

LOWER MURRAY WATER

Compliance and
Enforcement Strategy

December 2019



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WATER

TRADITIONAL OWNERS ACKNOWLEDGEMENT

The Victorian Government proudly acknowledges Victoria's Aboriginal Community and their rich culture and pays respect to their elders past and present.

We acknowledge Aboriginal people as Australia's first peoples and as the traditional owners and custodians of the land and water on which we rely. We recognise and value the ongoing contribution of Aboriginal people and communities to Victorian life, and how that enriches us. We embrace the spirit of reconciliation, working towards equality of outcomes and ensuring an equal voice for Aboriginal people.

LOWER MURRAY WATER (LMW) COMPLIANCE AND ENFORCEMENT STRATEGY SUMMARY

In July 2017 the Murray Darling Basin Authority (MDBA) responded to the public requests for further action to be taken to ensure the safety and longevity of the Murray Darling Basin. The MDBA reviewed the compliance of legislation within the Basin and from that review designed the MDBA Compliance Compact outlining recommendations that the States take to ensure compliance with the use of water within the Murray Darling Basin.

LMW's Compliance and Enforcement Strategy sets out the rules and procedures for LMW when conducting compliance and enforcement strategies among rural customers. The approach aims to provide transparency and accountability to both LMW and rural customers. Rural customers will be empowered to make decisions on water take with the support of LMW and its policies that will;

- Provide a commitment to transparency
- Provide a clear understanding of the role of LMW for compliance and enforcement
- Ensure traditional owners' rights are acknowledged
- Provide information of prohibited activities
- Outline LMW's priorities for enforcement including unauthorised take
- Outline the decision-making process regarding breaches of the Water Act 1989 and by-laws
- Provide a clear and logical escalation pathway in response to detected breaches
- Outline the risk-based program for monitoring and auditing ongoing compliance by water users including metering
- Describe the powers held by Authorised Officers of LMW
- Provide contact points for members of the public

- Provide assistance for anonymous reporting of breaches
- Program for increasing public awareness
- Compliance with Water resource plans of the MDBA and DELWP

Commitment to Transparency

LMW endeavours to work with all water users across its jurisdiction to provide education and support on what constitutes a Breach of the *Water Act 1989* or one of LMW's *by-laws*. This education is delivered through social media, website promotion, individual contact where occasion warrants and through ongoing communication by all customer facing staff members.

LMW intend to promote the laws and regulations found within the *Water Act 1989* and its *by-laws* by publishing them in the LMW website and other communication means.

Authorised Officers are to remain up to date on legislation changes and will ensure that ongoing training is sought to ensure correct information is provided.

LMW Authorised Officers will present to the staff of LMW regularly to ensure that staff are well equipped to answer questions relating to breaches of the *Water Act 1989* or one of its *by-laws*.

LMW's risk-based compliance approach aims to maximise voluntary compliance, supporting rural customers to comply with their licence and legal obligations and utilising intelligence, community reports and staff insights to target and rectify non-compliance.

'Compliance' means following the law. It means obtaining the right approvals or permissions and conducting authorised activities in accordance with any conditions or regulatory requirements.

'Enforcement' means the use of influence, authority and statutory methods to ensure compliance with the law. Enforcement can be a 'remedy' and a 'sanction' - to require the customer to stop the non-compliant activity and fix the problem or address any harm (the remedy), and where appropriate, applying a penalty or punishment for breaking the law (the sanction).

Role of the Water Authority

LMW is one of nineteen Water Authorities in the state of Victoria. LMW's responsibilities include;

- The supply of drinking water
- The removal of sewage and trade waste
- Delivery of irrigation water
- Delivery of stock and domestic water

LMW plays a key compliance role in ensuring that the lawful use of water is understood, licence and legal requirements are complied with and illegal extraction is identified, remedied with appropriate penalties applied to deter future non-compliance.

Where non-compliance is identified, LMW will adopt;

- Ethical enforcement measures: Provide a response that removes any economic benefit obtained through non-compliance and maximise deterrence of future non-compliance
- Preventative Measures: LMW aims to raise awareness of regulatory requirements relating to water use and how to comply to support compliance with the law
- Targeted activity: Compliance and enforcement activity will target areas and entities where non-compliance presents the greater risk to LMW's objectives of sustainable management of community water resources
- Proportionate responses: LMW's compliance responses will be proportional to the problem they seek to address and how liable, or responsible for the problem, the customer is
- Effective processes: LMW's enforcement activity will aim to prevent unlawful and unauthorised water use and act timely to minimise impacts and maximise the effectiveness of any deterrence.

Prohibited Activities under the *Water Act 1989*

Section	Title
S33AF	Offence to take interstate water without approval of Minister
S33AH	Offence to take water under a water allocation outside the associated water system without approval of Minister
S33E	Offence to take water without authorisation
S33D	Offence to interfere. With state observation bore
S63	Offence
S64AF	Offence to fail to comply with licence condition
S64J	Offence to use water for certain purposes on land without licence
S64K	Further offence for use of water in certain cases
S75	Interfere/obstruct/damage waterway
S143	Waste and misuse of water supply
S145	Control over Connections
S146	Diversion into works of an Authority
S148	Structures over works
S170F	Contravention of a Plan
S195	Control over connections and discharges
S200	Control over diversion of drainage water
S208	Control of works and structures
S288	Interference etc. with Authority's property
S289	Wrongful taking etc. of water
S290	Uncovering or exposing works
S291	Trespass
S291C	Offence to Impersonate Authorised Officer
292	Offence of obstructing etc. officers

All the prohibited activities outlined above hold varying penalties ranging from penalty units to periods of imprisonment. All offences will be investigated following the rule of law and without favour or bias, non-compliance remedied, and penalties applied to deter future non-compliance.

The use of discretion is used only when extenuating circumstances exist that are out of the control of the customer. Customers remain responsible for understanding

their legal obligations and LMW will provide support to customers to understand what their responsibilities are.

The above table and link to the legislation will be made available on the LMW website and promoted on social media. Recent amendments to the *Water Act 1989* authorised LMW to commence the use of infringement penalties for some offences after 30 March 2020.

A compliance manual is to be created for all staff as a guide to assisting customers to remain compliant with the legislation. It is proposed that an information pack be available for customers.

Priorities for enforcement

The three most common offences that affect LMW's ability to supply water to customers and community are;

S33E - Offence to take water without authorisation

S289 - Wrongful taking etc. of water

S288 - Interference etc. with Authority's property

The following question was asked to the Customer Advisory Committees in April 2019, *what are the three most concerning breaches of the Water Act 1989 that you come across?*

The response aligned with the same concerns held by LMW which are the three offences outlined above. LMW consider that clarity of the customer, community and/or user obligations supports LMW in ensuring legal requirements are investigated for the above offences and they are treated with high priority.

Due to the high priority placed on these offences by both the customer and LMW, it can be determined that reducing these offences and acting on these offences is important to the community making it a significant issue to address.

A compliance plan for the above three priority offences to be designed in conjunction with the tools available to promote and support compliant behaviour, discover what drives compliant behaviour and monitor/identify non-compliance. This allows LMW to ensure we create a strong deterrence for any future non-compliance.

To implement LMW's overall role to ensure delivery of safe water, LMW and customers need to be confident in compliance processes and actions when conducting investigations that threaten the delivery of water.

General escalation of compliance matters

LMW seek to promote voluntary compliance rather than reactionary compliance when dealing with breaches of the *Water Act 1989* in the first instance but also as a technique to avoid non-compliance behaviour.

This includes but is not limited to the use of:

- Informing and educating customers on compliance obligations
- Providing support to the community in the form of written advice to promote voluntary compliance
- Collecting information or insights on the state of compliance across the state and Murray Darling Basin

LMW will take an escalating approach to sanctions, ranging from advice as the least severe to prosecution as the most severe. Enforcement options may include:

- **Letter of advice:** may be used for first time low impact offences to encourage compliance and provide general advice on how best to comply with obligations.
- **Formal warnings:** may be used when the impact of non-compliance is low. Warnings signal that further non-compliance will result in an escalating enforcement response.
- **Meter restriction:** supply of water may be reduced, restricted or discontinued where water has been misused or unlawfully taken. The type and nature of meter restriction will be considered based on the scale, duration, impact and history of non-compliance.
- **Infringement notice:** may be used to deal with common breaches of the law where the impacts are not considered serious enough to warrant a prosecution. Infringements might be used when non-compliance is of a short duration, once off or the situation was quickly remedied.
- **Impose conditions:** may be used to return the water to the Murray Darling Basin through transfer between Allocation Accounts as a remedy.
- **Deny Access:** Disable a person's ability to place a water order.
- **Lockdown:** Lock the outlet of the customer to prevent further take.
- **Injunction:** LMW can apply for an injunction from the Supreme Court to stop a person contravening the Water Act or a condition of a licence, notice, approval or permit.
- **Prosecution:** Prosecutions seek to provide an appropriate sanction to the customer and act as a deterrent. LMW will consider prosecuting an individual or company where other enforcement measures are inadequate, or unlikely, to ensure ongoing compliance.

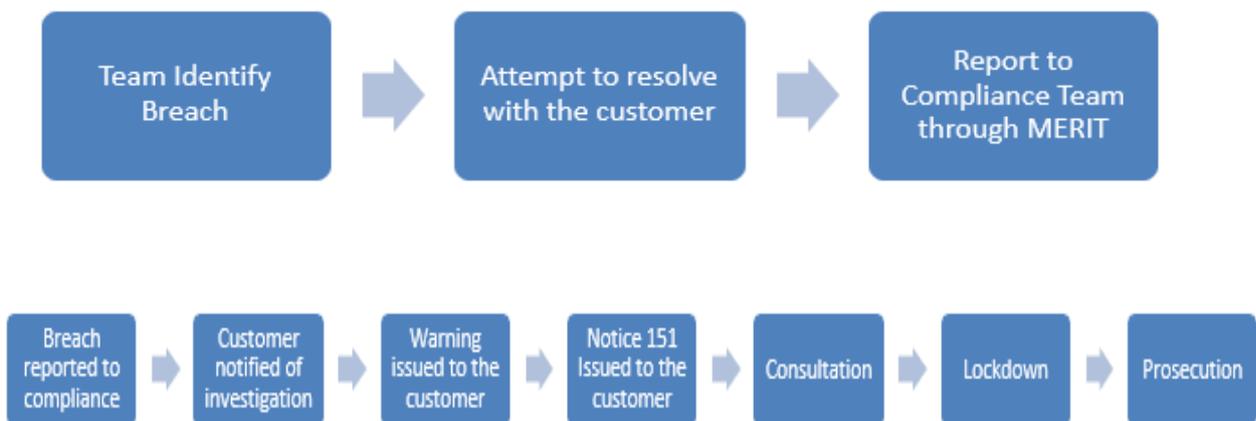
Escalation depends on circumstances

In responding to non-compliance, LMW will take account of the circumstances and attitudes of those needing to comply. We will seek to understand and take account of whether the person is both intending and willing to do the right thing but needs further support to do so, or whether they are recklessly or deliberately failing to meet their legal obligations.

The culpability of a customer will be considered alongside the impact of their non-compliance, how to provide a specific deterrent to future non-compliance by the customer and as a general deterrent by educating others about the potential consequences of breaking the law.

The LMW hardship program will be utilised when investigating any matters related to a breach of the *Water Act 1989*. Times of drought may see increased use of discretion in relation to allegations of wrongdoing.

LMW will use the following guideline for pathway of escalation:



Monitoring and Auditing ongoing Compliance by water users

Multiple teams have responsibilities when it comes to the monitoring and auditing of compliance by water users.

- **Business Development Team:** Maintain the LMW contributions to the Water Register. This means that they are responsible for the Unauthorised Take of Water beyond the Allocation Account (ABA) balance. (*S33E Water Act 1989*)

Internal dashboard and Water Register spreadsheets monitor and identify these breaches.

- **Operations Team:** Maintain the fleet of meters possessed by LMW. They identify Take Without Order (*S289 Wrongful Take of Water etc.*)
The Operations team can also identify Unauthorised Take of Water beyond Allocation Account balance. (*S33E Water Act 1989*)
- **Water Quality Team:** Identify water quality offences, including trade waste offences (*S178 Water Act 1989*) and discharge offences (*S195 Water Act 1989*)
- **All teams:** Breaches of compliance can come from multiple teams, staff members or community members at any given time.

Methods for monitoring and auditing the ongoing compliance of water users includes;

- Telemetry Metering and Data warehouse
- The Victorian Water Register
- Property and Metering
- MERIT (CRM)
- Public Complaints

Training of Authorised Officers

LMW Authorised Officers will hold a minimum qualification of Certificate IV in Government Investigations or equivalent.

Ongoing training will be provided for updated legislation and implementing new legislation when required.

First Contact for Members of the Public

LMW is available through contact on the LMW website, LMW social media accounts and during business hours via telephone and email. LMW are willing to maintain anonymity when accepting complaints relating to compliance matters.

Public reporting will be prepared and can be accessed via the Compliance Coordinator. A separate email address to be created for reporting of compliance.

Public Awareness Program

Joint education between the Communications Team, Customer Service Team and the Compliance team to ensure the public are recipients of accurate and consistent information on compliance matters is an essential prevention measure.

Education to include a focus on ensuring customer, water users and the community understand their legal obligations regarding water use, why those obligations are important and supporting those with compliance requirements to understand what compliance would look like.

LMW will also publish its annual compliance priorities, highlighting where it will target compliance effort and what customers and the community can do to ensure compliance. LMW will publish these annual priorities to promote voluntary compliance and enable users to evaluate their own performance and ensure they are compliant in advance of any assessment by LMW.

Reviewing the Strategy

This strategy will be reviewed at the conclusion of every financial year coinciding with the Annual Compliance Report LMW submit to DELWP. It will be reviewed in this manner to utilise the statistics provided in that report so that comparisons as to its effectiveness can be measured.



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