

MEMORANDUM OF UNDERSTANDING

WATER COMPLIANCE COLLABORATION IN THE MURRAY-DARLING BASIN

CONTENTS

CONTENTS	1
1. PARTIES	2
2. SCOPE, STRUCTURE, OPERATION, LEGAL EFFECT AND INTERPRETATION	2
3. ROLES AND RESPONSIBILITIES	3
4. PURPOSE	4
5. VALUES AND PRINCIPLES	4
6. COMMENCEMENT AND REVIEW	6
7. PUBLICATION	6
8. SIGNATORIES	7

1. PARTIES

- 1.1 The Murray-Darling Basin (the Basin) covers parts of Queensland, New South Wales, Victoria, South Australia and the Australian Capital Territory (collectively, the Basin States).
- 1.2 This Memorandum of Understanding (MoU) is between:
- (a) Inspector-General of Water Compliance
 - (b) Queensland Department of Regional Development, Manufacturing and Water
 - (c) NSW Natural Resources Access Regulator
 - (d) ACT Environment Protection Authority
 - (e) Victoria Department of Environment, Land, Water and Planning, as the representative of relevant Victorian regulators; and
 - (f) South Australia Department for Environment and Water, Water Licencing Branch,
- once signed by relevant representatives in section 8 (collectively, the Parties).

2. SCOPE, STRUCTURE, OPERATION, LEGAL EFFECT AND INTERPRETATION

COVERAGE

- 2.1 This MoU is between the Parties (as water compliance regulators in the Basin) and is intended to be limited to compliance matters within their relevant roles and responsibilities.
- 2.2 This MoU only relates to the geographic area of the Murray-Darling Basin and not to areas outside of the Basin that may also be regulated by the parties.
- 2.3 This MoU may be cited as “the MDB Water Compliance MoU”.

STRUCTURE

- 2.4 This agreement is structured by:
- (a) This substantive head MoU sets out the high level values and principles underpinning relationships between compliance agencies in the Basin, which are unlikely to be subject to frequent change; and
 - (b) Schedules containing details that may be subject to more frequent change.
- 2.5 The schedules:
- (a) May relate to matters of approach, collaboration or procedure
 - (b) Are relevant to all Parties unless otherwise specified in the schedule
 - (c) May be added to or amended by any Party, with the prior written agreement of the Parties to which the schedule relates, under the existing MoU.

OPERATION

- 2.6 This MoU does not affect the legal functions, powers or responsibilities of any of the Parties nor does it create any other legal relations between the Parties.
- 2.7 Nothing in this MoU replaces or extends commitments entered into by relevant governments through intergovernmental agreements, such as the Basin Compliance Compact.

GIVING EFFECT

- 2.8 While recognising this MoU is not legally binding, the Parties will use their best endeavours to give effect to this MoU and commit to providing timely feedback when a Party is unable to act in accordance with this MoU.

INTERPRETATION

- 2.9 Unless otherwise defined in this document, terms used will have the same definitions as those set out in the *Water Act 2007* (Cth) (the Water Act).
- 2.10 References to a Department, an agency or an individual role in the following document extend to their appropriately authorised representatives, delegates and agents.
- 2.11 References to the agencies who are Parties to this MoU extends to relevant agencies responsible for the functions of the identified Parties (for example, where the portfolio arrangements change through a machinery of government process).

DISPUTES

- 2.12 As this MoU is not binding, there is no formal mechanism for resolving disputes. Parties will escalate within their respective organisations and work together to resolve differences in accordance with the principles in this MoU.

3. ROLES AND RESPONSIBILITIES

- 3.1 The Australian Constitution determines the primacy for water management roles and responsibilities. The functions and activities of state and Commonwealth water compliance agencies are complementary and, at times, overlap, albeit under separate regulatory frameworks.
- 3.2 The effective regulation of Basin water resources is underpinned by each relevant government's compliance arrangements so that Basin water resources are managed appropriately, as a whole.
- 3.3 Agency architecture and scope in each jurisdiction is optimised by the relevant government to deliver efficient and effective water compliance in that jurisdiction's context. Consequently, the roles and responsibilities of each water compliance entity vary significantly.
- 3.4 Nothing in this MoU seeks to imply a functional obligation on an agency which does not otherwise exist.
- 3.5 This section of the MoU is provided as a simple starting guide to improve understanding of the relationship between the Inspector-General and other water compliance agencies.

INSPECTOR-GENERAL OF WATER COMPLIANCE

- 3.6 The Inspector-General's functions and powers are detailed in the Water Act and the *Basin Plan 2012* (Cth) (the Basin Plan).
- 3.7 The Inspector-General's functions can be summarised as:
- (a) Enforcing compliance with the Water Act, the Basin Plan and water resource plans (see Water Act s215C(e));
 - (b) Monitoring and independent oversight of Commonwealth and Basin States performance of obligations in the Basin (see Water Act s215C(1)(a) - (c) and 215C(3)); and
 - (c) Engaging with Basin communities on the management of Basin water resources (see Water Act s215C(1)(d)).

- 3.8 The Inspector-General also has an administrative role to lead and facilitate solutions to complex interjurisdictional compliance matters, whilst avoiding unnecessary duplication of regulation for individual water users.
- 3.9 In combination the Inspector-General's functions and powers are intended to:
- (a) Provide independent and Basin-wide information and evidence of compliance;
 - (b) Support the objectives of the Water Act and Basin Plan;
 - (c) Check that responsible parties are doing what is committed and agreed to get the intended outcomes from the Basin Plan;
 - (d) Ensure that everyone in the Basin, from governments and their agencies to water users and others are complying with the Water Act, Basin Plan and water resource plans; and
 - (e) Make available to the public clear Information on how water is managed in the Basin.

BASIN STATE PARTIES

- 3.10 Basin States are responsible for developing water resource plans for accreditation under the Water Act, which include water sharing and management rules for their water resources.
- 3.11 Basin State parties are responsible for regulating water users within their jurisdictions and enforcing compliance with state water management rules, including those that were designed to implement the Basin Plan.

4. PURPOSE

- 4.1 The purpose of this MoU is to achieve a working relationship between the Parties to:
- (a) Deliver a cooperative, and, to the extent appropriate, collaborative approach to compliance with water management rules in the Basin;
 - (b) Support robust, comprehensive and complementary water compliance arrangements across the Basin; and
 - (c) Improve clarity around the Parties' respective roles and responsibilities in water management,
- in support of each Party's statutory functions and powers.

Note: Nothing in this MoU limits the ability of individual Parties to act as agencies or constrains Parties' autonomy, authority or jurisdiction (see clauses 2.6 and 2.7 for the legal effect of this MoU).

5. VALUES AND PRINCIPLES

- 5.1. The parties acknowledge the importance of the following values and principles in dealing with each other and undertaking their roles and responsibilities.

VALUES

- 5.2. The values promoted by this MoU are:
- (a) Integrity;
 - (b) Accountability;
 - (c) Fairness;
 - (d) Respect;

- (e) Trust; and
 - (f) Transparency.
- 5.3. The Parties recognise the importance of these values to collectively support community confidence in regulators and the rules and regulations they administer.
- 5.4. The Parties acknowledge that these values must also underpin interactions between each regulatory agency, to support community confidence in water management across the Basin as a whole.

PRINCIPLES

- 5.5. The core principles in this MoU are to:
- (a) Work cooperatively to uphold water laws across the Basin;
 - (b) Pursue consistent approaches to compliance across levels of government and borders where possible and appropriate;
 - (c) Undertake compliance in a way that is proportionate to the risk being addressed, noting this may range from risks at individual water user scale to risks to water management across the Basin;
 - (d) Make decisions supported by evidence;
 - (e) Be respectful and supportive of each other's roles and responsibilities;
 - (f) Operate professionally, honestly, openly and constructively to build relationships based on mutual respect;
 - (g) Seek opportunities to collaborate, consult and engage with other Parties, as relevant;
 - (h) Pursue efficiency and effectiveness, including by avoiding duplication;
 - (i) Communicate intentions clearly by supporting each other's planning processes for delivering respective responsibilities;
 - (j) Share expertise, experience, skills and knowledge to build regulatory capability and quality;
 - (k) Share information and lessons learned to build a continuous learning culture in water regulation;
 - (l) Provide transparency to enable public scrutiny; and
 - (m) Produce clear, simple and effective communications where possible and appropriate.

WORKING TOGETHER

- 5.6. The above values and principles will inform the schedules giving effect to this MoU.
- 5.7. A list of compliance contact officials who are responsible for implementing the actions identified in this MoU and associated work program will be maintained by the Inspector-General and made available to the Parties.

6. COMMENCEMENT AND REVIEW

- 6.1 This MoU commences in each jurisdiction on the date of signature by the representative of the relevant party (the execution date).
- 6.2 Any Party may withdraw from the MoU at any time by written notice.
- 6.3 The MoU may be ended, reviewed and/ or updated at any time with the agreement of all of the Parties.
- 6.4 The Parties may alter the content of the schedules, with the prior consent of the appropriately authorised officials within an affected agency, without the need for entering into a revised MoU.

7. PUBLICATION

- 7.1 The Office of the Inspector-General of Water Compliance will maintain this MoU, which will be published, along with the schedules, on the Inspector-General's website.

8. SIGNATORIES



Troy Grant
Inspector-General of Water Compliance
Date: 25 August 2022



Grant Barnes
Chief Regulatory Officer
NSW Natural Resources Access Regulator
Date: 12 September 2022

Jarrod Cowley-Grimmond
Executive Director – Divisional Support
Queensland Department of Regional
Development, Manufacturing and Water
Date:

Su Wild-River
Chief Executive Officer
ACT Environment Protection Authority
Date:

Mike Fuller
General Manager, Water Licensing and
Water Management Solutions
Water and River Murray Division
Department for Environment and Water
Date:

Alieta Donald
Executive Director of Water Resource
Strategy Division
Victoria Department of Environment, Land,
Water and Planning
Date:

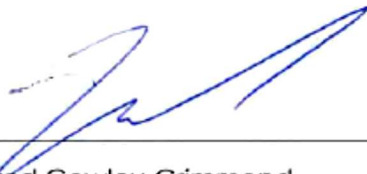


Troy Grant
Inspector-General of Water Compliance
Date: 25 August 2022

Su Wild-River
Chief Executive Officer
ACT Environment Protection Authority
Date:

Grant Barnes
Chief Regulatory Officer
NSW Natural Resources Access Regulator
Date:

Mike Fuller
General Manager, Water Licensing and
Water Management Solutions
Water and River Murray Division
Department for Environment and Water
Date:



Jarrod Cowley-Grimmond
Executive Director – Divisional Support
Queensland Department of Regional
Development, Manufacturing and Water
Date: 12 September 2022

Alieta Donald
Executive Director of Water Resource
Strategy Division
Victoria Department of Environment, Land,
Water and Planning
Date:



Troy Grant
Inspector-General of Water Compliance

Date: 25 August 2022



Su Wild-River
Senior Director
ACT Environment Protection Authority

Date: 8 December 2022

Grant Barnes
Chief Regulatory Officer
NSW Natural Resources Access Regulator

Date:

Mike Fuller
General Manager, Water Licensing and
Water Management Solutions
Water and River Murray Division
Department for Environment and Water

Date:

Jarrod Cowley-Grimmond
Executive Director – Divisional Support
Queensland Department of Regional
Development, Manufacturing and Water

Date:

Alieta Donald
Executive Director of Water Resource
Strategy Division
Victoria Department of Environment, Land,
Water and Planning

Date:



Troy Grant
Inspector-General of Water Compliance
Date: 25 August 2022

Su Wild-River
Chief Executive Officer
ACT Environment Protection Authority
Date:

Grant Barnes
Chief Regulatory Officer
NSW Natural Resources Access Regulator
Date:




Mike Fuller
General Manager, Water Licensing and
Water Management Solutions
Water and River Murray Division
Department for Environment and Water
Date: 10 October 2022

Jarrold Cowley-Grimmond
Executive Director – Divisional Support
Queensland Department of Regional
Development, Manufacturing and Water
Date:

Alieta Donald
Executive Director of Water Resource
Strategy Division
Victoria Department of Environment, Land,
Water and Planning
Date:

8. SIGNATORIES



Troy Grant
Inspector-General of Water Compliance
Date: 18 July 2024



Jesse Rose
Co-Executive Director of Water Resource
Strategy Division
Victoria Department of Energy,
Environment and Climate Action
Date: 16 July 2024

Grant Barnes
Chief Regulatory Officer
NSW Natural Resources Access Regulator
Date:

Mike Fuller
General Manager, Water Licensing and
Water Management Solutions
Water and River Murray Division
Department for Environment and Water
Date:

Jarrod Cowley-Grimmond
Executive Director – Divisional Support
Queensland Department of Regional
Development, Manufacturing and Water
Date:

Su Wild-River
Chief Executive Officer
ACT Environment Protection Authority
Date:

SCHEDULE 1: WORKING TOGETHER

COMMUNICATION AND MEETINGS

- S1.1. The Parties will promote efficient and effective working arrangements, including by, but not limited to:
- a. Maintaining up to date contact information for relevant contact officers nominated by Regulatory Leaders Forum representatives for the purposes of sharing information (including compliance information), conducting audits, and assessing assurance; and
 - b. Prior notice of media, events, announcements, promotional material or publicity, where relevant, possible and appropriate.

HANDLING ALLEGATIONS OF WATER ACCESS RIGHT LEVEL NON-COMPLIANCE

- S1.2. The Parties recognise that responsibilities for addressing potential non-compliance may vary depending on the nature of the offence.
- S1.3. The Parties agree to work together to the extent possible without compromising organisational independence, including by
- a. At a minimum sharing information on allegations of non-compliance in the Basin in accordance with Schedule 2; and
 - b. Determining opportunities to work together where it is practical and mutually beneficial.

WATER THEFT

- S1.4. The Parties recognise and support the role that water take enforcement plays in building trust and confidence in a fair and equitable water management system across the Basin.
- S1.5. The Parties agree to work together to pursue enforcement in an efficient and effective way that does not duplicate the function or activities.
- S1.6. Where duplication of roles exists, the Basin State Parties are to be the primary water management enforcement authorities.
- S1.7. The Inspector-General will enforce water take compliance in support of the Basin Plan outcomes.
- S1.8. The Inspector-General will seek to exercise water take offence provisions under section 73A or 73B of the Water Act in accordance with Part A of Schedule 3 (refer to Schedule 3).

COLLABORATION IN COMPLIANCE STRATEGY AND PLANNING

- S1.9. The Parties support engaging each other on compliance strategy and planning in an effort to facilitate mutually effective outcomes in each parties' respective areas of responsibility, as per the Inspector-General's published Regulatory Policy:
- a. to the extent that it does not hinder or infringe on independence or agency autonomy in pursuing timely and efficient agency compliance priorities and outcomes.
- S1.10. If requested, and if practical and not interfering with the respective independence of the Parties, the Parties agree to support each other's:

- a. Development of annual compliance priorities and/or work plans
- b. Identification of risks of non-compliance; and
- c. Other activities, as relevant.

S1.11. The Inspector-General will consult with the Parties on the Inspector-General's draft work plan allowing adequate time for jurisdictions to respond, and have regard to feedback received, prior to finalisation and publication recognising:

- a. The opportunity to work together to achieve improved compliance outcomes
- b. The opportunity for the Inspector-General to take the lead on cross-jurisdictional compliance matters identified by a state regulator or the Inspector-General, after written engagement between the Inspector-General and the relevant Basin jurisdiction to determine if it is appropriate for the Inspector-General to take the lead on the matter
- c. The need to avoid duplication
- d. The resource impact of the Inspector-General's work plan on State compliance agencies.

SHARING EXPERTISE, CAPACITY BUILDING AND SUPPORTING INNOVATION

S1.12. The Parties recognise the value of sharing expertise, capability and learnings and will, wherever possible:

- a. Inform each other of opportunities to jointly enhance skills and capabilities relating to regulation, investigation, audit and assurance, new technologies and staff training;
- b. Identify opportunities for innovation or shortfalls in expertise or capability with a view to working collaboratively to build the necessary expertise or capability, subject to resourcing, legal and/ or policy constraints; and
- c. Consider opportunities for staff secondments or exchanges, and invitations to observe activities to enable the further development of regulatory capability.

Note: Forums for engaging between jurisdictions are set out in Schedule 4. This MoU is not intended to commit Parties to participating in additional forums.

S1.13. The Parties also recognise the value in working collaboratively to develop and implement effective and complementary tools to support regulatory decision-making (for example, through the development of new monitoring technologies or improved systems).

SCHEDULE 2: SHARING COMPLIANCE INFORMATION

Notes: This schedule does not apply in relation to requests for information for compliance with water resource plan compliance reporting made for the purposes of Schedule 12 of the Basin Plan. All information for that purpose should be provided on the understanding that it will be made public.

Nothing in this MoU limits the Inspector-General's ability to request information in accordance with section 238(1)(b) of the Water Act or to obtain information in the use of powers under section 223 of the Water Act.

Shared information may also be subject to any other relevant legal restrictions (legislative or contractual) and internal arrangements, including those relating to privacy and information security that may apply to the Parties from time to time.

- S2.1. This schedule sets out agreed procedures for the Parties when sharing compliance information relating to allegations of non-compliance.
- S2.2. The purpose of these arrangements is to promote effective and efficient communication between the Parties and to support achieving compliance and enforcement outcomes in the Basin.

Relevant compliance information and intelligence could include, but is not limited to:

- (a) Allegations of non-compliance, complaints or information received from the public or other source;
- (b) Information received or prepared in relation to water-related compliance and enforcement activity (including research, monitoring, risk assessments, investigations, audits and assessments of assurance);
- (c) Water compliance, audit and other compliance reports not published by the report owner; and
- (d) Other intelligence, within the bounds of relevant legislative and privacy requirements.

PART A – INFORMATION AND INTELLIGENCE SHARING

- S2.3. The Parties recognise that there are existing information and data sharing arrangements between water management agencies for varying purposes. Where possible and efficient, existing arrangements will be used in preference to establishing new arrangements to avoid duplication.
- S2.4. To the extent possible, the Parties support a consolidated approach to information requests and reporting with advance notice to allow for information collection in an efficient and effective manner.
- S2.5. Information and intelligence that is relevant to the terms of a request under Part B should be shared at the earliest opportunity in accordance with Part B, unless otherwise prevented.
- S2.6. Parties commit to working together to:
 - a. Provide clarity about legal constraints in relation to sharing information or intelligence;

- b. Establish information or intelligence handling systems or protocols that allow for the optimal sharing of information or intelligence; and
- c. Comply with any requirements in relation to the treatment of information or intelligence shared under this MoU, including relevant information management or sharing plans, if any.

Notes: The purpose of S2.6 is to establish systems and protocols as preconditions for sharing information or intelligence in a way that does not contravene individual jurisdictions' obligations.

Nothing in this MoU is intended to oblige individual Parties to do something or not to do something that would be unlawful.

- S2.7. If any Party receives a request for information under relevant freedom of information legislation that could involve information provided by the other party, the Parties will consult each other on how the information may be treated.

Notes: The purpose of S2.7 is to ensure that relevant parties are aware of sharing of information provided to another party and is not intended to supplement internal processes established to manage freedom of information requests. It is also recognised that it is a matter for the relevant Party, who is the subject of a request for information, to determine how to respond to any request for information received by the Party.

- S2.8. Unauthorised disclosure of information or intelligence in accordance with this MoU will be handled in accordance with Schedule 4.

PART B – REQUESTS FOR AND PROVISION OF INFORMATION AND INTELLIGENCE

Information and intelligence shared citing "This information is provided on a confidential basis in accordance with the MDB Water Compliance MOU":

- (a) Will be treated as confidential information;
- (b) Will not be disclosed or used for purposes other than those set out in the request for information, or as otherwise agreed;
- (c) Will be managed in accordance with:
 - (i) the Australian Privacy Principles set out as a schedule to the *Privacy Act 1988* (Cth); and
 - (ii) any other relevant jurisdictional privacy legislation
- (d) Will be subject to any legislative obligations that apply to confidential information (see for example, section 215U of the Water Act, applicable to the Inspector-General's treatment of confidential information).

- S2.9. The relevant contact officers nominated by Regulatory Leaders Forum representatives for each Party will manage all referrals of, and requests to share information relating to alleged non-compliances with possible and/ or actual breaches of Commonwealth and/ or state law.

- S2.10. Parties will annually review the extent of requests to share information and the associated investment required, to make sure that this requests for information function is being managed appropriately.

- S2.11. Requests for compliance information or intelligence will be made in writing and will include:

- a. Details of the matter being considered, including legislative jurisdiction (specific section of specific legislation) underpinning the request;
 - b. Relevant data and information requirements;
 - c. How the information or intelligence will be used; and
 - d. The timeframe for providing the information or intelligence.
- S2.12. Responses to requests for compliance information or intelligence will be provided back to the relevant contact officers nominated by Regulatory Leaders Forum representatives:
 - a. Within the specified timeframe unless previously otherwise agreed in writing between the relevant agencies;
 - b. Containing all information or intelligence owned by the Party that is able to be provided that is relevant to the request;
 - c. Including relevant notes and caveats to provide jurisdictional context to the information or intelligence; and
 - d. Including relevant security classification of the information (where available).
- S2.13. It is open to Parties receiving a request for information or intelligence to seek assurances from the requesting party about how the information or intelligence will be handled or referred to prior to the disclosure of the information or intelligence. This may include, but is not limited to:
 - a. Restricting who has authority to view the information or intelligence;
 - b. Prescribing information handling requirements (for example, in relation to sensitive water market information); or
 - c. Signing an acknowledgement of responsibility to appropriately handle and store the information or intelligence.

Notes: It is acknowledged by the Parties that if a request for information captures legal advice sought and received by another Party, whether this advice is shared with the requesting Party confidentially is to be determined on a case-by-case basis by the requested Party.
- S2.14. Where the receiving agency is aware of information or intelligence that is relevant to the request for compliance information or intelligence, and that information or intelligence is owned by another agency, the receiving agency will:
 - a. Facilitate the provision of information between the agency owning the information or intelligence and the requesting agency, where possible; or
 - b. Provide relevant contacts for the agency owning the information or intelligence within a timeframe agreed by the Parties after consideration of the request.
- S2.15. Due to differences in legislative frameworks and legal limitations around sharing information or intelligence, Parties will:
 - a. Identify in written detail such limitations around sharing information or intelligence within a timeframe agreed by the Parties after consideration of the request; and

- b. Make all reasonable efforts to share information in a way that does not compromise the receiving agency's legal responsibilities.

Notes: Nothing in S2.14 prevents Parties identifying limitations around sharing information and intelligence after the specified or otherwise agree timeframe.

PROTOCOL: REFERRING ALLEGATIONS FROM THE INSPECTOR GENERAL OF WATER COMPLIANCE (IGWC) TO A BASIN STATE COMPLIANCE JURISDICTION

1. When the IGWC receives an allegation of non-compliance in a Basin State, and the IGWC determines that the Basin State Compliance Jurisdiction (the Jurisdiction) is the appropriate regulatory agency to respond to the allegation, the IGWC will submit referrals to the Basin State Compliance Jurisdiction via email to the nominated email address.

Nominated email address for referral of allegations:

Queensland	RDMWWRMWOS.Corro@rdmw.qld.gov.au
NSW	nrar.enquiries@nrar.nsw.gov.au , and Report suspicious activity NSW Dept of Natural Resources Access Regulator
ACT	environment.protection@act.gov.au
Victoria	water.compliance@deeca.vic.gov.au
SA	DEW.waterlicensingberri@sa.gov.au

2. Once the IGWC is provided with confirmation that the referral has been received by the jurisdiction an IGWC investigator will make contact via email with the jurisdiction's nominated manager to advise that the referral has been made.
3. The jurisdiction's nominated manager will respond to the IGWC via email within a reasonable time to confirm that the referral has been received and advise the IGWC if the allegation has already been received by the jurisdiction and if it is currently under assessment, investigation or finalised.
4. The jurisdiction will advise the IGWC of the proposed next steps within a reasonable time of the completion of the jurisdiction's preliminary assessment. This may include requesting assistance from the IGWC (e.g., water theft).
5. After the jurisdiction decides to finalise a matter that was the subject of an IGWC referral, the jurisdiction will contact the IGWC within a reasonable time to:
 - Advise whether any non-compliance was identified and the basis for it.
 - Advise whether the jurisdiction received and considered any information other than that the IGWC provided (subject to confidentiality and privacy provisions).

- Provide information detailing the nature of any notices or letters issued, other action taken, or if no action is taken the reasons why.
 - Identify whether the jurisdiction made any contact with the person who made the complaint if relevant.
6. The IGWC Director of Audit and Investigations will seek status updates intermittently regarding matters that have been referred via email. This email will include a list of all current matters that have been referred and their reference numbers. The jurisdiction will (subject to potential confidentiality concerns and/or if the matter is progressing towards a criminal prosecution) contact the IGWC to provide specific detail on:
- Whether any non-compliance has been substantiated as a result of their investigation, and the basis for it.
 - Actions that have already been taken – including the nature of any warning letters, infringement notices that have been issued.
 - Whether the jurisdiction has made contact with the complainant (if relevant)
 - Proposed next steps.
 - The estimated timeframe to finalisation

This information may be provided in written form.

7. Where the IGWC needs an immediate or urgent update about the status or progress of an allegation the IGWC has referred to the jurisdiction, for example in response to a parliamentary or ministerial request, the IGWC Director Audit and Investigation will contact the jurisdiction's nominated Manager directly.

SCHEDULE 3: HANDLING CONTRAVENTIONS OF LAWS

- S3.1. This Schedule sets out the approach that Parties will follow where there is a potential contravention of State Law that constitutes an offence under sections 73A or 73B of the Water Act.
- S3.2. All communication (such as requests or notifications) will be sent to relevant regulatory leaders and be copied to relevant contact officers nominated by Regulatory Leaders Forum representatives.

PART A – INSPECTOR-GENERAL'S GENERAL APPROACH TO WATER TAKE OFFENCES

- S3.3. In circumstances where the Inspector-General has authority under the Water Act to enforce a water take offence provision, the Inspector-General will follow the following process:
- a. Prior to determining whether to act in accordance with the authority under the Water Act, the Inspector-General will consult the relevant Party about:
 - i. The nature of its investigations, audits or inspections, if any; and
 - ii. Whether the agency has undertaken or intends to take any enforcement actions; and
 - iii. If the agency has not undertaken any enforcement actions, or does not intend to take any enforcement actions, the reasons the agency did not undertake enforcement actions.
 - b. Basin jurisdictions may make a written submission/response within a timeframe agreed by the Parties to the matters the Inspector-General is consulting on in clause S3.3a. for consideration by the Inspector-General.
 - c. The Inspector-General will generally only use the powers under the Water Act to ensure compliance in areas of overlapping responsibility as a last resort, that is, where a Basin State agency is unable and/or unwilling to act, or where a Basin State has determined no further action to be taken and the Inspector-General comes to a different view based on the implications for the Water Act, Basin Plan and/ or water resource plans where:
 - i. **Unable** means the Basin State agency does not have the legal/policy authority or capacity to act;
 - ii. **Unwilling** means the Basin State agency does not have a reasonable basis and does not act;
 - iii. **No further action determined** means the Basin State agency has taken some preliminary action (i.e. investigative, policy, legal action) and determined that it will not take further enforcement or compliance action in relation to a matter.
 - d. In addition to clause S3.3c. above the Inspector-General will not use the powers under the Water Act where:
 - i. The Basin State agency has sought a pecuniary penalty order against a person for illegal water take; or
 - ii. A compliance matter remains ongoing, unless formally requested by the Basin jurisdiction; or
 - iii. The Inspector-General is satisfied with the Basin State agency's approach to compliance with water take rules, metering requirements and works approvals as relevant to the particular matter.

Note: Nothing in paragraphs (b) or (c) should be taken to constrain the Inspector-General's regulatory powers under the Water Act and Basin Plan.

- e. Where the Inspector-General decides to use powers available under the Water Act (s73a and s73b):
 - i. The Inspector-General will advise the relevant Party at least five business days prior to making any public announcements of this intent as well as the intended enforcement action and the reasons for the Inspector-General's decision; and
 - ii. The Inspector-General will provide the relevant Party with written material and the opportunity for the Party to respond at least 10 business days prior to publication of that material.
- f. Where the Inspector-General has authority under the Water Act to enforce a water take offence provision and a Basin jurisdiction has determined it will take no further action in relation to a matter, the relevant Parties agree to jointly prepare and release public communications to explain why the Inspector-General is taking action and the Basin jurisdiction is not.
- g. The Inspector-General will:
 - i. Have regard to any responses from the Parties in relation to information provided by the Inspector-General in accordance with paragraph (d) before relevant material is published; and
 - ii. Advise the relevant Party of how the Inspector-General had regard to this feedback in determining to enforce the water take offence provisions under the Water Act.

PART B – INSPECTOR-GENERAL'S INVESTIGATIONS INTO A WATER TAKE OFFENCE

- S3.4. This Part clarifies the operation of section 73E of the Water Act (Restrictions on investigation and enforcement of alleged contravention of section 73A or 73B).
- S3.5. In general, the Parties, as relevant, will follow the following process:
 - a. Following the consultation outlined in clause S3.3a. and S3.3b., the Inspector-General will notify the relevant Party or Parties through nominated contact officers prior to issuing a written notice of the intent to investigate or enforce compliance with sections 73A or 73B.
 - b. The Basin State Party or Parties will consult with the Inspector-General about their intended response to the written notice within the specified timeframe unless otherwise agreed in writing by the Parties.
- S3.6. Options open to the Basin State Party or Parties include:
 - a. Providing a written response to the Inspector-General to advise of the actions the Party has or will undertake with respect to the alleged contravention;
 - b. Seeking to collaborate with the Inspector-General with respect to investigating or enforcing a contravention by mutual agreement (a joint investigation); or
 - c. Advising the Inspector-General that the matter will not be actioned by the Party or Parties.
- S3.7. It is also open to a Basin State Party or Parties to withdraw a written response on the actions the Party has or will undertake with respect to the alleged contravention at any time, where:
 - a. The Party or Parties determines not to take further action;

- b. The Party or Parties seeks the agreement of the Inspector-General to a joint investigation; or
 - c. The Party or Parties become aware of new or additional information about the matter that changes their position outlined in an original written response.
- S3.8. Where the Basin State and Inspector-General agree to a joint investigation, the process set out in clause S3.9 will be followed.
- S3.9. Joint investigations process:
 - a. The relevant Party or Parties will:
 - i. Indicate to the Inspector-General in writing that, in relation to the notice issued under S3.5(a), the Party or Parties is seeking to collaborate with the Inspector-General with respect to investigating or enforcing a contravention by way of a joint investigation (in accordance with S3.6(b)); or
 - ii. If a response has previously been given to a notice issued by the Inspector-General under S3.5(a) which does not reflect that the Party or Parties are seeking to undertake a joint-investigation with the Inspector-General, the Party or Parties will indicate in writing to the Inspector-General that the previous response is withdrawn, and the Party/Parties are seeking to collaborate with the Inspector-General via a joint-investigation.
 - b. The relevant Basin State Party or Parties and Inspector-General will enter into an agreement setting out:
 - i. The nature of the investigation;
 - ii. The roles of each of the agencies;
 - iii. The estimated timing and key milestones of the investigation; and
 - iv. Any other thing required by relevant agencies including costs if applicable and appropriate.
 - c. The relevant Basin State Party or Parties and Inspector-General will use best endeavours to conduct the investigation in accordance with the matters specified in the agreement.

SCHEDULE 4: UNAUTHORISED DISCLOSURE OF COMPLIANCE INFORMATION

Note: This schedule does not supersede any legal obligations to protect information or transfer legal liability.

- S4.1. This schedule sets out procedures for the Parties following the unauthorised disclosure of compliance information or intelligence provided to one Party from another Party.
- S4.2. Parties commit to advising the agency that owns or has provided compliance information or intelligence as soon as that Party becomes aware of an unauthorised disclosure of compliance information or intelligence.
- S4.3. Parties commit to working together to manage or mitigate the consequences of unauthorised disclosure which may include, but is not limited to:
 - a. Identifying steps to prevent the further circulation of the relevant information or intelligence;

- b. Investigating the source of the disclosure;
 - c. Investigating the consequences of the disclosure; and/ or
 - d. Implementing arrangements to prevent further unauthorised disclosures.
- S4.4. Parties recognise it is the responsibility of individual agencies to manage any implications for staff associated with unauthorised disclosure of confidential information.

SCHEDULE 5: FORUMS FOR COLLABORATION

Note: Nothing in this schedule prevents parties from collaborating in forums or bilaterally outside of this MoU.

REGULATORY LEADERS FORUM

- S5.1. The Regulatory Leaders Forum is a collaboration body to provide strategic support and coordination between regulatory agencies with water compliance and enforcement responsibilities across the Basin.
- S5.2. The membership of the Forum is the person occupying the senior executive role responsible for compliance in the relevant Basin jurisdiction (or executive-level delegate).
- S5.3. The member of each Party will meet up to four (4) times a year, in a high-level Regulatory Leaders Forum, to talk about the matters covered by this MoU, to identify joint activities, and to provide strategic leadership in strengthening water compliance in the Basin.

AELERT

- S5.4. The Australasian Environmental Law Enforcement and Regulators neTwork (AELERT) plays an important role in securing a sustainable Australasia through the advancement of best practice environmental regulation. As such, the core of AELERT's activities concern facilitating cross-jurisdictional collaboration on mutual regulatory challenges; promoting the development of the regulatory craft; and fostering capacity building across the Network.
- S5.5. The Parties recognise the Water Compliance Community of Practice established through AELERT as the appropriate forum for officers to share information on cross-cutting issues, solve problems, and promote best practice in water compliance policy and operations.

NATIONAL REGULATORS COMMUNITY OF PRACTICE

- S5.6. The National Regulators Community of Practice, established under the Australia and New Zealand School of Government (ANZSOG) primary focus is on inspiring, connecting and building the professionalism of practising regulators.
- S5.7. The Parties recognise the National Regulators Community of Practice as an appropriate forum to develop regulatory capability, where relevant and appropriate.

SCHEDULE 6: DEFINITIONS

Basin	The Murray-Darling Basin
Basin Plan	<i>Basin Plan 2012 (Cth)</i>
Basin State Parties	The Parties to this agreement who are an agency of a Basin State within the definition of the Water Act
Basin States	Queensland, New South Wales, Victoria, South Australia and the Australian Capital Territory
Inspector-General	The Inspector-General of Water Compliance established under section 215B of the Water Act and appointed by the Governor-General of Australia in accordance with section 215J of the Water Act, from time to time
MoU	This Memorandum of Understanding referred to as the MDB Water Compliance MoU
Office	<p>The staff made available to assist the Inspector-General in accordance with section 215S of the Water Act</p> <p>Also referred to as the Office of the Inspector-General of Water Compliance</p>
Parties	More than one Party to this MoU or all the Parties to this MoU, as relevant
Party	A Party to this MoU
Pecuniary order	penalty Non-criminal monetary penalties imposed by a court in civil proceedings that apply the civil standard of proof ("the balance of probabilities")
Water Act	<i>Water Act 2007 (Cth)</i>
Water access right	<p>(a) means any right conferred by or under a law of a State to do either or both of the following:</p> <ul style="list-style-type: none"> (i) to hold water from a water resource; (ii) to take water from a water resource; and <p>(b) without limiting paragraph (a), includes the following rights of the kind referred to in that paragraph:</p> <ul style="list-style-type: none"> (i) stock and domestic rights; (ii) riparian rights; (iii) a water access entitlement; (iv) a water allocation; and <p>(c) includes any other right in relation to the taking or use of water that is prescribed by the regulations for the purposes of this paragraph.</p>
Water resource plans	The water resource plans applying to water resource plan areas that have been accredited by the Commonwealth Minister under section 63 or approved by the Commonwealth Minister under section 69 of the Water Act