

## **Annex 1**

### **Amendments to the Water Act 2007 (Cth)**

#### **Part 2 – Management of Basin Water Resources**

##### **Division 1 – Basin Plan**

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##### **23A Proposing adjustments of long-term average sustainable diversion limits**

- (1) The Basin Plan may provide for the Authority to propose:
  - (a) an adjustment of the long-term average sustainable diversion limit for the water resources of a particular water resource plan area (or a particular part of those water resources) by an amount determined by the Authority (subject to subsection (4)); and
  - (b) as a result of one or more adjustments under paragraph (a) of this subsection, an adjustment of the long-term average sustainable diversion limit for the Basin water resources by an amount determined by the Authority.
- (2) If the Basin Plan includes provisions as described in subsection (1), the Plan must also include:
  - (a) criteria for determining whether the Authority should propose an adjustment, and the amount of an adjustment, referred to in paragraph (1)(a) or (b); and
  - (b) a requirement for the Authority to determine whether it is satisfied that the criteria referred to in paragraph (a) of this subsection have been met; and
  - (c) a requirement for the Authority not to propose an adjustment under paragraph (1)(a) or (b) without seeking and considering advice from the Basin Officials Committee; and
  - (d) a requirement for the Authority not to propose an adjustment under paragraph (1)(a) or (b) without:
    - (i) inviting members of the public to make submissions to the Authority on the proposed adjustment; and
    - (ii) providing a reasonable amount of time for those submissions to be made and considered by the Authority.
- (3) To avoid doubt:
  - (a) the Authority may propose an adjustment under paragraph (1)(a) or (b) without preparing an amendment of the Basin Plan under Subdivision F; and
  - (b) a long-term average sustainable diversion limit that is produced after the adjustment proposed by the Authority under paragraph (1)(a) or (b) has been taken into account must reflect an environmentally sustainable level of take.

Note: A proposed adjustment may be adopted by the Minister as an amendment of the Basin Plan under subsection 23B(6).

##### *Limit on proposed adjustments*

- (4) One or more adjustments may be proposed by the Authority under paragraph (1)(a), and an adjustment may be proposed under paragraph (1)(b) as a result of those adjustments, only if the total Basin adjustment percentage is no more than 5%.

### *Definitions*

- (5) In this Act:

***Basin reference limit*** means the long-term average sustainable diversion limit for the Basin water resources that applies at the reference time.

***proposed Basin limit*** means the long-term average sustainable diversion limit for the Basin water resources:

- (a) that is produced after the adjustment proposed by the Authority under paragraph (1)(b) has been taken into account; and
- (b) that replaces the previous long-term average sustainable diversion limit for the Basin water resources.

***proposed plan area limit*** means the long-term average sustainable diversion limit for the water resources of a particular water resource plan area (or a particular part of those water resources):

- (a) that is produced after the adjustment proposed by the Authority under paragraph (1)(a) has been taken into account; and
- (b) that replaces the previous long-term average sustainable diversion limit for those water resources (or the particular part of those water resources).

***reference time*** means:

- (a) unless paragraph (b) or (c) applies—the time the Basin Plan first takes effect; or
- (b) if, as a result of the most recent review of the Basin Plan under Subdivision G, an amendment of any one or more long-term average sustainable diversion limits is adopted—the time when the amendment or amendments take effect; or
- (c) if, after the most recent review of the Basin Plan under Subdivision G, the Authority advises the Minister, when giving a report of the results of the review to the Minister under subsection 50(5), that the Authority has decided not to prepare any amendment of any long-term average sustainable diversion limit—the time when the report is given to the Minister.

***total Basin adjustment percentage***, in relation to one or more adjustments proposed under paragraph (1)(a), is the amount of the difference between:

- (a) the proposed Basin limit that is proposed as a result of those adjustments; and
- (b) the Basin reference limit;

expressed as a percentage of the Basin reference limit.

- (6) If the amount of the difference between the limits in paragraphs (a) and (b) of the definition of ***total Basin adjustment percentage*** in subsection (5) is negative, express that amount as a positive amount.

## **23B Adopting proposed adjustments as amendments of Basin Plan**

- (1) This section applies if the Authority proposes one or more adjustments of the long-term average sustainable diversion limits for the water resources of particular water resource plan areas (or particular parts of those water resources) under paragraph 23A(1)(a).
- (2) For each water resource plan area (or each part) for which an adjustment is proposed, the Authority must include the following information in a notice:
  - (a) the long-term average sustainable diversion limit, for the water resources of the plan area (or the particular part of those water resources), that applied at the reference time;
  - (b) the proposed plan area limit;

- (c) the amount of the difference between the limits referred to in paragraphs (a) and (b) of this subsection, expressed as a percentage of the amount of the limit referred to in paragraph (a);
  - (d) if, on one or more occasions since the reference time, adjustments of the long-term average sustainable diversion limit for the water resources of that plan area (or the particular part of those water resources) have been adopted as amendments by the Minister under subsection (6)—the limit as so adjusted;
  - (e) an outline of the material on which the Authority based its decision in determining that the criteria referred to in paragraph 23A(2)(a) had been met in relation to the adjustment and the amount of the adjustment.
- (3) A notice made under subsection (2) must also include:
- (a) the proposed Basin limit that is proposed as a result of the proposed adjustments referred to in subsection (1); and
  - (b) the total Basin adjustment percentage; and
  - (c) an outline of the material on which the Authority based its decision in determining that the criteria referred to in paragraph 23A(2)(a) had been met in relation to the adjustment, and the amount of the adjustment, of the long-term average sustainable diversion limit for the Basin water resources; and
  - (d) the assessments against the supply measure conditions undertaken by the Authority and the Independent Panel, respectively, for each notified measure.

**Note:** The assessments against the supply measure conditions are provided for in section 7.11 of the Basin Plan.

- (4) The Authority must also prepare an amendment of the Basin Plan that sets out each proposed plan area limit, and the proposed Basin limit, that is included in the notice.

**Note:** The amendment is a legislative instrument (see section 33).

- (5) The Authority must:
- (a) give the notice made under subsection (2) to the Minister; and
  - (b) give the amendment of the Basin Plan prepared under subsection (4) to the Minister for adoption.
- (6) As soon as practicable after receiving the amendment, the Minister must:
- (a) consider the amendment; and
  - (b) either:
    - (i) adopt, in writing, the amendment if all of the requirements of Chapter 7 of the Basin Plan have been satisfied; or
    - (ii) give the Authority notice, in writing, that the Minister has decided not to adopt the amendment, including because all of the requirements of Chapter 7 of the Basin Plan have not been satisfied.

**Note:** If a long-term average sustainable diversion limit for the water resources of a particular water resource plan area (or a particular part of those water resources) is amended, the long-term annual diversion limit for those water resources is also amended (see table item 7 of the table in subsection 22(1)).

- (7) Where the Minister decides not to adopt the amendment because all of the requirements of Chapter 7 have not been satisfied, the Minister must direct the Authority to satisfy those requirements and to resubmit the amendment accordingly. The Minister must then reconsider the amendment pursuant to subsection (6).

- (8) The notice made under subsection (2):

- (a) must accompany the amendment when the amendment is laid before a House of the Parliament under section 38 of the *Legislation Act 2003*; and
- (b) is not a legislative instrument.

**Division 5, Part 2 – 1,500 Gigalitre Limit on Water Purchases**

**REPEAL ENTIRE DIVISION**

## Part 2AA—Water for the Environment Special Account

### 86AA Object of this Part

- (1) The object of this Part is to achieve the enhanced environmental outcomes set out in s. 86AB by:
- (a) protecting and restoring the environmental assets of the Murray-Darling Basin; and
  - (b) protecting biodiversity dependent on the Basin water resources;
  - (c) removing constraints, as required under s. 86AAB(1)(a); and
  - (d) increasing the volume of Basin water resources that is available for environmental use by 450 gegalitres, as required under s. 86AA(1)(b).

so as to give effect to relevant international agreements.

### 86AB Enhanced environmental outcomes

(1) Environmental outcomes are to be enhanced in the following ways:

- (a) further reducing salinity levels in the Coorong and Lower Lakes so that improved water quality contributes to the health of insects, fish and plants that form important parts of the food chain, with the aim of achieving the following outcomes:
  - (i) the maximum average daily salinity in the Coorong South Lagoon is less than 100 grams per litre;
  - (ii) the maximum average daily salinity in the Coorong North Lagoon is less than 50 grams per litre;
  - (iii) the average daily salinity in Lake Alexandrina is less than 1000 microsiemens per centimetre for 95% of years and 1500 microsiemens per centimetre all of the time;
- (b) keeping water levels in the Lower Lakes above:
  - (i) 0.4 metres Australian Height Datum for 95% of the time; and
  - (ii) 0.0 metres Australian Height Datum at all times;to provide additional flows to the Coorong, and to prevent acidification, acid drainage and riverbank collapse below Lock 1;
- (c) ensuring the mouth of the River Murray is open without the need for dredging in at least 95% of years, with flows every year through the Murray Mouth Barrages;
- (d) discharging 2 million tonnes of salt per year from the Murray-Darling Basin as a long-term average;
- (e) further increasing flows to the Coorong through the Murray Mouth Barrages, and supporting fish migration;
- (f) in conjunction with removing or easing constraints referred to in subparagraph (h)(ii), providing opportunities for environmental watering of an additional 35,000 hectares of floodplains in the River Murray System, to do the following:
  - (i) improve the health of forests and the habitats of fish and birds;
  - (ii) improve connections between the floodplains and rivers in the River Murray System;
  - (iii) replenish groundwater;
- (g) increasing the flows of rivers and streams, and providing water to low and middle level floodplains and habitats that are adjacent to rivers and streams, in the River Murray System:

- (i) to enhance environmental outcomes within those floodplains, habitats, rivers and streams; and
- (ii) to improve connections between those floodplains and habitats, and those rivers and streams;
- (h) in any other way that is consistent with:
  - (i) the Authority's modelling of the effect of increasing the volume of the Basin water resources that is available for environmental use by 3200 gigalitres; and
  - (ii) easing or removing constraints on the capacity to deliver environmental water to the environmental assets of the Murray-Darling Basin.

## **86AAB How to achieve enhanced environmental outcomes**

(1) The enhanced environmental outcomes set out in s. 86AB are to be achieved by:

- (a) easing or removing constraints on the capacity to deliver environmental water to the environmental assets of the Murray-Darling Basin; and
- (b) increasing the volume of the Basin water resources that is available for environmental use by 450 gigalitres.

(2) The requirements set out in subsection (1) must be achieved by June 30 2024.

**Note:** To avoid doubt, constraints proposals must be modified to reflect the agreed targets set by the Authority in the Constraints Management Strategy. The benchmark for comparing changes with respect to constraints' levels is 2012.

## **86ABC Water for the Environment Special Account**

- (1) The Water for the Environment Special Account is established by this section.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

## **86AC Credits to the Water for the Environment Special Account**

- (1) There must be credited to the Water for the Environment Special Account the following amounts:
  - (a) all amounts appropriated by the Parliament for the purposes of that Account;
  - (b) amounts paid by a Basin State, under an agreement between the Commonwealth and the State, for crediting to that Account;
  - (c) amounts received for crediting to that Account by the Commonwealth under any other agreement;
  - (d) amounts equal to money received by the Commonwealth in relation to property paid for with amounts debited from that Account;
  - (e) amounts equal to amounts of any gifts given or bequests made for the purposes of that Account.

**Note:** An Appropriation Act provides for amounts to be credited to a special account if any of the purposes of the special account is a purpose that is covered by an item in the Appropriation Act.

- (2) Amounts equal to money received by the Commonwealth from the disposal of or other dealings with water access rights paid for with amounts debited from the Water for the Environment Special Account are not to be credited to that Account.

**Note:** Such amounts are instead credited to the Environmental Water Holdings Special Account (see paragraphs 105(2)(a) and 112(1)(b)).

## **86AD Purposes of the Water for the Environment Special Account**

- (1) This section sets out the purposes of the Water for the Environment Special Account.
- (2) Amounts standing to the credit of the Water for the Environment Special Account may be debited for any of the following purposes:
  - (a) making payments in relation to projects that will further the object of this Part and help to achieve one or more of the requirements of ss. 86AB and either 86AAB(1)(a) or 86AAB(1)(b) by doing one or more of the following:
    - (i) improving the water efficiency of the infrastructure that uses Basin water resources for irrigation, taking into account return flows where this is hydrologically relevant;
    - (ii) improving the water efficiency of any other infrastructure that delivers, stores or drains Basin water resources for the primary purpose of providing water for irrigation;
    - (iii) improving or modifying any infrastructure (including bridges and roads) that constrains the delivery of environmental water to the environmental assets of the Murray-Darling Basin in order to ease or remove those constraints;
    - (iv) better utilising existing dams and storages to deliver environmental water to the environmental assets of the Murray-Darling Basin;
    - (v) entering agreements to acquire an interest in, or in relation to, land (including easements) to facilitate environmental watering of the environmental assets of the Murray-Darling Basin;
    - (vi) improving the rules, policies, practices and procedures in relation to the use and management of the Basin water resources;
  - (b) purchasing water access rights in relation to Basin water resources for the purpose of furthering the object of this Part and achieving one or more of the requirements of ss. 86AB and the requirement set out in 86AAB(1)(b);
  - (c) making any other payments:
    - (i) in relation to projects whose aim is to further the object of this Part and help to achieve one or more of the requirements of ss. 86AB and either 86AAB(1)(a) or 86AAB(1)(b); or
    - (ii) to address any detrimental social or economic impact on the wellbeing of any community in the Murray-Darling Basin that is associated with a project or purchase referred to in paragraph (a) or (b) or subparagraph (c)(i) so as to offset any such impact;
  - (d) meeting the expenses of administering the Account.

### **(3) A Proposal to receive a payment under s. 86AD (2) must:**

- (a) specify how the project, agreement or purchase will further the object of this Part and help to achieve one or more of the requirements of ss. 86AB and either 86AAB(1)(a) or 86AAB(1)(b); and
- (b) be placed on public exhibition for a minimum of 28 days, during which time the public may make submissions about the proposal; and
- (c) not be approved until the Minister has taken into account submissions received under subsection 3 and is satisfied that it will further the object of this Part and help to achieve one or more of the requirements of ss. 86AB and s. 86AAB(1)(a) or 86AAB(1)(b).



- (4) To avoid doubt, a payment under s. 86AD(2)(a), (b) or (c)(i) may only be made where the project, agreement or purchase will further the objects of this Part and help to achieve one or more of the requirements of ss. 86AB and either 86AAB(1)(a) or 86AAB(1)(b).
- (5) Payments for any notified supply measure may only be made where the Minister is satisfied that the supply measure conditions will be met for the notified supply measure.
- (6) For the purposes of this section, the expenses of administering the Water for the Environment Special Account do not include the cost of salaries of the Department.

Note: The supply measure conditions are defined and provided for in Chapter 7 of the Basin Plan.

### **86AAD Monitoring and reporting**

- (1) Any project for which a payment under 86AD(2)(a)(i) or 86AD(2)(c)(i) has been received must be monitored in order to ensure that it is furthering the objects of this Part and helping to achieve one or more of the requirements of ss. 86AB and 86AAB(1)(b).
- (2) The results of this monitoring must be published in the annual report provided for in s. 86AI.
- (3) If the monitoring demonstrates that the project is not furthering the objects of this Part and helping to achieve one or more of the requirements of ss. 86AB and 86AAB(1)(b), any subsequent funding may be withdrawn.

### **86AE Commonwealth environmental water holdings**

- (1) To avoid doubt, water access rights acquired by the Commonwealth with amounts debited from the Water for the Environment Special Account form part of the Commonwealth environmental water holdings (see section 108).

Note: The Commonwealth Environmental Water Holder must (subject to subsection (2) of this section) dispose or otherwise deal with Commonwealth environmental water holdings in accordance with sections 105 and 106.
- (2) Paragraphs 105(3)(b) and (4)(b), subparagraphs 106(3)(c)(ii) and (iii), and subsection 105(5), do not apply in relation to any water access right that forms part of the Commonwealth environmental water holdings if the water access right was acquired by the Commonwealth with amounts debited from the Water for the Environment Special Account.

### **86AF Arrangements to make payments**

- (1) The Minister may, on behalf of the Commonwealth, enter into arrangements and make payments for the purposes of subsection 86AD(2). Any subsequent arrangements and/or contracts are to be made publicly available.
- (2) If a Basin State is granted financial assistance with an amount debited from the Water for the Environment Special Account, the terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the Basin State. These agreements are to be made publicly available.

## 86AG Amounts to be credited to the Water for the Environment Special Account

At the beginning of 1 July in each financial year specified in the following table, the amount specified in the table for that year is credited by force of this section to the Water for the Environment Special Account.

Yearly payments		
Item	Financial year	Amount for financial year
1	2014-2015	\$15,000,000.00
2	2015-2016	\$40,000,000.00
3	2016-2017	\$110,000,000.00
4	2017-2018	\$430,000,000.00
5	2018-2019	\$320,000,000.00
6	2019-2020	\$350,000,000.00
7	2020-2021	\$315,000,000.00
8	2021-2022	\$105,000,000.00
9	2022-2023	\$60,000,000.00
10	2023-2024	\$30,000,000.00

## 86AI Annual report

*Annual report to be given to Minister*

- (1) As soon as practicable after 30 June in each financial year (the **report year**), the Secretary of the Department must prepare and give to the Minister, for presentation to the Parliament, a report on the Water for the Environment Special Account during that year.

*Contents of annual report*

- (2) The Secretary of the Department must include in each annual report particulars of the following:
  - (a) the objectives and priorities for amounts debited during the report year from the Water for the Environment Special Account;
  - (b) how those objectives and priorities helped to achieve the objects of this Part and the requirements set out in ss. 86AA and 86AB;
  - (c) taking into account subsection (2)(b), achievements against those objectives and priorities, including the following:
    - (i) the increase during the report year in the volume of the Commonwealth environmental water holdings as a result of amounts debited from the Water for the Environment Special Account (whether the amounts were debited in that or any other year);
    - (ii) a description of the water access rights acquired by the Commonwealth during the report year as a result of amounts debited from the Water for the Environment Special Account (whether the amounts were debited in that or any other year);
    - (iii) the water resource plan areas in which water access rights referred to in subparagraph (ii) have been acquired;
  - (d) for each project in relation to which an amount was debited from the Water for the Environment Special Account during the report year for the purposes of paragraph 86AD(2)(a) or subparagraph 86AD(2)(c)(i):
    - (i) a description of the project; and

- (ii) the aim of the project; and
- (iii) the water resource plan area in which the project is to take place or is taking place;
- (iv) information as to how the project helps to achieve the objects of this Part and the requirements set out in ss. 86AA and 86AB, including the monitoring information referred to in s. 86AAD.
- (v) where relevant, the monitoring results provided for in s. 86AAD.
- (e) if an amount was debited during a previous financial year for the purposes of paragraph 86AD(2)(a) or subparagraph 86AD(2)(c)(i) in relation to a project—any significant developments during the report year in relation to the project;
- (f) in any case—any amount debited from the Water for the Environment Special Account during the report year, and the purpose for which the amount was debited.

*Annual report to be tabled in Parliament*

- (3) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day the Minister receives the report.

*Annual report to be given to Basin States*

- (4) The Minister must cause a copy of each annual report to be given to the relevant State Minister for each of the Basin States on or before the day the report is first tabled in a House of the Parliament.

## **86AJ Reviews of this Part**

- (1) The Minister must cause 2 independent reviews to be conducted into whether the amount standing to the credit of, and to be credited to, the Water for the Environment Special Account is sufficient to increase, by 30 June 2024, the volume of the Basin water resources that is available for environmental use by 450 gigalitres, and to ease or remove constraints identified by the Authority on the capacity to deliver environmental water to the environmental assets of the Murray-Darling Basin.
- (2) A review must be conducted by a panel of at least 3 persons nominated by the Minister, after consulting each Basin State.
- (3) In conducting a review under subsection (1), a panel must also consider the following:
  - (a) the progress that has been, and is anticipated to be, made towards increasing the volume of the Basin water resources that is available for environmental use;
  - (b) whether the design of projects in relation to which payments have been made under section 86AD is likely to be effective in increasing the volume of the Basin water resources that is available for environmental use by 450 gigalitres;
  - (c) any other matter specified in writing by the Minister that is relevant to achieving the object of this Part.
- (4) A panel must give the Minister a written report of a review.
- (5) The report of the first review must be provided to the Minister by 30 September 2019.
- (6) The report of the second review must be provided to the Minister by 30 September 2021.
- (7) The Minister must cause a copy of a report of a review to be tabled in each House of the Parliament within 15 sitting days of that House after the day the report is given to the Minister.

- (8) The Minister must table the Government's response to the report by the following time:
- (a) for the first review—the time the Treasurer presents the budget to the Parliament for the 2020-2021 financial year;
  - (b) for the second review—the time the Treasurer presents the budget to the Parliament for the 2022-2023 financial year.