
NATIONAL PARTNERSHIP AGREEMENT ON WATER FOR THE FUTURE

WESTERN AUSTRALIA

PRELIMINARIES

1. This Implementation Plan is created subject to the provisions of the Intergovernmental Agreement on Federal Financial Relations and National Partnership Agreement on Water for the Future, and should be read in conjunction with those Agreements. The objectives in the National Partnership are to secure water supplies and to assist with climate change adaptation through efficient water use and management of water resources, secure water supplies for towns and cities and help households and businesses use water more efficiently, and adaptation to climate change and an environment of changed water availability.

2. The Parties are committed to implementing the National Framework for Compliance and Enforcement Systems for Water Resource Management (the National Framework) at Schedule 3; and promoting and facilitating the implementation of National Water Initiative (NWI) commitments.

3. The National Framework aims to improve water resource management nationally to ensure:
   (a) rigorous and appropriate application of compliance standards and enforcement strategies;
   (b) regular and consistent public reporting of monitoring and compliance actions;
   (c) raised public awareness of the importance of compliance and enforcement in managing water resources sustainably; and
   (d) an increase in resources to appropriate levels to achieve desired outcomes.

4. The Commonwealth has agreed to provide financial assistance under the Water for the Future National Partnership to assist the implementation the National Framework for Compliance and Enforcement Systems for Water Resource Management.

TERMS OF THIS IMPLEMENTATION PLAN

5. This Implementation Plan will commence as soon as it is agreed between the Commonwealth of Australia, represented by the Minister for Sustainability, Environment, Water, Population and Communities, and Western Australia, represented by the Minister for Water.

6. This Implementation Plan will cease on completion of the project as outlined in the Project Plan (Schedule 1), including the acceptance of final performance reporting and processing of final payments against project milestones specified in this
Implementation Plan. The Project is expected to commence in the 2010-11 financial year, and end in the 2015-16 financial year.

7. This Implementation Plan may be varied by written agreement between the Ministers or their delegates.

8. The Project Plan is a flexible document that may be varied over time to accommodate changes circumstances. However, variations to the Project Plan that directly affect milestones and their achievement (Table), and therefore the implementation of the National Framework, are subject to written agreement between the Ministers or their delegates.

9. Either Party may terminate this Implementation Plan by providing 30 days notice in writing. Where this Implementation Plan is terminated, the Commonwealth’s liability to make payments to Western Australia is limited to payments associated with Project milestones achieved by Western Australia, by the date of effect of termination of this Implementation Plan.

10. The Parties to this Implementation Plan do not intend any of the provisions to be legally enforceable. However, this does not lessen the Parties’ commitment to this Implementation Plan.

PROJECT OBJECTIVES

11. The objectives of this project are to:
   (a) give effect to the National Framework;
   (b) achieve more robust, risk-based, compliance and enforcement systems for water resource management, to prevent and respond to illegal activities that threaten the effectiveness of national efforts to set water use onto a sustainable footing; and
   (c) implement a more consistent approach across states and territories.

ROLES AND RESPONSIBILITIES

Role of the Commonwealth

12. The Commonwealth is responsible for:
   (a) having assessed the Project Plan in accordance with the Project Assessment Guidelines at Schedule 2; and
   (b) reviewing Western Australia’s performance against the project milestones specified in the Project Plan and providing any consequential financial contribution to Western Australia for that performance.

Role of Western Australia

13. Western Australia is responsible for all aspects of project implementation including:
   (a) fully funding the project, after accounting for financial contributions from the Commonwealth and any third party;
   (b) completing the activities in the Project Plan in a timely and professional manner, noting the provisions of clause 8, in accordance with this Implementation Plan and all applicable legislation; and
   (c) meeting all conditions including providing reports in accordance with this Implementation Plan.
(d) using the funding to increase their resourcing to undertake new and additional activities in relation to monitoring and enforcement of compliance, and not as substitute for existing resourcing.

PROJECT MILESTONES and FINANCIAL ARRANGEMENTS

14. The Commonwealth is providing funding to implement the National Framework, subject to agreement to this Implementation Plan and the attached Project Plan (Schedule 1), which has met the Project Assessment Guidelines.

15. The Commonwealth will make a payment upon commencement of the Implementation Plan and Project Plan (see Table 1 below).

16. The Commonwealth will then make two progress payments each year as described in Table 1. Payments to Western Australia are subject to the Commonwealth’s acceptance of Progress Reports that demonstrate that the applicable milestone has been met in accordance with the Project Plan, annual work plan, the Implementation Plan and the Reporting Arrangements.

   (a) December payments are subject to the reporting requirements described at clause 23.

   (b) February payments are subject to the reporting arrangements described at clause 24.

17. A final payment will be made as described in Table 1. The final payment is subject to the Commonwealth’s acceptance of the Final Report that demonstrate that the applicable milestone has been met in accordance with the Project Plan, annual work plan, the Implementation Plan and the Reporting Arrangements described at clause 27.

18. Subject to clause 19, the maximum financial contribution to be provided by the Commonwealth for the project is $6,313,450.00 payable in accordance with the schedule of project milestones set out in Table 1.

19. The parties acknowledge that although Western Australia’s Department of Water will use its best endeavours to secure passage of legislation that meets the National Framework’s requirements, this is not within the control of the Department of Water. As such, any funds withheld by the Commonwealth if this aspect of the National Framework is not achieved will be limited to the financial support for this activity ($60,000).

<table>
<thead>
<tr>
<th>Table 1: Project milestones and associated payments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Project payment milestone</strong></td>
</tr>
<tr>
<td>Establishment costs to implement the project, including for the employment of staff</td>
</tr>
<tr>
<td>Implementation Plan signed by Ministers</td>
</tr>
<tr>
<td>Payment milestone based on reporting of progress to date</td>
</tr>
</tbody>
</table>
20. Any Commonwealth financial contribution payable will be processed by the Commonwealth Treasury and paid to the Western Australian Treasury in accordance with the payment arrangements set out in Schedule D of the Intergovernmental Agreement on Federal Financial Relations.

21. Having regard to the estimated costs of projects specified in the overall Project budget, Western Australia will not be required to pay a refund to the Commonwealth if the actual cost of the Project is less than the agreed estimated cost of the Project except where Project milestones are revised and revisions are agreed to by both parties. Similarly, Western Australia bears all risk should the costs of a Project exceed the estimated costs. The Parties acknowledge that this arrangement provides the maximum incentive for Western Australia to deliver projects cost-effectively and efficiently.

REPORTING ARRANGEMENTS

22. Western Australia agrees to provide the Commonwealth with Progress Reports as described in clauses 23 -28, noting that the provisions of clause 8 above may lead to amendments to those Reports.

23. For the purposes of each December payment, Western Australia will provide a Progress Report to the Commonwealth on or before 15 October\(^1\) each year of the Project which will include the following information:

(a) progress on the Project against activities and milestones;
(b) the completion of any nominated milestones within the reporting period;
(c) the completion of all nominated activities that were due for completion in that period; and

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\(^1\) If the scheduled dates fall on a weekend or public holiday the due date is the next business day after the due date
(d) a forward work plan for the next reporting period which may, for example, include information on activities, staffing and how Commonwealth funding will be allocated to progress towards milestones described in the Project Plan.

24. For the purposes of each February payment, the forward work plan will be accompanied by a covering letter in which Western Australia commits to the Project and the Project Plan for the next reporting period, adopts the forward work plan as described in clause 23(d) and provide advice of any proposed or foreseen changes to the Project Plan that directly affect Milestones or their achievement, and therefore implementation of the National Framework.

25. Each Progress Report will be a stand-alone document that can be used for public information dissemination purposes regarding the progress towards the implementation of the National Framework.

26. Western Australia agrees to provide the Commonwealth, and at least as part of each clause 23 Report, with information about:

   (a) promotional activities undertaken in relation to, and media coverage of, the Project during the last reporting period;
   (b) expected promotional opportunities, during the next reporting period for the Project;
   (c) an evaluation of the Project Plan, including assessing the extent to which the outcomes of the National Framework have been achieved, and explaining why any aspects were not achieved; and
   (d) any other matters, relating to the Implementation Plan, which the Commonwealth and Western Australia agree should be included in the Progress Report.

27. Western Australia agrees to provide the Commonwealth with a Final Report, on or before 15 March 2016, that is a stand-alone document that may be used to describe the conduct, benefits and outcomes of the implementation of the National Framework.

28. Reports will contain the information specified in this plan and any other information reasonably requested by the Commonwealth, limited to the minimum necessary for the effective assessment of performance.

29. The Parties acknowledge that a review of the National Framework is due in 2014-15. Western Australia agrees to assist the Commonwealth with information and data that may support that review.

**PROMOTIONAL ACTIVITY**

30. Western Australia will acknowledge and promote the National Framework as a joint initiative of the Australian and State Governments as appropriate, including but not limited to:

   (a) events and announcements: national, state and local;
   (b) media releases, media activities including newspaper and radio interviews;
   (c) public relations activities including workshops, forums and conferences;
   (d) display materials such as banners, posters and on-ground Project signs;
   (e) publications such as reports, books, case studies, information kits and fact sheets; and
   (f) websites including all regional web home pages.
NOTICES

A Notice relating to the Implementation Plan is to be in writing and dealt with as follows:

a) if given by Western Australia to the Commonwealth:

Assistant Secretary
Water Policy Branch
Water Reform Division
Department of Minister for Sustainability, Environment, Water, Population and Communities
GPO Box 787
Canberra ACT 2600
Telephone: (02) 6274 1904
Facsimile: (02) 6274 2186
Email address: kerry.smith@environment.gov.au

or

b) if given by the Commonwealth to Western Australia:

Manager, Water Licensing
Water Resource Use Division
Department of Water
PO Box K822
Perth WA 6842
Telephone: (08) 6364 6640
Facsimile: (08) 6364 6526
Email: john.connolly@water.wa.gov.au

The Parties have confirmed their commitment to this Implementation Plan.

Signed for and on behalf of the Commonwealth of Australia by

[Signature]
The Honourable Tony Burke, MP Minister for Sustainability, Environment, Water, Population and Communities

2011

Signed for and on behalf of Western Australia by

[Signature]
The Honourable Bill Marmion MLA Minister for Environment; Water

2011
DEPARTMENT OF WATER – WESTERN AUSTRALIA

NATIONAL FRAMEWORK FOR COMPLIANCE AND ENFORCEMENT SYSTEMS IN WATER RESOURCE MANAGEMENT IMPLEMENTATION PLAN

This is both a submission and a project plan. As a submission it made a case for funding from the Commonwealth as part of the implementation of the National Framework for Compliance and Enforcement Systems in Water Resource Management (the National Framework).

As a plan it sets out to illustrate where the State's water resource compliance and enforcement program requires strengthening, associated goals and objectives, how the Department will address these challenges (strategies), the relevant scheduling in each case and estimated cost. It also identifies aspects of Western Australian law or water management policy that will influence how the framework will be implemented in Western Australia.

In part, this Project Plan briefly indicates the current situation in Western Australia with respect to compliance and enforcement as part of the management of the State's water resources.

Summary of Project benefits and duration

This Project will assist Western Australia to improve compliance and enforcement activities in relation to water through implementing the National Framework. This will enable enhanced and more robust compliance and enforcement of water resource management which is essential to:

i. ensure public confidence in water resource management,

ii. increase compliance in high risk catchments which in turn will assist environmental watering to meet its objectives,

iii. reduce the incidence of water theft in high risk catchments to increase available water, and increase confidence in water trade, and

iv. prevent and respond to illegal activities that threaten to diminish the effectiveness of national efforts to set water use on a sustainable footing.

This Project will be implemented over 5 years, commencing in the 2010/11 financial year with the Final Report to be provided by February 2016.

Aim of Project

To implement the National Framework to ensure:

i. rigorous and appropriate application of compliance standards and enforcement strategies,

ii. regular and consistent public reporting of monitoring and compliance action,

iii. raised public awareness of the importance of compliance and enforcement in managing water resources sustainably, and

iv. an increase in resources to appropriate levels to achieve desired outcomes.
Management of the Project

Western Australia agrees to carry out the Project:

i. in accordance with the general conditions of the National Partnership Agreement, Implementation Plan, this project plan and all applicable Laws;

ii. diligently, effectively and to a high professional standard,

iii. in the timeframes specified in the project plan meeting all Objectives, and

iv. to meet the milestones specified in Schedule 1, which are based on the National Framework (Appendix 1) and linked back to reforms identified in the National Water Initiative (NWI), including but not limited to, clauses 57(i)(c) and 89(i) of the NWI.

Clause 57(i)(c) requires jurisdictions to implement a ‘robust compliance monitoring regime’. Clause 89(i) requires jurisdictions to develop and apply ‘national guidelines…covering the application, scale, detail and frequency for open reporting addressing metered water use and associated compliance and enforcement actions’.

Western Australia agrees to provide suitable project management capability

i. The project will be managed and supervised by the Manager, Water Licensing, Water Licensing Branch, Department of Water. The current Manager (John Connolly) has been in the position since 2009 and has been with the Department for over 25 years. He has successfully managed various programs with this Department.

ii. Day-to-day implementation of the project will be the responsibility of the Compliance Coordinator appointed for the purposes of this Project.

iii. An organisation chart for the Department of Water illustrating the structural location of the Water Licensing Branch is attached.

iv. A comprehensive project management plan will be developed at the beginning of the project and will include an appropriate project governance structure for a project of this nature and scale. Governance will incorporate an internal project steering committee, including the Manager of Water Licensing, the Compliance Coordinator and other appropriate members.

v. Existing departmental project and financial management systems will be used to manage, monitor and review project delivery and provide financial oversight.

vi. The project management plan will include a comprehensive risk assessment and risk management and mitigation strategy.

vii. Staff selection will be through the current Department of Water staff selection process, including merit-based selection. In the event of staff changes, other suitably qualified persons will be employed, and the Commonwealth notified.

TAXES, DUTIES AND GOVERNMENT CHARGES

Western Australia is responsible for the payment of all taxes, duties and government charges imposed or levied in Australia or overseas in connection with any activities undertaken in relation to the Implementation Plan.

INDEMNITY
i. Western Australia agrees to indemnify the Commonwealth (and keep the Commonwealth indemnified) against any actions of the Western Australian Government under this agreement that result in:

   a. cost or liability Western Australia incurs, over and above funding provided by the Commonwealth under the terms of this agreement,
   b. loss of or damage to Commonwealth property, or
   c. loss or expense Western Australia incurs in dealing with any claim against the Commonwealth, including legal costs and expenses on a solicitor/own client basis.

ii. There will be no allocation of responsibility to the Commonwealth for any existing legal contracts, except where explicitly agreed in writing by the Commonwealth.

MILESTONE 1 - Implement Consistent Water Offences and Penalties and Common Evidentiary Aids

Objective: That water legislation in Western Australia contains appropriate penalties to deter non-compliance, relevant offences and evidentiary provisions to enable enforcement action to be taken and meets the requirements of the National Framework.

Current legislative framework

Western Australia’s compliance regime for water resource management comprises statutory and non-statutory elements, the statutory element is predominately contained within the following statutes:

- Rights in Water and Irrigation Act 1914
- Metropolitan Water Supply Sewerage and Drainage Act 1909 –
- Country Areas Water Supply Act 1947
- Land Drainage Act 1925
- Waterways Conservation Act 1976

This legislation deals with compliance and enforcement provisions relating to the licensing of the taking and use of water from surface water and underground water in proclaimed areas, construction of bores, controlling water supplies and catchments in the Perth Metropolitan area, cost recovery powers for land drainage in rural areas, clearing in saline areas and other rural catchment protection controls, and estuarine area activity controls. As well as these offence provisions there are various offence provisions arising mainly from works powers being exercised by water services licensees or public authorities that have a bearing on water quality in the environment including the:

- Water Agencies (Powers) Act 1984
- Water Services Licensing Act 1995
- Metropolitan Water Authority Act 1982

As far as statute law is concerned relevant offences for serious environmental harm or breaching Ministerial conditions controlling water in a proposal assessed by the EPA are found in the Environmental Protection Act 1986. Civil (or common law) actions can also provide remedies for environmental degradation, including restoration of the environment.
This is a complex legal field, requiring expertise in the State’s environmental laws. Several other statutes control the investigation of offences, the defences available to offenders and a sentencing multiplier, of five times the maximum penalty, for corporate offenders. Judicial interpretation of these statutes and Western Australia’s common law are important and relevant in considering the water resource management legislative framework, and its consistency with the National Framework.

The existing law is becoming outdated and inconsistent due to its age and the accumulation of amendments. The State government is committed to water resources legislation reform to achieve the objectives of the National Water Initiative and to provide the enforcement options consistent with sound, contemporary water resources management.

**Offences and defences**

Most of the offence provisions contemplated in the National Framework are already provided for in Western Australia’s water resource management legislation and are also proposed under the Water Resource Management Bill. For example there is a modified penalty regime with infringement notices for common quasi-regulatory offences that avoids court processes. Some additional offences had been identified in the drafting instructions for the new legislation, the Water Resource Management Bill. In some cases, the Water Resource Management Bill will provide for regulation making powers that will specify the minor and ancillary matters, breach of which will result in an offence.

A particularly difficult issue is determining how the National Framework’s objective for providing offences with reduced mental elements, or limiting defences available, can be pursued within Western Australia’s criminal law. The Framework discussed examples, such as negligence or recklessness, and also identifies the due diligence defence. Sections 74 and 74A of the Environmental Protection Act 1986 (EP Act) provides a model of due diligence defences that amended the usual ‘accident’ defence and were drawn from New South Wales law. While the policy intention was to make it easier to obtain a conviction, the relationship to defences in other Acts was not made clear and following the first test case, it was concluded that the EP Act model is problematic. Clearly alternative approaches should be considered. A number of approaches are already under active consideration.

**Penalties and evidentiary aids**

Western Australia’s legislative framework provides many of the penalties and evidentiary aids identified by the National Framework, particularly in relation to metering.

Action through the civil courts is available to affected water users to protect legal rights. These are largely in the form of tort actions or a statutory equivalent. There is no precedent of civil enforcement regime under Western Australian law. The current options for civil court actions are proposed to be retained and/or expanded in any legislative reform proposed by the Department.

1.1 **Identify further provisions for inclusion in Water Resource Management Bill**

**Context**

The National Framework identifies a broad range of legislative options to assist in compliance and enforcement activity. It reflects the variety of approaches that have developed across the different jurisdictions over time. Each of these approaches would prove useful in the appropriate context.

Experience in Western Australia, and internationally, demonstrates that the legislative provisions are useful and effective to deter offenders only as far as they can be effectively
implemented. Regulatory theory suggests that, while a suite of options is important, it is better to have a smaller range of options that are understood and adequately resourced for implementation, than to have a large variety of options that involve large training budgets and police powers where resources to obtain appropriately qualified staff are not available. All the options must support the strategic enforcement goals otherwise this will detract from overall effectiveness.

While an initial review of Western Australia’s legislative framework indicates that many of the National Framework requirements are addressed, further provisions from the National Framework are being considered. These processes are outlined below.

### 1.1.1 Offences and defences

1.1.1 (a) The Department of Water will review the offence provisions proposed in the Water Resource Management Bill and prepare any drafting instructions required to address the consistent offence provisions of the National Framework.

1.1.1 (b) The Department of Water will examine options to amend the mens rea (or criminal intent) element of appropriate water resource management offences so that a lesser standard of proof must be met by the prosecution. This would address the concept of no fault liability in the National Framework. Western Australia’s preliminary assessment of this issue indicates that a more thorough approach than only removing the need to prove fault is desirable (see discussion under “Current situation – Offences and defences”). Interactions with defences under the Criminal Code will be considered to best achieve the National Framework’s outcomes in the Western Australian context (reducing the need to prove intention, recklessness etc. in certain offences).

The Department of Water intends to consult with the Department of the Attorney General, the Chief Magistrate, the State Solicitor’s Office and the Office of the Director of Public Prosecutions to investigate several options including whether some of the defences made available under the Criminal Code can be superseded (as this must be expressly done) for certain offences under the Water Resource Management Bill and to ensure that any expansion of sentencing options are understood and supported. Where such a change is necessary to meet the objectives of the National Framework, the Department will use its best endeavours to obtain agreement to this course of action.

If the Department of the Attorney General can agree with improvements that would signify such a marked change to Western Australia’s legal framework, for certain offences the Department will also need to consider and advance the public policy arguments regarding which defences should be removed. For example, there are strong arguments that abolishing the normal defences of honest mistake or accident, without providing an express provision that steps taken to respond to hazards before the offence occurred may be taken into account to support a complete defence to the charge, may be ultimately counterproductive as people may not take the necessary precautions if they are likely to be convicted regardless.

Because of the nature of this work, the Department of Water expects to require specialist (criminal procedural and criminal policy) legal advice while developing this proposal. The anticipated funds are identified in the budget.

### 1.1.2 Evidentiary aids

The Department of Water will review the evidentiary presumptions and evidence gathering aids and provisions proposed in the Water Resource Management Bill and prepare any drafting instructions required to address any gaps in meeting the requirements of the National Framework. Depending on the timing of the Water Resource Management Bill, further provisions may be considered if the review is completed in time to feed into the development of the Bill. Otherwise the review will identify further options that should be considered as parts of the Act review process when the Water Resource Management Bill becomes law.
1.1.3 Penalties

1.1.3 (a) Drafting instructions for the Water Resource Management Bill will be developed to include a suite of penalties appropriate for Western Australia.

1.1.3 (b) Instructions for the maximum level of penalties have not yet been prepared for the Water Resource Management Bill, making the National Framework timely. In developing these instructions, the Department of Water will evaluate the proposed maximum penalty for each offence under the Water Resource Management Bill, taking close account of:

- the adequacy of the maximum penalties
- the highest levels of penalties currently imposed by water resource legislation in other jurisdictions
- the penalty levels that apply in other offences in Western Australia, particularly those imposed under natural resource management legislation
- the requirements of the National Framework.

1.1.3 (c) While civil enforcement options such as the use of a statement of claims, or enforceable undertakings in Magistrates Courts are without precedent in Western Australian law, the Department will review the options provided for in the Framework, liaise with other jurisdictions and consider further options that would be of value.

The Department of Water intends to consult with other agencies as mentioned above (at 1.1.1(b)) and the Chief Magistrate in that regard.

As with investigating modification of defences under the Criminal Code, further legal advice will be required and discussions with the relevant agencies will be sought.

1.2 Process for implementation

Drafting instructions will be prepared with consultation as described in the preceding section.

The Department will undertake any required regulatory impact assessments on legislative proposals that would be included in the Water Resource Management Bill, for introduction to Parliament. The Department of Water will engage with the Department of Treasury and Finance to determine whether the proposed provisions are of a magnitude necessary to require regulatory impact assessment in their own right, or whether they fall under the assessment of the Water Resource Management Bill. The social and economic analysis is important in the regulatory impact assessment to ensure that the most beneficial proposal is chosen. The Department of water will also consider the implications of other relevant legislation during this process.

Performance indicators

The completion of a Green Bill released for the Water Resource Management Bill which will include those parts of the Bill that are consistent with the Framework.

Introduction of the Water Resource Management Bill to Parliament. The Explanatory Statement will indicate what options were considered and reasons for taking up those provisions that are consistent with the Framework.

WA has used its best endeavours to introduce and pass legislation that meets the National Framework requirements.

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3 A Green Bill is draft legislation formally released by the Government for consultation.
4 This is subject to Ministerial approval in the context that the WA Premier signed off on the National Framework.
MILESTONE 2 - Categorise Water Resources According to Risk Categories

Western Australia’s resource classification categories

Over the last two decades, Western Australia has developed a simple and effective system to classify water resources based on risk associated with the level of use. This four tier system is used to report on resource status, and to guide the level of management response. The categories are now widely understood by decision makers in the state, and are outlined in the table below.

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>National Framework equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1 LOW</td>
<td>relatively low use, &lt; 30% of allocation limit used for individual resource unit</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>low risk to environment and water users, or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>low consequences of current and short-medium term use</td>
<td></td>
</tr>
<tr>
<td>C2 MODERATE</td>
<td>moderate use, 30% to &lt; 70% of allocation limit used for individual resource unit</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>moderate risk to environment and water users, or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>moderate consequences if use changes, or</td>
<td></td>
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<tr>
<td></td>
<td>potential to jump quickly to high use</td>
<td></td>
</tr>
<tr>
<td>C3 HIGH</td>
<td>high use, 70% &lt; 100% allocation limit used for individual resource unit</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>high risk or high consequences if use increases without higher level of management</td>
<td></td>
</tr>
<tr>
<td>C4 FULLY OR OVERALLOCATED</td>
<td>100% or greater than 100% allocation limit used (over allocated) for individual resource unit</td>
<td>3 or 3A</td>
</tr>
</tbody>
</table>

Note: Resources may become over allocated through the planning process as a means to cap use and/or begin recovery of the resource.

2.1 Assign water resources to risk categories

Initially the Department of Water will assign its water resources into the categories as described above. Water resource assignment will then be refined by reviewing the risk factors listed below, (which includes relevant factors identified in the National Framework). Where the review of these factors indicates that a higher degree of compliance activity is required, the water resource will be elevated into a higher category.

The factors to be considered include:
- The need to protect water rights\(^5\)
- Highly sensitive environmental values\(^6\)
- Areas where water use is likely to enter a higher response level in a short timeframe
- Intelligence indicates unacceptable levels of non compliance

Fractured rock aquifers will be assigned into category 2 (National Framework Risk Category 1) as a default, but the department will then consider the factors listed above to consider whether an elevated level of compliance activity is warranted. This is because the performance of these aquifers cannot be modelled without pumping results, and interference between water users is not normally encountered.

Where there is a need to monitor stock and domestic water use, this will be clearly identified.

Within 12 months of this Implementation Plan being accepted, Western Australia will provide a report of water resources assigned into risk categories as described above (i.e. the Western Australian Category and the National Framework equivalent) to the Department of the Environment, Water, Heritage and the Arts.

**Performance indicator**

Categorisation of Western Australia's water resources consistent with the National Framework, as described above.

Provision of a report to DSEWPC on the categorisation of water resources.

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**MILESTONE 3 - Establish a Best Practice Compliance and Enforcement Toolkit to Meet the Requirements of the National Framework**

**The current approach relative to National Framework criteria**

Western Australia reviewed its policies, strategies, training and other tools as part of its evaluation of the National Framework. While the department has documented policies and strategies for compliance and enforcement, many are outdated, and inconsistent with the National Framework.

The review also concluded that there would be a pressing need to develop the skills sets needed to allow effective delivery of a compliance program. In a recent internal report, the department concluded that investigative skills (e.g. evidence collection, chain of custody awareness, and preparation of witness statements) were lacking in most regions. As a result, potential enforcement actions, including prosecution, could not be pursued because they would be unable to succeed.

The review confirmed that the state should maintain access to the tools identified in the Best Practice Tools (Part 5) of the Framework. In some cases it is not efficient for the agency managing water resources to maintain that expertise. Rather, it is more effective for the Department of Water to collaborate with the Western Australian Police to use electronic surveillance, as has occurred in previous investigations.

We also identified that the “Incident and Complaints Management System”, which allows incident logging and case management no longer reflects best practice, and that the system

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\(^5\) Derived from defining characteristics of risk category 3 in the National Framework

\(^6\) Derived from defining characteristics of risk category 3 in the National Framework
can not support the capabilities required to implement the National Framework. Capabilities such as intelligence gathering and statistical reporting are not currently available.

**Develop a best practice compliance and enforcement toolkit**

**3.1 Prepare appropriate policy, strategy and guidance documents**

Western Australia will focus on developing the necessary precursors to deliver an effective compliance and enforcement program consistent with the National Framework during the first two years of this Implementation Plan. Known areas that require strengthening to ensure a consistent risk based approach is taken include:

- Compliance and Enforcement Strategy
- Compliance and Enforcement Policy
- Procedures and practical guidance for:
  - audit
  - compliance monitoring
  - investigation
  - gathering evidence
- Review of the structure and role of a central Compliance and Enforcement Unit (note links to milestone 5 (all activities).

**3.2 Review licence enforceability**

The Department of Water will review its processes for issuing licences and drafting licence conditions to ensure that they are appropriate and enforceable.

**3.3 Training**

These will need to be supported by an appropriate training program to develop the necessary skills to allow Departmental officers to undertake effective compliance and enforcement activities, consistent with the National Framework. One of the initial roles of the Compliance and Enforcement Unit (that will be established in year 1 of the Implementation Plan), will be to design and implement an appropriate training program. This is particularly important to ensure that the National Framework is consistently implemented across the diverse circumstances of the state.

Investigative skills (e.g. evidence collection, chain of custody awareness, and preparation of witness statements) will be strengthened in regional offices, leveraging the capacity of licensing officers to undertake routine compliance monitoring.

The higher level skills needed to provide this training and education, as well as mount investigations for criminal prosecution will be maintained in a Compliance and Enforcement Unit. This will need to be done in conjunction with relevant prosecuting authorities. This is discussed further at Milestone 5.

**3.4 Systems**

Western Australia will need to make investment in systems to allow the National Framework to be implemented. This will take place in the first two years of the Implementation Plan.

Capabilities such as intelligence gathering, and statistical reporting are not currently available, and will facilitate cost effective regulation consistent with the National Framework.

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7 An audit will assess compliance against the terms and conditions of a licence / other authorisation, and review the licence and its conditions to ensure enforceability.
The Department’s Enterprise Architecture project identified the “Incident and Complaints Management System” as obsolete technology requiring replacement. Rebuilding this system would allow more efficient technology, and effective integration into the state’s Water Management System (this will allow information transfer with the Commonwealth Government funded Common Registry once it becomes available).

3.5 Support Commonwealth led initiatives
Provide support to Commonwealth led initiatives that provide cost effective compliance outcomes for Western Australia. This is expected to include:

- Administrative support for a national water sentencing database by providing judgement and sentencing information
- Supporting use of remote sensing products developed by the Commonwealth to assist compliance monitoring. Subject to the Commonwealth providing appropriate training to allow such products to be understood and evaluated, the Department of Water will provide access to compliance and enforcement staff where this is cost effective, and support use of the products.
- Supporting the role of the National Groundwater Working Group in discussing the standardisation of licensing and reporting for groundwater bore drilling.

3.6 Review tools and their application
The Department of Water will review the available tools and their application on an ongoing basis to ensure that they are effective in achieving outcomes and goals of this milestone. This will be undertaken as a matter of course when carrying 3.1 to 3.5 and no specific resources will be required.

Performance Indicator
This milestone will be complete when the WA has implemented a toolkit which meets the requirements of the Framework by:

- Completion of the Compliance and Enforcement Strategy,
- Completion of the Compliance and Enforcement Policy,
- Completion of the Procedures and practical guidance documents,
- Completion of a report on the review of licence enforceability
- Completion report for Incident and Complaints Management System replacement, and
- The provision of these documents to DSEWPC

MILESTONE 4 - Stakeholder/Public Education

Required Stakeholder and Public Education

4.1 Consistent with the National Framework, the State’s compliance and enforcement strategy, policy and other non classified documents will be posted on the Department of Water home page.

4.2 The Department will prepare educational material, such as brochures, that can be provided to water users in the course of its normal communication, where that mode of communication may be effective. In addition the Department will conduct educational mail outs
of important information during the course of the Implementation Plan. Information about legislative changes would be distributed through this medium (amongst others).

The Department will continue to engage with its stakeholders through a variety of forums, including field days, resource management and planning workshops, negotiations with mining companies and routine contact with licensees. Further cost effective opportunities to enhance education about effective water resource management, and effective compliance and enforcement in particular will be sought.

4.3 The Department will publish the statistics and other information created through its public reporting (Milestone 6). The Department will ensure that licensees have access to this information.

4.4 The Department of Water will review the application of stakeholder public education activities on an ongoing basis to ensure that they are effective in achieving outcomes and goals of this milestone.

**Performance Indicators**

This milestone will be complete when WA has met the requirements of the Framework including:

- Educational mail-outs conducted.
- Completion of strategy and policy documents, published on the Department’s internet site.

**MILESTONE 5 - Implement Appropriate Levels of Monitoring Activity.**

**Current situation**

Currently there are centrally and regionally managed budgets for compliance and enforcement activity. In 2009 – 2010, the central budget was $165,000, which includes salary for 1.6 FTE in a Compliance and Enforcement Unit. Funding for this central Compliance and Enforcement Unit was provided through special purpose funding, which will not continue beyond the 2009 - 2010 financial year. Collectively, the regional budgets are approximately $293,000, including salary for 4.1 FTE. The Department of Water recognises the need to enhance the current compliance monitoring activities through the life of this Implementation Plan. This will be undertaken as outlined in this milestone.

The Department has initiated a project to review the structure and functions of its Compliance and Enforcement Unit to ensure effective and efficient compliance and enforcement activities across the Department. The project was initiated in February 2010. The project has two phases, with phase one relevantly including the following:

- Review the roles, responsibilities and skill requirements of the Compliance and Enforcement Unit;
- Review interaction with regional offices for consistency in decision making and how compliance and enforcement processes can be better integrated into the licensing process;
- Review compliance and enforcement standards across the Department to ensure consistency in proactive monitoring and education programs;
• Establish an audit function within the Compliance and Enforcement Unit to undertake random audits of licences.
• Establish a compliance and enforcement training program and build capacity for compliance and enforcement in regional offices.

The first phase of the project is expected to be completed within six months of commencement. The implementation phase of the project will follow, with an evaluation review to be completed in 2013/14.

5.1 Identify all licensed activities within each water source identified as category 4 (National Framework category 3)

This activity links to milestone 2, the risk classification of water resources prior to determining where monitoring will be required. This activity will analyse information in our licensing database to determine the number and type of approvals and licences in each water source. It will provide a vital information source to allow preparation of the State’s Compliance and Enforcement Plan (see 5.3)

5.2 Review resource requirements

The Department of Water will review its preliminary calculations of the resources required to enable us to conduct on-ground monitoring of 10% of licensed activities in category 4 areas (i.e. consistent with National Framework category 3). This will be an in-depth analysis into the levels of monitoring required and be informed by risk assessment and available data.

This analysis will be based on the number and type of licensed or approved activities and relevant logistical information. It will allow preparation of the State’s Compliance and Enforcement Plan (see 5.3). This plan (and its assumptions and resource estimates) will be reviewed and refined during the 3rd year of the Implementation Plan (see 5.8).

The preliminary calculations were used in this implementation plan to estimate the level of resourcing necessary to enable us to conduct on-ground monitoring of 10% of licensed activities in category 4 areas.

5.3 Prepare a Compliance Monitoring Plan to guide compliance monitoring

During the first year of this Implementation Plan, Western Australia will develop a Compliance Monitoring Plan to meet the requirements of the Framework.

The Compliance Monitoring Plan will describe the types of monitoring that will be undertaken including the use of compliance operations targeting specific types of water use (e.g. areas with a high level of water extraction for extended periods), and the use of different monitoring methods including on-site and aerial monitoring. The timing of monitoring will be included in the strategy for example on-site monitoring at different times to assess compliance with current authorisations. Treatment of public reports / complaints will be considered.

This plan will look at the activities that are best monitored on-ground and identify those that can reliably be monitored using remote means, which will be further examined at 5.7 below.

The plan will detail the State Audit Program, and identify priorities for regional compliance monitoring programs.

The Compliance Monitoring Plan will identify the financial and staffing resources provided by the State and Commonwealth governments. Within those budgetary constraints, the plan will describe how these resources will be deployed to best advantage to meet the National
Framework’s objective of monitoring 10% of licensed activities in category 4 areas (i.e. consistent with National Framework category 3).

5.4 Recruiting and training staff

To implement the monitoring objectives of the National Framework, officers will be employed into a centrally based Compliance and Enforcement Unit. This unit will have the specialist skills necessary for investigation and enforcement, particularly focused towards the sanctions part of the enforcement pyramid. These officers will have a substantial on ground role investigating the more serious breaches, and progressing them towards court sanctioned enforcement where practical. The attached table below shows the planned recruitment schedule.

Staff for this area should have a strong investigation background. Staff will be provided with the necessary training to enable them to conduct auditing and compliance monitoring activities which will include WA water legislation, internal processes and procedures such as record keeping and OHS, work identification (e.g. bore, meter, levee) and basic audit training.

These officers will also build compliance monitoring capacity by developing the procedures and training required to implement the level of compliance monitoring envisaged by the Framework. These activities are described at Milestone 3.

The Compliance and Enforcement Unit will also house officers to undertake the State Audit Program, and support regional compliance monitoring. In both cases, these officers will be used for on ground efforts. On ground capability of this unit will be increased through the life of the implementation plan.

5.5 Conduct on-ground monitoring

Additional monitoring will be conducted around the State in areas falling within risk category 4 as guided by the Compliance Monitoring Plan (prepared at 5.3).

The Department receives a number of reports of alleged breaches from the public and other agencies. These reports are risk assessed where appropriate and the Department will incorporate these reports into its monitoring program as evidence that illegal activity may be occurring and therefore monitoring is required.

There is likely to be an increase in the number of enforcement actions being taken as a result of the increased monitoring and the plan reflects the increase in resources required to investigate and take action on any illegal activity detected.

Monitoring for compliance with WA water legislation will include:

- Inspecting or auditing works such as bores, pumps and dams to ensure they are licensed/approved when required to be
- Inspecting or auditing activities authorised under licenses or other approvals to ensure they are complying with their conditions (e.g. location, capacity, operation)
- Inspecting meters to ensure their effective operation
- Checking compliance with the conditions of exemption orders

5.6 Monitor and evaluate results of on-ground monitoring and adapt implementation of the Framework as required

This activity will develop and implement a continuous improvement process allowing us to adapt our approach based on the results of our monitoring program. It will also help to inform our education program as it is likely to highlight areas such as parts of the legislation water users do not understand, or poorly worded licence conditions.
5.7  Evaluate uses of remote sensing

Evaluate uses of remote sensing for remote monitoring of activities, and trial where appropriate. Where remote sensing is demonstrated as being useful, it will be incorporated into the Compliance and Monitoring Plan at its review (see 5.8).

5.8  Review Compliance Monitoring Plan

The compliance monitoring plan should be reviewed every second year. This should include a review of the effectiveness of the design and delivery of the State Audit Program and regional compliance monitoring program, against the National Framework’s monitoring objectives and requirements.

At the time of this review, WA will have better information available about what is required to deliver an effective compliance and enforcement program for the state’s diverse water resources. This will allow the estimates of the resources required to conduct on-ground monitoring of 10% of licensed activities in category 4 (i.e. consistent with National Framework category 3) areas to be refined.

Performance indicators

- This Milestone will be complete when WA has implemented monitoring that meets the requirements of the
  - Provision of a Compliance Monitoring Plan to DSEWPC by the end of year 1, 3 and 5.
  - Conduct of compliance monitoring in accordance with the Compliance Monitoring Plan
  - Reporting on the number of officers with basic monitoring training
  - Monitoring surface water and groundwater licence holders within category 4 water resources each year using on-ground officers

MILESTONE 6 - Annual reporting

Improved annual reporting

The Department of Water will progressively improve the compliance and enforcement information provided publicly. The Department will publish annual statistics as the information becomes available in a form that can be reported on. This will be linked to the systems improvements (see Milestone 3), as current record keeping systems will not support statistical reporting of the performance indicators required by the National Framework. This will be one of the user requirements for systems improvements (see 3.4).

The compliance and enforcement information provided annually will be reviewed regularly to ensure it remains relevant, clear and transparent.

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8 The funding under this agreement reflects the Department’s initial calculations on what it believes will be needed to meet the monitoring requirements of the Framework. If more in depth analysis carried out as part of this milestone identifies a higher level of monitoring and resourcing than the initial funding under this plan provided for, the Department may not be able to meet these increased monitoring requirements. The Department is committed to maintaining its resourcing of compliance and enforcement so any shortfall in resourcing over and above what has been funded in this project will only be due to an increase in the monitoring resources identified to complete this milestone and not due to a reduction in Department resources for compliance and enforcement of water resource management.
Performance indicator

Annual publication of statistics identified by the National Framework.
## Payment Schedule

<table>
<thead>
<tr>
<th>MILESTONES (and tasks)</th>
<th>FTEs</th>
<th>Other</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Anticipated Commonwealth funding</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MILESTONE 1 – Implement Consistent Water Offences, Penalties and Evidentiary Aids</strong></td>
<td></td>
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<tr>
<td>Stage 1 – Identify further provisions for inclusion in Water Resource Management Bill</td>
<td></td>
<td>Legal advice</td>
<td>$ 20,000</td>
<td>$ 20,000</td>
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<tr>
<td>Stage 2 – Draft provisions as required and Regulatory Impact Assessment (as required by Department of Treasury and Finance)</td>
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<td>Legal advice</td>
<td>$ 40,000</td>
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<tr>
<td>Stage 3 – introduce legislative changes to Parliament</td>
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<td>Total $ 60,000</td>
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<th>MILESTONES (and tasks)</th>
<th>FTEs</th>
<th>Other</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
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<th>Year 5</th>
<th>Anticipated Commonwealth funding</th>
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<tbody>
<tr>
<td><strong>MILESTONE 2. Categorise Water Resources.</strong></td>
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<tr>
<td>Stage 1 – Review current status of WA’s water resources and assign to a management response category</td>
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**Total** $ 60,000
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<th>Year</th>
<th>Year</th>
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<th>Year</th>
<th>Year</th>
<th>Anticipated Commonwealth funding</th>
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</thead>
<tbody>
<tr>
<td><strong>MILESTONE 3. Establish a Best Practice Compliance and Enforcement Toolkit consistent with Objectives of National Framework.</strong></td>
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<tr>
<td>Stage 1 – Prepare appropriate policy, strategy and guidance documents</td>
<td>Policy Officer L5</td>
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<td>1</td>
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<tr>
<td></td>
<td>Legal officer L7</td>
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<td>.15</td>
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<td>Stage 2 – Review licence enforceability</td>
<td>Legal Officer L7</td>
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<td>0.85</td>
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<tr>
<td>Stage 3 – Design and deliver training program (Staff from Milestone 5, stage 4)</td>
<td>Scope detailed user requirements Design solution architecture Build solution Licences and Maintenance</td>
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<td>$ 50,000</td>
<td>$ 400,000</td>
<td>$ 40,000</td>
<td>$ 40,000</td>
<td>$ 40,000</td>
<td>$ 570,000</td>
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<tr>
<td>Stage 4 – Design and build systems for recording complaints, intelligence analysis and statistical reporting</td>
<td>C/wealth remote sensing product training (Commonwealth budgets)</td>
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<tr>
<td>Stage 5 – Support Commonwealth led initiatives</td>
<td>1 x L5 policy officer 1 x L7 legal officer (Compliance coordinator and Investigation officers listed at Milestone 5 will support this Milestone).</td>
<td></td>
<td>$ 250,613</td>
<td>$ 253,572</td>
<td>$ 146,961</td>
<td>$</td>
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<td><strong>Milestone total (FTE)</strong></td>
<td>Design and build Complaints management system</td>
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<td>$ 50,000</td>
<td>$ 400,000</td>
<td>$ 40,000</td>
<td>$ 40,000</td>
<td>$ 40,000</td>
<td>$ 570,000</td>
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<td><strong>Milestone total (operational)</strong></td>
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<td>MILESTONES (and tasks)</td>
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<td>Year 2</td>
<td>Year 3</td>
<td>Year 4</td>
<td>Year 5</td>
<td>Anticipated Commonwealth funding</td>
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<tr>
<td>MILESTONE 4. Stakeholder and Public Education.</td>
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<tr>
<td>Stage 1 – Publish relevant material on Department of Water web page</td>
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<tr>
<td>Stage 2 – Identify education needs, design appropriate education material and integrate into existing and improved distribution channels</td>
<td>Compliance coordinator L7</td>
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<tr>
<td>Stage 3 – Deliver programs</td>
<td>Will also use resources from Milestone 5, stage 5</td>
<td>mail out (14k) + printing etc 5k/yr</td>
<td>$ 5,000</td>
<td>$ 25,000</td>
<td>$ 5,000</td>
<td>$ 25,000</td>
<td>$ 5,000</td>
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<td>Milestone total (FTE)</td>
<td>0.2 x L7 Compliance Coordinator (same position as Milestone 5)</td>
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<td>$ 28,962</td>
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### MILESTONES (and tasks)

<table>
<thead>
<tr>
<th>MILESTONE 5. Implement Appropriate Levels of Monitoring Activity.</th>
<th>FTEs</th>
<th>Other</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Anticipated Commonwealth funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage 1 - Identify all licensed activities within each water source identified as category 4</td>
<td>Compliance coordinator L7</td>
<td></td>
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<td></td>
<td>$ 581,519</td>
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<tr>
<td>Stage 2 - Review resource requirements</td>
<td>Compliance coordinator L7</td>
<td></td>
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<td></td>
<td>$ 603,157</td>
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<tr>
<td>Stage 3 – Develop (and implement) biennial Compliance Monitoring Plan</td>
<td>Compliance coordinator L7</td>
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<td>$ 1,001,240</td>
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<tr>
<td></td>
<td>Compliance coordinator L7</td>
<td>Investigation Officer L6</td>
<td>Audit officers L4</td>
<td>Compliance officers L3</td>
<td>Vehicle costs</td>
<td>Remote area accommodation</td>
<td>$ 1,167,033</td>
<td>$ 1,217,251</td>
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<tr>
<td>Stage 4 - Recruiting and training staff</td>
<td>Uses resources identified at stage 4</td>
<td>Operational costs</td>
<td>$ 40,983</td>
<td>$ 53,472</td>
<td>$ 51,316</td>
<td>$ 52,478</td>
<td>$ 47,019</td>
<td>$ 245,269</td>
</tr>
<tr>
<td>Stage 5 - Conduct on-ground monitoring</td>
<td>Compliance coordinator L7</td>
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<td></td>
<td></td>
<td>$ 581,519</td>
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<tr>
<td>Stage 6 - Monitor and evaluate results of on-ground monitoring and adapt implementation of the Framework as required</td>
<td>Compliance coordinator L7</td>
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<td>$ 603,157</td>
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<td>Stage 7 - Evaluate uses of remote sensing</td>
<td>GIS officer L4</td>
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<td>$ 1,001,240</td>
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<td>Stage 8 - Review Compliance Monitoring Plan</td>
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<td>$ 1,167,033</td>
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#### Milestone total (FTE)

- 1 x L7 Compliance Coordinator
- 2 x L6 Investigation Officer
- 2 x L4 Audit Officer
- 4 x L3 Compliance Officer

- $ 581,519
- $ 603,157
- $ 1,001,240
- $ 1,167,033
- $ 1,217,251
- $ 4,570,199

#### Milestone total (operative)

- $ 40,983
- $ 53,472
- $ 51,316
- $ 52,478
- $ 47,019
- $ 245,269

Total $ 4,815,468
<table>
<thead>
<tr>
<th>Risk</th>
<th>Likelihood</th>
<th>Consequence</th>
<th>Risk Score</th>
<th>Treatment</th>
<th>Responsibility</th>
<th>Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. It is not possible to recruit individuals with suitable expertise or experience to undertake the activities outlined in the implementation plan – a range of expertise will be required to implement this framework and there is risk that it is not possible to recruit or obtain this range of skills and expertise. A return to boom conditions in the resources sector would magnify this risk.</td>
<td>3</td>
<td>4</td>
<td>12</td>
<td>Ensure classification levels of positions are appropriate to the work required. Use an appropriate advertising strategy for recruitment process.</td>
<td>Implementation plan project manager</td>
<td>Prior to and during recruitment of staff - primarily during year 1 and 3</td>
</tr>
<tr>
<td>2. Staff turnover – staff (either new monitoring staff or key staff for the delivery of the implementation plan) moving to new positions either within or outside the Department. A return to boom conditions in the resources sector would magnify this risk.</td>
<td>5</td>
<td>4</td>
<td>20</td>
<td>Ensure that career development pathways encourage staff to remain engaged in monitoring work. Ensure succession planning allows for implementation plan activities to proceed with minimal disruption if key staff leave.</td>
<td>Implementation plan project manager</td>
<td>Ongoing</td>
</tr>
</tbody>
</table>
| 3. Proposed remote sensing resource is not able to deliver the goal of allowing 25% of water resource entitlements to be monitored annually - the technical capabilities of the proposed resource, and its ability to be responsive to particular jurisdictional needs, is not yet known. These uncertainties preclude an estimation of the enforcement resources required to support use of this technology. | 3 4 12 | Remote sensing staff to collaborate to an appropriate level with Geosciences Australia (GA) in the development of the remote sensing resource and to provide GA with information on user needs and requirements. | Implementation plan project manager | Ongoing as required

| 4. Agreement can not be reached on new legislative arrangements before the Water Resource Management Bill is developed | 2 4 8 | Ensure that proposed amendments will lead to improved water resource management outcomes, so as to get support for the amendments. Initiate early consultation with key authorities. | Milestone 1 project manager | Year 1

| 5. Cabinet does not approve tabling of draft legislation | 2 4 8 | Ensure that proposed amendments will lead to improved water resource management outcomes, so as to get support for the legislation. | Implementation plan project manager Milestone 1 project manager | Year 1 & 2

| 6. Parliament does not enact legislation | 2 4 8 | Ensure that proposed amendments will lead to improved water resource management outcomes, so as to get support for the legislation. | Implementation plan project manager Milestone 1 project manager | Year 1 & 2
7. **External stakeholders oppose measures aimed at increasing compliance** - industry groups may oppose a greater focus on compliance, increased penalties and increased enforcement action against their constituents. This risks creating a less collaborative approach to securing water resource management outcomes.

It may also increase the risk to Parliament accepting the Water Resource Management Bill.

<table>
<thead>
<tr>
<th>Number</th>
<th>Likelihood</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Rare</td>
<td>This occurrence happens in very extraordinary circumstances.</td>
</tr>
<tr>
<td>2</td>
<td>Unlikely</td>
<td>This occurrence has a less than 50% chance of happening.</td>
</tr>
<tr>
<td>3</td>
<td>Possible</td>
<td>This occurrence has a 50% or more chance of happening.</td>
</tr>
<tr>
<td>4</td>
<td>Likely</td>
<td>This event will usually occur in most situations.</td>
</tr>
<tr>
<td>5</td>
<td>Almost Certain</td>
<td>There is very little chance that this event will not occur.</td>
</tr>
</tbody>
</table>

Implement the stakeholder engagement aspects of milestone 4.
Consult appropriately on proposed legislative amendments.
Consider risks to legislation in designing Compliance Monitoring Plan and enforcement responses.

Implementation plan project manager
Milestone 4 project manager
Milestone 1 project manager

Ongoing
Year 1
<table>
<thead>
<tr>
<th>Number</th>
<th>Consequences</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Minor</td>
<td>Delay in meeting the timeframes that can easily and quickly resolved.</td>
</tr>
<tr>
<td>2</td>
<td>Moderate</td>
<td>Delay in meeting the timeframes that can be resolved within 6 months.</td>
</tr>
<tr>
<td>3</td>
<td>Serious</td>
<td>Delay of 6 months or more in delivering one or more milestones.</td>
</tr>
<tr>
<td>4</td>
<td>Major</td>
<td>Failure to deliver a milestone.</td>
</tr>
<tr>
<td>5</td>
<td>Catastrophic</td>
<td>Failure to deliver the Framework, or the objectives that it aims to achieve</td>
</tr>
</tbody>
</table>
Schedule 2

Project Assessment Guidelines

The Commonwealth has assessed the Project Plan included as Schedule 1 to this Implementation Plan in accordance with these guidelines.

Commonwealth funding of a Project is conditional on the Project Plans meeting certain requirements.

The Project Plan provided sufficient information to enable the Commonwealth to complete and pass a due diligence assessment of the project. The assessment was undertaken with reference to the elements of the Framework and the notes supplied in the Project Plan example.

Project Management and governance, compliance and indemnity criteria

Project specifications, in the project plan, for the Proposal must include:

(a) Demonstration of suitable project management capability and capacity, including risk assessment and strategies for mitigation of any risk (with reference to C11).

(b) Appropriate governance arrangements to ensure the project delivers on time and against all key objectives;

(c) Consideration of other relevant State legislation;

(d) Indemnification of the Commonwealth against any environmental or other third party damage caused by the Proposal;

(e) Provisions such that the Commonwealth has no responsibility for any past, present or future taxation liabilities arising from investments and warranties on investments; and

(f) No allocation of responsibility to the Commonwealth for any legal contracts already entered into, except where explicitly agreed in writing by DEWHA.

Value for money criteria

The Proposal will be assessed as to whether or not it represents value for money, with respect to the budgeted resources, to achieve implementation of the National Framework.

Addressing the environmental and economic and social criteria

The Jurisdiction is required to outline how the Project will secure and deliver benefits for the environment and maintain or improve river and wetland health.

Outline how the Project will be able to secure a long-term sustainable future for irrigation communities, in the context of climate change and reduced water availability in the future. The Jurisdiction must demonstrate the short-term (to 2012) and long-term (to 2030) environmental and economic benefits of the Project.
Risk assessment:

B8 The Jurisdiction must provide details on the risks associated with the Project Plan, how the risks were identified and assessed, and how these risks will be managed. It must also demonstrate how the processes for managing the risks associated with the project meet Australian Standard AS/NZS 4360:2004: Risk management.

Other matters

B9 The Commonwealth may take into account other relevant matters where necessary in assessing the Proposal. In particular, the Commonwealth may also assess the overall potential of the project to deliver against the conditions of the National Partnership Agreement on Water for the Future under which this Implementation Plan is made.
Schedule 3


Approach
This Framework is to be read in the context of the compliance pyramid.

Compliance strategies are broadly represented by various forms of the Compliance Pyramid (see the figure below). The pyramid is designed with most compliance action at the base involving processes for encouraging and assisting compliance. Further up the pyramid actions are more concerned with directing compliance through verbal directions, advisory notices and warning notices. The top, where generally there is the least activity, involves administrative remedies and criminal proceedings.

For the pyramid to work effectively, jurisdictions require each of the elements to be effective and operate efficiently, to allow for the strategy’s overall success. While these pyramids concentrate most resources to the bottom of the pyramid (for example, in education) the National Framework ensures that the tools and processes at all levels of the pyramid are equally robust. If any of the elements are not robust it allows a weakness or gap in the framework that can be exploited by those seeking to take advantage, which could potentially cause the failure of the whole approach.

As agreed by COAG at its December 2009 meeting, implementation of all parts of this framework will be guided by the principle of cost-effective regulation.

Approaches that best achieve the objectives of this framework, in the most efficient regulatory manner possible, will be given effect to jurisdictional implementation plans. Paths for achieving the eight elements of the framework will also be outlined in these implementation plans. In recognition of the possible increase in costs of adopting the framework, the Commonwealth is providing funding of up to $60 million over five years nationally for agreed implementation plans to assist the transition to adopting the new framework and increasing the compliance and enforcement effort.

The National Framework aims to provide a nationally consistent approach by strengthening compliance and enforcement within each jurisdiction and addressing any gaps in their systems. This includes:

- robust compliance standards and enforcement strategies;
- rigorous and appropriate application of compliance standards and enforcement strategies;
- regular and consistent public reporting of monitoring and compliance action;
- raised public awareness; and
- an increase in resources to appropriate levels.

The jurisdictions agree to use their best endeavours to give effect to Parts 1, 2 and 3 of this Framework, and to introduce and pass legislation to provide for nationally consistent and adequate legislative requirements to manage compliance and enforcement, as per:

1. a comprehensive range of water offences that are consistent across all jurisdictions;
2. an appropriate suite of compliance approaches; and
3. nationally consistent penalties;

This Framework then provides for jurisdictions to:

4. develop and apply a risk category to water resources;
5. adopt best practice tools to assist with compliance and enforcement;
6. educate the public and stakeholders in laws and the importance of compliance with water resource laws;
7. ensure levels of monitoring and enforcement requirements are implemented according to risk categorisation of water resources, ensuring that as the risk to resources increases, so do the monitoring and enforcement actions; and
8. report policies and statistics on compliance, providing transparency in the system, and giving the public confidence in the nationally consistent approach.

1. Consistent Water Offences

Jurisdictions agree to use their best endeavours to introduce and pass legislation to adopt consistent offence provisions to minimise unlawful water take or use to cover the following minimum range of offences.

a) Take or use of surface or ground water without an authorisation.

b) Unauthorised construction of works:
   - bore construction or alteration;
   - other works, including dams, weirs, channels and levees;
   - bore construction by an unlicensed water driller; and
   - non-compliance by licensed water drillers such as non lodgement of drilling logs or faulty bore construction.
c) **Contravention of the conditions of an authorisation:**
   - taking water for purposes different to those authorised (e.g. using a stock and domestic (S+D) licence or right for irrigation);
   - taking water in excess of allocation or limits (for example, limits on the amount of water that may be intercepted through farm dams);
   - taking water in contravention of restrictions or conditions;
   - using water for purposes not permitted by an authorisation; and
   - taking water from a source not specified on authorisation.

d) **Where jurisdictions require water users to install, maintain and/or read meters under law, jurisdictions will have corresponding offences to address:**
   - failure to install a meter / drawing water without meter;
   - failure to maintain a meter;
   - failure to keep metering records;
   - fraudulently reporting take or metered amount; and
   - incorrectly reporting take or metered amount.

e) **Where meters are installed, jurisdictions will have an offence to address meter tampering.**

f) **Impeding or otherwise hindering an authorised officer from carrying out the monitoring and enforcement duties.**

g) **Impacting on water resource water quality where it is unlawful to do so.**

*Note: Jurisdictions should include major offences in legislation. The offence of breaching a licence condition does not always involve a high maximum penalty yet the offending behaviour may be very serious. Importantly, the conditions of licences are not always precisely drafted to withstand challenges from defence counsel in legal proceedings, and are subject to amendment or addition over time that can result in loose drafting and inconsistency. For example, it is not unusual in certain jurisdictions for an authorisation to require metering. It is considered that offences such as "interfering with a meter" and "failure to install a meter when required by a licence" should be offences separate from "breaching a condition of a licence."*

2. **An appropriate mix of compliance and enforcement legislative options and evidentiary aids to ensure effective operation of a compliance and enforcement system.**

**Compliance and Enforcement tools**
Jurisdictions agree to use their best endeavours to introduce and pass legislation to move to a nationally consistent compliance and enforcement regime by ensuring that their water resource legislation contains the appropriate range of compliance and enforcement options, including a combination of most tools outlined below.

Provision should be made for three different approaches to pursuing sanctions for unauthorised uses - criminal proceedings, civil enforcement and administrative
remedies. The decision on which remedy should be used, should be based on among other factors:

(i) the seriousness of the breach (for example, the amount of water taken or the potential for the breach to undermine the regulatory regime);
(ii) the circumstances surrounding the breach (including the willingness of the alleged offender to cooperate and that person's compliance history);
(iii) the urgency of the situation in relation to the action required to protect the resource; and
(iv) the effect of a criminal conviction with a range of consequences beyond the immediate penalty.

The Concept of No-fault Liability
Jurisdictions should ensure that water resource legislation contains an appropriate range of offences where fault (intention, knowledge or recklessness) does not have to be proved. This may apply to the entire offence or only to a particular component of an offence or both. This is commonplace in a range of environmental and natural resource legislation where the need to encourage high standards of care in managing natural resources is seen to outweigh the need for traditional concepts of fault in criminal offences.

It is also appropriate to maintain offences where intention or recklessness has to be proven. It is expected that these offences would generally attract a higher penalty than no-fault liability offences.

The choice of remedy may also depend on whether a particular offence requires proof of a specific mental element such as intent or recklessness (and whether that can be proved).

Evidentiary presumptions
To assist in applying the approaches above, the Jurisdiction should adopt nationally consistent evidentiary aids that will improve the effectiveness and resource efficiency of enforcing compliance, including by providing for:

- the liability of landholders for another person’s actions (for example, employees and contractors) to ensure that an entitlement owner has responsibility for breaches on their property, such as through unauthorised take or meter tampering, for example Part 17, Division 18A of the Environment, Protection and Biodiversity Conservation Act 1999;
- evidentiary presumptions such as the presumption that where pipes and channels from the relevant water resource are connected to the land of the defendant, the defendant is presumed (in the absence of proof to the contrary) to have taken the water that is the subject of a prosecution (and not for stock and domestic purposes (see Natural Resources Management Act 2004, SA, section 223; Water Act 1989, Vic, sections 288 and 289).

Evidence Gathering
To assist in any required legal proceedings Jurisdictions should ensure that legislation supports evidence gathering, including the following:

- strengthened evidence gathering provisions by providing (subject to appropriate safeguards to ensure fairness):
  - that water users must permit entry onto premises, excluding residential property, as a condition of all water use (for example, holders of water
access licences, stock and domestic rights), and designation of authorised officers to carry out these duties; and
- appropriate search powers for trained authorised officers that allow for sufficient evidence gathering, for example access to a water users’ business records;
- for the submission of satellite gathered remote sensing information, GPS, and geographic information system based analysis as evidence without providing proof of the chain of evidence where there are appropriate safeguards to ensure the integrity of the evidence and analysis.

3. **Consistent penalties.**
Jurisdictions agree to use their best endeavours to introduce and pass legislation to establish consistent penalties across Australia, by ensuring that maximum penalties for water resource offences are adequate and take close account of the highest level currently imposed by water resource legislation. Alternatively, jurisdictions will choose to provide penalties that offer similar value, by incorporating the appropriate mix of the following elements:

a) **Criminal and civil penalties that provide for:**
- specific (and higher) penalties for corporate offenders;
- liability of directors and other corporate officers where a corporation is found guilty of an offence;
- imprisonment (criminal offences only);
- licence/allocation reduction, suspension and/or cancellation (supplementary administrative remedy);
- remediation orders;
- enforceable undertakings (for example, s 87B of the Commonwealth *Trade Practices Act 1974*);
- the market value of stolen water, with the financial penalty reflecting the proceeds derived from the contravention and the harm caused;
- confiscation of the proceeds of crime (criminal offences only); and
- provision for creative sentencing legislation to allow judges to impose more socially relevant penalties such as the undertaking of community environmental projects and publicising of crimes. For example, s 67AC of the *Environmental Protection Act 1970* (Vic) specifically allows the court to order [the offender], in addition to, or instead of, any other penalty “to carry out a specified project for the restoration or enhancement of the environment.”

b) **Administrative remedies that provide for imposition of:**
- expiation notices/penalty infringement notices with:
  - penalties for administrative/expiation notices to escalate substantially for second and subsequent offences; and
  - for repeat offenders, a point system on administrative notices providing for the suspension of water licences;
- reductions in allocations greater than unauthorised take for first offences (supplementary administrative remedy); and
- reductions in allocations escalating to multiples of unauthorised take for repeat offenders (supplementary administrative remedy).
Where consistent penalties are to be achieved by fines with the highest monetary value being imposed, it is recognised that the low base for penalties in some jurisdictions means this may need to occur in stages, and that these penalties may need to be also consistent with other relevant jurisdictional legislation.

Where jurisdictions have other legislation that provides for use of penalty units, jurisdictions should prescribe penalties using those penalty units, to allow for easy implementation of CPI increases.

4. Risk Based Compliance and Enforcement

This Framework is risk based\textsuperscript{9}, with increased compliance and enforcement with increased risk.

Jurisdictions will:

- place all water resources within a jurisdiction into risk categories consistent with those outlined in this framework;
- ensure that their offence provisions include the common offence provisions (as outlined in item 1 of the Framework), where a jurisdiction has water resources with a risk category equivalent of 2 or above;
- implement monitoring for compliance based on the level of risk as outlined below.

Risk Categories:

- **Category 1:**
  Low competition for resources – low consumptive use of all water resources within the catchment\textsuperscript{10}, displaying one or more of the following characteristics:
  - use of the water resource is uncapped, and/or
  - a CSIRO sustainable yields project (where available) identifies water resource use within a catchment as “low”.

- **Category 2:**
  Moderate competition for resources – medium consumptive use of all water resources within the catchment identified (inter alia), indicated by:
  - some need to manage consumptive use (e.g., where there is stress to environmental assets or restrictions on water use during droughts, plus an increasing number of complaints from users about water resource management); and
  - uncapped use of the water resource, or where there is a cap in place it has not been fully allocated; or

\textsuperscript{9} A risk based compliance strategy is one that identifies “at risk” water resources and targets breaches of water resources legislation most likely to further stress the resource or which undermine the public’s confidence in effective water resource management.

\textsuperscript{10} A catchment in this framework is defined as all the water resources within an area, river and overland flow (surface water) and ground and artesian waters with the exception of unconnected water resources as specifically defined by jurisdictions.
• a CSIRO sustainable yields project (where available) does not identify the use of a water resource within a catchment as either “high” or “low”.

Category 3:
High competition for resources – high consumptive use indicated by catchments or unconnected water resources11 displaying one or more of the following characteristics:
• water rights requiring active protection;
• areas identified as requiring active environmental protection;
• the catchment or water resources within the catchment are capped and fully allocated; or
• a CSIRO sustainable yields project (where available) identifies the use of a water resource within a catchment as not less than “high”; and

Category 3A:
• Within Category 3 areas the jurisdiction there may be high priority areas for monitoring where even the growth of non-licensed water use or non compliance of unlicensed water use will impact on other water users or the environment. (In these circumstances jurisdictions are to verify that water is being used for the purposes for which it was authorised, for example ensure stock and domestic water is being used only for stock and domestic).

Jurisdictions will review the Risk Category of their water resources at least every five years and, consistent with this Framework, amend their compliance and enforcement approach to address any changes to the categorisation of their water resources.

5. Best practice tools
Jurisdictions will adopt best practice tools that will assist with compliance and enforcement, and should include:

Policies and strategies
• Development of jurisdictional compliance strategies and policies;
• Development of an internal compliance procedures document to outline the process officers use to undertake compliance, for example outlining investigative processes;
• Development of tools to encourage the public reporting of water offences and robust processes to investigate any alleged breaches.

11 Some individual water resources are largely not connected with other water resources in a catchment, and where this is verified by the jurisdiction, it may need individual categorisation for risk.
Training
- Appropriate training programs on effective compliance and enforcement processes for authorised officers, meter readers and other relevant staff including:
  - investigation techniques and procedures (to avoid error by inexperienced extension officers or meter readers and to ensure robust chain of evidence processes);
  - stakeholder communication;
  - access to and training in electronic surveillance technologies to monitoring and compliance staff;
  - access to and training in remote sensing technologies to monitoring and compliance staff.

Judicial aids
- access to a nationally consistent education program, which may be assisted by the Commonwealth, for judges and lawyers involved in criminal and civil proceedings relating to water resources to outline the impacts of water offences on the environment and other water users;
- cooperate with the Commonwealth in developing a nationwide Environmental Sentencing Database on water theft crimes and provide database access for judges and lawyers to promote greater consistency in penalty application, similar to the NSW Environmental Crime Sentencing Database (accessible through the NSW Judicial Information Research System);\(^{12}\) and
- consider establishing and/or using an environment court which specialises in Natural Resource Management matters to hear water compliance breach cases.

Other tools
- develop and/or use remote sensing of water use to provide intelligence for follow up investigation and provide evidence of unauthorised use of water with assistance from the Commonwealth. Current methodologies can identify farm dam/irrigation dam water use and also map vegetative growth that can show cropping/farm water use which has promising potential to detect uncharacteristic water use for further investigation and use as evidence;
- development of other tools/databases which share intelligence between jurisdictions (for example across state boundaries);
- other tools relevant to compliance and enforcement as outlined in the COAG Work Program (for example, National Water Drillers Licensing Scheme);
- development and application other new technologies which improve the availability of evidence to prove water offences, for example, the potential...
to use isotope profiling to determine the origin of water (for example, whether it was sourced from surface water or groundwater).

6. **Public and stakeholder education**

   Jurisdictions will provide information to educate the public and the stakeholders on the importance of compliance and enforcement of water resource management to the environment and other water users.

   - Jurisdictions will also provide information to licence holders as part of normal communication.

   A policy document should be developed and published on departmental websites outlining processes for educating the public on the importance of compliance and enforcement of water resource management to the environment and other water users.

7. **Monitoring**

   Annual compliance monitoring rates should be based on the level of risk - for example, there should be increased levels of monitoring for compliance as competition for the resource increases.

   The majority of monitoring activity will take place for water resources within category 3 and 3A with the jurisdictions outlining their approach to monitoring within categories 1 and 2.

   **Monitoring requirements within Category 3 areas**

   Jurisdictions are to carry out annual monitoring events equal to ten per cent of the total number of water entitlement/licence holders of a water resource using on ground officers. This would include, but not be limited to, monitoring of each of the following subsets of water users within a category 3 area:

   - gravity irrigators;
   - waterways extraction licences (for example, river pumpers);
   - groundwater bore licences.

   Jurisdictions will develop remote sensing capacity with a goal of twenty-five percent of water resource entitlements being monitored annually. *(The use of remote sensing by jurisdictions includes overlaying water use records or water entitlement records with satellite imagery and may also assist focusing on-the-ground monitoring resources by highlighting areas of unexplained water use.)*

   **Monitoring requirements within Category 3A areas**

   In addition to the requirements outlined in category 3, Jurisdictions must clearly demonstrate that they are annually monitoring a relevant percentage of water use in a water resource which is authorised under law but may not be licensed or metered such as stock and domestic and farm dams within category 3A.

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13 A 'monitoring event' is monitoring conducted in addition to scheduled meter readings by authorised officers, and may include, for example, random spot checks.

14 For example, if groundwater bore licence holders represent twenty per cent of all entitlement holders within a particular water resource area, twenty per cent of 'monitoring activities' must be dedicated to those areas.
Jurisdictions are expected to implement a level of monitoring for compliance within each category as competition for resources increases, for example, during times of very low water availability jurisdictions would further increase the level of monitoring for compliance within Category 3.

8. **Annual Public Reporting**
Water agencies will publish their monitoring and compliance strategies and plans. Annual public reporting against these strategies, based on uniform compliance statistics, should be undertaken. Statistics should include:

- numbers of alleged compliance breaches reported;
- numbers of advisory letters\(^\text{15}\) issued;
- numbers of formal warnings issued specifying the relevant section and Act;
- numbers of administrative sanctions specifying the relevant section and Act;
- numbers of criminal charges and proceedings brought, specifying the relevant section and Act;
- numbers of civil enforcement actions in the courts and the outcomes;
- numbers of licence suspensions specifying the relevant section and Act; and
- a statistical comparison with preceding years.

\(^{15}\) An advisory letter is a letter sent to a water user where a potential breach was identified but there was not enough evidence to issue a warning or take further action. This letter would usually outline the laws in relation to a potential breach.