5. Victoria’s water institutions and functions
Part 5. Victoria’s water institutions and functions

This chapter describes the institutional arrangements for the Victorian water sector (see Figure 11). The roles and responsibilities of the agencies that must have regard to the Basin Plan are outlined here. These include the Minister, water corporations, catchment management authorities and the Victorian Environmental Water Holder.

![Figure 11: Structure of the Victorian water sector](image-url)
5.1 The Minister

The Minister for Water is accountable to Parliament and responsible for governance of the water sector under the Victorian Water Act and the Catchment and Land Protection Act 1994. The ministers for environment and health and the Treasurer have some responsibilities for elements of the water sector’s regulatory framework, but these are not significantly affected by the Basin Plan.

The Minister for Water has specific responsibilities for issuing water entitlements and managing Victoria’s water resources and supply, thus is significantly affected by Basin Plan.

The Minister:

- makes and amends bulk and environmental entitlement orders
- appoints the storage manager and sets storage management objectives
- issues water shares
- issues take and use licences in groundwater and unregulated systems - in most cases this function is delegated to rural water corporations
- determines water trading rules and oversees the water market
- declares water shortages and qualifies rights
- establishes metering and reporting requirements
- is responsible for maintaining a register of all entitlements
- oversees the entitlement compliance framework
- ensures a water resource assessment program is in place
- ensures regional water strategies are prepared
- issues statements of obligation that set out the Minister’s expectations about the activities carried out by water corporations and catchment management authorities.

5.2 Water corporations

Victoria’s water and wastewater services are provided by 19 statutory corporations established under the Victorian Water Act. The Minister for Water and the Treasurer have joint responsibilities for specific governance functions of water corporations. The Minister for Water has portfolio responsibilities for the development of water policy and governance including overseeing performance and appointing directors to the boards of these corporations.

Victoria’s water and wastewater services are provided by 19 state-owned corporations established under the Victorian Water Act. The water corporations provide a range of water services to customers within their areas consisting of water supply, sewage and trade waste disposal and treatment, water delivery for irrigation, drainage and salinity mitigation services.

The water corporations are funded by fees and charges they collect from their customers.

The water corporations are subject to the Financial Management Act 1994 and the Public Administration Act 2004 and are also affected by:

- independent regulation of prices by the Essential Services Commission
- regulation of water quality by the Department of Health in accordance with the Safe Drinking Water Act 2003
- regulation of environmental impacts by the Environment Protection Authority
Water corporation customer complaints that are not resolved directly by the water corporation can be referred to the Energy and Water Ombudsman for consideration.

Water corporations may hold bulk entitlements, water shares and take and use licences to supply or support the supply of water to their customers.

The water corporations are responsible for meeting their customers' water needs and are required to carry out short and long-term planning. They are also required to have emergency management plans to minimise service disruptions.

Water corporations can participate in the water market.

Urban water corporations are responsible for water supply (including recycled water), sewage and trade waste disposal services to their urban customers. Rural water corporations provide services such as water supply, irrigation drainage and salinity mitigation services for irrigation, environmental, recreational and domestic and stock purposes.

Grampians Wimmera Mallee Water (GWMWater) is the main water corporation providing urban and rural water supply and sewerage services for the Wimmera-Mallee water resource plan area. Coliban Water supplies the small towns of Wychitella, Korong Vale, Wedderburn and Borung, and Central Highlands Water supplies Avoca, Redbank, Amphitheater Landsborough and Navarre. Figure 12 shows the areas managed by the urban water corporations.

GWMWater also provides rural domestic and stock supplies as shown in Figure 13 and manages take and use licences for surface water from unregulated waterways and groundwater in its management area of the Wimmera-Mallee water resource plan area except for urban supply where it is the Minister who issues these licences in its area of management.
Figure 12: Urban water corporations that provide services in the Wimmera–Mallee water resource plan area
Figure 13: Rural water corporations that provide services in the Wimmera–Mallee water resource plan area

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Wimmera–Mallee Water Resource Plan
5.3 Catchment management authorities

Victoria’s 10 catchment management authorities are statutory bodies established under the *Catchment and Land Protection Act 1994*. They also have functions and powers under Part 10 of the Victorian Water Act. They are administered according to the *Public Administration Act 2004* (that is, they are public entities) and the *Financial Management Act 1994* (that is, they are public bodies).

The Wimmera Catchment Management Authority (CMA), Mallee CMA and North Central CMA operate in the Wimmera-Mallee water resource plan area. Figure 14 shows their boundaries.
CMAs are jointly overseen by the Minister for Water and the Minister for Energy, Environment and Climate Change, and rely on funding from the Victorian Government. Their functions relate to the management of land and water resources and include:

- advising the Minister on catchment management issues and priorities
- advising the Department Secretary and municipal councils about flooding issues
- preparing and reviewing regional catchment strategies, sub-strategies and plans about catchment management issues such as:
  - waterway management strategies
  - seasonal watering proposals
  - environmental water management plans
  - land and water management plans (addressing salinity issues)
  - flood management plans
- encouraging cooperation between stakeholders
- promoting community awareness
- undertaking research
- preparing reports on their catchment management activities.

CMAs also have waterway management service delivery functions and powers under Part 10 of the Victorian Water Act. These functions include:

- carrying out works and activities to protect and enhance land, waterways, the environmental water reserve and the environmental values of waterways
- providing, maintaining and operating drainage schemes
- declaring flood levels and developing and implementing plans to minimise flooding.

When undertaking these functions, the CMAs are subject to the general powers and obligations of authorities established under the Victorian Water Act. They also may:

- regulate the connection of drainage works to designated waterways
- regulate drainage diversions into and out of their area

### 5.4 Victorian Environmental Water Holder

The Victorian Environmental Water Holder (VEWH) is established by Part 3AA of the Victorian Water Act.

The VEWH is responsible for holding and managing water entitlements to improve the environmental values and health of water ecosystems for uses that depend on environmental condition.

The VEWH works closely with CMAs in gathering the most up to date information to prepare a seasonal watering plan each financial year. This scopes where, when, how and why environmental water can be used across Victoria’s rivers, wetlands and floodplains. For more information see Part 12.5.

The VEWH has no powers to raise revenue through fees and charges, but may buy and sell water where this is consistent with its statutory objectives. It must comply with water trading rules that apply to other entitlement holders. The VEWH’s decisions about applying its water holdings are not subject to Ministerial direction.
Each year the Victorian Environmental Water Holder must prepare a corporate plan for the following three years that includes details of:

- strategies and policies
- governance, funding and reporting arrangements
- performance indicators.

### 5.5 The storage manager

Responsibilities for the management of water systems are assigned by a number of instruments under the Victorian Water Act, including those appointing resource managers (section 43A(1)(b)), and storage managers (section 122ZK), and instruments appointing a water corporation to make seasonal determinations for declared systems (section 64GA).

The Minister may appoint a storage manager under section 122ZK of the Victorian Water Act on the terms and conditions specified in the instrument of appointment. These are made for bulk water supply systems that supply multiple customers including bulk and environmental water holders and water shares and take and use licence customers.

Additional responsibilities are conferred on storage managers through government policy and legislative instruments, for example *Water for Victoria* and bulk entitlements.

The main responsibility of the storage manager is to operate the headworks system to supply water to meet entitlements. Other functions may include:

- calculating the amount of water available to entitlement holders
- preparing an annual supply system operating plan
- preparing a water resource outlook for the coming water year assuming wet, average, dry and drought scenarios
- reporting on operations to entitlement holders

GWMWater under section 122ZK of the Victorian Water Act is appointed as Storage Manager in respect of the bulk entitlements and environmental entitlements granted for the Wimmera-Mallee system headworks, subject to the terms and conditions as set out in the Storage Manager Instrument of Appointment 2010 documentation.

### 5.6 Issuing authorisations to take water

The Minister for Water is responsible for issuing entitlements under the Victorian Water Act. Section 7 of the Act provides for the continuation of Crown rights to the use, flow and control of all the water in a waterway and all groundwater in Victoria. From this right, the Minister may authorise individuals to take, use and hold water in Victoria. The types of entitlements and rights to take water (water access rights) available in the Wimmera-Mallee water resource plan area are outlined in Part 6.2–Part 6.4.

#### 5.6.1 What is an authorisation to take

In Victoria, an entitlement provides for an authorisation to take and use water. In the case of water shares, the authorisation to take and use water are separated across two instruments; however, because there are no water shares in the Wimmera-Mallee water resource plan area, this is not relevant. An authorisation typically has the following key characteristics:

- permits a particular person (or company) to take water from the system
- identifies the water resource or system from which the water can be taken or diverted
- identifies the volume that the person (or company) is authorised to take from the specified resource or system.
An authorisation to take (and use) water is typically subject to conditions including but not limited to:

- the time at which the person is permitted to take the water
- the rate at which the person may take or divert the water
- the place at which the person may take the water
- metering requirements
- reporting requirements.

The standard conditions typically applied to a take and use licence are contained in Schedule 2 of the Ministerial Policies for Take and Use Licences (Minister for Water, 2014b). For more information on the conditions applied to a bulk entitlement issued to a water corporation or the VEWH, see the Water Register at www.waterregister.vic.gov.au.

### 5.6.2 Limits on issuing new entitlements

The way ‘authorisation to take water’ complements the concepts of permitted take and actual take under the Basin Plan is explained in **Part 8.5**.

The Victorian Water Act requires the Minister to consider a number of matters when determining whether to issue a new entitlement including:

- every power, discretion, function, authority and duty of the Minister and the Authority must be construed subject to the **Groundwater (Border Agreement) Act 1985**, the **Murray-Darling Basin Act 1993** and the Murray-Darling Basin Agreement under section 6.
- the Crown must not exercise a right conferred by section 7(1) of the Victorian Water Act so as to limit a right to water conferred on any other person by section 8(1)(b), (c), or (d) or section 8(4) (c) of that Act.
- a right must not be conferred on another person under a licence to take and use water unless regard is had to the need to maintain the environmental water reserve in accordance with the environmental water objective.
- where a permissive consumptive volume (PCV) is determined under section 22A, the Minister may not issue a licence to take and use water if the issue of the licence will cause the PCV to be exceeded (see section 55 of the Victorian Water Act).

In addition to the above, the Commonwealth Act requires the Minister and water corporations to act in accordance with a water resource plan. A water resource plan requires Victoria to demonstrate how it will determine permitted take for an accounting period (one year) to meet the SDL prescribed in the Basin Plan. Furthermore, the water resource plan must identify rules that ensure actual take by water users does not exceed permitted take for the accounting period. Determining permitted take is outlined in **Part 8.3** and the rule for ensuring actual take does not exceed permitted take in **Part 8.5**. For more details on permitted and actual take see the Methods Report at **Appendix C**.

This means that in Victoria new entitlements cannot be issued where it would:

- result in exceeding the SDL under the Basin Plan by virtue of the limitation on decision making under section 6 resulting from the requirement in the Basin Plan to ensure actual take does not exceed permitted take
- result in exceeding permissible consumptive volumes as determined under the Victorian Water Act
- impact on other water users including the VEWH.
Practically speaking, in most areas across Victoria new entitlements cannot be issued because the current volume of entitlements is equal to the volume that can be sustainably diverted for the relevant system. There are some areas where groundwater may be available. In the Wimmera-Mallee water resource plan area, for example, the baseline diversion limit, which represents the volume of take as at 2009, is lower than the sustainable diversion limit volumes prescribed for the groundwater.

5.7 Compliance and enforcement

Compliance and enforcement is undertaken by the Minister and authorities (‘Authorities’) (water corporations and catchment management authorities). Authorities may also be responsible for compliance and enforcement as delegates of the Minister.

Offences under the Victorian Water Act include those relating to:
- authorisations to take and use water
- authorisation to construct works (including but not limited to works on waterways for the take and use of water)
- authorisation to discharge into waterways and aquifers
- connection to the works of an Authority.

In managing compliance with the Victorian Water Act, the Minister and Authorities have the following enforcement tools available under the Act:
- Notice to Repair under section 150, which allows an Authority to require the owner of land to repair works on their land or connect to the works of an Authority so that the Authority can provide a service to that land. Where a person fails to comply with the notice, they may be subject to penalties.
- Notice of Contravention under section 151, which allows (where the Authority believes the person has contravened the Act, regulations or other instrument under the Victorian Water Act) the Authority to require, by notice, to take any action to remedy the identified contravention. This notice allows the Authority to identify the breach of Victorian water law and determine action for the person to remedy or address the breach. Where a person fails to comply with the notice, they may be subject to penalties.
- reduce, restrict or discontinue delivery of water under section 231, which allows an Authority to reduce, restrict or discontinue the delivery of water to a serviced property in certain circumstances. These circumstances include where the Authority believes the owner of the serviced property has contravened the Act, regulations or bylaws relating to the taking of water. This power is not relevant, however, to the Wimmera-Mallee water resource plan area because water delivery does not occur in the system. This function is relevant in systems where water shares are issued.
- penalty infringement notices under section 295A where a person contravenes a permanent water saving plan or staged restrictions. These are part of the measures detailed in respect of extreme events in Part 9.
- prosecution powers under section 296 under which the Minister or Authority may institute court action to seek penalties for alleged conduct in contravention of the Victorian Water Act. Penalties under the Act are discussed below.
- revoke or suspend a driller’s licence under section 313 by the Drillers’ Licensing Board5. A driller’s licence is required for bore construction and does not contain conditions relating to the take and use of water.

5 It should be noted that the Drillers’ Licensing Board includes members who are not officers of the DELWP or a water corporation.
In addition to the formal powers under the Victorian Water Act, the Minister and Authorities are able to take administrative action to support compliance including education programs and warning letters. To support enforcement activities, the Minister and Authorities have the following additional powers under the Act to support compliance monitoring:

- powers under section 133 to permit an authorised person and officers of an Authority to enter private land to inspect any works or make any test to find out whether the Act, regulations or bylaws of the Authority are being complied with.
- search and seizure warrant under sections 291E to 291H, which permits an authorised water officer to enter land to inspect any works, make any test and seize any evidence that the Act, regulations or bylaws have not been complied with.

Powers to enter land are subject to conditions. In particular, where the land is used primarily for residential purposes, consent must be obtained and entry must be between 7am and 7pm. There are fewer restrictions on non-residential land to account for the manner in which general water resource management and system management activities are undertaken in addition to general monitoring and compliance on land that is often a significant distance from any residence. Similarly, the time of day for entry restrictions does not apply for non-residential land because water users may take and use their water overnight for a range of reasons including reducing evaporation losses and avoiding high daytime electricity costs associated with pumping water.

5.7.1 Metering and monitoring compliance

Water corporations carry out a monitoring program that includes on-ground inspections and metering of water use.

In Victoria meters are owned, read and maintained by water corporations and read remotely on a continuous basis, or at least yearly in other instances. Victoria's Non-Urban Metering Policy (Minister for Water, 2014c) requires all new extractions for commercial and irrigation purposes to be metered, and for the state to comply with the Australian Standard over time.

Existing licensed extraction sites must be metered if the licensed volume is 10 ML or greater for surface water, and 20 ML or greater for groundwater. Water corporations may choose to meter all commercial and irrigation extractions even where the amounts are smaller than these thresholds. Water corporations maintain asset databases of their meter fleets. Water corporation staff make inspections and spot checks for illegal bores or infrastructure and meter tampering, as well as conducting stream surveys.


5.7.2 Education programs

Water corporations undertake education and community awareness-raising activities such as:

- publishing newsletters, webpages, media releases, newspaper notices about prosecutions and advisory letters
- holding committee meetings, audits and presentations
- engaging with customers and other stakeholders.
5.7.3 Compliance and enforcement strategy

As part of ensuring that the implementation of national framework activities was embedded as business as usual, in December 2015 the Minister for Water amended water corporations’ statements of obligations. These are issued under the Water Industry Act 1994, and outline the manner in which the Minister would like water corporations to undertake their functions. The purpose of these statements is to specify the obligations of a water corporation in relation to performing its functions and exercising its powers under the Act. Clause 7.3A of the statements provides that:

To manage and prioritise risks associated with non-compliance in enforcement of the Water Act 1989, the Corporation must

a. Develop and implement policies, standards and systems based on risk-based regulatory models; and

b. Adhere to any guidelines issued by the department.

Victoria will publish a revised compliance framework in response to the Basin Compliance Compact.

Reporting requirements

Water corporations are required to report annually on how they have met their obligations under the statement of obligations. This reporting includes information on meeting the enforcement of the Victorian Water Act obligations outlined previously as clause 7.3A of the statement of obligations. Reporting against the statement of obligations will support reporting under Schedule 12 of the Basin Plan.

5.7.4 Complementing MDBA enforcement

Water resource plans are designed to demonstrate how Basin states are managing Basin water resources consistently and with a common goal of Basin river and environmental health. This is critical for sustainable water use to support continued agriculture and farming, rural communities and cities and towns without harming the environment or the ability for communities to enjoy and benefit from it.

As a result, Victorian water users will be subject to two regulatory regimes that manage the take of water from Victorian water resources in the Basin (see Part 1.3). The Victorian government remains responsible for managing compliance and enforcement with respect to obligations under the Victorian Water Act and any regulations made under that Act. The Commonwealth and Basin states intend that the MBDA will step in as a last resort to enforce compliance with the water resource plans in accordance with the powers under Part 8 of the Commonwealth Water Act. This is reflected in the Basin Plan Implementation Agreement (7 August 2013). This arrangement is supported on the basis that:

- water resource plans reflect state arrangements and Victorian water law contains the same or similar obligations as contained in the relevant water resource plan
- Victorian water corporations are in the best position to manage compliance and enforcement of Victorian water users
- where the Victorian State fails to take appropriate action to manage compliance with an obligation also contained in the relevant water resource plan, the MDBA could exercise its discretion to act
- to manage this relationship and to complement Commonwealth and state compliance and enforcement objectives, Victoria proposes to:
- provide annually, in its reporting under Matter 19 of Schedule 12 of the Basin Plan, information regarding detected non-compliance in water resource plan areas that relates to obligations
under Victoria's North and Murray Water Resource Plan and the action taken to address non-compliance, for example details of auditing, reporting and investigations carried out

- refer to the MDBA for consideration, non-compliance of a serious nature to assess appropriateness of state, Commonwealth or joint action
- use its best endeavours to provide the MDBA with relevant information to support enforcement action regarding non-compliance with a Victorian water resource plan area

**Autonomy and referrals**

While the MDBA and Victoria will work together to ensure that agencies, companies and individuals comply with the requirements of water resource plans, each party will do so while maintaining its autonomy and exercising its own discretion in relation to enforcement activities.

The Murray-Darling Basin Water Compliance Review (Compliance Review Report) released by the MDBA in November 2017 recommended the development of more structured arrangements relating to the joint enforcement of obligations under water resource plans. Enforcement under water resource plans is considered to be a joint responsibility between the MDBA and Basin states because:

- water resource plans should reflect state-based arrangements that should be enforced by the relevant Basin state
- the Commonwealth Water Act requires state agencies and individuals to comply with the requirements of water resource plans, and this obligation is enforceable under Commonwealth law
- Basin states should use best endeavours to support the MDBA in managing compliance with water resource plans

The Department of Environment, Land, Water and Planning is currently negotiating an enforcement and information sharing protocol with the MDBA. Once finalised this will be published on the DELWP website at [https://www.water.vic.gov.au/mdb/compliance](https://www.water.vic.gov.au/mdb/compliance)

While it is anticipated that in some cases the MDBA or Victoria may refer a non-compliance issue to the other party for investigation and prosecution, Victoria considers that such a referral should be done on the following basis:

- the referral is made in confidence to allow proper investigation of the matter
- the referral is done in full, meaning that the party to whom the matter was referred has full ownership of the matter and is responsible for resolving the issue
- the MDBA and Basin states retain prosecutorial discretion over decisions on whether to pursue investigation, settle a matter administratively or investigate at all.

The essence of prosecutorial discretion is that the investigating/prosecuting body can exercise its discretion in relation to its compliance and enforcement strategy and risk assessment for a matter to determine whether that matter should be pursued. Regardless of whether a matter was referred to Victoria by the MDBA, the relevant water corporation will exercise its discretion on whether to investigate and prosecute non-compliance with the Victorian Water Act. This discretion will be exercised free of direction or influence from the MDBA.

The exact nature of arrangements for referral of compliance matters is articulated in the protocol developed between the MDBA and Victoria.