COLLABORATION PROTOCOL

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

This collaboration protocol is an agreement between

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

and

The Queensland Department of Natural Resources, Mines and Energy of 1 William Street, Brisbane Qld 4000 (DNRME)
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2 BACKGROUND

1. In June 2018 the Australian Government and basin state\(^1\) Water Ministers signed the Murray-Darling Basin Compliance Compact (the compact). The 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 Murray-Darling Basin Authority (MDBA) and basin states to develop compliance and enforcement protocols that ensure effective, transparent and efficient outcomes on water theft (Action 2.3).

3. The protocol is a public document that sets out how allegations of non-compliance by individual water entitlement holders will be coordinated in each basin state. It will also explain how compliance and assurance arrangements will operate before and after basin plan accredited water resource plans (WRPs) are in place.

3 PURPOSE

4. This protocol outlines the arrangements between the MDBA and the Department of Natural Resources, Mines and Energy (DNRME) for sharing information and coordinating actions on water-related compliance and enforcement issues in the Murray-Darling Basin. It aims to promote best practice, improve transparency and provide certainty for the agencies involved, the water users who are being regulated and the general public.

5. Building on each agency’s existing compliance and assurance frameworks, this protocol sets out the processes for how the MDBA and DNRME will work together and share information in relation to:
   a. investigating compliance incidents and issues under the Water Act 2007 (Commonwealth), the basin plan and accredited WRPs
   b. audits of basin plan implementation that the MDBA conducts in accordance with section 13.10 of the basin plan
   c. 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 its own legislation, functions, compliance policies, procedures and frameworks 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 the best endeavours to promote best practice compliance and effective working arrangements between the agencies.

\(^1\) basin states’ refers to the governments of Queensland, New South Wales, Victoria, South Australia and the Australian Capital Territory
8. This protocol also recognises there may be incidents that breach both Commonwealth and state laws, and the protocol does not limit the rights of either jurisdiction to take appropriate compliance and enforcement action with respect to their own legislation.

4 COMMITMENTS

4.1 WORKING TOGETHER

9. The staff of both agencies will be constructive and practical in their dealings and respectful of each other's responsibilities and priorities.

10. Prior consultation will be reached on the nature and content of any events, announcements, promotional material or publicity relating to activities under this protocol and the roles of both agencies will be appropriately acknowledged and recognised.

11. When sharing information and otherwise collaborating on compliance, audit and assurance activities, the agencies agree to follow the processes, procedures and timeframes set out in this protocol and its schedules.

12. To help promote efficient and effective working arrangements, the agencies will nominate primary contact officers for the purposes of sharing compliance information\(^2\), conducting audits and assessing assurance.

13. The agencies agree that, wherever practicable and appropriate, they will share valid and credible compliance information with each other, as it relates to allegations of non-compliance with the basin plan, the Water Act or an accredited WRP, as set out in Schedule 1.

14. The parties also acknowledge that there are a range of reporting requirements and agree to work towards streamlining reporting and information sharing processes.

15. 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 agency.

16. At times a matter may be identified that constitutes or may constitute an infringement, breach or offence under legislation administered by the MDBA and legislation administered by the DNRME. In such cases, the parties will cooperate to achieve the most appropriate

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\(^2\) 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 source.
regulatory outcome. This may include consideration of joint operations where this achieves the most appropriate outcome, and regular communication on progress and outcomes.

4.2 MDBA AUDITS

17. The agencies acknowledge that an audit is a key tool for the MDBA to encourage and monitor compliance and assurance with the basin plan. The MDBA may conduct audits to assess the extent of compliance with the basin plan, as set out in section 13.10 of the basin plan. This may include audits relating to basin plan accredited WRPs.

18. The MDBA will publish an audit strategy and annual audit plan that set out priorities for the coming year, noting that additional audits may be conducted in response to specific incidents or intelligence reports. The MDBA will consult with basin states prior to publishing its annual audit plan.

19. Wherever possible, audits and assurance will be undertaken in a spirit of collaboration and cooperation between basin states. The MDBA will work with DNRME to develop and agree on the scope and timing of individual MDBA audits.

20. Further details about the processes and procedures for working together on MDBA audits will be developed collaboratively and reflected in a future schedule to this protocol.

4.3 SHARING EXPERTISE AND LEARNINGS

21. The agencies recognise the value of sharing expertise, capability and learnings. Wherever possible, the agencies will work collaboratively and inform each other of opportunities to enhance skills and capabilities relating to compliance, investigation, audit and assurance.

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

4.4 LEGAL EFFECT AND REVIEWING THE PROTOCOL

22. This protocol does not affect the functions, powers or responsibilities of either agency, nor does it create or impact other legal relations between the agencies.

23. The agencies will review this protocol within 12 months of its execution.

24. This protocol may be reviewed at any other time as required if the Australian Government or Queensland Government identify any shortfall or conflict that may arise with Commonwealth or state laws.

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3 This should take into consideration section 250B (2) Concurrent operation intended of the Water Act 2007 – if an act of a person is both an offence against the Commonwealth water legislation and an offence against the law of a State; and the person is convicted of either of those offences; the person is not liable to be convicted of the other of those offences.
EXECUTION PAGE

EXECUTED as an agreement
SIGNED SEALED AND DELIVERED 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

Brent Williams
Name of authorised representative (print)

Tracy Kraljieve
Name of witness (print)

Executive Director
Position of authorised representative (print)

Signature of authorised representative

Signature of witness

30/5/19
Date

30/5/19
Date

SIGNED SEALED AND DELIVERED for
and on behalf of the Queensland
Government as represented by the
Department of Natural Resources, Mines
and Energy by a duly authorised
representative

Linda Dowe
Name of authorised representative (print)

Brent Cornford
Name of witness (print)

DEPUTY DIRECTOR GENERAL WATER
Position of authorised representative (print)

MARKETS AND SUPPLY

EXECUTIVE OFFICER

OFFICE OF THE DEPUTY DIRECTOR-GENERAL
WATER MARKETS AND SUPPLY
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**SCHEDULE 1 – PROCESSES FOR MANAGING AND SHARING INFORMATION ON ALLEGATIONS OF NON-COMPLIANCE**

1. This schedule sets out agreed timeframes and procedures for the agencies when sharing compliance information. These arrangements are designed to promote effective, transparent and efficient communication between the agencies and to support collaboration in achieving compliance outcomes.

2. The responsibility for acting on non-compliance will vary depending on the nature of the offence. It is likely that the lead responsibility for the majority of allegations of non-compliance will be DNRME. Where there is an overlap of responsibility or where the MDBA considers that it needs to consider using its powers, the agencies will consult and cooperate to the extent that legislative and privacy requirements allow. Where DNRME or another state agency has lead responsibility for dealing with an allegation of non-compliance, the MDBA will consider using its powers in accordance with the specific level of risk attached to the allegation.

3. Both agencies agree to nominate a compliance contact officer who is responsible for sharing compliance information between the agencies and for referring allegations of non-compliance. The compliance contact officers will manage all requests for and sharing of compliance information relating to possible and/or actual breaches of Commonwealth or state law.

4. The agencies will advise any change to their compliance contact officer in writing at the earliest opportunity and the details in this schedule will be updated accordingly.

5. The agencies agree to share information as soon as practicable, and no later than 14 calendar 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.
6. When preparing compliance information for sharing, the agencies agree to:
   a. provide the information sharing request in writing between the agencies’ compliance
      contact officers
   b. provide the other party with information about details of the intended use of the
      information, advice or assistance and where applicable, the legislative provisions
      governing the request or disclosure of the information, advice or assistance
   c. ensure that any agreed templates are used by both parties when requesting or
      providing the compliance information
   d. acknowledge receipt of the information sharing request within 5 calendar days.

7. In deciding whether to fulfil a request and the extent to which that occurs, the requested
   agency will take into account any other matters specified by the respective jurisdiction’s
   laws, in particular those relating to confidentiality, data protection and privacy, and
   procedural fairness.

8. The agencies may hold meetings, as necessary, to discuss progress with compliance
   matters that have been referred by the MDBA, including an update on investigations
   underway, any issues identified and next steps.

9. The MDBA may at times request information from DNRME in accordance with section 238
   of the Water Act relating to:
   a. the preparation and implementation of the Basin Plan;
   b. the investigation of a possible contravention of a provision of Part 2 of the Water Act
      or regulations made for the purposes of part 2;
   c. a matter:
      i. relevant to the performance of the MDBA’s functions; and
      ii. specified in regulations made for the purposes of this paragraph.

10. When requesting information under section 238 of the Water Act, the MDBA will clearly
    set out how the information is relevant to section 238 of the Water Act.

11. Prior to issuing the notice, the MDBA will consult with the Compliance Contact Officer to
    confirm the correct recipient of the notice.

12. Following receipt of the notice, DNRME agree to advise the MDBA within 3 days of
    receiving the notice whether it has been issued to the correct recipient.

13. DNRME will use best endeavours to respond to the section 238 notice within the
    requested timeframe and if unable to respond within the timeframe, advise the MDBA as
    early as possible, the reasons for the delay.
SCHEDULE 2 – COMPLIANCE ASSURANCE REPORTING AND VERIFICATION

1. Under the Basin Plan Implementation Agreement 2013, the MDBA, basin states and the Commonwealth Environmental Water Holder 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 the annual statements of assurance and other assurance reporting, as agreed.

3. This schedule sets out the arrangements for collating and verifying the annual statements of assurance.

4. Both agencies agree to nominate an assurance contact officer who will manage all requests for annual statements of assurance and provide that information, as requested.

5. The agencies will advise any change to their assurance contact officer in writing at the earliest opportunity and the details in this schedule will be updated accordingly.

6. Each year the MDBA will provide a draft annual statement of assurance template to the DNRME assurance contact officer to review and comment prior to finalising the template.

7. DNRME will complete the annual statement of assurance template in accordance with the requirements of the basin plan and the BPIA.

8. The MDBA will undertake a risk-based approach to verifying the claims and evidence cited in the DNRME annual statement of assurance.

9. DNRME agrees to provide reasonable access to relevant personnel should the MDBA need clarification of evidence included in the statement or to provide additional information.

10. If the MDBA is not satisfied that the evidence in the statement of assurance supports the claims made by DNRME, the MDBA will escalate the matter to its executive level for direction.

11. The MDBA may prepare an assurance report to publish with the statements provided by basin states.
Schedule 3 — ACCOMPANYING LEGISLATION

Water Act 2007 (Commonwealth) excerpt

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.
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.