

Inspector-General of Water Compliance

## Controls supporting compliance with Basin Plan Requirements - Department of Climate Change, Energy, the Environment and Water



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# 1 Executive Summary

## 1.1 Introduction

Yardstick was engaged by the Inspector-General of Water Compliance (IGWC or the Inspector-General) as an independent provider to conduct a periodic audit to assess the extent of compliance by the Department of Climate Change, Energy, the Environment and Water (department, DCCEEW) with sections 12.51 and 12.52 of the Basin Plan, pursuant to section 73L(1)(a) of the *Water Act 2007* (Water Act).

## 1.2 Objective and scope

The objective of the audit was to examine the controls that DCCEEW had in place to ensure that persons within DCCEEW with knowledge of a pending water announcement did not enter into any water trading activity before it was made generally available, as required by sections 12.51 and 12.52 of the Basin Plan.

The audit focused on:

- Identifying all water announcements made between 1 July 2022 and 28 February 2023 relevant to Basin Plan Chapter 12 Part 5 Division 5;
- Examining documents and other evidence that demonstrate the arrangements DCCEEW had in place (systems, policies, processes, procedures and other) to manage sensitive water market information between 1 July 2022 and end February 2023; and
- Analysing the controls DCCEEW had in place to mitigate the risk of non-compliance with sections 12.51 and 12.52 of the Basin Plan for water announcements made between 1 July 2022 and end February 2023.

The Basin Plan's relevant legislative requirements are outlined in Appendix A - Legislative Requirements.

In addressing the objective and scope of this audit, Yardstick has relied on information sourced and provided by DCCEEW. Yardstick does not warrant the completeness or authenticity of information provided by DCCEEW. Please refer to the report's disclaimers on page 26.

## 1.3 Summary of findings and recommendations

The audit identified two water announcements within scope:

1. Bridging the Gap (BTG) within the Murray-Darling Basin – 22 February 2023. This is an initiative of the Commonwealth Government being implemented through DCCEEW to recover water entitlements to achieve Basin Plan objectives.
2. Sale of Water Allocations in the Goulburn Catchment – 23 January 2023 – Commonwealth Environmental Water Holder (CEWH). This announcement was a decision to sell Goulburn annual water allocations independently made by the CEWH under the Water Act and is not connected to Bridging the Gap initiatives.

A summary of the audit's findings and recommendations on the design and operating effectiveness of the department's and CEWH's control framework to support compliance with sections 12.51 and 12.52 of the Basin Plan is outlined in Table 1 and Table 2.

The department's policy documents outline the Basin Plan's requirements by stating that:

- If any single departmental staff member is aware of market sensitive information that has not been made generally available by a water announcement, all staff in the department are deemed to have the same awareness.
- Ethics walls (or information barriers) to control the flow of information reverse this presumption.

In this context, effective information barriers are critical to supporting compliance with the Basin Plan's requirements. For in-scope water announcements, the audit assessed whether the department and the CEWH had controls to:

1. Inform their staff of legislative and policy requirements through a documented, endorsed and readily available policy and procedural framework.
2. Reinforce legislative and policy requirements through training and guidance before becoming aware of a pending water announcement.
3. Control and limit access to market sensitive information only on a 'need to know' basis, and review access controls to have assurance that only persons authorised to access information could have or did have access to it.
4. Manage actual, perceived and potential conflicts of interest for staff and external consultants engaged to assist with water trading activities.

The findings in this report present an assessment of the effectiveness of relevant control frameworks to mitigate the risk that persons with knowledge of a pending water announcement did not enter into any water trading activity before it was made generally available through a public announcement. While the audit observed controls in place to address risks to probity after announcements were made generally available, the operation and effectiveness of those controls was not in-scope. The report does not provide an opinion on whether DCCEEW (or anyone else) contravened sections 12.51 or 12.52 of the Basin Plan. Rather, the extent of DCCEEW's compliance with sections 12.51 and 12.52 was assessed by auditing the design and operational effectiveness of its controls to support compliance with sections 12.51 and 12.52 of the Basin Plan.

The control effectiveness ratings are provided at Appendix B: Control Effectiveness Ratings.

Detailed findings are included in section 3: Detailed Findings - Bridging the Gap water announcement and section 4: Detailed Findings - Goulburn Catchment water announcement.

### Bridging the Gap (BTG) water announcement

The department advised that it was made aware of a pending water announcement by the Federal Water Minister (the Minister) on 20 February 2023, two days before the Minister's public announcement on 22 February 2023. As such, the audit assessed whether the department had controls in place to address risks to market sensitive information before the announcement was made generally available

A summary of findings and recommendations for the BTG announcement made on 22 February 2023, is provided in 1 below.

Table 1: Summary of findings and recommendations - BTG announcement

Area	Finding	Recommendations
Policy and procedural framework	<p>The department's policy and procedural framework was assessed as partly effective because:</p> <ol style="list-style-type: none"> <li>1. It did not sufficiently outline how key controls such as information barrier arrangements operate and must be complied with.</li> <li>2. The revised policy framework was socialised with staff on 1 March 2023, after the water announcement was made generally available. It is not clear how all staff were made aware of the policy framework and its requirements prior to the water announcement being made publicly available.</li> </ol>	<ol style="list-style-type: none"> <li>1. The department review and update its policy and procedural framework to clearly outline how controls such as information barrier arrangements operate, and include sufficient information on what constitutes compliance so that staff can clearly meet these requirements.</li> </ol>

Area	Finding	Recommendations
Training	<p>The department's training and awareness regime were assessed as partly effective in supporting compliance with the Basin Plan's requirements because:</p> <ol style="list-style-type: none"> <li>1. Before the water announcement was made publicly available, one training session on probity requirements was undertaken (23 November 2022); and one training session on Water Compliance was undertaken (23 February 2023). However, based on the department's records: 13 of the 26 staff (50%) who the department noted were directly involved in the BTG announcement did not attend the probity training seminar; and 22 of the 26 staff (85%) who the department noted were directly involved in the BTG announcement did not attend the Water Compliance training session.</li> <li>2. The PowerPoint slides used in the training sessions did not contain references to policy and procedural documents, nor did they contain sufficient detail on information barrier controls to manage market sensitive information to enable staff to meet requirements.</li> </ol>	<ol style="list-style-type: none"> <li>2. The department should ensure that staff engaged in water trading activities are trained in legislative and policy requirements and other processes and protocols before water announcements are made.</li> </ol>
Information barrier arrangements	<p>The department's information barrier arrangements were assessed as not effective in supporting compliance with the Basin Plan requirements. This is because the department had not:</p> <ol style="list-style-type: none"> <li>1. Identified what these arrangements are and how they are implemented within its records-management and business information systems. There is no guidance on which systems should not be used to store market sensitive information and have access restricted to, in a way that mitigates the risk of non-compliance with the Basin Plan's requirements.</li> <li>2. Implemented access controls such as restrictions to all relevant matters, folders, and files that potentially contained market sensitive information.</li> <li>3. Reviewed information access requirements to revoke the access of staff who no longer need access.</li> <li>4. Reviewed access controls and access logs to assure itself that its information barrier arrangements were operating as intended.</li> </ol>	<ol style="list-style-type: none"> <li>3. The department should clearly outline what its information barrier arrangements are and precisely who they apply to i.e., which systems these are established within, which staff have a 'need to know', and therefore, how staff access to relevant matters and folders is restricted, reviewed and revoked.</li> <li>4. The department should also clearly outline which information systems should not be used to store information relating to water trading activities, as these systems may not have appropriate information barriers.</li> <li>5. The department should periodically review and audit access logs to have assurance over the effectiveness of its information barrier arrangements.</li> </ol>
Managing conflicts of interest	<p>The department's conflicts of interest management arrangements were assessed as partly effective due to steps taken by senior executives to ensure compliance, and evidence of steps taken to manage conflicts during the Water Recovery Program – Governance group meetings. However, the effectiveness of these arrangements was reduced due to:</p> <ol style="list-style-type: none"> <li>1. The absence of a conclusive population of precisely who should have completed a conflict declaration before the department was aware of a pending water announcement</li> <li>2. 1 official who worked on the BTG announcement completed their declaration after the announcement.</li> <li>3. 17 staff (18%) in the relevant business areas that the department noted 'were not involved in the BTG announcement' had not completed conflicts declarations in a timely manner, but could have had access to market sensitive information due to information barrier arrangements not being effective.</li> </ol>	<ol style="list-style-type: none"> <li>6. The department should continue to review and enforce the completion of its interest declarations to have assurance that it has visibility of all actual, perceived, or potential conflicts that could impact its water trading activities.</li> </ol>

## Goulburn catchment announcement

The CEWH approved an approach to market sale minute on 18 January 2023 and made the water announcement generally available on 23 January 2023. A summary of findings and recommendations for the Goulburn Catchment announcement is provided in Table 22 below.

Table 2: Summary of findings and recommendations - Goulburn Catchment announcement

Area	Finding	Recommendations
Policy and procedural framework	The CEWH's policy and procedural framework to manage compliance with the Basin Plan's requirements for the Goulburn Catchment announcement was assessed as largely effective.	Please refer to the opportunity for improvement below.
Training	The CEWH's training and awareness regime was assessed as largely effective in supporting compliance with the Basin Plan requirements. There is an opportunity to improve training through clearly outlining: that information barrier arrangements are given effect through SPIRE; and referring to section 12.49 (3) in policy documents.	Please refer to the opportunity for improvement below.
Information barrier arrangements	The CEWH's information barrier arrangements were assessed as largely effective based on information that access to the Trade Actions folder was restricted to specific individuals and that staff are directed to save documentation within the 'Trade Actions' folder in SPIRE. The CEWH's information barrier arrangements could be improved through: <ol style="list-style-type: none"> <li>1. Clearly outlining that SPIRE gives effect to the CEWH's information barrier arrangements; and</li> <li>2. Regular reviews of access controls to have assurance over access control effectiveness.</li> </ol>	The office of the CEWH (CEWO) should periodically review access controls and audit access logs to have assurance over the effectiveness of its information barrier arrangements.
Managing conflicts of interest	The CEWH's conflicts of interest management arrangements for staff were assessed as largely effective. The CEWH's conflicts of interest management processes for external consultants could be improved by seeking formal declarations from external consultants to have assurance that market sensitive information is not misused.	The CEWO should seek independence declarations from external consultants engaged to support its water trading activities.

## Opportunities for improvement - CEWH

There is an opportunity to strengthen the CEWH's policy and procedural framework and training regime by:

- clearly outlining that SPIRE gives effect to its information barrier arrangements and how staff must comply with its information barrier arrangements; and
- outlining the range of events that could constitute a water announcement by referring to section 12.49 (3) of the Basin Plan.

## 2 Background and Timelines of Announcements

### 2.1 Background

Murray-Darling Basin water markets are “one of the most developed and efficient water markets in the world”.<sup>1</sup> The Bureau of Meteorology’s Australian Water Markets Report 2019–20 estimates that water markets in Australia (entitlement and allocation) had an estimated turnover of \$7 billion. Turnover of surface water traded (entitlement and allocation) in the southern Murray-Darling Basin was estimated to be worth \$4.8 billion.

A well-functioning, efficient water market is an essential element required to implement the Basin Plan. The Australian Competition and Consumer Commission’s water markets inquiry final report dated 26 March 2021 demonstrated that there are significant areas where policy and regulatory improvements are needed. One of these is in relation to the management of water announcements and insider trading.

Currently, Basin Plan sections 12.49 to 12.52 work in concert to form a legislative framework that manages water announcements and insider trading in Murray-Darling Basin water markets.

- Section 12.49 defines “water announcement”. This includes a public announcement of an agency of the Commonwealth in relation to an action it will be undertaking, which can reasonably be expected to have a material effect on the price or value of water access rights.
- Section 12.50 requires that a person who makes a water announcement must ensure that it is made in a manner that makes it generally available.
- Section 12.51 requires that a person who is aware of a water announcement must not trade prior to the announcement becoming generally available.
- Section 12.52 provides the ability for agencies that make water announcements to have information barrier arrangements in place to manage information where multiple functions associated with the water market are undertaken for example, water announcements and trading activities.

The Water Division(s) within the DCCEEW provide advice to government, develop policy, and implement government policy in relation to water management and water markets in the Murray-Darling Basin. DCCEEW also have responsibility for implementation of programs relating to the Basin Plan which include purchasing water in the market in accordance with Australian Government policy. Further, DCCEEW includes the Commonwealth Environmental Water Holder (CEWH) which holds water assets and trades in the Murray-Darling Basin water market.

Part 6 of the *Water Act 2007* outlines the statutory authority of the CEWH to conduct water trades, including the CEWH’s independence in decision making with respect to trading activities. Decisions made by the CEWH to trade water are not undertaken under the direction or advice from the Minister or the Secretary of the Department. Staff from DCCEEW are made available by DCCEEW to support the CEWH to discharge responsibilities in managing the Commonwealth’s environmental water holdings.

The CEWH has sole statutory responsibility for decisions to trade water. The CEWH is supported by staff located in the EWAE Division of DCCEEW who have specific functions in relation to the obligations of the CEWH. Staff within DCCEEW are therefore in a unique position where, in the course of their duties, they may be privy to sensitive information before a water announcement is made generally available to the public.

Since late 2020, the Australian Government has pursued a public policy which excluded purchasing water to implement the Basin Plan. On 22 February 2023, the Australian Government announced their intention to enter the Murray-Darling Basin water market as a purchaser of water, referred to as the Bridging the Gap announcement. This change in policy altered the active role(s) of DCCEEW and heightened the risks associated with managing compliance with sensitive water market information.

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<sup>1</sup> [Water market reform: final roadmap report](#), September 2022, page 8

It is important to the trust and confidence in the water market that DCCEEW are compliant with the Basin Plan, and are also perceived to be compliant with the Basin Plan. Information barrier arrangements are an important management control to ensure that employees do not inappropriately access or act on sensitive information. Compliance risk extends from when a decision is made to make a water announcement through to when it is announced.

The independent Inspector-General is the enforcement agency for the Basin Plan. The Inspector-General takes a proactive risk-based approach to address the risks in relation to water compliance, and areas where the office has concerns about water management and compliance. This enables the Inspector-General to focus its regulatory activities and resources on areas where the relative risks of possible or actual non-compliance or harm are the greatest. Priority focus areas for the 2022-2023 year include:

- Trade enforcement, and
- Building trust and confidence throughout Basin communities and water stakeholders.

As part of the 2022-23 Annual Workplan, the Inspector-General committed to undertake investigations into compliance with the Basin Plan Water Trading Rules and take enforcement action as appropriate.

## 2.2 Timelines of in-scope water announcements

A timeline of key events for the Goulburn Catchment announcement is provided in Table 3 below.

Table 3: Timeline of milestones for the Goulburn Catchment announcement

Milestone	Date
Independent market valuation (completed by an external consultant)	16 December 2022 – 9 January 2023
Water announcement regarding the sale of up to 8,000 ML of annual water allocations	23 January 2023
Tender open on AusTender	30 January 2023 – 3 February 2023

Based on the Goulburn Catchment Sale Outcome Report, a total of 27 bids were received. No bids were at or above the threshold sale price due to which no Goulburn annual water allocation was sold in the tender.

A timeline of key events for the Bridging the Gap announcement, as provided by the department is provided in Table 4 below.

Table 4: Timeline of milestones for the Bridging the Gap announcement

Milestone	Date
Water Markets Valuations Team commenced in current iteration <sup>1</sup>	September 2022
Department became aware of the Minister's intention to publicly announce the Bridging the Gap program	20 February 2023
Ministerial Media Release Bridging the Gap	22 February 2023
Water Announcements staff awareness and training commenced (tranche 1)	23 February 2023 – 30 August 2023
Water Announcements Compliance Noted by the Water Recovery Program Advisory Group (attached)	7 March 2023
Tender open on AusTender.	23 March 2023
Ministerial Media Release for Open Tender	23 March 2023

**Notes on table 4:** 1. The department advised that the Water Markets Valuations Team comprised one EL2 level staff member with recruitment undertaken between November 2022 when most members in the team commenced.



## 3 Detailed Findings - Bridging the Gap water announcement

The assessment of the department's control framework has been undertaken in the context of the Bridging the Gap (BTG) water announcement made on 22 February 2023. On 29 May 2024, the department advised that 'from late 2020, the Australian Government pursued a public policy which excluded purchasing water to implement the Basin Plan. On 22 February 2023, the Australian Government announced their intention to enter the Murray-Darling Basin water market as a purchaser of water. The Department was made aware of this announcement 2 days before it was made. This announcement constituted a change in policy and altered the active role(s) of DCCEEW.'

### 3.1 Policy and procedural framework

Water trading policies and procedures are a key component of the department's system of internal controls to support compliance with the Basin Plan requirements. They inform officials of their obligations to avoid instances where, in the course of their duties, market sensitive information could be misused or compromised. In the context of water trading activities, market sensitive information is most at risk when it is not generally available to the public i.e., before a public water announcement.

#### Assessment

The audit requested the department's policies, procedures, and guidance to assess whether these would be effective in supporting officials discharge their obligations and responsibilities when managing market sensitive information. The department provided:

1. Water Announcement Guideline (DRAFT) – *the version history does not include a date of preparation or publication but outlines a review date of 2017.*
2. Ethics Walls Guidance for Management of Market Sensitive Information – *there is no version history or publication date. The MS Word file name states March 2023.*
3. Water Announcements at a Glance – *this document is dated February 2023.*
4. Guideline – Compliance with water-trading rules for water announcements and water trades – Department of Agriculture and Water Resources, December 2016.
5. Departmental Policy – Water acquisition and divestment declaration of interests – Department of Agriculture, Water and the Environment, July 2020.

The audit assessed the department's policy documents against 8 criteria. Findings against each criterion are outlined in the table below.

Audit criteria	Findings
<ol style="list-style-type: none"> <li>1. Policies and procedures were in place prior to the announcement.</li> <li>2. Policies and procedures were approved and endorsed by a senior responsible officer.</li> <li>3. Policies and procedures align with, and clearly outline legislative requirements.</li> </ol>	<ol style="list-style-type: none"> <li>1. The department noted that its policy documents predate the BTG water announcement. To support this, on 29 May 2024, the department provided two documents: <ul style="list-style-type: none"> <li>- Guideline – Compliance with water-trading rules for water announcements and water trades – Department of Agriculture and Water Resources, December 2016.</li> <li>- Departmental Policy – Water acquisition and divestment declaration of interests – Department of Agriculture, Water and the Environment, July 2020.</li> </ul> <p>These documents, available from the Department of Agriculture, Water and the Environment's Instructional Material's Library, were provided five months after the initial request was made by the audit for policy and procedural documentation.</p> </li> <li>2. One document: Ethics Walls Guidance for Management of Market Sensitive Information was not in a departmental policy template. An email from the Acting Branch Head, Policy Reform circulated revised policies with staff within the Water Division on 1 March 2023. The email stated '...Please find attached important information regarding your responsibilities working with water market sensitive information. These documents have been updated and provide practical information to staff to ensure that individuals and the department are meeting their obligations under the Basin Plan water trading rules. The rules apply to all staff, even those not directly involved in decisions about water trading.' <p>The audit notes that policies and guidelines from the Department of Agriculture, Water and the Environment could have continued to apply while the department updated their policy documents.</p> </li> <li>3. The policy documents largely align with legislative requirements. However, references to examples of water announcements could be improved by referring to section 12.49 (3) of the Basin Plan which includes additional examples of a water announcement.</li> </ol>
<ol style="list-style-type: none"> <li>4. Policies and procedures are consistent with each other.</li> <li>5. Policies and procedures clearly outline risks relating to market sensitive information.</li> <li>6. Policies clearly outline key controls and compliance requirements relating to: ethics walls, managing conflicts, and managing market sensitive information.</li> <li>7. Policies and procedures have a documented version history.</li> <li>8. There is a clear hierarchy of policies and procedures.</li> </ol>	<ol style="list-style-type: none"> <li>4. The policy documents are largely consistent with each other.</li> <li>5. The policy documents outline risks to market sensitive information.</li> <li>6. The policy documents outline principles of information barrier arrangements and managing conflicts. In relation to information barrier arrangements, the document titled: Ethics Walls Guidance for Management of Market Sensitive Information, outlined generic information such as: 'Restrict access to internal electronic files with market sensitive information to business unit staff'. The document does not outline how this requirement is to be implemented, and in which record-keeping systems, and how staff should comply with this information barrier.</li> <li>7. One document: Ethics Walls Guidance for Management of Market Sensitive Information did not have a documented version history.</li> <li>8. The department has not established a clear hierarchy for water trading policy documents.</li> </ol>

For the BTG announcement, the department's policy documents were assessed as partly effective in supporting compliance with the Basin Plan requirements. This is because:

1. It did not sufficiently outline how key controls such as information barrier arrangements operate and must be complied with.
2. The revised policy framework was socialised with staff on 1 March 2023, after the water announcement was made generally available. It is not clear how all staff were made aware of the policy framework and its requirements, prior to the water announcement being made publicly available.

The department's policy framework could be improved by referring to section 12.49 (3) of the Basin Plan which includes additional examples of water announcements.

## 3.1.1 Training

Training reinforces the Basin Plan's and the department's policy requirements; and supports the department to discharge its obligation to adequately train staff in key processes and controls to prevent and mitigate risks to market sensitive information. In the context of water trading activities, training and guidance to staff must be undertaken regularly and before an impending water announcement so that risks to market sensitive information do not materialise before a water announcement is made public.

### Assessment

The audit requested information on training and guidance provided to staff relating to the BTG announcement. The Department provided:

1. Water Announcements Training – MS PowerPoint slide deck
2. Water Announcements Training and Information Register
3. Probity Training Slides – November 2022 – delivered by an external law firm
4. DCCEEW – Water Division – Probity Checklist – November 2022
5. Attendance report for all-staff probity training
6. Divisional Policy – Water acquisition and divestment declaration of interests, DCCEEW dated 21 February 2023
7. Negotiation Training slides – December 2022 – delivered by an external law firm
8. Water Compliance training attendance list – delivered on 23 February 2023

The department also provided training that was delivered between 1 May 2024 to 8 May 2024 – this was outside the scope period of the audit and, as such, was not assessed.

The audit assessed the Department's training against 6 criteria. Findings against each criterion are outlined in the table below.

Audit criteria	Findings
1. Training was provided before the water announcement.	1. The department provided training on 23 November 2022 which covered probity. This training included references to maintaining the confidentiality of sensitive information, however, there were no references to maintaining confidentiality of information in the context of the Basin Plan's requirements.
2. Training clearly outlines the Basin Plan's requirements and how these are complied with.	The department provided evidence of a meeting invitation for 'Water Compliance' training delivered on 23 February 2023. The meeting invitation stated that the training was to 'ensure that all departmental staff working in purchasing are aware of their responsibilities regarding Water Announcements under sections 12.49 to 12.52 of the Basin Plan...It is imperative that we are all aware of and abide by our responsibilities to not inappropriately impact the water market through our access to market sensitive information.' The audit acknowledges this attempt to inform staff of their obligations albeit after the water announcement was made generally available.
3. Training clearly references which policies and procedures staff must refer to for further information.	2. The training slides do not include all examples of what constitutes a water announcement. The focus of the training slides is mainly on water purchases, however, sales, carryovers, and transfers are also considered water announcements. As such, in addition to policy documents, the training slides also do not consistently outline what constitutes a water announcement.
4. Training clearly outlines information on controls such as information barrier arrangements and conflicts management.	3. The training slides do not refer to the department's policies and procedures for water trading or conflicts of interest.
5. Controls are in place to train staff who join relevant business areas.	4. The training slides do not outline information on how staff must comply with controls relating to information barrier arrangements and conflicts. For example, training slides do not include any information on which systems are used to manage market sensitive information and what controls have been set up within these systems to support and comply with the Basin Plan's information barrier requirements.
6. Records of staff completing training have been maintained.	5. The department noted that recurring training and information awareness would have supported new staff joining relevant business areas to be aware of their responsibilities.
	6. A review of the training attendance records identified that of the 26 persons the department stated were directly involved in the BTG announcement, 13 did not attend the probity training delivered in November 2023, and 4 staff attended the Water Compliance training delivered on 23 February 2023.

For the BTG announcement, the department's training and awareness regime were assessed as partly effective in supporting compliance with the Basin Plan requirements. This is because:

1. Before the water announcement was made publicly available, one training session on probity requirements was undertaken (23 November 2022); and one training session on Water Compliance was undertaken (23 February 2023). However, based on the department's records: 13 of the 26 staff (50%) who the department noted were directly involved in the BTG announcement did not attend the probity training seminar; and 22 of the 26 staff (85%) who the department noted were directly involved in the BTG announcement did not attend the Water Compliance training session.
2. The PowerPoint slides used in the training sessions did not contain references to policy and procedural documents, nor did they contain sufficient detail on information barrier controls to manage market sensitive information to enable staff to meet requirements.

## 3.1.2 Information barrier arrangements

Section 12.52 of the Basin Plan requires the department to have information barrier arrangements in place. Meeting this legislative requirement is critical to the integrity and confidentiality of market sensitive information. Information barrier arrangements provide the public and Parliament with assurance that market sensitive information could be, or has been, accessed only by staff and external persons with a ‘need to know’, and only for those purposes. This is important as staff and external persons could have personal interests that conflict with their role in administering water trading activities.

### Assessment

The department’s response to the information request to assess its information barrier arrangements is summarised in the table below.

Request	Summary of response provided to the audit
1. Names of persons within relevant business areas for the period 1 January 2023 to 30 March 2023.	1. Reports from the department’s HR system identifying staff within relevant business areas for the period 1 January 2023 to 30 March 2023.
2. Names of systems used to manage records.	2. Certain folders within HPE Content Manager, SharePoint/Microsoft Teams, Parliamentary Document Management System (PDMS); and certain mailboxes.
3. Reports with details of staff access to the systems used for the period 1 January 2023 to 30 March 2023.	3. For folders within HPE Content Manager, these folders and containers were created in the Department of Agriculture, Fisheries and Forestry dataset prior to the migration of DCCEEW content to the DCCEEW dataset. Extracting names of staff with access to these folders is no longer possible as DCCEEW profiles have been deactivated and logs are unavailable to track these movements.
4. Details of persons with access to certain mailboxes.	For PDMS, the department provided details of five matters relating to the BTG announcement.
5. Walkthroughs with system administrators for HPE Content Manager and PDMS.	4. Names of persons with access to the mailboxes. 5. The department facilitated a walkthrough of the systems with administrators.
6. Number of system administrators for PDMS.	6. Number of persons with administrator level access for PDMS.

In support of its information barrier arrangements, the department also provided an MS PowerPoint presentation on Records Management, the Water Recovery Program Design and Delivery – Records and Information Management Plan, a staff exit declaration form and general information on staff responsibilities when leaving the department.

The department noted that it did not engage external consultants as part of the BTG announcement, and that of its relevant business areas, 26 staff were directly involved in working on the BTG announcement. In this context, at a minimum, the audit expected to observe access controls in the department’s record-keeping systems which prevented staff who were not directly involved in the BTG announcement from being able to access market sensitive information.

The audit’s assessment of the department’s information barrier arrangements and findings are outlined in the table below.

Audit criteria	Findings
<ol style="list-style-type: none"> <li>1. Systems within which information barriers operate are clearly defined.</li> <li>2. Access control measures within relevant systems are clearly defined.</li> </ol>	<ol style="list-style-type: none"> <li>1. The department's Information Assets Policy: Records Management, lists three certified digital records management systems: SPIRE (used by CEWH), TRIM (HPE Content Manager) and RM8 (used by the Australian Antarctic Division only)  The department's water trading policy documents do not specify which systems are used to manage records. However, policy documents and the Water Announcements training presentation refer to "drives/folders/mailboxes." The Department did not provide information on group drives or folders used to manage water announcements records. The Department stated that records were managed within: TRIM/HPE Content Manager, Parliamentary Document Management System (PDMS), SharePoint and MS Teams. For MS Teams the department had provided evidence of the Team sites and group members. The audit notes that SharePoint and MS Teams are not listed as approved records keeping systems per the Department's policy.  On 29 May 2024, the department provided the Water Recovery Program Design and Delivery (Branch) – Records and Information Management Plan. This document states that records used by the branch will be stored in CM9 (water purchase documents) and PDMS (briefings for ministers), Lighthouse (for conflicts), Technology 1 (for invoices), and Microsoft Teams and shared drives for working drafts. This document does not refer to restricting access to market sensitive information to give effect to information barriers.</li> </ol>
<ol style="list-style-type: none"> <li>3. Access controls within relevant systems are implemented.</li> <li>4. Access requirements are regularly reviewed and revoked where no longer required.</li> <li>5. Access logs (including by system administrators) are monitored to detect non-compliance.</li> </ol>	<ol style="list-style-type: none"> <li>2. As outlined in section 3.1.1 – Policy and procedural framework, the Department has not clearly outlined its access control measures. This was further evident from delays in receiving access control information from the Department, and the delays in the Department identifying suitable system administrators for discussions and walkthroughs.</li> <li>3. Based on information provided by the Department, access controls within PDMS and HPE Content Manager are applied at a divisional level. Therefore, based on the design of the access controls that the audit was advised of, all staff within the division would have access to view information regarding relevant matters within PDMS and HPE Content Manager. The audit did not independently source and review how many relevant matters were stored within PDMS and HPE Content Manager – the audit has relied on the Department's representations.</li> <li>4. Based on discussions, system administrators noted that revoking access to restricted files and matters is reliant on staff informing administrators that they no longer require access. Administrators noted that receiving requests from staff to revoke access to restricted files does not occur very often. On 29 May 2024, the department noted that offboarding staff occurs via a 'Staff Exit Declarations' form. However, the finding relates to staff moving within the department and not having a continuing 'need to know' market sensitive information.</li> <li>5. There was no evidence of a review of access logs including those by system administrators to detect non-compliance.</li> </ol>

For the BTG announcement, the department's information barrier arrangements were assessed as not effective in supporting compliance with the Basin Plan requirements. This is because the department has not:

1. Identified what these arrangements are and how they are implemented within its records-management and business information systems. There is no guidance on which systems should not be used to store market sensitive information and have access restricted to, in a way that mitigates the risk of non-compliance with the Basin Plan's requirements.
2. Implemented access controls such as restrictions to all relevant matters, folders, and files that potentially contained market sensitive information.
3. Reviewed information access requirements to revoke the access of staff who no longer need access.
4. Reviewed access controls and access logs to assure itself that its information barrier arrangements were operating as intended.

The audit notes that controls such as an exit checklist and employee separation processes would only be relevant to those staff who had directly worked on the BTG announcement and left the department between 20 February and 21 February.

### 3.1.3 Managing conflicts of interest

Section 13(7) of the *Public Service Act 1999* and section 29 of the *Public Governance, Performance and Accountability Act 2013* require officials to disclose and manage material personal interests and avoid conflicts of interest. The department's Conflict of Interest Policy states that 'Employees (including SES officers) must declare annually, regardless of whether they identify a conflict or not' and that 'Failing to declare a conflict of interest may amount to a breach of the APS Code of Conduct.' The department's water trading policy documents referred to in section 3.1.1 also require the disclosure and management of actual, perceived, and potential conflicts. The department advised that of the 93 staff who were in relevant business areas, 26 were directly involved in supporting the BTG announcement.

#### Assessment

The audit requested information on interests disclosed by external consultants and staff within relevant business areas and conflict management plans that had been established to manage actual, perceived, or potential conflicts that had been disclosed. The department advised that no external consultants had been engaged to support the BTG announcement. However, the department's Water Recovery Program Advisory group listed external consultants as observers on the agenda for the meeting held on 2 February 2023. The Department reviewed conflicts of interests recorded within its information systems and provided:

1. 3 screenshots of conflicts declarations which outlined conflicts relating to water trading activities and how staff had proposed to manage each conflict.
2. A report (on 26 April 2024) from the conflicts management information system listing staff involved in the BTG announcement from the Water Infrastructure and Investment Division and Water Reform Division and the status of their conflict-of-interest declaration.
3. An email noting 29 staff had completed hard copy conflicts of interest declaration forms in relation to the BTG announcement.
4. A revised report (on 29 May 2024) from the conflicts management information system listing staff involved in the BTG announcement. The department advised that this report included details of disclosures made by staff in the Department of Agriculture, Forestry and Fisheries (DAFF) which may not have migrated to the DCCEEW conflicts management information system due to the transition of administrative systems following machinery of government changes.
5. An email (dated 3 November 2022) from the department's Chief Operating Officer outlining to staff that access to the DAFF conflict management information system would cease on 11 November 2022.
6. An email (dated 9 September 2022) from the Acting Division Head informing staff of the requirement to complete integrity, security and conflicts declarations (in the conflict management information system).
7. An email (dated 12 December 2022) from the Director in the Water Recovery Taskforce informing staff to provide the reference number for the conflicts that have been disclosed in the system.
8. An email (dated 22 December 2022) from a Deputy Secretary within the department which included the status of staff who had completed the mandatory annual security / integrity declaration and conflict of interest declaration.
9. A table in MS Word listing the status of conflicts of interest declarations as at 3 May 2023 for the department's Water Recovery Program Advisory Group<sup>2</sup>, which included staff from the department, central agencies (Department of Finance, Treasury, Prime Minister and Cabinet and Murray Darling Basin Authority), and externals: Maddocks, Marsden Jacob Associates, and Sententia.
10. Water Recovery Program – Governance group agendas for meetings held on: 2 February 2023, 7 March 2023, 5 April 2023, 4 May 2023, 21 September 2023 and 23 November 2023. These included verbal 'declarations of interest' by attendees.
11. An email (dated 18 April 2023) from a Deputy Secretary within the department to relevant Division Heads outlining the status of conflicts of interest declarations. The email noted that the department's objective was to 'have them completed in the staff member's first week back from Christmas leave' and there 'may be some data issue with the reporting given the number of different systems but we really need to complete this.'

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<sup>2</sup> The Water Recovery Program - Governance group was referred to as the Water Recovery Program - Advisory group at meetings held in September 2023 and November 2023.

The audit assessed the Department's processes to manage conflicts of interest against 4 criteria. Findings against each criterion are outlined in the table below.

Audit criteria	Findings
<ol style="list-style-type: none"> <li>1. All relevant staff had completed an annual disclosure regardless of whether they had a conflict.</li> <li>2. Staff who had disclosed a conflict in relation to water trading activities were not involved with the BTG announcement.</li> <li>3. Staff who had disclosed a conflict in relation to water trading activities were not privy to market sensitive information relating to the BTG announcement.</li> <li>4. Appropriate conflicts management plans were in place and implemented.</li> <li>5. External consultants had completed conflicts of interest declarations.</li> </ol>	<ol style="list-style-type: none"> <li>1. The audit was unable to ascertain the population of staff who worked within the department's relevant business areas during the period of the BTG announcement. The department advised that this was due to impacts from machinery of government changes. The absence of a conclusive population of officials who should have completed conflicts of interest declarations negatively impacted testing for this criterion. Notwithstanding this limitation, the audit worked with the population of officials provided by the department and considered data for 26 officials the department stated as being involved in the BTG announcement. The audit found: <ul style="list-style-type: none"> <li>- Two officials identified by the department as not being involved in the BTG announcement were listed as attendees on the agenda for the Water Recovery Program – Governance Group meeting to be held on 2 February 2023. This reduces confidence over the department's representations of officials who were or were not involved in the BTG announcement.</li> <li>- Of the 26 officials nominated by the department, 1 official was listed as having completed the declaration in March 2023 based on data provided on 29 May 2024.</li> <li>- That across the department's data generated as at 14 April 2023, data provided to the audit on 26 April 2024, and then revised data provided on 29 May 2024, the audit observed that the completion dates recorded for the conflicts of interest declaration was consistent for 2 of 26 officials. For the remaining 24 officials, the completion dates and status were inconsistent.</li> </ul> <p>A Deputy Secretary email on 18 April 2023 evidences steps taken to improve compliance with conflicts declarations and notes issues with data integrity. However, the reports indicated that for four Divisions, non-completion rates ranged between 14% to 46%. This further indicates that a proportion of divisional staff had not completed conflicts declarations in a timely manner, before the announcement was made generally available.</p> <p>As the department provisions access to TRIM / HPE Content Manager and PDMS to divisional staff, staff not directly involved in the BTG announcement should have also completed a conflicts of interest declaration. A review of data provided on 29 May 2024 identified that 17 officials had either not completed a conflicts declaration in the system or a hard copy form, before the announcement was made generally available.</p> </li> <li>2. The Department cited privacy reasons for not disclosing the names of staff for whom a screenshot of their annual conflicts of interest declaration was provided. As such the audit could not conclude on whether these staff were appropriately independent from activities relating to the BTG announcement. On 29 May 2024, the department advised that staff who had disclosed potential conflicts were located in the office of the CEWH and would not have been able to access market sensitive information due to system controls in place prior to the BTG announcement.</li> <li>3. The audit has relied on the department's representations on how conflicts that were disclosed were managed. However, noting that 17 of the 93 (or 18%) of staff who were in the relevant business areas had not completed a conflicts of interest declaration, assurance over the effective management of potential conflicts is reduced as the department would not have visibility of all potential, actual or perceived conflicts.</li> <li>4. As outlined in points 2 and 3 above, noting the limited information provided in relation to conflicts due to privacy reasons, the audit could not assess whether the conflicts management plans were in place and implemented. On 29 May 2024, the department advised that 'staff who had conflicts identified were within the Office of the Commonwealth Environmental Water Holder, so were not able to access market sensitive information from DCCEEW....and were not involved in the BTG announcement.'</li> <li>5. On 22 March 2024, the department advised that 'no external parties including legal professional, consultants or media personnel were formally engaged by the department to support the Ministerial announcement or publishing of the media release.' A review of the Water Recovery Program – Governance group agenda for the meeting held on 2 February 2023, listed an external law firm as the probity advisor. Based on the department's records, staff from the law firm had submitted conflicts of interest declarations on 15 February 2023. As observers to the Water Recovery Program – Governance group, the probity advisors could have declared interests verbally at the meeting.</li> </ol>



For the BTG announcement, the department's conflicts of interest management arrangements were assessed as partly effective due to the steps taken by senior executives to ensure compliance, and evidence of steps taken to manage conflicts during the Water Recovery Program – Governance group meetings. However, the effectiveness of these arrangements was reduced due to:

1. The absence of a conclusive population of precisely who should have completed a conflicts declaration before the department was aware of a pending water announcement.
2. 1 official who worked on the BTG announcement completed their declaration after the announcement was made publicly available.
3. 17 staff (or 18%) in the relevant business areas that the department noted 'were not involved in the BTG announcement' had not completed conflicts declarations in a timely manner, but could have had access to market sensitive information due to information barrier arrangements not being effective.

## 4 Detailed Findings - Goulburn Catchment water announcement

The assessment of the CEWH's control framework has been undertaken in the context of the Goulburn Catchment announcement to trade Commonwealth water on 23 January 2023.

### 4.1.1 Policy and procedural framework

Water trading policies and procedures are a key component of the department's system of internal controls to support compliance with the Basin Plan requirements. They inform officials of their obligations to avoid instances where, in the course of their duties, market sensitive information could be misused or compromised. In the context of water trading activities, market sensitive information is most at risk when it is not generally available to the public, i.e., before a water announcement is published.

#### Assessment

The audit requested the CEWH's policies, procedures, and guidance to assess whether these would be effective in supporting officials discharge their obligations and responsibilities when managing market sensitive information. The CEWH provided 4 documents:

1. Commonwealth Environmental Water Trading Framework – *November 2016*.
2. Protocols for Managing Trade of Commonwealth Environmental Water – *December 2014*.
3. Standard Operating Procedure (SOP) – Trade Intentions Update – *September 2022*.
4. SOP – Water Allocation Sale by Tender – *September 2022*.
5. SOP – Approach to Market Checklist
6. Approach to Market Checklist

The audit assessed the CEWH's policy documents against 8 criteria. Findings against each criterion are outlined in the table below.

Audit criteria	Findings
<ol style="list-style-type: none"> <li>1. Policies and procedures were in place prior to the announcement.</li> <li>2. Policies and procedures were approved and endorsed by a senior responsible officer.</li> <li>3. Policies and procedures align with, and clearly outline legislative requirements.</li> <li>4. Policies and procedures are consistent with each other.</li> <li>5. Policies and procedures clearly outline risks relating to market sensitive information.</li> <li>6. Policies clearly outline key controls and compliance requirements relating to: ethics walls, managing conflicts, and managing market sensitive information.</li> <li>7. Policies and procedures have a documented version history.</li> <li>8. There is a clear hierarchy of policies and procedures.</li> </ol>	<ol style="list-style-type: none"> <li>1. The Commonwealth Environmental Water Trading Framework (Trading Framework) and Protocols for Managing Trade of Commonwealth Environmental Water (Protocols) were publicly available from the Department's website. Based on their version history, these documents were last reviewed in December 2014 and November 2016 – before the January 2023 announcement. The CEWH's SOPs for Trade Intentions Update and Water Allocation Sale by Tender were endorsed and approved in September 2022, before the January 2023 announcement.  The Approach to Market Checklist, signed by the CEWH on 18 January 2023, outlined how the Portfolio Management Section had addressed the Trading Framework's 9 operating rules, including that 'the Branch Head, Wetlands Policy and Northern Water Use, and Director of Portfolio Management', were not aware of a water announcement that had not been made generally available.</li> <li>2. All documents provided were approved and endorsed by a senior responsible officer such as the CEWH or an Assistant Secretary.</li> <li>3. The policy documents largely align with legislative requirements. However, references to examples of water announcements could be improved by referring to section 12.49 (3) of the Basin Plan which includes additional examples of a water announcement.</li> <li>4. The Trading Framework and Protocols are consistent with each other.</li> <li>5. The policy and procedural documents outline risks to market sensitive information.</li> <li>6. The policy documents outline principles of information barrier arrangements and managing conflicts. However, the policy documents do not include sufficient details on how these have been implemented, and how staff must comply with them. The SOPs state that records should be saved in 'SPIRE' (records management system), however, there is no reference to SPIRE being the system through which the CEWO gives effect to the information barrier arrangements.</li> <li>7. The CEWH's policy documents have a documented version history.</li> <li>8. The CEWH's policy documents have a clear hierarchy.</li> </ol>

For the Goulburn catchment announcement, the CEWH's policy documents are largely effective in supporting compliance with the Basin Plan requirements. There is an opportunity to improve the CEWH's policies and procedures by clarifying within the SOPs:

3. that SPIRE is the primary system which gives effect to, and establishes, information barrier arrangements; and
4. the full range of events that could constitute a water announcement by also referring section 12.49(3) of the Basin Plan.

## 4.1.2 Training

Training reinforces the Basin Plan's and the department's policy requirements; and supports the CEWH to adequately train staff in key processes and controls to prevent and mitigate risks to market sensitive information. In the context of water trading activities, training and guidance to staff must be undertaken regularly and before an impending water announcement so that risks to market sensitive information do not eventuate before a water announcement is made public.

### Assessment

The CEWH provided the following information in relation to its training regime:

1. Annual CEWO Probity and Trade Protocols Training (three sessions: 24 August 2022, 26 August 2022 and 29 August 2022).
2. Email regarding a Probity Training Framework and Operating Rules presentation to senior executives (27 October 2022).
3. Probity briefing provided by a law firm on 23 January 2023.

The audit assessed the CEWH's training against 6 criteria. Findings against each criterion are outlined in the table below.

Audit criteria	Findings
1. Training was provided before the water announcement.	1. The CEWH's information awareness and training regime covered the period 24 August 2022 to 23 January 2023. This covers the period before and on the date of the announcement.
2. Training clearly outlines the Basin Plan's requirements and how these are complied with.	2. The training slides cover section 12.51 of the Basin Plan and how Operating Rule 1 of the Commonwealth Environmental Water Trading Framework supports this requirement. The training does not cover other requirements of the Basin Plan and what could constitute a water announcement.
3. Training clearly references which policies and procedures staff must refer to for further information.	3. The training slides refer to the Commonwealth Environment Water Trading Framework, the department's Integrity Framework (policies and guidelines to comply with the APS Values, APS Employment Principles, and the APS Code of Conduct). There are limited references to the standard operating procedures that guide water trading activities.
4. Training clearly outlines information on controls such as information barrier arrangements and conflicts management.	4. The training slides state that staff should not disclose information that is sensitive and not in the public domain. The training slides also describe what could constitute 'inside information', and that 'Access to CEWO internal electronic files should be restricted to the CEWH and CEWO staff...you can lock down SPIRE folders, or there is a Protective Enclave for very sensitive information.'  The training slides clearly outline how conflicts should be managed and provide examples of potential conflicts that relate to 'inside information' and how risks relating to conflicts could eventuate and how they should be managed.
5. Controls are in place to train staff who join the CEWH.	5. The CEWH advised that probity training is completed annually by CEWO staff and attendance records were provided.
6. Records of staff completing training have been maintained.	6. The CEWH provided training registers that recorded the names, date and attendance times for attendees.

For the Goulburn catchment announcement, the CEWH's training and awareness regime was assessed as largely effective in supporting compliance with the Basin Plan requirements. There is an opportunity to improve training through clearly outlining:

1. that information barrier arrangements are given effect through the use of SPIRE; and
2. the full range of events that could constitute a water announcement by also referring section 12.49(3) of the Basin Plan.

### 4.1.3 Information barrier arrangements

Section 12.52 of the Basin Plan requires the CEWH to have information barrier arrangements in place. Meeting this legislative requirement is critical to the integrity and confidentiality of market sensitive information. Information barrier arrangements provide the public and Parliament with assurance that market sensitive information has been accessed by only staff and external persons with a 'need to know'. This is particularly important as staff and external persons could have interests that conflict with their role in administering water trading activities within the CEWH's office.

#### Assessment

The CEWH's response to the information request to assess its information barrier arrangements is summarised in the table below.

Request	Summary of response provided to the audit
1. Names of systems used to manage records.	1. SPIRE and Parliamentary Document Management System (PDMS).
2. Reports with details of staff access to the systems used for the period 1 January 2023 to 30 March 2023.	2. For SPIRE, the Department provided names of staff with access to the relevant 'Trading Actions' folder. For PDMS, the Department stated that PDMS was not used by the CEWH for the in-scope period, as such there were no relevant matters.
3. Walkthroughs with system administrators for HPE Content Manager and PDMS.	3. The Department facilitated a walkthrough of the systems with administrators.

The audit assessed the CEWH's information barrier arrangements against 5 criteria. Findings against each criterion are outlined in the table below.

Audit criteria	Findings
1. Systems within which information barriers operate are clearly defined.	1. As outlined 4.1.1, the CEWH's SOPs state that records should be maintained in SPIRE. The SOP: Water Allocation Sale by Tender states that "File all sale documentation in SPIRE in 'Trade Actions' folder."
2. Access control measures within relevant systems are clearly defined.	2. SOPs do not outline access controls i.e., how staff access to the 'Trade Actions' folder is provided to those staff with a 'need to know' and those who directly deal with water trading activities.
3. Access controls within relevant systems are implemented.	3. Based on system walkthroughs, discussions with system administrators and information provided by the department, access controls within SPIRE were restricted to the 'Trade Actions' folder.
4. Access requirements are regularly reviewed and revoked where no longer required.	4. Based on discussions, system administrators noted that revoking access to restricted files and matters is reliant on staff informing administrators that they no longer require access.
5. Access logs (including by system administrators) are monitored to detect non-compliance.	5. During the audit fieldwork period, there was no evidence of a review of access logs including those by system administrators to detect non-compliance.

For the Goulburn catchment announcement, the CEWH's information barrier arrangements were assessed as largely effective based on information that access to the Trade Actions folder was restricted to specific individuals and that staff are directed to save documentation within the 'Trade Actions' folder in SPIRE. The CEWH's information barrier arrangements could be improved through:

1. Clearly outlining that SPIRE gives effect to the CEWH's information barrier arrangements; and
2. Regular reviews of access controls to have assurance over access control effectiveness.

## 4.1.4 Managing conflicts of interest

Section 13(7) of the *Public Service Act 1999* and section 29 of the *Public Governance, Performance and Accountability Act 2013* require officials to disclose and manage material personal interests and avoid conflicts of interest. The Department's Conflict of Interest Policy states that 'Employees (including SES officers) must declare annually, regardless of whether they identify a conflict or not' and that 'Failing to declare a conflict of interest may amount to a breach of the APS Code of Conduct.' The department's water trading policy documents referred to in section 3.1.1 also require the disclosure and management of actual, perceived and potential conflicts.

### Assessment

The audit requested information on interests disclosed by external consultants and staff within the CEWH's office, and conflict management plans that had been established to manage actual, perceived or potential conflicts that had been disclosed. The CEWH provided:

1. An email request to Executive level 2 (EL 2) staff within the CEWO to identify conflicts relating to Murray Darling Basin water ownership.
2. Evidence of email responses from EL 2 staff.
3. A table outlining the sections within which potential conflicts were disclosed by staff.
4. An email from the external probity advisor who listed the names of CEWO staff who had completed a conflicts of interest declaration.

The audit assessed the CEWH's processes to manage conflicts of interest against 4 criteria. Findings against each criterion are outlined in the table below.

Audit criteria	Findings
<ol style="list-style-type: none"> <li>1. All relevant staff had completed an annual disclosure regardless of whether they had a conflict.</li> <li>2. Staff who had disclosed a conflict in relation to water trading activities were not involved with the water announcement.</li> <li>3. Staff who had disclosed a conflict in relation to water trading activities were not privy to market sensitive information relating to the water announcement.</li> <li>4. Appropriate conflicts management plans were in place and implemented.</li> <li>5. External consultants had completed conflicts of interest declarations.</li> </ol>	<ol style="list-style-type: none"> <li>1. On 29 May 2024, the CEWH advised that due to data and reporting issues within the conflicts of interest (Col) reporting system, for the Goulburn catchment announcement, a separate Conflict of Interest (Col) register was established. To enable this, an email was sent to all EL 2 staff to seek declarations of interests relating to Murray Darling Basin water ownership within their teams. Separately, conflict of interest forms were also provided to the external probity advisor – it is possible these declarations were completed after the announcement was made.</li> <li>2. The CEWH advised that based on staff declarations, no conflicts were identified. The department cited privacy reasons for redacting the names of staff from screenshots of potential conflicts that were provided. As such, the audit could not validate that staff who had disclosed potential conflicts were not involved in the water announcement.</li> <li>3. As noted in point 2 above, the audit could not conclude on how staff who had disclosed a conflict were excluded from activities relating to the 23 January 2023 water announcement or were not privy to market sensitive information.</li> <li>4. As outlined in points 2 and 3 above, noting the limited information provided in relation to conflicts due to privacy reasons, the audit could not assess whether the conflicts management plans were in place and implemented.</li> <li>5. Noting that there is a risk that market sensitive information could be commercialised by external consultants, the audit assessed whether external consultants engaged by the CEWO had completed conflicts of interest declarations in addition to such terms being included in their contract with the Department. On 29 May 2024, the CEWO advised that they had relied on representations from the external consultant prior to being engaged that they did not have a conflict regarding providing information to the CEWH on the Goulburn announcement. Other than the external consultant's contract acceptance, there is no other documentation confirming that the external consultant did not have a conflict.</li> </ol>

For the Goulburn catchment announcement, the CEWH's conflict of interest management arrangements for staff were assessed as largely effective. The CEWH's conflicts of interest management processes for external consultants could be improved by seeking formal declarations from external consultants to have assurance that market sensitive information is not misused.

## Appendix A - Legislative Requirements

The legislative requirements from the Basin Plan are outlined in the table below.

Section	Requirements
12.49	<p><b>Interpretation</b></p> <p><i>Meaning of <b>material effect</b></i></p> <p>(1) In this Division:</p> <p><b>material effect:</b> a water announcement is taken to have a <b>material effect</b> on the price or value of water access rights if the announcement is reasonably likely to influence persons who commonly acquire water access rights in deciding whether or not to acquire or dispose of such rights.</p> <p><i>Meaning of <b>water announcement</b></i></p> <p>(2) In this Division:</p> <p><b>water announcement</b> means:</p> <p>(a) an allocation announcement; or</p> <p>(b) a carryover announcement; or</p> <p>(c) a public announcement by an agency of the Commonwealth or of a Basin State that:</p> <p>(i) is of a decision that relates to actions that the agency is undertaking, or may or will undertake; and</p> <p>(ii) can reasonably be expected, if made generally available, to have a material effect on the price or value of water access rights.</p> <p>(3) A reference in subparagraph (2)(c)(i) to a decision:</p> <p>(a) includes, but is not limited to, a decision that relates to:</p> <p>(i) a carryover arrangement or a change to a carryover arrangement; or</p> <p>(ii) a change in the ability to trade between places; or</p> <p>(iii) an amendment to a previous announcement; or</p> <p>(iv) a trading strategy; and</p> <p>(b) excludes a decision that relates to a particular trade of a water access right if:</p> <p>(i) the trade is or will be consistent with, and conducted pursuant to, a trading strategy; and</p> <p>(ii) the trading strategy has been the subject of a water announcement that has become generally available</p>
12.50	<p><b>Water announcements must be made generally available</b></p> <p>A person who makes a water announcement must ensure that it is made in a manner that makes it generally available.</p>
12.51	<p><b>Person not to trade if aware of water announcement before it is made generally available</b></p> <p>(1) This section applies to a person who is aware of:</p> <p>(a) a decision:</p> <p>(i) that has been made, and is to be announced, by an agency of the Commonwealth or of a Basin State; and</p> <p>(ii) that has not been publicly announced; and</p>

Section	Requirements
	<ul style="list-style-type: none"> <li>(iii) the announcement of which will constitute a water announcement; or</li> <li>(b) a water announcement that is not generally available.</li> </ul> <p>(2) The person must not:</p> <ul style="list-style-type: none"> <li>(a) take an action mentioned in subsection (3) in relation to any water access right whose price or value could reasonably be expected to be materially affected by the information referred to in subsection (1) if it were to become generally available; or</li> <li>(b) procure another person to take such an action.</li> </ul> <p>(3) For subsection (2), the actions are:</p> <ul style="list-style-type: none"> <li>(a) enter into a contract to trade; or</li> <li>(b) if no contract is involved in the trade:               <ul style="list-style-type: none"> <li>(i) apply to an approval authority in relation to the trade; or</li> <li>(ii) if no approval is involved in the trade—apply to a registration authority in relation to the trade.</li> </ul> </li> </ul>
12.52	<p><b>Chinese wall arrangements for agencies</b></p> <p>(1) A relevant agency does not contravene section 12.51 by taking an action mentioned in subsection 12.51(3) at any time merely because of information in the possession of an officer or a member of staff of the agency if:</p> <ul style="list-style-type: none"> <li>(a) the decision to take the action was taken on its behalf by a person or persons other than that officer or member of staff; and</li> <li>(b) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision referred to in paragraph (a) and that no advice with respect to the decision was given to that person or any of those persons by a person in possession of the information; and</li> <li>(c) the information was not so communicated and no such advice was given.</li> </ul> <p>(2) In this section:</p> <p><b>relevant agency</b> means:</p> <ul style="list-style-type: none"> <li>(a) the Commonwealth; or</li> <li>(b) a Basin State; or</li> <li>(c) a person that is:               <ul style="list-style-type: none"> <li>(i) an agency of the Commonwealth; or</li> <li>(ii) an agency of a Basin State.</li> </ul> </li> </ul>



## Appendix B - Control Effectiveness Ratings

The scale to rate the effectiveness of the Department's and the CEWH's control frameworks is provided in the table below.

Rating	Description
Effective	Controls are well documented, consistently applied and executed, and address the source of risk.
Largely effective	Controls are well documented and consistently applied. There are minor opportunities to improve controls.
Partly effective	Controls are documented and generally applied. There are low to moderate opportunities to improve controls.
Not effective	Controls are not documented, communicated or consistently applied. Controls may not operate as intended and do not address sources of risk.

## Report disclaimer

### Purpose of and restrictions on this report

This report has been compiled for the Inspector-General of Water Compliance (IGWC) for the objective set out in section 1.2 of this report. The IGWC may rely on this report pursuant to the terms of the: Panel Head Agreement, a Deed between the Commonwealth of Australia as represented by the Department of Finance, and Yardstick Advisory Pty Limited, for the Provision of Management Advisory Services to the Australian Government; and the Order for Services between IGWC and Yardstick Advisory Pty Limited, executed and provided to Yardstick Advisory Pty Ltd on 3 November 2023.

We disclaim all responsibility to any other party for any loss or liability that the other party may suffer or incur arising from or relating to or in any way connected with the contents of this report, the provision of this report to the other party or the reliance upon this report by the other party.

### Inherent Limitations

The report's findings and observations are based on documentation and information provided by the Department of Climate Change, Energy, the Environment and Water (DCCEEW) between December 2023 and May 2024. Yardstick does not warrant the completeness or accuracy of the information provided by DCCEEW. New or additional information brought to attention after the date of this report could affect the findings and observations. Yardstick reserves the right to amend and qualify our observations accordingly.