

The MDBA Protocol for handling allegations of non-compliance

The MDBA will follow the below process in handling allegations of non-compliance.

1. Allegation is made to the MDBA
 - a. The MDBA will acknowledge receipt of the allegation and use best endeavours to check the allegation's credibility and validity. This will involve preliminary inquiries which may seek to confirm:
 - i. that the allegation has been made in good faith and is not vexatious
 - ii. whether the non-compliance can be substantiated
 - iii. the relevant jurisdiction
 - iv. whether there is any evidence of a contravention of a specific Act or regulation
 - v. the harm involved in the contravention.
2. If the MDBA determines the allegation is not credible, the MDBA will inform the complainant that no further action will be undertaken.
3. If the allegation is found to be credible, the MDBA will:
 - a. Include the allegation in the MDBA's public register (de-identified as appropriate). As a breach of the Basin Plan water trading rules can have a commercial impact, the MDBA will publish generic information in relation to alleged breaches of the trading rules. Thus, the MDBA would publish the date an allegation was received, the section of the Basin Plan to which the allegation relates and the state in which the alleged breach occurred.
 - b. Refer the allegation to the relevant referral agency. If it is an allegation against an individual, this will most likely be the state water agency. If the allegation involves a state agency, the MDBA will refer the issue to the most appropriate enforcement agency (which may be the MDBA). At this point, MDBA will include the issue on the public register as a matter for which it is responsible.
4. The MDBA will follow up with the referral agency one month after the allegation's referral, seeking an update on the status of the management of the allegation including:
 - a. What action has already been taken
 - b. The referral agency's proposed next steps to ensure the matter is resolved, including details about timing
5. Two months after the date the MDBA referred the allegation to the state agency, the MDBA will seek another update from the state agency about the management of the allegation.

6. If the MDBA is not satisfied with progress in the matter, the MDBA will refer the matter to senior state officials for their advice.
7. Three months after the date the MDBA referred the allegation to the state agency, should the matter still not have been adequately addressed, the MDBA will refer the matter to the Murray–Darling Basin Ministerial Council for their discussion and advice.
8. Should the referral to the Murray–Darling Basin Ministerial Council fail to result in adequate action, the MDBA will refer the matter to the relevant state anti-corruption body to investigate why the matter has not been progressed.
9. In the absence of satisfactory action from a state agency, the MDBA may instigate an MDBA investigation and possible action under the Water Act.

Note: Where circumstances are such that direct investigation by the MDBA is the most appropriate response to an allegation of non-compliance, the MDBA may, at any point, decide to investigate in place of the steps above. This decision will turn on the weight of evidence presented to the MDBA, the materiality of the non-compliance in the particular area or in relation to Basin Plan outcomes and the seriousness of the offence.