



Australian Government



Sustainable Diversion Limit Reporting and Compliance Framework – Summary

November 2018

Published by the Murray–Darling Basin Authority
MDBA publication no: 38/18
ISBN (online): 978-1-925762-07-5



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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 person.

Introduction

The Murray–Darling Basin Plan aims to strike a balance between access to water for Basin communities, while also providing water for the environment, for the benefit of all Australians. This balance will deliver a productive and healthy Murray–Darling Basin. Compliance with the Basin Plan is critical to achieving this, and ensuring that all Australians trust that water is being used in accordance with the rules.

At its heart, the Basin Plan sets sustainable diversion limits (SDLs), which limit how much water, on average, can be used in the Basin by towns and communities, farmers, and industries, while keeping the rivers and environment healthy.

The SDL Reporting and Compliance Framework (the framework) outlines the approach the Murray–Darling Basin Authority (MDBA) will take when reporting and assessing compliance with the sustainable diversion limits. All elements of the Basin Plan are interconnected—individual elements must work together in order to set the groundwork for a healthy and sustainable Basin and all aspects of water management rely on effective compliance with water laws (Figure 1).

The framework is just one component of water managers’ approach to compliance and supports the MDBA’s Compliance and Enforcement Policy 2018-21, which sets out how the MDBA approaches its compliance role.



Figure 1: Understanding how the elements and implementation of the Basin Plan work

Roles and responsibilities for managing compliance with sustainable diversion limits

Managing water is a shared responsibility because water is a shared resource. Both Basin state governments and the Commonwealth Government have a key role in ensuring water laws are adhered to.

Basin state governments are the regulators and the frontline for policing water use in the Basin.

Individual compliance with local rules and licences is the responsibility of the Basin state governments. They are responsible for ensuring state compliance systems are effective, and for enforcing the rules, many of which are outlined in water resource plans.

The MDBA is responsible for assessing and monitoring Basin state compliance with SDLs. The MDBA will work with Basin states to ensure that any potential breaches of SDLs are investigated and that appropriate action is taken if water use grows over time and does not remain within the SDL. In making these decisions, the MDBA will provide transparent and timely accounts of all water take in the Basin through the establishment, maintenance and publication of the Register of Take. It will report the status of SDL compliance in its annual water take reports.

The MDBA also has the power to intervene if it has any concerns when it becomes aware of an allegation that a Basin state is not appropriately managing individual's compliance with their licence conditions and local rules. This latter aspect is addressed through the MDBA's Compliance and Enforcement Policy 2018-21, rather than through this framework.

Real time compliance is a priority for all Basin governments and work is being done through the Murray–Darling Basin Compliance Compact agreed by Ministers in June 2018 to achieve this. As part of this, the MDBA is working to develop and implement methods to improve the 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. The MDBA has recommended that by 2022, 95 per cent of take that can be metered, will be metered.

Scope of sustainable diversion limits reporting and compliance

SDL compliance is about assessing how much has been intercepted or used and comparing it to the SDL. Compliance commences for the 2019/20 water year, with the first assessment due in 2021.



The framework is not intended to identify the theft of water by individuals, including whether water has been taken within the water year at a time not allowed under the individual licence conditions. The framework is designed to assess state compliance with the SDLs at the SDL resource unit scale.

SDL compliance builds and expands on the Murray–Darling Basin Cap on Surface Water Diversions (the Cap), introduced by the Murray–Darling Basin Ministerial Council in 1995. The Cap introduced long-term limits on how much water could be taken from rivers in 24 designated river valleys.

The Basin Plan's SDL compliance includes reporting and compliance with limits on water take from watercourses, regulated rivers, groundwater, run-off dams, floodplain harvesting, commercial plantations and basic rights.



The framework aims to achieve an appropriate balance in the nature and timing of any response to a potential SDL exceedance. It includes a transparent process that provides procedural fairness, and aims to build community confidence in the SDLs and the Basin Plan itself.

Key sustainable diversion limit compliance concepts

Excess growth-in-use

Under this Framework, the MDBA will monitor trends in 'growth-in-use', which is when water use grows over a period of time. If this growth is consistent, and this causes the limit to be exceeded allocations may need to be adjusted in the future to meet the sustainable diversion limit.

Basin states are required to include mechanisms to respond and address any excess growth-in-use in their water resource plans. Such strategies should be able to provide for a reduction in take in a transparent manner, to ensure the SDL is met.

Reasonable excuse and make good steps

The concept of 'reasonable excuse' is new in the context of water take reporting and compliance in the Murray–Darling Basin. It was introduced because it is possible that interception and use of water in an SDL resource unit could exceed the SDL compliance test, even though all the rules in the relevant accredited WRP have been complied with or due to circumstances beyond a Basin state's control.

Reasonable excuse provides a mechanism for a Basin state to remain compliant with the SDL on the basis it has a legitimate reason for an apparent exceedance of the SDL compliance test. In making a claim for reasonable excuse the Basin state is required to provide the steps it will take to bring water take back within the SDL and ensure that it is complied with in future. These steps are referred to as 'make good steps'.

Importantly, regardless of whether a Basin state is determined to be non-compliant or to be compliant with a reasonable excuse, if an excess growth-in-use is identified, the Basin state will be required to 'make good' and reduce actual take to the SDL.

Assessing sustainable diversion limit compliance

Sustainable diversion limits, permitted take and actual take



Sustainable diversion limits are how much water, on average, can be used in the Basin by towns, communities, industry and farmers. These limits consider climate, trade, usage patterns and development of infrastructure.

Permitted and actual take are used to assess compliance with the SDL. Both are determined for each SDL resource unit at the end of each water year.



Permitted take is how much water was expected to be used under the SDL, based on the climate and water patterns of that water year.

It should be noted that **permitted take is not the same as water ‘allocated’** or made legally accessible for take. Models are often used to determine the permitted take.



Actual take is how much water was actually intercepted or used in the SDL resource unit in a given water year. It is measured or otherwise estimated.

Each of these terms are illustrated in the below Figure 2 over a 3 year period.

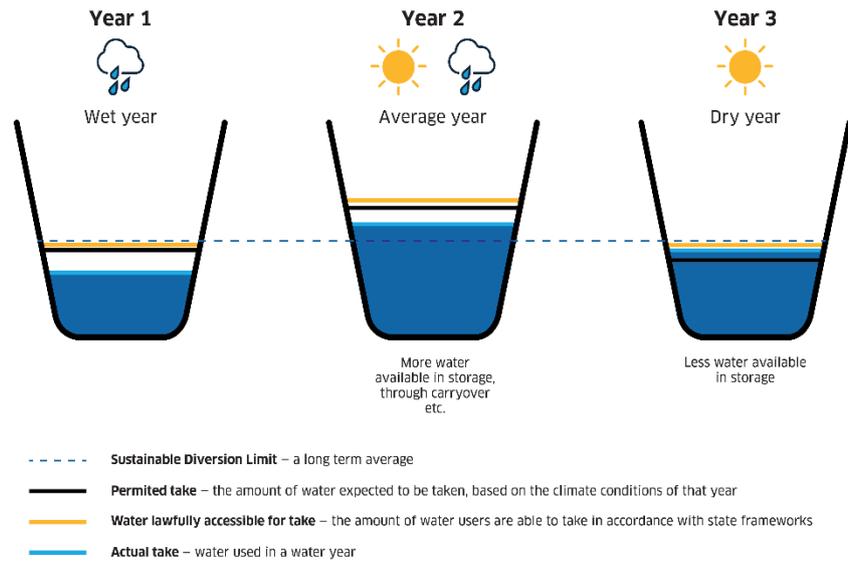


Figure 2: Hypothetical examples of the SDL, permitted take, water lawfully accessible and actual take

Water use patterns in the Basin

Variability in weather and in storage levels causes the annual ‘actual take’ to vary widely from year to year. As a result, the higher volumes of water are usually taken in dry years when there is a large volume of water remaining in storage from previous years. Conversely, the lowest volume is usually taken either in wet years when demand is low, or in dry years when carryover storage is low and supply is restricted. This is illustrated in Figure 3 below, in the wet year, allocations are much higher than in the dry year. Note, the entitlement¹ remains the same.

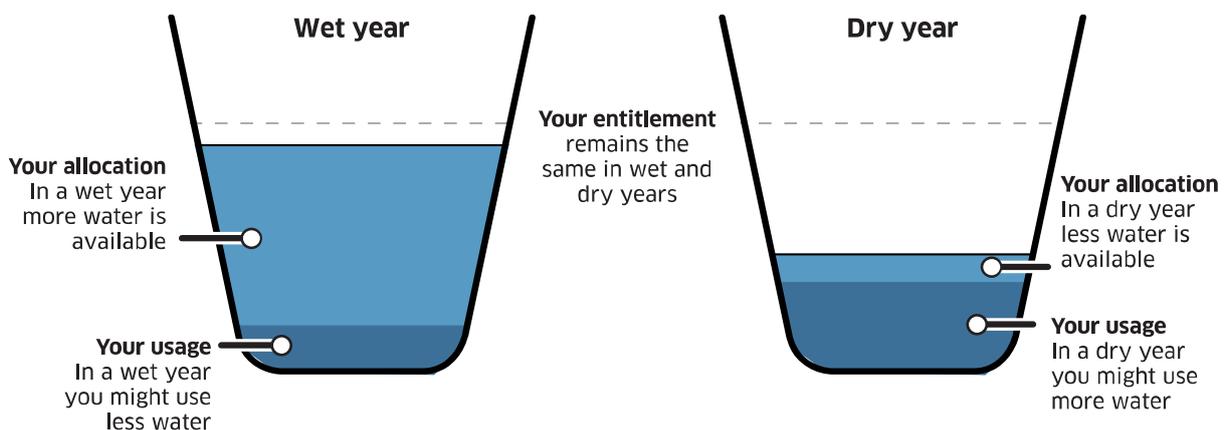


Figure 3: An example of variations in water allocations versus entitlements in wet and dry years

If actual take was only compared with the long-term average SDL each year, this annual variability would mean that it would take a long time to determine with any confidence if the SDL was being met or if actual take had increased above the SDL.

¹ The use of terms entitlement may vary in each Basin state

In order to reduce the time required to detect trends in actual take, methods (often hydrological models) established under accredited water resource plans will be used to determine the annual permitted take for the SDL resource units. These methods for permitted take will help detect trends by explaining the annual variation in actual take caused by variations in the weather and storage levels. The annual permitted take calculations reflect the rules in each accredited water resource plan.

While most take from watercourses and regulated rivers is measured, there are a number of categories of take which are currently unmeasured. While the MDBA will encourage Basin states to improve the measurement and reporting of these forms of take, it is acknowledged that these categories may initially use the long-term average as the best available estimate. Over time the MDBA will work with Basin states to obtain better estimates of these unmeasured forms of take and/or develop a more effective method of monitoring compliance with the SDLs using these estimates.

Until that time, these systems may need to be assessed by means of regular reviews.

Compliance test

The Authority will conduct a compliance test for each surface water and groundwater SDL resource unit from 2019. The method for determining compliance with the SDL is outlined in Chapter 6, Part 4 of the Basin Plan, and is referred to as the compliance test. Put simply, the method to test compliance compares actual take to permitted take and determines the annual differences over time. The data for each SDL resource unit is recorded in the Register of Take and will assist in determining whether there has been an exceedance of the compliance test or not.

There is a compliance test (and Register of Take) for surface water, and one for groundwater. The compliance tests ensure that the expected variability in annual actual take does not unnecessarily trigger an assessment of compliance. It allows for years when actual take is less than permitted take to offset years where the actual take is more than the permitted take.



The purpose of this test is to determine if there is an excess 'growth-in-use'. That is, if water take is increasing to become greater than the SDL.

The outcome of a compliance assessment will result in a SDL resource unit being either:

- *Compliant*: the water resources have been managed within the SDL for that resource unit.
- *Compliant with a reasonable excuse*: the Basin state must provide a report to the MDBA setting out the reasons for the excess and the steps it will take to reduce the cumulative balance of the register so that there is no excess.
- *Non-Compliant*: Further to s.71(1)(h) of the Act, a Basin state must advise the actions that it proposes to ensure that the SDL is complied with in the future. Appropriate compliance actions may also apply against the Basin state. The MDBA's approach to compliance is further outlined in the MDBA's [Compliance and Enforcement Policy 2018](#).

Reasonable excuse assessment

Under the Basin Plan, a Basin state may claim a reasonable excuse when the compliance test is exceeded.

As the regulator, the Authority will determine whether or not a reasonable excuse should be granted. This determination is based on the evidence provided by the Basin state, any supplementary evidence acquired by the MDBA and the justification for the reasons set out for that circumstance.

The framework sets out five classes of reasonable excuse (RE1 to RE5) that sit under these two categories, as well as some examples.

If the SDL reporting indicates that water take is in excess of the SDL compliance test the first step, in most cases, will be for the Basin state to investigate further. The framework provides time to obtain certainty around the cause of the exceedance of the compliance test. A period of *up to* three years is provided for Basin states to discover or investigate the issue, after which further action will be required (as illustrated in the examples provided in Figure 4 – see Discover Pathway). However, each year a Basin state claims a reasonable excuse, the Authority will review the evidence and justification provided by the Basin state in accordance with the framework, before granting a further reasonable excuse.

Figure 4 below is an example of possible reasonable excuse resolution pathways. The figure illustrates that compliance will need to be assessed and remedial actions applied across multiple years.

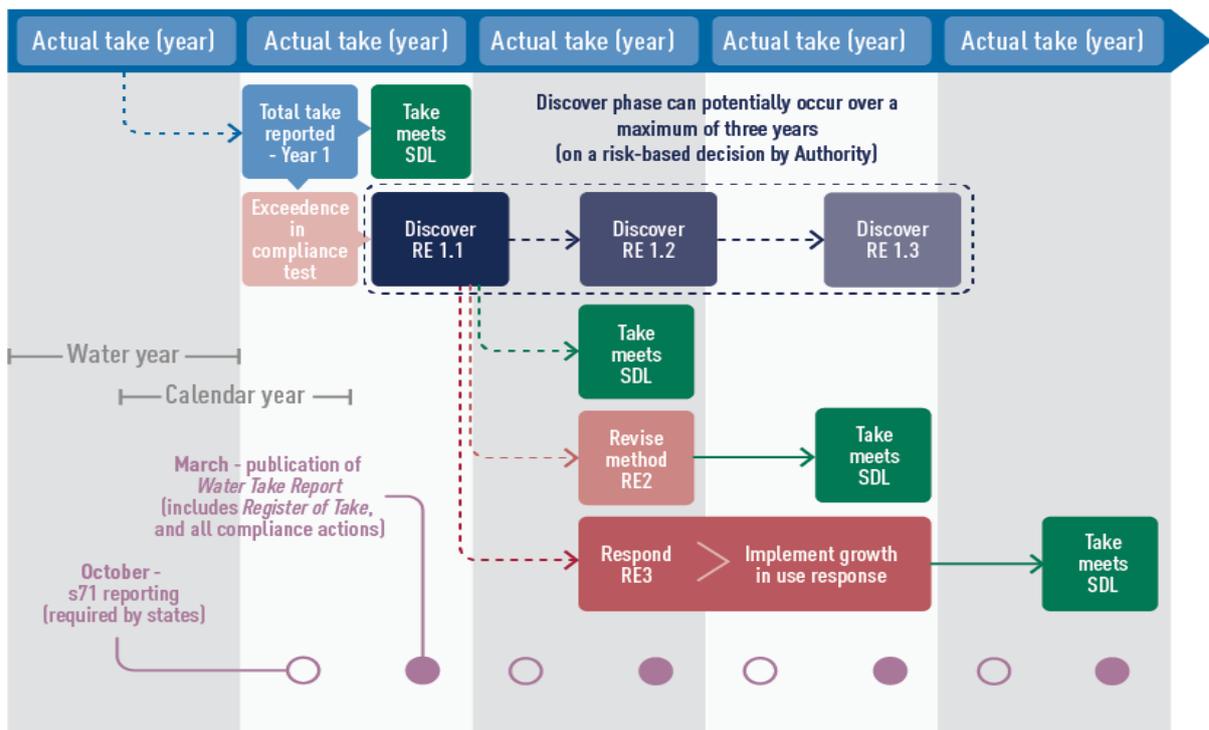


Figure 4: SDL compliance and reasonable excuse pathways



The framework includes more detail about the types of reasonable excuses that Basin states could claim if the compliance test shows the SDL has been exceeded. The framework also sets out how the MDBA will assess the claim.

The relevant Basin state is required to advise the MDBA of the make good steps it will take to bring diversions back under the SDL. The progress of the make good steps provided by the Basin state will be monitored and reviewed by the MDBA. How the steps progress may also influence whether a reasonable excuse for a given SDL resource unit is granted in subsequent years. A potential exceedance of the SDL could be ‘made good’ by one of the following:

- the data in the following year brings the SDL back into balance
- the water resource plan is re-accredited with a revised permitted take method which better reflects the pattern of user behaviour and still delivers the SDL over the long term
- a response is implemented if a real growth-in-use in excess of the SDL has occurred. This might be achieved, for example, via a reduction in water allocations to a specific class of entitlements.

Sustainable diversion limit compliance reporting timeframes

The reporting obligations of the Basin states are outlined in the *Water Act 2007* and the *Basin Plan 2012*. This includes the requirements for a Basin state to report all water use (or ‘take’), undertake self-assessment of compliance and provide any actions that will be taken as a result of non-compliance to the Authority, within four months of the end of the relevant water year (by 31 October).

The MDBA will publish the compliance outcomes of each SDL resource unit in its annual water take reports on the MDBA website by 31 March of the following year (Table 1). These reports will include the Register of Take for Surface water and Groundwater and all compliance assessment outcomes, including reasonable excuse claims, steps states will take to reduce the excess and any non-compliance actions.

The *trial Register of Take*, which is being used to test arrangements before SDL compliance commences, is published in [the transitional SDL water take reports](#) on the MDBA website.

Table 1: Time lag in water year reporting and compliance

Water Year 1	Water Year 2	Water Year 3	Water Year 4
Actual Use	Reporting and compliance assessment for use in Water Year 1	Reporting and compliance assessment for use in Water Year 2	Reporting and compliance assessment for use in Water Year 3

Conclusion

SDL reporting and compliance aims to ensure that a growth in actual take in excess of the SDL is detected and resolved. The sooner growth in actual take is detected, the sooner an action can be taken to address the growth. Early intervention will result in a smaller volume of any excess take having to be ‘made good’ in future years, in turn reducing the potential impact on entitlement holders. Addressing growth in actual take earlier will also reduce any potential adverse environmental outcomes.

At the same time, it is important that time is taken to minimise unnecessary adverse impacts on entitlement holders, while maintaining the integrity of the SDLs. Monitoring and assessing compliance against the SDL will take time. The nature of the tools being used, including the practical implications of gathering and reviewing data to support decision making and informing and consulting with communities in regards to any action required, means that the earliest any action to respond to a SDL exceedance could reasonably commence may be two or three years after the water year in which a potential exceedance was identified.

The framework sets out the background to the SDLs as well as guiding principles for the assessment of compliance with the SDL. It also sets out how a Basin state’s claim for reasonable excuse (RE) will be assessed. The process is intended to be transparent and provide procedural fairness and it aims to

achieve an appropriate balance in the nature and timing of any response to a potential SDL exceedance.

A reasonable excuse may be granted by the Authority if a potential exceedance occurs either while implementing the accredited water resource plan (WRP) or due to circumstances beyond a Basin state's control.

Importantly, regardless of whether a Basin state is 'compliant with a reasonable excuse' or non-compliant, steps are required to be taken to 'make good', that is to bring water take back within the SDL.

The MDBA has this framework in place, but we know improvements may be needed over time. We will undertake regular audit and assurance reviews for SDL reporting and compliance as part of the MDBA's audit and assurance program. The Framework will be reviewed by 2024 at the latest, to incorporate any learnings from the initial years of implementation.

This summary document outlines the MDBA's approach to enforce SDL compliance. The full SDL reporting and compliance framework document is available on the MDBA webpage.

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