

Office of the Chief Executive

Ref: EC23-000775

Mr Peter Harris AO
Independent Reviewer
Inspector-General of Water Compliance Powers
By Email

Dear Peter

I write following the release of your Interim Report of the Independent Review of the Inspector General of Water Compliance (IGWC), and your call for submissions.

Following amendment to the *Water Act 2007* (Cth) and the *Basin Plan 2012* (Cth), the IGWC was formally established in 2021. The Murray-Darling Basin Authority's (MDBA) compliance and enforcement responsibilities were subsequently transferred to the IGWC.

The establishment of the IGWC and transfer of compliance responsibilities have allowed for the independent management of compliance with the Basin Plan and Water Act. This has been an important contribution to help restore a level of community confidence in Basin Plan implementation.

The IGWC and MDBA have a joint interest in strong and effective working arrangements. In support of this, a Memorandum of Understanding (MoU) has been established between the MDBA and the IGWC; clarifying roles and responsibilities and allowing for the provision and sharing of information and expertise as required.

The MDBA is comfortable with the existing roles and responsibilities of the IGWC and other parties in terms of compliance. We note the amendments introduced by the Government through the *Water Amendment (Restoring our Rivers) Bill 2023* will provide further clarification regarding sustainable diversion limit (SDL) accounting.

I note that your Interim Report refers to the theme of 'data reliability and data dependence'. This has particular relevance to the management, implementation and compliance reporting for SDLs, both in terms of the data collation and modelling dimensions.

It is important to be clear on current roles and responsibilities. At the beginning of each year, the MDBA determines the SDL and provides this to Basin states. Basin states provide the MDBA with the annual permitted take and annual actual take data at the end of each water year, which includes the states' assessment of their compliance position. The MDBA then reviews the position (consistent with the Basin Plan accounting arrangements) before the Authority develops the register of take for each SDL resource unit, including the cumulative balance for that resource unit.

The cumulative balance determines whether there is an exceedance in a resource unit. In the event of an exceedance, the IGWC role is enlivened, most notably in connection with reasonable excuse. The IGWC does not determine the existence of an exceedance.

Owing to this, the data dependence and associated modelling that you discuss only exist when exceedances are determined. If the Basin state and the MDBA do not determine an exceedance, there is no role for the IGWC. Taking a broader community confidence lens, however, it should be possible for the IGWC to satisfy himself as to the robustness and appropriateness of the arrangements, data collection, modelling and assurance processes behind the determination of an exceedance or otherwise. Given there is limited scope for the MDBA to undertake assurance as part of its annual process, the MDBA expects that the IGWC would conduct such audits to have confidence in data. Engagement with these questions would seem to be matters generally within the functional ambit of the IGWC (per section 215C of the Water Act), noting the IGWC's capacity to conduct inquiries (section 239AA of the Water Act) and audits (section 73L of the Water Act) into relevant matters. Additionally, the MOU between the MDBA and the IGWC explicitly invites the IGWC to embed staff in the MDBA to improve understanding of the processes associated with SDL Accounting.

While not directly canvased in your interim report, I am advised there has been some suggestion that the IGWC could be responsible for overseeing SDL accounting and compiling the registers of take – effectively determining whether an exceedance in the cumulative balance exists. We see two key problematic issues with this proposition. One is that it unpicks the key tenet of independent oversight on which the IGWC was founded. If the IGWC compiled the registers, who would be the independent point of review for managing compliance with rectifying any exceedance? This issue was core to the Productivity Commission's 2018 recommendation for the establishment of an independent compliance agency.

Secondly, duplicating this capability with the MDBA is, as you suggest in your report, impractical, even if it was seen as optimal from a policy sense. The IGWC does not currently have the capability to undertake this role. To assume this function, significant technical expertise, both policy and modelling, would need to be established within the Office of Water Compliance. This would effectively duplicate the same function, capacity and capability as is required in the MDBA with no discernible benefit while noting the MDBA would still be required to have such functions even if the IGWC did compile the register of take.

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While the regulatory dimension of the IGWC is important, so too is the enabling environment in which we operate. This requires that the MDBA maintains its skill base, expertise and experience in connection with our modelling capability and accounting policy. Modelling resources are difficult to recruit, develop and retain. Proficient modellers require a solid understanding of the models, policy history and legislative framework in which the models are used, in addition to any foundational modelling skills. Specialised expertise and lengthy experience are often needed to diagnose and solve modelling problems.

Demands for modelling are also significant. The MDBA's Hydrological Analysis Program supports a number of activities in the MDBA that satisfy legislative obligations, including analysis for river operations, advice and assessment of Water Resource Plans (WRP), and modelling for the Sustainable Diversion Limit Adjustment Mechanism and Basin Plan Review. The Program also support Basin states with the determination of annual permitted take for the Murray and Lower Darling – capability which, if assumed by the IGWC, would undermine their independence. A list of the activities supported by the Hydrological Analysis Program is provided at Attachment A.

The MDBA's modelling capabilities are critical to supporting confidence and trust in the MDBA's decision making around our Basin Plan and River Management responsibilities. Disaggregation of modelling from the MDBA would further weaken Basin modelling capabilities and undermine the capacity of the MDBA and Basin states to effectively plan for and manage Basin Plan implementation and review.

Similarly, the MDBA needs to retain skills in accounting policy to enable it to also fulfil broader but related roles in WRP assessment and Basin Plan Review.

The MDBA therefore considers splitting modelling capabilities to the IGWC is not feasible or appropriate. I note the report refers to 'lengthened chains of data assessment', with delays potentially creating 'irrevocable situations in water allocation'. While we agree that timely assessment of SDL compliance is important, we do not agree that issues arising from delays will become 'irrecoverable' due to the long-term nature of SDL accounting. We would be happy to discuss reasons for delays and possible solutions further with you if it would be of assistance.

Thank you for the opportunity to input to your Review. The MBDA would be pleased to assist with any further information that may be required. Please contact Tim Goodes, Executive Director, Basin Plan, tim.goodes@mdba.gov.au or on 0401 716 700 for further information.

Yours sincerely



Andrew McConville

24 November 2023

Attachment A – List of activities supported by the MDBA Hydrological Analysis Program

The MDBA Hydrological Analysis Program undertakes a number of functions. An overview of current projects is described below.

Technical expertise to support policy and project implementation	Technical expertise to support River Operations and management	Advice and support for policy development and planning
<ul style="list-style-type: none"> Core modelling (Joint Programs, BAU) <ul style="list-style-type: none"> Including Annual Permitted Take for SDL Resource Units and CAP modelling, as well as development, maintenance and documenting of hydrological models for Murray and Lower Darling Long Term Diversion Limit Equivalent (LTDLE) factors review Water Resource Plan (WRP) assessments of BDL and WRP model scenarios Preparation and conduct of Sustainable Diversion Limit Adjustment Mechanism (SDLAM) Reconciliation Technical advice on Basin state constraints programs Technical input and advice to the Integrated River Modelling Uplift (IRMU) Program Theme lead and coordinator for Murray-Darling Water and Environment Research Program (MD-WERP) Hydrology Theme Development of model scenarios and tools for implementation of Enhanced Environmental Water Delivery (EEWD) project Input to support Hydrometric Network and Remote Sensing (HNRS) program Technical analysis of Basin state SDLAM programs, including options and outcomes advice Assessment of NSW Regional Water Strategies 	<ul style="list-style-type: none"> The Living Murray modelling (TLM) (Joint Program, BAU) Transition of Salinity Modelling to new modelling platforms (e-Water Source) Salinity Modelling (Joint Program, BAU) Modelling to support the Barmah-Millewa Feasibility Study (Joint Program) Options assessment for Commonwealth Environmental Water Office (CEWO) River Operations (Joint Program, BAU) <ul style="list-style-type: none"> Resource assessments State water accounts Operational loss calculations Services to support CEWO Data analysis and modelling Flood forecasting, as required Model development (Joint Program) <ul style="list-style-type: none"> Recalibration of models to reflect changed conditions and demands 	<ul style="list-style-type: none"> Modelling to inform Basin Plan Review Murray-Darling Basin Outlook Hydroclimate analysis Modelling for Sustainable Yields project Modelling for Sustainable Rivers project Collaboration with Department on hydro-economic modelling linkages Analysis of trends in use