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A Sustainable Water Future *without compromising the health of interdependent ecosystems*

Water Action Coalition

South Australian Public Commission of Inquiry Water and Environmental Management Terms of Reference

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REVISION RECORD

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1 INTRODUCTION

A Public Commission of Inquiry into Water and Environmental Management (Royal Commission) shall be established by the Government of South Australia to conduct a full and open public inquiry to determine whether the government has been acting in the public interest and upholding the public trust with respect to water and the environment of South Australia.

The inquiry shall determine the environmental, social and economic consequences of current government policies and practices, including those resulting from the Council of Australian Governments' (COAG) water reform agenda, given climate change and population growth projections for South Australia, and whether the Government of South Australia has applied due diligence in its efforts to ensure that South Australia receives a fair share of water from the Murray-Darling Basin, as provided for under section 100 of the Australian Constitution, and enabling the Murray River to flow to the sea irrespective of river flow variability.

Australian Constitution Section 100 - Nor abridge right to use water

The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

1.1 Purpose

The purpose of this inquiry is to determine the systemic causes of the environmental, social and economic damage and of other problems resulting from current water policies and management processes in South Australia and to determine the changes that need to be made by all levels of government, including by their departments and corporations, to safeguard the public's interest in water as the common property of all Australians and the utility and amenity of all water ways (freshwater and marine) under the "public trust doctrine".

The inquiry will also consider the impact of degradation of marine waters, under the control of the Government of South Australia, including stormwater and wastewater management practices, marina operations and dredging.

1.2 Inquiry Scope

Under the authority of the Royal Commissions Act 1917, a Public Commission of Inquiry shall be established to inquire into and report within 18 months of its establishment on the following matters:

1.2.1 Government Arrangements

The Commission will consider the operational structure and infrastructure of all government and local government agencies contributing to or responsible for managing, the environmental impacts of current water policy, including stormwater and wastewater management, development approvals and dredging.

1.2.2 Water Privatisation

The Commission will consider the constitutional compliance, impact and consequences of the establishment of the new national water market and the promotion of privatisation of the surface and ground waters of South Australia resulting from the implementation of the water reform agenda of COAG and as enacted by the South Australian Government. The Commission is to consider whether compliance with the common law "public trust doctrine" has been breached by the policies and actions of the Government of South Australia and in particular by its plans and decisions to build blocking dams and weirs in the Lower Lakes from the River Murray and construct a desalination plant at Port Stanvac.

1.2.3 Ecological Health

- a. The Commission will consider the ecological health of the River Murray, including the Lower Lakes and Coorong, and trends in and effects of extraction, diversion and quality of Murray-Darling water, both surface and ground water, over the last 30 years. Diversion volumes are to include all water used to convey river water from its natural course by channels and pipes, including all water held in storage, both public and private, and including interstate water storages reserved for the use of South Australia.
- b. The Commission will prepare guidelines to define the actions required to restore and protect the ecological health of all river and underground water systems at all times, including during drought, and to define the processes whereby Drought Management Plans shall implement an orderly reduction in the volumes of surface and ground water extracted from and diverted from a water source based upon section 1.5.2 Priorities of Water Use.
- c. The Commission is to be given full access to all indentures and any deeds of arrangement with commercial interests that compromise the conservation of water resources of the state and interdependent ecology.

1.2.4 Water Use

- a. The Commission will investigate trends of use of surface and ground water in South Australia over the past 30 years, with specific regard for volumes utilised for irrigation (including determination of crop types, irrigation techniques and intended markets), by other industries and that supplied for municipalities. Reference shall be made to the cost of water including taxes, water quality, water wastage, water losses and economic returns of public investment in Murray-Darling Basin infrastructure.
- b. The Commission will assess the current efficiency of water use by irrigators, industry, communities and municipalities and the plans of these sectors to increase efficiency and to conserve the water cycle.
- c. The Commission will assess the impact of the introduction of water trading, Managed Investment Schemes and the growth of irrigation demand within South Australia.

- d. The Commission will assess whether South Australia has secured a fair share of water from the Murray-Darling Basin as provided for under section 100 of the Australian Constitution before and after the establishment of the new National Water Market.

1.2.5 Climate Change & Population Growth

The Commission will assess the likely impacts of climate change and population growth on the availability of surface and ground water in South Australia and recommend policies that the Government of South Australia should consider to ensure sustainability of all water resources without compromising interdependent ecosystems.

1.2.6 Water Conservation

The Commission shall determine whether the South Australian Government has taken all necessary action to conserve wastewater and stormwater in urban areas, in particular the greater Adelaide metropolitan area, to prevent the continued degradation of Adelaide Coastal Waters, including the identification of all areas of land that should be dedicated to stormwater harvesting in the future to maximise the conservation of water in metropolitan Adelaide.

1.3 Recommendations

The Commission shall recommend any changes it deems necessary as a result of its inquiry, including those that specifically address section 1.2 Inquiry Scope and whether new legislation is required, such as a Sustainable Water Use Act, to help ensure the recommendations of the inquiry may be implemented by government.

1.4 Regard For Plans, Decisions and Actions by Government

The Commission shall have regard and full access to all investigations, actions, plans and decisions of the South Australian government, initiated by or in partnership, including by its departments, agencies and corporations, to carry out the required remedial action to restore the ecological health of South Australia's water courses, including the impacts of construction and operation of the desalination plant in South Australia and the impact of expanding the diversion of water by pipeline projects, marinas and other commercial activities.

1.5 Special Provisions

1.5.1 Commissioners' Board Of Inquiry

The Commissioners' Board of Inquiry shall comprise a Chairman and a Commissioner for each of the following areas appointed by a joint sitting of the South Australian Parliament:

- a. Ecosystems and the Environment
- b. Society and the Economy
- c. Government
- d. Water Privatisation & Water Reform

- e. Water Sustainability and Conservation (Urban, Industry & Agriculture including Infrastructure)
- f. Climate Change
- g. Population Growth

All appointments to the South Australian Public Commission of Inquiry, or eminent persons or experts engaged by the Commissioners, shall have placed on the public record a detailed statement detailing their position with respect to water reform and any involvement therein and why they should be deemed competent to act as advisors to the Commission. Draft reports shall be issued at no less than six monthly intervals until the work of the Commission of Inquiry is complete.

Separate reports shall detail findings and recommendations in relation to the restoration and protection of significant ecosystems of the Murray-Darling Basin, such as the Lower Lakes and the Coorong, The Great Artesian Basin, Upper Spencer Gulf and the greater Adelaide metropolitan area. These reports shall be completed within twelve months of the commencement of the Commission of Inquiry.

1.5.2 Priority Of Water Use

Surface water, including groundwater, shall be provided for use in the following order of priority:

- a. Water required by South Australian river systems and related water courses to ensure their ecological health.
- b. Water required by those dependent upon the River Murray for their domestic water supply.
- c. Water for use by irrigators to produce foodstuffs for residents of Australia.
- d. Water for use by other industries to produce goods and products for domestic use.
- e. Water for use by irrigators and industries to produce goods and products for export.