



Non-Urban Water Compliance and Enforcement Strategy

May 2020

Introduction

Water is a precious but limited resource. Communities, industries, the economy, our land and waterways depend on water to support a healthy environment and for Coliban Water's region within Victoria to grow and prosper. The Department of Environment, Land, Water and Planning (DELWP), water corporations and the community have clear responsibilities to work together to protect our precious water resources.

Demand for water will only continue to increase with population growth and accelerating changes in climate. Climate variability also brings greater uncertainty about the supply of water. It is crucial for water to be managed fairly for all users as we shift to a future with less inflows and available water.

A strong, clear system for compliance is vital to support community confidence that the same rules apply to everyone under Victoria's water management. It is essential to deter people from illegally taking and using water and harming the environment and other water users.

Our compliance and enforcement system is to maintain fair access to water resources and to impose penalties for illegal take and use of water. This strategy specifically relates to the non-urban water, or rural sector within Coliban Water. Our practice will be risk-based, responsive, accountable and consistent for effective compliance and enforcement in the non-urban water sector across Coliban Water's region and is consistent with the key principles and minimum standards water corporations across Victoria are expected to incorporate.

Aboriginal Acknowledgement

Coliban Water proudly acknowledges our region's Aboriginal community and their rich culture and pays respect to their Elders past, present and emerging.

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 this enriches us.

We embrace the spirit of reconciliation, working towards the equality of outcomes and ensuring an equal voice.

Purpose

This strategy is to demonstrate how Coliban Water will meet its obligations to effectively manage and prioritise compliance risks and enforce the *Water Act 1989 (Vic) (VWA)* as it relates to the following non-urban water services:

- Taking and using water;
- Construction, operation, maintenance, alteration and decommissioning of works; and
- Connection to the works of a water corporation.

Context

Coliban Water is one of six statutory corporations (refer to Figure 1) that provide non-urban water services under the VWA which includes responsibilities for compliance and enforcement of rules and legislative requirements surrounding the take and use of water and construction of works. Coliban Water is empowered to investigate and prosecute certain breaches of the VWA.

Victoria strives to maintain high standards in water compliance to be more effective in the face of changes in climate, reduced water availability and increased demand for water. The Victorian Government's water plan [Water for Victoria](#) (2016) committed to modernising its compliance system.

The importance of having effective compliance and enforcement systems not only in Victoria, but also across Murray-Darling Basin (Basin) states and territories, was made obvious in 2017 with allegations of significant water theft and poor regulation in the northern part of the Basin. All Basin states and the Australian Government responded by agreeing to a Basin Compliance Compact in June 2018 to improve transparency and accountability of water management systems and put more consistent compliance and enforcement practices in place. A clear system for compliance is necessary to reinforce public confidence in the Murray-Darling Basin Plan¹.

In Victoria, compliance and enforcement in the non-urban water sector is carried out by the Minister for Water and water corporations. DELWP expects all Victorian water corporations which provide non-urban water services to have strategies and protocols in place to provide strong, clear systems for compliance and enforcement in water use consistent with its 'Non-Urban Water Compliance and Enforcement Guidelines'.

Strategy 2030 Alignment

This strategy directly links to Coliban Water's **Strategic Direction 1: Water Security and zero Carbon** in securing our region's water supply in a constrained environment. It also links to **Strategic Direction 3: Prosperous Economies** to ensure that our agricultural industries that rely on our non-urban water services have confidence that we take action on illegal water use.

1. This is an interjurisdictional plan to share water sustainably between all users in the Basin as well as the environment. It was developed to put water aside for the environment and to set limits on how much water can be taken for irrigation, drinking water, industry and other future purposes across the Basin from July 2019.

Roles and Responsibilities

Under the VWA, the Minister for Water:

- is responsible for the development of water policy and governance of the water sector.
- is responsible for issuing water entitlements and managing Victoria's water resources for both urban and non-urban areas.
- has delegated power and functions for licence administration to water corporations
- is empowered to issue authorisations relating to take and use of water and construction of works, including, but not limited to, works on waterways for the take and use of water under specific section of the VWA.

DELWP supports the Minister in establishing the policies and strategies necessary to fulfil the Minister's responsibilities and overseeing the performance and appointment of directors to the boards of water corporations.

Coliban Water's non-urban water services are categorised as 'non-declared' under the VWA. Pursuant to Section 306 of the VWA, the Minister for Water has delegated its functions and powers under Section 51 to Coliban Water. Section 51 provides that a person may apply to the Minister for a licence to take and use water, which is mainly applicable in non-declared water systems.

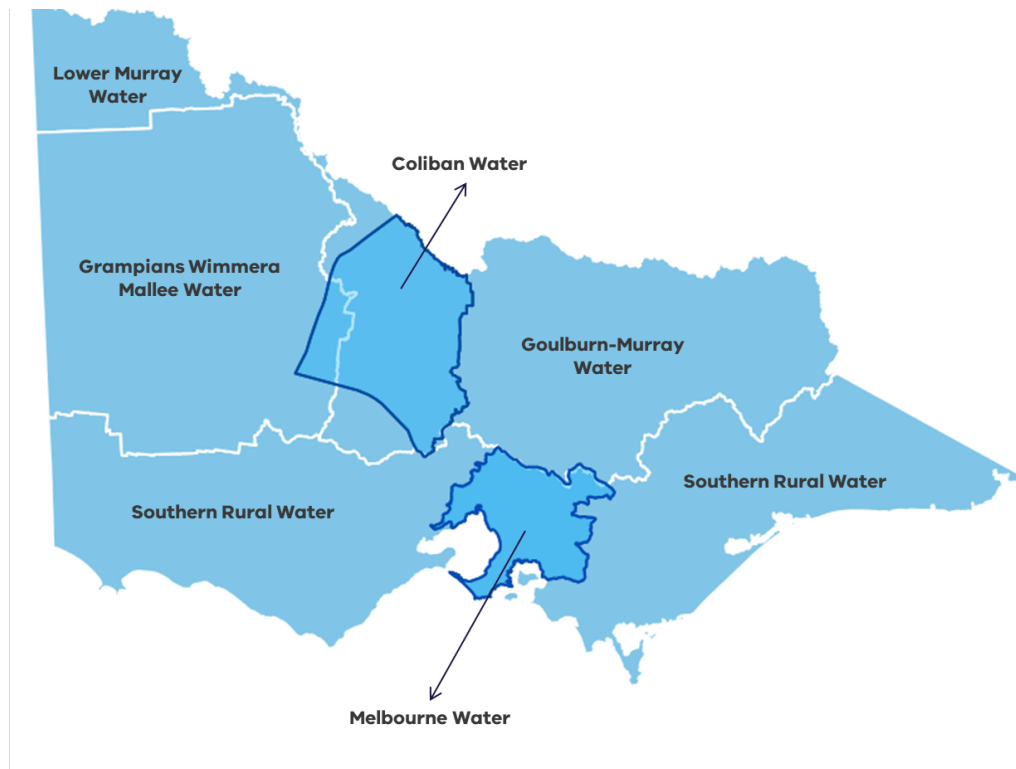


Figure 1: Map of the geographical jurisdiction of water corporations in Victoria relating to non-urban use.

Prohibited Activities and Penalties

Coliban Water is responsible for the compliance and enforcement of rules and legislative requirements surrounding the take and use of water and construction of works as authorised and/or delegated to by the Minister for Water. Coliban Water is therefore empowered to investigate and prosecute breaches of a variety of offences under the VWA.

The following is a general description of a selection of the prohibited activities and associated penalties that apply to unlawful interference with Coliban Water's systems under the VWA.

Offences Relating to Take and Use of Water, Works of a Water Corporation and Breaches of Licence Conditions	Penalty
<p>Taking or using water from a relevant water source, in a non-declared water system without authorisation under the VWA or any other Act.</p> <p>Recklessly¹ or knowingly² taking or using water from a relevant water source in a non-declared water system without authorisation resulting in— (a) land, works or water being seriously damaged; or (b) another person suffering substantial economic loss.</p> <p>Section 63</p>	<p>Individual, 240 penalty units; Body corporate, 1200 penalty units.</p> <p>¹Individual, 5 years imprisonment or 600 penalty units or both; Body corporate, 3000 penalty units.</p> <p>²Individual, 10 years imprisonment or 1200 penalty units or both; Body corporate, 6000 penalty units.</p>
<p>Taking, using or diverting a water corporation's water without consent or authorisation under the VWA or any other Act.</p> <p>Recklessly¹ or knowingly² taking, using or diverting a water corporation's water without consent or authorisation resulting in— (a) land, works or water being seriously damaged; or (b) another person suffering substantial economic loss.</p> <p>Section 289</p>	<p>Individual, 240 penalty units; Body corporate, 1200 penalty units.</p> <p>¹Individual, 5 years imprisonment or 600 penalty units or both; Body corporate, 3000 penalty units.</p> <p>²Individual, 10 years imprisonment or 1200 penalty units or both; Body corporate, 6000 penalty units.</p>
<p>Interfering with the flow of water in any works under the control and management of a water corporation without consent or authorisation under the VWA or any other Act.</p> <p>Recklessly¹ or knowingly² interfering with the flow of water in any works under the control and management of a water corporation without consent or authorisation under the VWA or any other Act, resulting in— (a) land, works or water being seriously damaged; or (b) another person suffering substantial economic loss.</p> <p>Section 289B</p>	<p>Individual, 240 penalty units; Body corporate, 1200 penalty units.</p> <p>¹Individual, 5 years imprisonment or 600 penalty units or both; Body corporate, 3000 penalty units.</p> <p>²Individual, 10 years imprisonment or 1200 penalty units or both; Body corporate, 6000 penalty units.</p>

Offences Relating to Take and Use of Water, Works of a Water Corporation and Breaches of Licence Conditions	Penalty
<p>Deliberately causing or negligently allowing water to be wasted, misused or excessively consumed after receiving a notice from a water corporation.</p> <p>Using water supplied by an agreement for a specific purpose for a different purpose</p> <p>Section 143</p>	<p>For a first offence, 20 penalty units or imprisonment for 3 months.</p> <p>For a subsequent offence, 40 penalty units or imprisonment for 6 months.</p> <p>For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues -</p> <ul style="list-style-type: none"> - after service of a notice of contravention on the person under section 151, or - if no notice of contravention is served, after conviction of the person for the offence.
<p>Failing to comply with a notice of contravention.</p> <p>Section 151</p>	<p>20 penalty units.</p> <p>Coliban Water may:</p> <ul style="list-style-type: none"> • carry out necessary works or action to remedy the contravention, and recover costs; • remove or disconnect services and recover its costs; and • apply to court for an injunction restraining the person from contravening the notice
<p>Altering or removing any works that are connected, or anything to be discharged into the works of a water corporation without consent.</p> <p>Recklessly¹ or knowingly² causing or permitting the connection of any works, or the alteration or removal of any works that are connected, or anything to be discharged into the works of a water corporation without consent that results in—</p> <ul style="list-style-type: none"> (a) land, works or water being seriously damaged; or (b) another person suffering substantial economic loss. <p>Section 145A</p>	<p>Individual, 120 penalty units; Body corporate, 600 penalty units</p> <p>¹Individual, 5 years imprisonment or 600 penalty units or both; Body corporate, 3000 penalty units.</p> <p>²Individual, 10 years imprisonment or 1200 penalty units or both; Body corporate, 6000 penalty units.</p>



Offences Relating to Take and Use of Water, Works of a Water Corporation and Breaches of Licence Conditions	Penalty
<p>Destroying, damaging, removing, altering or in any way interfering with any property of a water corporation without consent.</p> <p>Recklessly¹ or knowingly² destroying, damaging, removing, altering or in any way interfering with any property of a water corporation that results in:</p> <p>(a) land, works or water being seriously damaged; or (b) another person suffering substantial economic loss.</p> <p>Section 288</p>	<p>Individual, 240 penalty units; Body corporate, 1200 penalty units.</p> <p>¹Individual, 5 years imprisonment or 600 penalty units or both; Body corporate, 3000 penalty units.</p> <p>²Individual, 10 years imprisonment or 1200 penalty units or both; Body corporate, 6000 penalty units.</p>
<p>Failing to comply with take and use licence conditions</p> <p>Section 55A</p>	<p>Individual, 120 penalty units Body Corporate, 600 penalty units</p> <p>Note: a licence can be suspended or cancelled by the Minister under Section 60</p>
<p>Failing to comply with a notice to repair works</p> <p>Section 150</p>	<p>20 penalty units</p> <p>Coliban Water may carry out repairs and recover costs.</p>



Compliance and Enforcement System

Coliban Water's compliance and enforcement system is built on five main principles: Risk-based, responsive, transparent, accountable, and consistent (see Figure 2)



Figure 2: Five principles for an effective compliance and enforcement system

1. Risk-based

Coliban Water has developed its responses to the different offences under the VWA based on the likelihood and consequence of harm to each water resource and the risk of a breach occurring – refer to Attachment A.

Water resource risk considers the environmental profile and includes:

- the impact an unauthorised take will have on the water availability to others and the water market;
- interference with works impacting land, waterways and water quality (including environmental flows); and
- the social impacts such as recreational and amenity values of waterways held by the broader community.

In responding to contraventions of the VWA, Coliban Water will consider the level of risk presented by the particular contravention. Contraventions with higher risks will be met with stricter penalties, allocation of greater resources and more rapid responses. Whilst high-risk contraventions require more significant responses than lower-risk contraventions, this does not mean that some level of non-conformance is acceptable.

Monitoring, detection and enforcement action is also undertaken in consideration of a number of other factors, both mitigating and aggravating, including water resource risk, the response from and compliance history of a water user, any financial or other benefit gained from offending, and environmental damage.

The likelihood and potential impact of a non-compliance will be reviewed at least every two years, or when circumstances call for a review (whichever occurs first), to consider new developments and changing natural and regulatory environments.

2. Responsive

Coliban Water has a range of compliance and enforcement tools available to it. Examples include:

- Compliance Tools: Education & information; metering; reporting and accounting;
- Detection Tools: Site visits (including powers to permit authorised officers to enter private land and request a person to state name and address), audits, monitoring data, reports and information from the general public, other agencies or regulatory authorities;
- Enforcement Tools: Various sections under the VWA such as:
 - 'Notice to Repair';
 - 'Notice of contravention';
 - Power to issue penalty infringement notices;
 - Suspension, revocation or cancelation of licence;
 - Prosecution powers.

A person who fails to comply with a notice may be subject to penalties.

These tools allow for flexible responses to different levels of risks. Coliban Water has adopted the following compliance pyramid (Figure 3) in assessing the different options available and the escalation of responses depending on the breach.

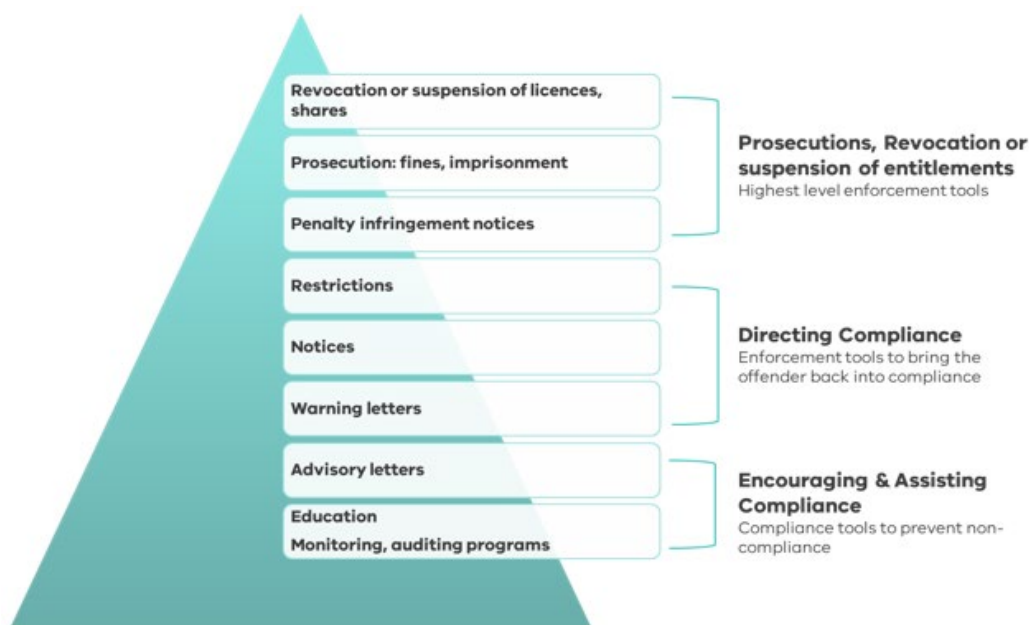


Figure 3: Compliance Pyramid

This compliance pyramid is used by Coliban Water in its decision-making processes and will inform starting points for action and pathways for escalation, if required.

Responses can start at any level of the pyramid, depending on the type of offence, the severity of the risk, and any other relevant issues. Compliance and enforcement action will escalate up the pyramid in accordance with an increase in the level of risk and seriousness of a breach.

Additionally, the compliance tools at the base of the pyramid will be used for all risk categories as a part of both pro-active and reactive action taken by Coliban Water. Coliban Water considers education of water users and the public to be the foundation of its compliance responsibilities.

Coliban Water understands that open investigations are 'living' and constantly evolving. Coliban Water is committed to considering all relevant information in order to ensure it is fully-informed and responds to breaches appropriately.

3. Transparent

Coliban Water is committed to transparency in undertaking its compliance and enforcement actions and exercising its powers and responsibilities.

Coliban Water aims to ensure that members of the public and water users understand the general policies and procedures that it engages in to maintain fair access to water and that authorities are acting with integrity, which includes this strategy being available on Coliban Water's website.

Coliban Water is also committed to providing ongoing education and awareness programs to assist water users and members of the public in understanding and complying with their obligations and to actively engage all stakeholders in compliance activities.

Coliban Water will also publish the following on its website:

- Our contact details, including who people can contact in Coliban Water to report on alleged breaches;
- Public reports on compliance and enforcement activities (e.g. annual report, newsletters). This is aimed at reassuring people that the compliance system is doing its job. Publishing enforcement decisions enables the rest of the public to see the consequences of committing an offence and may sometimes be a more effective deterrent than financial penalties;
- How persons who have been subject to an enforcement decision can ask for enforcement decisions to be reviewed; and
- The ongoing education programs in place for maintaining and improving public awareness of compliance matters.

4. Accountable

Coliban Water will ensure that compliance and enforcement functions are sufficiently independent from customer service functions to minimise potential conflicts of interest. Coliban Water's Rural Services Officers are the prime customer-facing incumbents in the field. Enforcement functions will be managed by the Customer Support team with oversight provided by the General Counsel and Corporate Secretary. Accountability will depend on the type and scale of the breach via an escalating process following Coliban Water's Compliance Pyramid and its delegations under the VWA as outlined in Coliban Water's Instrument of Delegations Policy (formerly Legislative Delegations Policy).

Coliban Water will ensure that staff responsible for compliance and enforcement are suitably trained to carrying out their duties and that its authorised officers understand their powers and obligations under the VWA. All our staff are required to comply with the Victorian Government Code of Conduct for Employees.

5. Consistent

Coliban Water's approach to compliance and enforcement is consistent with DELWP's policies and guidelines to ensure consistency across the state of Victoria.

To aid consistency, Coliban Water is part of a Victorian Water Compliance Community of Practice which regularly discusses issues relating to the non-urban take of water. Coliban Water is also part of the Water Compliance Community of Practice where annual forums are held to bring consistency to all agencies in the Murray-Darling Basin.

These Communities of Practice enable the sharing and exchange of ideas and processes, which facilitates the development and implementation of best practice by water corporations. Membership further encourages continual and consistent growth and improvement of all water corporations.

Implementation

This Non-Urban Water Compliance and Enforcement Strategy is supported by a Non-Urban Water Compliance and Enforcement Implementation Action Plan. The Plan specifies key actions and timeframes to be finalised prior to the 2020/21 rural season, as well as activities required to deliver this Strategy on an ongoing basis.

Ownership and Review

The Accountable Executive for this Strategy is the General Counsel and Corporate Secretary.

This Strategy will be reviewed at least every two years, with the next review due no later than May 2022.

Definitions

Compliance - a proactive regulatory activity where actions are taken to prevent breaches or offences from occurring in the first instance. There are a variety of compliance tools to support compliance with Victorian water laws, including education, hydrographic monitoring programs, metering inspections or audits, reporting and accounting.

Enforcement - a reactive regulatory activity that is triggered when breaches of the law are detected. Enforcement actions under the VWA include warning notices, reducing, restricting or discontinuing water supply or the delivery of water, issue penalty infringement notices, suspension or cancellation of an authorisation or licence, or prosecution.

Illegal Take - is the take or use of water without authorisation from the relevant state regulatory authority. It occurs when a person takes water when they do not have a water access right, or in contravention of conditions attached to a water access right (such as conditions as to total volume, rate of timing of take) or a works approval (such as location, pump size or use of a compliant meter). Illegally-built works that interfere with the flow of water for the purpose of taking it (for example, bores or surface water diversion structures like levees) are also considered by this strategy as part of illegal take.

Non-Urban Water - Coliban Water defines its non-urban water services as those that relate to water extractions from its rural network of channels and pipelines, or directly from our storages. This includes the network supplying water to the water treatment plants of Bendigo and Castlemaine, and to all rural customers.

