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Inspector-
General of
Water
Compliance

Sustainable Diversion Limit Compliance Framework

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Glossary

Note: this glossary is a collation of key terms used within the Framework. The descriptions of these terms throughout the Framework should be referred to for contextual information.

Actual take

The annual actual take for the Sustainable Diversion Limit (SDL) resource unit is the sum of the quantity of water taken by each form of take for consumptive use.¹

Action Plan

This Framework uses the term **Action Plan** to refer to:

Under s 71 of the **Water Act**, where there has been SDL non-compliance, the actions that the Basin State proposes to take to ensure the SDL is complied with in the future²

Under s 6.12 of the **Basin Plan**, for surface water **SDL resource units**, the steps the State will take to reduce the **cumulative balance** to zero or less, where an excess is recorded on the Register of Take and the Basin State is relying on a claim for **reasonable excuse**³

Under s 6.12C of the Basin Plan, for groundwater **SDL resource units**, the steps the State will take to reach the point where there is no excess, where an excess is recorded on the Register of Take and the Basin State is relying on a claim for **reasonable excuse**⁴

Annual SDL Compliance Statement

The annual Sustainable Diversion Limit Compliance Statement details the Inspector-General's assessment of compliance for all SDL resource units.

Basin Plan

Basin Plan 2012 (Commonwealth).

Basin State

Basin State is defined in the Water Act and includes New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory.⁵ Basin States have obligations relating to SDL compliance reporting and action plans under s 71 of the Water Act and Chapter 6 of the Basin Plan.

¹ Basin Plan s 6.10(2) (for surface water); s 6.12B(2) (for groundwater)

² Water Act s71(1)(h)

³ Basin Plan s 6.12 (5). Note that to the extent that any excess is due to incomplete water recovery by the Commonwealth, the action plan need not address that amount, as the Register of Take will be adjusted by crediting the amount of the shortfall (see Note 1 to s 6.12(5)).

⁴ Basin Plan s 6.12C (5)

⁵ Water Act s 4

Basin State agency

An agency of a Basin State is defined in the Water Act and means a State Minister, a Department, and certain other types of State government bodies.⁶ Basin State agencies are required by the Water Act to not act inconsistently with the Basin Plan and any water resource plan.⁷

Cumulative balance

For surface water SDL resource units, each year the actual take is subtracted from the permitted take to generate a debit (where actual take is more than permitted take) or a credit (where actual take is less than permitted take). Over time, these debits and credits generate a **cumulative balance**. The **surface water SDL compliance threshold** is when the cumulative balance for an SDL resource unit is a debit equal to or greater than 20% of the SDL.

Deemed excuses

The Basin Plan specifies two specific circumstances in which **reasonable excuse** will be a given, if the criteria for those circumstances are met.

Excess

The term 'excess' has a specific meaning in the Basin Plan:⁸

For **surface water** SDL resource units, an excess occurs when the **cumulative balance** on the relevant Register of Take is a debit amount equal to or greater than 20% of the SDL.

For **groundwater** SDL resource units, in any accounting period up to 2028, an excess occurs when the sum of actual take for all years since 2019 is greater than the sum of permitted take for those years, plus 20% of the SDL. For accounting periods after 2028, an excess occurs if the average annual take over the previous 10 years exceeds the average permitted take over that period.

This Framework refers to the point at which a Register of Take records an excess as the **SDL compliance threshold**.

Exceedance

This Framework uses the term 'exceedance' to refer to circumstances where the Register of Take indicates the cumulative balance is greater than 0% and less than 20%, meaning the cumulative balance is above the SDL, but has not reached the SDL compliance threshold of 'excess'.

MDBA

The Commonwealth agency, Murray-Darling Basin Authority.

Permitted take

The annual permitted take is the sum of the maximum quantity of water permitted to be taken by each form of take for consumptive use from the SDL resource unit in a water accounting period.⁹

⁶ Water Act s 4

⁷ Water Act ss 35, 59

⁸ Basin Plan s 6.12(1) (for surface water); s 6.12C(2) (for groundwater)

⁹ Basin Plan s 6.10(1) (for surface water); s 6.12B(1) (for groundwater)

Reasonable excuse

A Basin State can claim that there is a reasonable excuse for an excess by providing a report to MDBA and to the Inspector-General setting out:

- (a) the reasons for the excess; and
- (b) the steps the Basin State will take to reduce the cumulative balance of the Register of Take to zero or less (for surface water), or (for groundwater), the steps it will take to reach the point where there is no excess.¹⁰ These steps are referred to as an action plan in this Framework.

A Basin State is taken to have a reasonable excuse for an excess if the excess arises as the result of:

- (a) the operation of the water resource plan for the SDL resource unit; or
- (b) circumstances beyond the Basin State's control (for example where, for reasons beyond the Basin State's control, the Commonwealth has not achieved the water recovery target that it has set for itself in relation to the SDL resource unit).¹¹

This Framework refers to these last two as '**deemed excuses**'.

Registers of Take

MDBA must establish and maintain a Register of Take for each SDL resource unit for the purpose of assisting to determine, for each water accounting period, whether there has been compliance with the long-term annual diversion limit for an SDL resource unit, and the extent of any failure to comply with that limit.¹²

SDL compliance threshold

The point at which the Register of Take for an SDL resource unit records an 'excess' (see definition of excess above) is referred to in this Framework as the SDL compliance threshold. Once the SDL compliance threshold is reached, certain obligations and actions under the Water Act and Basin Plan are triggered.¹³

SDL resource unit

The water resources, or particular parts of the water resources, of a water resource plan area that is either a surface water SDL resource unit or a groundwater SDL resource unit. There are 29 surface water and 80 groundwater SDL resource units in the Murray-Darling Basin.¹⁴

¹⁰ Basin Plan s 6.11(3), (5) (surface water); s 6.12C(3), (5) (groundwater)

¹¹ Basin Plan s 6.11(4) (surface water); s 6.12C(4) (groundwater)

¹² Basin Plan s 6.08

¹³ Water Act s 71; Basin Plan s 6.12(3), (5) (surface water); s 6.12C(3), (5) (groundwater)

¹⁴ Basin Plan s 6.02 and Schedule 2 (surface water) and s 6.03 and Schedule 4 (groundwater)

Sustainable Diversion Limit (SDL)

The maximum long-term annual average quantities of water that can be taken, on a sustainable basis, from the Basin water resources.¹⁵

Water accounting period

1 July to 30 June, as defined by the Basin Plan (often also referred to as the 'water year').

Water Act

Water Act 2007 (Commonwealth).

Water resource plan

A water resource plan is a plan accredited or adopted under the Water Act. It sets out the rules for how water is used at a local or catchment level, including limits on how much water can be taken from the system, how much water will be made available to the environment, and how water quality standards can be met. Basin States also operate various water plans made under their own legislation (e.g. NSW water sharing plans or South Australian water allocation plans). While there is significant overlap in content, these are State instruments and not the same as water resource plans.

¹⁵ Water Act s 22(1)

1 Introduction

1.1 Purpose of the Framework

Sustainable Diversion Limits (**SDLs**) and compliance with the limits are essential to the implementation and operation of the *Basin Plan 2012* (**Basin Plan**). Under the Commonwealth *Water Act 2007* (the **Water Act**), SDLs provide for 'the establishment and enforcement of environmentally sustainable limits on the quantities of surface water and groundwater that may be taken from the Basin water resources'.¹⁶ In effect, SDLs limit the amount of water that can be taken from rivers and aquifers for irrigated agriculture, towns and industry.

This SDL Compliance Framework (the Framework) outlines the Inspector-General for Water Compliance's (**Inspector-General**) role and objectives in relation to ensuring compliance with the SDLs. The Framework articulates the Inspector-General's expectations and approach to exercising statutory powers and functions for SDL compliance.

The Framework defines the assessment processes to be followed by the Inspector-General as well as the response pathways to be taken following assessment of SDL compliance. For Basin States and Basin State agencies¹⁷ and Commonwealth government agencies including the Murray-Darling Basin Authority (**MDBA**), the Framework articulates the Inspector-General's expectations, requirements, and approach regarding performance by Basin States and Commonwealth government agencies of their functions relating to SDL compliance.

Defining the way the Inspector-General will assess SDL compliance provides stakeholders' understanding of how the water resources of the Murray-Darling Basin are being used and monitored. It offers transparency and builds confidence about this essential function to the Basin community, including irrigators, First Nations Peoples, peak bodies, industry representatives and the broader public.

The Framework will be reviewed and updated every 5 years or earlier if required.

¹⁶ Water Act s 20(b)

¹⁷ Under the Water Act, the Basin States are New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory. Basin State agencies are Basin State Ministers, departments and certain other types of government bodies (Water Act s 4).

1.2 Principles

The Inspector-General will pursue SDL compliance through implementation of this Framework which is designed on the basis of the following principles:

1. **Transparency** supports the objectives of the Water Act and the Basin Plan and provides confidence and assurance to the community regarding implementation of the SDL. Outcomes of each assessment process will be publicly reported to ensure a high degree of transparency.
2. **Accountability** supports integrity through ensuring clarity around roles and responsibility. Agencies will be held accountable for their respective roles in SDL compliance.
3. **Regulatory best practice** and continuous improvement underpins the approach to SDL compliance.
4. **Multiple lines of evidence** will be utilised in the assessment of and response to SDL compliance and non-compliance.
5. **Procedural fairness and regulatory judgement** will be applied, recognising the inherent uncertainties in the tools being used to assess SDL compliance and allowing and encouraging ongoing improvement.
6. The Inspector-General will seek to establish **open, two-way** communications and will work **proactively and cooperatively** with the Basin States to influence and support effective compliance with SDLs.

1.3 What is meant by SDL compliance?

Sustainable Diversion Limits

The Basin Plan establishes SDLs as the maximum long-term annual average quantities of water that can be taken, on a sustainable basis, from the Basin water resources. Each of the 29 surface water and 80 groundwater SDL resource units has its own SDL.¹⁸ There is also an SDL for the Basin as a whole, which is the sum of all SDLs for the SDL resource units. SDLs are set out in Schedules 2 (surface water) and 4 (groundwater) to the Basin Plan.

The Basin Plan prescribes the process for determining whether there is compliance with SDLs.¹⁹

Determining SDL compliance

The MDBA must keep a 'Register of Take' for each SDL resource unit. Each year, the MDBA and Basin States determine the amount of water that is permitted to be taken from each SDL resource unit ('**permitted take**'), using the method set out in the water resource plan that applies to that resource. The MDBA records in the Register of Take the permitted take and the amount of water that was actually taken in that year ('**actual take**').²⁰

The MDBA enters relevant quantities into the relevant Register of Take in the way prescribed by the Basin Plan, which differs for surface water and for groundwater SDL resource units.²¹

¹⁸ For SDL compliance purposes, the Basin Plan allows certain Victorian SDL resource units to be combined and they may be treated as a single SDL resource unit: see s 6.12(2).

¹⁹ Basin Plan, Chapter 6

²⁰ Basin Plan ss 6.08 - 6.12C

²¹ Basin Plan ss 6.08 (surface water and groundwater); 6.11 (for surface water); ss 6.12A – 6.12C (groundwater)

The Basin Plan specifies that **there is non-compliance** with an SDL if:

1. The Register of Take for the SDL resource unit indicates an '**excess**' for that resource unit, and
2. The Basin State in which the SDL resource unit is located does not have a '**reasonable excuse**' for the excess. The Basin Plan describes two specific circumstances that are deemed to provide a reasonable excuse but does not exclude other circumstances that might constitute a reasonable excuse.

What is an 'excess'?

The term 'excess' has a specific meaning in the Basin Plan.²² Once there is an excess, certain obligations and actions are triggered under the Basin Plan. This Framework refers to the point of **excess** as the **SDL compliance threshold**.

For **surface water** SDL resource units, an excess occurs when the **cumulative balance** on the relevant Register of Take is a debit amount equal to or greater than 20% of the SDL. For surface water SDL resource units, each year the actual take is subtracted from the permitted take to generate a debit (where actual take is more than permitted take) or a credit (where actual take is less than permitted take). Over time, these debits and credits generate a **cumulative balance**. The **surface water SDL compliance threshold** is the point at which the cumulative balance for an SDL resource unit is a debit equal to or greater than 20% of the SDL.

For **groundwater** SDL resource units, in any accounting period up to 2028, an excess occurs when the sum of actual take for all years since 2019 is greater than the sum of permitted take for those years, plus 20% of the SDL. For accounting periods after 2028, an excess occurs if the average annual take over the previous 10 years exceeds the average permitted take over that period.

This Framework uses the term 'exceedance' to refer to circumstances where actual take is higher than permitted take (cumulatively) but has not reached the SDL compliance threshold of 'excess'.

What is a reasonable excuse?

The Basin Plan does not define 'reasonable excuse' but specifies certain circumstances in which reasonable excuse will be given if the criteria for those circumstances are met ('**deemed excuses**'). The Basin Plan does not exclude other circumstances that might constitute a reasonable excuse.²³

This Framework outlines the Inspector-General's approach to determining reasonable excuse, including whether the criteria for a deemed excuse are met, in section 3.

Consequences of non-compliance

If there is SDL non-compliance (an excess with no reasonable excuse), the Water Act requires that the relevant Basin State must provide a report detailing the actions that the Basin State proposes to take to ensure that the SDL is complied with in the future. Reports are provided to the MDBA and Inspector-General.

If there is an excess but no non-compliance because the Basin State has a reasonable excuse, the Basin State must provide a report to both the MDBA and the Inspector-General indicating the steps that the State will take to rectify the excess.²⁴

This Framework refers to both types of report as an **action plan**.

²² Basin Plan s 6.12(1) (for surface water); s 6.12C(2) (for groundwater)

²³ Basin Plan 6.12 (surface water) and 6.12C (groundwater)

²⁴ Basin Plan 6.12 (surface water) and 6.12C (groundwater)

An excess on the Registers of Take or SDL non-compliance, is not in itself a direct contravention of the Water Act or regulations, or the Basin Plan or a water resource plan. However, acting inconsistently with the Basin Plan or a water resource plan is a contravention of the Water Act.

The way that the Inspector-General will exercise available powers and functions to ensure SDL compliance, and to ensure that the SDL provisions contained in water resource plans are being properly implemented, is outlined in this Framework.

2 Roles and responsibilities

2.1 Functions of the Inspector-General

The Inspector-General of Water Compliance is a Commonwealth statutory role established under the Water Act.

The Inspector-General's functions and powers are set out in the Water Act²⁵ and can be summarised as:

- a) Enforcing compliance with the Water Act, the Basin Plan and water resource plans;
- b) Monitoring and providing independent oversight of Commonwealth and State agencies' performance of obligations in relation to management of Basin water resources under the Water Act, Basin Plan and water resource plans; and
- c) Engaging with Basin communities on the management of Basin water resources.

The Inspector-General's functions focus on the integrity of management of Basin water resources.

2.2 Inspector-General's role in SDL compliance

SDLs are central to the Water Act and accordingly, SDL compliance is fundamental to implementation of the Basin Plan and water resource plans. Acting inconsistently with the Basin Plan or a water resource plan is a contravention of the Water Act, and the Inspector-General is the relevant enforcement agency for such contraventions.

The Inspector-General's two primary roles in relation to SDL compliance are:²⁶

- Exercising functions as the appropriate enforcement agency for any contravention of the Water Act; and
- Monitoring and providing independent oversight of the performance of obligations, functions and powers by the MDBA and Basin State agencies under the Water Act, Basin Plan and water resource plans.

Non-compliance with an SDL is not a breach of the Water Act, Basin Plan or a water resource plan. However, an excess that is non-compliant might arise from contravention of a legal obligation or from a failure of an agency to adequately perform its functions in relation to SDL compliance.²⁷

This Framework does not address illegal water take as a cause of SDL non-compliance. The SDL accounts maintained by the MDBA record take at the SDL resource unit scale and are not designed or intended to detect individual compliance. Actual take by individual water users is estimated, metered or modelled by Basin States. Basin States may discover illegal take during the year; such take is expected to be included in records of actual take. Basin States have primary responsibility for ensuring compliance by water users with Basin State laws.

²⁵ Water Act, s 215C

²⁶ Water Act, s 215C(1)

²⁷ Water Act, ss 34, 35, 58, 59, 71

Under the Water Act, the Inspector-General also has significant powers in relation to illegal water take,²⁸ and this aspect of compliance is being considered as a separate program of compliance activity being undertaken by the Inspector-General.

2.3 Inspector-General's powers in relation to SDL compliance

The Inspector-General has a range of statutory powers to undertake investigations, gather information and conduct inquiries in relation to conduct relating to SDL compliance, that may amount to a contravention of provisions in the Water Act, Basin Plan or water resource plans.²⁹ The Inspector-General may also conduct audits to assess the extent of compliance with the Basin Plan or water resource plans.³⁰

Obligations in the Water Act most relevant to SDL compliance are that:

- The MDBA must act consistently with the Basin Plan – relevant obligations are to maintain the Registers of Take in the way set out in the Basin Plan³¹.
- A Basin State must report matters relating to SDL annually in accordance with the requirements of the Water Act (these matters include an assessment of SDL compliance, and in the case of non-compliance, the State's action plan for future compliance)³² and the requirements of the Basin Plan in relation to reporting 'reasonable excuse' and providing action plans³³.
- A Basin State agency must not act inconsistently with the Basin Plan³⁴ – relevant obligations are in relation to claiming a reasonable excuse for an excess and providing an action plan to rectify that excess.
- A Basin State agency must not act inconsistently with a water resource plan³⁵ – this will most relevantly include ensuring that provisions in the water resource plan about applying the SDL are properly implemented.

If the Inspector-General has evidence of a contravention of the Water Act, the Inspector-General may take appropriate enforcement action. Enforcement action may include:³⁶

- Requesting a person (including a Basin State agency) to provide an enforceable undertaking that the person will take specified action to prevent the contravention; or
- Applying to the court for a declaration that there has been a contravention, and/or an injunction to prevent the contravention.

The Inspector-General has the ability to establish an Advisory Panel to support carrying out any of the Inspector-General's functions.³⁷

²⁸ The Water Act creates two offences relating to illegal water take: ss 73A and 73B. The Inspector-General is the appropriate enforcement agency for these offences.

²⁹ Water Act, Parts 10AA and 10AB

³⁰ Water Act s 73L

³¹ Basin Plan Chapter 6 Part 4

³² Water Act s 71

³³ Basin Plan Chapter 6 Part 4

³⁴ Water Act s 35

³⁵ Water Act s 59

³⁶ Water Act Part 8

³⁷ Water Act Part 9A, div 4

2.4 Roles and responsibilities – MDBA and Basin States

The Inspector-General's role in SDL compliance is supported by the MDBA and the Basin States through the provision of information as shown in Figure 1.

It is the responsibility of Basin States to report on permitted and actual take to the MDBA within 4 months after the end of the water accounting period (and other details as described in s 71 of the Water Act); the MDBA must give a copy of that report to the Inspector-General as soon as practicable after receiving it.³⁸ A Basin State must include in that report their self-assessment of compliance with SDLs.

In cases where a Register of Take shows an excess and a Basin State wishes to claim there is a reasonable excuse for the excess, the Basin State is responsible for providing the MDBA and Inspector-General with a report setting out the reasons for the excess and an associated action plan identifying steps to rectify the excess (Basin Plan, Chapter 6). If the Basin State does not claim a reasonable excuse or self-assesses that there is non-compliance, the Basin State must provide an action plan that identifies how the Basin State intends to ensure SDL compliance in the future, as part of the Basin State's report under s 71 of the Water Act.

The MDBA is responsible for maintaining the Registers of Take (Basin Plan, Chapter 6). The MDBA's SDL Accounting and Reporting Framework³⁹ outlines how the MDBA will maintain and publish the Registers of Take, conduct analysis on any excesses recorded on the Registers of Take and conduct technical analysis on reasonable excuse claims.

The Inspector-General will expect analysis of all excesses and of those exceedances (below the SDL compliance threshold) that are close to the SDL compliance threshold, ongoing for several years, increasing, unusual or erratic. This analysis will be expected of Basin States and MDBA.

MDBA is expected to advise the Inspector-General on any accounting treatments or MDBA decisions with material effect on a Register of Take, explanation of technical aspects of any adjustments made to the previous year's Register, which affect cumulative balance of the forward year.

The Inspector-General expects that the MDBA will identify and pass on to the Inspector-General any quality assurance issues with SDL accounting methods, data and any issues with the likely effectiveness of Basin States' proposed action plans.⁴⁰ The Inspector-General expects that MDBA and Basin States will exercise appropriate quality assurance on data collection, collation and analysis, and inform the Inspector-General of those quality assurance processes and statements, if requested by the Inspector-General.

³⁸ A Basin State's s 71 report must set out the quantity of water available in each water resource plan area during the previous year, the permitted take and actual take from the water resource plan area, details of water allocations and other decisions permitting the taking of water, details of water trades, an assessment of SDL compliance, and, where there has been non-compliance, the actions that the Basin State proposes to take to ensure the SDL is complied with in the future.

³⁹ <https://www.mdba.gov.au/sites/default/files/pubs/sdl-accounting-and-reporting-framework-2022.pdf>

⁴⁰ <https://www.mdba.gov.au/sites/default/files/pubs/memorandum-of-understanding-inspector-general-water-compliance.pdf>

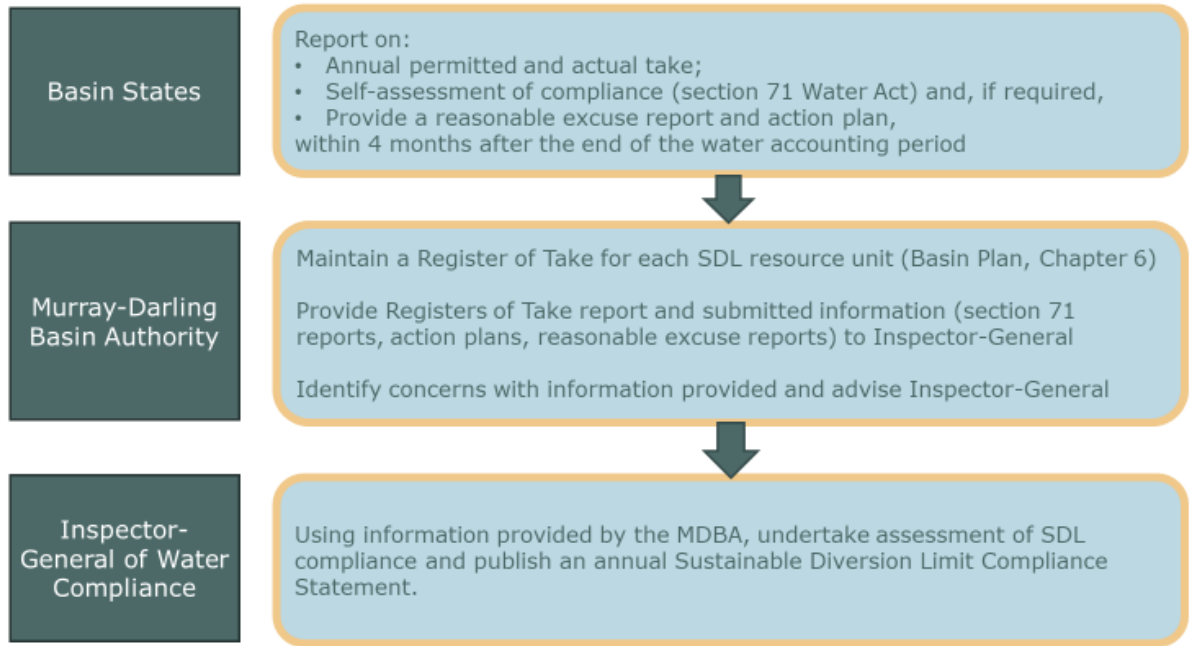


Figure 1 Evidence base – annual roles and responsibilities

3 SDL compliance – evidence base

Given the complexity of implementing SDLs, the Inspector-General will seek multiple lines of evidence in assessing and responding to SDL compliance and SDL non-compliance. This section of the Framework outlines the primary sources of information that the Inspector-General will use to assess SDL compliance, and the expectations regarding that information. Multiple lines of evidence are established in the Water Act and Basin Plan. The Inspector-General may seek additional lines of evidence as required and consistent with the principle of accountability.

The lines of evidence include:

- The Registers of Take.
- Assessment of annual section 71 reports⁴¹ from Basin States.
- The method in the water resource plan for annual permitted take and actual take.
- Water accounting for held environmental water, water trade and water recovery.
- Other compliance assessments being undertaken by the Inspector-General, including audits, investigations and compliance monitoring.
- Audits and reviews relating to water resource plans and Basin Plan implementation.
- Reports made by Basin States under Chapter 13 of the Basin Plan.
- Intergovernmental Agreement reporting, and
- Other information including reasonable excuse documents provided to the Inspector-General or available publicly, if it is specifically relevant to the water accounts and water management forming SDL compliance.

3.1 Registers of Take

Registers of Take are a key data source that will be used to identify if the SDL resource unit is in excess or exceedance, and for observing trends.

Information reported both to and from the Registers of Take must be consistent with obligations placed on the MDBA, Basin States and Basin State agencies under the Water Act and Basin Plan. The Inspector-General expects the Basin States to maintain appropriate quality assurance systems and to take reasonable steps to ensure accuracy of data provided to the MDBA for inclusion on the Registers of Take.

The Inspector-General expects the MDBA to ensure that all Registers of Take are maintained to the highest standard using appropriate models, robust data and estimates that pertain to permitted take and actual take methods in the water resource plan. The Inspector-General expects the MDBA to maintain appropriate quality assurance systems and to take reasonable steps to ensure accuracy of data included on the Registers of Take.

The Inspector-General may request additional matters be recorded in the Registers of Take for the purposes of compliance, where this is not inconsistent with obligations under the Water Act and Basin Plan.

⁴¹ *Water Act 2007* (Commonwealth), Section 71 – Reporting obligations of Basin States

3.2 Claim of reasonable excuse

The concept of 'reasonable excuse' was introduced in the Basin Plan because the SDL compliance threshold may be exceeded as a result of consumptive water take in an SDL resource unit, even though all the rules in the relevant water resource plan have been complied with, or in circumstances that are determined to be beyond the Basin State's control.

In these cases, a Basin State may choose to submit a report claiming a reasonable excuse and setting out the reasons the excess has occurred.

A claim of reasonable excuse should:

- Be reasonable in all the circumstances, taking account of the purpose of the SDLs and their role in implementing the Water Act and Basin Plan
- Be sufficient - that is, it identifies the cause and accounts for the excess
- Be accompanied by an action plan⁴²
- Arise in spite of the exercise of good faith and best endeavours.

Consistent with Basin Plan requirements, a claim for reasonable excuse must include a detailed report clearly explaining the specific reasons for the excess. The Basin State must also provide an action plan to address the excess – further information about action plans is in [section 3.3](#) of this Framework.

The onus is on the Basin State claiming a reasonable excuse to provide appropriate information to demonstrate the reasonable excuse. It is up to the relevant Basin State to appoint a relevant agency to respond on its behalf, but this would normally be the Minister or agency responsible for implementation of water resource management rules and policies.

The Inspector-General will expect a Basin State to engage with the Inspector-General in developing a reasonable excuse report, to ensure it meets the Inspector-General's expectations.

If a Basin State claims a reasonable excuse, the Inspector-General expects the Basin State's report to include the matters detailed in subsections 3.2.1 to 3.2.4.

The Inspector-General will also take account of other lines of evidence that specifically inform the reasons for an excess. This will include the Basin State's compliance assessment in the annual s 71 report and annual report on compliance with water resource plans for Chapter 13 of the Basin Plan⁴³, or other information provided to the Inspector-General that is specifically relevant to SDL compliance.

The Inspector-General will include in the annual SDL Compliance Statement a view on the reasonable excuse claim. Refer to section 4.9 for the review process prior to the publication of the annual SDL Compliance Statement.

⁴² An action plan is not required if the excess is solely due to a shortfall in Commonwealth water recovery that has led to an adjustment of the Register of Take.

⁴³ Schedule 12, item 19 of the Basin Plan

3.2.1 Identify the cause of excess, with sufficient detail

The report should identify the specific cause of the excess with sufficient particularity, including:

- Identifying the root cause or causes of excess, and how that cause(s) has manifested in the specific quantum of excess.
- Apportioning the causes of excess if there is more than one cause.
- Identifying the causal link with the relevant excess sufficient to show that the stated cause is the direct and principal cause of the excess.

3.2.2 Identify the grounds for claim of reasonable excuse

The report should establish the grounds on which the Basin State claims that the cause(s) amount to a *reasonable excuse* for the excess, including:

- Identifying the factual basis that establishes the excuse being claimed.
- Identifying whether a deemed excuse is claimed, and if so, which one (i.e., operation of the water resource plan, or circumstances beyond the Basin State's control, or incomplete Commonwealth water recovery for reasons beyond the Basin State's control).
- Identifying the relevant provisions of the water resource plan that incorporate and apply the SDL within the SDL resource unit and the management of take relating to the SDL volumes.
- Identifying the way that these provisions have been applied over the timeframe relevant to the excess.
- Explaining any actions taken to manage actual take in the period prior to the excess; these should include identifying the processes or guidance the Basin State has applied in determining what action (if any) it should take.
- Explaining the evidence-base used for decisions to act or not act to manage take within the SDL – for example, details of growth in use monitoring and response.

Central to a claim of reasonable excuse is the reasonableness of the Basin State's conduct. This is addressed in the last part of this section.

3.2.3 Deemed excuses

In addition to the above requirements, if a deemed excuse is claimed, the Inspector-General will determine whether the factual basis for the deemed excuse is established.

The Inspector-General expects the Basin State's report to show that:

- The facts provided by the Basin State establish the criteria for the deemed excuse.
- The Basin State's conduct relating to the deemed excuse criteria was reasonable in the circumstances.
- The deemed excuse is the direct and principal cause of the excess (or part of the excess, if a Basin State claims that there are multiple causes of an excess).

Specifically, for each type of deemed excuse, the Inspector-General expects the following:

Deemed excuse – operation of the water resource plan

If the excuse is that the excess arose as the result of the operation of the water resource plan, the Basin State's report needs to establish that the excess has arisen because of the necessary or automatic operation of the water resource plan.

An excess that arises because of the way discretionary powers under the water resource plan have been exercised falls outside of this deemed excuse. That is, if the water resource plan offered a choice of actions and a Basin State chose a course of action that led to the excess, the Inspector-General may not view that excess as being 'the result of the operation of the water resource plan' for the deemed excuse (although this does not prevent a Basin State from establishing that the circumstances are otherwise grounds for a reasonable excuse). Basin States have the right to exercise discretionary powers but will be accountable for the outcomes of these actions to the extent that they result in SDL non-compliance.

The Basin State's report should therefore identify:

- Which provisions of the water resource plan are relevant, and how the operation of these provisions *caused* the excess.
- Whether the water resource plan provided discretion which, if exercised, could have been applied to avoid the excess.
- If such provisions existed, why they were not used, or if they were used, why they were not effective to prevent the excess.

Deemed excuse – circumstances beyond the Basin State's control

If the excuse is that the excess arose as a result of circumstances beyond the Basin State's control, the Basin State's report should:

- Identify the factual basis for the circumstances claimed to be the source of the excess.
- Explain how those circumstances caused the excess.
- Explain how circumstances were beyond the Basin State's control. This will involve describing why no other options, that would have avoided excess, were available.

Deemed excuse – incomplete water recovery by the Commonwealth for reasons beyond the Basin State's control

If the excuse is that there has been incomplete water recovery by the Commonwealth, the Basin State's report should include information establishing that incomplete recovery was beyond the Basin State's control or influence. This will involve describing why no other options, that would have enabled complete recovery, or additional recovery, were within the Basin State's control.

Where this deemed excuse has been claimed, the Inspector-General will seek information from the relevant Commonwealth Department (currently the Department of Climate Change, Energy, the Environment and Water) about the extent of and reasons for incomplete water recovery. The Inspector-General may request the Basin State's report to respond to information received from the Commonwealth Department.

3.2.4 Establishing reasonableness

At the centre of the reasonable excuse provisions is the requirement that the excuse should be a reasonable one. If a Basin State relies on a deemed excuse, then the Basin State's conduct in relation to the circumstances of the deemed excuse should also be reasonable.

The Inspector-General will, in considering the threshold for reasonableness in any circumstances, take account of the purpose of the SDLs and their role in implementing the Water Act and Basin Plan. As noted, the Inspector-General expects a Basin State to engage with the Inspector-General in formulating a claim for reasonable excuse to ensure it meets the Inspector-General's expectations.

The Inspector-General will also take account of the following factors in considering a Basin State's claim of reasonable excuse (including deemed excuse, so far as applicable), which should therefore be addressed in the Basin State's report:

- Whether conduct has been deliberate, knowing or expecting that an excess may result from the conduct, or whether it has been lacking in due diligence (e.g., not considering whether the conduct might result in an excess and applying appropriate precautionary principles and a conservative approach).
- Past conduct – for example, whether there are previous instances of the same problem, or a lack of follow-through with corrective action (e.g., an excess excused on the grounds of inability to accurately identify the cause may not be reasonable in subsequent years as more data becomes available).
- Responsiveness to trends – for example whether any timely action was taken to anticipate, avoid or mitigate an actual or likely excess once a trend in exceedance became apparent.
- Whether an excess has been caused by mistake. Considerations would include whether the mistake was genuine, and made on reasonable grounds; or alternatively, could reasonably have been avoided by the exercise of due diligence.
- In cases of uncertainty, the principles of regulatory best practice, procedural fairness and judgement will be applied where there is a reasonable and ongoing effort to discover the cause of the excess.

3.3 Action plans

In the case of an excess (whether or not a reasonable excuse is claimed), the Water Act and Basin Plan require a Basin State to report to the MDBA and Inspector-General the actions that the Basin State will take to rectify the excess (**action plan**).

The obligation is on the Basin State to propose an action plan that meets the requirements of the Water Act or Basin Plan (whichever is applicable). The Inspector-General may also issue guidelines under the Water Act relating to the performance of obligations under the Water Act and Basin Plan in relation to action plans.

Where there is non-compliance, the Water Act requires an action plan to set out actions proposed to be taken by the Basin State to ensure that the SDL is complied with in future.⁴⁴

Where there is an excess with a reasonable excuse, the Basin Plan requires an action plan to set out the steps to be taken by the Basin State to either reduce the cumulative balance on the Register of Take to zero or less (for surface water) or to reach the point where there is no excess (for groundwater).⁴⁵ Where all or some of an excess in a surface water unit is due to incomplete water recovery by the Commonwealth, the action plan need not address that amount, as the Register of Take will be adjusted by crediting the amount of the shortfall.⁴⁶

The Inspector-General will expect a Basin State to engage with the Inspector-General in developing an action plan to ensure it meets the Inspector-General's expectations.

The Inspector-General expects that the basis of an action plan should be implementation of arrangements provided for in the water resource plan to apply the SDL, including arrangements to account for and manage potential, suspected, or actual growth-in-use and for increases in use by basic rights and interception activities.⁴⁷ Where the excess arises as the result of the operation of the water resource plan, the Inspector-General expects that the Basin State action plan should include either a proposal to amend the water resource plan, or explain why the Basin State considers this is not required.

The MDBA will provide the Inspector-General with any review and assurance reports relating to action plans as soon as reasonably practicable. The Inspector-General may seek modelling and related expertise from MDBA in relation to the appropriateness of the action plan. The Inspector-General will consider the MDBA's assessment as one line of evidence.

The Inspector-General expects action plans to clearly articulate how specific actions are intended to achieve compliance. Action plans will therefore need to identify how the proposed actions directly address the identified cause(s) of excess. Action plans should clearly identify timeframes required for actions to be implemented and reduce the excess to the point of compliance and how the implementation of activities and their contribution towards compliance will be monitored. The action plans should also demonstrate progress in implementing any past commitments from action plans for the specific water resource plan and SDL resource unit(s).

⁴⁴ Water Act s 71

⁴⁵ Basin Plan s 6.12(5) and s 6.12C(5).

⁴⁶ see Note 1 to s 6.12(5). For groundwater, any incomplete recovery is removed from the calculation of 'excess', so similarly, an action plan need not address a shortfall.

⁴⁷ Water resource plans are required to include arrangements that will ensure that actual take will not exceed permitted take, and that as a long-term average, permitted take will not exceed the SDL. Those arrangements must be able to respond to a range of factors, including so-called 'growth-in-use', regardless of the reason for any exceedance. Water Resource Plans are also required to maintain take under basic rights, by runoff dams and by commercial plantations at certain levels unless take by other forms of take is reduced (Basin Plan s 10.13).

The Inspector-General expects action plans, including timeframes for implementation, should be proportionate to the extent and cause of the excess. The Inspector-General expects Basin States would report at least annually on the status of actions in those action plans.

In appropriate circumstances, the Inspector-General may accept an enforceable undertaking that a Basin State agency will prepare and implement an action plan.

The Inspector-General will include in the annual SDL Compliance Statement a view on any claim of reasonable excuse and the associated State action plan. Refer to Section 4.9 for the review process prior to the public report on the annual SDL Compliance Statement.

4 Approach to assessing SDL compliance

4.1 Applying best practice

In assessing SDL compliance, the Inspector-General will apply regulatory best practice. This includes applying an objective approach with appropriate professional scepticism, with a clear and proportionate escalation pathway where appropriate. The approach will focus on ensuring that there are clear expectations, transparency and accountability in regard to the actions for assessing SDL compliance and addressing exceedance and excess.

The Inspector-General will assess SDL compliance, including claims of reasonable excuse and action plans, by applying a best practice regulatory approach, which includes the following:

- **An objective approach with appropriate professional scepticism** to assessment. Professional scepticism involves critical review, a questioning approach and testing the evidence and rationale of a proposal or statement.
- **A risk-based approach**, ensuring the assessment and response is **proportionate** and applies an appropriate escalation pathway, considering the **potential impacts**:
 - of an SDL exceedance or excess to Basin Plan and water resource plan objectives and purposes
 - to the regulatory regime and the risk of ongoing excess.
- **Fair procedures** to ensure that all relevant information is discovered and taken into account; this will include using multiple lines of evidence and ensuring that Basin States have appropriate opportunities throughout the assessment process to respond to potential findings in relation to non-compliance and adequacy of action plans.
- **Judgement and discretion** in the assessment and response.
- **Accountability**, through documenting the evidence base that supports the assessment.
- **Transparency**, through providing public reporting of the assessment outcome through the annual SDL Compliance Statement, and
- **Continuous improvement**, through ongoing monitoring, regular evaluation, review and adaptation.

The Inspector-General will take a proportionate approach to determining the appropriate response to a Basin State's level of compliance based on four assessment categories (

Figure 2).

The lowest level compliance issues will be assessed as level 1, with the most significant non-compliance at level 4 (

Figure 2). Details of assessments and associated responses are summarised in Figure 2 and detailed further in the following sub-sections.

The Inspector-General expects Basin States and Basin State agencies to exercise a modern and proactive best practice approach to their regulatory obligations, including by

taking appropriate action long before action at the higher levels of response would become necessary. As part of this, the Inspector-General expects that the Basin State will engage proactively (for example on water resource plan provisions that were exercised or not, and (for levels 2, 3 and 4) whether a proposed reasonable excuse is acceptable to the Inspector-General).

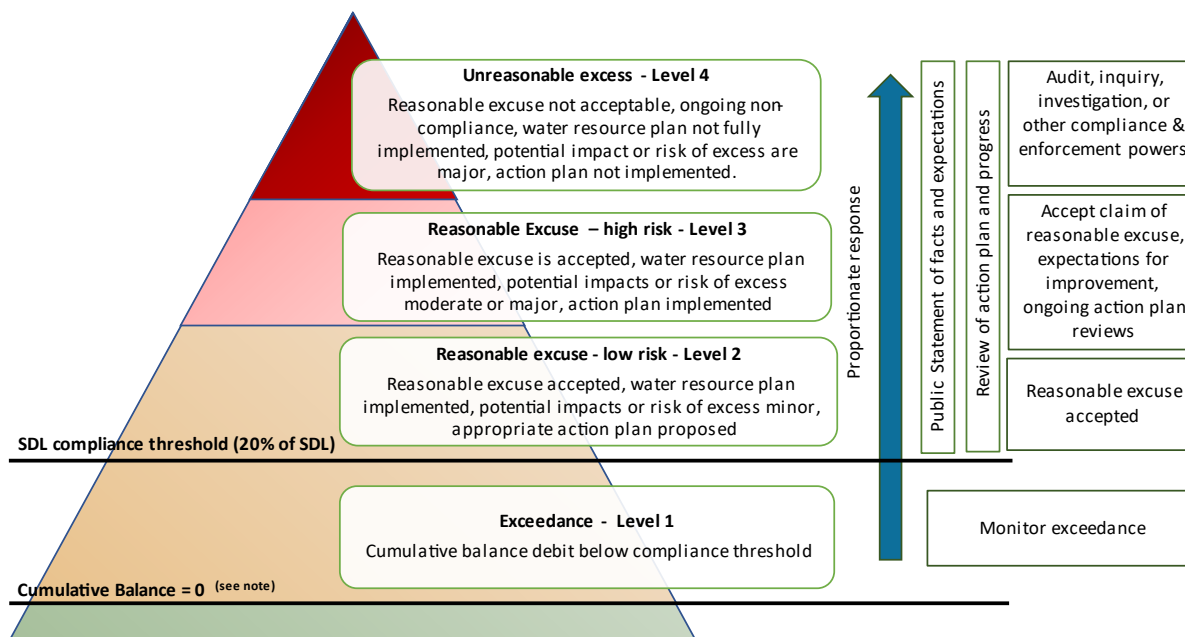


Figure 2 The four compliance assessment levels and the proportionate response approach associated with each level.

(Note: This chart has been developed to show the compliance levels relative to the SDL compliance threshold for a surface water SDL unit. For a groundwater SDL unit this line would represent the cumulative permitted take according to Basin Plan s 6.12C.)

4.2 Level 1

Assessment

At level 1, there is SDL compliance although an exceedance is recorded on the Register of Take. An exceedance occurs where the Register of Take records actual take that exceeds permitted take (cumulatively) but has not reached the SDL compliance threshold (refer section 1.3 in this Framework). Given that there is no excess, a claim of reasonable excuse is not required at this level.

Response

The Inspector-General will monitor exceedances below the SDL compliance threshold.

A proactive warning system

The SDL compliance threshold is reached when the Register of Take for an SDL resource unit records an 'excess' (see glossary in this Framework).

However, the Inspector-General is committed to a proactive approach to SDL compliance. As such, when increasing exceedances below the threshold are identified in a Register of Take, the Inspector-General will engage with the relevant Basin State, for example where there is a persistent exceedance and / or the exceedance is approaching the SDL compliance threshold. The Inspector-General may enter into a compliance capability discussion with the relevant Basin State and seek explanatory information. For

example, the Inspector-General may request a report from a Basin State agency to demonstrate the agency's data integrity assurance for that SDL resource unit or to offer their explanation of exceedance and current management options in addition to the requirements for the annual section 71 report. The Inspector-General may also request explanatory information from the MDBA in relation to the exceedance.

The Inspector-General will communicate expectations in relation to minimising exceedances to avoid further approaching, or triggering, the SDL compliance threshold.

Basin States and relevant Basin State agencies are encouraged to engage in a dialogue with the Inspector-General regarding approaches to reducing recurrent exceedances and/or actions to avoid further approaching, or triggering, the SDL compliance threshold.

4.3 Level 2

Assessment

Level 2 is the first level at which SDL excess (i.e., exceeding the SDL compliance threshold) will have been identified. Assessment at level 2 will involve:

- SDL excess
- A claim of reasonable excuse that is acceptable to the Inspector-General in accordance with the assessment approach outlined in section 3 above
- The water resource plan has been fully implemented
- The potential impacts relating to the excess are minor
- The Basin State has proposed and is implementing an appropriate action plan.

Response

The Inspector-General will review the Basin State's action plan to ensure it meets all expectations identified in section 3 above. The Inspector-General would communicate any expected changes to the Basin State and make a public statement that the Inspector-General is expecting to see results of its implementation. The Inspector-General will monitor the action plan and may undertake a data assurance systems audit.

4.4 Level 3

Assessment

Assessment at level 3 will involve:

- SDL excess
- A claim of reasonable excuse that is acceptable to the Inspector-General in accordance with the assessment approach outlined in section 3 above
- The water resource plan has been fully implemented
- The potential impacts relating to the excess are moderate or major (see section 4.1 and 4.6 for the principles of the approach to assessing potential impacts of excess), and/or
- The Basin State's action plan is adequate to improve compliance, and is being implemented, but there are opportunities to do more, or
- There is ongoing excess and limited evidence of progress on the action plan.

Response

The Inspector-General would review the Basin State's action plan against the expectations in section 3.3, acknowledge the action plan and make a public statement observing the facts, response or lack of response. The Inspector-General would state clear expectations regarding an amended plan of action from the Basin State and signal intent to investigate more deeply if there was no improvement in future years. The Inspector-General may undertake a data assurance systems audit.

4.5 Level 4

Assessment

Assessment at Level 4 will involve:

- SDL excess
- A reasonable excuse claim that is not acceptable to the Inspector-General, in accordance with the assessment approach outlined in section 3 above, or a Basin State has not claimed a reasonable excuse, and/or has self-assessed non-compliance in its s 71 report, and
- Excess has been ongoing over several years, and/or
- The water resource plan is not fully implemented or complied with by the Basin State, and/or
- The potential impacts relating to the excess are major (see section 4.1 and 4.6 for the principles of the approach to assessing potential impacts of excess) and/or
- The Basin State has not proposed or implemented an adequate plan of action.

Response

When non-compliance is identified, this means that the Inspector-General has not accepted the Basin State's claim of reasonable excuse or not accepted the claim of compliance, or that the Basin State has self-assessed as non-compliant in the s 71 report. The Inspector-General will review the Basin State's action plan and make a public statement observing the facts and the response (or lack of response). The Inspector-General may choose to undertake a detailed audit of state data, commence an investigation, or implement other powers and functions available as necessary. Powers of the Inspector-General relevant to SDL compliance are outlined in section 2.3 of this Framework.

4.6 Impact and risk to inform level of response

Figure 3 provides indicative examples of impacts and risks that the Inspector-General will consider to inform the level of response in the escalation framework. This is indicative only as judgement must be applied and the circumstances will differ in each case.

Application of regulatory best practice - escalation pathway Indicative consideration of potential impacts

Potential impact to Basin Plan and water resource plan objectives and outcomes .	Potential impact to regulatory regime and risk of ongoing SDL excess or non-compliance .
<p>Major impacts of SDL excess affect:</p> <ul style="list-style-type: none"> • Exacerbate severe drought impacts • Wetlands of international or national importance • Environmental water availability • Third parties and/or downstream water availability (within or downstream of SDL resource unit) • Water market 	<p>Major impacts of SDL excess affect integrity of regulatory regime through:</p> <ul style="list-style-type: none"> • Chronic ongoing SDL non-compliance • Failure to take action to address SDL non-compliance (no action plan or not implemented) • Lack of genuine good faith effort or previous commitments not implemented, effort not commensurate with impacts, risk • Chronic ongoing WRP non-compliance or failure to implement
<p>Moderate impacts of SDL excess affect (or occur in context of)</p> <ul style="list-style-type: none"> • Exacerbate drought impacts • Wetlands of international or national importance • Environmental water availability • Third parties and/or downstream water availability (within or downstream of SDL resource unit) • Water market 	<p>Moderate impacts of SDL excess affect integrity of regulatory regime through :</p> <ul style="list-style-type: none"> • Ongoing SDL non-compliance • Insufficient progress of action plan to address SDL non compliance • Some evidence of water resource plan non-compliance or failure to implement
<p>Minor impact or low risk of impact</p>	<p>Minor impact or low risk of impact, first excess not preceded by exceedance</p>

Figure 3. Indicative approach to considering impact and risk to inform level of escalation response

4.7 Ongoing compliance monitoring

In addition to annual SDL compliance assessment, the Inspector-General may track data on the implementation of Basin State action plans over time. This information will inform SDL compliance assessment and provide ongoing lessons regarding actions that are appropriate for Basin States' action plans.

4.8 Annual SDL Compliance Statement

The Inspector-General will publish their findings relating to SDL compliance each year as an annual SDL Compliance Statement. (See further information about the annual SDL Compliance Statement in section 5 of this Framework. The data and information used to carry out the assessment and develop the compliance statement is outlined in section 3 (SDL compliance – evidence base).

4.9 Assurance Review and Response

If the Inspector-General makes an assessment at level 4 (non-compliance), the Inspector-General will inform the Basin State concerned and provide an opportunity for the Basin State to respond prior to finalising the annual SDL Compliance Statement.

The Inspector-General may appoint a suitably qualified person/s to review any compliance assessment or may seek advice from an advisory panel (see section 5.5).

The Inspector-General will take into account any response made by a Basin State prior to finalising the annual SDL Compliance Statement.

Where a review has been conducted, the Inspector-General may publish the review advice. Publication may be by including a copy of the advice with the Inspector-General's SDL Compliance Statement.

5 Governance, relationships and transparency

5.1 Governance

The Inspector-General of Water Compliance is an independent statutory body and the key integrity agency for the Water Act. With this role comes a need to be transparent and accountable to the Australian public.

Each year the Inspector-General is required to publish an annual work plan, which sets out the key outcomes and priorities for the Inspector-General for that year, including in relation to SDL compliance.

The Inspector-General will publish the annual SDL Compliance Statement each year to support accountability and transparency.

5.2 Relationships

The Inspector-General has negotiated two Memoranda of Understanding with Commonwealth and Basin State agencies involved in the SDL reporting and compliance assessment process.

The *Memorandum of Understanding – Water Compliance Collaboration in the Murray-Darling Basin*⁴⁸ sets out the working relationship between the Inspector-General and Basin State agencies. It outlines the values and principles that all parties have agreed to. This Framework has been developed consistently with the core principles of this Memorandum of Understanding.

Similarly, the *Memorandum of Understanding – Collaboration Agreement*⁴⁹ between the Inspector-General and the MDBA outlines the values, principles, and ways of working together that each organisation has committed to.

The Inspector-General will conduct respectful and collaborative relationships with the Commonwealth and Basin States, while exercising powers and functions consistent with the Water Act.

The Inspector-General will seek to establish open, two-way communications with the Basin States, and will seek to operate on a “no surprises” basis in ensuring compliance with the SDLs. This includes encouraging the open exchange of information between the parties, and continuously improving compliance management approaches based on learnings gained through the application of this Framework.

5.3 Publication of annual SDL Compliance Statements

The Inspector-General will publish the outcomes of each SDL compliance assessment on its website in a timely manner, as the annual SDL Compliance Statement.

⁴⁸ [Memorandum of Understanding WATER COMPLIANCE COLLABORATION IN THE MURRAY-DARLING BASIN \(igwc.gov.au\)](https://www.igwc.gov.au/~/media/IGWC/2019-2020%20Annual%20Work%20Plan/2019-2020%20Annual%20Work%20Plan.pdf)

⁴⁹ [Memorandum of understanding with the Inspector-General of Water Compliance | Murray-Darling Basin Authority \(mdba.gov.au\)](https://www.mdba.gov.au/~/media/MDBA/2019-2020%20Annual%20Work%20Plan/2019-2020%20Annual%20Work%20Plan.pdf)

5.4 Timing of SDL compliance assessment

The Inspector-General's assessment of SDL compliance will commence following the receipt of the Registers of Take and final section 71 reports from the MDBA.

Where there are few or no compliance issues, the Inspector-General will aim to undertake the assessment and publish the SDL Compliance Statement within two months of receiving the Registers of Take report.

Where there are one or more cases of SDL excess, the Inspector-General will aim to assess compliance within three months of receiving the Register of Take report, reasonable excuse claim and action plan.

The Inspector-General notes that at the time of developing this Framework, not all SDL resource units were on the Registers of Take, due to some water resource plans not yet having commenced operating⁵⁰. There are some uncertainties on the exact time required to assess the full number of SDL resource units and the compliance issues that may arise, when reasonable excuse claims are made. Over time, experience of all parties may contribute to managing these timeframes.

As has been noted, the Inspector-General encourages Basin States to engage proactively with the Inspector-General to clarify expectations of reasonable excuse reports and action plans. It is expected that proactive engagement may help to manage the time taken for the Inspector-General to assess compliance and finalise the SDL Compliance Statement.

5.5 Advisory Panel

The Inspector-General may establish an Advisory Panel under the Water Act to provide advice and assurance on SDL compliance.⁵¹

The role of an advisory panel will not be to make assessment decisions on SDL compliance, but rather to provide current knowledge, critical thinking and analysis to provide the Inspector General with increased confidence in the information available to support and inform their statutory role related to SDL compliance assessment. Such a panel may draw on expertise such as water management, water accountancy, regulatory experience, audit and assurance. More specifically, the role of the panel could include advising the Inspector-General in relation to a review process (see section 4.9 of this Framework).

⁵⁰ Basin Plan Section 6.08 (5)

⁵¹ Water Act Part 9A Division 4

