

Independent Assurance Committee on Compliance

Report to the Authority of the ninth meeting 27 November 2019

1. Summary of the meeting

In many respects this meeting was a stock take of the Murray–Darling Basin Authority's (MDBA) regulatory position two years on from the major review of compliance that culminated in the Murray–Darling Basin Compliance Compact (Compact). Discussions were wide ranging and broader advice was provided to the MDBA than has previously been the case.

Several important matters were dealt with in detail:

- The pre-eminent regulatory and stewardship role of the MDBA
- Advice on regionalisation and organisational change
- The role of the Inspector-General of Murray–Darling Basin Water Resources and implications for regulatory work
- The Compact – progress to date and what future does it have
- Water Resource Plan accreditation and compliance
- The future of the Independent Assurance Committee (IAC)

All members of the committee were present. The Authority was represented by the MDBA's Chief Executive, Phillip Glyde. Brent Williams, Executive Director of the Office of Compliance, and a number of MDBA staff participated throughout the day. A brief account of the discussions is provided below.

2. MDBA's regulatory role and context – advice on several issues

A productive discussion was had about the structure of the MDBA as it addresses the challenges of regionalisation, an evolving mission, substantial staff upheaval and the uncertainties of the current operating environment. At first glance this may seem to be outside of the IAC's scope, but when considered more deeply, it is central to the regulatory performance of the MDBA.

The committee reiterated advice it had given following the release of the Productivity Commission's *Murray–Darling Basin Plan: Five-year assessment* report, that the regulatory and stewardship role of the Authority and MDBA was the MDBA's pre-eminent role. The

emphasis is often given to the works or river management role, both inside and outside the organisation. This weakens the authority needed to be the steward of the Basin. Another point of emphasis that is lost from time to time is that the regulatory and stewardship role is shared with Basin states, and the emphasis for the MDBA is leading, coordinating, and cajoling the Basin states to share that responsibility and meet their legal obligations to implement the *Basin Plan 2012* (Cth) (Basin Plan).

This translates at the highest level into the way the MDBA sees and organises its work. These ideas must be expressed strategically, following the organisational rule that structure follows strategy, and culture trumps all.

Committee members also shared their experiences of managing and working in regionalised organisations where more than one line of accountability existed (described as matrix organisations). These sorts of organisation are challenging to establish and maintain. They are challenging to manage, and demand a strong cultural commitment from the management cohort in everything they do. Executive physical presence and interaction with regional staff, especially on their turf, is vital. The buy-in of regional managers is essential, as that group can determine the success of the regionalised organisation. Finally, the ability to explain simply and concisely the strategy and game plan for the organisation, and staff understanding of their role in achieving the strategy is also a determinate of success. There is nothing new here, but the Authority should acknowledge that matrix organisations are challenging and demand discipline and rigour from senior managers to succeed. This understanding should be incorporated into the MDBA's regionalisation plans and approach.

3. Compliance Capability

The committee provided advice on the capabilities required of a regulatory organisation, especially those that are required of all staff in the MDBA. Given the current organisational uncertainty, it is likely that consideration of capability requirements will play out as the MDBA's new strategy and structure are developed. Without doubt, certain specialist regulatory skills must exist within the MDBA. Some capability and specialist expertise might be contracted, but this is the exception rather than the rule. At our meeting in March 2020, we will revisit this topic.

4. Floodplain Harvesting Measurement

The IAC received an update on actions underway to improve the measurement and accounting for floodplain harvesting in New South Wales (NSW) and Queensland. This has been a high priority area for the IAC, and was flagged as a critical issue in the Compact.

Measuring floodplain harvesting is a complex challenge, and requires the application of a range of techniques, including direct measurement and modelling. The MDBA has published guidance notes on best practice modelling of floodplain harvesting, however the IAC was concerned that similar information on the approaches that will be applied to direct measurement of components of floodplain harvesting is not yet widely available.

The committee was encouraged to learn that NSW, Queensland and the MDBA have been working collaboratively on this issue. A joint proposal has been submitted seeking federal funding to develop a water accounting and water balance tool for monitoring and managing floodplain harvesting. Water Resource Plans are also incorporating state commitments to complete licensing of floodplain harvesting and to install measurement technologies.

5. Water Resource Plans

The IAC was briefed on that status of the development of Water Resource Plans by the Basin states, and their accreditation by the Commonwealth Minister for Water. Good progress is being made, with eight out of 33 Water Resource Plans currently accredited, and the prospect of five more to go to the Authority for consideration about recommending accreditation in March 2020.

Significant work has been undertaken and progress made by NSW on their 20 Water Resource Plans, which has included close liaison with the MDBA. In light of the tight timeframes for the MDBA to consider the proposed Water Resource Plans once they are submitted to the MDBA by NSW, the IAC highlighted the importance of the MDBA having a streamlined and well-resourced approach in place to deal with those Water Resource Plans when they are received, as well as having a contingency plan if the Water Resource Plans are not submitted according to the agreed timetable, and noted that the MDBA has contingency plans in place to address both the work load demand and the risk if WRPs are not submitted.

The IAC also discussed and provided advice on the proposed WRP compliance program. Based on previous IAC advice, the MDBA has worked to design an approach that is risk-based, does not increase the reporting burden on the Basin states, and meets the Basin Plan reporting requirements.

6. Discussion with Mick Keelty about roles and responsibilities

The committee spoke with the Interim Inspector-General Mick Keelty about the prospective role of the Inspector-General with two considerations in mind.

The first consideration was whether the appointment of an Inspector-General diminished or changed the role of the IAC. The conclusion reached was that it did not and that the roles

were complementary. The IAC is a tool of the Authority in helping evolve the regulatory function of the MDBA and to provide assurance to the Authority on the MDBA's regulatory performance. In contrast, the Inspector-General has an external role, in providing a mechanism for public scrutiny of the performance of Basin state and Commonwealth agencies in implementing the Basin Plan and in investigating allegations of malpractice and maladministration.

The second consideration was how the Inspector-General might change or influence the regulatory role of the MDBA. At one level, the establishment of the Inspector-General may appear to lessen the authority of the MDBA. However, a more positive perspective is that it complements and strengthens the ability of the MDBA as a regulatory body by providing another mechanism to bring Basin states to account when they fall short of their Basin Plan obligations and as another way of restoring public confidence in Basin governance.

7. Compact Assurance Reporting and 2020 Review

The IAC has two roles to play in Compact assurance. The IAC provides an assurance report on the MDBA's performance against the MDBA's own Compact commitments, and it also scrutinises the MDBA's assurance report on the other parties to the Compact.

The IAC's view is that the Compact has achieved as much as it could, remembering that it was a mechanism to translate the original recommendations of the various reviews and investigations into water compliance in 2017-2018, particularly the Murray–Darling Basin Water Compliance Review (Compliance Review) and the NSW Ken Matthews Review, into a practical and agreed work plan for the Basin states and the Commonwealth. There was a weakening of some of the recommendations from the Compliance Review in the process of settling the Compact, but it has been an effective mechanism to maintain impetus and achieve progress. The main shortcomings relate to measurement, and these will be detailed in the IAC's formal commentary on the Compact later this year.

The committee discussed the 2020 review of the Compact by the parties, as required by the Compact, and concluded that the Compact had probably run its course as a device to progress change. The committee recommends that the Authority consider requesting the Inspector-General to provide an independent review of the effectiveness of the Compact and to recommend what further steps need to be taken to address the findings of the Compliance Review. This advice could provide the basis for a recommendation to the Basin Officials or Murray–Darling Basin Ministerial Council on the review of the Compact. The MDBA and IAC may also have a role in assisting the Inspector-General if that path is pursued.

8. Review of the IAC – required after two years in early 2020

The IAC expects that at some point the MDBA's compliance function will have developed and matured to a point where the guidance and mentoring from the IAC is no longer required. Similarly, the Authority's need for independent advice and assurance on regulatory matters will have diminished.

The consensus of the IAC is that we are not yet at that point. Organisational instability associated with regionalisation, heavy external scrutiny, challenges with Basin state compliance as Water Resource Plans come into play, the evolution of the Inspector-General role, the impacts of drought, and a renewed Authority, make the case for the IAC having a role for at least another 12 months.

9. Communicating the work of the IAC

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

Allan Holmes

Chair, Independent Assurance Committee

28 November 2019