



RECONNECTING RIVER COUNTRY PROGRAM

Landholder Negotiation Framework

Discussion Paper

March 2022



Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Landholder Negotiation Framework

© State of New South Wales through Department of Planning and Environment 2022. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose provided you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (March 2022) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Preamble

The Reconnecting River Country program seeks your input on how we will work with landholders to reach mutual agreements to mitigate the potential impacts of the release of water for the environment under relaxed constraints.

The Reconnecting River Country program (the program) aims to achieve a balance of economic, social, cultural, and environmental outcomes across southern NSW when implementing actions to improve wetland and floodplain connectivity. The program focuses on delivering regional and local community benefits first and foremost, as part of the NSW Government's continued commitment to delivering sensible, community-driven Murray-Darling Basin Plan outcomes.

In the Murray-Darling Basin, there are a range of constraints or barriers limiting flows along our river systems. These constraints include physical structures (e.g. low-lying bridges and roads), river management practices and operational limits for river flows. Reducing constraints will allow water for the environment to be delivered at higher levels, connecting rivers to floodplains more often to provide enhanced outcomes for river habitats, native fish and other fauna. Ultimately, reducing constraints will allow improved environmental outcomes to be achieved with existing volumes of water for the environment.

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 and loss of accessibility.

Landholders, land managers and communities in regional NSW will see regional and local benefits through:

- investment in infrastructure and on-farm works
- the potential for improved agricultural productivity as a result of floodplain flows
- improved property access during unregulated flows
- improved recreational fishing and tourism
- improved river health.

Actions to mitigate impacts of water for the environment delivered at higher levels than existing practice, will also mitigate impacts of natural events up to those flow levels.

To complement the program, the Department of Planning and Environment (the Department) is developing a Landholder Negotiation Framework (the Framework) for a transparent, equitable, fair and consistent approach to negotiation of agreements with landholders, who may be affected by water for the environment being delivered at higher flow levels than current operating practice. The Framework aims to ensure all agreements are made in good faith and to provide consistency and certainty for affected landholders. The Framework will be embedded in the legislation through changes to the Water Management (General) Regulation 2018, which will ensure it is transparent and legally sound.

Initially the Framework will apply to the proposed flows under the program. In the future it may be extended to apply to other flow regimes related to NSW Long Term Water Plans under the Basin Plan. However, the Framework is not intended to apply to delivery of water for the environment within current accepted river operations practice.

The proposed process for the Framework to reach agreement with landholders includes six steps:

1. identification of affected landholders
2. assessment of impacts

3. negotiation
4. mediation (if an agreement cannot be formed during negotiation)
5. agreement on mitigation of impacts
6. exploration of options where agreement is not reached.

This Discussion Paper has been developed to provide interested parties with the opportunity to influence what the Framework looks like and how it works. The paper describes the context of the program, related legislation, the proposed process to reach agreement, examples of how the Framework could be applied and case studies of similar frameworks.

The Department is seeking submissions from interested parties on:

1. how the Department can work with landholders to achieve an efficient and acceptable process for reaching agreements
2. how a Framework (incorporated into regulation) can assist to provide clarity on the process landholders can expect the Department to follow in negotiating agreements in good faith.

Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

Introduction	1
Reconnecting River Country program overview.....	1
How can you have your say?	2
We want to hear from you	2
Providing submissions.....	2
Why a Landholder Negotiation Framework?	3
Why is the Framework required?.....	3
How will the Landholder Negotiation Framework be established and used?.....	3
What could the Landholder Negotiation Framework look like?	3
What is the proposed approach in the draft Framework?.....	3
Step 1: Identify affected Landholders	4
Step 2: Assessment of impacts	4
Step 3: Negotiation	5
Step 4: Mediation (if required).....	5
Step 5: Agreement on mitigation of impacts.....	6
Step 6: Options where agreement is not reached	6
What will the Agreement at step 5 look like?	6
Practical example scenarios of using the Landholder Negotiation Framework.....	7
Example scenarios.....	7
What is the context for the Framework?	9
Relevant legislation and policy	9
Water management	9
Just terms	9
Good faith.....	9
Reconnecting River Country Impact Mitigation	10
Next steps	11
Appendix 1 The Basin Plan	12
Appendix 2 Examples of negotiation frameworks	13
Hume to Yarrawonga.....	13
Northern Victorian Irrigation Renewal Project.....	14
Tasmanian Irrigation.....	14
TransGrid	15

Introduction

Purpose of this Discussion Paper

The Department of Planning and Environment (the Department) is developing a framework for a transparent, equitable, fair and consistent approach to negotiation of agreements with landholders, who may be affected by water for the environment being delivered at higher flow levels than current operating practice. The Landholder Negotiation Framework (the Framework) aims to ensure all agreements are made in good faith and to provide consistency and certainty for affected landholders, supported by legislation.

We would like your input to inform development of the Framework. This discussion paper describes the Reconnecting River Country program, related legislation, the potential steps of the Framework, examples of how the Framework could apply and case studies of similar frameworks. Questions are posed through the discussion paper on different elements of the Framework. The paper sets out how you can have your say by making a submission to the Department.

Reconnecting River Country program overview

The Reconnecting River Country program (the Program) aims to achieve a balance of economic, social, cultural and environmental outcomes across southern NSW when implementing actions to improve wetland and floodplain connectivity. The program focuses on delivering regional and local community benefits first and foremost, as part of the NSW Government's continued commitment to delivering sensible, community-driven Murray-Darling Basin Plan outcomes. The program reimagines the previous Constraints Measures program and has been developed based on extensive feedback from the local community.

In the Murray-Darling Basin, there are a range of constraints or barriers limiting flows along our 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.

The program will address physical, policy and operational barriers to the delivery of water for the environment. Examples of possible actions under the program include:

- operational changes, such as changes to river management rules expressed in Water Sharing Plans or river management operational manuals and procedures
- raising bridges or other works to ensure access during high managed flows
- purchase of easements to facilitate the delivery of higher managed flows.

Reducing constraints will result in water for the environment being delivered at higher levels, connecting rivers to floodplains more often to provide enhanced outcomes for river habitats, native fish and other fauna. Ultimately, reducing constraints will allow improved environmental outcomes to be achieved with existing volumes of water for the environment.

Delivery of water for the environment at levels higher than current operating practice could have impacts on landholders. Impacts may include inundation of private land, damage to infrastructure and loss of access. The NSW Government is committed to mitigating issues arising for landholders directly affected by constraints relaxation by applying appropriate measures developed in collaboration with landholders and the community.

Through the program, landholders, land managers and communities in regional NSW are expected to benefit. Mitigation actions such as purchase of easements, and infrastructure works will provide significant economic stimulus for regional communities. Other benefits could include:

- increased pasture growth for floodplain graziers and floodplain cropping opportunities

- funding for on-farm infrastructure improvements, such as new bridges or crossings
- funding for upgrades to aging public infrastructure, such as levees, roads and crossings
- better water quality as saline pools are flushed out and floodplain vegetation litter is washed away reducing the risk and severity of blackwater events
- recreation and tourism associated with higher flows and healthy wetlands, such as kayaking and camping
- the opportunity to provide goods and services through the construction of water management structures.

Actions to mitigate impacts of higher flows will also mitigate impacts of many natural flow events.

The program is part of the NSW Government's commitment to the Murray-Darling Basin Plan (see Appendix 1 The Basin Plan). The program commenced stakeholder and community engagement and collaboration in August 2021. Development of the Framework is part of meeting the Government's commitment to mitigate impacts by negotiating agreements in good faith with landholders.

How can you have your say?

We want to hear from you

This Discussion Paper has been developed so that landholders, community members and other interested parties have an opportunity to influence what the Framework looks like and how it works. The Department is seeking submissions from interested parties on:

1. how the Department can work with landholders to achieve an efficient and acceptable process for reaching agreements; and
2. how a Framework (incorporated into regulation) can assist to provide clarity on the process landholders can expect the Department to follow in negotiating agreements in good faith.

This is an opportunity for communities and landholders to provide input into the Framework's design. We encourage consideration of the questions throughout this discussion paper when developing a submission.

More information on the program can be found at dpie.nsw.gov.au/reconnecting-river-country

Providing submissions

Submissions are open from 7 March to midnight on 15 April 2022 and can be:

- emailed to: RRCP.LNF@dpie.nsw.gov.au
- posted to:

Reconnecting River Country Program
Water Infrastructure NSW
Department of Planning and Environment
Locked Bag 5022
Parramatta NSW 2124

The Department values your input and accepts that the information you provide may be private and personal. If you prefer your submission or personal details to be treated as confidential, please make this clear in your submission. If you do not request confidentiality, the Department may make your submission, including any personal details contained in the submission, available to the public. Further information on the Department's privacy policy and management plan can be found on its website at dpie.nsw.gov.au/privacy.

Why a Landholder Negotiation Framework?

Why is the Framework required?

As the program will result in an increased frequency of inundation of the lower floodplain and floodplain waterways, the NSW Government has committed to addressing impacts on affected landholders. The Government will do this by negotiating with affected landholders in good faith to mitigate the potential impacts from releases of water for the environment that are higher than current operating practice.

The Framework will create a streamlined negotiation method to ensure transparent, equitable, fair and consistent outcomes for all affected landholders. It will also provide a mechanism for landholders to raise issues and discuss mitigation options.

Experience from other negotiation frameworks (see Appendix 2 Examples of negotiation frameworks) has shown the importance of a clear, consistent process, providing a reasonable timeframe for all parties to negotiate, obtain advice and consider options.

How will the Landholder Negotiation Framework be established and used?

The Framework will be established through amendments to the Water Management (General) Regulation 2018. Submissions on this Discussion Paper will be considered in drafting the proposed Regulation amendments. Negotiations with affected landholders will take place in line with the regulation amendments. The Department intends to release the draft Regulation for exhibition in 2022.

Initially the Framework will apply to negotiations on mitigating the potential impacts of the proposed flows under the program. In the future it may be extended to apply to other flow regimes related to NSW Long Term Water Plans under the Basin Plan, though any extension of the Framework would only take place after further consultation with the broader community.

The Framework is not intended to apply to negotiations around the delivery of water for the environment within current accepted river operations practice.

Where native title rights are affected, the NSW Government will comply with the *Native Title Act 1993* (Cth).

What could the Landholder Negotiation Framework look like?

What is the proposed approach in the draft Framework?

In all instances, the Government will seek voluntary agreement with affected landholders. If a voluntary agreement cannot be achieved, the Framework may move to a mediation process. In the event an agreement still cannot be reached, this Discussion Paper seeks input from landholders on how the program could proceed.

The Framework is intended to:

- be simple to understand and administer
- provide a consistent and transparent way for environmental water managers, river operators and landholders to develop long-term agreements to mitigate potential impacts from the delivery of water for the environment at flows higher than existing practice

- apply to circumstances where long-term changes are proposed to flow management to achieve environmental objectives. The Framework is not intended to be used to negotiate with landholders ahead of individual events nor apply to the delivery of water for the environment within existing operational practice
- enable streamlined negotiations which can be completed within reasonable timeframes that provide clarity, consistency and certainty for affected landholders.

A preliminary assessment of impacts will inform the negotiation process. Mitigation options will be developed with affected parties as a group or as individuals. The Department will develop a regulation that will ensure a consistent and transparent process that will facilitate appropriate mitigation measures, which may include easements, compensation or infrastructure being offered and agreements reached.

The proposed Framework process would consist of the steps shown in Figure 1 and explained further below.

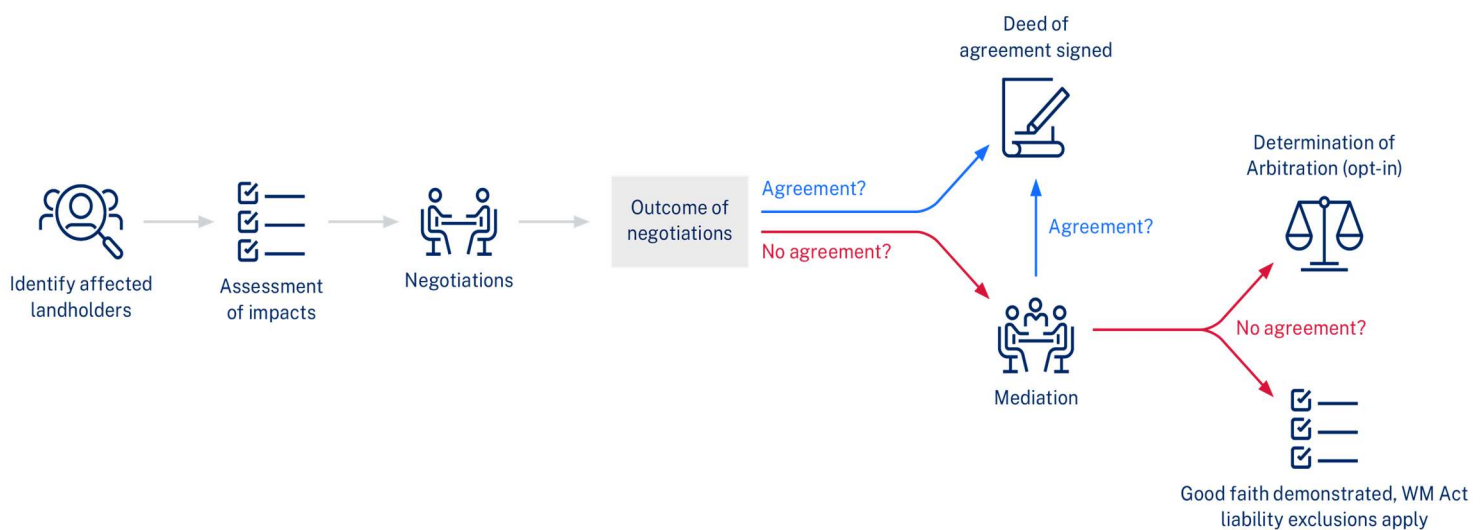


Figure 1. Steps of the proposed Framework

Step 1: Identify affected Landholders

Landholders that will be potentially impacted will be identified through either comprehensive modelling and mapping or through landholders advising the Department that they expect to be impacted and wish to enter into an agreement to mitigate these impacts.

Affected landholders are defined as owners, occupiers or users of public or private land that can be directly affected by water for the environment releases at flows higher than existing practice.

Discussion question: Do you consider the definition of affected landholders to be appropriate?

Discussion question: How can we ensure all affected landholders are identified?

See section 2 of this Discussion Paper for information on how to submit your response.

Step 2: Assessment of impacts

Step 2 covers the assessment of potential impacts that are directly attributable to managed releases of water for the environment under relaxed constraints. This may include, but is not limited to:

- economic loss (including a reasonably foreseeable impact to property value)
- an interference to the normal operation or use of the Landholder's land

- damage to infrastructure, property, or land
- potential loss of or injury to stock.

In assessing these impacts, the Department will also consider any potential benefits from the releases of water for the environment to the landholder, as well as methods for differentiating between managed releases above existing practice and other natural or operational flows.

The approach to assessing the impacts will be set out in the Impact Mitigation Toolbox. This is being developed in collaboration with landholders who have responded to an open invitation to participate. Further information about the Toolbox is set out in Reconnecting River Country Impact Mitigation section of this Discussion Paper.

Discussion question: What potential impacts should be considered for assessment?

See section 2 of this Discussion Paper for information on how to submit your response.

Step 3: Negotiation

Once the potential impacts are identified, affected landholders will be invited to engage in voluntary negotiations. The negotiations would be conducted in good faith, with appropriate support provided to landholders throughout the negotiation process. This may include assistance with legal, financial and property planning advice.

If negotiations are successful, an agreement is reached between the parties (see Step 6: Agreement on mitigation of impacts).

All affected landholders will have an opportunity to agree on terms within a reasonable timeframe. Existing legislation provides that a reasonable timeframe for negotiation is a minimum of six months, noting that negotiations may require shorter or longer timeframes (see Reconnecting River Country Impact Mitigation below).

Discussion question: How would you like negotiations to be undertaken?

Discussion question: What do you consider a reasonable timeframe for negotiation?

See section 2 of this Discussion Paper for information on how to submit your response.

Step 4: Mediation (if required)

Mediation would seek to resolve issues preventing agreement. It is proposed that mediation be provided where:

- voluntary negotiations cannot progress
- an agreement is not reached within the timeframe specified under the Framework.

Moving to the mediation stage would be by way of a party giving written notification that the negotiation process would move to mediation.

Mediators would be independent parties chosen from a panel established for the process.

Mediation would cease and proceed to Step 5: Options where agreement is not reached if:

- it becomes clear that an agreement will not be reached
- either party withdraws from mediation
- either party considers the other is not acting in good faith.

Mediation, if successful, will lead to the Department and landholder reaching agreement. In this case, the parties will proceed to [Step 6: Agreement on mitigation of impacts](#).

Discussion question: How would you like the process to progress if an agreement isn't made within the timeframes?

See section 2 of this Discussion Paper for information on how to submit your response.

Step 5: Options where agreement is not reached

If the landholder is not satisfied with the outcome from mediation or no agreement can be made, then the process will move to this step.

The *Land Acquisition (Just Terms Compensation) Act 1991* (the Just Terms Act) includes provision for compulsory acquisition where agreement for voluntary acquisition and/or easement is not successful. The NSW Government has stated it will not be pursuing compulsory acquisition of land or easements as part of the program at this stage.

Other options where agreement cannot be reached could include:

- arbitration (engaging a third party to resolve the dispute) if the landholder agrees to participate in the process
- voluntary acquisition of the property, rather than an easement, if the landholder prefers this in their circumstances and the potential acquisition meets the criteria developed through the program. The criteria for voluntary acquisition is yet to be established but may be based on the ability of the purchase to contribute to other Government priorities, such as biodiversity or cultural outcomes
- Government relying on statutory exclusion from liability afforded to the NSW Government under the *Water Management Act 2000* (WM Act) and implementing good faith through river operational arrangements, transparent environmental water planning and communication of event notifications (see Relevant legislation and policy).

Discussion question: How would you like the process to progress if mediation is unsuccessful?

See section 2 of this Discussion Paper for information on how to submit your response.

Step 6: Agreement on mitigation of impacts

If negotiation/mediation is successful, a deed of agreement is proposed to formalise the agreement between the parties. The likely nature and structure of Agreements is discussed below.

What will the Agreement look like?

It is proposed that landholder agreements for the Reconnecting River Country Program will follow a structure as presented in Figure 2, with an overarching Deed of Agreement and several supporting schedules tailored to the needs of each landholder.

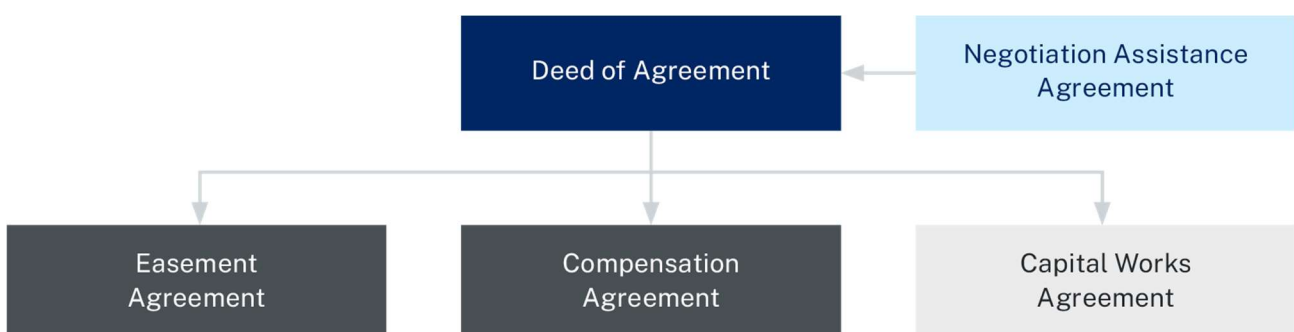


Figure 2. Proposed Landholder Agreement Structure

The agreements will be structured using multiple predesigned templates, which can be adapted to suit each individual or group. Consultation on both the Framework and Toolbox will inform the development of agreement templates. Draft templates will be made available to landholders to consider through the negotiations (see Step 3: Negotiation).

It is expected that an overarching Deed of Agreement will describe the terms and conditions, a summary of the underlying agreements, an outline of the expected inundation maximum, a commitment to early communication of watering priorities and notification of environmental watering events and a resulting deed of release. Under the Deed of Agreement there would be:

- a Negotiation Assistance Package, which would provide financial assistance and relevant information to assist landholders through the process of negotiating mitigation agreements, such as obtaining legal, financial and property valuation advice
- an Easement Agreement, which would detail the right to inundate the designated area and the deed of release. The easement would be registered on the title of the property and continue to apply, notwithstanding any future sale of the property. This ensures there is a common understanding between the river operator and the landholder about the expectation of any inundation due to these releases. In addition, the easement would include the financial compensation specific to the easement conditions
- a Compensation Agreement, which would cover impacts not covered by the easement and determine additional compensation that may be available
- a Works Agreement, which covers the construction of works either by the landholder or the Department, and responsibility for operations and maintenance of works, noting the intention that ongoing ownership and responsibilities are assigned to the benefiting landholder.

Each of these would be tailored to the specific needs of the landholder or removed if not applicable.

Discussion question: Do you consider this to be an appropriate agreement structure for the program, or do you have suggestions for how it can be improved?

See section 2 of this Discussion Paper for information on how to submit your response.

Practical examples of using the Landholder Negotiation Framework

The Framework would be implemented using the six steps outlined above. The process may be applied to an individual negotiation or where landholders would prefer to negotiate as a group. The following are hypothetical scenarios of applying the Framework. It is recognised that each landholder's situation may be unique.

Examples

Easement agreements

Following assessment of the impacts of flow releases under the program, a section of land is identified as likely to be periodically inundated. The landholder is notified and invited to negotiate an agreement for an easement over the land and a fair compensation package. The land is generally used for grazing and can be cleared of stock with relative ease when notification is received of an upcoming release. A landholder agrees to an easement over the area based on an agreed compensation package for the easement, including its registration on the land title of the property.

Mitigation option

A landholder has been contacted as a portion of the land area is expected to be periodically inundated by flow releases under the program. The area expected to be inundated contains a small area with a riverside pump. Options considered to mitigate the impact are the relocation of the pump, raising the pump or installing a different type of pump. Negotiations are undertaken and it is determined that the most appropriate option in this instance is to relocate the pump to a slightly higher location outside of the potential inundation area. A one-off compensation package is agreed to relocate the pump, construct a new shed and for future maintenance and upkeep of the piping.

Access upgrade including an easement

The program releases result in overbank flows in an anabranch. This causes inundation of low-lying grazing land adjacent to the anabranch and cuts off access to a large area of cropping land normally accessed via a low-level crossing. The anabranch is identified as a known fish habitat. There is no alternative access to the cropping land suitable for machinery. The offer is made of an easement covering both the low-lying grazing and the cropping land inaccessible due to the inundation of the low-level crossing. The landholder agrees to an easement covering the low-level grazing land, but not the cropping land due to the value of that land to the farm enterprise. A cost benefit analysis supports the position of the landholder. Through negotiation the Department and the landholder agree to the easement over the low-lying grazing land and upgrading the low-level crossing to a fish friendly crossing to the level required for the proposed flows.

Access upgrade through cost-sharing

A large area is identified that is not affected by the flow releases, but which relies on an access road. The access road is likely to be cut off slightly more frequently when inundated by the proposed releases. During negotiation, the landholder agrees to an upgrade of the access road to raise it above the nominated flow levels. However, the landholder prefers to upgrade the road to a higher level than the program requires. The Department and the landholder agree to share the costs for the more significant upgrade. The Department pays a share equivalent to the amount for upgrade to the nominated program flow levels and the landholder pays the remaining amount for the higher upgrade. The Agreement reflects this cost-share.

Mediation

Through assessing the additional impacts of the program flow releases, an area of land has been identified as likely to be affected. An easement is required over the area to provide for the program flow releases. The landholder has been contacted and negotiations have been ongoing. However, an agreement was not reached. An independent mediator is then selected from the preselected panel. The mediator identifies a difference of interpretation between the landholder and the Department about how a valuation method is applied. Resolution of this difference enables the Department and the landholder to proceed to an agreement. Following the mediation process, an agreement is reached for an easement and a compensation package is determined.

Arbitration

Through assessing the additional impacts of the flow releases, an area of land has been identified as likely to be affected. An easement is required over the area to provide for the program flow releases. The landholder has been contacted and negotiations stalled. The Department and landholder entered mediation, however, an agreement could not be reached within a reasonable timeframe. The Department recommends that the parties enter an arbitration process to determine the outcome. It is made clear to the landholder that entering into arbitration is voluntary, but the results of the process shall form an in-principle agreement between the parties to be formalised within a set period. The landholder agrees to the process and an independent arbitrator is selected from the preselected panel. Once the arbitrator hands down the determination the landholder and Department enter into an agreement consistent with the determination.

What is the context for the Framework?

Relevant legislation and policy

Water management

Amendments¹ to the *Water Management Act 2000* (WM Act) were made in June 2018 to clarify protections for the NSW government and WaterNSW regarding liabilities from environmental water releases when the agencies have acted in good faith. The first of these amendments includes a regulation making power to allow the Framework to be established under the Water Management (General) Regulation 2018 (new section 399B for the WM Act). The second of these amendments will clarify that the existing statutory exclusion from liability afforded to the NSW Government under the WM Act extends to water for environment releases where the action is undertaken in good faith (amendments to the existing section 398 of the WM Act). This amendment to the WM Act will not commence until the Framework has been established.

Just terms

The Department is committed to negotiating voluntary outcomes through seeking easements and infrastructure mechanisms to mitigate impacts on landholders. The Framework helps ensure landholder's interests are protected through a transparent, equitable, fair and consistent process, providing support to landholders to negotiate, and providing information on impacts and benefits. The Framework will be consistent with other legislation and policy concerning acquisition of easements and calculation of compensation.

The *Land Acquisition (Just Terms Compensation) Act 1991* (the Just Terms Act) establishes the procedures and requirements for any acquisition of land or interest in land (including easements). It ensures that any owner of land subject to an acquisition notice is paid compensation on just terms having regard to all relevant matters specified in the Act.

The proposed Framework, which will guide the negotiation process, uses an escalation model, consistent with the Just Terms Act.

The Property Acquisition Standards (propertyacquisition.nsw.gov.au/standards-and-principles) in NSW set the requirements for NSW authorities that undertake acquisitions under the Just Terms Act for improving the experience of property owners while ensuring project objectives are achieved. The standards ensure that:

- property owners will be treated fairly and with empathy and respect
- property owners will be provided with clear information about their rights
- property owners will be supported throughout the acquisition process with assistance tailored to meet individual circumstances
- the acquisition process will be consistent across projects and acquiring authorities
- the Government will monitor and report publicly on the effectiveness of the land acquisition process.

Good faith

Operating in good faith is a crucial element to the relationships under the program. The good faith approach includes a transparent, equitable, fair and consistent Framework to guide consultation and negotiations with landholders who may be affected by the program's nominated flows at levels higher than the current operational practice by river operators.

¹ Amendments to the WM Act were made by the *Water Management Amendment Act 2018* (Schedule 1 [81] to [84])

The Framework is intended to apply to circumstances where long-term changes are proposed to flow management (e.g. flow limits) to achieve long-term environmental objectives (e.g. improved wetland health). As such, agreements are intended to be long-term allowing flows to be delivered within new agreed limits to achieve program objectives. The Framework is not intended to be used to negotiate with landholders ahead of individual events nor apply to the delivery of water for the environment within existing operational practice.

The Framework is intended to ensure the program provides transparent and equitable principles regarding when agreements for easements, compensation, and mitigation measures will be available. In addition, it will ensure all agreements are negotiated fairly and transparently and offer a fair and reasonable compensation package to all affected landholders. Establishing the Framework under the Regulation will also ensure transparent and consistent dealings by the NSW Government with all affected landholders.

A second part involves operational procedures from the environmental water manager and river operator to ensure that annual priorities and proposed water for the environment releases are communicated. This second part of the good faith process will be through ongoing communication with affected landholders from the Department and WaterNSW.

The Department will keep affected landholders informed of annual watering priorities, with updates provided as the water year evolves and information on seasonal conditions and water availability changes. When an upcoming release becomes likely, progress updates may be provided to ensure that landholders remain informed of any intended releases of water for the environment.

WaterNSW will provide the final notification to inform landholders before and during a release of water for the environment under the program, detailing the targeted flow rate or level of the release.

Notification systems are currently in place for Water NSW customers and through the Bureau of Meteorology and the State Emergency Service. The Department will be investigating options for improving and complementing these systems to provide accurate and timely notification for flows that would be available to all landholders.

Reconnecting River Country Impact Mitigation

The program is developing an Impact Management Toolbox (the Toolbox). This will consist of a suite of tools, processes and methodologies to guide negotiations with affected parties (including private and public landholders) on what the NSW Government will do to mitigate the impacts of the program. While the Framework provides the process for a transparent, equitable, fair and consistent negotiation with landholders, the Toolbox relates to the on-ground implementation of the Framework.

The program has developed a set of draft principles that will form part of the Toolbox and guide the Framework's development and implementation, as below:

1. As an affected landholder, we will engage with you to endeavour to mitigate the potential impacts of changes to river flows through a respectful and genuine process
2. We recognise and will respect your interests and property rights
3. The process of mitigating the potential impacts of changes to river flows will be transparent, equitable, fair and consistent
4. We will assess the potential impacts, risks and benefits of possible changes to river flows using the best available science, modelling, practices and standards. This will consider the diversity of impacts for different regions and incorporate your local knowledge and understanding
5. We will manage your information in a safe and secure manner

6. We will negotiate agreements with you, which will mitigate the potential impacts of changed flows into the future and will be designed to survive title transfers
7. You will be provided with reasonable valuation and solutions to mitigate the potential impacts resulting from changes in flows
8. Asset ownership and responsibilities for operations and maintenance will be made clear as part of agreements
9. If you would like protections or benefits above those required to mitigate potential impacts from changes in flows, we will consider them and negotiate cost sharing arrangements with you.

Where native title rights are affected, the NSW Government will comply with the *Native Title Act 1993* (Cth).

Next steps

The NSW Government is committed to ongoing engagement with the community throughout the program and this Discussion Paper is part of that conversation. Submissions received in response to this Discussion Paper will inform the development of the Framework (see Figure 3).

The Department will release a summary of the feedback received from the Discussion Paper in the months that follow the submission period. The Department will release the draft Regulation for a further period of consultation in mid to late 2022.

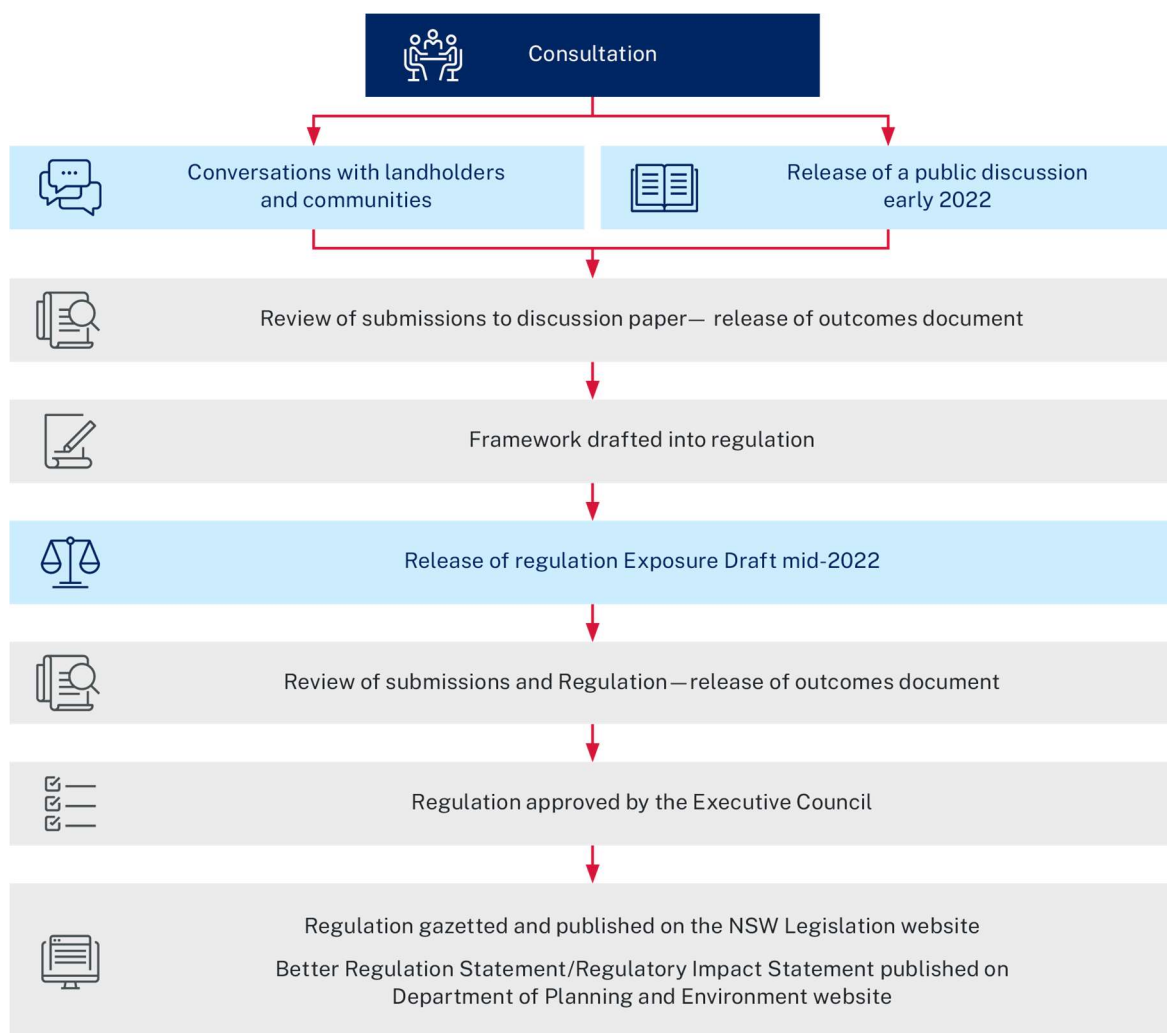


Figure 3. Proposed Landholder Negotiation Framework regulation development process

Appendix 1 The Basin Plan

The Murray-Darling Basin Plan (Basin Plan) sets sustainable diversion limits (SDLs) on how much water can be used in the Basin for consumptive purposes, while also ensuring there is enough water to sustain the environment and natural ecosystems. Flexibility is provided under the Basin Plan in the form of a mechanism to adjust SDLs in the southern Basin to achieve a sustainable balance between environmental, social and economic outcomes.

The Reconnecting River Country program will help achieve environmental outcomes while reducing the need for future water recovery from consumptive use. By enabling delivery of water for the environment at moderately higher flows than existing practice, the program will support achievement of environmental outcomes more efficiently in the future. This will reduce the need for further recovery of water for the environment from consumptive use, including irrigated agriculture. In this way the program supports social, cultural, economic, and environmental outcomes for regional communities.

Appendix 2 Examples of negotiation frameworks

Hume to Yarrawonga

Between 2000 and 2004, the then Murray-Darling Basin Commission (MDBC), in collaboration with the Victorian and NSW Governments, engaged in a voluntary negotiation process to establish easements along the Hume-Yarrawonga Reach. This was to allow for release of flows from Hume Dam up to 25,000 ML/day, for the purpose of remedying adverse effects of regulated flows.

The Hume to Yarrawonga Land Acquisition Reference Group (HYLA Reference Group) was formed to:

- consider the range of impacts
- consider processes for measuring the impacts
- develop a methodology for assessing a level of payment and a method for registering a once off payment of compensation.

The HYLA Reference Group consisted of a MDBC representative, three floodplain landholders (representing the Murray River Action Group), a valuer, a downstream irrigator representing the water user community and an agriculturalist.

The HYLA Reference Group met 13 times over a two-year period to consider issues raised by affected landholders. The outcome was a plan that was acceptable to the MDBC and to the affected landholders. The accepted plan adopted the establishment of easements that were to be recorded on title and followed the procedures required by NSW and Victoria Land Title Offices. It was resolved that the process would not be compulsory.

The process of negotiating easements involved:

- the assessments of impacts including:
 - identifying the range of impacts and attitudes of landholders towards easements
 - working with landholders to develop a basis for assessing the value of easements
 - development of a process for quantifying the 'degree of affectation' from the flows
 - development of a process for establishing land worth
 - mapping areas affected
 - development of models to calculate assessed level of payment.
- engagement with landholders which included:
 - letters to landholders acknowledging impacts of regulated flows, and follow-up surveys to identify range of impacts from full regulated flow
 - second survey with landholders after a 25,000 ML/day release to mark-up areas impacted on aerial imagery and get landholder sign off on the accuracy of maps
 - community meetings and brochures outlining the principles and assumptions to be used in the assessment and the impacts of full regulated flow that had been identified from landholder surveys in the previous two years
 - community meetings to introduce and explain the easement process to affected landholders
 - trials of the model to test its application were conducted on seven of the affected properties
 - property surveys to map areas affected and determine level of payment
 - protocols for dealing with landholders for managing expectations, follow up meetings and correcting misinformation.

This process resulted in 85 landholders accepting the offer and 23 landholders rejecting the offer. Due to the lack of full easement coverage, the legal obligation remains on the MDBA when operating Hume Dam to take reasonable steps to avoid third party impacts or risk legal action.

Northern Victorian Irrigation Renewal Project

The Northern Victorian Irrigation Renewal Project (NVIRP) began in 2008 and focussed on the upgrade of irrigation infrastructure throughout the Goulburn-Murray Irrigation District. The NVIRP was initially led by Goulburn Murray Water (GMW). Initially, project methods and assumptions were 'hardwired' following development of the project business case, which resulted in lack of flexibility for changes during project implementation.

In 2016, a 'reset' was undertaken to allow updates in assumptions and project methods and to implement knowledge from earlier program phases. The project involved 15,000 landholders. To rebuild trust during the reset phase, GMW communicated the prior assumptions to landholders, to explain reasons for the issues in the prior phase. Detailed on-ground knowledge was needed for planning appropriate solutions, channel by channel.

This experience highlighted the need for a clear framework for landholder negotiation, to ensure that agreements are fair for landholders and consistent with project goals. Key lessons were:

- Get community input to solutions. Taking only a large-scale perspective would be unlikely to produce solutions that are appropriate locally. Local on ground practitioners and landowners can provide vital information at this finer scale. Even when community input is sought it is important to get representation from the full range of landowners, from hobby farmers, through to big irrigators and pastoralists.
- In the case of the NVIRP, to deliver modernisation successfully, statutory reconfiguration powers were needed. In the early years of NVIRP, restricting to voluntary agreements proved a barrier to achieving the modernisation objectives, however, despite the introduction of powers, there was only one example where the powers needed to be used. In most situations, the availability of the powers was enough to provide a framework to reach agreement with landholders.

Tasmanian Irrigation

Tasmanian Irrigation (TI) is a Tasmanian Government owned organisation that was established to develop, own and operate significant irrigation schemes in Tasmania. In 2008, TI commenced a program to develop 15 irrigation schemes over two stages.

TI requirements were underpinned by a robust legislative framework to acquire an interest in land and provide a compensation framework to work within. This underlying power provided confidence on the ability and clear timeframes to acquire land to deliver important regional and community outcomes and for fair compensation to be received by the landowner.

TI was determined to be an acquiring authority for the purposes of the Tasmanian legislation. This provided TI the ability to acquire land (or an interest in land, such as an easement). The *Land Acquisition Act 1993 (Tas)* (LAA) enables an acquiring authority to acquire privately-owned land necessary for the construction of new public infrastructure. It also provides the basis for determination of compensation arising from the acquisition of that land. The ability to compulsorily acquire land provides an acquiring authority with certainty that it can obtain the necessary land required for the provision of public infrastructure.

The policy of TI was to negotiate with the landowner to purchase the land. If an agreement could not be reached on the acquisition and the compensation to be paid, TI would move to compulsorily acquire the land under the LAA process. This process also allowed the ownership of the land to transfer to TI and allowed the necessary works to take place while the value of compensation is resolved over time.

TransGrid

TransGrid owns and operates the major high voltage electricity transmission network in NSW and the ACT, connecting generators, distributors, and major end users. Their role is to connect electricity consumers to a safe, secure, and reliable network through efficient maintenance, proficient operation of assets and prudent investment. In some cases, this requires the establishment of easements to ensure TransGrid staff can build new infrastructure, access infrastructure for routine inspections, and conduct repairs or in the case of emergency.

When the need for an easement is identified, TransGrid seeks to negotiate an agreement with the landholder.

After a face-to-face meeting (or making reasonable attempts), TransGrid will provide a letter of intention or an offer to purchase an easement. This letter will commence the minimum six-month negotiation period that is required under section 10A of the Just Terms Act.

This period will provide time to negotiate an agreement, and for the landholder to understand the valuation and acquisition process, obtain any necessary independent advice plus have their questions and concerns addressed in order to consider their options.

As part of the process TransGrid:

- connects landholders with a member of TransGrid's property team who will work with them throughout the process
- offers compensation for the easement that is assessed by a qualified valuer
- recommends engagement with a qualified, independent valuer to assess the easement compensation
- recommends landholders seek independent legal advice
- provides landholders with a map, plan of the easement, terms of the easement and copies of the acquisition documentation.

If an agreement is reached, TransGrid will provide the landholder's solicitors with the documents required to grant the easement and arrange for registration of an easement on the landholder's certificate of title. TransGrid will pay compensation after the easement is registered.

If an agreement is not reached following the six-month period after the initial offer or letter of intent is issued, TransGrid may take steps towards compulsory acquisition under the Just Terms Act – however this is typically as a final resort and would occur in parallel to any ongoing negotiations.