

Coorongs don't make a right

Fraud risks and environmental water in the Murray Darling Basin

The Commonwealth Environmental Water Holder (CEWH) does not have the powers to deliver on its responsibilities. Instead it relies on verbal and other non-legally binding agreements in managing its near \$3 billion worth of environmental water. An audit by EY found this presented “unique fraud risks”. South Australia’s substitution of Coorong environmental water for other uses in its Lower Lakes is an example of these problems.

Discussion paper

Maryanne Slattery

Roderick Campbell

December 2018

ABOUT THE AUSTRALIA INSTITUTE

The Australia Institute is an independent public policy think tank based in Canberra. It is funded by donations from philanthropic trusts and individuals and commissioned research. We barrack for ideas, not political parties or candidates. Since its launch in 1994, the Institute has carried out highly influential research on a broad range of economic, social and environmental issues.

OUR PHILOSOPHY

As we begin the 21st century, new dilemmas confront our society and our planet. Unprecedented levels of consumption co-exist with extreme poverty. Through new technology we are more connected than we have ever been, yet civic engagement is declining. Environmental neglect continues despite heightened ecological awareness. A better balance is urgently needed.

The Australia Institute's directors, staff and supporters represent a broad range of views and priorities. What unites us is a belief that through a combination of research and creativity we can promote new solutions and ways of thinking.

OUR PURPOSE - 'RESEARCH THAT MATTERS'

The Institute publishes research that contributes to a more just, sustainable and peaceful society. Our goal is to gather, interpret and communicate evidence in order to both diagnose the problems we face and propose new solutions to tackle them.

The Institute is wholly independent and not affiliated with any other organisation. Donations to its Research Fund are tax deductible for the donor. Anyone wishing to donate can do so via the website at <https://www.tai.org.au> or by calling the Institute on 02 6130 0530. Our secure and user-friendly website allows donors to make either one-off or regular monthly donations and we encourage everyone who can to donate in this way as it assists our research in the most significant manner.

Level 1, Endeavour House, 1 Franklin St
Canberra, ACT 2601
Tel: (02) 61300530
Email: mail@tai.org.au
Website: www.tai.org.au
ISSN: 1836-9014

Summary

The Commonwealth Environmental Water Holder (CEWH) manages \$3.2 billion worth of environmental water on behalf of taxpayers and the environment. It is responsible for deciding where environmental water should be used in order to maintain the ecological health of nationally and internationally significant wetlands in the Murray Darling Basin.

While the CEWH is responsible for environmental water, it must rely on state governments and their agencies to deliver its water. It also relies on Commonwealth water agencies - the Murray-Darling Basin Authority and the Department of Agriculture and Water Resources - to act in a way that maximises outcomes for CEWH.

However, the priorities of these agencies are not always aligned with CEWH's objectives. CEWH has no statutory power over them if they choose to act in a way contrary to CEWH's decisions. The Commonwealth's water holder is effectively hostage to the state's water managers.

Conscious of this situation, in 2017 the CEWH commissioned consultants Ernst and Young (EY) to assess the risks associated with environmental water delivery. EY concluded there were "significant risks" around "CEWH's ability to meet its statutory obligations." Further:

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.*

EY outline in the Audit Report that CEWH has no power to enforce its decisions and instead *“relies on relationships developed at the officer level rather than agreed processes”*. The delivery of the Basin Plan’s environmental water is dependent on *“verbal or other non-legally binding agreements.”*

Despite highlighting the difficulties the CEWH faces and the risk of the Commonwealth being defrauded by state agencies, their officers and private landholders, EY’s report was not made public. It was only released through senate processes instigated by Senators Hanson-Young and Patrick. CEWH made no reference to the report or its conclusions in evidence to inquiries by parliamentary committees, the South Australian Royal Commission, Australian National Audit Office or Productivity Commission. A possible explanation is that the report would jeopardise the relationships that CEWH relies on so heavily.

EY highlighted that risks to the CEWH were highest in South Australia due to lack of transparency and inadequate reporting by South Australia. Difficulties between CEWH and the South Australia Government relating to the Coorong are an example of CEWH’s impotence when dealing with states, highlighted by EY and other recently released documents. The Coorong is an internationally important wetland at the end of the River Murray system. Just above the Coorong are the Lower Lakes, which are important for South Australia’s tourism, recreation and amenity.

In 2015-16 the South Australia government requested environmental water from CEWH, while at the same time deferring other water it was entitled to. Lake water levels were kept high, but sufficient water was not delivered to the Coorong. South Australia could have used the deferred entitlement water to maintain recreation and tourism in the Lakes, but in EY’s words *“it could be perceived that environmental water was being substituted for SA’s entitlement flow.”* 798 gigalitres of CEWH’s water was used for that event at a value of approximately \$1 billion if repeated annually or \$175 million if purchased on the temporary market.

EY’s report was not made public before the recent Murray-Darling Basin Ministerial Council that negotiated changes to the Basin Plan regarding 450 gigalitres of additional water for South Australia. An outcome from the meeting was to make \$70 million available to the South Australian government for the management of the Coorong. The imminent publication of the Internal Audit Report is likely to have been a motivating factor in the negotiations between governments for this funding commitment.

Taxpayers expect that appropriate governance arrangements are in place to achieve the outcomes under the \$13 billion Basin Plan. A full governance review of the Basin Plan is required and CEWH’s powers need to be aligned with its statutory responsibilities.

Introduction

The Murray-Darling Basin Plan is a partnership between the governments of the Commonwealth, Queensland, New South Wales, Victoria, South Australia and the Australian Capital Territory and is administered by agencies of all of these governments. This makes the governance of the Basin Plan complicated.

Environmental water in the \$13 billion Murray Darling Basin Plan is overseen by three key federal government agencies:

- The Department of Agriculture and Water Resources sets high level water policy, buys environmental water on behalf of the Commonwealth Environmental Water Holder (CEWH) and manages water efficiency programs
- The Murray Darling Basin Authority is responsible for: operating the River Murray to the South Australia border; accrediting State Water Resource Plans, which have high level principles for environmental water; developing the Basin Water Strategy for environmental water; and setting annual priorities for environmental water; and
- The CEWH owns and manages the environmental water and decides where environmental water will be used.

The Commonwealth Environmental Water Holder (CEWH) is a statutory position under the Water Act 2007. It has significant statutory obligations under the:

- Public Governance, Performance and Accountability Act 2013 for the financial management of its nearly \$3.2 billion water portfolio; and
- Water Act 2007 and the Murray-Darling Basin Plan 2012 for environmental outcomes.

Whilst CEWH has statutory responsibilities for environmental outcomes it does not have strong statutory powers to meet those responsibilities. Instead, the CEWH relies on State governments to deliver its environmental water and for the Commonwealth water agencies - the Murray-Darling Basin Authority and the Department of Agriculture and Water Resources - to act in a way that maximises outcomes for CEWH. This is an inherent problem for CEWH because all these other agencies have their own responsibilities, which do not necessarily align with, or may even compete with CEWH's responsibilities.

An example, further discussed below, is CEWH's attempts to deliver water to the Coorong, the internationally significant wetlands at the end of the system in South Australia. While the CEWH plans to use its water asset to maintain the ecological health of the Coorong, it relies on the South Australian river operators to physically deliver the water there. However, the South Australian government's priorities are to manage the lakes for a range of outcomes, which include:

*optimal water levels to get the best environmental, social, economic and water security outcomes, while managing associated risks and trade-offs.*¹

Conscious that the responsibilities of CEWH don't always align with those of their delivery partners, CEWH commissioned Ernst and Young to undertake an Internal Audit Report, titled *Assessing Risks Associated with Environmental Water Delivery Services*.² It has just become publicly available through a request by Senator Sarah Hanson-Young for the Order for Production of Documents and Senator Rex Patrick through a Question on Notice. The detailed working papers were an attachment to that audit report, but these were not provided in the papers to the Senate.

AUDIT FINDINGS AND RECOMMENDATIONS

Ernst and Young concluded 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.

They made the following key findings from the 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.*

¹ South Australia Department of Environment and water *Managing water levels in the Lower Lakes*, <https://www.environment.sa.gov.au/topics/river-murray/improving-river-health/variable-lakes>

² Ernst and Young (2017) *Internal Audit Report: Assessing Risks Associated with Environmental Water Delivery Services*, Obtained through Rural and Regional Affairs and Transport Committee, 2018-19 Supplementary budget estimates, Cross Portfolio Murray-Darling Basin Plan matters, Questions on Notice No. 3, https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/rrat

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.*

Ernst and Young made special mention of 'unique fraud risks' for CEWH:

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.

Ernst and Young recommended that CEWH implement several controls to mitigate the risks that her statutory obligations are not met:

1. *Strengthen institutional and governance arrangements.*
 - 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.*
 - b. *Establish improved mechanisms for collaboration on operational policy development, risk management and documentation of procedures and service standards.*
 - 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 water delivery.*
2. *Strengthening accountability mechanisms.*
 - a. *Promote and establish effective evaluation, audit and compliance functions in practice.*
 - 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.*
3. *Facilitating improved transparency in decision making, information and procedures.*
 - a. *Collaborate and, where appropriate, co-invest in projects improving environmental watering outcomes and business processes.*
 - b. *Prioritise and implement investigations that support change in operational policy, institutional arrangements and procedures.*

RISKS IN SOUTH AUSTRALIA

Ernst and Young considered that:

the risk of achievement of the CEWH's obligations appears highest in South Australia, but there are also considerable risk for NSW and Victoria, and to a lesser extent Queensland.³

Common issues identified in all States were:

- *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.⁴*

The key risks for South Australia 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.⁵*

³ Ernst and Young (2017) *Internal Audit Report: Assessing Risks Associated with Environmental Water Delivery Services*, Obtained through Rural and Regional Affairs and Transport Committee, 2018-19 Supplementary budget estimates, Cross Portfolio Murray-Darling Basin Plan matters, Questions on Notice No. 3, https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/rrat

⁴ Ernst and Young (2017) *Internal Audit Report: Assessing Risks Associated with Environmental Water Delivery Services*, Obtained through Rural and Regional Affairs and Transport Committee, 2018-19 Supplementary budget estimates, Cross Portfolio Murray-Darling Basin Plan matters, Questions on Notice No. 3, https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/rrat

⁵ Ernst and Young (2017) *Internal Audit Report: Assessing Risks Associated with Environmental Water Delivery Services*, Obtained through Rural and Regional Affairs and Transport Committee, 2018-19 Supplementary budget estimates, Cross Portfolio Murray-Darling Basin Plan matters, Questions on Notice No. 3, https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/rrat

The incoming brief for the new CEWH included three letters from the old CEWH to the Chief Executive in the South Australian Department of Environment Water and Natural Resources that raises two issues around South Australia's decision making framework and water delivery priorities for CEWH environmental delivery in South Australia:

- South Australia's deferment of water for critical human water needs; and
- The management of the Lower Lakes and the Coorong.

*The Coorong is considered to be the most important waterbird wetland in the Murray-Darling Basin. It has been degraded to the point where it is at risk of losing the key elements which make it such an iconic wetland of local, national and international importance.*⁶

Deferment of water for critical human water needs

The Murray-Darling Basin Agreement prescribes an amount of water to be delivered to South Australia each month. CEWH has sought to have environmental water delivered to South Australia in addition to the South Australian entitlement, to enhance environmental outcomes.

South Australia can request that MDBA not deliver a portion of their entitlement, and 'defer' it until a later date. In 2015-16 the CEWH agreed to provide environmental water at South Australia's request, to increase flows into the Coorong and manage levels in the Lower Lakes. After CEWH directed the delivery, South Australia deferred some of their entitlement, which decreases the amount of water available to the Lower Lakes and the Coorong. The CEWH wrote to the Chief Executive of the South Australian Department of Environment and Water and Natural Resources in 2015 and asked her to:

*Reconsider plans to defer Entitlement Flow over summer to increase barrage flow into the Coorong to meet immediate critical needs.*⁷

South Australia continued to defer their entitlement of that period. This is legal under the Basin Plan and are they under no obligation to abide by CEWH's requests.

⁶ Goyder Research for Water Research (2018) *Recommended actions for restoring the ecological characteristics of the South Lagoon of the Coorong*, <https://www.environment.sa.gov.au/topics/river-murray/about-the-river/coorong-lower-lakes-murray-mouth>

⁷ Papps (2015) *Letter from David Papps to Sandy Pitcher*, Obtained via Order for the Production of Documents 1026, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22publications/tables/papers/310741e2-76ac-43f1-acc9-e3523d3dedcd%22>

Ernst and Young commented on this event:

...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.⁸

Management of the Lower Lakes and the Coorong

The Lower Lakes is an important South Australian amenity for recreational water activities, such as boating. There is a lot of public demand for the Lakes to be full in the summer, when recreational use is highest. For example, the Milang-Goolwa Freshwater Classic is the largest freshwater yacht race in the Southern hemisphere held in January each year and is the end of Goolwa Regatta Week of activities. Hundreds of people participate in the week and thousands more watch the race.⁹

Goolwa Regatta Yacht Club Commodore Lyn Roberts said:

the event was still one of the biggest on the South Australian yachting calendar and a celebration of the Murray, Australia's longest river.

Goolwa Regatta Week helps to showcase the Lower Murray lakes, the River Murray, Hindmarsh Island and the Coorong waterways as a significant tourist attraction.

Our population expands quite dramatically down here in January and we've had really good publicity this year so I'm sure a lot of people will be heading to some of the events we've got on.¹⁰

⁸ Ernst and Young (2017) *Internal Audit Report: Assessing Risks Associated with Environmental Water Delivery Services*, Obtained through Rural and Regional Affairs and Transport Committee, 2018-19 Supplementary budget estimates, Cross Portfolio Murray-Darling Basin Plan matters, Questions on Notice No. 3, https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/rrat

⁹ Spence (2018) *yachts prepare for first Saturday freshwater classic*, <http://theleadsouthaustralia.com.au/industries/tourism/yachts-prepare-first-saturday-freshwater-classic/>

¹⁰ Spence (2018) *yachts prepare for first Saturday freshwater classic*, <http://theleadsouthaustralia.com.au/industries/tourism/yachts-prepare-first-saturday-freshwater-classic/>

The race was abandoned from 2007 to 2011 because there was not enough water in the Lower Lakes.¹¹

Releases of environmental water into the Coorong decrease the water level in the lakes. The preferred timing for environmental water releases into the Coorong is also during the summer - December to March. The Wentworth Group of Concerned Scientists examined the relationship between flows into the Coorong and the water in the Lower Lakes:

Barrage flows for the 2012–15 reporting period (2,680 GL/yr) were within the 2,000 GL/yr minimum target in the Basin-wide environmental watering strategy. However there was considerable variation between years. Barrage flows over spring 2016 were low even though lake levels were above full supply level. A report commissioned by the Commonwealth Environmental Water Holder concerning the current management of lake levels stated that South Australia “appears to prioritise high lake water levels over maintenance of flows to the Coorong and Murray mouth”.¹² With the limited environmental water available, retaining high water levels in the Lower Lakes at the expense of barrage flows compromises the connection of the river to the sea, and may put at risk the Australian Government’s international obligations to protect the Coorong under the Ramsar Convention.¹³

CEWH water delivered to South Australia is traded into an account held by the South Australian Water Minister at the South Australian border. The South Australian river operator, SA Water makes decisions about management of the Lower Lakes and the Coorong, they are not bound by CEWH’s wishes. CEWH has been very frustrated around the lack of transparency around South Australia’s decisions. For example, the CEWH wrote to the South Australian Chief Executive of the South Australian Department of Environment and Water and Natural Resources in 2014 and said:

To support the effective use of Commonwealth environmental water, your department was asked to provide a short term barrage operating plan in addition to other supporting information. A final short term barrage operating

¹¹ Spence (2018) *yachts prepare for first Saturday freshwater classic*, <http://theleadsouthaustralia.com.au/industries/tourism/yachts-prepare-first-saturday-freshwater-classic/>

¹² Stewardson and Guarino (2016) *2014-15 Basin-scale evaluation of Commonwealth environmental water - Hydrology*,

¹³ Wentworth Group of Concerned Scientists (2017) *Review of water Reform in the Murray-Darling Basin*, <http://wentworthgroup.org/wp-content/uploads/2017/12/Wentworth-Group-Review-of-water-reform-in-MDB-Nov-2017.pdf>

*plan has not been received by my office. Based on the information available to my office, the requirement for delivering the full volume of environmental water was not evident and therefore any remaining water will be held for delivery next year.*¹⁴

At the time of writing, South Australia is still has published a final Barrage Operating Plan.¹⁵

The CEWH commissioned an evaluation of its water on the hydrology of the Basin, which stated:

*At the River Murray barrages, Commonwealth environmental water contributed 100% of the total streamflow volume. ... In the absence of Commonwealth environmental water, flows over the barrages would have been negligible in 2015–16. This suggests that river operations may have adapted to the availability of Commonwealth environmental water. Possibly, water that would have previously passed through to the Coorong and Murray Mouth (i.e. prior to the Commonwealth environmental water program) is no longer being prioritised below the Lower Lakes, with the possibility that Commonwealth environmental water is substituting previously provided environmental water rather than augmenting it.*¹⁶

The water recover targets under the Basin Plan are intended to be in addition to release into the Coorong and not instead of those releases. If CEWH's water does not augment existing flows, then more water will need to be recovered to achieve the environmental outcomes intended under the Basin Plan.

¹⁴ Papps (2015) *Letter from David Papps to Alan Holmes*, Obtained via Order for the Production of Documents 1026,
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22publications/tabledpapers/310741e2-76ac-43f1-acc9-e3523d3dedcd%22>

¹⁵ South Australia Department of Environment and water *Managing water levels in the Lower Lakes*,
<https://www.environment.sa.gov.au/topics/river-murray/improving-river-health/variable-lakes>

¹⁶ Stewardson and Guarino (2017) *2015-16 Basin-Scale Evaluation of Commonwealth Water – Hydrology*, <https://www.environment.gov.au/system/files/resources/6f6589ec-ff05-45f5-9fdd-d9f7071e2c78/files/2015-16-basin-evaluation-app-b-hydrology.pdf>

FINANCIAL AND ECONOMIC IMPLICATIONS

There are also large financial and economic implications if CEWH's water is substituting, rather than augmenting flows.

When we (CEWH) deliver environmental water through delivery partners or service providers we are still accountable for the use of the water as a Commonwealth asset – the responsibility does not transfer even though the water does.¹⁷

The Secretary of the Department of Environment and Energy is ultimately accountable for the CEWH portfolio under the Public Governance, Performance and Accountability Act 2013 (PGPA Act).¹⁸ The PGPA Act requires that Commonwealth resources, like the CEWH's water portfolio are used in a way that is efficient, effective, ethical and economic, through high standards of accountability and transparency.¹⁹

In 2015-16, 798 gigalitres of CEWH's water was delivered to the Lower Lakes.²⁰ This is roughly one-third of the CEWH's \$3.2 billion portfolio, or around \$1 billion, if repeated annually.²¹ If that water was purchased on the temporary market in 2015-16, it would

¹⁷ Commonwealth Environmental Water Office (undated) *The Commonwealth Resource Management Framework and Environmental Watering: An Overview*, Obtained via Order for the Production of Documents 1026, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22publications/tables/papers/310741e2-76ac-43f1-acc9-e3523d3dedcd%22>

¹⁸ Commonwealth Environmental Water Office (undated) *The Commonwealth Resource Management Framework and Environmental Watering: An Overview*, Obtained via Order for the Production of Documents 1026, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22publications/tables/papers/310741e2-76ac-43f1-acc9-e3523d3dedcd%22>

¹⁹ *Public Governance, Performance and Accountability Act (2013)*, <https://www.legislation.gov.au/Details/C2013A00123>

²⁰ Stewardson and Guarino (2017) *2015-16 Basin-Scale Evaluation of Commonwealth Water – Hydrology*, <https://www.environment.gov.au/system/files/resources/6f6589ec-ff05-45f5-9fdd-d9f7071e2c78/files/2015-16-basin-evaluation-app-b-hydrology.pdf>

²¹ Commonwealth Environmental Water Office (undated) *The Commonwealth Resource Management Framework and Environmental Watering: An Overview*, Obtained via Order for the Production of Documents 1026, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22publications/tables/papers/310741e2-76ac-43f1-acc9-e3523d3dedcd%22>

have been worth around \$175 million, based on the annual temporary price of \$220 per megalitre.²²

There is also an economic impact of taking that water out of production, both directly as a loss of agriculture and the flow on impact of social and economic loss to regional communities.

TRANSPARENCY

The CEWH has not publicly referred to the findings in its Internal Audit Report, either as a formal submission or in evidence (where applicable), in several relevant inquiries:

- Senate Inquiry into the Integrity of the Water Market in the Murray-Darling Basin;²³
- House of Representatives inquiry into Environmental water delivery (check names)²⁴
- Australian National Audit Office of New South Wales' Protection and Use of Environmental Water in the Murray-Darling Basin²⁵
- Murray-Darling Basin Royal Commission in South Australia²⁶
- Productivity Commission's Murray-Darling Basin Plan: 5 year assessment²⁷

The process to obtain the Internal Audit Report was very difficult and drawn out, in what appears to be an attempt by CEWH to frustrate this report becoming public:

²² Aither (2016) *Water markets Report: 2015-16 Review and 2016-17 Outlook*, http://www.aither.com.au/wp-content/uploads/2016/08/Aither_WaterMarketsReport2015-FINAL-25Aug2016.pdf

²³ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/MurrayDarlingPlan

²⁴ CEWH (2017) *Submission to the House of representatives Inquiry into the management and use of environmental water*, https://www.aph.gov.au/Parliamentary_Business/Committees/House/Environment_and_Energy/EnvironmentalWater/Submissions

²⁵ ANAO (2017) *New South Wales' Protection and Use of Environmental Water in the Murray-Darling Basin*, <https://www.anao.gov.au/work/assurance-review/dept-agriculture-water-resources-assessment-nsw-protection-use-environmental-water-mdb>

²⁶ CEWH (2018) *Commonwealth Environmental Water Holder Submission to the South Australian Murray-Darling Basin Royal Commission*, <https://www.mdbrc.sa.gov.au/sites/g/files/net3846/f/mdbrc-submission-ryan-breen-commonwealth-environmental-water-holder-act.pdf?v=1539235163>

²⁷ CEWH (2018) *Commonwealth Environmental Water Holder Submission to the Productivity Commission's Murray-Darling Basin Plan: Five-year assessment*, https://www.pc.gov.au/__data/assets/pdf_file/0009/227637/sub075-basin-plan.pdf

- The Australia Institute requested the Internal Audit Report and the Detailed Working Papers through a Freedom of Information request in August 2018. The Department of Environment and Energy denied the request.
- The Australia Institute challenged that Freedom of Information rejection and requested that be subject to an internal review. That request was also declined in October 2018.
- Senator Sarah Hanson-Young requested the full incoming brief to the new CEWH through three Order for Production of documents, in July, August and September 2018.²⁸ The incoming brief was provided on the third request, with some redactions. However, the Internal Audit Report was excluded entirely from those documents.
- Senator Rex Patrick requested the Internal Audit Report through a Question on Notice in October 2018. The Internal Audit Report was provided in early December 2018, but an attachment to the report that contain the detailed working papers was not provided.²⁹

Since Four Corners aired allegations of large-scale water theft in July 2017, there has been a barrage of examples of mismanagement and malfeasance in the implementation of the Basin Plan.³⁰ It is likely that CEWH's efforts to stop the audit report becoming public were attempts to avoid further criticism of the Basin Plan implementation, particularly at a critical time for Basin Plan negotiations.

The CEWH is mostly reliant on the goodwill of others to deliver its water in accordance with its wishes. Ernst and Young note:

*There is significant risk that the existing controls are not sufficient to ensure the CEWH's statutory obligations are met. This... arises because delivery of Commonwealth environmental water relies on relationships developed at the officer level rather than agreed processes...*³¹

²⁸Senator Hanson-Young (2018) *Order for the Production of Documents 1026*, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22publications/tables/papers/310741e2-76ac-43f1-acc9-e3523d3dedcd%22>

²⁹ Senator Patrick (2018) *Rural and Regional Affairs and Transport Committee, 2018-19 Supplementary budget estimates, Cross Portfolio Murray-Darling Basin Plan matters, Questions on Notice No. 3*, https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/rrat

³⁰ Slattery and Campbell (2018) *The Basin Files – Maladministration of the Murray-darling basin Plan: Volume 1*, <http://www.tai.org.au/content/basin-files>

³¹ Ernst and Young (2017) *Internal Audit Report: Assessing Risks Associated with Environmental Water Delivery Services*, Obtained through Rural and Regional Affairs and Transport Committee, 2018-19 Supplementary budget estimates, Cross Portfolio Murray-Darling Basin Plan matters, Questions on Notice No. 3, https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/rrat

It is likely that CEWH has attempted to conceal the report to avoid jeopardising it and staff's relationships with South Australian counterparts.

The Murray-Darling Basin Plan Ministerial Council negotiated criteria for the last part of setting the water recovery target under the Basin Plan on 14 December 2018, which is a potential 450 gigalitres of additional water for South Australia. The publication of the Audit Report and subsequent scrutiny of the management of the management of environmental water in the Lower Lakes and Coorong prior to that meeting could have jeopardised those negotiations.

An outcome from the Murray-Darling Basin Ministerial Council meeting was to make \$70 million available to the South Australian government for measures to support the long-term health of the Coorong identified through the development of a 'Healthy Coorong, Healthy Basin Action Plan'.³² The imminent publication of the Internal Audit Report is likely to have been a motivating factor in the negotiations between governments for this funding commitment. This commitment is in addition to the \$610 million funded by the Commonwealth in 2011 to build resilience and address river health across the whole of the River Murray system in South Australia, including the Lower lakes, Coorong and Murray Mouth.³³

³² South Australia Department for Environment and Water (2018) *Media Release 14 December 2018: Coorong getting back on track*, <https://www.environment.sa.gov.au/news-hub/news/articles/2018/12/coorong-getting-back-on-track>

³³ Government of South Australia and Australian Government (2012) *Murray Rivers Riverine Recovery*, <http://www.environment.sa.gov.au/files/0cc065c1-77ff-4a30-adab-a1e10119118e/riverine-recovery-project-overview-fact.pdf>

Conclusion

The CEWH is responsible for a near \$3.2 billion asset funded by Australian taxpayers. It has statutory responsibilities in relation to the management and accountability of that financial asset; and also what that asset should achieve ecologically.

Despite such large responsibilities, the CEWH has very few powers to achieve those outcomes and is reliant on Basin States, the Murray-Darling Basin Authority and the Department of Agriculture and Water Resources. All of those agencies have obligations in addition to environmental watering, so this poses a risk to CEWH meeting its statutory obligations.

In the absence of statutory powers, CEWH relies on relationships and goodwill to achieve its statutory outcomes. This in turn results in a lack of public transparency as CEWH tries to conceal risks and shield partner governments from scrutiny and possible embarrassment.

Taxpayers expect that appropriate governance arrangements are in place to achieve the outcomes under the \$13 billion Basin Plan. A full governance review of the Basin Plan is required and CEWH's powers need to be aligned with its statutory responsibilities.