

**Further Agreement on Addressing Water Overallocation and Achieving
Environmental Objectives in the Murray-Darling Basin – Control and
Management of Living Murray Assets**

This Agreement is entered into on *12 June*2009 by:

The Commonwealth of Australia;
The State of New South Wales;
The State of Victoria;
The State of South Australia;
The Australian Capital Territory; and
The Murray-Darling Basin Authority.

PREAMBLE

1. On 3 July 2008, the Commonwealth Government and the Governments of New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory entered into the intergovernmental *Agreement on Murray-Darling Basin Reform* (the Reform IGA).
2. In order to give effect to the Reform IGA:
 - (a) those governments entered into a new *Murray-Darling Basin Agreement*;
 - (b) those governments entered into the intergovernmental *Agreement on Murray Darling Basin Reform – Referral* (the Referral IGA);
 - (c) the Parliaments of New South Wales, Victoria, Queensland and South Australia referred certain legislative powers to the Commonwealth; and
 - (d) the Commonwealth Parliament passed the *Water Amendment Act 2008* (Cth), which amended the *Water Act 2007* (Cth).
3. Under clause 3.9.2 of the Referral IGA, the parties agreed to put in place further arrangements in the context of the Living Murray Initiative to clarify how entitlements held by the Parties for the purposes of the Living Murray Initiative are to be controlled, managed and accounted for.

THE PARTIES AGREE:

1. Purpose

- 1.1. This Agreement is made:
- (a) pursuant to clause 3.9.2 of the Referral IGA, in order to clarify how entitlements held by the Parties for the purposes of the Living Murray Initiative are to be controlled, managed and accounted for; and
 - (b) to amend and clarify the Living Murray Initiative to reflect the new governance arrangements brought about by the MDB Agreement and the *Water (Amendment) Act 2008* (Cth).

2. Definitions

- 2.1. In this Agreement, unless the contrary intention appears:
- (a) terms used in this Agreement that are defined in the MDB Agreement have the respective meanings assigned to those terms by the MDB Agreement;
 - (b) a reference to "**disposal**" of Living Murray assets in this Agreement includes a reference to disposal by temporary and permanent trading;
 - (c) "**General Purpose financial statement**" has the same meaning as under Australian Accounting Standards;
 - (d) "**Living Murray assets**" are:
 - (i) water access rights, water delivery rights, irrigation rights or other similar rights relating to water; or
 - (ii) interests in, or in relation to, such rights;that are held by a person for the purposes of the Living Murray Initiative;
 - (e) "**Living Murray governments**" are the parties to this Agreement (which are also parties to the Living Murray IGA and Supplementary IGA), but not the Murray-Darling Basin Authority.
 - (f) "**Living Murray IGA**" means the Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin of 25 June 2004;
 - (g) "**Living Murray Initiative**" means the Living Murray IGA read together with the Supplementary IGA;
 - (h) "**MDB Agreement**" means the Murray-Darling Basin Agreement, entered into on 1 December 2008 by the Commonwealth Government and the Governments of New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory;
 - (i) "**Special Purpose financial statement**" has the same meaning as under Australian Accounting Standards;
 - (j) "**Supplementary IGA**" means the Supplementary Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin of 14 July 2006;

Note: For the purposes of paragraphs (c) and (i), at the time this Agreement was signed the relevant Australian Accounting Standard was AASB 101 of September 2007.

3. Interpretation

3.1. In this Agreement, unless the contrary intention appears:

- (a) a reference to any Act includes any Act amending, or in substitution for, that Act, and includes a reference to any subordinate legislation made under that Act;
- (b) words importing the singular include the plural and vice versa; and
- (c) headings do not form part of this Agreement.

3.2. Where it is provided in other clauses of this Agreement that parties 'acknowledge' matters, those statements are intended only to provide the background and context to the substantive terms of this Agreement, and are not intended to have any other effect.

4. Effect of *Water Act 2007* and *Water Regulations 2008*

4.1. The parties acknowledge the effect of sections 239N, 239Q and 239W of the *Water Act 2007*, and regulations made under those sections, on the operation of the Living Murray IGA and Supplementary IGA. The effect of these provisions is, generally, to continue the Living Murray IGA and Supplementary IGA in effect as if references to the Commission were references to the Authority, and references to the former Ministerial Council were references to the Ministerial Council.

5. Variation of Living Murray IGA and Supplementary IGA

5.1. Pursuant to clause 83 of the Living Murray IGA, the Living Murray governments agree that:

- (a) the words of clause 11 of the Living Murray IGA are omitted and replaced by the following words: "In this Agreement, words and phrases have the same meaning as in the National Water Initiative Intergovernmental Agreement and the MDB Agreement";
- (b) in clause 70 of the Living Murray IGA the words: "within 12 months of commencement of this Agreement" are omitted and are replaced by the following words: "by the first Murray-Darling Basin Ministerial Council Meeting of 2010";
- (c) clause 5 of the Supplementary IGA is to operate in conjunction with the MDB Agreement such that the Ministerial Council determines available funds through its approval of the corporate plan under clause 34 of the MDB Agreement;
- (d) the words of clause 6 of the Supplementary IGA are omitted and replaced by the following words: "The Authority will participate in the Living Murray Initiative by investing in projects on the Eligible Measures Register in accordance with the MDB Agreement"; and
- (e) clauses 8 and 9 of the Supplementary IGA are omitted.

6. Ownership and control of the Living Murray assets

6.1. This Agreement does not affect ownership of any Living Murray asset.

6.2. The Living Murray governments acknowledge that the Living Murray assets are not under the control of the Authority; but that the Authority has management responsibilities under the Living Murray IGA.

6.3. The Living Murray governments acknowledge that the Living Murray assets are controlled jointly by the Living Murray governments for the purposes of the Living Murray Initiative. This Agreement details how that control is to be exercised.

- 6.4. The Living Murray governments agree that through the Living Murray Initiative, they have established an unincorporated joint venture exercising joint control of the Living Murray assets by mutual agreement.
- 6.5. The Living Murray governments agree that the joint venture referred to in clause 6.4 does not have the effect of establishing a corporation, partnership or other entity, or a financial structure that is separate from the Living Murray governments as joint venturers.
- 6.6. The Living Murray governments acknowledge that each Living Murray government has control over its share of the future economic benefits of the Living Murray assets through its share in the control of these assets, and in particular acknowledge that:
- (a) clause 69 of the Living Murray IGA provides that net revenue from the temporary trade of water recovered under that IGA must be set aside for the achievement of the objectives of that IGA;
 - (b) clause 71 of the Living Murray IGA provides that water recovered under that IGA may only be traded on the permanent market if the outcome of the transaction is to use the revenue derived to acquire water access entitlements which better match the requirements of the Basin Environmental Watering Plan developed by the Ministerial Council under clause 58 of that IGA; and
 - (c) clause 70 (as amended by this Agreement) provides that the Ministerial Council will develop, by the first Murray-Darling Basin Ministerial Council Meeting of 2010, a protocol concerning the trading of recovered water and the direction of revenue to meet the objectives of the Basin Environmental Watering Plan, or complementary river health outcomes where the revenue is not required for the purposes of the plan.
- 6.7. The Living Murray governments acknowledge that each Living Murray government will exercise control over its share of the Living Murray assets through its representative on the Murray-Darling Basin Ministerial Council in accordance with the Living Murray Initiative.
- 6.8. The Living Murray governments agree that the shares of the control of the Living Murray assets will be retained by the Living Murray governments in the following proportions until altered by amendment to this Agreement, including any amendment following a review referred to in clause 6.9:
- | | |
|-----------------|--------|
| Commonwealth | 20% |
| South Australia | 26.67% |
| Victoria | 26.67% |
| New South Wales | 26.67% |
| ACT | 0% |
- 6.9. The Living Murray governments agree to review the Living Murray governments' shares of the control of the Living Murray assets from time to time, with a view to amending this Agreement to reflect the Living Murray governments' respective contributions to the acquisition of these assets.
- 6.10. The Living Murray governments may agree unanimously at any time to conduct a review of the kind described in clause 6.9. However, the Living Murray governments agree that the first review of that kind will be completed, and that a decision on whether and, if so, how to amend the shares will be made, by the first Murray-Darling Basin Ministerial Council Meeting of 2010.

7. Authority's role in relation to the Living Murray assets

- 7.1. The parties acknowledge that pursuant to section 18H of the Water Act, the Authority must manage the Living Murray assets in accordance with, and in a way that gives effect to, the Living Murray Initiative, as read together with this Agreement.
- 7.2. In managing the Living Murray assets, the Authority will:
 - (a) account for the Living Murray assets; and
 - (b) carry out recording, reporting and audit functions in relation to the Living Murray assets;as specified in this Agreement.

8. Asset records

- 8.1. The Authority will keep an aggregated Basin-wide Living Murray asset register in respect of all Living Murray assets, separate from the Authority's asset register and the RMO asset register and will make it available for inspection at any time it is requested to do so by a Living Murray government.
- 8.2. At the commencement of this Agreement, the Living Murray asset register will include for each asset the details listed in clause 8.3 that are applicable to that asset, as contained in the registers that were maintained by the Commission immediately before the MDB Agreement came into effect, and any amendments made to those registers by the Authority after that date but before the commencement of this Agreement.
- 8.3. The Authority will include in the Living Murray asset register for each asset, such details on the location, title, valuation, revaluation, disposal, write-off, amortisation, trading and impairment of the asset as are applicable to that asset.
- 8.4. The Authority will update the Living Murray asset register within one month of notice from the holder of a Living Murray asset, regarding the disposal, trading or write-off of a Living Murray asset, or within such other period as may be unanimously agreed by the Living Murray governments.
- 8.5. Before the end of each financial year, the Authority will:
 - (a) review the values of the Living Murray assets, in accordance with Australian Accounting Standards and any specific requirements of the Living Murray governments agreed unanimously by the governments, and will value or revalue the Living Murray assets accordingly; and
 - (b) update the Living Murray asset register for impairment, disposal, trading, write-off, amortisation and revaluation of the Living Murray assets.
- 8.6. The Authority's annual update carried out under paragraph 8.5(b) will reflect the findings of the annual review referred to in paragraph 8.5(a).
- 8.7. The Authority will provide to the Living Murray governments:
 - (a) draft valuations under paragraph 8.5(a), by 7 July of each financial year, together with the draft annual financial statements provided under clause 10.5.
 - (b) final valuations under paragraph 8.5(a), by 31 August of each financial year, together with the audited annual financial statements provided under clause 11.2.
- 8.8. If the Authority becomes aware of a material change to a draft valuation provided under paragraph 8.5(a), before the Authority has provided the corresponding final valuations under paragraph 8.5(b), the Authority will notify the Living Murray governments of this change as soon as practicable after becoming aware of that change.

- 8.9. The Authority will maintain such other records in relation to the Living Murray assets as are required by the unanimous agreement of the Living Murray governments from time to time.

9. Accounting

- 9.1. The Authority will keep books of account for the Living Murray assets in accordance with Australian Accounting Standards, in particular the provisions of AASB 131 of 30 April 2007 (or as subsequently amended by the Australian Accounting Standards Board) that apply specifically to unincorporated joint ventures involving the joint control by the venturers of one or more assets contributed, or acquired for the purpose of, the joint venture and dedicated to the purposes of the joint venture. In particular:
- (a) the Authority will prepare annual financial statements in respect of the Living Murray assets for the Living Murray governments;
 - (b) if a particular format is agreed unanimously by the governments, the annual financial statements in respect of the Living Murray assets are to be in that agreed format; and
 - (c) the annual financial statements in respect of the Living Murray assets will be treated as Special Purpose financial statements for audit purposes rather than General Purpose financial statements and these accounts shall be prepared separately from the other annual financial statements required to be prepared by the Authority.
- 9.2. The Authority will include in the annual financial statements in respect of the Living Murray assets, details sufficient to allow the Living Murray governments to include in their annual financial statements details of the Living Murray assets in accordance with applicable Australian Accounting Standards. The annual financial statements in respect of the Living Murray assets will include details of any jointly held liabilities and/or increases or decreases in asset values incurred in relation to the Living Murray assets.
- 9.3. Declines in asset values from disposal, write down, downward revaluation, amortisation, trading or impairment of the Living Murray assets will be incurred jointly by the Living Murray governments in relation to the Living Murray assets in the same relative proportions as referred to in clause 6.8 (noting that the Living Murray governments may, by unanimous agreement, amend this Agreement so as to adjust these relative proportions).
- 9.4. The parties acknowledge that under clause 69 of the Living Murray IGA, net revenue from the temporary trade of Living Murray assets must be separately accounted for on the financial registers of the investing parties.
- 9.5. The parties agree that:
- (a) net revenues from the permanent trade of Living Murray assets must be accounted for in accordance with the protocol developed under clause 70 of the Living Murray IGA; and
 - (b) in the period before a protocol is developed under clause 70 of the Living Murray IGA, net revenues from the permanent trade of Living Murray assets must be separately accounted for on the financial registers of the investing parties.
- 9.6. Increases in asset values from upward revaluations and acquisitions of the Living Murray assets will be incurred jointly by the Living Murray governments in relation to the Living Murray assets in the same relative proportions as referred to in clause 6.8 (noting that the Living Murray governments may, by unanimous agreement, amend this Agreement so as to adjust these relative proportions).

10. Reporting

- 10.1. The Chief Executive of the Authority will include in each annual report prepared for the purposes of clause 85 of the MDB Agreement information about the acquisition and/or trading of the Living Murray assets in the relevant financial year and any other matters relating to the Living Murray assets which the Living Murray governments unanimously agree should be included.
- 10.2. The financial statements included in the Authority's annual report will not include the annual financial statements in respect of the Living Murray assets required under paragraph 9.1(a).
- 10.3. The Authority will provide to the Living Murray governments such additional financial and operational reports on its activities in relation to the Living Murray assets as agreed unanimously by the Living Murray governments from time to time.
- 10.4. The Authority will provide un-audited interim management accounts to the Living Murray governments no later than 15 January of each year to enable the Living Murray governments to use them in their Mid-Year Reports. These accounts are not required to include details in relation to:
 - (a) revaluation of Living Murray assets; or
 - (b) impairment of Living Murray assets.
- 10.5. The Authority will provide the Living Murray governments with draft annual financial statements for each financial year in relation to the Living Murray assets by 7 July of the following financial year.
- 10.6. Without limiting clauses 8.1, 10.3, 10.4 or 10.5, the Authority will use its best endeavours to provide information in response to reasonable requests from a Living Murray government about the Living Murray assets.

11. Audit

- 11.1. The Authority will arrange for the books of account for the Living Murray assets to be audited each financial year by the Australian National Audit Office or such other body as may be unanimously agreed from time to time by the Ministerial Council.
- 11.2. The Authority will provide the Living Murray governments with audited annual financial statements for each financial year in relation to the Living Murray assets by 31 August of the following financial year.

12. Agreement by parties under this Asset Agreement

- 12.1. Any agreement by the Living Murray governments under a clause of this Agreement must be made by unanimous agreement of all of the Living Murray governments' representatives.
- 12.2. Any agreement by the parties under a clause of this Agreement must be made by unanimous agreement of all of the parties' representatives.
- 12.3. The parties' representatives for the purposes of clauses 12.1 and 12.2 are:
 - (a) for each Living Murray government:
 - (i) that government's representative on the Ministerial Council; or
 - (ii) that government's representative on the Committee, if the Living Murray governments' representatives on the Ministerial Council have unanimously agreed that the Living Murray governments' Committee representatives are to exercise the relevant decision-making power; and
 - (b) for the Authority, the Chief Executive.

13. Inconsistency between MDB Agreement and this Agreement

- 13.1. In the event of any inconsistency between the MDB Agreement and this Agreement, the MDB Agreement will prevail.
- 13.2. In the event of any inconsistency between the Living Murray Initiative and this Agreement, this Agreement will prevail unless the Living Murray governments otherwise unanimously agree.

14. Resolution of Disputes

- 14.1. In relation to clauses 5.1 and 6.1-6.10:
 - (a) if the Living Murray governments' Committee representatives fail to agree on any motion submitted by one of those representatives within two months, that representative may refer the matter to the Living Murray governments' Ministerial Council representatives;
 - (b) if the Living Murray governments' Ministerial Council representatives fail to resolve any matter in relation to this Asset Agreement, including a matter referred to it under paragraph (a), within six months, any of those representatives may refer the matter to an arbitrator;
 - (c) when a matter is referred to an arbitrator, any Living Murray government Ministerial Council representative may give the other representatives written notice to agree to appoint an arbitrator to decide the matter;
 - (d) if an arbitrator is not appointed within two months of notice being given, the Chief Justice of the Supreme Court of Tasmania, or the person acting in that office, may appoint an arbitrator at the request of the representative giving notice under paragraph (c);
 - (e) the decision of any arbitrator appointed under this clause is deemed to be the decision of the Living Murray governments' Ministerial Council representatives; and
 - (f) this clause does not apply to a resolution on a question of law.
- 14.2. In relation to any other clause of this Asset Agreement:
 - (a) if the Living Murray governments' Committee representatives and the Authority's representative fail to agree on any motion submitted by one of those representatives within two months, that representative may refer the matter to the Living Murray governments' Ministerial Council representatives and the Authority's representative;
 - (b) if the Living Murray governments' Ministerial Council representatives and Authority's representative fail to resolve any matter in relation to this Asset Agreement, including a matter referred to it under paragraph (a), within six months, any of those representatives may refer the matter to an arbitrator;
 - (c) when a matter is referred to an arbitrator, any Living Murray government Ministerial Council representative or the Authority's representative may give the other representatives written notice to agree to appoint an arbitrator to decide the matter;
 - (d) if an arbitrator is not appointed within two months of notice being given, the Chief Justice of the Supreme Court of Tasmania, or the person acting in that office, may appoint an arbitrator at the request of the representative giving notice under paragraph (c);

- (e) the decision of any arbitrator appointed under this clause is deemed to be the decision of the Living Murray governments' Ministerial Council representatives and Authority representative; and
- (f) this clause does not apply to a resolution on a question of law.

15. Authority has no interest in relation to clauses 5.1 and 6.1-6.10

- 15.1. The parties agree that the Authority has:
- (a) no right, title or interest in the subject matter dealt with by clauses 5.1 and 6.1-6.10; and
 - (b) no standing for the purposes of any matter or any dispute (whether as to law or fact) arising out of, or in connection with, the subject matter of clauses 5.1 and 6.1-6.10.
- 15.2. For the purposes of clause 15.1, the subject matter dealt with by clause 5.1 is the variation of the Living Murray IGA and the Supplementary IGA.

16. Review of Agreement

- 16.1. Without limiting the operation of clause 15.1, the parties agree to review the operation and effect of this Agreement before July 2010 and as a consequence of this review may agree to amend this Agreement in accordance with clauses 17.1 and 17.2.

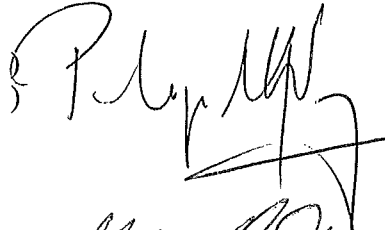
17. Amendment

- 17.1. Clauses 5.1 and 6.1-6.10 may be amended by unanimous agreement between the Ministerial Council representatives of the Living Murray governments.
- 17.2. Any other clause of this Asset Agreement, may be amended by unanimous agreement between the Ministerial Council representatives of the Living Murray governments and the Chief Executive of the Authority.

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

The Honourable Penelope Ying Yen Wong MP
for and on behalf of the Commonwealth of Australia
In the presence of -



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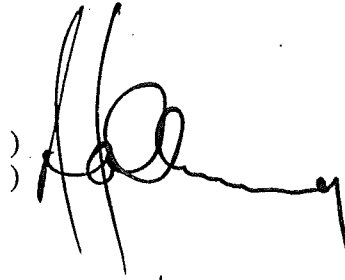
The Honourable Phillip Costa MP
for and on behalf of the State of New South Wales
In the presence of -



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The Honourable Tim Holding MP
for and on behalf of the State of Victoria
In the presence of -



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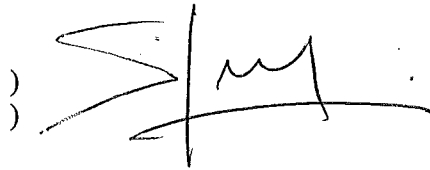
The Hon Karlene Maywald MP
For and on behalf of the State of South Australia
In the presence of -



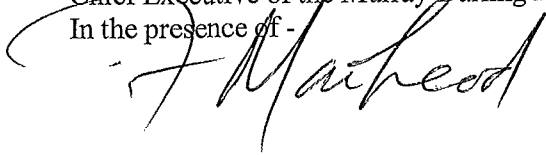
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Mr Simon Corbell MLA
for and on behalf of the Australian Capital Territory
In the presence of -



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Robert Alan Freeman
Chief Executive of the Murray-Darling Basin Authority
In the presence of -



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