Chapter 6: Victoria’s water institutions and their functions
6. Victoria’s water institutions and their functions

This chapter describes the institutional arrangements for the Victorian water sector (see Figure 6-1). It outlines the roles and responsibilities of the agencies that must have regard to the Basin Plan. These include the Minister for Water, water corporations, catchment management authorities and the Victorian Environmental Water Holder.

Figure 6-1: Structure of the Victorian water sector
6.1 Overview

Under the Victorian Water Act the Minister for Water is responsible for issuing water entitlements and managing Victoria’s water resources and supply. Amongst other things, the Minister for Water has responsibilities for the development of water policy and governance of the water sector.

Under the Victorian Water Act, rural water corporations have functions which include delivery of surface water and irrigation drainage services, as well as having delegated responsibility for administering water shares and take and use licences issued under the Act. These services are critical for agricultural water users. Rural water corporations are also responsible for administering the diversion of water from waterways and the extraction of groundwater under delegation from the Minister.

Urban water corporations manage water supply and wastewater services in cities and towns.

The Victorian economic regulation framework, established under the *Essential Services Commission Act 2001* and the *Water Industry Act 1994*, guides rural and urban water corporation pricing and investment decisions. The Essential Services Commission oversees this economic regulatory framework.

The quality of water supplied by urban water corporations is independently regulated by the Department of Health and Human Services in accordance with the *Safe Drinking Water Act 2003*. The environmental performance of water corporations in relation to wastewater discharge is independently regulated by the Environment Protection Authority Victoria in accordance with the *Environment Protection Act 1970*.

The Victorian Environmental Water Holder (VEWH) is the independent statutory body responsible for the use of environmental water across the state. It holds a number of environmental water entitlements in its own right and manages entitlements on behalf of Snowy Water Initiative (see Section 12.5.5) and the Living Murray Program (see Section 12.5.4). The VEWH relies on the services of rural water corporations and storage managers to deliver environmental water where it is required.

At the national level, the Commonwealth Environmental Water Holder (CEWH) holds and manages water entitlements in line with the Murray-Darling Basin Plan. The CEWH’s entitlements have been recovered for the environment through water purchases and infrastructure investments in the Murray-Darling Basin. Delivery of the Commonwealth’s environmental water in Victoria is managed by the VEWH in partnership with the CEWH and catchment management authorities (CMAs) see Chapter 12.

Victoria has a well-established catchment management framework to conserve our environment while maintaining and increasing productivity from our land and water resources. The *Catchment and Land Protection Act 1994* is the legislative basis for catchment management in Victoria. Under the Act, 10 CMAs have been established across the state that each develop a regional catchment strategy for their area. It also establishes the Victorian Catchment Management Council to advise on statewide matters.

In regulated water systems with multiple entitlement holders, water corporations appointed as storage managers or resource managers are responsible for managing the available water resources on behalf of entitlement holders.

Planning in unregulated surface and groundwater systems generally involves developing arrangements so that available resources are managed equitably and sustainably. The management arrangements set out the triggers for rosters, restrictions and bans on extractions during periods of limited resource availability.
6.2 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.

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

6.2.1 Issuing authorisations to take and use 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. Under this right the Minister may authorise individuals to take, use and hold water via entitlements.

The types of entitlements to take water (water access rights) available in Victoria’s North and Murray water resource plan area are outlined in Section 7.2.

An authorisation typically has these key characteristics:

1. authorises the taking of water
2. identifies the water resource or system from which the water can be taken or diverted
3. identifies the holder of the entitlement and the volume that the person or company is authorised to take.

An authorisation to take (and the authorisation to use) water is typically subject to arrangements or conditions that include, but are 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
- annual use limits
• metering requirements (see also Section 6.7.1 for more information)
• 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 (DEPI, 2014).

6.2.2 Limits on issuing new entitlements

The authorisation to take water complements the concepts of permitted take and actual take under the Basin Plan which is explained in Section 9.3.

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 of the Victorian Water Act, 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 these matters, the Commonwealth Water 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 of one year to meet the sustainable diversion limit 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 Section 9.3.2 and the rule for ensuring actual take does not exceed permitted take in Section 9.3.3. 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 actual take exceeding permitted take
• result in exceeding permissible consumptive volumes as determined under the Victorian Water Act
• impact on other water users including the Victorian Environmental Water Holder

Practically speaking, new entitlements cannot be issued in most areas across Victoria 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, or savings can be made through infrastructure upgrades which may result in new entitlements.
6.3 Water 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 Victoria 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 water needs of their customers 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.

6.3.1 Urban Water Corporations

Urban water corporations are responsible to their urban customers for water supply (including recycled water), sewage and trade waste disposal services.

In Victoria’s North and Murray water resource plan area these corporations are:

- Central Highlands Water
- Coliban Water
- Goulburn Valley Water
- Grampians Wimmera Mallee Water
- Lower Murray Water
- North East Water
- East Gippsland Water
- Western Water

Melbourne retailers, City West Water, South East Water and Yarra Valley Water also hold entitlements in the water resource plan area.
6.3.2 Rural Water Corporations

Rural water corporations provide services such as water supply, irrigation drainage and salinity mitigation services for irrigation and land management. They have the authority to operate surface water and groundwater management infrastructure including storages, channels, weirs and bores, and work with catchment management authorities to protect and improve land, waterways, the environmental water reserve and the environmental values of waterways, in line with decisions of the VEWH. The rural water corporations in Victoria’s North and Murray water resource plan area are shown in Figure 6-3.
6.3.2.1 Goulburn-Murray Water

Goulburn-Murray Water (GMW) manages the bulk water delivery and transfer for around 30 percent of Victoria’s land area, or around 68,000 km². There is more information on these irrigation districts in Chapter 4.

GMW operates 22 storages in its region, including Murray-Darling Basin Authority storages managed by Victoria. Goulburn-Murray Water’s regulated area of operation includes the Ovens, Broken, Goulburn, Campaspe and Loddon basins, as well as the River Murray as far as Lock 11 and Mildura Weir.

Goulburn-Murray Water operates an extensive network of water distribution channels, pipelines and natural carriers, including unregulated waterways, to deliver raw water to its customers.

GMW provides information on the quality of water supplied to customers so that they can make informed choices about their water use. Under the Safe Drinking Water Act (2003), GMW must also advise customers of the non-potable nature of water supplied by the water corporation.

GMW supplies raw or untreated water for irrigation, stock and domestic purposes and for other bulk entitlement commitments. The quality of the water can vary due to a variety of factors such as algal levels, land uses, changes in flow, floods and drought.

Goulburn-Murray Water works with catchment partners to identify ways of reducing the impacts of land use and development in catchments. This includes water quality monitoring, implementation of land and water management plans and requiring that certain standards are met for developments.

GMW’s incident response procedures include notifying customers and the general public if poor water quality is detected. GMW monitors its storages and supply systems for various water
quality parameters, including nutrients, salinity and blue-green algae. For more information see Section 10.3.4

### 6.3.2.2 Lower Murray Water

Lower Murray Water’s area of operation extends alongside the River Murray from Koondrook for urban supply and Miralie-Corcamba road at Wood Wood for rural supply to the South Australian border, taking in the municipalities of Mildura, Swan Hill and Gannawarra. Lower Murray Water provides both urban and rural functions. It provides the region with urban water and wastewater services, and it supplies raw water to domestic and stock users as well as irrigation customers. It also operates the subsurface irrigation drainage water collection systems.

Lower Murray Water operates four irrigation distribution systems, three other rural distribution systems and 10 urban distribution systems.

### 6.3.2.3 Coliban Water

Coliban Water provides water and wastewater services to about 146,000 people in 49 towns across central and northern Victoria. The largest towns it services are Bendigo, Castlemaine, Echuca and Kyneton. Coliban Water also supplies about 1,500 rural licence holders from 500 km of pipelines and open channels in the Coliban rural water supply system extending from Malmsbury to Bendigo, and to Raywood and surrounding areas.

Coliban Water’s service area is within parts of the Campaspe, Loddon, Murray, Goulburn and Avoca basins. It operates two major distribution systems:

- the Goldfields Superpipe incorporating the Eppalock Pipeline which it jointly operates with Central Highlands Water
- the Coliban Main Channel which transports water from Malmsbury to Bendigo

Coliban Water operates nine urban water supply systems, including two separate groundwater systems of Elmore and Trentham and 11 rural sub-systems.

### 6.3.2.4 Grampians Wimmera Mallee Water

Grampians Wimmera Mallee Water (GWMWater) services a large area of about 25 percent of the state in the north-west of Victoria. It sources most of its water from a complex system of storages in the Grampians, as detailed in the Wimmera Mallee Water Resource Plan comprehensive report, but the northern part of GWMWater’s rural pipeline system is supplied from the River Murray.

### 6.4 Catchment management authorities

Victoria’s 10 catchment management authorities (CMAs) are statutory bodies established under the *Catchment and Land Protection Act 1994*. They also have waterway management functions under Part 10 of the Victorian Water Act.

The North East CMA, Goulburn Broken CMA, North Central CMA and Mallee CMA, operate in Victoria’s North and Murray water resource plan area. Figure 6-4 shows their boundaries.
CMAs are jointly overseen by the Minister for Water and the Minister for Energy, Environment and Climate Change, and receive their main source of funding from the Victorian and Commonwealth governments.

Their functions in the management of land and water resources include:

- advising the relevant 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 and environmental management such as:
  - regional waterway 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
- carrying out research and monitoring
- preparing reports on their catchment management activities

These functions apply on privately-owned land and Crown land.
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 improve land, waterways, the delivery of the environmental water reserve and the environmental values of waterways
- providing, maintaining and operating drainage schemes, where applicable
- declaring flood levels and developing and implementing plans to minimise flooding

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

- regulate the connection of drainage works to designated waterways
- regulate drainage diversions into and out of their area
- make bylaws in relation to their functions under Part 10 of the Victorian Water Act

### 6.5 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. It also manages the operational delivery of Commonwealth environmental water based on an agreement between the Victorian Environmental Water Holder and the Commonwealth Environmental Water Holder.

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 Section 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

### 6.6 The storage and resource managers

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).

#### 6.6.1 The storage manager

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. Storage manager appointments 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 (DELWP, 2016) and bulk entitlements.

The main responsibility of the storage manager is to operate the headworks system (which are defined in the instrument of appointment or relevant bulk entitlement) 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

In Victoria’s North and Murray water resource plan area Goulburn-Murray Water has been appointed storage manager for Loddon, Bullarook, Goulburn and part of the Campaspe system. Coliban Water is the appointed storage manager for the Upper Coliban storages in the Campaspe system. There is no storage management appointment in the Murray system.

6.6.2 The resource manager

The Minister may appoint a resource manager under section 43A of the Victorian Water Act. Each instrument of appointment outlines the terms and conditions and the purpose of the appointment.

The responsibilities of the resource manager may include:

- monitoring compliance of bulk entitlement holders with their bulk entitlement
- mediating disputes and supervising qualifications of rights

In Victoria’s North and Murray water resource plan area Goulburn-Murray Water has been appointed as the resource manager for the Campaspe, Loddon (which includes Bullarook) Goulburn, Kiewa and Murray basins.

The Ovens and Broken system appointments for Goulburn-Murray Water are combined instrument of appointments for storage and resource manager, and there is no separation as to what tasks are undertaken as a storage manager and what tasks are carried out as a resource manager.

6.6.3 Making seasonal determinations

Under section 64GA of the Victorian Water Act, the Minister may appoint an authority to be responsible for making seasonal determinations in declared water systems. For the declared systems in Victoria’s North and Murray water resource plan area, Goulburn-Murray Water has been appointed the responsible authority to determine the water available in the system and make seasonal determinations.

GMW uses the Northern Victoria Resource Manager website (http://nvrm.net.au) to announce seasonal determinations. As well as releasing seasonal determinations, GMW uses the Resource Manager website as a communications tool to, among other things, provide seasonal outlooks and issue spillable water declarations.

6.7 Compliance and enforcement functions

Compliance and enforcement are carried out by the Minister and Authorities, such as 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, alter or operate works including, but not limited to, works on waterways to divert, take or 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.
- The power to 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 function is relevant in systems where water shares are issued. These are some of the measures detailed in respect to extreme events in Chapter 10.
- Penalty infringement notices under section 295A where a person contravenes a permanent water saving plan or staged restrictions (which are some of the measures detailed in respect to extreme events in Chapter 10).
- 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 in the next section.
- Revoke or suspend a driller’s licence issued by the Drillers’ Licensing Board under section 313. A driller’s licence is required for bore construction and does not contain conditions relating to the take and use of water.

As well as 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.

The Minister and Authorities have these additional powers under the Act to support compliance monitoring and enforcement activities:

- 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 powers under sections 291E to 291H, which permit 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 7 am and 7 pm. There are fewer restrictions on non-residential land to account for the way general water resource and system management activities are carried out, as well as general monitoring and compliance on land that is often a significant distance from any residence.

Similarly, restrictions on the time of day for entry do not apply for non-residential land, since commercial water users can take and use their water overnight for different reasons, including reducing evaporation losses and avoiding high day time electricity costs for pumping water.

**6.7.1 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 regular basis, or at least yearly in other instances. Victoria’s Non-Urban Metering Policy (DEPI, 2014) 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.


**6.7.2 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

The Corporation must annually report to the Secretary on the monitoring and compliance activities it has undertaken and any enforcement actions commencing with the 2016-17 financial year.
Victoria will publish a revised compliance framework accordance with the work program outlined in to the Basin Compliance Compact including a state-wide compliance and enforcement policy, updated compliance and enforcement strategies published by rural water corporations, and guidelines issued under the statement of obligations.

### 6.7.3 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. Water corporations are also required to report compliance activities and the status of their metering fleets under the Basin Compliance Compact.

### 6.7.4 Education programs

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

- publishing newsletters, web content, media releases, newspaper notices about prosecutions and advisory letters
- holding committee meetings, reach audits and presentations
- engaging with customers and other stakeholders

### 6.7.5 Complementing Murray-Darling Basin Authority enforcement

Water resource plans are designed to demonstrate how Basin states are managing Basin water resources consistently and with a common goal of river and environmental health across the Murray-Darling Basin. 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 their environment.

As a result, water users will be subject to two regulatory regimes that manage the take of water from Victorian water resources in the Basin. 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 Murray-Darling Basin Authority 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

6.7.5.1 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.

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 or 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 will be articulated in the protocol developed between the MDBA and Victoria in accordance with the requirements of the Basin Compliance Compact.