

Question on notice no. 3

Portfolio question number: 3

2018-19 Supplementary budget estimates

Rural and Regional Affairs and Transport Committee, Cross Portfolio Murray-Darling Basin Plan matters

Senator Rex Patrick: asked the Department of the Environment and Energy on 26 October 2018—

Senator PATRICK: Perfect. That's very helpful. Just going back to OPD No. 1026, which was the incoming brief for the Commonwealth Environmental Water Holder, I note that in the brief there was a document that was called the 'CEWH assurance review'. It's listed in the annex that was provided to us; yet the assurance review is not included in the OPD as returned to the Senate. If I were a suspicious person-and I'm not-the first thing I'd do is go: 'Hang on! What aren't they showing me?' Can someone provide an explanation as to

- (a) whether I'm wrong, that it was actually provided; and
- (b) , if I'm correct, why it wasn't returned?

Ms Swirepik: I can provide an answer to that. With the OPDs, obviously, there's a lot of information. I don't know whether we communicated the whole briefing. The incoming briefing was three large folders. There were a lot of attached reference documents, of which this was one. So the main part of the brief was a couple of pages long with two short attachments also. The third section of the brief said, 'And here are all these 41 references for you to read at some point in time.' One of those was the assurance review. During the time that we had to respond to the OPD we looked through it to see what harm we thought could be caused by releasing some of the documents. You would understand that when you take an assurance review that is critical for the improvement of your practice. We have actually made a couple of those reviews publicly available. There was a review done by Neil Byron. This review actually looked at the relationships with the states and the processes for things like placing water orders and reconciliations. So it was very much a nuts-and-bolts operational review of how we interact with the states; but it also highlights vulnerabilities and things like that that we work with and we need to address. It was our assessment that it wasn't helpful at that point in time to be releasing that document into the public domain because we were responding to that and improving practices of how we operate with the states. We did not go to the point of claiming in our response to the OPD that we'd met a public interest test, but we had chosen not to provide, in our first reaction to that OPD, a series of documents, and that was one of those documents.

Senator PATRICK: There is a criterion and it is not that it's not helpful, but it has to be harmful to release it publicly. I'm not sure what you're really saying there, so I'll just be upfront: will you provide that to the committee?

Ms Swirepik: In the time to respond to the OPD we didn't have the time to make the assessment completely.

Senator PATRICK: No. I understand that.

Ms Swirepik: If we were to mount a public interest test for that document I would be prepared to reassess that now. I think I would need to go back and look at the reasons for the advice of withholding that and see if it does meet the public interest test. I would certainly be happy to look at that again.

Senator PATRICK: You say there is already some advice about whether or not that should be withheld?

Ms Swirepik: We had an initial discussion within the department and talked to our legal people. I'm not sure that I can say that there's written advice that we have within our department, but I can clarify that for you.

Senator PATRICK: Just to be clear: I'm requesting that you table that document. You can take on notice whether there needs to be any immunity claimed.

Ms Swirepik: Thank you.

Answer —

The 'CEWH assurance review' is an Internal Audit Report entitled *Assessing Risks Associated with Environmental Water Delivery Services* conducted by an independent service provider in mid- 2017, reporting in October. The audit was undertaken at that time to assess the extent to which arrangements established with state jurisdictions for the use of Commonwealth environmental water provide a sound basis for the Commonwealth Environmental Water Holder to meet its statutory obligations under the *Water Act 2007* and the *Public Governance, Performance and Accountability Act 2013*. A copy is attached.

The audit raised process issues specific to arrangements for the management and delivery of the Commonwealth's held environmental water in mid-2017, primarily relating to governance, reporting and transparency. It was undertaken as part of the continuous evaluation and improvement approach adopted by the Commonwealth Environmental Water Office to ensure that the management and delivery of Commonwealth environmental water holdings is as efficient and effective as possible.



Australian Government

Department of the Environment and Energy

Internal Audit Report

Assessing Risks Associated with Environmental Water Delivery Services

Audit No. 10

Date considered¹: 17 October 2017

Service Provider: Ernst & Young

Audit Sponsor: David Papps, Commonwealth
Environmental Water Holder



¹ Date considered by Portfolio Audit Committee

1 OBJECTIVE OF THE AUDIT

The objective of the audit is to assess the extent to which arrangements established with State jurisdictions for the use of Commonwealth environmental water, and compliance with those arrangements, provide a sound basis for the Commonwealth Environmental Water Holder's (CEWH) ability to meet its statutory obligations.² The relevant State jurisdictions are New South Wales (NSW), Victoria (VIC), South Australia (SA) and Queensland (QLD).

2 CONTEXT AND SCOPE OF THIS AUDIT

The CEWH was established by the *Water Act 2007* to manage Commonwealth environmental water holdings for the purpose of protecting or restoring environmental assets in State jurisdictions, including within the Murray Darling Basin. Delivery of Commonwealth environmental water requires the cooperation of State jurisdictions as they are the water resource manager and/or operate water delivery infrastructure.

The Murray-Darling Basin Plan was developed by the Murray-Darling Basin Authority (MDBA) and provides a framework to manage the water resources of the Basin, and sets out reductions in water diversions for Basin catchments.

Under the *Basin Plan 2012*, States are required to undertake monitoring and reporting, as well as prepare Commonwealth-accredited water resource plans.

The Water Act requires that Commonwealth environmental water is managed to protect or restore environmental assets to give effect to relevant international agreements such as the Ramsar Convention. More broadly, the CEWH is required to act to give effect to the Basin Plan. Under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the CEWH is required to establish and maintain a system of controls to manage risks, maintain appropriate accounts and records, and provide annual Performance Statements.

The processes for Commonwealth environmental water delivery subject to this internal audit are:

- Agreement with State delivery partner on the arrangements for water delivery including; cost sharing, monitoring and reporting under each of the following scenarios:
 - Scenario 1: account debited directly by river operator
 - Scenario 2: transfer of water to State government agency
 - Scenario 3: Approval for a State government agency to call or release water.
- Under Scenario 2 and Scenario 3, State government agencies then order the release of water and river operators deliver the water as per agreement with the CEWH.
- Reporting by State delivery partners to CEWH on the environmental watering actions undertaken.

As part of the audit, we gathered information through reviewing documentation provided by the Commonwealth Environmental Water Office (CEWO) and meetings with relevant staff. We met with staff from the North, Central and Southern Delivery teams and the Portfolio Management team. We also attended a meeting on broader Basin Plan risks for Commonwealth Environmental Water. It is important to note that the scope of this audit did not provide for us to engage with the States or other stakeholders outside of the Department, and/or to verify risk information or events.

As part of this internal audit, the CEWO provided information on instances, due to State-based arrangements, where Commonwealth environmental water was not delivered at the required time to achieve optimum environmental benefits, or where Commonwealth environmental water was not used for

² Statutory obligations under the *Water Act 2007* (Water Act) and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act)

the purpose required by the CEWH. Further, CEWO provided evidence that the use of Commonwealth environmental water is not always fully accounted for by States.

These instances where Commonwealth environmental water is not delivered by State jurisdictions as required by the CEWH mean that the Department’s ability to meet its statutory obligations under the Water Act and the PGPA Act are at risk.

3 KEY FINDINGS AND RECOMMENDATIONS

The following key **findings** have been made as a result of this internal audit:

1. The strength of the existing controls relies on the relationships developed with State counterparts, and on mutual alignment through verbal or other non-legally binding agreements. The effectiveness of relationships in managing risks are however, variable. In addition, inadequate external governance arrangements for the operational delivery of environmental water delivery presents risks in the use of Commonwealth environmental water consistent with Basin Plan obligations.
2. The quality of reporting provided by state jurisdictions on the use of the Commonwealth environmental water is of varying quality, and in some cases is poor. Reliance on these State processes and governance arrangements present a risk to the CEWH in discharging its public accountability obligations (under PGPA and the Water Act).
3. There is significant risk that arrangements established by State jurisdictions for the use of Commonwealth environmental water do not provide a sound basis for the Commonwealth Environmental Water Holder’s ability to meet its statutory obligations. The risk of not achieving the Commonwealth Environmental Water Holder’s obligations appears highest in South Australia. Significant risk is also present in NSW and Victoria, and to a lesser extent Queensland.
4. A lack of transparency in current State jurisdictions’ governance and reporting arrangements provides opportunities for unauthorised use of Commonwealth environmental water.

Overall these findings indicate that there is significant risk that arrangements established by State jurisdictions for the use of Commonwealth environmental water do not provide a sound basis for the CEWH’s ability to meet its statutory obligations.

Detailed working papers are provided at **Attachment A**.

As a result it is **recommended** that the CEWH consider implementation of one or more of the following risk management strategies (controls) to reduce the risk that its statutory obligations are not met.

1. Strengthen institutional and governance arrangements	Risk Rating: High
<p>a) Review and negotiate Partnership Agreements, or investigate other forms of agreements, which clarify and set expectations and responsibilities, establish commitment to institutional arrangements and provide clarity and certainty to the operational processes (including risk management) relied upon to give effect to the statutory function of the CEWH.</p> <p>b) Establish improved mechanisms for collaboration on operational policy development, risk management and documentation of procedures and service standards.</p> <ul style="list-style-type: none"> • Pursue with the Murray Darling Basin Authority and Department of Agriculture and Water Resources (DAWR) the need to establish an effective formal forum for facilitating the input of environmental (water holder) interests into the development of Murray-Darling Basin policy and operational procedures. • Facilitate the collaboration of environmental water managers to promote a common vision for advancing water reform and the development of progressive measures for environmental water delivery. <p>c) Promote the broader function of the MDBA River Murray Operations as under the Water Act 2007, in addition to its responsibilities under the Murray-Darling Basin Agreement, and establish a service level agreement to give purpose to this function for facilitating environmental water delivery.</p>	

- Establishing direct arrangements with service providers for water delivery in the River Murray to improve the efficient coordination and administration of cross-jurisdictional watering actions, transparency and accountability in environmental water delivery, and consistency in standards of reporting.

Management Comments	
<p>a) The CEWH proposes the following activities aimed at improving institutional arrangements. These arrangements provide the foundation for the water delivery services provided by State jurisdictions in the operational management of Commonwealth environmental water and the treatment of risks.</p> <p>Delivery services are the business processes provided by the collection of State government agencies, water delivery partners and river operators enabling the active management of water through operation of river infrastructure, administration of water trades, accounting and reporting, communications and information support. Current services established historically to meet the needs of consumptive water users have proven to be less appropriate for servicing large scale environmental watering. Establishing improved arrangements and services requires high level commitment from senior officials to direct reform in policy, process and practice. Engaging in the governance that would provide this commitment is discussed in subsequent comments at 1(b).</p> <p>The treatments proposed in response to the report's recommendations include:</p> <ol style="list-style-type: none"> i. Working with senior officials of DAWR to investigate the development of a schedule to the <i>Intergovernmental Agreement on Water Reform in the Murray-Darling Basin</i> (IGA) requiring the commitment of all Basin states to the establishment of water delivery services required for the effective and efficient operational management of environmental water in the Murray-Darling Basin. Improving water delivery services is consistent with recommendations from the Independent River Operations Review Group (IRORG) in its report to the Basin Officials Committee (BOC) on River Murray operations in 2015-16 and is expected to be again recommended in its review of operations in 2016-17. ii. Investigate the development of a service level agreement and Environmental Watering Schedules, given effect under the <i>Water Act 2007</i> and Basin Plan, with MDBA River Murray Operations. Subject to the outcome of the investigations, this may provide a model for the development of service delivery agreements with the responsible authorities for river operations in valleys across the Basin. iii. Review the Partnership Agreement with the Victorian Environmental Water Holder and NSW Office of Environment and Heritage, and revise to address identified risks and to give effect to the IGA schedule (if agreed). iv. On the basis of outcomes from tasks above, seek to negotiate a Partnership Agreement with SA Department of Environment, Water and Natural Resources, establishing an appropriate level of accountability, protocols and procedures for environmental water management; transparency of decision-making; accountability; and reporting. 	<i>Agreed/Not Agreed</i>
	<i>Timeframe</i> July 2018
	<i>Responsibility</i> CEWH Assistant Secretary Wetlands, Policy and Northern Water Use Branch, CEWO
<p>b) The CEWH does not hold membership of senior officials committees responsible for overseeing the operational implementation of the Basin Plan, and as such the responsibility for promoting higher levels of accountability and commitment by responsible governments rests with those senior officials within DAWR representing the Commonwealth government.</p> <p>The CEWH will work with DAWR and MDBA officials to escalate issues affecting environmental water policy and management through the Basin Officials</p>	<i>Agreed/Not Agreed</i>
	<i>Timeframe:</i> December 2017
	<i>Responsibility</i>

<p>Committee and its sub-committees, including issues that may impact the successful implementation of measures under the Basin Plan.</p> <p>In this context, the CEWH will work with DAWR Senior Executives to highlight governance risks to the Basin Officials Committee and identify opportunities for establishing more effective arrangements that support the statutory responsibilities of the CEWH in its management of the water portfolio.</p>	<p>CEWH</p> <p>Assistant Secretary Wetlands, Policy and Northern Water Use Branch, CEWO</p>
<p>c) The MDBA River Murray Operation's mandate for the management of water resources in the Basin exists through the River Murray Operations Framework. Changes to this framework (given effect through the Murray-Darling Basin Agreement, Objectives and Outcomes) require commitment by senior departmental officials and government ministers. The CEWH has no decision-making role in changes to the River Murray Operations Framework and its instruments, and therefore relies on the role of DAWR in their function representing the Commonwealth's interest within these forums. The CEWH will write to the Basin Officials Committee (see also response at 1(b)) raising the issues of risk to the statutory function of the CEWH, and promoting opportunities for progressing improved water delivery services.</p> <p>The CEWH will engage directly with MDBA River Murray Operations seeking a service level agreement for environmental water delivery within the River Murray, consistent with MDBA's broader function established under the <i>Water Act 2007</i>. Development of a direct service level agreement will require commitment through intergovernmental agreement, extensive consultation with state agencies, and may be given effect through the implementation of environmental watering schedules identified at (a) above.</p>	<p><i>Agreed/Not Agreed</i></p> <hr/> <p><i>Timeframe</i></p> <p>July 2019</p> <hr/> <p><i>Responsibility</i></p> <p>CEWH</p> <p>Assistant Secretary Wetlands, Policy and Northern Water Use Branch, CEWO</p>

<p>2. Strengthening accountability mechanisms</p>	<p>Risk Rating: High</p>
<p>a) Promote and establish effective evaluation, audit and compliance functions in practice:</p> <ul style="list-style-type: none"> • Establish a CEWO audit/review function to provide the CEWH with assurance of the appropriateness of water delivery arrangements and support continuous improvement. • Work with the MDBA and DAWR in their responsibility to establish an independent audit and compliance function for Basin Plan implementation. • Work with MDBA and DAWR to strengthen the independence of, and broadening the scope of the annual review of river operations. <p>b) Use existing collaborative mechanisms with state government agencies and environmental water holders to develop standards in the measurement, accounting and reporting of environmental water</p>	
<p>Management Comments</p>	
<p>a) The MDBA's independent regulatory function is established under the <i>Water Act 2007</i> and Basin Plan 2012. The MDBA is conducting a Basin-wide Compliance Review which will consider the legislative, policy and practical implementation of compliance in water management across the Murray-Darling Basin. The review will also examine the MDBA's internal compliance monitoring and enforcement practices. Consideration will be given to the appropriateness of state laws and instruments, and their interaction with Commonwealth arrangements, in supporting the Basin Plan.</p> <p>The review is being conducted by an MDBA taskforce, led by Authority Member George Warne. A panel of independent experts has also been engaged to assist the taskforce.</p>	<p><i>Agreed/Not Agreed</i></p> <hr/> <p><i>Timeframe</i></p> <p>October 2017</p> <hr/> <p><i>Responsibility</i></p> <p>CEWH</p> <p>Assistant Secretary Wetlands, Policy and Northern Water Use Branch, CEWO</p>

<p>The CEWH will consult with the MDBA taskforce and DAWR as part of the review to ensure that implications for the CEWH are appropriately considered.</p> <p>Commonwealth environmental water is managed within an adaptive management framework that includes processes for water use acquittal and review. An independent review of the business systems of the Commonwealth Environmental Water Holder was self-initiated in August 2017. Strengthening the internal business processes of the CEWH, including evaluation, will be considered in light of findings from the independent review that is due in late October 2017.</p>	
<p>b) The measurement, accounting and reporting of environmental water use is the responsibility of parties external to the CEWO. However, to advance the development of improved practice, the CEWO will seek to collaborate with state government agencies and river operators to establish guidelines for improving the accounting of environmental watering. Guideline development will be subject to agreement by Basin States and water resource managers. Commitment to instituting better practices in water accounting and reporting will be pursued through intergovernmental and partnership agreements noted in 1a) above, and reinforced through the compliance and review functions in 2a).</p> <p>The CEWH has recently commissioned the development of a discussion paper on establishing guidelines for accounting for environmental water use. This discussion paper will form the basis for engagement with the state authorities.</p>	<p><i>Agreed/Not Agreed</i></p> <hr/> <p><i>Timeframe</i></p> <p>July 2018</p> <hr/> <p><i>Responsibility</i></p> <p>CEWH</p> <p>Assistant Secretary Wetlands, Policy and Northern Water Use Branch, CEWO</p>

<p>3. Facilitating improved transparency in decision making, information and procedures</p>	<p>Risk Rating: High</p>
<p>a) Collaborate and, where appropriate, co-invest in projects improving environmental watering outcomes and business processes.</p> <p>b) Prioritise and implement investigations that support changes in operational policy, institutional arrangements and procedures. For example:</p> <ul style="list-style-type: none"> • Establish a framework for assessing net third party impacts. • Determine alternative accounting methods for the attributing 'losses' associated with the large scale use of environmental water. • Conduct a survey on the effectiveness of local engagement mechanisms. 	
<p>Management Comments</p>	
<p>a) The CEWH incorporates scientific evidence into its decision making processes through strategic investment of resources, promoting improved transparency through collaboration in external programs, and establishment of internal systems for providing quality assurance in information used for decision-making and adaptive management.</p> <p>Long term intervention monitoring and investment in the application of emerging science (e.g. Black Box Management Framework) provides examples of the CEWH's on-going commitment to integrating peer reviewed science into decision-making and promoting innovation. The on-going commitment to investing in innovative projects will be supported through an Investment Framework (public release of a discussion paper is pending approval). These projects provide a means of building partnerships and interjurisdictional relationships through co-</p>	<p><i>Agreed/Not Agreed</i></p> <hr/> <p><i>Timeframe</i></p> <p>July 2018</p> <hr/> <p><i>Responsibility</i></p> <p>CEWH</p> <p>Assistant Secretary Wetlands, Policy and Northern Water Use Branch, CEWO</p>

<p>investment opportunities, and joint working groups supporting closer alignment in environmental objective setting.</p> <p>The CEWH is highly reliant on the technical information provided by external sources to support decision-making on environmental water use. The Assurance Review report notes the highly variable quality of this information. The CEWH has recently commissioned an independent review of its business systems. The outcome of this review will inform the on-going refinement of the function of the CEWO.</p> <p>An internal discussion paper is currently in development by the CEWO on the future information needs and services, and processes for evaluating externally sourced information. The outcome of this work will be considered in the context of the findings from the CEWH's independent review.</p>	
<p>The successful delivery of the CEWH's functions relies upon the external business systems, administrative processes and operating protocols established by state government agencies.</p> <p>The Assurance Review is the beginning of a process for promoting the service needs of the CEWH. This is part of a broader program being resourced by the CEWH to build awareness of the statutory responsibility of the CEWH, establishing an evidence base supporting a change agenda, and to promote the establishment of protocols and better practice guidelines befitting the management of Commonwealth resources through direct engagement.</p> <p>The development of discussion papers and annual review of environmental watering actions (noted above) provides a mechanism for establishing standards and an enduring system of on-going improvement. The CEWH's ability to meaningfully engage directly with state agencies through the appropriate interjurisdictional forums is fundamental for this purpose.</p> <p>Transparency in external processes relies on good will and strong relationships. The CEWH continues to commit to building a strong culture and community of practice with external agencies. This goodwill will be reinforced through strengthened institutional and governance arrangements noted above (management comment 1) and an open approach to collaboration on Basin Plan implementation.</p> <p>A review of the effectiveness of the broad program of work and proposed management responses will be undertaken by July 2019.</p>	<p><i>Agreed/Not Agreed</i></p> <hr/> <p><u>Timeframe</u></p> <p>Review by July 2019</p> <hr/> <p><u>Responsibility</u></p> <p>CEWH</p> <p>Assistant Secretary Wetlands, Policy and Northern Water Use Branch, CEWO</p>

4 DESCRIPTION OF KEY FINDINGS ON THE EFFECTIVENESS OF ENVIRONMENTAL WATER DELIVERY CONTROLS

The following section provides a description of the key findings uncovered through this internal audit on the effectiveness of the CEWH's controls to ensure delivery of environmental water.

1. There is significant risk that the existing controls are not sufficient to ensure the CEWH's statutory obligations are met.

This significant risk arises because delivery of Commonwealth environmental water relies on relationships developed at the officer level rather than agreed and robust processes, and the alignment of priorities between the CEWH and State jurisdictions. In particular:

- Agreements with State jurisdictions, where they exist, are not enforceable.
- States' catchment based annual environmental priorities may not align with the CEWH's water management plans, which are set within the broader basin context.
- The Commonwealth does not have any enforceable access to data or ability to require data to be provided in a certain form or time.
- Complex arrangements exist for the delivery of Commonwealth environmental water, involving multiple State agencies whose decision making processes are not always transparent to CEWH.
- The CEWH has varying degrees of influence over States' environmental water priorities or operating rules for the use of Commonwealth Environmental Water, with the opportunity to input into processes often occurring late in the development of priorities or rules.

2. The strength of the existing controls relies on the relationships developed with State counterparts, and on mutual alignment, and the strength of these relationships are variable.

Arrangements in the River Murray are the most complex where the Commonwealth, SA, NSW and VIC all have interests in system outcomes. For example, in the River Murray, SA, NSW and VIC jointly have effective control of MDBA river operations, and through this influence can place restrictions on water delivery and Commonwealth environmental water portfolio management through groups such as Southern Connected Basin Environmental Watering Committee, Water Liaisons Working Group, River Murray Operations Committee, and Basin Officials Committee.

Existing controls such as Operational Advisory Groups provide an informal means of CEWO oversight and involvement in operational planning and decision-making, and a source of information directly from the MDBA. The CEWH is only one stakeholder in State based arrangements. The informal nature of this group, coupled with the extent of influence of multiple external parties has varying effectiveness in ensuring Commonwealth environmental water is delivered as required.

Overall through discussions with the CEWO it is clear that many of their personnel are deeply passionate about the objectives of the CEWO and achieving the desired environmental outcomes. In discussions with the CEWO, the reliance on relationships at officer level rather than agreed processes has been highlighted as a key concern. However it is a key finding of this audit that in the absence of statutory controls, development of strong relationships and empathy with State counterparts is a vital component is gaining buy-in to achieve agreed processes.

3. Quality of reporting from State jurisdictions on the use of the Commonwealth environmental water is of varying quality, and in some cases poor or absent.

Any reporting provided to the Commonwealth is discretionary as agreed protocols for reporting have not been agreed and adhered to.

Reporting provided by NSW for the use of Commonwealth environmental water is often subject to change and therefore unreliable. SA has not provided reporting over the last two to three years that attribute Commonwealth environmental water transferred to SA to specific environmental actions. For

example, at the end of 2015-16 over 100 gigalitres was not attributed to any environmental outcomes in SA. More generally information provided to the CEWO to inform operational decisions is understood to be highly variable in its quality.

4. The risk of achievement of the CEWH's obligations appears highest in SA, but there are also significant risks for NSW and VIC, and to a lesser extent QLD.

Common issues in all States were that:

- The delivery of Commonwealth environmental water can be influenced by multiple parties through the delivery process.
- The CEWH does not have direct agreements with river operators and it does not directly influence river operator's water delivery priorities, relying instead on its relationship with the State delivery partner.
- The effectiveness of States' local engagement mechanisms for supporting the CEWH's statutory obligation to working with local communities are also questioned by CEWO.

For South Australia other key issues uncovered were:

- Lack of transparency over South Australia's decision making framework in relation to environmental water release versus consumptive use, and ability to agree on water delivery priorities.
- Inadequate reporting by SA on individual watering actions using Commonwealth environmental water.
- Lack of agreed processes that work well.

In our consultations the Southern delivery team had the most issues to share, and provided examples of environmental water delivery and reporting issues.

For NSW other key issues uncovered were:

- There is not always an agreed water accounting protocol with NSW which contributes to unreliable reporting by NSW.
- Unreliable reporting by NSW puts the Department's ability to report on environmental watering actions at risk.
- Risk relating to adequate operational monitoring mechanisms in place and unauthorised or unmetered extraction in unregulated systems.

For VIC the risk of achievement of CEWH's obligations was not assessed to be as high as NSW or SA, as:

- There is an agreed water accounting protocol set out in the CEWH's letter on watering actions for Goulburn Murray Water.
- Reporting by VIC generally satisfies the CEWH's requirements.
- There is better alignment of priorities with the State agencies and their officers.

For QLD the risk of achievement of CEWH's obligations is mitigated by holdings in QLD relate to largely unregulated systems where the CEWO has greater direct influence. However there are still risks of inadequate monitoring mechanisms in place and unauthorised or unmetered extraction in unregulated systems.

5. Based on lack of transparency of the current arrangements there are opportunities for Commonwealth environmental water to be used for unauthorised purposes.

As noted previously a key risk is the lack of agreed processes and transparency around water delivery decisions by river operators. This lack of transparency can lead to the perception that environmental water is being used for unauthorised purposes. For example in 2015-16 when SA deferred water in storage but at the same time requested additional environmental water to maintain lake water levels, it could be perceived that environmental water was being substituted for SA's entitlement flow.

However a key element that needs to be proved for any fraud offence is 'intent', for example if the CEWH suspected that a State agency or individual officer had misused a water asset, they would need to prove that the agency or individual knowingly and intentionally misused the asset (as opposed to the asset accidentally being misused.) For this reason, fraud offences can be very difficult to prove, and can take years to resolve.

It appears that the CEWH has a number of unique fraud risks that relate specifically to its water assets. Three fraud risks that appear to be particularly relevant for the CEWH are:

- State agencies intentionally providing false information to the CEWH to obtain resources
- State agencies intentionally misusing CEWH resources in order to achieve their own objectives
- individual water officers intentionally providing false information and/or misusing CEWH resources in order to achieve their own private objectives, which may include commercial gain for themselves and/or their family or associates.
- unauthorised access or misuse of environmental water by private landholders.

The potential for disparity between States' priority objectives and the CEWH's watering plans, as well as the complexity of delivery arrangements increase the risk of fraud for the CEWH. Furthermore the lack of transparency of State jurisdictions' governance and processes makes it very difficult to put controls in place to mitigate against this risk. The effectiveness of compliance functions by state or Commonwealth regulatory authorities was outside of the scope of this review and was not assessed, however, based on the interviews conducted detailed examination of the function of compliance agencies and their programs is warranted.