

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE MURRAY-DARLING BASIN AUTHORITY (MDBA) AND  
THE NSW NATURAL RESOURCES ACCESS REGULATOR (NRAR)**

**1. PURPOSE**

The purpose of this Memorandum is to improve public confidence in water management arrangements through a strong and cooperative approach to compliance with, and enforcement of, water management rules in the NSW Murray-Darling Basin.

This will be achieved through building an effective working relationship between the parties in discharging their respective roles and responsibilities, including:

- sharing of information and intelligence
- protocols for managing allegations of non-compliance and conducting joint investigations
- a commitment to continuous improvement, for example through the development of new monitoring technologies, improved systems or advocating for better laws
- enhancing the capability and capacity of our staff
- effective reporting of our activities.

**2. ROLES**

The NRAR was established in 2017 under the *Natural Resources Access Regulator Act 2017* (NSW) as an independent regulatory agency responsible for compliance and enforcement of NSW natural resource management laws. The NRAR has powers for compliance and enforcement under the *NSW Water Management Act 2000* and *NSW Water Act 1912*. The principle objectives of the NRAR are:

- To ensure effective, efficient, transparent and accountable compliance and enforcement measures for the natural resources management legislation, and
- To maintain public confidence in the enforcement of the natural resources management legislation.

The MDBA was established in 2008 under the *Water Act 2007* (Cth) as a statutory authority responsible for developing and ensuring compliance with a whole of Basin Plan intended to achieve the sustainable management of Basin water resources. The MDBA is the enforcement agency for contraventions of the Water Act related to the management of Basin water resources and information gathering. Its enforcement powers apply to state agencies, irrigation infrastructure operators and holders of water access rights.

**3. WORKING TOGETHER**

The staff of both agencies will work together to effectively implement and regulate water management laws in NSW, including the Basin Plan. We will be constructive, practical and transparent in our dealings, and respectful of each others distinct roles and responsibilities. We will actively seek opportunities to collaborate and share resources and information to achieve the purpose of this Memorandum.

**4. HANDLING ALLEGATIONS OF NON-COMPLIANCE**

The responsibility for addressing potential non-compliance will vary depending on the nature of the offence. For example, water theft is primarily a responsibility of NRAR. A breach of the trade rules is likely to be an MDBA responsibility.

It is likely that handling the majority of allegations of non-compliance in NSW will be the lead responsibility of the NRAR. Where there is an overlap in responsibility, or where the MDBA considers that it needs to consider using its powers, the NRAR and MDBA will consult and cooperate to the extent that legislative and privacy requirements allow.

Where the NRAR or another state agency has lead responsibility for dealing with an allegation of non-compliance, it is the MDBA's intention to only consider using its powers as a last resort.

From time to time, both parties receive allegations of non-compliance in NSW. The NRAR and the MDBA have developed a protocol ( see Schedule 1) for handling such allegations, including identifying the lead agency, how matters are to be reported and published to assure the public that matters are being treated seriously, and expected timeframes for resolving matters.

The protocol also establishes the principles for joint investigations on particular matters if this is likely to assist in an effective compliance outcome.

## **5. INFORMATION SHARING**

The NRAR and the MDBA will actively share relevant information in order to enhance the efficient and effective operation of this Memorandum and of their respective compliance responsibilities.

This includes information such as water use data, compliance and enforcement activities and other intelligence, within the bounds of relevant legislative and privacy requirements. In this regard any formal request for information will be responded to within 30 days or as otherwise agreed between the MDBA and NRAR.

The NRAR Chief Regulatory Officer and the MDBA Chief Compliance Officer will meet regularly to informally share information and provide updates and respective compliance and enforcement activities.

## **6. CAPACITY BUILDING**

The MDBA and the NRAR will endeavour to share experience and opportunities that could enhance compliance and enforcement capacity in relation to, but not limited to:

- new technologies
- regulatory craft and strategy
- community of practice
- staff training and skills development
- staff exchanges

## **7. WORK PROGRAM**

The Chief Regulatory Officer of the NRAR and the Chief Executive of the MDBA will meet annually to develop a program of activities to progress the purpose of this Memorandum. The work program will be published at the commencement of each financial year and outcomes reported at the end of each year.

The work program may include a range of activities for example:

- joint activities such as developing improved remote sensing techniques, or progressing the community of practice on water compliance
- a joint statement of compliance priorities for both agencies in a given year
- joint compliance operations.

## **8. LEGAL EFFECT AND REVIEW**

The parties will use their best endeavours to give effect to this Memorandum. The Memorandum does not affect the functions, powers or responsibilities of either party nor does it create any other legal relations between the parties.

The Memorandum becomes operative on the date of signing by both parties. The MDBA and NRAR will engage an independent and suitably qualified person to review the efficacy of the Memorandum every 2 years from commencement. The review will be provided to the MDBA Board and the NRAR Board and subsequently published along with any response or refinement proposed by the Boards.

## **9. REPRESENTATIVES OF THE PARTIES**

The following officers are responsible for implementing the actions identified in this Memorandum and associated work program. Any change in details should be advised in writing to the other representative as soon as possible.

Ross Carter

Interim Chief Regulatory Officer, NRAR

Russell James

Chief Compliance Officer, MDBA

Ph (02) 6279 0711

*russell.james@mdba.gov.au*

*From May 2018, NRAR contact details are:*

Grant Barnes

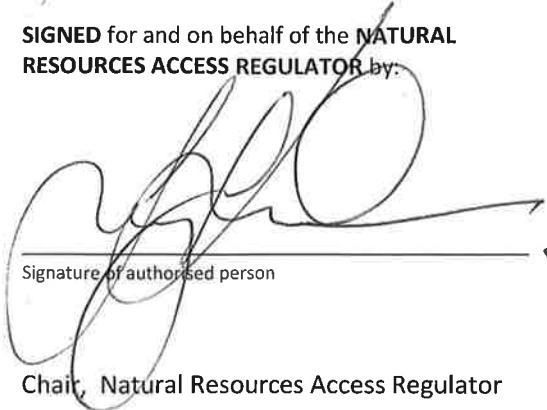
Chief Regulatory Officer, NRAR

Ph: 0437 722 548

*Grant.barnes@industry.nsw.gov.au*

**EXECUTED** as a Memorandum of Understanding as follows:

**SIGNED** for and on behalf of the **NATURAL RESOURCES ACCESS REGULATOR** by:



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Signature of authorised person

Chair, Natural Resources Access Regulator

Office of authorised person



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Signature of witness

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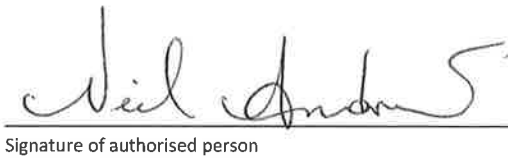
Name of witness

20 February 2018

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Date

**SIGNED** for and on behalf of the **MURRAY-DARLING BASIN AUTHORITY** by:

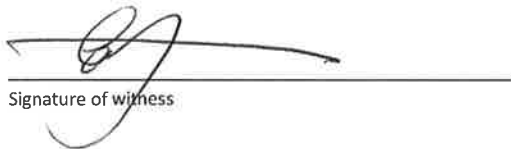


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Signature of authorised person

Chair, Murray-Darling Basin Authority

Office of authorised person



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Signature of witness

ALLAN HOLMES

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Name of witness

20 February 2018

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Date

### **Schedule 1 – Protocol for handling allegations of non-compliance.**

1. The MDBA has adopted and published a protocol for handling allegations of non-compliance. The NRAR is lead compliance regulator in NSW for water management.
2. From time to time, NRAR may provide general advice and information to MDBA to support the preliminary assessment of allegations of non-compliance.
3. The MDBA may refer allegations of Basin Plan non-compliance, including allegations of illegal take, to NRAR for investigation.
4. NRAR will update the MDBA on progress with handling of any referred allegations as follows:
  - a. NRAR to provide MDBA an update on the status of the investigation into an allegation with one month of receipt, including what action has been taken, proposed next steps, and an estimate of expected time remaining until the matter is closed
  - b. NRAR to provide further updates to the MDBA within 10 working days of receiving a request.
  - c. MDBA to provide written notification to NRAR's Chief Regulatory Officer where it is not satisfied with progress on a referred matter. Consistent with the MDBA protocol, the MDBA may raise these concerns with the Basin Officials Committee and/or Basin water ministers.
5. NRAR and MDBA may conduct joint investigations of allegations of non-compliance.
6. NRAR and MDBA will share information and intelligence, and community information provided such information does not compromise any investigation or legal proceeding.
7. The NRAR may refer allegations of Basin Plan non-compliance to the MDBA for investigation, in which case the above protocols for reporting on progress will be observed.