

RIVER MURRAY WATERS AMENDMENT ACT 1987

RIVER MURRAY WATERS AMENDMENT ACT 1987 No. 154 of 1987

LONG TITLE

An Act to approve an agreement for the amendment of the Agreement entered into between the Prime Minister of the Commonwealth and the Premiers of the States of New South Wales, Victoria and South Australia, with regard to the River Murray, the Menindee Lakes and other waters, to amend the River Murray Waters Act 1983, and for other purposes

Short title etc.

(Assented to 26 December 1987)

1. (1) This Act may be cited as the River Murray Waters Amendment Act 1987.

(2) In this Act, "Principal Act" means the River Murray Waters Act 1983*1*.
(Minister's second reading speech made in-
House of Representatives on 4 November 1987
Senate on 25 November 1987)
1 No. 86, 1983.

Commencement

2. This Act shall come into operation on 1 January 1988.

Interpretation

3. In this Act, unless the contrary intention appears:

"amending agreement" means the agreement a copy of which is set out in the Schedule.

Approval of Agreement

4. The amending agreement is approved.

Short title

5. Section 1 of the Principal Act is amended by omitting "River Murray Waters" and substituting "Murray-Darling Basin".

Interpretation

6. Section 3 of the Principal Act is amended:

(a) by omitting "the Schedule" from the definition of "Agreement" and substituting "Schedule 1, as amended by the agreement, a copy of which is set out in Schedule 2";

(b) by omitting "the" from the definition of "Commonwealth member" and substituting "a";
and

(c) by inserting the following definition:

" 'Ministerial Council' has the same meaning as in the Agreement;"

Appointment of Commissioners and Deputy Commissioners

7. Section 6 of the Principal Act is amended by omitting from subsection (1) "a Commissioner and a Deputy Commissioner" and substituting "2 Commissioners and 2 Deputy Commissioners".

8. Section 14 of the Principal Act is repealed and the following section is substituted:

Certain documents to be laid before Parliament

"14. The Minister shall cause a copy of each report and statement submitted by the Commission under clause 68 of the Agreement to the Ministerial Council to be laid before each House of the Parliament without delay."

Schedule 1

9. The heading to the Schedule to the Principal Act is amended by omitting "SCHEDULE" and substituting "SCHEDULE 1".

Schedule 2

10. The Principal Act is amended by adding at the end the Schedule set out in the Schedule to this Act.

SCHEDULE
Section 3

SCHEDULE 2
Section 3

MURRAY-DARLING BASIN AGREEMENT

An agreement (to be called the "Murray-Darling Basin agreement") made this thirtieth day of October One thousand nine hundred and eighty seven between-

THE COMMONWEALTH OF AUSTRALIA (hereinafter referred to as "the Commonwealth") of the first part,

THE STATE OF NEW SOUTH WALES of the second part,
THE STATE OF VICTORIA of the third part, and
THE STATE OF SOUTH AUSTRALIA of the fourth part.

WHEREAS the Commonwealth, New South Wales, Victorian and South Australian Governments wish to promote and co-ordinate effective planning and management for the equitable efficient and sustainable use of the water, land and environmental resources of the Murray-Darling Basin:

AND WHEREAS those Governments have agreed that certain amendments should be made to an Agreement made between the parties on the first day of October 1982 and subsequently approved by the Parliaments of all those Governments (hereinafter referred to as "the principal agreement"):

NOW IT IS HEREBY AGREED by and between the parties to this agreement as follows-

1. Unless the contrary intention appears, expressions used in this agreement have the same meanings as they have in the principal agreement.

2. (1) This agreement, other than this sub-clause and sub-clauses (2) and (3) of this clause, is subject to approval by the Parliaments of the Commonwealth and of the States of New South Wales, Victoria and South Australia and shall come into effect when so approved.

(2) The Commonwealth, New South Wales, Victorian and South Australian Governments will submit this agreement for approval to their respective Parliaments as soon as practicable after the date of this agreement.

(3) A further approval of the Parliaments referred to in sub-clause 2 (1) shall not be required where any other State becomes a party to this agreement pursuant to clause 117A.

3. Clause 1 of the principal agreement is amended by-

(a) deleting the definition of "Commission", and inserting the following:

" "Commission" means the Commission continued in existence hereunder under the name "Murray-Darling Basin Commission".";

(b) deleting from the definitions of "Commissioner for the Commonwealth", "Commissioner for New South Wales", "Commissioner for South Australia" and "Commissioner for Victoria" the words "the Commissioner" and substituting the words "a Commissioner";

(c) deleting from the definition of "Contracting Government" the words "or the State of South Australia" and adding the words ", the State of South Australia or, except for Parts V and VIII and sub-clauses 48 (2), 48 (3) and 48 (4) and paragraphs 48 (1) (a) and 48 (1) (c) of Part VI, a State becoming a party pursuant to clause 117A.";

(d) deleting from the definitions of "Deputy Commissioner for the Commonwealth", "Deputy Commissioner for New South Wales", "Deputy Commissioner for South Australia" and "Deputy Commissioner for Victoria" the words "the Deputy Commissioner" and substituting the words "a Deputy Commissioner";

(e) inserting after the definition of "the Authority" the following:

"the Ministerial Council" means the Ministerial Council established by Part IIIA.

"the Murray-Darling Basin" means so much of the area within the boundaries of the map shown in the schedule to this agreement as forms part of the territory of the Contracting Governments."

4. The following Part shall be inserted in the principal agreement before Part III-

"PART IIIA-ESTABLISHMENT OF MINISTERIAL COUNCIL

7A. (1) There shall be a Ministerial Council consisting of up to three Ministers from each Contracting Government who have prime responsibility for matters relating to water, land and environment.

(2) A member of the Ministerial Council for the time being representing a party to this Agreement-

(a) may appoint a delegate who is another Minister of State of that party to attend a meeting of the Ministerial Council in place of the member; or

(b) shall, while a Minister of State of the party is for the time being acting as the Minister who is referred to in sub-clause 7A (1), be the Minister who is so acting, and references in this Agreement (other than in this clause) to a member of the Ministerial Council shall include a delegate in respect of attendance at any such meeting or a Minister who is so acting.

7B. The functions of the Ministerial Council shall be the general oversight and control over the major policy issues of common interest to the Contracting Governments in relation to the Murray-Darling Basin.

7C. The Ministerial Council may give directions to the Commission concerning the performance of the functions of the Commission and the exercise of its powers and the Commission shall comply with those directions.

7D. The Ministerial Council may require the Commission to furnish to it a report in relation to any of its operations.

7E. (1) The Ministerial Council shall meet at least once in each year but otherwise at such times as it sees fit and shall, subject to this Agreement, determine its own procedure.

(2) The quorum for a meeting of the Ministerial Council shall be each Minister nominated under clause 7G or, in the absence of that Minister, a Minister from the same Contracting Government authorised for this purpose by the Minister so nominated.

(3) A resolution before the Ministerial Council will be carried only by a unanimous vote of all Ministers present who constitute a quorum.

(4) The Chairperson of the Ministerial Council shall be one of the Commonwealth Ministers who is a member of the Council and is at the relevant time the member nominated for this purpose by the Prime Minister.

7F. The Ministerial Council

- (a) shall constitute a Community Advisory Committee; and
- (b) may constitute such other committees as it shall see fit, to assist it in discharging its functions, with terms of reference, functions and membership determined by it from time to time.

7G. The Prime Minister and the Premier of each other Contracting Government shall from time to time each nominate one of the Ministers representing it on the Ministerial Council to be the Minister responsible to the Ministerial Council for the responses of that Minister's government."

5. Clause 7 of the principal agreement is amended by deleting the words "shall continue to function" and substituting the words "is continued in existence under the name of the Murray-Darling Basin Commission".

6. Clause 8 of the principal agreement is deleted and the following clause substituted-

"8. The Commission shall consist of the Commissioners, appointed pursuant to clause 9."

7. The following clause shall be inserted before clause 9 of the principal agreement-

"9A. (1) A Commissioner, other than the President, shall disclose to the President any direct or indirect pecuniary interest that he has or acquires in a business carried on in Australia or in a body corporate carrying on such a business, being an interest that could be in conflict with his duties as a Commissioner.

(2) The President shall give written notice to the Minister responsible for administering on behalf of the Commonwealth this Agreement of all direct and indirect pecuniary interests that he has or acquires in any business carried on in Australia or in any body corporate carrying on any such business."

8. Clause 9 of the principal agreement is amended-

- (a) by deleting the words "One Commissioner and one Deputy Commissioner" and substituting the words "Two Commissioners who, between them, represent water, land and environmental resource management and two Deputy Commissioners";
- (b) by deleting the words "and the Governor" after the word "Victoria" and substituting the words ", the Governor";
- (c) by adding the words "and the Governor of any State becoming a party to this Agreement pursuant to clause 117A" after the words "South Australia".

9. Clause 11 of the principal agreement is deleted and the following clause substituted-

"11. (1) Where immediately before the variation date a person holds office as a Commissioner or Deputy Commissioner by virtue of a provision of this Agreement that person continues on and after that date to hold office for the remainder of his term of office as if he had been appointed to the Murray-Darling Basin Commission and any instrument by which that appointment was made continues in force accordingly.

(2) For the purposes of this clause, "the variation date" means the date on which this Agreement was first amended."

10. Clause 12 is amended by deleting the words "the Commissioner" wherever appearing and substituting the words "a Commissioner" and by deleting the words "the Deputy Commissioner for the Commonwealth or that State, as the case may be, shall act as" and substituting the words "the Deputy Commissioner appointed for that Commissioner shall act as a".

11. Sub-clause 19 (3) of the principal agreement is amended by deleting the words "The Commissioner for the Commonwealth shall be the President of the Commission and" and substituting "the Chairperson of the Ministerial Council shall, after consulting with the Ministerial Council, appoint from the Commissioners for the Commonwealth the President of the Commission who".

12. Sub-clause 19 (4) of the principal agreement is amended by deleting the words "Commissioner for the Commonwealth is not present the Deputy Commissioner for the Commonwealth" and substituting the words "President of the Commission is not present, the person appointed the Deputy Commissioner for that Commissioner".

13. Sub-clause 19 (5) of the principal agreement is deleted and the following sub-clause substituted-

"(5) The chairman shall have a deliberative vote but shall not have a casting vote except as provided in sub-clauses 20 (2), 82 (2) and 116 (5)."

14. The following sub-clause shall be inserted before sub-clause 19 (6) of the principal agreement-

"(6A) The two Commissioners for a Contracting Government shall have a joint vote, exercisable in the absence of one by the other."

15. Sub-clause 19 (6) of the principal agreement is deleted and the following sub-clause substituted-

"(6) One Commissioner for each Contracting Government shall be a quorum. Except as provided in sub-clauses 20 (2), 25A (2), 82 (2) and 116 (5), a unanimous vote shall be necessary for the transaction of the business of the Commission."

16. Sub-clause 20 (2) of the principal agreement is deleted and the following sub-clause substituted-

"(2) A delegation under sub-clause 20 (1) may be revoked by a majority vote of the Commissioners or, if the voting is equally divided, by the casting vote of the chairman."

17. Sub-clause 21 (3) and paragraphs 48 (1) (b) and 48 (2) (b) of the principal agreement are deleted.

18. Sub-clause 24 (1) of the principal agreement is amended by deleting-

(a) the words "the Commissioner and Deputy Commissioner" and substituting the words "the Commissioners and Deputy Commissioners";

(b) the words "that Commissioner or that Deputy Commissioner" and substituting the words "any of those Commissioners or those Deputy Commissioners"; and

(c) the word "him" and substituting the words "any of them".

19. The following Part shall be inserted in the Agreement before Part IV-

"PART IVA MURRAY-DARLING BASIN

25A. (1) The Commission shall advise the Ministerial Council in relation to the management of the water land and environmental resources within the Murray-Darling Basin.

(2) Subject to this sub-clause, the advice referred to in sub-clause 25A (1) shall be determined by majority vote of the Commissioners for the Contracting Governments. In the event of a unanimous decision not being reached the Commissioners for each Contracting Government may jointly tender separate advice to the Ministerial Council.

25B. The Commission shall, to the extent to which its powers so extend, give effect to any policy or decision of the Ministerial Council whether or not the subject of advice under clause 25A which the Ministerial Council requires it to implement. Those powers however, shall not extend to enable the Commission to do anything for which Part IV and subsequent Parts provide otherwise than as provided for by those Parts."

20. (1) Sub-clause 25 (2) of the principal agreement, is amended by adding the words-"The Commission shall inform the Ministerial Council of the proposed surveys, investigations or studies for which that consent is being sought."

(2) Paragraph 25 (3) (b) of the principal agreement is amended by inserting the words "the Ministerial Council and either" after the word "inform" and by substituting the words "by any of them" for the words "by that Contracting Government or authority".

(3) Sub-clause 26 (2) of the principal agreement is amended by adding the following words-"The Commission shall inform the Ministerial Council of the establishment, maintenance or operation of any of those systems for which a consent under either paragraph 26 (2) (a) or 26 (2) (b) is being sought."

(4) Clause 27 of the principal agreement is amended by deleting the words "to the Contracting Governments" and substituting the words "to the Ministerial Council".

(5) Clause 28 of the principal agreement is amended by:

- (a) deleting the words "or to";
- (b) inserting before the word "concerning" the words "or the Ministerial Council," and
- (c) adding the words "and shall inform the Ministerial Council of the recommendation at the time it is made."

21. Paragraph 33 (1) (b) and sub-clause 33 (2) of the principal agreement are amended by deleting the words "Contracting Governments jointly" and "Contracting Governments" and substituting the words "Ministerial Council".

22. Clause 34 of the principal agreement is amended by deleting the words "of the Contracting Governments" and substituting the words "of the Ministerial Council".

23. (1) Sub-clause 35 (3) of the principal agreement is amended by deleting the words "Contracting Governments" and "Contracting Governments are" and substituting the words "Ministerial Council" and "Ministerial Council is" respectively.

(2) Sub-clause 36 (1) of the principal agreement is amended by deleting the words "each of the Contracting Governments" and substituting the words "the Ministerial Council".

(3) Sub-clause 36 (2) of the principal agreement is amended by deleting the words "Contracting Governments" and "Contracting Governments have" and substituting respectively the words "Ministerial Council" and "Ministerial Council has".

(4) Clause 40 of the principal agreement is amended by deleting the words "agreed upon between them" and substituting the words "determined by the Ministerial Council".

(5) Sub-paragraph 48 (1) (a) (iv) and paragraph 48 (2) (c) of the principal agreement are amended by deleting the word "Commission" and substituting the words "Ministerial Council".

(6) Sub-paragraphs 48 (1) (a) (v) and 48 (2) (a) (iii) of the principal agreement are amended by deleting the words "Contracting Governments have entered into an agreement" and substituting the words "Ministerial Council has determined otherwise".

(7) Sub-clause 48 (3) of the principal agreement is deleted and the following sub-clause substituted-

"(3) The Ministerial Council may determine the shares in which one or more of the Contracting Governments is to bear the costs of constructing, maintaining, operating and controlling the works referred to in sub-clause 33 (1)."

(8) Sub-clause 48 (4) of the principal agreement is amended by inserting before the word "determine" the following words "recommend to the Ministerial Council and the Ministerial Council shall".

(9) Sub-clause 50 (1) and clause 117 of the principal agreement are amended by deleting the words "Contracting Governments" and substituting the words "Ministerial Council".

(10) Sub-clauses 50 (2) and 51 (2) of the principal agreement are amended by inserting the words "which shall be subject to the approval of the Ministerial Council" after the word "expenditure".

(11) Sub-clause 52 (1) of the principal agreement is amended by inserting after the word "prepare" the words "and submit to the Ministerial Council for its approval".

(12) Sub-clause 59 (6) of the principal agreement is amended by inserting after the word "Government" the words ", the Ministerial Council".

(13) Clause 60 of the principal agreement is amended by inserting the words "to the Ministerial Council and" after the word "account".

(14) Sub-clause 64 (4) of the principal agreement is amended by inserting the words "the Ministerial Council and" after the word "to".

(15) Sub-clauses 68 (2) and 68 (3) of the principal agreement are amended by deleting from each sub-clause the words "each of the Contracting Governments" and the words "Governor-General or the Governor (as the case may require)" and substituting in each case the words "the Ministerial Council".

(16) Sub-clause 69 (1) of the principal agreement is amended by deleting the words "to each" and substituting the words "the Ministerial Council and each" and inserting the word "of" after the word "Governments".

(17) Clause 74 of the principal agreement is amended by deleting the words "the Commissioner" and substituting the words "a Commissioner".

(18) Sub-clauses 82 (2) and 116 (5) of the principal agreement are amended by deleting the words "the four Commissioners or, if the four Commissioners are equally divided, by the casting vote of the Commissioner for the Commonwealth" and substituting the words "the Commissioners or, if the voting is equally divided, by the casting vote of the chairman".

(19) Sub-clause 116 (1) of the principal agreement is amended by deleting the words ", as provided in this clause be referred for decision to an arbitrator" and substituting the words "be referred to the Ministerial Council, one or more members of which, if it fails to resolve it within six months, may, as provided in this clause, refer the question to an arbitrator".

(20) Sub-clause 116 (2) of the principal agreement is amended by deleting the words "the end of the prescribed period" and substituting the words "or about the time the question is referred for decision to an arbitrator".

(21) Sub-clause 116 (4) of the principal agreement is amended by inserting the words ", the Ministerial Council" immediately before the words "and the".

(22) Paragraph 116 (6) (b) of the principal agreement is amended

(a) by deleting the word "four"; and

(b) by deleting the words "Commissioner for the Commonwealth" and substituting the word "chairman".

24. The following clause shall be inserted in the principal agreement before clause 117-

"117A. (1) Subject to sub-clause 117A (2), a State of the Commonwealth not initially a party to this Agreement may, on the concurrence in writing of the existing parties, become a party by signature on its behalf of a copy of this Agreement and notifying each party to this Agreement in writing of the signature and date of signature.

(2) This Agreement shall have no force or effect in relation to a State to which sub-clause 117A (1) applies unless and until it is approved by the Parliament of that State."

25. The following Schedule is inserted after Schedule A to the principal agreement.

SCHEDULE B
THE DIAGRAM HAS BEEN OMITTED

IN WITNESS WHEREOF this agreement has been respectively signed for and on behalf of the parties hereto on the day and year first above-written.

SIGNED by the Honourable
ROBERT JAMES LEE HAWKE, Prime
Minister of the Commonwealth
of Australia in the
presence of-

ADRIENNE JACKSON
HAWKE SIGNED by the Honourable
BARRIE JOHN UNSWORTH, Premier
of the State of New South
Wales, in the presence of-

BOB

G. GLEESON
UNSWORTH SIGNED by the Honourable
JOHN CAIN, Premier of the
State of Victoria, in the
presence of-

BARRIE

ANDREW McCUTCHEON
CAIN SIGNED by the Honourable
DONALD JACK HOPGOOD,
Acting Premier of the State of
South Australia, in the
presence of-

JOHN

LOU ZOLLO
HOPGOOD

DON