

Submission to Inspector General of Water Compliance on Regulatory Policy Discussion Paper

Department of Energy, Environment and Climate Action



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Energy,
Environment
and Climate Action

OFFICIAL

Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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Overview

The Department of Energy, Environment and Climate Change (DEECA) welcomes the establishment of the Inspector-General of Water Compliance (IGWC) to oversee the states', and Commonwealth's compliance with the Basin Plan and Water Resource Plans. DEECA continues to work collaboratively with the IGWC and other Basin states through the Regulatory Leaders Forum and associated working groups.

The development of the IGWC's Regulatory Policy is a necessary step to provide guidance and clarity on the IGWC's approach to performing its regulatory roles and responsibilities. DEECA appreciates the opportunity to provide feedback on the Regulatory Policy Discussion Paper and support the development of the Policy.

The Regulatory Policy Discussion Paper provides an articulation of roles and responsibilities established under the *Water Act 2007 (Cth) (the Act)*. While legislative context is important, the Discussion Paper relies too heavily on the Act and the Basin Plan and could benefit from a practical focus on how the IGWC will use its regulatory role and powers to improve Basin-wide outcomes on the ground.

Given the wide range of roles and functions articulated in the Discussion Paper, it would be valuable to Victorian water users for the IGWC to define clear and meaningful priorities over time which will inform areas the IGWC's areas of focus.

An important foundational piece of work which would benefit water users and jurisdictions across the Basin is a clear and plain language description of how water compliance works within and across different states and territories and the roles and responsibilities of different entities in ensuring that Basin water resources are responsibly managed.

DEECA would like to see the Regulatory Policy provide further clarity in the following areas:

- Specific regulatory outcomes identified by the IGWC
- An articulation of core functions (i.e. education or monitoring) and links to tools (i.e. powers), priority areas and regulatory outcomes
- The ways in which the IGWC will work with state regulators to achieve outcomes and avoid overlap or duplication with the role of states' compliance regimes
- Relevant regulatory principles based on regulatory context and best practice standards.



Alieta Donald
Co-Executive Director, Water Resource Strategy

Response to Regulatory Policy Discussion Paper

Institutional Content

Request for feedback

- *Noting the collective responsibility for the management of Basin water resources, is it clear from the above the focus of the Inspector-General's roles and responsibilities?*
- *Are the principles above appropriate to inform the Inspector-General's Regulatory Policy?*

Response

- It must be made clear that the role of the IGWC does not extend to broadly assessing state agencies' compliance with state legislation, nor does it have a role in assessing the effectiveness of Victorian laws or overseeing the performance of function or powers of the State in general. Rather, the IGWC's primary role is to monitor and provide independent oversight by agencies of the Murray-Darling Basin states of their obligations in relation to management of Basin water resources under the Commonwealth Water Act, Basin Plan, and Water Resource Plans.
- The proposed principles in this section could benefit from recognising the IGWC's role in coordinating state and Commonwealth efforts to maximise compliance outcomes in the Basin. It is unclear how the principles defined in this section relate to principles later in the Discussion Paper.
 - Regarding principle 3, it is not clear beyond the IGWC's role in monitoring compliance with Sustainable Diversion Limits (SDL) why this would be a principle.
 - Regarding principle 4, national interest features in the Act and our intergovernmental agreements. National interest is a subjective term and should not be used to prioritise actions of the IGWC. Actions should be defensible and based on risk, intelligence, and intended Basin-wide outcomes.

Regulated Agencies

Request for feedback

- *Noting the complexity of governance arrangements associated with the management of Basin water resources, what, if anything, would aid in clarifying those governance arrangements? Further, is it clear the unique role performed by the Inspector-General within and to support those arrangements?*
- *For government agencies, the Inspector-General welcomes insights into how to characterise your various roles to ensure his regulatory policy will be relevant despite differences in individual government arrangements.*
- *The Inspector-General is also seeking feedback on whether the above provides sufficient clarity around regulation of relevant government agencies under the Act.*

Response

- In order for the IGWC's role to be well understood, their roles and responsibilities must be described in comparison to those of other jurisdictions with responsibilities with related roles and responsibilities This would assist in clarifying:
 - Where the IGWC undertakes an oversight function
 - Where the IGWC undertakes an enforcement function under Commonwealth legislation
 - Where the IGWC undertakes a stand-alone regulatory function
- It must be made clear that the role of the IGWC does not duplicate other Commonwealth agencies (e.g. Australian Competition and Consumer Commission's role in reviewing water markets or the role of the Murray-Darling Basin Authority). In Victoria, the Minister for Water is accountable to Parliament and responsible for the development of water policy and governance of the water sector under the Victorian *Water Act 1989 (Vic)* and *Catchment and Land Protection Act 1994 (Vic)*. Under the Victorian Water Act, the Minister for Water is responsible for issuing water entitlements and managing Victoria's water resources for both urban and non-urban uses.

- Under the Victorian Water Act, the Minister for Water has powers and functions which have been delegated to water corporations, including for the administration of water entitlements and licences. This means that in addition to water corporations' functions of delivering water and irrigation drainage services, water corporations also have delegated responsibility for the compliance and enforcement of rules and legislative requirements surrounding the take and use of water and construction of works.

Legislative Context

Request for feedback

- *Noting the range of objectives of the Act, is it clear how these relate to the Inspector-General's roles and responsibilities?*
- *Is the Inspector-General's interpretation of this objectives appropriate?*
- *The Inspector-General is requesting feedback on the clarity of the Act and its enabled legislation and, relevantly, how this informs the Inspector-General's roles and responsibilities*

Response

- It is not clear in the Discussion Paper how the proposal by the IGWC to monitor and provide insights into economic, social and environmental outcomes adds value to existing programs or avoids duplication. There are a wide range of existing monitoring, evaluation and reporting programs for economic, social and environmental outcomes already in place in the Murray-Darling Basin across a range of agencies.
- Given that the Discussion Paper outlines that the objectives of the Act are generally met by existing rules and functions of other agencies, this section could be clearer around the IGWC's role in that context, for example – providing oversight and assurance that those rules and functions are effective.
- For Basin States, principles in this section largely reflect the objectives of existing Water Resource Plans and other relevant agreements.

Management of Basin water resources under the Act

Request for feedback

- *The Inspector-General is requesting feedback on whether his role in the management of Basin water resources is clear from the above. Relevantly, are there any gaps that should be considered in the development of his regulatory policy?*

Response

- It should be made clear that the water trading rules which the IGWC identifies for the enforcement agency are water trading rules set under the Commonwealth Act.
- Oversight of relevant government agencies' performance under Water Resource Plans is considered a core function of the IGWC. The IGWC should outline how this function links to enforcement tools available and what regulatory outcomes the IGWC intends to achieve.
- As outlined in previous sections, it is difficult to clearly describe the role of the IGWC in relation to management of Basin water resources without describing the roles and functions of other agencies. The type of role the IGWC plays in relation the identified focus areas should be made clearer.

Inspector-General roles and responsibilities

Request for feedback

- *The Inspector-General is requesting feedback on what, if anything, stakeholders consider in addition to the above could usefully be clarified around his functions as part of developing his regulatory policy.*

Response

- The Regulatory Policy should provide more clarity on the IGWC's core functions (e.g. education or monitoring) and link to tools (e.g powers) and outcomes. For each core function it should be made clear:
 - Where the IGWC is a sole provider of the function or where the IGWC oversees relevant agencies; and
 - What the priority areas or actions for the IGWC are in delivering this function.

- DEECA notes that no specific principles, guidelines, or standards have been developed for the IGWC's regulatory powers. The Regulatory Policy and other relevant policies must specify how the IGWC intends to exercise its regulatory powers and how it complements or interacts with existing Basin jurisdictions' compliance and enforcement regimes. Without this clarity, DEECA is concerned about the possibility of:
 - duplication with the role of states' compliance regimes;
 - confusion from regulated communities about the role of agencies; and
 - use of regulatory powers without appropriate and demonstrable justification (e.g. risk-based, intelligence-led and outcome orientated) leading to potentially excessive use of states' resources for limited outcomes.
- It must be made clear that use of IGWC powers must not intervene and/or potentially frustrate investigations or enforcement matters pursued by state agencies (e.g. IGWC will only intervene as a last resort by providing written notice to the state where the contravention is alleged and allow 28 days for a response).

