

# **COLLABORATION PROTOCOL**

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

This Protocol is an agreement between

The Murray-Darling Basin Authority

and

The New South Wales Natural Resources Access  
Regulator (NRAR)

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## **2 BACKGROUND**

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1. In June 2018, the Australian Government and Basin State<sup>1</sup> 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 MDBA and Basin States to develop compliance and enforcement protocols to help ensure effective, transparent and efficient outcomes on water theft.
3. Each protocol must be public and set out how allegations of non-compliance by individual entitlement holders will be coordinated in each jurisdiction. It must also explain how compliance arrangements will operate both before and after Basin Plan accredited Water Resource Plans (WRPs) are in place.
4. The MDBA and the NRAR had previously signed a Memorandum of Understanding, in February 2018, which sets out how the MDBA and the NRAR will work together, handle allegations of non-compliance and share information.
5. The February 2018 Memorandum of Understanding does not, however, describe how the MDBA may conduct audits on NRAR's systems, compliances activities, processes and controls to assess the extent of compliance with the Basin Plan. This Protocol has been developed to meet that requirement as a complement to the Memorandum of Understanding.

## **3 PURPOSE**

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6. This Protocol should be read in conjunction with the Memorandum of Understanding between the MDBA and the NRAR and outlines the arrangements for the conduct of audits of the NRAR by the MDBA.
7. This Protocol acknowledges that each jurisdiction must operate in accordance with their own legislation, functions, compliance policies and procedures for regulating water use and implementing the Basin Plan.
8. While the arrangements established under this Protocol are not legally binding, they are agreed to in a spirit of collaboration and good will, and with best endeavours to promote best practice compliance and effective working arrangements between the MDBA and the NRAR.

## **4 COMMITMENTS – MDBA AUDITS**

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<sup>1</sup> 'Basin State' refers to the governments of New South Wales, Queensland, Victoria, South Australia and the Australian Capital Territory.

9. The parties acknowledge that audit is a key tool for the MDBA in encouraging and monitoring compliance with the Basin Plan. The Authority may conduct audits to assess the extent of compliance with the Basin Plan as provided in s13.10 of the Basin Plan. This may include audits relating to Basin Plan accredited WRPs.
10. The MDBA will publish an audit strategy and annual audit plan setting out priorities for the upcoming year, noting that additional audits may be instigated in response to specific incidents or intelligence reports. The MDBA will consult with the NRAR prior to publishing its annual plan each year.
11. Wherever possible, audits will be undertaken in a spirit of collaboration and cooperation. In undertaking audits, the MDBA commits to working with the NRAR as appropriate to develop and agree on the scope and timing of individual audits.
12. Further detail about the processes and procedures for working together on MDBA audits is at Schedule 1.

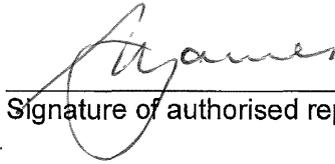
# EXECUTION PAGE

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## 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

Russell James  
Name of authorised representative (print)

  
Signature of authorised representative

08/01/19.  
Date

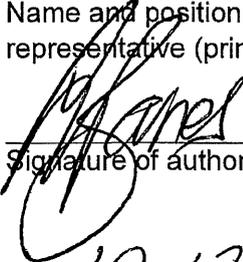
Thea Kim  
Name of witness (print)

  
Signature of witness

08/01/19  
Date

**SIGNED SEALED AND DELIVERED** for and on behalf of the Natural Resources Access Regulator as represented by a duly authorised representative

Grant Barnes  
Name and position of authorised representative (print)

  
Signature of authorised representative

10-12-18  
Date

Gravin Walker  
Name of witness (print)

  
Signature of witness

10/12/18  
Date

## **SCHEDULE 1 – PROCESSES FOR CONDUCTING MDBA AUDITS**

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

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

7. The MDBA and the NRAR will make best endeavours to arrange an entry meeting within two weeks from when the draft engagement plan is first shared, to confirm the features set out in the plan. At that meeting the parties will aim to settle the arrangements for the walkthrough of the NRAR's systems, compliances activities, processes and controls as they relate to the audit topic.
8. The parties will aim to settle any amendments to the draft audit engagement plan within two weeks of the entry meeting. The engagement plan will then be confirmed via signature of the authorised MDBA and State Agency representatives.
9. Where the NRAR is the lead agency for an audit topic within their state, the NRAR agrees to coordinate access to all related state third party agencies required to participate in the audit. NRAR will provide alternative NSW agency contact points, where appropriate, for any information or data required by MDBA auditing which is outside NRAR's statutory remit.
10. The NRAR agrees to provide reasonable access to operational personnel for the purpose of conducting the audit, including any planning and fieldwork that may be required to complete the audit, noting that the MDBA agrees to conduct the audit in the most efficient way possible.
11. The MDBA will provide the draft audit report to the NRAR for comment. The NRAR will provide comments, feedback and initial written responses to each recommendation within the detailed audit report within three weeks of receiving the audit report. This includes:
  - (i) Any factual errors;
  - (ii) Information on any corrective or improvement measure already taken to address the issues identified; and
  - (iii) The initial response to each recommendation.
12. The MDBA will finalise the audit report after considering the feedback and will provide an embargoed copy to the NRAR Audit Contact Officer at least two weeks prior to the audit report being published on the MDBA website.
13. The NRAR will be asked to provide an implementation action plan to the MDBA responding to the audit within four weeks of the published audit report, unless otherwise agreed. This will be used by the MDBA to undertake a recommendation implementation review<sup>2</sup>.

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<sup>2</sup> A recommendation implementation review is an evaluation of the action plan to ensure recommendations are addressed and implemented in a timely manner.

## **SCHEDULE 2: ACCOMPANYING ADVICE**

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# **Water Act 2007 - Division 6—Confidentiality**

### **215 Confidentiality**

Authority must protect confidential information

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

Authorised uses and disclosures

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

- (v) a person who is acting as an Authority member or as a member of the Authority staff; or
  - (vi) a person who is authorised to perform or exercise a function or power of, or on behalf of, the Authority; or
- (b) the performance of functions or services by the person by way of assisting an Authority delegate;

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

- (6) Regulations made for the purposes of this subsection may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of this section.
- (7) Nothing in any of subsections (2), (3), (4) and (5), and in regulations made for the purposes of subsection (6), limits:
  - (a) anything else in any of those subsections or in those regulations; or
  - (b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.

# Water Act 2007 - Division 3—Information gathering

## 238 Power to request information

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

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

- (2) The Authority may, in writing, require the person to give specified compellable information to the Authority:
- (a) within a specified period of time; and
  - (b) in a specified form or manner.
- (3) The person must not fail to comply with a requirement under this section.

Civil penalty: 50 penalty units.

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

Civil penalty: 60 penalty units.

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

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

**239 Prohibitions on disclosure of information do not apply**

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

## ATTACHMENT A - AUDIT PROCESS

