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Acknowledgement of the Traditional Owners of the Murray–Darling Basin
The Murray–Darling Basin Authority pays respect to the Traditional Owners and their Nations of the Murray–Darling Basin. We acknowledge their deep cultural, social, environmental, spiritual and economic connection to their lands and waters.

The guidance and support received from the Murray Lower Darling Rivers Indigenous Nations, the Northern Basin Aboriginal Nations and our many Traditional Owner friends and colleagues is very much valued and appreciated.

Aboriginal people should be aware that this publication may contain images, names or quotations of deceased persons.

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About this Policy

The purpose of this Compliance and Enforcement Policy (the Policy) is to outline the Murray–Darling Basin Authority’s (MDBA) approach to compliance and enforcement under the Water Act 2007 (Cth) (Water Act) and the Basin Plan 2012 (Cth) (Basin Plan). The Policy explains to the community, businesses, regulated entities and government agencies how and why the MDBA conducts its compliance and enforcement activities.

This Policy sets out:

1. The objectives and principles of the MDBA’s compliance and enforcement program
2. The MDBA’s regulatory role and responsibilities
3. The MDBA’s approach to compliance and enforcement
4. A summary of the MDBA’s compliance and enforcement approaches for each compliance area.
1. Compliance and enforcement objectives and principles

Full implementation of the Basin Plan is critical to a healthy, sustainable Murray–Darling Basin (the Basin). Regulating compliance with the Water Act, which requires compliance with the Basin Plan, and accredited Water Resource Plans (WRPs), is an essential part of Basin Plan implementation, and building confidence that communities, businesses and governments are fulfilling their obligations in sustainable water management.

The MDBA needs to have effective compliance and enforcement arrangements to underpin the integrity of the sustainable diversion limits (SDLs); protect environmental water; and support a competitive water market. Effective state-based compliance systems are an important basis for public confidence in the management of the Basin’s water resources.

A strong MDBA compliance and enforcement policy and work program will deter illegal activity and drive voluntary and positive action. This will include monitoring compliance through audits and investigations, using enforcement powers to take action where non-compliance is detected, if warranted, benchmarking against best practice, as well as building capacity to comply through education and engagement.

Objectives
The MDBA’s compliance and enforcement objectives are to:

• Support achievement of the environmental, social and economic outcomes contemplated by the Water Act by ensuring compliance with the Basin Plan and accredited WRPs.

• Strengthen the integrity of the Basin Plan and associated Basin state and Australian Government water management arrangements.

• Provide independent assurance of compliance with the Basin Plan.

Principles
The MDBA will undertake its compliance and enforcement functions in accordance with the following principles:

• **Transparent and accountable** — compliance and enforcement activities will be conducted transparently, and activities and decisions will be reported publicly, to build the credibility of, and confidence in, the MDBA’s compliance and enforcement approach. The focus on transparency and accountability will be consistent with the MDBA’s confidentiality and information handling requirements under relevant legislation, such as the Privacy Act 1988 (Cth).

• **Risk based** — the MDBA will regularly assess the risk of non-compliance, and target its compliance efforts towards matters with the highest risks and/or which would be the most likely to jeopardise the achievement of Basin Plan outcomes.

• **Proportionate** — the level of compliance and enforcement responses will reflect the seriousness of the compliance matter.

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1 Basin states are the governments of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory.
• **Fairness and equity** — the MDBA will deal with compliance matters consistently and fairly across the Basin, and ensure the rights of all parties are respected.

• **Collaborative, engaged and informed** — understanding and knowing how to comply with obligations is critical to compliance. The MDBA will work cooperatively with Basin governments, engage with and listen to communities, and encourage open access and sharing of information. Decisions will be informed by a range of sources including science and technology, and information from other regulators, communities, and industry. The MDBA will use the best available information when looking to investigate and enforce against non-compliance.

• **Efficient and effective** — the MDBA will be outcome focused and seek to avoid duplication of regulatory effort. The MDBA will operate efficiently and consider compliance costs for regulated entities. Allegations about non-compliance will be responded to in a timely manner.

### About the Basin Plan

The aim of the Basin Plan is to ensure that water is available for use on an environmentally sustainable basis, and that economic use of the water available for extraction is maximised. The Basin Plan is a Commonwealth legal instrument that fundamentally changes the way water is managed in the Basin. It guides governments, regional authorities and communities to sustainably manage and use water across the Basin as part of a single, integrated river system.

The main mechanism for achieving sustainable water use are the legal limits the Basin Plan puts on water extraction in each valley and groundwater unit within the Basin. These limits are known as Sustainable Diversion Limits (or SDLs).

When the Basin Plan commenced in 2012, allowable water extraction levels were higher than the new SDLs, so a seven-year transition period commenced to bring water extraction back to a sustainable level. During this time, the Australian Government has been recovering water for the environment by either buying water entitlements on the market, or investing in infrastructure that achieves more efficient water use.

In addition to establishing the new SDLs, other important elements of the Basin Plan include arrangements to protect and deliver water for the environment, rules to support efficient water markets, targets for achieving better water quality, and rules to protect critical human water needs in extreme events.

Many elements of the Basin Plan, including the new SDLs, will be implemented through WRPs developed by Basin states. The MDBA will assess these for consistency with the Basin Plan requirements and recommend to the Australian Government Minister for Water whether they should be accredited.
**Who is regulated by the Basin Plan**

Under the Water Act, Basin states and Australian Government agencies, including the MDBA, the Commonwealth Environmental Water Holder (CEWH), the Australian Consumer and Competition Commission (ACCC) and the Department of Agriculture, Water and the Environment (DAWE) must perform their functions and exercise their powers consistently with, and in a manner that gives effect to, the Basin Plan and Basin state WRPs.

Basin states are responsible for developing and implementing WRPs in accordance with the Basin Plan. They are also responsible for ensuring irrigation infrastructure operators (IIOs) and water users comply with relevant WRP rules and licence conditions. Basin state water agencies are also responsible for administering water trades, and setting and implementing rules to protect environmental water.

Other regulated entities such as IIOs and holders of water access rights (e.g. irrigators) are similarly bound to act consistently with the Basin Plan and WRPs. Some entities also have obligations with regard to reporting water trade prices.

Australian Government agencies generally have more specific obligations. For example, the CEWH must administer its environmental water holdings in accordance with the environmental watering plan of the Basin, DAWE has particular responsibilities by virtue of chairing the Basin Officials Committee, and the MDBA has responsibilities by virtue of its role in operating the River Murray System on behalf of the joint governments.

Where the MDBA has a specific role in complying with provisions in the Water Act and the Basin Plan, it will publish details of its performance in its annual report, including details of any independent auditing of its own activities to provide assurance that it is acting in accordance with the Basin Plan. If at any time the MDBA is found to be non-compliant with the Water Act or Basin Plan, it will move immediately to remedy the situation, with full public disclosure on the non-compliance and steps taken to address it.
2. MDBA’s regulatory role and responsibilities

The MDBA was established under the Water Act as an independent, expert body responsible for developing, implementing and overseeing compliance with the Basin Plan and WRPs. The Australian Government, Basin state governments and the wider community expect that the MDBA will actively ensure compliance with the Basin Plan and WRPs to ensure sustainable water management.

Through the Water Act and the Basin Plan, the MDBA regulates water users and managers, including the Basin state water agencies who have day to day responsibility for water planning, rule-setting, river operations and state-level compliance. The MDBA’s role is to ensure there is compliance with the requirements and regulatory responsibilities as specified in the Water Act and the Basin Plan, and more broadly to provide assurance over the management of the Basin water’s water resources. The MDBA’s approach to working with Basin states is set out in section 3.

The MDBA has seven compliance areas:

I. **Water Resource Plans (WRPs)** — the key instrument through which the MDBA regulates state level activities is through WRPs developed by the Basin states. Once the WRPs are accredited, the MDBA and Basin states will need to ensure that state water laws are consistent with relevant WRP requirements into the future.

II. **Sustainable Diversion Limits (SDLs)** — the MDBA works to ensure compliance with the limits on the amount of water that can be sustainably taken from the Basin and used for consumptive purposes. The MDBA also works to ensure the methods for measuring consumptive water use are continually improved (e.g. metering coverage, remote sensing, gauging). The MDBA’s approach to SDL compliance is set out in the MDBA’s SDL Reporting and Compliance Framework.

III. **Compliance and enforcement in relation to illegal take** — although primarily the responsibility of Basin state water agencies, the MDBA provides assurance of the compliance and enforcement frameworks within each Basin state to improve confidence in the management of the Basin’s water resources, for example, the MDBA may audit Basin state compliance and enforcement processes or performance. The MDBA may also directly regulate the compliance of individual water users with the Basin Plan, and intends to do so in the absence of adequate action by a Basin state, for example in response to allegations of illegal take.

IV. **Improving water metering and measurement of water take** — the MDBA will work to develop and implement methods to improve accuracy of water measurement and increase transparency of water take across the Basin. This will include the use of remote sensing and emerging technologies to support Basin Plan compliance and water compliance monitoring activities.

V. **Planning and protection of environmental water** — the MDBA monitors and reports on compliance with the requirements of chapter 8 and 10 of the Basin Plan, including the Basin-wide environmental watering strategy and annual watering priorities, and relevant environmental water protection rules contained in WRPs.
VI. **Water trade** — the MDBA enforces compliance with the Basin Plan water trading rules. This is focused on ensuring: restrictions on trade are compliant; water announcements are disclosed appropriately; compliance by IIOs with their requirements; compliance by Basin states with the information and reporting requirements; accurate reporting of water trade prices; and compliant use of exchange rates.

VII. **Water quality and salinity** — the Basin Plan includes targets for water quality and salinity throughout the Basin. The MDBA monitors these targets and provides assurance that regulated entities such as river operators and the Basin Officials Committee have regard to relevant targets when making water management decisions.
3. Approach to compliance and enforcement

Governance
The MDBA has established the Office of Compliance to manage its compliance and enforcement functions. The responsibilities of the Office of Compliance include:

- setting compliance and enforcement policies and processes;
- maintaining an audit program;
- conducting investigations into allegations of non-compliance;
- implementing and monitoring compliance with the water trade rules;
- developing best practice guidelines for different aspects of compliance;
- benchmarking Basin state performance against best practice; and
- reporting publicly on compliance performance.

An Independent Assurance Committee (the Committee) provides the MDBA with expert advice on its approach to compliance, and external assurance over how well this work is being implemented. This assurance also extends to how the MDBA manages any perceived or real conflicts of interest involving its Basin Plan responsibilities and operation of the River Murray. The Committee’s advice to the MDBA is made public. The Committee comprises up to four experts in compliance, enforcement and regulation and has been established under section 203 of the Water Act. Details of its terms of reference and current membership can be found on the [MDBA website](#).

Working with regulated entities
The MDBA works with all regulated entities to ensure that they are aware of, and understand how they can comply with, their obligations under the Water Act and the Basin Plan.

Working with Basin states
It is the MDBA’s expectation that the Basin states will voluntarily cooperate with the MDBA’s compliance activities to maintain community confidence.

The MDBA’s intent is for compliance and enforcement activities to be initiated at the most appropriate jurisdictional level required for their resolution. In most cases this is likely to be at the state level, in some it will be at the Basin level, and in others it may be at the Australian Government level, involving regulated Australian Government agencies.

For example, in line with the MDBA’s [Escalation Protocol](#), in the first instance, the MDBA will refer allegations of illegal water take to the relevant Basin state regulatory agency for investigation. However, if there is evidence a Basin state is not adequately discharging its regulatory responsibilities, the MDBA will conduct its own investigations and may take direct enforcement action where appropriate.

The MDBA will seek to reach agreement with relevant Basin state agencies on protocols to ensure its compliance role is conducted efficiently and effectively. In particular, the MDBA is committed to:

- informing Basin states of the scope of compliance audits, and conducting audits and investigations in accordance with any protocols agreed with the Basin states.
• consulting with Basin states over the preparation of relevant guidelines or benchmarking activities, or before the release of key compliance reports.
• working with Basin states to build capacity in best practice compliance. For example, it is intended to build an active community of compliance practitioners to share practical experience and knowledge on a range of issues.
• seeking feedback from Basin states on how it is carrying out its regulatory functions with a view to improving its performance.

**Working with water infrastructure operators**
Water infrastructure operators (including bulk water operators and IIOs) are state or privately-owned agencies that provide water services to a range of rural water users such as irrigators, stock and domestic users, and industry. The MDBA is committed to engaging with these large water users in a fair, open and transparent way, to support the best and most efficient use of Basin water resources. This includes targeted education activities, such as workshops, guidelines, fact sheets, to help these users understand and comply with their legislative obligations.

**Working with communities**
Education and engagement are essential to help water users understand water resource laws and the importance of compliance with such laws to the environment and to other water users.

The MDBA will work with stakeholders and the broader community to explain its roles and responsibilities in regulating and enforcing water management in the Basin.

The MDBA will seek advice from the Basin Community Committee on how best to target its engagement and education efforts, and through the MDBA’s regional offices and networks to enable community feedback on the MDBA’s performance at a local level.

### Reporting

The MDBA will report transparently to provide information about activities and outcomes associated with implementation of the Basin Plan. The intent is to give confidence to communities that governments are on track with implementation of the Basin Plan and that water users are doing the right thing.

Examples of this reporting include:
• Annual assurance statements and report card style publications on Basin Plan compliance.
• Registers of Basin state measures and efforts for example on protection of environmental flows, progress developing WRPs, and the SDL register of take.

Guidelines and practice notes, for example, in relation to the accuracy and appropriateness of water measurement in the Basin.
Compliance program
The MDBA’s emphasis is on a strong compliance and enforcement program to deter illegal activity, and drive voluntary and positive action. The program will determine whether there is compliance through monitoring activities using technology such as remote sensing, auditing different aspects of Basin Plan implementation, and investigating reports of alleged non-compliance, as necessary. The MDBA will acknowledge where there is good compliance and take enforcement action where there is non-compliance. The MDBA will identify and promote good practice by preparing guidelines and practice notes on relevant aspects of water management and benchmarking performance. Where non-compliance is found, it will be addressed appropriately.

A portion of the MDBA's compliance program is shaped by its annual compliance priorities. Each year the MDBA undertakes a compliance risk assessment that considers both high-level and broad-based compliance risks, as well as more detailed assessments for each of the compliance areas. Potential risks are considered in terms of the likelihood of occurrence, possible consequences (such as impacts on the environment, impacts on stakeholders and financial risks) and whether the MDBA's current risk mitigation actions are sufficient to reduce the risk of non-compliance. The annual risk assessment will be used to inform the setting of compliance priorities that targets those areas at highest risk of non-compliance and of serious consequences. The MDBA will publish a statement of its annual compliance priorities on its website.

Section 4 contains a high-level outline of the compliance and enforcement tools that the MDBA may consider using for each of its compliance areas.

Audits
Auditing is a critical tool for the MDBA in encouraging and monitoring compliance with the Basin Plan. Under the Water Act, the MDBA has a broad audit function with significant information gathering, inspection and investigation powers. The MDBA will undertake and publish its own monitoring, auditing and, if required, investigations, to provide the community with confidence that the Basin Plan reporting is accurate and implementation is on track. Audits and investigations may be undertaken as part of the annual work program, or they may be instigated in response to a specific incident or intelligence reports. The MDBA will publish audit reports on its website.

Enforcement approach
The MDBA’s enforcement approach recognises that enforcement action can deter non-compliance and illegal activity, and improve performance. The Water Act and the Basin Plan create many obligations that can be enforced. To achieve Basin Plan outcomes, the MDBA has taken a policy position on enforcement with regard to:

- **compliance with WRPs.** The MDBA will use its full suite of enforcement options to ensure compliance with WRPs, in particular those which relate to compliance with SDLs, and the protection of both held and planned environmental water.
- **illegal take.** The MDBA seeks to provide assurance that Basin state compliance and enforcement frameworks are effective. The MDBA will use its audit powers to verify...
state performance. If a Basin state is found not to be taking adequate action against allegations of illegal take, the MDBA will investigate and if warranted, take direct enforcement action.

- **compliance with the Basin Plan water trading rules.** The MDBA will use its enforcement powers where necessary to encourage a ‘level playing field’ in the various water markets across the Basin.

The MDBA’s enforcement tools are outlined in [section 5](#).
4. Compliance and enforcement approaches for each compliance area

The MDBA takes a risk-based approach to its compliance and enforcement activities, which considers a combination of two elements: consequence or harm to the Basin’s water resources and environment, and the level of engagement of the regulated entities.

The tables and diagrams below set out the MDBA’s role in each of its compliance areas, and how the MDBA may apply its compliance tools and statutory enforcement powers, taking into account how engaged a regulated entity is and the consequence or harm that non-compliance may cause.

**Consequence and harm (horizontal axis):** the harm or consequence of non-compliance has five levels: low, minor, moderate, major and severe. This reflects the actual or potential environmental, economic and social impacts of non-compliance. It also considers the scale and duration of any harm and the level of public concern.

**Level of engagement (vertical axis):** this ranges from engaged to unengaged. In determining the attitude of the regulated entity the MDBA considers their track record, capacity and resources dedicated to compliance activities, business practice and culture to respond to and rectify non-compliance.

The MDBA may use the tools and powers sequentially, in combination, or individually to respond to a compliance issue.

In practice, this risk-based approach broadly means that the MDBA will focus its regulatory activities and resources on entities and compliance areas where the relative risks of possible or actual non-compliance or harm are greatest.

The MDBA’s compliance tools and enforcement powers are described in detail in section 5.
I. Water Resource Plan compliance

MDBA compliance role
The MDBA’s compliance role is to monitor and enforce compliance of all regulated entities with accredited WRPs. In reviewing compliance with the WRP requirements, the MDBA ensures that state water management processes do not diverge from the arrangements accredited. The Water Act requires that an agency of a Basin state, an operating authority, an infrastructure operator or a holder of a water access right must not act inconsistently with a WRP or fail to act as required by a WRP.

WRPs are the overarching framework through which most of the MDBA’s other compliance areas are enlivened. For example, WRPs contain provisions to ensure the protection of environmental water, manage water quality and salinity, and to determine if water take is compliant with SDLs.

Compliance tools for the MDBA
- Stakeholder communication, education and engagement
- Capacity building
- Preparation of guidelines and standards
- Maintaining cooperative arrangements with state and Australian Government agencies and regulators (e.g. joint investigative activities, working groups)
- Reports and data published regularly
- Independent monitoring including using remote sensing technologies
- Audits of WRP compliance
- Advisory letters to the Basin state
- Advisory meetings with Basin state
- Use of power to request compilable information from Basin state agencies and water access right holders to monitor compliance and investigate potential non-compliance

Enforcement options
- The MDBA and regulated entity may enter into Enforceable Undertakings to make good an area of non-compliance
- The MDBA may apply to a court for a declaration that a regulated entity has not complied with its WRP
- The MDBA may apply to a court for an injunction to prevent the potential, current or further non-compliant behaviour

Escalation pathway
II. Sustainable Diversion Limit accounting and compliance

MDBA compliance role
The MDBA works to ensure compliance with the limits on the amount of water that can be sustainably taken from the Basin to be used for consumptive purposes in each SDL area.

The MDBA must establish, maintain and publish a register of water take annually. This includes reviewing data provided by the Basin states to determine whether there is non-compliance with an SDL for each WRP area. The MDBA also works to ensure that the methods for measuring consumptive water use are fit for purpose and on an improvement path (e.g. metering coverage, modelling, remote sensing, and gauging).

Where a non-compliance with an SDL is identified, actions will be taken to identify and resolve the underlying causative issue or behaviour.

Further detail about the MDBA’s approach to SDL compliance is set out in MDBA’s SDL Reporting and Compliance Framework.

Compliance tools for the MDBA

• Stakeholder education and engagement
• Capacity building (e.g. water compliance community of practice)
• Guidelines on measuring water take measurement (e.g. hydrometric and hydrologic modelling)
• Technical and policy advice
• Public reporting (e.g. section 71 reporting and the register of take)
• Independent monitoring of water take (e.g. remote sensing)
• Audits and assurance reviews of state data, methods, and models
• Annual assessment of SDL Compliance
• Use power to request compellable information from regulated entities
• Advisory meetings with the Basin state
• Advisory letters to the Basin state
• Assessment of reasonable excuse claims
• Make good actions under the SDL Reporting and Compliance Framework (i.e. implement growth-in-use response strategy)²

Enforcement options
Where non-compliance with an SDL amounts to a breach of the Basin Plan or a WRP, the MDBA may:

• enter into an Enforceable Undertaking with a state to address the area of WRP non-compliance
• apply to a court for a declaration that a regulated entity has not complied with its WRP
• apply to a court for an injunction to prevent the potential, current or further non-compliant behaviour

Escalation pathway

CONSEQUENCE/HARM of non-compliance

² A Basin state may be required to implement a ‘growth-in-use’ response strategy where the volume of water being used has exceeded the SDL for the area.
III. Compliance and enforcement of illegal take

**MDBA compliance role**

The MDBA’s main role is to provide assurance of Basin state compliance and enforcement systems through conducting audits and investigating state practices and processes. The MDBA may also directly regulate the compliance of individual users with the Basin Plan, for example by enforcing against illegal take if a Basin state fails to do so adequately.

**Compliance tools for the MDBA**

- Education and stakeholder engagement
- Capacity building (e.g. community of practice amongst environment and water regulators)
- Maintain cooperative arrangements with government regulators (e.g. joint investigative activities, protocols with Basin state regulatory agencies)
- Prepare and publish compliance activity reporting guidelines
- Publish Basin compliance and enforcement data regularly
- Annual benchmarking of Basin state compliance and enforcement systems
- Investigations and inspections
- Use of technology including remote sensing applications to monitor water take
- Audit the effectiveness of Basin state compliance and enforcement systems
- Advisory letters
- Compliance audits or investigations using power to request compellable information from regulated entities including water access right holders

**Enforcement options**

Where illegal take amounts to a breach of a WRP, the MDBA may:

- Enter into an enforceable undertaking with a regulated entity to make good on their non-compliance
- apply to a court for a declaration that a regulated entity has not complied with its WRP
- apply to a court for an injunction to prevent the potential, current or further non-compliant behaviour
IV. Improving water metering and measurement of water take

MDBA compliance role
The MDBA will work to develop and implement methods to improve accuracy of water measurement and increase transparency of water take across the Basin. The MDBA does not have regulatory functions in water metering, but recognises that good metering is critical to managing the Basin’s water resources and water compliance.

Compliance tools for the MDBA
- Developing practice notes and issuing guidance material to enable best practice
- Capacity building (e.g. establishing and participating in communities of practice to improve water information and measurement)
- Supporting intergovernmental initiatives and joint work such as the Basin Compliance Compact, and cooperative activities including joint audits
- Development of new technologies including remote sensing and emerging technologies to support Basin Plan compliance and water compliance monitoring activities
- State-to-MDBA reporting requirements, public reporting and registers
- Investigations and audits
- Audits or investigations using the MDBA’s power to request compellable information

Enforcement options
- The MDBA has no specific enforcement powers in this area. The MDBA’s work in metering and measurement is an enabling strategy to achieve better levels of Basin Plan compliance and enhance the quality of water compliance and enforcement systems

Escalation pathway
V. Planning and protection of environmental water

**MDBA compliance role**

The MDBA provides assurance of about how well environmental water is protected in the Basin, as reflected in the implementation of WRP s and SDL accounting arrangements.

The environmental watering plan (Basin Plan chapter 8) requires that the State and Australian Government agencies fulfil certain obligations. For the MDBA, this includes preparing the Basin-wide environmental watering strategy, and for the Basin states, this includes preparing long-term watering plans. The MDBA monitors compliance with the environmental watering plan by assessing the extent to which obligations are fulfilled by state and Australian Government agencies, and by supporting the development and assessment of state WRP provisions regarding the identification and protection of planned and held environmental water. Where an accredited WRP is in place, the MDBA will be responsible for monitoring state implementation of environmental water provisions.

The MDBA also assesses the adequacy of Basin state pre-requisite policy measure (PPM) implementation plans as part of the reconciliation of the SDL adjustment mechanism and WRP accreditation.

**Compliance tools for the MDBA**

- Education and stakeholder engagement
- Capacity building (e.g. community of practice with environment and water regulators)
- Technical and policy advice e.g. SDL Adjustment Mechanism implementation
- Public register of measures to protect environmental water
- Maintaining cooperative arrangements with government regulators and operational agencies (e.g. coordinated delivery, joint investigative activities)
- Monitoring, evaluation and reporting of environmental outcomes and environmental management framework, including how watering is measured and state-to-MDBA reporting requirements, such as Schedule 12 reporting
- Audits of planning, delivery and monitoring frameworks for environmental water
- Investigation of environmental watering events and policies
- Advisory letters about the compliance of environmental water planning instruments with the Basin Plan requirements
- The MDBA’s advice to the Minister whether to accredit a WRP includes considering whether the WRP is compliant with the environmental water requirements under the Basin Plan
- Compliance audits or investigations using power to request compilable information

**Enforcement options**

- Enter into enforceable undertakings to make good an area of non-compliance
- The MDBA may apply to a court for a declaration that a regulated entity has not complied with its WRP
- The MDBA may apply to a court for an injunction to prevent potential, current or further non-compliant behaviour

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**Escalation pathway**

Unengaged

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<th>Minor</th>
<th>Moderate</th>
<th>Major</th>
<th>Severe</th>
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<td>Stakeholder communication and engagement</td>
<td>Preparation of guidelines and standards and provision of technical advice</td>
<td>Cooperative arrangements with other agencies</td>
<td>Advisory letters and meetings</td>
<td>Public reporting and data release</td>
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Engaged
VI. Water trading rules

**MDBA compliance role**
The MDBA enforces compliance with the Basin Plan’s water trading rules. This is particularly focused on ensuring: restrictions on trade are compliant; avoiding inappropriate water announcements; compliance by IIOs; compliance by Basin states on the information and reporting requirements; accurate reporting of water trade prices; and the appropriate use of exchange rates.

**Compliance tools for the MDBA**
- Education and stakeholder engagement
- Capacity building (e.g. community of practice and Working Group amongst market regulators)
- Maintain cooperative arrangements with government regulators (e.g. ACCC and interjurisdictional trade groups)
- Reporting requirements in the Basin Plan for regulated entities to provide information to the MDBA
- Publish reports, guidance material and data regularly
- Advisory meetings, including negotiations, between MDBA and Basin governments, or individuals and entities engaged in trade of water access rights
- Advisory letters
- Audits of selected high risk water trade issues and rules
- Use power to request compilable information from Basin state agencies, brokers, IIOs, and water access right holders to monitor compliance and investigate potential non-compliance

**Enforcement options**
- Enter into enforceable undertakings to make good an area of non-compliance
- The MDBA may apply to a court for a declaration that a regulated entity has not complied with water trading rules
- The MDBA may apply to a court for an injunction to prevent potential, current or further non-compliant behaviour

![Escalation pathway diagram]

**Escalation pathway**
- Unengaged
- Engaged
- Low
- Minor
- Moderate
- Major
- Severe
- Injection
- Enforceable undertakings
- Declarations
- Audits of high risk trade rules and issues
- Investigation and audit using power to request information
- Advisory letters and meetings
- Public reporting and data release
- Capacity building
- Education and engagement
**VII. Water quality and salinity**

**MDBA compliance role**

The Basin Plan sets water quality and salinity (WQ&S) objectives and targets. Basin states, river operators, the Basin Officials Committee and environmental water holders must have regard for WQ&S targets when making relevant water management decisions. The MDBA provides assurance that Basin states and the CEWH are having regard to the WQ&S when managing flows and using environmental water. Failure to achieve targets is not a breach of the Basin Plan, but rather sends a signal that management settings may require modification.

Water quality management plans are a required component of accredited WRPs, and the MDBA has a role to monitor and enforce compliance of all regulated entities with accredited WRPs.

The MDBA must also monitor, assess and report on salinity levels in the River Murray.

**Compliance tools for the MDBA**

- Capacity building through working collaboratively with government agencies involved in the planning, management and use of water in the Basin
  - Education and stakeholder engagement
  - Preparation of guidelines and standards
  - Maintaining cooperative arrangements with government regulators and operational agencies (e.g. cooperative audits)
  - Public reporting on the effectiveness of measures taken
  - Audit provisions under the Basin Salinity Management Strategy
  - Compliance audits or investigations using power to request compellable information
  - Advisory letters

**Enforcement options**

- Make good actions (for example for failure to report or have regard to certain requirements)
- The MDBA may apply to a court for a declaration that a regulated entity has not complied with its WRP
- The MDBA may apply to a court for an injunction to prevent potential, current or further non-compliant behaviour

**Escalation pathway**
5. The MDBA’s compliance and enforcement tools

The MDBA has a range of statutory and non-statutory compliance and enforcement tools. These can be used proactively to promote compliance or deter non-compliance, or reactively to take enforcement action in response non-compliance.

Compliance tools

To promote compliance with the Water Act, the Basin Plan and WRPs, the MDBA uses a range of tools. These include:

- **Informing and educating** regulated entities and the general public to raise awareness of key requirements of the Basin Plan and Water Act obligations including Water Resource Planning, limits to overall levels of water take, planning and protection of environmental water, water trade and market requirements, and water quality and salinity management arrangements. Examples of these activities include public information sessions, presentations at key stakeholder meetings and briefings.

- **Capacity building** by convening workshops and providing constructive, timely advice to regulated entities on how they can meet their regulatory responsibilities under the Basin Plan and Water Act. This may include building a community of practice, workshop style events, and publishing policy statements.

- **Setting guidelines and standards** to promote compliance. Examples range from planning frameworks such as the Basin Wide Environmental Water Strategy, to specific guidelines on hydrometric systems and hydrologic modelling. Standards to build increased transparency of the Basin’s water compliance and enforcement frameworks are also planned.

- **Risk assessments and horizon scans** to identify emerging areas of compliance risk. These scans will support proactive efforts to encourage compliance and enable the MDBA to mitigate the risk of non-compliance.

To monitor, detect and investigate non-compliance, the MDBA uses a variety of practices to collect evidence and intelligence. These include:

- **Audits** may be strategic and proactive to identify compliance problems or risks, or they may be responsive and reactive to reported problems. They may contain field and desktop components. The MDBA will publish its Audit reports, which will include recommended actions if appropriate.

- **Requesting and compelling information** under the Water Act. To support the MDBA’s compliance role, the MDBA may compel information from regulated entities to enable it to effectively monitor compliance and investigate allegations of non-compliance.

- **Breach reports** and allegations of water theft. The MDBA has an online portal where members of the public report potential breaches. Feedback is provided to reporters on any action taken, as well as any results of the action.

- **Using technology including remote sensing** to monitor and measure water use across the Basin.

- **Reporting and publishing** information to build transparency and accountability. The MDBA has a number of public registers, examples include: the protection of environmental flows, register of water take and progress on the development and accreditation of WRPs. With respect to
compliance and enforcement, the MDBA will provide progress reporting on how Basin states are improving their systems. The MDBA is also responsible for coordinating and verifying annual Statements of Assurance from Australian Government and state agencies on Basin Plan implementation.

- **Advisory letters** may be issued to provide written warnings of potential non-compliance.

## Enforcement tools and powers

Enforcement tools draw on the influence, authority and statutory powers of the MDBA to compel compliance with WRPs, the Basin Plan and the Water Act. In line with the MDBA’s Compliance and Enforcement Policy principles, the MDBA will use its enforcement powers to deter or address non-compliance and make good the harm caused by breaking the law.

Internal enforcement guidelines support decision-making on how and when enforcement actions will be taken, to ensure consistency and fairness for the regulated community. The strategy adopts a risk-based approach.

The MDBA’s enforcement tools include:

- **Investigations** of suspected non-compliance by regulated entities. Investigations may range from on-site inspections of meters to desktop reviews of information relevant to an allegation of non-compliance with the Basin Plan or the Water Act.
- **Informal negotiations** between the alleged offender and the MDBA to educate the alleged offender about how their actions constitute non-compliance and discuss options for preventing or remedying the behaviour. Commencing informal negotiations early can avoid the need for more formal enforcement action.
- **Infringement notices** may be issued in response to certain non-compliances as set out in section 156 of the Water Act (noting that the MDBA’s power to issue infringement notices is limited).
- **Enforcement notices** may be issued by the MDBA for a contravention of the Basin Plan or a WRP, requiring a person to do, or stop doing, specific conduct, and may require the person to undertake make good actions.
- **Enforceable undertakings** are an alternative to civil proceedings and focus on remedying the harm caused. They allow the non-compliant entity to voluntarily enter into a binding agreement to undertake agreed tasks to remedy an alleged contravention of the Basin Plan and Water Act.
- **Injunctions** may be applied for by the MDBA in the Federal Court to stop a person or entity from contravening the Water Act, Basin Plan, the Water Trade Rules or a WRP.
- **Declarations of contravention** may be applied for by the MDBA in the Federal Court for a declaration of a contravention of the Water Act, Basin Plan or a WRP.
- **Civil penalty proceedings** may seek to provide an appropriate financial penalty to the non-compliant entity and act as a deterrent. The MDBA will consider commencing civil proceedings in accordance with its litigation approach. The MDBA’s power to commence civil penalty proceedings is limited.

The MDBA has the power to apply to a court for an equitable remedy (injunction or declaration of a contravention) from a Basin state. Due to section 12 of the Water Act, the MDBA is unable to seek penalties against a Basin state for contraventions of the law.
Office locations
Adelaide
Albury-Wodonga
Canberra
Toowoomba