

# PROJECT AGREEMENT FOR TASMANIAN IRRIGATION TRANCHE II

An agreement between:

- the Commonwealth of Australia; and
- Tasmania.

The outputs of this Agreement will be the construction of irrigation infrastructure schemes in Tasmania.

# Project Agreement for Tasmanian Irrigation Tranche II

## OVERVIEW

1. This Project Agreement (the Agreement) is created subject to the provisions of the Intergovernmental Agreement on Federal Financial Relations (IGA FFR) and should be read in conjunction with that Agreement and its Schedules, which provide information in relation to performance reporting and payment arrangements under the IGA FFR.

### Purpose

2. This Agreement will support the construction of sustainable irrigation infrastructure schemes that will assist communities, irrigators and businesses to use water resources sustainably and efficiently, consistent with nationally agreed water reforms.

### Reporting Arrangements

3. Tasmania will report annually against the agreed milestones during the operation of this Agreement, as set out in Part 4 – Project Milestones, Reporting and Payments.

### Financial Arrangements

4. The Commonwealth will provide an estimated total financial contribution to Tasmania of up to \$60 million exclusive of GST in respect of this Agreement, as set out in Part 5 – Financial Arrangements.

## PART 1 – FORMALITIES

5. This Agreement constitutes the entire agreement for this project.

### Parties to this Agreement

6. This Agreement is between the Commonwealth of Australia (Commonwealth) and Tasmania.

### Term of the Agreement

7. This Agreement will commence as soon as the Commonwealth and Tasmania sign the Agreement and will expire on 30 June 2019 or on completion of the project, including final performance reporting and processing of final payments against milestones, unless terminated earlier or extended as agreed in writing by the Parties.

## PART 2 – PROJECT OUTPUTS

### Outputs

8. The outputs of this Agreement will be construction of sustainable irrigation infrastructure schemes which may include:
  - (a) Southern Highlands Irrigation Scheme;
  - (b) Swan Valley Irrigation Scheme;
  - (c) North Esk Irrigation Scheme;
  - (d) Scottsdale Irrigation Scheme;
  - (e) Duck Irrigation Scheme; and
  - (f) other agreed schemes, in accordance with Clause 27 and 28 of this Agreement.
9. The funding of irrigation schemes will be subject to available funds and assessment in accordance with the Due Diligence Guidelines and Criteria at Schedule A to this Agreement.

## PART 3 – ROLES AND RESPONSIBILITIES OF EACH PARTY

### Role of the Commonwealth

10. The Commonwealth will be responsible for:
  - (a) monitoring and assessing achievement against milestones in the delivery of the irrigation infrastructure schemes under this Agreement to ensure that outputs are delivered within the agreed timeframe;
  - (b) providing a consequent financial contribution to Tasmania to support the implementation of this Agreement;
  - (c) where applicable, in accordance with the *Fair Work (Building Industry) Act 2012*, ensuring that financial contributions to a building project or projects as defined under the Fair Work (Building Industry – Accreditation Scheme) Regulations 2005, are only made where a builder or builders accredited under the Australian Government Building and Construction WHS Accreditation Scheme is contracted; and
  - (d) where applicable, ensuring that compliance with the Building Code 2013 is a condition of Australian Government funding.

### Role of Tasmania

11. Tasmania will be responsible for:
  - (a) providing a financial contribution to support the implementation of this Agreement;
  - (b) liaising with private investors/irrigators in each of the irrigation scheme areas, including in relation to financial contributions to the relevant schemes;
  - (c) all aspects of delivering on the project outputs set out in this Agreement;

- (d) reporting on the delivery of outputs as set out in Part 4 – Project Milestones, Reporting and Payments;
- (e) where applicable, ensuring that only a builder or builders accredited under the Australian Government Building and Construction WHS Accreditation Scheme is contracted, and providing the necessary assurances to the Commonwealth; and
- (f) where applicable, ensuring that compliance with the Building Code 2013 is made a condition of tender for all contractors and subcontractors who tender for the work, and providing the necessary assurances to the Commonwealth.

## Shared roles

- 12. The Parties will meet the requirements of Schedule E, Clause 26 of the IGA FFR, by ensuring that prior agreement is reached on the nature and content of any events, announcements, promotional material or publicity relating to activities under this Agreement, and that the roles of both Parties will be acknowledged and recognised appropriately.

## PART 4 – PROJECT MILESTONES, REPORTING AND PAYMENTS

- 13. Irrigation scheme projects, milestones for the projects, their relationship to the outputs, expected completion dates, relevant reporting dates and expected payments will be set out in Schedules to this Agreement. The Commonwealth will make payments subject to the annual performance report demonstrating the relevant milestone has been met.
- 14. If a milestone is met in advance of the due date and the relevant performance report demonstrates that the milestone has been met, the Commonwealth may make the associated payment earlier than scheduled provided it falls within the same financial year as the original milestone date.

## Reporting arrangements

- 15. Tasmania will provide annual performance reports in accordance with Schedules to this Agreement during the operation of the Agreement. Each performance report is to contain:
  - (a) a description of actual performance in the period to date against the project milestones set out in the Schedules to this Agreement;
  - (b) a description of the work that will be undertaken to complete the remaining project milestones; and
  - (c) on completion of the irrigation scheme, a certificate of attainment of practical completion.
- 16. For the purposes of this Agreement, practical completion means:
  - (a) irrigation schemes are completed except for minor defects or omissions, which do not prevent them from achieving their stated purpose;
  - (b) all scheduled tests and inspections have been undertaken, are successful and demonstrate operational performance as expected; and
  - (c) irrigation schemes are fit for the designated use.

17. The irrigation schemes will contribute to agreed water reform outcomes in Tasmania under the Intergovernmental Agreement on a National Water Initiative. Tasmania will continue to provide annual water reform baseline reports in accordance with established arrangements.

## PART 5 – FINANCIAL ARRANGEMENTS

18. The Commonwealth will provide an estimated total financial contribution to Tasmania of up to \$60 million in respect of this Agreement. All payments are GST exclusive.
19. The Commonwealth’s financial contribution under this Agreement is for irrigation scheme construction costs only. All other costs associated with the irrigation schemes are the responsibility of Tasmania.
20. The balance of non-Commonwealth contributions will consist of contributions from Tasmania and private investors and/or irrigators in each irrigation scheme area, with Tasmania’s contribution being no less than \$30 million (GST exclusive) in respect of this Agreement.
21. The Commonwealth’s funding contribution will not be reduced where Tasmania secures funding from other activity partners.
22. The Commonwealth and Tasmania’s estimated financial contributions to the operation of this Agreement, including through National Partnership payments to the States paid in accordance with *Schedule D – Payment Arrangements* of the IGA FFR, are shown in Table 1.

**Table 1: Estimated financial contributions**

(\$ million)	2015-16	2016-17	2017-18	2018-19	Total
<b>Estimated total budget</b>	<b>65.0</b>	<b>35.0</b>	-	<b>17.12</b>	<b>117.12</b>
Less estimated National Partnership Payments	34.4	18.0	-	7.60	60.0
Balance of non-Commonwealth contributions <sup>(a)</sup>	30.6	17.0	-	9.52	57.12

<sup>(a)</sup> Non-Commonwealth contributions include contributions from Tasmania and private investors/irrigators.

23. Having regard to the agreed estimated costs of projects specified in this Agreement, Tasmania will not be required to pay a refund to the Commonwealth if the actual cost of the project is less than the agreed estimated cost of the project. Similarly, Tasmania bears all risk should the costs of the project exceed the agreed estimated costs. The Parties acknowledge that this arrangement provides the maximum incentive for Tasmania to deliver projects cost effectively and efficiently.

## PART 6 – GOVERNANCE ARRANGEMENTS

### Enforceability of the Agreement

24. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, that does not lessen the Parties’ commitment to this Agreement.

### Variation of the Agreement

25. The Agreement may be amended at any time by agreement in writing by both the Parties.
26. In the event that an irrigation scheme listed in Clause 8 of this Agreement does not proceed, any costs relating to that irrigation scheme will:
- (a) be borne by Tasmania; and

- (b) not form part of Tasmania's financial contribution under this Agreement.
27. An additional irrigation scheme may be agreed between the relevant Commonwealth and State ministers where Tasmania determines that the proposed irrigation scheme is viable and there are sufficient funds available.
  28. For avoidance of doubt Clause 9 of this Agreement will apply to all irrigation schemes listed under Clause 8 of this Agreement.
  29. Either Party may terminate their participation in the Agreement at any time by notifying the other Party in writing.

## **Delegations**

30. The Commonwealth Minister may delegate the assessment of performance against milestones and the authorisation of related project payments to senior Commonwealth officials, having regard to the financial and policy risks associated with those payments.

## **Dispute resolution**

31. Either Party may give notice to other Party of a dispute under this Agreement.
32. Officials of both Parties will attempt to resolve any dispute in the first instance.
33. If a dispute cannot be resolved by officials, it may be escalated to the relevant Ministers.

The Parties have confirmed their commitment to this agreement as follows:

**Signed for and on behalf of the Commonwealth  
of Australia by**



**The Honourable Barnaby Joyce MP**  
Deputy Prime Minister  
Minister for Agriculture and Water Resources

Date: 24-2-16

**Signed for and on behalf of the  
State of Tasmania by**



**The Honourable Jeremy Rockliff MP**  
Deputy Premier  
Minister for Primary Industries and Water

Date: 23.2.2016



## Schedule A

# Due Diligence Guidelines and Criteria

### PROJECT AGREEMENT TASMANIAN IRRIGATION TRANCHE II

- A1 These Guidelines provide advice to assist Tasmania prepare the business case (proposal) for each irrigation scheme.
- A2 The Commonwealth agrees to assess a proposal for inclusion in this Agreement as a Commonwealth-funded project in accordance with these Guidelines.
- A3 Commonwealth funding of an irrigation scheme is conditional on the Commonwealth undertaking due diligence in accordance with these Guidelines.
- A4 Should the Commonwealth agree to contribute funds to an irrigation scheme, then payments will be made subject to progressing implementation of National Water Initiative Reform Actions by Tasmania (where applicable).
- A5 To commence the due diligence process, the Commonwealth will require Tasmania to submit a proposal for each irrigation scheme.
- A6 The Commonwealth may engage an independent third party to undertake some or all of the due diligence.

## Due Diligence Criteria

- A7 The proposal for each irrigation scheme must provide sufficient information to enable the Commonwealth to commence due diligence. The criteria by which this assessment will be undertaken are:
  - (a) economic and social;
  - (b) environmental;
  - (c) value for money;
  - (d) water reform; and
  - (e) other.

## Economic and social criteria

- A8 The proposal must:
  - (a) be able to secure a long-term sustainable future for irrigation communities, in the context of meeting future demand for water in a drying climate;
  - (b) contribute to regional investment and development, secure regional economies and support the local community; and
  - (c) demonstrate long-term economic and environmental benefit that can be sustained over a 30 year horizon, preferably supported by a modern, efficient irrigation plan.



## Environmental criteria

- A9 Environmental impact assessments (short and long term) consistent with relevant State and Commonwealth legislation must form part of the business case for the proposal.
- A10 Any proposal that involves investment in new or refurbished water infrastructure will be required to be assessed as ecologically sustainable prior to the investment occurring, consistent with Clause 69 of the Intergovernmental Agreement on a National Water Initiative.

## Value for money criteria

- A11 The proposal must demonstrate value for money in the context of economic and social, and environmental criteria through:
- (a) a positive cost-benefit outcome for a range of investment scenarios, compared with a 'no change' option; and
  - (b) clearly defined and agreed cost sharing arrangements.

## Water reform criteria

- A12 All activities associated with the funding of a proposal must be in accordance with the Intergovernmental Agreement on a National Water Initiative.
- A13 Tasmania must demonstrate how a proposal will be consistent with its defined National Water Initiative commitments within clearly specified timelines.
- A14 Tasmania will ensure that proposals are National Water Initiative-compliant, or otherwise outline the steps in place to ensure National Water Initiative-compliance during the implementation of the proposal, particularly but not exclusive to the areas of:
- (a) water management planning and stakeholder engagement, including indigenous engagement;
  - (b) water access entitlements;
  - (c) water markets and trading;
  - (d) water pricing;
  - (e) metering;
  - (f) environmental water; and
  - (g) water data.

## Other criteria

- A15 The proposal must be consistent with best practice, in particular:
- (a) the design for the proposal must include irrigation delivery systems that will run at a minimum 90% level of efficiency; and
  - (b) bulk water and farm off-takes are to be metered to new national metering standards with an in-field accuracy of +/- 5 per cent.
- A16 The proposal must integrate with Tasmania's water planning documents and processes.

- A17 The proposal must clearly demonstrate that the Commonwealth funding will be used for on-ground works-related expenditure only and will not be used for financial restructuring or other purposes not directly related to on-ground works.
- A18 The proposal must demonstrate suitable project management capability and capacity.
- A19 The proposal's irrigation scheme specifications must include:
- (a) appropriate governance arrangements to ensure the irrigation scheme delivers on time, within budget and against all key objectives and outputs;
  - (b) compliance with other relevant jurisdictional legislation;
  - (c) indemnification of the Commonwealth against any environmental or other third party damage caused by the proposal;
  - (d) the Commonwealth to have no responsibility for any past, present or future taxation liabilities arising from investments;
  - (e) warranties on investments; and
  - (f) no allocation of responsibility to the Commonwealth for any legal contracts already entered into, except where explicitly agreed in writing by the Commonwealth.
- A20 The Commonwealth may take into account other relevant matters where necessary in undertaking its due diligence assessment.
- A21 It is expected that Tasmania will, where required, commission suitably qualified, independent persons or organisations to carry out detailed studies to inform the development of the proposal and demonstrate compliance with the requirements of this Schedule. Any studies produced must be made available to the Commonwealth to inform its assessment of Tasmania's proposal.