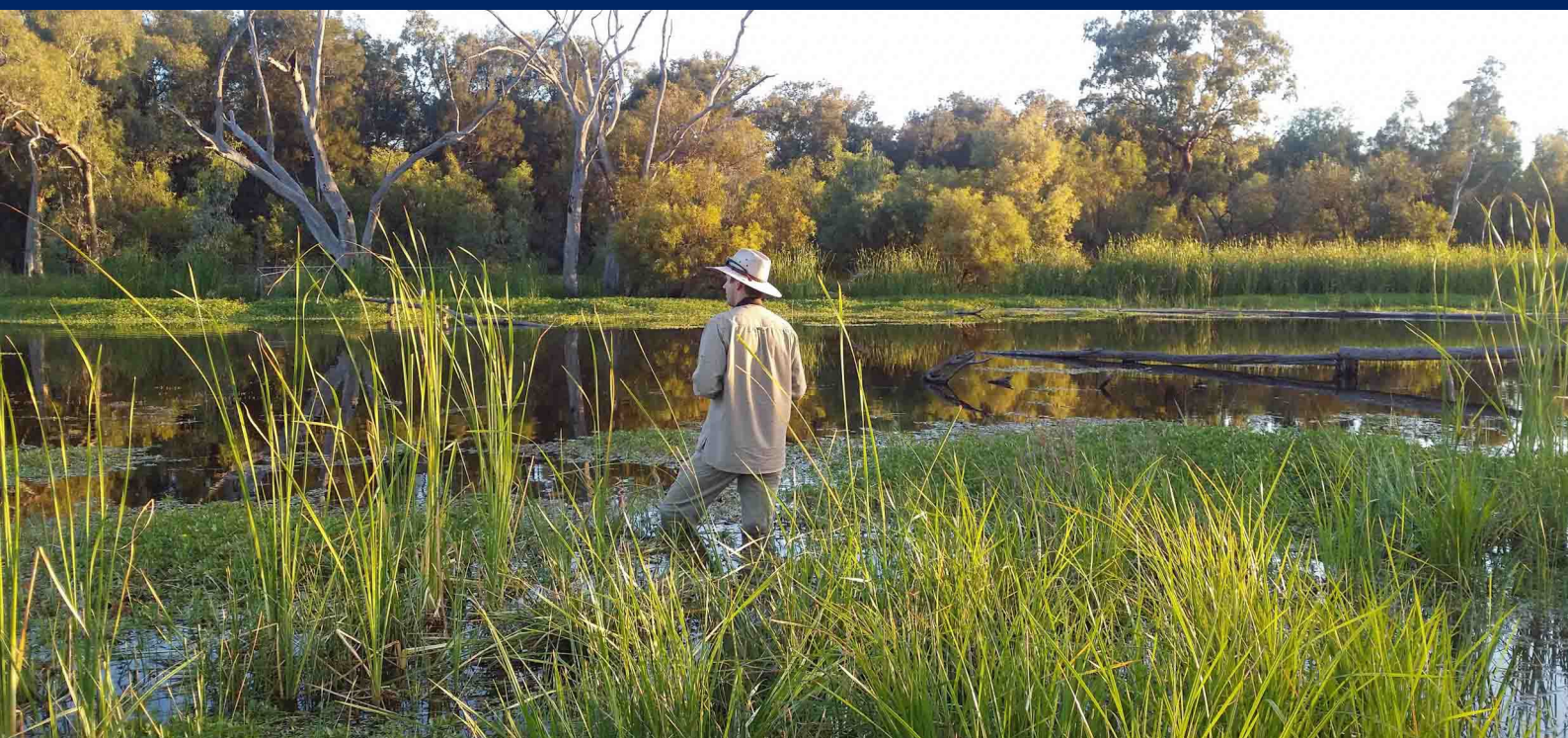


Department of Climate Change, Energy, the Environment and Water

Negotiation Guidelines: Landholder Negotiation Scheme

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

24 August 2026



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

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Preamble

These Negotiation Guidelines have been prepared consistent with Schedule 9, section 8 of the *Water Management (General) Regulation 2025* (the WM Reg).

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

Section 399B of the WM 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.*¹

These Negotiation Guidelines provide detailed guidance on the conduct of good faith negotiations under the Landholder Negotiation Scheme (LNS) as set out in Sch 9 of the WM Reg, between the Water Administration Management Corporation (Ministerial Corporation) and landholders affected by the proposed environmental water releases. The Ministerial Corporation must negotiate in a way that is consistent with these Negotiation Guidelines (Sch 9, s 7(1) of the WM Reg).

The Negotiation Guidelines are intended to assist in the plain English interpretation of the LNS as set out in Sch 9 of the WM Reg, in its application to specific locations and circumstances where the Minister determines the LNS applies.

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

¹ This is current as of July 2026. Find the Water Management Act here: [Water Management Act 2000 No 92 - NSW Legislation](#)

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1 Purpose

The Negotiation Guidelines were prepared in accordance with Sch 9, s 8 of the WM Reg 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 made in accordance with Sch 9 s 3(1) of the WM Reg.
- 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 WM Reg (Sch 9, s 3(4)(b)).

The Negotiation Guidelines also assist WaterNSW in developing procedures for notifying affected landholders of individual environmental water releases, as required under Sch 9, s 9 of the WM Reg.

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

The Negotiation Guidelines may be reviewed from time to time to ensure they are accurate and up to date. If the Minister wishes to make amendments to the Negotiation Guidelines, an amendment to Sch 9 s 8(3) of the WM Reg must be made. The Negotiation Guidelines will also be reviewed as part of the review required by Sch 9 s 10 after the period of 5 years following the commencement of the Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025 (6 June 2025).

If the Minister amends the Negotiation Guidelines, the revised version will be made available to affected landholders invited to negotiate and published on the department's website.

If the NSW Government/Minister wishes to change the terms of an agreement with affected landholders or the description of the proposed environmental water release outlined in the Declaration Order, these changes would be subject to further negotiation and compensation as appropriate.

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

Voluntary negotiations under the LNS are the preferred approach to reach agreement on compensating affected landholders for the acquisition of an interest in land (e.g. easements in gross).

Part 3, Division 4 of the *Land Acquisition (Just Terms Compensation) Act 1991* (Just Terms Act), which sets out how compensation will be determined for the acquisition of an interest in land will also apply where easements are acquired through voluntary negotiations under the LNS.²

As set out in Sch 9, s 4(2)(b) of the WM Reg, 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, the Minister may consider compulsory acquisition of an interest in the land as a last resort.

² The Just Terms Act does not apply where land is available for purchase on the open market.

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 WM Act.

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 ([Property acquisition standards and principles | NSW Government](#)) 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 and these Negotiation Guidelines would cease to apply.

3 Criteria for application of Sch 9 of the WM Reg

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

In the period prior to making a Declaration Order under Sch 9, s 3(1) of the WM Reg, 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.

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, and, where appropriate, any buffers proposed to mitigate the risk of exceeding maximum flow parameters.

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

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

The Minister may also consider other relevant matters.

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. Works could affect either the environmental water release arrangement itself, and/or the extent of the land likely to be affected.

If the Minister makes a Declaration Order, published in the Gazette, the NSW 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 WM Reg, 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 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 is made, and the commencement of formal negotiations is important to:

- Inform affected 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 land as a last resort
- provide stakeholders with a map of the proposed maximum extent of inundation plus a buffer (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 affected landholders of the program-specific arrangements for reimbursing legal and valuation costs reasonably incurred under LNS 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 (detailed in section 5.2 of the Guidelines). 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 is 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 WM Reg, 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.
- 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 affected 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 an invitation to negotiate has been accepted by the landholder (see Sch 9, s 5 and 6(1) of the WM Reg).

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 WM Reg).

Where an affected landholder or other person formally declines an invitation to negotiate, or if a written response is not received by the Ministerial Corporation within the timeframe set out in the invitation or within a longer period as agreed with the Ministerial Corporation, the Ministerial Corporation may consider the matter closed.

Not all negotiations undertaken under a Declaration Order will begin or 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 or shorten a negotiation period

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

Schedule 9, s 6(2)(a) of the WM Reg 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 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 WM Reg).

5.4 Ending a negotiation

5.4.1 Ending a negotiation

Schedule 9, s 6 of the WM Reg 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.

Before the Ministerial Corporation terminates a negotiation under Sch 9, s 6 of the WM Reg, it must give written notice to the affected landholder or other person concerned except when the Minister declares an end to all negotiations under Sch 9, s 6(6) (Sch 9, s 6(3) of the WM Reg). The notice should set out the reasons why the Ministerial Corporation is considering terminating the

negotiation. For example, if the negotiation is being terminated because it is unlikely to succeed or is unproductive (Sch 9, s 6(2)(b)(ii)) this may include where the affected landholder or other person:

- 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. This process is not required where the negotiation is ending because it has been successful and an agreement has been reached (Sch 9, s 5 of the WM Reg).

Termination of a negotiation under the LNS 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 WM Reg, 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 WM Reg 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 stated 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.

Where the purpose of negotiations is to secure an interest in land (e.g. easement), on termination of an LNS negotiation (see Section 5.4 1), or if a negotiation period ends without agreement (see Section 5.4 2) 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. an easement) can only occur on a case-by-case basis with the approval of the NSW Minister for Water, where acquisition is considered essential to deliver the proposed environmental water release arrangement. The use of compulsory acquisition powers may not apply in all cases where an agreement is 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, Sch 9 of the WM Reg and these Negotiation 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 WM Reg 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 take reasonable steps to notify all landholders affected by the Declaration Order.

As outlined 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.

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

6 Conduct and procedure of negotiations

This section provides guidance on the negotiation procedure to be followed for each affected landholder or other relevant person. Depending on the nature of the agreement sought and the complexity of property impacts expected from the proposed environmental releases, in some instances the steps outlined in this section may occur simultaneously rather than sequentially. This does not alter the requirement for the Ministerial Corporation to negotiate for 12 months unless agreed otherwise.

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 conduct negotiations consistent with these Negotiation Guidelines.

Where the purpose of negotiations is to acquire an interest in land (e.g., easement), the Ministerial Corporation will conduct those negotiations consistent with the property acquisition standards and principles.³

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.

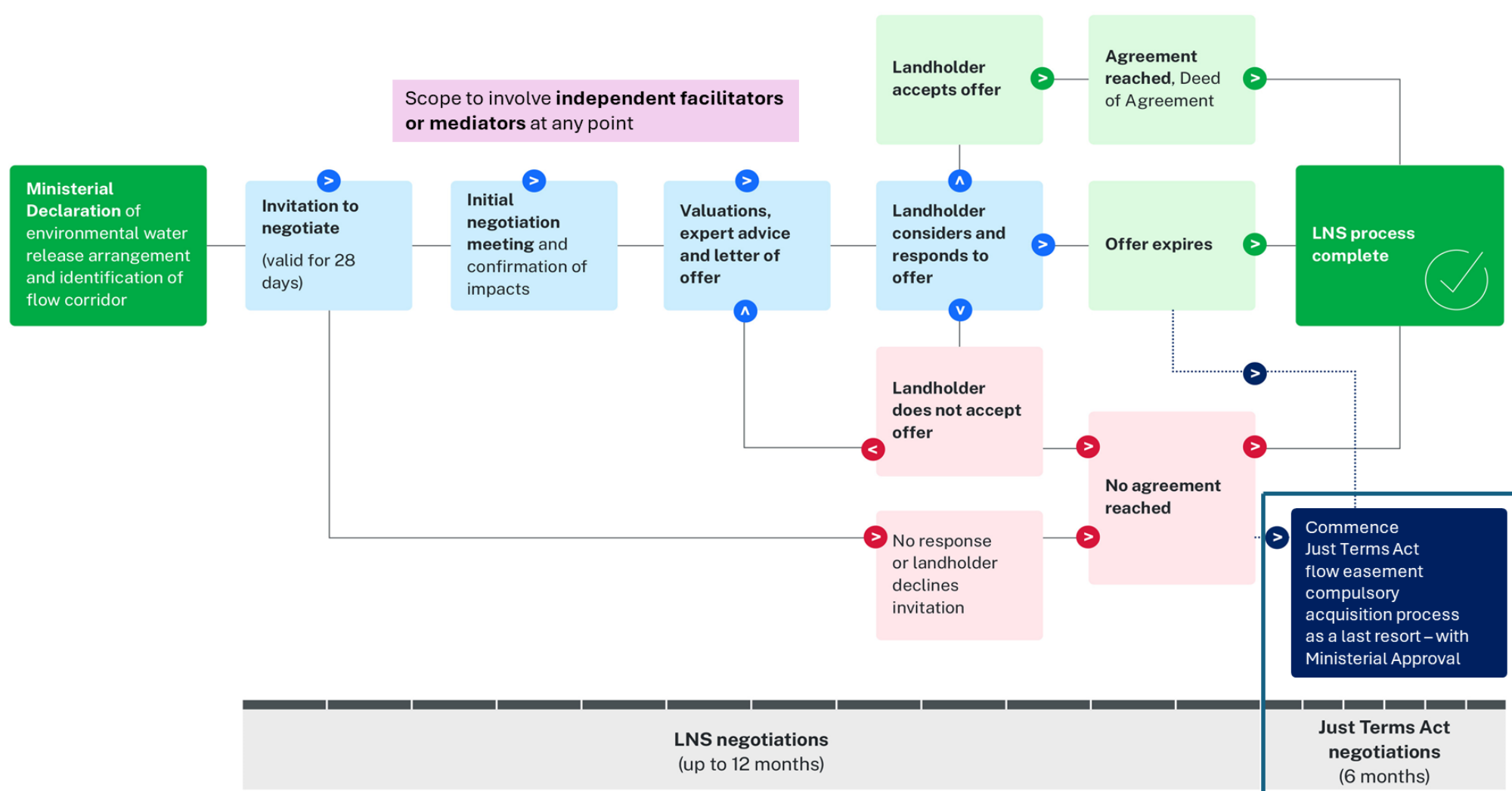
As discussed in the preamble, these Negotiation Guidelines are intended to support transparency, equity, fairness and consistency in the negotiation process to ensure all negotiations are undertaken in good faith.

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.

An indicative flow diagram of the LNS negotiation process, where the purpose of negotiations is to acquire an interest in land via voluntary agreement, can be found at Figure 1.

³ Available at [Property acquisition standards and principles | NSW Government](#)

Figure 1: Flow diagram of an indicative LNS negotiation process where the purpose of negotiations is to acquire an interest in land via voluntary agreement.



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 issuing an invitation to negotiate 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 may be provided with the following information, where this has not already been provided with the invitation to negotiate:

- contact information for the affected landholder's dedicated Personal Manager and, where applicable, 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 process, including the possibility of compulsory acquisition of an interest in the land as a last resort (where applicable)
- 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 available 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

Discussions between the Ministerial Corporation and the affected landholder or other person may 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 any 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. Where applicable, this information will inform development of an offer (see Section 6.5).

This phase of negotiations may 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 the agreement (e.g., easement terms, deed of release, covenant)
- 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 regarding compensation for the acquisition of an interest in land
- any existing registered easements, access arrangements or conservation agreements with third parties
- 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 may inform:

- assessments of the need for, and nature of, any physical works considered necessary to mitigate the anticipated impacts
- independent valuations of the likely impact of the proposed environmental water releases 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.

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, the Ministerial Corporation must consider the *Native Title Act 1993* (Cth).

To satisfy the requirements of Sch 9, s 4(1) of the WM Reg 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 (e.g., 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 Offers

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. The offer will be informed by the independent valuation and relevant outcomes of negotiations and discussions under Sections 6.2, 6.3 and 6.4 (as relevant).

Where applicable, 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). The offer must also be informed by an independent valuation undertaken by a qualified valuer, consistent with the provisions the Just Terms Act.

Where new 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 may include a timeframe within which it remains open to acceptance by the affected landholder or other person and may 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 an offer 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 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 WM Reg.

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 relevant person

- the affected landholder or other relevant person has failed to formally accept it within the response timeframe set out in the written offer
- the land is sold or ownership is 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 WM Reg.

During these negotiations, all factors relevant to mitigation of impacts on the property of an 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 WM Reg 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 WM Reg 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, however 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, compensation (in addition to impact on market value of the land) will be available for:

- independent legal advice (e.g. conveyancing, review of Deed of Agreement)
- independent property valuation (prepared in accordance with s 55 of the Just Terms Act)
- specialist consulting service costs, which may also be eligible subject to prior approval from the program.
- other disturbance costs as defined by s 59 of the Just Terms Act.

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.

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

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

8 Agreements

8.1 Form of an Agreement

Where the Minister declares the LNS applies to a proposed environmental water release, the Ministerial Corporation must prepare documentation on the nature and form of an Agreement (e.g. Deed of Agreement, deed of release) where all relevant details of the agreement are formalised.

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

- registration of an easement
- compensation 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.

The form of the agreement should not limit the way the Ministerial Corporation chooses to acquire an easement, or the timing of such acquisition. The agreement should be consistent with relevant matters set out in the Declaration Order. 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 an Agreement

The Ministerial Corporation will ensure that an Agreement is:

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

The agreement should be consistent with relevant matters set out in the Declaration Order.

Where an agreement provides for 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, set out in a Sch 9, s 3 Declaration Order, is implemented on an enduring basis, Sch 9, s 9 of the WM Reg 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 mechanism for affected landholders to advise WaterNSW with any changes to their contact details.