

Non-Urban Water Compliance and Enforcement Guidelines for Water Corporations

Maintaining Strong Compliance for our Environment and Water Markets in Victoria



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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Foreword

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 Victoria to grow and prosper.

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.

A review of compliance systems across the Basin by the Murray-Darling Basin Authority in 2017 revealed that Victoria has been managing compliance effectively. This is evidence of an effective water market, water corporations and water users cooperating on compliance and established layers of safeguards against large-scale or systemic water theft.

We are now working to modernise our compliance and enforcement system to maintain fair access to Victoria's water resources and to impose tougher penalties for illegal take and use of water.

These guidelines show that we need practices to be risk-based, responsive, open, accountable and consistent for effective compliance and enforcement in the non-urban water sector across Victoria.

It aims to maintain public confidence in the legitimacy and fairness of Victoria's water management through more consistent responses to offences under the Victorian Water Act, and improve the accountability, transparency and integrity of our compliance and enforcement systems.

DELWP, water corporations and the community have clear responsibilities to work together to protect our precious water resources. It is our promise to the community to deliver a dedicated, fair and accountable program of compliance.



Deputy Secretary

Department of Environment, Land, Water and Planning

1. About the guidelines

1.1. Purpose

The guideline establishes key principles and minimum standards water corporations are expected to incorporate into their own compliance strategies. These strategies demonstrate how water corporations will meet their obligations to effectively manage and prioritise compliance risks and enforce the *Water Act 1989 (Vic)* (Victorian Water Act).

1.2. Scope

The guidelines focus on compliance and enforcement of the Victorian Water Act relating to:

- Taking and using water
- Construction, operation, maintenance, alteration and decommissioning of works including, but not limited to, works on waterways for the take and use of water and water bores
- Connection to the works of a water corporation.

There is a strong focus on addressing unauthorised take and use of water. Illegal take and the tampering with associated metering equipment and other works in the northern part of the Murray-Darling Basin¹ were the main concerns that led to the development of the Murray-Darling Basin Compliance Compact in June 2018. The Murray-Darling Basin Authority described this class of water offence as:

'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 takes 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 report as part of illegal take.'

1.3. Who the guidelines apply to

The guidelines apply to six water corporations which provide non-urban water services² across Victoria and are referred to in the guidelines as water corporations:

- Coliban Water
- Goulburn-Murray Water
- Grampians Wimmera Mallee Water
- Lower Murray Water
- Melbourne Water
- Southern Rural Water.

Water corporations are expected to develop or update their compliance and enforcement strategies in accordance with the guideline by 31 December 2019.

1. The northern Basin refers to New South Wales and Queensland.

2. Non-urban water services refer to services relating to water extractions from rivers, waterways, channel systems and groundwater for irrigation, commercial and domestic and stock purposes, as well as water supply, drainage and salinity management. It also refers to bulk

water supply services provided by some water corporations to other water corporations in regional areas of the state. Collectively, these services are referred to as the non-urban water sector.

2. Importance of compliance and enforcement

Water is a precious and limited resource. It is critical to our economy, environment and communities. This is why water needs to be managed fairly for all water users. Water theft undermines the health of our environment, which threatens communities and our economy.

Effective and strong compliance helps to maintain fair access to water. It supports community confidence in the water entitlement framework and water market because the same rules apply to everyone. It also deters people from illegally taking and using water.

2.1. What compliance and enforcement means

Compliance and enforcement are two separate concepts that work together to maintain the integrity of water markets and sustain public confidence in Victoria's water management.

Compliance is 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 is a reactive regulatory activity that is triggered when breaches of the law are detected. Enforcement actions under the Victorian Water Act include warning notices, direction notices, reducing, restricting or discontinuing water supply or the delivery of water, issue penalty infringement notices (PINs), suspension or cancellation of an authorisation or licence, or prosecution.

2.2. Maintaining compliance

A review of compliance systems across the Basin by the Murray-Darling Basin Authority in 2017 revealed that the way compliance is maintained in Victoria is evidence of an effective water market and a collaborative approach to compliance. This is where water corporations work directly with water users as the first step in supporting compliance for fair access to water.

Another strength of Victoria's compliance system is the layers of safeguards against large-scale or systemic water theft. These include extensive metering and measurement systems, comprehensive specification of entitlements,

modernised irrigation systems, Victoria's sophisticated Water Register and comprehensive water accounting.

2.3. Strengthening compliance

Risks to compliance can increase during drought when there is more competition for water or where there are constraints on delivering water during peak demand. Demand for water is increasing and we can expect increased competition in the water market.

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. This is done by continually updating its policies, systems and legislation. The Government's water plan [Water for Victoria](#) (2016) committed to modernising our compliance system.

The importance of having effective compliance and enforcement systems not only in Victoria, but also across 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 Plan³.

In Victoria, compliance and enforcement in the non-urban water sector is carried out by the Minister for Water and water corporations. Water corporations in Victoria already have their own compliance and enforcement policies that were developed through the National Framework for Compliance and Enforcement Systems for Water Resources Management (2016). A 2018 review of the governance arrangements and framework for non-urban water compliance and enforcement in Victoria highlighted that Victoria's approaches already had the elements needed to achieve effective compliance and enforcement. However, there was scope for them to be improved and applied more consistently.

State-wide guidelines for water corporations to update their compliance strategies will establish a level of consistency in practices across Victoria,

3. 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.

enabling more effective responses to offences such as water theft.

2.4. Roles and responsibilities

The Minister for Water and water corporations have compliance and enforcement responsibilities under the Victorian Water Act. See [Figure 1](#) for an illustration of the institutional arrangements.

2.4.1. Minister for Water

The Minister for Water is accountable to Parliament and responsible for the development of water policy and governance of the water sector under the Victorian Water Act and *Catchment and Land Protection Act 1994*. Under the Victorian Water Act, the Minister for Water is responsible for issuing water entitlements and managing Victoria's water resources for both urban and non-urban uses.

The Department of Environment, Land, Water and Planning (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.

2.4.2. Water corporations

There are 19 statutory corporations established under the Victorian Water Act that provide water and wastewater services. Six water corporations provide non-urban water services and are the subject of the guidelines.

Under the Victorian Water Act, the Minister for Water has delegated powers and functions for licence

administration to water corporations. This means that in addition to water corporations' functions of delivering water and irrigation drainage services, water corporations also have delegated responsibility for the compliance and enforcement of rules and legislative requirements surrounding the take and use of water and construction of works. See [Figure 4](#) for more details on the authorisations and delegated functions under the Victorian Water Act.

Water corporations have a range of tools to ensure compliance. They are also empowered to investigate and prosecute breaches of the Victorian Water Act. See [Figure 3](#) for a list of common offences under the Victorian Water Act relating to the take and use of water and construction of works on a waterway that have penalty units. See [Figure 4](#) for a list of common compliance, detection and enforcement tools available to water corporations.

The Minister for Water issued a Statement of Obligations (General)⁴ on 20 December 2015 setting out expectations for water corporations to develop and implement policies, standards and systems to manage and prioritise compliance risks and enforce the Victorian Water Act (clause 7.3A). A compliance strategy, developed in accordance with this guideline, will demonstrate how a water corporation will use the range of compliance, detection and enforcement tools and incorporate the key principles for effective compliance and enforcement to carry out its function effectively.

4. The Statement of Obligations (General) was issued under section 41(2) of the *Water Industry Act 1994 (Vic)*, which sets out the expectations the Minister has on water corporations to carry out its core functions and duties effectively, including compliance and enforcement.

The Statement of Obligations (General) can be found in this link: https://www.water.vic.gov.au/data/assets/pdf_file/0015/54330/Statement-of-Obligations-General.pdf

Figure 1: Illustration of the institutional arrangements in Victoria's water sector

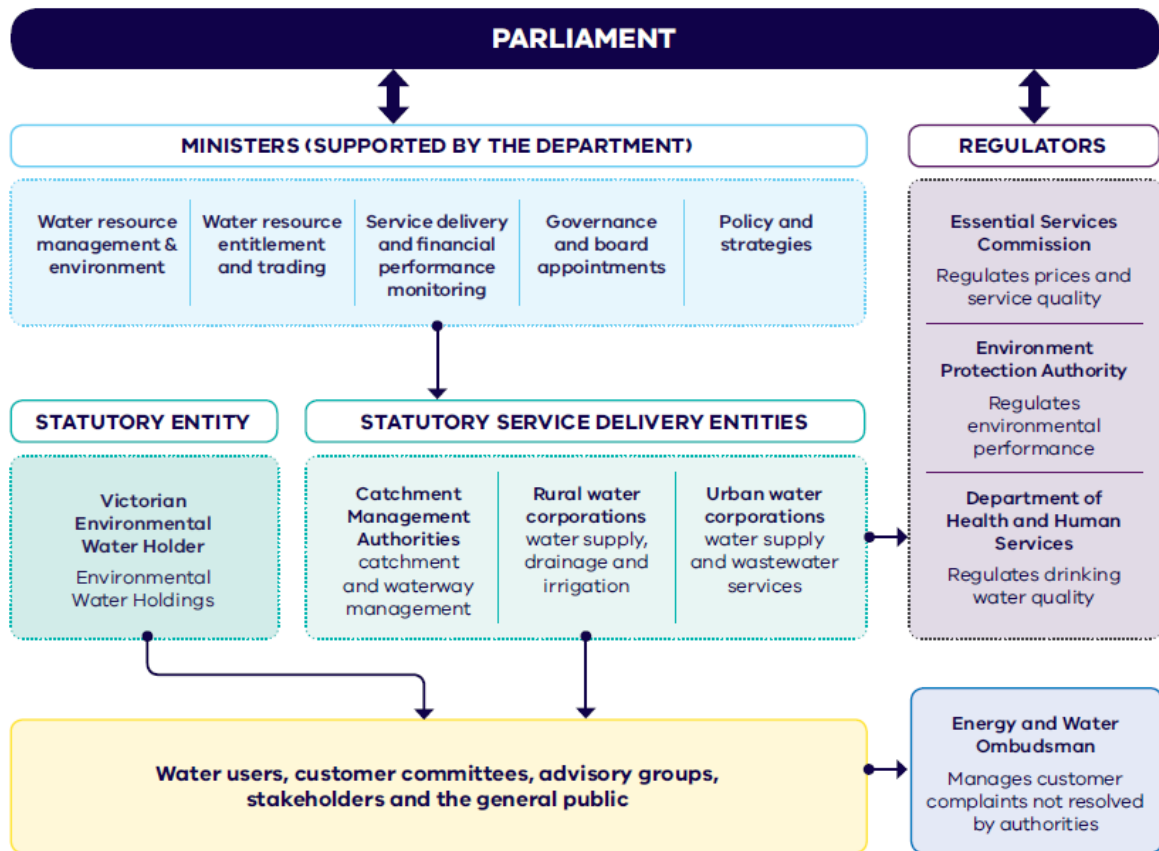


Figure 2: Authorisations under the Victorian Water Act

Under the Victorian Water Act, the Minister 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 sections of the Victorian Water Act.

The Minister then delegates these authorisations to water corporations under section 306 of the Victorian Water Act.

All authorisations below are delegated to Goulburn Murray Water, Grampians Wimmera Mallee Water, Lower Murray Water and Southern Rural Water. Section 51 is also delegated to Coliban Water and Melbourne Water. Section 67 is also delegated to Melbourne Water.

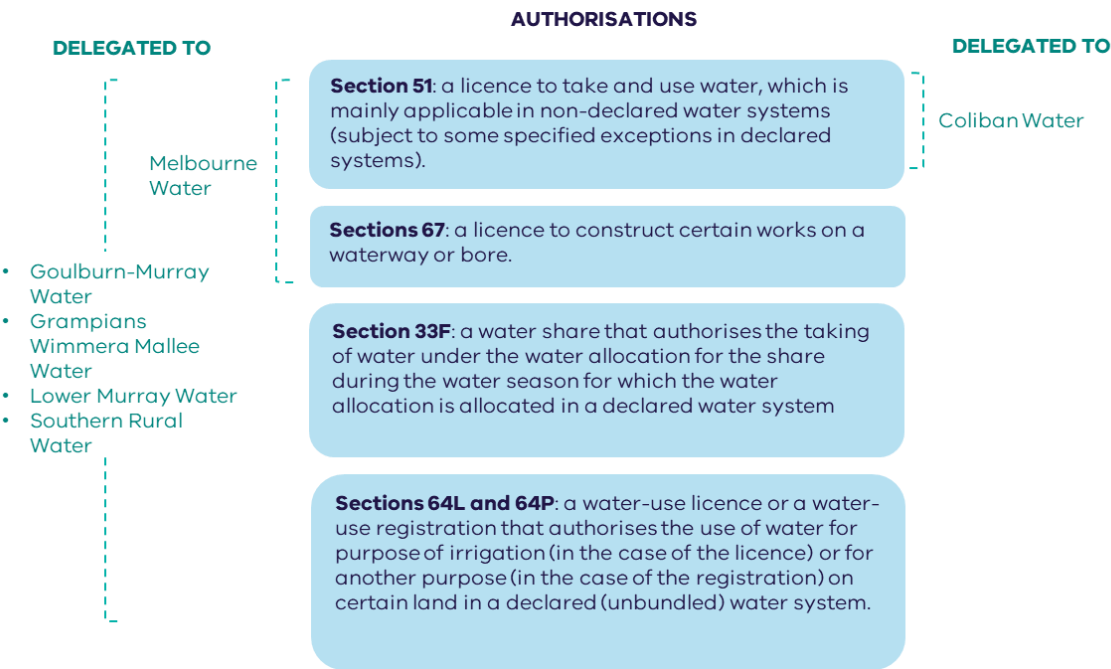
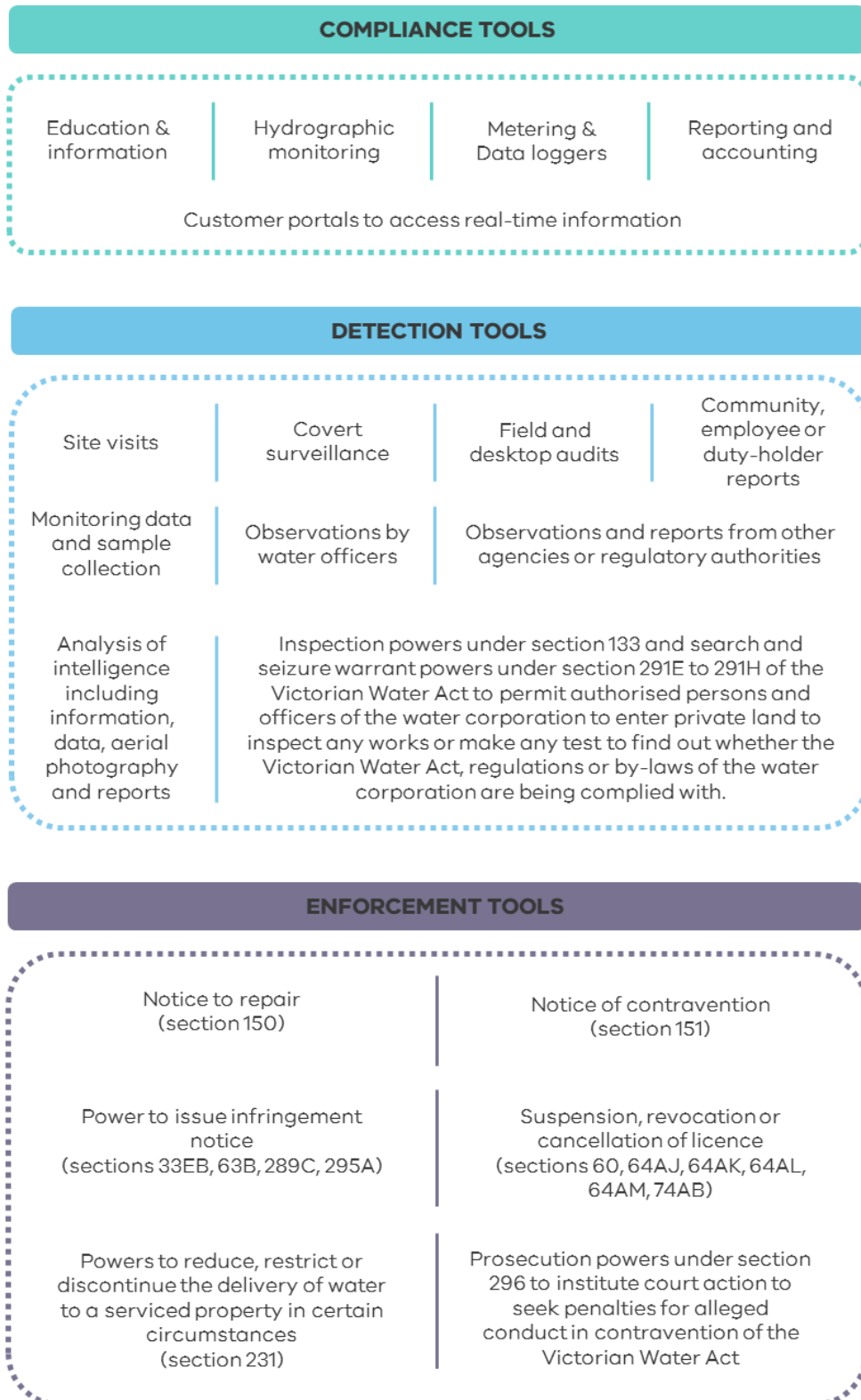


Figure 3: Offences under the Victorian Water Act

Offences relating to Take and Use of Water			
Failing to comply with take and use licence conditions Section 55A	Failing to comply with water-use licence conditions Section 64AF	Deliberately or negligently wasting water after receiving warning notice, or using a supply of water outside its intended purpose Section 143	Taking or using water from certain water sources in a non-declared water system without being authorised under the Victorian Water Act or any other act to do so Section 63 Section 289(1)
Without the consent of the water corporation, or without any other lawful authority, taking, using or diverting water that is under the control and management of an Authority or that is supplied by a water corporation for the use of another person Section 289(1)			
In a declared water system: <ul style="list-style-type: none"> • Taking water from certain water sources without being authorised to do so by a water share or under any other authorisation to do so Section 33E • Using water for irrigation on land, or knowingly cause or permit water to be used for irrigation on land unless the person does so under a water-use licence that authorises the use of water for that purpose on that land Section 64J(1) • Using water on land or knowingly cause or permit water to be used on land for purposes other than the purpose of irrigation, unless the person does so under a water-use registration that authorises the use of water for purposes other than irrigation on that land Section 64J(2) • Failing to comply with conditions imposed on a water-use licence Section 64AF 			
Offences relating to Construction of Works			
Failing to comply works licence conditions Section 70A	Constructing, altering, operating, removing or decommission any works on a waterway, obstructing or interfering with any works on a waterway, without being authorised to do so under the Victorian Water Act or any other act to do so Section 75 Section 75A	Failing to comply with a notice to repair works Section 150	Without the consent of the water corporation, or without any other lawful authority, interfering with the flow of water in any waterway, aquifer or works under the control and management of a water corporation Section 289(1)
Altering or removing any works that are connected to the works of a water corporation without consent Section 145	Breaching a water corporation's by-laws relating to water use or works made under Sections 160 and 171	Without the consent of the water corporation, or without any other lawful authority, destroying, damaging, removing, altering or in any way interfering with any works or other property (whether real or personal) belonging to or under the control and management of a water corporation Section 288	

Figure 4: Compliance, detection and enforcement tools



3. Guidelines for water corporations

An effective compliance and enforcement system is built on five main principles: risk-based, responsive, transparent, accountable, and consistent.



Figure 5: Five principles for an effective compliance and enforcement system

Principle 1: Risk-based

A risk-based compliance system is one that identifies 'at risk' water resources, assesses the likelihood and consequences of harm, and makes sure that monitoring, detection and enforcement actions build as the risk to resources increases. Having a risk-based approach does not mean that some level of non-compliance is acceptable. It means that water corporations' resources are used efficiently by focussing more on areas and entities where there are the greatest compliance risks.

With a risk-based approach, water corporations will use different responses based on the overall risk associated with actual or possible offences. The relative risk linked to an instance of actual or possible breach of the law can affect:

- the action taken
- the resources employed and/or
- the time for a response to be made.

In 2014, water corporations developed a risk-based regulatory approach to proactively and reactively manage compliance risks as part of the *National Framework for Compliance and Enforcement Systems for Water Resource Management*. This

section draws on that work and highlights the main steps and minimum standards in applying a risk-based approach.

A. Identify and assess risk level of water resources

Water corporations should identify all water resources and determine the risk level of each water resource. The risk levels should reflect the capacity of the water resource to provide consistent and reliable water availability and delivery to water users.

When working out the risk level, it is appropriate to consider the environmental profile of the water resource, such as native vegetation, fauna, habitats, cultural heritage, water quality, sustainable flows, and other environmental considerations.

The minimum three levels of risks are low, medium and high.

B. Identifying and assessing prohibited activities / risk of non-compliance

Water corporations should also identify and assess compliance risks independently from the risk levels of water resources. This means that when determining the risk of a breach occurring such as unauthorised take of water, there is no regard to

whether the water resource is considered high or low risk. Instead, the risks assessed would consider other factors such as the number of entitlements, amount of allocation, number of water users and whether access to waterways is restricted and/or banned.

Assessing an offence as low risk does not mean that the offence is acceptable. It means that water corporations' approach to monitoring this risk and taking enforcement actions may differ from another offence that is assessed as high risk.

Identifying prohibited activities

Water corporations are to maintain a list of permissible and prohibited activities under the Victorian Water Act, the conditions and penalties that apply if a breach is detected.

provides guidance on the authorisations under the Victorian Water Act and [Figure 3](#) provides guidance on the offences under the Victorian Water Act.

Assessing risks of non-compliance

When assessing risks of non-compliance, it is appropriate to consider a range of risk factors such as the likelihood of risk, potential impacts, thresholds for non-compliance, and other risk factors specific to the case.

This can be achieved by assessing:

- (1) **static risk** – risk factors in the regulatory framework, and
- (2) **dynamic risk** – risk factors that are specific to each case.

Static risk refers to risks of a breach of legislative requirements set out in the Victorian Water Act and other relevant acts, their associated regulations, by-laws and Ministerial policies. It is determined by considering the 'likelihood' and 'potential impact' of a potential breach or offence.

Information used to assess the 'likelihood' and 'potential impact' is often drawn from historical complaints data and the collective expertise of the water corporations' staff. The 'likelihood' and 'potential impact' of non-compliance risks should be reviewed regularly to take new developments into consideration.

Dynamic risk refers to risks that are specific to a case, such as assessing the compliance history of a water user (individual or enterprise) - first-time or habitual offender. These risks can change and be specific to individual cases of non-compliance.

Assessing dynamic risk helps to make sure that the individual details associated with a case of breach or offence are considered and to make sure that the water corporations' responses are appropriate to the risk. This is discussed further in the next principle.

See Figure 6: Examples of Static Risks and Dynamic Risks

for more information on static risk and dynamic risk. Like the risk levels for water resources, there are a minimum three levels of low, medium and high in assessing risks of non-compliance.

C. Establish appropriate responses

With a comprehensive risk assessment of (i) water resources and (ii) prohibited activities/non-compliance, water corporations can establish appropriate responses to manage these risks. The higher the risk, the more resources are required to monitor and enforce compliance, and more serious and timely responses are required if there is a breach.

Water corporations have a range of tools available to them to safeguard compliance, as described in section 2 of this policy. The tools used across risks can differ. Setting up appropriate responses is part of a responsive regulatory approach, which is described in more detail in the next principle.

Principle 1: Compliance strategies will be risk-based to make sure that resources are used efficiently, focussing more on areas where there are the greatest compliance risks.

Standard 1: Water corporations should have a risk classification of all their water resources with a minimum three levels of risks, ranging from low risk to high risk. Water corporations may have more classifications if necessary, such as 'very low' or 'extreme'.

Standard 2: Water corporations should have a risk classification of prohibited activities / threats of non-compliance to these water resources with a minimum three levels of risks, ranging from low risk to high risk. Water corporations may have more classifications if necessary, such as 'very low' or 'extreme'.

Standard 3: Water corporations should establish appropriate responses to manage these risks. Where risks are identified as high, more resources must be focused on managing these risks. Resources could be in the form of more frequent monitoring programs, use of technology and dedicated resources. At the same time, water corporations should not neglect areas with low risks.

Standard 4: Water corporations should review their risk assessments at least once every four years, or when circumstances call for a review - like periods of drought, dry weather or heavy rainfalls - whichever occurs first to consider new developments and changing natural and regulatory environments. Reviews should be documented and approved by the appropriate line managers.

Figure 6: Examples of Static Risks and Dynamic Risks

Static Risks

Risks that are **not changeable** as the requirements to comply are set out in various acts, associated regulations, by-laws, Ministerial policies, licence conditions, water corporations' local management plans, and drought response plans etc.

These requirements do not often change, such as the:

- Requirement to obtain the appropriate authorisations from water corporations to take and use water or construct works on waterways.
- Conditions imposed on water-use licences, water shares or works licences.

Dynamic Risks

Risks that are **changeable** and specific to a case..

Case-specific factors fall largely into the following main categories:

1. Profile of a water user (individual or enterprise) – looking at the user's compliance history.

2. Culpability / conduct of a water user (individual or enterprise) – looking at the intention or motive, whether the breach was self-reported or corrected quickly.

3. Environmental performance such as water availability, restrictions and/or bans.

4. Extent of impact on the following:

- Environment: impacts on land, waterways and, water quality and river health.
- Equitable use of water: impacts on the water resources available to other users in community and to the environment.
- Market integrity: the risk that significant or systemic breaches will affect and potentially reduce the fairness, transparency and efficiency of the water market.
- Social values: impacts on the social, recreational and amenity values of waterways experienced by the broader community.

5. Cumulative or emerging environmental risks or impacts – combined risks or impacts from aggregate exposures or stressors to multiple breaches by individuals or enterprises

There may also be other case-specific factors that need to be assessed by the water corporation.

Principle 2: Responsive

Water corporations have a range of compliance and enforcement tools available (see [Figure 4](#)) These allow for flexible responses to different levels of risks established through the risk-based approach.

Having flexible responses is a characteristic of a responsive regulatory approach which can be conceptually arranged in a pyramid (Ayres & Braithwaite, 1992)⁵. See [Figure 7](#) for an illustration of a compliance pyramid and how the compliance and enforcement tools can be used for non-urban water management in Victoria.

A compliance pyramid signals to water users that while a water corporation's resources would be focused on encouraging compliance, there is capacity for enforcement actions to be escalated to the highest power. This acts as a deterrent to breaches of the law and encourages cooperative problem solving at the base of the pyramid.

A compliance pyramid also guides water corporations in establishing how and when the available compliance and enforcement tools can be used depending on the risk profile of the offence, water user and scale of impacts. This will inform a water corporation's decision-making processes for handling detected breaches and escalation pathways for enforcement actions in response to breaches of Victorian water legislation.

A. Lower level: Encouraging and assisting compliance

Compliance tools at the bottom of the pyramid are strategies of first choice and often used. Education, community engagement and monitoring programs allow for high levels of self-regulation in the community. These tools are less coercive and interventionist and more cost effective. They also align more closely with the customer-service roles of water corporations.

Most water users are responsible and want to comply with the laws. To do this they need to be empowered with the necessary information and tools for compliance. Water corporations and water industry leaders should help educate water users on their rights and obligations through a continuing program of awareness-raising campaigns and interactive education.

Regular publication of newsletters and media releases about compliance issues, newspaper notices about prosecutions and committee meetings

with customers and other stakeholders to discuss key issues and solutions are other important tools to support community engagement.

Water corporations can issue advisory letters or oral advices to water users who may have unintentionally breached the Victorian Water Act because they were not familiar with the rules and their obligations. Oral advices should be documented and recorded.

Advisory letters or oral advices are recommended to be sent to water users only in scenarios where the act of non-compliance was not deliberate, had minimal or no impact on the environment and other water users, and was a first-time offence. Advisory letters or oral advices should inform water users of their obligations, provide them with reasonable time to correct the breach, and remind them that a subsequent act of non-compliance could result in further enforcement action being taken.

B. Medium level: Directing compliance

If the strategy of encouraging and supporting compliance fails, stronger enforcement tools may be used to direct compliance as illustrated in [Figure 7](#).

Warning letters or oral warnings can be issued to water users who have allegedly breached the Victorian Water Act, intentionally or unintentionally, where there are greater risks to the environment and/or other water users from the breach (see Principle 1). Warning letters or oral warnings should inform these water users of requirements under the Victorian Water Act and conditions under their licences and/or water shares, and caution that if the breach is not corrected within a specified time, further enforcement actions will be taken. Oral warnings should be documented and recorded.

C. Higher levels: Enforcement

Water corporations have the powers to reduce or restrict water delivery, issue penalty infringement notices, prosecute, suspend or revoke licences. These actions target offenders who are uncooperative and often target offences that have unacceptable impacts on the environment and/or other stakeholders or have the potential to cause significant negative impacts on the environment and/or other stakeholders if the offence continued.

So that there are adequate checks and balances, water corporations should make clear what processes are in place for water users to complain about how their matter has been handled by the

5. Ayres, I. & Braithwaite, J. (1992). *Responsive Regulation: Transcending the Deregulation Debate*. Oxford University Press.

water corporation or to request a review of enforcement decisions, if they believe a decision was unfair. In Victoria, there are alternative avenues for members of the public to pursue if they are not satisfied with the outcome of dealings with their

water corporation. This includes the Energy and Water Ombudsman Victoria (EWOV) which is an independent dispute resolution service.

Principle 2: Water corporations have a range of available compliance and enforcement tools. Use of these tools will be responsive and appropriate to the level of non-compliance and the risk associated with the non-compliance.

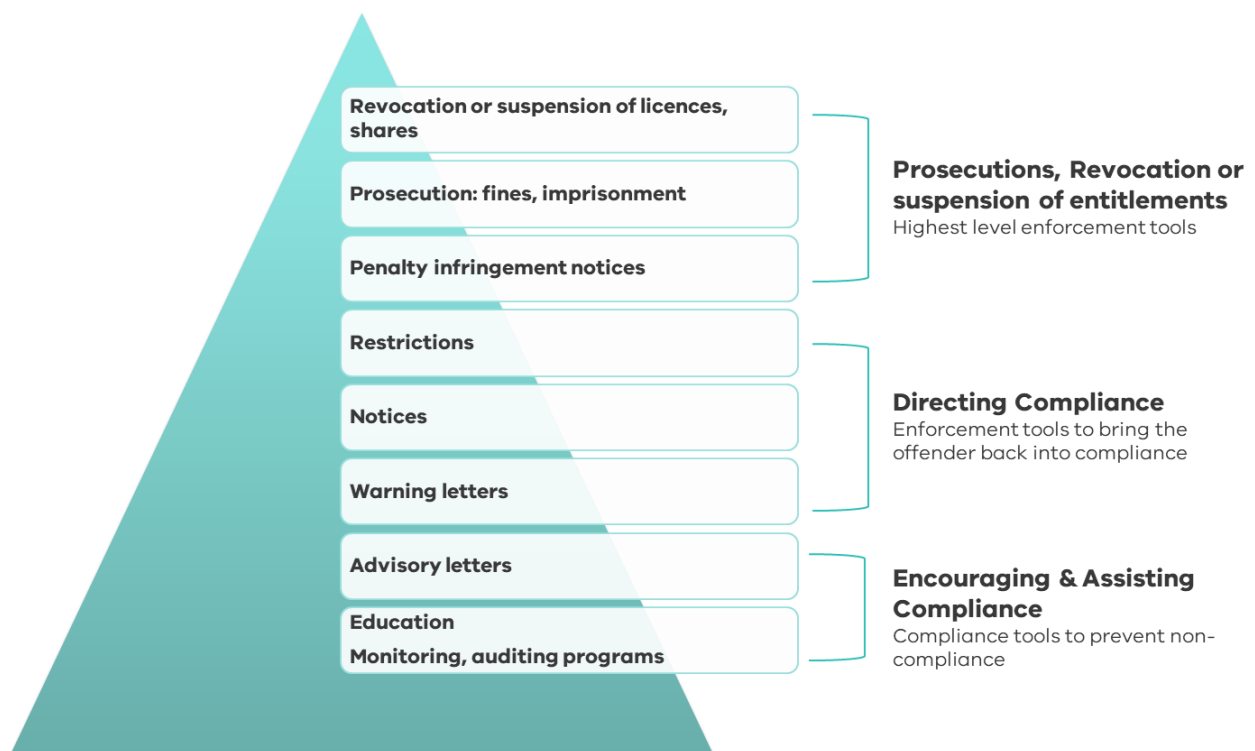
Standard 5: Water corporations should establish a compliance pyramid that sets out how and when they will use the range of available compliance and enforcement tools. This compliance pyramid will inform water corporations' decision-making processes and escalation pathways for detected breaches of the Victorian water legislation.

Standard 6: Water corporations should establish a decision-making process for taking actions in response to detected breaches of the Victorian water legislation.

Standard 7: Water corporations should establish clear and logical escalation pathways that specify their responses to detected breaches of the Victorian water legislation, from the lowest to highest levels of the compliance pyramid.

Standard 8: Water corporations should publish information on how water users may complain about how their matter was handled or to request a review of enforcement decisions, if they believe a decision was unfair. This ensures that there are adequate checks and balances in place.

Figure 7: Illustration of a compliance pyramid in Victoria's non-urban water sector



Principle 3: Transparent

Transparency and the fourth principle of accountability are essential elements of successful compliance and are generally considered the two main pillars of good corporate governance. They work to build public confidence in the legitimacy and fairness of water sharing and extraction arrangements, and the consistent application of those arrangements.

Transparency literally means the characteristic of being easy to see through. In a business or governance context, transparency has come to mean honesty and the quality of being done in an open way.

In this policy, transparency means that a water corporation's compliance and enforcement activities can be seen clearly by the public. This starts with water corporations publishing their compliance strategies and protocols, so that the members of the public and water users will have confidence there are policies and procedures in place that maintain fair access to water and that authorities are acting with integrity.

Water corporations' strategies and protocols should clearly state:

- the water corporation's role, responsibilities and priorities for compliance and enforcement
- water users' rights and obligations, what activities are prohibited and the penalties that apply
- how a water corporation carries out its compliance and enforcement activities, including how it applies a risk-based approach and responsive regulation
- what systems and processes are in place to manage, track and document allegations and decisions
- where to find public reports on compliance and enforcement activities
- who in the water corporation is primarily responsible for investigating and enforcing compliance and who people can contact in the water corporation to report on alleged breaches
- how persons who have been subject to an enforcement decision can ask for enforcement decisions to be reviewed
- what ongoing education programs are in place for maintaining and improving public awareness of compliance.

Refer to Appendix 1 for more specific elements that are appropriate to include in water corporations' compliance strategies and protocols.

Water corporations are recommended to report publicly on their compliance activities and enforcement decisions. These can be published in the corporation's annual report, on websites or in newsletters where the public can easily access the information. Making this information publicly available reveals the levels, patterns and results of compliance activities to reassure 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.

As part of continuing education programs, water corporations are recommended to develop public communication materials to raise awareness of how compliance risks are managed in Victoria. These would highlight the main aspects of compliance and enforcement affecting water users and could include fact sheets, infographics, newsletters, videos or podcasts.

Principle 3: Water corporations will be transparent about their compliance strategies, protocols and compliance and enforcement activities.

Standard 9: Water corporations should publish on their websites their compliance strategies and general protocols impacting on water users. The strategies and protocols for the public to access are to contain the elements highlighted in Appendix A of this policy.

Standard 10: Water corporations should publicly report on their compliance and enforcement activities and make sure that these reports can be accessed easily.

Standard 11: Water corporations should develop public communication materials to raise awareness of how compliance risks are managed in Victoria and highlight the main aspects of compliance and enforcement affecting water users. Communication materials could include guidance for the public on what information would be helpful when they are reporting offences.

Principle 4: Accountable

Accountability requires a clear assignment of responsibilities for decision-making.

Water corporations have to carry out many different functions, most of which are about providing services for customers, and some about regulation and enforcement. There is an inherent tension between these functions.

To minimise any conflicts of interest, water corporations should ensure that compliance and enforcement decisions are sufficiently independent from customer service considerations. This can be achieved by having clear and documented decision-making processes and escalation pathways for enforcement decisions that (i) identify who in the organisation has authority to make enforcement decisions, (ii) processes to escalate a matter to management or the Board, where relevant, and (iii) how the final decision will be recorded.

Having clear and documented decision-making processes and escalation pathway ensure that water corporation staff know who in the organisation responsible for making decisions related to compliance and enforcement.

Water corporations also need to clearly communicate to *all* levels of staff in the organisation that it has compliance and enforcement responsibilities. This can be achieved by establishing a code of conduct⁶ that clarifies the organisation's mission, values and principles, and includes the organisation's obligations to manage

and prioritise compliance risks under the Statement of Obligations.

A clearly-written code of conduct can articulate the values the organisation wishes to foster in its leaders and employees, and define the desired behaviours. It is also a tool that builds a culture of integrity and accountability from the top-down. Encouraging all levels of staff to acknowledge and sign the code of conduct can raise awareness of the organisation's responsibilities for compliance, along with providing services to customers. See **Appendix B** for more details on how to draft an effective code of conduct.

It is also important that the water corporation staff responsible for compliance and enforcement are equipped with the skills to identify offences, gather evidence, conduct interviews and manage administrative sanctions. Water corporations must have staff training programs that identifies individual training needs.

Good governance in water compliance needs to be led from the top. Water corporation directors and executive teams should have a direct line of oversight and be kept informed about compliance and enforcement issues. This can be achieved by making sure that a water corporation's decision-making process and escalation pathways allow for significant compliance issues to be escalated to the board and/or executive teams. Water corporations are also recommended to make sure that compliance issues are a standing agenda item for board meetings.

6. This code of conduct differs from the Victorian Government Code of Conduct for Employees because it will focus more on a water

corporation's obligations and expectations under the Victorian Water Act.

Principle 4: Water corporations are accountable for compliance and enforcement.

Standard 12: Water corporations should clearly establish their roles and responsibilities to maintain compliance in the non-urban water sector.

Standard 13: Water corporations should establish and document decision-making processes for dealing with compliance related matters, and escalation pathways for enforcement decisions. Decision-making processes and escalation pathways should at minimum (i) clearly identify who in the organisation has authority to make enforcement decisions, (ii) processes to escalate a matter to management or the Board, where relevant, and (iii) how the final decision will be recorded. Water corporations should also ensure that enforcement decisions are sufficiently independent from customer service considerations so as to minimise conflicts of interest.

Standard 14: Water corporations should establish codes of conduct that clearly communicate to all levels of staff the water corporation's obligations and expectations regarding compliance.

Standard 15: Water corporations should make sure that staff authorised to carry out compliance and enforcement roles are adequately trained. There should be an identified training program to equip staff with the skills to identify offences, gather evidence, conduct interviews and manage sanctions.

Standard 16: Water corporations' compliance strategies and protocols should be endorsed by the board of directors to make sure that compliance is led from the top. Major changes to the strategy are to be approved by the board.

Principle 5: Consistent

It is important that compliance and enforcement practices are consistent across the state. This refers to how water corporations apply risk-based approaches (Principle 1), apply responsive regulation (Principle 2), and develop compliance and enforcement strategies and protocols that are transparent and accountable (Principles 3 and 4).

Ensuring consistency in compliance and enforcement practices across Victoria builds public confidence that everyone is held to the same rules.

DELWP publishes state-wide policies and guidelines, such as this, to establish consistent practices and highlight the best practices and working methods for water corporations to strive towards. Examples include [Policies for Managing Take and Use Licences](#)⁷, [Policies for Managing Works Licences](#)⁸, [Metering Policy](#)⁹ which can be found in DELWP's website. The Statement of Obligations (General) requires water corporations to adhere to guidelines issued by DELWP relating to compliance and enforcement.

Water corporations are encouraged to establish a community of practice or similar forums where their nominated representatives meet regularly to exchange ideas, share best methods and resources, and work together to develop consistent approaches to compliance and enforcement in Victoria.

In 2019, water corporations committed to setting up a community of practice for consistent approaches to deal with the issue of water theft. Water corporations in the Murray-Darling Basin are also working together with DELWP and the Murray-Darling Basin Authority to establish a collaboration protocol. This will set out procedures to exchange information about compliance with water laws and enforcement.

Principle 5: Water corporations will strive to put consistent approaches in place across the state.

Standard 17: Water corporations should adhere to policies and guidelines set by DELWP. Where the water corporation cannot meet the guidelines, it needs to explain why.

Standard 18: Water corporations are encouraged to establish a community of practice, or similar forums, to exchange their best methods and ideas and encourage consistent practices to state-wide compliance issues.

7. <http://waterregister.vic.gov.au/water-entitlements/about-entitlements/take-and-use-licences>

8. <http://waterregister.vic.gov.au/water-entitlements/about-entitlements/works-licences>

9. <https://www.water.vic.gov.au/water-for-agriculture/non-urban-water-metering>

Summary of Principles and Standards

Principles	Standards
<p>Principle 1: Risk-based</p> <p>Compliance strategies will be risk-based to make sure that resources are used efficiently, focussing more on areas where there are the greatest compliance risks.</p>	<p>Standard 1: Water corporations should have a risk classification of all their water resources with a minimum three levels of risks, ranging from low risk to high risk. Water corporations may have more classifications if necessary, such as 'very low' or 'extreme'.</p> <p>Standard 2: Water corporations should have a risk classification of prohibited activities / threats of non-compliance to these water resources with a minimum three levels of risks, ranging from low risk to high risk. Water corporations may have more classifications if necessary, such as 'very low' or 'extreme'.</p> <p>Standard 3: Water corporations should establish appropriate responses to manage these risks. Where risks are identified as high, more resources must be focused on managing these risks. Resources could be in the form of more frequent monitoring programs, use of technology and dedicated resources. At the same time, water corporations should not neglect areas with low risks.</p> <p>Standard 4: Water corporations should review their risk assessments at least once every four years, or when circumstances call for a review - like periods of drought, dry weather or heavy rainfalls - whichever occurs first to consider new developments and changing natural and regulatory environments. Reviews should be documented and approved by the appropriate line managers.</p>
<p>Principle 2: Responsive</p> <p>Water corporations have a range of available compliance and enforcement tools. Use of these tools will be responsive and appropriate to the level of non-compliance and the risk associated with the non-compliance.</p>	<p>Standard 5: Water corporations should establish a compliance pyramid that sets out how and when they will use the range of available compliance and enforcement tools. This compliance pyramid will inform water corporations' decision-making processes and escalation pathways for detected breaches of the Victorian water legislation.</p> <p>Standard 6: Water corporations should establish a decision-making process for taking actions in response to detected breaches of the Victorian water legislation.</p> <p>Standard 7: Water corporations should establish clear and logical escalation pathways that specify their responses to detected breaches of the Victorian water legislation, from the lowest to highest levels of the compliance pyramid.</p> <p>Standard 8: Water corporations should publish information on how water users may complain about how their matter was handled or to request a review of enforcement decisions, if they believe a decision was unfair. This ensures that there are adequate checks and balances in place.</p>

Principles	Standards
<p>Principle 3: Transparent</p> <p>Water corporations will be transparent about their compliance strategies, protocols and compliance and enforcement activities.</p>	<p>Standard 9: Water corporations should publish on their websites their compliance strategies and general protocols impacting on water users. The strategies and protocols for the public to access are to contain the elements highlighted in Appendix A of this policy.</p> <p>Standard 10: Water corporations should publicly report on their compliance and enforcement activities and make sure that these reports can be accessed easily.</p> <p>Standard 11: Water corporations should develop public communication materials to raise awareness of how compliance risks are managed in Victoria and highlight the main aspects of compliance and enforcement affecting water users. Communication materials could to include guidance for the public on what information would be helpful when they are reporting offences.</p>
<p>Principle 4: Accountable</p> <p>Water corporations are accountable for compliance and enforcement.</p>	<p>Standard 12: Water corporations should clearly establish their roles and responsibilities to maintain compliance in the non-urban water sector.</p> <p>Standard 13: Water corporations should establish and document decision-making processes for dealing with compliance related matters, and escalation pathways for enforcement decisions. Decision-making processes and escalation pathways should at minimum (i) clearly identify who in the organisation has authority to make enforcement decisions, (ii) processes to escalate a matter to management or the Board, where relevant, and (iii) how the final decision will be recorded. Water corporations should also ensure that enforcement decisions are sufficiently independent from customer service considerations so as to minimise conflicts of interest.</p> <p>Standard 14: Water corporations should establish codes of conduct that clearly communicate to all levels of staff the water corporation's obligations and expectations regarding compliance.</p> <p>Standard 15: Water corporations should make sure that staff authorised to carry out compliance and enforcement roles are adequately trained. There should be an identified training program to equip staff with the skills to identify offences, gather evidence, conduct interviews and manage sanctions.</p> <p>Standard 16: Water corporations' compliance strategies and protocols should be endorsed by the board of directors to make sure that compliance is led from the top. Major changes to the strategy are to be approved by the board.</p>
<p>Principle 5: Consistent</p> <p>Water corporations will strive to put consistent approaches in place across the state.</p>	<p>Standard 17: Water corporations should adhere to policies and guidelines set by DELWP. Where the water corporation cannot meet the guidelines, it needs to explain why.</p> <p>Standard 18: Water corporations are encouraged to establish a community of practice, or similar forums, to exchange their best methods and ideas and encourage consistent practices to state-wide compliance issues.</p>

Appendix A Elements of Compliance and Enforcement Strategies and Protocols

Water corporations' strategies and protocols should contain these elements:

1. A commitment to transparency. (see **Principle 3**)
2. A clear description of the water corporation's role and operations, including its functions as a delegated licensing authority. (see **section 2** and **Principle 4**)
3. Acknowledgement of Traditional Owners.
4. A general description of the applicable prohibited activity and penalties that apply. (see **Figures 4 and 5**)
5. The water corporation's compliance priorities. (see **Principle 1**)
6. The decision-making process the water corporation follows for taking action in response to a breach of the Victorian Water Act or its by-laws. (see **Principles 1 and 2**)
7. A clear and logical escalation pathway in response to detected breaches, from warnings through to when prosecutions will be pursued. (see **Principles 1 and 2**)
8. An internal reporting and escalation process to notify or refer matters, where appropriate, to the executives and/or board of directors. (see **Principle 4**)
9. A risk-based program for monitoring and auditing ongoing compliance by water users. (see **Principle 1**)
10. A description of the authority of staff to investigate and prosecute and their ongoing training requirements to carry out these roles. (see **Principle 4**)
11. Easy access to the water corporation's contact details and guidance on what information is required when members of the public report possible breaches of the law for investigation. (see **Principle 3**)
12. Where timely public reporting on compliance and enforcement activities can be accessed. (see **Principle 3**)
13. A program for improving and maintaining public awareness, to help water users and the public understand and comply with their legal obligations for water compliance. (see **Principle 2**)
14. Where the water corporation is included in the Basin Plan, arrangements for coordinating with the Commonwealth agencies about compliance with water resource plans. (see **Principle 3**)

Appendix B Establishing Code of Conduct

A clearly-written code of conduct clarifies an organisation's mission, values and principles, linking them with standards of professional conduct (Ethics & Compliance Initiative)¹⁰. Such a code articulates the values the organisation wishes to foster in leaders and employees and it defines desired behaviours. It can also become a benchmark for measuring individual and organisational performance.

A code of conduct also acts as a central guide and reference for employees to support day-to-day decision making. It encourages discussions of ethics and compliance, and guides employees in handling the ethical dilemmas they encounter in everyday work.

A water corporation's code of conduct will be an addition to the Victorian Government Code of Conduct for Employees which also applies to all water corporation employees. This new code of conduct is expected to focus more on the water corporation's obligations and expectations under the Victorian Water Act, and to clearly communicate its roles and responsibilities of compliance and enforcement to all levels of staff in the organisation.

Content

There are different ways to structure an effective code of conduct. How it is written, organised and presented has a big impact on how employees understand and use the code.

Recommended content for a well-structured code includes:

1. A title that has impact
2. A letter from the organisation's leader/s
3. Table of contents
4. Introduction
5. Core values of the organisation
6. Code provisions – substantive matters
7. Information and resources

Common code provisions

Code provisions are specific standards of behaviour and performance expectations the organisation chooses to highlight and address. They can include a wide range of issues, from legal and regulatory concerns and relationships with stakeholders to the application of the organisation's values.

Importantly, code provisions tell employees which behaviours are not acceptable in the organisation. This helps them to adhere to standards and empowers them to speak up if there is misconduct.

Common standards of behaviour and performance expectations that can be relevant for water corporations' codes of conduct include:

- Compliance, integrity and anti-corruption
- Conflict of interest
- Employment practices
- Environmental issues
- Ethics and compliance resources
- Relationships with customers.

For more guidance on how to build a clearly-written code of conduct, you can refer to the Ethics & Compliance Initiative website (<https://www.ethics.org/>).

10. Ethics and Compliance Initiative is a best practice community of organisations that are committed to creating and sustaining high quality ethics and compliance programs. For more information, visit <https://www.ethics.org/>