Environmental Defenders Office

Submission on the Water Legislation Amendment Bill 2022

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Submitted to:

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Acknowledgement of Country

EDO recognises and pays respect to First Nations Peoples. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from First Laws so that together, we can protect our environment and First Nations' cultural heritage through Western law. We recognise that their countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

A Note on Language

We acknowledge that there is a legacy of writing about First Nations without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. Where possible, we have used specific references. More generally, we have chosen to use the term "First Nations". We acknowledge that not all Aboriginal and Torres Strait Islander peoples will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

INTRODUCTION

EDO welcomes the opportunity to comment on the Water Legislation Amendment Bill 2022 (**Bill**).

EDO has consistently argued for improved metering and measurement of extractions, greater transparency with respect to usage and account data and greater protection of environmental flows across all Murray Darling Basin (**MDB**) jurisdictions. A strong metering framework assists with the management of water resources and markets and is critical for an effective compliance system. It also increases trust among water users and the public generally.

EDO acknowledges and commends the Queensland Government's commitment to establishing a regulatory framework that will implement stronger policy measures for measuring the take of non-urban water. These reforms will assist Queensland to meet its obligations under the Murray-Darling Basin Compliance Compact and the National Water Initiative. The reforms will also help Queensland manage its MDB water resources using the best available data and with the advantage of emerging technologies. The adoption of reforms such as these by MDB States are vital to the success of the Basin Plan.

Nevertheless, we have identified several weaknesses of the Bill that we recommend warrant further consideration. In particular, we are concerned that the Bill leaves too much to the regulations, undermining regulatory certainty, compromising the important goal of metering as much water take as is reasonably practicable, and undermining the overall scope for positive impact.

We have also taken this opportunity to highlight several additional matters that we recommend require further consideration and response. In particular we emphasise the important link between the metering framework and the suite of available enforcement mechanisms: for optimum outcomes, the strengthened metering framework must be complemented by a robust enforcement framework. Similarly, we commend to the Committee the merit of establishing an independent regulator to further strengthen the regulatory framework for improved outcomes for users and the environment.

SUMMARY OF RECOMMENDATIONS

We make the following **recommendations** in relation to the Bill:

1. The Water Act 2000 (Qld) (**Water Act**) should mandate measurement requirements for all volumetric licences, subject to limited exemptions which can be established in the regulations. To the extent that staged implementation is necessary, this can be given effect by providing that measurement requirements are "switched on" (e.g. by reference to area and/or licence type) when certain triggers are satisfied.

2. Measurement requirements should apply (preferably by the Water Act, in line with Recommendation 1) a "no meter, no pump" policy, being a metering target of at least 95% of meterable take per water resource area.

3. At a minimum, a "no meter, no pump" policy should be applied in those catchments assessed as high risk through the Department's catchment level risk assessment (i.e. at least 95% of meterable take should be metered in those catchments).

4. The Water Act should mandate that telemetry devices are required for all meters, subject to limited exceptions.

5. The Government should take this opportunity to consider including a power in the Water Act for the regulator to accept enforceable undertakings.

6. The Act should provide the Chief Executive or the Minister with a specific power to issue directions to a landholder to install, use and maintain metering equipment.

7. In relation to public notification of licence amendment applications, draft s 130(3) of the Bill should be deleted (Bill cl 17). Alternatively, if the clause is retained, it should be redrafted so that it:

    a) only applies to amendments of the type identified in draft s 130(1)(b) (namely: proposed amendments "to add, remove or change a condition of [a] licence"); and

    b) expressly states that it does not apply to applications that satisfy one or more of the tests in draft s 130(1)(a)(i)-(iv));[1] and

    c) is only triggered if the Chief Executive is satisfied that the proposed amendment:

        i. *would not* have an adverse impact on an authorisation or entitlement of a person to take or interfere with water under this Act; and

        ii. *could not* have *any impact* on the matters listed in draft s 130(3)(b)(ii)-(iii).

    Before redrafting, they Committee should ensure that First Nations peoples have been provided with a meaningful opportunity to comment on draft s 130(3)(b)(ii).

8. The Government should take this opportunity to amend s 1009 of the Act to require all listed information be made publicly available via the Queensland Government website.

9. The Committee should recommend that the Government prioritise establishing an independent regulator to support rigorous compliance and enforcement activity.[2]

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[1] i.e. if it is likely that the amendment will increase the amount of water that may be taken under the licence, the rate at which water may be taken, change the location of the taking or interference, or increase or change the interference with water under the licence.

[2] We draw the Committee's attention to two recent reports published by the EPA which talk more broadly to the need for and merits of establishing independent environmental protection agencies in Australia, including in Queensland in particular: EDO, *Implementing an effective independent Environmental Protection Agency in Queensland – Best practice environmental governance for environmental justice* (February 2022) (available at https://www.edo.org.au/wp-content/uploads/2022/02/Implementing-an-effective-independent-Environmental-Protection-Agency-in-Queensland.pdf); EDO, *Implementing effective independent Environmental Protection Agencies in Australia – Best practice environmental governance for environmental justice* (January 2022) (available at https://www.edo.org.au/wp-content/uploads/2022/01/Implementing-effective-independent-EPAs-in-Australia-Report.pdf).

KEY ISSUES

Metering & telemetry

Application of measurement requirements (Bill cl 39)

We commend the Bill for seeking to strengthen water measurement requirements.

However, as drafted, measurement requirements will only apply to an authorisation, or a class of authorisations, *if so declared by regulation* (per draft s 217C ("Application of measurement requirements") (Bill cl 39)).

We are concerned that the Bill provides no guarantee that authorisations to take water will ultimately be subject to metering requirements: whether, when, and in what form any measurement requirements are ultimately applied remains a matter of regulatory discretion.

It is notable that this is contradicted by the representations made by the Hon. GJ Butcher, Minister for Water, who, when introducing the Bill to Parliament, stated that "the framework *will* apply to water users who have a *volumetric surface water or underground water entitlement*"[3] (emphasis added). Similarly, the Explanatory Notes to the Bill state that "water entitlements that are subject to a limit on the volume of water than can be taken… (known as volumetric entitlements) *will* be subject to strengthened water measurement requirements" (emphasis added).[4]

EDO appreciates that there is an intention to roll out metering obligations over time. Further, that it may not be practicable to apply measurement requirements to all volumetric licences simultaneously via the primary legislation or the regulations. We also acknowledge the intention to prioritise catchments identified as having the "highest water pressure risk".[5] However, we suggest that this can be accommodated without unduly sacrificing regulatory certainty, particularly given the Minister has clearly stated which water users are intended to be captured by the framework.

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[3] Record of Proceedings, First Session of the Fifty-Seventh Parliament, Wednesday 12 October 2022, p 2607, available at: https://documents.parliament.qld.gov.au/com/SDRIC-F506/WLAB2022-3DAB/Transcript%20-%2024%20October%202022%20-%20SDRIC%20-%20Briefing%20-%20Inquiry%20into%20the%20Water%20Legislation%20Amendment%20Bill%202022.pdf (accessed 17 Nov 2022).

[4] Water Legislation Amendment Bill 2022: Explanatory Notes, p 2, available at: https://documents.parliament.qld.gov.au/bills/2022/3111/Water-Legislation-Amendment-Bill-2022---Explanatory-Notes-a3e7.pdf) (accessed 17 Nov 2022).

[5] Queensland Non-Urban Water Measurement Policy – Implementation Plan, 1 October 2022, available at: https://www.rdmw.qld.gov.au/__data/assets/pdf_file/0004/1645051/qld-non-urban-water-measurement-implement-plan.pdf) (accessed 17 Nov 2022).

For example, the Bill could be drafted with the default position of measurement requirements applying to all authorisations to take water, but also:

(a) provide that metering requirements are only "switched-on" in particular catchments by way of regulations, which are to be made once certain identifiable triggers have been satisfied; and

(b) establish clear and defined exemptions and/or a power for the regulations to incorporate clear and defined exemptions.

We draw the Committee's attention to provisions of the NSW *Water Management Act 2000* (**NSW WMA**). Under the NSW WMA, metering conditions apply *unless regulations state otherwise*. Section 101A(1) of the NSW WMA states:

> "It is a mandatory condition of a water supply work approval[6] that metering equipment is installed, used and properly maintained in connection with the work."

Section 101A(3) of the NSW WMA then provides for the regulations to establish exemptions (by reference to approvals, works, or particular circumstances). The *Water Management (General) Regulation 2018* (NSW) (**WM (Gen) Reg**) currently establishes several exemptions from the "mandatory metering equipment conditions". We note that the WM (Gen) Reg presently prescribes a series of temporary (cl 230)[7] and permanent exemptions (cl 231), as well as exempting inactive water supply works (cl 232). It also empowers the Minister to exempt a holder or a class of holders from the mandatory metering equipment condition (cl 233).[8]

"No meter, no pump"

Any exemptions to mandatory metering requirements should be consistent with a "no meter, no pump" policy.

EDO has long advocated for the implementation of "no meter, no pump" laws across the MDB.[9] Failure to accurately measure all extractions makes it almost impossible to accurately determine if individual extraction limits have been breached and effectively prevents regulators from enforcing licence conditions. Unmeasured extractions also erode community confidence in the government's ability to regulate water take and undermine the social licence of water users.

In November 2017, the *Murray-Darling Basin Water Compliance Review* (**MDB Compliance Review**) expressly recommended that MDB governments "deliver a 'no meter, no pump' policy". The Review acknowledged that in some cases, applying metering requirements would impose undue cost burdens. To balance the benefits of universal metering against undue cost burdens in limited

[6] A water supply work includes pumps, bores, dams, weirs, irrigation channels, banks and levees.
[7] Temporary exemptions are identified by reference to, for example, specific works in particular water management areas, or by reference to licence numbers.
[8] While we do not endorse the scope of the exemptions incorporated by the WM (Gen) Reg, they demonstrate that legislation mandating metering requirement can be appropriately qualified by regulations.
[9] See for example, EDO Submission to the Productivity Commission on the National Water Reform Inquiry (21 August 2020), available at: https://www.edo.org.au/wp-content/uploads/2020/08/EDO-Submission-to-PC-on-NWI-210820.pdf (accessed 17 Nov 2022).

cases, the Review concluded that a metering target of 95% of meterable take per water resource area would be sufficient to qualify as a "no meter no take" policy.[10]

However, the Independent Audit of Queensland Non-Urban Water Measurement and Compliance (March 2018) (**Independent Audit**) did not support a "sweeping no meter, no pump" policy. Instead, the Independent Audit preferred a metering approach "based on catchment risk assessment" by reference to policy triggers that "are designed to identify catchments with high risk associated with the use of water and provide a check that the benefits of metering outweigh the costs."[11]

EDO maintains its support for the widespread implementation of a "no meter, no pump" policy. However, noting the Independent Audit's recommendations, we suggest that Queensland should at least apply a "no meter, no pump" policy in those catchments identified as high-risk through the Department's catchment level risk assessment. This would strike a balance between the Independent Audit's concern about a "sweeping" policy and the elevated importance of regulatory oversight in high risk catchments.

Recommendations:

1. The Water Act 2000 (Qld) (**Water Act**) should mandate measurement requirements for all volumetric licences, subject to limited exemptions which can be established in the regulations. To the extent that staged implementation is necessary, this can be given effect by providing that measurement requirements are "switched on" (e.g. by reference to area and/or licence type) when certain triggers are satisfied.

2. Measurement requirements should apply (preferably by the Water Act, in line with Recommendation 1) a "no meter, no pump" policy, being a metering target of at least 95% of meterable take per water resource area.

3. At a minimum, a "no meter, no pump" policy should be applied in those catchments assessed as high risk through the Department's catchment level risk assessment (i.e. at least 95% of meterable take should be metered in those catchments).

Universal telemetry

The Explanatory Notes to the Bill state that "[i]mproving water measurement and using telemetry are key commitments under the MDB Compact".[12]

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[10] Recommendation 1, pp 17 & 39, available at: https://www.mdba.gov.au/sites/default/files/pubs/MDB-Compliance-Review-Final-Report.pdf (accessed 17 Nov 2022).
[11] Independent Audit of Queensland Non-Urban Water Measurement and Compliance – Final Report, p 57, available at: https://www.mdba.gov.au/sites/default/files/pubs/qld-independent-audit-of-qld-non-urban-water-measurement-and-compliance-2018_2.pdf (accessed 17 Nov 2022).
[12] Water Legislation Amendment Bill 2022: Explanatory Notes, p 13, available at https://documents.parliament.qld.gov.au/bills/2022/3111/Water-Legislation-Amendment-Bill-2022---Explanatory-Notes-a3e7.pdf (accessed 17 Nov 2022).

First and foremost, the most effective means of ensuring that water users are complying with applicable laws is to accurately measure all water take and ensure that this measurement can be independently verified by the regulator in real time using telemetry.[13]

EDO supports proposed amendments to the definition of "measurement device" in s 4 of the Water Act to capture telemetry devices. Beyond this however, the Bill leaves it to the regulations to impose requirements to use telemetry.

Our long-standing position is that:

- telemetry must be applied universally; and
- access to the resulting data must be made available to the community in real time.

We consider universal telemetry to constitute the use of telemetry on all pumps of an appropriate capacity in all areas that have access to transmit data.

The Murray Darling Basin Authority supports the increased use of telemetry across the MDB and notes that the upfront costs can be offset by the reduced ongoing costs of field visits.[14]

We note that in NSW, where telemetry requirements apply to some licences, it is acknowledged that there are some "blackspot" areas where there is no network coverage to enable the operation of telemetry. During the Public Briefing – Inquiry into the Water Legislation Amendment Bill 2022, the Department was asked whether there are areas where there is no communication system in place to enable the use of telemetry. The response given indicated that a thorough telemetry trial had been undertaken and that there were no occasions in that trial where it was not possible to transmit data.[15] Nevertheless, in the event that blackspot areas are identified in Queensland, we note that in NSW licence holders are able to apply for an exemption on the basis of being in a blackspot. This is because the Minister has made an exemption from telemetry requirements under cl 233 of the WM (Gen) Reg (referred to above). Where necessary, a similar approach could be used in Queensland if the regulations contain an equivalent power.

Recommendation:

4. The Water Act should mandate that telemetry devices are required for all meters, subject to limited exceptions.

[13] Telemetry is a system whereby water use data is transmitted automatically from pump meters to the regulator via the telecommunications network.
[14] MDBA, The Murray–Darling Basin Water Compliance Review, 2017, pp. 18.
[15] State Development and Regional Industries Committee, *Public Briefing – Inquiry Into The Water Legislation Amendment Bill 2022, Transcript of Proceedings*, p 8, available at: https://documents.parliament.qld.gov.au/com/SDRIC-F506/WLAB2022-3DAB/Transcript%20-%2024%20October%202022%20-%20SDRIC%20-%20Briefing%20-%20Inquiry%20into%20the%20Water%20Legislation%20Amendment%20Bill%202022.pdf (accessed 17 Nov 2022).

Compliance and enforcement

We note that the primary objective of the Bill is to amend the Water Act to establish a regulatory framework for implementing Queensland's strengthened policy for measuring the take of non-urban water. For optimum regulatory outcomes, the strengthened metering framework must be complemented by a robust enforcement framework.

The MDB Compliance Review recommended in 2017 that Basin States review their legislation and propose necessary amendments to ensure "an appropriate range of administrative, civil and criminal sanctions and penalties"[16] The Review noted for example the following:[17]

- Administrative sanctions have the advantage of being quick to impose and offer effective deterrence in certain circumstances. Options include "stop pumping" and remediation orders (e.g. removing floodplain works) as well as penalties and on-the-spot fines.
- Civil penalty provisions offer the advantage of a lower standard of proof than criminal penalty provisions.
- Civil proceedings might be more appropriate for less severe breaches and, depending on the range of powers available to the relevant court, civil orders can be an effective deterrent. They can also provide more practical outcomes such as injunctions.

The *Regulatory Strategy: Water Resource Management 2022-2024* (Department of Regional Development, Manufacturing and Water) provides a useful overview of the Department's current approach to compliance and enforcement, as well as available mechanisms.[18]

Consistent with the MDB Compliance Review and the primary objective of the Bill, this is an opportunity to strengthen the broader compliance and enforcement provisions of the Water Act.

We note that we have not undertaken a thorough review of the compliance and enforcement framework for the purposes of this submission and recommend that such a review be undertaken.

Enforceable undertakings

Enforceable undertakings are voluntary and court enforceable promises offered by a person to the regulator, following an alleged contravention of the law.[19] They provide a quick and effective method of remedying potentially unlawful conduct without the need for court proceedings. They can also offer solutions that are better tailored to resolving the relevant problem than would court

[16] Recommendation 7, p 22. Available at: https://www.mdba.gov.au/sites/default/files/pubs/MDB-Compliance-Review-Final-Report.pdf (accessed 17 Nov 2022).
[17] MDBA, The Murray–Darling Basin Water Compliance Review, 2017, pp. 49-50.
[18] Available at: https://www.rdmw.qld.gov.au/__data/assets/pdf_file/0011/1630784/regulatory-strategy-wrm-2022-24.pdf (accessed 17 Nov 2022).
[19] For further information see: *Enforceable Undertakings in Action – Report of a Roundtable Discussion with Australian Regulators* (2010), available at: https://law.unimelb.edu.au/__data/assets/pdf_file/0010/1557118/Final_EU_Working_Paper_17_Feb_20101.pdf (accessed 17 Nov 2022).

proceedings. We note that enforceable undertakings are available under the *Environmental Protection Act 1994* (Qld),[20] but not under the Water Act.

Enforceable undertakings were introduced into the NSW WMA in 2018.[21] The NSW Natural Resource Access Regulator (**NRAR**) notes that enforceable undertakings provide scope for innovative outcomes and offer an efficient alternative to costly and lengthy court processes or other enforcement action.[22] NRAR's latest Progress Report indicates that five enforceable undertakings were finalised in the 2021-2022 financial year, including a $425,000 undertaking, $25,000 of which was a donation to Landcare for revegetation works.[23] Enforceable undertakings are also a compliance mechanism available to Commonwealth regulators under the *Water Act 2007* (Cth).[24]

Recommendation:

5. The Government should take this opportunity to consider including a power in the Water Act for the regulator to accept enforceable undertakings.

Specific directions relating to metering requirements

Regulators often face hurdles in obtaining accurate data. Such data is critical to enable appropriate enforcement activity. While the metering framework that is to be implemented by this Bill will go a long way towards providing regulators with the information they need, there may still be instances where suspected unlawful activity is occurring without appropriate metering in place. Accordingly, we recommend that the Act provide the Chief Executive or the Minister with a specific power to issue directions to a landholder to install, use and maintain metering equipment. We draw the Committee's attention to s 326 of the NSW WMA as an example of such a provision

Recommendation:

6. The Act should provide the Chief Executive or the Minister with a specific power to issue directions to a landholder to install, use and maintain metering equipment.

[20] Section 507.
[21] See NSW WMA ss 336E-336F, available at: https://legislation.nsw.gov.au/view/html/inforce/current/act-2000-092 (accessed 17 Nov 2022).
[22] Natural Resources Access Regulator, *Enforceable Undertakings Guideline*, p 1, available at: https://www.nrar.nsw.gov.au/__data/assets/pdf_file/0008/367388/enforceable-undertakings-guideline.pdf (accessed 17 Nov 2022).
[23] Natural Resources Access Regulator, *Progress Report 2021-2022*, pp17-18 available at: https://www.nrar.nsw.gov.au/__data/assets/pdf_file/0019/541234/NRAR-Progress-Report-2022-.pdf (accessed 17 Nov 2022).
[24] See s 163.

Transparency and public participation

Public notification of licence amendment applications

Clause 17 of the Bill proposes to amend s 130 of the Water Act. As currently drafted, s 130 lists circumstances in which a proposed "dealing"[25] for a water licence must be assessed as though it were an application for a new water licence.

Public notification requirements currently apply to such applications: Water Act s 112 (the Bill also proposes some amendments to s 112).

Clause 130(3) proposes to give the Chief Executive a broad discretion not to publicly notify an application for an amendment that would add, remove or change a condition of a water licence. The Chief Executive would not be required to conduct public notification if satisfied that:

- public notification would not be in the public interest; and
- granting the application will not adversely affect:
    - an authorisation or entitlement of a person to take or interfere with water under the Act; and/or
    - the interests of Aboriginal people and Torres Strait Islander and their connection with water resources; and/or
    - a natural ecosystem.

The Explanatory Notes to the Bill suggest that the purpose of this exemption is to acknowledge "that there may be situations where an application for such a dealing would and could not have any third-party impact, for example where the holder seeks to remove a condition requiring something be done by a particular time having satisfied the requirement".[26]

The discretion established by the draft provisions is broader than necessary and ill-suited to achieving the stated purpose. This is particularly so noting that:

- public consultation is itself a key step in identifying potential and unforeseen adverse consequences of an environmental/licensing approval decision;
- there is no requirement for example that the Chief Executive receive and consider the input or advice of a relevantly qualified expert, or even a departmental advisor, before determining not to engage in public consultation;

[25] "Dealing" is defined in s 20, to which the Bill proposes a minor amendment: Bill cl 14.
[26] Water Legislation Amendment Bill 2022: Explanatory Notes, p 17, available at: https://documents.parliament.qld.gov.au/bills/2022/3111/Water-Legislation-Amendment-Bill-2022---Explanatory-Notes-a3e7.pdf) (accessed 17 Nov 2022).

- the test is not that the Chief Executive is satisfied that the amendments "would not and *could not* have *any third party impact*" (emphasis added) – but a lower test that they "will not adversely affect" certain interests, entitlements of matters; and

- what constitutes an "adverse effect" on the matters listed in draft s 130(3)(b)(i)-(iii) is not defined. What for example is an "adverse effect" on another person's entitlement to take or interfere with water? And what is an "adverse effect" on "the interests of Aboriginal people and Torres Strait Islands and their connection with water resources"? In relation to the latter, noting that we do not speak for First Nations peoples, we question the proposition that the Chief Executive is in a position to independently form a valid opinion about this.

We are also concerned that, as drafted:

- the power could be used inappropriately and undermine the benefits of public consultation processes; and

- it would be very difficult to hold the Chief Executive to the intended constraints – it would need to be established that the Chief Executive's state of satisfaction was legally unreasonable, irrational or illogical. This is an onerous test.

Recommendation:

7. In relation to public notification of licence amendment applications, draft s 130(3) of the Bill should be deleted (Bill cl 17). Alternatively, if the clause is retained, it should be redrafted so that it:

    a) only applies to amendments of the type identified in draft s 130(1)(b) (namely: proposed amendments "to add, remove or change a condition of [a] licence"); and

    b) expressly states that it does not apply to applications that satisfy one or more of the tests in draft s 130(1)(a)(i)-(iv));[27] and

    c) is only triggered if the Chief Executive is satisfied that the proposed amendment:

        i. *would not* have an adverse impact on an authorisation or entitlement of a person to take or interfere with water under this Act; and

        ii. *could not* have *any impact* on the matters listed in draft s 130(3)(b)(ii)-(iii).

    Before redrafting, they Committee should ensure that First Nations peoples have been provided with a meaningful opportunity to comment on draft s 130(3)(b)(ii).

[27] i.e. If it is likely that the amendment will increase the amount of water that may be taken under the licence, the rate at which water may be taken, change the location of the taking or interference, or increase or change the interference with water under the licence.

Improving access to information by requiring online publication

We recommend that the Government take this opportunity to amend s 1009 of the Water Act to require the Chief Executive to keep a copy of the listed documents available for inspection by publishing the copy on a Queensland Government website. Although this is currently an option, it is not mandated. Where documents are only available in hard copies at the head and/or regional office(s), this creates an unnecessary barrier and compromises transparency.

Doing so would give effect to Recommendation 6 of the key recommendations contained within the *Independent Audit of Queensland Non-urban Measurement and Compliant – Final Report* (March 2018), being to: "improve transparency by making publicly available online information relating to water resource management, water use and compliance."[28] We commend the Queensland Government for recently making available an online portal allowing access to the public register under the *Environmental Protection Act 1994* (Qld) and suggest that a similar model may be appropriate here.

Recommendation:

8. The Government should take this opportunity to amend s 1009 of the Act to require all listed information be made publicly available via the Queensland Government website.

The need for an independent regulator

Effective compliance and enforcement are best facilitated through an appropriately resourced, independent regulator. Independence supports decision making that is, and is perceived to be, objective, impartial and consistent. Independence means that the bodies responsible for developing policies are separate from those enforcing compliance.

The Committee may be aware of the significant legislative and institutional reforms that took place in NSW following the Four Corners episode *Pumped*, aired in July 2017, and the 2017 Ken Matthews Independent Investigation into NSW Water Management and Compliance. One of the fundamental principles driving the recommendations that came out of the Matthews Review was that decisions about compliance and enforcement should be sufficiently independent of water policy making, water planning and water regulation-making.[29] The NSW Natural Resource Access Regulator (**NRAR**), established in 2017, provides a successful example of the implementation of an independent regulator. NRAR is led by an independent board whose role includes determining whether proceedings for breaches of water legislation should be commenced. The day-to-day running of compliance operations is led by NRAR's chief regulatory officer who is accountable to the board. NRAR is not subject to the control or direction of the relevant Minister, but the Minister can provide written directions on general matters if it is in the public interest to do so.

[28] Independent Audit, p vi.
[29] Independent Investigation into NSW Water Management and Compliance, Interim Report (8 September 2017), p 37, available at: https://www.industry.nsw.gov.au/__data/assets/pdf_file/0016/120193/Matthews-interim-report-nsw-water.pdf.

While NRAR continues to face challenges in achieving effective enforcement outcomes, its effectiveness was recently summed up in the Commonwealth Inspector-General of Water Compliance August 2022 report into compliance and enforcement across the MDB. The Inspector General noted that prior to the establishment of NRAR in 2017, NSW had issued 44 warning letters, 122 advisory notices and commenced zero prosecutions in the previous year. By contrast, in the 2020-21 year, NRAR issued 843 enforcement actions, completed 7 prosecutions, and commenced a further 8 prosecutions.[30] The Inspector General described NRAR as an innovator among Basin state agencies regarding its development and utilisation of different technologies to assist with monitoring compliance.[31]

While the Queensland Government and this Committee are considering reforms to the measurement and metering framework so as to improve compliance and resource management, it is timely to also consider the establishment of an independent regulator.

Recommendation:

9. The Committee should recommend that the Government prioritise establishing an independent regulator to support rigorous compliance and enforcement activity.[32]

[30] Inspector-General of Water Compliance, Compliance and enforcement across the Murray-Darling Basin (August 2022), p 9.
[31] Inspector-General of Water Compliance, Compliance and enforcement across the Murray-Darling Basin (August 2022), p 8.
[32] We draw the Committee's attention to two recent reports published by the EPA which talk more broadly to the need for and merits of establishing independent environmental protection agencies in Australia, including in Queensland in particular: EDO, *Implementing an effective independent Environmental Protection Agency in Queensland – Best practice environmental governance for environmental justice* (February 2022) (available at https://www.edo.org.au/wp-content/uploads/2022/02/Implementing-an-effective-independent-Environmental-Protection-Agency-in-Queensland.pdf); EDO, *Implementing effective independent Environmental Protection Agencies in Australia – Best practice environmental governance for environmental justice* (January 2022) (available at https://www.edo.org.au/wp-content/uploads/2022/01/Implementing-effective-independent-EPAs-in-Australia-Report.pdf).