

Annual Report on Compliance Activities for Northern Victoria

2018 - 2019



Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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All Basin states and the Australian Government, through the Council of Australian Governments (COAG), have committed to a [Basin Compliance Compact \(the Compact\)](#) that will improve the transparency and accountability of water management regimes and put in place more consistent compliance enforcement practices in the Basin.

This report fulfils Victoria's commitment under Compact action 1.2c to publicly report annually on compliance and enforcement actions by location including the timeliness with which allegations are addressed.

Since 2014, water corporations that manage water resources in non-urban areas report annually on their compliance and enforcement activities in accordance with clause 7.3A of their [Statement of Obligations](#). The state-wide Water Compliance Reports can be found on Department of Environment, Land Water and Planning's (DELWP's) website.

This report contains data for northern Victoria from the following water corporations: Coliban Water, Goulburn Murray Water, Grampians Wimmera Mallee Water and Lower Murray Water.

Taking water that's not yours means less water for everyone – it's all connected

Most water users are responsible and abide by the conditions of their licences. However, each year, a small number of users break the law. Common offences of the *Water Act 1989* (Victorian Water Act) in rural areas are:

- Unauthorised take of water (sections 33E and 63)
- Unauthorised works (section 75)
- Wrongful take of water (section 289)
- Structure over works (section 148)
- Interference with a water corporation's property (section 288)
- Failure to comply with water-use licence conditions (section 64AF)
- Failure to comply with notice of contravention (section 151)

Water users break the law when they take more water than they are allowed to in their water

licence or water share and when their Allocation Bank Account (ABA) balance is negative (i.e. unauthorised take of water), even if it is a small volume of water. Whenever a little more water is taken than is allowed, it can easily add up and there is limited water to go around. This is especially so in the southern-connected Murray-Darling Basin where inflows into the Basin storages are at record low levels.

Sometimes these offences are deliberate, and sometimes they happen because people do not know the law.

Implementing the Basin Compliance Compact

The community expects accountability and transparency in the water market. In 2017, the ABC Four Corners report 'Pumped' revealed allegations of large-scale illegal pumping of water by irrigators in New South Wales (NSW). This report put the spotlight on the management of water resources in the Murray-Darling Basin, and identified particular gaps in the compliance regime across the Basin, particularly the Northern Basin. Public scrutiny of Basin Plan implementation and compliance intensified following a report on water management by the New South Wales Ombudsman, the findings of the Productivity Commission and South Australia's Royal Commission in to the Basin Plan, the death of more than one million fish at Menindee Lakes in NSW and climate extremes causing continuing drought in south-eastern Australia.

All Basin states and the Australian Government signed up to a Basin Compliance Compact in 2018 that will improve the openness and strengthen accountability of water management systems and enforce compliance more consistently. This is necessary to reinforce public confidence in the management of Murray-Darling Basin and water resources in all Basin states.

Water Act reforms to support stronger compliance and enforcement

In August 2019, Victoria's *Water and Catchments Legislative Amendment Act 2019* (2019 Amendment Act) was passed in Parliament. The 2019 Amendment Act strengthens penalty provisions in the Victorian Water Act and makes it easier to prosecute water offences. The 2019 Amendment Act also makes it clear that offences such as misuse of water or water theft will be addressed seriously, and has:

- increased the maximum fine for intentional water theft and related offences if they cause substantial harm, to \$990,000 for companies and \$198,000 for individuals,
- allowed for the suspension or cancellation of licences for taking water and works, and
- enabled water corporations to issue penalty infringement notices for less serious water offences.

The Amendment Act came into effect on 9 October 2019.

Compliance activities

In 2018-19, there was a greater level of compliance activity as water corporations continued to invest in metering, telemetry and database management systems that enable better monitoring of water take, greater scrutiny of potential breaches, and more comprehensive compliance reporting.

Water corporations in northern Victoria reported that they detected 6,086 potential breaches between 1 July 2018 and 30 June 2019. 96 per cent of potential breaches detected were for unauthorised take. Potential breaches were investigated further by water corporations to check if they were actual breaches and if enforcement action was needed.

There was an increase in the number of potential compliance breaches reported in 2018/19 compared to 2017/18 because of two main reasons:

- improved scrutiny of water take as
 - water corporations have greater capacity to detect potential breaches with improved metering and system monitoring technology (e.g. telemetry, data management systems) that makes better use of data for compliance purposes;
 - we are now counting all allocation bank accounts (ABAs) with a negative balance as a potential breach. Concerns have been raised that some water users are regularly taking water without first buying allocation, allegedly to take advantage of lower prices later in the season to bring their water accounts back into balance. This practice is an offence under the Water Act 1989 that Victoria is actively working to stamp out and encourage other Basin states to do the same;

- warmer and drier conditions have led to higher prices on the market so there may be greater temptation for some people to make poor decisions and illegally take and use water – but they will be caught.

Water corporations commenced 6,307 investigations (including detected potential breaches carried forward from the previous year) and finalised 5,757 investigations (Table 1). This shows that at least 91% of potential breaches reported are resolved within a year.

Rural water corporations finalised 4,532 investigations without taking enforcement action.

Reasons for this outcome included:

- an investigation concluded that there was no offence,
- insufficient evidence,
- breaches involved small volumes of water for domestic and stock supply for which there may have been difficulty purchasing the needed small volume on the water market.

In some cases, no enforcement action was taken because potential breaches were resolved by the customer before investigations commenced. This does not mean that this behaviour is acceptable. Victoria is working to standardise across water corporations how such cases will be enforced under *the Water Act 1989*.

In Victoria water corporations own, maintain and read meters. Table 1 shows water corporations reported significantly more manual meter reads and telemetered meters this year, which can be attributed to more complete reporting.

Enforcement activities

Water corporations have a range of enforcement options including issuing advisory letters, warning letters, notices of contraventions, reduce, restricting or discontinuing water supply or prosecutions (see Figure 1). Water corporations may take several different enforcement actions if a breach is not rectified. For example, a person who is issued with a notice of contravention may have been previously issued with an advisory letter and/or a warning letter but failed to correct his or her behaviour.

Between 1 July 2018 and 30 June 2019, rural water corporations took 1,924 enforcement actions against breaches of the Victorian Water Act (Table 1). Rural water corporations took 424

more enforcement actions in 2018/2019 than in 2017/2018.

95 per cent of the enforcement actions reported by rural water corporations were advisory or warning letters. Tables 2 to 5 show a breakdown of enforcement actions and the offences cited against those actions.

Between 1 July 2018 and 30 June 2019, 11 prosecutions were commenced (Table 6), 9 of which were finalised and two will be carried forward into the next year (Table 7). Table 8 shows the outcomes of all prosecutions that were finalised in 2018/19.



Figure 1 Compliance and enforcement pyramid

Priorities for 2019 – 2020

DELWP and the water corporations are committed to ensuring that the increased focus on compliance and enforcement is sustained and turned into 'business as usual'. The passage of the 2019 Amendment Act is timely as it provides for greater deterrence against water theft by strengthening penalties and gives water corporations a wider range of enforcement tools.

A key priority for the 2019 – 2020 year will be to improve the monitoring of water consumption and ensure Victorian authorities are well-placed to

take enforcement action in instances unauthorised take of water. As there is limited water to go around, especially in times of drying conditions, it is important for water corporations to work with their customers to maintain positive balances in allocation bank accounts, plan ahead for their water needs, keep track of water use and identify and resolve issues well before the end of the water year.

Other priorities include completing the remaining actions in the Murray-Darling Basin Compliance Compact and drafting regulations to implement amendments in the 2019 Amendment Act.

Table 1: Compliance activities in the reporting year

Compliance & Enforcement Activity	2017-18	2018-19
Number of telemetered meters	22,085	27,138
Number of meter reads by compliance officers ¹	34,829	42,895
Number of meter inspections undertaken by compliance officers	34,851	57,821
Alleged compliance breaches reported	1,448	6,086
Investigations commenced ²	1,446	6,307
Investigations finalised with no action taken	5	4,532
Number of enforcement actions taken ³	1,500	1,924

Table 2: Enforcement actions taken in the reporting years

Number of Enforcement Actions ⁴	2017-18	2018-19
Advisory letters issued	777	802
Formal warnings issued (Table 3 for breakdown by sections of the Victorian Water Act)	693	1,035
Statutory notices issued (Table 4 for breakdown by sections of the Victorian Water Act)	12	59
Recommended for prosecution (Table 5 for breakdown by sections of the Victorian Water Act)	9	21
Referred to other agencies	9	6
Licence cancellations and/or suspensions	0	0
Restrict supply of water	0	1

Table 3: Breakdown of formal warnings issued by section of the Victorian Water Act in 2018-2019

Section of the Act	2018-19
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	111
Unauthorised take of water (section 63) & Wrongful take of water (section 289)	18
Unauthorised take of water (section 33E)	737
Interference with Authority's property (Section 288)	1

1. Manual meter reads.

2. The number of investigations commenced will include alleged breaches that reported in the previous year but not commenced in that same year.

3. Water corporations may take several different enforcement actions if a breach is not rectified. For example, a person who is issued with a notice of contravention may have been previously issued with an advisory letter and/or a warning letter but failed to correct his or her behaviour.

Section of the Act	2018-19
Wrongful take of water (Section 289)	168

Table 4: Breakdown of statutory notices issued by section of the Act in 2018-2019

Section of the Victorian Water Act	2018-19
Unauthorised take of water (section 63) & Wrongful take of water (section 289)	1
Unauthorised works (section 75) & Wrongful take of water (section 289)	1
Structure over works (section 148)	4
Failure to comply with a notice of contravention (section 151)	5
Interference with Authority's property (section 288)	5
Wrongful take of water (section 289)	43

Table 5: Breakdown of cases recommended for prosecution by section of the Act in 2018-2019

Section of the Victorian Water Act	2018-19
Unauthorised take of water (section 33E)	1
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	19
Interference with Authority's property (section 288) & Wrongful take of water (section 289)	1

Table 6: Prosecutions commenced in reporting year

Relevant section(s) of the Victorian Water Act	Date commenced	Catchment
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	12-Jul-18	Goulburn River Central Goulburn Irrigation Area
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	12-Jul-18	Goulburn River Central Goulburn Irrigation Area
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	24-Jul-18	Goulburn River Shepparton Irrigation Area
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	24-Jul-18	Goulburn River Shepparton Irrigation Area
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	25-Jul-18	River Murray Murray Valley Irrigation Area
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	26-Jul-18	River Murray Torrumbarry Irrigation Area
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	26-Jul-18	River Murray Torrumbarry Irrigation Area

Relevant section(s) of the Victorian Water Act	Date commenced	Catchment
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	26-Jul-18	River Murray Torrumbarry Irrigation Area
Unauthorised take of water (section 63), Unauthorised works (section 75), and Wrongful take of water (section 289)	08-Aug-18	Goulburn River
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	16-May-19	Goulburn River Shepparton Irrigation Area
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	21-Jun-19	River Murray Torrumbarry Irrigation Area

Table 7: Prosecutions in progress at end of reporting year⁵

Relevant section(s) of the legislation	Date commenced	Catchment
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	16-May-19	Goulburn River Shepparton Irrigation Area
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	21-Jun-19	River Murray Torrumbarry Irrigation Area

Table 8: Outcomes of the prosecutions finalised in reporting year

Relevant section(s) of the Victorian Water Act	Date commenced	Date concluded	Catchment	Outcome
Unauthorised works (section 75) & Wrongful take of water (section 289)	26-Jul-17	18-Dec-18	River Murray	Matter settled by consent. Accused ordered to pay costs of \$12,500.
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	29-May-18	13-Nov-18	River Murray Torrumbarry Irrigation Area	Matter settled by consent. Accused agreed to pay costs of \$1,122.30.
Interference with Authority's property (section 288) & Wrongful take of water (section 289) (2 counts)	30-May-18	26-Sep-18	River Murray Rochester Irrigation Area	1. 12 month bond 2. Costs \$724.30 3. No conviction
Interference with Authority's property (section 288)	20-Jun-18	11-Jul-18	Murray Darling Basin - Surface Water	\$700 fine and Court Costs
Unauthorised take of water (section 33E) & Wrongful take of water (section 289) [#]	12-Jul-18	25-Sep-18	Goulburn River Central Goulburn Irrigation Area	Withdrawn

⁵ Prosecutions that have not been finalised as at 30 June 2019 and have been carried forward into the next reporting year.

Relevant section(s) of the Victorian Water Act	Date commenced	Date concluded	Catchment	Outcome
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)#	12-Jul-18	25-Sep-18	Goulburn River Central Goulburn Irrigation Area	Withdrawn
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)	25-Jul-18	31-Oct-18	River Murray Murray Valley Irrigation Area	1. Fine \$2,000 2. Costs \$1,500 3. Conviction
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)^	24-Jul-18	05-Oct-18	Goulburn River Shepparton Irrigation Area	Withdrawn
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)^	24-Jul-18	01-Nov-18	Goulburn River Shepparton Irrigation Area	1. Diversion 2. 5 month bond 3. Costs \$324.30
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)*	26-Jul-18	20-Nov-18	River Murray Torrumbarry Irrigation Area	Withdrawn
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)*	26-Jul-18	20-Nov-18	River Murray Torrumbarry Irrigation Area	Withdrawn
Unauthorised take of water (section 33E) & Wrongful take of water (section 289)*	26-Jul-18	20-Nov-18	River Murray Torrumbarry Irrigation Area	1. Diversion 2. Compensation \$1,000 3. Costs \$124.30
Unauthorised take of water (section 63), Unauthorised works (section 75), and Wrongful take of water (section 289)	08-Aug-18	01-Feb-19	Goulburn River	Matter settled by consent. Accused made application for appropriate licences.

^ * denotes related offences