

PROJECT AGREEMENT FOR DELIVERY OF ENVIRONMENTAL MEASURES IN NORTHERN MURRAY-DARLING BASIN

An agreement between:

- the Commonwealth of Australia; and
- the States of
 - ◆ New South Wales, and
 - ◆ Queensland.

The outputs of this project agreement will be feasibility and business case activities to progress Toolkit Measure project proposals, the delivery of the Fencing Northern Basin Riverbanks program by Queensland and New South Wales and implementation of other environmental measures to complement the Toolkit Measures, as may be agreed between the Parties to this Agreement.

Project Agreement for Delivery of Environmental Measures in Northern Murray-Darling Basin

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. Murray-Darling Basin (the Basin) governments have agreed a significant program of works and measures to improve environmental outcomes in the northern Basin. These include the Toolkit Measures brought forward as part of the Murray-Darling Basin Authority's Northern Basin Review, and Commonwealth, Queensland and New South Wales government commitments that aim to protect and restore native fish populations.
3. This Agreement will support the delivery of environmental measures in the northern Basin. This includes feasibility and business case activities to progress Toolkit measure project proposals and delivery of the Fencing Northern Basin Riverbanks program by the New South Wales and Queensland governments.
4. In August 2019, Basin governments agreed to the implementation of environmental measures in the northern Basin (known as Toolkit Measures) as set out in Schedule 3 to the Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin (IGA). The Toolkit Measures are aimed at improving water management to maximise the outcomes achieved from the delivery of environmental water in the northern Basin.
5. Toolkit Measure feasibility proposals will be subject to ecological prioritisation as part of the Commonwealth assessment for business case development funding. Business cases will inform the Commonwealth's decision to fund project implementation, with implementation of any approved Toolkit Measure projects being funded under a proposed National Partnership Agreement.
6. The Fencing Northern Basin Riverbanks program will invest in projects that are intended to provide a practical means to:
 - a) contribute to the improvement and protection of native fish biodiversity across the northern Basin, while also benefiting local farmers and landholders
 - b) complement and enhance the benefits of existing measures, such as northern Basin Toolkit projects, relevant commitments in the northern Basin relating to the Commonwealth's responses to the Independent Assessment of the 2018-19 Fish Deaths in the Lower Darling (the Vertessy Report), and other state or regional priorities to improve native fish health (e.g. Ramsar wetland management plans), and
 - c) protect places of spiritual importance for Indigenous Communities.

7. The Fencing Northern Basin Riverbanks program will focus on synergies with the Toolkit Measures, priorities identified within the Native Fish Management and Recovery Strategy and other relevant commitments in response to the Vertessy Report.

Reporting Arrangements

8. The States will report against the agreed milestones during the operation of this Agreement, as set out in Part 4 — Project Milestones, Reporting and Payments.

Financial Arrangements

9. The Commonwealth will provide an estimated total financial contribution of up to \$29.4 million GST exclusive as set out in this Agreement.

PART 1 – FORMALITIES

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

Parties to this Agreement

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

Term of the Agreement

12. This Agreement will commence as soon as the Commonwealth and one other Party sign it and will expire on 30 June 2023 or on completion of the final 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 OUTPUT

Output

13. The outputs of this project will be:
 - (a) the completion of feasibility and business case activities to progress the development of Toolkit projects in the northern Basin, to assist in informing the Commonwealth's decision to fund project implementation;
 - (b) implementation of the Fencing Northern Basin Riverbanks program; and
 - (c) implementation of other environmental measures to complement the Toolkit Measures, as may be agreed between the Parties to this Agreement.

PART 3 – ROLES AND RESPONSIBILITIES OF EACH PARTY

Role of the Commonwealth

14. The Commonwealth will be responsible for:
 - (a) monitoring and assessing achievement against milestones in the delivery of the activities under this Agreement to ensure that outputs are delivered within the agreed timeframe;

- (b) providing a consequent financial contribution to the States to support the implementation of this Agreement;
- (c) 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, where applicable; and
- (d) 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, where applicable.

Role of the States

15. The States will be responsible for:

- (a) all aspects of delivering on the project outputs set out in this Agreement;
- (b) reporting on the delivery of outputs as set out in Part 4 — Project Milestones, Reporting and Payments;
- (c) engaging with community in the identification and development of proposals and implementing arrangements to provide transparency for stakeholders in the development of project proposals under this Agreement;
- (d) regarding Toolkit proposals, providing sufficient information for independent assessments of the ecological merits of proposed projects under the Northern Basin Toolkit Ecological Prioritisation Framework, and for the Commonwealth to undertake a value for money assessment of the proposals;
- (e) regarding the delivery of the Fencing Northern Basin Riverbanks program, the submission of project proposals and implementation of the program;
- (f) in all cases, ensuring delivery of any activities and projects contemplated under this Agreement or in a Schedule comply with all applicable laws, including in relation to required planning and environmental approvals and work, health and safety;
- (g) 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
- (h) where applicable, ensuring that compliance with the *Building Code 2016* is made a condition of tender for and performance of building work by all contractors and subcontractors, and providing the necessary assurances to the Commonwealth.

16. The States also agree to ensure that any third parties engaged to deliver projects and activities in the northern Basin be required to give preference to Indigenous (including small Indigenous enterprises) and local suppliers and employment, and encourage the use of Indigenous and local labour where possible, in accordance with relevant State policies.

Shared roles

17. The Parties will be jointly responsible for agreeing bilateral and/or multilateral schedules to the Agreement in accordance with Part 4 — Project Milestones, Reporting and Payments.

18. 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, branding, 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

19. Milestones for the measures, their relationship to the activities, expected completion dates, relevant reporting dates and expected payments to be made will be set out in bilateral and/or multilateral schedules to the Agreement. The Commonwealth will make payments subject to the performance report demonstrating the relevant milestone has been met.
20. If a milestone is met in advance of the due date, where 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

21. The States will provide performance reports on the activities being funded in the Schedules to this Agreement during the operation of the Agreement. Each performance report is to contain a description of actual performance in the period against the activity milestones. The States will also include information detailing the actual expenditure incurred against budgeted expenditure where specified in a Schedule.

PART 5 – FINANCIAL ARRANGEMENTS

22. The Commonwealth will provide an estimated total financial contribution of up to \$29.4 million exclusive of GST in respect of the Agreement, as set out in this Part 5 Financial Arrangements and the Schedules to this Agreement. This includes up to:
 - (a) \$14.4 million exclusive of GST for Toolkit project feasibility assessment, representing 8 per cent of the total funding available for the implementation of Toolkit Measures, and
 - (b) \$15 million exclusive of GST for the delivery of the Fencing Northern Basin Riverbanks program, with \$7.5 million being made available for each State.
23. Having regard to the agreed estimated costs of the activities specified in the Agreement, a State 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, the States bear all risk should the costs of a project exceed the agreed estimated costs. The Parties acknowledge that this arrangement provides the maximum incentive for the States to deliver projects cost effectively and efficiently.
24. Notwithstanding clause 23 above, the Parties may agree that the total amount of Commonwealth funding paid to a State for the final stage of the Fencing Northern Basin Riverbanks program is to meet actual expenditure incurred in delivering the final stage of the program and up to the maximum total amount agreed and available for the final stage in the relevant Schedule to the Agreement.

25. The Commonwealth's estimated financial contributions to the operation of this Agreement, including through Agreement payments to the State paid in accordance with Schedule D — Payment Arrangements of the IGA FFR, are set out in Schedules to this Agreement.
26. 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 for individual measures as specified in the Schedules to this Agreement, unless otherwise specified in the relevant Schedule.
27. The Commonwealth will provide funding to the States on completion of each milestone and as agreed in the individual Schedules to this Agreement.
28. The provision of funding for feasibility and business case activities does not guarantee implementation funding for the relevant measure/s will be provided.

PART 6 – GOVERNANCE ARRANGEMENTS

Enforceability of the Agreement

29. 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

30. The Agreement may be amended at any time by agreement in writing by all the Parties.
31. During the term of the Agreement, the Commonwealth and one or more of the States may agree to add Schedules to this Agreement.
32. Schedules to this Agreement that have no impact on other Parties may be amended at any time by agreement in writing by the relevant Commonwealth and State portfolio ministers.
33. Parties to the Agreement may terminate their participation in the Agreement at any time by notifying all Parties in writing. The Commonwealth and the relevant Party agree to negotiate arrangements for meeting the reasonable costs incurred by the Parties up to the time of termination of the Agreement.

Delegations

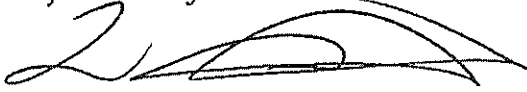
34. The Commonwealth Minister may delegate the assessment of performance against milestones and the authorisation of related project payments to senior Commonwealth officials, having regard to the financial and policy risks associated with those payments.

Dispute resolution

35. Any Party may give notice to another Party of a dispute under this Agreement.
36. Officials of relevant Parties will attempt to resolve any dispute in the first instance.
37. 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*

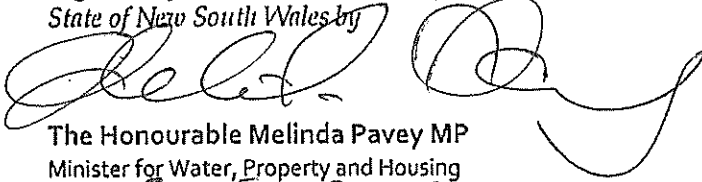


The Honourable David Littleproud MP
Minister for Water Resources, Drought, Rural
Finance, Natural Disaster and Emergency
Management

[Day] [Month] [Year]

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



The Honourable Melinda Pavey MP
Minister for Water, Property and Housing

[Day] [Month] [Year]


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

The Honourable Dr Anthony Lynham MP
Minister for Natural Resources, Mines and Energy

[Day] [Month] [Year]

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The Honourable David Littleproud MP
Minister for Water Resources, Drought, Rural
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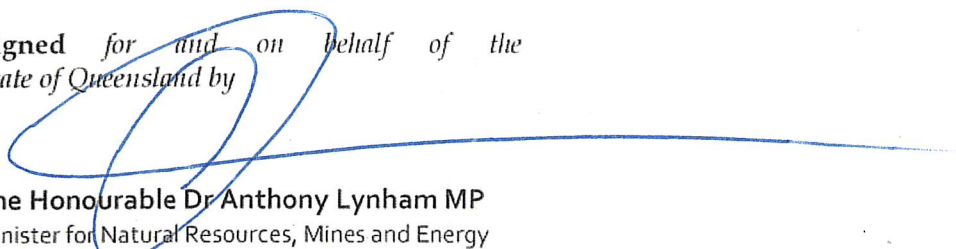
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Signed for and on behalf of the
State of New South Wales by

The Honourable Melinda Pavey MP
Minister for Water, Property and Housing

[Day] [Month] [Year]

Signed for and on behalf of the
State of Queensland by



The Honourable Dr Anthony Lynham MP
Minister for Natural Resources, Mines and Energy

[Day] [Month] [Year]

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