

# REVIEW OF THE MDBA ASSESSMENT OF REASONABLE EXCUSE CLAIMS FOR SDL COMPLIANCE – 2019/20



15 June 2021

A report by the Independent Assurance  
Committee

The 2019/20 water year was the first application of the SDL reporting and compliance framework. The MDBA requested the IAC to review its SDL compliance assessment processes in relation to exceedance of SDLs and claims for reasonable excuse.

# Review of the MDBA Assessment of reasonable excuse claims for SDL compliance – 2019/20

A REPORT BY THE INDEPENDENT ASSURANCE COMMITTEE

## CONTENTS

- 1. INTRODUCTION ..... 2
- 2. IAC REVIEW PROCESS ..... 2
  - Terms of reference .....2
  - Review process.....3
  - Limitations.....3
- 3. REASONABLE EXCUSE CLAIMS ..... 3
- 4. IAC FINDINGS AND OBSERVATIONS..... 4
- 5. SUMMARY AND CONCLUSIONS ..... 7

## 1. INTRODUCTION

The Sustainable Diversion Limits (SDLs) are one of the primary mechanisms established in the Murray-Darling Basin Plan to support a sustainable balance between water for consumptive use and for the environment. The 2019/20 water year is the first year in which the SDL compliance arrangements under the Basin Plan come into effect.

Basin states are responsible for preparing Water Resource Plans (WRPs) and managing, monitoring and reporting on water take from surface and groundwater systems in accordance with the provisions set out in these plans. They are also responsible for undertaking an annual self-assessment of compliance with SDLs for each SDL resource unit. The Murray-Darling Basin Authority (MDBA) is responsible for reviewing data provided by the states, compiling a register of take and making an assessment of compliance with SDLs for each resource unit.

The Independent Assurance Committee (IAC) provides expert advice to the Authority on the design, implementation, and adequacy of the MDBA's Basin Plan compliance program. Given that 2019/20 was the first application of the SDL Reporting and Compliance Framework<sup>1</sup>, the Authority requested the IAC to review the MDBA's SDL compliance assessment processes in those cases where water taken is reported to be excess of the SDL compliance test.

Following the state self-assessments, the MDBA received three claims for *Reasonable Excuse* from New South Wales (NSW) for exceedance of SDL compliance action triggers. All three claims were for NSW SDL resource units (refer to Section 3).

## 2. IAC REVIEW PROCESS

### Terms of reference

The terms of reference adopted for the IAC's review were for the IAC to undertake:

- i. Broad assurance/commentary about MDBA's preparation of SDL accounts, which may take the form of limited assurance on the overall approach to compliance assessment.
- ii. Assurance of the Authority's assessment of the reasonable excuse claims for 2019-20 with respect to:
  - a. The application of the SDL Reporting and Compliance Framework (i.e. assurance on the application and appropriateness of the process)
  - b. Whether the bilateral arrangements made between NSW and MDBA for SDL compliance have been followed as intended.
- iii. The IAC may also make recommendations on matters arising from its assurance work including advice on any broader compliance response by the Authority.

Based on these terms of reference, the IAC developed a series of review questions:

- Did the MDBA undertake its reporting and assessment functions in accordance with the Framework?
- Reasonable excuse assessments:
  - Did the MDBA follow the Framework in evaluating Reasonable Excuse claims?

---

<sup>1</sup> Refer to MDBA *Sustainable Diversion Limit reporting and compliance Framework*, Murray-Darling Basin Authority, Canberra, November 2018

- Are the MDBAs assessment findings and conclusions reasonable, based on the information available?
- Any other advice or observations about the process and the framework?

## Review process

The IAC adopted a two-stage process for its review.

*Stage 1*, involved the MDBA providing a package of information, including relevant submissions from jurisdictions, background reports and the MDBA’s initial draft assessment reports on reasonable excuse claims. Once the IAC had reviewed this material it met with the MDBA’s SDL compliance team by video conference for presentations by the MDBA on its assessment methodology and findings. The IAC tested a range of issues with the MDBA and provided initial feedback and comment on the assessments.

*Stage 2* of the IAC’s review involved the MDBA providing updated final draft assessment reports. This stage also involved a further meeting with the MDBA to review these reports and to also consider updated information provided by NSW on the Barwon Darling SDL exceedance.

The IAC developed its report and findings on the basis of the MDBA’s final draft assessment reports. It is noted that the MDBA has also provided these final draft assessment reports to NSW for its response prior to submitting final assessments and recommendations to the Authority for decision on compliance findings.

## Limitations

As part of this review, the IAC has considered a large range of information and data provided by the MDBA and jurisdictions. In line with the terms of reference, this is a limited assurance review, and the IAC has accepted the attestations and declarations provided by jurisdictions in relation to the accuracy and completeness of the data provided. The IAC has not undertaken independent testing of this data.

The IAC has relied on the information and reports provided to it by the MDBA and in the written submissions from jurisdictions in helping it to formulate its findings; however, the findings and observations included in this report are entirely those of the IAC

## 3. REASONABLE EXCUSE CLAIMS

The summary details of the three reasonable excuse claims lodged by NSW are shown in the table below.

SDL Resource Unit	Long term SDL (GL)	Compliance trigger* (GL)	Permitted take (GL)	Actual take (GL)	Permitted minus actual take GL (% SDL)
<b>Groundwater</b>					
<b>Lower Murrumbidgee Deep Alluvium</b>	273.6	-54.7	273.6	329.5	-55.9 (-20.4%)
<b>Upper Macquarie Alluvium</b>	17.9	-3.6	18.8	23	-4.2 (-23.5%)
<b>Surface water</b>					
<b>Barwon-Darling watercourse</b>	176.2	-35.2	203.1	259.9	-56.8 (-32%)

\* Compliance trigger is 20% of long-term SDL

## 4. IAC FINDINGS AND OBSERVATIONS

The IAC's findings and observations in relation to the MDBA assessment of the NSW reasonable excuse claims are provided below.

### ***Did the MDBA undertake its reporting and assessment functions in accordance with the SDL Compliance Framework?***

Following consideration of the information provided, the IAC found that the MDBA had followed the provisions set out in the Sustainable Diversion Limit Reporting and Compliance Framework document. The MDBA undertook the steps required under the framework. For example, the MDBA:

- Ensured completeness of data and other information provided by states
- Confirmed that statements of compliance were completed and provided by states.
- Sought and received completed submissions from jurisdictions where reasonable excuses were being claimed in relation to exceedance of SDLs
- Sought advice from the Department of Agriculture, Water and the Environment on the extent of water recovery completed in each SDL resource unit.
- Undertook basic assurance processes on the data provided.
- Compiled the required registers of take and identified instances where actual take exceeded the permitted take.
- Undertook detailed assessment in cases where the SDL compliance trigger was exceeded, and reasonable excuse claims were lodged.

### ***Reasonable excuse assessments***

- *Did the MDBA follow the framework in evaluating Reasonable Excuse claims?*

In all cases, it was the IAC view that the MDBA had followed the required provisions laid out in Sustainable Diversion Limit Reporting and Compliance Framework document in relation to its assessments of the three reasonable excuse claims lodged by NSW.

Importantly, since NSW has not achieved final accreditation of any Water Resource Plans, the SDL compliance and reasonable excuse claim assessments were based on the proposed WRPs submitted by NSW during 2020. The IAC is of the view that the MDBA has also had appropriate regard for the provisions set out in the bilateral agreement between the MDBA and NSW in relation to SDL reporting and compliance in the interim period until accredited WRPs are in place. The MDBA has also worked with NSW to clarify and reach agreed interpretations for any issues where inconsistencies were identified between various elements of the proposed WRP package.

The MDBA has also documented its assessment findings and proposed recommendations to the Authority in draft assessment reports. These appropriately reference the relevant provisions of the Sustainable Diversion Limit Reporting and Compliance Framework document and the Basin Plan that have been used to guide the assessment of reasonable excuse claims. These reports also provide a list of the other reports and information considered by the MDBA in making its assessments.

- *Are the MDBAs assessment findings reasonable, based on the information available?*

*Groundwater:*

In relation to the exceedances in the two groundwater SDL resource units, in both cases the MDBA proposes that the NSW claim of reasonable excuse should be accepted as valid, on the basis that the exceedance arose from actions taken in good faith in accordance with the provisions of the proposed WRPs.

The MDBA reviewed the primary reasons identified by NSW for exceedance of the SDL compliance limits, which related to the unusual season rainfall patterns in 2019/20 and their interaction with the methodology for estimation of permitted take. The MDBA also considered data and analysis provided by NSW in relation to the likelihood that the exceedance was associated with underlying growth in use.

The MDBA also undertook an assessment of the make good actions proposed by NSW, including the actions already taken in relation to consultation with water users and the limits to the Available Water Determinations for the Lower Murrumbidgee Deep Alluvium.

Overall, it is the IAC's view that the MDBA findings and the proposed compliance decision to accept the reasonable excuse claims for groundwater and endorse the make good actions proposed by NSW are reasonable, based on the information available to the MDBA.

*Surface water:*

The NSW claim for a reasonable excuse in relation to SDL exceedance in the Barwon-Darling watercourse had two key elements:

- i. NSW claimed that the SDL exceedance primarily resulted from the operation of the proposed WRP for the Barwon-Darling watercourse.
- ii. A minor contributing factor to the exceedance was incomplete recovery of water for the environment in this system by the Commonwealth. This accounted for only 1.6GL of the 56.8 GL exceedance.

The MDBA undertook extensive consideration of the information provided by NSW. It also considered a range of other evidence in relation to the risks of growth in use and issues identified in relation to the changes in water sharing rules and improved metering that reduced the representativeness of the permitted take modelling.

The MDBA concluded that the minor claim for incomplete water recovery was appropriate; however the more substantial claim for a reasonable excuse was not supported due the evidence that NSW had failed to undertake assessments of compliance with the long-term average annual extraction limits that are required under the water sharing plan that forms part of the proposed WRP measures. The MDBA was of the view that these compliance checks are an important part of the suite of rules included in the proposed WRP to ensure that actual take does not exceed the permitted take.

Overall, the MDBA proposed that the claim of reasonable excuse should not be accepted. The MDBA endorsed the program of make good actions proposed by NSW. However, to strengthen the response, the

MDBA also recommended that NSW should accelerate implementation of a number of prior Basin Plan compliance commitments for this system, including regulation and measurement of floodplain harvesting, upgrades to water system modelling and finalisation and accreditation of the WRP for this system.

The IAC is of the view the MDBA's assessment that the Barwon Darling watercourse was non-compliant with the SDL for 2019/20 is reasonable on the basis of the available information. The IAC also notes that the other pertinent factors that supported the MDBA's assessment findings included that:

- The relatively large exceedance of the permitted take volume highlighted the importance of applying all the compliance tools and checks established under the water sharing plan.
- An independent audit provided confirmation that the required long term average annual extraction limit compliance checks had not been performed from commencement of the water sharing plan in 2012 up to the date of the audit in December 2018.
- There had been significant delays in implementation of previous commitments to improve water management and compliance measures in the Barwon Darling.

These issues are also relevant to and contribute to consideration of the relative risks associated with subsequent action or inaction that informed the MDBA's proposal to reject the NSW reasonable excuse claim.

The IAC also considers that the program of make good measures proposed by NSW as augmented by the MDBA recommendations are proportionate and reasonable. The IAC also notes the analysis of available past usage data undertaken for this system and endorses the MDBA's conclusion that a growth in use response is not required at this time. The IAC also supports the proposal that growth in use should be reassessed once the permitted take method is improved and further usage data is available. The Barwon-Darling watercourse is a key link providing northern and southern basin connectivity and actions to improve modelling of permitted take and supporting community confidence in water resource management in this system should be given appropriate priority.

#### **Other observations**

This was the first experience of full SDL reporting and compliance processes for the Basin States and the MDBA. It can be expected that much has been learned by all parties, and the MDBA is encouraged to undertake a review process with the states to capture relevant learnings and identify opportunities to improve the process.

In relation to the reasonable excuse assessment reports prepared by the MDBA, the IAC observes that there was a noticeable improvement in the quality and clarity of these reports from the initial draft to the final draft. In particular, the final draft of the MDBA Barwon-Darling assessment report provided clear references to relevant provisions in the Sustainable Diversion Limit Reporting and Compliance Framework document and the Basin Plan that were relevant to each element of the assessment process. It also provided a clear, well set out rationale for the final assessment position to be recommended to the Authority. This format should be adopted as the model for future assessment reports.

In relation to the groundwater systems, the IAC notes the permitted take adjustment methodology considers seasonal rainfall. It allows for higher groundwater take in low rainfall years in recognition of lower availability of surface water in those years, which is balanced by reduced permitted take in wetter years which reflects water user demand patterns and also allows for recharge and recovery of the aquifer. This method has been demonstrated to achieve SDL compliance based on a repeat of historical climate conditions.

However, with climate change and the predicted reduction in overall annual rainfall, the current permitted take method may allow higher use in more years than would have occurred historically. Therefore, the long-term implications of the current permitted take method for sustainable groundwater management under possible future reduced rainfall scenarios may need to be considered further, as part of a future Basin Plan review.

## 5. SUMMARY AND CONCLUSIONS

The IAC has reviewed the MDBA's assessment of the three reasonable excuse claims lodged by NSW as part of the 2019/20 SDL monitoring and compliance process.

The MDBA proposes to accept the two reasonable excuse claims for groundwater SDL resource units, and to reject the claim for the Barwon-Darling watercourse, assessing it as non-compliant with the SDL for 2019/20.

After reviewing the MDBA's approach the IAC finds that:

- The MDBA undertook its reporting and assessment functions in accordance with the Sustainable Diversion Limit Reporting and Compliance Framework and the Basin Plan.
- The MDBA followed the provisions set out in the Framework in assessing the NSW claims for reasonable excuses in relation to exceedance of SDLs in three resource units. The MDBA also complied with the provisions agreed with NSW in the bilateral agreement for SDL monitoring and compliance.
- The MDBA's proposed findings are reasonable based on the information provided to them and the additional information available.
- The make good actions proposed by NSW as augmented by the MDBA recommendations are reasonable and proportionate to the scale of SDL exceedance issues identified through the compliance assessment process.
- The IAC notes and endorses the MDBA's conclusion that a growth in use response is not required in the Barwon Darling system at this time. The IAC also supports the proposed careful further monitoring of this issue.