

Guidelines for claiming payment under the Commonwealth Water Act



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The information contained in this document is of a general nature only. It should not be relied on as legal or any other form of professional advice. It is recommended that entitlement holders obtain independent advice for their circumstances. This includes advice on whether they may qualify for a payment, need assistance making a claim for a payment, or wish to seek a review of a particular determination made under the framework.

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Introduction

Purpose

These guidelines aim to help water access entitlement holders in the Murray–Darling Basin determine whether they qualify for a payment under the [Water Act 2007](#), and submit a claim. The guidelines detail the relevant qualification criteria for entitlement holders under section 77 of the Water Act.

To qualify, entitlement holders must have experienced a reduction in water allocations or a change in reliability of those allocations as a result of the Basin Plan. There are a number of criteria that must be met to qualify for a payment and the department will generally not assess a claim unless the relevant Water Resource Plan (WRP) is accredited.

Background

The claim for payment process in the Water Act is referred to as the 'risk assignment framework'. Under the framework, water access entitlement holders may qualify for a payment from the Australian Government for a loss in the market value of their entitlement if they meet certain criteria.

The risk assignment framework supports the Australian Government and Basin states to work toward the environmentally sustainable levels of extraction for the Murray–Darling Basin.

Certain entitlement holders may qualify for payments from 1 July 2019, when the Sustainable Diversion Limits (SDLs) in the Basin Plan commenced. The SDLs set the levels of sustainable water extraction across the Basin. State and territory governments set rules about how they will meet SDLs in catchment areas. These rules are contained in WRPs. Where the Commonwealth has not been able to recover all the water needed in areas throughout the Basin, the WRPs may include rules that reduce water allocations or change the reliability of those allocations. The Australian Government bears responsibility to make payments under section 77 of the Water Act for any such reductions to water allocations or changes in reliability of those allocations due to the SDLs.

Section 77 of the Water Act provides that entitlement holders may qualify for a payment if:

- entitlement holders experience a reduction in market value of their entitlement
- the reduction in market value is due to a reduction in or change in reliability of water allocations to meet the SDLs under the Basin Plan 2012.

Relevant state or territory agencies that issue water access entitlements will generally contact entitlement holders if their water allocations have been reduced or if the reliability of water allocation is affected.

1 Qualification criteria

These guidelines detail the key qualification criteria for prospective claimants to consider before making a claim. The full qualification criteria are provided in Subdivision A, Division 4, Part 2 of the Water Act.

Payments can only be made to an entitlement holder if the minister is satisfied that the person qualifies for a payment and determines that a payment should be made to the person under section 77(3) of the Water Act.

Entitlement holders must meet 4 criteria to qualify for a payment. The department will conduct an assessment on all criteria. Before making a claim, entitlement holders should consider whether they meet these criteria:

- 1) The water access entitlement relates to a WRP area.
- 2) There is a reduction in or change in reliability of a water access entitlement holder's water allocations.
- 3) The reduction in or change in reliability occurs because of a reduction in the SDL for the relevant area.
- 4) The water access entitlements held by claimants must also fit in an eligible category (see section 1.4 below).

Entitlement holders need to provide information to support their claim, including a copy of the relevant water access entitlement or an extract from the relevant state or territory register.

1.1 The entitlement relates to a water resource plan area

Water access entitlements within the Murray–Darling Basin will usually meet this criteria. To check whether a water access entitlement relates to a WRP area within the Murray–Darling Basin see the [Murray–Darling Basin WRP areas](#).

A number of WRPs are still being developed by state and territory agencies and provided by the Murray–Darling Basin Authority to the minister for accreditation.

The department will not assess whether a payment can be made until a WRP has been accredited by the minister.

For information about the status of WRP accreditation see [Water resource plans](#).

1.2 Reduction in or change in the reliability of water allocations

To qualify for a payment there must have been:

- a reduction in the water access entitlement's water allocations, or
- a change in the reliability of the water access entitlement's water allocations.

Relevant state or territory agencies will usually contact entitlement holders if water allocations have been reduced or if reliability of water allocations has been affected.

Entitlement holders should include in their application a copy of any correspondence from a state or territory government confirming a reduction in or change in reliability of the water allocations.

State or territory agencies are only likely to make reductions to allocations or change the reliability of allocations for areas where there are remaining water recovery targets. For remaining water recovery targets see [Summary of surface water recoveries](#) and [Groundwater recoveries](#).

Note that the risk assignment framework relates to reductions in the market value of the water access entitlement (not to a particular annual allocation). Accordingly, what is relevant in making your application is whether there is a permanent reduction or change to allocations to the underlying water access entitlement (e.g. a change in the nominal entitlement or nominal allocation) that is associated with a change in SDL and would affect the market value of your entitlement. The annual allocation made for the current water year is not relevant. Different terminology is used for these concepts in different Basin states.

For example, a water access entitlement may have a nominal allocation of 10 ML. A state may have reduced the nominal allocation for that entitlement to 9 ML due to the reduction in the SDL in the relevant area. The reduction of 1 ML is the relevant change in water allocations for the purposes of the risk assignment framework rather than the annual allocation in the current water year. If you are unsure, please contact the state or territory agency that issued your entitlement to confirm whether reductions have been made.

1.3 Reduction or change in reliability of water allocation due to reduction in Sustainable Diversion Limit

The reduction in or change in the reliability of the water allocation must occur because of a reduction in the SDL for the water resources of the WRP area.

Under the Basin Plan, SDLs are calculated for each SDL resource unit in a WRP area. This ensures that the WRP area does not exceed the limits set for sustainable extraction. Entitlement holders can check the [SDL resource unit](#) and boundaries that relate to their water access entitlement.

Entitlement holders can check the relevant [Water resource plan](#)—including any rules relating to section 10.11 of the Basin Plan—to clarify whether water allocations have been reduced for the purpose of meeting the SDL in the Basin Plan. However, this will be assessed by the department and considered by the minister in making a determination under the Water Act.

1.4 Water access entitlement information

The water access entitlements held by claimants must fit into an eligible category as described under the Water Act, so the department will need a copy of the relevant water access entitlement or an extract from the relevant state or territory register. The questions you answer about your entitlements in the 'Claim for a payment form' will help give the department the required information about these categories. More details on eligibility are provided in section 77(1)(b) of the Water Act and relate to characteristics of your water access entitlement, such as the date on which it was issued, granted or authorised.

2 How to make a claim for payment

Before applying

- Read these guidelines to clarify whether you may qualify for a payment.
- Read relevant Commonwealth legislation and policies on the risk assignment framework, including the Part 2 Division 4 Subdivision A of the *Water Act 2007* and sections 6.13 and 6.14 of the [Basin Plan 2012](#).
- Ensure your access entitlement falls within one of the categories set out in section 77(1)(b) of the Water Act.
- Check the [status of WRP accreditation](#). The department will not assess a claim until the relevant WRP is accredited.

To apply

Complete and submit the Claim for payment under the Commonwealth Water Act form. The form also provides the option to appoint an authorised representative to submit a claim. To assist the timely assessment of your claim, include a copy of:

- the relevant water access entitlement
- any correspondence from the relevant state or territory government confirming a reduction in or change in the reliability of the water allocation
- where relevant, written authorisation for the representative to act on behalf of the claimant
- any other relevant supporting evidence.

Privacy

Any information collected by the department in relation to any query or claim received in relation to the risk assignment framework, including any personal information, will be used and disclosed for the purpose outlined in the privacy notice included in the form. Further information about how the department handles privacy can be found in the department's [Privacy Policy](#).

It is important to ensure that all information provided in relation to a claim is true and correct. Under section 137 of the Criminal Code, it is a serious offence for a person to knowingly provide false and misleading information to a Commonwealth entity.

Contact

Completed applications and requests to withdraw applications can be sent to:

Murray–Darling Basin Policy Branch
Department of Agriculture, Water and the Environment
GPO Box 858, Canberra ACT 2601
risk.assignment@agriculture.gov.au

3 Calculating payment amount

The Water Act sets out how the minister must determine the amount that will be paid to an entitlement holder. Section 77(4) provides that the amount of any payment is to be worked out by determining any reduction in market value of an entitlement as a result of a reduction to allocations or a change in reliability of allocations. The minister or his delegate determines this amount through a 2-step process:

- 1) calculating the amount of the reduction in the market value of the water access entitlement that has occurred because of the reduction in or the change in the reliability of water allocations (see section 77(4)(a))
- 2) calculating how much of that reduction in market value is reasonably attributable to the Commonwealth's share of the SDL reduction (see section 77(4)(b)). The Basin Plan provides that the Commonwealth's share is 100%.

Therefore, to calculate any amount to be paid, the minister's decision is based on the extent that the reduction to allocations or change in reliability has directly caused a loss of market value of the entitlement.

To assist the minister's assessment of the amount of any payment for an entitlement holder, the department will compare the market value of the entitlement before the reduction occurred and at the time of the reduction. This will inform the department's recommendation about whether a payment should be made and the amount of any payment. The department may seek external valuation to finalise this assessment before making a recommendation.

If there is no reduction in the market value of the water access entitlement, the minister will determine that no amount is payable. This may be the outcome even if all other qualification requirements appear to have been met.

4 Claim processing

Under the Water Act, the minister makes determinations on claims. In some cases, determinations may be made by a delegate of the minister. The department will assess the information provided in the application form to support the minister to make determinations. If required, the department will contact the entitlement holder for further information to inform a determination.

If the minister is satisfied that the entitlement holder qualifies for a payment, the minister will determine that a payment is to be made and the amount of payment. If the minister is not satisfied that the entitlement holder qualifies for payment, the minister will determine that a payment is not to be made.

You will be given an opportunity to respond to the minister's proposed determination before it is finalised.

After any further information is taken into account, the minister will make a final determination and the entitlement holder will be notified in writing of the determination. If the minister determines that an amount is payable, the department will contact the entitlement holder to organise payment.

Information about the right for review at the Administrative Appeals Tribunal will also be included in the written notice of the minister's determination (see [Determination review process](#)).

Once a claim has been submitted, the department can only provide general advice regarding the progress of claims. The department is unable to provide specific timelines for processing claims and for determinations by the minister. The time taken to progress claims will vary due to complexity and the number of claims.

5 Determination review process

The Water Act provides that a claimant may apply to the Administrative Appeals Tribunal (AAT) for a review of a determination by the minister. A review is available if the entitlement holder has received a payment but thinks the payment is not for the correct amount, or if the minister has determined that no payment should be made (see section 77(7) of the Water Act). The determination notification letter will include information on applying for review at the AAT.

The AAT reviews certain administrative decisions made by the Australian Government. The AAT has the power to affirm, vary or set aside a decision or ask the decision-maker to reconsider.

The time limit for lodging applications for review with the AAT is 28 days after an entitlement holder receives notification of the determination. For more information about applying see [Applying for a review](#).

Glossary

A number of terms used in the guidelines are defined in the Water Act and Basin Plan. The department has made every effort to ensure accuracy; however, where replicated below they have the same meaning as set out in the Water Act. In the event of any inconsistency, the meaning as set out in the Water Act will prevail unless the context specifically indicates otherwise.

Term	Definition
department	Department of Agriculture, Water and the Environment
entitlement holder	A person who holds a water access entitlement under an Australian state or territory law.
minister	The Commonwealth minister with portfolio responsibility for water resources. Under the Water Act, the minister may delegate powers including relating to determinations under section 77 of the Water Act. If the minister delegates these powers, references to the minister in these guidelines may also refer to the delegate.
SDL	The long-term average sustainable diversion limit.
SDL resource unit	SDL resource units identify water resources—or particular parts of the water resources—of a water resource plan area. Defined in section 1.07 of the Basin Plan.
water access entitlement	A perpetual or ongoing entitlement, by or under a law of a state or territory, for exclusive access to a share of the water resources of a water resource plan area.