



Australian Government
**Department of Agriculture,
Water and the Environment**

Submission to the Joint Committee of Public Accounts and Audit inquiry:

‘Governance in the stewardship of public resources:
Inquiry into Auditor-General’s Reports 11, 31, 39
(2019-20) and 2 and 9 (2020–21)’

January 2021



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Introduction

The Department of Agriculture, Water and the Environment welcomes the opportunity to provide a submission to the Joint Committee of Public Accounts and Audit inquiry into *'Governance in the stewardship of public resources: Inquiry into Auditor-General's Reports 11, 31, 39 (2019-20) and 2 and 9 (2020-21)'*. This submission relates to the Auditor-General's report No.2 (2020-21), *Procurement of Strategic Water Entitlements*.

In making this submission, the department notes that the Australian Government has been recovering water for the environment since 2008 to ensure the sustainability of the Murray-Darling Basin and assist with bridging the gap to the Sustainable Diversion Limits set out in the Murray-Darling Basin Plan. There are two key ways in which the government has recovered water:

1. Through infrastructure investment, and
2. Water purchasing activities.

Water recovered is managed by the Commonwealth Environmental Water Holder consistent with the requirements of the *Water Act 2007*.

The government's approach has generally been to prioritise water recovery through infrastructure investment. This has helped strengthen Basin communities and industry while delivering on the Basin Plan's water recovery targets. Water purchase activities were pursued to secure high priority water to secure environmental outcomes, including the strategic purchases that Auditor-General's report No.2 (2020-21), *Procurement of Strategic Water Entitlements* reviewed.

As at 30 September 2020, 1,231.2 gigalitres in long term average annual yield (LTAAY) of surface water entitlements and 35.3 gigalitres LTAAY of groundwater entitlements have been purchased at a cost of around \$2.6 billion. This represents around 11% and 2% of long-term surface and groundwater diversions respectively. This water has made a significant contribution to Murray-Darling Basin Plan water recovery targets and the health of rivers, wetlands and floodplains in the Basin while ensuring Basin communities can run their businesses from a sustainable footing. Further information on the use of recovered water is available at environment.gov.au/water/cewo/monitoring.

The Commonwealth Resources Management Framework, including the Commonwealth Procurement Rules, governed the conduct of water purchasing activities. In designing and implementing the government's water purchasing programs, in particular the *Restoring the Balance in the Murray-Darling Basin (Water Purchasing)* and *Sustainable Rural Water Use and Infrastructure* Programs, the focus was on ensuring:

- any purchase of water on behalf of the Australian Government represents value for money for the Australian taxpayer, and
- appropriate transparency in relation to government decision-making.

While the department considers value for money and targeted Australian government outcomes have been achieved under these programs, the department appreciates that improvements can always be made to program administration.

The department accepted in full the four recommendations made by the Australian National Audit Office (ANAO) in its report on the *Procurement of Strategic Water Entitlements*¹.

With steps already taken to implement the ANAO's recommendations, the department's current focus is on improving its policies and processes to further address the findings and observations made in the report. The purpose of this submission is to:

- outline the actions the department has taken and will continue to take in response to the recommendations of the ANAO audit (Section 1), and
- provide information on steps the department has taken to enhance transparency of information about water purchases (Section 2).

¹ See Appendix 1 of the Auditor-General's report No.2 (2020–21), *Procurement of Strategic Water Entitlements*

Section 1: Implementation of recommendations

The department is establishing new governance arrangements to enhance the effectiveness and efficiency of programs administered or overseen by the Water Division, within the Department of Agriculture, Water and the Environment (DAWE). The design of these arrangements has been informed by the ANAO's recommendations and the findings and observations made in the report.

A Water Implementation Board has been established to support the effective and timely implementation of programs administered or overseen by Water Division. The Board provides strategic oversight of program development, delivery, risk management, review and evaluation.

The Board is chaired by the department's Deputy Secretary with responsibility for Water. Board members include:

- The Chief Executive Officer of the Murray–Darling Basin Authority,
- The Chief Executive Officer of the National Water Grid Authority,
- The Commonwealth Environmental Water Holder,
- The First Assistant Secretary of Water Division, and
- The department's Chief Financial Officer.

An independent member with experience in program delivery and risk management is also being engaged.

A new area focusing on program excellence is also being established within the department's Water Division to complement existing corporate support services. It will:

- Provide best practice advice and support in program design, development, administration and review.
- Ensure effective program evaluation is in place for Water Division programs.
- Ensure, as part of the department's culture of continuous improvement, that staff are aware of new developments in program design, implementation and evaluation and what is needed to comply with requirements.

Further information is provided below on each of the ANAO's recommendations.

ANAO Recommendation 1: The Department of Agriculture, Water and the Environment review and update internal procurement guidance to ensure delegations are accurately identified in approval briefs.

In response to Recommendation 1, the department has reviewed its internal procurement guidance to ensure delegations are accurately identified in approval briefs.

As a result of the review, the department is satisfied that the guidance and templates it has available provide sufficient guidance to staff. The department's Financial Compliance Section and Office of the General Counsel also provide day to day support to departmental staff on

delegations. Template delegation material is available to all staff to ensure that sufficient information on the delegation to be exercised is included in all decision-making briefs.

Mandatory e-learning modules, completed as part of the department's staff induction process and annually or bi-annually thereafter, highlight the need for all staff to comply with financial and procurement obligations and where to find further information or resources. To develop greater awareness of the procurement guidance and templates available to staff, the department also launched a staged communication campaign and promoted the materials available in September and October 2020. The department will also continue regular communication activities to ensure staff are aware of the materials and resources available to support departmental delegates to make sound and defensible decisions.

Recommendation 2: The Department of Agriculture, Water and the Environment develop assurance mechanisms for procurement processes to ensure all necessary documentation is completed and documented in a timely manner prior to execution of contracts.

In responding to this recommendation, the department acknowledges the ANAO's findings in relation to due diligence and two instances where a contract was signed but not dated by the seller or their witness.

The department has extensive procurement guidance and templates that support timely and effective conduct of procurement processes. All staff are required to utilise this material. The department's central procurement team regularly reviews and updates these documents and templates. The department is satisfied that the material provides sufficient guidance to staff, and that the endorsed procurement processes (including clearance and approval processes) ensure that key requirements are satisfied.

The department's Water Division has updated its administrative and other procurement-related processes for conveyance of water entitlements, including the *Water Division Conveyance Manual*. This manual now includes specific instruction regarding ensuring contracts are dated when signed, and that due diligence processes are conducted prior to execution of contracts.

Recommendation 3: The Department of Agriculture, Water and the Environment review and update arrangements for managing real or perceived conflicts of interest including assurance mechanisms to ensure these are consistently implemented and communicated.

The department acknowledges that while the ANAO found no indications that conflicts of interest did exist with respect to the matters in the report, it did identify that processes could be further strengthened by requiring individuals, including independent valuers, to make a declaration if there are conflicts of interest. The department has taken steps to ensure its processes support this.

In response to this recommendation, the department implemented a *Water acquisition and divestment declaration of interests* policy to provide greater assurance regarding the acquisition or divestment of water entitlements and allocations. This policy requires any person or entity involved in the acquisition or divestment of water entitlements or allocations by the department to make regular declarations of real or apparent conflicts of interest, including where no known conflicts exist. This policy also extends to those involved in the process, such as independent valuers. A copy has been provided to all Water Division staff and this document is maintained on the department's Instructional Material Library.

The department also has broader arrangements for managing conflicts of interest, including assurance mechanisms to ensure these are consistently implemented and communicated. Where conflict of interest declarations are made, these are reviewed by the relevant manager and recorded on a centralised compliance system.

The department continues to update its existing policies, procedures and guidance material for managing conflicts of interest where needed. The department has consulted employees on a new *Conflict of Interest Guideline*, with feedback to be incorporated prior to publication of the final guideline in early 2021. This guideline will form part of the department's broader integrity framework.

The department also continues to ensure all employees are aware of their ongoing obligations to avoid conflicts of interest and to declare any interests that may be a conflict with their role. The department also provides training for employees on conflicts of interest and how they are to be managed, coupled with support materials and a hotline for advice on matters pertaining to conflicts of interest.

Recommendation 4: The Department of Agriculture, Water and the Environment implement a framework which requires the development of evaluation strategies early in the program design process and regular monitoring and review throughout the lifecycle.

The department's Water Division continues to manage a significant program of administered funding on behalf of the Australian Government.

The Water Division is establishing a new area to improve its focus on program excellence (see above). This area will ensure effective evaluation for programs across the division and provide reports to the Water Implementation Board.

An evaluation of the department's water purchasing program has commenced, with the engagement of an independent consultant. This evaluation will be completed in early 2021.

The water purchasing program has also been subject to ongoing review and process improvement throughout its life cycle. Numerous external reviews and audits have been undertaken including:

- ANAO 2011, Restoring the Balance in the Murray–Darling Basin - performance audit. Available at anao.gov.au/work/performance-audit/restoring-balance-murray-darling-basin
- Marsden Jacob Associates 2012, Survey of water entitlement sellers under the Restoring the Balance in the Murray–Darling Basin Program. Available at webarchive.nla.gov.au/awa/20160106215505/http://www.environment.gov.au/resource/survey-water-entitlement-sellers-under-restoring-balance-murray-darling-basin-program
- ANAO 2015, Funding and Management of the Nimmie-Caira System Enhanced Environmental Water Delivery Project – performance audit. Available at anao.gov.au/work/performance-audit/funding-and-management-nimmie-caira-system-enhanced-environmental-water
- CSIRO 2015, Motivating the Market. Available at agriculture.gov.au/sites/default/files/documents/motivating-the-market-report.pdf

The department is taking steps at a broader level to assess the extent of its evaluation activities across programs. This stocktake will inform the continued improvement of its evaluation practices

Section 2: Transparency and reporting

Commonwealth water purchases have attracted high levels of public interest since the program commenced in 2008. Over the years, the department has taken steps to make information about these purchases available to the public, while balancing obligations to maintain confidentiality and ensure value for money outcomes are not compromised. In addition to complying with publication obligations under the Commonwealth Procurement Rules, this includes publishing information on the department website about strategies and priorities, targets and progress, and the environmental benefits of water purchased.

Increasing transparency assists in building community trust and confidence. The department recognises that further improvements can be made to enhancing transparency of the administration of its programs.

Public information about water purchases

In addition to making information available under the Freedom of Information Act and to Parliament through committees, questions on notice and orders to produce documents, the following information is available on water purchases:

Contracts are reported on AusTender

Information about each water purchase contract, including the price paid, type of procurement and vendor name, is published on AusTender where the value exceeds \$10,000. AusTender is the Australian Government procurement information system and the publication of this information is required under the Commonwealth Procurement Rules.

Information about individual strategic water purchases

The department has published information about the location, volume, price, and benefits of each strategic water purchase on its website. This information is available at agriculture.gov.au/water/markets/commonwealth-water-mdb/limited-tender

Average prices of offers accepted are published

At the conclusion of each open tender for water purchases, the department published the average price per megalitre of offers accepted from that process on its website, where more than 5 offers were accepted. This information is available at webarchive.nla.gov.au/awa/20191115082623/https://www.agriculture.gov.au/water/markets/commonwealth-water-mdb/average-prices

Water recovery progress is published regularly

Progress toward achieving the water recovery targets set out in the Basin Plan is published regularly on both the department's and Murray–Darling Basin Authority websites. This information is available at agriculture.gov.au/water/mdb/progress-recovery/progress-of-water-recovery

Data.gov.au

The department continues to publish a range of data sets about its activities in delivering on the Murray–Darling Basin Plan through data.gov.au. For example, information about contracts awarded under the Upper Condamine Alluvium Groundwater Purchase Tender (Round 6) and Upper Condamine Alluvium Limited Tenders (2018–19) has been published, and the department continues to examine other data sets which can be made available. This information is available at data.gov.au, with water purchase specific information at data.gov.au/dataset/ds-dga-33a943f0-58d6-4394-84c0-d6cbecf62191/details?q=water%20purchase

Conclusion

The Auditor-General's report No.2 (2020–21), *Procurement of Strategic Water Entitlements* has presented an opportunity for the department to strengthen and update existing processes and guidance material supporting the department's conduct of water related procurements.

As part of the culture of continuous improvement, the department will continue to identify ways to improve delivery of its programs.