

Murray-Darling Basin Reform

Memorandum of Understanding 26 March 2008

Agreed in principle for consultation with stakeholders

Preamble

1. In order to implement co-operative, efficient and effective arrangements in the Murray-Darling Basin, the Commonwealth and the Murray-Darling Basin States – New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory – have agreed that the Murray-Darling Basin Authority and the Murray-Darling Basin Commission be brought together as a single institution, to be known as the Murray-Darling Basin Authority.
2. The new, independent Authority will be responsible for developing, implementing and monitoring the Basin Plan, which will include a sustainable cap on surface and groundwater diversions across the Basin. The Basin Plan will provide for the critical human water needs of communities that use water from the Murray River and its tributaries, a sustainable industry and enhanced environmental outcomes. The Basin Plan will recognise critical human needs as a priority and establish a decision-making process for determining the method for securing this water. The new Authority will also be responsible for the current functions of the Office of the Murray-Darling Basin Commission.
3. With this Memorandum of Understanding (MOU), Governments have committed to sign an Intergovernmental Agreement at the July 2008 COAG meeting. Governments will consult with stakeholders immediately on the implementation of this MOU and have asked officials to prepare for the July meeting an Intergovernmental Agreement (IGA) and recommendations on any other arrangements required to implement this MOU.

Heads of Agreement

Institutional Structure and Governance

4. The Murray-Darling Basin Authority and Murray-Darling Basin Commission (MDBC) would be brought together as a new, single institution, to be known as the Murray-Darling Basin Authority (MDBA).
5. Through the report to the July 2008 COAG meeting, the Basin jurisdictions will determine the functions of the MDBC set out in the existing MDB Agreement and the MDB Acts to be transferred to the MDBA and reflected in the Water Act or the IGA, as appropriate.

6. The Commonwealth will consult with the Basin States on the appointment of the Authority members.
7. All existing staff of the Office of the MDBC will be transferred to the new Authority, noting that their high level of expertise and experience will make a valuable contribution to the work of the new Authority.
8. The new MDBA will have two roles: it will be responsible for developing and implementing the Basin Plan, as provided for in the Water Act; and, will also be responsible for the current functions of the MDBC.
9. The MDBA will provide a Basin Plan in early 2011.
10. As provided for in the Water Act, the Commonwealth Minister is the decision maker on the Basin Plan. If the Commonwealth Minister decides not to adopt the Basin Plan, then the Commonwealth Minister would give the Basin Plan back to the Authority with suggestions for consideration by the Authority. If the Minister declines to accept the revised Basin Plan, then the Minister must provide to the Parliament reasons for directing the Authority to make modifications to that version of the Basin Plan.
11. A new Ministerial Council will be established, comprising all Basin States and chaired by the Commonwealth.
12. The new Council will provide advice to the Commonwealth Minister on the Basin Plan, including the sustainable cap on surface and groundwater diversions, and monitoring the Plan's performance.
13. If all, or any, Basin State Minister(s) disagree with the cap or other relevant parts of the Basin Plan, these matters would be referred back to the Authority for reappraisal. The Authority would then return the Basin Plan to the Ministerial Council for its advice. The Plan would then be submitted to the Commonwealth Minister for decision.
14. This advisory role of the new Council will be formalised in the Water Act 2007, or as otherwise agreed.
15. In relation to the existing functions of the MDBC (state water shares, River Murray operation, the Living Murray Initiative and natural resource management programs, such as salinity and fish), the Authority would report to the new Ministerial Council.
16. Current state Water Shares, as defined by the MDB Agreement and subsequent MDB Ministerial Council and MDBC decisions, will be preserved unless otherwise agreed by all signatories to this MOU.
17. The Basin Officials' Committee, provided for in the Water Act, will be an officials' decision-making body in relation to the existing functions of the

MDBC that will now be performed by the MDBA. Basin Officials will have a role analogous to that of MDB Commissioners, which will be abolished.

18. An external review will be commissioned to examine the most efficient way for the MDBA to perform for the Basin States the current functions of the MDBC. This will address the governance and delivery arrangements for programs and projects. This external review will be an input to the report by officials to the July 2008 COAG meeting.
19. Reflecting the current arrangements for the MDBC, the Basin States will contribute financially to the MDBA for the functions currently performed by the MDBC.

Other Matters

Commonwealth Investments

20. In determining the allocation of investment funding to projects within a Basin State, the Commonwealth will have regard to progress towards the following key reform outcomes:
 - competitively neutral and independently regulated water market and trading arrangements across the southern connected Basin;
 - water charging regimes that reflect the full cost of supply to end users including externalities; and
 - publicly accessible and compatible water register arrangements across all Basin jurisdictions (including a national water register information database).
21. The Commonwealth will also have regard, among other things, to the following investment priorities:
 - strategic investment to accelerate development of a best practice and consistent Basin water modelling platform, noting that the MDBA will be developing such a platform in consultation with Basin States;
 - infrastructure investments that capture and return water losses and reduce system evaporation losses; and
 - purchasing water for the environment from willing sellers.
22. The Commonwealth will conduct a due diligence assessment of priority projects nominated by Basin States for funding under the \$10 billion plan. The Commonwealth will establish a process for Basin states and other proponents to submit priority projects for their jurisdictions. The Commonwealth recognises that in States such as New South Wales and South Australia, infrastructure is privately owned. The Commonwealth will work with irrigators in these regions to ensure equitable consideration of funding proposals.
 - The Commonwealth Government has agreed in principle to fund 90 percent of the total project costs, up to \$1 billion, of the Stage Two Food Bowl Project in Victoria, subject to a joint due diligence assessment and the delivery of half the gain in additional flows (around 100 billion litres) to environmental flows into the Murray River. This

project will also deliver a volume of water for farmers equivalent to that available for environmental flows, helping ensure the future for Victorian irrigators. Work would commence in 2009-10 with the project providing significant benefits to the economy and the environment.

- Jurisdictions will ask the MDBC to accelerate work on a number of feasibility studies to assess the proposed schemes to manage better environmental and irrigation issues, including those in relation to the Barmah Choke.
- Between now and the next COAG meeting, the Commonwealth will agree with the governments of New South Wales, Queensland, South Australia and the Australian Capital Territory on priority water savings projects in the Murray-Darling Basin for priority Commonwealth funding.

23. If following the due diligence, the Commonwealth agrees to contribute funds to a project, progress payments would be made by the Commonwealth, subject to the Basin State achieving agreed outcomes for water reform.

Commonwealth-State Water Management Partnerships

24. Within the Basin, access to funds under the Commonwealth's \$10 billion plan will be linked to MDB reform outcomes. In this context, the Commonwealth and Basin States will enter into Commonwealth-Basin State Water Management Partnerships to assist States implement water reforms. These partnerships could cover improving water registers, scientific work for new water resource plans, monitoring and enforcement and structural adjustment funding if communities are severely adversely affected. Commonwealth assistance would depend on States achieving agreed outcomes, and would only be for additional or new costs arising from reform, including implementation of the Basin Plan.

25. Overall, the States will not bear additional net costs as a consequence of the reforms set out in this MOU and the implementation of the Water Act.

Australian Competition and Consumer Commission (ACCC)

26. Under the Water Act, the water charge rules can provide for the ACCC to determine water charges in the Basin. The ACCC advises the Commonwealth Minister on water market rules in the Basin.

27. The Parties endorse the importance of the ACCC performing these roles to ensure efficient, transparent markets and charges in the Basin and ask that officials recommend the way in which the role of the ACCC might be strengthened, as part of their report to the July 2008 COAG meeting.

Critical Human Water Needs

28. All Basin jurisdictions note that by not providing for critical human needs, there is a gap in the Basin Plan.

29. The Basin Plan process must ensure that situations are avoided where water for critical human needs is not provided.
30. Jurisdictions agree that the approach to addressing critical human needs should provide as much certainty as possible, while preserving the flexibility required to deal with differences in circumstances.
31. The Working Group on Climate Change and Water will report back to COAG in July 2008 with advice as to how the Basin Plan will address the provision of water for critical human needs.
32. Jurisdictions agree that South Australia will have access to upstream storages for the purposes of South Australia meeting its responsibilities for critical human needs, subject to implementation arrangements being agreed by Basin jurisdictions.

Complementary Management of Environmental Water

33. All Basin jurisdictions agree to examine the way in which environmental water recovery programs should be managed to ensure they are cost effective and maximise environmental outcomes.

Enforcement of the Basin Plan

34. All Basin jurisdictions support the audit, monitoring and enforcement provisions of the Water Act. They agree to work with the MDBA to develop enforcement arrangements to complement the Act's enforcement provisions to protect States' shares and ensure compliance within catchments.

Risk Assignment Framework

35. The Commonwealth agrees to bring forward the risk assignment framework in the National Water Initiative, and incorporated in the Water Act 2007, to commence from the date at which existing water resource plans in the Murray-Darling Basin cease to have effect. (The Parties note that South Australia has four plans which cease to have effect between 21 December 2012 and 1 July 2014 for the purposes of the Water Act; New South Wales has 14 plans which cease to have effect on 1 July 2014; Queensland has four plans which cease to have effect on 1 September 2014. The new arrangement would apply to these plans.)
36. The Commonwealth agrees to further amend Division 4 of Part 2 of the Water Act 2007 such that the Commonwealth's share of any reduction in water availability (and therefore responsibility for compensation liability) includes 100 per cent of the new knowledge components of those reductions in long-term sustainable diversion limits that exceed three per cent of the relevant diversion limit.

37. The Commonwealth agrees to honour all existing water resource plans in all jurisdictions, including Victoria's plans that continue until 2019.

Improved Environmental Outcomes

38. Jurisdictions recognise that the extreme drought has exacerbated the Basin's environmental situation. Continued low flows to Ramsar and other icon sites, including the Lower Lakes, Coorong and Murray Mouth, is resulting in serious environmental degradation.
39. The Basin Plan will provide for improved environmental outcomes across the Basin.
40. Importantly it would seek to improve the status of all Ramsar sites (including the Lower Lakes, Coorong and Murray Mouth) and other key environmental sites in the Basin, with important environmental outcomes such as increasing environmental flows, healthier wetlands, protection of floodplain areas and River Red Gums.
41. The new Ministerial Council would implement actions to assist in addressing these outcomes through its decision-making powers associated with the Living Murray Initiative, natural resource management programs, and River Murray operations.

A New Approach to Murray-Darling Basin Reform

42. The Parties declare that the agreement set out in this MOU is a new partnership for the management of the Murray-Darling Basin.
43. This MOU implements sound principles of Federal-State relations by assigning the Basin wide planning role to the MDBA and the Commonwealth Minister, while providing for clear participation by Basin States in decision-making and affirming the autonomy of Basin States to manage water within catchments.
44. This MOU removes the conditionality of the IGA proposed by the previous Commonwealth Government. In this context, the Basin States are pleased that, as an expression of good faith, the Commonwealth has already been undertaking consultations with Basin States about the membership of the MDBA.
45. Specifically:
- a new Ministerial Council will be established, which will provide formal roles for Basin States in the Basin Plan and will decide on natural resource management programs, the Living Murray Initiative, State water shares and River Murray operation;
 - Basin State water authorities will make available water determinations; and

- State authorities will make river flow directions for the Goulburn and Murrumbidgee Rivers. (These two matters will not be the responsibility of the MDBA, which is what the previous Commonwealth Government had proposed.);
- there will be a new, cooperative approach to environmental water management by the Parties;
- unlike the previous Commonwealth Government's proposal, there will be funding available to States under new partnership arrangements for such things as improved water resource plans, monitoring and enforcement, and structural adjustment; and
- access to funds under the \$10 billion plan will be conditional upon achieving agreed water reform objectives rather than the referral of powers sought by the previous Commonwealth Government.

Next Steps

46. Having agreed this MOU, the Parties further agree:
- to commence immediate consultation with stakeholders on the implementation of this agreement; and
 - that the Commonwealth convene a group of officials from the Basin States to develop an IGA and recommend any other arrangements required to implement this MOU.
47. The IGA for Murray-Darling Basin Reform will be submitted for signature by First Ministers at the next COAG in July 2008.

IN WITNESS WHEREOF this Agreement has been executed as at the day and year first written above.

SIGNED by:

The Honourable Kevin Rudd MP)
Prime Minister of the Commonwealth of Australia)

The Honourable Morris Iemma MP)
Premier of the State of New South Wales)

The Honourable John Brumby MP)
Premier of the State of Victoria)

The Honourable Anna Bligh MP)
Premier of the State of Queensland)

The Honourable Michael Rann MP)
Premier of the State of South Australia)

Mr Jon Stanhope MLA)
Chief Minister of the Australian Capital Territory)