



Australian Government



Inspector-
General of
Water
Compliance

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Stephen Palethorpe
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Senate Standing Committees on Environment and Communications

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Dear Stephen Palethorpe,

Thank you for providing written questions on the *Water Amendment (Restoring our Rivers) Bill 2023* (the Bill). I am pleased to provide the following in response to your two questions on duplication and also unintended consequences arising from the Bill.

Question 22. In its submission to the Productivity Commission inquiry, the IGWC pointed out that there are some functions that remain with the MDBA which should be transferred to the IGWC, such as SDL accounting. The IGWC also noted that, in some instances, there is a lack of clarity resulting in the risk of duplication of monitoring and oversight activities. Are you able to explain which monitoring and oversight activities are still duplicated between agencies? Which functions should be transferred to the IGWC?

Answer (Inspector-General of Water Compliance):

In the context of the Water Act and the Basin Plan, the independent Inspector-General of Water Compliance (the Inspector-General), broadly has the roles of:

- Monitoring and overseeing the performance of functions and exercise of powers by agencies of the Commonwealth
- Monitoring and overseeing relevant Commonwealth, and Basin state and territory government agencies' performance in the management of Basin water resources
- Enforcing compliance with Commonwealth laws that regulate the management of Basin water resources
- Engaging with the Australian community on the management of Basin water resources.

The Inspector-General's submission to the Productivity Commission (PC) highlighted matters relevant to the PC's consideration of the efficiency and effectiveness of broad institutional architecture and governance arrangements for the management of water resources in the Murray-Darling Basin.

The Inspector-General, the Murray-Darling Basin Authority (MDBA) and the Productivity Commission (PC) all undertake aspects of monitoring and/or reporting on Basin Plan implementation and/or its effectiveness. The risks of duplication are known and actively managed by the Inspector-General to avoid duplication.

The compliance and enforcement functions were separated from the MDBA and transitioned to the Inspector-General in August 2021. Some regulatory activity remains with the MDBA, for example, Sustainable Diversion Limit (SDL) accounting.

Information required from the MDBA regarding SDL accounting to support SDL compliance by the Inspector-General is being managed cooperatively by both agencies, and where necessary, agreed arrangements are prescribed in a Memorandum of Understanding between the Inspector-General and the MDBA. Further, the Inspector-General is considering the need for a further assurance program on SDL accounting, if required. This forms part of considerations for the Inspector-Generals' SDL Compliance Framework which is planned for publication in late October 2023.

The MDBA is responsible under the Water Act and Basin Plan for, among other things, periodic evaluations of the effectiveness of the Basin Plan. These evaluations include matters which the Inspector-General is responsible for (for example, Basin Plan Schedule 12 Matter 19 relating to compliance with water resource plans). The Inspector-General's requirements are being managed cooperatively by both agencies, and where necessary, agreed arrangements are prescribed in a Memorandum of Understanding between the Inspector-General and the MDBA.

The Inspector-General notes the Rural and Regional Affairs and Transport References Committee, in its 2021 inquiry into the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* recommended the Australian Government:

"better publicises the Inspector-General of Water Compliance's functions through the development of an information campaign. The campaign should, amongst other things, clarify how the Inspector-General of Water Compliance's role interacts with the Murray-Darling Basin Authority and basin state agencies."

This reflected the Select Committee on the Multi-Jurisdictional Management and Execution of the Murray Darling Basin Plan report on *Constitution Alteration (Water Resources) 2019*, where it was recommended:

"the Commonwealth and basin states, through the Murray-Darling Basin Ministerial Council, create, maintain and make easily accessible a detailed, comprehensive, clearly set-out and collectively-owned roadmap of the Murray-Darling basin's governance framework which clarifies decision-making and accountability between levels of governments and agencies for each aspect of the Murray-Darling Basin Plan."

The Inspector-General has recently developed its regulatory policy, which seeks to provide clear, plain English guidance around the role of the Inspector-General.

The Inspector-General notes the PC inquiry (Murray-Darling Basin Plan: Implementation review 2023), and also the independent review of the Inspector-General of Water Compliance are both currently underway. These reviews are currently considering matters relating to the functions, powers, independence and other institutional governance arrangements of the Inspector-General in the broad context of water management. The Inspector-General supports these reviews and awaits their outcomes.

The matters described above are separate to the SDL compliance matters proposed for law reform in the *Water Amendment (Restoring Our Rivers) Bill 2023*.

Question 23: The IGWC submission advised that it had 'identified potential unintended consequences of the reforms relating to my existing oversight functions' and that the Department of Climate Change, Energy, the Environment and Water had subsequently been notified. Are you able to explain what

unintended consequences are being referred to? What is being done to address these?

Answer (Inspector-General of Water Compliance):

As noted in the Inspector-General of Water Compliance (the Inspector-General) submission dated 29 September 2023, the Inspector-General has identified the need to consider the operation of the Inspector-General's monitoring and oversight functions with respect to the new frameworks proposed in the *Water Amendment (Restoring Our Rivers) Bill 2023*. The monitoring and oversight functions apply to the entirety of the Water Act except those elements that are specifically prescribed as being outside of the Inspector-General's jurisdiction (see Water Act section 215C). This meant, as it stands in the *Water Amendment (Restoring Our Rivers) Bill 2023* introduced on 7 September 2023, the Australian Competition and Consumer Commission (ACCC) and the Bureau of Meteorology (the Bureau) will be subject to the Inspector-General's oversight in performing their new functions under the Water Act should the Bill be passed by the parliament without amendment.

Existing ACCC activity governed by the Water Act is currently excluded from oversight by the Inspector-General. This sets a clear policy precedent for the approach to this issue. For example, activity under the Water Act Parts 4 & 4A (relating to Basin water charge and water market rules) are specifically excluded from the Inspector-General's functions in section 215C(1)(a) & (b).

Further, with respect to the ACCC, it will be an appropriate enforcement agency for the purposes of new Parts 5, 5A and 10AC. It will, therefore, be open to the ACCC to exercise its powers with respect to those parts and, potentially, with respect to the Inspector-General, and/ or staff supporting the Inspector-General in some circumstances. The Inspector-General therefore considers it would be inappropriate for the role of the Inspector-General to oversee the ACCC's exercise of its regulatory powers with respect to the Inspector-General's role or supporting staff.

The Inspector-General therefore supports the government amendment to the *Water Amendment (Restoring Our Rivers) Bill 2023*, as introduced on 18 September 2023, to remove independent monitoring and oversight of those parts of the Water Act for which the ACCC is the appropriate enforcement agency.

Existing Bureau activity governed by the Water Act is currently included for oversight by the Inspector-General. This sets a clear policy precedent for the approach to this issue. For example, with respect to the Bureau, the Inspector-General currently has a function of monitoring and independent oversight of its performance of functions and exercise of powers under Part 7, relating to its national water information function. The new Part 7A complements Part 7 by setting out requirements in relation to Murray-Darling Basin (the Basin) water information.

The Inspector-General therefore does not propose any change to existing arrangements with respect to the Bureau in the *Water Amendment (Restoring Our Rivers) Bill 2023* as introduced on 7 September 2023.

Yours sincerely,



Troy Grant
Inspector-General of Water Compliance