

# Attachment A: Terms of Reference

1. I, the Honourable Troy Grant, Inspector-General of Water Compliance have, on my own initiative, pursuant to section 239AA of the *Water Act 2007* (Cth) (the “**Water Act**”) and for the purpose of performing the functions referred to in paragraphs 215C(1)(a) to (c) of the Water Act, decided to conduct an inquiry into the implementation of measures to improve environmental outcomes in the Northern Murray-Darling Basin set out in Schedule 3 of the Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin, June 2013 and most recently amended August 2019.

## Background

2. The Intergovernmental Agreement on Implementing Water Reform in the Murray Darling Basin, June 2013 (including any amendments) (the “**Agreement**”) is, for the purposes of paragraph 215C(1)(c) of the Water Act, an agreement referred to in subsection 215C(3) of the Water Act.
3. In 2019, and following The Northern Basin Review November 2016, the Commonwealth, Queensland and New South Wales governments committed to implementing a series of environmental measures, collectively referred to as the Northern Basin Toolkit, to deliver improved environmental outcomes. These commitments were reduced to writing in the form of Schedule 3 of the Agreement.
4. The Northern Basin Toolkit comprises six measures (the “**Measures**”), which are described in Appendix A of Schedule 3 of the Agreement, namely:
  - (a) undertake targeted recovery of water (“**Measure 1**”)
  - (b) protection of environmental flows (“**Measure 2**”)
  - (c) develop a broad range of practical event-based mechanisms that can be used by environmental water holders to meet important flow targets, including temporary trade by event, options over pumping (contractual agreements) and store and release (“**Measure 3**”)
  - (d) promote the planning for, and delivery of, environmental water across northern Murray Basin (“**Measure 4**”)
  - (e) removal of system constraints in the Gwydir catchment to improve flows reaching the Gwydir wetlands (“**Measure 5**”)
  - (f) targeted environmental works and measures to promote fish movement and habitat in the northern Murray-Darling Basin (and “**Measure 6**”).
5. Clause 3 of Schedule 3 of the Agreement provides that all the measures comprising the Northern Basin Toolkit are to be implemented by 30 June 2024.
6. At the time that the Agreement was amended to incorporate Schedule 3, the Commonwealth estimated that its total financial contribution to the Queensland and New South Wales governments to deliver the Northern Basin Toolkit would be \$180 million (GST exclusive).

7. Pursuant to subclause 11(d) of Schedule 3 of the Agreement, the Commonwealth, Queensland and New South Wales governments agreed to be jointly responsible for cooperating with the Inspector-General of Water Compliance.
8. In the June 2023 Report Card published by the Murray-Darling Basin Authority (the “**MDBA**”), the MDBA reported that “*the full package*” of the Northern Basin Toolkit would “*not be delivered by the June 2024 agreed timeframe*”. The MDBA reported that only two measures were on track for delivery by June 2024. In relation to the remaining measures, the MDBA reported that:
  - (a) Measures 1 and 2 were at risk of not being completed by June 2024
  - (b) Measures 5 and 6 would not be complete by June 2024.
9. In August 2023, the relevant Commonwealth, Queensland, and New South Wales government Ministers agreed to extend the deadline for the completion of the Northern Basin Toolkit until 31 December 2026.

## Terms of Reference

10. Pursuant to section 239AB of the Water Act, I determine that the terms of reference for this inquiry are to inquire into and to make findings and recommendations in relation to:
  - (a) the:
    - (i) extent to which the Northern Basin Toolkit has been implemented
    - (ii) progress that has been achieved in relation to the Measures (including the work done by any corporation and/or other business pursuant to arrangements entered into for the purpose of implementing the Northern Basin Toolkit)
    - (iii) extent to which outcomes sought have been attained
    - (iv) work left to do to implement the Northern Basin Toolkit.
  - (b) the extent to which the Commonwealth, New South Wales and Queensland governments have implemented their respective commitments in Schedule 3 of the Agreement
  - (c) the extent to which the governance arrangements referred to in clauses 9 to 12 of Schedule 3 of the Agreement have been effective, both in relation to design and implementation of those governance arrangements
  - (d) reasons for the non-delivery of all the Measures by June 2024 and the reasons for the request for an extension of time to deliver the Measures until 31 December 2026
  - (e) the amount that has been spent respectively by the Commonwealth, Queensland and New South Wales governments in relation to implementation of the Northern Basin Toolkit and the particular items and associated deliverables on which that money has been spent
  - (f) the effectiveness of the Agreement to deliver the Northern Basin Toolkit.

11. In accordance with subsection 239AB(2) of the Water Act, the legislative powers of the Commonwealth that support the exercise by me of the powers in subsections 239AC(2) and 239AD(2) in relation to this inquiry are:
- (a) the power of the Parliament to make laws with respect to trade and commerce with other countries, and among the States (within the meaning of paragraph 51(i) of the Constitution)
  - (b) the power of the Parliament to make laws with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution)
  - (c) the power of the Parliament to make laws with respect to external affairs (within the meaning of paragraph 51(xxix) of the Constitution), as it relates to giving effect to Australia's obligations under relevant international agreements (as defined in subsection 4(1) of the Water Act)
  - (d) the executive power read together with the express incidental power (section 61 and paragraph 51(xxxix) of the Constitution, respectively)
  - (e) the power of the Parliament to make laws with respect to matters in respect of which the Constitution makes provision until the Parliament otherwise provides (within the meaning of paragraph 51(xxxvi) of the Constitution), together with section 96 of the Constitution (financial assistance to States).

