Department of Planning and Environment

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Implementation of water management corruption prevention actions

12-month Progress Report to the Independent Commission Against Corruption (ICAC)

May 2022

Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

Copyright and disclaimer

Introduction

The NSW Independent Commission Against Corruption (ICAC) conducted two related investigations into complaints about water management in NSW: Operation Avon and Operation Mezzo.

ICAC published its report *Investigation into Complaints of Corruption in the Management of Water in NSW and Systemic Non-compliance with the Water Management Act 2000* in November 2020 and made no findings of corrupt conduct.

The report did make 15 corruption prevention recommendations to help address the corruption risks identified during its investigation. The NSW Government response was issued in March 2021.

This Progress Report is the first of two Department of Planning and Environment (formerly the Department of Planning, Industry and Environment: DPIE) reports to ICAC and provides information on the NSW Government's implementation of the 15 recommendations over the past 12 months.

As at April 2022, 13 recommendations were deemed fully implemented and two were deemed partially implemented.

Recommendation 1

That the Department of Planning, Industry and Environment (DPIE) publicly records:

- its water strategy, objectives and priorities for the use and management of NSW's water resources in a manner consistent with the mandatory duty in s 9 of the WMA
- the need to ensure the water management principles in s 5, and in particular those that relate to sharing, as set out in s 5(3) of the WMA, are all given effect.

Section 9 of the WMA should also inform relevant key departmental records, including agency policies, guidelines and role descriptions, concerning the management of water resources.

Progress Update

Partially Implemented

The implementation approach for this recommendation is largely consistent with the NSW Government's March 2021 response. With respect to the policy review, the implementation approach was adapted as the initial scope of the department's response was based on a narrow interpretation of the ICAC recommendation. When the scope was re-examined, a broader interpretation was assessed as necessary having implications on its delivery by March 2022.

Water strategies

In September 2021, the NSW Government launched the NSW Water Strategy. Of the 12 Regional Water Strategies, Greater Hunter Regional Water Strategy, is in implementation with the remainder expected to go on public exhibition in 2022, 9 of which will be finalised in 2022. The Metropolitan

Water Strategies include the Lower Hunter Water Security Plan and Greater Sydney Water Strategy, which were finalised in 2022.

Water sharing plans

The Department is publishing documents with each water sharing plan remake or amendment that clearly explains how the plan provisions meet the principles of the *Water Management Act 2000*, in particular section 5(3), and including the duty in s 9.

The replacement Border Rivers Water Sharing Plan was published in July 2021 and compliance with water management principles is published under supporting documentation. The NSW MDB Fractured Rock Groundwater Sources water sharing plan amendment and compliance with water management principles were published in January 2022. Compliance with water management principles will be done for all future plan replacements and amendments.

Water policy reviews

Incident response guides (IRGs) are published as part of submission of Water Resource Plans to the MDBA for accreditation assessment. Currently two NSW WRPs have been resubmitted to the MDBA and the associated IRGs are available online.

The department published a Section 10 review method in February 2022. Section 10 reviews are expected to be completed and published by mid-2023.

An internal review of 13 water management policies was completed in April 2022. The review determined that 9 policies are compliant with section 5, 3 were broadly consistent but required greater clarity, and 1 which pre-dated the *Water Management Act 2000* and was deemed to have limited practical effect. This self-assessment will be independently tested, and some policies are being referred for further legal review. A process to review new policies is also being developed to ensure Section 9 informs all policy work.

Visit the department's website for more information

- Acts & Legislation
- NSW Water Strategy
- Regional Water Strategies
- Metropolitan Water Strategies
- Section 10 review method
- Water Resource Plans
- Water Sharing Plans

Recommendation 2

That the DPIE develops and publishes a protocol and procedures for amending WSPs that reflect the principles for water sharing in s 5(3) of the WMA and give priority to those principles in the order in which they are set out in that subsection in accordance with the mandatory duty imposed by s 9 of the WMA. The protocol should also have regard to audits conducted by the Natural Resources Commission.

Progress Update

Fully Implemented

The implementation approach for this recommendation is consistent with the NSW Government's March 2021 response.

Water Management Act principles

The department published a Replacement Water Sharing Plan Manual in February 2022 and will publish an Amendment Protocol in May 2022.

In July 2021, the department commenced publication of fact sheets at the time water sharing plans are replaced or amended to demonstrate how plan provisions meet the principles of the *Water Management Act 2000*, in particular Section 5(3), and including the duty in Section 9. This action is ongoing and will be done into the future for plan replacements and amendments.

Visit the department's website for more information on

- Water Planning Process
- Water sharing plans status

Recommendation 3

That the DPIE implements all changes it has proposed to the BDWSP rules to ensure its consistency with the WMA, specifically:

- implementing IDELs and TDELs (including trade limits on IDELs)
- raising A-class cease-to-pump thresholds based on up-to-date environmental water requirements to better protect low-flow water from extraction
- removing imminent flow provisions to prevent extraction of low-flow water even when higher flows are anticipated
- introducing resumption of flow rules to protect the first flow of water after a dry (low or cease-to-flow) period from extraction

- establishing management provisions to protect upstream environmental water releases from being extracted when they reach the Barwon-Darling.

Progress Update

Fully Implemented

The recommendation was reported as fully implemented in the NSW Government's March 2021 response.

Visit the department's website for more information on

- Environmental water
- Water management in the Barwon-Darling

Recommendation 4

That the DPIE establishes a dedicated and adequately funded WSP implementation team to ensure all of the state's WSP rules are implemented effectively.

Progress Update

Fully Implemented

The recommendation was reported as fully implemented in the NSW Government's March 2021 response.

Recommendation 5

That the DPIE publishes a list of all WSP rules that have not yet been implemented and develops and publishes timelines for implementing these rules.

Progress Update

Fully Implemented

The implementation approach for this recommendation is consistent with the NSW Government's March 2021 response.

Implementation of water sharing rules

The department published its approach to implementing water sharing plan rules by themes in February 2022. The number of rules extends to over 24,000 across 59 WSPs This document provides a summary of the rules grouped according to themes which have not been given effect to across water sharing plans (WSPs). The document was last updated in April 2022.

The Water Sharing Plan Implementation Program is expected to commence in mid-2022 and will be led by the department and delivered in conjunction with WaterNSW and the Natural Resources Access Regulator.

The Department's Implementation Program is a theme-based, structured and coordinated approach to the implementation of water sharing plans. It will

- Provide corporate oversight of implementation activities and progress across all WSPs
- Enables strategic risk-based decision making on resourcing implementation activities
- Deliver stakeholders transparent, fit for purpose information on WSP implementation status and progress.

Information on the program will become available on the departmental website from July 2022 and include annual implementation status updates from 2023.

Visit the department's website for more information on

- Water Sharing Plans

Recommendation 6

That the DPIE prioritises and seeks to bring forward audits of any WSP that have not, to date, been audited under s 44 of the WMA.

Progress Update

Fully Implemented

The recommendation was reported as fully implemented in the NSW Government's March 2021 response.

Visit the department's website for more information on

- Water sharing plan audits

Recommendation 7

That the NSW Government recommences funding of scientific audits that periodically monitor the environmental health of its rivers and river flows to provide independent assurance of the effectiveness of its water management policies.

Progress Update

Partially Implemented

The implementation approach for this recommendation is consistent with the NSW Government's March 2021 response.

Environmental and scientific monitoring funding

Funding is provided for environmental and scientific monitoring, and is conducted jointly with the department's Environment & Heritage group and the Department of Regional NSW's Fisheries group for all inland catchments. Coastal areas have strategically targeted monitoring, evaluation and reporting (MER) activities in line with Water Sharing Plan revision timeframes and is conducted with input from DPI Fisheries.

River Condition Index and HEVAE updates

NSW Water Strategy actions to update the River Condition Index and High Ecological Value Aquatic Ecosystems (HEVAE) have had minor delays but are progressing well against the extended implementation date and are due to be complete within 2022.

Visit the department's website for more information on

- NSW HEVAE framework
- NSW River Condition Index
- Section 10 review method

Recommendation 8

That the DPIE publishes all stakeholder and community engagement plans concerning water management when they are complete.

Progress Update

Fully Implemented

The implementation approach for this recommendation is consistent with the NSW Government's March 2021 response.

Publishing water engagement plans

Engagement is ongoing and the publication of stakeholder and community engagement plans concerning water management is aligned to specific projects. As proposed in the March 2021 response, engagement plans are published on respective program pages when complete.

Throughout 2021, the department has improved its transparency and communication of engagement plans and activities and continues to look for ways to make it easier for the public to find online. With respect to refreshing the department's website, this is an ongoing improvement process, and examples of the improvements are included in the progress update to Recommendation 10.

The following programs provide good examples of how stakeholder and engagement plans are published

- Regional water strategies
- Water Infrastructure NSW
- Town Water Risk Reduction Program

Continuous improvement of engagement framework tools

As part of Recommendation 9, the department engaged KPMG to undertake an independent review of the *Water Stakeholder and Community Engagement Policy*. An action plan is being developed to respond to the April 2022 KPMG Audit Report recommendations and will include actions to ensure consistency in tools.

Visit the department's website for more information on

- Stakeholder Engagement

Recommendation 9

That the DPIE tasks an appropriately qualified and experienced independent reviewer to conduct, on a recurrent basis, reviews of the steps taken to implement its "Water stakeholder and community engagement policy" and the policy's effectiveness. The independent reviewer should have the function of making such recommendations as they think necessary to ensure that all water stakeholders have their interests heard in a fair, balanced and transparent way.

Progress Update

Fully Implemented

The implementation approach for this recommendation is consistent with the NSW Government's March 2021 response.

Independent audit of water engagement policy

KPMG was engaged in 2021 to undertake an independent review of the department's *Water Stakeholder and Community Engagement Policy* and to recommend a future recurring audit program. The Letter of Observation and Audit Report were submitted to the Department in April 2022.

Visit the department's website for more information on

- Stakeholder Engagement, which includes the *Water Stakeholder and Community Engagement Policy*, KPMG Letter of Observation and Audit Report

Recommendation 10

That the DPIE develops a model procedure concerning the conduct of meetings with external stakeholders in respect of water management issues that includes requirements to:

- make records of these meetings
- publish meeting details including attendees, organisations represented and meeting agendas, on the water area of the DPIE's website at least monthly.

Progress Update

Fully Implemented

The Department is committed to transparency and continual improvement. The implementation approach for this recommendation is largely consistent with the NSW Government's March 2021 response. When implementing this recommendation, the Water Group found that policy and procedures related to records management, engagement, publication, lobbying and privacy

processes were already available and that meetings and engagement activities and their details were published online. This includes the Code of Conduct which is addressed at Recommendation 12.

Improved guidance for staff on conduct and engagement requirements and practices

Notwithstanding this operating context, the Water Group identified a need for improvement and consolidated all relevant policies and links to published information to guide staff in planning for, conducting and reporting on meeting and engagement activities with external stakeholders. As the term, frequency and method of reporting is dependent on the activity, the guidance is presented as a matrix which accounts for this variability.

Improved public access and navigation of engagement information

Significant progress has been made to proactively publish meeting materials and the management of our broader engagement activities. It is now easier to find information about engagement activities on the department's website. Meetings and engagements are recorded in a stakeholder management system and published quarterly on the stakeholder engagement section of the site.

In 2021, the department developed and launched a series of libraries to assist with ease of public access and navigation to information on engagement activities

1. The Water meetings library is updated monthly and contains records of key meetings under each program of work. The meeting records vary by forum and may include be represented as video recordings, What We Heard Reports, or minutes and actions.
2. The Water presentations library is updated monthly and consists of webinars and presentations that cover a range of topics across the water sector from 2020 onwards.

As part of continuous improvement, the department will continue its work to embed best practice processes and lift staff capability. Actions in response to the independent review of the *Water stakeholder and community engagement policy* (Recommendation 9) will provide the foundation to continually improve engagement governance and capability. In addition, actions out of the NSW Water Strategy Priority 1*, Build community confidence and capacity through engagement, transparency and accountability*, will continue to focus on transparency and confidence, which goes to the heart of this recommendation.

The following provide examples of how different engagement activities are conducted

- Connectivity Stakeholder Reference Group
- Monthly Water Engagement Roundups
- List of engagements in 2021
- Non-urban water metering document library

Visit the department's website for more information on

- Stakeholder Engagement

Recommendation 11

That the DPIE formalises communication, information-sharing and consultation protocols with officers performing the functions of the Environment, Energy and Science Group (formerly the Office of Environment and Heritage).

Progress Update

Fully Implemented

The recommendation was reported as fully implemented in the NSW Government's March 2021 response.

Recommendation 12

That the DPIE ensures that its staff are properly inducted and receive ongoing training regarding the responsibilities of public officers in respect of the classification and handling of confidential and sensitive information.

Progress Update

Fully Implemented

The recommendation was reported as fully implemented in the NSW Government's March 2021 response.

Visit the department's website for more information on

- The department's revised Code of Ethics and Conduct was published in March 2022

Recommendation 13

That the DPIE reviews its recruitment policies and procedures to ensure that they are consistent with the Government Sector Employment (General) Rules 2014 rules and best-practice guidance provided by the Public Service Commission. Particular attention should be given to ensuring that:

- job advertisements run for enough time to allow the market to be tested
- hiring managers undertake the Public Service Commission's recruitment training

- more than one member of a selection panel participates in the cull of candidates, unless exceptional circumstances exist
- clear guidance is provided about the relevance of any independent reports assessing the suitability of candidates.

Progress Update

Fully Implemented

The implementation approach for this recommendation is consistent with the NSW Government's March 2021 response.

Hiring manager training

Comprehensive hiring manager training was rolled out across the department in July 2021.

Visit the following links for more information on

- *Government Sector Employment Act 2013*
- Public Service Commission Guideline: Inquiries into the administration and management of government sector agencies

Recommendation 14

That the NSW Government guarantees the funding of the Natural Resources Access Regulator (NRAR), at least to a level equivalent to the recommendations of the Independent Pricing and Regulatory Tribunal of NSW, over the long term.

Progress Update

Fully Implemented

The implementation approach for this recommendation is consistent with the NSW Government's March 2021 response.

Funding of the Natural Resources Access Regulator

IPART current Water Administration Ministerial Corporation determination on maximum prices for water management services came into effect on 1 October 2021. This includes pricing for delivery of water compliance and enforcement.

The 2021-22 NSW Government Budget included $32.2 million ($130.7 million recurrent expenses over four years) to investigate suspicious activities and alleged breaches to water regulation in New South Wales and manage dam safety.

Visit the following links for more information on

- Natural Resources Access Regulator
- NSW Budget
- NSW Government agency annual reports
- IPART water pricing determinations and reviews

Recommendation 15

That the DPIE periodically publishes aggregated water account information on its website and makes individual-level data available to NRAR.

Progress Update

Fully Implemented

The implementation approach for this recommendation is consistent with the NSW Government's March 2021 response.

Aggregated water account information

Aggregated water account information is now published for all NSW water sources on the WaterInsights portal. Currently, recorded license usage for unregulated water sources is very low, however, as the NSW non-urban water metering policy takes effect more meters will be deployed across unregulated systems. As it is recorded, metered license usage will automatically update the unregulated usage volumes on the WaterInsights portal.

The department has recently workshopped enhancing the existing departmental usage dashboard to include recorded unregulated usage, as well as providing insight to the meter coverage in the water sources. The department will also explore methods for estimating usage for unmetered licenses and incorporating these estimates into the usage dashboard.

Visit the following links for more information on

- Water accounting usage dashboard

- WaterInsights portal