



Australian Government



Inspector-
General of
Water
Compliance

Submission to the Productivity Commission's inquiry into Basin Plan implementation

High level summary of matters affecting
Basin Plan implementation



Introduction



Historical context creates complexity

The legacy of federation and the Constitution at times creates a siloed, individual lens at jurisdictional level that will continue being problematic when managing water in the Basin on a national scale. Communities will rightly continue to feel confused about the complexity of joint management via both the Murray-Darling Basin Agreement (the Agreement) and the Murray-Darling Basin Plan. Sustainable management of water in the Basin must be set at a national scale in order to achieve balanced outcomes for all parties, and collaborative efforts by jurisdictions and the Commonwealth provide for this through delivering on the Basin Plan.

Establishment of the independent Inspector-General of Water Compliance

Following findings from the Productivity Commission's previous five-yearly review of Basin Plan implementation, the role of Inspector-General of Water Compliance (Inspector-General) was established on 5 August 2021 to provide oversight, compliance, and enforcement functions of the Water Act and Basin Plan. The Inspector-General is an independent integrity agency and regulator with inquiry, audit, and investigative powers and was initially appointed to the role of Interim Inspector-General in December 2020, before being appointed as Inspector-General for a four-year term commencing on 5 August 2021.

The Inspector-General has oversight of the performance of state and Commonwealth agencies operating under the Basin Plan and intends to provide transparency and accountability to Basin Plan matters, to ensure there is public confidence in the management of the Murray-Darling Basin and its water resources.

History of arrangements and legislation governing the Murray Darling Basin



Foreword



The five-yearly review of Basin Plan implementation by the Productivity Commission (PC) is a critical assessment of performance and opportunity for continuous improvement that I strongly support. An intrinsic part of my role as the independent Inspector-General includes my compliance and oversight powers as well as an obligation to “engage with the Australian community in relation to the management of Basin water resources” (215C Water Act 2007 Clth).

In the two years since my appointment to the role of Inspector-General of Water Compliance I am proud to have built a strong evidence base that guides my oversight and compliance roles to ensure the transparent and accountable management across the Basin of Australia’s most precious resource - water. Through multiple submissions I intend to provide evidence to the PC regarding the Basin Plan implementation as it relates to all of my functions.

Within this public submission I have provided a high-level summary which outlines my findings from my two years in the role. While I have identified concerns where elements of Basin Plan implementation are falling behind or lack accountability, I also want to share my confidence in the construct of certain programs and mechanisms, built specifically to uphold the integrity of a large-scale and long-term reform program.

Separately, I have provided further confidential evidence and information to the Commission.

In many instances where I do have concerns, these matters cannot be resolved through one agency or one simple change. These are often legacy issues that are intertwined in decades’ legislative construct and the lessons that arise when implementing significant intergovernmental and multi-jurisdictional reform, such as the Basin Plan. I remain positive that through a collaborative effort at both Commonwealth and State level, all organisations can work towards achieving the outcomes intended by the Basin Plan.

The Hon. Troy Grant

Inspector-General of Water Compliance

Structure of Submission

The Inspector-General undertakes a range of functions that impact water management and the implementation of the Basin Plan in different ways. On one hand, the Inspector-General is a regulator with purpose-built **compliance** powers relating to water take, water trade and water theft. On the other hand, the Inspector-General has a role to **engage** the Australian community in the management of water resources in order to provide a level of public confidence into these matters. Finally, the Inspector-General has **oversight and monitoring** responsibilities, with strong inquiry powers to provide **accountability and transparency** into both Commonwealth and State government management of water resources in the Murray Darling Basin.

Topics addressed in this submission

This submission will provide a high-level public overview of areas of interest and risk relating to Basin Plan implementation, feeding in evidence-based information from the Inspector-General as an independent integrity agency and regulator. This information will at times be accompanied with specific impacts to the role and functionality of the Inspector-General.



Community Sentiment Research – independent baseline of evidence in relation to public perception and the drivers of confidence in the implementation of the Murray Darling Basin Plan.



\$13B in Basin Plan reform funding – what level of public transparency is there in communicating where government funding has been allocated, and how this relates to Basin Plan outcomes.



Water for the Environment Special Account – a special account established to fund the recovery of 450GL of environmental water through efficiency measures and to ease priority river constraints through the constraints measures program



Sustainable Diversion Limit (SDL) compliance – one of the key functions of the Inspector-General is to assess Basin State compliance with sustainable diversion limits of water extraction across the Basin



Sustainable Diversion Limit Adjustment Mechanism – an agreed mechanism designed to deliver environmental outcomes equivalent to 605 gegalitres of water.



Water Resource Plans (WRPs) – an essential part of implementing the Basin Plan, WRPs set out the rules for water management within a specified area.



Basin water markets – Basin wide water trade markets have an annual average value of over \$1.8 billion per year. Water trading has brought substantial benefits to many water users across the Basin, but improvements to water markets are sorely needed.



Metering and measurement Metering is fundamental to trust in water accounting and compliance. Metering standards need to be consistent to make sure water take is metered, accurate and timely.



Basin State Compliance and Enforcement - progress and improvement of Basin State frameworks that govern compliance and enforcement.



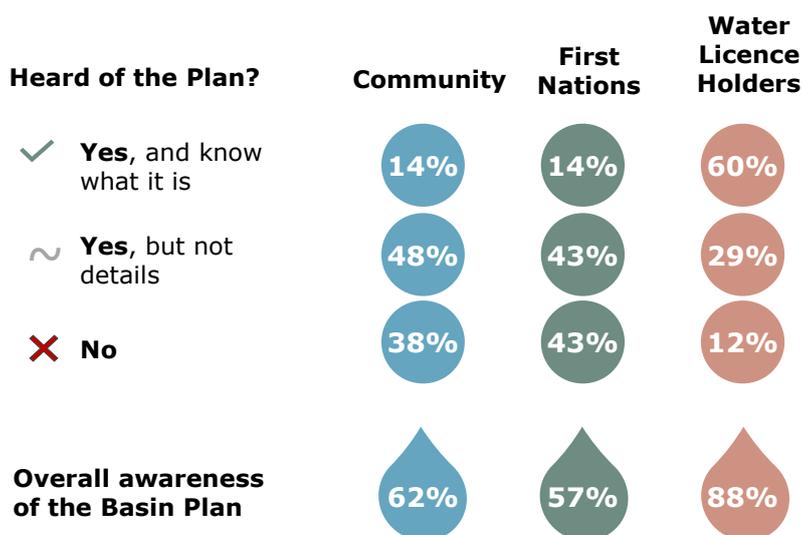
Legislation - Roles, Constraints and Barriers - the multiagency landscape of Basin water management creates system complexity and presents implications for the role of the Inspector-General as an independent integrity agency.

Community Sentiment Research – Basin Plan



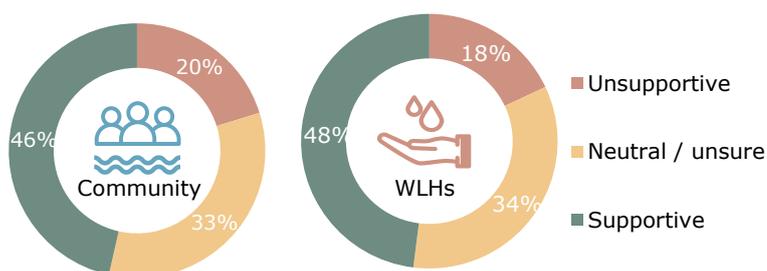
A key element in understanding the importance of water management in the Murray–Darling Basin is ensuring stakeholders know about and understand the Basin Plan. The Inspector-General undertakes an annual community sentiment survey, focussing on awareness and support for the Basin Plan, perceptions towards compliance and enforcement, and understanding of the role of the Inspector-General. While most survey participants were aware of the Basin Plan, they were not aware of the details. Most community member respondents didn't think they were directly affected by the Basin Plan. However, those who were aware of the Basin Plan's details were largely supportive of it.

Awareness of the Basin Plan



Support for the Basin Plan

Among those who were aware of details of the MDB plan: (WLH = Water Licence Holders)



Basin Plan Support

Despite the difficulty in obtaining digestible information as to how the whole water management system works across Australia, the research shows that approximately half of those who were aware of the Basin Plan supported it. Moreover, a third of all people interviewed were unsure or neutral, demonstrating that there is an opportunity to further explain the deliverables and benefits of the Basin Plan.

Community Information Seeking

The research identified a range of sources that informed participants' knowledge in relation to Murray–Darling Basin water management. Most participants reported that they received information from media channels which can be of concern as these channels are more likely to be skewed, with a tendency to prioritise negative stories and content.

Government sources of information were almost a last resort – with a complex federal-state relationship in the water management space resulting in confusion as to where individuals should go to find which agency is responsible.

Even at the federal level alone, there are at least 6 agencies directly involved in water management in the Murray Darling Basin (DCCEEW, CEWH, MDBA, ACCC, BoM, Inspector-General). Similar levels of complexity apply within some states with multiple agencies playing a role in water management.

Ranking of places people go to get their water management information:

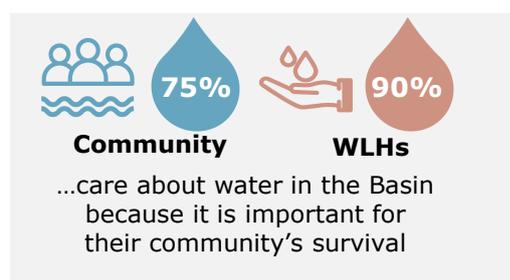
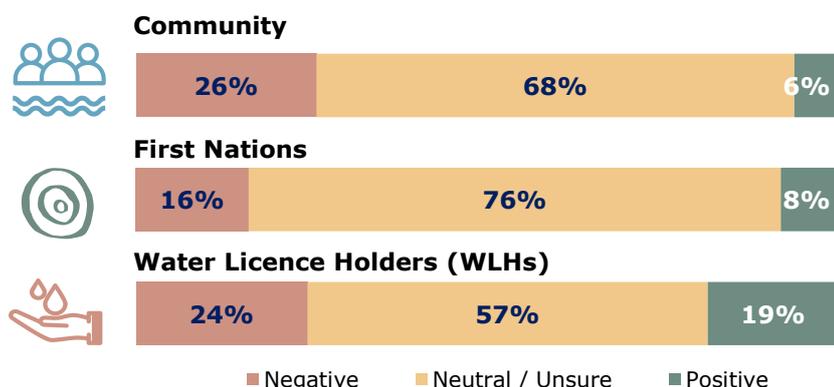
1. Word of mouth
2. On the ground experiences, interaction with waterways
3. News / media
4. Education facilities
5. Workplace or interest groups
6. Government channels

Community Sentiment Research – Water Management

Interestingly, while half of the public and water licence holders support the Basin Plan, a low number of stakeholders felt positive about water management across the Basin.

Top concerns in water management in the Basin were found to relate to the distribution and allocation of water, sustainability of the system for the future, including extreme weather events, and the environment. There were strong emotions associated with compliance, with most community members and water licence holders reporting they get angry with those who do not follow the rules. There was also a perception that people often took more water than they are allowed to.

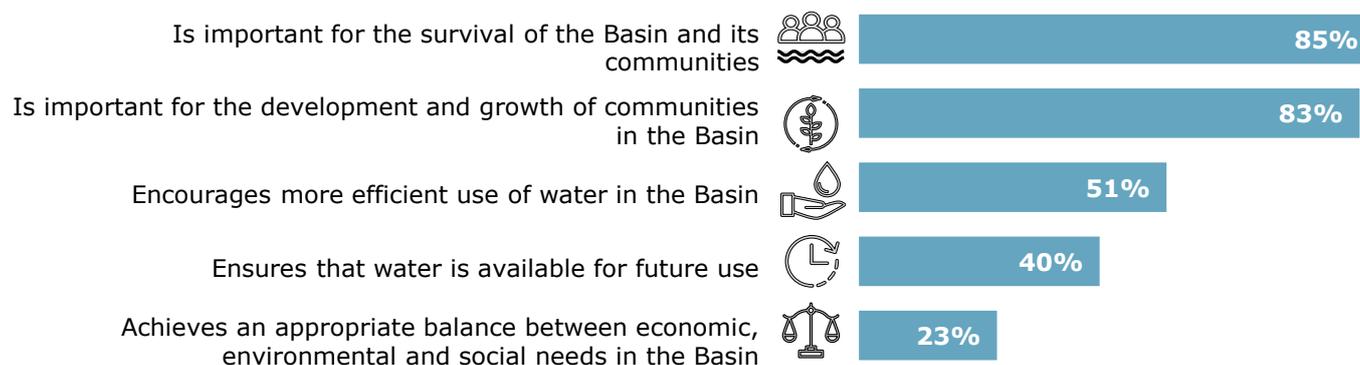
Feelings towards the management of water in the Basin...



Community perceptions of the Basin Plan

(% agree of those who were aware of details of the Plan)

The Basin Plan...



Concerns of mismanagement and political motives in water management

Concerningly, a strong theme throughout the research related to the perception that water management decisions were not transparent, and that political motives or mismanagement were affecting the public perception of water management across the Basin. Furthermore, compliance and enforcement was not top of mind when community members were questioned about their feelings towards water management, but when prompted about compliance they felt strongly about the need for people following the rules. **This demonstrates that compliance and enforcement alone are not strong drivers of confidence in the integrity of water management, and confidence in institutions charged with water management is front of mind.** A full set of findings can be found on the Inspector-General's website at: [Annual Community Sentiment Survey | Inspector General of Water Compliance \(igwc.gov.au\)](https://www.igwc.gov.au)

\$13B Basin Plan funding – Transparency

Together with the disjointed information spread across both federal and state agencies, the inability for individuals to understand or see the positive outcomes relating to water management and the Basin Plan creates an environment for low confidence. In particular, references to the \$13B in funding are a theme of media outlets and those in opposition to the Basin Plan.

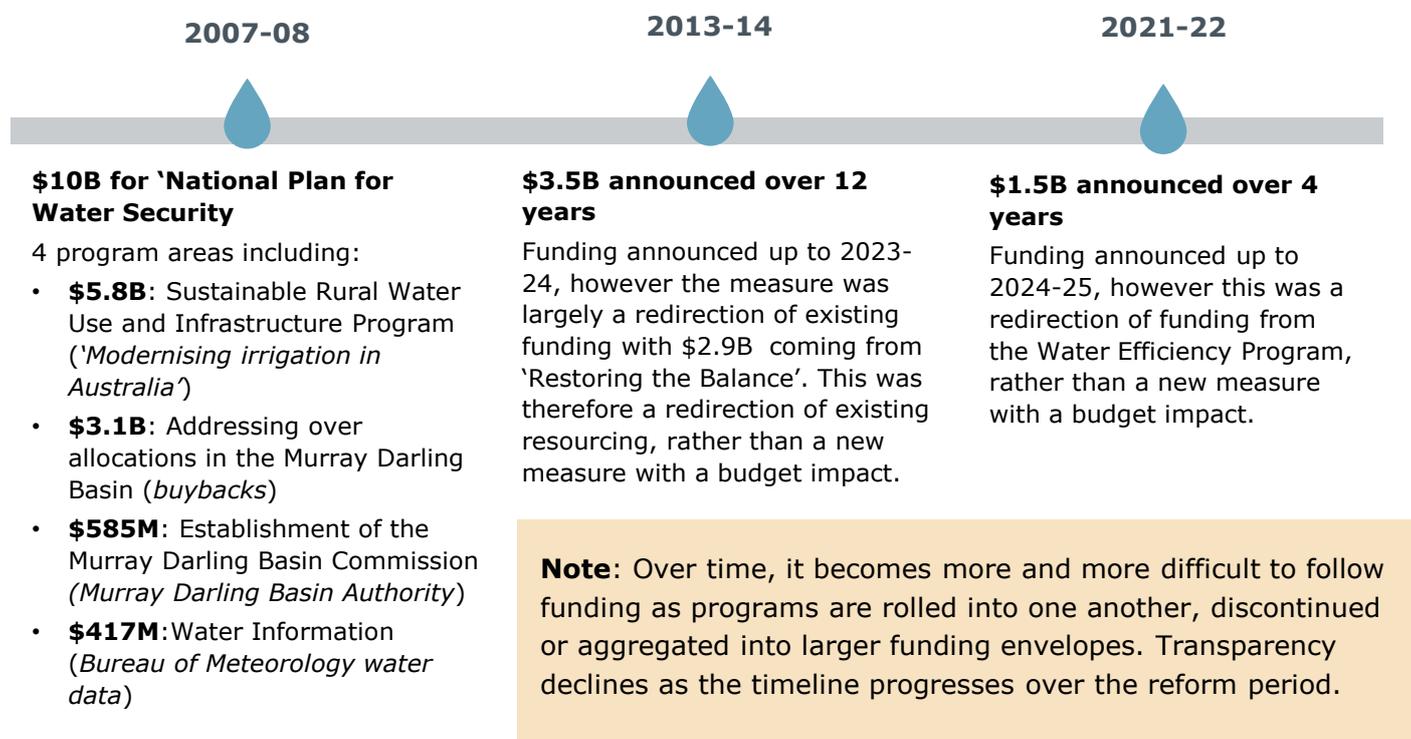
Underpinning the management of Basin water resources is the money spent on, or committed to, achieving Basin Plan outcomes. If the public cannot see for themselves where the money for Basin reform has gone, and what outcomes have been achieved, trust in the management of Basin water resources will erode.

A lack of transparency around funding is not a new issue - the Productivity Commission's (PC) previous *Murray Darling Basin Plan: Five-year assessment* it was determined that where the public cannot see outcomes for spending, a perception of 'wastage' or low confidence in Basin Plan implementation can arise.

The Inspector-General recently undertook a review to gain a better understanding of **what level of detail concerning the \$13B allocated to Murray-Darling Basin reform is available to members of the public**, allowing the Inspector-General to make an informed assessment as to the overall level of public transparency associated with this significant expenditure. The review used **only publicly available information** to ascertain transparency and cohesiveness of the available information. The Inspector-General notes that further information will reside within government agencies. The following information in this submission demonstrates the observations which are drawn from information in the public domain.

When did \$10B provided for Murray Darling Basin reforms, become \$13B?

\$13B is regularly quoted as the total sum of funding provided for Murray Darling Basin reforms. However, publicly available budget papers and other sources do not explain this shift and it would be almost impossible for a member of the public to digest and comprehend the movements and program changes over time.



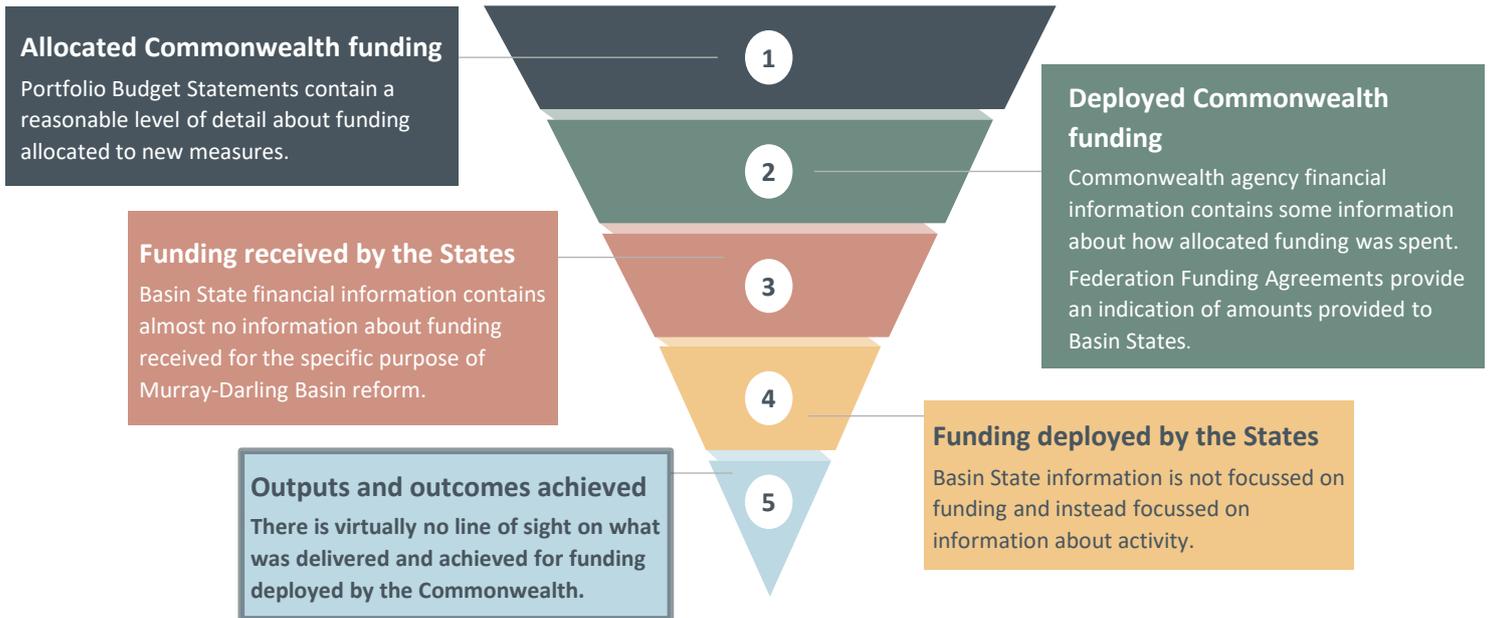
This movement of funding over time **is not uncommon**, nor does it point to any mismanagement, it is simply a result of the construct of long term funding associated with intergovernmental reform. However, this does not mean that the opaque nature of following money to outcomes over a long term doesn't contribute to community concern or lowered confidence in Basin Plan deliverables.

\$13 Billion: Integrity of Basin Plan Funding



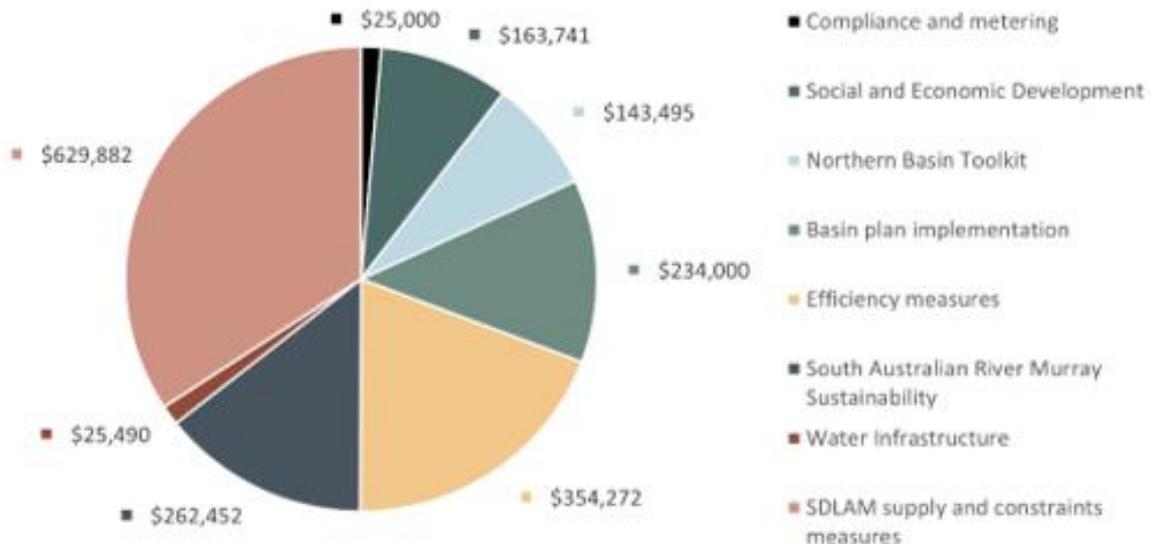
The Commonwealth provides funding to State and Territory governments through the Federal Financial Relations (FFR) system. Under this system, the Commonwealth and jurisdictions agree to outcomes (infrastructure, services, etc) that are best delivered by jurisdictions, whereby the funding is provided by the Commonwealth. The two parties enter into agreements which specify milestones, payments and deliverables.

Intergovernmental Funding Arrangements



The review of publicly available information in relation to Federation Funding Agreements identified **40 agreements** in relation to water and Basin Plan deliverables, with **58 schedules** and **774 milestones** covering **\$1.84B** in payments. From this information, the Inspector-General was able to demonstrate the funding breakdown by Basin Plan element, which would be beneficial to the public when demonstrating deliverables through funding by intergovernmental agreement, and how that relates to Basin Plan outcomes.

Funding breakdown by Basin Plan element - \$000

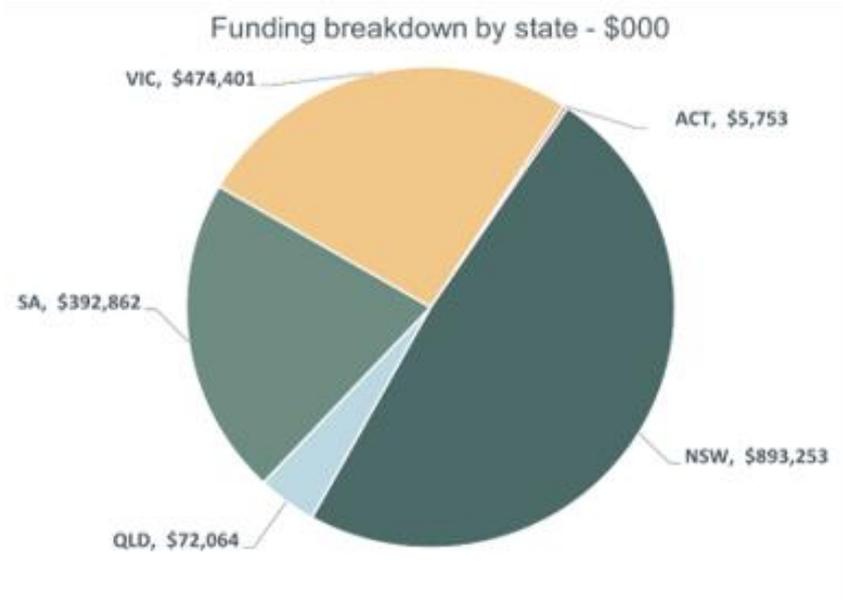


\$13 Billion: Public Accountability



While financial governance arrangements do not require governments to provide a heightened level of information for public accountability, the lack thereof creates a void where individuals are left confused as to how \$13B in government funding translates to 'on ground' outcomes. It is even less clear how these 'on ground' outcomes roll back up into larger targets under Basin Plan deliverables. Even a breakdown of funding, as shown below, would increase the level of accountability at jurisdictional level. In turn, accountability on the finance and program manager, that is the Department responsible for administering the program funding, could also be improved.

Quantitative research methodology



Where a jurisdiction is lagging in terms of Basin Plan implementation (for example, SDLAM, Water Resource Plans), a simple public set of information, demonstrating level of funding received by jurisdiction, together with Basin Plan deliverables, would provide a heightened level of accountability to the public.

The table on the next page highlights overarching observations and issues that arise from these matters.

The following page provides further observations and the issues related to those matters when reporting publicly on large scale, interjurisdictional reform funding.

\$13 Billion: Public Accountability



High level observations and issues

Focus	Observations	Issue
<p>Overarching observations</p>	<p>Lack of transparency in funding flows is not unusual for a multi-agency government reform program running over a decade.</p> <p>The Water for the Environment Special Account provides for heightened transparency and accountability, including 2 independent statutory reviews that produce public reports on spending and effectiveness.</p>	<p>Commonwealth entities are under no obligation to provide a higher level of public reporting transparency on funding. Commonwealth entities are likely to be meeting their obligations in this reporting.</p> <p>When the public cannot see where the money has been spent in an aggregated breakdown, this reduces community confidence and trust in water reform.</p>
<p>Federal Financial Relations – Funding provided to the Basin State governments</p>	<p>There is disconnect between funding agreements and budget documents.</p> <p>Information in the Commonwealth budget documents for Federal Financial Relations arrangements is provided at the program level, making it difficult to align with milestone payments in the funding agreements.</p> <p>Accountability measures for funding provided vary across agreements; more recent funding agreements tend to include greater provision for accountability.</p> <p>It is not possible to follow funding from receipt by the state to expenditure made in connection with funding agreements.</p>	<p>There is limited publicly available information to determine whether payments have been made.</p> <p>Consistent with estimates documents, the final budget outcome information is at the program level. While it can be assumed that payments have been made, on the basis that total amounts are included in whole-of-government financial documents, there is no alignment.</p> <p>Limited information is made available on the assessment of milestones.</p> <p>There is limited connection between the Federation Funding Agreements and state financial information. At most, states provide high-level snapshots.</p>
<p>Program-level information – Granular information availability</p>	<p>Public information focuses on facilitating program delivery rather than demonstrating accountability.</p> <p>The review indicates that information is made publicly available not for accountability purposes but to enable stakeholders to engage with projects and connect with the appropriate people if they want to get involved or believe they are impacted.</p> <p>The level of detail provided is different depending on state and program. Funding information is limited to high-level snapshots of total funding being provided or made available.</p>	<p>The reporting frameworks inform reporting decisions and information that is available.</p> <p>Entities only produce accountability information when there is a legislated requirement or they are directly asked.</p> <p>The level of detail that entities provide depends on the requirements. Without clear guidance, there may be inconsistent information across the Basin.</p> <p>An example of this, related to Basin reform, is the level of information included in the different water entitlement trade registers.</p>

\$13 Billion: Water for the Environment Special Account

The public information review into the \$13B did find evidence of areas with high levels of transparency – namely the Water for the Environment Special Account (WESA). This account was established via an amendment to the Water Act and includes heightened levels of reporting, review and specificity around the circumstances in which the funds can be used.

Water for the Environment Special Account (WESA)

\$1.775B
Over 10 years

\$1.575 billion is available to increase, by 30 June 2024, the volume of the Basin water resources that is available for environmental use by 450 gegalitres. **Accountability** for designing and delivering these programs sits with the Australian Government Department of Climate Change, Energy, the Environment and Water.

\$200 million will help to ease or remove/relax constraints to deliver environmental water. Under this program, **Basin state governments are responsible** for delivering agreed projects in their jurisdiction at a local level, overseen by the Murray–Darling Basin Ministerial Council (Ministerial Council).

Section 86AJ of the *Water Act 2007* provides for two independent reviews of the WESA to be conducted by a panel of at least 3 individuals nominated by the Minister. Among other things, the review must consider the progress of the 450 gegalitres for environmental use and the easing of constraints.

The first review was published in March 2020 and the second review was published in December 2021. Both reviews were completed after their statutory deadline.

This review mechanism allows for an independent assessment of funding which is 'ringfenced' for certain purposes, with the opportunity to call out progress and issues relating to the deliverables intended to be funded by that special account. Findings from the latest report are as follows:



The first review found that neither the 450 GL of water recovery through efficiency measures nor the constraints measures will be delivered by 30 June 2024.

The rate of progress will be such that the amounts allocated to the WESA should be sufficient to cover expected expenditure on the measures up to that date.



The second review found that the constraints measures program will not be delivered by 30 June 2024 and WESA funds should be sufficient to cover expected expenditure.

Additionally, two of the 6 constraints projects could possibly be delivered by 30 June 2024, but it is not possible for the other 4 projects to be implemented by this date.



The second review also found that the 450 GL will not be recovered by 30 June 2024.

Sustainable Diversion Limit (SDL) Compliance

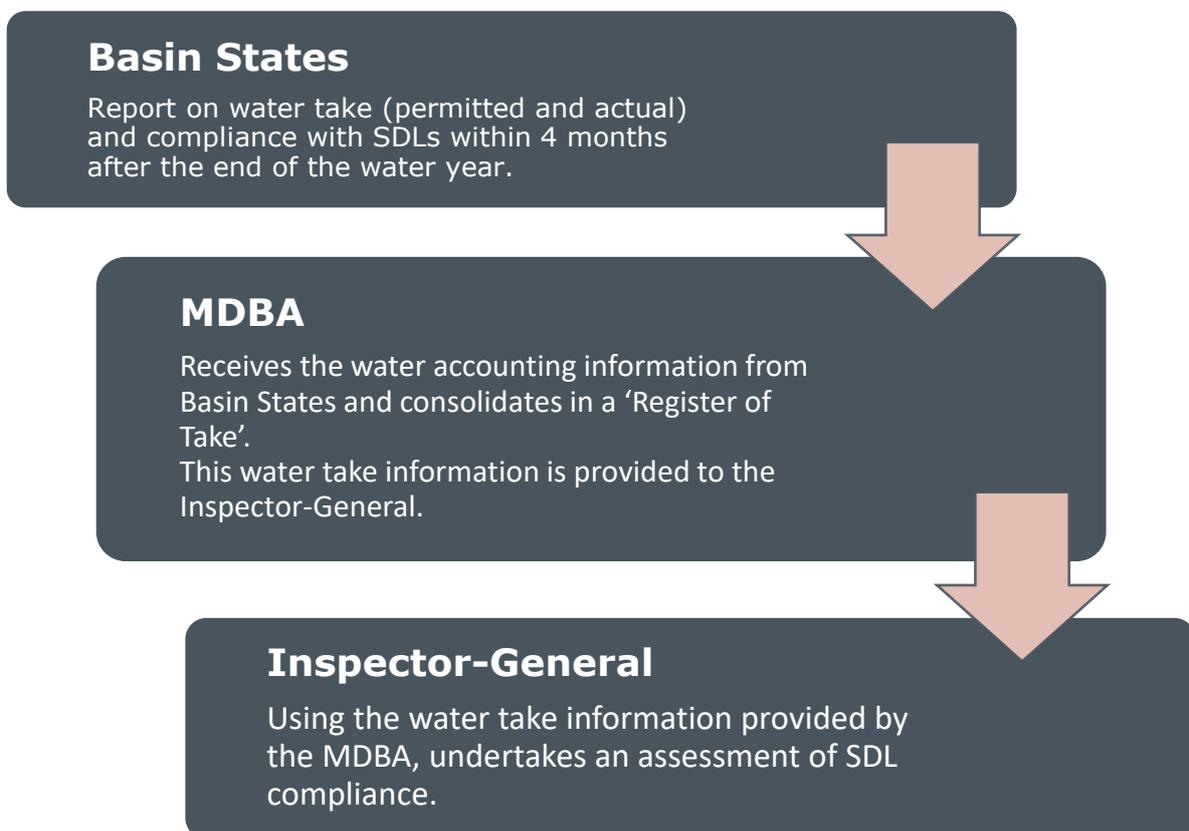


What are sustainable diversion limits (SDLs)?

The Basin Plan sets sustainable diversion limits (SDLs), which limit how much water, on average, can be sustainably taken from the surface and groundwater resources of the Basin for use by towns and communities, industry and farmers.

Who is responsible for assessing compliance with SDLs?

The Inspector-General annually undertakes an assessment of compliance with SDLs. The Basin States and the MDBA also have responsibilities in relation to SDL compliance.



SDL Compliance Framework

The Inspector-General is currently developing a Sustainable Diversion Limit Compliance Framework which will set out the Inspector-General's role and objectives in relation to ensuring compliance with the SDLs. The framework will also articulate the Inspector-General's expectations, requirements and approach regarding performance by Basin States and agencies and the MDBA of their functions relating to SDL compliance.

The framework is expected to be finalised and published later this year.

SDL Compliance Status



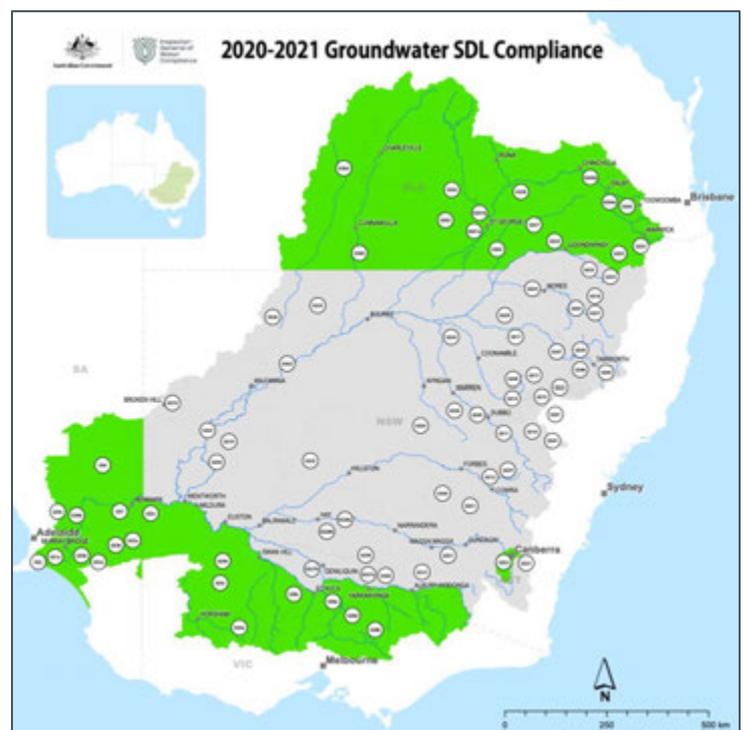
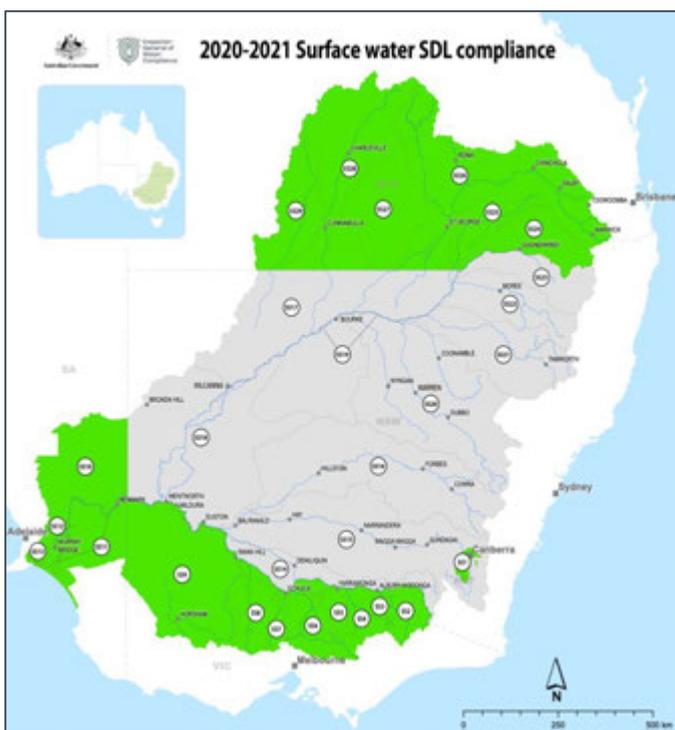
The Inspector-General of Water Compliance is responsible for monitoring Basin State governments' compliance with the sustainable diversion limits (SDLs). SDLs are a key element of the Basin Plan. Under s. 20(b) of the Water Act, the Basin Plan is to provide for 'the establishment and enforcement of environmentally sustainable limits on the quantities of surface water and groundwater that may be taken from Basin water resources'.

In effect, SDLs limit the amount of water that can be taken from rivers and aquifers for towns, industry and farmers.

Under the Basin Plan, SDLs are set for 29 surface water areas and 80 groundwater areas across the Basin (these 109 areas are referred to as the **SDL resource units**). SDLs cover all forms of water take defined in the Basin Plan – including take from watercourses and regulated rivers, groundwater, floodplain harvesting, runoff dams and commercial plantations; and take under basic rights (e.g. for stock and domestic use).

The Water Act requires Basin State governments to provide an annual report to the MDBA on the volumes of water take for each SDL resource unit. The MDBA then performs a limited quality assurance check on the data before passing it on to the Inspector-General. This data is the official **register of take** for the purposes of determining SDL compliance.

Each year, SDL Compliance assessments are published on the Inspector-General's website at: [Reviews and reports | Inspector General of Water Compliance \(igwc.gov.au\)](https://www.igwc.gov.au/reviews-and-reports)



Sustainable Diversion Limit Adjustment Mechanism (SDLAM)

The Basin Plan includes arrangements which allow for the adjustment of surface water SDLs through Sustainable Diversion Limit Adjustment Mechanism (SDLAM).

In 2017, the Australian, NSW, VIC and SA governments put forward 36 **supply and constraints** projects to enact the SDLAM. These projects were assessed by the MDBA who determined that, as a package, they would deliver environmental outcomes equivalent to 605 gigalitres of water - essentially keeping 605 gigalitres of water in the consumptive pool.

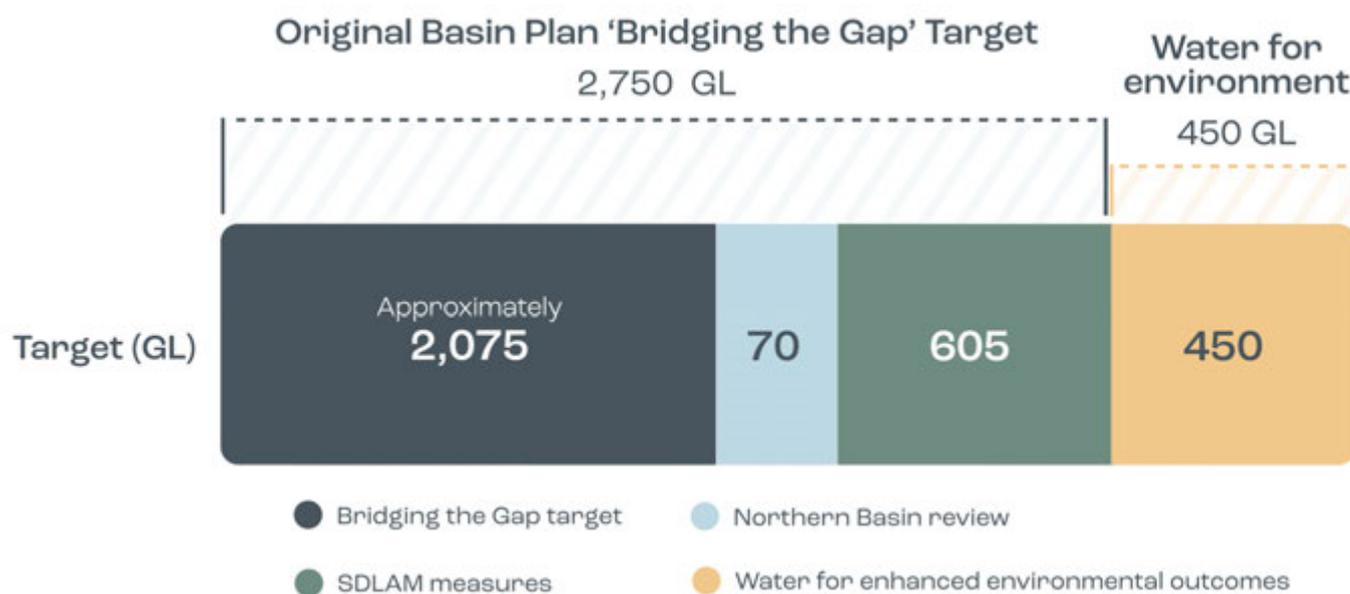


Diagram reference: Department of Climate Change, Energy, the Environment and Water:
How we recover water in the Murray-Darling Basin - DCCEE

In addition to the 450GL 'efficiency measures' and the constraint projects provided for in the WESA, an additional set of projects relating to 'SDLAM measures' in the graphic above is 'supply measures'.

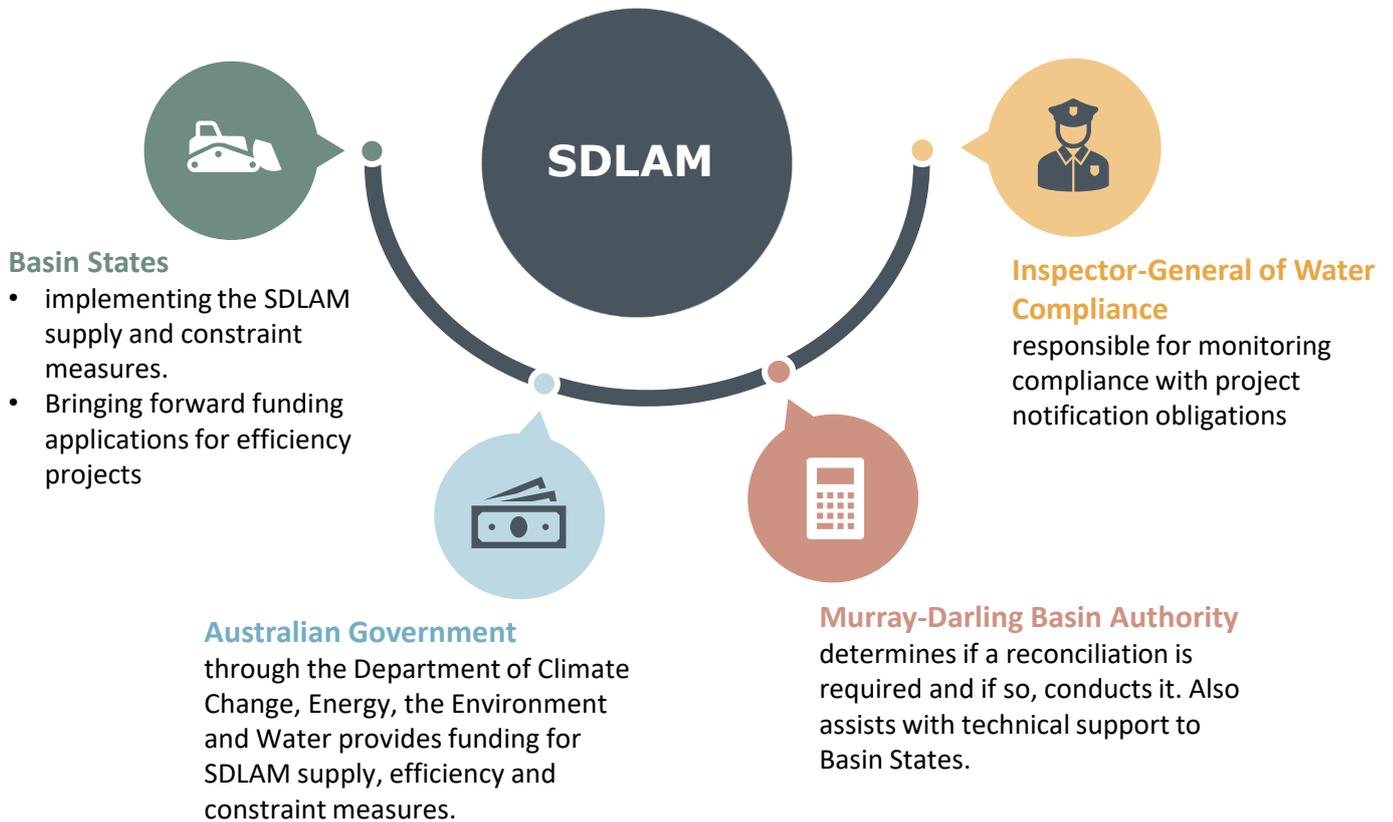
Supply measures can:

- reduce evaporation at water storages
- manage environmental water more efficiently through using infrastructure or changing river operating rules.

Constraints measures are activities that address barriers to delivering environmental water. Some of these have also been notified as supply measures.

SDLAM: Roles and Responsibilities

The responsibility to deliver on SDLAM measures (supply, constraints and efficiency) is multi-layered and covers both Basin States and the Commonwealth. There is also a role to monitor compliance with SDLAM related legislative obligations. The figure below provides a high-level outline of the key roles and responsibilities relating to SDLAM.



Transparency of Supply Project Progress

Each year since 2019 the MDBA conducts an annual assurance review of the progress of the SDLAM projects in preparation for a reconciliation process to be undertaken in 2024 should it consider that the package of measures will produce different environmental outcomes from those determined in 2017. The most recent of these [assurance reports](#) anticipated that the SDLAM projects would only deliver between 290GL and 415GL of the anticipated 605GL.

However, despite project delays being of concern, other than MDBA assurance reporting there is no independent review (similar to WESA) of the multi-jurisdictional approach to delivering on those projects (funding, project progress, delivery).



A similar accountability mechanism such as 86AJ of the *Water Act 2007* would increase the transparency of supply project progress via independent review.



Similar to the way WESA provides for constraints, this would allow transparency from a systems or program point of view where multi-jurisdictional coordination is required.



A built-in review mechanism for supply projects would create whole-of-system transparency in relation to SDLAM.

Water Resource Plans (WRPs)



What is the current status of WRP accreditation?

Water resource plans are an integral part of implementing the Basin plan. They outline how each region of the Basin aims to achieve community, environmental, economic and cultural outcomes and ensure that state water management rules meet the Basin Plan objectives.

Each water resource plan specifies the rules the Basin States will apply to manage water quantity and quality for the consumptive use, the environment and cultural purposes. **They are also used to ensure that SDLs are not exceeded over time.**

Eighteen water resource plans have been accredited and are operational. This total comprises plans for each water resource plan area in Queensland, Victoria, the ACT and South Australia; and 5 of the 20 water resource plan areas of New South Wales (see New South Wales water resource plans). Queensland, Victoria, South Australia and the ACT are operating under accredited water resource plans.

Status of accredited water resource plans can be viewed on the MDBA's [website](#).

Water resource plans incorporate surface water and groundwater resources.

The Basin is divided into 33 water resource plan areas in total: 14 for surface water, 14 for groundwater, and 5 that cover both.

Water Resource Plan development: Basin State governments are responsible for developing water resource plans. They work closely with the MDBA to ensure that their water resource plans meet both the requirements of the Basin Plan and local requirements for water resource management.

Water Resource Plan process: Much of the critical work of water resource planning happens in the development stages when plans are developed in consultation with communities and with assistance from the MDBA. Getting the plans right can take time, as local communities must have confidence that the plans are robust, are high quality and adequately address local needs.

Water Resource Plan accreditation: Basin State governments submit their completed water resource plans to the MDBA for assessment. The MDBA then advises the Australian Government Minister responsible for Water on whether the plans should be accredited.

Of the 33 Water Resource Plans across the Basin, there remain 15 plans that have yet to be formally accredited. All these remaining plans belong to NSW. **The delay and on-going absence of operational NSW WRPs poses a significant risk to the implementation of the Basin Plan, as approximately 50% of the water take occurs in NSW.**

This is because if any SDL resource unit in the Basin cumulatively exceeds its permitted take by 20%, then the Basin Plan outlines the rules around non-compliance and reasonable excuse which can then be enforced. **The lack of accredited WRPs in NSW means there is no legal basis upon which the Inspector-General can assess NSW's compliance with the long-term annual SDLs.**

Water Resource Plans (WRPs)



What impact does the absence of accredited water resource plans have?

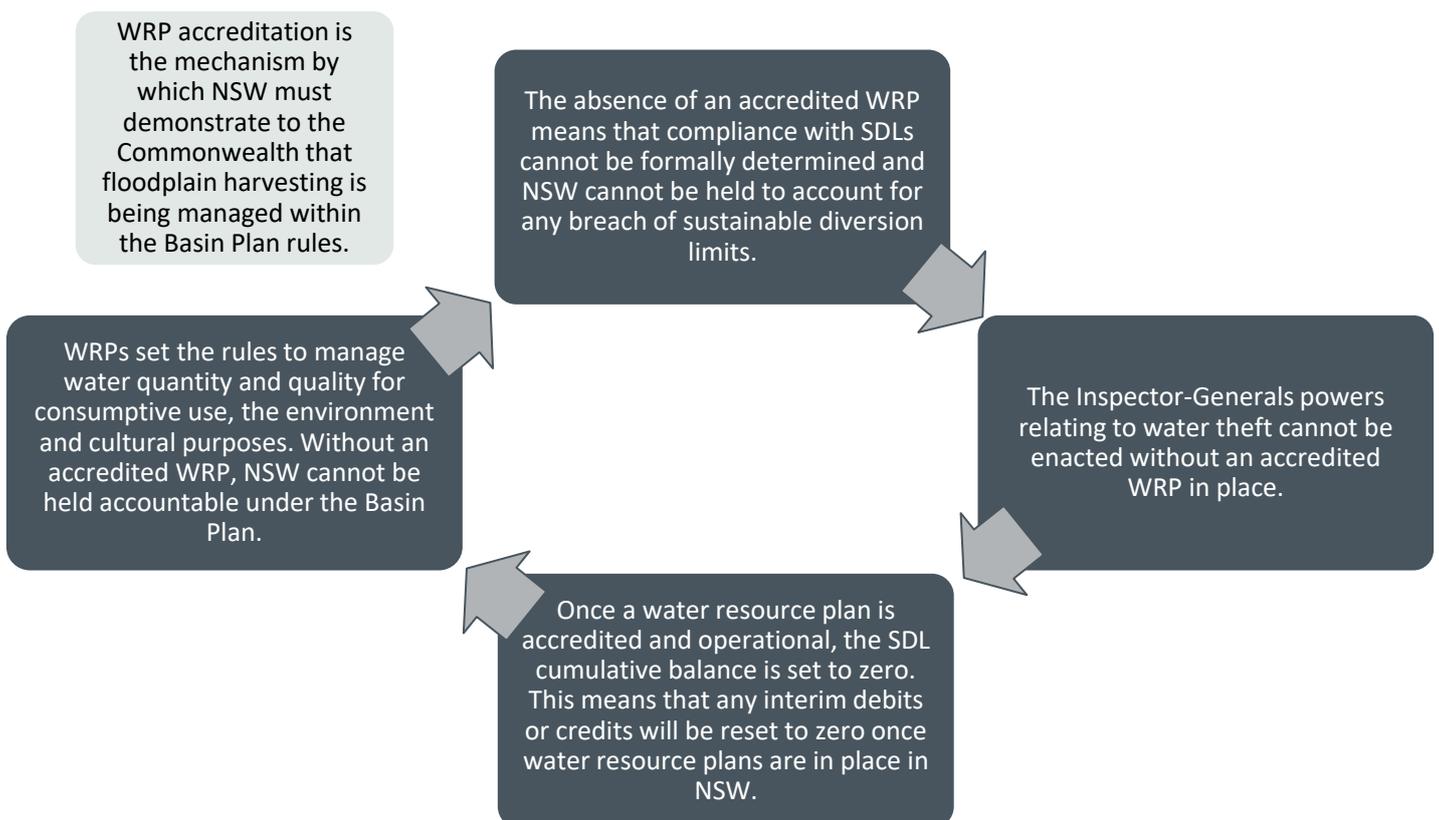
At the MDBA River Reflections Conference in 2022, the Inspector-General of Water Compliance delivered a speech relating to the importance of WRPs and the issues associated with the absence of WRPs in NSW. The following is an excerpt of that speech:

While NSW WRPs remain outstanding, full compliance with the Basin Plan cannot be achieved. I am the enforcement agency, the sole enforcement agency, for WRPs. But I can't enforce the rules in the plans that don't yet exist. WRPs are an essential part of implementing the Basin Plan to achieve that success we're all after. Accredited WRPs are required to enable compliance and enforcement; and those plans also ensure the following:

The limits on how much water can be taken from the system and that those water takes are maintained. That water will be made available to the environment. Consideration for cultural values and uses; and finally, water quality targets are managed.

The single most important compliance matter in the Basin Plan is SDL compliance. It is the foundational cornerstone of the limit on how much can be taken across these valleys where the WRPs are defined and still have a sustainable river.

NSW's level of accountability under the Basin Plan is not equal to that of other Basin states and the territory, each of who have accredited WRPs.



Click the link below to read a transcript of the speech the Inspector-General delivered at the 2022 MDBA River Reflections Conference where he talked about the absence of accredited WRPs and the associated impacts.

<https://www.igwc.gov.au/media-releases/transcript-hon-troy-grant-inspector-general-water-compliance-2022-river-reflections-conference-2-june-2022>

The Inspector-General recently published its first audit of a WRP – the Condamine-Balonne WRP in QLD. This audit did not find any non-compliance, however did make a number of recommendations to improve systems and processes, particularly in relation to the effectiveness of the WRP in achieving its intended outcomes.

To read a snapshot of this audit, click [Lower Balonne Audit Snapshot \(igwc.gov.au\)](#).

Basin Water Markets



As the Basin Plan is a cap-and-trade policy a well-functioning, efficient water market is essential to ensuring its success. The Basin Plan water trading rules is the element of the Basin Plan that supports water users to respond to changes in water availability.

ACCC Water Markets Inquiry

The Australian Competition and Consumer Commissions 2019-2021 water market inquiry demonstrated that significant improvements are needed.

In 2022 the Australian government released its water market reform roadmap that sets out the pathway to implement water market reform.

When implemented, the Inspector-General along with enforcing the Basin Plan water trading rules, will be responsible for compliance and enforcement of new Bureau of Meteorology water market data standards.



What is the role of the Inspector-General?

The Inspector-General is responsible for compliance and enforcement of the Basin Plan water trading rules.

Under the water market reforms, the Inspector-General will largely retain its current roles and responsibilities in relation to the Basin Plan water trading rules, however some elements are planned to be transferred to the ACCC.

Water Trade Audits

The Inspector-General has undertaken two audits of Basin Plan water trading rules obligations. One looking at interstate trade in the Northern Basin, the other of Goulburn–Murray Water's disclosure obligations under the Basin Plan. Both audits observed process and system failures in relation to Basin Plan obligations. These process and system failures will not fall under the umbrella of issues addressed as part of the water market reforms.

More information about both of the audits can be found here: [Reviews and reports | Inspector General of Water Compliance \(igwc.gov.au\)](#)

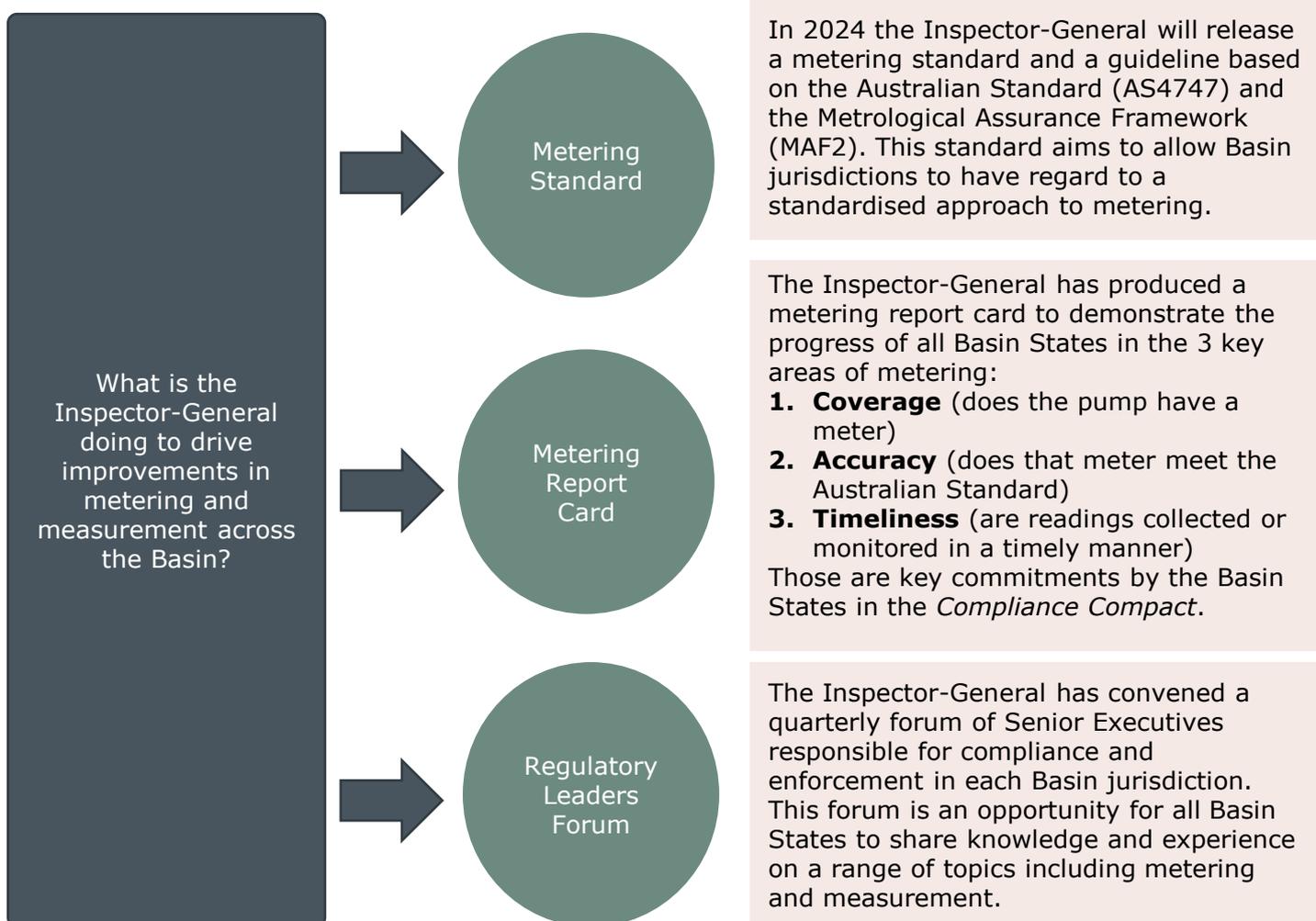
Basin Plan Water Trading Rules

The majority of the Basin Plan water trading rules will remain largely unchanged under the water market reform process. Ongoing compliance, enforcement and review of the Basin Plan water trading rules will be required to ensure they support Basin Plan outcomes.

Metering and measurement

The Inspector-General is delivering on a range of initiatives in order to drive improvements in effective water measurement. Measuring how much water each licence holder actually takes from the Basin is fundamental to water management. Without accurate, consistent measurement at this level, it would be impossible to be confident that water use in the Basin remains under sustainable diversion limits. It would also be impossible to ensure a level playing field across the system.

Water meters are used to measure licence holder water take throughout the Basin. The quality of water metering is therefore a critical factor in the quality of Basin water management. The Inspector-General recognises this by publishing a Murray-Darling Basin Metering and Measurement Report Card each year. In effect, the metering report card assesses the qualitative aspects of metering within each state and territory.



There are a number of agencies with a role in metering and measurement

Whilst Basin State governments have primary responsibility for regulating water take in their respective jurisdictions, including by setting their jurisdiction's metering policies, Commonwealth agencies also have a role to play. While the Inspector-General has the ability to set standards and guidelines in metering and measurement, the Commonwealth Department (DCCEEW) also influences this space by setting policy and providing funding for certain elements where whole-of-Basin uplift may be required (e.g. telemetry). The MDBA are also actively participating in this space through hydrological monitoring projects and the modelling of water take across the Basin.

Metering and measurement - commitments

In 2018 the Compliance Compact was agreed by Basin State governments and the Australian Government. Its aim was to help restore public confidence in Basin water management through annual reporting on key priority areas.

What is the Compliance Compact?

The Compact is a collaborative, joint commitment by the Australian Government and all Basin State Governments. It focuses on five key priority areas:

1. A compliance culture of transparency and accountability in decision-making
2. Effective compliance and enforcement frameworks
3. Metering and measurement of water take
4. Finalising water resource plans
5. Protecting and managing environmental water

As at the end of 2020, 41% of commitments were complete, 33% of commitments were progressing, and the remaining 26% of commitments were either of concern or had insufficient evidence. In 2021 a review of the Compact led by the MDBA was undertaken. It noted that of the five priority areas listed above, metering and measurement of water take remains the most significant theme of outcomes at risk. This review also noted that:

The Compact should evolve from an annual cycle of activity and commitment reporting... to refined performance and outcomes reporting on the Basin's water compliance systems. This will meet community expectations initially and progressively provide more valuable information. Ideally, the performance reporting metrics will be developed collaboratively.

The [Des Pearson review](#) in 2022 reinforced these findings. It found:

... simply reporting activities does not necessarily show how effective the activities are in achieving desired outcomes. There is a need to move the focus from activities and outputs to achieving better compliance outcomes ... At present there is no established Basin-wide set of key indicators that would allow systematic monitoring of how effective compliance and enforcement activities are in achieving outcomes.

In response, the Inspector-General has committed to the following projects to address the findings of these reviews and supersede the annual reporting against Compact commitments:

1. A metering report card to improve the public visibility and accessibility of Basin-wide progress towards meeting the metering and measurement commitments of the Compact; and
2. Annual compliance performance reporting which will improve the visibility, consistency and comparability of water compliance performance reporting.

Floodplain harvesting

Floodplain harvesting (referred to as 'overland flow' in QLD) has been included in the Murray-Darling Basin Agreement's Cap on surface water diversions (the Cap) since 1995 and is included as part of the baseline diversion limits and sustainable diversion limits imposed by the Basin Plan. **Floodplain harvesting has, to date, been accounted for through modelling which carries a level of uncertainty.**

In NSW, licences for floodplain harvesting have been issued in some valleys and entitlement holders are now subject to measurement obligations. Queensland is progressively working towards licensing overland flow in the QMDB, with licences issued for the Lower Balonne sub-catchment and part of the Border Rivers and Moonie WRP area, and measurement reforms are underway.

Basin State Compliance and Enforcement

In 2017, a *Four Corners* report into water management in the Basin raised significant concerns about unauthorised water take in NSW and as a result community confidence in water compliance was severely undermined.

Progress since 2018

The previous PC assessment noted that water take compliance was a significant concern raised in both public forums and inquiry submissions. The subsequent report found that in response to a number of reviews at that time, change was being instigated, and represented a step in the right direction.

Each Basin State faces compliance and enforcement challenges unique to its jurisdiction. NSW, as the state responsible for the largest amount of water take in the Basin and the largest geographical area, has faced the most significant of those challenges. Pleasingly, it is evident to the Inspector-General that significant effort has been made to address compliance and enforcement shortcoming across the Basin, and we are now in a much better position than in 2017/18.

This is not to say however that further improvements in this area cannot be achieved.

There are several commitments made by Basin governments under the Murray-Darling Basin Compliance Compact that are yet to be implemented. It is the intention of the Inspector-General to undertake a stocktake of the implementation of all Compliance Compact commitments in 2025.

The community survey data obtained by the Inspector-General provides a current evidence base relating to community perception of compliance – compliance and enforcement isn't the key driver of a lack of confidence in water management. Other concerns, such as transparency of decision making in relation to water allocations; sustainability; water quality; and perceptions of mismanagement by various Basin governments; are front of mind for those who have concerns about water management. Some of these issues relate to water management under the Murray Darling Basin Agreement, not the Basin Plan.

The 'Des Pearson' review

In 2021, the Inspector-General commissioned a review of Basin state compliance and enforcement frameworks, led by Mr Des Pearson (AO). This review concluded that whilst individual water user compliance was generally well managed across the Basin, there remained a number of areas where improvements could be made.

In response, the Inspector-General has identified a number of action items aimed at addressing the findings of Mr Pearson. Included among these are the establishment of the Regulatory Leaders Forum, the implementation of a metering standard; and the development of a compliance performance reporting dashboard. For more information on the review and associated findings and action items, please visit: [Compliance and enforcement across the Murray–Darling Basin \(Inspector-General.gov.au\)](https://www.inspector-general.gov.au/compliance-and-enforcement-across-the-murray-darling-basin).



WATER'S EDGE PODCAST:
'The Pearson Report'
to hear from Des Pearson
and Inspector-General
Troy Grant scan this
QR code, or go to
<https://apple.co/3Dt9dJX>

Des and Troy are honest and forthcoming with their views about the report and provide an insight into how water can be better managed across the Basin; with a more consistent approach to water terminologies and water accounting.

Legislation – Roles, Constraints and Barriers

Water management in the Basin is inherently complex. It includes a multi-layered legislative framework involving a web of historical inter-jurisdictional and multi-agency governance arrangements, as well as complex science and the social and economic circumstances of Basin communities. The framework includes:

- Water Act 2007
- Intergovernmental agreements
- International agreements
 - MDB Agreement
 - Basin Plan
- Water Resource Plans
- Water regulations
- State law (different in each jurisdiction)



The governance framework reflects this complexity, with institutional arrangements crossing multiple levels of government. The overarching framework is operationalised by a range of Commonwealth agencies, as well as the Murray Darling Basin Ministerial Council (decision making body), underpinned by the Basin Officials Committee that is charged with facilitating cooperation and coordination between the Commonwealth, the Basin states and the Murray–Darling Basin Authority (MDBA) in funding works and managing the Basin water and other natural resources.



It's not surprising that such a complex legislative framework is imperfect, and that lessons from implementation will expose some legislative flaws. The Inspector-General has observed limitations or barriers preventing performance of functions to the standard the community may expect. Other issues stem from lack of clarity, misalignment or duplication in roles. An **example** of this was highlighted in the review conducted by the Inspector-General of Water Compliance titled "Steady as it Flows" as detailed below.

Steady as it Flows

In 2022, the Inspector-General of Water Compliance conducted an assessment into how the Murray-Darling Basin Authority (MDBA) performs its role in running the River Murray system and how the Commonwealth Environmental Water Holder (CEWH) manages its portfolio of water entitlements to improve river health and deliver better environmental outcomes across the Basin. This involved assessing whether each agency worked to specific rules and had appropriate management and decision-making processes in place.

The assessment found that the measurement and modelling of water that underpins the MDBA's river operations function is fit for purpose to deliver the requirements of the Murray-Darling Basin Agreement (the Agreement).

Similarly, the assessment found that the CEWH discharges its functions appropriately in relation to its responsibility to plan and manage water to achieve positive environmental outcomes across the Basin.



Overall, this assessment found the two organisations performing professionally and in accordance with the obligations considered by the assessment.



However, this assessment noted the unresolved conflict that exists between the Basin Plan, with its focus on environmental requirements, and the Agreement, which focuses on water delivery for the southern states and irrigation. This conflict is exemplified by the lack of clear and transparent processes for prioritising needs when there are competing demands for water delivery.



A key overarching theme that goes to the heart of some of the concerns that prompted this assessment relates to the complexity of water management and the legislative and governance framework. This makes communication and engagement difficult and often confusing. Many of the concerns raised by stakeholders are not solely the responsibility of the MDBA or the CEWH. Some lie with other state or federal government agencies or committees, and others are shared responsibilities.

Complex and intertwined legislative powers

While the *Steady as it Flows* report highlighted the complex, multiagency landscape of Basin water management that the legislation must navigate, there are implications for the role of the Inspector-General of Water Compliance as an independent integrity agency.

Legislative Gaps

The Murray Darling Basin Agreement, which stems back to 1914 when New South Wales, South Australia and Victoria came together to make sure water in the River Murray was managed in an agreed way, and to leave South Australia with enough water.

Basin State governments and the Australian Government have all signed the Agreement, and each state contributes funding for managing the River Murray based on its level of water use.

The Agreement has been updated and amended from time to time by the Ministerial Council, ensuring it meets current needs. An example of this is when updates were made to address problems identified during the Millennium Drought. In 2008, the Agreement was incorporated into the Water Act (2007).

Despite the critical role the Agreement plays, it is not within the oversight remit of the Inspector-General of Water Compliance, making holistic oversight across the Basin's legislative and operational framework difficult.

Further to this, of the 40 intergovernmental agreements governing the financial arrangements between the Commonwealth and States in relation to Basin Plan deliverables, the Inspector-General only has oversight of nine.



Role Duplication

In the Productivity Commission's (PC) previous Murray Darling Basin Plan: Five-year assessment, a key point was found to be that: *the MDBA has conflicting roles. It supports Basin Governments (as their agent) to implement the Plan and is also required to ensure compliance with the Plan. These conflicts will intensify in the next five years. The MDBA should be split into two separate institutions — the Murray-Darling Basin Agency and the Basin Plan Regulator.*

This recommendation supported the establishment of the independent Inspector-General of Water Compliance, albeit it embodies a different model than that proposed in the PC's assessment.

Further to this, the PC recommended consolidating the MDBA's compliance, evaluation and review functions into the new regulator in order to allow greater clarity of role and allow the different cultures required to do both roles well to be cultivated.

While this has been achieved to some level, other functions such as SDL accounting remain with the MDBA. Or in some instances, there is a lack of clarity resulting in the risk of duplication of monitoring and oversight activities.



The Inspector-General as an 'integrity agency'

On July 1, the National Anti-Corruption Commission (NACC) commenced operation. The NACC will serve to detect, investigate and report on corrupt conduct in the Australian Government public sector.

In the legislation that enacted the NACC (the *National Anti-Corruption Commission Act 2022*), the Inspector-General of Water Compliance is identified as a Commonwealth integrity agency.

The identification of the Inspector-General of Water Compliance as an integrity agency under the National Anti-Corruption Commission Act 2022 means the Inspector-General has a legislated role in informing and supporting the Commission.

As a Commonwealth integrity agency, the Inspector-General operates within the Australian Government's multi-agency approach to promote integrity, transparency and accountability and to prevent corruption, fraud and misconduct.

This role covers sharing relevant information, referring matters to the Commission, and supporting or jointly conducting investigations into public officials' conduct.

As an integrity agency, the Inspector-General will provide accountability for the decision making and management of Basin water resources under the Water Act. This brings greater purpose to the Inspector-General's role to monitor and oversight Commonwealth agency exercise of powers.



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