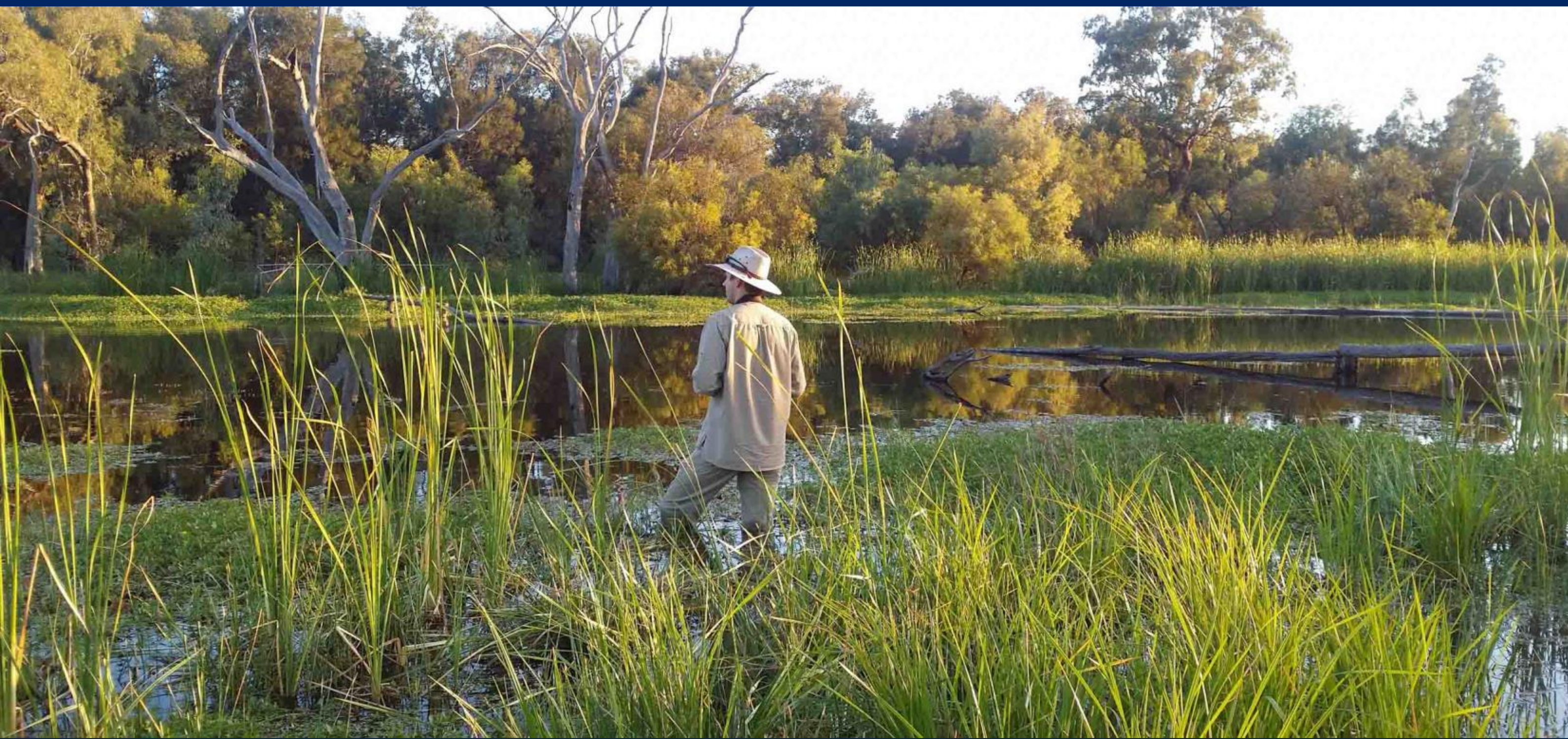
Department of Climate Change, Energy, the Environment and Water

Negotiation Guidelines: Landholder Negotiation Scheme

Made pursuant to Schedule 9 of the *Water Management (General) Regulation 2025*

11 August 2025



Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the traditional custodians of the land and pays respect to Elders past, present and future.

We recognise Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and their rich contribution to society.

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

Negotiation Guidelines: Landholder Negotiation Scheme Regulation

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Preamble

These Negotiation Guidelines have been prepared consistent with Sch 9, s 8 of the *Water Management (General) Regulation 2025* (the LNS Regulation).

Section 399B of the *Water Management Act 2000* (Water Management Act), provides for a regulation to facilitate negotiations with landholders who may be affected by proposed environmental water releases.

Section 399B of the Water Management Act is as follows:

s 399B Consultation about environmental water releases

1. *The regulations may make provision for or with respect to a scheme to facilitate consultation and negotiations with owners and occupiers of land, and other persons, who may be affected by proposed releases of water for environmental purposes.*
2. *Without limiting subsection (1), the regulations may make provision for or with respect to the following:*
    a) *the circumstances in which the scheme will apply,*
    b) *notification of proposed releases,*
    c) *mediation of disputes, in cases where agreement is required to resolve legal or other issues relating to a proposed release.*

These Negotiation Guidelines provide detailed guidance on the conduct of good faith negotiations under Schedule 9 of the *Water Management (General) Regulation 2025* (the LNS Regulation), between the Water Administration Management Corporation (Ministerial Corporation) and landholders affected by the proposed environmental water releases. The Ministerial Corporation must negotiate in accordance with these Negotiation Guidelines (Sch 9, s 7(1) of the LNS Regulation).

The Negotiation Guidelines are intended to assist in the plain English interpretation of the draft LNS Regulation in its application to specific locations and circumstances where the Minister determines the LNS Regulation applies.

The Negotiation Guidelines are intended to support transparency, equity, fairness and consistency in the negotiation process to ensure agreements with affected landholders are negotiated in good faith.

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1 Purpose

The Landholder Negotiation Scheme Regulation was originally made under an amendment to the *Water Management (General) Regulation 2018*).

These Negotiation Guidelines were prepared in accordance with Sch 9, s 8 of the LNS Regulation for the following purposes:

- to provide guidance on the conduct of good faith negotiations with affected landholders concerning proposed environmental water releases subject to a Declaration Order under the LNS Regulation
- to address the circumstances in which an independent facilitator or mediator may be appointed
- for consideration by the Minister in making a Declaration Order to determine a proposed environmental water release under the LNS Regulation (Sch 9, s 3(4)(b)).

These Negotiation Guidelines also serve to assist WaterNSW in developing procedures for notifying affected landholders of individual environmental water releases, as required under Sch 9, s 9 of the LNS Regulation.

The Negotiation Guidelines apply to all negotiations relating to a Declaration Order made under Sch 9, s 3 of the LNS Regulation. The Ministerial Corporation must negotiate in accordance with these Negotiation Guidelines (Sch 9, s 7 of the LNS Regulation).

If the Minister wishes to make amendments to these Negotiation Guidelines, an amendment to Schedule 9 of the *Water Management (General) Regulation 2025* must be sought. Typically, any amendments to the Negotiation Guidelines will take place concurrently with a review of the LNS Regulation. If a revised version of the Negotiation Guidelines is made, this will be made available to affected landholders invited to negotiate and published on the department's website.

Once all negotiations have concluded (see Section 5.5) and proposed environmental water releases are in place, the environmental water releases must remain within the parameters specified in the Declaration Order and the associated agreement terms (e.g. easement terms). The Declaration Order and easement terms are enduring, legal documents. If the NSW Government/Minister wishes to change the terms of an agreement with affected landholders or Schedule 1 (description of the proposed environmental water release) of the Declaration Order, these changes would be subject to further negotiation and compensation as appropriate.

The process from Declaration Order to commencement of any proposed environmental releases is described in Figure 1.

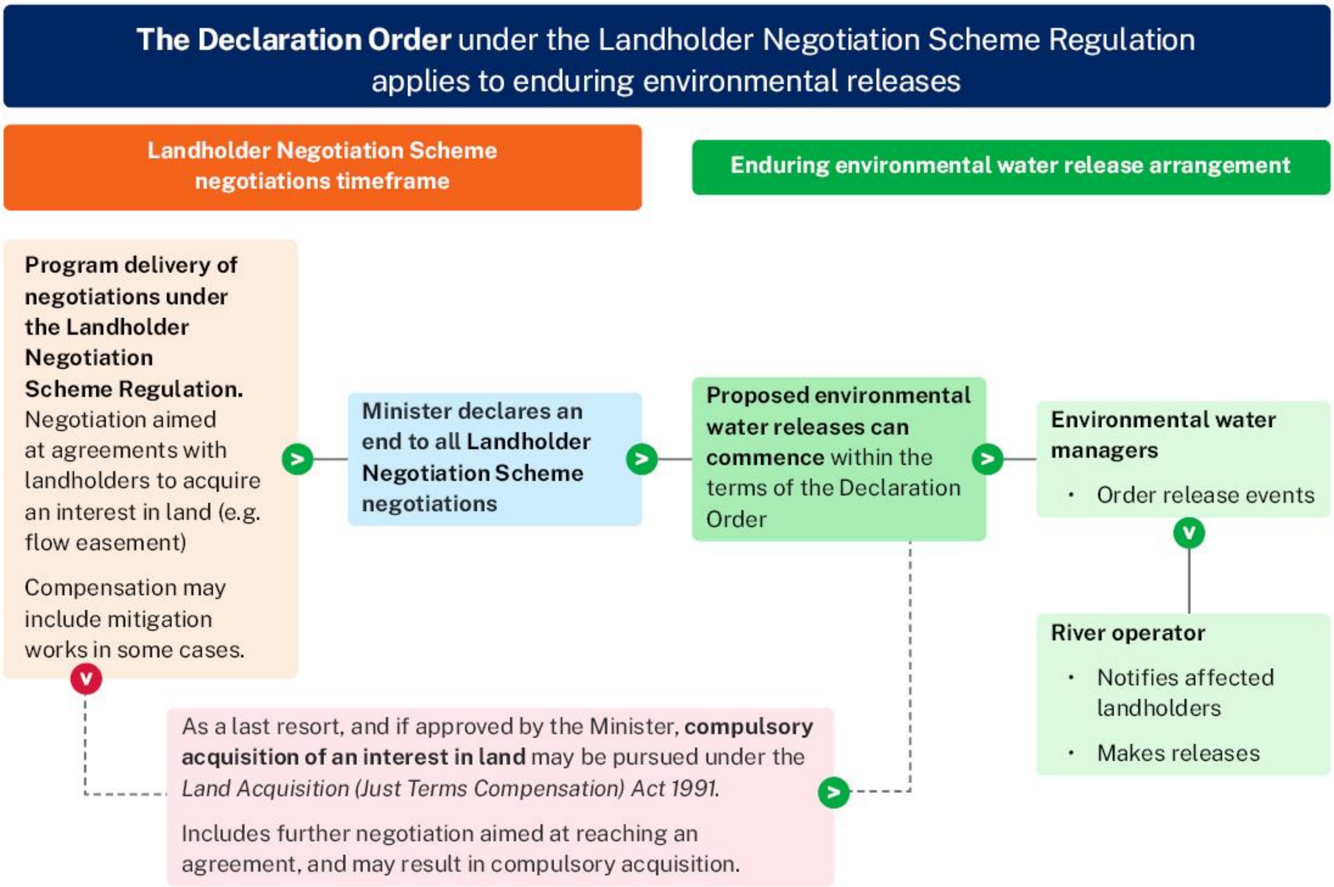


Figure 1. The process from Declaration Order to operationalisation of proposed environmental releases

2 Relationship to the *Land Acquisition (Just Terms Compensation) Act 1991*

Voluntary negotiations under the draft LNS Regulation are the preferred approach to reach agreement on compensating affected landholders for the acquisition of interests in land (e.g., easements in gross). Part 3, Division 4 of the *Land Acquisition (Just Terms Compensation) Act 1991* (Just Terms Act) will also apply to voluntary negotiations under the LNS Regulation.[1] Section 55 of the Just Terms Act sets out the matters to be considered by the Ministerial Corporation in determining the amount of compensation (which can include works to be delivered in lieu of compensation) payable to a landholder for the acquisition of an interest in land (e.g. an easement that provides a river operator with an enduring right to inundate land).

As set out at Sch 9, s 4(2)(b), an invitation to negotiate must specify the circumstances in which the Minister may consider the compulsory acquisition of an interest in the land, by the Ministerial Corporation. Subject to this, and if such an agreement is unable to be reached through voluntary negotiations under the LNS Regulation, the Minister may consider compulsory acquisition of an interest in the land as a last resort. The Ministerial Corporation has the power to acquire land or an interest in land by agreement or by compulsory process under s 375 of the Water Management Act.

[1] The Just Terms Act does not apply where land is available for purchase on the open market.

In this regard, the Just Terms Act sets out the requirements on government authorities (including the Ministerial Corporation) regarding the acquisition of land or interest in land by compulsory process. Section 10A of the Just Terms Act states an authority must make a genuine attempt to acquire an interest in land by agreement for at least 6 months before giving a proposed acquisition notice, unless a longer or shorter period of negotiation has been agreed between the authority and landholder, or the Minister approves a shorter period of negotiation.

The Property Acquisition Standards (propertyacquisition.nsw.gov.au/standards-and-principles) set further requirements for NSW authorities undertaking acquisitions under the Just Terms Act.

The circumstances where the Ministerial Corporation may consider compulsory acquisition of an interest in land are further discussed at Section 5.4.4. In all cases, any active negotiations under the LNS Regulation would have ended, and the LNS Regulation and these Negotiation Guidelines would cease to apply.

3 Criteria for application of the Regulation

Schedule 9, s 3 of the LNS Regulation enables the Minister, after consultation with the Minister for the Environment, to make a Declaration Order (published in the Gazette) on the application of the regulation to a proposed environmental water release. Such a Declaration Order must be made before negotiations can proceed with affected landholders and other relevant persons under the LNS Regulation.

In the period prior to making a declaration under Sch 9, s 3 of the LNS Regulation, individual programs should seek to engage with affected landholders and other persons on the proposed environmental water releases to ensure landholders are aware of the rationale for proposed changes in river management, and they have been provided an opportunity to comment on the planning process.

The Declaration Order must set out the relevant information on the proposed environmental water release, including proposed maximum flow rates and their anticipated frequency, timing, duration, magnitude and extent, along with appropriate buffers as necessary to mitigate the risk of exceeding maximum flow parameters.

In considering the criteria at Sch 9, s 3(4) of the LNS Regulation, the Minister must consider:

- the effect of the proposed environmental water release on affected landholders and other persons
- these Negotiation Guidelines.

In considering the effect of the proposed environmental water release on affected landholders and other persons, the Minister may consider the following:

- potential impacts to affected landholders likely to result from the proposed environmental water releases, such as:
    - the number of landholders likely to be affected

    - the maximum extent of the area likely to be affected under the proposed environmental water releases, including a conservative allowance for a margin for error in modelling water releases
    - the anticipated timing, duration and frequency of the proposed environmental water releases
    - the likely nature and extent of adverse impacts on landholders' commercial operations
    - the likely future impact on access to and within the affected landholdings, and on existing on-property assets, and whether such matters can be mitigated by works.
- any new, proposed or existing water infrastructure works relating to the proposed environmental water releases. It is possible new, proposed or existing works could affect either the environmental water release arrangement itself, and/or the extent of the land likely to be affected.

The Minister may also consider other relevant matters.

If the Minister makes a Declaration Order, published in the Gazette, the Department of Climate Change, Energy, the Environment and Water must also publish it on its website.

4 Identification of affected landholders

Under Sch 9, s 4(1) of the LNS Regulation, the Ministerial Corporation must take all reasonable steps to invite each affected landholder, described in a Declaration Order published in the Gazette, and other persons the Ministerial Corporation considers relevant to negotiate about the potential impacts of the proposed environmental water release. Other persons may include (for example) neighbouring landholders holding a registered easement within the landholding in question.

In seeking to identify the landholder, sources of information may include contact information already collected by the program, registers of land title (including for details of registered lessees, mortgagees and other interests), and any additional enquiries deemed necessary to locate contact details of landholders in the form of postal addresses, telephone numbers and/or email addresses.

For example, additional lines of enquiry may include:

- use of GIS systems to identify affected lots and their title details
- legal searches of title details and ASIC searches of company details
- internet searches
- visits to residences located on the landholding
- enquiries with local councils, real estate agents and solicitors.

5 Negotiation period timeframes

5.1 Pre-negotiation engagement of stakeholders

Individual programs should consider how best to engage with stakeholders, including affected landholders and communities, prior to the commencement of formal negotiations.

Engagement with stakeholders prior to, or after, a Declaration Order being made and the commencement of formal negotiations is important to:

- inform landholders and other stakeholders of the purpose of the negotiations and the likely process of negotiations including the possibility of compulsory acquisition of an interest in the land as a last resort
- provide stakeholders with a map of the proposed maximum extent of inundation plus a buffer zone (if applicable), and contextual information about the proposed environmental water release including maximum flow rates, and the anticipated frequency, timing, and duration of flows
- inform landholders of the program-specific arrangements for reimbursing legal and valuation costs reasonably incurred under LNS Regulation negotiations
- assist in the collection of data and information relating to landholdings prior to commencement of formal negotiations.

All such engagement is distinct from formal negotiations yet to commence (as detailed in section 5.2 of these Negotiation Guidelines). This pre-negotiation engagement may occur before and/or after publication of the Declaration Order.

Programs should consider a variety of communication channels to maximise the reach of the initial engagement activities. This will be particularly important for programs with large numbers of affected landholders.

5.2 Commencement of a negotiation period

Consistent with Sch 9, s 4(1) of the LNS Regulation, the Ministerial Corporation will take all reasonable steps to give written notice, inviting each affected landholder specified in a Declaration Order and other persons the Ministerial Corporation considers relevant to participate in a negotiation (See Section 6.2). The written notice must include:

- information about the proposed environmental water release (as set out in the Minister's Declaration Order)
- a copy of, or link to the website for these Negotiation Guidelines.
- if relevant, the circumstances when the Minister may consider compulsorily acquiring an interest in land under the Just Terms Act.

All reasonable steps to give a landholder written notice may include, but is not limited to:

- contacting the landholder either in person or by phone to confirm a preferred method of receiving a notice of invitation
- identifying a postal address and sending the notice via registered mail
- identifying an email address and sending the notice via email
- identifying social media avenues for contacting the landholder.

The period of each negotiation commences once a written notice of invitation has been accepted by the landholder (see Sch 9, s 5 of the LNS Regulation).

Where, after all reasonable inquiries have been made, a landholder or other person is unable to be located to be given a notice of invitation, the Ministerial Corporation may determine a negotiation is unable to take place. This does not preclude the possibility the landholder or other person in question may be subsequently located and invited to participate in negotiations.

If a landholder believes they may potentially be affected by a proposed environmental water release, but has not received an invitation to negotiate, the landholder may contact the relevant program. The Ministerial Corporation must then review the request to determine whether an invitation to negotiate is warranted and communicate the outcome to the landholder.

Each invitation will include a 28-day timeframe where the offer to negotiate remains open to acceptance by the affected landholder or other person. The invitation will request the landholder to provide a written response to the Ministerial Corporation within this timeframe. The Ministerial Corporation will provide the landholder with a reminder if a response to the invitation has not been received within 21 days. The Ministerial Corporation may consider a reasonable request to extend this 28-day timeframe. (Sch 9, s 5(b) of the LNS Regulation).

Not all negotiations undertaken under a Declaration Order will begin and end at, or around, the same time. Depending on the circumstances (e.g., the number of affected landholders or other persons within the area affected by the proposed environmental water releases, as well as other factors such as land use, extent of inundation, land tenure and the geographic distribution of landholdings within the affected area), it may not be practical or feasible for all negotiations with individual affected landholders or other persons to commence at the same time. For this reason, the Ministerial Corporation may, in consultation with the relevant government program, decide to schedule negotiations in stages over an extended period of time.

5.3 Provision to extend a negotiation period

Schedule 9, s 6(1) of the LNS Regulation provides for a negotiation period of 12 months from the date the landholder accepts the invitation to negotiate.

Schedule 9, s 6(2)(a) provides for the Ministerial Corporation to extend or shorten the negotiation period if agreed with the landholder. Considerations for extending the negotiation period may include (but are not limited to) the following circumstances:

- where one party to a negotiation is unable to participate in the negotiation for a period due to reasons such as:
  - a change in personal circumstances (e.g., personal illness or injury, family caring responsibilities, a death in the family, or a natural disaster)
  - a delay in the availability of information relevant to the matters under negotiation
  - a need for consultation with one or more third parties with an interest in a landholding.
- where both parties consider an extension of time is reasonably required in the interests of reaching agreement with one or more affected landholders or other persons.

An affected landholder or other person may request an extension of time in writing and with a rationale for the request. The Ministerial Corporation must consider whether the nature and duration of the requested extension is reasonable under the circumstances, and whether an extension of time is likely to assist in reaching an agreement. The Ministerial Corporation must respond to such a request in good faith and in a timely manner.

In all cases, where a negotiation period is extended the Ministerial Corporation will confirm in writing the amount of additional time determined for the negotiations with the affected landholder or other person.

The Ministerial Corporation and the landholder may also agree to a shorter period of negotiation (see Sch 9, s 6(2)(a) of the LNS Regulation).

5.4 Ending of a negotiation

5.4.1 Ending of a negotiation

Schedule 9, s 6 of the LNS Regulation provides that a negotiation ends when the first of the following occurs:

- an agreement has been reached between the Ministerial Corporation and the affected landholder or other person

- the 12-month maximum period of a negotiation has expired
- the Ministerial Corporation terminates a negotiation because it is satisfied the negotiation is unlikely to succeed or is unproductive.

In addition, if a landholder considers a negotiation is unlikely to succeed or is unproductive, the landholder can request the Ministerial Corporation to terminate the negotiation by providing written advice to the Ministerial Corporation.

In instances where an affected landholder or other person formally declines an invitation to negotiate provided in a notice of commencement of negotiations, or if a written response is not received by the Ministerial Corporation within the timeframe set out in the notice, the Ministerial Corporation may decide to terminate the negotiation (see Sch 9, s 6(2)(b)(ii) of the LNS Regulation). If a written response is not received, the Ministerial Corporation should endeavour to contact the affected landholder or other person by other means to confirm whether the person wishes to negotiate.

Before the Ministerial Corporation terminates a negotiation under Sch 9, s 6(2)(b)(ii) of the LNS Regulation, it must give a written notice to the affected landholder or other person concerned (Sch 9, s 6(3) of the LNS Regulation). The notice should set out the reasons why the Ministerial Corporation is considering terminating the negotiation. For example, this may include where the affected landholder or other person:

- has rejected an invitation to negotiate or failed to reply to an invitation to negotiation within the specified period
- is repeatedly unavailable to attend negotiation meetings without a satisfactory reason
- refuses to negotiate some or all elements of an offer
- has rejected an offer and the Ministerial Corporation has formed a view the parties remain a long way apart on key matters under negotiation
- has clearly demonstrated an unwillingness to negotiate in good faith.

On providing written notice to the landholder (or other person), the Ministerial Corporation must give the landholder (or other person) an opportunity to make a submission responding to the written notice, which must be provided to the Ministerial Corporation within 28 days of receipt. The Ministerial Corporation must consider the submission before making its determination.

Termination of a negotiation under the LNS Regulation does not necessarily mean the Ministerial Corporation will pursue compulsory acquisition of an interest in land under the Just Terms Act (see Section 5.4.4.).

Where a negotiation has commenced with a landowner, and the title transfers to a new owner in the meantime, the negotiation with the original landowner is deemed to have ended. The Ministerial Corporation may then seek to initiate a new negotiation with the new owner.

Where a negotiation has commenced with a lessee, and the lessee’s tenancy of the relevant land expires without renewal in the meantime, the negotiation is deemed to have ended. The Ministerial Corporation must then seek to initiate a negotiation with the new lessee unless the environmental water release arrangement has already been accounted for in the new lease arrangement.

5.4.2 Expiry of a negotiation period without agreement

If a negotiation period expires without agreement, the Ministerial Corporation will give a written notice to the affected landholder or other person advising the negotiation period has concluded.

However, the expiry of a negotiation period does not necessarily mean expiry of an offer. The expiry period set out in the terms of an offer may extend beyond expiry of the negotiation period.

Under Sch 9, s 6(8) of the LNS Regulation, the Minister may direct the Ministerial Corporation to attempt to resume negotiations after the end of the period of negotiation.

5.4.3 Resuming a negotiation that has previously ended

Schedule 9, s 6(7) of the LNS Regulation enables the Ministerial Corporation and the landholder to agree to resume a negotiation that has ended. Resumption of a negotiation may be warranted if it is considered likely further good faith negotiations will result in agreement.

5.4.4 Scope to initiate compulsory acquisition process in accordance with the Just Terms Act

As indicated in Section 5.2, an invitation to negotiate must set out the circumstances when the Minister may consider acquiring an interest in land under the Just Terms Act.

On termination of an LNS Regulation negotiation (see Section 5.4 1), or if a negotiation period ends without agreement (see Section 5.4 2) on the proposed acquisition of an interest in land (e.g., easement in gross), the Minister may determine, as a last resort, that the Ministerial Corporation can initiate the acquisition by compulsory process under the Just Terms Act.

Compulsory acquisition of an interest in land (e.g., easements) could only occur on a case-by-case basis with the approval of the NSW Minister for Water, where acquisition is considered to be essential to delivering the proposed environmental water release arrangement. While use of compulsory acquisition powers will not apply in all cases where agreements are not reached, the types of factors considered by the Minister when making a decision about the acquisition of an interest in land by compulsory process may include the:

- proportion, location, land use and impact of predicted additional inundation
- scale of the predicted impact of inundation on the ongoing viability of existing land-use/s.

Under these circumstances, the LNS Regulation and these guidelines would cease to apply, and the Ministerial Corporation must then proceed in accordance with the relevant requirements of the Just Terms Act. This includes first making a genuine attempt to acquire an interest in the land by agreement for at least 6 months, subject to certain exceptions.

5.5 Conclusion of all negotiations made under a Declaration Order

Schedule 9, s 6(6) of the LNS Regulation provides for the Minister to declare an end to all negotiations undertaken in relation to a Declaration Order if satisfied all such negotiations have ended. The department must publish this notice on its website and notify all landholders affected by the Declaration Order.

As discussed at Section 5.2, it may not be practical or feasible for all negotiations with individual affected landholders or other persons to commence at the same time. For this reason, the Ministerial Corporation may decide to schedule negotiations in stages over an extended period of time.

More generally, the period of time required to complete all negotiations will be determined by the Ministerial Corporation in consultation with the relevant government program.

The environmental water release arrangement, as proposed in the Minister's Declaration Order, may not commence until after the conclusion of all negotiations under the LNS Regulation. See Figure 1 in Section 1 of these guidelines for further context.

6 Conduct and procedure of negotiations

This section provides guidance on the negotiation procedure to be followed for each affected landholder or other person.

The Ministerial Corporation is responsible for planning of the negotiation process and the associated knowledge, skills and resources required to undertake negotiations in good faith. Officers undertaking negotiations on behalf of the Ministerial Corporation must be authorised to do so under delegation and must conduct negotiations consistent with these Negotiation Guidelines. The Ministerial Corporation will also need to conduct negotiations consistent with the NSW Property Acquisition Standards and Guidelines.[2]

The Ministerial Corporation will arrange for all meetings with affected landholders or other persons and take all reasonable steps to ensure negotiations are organised at the convenience of each affected landholder or other person. For example, negotiations may take place either at locations convenient to the affected landholder or other person, or remotely via telephone, videoconference or both. These arrangements may be varied at any time by agreement.

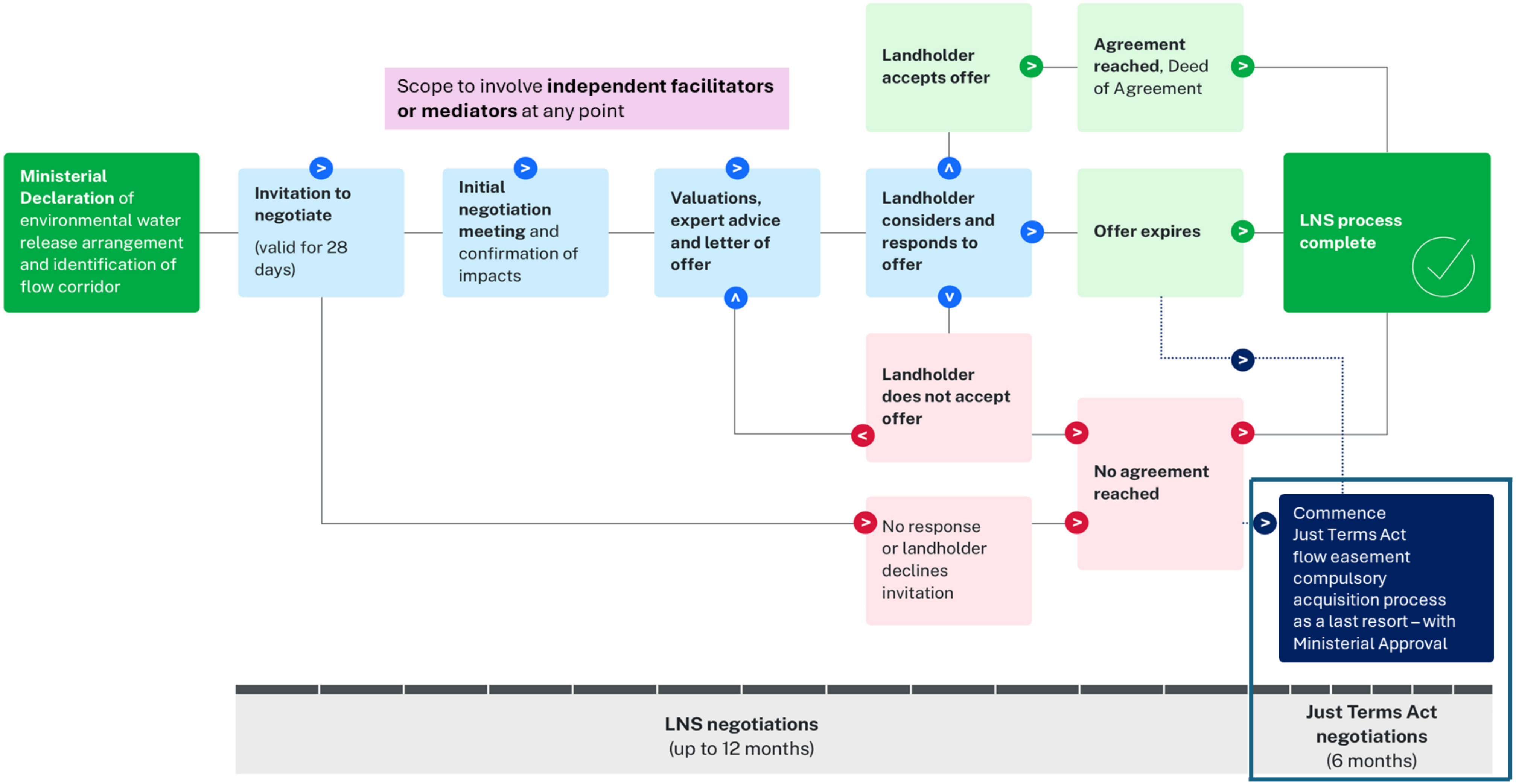
As discussed in the preamble, these Negotiation Guidelines are intended to support transparency, equity, fairness and consistency in the negotiation process to ensure all negotiations are undertaken in good faith.

The Ministerial Corporation must make a genuine attempt to negotiate an outcome by agreement. In doing so, it must take reasonable steps to respond in a timely manner to all affected landholder requests for information. In addition, the Ministerial Corporation will negotiate in ways showing a willingness to listen to and understand the concerns of landholders, displaying sincerity and authenticity and acknowledging landholders' contributions to negotiations.

A flow diagram setting out the negotiation process can be found at Figure 2.

[2] Available at Property acquisition publications and forms | NSW Government

Figure 2: Flow diagram of LNS negotiation process



6.1 Preparation for negotiation

To inform the negotiation process, information on the ways each landholding is likely to be impacted by inundation arising from the proposed environmental water releases will be prepared. Depending on the circumstances of individual affected landholders or other persons, this may include information on matters including (but not necessarily limited to) the following:

- affected land and assets including a table of lots, owners and title details
- a site plan with detailed inundation overlay, including total area of inundation at the maximum flow limit and available information on any tenancies or other registered interests in the landholding
- any other information considered relevant to the landholding.

This information will be compiled by the department and made available to the affected landholder or other person (see Section 6.2).

6.2 Initial negotiation meeting

In giving written notice to an affected landholder or other person (see Section 5.2), the Ministerial Corporation will invite the affected landholder or other person to participate in a negotiation and propose an initial meeting.

At the initial negotiation meeting, the affected landholder or other person will be provided with:

- contact information for the affected landholder's dedicated Personal Manager and Acquisition Manager
- information on the purpose of the negotiations and the likely negotiation process
- mapping of the modelled inundation footprint of the proposed environmental water releases and other relevant information including maximum flow rates and anticipated frequency, timing, and duration
- a written outline of the proposed negotiation procedure, including the possibility of compulsory acquisition of an interest in the land as a last resort
- details of the assistance available to affected landholders, regarding legal and valuation costs reasonably incurred, to ensure they can participate effectively in negotiations (see Section 7)
- information on who affected landholders or other persons may contact for any queries and/or complaints about the negotiation process
- details of any other assistance to be provided to affected landholders throughout the negotiations, such as external counselling and support services.

The anticipated scope and subject matter of the negotiations may also be discussed.

6.3 Confirmation of the nature and extent of impacts on affected landholders

After the initial meeting, discussions between the Ministerial Corporation and the affected landholder or other person should then focus on confirming the likely impacts of the proposed environmental water releases on the relevant land (or parcels of land), and if relevant, adjoining lands. Discussions will also cover built assets and other improvements on the land that may be impacted. The objective of these discussions, which may take place over one or more meetings, is to confirm and (to the extent possible) agree on the nature and extent of assessable inundation impacts and benefits. This information can then inform development of an offer (see Section 6.5).

This phase of negotiations will need to be informed by a range of information, including (but not limited to):

- mapping of the modelled inundation footprint of the proposed environmental water releases
- terms of a proposed easement, if applicable
- contextual information that will be made available on how proposed environmental water releases are likely to be given effect via ordering of individual releases of environmental flows by environmental water managers and delivery of these releases by river operators (this will include the Declaration Order)
- land uses and/or commercial activities on the land
- the matters set out in s 55 of the Just Terms Act[3], considered on a case-by-case basis, are as follows:

  55 Relevant matters to be considered in determining amount of compensation

  In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division) -

  (a) the market value of the land on the date of its acquisition,

  (b) any special value of the land to the person on the date of its acquisition,

  (c) any loss attributable to severance,

  (d) any loss attributable to disturbance,

  (e) the disadvantage resulting from relocation

  (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

- any existing registered easements, access arrangements or conservation agreements with third parties

[3] S.55 of the *Land Acquisition (Just Terms Compensation) Act 1991* as current to 5 July 2024. Refer to legislation for any subsequent amendments that may have been made to this section.

- potentially affected assets (such as access roads, culverts, pumps), and any modifications to, or augmentation of, those physical assets as may be reasonably required to mitigate impacts
- any new and additional works as may be reasonably required to mitigate impacts
- any material impacts on third parties with a registered interest in the land, such as mortgage holders
- any other relevant considerations, including betterment.

The documented assessment of impacts and benefits will then inform:

- assessments of the need for, and nature of, any physical works considered necessary to mitigate the anticipated impacts.
- independent valuations of any proposed easements in gross by a qualified valuer
- estimates of the cost of physical works proposed to mitigate impacts (potentially in lieu of compensation), drawing on expert advice as required
- for registered leaseholders, an assessment of the likely effect of the proposed environmental water releases on an existing registered lease.

This phase is an information gathering and analysis phase. Agreement between the parties on compensation is not sought or required during this phase.

6.4 Aboriginal land and interests

In relation to Crown Land in the relevant project area subject to an Aboriginal Land Claim under the *Aboriginal Land Rights Act 1983* (including claims that have been determined but title has not yet been transferred) the Ministerial Corporation will work with Crown Lands to progress these claims with a view to acquiring an interest in land as required.

When dealing with land under the LNS Regulation, the Ministerial Corporation must consider the *Native Title Act 1993* (Cth).

To satisfy the requirements of Sch 9, s 4(1) in relation to native title holders, the Ministerial Corporation will at least notify:

- if a prescribed body corporate is registered on the National Native Title Register as holding the native title rights and interests on trust in relation to the land – the prescribed body corporate
- if a native title claimant application is registered on the National Native Title Register over the land, any named applicants for that application
- if there is no registered native title claimant application or prescribed body corporate over the land, the native title representative body for that area (i.e., Native Title Services Corporation Ltd).

In addition, the Ministerial Corporation may consult and negotiate with relevant Aboriginal Traditional Owners and organisations who are not landholders or native title holders, but who may nonetheless have an interest in, or be affected by, the proposed environmental water release.

6.5 Provision of an offer

6.5.1 Provision of an offer

The Ministerial Corporation may prepare an offer and provide it to the affected landholder or other person in writing. Typically, this offer will be informed by the outcomes of negotiations and discussions under Sections 6.2, 6.3 and 6.4 (as relevant). In most cases, an offer will include provision for the acquisition of an interest in land to secure an enduring right to deliver environmental water through an identified flow corridor (e.g., easement). Offers may also provide for physical works intended to mitigate the impacts of a proposed environmental water release.

Where acquisition of an interest in land is proposed, the offer will include information on the terms of the proposed easement(s) and/or covenant(s).

Where new on-property works, or augmentation of existing approved works, are proposed as a means of mitigating impacts, the offer may provide for the proposed works.

An offer must be informed by an independent valuation undertaken by a qualified valuer, consistent with the provisions the Just Terms Act.

The offer will include a timeframe within which it remains open to acceptance by the affected landholder or other person and will request that they provide a written response to the Ministerial Corporation. At the discretion of the Ministerial Corporation, this timeframe may extend beyond the expiry of the negotiation period.

6.5.2 Variation of an offer

The Ministerial Corporation may vary offers to an affected landholder or other person during negotiations in response to information they provide.

Furthermore, if an offer is rejected within the negotiation period, the Ministerial Corporation may seek to continue negotiations with a view to resolving any outstanding matters in good faith. This may result in the preparation of one or more revised offers for consideration by the affected landholder or other person.

In relation to the negotiated purchase of easements in gross and/or any other interest in land, varied offers must be prepared as per Section 6.5.1 of these guidelines.

Where the affected landholder or other person has failed to accept an offer within the timeframe specified, or has formally declined an offer, the Ministerial Corporation is not obliged to provide a varied offer if satisfied further negotiation would be unproductive. In such instances, the Ministerial Corporation may terminate the negotiation under Sch 9, s 6(2)(b)(ii) of the LNS Regulation.

6.5.3 Expiry of an offer

An offer is deemed to have expired if:

- it is formally rejected by the affected landholder or other person
- the affected landholder or other person has failed to formally accept it within the response timeframe set out in the written offer
- the land is sold or transferred
- it is replaced by another (varied) offer.

If a written response is not received at least 7 days before expiry of the offer, the Ministerial Corporation must take all reasonable steps to contact the affected landholder or other person to confirm if they have considered the offer and intend to respond.

The Ministerial Corporation must provide a written notice to an affected landholder or other person to advise if an offer has expired in the absence of any formal acceptance or rejection.

6.6 Further negotiation of impact mitigation

Further negotiations may take place on provision of an offer (see Section 6.5). Note, this further negotiation of impact mitigation should not be confused with commencement of the negotiation period under Sch 9, s 6(1) of the LNS Regulation.

During these negotiations, all factors relevant to mitigation of impacts on the affected landholder or other person of the proposed environmental water releases will be considered, including (but not limited to):

- impacts and benefits as identified at Sections 6.3 and 6.4 (as relevant)
- appropriate, fit-for-purpose and cost-effective measures to mitigate impacts
- negotiation of agreement in principle to a mitigation package.

Negotiations will be informed by valuations and other information already provided to the affected landholder or other person, as well as:

- any independent valuation (and/or other relevant professional) advice procured by the affected landholder or other person (see Section 7 on negotiation assistance)
- any further independent valuations and/or technical advice required by the Ministerial Corporation
- the views of the affected landholder or other person and any relevant information they have provided.

6.7 Independent facilitation

Schedule 9, s 8(2)(a) of the LNS Regulation also requires these guidelines to provide for the circumstances where an independent facilitator may be appointed.

In the context of negotiation, facilitation refers to the process of guiding a group or individuals through discussions to help them reach a consensus or resolve conflicts. Effective facilitation helps to break down barriers, encourages participation and can lead to more productive outcomes. Facilitation will generally occur early in the negotiation process where parties are finding difficulty getting negotiations started.

Facilitated negotiation is intended to assist the parties in negotiating an agreement. It does not entail any obligations on either party to reach an agreement. The role of facilitation does not extend to arbitration on issues in dispute.

Both the Ministerial Corporation and the affected landholder or other person may request independent facilitation to support negotiations. The appointment of an independent facilitator must be agreed to by both the Ministerial Corporation and the landholder. The independent facilitator must be a person with expertise and experience in negotiation.

The Ministerial Corporation will apply a reasonable time limit of at least 7 days for the landholder or other person to agree to appoint a nominated facilitator.

The Ministerial Corporation may decide to appoint several independent facilitators from which individual facilitators may be engaged from time to time.

6.8 Mediation

Schedule 9, s 8(2)(a) of the LNS Regulation requires these Negotiation Guidelines to provide for the circumstances where a mediator may be appointed.

Mediation may assist where (for example) negotiations have made considerable progress, but where a small number of issues remain in dispute. The mediator supports communication, promotes understanding and helps the parties explore potential solutions. Mediation will generally occur towards the end of the negotiation process where there has been good progress to reach a negotiated agreement but there are matters both parties are unable to resolve.

Mediation does not entail any obligations on either party to reach an agreement. The role of mediation does not extend to arbitration on issues in dispute.

Both the Ministerial Corporation and the affected landholder or other person may request mediation to support negotiations. On agreement between the affected landholder or other person and the Ministerial Corporation, the Ministerial Corporation may appoint an independent mediator to assist parties in reaching an outcome on one or more specified areas of dispute. The independent mediator must be a person with expertise and experience in mediating disputes.

The Ministerial Corporation may apply a reasonable time limit of at least 7 days for the landholder or other person to agree to appoint a nominated mediator.

The Ministerial Corporation may decide to appoint several independent mediators from which individual mediators may be engaged from time to time.

7 Negotiation assistance

Where an agreement is reached under the LNS Regulation, compensation (in addition to impact on market value of the land) will be available for:

- legal costs reasonably incurred
- valuation fees of a registered valuer reasonably incurred
- if the negotiation relates to the need to reconfigure or adjust the actual land uses, the financial costs reasonably incurred by the affected landholder or other person directly in respect of the negotiation of those matters.

In relation to LNS negotiations that do not result in agreement, each program will determine whether negotiation assistance can be provided. This will be subject to Ministerial approval. Similarly, for negotiations undertaken in accordance with compulsory acquisition procedures (in accordance with the Just Terms Act) that do not result in agreement or compulsory acquisition of an interest in land, each program will determine whether negotiation assistance can be provided.

Non-financial assistance may also be provided. For example, access to available inundation modelling, mapping, aerial photography and satellite imagery may be provided.

Wherever the Minister determines the LNS Regulation applies, the Ministerial Corporation must ensure information about negotiation assistance available to landholders is provided to affected landholders or other persons, including whether fees reasonably incurred for negotiations under the LNS Regulation will be reimbursed if agreement is not reached. This will be provided in writing as part of the invitation to negotiate.

8 Deeds of Agreement

8.1 Form of a Deed of Agreement

Whenever the Minister declares the LNS Regulation applies to a proposed environmental water release, the Ministerial Corporation must prepare documentation on the nature and form of a legally binding Deed of Agreement where all relevant details of an agreed offer are formalised.

For example, the form of an agreement may provide for:

- registration of an easement
- funding for, and/or delivery of, physical works to mitigate inundation impacts
- registration of restrictive and/or positive covenants (e.g. in relation to physical mitigation works)
- interim arrangements and an indemnity for the river operator and other relevant parties (as appropriate).

The agreement may also set out the terms of financial payments and may also provide for any other matters as agreed.

It may also require, wherever relevant, for the affected landholder or other person to provide certain information to a lessee and/or licensee, to others with an interest in the land, to potential future owners prior to purchase or potential future lessees prior to formalising a lease, of the land in question.

8.2 Execution of a Deed of Agreement

The Ministerial Corporation will ensure that a Deed of Agreement is:

- prepared consistent with the terms agreed between the affected landholder or other person and the Ministerial Corporation
- provided to the landholder for execution by both the affected landholder or other person and the Ministerial Corporation.

The form of a deed should not limit the way the Ministerial Corporation chooses to acquire one or more easements, or the timing of such acquisition(s). The agreement should be consistent with relevant matters set out in the Declaration Order.

Where an agreement provides for purchase of an easement in gross or covenant, the Ministerial Corporation may place a caveat on the title of the relevant land if registration of the interest in land is not completed on execution of the agreement. This will ensure any potential buyer is aware of an intention to register an easement in gross or covenant over the relevant land.

9 Notification of flows to affected landholders

Once a proposed environmental water release arrangement, as set out in a Sch 9, s 3 declaration is implemented on an enduring basis, Sch 9, s 9 of the LNS Regulation requires WaterNSW to take reasonable steps to notify landholders affected by an individual release of water. This applies irrespective of whether agreement has been reached and/or an interest in the land has been acquired as part of a flow corridor. Notifications must accord with any direction given by the Minister.

In acting on this requirement, WaterNSW must take reasonable steps to:

- encourage and enable affected landholders and other parties to register for notification purposes, and nominate a preferred mode(s) of notification
- notify all registered landholders and other registered parties using their nominated mode(s) of notification. The reasonable steps to take these actions will be detailed in WaterNSW's procedure for notifying affected landholders.

In developing a procedure for notifying affected landholders and other registered parties, WaterNSW should consider a range of relevant factors including (but not limited to):

- a reasonable timeframe for advance notification of a water release to registered landholders and other registered parties
- the dynamic nature of decision-making, recognising decisions on water releases are often made in response to natural flow cues and system conditions
- the inclusion of information on the timing and magnitude of a water release and forecast downstream flows
- matters of uncertainty over which the river operator does not have control, and how any associated caveats are communicated
- the mode(s) by which each notification (or updated notification as required) is to be communicated.

The procedure should also set out the mechanisms for affected landholders to advise WaterNSW with any changes to their contact details.