

Report on the outcomes of the Murray–Darling Basin Authority (MDBA) and NSW Natural Resource Access Regulator (NRAR) Joint Work Program 2018-19

In February 2018, the MDBA and the NRAR entered into a Memorandum of Understanding (MoU) outlining how the agencies will work together and share information on compliance matters. The MoU provides for an annual joint work program to strengthen water compliance arrangements.

The 2018-2019 work program draws from the recommendations of independent reviews and investigations into the management of water and allegations of water theft conducted in 2017 and 2018, which highlighted issues with the governance, processes and arrangements for water regulation in the Basin.

A report on the commitments contained in the Joint Work Program for 2018-2019 follows.

About the agencies

The MDBA is the Australian government agency responsible for monitoring and regulating compliance with the *Basin Plan 2012* (Cth) (Basin Plan) and accredited water resource plans. A core function is providing assurance about Basin state water compliance arrangements for managing frontline compliance within their jurisdictions. This assurance is sought through annual reporting in line with the Murray–Darling Basin Compliance Compact, in addition to the MDBA’s audit program and collaborative arrangements with Basin state government agencies.

The NRAR was established in early 2018 to be an independent, transparent and effective regulator of water management legislation in NSW.

Outcomes of 2018-2019 Joint Work Program

Work program commitment	Statement of outcomes
<p>Inter-agency protocol Building on the protocol at Schedule 1 of the MOU, an enhanced inter-agency protocol will be developed, setting out arrangements for:</p> <ul style="list-style-type: none"> • appropriate sharing and protection of compliance information and intelligence • managing allegations of non-compliance, including scope for conducting joint investigations where agreed, and • the conduct of audits and reviews, including joint audits where agreed. 	<p>In February 2019, the MDBA and NRAR entered into a Collaboration Protocol for audits and reviews of the NRAR by the MDBA in relation to Basin Plan compliance. The Collaboration Protocol outlines the arrangements for the conduct of the MDBA’s audits of the NRAR’s systems, compliances activities, and processes. The MDBA prepares an annual risk-based audit program, and in line with the Collaboration Protocol, the MDBA will engage with the NRAR prior to publishing each year annual program.</p> <p>The Collaboration Protocol complements the Memorandum of Understanding (MoU) between the MDBA and the NRAR, which was entered into in February 2018 and outlines protocols for handling allegations of non-compliance, reporting, capacity building and information sharing.</p> <p>In early 2019, the MDBA reviewed its internal investigation policies and procedures and determined that, based on the current regulatory environment and activities, the arrangements in Schedule 1 of the MoU are sufficient for conducting joint investigations with the NRAR. The need for additional formal arrangements for these matters will be considered again when the MoU is reviewed in early 2020.</p> <p>In light of delayed responses to requests for updates about referred allegations in 2018-2019, in August 2019 the MDBA and NRAR agreed to improved arrangements for referring allegations and receiving updates about referred allegations.</p>
<p>Cooperation on the MDBA Review program The MDBA plans to conduct at least two compliance-related reviews in NSW this financial year. The first of these will be a joint review with NRAR to review the effectiveness of compliance arrangements during the Barwon-Darling environmental flow event of mid-2018.</p>	<p>The MDBA conducted two compliance-related reviews in NSW in the 2018-2019 financial year.</p> <p>Firstly, the MDBA reviewed the effectiveness of compliance arrangements during a major environmental flow in the northern Murray–Darling Basin between April and June 2018. During this environmental flow, temporary restrictions on water extraction were imposed by the NSW Government and enforced by the NRAR.</p> <p>The review found that NRAR had appropriate governance arrangements and undertook effective operations to ensure water access licence holders complied with the temporary water restriction rules. No theft of water was observed. The review also identified opportunities for improvement by establishing more formal</p>

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<p>The MDBA will consult NRAR over the subject and scope of the second review, expected to be in southern NSW. This review may be conducted jointly, if agreed, or may simply involve NRAR assisting with access to relevant information consistent with the inter-agency protocol.</p>	<p>processes and procedures (including inter-agency governance arrangements); regulating stock and domestic access; and developing communication strategies for future environmental watering events.</p> <p>The second review was of metering in the lower Murrumbidgee region, and how data is taken from the meters and subsequently provided to the MDBA for reporting. To focus the scope of the review, the MDBA decided not to include the activities of NRAR in this review, and instead engage with WaterNSW and the NSW Department of Industry – Water.</p> <p>In June and July 2019, the MDBA consulted NRAR in the development of its 2019-2020 Audit Program.</p>
<p>Community of Practice The initial meeting of compliance practitioners under the new national Community of Practice for Compliance Practitioners will be held in Adelaide in November 2018. Both MDBA and NRAR staff will actively participate in planning and attending this forum.</p>	<p>Reviews into the compliance and enforcement arrangements in the Murray–Darling Basin in 2017 and 2018 recommended the establishment of a Water Compliance Community of Practice (CoP) to provide a platform for state and Australian government compliance officers to build regulatory capacity and capability by sharing lessons learned, discussing projects and issues, and identifying best practice in water regulation.</p> <p>In line with its commitment under the Basin Compliance Compact, in June 2018 the MDBA established and led a steering committee with representatives from state water compliance agencies, including the NRAR, to develop the scope for the CoP, and plan the launch event.</p> <p>The CoP was officially launched at a forum in November 2018 in Adelaide. Representatives from 15 state and Australian government agencies attended the inaugural forum. Senior officials from the MDBA and the NRAR attended and presented at the launch, and did so again at the second Water Compliance CoP forum in Brisbane, in August 2019.</p> <p>The Water Compliance Community of Practice (CoP) is a working group of the Australasian Environmental Law Enforcement and Regulators neTwork (AELERT).</p>
<p>Allegations of non-compliance NRAR has an active program of managing the backlog of water compliance matters in NSW. MDBA will periodically request</p>	<p>The Natural Resources Access Regulator (NRAR) is a risk-based regulator that responds to alleged breaches of water law in NSW. NRAR employs a graduated and proportionate approach to any breaches of water laws. This is based on the severity of the breach (its effect on the environment and potential harm to people</p>

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<p>confidential briefings from NRAR on the status of this program.</p> <p>MDBA will continue to refer to NRAR any relevant allegations brought to it, consistent with the inter-agency protocol.</p>	<p>or property) and the regulated entity’s culpability, cooperation and approach to the breach and the public interest.</p> <p>In addition to responding to alleged breaches of water laws, NRAR compliance officers carry out monitoring and auditing activities that include inspecting properties to assess compliance with water users’ licences and water laws.</p> <p>NRAR uses a suite of tools to respond to an alleged breach of water law. These tools may include one, or a combination of the following:</p> <ul style="list-style-type: none"> • using the alleged breach as part of the intelligence to develop future monitoring and audit programs • education and information campaigns • incident management—stopping any significant, ongoing effect and remediating it where appropriate • investigations and enforcement • amending conditions in licences issued by NRAR. <p>NRAR selects the appropriate tools to apply to alleged breaches. This, in turn, influences whether or not NRAR needs to inspect a site and the time NRAR will need to respond. Regardless of the assessed priority, all reports of alleged breaches are used to inform NRAR’s intelligence base for preparing compliance responses.</p> <p>To date the NRAR has been able to finalise the following:</p> <ul style="list-style-type: none"> • 234 legacy cases from the Department of Industry Water • 188 legacy cases from WaterNSW <p>In 2018-2019, the MDBA referred 9 allegations of non-compliance to the NRAR, 6 of which were closed or finalised by the NRAR in the reporting year. The MDBA would like to strengthen the relationship with NRAR to ensure follow up on matters referred is administered in a consistent manner.</p>
<p>Northern Basin Commissioner</p>	<p>Mick Keelty was appointed to be the Northern Basin Commissioner by the Australian Government in September 2018.</p>

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<p>Both agencies will cooperate with provision of relevant information and briefings to the newly appointed Northern Basin Commissioner, Mr Mick Keelty.</p>	<p>Since then, the MDBA has provided regular briefings and information to him on key compliance and water management issues in the Basin.</p> <p>To support and promote his role, the MDBA invited Mick Keelty to provide a keynote address at the launch of the Water Compliance Community of Practice in November 2018. He also met with the Authority in September 2018, and the MDBA's Independent Assurance Committee in February 2019 to discuss his areas of compliance concern.</p> <p>The NRAR will continue to develop a working relationship with the Northern Basin Commissioner.</p> <p>The Australian government announced that the Commissioner would be replaced by the creation of a new position of Inspector-General of Murray–Darling Basin Resources on 1 October 2019. Mick Keelty has been announced as the Interim Inspector General.</p>