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2016–17 self- assessment

Regulator Performance Framework

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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.

The MDBA's regulatory activity subject to the Regulator Performance Framework

There are some contextual factors that influence how much of the MDBA's work is subject to the framework. It is important to understand these factors as they influence the MDBA's self-assessment.

Firstly, the entities regulated by the MDBA are primarily governments or their agencies. Only a very small portion of the work involves direct regulation of non-government entities. Given that the focus of the framework is on impacts of regulation on individuals, business and community organisations (i.e. non-government entities), only a very small portion of the MDBA's work is subject to the framework. The relevant work is the administration of the Basin Plan water trading rules as those rules apply to individual traders and irrigation infrastructure operators. This is a relatively minor component of the MDBA's overall work and imposes a minor regulatory burden – the annual compliance cost has been estimated at less than \$15,000 for the entire regulated community.

Secondly, the relevant regulatory work is already well into the implementation phase following comprehensive stakeholder consultation prior to the enactment of the water trading rules in July 2014. Among others, that consultation targeted irrigation infrastructure operators and irrigation bodies. It also included bilateral meetings with regulated entities at each major stage of the decision-making process.

The consultation included a strong focus on how to minimise the compliance burden on individuals, business and community organisations. As well as helping to promote transparency and accountability, this resulted in a trade rules system that already imposes minimal burden on those concerned. Given that the framework involves annual reporting periods (e.g. this self-assessment is concerned with activities undertaken in 2016–17), there is limited opportunity for the MDBA to report on the significant work already done as it pre-dates the framework's current reporting period.

Of all the MDBA's regulatory functions, managing compliance with water markets and trade is the most established. However, the MDBA is currently in a period of transition as it undertakes new compliance functions as set out in the Basin Plan 2012. Key functions will include Sustainable Diversion Limit (SDL) and Water Resource Plan (WRP) compliance. As a result, the MDBA has been working to develop its regulatory capabilities, including developing policies and processes to support the MDBA [Compliance Strategy \(2014\)](#) (Compliance Strategy) as well as further developing staff capabilities.

Further to previous consultation, in late 2017 the MDBA undertook a Basin-wide Compliance Review which has considered the MDBA's own compliance and enforcement activities including recommendations for improvement. Although this review occurred after the 2016-17 reporting period, it is worth noting that these recommendations are likely to include the regulator functions under the framework. This will change the processes outlined in the 2016-17 self-assessment.

The MDBA's 2016–17 self-assessment

The MDBA is responsible for the regulation of the Basin Plan water trading rules as they apply to individual traders and irrigation infrastructure operators. The MDBA regards the successful implementation of water trading rules as a high priority and acknowledges that lack of compliance can compromise both users and traders confidence to invest in water access rights. Priorities for enforcing trade rules are outlined in the MDBA [Strategic Priorities - Basin Plan water trading rules](#) (Strategic Priorities) document.

The framework is used to prioritise MDBA's relevant regulatory and compliance activities by meeting the key performance indicators (KPIs) set out in the Regulatory Performance Framework. A self-assessment of the MDBA's performance measures against these KPIs during 2016-17 is discussed below.

1. Regulators do not unnecessarily impede the efficient operation of regulated entities

The MDBA has worked to strengthen its capacity as a regulator by continuously reviewing policies, procedures and requirements. The MDBA is in the process of reviewing strategy and guidance material provided in the Compliance Strategy, which is expected to be updated by mid-2018. The Murray-Darling Basin Water Compliance Review 2017 will also provide recommendations that will inform actions moving forward.

As the MDBA's regulatory role is expanded to include WRP and SDL compliance by July 2019, additional policies and procedures are being developed to support the Compliance Strategy 2014.

Environment scanning (systematically surveying external opportunities and threats) was undertaken to minimise the potential for unintended negative impacts by maintaining productive working relationships with regulated entities and understanding how they work. As an operator, the MDBA continued ongoing investigation into price reporting of trade to identify high risk transactions and market drivers.

2. Communication with regulated entities is clear, targeted and effective

The MDBA's compliance approach includes targeted communication and provision of information. The MDBA has a process of updating stakeholders when required. Although there were no significant regulatory or policy changes during 2016-17, by maintaining strong communication channels with regulated entities the MDBA will be able to engage efficiently with representatives if changes are made in the future.

The MDBA also has effective mechanisms in place to receive information from stakeholders. As well as ongoing communication through existing relationships with the Trade or Compliance Teams, the MDBA website allows stakeholders to register queries, complaints and allegations. Issues can also be raised through routine engagement events throughout the Murray-Darling Basin. The MDBA has also ensured that up-to-date and clear guidance information is published on the MDBA website and complies with government accessibility guidelines.

The MDBA is developing clearer protocols for responding to allegations of non-compliance. There is currently a lack of clear internal processes, which has resulted in delayed responses to some allegations.

3. Actions undertaken by regulators are proportionate to the regulatory risk being managed

In order to minimise burden on those who are voluntarily compliant, the MDBA recognises the compliance record of regulated entities and encourages the use of earned autonomy. This has resulted in engagement with regulated entities being limited to occasions when it was only deemed necessary, such as reminding regulated entities if they fail to fulfil compulsory expectations.

The MDBA also applies a risk-based, proportionate approach to compliance obligations and enforcement actions. Compliance and enforcement strategies, such as the compliance risks set out in the MDBA Strategic Priorities document and the MDBA Compliance Strategy, are consistent with agreed risk management policies.

4. Compliance and monitoring approaches are streamlined and coordinated

The MDBA seeks to minimise the compliance costs imposed on entities. All monitoring and enforcement strategies undertaken by the MDBA are based on risk and take into account the needs of regulated entities, as set out in the MDBA Strategic Priorities document. The MDBA also ensures that information requests are tailored and only made when necessary to secure regulatory objectives in accordance to the risk based framework.

5. Regulators are open and transparent in their dealings with regulated entities

The MDBA ensures a transparent approach by providing information on our website, including publications outlining individual roles and responsibilities under the Basin Plan water trading rules. As a requirement of the Basin Plan, the MDBA also collects and publishes information on irrigation infrastructure operators' trading rules. The ongoing relationship between the MDBA's water markets and trade team, and regulated entities ensures that advice and guidance is widely available, with feedback mechanisms in place to support and inform improvement.

The MDBA internally tracks correspondence to make sure it is acted upon in a timely and appropriate manner. This process is being updated to ensure it is included in MDBA's coordinated compliance approach. This will include improved communications about our compliance activities.

6. Regulators actively contribute to the continuous improvement of regulatory frameworks

Flexibility to adjust to changing circumstances is a key priority of the MDBA. Stakeholder events are held regularly to facilitate participation in the development and/or amendment of regulatory frameworks and events are designed appropriate to risk. Extensive engagement was held in 2016-17 across the Southern Basin where the majority of regulated entities are located.

The MDBA communicates on a regular basis with the Department of Agriculture and Water Resources (DAWR). This is important in ensuring a flow of information between the regulator and the policy department. The DAWR is also a member of the Trade Rules Working Group and regularly attends workshops where it can advise on the approach and strategic priorities in administering the water trading rules.

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