

Independent Assurance Committee on Compliance

Report to the Authority of the thirteenth meeting, 1 December 2020

1. Meeting Overview

All members of the Independent Assurance Committee (IAC) were present. Phillip Glyde, Chief Executive, Tim Goodes, Executive Director Basin Regulation, Daniel Blacker, General Manager Office of Compliance, attended the meeting supported by relevant Murray–Darling Basin Authority (MDBA) staff.

The agenda for the meeting was substantial and the most important matters are summarised here:

- The Warrego River compliance audit underscores the importance of compliance auditing and will allow Queensland to more closely examine the performance of its compliance arrangements.
- The proposal for establishing the Inspector-General of Water Compliance falls well short of the independence and accountability requirements of an office that has a main aim of rebuilding public trust in water compliance across the Basin.
- The new proposed offences and penalties in the Water Act 2007 are problematic and require serious reconsideration.
- The Compliance Compact Review presents an opportunity for a second, more outcome-oriented accord to achieve desired metering levels and benchmarks for compliance standards across the Basin.
- Through the Compact Assurance report it is apparent that there are particular problems with Queensland and the ACT performance.
- The NSW Natural Resource Access Regulator’s performance is a bright spot on the compliance horizon.
- Despite the continuing intense scrutiny and pressure, the MDBA continues to do good work in the regulatory sphere.

2. General update from the MDBA

The MDBA Executive members provided updates on important outcomes of the recent Ministerial Council meeting, and on emerging compliance issues facing the Office of Compliance and the new Inspector-General. Also discussed were the status of the compliance work program and progress on the early compliance audits.

It was clear from the compliance work program documentation that some adjustment was needed to better match resources to demand. The Office of Compliance was well aware of this requirement and ready to adjust accordingly.

The first Water Resource Plan (WRP) audit is underway to review compliance with the mechanisms used by Queensland to regulate water take and protect environmental water in the Warrego River. The IAC discussed the merits of different potential approaches to the analysis, including compliance auditing of the implementation of WRP rules and performance auditing of systems, processes and policies.

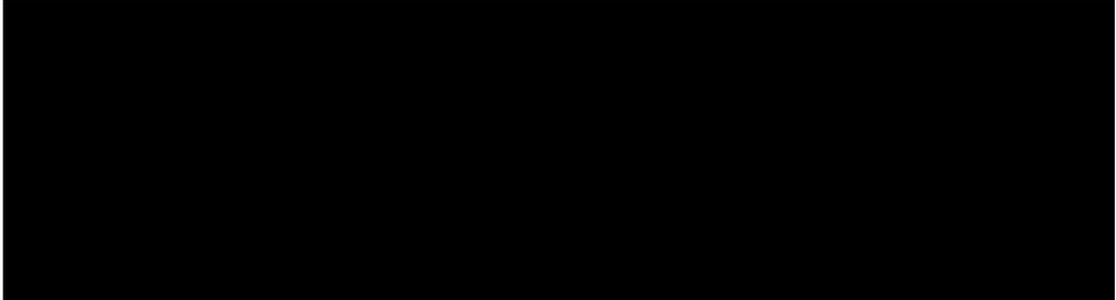
The IAC noted that these types of audit provide a strong opportunity to improve performance and reinforced the importance of monitoring, metering and the use of telemetry. The IAC also noted the risk of reliance on self-reporting.

The IAC also stressed the value of framing initial recommendations to help build the dialogue with Queensland to encourage effective responses to the substantial issues raised, while at the same time making transparent the findings. The IAC also noted that the preliminary findings of the audit underscored the conclusions from the review of the Compliance Compact about shortcomings in metering of water take, as well as the importance of compliance benchmarks to bring parties up to an acceptable standard.

3. Inspector-General of Water Compliance (IGWC) legislation and implementation

The IAC received an update on establishing the Inspector-General of Water Compliance (IGWC) and discussed the proposed arrangements for governance and administration. The IAC noted the highly ambitious timeframe to introduce and pass IGWC legislation in the 2021 Autumn sitting of the

federal Parliament. It also noted the planning that was under way in the MDBA to enable the smooth transition of the Office of Compliance to the IGWC.



Given the significance of these matters relating to the IGWC’s role and function, the IAC decided that it would provide separate advice to the Authority within the next week.

4. Compact and Metering Update

4.1 2020 Assurance Report

The IAC noted the progress with the 2020 Assurance Report. There are two tasks for the committee – preparing Part B, the IAC’s assurance of the MDBA’s progress with its commitments under the Compact; and the second task is to review the whole Assurance Report and provide advice to the Murray-Darling Basin Ministerial Council.

The first task has been completed and the second is required to be done before the end of this year. There are two noteworthy concerns about this year’s report. The first is Queensland’s lack of commitment to and progress

with metering and measurement. And ACT's nil reporting for 2020 is the second.

These matters will formally come to the attention of the Authority when the Assurance Report is published, and it will need to consider an appropriate response. Previously, the Assurance report has been published before the final Ministerial Council meeting of the year which provided a forum for significant matters to be discussed and parties to explain any shortcomings.

4.2 Review of the Compact

The IAC considered the draft review document and provided advice on its form and content. The IAC had previously provided its evaluation of the Compact as part of the review process.

In summary, the IAC made the following main observations:

- The Compact was a convenient summary of actions to be undertaken by the parties.
- It provided a mechanism to report on progress.
- The most serious shortcomings of the Compact were that the actions were most often input measures rather than the achievement of specific outcomes, and of a qualitative character rather than a quantitative one.
- Several critical shortcomings remain to be dealt with across the Basin.

The IAC suggested that the two-page executive summary for the Review needed to be recast to briefly summarise the Compact's workings and achievements but more importantly, to provide the platform for a new commitment to progress the two most important outstanding matters:

- Metering and measurement to the required level across the Basin by 2025; and
- Standards and benchmarks for compliance practice, adopted by all parties by a set date.

A mechanism for the commitment is also required, as is the central involvement of the MDBA and the IGWC

5. Floodplain Harvesting

The IAC was updated on the status of floodplain harvesting licensing and measurement progress including timing and staging across NSW and Queensland. The IAC noted the challenges ahead in working across the two states and finding an acceptable approach that was robust, practical and accurate.

6. NSW Natural Resources Access Regulator engagement

The IAC received a briefing from the NSW Natural Resources Access Regulator (NRAR). Grant Barnes, Chief Regulatory Officer, Tim Gilbert, Director of Regulatory Capability and Coordination, and Bruce Brown, NRAR board member, were in attendance.

The IAC noted NRAR's continued progress in enhancing its compliance activity and the advances it has made in its maturity as a regulator.

The IAC recognised the importance of the independent status of NRAR to it carrying out its functions and restoring and maintaining public and stakeholder confidence. The IAC considered that the NRAR experience offered a valuable model for the establishment of the Inspector-General of Water Compliance.

The meeting with NRAR provided the opportunity to reflect on the IGWC role and the characteristics that would provide the best regulatory performance. The proposal to extend the powers of the Commonwealth regarding offences and penalties was also discussed.

7. Water Trade

MDBA officers briefed the IAC on a range of strategic issues relating to the MDBA's role in overseeing water trading rules under the Basin Plan. Following on from discussions at the previous IAC meeting, MDBA officers have finalised a submission to the ACCC water markets inquiry.

As required under the Basin Plan, the MDBA has also commenced a review of provisions in the Plan that provide some limited exemptions to the normal trading rules for some possible environmental water transfers. Consultation with the ACCC and environmental water holders has revealed a diversity of views on the benefits of retaining these provisions. Some concerns had been raised that these exemptions may potentially impact on efficient market

operation and give rise to other concerns; however, given that the provisions have never been used and limited evidence was provided to demonstrate the substance of the concerns, the IAC was not convinced that removal of the provisions was appropriate at this time.

Work to date also revealed that these trade provisions are only one component in a complex mosaic of issues involved in the effective management and delivery of environmental water entitlements. The IAC supported the option of dealing with the immediate review requirements under the trade rules, whilst also initiating a more fundamental review of the policy issues impacting on environmental water management with a view to identifying sustainable, effective solutions to these issues.

8. Sustainable Diversion Limit Adjustment Mechanism (SDLAM) Assurance and Reconciliation

The target date specified in the Basin Plan for completion of the SDLAM projects is 2024. The MDBA has commenced development of the necessary procedures to be used in the event that a new determination of the adjustment amounts achieved by the implemented SDLAM projects is required in 2024.

The IAC noted and endorsed the development of an overall reconciliation framework. The IAC also considered and provided feedback on a draft probity plan designed to ensure the MDBA avoided any conflict of interest arising through its various roles in the SDLAM reconciliation process. The Committee encouraged the MDBA to consider the potential role(s) that the Inspector General of Water Compliance might undertake, especially in relation to independent assurance of project progress.

The reconciliation process is complex, and the IAC was pleased to note the detailed planning already underway to ensure that there is a clear pathway to accurate reconciliation. This will also provide states with a clear understanding of the process and the data they will need to provide to support reconciliation.

9. Water Resource Plan (WRP) Assessment – NSW

The IAC noted that proposed WRPs for all 20 NSW Water Resource Areas have now been submitted. An update on the MDBA's assessment of these

plans highlighted the additional steps needed, especially the further engagement and consultation with First Nations on incorporating Indigenous values and uses in each WRP. The IAC supported the MDBA working progressively with NSW to resolve outstanding issues in a timely manner.

10. Concluding Remarks

The IAC continues to work closely with relevant staff in the MDBA and enjoys an effective working relationship and strong support. The first meeting in 2021 provides an opportunity for a more strategic and reflective meeting.

Allan Holmes

Chair, Independent Assurance Committee

7 December 2020