

# NATIONAL PARTNERSHIP AGREEMENT ON IMPLEMENTING WATER REFORM IN THE MURRAY-DARLING BASIN



DEPARTMENT OF AGRICULTURE

FINAL REVIEW

27 FEBRUARY 2020

## Acknowledgments

We would like to thank the interviewees from the Basin States and Commonwealth agencies. We thank them for their time and insights and trust that their views are adequately represented in this report. The full list of agencies consulted is provided in Section 2 below.

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# Contents

- Executive summary..... v**
  - Project.....v
  - Method.....v
  - Findings.....v
- 1. Background..... 8**
  - 1.1 This report..... 8
  - 1.2 Institutional context..... 8
  - 1.3 Scope and terms of reference..... 13
- 2. Methodology..... 14**
- 3. Performance of the NPA ..... 17**
  - 3.1 Effectiveness of the NPA in contributing to water reforms..... 17
  - 3.2 Operations and efficiency of the NPA implementation arrangements.....24
  - 3.3 Areas for improvement..... 31
- Appendix 1. NPA logic ..... 38**
- Appendix 2. Assessment against IGAFRR principles..... 39**
- Appendix 3. Best practice for NPAs..... 43**
- Appendix 4. Documents reviewed ..... 46**
- Appendix 5. NPA milestones ..... 50**

## Abbreviations and acronyms

ACT	Australian Capital Territory
CEWO	Commonwealth Environmental Water Office (including advice from the Commonwealth Environmental Water Holder)
CFFR	Council on Federal Financial Relations
COAG	Council of Australian Governments
DoE	Department of the Environment
IGA	Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin
IGAFFR	Intergovernmental Agreement on Federal Financial Relations
KPI	Key Performance Indicator
LTWP	Long-term environmental watering plans
MDB	Murray-Darling Basin
MDBA	Murray-Darling Basin Authority
MoG	Machinery of Government
NPA	National Partnership Agreement
NWC	National Water Commission
PC	Productivity Commission
PM&C	Department of Prime Minister and Cabinet
SDL	Sustainable Diversion Limit
SOA	Statement of Assurance
State/s	Basin state/s and/or territory
WAMP	Water Allocation and Management Plan
WRP	Water Resource Plan
WSP	Water Sharing Plan

# Executive summary

## Project

ARTD Consultants was engaged by the Department of Agriculture (the Department) to undertake the final review of the *National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin* (the NPA).

The purpose of the NPA is to ensure that Murray-Darling Basin (MDB) water reforms, including the Murray-Darling Basin Plan (Basin Plan), are implemented in the national interest of a healthy working river system, strong communities, and sustainable food and fibre production, while providing certainty for affected communities and water users.

Clause 34 of the NPA requires that it be reviewed with regard to progress made by the Parties in achieving the agreed outcomes at July 2016 and again 12 months before the end of the NPA. Due to that timing requirement, this final review does not include the final assessment period of 2018-19.

## Method

We reviewed the NPA in three stages—project scoping and planning; data collection and analysis; and reporting. The project inception meeting and background briefing with the Department was held on 9 May 2019, with interviews taking place from 4 June to 28 June. We interviewed representatives from all Basin States, as well as the Department of Prime Minister and Cabinet (PM&C), the Commonwealth Environmental Water Office (CEWO), the Murray-Darling Basin Authority (MDBA), The Treasury and the Department. The document review was undertaken concurrently with other tasks and examined 171 documents provided by the Department, predominantly relating to annual assessments. The review process was guided by the Council on Federal Financial Relations' (CFFR) *A Short Guide to Reviewing National Partnerships*.

## Findings

### Effectiveness

The NPA has helped States implement the MDB water reforms. While States have, under the 2013 Murray-Darling Basin Intergovernmental Agreement, agreed to make progress against the Basin Plan, the NPA facilitated this progress.

While most of the NPA reporting milestones were met over the period of the agreement, in recent years there has been a trend away from full completion of milestones towards partial completion. In part, this is due to States' actual progress against the milestones becoming

evident. The Department consistently drew on advice from CEWO and MDBA in assessing progress toward the NPA milestones.

The NPA's effectiveness has been limited by its milestones being broadly defined and not allowing partial payments; however, this design was intentional and a product of the NPA's context. The milestones were broadly defined to enable States to sign the agreement due to lack of clarity around the detailed implementation of Basin Plan measures during the NPA's design phase. At the time the Commonwealth did not support the inclusion of partial payments to avoid the risk of States not fully implementing key aspects of water reform.

## Efficiency

All parties are carrying out their roles and responsibilities under the NPA, but there have been some delays in the execution of these over time. The quality, timeliness, accuracy and suitability of the assessment arrangements have all been strong and were strengthened by the mid-term review and other associated reviews, such as the [ANAO Assurance Review of NSW protection and use of environmental water in the Murray-Darling Basin \(2017\)](#), [ANAO performance audit of NPA monitoring and payment arrangements \(2018\)](#), [PC Murray-Darling Basin Plan: Five-year assessment, Inquiry Report, Independent investigation into NSW water management and compliance \(2017\)](#), [Murray-Darling Basin Water Compliance Review \(2017\)](#) and [Murray-Darling Basin Water Compliance Compact \(2018\)](#).

Heightened scrutiny following the mid-term review, Four Corners 'Pumped' report in 2017 and subsequent inquiries led to delays in the assessment arrangements, but no payments were made outside of the reporting year. All annual assessments except one (NSW in 2016/17) have resulted in the release of States' payments. The total of actual payments made to date (FY2018-19) is \$141,181,819. If all States receive their 2019-20 payments, the total funding provided by the end of the FY2019-20 will be \$161,181,819.

In hindsight, the NPA's milestones and payment structure have been problematic. States reported the milestones made it difficult to plan action against them and for the Commonwealth to make clear assessments of progress, while the 'all or nothing' payments have put significant pressure on the Commonwealth to pay States even when they have only made partial progress against milestones.

## Enhancements

There are several opportunities for enhancing a future NPA. These include:

1. Aligning a future NPA more closely with the strategic objectives of its associated policy
2. Clearly defining all milestones and KPIs to prescribe outputs and outcomes.
3. Clearly specifying the roles of all parties in the agreement's documentation.
4. Structuring similar future NPAs as a head agreement with schedules which have clearly defined implementation schedules and milestones.
5. With the aim of maximising the independence and credibility of a future NPA, consider which entity is best placed to undertake assessment arrangements.

6. Designing ambitious, graduated milestones that alleviate the pressure of judging partial completion and define early milestones as prerequisites for the achievement of, and payment for, later milestones.
7. Providing specialised training for agency staff who are working within complex environments similar to those facilitating Murray-Darling Basin water reforms.
8. Ensuring that a future NPA is consistent with the Intergovernmental Agreement on Federal Financial Relations' principles for best practice in National Agreements.

# 1. Background

## 1.1 This report

This report documents the final review of the *National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin* (the NPA). Clause 34 of the NPA requires that it be reviewed with regard to progress made by the Parties in achieving the agreed outcomes 12 months before the end of the NPA.

ARTD Consultants was engaged by the Department of Agriculture (the Department) to complete the final review.

The review team drew on three primary sources to inform the review.

1. Document review—171 documents provided by the Department were reviewed
2. Stakeholder interviews—with representatives from all Basin States, the Department of Prime Minister and Cabinet (PM&C), the Commonwealth Environmental Water Office (CEWO), the Murray-Darling Basin Authority (MDBA), The Treasury and the Department
3. Analysis of wider policy and institutional settings that frame the agreement— including those that relate to water policy in the Murray-Darling Basin (MDB), and those that relate to financial relations in the federation, such as the Council on Federal Financial Relations' (CFFR) short guide to reviewing National Partnerships.

This report is structured as follows:

- Section 1 provides background to the NPA and this review
- Section 2 summarises the methodology adopted
- Section 3 details the performance of the NPA and includes recommendations for any similar future NPA

## 1.2 Institutional context

The institutional framework underpinning the NPA is complex. The complexity arises from the joint authority of the Commonwealth and States for water resource management, compounded by the scale and breadth of policy instruments implemented to achieve significant water reforms in the MDB. The NPA is a negotiated agreement signed by the Commonwealth and all Basin States<sup>1</sup> to support the implementation of the 2013 *Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin* (IGA) and, in turn, the Basin Plan and associated reforms and initiatives.

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<sup>1</sup> The Basin States are New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory.

### 1.2.1 Constitutional powers

Under the Constitution, the Commonwealth Parliament does not have an express power to legislate in respect of water management and use in Australia. However, the Commonwealth has been able to legislate in respect of water resources in reliance on a range of constitutional powers. In relation to the Water Act as originally enacted in 2007, the most significant of these were:

- The external affairs power (s 51(xxix)) of the Constitution, in implementation of Australia's obligations under international law, including the Convention on Biological Diversity and the Ramsar Convention on Wetlands of International Importance, and other treaties;
- The corporations power (s 51(xx)), in relation to the regulation of the activities of trading or financial corporations concerning water and water access entitlements;
- The interstate trade and commerce power (s 51(i)), in relation to the promotion and regulation of interstate trade in water access entitlements; and
- The powers relating to meteorological observations (s 51(viii)), and census and statistics (s 51(xi)), which support the Bureau of Meteorology's water information functions.

Following the 2008 referrals of power by the States, provisions were introduced by the *Water Amendment Act 2008* that also rely on s 51(xxxvii) of the Constitution. This paragraph provides that the Commonwealth Parliament may make laws on matters referred to it by the Parliament of any State, but such laws can extend only to the States by whose Parliaments the matter is referred or that afterwards adopt the law.

### 1.2.2 Water Act 2007

The Water Act enables the Commonwealth, in conjunction with Basin states, to manage water resources within the Murray-Darling Basin in the national interest. Basin States continue to manage and regulate water in the Basin through their own policies and legislation in a manner consistent with the Water Act and the Murray-Darling Basin Plan.

In particular, the Water Act:

- establishes the MDBA with the functions and powers, including enforcement powers, needed to ensure that Basin water resources are managed in an integrated and sustainable way;
- requires the MDBA to prepare the Murray-Darling Basin Plan—a strategic plan for the integrated and sustainable management of water resources in the Murray-Darling Basin—for adoption by the Commonwealth Minister;
- establishes a Commonwealth Environmental Water Holder to manage the Commonwealth's environmental water to protect and restore the environmental assets of the Murray-Darling Basin, and outside the Murray-Darling Basin where the Commonwealth owns water;

- provides the ACCC with a key role in developing and enforcing water charge and water market rules along the lines agreed in the National Water Initiative;
- gives the Bureau of Meteorology water information functions that are in addition to its existing functions under the *Meteorology Act 1955*; and
- gives the Productivity Commission a role in reporting on the effectiveness of the implementation of the Murray-Darling Basin Plan and water resource plans and the progress towards achieving the objectives and outcomes of the National Water Initiative.

In addition to the Water Act, the legislative framework for managing the Murray-Darling Basin includes the Murray-Darling Basin Plan, the *Water Regulations 2008*, and water charge and water market rules.

### 1.2.3 Water recovery programs

The Australian Government manages or has managed a range of on and off-farm irrigation infrastructure improvement programs and a market-based water buyback program (now capped at 1500 GL<sup>2</sup>), designed to recover water for the environment.

States also manage or have managed on and off-farm water recovery programs, some of which are still in progress but nearing completion.

Water entitlements recovered through these programs and their annual allocations are managed by the Commonwealth Environmental Water Holder.

### 1.2.4 The Sustainable Diversion Limit adjustment mechanism

A SDL adjustment mechanism was included in the Basin Plan to provide flexibility and allow for enhanced social, economic and environmental outcomes than would otherwise be achieved by the Basin Plan. The mechanism provides for:

- less water recovery where equivalent environmental outcomes can be achieved instead through measures that improve consumptive water supply (or constraints measures that contribute to supply)—such as reduced evaporation at water storages, improving river operation rules, or using water infrastructure more efficiently;
- the removal or easing of physical or other constraints on the capacity to deliver environmental water; and
- efficiency measures—which improve environmental outcomes while maintaining or improving socio-economic outcomes by making savings in the amount of water required for consumptive purposes—for example by making more water available for the environment through water efficiency projects in agriculture, water delivery, industrial and urban settings.

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<sup>2</sup> We understand that some water purchases are still occurring to meet Bridging the Gap and (potential) efficiency measures targets.

### 1.2.5 Intergovernmental agreements

There is a long history of cooperative agreements involving the Commonwealth and the Basin States in managing water resources in the MDB—over recent decades, these include *The Living Murray* initiative and the *National Water Initiative 2004*.

The current substantive agreement affecting river operations in the MDB is the *Murray-Darling Basin Agreement* of 2008 which is located at Schedule 1 to the Water Act. The agreement governs the operations of significant river infrastructure such as locks, weirs and storages, as well as containing complex rules and procedures for the management of the Basin and enshrines South Australia’s volumetric entitlement.

The Council of Australian Governments’ (COAG) *Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin* is an undertaking by the Commonwealth and Basin States to ensure that Basin water reforms, including the Murray-Darling Basin Plan (Basin Plan), are implemented to support the national interest of improving the health of the Basin and securing a future for its communities.

As part of the implementation of the IGA, the Australian Government also provides financial support to the Basin States through the NPA. This is in recognition of costs incurred by Basin States in implementing the Basin Plan. Under the NPA, the Commonwealth committed to providing \$174 million over nine years (2012-13 to 2019-20) to the Basin States based on performance. The outputs under the NPA, in summary, include the Basin States:

- enabling the Commonwealth to meet its commitment to ‘bridge the gap’ between baseline diversion limits and Sustainable Diversion Limits (SDLs)
- cooperatively identifying and agreeing on initiatives to be considered by the MDBA under the Surface Water SDL adjustment mechanism
- implementing the Basin Plan, including preparing Water Resource Plans consistent with Basin Plan requirements to provide greater certainty for water users
- ensuring the characteristics of licenced entitlements held for environmental use will not be enhanced or diminished to facilitate improved environmental watering
- working collaboratively with the Commonwealth and each other in exercising their environmental watering and planning responsibilities in accordance with the Basin Plan Environmental Watering Plan, and with regard to the Basin annual environmental watering priorities.

#### ***This National Partnership Agreement***

The *National Partnership Agreement (NPA) on Implementing Water Reform in the Murray-Darling Basin*—the subject of this review—is an overarching intergovernmental agreement which commits the Commonwealth to providing financial support to assist Basin States in their implementation of the Basin Plan and associated MDB water reforms, and the IGA.

Under the NPA, the Department provides an annual assessment report on each Basin State’s performance in supporting the implementation of the Basin Plan and IGA to the

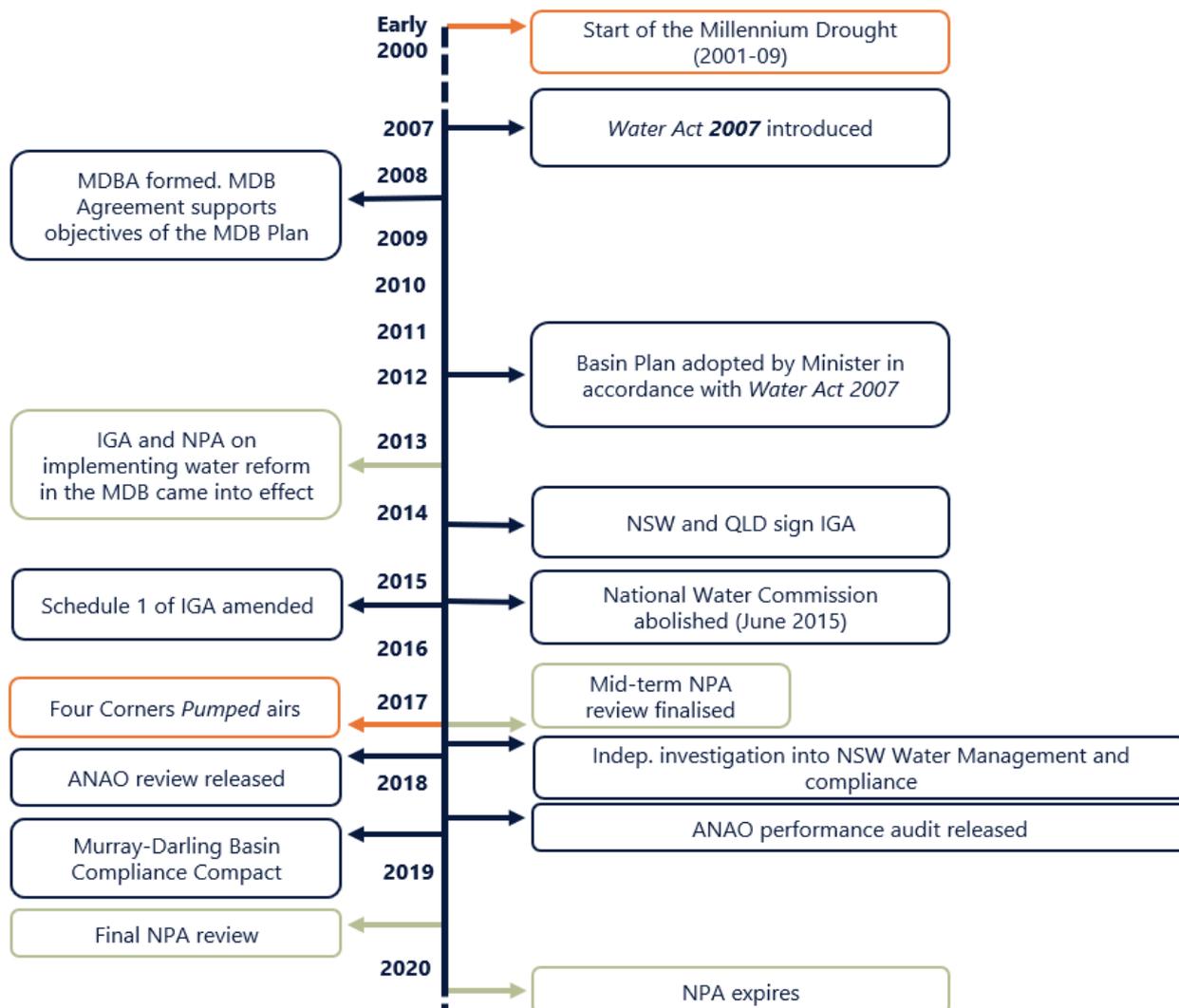
Commonwealth Minister. The Commonwealth Minister authorises, based upon the funding and performance reporting arrangements set out in the NPA and the Department’s assessment, whether payments are made to a Basin State.

Clause 34 of the NPA requires that it be reviewed with regard to progress made by the Parties in achieving the agreed outcomes, both at July 2016 and 12 months before the end of the NPA. The mid-term review of the NPA was finalised in August 2017, and this final review is expected to be completed in early 2020.

There are a range of other intergovernmental agreements in place or under development to facilitate MDB water management, such as those for State-led water recovery and/or efficiency measures projects, constraints and supply measures projects, and the MDB Compliance Compact.

The figure below outlines significant events which preceded and occurred during the NPA.

**Figure 1. Timeline of policy and events relevant to the NPA**



### 1.3 Scope and terms of reference

This review sourced, analysed and synthesised relevant data—principally, a document review and stakeholder consultations.

The scope of this review was defined by the following Terms of Reference (ToR):

1. Assessment of the effectiveness of the NPA in contributing to the Murray-Darling Basin water reforms, specifically the extent to which:
  - the NPA has supported the achievement of the milestones and outputs
  - the milestones and outputs have supported achievement of the NPA objectives and outcomes
2. Assessment of the operations and efficiency of the implementation arrangements in the NPA, specifically:
  - the extent to which all Parties are carrying out their assigned roles and responsibilities
  - the quality, timeliness, accuracy and suitability of performance reporting and assessment arrangements, including whether the performance indicators adequately measure achievement of the outcomes of this NPA
3. Identification of areas for improvement and opportunities to enhance current and future arrangements.

The review was not tasked with reporting on:

- an assessment of the *Water Act 2007*, the Basin Plan or the SDL adjustment mechanism
- any other matters outside the Terms of Reference.

## 2. Methodology

This chapter outlines the staged approach, key methods and timeline of the Review.

### 2.1.1 Staged approach

The Review used a mixed methods approach and was conducted in three stages.

The first stage consisted of project scoping and planning and included an inception meeting with the Department. The purpose of this stage was to clarify and confirm our proposed approach and develop a more detailed understanding of the scope of the project, and receive review documents. The product of this stage was a detailed work plan which included a program logic and key review questions.

The NPA program logic (Appendix 1) locates the NPA within the broader set of institutional arrangements and the role of the NPA in helping achieve water reform outcomes, which are shown as outside the scope of the NPA review.

The second stage consisted of data collection and analysis. During this stage we conducted a desktop review of NPA documents and interviewed stakeholders from Commonwealth agencies and States. In conducting the desktop review, we reviewed the Department's assessments of States' annual Statements of Assurance (SOA) and the associated information which was provided by the CEWO and MDBA to assist the Department in making their assessments. The document review also included the mid-term review of the NPA, the ANAO reviews and Productivity Commission (PC) inquiry report.

The document review had two main objectives—to review and summarise the results of Basin States' annual assessments and to track whether the advice of the CEWO and MDBA provided to the Department was considered and included in annual assessments.

In reviewing these documents, we focussed on understanding how advice from the CEWO and MDBA was taken up by the Department in their assessment of States' progress against the milestones. The document review helped refine key review questions and informed the stakeholder reviews. For a full list of documents reviewed, please see Appendix 4.

Throughout June we interviewed 11 stakeholders. These interviews were conducted over the phone with stakeholders from state and Australian Government departments and agencies. A list of agencies interviewed is provided below. These interviews provided a deeper understanding, complementing the document review's findings.

The final stage was reporting of the results. We submitted the draft report on 15 July 2019, also providing a copy to Treasury and PM&C at the Department's request. Following the Department's review and further changes, the draft report was circulated to Basin States for

their response, and to the Department for final consideration before completion of the final report.

### 2.1.2 Key stakeholder interviews

We interviewed representatives from each Basin State and all central agencies involved in the assessment arrangement of the NPA. In total, we held 11 interviews with key staff representing the following agencies:

- The Treasury
- Department of the Prime Minister and Cabinet
- Murray-Darling Basin Authority
- Commonwealth Environmental Water Office
- Department of Agriculture
- ACT Environment Planning and Sustainable Development Directorate
- NSW Department of Industry
- Queensland Department of Natural Resources, Mines and Energy
- South Australian Department of Environment and Water
- Victorian Department of Environment, Land, Water and Planning

### 2.1.3 Review questions

The following table outlines key review questions and their related ToR.

**Table 1. Terms of reference and final review questions**

Terms of reference	Review questions
<p>Assessment of the effectiveness of the NPA in contributing to the Murray-Darling Basin water reforms, specifically the extent to which:</p> <ul style="list-style-type: none"> <li>▪ the NPA has supported the achievement of the milestones and outputs</li> <li>▪ the milestones and outputs have supported achievement of the NPA objectives and outcomes</li> </ul>	<p>To what extent are the expected standards and outcomes of the NPA clear to Basin States and other key stakeholders? Have assessments since the mid-term review clearly specified expectations for future performance?</p> <hr/> <p>While implementing the NPA, was there a shared understanding among Basin States about the objectives and intended outputs, outcomes and milestones of the NPA? Were these sufficiently clearly specified within the NPA to enable effective progress/ milestone reporting?</p> <hr/> <p>How has the NPA contributed to Basin States implementing water reform in the Murray-Darling Basin?</p>
<p>Assessment of the operations and efficiency of the implementation</p>	<p>How have Basin States applied the funding allocated under the NPA to deliver intended outcomes? To what extent have funding levels been adequate to deliver these outcomes?</p>

<p>arrangements in the NPA, specifically:</p> <ul style="list-style-type: none"> <li>▪ the extent to which all Parties are carrying out their assigned roles and responsibilities</li> <li>▪ the quality, timeliness, accuracy and suitability of performance reporting and assessment arrangements, including whether the performance indicators adequately measure achievement of the outcomes of this NPA</li> </ul>	<p>To what extent have Basin States and the Commonwealth met their roles and responsibilities under the NPA? Where, how and in what form is documentary evidence of this available, to support verification of the milestone reports?</p> <hr/> <p>How has the quality, timeliness, accuracy and suitability of performance reporting and assessments arrangements by Basin States and Commonwealth agencies affected the operation and efficiency of the implementation of the NPA?</p>
<p>Identification of areas for improvement and opportunities to enhance current and future arrangements.</p>	<p>What were the main enablers and barriers to Basin States achieving the intended objectives, outcomes, outputs and milestones of the NPA? <i>[Also relevant to ToR 2]</i></p> <hr/> <p>If there was to be another NPA, how could this be enhanced to further deliver on its objective?</p>

**2.1.4 Review timeline**

The review was conducted between May and October 2019, with stakeholder interviews taking place throughout June.

**2.1.5 Limitations**

The NPA, which is the subject of this review, is just one part of the broader institutional arrangements implemented to achieve water reform in the MDB. It does not operate independently of its institutional context; the other related institutional arrangements are mutually dependent. The scope of this review cannot feasibly cover (and the terms of reference do not extend to) the outcomes being achieved within the Basin Plan or consider other aspects of the institutional arrangements.

## 3. Performance of the NPA

This section summarises the findings against the Terms of Reference, drawing on the document review and stakeholder interviews.

### 3.1 Effectiveness of the NPA in contributing to water reforms

#### Term of Reference 1

Assessment of the effectiveness of the NPA in contributing to the Murray-Darling Basin water reforms, specifically the extent to which:

- the NPA has supported the achievement of the milestones and outputs
- the milestones and outputs have supported achievement of the NPA objectives and outcomes

#### 3.1.1 The NPA has been a useful contributor to State reform activity

The NPA is explicitly and implicitly linked to other policy instruments, including the Basin Plan (see 1.2), making it a complex policy and administrative environment in which to deliver and report on reforms.

Overall, however, the review has found that the NPA has contributed to the Murray-Darling Basin reforms, providing critical financial resources that facilitated action by States in making a start on the Basin Plan in the early years of the agreement and supported State activity throughout the period.

All States described the funds provided through the NPA as having contributed to activities that were key to implementing water reform in the Murray-Darling Basin. They noted it has paid for expertise, planning and reporting processes, and has catalysed action in implementing the reforms. The value of the seven-year implementation period for planning and implementation was also noted.

While activities varied between states, all States offered a view that the NPA funds have been important to resourcing water reforms administration. The NPA has funded State agencies' staff and professional expertise to support a wide range of water reform activity including:

- monitoring and modelling
- water trade rule implementation
- groundwater allocation
- water resources plans
- long-term environmental watering plans (LTWPs)
- Indigenous, local and industry engagement
- participation in Basin Plan forums and initiatives
- constraints/SDL project development support.

Most States indicated that the water reforms are ambitious, and many noted that reforms have been more complex and difficult than envisaged at the outset of the NPA and that the reforms are a work in progress, but that the NPA had enabled some of the relevant work to occur. For example, in Queensland, Water Plans are subject to review every ten years but the NPA funding enabled a full review that mapped the new Water Plan to the Basin Plan obligations, ensuring that it met the additional obligations under the Basin Plan.

### ***To what extent have funding levels been adequate to deliver these outcomes?***

Most States indicated that State financial and technical resources were combined with NPA funding in order to achieve their agreed water reform goals and work towards meeting their performance milestones. This is consistent and appropriate for a State-Commonwealth partnership, especially given States have the majority of legal responsibilities and technical and professional capabilities with respect to water management. Enhanced specification of milestones, KPIs, assessment methods and standards at the outset of a future NPA may make the use of these funds more efficient.

As is appropriate for a partnership, which draws on the shared capacities of the partners, the NPA funds have been used hand-in-hand with States' water policy and management capacity. States recognise that the NPA was meant to drive change, not fund operational practices and arrangements that States already had in place.

### ***There were changes in the context and the reporting arrangements***

Water reform in the MDB has continued to evolve since the inception of the NPA and the Water Act. This is evidenced through amendments to the Act in 2008, 2012, 2013 and 2016 and the development of other instruments and agreements over the period of the NPA.

The NPA mid-term review resulted in changes to the Department's assessment process. While States agreed to the Australian Government's proposed responses to the mid-term review, these changes increased the depth and kinds of evidence required to meet the milestones. States outlined this, and a lack of clarity in the milestones (see 3.2.2) as contributing to difficulties in reporting on the achievement of milestones over the life of the agreement.

Around the same time as the mid-term review, increased scrutiny generated through Four Corners' 'Pumped' report (2017) triggered State and Australian Government reviews and increased Ministerial and Departmental scrutiny of the NPA's outcomes.

One of these reviews, the 2017 ANAO Assurance Review of NSW protection and use of environmental water in the Murray-Darling Basin, resulted in the Department re-evaluating assessment methods. The concurrent increased focus on compliance resulted in States' reporting obligations being ramped up and made more stringent. This resulted in delays to

the assessment process due to the additional depth of analysis required and therefore delays in the associated payments to States<sup>3</sup>.

Stakeholders indicated that following these 2017 changes, including the implementation of recommendations from the mid-term review, and as the end of the NPA—and deadlines to achieve the milestones—approached, the assessment process became more complex. This period was a pivot point that appears to have accelerated progress towards achievement of NPA objectives in NSW and an increased focus on compliance in all states. States highlighted an increase in reporting requirements which may in part reflect their involvement in multiple reviews and reporting mechanisms at the time; however, NPA reporting obligations have also increased over time. This reflects the increasing complexity of the assessment process discussed above, including the Commonwealth's decision to explicitly include reporting on Compliance Compact implementation.

### 3.1.2 Most NPA milestones were met

There are nine performance milestones as per Schedule A in the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin (see Appendix 5). Several milestones are substantially equivalent:

- Milestones 2 and 6
- Milestones 3 and 7
- Milestones 4 and 8
- Milestones 5 and 9.

The total of actual payments made to date (up to the 2017-18 assessment year) is \$141,181,819. If all States receive payments for the 2018-19 assessment year, the total funding provided for the entire NPA assessment period will be \$161,181,819.<sup>4</sup>

The results of all annual assessments, excluding the final assessment period, are summarised in Figure 2 below.<sup>5</sup>

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<sup>3</sup> Payments were made in the subsequent financial year to the assessment year, but some State representatives noted that payments were made right at the end of the financial year. This caused tension between State water agencies and their respective Treasuries.

<sup>4</sup> NSW and Queensland did not receive payment in 2012-13 under the superseded NPA signed by Victoria, South Australia and the ACT in June 2013.

<sup>5</sup> This figure only refers to milestone 6, 7, 8 and 9. It should also be noted that the last reporting year for milestone 9 was 2015-16. The current NPA supersedes the June 2013 NPA signed by the Vic, SA and ACT only. Both NSW and Qld signed the new NPA in February 2014. Some milestones were not applicable to certain States over the course of the agreement.

**Figure 2. Basin States achievement of milestones**

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<b>6</b>	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	Not yet assessed
<b>7</b>	ACT All other states not assessable in 2013.	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	Not yet assessed
<b>8</b>	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	ACT NSW QLD SA VIC	Not yet assessed
<b>9</b>	ACT NSW SA VIC QLD	ACT NSW SA VIC QLD	ACT NSW SA VIC QLD	ACT NSW SA VIC QLD	ACT NSW SA VIC QLD	ACT NSW SA VIC QLD	Not yet assessed

Note: Green text indicates where a milestone has been fully met. Orange text indicates a milestone that has been partially met. Red text indicates a milestone that was not met. Grey strikethrough text indicates that milestone is not applicable. Milestones 2 & 6, 3 & 7, 4 & 8, 5 & 9 are largely equivalent and so this figure only refers to milestone 6, 7, 8 and 9.

To date, all payments in relation to performance against milestones have been made to the States except payment to NSW in 2016-17. For that assessment, NSW only partially met milestones 6 and 7, and failed to meet milestone 8, resulting in a non-payment for that year. States who partially met milestones were paid in all cases, as their progress was deemed to be substantial and measures were deemed to be in place to meet the milestones in future, therefore not warranting payment being withheld. As discussed later, there is no provision for partial payments in the NPA.

### **3.1.3 Milestones which were not consistently met**

The achievement of milestones about supporting the Commonwealth in Bridging the Gap, following the Constraints Management Strategy and cooperating in arrangements for Basin Plan environmental watering were not consistently met (milestone 6, 7 & 8, see Appendix 5 for full list of milestones). As shown in Figure 2 above, milestone 6 which relates to the state supporting the Commonwealth in Bridging the Gap was rarely fully met by States except South Australia—the only State which met all milestones across all years.

Milestone 6a was raised as a concern by the Department (with advice from the CEWO and MDBA) for multiple States throughout the assessment term of the NPA. Reasons for non-compliance included lack of interstate trade, inter-valley trade limits, intrastate tagging arrangements, trade of water access entitlements with conjunctive storage conditions and relocatable licences, which were considered to be inconsistent with the Basin Plan water trading rules. The MDBA advised all Basin States of their immediate priority areas of inconsistency with the Basin Plan water trading rules (BPWTR) in December 2014, and then again in 25 June 2015. Some of these discussions continued into 2015-16 and resulted in consistent partial achievement of the milestone.

New South Wales did not fully meet milestone 7 after 2014-15. The MDBA commented that NSW was behind the IGA schedule and was working collaboratively with Vic and SA to progress the Constraints Measurement Strategy through developing business cases for a number of constraints measures. In 2017-18, the CEWO's comments were similar to those of the MDBA in the previous financial years, with the CEWO noting that progress was slow; most projects were in pre-feasibility mode. This slow progress meant that limited action was able to be taken to remove or address constraints in align with the MDBA Constraints Management Strategy. NSW received its 2017-18 milestone payment.

In recent years, the CEWO and the MDBA discussed States' achievement of milestone 8 (see Appendix 5) in their advice to the Department and these issues were reflected in the Department's annual assessments. In 2015-16, all States fully met the milestone but all States apart from Queensland had issues raised by either the MDBA or the CEWO.

### 3.1.4 Take up of MDBA and CEWO advice by the Department

The assessment process includes advice provided by the CEWO and MDBA to the Department on the States' progress against the NPA milestones. The Department was consistent in taking up this advice, which was consistently included in annual assessments. All compliance issues that were flagged by the MDBA or CEWO in each financial year are summarised in Figure 3 below. The trend was that the MDBA and CEWO identified more issues over time around compliance for Milestone 8. This correlates with the Department's annual assessments; over time more milestones were only partially met.

As expected given their differing responsibilities, the MDBA and CEWO generally provided advice on different milestones, or parts of milestones. There were only six instances where advice from the MDBA and CEWO overlapped. This advice was for:

- Milestone 8b for NSW in 2015 -16
- Milestone 8d for NSW in 2015 -16
- Milestone 8b for NSW in 2016-17
- Milestone 8d for NSW in 2016-17
- Milestone 8b for NSW and QLD in 2017-18
- Milestone 8f for ACT, NSW and QLD in 2017-18.

Figure 3. MDBA & CEWO advice

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
6	MDBA and DoE (incl. CEWO)	MDBA and DoE (incl. CEWO)	6a MDBA advice to all Basin States	6a MDBA all Basin States 6b MDBA (NSW, QLD & VIC)	6a MDBA (ACT, NSW & QLD)	No advice provided by MDBA or CEWO	Not yet assessed
7			No advice provided by MDBA or CEWO	MDBA for (NSW, SA and VIC)	MDBA for (NSW, SA and VIC)	MDBA for (NSW, SA and VIC)	Not yet assessed
8			8a CEWO (SA) 8b CEWO (NSW, QLD & SA) 8d CEWO (NSW)	8b CEWO & MDBA (NSW) 8c MDBA (ACT & NSW) 8d CEWO & MDBA (NSW) 8f MDBA (SA & VIC)	8b CEWO & MDBA (NSW) 8b MDBA (QLD) 8c MDBA (ACT, NSW & VIC) 8d CEWO & MDBA (NSW) 8f MDBA (ACT & VIC)	8b CEWO & MDBA (NSW & QLD) 8b CEWO (SA & VIC) 8d MDBA (ACT & NSW) 8d CEWO (NSW) 8e CEWO (NSW & QLD) 8f CEWO & MDBA (ACT, NSW & QLD) 8f MDBA (SA & VIC)	Not yet assessed
9			No advice provided by MDBA or CEWO	No advice provided by MDBA or CEWO	Not applicable	Not applicable	Not yet assessed

Note. For 2012-13 and 2013-14, the advice provided cannot be broken down per milestone as MDBA and CEWO did not provide that detail. Milestone 2 & 6, 3 & 7, 4 & 8, 5 & 9 are largely equivalent hence the figure only refers to milestone 6, 7, 8 and 9.

### 3.1.5 Fewer milestones were fully met over time

In recent years, there was a trend for milestones to be only partially met. To date, 60 milestones were assessed as met, 22 milestones were partially met, and one milestone was not met.

We understand that this trend towards partial completion of milestones is, in part, related to actual State progress in implementing the water reforms becoming more salient. For example, in the early years of the NPA it was unclear whether LTWPs would be delivered on time but, as their deadline approached, it became more certain that it would not be possible for them to be delivered on time. It should be noted, given the complexity of achieving reform outcomes (such as LTWPs) that the Commonwealth did not assess partial achievement of a milestone as cause for non-payment provided progress was being made to achieve the milestone in future.

## 3.2 Operations and efficiency of the NPA implementation arrangements

### Term of Reference 2

Assessment of the operations and efficiency of the implementation arrangements in the NPA, specifically:

- the extent to which all Parties are carrying out their assigned roles and responsibilities
- the quality, timeliness, accuracy and suitability of performance reporting and assessment arrangements, including whether the performance indicators adequately measure achievement of the outcomes of this NPA

### 3.2.1 Roles and responsibilities

All parties are carrying out their assigned roles and responsibilities under the NPA, but there have been some delays in the execution of these over time.

The responsibility for the NPA assessment process has been transferred and has evolved since the NPA was drafted in 2012. Initially, the National Water Commission (NWC) conducted the assessments of Basin States' progress against the milestones on behalf of the COAG Reform Council, with supporting advice provided by the MDBA and Department of the Environment (DoE), including advice from the CEWO. However, with the abolition of the NWC in December 2014, the responsibility for conducting the assessments transferred to the (then) Department of the Environment with supporting advice provided by the CEWO and MDBA. This assessment function is currently managed by the Department of Agriculture. These

changes removed the capacity for third-party assessments, as was intended in the initial agreement.<sup>6</sup>

It appears there is a level of confusion amongst some State stakeholders about roles and responsibilities under the NPA. Some stakeholders indicated that this confusion is magnified by the multiple parallel processes involving Basin water policy, of which the NPA is only one, but which is explicitly and implicitly linked to others.

Concerns were expressed that the Commonwealth agencies (CEWO, MDBA, and the Department) all have policy and operational responsibilities and are therefore party to the reforms and should not be assessing Basin State progress. For example, the MDBA has both compliance and operational functions as pointed out by the recent PC review<sup>7</sup>. Third party assessment of a future NPA's milestones should also be considered.

Of the stakeholders interviewed, many outlined that extensive staff turnover within State water agencies had resulted in a loss of professional continuity and organisational memory so NPA documentation became critically important in terms of defining scope, standards and outcomes. However, some stakeholders had been involved in the NPA since its inception or had come back to a role that involved it.

Of particular concern, the development of Water Resource Plans (WRPs) has been a long and complex task. Issues reported by the States included:

- some States not having the expertise available to implement the reforms, despite the NPA funding being intended for this purpose.
- the MDBA and Basin States developing guidance material in parallel during preparation of WRPs. In some cases guidance material changed or was not finalised until after Basin States had made significant progress on developing their WRPs. This led to inefficiencies and difficulties in meeting timelines to develop WRPs that met MDBA requirements.
- challenges faced by Basin States to meet some of their milestones and WRP deadlines due to the MDBA not having clear deadlines for responding to drafts or requests for advice.
- continuity of staffing has generally been difficult over the period of the NPA and has hindered development of WRPs and other initiatives. Basin States will need to consider how they will maintain key staff to complete implementation when funding ends in June.

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<sup>6</sup> We understand that the NPA assessment arrangements were transferred to the Department of the Environment along with the relevant NWC staff.

<sup>7</sup> <https://www.pc.gov.au/inquiries/completed/basin-plan/report/basin-plan.pdf>

### 3.2.2 Quality, timeliness, accuracy and suitability of performance reporting and assessment arrangements, including the adequacy of performance indicators in measuring achievement of NPA outcomes

This section outlines how the NPA performs against the Intergovernmental Agreement on Federal Financial Relations' (IGAFFR)<sup>8</sup> principles for best practice when designing NPAs. This analysis is set out in more detail in Appendix 2. The IGAFFR and supporting guidelines are intended to result in clearly articulated NPAs that support the achievement of NPA objectives.

The NPA is consistent with some, but not all, of the IGAFFR principles.

**Table 2. IGAFFR principles with which the NPA is consistent**

	Principle in short	Criteria	Assessment	Comment
E21	Meets basis for Commonwealth support	Appropriate		The NPA is an appropriate policy instrument based on the following: <ul style="list-style-type: none"> <li>- It is closely linked to a current national objective of the Commonwealth;</li> <li>- It has 'national public good' characteristics</li> <li>- It has 'spill over' benefits that extend beyond the boundaries of a single State</li> </ul>
E24	National Partnerships are expected to have limited time horizons	Efficient Appropriate		The NPA is long (7 years) but is reasonable given it covers the period from settling the Basin Plan and SDL adjustment to the finalisation of WRPs to align with the Basin Plan. Any shorter period would have been inconsistent with its objectives.
E19	Utilisation of project, facilitation or incentive payments	Effective Efficient Appropriate		Incentive payments were used but the features of payments were not fully utilised in the NPA.
	Structure incentive payments to encourage ambitious benchmarks	Effective Efficient		The incentive payments were structured as "all or nothing" payments. This provides maximum incentive to achieve all performance milestones, but it also has two adverse effects: <ul style="list-style-type: none"> <li>▪ it can place extraordinary pressure on the assessor and decision-maker as to whether payments should be paid in marginal circumstances</li> <li>▪ it removes all financial incentive to strive for performance in circumstances where a jurisdiction is clearly not going to achieve an ambitious milestone.</li> </ul>

<sup>8</sup> The original version of the MDB agreement was agreed in 2008, predating the current financial framework. However the MDB agreement, as subsequently revised, is subject to the new financial framework.

### **Basis and timing of the NPA**

The NPA is an appropriate policy instrument and meets the basis for Commonwealth support in that it is linked to current national objectives, has national public good and has effects that spill over State boundaries (see E21, Table 2 above).

While the NPA is relatively long for a National Partnership, it is consistent with best practice (see E24, Table 2 above) as its timeframe includes the initialisation of the Basin Plan and extends to the revision of WRPs to align with the Basin Plan.<sup>9</sup>

### **Payment structure**

The NPA is consistent with best practice in utilising reward payments to incentivise achievement of ambitious milestones (see E19, Table 2 above); however, the available features of reward payments were not fully utilised.

The incentive payments were structured as "all or nothing" payments (see E19, Table 2 above). This provides maximum incentive to achieve all performance milestones, but it also has adverse effects:

- in some circumstances, it can place extraordinary pressure on the assessor and decision-maker as to whether payments should be paid—noting that clause 24 of the NPA allows the Minister to authorise payments where adverse findings are not considered material to that State's cooperation with reforms. However there may be pressure in marginal circumstances to compromise on assessment of the materiality of achievement of performance milestones. Furthermore, any proclivity for compromise on the part of the assessor or decision-maker may encourage the payment recipient to lower their future performance.
- it removes all financial incentive to strive for performance in circumstances where a jurisdiction is clearly not going to achieve an ambitious milestone.
- it imposes maximum penalty on States who are motivated to achieve reform but for one reason or another are unable to fully meet a payment milestone.

A broader problem with the NPA is that States have received almost all payments, but overall progress on the reforms has been delayed. For example, some States intended to deliver WRPs but appeared to have left development of WRPs too late in the process in order to deal with inevitable difficulties in consultations and technical work. States have also commented that WRP development is complicated by the necessary role of the MDBA (who are not a party to the NPA). The NPA milestones and payments could have been structured to encourage the States to deliver staged reforms, which would have provided stronger incentives during the process to ensure that those processes were on track.

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<sup>9</sup> <https://www.mdba.gov.au/basin-plan-roll-out/basin-plan/basin-plan-timeline>

**Table 3. IGAFRR principles where the NPA does not align with best practice**

	Principle in short	Criteria	Assessment	Comment
E19	Graduate benchmarks to allow partial payment for partial delivery	Effective Efficient Appropriate		While partial payments were not included in the agreement to avoid the risk of States not implementing key aspects of water reform, not allowing partial payments has been contentious and inadequate for performance management.
	Benchmarks should be clear, mutually agreed, ambitious and assessable by the COAG Reform Council	Effective Efficient Appropriate		The NPA's milestones are not sufficiently clear or tightly defined risking subjective assessment. There is little use of timeframes in the milestones. For example, linking LTWPs to milestones in earlier periods would have provided an incentive to engage earlier in the agreement. Transfer of the NWC's role following its abolition to the Department (via the DoE) removed the third-party assessment function.
D4	Estimates of Commonwealth own-purpose and State own-purpose expenses should be included	Appropriate		The NPA could have included total Commonwealth-own and State-own expenditure on implementation of the water reforms. Reporting actual expenditures against forecast expenditures would have increased public transparency of the reforms. However, it could be difficult to report on State-own expenditure as much of the Basin Plan implementation is linked with States' ongoing water operations. It would be a challenge to unpack these in detail for the purpose of annual NPA assessments.
D35	For reward payments, consideration of the COAG Reform Council's recommendation before making a part or full payment	Efficient Appropriate		While assessment was initially undertaken by the NWC on behalf of the COAG Reform Council, the function transferred to the Department (via the DoE). The IGAFRR does not provide a role for the Minister in the case of reward payment.
E24	Reward payments not made until independent assessment by the COAG Reform Council demonstrates achievement			

### **Partial payments**

The NPA is not consistent with the principle of applying graduated benchmarks to allow partial payment for partial delivery (E19, 0 above).

While we understand that this design was intentional to ensure that States delivered all milestones of the NPA, not allowing partial payments has been contentious throughout the NPA and inadequate for performance management.

The mid-term review and an ANAO audit recommended renegotiating the NPA because it was inadequate for performance management in not allowing for partial payments. We agree with the Department's response that it would have been too difficult and time-consuming late in the life of the NPA to renegotiate the current NPA. Any future NPA should contain a better payment structure that is linked to tightly specified and outcomes-focused milestones.

### ***Clear, ambitious and well-articulated milestones***

The NPA's milestones are not consistent with the principles of best practice in that they are not sufficiently clear or tightly defined (E19, 0 above). There is little use of timeframes in the milestones which would allow sequencing of tasks and prerequisites for attainment of payment over time. For example, WRP preparation was not included as a milestone in the NPA, even though WRPs are central to implementation of the Basin Plan. Linking early engagement with the drafting of WRPs to later payments and milestones would have provided an incentive to make progress earlier in the agreement.

The operation and efficiency of the implementation of the NPA was affected by the pivotal events of 2017, including public scrutiny and related inquiries, as mentioned above. Initially, the assessment reporting was less extensive, with some stakeholders raising doubts about milestone selection and reflecting that they duplicated existing policy commitments made by States (for example, NWI compliance). Following this, States reported a shift towards more detailed and compliance-focused assessment arrangements and increased scrutiny in the face of public interest and associated Ministerial inquiry into the achievement of the NPA's objective.

The NPA milestones were designed to help facilitate State participation and to guide planning and early activity. States agree that the expected standards and outcomes of the NPA were sufficiently clear at the outset for them to agree to enter into the NPA. Basin States also reported that they had a clear idea of the objective—providing funds to implement water reform in the MDB, including the development of WRPs consistent with the Basin Plan.

However, it was unclear what some components of the Basin Plan would involve when the NPA was drawn up and so milestones needed to be broad enough to encompass all possibilities. States noted in the review that in hindsight the milestones were not well specified. They described them as broad, ambiguous and not lending themselves to action to achieve them.

The milestones are phrased, in part, using terms which are open to interpretation and are not defined in the agreement. These terms open assessment of States' progress in implementing

the milestones up to discretion and subjectivity. For example, terms such as 'supported' and 'impede' (milestone 6), 'consistent' (milestone 7), 'cooperated' and 'facilitate' (milestone 8). The milestones consistently only require 'confirmation' and do not specify what evidence of action is required.

### ***Reporting on expenditure***

The IGAFRR principles suggest that estimates of Commonwealth own-purpose and State own-purpose expenses should be included in the agreement (D4, 0 above). The NPA could have included reporting on this expenditure in implementing the water reforms, especially actual against forecast expenditure, which would have increased public transparency of the reforms. However, it would be difficult to report on State-own expenditure as much of the Basin Plan implementation is linked with States' ongoing water operations. It would be a challenge to unpack these in detail for the purpose of annual NPA assessments.

### ***Role for independent assessment and reward payments***

The NPA was consistent with principles D35 and E24 of the IGAFRR (0 above) until the assessment role transferred away from the NWC to the Department (via DoE). The IGAFRR also does not provide a role for the Minister in the case of reward payment; an issue which should have been identified by the central agencies during drafting.

The transfer of the assessment role from the NWC to the Department also reduced the independent nature of assessment as the Department was involved in elements of water reform implementation. However, having this function within the Department meant that assessors had access to officers with substantial understanding of, and expertise in, water reform processes. This issue is discussed further in the recommendations section.

In undertaking their role in the assessment arrangement, the Department made all payments to States within the relevant financial year throughout the course of the agreement. Although States highlighted that some payments were made at the end of the financial year, they were never made outside of the financial year. In some cases, assessments were delivered after the due date specified in the NPA, and States noted that the uncertainty of payment timing caused tension with their respective Treasuries. However it should be noted some of these delays occurred because of the inquiries and reviews into the NPA which occurred in the 2016-17 and 2017-18 periods, the inclusion of Compliance Compact reporting in the assessment process and late submission of SOAs by States.

### 3.3 Areas for improvement

#### Term of Reference 3

Identification of areas for improvement and opportunities to enhance current and future arrangements.

While the NPA was largely effective, it was limited by the shortcoming of its milestones and payment structure. Generally, the assessment arrangements worked well and the roles of parties to the agreement were clear; however, transferring the role of the NWC to the Department (via DoE) reduced the independence of the assessment arrangements and reduced the NPA's consistency with IGAFRR principles of best practice. The external political environment in which the NPA functioned also changed over time, resulting in a shift in the way the NPA progress reports were assessed.

#### 3.3.1 Enablers and barriers

States perceived NPA funding as an enabler in achieving the objectives of the NPA, despite the shifting policy context, increased scrutiny since 2017, and outcomes of the NPA mid-term review adding complexities to the reporting arrangements and the level of detail included in milestone assessments. Some stakeholders noted that the public scrutiny and heightened interest in progress of the Basin Plan following the Four Corners report catalysed action and aided in the achievement of NPA objectives.

The States' reported that their staff, including their science capabilities were a major enabler. Many States regarded good, open working relationships at the officer level to have been a key enabler of the NPA. However, lack of specification and clarity around the WRP development process and staff churn in State and Commonwealth agencies was seen as a barrier. We heard that there are no staff currently working within the NSW water agencies who were present at the inception of the NPA due to downsizing in the intervening years. Given that the NPA aimed to ensure that States had staff on board to manage the MDB reform process, this has been a barrier to implementation and leaves NSW at a significant disadvantage in achieving its objectives under the NPA.

Notwithstanding the Northern Basin Review, we heard a perception that all Basin rivers were being treated as if they are hydrologically similar and this was described as a barrier. This related to perceived assumptions that the hydrological characteristics of the Murray River and the Southern Basin had been used in conceptualising and modelling all river systems within the MDB, while not applicable to the Northern Basin.

For some States, other barriers include the way in which some dimensions of the reform require other States to deliver, or for the MDBA to progress certain aspects of the reforms. They identified that their agreement with the Commonwealth is contingent on other States

and on specific activities within Commonwealth agencies. However, the complex nature of the intergovernmental arrangements in the MDB make it hard to be clear about how specific policy responsibilities are allocated, and the degree to which overall progress is being made on key dimensions of the reforms.

### 3.3.2 Recommendations

We have developed the following recommendations in response to the review findings.

#### ***Focus of future agreements***

The NPA is explicitly and implicitly linked to other complex policy instruments like the Basin Plan, making for a complex policy and administrative environment in which to deliver and report on reforms. The reforms are a work in progress, and the nature of future reform targets and the detail of future progress measures remains unclear.

#### ***Recommendation 1***

*A future NPA should be closely aligned with major policy reform targets to guide and achieve strategic outcomes.*

#### ***Milestones and the specification of KPIs***

The review found that the majority of milestones were met, despite a trend towards States only partially meeting milestones in recent years. States generally delivered timely annual reports<sup>10</sup> and the Commonwealth released payments (where milestones were met, or partially met) in accordance with the timeframes set out in the NPA, despite some payments being made just prior to the end of financial year<sup>11</sup>.

As the NPA progressed and deadlines approached, the nature of the milestones meant the Commonwealth needed more detail from the States to assess progress adequately. The outcomes of the mid-term review and the ANAO inquiries, and the inclusion of Compliance Compact reporting also made the assessment process more complex. In line with this, reporting requirements increased for Basin States.

However, the lack of detail in NPA milestones has caused problems for both the Department in measuring performance against performance indicators, as well as the States in delivering against them. As the inclusion of additional milestones to pay for progress towards outcomes would increase the level and reporting requirements for the States (which has been a cause for concern) it may be most appropriate to adopt clear, graduated milestones based on

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<sup>10</sup> Noting that NSW and the ACT submitted late reports in 2016-17 and 2017-18.

<sup>11</sup> We understand this occurred in the 2016/17 assessment period following increased scrutiny of assessment arrangements, including the need for revisions to SOAs and additional advice from MDBA and CEWO.

ambitious targets which minimise the need for subjective judgements, without creating an excessive number of milestones.

### **Recommendation 2**

*Any future agreement would be improved through the use of clear and prescriptive milestones and KPIs. These should define the scope of each milestone, in line with the principles codified in the Intergovernmental Agreement on Federal Financial Relations (see Appendix 3). It should also clearly specify the ways these will be measured, reported on and assessed.*

It is important to recognise that for future agreements the formal nature and documentation of an NPA plays an important role in guiding the work of agencies—especially through periods of staff turnover, machinery of government changes and external pressures on their work. Therefore, the more clearly that processes, standards and obligations are specified, the more the document acts to guide the work of multiple agencies over the life of the agreement. This eliminates disagreement between the parties to the agreement about the original intention or reporting expectations.

### **Recommendation 3**

*Any future NPA needs to more clearly specify the processes, standards and obligations of all parties in order for the agreement's documentation to guide the future work of multiple agencies over the life of the agreement.*

## **Structure of future agreements**

Consultation with central agencies and States identified several opportunities for enhancing a future NPA. In addition to clearly defined milestones and more prescriptive outputs and outcomes, suggestions included:

- Designing any future, similar NPAs as an overarching framework, or head agreement, setting out high level outcomes. This would be complemented by schedules to this agreement. These schedules would include clearly defined implementation schedules and detailed sub-milestones and KPIs.
- Being flexible with implementation timeframes where there are reasonable grounds for renegotiation e.g. taking into consideration the operating environment and other variables that might mean the Basin States are unable to meet the deliverables within initially anticipated timeframes.
- Continuing to provide Basin States the opportunity to review and comment on the feedback provided by MDBA or CEWO on their annual statements.

The review identified tensions between the desire for greater flexibility and open-ended agreements, and the need for tight specification of key elements of partnership agreements. We recognise this may be inherent in any context of long-term reform where some

components are yet to be fully designed. This could be helped through a more layered agreement structure.

#### **Recommendation 4**

*Consider structuring future NPAs to provide an overarching framework or head agreement, setting out high level outcomes, which is complemented by schedules to this agreement with clearly defined implementation schedules and detailed milestones and KPIs; and greater flexibility with implementation timeframes where there are reasonable grounds for renegotiation.*

### **Roles and transparency of intergovernmental arrangements**

Clarity is required in defining the respective roles of the Commonwealth and the States in the intergovernmental arrangements for the MDB. Further work is needed defining the respective application of the:

- Compliance models
- Joint government development models
- Co-production and partnerships models
- Reform partnerships
- Multi stakeholder programs.

A number of policy framework matters deserve serious consideration, including the nature of any institutional settings. A number of stakeholders pointed to the multiple roles of Commonwealth agencies. Given that Commonwealth agencies are often responsible for policy development and implementation, this can make objective and independent assessments of the progress of individual jurisdictions or combined progress more difficult. This points to the need to consider the what, how and who of future assessments, given that the NPA assessments were originally carried out independently by the National Water Commission, and subsequently transferred to the Department. Further consideration of ways to clarify roles and responsibilities is needed.

An independent entity offers an unbiased perspective but may not sufficiently understand the complexity of the water reform landscape to make sound judgements on progress. Conversely, Commonwealth agencies' mixed role in both policy development and implementation has the potential to reduce the integrity of the assessment arrangements, particularly in a complex environment where it is difficult to have detailed milestones. Although this combination of roles does not necessarily lead to unbalanced assessment of Basin State progress by these agencies, clarifying the roles and responsibilities of Commonwealth agencies will ensure that future assessments have independence and credibility. Also, it should be noted that it is standard practice for Commonwealth agencies to have probity processes in place to manage possible or perceived conflicts of interest. Assessment by a Commonwealth agency such as the department may be appropriate with adoption of the clear, well-defined milestones and other recommendations of this review.

This model should ensure both third-party scrutiny and expert judgement is included in the assessment.

If assessment is carried out by an independent entity such as the Productivity Commission (with potentially reduced technical knowledge of the sector), assessments should continue to integrate advice from other agencies to maximise the independence and credibility of the assessment arrangements.

In the 2018-19 reporting period, the Department gave Basin States the opportunity to review MDBA and CEWO comments on annual SOAs prior to completing Basin States' annual reports. This practice created more transparency in the assessment process and allowed the Basin States to provide any necessary clarification. This review identified a strong reliance on written reports between the parties as the basis of performance. More open and transparent progress reporting that involves exposure of findings would be useful. Given the substantial role of the media in catalysing progress during the current NPA, providing the public with information about progress could encourage performance by Basin States. Other options for more independent, open and transparent progress reporting include:

- Consultation with First Nations groups as a component of policy decisions, milestone or broader success criteria in the basin reform architecture. For example, consultation with First Nations people in WRP development has been beneficial.
- Consultation with stakeholders and communities to understand satisfaction as a milestone
- Using independent auditors (as per the MDB salinity and cap audits) that receive jurisdictional progress reports and have open hearings.

#### **Recommendation 5**

*Consider which entity is best placed to undertake the assessment arrangements of any future, similar NPAs, and how details of progress against milestones can be as open and transparent as possible. Consider how First Nations groups and local communities can be engaged in a broad assessment of progress in water forms, or engaged following the assessment process.*

#### **Use of effective payment structures**

A different payment structure should be considered for any future, similar NPAs. While the 'all or nothing' payment structure made it difficult for States to avoid delivering some milestones, this design does not appear to have been successful in ensuring that the reforms were well implemented. This puts the Department and Minister in a difficult situation in assessing whether sufficient work has been done to, on balance, make a payment.

An option to resolve this challenge is to sequence milestones, marking early milestones as prerequisite for the achievement, and payment for, later milestones. This would reduce the likelihood that States only deliver components of their choosing. Including criteria for partial

and complete achievement in milestones would also allow for graduated payments to be made based on progress.

The current NPA is based on defining extra costs and overlaying targets on these. A number of stakeholders pointed to the model of national competition payments which were made under the National Competition Policy arrangements and utilised incentive payments for the achievement of clearly established targets. This model relies on a strong independent assessor that is respected for their judgement in making recommendations for payments.

While incentive payments act as rewards for the delivery of outcomes or continuous performance improvement, stakeholders noted they can be hard to judge and control, and impose an additional reporting and assessment burden. Any future, similar NPAs must ensure that payments are only made for actual outcomes, with incentive payments for timely delivery against the agreed milestones, or in instances where States exceed expectations. For example, early delivery of WRPs could be linked to an incentive payment.

### **Recommendation 6**

*Design a set of detailed milestones that encourage the achievement of outcomes using a combination of project, facilitation and incentive payments, making graduated payments based on achievement of milestones. Utilise sequencing so that early milestones act as prerequisites for the payment of later milestones and reward States for exceeding expectations with incentive payments.*

### **Professional capacity for working in complex policy roles**

Many stakeholders identified that the number of separate instruments and their linkages remained difficult to negotiate and confusing. However, this is the nature of water reform in a complex trans-boundary river system within a federated system of government. Working with overlapping and interlinked instruments is important and agency staff involved should receive specific training focused on understanding the bigger picture of the reforms and how their sections fit into the whole.

### **Recommendation 7**

*Agency staff working within a system of overlapping and interlinked policy instruments should receive specific training focused on understanding the bigger picture of the reforms and how their sections fit into the whole.*

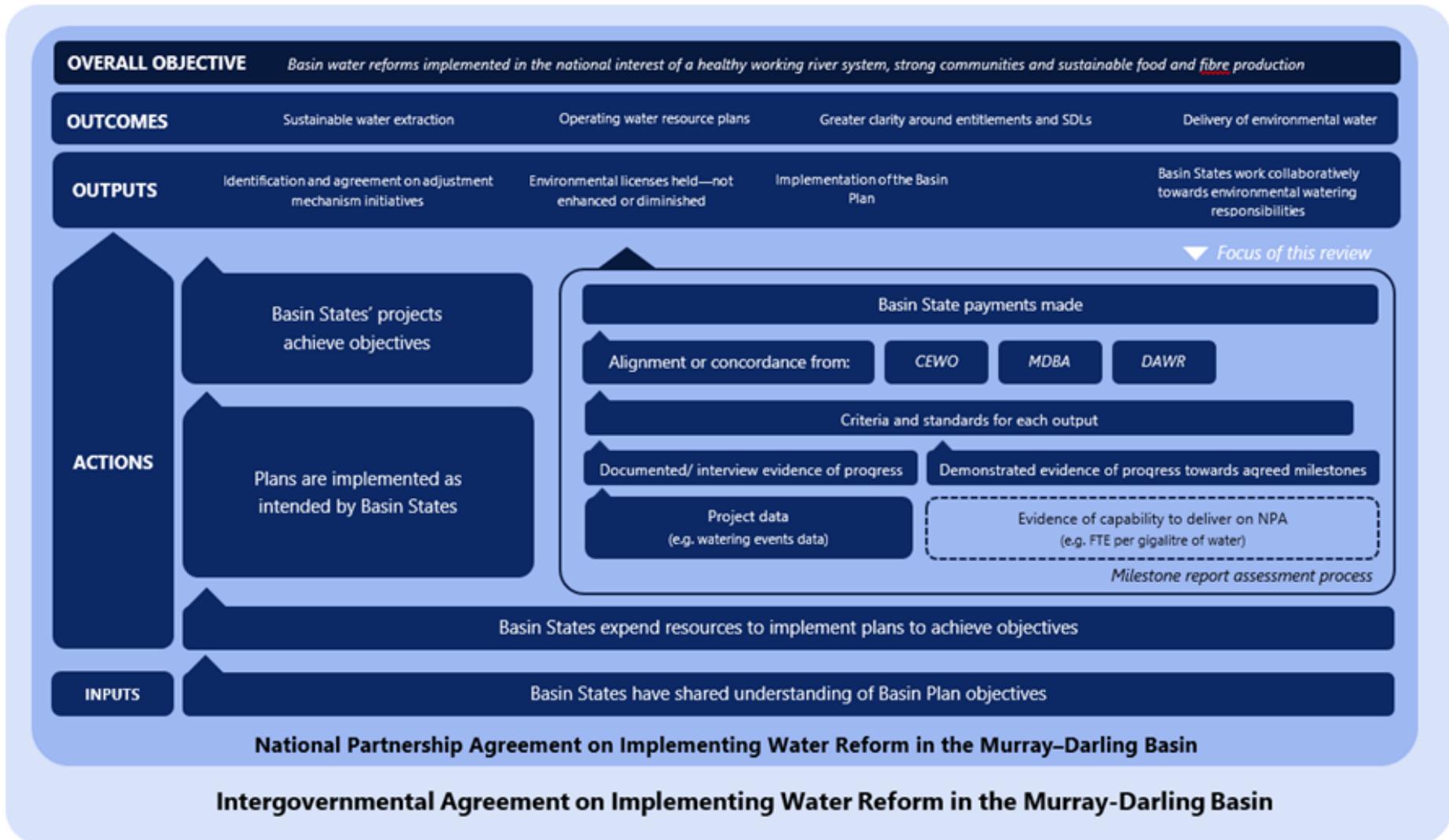
### **Better practice guidance on partnerships**

The framework for the Commonwealth's financial relations with the States and Territories is detailed in the IGAFRR and supporting guidelines. Any future NPA would benefit from adopting and adhering to the principles, standards and guidance provided for partnership agreements. These provide for different kinds of payments enabling flexibility.

**Recommendation 8**

*Any future NPAs should be consistent with the COAG principles for intergovernmental agreements if it has a limited time frame (E23); has benefits that extend beyond a single boundary (E21) and has reward payments subject to independent assessments of performance (preferably undertaken by an entity such as the PC). It would also require well defined roles and responsibilities, clear specification of objectives, measurable outcomes and outputs, and the adoption and disclosure of performance indicators in ways which enhance public accountability.*

# Appendix 1. NPA logic



## Appendix 2. Assessment against IGAFRR principles

Relevant IGAFRR principle	Criteria	Assessment	
<p>E19 National Partnership <u>project payments</u> support national objectives and provide a financial contribution to the States and Territories to deliver specific projects.</p> <p>National Partnership <u>facilitation payments</u> may be paid in advance of the States and Territories implementing a reform, in recognition of administrative and other costs of undertaking the reform.</p> <p>National Partnership <u>incentive payments</u> will be provided to reward the States and Territories which deliver reform progress or continuous improvement in service delivery.</p>	<p><b>Effective</b> <b>Efficient</b> <b>Appropriate</b></p>		<p>Payment arrangements under the IGAFRR allow for a wide range of payment structures to support reform efforts or incentivise certain behaviours. These payment features were not fully utilised in the NPA. Notwithstanding that, we note:</p> <ul style="list-style-type: none"> <li>Originally, under the 2008 Agreement on Murray-Darling Basin Reform, the Commonwealth agreed that the States would not have to bear the additional net costs arising from implementing the reforms. The NPA (clause 4) replaced that provision and consequently, payments by the Commonwealth to the States are structured as <u>incentive payments</u> (rewards) to be paid on meeting reform milestones. This was agreed by all governments and aligns with the objective of the NPA for the Basin States to implement the water reforms.</li> </ul>
<p>E19 Incentive payments will be structured in a way that encourages the achievement of ambitious milestones or performance benchmarks</p>	<p><b>Effective</b> <b>Efficient</b></p>		<p>The incentive payments were structured as ‘all or nothing’ payments. This provides maximum incentive to achieve all performance milestones, but it also has two adverse effects:</p> <ul style="list-style-type: none"> <li>it can place extraordinary pressure on the assessor and decision-maker as to whether payments should be paid— noting that clause 24 of the NPA allows the Minister to authorise payments where adverse findings are not considered material to that State’s cooperation with reforms. However there may be pressure in marginal circumstances to compromise on assessment of the materiality of achievement of performance milestones.</li> <li>it removes all financial incentive to strive for performance in circumstances where a jurisdiction is clearly not going to achieve an ambitious milestone.</li> </ul>

<p>E19 Graduated benchmarks may be specified in NPAs to provide that States receive some proportion of funding for an activity that has not fully achieved the reform or service delivery objectives but has resulted in partial attainment of the agreed outcomes.</p>	<p><b>Effective</b> <b>Efficient</b> <b>Appropriate</b></p>		<p>The ‘all or nothing’ nature of the reward payments was a significant point of contention with the States. A recommendation of the mid-term review and an ANAO audit was to renegotiate the NPA because it was inadequate for performance management in not allowing for partial payments.</p> <p>We understand that the Department decided it was not efficient to renegotiate the NPA to more tightly define milestones so late in the current NPA; however, any future NPA should contain a better payment structure that is linked to tightly specified and outcomes-focussed milestones.</p>
<p>E19 National Partnerships should set out clear, mutually agreed and ambitious performance benchmarks that can be assessed by the COAG Reform Council. These should be structured in a way that encourages the achievement of ambitious reform targets and continuous improvement in service delivery, and provide better outcomes than would otherwise be expected.</p>	<p><b>Effective</b> <b>Efficient</b> <b>Appropriate</b></p>		<p>The NPA provided that the National Water Commission would assess annual progress against the milestones. The NWC had a role as special adviser to the COAG Reform Council on water reform matters. The NPA was therefore consistent with the IGAFRR. On the abolition of the NWC, the NPA assessment function could have also transferred to an agency not involved in Basin water reform, for example the PC, instead of to the Department. Given the Department’s ongoing role in briefing the Minister, there is a potential conflict in it undertaking assessments, which may reduce the integrity of outcomes. Conversely an independent entity may not sufficiently understand the complexity of the water reform landscape to make sound judgements. Care needs to be taken to ensure both third-party scrutiny and expert judgement are included in the assessment process, enabled by clear responsibilities and well-defined milestones.</p> <p>We also note there is little use of timeframes in the milestones. Poorly specified milestones—in terms of deliverables linked to outcomes and timeframes—may have undermined achievement of some outcomes. For example, long-term watering plans could have been linked to milestones that required consultation and drafts in earlier periods. This would have provided a financial incentive, as well as a strong signal of intent, about early engagement.</p>

<p>D4 Where Commonwealth own-purpose expenses and State own-purpose expenses directly contribute to the objectives, outcomes and outputs of a National Partnership agreement, estimates should be included in that National Partnership, even if it does not involve financial transfers between the Commonwealth and the States, for example in areas of significant policy collaboration</p>	<p><b>Appropriate</b></p>		<p>The NPA could have included total Commonwealth-own and State-own expenditure on implementation of the water reforms. Reporting actual expenditures against forecast expenditures would have increased public transparency of the reforms.</p>
<p>D35 Where the achievement of pre-determined milestones or performance benchmarks is required before a payment is made to a State or Territory: (a) in the case of <u>reward payments</u> that provide an incentive for States and Territories to implement nationally significant reforms or service delivery improvements, and as soon as possible following receipt of a recommendation from the COAG Reform Council as to whether a pre-determined performance benchmark has been achieved the Commonwealth will consider that recommendation and the Commonwealth Treasurer will make a determination as to whether all or part of the reward payment will be paid</p>	<p><b>Efficient Appropriate</b></p>		<p>As the NPA contains only reward payments, after abolition of the NWC the assessment should have been undertaken by a similar independent entity. The IGAFRR does not provide for a role for the Minister in the case of reward payments. This issue should have been identified by the central agencies at the draft NPA stage. However for consideration in future agreements, there are arguments in favour of both internal and external assessment, as identified in E19 above.</p>
<p>E24 National Partnership reward payments would not be paid to a State or Territory until an independent assessment by the COAG Reform Council demonstrates that performance benchmarks have been achieved</p>			
<p>E21 The following principles guide the basis of Commonwealth support for a national reform or service delivery improvement in areas of state or territory responsibility:</p> <ul style="list-style-type: none"> <li>▪ is closely linked to a current or emerging national objective or expenditure priority of the Commonwealth—for example, addressing Indigenous disadvantage and social inclusion;</li> </ul>	<p><b>Appropriate</b></p>		<p>This NPA is an appropriate policy instrument, as measured by the following principles:</p> <ul style="list-style-type: none"> <li>▪ is closely linked to a current or emerging national objective or expenditure priority of the Commonwealth—for example, addressing Indigenous disadvantage and social inclusion;</li> </ul>

- has ‘national public good’ characteristics — where the benefits of the involvement extend nationwide;
- has ‘spill over’ benefits that extend beyond the boundaries of a single State or Territory;
- has a particularly strong impact on aggregate demand or sensitivity to the economic cycle, consistent with the Commonwealth’s macroeconomic management responsibilities; or
- addresses a need for harmonisation of policy between the States and Territories to reduce barriers to the movement of capital and labour.

- has ‘national public good’ characteristics — where the benefits of the involvement extend nationwide;
- has ‘spill over’ benefits that extend beyond the boundaries of a single State or Territory.

We consider that the above principles would continue to be met should the parties wish to enter into a future, similar NPA in respect of MDB water management.

E23 National Partnerships are generally expected to have limited time horizons

**Efficient  
Appropriate**



This NPA is quite long at 7 years. Nevertheless, we consider that reasonable as it covers the period from settling the Basin Plan and SDL adjustment to the final year of implementing the Basin Plan and compliant water resource plans. Any shorter period would have been inconsistent with the objectives and inappropriate.

## Appendix 3. Best practice for NPAs

Extensive documentation on the framework for federal financial relations is provided by COAG and the Council on Federal Financial Relations (CFFR)—a key body established by the COAG to oversee all aspects of the financial relationship between the Commonwealth and the States and Territories. The CFFR is comprised of the Commonwealth Treasurer as Chair and the State and Territory Treasurers.

The framework for the Commonwealth's financial relations with the States and Territories is detailed in the *Intergovernmental Agreement on Federal Financial Relations* and supporting guidelines.

COAG mandates the following principles in the Intergovernmental Agreement:

- The Commonwealth will provide National Partnership payments to the States and Territories to support the delivery of specified projects, to facilitate reforms or to reward those jurisdictions that deliver on national reforms or achieve service delivery improvements (clause E19):
  - National Partnership project payments support national objectives and provide a financial contribution to the States and Territories to deliver specific projects.
  - National Partnership facilitation payments may be paid in advance of the States and Territories implementing a reform, in recognition of administrative and other costs of undertaking the reform.
  - National Partnership incentive payments will be provided to reward the States and Territories which deliver reform progress or continuous improvement in service delivery.
    - These payments will be structured in a way that encourages the achievement of ambitious milestones or performance benchmarks.
    - Graduated benchmarks may be specified in NPAs to provide that States receive some proportion of funding for an activity that has not fully achieved the reform or service delivery objectives but has resulted in partial attainment of the agreed outcomes.
    - National Partnerships should set out clear, mutually agreed and ambitious performance benchmarks that can be assessed by the COAG Reform Council. These should be structured in a way that encourages the achievement of ambitious reform targets and continuous improvement in service delivery, and provide better outcomes than would otherwise be expected.
- Payments classified as Commonwealth own-purpose expenses are the only intergovernmental financial transfers which are not covered by these payment arrangements (clause D3).
- Where Commonwealth own-purpose expenses and State own-purpose expenses directly contribute to the objectives, outcomes and outputs of a National Partnership agreement, estimates should be included in that National Partnership, even if it does not involve financial transfers between the Commonwealth and the States, for example in areas of significant policy collaboration (clause D4).

- Where the achievement of pre-determined milestones or performance benchmarks is required before a payment is made to a State or Territory (clause D35):
  - (a) in the case of reward payments that provide an incentive for States and Territories to implement nationally significant reforms or service delivery improvements, and as soon as possible following receipt of a recommendation from the COAG Reform Council as to whether a pre-determined performance benchmark has been achieved, the Commonwealth will consider that recommendation and the Commonwealth Treasurer will make a determination as to whether all or part of the reward payment will be paid;
  - (e) in the case of facilitation and project payments, the Commonwealth Treasurer will make a determination, based upon funding and performance reporting arrangements set out in the National Partnership and as authorised by the relevant Commonwealth Minister or delegate, as to whether the facilitation or project payment will be paid; and
- The following principles guide the basis of Commonwealth support for a national reform or service delivery improvement in areas of state or territory responsibility (clause E21), where it:
  - is closely linked to a current or emerging national objective or expenditure priority of the Commonwealth — for example, addressing Indigenous disadvantage and social inclusion;
  - has ‘national public good’ characteristics — where the benefits of the involvement extend nationwide;
  - has ‘spill over’ benefits that extend beyond the boundaries of a single State or Territory;
  - has a particularly strong impact on aggregate demand or sensitivity to the economic cycle, consistent with the Commonwealth’s macroeconomic management responsibilities; or
  - addresses a need for harmonisation of policy between the States and Territories to reduce barriers to the movement of capital and labour.
- National Partnerships are generally expected to have limited time horizons (clause E23). On delivery of the particular initiative which is subject to a National Partnership payment:
  - funding would cease because the project, output or reform has been delivered; or
  - where on-going funding is required to maintain a new level of output, such funding may more appropriately be provided through the relevant National SPP Agreement or general revenue assistance.
- National Partnership reward payments would not be paid to a State or Territory until an independent assessment by the COAG Reform Council demonstrates that performance benchmarks have been achieved (clause E24).

In addition, COAG mandates that, to the fullest extent possible, NPAs will be aligned with the following principles (clause E22):

- Objectives, outcomes and outputs:
  - NPAs will detail the mutually agreed objectives, outcomes and outputs being pursued by the Commonwealth and the States and Territories (clause E8).

- NPAs should be clear and specific as far as practicable in terms of outcomes to be achieved (clause E9). National Agreements may also include outputs to describe the services being delivered to achieve outcomes, as a way to broadly define roles and responsibilities, and to capture contributions to outcomes, particularly where outcomes themselves are difficult to measure or isolate.
- Agreed outcomes and outputs should be specific and measurable and related to agreed objectives (clause E10).
- Roles and responsibilities:
  - National Agreements will contain a broad statement on the roles of each government (clause E11), thereby helping to:
    - clarify the responsibilities of each level of government;
    - provide a clear link between roles and responsibilities and public accountability for those agreed roles and responsibilities; and
    - frame shared accountability for outcomes.
  - National Agreements will be explicit as to the roles and responsibilities of the Commonwealth and States and Territories to avoid any unnecessary and costly duplication of functions between different levels of government (clause E12).
- Performance indicators:
  - National Agreements will specify performance indicators to enhance public accountability (clause E13). Performance indicators, in conjunction with clear roles and responsibilities, inform the community about how each government is progressing towards achieving the mutually agreed objectives, outcomes and outputs.

## Appendix 4. Documents reviewed

In total, 171 documents were reviewed. Documents reviewed were from each year of the NPA. The table below lists all documents reviewed under the subfolders into which they were organised. Most documents related to the Department's annual assessments.

### Document review files

#### ***ANAO (and PC reviews)***

ANAO assurance review of NSW protection and use of environmental water in the MDB

ANAO performance audit of NPA monitoring & payment arrangements 2017-2018

Department's response to the ANAO performance audit

Department's response to the ANAO assurance review

Extract from PC inquiry relevant to NPA

#### ***Final Review Terms of Reference***

NSW and Vic comments on ToR for NPA final review

Terms of Reference for the NPA final review

#### ***MDBA Compliance Review and Compact***

Basin-Compliance- Compact-12-December-2018

MDB-Compliance-Review-Final-Report

#### ***NPA mid-term review***

NPA mid-term review - final report August 2017

#### ***NPA, IGA and other key docs***

IGA on Federal Financial Relations

IGA on Implementing Water Reform in the MDB (revised 2015, 2016, 2017 and 2019)

NPA on Implementing Water Reform in the MDB

NPA Schedule B - Variation to the Agreement

Payments to Basin States under the NPA on Implementing Water Reform in the Murray-Darling Basin - 2018 assessment summary

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FFR circular 2015-01 Developing National Partnerships under the FFR framework

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FFR Short guide to reviewing National Partnerships

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FFR's Short guide to the IGA on FFRs and the federal financial relations framework

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### **2012-13**

NSW & Qld Statement of Assurances

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MDBA advice to NWC

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Draft NPA assessment provided to each state for comment

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NPA assessment by NWC

### **2013-14**

ACT, NSW, Qld, SA, Vic Statement of Assurances

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NPA assessment by NWC

### **2014-15**

ACT, NSW, Qld, SA, Vic Statement of Assurances

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Additional information provided by each state to be included in the NPA assessment

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CEWO and MDBA advice on each state's performance

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ACT, NSW, Qld, SA, Vic Draft NPA assessments

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ACT, NSW, Qld, SA, Vic comments on Draft NPA assessment

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Clarification emails from States re their draft assessment

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Final NPA assessment

### **2015-16**

ACT, NSW, Qld, SA, Vic Statement of Assurances

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Additional information provided by each state to be included in the NPA assessment

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CEWO and MDBA advice on each state's performance

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ACT, NSW, Qld, SA, Vic Draft NPA assessments

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Clarification emails from States re their draft assessment

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ACT, NSW, Qld, SA, Vic comments on Draft NPA assessment

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Additional advice provided by MDBA

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Final NPA assessment

### **2016-17**

ACT, NSW, Qld, SA, Vic Statement of Assurances

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Additional information provided by each state to be included in the NPA assessment

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CEWO and MDBA advice on each state's performance

---

ACT, NSW, Qld, SA, Vic Draft NPA assessments

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Clarification emails from States re their draft assessment

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ACT, NSW, Qld, SA, Vic comments on Draft NPA assessment

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ACT, NSW, Qld, SA, Vic 2<sup>nd</sup> Draft NPA assessments

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ACT, NSW, Qld, SA, Vic comments on 2<sup>nd</sup> Draft NPA assessment

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Official letters from each state indicating that information provided is factual

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Official letter from Victoria re the Victorian Farm Modernisation Project

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Additional advice provided by MDBA

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Final NPA assessment

### **2017-18**

ACT, NSW, Qld, SA, Vic Statement of Assurances

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ACT, NSW, Qld, SA 2017-18 Annual report

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Victorian Basin Plan Implementation Highlights for 2017-18

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Official letter from NSW re progress under the NPA

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CEWO and MDBA advice on each state's performance

---

ACT, VIC answers to follow up questions about their Statement of Assurances

---

NSW additional evidence re watering priorities

---

ACT, NSW, Qld, SA, Vic Draft NPA assessments

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ACT, NSW, Qld, SA, Vic comments on Draft NPA assessment

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Clarification emails from States re their draft assessment

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Official letters from each state indicating that information provided is factual

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Additional advice provided by MDBA

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Final NPA assessment

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Summary of Basin States payments

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## Appendix 5. NPA milestones

The performance milestones are outlined below as per Schedule A in the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin:

- **Milestone 1:** For New South Wales, Victoria and South Australia only, the State has provided a brief description of supply measure projects for which feasibility and business cases are being developed for consideration under the SDL adjustment mechanism.
- **Milestone 2:** The State has supported the Commonwealth in Bridging the Gap, as measured by:
  - a. confirmation that no restrictions were introduced on the trade of water access entitlement, except where consistent with the Basin Plan water trading rules; and
  - b. confirmation that no action has been taken to impede Commonwealth measures to acquire water for environmental purposes; and
  - c. confirmation that applications for water entitlement and allocation trades, to which the Commonwealth is a party, were processed consistent with the agreed service standards relating to trade processing times for State approval agencies; and
  - d. specification of entitlements in regulated surface water systems, consistent with clauses 28 to 32 of the National Water Initiative in the timeframe agreed by the IGA, unless where otherwise agreed.
- **Milestone 3:** Following publication of the Constraints Management Strategy by the Authority, confirmation that any actions taken by the state to remove or address constraints are consistent with the measures agreed through the inter-jurisdictional governance procedure for the SDL adjustment mechanism.
- **Milestone 4:** The state has cooperated in arrangements for Basin Plan environmental watering, as measured by:
  - a. except as otherwise agreed by the Commonwealth and the relevant State(s) to facilitate improved environmental watering, confirmation that the characteristics of licensed entitlements held for environmental use have not been enhanced or diminished relative to like entitlements held and used for other purposes; and
  - b. where feasible and agreed by the relevant Basin State, and where associated their party impacts have been considered, confirmation that measures have been implemented to facilitate the use of environmental water by protecting environmental water in-stream and on land through:
    - i. The delivery of held environmental water in-stream through arrangements such as water shepherding to facilitate environmental flows; and
    - ii. Further use of environmental water at multiple locations along the river, such as through return flow provisions; and
  - c. confirmation that the Authority has been provided with annual environmental watering priorities, consistent with the Basin Plan; and
  - d. confirmation that the management and delivery of planned and held environmental water is consistent with the Basin Plan, including:
    - a. the environmental watering plan's *Principles to be applied to environmental watering*; and

- b. that a statement of reasons has been provided to the Authority for any environmental watering undertaken that was not in accordance with the Basin annual environmental watering priorities; and
- e. confirmation that environmental watering in regulated catchments has occurred having regard to the views of local communities and persons materially affected by the management of environmental water; and
- f. 12 months after the Authority has made the Basin-wide Environmental Watering Strategy, or within another timeframe agreed between the Authority and Basin State, confirmation that long-term environmental watering plans for surface water resource plan areas have been developed consistent with the requirements of the Basin Plan.
- **Milestone 5:** For New South Wales, Victoria and South Australia only, the State has provided a brief description of supply measure projects for which feasibility and business cases are being developed for consideration under the SDL adjustment mechanism
- **Milestone 6:** The state has supported the Commonwealth in Bridging the Gap, as measured by:
  - a. after the Basin Plan Trade Rules come into effect, confirmation of the removal of volumetric or other barriers to permanent trade out of water irrigation areas that are inconsistent with the Basin Plan water trading rules; and
  - b. confirmation that no restrictions were introduced on the trade of water access entitlements, except where consistent with the Basin Plan water trading rules; and
  - c. confirmation that no action has been taken to impede Commonwealth measures to acquire water for environmental purposes, except where consistent with the Basin Plan water trading rules; and
  - d. confirmation that applications for water entitlement and allocation trades, to which the Commonwealth is a party, were processed consistent with the agreed service standards relating to trade processing times for State approval agencies; and
  - e. specification of entitlements in regulated surface water systems, consistent with the clauses 28 to 32 of the National Water Initiative in the timeframe agreed in the IGA, unless where otherwise agreed.
- **Milestone 7:** Following publication of the Constraints Management Strategy by the MDBA, confirmation that any actions taken by the state to remove or address constraints are consistent with the measures agreed through the inter-jurisdictional governance procedure for the SDL adjustment mechanism.
- **Milestone 8:** The state has cooperated in arrangements for Basin Plan environmental watering, as measured by:
  - a. except as otherwise agreed between the Commonwealth and relevant State(s) to facilitate improved environmental watering, confirmation that the characteristics of licensed entitlements held for environmental water have not been enhanced or diminished relative to like entitlements held and used for other purposes; and
  - b. where feasible and agreed by the relevant Basin State, and where associated third party impacts have been considered, confirmation that measures have been implemented to facilitate the use of environmental water by protecting environmental water in-stream and on land through:
    - i. the delivery of held environmental water in-stream through arrangements such as water shepherding to facilitate environmental flows; and

- ii. further use of environmental water at multiple locations along the river, such as through return flow provisions; and
- c. confirmation that the Authority has been provided with annual environmental watering priorities, consistent with the Basin Plan; and
- d. confirmation that the management and delivery of planned and held environmental water is consistent with the Basin Plan; including:
  - a. the environmental watering plan's *Principle to be applied to environmental watering*; and
  - b. that a statement of reasons has been provided to the Authority for any environmental watering undertaken that was not in accordance with the Basin annual environmental watering priorities; and
- d. confirmation that environmental watering in regulated catchments has occurred having regard to the views of local communities and persons materially affected by the management of environmental water; and
- f. 12 months after the Authority has made the Basin-wide Environmental Watering Strategy, or within another timeframe agreed between the Authority and Basin State, confirmation that long-term environmental watering plans for surface water resource plan areas have been developed to be consistent with the requirements of the Basin Plan.



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