

The Independent Commission Against Corruption
Investigation into complaints of corruption in the
management of water in NSW and systemic non-
compliance with the *Water Management Act 2000*

NSW Government response and action plan to the Independent Commission Against Corruption Investigation into complaints of corruption in the management of water in NSW and systemic non-compliance with the *Water Management Act 2000*

Recommendation 1:

That the Department of Planning, Industry and Environment (DPIE) publicly records:

- its water strategy, objectives and priorities for the use and management of NSW's water resources in a manner consistent with the mandatory duty in s 9 of the WMA
- the need to ensure the water management principles in s 5, and in particular those that relate to sharing, as set out in s 5(3) of the WMA, are all given effect.

Section 9 of the WMA should also inform relevant key departmental records, including agency policies, guidelines and role descriptions, concerning the management of NSW water resources.

Response: Implement the recommendation as described in the report

Actions:

The draft NSW Water Strategy documents a series of objectives, guiding principles and priorities that are based on the objects and principles of the *Water Management Act 2000* (the Act), and includes sections which describe in plain English the prioritisation of water sharing according to the Act, both under normal conditions and when a water sharing plan might be suspended during an extreme event. The NSW Water Strategy is to be finalised in July 2021 following public consultation. Regional water strategies across NSW will be complete in 2022.

Operational policies such as Incident Response Guides document the measures to provide for water sharing priorities under the Act, and for when they change when a water sharing plan is suspended during an extreme event. These guides are being reviewed following the recent drought to identify how they can be improved.

The Department will review other policy and operational guidance documents, for example background documents to water sharing plans, to clearly reflect alignment with s. 5 of the Act. All relevant policy and operational guidance documents will be identified, prioritised, reviewed and updated in tranches, with all reviews and updates to be complete within 12 months (by March 2022).

Further, s. 10 of the *Water Management Act 2000* requires the Minister to “ensure that the work and activities of the Department are reviewed at intervals of not more than 5 years for the purpose of determining whether they have been effective in giving effect to the water management principles of this Act and the State Water Management Outcomes Plan.” It is proposed to commission a report under s. 10 within the next 12 months (by March 2022).

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Also, the Department has already developed new explanatory material that outlines how the Department undertakes water sharing planning in alignment with the principles and duties of the *Water Management Act 2000*. For example, the Department recently published a document that clearly explains how development of the Border Rivers Water Sharing Plan, including amendments to enable licensing of floodplain harvesting take, is consistent with the requirements of the *Water Management Act 2000*, including the duty in s 9.

Responsibility: DPIE Water Group, Strategy Division

Recommendation 2

That the DPIE develops and publishes a protocol and procedures for amending WSPs that reflect the principles for water sharing in s 5(3) of the WMA and give priority to those principles in the order in which they are set out in that subsection in accordance with the mandatory duty imposed by s 9 of the WMA. The protocol should also have regard to audits conducted by the Natural Resources Commission

Response: Implement the recommendation as described in the report

Actions:

The Department's Water Group has established a new, dedicated team to drive implementation of water sharing plans and other water policy (Water Planning Implementation Team). Part of the purpose of this new team is to ensure that evaluation and future amendments of water sharing plans include an evaluation against the principles in s. 5 of the Act.

The Department's existing procedures and guidance documents for water sharing plan replacement and amendments will be reviewed to ensure they clearly reflect the relevant requirements. They will be published by end of Q2 2021.

Responsibility: DPIE Water Group, Strategy Division

Recommendation 3

That the DPIE implements all changes it has proposed to the BDWSP rules to ensure its consistency with the WMA, specifically:

- implementing IDELs and TDELs (including trade limits on IDELs)
- raising A-class cease-to-pump thresholds based on up-to-date environmental water requirements to better protect low-flow water from extraction
- removing imminent flow provisions to prevent extraction of low-flow water even when higher flows are anticipated
- introducing resumption of flow rules to protect the first flow of water after a dry (low or cease-to-flow) period from extraction
- establishing management provisions to protect upstream environmental water releases from being extracted when they reach the Barwon-Darling.

Response: Implement the recommendation as described in the report

This recommendation has already been implemented in full.

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The following changes to the Water Sharing Plan for the Barwon-Darling Unregulated Water Source commenced when the plan was amended from 1 July 2020. The changes responded to findings and recommendations from the *Independent investigation into NSW water management and compliance* (Matthews report, 2017) and the NRC review of the Barwon-Darling water sharing plan (2019) and the *Independent assessment of the 2018-19 fish deaths in the lower Darling* (Vertessy report, 2019).

Specifically:

- Individual daily extraction components (IDECs) (previously referred to as IDELs) were implemented as of 1 July 2020, including trade restrictions. The Total Daily Extraction Limits (TDELS) are the sum of IDECs in the Barwon-Darling system
- Following an independent review by the NRC, A-class cease-to-pump thresholds were changed based on the most up to date scientific information contained in the Long Term Water Plan and expert opinion. A consistent approach was applied throughout the Barwon-Darling water source
- The imminent flow rule was removed from the Barwon-Darling water sharing plan on 1 July 2020
- Resumption of flow rules were introduced on 1 July 2020 to protect first-flush events in the Barwon-Darling after extended dry periods, informed by modelling and expert opinion
- Active management was introduced on 1 December 2020 to protect water that has been purchased for the environment (Held Environmental Water) in the Barwon-Darling, lower Macquarie, and lower Gwydir (noting that normal operation of our regulated rivers already protect this water in our upstream regulated river water sources).

More information is available at the environmental water hub:

www.industry.nsw.gov.au/water/environmental-water-hub

Recommendation 4

That the DPIE establishes a dedicated and adequately funded WSP implementation team to ensure all of the state's WSP rules are implemented effectively.

Response: Implement the recommendation as described in the report

This recommendation has already been implemented in full.

The Department's Water Group has a new, dedicated Water Planning Implementation Team. The team focusses on:

- evaluation and reporting
- implementation programs
- regulatory implementation
- environmental water management
- water allocations
- drought management (until June 2021).

This team sits within a new Division within the Department's Water Group led by a Chief Operating Officer. This Division of the Chief Operating Officer has an exclusive focus on implementation and operations to ensure this work is prioritised and the implementation team has the right tools, support and frameworks to support implementation activities.

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Improved processes are being developed for progressing mandatory conditions on access licences and approvals, development of water sharing plan implementation programs and annual progress reporting on implementation. The team is also developing methods for improving efficiency in water sharing plan evaluations so resources are focussed in priority areas.

There will be ongoing monitoring of the adequacy of resourcing.

Recommendation 5

That the DPIE publishes a list of all WSP rules that have not yet been implemented and develops and publishes timelines for implementing these rules.

Response: Implement the recommendation as described in the report

Actions:

This work is underway. The Department's Water Group is establishing implementation programs for water sharing plans which will capture all the implementation aspects.

This will include developing a database of plan rules, and publishing rules that have not been implemented by December 2021.

Responsibility: DPIE Water Group, Operations Division

Recommendation 6

That the DPIE prioritises and seeks to bring forward audits of any WSP that have not, to date, been audited under s 44 of the WMA.

Response: Implement the recommendation as described in the report

This recommendation has already been implemented in full.

Audits of all water sharing plans under s. 44 of the Act are now up to date.

The function of conducting audits under s. 44 has been transferred to the independent Natural Resources Commission through amendments to the Act in 2018, so that these audits are done at arm's length to the department.

Previous audit reports are available at: www.industry.nsw.gov.au/water/plans-programs/water-sharing-plans/audits

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Recommendation 7

That the NSW Government recommences funding of scientific audits that periodically monitor the environmental health of its rivers and river flows to provide independent assurance of the effectiveness of its water management policies.

Response: Implement the recommendation as described in the report

Actions:

The Department supports investment in long-term, high-quality monitoring, evaluation and reporting, which includes the periodic monitoring of environmental health to determine effectiveness of management and policy.

River-based environmental monitoring, evaluation and reporting is undertaken by the Department of Primary Industries-Fisheries (DPIF), the Environment, Energy and Science (EES) Group and the Water Group, which have developed a coordinated program in the Murray-Darling Basin and are currently developing a coastal program.

Monitoring the environmental health of rivers and river flows requires a combination of in-field, real-time flow, and remote sensing data collection. Periodic monitoring is typically at an annual or inter-annual scale rather than more frequent.

The draft NSW Water Strategy includes commitments to invest in monitoring, evaluation, reporting and research to inform future management actions. This includes a commitment to update the River Condition Index in 2021, which will provide a baseline for assessing progress of the NSW Water Strategy and the regional and metropolitan water strategies.

NSW has also completed a comprehensive body of work through the NSW High Ecological Value Aquatic Ecosystems (HEVAE) framework which maps and classifies the instream ecological value of river reaches in NSW freshwater rivers. The HEVAE framework informs the development of water sharing plans, along with specific ecological condition and intervention monitoring, including fish community status and threatened species distributions. This has been completed for all inland catchments and detailed assessments in coastal regions will be complete in 2021.

The Department has implemented its own monitoring, evaluation and reporting program, and the Murray-Darling Basin Authority has established a cross-jurisdictional Monitoring, Evaluation and Reporting Working Group. Further, monitoring, evaluation and reporting plans have been developed as part of each water resource plan, including for surface water ecology for each inland valley and groundwater.

Funding will be secured to appropriately support effective monitoring of river health and evaluation of outcomes and this is will initially be targeted to locations with high environmental risk.

Independent assurance of the effectiveness of water management policies is provided by the function performed by the Natural Resources Commission under s. 43A of the *Water Management Act 2000* which requires it to review “a) the extent to which the water sharing provisions have materially contributed to the achievement of, or the failure to achieve, environmental, social and economic outcomes, and (b) whether changes to those provisions are warranted.”

This will be complemented by reviews under s.10 of the *Water Management Act 2000* (see response to recommendation 1).

Responsibility: DPIE Water Group, Knowledge and Operations Divisions

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Recommendation 8

That the DPIE publishes all stakeholder and community engagement plans concerning water management when they are complete.

Response: Implement the recommendation as described in the report

Actions:

The Department is currently drafting a whole-of-cluster stakeholder engagement framework and public charter that will be rolled out across the cluster.

Already, the Department's Water Group publishes details of all upcoming public engagement processes on its website. Procedures will be reviewed so that this can include publication of communication and engagement plans concerning water management. Procedures for publishing communication and engagement plans will be developed, and we will commence publishing stakeholder and community engagement plans concerning water management when they are complete by mid-2021.

Further, it is already common practice for the Department's Water Group to publish 'what we heard' documents after public consultation processes, which document meetings held and issues raised during a consultation process.

The Department's website is being refreshed in 2021. The ability to find consultation reports and records of meetings will be improved through that process.

Responsibility: DPIE Water Communications, Water Relations and DPIE Engagement

Recommendation 9

That the DPIE tasks an appropriately qualified and experienced independent reviewer to conduct, on a recurrent basis, reviews of the steps taken to implement its "Water stakeholder and community engagement policy" and the policy's effectiveness. The independent reviewer should have the function of making such recommendations as they think necessary to ensure that all water stakeholders have their interests heard in a fair, balanced and transparent way.

Response: Implement the recommendation as described in the report

Actions:

The Department's Water Group will engage an independent reviewer to review implementation and effectiveness of the *Water stakeholder and community engagement* policy every two years. The first review will be complete within 12 months (by March 2022).

Further, the draft NSW Water Strategy prioritises actions to build community confidence and capacity through engagement, transparency and accountability. This includes actions to improve how the water sector engages with communities about water management and make it much easier for water users and the broader community to engage with and understand water management and how decisions are made.

There will be annual public reporting of progress against actions in the NSW Water Strategy, and it will be formally evaluated at least every five years. This will include formal evaluation of the activities to improve stakeholder engagement.

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The Department has periodically commissioned reviews which consider aspects of our communications and engagement. As a result of reviews undertaken such as the Review into the First Flush event, the Matthews Investigation and a transparency stocktake currently underway by the Nous Group, the department has worked to develop improved communications and engagement approaches.

The Department has also established a new communications team dedicated to the Water Group to support effective stakeholder and community engagement. Members of this team have completed, or are in the process of completing, IAP2 (International Association for Public Participation) certification.

Responsibility: DPIE Water Communications, Water Relations and DPIE Engagement

Recommendation 10

That the DPIE develops a model procedure concerning the conduct of meetings with external stakeholders in respect of water management issues that includes requirements to:

- make records of these meetings
- publish meeting details including attendees, organisations represented and meeting agendas, on the water area of the DPIE's website at least monthly.

Response: Implement the recommendation as described in the report

Actions:

Engagement processes of the Department's Water Group are currently underpinned by the *Water stakeholder and community engagement* policy. This policy and associated procedures will be reviewed to align with the new Department-wide framework. Procedures to guide staff practices in conducting meetings with external stakeholders will be considered as part of this process and ensure broader privacy requirements are upheld. Procedures for meeting conduct are to be developed by December 2021.

The Water Group will work with other parts of the Department that also meet with external stakeholders on water management issues (for example, the Environment, Energy and Science Group) to ensure that equivalent requirements are built into procedures for that part of the Department.

Already, the Water Group publishes all upcoming public engagement processes on its website. It also regularly updates a summary list of meetings that have been held over the previous quarter. This is supported by dedicated engagement software to record details of meetings. We also publish minutes, summaries, and communiques of key meetings online, for example, communiques of Critical Water Advisory Panel meetings are published online.

The Water Group will improve the way this information is presented on its website to make it more accessible, and review whether additional information including attendees and agenda can be included in these records, subject to any privacy considerations.

It is now common practice for the Water Group to publish 'what we heard' documents after public consultation processes, which document meetings held and issues raised during a consultation process.

Responsibility: DPIE Water Communications, Water Relations and DPIE Engagement

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Recommendation 11

That the DPIE formalises communication, information-sharing and consultation protocols with officers performing the functions of the Environment, Energy and Science Group (formerly the Office of Environment and Heritage).

Response: Implement the recommendation as described in the report

This recommendation has already been implemented and is ongoing.

The Department's Water Group works closely and collaboratively with the Environment, Energy and Science (EES) Group within the Department of Planning, Industry and Environment cluster. This is formalised through a series of forums at various levels of the cluster:

- The Department of Planning, Industry and Environment Leadership Team, chaired by the Secretary, reviews all major cluster policy issues, and endorses all submissions to Cluster Ministers Committee and Cabinet.
- Regional Water Senior Officers Group (RWSOG) is a senior executive level interagency committee that includes EES Group. All key water policy and plan development, reviews and amendments are managed through the RWSOG. This includes proposed amendments to water sharing plans as part of statutory reviews and remakes prior to and after public consultation. Minor amendments to water sharing plans that are made outside the statutory review cycle also include consultation with EES Group and concurrence from the Minister for Energy and Environment.
- EES Group is part of Ministerial Council and Basin Officials Committee pre/de briefs.
- EES Group is part of the inter-agency Critical Water Technical Advisory Group that meets fortnightly.
- EES Group is a part of the water sharing plan development governance structure including representations on Water Science and Regional working groups at officer level, coastal and inland planning and policy working groups at manager level and the RWSOG at the senior executive level. EES Group is a member of the Regional Water Strategies governance and technical committees, including at the Cluster leadership level.
- There is an EOM (Environmental Objectives Monitoring) working group that has met through all stages of water resource plan development that combines EES Group, DPI Fisheries and Water Group's approach to ecological monitoring.
- EES Group is a joint member of the NSW Modelling and Monitoring Hub which makes formal communication, information sharing and improvement initiatives in water modelling, monitoring and data.
- A regulatory issues working group has representatives from EES Group, NRAR, WaterNSW and Water Group that meet fortnightly to work through any regulatory/implementation issues that arise from implementation of the water sharing plans and other statutory instruments.

These arrangements will be regularly reviewed to ensure that the collaborative work of the Water Group and EES Group results in approvals by the Minister for Water and concurrence requests to the Minister for Energy and Environment for making or amending water management plans explicitly demonstrate adherence to water management principles.

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Recommendation 12

That the DPIE ensures that its staff are properly inducted and receive ongoing training regarding the responsibilities of public officers in respect of the classification and handling of confidential and sensitive information

Response: Implement the recommendation as described in the report

This recommendation has already been implemented and is ongoing.

One action from the Water Reform Action Plan released in December 2017 was to “Build capability, improve standards and embed an ethical culture” and this included a commitment to “roll out department-wide ethics and professional standards training” within the former Department of Industry. This action was completed, and implementation of actions under the Water Reform Action Plan was independently reviewed.

The Department released its Code of Ethics and Conduct in March 2020 which includes information management requirements.

In addition the following mandatory actions are required by staff:

- completion of the on line Code of Ethics and Conduct training which addresses records management
- submission of an annual declaration within the Department’s Ethics Portal setting out they have read and understood their obligations under the Code of Ethics and Conduct.

The Department continues to enhance its records management practices. In December 2020, Department’s Records and Information Management Policy was approved. This policy is supported by mandatory online training on core records and information management obligations for Water Group staff, and continuing to improve guidance to staff of records and information management practices.

Recommendation 13

That the DPIE reviews its recruitment policies and procedures to ensure that they are consistent with the Government Sector Employment (General) Rules 2014 rules and best-practice guidance provided by the Public Service Commission. Particular attention should be given to ensuring that:

- job advertisements run for enough time to allow the market to be tested
- hiring managers undertake the Public Service Commission’s recruitment training
- more than one member of a selection panel participates in the cull of candidates, unless exceptional circumstances exist
- clear guidance is provided about the relevance of any independent reports assessing the suitability of candidates.

Response: Implement the recommendation as described in the report

Actions:

The Department’s recruitment processes and practices are continually being refined and conform to the requirements of the *Government Sector Employment Act 2013* and Public Service Commission guidelines.

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The Department conducts regular hiring manager training and has recently updated its hiring manager guide.

People Performance and Culture Group has implemented an updated workflow, checklist and hiring manager guide to support hiring managers understand and adhere to the appropriate recruitment standards. It is anticipated that comprehensive hiring manager training will be rolled out in 2021.

A Hiring Manager training module is currently under construction. This will be a compulsory e-learning module for all hiring managers. This e-learning module will be modelled from the Public Service Commission training and include additional information including best practice advertising guidelines, panel responsibilities and outcomes. This comprehensive hiring manager training module is anticipated to be rolled out by end Q3 2021.

In addition, People, Performance and Culture Group is generally represented on interview panels for senior executive roles.

Responsibility: DPIE People, Performance and Culture Group

Recommendation 14

That the NSW Government guarantees the funding of the Natural Resources Access Regulator (NRAR), at least to a level equivalent to the recommendations of the Independent Pricing and Regulatory Tribunal of NSW, over the long term

Response: Implement the recommendation as described in the report

Actions:

The Independent Pricing and Regulatory Tribunal (IPART) will finalise its determination of prices for water management services delivered on behalf of the Water Administration Ministerial Corporation by June 2021, with new prices to apply for four years from 1 July 2021. IPART's determination will be based on its decisions about the efficient costs of water management, including NRAR's compliance management activities.

Water management prices will reflect the portion of costs to be borne by water users based on the impactor pays principle and consideration of customer bill impacts. Under the National Water Initiative pricing principles adopted by IPART, the remainder of efficient costs should be paid by the Government. IPART has also adopted the principle that the Government should pay for the costs of addressing legacy issues (costs that are a result of past users and activities).

Formal NSW Government approval of the Government funding amount will be sought in Q2 2021, following IPART's draft price determination.

Recommendation 15

That the DPIE periodically publishes aggregated water account information on its website and makes individual-level data available to NRAR.

Response: Implement the recommendation as described in the report

This recommendation has already been substantially completed and is ongoing.

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The Department now publishes aggregated water account information in near real time through the department's usage dashboard (www.industry.nsw.gov.au/water/allocations-availability/water-accounting/usage-dashboard)

Information is provided for NSW regulated and groundwater systems and may be filtered down to individual water sources and categories of licence. The dashboard allows the public to access:

- the current volume of water available to use
- additional water in licence accounts that is not currently available for use (restricted by the water sharing plan rules such as usage limits or by temporary water restrictions)
- the total usage for the water year that has been reconciled to a meter reading (or other approved measurement device)
- the total water orders for the water year (regulated systems) that have been delivered but are yet to be reconciled to a meter reading
- the future water orders that have been placed for delivery (regulated systems)
- a range of visualisation and downloadable data options (to a daily timestep) for current and historical water account usages, including by river section.

Intended expansion for this product includes the ability to analyse between held environmental water licences and consumptive licences, providing information at a finer granularity (for example a water management zone) and expanding to inland unregulated river water sources.

Aggregated water account information is also being progressively built into the new WaterInsights information portal, hosted by WaterNSW (www.waternsw.com.au/waterinsights/water-insights). WaterInsights aims to bring together commonly sought water accounting information into one easily accessible and user-friendly platform, and to assist improving water literacy. The accounting information includes issued licence share components, current water allocations, water availability, account usage and trading.

Information is now available for 70% of NSW water sources and will soon be expanded to capture the remaining inland water sources. It will be rolled out for remaining inland water sources in the Northern Basin by June 2021, and the Southern Basin by December 2021.

NRAR already has direct access to the operational system (administered by WaterNSW) that underpins this aggregated public information, and can access individual access licence accounts, without restriction. This provides NRAR the individual accounting transactions applied to a water access licence (carryover, allocation, temporary trading, orders, usages, forfeits, restrictions, account balance), the licence attributes (licence share, water type, legislative management area), the licence holder details and the pump or bore locations used to extract water. NRAR is also able to access the licencing system (administered by WaterNSW) that provides further detailed information on the licence history, licence dealings and the legislative conditions that apply to the licence. The Department has also supported NRAR through customised data products and data reports catered to their operational requirements.

The Department notes that the availability and utility of this information is limited by the availability of reliable measurement and metering. As the NSW Government's metering policy rolls out across the state, the availability of usage and account information will increase.

Responsibility: DPIE Water Group, Knowledge Division and WaterNSW