



Australian Government



Inspector-
General of
Water
Compliance

Productivity Commission National Water Reform Inquiry

Interim Report Submission

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Table of Contents

Table of Contents	3
Introduction.....	4
About the Inspector-General of Water Compliance	4
Structure of this submission.....	5
Feedback on NWI renewal advice	6
Building in good governance for a renewed NWI	6
Water resource management – a fit-for-purpose framework.....	7
Water entitlements and planning	7
Water trading and markets	7
Environmental management	8
Securing Aboriginal and Torres Strait Islander people’s interests in water	8
Ensuring the integrity of water resource management	9
Urban water services.....	10
Government investment in major water infrastructure.....	10
Expanding Commonwealth laws.....	11

Introduction

The 2004 *Intergovernmental Agreement on a National Water Initiative* (NWI) is a world-leading agreement that supports the multi-jurisdictional management of Australia's scarce water resources. The NWI critically establishes joint commitments of all Australian governments to water management in the national interest.

The Inspector-General of Water Compliance welcomes the opportunity to provide a submission to the Productivity Commission on the interim report for its *National Water Reform 2024* inquiry.

About the Inspector-General of Water Compliance

As an independent statutory office holder, the Inspector-General of Water Compliance was established to enforce compliance with Commonwealth water laws and to hold relevant governments to account in their management of Murray-Darling Basin (Basin) water resources.

In this context, 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.

In performing the above roles, the Inspector-General is primarily responsible for:

- Assessment of compliance with long-term water extraction limits (known as sustainable diversion limits) in Basin catchments under the *Water Act 2007* (Cth) (Water Act)
- Compliance with water resource plans that enable the integrated management of Basin water resources by Commonwealth and Basin State governments
- Enforcement of the *Basin Plan 2012* (Cth) (Basin Plan) water trading rules
- Assurance around the enforcement of water laws with respect to the theft of Basin water resources
- Oversight of the implementation of commitments in intergovernmental agreements that support the effective operation of the Water Act and delivery of the Basin Plan
- Providing accountability for the effectiveness of Commonwealth and Basin States' performance of their obligations under Part 2 of the Water Act, relating to the management of Basin water resources
- Scrutinising and providing accountability around relevant Commonwealth agency decisions made in performing their functions or exercising powers under Part 2 of the Water Act
- Engaging with Australian communities by providing assurance around the management of Basin water resources.

The Inspector-General is also responsible for enforcing Part 2A of the Water Act, relating to critical human water needs. In accordance with this Part of the Water Act, the Basin Plan sets out the triggers for and processes to follow during times of low water availability.

With respect to the Inspector-General's function of overseeing intergovernmental agreements, the Inspector-General oversees the NWI, to the extent it relates to Basin water resources,

among other agreements. The NWI is also one of the intergovernmental agreements with commitments that underpin the effective operation, implementation and application of the Commonwealth's water laws.

As such, the Inspector-General is well-placed to provide insights into the NWI and potential reforms through their role in providing assurance around water management in the Basin and implications for the Commonwealth's water laws. Further, the NWI and potential reforms will directly affect the Inspector-General's functions, which are relevant considerations for finalising the final report for the Productivity Commission's inquiry.

Structure of this submission

The Inspector-General's submission is in two parts:

1. Feedback on the Productivity Commission's proposed NWI renewal advice
2. Observations on using Commonwealth water legislation as a framework for guiding national water reform policy.

The content of the submission draws on the Inspector-General's experience in performing their functions since 2021.

Given the Inspector-General's role, this submission provides insights from their role in institutions relating to the management of Basin water resources. However, with the challenges facing all Australian governments in the management of water resources in the national interest, these observations may be extrapolated and applied more broadly.

Feedback on NWI renewal advice

The Inspector-General broadly supports the Productivity Commission's refreshed intent. The Inspector-General especially considers that the Commission's modernised goal that extends the existing overarching goal of the NWI, and does not replace it, provides needed clarity without losing the critical underlying purpose of the NWI. The Inspector-General notes that the modernised goal would provide necessary additional context and authority to consider and provide assurance around matters affecting water management in the Basin.

The remainder of this section focuses on the elements of the renewed NWI identified by the Productivity Commission that are relevant to the Inspector-General or can usefully be informed by the Inspector-General's experience.

Building in good governance for a renewed NWI

The Inspector-General strongly supports improving governance arrangements, as crucial to strengthening the transparency and accountability that underpins governments' social licences to manage water in the national interest. The Inspector-General notes issues associated with poor accountability have been demonstrated over the past six years, including in:

- Response to allegations aired in the Four Corner's program, 'Pumped'
- Multiple reviews on water management in the Basin
- The Australian Parliament's consideration of the *Water Amendment (Restoring our Rivers) Bill 2023*
- The Productivity Commission 2023 inquiry into Basin Plan implementation.

This demonstrates accountability remains an enduring problem that is yet to be adequately managed and could, therefore, be a focus of and addressed through a renewed NWI.

What is accountability?

Accountability can be articulated as:

- To be held responsible for:
 - Decisions made and actions taken
 - Discharging obligations
 - Matters within someone's power, control or management
- To explain something.

In practical terms, effective accountability depends on three things:

1. Clear and unambiguous governance arrangements through the identification and assignment of roles to entities that are responsible for exercising powers, or that control or manage something
2. Specified and consistently applied consequences for failures of relevant entities to perform their responsibilities
3. Meaningful, visible and accessible reporting on outcomes in areas of responsibility, including effective public communications.

The Inspector-General also recommends the Productivity Commission review and update its renewal advice 4.1 to reflect institutional changes since its 2021 inquiry. Relevantly, this includes establishment of the Inspector-General with a broad role in providing assurance around the management of Basin water resources and a specific function of overseeing implementation of certain commitments in the NWI. The Inspector-General considers the Inspector-General of Water Compliance

Productivity Commission's substantive analysis in Chapter 1 could also be accordingly updated, including the following relevant sections:

- Ongoing collective oversight of the renewed NWI and its implementation
- Role for Commonwealth leadership.

Water resource management – a fit-for-purpose framework

The Productivity Commission's 2021 report flagged that for water resource management in a system to be effective, governance, regulatory, operational and informational arrangements need to be fit-for-purpose. The Inspector-General notes that the Productivity Commission's proposal aligns with individual jurisdictions' and regulatory agencies' risk-based approach to water regulation. However, a challenge remains about the application of such an approach at regional or national levels, where legislative jurisdiction constrains regulatory powers, interventions and, therefore, risks that are considered and managed by individual governments.

The Inspector-General considers the renewed NWI provides an opportunity to establish national governance, regulatory, operational and informational arrangements, to complement and, where necessary, supplement individual governments' arrangements. The Inspector-General recommends the Productivity Commission clarify how a fit-for-purpose framework could also be applied at a national level in support of the modernised goal of the NWI.

Water entitlements and planning

The Inspector-General has key responsibilities relating to water accounting in the Basin (see section on *Ensuring the integrity of water resource management*, below), where comprehensive water accounting arrangements underpin effective water management and compliance arrangements. Based on this experience, the Inspector-General highlights the importance for all interception activities being measured and accounted for, and continual improvements in coverage and accuracy, regardless of the management system adopted by governments.

As with other elements of the Productivity Commission's advice, there is an opportunity to establish more robust governance arrangements in the management of water under the renewed NWI, including in relation to water entitlements and planning. These governance arrangements need to include clear assignment of roles and responsibilities, fit-for-purpose reporting, and effective accountability arrangements.

Water trading and markets

The Inspector-General is responsible for enforcing the water trading rules set out in the Basin Plan. The Inspector-General welcomes the Productivity Commission's renewal advice focused on improving consistency, transparency and efficiency of water trading and markets.

The Inspector-General's experiences demonstrate that the quality, consistency, adequacy and timeliness of water market information remains an issue that could be managed through a renewed NWI. The Inspector-General recommends a renewed NWI could also include governments committing to develop and use consistent terms and ways of referring to agencies in reporting water market information, to overcome complexities arising through different jurisdictional approaches.

Environmental management

The Inspector-General's experiences strongly reinforce the Productivity Commission's findings. The Inspector-General agreed to consider environmental watering outcomes as a result of the Australian Parliament's consideration of the *Water Amendments (Restoring our Rivers) Bill 2023*. The absence of clearly articulated outcomes, including indicators, metrics and targets, makes it difficult to assess environmental water outcomes at the Basin scale. The Inspector-General notes this is compounded by the lack of previous reporting that would allow outcomes to be measured against (i.e., a baseline).

The Inspector-General therefore recommends the Productivity Commission consider also identifying the need for:

- Clearly articulated environmental outcome indicators at the Basin scale
- Regular and fit-for-purpose monitoring, evaluation and reporting
- Clarifying the environmental management framework and, in particular, the need for transparent decision-making, and assignment of roles and responsibilities
- Clarifying the treatment of environmental water under relevant trading frameworks.

The Inspector-General also considers appropriate governance arrangements, including clearly assigned roles and responsibilities could facilitate broader public visibility of reported outcomes. The Inspector-General notes that the current legislative frameworks do not support accountability for environmental water outcomes from a national perspective, which could be managed by relevant governments through the NWI. The need for improved accountability means there is value in progressing this through the NWI instead of or in advance of legislative reform.

Securing Aboriginal and Torres Strait Islander people's interests in water

The Basin Plan supports the achievement of Aboriginal objectives and outcomes that relate to water resources through water resource plans, with specific requirements set out in Chapter 10, Part 14. In preparing a water resource plan, and through consultation with Traditional Owners, Basin States identify opportunities to strengthen the protection of Aboriginal values and uses that relate to water resources. However, Basin Plan requirements to 'have regard to' these matters can be interpreted in a minimal way, resulting in limited accountability around how this consultation is conducted and/or represented in the water resource plan.

The Inspector-General's experience in providing oversight around the application of the Basin Plan with respect to Indigenous values and uses demonstrates the importance of articulating commitments in a way that ensures these deliver the intended outcomes. Relevantly, commitments to achieve Aboriginal objectives and outcomes need to be clear, measurable and relevant to the outcomes that are intended to be delivered, so these able to be monitored, reported and used to evaluating the effectiveness of governments' efforts.

Furthermore, the Inspector-General's network of field officers across the Basin provides insights on governments' engagement and collaboration with First Nations on Aboriginal interests in water. The Inspector-General recommends any reporting and evaluation framework for First Nations engagement in water planning processes should be developed with First Nations people to ensure that the framework is fit for purpose, outlines what is going to be monitored and how, and has clearly defined mechanisms and timeframes.

Ensuring the integrity of water resource management

As a Commonwealth integrity agency under the *National Anti-Corruption Commission Act 2022* (Cth), the Inspector-General strongly supports the effectiveness of arrangements to ensure (and assure) that the letter and intent of laws and relevant agreements are being delivered. As such, the Inspector-General's experiences in performing their various roles and responsibilities provides insights into what could usefully be captured in the renewed NWI.

Under the Water Act, responsibilities for annual water accounting are split between:

- Basin States, who are responsible for providing water take data, information affecting the availability of water and statements of compliance against sustainable diversion limits
- The Murray-Darling Basin Authority, which is responsible for maintaining registers of take
- The Inspector-General, who is responsible for determining compliance with sustainable diversion limits.

The Inspector-General is also responsible for:

- Enforcing compliance with water accounting obligations and the accounting framework of the Basin Plan and given effect through water resource plans
- Monitoring and overseeing performance of obligations under certain parts of the Water Act and the entirety of the Basin Plan and water resource plans
- Monitoring and overseeing implementation of commitments in certain intergovernmental agreements, including agreements designed to supplement or support the operation of the Water Act.

All of the above, in combination, are intended to provide assurance around the integrity in the operation of the Water Act, Basin Plan and associated intergovernmental agreements. However, the water accounting arrangements and Basin Plan reporting arrangements do not result in the generation and publication of all the information relevant to these matters. Further, where information is published, it is often provided in a way that does not allow for Basin-wide comparisons or is not meaningful or readily understandable, due to the complexities of multi-jurisdictional management arrangements. The range of reports also creates confusion around how information provided for one purpose relates to other reports prepared for other purposes.

The Inspector-General is working with Basin State agencies to improve the quality, consistency, accessibility and relevance of information provided in relation to metering and measurement of water take and water compliance performance. However, there remains a need for transparency and accountability around the source, quality and context of information provided in water accounting to strengthen the integrity of water use information and water management.

There also remain gaps around other relevant information that provides evidence of challenges in the Inspector-General performing their responsibilities that have implications for the effectiveness of a renewed NWI. These challenges could be managed by:

- Recognising that the information reporting, including, and in addition to, under legislation, are not set and forget, and should be periodically reviewed and updated to ensure the information provided is relevant, reliable, adequate, consistent and timely
- The need to provide clarity around information commitments and governance arrangements, for example, what information has been committed to be provided, in what frequency, for what purpose(s), and to whom
- Gaps in accurate measurement of water take remains an enduring risk to the effectiveness of water management under the Water Act that has been subject to previous commitments and public funding to manage and, as such, needs to be prioritised as an area for action

- Improving the transparency around information that is provided for water accounting purposes, including the source of the information and any factors that could affect the reliability of that information.

Urban water services

Under the Water Act, the Inspector-General has been delegated by Basin States certain powers with respect to critical human water needs. In addition, the Inspector-General may provide assurance with regard to urban water services that relate to Basin water resources and are covered under the NWI.

The Inspector-General recognises that access to safe, reliable water for human consumption in regional areas is going to be more challenging with a changing climate. As such, there is likely to be a strong interest in understanding the outcomes for communities in regional areas.

Similar to environmental outcomes, the Inspector-General recommends the Productivity Commission also identify the need for clearly articulated indicators and regular reporting against those indicators. The Inspector-General considers appropriate governance arrangements would facilitate broader public visibility of reported outcomes.

Government investment in major water infrastructure

Under the Water Act, the Inspector-General is responsible for overseeing the implementation of commitments in certain funding agreements between the Commonwealth and Basin State governments. In 2022-23 the Inspector-General reviewed the transparency of the \$13 billion in Commonwealth expenditure associated with the Basin Plan. This review revealed insufficient public information on how the funds were allocated, what specific outcomes were achieved, and how much of the budget remained unspent.

In light of this work, the Inspector-General recommends that the renewed NWI could also include establishing project delivery metrics to facilitate governments' timely tracking and public reporting, to improve the visibility, of government funded infrastructure progress.

Expanding Commonwealth laws

The Inspector-General notes the Productivity Commission will provide advice on the potential utilisation of the Commonwealth water laws as a framework for guiding national water reform policy. The Inspector-General offers the following observations to inform the Productivity Commission in developing this advice.

The Commonwealth water laws are national laws, which means they are capable of applying across jurisdictions or to provide regulatory frameworks to support the delivery of national interest water management outcomes. However, the constitutional split in powers between states and the Commonwealth means these laws will still need to be supported by intergovernmental agreements, to ensure the efficacy of the Commonwealth's legislative framework.

To maintain the integrity of national water reforms where implemented through a combination of legislation and intergovernmental agreements, the Inspector-General recommends ensuring that issues of governance, accountability and consequence are clearly set out and in a way that is able to be enforced. This would include, among other things:

- Roles and responsibilities are clearly assigned, preferably to the relevant officeholder or agency which is responsible for a decision, or which owns or controls a process, as appropriate
- Commitments are clear, measurable and relevant to the outcomes that are intended to be delivered; language such as facilitate, consider, collaborate, work with, optimise, etc. should be avoided or supplemented by appropriate associated metrics
- Commitments could expressly cover, among other things, provision of information, including content, timing, purposes, to whom the information is provided, management, and processes to follow when reviewing and updating information provision requirements
- An appropriately independent agency with responsibilities for oversight and assurance under both legislation and agreements, with associated powers that reflect the nature of its roles and responsibilities
- Establishing proportionate consequences, and avenues for enforcing those consequences, where commitments are not implemented, are not implemented in a timely way, or are implemented in a way that is contrary to the intended outcome.

Where this is inconsistent with existing frameworks, for example the Federal Financial Relations arrangements, an alternate fit-for-purpose mechanism may be required to be developed.

The Inspector-General also recommends adopting a principles-based and outcomes focused approach to drafting. This could manage the risk of unintended consequences associated with prescriptive legislation, particularly where there is a need to manage jurisdictional differences and maintain a flexible and adaptive regulatory regime.

As a substantive reform, with potential national interest implications, it would be crucial that the associated policy is developed in accordance with and give effect to best practice principles. These principles are environmental, economic, social, cultural, and legal in nature, and the development of the policy needs to be supported with access to relevant capabilities and expertise. Confidence in the process, and perceptions around the rigour of the outcomes, will also be largely driven by the public's ability to participate in, and be seen to inform, the policy development process.