



Environmental
Justice Australia

Healthy water ecosystems

Community involvement in water governance
– a discussion paper



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Environmental Justice Australia (formerly the Environment Defenders Office, Victoria) is a not-for-profit public interest legal practice. Funded by donations and independent of government and corporate funding, our legal team combines a passion for justice with technical expertise and a practical understanding of the legal system to protect our environment.

We act as advisers and legal representatives to the environment movement, pursuing court cases to protect our shared environment. We work with community-based environment groups, regional and state environmental organisations, and larger environmental NGOs. We also provide strategic and legal support to their campaigns to address climate change, protect nature and defend the rights of communities to a healthy environment.

While we seek to give the community a powerful voice in court, we also recognise that court cases alone will not be enough. That's why we campaign to improve our legal system. We defend existing, hard-won environmental protections from attack. At the same time, we pursue new and innovative solutions to fill the gaps and fix the failures in our legal system to clear a path for a more just and sustainable world.

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For further information on this report please contact:

Bruce Lindsay, Law Reform Officer, Environmental Justice Australia

Telephone: 03 8341 3100

Email: bruce.lindsay@edo.org.au

Environmental Justice Australia

Telephone: 03 8341 3100 (Melbourne metropolitan area)

1300 336 842 (Local call cost for callers outside Melbourne metropolitan area)

Facsimile: 03 8341 3111

Email: edovic@edo.org.au

Website: www.edovic.org.au

Post: PO Box 12123, A'Beckett Street VIC 8006

Address: Level 3, the 60L Green Building, 60 Leicester Street, Carlton

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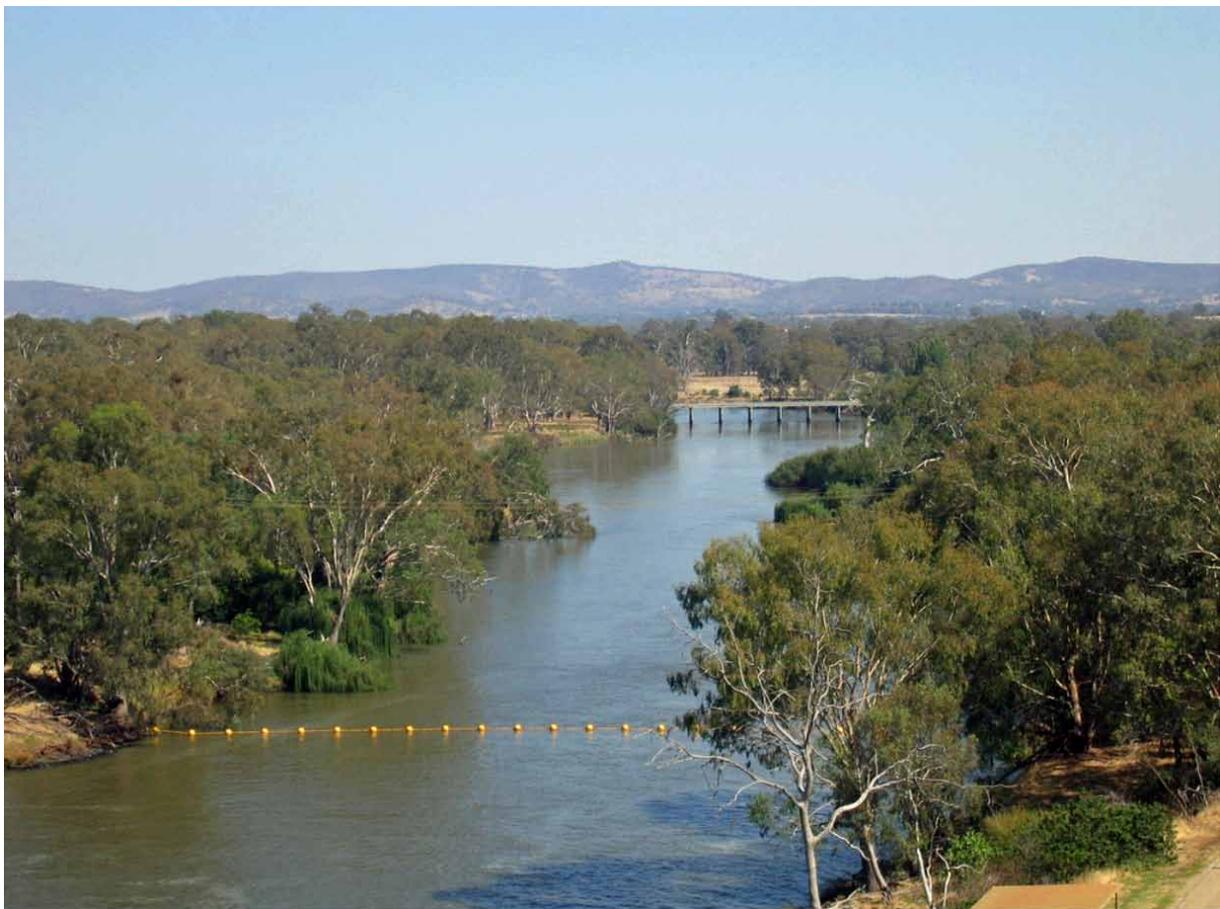
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1 Introduction

Healthy water ecosystems are essential to communities and to nature. We all need to be aware of what is happening to our water resources and to those places, such as rivers and wetlands, affected by how water is managed. Communities need to be involved in decision-making about water, not just as ‘consumers’ but as citizens and active participants in the governance of this important resource. For well over a hundred years, many of Victoria’s rivers, wetlands and waterways have been degraded – from excessive extraction of water, or from disturbances in catchments, from historic uses that have treated them as drains (or turned them into drains!), or from destruction of wetlands through ‘reclamation’. Poor decision-making has played a significant role in these poor outcomes. Changing climate is now leading to a shift in rainfall patterns that is also impacting on water ecosystems. Everyone has an interest in making sure that decisions about water, our wetlands and waterways are environmentally sound and community involvement in the management of water resources is essential to this outcome.

Environmental organisations and representatives have a central role to play in deciding how water resources and catchments are to be managed so that we can maintain or restore environmental values.

We want to begin a discussion about the best ways to facilitate community involvement in decision-making about water ecosystems and about problems and limitations in doing this.



2 This paper and your feedback

The EDO has previously maintained a keen interest in issues of water law, the protection of water resources for environmental benefits, and improvement to the law in these areas. Among other things, the EDO has advised on the legality of Basin Plan, made submissions to reform of Victorian water law, and produced reports on Victoria's wetlands and on the Environmental Water Reserve.

Now we want to begin a discussion around how communities are involved in water governance and decision-making. We will be undertaking a series of workshops on this issue and producing a report exploring constraints on community involvement and opportunities for improved participation. This report will identify what measures and/or reforms might be useful to improve community engagement in water governance. These reforms may include, for instance, a community guide to water law in Victoria, recommendations for capacity-building programs for community groups, or proposals for law reform.

In this Discussion Paper, we:

- provide an overview of some important aspects of water law and regulation in Victoria;
- look at existing constraints and opportunities for community involvement, including involvement through water planning processes, consultation, review of decisions, and engagement with water authorities; and
- consider a range of issues impacting on water governance and community involvement, such as how collaborative government agencies are, the complexity and transparency of water regulation, what legal requirements there are for a range in interest groups to be represented in decision-making, and whether involvement in water monitoring and 'citizen science' is a good pathway to involvement in decision-making.

If you have been involved in water governance or decision-making processes, we would value your feedback and input. We have included a series of questions after each section of this Discussion Paper.

For ease of use, you can access and respond to our questions on SurveyMonkey [here](#).



3 Legislative and regulatory regimes applying to water in Victoria

Water law and regulation is complex. This is a product of the functional complexity of water systems, combined with the complex layers of law and regulation. As the National Water Commission has remarked:¹

Water systems and uses are diverse and include heavily regulated and developed rivers used for irrigated agriculture in the north that flow into the River Murray; unregulated rivers and large storages that supply Melbourne; internally draining systems in the groundwater dominant western region; and heritage-listed unregulated rivers with high conservation value in the Gippsland region. Victoria's many water systems are connected through a network of rivers, channels, pipes and storages, and investment has been made in water savings and efficiency projects in irrigation districts. Groundwater aquifers vary in size and volume throughout Victoria, accounting for 37 per cent of water use in the drier Western Region. Groundwater resources are used for agricultural, domestic and stock, industrial purposes and augmenting town supply and there are indications of declining levels in different parts of the state.

The overall objectives and purposes of water regulation have changed over time. Now they may be viewed as a balancing act between 'consumptive' uses and environmental needs, whereas previously the environment was not considered. This historic shift has been associated with a growing appreciation of water as a 'natural resource' and fundamental to environmental sustainability, to be managed within 'catchments'.

Legislative arrangements governing water are contained a number of key Acts of the Victorian Parliament and the Commonwealth *Water Act 2007*.

3.1 *Water Act 1989 (Vic)*

The *Water Act 1989 (Vic)* ('Victorian Water Act') establishes the main architecture for the governance of water resources in Victoria. The Victorian Water Act establishes the basic legal characteristics of water, as well as systems for its allocation, use, transaction, supply and management in landscapes.² This Act establishes governance arrangements, including Ministerial powers and the role of water corporations. There are provisions for environmental management of water resources, such as through the Environmental Water Holder.



¹ National Water Commission 'The context of water planning in Victoria' <http://archive.nwc.gov.au/library/topic/planning/report-card/victoria> (accessed 4 December 4, 2013)

² See also Environment Victoria's *Bringing the Water Act into the Twenty-First Century* (2010), <http://environmentvictoria.org.au/sites/default/files/Reforming%20the%20Victorian%20Water%20Act.pdf> (viewed 15 April 2014)

The Victorian Water Act vests all water in the Crown. The Victorian Government, through the relevant Minister, has powers to allocate water entitlements to authorities and individuals. A right of access to water generally occurs by being conferred on a public authority or directly on an individual (for example, via the 'stock and domestic rights'), conferred by statutory grant to an individual (for example, a licence to take surface or groundwater), or by supply from a water authority.³ The Water Act also provides for 'environmental entitlements' which are allocations of water held by the Environmental Water Holder for environmental benefit.

The Victorian Water Act has recently gone through a review process and a new Water Act is expected to be enacted this year and operational in 2016. Many of the fundamentals of existing water legislation will remain, although there are some concerns the EDO has raised in relation to how the new Act will treat the environment: see www.edovic.org.au/blog/victorias-new-water-laws-downgrade-environment.

3.2 **Water Act 2007 (Cth)**

The Victorian Water Act operates in conjunction with the Commonwealth *Water Act 2007* over those areas within Victoria that fall within the Murray-Darling Basin (known as the 'Northern Region'). From 2012 to 2019, Victoria must progressively bring its water regulation and management in the Northern Region in line with the framework established by the Murray-Darling Basin Plan. How this will happen in practice is still unfolding.

3.3 **The Catchment and Land Protection Act 1994 (Vic)**

The Victorian Water Act regime also functions within the catchment management framework established under the *Catchment and Land Protection Act 1994* (Vic) ('CaLP Act'). The CaLP Act and the Victorian Water Act inter-relate in important ways. The CaLP Act establishes Catchment Management Authorities ('CMAs'), which have responsibilities under the Victorian Water Act. Important planning functions under the CaLP Act, such as development and implementation of Regional Catchment Plans, have a key role in the management of waterways and water resources throughout the State, especially at an ecological level.

3.4 **Environment Protection Act 1970 (Vic)**

Water quality issues are managed and regulated under the Victorian *Environment Protection Act 1970* (Vic) ('EP Act'). Under the EP Act, it is an offence to pollute waters, including changing the condition of water to make it poisonous, noxious or harmful to people or ecosystems, or detrimental to a beneficial use of waters.⁴ Any discharges into waters must also comply with standards or practices set under State Environment Protection Policies or Waste Management Policies.⁵ The *State Environment Protection Policy (Waters of Victoria)* provides a comprehensive framework for water quality standards applying to surface waters in Victoria and their environmental values and beneficial uses.⁶ The EP Act framework also provides statutory protection for groundwater.⁷

3.5 **Other legislation**

Various other bodies of legislation are relevant to water regulation and management in Victoria, but largely at the margins for the purposes of this project. This includes the *Coastal Management Act 1995* (Vic) in relation to the integrated management of catchments and coastal ecosystems. Planning and management arrangements provided for under that Act will extend to estuarine systems⁸ and to coastal Crown lands (such as wetlands) which may be affected by both coastal and riparian systems.⁹ Estuarine systems may extend many kilometres inland and be subject to complex interactions of marine and riverine influences.

³ D E Fisher Water Law (LBC Information Services, 2000), 201 and Ch 8 generally

⁴ *Environment Protection Act 1970* (Vic), s 39(1)

⁵ *Environment Protection Act 1970* (Vic), s 38

⁶ See SEPP (Waters in Victoria), cl 5, 7

⁷ SEPP (Groundwaters in Victoria) 2002; the SEPP (Prevention and Management of Contamination of Land) 2002 is also relevant in this respect and for practical purposes these SEPPs have been consolidated: see <http://www.epa.vic.gov.au/about-us/legislation/land-and-groundwater-legislation> (viewed 13 December 2013)

⁸ See definition of 'sea' under the *Coastal Management Act 1995* (Vic), s 3: "'sea" includes bay, inlet, estuary and any waters within the ebb and flow of the tide.'

⁹ The definition of 'coastal Crown land' includes: 'any Crown land within 200 metres of high water mark of... (i) the [coastal waters of Victoria](#); or (ii) any sea within the limits of Victoria...' *Coastal Management Act 1995* (Vic), s 3

4 Constraints on and opportunities for community involvement in water governance

Public involvement in decision-making over water resources concerns three main areas of activity:

- water planning;
- licensing decisions; and
- review or appeal processes.

A variety of mechanisms for community engagement exist, although not all allow broad-based participation by the public. For example, some decisions only allow CMAs or interest groups to be consulted; some review provisions may only extend to persons with a direct interest in the decision made.

4.1 Water planning and licensing framework

Water planning has become a key pillar of water resources management over the past two decades.¹⁰ It is a response to historic problems of over-allocation of resources, deficiencies in institutional structures and practices, and the need for a more orderly, balanced and equitable approach to water management.

Water planning processes in Victoria are governed both by provisions in the Victorian Water Act as well as the overarching scheme under the Commonwealth Water Act and the Murray-Darling Basin Plan. Under the Victorian Act, planning processes include the development of Sustainable Water Strategies and Long-term Water Resources Assessments, Stream Flow Management Plans, and Seasonal Watering Plans (for environmental water flows).

‘Planning’ includes acquiring information and making assessments about resource uses, identifying legal rights and interests attached to water resources, evaluating present and future needs and impacts, and setting frameworks for management, regulation and decision-making.¹¹ Planning also identifies threats and pressures on the environment.

Environmental protection laws also provide some mechanisms for planning and community involvement in those processes. In particular, under the Victorian Environment Protection Act, the Environment Protection Authority (‘EPA’) may accept a voluntary proposal from an environmental agency for a Neighbourhood Environment Improvement Plan (‘NEIP’), or direct an environment agency to prepare one.¹² The NEIP process is currently under review by the EPA.

Licensing and water allocation decisions are individual decisions permitting access to water resources within the broader context of water planning. Many water plans have the force of law and will determine volumes of water that may be taken, from where, on what conditions, and so forth.¹³

Various forms of (statutory) allocation decisions are authorised under Victorian law, including bulk entitlements to large water holders or ‘take and use’ licences. Bulk entitlements include those rights to water given the water authorities who then use them to supply urban customers or irrigation districts.

4.2 Consultation and advisory processes for water planning and allocation

There are three main avenues of community participation that tend to operate under planning and allocation processes in water law and environmental protection law.

The first of these is to provide opportunities to make **public submission** on proposed decisions or actions. Ordinarily, this process is open to any member of the public and may be submissions in writing or, in some circumstances, involvement in public meetings.

Secondly, a variety of **consultative procedures** operate under legislation, such as the convening of consultative

¹⁰ On development of statutory planning, see generally Alex Gardner, Richard Bartlett and Janice Gray *Water Resources Law* (LexisNexis Butterworths, 2009)

¹¹ Gardner, et al *Water Resources Law*, [14.1]

¹² *Environment Protection Act 1970* (Vic), Part 3, Division 1B

¹³ See e.g. legislative provisions for management plans for water supply protection areas under section 32A of the Victorian Water Act, or the Basin Plan for the Murray-Darling Basin made under Part 2 of the Commonwealth Water Act.

committees. In some cases these may be mandatory, such as under the Basin planning process of the Commonwealth Water Act or in the preparation of management plans for declared water supply protection areas under Victorian law; in other cases they will be at the discretion of a Minister or other authority.

Consultative procedures are common under water and related environmental legislation. Under water law they are often used in the development of water resource plans. A 2008 study of water planning found that, in practice, community engagement goes ‘well beyond the requirements of legislation.’¹⁴ The National Water Initiative requires participant Governments to ‘ensure open and timely consultation with all stakeholders’.¹⁵

Even at their broadest, consultative procedures confer no formal decision-making power, or authority to make legally binding decisions. Also, ‘community’ interests are unlikely to be uniform but rather comprise diverse (and often conflicting) interests, such as environmental, industrial and/or agricultural interests. This situation reflects the fact that, at the planning stage, decision-making and governance is likely to be politically charged, often intensely so.

The manner in which decision-making procedures are framed impacts on formal participatory rights and possibilities. For instance, in consultation procedures under water planning, the Victorian Water Act obliges the Minister to ensure ‘all relevant interests are fairly represented’ on a consultative body and that ‘persons with knowledge and experience’ in the issue are included in its membership. In consultative procedures on long-term resource assessments, the requirements are wider, as the consultative body must include interests that ‘represent the community to which the review relates’.

Thirdly, **panels** may be appointed to consider prospective decisions or actions, which may include consideration of public submissions. Under Victorian water law, there are few guidelines or directions on the nature of panels or how they are to conduct their inquiries. There is no requirement that they have to be independent, expert panels.

EXAMPLE

Sue is a member of a local environment group which has a long-term interest in the ecological health of the local creek and wetlands. The water authority is responsible for preparing a ‘stream flow management plan’ for this area after it has been declared a Water Supply Protection Area by the Water Minister. Sue is appointed to a consultative committee to prepare the plan, representing the environmental interests of the area. Other interests including local farmers, the local golf course, the Council and a large local quarry are also represented. The majority of interests represented are local landowners as required under the Victorian Water Act.

We need your feedback:

Have you/your group been involved in consultation processes around particular planning, licensing or allocation decisions? For instance, decisions around environmental flows, water or other management plans, bulk entitlements, or licences to take water.

In your view, are the consultation processes you have been involved in satisfactory?

When is community engagement needed on water resources decision-making?

What sort of community input into decision-making is needed?

You can access and respond to our questions on SurveyMonkey [here](#).

¹⁴ Mark Hamstead, Claudia Baldwin and Vanessa O’Keefe *Water allocation planning in Australia – current practices and lessons learned* (Waterlines Occasional Paper 6, National Water Commission, 2008), 160

¹⁵ *Intergovernmental Agreement on a National Water Initiative* (2004), cl 95

4.3 Review of decisions

Public involvement may also occur by review of decisions taken by public officials or authorities. Merits review is a process by which decisions of a public authority can be re-made by a tribunal (the Victorian Civil and Administrative Tribunal).

For an individual or group to challenge a decision under the Victorian Water Act, such as a licensing decision, by way of merits review, there must be provision made for review in the Act. There are various administrative decisions under the Victorian Water Act which are reviewable by VCAT. A person or group must also be permitted to do so. They must have 'standing' to challenge the original decision, which means they must have an interest in the decision that the Tribunal will recognise. This may be more than just a curiosity or concern about a decision. Standing to challenge such decisions is commonly limited to 'persons whose interests are affected' by the decision, or, otherwise, persons 'aggrieved' by the decision.

Challenge to government decisions may also apply to water quality issues, such as discharges of pollutants or other actions affecting the quality of waterways, water supplies or aquatic environments. VCAT has jurisdiction to review decisions about the regulation of premises whose activities may have adverse impacts on aquatic environments. The key decisions to which review provisions apply are works approvals for construction or development, or licensing to discharge or do something impacting on the environment. Issues of standing may also arise, requiring a person seeking review to show that they have an interest in the matter¹⁶ and also show sufficient *grounds* to seek review, such as that these interests would be 'unreasonably and adversely' affected by the decision.

Review of decisions is an avenue of engagement (by holding decision-makers to account and challenging original decisions). Where successful, merits review of Authority or agency decisions can have resounding effects on individual decisions and on policy-making. Scope for accessible and effective review can play an important role in contributing to good decisions by primary (such as Authority or agency) decision-makers.

However, review is necessarily a question of recourse, relating to an individual decision. It is thereby a matter of reacting to an application and decision made, as distinct from proactive or strategic engagement in decision-making.

EXAMPLE 1

Barry is a local landowner who is concerned about the health of a local wetland during the drought. The wetland has never dried out completely and it is fed by a local spring. Another landowner, upstream of the wetland, has applied for and been granted a licence from the water authority to take an increased amount of groundwater (under section 51 of the Victorian Water Act) in order to irrigate pasture. Barry seeks to have the decision to grant the licence reviewed at VCAT (which he is able to do under section 64 of the Act).

EXAMPLE 2

A mine wishes to discharge water used in its mining operation into a local waterway after it has received some treatment. Environment groups are opposed to this course of action. The discharge is approved by the EPA and the environmental groups seek to have the decision reviewed in VCAT under section 20 of the Environment Protection Act.

We need your feedback:

Have you been involved in seeking to have a decision reviewed under the Victorian Water Act? The EP Act?

¹⁶ Environment Protection Act 1970 (Vic), subs 33B(1)

Are rights to review decisions, such as the issuing of licences or permitting works on waterways, under the Victorian Water Act well understood?

Do you think rules about a person or group have 'standing' to review decisions are understood in the community?

What impediments are there to decisions, such as those of the Minister or water authorities, being reviewed?

Are rights to review decisions under the Environment Protection Act well understood?

You can access and respond to our questions on SurveyMonkey [here](#).

4.4 Decision-making by water authorities

Water authorities, such as Melbourne Water, Barwon Water and other water corporations, are responsible for managing water resources, including supply to urban customers and irrigators, managing bulk entitlements and in some cases environmental entitlements. They are statutory authorities, which are part-commercial and part-governmental. Another important agency in managing water resources are the CMAs.

Involvement in agency governance may be a matter primarily of lobbying or seeking to persuade and influence those in official positions, whether operational or in formal governance positions (such as Board members or senior management).

Appointment to Water Corporation governing bodies, or CMA Boards, for instance, is largely at the discretion of the government of the day, so there is scope (at least theoretically) for community involvement by way of appointment of identified community representatives. This discretion is constrained only by the requirement that directors, in the case of Water Corporations, have qualifications and experience relevant to the operations of the organisation.¹⁷ For CMAs, Board members may have expertise in, for example, water resources or environmental management. For most CMAs, it is necessary that at least half of Board members are also primary producers. So, in contrast to local government, for instance, there is no direct democratic participation in the institutions of water governance.

Authorities may set up their own consultative processes, intended to include community, environment and/or other interests in policy or operational decision-making.

As a matter of policy or practice, agencies may establish ongoing consultative arrangements, with a view to engaging relevant constituencies. Barwon Water, for example, maintains both a Customer Service Consultative Committee and an Environment Consultative Committee.¹⁸ Goulburn Broken CMA has established a framework of community engagement advisory groups concerned with key CMA programs. In this case, these groups operate under provisions in the *Catchment and Land Protection Act 1994* (Vic)¹⁹ governing CMA advisory committees.

We need your feedback:

Have you or your community group participated in regular consultative processes set up by a Water Authority, Catchment Management Authority, EPA, or other authority? If so, has the experience been beneficial? Has the authority or agency actively listened and taken on board the views, experience or ideas of your group?

In your view, would democratic election of the governing boards of water authorities and CMAs enhance community involvement and interest in water management? If yes, why and what would be preferable models of election? If no, why not?

You can access and respond to our questions on SurveyMonkey [here](#).

¹⁷ *Water Act 1989* (Vic), s 97

¹⁸ <https://www.barwonwater.vic.gov.au/about/community/consultation> (viewed 17 January 2014)

¹⁹ Section 19J

4.5 Enforcement

One final area in which capacity for formal participation should be considered is enforcement of the law where it has been breached, specifically ‘third party’ or ‘citizen’ enforcement. Currently, citizen enforcement under the Victorian Water Act is largely non-existent. There are a range of offence provisions under the Victorian Water Act and under the Environment Protection Act that relate to the extraction and allocation of water and/or to the achievement or maintenance of healthy ecosystems. For instance, under the Victorian Water Act a person must not take water, other than for domestic or stock purposes, without an authorisation or entitlement to do so. Persons and Authorities are required to adhere to conditions or specifications under entitlements or allocations. Not to do so may be an offence. Authority for enforcement of offence provisions, however, will typically be in the hands of a water authority, the relevant Minister or (in relation to prosecutions) the police. By comparison, under planning law, any person may seek to have a planning permit or its conditions enforced by application to VCAT.

EXAMPLE

The Greenplace Environment Group is a community group which has taken a long-term interest in the health of the river that passes through their town. They are concerned that a large agricultural company upstream is extracting substantial volumes of water for their enterprise. They find out that the company is taking water without a licence and arguing it is only for stock watering. The Group learns it is irrigating pasture as well. They complain to the water authority, who is reluctant to do anything about it. They are unable to seek enforcement themselves.

We need your feedback:

Is there a need to consider third party (citizen) enforcement provisions under the Victorian Water Act?

You can access and respond to our questions on SurveyMonkey [here](#).



5 Some current issues in water governance impacting on the environment

5.1 Resistance to, or facilitation of, collaborative decision-making?

Community involvement in water governance, as with environmental governance generally, is affected by institutional and historical factors. Communities of interests around water are now diverse and complex, compelling 'Policy makers and practitioners ... to ask whether present legal tools and resource governance architectures are providing adequate answers to the nation's pressing water problems.'²⁰

Collaborative governance is understood to be a problem-solving and perhaps dispute-resolution process, as much as a gathering together of all relevant parties in decision-making processes. The collaborative approach is intended to open spaces of *participation* to community actors – and hence meaningful opportunities for involvement. As Holley and Sinclair demonstrate in a study of particular Australian 'collaborative environmental governance' programs, the situation is more problematic. 'A key lesson...' they find, 'is that in practice governments and agencies often stymie opportunities for non-government participants to input into decisions.'²¹

Even in circumstances where government and agencies expressly promote participatory processes, 'government and agencies in all three programs [under investigation] continue to dominate decision-making... the findings suggest that power is not shared equitably and, specifically, that government agencies retain control.'²² In each of the collaborative environmental governance programs examined in that study, the authors identified deeply entrenched reluctance on the part of state agencies and officials to implement participatory decision-making in a real sense, a dynamic the product in part of historic and 'conventional state governance mentalities.'²³

We need your feedback:

What agency (or agencies) have you engaged with over water management?

How effective has participation been?

How have agencies facilitated your participation in decision-making or consultation?

How have agencies impeded participation?

You can access and respond to our questions on SurveyMonkey [here](#).

²⁰ Cameron Holley and Darren Sinclair 'Deliberative participation, environmental law and collaborative governance: insights from surface and groundwater studies' (2013) 30 *Environment and Planning Law Journal* 32, 32-33

²¹ Holley and Sinclair 'Deliberative participation, environmental law and collaborative governance: insights from surface and groundwater studies', 51

²² Holley and Sinclair 'Deliberative participation, environmental law and collaborative governance: insights from surface and groundwater studies', 51

²³ Holley and Sinclair 'Deliberative participation, environmental law and collaborative governance: insights from surface and groundwater studies', 52

5.2 Complexity, knowledge and transparency?

The complexity and difficulty of legal frameworks applying to water is not unusual in law governing natural resources. It can be an immense challenge for community participants, and even for professional water resource managers.²⁴ *Legal complexity* is overlaid with layers of *administrative and technical complexity*.

Navigating these responsibilities and powers, alongside negotiating legislation and management practices, presents a major challenge for community groups, at least those without substantial or long-standing resources and experience to fall back on.

Water law, planning and decision-making, like other areas of natural resources management, depends heavily on *scientific and expert information and knowledge*. Access to sufficient and credible technical knowledge may be an impediment to participation in decision-making processes, such as exercising review rights. In planning and allocation decisions, scientific and technical information may be supplied by water authorities or other agencies or proponents. At this point, the issue may become one of the credibility or community acceptance of this expertise, as well as competence and/or proficiency in interpreting and understanding it.²⁵

Few of these problems and difficulties are helped by the availability of *information about water resources*. A 2008 investigation found that the quality and availability of water information had declined and may be unfit for the purposes of proper water planning and assessment.²⁶ Further, the report found that water information was dispersed and inaccessible, and held across numerous agencies and jurisdictions in an uncoordinated manner in 'highly variable systems of data storage and management'.²⁷

We need your feedback:

Has complexity in law or practice been a significant issue inhibiting participation in decision-making or consultation?

How has your group dealt with complexity in law, regulation and/or practices?

What knowledge or information would have assisted participation in consultative or other decision-making processes?

What knowledge or information were community groups able to bring to decision-making processes?

What is the best way to make relevant documents and information available and accessible?

You can access and respond to our questions on SurveyMonkey [here](#).

5.3 Legal requirements for a broad range of interests to be represented

There are many provisions under the various laws identified above for different voices ('interests') to be engaged in decision-making processes about water management, water quality or catchment management. Under some consultation processes, there are legal requirements for 'all relevant interests' to be represented, for landowners to be represented and for public agencies to be represented. Under other processes, there are few or no particular requirements for representation.

²⁴ See e.g. Hamstead, Claudia Baldwin and Vanessa O'Keefe *Water allocation planning in Australia – current practices and lessons learned*, xviii: 'Water planning is not yet a mainstream activity like town planning. While there are many courses relating to specific scientific and technical matters that are important for water planning, none exist for water planning itself. Water planners are largely technically trained people who have been thrown in at the deep end and who have learned by doing.' Also see Tan, et al *Tools for water planning: lessons, gaps and adoption*, 66-67, 74

²⁵ Poh-Ling Tan, Carla Mooney, Ian White, Suzanne Hoverman, John Mackenzie, Kristal Burry, Claudia Baldwin, Kathleen Bowmer, Sue Jackson, Margaret Ayre and David George *Tools for water planning: lessons, gaps and adoption* (Waterlines report 37, National Water Commission, 2010), 40-43

²⁶ Sinclair Knight Mertz *The need for improved water data and water data sharing* (Waterlines Occasional Paper 4, National Water Commission, 2008), 22-23

²⁷ Sinclair Knight Mertz *The need for improved water data and water data sharing* (Waterlines Occasional Paper 4, National Water Commission, 2008), 22

In some circumstances advisory committees have a legal basis, such as the *Catchment and Land Protection Act, s 19J*, but in many other cases such advisory bodies have no statutory basis. They will be established under the general managerial powers of the authority making the decision(s).

We need your feedback:

Is it preferable to have consultative or advisory processes outlined in legislation?

Would sitting fees or other remuneration to community environmental representatives facilitate and encourage participation?

In addition to requirements that consultative committees include landowner representatives, should it be a requirement in legislation that there be provision for environmental interests to be specifically and equally represented? If so, what is the best way to choose those representatives?

You can access and respond to our questions on SurveyMonkey [here](#).

5.4 Is water monitoring and ‘citizen science’ a good pathway into more extensive involvement in water decision-making?

Community involvement in monitoring and observation of waterways and wetlands, such as in ‘citizen science’ initiatives, may be encouraged and supported by government-funded programs and agencies. For instance, Estuary Watch²⁸ and Water Watch²⁹ are well-established schemes based on community involvement in monitoring and management. Such programs are significant in providing broad-based, practical participation in water management.

These programs may be useful in ‘adaptive management’ processes. Adaptive governance applies methods of iterative change and ‘learning by doing’ to management problems. This includes learning from communities and communities learning about water ecosystems. The objective of adaptive approaches is to produce more resilient ecosystems³⁰ and more sustainable interactions between humans and natural resources, such as water. Adaptive management can guide where effort should be directed in the management of water, such as into capacity building, monitoring, better science, conflict management, modelling, and experimentation.³¹

Community involvement in monitoring or evaluation of particular wetlands or rivers may encourage community members to get more involved in environmental groups, participatory or decision-making processes, such as advisory committees.

We need your feedback:

Have you or your group been involved in monitoring of wetlands, rivers or water systems?

If so, has this process been important to getting involved in decision-making processes about water management, such as environmental flows, waterway management, or licensing decisions?

Who controls the data/information collected? Do you use the data collected for advocacy or engagement in decision-making?

You can access and respond to our questions on SurveyMonkey [here](#).

28 See <http://www.estuarywatch.com.au/pls/ewprod/f?p=102:1:2967557039056422>

29 See <http://www.vic.waterwatch.org.au/>

30 Brian Walker, Stephen Carpenter, John Anderies, Nick Abel, Graeme Cumming, Marco Janssen, Louis Lebel, Jon Norberg, Garry D. Peterson, and Rusty Pritchard ‘Resilience management in socio-ecological systems: a working hypothesis for a participatory approach’ (2002) 6 *Conservation Ecology* 1 14

31 Kai Lee ‘Appraising adaptive management’ (1999) 3 *Conservation Ecology* 2 [online]