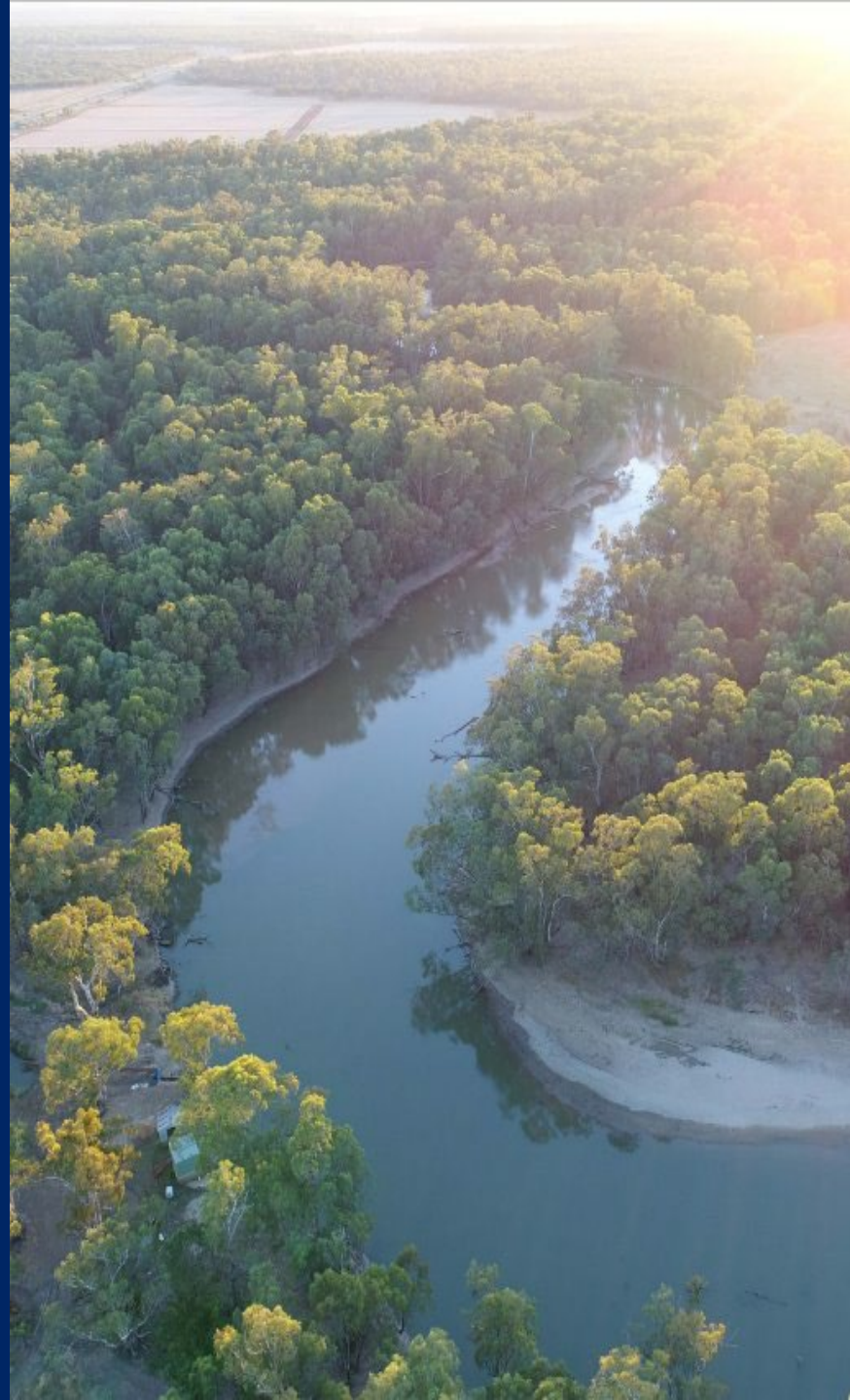


Landholder Negotiation Scheme

Information webinar

15 July 2025



Acknowledgement of Country

The Department of Climate Change, Energy, the Environment and Water acknowledges that it stands on Aboriginal land.

We acknowledge the Traditional Custodians of the land and water, and we show our respect for Elders past, present and emerging.

We do this 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.

Artist and designer Nikita Ridgeway from Aboriginal design agency – Boss Lady Creative Designs, created the People and Community symbol.

An aerial photograph showing a winding river through a lush green forest. The river is calm, reflecting the surrounding trees. The forest is dense with various shades of green, and the riverbank is visible on the left side.

Landholder Negotiation Scheme: background

- The proposal to create the Landholder Negotiation Scheme (LNS) was approved by Parliament in 2018.
- Implemented as a package of amendments to improve water management in NSW and support the delivery of Basin Plan projects.
- Designed to protect the interests of landholders through setting up a consistent and fair negotiation framework.
- A Discussion Paper was released for public comment in 2022. Community feedback was published in a 'What you said, what we did' report in August 2022.
- Public exhibition of the draft LNS Regulation, Negotiation Guidelines and Regulatory Impact Statement, from 16 September – 24 November 2024.
- The LNS was made in June 2025 and will:
 - support the implementation of programs or projects intended to improve the health and connectivity of rivers and wetlands
 - be applied where an enduring change is proposed to environmental water release arrangements.

Landholder Negotiation Scheme



Provides a state-wide framework that NSW Government must follow when negotiating agreements with landholders affected by future environmental water delivery.



Designed to protect the interests of affected landholders through a fair, consistent and transparent framework.

Without the LNS, the Just Terms Act is the only alternative process.



Requires consideration of impacts and compensation and / or mitigation works for affected landholders in line with existing legislation.



Additional protections for landholders through - more time to negotiate (12 months), allowing for mediation and requiring advance flow notifications.



Is an amendment to the *Water Management (General) Regulation 2018* and supported by statutory Negotiation Guidelines.



Declaration Order, published in the Government Gazette is required to switch on or apply the LNS in a particular area.

To date, no Declaration Orders have been published.



Landholder Negotiation Scheme public exhibition

- **16 September – 24 November 2024 (10 weeks)**
- Engagement activities included webinars, drop-in sessions and community meetings in Moree, Deniliquin, Wagga Wagga and Darlington Point
- 119 submissions received
- Submissions received from landholders and peak stakeholder groups
- Feedback received on draft LNS Regulation, Negotiation Guidelines, and the Reconnecting River Country and Reconnecting Watercourse Country Programs.

What We Heard report

The most frequently raised issues were:

- **LNS** – the decision to develop the LNS
 - **Flow easements** – opposition to flow easements and associated compensation; preference expressed for event-based payments
 - **Just Terms Act** – the rationale for, and opposition to, the option for compulsory acquisition of an interest in land (existing legislation) as a last resort
 - **Risk management** – concerns about the risk management of environmental water releases
 - **Landholder contact** – concerns about the ‘reasonable steps’ taken to identify and contact affected landholders
 - **Mediation and facilitation** – the need for mediators and facilitators to be independent
 - **Negotiation costs** – reimbursement for costs reasonably incurred during negotiations under the LNS
 - **Consultation process** – frustration with public exhibition approach
-

Amendments in response to feedback

LNS Regulation

- Clarified definitions (e.g. 'proposed environmental water release')
- Strengthened what the Minister must consider when making a Declaration Order
- Landholders can respond if a negotiation is being ended
- Clarified that flow notifications will be made prior to each environmental water release that is subject to a Declaration Order
- Requirement to undertake public consultation as part of 5-year review
- Requirement to provide written notice that 12-month negotiation timeframe has ended.

Negotiation Guidelines

- New diagram to illustrate role of Declaration Order
- Examples added to explain what 'reasonable steps' may mean for identifying landholders and for flow notifications
- Landholders can request to be included in the LNS and allow landholders to request to end a negotiation
- Clarified that a landholder has 7 days to agree to appoint a nominated facilitator or mediator
- Clarified when legal and valuation costs will be reimbursed and factors for notifying landholders of future environmental water releases.

Other amendments

LNS Regulation:

- Definition of Negotiation Guidelines includes date published
- Provision to amend the Declaration Order to describe an additional area of land likely to be affected
- Clarification that requirement for WaterNSW to notify when environmental water releases are proposed to be made only applies to declared releases.

Negotiation Guidelines:

- Removal of provision for Minister to amend Negotiation Guidelines from time to time (now requires regulation amendment)
- Provision for landholder to request negotiations are terminated if negotiations deemed likely to be unproductive
- Clarification of types of information that may be provided at initial negotiation meeting
- Clarification as to when a facilitator or mediator may be engaged.

Negotiation Guidelines

Department of Climate Change, Energy, the Environment and Water

Negotiation Guidelines: Landholder Negotiation Scheme

Made pursuant to Part 10A of the *Water Management (General) Amendment
Regulation 2018*

29 May 2025



- Plain English explanation of the LNS.
- Provides detailed guidance on how to conduct voluntary good faith negotiations under the LNS.
- Guidelines include details regarding the:
 - relationship between the LNS and the Just Terms Act
 - process for identifying affected landholders
 - negotiation timeframes
 - conduct and procedure of negotiations (including independent mediation and facilitation)
 - notification of flows to landholders by the river operator.

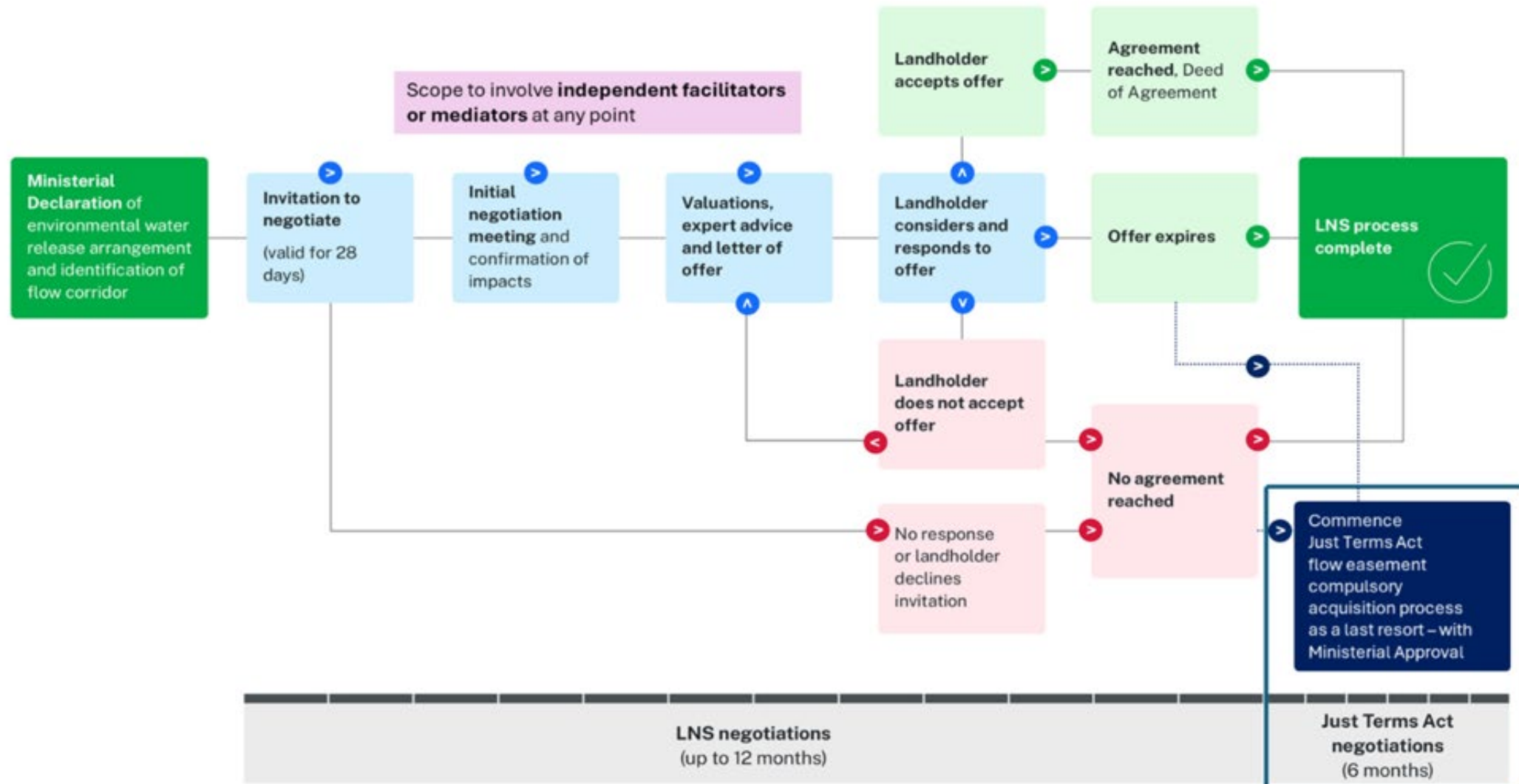
Landholder Negotiation Scheme and the *Land Acquisition (Just Terms Compensation) Act 1991*

- The Just Terms Act is existing legislation supporting just terms compensation to landholders where public authorities acquire an interest in land.
- In determining compensation under the LNS, the Just Terms Act (S55) applies. This includes having regard to market value, special value, loss attributable to severance, other disadvantage and impact on adjoining land.
- If a negotiation is not successful under the LNS, the Minister may consider compulsory acquisition of a flow easement as a last resort under the Just Terms Act.
- Compulsory acquisition will not be required in all cases where LNS negotiations are not successful.



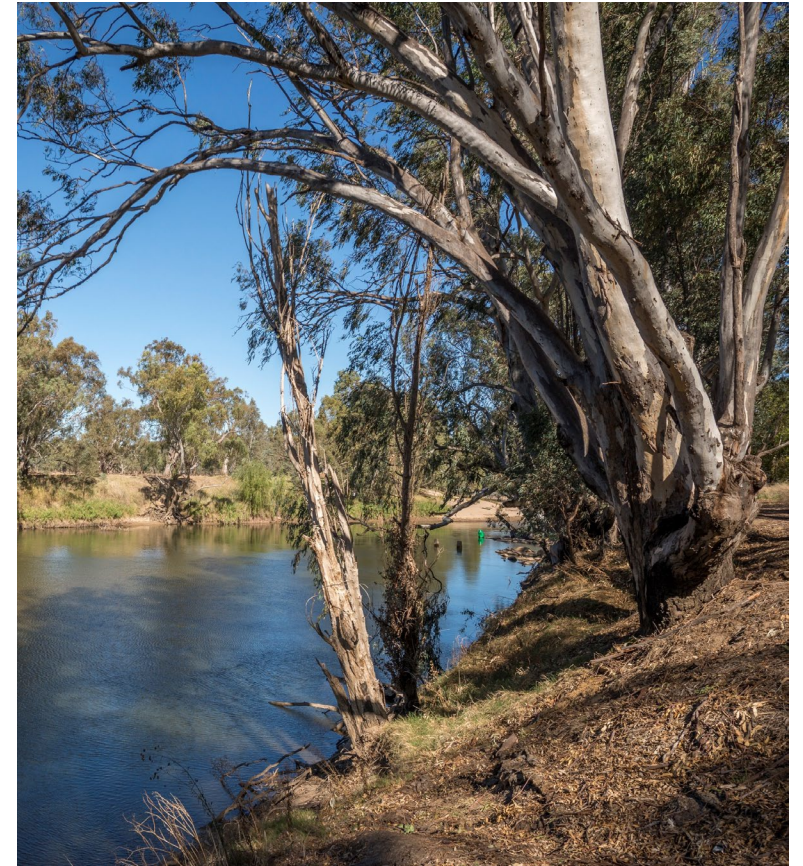
Landholder Negotiation Scheme (LNS)

Negotiation and Just Terms Act process



Declaration Order

- The LNS comes into effect through the Minister publishing a Declaration Order in the NSW Government Gazette that describes:
 - the frequency, timing and duration of the new environmental water release arrangement
 - the area that will be subject to LNS negotiations.
- Declaration Orders are program specific and must be published before negotiations under the LNS can commence.
- Provides information for landholders and property valuers to inform the valuations and the impacts of the flows on the property.



The Declaration Order under the Landholder Negotiation Scheme Regulation applies to enduring environmental releases

Landholder Negotiation Scheme negotiations timeframe

Enduring environmental water release arrangement

Program delivery of negotiations under the Landholder Negotiation Scheme Regulation.

Negotiation aimed at agreements with landholders to acquire an interest in land (e.g. flow easement)

Compensation may include mitigation works in some cases.

Minister declares an end to all Landholder Negotiation Scheme negotiations

Proposed environmental water releases can commence within the terms of the Declaration Order

Environmental water managers

- Order release events

River operator

- Notifies affected landholders
- Makes releases

As a last resort, and if approved by the Minister, **compulsory acquisition of an interest in land** may be pursued under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Includes further negotiation aimed at reaching an agreement, and may result in compulsory acquisition.

Invitation to negotiate

- All reasonable steps will be taken to invite affected landholders within the area described in the Declaration Order to enter into negotiations.
- **The Negotiation Guidelines outline that the written notice must include** the proposed environmental water releases, a copy of (or link to) the Negotiation Guidelines and the circumstances when the Minister may consider compulsory acquisition under the Just Terms Act.
- **All reasonable steps to give a landholder written notice may include** contacting the landholder in person or by phone to confirm a preferred contact method and identifying all possible contact avenues including postal address, email address and social media.



2018 *Water Management Act 2000* amendments made alongside the LNS

- The purpose of the s 398 amendment was to clarify that river operators can deliver releases of water for environmental purposes without the risk of civil liability where these releases are made in good faith.
- S 398 is in effect now for delivery of existing environmental flows across the state.
- Where there are new environmental flow arrangements, these cannot begin until after the conclusion of good faith negotiations under the LNS.
- The statutory protection provided under s 398 of the WM Act only applies where the NSW Government or Water NSW have acted in good faith.
- In general terms, good faith means:
 - adhering to all relevant legislation
 - adhering to policies and procedures, such as river operation procedures to ensure a risk-based approach to delivering flows
 - reliance on the latest data and modelling
 - ensuring appropriate approvals are obtained.
- Good faith has been part of the legislative framework under the WM Act since its inception and is commonly used in NSW legislation.

For more information



Information sessions about Reconnecting River Country Program and Landholder Negotiation Scheme will be held **21–24 July 2025** in Balranald, Hay, Darlington Point, Wagga Wagga and Gundagai

Register now at: water.dpie.nsw.gov.au/reconnecting-river-country-program

Further information about the Gwydir Reconnecting Watercourse Country Program:

<https://www.environment.nsw.gov.au/topics/water/water-for-the-environment/catchments/gwydir/gwydir-reconnecting-watercourse-country-program>

Landholder Negotiation Scheme:

<https://water.dpie.nsw.gov.au/about-us/legislation-and-policies/acts-and-regulations/landholder-negotiation-scheme-regulation>

What We Heard Report:

https://water.dpie.nsw.gov.au/_data/assets/pdf_file/0018/630513/lms-regulation-what-we-heard-report.pdf

visit: water.nsw.gov.au/landholder-negotiation-scheme

email: water.enquiries@dpie.nsw.gov.au

phone: 1300 081 047

