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## Environmental Water Bank Options for the South Australian River Murray

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Final Report to South Australian Department of Water, Land  
and Biodiversity Conservation

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## Executive Summary

This report examines opportunities to use one or more bank-like structures to source, hold and manage water for the environment in the River Murray in South Australia. It is written against a backdrop of considerable community interest in helping to restore health and function to this River.

Essentially, there are three options available to the government

- Creation of a Government Bank that is controlled by normal administrative procedures within Government and has the capacity to source, hold and manage water for environmental purposes;
- Creation of one or more Independent Holding Banks that source and hold water for the environment and have considerable negotiating power but do not become directly involved in daily infrastructure, wetland or flow management; and
- Creation of one or more Independent Managing Banks that source and hold water and, also, become directly involved in environmental project management.

The report, after considering and evaluating the options, recommends immediate establishment of a Holding Bank that is structured in such a manner that it could expand into a Management Bank. Depending upon the nature of Living Murray negotiations, this Bank could grow to operate across the entire River Murray System. Given the potential significance of opportunities to source water via tax-deductible donations from corporations and private individuals, it is recommended that this Bank be structured as a Trust. Trustees should be selected for their knowledge of river environments and financial management.

In order for the proposed Holding Bank to be successful, it will be necessary for the State to appoint a River Manager with whom Bank Trustees can negotiate.

In addition, the State should explore opportunities to trial, through a bank; opportunities to deliver enhanced environmental outcomes for the River in partnership with the private sector and non-government organisations.

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# The Need for New Environmental Water Management Institutions

Alteration of natural flow patterns in the River Murray over the past decades is threatening the health of River floodplain, wetland and estuary ecosystems (MDBC, 2003a). Weir levels maintained at higher than natural levels for prolonged periods, along with increased saline inflows from irrigation and dryland clearing have raised watertable and salinity levels in many ecologically significant wetlands/floodplains. Reduced frequency of medium floods has reduced wash-off of salts from floodplains and renewal of freshwater into floodplain groundwater.

In the absence of further intervention, significant environmental consequences would be expected throughout the Murray Darling Basin (MDBC, 1999). In South Australia best available estimates are that if no further actions are taken 30–50% of River Murray floodplains will be adversely affected within 50 years. In addition, continued closure of the Mouth of the River, as has occurred over the past year, could have adverse consequences for the ecologically significant Coorong and lower lakes (MDBC, 2003b).

In the popular press the answer to the River's environmental problems is often summarised in two words, environmental flow. In fact, restoring the ecological health of the River in South Australia will require not just more water but re-organisation of the entire way that the River is managed including:

- Increasing the frequency of large water volume flood events to flush salts from wetlands and floodplain;
- Reducing saline drainage flow onto floodplains as a result of irrigation and mallee clearance;
- Manipulating river level maintenance to periodically drain floodplains currently subject to longer than natural sustained high water tables;
- Actively manipulating flows onto floodplains to enhance their ecosystem status;
- Moderate but sustained increases in flow to flush the accumulated sediment load that currently blocks the outlet of the River into the sea; and
- Installation or modification of drains, weirs and other infrastructure to allow maintenance of important functions such as more natural wetting and drying regimes in sensitive riverine ecosystems as weir pools are raised and lowered.

In recognition that improved River health will require evolution of institutional structures to manage the River, Basin States, the MDBC and environmental groups are proposing and developing new environmental management approaches. In particular through its *Living Murray* initiative, the MDBC is exploring options to source and manage significant environmental flows (between 350 GL and 1500 GL of water) for the environment. In addition, the MDBC is already investing \$150 million to improve infrastructure, such as weirs, in ways that will allow improved environmental management of the River (MDBC, 2003c).

In South Australia a River Murray Levy is being introduced beginning in October 2003. The flat rate charge of \$130/year for commercial water users and \$30/year for residential water users is expected to raise \$160 million over five years. All revenues from the levy will be dedicated to actions that improve environmental health of the River (State of South Australia, 2003). Victoria has also recently announced a \$320 million trust to “*rebuild Victoria's irrigation system, **revive our rivers and save water***” (Victorian State Government, 2003 – bolding added). New South Wales is already operating a small-scale environmental water trust for the

benefit of the Barmah-Millewa wetlands (see Box 1 describing River Murray environmental management initiatives and proposals).

New environmental management approaches are emerging because many of the current arrangements for managing Basin water arose in an era before the current environmental concerns. Institutional arrangements for environmental water sourcing, managing and accounting vary significantly across initiatives being implemented or proposed. They range from a government-controlled, highly centralised management approach being proposed as one option under the *Living Murray* initiative to very localised non-governmental initiatives being championed by some environmental groups (e.g. *Wetlands Care Australia*).

## Methodology

Consistent with our terms of reference, this report:

- Outlines key opportunities for environmental water sourcing, and management;
- Identifies institutional structure options to deliver environmental water outcomes that could be used in South Australia;
- Develops a set of design criteria for evaluating options;
- Applies these design criteria to identify a preferred approach to environmental management of the River in the State; and
- Identifies a preferred option and presents a road map outlining steps toward implementation of that option.

## Options and Opportunities

Fundamentally, there are two basic approaches to consider:

- A within-Government entity; and
- An entity at arms length from Government.

To choose among these options, it is necessary to carefully analyse and understand the implications for all stakeholders – the Government, irrigators and the general public.

In considering the options, it must be appreciated that many non-governmental organisations are already undertaking some form of effort to manage wetlands within the River Murray corridor in South Australia (Schmidt, 2003). This means that any new government initiative must not and cannot be considered in isolation. Moreover and as summarised in Box 1, there have been a number of important new initiatives to create trust or bank-like arrangements and to explore opportunities to source considerable volumes of water for the River. Some of these new initiatives are expected only to source and hold water, while others expect to or are also engaged in trading of this water. A subset of these initiatives is also responsible for managing the timing and release of this water for environmental purposes.

For the purposes of this report and ease in communication, **we describe any environmental institution that holds or manages environmental water as an Environmental Water Bank**. This is a term of convenience and is not meant to imply any particular set of functions or institutional design.

### Box 1: River Murray environmental management initiatives and proposals

	Sourcing	Holding	Trading	Managing
<p><b>New South Wales Wetlands Working Group</b> - this Group formed in 1999 by the NSW Government is responsible for managing 30 GL of water for the health of the Barmah-Millewa wetlands complex. The water managed by this Group was sourced from savings created by NSW government investment in rehabilitation of Murray Irrigation Limited infrastructure. In 2001, a total of 3,975 ML was allocated to flood 43 small wetlands sites (totalling 572 ha). The group also participates strategically in water markets and in 2002-03 sold 25GL to irrigators as temporary water allocations.</p> <p>(Nias <i>et al.</i>, 2003).</p>			X	X
<p><b>Wetlands Care Australia</b> - This registered environmental organisation sources cash assets from corporations and individuals. It employs wetlands rehabilitation experts who offer technical assistance to community groups and corporations interested in wetland restoration and management. The group lists 47 projects distributed across all Australian States on its website. The group primarily gives planning advice and small grants for planning with major resources for works contributed by corporate sponsors or government grants.</p> <p>(<a href="http://www.wetlandcare.au">http://www.wetlandcare.au</a>).</p>	X			X
<p><b>Living Murray</b> - The environmental water initiative of the Murray Darling Basin Commission. While no commitments have yet been made, the initiative is currently holding stakeholder discussions related to options for sourcing and managing between 350 GL and 1500 GL of water for the environment. Options under consideration for sourcing and management include: an independent environmental water "bank"; an environmental water manager working within the MDBC; and managing water in partnership with community groups such as the NSW Wetlands Working Group.</p> <p>(MDBC, 2002).</p>	X	X	?	X
<p><b>Wetlands Water Exchange Project</b> - Wetlands Care Australia and Built Environs Corp are proposing to fund construction of infrastructure allowing drainage of an initial 34 (eventually 120) permanently flooded wetlands. The proponents of this project have estimated that this would initially make up to 16 GL (eventually up to 60GL) of water available in dry years. If policy is changed to allow sale via a temporary trade of some of these savings to irrigators, the project could be self-funding. Once the project has recovered its costs, net revenue could be used for other environmental purposes.</p> <p>(Wetlands Water Exchange Project, 2003).</p>	X		X	X
<p><b>South Australian River Murray Levy</b> - A flat rate levy of \$30/year on all domestic water users in the State, a levy of \$130/year on all commercial and industrial water users, and a levy of \$135 per year on all irrigators watering more than 10 ha.</p> <p>(South Australian Government, 2003).</p>	X			
<p><b>Victorian Water Trust</b> - A trust with a total expected value of \$320 million over the next eight years to invest in irrigation infrastructure with conservation goals and environment flows. These goals include investment for 70 GL of Snowy River environmental flows, in addition to 30 GL of River Murray environmental flows to be sponsored jointly with South Australia.</p> <p>(Victorian Government, 2003).</p>	X			X

## Sourcing and Management opportunities

There is a range of opportunities to use a bank-like structure to both source and manage environmental water in a manner that would improve River ecological health. Importantly, as South Australian legislation facilitates separation of water licences into holding licences and taking licences, it is possible to set up a water bank that sources and holds water but does not manage or use it and also a bank like structure that is directly involved in water management. We deal with each opportunity separately.

### ***Sourcing Opportunities***

Water and other assets for use in improving River environmental health could be sourced in, at least, five ways.

#### **1. Private donations**

One significant potential source of water is in the form of charitable contributions from individuals and institutions. Contributions could come from:

- Irrigators with unused water that they would like to gift to the environment in general or for specific environmental values/sites;
- Private individuals motivated to donate cash and/or property;
- Companies interested in being associated with restoration of the River Murray.

Considerably more money and water would likely be sourced if the bank was organised in a form that made donations tax deductible. As set out in Appendix 2, under the *Income Tax Assessment Act 1997* donations would be made tax deductible if:

- The bank is listed as a Registered Environmental Organisation on the Commonwealth Department of Environment and Heritage Register of Environmental Organisations; and
- Donations are unconditional;
- Each donation of cash exceeds \$2, and each property donation (including water) is independently valued at more than \$5,000.

More information on the procedures to be followed in establishing a bank as a registered environmental organisation is presented in Appendix 3. The Income Taxation Assessment Act requires that the organisation administering the contributed assets have an environmental purpose as its principal purpose and maintains a distinct fund established to receive contributions with an object (purpose) of conservation and protection of the environment. Under the Income Taxation Assessment Act registered environmental organisations can be:

- a body corporate;
- a cooperative society;
- a trust; or

- an unincorporated body established for a public purpose by a State, Territory or the Commonwealth.

Market research to the extent necessary to determine how much water could be sourced as a result of registering the bank as an environmental organisation is well beyond our terms of reference and budget. Nevertheless, it is not difficult to imagine a well-structured and well-administered environmental water bank having considerable success in both sourcing water from large irrigators and water supply companies and also organisations like Telstra or SA Water interested in encouraging their clients to consider making donations to a water bank when they pay an account. Voluntary actions of this kind would enable such entities to present themselves as being publicly responsible.

It may also be possible for the Bank to set up a drought banking arrangement where by irrigators would donate entitlements in all but drought years. Such an arrangement may, however, not be tax deductible.

## **2. Transfer of government assets to an environmental water bank**

A different opportunity to source water for the environment lies with the Government of South Australia. In particular, two opportunities present themselves. The first is to make irrigation entitlements held by the Government of South Australia available for environmental purposes. The second is to transfer money to the bank and encourage this bank to use this money to purchase water for the environment.

Government holdings of irrigation water are considerable. In particular,

- 4.8 GL is held by the Minister for Environment and Conservation; and
- 4.2 GL is held by the Minister for Primary Industry and Resources (South Australian Government, 2001).

As the Government is interested in increasing environmental water allocations to the River, and even though they are currently leased to third parties, the Government could, following the expiration of current leasing arrangements, transfer these holdings to an Environmental Water Bank. They could then instruct the bank to manage it in a way that would result in increased environmental outcomes for the River. It could also arrange to lease these holdings to the Bank for a period of time.

The second major and obvious source is the money being raised through the recently announced River Murray Levy. Placement of all or some of this money in an independent Bank or Trust would make it clear to all that this money is intended solely to help restore to the River Murray.

Finally, the recently passed River Murray Act 2003 includes amendments to the Water Resources Act 1997 that make it possible for the Minister to use a compulsory offer process to reduce the total volume of irrigation entitlements and thereby increase the volume of water available for environmental purposes. Under such a compulsory offer process, all irrigators would be required to nominate a price at which they would be prepared to sell part of their entitlement. The Government would then inspect all offers and accept all offers made below a nominated price. The result, initially, would be the purchase of water from a sub-set of irrigators at a price voluntarily determined by them. If a Bank were established, it would be possible to place the resultant water in a bank rather than surrendering these licences and lowering the South Australian cap on irrigation.

### 3. Acting in water markets

If a bank were given access to money to source water then it would need to source this water in the open market. Conceptually, having secured assets in the form of money a bank could operate in the permanent water entitlement and temporary allocation market. There are a variety of ways that water could be sourced for the environment in markets including:

- Purchasing water entitlements from irrigators in South Australia or interstate that are voluntarily offered for sale via a process known as a *permanent trade*; and
- Purchasing periodic water allocations from irrigators in South Australia or interstate that are voluntarily offered for sale via a process known as a *temporary trade*.

Permanent trades would simply become part of the ongoing suite of assets held by the bank. Within the River Murray System of South Australia, temporary trades, unless changes are introduced to allow carry forward from one year to the next, would have to be used in the year of purchase.

When setting up a bank, it will be important to decide whether or not the bank should continue to pay all or part of the water delivery charges that would have been paid if the water were still used for irrigation. If the Bank is treated simply as another water user, then normally one would expect it to have to pay all delivery and other charges in the same way that is required of all other irrigators.

### 4. Counter-cyclic trading

Having purchased or been given entitlements by one means or another, a bank could engage in what is sometimes described as “counter-cyclic” trading. This involves providing access to the allocations held by the bank in drought years. Then using the resultant money in subsequent years when the price of water is lower to buy more entitlements and/or allocations or to use the funds in some other way consistent with the objectives of the trust. This approach – already being used in NSW (see Box 1) – offers an opportunity to lessen the financial impact on irrigators of securing more water for the environment and increasing environmental outcomes. The opportunity exists because environmental needs tend to be less in drought periods and greater in wetter periods. Irrigator needs tend to have the opposite pattern and tend to be largest in drought periods and least in wet periods.

To secure public trust and acceptance of counter-cyclic trading a bank would need to have an independent structure that is at arm length from government. To date the NSW Working Group that has been trialling this practice has sold water in a dry period but has not yet taken the next step of buying water back (see Box 1).

It would also be possible for a bank to accept water from a licensee on the understanding that an equivalent quantity would be returned in a subsequent year.

### 5. Investing in water savings

In addition to purchasing and being given entitlements and allocations, a bank could invest in processes that result in water savings. Creation of additional environmental water allocations through investments that allow water savings could include:

- Financing investments that increase the efficiency of distribution and/or on-farm systems and making the resultant water savings available for environmental management; and

- Taking actions (and potentially making infrastructure investments) that allow management of wetlands that are presently inundated for greater than ecologically desirable periods of time, thereby reducing water consumption by the wetland and making that water available for alternate uses.

Both of these water savings options have complications. Under current arrangements increases in water use efficiency can result in a reduction in the amount of water that is available for the River rather than increase it. This is the case when part of the savings that had previously returned to the River as deep drainage or runoff is used consumptively. Conceptually and in the long run, only evaporative and transpiration savings would result in environmental flow improvement under these circumstances (Young and McColl 2003).

Currently, there is provision for trading water made available through reduction of evaporative and transmission losses in irrigation delivery systems and on farm management practices but not for trading water made available through reducing evaporation from wetlands as this water is already allocated to the environment. Nevertheless, conceptually it is possible to finance the cost of putting in a wetland management scheme that results in a reduction in wetland evaporation losses through the sale of evaporative savings to irrigators. This, however, would require a significant policy change. At present, any water that evaporates from a wetland area is allocated to the environment and not irrigators. This means that, in order to allow the sale of evaporative savings, approval to allow the sale of environmental water – notional above the cap – would need to be obtained from those collectively responsible for managing entitlements and allocations. As an interim strategy to test the effectiveness of such an option it would be possible to enter into an arrangement where a bank would give an independent developer a tradeable allocation equivalent to the savings made.

The South Australian Water Allocation Plan for the River Murray requires that any salinity impacts of managing water for the environment need to be offset. The question of whether or not the bank would also have to offset salinity impacts associated with wetland drainage would also need to be resolved. One option would be for the Government to take responsibility for offsetting salinity impacts caused by an environmental water bank. Alternatively, the bank could be made responsible for offsetting the salinity impacts of environmental management.

### ***Management Opportunities***

A major issue for consideration is the question of whether or not a water bank should get directly involved in delivery of environmental outcomes for the River or, alternatively, be able only to use its holdings to influence those responsible for managing river flows. In this lesser role, a bank could influence river management but not have a major role in influencing daily or even weekly flow and distribution decisions.

Once additional water is sourced and placed in a bank this water could be used for the benefit of the River environment in a number of ways including:

- Restoring or invigorating ecological function of floodplain wetlands;
- Release of water to augment medium and small flood events that increase flushing of salt from floodplains and renew freshwater supplies in floodplain groundwater; and
- Release of water to flush accumulated sediment from the River Mouth.

There is also opportunity to invest in new infrastructure and modification of existing infrastructure to allow restoration of more dynamic flow regimes. This could, for example,

include use of structures to allow drainage and reduce length of periods of higher than natural watertable and/or use of floodgates to hold back flood waters where such actions would benefit floodplain/wetland environmental health. Infrastructure could also be designed to allow controlled flooding of wetlands during periods when flows are low. As a general observation, it is likely that lowering of the water level will allow wetlands to drain and release activated carbon from the floodplain into the river channel. Raising of the level will allow local inundation of the floodplain in a way that can be expected to improve recruitment and maintenance of some species including river red gums.

## Institutional Options for Environmental Water Management

When the two basic approaches of either establishing the bank as either as a government entity or an entity at arms length from Government are combined with sourcing, holding, trading and management options three different institutional structures emerge. Essentially, the South Australian Government could use a Bank to enhance the range of environmental water management options available to it by establishing:

1. *A Government Bank* - A within Government entity with powers to **source, hold and manage** water and other assets for environmental outcomes.
2. *A Holding Bank* - A bank at arms length from Government with powers to **source and hold but not manage water** and other assets for environmental outcomes.
3. *A Managing Bank* – A bank at arm length from Government with powers to **source, hold and manage water** and other assets for environmental outcomes.

These options are not mutually exclusive. In fact, any combination could be adopted at the same time. It is also possible to have several different banks interacting with one another or a single structure that brings all of them together. Both the Holding Bank and the Managing Bank options would require the appointment of a River Manager with whom these Banks would need to negotiate.

In order to establish a *Government Bank* it would be necessary for the Minister for the River Murray to establish a body corporate by regulation or an unincorporated association with the dedicated role of establishing and administering a “fund” for increasing environmental flows or undertaking other actions to improve environmental health of the River. There are two ways to establish a corporation. Under section 24 of the *Public Corporations Act 1993* the Governor may by regulation establish a body corporate as a subsidiary of a public corporation. Alternatively, the Minister could establish an incorporated association under the *Associations Act 1985*. Either approach would allow the Minister a large measure of control including appointment of a management committee, and power in setting rules dictating how assets could be donated and administered. The Government could also legislate to establish a separate statutory corporation.

If a *Holding Bank* is established as a legal entity at arms length from government, it could receive donations that are tax deductible. To do this it would be necessary for the Bank to take the form of a corporation, a charitable trust or a co-operative society (see Appendix 3). Under this model, the government would need to establish an entity or position with which the Holding Bank could negotiate. This could take the form of a River Manager or an entity responsible for managing environmental assets along the River.

The Holding Bank preserves one key advantages of a charitable trust, the perception by those with an interest in contributing to restoration of environmental health of the River that the entity they are contributing to is permanent and independent. The Government could consider coupling this approach with simultaneous initiatives that allow private management of environmental water for one or more wetlands under a licensed management plan.

To establish a *Managing Bank* at arms length from Government is simple if the bank's holdings and role is relatively small in size. If, however, the Managing Bank's holdings were large enough to significantly influence river flow management and storage considerations, consideration would need to be given to the way this is done. In particular, consideration would need to be given to the degree of management flexibility given to the Bank. Under a restrictive approach, conditions that specify how and when water may be released onto a wetland would be very tight and periodically negotiated via the development of management plans. Alternatively, a Managing Bank could be left a large amount of discretion and independence. If a high degree of flexibility is given then much greater attention needs to be given to the Bank's mandate and the mechanisms designed to keep it accountable.

## Design Criteria for Evaluating Institutional Options

The terms of reference for this project requested an analysis of alternative institutional mechanisms for River Murray environmental management in South Australia. The analysis is presented in a three-step process consisting of:

1. Development of set design criteria to help identify the features of a bank that would help achieve various objectives. The criteria used are outlined in Box 2. They have been adapted to the specific task at hand based on a framework developed by Commons (1995) for judging the relative merit of environmental management policy options in general.
2. Use of the criteria to identify desirable design features of an environmental water management bank that could source, hold and if appropriate manage activities. A description of these design features is provided in Table 1.
3. Evaluation of the institutional options against the design criteria.

### Box 2: Criteria for Evaluating Environmental Water Management Institution Options

**Dependability (environmental effectiveness)** – More dependable options are more likely to deliver River ecological health benefits through time

**Economic Efficiency** – More efficient options deliver more River ecological health benefits per dollar of public expenditure.

**Administrative Efficiency** – More administratively efficient options require less complex, information-intensive administrative apparatus and thus have lower administrative cost and effort requirements “per unit” of environmental improvement achieved.

**Community Acceptability** – Options that are more acceptable to the community will be perceived as being fair and effective because they strike the right balance between social, economic and environmental considerations.

**Adaptability** – More adaptable options allow changes over time in the way that environmental water is sourced, managed and accounted for. (Reasons that changes in environmental management may become desirable include potential for changes in knowledge about determinants of River ecosystem health, changes in water market conditions, and evolution of larger Basin wide environmental water management structures.)

**Table 1: Summary of design features that should be incorporated into a bank**

<b>Design Criteria</b>	<b>Desirable Design Features</b>
Dependability	<p>Manager with minimal conflicting aspirations and a clear and unambiguous interest in delivery of environmental goals.</p> <p>Design features ensuring that environmental water management arrangements, and asset commitments are permanent</p>
Economic Efficiency	<p>Permanent independent entity designed to maximise attractiveness as an opportunity for charitable contribution</p> <p>Bank with unfettered choices across largest possible scope of water and cash asset sourcing options including:</p> <ul style="list-style-type: none"> <li>• Tax – deductible donations of water and cash</li> <li>• Market acquisitions of water in South Australia and interstate</li> <li>• Counter-cyclical water trading</li> <li>• Creating water through evaporative savings</li> </ul> <p>Bank with unfettered choices across largest possible scope of options to manage assets for River environmental health including:</p> <ul style="list-style-type: none"> <li>• Power to order water for the environment when and where it is needed</li> <li>• Power to invest in building and operating infrastructure to facilitate better environmental management</li> </ul>
Administrative Efficiency	<p>Entities that realise economies of scale in administration. Ideally a single central environmental water manager to avoid the cost and effort involved with developing and administering protocols for</p> <ul style="list-style-type: none"> <li>• approval of multiple small local plans</li> <li>• sharing available water among potentially competing local plans for environmental water use</li> </ul>
Community Acceptability	<p>High degree of community trust as a result of very transparent accounting structures and reporting processes</p> <p>Fair process to attain water for the environment</p> <p>Capacity to trade and bank counter cyclically in a manner that enhances irrigator welfare</p>
Adaptability	<p>Arrangements that allow periodic review and updating of operating arrangements as circumstances change</p> <p>A capacity to take on additional functions and expand into or be absorbed into a Basin wide entity</p>

## ***Evaluation of the Options***

As outlined above there are three fundamental options for the institutional design of an environmental water bank in South Australia. In this section, strengths and weaknesses of each of the options is outlined by considering the extent to which each option allows for the desirable design features identified in Table 1.

### ***Dependability***

**Dependability (environmental effectiveness)** – More dependable options are more likely to deliver River ecological health benefits through time.

The dependability criterion focuses on design features that guarantee reliable environmental outcomes. In particular, it is important that the structure is designed in a manner that forces it to deal with all the consequences of allocating more water for the environment. For a Holding Bank, this is not a major concern as others will be responsible for the consequences of using the water. A Government Bank or a Managing Bank, however, will need to be able to demonstrate that it is dealing with any adverse impacts such as increased salinity and changes in the cost of supplying water to irrigators. Such rules can be made a condition on environmental water use that apply regardless of who manages environmental water releases.

As a general rule, banks that do not have to deal with conflicting aspirations and have clearly stated responsibilities will be more dependable than those that have to cope with changing social, economic and political aspirations.

Another clearly desirable feature, if donations are to be attracted, is a structure that guarantees that donations will be used only to improve environmental outcomes and will not be subsequently transferred or used for other purposes. This means, in particular, that the bank must have a sense of permanence and an arrangement that ensures that if the bank is wound up, its assets will remain allocated to the environment. Clear objectives and clear statements about the procedures to be followed if the bank's assets are to be transferred to another entity are essential. There needs to be a guaranteed permanent dedication of assets to pre-ordained environmental purposes.

An independent governance arrangement at arm length from government with a skills based board will also increase the sense of dependability. There are potential advantages to a bank at arm length from government operating to both source and manage water from a perceived environmental dependability perspective, as it would not be subject to political influence. In contrast, the public may be more likely to perceive an entity more directly controlled by Government as not always able to overcome pressures to balance conflicting environmental and irrigation goals.

Regardless of the management arrangement, an advantage of an environmental sourcing function at arm length from Government is that this allows counter-cyclic water trading with potential efficiency gains without the Minister being exposed to the political risks of operating in a market. Over all, the general conclusion is that a Holding Bank or a Managing Bank will be more dependable than an entity directly administered by the government of the day.

## ***Economic Efficiency***

### **Economic Efficiency –**

More efficient options deliver more River ecological health benefits per dollar of public expenditure.

Past experience with environmental policy suggests that less prescriptive approaches that leave the widest range of discretion to those charged with achieving environmental outcomes are generally more efficient. Thus, a bank structure that allows sourcing through donations, market acquisition, counter-cyclic trading, and infrastructure investment to create savings would be potentially more efficient than a bank with more circumscribed functions. This is because a wider array of choices allows more latitude to seek out least cost, greatest environmental impact opportunities. Thus, the approach that leaves a bank with relative unfettered choices as to style of operation will be more efficient than one that seeks to tightly describe the way that water must be sourced, held and used.

In principle, all forms of bank would have access to the full range of sourcing options but it would be problematic for a Government Bank to engage in counter-cyclic trading. The greater credibility associated with independent Holding and Management Structures would enable more water to be sourced per unit of State government expenditure. While more efficient from a State perspective, it needs to be appreciated that part of the benefits for this independent structure come from the capacity of people to donate water in return for an income tax deduction. Essentially this results in a cost-sharing arrangement between the Commonwealth and State Governments. Every dollar donated to the State reduces Commonwealth income tax revenue.

Of all the options, a Managing Bank will have the greatest capacity to attract tax-deductible donations because of its close association with delivery of actual outcomes. In particular, a Managing Bank would be able to claim full credit for the management activities that it undertakes. It would, for example, be able to issue a press release claiming that today it ordered the release of 20 GL of water through the River Mouth and that this is expected to result in the removal of x tonnes of sand from the Mouth.

A major reason for using a Holding Bank structure is the argument that this approach would force ongoing consultation and negotiation with a River Manager which if well organised, could be expected to open up opportunities for the development of win-win co-operative strategies by, for example, choosing the times when water is released for the environment in a manner that minimises transmission costs or losses.

## ***Administrative Efficiency***

**Administrative Efficiency –** More administratively efficient options require less complex, information intensive administrative apparatus and thus have lower administrative cost and effort requirements “per unit” of environmental improvement achieved.

Several of the key design features that allow efficient administration of environmental water sourcing and management arrangements can largely be accommodated through any of the institutional options under consideration. From an administrative cost perspective, more devolved management of water presents particular challenges but also forces the State and MDBC to develop strategic rather than tactical management strategies.

A key administrative cost consideration is the cost to government of managing each bank. Conceptually, a smaller number of banks will enable any river manager(s) to realise economies of scale.

Developing a mechanism for sharing limited available environmental water among multiple local groups that serves the overall environmental interest by allocating water to highest

environmental priorities while still leaving groups some autonomy in decision-making would be particularly challenging.

One way to significantly increase administrative efficiency would be to restrict local groups primarily to sourcing activities, and allowing water releases for the environment to be orchestrated according to an environmental “master plan” developed by a central management authority.

## ***Community Acceptability***

**Community Acceptability** – Options that are more acceptable to the community will be perceived as being fair and effective because they strike the right balance between social, economic and environmental considerations.

For any institution set up at arm length from government with the intent of undertaking tasks that have traditionally been undertaken by government a high degree of community acceptability is essential. Acceptability is built through development of a high degree of trust, which, in the case of a bank, requires very transparent accounting and reporting procedures, and clear articulation of objectives.

Separating regulatory functions from banking functions can increase the degree of public trust in administrative arrangements.

A bank that is seen to act in a fair manner that takes impacts on the community into account would foster community acceptability. Features that do this include sourcing of water only via transparent market-based processes that source water at its true value to industry and the development of counter-cyclic trading policies and promotion of the fact that this helps the community by providing more water in times of greatest need. A process enabling irrigators to deposit water with a bank and withdraw it in a subsequent season.

## ***Adaptability***

**Adaptability** – More adaptable options allow changes over time in the way that environmental water is sourced, managed and accounted for. (Reasons that changes environmental management may become desirable include potential for changes in knowledge about determinants of River ecosystem health, changes in water market conditions, and evolution of larger Basin wide environmental water management structures.)

Design features that allow evolution in environmental water sourcing and management arrangements can largely be accommodated regardless of the institutional option chosen by the SA Government. One way to accommodate evolution (possibly for both charitable trusts and “funds” set-up to receive charitable gifts by a corporate body or association within Government) is specification of a review process that allows periodic modification of operating procedures in light of changes in circumstances. Review arrangements would have to be carefully conceived in order not to discourage philanthropic donations. In particular guarantees that review could not lead to modification that could somehow reduce environmental dependability would have to be included.

It is particularly important that design enables coordination of interaction with any Basin or River Murray wide bank that emerges.

If the option of a holding bank or a managing bank is chosen, it should be possible to design arrangements so that the bank can accommodate growth and, where it has management responsibilities, to devolve them to others. In particular, there are a number of non-government organisations (NGOs) interested in project managing wetland development. If this option involving NGOs in project delivery is pursued then it will be necessary to find ways to co-badge projects so that both the bank and NGOs gain credit.

## Scale of Management

A related issue not well considered by the design criteria set out above is the question of scale of operation of Managing Banks. As indicated above, it is possible to set up and/or allow many small purpose specific banks to be established or, alternatively, to use a small number of relatively large banks to each manage a number of projects.

Conceptually, it is possible to allow multiple small local entities to engage in a wide range of environmental water management but ensuring that actions chosen by local groups do in fact benefit the environment is challenging. Such an approach would require development of carefully crafted licence conditions that regulate the conditions associated with the use of water for environmental purposes and significant administrative apparatus for reviewing and approving environmental water use plans. Catchment and river planning processes such as water allocation plans offer one potentially efficient mechanism to do this.

If releases were consistent with a master plan, it would not matter who actually releases the water. From a marketing and fundraising perspective it would be particularly important to allow an opportunity for an independent bank to announce that it had released significant water into an ecologically important wetland. As a general observation, the larger the scale of an independent bank the more environmental management functions can be internalised.

Attempting to coordinate autonomous environmental water management decisions by multiple basin States leads to challenges much like those that arise in attempting to manage autonomous environmental water management by multiple local interests within one State. This again suggests the importance of designing a structure that can be subsumed by a larger Basin-wide entity if and when it emerges.

## The Preferred Approach

In addition to the revenues from the River Murray Levy and existing water allocations that the Government can contribute, there is potentially a large pool of resources that private individuals and corporations would like to dedicate to River ecological health restoration. With financial support from the National Heritage Trust and the National Action Plan for Salinity and Water Quality, non-government organisations are already dedicating significant resources to environmental health restoration in some 40 wetlands along the South Australian River Murray.

Communities, Governments and corporate sectors in all Basin states are committed to significant investment. This means there is an opportunity to create an environmental water bank that truly maximises effort to restore River Murray ecological health by harnessing the full capacity of private and corporate willingness to contribute to the cause as well as Government resources. Ideally, this bank would be structured so that it could operate at a large scale at least across the entire Southern Connected River Murray System and not be limited solely to South Australian considerations. In particular, it is important to realise that in many cases it will be more cost-effective for the State to take action in and invest in actions in other states. In particular, it may be more cost-effective to source water from other States.

The analysis of institutional options for an environmental water bank suggests that one key to success would be creating a bank that is a registered environmental organisation with sufficient independence to attract donations from individuals and corporate Australia. This speaks for an entity that is at arm length from Government, perceived as having a permanent role and being able to source, hold environmental water. An independent sourcing and holding bank perhaps in the form of a trust would have the advantage that it could engage in counter-cyclical water trading to increase the value of the assets of the bank. A bank closely associated with the Government may find it difficult to engage in counter-cyclical trading without being accused of having conflicts of interest and/or being accused of impropriety.

In addition, our analysis suggests that it would be important from a marketing and fund raising perspective to design a bank that involves non-governmental organisations in environmental water management projects. Coupled together these issues suggest that the need either for a corporation or a Trust. Corporations have greater flexibility than trusts as trusts are tightly constrained by the nature or the objectives and the list of beneficiaries. If the trust model is chosen and the objectives are written in terms of outcomes, well-selected Trustees with an appropriate range of expertise can be left to manage the Trust on a day to day basis with little input from government. If a corporate model is chosen then a much greater degree of supervision is required. Either model would work but a Trust structure would give greater prominence to the issue and allow sourcing of more water.

The ideal structure for the Trust option is one that is lead by a skill-based Board selected for the collective expertise of its members. This is particularly important if the Bank is to continue to receive donations of water from private companies and individuals and if it is to enjoy public confidence. Decisions made by the bank's Board need to reflect a sense of independence that appears to be and is insulated from political considerations. The Board should contain members with a balance of skill and experience in three areas:

- Excellent chairing and public communication skills including – judgement, a sense for natural justice and negotiating skills in complex environments;
- Strong but broad environmental credentials and ability to make considered judgement about what is best for River health based on scientific evidence and experience;
- Business sense and understanding of water markets, water trading and the irrigation industry.

Based on the analysis we recommend that the State Government consider:

1. Establishing an environmental water holding bank as a trust at arms length from government to source, hold, counter-cyclically trade water and negotiate the periodic transfer of this water to a river manager. The Trust should be structured so that it could also engage in direct water management for a few small trials. The trust should be used to develop experience in coordinating environmental water management at a larger scale to test whether or not such a structure would work effectively across the entire River Murray and its tributaries. Detailed specifications for a Trust of this form are set out in Appendix 1.
2. Appointing a River Manager to negotiate with the Trust and to which the Trust would be accountable for the use of its water.
3. Establishing the Trust with objectives
  - (a) To trial experience in the use of environmental entities, water trusts and similar entities to increase quantity of water available to river flow managers interested in improving environmental outcomes in the River Murray and its associated environments by:
    - Attracting donations & bequests of money, water and other property for this purpose;
    - Operating strategically in the water market with a view to enhancing the value of entrusted assets and increasing the Trust's capacity to promote environmental outcomes in the River Murray and its tributaries;
    - Making water available to those responsible for the management of flows of water and the distribution of water for environmental purposes;

- Seeking opportunities to support, foster, co-operate and invest in delivery of environmental outcomes for the River Murray and its tributaries.
- (b) To provide guidance and act as a building block for the development of similar arrangements across the Basin and more widely.
4. Appointing 3 to 5 trustees to collectively be responsible for all decisions pertaining to the use, distribution to beneficiaries and management of Trust assets. These Trustees should collectively have a balance of skills and experience in three areas:
    - (a) Excellent chairing and public communication skills including – judgement, a sense for natural justice and negotiating skills in complex environments;
    - (b) Strong but broad environmental credentials and ability to make considered judgement about what is best for River health based on scientific evidence and experience;
    - (c) Business sense and understanding of water markets, water trading and the irrigation industry.
  5. Transferring or leasing water entitlements held by South Australian Ministers to the Trust.
  6. Transferring at least a significant proportion of the revenue being raised through the River Murray Levy to the Trust.
  7. Developing one or more trials involving wetlands management by the bank in partnership with a non-government organisation.

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## Appendix 1:

### **Draft Specification for an Environmental Water Bank to Source, Hold and, if appropriate, Manage Environmental Water for the River Murray**

Prepared with assistance of John Marsden - Marsden Jacob Associates, Melbourne

The conclusion to this report was that the SA Government may wish to consider establishing a bank that has a sourcing and supply functions but no direct capacity to manage or control release or use of water. This would allow the Department to continue as the primary manager of the River. Nevertheless, arrangements are specified so that subsequent expansion of bank function could include direct management of specified management activities including:

- investment in works that result in improvements in river health ; and
- managing the timing and nature of releases of water to be used for environmental purposes.

This appendix specifies detailed arrangements for the creation of an independent legal entity that sources, holds, trades and supplies water to river flow managers. Before adopting this draft specification, it is recommended that independent legal advice be sought.

Once established the bank would operate at arm length from Government but its structure would be such that the Minister could influence the strategies that Trustees pursued. If the bank were established either as a Trust or a corporation the bank would be subject to the disciplines of corporations law. Typically, these disciplines are more stringent and less flexible than those required of government.

To maximise opportunities to source water by way of donations, the bank would need to be registered as an environmental organisation by the Commonwealth Minister for Environment and Heritage.

#### ***Background***

To establish a legal entity, such as a Trust, it is necessary, among other things to define

1. A set of objectives and purposes;
2. A specified set of beneficiaries;
3. A list of general legislation and rules binding trust management;
4. A mechanism for appointing trustees; and
5. Specification of a period of operation and method of disposal of assets should the trust be dissolved.

Although not mandatory, given the nature of the Trust it would also be wise to specify

1. The relationship between the Trust, the MDBC and river flow managers in all States;
2. Expected environmental accounting and reporting procedures; and
3. Rules related to buying and selling water in an effort to enhance the Trust's key objectives.

Moving from the draft specifications set out below to a detailed trust plan will require considerable judgement.

### ***A Registered Environmental Organisation***

Under the Income Tax Assessment Act 1997, unconditional donations to a Registered Environmental Organisation of property, including an access entitlement or water allocations, valued by the Valuer General on behalf of the Commissioner for Taxation at more than \$5,000 are tax deductible (See Appendix 2). Details of the process and procedures to gain registration as an environmental organisation are set out in Appendix 3. To be eligible to receive donations that are tax deductible, the environmental organisation must take the form of

- a. a body corporate; or
- b. a co-operative society; or
- c. a trust; or
- d. an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory.

### ***Objective and Purpose***

A trust and other entities need a specific set of objectives that are stated in a manner that can be used to guide a Board as they make decisions.

The objectives and purposes of the Environmental Water Bank could be:

- a. To establish principles for and trial experience in the use of environmental entities, water trusts and similar entities to increase quantity of water available to river flow managers interested in improving environmental outcomes in the River Murray and its associated environments by:
  - Attracting donations & bequests of money water and other property for this purpose;
  - Operating strategically in the water market with a view to enhancing the value of entrusted assets and increasing the Trust's capacity to promote environmental outcomes in the River Murray and its tributaries;
  - Making water available to those responsible for the management of flows of water and the distribution of water for environmental purposes;
  - Seeking opportunities to support, foster, co-operate and invest in delivery of environmental outcomes for the River Murray and its tributaries.
- b. To provide guidance and act as a building block for the development of similar arrangements across the Basin and more widely.

If these objectives are adopted and if it is decided to form the bank as a Trust then the entity could be called the **River Murray Environmental Water Trust**.

## ***Beneficiaries***

If a Corporation is established beneficiaries need not be defined in advance. However, if a Trust is formed beneficiaries need to be specified. Subject to and in a manner consistent with Corporations Law, the beneficiaries of the trust should be able to receive money, water or other property for use in promoting the objectives and purposes of the Bank.

The beneficiaries of the trust could include

- the MDBC;
- any environmental programs sponsored or approved by a Government;
- any management entities or initiatives sharing the common purpose of promoting the ecological health of the River Murray and its tributaries;
- a specified River Murray Manager(s); or
- any other entity with similar objectives.

Although some directly applicable research may be commissioned by the entity, it should not be the purpose of this entity to conduct or sponsor research or cover the costs of administration not directly associated with management of trust assets.

## ***Legislation and Rules Binding Operation of the Environmental Water Trust***

The entity should be bound by all legislation and in particular:

- Acts and subordinate legislation relating to the River Murray and its tributaries including water allocation plans;
- Binding decisions made by the Murray Darling Basin Ministerial Council;
- Acts and subordinated legislation pertaining to corporate governance and the operation of trusts in Australia;
- Provisions of the Income Tax Assessment Act; and
- Rules for use and trade of consumptive and, where appropriate, environmental water.

## ***Relationship with the MDBC and Other Agencies***

It is recommended that the legal entity be registered in South Australia. However, the aim of the bank should be to promote change in any part of the Basin in a manner that would result in an improvement in the ecological health of the River Murray and its associated wetlands in South Australia.

It is further recommended that the bank operate in a constructive and cooperative manner with other agencies responsible for the management of the River and its tributaries. The bank should be guided by objectives for the River and its tributaries as expressed by MDBC or other agreements among States, the Australian Capital Territory and the Commonwealth.

## ***Mechanisms for Appointing Trustees***

Strong independent governance over time is vital to continued effective operation. This is particularly important if the Bank is to continue to receive donations of water from private companies and individuals and if it is to enjoy public confidence. Decisions made by the bank's Board need to reflect a sense of independence that is insulated from political considerations.

An effective Board could involve 3 to 5 members responsible for all decisions pertaining to the use, distribution to beneficiaries and management of assets. The Board should contain members with a balance of skill and experience in three areas:

- Excellent chairing and public communication skills including – judgement, a sense for natural justice and negotiating skills in complex environments;
- Strong but broad environmental credentials and ability to make considered judgement about what is best for River health based on scientific evidence and experience;
- Business sense and understanding of water markets, water trading and the irrigation industry.

There are several options for appointing members of a Board. If a decision is made to establish the Bank as a trust, choice depends upon the way the Trust is settled. Commonly adopted options include

- A trust managed by a holding company with independent directors appointed by the share holders of the holding company;
- Trustees appointed as individuals by the Minister (the settler of the Trust) and, subsequently, by the Minister on the recommendation of a selection panel appointed by the Trustees in consultation with the SA Government;
- A “college” which appoints Trustees from time to time.

None of the options is clearly superior. In our opinion, the simplest option for a Trust that is given control of environmental water presently managed by a State would be to use the second model – appointment of by the Minister on the recommendation of a selection panel appointed by the Trustees in consultation with the SA Government.

### ***Period of the Trust and Disposal of Assets***

There is a clear dilemma associated with the capacity of a legal entity to attract donations of water and/or money if it is set up only for a period.

It is recommended that an independent review of the effectiveness of the bank be commissioned during the last half of its fourth year of each five years of operation. Following completion of this review, it should be possible to revise the objectives set out above and/or cease operations.

In the event that the Trust is wound up or it is decided not to continue to use the Trust to source and hold environmental water, all remaining assets should be transferred either:

- To an entity with similar aims and objectives;
- To a Murray Darling Basin environmental water manager or equivalent;
- To the Governments of South Australia, Victoria, New South Wales and the Australian Capital Territory in proportion to the value of water, cash or other property contributed to the Trust on the condition that these assets be used only for similar purposes.

{It needs to be recognised, however, that donations to an entity that may ultimately return assets to a State Government may not be deductible from income tax.}

## ***Water Accounting and Reporting***

As an independent Trust, structured to operate in the public interest, a high degree of accountability will be necessary. To this end, there is need for water accounting and reporting systems that demonstrate how all water and other assets have been used to further environmental objectives and purposes.

The Trust could be expected to:

- hold access entitlements mostly, but not exclusively, in the form of SA Water Holding Licences;
- hold volumetric allocations available for sale or transfer to water users and managers including environmental managers;
- hold money;
- possibly hold or lease assets in the form of buildings etc; and
- if the Trust becomes involved in management, infrastructure and tangible assets in the form of drains, pumps, equipment etc.

Accounts for each of the above assets will be required. To ensure confidence, these accounts should be as open as possible. In particular, the annual report should be tabled in the Parliament of South Australia and widely publicised.

This annual report should and in addition to normal corporate requirements to:

- List beneficiaries
- List transactions and estimated nature of the environmental benefits;
- List assets held as:
  - Permanent water entitlements,
  - Annual water allocations, and
  - Cash and other property;
- Report on the contribution that the Trust has made to the health of the River Murray and its Tributaries.

## ***Rules for Accepting Donations***

For income tax assessment purposes, the value of any donation of water will need to be determined by the Commonwealth Valuer General<sup>1</sup>.

- It is recommend that the Trust be structured so that donations of water to the Trust be tax deductible.
- It is recommended that the Trust only accept donations without restrictions on use of water given to it.

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<sup>1</sup> To avoid complications under the Income Tax Assessment Act, it is recommended that value of allocation-donations be pro-rated to reflect extent to which allocations exceed the MDBC allocation cap in the State where donation is made.

## Appendix 2 Tax Incentives for Donations to Environmental Organisations

Environment Australia

Downloaded on 25/06/03 from <http://www.ea.gov.au/biodiversity/publications/fact-sheets/incentives.html>

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Thanks to changes to taxation legislation, increasing numbers of Australians are receiving financial benefits from donations to assist in conserving Australia's environment and heritage.

For example, with the Federal Government's changes to the *Income Tax Assessment Act 1997*, taxpayers now benefit from donations of property valued at more than \$5000 to relevant organisations.

Changes to the capital gains tax (CGT) treatment of payments for entering into conservation covenants, and the conservation covenant deduction measure legislated in October 2001, provide further complementary incentives for conservation.

### **Donations**

**Under initiatives legislated in May 2000, you and the environment can benefit from:**

- An income tax deduction for gifts of property, made on or after 1 July 1999, valued at more than \$5000. The deduction is available regardless of when or how the property was acquired and the deductions can be spread over five years.
- A capital gains tax exemption for gifts of property bequeathed in a will to an eligible organisation.

### **What are the benefits?**

These measures are aimed at encouraging donations of property to eligible environmental bodies. Donors benefit from the capacity to claim tax deductions on the donation.

Deductions may be apportioned over up to five years so that tax benefits are not lost when a donor's income in a single year is less than the value of the gift. (Note: a deduction under this provision can not result in an income tax loss.)

This is particularly important for donors who are asset rich but on low incomes. For example, a gift of land worth \$100,000 can be split into five deductions of \$20,000 and claimed over five subsequent years, allowing greater tax deductions to be claimed, particularly for those whose incomes are less than the value of the donation.

### **Who can claim a deduction?**

Any taxpayer (for example, an individual, trust, or company) can claim a deduction for a donation of property and seek apportionment of tax deductions. However, other regulations such as company and trust laws/legislation may impact on the ability of an entity to make a donation of property.

### **What type of property can be donated?**

Land, buildings, shares, vehicles, machinery etc valued at over \$5000 by the Commissioner of Taxation may be donated.

### **Who are the eligible environmental bodies?**

An eligible environmental body is one that is on the Register of Environmental Organisations (the Register). The Register was established in 1992 to remove the need for amendments to the tax law every time an environmental organisation was granted tax-deductible status. Entry on the Register allows an environmental organisation to seek tax deductible donations.

### **What are the steps involved?**

For gifts or donations made on or after 1 July 1999:

- Donors must obtain a valuation of the property from the Commissioner of Taxation through the Australian Valuation Office. The Office charges a fee for valuations, which is tax deductible.
- Applicants seeking to apportion a deduction over a number of years must fill in the apportionment of deductions form (see contacts page) and send a copy to the Secretary of the Department of the Environment and Heritage (GPO Box 787, Canberra, ACT, 2601). On this form, taxpayers must state how much of the deduction they will claim in each year over a period up to five years. This statement can be varied at any time. Forms are also available on the internet at <http://www.ea.gov.au/pcd/ppu/apportionment.html>

### **Is your group eligible for the Register of Environmental Organisations?**

It is in an environmental organisation's best interest to obtain deductible gift recipient status so that donors can take advantage of the new tax initiatives.

For information contact the Register of Environment Organisations (see below) or visit

<http://www.ea.gov.au/pcd/ppu/reo/>

### **Conservation covenants**

In October 2001, the Government amended the deduction and CGT provisions of the tax law in relation to entering into a perpetual conservation covenant.

The amendments provide for two types of tax concession:

- an income tax deduction for any decrease in land value as a result of entering into a conservation covenant (provided the landowner receives no payment for entering into it); and,
- where a conservation covenant is entered into, CGT provisions will apply as if it were a sale or gift of the land.

The new tax deduction will be available from 1 July 2002, whereas the new CGT provisions have been backdated to 15 June 2000 (where the landowner receives money or property for entering into the conservation covenant) in order to cover payments made under the Tasmanian Private Forest Reserve Program.

For those landowners who do not receive any money or property for entering into a conservation covenant but are not eligible for the deduction, the current CGT provisions remain in place to ensure they are not disadvantaged.

### **Conservation covenant deduction**

To qualify for a deduction, a conservation covenant must:

- a) be in perpetuity and, where possible, attached to the title of the land;
- b) be approved by the Minister for Environment and Heritage (either directly or through being part of an approved conservation covenant program);
- c) be valued at more than \$5000 or be attached to land acquired less than 12 months before the covenant was attached;
- d) be entered into with a deductible gift recipient.

A landowner will not be eligible for a deduction if they have received any money, property or other material benefit in return for entering into a conservation covenant. Landowners will need to have the decrease in market value of their land, and hence the amount of the deduction, determined by the Australian Valuation Office. The Office may charge a fee for this service, which is tax deductible. Landowners will be able to spread the value of the deduction over five years using the process outlined above.

To avoid disappointment landowners should confirm that the proposed holder of a conservation covenant is a deductible gift recipient before entering into a conservation covenant. This can be done by contacting the Register of Environment Organisations (see contact below) or by calling the Australian Taxation Office on 13 24 78.

Please note that programs run by Commonwealth, State or Local governments do not meet these criteria.

Where a landowner is eligible to claim a deduction for granting a conservation covenant, the new CGT provisions (below) will apply.

### **Capital Gains Tax changes**

The CGT provisions have been changed in relation to conservation covenants. The new CGT treatment applies where a landowner:

- a) receives money or property for granting a conservation covenant; or
- b) is eligible for a tax deduction under the conditions described above.

In both cases, the covenant has to be entered into as part of an approved conservation covenant program or approved directly by the Minister for Environment and Heritage.

Conservation covenants, which are not eligible for the new treatment, will be treated in the same way they were before - that is, a capital gain will arise equal to the difference between the money and/or property received and the costs incurred in granting the covenant. If no money or property is received, a capital loss equal to the costs incurred in granting the covenant will arise.

### **What are the benefits?**

For the case where a landowner receives money or property for granting a conservation covenant, the following benefits apply. The new CGT treatment will result in a reduced capital gain because a portion of the cost base of the land is taken into account in working out the capital gain (previously the capital gain equalled the amount received for the covenant less incidental costs).

Landowners are also able to access any CGT concession or exemption that may apply to the capital gain. For example, a capital gain from a covenant granted in respect of land owned before 20 September 1985 will now be exempt.

In addition the CGT discount may now apply if the land has been owned for at least 12 months or the small business concessions may apply if the relevant conditions are satisfied.

### **How does it work?**

The CGT changes recognise that, economically, the landowner has suffered some loss in the value of his/her land by entering into the conservation covenant. Therefore, when determining the amount of a capital gain from the grant of a conservation covenant, a portion of the cost base of the land will now be taken into account.

This treatment is equivalent to that applied to the sale of part or all of the land or, in some cases, the removal of trees from the land.

Environment Australia has developed guidelines and procedures for the approval of covenanting programs. Guidelines are available on the Internet at:  
<http://www.ea.gov.au/biodiversity/programs/covenanting/index.html>

The guidelines describe the elements required to be met for conservation covenanting programs to gain approval by the Minister for the Environment and Heritage. Approval procedures are also documented.

Please direct any queries in relation to approval to the Environment Australia officers listed at the end of this fact sheet.

**Further information**

Area of interest	Contact
Conservation Covenants	<p><i>Environment Australia</i>            Carolyn Paris            Ph: (02) 6274 2368            Kathy Tracy            Ph: (02) 6274 2333 or            Veronica Ritchie            Ph: (02) 6274 2713            Environment Australia            GPO Box 787, Canberra, ACT, 2601  <i>Australian Taxation Office</i>            Gess Sottile            Non-Profit Centre            Australian Taxation Office            GPO Box 900, Civic Square, ACT, 2608            Ph: (02) 6216 1443            Fax: (02) 6216 2657            Email: <a href="mailto:giuseppina.sottile@ato.gov.au">giuseppina.sottile@ato.gov.au</a>            Internet: <a href="http://www.ato.gov.au">www.ato.gov.au</a></p>
Register of Environmental Organisations	<p><i>Environment Australia</i>            John Heagney            Register of Environmental Organisations            Environment Australia            GPO Box 787, Canberra, ACT, 2601            Ph: (02) 6274 1467            Fax: (02) 6274 1858            Email: <a href="mailto:reo@ea.gov.au">reo@ea.gov.au</a>            Internet: <a href="http://www.ea.gov.au/psg/ppu/reo.html">http://www.ea.gov.au/psg/ppu/reo.html</a>            Department of the Environment and Heritage            GPO Box 787, Canberra, ACT, 2601</p>
Valuation of property	<p><i>Australian Valuation Office</i>            Philanthropy Program, Australian Valuation Office            Phone: (02) 6229 3401 or (08) 8218 9008            Fax: (02) 6230 5060 or (08) 8212 6090            PO Box 911            Dickson ACT 2602</p>
Taxation legislation	<p>The <i>Income Tax Assessment Act 1997</i> can be viewed at <a href="http://scaleplus.law.gov.au">http://scaleplus.law.gov.au</a>            The Explanatory Memorandum to the conservation covenant provisions can be viewed at <a href="http://law.ato.gov.au/atolaw/index.html">http://law.ato.gov.au/atolaw/index.html</a></p>
Apportionment of deductions	<p>Information and forms can be obtained on the Internet at: <a href="http://www.ea.gov.au/pcd/ppu/apportionment.html">http://www.ea.gov.au/pcd/ppu/apportionment.html</a>            Alternatively, you can contact the Department of Environment and Heritage to ask for a form to be sent to you:            Ph: (02) 6274 1467            Email: <a href="mailto:reo@ea.gov.au">reo@ea.gov.au</a></p>

# Appendix 3: Guidelines for Register of Environmental Organisations 2003

## A Commonwealth Tax Deductibility Scheme for Environmental Organisations

*Environment Australia, 2003*

Downloaded on 25/0603 from <http://www.ea.gov.au/pcd/ppu/reo/>

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### General Information

The objective of the register is to assist environmental organisations to obtain financial support from the community for use in the conservation and protection of the natural environment, by providing a tax incentive mechanism for the community to donate to those organisations.

#### **Background**

The Register of Environmental Organisations (the Register) was established in 1992 to remove the need for amendments to the *Income Tax Assessment Act* every time an environmental organisation was granted tax-deductible status.

The Register was given legislative effect on 24 December 1992 and now allows all approved environmental organisations to seek tax-deductible donations.

Gifts made to a public fund on the Register are made deductible by item 6.1.1 of subsection 30-55(1) of the *Income Tax Assessment Act 1997* (ITAA) and the requirements for the admission of organisations are prescribed in Subdivision 30-E of the ITAA.

The Department of the Environment and Heritage (the Department) administers the Register in consultation with the Australian Taxation Office (ATO).

#### **Meaning of environmental organisation**

[Section 30-260 of the ITAA]

An environmental organisation must be one of the following:

- a) a body corporate; or
- b) a co-operative society; or
- c) a trust; or
- d) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory.

Under section 30-275 of the ITAA, a body corporate (except a statutory authority) or a co-operative society is an environmental organisation only if:

- a) its membership consists principally of bodies corporate; or
- b) it has at least 50 members who are individuals that are:
  - regarded as financial members; and
  - entitled to vote at a general meeting of it; or
- c) The Minister for Environment has determined that, because of special circumstances, it does not have to meet either of the requirements in paragraph (a) or (b).

Most eligible environmental organisations fall into categories of being a body corporate or a co-operative society. This means that they are incorporated under the laws of the

Commonwealth in the case of a company limited by guarantee, or a State or Territory as an incorporated association, co-operative society or similar body.

The ITAA provides that, in special circumstances, the Minister for the Environment and Heritage (Environment Minister) may waive the requirement for an eligible incorporated organisation to have a minimum of 50 members. However, strong and justifiable reasons would be required for the Minister to grant an exemption, as it is Commonwealth Government policy that incorporated organisations meet the minimum membership requirement.

### **Application process**

Under the ITAA, an environmental organisation is described as a body corporate; or a co-operative society; or a trust; or an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory.

#### **Step 1**

Organisations seeking entry on the Register must satisfy one of the above descriptions of environmental organisations. A State/Territory registration process is required for a body corporate, a co-operative society or a trust. A company seeking to be limited by guarantee must comply with the requirements of the Australian Securities and Investments Commission. All of the above involve a legal process.

#### **Step 2**

Your organisation must seek an Australian Business Number (ABN) from the Australian Taxation Office (ATO) before submitting an application to this Department. Organisations need to have an ABN before they can be endorsed as a deductible gift recipient and/or as an income tax exempt charity.

For further detail, see [Section 1.1, Australian Business Number](#).

#### **Step 3**

Organisations that are already incorporated or are registered must make amendments to their constitutional documents as requested in the Guidelines, in order to meet the requirements for entry on the Register.

The Department is happy to advise organisations on amendments. To assist organisations, we will assess draft constitutions against the requirements of the Guidelines.

#### **Step 4**

Complete the attached [application form](#) for entry to the Register and for Deductible Gift Recipient (DGR) status.

The application form, along with the other Register requirements, must be sent to Environment Australia.

### **Assessment process**

Environment Australia carries out an initial assessment of all applications for entry onto the Register. A check is made to ensure that the organisations meet the legislative requirements of the ITAA, the requirement of ministerial rules, and the administrative requirements of the Guidelines.

Applications are then referred to the Environment Minister. The Minister must agree to the entries and certify that the organisations are environmental organisations to the (Assistant)

Treasurer. After the Minister has signed the instrument for entry onto the Register, it is then passed to the (Assistant) Treasurer for his/her consideration.

When the (Assistant) Treasurer has approved the recommendation, the ATO will process each organisation's application for endorsement of its public fund as a DGR and will issue each organisation with written notification of their endorsement.

When notified of the (Assistant) Treasurer's approval, the Department advises each applicant in writing of their inclusion on the Register. The date of entry on the Register is the date that the (Assistant) Treasurer signed the instrument.

### ***Donations of gifts of property over \$5,000***

The Government has introduced new philanthropy measures to encourage taxpayers to donate to certain funds, authorities and institutions.

Taxpayers are able to claim the benefits of a tax deduction for a gift over a maximum of 5 years. To take advantage of this concession, the gift must have been a gift of property made to an organisation listed on the Register, on or after 1 July 1999, and be valued at over \$5,000. In order to claim a deduction over 5 years, a claimant must fill out an election form and send it to the Secretary of the Department of the Environment and Heritage. An election pro forma is available on request from the Department - see contact details below.

### ***Donations and sponsorship***

*What is the difference between a donation and sponsorship?*

A donation is made unconditionally - the donor gives of his/her free will to an organisation that is free to determine the purpose for which the donation will be used, within the confines of that organisation's objectives. The donor may state a preference as to how the gift might be used as long as the organisation has an unconditional discretion as to how it will use the gift.

The donor must not receive any pecuniary or other material benefit in return for the gift including such benefits as membership or newsletters. Details relating to tax deductions for donations are found under division 30 (the gift provisions) of the ITAA.

Corporate sponsorship is a payment made by a business in exchange for promotional or advertising services, which creates mutual benefits for both the organisation and sponsoring business. Partnerships through sponsorship arrangements are tax deductible to businesses under section 8-1 of the ITAA.

For the purposes of the ITAA, donations are gifts made unconditionally under the terms of subdivision 30-E. Therefore, corporate sponsorships are not gifts, and sponsorship monies must not be placed in the public fund account. Corporate sponsorships are payments made by a business in exchange for promotional, advertising or other services.

### ***Bequests***

Testamentary gifts (bequests) are not tax deductible (see subsection 30-15(2) of the ITAA). The term bequest applies not only to those gifts specifically bequeathed under a will (or made by trustees as a result of a requirement placed on them by a will) but also to any gifts made by trustees out of the estate before the estate is settled. Consequently, donations by executors of deceased estates are not tax deductible.

### ***Income tax exempt charities***

Organisations that meet the requirements for listing on the Register may also qualify for endorsement by the ATO as an income tax exempt charity (ITEC).

The advantages for environmental groups that are endorsed as income tax exempt charities is that they are exempt from income tax and are not required to lodge income tax returns unless directed by the ATO. In some cases, charities will also qualify for other Commonwealth, State and Territory tax concessions.

For additional information and to order an ITEC application form, please call the ATO on 13 24 78.

**Contact information**

If, after reading the Guidelines, you have queries about your application, please contact:

Register of Environmental Organisations  
Policy and Accountability Branch  
Environment Australia  
GPO Box 787  
CANBERRA ACT 2601  
Telephone: (02) 6274 1467  
Email: [reo@ea.gov.au](mailto:reo@ea.gov.au)