

WATER'S EDGE: TRANSCRIPT

S2, Episode 3: Origins of the Inspector-General with Mick Keelty AO

- Speaker: *Water's Edge* podcast acknowledges the traditional owners of country throughout the Murray-Darling Basin and Australia and their continuing connections to lands, waters, and community. We pay our respects to Aboriginal and Torres Strait Islander cultures and to the elders past, present and emerging.
- AH: Coming up: how and why the role of the Inspector-General of Water Compliance was established.
- MK: People in the lower part of the basin thought that there was too much floodplain harvesting going on in the north, and it was denying them opportunities in the south.
- AH: The challenges faced along the way.
- MK: So, to simply focus on the Queensland end or the NSW end wasn't going to help South Australia or Victoria or the ACT.
- AH: And where things are headed now.
- TG: We know the government's backing the Inspector-General and the work we're doing. The states have never been more co-operative through the regulatory leader's forum that we've established, the first time they've ever been brought together.
- AH: I'm your host, Annabelle Hudson.
- Speaker: This is *Water's Edge* and welcome to the conversation.
- AH: On the first of October 2019, former Australian Federal Police Commissioner Mick Keelty AO was appointed as the interim Inspector-General of the Murray-Darling Basin water resources for a period of twelve months. It followed his role as the Northern Basin commissioner. Mr Keelty was appointed to this position to help create new laws under the 2007 Water Act, to create a permanent, statutory position. In August 2021, the role of the Inspector-General of Water Compliance was officially filled by Mr Troy Grant, after Mr Keelty decided not to continue in the role. I'm very excited to introduce Mick Keelty to our *Water's Edge* listeners today, to hear firsthand about the establishment of the Inspector-General of Water Compliance, and some of the challenges he faced in that position. Also joining us is the Inspector-General himself, Troy Grant, to chat about where we are now and how the transition occurred. Welcome to you both.
- TG: Thanks, Annabelle.

- MK: Thanks, Annabelle.
- AH: Well, we might get straight into it. Mick, we'll go to the start where it all began. How did you get to be in the role of Inspector-General of Murray-Darling Basin resources?
- MK: Well, prior to the creation of the Inspector-General's role, there had been a *4 Corners* program highlighting the need for better compliance and highlighting anomalies about water legislation across different jurisdictions. For those familiar with the Murray-Darling Basin, you've got the jurisdictions of NSW, Victoria, South Australia, and the ACT. And what the *4 Corners* program did was to highlight the fact that because there were jurisdictional differences there were different compliance regimes in place. NSW, for example, changed its Water Act. In changing the Water Act, it had allowed any changes that had been done for things like floodplain harvesting on properties, any changes that had been done were basically approved from the date of that new legislation, and that created animosity in the lower parts of the Basin, because people in the lower part of the Basin thought there was too much floodplain harvesting going on in the north and it was denying them opportunities in the south. So, by the time you got to places like Bourke and Brewarrina, people were in drought and not getting any of the water that was coming into the north of the basin. So, the original position was created when Tony Burke, the federal Labor shadow minister at the time, approached David Littleproud, the federal minister at the time, and asked whether I would look at the northern basin and become commissioner of the northern basin. So, for twelve months in 2018-19, I looked solely at the northern basin and worked around the northern basin and, without legislation, tried to establish what was going on. The Queensland police had initiated a prosecution in the northern basin that was before the courts for making adjustments to a particular property where water was channelled or saved, onto that property, and denied to properties downstream. So, it highlighted a lot of deficiency in policy as well as practice.
- AH: What progressed to having coverage of the entire basin? At what point did that happen?
- MK: So, there is a Water ministers' council, and each of the jurisdictions are represented at that council. I wrote a report on the northern basin and the things I'd discovered in the northern basin, with recommendations as to what should occur in the northern basin. But, of course, one of the things that my report highlighted is that the Murray-Darling Basin is not jurisdictional. It's a national asset. So, to simply focus on the Queensland end, or the NSW end, wasn't going to help South Australia or Victoria or the ACT. So, it focused the ministerial council's mind on the fact that they needed a Basin-wide approach. Yeah. So, the council itself - the ministers themselves - led by Niall Blair, from NSW, I think, if I recall correctly, they championed a nationwide, or a basin-wide position of Inspector-General. I think David Littleproud, who was then the federal minister, approached me as to whether I would convert from northern basin commissioner to interim-Inspector-General of the Murray-Darling Basin.

- AH: Now, that title - interim Inspector-General - does that insinuate or imply that you didn't have any legislative functions or ability to make those legislative calls?
- MK: Exactly. That was one of the things I highlighted in the northern basin commissioner's report: that I'd done it with the co-operation of farmers and graziers as well as departmental officers. In fact, it highlighted the fact that departmental officers in Queensland were instructed, in fact, to not co-operate with me. I had no powers to compel them to speak to me. So, to have an interim Inspector-General's role, was to allow the work to continue but to get the legislation and policy to catch up and give the position powers.
- AH: So, would you say that - you had spent the first twelve months in the role. Then you decided not to continue in the role. Is that because of issues in terms of legislation? Why did you decide? I think a lot of people were quite shocked that you didn't want to continue in the role.
- MK: Well, the problem we had was that we were twelve months down the track but for me it was two years since I'd started the northern basin commissioner's role. And we still had no signs of any legislation. I was working out of a little office in Brisbane, travelling the Murray-Darling Basin. I really only had one member of staff, based in Canberra, and so it wasn't resourced. Nor was it given legislation. I was also, at the same time, with the approval of the ministers, doing bushfire inquiries. I'd done the 2020 bushfire inquiry for the South Australian government. I'd helped write the terms of reference for the royal commission into the 2020 bushfires, which was conducted as a national royal commission. So, I'd also had a lot of other demands on my time. And because this had no legislation or legislative background or backing, and not resourcing, I just felt it was time to move on and focus on other work. In the absence of legislation, and in the absence of proper resourcing, we were really only playing at the edges. The ministerial council itself was pretty dysfunctional. They'd have a ministerial council meeting, and then it'd almost be a race to the microphone, to see each minister from each jurisdiction talk about their position on water and their position on the Murray-Darling Basin, which was of no assistance to the people on the ground - the farmers, the graziers, the people whose livelihoods, whose generations of livelihoods, had been producing in what is the food bowl of Australia.
- AH: Absolutely. And then we'll cue Troy Grant coming in. How did you end up in the role of Inspector-General of Water Compliance?
- TG: I just received a call, pretty much out of the blue, from minister Keith Pitt's office. One of his staffers canvassed my interest on a scale of 1, 2, or 3, to take up the role. I was a bit confused because I knew Mick. I've known him a number of years. I knew he was in the role. They told me that he was finishing up. They just gauged my interest - from 'No way, Jose', to 'Yeah, I'll think about it', to 'Absolutely'. I took option 2: I'd think about it. Not long later, I got a phone call from Mick to give me a heads-up that he'd nominated me for the role. So, the phone call's...
- AH: A bit late there, Mick!

- TG: So, the phone calls weren't quite in sequence, but because I'd known Mick I took an interest in the work he was undertaking and he was very kind in his recommendations and, when I was appointed as the interim Inspector-General, he articulated why he made those recommendations. I'd come from the basin, I'd lived for forty years there, I had a legislative base of experience, not only applying law in my role as a police officer but as a legislator, crafting law, crafting policy. I understood government. I had been on ministerial councils as a minister, so I understood how it worked. I was a country boy, so I was really blessed that Mick thought so highly that he made the recommendation to the minister at the time. And, after giving it a lot of consideration, because it'd been a couple of years out of politics, I had no interest in getting back into the political fray. I think Mick's point is a really good one: there was a period of time where there was a real optimism about the Basin plan and water management across the Murray-Darling. Going forward, we had Niall Blair - who, I think Mick would attest, was a real champion - Lisa Neville, in Victoria was similarly a very good champion.
- MK: Yes.
- TG: And, as happens with all governments, there's portfolio changes and you get a different cohort. So, I reluctantly agreed. More on the basis that I could see how the role wasn't political, how Mick had framed it and built it with the minister. It wasn't to play in the policy development space; it was to be a problem-solving role, backed up by powers. There was a frustrating period about getting those powers. Mick had a journey of some two years. I had an eight month journey on top of that, still. So, it was a long time that the legislation came to fruition, on 5 August, and despite that being a wonderful thing we are now going through a process still of identifying more legislative gaps and policy gaps.
- AH: Do you think there is room for more legislative powers for the Inspector-General?
- TG: Absolutely. We're really looking forward to the how the Labor government, during the campaign, made a commitment to do a review of the Inspector-General after a twelve month period to make sure we had the adequate powers and resources that we require to do the job. We look forward to contributing to that review, which is about to get underway. It will be telling. There are two similar stories here, and this really speaks to the cultural genesis of what's wrong with the Basin plan. It's always been built on compromise. So, the legislation and the plan itself is compromised in its framework and its structure in order to appease those that don't necessarily agree with it. So, there are all these gaps and get-out clauses or ways that people can escape accountability or aren't held to proper scrutiny. So, what has happened on a lot of occasions is that administrative arrangements have been put in place to overcome these gaps, which have been well-intended, but are not enforceable. So, this review will give us the chance to hopefully put to the minister a sensible way forward to tweak the Act - it doesn't need an overhaul, it just needs some tweaking to fill those gaps - and things that are currently measured or required or onerous on a state to do, within the plan, some of those are a bit redundant. So, they could be taken away and that would do away with some of these administrative arrangements that just complicate things really, that have no enforceability and effectively is why NSW has been able to not submit

any water resource plans for over a decade. They had seven years to do it; they're three years over because the legislation didn't envisage when it was built wouldn't have submitted plans that wouldn't be accreditable within that time period. No one thought that was possible. But we're living that reality today.

AH: That's right. Here we are. I might jump back a little bit. Mick, when you started in the role, you had two people working. Now, we're up to about fifty, Troy. So, at the start, how did you gather intelligence and information on what issues were affecting the basin?

MK: That's a really good question, Annabelle. So, I travelled the basin, far and wide, and I held town hall meetings. I think it came to a head when there was a demonstration in Canberra. Several thousand people came to Canberra and blockaded Parliament House.

AH: That was the 'Can the plan'?

MK: That was it. I met with those people, and brokered a meeting with the minister at the time. It wasn't actually the plan that was the problem. It actually was exactly what Troy was saying: there are aspects in it, and the administrative arrangements and the leaning-in to favour one outcome over another. It's like a balloon: if you depress one side, it's going to have an impact on another side. So, the ministerial council wasn't really working. When I said it was dysfunctional, it was absolutely dysfunctional. It was only when you had the Lisa Nevilles, and the Niall Blairs, who actually got this, and got behind it, and understood on the back of the *4 Corners* story that there was no metering, no compliance, no checking of what was going on. So, I think that one of the things that I tried to do was to hear from the people themselves - the farmers themselves. Things like dairy farmers in Victoria who'd come over from New Zealand didn't understand that they couldn't buy into this market. They thought they were buying a dairy farm. They didn't realise they had to buy a water licence as well.

AH: Separate to the farm.

MK: Yep. They'd never experienced that in New Zealand. When you started to see livelihoods being impacted and business decisions being impacted by poor policy, it was crying out for some action which is what the review that we did, on the impact of low inflows. Remember that when I was commissioned to do this work, it was in drought. We were in serious drought. So, there were some big things that came out of the drought, apart from the impact on the economy and the impact on productivity. We learned very quickly that Indigenous communities were totally left out of the plan. Totally left out of the Water Act, totally left out of the considerations going back to 1915, when our forefathers decided that they needed to have a plan around water.

AH: Absolutely. I'd be keen to know, Troy, how the issues have evolved. Are they any different to what Mick was experiencing in his time as the interim Inspector-General?

- TG: It's a great question, and what Mick did without the resourcing in that short period of time - in reality, because the basin plan politics and issues have been around for donkey's - what he was able to articulate in easy-to-digest language in the reports that he wrote, just took us massive steps forward, particularly in relation to the inflows report. The first thing that identified was that, at the heart of the problems, were the misconceptions, the myths around water. That report really highlighted the quantum of water that flowed from the Darling into the Murray, that there were southern basin expectations, understanding and believed in their hearts that a far greater amount of water flowed from the Darling into the Murray, and that anything activity-wise in the northern basin was only depriving the Murray in the southern systems of their water. So, there was a lot of the start of debunking of myths, which is a cornerstone of our community engagement strategy in the IGWC office now. It's a really important thing because, if you have these myths out there, they run into people's agendas. People would get out there, and get onto a soapbox and just say, 'This is so...' And there was no one to challenge that. There was no independent voice to challenge that myth. Mick was the first one to do that. That's legacy one, that's been laid out. Legacy two is that he was independent, first and foremost, and was able to demonstrate that by calling things out in the first instance, without power, and did it very skilfully. It takes a lot of courage to speak out when you're not backed up by legislation. The basin community's reacted to that. They immediately said, 'We're sick of people marking their own homework.' That's what was happening at a Commonwealth level and a state level, as well. The compliance component at that time sat within the MDBA - the office of compliance now sits with me.
- AH: So, they were essentially overseeing their own compliance?
- TG: Yeah! This is not disparaging in any way, but if you look at it from a governance principle point of view, how do you structurally have an organisation without better frameworks legislatively, wise? The police do it with internal investigations. But they are oversighted by oversight bodies. So, they have a very rigid internal inquiries or IA components. So, they can do that because they've got this oversight component. The MDBA had the responsibility of oversighting a lot of their own work as well as oversighting the states. The state jurisdictions fund about 60% of the MDBA's budget. So, if you're looking at it from a principles point of view...
- AH: It doesn't look great.
- TG: I'm not remotely saying that any maladministration or malfeasance occurred, but it doesn't give any confidence to the community that the job's been assessed or oversighted or checked. So, the checks and balances, just on that basis, could be challenged. I think the community embraced the idea and concept of an independent voice. Mick immediately got people's confidence by being out and about in the basin, his independent reports started to call things out, gave us legacy number two. The third legacy really was the fact that his departure - because of his frustrations with the lack of legislation - got the legislation kicked on. It gave it a bit of an acceleration. Whilst it's not perfect yet - and nothing ever

is, when you roll out the first model of a new vehicle, it takes a few incarnations to get it to be as good as it can be - our legislation and our framework is similar.

AH: It needs to be updated?

TG: It's always evolving. It's a live document. It's not something that sits on the shelf. It's a work-in-progress, needs review, needs change, just like all laws and procedures do. We've made some seismic steps because some of the frustrations that Mick has articulated at the ministerial council - I went to the last ministerial council. While they didn't get outcomes from the policy area, which isn't my space, the dynamic in the room was very different to the hostile, dysfunctional dynamic that Mick was faced with. So, that's a step forward.

AH: There was a fairly robust report from a prominent research group - I'm not going to name names - in 2019 that made some significant claims about major controversies that have been widely reported across all media outlets. I want to get to the bottom of something now that I have you both in the room. How did you - and how do you - decide what needs investigating or review? How did you decide the scope of that? Is it based on what you're being told by field officers, Troy? Is it based on evidence? Is it based on rumours? Or media reports?

TG: Well, Mick didn't have those powers that he could refer if things were provided to him. If it was probably more anecdotal information, he would pass it onto the state regulators because they were the only ones who had the jurisdiction at that stage. So, that's very different to what we can do. We still have those arrangements. They still...

AH: There's obviously certain things that you can't have.

TG: Yes. The Act says that they are the first regulator, and we have 'step-in' capability, and there's a process that goes around that. So, far as what we investigate, there are certain things that are carved out of our legislation, that aren't our space to delve into, so when we're reported issues in that we refer them to the appropriate authorities. Then we oversight that referral. Matters that are referred to us directly that fall within our jurisdiction, we have a triage system to work out whether they constitute an investigation under our investigative powers, under our powers of oversight, or whether they're an issue that we can investigate using our powers of enquiry. They come with significant compelling powers which, as Mick identified earlier in the podcast, he just simply couldn't compel any information. But we have that power and it's an enormous power. You use it scarcely, or you don't over-use it. The best way to get information, as Mick also had to rely on, was to have co-operation.

AH: By good relationships?

TG: By good relationships. We often get referred to - and I know Mick was too - and whether it's because we're both former police officers, that we were the new water cop, or the new cop on the beat. There's some parallels there, but the reality is that our job is to have the big stick and call things out when it's required, but it's also to identify what's going well, what's going good, to acknowledge and

recognise that and give proper credence and highlight to that, which is what we're doing. We do both those roles. So, to answer, it depends on how it comes to us, whether it's captured by our legislation or not, or then whether it fits in our three categories of legislation for us to act on. We're now resourced with specialists in those areas to do that. The most number of investigations that we carry out by way of either referral or proactively done by our team is water trade and price reporting. I think we've got around seventy current investigations in that subject matter alone. There's some with a bit broader scope with legislation, which quickly drags in other opportunities for us to investigate.

AH: Did you find that as well, Mick? That water trade was an area of concern that people were bringing to you, or was it water management in general that you were faced with?

MK: No, water trade was a major issue. One of the things that I highlighted in the northern basin commissioner's report was foreign investment in water was not examined or oversighted by the Foreign Investment Review Board. The treasurer at the time picked up on that and so I had a meeting with the Foreign Investment Review Board and tried to get them to look at water at the same way that we do at other valuable commodities that foreign investment was looking at. That was basically on the back of water trading. Once water trading, and people saw the value of water, the issue that became apparent very quickly was that there was no regulatory authority. It wasn't like they were reporting to ASIC (the Australian Securities Investment Commission), wasn't like they were reporting to the Foreign Investment Review Board. It was just happening. And it was ungoverned, and it was basically entrepreneurial in its nature. If someone wanted water in one part of the basin when someone needed water, it was a co-operative arrangement in some cases but in other cases - and of course in drought the value of water goes through the roof. So, this commodity was being traded ungoverned and unregulated. So, it became really important to highlight that and say - and I think it was under the Turnbull government, when Turnbull was minister responsible - it was a good idea. But it didn't come with the rest of it. It's kind of like Troy just said about the MDBA. It was a great idea to create the Murray-Darling Basin Authority, and a great idea to put compliance in there, but as time evolved they started to mark their own homework and that's not a good idea. So, nobody had picked up on that. This is, I think, one of the important things about the independence of the role, that because you're not buying into the policy and you're not buying into the delivering the policy in the way that the departments are, you can stand back and have a look at the effectiveness of the policy and the way it's policed or complied with. But also, I think the government didn't understand fully the economic value of getting this right. Because not only was water trading an important economic policy, but the whole production of the Murray-Darling Basin, impacted by the drought at the time, impacted the price - for example - of exports and imports. So, the balance of trade was impacted by the fact that we couldn't produce rice and export it. We couldn't get that foreign money in here for our exports.

TG: I think, as another example of the power and effect that Mick had, in that early period, was the ACCC were then commissioned following that to do a report. They

found systemic problems with the culture and the organisation and the way that each of the state-based water trading entities were trading. There was no consistency; there was code of conduct-type concerns, and now we've moved to a federal roadmap to make legislative changes to correct that.

AH: Have changes happened? Can the community be assured that it's all...?

TG: It's all in progress at the moment. The roadmap has been published, the ACCC and ourselves as the Inspector-General, and the Bureau of Meteorology are currently working through a process of who will perform different functions in relation to water trade. There are specific water trading arrangements and rules within the basin plan currently that we look at. That relates to insider trading, trade price reporting, et cetera. So, there are components there. But there's a whole lot of other data-related information that the bureau will have to take a big role in. I'm talking about legislative ability to set standards - we have that standard-setting ability within our current Act as well, at the moment. And, obviously, the ACCC from a consumer perspective. So, between the three of us, we'll get to a good landing spot to support the legislation that will go through the Commonwealth parliament in due course to, again, improve the water trade system to overcome some of the legacy issues that Mick identified that were established.

AH: Well, it's certainly a very complex field and I could talk to you both all day about the history of the Inspector-General and how we got to where we are. But, sadly, we are out of time. So, if there's nothing else that you guys want to talk about or we haven't covered?

TG: I'd just like to say that I think the basin and Australia more broadly will be indebted to Mick Keelty for what he did in those formative years. He really gave us a roadmap to take this very challenging, complex, controversial, and contested Murray-Darling space to a better landing spot, where there's transparency, where there's going to be accountability, and people will be ultimately able to have trust and confidence in it. If he didn't do that work in the beginning, we'd be nowhere near it within a short space of time.

AH: Absolutely.

MK: Well, thank you, Troy. You've done the hard yards. You've got the resources, and that's one of the things I failed to do.

TG: I've got to say, and this is a true and honest disclaimer, that Mick rightly said, during the majority of his tenure, the basin was in significant and severe drought. The actual day that I got appointed as interim Inspector-General, on 20 December 2020, is when it started raining. And it hasn't stopped since! So...

AH: No, it hasn't!

TG: So, I've had the advantage of plenty of water, which lowers the temperatures.

AH: But now's the time to prepare.

- TG: Absolutely. That allows us to engage with people on a wholly different, level playing field. If they're coming at you, hot and angry, because they're suffering all those pressures, the conversations you're having there are far different when you're talking about long-term improvements and how to get things better. So, we've had that massive advantage, of the wet period, which can make all the difference. But the reality is that it's our job to always look at the oversight that is about risk to the system, and our other components about risks within the system. That's fundamentally what our job's all about.
- AH: Well, thank you both so much for your time. I've really enjoyed it. And hopefully our *Water's Edge* listeners have really enjoyed it too. Thanks for your time.
- Speaker: *Water's Edge* is produced by the Inspector-General of Water Compliance, Australian government, Canberra. For more information, visit www.igwc.gov.au.