



Australian Government



Inspector-
General of
Water
Compliance

Future National Water Agreement

Discussion Paper Submission

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Table of Contents

Background	1
About the Inspector-General of Water Compliance	1
Structure of this submission	2
Approach adopted for developing a future agreement	3
Responses to discussion paper	4
Objective 1: Securing water for all uses	4
Objective 2: Supporting Aboriginal and Torres Strait Islander People's water interests and values	4
Objective 3: Climate resilient water management	5
Objective 4: Ensuring evidence-based decision making	5
Objective 5: Transparent, strategic water infrastructure investment	5
Objective 6: Sustained community trust and confidence in government, water agencies, water managers and users	6
Objective 7: The efficient use of water	6



Background

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 NWI laid the foundation for a more efficient, transparent and sustainable approach to water resource planning and management throughout Australia.

On 28 March 2024, the Department of Climate Change, Energy, the Environment and Water (DCCEEW) commenced consultation on a new national agreement that seeks to build on the sound water management principles that were established in the NWI to address new and emerging water management challenges. To support this consultation, DCCEEW published *Discussion paper – Seeking views on a future national water agreement* (March 2024).

The Inspector-General of Water Compliance welcomes this opportunity to provide a submission to the DCCEEW on this discussion paper to help inform the development of a new national water agreement.

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. Where, 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. 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 a potential new national water agreement 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 new national water agreement will directly affect the Inspector-General's functions.

Structure of this submission

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

- Observations about the approach adopted for developing the agreement
- Responses to the objectives and outcomes set out in the discussion paper.

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

This submission provides insights from the Inspector-General's statutory role as one of the institutions associated with 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.



Approach adopted for developing a future agreement

The Inspector-General welcomes DCCEEW's consultation-focused approach to developing the agreement. The Inspector-General notes that DCCEEW has indicated further steps in its discussion paper and would appreciate further opportunities to inform the development of the agreement or follow-up on any of the matters raised in this submission.

The Inspector-General notes the role of the NWI in establishing a national approach to water reform and the collective management of Australia's water resources in the national interests by governments at all levels. The development of a new agreement to replace or build on the NWI could therefore usefully be informed by data that demonstrates how the NWI has operated in practice, including specific issues that could reasonably be managed through a new agreement.

Since the statutory office of the Inspector-General of Water Compliance was established in August 2021, the Inspector-General has developed insights into gaps and constraints relating to accountability and governance that compromise the effectiveness of relevant intergovernmental agreements, including the NWI. The following summarises these findings and provides insights into what this could mean for a new agreement.

Importance of effective governance arrangements for integrated management of water

Roughly twice as many obligations, duties or commitments are set out in intergovernmental agreements compared to Commonwealth water laws. This significantly larger proportion demonstrates how important effective implementation of commitments entered into by relevant governments are to delivering intended water management outcomes. Consequently, it is essential agreements provide for effective governance arrangements that ensure relevant parties are able to be held to account for the implementation and effectiveness of associated commitments.

Need for improved transparency and accountability for publicly funded projects

Where agreements relate to project funding, there is need for proportionate oversight to the amount of associated funding, to manage risks and provide transparency and accountability in the use of public money. Integrity in the general use of public money has also been highlighted as a concern by the Commonwealth Auditor-General. However, provision of and public access to information relating to funding and outcomes is poor, which demonstrates the need for explicit inclusion of reporting requirements in relevant agreements.

Effective water management over the long term requires enduring commitment of governments

Government failure to deliver commitments in intergovernmental agreements undermine the efficacy of integrated water management and creates inequities for different water users. Failure to deliver commitments related to water resource plans and metering demonstrates the importance of appropriate and enduring incentives for governments to implement commitments. These incentives should be part of new agreements, where relevant governments could be held accountable through processes established in those agreements.

Focus on practical drivers of trust and confidence

Community perceptions around water management are driven by a number of factors, where the underlying theme is one of transparency; that is, being able to form views on decision-making and outcomes. The importance of transparency is likely to be exacerbated in drier conditions, where, for example, a drought could increase distrust in governments' management of increasingly scarce water resources. Early focus on, and commitments to, practically improve the visibility of and access to relevant information could be used as a mechanism to proactively manage this risk.

Importance of national leadership in adaptive management

National water reforms are a cooperative effort requiring enduring commitment to delivering the national interest. Confidence in those reforms therefore relies on certainty that relevant decision-makers (such as the relevant ministerial council) will meet to discuss emerging risks, challenges and opportunities as part of the adaptive management of water resources. This confidence depends on these meetings being held with sufficient frequency for timely consideration and implementation of measures to manage those risks. An agreement could therefore provide for such meetings, where the procedures and processes formalised through an appropriate mechanism, such as terms of references.



Responses to discussion paper

The Inspector-General considers the objectives and outcomes set out in the discussion paper are broadly appropriate. The Inspector-General notes these link directly to managing new challenges facing Australian governments in the management of water and the intention to build on the principles set out in the NWI.

The Inspector-General would welcome further opportunities to comment on the development of the future agreement going forward. Relevantly, the Inspector-General can provide insights from their experience in performing their statutory functions that could be leveraged by decision-makers to manage existing risks and challenges and avoid drafting that may have unintended future consequences.

The Inspector-General considers the articulation of principles and application of those principles by relevant governments in developing action plans will be critical to a new agreement being effective. As such, the Inspector-General recommends that, for all the objectives, fit-for-purpose governance arrangements and maximising transparency and accountability should be explicit principles.

This could include, among other things, assignment of roles and responsibilities, regularly monitoring and reporting on outcomes, and maximising the consistency and accessibility of reporting of governments. This needs to be supported by the identification of relevant indicators, performance metrics and targets, as relevant. Governments would also need to commit to report on these to an appropriate institution at least annually, who would then consolidate the information and report to the national policy body (i.e., the Water and Murray-Darling Basin Ministerial Council).

The remainder of this section provides the Inspector-General's responses to the specific objectives and associated outcomes in the discussion paper.

Objective 1:

Securing water for all uses

The Inspector-General considers the objective and outcomes are broadly appropriate. In terms of principles that will apply in the development of government action plans, the Inspector-General recommends articulating how the objective and associated outcomes will be achieved through the adaptive management of water in light of the changing climate, increased demand and protection of Aboriginal and Torres Strait Islander People's interests and values.

Objective 2:

Supporting Aboriginal and Torres Strait Islander People's water interests and values

The Inspector-General considers the objective and outcomes are broadly appropriate.

The Basin Plan includes obligations relating to Aboriginal objectives and outcomes that are captured through water resource plans. 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, the Basin Plan requirement to 'have regard to' these matters can be interpreted in a minimal way, resulting in limited accountability around how this consultation is represented in the water resource plan.

As such, the Inspector-General recommends learning from the experience in applying the Basin Plan in the principles that will apply in the development of government action plans. Relevantly, this could entail establishing and reporting on measures of effectiveness, to provide a higher level of transparency and accountability around government's delivery of this objective and associated outcomes.

Objective 3: Climate resilient water management

The Inspector-General considers the objective and outcomes are broadly appropriate and, in particular, welcomes the focus in the outcome around managing extreme scenarios on clear triggers, roles and responsibilities for action. In terms of principles that will apply in the development of government action plans, the Inspector-General recommends providing more guidance around the nature of the role of governments in a changing climate. Relevantly, the Inspector-General considers that water management frameworks to also reasonably cover managing the consequences of climate variability (e.g., access to water that is fit for human consumption, or cultural or agricultural needs, managing water borne disease, etc.).

The Inspector-General also considers that this objective could be usefully linked to objective 4 (evidence-based decision making). Climate variability necessitates the use of adaptive approaches as a means of managing a 'wicked' policy problem. From a practical perspective, timely, fit-for-purpose incremental reforms, informed by multi-disciplinary expertise will be required, which will be a challenge facing all governments in the management of water.

Objective 4: Ensuring evidence-based decision making

The Inspector-General considers the objective and outcomes are broadly appropriate and in line with improving transparency and visibility of decision making.

In terms of principles that will apply in the development of government action plans, the Inspector-General recommends clarifying roles and responsibilities with respect to information. Specifically, the Inspector-General notes that the provision of information can be an onerous task for governments but that this could be better managed by establishing clear procedures and guiding principles around what information is necessary to be provided. The Inspector-General also notes that governments have an opportunity to improve the consistency of the information individual governments report or provide, to reduce the risk of information being misrepresented or informing disinformation.

The Inspector-General also recommends recognising the challenges facing governments in the management of water in a variable climate. Relevantly, as noted above, governments will need to pursue adaptive management practices, which will need to be informed by the dynamics between environmental, ecological, climatic, social, cultural, economic and health factors. The Inspector-General considers that guidance around different factors for decision makers to be aware of could help to identify appropriate sources of relevant evidence.

Objective 5: Transparent, strategic water infrastructure investment

The Inspector-General considers the objective and outcomes are broadly appropriate. In terms of principles that will apply in the development of government action plans, the Inspector-General recommends extending reporting to reporting on project outcomes. This reporting can then be used to further inform 'evidence-based decision making' in line with objective 4.

Objective 6:

Sustained community trust and confidence in government, water agencies, water managers and users

In the Murray-Darling Basin, one of the stated reasons for establishing the statutory office of the Inspector-General of Water Compliance was to improve trust and confidence in the management of Basin water resources. As such, the Inspector-General welcomes this focus at a national level.

The Inspector-General considers the objective and outcomes are broadly appropriate. The Inspector-General, in particular, strongly supports the outcome of “[progress] towards achieving water management objectives is demonstrated through robust and transparent monitoring, reporting and evaluation” as critical for providing necessary social licence.

The Inspector-General recommends adopting best practice principles to be used in the development of action plans. Relevant principles include the governance principles identified by the Organisation for Economic Co-operation and Development (OECD) in its:

- 2014 *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy
- 2015 *OECD Principles on Water Governance*.

In addition, the Inspector-General recommends that a principle of continual improvement be applied to governance arrangements. Relevantly, the Inspector-General considers the national policy body and individual governments’ regular review and refinement of governance arrangements would ensure water management meets community needs and the split in roles and responsibilities remain fit-for-purpose in light of practical outcomes.

Objective 7:

The efficient use of water

The Inspector-General considers the objective and outcomes are broadly appropriate.

The Inspector-General notes the potential role of the new agreement in providing context for an analytical framework to apply in future reviews into Australia’s water markets. The Inspector-General therefore would welcome clarification of how the outcomes from water management (including trading of water) would be intended to support or deliver national economic interests, as part of the agreement.

In terms of principles that will apply in the development of government action plans, the Inspector-General recommends building on the policy drivers behind recent Commonwealth law reforms (through the *Water Amendment (Restoring our Rivers) Act 2023*). Relevantly, there is an opportunity for governments to make improving the provision of accurate, consistent and timely information that is, or could reasonably be, used in trading decisions as a means of efficient price setting a priority in the agreement.

