State water shares require the unanimous vote of the Commonwealth, New South Wales, Victoria and South Australia. Queensland and the Australian Capital Territory will not participate in such decisions.
- 3.6.7. Majority decisions will be provided for in the case of the provision of majority and minority advice from the Basin Officials Committee to the Ministerial Council; and in relation to releases from Menindee Lakes when in joint control.

### 3.7. **Basin Community Committee**

#### *Membership*

- 3.7.1. The Ministerial Council will decide the appointments to the Basin Community Committee.
- 3.7.2. The Basin Community Committee will consist of a Chair and up to 16 other members. The Committee must include at least eight individuals who are water users or representatives of one or more water users, as provided for in the Water Act.

*Advisory role to the Authority*

- 3.7.3. Either the Authority Chair or a part-time Authority member will be an ex officio member of the Basin Community Committee. The Authority member of the Basin Community Committee would report the Committee's views to the Authority.

*Advisory role to the Ministerial Council*

- 3.7.4. The Chair of the Basin Community Committee may attend a meeting of the Ministerial Council as an observer, by invitation.

**3.8. Schedules B and C**

- 3.8.1. The roles and responsibilities of the Commonwealth Minister, the Ministerial Council, the Authority, the Basin Officials Committee and the Basin Community Committee are outlined in Schedules B and C.

**PART 4 COMMONWEALTH-STATE WATER MANAGEMENT PARTNERSHIPS**

- 4.1. The Commonwealth-State Water Management Partnership arrangements outlined below will be consistent with the National Partnership Payments arrangements announced as part of the 2008-09 Commonwealth Budget. The parties note that funding has been allocated by the Commonwealth Government to the Water for the Future – Sustainable Rural Water Use and Infrastructure Program.
- 4.2. The parties agree that there is an urgent need to undertake water reforms in the Murray-Darling Basin to deliver a sustainable cap on surface and groundwater diversions across the Basin to ensure the future of communities and industry, and enhanced environmental outcomes.
- 4.3. The parties further agree that Basin State Priority Projects must make a substantial contribution to improving water use efficiency and addressing over-allocation in the Murray-Darling Basin.
- 4.4. Funding would only be provided for additional or new costs arising from reforms agreed by the parties or from the implementation of the Basin Plan.
- 4.5. **A bilateral agreement**
- 4.5.1. The parties agree that a Commonwealth-State Water Management Partnership will be in the form of a bilateral agreement between the Commonwealth and each Basin State.
- 4.5.2. The parties agree that the Commonwealth-State Water Management Agreements will be public documents.

- 4.5.3. The bilateral agreement will cover:
- (a) water reform outcomes to be achieved, including relevant outcomes from COAG and agreed reform actions, timeframes and performance benchmarks/milestones; and
  - (b) the Basin State's Priority Project, including the scope and conditions for funding and timing of progress payments.
- 4.5.4. The parties recognise the direct link between agreed water reform outcomes and actions, and funding provided for Priority Projects.
- 4.5.5. The following headings may be used to guide the development of the Commonwealth-State Water Management Partnership:
- (a) objectives and principles;
  - (b) responsibilities of Governments under the bilateral agreement;
  - (c) reform outcomes and reform actions (likely also to be a schedule to the bilateral agreement);
  - (d) Priority Projects;
  - (e) funding arrangements, including terms and conditions;
  - (f) financial and performance information (likely also to be a schedule to the bilateral agreement);
  - (g) dispute resolution, intellectual property and auditing; and
  - (h) variations.

4.6. **Commonwealth Commitment**

- 4.6.1. The Commonwealth is committed to furthering Basin water reform, through the legislative and other actions it has agreed to undertake in the Intergovernmental Agreement. The Commonwealth will develop the Commonwealth-State Water Management Partnerships co-operatively with each Basin State, and will expeditiously meet its obligations under these Partnerships.

4.7. **Assessment of the Parties**

- 4.7.1. The COAG Reform Council will be responsible for assessing the performance of the parties in relation to Commonwealth-State Water Management Partnerships.
- 4.7.2. The COAG Reform Council will undertake the assessment of the performance of the Commonwealth.
- 4.7.3. In relation to the assessment of Basin States under these Partnerships, the COAG Reform Council may delegate

responsibility for assessment to the National Water Commission.

- 4.7.4. In addition to its current role under Part 3 of the Water Act, the National Water Commission will:
- (a) be responsible for assessing Basin State Government performance on achieving reform outcomes;
  - (b) report against milestones specified in the bilateral agreements to the Commonwealth Minister on Basin State Government progress in achieving water reform outcomes;
  - (c) establish a transparent process with the Basin States for the conduct of their assessment; and
  - (d) as part of this transparent process, the National Water Commission will provide Basin States with an opportunity to comment on a draft assessment prior to providing advice to the Commonwealth Minister.

4.8. **Water reforms**

- 4.8.1. In determining the allocation of investment funding to Priority Projects within a Basin State, the Commonwealth will have regard to progress towards the following key reform outcomes for rural water in the Basin State:
- (a) competitive neutrality and independently regulated water market and trading arrangements across the southern connected Basin;
  - (b) water charging regimes that reflect the full cost of supply to end users, including environmental externalities where feasible and practical; and
  - (c) publicly accessible and compatible electronic water registers across all Basin jurisdictions (including a national water register information database).
- 4.8.2. The Commonwealth and Basin States agree that the Commonwealth may assist Basin States to implement the following reforms:
- (a) ensure compatible electronic water registers are in place by April 2009, or as agreed by COAG;
  - (b) ensure that scientific work for new water resource plans is rigorous;
  - (c) establish appropriate monitoring and enforcement arrangements;

- (d) structural adjustment funding (if it is demonstrated that communities are severely adversely affected), which is being addressed under the COAG forward work program on water;
- (e) implementation of the Basin Plan to be prepared by the Authority; and
- (f) accelerated development of a best practice and consistent Basin water modelling platform, noting that the Authority will be developing such a platform in consultation with Basin States.

4.9. **Priority Projects for Commonwealth investment**

4.9.1. The objectives of Commonwealth investments in Priority Projects are to:

- (a) implement water saving infrastructure projects;
- (b) return water to the environment and restore river health; and
- (c) adapt to climate change in an environment of reduced water availability.

4.10. **Commonwealth investment principles**

4.10.1. The Commonwealth has established the following investment principles for Priority Projects and Other Projects:

- (a) projects must be able to secure a long-term sustainable future for irrigation communities, in the context of climate change and reduced water availability in the future;
- (b) projects must deliver substantial and lasting returns of water to the environment to secure real improvements in river health; and
- (c) projects must be value for money in the context of the first two tests.

4.11. **Basin State Priority Projects**

4.11.1. The Commonwealth, based on information provided by the relevant Basin State, has undertaken an initial consideration of each Basin State's Priority Project.

4.11.2. The Commonwealth agrees in principle to provide the following funding to Priority Projects, subject to due diligence:

- (a) Stage Two of the Victorian Government's *Food Bowl Project* with funding of 90 per cent of the total project costs, up to a maximum funding amount of \$1 billion and up to \$103 million, available to assist private irrigators in the modernisation of their irrigation infrastructure;

- (b) Up to \$1.358 billion to New South Wales for a suite of initiatives to modernise and upgrade irrigation infrastructure and a notional \$650 million to private irrigators;
- (c) Up to \$610 million to South Australia to upgrade irrigation infrastructure and improve river management, including a notional \$110 million for private irrigators to upgrade infrastructure, \$80 million for water purchasing from willing sellers and \$200 million to address the problems with Coorong and the lower lakes;
- (d) Up to \$510 million to Queensland for irrigation planning and infrastructure investment and for water purchasing from willing sellers; and
- (e) Up to \$85 million towards the Australian Capital Territory Government's *Salt Management Strategy* to reduce salt inflows to the Murrumbidgee River.

4.11.3. Priority Projects will be managed by the relevant Basin State.

#### 4.12. **Due diligence on Priority Projects**

- 4.12.1. The parties agree that the in-principle agreement recorded in clause 4.11 means that following in-principle agreement all Priority Projects will be subject to robust due diligence assessment by the Commonwealth. The Commonwealth's due diligence guidelines are attached as Schedule E.
- 4.12.2. Due diligence will include an examination of information provided by the Basin State in support of their Priority Project. In undertaking the due diligence assessment, the Commonwealth will consider the social, economic, environmental, financial and technical aspects of the Priority Project.
- 4.12.3. In undertaking the due diligence, the Commonwealth may seek the advice of the Murray-Darling Basin Authority.
- 4.12.4. For due diligence assessment of Priority Projects involving irrigation systems, Basin States agree they will participate in processes consistent with the methodology of the Commonwealth's Irrigation Modernisation Planning Assistance Program and Irrigation Infrastructure 'Hotspots' Assessment Program.
- 4.12.5. Should the due diligence of Priority Projects conclude that the Priority Project is not economically, environmentally, financially, socially, or technically viable or feasible, the parties agree to enter into discussion about possible reconfiguration of the Priority Project on a no commitments basis.

**4.13. Funding and payments**

- 4.13.1. Once a Commonwealth-State Water Management Partnership is agreed, progress payments will be made by the Commonwealth, subject to the Basin State:
- (a) achieving agreed progress in relation to the Priority Project;
  - (b) transferring to the Commonwealth at least 50 per cent of the water savings agreed from each Basin State's Priority Project under an agreed timetable. These water savings will be permanently transferred to the Commonwealth Environmental Water Holder as secure and transferable water entitlements; and
  - (c) achieving agreed progress in completing reform actions that yield agreed reform outcomes. These reform actions will be matters within the control of the Basin State.
- 4.13.2. Should a reform action milestone not be complete, a pro rata payment may be provided in the first instance. However, if when reviewed a second time the reform action is still not complete, payment may be withheld until the action has been completed.
- 4.13.3. The parties agree that some reform actions, such as those relating to interstate trade, require actions by more than one Basin State. In these cases, there will be a separate payment stream to relevant Basin States, not linked to progress on the Priority Project and the reform actions within the control of the Basin State.

**4.14. Reducing Priority Project funds**

- 4.14.1. Under the Commonwealth-State Water Management Partnership, the Commonwealth may withhold all or part of its funding should there be a material breach of the partnership agreement, if progress is determined to be unsatisfactory or if funding is not used for its intended purposes.

**4.15. Dispute resolution**

- 4.15.1. Both parties will endeavour to resolve any disputes under this agreement or under the Commonwealth-State Water Management Partnership.
- 4.15.2. In the event that a dispute arises under this agreement or the Commonwealth-State Water Management Partnerships, the following process will occur:
- (a) a representative of each of the parties will discuss the dispute as soon as practical;



- (b) should the dispute remain unresolved the dispute will be referred to relevant senior executives as soon as practical;
- (c) should the dispute still remain unresolved it will be referred to the Chief Executive of the relevant Commonwealth and Basin State agencies; and
- (d) if the matter remains unresolved it may be referred to relevant Ministers for resolution as soon as practical.

4.16. **Other projects**

- 4.16.1. The Commonwealth will establish a separate process, applying the same principles, for other proponents in the Murray-Darling Basin, such as irrigation corporations in New South Wales and South Australia, to submit project proposals.

**PART 5 NO ADDITIONAL NET COSTS**

- 5.1. The Commonwealth undertakes that the Basin States will not bear additional net costs as a consequence of the reforms agreed between the parties and the implementation of the Water Act.
- 5.2. The parties agree that no additional net costs refers to financial costs and means that the additional costs borne by each Basin State as a consequence of the reforms agreed between the parties and the implementation of the Water Act will be less than or equal to the cost savings and additional funds accruing to each Basin State from reforms agreed between the parties and in the implementation of the Water Act.

*Contributions to the Authority*

- 5.3. The parties note that the Commonwealth Government will fund the work of the Authority to prepare, implement, monitor and enforce the Basin Plan.
- 5.4. The parties note the decision of the Murray-Darling Basin Ministerial Council of May 2006, whereby the Commonwealth and Basin States agreed to at least maintain their 2006-07 contributions to the Murray-Darling Basin Commission in real terms for the four years to 2010-11.
- 5.5. The parties recommit to this agreement to the end of 2010-11 for the purpose of making their funding contributions to the Authority to the end of 2010-11, for the functions the Authority performs that were previously performed by the Murray-Darling Basin Commission.
- 5.6. The parties agree that funding arrangements after 2010-11 for programs other than those relating to the Basin Plan (referred to in clause 5.4), will be decided by the Ministerial Council. Prior to 2010-11, any requirements for additional programs or program adjustments will be negotiated between the relevant parties on a case by case basis.

- 5.7. The parties agree the \$500 million made available to the Murray-Darling Basin Commission in June 2006 will be transferred to the Authority for continued expenditure on the range of programs to which it is currently committed, subject to any alteration of these activities by future decisions of the new Ministerial Council. The parties also agree that any interest earned on the \$500 million will also be transferred to the Authority, and that interest can continue to be accrued in relation to these funds.

*Baseline Cost*

- 5.8. It will be necessary to establish a baseline cost for each Basin State, above which “additional net costs” can be determined. In order to smooth year to year fluctuations, the baseline cost should be an average of real costs over a period of time up to 30 June 2007. The methodology for setting the baseline will be the same for all Basin States. It will be developed and agreed by Commonwealth and Basin State officials by 29 August 2008.
- 5.9. Once the methodology is agreed, an independent assessment will be conducted to determine the baseline costs of each Basin State.
- 5.10. The parties agree that this assessment, and those below in this Section, will be conducted by a body, selected by the Commonwealth following consultation with the States.
- 5.11. The parties agree that in order to minimise implementation costs and assist alignment with jurisdictional Budget and pricing processes, the development of costing methodology will take into account readily available and verifiable data such as Budget forecasts, pricing submissions and determinations, and the results of independent reviews.

*Methodology*

- 5.12. The parties agree to the following methodology for determining whether a State has incurred additional net costs:

$$\text{Additional net costs} = [(\text{increase in costs}) - (\text{reduction in costs})] - [(\text{increase in funds}) - (\text{reduction in funds})]$$

*Changes in Costs*

- 5.13. Each Basin State will identify any new costs they bear as a consequence of the reforms agreed between the parties and the implementation of the Water Act.
- 5.14. These new costs could arise from new activities, or an expansion of existing activities.
- 5.15. The parties note that the reforms agreed between the parties and the implementation of the Water Act could also lead to some activities being discontinued, wound back or redirected, leading to cost savings.

- 5.16. The parties agree that an independent assessment would be conducted of activities undertaken by a Basin State, to assess the nexus between the activities and the reforms agreed between the parties and the implementation of the Water Act.

*Changes in Funds*

- 5.17. The parties note that new funds may be provided to a Basin State in relation to water reform, as provided for under the Water Management Partnerships. In a circumstance where these funds exceed the costs of the activities, these new net funds would be included in the methodology set out in clause 5.12.
- 5.18. The parties note that any payments made by the Commonwealth, during the period of the no additional net cost commitment by the Commonwealth (up to 30 June 2015), in relation to new knowledge liabilities, as set out in the National Water Initiative framework and in Part 10 of this Agreement, would be excluded from the methodology in clause 5.12.
- 5.19. The parties note that any new payments made by the Commonwealth to non-government entities under clause 4.16, up to 30 June 2015, would only be included in the methodology to the extent they relieve a Basin State of payments it would otherwise have made.
- 5.20. The parties note that States may incur reductions in funds due to the implementation of the Water Act and/or agreed reforms.
- 5.21. The parties agree that an independent assessment would be conducted of activities undertaken by a Basin State to assess the new funds and loss of funds and their nexus to the activities associated with the reforms agreed between the parties and the implementation of the Water Act.

*Assessment and Ex Post Adjustment*

- 5.22. The parties agree that an assessment will be conducted annually by an independent process to determine if a Basin State has incurred additional net costs since the inception of this arrangement.
- 5.23. If a Basin State is found to have incurred additional net costs, the Commonwealth will make a payment of the amount of the additional net costs to the Basin State.
- 5.24. If a Basin State is found to have accrued additional net funds, such amounts will be carried forward and taken account of in the following year's assessment.

*Cessation of the Commonwealth Undertaking*

- 5.25. The parties agree that the no additional net cost undertaking by the Commonwealth will cease on 30 June 2015.

**PART 6 AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC)**

- 6.1. The parties endorse the importance of the ACCC performing the roles set out for it under the Water Act to ensure efficient, transparent water markets and water charges in the Basin.
- 6.2. The parties note that the Water Act provides for the Minister, having received advice from the ACCC, to make water market rules and water charge rules relating to regulated water charges, as defined in the Water Act. The ACCC is responsible for monitoring and enforcing the water market and water charge rules.
- 6.3. The parties are seeking to strengthen the role of the ACCC in three ways:
  - 6.3.1. by expanding the application of the water market and water charge rules to all relevant entities and transactions (clauses 6.4 - 6.9). This requires a referral from the Basin States;
  - 6.3.2. by extending the ability of the water market and water charge rules to deal with the determination and approval by the ACCC of regulated water charges (clauses 6.10 – 6.14). This can be done by the Commonwealth under its existing powers; and
  - 6.3.3. by expanding the water market and water charge rules, and thereby the ACCC's regulatory role, across the Murray-Darling Basin States (clauses 6.15 - 6.20). This is a matter for each Basin State to choose to opt in.

*Application of Water Charge and Water Market Rules to All Entities and Transactions within the Basin*

- 6.4. The parties see advantage in having one regulator, the ACCC or an accredited State regulator, in relation to water charge and water market rules within the Basin.
- 6.5. This means that all users will be assured of uniform approach to regulation irrespective of the structure of their water service provider.
- 6.6. The parties note that the Water Act identifies the entities and transactions to which the water charge rules and water market rules will apply based on the Commonwealth's constitutional powers. The limitations of these powers means that the ACCC will only be able to regulate where the relevant entities are:
  - 6.6.1. constitutional corporations; or
  - 6.6.2. engaging in interstate trade; or

- 6.6.3. engaging in an act that relates to a water resource, a tradeable water right or water service infrastructure in a Territory or imposing or demanding payment in a Territory in relation to an act; or
- 6.6.4. engaging in an act via a postal, telegraphic, telephonic or other like service.
- 6.7. These limitations of the Commonwealth's powers mean that entities that are individuals, unincorporated trusts, syndicates, unincorporated joint water supply schemes/authorities as well as Government departments and unincorporated agencies may not presently be covered by the water charge and water market rules in relation to all of their transactions.
- 6.8. As the range of entities and transactions that the ACCC can regulate under the current arrangements is incomplete and uncertain, the water charge rules and water market rules may not be consistently applied to all entities and transactions within the Basin.
- 6.9. To address this issue, the parties agree to extend the application of the water market rules and water charge rules to cover, respectively, all irrigation infrastructure operators and all bodies within the Basin that charge regulated water charges (within the definition of s 91 of the Water Act), not just those that fall within the scope of the Commonwealth's powers.

*Extension of ACCC's Powers to Make Determinations with respect to all Regulated Water Charges within the Basin*

- 6.10. The parties see advantage in having one regulator, the ACCC or an accredited State regulator, being able to deal with the determination or approval of all regulated water charges in the Basin.
- 6.11. Under the Water Act, the water charge rules can provide for the ACCC, or State agencies that it accredits, to deal with the determination or approval of some but not all of the regulated water charges. For regulated water charges that are not able to be covered by such determinations or approvals, in some cases, they will be covered by Basin State regulation, and in other cases they will not be regulated at all. The consequences of this include that:
  - 6.11.1. some businesses will have both the ACCC and a State regulator making charge determinations or approvals in respect of different parts of their business; and
  - 6.11.2. accredited State regulators will act in accordance with rules for accreditation made under the Water Act for some charges, whereas their determinations with respect to other charges will be made in accordance with separate State legislation.

- 6.12. Apart from the referral required to achieve the reform mentioned in clause 6.9, this can be done by the Commonwealth under its existing powers.
- 6.13. The parties endorse the Commonwealth amending the Water Act so as to extend the ability of the water charge rules to deal with the determinations or approvals by the ACCC or accredited State agencies, of all regulated water charges (which excludes charges in respect of urban water supply activities beyond the point at which the water has been removed from a Basin water resource) within the Basin.
- 6.14. The parties note that the water charge rules cannot cover charges in respect of urban water supply activities beyond the point at which the water has been removed from a Basin water resource. These urban water charges will continue to be subject to existing regulatory arrangements.

*Application of the ACCC's Regulatory Role across Murray-Darling Basin States*

- 6.15. The parties agree that the decision to extend the application of water market rules and/or water charge rules across Basin States, thereby extending the ACCC's regulatory role across Basin States, is a matter for individual jurisdictions to opt in.
- 6.16. By opting in, a party would be seeking to ensure that there is uniform regulation of Basin and non-Basin water resources across the Basin State, exempting charges in respect of urban water supply activities beyond the point at which the water has been removed from a Basin water resource. In doing so, all like providers of water and water related services, as well as users, would be subject to the same regulatory regime across the Basin State.
- 6.17. The parties note that under the Water Act, water market rules apply only to the Murray-Darling Basin and water charge rules can only be made for regulated water charges that relate to Basin water resources. Water charges levied in respect of non-Basin water resources will continue to be determined under current State-based arrangements, which vary significantly across the Basin States.
- 6.18. To address this issue, a party may choose to opt in and thereby do either or both of the following:
  - 6.18.1. apply, within its jurisdiction, the water charge rules as made by the Minister under the Water Act, to regulated water charges outside the Basin; and/or
  - 6.18.2. apply, within its jurisdiction, the water market rules as made by the Minister under the Water Act, to irrigation infrastructure operators outside the Basin;

and confer powers on the ACCC to monitor and enforce this extended geographical operation of the water market rules and/or water charge rules.

- 6.19. The Commonwealth agrees to amend the Water Act to enable the rules to have this extended application, thereby extending the ACCC's regulatory role across Basin States.
- 6.20. The parties note that charges in respect of urban water supply activities beyond the point at which the water has been removed from a water resource will continue to be subject to existing regulatory arrangements.

#### **PART 7 CRITICAL HUMAN WATER NEEDS**

- 7.1. The parties recognise that critical human water needs are the highest priority water use for communities dependent on the water of the Murray-Darling Basin.
- 7.2. The Parties recognise:
  - 7.2.1. that water that contributes to the shared resources of the River Murray System comes from two sources, natural inflows and releases from Snowy Hydro;
  - 7.2.2. the new record low natural inflows and the capacity for Snowy Hydro to reduce the Required Annual Release under drought conditions in the Snowy Mountains Scheme; and
  - 7.2.3. that there may be insufficient inflows in any year to meet minimum conveyance water requirements.
- 7.3. The parties agree that the arrangements for meeting critical human water needs for those communities dependent on the River Murray System, excluding the Edward-Wakool System downstream of Stevens Weir, and the potential input from tributaries that can provide significant volumes of water to the River Murray (i.e. the Murrumbidgee, Darling and Goulburn Rivers), will be a mandatory part of the Basin Plan.
- 7.4. The parties agree that the provision of conveyance water to enable provision of critical human needs will be addressed in the Basin Plan together with the arrangements to support jurisdictions to accumulate and store critical human needs however, responsibility for securing and providing the volume of water required for critical human needs rests with the respective jurisdictions.
- 7.5. The parties agree that the provision of critical human water needs will require sufficient conveyance water through the system to support the delivery of required quantities of water for critical human water needs of all jurisdictions.

- 7.6. If water quality falls outside trigger points set out in the Basin Plan (in relation to parameters such as salinity and blue green algae), the options and actions for addressing the water quality issue will be developed by the Authority in consultation with the Basin Officials Committee. When the option includes adjustment to the quantity of conveyance water, the Authority would refer the matter for decision by the Ministerial Council.
- 7.7. The parties agree that South Australia will be provided with storage capacity in the headwater storages in New South Wales and Victoria (that may include Hume and Dartmouth storages) to store sufficient water to meet its critical needs.
- 7.8. To meet the critical human needs of all Basin communities over prolonged dry inflow sequences (ie greater than one year), the parties agree that each State jurisdiction is able to carry over a volume of water equivalent to 150% of its annual critical human needs requirements (18 months supply). The volume of water required to meet critical human needs in each State will be specified in the Basin Plan.

### **A Three Tier System for Water Sharing**

- 7.9. In order to provide for improved arrangements for the provision of critical human needs, the parties agree to the introduction of a three tier system for sharing water in the River Murray System and key tributaries as follows:

#### *Tier 1 – Normal Sharing*

- 7.9.1. For periods of normal water availability (e.g. no risk of not receiving the full Required Annual Release from Snowy Hydro), the sharing arrangements of the Murray-Darling Basin Agreement 1992, transitioned as per the arrangements set out in this Intergovernmental Agreement, will continue;

#### *Tier 2 – Basin Plan to provide for conveyance water to enable provision of Critical Human Needs*

- 7.9.2. For periods of water availability that are sufficiently low that the normal sharing provisions provided for in Tier 1 will not ensure there is sufficient water to meet conveyance water needs, the Basin Plan will determine the necessary water sharing arrangements to ensure such water is provided for if at all possible; and

#### *Tier 3 – Extreme and unprecedented circumstances*

- 7.9.3. For periods of extreme and unprecedented low levels of water availability (these being inflow conditions below, or predicted to be below, the worst on record), water quality or where there is an extreme risk of failure in being able to supply water for critical human needs in the next 12 months, the Ministerial



Council will determine the sharing of the available water and contingency measures.

### **Details of Tier 1 – Normal Sharing**

- 7.10. The parties agree that during Tier 1 Water Sharing, South Australia can store water in headwater storages in New South Wales and Victoria for the purpose of building a reserve to meet its critical human water needs, in a way that does not affect upstream States' water availability that would have otherwise occurred.
- 7.11. If South Australian critical human needs water spills from upstream storages it will be re-regulated in Lake Victoria, wherever possible, for subsequent use by South Australia.

### **Details of Tier 2 – Basin Plan to provide for conveyance water to enable provision of Critical Human Needs**

- 7.12. The parties agree that the Basin Plan will determine water sharing arrangements on the River Murray System and key tributaries under certain prescribed circumstances in order to provide conveyance water to enable provision of critical human needs. The process for critical human needs clearly preserves states shares. As provided for in clause 3.2.8 any changes to state water shares under these arrangements is only made when agreed to by all Basin states.
- 7.13. The parties recognise that Basin Plan arrangements to meet critical human water needs on the River Murray System may affect State water shares, including the timing of the delivery of State water shares, on that system.
- 7.14. The parties agree that the conveyance water in the River Murray System required to deliver critical human water needs receives first priority from the shared resource where available.
- 7.15. The Basin Plan, in order to provide conveyance water to enable provision of critical human needs, will, for Tier 2 water sharing:
- 7.15.1. specify the conditions, including triggers as appropriate, under which:
- (a) it is necessary for the purposes of providing conveyance water to depart from State water shares that routinely apply (under Tier 1) and commence Tier 2 water sharing; and
  - (b) water sharing reverts from Tier 2 arrangements to the State water shares that routinely apply.
- 7.15.2. specify a reserves policy:
- (a) for the volume of water required to be reserved to meet the shortfall between the conveyance water required to enable provision of critical human needs and the minimum inflow

- sequence to the River Murray System from natural flows and Snowy Hydro; and
- (b) specifying the extent to which this volume varies between years and arrangements to ensure its provision;
- 7.15.3. recognise that each State will have autonomy over decisions on how water from its water share is used, and will be responsible for meeting critical human water needs in that State;
- 7.15.4. provide for each jurisdiction to carry over a volume of water equivalent to 150% of its annual critical human needs requirements (18 months supply); and
- 7.15.5. provide for South Australia to store water in headwater storages in New South Wales and Victoria for the purposes of meeting critical human water needs, in a way that does not affect upstream States' water availability.
- 7.16. The minimum requirements for the arrangements for critical human water needs in the Basin Plan to address the requirements to Tier 2 water sharing are:
- 7.16.1. monitoring arrangements;
- 7.16.2. process for assessing, and managing risks to critical human water needs associated with inflow prediction in the River Murray System and also the Snowy Mountains Scheme;
- 7.16.3. risk management approach for inter-annual planning addressing when water is set aside for the following year as opposed to being made available for other uses in the specific year where critical human water needs arrangements are being implemented;
- 7.16.4. maintenance by the Murray-Darling Basin Authority of a separate and transparent water account to track and account for the physical volume of water, which is accumulated, stored, spilled, debited for evaporation and used by South Australia. The account will be proportionally debited for any incremental evaporative losses from headwater storages;
- 7.16.5. that critical human needs water in upstream storages may only be called out of storage for delivery by the relevant State in consultation with the Murray-Darling Basin Authority; and
- 7.16.6. detailed carryover procedures for New South Wales, Victoria and South Australia.

### **Details of Tier 3 - Extreme and Unprecedented Circumstances**

- 7.17. The parties recognise that it will not be possible to provide for water sharing that meets critical human needs in every possible circumstance that may arise in the future. Accordingly, the parties agree to the Ministerial Council having a role in sharing water in extreme and unprecedented circumstances in relation to water availability or water quality or where there is an extreme risk of failure in being able to supply water for critical human needs in the next 12 months.
- 7.18. To provide a clear transition between Tier 2 and Tier 3 water sharing, the Basin Plan will:
- 7.18.1. specify a process, including trigger points, for intervention by the Ministerial Council in periods of extremely low water availability, water quality or where there is an extreme risk of failure in being able to supply water for critical human needs in the next 12 months (commencement of Tier 3 water sharing); and
  - 7.18.2. specify a process, including trigger points, for reversion to Tier 2 water sharing (cessation of Tier 3 water sharing).
- 7.19. Following the commencement of Tier 3 water sharing arrangements, the Ministerial Council will be responsible for water sharing and contingency measures on the River Murray System and key tributaries.

### **Transition arrangements from 1 November 2008 until early 2011**

- 7.20. In the period following the commencement of the new arrangements and up until the Basin Plan is made, due in 2011, the parties agree that:
- 7.20.1. the principles and arrangements established under Part 7 will be applied through the cooperative endeavours of Basin Governments through the Ministerial Council and Basin Officials Committee;
  - 7.20.2. the Murray Darling Basin Authority will work with the Basin Officials Committee as a priority to establish any triggers and management requirements necessary under the three tier water sharing arrangements; and
  - 7.20.3. South Australia will have access to headwater storages for the purposes of meeting critical human water needs as agreed under Part 7.

## **PART 8 COMPLEMENTARY MANAGEMENT OF ENVIRONMENTAL WATER**

- 8.1. The parties agree that the use of environmental water should be coordinated across all types of environmental water and between all holders of environmental water entitlements to achieve agreed environmental objectives in the most cost efficient and effective way possible.
- 8.2. The parties note that the COAG Working Group on Climate Change and Water agreed to a set of high-level principles to underpin the use of environmental water, including water that is purchased for the environment. These principles can serve as a basis for further discussion to ensure more integrated planning and decision-making within and across State boundaries.
- 8.3. The principles in relation to the complementary management of environmental water are:
  - 8.3.1. environmental water will be protected under legislation in every jurisdiction and will only be traded in accordance with agreed principles for trading of environmental water;
  - 8.3.2. environmental water will be acquired and/or managed in the context of integrated river and wetland management programs aimed at achieving agreed environmental objectives;
  - 8.3.3. environmental water will be managed in conjunction with consumptive water and other flows wherever possible, to achieve agreed environmental objectives in the most efficient and effective way possible;
  - 8.3.4. the holding and/or management of environmental water will be underpinned by transparent decision making and independence from the influence of competing uses;
  - 8.3.5. environmental water plans will set agreed environmental objectives, watering priorities and targets;
  - 8.3.6. environmental water use will be transparently accounted and reported as part of normal water accounting processes;
  - 8.3.7. appropriate governance will be required at a Basin and valley scale to oversee annual planning of environmental water use; and
  - 8.3.8. environmental water managers will be clearly accountable for operational decisions and outcomes.

## **PART 9 ENFORCEMENT OF THE BASIN PLAN**

- 9.1. The parties affirm their support for the audit, monitoring and enforcement provisions of the Water Act, and note the responsibility of the Authority in this regard.
- 9.2. The parties agree to work with the Authority to develop enforcement arrangements to complement the Water Act's enforcement provisions to protect States' shares and ensure compliance with the Basin Plan and water resource plans within catchments.
- 9.3. The parties note that the Authority will submit the proposed complementary enforcement arrangements to the Commonwealth Minister for decision.

## **PART 10 RISK ASSIGNMENT FRAMEWORK**

- 10.1. **Assignment of risks in relation to reductions in diversion limits**
  - 10.1.1. Part 2, Division 4 of the Water Act sets out the allocation of risks in relation to reductions in water availability, reflecting the National Water Initiative. Under this Part of the Intergovernmental Agreement, the architecture of the National Water Initiative and the Water Act remain unchanged. The only change is that the Commonwealth takes on the liabilities of the Basin States in relation to new knowledge components that exceed three percent of the relevant diversion limit and from an earlier date as set out in this Part of the Intergovernmental Agreement.
  - 10.1.2. The Basin States who choose to apply the National Water Initiative risk assignment framework, amended by this Agreement, agree to use their best endeavours to amend their legislation by 30 June 2009 to prescribe the State's responsibility, if any, for risk management within the Basin. These provisions would apply only on the expiry of transitional water resource plans. The provisions outlined in this clause will not change the rights of entitlement holders as provided for under the National Water Initiative. The provisions simply provide for the transfer of responsibility in respect to compensation associated with changes due to improvements in knowledge (as outlined in clause 49 of the NWI) from the State Governments to the Commonwealth Government.

- 10.1.3. Commonwealth undertakes to use its best endeavours to enact legislation to amend Division 4 of Part 2 of the Water Act so that:

In respect of those Basin States who choose to apply the National Water Initiative risk assignment framework, the

- (a) the Commonwealth's share of a reduction in a long-term average sustainable diversion limit includes, in any 10 year period, all of the new knowledge components of the reductions that exceed three per cent of the relevant diversion limit; and
- (b) for a water resource plan area in the Murray-Darling Basin with a transitional or interim water resource plan, the Commonwealth will take responsibility for its share of the new knowledge component of a reduction in the long-term average sustainable diversion limit for the water resources of that plan area arising after the transitional or interim water resource plan ceases to have effect.

#### **PART 11 TRANSITION ARRANGEMENTS**

- 11.1. The parties note that the Basin Plan will be made in early 2011 and that transition arrangements will be necessary between 1 November 2008 and the time at which the Plan is made.

**Signed for and on behalf of each of the parties by:**

The Honourable Kevin Rudd MP )  
Prime Minister of Australia )

The Honourable Morris Iemma MP )  
Premier of the State of New South Wales )

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

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

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

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

**Key elements of the legal process for implementation of the Agreement on Murray-Darling Basin reform.**

The following paragraphs set out the key elements of the legal process that would be required for implementation of this Agreement, and which the parties will endeavour to implement.

**Element 1 – Amendment of the Murray-Darling Basin Agreement**

- (1) In relation to institutional arrangements, amendments will need to be made to the Murray-Darling Basin Agreement to reflect relevant aspects of the Intergovernmental Agreement on Murray-Darling Basin Reform on:
  - a. the establishment, membership, voting and functions of the new Ministerial Council;
  - b. various functions of the Authority;
  - c. various functions of the Basin Officials Committee and voting in relation to these functions; and
  - d. various functions of the Basin Community Committee.
  
- (2) In relation to functional areas, amendments will need to be made to the Murray-Darling Basin Agreement to reflect the relevant aspects of the parties' agreement in the Intergovernmental Agreement on matters including:
  - a. cost sharing;
  - b. asset management and river operations;
  - c. measures – strategies, plans and programs; and
  - d. State shares (including the effect of critical human water needs provisions on State shares).

**Element 2 – Amendment of the Water Act**

- (3) The following are the main amendments that will need to be made to the Water Act, so as to reflect relevant aspects of the parties' agreement in the Intergovernmental Agreement:
  - a. making the amended Murray-Darling Basin Agreement a Schedule to the Water Act;
  - b. expanding the functions and powers of the Authority and the Basin Officials Committee to include those set out in the amended Murray-Darling Basin Agreement (these provisions will need to be supported by the referrals, see element 3);
  - c. changing the structure and function of relevant bodies, including by:
    - (i) specifying that in relation to their Murray-Darling Basin Agreement functions, the Authority and Basin Officials Committee will act in accordance with the Agreement;



- (ii) amending the special account so it may earn interest (this account will hold all funds of the Authority including in relation to its Murray-Darling Basin Agreement functions, which will be expended with the approval of the Basin Officials Committee or new Ministerial Council);
  - (iii) amending provisions relating to the establishment and composition of the Basin Officials Committee;
  - (iv) giving new functions (e.g., in relation to development of the Basin Plan) to the Ministerial Council; and
  - (v) amending the functions of the Basin Community Committee;
- d. amending provisions relating to the development of the Basin Plan to provide for review by Basin State Ministers;
  - e. amending Division 4 of Part 2 to adjust risk assignment provisions;
  - f. providing as necessary for the staff, assets, liabilities etc. of the Murray-Darling Basin Commission, and other transitional matters (these amendments will need to be supported by the referrals, see element 3);
  - g. amending Division 1 of Part 2 of the Water Act to require that the Basin Plan deals the provision of critical human needs for water (this amendment will need to be supported by the referrals, see element 3); and
  - h. amending Divisions 1 and 2 of Part 4 of the Water Act to extend the reach of the water charge and water market rules within the Basin, and enable extension beyond the Basin (some of these amendments will need to be supported by the referrals, see element 3).

### **Element 3 – Amendment of Murray-Darling Basin Acts to become referral Acts**

- (4) The existing Basin State Murray-Darling Basin Acts will need to be amended so they refer to the Commonwealth the power to make such amendments, as are agreed by the Basin States, to the Water Act to:
  - a. provide that the Authority and the Basin Officials Committee have the powers and functions set out in the amended Murray-Darling Basin Agreement.
  - b. provide for the staff, assets, liabilities etc. of the Murray-Darling Basin Commission, and other transitional matters;
  - c. provide for the Basin Plan to deal with critical human needs, and give relevant powers and functions to the Ministerial Council; and
  - d. provide for an extension of the reach of the water charge and water market rules within the Basin.
- (5) The amended Murray-Darling Basin Acts will also need to deal with technical issues concerning the referral, including, for example, how the references can

be terminated and may also need to deal with other matters currently dealt with by the Murray-Darling Basin Acts.

**Element 4 – Intergovernmental Agreement on referrals**

- (6) An Intergovernmental Agreement will need to be entered into between the Commonwealth and the Basin States to deal with the ongoing mechanics of the referral. It could deal with the processes for agreeing on any amendments to the provisions of the Water Act which are supported by the referral, and the referral legislation, and the process for terminating the referral. Some of these matters may be able to be dealt with in the Murray-Darling Basin Agreement.

**Element 5 – Amendment of other legislation**

- (7) There may need to be some other changes to existing Commonwealth, State and Territory laws to accommodate the new regime, in particular where these laws refer to the Murray-Darling Basin Commission.

<b>Program</b>	<b>Authority</b>	<b>Commonwealth Minister</b>	<b>Ministerial Council</b>	<b>Basin Officials Committee</b>	<b>Basin States</b>
Basin Plan <ul style="list-style-type: none"> <li>• Planning</li> <li>• Consultation</li> <li>• Coordination</li> <li>• Analysis</li> <li>• Drafting</li> </ul>	Prepares the Basin Plan, consults with Basin States, Basin Officials Committee, Basin Community Committee and stakeholders.  Undertakes planning and policy coordination related to the Basin Plan.  Conducts or commissions analysis as an input to the Basin Plan.	Decision maker, adopts the Basin Plan.	Provides advice to Commonwealth Minister on Basin Plan. May refer Basin Plan back to the Authority for reappraisal.	Provides advice to the Authority on the Basin Plan.	Are consulted on the Basin Plan and may make submissions.  Work with the Authority in its Basin planning process to ensure synergy and harmony in implementation elements.

<b>Program</b>	<b>Authority</b>	<b>Commonwealth Minister</b>	<b>Ministerial Council</b>	<b>Basin Officials Committee</b>	<b>Basin States</b>
Basin Plan implementation <ul style="list-style-type: none"> <li>• Monitoring</li> <li>• Reporting</li> <li>• Enforcements</li> </ul>	Undertakes monitoring, reporting and enforcement activities related to the implementation of the Plan.	Responsible Minister for the Authority (also for role of NWC).	If sustained efforts by the Basin Officials Committee to resolve a matter are unsuccessful, and the matter is of strategic significance (including key issues in relation to State water shares), then it will be referred to the Ministerial Council for strategic direction.	May provide advice to the Authority on implementation matters.  Responsible for resolving operational management and delivery inconsistencies that arise between the application of the Basin Plan and States' management and delivery of their water entitlements and allocations including State water shares, seeking to optimise multiple benefits and maximise efficiency and flexibility and to minimise future conflicts.	Cooperation with the Authority on monitoring, reporting and enforcement of Basin Plan, including sharing of information.  Manage resources, programs, reporting and enforcement regimes to comply with Basin Plan.
Basin Plan review	Conducts 10 yearly statutory review and as requested.  Provides advice to the Ministerial Council on the impacts of the Basin Plan as soon as possible after the fifth anniversary of the Basin Plan.	May request review after 5 years since last review.  Receives the report of the results of the review.	Provides advice to Commonwealth Minister on the review; May request review after 5 years since last review.	Is consulted on the review.  Advises Ministerial Council on the review.	May jointly request a review of the Basin Plan after 5 years since last review.  Are consulted on the review and may make submissions.

<b>Program</b>	<b>Authority</b>	<b>Commonwealth Minister</b>	<b>Ministerial Council</b>	<b>Basin Officials Committee</b>	<b>Basin States</b>
Basin Plan amendment	Prepares amendment of the Basin Plan.	Decision maker, adopts amended Basin Plan	Provides advice to Commonwealth Minister on Basin Plan on major amendments	Is consulted on amendments. Provides advice to Ministerial Council on major amendments.	Are consulted on amendments and may make submissions.
Water Resource Plans	<p>Makes recommendations to Minister on accreditation of water resource plans submitted by Basin States.</p> <p>Makes recommendations to Minister on accreditation of amendments to water resource plans submitted by Basin States.</p> <p>May advise or assist Basin States in preparing a water resource plan or an amendment to a water resource plan.</p> <p>Prepares water resource plans at the request of the Minister.</p>	<p>May accredit a water resource plan prepared by a Basin State.</p> <p>In limited circumstances, may request the Authority to prepare a water resource plan.</p> <p>May adopt a water resource plan prepared by the Authority.</p>	-	-	<p>Develop new and amend new and existing water resource plans consistent with the Basin Plan and in consultation with stakeholders.</p> <p>Submit water resource plans to the Authority for accreditation by the Minister.</p> <p>Monitor and enforce water resource plans.</p> <p>Report on water resource plans as per s 71 of Water Act.</p>

<b>Program</b>	<b>Authority</b>	<b>Commonwealth Minister</b>	<b>Ministerial Council</b>	<b>Basin Officials Committee</b>	<b>Basin States</b>
Water charge and water market rules	-	Makes the rules having sought and taken into account advice from the ACCC.	-	-	<p>Are consulted on the making, amendment and revocation of water charge and water market rules.</p> <p>Provide advice and necessary information to ACCC to enable the development of appropriate market rules and water charge rules.</p> <p>Must comply with water charge and water market rules.</p> <p>Maintain registers of water rights.</p>

<b>Program</b>	<b>Authority</b>	<b>Commonwealth Minister</b>	<b>Ministerial Council</b>	<b>Basin Officials Committee</b>	<b>Basin States</b>
Sustainable Diversion Limits	Prepares as part of the Basin Plan.	Decision maker, as part of the Basin Plan	Provides advice to Commonwealth Minister on Basin Plan. May refer Basin Plan back to the Authority for reappraisal.	Provides advice to the Authority on the Basin Plan.	<p>Are consulted on the Basin Plan and may make submissions.</p> <p>Support preparation through provision of data, policy advice, analysis and general advice.</p> <p>Ensure that sustainable diversion limits in water resource plans are consistent with those set out in the Basin Plan.</p> <p>Ensure water resources are managed within Sustainable Diversion limits.</p>
State water shares <ul style="list-style-type: none"> <li>Determine shares available to States</li> </ul>	Authority implements Ministerial Council decisions.	-	High level decision making.  May delegate implementation to Basin Officials Committee.	High level decision making as per Ministerial Council delegation.	NSW, Victoria and South Australia manage water resources consistent with State shares.

<b>Program</b>	<b>Authority</b>	<b>Commonwealth Minister</b>	<b>Ministerial Council</b>	<b>Basin Officials Committee</b>	<b>Basin States</b>
River Murray Water Operations <ul style="list-style-type: none"> <li>• River operations</li> <li>• Metering and billing</li> </ul>	Authority implements Basin Officials Committee decisions.	-	Approves budget, including for major capital expenditure in context of corporate plan and budget submitted by Authority.	High level decision making.	NSW, Victoria and South Australia undertake operational functions at the direction of the Authority.  NSW, Victoria and South Australia call out water to meet Basin State water needs within volumes established.
Asset Management	Authority prepares asset management plan.  Authority implements agreed plan.	-	Approves budget including for major capital expenditure in context of corporate plan and budget submitted by Authority.  Approves asset management plan.	Monitors asset management plan.	NSW, Victoria and South Australia work with Authority to deliver asset management plan.  Responsible for land use planning decisions.
Basin Salinity Management Strategy (BSMS) <ul style="list-style-type: none"> <li>• Establishes river salinity targets for each tributary valley</li> </ul>	Authority implements Basin Officials Committee decisions on matters relating to the existing programs.  Authority prepares a water quality and salinity management plan as required by the Water Act.	Decision maker, as part of the Basin Plan, on a Water quality and salinity management plan.	Provides advice to Commonwealth Minister on Basin Plan. May refer Basin Plan back to the Authority for reappraisal.	Provides advice to the Authority on the Basin Plan.	Are consulted on the Basin Plan and may make submissions.  Undertake monitoring, assessment and reporting in accordance with established program.



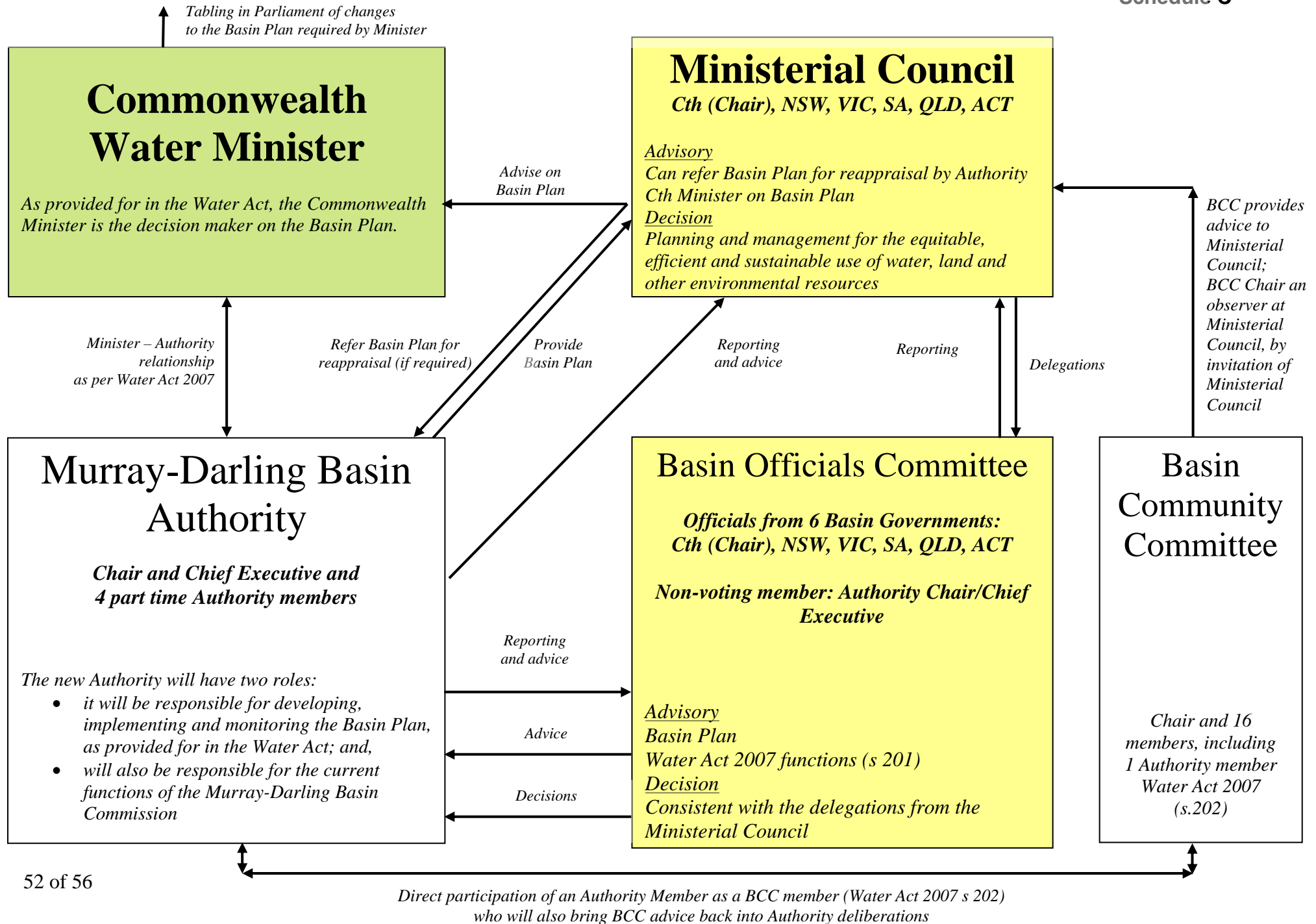
<b>Program</b>	<b>Authority</b>	<b>Commonwealth Minister</b>	<b>Ministerial Council</b>	<b>Basin Officials Committee</b>	<b>Basin States</b>
<p>BSMS Salt Interception Scheme (SIS)</p> <ul style="list-style-type: none"> <li>Projects that intercept saline water</li> <li>Investigate, design, construct, maintain and operate River Murray salt interception schemes</li> </ul>	<p>Authority prepares asset management plan.</p> <p>Authority implements agreed plan.</p>	-	<p>Approves budget, including for major capital expenditure in context of corporate plan and budget submitted by Authority. Approves asset management plan.</p>	<p>Monitors asset management plan.</p> <p>High level decision making as per Ministerial Council delegation.</p>	<p>Responsibility for design, delivery, operation and maintenance of salt interception schemes.</p> <p>Responsibility for monitoring and reporting of schemes.</p>
Water Quality	Authority prepares a water quality and salinity management plan as part of the Basin Plan.	Decision maker, as part of Basin Plan.	Provides advice to Commonwealth Minister on Basin Plan. May refer Basin Plan back to the Authority for reappraisal.	Provides advice to the Authority on the Basin Plan.	<p>Are consulted on Basin Plan and may make submissions.</p> <p>Implementation, monitoring and reporting as set out in the Basin Plan.</p>
<p>Sustainable Rivers Audit</p> <ul style="list-style-type: none"> <li>Audit of conditions of the Basin's rivers</li> </ul>	Authority decides on scope of the Sustainable Rivers Audit and undertakes the Audit, which would be an input to the Basin Plan.	Decision Maker.	Provides advice to Commonwealth Minister on Basin Plan. May refer Basin Plan back to the Authority for reappraisal.	Provides advice to the Authority on the Basin Plan.	<p>Are consulted on the Basin Plan and may make submissions.</p> <p>Implementation, monitoring and reporting as set out in the Basin Plan.</p>
<p>Native Fish Strategy</p> <ul style="list-style-type: none"> <li>Rehabilitate native fish</li> </ul>	Authority implements decisions of Basin Officials Committee, consistent with the Basin Plan.	-	<p>High level decision making.</p> <p>May delegate implementation to Basin Officials Committee.</p>	High level decision making as per Ministerial Council delegation.	Development, implementation and monitoring of Native Fish Strategy.

<b>Program</b>	<b>Authority</b>	<b>Commonwealth Minister</b>	<b>Ministerial Council</b>	<b>Basin Officials Committee</b>	<b>Basin States</b>
<p>Integrated Basin Report</p> <ul style="list-style-type: none"> <li>• Draws together all program data into a single analysis</li> </ul>	<p>Authority undertakes the Integrated Basin Report, which would be an input to the Basin Plan.</p>	<p>Decision Maker.</p>	<p>Provides advice to Commonwealth Minister on Basin Plan. May refer Basin Plan back to the Authority for reappraisal.</p>	<p>Provides advice to the Authority on the Basin Plan.</p>	<p>Are consulted on the Basin Plan and may make submissions.</p> <p>Implementation, monitoring and reporting as set out in the Basin Plan.</p>
<p>The Living Murray</p> <ul style="list-style-type: none"> <li>• Target to return 500GL of water to the River by June 2009, comprises: <ul style="list-style-type: none"> <li>• Environmental Works and Measures Program</li> <li>• The Living Murray – Water Recovery</li> <li>• The Living Murray – Environmental Water Delivery</li> <li>• The Living Murray – Indigenous Partnerships Program</li> </ul> </li> </ul>	<p>Authority implements decisions of Basin Officials Committee.</p> <p>Range of components of TLM implemented consistent with the aspect of the activity (e.g. Environmental Works and Measures Program as part of asset creation).</p>	<p>-</p>	<p>High level decision making.</p> <p>May delegate implementation to Basin Officials Committee.</p>	<p>High level decision making as per Ministerial Council delegation.</p>	<p>For NSW, Victoria, South Australia and the ACT, participation in implementation of Living Murray programs (including Environmental Works and Measures Program and Indigenous Partnerships Program and delivery of water savings to help meet Living Murray targets).</p> <p>Monitoring and reporting on individual Living Murray Programs.</p>

<b>Program</b>	<b>Authority</b>	<b>Commonwealth Minister</b>	<b>Ministerial Council</b>	<b>Basin Officials Committee</b>	<b>Basin States</b>
<p>Risks to Shared Water Resources Program</p> <ul style="list-style-type: none"> <li>• Implications of the six identified risk factors</li> </ul>	<p>The Authority will identify risks and strategies to manage them, as part of the Basin Plan.</p> <p>The data collected in the Risks to Shared Water Program would be an input to the preparation of the Basin Plan.</p>	Decision Maker.	Provides advice to Commonwealth Minister on Basin Plan. May refer Basin Plan back to the Authority for reappraisal.	Provides advice to the Authority on the Basin Plan.	<p>Are consulted on the Basin Plan and may make submissions.</p> <p>Implementation, monitoring and reporting as set out in the Basin Plan.</p>
Water Trade	Trading rules to be included in the Basin Plan.	Decision Maker.	Provides advice to Commonwealth Minister on Basin Plan. May refer Basin Plan back to the Authority for reappraisal.	Provides advice to the Authority on the Basin Plan.	<p>Are consulted on the Basin Plan and may make submissions.</p> <p>Compliance with trading rules.</p> <p>Maintain registers of water rights.</p> <p>Administer intra and interstate trade in water rights within the rules.</p>
<p>Northern Basin Program</p> <ul style="list-style-type: none"> <li>• Improve understanding of the Northern Basin</li> </ul>	<p>Authority implements Basin Officials Committee decisions.</p> <p>The data collected in the Northern Basin Program would be an input to the preparation of the Basin Plan.</p>	-	<p>High level decision making.</p> <p>May delegate implementation to Basin Officials Committee.</p>	High level decision making as per Ministerial Council delegation.	Development, implementation and monitoring of Northern Basin Program.

# Murray-Darling Basin Institutional Structure and Governance

Schedule C



## **Decision rules for transition to the Murray-Darling Basin Authority**

### **Human Resources**

1. All existing staff of the Office of the Murray-Darling Basin Commission will be transferred to the new Authority noting that their high level of expertise and experience will make a valuable contribution to the work of the new Authority.
2. Each person currently employed by the Murray-Darling Basin Commission will have a position in the Murray-Darling Basin Authority. This position will be equivalent to their existing position in the Murray-Darling Basin Commission.
3. The Murray-Darling Basin Authority will not offer voluntary redundancies to existing staff of the Murray-Darling Basin Commission as part of the transition process.
4. The offering of any voluntary redundancies to staff prior to the transition date is a matter for consideration by the Murray-Darling Basin Commission in accordance with the Murray-Darling Basin Commission Collective Agreement 2006-2009 and the Murray-Darling Basin Commission Delegations of Power.
5. Transferring employees of the Murray-Darling Basin Commission who currently fall within the Collective Agreement 2006-2009 will be regulated by that Agreement, and will retain all rights and conditions under that Agreement for the transmission period of 12 months, pending the making of a new Collective Agreement (*Workplace Relations Act 1996*, s 585). The Authority will negotiate a Collective Agreement with Authority staff before the transmission period ends.
6. All transferring employees of the Murray-Darling Basin Commission who are contracted to the Commission under Individual Employment Agreements will be offered new Agreements, retaining those rights and terms and conditions for the period of their current Agreement, unless otherwise negotiated.
7. Existing redundancy/severance and long service leave entitlements of all Murray-Darling Basin Commission employees will be recognised, including the entitlement to access Long Service Leave after seven years service.

#### *Notes:*

- (a) Transferring employees who are not Australian Citizens at the time of transfer will be transferred to the new Authority by application of Sections 22 (8) or 72 (1d) PS Act.
- (b) In accordance with the APS Fairness Test, no transferring employee will be disadvantaged in terms of reducing the benefit to an employee of any individual term or condition applicable to the employee.
- (c) The detailed arrangements to give effect to the above principles will be decided in consultation with the Australian Public Service Commission and the Department of Education, Employment and Workplace Relations, including mechanisms by which redundancy/severance and long service leave benefits at the end of the transmission period are “grandfathered” for all transferring employees.

### **Program Commitments**

8. The new Authority will also be responsible for the current functions of the Office of the Murray-Darling Basin Commission.
9. The new Authority will preserve and respect prior program commitments, approved budgets and delivery timeframes unless otherwise agreed by the MDB Ministerial Council or its successor.

## Business Continuity

10. Ensure continuity of the arrangements for river operations in the Murray River and asset maintenance and operation, noting the critical importance of operating the River, particularly in a period of drought, such that these arrangements retain existing functionality in the new organisation and there is no period of uncertainty in relation to these issues in the transition from the Murray-Darling Basin Commission to the Murray-Darling Basin Authority.
11. All existing contractual commitments of the Murray-Darling Basin Commission to be transferred to the Murray-Darling Basin Authority, unless agreed otherwise.
12. Existing Murray-Darling Basin Commission business systems to be carried over to support 'start up' of the Murray-Darling Basin Authority noting the requirement that they comply with Commonwealth legislation.\*
13. Existing indemnities, as provided under the MDB Agreement, to be preserved and continued.
14. Further work will be undertaken regarding transition arrangements for Murray-Darling Basin Commission assets and liabilities other than those identified in clause 3.4.4 of the Intergovernmental Agreement.

### *Notes:*

\*A transition period may be required to ensure all business systems are compliant with Commonwealth legislation following the actual transition from the Murray-Darling Basin Commission to Murray-Darling Basin Authority.

## Assets and Liabilities

The approach agreed by parties in regard to the transition arrangements for River Murray operation assets and liabilities is set out in clauses 3.4.4 to 3.4.10 of the Intergovernmental Agreement.

## Commonwealth Government Due Diligence Criteria for Basin State Priority Projects

In undertaking the due diligence assessment of priority projects the Commonwealth will consider the social, economic, environmental, financial and technical aspects of the project.

### 1. Economic and social criteria

Projects must be able to secure a long-term sustainable future for irrigation communities, in the context of climate change and reduced water availability into the future:

- projects must contribute towards regional investment and development, secure regional economies and support the local community; and
- projects must demonstrate a long-term economic and environmental benefit that can be sustained over a 20 year horizon, preferably supported by an irrigation modernisation plan consistent with the Commonwealth's guidelines for irrigation modernisation planning assistance.

### 2. Environmental criteria

Projects must deliver substantial and lasting returns of water to the environment to secure real improvements in river health:

- projects must be based on a technically valid calculations of net water savings, with projections to take into account the impacts of climate change;
- projects must be able to deliver water in the form of a secure and transferable water entitlement to the Commonwealth Environmental Water Holder; and,
- the Commonwealth's share of water saved must be capable of being used for purposes that reflect the Commonwealth's environmental priorities

### 3. Value for money criteria

Projects must deliver value for money in the context of the first two criterion:

- projects must have a suitable dollar per megalitre benchmark against local/regional water market prices and represent cost- and time-effective strategies for achieving water savings;
- projects must demonstrate a positive cost-benefit outcome for a range of investment scenarios, compared with a no change option; and
- there must be clearly defined, and agreed, cost sharing arrangements.

### 4. Water reform criteria

All activities associated with the funding of projects must be in accordance with Council of Australian Governments and National Water Initiative agreements.

Jurisdictions or other parties must make progress towards key water reforms, including those previously agreed to by jurisdictions under the National Water Initiative, including, but not limited to:

- competitively neutral and independently regulated water market and trading arrangements across the southern connected Basin;

- water charging regimes that reflect the full cost of supply to end users, including environmental externalities where feasible and practical;
- publicly accessible and compatible water register arrangements across all Basin jurisdictions (including a national water register information database); and
- strategic investment to accelerate development of a best practice and consistent Basin water modelling platform, noting that the Murray-Darling Basin Authority will be developing such a platform in consultation with Basin States;
- compliance with any other COAG water and National Water Initiative reforms.

## 5. Other due diligence criteria

Projects must be consistent with best practice and other national approaches and standards being adopted for planning and implementation of *Water for the Future*.

Projects will need to integrate with Basin State water planning documents and processes.

Projects involving irrigation systems will require independently-conducted water loss hotspot assessment and modernisation plans.

Funding will be provided for on-ground works related expenditure only and not for financial restructuring or other purposes.

Suitable project management capability and capacity must be demonstrated.

Project specifications must include:

- appropriate governance arrangements for the project to ensure it delivers on time, within budget and against all key objectives;
- compliance with relevant state environmental legislation and the *Environment Protection and Biodiversity Conservation Act 1999*;
- compliance with other relevant jurisdictional legislation;
- indemnification of the Commonwealth against any environmental or other third party damage caused by the project;
- no responsibility to the Commonwealth for any past, present or future taxation liabilities arising from investments;
- warranties on investments; and
- no allocation of responsibility to the Commonwealth for any legal contracts already entered into, except where explicitly agreed.

The Commonwealth will take into account other relevant matters where necessary in undertaking its due diligence.