

# Independent Assurance Committee on Compliance

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## Report to the Authority of the eighth meeting 4 September 2019

### 1. Details of the meeting and future arrangements

The Independent Assurance Committee (IAC) met for the eighth time on Wednesday, 4 September 2019. The Murray–Darling Basin Authority (MDBA) was represented by Andrew Reynolds (acting Chief Executive). Brent Williams (acting Executive Director, Office of Compliance) along with a number of MDBA staff also participated in the meeting. The main matters considered were the MDBA’s regulatory posture with states, the role of the Inspector General, reporting on Water Resource Plan performance, and the future of the Compliance Compact. The absence of an independent Authority member during this period while the Authority does not have a full complement, restricts the IAC’s communication with, and benefit to, the Authority.

The IAC is nearing the end of its second year of operation. It has assisted the MDBA’s evolution of its regulatory role as well as providing detailed advice on specific regulatory matters. It has also advised the Authority and provided assurance on the MDBA’s regulatory performance. The Committee was established in February 2018 and its terms of reference indicate it will be reviewed after two years. While it has a quite different role to the proposed Inspector General of Murray–Darling Basin Water Resources the two entities have common objectives – improving public confidence in the management of the Basin water resources; and, ensuring the integrity of the Basin Plan as it is implemented. The IAC reports to the Authority whereas the Inspector General reports to the Minister. The review will provide the Authority with advice about the IAC’s performance and what its future should be. In the meantime, we believe we can assist the MDBA with establishing effective working arrangements with the Inspector General. One of the significant benefits of the Inspector General is the ability to establish a public profile on regulation, something the IAC is limited in doing.

### 2. Office of Compliance – work plan for 2019/2020, MDBA compliance priorities and work plan

The IAC discussed and provided advice on emerging issues, compliance priorities, and the audit program.

### 3. MDBA Regulatory posture and the role of the Inspector General

The IAC discussed the changing regulatory role of the MDBA and the future shift in the nature of its work, as water resource plans come into effect over the next year, and with the establishment of the new Inspector General.

The Authority ought to be seen as the steward of the Basin water resources with the necessary regulatory authority to bring states along and intervene where it has to. At the same time, it should emphasise that a partnership with states is essential to effective stewardship and that the states have the front-line regulatory role. This allows the MDBA to position itself as the regulator of the regulators, with certain step in powers, in circumstances where the states fall short in fulfilling their responsibilities.

The MDBA expressed concern about the inherent challenges of getting states to engage effectively on some regulatory matters. There is nothing new in that challenge and it is multi-faceted. The positioning of the Authority, the history of relationships, the nature of federal arrangements, climatic conditions and water availability, and the political circumstances, all contribute.

The Authority and the MDBA through their strategic settings will determine how these challenges are addressed. The compliance review, the Compact, the IAC and the Inspector General are responses to these challenges; all are mechanisms that attempt to influence behaviours, actions and results.

The IAC emphasised the importance of the MDBA making clear its strategy for all its functions, including its regulatory role (as the regulator of regulators). This must include building a strong relationship with the Inspector General given the ability of that office to bring public pressure to bear on recalcitrant conduct. It also provides an important opportunity to get public exposure to, and scrutiny of, a strong and publicly accountable compliance program.

The IAC challenged the MDBA to think about the quality of the relationships with their state counterparts and to explore whether it would be worth re-imagining a different world and how that might be achieved through social and diplomatic means. Leadership is a powerful force if it can be harnessed for the good.

### 4. Water Resource Plan accreditation update and reporting proposals

The IAC received a comprehensive update on progress in developing WRPs.

The Committee noted that whilst it is expected that all WRPs will be submitted by the end of December 2019, given recent experience some plans may need to be amended and

resubmitted following the initial assessment. This raises a real risk that some WRPs will not be accredited by the end of the current water year (30 June 2020).

The implications of not having all WRPs accredited by 30 June 2020 were discussed in detail, and MDBA staff were able to advise that the following arrangements are being put in place to mitigate key risks:

- The bilateral agreements with each state setting out interim SDL compliance assessment and management processes will continue to apply until an accredited plan is in place and are considered to be fit for purpose, noting that more detailed information will continue to be brought into account as WRPs are brought forward.
- The Authority is developing a resourcing plan to ensure WRPs can be assessed promptly when they are received. Based on the most current expected timing for lodgement of WRPs by the states, the Authority is planning arrangements to ensure that suitable resources will be available (especially over the Christmas New Year period) to undertake assessments in a timely manner.

The IAC noted that whilst there were considerable time pressures on the process, the states and MDBA were committed to ensuring that plans are of a high standard. This approach is strongly endorsed. It will also be important to capture the key learnings from the WRP development process as an input to review of the Basin Plan in 2026.

In relation to WRP compliance reporting needs, the IAC urged staff to review the overall suite of Basin Plan reporting requirements to ensure that WRP reporting doesn't duplicate other reporting. The Committee suggested that the primary focus should be on developing an initial reporting approach and improving or extending this based on experience over time. The key elements of the reporting approach could include:

- "Mandatory" reporting on key WRP elements that are common to all WRPs. Examples in this category are annual levels of permitted and actual take, which are essential for demonstrating compliance with SDLs.
- Specific additional reporting may need to be tailored to individual WRPs as relevant - e.g. details of management and compliance arrangements for flood plain harvesting.
- Monitoring for emerging risks in collaboration with jurisdictions, which may identify areas that need additional compliance reporting.

In order to minimise the reporting burden on states and to recognise that states have a primary role in regulating water sharing and use, it was suggested that the MDBA should work with the states to identify state based assurance programs that will provide confidence to all water users and the MDBA that WRP reporting is timely, accurate and sufficiently comprehensive to demonstrate the extent of compliance being achieved in each WRP area.

## 5. Meeting with Ramzi Jabbour, Leader of the task force to establish the office of the Inspector General

The IAC met with Mr Ramzi Jabbour, Assistant Secretary, Department of Agriculture, who is responsible for establishing the Inspector General for Murray–Darling Basin Water Resources. Discussions assisted better understanding of the respective roles and possible interactions in the future. Mr Jabbour outlined the Inspector General's mission of restoring confidence amongst all stakeholders in the integrity of the Basin Plan. The discussion centred around the opportunities to share information and learnings, and to prevent any potential duplication of effort on compliance.

The IAC could assist the office of the Inspector General in the establishment phase through briefing it on its work and providing intelligence on Basin Plan regulation and compliance. Our advice to the Authority is for it to direct the IAC to work closely with the interim Inspector General and assist with his remit, not through additional work but by sharing its findings and perspectives.

## 6. Meeting with Mark Taylor, Commonwealth Environmental Water Office (CEWO)

The IAC met with Mark Taylor, who briefed it on recent activities of the CEWO and matters regarding compliance with the Basin Plan. The CEWO appears to be developing sound working arrangements with the MDBA, which will be most important for ensuring good regulatory oversight of environmental watering.

## 7. Proposed environmental water audit

The IAC noted and endorsed the proposed plan for environmental water auditing.

## 8. Compliance Compact – 2019 Assurance and 2020 Review

The IAC briefly discussed the 2019 assurance process for the Compliance Compact. The committee recognised that the Compact will have limited effectiveness beyond the end of this year. However, the 2020 review will provide a very important opportunity to report to COAG on the effectiveness of the Compact and to emphasise what significant matters are outstanding and need further attention. The Inspector General may have a role in this review, supported by the IAC, if the Minister was of a mind to put that to Ministerial Council as a way to close out the Compact.

## 9. Communicating the work of the IAC

This report to the Authority will be available on the MDBA website and consideration will be given by the MDBA as to whether a press release on the IAC's deliberations is warranted.

Allan Holmes

Chair, Independent Assurance Committee

6 September 2019