

# PROJECT AGREEMENT FOR MURRAY-DARLING BASIN WATER INFRASTRUCTURE, NEW SOUTH WALES-LED EFFICIENCY PROJECTS

An agreement between:

- the Commonwealth of Australia; and
- New South Wales

The outputs of this Agreement are to: i) develop proposals into feasibility studies, cost benefit analysis and technical reports; or business cases. ii) implement agreed projects that achieve water recovery with neutral or improved social and economic outcomes. Water savings generated by State-led efficiency measures will contribute to an increase in the volume of Basin water resources available for environmental use by 450 gigalitres.

# Project Agreement for Murray-Darling Basin Water Infrastructure, New South Wales-led Efficiency Projects

## 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 delivery of water recovery through State-led efficiency measures under the Murray-Darling Basin Water Infrastructure Program as agreed at the Murray-Darling Basin Ministerial Council meeting held on 8 June 2018. At this meeting, Ministers agreed that Basin State and Territory governments could bring forward funding applications for consideration directly to the Commonwealth Department of Agriculture and Water Resources.

### Reporting Arrangements

3. New South Wales will report against the agreed milestones in each of the attached schedules during the operation of this Agreement, as set out in Part 4 – Project Milestones, Reporting and Payments.

### Financial Arrangements

4. The Commonwealth will provide financial contributions to New South Wales in respect of this Agreement up to \$500,000, as set out in Part 5 – Financial Arrangements and in the individual activity schedule to this Agreement.

## PART 1 – FORMALITIES

5. This Agreement and its Schedules constitute the entire agreement for this project.
6. The Basin Plan sets out limits to the available take from surface water. The Sustainable Diversion Limits (SDLs) represent a reduction of 2750 gigalitres (GL) across the Basin and are in operation from 1 July 2019.
7. Chapter 7 of the Basin Plan (Adjustments of SDLs) provides for adjustments to the SDLs, both through measures to increase the water available for take (supply measures) and to decrease water that is required for consumption through improved efficiency (efficiency measures).

8. Chapter 7 details the commitment to efficiency measures of an additional 450 GL of environmental water to improve the environmental outcomes (Schedule 5 of the Basin Plan and Section 86AA of the *Water Act 2007*). The additional 450 GL of environmental water is to be achieved with neutral or positive socio-economic outcomes by 30 June 2024. Out of the 450 GL, an initial 62 GL are to be found as soon as possible.
9. The *Water Act 2007* (Section 86AD) sets out the purposes for which funding to achieve the additional 450 GL can be expended, while the Basin Plan, at clause 7.13, establishes that notifications of projects that are able to be included as Efficiency Measures must be maintained on a register of notifications by the Murray-Darling Basin Authority. The package of Efficiency Measure notifications can be found at:  
<https://www.mdba.gov.au/sites/default/files/docs/Package-constraint-supply-efficiency-measures.pdf>.
10. State-led efficiency measure arrangements will complement the roll-out of Commonwealth-led efficiency measures as part of the Murray-Darling Basin Water Infrastructure Program, to progress the recovery of water through efficiency measures in either urban, industrial, off-farm, water metering and on-farm infrastructure projects.

## Parties to this Agreement

11. This Agreement is between the Commonwealth of Australia (the Commonwealth) and the State of New South Wales.

## Term of the Agreement

12. This Agreement will commence as soon as the Commonwealth and New South Wales sign it and will expire on 30 June 2024, or on completion of the project(s) described in Schedule(s) to this Agreement, 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

13. The outputs of this Agreement can include:
  - (a) development of feasibility studies, which may include initial cost benefit analyses and technical reports;
  - (b) development of business cases for efficiency measures water recovery projects, in accordance with the requirements outlined in clauses 22 and 23 of this Agreement; and
  - (c) implementation of agreed projects that achieve water recovery with neutral or improved social and economic outcomes.
14. Proposals will be considered for investment according to their maturity or the stage of development that the proposal has attained (see Table 1 below). Decisions will take into consideration if the proposal should progress to the next phase of development or if a business case should receive Commonwealth investment for final delivery of the project.
15. Proposals or projects that are agreed will be implemented through a schedule added to this Agreement or another project agreement. Schedules will be informed by the information provided at the latest stage of development and will be agreed by the Commonwealth and New South Wales.

**Table 1. Proposal development and outputs**

| <b>State proposal</b><br>-stage of development | <b>Funding decision</b><br>-by Commonwealth   | <b>Project Output</b>                                       |
|--|---|---|
| Initial or concept proposal                    | Will be considered for feasibility development funding or business case development funding | Feasibility study or business case                          |
| Feasibility study                              | Will be considered for business case development funding                                    | Business case   |
| Business case or project proposal              | Will be considered for project implementation funding                                       | Project implementation schedule and delivery of the project |

16. New South Wales proposals for development as part of this Agreement include:

- (a) MDB Local Water Utilities Water Efficiency Project; and
- (b) other proposals as agreed between the parties that meet the requirements of the State-led efficiency measures under the Murray-Darling Basin Water Infrastructure Program.

## **PART 3 – ROLES AND RESPONSIBILITIES OF EACH PARTY**

### **Role of the Commonwealth**

17. The Commonwealth will be responsible for:

- (a) monitoring and assessing achievement against milestones in the delivery of activities under this Agreement to ensure that outputs are delivered within the agreed timeframe;
- (b) providing a financial contribution to New South Wales to support the implementation of this Agreement;
- (c) assessing proposed activities against the criteria and information requirements described in clauses 22 and 23, where relevant, the socio-economic criteria agreed at the Murray Darling Basin Ministerial Council meeting of 14 December 2018;
- (d) making a decision, once fully developed activities have been evaluated as successfully meeting the criteria for funding, as to whether funding can be provided from the Water for the Environment Special Account (WESA);
- (e) notifying New South Wales of:
  - I. the outcome of the completed assessment for the approved activities such as a business case
  - II. the eligibility and amount of further funding approval to implement the recommendations of the feasibility study or business case

within 30 days of receipt of the completed business case that includes all information requirements outlined below;

- (f) for outputs related to projects (i.e. not a feasibility study output or business case output), notifying New South Wales at the time of project approval of the information required to be provided by New South Wales to enable the Commonwealth to undertake annual Monitoring, Evaluation, Review and Improvement (MERI) reporting or for reviews of the Murray-Darling Basin Water Infrastructure Program;
- (g) where relevant, in accordance with the *Building and Construction Industry (Improving Productivity) Act 2016*, ensuring that financial contributions to a building project or projects as defined under the Fair Work (Building Industry - Accreditation Scheme) Regulations 2016, are only made where a builder or builders accredited under the Australian Government Building and Construction WHS Accreditation Scheme is contracted; and
- (h) where relevant, ensuring that compliance with the Code for the Tendering and Performance of Building Work 2016 (Building Code 2016) is a condition of Australian Government funding.

## Role of New South Wales

- 18. New South Wales will be responsible for:
  - (a) all aspects of delivering on the approved outputs as set out in this Agreement and schedules to this Agreement;
  - (b) where relevant, providing a financial contribution to support the implementation of this Agreement;
  - (c) cooperating with the Commonwealth to ensure that WESA payments are made for actual expenditure, including the facilitation of refunds if required;
  - (d) reporting on the delivery of outputs as set out in Part 4 – Project Milestones, Reporting and Payments and in the schedules to this Agreement;
  - (e) where required 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) supporting the Commonwealth's broader efficiency measures initiatives, including the Murray Darling Basin Water Infrastructure Program.

## Shared roles

- 19. The Commonwealth and New South Wales will be jointly responsible for developing and agreeing schedules which set out the agreed activities and associated milestones, reporting and payment arrangements in accordance with clause 25 of this Agreement.
- 20. The Parties agree that the first priority for efficiency measures projects is to recover the initial 62 GL as soon as possible to ensure that the full 605 GL of supply measure adjustment comes into effect as soon as possible.
- 21. 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.

## Eligibility Criteria and Information Requirements

22. In feasibility studies and business cases, New South Wales agrees to address the criteria set out below. This will enable the Commonwealth to assess proposals and make investment decisions in a timely way.
23. Eligibility criteria and required information for feasibility studies and business cases:
  - (a) a completed water savings calculator for the proposal;
  - (b) provision of the nominated water type(s) (e.g. entitlement class) and value(s) that meet the Commonwealth approach to water recovery;
  - (c) a description of how the proposal meets the socio-economic criteria agreed at the Murray- Darling Basin Ministerial Council meeting of 14 December 2018;
  - (d) proposal overview, opportunity description and rationale;
  - (e) project description and details including a statement to confirm that proposals are standalone, that is, are not run through existing state programs;
  - (f) supporting evidence for the proposal/project such as maps, reports etc.;
  - (g) purpose and quantum of different activities to be funded;
  - (h) summary of estimated costs provided by a feasibility study for both business case and for project implementation stages. A business case is to provide further detailed cost breakdowns; and
  - (i) proposed schedule with milestones.
24. In addition to the above information, business cases or project proposals will also need to provide as a minimum the details of:
  - (a) project management arrangements;
  - (b) risk management both for project delivery and for any potential operational risks;
  - (c) governance arrangements including management of any approvals or regulatory requirements;
  - (d) stakeholder management;
  - (e) workplace Relationships Management Plan compliant with WHS and Building Code requirements; and
  - (f) any other information New South Wales considers relevant to enable the Commonwealth to assess the business case.

## PART 4 – PROJECT MILESTONES, REPORTING AND PAYMENTS

25. Projects, milestones for these activities or projects, their relationship to the outputs, expected completion dates, relevant reporting dates and expected payments will be outlined in schedules to this Agreement.

## Reporting arrangements

26. New South Wales will provide performance reports in accordance with the schedule for individual approved activities under this Agreement. Each performance report is to contain a description of actual performance in the period against the activity milestones, and a report of actual expenditure against budgeted expenditure for the current milestone.
27. If New South Wales decides to not proceed with a proposal that has been deemed feasible, then it is to provide a detailed case as to why the project should not be implemented.
28. Where the output is a project (i.e. not a feasibility study output or business case output), a final project report must be provided to the Commonwealth within 90 days of the completion of the project. The relevant report will be a stand-alone document(s) than can be used for public information dissemination purposes. The final project report will:
  - (a) describe the conduct, benefits, and outcomes of the projects;
  - (b) evaluate the project from New South Wales's perspective, including assessing the extent to which the project milestones have been achieved and why any aspect was not achieved; and
  - (c) include a discussion of any other matters relating to the project, limited to the minimum necessary for the effective assessment of a projects performance.
29. Where the output is a project, New South Wales will provide information to enable the Commonwealth to undertake annual Monitoring, Evaluation, Review and Improvement (MERI) reporting or for reviews of the Murray-Darling Basin Water Infrastructure Program.

## PART 5 – FINANCIAL ARRANGEMENTS

30. Funding for efficiency measure projects is provided from the WESA and associated special appropriations established through Part 2AA of the *Water Act 2007*. The Commonwealth will provide funding that aligns with the purposes and the conditions set out for the WESA in Part 2AA of the *Water Act 2007*.
31. The Commonwealth agrees to provide financial contributions to New South Wales when New South Wales has provided a performance report demonstrating that the relevant milestone has been met.
32. The Commonwealth's funding contribution will not be reduced where New South Wales secures funding from other activity partners.
33. When considering maximum project costs for approved projects, the parties agree the Commonwealth contribution must align with the requirements for Commonwealth funding under the Murray Darling Basin Water Infrastructure Program, being a specified market multiple of the value of the water entitlements being returned to the Commonwealth.
34. The Commonwealth's and New South Wales's estimated financial contribution to individual activities will be detailed in schedules to this Agreement.
35. Funding provided under this Agreement is not to be used to recover any costs incurred on measures prior to the commencement dates of the activities specified in the schedules to this Agreement. The Commonwealth will provide funding to New South Wales through payments

as described in the Schedules, up to the maximum total estimated cost of the activities agreed in the individual Schedules to this Agreement.

36. Should total expenditure for the activities agreed in individual Schedules to this Agreement be less than the total estimated costs, the parties agree that the final payment will be reduced to meet the total actual expenditure incurred on the activities.
37. Notwithstanding clause 35 and having regard to the agreed estimated costs of activities specified in an individual schedule to this Agreement, New South Wales agrees to pay a refund to the Commonwealth if the actual cost of the project is less than the agreed estimated costs of the project and payments have been made by the Commonwealth that exceed the actual expenditure under that individual schedule.
38. New South Wales agrees that a refund under one individual schedule could be deducted from the overall amount of approved agreed estimated costs in other individual schedules attached to this Agreement. The Commonwealth agrees to notify New South Wales should this clause 38 be required.
39. New South Wales can seek additional funds if the costs of an approved activity exceed the agreed estimated costs by providing advice to the Commonwealth at the earliest possible opportunity. The Commonwealth and New South Wales agree to negotiate in good faith on amending the relevant schedule to address any reasonable additional costs which ensure that the full water savings estimates are met. Any additional costs must meet the requirements of clause 33 above.
40. The Commonwealth can agree that NSW has fulfilled the requirement to pursue a feasible project where NSW acts to promote the implementation of positive projects to a third party. This can occur where NSW encourages other parties to pursue the feasible project with provision of support and information obtained through feasibility studies or from positive business cases.
41. To the extent that NSW encourage and support the pursuit of projects identified as being feasible, the parties will then assign a proportion of the costs to such projects, based on an agreed formula outlined in the relevant schedule.
42. When a business case identifies that the project is not able to make water savings and the project cannot be modified to meet the eligibility requirements for funding, the Commonwealth will not require refund of the business case costs.
43. Funding provided to New South Wales for feasibility studies and business cases that lead to the approval of a project for implementation, will be considered by the Commonwealth when making its value for money decisions based on the total estimated costs for implementation and volume of water to be recovered.

## **PART 6 – GOVERNANCE ARRANGEMENTS**

### **Enforceability of the Agreement**

44. 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

45. The Agreement may be amended at any time by agreement in writing by both the Parties.
46. Either Party to the Agreement may terminate their participation in the Agreement at any time by notifying the other Party in writing.

## Delegations

47. The Commonwealth Minister may delegate the assessment of performance against milestones to senior Commonwealth officials consistent with section 86AF (2) and 251 of the *Water Act 2007*, having regard to the financial and policy risks associated with those payments.

## Dispute resolution

48. Either Party may give notice to the other Party of a dispute under this Agreement.
49. Officials of each Party will attempt to resolve any dispute in the first instance.
50. If a dispute cannot be resolved by officials, it may be escalated to the relevant Ministers.

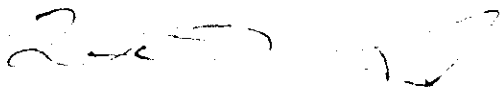
## PART 7 – INTELLECTUAL PROPERTY

### Intellectual Property

51. In this PART 7, Intellectual Property includes all rights in relation to copyright, inventions, trademarks, designs, patents and other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
52. All Intellectual Property created in connection with any of the activities under this Agreement vests in New South Wales and the parties will do all things necessary to vest any such Intellectual Property rights in New South Wales.
53. New South Wales grants the Commonwealth and relevant Local Water Utilities a free, non-exclusive licence to use any Intellectual Property created in connection with any of the activities under this Agreement for the purpose of project registration, monitoring and evaluation and promotion of the MDBWI program.

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

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

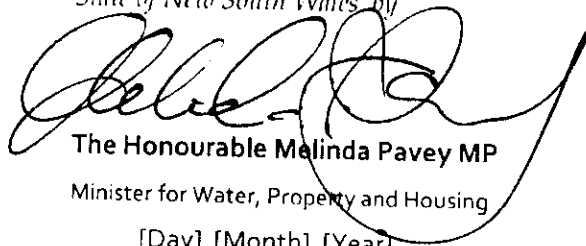


**The Honourable David Littleproud MP**  
Minister for Water Resources, Drought, Rural  
Finance, Natural Disaster and Emergency  
Management

[Day] [Month] [Year]

2 July 2015

*Signed for and on behalf of the  
State of New South Wales by*



**The Honourable Malinda Pavey MP**  
Minister for Water, Property and Housing

[Day] [Month] [Year]

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