



Australian Government



COLLABORATION PROTOCOL

for sharing information and
coordinating activities in relation
to Basin Plan compliance

This Protocol is an agreement between

The Murray-Darling Basin Authority
ABN 13 679 821 382 (**MDBA**) of 33 Allara St Canberra,
ACT 2602

and

The Crown in right of the State of New South Wales acting
through the Department of Industry (ABN 72 189 919 072)
located at MLC Centre, 19 Martin Place, Sydney NSW
2000

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Background

1. In June 2018 the Australian Government and Basin States¹ water Ministers signed the Murray-Darling Basin Compliance Compact. The Compliance Compact is a commitment by all Basin governments to strengthen their approach to compliance and build more transparent and accountable systems for regulating water across the Basin.
2. The Compact includes a commitment for the MDBA and Basin States to develop compliance and enforcement protocols to help ensure effective, transparent and efficient outcomes on water theft. In NSW, compliance and enforcement activities are primarily delivered through the Natural Resources Access Regulator (NRAR), who have a separate Memorandum of Understanding (MOU)² with the MDBA.
3. There are limited areas of compliance and enforcement that are delivered through NSW Department of Industry such as compliance with basin plan trade rules, and rules specified in the Water Resource Plans (WRP's).
4. This Protocol outlines the arrangements between the MDBA and **NSW Department of Industry** (the parties) for sharing information and coordinating actions on compliance and enforcement for issues that are the responsibility of NSW Department of Industry or other NSW agencies, but not covered by the MOU between NRAR and the MDBA. It aims to

¹ Basin States' refers to the governments of New South Wales, Queensland, Victoria, South Australia and the Australian Capital Territory.

² <https://www.mdba.gov.au/sites/default/files/pubs/NRAR-MDBA-signed-memorandum-of-understanding.pdf>

promote best practice, improve transparency and provide certainty for the agencies involved, the water users who are being regulated and the general public.

Purpose

5. Building on each agency's compliance frameworks, this Protocol sets out the processes for how the MDBA and **NSW Department of Industry** will work together and share information in relation to:
 - (i) investigating compliance incidents and issues under the Water Act, the Basin Plan and accredited WRP's;
 - (ii) audits of Basin Plan implementation that the MDBA conducts in accordance with section 13.10 of the Basin Plan; and
 - (iii) Assurance reporting conducted under section 9 of the *Basin Plan Implementation Agreement 2013* and the Compliance Compact.
6. This Protocol acknowledges that each jurisdiction must operate in accordance with their own legislation, functions, compliance policies and procedures for regulating water use and implementing the Basin Plan.
7. While the arrangements established under this Protocol are not legally binding, they are agreed to in a spirit of collaboration and good will, and with best endeavours to promote best practice compliance and effective working arrangements between the MDBA and **NSW Department of Industry**.
8. This Protocol also recognises there may be incidents that breach both Commonwealth and State law and the protocol does not limit the right of either jurisdiction to take appropriate compliance and enforcement activities with respect to their own legislation.

Commitments

1.1 Working Together

9. NSW Government manage the State's water resources through the four key agencies detailed below, and Local Councils³. The Department of Industry will coordinate requests for NSW for information covered by this Collaboration Protocol, other than information covered by the MOU between NRAR and the MDBA, to ensure a consistent approach and contact between MDBA and NSW agencies.
 - (i) Department of Industry— Lands and Water
 - Responsible for surface and groundwater management including ensuring water security for NSW

³ Securing our water: NSW Government water reform action plan. Dec 2017. www.industry.nsw.gov.au/water-reform

- Ensures equitable sharing of surface and groundwater resources and that water entitlements and allocations are secure and tradeable
- Manages NSW's water resources through planning, policy and regulation
- Leads NSW negotiations with the Commonwealth, including the MDBA and other jurisdictions

(ii) Natural Resources Access Regulator

- Responsible for compliance and enforcement of NSW water law with powers for investigations and other strategies as part of providing quality regulation
- Determines when to commence prosecutions or uses other enforcement tools in the event of non-compliance
- Other functions include:
 - preparing policies and procedures relating to the enforcement powers under natural resources management legislation
 - advising and reporting to the Minister on matters relating to administration of natural resources management legislation
 - publishing details of convictions in prosecutions
- The NRAR will initially focus on water regulation, but as it matures other prescribed natural resource management areas may be added.

(iii) WaterNSW

- The state's bulk water supplier and operational manager of surface water and groundwater resources
- Develops and operates infrastructure solutions for water supply security and reliability
- Conducts customer-facing functions such as the delivery of water and billing

(iv) Office of Environment & Heritage

- Manages the state's environmental water holdings
- Develop a long-term environmental watering plan as required under the Basin Plan.

10. To help promote efficient and effective working arrangements, the MDBA and **NSW Department of Industry** have nominated primary contact officers for the purposes of sharing compliance information⁴, conducting audits and assessing assurance. The contact details for all contacts are specified in the schedules to this protocol and will be updated as required by each party.

11. The MDBA and **NSW Department of Industry** agree that, wherever practicable and appropriate, they will share compliance information with each other as it relates to:

(i) allegations of non-compliance with the Basin Plan, the Water Act or an accredited WRP; and

(ii) any other compliance or enforcement issues that are relevant to the other party's legislation or functions.

12. When sharing information and otherwise collaborating on compliance, audit and assurance activities, the parties agree to follow the processes, procedures and

⁴ Means information received or prepared by an agency in relation to water related compliance and enforcement activity including investigations, audits and assessments of assurance against the Basin Plan. This will include a report, allegation, complaint or information received from the public or other sources.

timeframes for sharing Compliance Information, conducting audits and assessing assurance as set out in Schedules 2, 3 and 4 respectively.

13. The parties also acknowledge that there are a range of reporting requirements required and agree to work towards streamlining processes.
14. Compliance information shared under this Protocol will be treated as confidential and will not be disclosed or used for purposes other than those set out in this Protocol. Sharing compliance information will also be subject to any confidentiality obligations, relevant legal restrictions and internal arrangements (including those relating to privacy and information security) or conflicts of interest that may exist for either party.
15. There may be times when a matter is identified which constitutes or may constitute an infringement, breach or offence under both legislation administered by the MDBA and legislation administered by the **NSW Department of Industry**. In such cases, the parties will work cooperatively to achieve the most appropriate regulatory outcome. This includes:
 - (i) Considering whether a joint operation is necessary and if so, support and communicate with one another to effectively facilitate the operation;
 - (ii) As soon as practicable after receiving Compliance Information, advising the other in writing whether they will or intend to take compliance or enforcement action; and
 - (iii) If compliance or enforcement action is taken, provide regular written updates on the status of matters.

4.2 MDBA Audits

16. The parties acknowledge that audit is a key tool for the MDBA in encouraging and monitoring compliance with the Basin Plan. The Authority may conduct audits to assess the extent of compliance with the Basin Plan as provided in s13.10 of the Basin Plan. This may include audits relating to Basin Plan accredited WRP's (as per S238 of the Water Act).
17. The MDBA will publish an Audit Work Program setting out priorities for the upcoming year, noting that additional audits may be instigated in response to specific incidents or intelligence reports. The MDBA will consult with Basin States prior to publishing its annual plan each year.
18. Wherever possible, audits will be undertaken in a spirit of collaboration and cooperation. In undertaking audits, the MDBA commits to working with **NSW Department of Industry** as appropriate to develop and agree on the scope and timing of individual audits.
19. Further details about the processes and procedures for working together on MDBA audits is defined Schedule 3.

4.3 Sharing expertise and learnings

20. The parties recognise the value in sharing expertise, capability and learning. As such, wherever possible, they will work collaboratively and inform each other of opportunities

to enhance skills and capabilities relating to compliance, investigation, audit and assurance.

21. The parties may also identify shortfalls in expertise or capability with a view to working collaboratively to build the necessary expertise or capability. This would be subject to resourcing, legal and policy constraints.

Execution page

The parties will use their best endeavours to give effect to this agreement. The Collaboration Protocol does not affect the functions, powers or responsibilities of either party nor does it create any other legal relations between the parties. The Collaboration Protocol becomes operative on the date of signing by both parties.

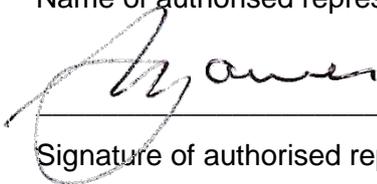
The MDBA and DOI NSW will engage an independent and suitably qualified person to review the efficacy of the Agreement every 2 years from commencement. The review will be provided to the MDBA Board and the NSW Department of Industry and subsequently published along with any response or refinement proposed by the parties.

EXECUTED as an agreement

SIGNED for and on behalf of the Commonwealth of Australia as represented by the **Murray-Darling Basin Authority** as Host Agency by a duly authorised representative

Russell James

Name of authorised representative (print)



Signature of authorised representative

16.4.2019

Date

Tracy Krajevic

Name of witness (print)



Signature of witness

16.4.19

Date

SIGNED SEALED AND DELIVERED for and on behalf of the **NSW Department of Industry** as represented by the State Agency by a duly authorised representative

Rachel Connell

Name of authorised representative (print)



Signature of authorised representative

14 April 2019

Date

Amber O'Hara

Name of witness (print)



Signature of witness

14 April 2019

Date

Schedule 1 – Processes for managing and sharing information on allegations of non-compliance

1. This Schedule sets out agreed timeframes and procedures for the MDBA and **NSW Department of Industry** to follow when sharing Compliance Information, referring allegations of non-compliance and investigating potential and/or actual breaches of Commonwealth and/or state water laws. These arrangements are designed to promote effective, transparent and efficient communication between the parties and to support collaboration in achieving positive compliance outcomes.
2. Both parties agree to have a nominated Compliance Contact Officer for sharing compliance information and referring allegations of non-compliance. All requests for and sharing of Compliance Information relating to possible and/or actual breaches of Commonwealth or State law will be made through the Compliance Contact Officers.
3. Any change to the nominated Compliance Contact Officer for either party will be advised in writing at the earliest opportunity and the details in this schedule will be updated accordingly.
4. The parties agree to share information as soon as practicable, and no later than 14 days after becoming aware of information that may relate to or assist with the investigation of potential and/or actual breaches of Commonwealth and/or state law.
5. When preparing Compliance Information for sharing with the other party, the parties agree to:
 - (i) Prepare the request or sharing of information in a written format and indicate the intended use of the information, advice or assistance;
 - (ii) Provide the other party with the legislative provisions governing the request or disclosure of the information, advice or assistance;
 - (iii) Ensure that any agreed templates are used by both parties when providing/requesting Compliance information;
 - (iv) Acknowledge receipt of the request or sharing of information within 3 days via an email to the Compliance Contact Officer.
6. To commit to transparency, the MDBA has published the [MDBA Protocol for handling allegations of non-compliance](#). This document sets out the escalation pathway the MDBA will follow when sharing information and referring allegations of non-compliance to state agencies. Once the MDBA has referred a compliance matter to **NSW Department of Industry**, it will follow up on progress in accordance with the processes set out in that MDBA protocol.
7. The MDBA and **NSW Department of Industry** will meet as required to discuss progress with compliance matters that have been referred by the MDBA.

Schedule 2 – Processes for conducting MDBA Audits

1. This Schedule sets out agreed arrangements for the planning and conduct of audits by the MDBA in accordance with s13.10 of the Basin Plan.
2. The MDBA's audit policy and practice will be prepared and implemented in line with the Australian Auditing Standards. Audits and investigations may be undertaken as part of the Annual Audit Plan, or they may be instigated in response to a specific incident or intelligence reports. The MDBA will publish audit reports on its website.
3. All requests relating to the conduct of audits will be made through the nominated Audit Contact Officers.
4. The MDBA Audit Program consists of three core elements:
 - (i) **Audit Strategy**: details the anticipated audit and assurance activities to be undertaken by the MDBA across a five-year rolling period.
 - (ii) **Annual Audit Plan**: published between May and June. Builds on the Audit Strategy to demonstrate the coverage, depth and timing of planned audits within a particular water year. May be updated during the year to accommodate any unannounced audits within the year.
 - (iii) **Audit Engagement Plan**: developed for each audit activity identified in the annual audit plan and for any unannounced audit activity that may be conducted. For each audit, the engagement plan outlines the audit objective, scope, approach, and timeframes for completion.
5. The MDBA will consult with **NSW Department of Industry** in developing its the Audit Strategy, Annual Audit Plan and relevant Individual Audit Engagement Plans.
6. Each MDBA audit will follow standard audit procedures, involving:
 - (i) The development of an audit engagement plan.
 - (ii) A process walkthrough.
 - (iii) An assessment of key risks.
 - (iv) Audit testing procedure and associated fieldwork.
 - (v) Initial status report on key matters identified.
 - (vi) Draft and final audit report.

For audits involving matters that are the responsibility of **NSW Department of Industry**, the MDBA will seek comment on the draft engagement plan as appropriate and discuss arrangements for carrying out the audit.

7. The MDBA and the **NSW Department of Industry** will make best endeavours to arrange an entry meeting within two weeks from when the draft engagement plan is first shared, to confirm the features set out in the plan. At that meeting the parties will aim to settle the arrangements for the walkthrough of the **NSW Department of Industry** systems, compliances activities, processes and controls as they relate to the audit topic.
8. The parties will aim to settle any amendments to the draft audit engagement plan within two weeks of the entry meeting. The engagement plan will then be confirmed via signature of the authorised MDBA and State Agency representatives.

9. Where **NSW Department of Industry** is the lead agency for an audit topic within their state, **NSW Department of Industry** agrees to coordinate access to all related state third party agencies required to participate in the audit.
10. **NSW Department of Industry** agrees to provide reasonable access to operational personnel for the purpose of conducting the audit, including the walkthrough, the audit testing procedure and any fieldwork that may be required to complete the audit.
11. The MDBA will provide the draft audit report to the **NSW Department of Industry** for comment. **NSW Department of Industry** will provide comments, feedback and an initial written responses to each recommendation within the detail audit report within three weeks of receiving the audit report. This includes:
 - (i) Any factual errors;
 - (ii) Information on any corrective or improvement measure already taken to address the issues identified; and
 - (iii) The initial response to each recommendation.
12. The MDBA will finalise the audit report after considering the feedback and will provide an embargoed copy to the **NSW Department of Industry** Audit Contact Officer at least two weeks prior to the audit report being published on the MDBA website.
13. The **NSW Department of Industry** will be asked to provide an implementation action plan to the MDBA responding to the audit within four weeks of the published audit report. This will be used by the MDBA to undertake a recommendation implementation review⁵.

⁵ A recommendation implementation review is an evaluation of action plan to ensure recommendations are addressed and implemented in a timely manner.

Schedule 3 - Compliance Assurance Reporting and Verification

1. Under the Basin Plan Implementation Agreement 2013 (BPIA), the MDBA, Basin states and the Commonwealth Environmental Water Holder (CEWH) have agreed to publish annual Statements of Assurance to demonstrate their compliance with and progress in implementing the Basin Plan.
2. The MDBA is responsible for coordinating and verifying BPIA annual Statements of Assurance and other assurance reporting as agreed. This Schedule sets out the arrangements for collating and verifying the annual Statements of Assurance on Basin Plan implementation.
3. All requests regarding annual Statements of Assurance will be made through the nominated Assurance Contact Officers.
4. Each year the MDBA will provide a draft annual Statement of Assurance reporting template to the **NSW Department of Industry** Assurance Contact Officer to review and comment. The **NSW Department of Industry** will complete the Statement of Assurance reports in accordance with the requirements of the BPIA.
5. The MDBA will undertake a risk based approach to verifying the claims and evidence cited by the **NSW Department of Industry** in the annual Statement of Assurance.
6. The **NSW Department of Industry** agrees to provide reasonable access to relevant personnel should the MDBA need clarification of cited evidence or for the provision of additional information.
7. In the circumstance where the MDBA is not satisfied that the evidence cited in the Statement of Assurance supports the claims made by the **NSW Department of Industry**, the MDBA will escalate the matter to the Executive level.
8. The MDBA will prepare an assurance report to publish with the statements provided by Basin states.

SCHEDULE 4: ACCOMPANYING ADVICE

Water Act 2007 - Division 6—Confidentiality

215 Confidentiality

Authority must protect confidential information

- (1) The Authority must take all reasonable measures to protect from unauthorised use or disclosure information:
 - (a) that is confidential information; and
 - (b) that is given to the Authority in, or in connection with, the performance of its functions or the exercise of its powers.

Authorised uses and disclosures

- (2) Disclosing summaries of information or statistics derived from information is authorised use and disclosure of the information provided that information relating to any particular person cannot be found out from those summaries or statistics.
- (3) For the purposes of subsection (1), the disclosure of information as required or permitted by a law of the Commonwealth or a prescribed law of a State is taken to be authorised use and disclosure of the information.
- (4) Disclosing information to either of the following is authorised use and disclosure of the information:
 - (a) the Minister;
 - (b) the Secretary of the Department for the purpose of advising the Minister, or an officer authorised for that purpose.
- (5) For the purposes of subsection (1), the disclosure of information by a person for the purposes of:
 - (a) performing the person's functions as:
 - (i) an Authority member; or
 - (ii) a member of the Authority staff; or
 - (iii) an Authority delegate; or
 - (iv) an authorised officer; or
 - (v) a person who is acting as an Authority member or as a member of the Authority staff; or

(vi) a person who is authorised to perform or exercise a function or power of, or on behalf of, the Authority; or

(b) the performance of functions or services by the person by way of assisting an Authority delegate;

is taken to be authorised use and disclosure of the information.

(6) Regulations made for the purposes of this subsection may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of this section.

(7) Nothing in any of subsections (2), (3), (4) and (5), and in regulations made for the purposes of subsection (6), limits:

(a) anything else in any of those subsections or in those regulations; or

(b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.

Water Act 2007 - Division 3—Information gathering

238 Power to request information

- (1) This section applies to a person if the Authority has reason to believe that information (the **compellable information**) relating to any of the following matters:
- (a) the preparation and implementation of the Basin Plan;
 - (b) the investigation of a possible contravention of a provision of Part 2 or regulations made for the purposes of Part 2;
 - (c) a matter:
 - (i) relevant to the performance of the Authority's functions; and
 - (ii) specified in regulations made for the purposes of this paragraph;

is in the person's possession, custody or control (whether held electronically or in any other form).

- (2) The Authority may, in writing, require the person to give specified compellable information to the Authority:
- (a) within a specified period of time; and
 - (b) in a specified form or manner.

- (3) The person must not fail to comply with a requirement under this section.

Civil penalty: 50 penalty units.

- (4) The person must not, in purported compliance with a requirement under this section, give to the Authority information that is false or misleading in a material particular.

Civil penalty: 60 penalty units.

- (5) Subsection (3) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the information in question is:
- (a) of a commercial nature; or
 - (b) subject to an obligation of confidentiality arising from a commercial relationship; or
 - (c) commercially sensitive.

- (6) Subsection (3) does not apply in relation to compellable information covered by paragraph (1) (b) if giving the information might tend to incriminate the person or expose the person to a penalty.

239 Prohibitions on disclosure of information do not apply

This Division has effect despite any law of the Commonwealth, a State or a Territory prohibiting disclosure of the information.