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# Regulator Performance Framework Self-assessment 2017-2018

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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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# 1. Regulatory statement for 2017-2018

Under the Australian Government's Regulator Performance Framework (RPF), Australian Government agencies with regulatory functions must undertake an annual self-assessment of their performance regulating individuals, communities and businesses.

The RPF and the self-assessment process have historically had limited application to the Murray–Darling Basin Authority's (MDBA) regulatory role because of the unusual nature of the MDBA as a regulator.

The MDBA was established under the *Water Act 2007* (Cth) (Water Act) as an independent, statutory body responsible for developing, implementing and overseeing compliance with the Water Act and the *Basin Plan 2012* (Cth) (Basin Plan).

Under the Water Act, the MDBA has an unusual and transitioning regulatory role. While it is primarily a regulator of Basin state regulatory agencies, the MDBA also has a minor role in regulating individuals and businesses. This minor function is reserved for circumstances where the MDBA is acting as a regulator of last resort. The dual role is the result of a combination of factors, which include that:

- Basin state governments have the primary responsibility for enforcing compliance with their state legislation.
- The MDBA's primary regulatory functions relate to providing assurance about state water management and compliance arrangements, rather than undertaking direct enforcement action.
- The MDBA currently has limited compliance and enforcement powers under the Water Act.
- While MDBA has had a role regulating the Basin Plan water trading rules since July 2014, the MDBA's regulatory role will significantly increase once more water resource plans (WRPs) are accredited and sustainable diversion limit (SDL) accounting commences in 2019-2020.

In preparation for the imminent increase in regulatory functionality following the accreditation of WRPs, the MDBA's 2017-2018 regulatory work program was aimed at reviewing the MDBA's regulatory approach, frameworks and capability to ensure policies and procedures are in place to support the MDBA's evolving regulatory role.

In addition to this planned increase in regulatory responsibility, in July 2017 the ABC's Four Corners program broadcast an episode about water in the Barwon–Darling titled *Pumped*. The episode made allegations about illegal water take; misconduct and maladministration regarding the NSW government's management of allegations of illegal activities; and that the rules in place to regulate water use were not fit for purpose and enabled unsustainable water use.

The program triggered numerous Australian Government and state level investigations and reviews (see Appendix A for a list). In response to the findings and recommendations of the various reviews, in June 2018 the Australian and Basin state water Ministers agreed in principle to a Murray–Darling

Basin Compliance Compact (Compact).<sup>1</sup> Through the Compact, governments committed to work programs aimed at improving governance, accountability, frameworks, and transparency in compliance and enforcement in the Murray–Darling Basin. The Compact is aimed at improving outcomes for the environment and health of the Murray–Darling Basin, as well as restoring public confidence in the management of Basin water resources.<sup>2</sup>

The various reviews and investigations also highlighted the public expectation and need for the MDBA to clarify and more proactively undertake its regulatory role.

This self-assessment focuses on the three areas of the MDBA’s regulatory activity subject to the RPF:

- regulation of the Basin Plan water trading rules;
- reforms to regulatory frameworks for the management of Basin water resources; and
- management of allegations of non-compliance with respect to the Basin Plan, accredited WRPs, and the *Water Regulations 2008* (Cth).

The outcomes of this self-assessment broadly indicate that:

- The MDBA has undertaken a high volume of external communications work, and has demonstrated increased transparency in its approach to undertaking its compliance functions. However, further work is required to clarify the MDBA’s evolving compliance role, and the delineation between Basin state and Australian Government water regulation roles and responsibilities.
- While the MDBA’s stakeholder engagement mechanisms and approach are appropriate in light of the MDBA’s limited direct regulation of individuals, businesses and communities to date, the MDBA should assess the effectiveness of its revised processes for responding to stakeholder communications and complaints.

Additionally, despite the MDBA achieving substantial compliance with most of the metrics in 2017-2018, during the completion the self-assessment, the MDBA identified that a review of the metrics should be undertaken to remove duplication, align better with the overarching RPF KPIs, and more usefully assess the MDBA’s evolving regulatory role.

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<sup>1</sup> The Murray–Darling Basin Ministerial Council agreed to commence implementing the Compact in June 2018. The Compact was endorsed by the Prime Minister Scott Morrison and the state and territory First Ministers at the December 2018 meeting of the Council of Australian Governments (COAG).

<sup>2</sup> There has been significant evolution in MDBA’s regulatory approach since the completion of the various compliance reviews in 2017 and 2018, and in line with the MDBA’s Compact commitments. Due to the limited reporting period and scope for the RPF, only some of this work is included in this report. Further detail can be found in the [Murray–Darling Basin Compliance Compact Interim Assurance Report 2018](#).

# 2. Background

## 2.1 The Regulator Performance Framework

The [Australian Government's Regulator Performance Framework](#) (the RPF) was released in October 2014. The RPF aims to improve performance by encouraging regulators to undertake their functions with the minimum impact on individuals, business and community organisations to achieve regulatory objectives.

The RPF comprises six outcomes-based key performance indicators (KPIs) to articulate the Australian Government's overarching expectations of regulator performance:

1. Regulators do not unnecessarily impede the efficient operation of regulated entities
2. Communication with regulated entities is clear, targeted and effective
3. Actions undertaken by regulators are proportionate to the regulatory risk being managed
4. Compliance and monitoring approaches are streamlined and coordinated
5. Regulators are open and transparent in their dealings with regulated entities
6. Regulators actively contribute to the continuous improvement of regulatory frameworks.

The RPF requires regulatory agencies to annually self-assess their performance regulating individuals, business and community organisations against the six KPIs listed above.

## 2.2 The MDBA's regulatory context and functions

The MDBA was established under the Water Act as an independent body responsible for developing, implementing, and overseeing compliance with, the Basin Plan, as well as compliance with accredited WRPs.

The MDBA's regulatory role is to ensure there is compliance with the requirements and regulatory responsibilities specified in the Basin Plan and the Water Act, and, more broadly, to provide assurance over the management of the Basin water resources.

Regulated entities under the Water Act include water users and managers, such as irrigation infrastructure operators and Basin state government water agencies who have day to day responsibility for water planning, rule-setting, river operations and state-level compliance.

The entities currently primarily regulated by the MDBA are governments or their agencies.

The MDBA is currently in a period of transition as it prepares to undertake new regulatory functions set out under the Water Act, the Basin Plan, and implement recommendations from the various compliance reviews. Key future functions will include ensuring compliance with SDLs and WRPs, for which Basin state governments are the primary regulated entities. This means that while a significant volume of work to support the MDBA's increasing regulatory functions and strengthened regulatory approach was undertaken in 2017-2018, the majority this work falls outside the scope of RPF reporting.

Only a small portion of the MDBA's work involves direct regulation of non-government entities. In those instances, in line with the MDBA's [Compliance and Enforcement Policy 2018-2021](#), the MDBA may act as a regulator of last resort where the primary regulators are unwilling or unable to act.

Given that the focus of the RPF is on the impact of regulation on individuals, business and community organisations (i.e. non-government entities), only a small portion of the MDBA's work is subject to the RPF.

The three areas of the MDBA's work in 2017-2018 subject to the RPF are the:

1. regulation of the Basin Plan water trading rules;
2. reforms to regulatory frameworks for the management of Basin water resources; and
3. the management of allegations of non-compliance with respect to the Basin Plan, accredited water resource plan and the water regulations.

## Water trade

Of all the MDBA's regulatory functions, managing compliance with the Basin Plan water trading rules (the Rules) is the most established.

The rules commenced on 1 July 2014, and operate in parallel with existing Basin state rules and irrigation infrastructure operator rules. The objective of the Rules are to:

- reduce restrictions on trade;
- improve transparency and access to information; and
- improve market confidence through a more effective water market.

The Rules were developed following a period of comprehensive stakeholder consultation which targeted irrigation infrastructure operators (IIOs) and irrigation bodies. It also included bilateral meetings with regulated entities at each major stage of the decision-making process.

The rules apply to the Australian and Basin state governments, IIOs and individual market participants.

State government agencies are responsible for processing trades by water users and developing and implementing their state trading rules in line with the Basin trading rules.

The MDBA's role is to enforce compliance with the Rules. This is focused on ensuring: state and IIO restrictions on trade are compliant with the Rules; water announcements are disclosed appropriately; compliance by Basin state governments and IIOs with the information and reporting requirements; accurate reporting of water trade prices; and compliant use of exchange rates.

The MDBA uses a risk based approach to assess compliance with the Rules and prioritise its regulatory activities, as outlined in the MDBA's [Strategic Priorities: Basin Plan water trading rules](#).

To support compliance with the Rules, the MDBA has published [Guidelines for the Water Trade Rules](#) to help water managers and users understand the rules in the Basin and give them improved access to market information. The MDBA also undertakes regular formal and informal consultation with state government trade administrators and river operators, for example through the Trading Rules

Working Group, to support the co-operative, consistent and compliant application of trade rules across the Basin.

Administering the Rules is a relatively small component of the MDBA's overall work and imposes a minor regulatory burden.

#### Case study 1: Barmah Choke trade processing project

The Barmah Choke is a narrow stretch on the River Murray which is a challenge for river managers because it limits the delivery of irrigation water during periods of peak demand.

To protect the delivery of water downstream, trade from above the Choke to below is restricted. People upstream of the Choke can only sell water to buyers downstream if the same or greater volume of water has been transferred from downstream to upstream first. The MBDA is responsible for keeping track of the balance of trade.

State water agencies are responsible for processing water trade requests by their water users. During 2017 processing changes made by Basin state agencies resulted in stakeholders being concerned about getting access to choke capacity. The MDBA also received a complaint that the processing changes are non-compliant with the Basin Plan.

The MDBA facilitated discussions with the Basin governments to resolve stakeholder concerns. A project was undertaken from February to May 2018 to develop an online tool which enabled the automated approval or refusals of trades across the Choke on receipt. The new system went live on 1 June 2018 and addressed the issues raised by stakeholders,

The tool allows for real time updating of Barmah Choke trade opportunities when water is traded from downstream to upstream of the Choke in Victoria, while allowing states to process trades on receipt. These improvements mean that water users looking to trade water across the Choke will have more accurate information to support their decision.

## Regulatory reform

In 2017-2018, following the July 2017 Four Corners episode *Pumped*, water compliance was a key stakeholder concern.

In response to community concern, and at the request of the Prime Minister, from July to November 2017 the MDBA and an Independent Panel conducted the [Murray–Darling Basin Water Compliance Review](#) (Compliance Review), to assess the legislative, policy and practical implementation of compliance in water management across the Basin.

During the Compliance Review, the MDBA received expert advice from an independent panel, and undertook consultation with a range of government and non-government stakeholders. The MDBA used various mediums for consultation including an online survey to assess stakeholder confidence in the management of Basin water resources, meetings with the Basin Community Committee and meetings with peak stakeholders (representing Aboriginal communities, irrigators, farmers, floodplain interest and environmental groups), and field trips which included roundtable meetings

with stakeholders representing the environment, irrigation, farming and local government sectors. More than 80 people attended roundtables in Berri, Shepparton, Leeton, Burke, Tilpa and St George.

The Compliance Review identified that compliance is administered inconsistently across the Basin, with variations in the culture of compliance within regulatory agencies and the community, the level of resourcing devoted to compliance activities, the transparency of reporting, the comprehensiveness and clarity of compliance policy frameworks and the challenges posed by monitoring and enforcing compliance.

The Compliance Review reaffirmed various actions Basin state governments had committed to under the 2012-2016 [National Framework for Compliance and Enforcement Systems for Water Resource Management](#) (Framework). The Framework was aimed at harmonising water compliance frameworks, monitoring, and legislation across Australia to increase compliant behaviour by reducing confusion or inconsistencies about the rights and responsibilities of water users, and increase water user confidence in the management of water resources by governments.

The Compliance Review also found that the MDBA should clarify, and be more assertive in performing, its compliance and enforcement role. The findings and recommendations of the Compliance Review are being actioned by the Australian and Basin state governments through the Basin Compliance Compact, agreed in June 2018.

A significant component of this work is in the area of improving metering and measurement of water take, such as by reviewing and strengthening state metering policies and practices. While meeting the strengthened metering and measurement requirements may lead to an increased burden on water users in the short term, these changes are essential to ensure the accountability, fairness and integrity of the system.

The MDBA adopted the review actions and recommendations specific to the MDBA's work, and implementing these was a strong focus for the remainder of 2017–18 (see Figure 1). The majority of these actions relate to the MDBA's role as a regulator of Basin state government entities, and so are not subject to the RPF. However some actions may ultimately impact individuals and businesses, for example where the MDBA works with Basin state governments to ensure relevant information is provided to water users, or that state compliance and enforcement frameworks adequately protect the rights of water users.

**Figure 1: Implementation of Murray-Darling Basin Water Compliance Review recommendations (June 2018).**

# Implementation of Basin Compliance Review recommendations

## Murray–Darling Basin Authority

## Basin Governments

### November 2017

- Establish an MDBA Office of Compliance
- Establish an online register to report on the handling and progress of compliance matters reported to the MDBA
- Publish allegation escalation pathway

### January 2018

- Publish Water Resource Plan Quarterly Report

### February 2018

- Establish Independent Assurance Committee
- Establish Basin Compliance Compact drafting group

### 31 March 2018

- Prepare guidelines for consistent reporting of compliance activities

### 30 June 2018

- Publish MDBA Compliance & Enforcement Strategy
- Publish SDL Reporting and Compliance Framework (*delayed until 30 September 2018*)
- Publish guidelines on hydrometric networks and hydrological modelling

### December 2018

- Publish Compact Progress Report

### 30 June 2019

- Accreditation deadline for state Water Resource Plans

Completed

- Agree a Basin Compliance Compact comprising Australian and state government implementation plans

### 30 June 2018

- Publish improvement program for hydrological models
- Publish state compliance strategies
- Publish meter improvement plans
- Review legislation and propose improvements

### 1 July 2018

- Publish/implement meter improvement plans with annual report

### 30 September 2018

- All new meters on sale in Australia must be compliant (AS4747)

### 30 June 2019

- Publish improvements to hydrometric network
- Publish annual progress reports

## Allegations of non-compliance

Under the Water Act, the MDBA regulates water users and managers, including the Basin state government water agencies who have day to day responsibility for water planning, rule-setting, river operations and state-level compliance.

Although responding to allegations of non-compliance is primarily the responsibility of Basin state government water agencies, the MDBA's role is to provide assurance of, and drive improvement in, state compliance and enforcement frameworks to improve water user confidence in the management of the Basin's water resources. For example, the MDBA may report on, or audit, Basin state government compliance and enforcement processes or performance.

The MDBA can directly regulate the compliance of individual water users with accredited WRPs and the Basin Plan, and intends to do so as a last resort where a Basin state government is unwilling or unable to act. However, there is currently only one accredited WRP, and the Water Act has limited provisions for pursuing offences. Under the Compact, the Australian Government committed to reviewing the Water Act with a view to clarifying and enhancing the MDBA's compliance and enforcement powers.

Currently, the MDBA has various means for collecting compliance intelligence and allegations of potential non-compliance with the Basin Plan or accredited water resource plans. This includes the online 'Report a Breach' portal, emails received at the [compliance@mdba.gov.au](mailto:compliance@mdba.gov.au) inbox and via the MDBA Engagement hotline. Additionally, from time to time, MDBA staff and [Regional Engagement Officers](#) may receive information that can be used for intelligence purposes.

In line with the MBDA's [Escalation Pathway](#), allegations of non-compliance may be referred to the relevant Basin state government agency for assessment, advice or investigation. This is most often the case where an allegation is a breach of a state law, not a breach of the Water Act or the Basin Plan. Where a referral is made, the MDBA requests and publishes updates about the progress of state investigations.

Due to the role of Basin state governments as the frontline regulators of non-compliance, the lack of clarity around the MDBA's compliance role and what constitutes non-compliance with the Basin Plan or the Water Act, and the lack of accredited WRPs, historically, the MDBA has received a limited number of allegations of non-compliance from the public. Often, by the time the MDBA receives an allegation of non-compliance, the matter may have previously been reported to another regulatory agency.

A summary of the MDBA's compliance activities in 2017-2018 was published on the MDBA website in September 2018 (Appendix B). This reporting template was prepared by the MDBA in line with its commitments under the Compact and provided to the Basin states to drive consistent reporting and improve transparency for water users. The MDBA's low levels, or lack of, activities in some areas is because the reporting template was designed for state agencies with broader compliance and enforcement powers.

## Case study 2: Case management update

The Four Corners episode *Pumped* raised allegations about the management of potential illegal water take in NSW, and maladministration by government officials.

In the Murray–Darling Basin Water Compliance Review (Compliance Review), the MDBA reviewed Basin state government and MDBA compliance and enforcement arrangements, and found that there is a lack of consistency and transparency in these arrangements and activities across the Basin. The Compliance Review recommended all Basin governments review their compliance and enforcement arrangements to ensure they are adequate, risk based and accessible to the public.

The MDBA immediately acted upon this recommendation by establishing a dedicated Audit and Investigation team, and publishing an [Escalation Pathway](#) in November 2017 outlining the MDBA's actions and expectations when referring allegations to Basin state governments.

In early 2018, the MDBA undertook targeted recruitment to develop internal compliance capability. These expert staff conducted a review of the MDBA's case management processes and the composition of the case management committee to ensure the MDBA is collecting and using information, and handling allegations in line with best practice. This led to the development of a suite of internal guidance documents around record keeping and allegation management.

Since November 2017 the MDBA has also maintained an online [register](#) of allegations of non-compliance it has received, identifying the state, status and type of allegation. This shows how the MDBA uses compliance information it receives and maintains oversight over allegations that are referred to Basin state governments for action.

# 3. Methodology

## Self- assessment

This self-assessment covers the period of 1 July 2017 to 30 June 2018. The MDBA’s performance was assessed in line with the KPIs defined in the RPF using a series of metrics for the MDBA that were approved by the Minister for Agriculture and Water Resources in November 2018.

The MDBA self-assessed its performance for each of the metrics using the following ratings:

Met	In transition	Not Met
Strong performance against the metric.	Demonstrated focus and activities to improve performance against the metric.	Poor performance against the metric.

The ratings are supported by evidence of relevant activities undertaken by the MDBA. Evidence was drawn from:

- The Murray–Darling Compliance Compact Assurance Report
- Murray–Darling Basin Authority compliance activity report 2017-18
- The Murray–Darling Basin Water Compliance Review
- Materials from the MDBA’s internal and external websites, such as guidelines, policies, strategies fact sheets and web content.
- The MDBA’s 2016-2017 and 2015-2016 Regulator Performance Framework reports.

## Validation

The Independent Assurance Committee were appointed in February 2018 under the Water Act to provide expert advice on the design, implementation and adequacy of the MDBA’s Basin Plan compliance program.

The draft self-assessment was provided to the Independent Assurance Committee for comment in March 2019. The Independent Assurance Committee provided comments on areas for clarification or expansion in the draft self-assessment.

A revised self-assessment was subsequently provided to the IAC for validation in April 2019.

## 4. 2017-2018 Self-assessment

### KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

MDBA metric	Rating	Contributing activities	Validator rating
<b>Regular, ongoing review of policies, procedures and requirements based on stakeholder and expert feedback.</b>	Met	<ul style="list-style-type: none"> <li>- In June 2018, the MDBA published a revised Compliance and Enforcement Policy (2018-2021) outlining its risk-based approach to compliance and a statement of the MDBA’s Compliance Priorities for 2018-2019. The Policy and Priorities were developed in line with the feedback received during the Compliance Review, through undertaking an environment scan, and in consultation with the ACCC and the Independent Assurance Committee.</li> <li>- In early 2018, the MDBA reviewed its case management protocol and membership of the case management committee to align with best practice and stakeholder feedback.</li> <li>- Ongoing engagement with MDBA Media, Communicational and Engagement branches and Regional Engagement Officers to inform policy development and review based on stakeholder concerns.</li> <li>- The MDBA facilitated the Barmah Choke trade processing project through the Trade Working Group, to ensure there is equity for water users in Victoria and NSW seeking to trade across the Barmah Choke.</li> </ul>	Met
<b>Documented established communication mechanisms with regulated entities.</b>	Met	<ul style="list-style-type: none"> <li>- In 2017-2018, the MDBA provided information to regulated entities through various mediums including media releases, web content, fact sheets, presentations and briefings at meetings of industry, community and environmental peak representatives, and town halls.</li> <li>- In 2017-2018, MDBA spokespeople conducted 18 radio and television interviews about compliance matters.</li> <li>- The MDBA receives information from regulated entities through Regional Engagement Officers who provide regular reports to the MDBA about community concerns and issues, the online ‘Report a Breach Portal’, the <a href="mailto:compliance@mdba.gov.au">compliance@mdba.gov.au</a> and <a href="mailto:watermarkets@mdba.com">watermarkets@mdba.com</a> public inboxes and the Engagement hotline.</li> <li>- An online survey about understanding of and confidence in Basin compliance regimes was available on the MBDA website from September to October 2017. Over that time there were 249 visitors to the page and 68 respondents to the survey. Further information about the survey is provided at Attachment C.</li> </ul>	Met

## KPI 2 – Communication with regulated entities is clear, targeted and effective

Metric	Rating	Contributing activities	Validator rating
<b>Reasonable stakeholder satisfaction with communication methods, information and guidance materials.</b>	In transition	<ul style="list-style-type: none"> <li>- As there has not been a direct assessment of stakeholder satisfaction with the MDBA's communication methods information and guidance materials for regulated entities in 2017-2018, this rating has been inferred from the responses to other activities undertaken by the MDBA and materials published, and the lack of criticism received through the MDBA's existing stakeholder feedback channels.</li> <li>- Feedback obtained during the Compliance Review indicated that water users have low levels of confidence in compliance with water rules, and limited confidence in government management of water resources or responses to non-compliance. Feedback during 2017-2018 also identified significant variation in water user levels of knowledge about water rules, compliance, and the MDBA's compliance role. In response, in 2018 the MDBA focused on improving engagement and information about compliance through using various communication methods such as publications, radio interviews, revised and new web pages, media releases, factsheets, and procedures or messages for staff to use when interacting with regulated entities.</li> </ul>	In transition
<b>Demonstrated effective mechanisms for responding to stakeholder engagement / complaints.</b>	In transition	<ul style="list-style-type: none"> <li>- The MDBA received 89 media inquiries about compliance in 2017-2018, and MDBA spokespeople conducted 18 radio and television interviews about compliance matters in that time.</li> <li>- The MDBA receives information from regulated entities through: <ul style="list-style-type: none"> <li>o the online 'Report a Breach Portal',</li> <li>o the <a href="mailto:compliance@mdba.gov.au">compliance@mdba.gov.au</a> and <a href="mailto:watermarkets@mdba.com">watermarkets@mdba.com</a> public inboxes and</li> <li>o the Engagement hotline.</li> </ul> </li> <li>- Additional information from stakeholders is received through the MDBA's Regional Engagement Officers who</li> </ul>	In transition

provide regular reports to the MDBA about community concerns and issues.

- In 2017-2018, the MDBA reviewed its case management framework to more effectively respond to allegations of non-compliance, this included developing and publishing an escalation pathway and register of allegations of non-compliance received, and commencing negotiations with state agencies to develop arrangements for referrals, joint investigations and information sharing.
- As documented in the 2017–18 annual report on compliance activities for the Murray–Darling Basin Authority (Attachment B), in 2017-2018 the MDBA:
  - o received 20 allegations of non-compliance;
  - o finalised 12 allegations with no breach found;
  - o was still reviewing 8 allegations at 30 June 2018; and
  - o referred 6 allegations to a state government agency.
- The MDBA did not commence, progress or conclude any investigations in 2017-2018 in response to allegations of non-compliance received.

## KPI 3 – Actions undertaken by regulators are proportionate to the regulatory risk being managed

Metric	Rating	Contributing activities	Validator rating
<b>Demonstrated engagement with regulated entities to inform them of the regulators' expectations.</b>	Met	<ul style="list-style-type: none"> <li>- In November 2017, the MDBA adopted and published an Escalation Pathway that sets out when and how the MDBA follows up on allegations that have been referred to the states.</li> <li>- In November 2017, the MDBA published the Compliance Review report outlining the roles of the MDBA and regulated entities, and the MDBA's expectations for Basin Plan compliance. This was reiterated in the June 2018 publication of the Compliance Compact.</li> <li>- In June 2018, the MDBA published its revised Compliance and Enforcement Policy 2018-2021 and the Compliance Priorities 2018-2019, which set out the MDBA's regulatory approach, expectations, focus areas and program.</li> <li>- In early 2018 the MDBA reviewed its compliance web pages to ensure messaging about the role of the MDBA and Basin Plan compliance is up to date, clear and consistent.</li> <li>- The MDBA developed factsheets to provide fundamental information about the Basin Plan to the public, including a factsheet 'Complying with the Basin Plan'.</li> <li>- The MDBA provides regular compliance updates to the Basin Community Committee and peaks meetings, and Regional Engagement Officers and regional staff and through newspaper and radio interviews.</li> <li>- The MDBA made 21 media releases about compliance related issues in 2017-2018.</li> </ul>	Met
<b>Compliance strategies and/or policies are published and include a risk-based approach(es).</b>	Met	<ul style="list-style-type: none"> <li>- In early 2018, the MDBA commenced developing audit strategy and investigation strategies, with public summaries to be published in 2019.</li> <li>- In June 2018, the MDBA published a revised Compliance and Enforcement Policy 2018-2021 outlining its risk-based approach to compliance in seven key areas and options for graduated compliance actions consistent with the MDBA's powers.</li> <li>- The MDBA has committed to publishing an annual statement of Compliance Priorities. The 2018-2019 Compliance Priorities were published in June 2018. The Compliance Priorities are informed by an annual environmental scan and risk assessment.</li> </ul>	Met

## KPI 4 – Compliance and monitoring approaches are streamlined and coordinated

Metric	Rating	Contributing activities	Validator rating
<p><b>Evidence of collected information being acted upon, stored and re-used.</b></p>	<p>In transition</p>	<ul style="list-style-type: none"> <li>- In early 2018, targeted recruitment was undertaken to hire staff with audit and investigatory experience to develop the MDBA’s intelligence gathering and audit and investigation capabilities. This led to a review of the MDBA’s case management documentation to ensure collected information is stored appropriately and used in line with best practice.</li> <li>- In March 2018, the MDBA published guidelines for reporting of compliance and enforcement activities to encourage consistency in reporting by Basin governments to promote public transparency and accountability. The MDBA published its self-report of activities in 2017-2018 using the template in September 2018 (Attachment B).</li> <li>- In February 2018, the MDBA signed a Memorandum of Understanding with the NSW Natural Resources Access Regulator, to underpin a strong and cooperative approach to compliance with, and enforcement of, water management rules in the NSW Murray–Darling Basin. This includes a commitment to information sharing between regulatory agencies.</li> </ul>	<p>In transition</p>
<p><b>Monitoring and enforcement strategies allow for a range of regulatory responses.</b></p>	<p>Met</p>	<ul style="list-style-type: none"> <li>- In June 2018, the MDBA published its revised Compliance and Enforcement Policy 2018-2021 which describes the range of regulatory responses available to the MDBA, and includes risk-based options for graduated compliance actions consistent with the MDBA’s powers.</li> </ul>	<p>Met</p>

## KPI 5 – Regulators are open and transparent in their dealings with regulated entities

Metric	Rating	Contributing activities	Validator rating
<b>Compliance strategies and/or policies are published and include a risk-based approach(es).</b>	Met	<ul style="list-style-type: none"> <li>- In June 2018, the MDBA published a revised Compliance and Enforcement Policy 2018-2021 outlining its risk-based approach to compliance in seven key areas and options for graduated compliance actions consistent with the MDBA’s powers.</li> <li>- The MDBA has committed to publishing an annual statement of Compliance Priorities. The 2018-2019 Compliance Priorities were published in June 2018. The Compliance Priorities are informed by an annual environmental scan and risk assessment.</li> <li>- In early 2018, the MDBA commenced developing strategies for its audit and investigation functions, with public summaries to be published in 2019.</li> </ul>	Met
<b>Feedback mechanisms are in place and provide stakeholder input into continuous improvement.</b>	Met	<ul style="list-style-type: none"> <li>- In 2017-2018, the MDBA received feedback through:               <ul style="list-style-type: none"> <li>o Appearing at meetings with peak representatives and the Basin Community Committee.</li> <li>o Consulting on its draft Compliance Policy with the Australian Competition &amp; Consumer Commission and the Independent Assurance Committee.</li> <li>o The online survey during the Compliance Review.</li> <li>o The ‘Report a Breach’ online portal.</li> <li>o The Compliance public inbox and Engagement hotline.</li> <li>o Regional Engagement Officers who provide updates to the Office of Compliance about compliance related concerns they have received.</li> <li>o Targeted recruitment of Office of Compliance staff in offices outside of Canberra providing more regional focus and increased opportunities to receive stakeholder feedback.</li> </ul> </li> <li>- In 2017-2018, the MDBA used stakeholder feedback to inform:               <ul style="list-style-type: none"> <li>o the findings and recommendations of the Compliance Review and Basin Compliance Compact; and</li> <li>o the drafting of the Compliance and Enforcement Policy 2018-2021 and Compliance Priorities 2018-2019.</li> </ul> </li> </ul>	Met

## KPI 6 – Regulators actively contribute to the continuous improvement of regulatory frameworks

Metric	Rating	Contributing activities	Validator rating
<b>Compliance capability improvement goals are documented and continuously improved</b>	In transition	<ul style="list-style-type: none"> <li>- In line with commitments under the Compliance Review and the Compact, in January 2018 the established a dedicated Office of Compliance and commenced work to enhance its regulatory capability.</li> <li>- In 2018, internal communications were directed towards developing compliance culture and capability within the MDBA.</li> <li>- In June 2018, a Capability Plan was developed containing training requirements and targets goals, and will be updated to incorporate improvements in best practice or training.</li> </ul>	In transition
<b>Regulatory frameworks or approaches are regularly reviewed and improved.</b>	Met	<ul style="list-style-type: none"> <li>- In June 2018, the MDBA published the Compliance and Enforcement Policy 2018-2021 to replace the Compliance Strategy (2014). The new policy will be reviewed in 2021.</li> <li>- In January 2018, the MDBA appointed an Independent Assurance Committee to provide assurance about the design and implementation of the MDBA's regulatory regime.</li> <li>- From March to June 2018, the MDBA facilitated the drafting of the Compact which included commitments to ensure regulatory framework and practices across the Basin are reviewed and improved. The MDBA will work with industry, community, environmental groups and state and Australian government agencies to implement the commitments under the Compact.</li> <li>- In February 2018, the MDBA signed a Memorandum of Understanding with the NSW Natural Resources Access Regulator which includes a commitment to continuous improvement, and capacity building in relation to new technologies, regulatory craft and training and skill development.</li> </ul>	Met

## 5. Validator statement

In February 2018, the MDBA Authority Board established the Independent Assurance Committee (IAC) to provide external assurance over the MDBA's Basin Plan compliance role through the provision of independent expert advice to the Authority on the design, implementation and adequacy of the MDBA's compliance program.

The IAC has reviewed the MDBA's self-assessment for 2017-2018, under the Australian Government's Regulatory Performance Framework, and provides this statement of validation.

The IAC reviewed a draft of the self-assessment and provided feedback to the MDBA. The MDBA subsequently revised and finalised its self-assessment.

The IAC can validate the final self-assessment ratings for each of the metrics under the six KPIs. They are an accurate assessment of performance in 2017-2018.

The MDBA has made significant improvements to its compliance program in 2017-2018. The establishment of an Office of Compliance and the implementation of a reform program has resulted in substantial change.

The MDBA has a unique role as a regulator of regulators as well as having some regulatory roles in its own right. The IAC notes that the MDBA is in a period of transition as the Murray–Darling Basin Plan arrangements are established.

The IAC recommends that the performance metrics be revised for the next assessment to better reflect the unique characteristics of the MDBA as a regulator.

# Appendix A: Compliance reviews and investigations in 2017-2018

Review or Investigation	Conducted by	Published or completed	Link
Murray Darling-Basin Water Compliance Review examining the compliance and enforcement frameworks and practices of the Basin states and of the MDBA, and the appropriateness of water management.	MDBA and Independent Review Panel	November 2017	<a href="https://www.mdba.gov.au/basin-plan-roll-out/basin-wide-compliance-review">https://www.mdba.gov.au/basin-plan-roll-out/basin-wide-compliance-review</a>
The interim and final reports of the Independent investigation into NSW water management and compliance	Ken Matthews AO	September and November 2017	<a href="https://www.industry.nsw.gov.au/about/our-business/independent-review-water-management-and-compliance">https://www.industry.nsw.gov.au/about/our-business/independent-review-water-management-and-compliance</a>
Investigation into water compliance and enforcement 2007-17 in response to complaints and public interest disclosures received by the Ombudsman alleging that the water management principles and rules were not being properly complied with and enforced.	NSW Ombudsman	November 2017 and March 2018	<a href="https://www.ombo.nsw.gov.au/news-and-publications/publications/reports/state-and-local-government/investigation-into-water-compliance-and-enforcement-2007-17">https://www.ombo.nsw.gov.au/news-and-publications/publications/reports/state-and-local-government/investigation-into-water-compliance-and-enforcement-2007-17</a>
Department of Agriculture and Water Resources' assessment of the performance of New South Wales under the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin relevant to the protection and use of environmental water for the 2014–15 and 2015–16 financial years.	Australian National Audit Office	November 2017	<a href="https://www.anao.gov.au/work/assurance-review/dept-agriculture-water-resources-assessment-nsw-protection-use-environmental-water-mdb">https://www.anao.gov.au/work/assurance-review/dept-agriculture-water-resources-assessment-nsw-protection-use-environmental-water-mdb</a>
Integrity of the water market in the Murray-Darling Basin.	Senate Committee for Rural and Regional Affairs and Transport	November 2018	<a href="https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/MurrayDarlingPlan">https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/MurrayDarlingPlan</a>
Independent audit of Queensland non-urban water measurement and metering framework and compliance arrangements.	Mr Tim Waldron, Mr Ian Johnson and Professor Poh Ling Tan	March 2018	<a href="https://www.dnrm.qld.gov.au/water/independent-audit-of-queensland-non-urban-water-measurement-and-compliance">https://www.dnrm.qld.gov.au/water/independent-audit-of-queensland-non-urban-water-measurement-and-compliance</a>
After the Four Corners broadcast, the Secretary of the NSW Department of Industry referred the allegations about misconduct and maladministration to the NSW Independent Commission Against Corruption.	NSW Independent Commission Against Corruption	N/A	<a href="https://www.icac.nsw.gov.au/investigations/current-investigations/investigations">https://www.icac.nsw.gov.au/investigations/current-investigations/investigations</a>

# Appendix B: 2017–18 annual report on compliance activities for the MDBA

The Murray–Darling Basin Authority (MDBA) is responsible for the implementation of a plan for the sustainable management of the Murray–Darling Basin’s water resources, operating the River Murray system, and ensuring water users and managers comply with the requirements and regulatory responsibilities as set out in the *Water Act 2007* (Cth) (Water Act) and the *Basin Plan 2012* (Cth).

The MDBA takes a risk based approach to compliance and enforcement. This includes undertaking compliance activities identified in its Annual Priorities and Audit Strategy. From time to time the MDBA also receives information or allegations relating to potential breaches of the Water Act or the Basin Plan.

Compliance and enforcement activities should be initiated at the appropriate jurisdictional level for the compliance issue: either at the Basin state government level or the Australian Government level. In most cases it will be at the Basin state level, as Basin state government water agencies have day to day responsibility for water planning, water licensing, rule-setting, river operations and state-level compliance (including meter inspections and readings).

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

The following tables summarise the compliance actions undertaken by the MDBA from June 30 2017 to June 30 2018.

Compliance and enforcement activity	2017-18
<b>Number of meters read by compliance officers</b>	The MDBA did not conduct meter readings in 2017-2018.
<b>Number of telemetered meters</b>	The MDBA does not administer telemetered meters and did not collect compliance information on telemetered meters in 2017-2018.
<b>Number of meter inspections undertaken by compliance officers</b>	The MDBA did not conduct meter inspections in 2017-2018.
<b>Alleged compliance breaches reported</b>	20
- <b>Allegations breaches finalised (no breach found)</b>	12
- <b>Allegations under review by the MDBA at 30 June 2018</b>	8
- <b>Allegations referred to a relevant state agency</b>	6

<b>Investigations commenced, underway or finalised<sup>3</sup></b>	The MDBA did not commence or finalise any investigations in 2017-2018.
<b>Advisory letters issued<sup>4</sup></b>	The MDBA did not issue any advisory letters in 2017-2018.
<b>Formal warnings issued</b>	The MDBA did not issue any formal warnings in 2017-2018.
<b>Statutory notices issued (enforcement or infringement notices)</b>	The MDBA did not issue any statutory notices in 2017-2018.
<b>Licence cancellations and/or suspensions</b>	Not relevant to the MDBA. The MDBA does not have this power under the Water Act.
<b>Administrative sanctions</b>	The MDBA did not issue any administrative sanctions in 2017-2018.

#### Prosecutions commenced, underway or finalised in reporting year

Relevant section(s) of the legislation	Date commenced	Catchment
The Water Act currently has limited provisions for pursuing offences. The Australian Government is currently reviewing the Water Act with a view to enhancing the penalty provisions, including offences, in proposed amendments to the Water Act.		

#### Service Level targets

Service level targets	2017-18 Target	2017-18 Actual Performance	Action taken
MDBA will follow up with the referral agency one month after the allegation's referral.	This target was developed in December 2017. <sup>5</sup>	No. of cases: 4  2	The MDBA followed up within one month after the allegation's referral  The MDBA did not follow up within one month after the allegation's referral
MDBA will follow up with the referral agency, two months after the allegation's referral	2017/2018 target not set	2 cases	The MDBA followed up within two months after the allegation's referral

<sup>3</sup> An investigation is a formal process of seeking information relevant to an alleged, apparent or potential breach of the law, involving possible judicial proceedings (Australian Government Investigations Standards (2011)).

<sup>4</sup> Advisory letters can be issued to individuals or groups to remind them about their compliance responsibilities, or to provide notice of changes that affect their compliance responsibilities.

<sup>5</sup> In December 2017, the MDBA released an Escalation Pathway documenting its process for referring allegations to states containing these targets.

# Appendix C: Summary of online compliance survey

An online survey was available on the MBDA website from 6 September - 25 October 2017. Over that time there were 249 visitors to the page and 68 respondents to the online survey.

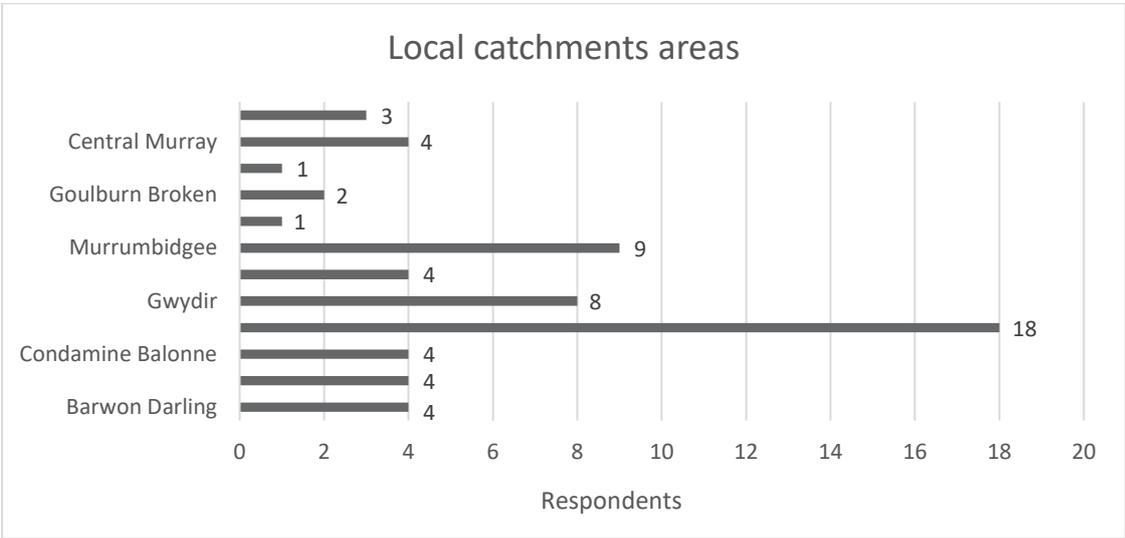
## Survey questions

Respondents answered the following questions. (Note that a number of respondents did not answer every question).

- *Do you live in a catchment in the Murray-Darling Basin, and if so, which one?*
- *Are you a water user in the Murray-Darling Basin?*
- *How well would you rate your understanding of when water users can withdraw water, and volumetric limits in your area?*
- *Do you know your principal contact and process for compliance and enforcement activities in your area, and/or state?*
- *Do you know what the MDBA’s role is in compliance and enforcement of water management and extraction rules?*
- *Are you confident that most water users are complying with the water rules?*
- *Do you believe that the current enforcement and penalty system is sufficient for preventing unauthorised take?*
- *How confident are you that the compliance and enforcement system for unauthorised take is working in your area?*
- *Have you ever reported a breach of unauthorised take?*
- *Were you aware of any follow up actions?*
- *How can compliance and enforcement activities be improved?*
- *Is there anything else you would like to have your say on?*

## Demographics

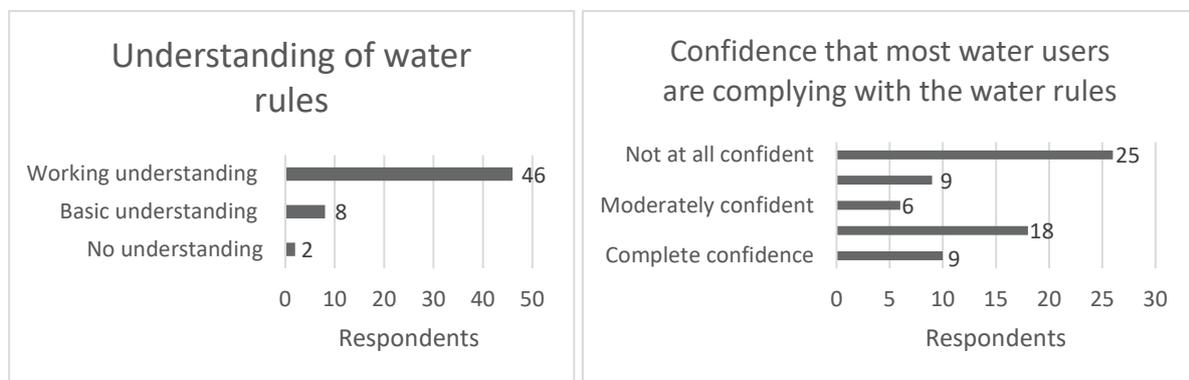
Of the 68 respondents, 62 live within the Murray-Darling Basin, and 56 are water users.



## Understanding of water rules

Respondents were asked to rate their understanding of when water users can withdraw water and volumetric limits in their area. The majority indicated they had an understanding of water rules and the MDBA's role in enforcing them. However, confidence that water rules were being complied with varied, with 37% of respondents indicating they had no confidence at all. Not all respondents were aware who their principle contact for compliance was, and only 47% stated they were aware of what the MDBA's role in compliance and enforcement of water management and extraction rules was.

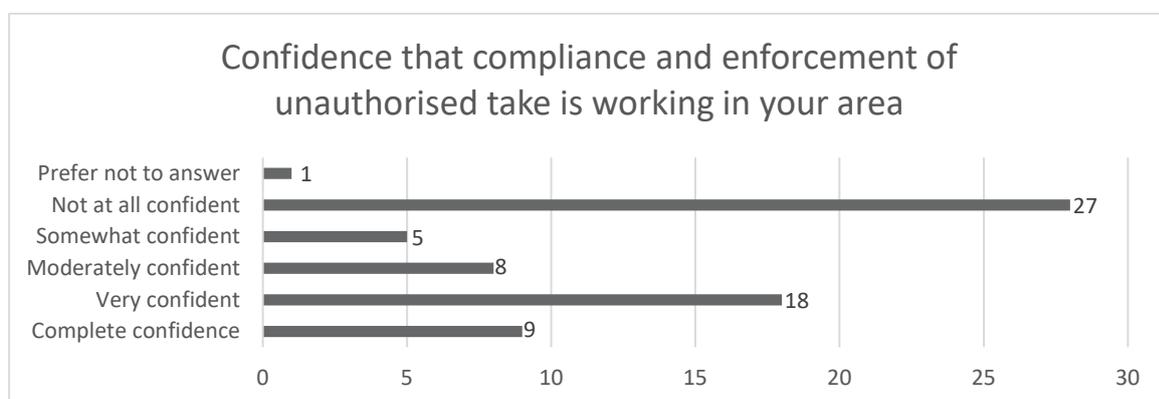
Although there was some recognition that the role of compliance and enforcement is a state responsibility, others expressed their belief that the MDBA is divorced from everyday matters and should have more regulatory power. Comments expressed a level of ambiguity around compliance arrangements, which was explained by some as a result of the level of change that has occurred in recent years.



## Confidence in current compliance and enforcement regimes

Based on the respondents, there is a lack of confidence in the current enforcement regime, with 68% of respondents indicating they do not believe that the current enforcement and penalty system is sufficient for preventing unauthorised take. Similarly, 40% of respondents were not confident that compliance and enforcement regimes were working in their area.

There was a common theme that compliance needs to be taken more seriously. This includes adequate resourcing and constant policing, and timely and consistent punishments that act as deterrents.



## Management of compliance investigations

Of the respondents, 22% (15) had reported a breach of unauthorised take to the MDBA and/or State authority, of which 8 indicated they were unaware of any follow-up actions occurring.

## Themes for improvement

The survey invited respondents to share how they believe compliance and enforcement activities can be improved. Responses included a variety of key themes:

- There should be increased resourcing for compliance enforcement activities. 14 respondents called for improved metering, particularly the use of telemetry meters. Other suggested improvements included technology such as drones and satellite imagery, and more compliance officers on the ground.
- There should be an independent regulator to police water extractions. 4 respondents commented that this should be an independent body, whilst another 4 thought this should be the Commonwealth Government. This shows a lack of confidence in state authorities, with a number of respondents suggesting that state owned corporations have a bias towards their own customers.
- 4 respondents called for adequate and timely penalties to discourage illegal activity.
- 4 respondents mentioned the need for more transparency.
- 4 respondents felt that the current system works well and no major compliance issues have been noticed.

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**Office locations**

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