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# Sustainable Diversion Limit Reporting and Compliance Framework - What we heard

Stakeholder webinars – August 2018

November 2018

Published by the Murray–Darling Basin Authority  
MDBA publication no: 39/18  
ISBN (online): 978-1-925762-08-2



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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

## Overview

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 SDLs. All aspects of water management rely on effective compliance with water laws. 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.

The framework outlines the approach that the MDBA will take when reporting and assessing compliance with SDLs. This includes how a claim for ‘reasonable excuse’ made by a Basin state government will be considered and assessed. The framework aims to arrive at an appropriate balance, by ascertaining the causes of any potential SDL exceedance and taking into account the accuracy of the information and tools available when determining the nature and timing of any compliance responses. It is a process based on guiding principles that include transparency, balance and procedural fairness.

The framework sets out the process for assessing claims for reasonable excuse and provides examples of ‘make good’ steps. Make good steps are the actions that a Basin state will take to bring take back to the SDL and include time to investigate potential exceedances. The MDBA will work with Basin states in all circumstances to ensure compliance is managed according to the legislation and the guiding principles. The framework includes a review process to ensure that it is able to adapt and remain fit for purpose.

The MDBA held four webinars on the draft SDL reporting and compliance framework over August 2018. The purpose of the webinars was to provide interested stakeholders with information about the draft framework as outlined in the Draft Sustainable Diversion Limit Reporting and Compliance Framework – Summary, which was published on the MDBA’s website in July 2018. The webinars also provided an opportunity for stakeholders to comment on the proposed new compliance process for SDLs, ask questions and provide feedback. The four webinars were attended by over 60 stakeholders. Representatives from peak bodies, local and state governments, Aboriginal leaders, environmental groups, industry groups and individual stakeholders participated in these sessions.

Stakeholders want to better understand what was being proposed. Accordingly, some of the language and graphics used in the framework have been updated to provide more clarity around the terms that are used and what is required. The summary of the framework will be updated to reflect the final framework. Overall, the Authority is confident the framework sets up a transparent, fair and balanced reporting and assessment process.

The key themes that were raised in the webinars are discussed below.

## Key themes

### Sustainable diversion limit compliance applies at the SDL resource unit level

*Stakeholders want to understand what role and responsibility the MDBA has in regulating and managing SDL compliance.*

The Basin Plan requires the MDBA to manage **Basin state compliance** with the sustainable diversion limits (SDLs) at a SDL resource unit level. Any compliance actions under the framework are against the Basin state, not the individual. As a result of a potential exceedance of the SDL in a SDL resource unit, a Basin state is required to provide the Authority with the steps it will take to rectify the potential issue — initially this may include time to investigate the circumstances of the exceedance. If an SDL resource unit remains in exceedance of the compliance test for multiple years in a row, and it is determined that there is a real excess growth in use, there may be impacts on individual water users to reduce the actual take to meet the SDL over the long-term. The approach to do this would be developed by the relevant Basin state. This could occur, for example, via a reduction in some allocations across the SDL resource unit.

The framework is not intended to identify the theft of water by individuals. It remains the responsibility of the Basin states to manage compliance with the relevant water legislation. However the MDBA will separately (under the MDBA's *Compliance and Enforcement Policy 2018-21*), audit and follow up any concerns that it becomes aware of, if a Basin state is not appropriately managing any claims of non-compliance at an individual level (e.g. unlicensed take of water).

### Timeframes for state action

*Some stakeholders are concerned about the length of time allowed for Basin states to investigate a compliance issue before they have to take any action, while others have expressed support for the time taken to fully understand the circumstances.*

Determining appropriate timeframes has been one of the challenges the MDBA has faced in developing the draft framework. Given the nature of the tools available for assessing compliance, the framework has to strike the right balance between providing enough time for the Basin state to appropriately investigate the issue that has caused an exceedance of the compliance trigger. On the other hand, the sooner a response to an actual excess growth occurs, the smaller the volume will be that needs to be made good in future years, and the lesser the risk of any adverse environmental or cultural outcomes.

A reasonable excuse is granted on the basis that certain steps are to be undertaken by the Basin state to investigate any compliance issue. The framework includes expected timeframes for the steps to be implemented.

The framework will be reviewed on a regular basis to ensure that it is able to adapt and remain fit for purpose. This will include the review of the timeframes that have been set. The framework will be reviewed by 2024, if no review has already occurred.

## Excess growth-in-use

*Stakeholders want to understand what is meant by the terminology of 'growth-in-use'.*

The term growth-in-use refers to a consistent upward trend in the amount of water being used. For example, an increase in the use of water for stock and domestic purposes that may arise from population increases. The MDBA will monitor trends in 'growth-in-use' patterns. If growth is consistent and exceeds the SDL, a growth-in-use response action will need to be taken to ensure the sustainable diversion limit is met.

More information is included in the framework about the different types of growth-in-use.

## Permitted take

*Stakeholders wanted clarification on what the term permitted take means.*

Permitted take is not the water allocations or the water legally allowed to be taken as determined by Basin state water legislation. Rather, it is how much water was expected to be used under the Basin Plan, based on the climate and water patterns of a given year and is assessed retrospectively at the end of the water accounting year.

The term permitted take is in the Basin Plan. The MDBA is aware that it is a term that is easily confused with other similar concepts, which was confirmed by multiple questions at the webinars.

It is important to understand that the SDLs set the long term limit on take and the permitted take is essentially an annual expression of the SDL. Over a repeat of historical climate conditions, the average amount that is permitted to be taken would meet the SDL, however, in some years the permitted take will be higher than the SDL and in others it will be lower, based on the water availability in the given year. Permitted take is akin to the 'Cap target' used in the Murray–Darling Basin Cap on diversions.

The framework includes more information around permitted take, and the MDBA is also developing content to provide further information on this concept.

## Confidence and transparency in models

*Stakeholders expressed concern with the use of models in managing compliance with the SDL, and the veracity of the numbers that are currently being used in the modelling to be included in the water resource plans (WRPs).*

Approximately 80 per cent of the surface water take in the Basin is already modelled for purposes of compliance with the Cap on diversions. These models relate predominantly to the regulated rivers and watercourses across the Basin. It is expected that the methods for determining the permitted take for most regulated rivers and watercourse diversions in the surface water WRPs will similarly use a model. It is generally recognised that the models are not perfect tools for compliance, however, it is widely acknowledged that they are the best tool available for this purpose, and they have been used for managing compliance with the Cap for around 20 years.

The MDBA will assess each of the models Basin state governments propose to use in WRPs for SDL compliance against the requirements outlined in the Basin Plan. This provides assurance that the models used by the Basin states are the best available. The assessment includes a demonstration that the implementation of the WRP, as set out in the method for determining permitted take, will, over the long-term, ensure that the SDL for that SDL resource unit will not be exceeded. This assessment is required before the MDBA will recommend a Basin state water resource plan to the Australian Government Minister for accreditation.

As an outcome of the webinars, the MDBA arranged a meeting with NSW and MDBA modellers and concerned stakeholders to discuss the models being put together as part of the NSW water resource plans.

## Cap Credits

*Stakeholders want to know what happens to the cumulative Cap credits that have been built up under the Cap compliance regime.*

SDL compliance is part of the new water reform being implemented across the Basin under the Basin Plan. This includes the new SDL compliance regime, under which each SDL resource unit will start with a balance of zero. Any credits under the Cap remain but these only relate to the administration of the Cap itself. The Cap compliance regime is expected to be discontinued once compliance with the SDL is fully implemented from 2019 onwards. This will be a decision made by the Ministerial Council.

## Water recovery

*Stakeholders want to know how much various Commonwealth water recovery projects contribute to 'bridging the gap'.*

Long-term diversion limit equivalent factors (known colloquially as the cap factors) are used to accurately assess how much water has been recovered for the environment, and to guide future water recovery decisions. To establish updated factors, the MDBA is working with the Basin states on the development of their 'planning assumptions'. The planning assumptions are estimates, based on modelling and historical information, of how much type of entitlement is expected to be used in each SDL resource unit, under the local water management arrangements.

In mid-2018 New South Wales consulted on the development of its LTDLE's and published information on its website to inform the discussion. The MDBA has commissioned an independent review of the work completed by NSW on updating the LTDLE's, and will do the same for each of the relevant Basin states. This work will be published by the MDBA as it becomes available.

## Other issues

*A variety of issues raised during the webinars were concerned with related broader water management and compliance, rather than being specific to the SDL reporting and compliance framework.*

Questions and comments relevant to the MDBA's broader compliance and enforcement approach and the Basin state Compliance Compact commitments included:

- the management of illegal take within the Basin, and how the MDBA will manage this—in particular questions were raised around the MDBA's role in regards to individual water user compliance
- the improvement of metering standards and practices across the Basin, in particular in the northern Basin, concerns were raised that without an improvement in measuring there is little confidence in compliance with the SDL
- concerns around public perception of the MDBA's ability to fairly manage water resources and ensure compliance when Basin states are doing the wrong thing—for example, the average person sees that the rivers are dry and yet there are record cotton crop yields occurring at the same time.

There was a suggestion that the draft framework should include the consideration of impacts of growth-in-use on cultural values. The SDL reporting and compliance framework provides a mechanism to ensure that take does not exceed the SDL, as set under the Basin Plan, and in doing so ensures the protection of cultural values, as provided for by the SDL. The MDBA is committed to further enhancing cultural flows in line with recent discussions and will continue to work with Traditional Owners in this regard.

Stakeholders raised concerns around how the SDL will be able to adjust to the impacts of climate change. The MDBA has considered this in setting the SDL, which is based on the historical climate conditions of the past 114 years and takes into consideration the worst droughts and floods that have occurred in recorded history. Further, as the permitted take is based on water availability, if the coming years are drier on average than the historical climate period, the permitted take will be reduced accordingly. The SDL reporting and compliance framework has been designed to take into account these climate variances.

Finally, stakeholders raised concerns around the ability of Basin states to meet the 30 June 2019 timeframe for having accredited WRPs. There is considerable work ahead to ensure all water resource plans are accredited in 2019. The MDBA is working closely with Basin state governments on the timing and delivery of WRPs to meet the requirements of the Basin Plan. This collaborative approach will make accreditation as efficient as possible.

## Next steps

In summary, what we heard from the webinars was questions to better understand what was being proposed, rather than comments suggesting changes were required to the key policy settings of the draft framework. Accordingly, some of the language and graphics used in the framework have been updated to provide more clarity around the terms that are used and what is required. The summary of the framework will also be updated.

Issues that are out of the scope for the SDL reporting and compliance framework have been directed to the responsible party and follow up discussions have been arranged.

The final SDL reporting and compliance framework has been published on the MDBA webpage. The framework is set for review in 2024. However, it is an adaptable framework that can be reviewed earlier based on learnings in the initial years of SDL implementation if it is considered appropriate to do so.

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