

## **SCHEDULE H**

### **APPLICATION OF AGREEMENT TO AUSTRALIAN CAPITAL TERRITORY**

#### **Interpretation**

1. (1) A reference to a State, a State Government or a public authority of a State in a clause of the Agreement which, by this Schedule, applies to the Australian Capital Territory, includes a reference to the Australian Capital Territory or the Australian Capital Territory Government or a public authority of the Australian Capital Territory, as the case requires.
- (2) Sub-clause 1(1) applies, subject to this Schedule.

#### **Australian Capital Territory to be a contracting party**

2. The Australian Capital Territory shall become a party to the Agreement on the terms set out in this Schedule.

#### **Application of Agreement to the Australian Capital Territory**

3. The provisions of the Agreement apply to the Australian Capital Territory except:
  - (a) for those provisions declared not to apply by this Schedule; and
  - (b) to the extent that provisions are modified by this Schedule; and
  - (c) where the Ministerial Council or the Commission determines that a provision does not apply, pursuant to clause 6 of this Schedule.
4. For the purposes of this Schedule, a reference in clause 3 or 13 of Schedule C to "Queensland" or "the State of Queensland" must be taken as including a reference to the Australian Capital Territory.

#### **Provisions not applying to the Australian Capital Territory**

5. (1) Parts X, XI and XII of the Agreement do not apply to the Australian Capital Territory.
- (2) Sub-clauses 38(1) and 38(3) of the Agreement only apply to the Australian Capital Territory in respect of an act, omission or loss incurred in relation to the bona fide execution of powers:
  - (a) in or related to the Australian Capital Territory; or
  - (b) under a provision of the Agreement as it applies to the Australian Capital Territory.

- (3) Insofar as any provision of the Agreement bears on any of the following matters, it does not apply to the Australian Capital Territory:
- (a) Any matter concerning the design, execution, construction, funding, operation, maintenance, alteration or replacement of any works, measures, policies or strategies solely associated with the management of the River Murray and River Murray in South Australia.
  - (b) Any liability of the Commission, any Commissioner or Deputy Commissioner, any officer of the Commission, any Contracting Government or any Constructing Authority in respect of:
    - (i) any matter referred to in paragraph 5(3)(a); or
    - (ii) any matter arising under a provision of the Agreement which the Ministerial Council or Commission has determined does not apply to the Australian Capital Territory under clause 6 or clause 10.

*[Explanatory note: The parties intend that the Australian Capital Territory should not be involved in, contribute financially towards, or incur any liability resulting from, the water management activities of River Murray Water or similar activities by or for the Ministerial Council under that Intergovernmental Agreement. On the other hand, the parties do intend that the Australian Capital Territory should be involved in, contribute financially towards and may incur liabilities resulting from, the Living Murray Initiative except to the extent that such liabilities are otherwise negated by the Agreement including this Schedule H and the Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin dated 25 June 2004 and the Living Murray Business Plan.]*

- (4) Nothing in the Agreement requires the Australian Capital Territory:
- (a) to contribute to the costs of or associated with remedying, any actual or anticipated damage referred to in paragraph 51(1)(c) of the Agreement; or
  - (b) to meet any compensation for damage paid under clause 83 of the Agreement,

except where the Australian Capital Territory has contributed to the construction, maintenance or operation expenses of the works to which the costs or compensation relate.

#### **Powers of Ministerial Council and Commission to make determinations**

6. (1) The Ministerial Council or the Commission, as the case may be, may:

- (a) determine that a provision of the Agreement does not apply to the Australian Capital Territory, either generally or in relation to a particular matter or class of matter; and
  - (b) revoke any such determination made by it.
- (2) The Ministerial Council may, at any time, direct that any determination made by the Commission under paragraph 6(1)(a) is deemed to have been:
  - (a) revoked; or
  - (b) altered in any way directed by the Ministerial Council.
- (3) The Commission must give effect to any determination made by the Ministerial Council under paragraph 6(1)(a).

### **Factors to be considered by Ministerial Council or Commission**

- 7.
  - (1) In making a determination under sub-clause 6(1) or 6(2), the Ministerial Council or the Commission must apply the guidelines set out in subclause 7(2), unless the Ministerial Council or the Commission, as the case may be, determines otherwise.
  - (2) A provision should not apply to the Australian Capital Territory unless:
    - (a) issues arising under that provision are likely to cause a significant benefit or a significant detriment to the Australian Capital Territory; or
    - (b) any decisions or actions taken within the Australian Capital Territory without reference to that provision might cause significant benefit or significant detriment to any part of the Murray-Darling Basin within the Australian Capital Territory; or
    - (c) the Government of the Australian Capital Territory has incurred or may incur any financial obligation as a result of that provision.

### **Australian Capital Territory appointments**

- 8.
  - (1) The reference in clause 15 of the Agreement to "the Premier of each other Contracting Government" shall be taken to include a reference to the Chief Minister of the Australian Capital Territory.
  - (2) Sub-clause 20(2) of the Agreement shall not apply to the Australian Capital Territory. Instead, the Executive of the Australian Capital Territory shall appoint one Commissioner who represents water, land and environmental resource management and two Deputy Commissioners who, between them, represent water, land and environmental resource management.

- (3) For the purposes of this Schedule, a reference in sub-clause 28(3), 29(3), 29(4), 30(2) and 38(2) of this Agreement to the Governor of a State shall be taken to be a reference to the Executive of the Australian Capital Territory.

### **Quorum where provisions do not apply to the Australian Capital Territory**

9. (1) The quorum of the Ministerial Council for debating any issue, or considering or making any resolution on an issue, related to:
- (a) any provision of the Agreement; or
  - (b) to any policy, determination or decision of the Ministerial Council,
- which does not apply, in whole or in part, to the Australian Capital Territory by virtue of this Schedule, does not include any Minister from the Government of the Australian Capital Territory.
- (2) The quorum of the Commission for debating any issue, or considering or making any resolution on an issue, related to:
- (a) any provision of the Agreement; or
  - (b) to any policy, determination or decision of the Ministerial Council or the Commission,
- which does not apply, in whole or in part, to the Australian Capital Territory by virtue of this Schedule, does not include any Commissioner appointed by the Executive of the Australian Capital Territory
- (3) A person who is not included in a quorum may not vote on any resolution referred to in sub-clause 9(1) or 9(2), as the case requires.
- (4) The text of any resolution referred to in:
- (a) sub-clause 9(1) for which approval is sought under clause 13 of the Agreement, need not be referred to or approved by any Minister from the Government of the Australian Capital Territory; or
  - (b) sub-clause 9(2) for which approval is sought under clause 33 of the Agreement, need not be referred to or approved by any Commissioner appointed by the Executive of the Australian Capital Territory.

### **Application of previous Ministerial Council decisions to the Australian Capital Territory**

10. (1) Except as provided in this clause, every policy, determination or decision made by the Ministerial Council before the Ministerial

Council approves this Schedule, in relation to any provision or matter which, by virtue of the Schedule, applies in whole or in part to the Australian Capital Territory, applies to the Australian Capital Territory.

- (2) Within 12 months after the date upon which the Ministerial Council approves this Schedule, or such longer period as the Ministerial Council may allow, the Australian Capital Territory may propose to the Commission that a policy, determination or decision of the Ministerial Council referred to in sub-clause 10(1):
  - (a) should apply to the Australian Capital Territory; or
  - (b) should only apply to the Australian Capital Territory with modifications; or
  - (c) should not apply to the Australian Capital Territory.
- (3) The Commission shall consider any proposal made under sub-clause 10(2) and may make such recommendations to the Ministerial Council about the proposal, as it thinks fit.
- (4) The Ministerial Council, after considering any recommendations made by the Commission, may either:
  - (a) adopt the proposal, with or without amendments; or
  - (b) reject the proposal.
- (5) Any policy, determination or decision referred to in sub-clause 10(1), which is not mentioned in a proposal as adopted by the Ministerial Council under sub-clause 10(4), ceases to apply to the Australian Capital Territory on the day on which that proposal is adopted by the Ministerial Council.