



Select Committee on Regional Development and Decentralisation

Department of House of Representatives

Murray-Darling Basin Authority

Supplementary Submission

At the Select Committee on Regional Development and Decentralisation on 16 February 2018 in Canberra ACT, the MDBA was asked to provide additional information.

Approach to regionalisation and next steps in building our regional footprint

The Murray-Darling Basin Authority (MDBA) started decentralising in August 2016. The first step was piloting Regional Engagement Officers in key communities across the Basin. In March 2017, three regional office locations were selected to start building a stronger regional presence – Adelaide, Albury-Wodonga and Toowoomba.

Prior to announcing these additional offices, the MDBA scoped and costed seven different options. The options included total relocation and a range of hub and spoke models. The options considered the following criteria:


- Stakeholder engagement and physical site visits (current and future)
- Available infrastructure (including healthcare)
- Proximity to education
- Key stakeholder proximity and access
- Available transportation
- Proximity to the river users including irrigators, tourism operators and interest groups.

Following analysis of the various options, the MDBA decided to establish regional offices in each of the jurisdictions, Toowoomba (Queensland), Albury-Wodonga (NSW and Victoria), and Adelaide (South Australia), as well as operating a permanent Regional Engagement Officer network.

The first phase of establishing the regional offices was through relocating staff with an interest in moving to the new office locations. Our publicly announced goal is to have approximately ten per cent of our staff (25-30 staff) in these offices. As of February 2018, the MDBA has relocated or recruited 14 staff to the regional offices and supported six Regional Engagement Officers.

Office locations

Adelaide, Albury-Wodonga,
Canberra, Toowoomba

 mdba.gov.au



The next phase will identify recruitment strategies for each of the offices. A recruitment process has also started for employing Regional Engagement Officers in the following target areas:

- Barwon Darling, NSW
- Goulburn Murray, VIC
- Lower Condamine Balonne, QLD
- Lower Darling, NSW
- Lower SA Murray, SA
- Mid-Murray, NSW
- West Murrumbidgee, NSW

One year on from our regionalisation announcement, the MDBA is reflecting on its office locations and performance, lessons learnt from the process, and next steps. Our assessment is:

- The southern Basin can be effectively serviced from the chosen Albury-Wodonga location. This office establishment is progressing well.
- The western Basin can be effectively serviced from Adelaide. There has been some criticism about the Adelaide location not being in a regional town but this area still appears to be the most appropriate location to meet dispersed stakeholders and attract quality staff. The MDBA will continue to monitor this office location over the next 12 months.
- The northern Basin is a large area to cover and we believe we may need to strengthen our presence here. For business reasons we need to have a local presence for compliance, water resource planning and monitoring and for the implementation of the Northern Basin Toolkit measures, should the current impasse in relation to the Basin Plan amendments for the north be resolved.
- Voluntary staff relocations and regional recruitment have raised our awareness of the need to build staff capability and skills to work with diverse teams across multiple locations.
- Connectivity between regional offices and Canberra head office has been essential to making the hub and spoke model work. We have realised the importance and reliance on modern Information Technology and systems infrastructure. Development of this capability has promoted flexible working arrangements for our regionally located staff, and staff in the Canberra office.

The MDBA is decentralising slowly as these moves are internally funded and we need to ensure we can continue to deliver on all our functions. Large and rapid movements are more likely to impact on our capability, relationships with Basin governments and ability to perform the MDBA's tasks. The phased approach helps us to minimise the adverse impacts of regionalising and maximise the benefits that can be obtained.

The regional offices and permanent Regional Engagement Officers are being funded within the MDBA's existing resources. A target of ten percent of staff relocating to regions was identified as the initial achievable target within MDBA's existing finances.

There is a strong interest by Basin stakeholders (communities, industries and interest groups) to improve relationships with the MDBA. Being local and more accessible will aid this process. Having a contact point in each Basin jurisdiction will help us to be contactable with local, regional and state stakeholders.

There is a strong case for the MDBA to continue with the hub and spoke model. There would be sensitivities if the MDBA were to only locate to one Basin state - there would very likely be concerns raised by other Basin states over the impartiality of future MDBA decisions and there may also be concerns if this increased the costs for the Joint Venture arrangements. To date the cost of regionalisation has been neutral to the Joint Venture.

Social and Economic impacts of the Basin Plan and community profiles

The MDBA completed an interim evaluation of the outcomes from Basin Plan implementation in late 2017. We have since released supplementary information which has only just become available from the Australian Bureau of Statistics (ABS) on socio-economic trends in southern Basin communities on 22 February 2018, by way of community profiles. We are now using the ABS data alongside water recovery data for 45 communities in the southern Basin to better understand the social and economic impacts of the Basin Plan on local communities.

The profiles illustrate socio-economic trends in Basin communities over the past 15 years and the Basin Plan is just one of many factors feeding into the social and economic change. The data shows many Basin communities are experiencing similar socio-economic trends—regardless of the amount of water recovery in those communities. These trends are often evident across both irrigation-dependent and non-irrigation dependent communities in the Basin. However, there are some communities where water recovery seems to have played a greater role in social and economic change.

The data also shows that some communities have experienced significant decreases in employment in agriculture although there has been only a very small amount of net water recovery; while others have remained comparatively resilient despite significant volumes of water recovery. This indicates that not only is the Basin Plan just one of a number of factors behind social and economic change—but in many communities it may not be the most significant factor. The MDBA are currently undertaking work to better

understand how and why this is the case, and to look at the scale and timing of the changes—work which we aim to release in April 2018.

In considering this data, it is also worth noting that, although there are some communities that have been experiencing hardship, during the past five years the Basin economy as a whole has continued to grow. Even with Basin Plan water recovery, and earlier recovery of water for the environment prior to the Basin Plan, the value of irrigated agriculture in the Basin has remained steady. This is due to productivity improvements—including as a result of infrastructure investment under the Basin Plan—as well as changes to the mix of crops grown and changes in commodity prices.

The Basin Plan is also integral to securing a sustainable future for the unique natural assets that play a vital role in supporting industries other than agriculture. For example, tourism in the Basin is now worth around \$7.5 billion—with expenditure by overnight visitors to the Basin having increased by \$1.8 billion over the past five years. Spending on recreational fishing is also estimated to be worth around \$1 billion dollars each year, generating 10,000 jobs. The Basin Plan is expected to provide support for these parts of the Basin economy in the long run as the health of the natural environment is improved.

The Basin Plan Evaluation and community profiles are available at mdba.gov.au/basin-plan-roll-out/monitoring-evaluation/water-recovery-southern-basin

Compliance

The MDBA was established to be a ‘voice for the Basin as a whole’, to be given effect through a Basin Plan that set sustainable diversion limits (SDLs) on water take. In developing the Basin Plan, the MDBA has worked on the basis of compliance and enforcement against individuals being a matter for state governments.

While the Basin Plan was passed into law in late 2012, some important provisions did not take immediate effect: the trading rules commenced on 1 July 2014, the 36 water resource plans to be prepared by state governments and accredited by the Australian Government as meeting the Basin Plan’s requirements are not scheduled to be finalised until 30 June 2019, and the Sustainable Diversion Limits do not commence until 1 July 2019. For this reason the MDBA refers to the period from Basin Plan commencement until 30 June 2019 as the ‘transitional period’. Transitional water resource plans are existing state plans that have not yet been revised to reflect Basin Plan requirements (but are required to do so by 30 June 2019).

On 24 July 2017 the ABC Four Corners episode ‘Pumped’ highlighted the lack of compliance in the Murray-Darling Basin, particularly in the northern Basin. The episode triggered a number of reviews of compliance in the Basin.

The reviews are listed below and details of the recommendations can be found at **Attachment A**.

1. Ken Matthews AO interim report and final report
2. Australian National Audit Office
3. NSW Ombudsman
4. MDBA Basin Wide Compliance Review
5. Independent Panel Basin Wide Compliance Review
6. South Australia Royal Commission
7. Senate Committee for Rural and Regional Affairs and Transport- Integrity of the water market in the Murray-Darling Basin.
8. Queensland Government -Independent audit of Queensland non-urban water measurement and metering framework and compliance arrangements.
9. Independent Commission against Corruption (ICAC) NSW investigation.

In response to the recommendations in the MDBA Basin Wide Compliance Review and the Independent Panel Basin Wide Compliance Review, the MDBA immediately established an Office of Compliance led by Executive Director, Russell James and General Manager, Brent Williams.

An independent Assurance Committee was appointed by the Authority in February 2018. Its members are Allan Holmes (Chair), Lisa Corbyn, Martin Dolan, and Garry Smith.

The purpose of the Independent Assurance Committee is to provide external assurance over the MDBA's Basin Plan compliance role through the provision of independent expert advice to the Authority on the design, implementation and adequacy of the MDBA's Basin Plan compliance program.

The Independent Assurance Committee will have their first meeting is 16 March 2018, where they will provide advice on our proposed audit program and risk assessment.

The newly formed Office of Compliance is taking the following actions:

Compliance Compact:

At the Murray–Darling Basin Ministerial Council meeting on 19 December 2017, it was agreed a Basin Compliance Compact would be developed, drawing together the recommendations from a number of current reviews.

The Compact is to include specific plans for improving compliance and enforcement activities for each Basin jurisdiction and for the MDBA, and arrangements for transparent reporting of progress. Ministers also agreed to appoint an independent person, Wendy Craik to examine and bring together the findings of the various compliance reports and provide advice on their implementation. The Compact will be considered at the next Ministerial Council meeting.

Compliance Strategy:

The MDBA's 2014 Compliance Strategy is currently being revised in line with the findings of the Compliance Review. The revised strategy will explain how the MDBA will take a more assertive approach on Basin Plan compliance and provide detail on its compliance program. The MDBA has also adopted the escalation strategy as proposed in the Compliance Review.

The MDBA's ongoing compliance work program is also being established and includes the following components:

- ongoing risk assessment of Basin Plan non-compliance
- an assurance framework that includes auditing, public reporting and use of registers
- investigation, case management and enforcement activities.

The Department of Agriculture and Water Resources is providing funding of \$9.1 million over three years commencing in July 2018 to implement the Review's recommendations and strengthen its compliance function.

Allegations of non-compliance:

All allegations of non-compliance are now being managed in line with the MDBA's [escalation pathway](#). A register of allegations currently being investigated by the MDBA is published [online](#). At a glance, 6 of these matters relate to impediments to water trade (4 in Victoria, 2 in NSW), and there are 3 matters relating to unauthorised take (3 in NSW) as of 26 February 2018.

Over the next 18 months, the MDBA will develop a more strategic case mix seeking to test its powers, pursue cases of real public and strategic value and build the MDBA's regulatory credibility.

Water Measurement:

The MDBA will pursue the 'no meter, no pump' policy with Basin states and progress a national metering standard. The MDBA will also develop guidelines for other aspects of water measurement (e.g. hydrometric networks and hydrological modelling) within the Basin. Work on the standards and guideline development has commenced to meet the June 2018 deadlines. Basin states will be consulted as part of the development process.

The MDBA will also prepare an improvement program for its hydrological models and develop new technologies (e.g. remote sensing data) for acquiring water information in the Murray–Darling Basin to support its compliance function.

A SDL Reporting and Compliance Framework is currently being drafted and will include MDBA policy responses to a range of 'reasonable excuse' and 'make good' provision

scenarios. The draft document is due to be completed by April 2018. It will then be circulated to Basin state governments for comments, and consultation with peak body representative will take place in May 2018.

Strengthening the MDBA Regulatory Powers:

The MDBA is seeking legislative amendments to clarify its powers, particularly regarding enforcement of transitional water resource plans, and developing a more comprehensive suite of sanctions and powers to perform its regulatory responsibilities. Legal advice and consultations with Commonwealth government agencies is being considered to determine the best approach for strengthening the MDBA's regulatory powers.

Water Resource Plan Accreditation:

The MDBA wrote to Basin state governments, informing them of the MDBA's intent to publish a register on state government progress towards preparing water resource plans. The register was published on our website on 9 February 2018. This register includes an independent assessment of state progress. The MDBA is increasing resources dedicated to water resource plan accreditation and developing ways to streamline the accreditation process.

Protection of Environmental Flows:

The MDBA will publish a register on state measures for protection of environmental flows by June 2018. Work on the register has commenced.

A MDBA Memorandum of Understanding ([MOU](#)) with NSW Natural Resource Access Regulator (NRAR) was signed in late February 2018 to strengthen the relationships between the two parties and provide for joint activities, including: sharing of information and intelligence; enhancing staff compliance capabilities; and developing new technology.

End of Submission

Attachment A- Compliance review recommendations

MDBA Basin Wide Compliance Review actions
<p>MDBA Action 1. The MDBA will:</p> <ol style="list-style-type: none"> publish guidelines drawing on relevant standards for the requirements of hydrometric networks and hydrologic models for compliance and enforcement by 30 June 2018 publish annually from 2018 a report on the data quality and assurance processes for hydrometric data for Basin Plan reporting and river operations in the River Murray System.
<p>MDBA Action 2. The MDBA will publish an improvement program for its hydrologic models, as per Recommendation 4, by 30 June 2018.</p>
<p>MDBA Action 3. The MDBA will also review its arrangements as per Recommendation 5 and will prepare guidelines for consistent reporting of compliance activities by 31 March 2018.</p>
<p>MDBA Action 4. The MDBA will take a more proactive approach to compliance and enforcement by:</p> <ol style="list-style-type: none"> immediately adopting the revised protocol for handling and escalating allegations of non-compliance at Attachment B seeking a change to the Water Regulations 2008 to ensure uniform application of its compliance powers during the transition period to 30 June 2019.
<p>MDBA Action 5. By 30 June 2018 the MDBA will revise and publish its compliance and enforcement strategy to ensure compliance with the Basin Plan. The strategy will include:</p> <ol style="list-style-type: none"> a clear statement of the MDBA's expectations that compliance and enforcement is undertaken effectively by states, in line with best practice a risk-based audit program to check that Basin Plan obligations are being met, including state compliance arrangements guidelines or standards relevant to water measurement and compliance improvements to the system of assurance statements made by states and Australian Government agencies in meeting their Basin Plan obligations improved communication of the MBDA's compliance activities.
<p>MDBA Action 6. The MDBA will establish a dedicated compliance and enforcement branch, as well as an independent assurance committee to advise on the MDBA's compliance and enforcement work.</p>
<p>MDBA Action 7. By 30 June 2018 the MDBA will prepare and publish an SDL reporting and compliance framework that includes:</p> <ol style="list-style-type: none"> an explanation of how the 'reasonable excuse' and 'make good' provisions in the Basin Plan will be applied for SDL accounting purposes other lines of evidence, such as satellite data, crop returns and long term hydrologic models to complement self-reporting by states

Attachment A- Compliance review recommendations

MDBA Basin Wide Compliance Review actions
<ul style="list-style-type: none"> c. SDL compliance, accounting and reporting within its audit and assurance program d. improved public communication of SDL compliance and accounting arrangements.
<p>MDBA Action 8. To meet the 30 June 2019 deadline for water resource plans the MDBA will:</p> <ul style="list-style-type: none"> a. develop and keep up to date a public register of progress with water resource plan development, including its assessment as to whether any replacements of or amendments to transitional water resource plans are 'no less consistent' than the Basin Plan b. continue to work with states to find ways to streamline the accreditation process c. increase its current level of resourcing for the assessment of state water resource plans d. actively consider whether it should advise the Commonwealth Minister to agree to initiate the step-in provisions of the Water Act if there is insufficient progress on some water resource plans.
<p>MDBA Action 9. The MDBA will maintain a public register of state measures to improve the protection of environmental water and report annually on progress towards meeting this important Basin Plan milestone.</p>

MDBA Basin Wide Compliance Review recommendations
<p>Recommendation 1:</p> <p>To deliver a 'no meter, no pump' policy, it is recommended that governments:</p> <ul style="list-style-type: none"> a. mandate that all new meters on sale in Australia must meet AS4747 from 30 September 2018 b. require that 95% of meterable take in each water resource area is metered using AS4747 compliant meters by 31 December 2022 c. require the installation of telemetry for all entities with an average annual take of more than 100ML by 31 December 2022. For all others the requirement to install telemetry would be subject to a published risk assessment d. publish a mandatory protocol to be followed in the event of meter failure e. require installed meters to be validated by the compliance agency and then checked every five years f. require that all meters be easily identifiable by a unique reference number, and entitlement and pump details must be publicly accessible g. release a meter improvement plan by 1 July 2018 with annual reports on progress h. audit water take by stock and domestic and other rights holders to identify areas of stress on water resources from the exercise of these rights, and put in place measures to monitor compliance.

Attachment A- Compliance review recommendations

<p>Recommendation 2: To improve confidence in the measurement of take by floodplain harvesting in the northern Basin, it is recommended that NSW and Queensland:</p> <ul style="list-style-type: none"> a. include an updated assessment of water take by floodplain harvesting in their annual water accounts commencing immediately b. require that 95% of take by non-metered floodplain harvesting is accurately measured, for example, by calibrated storage level recorders by 30 June 2022 and publish annual milestones towards this objective.
<p>Recommendation 3: To achieve the coverage required to generate river flow data for compliance and enforcement purposes, it is recommended that each state review its hydrometric network to identify any gaps and maintenance backlogs and publish by 30 June 2019 a program for addressing any issues.</p>
<p>Recommendation 4: It is recommended that by 30 June 2018 states publish an improvement program for hydrologic models to account for water take including their plans for transitioning to eWater Source and ongoing improvement of model performance. If a decision is made not to transition to eWater Source, the reasons for this should be published.</p>
<p>Recommendation 5: It is recommended that by 30 June 2018 each state review its arrangements for compliance and governance to ensure they take account of the following principles:</p> <ul style="list-style-type: none"> a. encouraging a strong culture of compliance that is led 'from the top' b. clear assignment of decision making responsibilities at appropriate levels, with decisions made on the grounds set out in published compliance strategies c. a commitment to transparency d. compliance functions should preferably be undertaken by a single agency (with appropriate separation of enforcement and operational functions) or where this is not the case, the agencies should be well-aligned.
<p>Recommendation 6: It is recommended that by 30 June 2018 each state publish compliance strategies that include:</p> <ul style="list-style-type: none"> a. a risk-based strategy for guiding compliance monitoring effort b. annual audit priorities c. an escalation pathway to apply once non-compliance is detected d. a mandatory protocol for entitlement holders to follow in the event of meter failure e. a statement of the penalties and sanctions regime, and any improvements required f. annual reporting of data on compliance activities by location including the timeliness with which allegations are addressed g. provisions to ensure compliance staff are adequately trained h. a program of community awareness and education including a program to ensure that water plans, licences and management rules are expressed as simply as possible and guides for these instruments are published

Attachment A- Compliance review recommendations

<ul style="list-style-type: none"> i. a program to ensure information about entitlements, allocations, licence conditions, meter readings, account balances and so on are easily accessible to the public in real-time j. a program to ensure meters are identified by a unique reference number, and entitlement and pump details are publically accessible k. a commitment to effectiveness and efficiency, including the adoption of new technologies l. adequate resourcing based on a cost recovery pathway, with compliance budgets protected from the normal exigencies of government budgets.
<p>Recommendation 7: It is recommended that by 30 June 2018, states review their legislation and if needed propose any amendments necessary to ensure:</p> <ul style="list-style-type: none"> a. strong penalties and greater consistency between states b. an appropriate range of administrative, civil and criminal sanctions and penalties.
<p>Recommendation 8: It is recommended that Australian Government–state governance arrangements for implementing the Basin Plan are reviewed to ensure that all those with implementation obligations are engaged, statutory roles are respected, decisions are better integrated, and transparency is improved.</p>
<p>Recommendation 9: It is recommended that COAG reiterates its commitment to the 30 June 2019 deadline for water resource plan accreditation because of concerns arising from this review. It is further recommended that NSW and Victoria accelerate their work on preparing Basin Plan-compliant water resource plans.</p>
<p>Recommendation 10: To improve protection of environmental water in the unregulated rivers of the northern Basin it is recommended that the NSW and Queensland governments revise their water resource plans to include effective policies for the protection of environmental water, particularly during low flows. These policies should include event-based management or other innovative policy tools capable of delivering equivalent environmental outcomes. In the Barwon-Darling it is recommended that immediate steps are taken to introduce Individual Daily Extraction Limits and voluntary mechanisms to protect individual low flow events.</p>
<p>Recommendation 11: To improve the protection of environmental water in the southern-connected Basin it is recommended that governments fully implement the SDL adjustment mechanism including:</p> <ul style="list-style-type: none"> a. state policies to improve protection of environmental water (also called prerequisite policy measures) as required under the Basin Plan by 30 June 2019

Attachment A- Compliance review recommendations

- b. completion of supply, efficiency and constraints projects by 2024.

Recommendation 12:

It is recommended that the COAG commit to a Basin Compliance

Compact to implement the recommendations of the review initiated by the Prime Minister. The Compact would commit governments to the actions required to restore public confidence in water management within the Basin. The Compact would be published by 30 June 2018 with annual progress reports thereafter and would address:

- a. progress with the roll out of improved metering and measurement arrangements outlined in this report
- b. an update on each state's compliance strategy addressing the issues contained in this report
- c. a report on each state's compliance activities including the timeliness of handling allegations
- d. the establishment of a network of water compliance practitioners to promote best practice approaches, to be coordinated by the MDBA
- e. steps within each Basin state to ensure that Basin Plan-compliant water resource plans will be ready for accreditation within the agreed timelines
- f. progress with measures to improve the protection of environmental water including the toolkit measures in the northern Basin, and relevant components of the SDL adjustment mechanism.

Independent Panel Basin Wide Compliance Review recommendations

Recommendation 1: MDBA to revise, and clearly and publicly communicate, its compliance and enforcement arrangements. Explicit guidance must be provided to all parties on their reporting obligations, how MDBA will assess compliance, and how it will report publicly.

Recommendation 2: Council of Australian Governments (COAG) to endorse a proposal to explicitly require BOC, as part of its Water Act function of facilitating cooperation and coordination between MDBA and all Basin governments, to assist in bringing about the timely development of water resource plans. An amendment of the Water Act is the most effective way to implement this proposal. MDBA's authority as the relevant enforcement body for contraventions of the Water Act is to be maintained.

Recommendation 3: COAG to endorse a revision to BOC membership to:

- a. require BOC members to bring a whole-of-government view to the forum, which includes representing the interests of state river operators and environmental water managers
- b. allow MDBA to participate as a full member for matters relating to Basin Plan implementation, and as a non-voting member for river operations.

Recommendation 4:

Attachment A- Compliance review recommendations

Independent Panel Basin Wide Compliance Review recommendations
COAG to endorse an amendment to the Water Act to strengthen the standing of Authority members, restore public confidence and ensure greater transparency in and a bipartisan approach to, the appointment of Authority members. Amendments should include: <ul style="list-style-type: none"> a. to be eligible for appointment, an individual must have a high level of expertise, and be widely recognised as having high standing in, one or more fields relevant to the Authority's functions (relevant fields are specified in Section 178 of the Act) b. in recommending members to the Governor-General for appointment, the Minister must endeavour to ensure that collectively among the members there is a high level of expertise across all the specified fields.
Recommendation 5: COAG to endorse an amendment of the Water Act to provide a more comprehensive suite of sanctions and powers, such as appropriate evidentiary provisions and criminal sanctions.
Recommendation 6: The Commonwealth Minister to direct the Commonwealth Department to take a more active role that reflects the significance of water resource plans to the administration of the Water Act.
Recommendation 7: MDBA, with states and the Bureau of Meteorology, to review the Basin's hydrometric network to improve water management for the environment.
Recommendation 8: COAG to endorse a revision to the membership of BOC to include CEWH in matters relating to the Basin Plan.
Recommendation 9: MDBA to seek the formal advice of CEWH when assessing relevant provisions of water resource plans.
Recommendation 10: MDBA to ensure that accredited water resource plans include policies essential for the protection of environmental water, particularly low flows in the northern Basin, and the 'pre-requisite policy measures' for the southern connected Basin.

Matthews interim report recommendations
Structural reforms: Reconsolidate and significantly augment all compliance and enforcement functions now dispersed between WaterNSW and DPI-Water, into the Department of Industry.
To house the consolidated functions, legislate to establish a NSW Natural Resources Access Regulator.
The regulator would comprise a board, appointed by the applicable portfolio minister(s) but not subsequently subject to ministerial direction.
Pending advice to IPART from the board on longer-term resourcing requirements, interim resourcing levels for the first two years should be set and announced as part of the package.
Confer at least the following functions on the board:

Attachment A- Compliance review recommendations

<p>Matthews interim report recommendations</p> <ul style="list-style-type: none"> i. require the department to produce and publish, for each category of resource access right, a two-year strategic compliance assurance plan ii. approve an internal operations protocol that documents the processes for commencing, progressing and decision-making on compliance actions iii. oversight the delivery of compliance and enforcement activities, with authority to give directions to the department where improvement or corrective action is required iv. make decisions on whether to commence (or not commence) proceedings for serious offences based on information and proposals prepared by the department v. require regular twice-yearly reporting by the department on activities and results to the board, and thence the minister and the public <p>Independent investigation into NSW water management and compliance</p> <ul style="list-style-type: none"> vi. provide an annual stand-alone report to the minister, for public release, attesting to the adequacy of the department's regulatory activities, and information on areas that is has recommended or directed improvement vii. to ensure adequate resourcing, empower the board to advise IPART on the minimum necessary funding that should be recovered from access rights holders in order (in its opinion) to provide a high level of confidence that the subject resources are being accessed in accordance with lawful entitlements.
<p>The recommended ministerial package also envisages a letter from the Premier to the Chair of the MDBA proposing a range of Basin-wide initiatives to ensure all States are engaged alongside NSW in improving their compliance and enforcement efforts.</p>
<p>Public consultation on proposed measures</p>
<p>Access to information</p> <ul style="list-style-type: none"> a) Enable the public to readily access from a single source, all details of entitlements, including: name of holder; licence number; licence conditions; water entitlement; water allocations; meter readings; real time water account balance; and all trading activities. b) Enable the public to readily identify any specific pump, off-take, or works.
<ul style="list-style-type: none"> c) Pay particular attention to improving the transparency of environmental water entitlements and flows. In-stream releases should be more clearly identified. The targets, goals, and environmental response should be more readily available. The responsible environmental water manager should be identified. The rules by which flows are being protected should be announced in conjunction with the flow itself.
<p>Reporting channels</p> <ul style="list-style-type: none"> d) Establish and promote a statewide non-compliance reporting hotline and email reporting channel. This should include facility for anonymous reporting. e) Require regular feedback to informants on actions taken in response to complaints, within a designated timeframe.

Attachment A- Compliance review recommendations

<p>Matthews interim report recommendations</p> <p>f) Develop clear channels within the department to carry forward public reporting and ensure independent scrutiny of actions by water users. These channels should be designed to ensure reports go beyond first line managers; reports need also to be brought to the attention of sufficiently senior levels in the department.</p> <p>g) Require the routine publication of the identities of water users found guilty of serious offences.</p> <p>h) Implement comprehensive annual public reporting on NSW compliance and enforcement activities, as already required under the National Framework for Compliance and Enforcement Systems, but not yet in place in NSW. Reports should be delivered to a fixed schedule and according to a standard format developed after public consultation.</p> <p>i) Require annual public reporting of compliance and enforcement activities for each NSW Water Sharing Plan—and after 2019, each NSW Water Resource Plan under the Basin Plan. Reports should be delivered to a fixed schedule and according to a standard format developed after public consultation.</p> <p>j) Require publication and upkeep of an on-line description of the compliance and enforcement arrangements, including contact details and ‘who-is-responsible-for-what’ for each Water Sharing Plan, and for NSW as a whole.</p>
<p>Structural reforms</p> <p>a) Consistent with the ministerial reform package, provide institutional separation of compliance staff from water policy, water planning, water regulation, water delivery, environment and agriculture staff.</p> <p>b) Seek to draw a stronger distinction/separation between ‘compliance’ and ‘enforcement’ responsibilities so that the need when necessary, to move from educative, collaborative work to bring non-compliant activities into compliance does not result in reluctance by officers to engage in sharper edged ‘enforcement’ work when warranted.</p>
<p>Accountabilities</p> <p>c) Clarify responsibility, authority, accountability, and delegations within the compliance and enforcement function. Specify the levels at which approvals are given for each level of compliance action. Specify the circumstances under which senior officers are to be kept informed and document the rare and exceptional circumstances under which senior officers may legitimately intervene in specific enforcement actions and cases.</p> <p>d) Consider designating a Chief Compliance and Enforcement Officer under the board and provide statutory or other form of independence from ministerial or senior officer intervention on operational matters. Consider appointing the Chief Compliance and Enforcement Officer to the board itself.</p> <p>e) Commit to periodic third-party auditing of NSW compliance and enforcement systems by other states. This could be a reciprocal arrangement facilitated by the MDBA and an opportunity for the MDBA to show leadership in compliance matters.</p> <p>f) The MDBA should take into account proposed compliance and enforcement arrangements before it approves/accredits each draft Water Resource Plan under the Basin Plan. The Barwon–Darling Water Resource Plan to be brought forward for early assessment in this regard.</p>

Attachment A- Compliance review recommendations

Matthews interim report recommendations
<p>g) The potential powers, roles and functions of the MDBA in compliance and enforcement, both before and after 2019, to be more clearly articulated and made public. This should include a clear statement, in advance, of the circumstances under which the authority's legislative 'reserve' power to intervene would be mobilised if compliance and enforcement by basin states is judged insufficient.</p>
<p>Metering</p> <p>a) Make the requirement for metering universal: 'no metering, no pumping'.</p> <p>b) Remove all scope for self-reporting, such as log books in lieu of fully operational water meters.</p> <p>c) Enforce modern Australian metering standards and bring forward the date to which certain current non-compliant meters are 'grandfathered' in the Barwon–Darling and other systems.</p> <p>d) Reduce tolerance for argued differences in conditions between northern and southern areas of the Murray–Darling Basin. Standards and rules (e.g. metering) should be basin-wide unless the need for exceptional northern arrangements can be convincingly demonstrated to other states and the MDBA.</p> <p>e) Reinforce a mandatory requirement for meter readers to report defective, inoperable or apparently tampered-with meters in real time. Require random and more frequent meter reading schedules. Enforce random cross-checks of meter readings. Publish meter readings in real time.</p> <p>f) Publicly specify unambiguous responsibilities for metering costs: purchase, installation and maintenance are costs to irrigators; stream gauging, meter reading, etc. are costs to government, albeit largely cost recovered through IPART.</p>
<p>Compliance enforcement</p> <p>g) Require structured and documented processes for commencing, progressing, and decision making on compliance actions. Priorities should be set and pursued to completion on the basis of regular structured risk assessment processes. Clear protocols for the engagement at key points, of senior officers and the board should be developed and observed.</p> <p>h) Assertively adopt and implement new monitoring and compliance techniques and technologies such as: remote sensing of crop growth and water holdings; back to base and remote meter reading and telemetry; and targeted covert operations. These techniques can be made first-line tools or utilised as cross-checks of more conventionally sourced data. To date, there has been limited use only of these techniques—it is time to utilise them assertively.</p> <p>i) Implement post-action audits of each major enforcement case to extract learnings and process improvements for the future and critically, build in the improvements into policies, procedures and practice.</p> <p>j) Require progress reporting to senior levels for all cases. 'Traffic light' or similar reporting techniques should highlight any slippage in individual case management.</p>
<p>Resourcing</p> <p>k) Ensure more stable and secure resourcing for compliance and enforcement activities by the dedication of core funding by means of IPART-approved charges.</p>

Attachment A- Compliance review recommendations

Matthews interim report recommendations
<p>Capacity building</p> <p>l) Build capacity through targeted recruitment of specialist investigators, noting that police experience is not by itself a sufficient guarantee of competence in investigations. Consider contracting specialist investigators for specific or high profile cases.</p> <p>m) Require minimum levels of training for compliance and enforcement staff in investigation techniques (Certificate IV in Government Investigations) as well as in domain knowledge such as the NSW Water Management Act, the Water Act, the Basin Plan, and specific conditions of licences.</p> <p>n) Make ethics training a pre-requisite for commencement including for senior level lateral recruits to the public service. Induction training should be mandatory for all staff and should be delivered in a timely fashion before operational commencement. Other relevant training, for example in the Evidence Act, will be important. Refresher courses should be scheduled for each officer and become part of their performance development plans.</p>
<p>Agency processes</p> <p>o) Specify in operational procedures how DPI-Water and Lands & Forestry should work together on overlapping issues such as irrigation works affecting Crown land.</p> <p>p) Specify in operational procedures how DPI-Water should work with other agencies when non-water legislation is involved, e.g. fisheries, forestry, environment, etc.</p> <p>q) Encourage wider and more ready use of innovative penalties for breaches of licence conditions other than monetary penalties. This includes suspension of licences or penalty reduction of water allocations. Such penalties could be matched more directly to the benefit otherwise gained by a water user from an illegal extraction of water.</p> <p>r) Seek to establish arrangements for best practice sharing among jurisdictions and among other sectors of the natural resource-based industries.</p>
<p>MDBA contributions</p> <p>a) The roles and functions, and potential scope for action by the MDBA in compliance and enforcement, both before and after 2019, should be more clearly articulated and made public. This should include a clear statement, in advance, of the circumstances under which the authority's legislative 'reserve power' to intervene would be mobilised if compliance and enforcement by a basin state were judged insufficient.</p> <p>b) As a matter of urgency, a revised whole-of-basin compliance and enforcement strategy should be developed. The strategy should include standards and the levels of effort (resourcing) to be achieved by each member state. The objective would be to build confidence that all states were achieving a similar standard of compliance. The strategy should set out a rolling program of review of the highest areas of risk of non-compliance and routinely audit the adequacy of each state's water measurement (especially metering) and monitoring arrangements. The strategy should require an annual report to the Ministerial Council on the performance of all basin states in compliance and enforcement. This report would be made public.</p>

Attachment A- Compliance review recommendations

<p>Matthews interim report recommendations</p> <p>c) As a complementary measure, require more effective annual assurances from the basin states about the compliance and enforcement arrangements in place in each state. These assurances should attest to the state's achievement of the standards and levels of effort set out in the above whole-of-basin compliance and enforcement strategy. They should provide quantitative and qualitative indicators of performance to a standard and format to be set by the authority. The assurance reports would be made public.</p> <p>d) Implement reciprocal periodic third party auditing of each basin state's compliance and enforcement systems by other states.</p> <p>e) Sponsor the formation of a national forum for compliance and enforcement agencies from basin states with a view to developing a community of practice to share best practice; tackle trans-border compliance issues and provide advice on opportunities for systemic improvements to the authority and the Ministerial Council.</p> <p>f) Announce now that the MDBA will take into account proposed compliance and enforcement arrangements before it approves/accredits any draft Water Resource Plan under the Basin Plan. The Barwon–Darling Water Resource Plan should be brought forward for early assessment in this regard.</p> <p>g) Announce now that the new Water Resource Plans will be assessed by the MDBA and Commonwealth against the criterion of the adequacy of the arrangements proposed for protecting environmental flows and entitlements.</p>
<p>Protection of environmental flows</p> <p>Pending development of the longer term solution, an interim solution that would assist in at least the Barwon–Darling River system could involve:</p> <ul style="list-style-type: none"> • implementation of individual daily extraction limits (which were already foreshadowed by the NSW Government when the Barwon–Darling Water Sharing plan was first introduced) • greater use of event-based mechanisms such as more flexible commence-to-pump rules during periods of low flow • manipulation of flow rates from tributaries where hydrological regulation provides the opportunity • publication of simple explanatory materials to assist public understanding of the way the new interim processes will operate—to build public confidence in the arrangements. This would need to be complemented by (flow) event-by-event public communications about the rules applying.
<p>Matthews final report recommendations</p> <p>Implementation of the reforms</p> <p>Recommend that top departmental management move quickly to complete the implementation master plan, commission work on individual project plans, establish and commence operations of the necessary program oversight and steering arrangements.</p> <p>Resourcing</p>

Attachment A- Compliance review recommendations

Recommend that the proposed top-level steering committee move quickly to clarify reform project budgets, and especially to make available the necessary staff resources and time.
<p>Implementation challenges</p> <p>Recommend that the government announce now its intention to commission an independent audit and evaluation of results against ministers' original target outcomes, after 12 months</p>
<p>Inter-agency relationships</p> <p>Recommend establishment of machinery and protocols for Natural Resources Access Regulator, WaterNSW and the department's new Crown Lands and Water Division to stay in touch and to cultivate a constructive, collaborative working relationship.</p>
<p>Overall plan for implementation</p> <p>Recommend that an implementation plan be completed as a matter of urgency and maintained thereafter</p>
<p>Overall plan for implementation</p> <p>Recommend that an early task for each 'project lead' should be to submit to the steering committee their plans for consultation</p>
<p>Overall plan for implementation</p> <p>Recommend that the Secretary issue a formal statement of membership and terms of reference for the Steering Committee and make clear his expectations of a hands-on supervisory role and that the committee is ultimately accountable for progress.</p>
<p>Overall plan for implementation</p> <p>Recommend that an internal funding allocation for reform implementation be announced as soon as possible</p>
<p>Overall plan for implementation</p> <p>Recommend that, immediately following the release of the MDBA's own Compliance Review report, discussions be undertaken with the MDBA and the Commonwealth about the possibility of accessing Commonwealth funds available for Basin Plan implementation. Commonwealth funding for metering, compliance and enforcement, and protection of environmental water may advance the objectives of both levels of government.</p>
<p>Overall plan for implementation</p> <p>Recommend that that the senior steering committee accept responsibility to facilitate the release and transfer of staff with expertise to relevant reform projects. This will sometimes require explicit choices to defer other work in favour of the reform projects.</p>
Specific allegations in the Barwon-Darling

Attachment A- Compliance review recommendations

Recommend that the Natural Resources Access Regulator consider conducting a post-case review to identify process improvements for similar cases in the future.
<p>Conduct of senior public servants</p> <p>Recommend that, in the light of the Four Corners program, there is a review of departmental Code of Conduct, as well as a review of the departmental guidance documents covering the handling of classified and sensitive government information.</p>
<p>Conduct of senior public servants</p> <p>Recommend that there be a review of all ethics-related departmental policies, including: Code of Conduct Policy, Fraud and Corruption Prevention Policy, Gifts and Benefits Policy, Sponsorship Policy, ICAC Corruption Prevention Policy, Public Interest Disclosures Policy and processes.</p>
<p>Conduct of senior public servants</p> <p>Recommend a review of staff induction processes including induction training, but possibly also induction briefings and 'on-boarding' material/welcome letter specifically addressing the ethical and conduct obligations of public servants.</p>
<p>Conduct of senior public servants</p> <p>Recommend updating the current online learning module about the departmental Code of Conduct, and making the module mandatory for all staff.</p>
<p>Conduct of senior public servants</p> <p>Recommend consideration of how lateral appointees to the department from outside the public service can quickly absorb how the ethical and conduct obligations on public servants differ from those applying in the private sector.</p>
<p>Conduct of senior public servants</p> <p>Recommend consideration of how staff selections—especially at more senior levels— could take better account of the ethical example officers provide to others. This would need to be consistent with the merit principle but could be encouraged by means of revised staff selection criteria.</p>
<p>Conduct of senior public servants</p> <p>Recommend a re-design of staff feedback processes to encourage frank and empowered communication up the line without staff needing the cover of anonymous formal whistle-blower procedures (which should continue to be available).</p>
Conduct of senior public servants

Attachment A- Compliance review recommendations

Recommend the continuing reinforcement by the Secretary and other top managers of the importance of ethical conduct, as well as communication that ethical conduct is not an onerous burden imposed on public servants, but rather a positive attribute of a modern workplace that encourages pride, collegiate commitment, loyalty, morale and ultimately, team performance.
<p>Conduct of senior public servants</p> <p>Recommend measures to ensure that ethical and public service conduct issues continue to receive departmental management attention into the future long, after the current impact of the Four Corners experience has dimmed.</p>
<p>Stakeholder engagement</p> <p>Recommend the department seek to make a significant adjustment to historical departmental practice by finding ways to provide greater access for water stakeholders such as environmental groups and agencies who until now have primarily engaged with the Office of Environment and Heritage.</p>
<p>Stakeholder engagement</p> <p>Recommend that the department seek to foster more constructive relationships with stakeholders elsewhere within the NSW Government, including the critical relationships with WaterNSW and the Office of Environment and Heritage.</p>
<p>Irrigator engagement</p> <p>Recommend that the primary forum for irrigator's consultation be established with published terms of reference (including guidance on how the forum will conduct its business) and membership.</p>
<p>Implementation advice on the engagement strategy</p> <p>Recommend that: lead responsibility is made clearer; the timeline for finalisation of the strategy be settled, the authorisation (approval) process be specified in advance; and that the Minister, the Secretary, and his corporate communications staff be consulted as work proceeds.</p>
<p>Clarifying agency roles</p> <p>Recommend that the settlement between WaterNSW and NRAR be finalised as soon as possible, and then once finalised, be published as soon as possible.</p>
<p>Preparing for the new NRAR Board</p> <p>Recommend that agenda papers be available for the first meeting of the incoming NRAR Board covering the following: background of NRAR, processes for identifying conflicts of interest, Chief Regulatory Officer work to date, NRAR Establishment Plan, strategic work priorities and draft workplan, next steps.</p>

Attachment A- Compliance review recommendations

<p>Preparing for the new NRAR Board</p> <p>Recommend that the Minister consider meeting the Board at its first meeting to communicate his expectations, including his commitment to the independence and success of the new agency.</p>
<p>Preparing for the new NRAR Board</p> <p>Recommend that the Natural Resources Access Regulator Establishment Plan be published as soon as the incoming Board has endorsed it.</p>
<p>Implementation advice to the department</p> <p>Recommend that any ambiguity about the powers of the NRAR board versus the residual powers of the department Secretary be clarified before the commencement of NRAR by means of a charter letter or administrative Memorandum of Understanding from the Secretary of the department to the Chief Regulatory Officer within NRAR</p>
<p>Implementation advice to the department</p> <p>Recommend clean break of WaterNSW and the department along these lines: All compliance and enforcement staff return to department (including proportional budget), advice, education, sanctions, reporting, and liaison machinery.</p>
<p>Implementation advice to the department</p> <p>Recommend that the settlement between WaterNSW and NRAR be finalised and published as soon as possible.</p>
<p>Protection of environmental water</p> <p>Recommend that the informal “working group” of part-time officers be re-designated an “Interagency Task Force” established with Ministerial or Secretary-level imprimatur to complete its defined, high profile task within a given time.</p>
<p>Protection of environmental water</p> <p>Recommend that timelines be set to deliver the interim report solution within three months and that the more enduring solution be requested to be available well before the 2019 deadline for the finalisation of Water Resource plans, and an experienced senior officer (public service or contractor) be dedicated to lead the task full time.</p>
<p>Protection of environmental water</p> <p>Recommend that clear lines of accountability, regular reporting, and consultation and approval authority be established at the outset in terms of reference for the task agreed by ministers or secretaries.</p>
<p>Protection of environmental water</p>

Attachment A- Compliance review recommendations

Recommend that the MDBA be invited to build the Task Force process into the Authority's own work program as its principal vehicle for resolving the long-unresolved issues associated with protection of environmental water in NSW, with potential for application in other jurisdictions where required.
<p>Protection of environmental water</p> <p>Recommend that the terms of reference (in relation to the task) seek options and advice on at least the following: voluntary agreements with northern irrigators, event-based management in unregulated systems, advice to manage low flows, individual and total daily extraction limits, abolition of carryover arrangements, possible river operator oversight, public awareness, environmental objectives, broader use of Barwon-Darling solutions, and mechanisms for implementation</p>
<p>Intergovernmental and MDBA processes</p> <p>Recommend active and strategic input to the MDBA Review and to the decision-making processes to follow, by NSW at officials level up to and including the Basin Officials Committee, and at Ministerial level.</p>
<p>Intergovernmental and MDBA processes</p> <p>Recommend NSW seek to have the future compliance and enforcement roles of the Authority specified as follows: Focus compliance at Basin Plan level, exercise its full powers to ensure compliance, equivalent standards and levels of effort among all Basin states, provide a common framework for states to execute and report compliance, sponsor compliance best practice sharing among states, accept responsibility to keep compliance on whole-of-basin agenda into future.</p>
<p>Metering policy – new technologies</p> <p>Recommend initiation of an Expression of Interest or Request for Proposals procurement process for new monitoring and compliance technologies (such as remote sensing of crop growth and water holdings).</p>
<p>Metering policy – new technologies</p> <p>Recommend that opportunities to collaborate in harmonisation of remote sensing standards and procurement with other basin states and/or the MDBA should be explored.</p>
<p>Metering policy</p> <p>Recommend that, to determine appropriate requirements for metering, consultation be broad: parties in addition to irrigators will have strong interests.</p>
<p>Metering policy</p> <p>Recommend that NSW urgently engage with the MDBA to outline NSW's objectives and intentions (including proposed consultation arrangements) in relation to metering and seeking a reconciliation of their respective positions.</p>

Attachment A- Compliance review recommendations

Ombudsman report observations
Vital that any water compliance and enforcement effort is adequately funded and resourced and staffed by qualified experienced persons with investigative experience in dealing with offences where the burden of proof is beyond reasonable doubt
Important that investigators are supported by, and have easy access to, water experts and legal officers experienced in water issues
Strong leadership support and a clear mandate from Government are paramount to the success of any future compliance model
We recommended that the Government, with particular input from all agencies that share responsibilities for water management and regulation in NSW, consider conducting a comprehensive review of the water regulatory system.
Chronic under-resourcing of the compliance and enforcement roles.
Constant stream of restructures and transfers of water regulation responsibilities (seven times since 2007) that resulted in significant staff turnover, loss of corporate memory, and poor staff morale.
A clash of cultures between a customer service focus and enforcement obligations have compromised the effectiveness of carrying out compliance and enforcement functions.
Australian National Audit Office concerns
The lack of specific, measurable deliverables, and outcome measures in the milestones and criteria for assessing the performance of NSW under the <i>National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin</i> (the NPA) represent significant weaknesses in the performance framework.
While the Department of Agriculture and Water Resources has followed agreed processes for monitoring performance, there was a lack of evidence and explanation to substantiate its positive assessment of NSW's progress under Milestone 8 of the NPA for 2015–16, in light of serious issues raised about the state's water regulation arrangements. Importantly, there was little in the Department of Agriculture and Water Resources' submission to the Minister for 2015–16 to suggest that there were risks that NSW was not delivering environmental water consistent with the Basin Plan. These factors have limited the effectiveness of Department of Agriculture and Water Resources' assessment.

Attachment A- Compliance review recommendations

Senate inquiry interim report
The committee recommends that that the Senate grants an extension of time for the committee to report, to 28 March 2018

Outstanding reports

Integrity of the water market in the Murray-Darling Basin.	Senate Committee for Rural and Regional Affairs and Transport	Ongoing. Interim report available - https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/MurrayDarlingPlan
Independent audit of Queensland non-urban water measurement and metering framework and compliance arrangements.	Queensland Government	Ongoing - https://www.dnrm.qld.gov.au/water/independent-audit-of-queensland-non-urban-water-measurement-and-compliance