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Mr Peter Harris AO
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Dear Mr Harris

INDEPENDENT REVIEW OF THE INSPECTOR-GENERAL OF WATER COMPLIANCE

Thank you for the opportunity to provide some preliminary comments, that we hope will inform your interim report. We'd be happy to provide more detailed information – as required – to support your final advice to government.

In line with your Terms of Reference¹, we believe the identified themes of *functional effectiveness* and *regulatory maturity*, are highly relevant drivers for this review. There is considerable room for improvement in relation to both themes, as illustrated by the brief examples provided in this letter.

Slow Response Times

For Basin States, one of the more critical roles that the Inspector General (IG) performs, relates to the confirmation of compliance with Sustainable Diversion Limits (SDLs). While the IG's specific role is new², the process itself is long-standing.

The Commonwealth's *Water Act*³ requires states to submit their annual water use data to the nominated Commonwealth agency by 31 October. A series of 'verification steps' then take place to determine whether or not SDLs have been met, and if not met, whether there's a reasonable excuse for the apparent 'breach'.

For external stakeholders, this process is already unreasonably slow. It can take up to 12 months from the end of any given water year for users to know how their valley performed. Since 2021, this timeframe has been pushed-out to closer to 15 months.

With respect to *regulatory maturity*, the significant lag-time between the actions that are subject to compliance (i.e. an individual's water-use), and the findings of that compliance assessment (i.e. up to 15 months after the given water year has finished), is unacceptable and should be addressed as a matter of urgency.

Recognition of Effort

It's unfortunate the IG has chosen to make such a political spectacle out of the absence of some accredited NSW *Water Resource Plans* (WRPs).⁴ While we acknowledge the IG's opinion that he can't do his job in NSW without accredited WRPs, his means of addressing this gap is substantially eroding public trust. It's also arguably counter to the ultimate role of an effective regulator, which is to: *allocate effort based on the characteristics of the regulated community*.⁵

To date, the IG has not been seen to make any public effort towards this particular task.

¹ [Consultation hub | Terms of reference - Independent Review of the Inspector-General of Water Compliance - Climate \(dcceew.gov.au\)](#)

² Up until August 2021, it was performed by the MDBA.

³ [WATER ACT 2007 - SECT 71 Reporting obligations of Basin States \(austlii.edu.au\)](#)

⁴ Examples include: (i) how NSW data has been represented in recent IG-drafted SDL compliance reports; and (ii) the IG referring to political speeches he's made on this topic, in the preface of related regulatory/compliance reports.

⁵ [MRIT-complete-tool-v3.0-2016.pdf \(aelert.net\)](#), p. 11 – paraphrased.

SDL-compliance 'style' arrangements have been in place across most of the Basin since the mid-1990s. The only real-world difference is that SDLs set consumption at a lower volume than previous iterations.

The mechanics of demonstrating compliance have a multi-decadal history among water users, and government agencies alike. In fact, highly effective transitional arrangements were introduced in 2012, to ensure a smooth commencement of more formal compliance in 2019.⁶

By refusing to engage with this complex history, the IG is failing on two fronts. Firstly, the message is being sent to individual water-users that their up to 30 years of effort no longer counts because he is missing some accredited WRPs. Secondly, the IG is refusing to work productively on this issue, which presumably would involve the creation of: *an agile assessment method, that integrates multiple data sources, and compares 'real-world' risk using multiple areas of focus.*⁷

SDLs Are Not One-Sided

This example perhaps fits best within the IG's currently poor approach to problem solving.⁸

We note that much of the IG's focus has been driven by an unfounded assumption that Basin resources are overallocated, and water theft is rampant. In fact, in the majority of Basin Valleys, the opposite is true.

In the first year of SDL compliance – 2019-2020 – actual surface-water use was 2,175 GL below the annual permitted take. In the second year, this volume increased to 3,848 GL.⁹

Currently, in the Basin, we have a significant under-use problem – as opposed to one of perceived over-use. The IG's regulatory approach has not yet been framed to deal with this critical issue – despite having clear obligations regarding the full-suite of water management tasks across the Basin.

To achieve *regulatory maturity* in relation to the entirety of SDL enforcement, resources must be urgently devoted to this specific complex problem, to encourage use up to legal limits.

Thanks again for the opportunity for the RGA to provide an initial round of feedback. As mentioned, upon request, we can arrange for more detailed evidence to be made available to inform your final report.

Yours Sincerely



Linda Christesen
Water Policy Manager

⁶ There was a 97% success rate in the first year, increasing to 99% in the second. Where SDLs weren't met, this was due to reasonable, methodological matters and not water theft.

⁷ [MRIT-complete-tool-v3.0-2016.pdf \(aelert.net\)](#), p. 11 – paraphrased.

⁸ [MRIT-complete-tool-v3.0-2016.pdf \(aelert.net\)](#), p. 13.

⁹ [Annual Water Take Report 2020–2021 \(mdba.gov.au\)](#), p. 21.