

Chapter 4

Compliance and the Murray-Darling Basin Authority

4.1 The investigations into alleged instances of water theft, and the subsequent reviews and reports into water compliance—including this inquiry—have highlighted the vital roles that proper monitoring, regulatory oversight and compliance need to play in order to properly administer and manage the MDB.

4.2 The committee received significant evidence pointing to gaps in the metering systems and compliance structures in a number of Basin states, meant to ensure that water was properly allocated throughout the Basin for both users and the environment.

4.3 Following the serious allegations and concerns that came to light, the MDBA undertook to review its role in water compliance, particularly with regard to its oversight of the actions of Basin states. This chapter considers the findings of the Murray-Darling Water Compliance Review conducted by the MDBA, and the role of the MDBA in compliance more broadly.

MDBA compliance functions

4.4 The compliance and enforcement functions of the MDBA are complex. The enforcement role of the MDBA is primarily in relation to the Basin Plan which does not fully come into effect until 2019. As noted by the MDBA, its regulatory role will increase from July 2019, and if 'instances of unauthorised take constitute action that is inconsistent with a WRP, or leads to an exceedance of an SDL, MDBA may take compliance action'.¹

4.5 In 2016-17, out of a budget of \$44.746 million, the MDBA spent \$1.747 million on compliance-related activities, with 16 staff allocated to these activities. In 2017-18, with a budget of \$40.970 million, \$2.917 million was allocated for compliance-related activities. In 2017-18, 32 staff were dedicated to compliance, which included 14 staff for the Water Compliance Review.²

4.6 While the MDBA holds some powers to investigate breaches of water rules, Mr Phillip Glyde, Chief Executive of the MDBA, said that it did not have the 'breadth of capability that the state governments would have' regarding compliance. He argued that the MDBA was 'quite comfortable with the fact that the New South Wales government and the Queensland government are looking specifically and deeply [at water rule breaches], with their stronger powers in relation to those particular issues'. Further to this, Mr Glyde stated that:

1 Murray-Darling Basin Authority, *Submission 26*, p. 2.

2 Murray-Darling Basin Authority, answers to questions on notice, 27 October 2017 (received 20 December 2017).

The responsibility and the legal power for enforcing water entitlements in a particular jurisdiction rest with that jurisdiction, which is why, when we get allegations, we refer them to authorities in the jurisdictions.³

4.7 The MDBA submitted that:

The MDBA's current role in compliance allegations concerning individual water users is limited. Such a role was never contemplated for the Authority, and it is not resourced to perform this intensive role across the Basin. Rather, it has been assumed that Basin states are enforcing their own laws diligently.⁴

4.8 Mr Glyde stated that the MDBA was generally supportive of the recommendations of the Matthews review, as they related to the MDBA. Mr Glyde advised that the MDBA would develop a comprehensive response that took into consideration the findings of both the Matthews review and MDBA's own compliance review, detailed below.⁵

Murray-Darling Water Compliance Review

4.9 On 5 September 2017, the then Prime Minister and then Deputy Prime Minister announced the Murray-Darling Water Compliance Review (WCR), to be presented to the Murray-Darling Basin Ministerial Council (Ministerial Council). The MDBA was tasked with conducting the WCR, which would 'provide an independent, Basin-wide strategic review into compliance with state- and territory-based regulations governing water use in the Murray-Darling Basin'.⁶

4.10 As part of the WCR, the MDBA examined the:

- appropriateness of and compliance with state laws and statutory instruments such as WRPs;
- adequacy of water measurement and monitoring arrangements, including metering;
- adequacy of penalty arrangements to deter and punish non-compliant water use;
- adequacy of governance and institutional arrangements ensuring legally compliant water use; and

3 Mr Phillip Glyde, Murray-Darling Basin Authority, *Estimates Hansard*, 27 October 2017, pp. 67, 78.

4 Murray-Darling Basin Authority, *Submission 26*, p. 3.

5 Mr Phillip Glyde, Murray-Darling Basin Authority, *Estimates Hansard*, 27 October 2017, p. 56.

6 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 1, <https://www.mdba.gov.au/sites/default/files/pubs/MDB-Compliance-Review-Final-Report.pdf> (accessed 11 January 2018).

- steps required to improve confidence in water compliance and enforcement arrangements.⁷

4.11 In addition, an independent, expert panel would provide advice on the approaches and methodologies used by the MDBA in conducting the WCR. The expert panel would present a separate report to the Ministerial Council, assessing the MDBA report. The expert panel would also examine the compliance and enforcement arrangements of the MDBA, how these interact with Basin state arrangements, and present options for improving the overall effectiveness of the Basin Plan.⁸

4.12 In its submission to the inquiry, DAWR advised that the Australian Government considered the WCR to be an 'appropriate whole of Basin response to the allegations aired by the Four Corners report', which would complement the other investigations already completed or in train.⁹

Findings

State compliance and enforcement

4.13 The WCR found that the Basin states had significant variations in their compliance cultures, resourcing levels, transparency and 'comprehensiveness and clarity of the policy framework'. Via a state-by-state analysis, the WCR determined that South Australia has had a long commitment to a compliance culture, with licensed water take metered since 1994. SA had a well-codified compliance regime, with good transparency and detailed annual reports on compliance activity and outcomes.¹⁰

4.14 In Victoria, compliance was undertaken by regional water authorities. In examining Goulburn Murray Water, the WCR determined that the modern, remote sensed meters in place provided accurate and real-time data, through a networked system. The WCR argued that 'whereas excess take by an entitlement holder pumping from a river might be seen as a victimless crime, in a network system it is a crime against neighbours'. The network system therefore leads to a compliance culture amongst irrigators.¹¹

4.15 However, the WCR suggested that Victoria lacked a full suite of penalties and sanctions for illegal water take, resulting in administrative compliance action reliant

7 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 2.

8 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 1.

9 Department of Agriculture and Water Resources, *Submission 47*, p. 8.

10 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 12.

11 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, pp. 12-13.

on limited penalties and sanctions, or by criminal prosecution requiring a very high standard of proof.¹²

4.16 The WCR noted that compliance in NSW was hindered by the fact that the state had both the greatest number of water licences and volume of water take, and the largest geographic area in the Basin. In addition, there was a 'significant volume' of unregulated water and floodplain harvesting, making it difficult to determine breaches. The WCR found that addressing these issues had been a low priority for NSW for the past 20 years. As a result, the WCR determined that:

The absence of a culture of compliance, organisational instability and limited resourcing have meant that compliance has relied heavily on custom and practice, resulting in a lack of effectiveness, consistency and transparency.¹³

4.17 With regard to Queensland, the WCR noted that the state only adopted a cap on diversions in 2010, and thus had the least experience with compliance. While Queensland was at the time undertaking a significant review of metering, the WCR was of the view that compliance efforts would be hampered by significant floodplain harvesting, as well as 'challenges of distance and an industry with some very large entitlement holders'.¹⁴

4.18 Between the Basin states, the WCR noted a 'striking variation' in enforcement activity. For example, in 2016-17, Victoria issued 562 warning letters and notices, SA issued 355 and NSW issued 44. Across all Basin states there were a very small number of prosecutions, with no prosecutions in 2016-17 in NSW and Queensland, and six in the other states.¹⁵

4.19 The WCR concluded that NSW, Queensland and Victoria had a 'notable lack of transparency', reflecting a closed culture and lack of codification of compliance tasks, thus restricting the ability to publish results. In NSW and Queensland, the WCR stated that compliance was 'bedevilled by patchy metering, the challenges of measuring unmetered take and the lack of real-time, accurate water accounts'. It also determined that NSW and Queensland had low levels of compliance resources, with South Australia more adequately equipped.¹⁶

4.20 The WCR concluded that ineffective compliance systems could be explained by a lack of commitment to compliance by responsible organisations. Additionally,

12 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 13.

13 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 13.

14 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 13.

15 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 13.

16 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 14.

the difficulty in proving water offences constrained enforcement activity. The WCR therefore suggested that the burden of evidence of water breaches be reduced, and the offences simplified, perhaps by way of strict liability offences and the use of technology.¹⁷

Water resource plans

4.21 The WCR noted that full compliance with the Basin Plan could not be achieved until state WRPs were accredited, due for completion by 30 June 2019. However, the WCR acknowledged that progress on the development of state WRPs has not been adequate. While there are 36 WRPs to be developed across the Basin (the majority of which are in NSW), to then be accredited by the MDBA by 30 June 2019, only one WRP has been accredited, in Queensland. The WCR notes particular concern with the progress made by NSW and Victoria, but considers South Australia, Queensland and the ACT better placed to meet the timeframes. The WCR details actions the MDBA would take to help ensure the 30 June 2019 deadline was met by all Basin states.¹⁸

4.22 The WCR called for the ability to manage water flows on an event-by-event basis, rather than on the basis of long-term average use levels, and to protect low flows for downstream communities. To this end, the WCR found that the Barwon-Darling WSP does not adequately protect environmental water, especially during low flows. The Northern Basin Review, completed in late 2016, presented measures to improve the protection of environmental flows in the unregulated rivers of northern NSW.¹⁹

MDBA compliance and enforcement

4.23 The WCR noted that under the Basin Plan, the MDBA had considered water compliance and enforcement a matter for the states. Despite this, the WCR states that:

in the course of the Review, it has been made very clear that the community does not accept this arrangement. Numerous stakeholders have expressed considerable frustration that the MDBA did not respond adequately to allegations of serious breaches. They are looking to the MDBA to take more responsibility for compliance and enforcement.

The MDBA has not given sufficient attention to compliance, has not provided a clear statement of its compliance role, and has not dealt adequately with allegations of compliance breaches. The Review presents a

17 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 14.

18 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, pp. 15, 25.

19 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 15.

program of actions the MDBA will undertake to redress these deficiencies and cement its role in compliance and enforcement.²⁰

Recommendations

4.24 While making a number of recommendations to Basin state governments to improve water management, and detailing the actions the MDBA would take to improve its functions, the WCR recommended that COAG commit to a Basin Compliance Compact. The Compact would commit Basin state governments to 'the actions required to restore public confidence in water management within the Basin'. The Compact would be published by 30 June 2018, with annual progress reports detailing the progress in each state in enacting the WCR recommendations, including:

- implementation of improved water metering and measurement;
- the state's compliance strategy and how the strategy addresses the concerns raised by the WCR;
- the state's compliance activities, including the timeliness of responding to allegations;
- the development of WRPs compliant with the Basin Plan;
- implementation of measures to improve the protection of environmental water; and
- the establishment of a network of water compliance practitioners to promote best practice (coordinated by the MDBA).²¹

4.25 More details on each of these key recommendations made by the WCR are presented below.

Technology

4.26 The WCR called on Basin state governments to implement a metering target of 95 per cent per water resource area for meterable take. Such a target would in effect implement the 'no meter, no pump' rule (as proposed by the Matthews review). It was also argued that this target would avoid placing cost burdens on small entitlement holders, as the metering would apply to those extracting more than 20 megalitres (ML) on average annually. The WCR made recommendations as to the appropriate standards of the meters, how the meters should be installed and audited, and that the pump details and water entitlements be made publicly available.²²

4.27 To further improve the measurement of water take, particularly with regard to floodplain harvesting in the Northern Basin, the WCR recommended that NSW and

20 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, pp. 14-15.

21 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, pp. 27-28.

22 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, pp. 17-18.

Queensland improve the assessment of water taken by floodplain harvesting in their annual accounts, and have accurate measurements of non-metered floodplain harvesting in place by 30 June 2022.

4.28 The MDBA undertook to publish, by 30 June 2018, guidelines for the requirements of hydrometric networks and hydrologic models for compliance and enforcement. From 2018 onwards, the MDBA would also publish an annual report on the 'data quality and assurance processes for hydrometric data for Basin Plan reporting and river operations in the River Murray System'.²³

4.29 To this end, in August 2018 the MDBA released a program report titled 'Model improvement program from MDBA hydrological models'. The report 'outlines components and timeframes for three models used to support Basin Plan implementation'.²⁴

Compliance frameworks

4.30 The WCR made a number of recommendations for Basin states to implement effective compliance regimes. The WCR determined that good governance for water compliance required Basin states to adopt the following elements:

- organisational stability and a strong compliance culture, led 'from the top';
- the clear assignment of responsibilities and accountabilities for decision-making, with transparency and close connections in making compliance decisions;
- compliance functions to be held within one agency, with a separation between enforcement and customer service (as in place in South Australia and Goulburn Murray Water);
- adequate resourcing of and budget allocations to compliance functions, in conjunction with well-trained and knowledgeable staff;
- the publication of compliance risk tools, risk classification of water sources and annual audit priorities (with South Australia at the time the only state publishing its compliance strategy);
- clear escalation pathways for enforcement action against alleged offences, and publication of this pathway (with South Australian at the time the only state publishing its escalation pathway);
- good annual reporting on compliance activity, including numbers, types and locations of breaches, the actions taken, outcomes achieved and the timeliness of each step in the compliance pathway; and

23 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 20.

24 Murray-Darling Basin Authority, *Model improvement program*, 16 August 2018, <https://www.mdba.gov.au/publications/mdba-reports/model-improvement-program> (accessed 12 November 2018).

- provision of clear, simple and publicly available information to entitlement holders so that they understood their rights and obligations and could therefore voluntarily comply with the rules.²⁵

4.31 The WCR recommended that each state review its compliance and governance arrangements, considering the elements listed above, and for each state to publish its compliance strategies. Both tasks were to be completed by 30 June 2018. By 31 March 2018, the MDBA would issue guidelines for the consistent reporting of compliance activities.²⁶

4.32 Given the shared nature of water resources across the Basin, the WCR called for consistency across the states in the penalties and sanctions imposed against water breaches.²⁷ It was also recommended that an appropriate range of administrative, civil and criminal penalties be put in place across all states, so that 'the punishment can match the crime', and to allow compliance resources to be allocated in a way that was proportionate to the offence.²⁸

MDBA compliance

4.33 The WCR acknowledged the strong community and stakeholder concerns that the MDBA's compliance powers were unclear, including the view that the MDBA should more actively enforce compliance with the Basin Plan.²⁹

4.34 The Basin Plan is enacted through state WRPs. The WCR noted that under these arrangements, states have the lead compliance and enforcement function against individual water entitlement holders. It was stated that the 'MDBA is not resourced to take over this role, and it would be inefficient for the MDBA to do so'. However, the WCR continued that:

the MDBA's role is to hold states to account if they are not performing their compliance and enforcement functions effectively. The MDBA accepts that it has not adequately escalated allegations of water theft when the relevant state authorities have not dealt adequately with them. A more assertive and transparent approach to compliance by the MDBA is needed, including a proactive escalation strategy (set out in Attachment B [of the WCR]), an

25 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, pp. 20-21.

26 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, pp. 21-22.

27 As an example of inconsistencies, the WCR stated that the maximum penalty in NSW for illegal take is \$2.2 million for a corporation, with a first offence in Victoria attracting a penalty of \$9,514.

28 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 22.

29 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 23.

audit and assurance program, better public reporting, and a willingness to employ its enforcement powers where necessary.³⁰

4.35 The WCR detailed the actions the MDBA would take to improve its compliance functions. These actions included:

- taking a more proactive approach to compliance and enforcement by adopting a revised proactive escalation strategy;
- revising and publishing the MDBA compliance and enforcement strategy, ensuring its compliance with the Basin Plan. The strategy would include, among other things, a risk-based audit program to check that the obligations of the Basin Plan are being met, including via state compliance arrangements; and
- the establishment of a dedicated compliance and enforcement branch and an independent assurance committee that will provide advice to the MDBA on its enforcement and compliance work.³¹

4.36 The WCR further suggested that to improve implementation of the Basin Plan, the governance arrangements between the Australian Government and state agencies should be improved and streamlined. Improvements would aim to 'better reflect roles and responsibilities so as to ensure that all relevant agencies are engaged on issues for which they have responsibility and avoid duplication', while improving transparency and the integration of decision-making.³²

Environmental water

4.37 The WCR agreed with the assertions made in Four Corners that the rules in the Barwon-Darling system allowed environmental water to be used by irrigators.³³ The WCR called for improvements to the water entitlement system, to provide confidence that water recovered for environmental purposes was used as such. The WCR saw scope for the improved protection of environmental water in the unregulated northern Basin, and in more regulated areas of the southern Basin (such as the Murray and Murrumbidgee rivers).³⁴

4.38 While it was acknowledged that work was underway in NSW and Queensland to better protect environmental water, the WCR recommended that NSW and

30 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 23.

31 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 24.

32 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, pp. 24-25.

33 See also the 'Case Study on Protection of Environmental Flows in the Barwon-Darling, NSW', Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, pp. 69-70.

34 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 26.

Queensland take action to 'immediately introduce Daily Extraction Limits and encourage the development of voluntary agreements to protect low flows (of less than 2000ML/ day at Bourke)'.³⁵

4.39 The WCR recommended that the NSW and Queensland governments revise their WRPs to ensure they include effective policies for the protection of environmental water, particularly during low flows. Such policies should 'include event-based management or other innovative policy tools capable of delivering equivalent environmental outcomes'.³⁶

Independent Panel Report – Murray-Darling Basin Water Compliance Review

4.40 The independent panel reviewing the MDBA's WCR also made a number of findings and recommendations regarding compliance and enforcement, in addition to those recommendations and actions presented by the WCR (which the panel fully supported).

4.41 The independent panel found that it was difficult to understand the progress of Basin Plan implementation, given the variety of reports between the MDBA, the CEWH and the Basin states. Nevertheless, the panel found that insufficient progress had been made in the accreditation of WRPs and in the protection of environmental water. It further contended that while the MDBA had a central leadership and coordinating role:

it has been unable to assert its authority during the development of water resource plans and transition to SDLs; the Australian Government Department of Agriculture and Water Resources (DAWR) and the Basin Officials Committee (BOC) also have important roles which are not being effectively discharged. The Panel notes an underlying lack of acceptance that the Water Act has fundamentally changed roles and responsibilities for management of Basin water resources: it is not business as usual.³⁷

4.42 The independent panel made a number of recommendations relating to accountability, including, among other things, that:

- the MDBA revise and clearly communicate its compliance and enforcement arrangements, provide advice on how it will assess compliance and report publicly, while providing clear guidance on the reporting obligations of all stakeholders, and
- COAG endorse amendments to the Water Act with regard to the appointment of members to the MDBA. Those appointed should have a 'high level of expertise, and be widely recognised as having high standing in, one or more

35 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 26.

36 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 27.

37 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 100.

fields relevant to the Authority's functions', with members collectively having experience across the necessary variety of fields.³⁸

4.43 In finding that Basin states should continue to be responsible for water law enforcement, the independent panel also found that clarity was needed as to when the MDBA would act in instances of illegal take, and WRPs were needed to help provide this clarity on MDBA action. The panel recommended that COAG endorse amendments to the Water Act that would provide a 'more comprehensive suite of sanctions and powers, such as appropriate evidentiary provisions and criminal sanctions'.³⁹

4.44 The independent panel supported the WCR's calls for improved water measurement and monitoring. It made the additional recommendations that the Minister call on DAWR to take a more active role, given the significance of WRPs to the administration of the Water Act. Further, the MDBA should work with the states and the Bureau of Meteorology to improve environmental water management via a review of the hydrometric network.⁴⁰

4.45 In relation to environmental water, the panel considered that there was a 'concerning systemic failure to protect low flows in unregulated rivers in the northern Basin', and that the water take rules in NSW had contributed to the loss of low flows in unregulated rivers. The independent panel also argued that held environmental water was not properly protected from take. To address this, the panel recommended that the MDBA ensure accredited WRPs include policies for the protection of environmental water, particularly low flows in the northern Basin.⁴¹

4.46 In concluding, the independent panel stressed that the review and subsequent report of the WCR was both valuable and essential. Without the WCR, the panel considered that the Basin Plan could have been placed in 'real jeopardy', due to lack of action by the MDBA and the failure of Basin states to deliver on their commitments.⁴²

Independent Assurance Committee

4.47 On 12 February 2018, the MDBA announced the appointment of members to an Independent Assurance Committee (IAC), established to provide 'expert advice on the design, implementation and adequacy of the MDBA's Basin Plan compliance

38 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 101.

39 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 102.

40 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 103.

41 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, pp. 103-104.

42 Murray-Darling Basin Authority, *The Murray-Darling Basin Water Compliance Review*, November 2017, p. 104.

program'. The establishment of the IAC was a result of the WCR and aims to ensure the MDBA 'fully and proactively' executes its compliance functions.⁴³

4.48 Mr Glyde advised that the IAC would:

provide advice – which will be publicly available – on the MDBA's compliance strategy and approach, program design and agency capability.

[The IAC] will help [the MDBA] to ensure adequate attention is given to high risk areas for Basin Plan implementation, including state and MDBA compliance arrangements and reporting, state water resource plans and improved management of environmental water.⁴⁴

4.49 The IAC consists of four independent experts with knowledge in various relevant fields. As part of its annual work program, in 2018 the IAC was expected to implement MDBA actions resulting from the WCR, provide advice on the Compact, and progress with Commonwealth accreditation of Basin state WRPs and the protection of environmental water.⁴⁵

MDBA compliance action since the WCR

4.50 Since the completion of the WCR, the MDBA and the Ministerial Council have taken steps to implement the recommendations of that review. The MDBA has established an Office of Compliance to provide a 'focal point within the MDBA to improve water compliance in line with the Basin Plan'.⁴⁶

4.51 The MDBA has further developed an online register, detailing how it has handled allegations of non-compliance that have been reported to it. The MDBA has adopted a compliance escalation pathway, to be followed when handling non-compliance allegations.⁴⁷

4.52 In June 2018, the MDBA published its 'Compliance and enforcement policy 2018-21', detailing the MDBA's approach to compliance and enforcement under the Water Act and Basin Plan. The policy outlines the seven compliance areas of the MDBA, being:

43 Murray-Darling Basin Authority, *Independent Assurance Committee to strengthen Basin-wide compliance*, 12 February 2018, <https://www.mdba.gov.au/media/mr/independent-assurance-committee-strengthen-basin-wide-compliance> (accessed 13 February 2018).

44 Murray-Darling Basin Authority, *Independent Assurance Committee to strengthen Basin-wide compliance*, 12 February 2018.

45 Murray-Darling Basin Authority, *Compliance and enforcement: Compliance Independent Assurance Committee*, <https://www.mdba.gov.au/basin-plan-roll-out/compliance-enforcement/compliance-independent-assurance-committee> (accessed 13 February 2018).

46 Murray-Darling Basin Authority, *Action on Compliance Review*, <https://www.mdba.gov.au/basin-plan-roll-out/basin-wide-compliance-review/action-compliance-review> (accessed 13 February 2018).

47 Murray-Darling Basin Authority, *Action on Compliance Review*, <https://www.mdba.gov.au/basin-plan-roll-out/basin-wide-compliance-review/action-compliance-review> (accessed 13 February 2018).

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- WRPs and ensuring state water laws remain consistent with accredited WRPs;
 - SDLs, including continual improvement to measuring consumptive use;
 - compliance and enforcement in relation to illegal take;
 - improving water metering and measuring of water take (including the use of remote sensing and emerging technologies);
 - planning and protection of environmental water;
 - water trade; and
 - water quality and salinity.⁴⁸

Basin Compliance Compact

4.53 At a meeting of the Ministerial Council on 19 December 2017, Basin state water ministers acknowledged that confidence in the governance of the MDB had been eroded by the allegations of water theft and inadequate enforcement of the rules. The Council committed to 'prompt and effective responses to the reviews that had been conducted to date, and to those still underway'.⁴⁹

4.54 To that end, the ministers agreed to appoint an independent person to examine and collate the findings and recommendations of the various compliance reviews, to provide the Council with advice on implementation. The Council further determined that Basin officials would establish a draft Basin Compliance Compact (Compact), as recommended by the WCR. The draft Compact would:

detail a compliance implementation framework, including specific plans for improving compliance and enforcement activities for each Basin jurisdiction and for the MDBA, and transparent reporting and accountability arrangements on progress.⁵⁰

4.55 The MDBA supported the appointment of an independent person to assist with implementation of the compliance review recommendations. The MDBA also noted that the Compact had been recommended by the WCR, and thus supported its development. Mr Glyde of the MDBA observed that given the numerous reviews completed and ongoing, a 'well-coordinated response and plan of action will be

48 Murray-Darling Basin Authority, *Compliance and enforcement policy 2018-21*, June 2018, pp. 5-6, <https://www.mdba.gov.au/sites/default/files/pubs/MDBA-Compliance-and-enforcement-policy-2018.pdf> (accessed 12 November 2018).

49 Murray-Darling Basin Authority, *Communique: Murray-Darling Basin Ministers meet in Albury*, 19 December 2017, <https://www.mdba.gov.au/media/mr/communique-murray-darling-basin-ministers-meet-albury> (accessed 13 February 2018).

50 Murray-Darling Basin Authority, *Communique: Murray-Darling Basin Ministers meet in Albury*, 19 December 2017.

essential to give proper effect to the numerous recommendations resulting from the reviews'.⁵¹

4.56 The draft Compact was agreed to by the Ministerial Council, at its meeting on 8 June 2018, but is yet to be endorsed by COAG. The Compact addresses and responds to the WCR, the interim and final reports of the Matthews review, and the independent audit of Queensland water measurement and compliance, completed in March 2018. The Compact commits the Basin states—within set timeframes—to 'building improved compliance and enforcement practices into their 'business as usual' management of Basin water resources', with a focus on five key themes:

- transparency and accountability;
- compliance and enforcement frameworks;
- metering and measurement;
- finalising water resource plans, and
- protecting and managing environmental water.⁵²

4.57 Importantly, the Compact commits Basin states to effective water metering, and notes that all water meters should comply with the national standard (AS4747), by no later than June 2025. Additionally, Basin states would be required to meter all take via water entitlements (however defined by each jurisdiction) by June 2025, and introduce a program, no later than 2025, to progressively automate the reporting of water take. The Compact specifically notes that for higher risk take, 'including large users in the Barwon-Darling', that the take be accurately metered and telemetered by December 2019.⁵³

4.58 The Basin states, as parties to the Compact, agreed to the adoption of 'consistent approaches for compliance arrangements and practices across the Basin' which would be supported by a 'network of compliance practitioners, who will share knowledge and experience'.⁵⁴

4.59 The Compact further notes that:

telemetry should be utilised to improve the timeliness and efficiency of capturing and reporting water take data for compliance, and flag possible breaches of water management rules for immediate investigation.

However, currently there are insufficient meters that meet the standard to suit every metering situation, and telemetry may not be cost effective for some water users. A risk-based approach will initially be taken, with the

51 Murray-Darling Basin Authority, *MDBA welcomes Basin ministers' shared commitment to compliance*, 21 December 2017, <https://www.mdba.gov.au/media/mr/mdba-welcomes-basin-ministers%E2%80%99-shared-commitment-compliance> (accessed 13 February 2018).

52 Murray-Darling Basin Compliance Compact, 8 June 2018, pp. 2-8, https://www.mdba.gov.au/sites/default/files/pubs/Basin-Compliance-Compact_0.pdf (accessed 1 November 2018).

53 Murray-Darling Basin Compliance Compact, 8 June 2018, pp. 5-6.

54 Murray-Darling Basin Compliance Compact, 8 June 2018, p. 2.

ultimate aim of achieving comprehensive coverage of compliant meters and telemetry across the Basin.⁵⁵

55 Murray-Darling Basin Compliance Compact, 8 June 2018, p. 5.

