

# Independent Assurance Committee on Compliance

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## Report to the Authority of the tenth meeting 26 March 2020

### 1. Meeting Overview

All members of the Independent Assurance Committee (the committee) were present, and the Authority was represented by Chief Executive, Phillip Glyde. Brent Williams and Di Mead, the Executive Director and the Acting General Manager of the Murray-Darling Basin Authority (MDBA) Office of Compliance, and a number of MDBA staff participated throughout the day. The meeting was conducted by teleconference. Despite the challenges of operating in this way, the discussions were rigorous and the committee was able to provide considered and comprehensive advice about regulatory issues the MDBA is currently considering.

Agenda items are summarised under the subheadings below, however the broader deliberations on strategic matters are captured here.

Clearly, the Covid-19 pandemic presents a vastly different operating environment with its own threats and opportunities. Coming on top of an already challenging environment (water scarcity, bushfire recovery, the hard end of the implementation of the *Basin Plan 2012* (Cth) (Basin Plan), and organisational uncertainty), the MDBA's compliance approach and activities, and regulatory positioning, needs to be carefully reconsidered. It may well be that this uncertain environment provides a rare opportunity to reset or reposition the Basin Plan reform.

Many and varied sources have pointed out that the language of water management is complex, and impenetrable for most water users and the broader community. Some argue for simplifying the management system, but while that might be a worthy aim, the system is inherently complex and is unlikely to change in the short or medium term. What is required, and is achievable now, is better communication, through improved translation and explanation of the complexity - a challenge faced by anyone working in a highly technical discipline with a critical public interface.

The Margaret Simons' essay (*Cry Me A River*), in the most recent Quarterly Review (Issue 77, 2020), demonstrates how challenging Basin Plan implementation (and water reform and management, generally) is. While the essay provides valuable insights into Murray-Darling Basin management, it provides little in the way of suggesting where solutions to the intractable problems might be found. The essay does, however, underscore the critical leadership role of the Authority, particularly in light of the dearth of trusted and respected voices on Basin matters.

## 2. MDBA Compliance Priorities 2020/2021

The committee noted the MDBA's progress against its 2019/20 Compliance Priorities: unmeasured take; metering; sustainable diversion limit (SDL) accounting and the SDL Adjustment Mechanism; improving water trade markets; water for the environment; and Basin state compliance and enforcement arrangements. This progress report also provided a useful context for advising on the MDBA's emerging priorities for 2020/21.

The committee discussed the MDBA's operating environment, risks and posture, and provided advice on the list of emerging priorities for 2020/21. There was general endorsement of the MDBA's approach for identifying priorities, and the tentative list of emerging priority areas was supported – however the committee noted that the Basin states and the Australian Government will have reduced capacity and resources in 2020/21, so the MDBA's regulatory effort must reflect those circumstances.

The committee highlighted the importance of the risk assessment and prioritisation process underpinning the setting of priorities. It requested that the MDBA bring information to the next committee meeting to enable a thorough examination of the approach to risk prioritisation in order to better understand how it is working and see how it can be improved. The committee also stressed the importance of having a broader strategic view of priorities, especially in light of the transition of the regulatory program to one centred on compliance with accredited Water Resource Plans.

## 3. SDL Adjustment Mechanism – Reconciliation Strategy

The committee noted the legal responsibility of the Authority (under section 7.11 of the Basin Plan) to undertake a reconciliation of the SDL adjustment if there were significant changes to the scope or likely completion date of the suite of 36 planned supply measures on which the adjustment was based. The committee also noted that in reading the draft progress report, it was almost certain that a reconciliation would be required. The Productivity Commission's assessment (in its five-year assessment report) that timely completion of some of the projects was unlikely, gives further weight to that conclusion.

The committee supported a three-stage escalation strategy proposed by the MDBA to manage this risk. The committee stressed that in implementing the escalation process the following matters should be emphasised:

- making clear to stakeholders and the broader public that the reconciliation was a legal requirement on the Authority that could only be removed by an amendment to the Basin Plan;
- reiterating that responsibility for delivery of the projects lies with the Basin states and the Commonwealth Department for Agriculture, Water and the Environment;
- clear and early reporting of project progress and delays; and
- actively communicating the consequences of any project delay or non-delivery, so that the results of any reconciliation would not be a surprise.

The necessary first step in this process was the early release of the 2020 SDLAM Progress Report, together with a clear statement of what further steps would become necessary and when, including a formal reconciliation. The Authority's Advisory Committee on Social, Economic and Environmental Sciences may also be able to provide an authoritative perspective on the progress report that assists the public discussion on SDL adjustment.

#### 4. SDL Accounting and Compliance

The committee considered the 2019 SDL Accounting Framework Review, and provided advice on the excellent draft SDL Accounting Improvement Strategy. The Improvement Strategy provides a structured approach for continuous improvement to SDL accounting processes and will be informed by learnings as the MDBA and the Basin states gain experience in applying the accounting procedures.

The matters raised by the Sunrice 2019 report into water use patterns are interesting but are based on a number of major assumptions which are not all entirely valid. The work being done by the MDBA should settle this issue, and the IAC noted the communication program proposed to share the outcomes of the MDBA analysis. The Sunrice argument once again highlights the complexity of water accounting and the need for clear explanations of principles and concepts that are fundamental to water management.

The challenges of assessing SDL compliance for 2019/2020 were acknowledged, particularly the role of bilateral agreements in the absence of accredited water resource plans, and the delays in the completion of work on Basin state planning assumptions.

#### 5. Water Resource Plans – accreditation update and compliance program

The committee noted the continuing delay in NSW's completion of its water resource plans, and the Basin-wide uncertainties created by the ongoing delay. In the current circumstances, the limits of what further could be done by the MDBA were acknowledged.

The committee endorsed the MDBA's design of a framework for Basin state reporting on water resource plan compliance, in line with the legal requirements set out in the Basin Plan, as well as the plan for communicating it to Basin states. The IAC stressed the importance of transparency and accountability for what Basin states report. The argument that the publication of reports may deter open reporting cannot be entertained. The Basin states have an obligation to fulfil the requirements of the Basin Plan and the *Water Act 2007* (Cth). Public scrutiny of their reports will encourage states to perform, not the opposite.

One of the challenges facing the MDBA is to evolve its regulatory approach to fit better with a world where water resource plans are in place and fully operational. This matter will be addressed in future committee meetings.

## 6. Items for next meeting

- A scan of the major reviews or reports relating to water management and the Basin Plan, including an examination of the expected draft of the ACCC report on water trade
- The Interim Inspector General's report on the Murray-Darling Basin Agreement
- The role of the Inspector General and the Productivity Commission recommendations on compliance
- An update on restructure, regionalisation and capability
- The review of the Murray-Darling Basin Compliance Compact
- The risk assessment process behind the setting of the Compliance Priorities for 2020/21, and review of the final priorities

## 7. Communicating the work of the IAC

As is normally the case, this communique is made available to inform the public of the views of the committee. We hope it provides an insight into the complexity and challenges of the MDBA's regulatory work.

Allan Holmes

Chair, Independent Assurance Committee

30 March 2020