

## SCHEDULE E

### TRANSFERRING WATER ENTITLEMENTS AND ALLOCATIONS

#### PART I - PRELIMINARY

##### **Purposes**

1. The purposes of this Schedule are, consistently with the laws of each State, the Agreement, the National Water Initiative and policies from time to time adopted by the Ministerial Council:
  - (a) to co-ordinate the transfer between States and between valleys within the Murray-Darling Basin, of such water entitlements and allocations as are, from time to time, determined by the Ministerial Council and specified in Appendix 1, in a way which minimises any detrimental effects upon the environment and upon other water users;
  - (b) to set out principles to be applied to such transfers by the Commission, State Contracting Governments and licensing authorities;
  - (c) to allow protocols to be made under this Schedule to supplement its provisions; and
  - (d) to require a State Contracting Government to notify the Commission of any intervalley transfer made within that State.

##### **Application**

2. Subject to the laws of each State, this Schedule applies to transfers referred to in paragraph 1(a), relating to water within:
  - (a) the upper River Murray and the River Murray in South Australia; and
  - (b) regulated reaches of the Goulburn, Campaspe, Loddon and Murrumbidgee river systems; and
  - (c) such other sources from time to time specified in Appendix 1,for the purposes of either or both of exchange rate trade and tagged trade, as the Ministerial Council may determine from time to time.

##### **Definitions and interpretation**

3. (1) In this Schedule and any protocols made under it, save where inconsistent with the context:
  - (a) "**allocation**" means the volume of water allocated for use under an entitlement in any water year (as defined in clause 2 of Schedule F) pursuant to the law of a State;

"**cap on diversions**" has the same meaning as in Schedule F;

"**convert**", in relation to an entitlement, means to convert an entitlement of one type, with lower reliability into an entitlement of another type, with higher reliability, or vice versa;

"**conversion factor**" means a factor determined for the purpose of clause 12;

"**designated river valley**" has the meaning set out in Schedule F;

"**entitlement**" means:

- (i) an entitlement to a particular share of water within the upper River Murray, the River Murray in South Australia or regulated reaches of the Goulburn, Campaspe, Loddon and Murrumbidgee river systems or a source referred to in paragraph 2(c) pursuant to the law of a State; or
- (ii) any other entitlement to divert water or to receive water diverted by another from those sources,

but does not include a State entitlement;

"**environmental entitlement**" means an entitlement to use water for environmental purposes;

"**exchange rate**" means a rate determined for the purposes of clause 12;

"**interstate transfer**" means a transfer of an entitlement or allocation made between States in accordance with this Schedule;

"**intervalley transfer**" means a transfer of an entitlement or allocation made out of a valley:

- (i) into another valley; or
- (ii) into the River Murray, or vice versa;

"**licensing authority**" means the authority within a State with power to make a final decision whether a transfer may be made into or out of that State;

"**relevant water authority**" in relation to an entitlement or allocation within an irrigation district, means the body responsible for administering that entitlement or allocation in that district;

"**State entitlement**" means the entitlement of a State to water, determined in accordance with Part X of the Agreement;

"**State of destination**" means the State into which a transfer of an entitlement or allocation is, or is to be, made;

"**State of origin**" means the State out of which a transfer of an entitlement or allocation is, or is to be made;

"**transfer**", in relation to an **allocation**, includes:

- (i) the transfer of an allocation already made in a State of origin to a State of destination, in accordance with this Schedule; and
- (ii) the transfer of an allocation within a State, according to the laws of that State;

"**transfer**", in relation to an **entitlement**, includes:

- (i) the transfer of an entitlement, by either exchange rate trade or tagged trade, between States, in accordance with this Schedule; and
- (ii) the transfer of an entitlement within a State, according to the laws of that State;

"**Transfer Register**" means the register referred to in clause 16;

"**valley**" means a river valley defined in a protocol made under paragraph 6(1)(b);

"**valley account**" has the meaning set out in sub-clause 11(2);

"**year**" means the 12 months beginning on 1 July;

- (b) a reference to a clause, sub-clause, paragraph or Appendix is a reference to a clause, sub-clause, paragraph or Appendix of this Schedule;
  - (c) a reference to the cap on diversions for a designated river valley is to the long-term diversion cap for that designated river valley, fixed in accordance with Schedule F;
  - (d) a reference to "**exchange rate trade**" is to an arrangement under which an entitlement in a State of origin is cancelled, extinguished or suspended and an equivalent entitlement is created in a State of destination, either permanently or for a fixed term;
  - (e) a reference to "**tagged trade**" is to an arrangement under which every allocation made under an entitlement in a State of origin is made available for use in a State of destination, either permanently or for a fixed term.
- (2) For the purposes of this Schedule, the Ministerial Council may determine the geographic extent and limits of the Barmah Choke.

## **PART II – GENERAL PRINCIPLES**

### **Power to alter entitlements and allocations to which Schedule applies**

4. On the recommendation of the Commission, the Ministerial Council may, from time to time, alter the entitlements and allocations to which this Schedule applies, by amending Appendix 1.

### **Suspension of Schedule**

5. (1) Subject to sub-clause 19(10), a State Contracting Government may, from time to time, after consulting the Ministerial Council, suspend or limit the operation of this Schedule in that State, if the State Contracting Government considers that:
  - (a) the use or management of water comprised in entitlements or allocations transferred under this Schedule have increased or accelerated environmental degradation; or
  - (b) any other State has made inadequate progress towards pricing water to recover full costs, in accordance with principles adopted by the Council of Australian Governments; or
  - (c) the policies or practices applying within any other State do not achieve the objectives of the National Water Initiative relating to reducing barriers to trading entitlements and allocations and ensuring competitive neutrality in the market for such entitlements and allocations.
- (2) The Ministerial Council may, from time to time, having regard to the National Water Initiative, by resolution, suspend or limit the operation of this Schedule in relation to a State or States.

### **Power to make protocols**

6. (1) The Commission may, from time to time, make protocols:
  - (a) to implement the provisions for adjusting the cap on diversions set out in Appendix 3;
  - (b) about calculating salinity debits and credits for the purposes of clause 10;
  - (c) defining valleys for the purposes of this Schedule and about maintaining, crediting, debiting and giving directions for releases to be debited to, valley accounts, pursuant to clause 11;
  - (d) determining one or more conversion factors and exchange rates; about applying and using any conversion factor or exchange rate so determined; and defining trading zones, for the purposes of clause 12;
  - (e) about any matter referred to in clause 13 (Restrictions on Transfers);
  - (f) about any matter referred to in clause 15 (Procedures and Principles for Transfers);
  - (g) about any matter referred to in clause 17 (Monitoring and Reporting);
  - (h) to implement either or both of exchange rate trade and tagged trade; and

- (i) implementing any resolution of the Ministerial Council about transferring environmental entitlements.
- (2) The Commission must notify each Contracting Government:
  - (a) whenever it is considering making, amending, reviewing or revoking a protocol; and
  - (b) of the subject matter of any proposed protocol, amendment, review or revocation.
- (3) A Contracting Government may nominate a person with relevant expertise and experience to give advice to the Commission in preparing, amending, reviewing or revoking a protocol.
- (4) The Commission must consider any advice given by a person nominated under sub-clause (3), before it makes, amends or revokes a protocol.
- (5) A protocol made under this clause:
  - (a) must, subject to clause 2, indicate whether it applies to exchange rate trade, tagged trade or both; and
  - (b) must not be inconsistent with any provision of the Agreement (including its Schedules) and is void to the extent of any inconsistency.
- (6) The Commission may:
  - (a) amend, review or revoke any protocol made under sub-clause 6(1); and
  - (b) review any such protocol at the request of a Contracting Government.
- (7) Despite sub-clause 34(1) of the Agreement (Delegation), the Commission may not delegate any power conferred on it by sub-clauses 6(1) and (6).

### **PART III – MATTERS RELATING TO ADMINISTRATION OF THE AGREEMENT**

#### **Adjustment of delivery of State entitlements**

- 7. The Commission must, from time to time, adjust the delivery of State entitlements under Part X of the Agreement to take into account, and to give effect to, transfers of entitlements and allocations between States, in accordance with Appendix 2.

#### **Adjustment of cap on diversions**

- 8. (1) Subject to paragraph 16(6)(a), the Commission must, from time to time, adjust the cap on diversions for each designated river valley to reflect interstate and intervalley transfers of entitlements or allocations under this Schedule, in order to ensure that diversions within the Murray-Darling Basin do not exceed the total diversions under baseline conditions referred to in Schedule F.

- (2) For the purpose of making any calculation under clause 10 of Schedule F, the relevant annual diversion target for that year must either be increased or reduced, as the case requires, by the volume determined in accordance with Appendix 3.

### **Adjustment of State financial contributions**

9. (1) In every year, the Commission must, based on information contained in the Transfer Register, calculate the amount by which any sum payable by a State Contracting Government in any year under Part VII of the Agreement, should be varied to reflect transfers of entitlements made by exchange rate trade from river reaches regulated by works subject to the Agreement, into or out of that State in the preceding year.
- (2) If the Ministerial Council so approves, either generally or in a particular case, the Commission may add or subtract, as the case requires, any amount determined under sub-clause 9(1) to or from the sum payable by a State Contracting Government in the next following year, under Part VII of the Agreement.
- (3) Despite the provisions of Part VII of the Agreement, a State Contracting Government must pay any sum as varied in accordance with sub-clause 9(2).

*Note:*

- (a) *Where an interstate transfer, made either by exchange rate trade or tagged trade, relates to water in a tributary of the River Murray, the recovery of State bulk water charges relating to that water is a matter for agreement between the relevant States.*
- (b) *Where tagged trade occurs, a transferee in the State of destination holds an entitlement which continues to exist in the State of origin. A State of origin might recover bulk water charges either directly from the holder of the entitlement in the State of destination, or through the relevant water authority in that State, as agreed between the parties.*

### **Accounting for salinity impacts**

10. (1) An entitlement or allocation can only be transferred under this Schedule if the proposed transfer is consistent with Schedule C.
- (2) Consistently with the law of the relevant State, a licensing authority within that State must attach such conditions to any transfer into or out of that State which the licensing authority considers necessary or desirable to ensure that the State meets its obligations under Schedule C.
- (3) The Commission must attribute salinity credits and debits arising from the dilution effects of interstate transfers of entitlements or allocations to the State of origin and State of destination, in equal shares and in accordance with any protocol made under paragraph 6(1)(b).
- (4) The Commission must attribute salinity credits and debits arising from changes to salt accession attributable to any transfer of entitlements or allocations, or changes

to the use of water arising from such transfers, to the State in which the change occurs and in accordance with any protocol made under paragraph 6(1)(b).

## **PART IV – OPERATIONAL PRINCIPLES AND ADMINISTRATION**

### **Delivery of water and valley accounts**

11. (1) The Commission must ensure that water made available in each valley reflects the transfers of entitlements and allocations made under this Schedule, in accordance with any protocol made under paragraph 6(1)(c).
- (2) For this purpose of this clause, the Commission must maintain a valley account:
  - (a) for each tributary in respect of which there are entitlements or allocations which may be traded under this Schedule; and
  - (b) in accordance with any protocol made under paragraph 6(1)(c).
- (3) The Commission may:
  - (a) in accordance with any protocol made under paragraph 6(1)(c), direct that water standing to the credit of a valley account for any valley be used for any purpose to which the Commission may have regard under sub-clause 95(3) or 95(4) of the Agreement; and
  - (b) amend or cancel any such direction at any time.
- (4) A State Contracting Government must implement any direction given under paragraph 11(3)(a) in accordance with any protocol made under paragraph 6(1)(c).
- (5) With the consent of the State Contracting Government to whom a direction is given under sub-clause 11(3), a direction may result in a valley account being overdrawn.

### **Conversion factors and exchange rates**

12. (1) Subject to sub-clause 12(2), the Commission may, by a protocol made under paragraph 6(1)(d), determine or alter one or more:
  - (a) conversion factors to be applied when converting an entitlement of one type into an entitlement of another type, in the same valley; and
  - (b) exchange rates to be applied under this Schedule:
    - (i) to any transfer of an entitlement by exchange rate trade; and
    - (ii) to any transfer of an entitlement by tagged trade or to any transfer of an allocation,

and must publish any such conversion factors and exchange rates in such manner as it thinks fit.
- (2) An exchange rate referred to in subparagraph 12(1)(b)(ii) must only be made to take into account either or both of:
  - (a) any changes in distribution losses; and

- (b) any differences in utilization,  
resulting from the transfer.
  
- (3) A conversion factor and an exchange rate determined or altered by the Commission operates prospectively and cannot be used to alter:
  - (a) a previous entry made in any valley account; or
  - (b) any previous adjustment made to State entitlements or the cap on diversions, or the previous calculation of State financial contributions,under this Schedule.
  
- (4) A protocol referred to in sub-clause 12(1):
  - (a) must specify how any conversion factor or exchange rate is to be applied;  
and
  - (b) may establish one or more zones within which an exchange rate will not be applied to specified types of entitlement; and
  - (c) must attempt to minimise any adverse effect that any conversion or any type of transfer may have on:
    - (i) water users, other than the transferor or transferee; and
    - (ii) the environment; and
  - (d) may provide for taking account of:
    - (i) any losses which may occur during transmission of an entitlement;  
and
    - (ii) any change in the level of reliability of supply of an entitlement resulting from the conversion or transfer; and
    - (iii) the extent to which the volume of water represented by an entitlement has been used; and
    - (iv) any adverse effect which the conversion or transfer may have on the environment; and
    - (v) any other matter which the Commission considers appropriate
  
- (5) Each State Contracting Government must ensure that any licensing authority within the State applies any relevant conversion factor or exchange rate determined under this clause, in accordance with any protocol made under paragraph 6(1)(d).

### **Restrictions on transfers**

13. (1) Subject to sub-clause 13(4), a protocol made under paragraph 6(1)(e) may prohibit, restrict or regulate the transfer of a specified type of entitlement.
- (2) Without limiting sub-clause 13(1), a protocol:
  - (a) must, subject to other provisions of this clause, facilitate the transfer of entitlements or allocations between hydrologically connected systems, in accordance with this Schedule; and
  - (b) must be consistent with any principles relating to markets in, and trading of, water entitlements and allocations, from time to time adopted by the Ministerial Council; and
  - (c) must not hinder the ability of the Commission to regulate and manage the flow of water within the upper River Murray and the River Murray in South Australia, in accordance with the Agreement; and
  - (d) must not purport to affect or interfere with State responsibilities for managing water resources, except as provided for in the Agreement.
- (3) Until the Ministerial Council resolves otherwise an entitlement must not be transferred into or out of the Lower Darling Valley.
- (4) A State Contracting Government may, consistently with the law of that State, from time to time prohibit, restrict or regulate the transfer of any type of entitlement or allocation in a way which is consistent with any principles relating to markets in, and trading of, water entitlements, from time to time adopted by the Ministerial Council.
- (5) Each State Contracting Government must, consistently with the law of that State, take such action within the State as may be necessary to ensure that any prohibition, restriction or regulation made or imposed by the Commission or the State Contracting Government is complied with and observed by each authority and other person in that State.

### **Environmental and supply considerations**

14. (1) The Commission must maintain a record of the environmental assessment criteria and processes from time to time applied by each Contracting Government in respect of applications to transfer entitlements or allocations.
- (2) Each Contracting Government must:
  - (a) notify the Commission of any change to the environmental assessment criteria and processes contained in the record referred to in sub-clause 14(1) with respect to that Government, as soon as practicable after that change is made ; and
  - (b) propose any consequential alterations to the record referred to in sub-clause 14(1) which it considers necessary or desirable.

- (3) Each Contracting Government must, by 31 July in every year, give the Commission a report setting out all changes referred to in paragraph 14(2)(a) with respect to that Government, made in the previous year.
- (4) The Commission may, from time to time, amend the record referred to in sub-clause 14(1) in any way it considers necessary or desirable, in order to reflect the relevant environmental assessment criteria and processes of a Contracting Government.
- (5) Each State Contracting Government must ensure that any licensing authority within the State:
  - (a) takes into account any policies from time to time adopted by the Ministerial Council about:
    - (i) managing environmental flows; and
    - (ii) managing the delivery of State entitlements, in the light of limits to the capacity of the River Murray system; and
    - (iii) any other matters relevant to the purposes of this Schedule, when considering whether or not to approve any application to transfer an entitlement or allocation under this Schedule; and
  - (b) submits any such application to the relevant environmental assessment criteria and processes from time to time set out in the record referred to in sub-clause 14(1); and
  - (c) decides whether or not to grant the application in accordance with:
    - (i) the policies referred to in paragraph 14(5)(a); and
    - (ii) the results of applying the criteria and processes referred to in paragraph 14(5)(b); and
  - (d) imposes comparable conditions about environmental matters on any entitlement or allocation transferred into that State under this Schedule as it would impose on an entitlement or allocation granted or transferred within that State to use the same amount of water for the same purpose at the same location.

### **Procedures and principles for transfers**

- 15. (1) The Commission may, by a protocol made under paragraph 6(1)(f), specify processes and principles to be followed by the Commission and, consistently with State law, each State Contracting Government and licensing authority, to record and to facilitate the transfer of entitlements and allocations, subject to the other provisions of this Schedule.
- (2) Each State Contracting Government must, consistently with the law of that State, take such action within the State as may be necessary to ensure that processes and

principles referred to in this Schedule and in any protocol made under paragraph 6(1)(f) are applied and observed by each authority and other person in that State.

- (3) Without limiting sub-clause 15(1), a protocol made under paragraph 6(1)(f) may:
- (a) apply to:
    - (i) interstate transfers;
    - (ii) intervalley transfers;
    - (iii) transfers made across the Barmah Choke; and
  - (b) specify procedures, which are consistent with State law, for:
    - (i) ensuring, where appropriate, that an entitlement in a State of origin is cancelled or extinguished before, or at the same time as, an equivalent entitlement is created in the State of destination;
    - (ii) processing applications to transfer entitlements and allocations;
    - (iii) confirming the ability of the Commission to deliver water pursuant to any proposed transfer;
    - (iv) notifying the Commission when a transfer has occurred; and
  - (c) specify principles, which are consistent with State law, for determining access and exit fees relating to irrigation infrastructure; and
  - (d) subject to clause 16, require the keeping of registers and accounts of transfers.

### **Transfer Register**

16. (1) In this clause:
- base valley** means a valley referred to in sub-clause 3(2) of Schedule F.
- (2) The Commission must keep and maintain a register which sets out the following information with respect to conversion of entitlements and each intervalley transfer of an entitlement (and, if the Commission so resolves, each allocation) occurring within the area referred to in clause 2:
- (a) The following information about the place of origin:
    - (i) The volume in megalitres and type of any entitlement converted into an entitlement of another type.
    - (ii) The volume in megalitres of any entitlement created by such conversion, after applying the relevant conversion factor, and the type of the new entitlement.

- (iii) The volume in megalitres of any allocation or entitlement transferred.
  - (iv) The identifying number of the allocation or entitlement transferred.
  - (v) The type of entitlement to which the transfer relates.
  - (vi) The base valley from which the transfer was made.
  - (vii) The designated river valley from which the transfer was made.
  - (viii) The date on which either:
    - the entitlement transferred was cancelled, extinguished or suspended at the place of origin; or
    - any allocation under an entitlement is permanently made available in the State of destination; or
    - the transfer of the allocation was authorised,as a result of the transfer, as the case requires.
- (b) The following information about the place of destination:
- (i) The exchange rate applied to any transfer.
  - (ii) The volume in megalitres of the allocation or entitlement transferred, after applying the relevant exchange rate.
  - (iii) The type of entitlement into which the allocation or entitlement transferred has been converted.
  - (iv) The base valley into which the transfer was made.
  - (v) The designated river valley into which the transfer was made.
  - (vi) The date upon which either:
    - any new entitlement was created at the place of destination; or
    - the use of the transferred allocation was authorised,as a result of the transfer, as the case requires.
  - (vii) The identifying number of any new entitlement.
  - (viii) If the transfer was made between States, an identifying interstate transfer number, allocated to the transfer by the Commission.
- (c) The effective date of the transfer, being the later of the dates referred to in sub-paragraphs 16(a)(vii) and 16(b)(vi).

- (3) Pursuant to the obligations set out in paragraph 11(1)(c) of Schedule F, each State Contracting Government must ensure that the Commission promptly receives all such information relating to transfers within, to or from the territory of that State, as may be necessary to keep the Transfer Register up-to-date.
- (4) The Commission must, after the end of each year, arrange for an independent auditor:
  - (a) to examine whether there is any discrepancy between information provided by each State Contracting Government under sub-clause 16(3), information provided under clause 8 of Appendix 3 to this Schedule and information set out in the Transfer Register; and
  - (b) to make recommendations to the Ministerial Council, on or before September 30 in the following year, about any amendment to the Transfer Register as the auditor thinks desirable, in view of any such discrepancy.
- (5) After considering any recommendation made by an independent auditor under paragraph 16(4)(b), the Ministerial Council may require the Commission to make any alteration to the Transfer Register, which the Ministerial Council considers appropriate.
- (6) The Commission must recalculate:
  - (a) any adjustment to the cap on diversions or any annual diversion target, pursuant to clause 8; or
  - (b) any calculation pursuant to clause 9,
 in respect of which relevant alteration has been made to the Transfer Register under sub-clause 16(5).

### **Monitoring and reporting**

- 17. (1) Unless the Commission determines otherwise, by 30 June in every year, commencing in 2007, each State Contracting Government must, in accordance with any protocol made under paragraph 6(1)(g), prepare and give to the Commission a report on measures taken in that State in the preceding year:
  - (a) to manage any adverse environmental effects attributable to interstate transfers of entitlement or allocations into and out of that State; and
  - (b) to implement and monitor environmental assessment criteria and procedures for the use of water transferred into the State on land at its destination.
- (2) By 31 December in every year, the Commission must, in accordance with any protocol made under paragraph 6(1)(g), prepare and give to each State Contracting Government a report setting out the following information for the preceding year:
  - (a) the total volume of transfers of entitlements and allocations into and out of each State; and

- (b) the exchange rates applied to interstate transfers referred to in paragraph 17(2)(a); and
- (c) any adjustment to the delivery of a State's entitlement made under clause 7; and
- (d) any adjustment to the contribution of a State Contracting Government approved by the Ministerial Council under sub-clause 9(2); and
- (e) any adjustment to the cap on diversions for a designated river valley made under clause 8.

### **Review of interstate transfers**

18. (1) The Commission must prepare and give to the Ministerial Council and the Community Advisory Committee a report on:
- (a) the operation of this Schedule; and
  - (b) the markets for interstate transfers of entitlements and allocations, respectively, by 1 July 2007 and thereafter, either:
    - (c) by the end of every third year; or
    - (d) in the case of the market for entitlements, promptly after at least 8% of the volume of entitlements to use water for irrigation in any area has been permanently transferred interstate since the last report on that market was made under this clause; or
    - (e) in the case of the market for allocations, promptly after at least 8% of the volume of allocations to use water for irrigation in any area has been transferred interstate in the preceding 12 months,
- whichever is sooner.
- (2) A report referred to in sub-clause 18(1) must deal with delivery losses, the accuracy or otherwise of water accounting measures and any other matter which the Ministerial Council may, from time to time direct, or which the Commission considers appropriate.
- (3) For the purpose of sub-clause 18(1), "area" means any irrigation area administered by a relevant water authority, or any part of such an area which is separately administered from other parts.

### **Dispute resolution**

19. (1) This clause applies to any dispute arising under this Schedule between:
- (a) one or more of the State Contracting Governments; and
  - (b) one or more State Contracting Government and the Commission,

each of whom is a **party** for the purpose of this clause.

- (2) A dispute arises at the time when one party notifies the other party or parties in writing that there is a dispute about a matter specified in the notice.
- (3) If a dispute arises, the parties must seek, in good faith, to resolve the dispute expeditiously by negotiations between them.
- (4) If a dispute is not resolved within 60 days, a party to the dispute may give written notice to the other party or parties requiring the matter to be referred to a dispute panel:
  - (a) comprising at least two members agreed between the parties; or
  - (b) if they cannot agree, comprising an equal number of members appointed by each party to the dispute.
- (5) A dispute panel must meet within 7 days after it is appointed, or within such other period agreed by the parties.
- (6) A unanimous decision of the dispute panel is binding upon the parties.
- (7) If the dispute panel does not reach a unanimous decision:
  - (a) any dispute to which the Commission is a party must be referred to the Ministerial Council for resolution; and
  - (b) any dispute between State Contracting Governments may be referred by a party to an arbitrator, as if it were a matter requiring resolution by an arbitrator under clause 133 of the Agreement.
- (8) Each party must meet its own costs in relation to any dispute.
- (9) Each party must contribute equally to the cost of any dispute panel or arbitrator, unless the dispute panel or arbitrator, as the case requires, directs otherwise.
- (10) Each State Contracting Government undertakes to try to resolve any difference between it and any other State Contracting Government about a matter referred to in paragraph 5(1)(a), (b) or (c), in accordance with sub-clauses 19(1) – 19(6) before consulting the Ministerial Council under sub-clause 5(1).

## APPENDIX 1

(See clause 4)

### ENTITLEMENTS AND ALLOCATIONS

LEGISLATION	CATEGORY	SOURCE
Water Management Act 2000 (NSW)	High Security Access Licence	Murrumbidgee Regulated and Murray Valley Regulated
	General Security Access Licence	
	Conveyance access Licence	
	Local Water Utility Access Licence	
	Allocation under any type of water access licence	
Water Act 1989 (Vic)	Water licence granted under section 51	River Murray and Goulburn, Campaspe and Loddon river systems
	Irrigation water right	
	Bulk entitlement	
	Sales Allocation	
Water (Resource Management Act 2005 (Vic)	High-reliability water share	
	Lower reliability water share	
	Allocation under a water share	
	Allocation under an environmental entitlement	
Natural Resources	Water licence	River Murray Prescribed Watercourse

<b>LEGISLATION</b>	<b>CATEGORY</b>	<b>SOURCE</b>
Management Act 2004 (SA)		
	Water allocation under a water licence	

## APPENDIX 2

(See clause 7)

### ADJUSTING DELIVERY OF STATE ENTITLEMENTS UNDER PART X OF THE AGREEMENT

#### PART I - RULES WHICH APPLY AT ALL TIMES

##### Interstate transfers of entitlements

1. (1) Subject to sub-clause 1(2), the Commission must adjust the delivery of a State entitlement as a result of each interstate transfer of an entitlement, in accordance with Rules 1-4:
  - (a) in the case of exchange rate trade, by the volume of the allocations which would have been made to that entitlement in the State of origin in every year, if the entitlement had not been transferred; and
  - (b) in the case of tagged trade, by the volume of water used by the transferee in each year.
- (2) For the purpose of calculating the volume referred to in paragraph 1(1), for exchange rate trade, if the transferor seeks to transfer an entitlement with lower reliability, the Commission must first apply the relevant conversion factor that would be applied to convert that entitlement into a type of entitlement with higher reliability, in the valley of origin.
- (3) An adjustment made under sub-clause 1(1), must be calculated from the effective date of the relevant transfer.
- (4) The Commission must alter its procedures for delivering State entitlements to reflect any adjustments made under sub-clause 1(1), in the manner set out in any protocol made under paragraph 6(1)(e).

**Rule 1:** *Transfers into South Australia*

The Commission must *increase*:

- (a) water deliveries to South Australia; and
- (b) the volume provided to South Australia by the State out of which the transfer was made,

but must not increase the priority of delivering the volume represented by any transfer.

**Rule 2:** *Transfers out of South Australia*

The Commission must *decrease*:

- (a) water deliveries to South Australia; and

- (b) the volume provided to South Australia by the State into which the transfer was made.

**Rule 3:** *Transfers out of New South Wales into Victoria*

The Commission must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to New South Wales; and
- (b) increase the volume which may be delivered to Victoria.

**Rule 4:** *Transfers out of Victoria into New South Wales*

The Commission must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to Victoria; and
- (b) *increase* the volume which may be delivered to New South Wales.

**Interstate transfers of allocations**

- 2. (1) The Commission must adjust a State entitlement as a result of each interstate transfer of an allocation:
  - (a) by the adjusted volume of that transfer; and
  - (b) in accordance with Rules 5 – 8 set out below.
- (2) The Commission must alter its procedures for delivering State entitlements to reflect any adjustment made under sub-clause 2(1), in accordance with any protocol made under paragraph 6(1)(f) of this Schedule.

**Rule 5:** *Transfers into South Australia*

The Commission must *increase*:

- (a) water deliveries to South Australia; and
- (b) the volume provided to South Australia by the State out of which the transfer was made.

**Rule 6:** *Transfers out of South Australia*

The Commission must *decrease*:

- (a) water deliveries to South Australia; and
- (b) the volume provided to South Australia by the State into which the transfer was made.

**Rule 7:** *Transfers out of New South Wales into Victoria*

The Commission must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to New South Wales; and
- (b) *increase* the volume which may be delivered to Victoria.

**Rule 8:** *Transfers out of Victoria into New South Wales*

The Commission must, in relation to Hume Reservoir:

- (a) *decrease* the volume which may be delivered to Victoria; and
- (b) *increase* the volume which may be delivered to New South Wales.

**PART II -RULES WHICH ONLY APPLY IN PERIODS WHEN THERE IS SPECIAL ACCOUNTING**

**Accounting under clause 124 of the Agreement**

- 3. During any period of special accounting, the Commission, in each month, must increase and decrease the account kept for a State:
  - (a) under paragraph 124(a) of the Agreement, in accordance with Rules 9 and 10 set out below; and
  - (b) under paragraph 124(b) of the Agreement, in accordance with Rules 11 and 12 set out below.

**Rule 9:** *New South Wales*

The Commission must:

- (a) *increase* the account by the sum of adjustments made in that month for New South Wales under rules 1, 3, 5 and 7; and
- (b) *decrease* the account by the sum of adjustments made in that month for New South Wales under rules 2, 4, 6 and 8.

**Rule 10:** *Victoria*

The Commission must:

- (a) *increase* the account by the sum of adjustments made in that month for Victoria under rules 1, 4, 5 and 8; and
- (b) *decrease* the account by the sum of adjustments made in that month for Victoria under rules 2, 3, 6 and 7.

**Rule 11:** *New South Wales*

The Commission must:

- (a) *increase* the account by the sum of adjustments made in that month for New South Wales under rules 2 and 6; and
- (b) *decrease* the account by the sum of adjustments made in that month for New South Wales under rules 1 and 5.

**Rule 12:** *Victoria*

The Commission must:

- (a) *increase* the account by the sum of adjustments made in that month for Victoria under rules 2 and 6; and
- (b) *decrease* the account by the sum of adjustments made in that month for Victoria under rules 1 and 5.

## APPENDIX 3

(See clause 8)

### ADJUSTING CAP ON DIVERSIONS

#### Definitions

1. For the purposes of this Appendix:

**cap required**, with respect to a unit of a type of entitlement, means the product of that unit *multiplied* by the appropriate cap factor referred to in paragraph 9(c).

**effective date** means the beginning of the year in which this Appendix comes into effect.

#### PART I – ADJUSTING FOR TRANSFERRED ALLOCATIONS

##### Adjusting cap for transferred allocations

2. The annual diversion target for a designated river valley, referred to in sub-clause 10(1) of Schedule F, must either be increased or reduced, as the case requires, by the volume of any interstate or intervalley transfers of allocations into or out of that designated river valley in that year, *multiplied* by the appropriate cap transfer rate set out in Table 1 of a protocol made under paragraph 6(1)(a) of the Schedule.

#### PART II – ADJUSTING FOR ENTITLEMENTS TRANSFERRED BY TAGGED TRADE

##### Cap adjustment for tagged trade

3. The annual diversion target for a designated river valley referred to in sub-clause 10(1) of Schedule F must be:
  - (a) increased by the volume of water diverted in that designated river valley in that year, which is attributable to entitlements tagged to another designated river valley; and
  - (b) reduced by the volume of water attributable to entitlements tagged to that designated river valley, which is diverted in any other designated river valley in that year.

#### PART III – ADJUSTING FOR ENTITLEMENTS TRANSFERRED BETWEEN 1 JULY 1994 AND THE EFFECTIVE DATE, USING EXCHANGE RATES

##### Interim register

4. The Commission must establish and maintain an interim register which records the volume of any entitlement transferred from a designated river valley to another designated river valley during each year between 1 July 1994 and the effective date.

##### Adjusting annual diversion targets

5. Each year, the Commission must calculate the adjustment to the annual diversion target for a designated river valley for transfers recorded on the interim register referred to in clause 4, by:
  - (a) *multiplying* the cumulative volume of every entitlement of a particular type transferred *into* the designated river valley between 1 July 1994 and the earlier of the beginning of that year and the effective date, by the appropriate cap transfer rate set out in Table 2 of a protocol made under paragraph 6(1)(a) of the Schedule; and
  - (b) *multiplying* the cumulative volume of every entitlement of a particular type transferred *out of* the designated river valley between 1 July 1994 and the earlier of the beginning of that year and the effective date, by the appropriate cap transfer rate; and
  - (c) *subtracting* the product of (b) from the product of (a).

#### **PART IV – ADJUSTING FOR ENTITLEMENTS TRANSFERRED OR CONVERTED AFTER THE EFFECTIVE DATE, USING EXCHANGE RATES**

##### **Object of Part**

6. The object of this Part is, subject to sub-clause 8(1) of the Schedule, to minimise the impact of transfers or conversion of entitlements on entitlements held by third parties, by endeavouring to ensure that:
  - (a) the proportion of the cap associated with each unit of a particular type of entitlement remains the same *after* an entitlement has been transferred or converted as it was *before* that transfer or conversion; and
  - (b) the annual diversion target for each State and designated river valley referred to in sub-clause 10(1) of Schedule F is adjusted accordingly.

##### **Operation of Part**

7. This Part applies to entitlements transferred or converted after the effective date.

##### **Calculating increases in cap required**

8. Based on information set out in the Transfer Register, the Commission must make the following calculations for every year, in respect of each designated river valley, as a consequence of transfers between that designated river valley and every other designated river valley:
  - (a) The **volume of each type of entitlement** into which former entitlements were transferred or converted, as recorded under sub-paragraphs 16(2)(b)(ii) and 16(2)(a)(ii) of this Schedule.
  - (b) The **net increase in each type of entitlement**, by *subtracting* the volume of that type of entitlement recorded under sub-paragraphs 16(2)(a)(iii) and 16(2)(a)(i) of this Schedule from the volume of that type of entitlement calculated under paragraph 8(a).

- (c) The **net increase in the cap required** for each type of entitlement , by *multiplying* the result of the calculation in paragraph 8(b) by the relevant cap factor set out in Table 3 of a protocol made under paragraph 6(1)(a) of the Schedule.

### **Adjusting annual diversion targets**

9. (1) The Commission must, in each year, alter each long-term diversion cap to reflect the results of transferring entitlements, pursuant to paragraph 8(a) of Schedule F, by adjusting annual diversion targets.
- (2) The Commission must adjust each annual diversion target by following any protocol made by the Commission under paragraph 6(1)(a) of the Schedule, to implement the Stages set out below.

#### **Stage 1**

Adjust annual diversion targets, as far as possible by allocating to the cap required in a designated river valley of destination, so much of the volume of cap no longer required in the designated river valley of origin as is required in the designated river valley of destination. A separate calculation must be made for the interaction between each designated river valley and every other designated river valley, based on information collated from the Transfer Register.

#### **Stage 2**

Pool any cap surpluses and deficits calculated under Stage 1 in relation to each designated river valley, in order to reduce any shortfalls in each designated river valley.

Where lower reliability entitlements have been converted to higher reliability entitlements within a designated river valley, the net effect of that conversion on the cap attributable to that valley must be included in the pool. However:

- (a) a shortfall within a designated river valley caused by such conversions cannot be reduced by attributing a surplus existing in another designated river valley; and
- (b) the volume pooled with respect to a designated river valley cannot exceed the sum of the deficits arising in other designated river valleys, as a result of transfers between that designated river valley and other designated river valleys.

#### **Stage 3**

- (a) Calculate any cap surplus resulting from Stage 2 for each designated river valley.
- (b) Then allocate any of that cap surplus that is attributable to interstate transfers into or from that designated river valley to the environment, by

- (c) reducing the annual diversion target for that designated river valley by the portion of the surplus referred to in paragraph (b).

The allocation referred to in paragraph (b) must only apply in the year in which it is made and will not create an entitlement to draw a comparable volume of water from any storage in the Basin. Progressively reducing annual diversion targets will, however, eventually allow more water to flow downstream.

#### **Stage 4**

Calculate the adjustment to each annual diversion target for each designated river valley by determining the sum of the total adjustments made under Stages 1, 2 and 3.