

Department of Planning and Environment

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What you said, what we did

Feedback on the Landholder Negotiation Framework discussion paper

August 2022





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Abbreviations

Term, abbreviation or acronym	Definition
Basin Plan 2024 timeline	The Basin Plan is being implemented over a transition period to 2024 to allow time for Basin states, communities and the Australian Government to work together to manage the changes required for a healthy working Basin
The department	The NSW Department of Planning and Environment
IMT	Impact Management Toolbox
LNF	Landholder Negotiation Framework
Murray Darling Basin Plan (Basin Plan)	Plan outlining a coordinated approach to water use across the Murray-Darling Basin' four states and the ACT
The program	Reconnecting River Country Program, which aims to improve environmental, social and cultural outcomes for communities along the Murray and Murrumbidgee River systems
The regulation	<i>Water Management (General) Regulation 2018</i> , which falls under the WM Act
RIS	Regulatory Impact Statement
SDLAM	Sustainable Diversion Limit Adjustment Mechanism, which aims to achieve improved environmental outcomes using existing water for the environment
<i>The WM Act</i>	Water Management Act 2000

Introduction

About this report

This report summarises the community and stakeholder engagement process carried out, and submissions received, during the public exhibition of the Landholder Negotiation Framework (LNF) discussion paper. It includes a summary of:

- the engagement and consultation process, including activities and timing
- the number and type of submissions received by various stakeholders
- the feedback received and issues raised in the submissions
- how feedback has been acknowledged, responded to and considered to refine and develop the LNF.

Program background

The Reconnecting River Country Program, launched in August 2021, reimagines the previous Constraints Measures Program and has been developed based on extensive feedback from the local community and using the best available science.

The program will allow the NSW Government to address physical, policy and operational barriers to environmental water delivery in the Murray and Murrumbidgee rivers allowing greater environmental benefit to be achieved using existing water for the environment.

In the Murray-Darling Basin, there is a range of constraints or barriers limiting flows along these river systems. These constraints include physical structures (e.g. low-lying bridges and roads), river management practices and operational limits for river flows. As a result, rivers connect to their floodplains less often than is needed to maintain healthy river, wetland and floodplain ecosystems.

Relaxing these constraints will allow water for the environment to be delivered at higher levels during particular times to achieve improved environmental outcomes.

Changes to flow management are likely to result in impacts and benefits for public and private landholders and communities. Impacts may include inundation of private land, damage to infrastructure, reduced productivity and loss of accessibility.

Landholders, land managers and communities along the Murray and Murrumbidgee River systems will see the benefits of the program through investment in infrastructure and on-farm works, the potential for improved agricultural productivity for graziers from floodplain flows, as well as improved recreational fishing and tourism. The NSW Government has committed to investigating relaxing constraints to deliver the objectives of the Murray-Darling Basin Plan.

About the Landholder Negotiation Framework

The NSW Government is developing a state-wide Landholder Negotiation Framework (LNF), which sets out the approach to negotiating agreements with landholders who may be affected by water for the environment being delivered at higher flow levels than current operating practice. It aims to ensure the process is fair and balanced, and all agreements are made in good faith. Where landholders are assessed as being affected by these flow deliveries, the NSW Government has committed to mitigating impacts through agreements reached with landholders.

The LNF provides consistency and certainty for affected landholders underpinned by legislation. The NSW Government is proposing to establish the LNF as an amendment to the *Water Management (General) Regulation 2018*, under the *Water Management Act 2000* (the WM Act). By establishing the LNF as a regulation, it will ensure a fair and transparent way for the NSW Department of Planning and Environment to consult and negotiate with landholders on the potential impacts and benefits of releases of water for environmental purposes at higher flow levels than current operating practice.

The LNF will provide guidance as to how the NSW Government, represented by the department, will act in good faith during the negotiation process. Under the long-established WM Act legislation, river operators and NSW Government agencies are required to act in good faith to protect them from liability for impacts. Proposed agreements with landholders would need to be negotiated in good faith to support the release of water for environmental purposes at flow levels higher than current operating practice.

The LNF discussion paper was developed to enable the community to understand the proposed LNF process. It included discussion questions to seek stakeholder feedback.

Relationship between the LNF and the program

The NSW Government intends to legislate the LNF as an amendment to the Water Management (General) Regulation 2018 under the WM Act.

Submissions received on the LNF discussion paper focussed on:

- the state-wide proposed LNF
- its application specifically within the Murray and Murrumbidgee footprint of the Reconnecting River Country Program.

This report attempts to qualify and clearly address each type of comment and provide a response.

The LNF is a key tool assisting the implementation of the program. It is intended to protect the interests of landholders via a transparent, fair and consistent approach to negotiations, and ensure all negotiations on mitigation of impacts are conducted in good faith.

The LNF is not the determining factor as to whether the program will be implemented. The decision on whether the program will proceed to implementation is one for all Basin jurisdictions, it is not something the NSW Government can decide on its own. In making this decision, many factors will be considered including levels of stakeholder acceptance, expected environmental benefits, capacity to deliver Basin Plan objectives, and overall program cost and feasibility.

Engagement approach

The LNF discussion paper went on public exhibition for six weeks from 7 March until 15 April 2022. The paper was accessible on the department's [webpage](#) and the department's Have Your Say portal. Supporting communication and engagement activities were carried out prior to and during the public exhibition period, including print advertising in state and regional press including The Land, Wagga Daily Advertiser and Albury Border Mail. Submissions were received through a dedicated email address: RRCP.LNF@dpie.nsw.gov.au.



30

Stakeholder submissions received



400+

Views of LNF webpage



162,800

People reached through two social media campaigns



47

Visits to the Have Your Say interactive portal



77

Case study participants



93

Baseline sentiment survey participants

What you said

Submission feedback

During the public consultation period a total of 30 submissions were received by mail and email.

The submissions included responses from 23 private landholders and community members, six organisations and one irrigation infrastructure operator.

The submissions provided detailed and diverse feedback on different aspects of the LNF discussion paper. Submissions included responses to the discussion questions posed in the paper, as well as providing general feedback, raising concerns, expressing support or opposition, or suggesting improvements.

Comments in the submissions were analysed and organised into categories. Some comments mentioned more than one category. In these instances, the comment was captured under all the relevant themes.

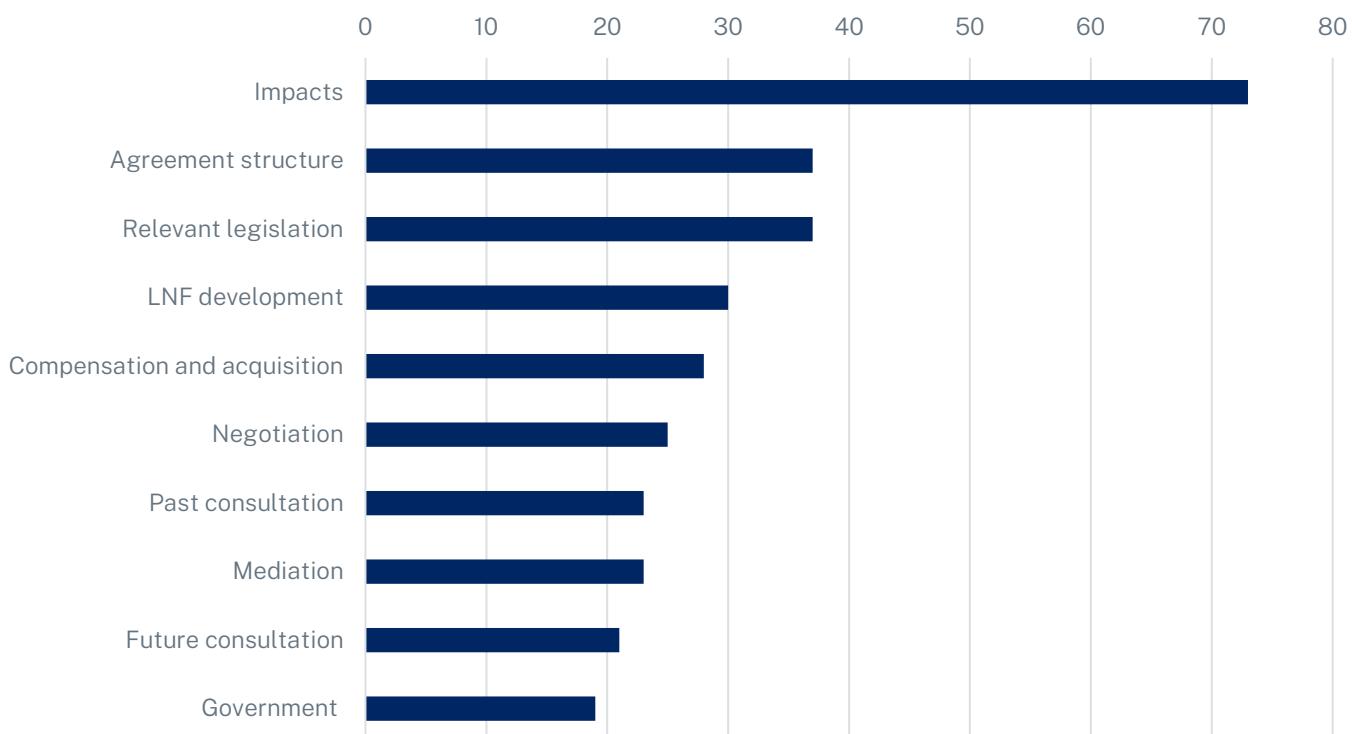
The table below shows the number of references to each category across all the submissions from highest to lowest. Detailed feedback for each category, and the program's responses and actions, are included in the What we did section of this report.

Category	No. of comments
Response to discussion question 3: impacts What potential impacts should be considered for assessment?	73
Response to discussion question 8: agreement structure Do you consider this to be an appropriate agreement structure for the program, or do you have suggestions how it can be improved?	37
Comments about relevant legislation, policies, strategies	37
Comments about the development of the LNF	30
Comments about compensation and property acquisition	28
Response to discussion question 4: negotiation How would you like negotiations to be undertaken?	25
Comments about past consultation	23
Response to discussion question 7: process if mediation is unsuccessful How would you like the process to progress if mediation is unsuccessful?	23
Comments about future consultation	21
Comments about NSW Government as a proponent and trust	19
Request for information	18
Comments about impact mitigation	17
Comments about program timeframes	17
Response to discussion question 1: landholder definition Do you consider the definition of affected landholders to be appropriate?	16
General support for LNF	15
Response to discussion question 5: negotiation timeframes What do you consider a reasonable timeframe for negotiation?	11
Comments about good faith	11

Category	No. of comments
Response to discussion question 2: landholder identification How can we ensure all affected landholders are identified?	10
Response to discussion question 6: progress if agreement isn't reached How would you like the process to progress if an agreement isn't made within the timeframes?	10
Comments that were not relevant to LNF	9
General opposition to LNF	8
Comments about the purpose or justification of the LNF	8
Question for program team	4

The graph below shows the ten most frequently raised issues across all comments, including comments that mentioned more than one category.

Issues most frequently raised



Summary of feedback



Impacts

We asked stakeholders what potential impacts should be considered for assessment.

Some responses said impacts should be addressed on an individual landholder basis, and others described the potential seasonal, access and productivity impacts.



Agreement structure

We asked stakeholders if they considered the agreement structure for the program to be appropriate, or if they had suggestions for it to be improved.

Some responses provided suggestions and others said the LNF appears to show participation is mandatory, which may reduce trust.



Relevant legislation

Some said they wanted more information about the LNF's integration with other legislation, policies and strategies.



Compensation and acquisition

Some said the LNF needs to consider impacts to land values through property use changes, or where the landholder's preference is to have the property acquired.



Past consultation

Some said past landholder and stakeholder consultation was not adequate and led to low trust.



LNF development

Some said they wanted to see more information, data and analysis about the LNF and the program.



Negotiation

We asked stakeholders how negotiations should be carried out.

Some said it appears the LNF will reduce negotiation time, or remove power and control, and indicated negotiations should be transparent.



Process if mediation is unsuccessful

We asked stakeholders how they would like the process to progress if mediation is unsuccessful. Some said the LNF should be discontinued in this case and noted their disagreement with the exclusion of liability on the part of the NSW Government.



Future consultation

Some said we should meet and speak with landholders directly and provide financial support to ensure properties remain viable.



Government

Some stakeholders commented on the reputation of the NSW Government and mentioned a lack of trust.

What we did

The department thanks all stakeholders who made submissions on the discussion paper. We are committed to taking all the feedback from these submissions into consideration.

Following analysis and categorisation of the submission comments, an agency review panel developed responses and proposed actions. This review panel also provided recommendations to findings that will inform drafting instructions for the proposed regulation amendment.

General comments

What we heard	Our response and actions
<ul style="list-style-type: none">• Comments expressing opposition to the LNF.• Comments expressing support for the LNF.• Comments unrelated to the LNF and considered out of scope.	<ul style="list-style-type: none">• The LNF provides the process by which negotiations with landholders will occur. The intent of the LNF regulation is to require the NSW Government to follow a consistent and equitable process and timeframe for affected landholders. This will provide certainty and transparency for landholders about the negotiation process to reach agreement on how impacts that result from delivering water for the environment above existing operational practice would be mitigated.• We appreciate all feedback on the program and agree there are program benefits. The program is currently investigating these and will develop publicly available reports about these expected benefits.• While out of scope comments are not specifically relevant to the LNF, this feedback will be considered as part of ongoing development of, and engagement about, the program and other relevant programs.

Project development

What we heard	Our response and actions
<p>Comments relating to:</p> <ul style="list-style-type: none">• the purpose of the LNF or justification of why it is required, including interaction with other projects and Victoria.• the development of the LNF, including criticism of the lack of data and information provided.• contextual legislation, existing plans and strategies and other programs, such as the Murray Darling Basin Plan, the wider SDLAM program and the Barmah Choke bypass.• the reputation of the NSW Government, including a lack of trust associated with the LNF and past engagement.	<ul style="list-style-type: none">• The WM Act already has a long-established provision for statutory protection of river operators from liability where activities are conducted in good faith. The LNF is about the good faith process to provide landholders and the NSW Government with the opportunity and the means to reach agreement on just terms.• The intent of the LNF regulation is to require the NSW Government to follow a consistent and equitable negotiation process, within a set timeframe, with affected landholders, to provide certainty and promote transparency. The NSW Government is not proposing the regulation forces landholders into entering an agreement. Rather, the obligation is on the NSW Government to follow a consistent and equitable process.• The NSW Government regulation amendment will consider a proposed maximum negotiation period of 18 months. An indefinite negotiation period may restrict objectives for a defined, fair and consistent process. Delivering water for the environment above existing operational flow limits will not start until affected landholders have the opportunity to reach a negotiated agreement.• The program will continue to work collaboratively with partner agencies to improve our engagement and consultation activities across related plans, strategies and other programs. Recognising stakeholder concerns with prior engagement, the program is conducting broader engagement about flow options, identifying and documenting benefits, improving modelling and mapping techniques and implementing an Impact Management Toolbox to mitigate impacts.• The amendment to the WM Act enabling the proposed LNF regulation concerns only the negotiation process with landholders affected by releases of water for environmental purposes above current operational limits. For submissions that raised the issue of the Barmah Choke, we acknowledge there is a parallel project investigating Barmah Choke bypass options on the Murray River for a range of delivery purposes. The program objectives focus on delivering water for the environment only.• For submissions that raised the issue of Victorian integration, the NSW Government recognises the interests of the Victorian Government regarding the program. The NSW Government will provide Victoria with information on the proposed approach and seek to achieve a consistent approach for their respective projects for the Murray River across borders. The NSW and Victorian Governments are collaborating and coordinating closely on these projects examining potential releases of water for environmental purposes above existing river operational constraints.

LNF structure

What we heard	Our response and actions
<ul style="list-style-type: none">Comments suggesting the LNF needs to consider impacts to land values (through property use changes), or where the landholder preference is to have the property acquired.Comments relating to the general timing of consultation and timeframes for the wider program and Basin Plan.Comments relating to impact mitigation within the LNF and suggestions for mitigation measures.Comments suggesting the LNF is not being carried out in good faith, and the NSW Government would not negotiate in good faith.	<ul style="list-style-type: none">The method to consider market and residential value impacts, their mitigation and compensation would not be prescribed in the LNF regulation. Existing legislation requires the NSW Government to consider certain factors in valuing impacts, mitigations and compensation.The program is proposing to compensate landholders for impacts on land value or business value and will consider additional factors, including inconvenience. One-off payments to compensate landholders would provide greater certainty for landholders and will be calculated to assess the net present value of future impacts.The NSW Government has committed to no compulsory acquisition of land or easements under the program. Acquisition of land would only occur where sale is offered voluntarily, or a property is on the open market and the site is strategically important for the program.The program will engage with affected landholders and stakeholders regarding the method(s) for considering market and residential value and cost impacts, their mitigation and compensation payable, as well as an assistance package to assist landholders with their own costs of participating in the negotiation process.The NSW Government is aware of the challenges presented by the Basin Plan 2024 implementation timeframe. The NSW Government is committed to implementing the Basin Plan and will continue to work with the Australian Government and other Basin States to ensure sufficient time for Basin States, communities, and the Australian Government to work together to manage the changes required for a healthy and productive Basin.

Consultation

What we heard	Our response and actions
<ul style="list-style-type: none">• Previous consultation and engagement was lacking and led to low trust in government.• Direct consultation with landholders, and financial support, is required to ensure properties remain viable.• Some comments were concerned the LNF Discussion Paper was publicly exhibited and available for the public to make submissions about private land.• Digital tools and communication channels should be used to ensure adequate consultation with stakeholders.	<ul style="list-style-type: none">• The NSW Government is trying to take into account the lessons learned from previous consultations. The program is actively seeking to address concerns by making a significant investment to improve modelling and by implementing an education and engagement program with landholders to improve their understanding of the program.• The intent of the LNF regulation is to require the NSW Government to follow a consistent and equitable negotiation process and a set timeframe for negotiations with landholders. The LNF is intended to support certainty, transparency and protection for landholders. The NSW Government believes the LNF should be underpinned by state-wide legislation.• The LNF is about the process of negotiation in good faith with affected landholders to assess impacts, implement mitigation and offer compensation through an agreement on fair, reasonable and just terms.• The application of state-wide legislation requires a broader public exhibition and call for submissions from the wider community as well as directly affected landholders.• As a proposed regulation, the LNF amendments will be subject to a consultation process as required by law. Public consultation on the exposure draft of the LNF will invite submissions on the proposed regulation. A Regulatory Impact Statement will also be released for consultation.• Regarding the program, we will continue to engage with affected landholders. Landholders will be provided with outputs from relevant models and property level inundation maps. Local knowledge from landholders about flows will be used to refine these maps. Easement areas and infrastructure plans will incorporate a buffer above the upper flow limit adopted by the program to ensure the mitigation measures are appropriate.• The program will include a Negotiation Assistance Package for landholders to support them in the negotiation process, such as securing advice.• The program remains committed to proactively engaging with directly affected landowners. We use a wide range of consultation tools to engage with stakeholders, including digital, and traditional communication channels. Digital tools include a virtual information room to provide information and gather feedback.

Discussion question 1: landholder definition

Comments in this category responded to discussion question 1: do you consider the definition of affected landholders to be appropriate?

What we heard	Our response and actions
<ul style="list-style-type: none">• Almost half of the comments received on this question said private landholders will be more adversely affected by the LNF than public users, so the definition is not appropriate• Comments supporting the definition provided in the LNF• Comments calling for further refinement of the definition through further stakeholder input and consultation	<ul style="list-style-type: none">• The definition of ‘affected landholders’ will be clarified. The focus of the LNF is on appropriate negotiation processes with private landowners and private leaseholders.• In general, public landholders and users will not be the subject of the proposed LNF regulation. The regulation may include a provision for a negotiation process with local councils and non-government bodies.• The program welcomes feedback. Proactive consultation is ongoing, and we continue to engage with all directly affected landholders and stakeholders.

Discussion question 2: landholder identification

Comments in this category responded to discussion question 2: how can we ensure all affected landholders are identified?

What we heard	Our response and actions
<ul style="list-style-type: none">• Comments stressing the importance of contacting each affected landholder individually.• Comments providing suggestions for identifying affected landholders, including:<ul style="list-style-type: none">◦ geospatial mapping and electoral data◦ interagency collaboration and data sharing◦ print, social media and letterbox drops using Australia Post◦ the use of local council and other agency mailing lists.	<ul style="list-style-type: none">• The LNF regulation would require NSW Government agencies to identify affected landholders.• Regarding the program, we will engage with affected landholders as part of the engagement strategy. The program is currently working with landholders who have volunteered to participate in case studies, as well as existing regional stakeholder groups but this will be expanded as we move into the next phase of the program.• The program will notify landholders when (and if) negotiations commence. We welcome and appreciate suggestions for how we go about identifying affected landholders.• The program will use the best available and most recent science and modelling to identify potential inundation from water for the environment above existing operational flow limits. The mapping outputs of this modelling will be available for each affected landholder’s property and we will verify the models on-ground. We will use modelling to identify landholders, as well as surveys, digital tools and traditional and online communication channels.

Discussion question 3: impacts

Comments in this category responded to discussion question 3: what potential impacts should be considered for assessment?

What we heard	Our response and actions
<ul style="list-style-type: none">• Several comments emphasising the need to address impacts on an individual landholder basis, highlighting site specific impacts.• Some comments suggesting the NSW Government is unaware of the full range of impacts.• Comments expressing the importance of taking into account seasonal impacts, both in relation to agriculture and inundation, and elevated inundation risks.• Comments raising access impacts, the loss of agricultural productivity and emphasising the need to consider associated economic impacts.• Comments raising the need to consider negative environmental impacts, such as erosion, soil compression and the spread of weeds, with others highlighting the importance of positive environmental impacts.• Comments noting quality of life, wellbeing and psychology impacts.• Several comments not supporting the use of statutory liability exclusions resulting from using ‘good faith’ in negotiations.	<ul style="list-style-type: none">• Step 2 in the LNF regulation will ensure all potential impacts are identified, assessed and documented. The LNF will set the steps for the negotiation process to reach agreement on impact mitigation, providing assurance to landholders the NSW Government must follow a consistent approach and requirements.• The program is developing an Impact Management Toolbox in collaboration with landholders. When the program commences formal negotiations with all affected landholders, this toolbox will assist with identifying and mitigating impacts.• The program will use the best available and most recent science and modelling to identify potential inundation from delivering water for the environment above existing operational flow limits. Inundation maps will be available for each affected landholder’s property to assist with identifying impacts, negotiations and mitigation. With each affected landholder, the program will negotiate impact mitigations through compensation and/or infrastructure.• Planning delivery of water for the environment above existing constraints will need to strike a balance between the optimum season for environmental outcomes and minimising adverse impacts on agricultural activities. Recent modelling indicates the program is expected to only have limited additional impacts to what is already experienced during unregulated flow events.• The WM Act already excludes river operators from liability when they act in good faith to release water for operations (e.g. air space management). The program is working to identify the optimal river operations procedures, risk management approaches and notification of flows for environmental water deliveries. The program will engage with affected landholders on these aspects, provide information and address any concerns.

Discussion question 4: negotiation

Comments in this category responded to discussion question 4: how would you like negotiations to be undertaken?

What we heard	Our response and actions
<p>Comments suggesting:</p> <ul style="list-style-type: none">• the LNF will reduce the time for negotiations, and remove the power and control from affected landholders, or suggested an element of coercion was involved.• negotiations should be transparent and include an option for collective negotiating.• an independent assessment of issues would be required to progress to negotiation.• independent, face-to-face negotiations should be carried out with the landholder and any professional services. Some submitters raising water use charges, and the consequences of acquisition of water entitlements by governments for environmental use.	<ul style="list-style-type: none">• The NSW Government is seeking to implement a framework providing a fair and transparent way to consult and negotiate with landholders to address the impacts of delivering water for the environment above the existing operational flow limits. The LNF establishes the good faith process to provide landholders and the NSW Government with the opportunity to reach agreement on just terms.• The NSW Government's intention is for the LNF to provide a defined and consistent process requiring agencies to negotiate in good faith and a mechanism for landholders to raise issues and discuss mitigation.• The negotiation process aims to meet the needs of landholders and support a suitable mitigation agreement depending on the specific impacts to each landholder.• The LNF is not intended to address water use charges, nor the consequences of acquisition of water entitlements by governments for environmental use.• For the program, the NSW Government has committed to no compulsory acquisition and impacts will be mitigated on reasonable, fair and just terms.• The program will engage with affected landholders to address impacts associated with increased flow limits for water for the environment above current operational flow limits.• Negotiations would be individual unless landholders opt to negotiate as a group. Agreements reached with a group would then be signed with each individual landholder.• The program includes a negotiation assistance package.

Discussion question 5: negotiation timeframes

Comments in this category responded to discussion question 5: what do you consider a reasonable timeframe for negotiation?

What we heard	Our response and actions
<ul style="list-style-type: none">• Comments on what was considered a reasonable timeframe for negotiations, including:<ul style="list-style-type: none">◦ no timeframes should be specified◦ no less than six months◦ twelve months◦ references to a 12-year negotiation period.• Comments suggesting further engagement with, and more detailed information provided to, landholders is required to determine negotiation requirements.• One comment said the proposed process is concerning for landholders, as the NSW Government could overlook issues but still claim good faith negotiations have occurred.	<ul style="list-style-type: none">• In drafting the proposed regulation, the NSW Government will consider a maximum negotiation period of 18 months.• The NSW Government will consider:<ul style="list-style-type: none">◦ a ‘stop-the-clock’ mechanism to provide reassurance to landholders their negotiations can be paused if certain circumstances arise◦ the capacity to extend the negotiation timeframes to accommodate exceptional circumstances.• An indefinite negotiation period would not be appropriate as this would not achieve objectives for a defined, fair and consistent process.• The program will continue to engage with all affected landholders and will use the best available and most recent science, modelling and mapping techniques to provide landholders with information allowing them to make informed decisions.• Consultation is ongoing and the program is using several means to ensure it engages with all directly impacted landholders.• The program is engaging with stakeholders in different ways, including digital and traditional communications and on-ground meetings with landholders.

Discussion question 6: progress

Comments in this category respond to discussion question 6: how would you like the process to progress if an agreement isn't made within the timeframes?

What we heard	Our response and actions
<ul style="list-style-type: none">Comments suggesting negotiations should not have a timeframe.Comments suggesting more landholder and stakeholder involvement is required, such as when independent parties are being selected for a mediation panel, and through community-endorsed and co-design solutions.Comments supporting the proposed process to proceed.One comment suggesting if agreement cannot be reached a decision needs to be made if the LNF can continue in good faith.One comment expressing concern at the lack of information about timeframes for the Negotiation Assistance Package.	<ul style="list-style-type: none">In drafting the regulation, the NSW Government will consider a maximum negotiation period of 18 months. An indefinite negotiation period would not be appropriate as this would not achieve objectives for a defined, fair and consistent process.The NSW Government will include in the draft proposed regulation that the appointment of mediation panel members will require mutual agreement by all negotiating parties.The LNF will use a consistent negotiation process and timeframe for all affected landholders. It will ensure good faith negotiations occur and will provide options if an agreement cannot be reached.The program includes a Negotiation Assistance Package for affected landholders. We will consult with landholders regarding what is in this package.

Discussion question 7: progress if mediation is unsuccessful

Comments in this category responded to discussion question 7: how would you like the process to progress if mediation is unsuccessful?

What we heard	Our response and actions
<ul style="list-style-type: none">Comments suggesting the process should be abandoned if mediation is unsuccessful, and voluntary acquisition may be a possibility in some cases rather than an easement.Comments expressing disapproval of the proposed amendment to the <i>WM Act</i> because they believe the NSW Government is attempting to remove liability for inundation.Comments expressing concern at the possibility of the NSW Government relying on the LNF to avoid liability and/or coerce submission through a pretence of good faith.One comment expressing the withdrawal from mediation should only be an option for landholders, so the NSW Government cannot use this as leverage to progress.Two comments expressing further detail and information should be provided to landholders, stakeholders and the community, including independent mediators.	<ul style="list-style-type: none">The WM Act already excludes river operators from liability when they act in good faith to release water for operations (e.g. air space management). The LNF is about the good faith process to provide landholders and the NSW Government with the opportunity and the means to reach agreement on just terms.The program is working to identify the optimal river operations procedures, risk management approaches and notification of flows for environmental water deliveries. The program will engage with affected landholders on these aspects, provide information and address any concerns.The intention is for the LNF regulation to that NSW Government does not have an option to withdraw from negotiation or mediation until the allocated time period for negotiation of 18 months has elapsed, or it can be reasonably demonstrated other parties do not intend to negotiate in good faith.The NSW Government is seeking to implement a framework providing a fair and transparent process to negotiate with landholders to address impacts of increased flow limits for water for the environment. The LNF is about the good faith process to provide landholders and the NSW Government with the opportunity and the means to reach agreement on just terms.The NSW Government has committed to mitigating impacts from water for the environment above existing operational flow limits, and to no compulsory acquisition under the program. Land acquisition may only occur where voluntary or a property is on the open market and the site is strategically important.

Discussion question 8: agreement

Comments in this category responded to discussion question 8: do you consider this to be an appropriate agreement structure for the program, or do you have suggestions how it can be improved?

What we heard	Our response and actions
<ul style="list-style-type: none">Comments suggesting the LNF conflicts with the NSW Government's stated position that participation will be voluntary, which may contribute to further delay and lack of trust with landholders.Comments expressing the proposed mitigation approach (including purchase of easements) is biased towards the NSW Government and future infrastructure maintenance would be a burden for landholders.Comments saying not enough information has been provided to landholders.Comments expressing support for the agreement structure, and some expressing conditional support.	<ul style="list-style-type: none">Water Infrastructure NSW is developing a policy on infrastructure ownership, operation and maintenance. We will engage landholders to further explore and guide resolution of these issues.In relation to publicly funded capital works for privately-owned assets, the approach applied historically and consistently by the NSW Government is the asset owner is responsible for ongoing operations and maintenance.Infrastructure funded by the program will also provide access and resilience against ongoing inundation from unregulated flows up to the adopted limit for water for the environment above existing operational flow limits. This will generate additional benefits to landholders and will be factored in when estimating the future costs of operation and maintenance.The program has reviewed initial stakeholder feedback on the mitigation principles. We will continue with broader consultation before finalising these principles.Maximum inundation will be the key limiting parameter for releases of water for the environment. The agreement will include reference to maximum inundation associated with the upper flow limit adopted for each river or reach under the program. While hydraulic investigations and modelling applied uses the best available science, it will not be possible to guarantee exact frequency and timing of lows given variability in water availability, changes in channel configuration and other conditions. The program proposes a conservative estimate (i.e. upper end) for the frequency, timing and duration be used in calculating the easement value and other compensation to allow maximum protection for landholders.Future planning on releases of water for the environment planning, as well as ensuring landholders receive timely notification of specific events, will help landholders to anticipate and plan for future events.As the program contributes to the 605GL 'supply volume' under the Basin Plan it will help to reduce the need for further water recovery from agriculture.

What we heard

Our response and actions

- Agreements with landholders only apply within set terms (e.g. the easement applying to an adopted flow limit and flow conditions). There is no intention for any future changes in flow limits and flow conditions after agreements are reached. If any future government contemplated a change in the terms of the existing agreement, a new agreement mitigations and compensation would have to be negotiated.
- The program is about raising operational flow limits for environmental water delivery purposes only.
- Accounting for losses from water for the environment is subject to various policies under the Basin Plan, including the prerequisite policy measures under the Water Sharing Plans (WSPs). WSPs may need to be amended to deliver water for the environment above existing constraints and this will be subject to consultation as required under the WM Act.
- Potential third-party impacts will be considered as part of the program's next phase.
- For the program, the NSW Government is open to landholder input to the process and composition of a mediation panel. However, it will be important the panel members are independent of both the NSW Government and affected landholders and all parties agree to the composition of the panel and the terms of the engagement.

Questions and requests for information

Comments in this category included questions, clarifications and requests for information.

What we heard	Our response and actions
<ul style="list-style-type: none">• Comments requesting further information about the LNF and the program, including inundation modelling and research.• Comments asking for clarification and requesting responses from the program team.	<ul style="list-style-type: none">• Over the last three years the program has focussed on upgrading data, scientific technical approaches, methodologies and resources to provide better information, including through:<ul style="list-style-type: none">◦ improving the hydraulic and hydrological modelling◦ updating the estimates of the environmental risks and benefits◦ reviewing river operations for environmental flows above existing operational limits◦ monitoring and capturing new data related to natural events in 2021 using aerial photography, gauge readings and camera monitoring.• The technical information will be used to help the Basin States to decide on the next steps for the program. Engagement on the upgraded technical information started in July 2022.• The NSW Government is aware of the challenges presented by the Basin Plan 2024 implementation timeframe. NSW is committed to implementing the Basin Plan and is seeking to work with the Australian Government and other Basin States to ensure time is available for Basin states, communities and the Australian Government to work together to manage the changes required for a healthy and productive Basin.• The program will engage with affected landholders to assess benefits, impacts, mitigations and then, if the program proceeds, will negotiate agreements with affected landholders on fair, equitable and just terms.• The agreement structure described in the LNF discussion paper is a draft for feedback. It is not intended for a detailed agreement structure to be specified in the proposed LNF regulation.• The program uses a wide range of consultation tools to reach and engage with stakeholders, including digital and traditional communication channels and face-to-face surveys with landholders. Program engagement is ongoing, and we remain committed to engagement with directly affected landholders.

Next steps

As described in our responses and actions, the feedback received on the LNF discussion paper will be considered and, wherever possible, integrated into the next phase of the LNF development. Should the NSW Government choose to proceed, an exposure draft of the proposed regulation amendment and a Regulation Impact Statement (RIS) will be publicly exhibited, and submissions invited. Legislation requires this RIS to consider alternatives to the regulation (including non-regulatory approaches) and for the costs and benefits of the options to be assessed.

Consultation is ongoing for the program and we will continue to engage with directly impacted landholders and stakeholders. While consultation on a proposed regulation must comply with legislation, the program's process of collaborative engagement with affected landholders and stakeholders will continue.

The program is also developing the IMT to help in identifying and mitigating impacts. This toolbox consists of supporting principles, policy, and methods to support negotiations with private landholders, including leaseholders, during certain steps of the LNF process.

The decision on whether the program will proceed to implementation is one for all Basin jurisdictions, it is not something the NSW Government can decide on its own. In making this decision, many factors will be considered including levels of stakeholder acceptance, expected environmental benefits, capacity to deliver Basin Plan objectives, and overall program cost and feasibility.

The IMT is currently being developed and will be finalised in collaboration with landholders from mid-2022.

How to provide feedback

There will be further opportunities to provide feedback on the LNF once consultation begins on the exposure draft and RIS for the LNF amendment to the *Water Management (General) Regulation 2018*.

The program team welcomes feedback at any time. We will also seek feedback from landholders to finalise the IMT, the Negotiation Assistance Package and other tools of negotiation from July 2022.

More information

For more information:

- visit dpie.nsw.gov.au/reconnecting-river-country-program
- email RRCP.LNF@dpie.nsw.gov.au
- call 1300 081 047.