

Department of Climate Change, Energy, the Environment and Water

# Landholder Negotiation Scheme Regulation, Negotiation Guidelines and Regulatory Impact Statement: What We Heard

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What We Heard Report

May 2025



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# 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.

Landholder Negotiation Scheme Regulation, Negotiation Guidelines and Regulatory Impact Statement: What We Heard

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# 1 Glossary

| Term  | Definition   |
|---|--|
| <b>Basin Plan</b>   | <i>Murray-Darling Basin Plan 2012 (Cth)</i> made under the <i>Water Act 2007 (Cth)</i>   |
| <b>Constraints Roadmap</b>  | The Constraints Relaxation Implementation Roadmap was developed by the Murray-Darling Basin Authority in 2024 to assist the Australian and Basin State governments to identify, develop and implement measures to relax constraints to the delivery of water for the environment.  |
| <b>Consultation Paper for the Draft LNS Regulation (Consultation Paper)</b> | <p>A supporting document to the exhibition of the draft LNS Regulation that provided an overview of the relationship between the:</p> <ul style="list-style-type: none"> <li>• draft LNS Regulation</li> <li>• LNS Negotiation Guidelines and</li> <li>• LNS Regulatory Impact Statement</li> </ul> <p>for the purpose of gathering feedback from landholders, stakeholders and the wider community.</p> |
| <b>Declaration Order</b>  | A legal document to be issued by the Minister under s 247C of the LNS Regulation that declares that the Regulation applies to a release, or series of releases, of water for a environmental purposes occurring as part of a continuing arrangement. The Declaration Order will describe the proposed environmental water release(s) and the area of land likely to be affected.                         |
| <b>Flow easement</b>  | Easements in gross that provide the river operator with an enduring right to inundate land as a result of the environmental water releases subject to a Declaration Order. Flow easements (which may be combined with mitigation works in some cases) will provide for a flow corridor.  |
| <b>Just Terms Act</b>   | <i>Land Acquisition (Just Terms Compensation) Act 1991</i>   |
| <b>LNS Regulation</b>   | <i>Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025</i> . The LNS Regulation will be established as an amendment to the <i>Water Management (General) Regulation 2018</i> (the WM Regulation), under the <i>Water Management Act 2000</i> (the WM Act).  |

| Term  | Definition   |
|---|--|
| <b>Mid Murray Anabranches Project</b>                           | Part of the NSW Government’s Sustainable Diversion Limit Adjustment Mechanism (SDLAM) program, the Mid-Murray Anabranches Project aims to restore the quality and functionality of local rivers and creeks within the Murray River system, and support the needs of adjacent landholders, industries and First Nations communities.  |
| <b>Negotiation Guidelines</b>                                   | The Landholder Negotiation Scheme Negotiation Guidelines prepared in accordance with clause 247H of the LNS Regulation are intended to assist in the interpretation of the LNS Regulation in its application to specific locations and circumstances where the Minister determines that the LNS Regulation applies.                  |
| <b>Proposed environmental water release</b>                     | The proposed environmental water release(s) is defined under s 247A of the draft LNS Regulation. The Minister is able to make a Declaration Order (under s 247C) to describe the declared environmental water release(s) subject to the LNS Regulation.  |
| <b>Reconnecting River Country Program</b>                       | A key Basin Plan initiative essential to creating healthier, functioning river systems in the Murray and Murrumbidgee. The program is proposing to relax constraints to enable flexibility for environmental water releases.   |
| <b>Reconnecting Watercourse Country Program</b>                 | An environmental works and measures program established under the Australian Government’s Northern Basin Toolkit to support achievement of the objectives of the Basin Plan.   |
| <b>Regulatory Impact Statement (RIS)</b>                        | The Regulatory Impact Statement (RIS) prepared under the <i>Subordinate Legislation Act 1989</i> to assess the economic and social costs and benefits of the proposed amendment to the <i>Water Management (General) Regulation 2018</i> and its alternatives.   |
| <b>Sustainable Diversion Limit Adjustment Mechanism (SDLAM)</b> | A program designed to achieve similar or improved environmental outcomes for rivers, wetlands and wildlife using less water over the long-term as part of the Basin Plan. SDLAM can be achieved through supply improvements (improvement to the way rivers are managed for environmental water), constraints or efficiency measures. |
| <b>SDLAM 605 GL</b>   | In 2017, the Basin states and the Australian Government agreed on a package of 36 SDLAM projects across the southern connected Murray-Darling Basin, with the aim of recovering 605 GL of water each year for the river system.  |
| <b>SL Act</b>   | <i>Subordinate Legislation Act 1989</i>  |

| Term                           | Definition  |
|--------------------------------|---|
| <b>Ministerial Corporation</b> | The Water Administration Ministerial Corporation. The Ministerial Corporation is the statutory body responsible for water resource management in NSW. |
| <b>WM Act</b>                  | <i>Water Management Act 2000</i>  |
| <b>WM Regulation</b>           | <i>Water Management (General) Regulation 2018</i>   |

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## 2 Executive summary

### Purpose of this report

The NSW Department of Climate Change, Energy, the Environment and Water is proposing to establish the Landholder Negotiation Scheme (LNS) as an amendment to the *Water Management (General) Regulation 2018* (WM Regulation), under the *Water Management Act 2000* (WM Act). The LNS Regulation and accompanying Negotiation Guidelines will support a fair and transparent process for voluntary negotiations with landholders affected by proposed water releases for environmental purposes.

This report summarises the submissions received during the public exhibition of the Draft LNS Regulation, Draft LNS Negotiation Guidelines and Regulatory Impact Statement (RIS). This report includes an overview of the engagement and consultation process, and the number and type of submissions received. The main sections of this report summarise the feedback received, and the issues raised in the submissions. This report indicates how the feedback has been considered and used to inform amendments to the LNS Regulation and Negotiation Guidelines.

### Exhibition and submissions

The public exhibition period ran from 16 September 2024 to 24 November 2024. This period included an extension of 3 weeks in response to requests from stakeholders, to ensure all stakeholders were given an equal opportunity to provide submissions.

The exhibited documents included:

- Consultation Paper for the Draft LNS Regulation
- Draft LNS Regulation
- Draft Negotiation Guidelines: Landholder Negotiation Scheme Regulation
- Regulatory Impact Statement for the Landholder Negotiation Scheme.

A total of 119 submissions were received.

During the exhibition period, engagement activities included 3 public online webinars and multiple 1-hour small group 'drop-in' information sessions in Moree and Deniliquin. The initial Wagga Wagga drop-in sessions were made available online, with additional face to face sessions held in Wagga Wagga on 30 October 2024 and Darlington Point on 31 October 2024.

While the department had requested feedback on the LNS consultation documents, many comments were also received on specific elements of the Reconnecting River Country Program and the Reconnecting Watercourse Country Program. Importantly, the LNS Regulation and Negotiation Guidelines exist separately to these programs. Recognising the significant effort to provide comments, this report also includes responses to the issues raised about these programs (see Chapter 5).

## Summary of what we heard and departmental responses

Comments in submissions were analysed and organised into categories of questions, issues and concerns.

The most frequently raised issues and responses, as provided in Chapter 4.1 of this report, were comments on:

- the decision to develop the LNS Regulation
- the *Land Acquisition (Just Terms Compensation) Act 1991* (Just Terms Act)
- the rationale for, and opposition to, the acquisition of an interest in land (e.g. flow easement) and associated compensation, with a preference expressed for event-based payments
- the rationale for, and opposition to, including the option for compulsory acquisition of an interest in land (using powers under existing legislation) as a last resort
- concerns about the risk management of environmental water releases and consequences of exceedance of easement terms
- concerns about the ‘reasonable steps’ taken to identify and contact affected landholders
- independent facilitation and mediation
- reimbursement for costs reasonably incurred during negotiations under the LNS Regulation
- expressing frustration about the LNS public exhibition consultation process.

### Draft LNS Regulation: amendments based on what we heard

The draft LNS Regulation will be amended in response to the issues raised in submissions to:

- clarify definitions
- clarify the requirements to be considered by the Minister in making a Declaration Order to apply the LNS Regulation
- provide for a landholder to have the opportunity to request a review where the Water Administration Ministerial Corporation (Ministerial Corporation) proposes to declare a negotiation is closed and to require the Ministerial Corporation to consider the landholder’s submission
- clarify the requirements when the Negotiation Guidelines are amended
- clarify requirements to notify landholders of the proposed new environmental water releases, subject to a Declaration Order
- clarify requirements for review of the LNS Regulation and associated review of the Negotiation Guidelines.

A detailed overview of the issues raised regarding the LNS Regulation and the department’s responses is provided in Appendix A to this report.

### Draft Negotiation Guidelines: amendments based on what we heard

The department has comprehensively reviewed the Negotiation Guidelines in response to the submissions received. Several amendments have been made, as detailed in Chapter 4.2 of this report. In summary, amendments will clarify:

- the intent and content of the Declaration Order and requirements for the Minister to consider in making this Order
- the government’s rationale for easements, as well as the purpose and characteristics of acquiring an interest in land (e.g. flow easement) to provide the river operator with a right to inundate land by making the proposed environmental water releases
- the circumstances where compulsory acquisition of an interest in land may be considered as a last resort
- examples (non-exclusive) of what ‘reasonable steps’ may entail
- information to be provided to landholders as part of the negotiations
- negotiation timeframes and information about how negotiations will be conducted
- the process for appointing an independent facilitator and/or mediator
- negotiation assistance available for landholders
- obligations for WaterNSW when notifying landholders of the proposed environmental water releases, subject to a Declaration Order.

A detailed overview of issues raised regarding the Negotiation Guidelines, and the department’s responses, is provided in Appendix B of this report.

### **Regulatory Impact Statement: what we heard and departmental response**

After analysing the submissions received, the RIS analysis is considered sufficient to support the making of the LNS Regulation, noting the impacts, costs and benefits of individual programs, easement acquisition and/or mitigation works are not in scope for the RIS. Individual programs must meet stringent requirements including progressing through the NSW Treasury Gateway Policy assurance process, which ensures projects and programs are effectively developed and delivered. For further information on the NSW Gateway Policy and how projects are assessed, please see [TPG22-12 NSW Gateway Policy | NSW Treasury](#).

There is no requirement for the RIS to be updated following a public exhibition process. A detailed overview of submission comments regarding the RIS and departmental responses is provided in Appendix C to this report.

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## 3 Introduction

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### 3.1 About this report

This report summarises the public exhibition process and submissions received regarding the Draft Landholder Negotiation Scheme Regulation (the LNS Regulation), Draft LNS Negotiation Guidelines (Negotiation Guidelines) and Regulatory Impact Statement (RIS). This report includes:

- an overview of the engagement and consultation process, including activities and timing
- the number and type of submissions received by various stakeholders
- the feedback received and issues raised in the submissions
- how the feedback has been considered and responded to in refining the LNS Regulation and Negotiation Guidelines.

While feedback was only requested on those documents published as part of the consultation package (as above), many comments were also received on specific elements of the Reconnecting River Country Program and the Reconnecting Watercourse Country Program. This report also includes additional responses to the issues raised regarding these programs.

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### 3.2 Background

Amendments to the *Water Management Act 2000* (WM Act), made in 2018 (s 399B of the WM Act which has not yet commenced), provide for the creation of a scheme under the *Water Management (General) Regulation 2018* (WM Regulation) to facilitate voluntary negotiations with owners and occupiers of land and other persons affected by proposed new releases of water for environmental purposes. An amendment to s. 398(1)(c) was also made in 2018 with a view to protect river operators from liability when releasing environmental water in good faith. These sections of the WM Act will be proclaimed alongside the making of the LNS Regulation.

The LNS Regulation (previously referred to as the Landholder Negotiation Framework Regulation or LNF) will support the implementation of programs or projects intended to improve the health and connectivity of rivers and wetlands. That is, the LNS Regulation will be applied where an enduring change to an arrangement for the release or series of releases of water for environmental purposes, via a published Declaration Order by the NSW Minister for Water. These arrangements mean that environmental water can be released into river systems at higher levels, or different frequencies or times, than is current practice.

The LNS Regulation is a statewide instrument and is currently expected to apply to the Reconnecting River Country Program (Murrumbidgee River) and the Reconnecting Watercourse Country Program (Gwydir River). The LNS Regulation may also be used for other future environmental water programs in NSW, where they are declared and published by a Declaration Order under the Regulation.

The LNS Regulation will serve as a framework for the NSW Government to negotiate in good faith with landholders affected by the delivery of proposed environmental water releases.

The LNS Negotiation Guidelines are intended to provide further, simplified guidance on how the LNS Regulation must be implemented.

When a new or amended regulation is proposed, the *Subordinate Legislation Act 1989* (SL Act) requires that a better regulation statement or a RIS is prepared. To fulfill this obligation a RIS was prepared to consider alternatives to the LNS regulation (including non-regulatory approaches) and for the costs and benefits of the options to be assessed. Consulting on policy design and implementation is a key commitment of the department and is also a legal requirement under the SL Act.

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## 3.3 Engagement overview

The public exhibition period ran from 16 September 2024 to 24 November 2024. This period included an extension of 3 weeks in response to concerns raised by some stakeholders, and to ensure all stakeholders were given an equal opportunity to provide submissions.

The documents exhibited included:

- Consultation paper for the Draft LNS Regulation
- Draft LNS Regulation
- Draft Negotiation Guidelines: Landholder Negotiation Scheme Regulation
- Regulatory Impact Statement for the Landholder Negotiation Scheme.

The consultation paper gave an overview of the LNS Regulation, Negotiation Guidelines and RIS and the relationships between these documents and aimed to support landholders in making submissions. Feedback was not sought on the consultation paper.

### 3.3.1 How we engaged and who we spoke with

During the exhibition period, consultation and engagement activities included 3 public webinars, held in September and October 2024, and public information sessions in Moree and Deniliquin. The initial in-person Wagga Wagga sessions, in early October, were made available online. Two additional face-to-face sessions were held in Wagga Wagga on 30 October 2024 and Darlington Point on 31 October 2024. The department also met with several local councils and key stakeholder groups and responded directly to many questions from landholders via email and phone.

Stakeholders were invited to provide feedback via one of the following methods:

- submitting directly via the 'Have your say' online submission portal
- downloading the submission form and emailing it to [admin.rrcp@dpi.nsw.gov.au](mailto:admin.rrcp@dpi.nsw.gov.au)
- emailing a written submission to [admin.rrcp@dpi.nsw.gov.au](mailto:admin.rrcp@dpi.nsw.gov.au)
- posting a written submission to the department (DCCEEW – Water Group) in Parramatta.

## 4 What we heard

A total of 119 submissions were received during the public exhibition period.

Individuals and groups making a submission were able to identify as multiple stakeholder types. Submissions were received from private landholders, livestock farmers, irrigators, interested community members, organisations, environmental groups and local governments. A breakdown of stakeholder types is provided in Table 1 below.

Table 1. Stakeholder types. Individuals were able to select more than one stakeholder type.

| Stakeholder Type                           | Count |
|--|-------|
| Landholder                                 | 62    |
| Livestock farmer                           | 23    |
| Irrigator                                  | 14    |
| Domestic and stock water user              | 19    |
| Interested community member                | 17    |
| Environmental/ environmental group         | 4     |
| Representative water peak/water user group | 5     |
| Unknown/other                              | 48    |

The submissions provided detailed and diverse feedback on different aspects of the LNS Regulation, Negotiation Guidelines and RIS. Submissions included responses to the discussion questions posed in the consultation paper and the online submission form. They also provided general feedback, raised concerns, expressed support or opposition, or suggested improvements. Many submissions also commented on the Reconnecting River Country and Reconnecting Watercourse Country Programs.

The various matters raised in submissions were analysed and organised into categories. Some matters applied to more than one category. In these instances, the matter was captured under each of the relevant categories.

Following analysis and categorisation of the submission comments, an agency review panel comprised of senior staff from the department and WaterNSW reviewed and developed responses to submission comments. The review panel also provided findings and recommendations regarding the policy intent to inform the proposed amendments of the Regulation and/or Negotiation Guidelines. These are detailed in the following chapters.

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## 4.1 Key issues raised (general)

Several recurring issues of concern to stakeholders were identified in submissions. These issues relate to multiple sections of the LNS Regulation and Negotiation Guidelines. They have been summarised and responded to below.

### 4.1.1 The decision to develop the LNS Regulation

#### What we heard – the decision to develop the LNS Regulation

While a small number of submissions were supportive of the LNS Regulation and approach, some questioned the need for the LNS Regulation and indicated it was not clear if a decision to proceed with making the regulation had already been made.

The decision to develop an LNS Regulation was made by a previous government and Parliament, through amendments to the WM Act in 2018. The current NSW Government intends to maintain this approach and to develop the Regulation to provide for the conduct of negotiations in good faith with respect to declared proposed environmental water releases.

The LNS Regulation is intended to be a statewide regulation and is expected to apply to the Reconnecting River Country and the Reconnecting Watercourse Country Programs. The LNS Regulation may also apply to future programs where changes to environmental water release arrangements are proposed. It is intended to outline how negotiations must be conducted with landholders affected by proposed environmental water releases. The proposed LNS Regulation provides for a good-faith, voluntary negotiation process that is fair, consistent and transparent, and ensures the interests of landholders are appropriately considered. It does not specify the content or substance of negotiations, or program-specific issues such as environmental water flow targets or limits.

For each program, a Ministerial decision to apply the LNS Regulation will be made via a Declaration Order under s 247C. The Declaration Order will describe the proposed environmental water releases for a program and the area of land likely to be affected by the releases.

In the absence of the LNS Regulation, the Reconnecting River Country and Reconnecting Watercourse Country Programs would be required to rely on the *Land Acquisition (Just Terms Compensation) Act 1991* (Just Terms Act) for acquisitions of flow easements.

Compared to the Just Terms Act, the LNS Regulation provides for a longer timeframe for voluntary negotiations (12 months compared to 6 months) and for additional support including independent facilitation and mediation. Reimbursement for costs, reasonably incurred, will be paid where negotiations under the LNS result in agreement. Reimbursement of costs for negotiations under the LNS Regulation that do not result in an agreement will be determined on a program-by-program basis. See section 4.1.8 for further information.

### 4.1.2 The *Land Acquisition (Just Terms Compensation) Act 1991* NSW

#### What we heard – the *Land Acquisition (Just Terms Compensation) Act 1991*

Several submissions referred to the Just Terms Act and whether the current review of the Act would require subsequent changes to be made to the LNS Regulation or influence the findings of

the RIS. Some submitters disputed that the Just Terms Act was the appropriate piece of legislation to support acquisitions of interests in land for proposed environmental water releases. Questions about other Just Terms Act related issues including easements, compensation, compulsory acquisition and reimbursement for costs reasonably incurred are addressed separately in the sections below.

The Just Terms Act is an existing piece of legislation which is unchanged by the LNS Regulation. All acquisitions of interests in land (such as flow easements) by government, whether by negotiated voluntary agreement or compulsory acquisition process, must be in accordance with the provisions of the Just Terms Act. The LNS complements the established acquisition framework of the Just Terms Act. For further information on acquisitions of an interest in land and compensation in accordance with the Just Terms Act, please refer to section 4.1.3 of this report.

At the start of negotiations, the Ministerial Corporation will be required to provide information to the landholder about how negotiations will be conducted and to advise whether compulsory acquisition of an interest in land may be a possibility. For further information on the compulsory acquisition process in accordance with the Just Terms Act, please refer to section 4.1.4 of this report.

The Department of Planning, Housing and Infrastructure is leading the review of the Just Terms Act. If legislative amendments are made to the Just Terms Act, the LNS Regulation and Negotiation Guidelines will be reviewed to ensure they remain consistent.

### **4.1.3 Acquisition of interests in land and compensation**

#### **What we heard – acquisition of interests in land and compensation**

Many submissions raised concerns about the acquisition of an interest in land (e.g. flow easement) and the associated compensation. Opposition to the acquisition of an interest in land stemmed from a range of concerns, which include:

- one-off compensation payments for an acquisition of an interest in land, which may include works, would not be able to adequately cover all impacts landholders may experience from the proposed environmental water releases over time. These include impacts to safety, mental health, financial, social, biosecurity and other potentially negative impacts.
- acquiring an interest in land such as a flow easement would result in a blot on the title and devalue the landholder's property without adequate compensation.

Several submissions suggested event-based payments would be preferred, and some submissions questioned the tax implications of compensation payments.

Acquisition of an interest in land, such as a flow easement, may be required in some programs to establish the flow corridor for proposed environmental water releases. See Sections 7.4.4 and 7.5.1 of this report for Reconnecting River Country Program and Reconnecting Watercourse Country Program specific rationale for the use of flow easements.

Public authority acquisition of land, or an interest in land, and the associated compensation, are subject to the Just Terms Act, which is an existing and longstanding framework unchanged by the LNS Regulation. Under the Just Terms Act, an acquisition of an interest in land obligates the NSW Government to compensate landholders on just terms.

After a negotiation ends (whether through agreement under the LNS Regulation, or under any subsequent Just Terms Act process), any future NSW Government decision to change or increase water releases, beyond the agreed terms (e.g. flow easement terms), would require a new program of negotiations and compensation. Any registered flow easements can only be varied through agreement with the landholder. The Negotiation Guidelines have been amended to clarify this intent.

The Ministerial Corporation must determine compensation for the acquisition of an interest in land (that is, flow easement) consistent with s 55 of the Just Terms Act<sup>1</sup>:

When a negotiation with a landholder begins, a dedicated Acquisition Manager and Personal Manager will work with the landholder to understand how the affected land is used, managed and impacted by the proposed environmental water releases. Landholders will have an opportunity to provide all relevant information to the valuers to inform their valuation report.

In accordance with s 55 of the Just Terms Act, valuation of an acquisition of an interest in land, such as a flow easement, will include consideration of potential impacts to land and/or assets, including changes in market value to ensure landholders are appropriately compensated for the acquisition of the interest in land. In addition, where eligible, mitigation works in lieu of compensation may be considered in accordance with the Just Terms Act.

Landholders are encouraged to engage their own legal and valuation advisors to aid in negotiating a settlement. Where required, landholders are also encouraged to obtain their own personal legal and tax advice. See also Section 4.1.8 of this report for further information about reimbursement for costs, reasonably incurred.

Acquisition of land or an interest in land such as flow easement under the Just Terms Act occurs through a 'once off' compensation payment. See Sections 7.4.4 and 7.5.1 for information regarding event-based payments.

The NSW Government recognises a proposal for acquisition of an interest in land for the delivery of environmental water may negatively impact a landholder's health and wellbeing. Landholders have access to a property acquisition support line, delivered by a team of qualified psychologists and social workers, through the Centre for Property Acquisition. Individual programs may also provide additional landholder support services.

#### **4.1.4 Compulsory acquisition of an interest in land**

##### **What we heard – compulsory acquisition of an interest in land**

A large proportion of submissions opposed the inclusion of the option for the Ministerial Corporation to compulsorily acquire interests in land in the LNS Regulation and Negotiation Guidelines.

The NSW Government's preference is to negotiate voluntary agreements under the LNS Regulation. Where negotiations do not result in an agreement or the landholder declines an invitation to negotiate under the LNS Regulation, compulsory acquisition of an interest in land (e.g. flow

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<sup>1</sup>Section 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.

easements) may be considered in some cases as a last resort. This will be subject to Ministerial approval and will be determined on a case-by-case basis.

The Ministerial Corporation has the power to acquire land or an interest in land by agreement or by compulsory process under the WM Act and the process and compensation for this are subject to the Just Terms Act.

The factors that may be considered by the Minister when deciding whether compulsory acquisition of an interest in land is required for a property include:

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

Compulsory acquisition of an interest in land may not apply in all cases where voluntary agreements are not reached.

For more information on compulsory acquisition in NSW, please visit the Centre for Property Acquisition's website: <https://www.nsw.gov.au/housing-and-construction/property-acquisition/about-us>

#### **4.1.5 Risk management of environmental water releases and next steps in instances of exceedance of easement terms**

##### **What we heard – risk management of environmental water releases and next steps in instances of exceedance of easement terms**

Some submissions wanted to know what would happen if the flow limits, as specified in agreement terms, were exceeded by an environmental water release.

It is NSW Government policy that river operators should have statutory protection from civil claims when in good faith they make releases of water for environmental purposes. This was the intent behind 2018 amendments to the WM Act. These amendments are proposed to come into effect alongside the LNS Regulation.

When determining the volume and timing of environmental water releases, there are several layers of risk management in decision-making, most of which are established practices in river operations. These operational procedures will be reviewed and, if necessary, amended to ensure they are fit for purpose for any proposed new environmental water release arrangements outlined in a Declaration Order.

Several factors will be considered in determining when to make the proposed environmental water releases, which are relevant to the risk management of environmental water releases.

The first is water availability. The making of the proposed environmental water releases will always be limited by water allocations enabling sufficient volumes of environmental water, which will limit the likelihood and frequency of such releases.

Secondly, flood risk is considered. River operators take a risk-based approach to making water releases. They closely monitor predicted weather events and reduce water releases from the headwater storages if rainfall events are predicted in the catchment or if unregulated tributary flows are predicted downstream.

Thirdly, environmental priorities are considered, including the condition of the target wetlands and floodplains, the time since the last wetland connecting flow and competing priorities across the catchment. An Environmental Water Advisory Group (EWAG) provides advice on environmental water release planning and includes water managers, community members, landholders, scientists, local government representatives and First Nations groups. The final decision to make specific environmental water releases is made by the river operator, considering the factors discussed above.

The agreements and (and where relevant, flow easements) provide the right (with compensation payable) to inundate land by corresponding flows to the adopted target flow limit and a nominated buffer. The buffer is intended to provide a safeguard to landholders.

In the event the flow limit, including the any buffer specified in the agreement, is exceeded, an assessment may be required on a case-by-case basis to understand the cause and identify any necessary actions. For further considerations under the Reconnecting River Country Program, see Section 7.4.4 of this report.

#### 4.1.6 Defining ‘reasonable steps’ in the LNS Regulation

##### What we heard – defining reasonable steps in the LNS Regulation

Many submissions were concerned about the ‘reasonable steps’ to be taken to identify affected landholders and to ensure they receive initial invitations to negotiate, as well as to notify affected landholders of environmental water releases. Submissions questioned what is meant by ‘all reasonable steps’ as written in s 247D(1) (invitations to negotiate) and s 247I(2) (notification of environmental water flows by WaterNSW) of the LNS Regulation, and associated sections within the Negotiation Guidelines.

‘Reasonable steps’ is intended to be taken at its ordinary meaning. The term exists elsewhere in legislation and there is no intent to define it in the LNS Regulation.

**Reasonable steps to identify landholders in invitations to negotiate (s 247D(1)):** The Negotiation Guidelines have been amended to provide a list of non-exhaustive examples of reasonable steps for the Ministerial Corporation to identify affected landholders.

**Reasonable steps to notify landholders prior to specific environmental water releases (s 247I(2)):** WaterNSW will be required to take reasonable steps to enable registration for notifications and then to notify registered parties. WaterNSW will consider additional reasonable steps in developing procedures to notify affected landholders prior to specific environmental water releases, subject to a Declaration Order.

#### 4.1.7 Independent facilitation and mediation

##### What we heard – independent facilitation and mediation

Several submissions raised a request for more landholder input into the selection of independent facilitators and mediators, including the ability for landholders to nominate their own independent facilitator or mediator.

Both the LNS Regulation and the Negotiation Guidelines provide for the appointment, by agreement, of independent facilitators and mediators. Individual programs will appoint independent mediators and facilitators. The Negotiation Guidelines have been amended to clarify that the Ministerial Corporation will apply a reasonable time limit of at least 7 days for the landholder or other person to agree to the appointment of a nominated facilitator.

The Negotiation Guidelines provide for a facilitator or mediator to only become involved in a negotiation with the agreement of both parties. While the facilitator or mediator will be contracted by the department, their terms of engagement will require them to facilitate or mediate independently. Landholders are also able to appoint their own legal and valuation advisors, to aid them in negotiating a settlement.

#### **4.1.8 Reimbursement for costs reasonably incurred during negotiations under the LNS Regulation**

##### **What we heard – costs reasonably incurred during negotiations under the LNS Regulation**

Many submissions raised concerns that the Negotiation Guidelines only allow for reimbursement of landholders' costs reasonably incurred during negotiations under the LNS Regulation if agreement is reached. Submissions also requested details of the amount available to cover their independent legal advice.

The Negotiation Guidelines provide for reimbursement of costs reasonably incurred where negotiations under the LNS result in agreement, including payments for costs reasonably incurred relating to legal and valuation advice.

The Negotiation Guidelines have been amended to clarify that, where negotiations under the LNS do not result in an agreement, reimbursement for costs reasonably incurred, is subject to Ministerial approval, and as such will be determined on a program basis prior to the start of negotiations with landholders.

The Negotiation Guidelines have been further amended to make clear that the Ministerial Corporation must explain 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. Individual programs will be required to inform landholders up front about reimbursement of costs reasonably incurred during negotiations. The Reconnecting River Country Program intends to reimburse legal and valuation costs reasonably incurred during negotiations even if an agreement is not reached.

Landholders will be reimbursed for all costs reasonably incurred in negotiations conducted in accordance with the Just Terms Act, where negotiations proceed to compulsory acquisition.

#### **4.1.9 The LNS public exhibition consultation process**

##### **What we heard – the LNS public exhibition and consultation process**

Several submissions noted dissatisfaction with aspects of the LNS public exhibition process. These included that there was insufficient time to respond to the public exhibition, the consultation sessions were held without all relevant landholders being notified and a last-minute consultation cancellation created inconveniences for landholders. Several submissions also

expressed dissatisfaction with the ongoing consultation around the Reconnecting River Country Program, the Reconnecting Watercourse Country Program and other NSW Government water initiatives for which engagement is currently running. Comments on program-specific consultation are addressed in the table in Sections 7.4.3 and 7.5.5 of this report.

As part of the LNS public exhibition period, the department provided online webinars, face to face drop-in sessions in Moree and Deniliquin, phone calls to individual landholders where requested, and direct responses to emails from landholders. Recordings of the webinars were also published online. The department also met with several peak stakeholder groups and local councils.

The public exhibition period for the LNS Regulation was originally scheduled from 16 September to 27 October 2024. Notice of the public exhibition and scheduled online webinars and drop-in sessions were advertised on regional radio stations (AM and FM), state and regional newspapers, the NSW Government and DCCEEW Water Group Have your Say website pages and via emails to stakeholders, including through the department's Water News e-newsletter and other targeted e-newsletters.

Early in the public exhibition period, the department was made aware a technical issue in the mailing distribution system meant some stakeholders did not receive the departmental emails regarding the public exhibition. This was addressed immediately, and additional emails were sent to these stakeholders.

The drop-in sessions scheduled to be held in Wagga Wagga, 2 and 3 October 2024, were moved online due to technical difficulties. The sessions went ahead at the original times. Taking into account of the email system issue, requests from landholders and the rescheduling of the Wagga Wagga drop-in sessions, the public exhibition period was extended a further 3 weeks until 24 November. This 10-week period exceeded the statutory requirements for public exhibition of a draft regulation.

Face to face information sessions on the Reconnecting River Country Program and the LNS were subsequently held on 30 October 2024 in Wagga Wagga and on 31 October 2024 in Darlington Point.

A third online statewide webinar was also held on 8 October 2024.

The department seeks to improve the way it delivers projects and engages with communities. Feedback is important to help the department continue to refine its approach. Consultation is tailored for project requirements to most effectively engage with stakeholders, and may include consultation periods, town hall meetings, drop-in sessions, webinars and websites for information and feedback.

Please see Sections 7.4.3 and 7.5.5 of this report for a program level response to consultation issues.

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## 4.2 Amendments made to the LNS Regulation and Guidelines in response to submissions

Many submissions provided constructive suggestions for amendments to the LNS Regulation and the Negotiation Guidelines. The department has carefully considered these suggestions and has revised both instruments as outlined in the tables below.

Please note, this section (Section 4.2) only provides detail on issues raised for which amendments were made, as well as a short summary of other issues raised. The department received many submissions on a range of issues and not all comments have resulted in amendments to the LNS Regulation or Negotiation Guidelines. Many comments and suggestions were outside the scope of the LNS Regulation, as defined in s399B of the *Water Management Amendment Act 2018*.

Additionally, a large number of submissions also provided feedback specific to the Reconnecting River Country and Reconnecting Watercourse Country Programs and this feedback did not result in specific changes to the LNS Regulation or Negotiation Guidelines. An extended summary of those issues and a response is provided in Appendices A, B and C to this report.

### 4.2.1 LNS Regulation

#### What we heard – the LNS Regulation

Submissions on the LNS Regulation covered a significant number of issues, some of which have been previously addressed in Section 4.1 of this report. Commonly raised issues included:

- comments about the definitions in s 247A of the LNS Regulation, and confusion about which proposed new environmental water releases the LNS Regulation will apply to
- concerns the LNS Regulation confers too much arbitrary power, and procedural fairness for landholders is not adequately addressed
- concern the negotiation timeframes are too short
- concerns around the nature of compensation for costs reasonably incurred for negotiations, and questions on whether compensation will be payable if voluntary agreement under the LNS Regulation is not reached (see Section 4.1.8)
- suggestions and requests for further detail on flow notification procedures, including who would be notified and through which channels
- requests for additional consultation requirements to be added into the LNS Regulation.

An extended summary of these issues, together with department responses, is provided in Appendix A to this report.

A number of amendments have been made to the LNS Regulation in response to submissions. These are outlined in Table 2 below.

Table 2. Amendments made to the LNS Regulation in response to submissions.

| Section | Amendments   |
|---------|--|
| 247A    | The definition of proposed environmental water release at s 247A has been amended to clarify the link with the Declaration Order under s 247C and the intent that this relates to a new and continuing arrangement of environmental water releases (that is, address the risk of this being wrongly interpreted as being for an individual release of environmental water).                                    |
| 247A    | Definitions and the LNS Regulation has been reviewed for plain English and terminology consistency with the WM Act and other legislation, given some submissions misinterpreted the intent.  |
| 247C    | The considerations for the Minister when making a Declaration Order have been amended. The intent of these amendments is the Minister ‘must’, rather than ‘may’, consider the effect of the proposed new environmental water release on affected landholders and other persons and must have regard to the Negotiation Guidelines when making a declaration (s 247C (4)(a) and (b)).                           |
| 247F    | The LNS Regulation has been amended to require the Ministerial Corporation to provide the landholder with the opportunity to request a review of a proposed decision to declare a negotiation has ended, within a nominated timeframe. The Ministerial Corporation would be obliged to consider the landholder’s submission before declaring the negotiation with an individual affected landholder has ended. |
| 247I    | The LNS Regulation has been amended to clarify requirements to notify landholders, prior to each environmental water release, subject to a Declaration Order being made.   |
| 247J    | Section 247J has been amended to specify that consultation must occur as part of the review of the LNS Regulation, to be conducted 5 years after its commencement and the Negotiation Guidelines will also be reviewed at this time.   |

In addition to the amendments made to the LNS Regulation in response to submissions, there are several other amendments made to ensure the LNS Regulation is consistent with the policy intent and is fit for purpose. These are outlined in Table 3 below.

Table 3. Additional amendments made to the LNS Regulation to ensure policy intent and accuracy.

| Section | Amendments  |
|---------|---|
| 247A    | Minor editorial amendments to the definition of an ‘affected landholder’. |

| Section | Amendments  |
|---------|---|
| 247A    | Amendments to the definition of an ‘environmental water release’ to ensure the nature of these releases are clear (that is, that these releases will recur over time on an continuing basis and may involve a series of releases over multiple days).   |
| 247A    | Amendment to the definition of the Negotiation Guidelines.  |
| 247A    | The addition of a definition of a Declared Release as mentioned under clause 247C.  |
| 247B    | Minor editorial amendments to clarify who the Ministerial Corporation will negotiate with in relation to a declared release.  |
| 247C    | Minor editorial amendments to clarify the content of the Declaration Order.   |
| 247C    | <p>Insertion of new sub-section to enable the Minister to amend the Declaration Order from time to time to describe an additional area of land likely to be affected by the release. This is to enable a staged approach to negotiations particularly where the proposed environmental water release outlined in the Declaration affects many landholders.</p> <p>This section does <b>not</b> allow the Minister to amend the description of the proposed environmental water release.</p> |
| 247D    | Minor amendments to ensure that the invitation to negotiate in 247D (3) is consistent with the provisions of the Just Terms Act.  |
| 247F    | Inserted requirement for the Ministerial Corporation to provide written notification when the 12-month negotiation timeframe has ended.   |
| 247G    | Clarifying that the Ministerial Corporation must negotiate in a manner consistent with the Negotiation Guidelines   |
| 247G    | Amendments to clarify the types of previous or existing agreements the Ministerial Corporation may take into account when negotiating with an affected landholder.  |
| 247H    | Removal of 247H(3) that stated the Negotiation Guidelines may include other matters that the Minister considers relevant.   |
| 247H    | Insertion of new 247H(3) that states the date the Negotiation Guidelines were made and published on the Department’s website.   |
| 247I    | Insertion of new sub-section to clarify the requirement for WaterNSW to notify landholders of environmental water releases as described in 247I only applies to environmental water releases proposed under a Declaration Order.  |

| Section | Amendments   |
|---------|--|
| 247I    | Amendments to clarify that WaterNSW must take reasonable steps to notify prior to the release of environmental water and that the notification is intended to notify landholders impacted by the flows relating to the release of environmental water. |

## 4.2.2 Negotiation Guidelines

The Negotiation Guidelines are intended to:

- provide guidance on the conduct of good faith negotiations with landholders
- address circumstances where an independent facilitator or mediator may be appointed
- describe the considerations the Minister may take into account when making a Declaration Order for a proposed new environmental water release under the LNS Regulation
- address any other matters the Minister considers relevant.

The Ministerial Corporation must conduct negotiations in accordance with the Negotiation Guidelines (s 247G(1) of the LNS Regulation).

**Key issues:** Submissions on the Negotiation Guidelines covered several issues, some of which have been previously addressed in Section 4.1 of this report. Other commonly raised issues included:

- requests for more landholder input into the selection of independent facilitators and mediators (see Section 4.1.7)
- concerns regarding the proposed process for amending the Negotiation Guidelines
- requests for more clarity on the process for any future government decisions to further change or increase environmental water releases beyond the agreed easement terms
- suggestions the Minister should be required to more carefully consider relevant contextual factors when making decisions about a Declaration Order, and clearer details about what those factors should include
- concerns the ‘reasonable steps’ to identify landholders were unclear, and it may be difficult to identify all individuals with an interest in affected land
- requests for additional information to be provided to landholders during pre-negotiation engagement; some associated errors were identified in the LNS flow diagram (which appeared only in the Consultation Paper exhibited as part of the 2024 LNS Regulation public exhibition); and some associated errors in the content of Section 5.2 of the Negotiation Guidelines
- concerns regarding the conduct and procedure of negotiations, including requests additional information be provided to landholders in a timely manner to support negotiations, a complaints body be made available to landholders and negotiations be collectively with communities rather than on an individual property-by-property basis

- requests for negotiation assistance payments, regardless of whether negotiations reach agreement (see Section 4.1.8)
- suggestions for additional clauses to be included in Section 8 of the Negotiation Guidelines (Deeds of Agreement)
- many suggestions for communication channels and other considerations when providing flow notifications to landholders.

An extended summary of these issues, along with department responses, is provided in Appendix B to this report.

The department has made several changes to the Negotiation Guidelines which have arisen from suggestions in submissions. The changes for each clause are outlined in Table 4., below.

Table 4. Amendments made to the Negotiation Guidelines in response to submissions.

| Section | Amendments  |
|---------|---|
| 1       | Section 1 has been amended to reflect and align with amendments to the LNS Regulation.  |
| 2       | Section 2 has been amended to clarify the government’s rationale for acquisitions of interests in land (see Section 4.1.3 of this report).  |
| 3       | Section 3 has been amended to remove reference to the Minister exercising discretion as to whether a Declaration Order is warranted.  |
| 3       | Section 3 has been amended to clarify what is expected to be included in the Declaration Order regarding the description of the proposed environmental water release and maximum flow timing, duration and extent.  |
| 3       | Section 3 has been amended to strengthen requirements for the matters to be considered by the Minister, and to clarify a conservative approach to margin of error will be used in modelling.  |
| 4, 5, 9 | <p>The Negotiation Guidelines have been amended to provide some (non-exclusive) examples of what ‘reasonable steps’ may entail, as relates to Sections 4, 5.2 and 9, and includes further sources of information that may be lawfully accessed for this purpose.</p> <p>Section 5.2 has been amended to clarify the obligations on the Ministerial Corporation to identify landholders, as well as ensuring they are aware of receiving an invitation to negotiate.</p> |
| 5, 6    | <p>Sections 5.1 (Pre-negotiation engagement of stakeholders) and 6.1 (Preparation for negotiation) have been amended to align with suggested inclusions from submissions.</p> <p>An updated flow diagram of the negotiation process (which was included in the exhibited consultation paper for the Draft LNS Regulation) has been added to the Negotiation Guidelines.</p>   |
| 5       | Section 5.1 has been amended to make clear communities should be included in the pre-negotiation engagement process, noting this is a matter for each program to address.   |
| 5       | Section 5.2 has been amended to require a link to an up-to-dated version of the Negotiation Guidelines be provided to landholders alongside the initial invitation to negotiate. This will ensure landholders are always able to access the current version, irrespective of amendments.  |
| 5       | Section 5.2 has been amended to enable a landholder, identified as being potentially affected by the proposed new environmental releases arrangement, to contact the  |

| Section | Amendments  |
|---------|---|
|         | Ministerial Corporation if they consider they may be potentially affected. The Ministerial Corporation must then review the request.  |
| 5       | Section 5.2 has been amended to ensure consistency with s 247F(1) of the LNS Regulation, and to indicate all negotiations will need to be concluded before the proposed environmental water releases can commence.  |
| 5       | Section 5.4.1 has been amended to reflect additional subclauses inserted into 247F requiring the Ministerial Corporation to provide the landholder with the opportunity to request a review of a proposed decision to declare a negotiation has ended, within a nominated timeframe. The Ministerial Corporation would be obliged to consider the landholder's submission before declaring the negotiation has ended.   |
| 6       | Section 6 has been amended to include consideration of appropriate conduct in negotiations, including reference to the NSW Land and Property Acquisition Guidelines which addresses appropriate conduct the NSW Government must follow.   |
| 6       | Section 6 has been amended to reflect, consistent with the LNS Regulation, the Ministerial Corporation must take all reasonable steps to ensure the landholder has received and considered the invitation to negotiate.   |
| 6       | Section 6.5.3 has been amended to require the Ministerial Corporation to provide the landholder with a reminder regarding the invitation to negotiate.  |
| 6       | Both the LNS Regulation and the Negotiation Guidelines provide for the appointment, by agreement, of independent facilitators and mediators. Section 6.7 now clarifies 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.  |
| 7       | <p>Reimbursement for costs reasonably incurred will be paid where negotiations under the LNS result in agreement, consistent with the Just Terms Act.</p> <p>The Negotiation Guidelines have been amended to clarify reimbursement for costs reasonably incurred, where negotiations under the LNS do not result in an agreement, is subject to Ministerial approval and will be determined on a program basis prior to the commencement of negotiations.</p> <p>The Negotiation Guidelines has been amended to specify when the Ministerial Corporation invites landholders to negotiate, it must be made clear whether fees, reasonably incurred for negotiations under the LNS Regulation, will be reimbursed if agreement is not reached. Landholders will be informed of reimbursement avenues available to them as part of the invitation to negotiate.</p> |

| Section | Amendments  |
|---------|---|
| 8       | Section 8.2 of the Negotiation Guidelines has been amended to ensure it does not prevent Deeds, including an obligation on the landholder to notify a potential purchaser or lessee of the terms of the Deed.   |
| 8       | Section 8 of the Negotiation Guidelines has been amended to reflect the Declaration Order will describe the proposed environmental water releases.<br><br>The exact content of the Declaration Order will be a matter for each program.   |
| 8       | The Negotiation Guidelines have been amended to ensure they do not prevent the Ministerial Corporation acquiring flow easements in gross via an option. However, this approach of acquiring an easement through an option is unlikely to be necessary as the programs are likely to have modelled the area of impact and have funding to proceed before commencing the acquisition process.   |
| 9       | The Negotiation Guidelines have been amended to enable landholders to nominate their reasonable and preferred mode(s) for receiving advance notifications of environmental flow releases subject to a Declaration Order.  |
| 9       | The Negotiation Guidelines have been amended to clarify WaterNSW must take reasonable steps to notify landholders of environmental flow releases subject to a Declaration Order. This clause does not discriminate between landholders who have agreed to easements, and those who have not.  |
| 9       | The Negotiation Guidelines have been amended to include WaterNSW should consider a range of relevant factors in developing a procedure for notifying landholders of environmental water releases subject to a Declaration Order.<br><br>However, WaterNSW is not able to consider mobile and internet coverage. Landholders who have poor coverage can nominate an alternate method of notification, such as the text-to-voice service for landline telephones. |

In addition to the amendments made to the Negotiation Guidelines in response to submissions, there has been several other amendments made to ensure the Negotiation Guidelines are consistent with the policy intent and is fit for purpose. These are outlined in Table 5 below. Minor editorial amendments have also been made throughout the Negotiation Guidelines to improve readability.

Table 5. Additional amendments made to the Negotiation Guidelines to ensure policy intent and accuracy

| Section  | Amendments   |
|----------|--|
| Preamble | Minor editorial amendments to clarify the purpose of the Negotiation Guidelines. |

| Section | Amendments  |
|---------|---|
| 1       | Minor editorial amendments to clarify the purpose of the Negotiation Guidelines to ensure consistency with the LNS Regulation.  |
| 1       | Removal of text stating the Minister may amend the Negotiation Guidelines from time to time and insertion to clarify that amendments if the Minister wishes to amend the Negotiation Guidelines, an amendment to s247A of the LNS Regulation will be required.  |
| 1       | Insertion of a diagram to outline the process from Declaration Order to delivery of proposed environmental water releases.  |
| 5       | Minor editorial amendments to Section 5.2 to clarify negotiations may be conducted in stages where the proposed environmental water release impacts many landholders.   |
| 5       | Amendments to Section 5.4.1 to clarify a landholder may write to the Ministerial Corporation requesting negotiations are terminated if the landholder believes the negotiation is unlikely to succeed or is unproductive.   |
| 5       | Section 5.4.1 was amended to clarify termination of negotiations under the LNS Regulation does not necessarily mean compulsory acquisition of an interest in land will be pursued under the Just Terms Act.   |
| 5       | Insertion of Section 5.5 'Conclusion of all negotiations made under a Declaration Order' to clarify when and how the Minister may declare the end to all negotiations undertaken in relation to a Declaration Order. This section also clarifies negotiations with landholders affected by a proposed environmental water release may be conducted in stages depending on the number of affected landholders. |
| 6       | Section 6.2 has been amended to clarify the information to be provided to a landholder at the initial negotiation meeting.  |
| 6       | Section 6.5.1 has been amended to clarify what will be included in an offer.  |
| 6       | Amendments to Sections 6.7 and 6.8 to clarify the circumstances under which independent facilitation or mediation may be required to support negotiations.  |
| 8       | Minor amendments to Section 8.1 to clarify what a Deed of Agreement may include.  |

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## 4.3 Regulatory Impact Statement

A Regulatory Impact Statement (RIS) was prepared to assess the economic and social costs and benefits of the proposed regulation amendment and its alternatives, as required by the SL Act. The RIS analysed 3 options, listed below. These were assessed to determine whether alternative methods could achieve the same outcomes as the proposed Regulation, including the costs and benefits of each option. The 3 options were:

- **Option 1** – a ‘no LNS regulation’ option, where consultation and negotiation takes place under the existing Just Terms Act, in the absence of a regulatory framework specifically designed for easement acquisition for proposed environmental water releases
- **Option 2** – the ‘preferred’ option, as set out in the draft LNS Regulation
- **Option 3** – a ‘more prescriptive’ option, where a regulation amendment is introduced with an approach to the negotiation procedure that is more detailed and prescriptive than the ‘preferred’ option.

The scope of the RIS is in accordance with the [NSW Treasury Guide to Better Regulation \(TPP 19-01\)](#). The RIS compares the social and economic costs to both government and landholders of engaging in negotiations under the proposed option as compared with 2 other options.

The RIS does not specifically assess the costs and benefits of the Reconnecting River Country Program or Reconnecting Watercourse Country Program. These programs are assessed in detail under separate business cases. To ensure the RIS is fit for purpose, it assessed the regulation costs associated with each of the options.

Comments on the RIS have been reviewed, summarised and responded to. A brief overview of responses is provided here, and further detail is provided in Appendix C.

### What we heard – the Regulatory Impact Statement

Many of the submissions that made comment on the RIS questioned the extent to which the RIS investigated possible impacts to landholders and communities. Additionally, some submissions suggested the costs and benefits assessed under the RIS should be re-considered using different methods or incorporating additional costs and benefits.

Some submissions questioned the 3 options analysed in the RIS, suggesting insufficient alternatives were investigated and the RIS is lacking a comprehensive exploration of non-regulatory approaches or alternative mechanisms to achieve the desired outcomes.

A more detailed summary of these issues, alongside department responses, is provided in Appendix C.

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## 5 What we heard – Reconnecting River Country Program and Reconnecting Watercourse Country Program

This section provides an overview of the issues raised in submissions directly related to the Reconnecting River Country Program and/or the Reconnecting Watercourse Program, rather than issues relating to the draft LNS Regulation or LNS Guidelines. The Reconnecting River Country and Reconnecting Watercourse Country Programs are separate to the LNS Regulation and Negotiation Guidelines, which are statewide statutory instruments.

Program specific issues raised as concerns in the comments have been summarised as:

- program level cost benefit analyses and options evaluation
- decisions around the frequency, timing and duration of proposed environmental water releases
- decisions around the preferred approach to mitigating the impact of program environmental water flows, including eligibility requirements and specifications for private works.

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### 5.1 Reconnecting River Country Program

The Reconnecting River Country Program is a key Murray Darling Basin Plan initiative and NSW Government commitment. It forms part of the Sustainable Diversion Limit Adjustment Mechanism (SDLAM), and it is a notified supply and constraints project. Delivering the program will help reduce the need for further water buybacks from Murray and Murrumbidgee communities. The program is critical to achieving the objectives of the Murray-Darling Basin Plan and is essential to creating healthier functioning river systems in the Murray and Murrumbidgee valleys.

The program is proposing to use existing environmental water flexibly, occasionally reinstating some of the higher flow pulses lost due to river regulation and consumptive water use. This approach will deliver environmental benefits along the entire river system. The positive outcomes of these higher flows will be significant, benefiting rivers, wetlands and floodplain vegetation communities, and the plants and animals (such as fish, frogs, waterbirds) that inhabit these areas. These benefits include improved water quality and enhanced longitudinal and lateral connectivity. Importantly, the program will not affect water allocations or the delivery of irrigation orders.

A range of flow limit options have been considered for the Murrumbidgee River. The highest flow considered in the Murrumbidgee (40,000 ML/day at Wagga Wagga) is well below minor flood level in most areas and well below the 2022 flood level. Program flows will not be released during periods of heightened flood risk. The flow limit is the maximum flow rate of the river to be targeted by proposed environmental water releases. The volume of water released to reach the limit will depend on availability of water from other sources including rainfall and tributary flows. The recommended flow limit option will be selected prior to commencing delivery, following assessment and consideration of the Murrumbidgee Final Business Case.

Flow extent mapping for the 3 flow limits under consideration can be viewed on the Reconnecting River Country Program website. These maps assist landholders in determining if their property may be affected. The mapping can be found at [water.nsw.gov.au/rrcp-inundation-mapping](http://water.nsw.gov.au/rrcp-inundation-mapping)

### What we heard – Reconnecting River Country Program

Submissions that included feedback on program specific issues related to the Reconnecting River Country Program included:

- general opposition to the program
- concerns about the accuracy of the inundation modelling undertaken by the program
- requests to see the program’s Final Business Case for the Murrumbidgee
- requests for further information on the Murray component of the program
- confusion on the interaction between the Reconnecting River Country Program and the Reconnecting Watercourse Country Program, the Sustainable Diversion Limit Adjustment Mechanism, the Murray-Darling Basin Authority Constraints Roadmap and the Floodplain Management Program
- the environmental benefits and risks assessment (EBRA) for the program has insufficiently/incorrectly quantified program risks and benefits
- insufficient consideration of program costs and benefits
- concern the program impacts and risks are not addressed by the LNS Regulation and the Just Terms Act land acquisition framework, including a lack of river gauges on the Murrumbidgee, perceived increased regional flood risk, landholder stress, environmental damage, safety and biosecurity issues
- concern that some landholders are unable to provide accurate commentary on likely impacts when the final flow limit for the Murrumbidgee has not been determined .

A more detailed summary of these issues alongside department responses is provided in Appendix D to this report.

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## 5.2 Reconnecting Watercourse Country Program

The Reconnecting Watercourse Country Program is an environmental works and measures program established under the Australian Government’s Northern Basin Toolkit to help realise the objectives of the Murray-Darling Basin Plan. It will enable more flexible delivery of environmental water and aims to remove or relax physical and operational constraints to achieve required environmental water releases. This will improve connections to wetlands and watercourses, including the Gingham and Lower Gwydir watercourses, and the Mehi River to the Barwon River following extended dry times.

The Landholder Negotiation Scheme is a tool that aligns with the broader co-design and negotiation approach of the Reconnecting Watercourse Country Program.

## What we heard – Reconnecting Watercourse Country Program

A number of submissions provided feedback on program specific issues related to the Reconnecting Watercourse Country Program. These included:

- general opposition to the Gwydir Reconnecting Watercourse Country Program
- concern that environmental water will go beyond the easement and buffer
- the impact of the Gwydir Raft on environmental water delivery
- modelling being complex, inaccurate and unable to accurately identify impacts
- concern the consultation and engagement was confusing and lacking in transparency
- concerns about biosecurity, weeds and pest impacts due to environmental water flows
- confusion on the interaction between the Reconnecting River Country Program and the Reconnecting Watercourse Country Program, the Sustainable Diversion Limit Adjustment Mechanism, the Murray Darling Basin Authority Constraints Roadmap and the Floodplain Management Program
- concern the environmental water requirements of the Gwydir Wetlands have not been considered
- upgrades to the Tareelaro Weir are required
- the need to take into consideration farming schedules and priorities of landholders when conducting engagement activities.

An extended summary of these issues along with department responses is provided in Appendix E to this report.

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## 6 Next steps

The feedback provided from the public exhibition of the LNS Regulation has been carefully considered by the department. Amendments to the LNS Regulation and Negotiation Guidelines have been made, where possible, to align with suggestions from stakeholders.

The department would like to thank all stakeholders who made submissions in response to the public exhibition of the draft LNS Regulation.

# 7 Appendices

## 7.1 Appendix A – Summary of submissions received on the LNS Regulation

### 7.1.1 247A Definitions

| What we heard  | Response  |
|--|---|
| <b>Lack of clarity regarding the relationship between the definition of the proposed environmental water release and individual environmental releases.</b>  | The definition of proposed environmental release refers to the Minister's Declaration Order published in the Gazette as per s 247C. The definition of proposed environmental release at s 247A has been amended to clarify the link between s 247C and the intent that this relates to a new and enduring arrangement / program of releases (that is, reduce the risk of this being wrongly interpreted as being an individual release). This is intended to address stakeholder concerns that suggest the definition at s 247A is unclear. |
| <b>The definition of “affected landholder” is unclear.</b>   | The definition of an affected landholder at s 247A is considered sufficient for the purposes of the regulation as it is consistent with the Just Terms Act.   |
| <b>Legal terminology used in the LNS Regulation is too complex.</b>  | Definitions and the Regulation have been reviewed for plain English terminology while being consistent with the WM Act and other legislation, given some submissions misinterpreted the intent.<br><br>One of the purposes of the Negotiation Guidelines is to assist in explaining and interpreting the LNS Regulation and the Negotiation Guidelines are being revised based on the feedback received to ensure they achieve this goal.   |
| <b>The inclusion of ‘permanent’ in the definition of proposed environmental water release excludes the ability for landholders to negotiate mitigation of impacts from one-off or undeclared environmental water releases.</b> | <i>Note:</i> the phrase ‘permanent basis’ has been replaced in the definition of a proposed environmental water release in the LNS Regulation with ‘continuing arrangement for releases of water for environmental purposes’.<br><br>Agreements reached under the LNS Regulation will only apply to environmental water releases where the Minister publishes a Declaration Order under s 247C of the LNS Regulation describing the proposed environmental water  |

| What we heard | Response  |
|---------------|---|
|               | <p>release. Environmental water releases subject to a Declaration Order will constitute a permanent arrangement.</p> <p>Any environmental water releases that are not subject to a Declaration Order will not be subject to agreements made under the LNS Regulation.</p> |

## 7.1.2 247B Object of the Part

| What we heard   | Response   |
|---|--|
| <p><b>The proposed wording gives the Minister the power to act without proper consideration of landholder needs, and to not fully consider the impact on landholders.</b></p> | <p>The decision to develop an LNS Regulation was made by a previous government and Parliament, through amendments to the WM Act. The NSW Government intends to maintain this approach and to develop the Regulation to provide for the conduct of negotiations in good faith.</p> <p>In making a Declaration Order under s 247C, the LNS Regulation provides that the Minister may consider the effect on landholders and other persons. This clause has been amended to ensure that in making the Declaration Order the Minister must consider the effect on landholders noting the individual impacts on landholders would be assessed at the individual property level.</p> |
| <p><b>The term voluntary should be removed from the Landholder Negotiation Scheme.</b></p>  | <p>The word "voluntary" does not appear in the LNS Regulation. Negotiation is voluntary in the sense landholders can choose whether or not to accept an invitation to negotiate under the LNS and whether negotiations under the LNS Regulation result in an agreement.</p> <p>No amendment will be made to the LNS Regulation.</p>  |
| <p><b>Good faith is not an appropriate mechanism for the government to use as they cannot be trusted.</b></p>   | <p>The intent of the proposed LNS Regulation is to provide a robust framework for good faith negotiations, to maximise prospects for voluntarily reaching agreement with landholders on the introduction of changes to water releases for environmental purposes.</p> <p>It is not proposed to amend the reference to good faith, which has been part of the legislative framework under the WM Act for over 20 years.</p>   |

| What we heard  | Response   |
|--|--|
| <p>Concern the Regulation gives provision for any future programs to be included within the terms of easement without actual identification.</p> | <p>The LNS Regulation is independent of and separate to any specific programs. The LNS does not specify the mechanism to secure an enduring agreement, this is a program decision.</p> <p>If a program uses the LNS Regulation to secure a flow easement agreement, the terms of the agreement are binding to the NSW Government. If a future program is proposed that seeks to change the enduring environmental water arrangements, the NSW Government would be required to undertake further negotiations with the landholder to secure an agreement and determine any compensation payable for the new proposed environmental water release arrangement.</p> |

### 7.1.3 247C Application of part to declared proposed environmental water releases

| What we heard   | Response  |
|---|---|
| <p>Submissions expressed concern that the term ‘may’ was too ambiguous as to whether the Minister will make a Declaration of application of the LNS (s 247C(1)) and whether the Minister will consider the effect on landholders and the Guidelines (s 247C(4)).</p> <p>Use of the word ‘must’ would be more aligned with intent of the Regulation.</p> <p>Suggested change to s 247C(4) so the Minister ‘must’ take into account relevant contextual matters, and edit the LNS Guidelines to include the word ‘maximum’ before duration and frequency.</p> | <p>The LNS will only apply where the Minister makes a published Declaration Order under s 247C. Making the Declaration Order is a decision (a choice) for the Minister, so it is appropriate the Minister ‘may’ rather than ‘must’ make a declaration under s 247C (1).</p> <p>The considerations for the Minister when making a Declaration Order have been amended to require the Minister ‘must’ consider the effect of the proposed environmental water release on affected landholders and other persons (s 247C (4)(a)) and ‘must’ consider the Negotiation Guidelines (s 247C(4)(b)).</p> <p>Section 247G already provides that the Ministerial Corporation must negotiate in accordance with the Negotiation Guidelines and s 247H already provides that the Minister must make guidelines.</p> |
| <p>Unclear what considerations will be taken by the Minister in making a Declaration Order to</p>   | <p>Considerations are set out in s 247C of the LNS Regulation and Section 3 of the Negotiation Guidelines.</p>  |

| What we heard   | Response   |
|---|--|
| <p>determine proposed environmental releases under the LNS Regulation.</p>  | <p>No amendment to the LNS Regulation or Negotiation Guidelines has been made.</p> <p>Refer above regarding other matters for review.</p>  |
| <p>The LNS should apply to previous and/or existing environmental flows to compensate landholders affected by these flows.</p>                              | <p>The LNS Regulation is proposed to apply only to proposed new enduring changes to releases for environmental purposes where a Declaration Order has been made by the Minister. Existing and established environmental flow arrangements are not subject to the LNS Regulation.</p> <p>No amendment has been made to the LNS Regulation.</p>  |
| <p>Does not adequately address the long-term sustainability of the proposed environmental water management strategies and their effects on landholders.</p> | <p>The long-term sustainability of a proposed environmental water release is program-level consideration assessed during program development. Negotiations with affected landholders under the LNS Regulation will take into account long-term impacts when determining compensation.</p> <p>No amendment has been made to the LNS Regulation.</p>   |
| <p>Suggest that government be obliged to disclose third party impacts and undertake consultation on the Declaration Order.</p>                              | <p>Identifying and addressing impacts on landholders is the subject of negotiations under the LNS Regulation.</p> <p>Section 5.1 of the Negotiation Guidelines states that programs should seek to engage with landholders regarding proposed changes to environmental releases before formal negotiations commence. This engagement will provide an opportunity for the programs to refine products such as inundation mapping and inform program development more broadly.</p> <p>In addition, the Negotiation Guidelines will require the written notice inviting each landholder to negotiate to include information about the proposed new environmental water releases.</p> <p>The Declaration Order must be published prior to the start of negotiations.</p> |
| <p>Concern that the LNS Regulation may be used for other future environmental programs.</p>   | <p>Currently, it is expected that the LNS Regulation will apply to the Reconnecting River Country Program and the Reconnecting Watercourse Country Program. As the LNS Regulation is a statewide regulation, it may also be applied for future programs where landholders will be affected by proposed changes to environmental water release arrangements.</p>  |

| What we heard   | Response   |
|---|--|
|   | Any agreement (e.g. flow easement terms) reached with a landholder under the LNS Regulation is legally binding and can be varied only with consideration of whether additional compensation is required in accordance with the Just Terms Act.   |
| <b>The government needs to clearly articulate what inundation by environmental water is covered by the LNS.</b>   | The Declaration Order by the Minister (under s 247C) for each program will describe the proposed new enduring change to environmental water releases, including the predicted maximum frequency, timing, duration and extent of flows and inundation.<br><br>No amendment has been made to the LNS Regulation. |
| <b>The Minister should take into consideration broader impacts on the land and the community when making a Declaration Order, for example, environmental, economic and heritage considerations.</b> | These issues are covered by the provision that the Minister may consider other relevant matters (s 247C(4c)).<br><br>No amendment has been made to the LNS Regulation.   |

#### 7.1.4 247D Negotiations between Ministerial Corporation and persons

| What we heard   | Response  |
|---|---|
| <b>Concern that s 247D(1) is insufficient in not requiring the Ministerial Corporation to take all reasonable steps to ensure the persons to whom an invitation has been sent have received the invitation.</b> | Although this concern is addressed in sections 5.2 and 5.4.1 of the draft Negotiation Guidelines, the Negotiation Guidelines have been strengthened by requiring the Ministerial Corporation to take all reasonable steps to make contact with affected landholders and confirm that the landholders are aware that they have received an invitation.<br><br>As both the LNS Regulation and the Negotiation Guidelines provide for the 28-day response timeframe to be extended, in response to a reasonable request from an affected landholder, no amendment has been made to the LNS Regulation. |
| <b>A true negotiation would allow the landowner to say no.<br/><br/>If affected landholders object their land will be compulsorily acquired.</b>  | The LNS does allow a landholder to decline an invitation to negotiate and to decline to agree to terms. In some of these cases, the government's policy position is that compulsory acquisition of an interest in land (for example, flow   |

| What we heard  | Response  |
|--|---|
|  | <p>easements) may be considered, as a last resort, subject to approval by the Minister.</p> <p>No amendment is required to the LNS Regulation.</p>  |
| <p><b>Concern that landholders will only be provided with inundation mapping once they have agreed to negotiate.</b></p>                       | <p>Section 5.1 of the Negotiation Guidelines states that programs should engage with affected landholders before the commencement of formal negotiations. This engagement may include the provision of inundation mapping.</p> <p>For example, landholders within the Reconnecting River Country and Reconnecting Watercourse Country Program areas already have access to program specific inundation maps.</p> <p>Section 5.2 of the Negotiation Guidelines requires that the written notice inviting each landholder to negotiate should include information about the proposed environmental water releases.</p> <p>No amendment has been made to the LNS Regulation.</p> |
| <p><b>The regulation has limited flexibility as it does not adequately account for the unique circumstances of individual landholders.</b></p> | <p>The LNS Regulation is intended to provide a clear, transparent and consistent approach to negotiating with landholders affected by proposed changes to environmental water releases.</p> <p>The LNS Regulation does not prescribe the substance of negotiations. Individual negotiations with landholders under the LNS Regulation will take into consideration the unique impacts to the property as a result of the proposed environmental water release.</p> <p>No amendment has been made to the LNS Regulation.</p>   |

### 7.1.5 247E Time limit for persons to accept invitation to negotiate

| What we heard  | Response   |
|--|--|
| <p><b>The 28-day period to respond to an invitation to negotiate is insufficient and should be extended to at least 40 days.</b></p> | <p>The timeframe for response to the invitation is considered adequate as the LNS Regulation includes the ability for landholders to request an extension to the period of time to respond to the invitation to negotiate. This is reiterated at section 5.2 of the Negotiation Guidelines.</p> <p>No amendment has been made to the LNS Regulation.</p> |

## 7.1.6 247F Period of negotiations

| What we heard  | Response   |
|--|--|
| <p>Concerned that too much decision-making power is conferred on the Ministerial Corporation through s 247F. Landholders require a mechanism through which they can challenge Ministerial Corporation decisions to end negotiations.</p> | <p>The LNS Regulation has been amended to require that the Ministerial Corporation provide the landholder with the opportunity to request a review of a proposed decision to declare that a negotiation has ended, within a nominated timeframe. The Ministerial Corporation would be obliged to consider the landholder’s request before declaring the negotiation has ended.</p>   |
| <p>The timeframe for negotiations is inadequate.<br/>A longer period for negotiation is needed so landholders can be fully informed.</p>   | <p>The LNS Regulation and Negotiation Guidelines provide for a 12-month timeframe for voluntary negotiations and accommodate a range of circumstances where an extension of time is warranted. This will best serve the interests of both government and landholders in negotiating agreed outcomes wherever possible.</p> <p>In comparison, the Just Terms Act provides for a 6-month timeframe for voluntary negotiations.</p> <p>Lengthy negotiations can result in additional costs, including legal fees and valuation expenses for landholders.</p> <p>No amendment has been made to the LNS Regulation.</p> |
| <p>Unclear whether declaring an end to all negotiations is referring to negotiation with an individual or negotiations for the entire program.</p>   | <p>Section 247F(6) of the LNS Regulation relates to all negotiations made under a Declaration Order (s 247C).</p> <p>Section 5.4.1 of the Guidelines makes it clear the Minister’s decision to end negotiations under s 247F(6) relates to all negotiations.</p> <p>Note that s 247F(2)(b) provides that the Ministerial Corporation can end negotiations with a specific landholder.</p> <p>No amendment has been made to the LNS Regulation.</p>   |
| <p>Remove the 28-day and 12-month deadlines for negotiation and implement a more gradual and phased approach.</p>  | <p>The timeframes are considered sufficient, noting that they can be extended by agreement when warranted. An entirely open-ended timeframe is not considered to be in the best interests of landholders or to ensuring that the programs meet their funding timeframe commitments.</p> <p>No amendment has been made to the LNS Regulation.</p>   |

## 7.1.7 247G Conduct of negotiations

| What we heard   | Response   |
|---|--|
| <p>The capacity and ability of landholders to engage and negotiate effectively will vary greatly.</p> | <p>The LNS Regulation and Negotiation Guidelines provide for landholders to access negotiation assistance to allow them to engage valuation and legal expertise.</p> <p>Please refer to Section 4.1.8 of this report for further information about reimbursement for costs reasonably incurred.</p> <p>No amendment has been made to the LNS Regulation.</p> |

## 7.1.8 247I Notifications of environmental water releases by Water NSW

| What we heard   | Response   |
|---|--|
| <p>River operator landholder notification process should include notifying relevant communities in the region.</p>  | <p>Section 247I provides that WaterNSW must take all reasonable steps to register (opt-in) affected landholders for notifications and then notify releases to affected landholders that have registered. At this stage, it is not considered feasible to mandate WaterNSW to notify the broader community about releases.</p> <p>However, it should be noted that any person can opt-in to be notified of releases, and that notifications will also be publicly available on the WaterNSW website.</p> <p>No amendment has been made to the LNS Regulation.</p> |
| <p>The timeframe for providing advance notice of a water release, as well as how long the water release will last, should be stated publicly in local media and newspapers.</p> | <p>Section 9 of the Negotiation Guidelines provides guidance for WaterNSW regarding the matters to be considered in developing a notification procedure for forthcoming environmental flow releases.</p> <p>No amendment has been made to the LNS Regulation.</p>  |
| <p>How and when will landholders be notified of a planned environmental water release?</p>  | <p>Section 247I requires WaterNSW to take reasonable steps to notify a landholder affected by the release. The Minister may give a direction to WaterNSW in this respect.</p> <p>Section 9 of the Negotiation Guidelines provides guidance for WaterNSW on the matters to be considered in developing a notification procedure for forthcoming environmental flows.</p> <p>WaterNSW will also develop a notification procedure and plan to establish an opt-in notification system, where any</p>  |

| What we heard   | Response  |
|---|---|
|   | <p>stakeholders who register for the notifications will be able to nominate their preferred mode of notification. Notifications will also be publicly available on the WaterNSW website.</p> <p>No amendment has been made to the LNS Regulation.</p>   |
| <p><b>The Regulation requires WaterNSW to notify affected landholders but it is unclear if this includes affected landholders who did not reach an agreement or declined the invitation to negotiate.</b></p> | <p>Under s 247I of the LNS Regulation, WaterNSW must take reasonable steps to notify landholders affected by the release. This clause does not differentiate between landholders who have agreed to terms, and those who have not.</p> <p>Note that any person can opt-in to be notified of releases, and that notifications will also be publicly available on the WaterNSW website.</p> <p>The Negotiation Guidelines have been amended to clarify this point.</p>  |
| <p><b>It is unclear if negotiations include input on frequency and volume of environmental water releases, or provisions to ensure maintenance of third party works.</b></p>                                  | <p>The negotiations under the LNS Regulation involve negotiations regarding the impacts of the proposed environmental water release and, in some cases, the acquisition of an interest in land (e.g. flow easement). It is not proposed that these negotiations would include negotiating the frequency or volume of environmental flow releases.</p> <p>The Declaration Order will describe the proposed new and enduring environmental flow arrangements. The nature, frequency, duration and volume of the proposed releases are not the subject of negotiations under the LNS Regulation.</p> <p>Indicative information relating to the anticipated frequency and duration of events will be included in supporting material for the negotiations.</p> <p>No amendment has been made to the LNS Regulation.</p> |

## 7.1.9 247J Review of LNS

| What we heard  | Response   |
|--|--|
| <p>Landholders should be able to provide commentary on any review of the LNS Regulation.</p> | <p>The LNS Regulation and Negotiation Guidelines may be reviewed and amended by the Minister as required. The extent of consultation required on amendments will be determined by the significance of the amendments, consistent with the NSW Government Guide to Better Regulation. However, landholders will be notified of any changes made.</p> <p>Section 247J has been amended to clarify that consultation can occur as part of the review of the LNS Regulation, conducted 5 years after commencement.</p> |

## 7.1.10 Other matters raised

| What we heard   | Response  |
|---|---|
| <p>Many submissions requested the government delay implementation of the Regulation until the Basin Plan review has been completed.</p>   | <p>The decision to develop an LNS Regulation was made by a previous government, and it remains NSW Government policy. While currently it is expected that the LNS will apply to the Reconnecting Water Country Program and Reconnecting Watercourse Country Program which are NSW Basin Plan projects, the LNS Regulation is separate to the Basin Plan and may be applied to proposed changes to environmental water releases outside of current Basin Plan commitments.</p> |
| <p>A landholder should be able to forgo payment in agreement for rehabilitation works that might occur under another program that protects the area from future inundation periods.</p> | <p>In some cases, mitigation works may comprise part of the agreement made with a landholder under the LNS. Whether or not mitigation works are in scope for negotiations is a program decision. Where on-farm works have been approved under another program, these would be considered in valuing compensation.</p> <p>No amendment has been made to the LNS Regulation.</p>  |

## 7.2 Appendix B – Summary of submissions received on the Negotiation Guidelines

This section provides a summary of comments from stakeholder submissions regarding the LNS Negotiation Guidelines, together with responses from the department.

The Negotiation Guidelines are intended to:

- provide guidance on the conduct of good faith negotiations with landholders
- address circumstances in which an independent facilitator or mediator may be appointed
- describe the considerations the Minister may take into account when making a Declaration Order to determine proposed new environmental water releases under the LNS Regulation
- address any other matters the Minister considers relevant.

Some stakeholders suggested that the Negotiation Guidelines should replace the LNS Regulation, and the definition of proposed new environmental water releases is unclear.

Concerns were also raised regarding the proposed process for amending the Negotiation Guidelines, and for more clarity on the process for any future government decisions to further change or increase environmental water releases beyond the agreed easement terms.

The department has responded to this feedback and provided further information alongside proposed Negotiation Guidelines amendments below.

### 7.2.1 Negotiation Guidelines Section 1 – Purpose

| What We Heard  | Response  |
|--|---|
| <p><b>It is concerning the Minister can amend the guidelines from time to time. Landholders should have a chance to provide feedback on amendments to the LNS Guidelines, and how landholders would be notified that changes had been made.</b></p> <p><b>The definition of proposed environmental water releases at s 247A is unclear and needs to more clearly link to Declaration Order at 247C.</b></p> <p><b>The wording previously used by the government to describe the way that agreements with</b></p> | <p>See Section 4.2.1 above on proposed review of the LNS Regulation concerning s 247A definition of proposed environmental water releases, and s 247J of the LNS Regulation regarding review of the Regulation and Negotiation Guidelines 5 years after commencement.</p> <p>Landholders will also be able to provide feedback on the operation of the LNS Negotiation Guidelines when they are reviewed alongside the LNS Regulation under s 247J of the LNS Regulation.</p> <p>The Negotiation Guidelines will be amended to reflect and align with any possible future amendments to the LNS Regulation.</p> <p>In addition to the above, the Negotiation Guidelines (Section 5) have been amended to add the requirement that a link to an up-to-date version of the guidelines will be provided to landholders alongside the initial invitation to negotiate. This</p> |

| What We Heard   | Response  |
|---|---|
| <p>landholders only apply within set terms should be included in the Guidelines.<sup>2</sup></p>  | <p>will ensure that landholders are able to access the current version of the Negotiation Guidelines.</p> <p>Any future government decision to further change or increase environmental water releases beyond agreed easement terms would require a new program of negotiation and compensation.<sup>3</sup> This has been clarified in the Negotiation Guidelines.</p>   |
| <p>The Negotiation Guidelines should replace the LNS regulation as they offer a framework for consistent application rather than imposing strict legal obligations that may have unintended consequences for landholders.</p>       | <p>The decision to develop an LNS Regulation was made by a previous government and Parliament, and it remains current government policy. The regulation is high-level and is not overly prescriptive, with flexibility in interpretation provided for in the Negotiation Guidelines.</p> <p>Without legislative backing in the form of the LNS Regulation, the Negotiation Guidelines would not carry any weight. Instead, all negotiations would be required to take place under the requirements of the Just Terms Act.</p> <p>It is noteworthy that some landholder submissions expressed an opposing view: that the LNS Regulation should be more prescriptive about the conduct of negotiations.</p> |
| <p>The Negotiation Guidelines should include a framework for the acquisition of whole or part of a landholding where the proposed new environmental water releases impose certain hardships on landholders, that is, severance.</p> | <p>All acquisitions of interests in land, such as flow easements, must be in accordance with the provisions of the Just Terms Act, including consideration of severance.</p>  |

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<sup>2</sup> “Agreements with landholders only apply within set terms (for example, the easement applying to an adopted flow limit and flow conditions). There is no intention for any future changes in flow limits and flow conditions after agreements are reached. If any future government contemplated a change in the terms of the existing agreement, a new agreement, mitigation [works] and compensation would have to be negotiated.” What you said, what we did – Feedback on the landholder Negotiation Framework discussion paper, DPIE, 2022, available at [water.nsw.gov.au/\\_data/assets/pdf\\_file/0009/524664/what-you-said-what-we-did.pdf](https://water.nsw.gov.au/_data/assets/pdf_file/0009/524664/what-you-said-what-we-did.pdf)

<sup>3</sup> As above.

## 7.2.2 Negotiation Guidelines Section 2 – Relationship with the *Land Acquisition (Just Terms Compensation) Act 1991*

| What We Heard  | Response  |
|--|---|
| <p>Concerns regarding easements negotiated under the LNS Regulation, including:</p> <ul style="list-style-type: none"> <li>easements would allow public access to properties</li> <li>payments for easements would not adequately compensate landholders.</li> </ul> <p>Concerns regarding compensation including:</p> <ul style="list-style-type: none"> <li>the government should consider event-based payments rather than one off compensation</li> <li>compensation inadequately considers all financial and social impacts.</li> </ul> | <p>The LNS Guidelines have been amended to clarify the government’s rationale for acquisitions of an interest in land, such as a flow easement (see section 4.1.3 of this report).</p>  |
| <p>The Landholder Negotiation Scheme does not include the responsibilities and liabilities of government in ensuring landholders affected receive a fair and reasonable outcome, nor does it address the negative impacts on the safety, mental health and potentially lifelong negative impacts.</p>  | <p>All negotiated agreements by the NSW Government, whether by voluntary agreement or compulsory acquisition process, must be in accordance with the provisions of the Just Terms Act. In this context it is appropriate that the Negotiation Guidelines reference s 55 of that Act.</p> <p>The LNS Regulation (s 247F) has been amended to require that the Ministerial Corporation provide the landholder with the opportunity to review and respond within a nominated timeframe to a proposed decision to declare that a negotiation has ended. The Ministerial Corporation would be obliged to consider the landholder’s response before declaring that the negotiation has ended.</p> <p>Landholders have access to a Property Acquisition Support Line delivered by a team of qualified psychologists and social workers through the Centre of Property Acquisition. There may also be program-specific mental health support options made available to landholders.</p> |

| What We Heard  | Response   |
|--|--|
| <p>The process for determining compensation and payments for flow easements, should include:</p> <ul style="list-style-type: none"> <li>the improvement and productivity increases that farmers have made to the land</li> <li>market value of land, impacts to infrastructure such as bridges and roads.</li> </ul> | <p>Please refer to Section 4.1.4 of this report.</p> |

### 7.2.3 Negotiation Guidelines Section 3 – Criteria for application of the Regulation

| What We Heard  | Response   |
|--|--|
| <ul style="list-style-type: none"> <li>Section 3 of the Negotiation Guidelines (which links to s 247C of the LNS Regulation) does not provide adequate protection for landholders in the matters that the Minister may consider in making a Declaration Order on whether the LNS applies to a proposed new environmental water release. The Minister may have too much discretion as to whether a Declaration Order is warranted.</li> <li>Several submissions questioned the content of the Declaration Order.</li> <li>Clarification is needed on who determines what is an appropriate margin of error.</li> <li>Section 3 of the guidelines requires amendment to state the Minister <i>must</i> take into account relevant contextual matters (as opposed to <i>may</i>)</li> </ul> | <p>The Negotiation Guidelines have been amended to remove reference to the Minister exercising discretion as to whether a Declaration Order is warranted.</p> <p>Additional information has been included in the Negotiation Guidelines to the effect that programs may consider consultation/communications about the Declaration Order prior to release.</p> <p>Third party impacts on landholders must be compensated in accordance with the Just Terms Act.</p> <p>Section 3 of the Negotiation Guidelines has been amended to clarify what is expected to be included in the Declaration Order regarding maximum flow timing, duration and extent.</p> <p>Please refer to Section 4.1.5 of this report for further information on consideration of risks associated with environmental flow releases.</p> <p>Section 3 of the Negotiation Guidelines has been amended to strengthen requirements for the contextual matters to be considered by the Minister, and to clarify that a conservative approach to margin of error will be used in modelling.</p> |

| What We Heard  | Response  |
|--|---|
| and suggested an additional contextual matter be included relating to the risks associated with the proposed environmental flow release program. |   |
| Clarification is needed on what considerations must be taken into account by the Minister in making a Declaration Order under S247C.             | Considerations are set out in s 247C of the LNS Regulation and Section 3 of the Negotiation Guidelines. |

#### 7.2.4 Negotiation Guidelines Section 4 – Identification of affected landholders

| What We Heard   | Response  |
|---|---|
| The definition of what actions may constitute 'reasonable steps' taken by the Ministerial Corporation to give written notice to landholders inviting them to participate in negotiations are unclear.   | Please refer to Section 4.1.6.  |
| Often other relevant persons are identified during conversations with the registered owner. These persons may not be registered in the second schedule of the title however may have an interest that is impacted by the environmental water release. | Section 5.2 of the Negotiation Guidelines provides sufficient guidance to the Ministerial Corporation to identify and contact the 'other persons' referenced at s 247D(1)(b) of the draft LNS Regulation. |

#### 7.2.5 Negotiation Guidelines Section 5 – Negotiation period timeframes

| What We Heard  | Response   |
|--|--|
| Additional information is required in pre-negotiation engagement, including requests that landholders are: | The Negotiation Guidelines sections 5.1 (Pre-negotiation engagement of stakeholders) and 6.2 (Preparation for negotiation) have been amended to align with the suggested inclusions. |

| What We Heard   | Response  |
|---|---|
| <ul style="list-style-type: none"> <li>informed about reimbursement of any legal, valuation and accounting expenses reasonably incurred</li> <li>provided with a map of the proposed maximum inundation extent, timing, frequency and duration of proposed flows, and information on how flood risk at the time of each release will be mitigated.</li> </ul> <p>The LNS negotiation process flow diagram included in the Consultation Paper does not include pre-negotiation engagement.</p> | <p>An updated flow diagram of the negotiation process (which was included in the exhibited Consultation Paper for the Draft LNS Regulation) has been added to Negotiation Guidelines.</p>   |
| <p>Provisions should be included in the Guidelines for impacted landholders, not identified by the Ministerial Corporation, to opt-in for consideration of individual circumstances.</p>  | <p>The Negotiation Guidelines have been amended to enable a landholder, who has not been identified as being potentially affected by the proposed new environmental releases arrangement, to contact the Ministerial Corporation if they consider they may be potentially affected. The Ministerial Corporation must then review the request.</p>   |
| <p>There is a drafting error in Section 5.2 of the Guidelines relating to commencement of the negotiation period.</p> <p>It is unclear what is meant by ‘the Ministerial Corporation may decide to schedule negotiations over an extended period of time’, and whether flows may commence before all negotiations are commenced or concluded.</p>   | <p>Part 5.2 of the Negotiation Guidelines has been amended to ensure consistency with s 247F(1) of the LNS Regulation.</p> <p>Section 5.2 of the Negotiation Guidelines has been further amended to indicate that all negotiations will need to be concluded before any of the proposed new and enduring environmental flow arrangements can take place. The negotiation period under the LNS must be completed before the proposed new environmental flows can commence.</p> |
| <p>The negotiation process should consist of general consultation and meetings with the relevant communities in addition to impacted landholders.</p>   | <p>Part 5.1 of the Negotiation Guidelines has been amended to make clear that communities should be included in the pre-negotiation engagement process, noting that this is a matter for each specific program to address.</p>  |

| What We Heard   | Response  |
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| <p>Pre-negotiation engagement should be conducted via community meetings in affected areas and individual consultation with affected landholders, in addition to key stakeholders such as councils and government agencies.</p>   | <p>It would not be appropriate for the Negotiation Guidelines to be too prescriptive on the form of such engagement, as this may depend on a range of factors including community and landholder preferences.</p> <p>This will be a matter for each specific program to address.</p>  |
| <p>When landholders agree to negotiate, they should sign an agreement to allow access to evaluate existing land conditions and allow a compensation assessment. This will allow the Ministerial Corporation to understand the potential impacts of the release.</p>                                     | <p>The compensation assessment will be completed by qualified valuers, in accordance with the Just Terms Act. In most instances, this will involve an on-site assessment and direct discussions with the owner/s (subject to their agreement).</p> <p>Landholders will also be entitled to obtain their own independent valuation to inform their negotiations with government.</p> |
| <p>The Ministerial Corporation should be aware, if phasing negotiations, there is the potential some landholders may be less likely to engage if they are aware other impacted landholders have not been engaged.</p>   | <p>Programs will determine whether negotiations are phased. The Negotiation Guidelines, being statewide, cannot be prescriptive on this matter.</p>   |
| <p>Access to mediation where determinations are unclear, and legislatively binding government response times to stakeholder queries, to ensure that impacted landholders have the information they require to engage in negotiations (with automatic extensions granted if timeframes are not met).</p> | <p>Section 5.3 of the Negotiation Guidelines states that the Ministerial Corporation must respond to a request for an extension of time in good faith and in a timely manner.</p> <p>Both the LNS Regulation and the Negotiation Guidelines provide for the appointment, by agreement, of independent mediators or facilitators.</p>  |
| <p>There are concerns around the sufficiency of negotiation period timeframes.</p>  | <p>The negotiation timeframe was updated from 6 to 12 months following stakeholder feedback in 2022.</p> <p>The LNS Regulation and Guidelines provide for a 12-month negotiation timeframe and provisions for extension which are intended to accommodate a range of circumstances where an extension of time is warranted. This approach will</p>                                  |

| What We Heard  | Response  |
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|  | <p>best serve the interests of both government and landholders in negotiating agreed outcomes wherever possible.</p>  |
| <p><b>Regarding section 5.4.3, there can be no good faith from landholders if this liability exclusion remains. This exclusion should be removed from the legislation and full consideration of liability (and therefore compensation) to extend to all landholders, even if an agreement is not in place.</b></p> | <p>Notwithstanding the option for the Minister to consider compulsory acquisition in accordance with the Just Terms Act, s 247F(7) and s 247F(8) of the LNS Regulation and Section 5.4.3 of the Guidelines provide scope to restart a negotiation that has ended. In this way landholders who initially fail to agree to terms can seek agreement on compensation.</p> <p>The statutory protection for things done in good faith is an established framework which has been in the WM Act for over 20 years. The government does not propose to remove this protection.</p> |
| <p><b>For some landholders who do not agree to terms, and where the compulsory acquisition process is not applied, there will be no avenue for compensation.</b></p>   | <p>Should any such case arise, it should be noted that s 247F(7) and section 5.4.3 of the Guidelines provide scope for the landholder to request to recommence a negotiation that has previously ended. In this way landholders who initially fail to agree to terms can seek agreement on compensation.</p> <p>Landholders can request to recommence negotiations up until the Minister declares all negotiations under a particular program are closed.</p>   |
| <p><b>Most landholders, if they did not accept a compensation offer, would not be able to take their matter to the Land and Environment Court. It is not a sign of good faith that this may be the only avenue.</b></p>  | <p>The LNS Regulation is aimed at facilitating negotiated agreements with landholders but enables consideration of compulsory acquisition of an interest in land in accordance with the Just Terms Act as a last resort, subject to approval by the Minister.</p> <p>In cases where compulsory acquisition is pursued, the LNS Regulation would cease to apply and would be replaced by existing established procedures under the Just Terms Act.</p>   |
| <p><b>The written notice inviting landholders to negotiate should include information about the proposed new environmental water releases and the circumstances when the Minister may consider acquiring an interest in the land</b></p>   | <p>Section 5.4.4 sets out some matters that the Minister may consider in arriving at a decision on whether to acquire a flow easement by compulsory process in accordance with the Just Terms Act. The materiality of impact on the landholder is the primary consideration.</p> <p>The Negotiation Guidelines (Section 6) require that the Ministerial Corporation must provide information about the proposed new environmental water releases to the</p>   |

| What We Heard   | Response   |
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| (through compulsory acquisition process).   | landholder. This section has been amended to further clarify what information must be provided.  |
| Section 5.4.4 includes first making a ‘genuine attempt’ to acquire an interest in the land by agreement for at least 6 months. How is a genuine attempt defined?  | <p>"Genuine attempt" is a term in the Just Terms Act that is established in legislation and practice.</p> <p>In accordance with the Just Terms Act the Ministerial Corporation must undertake a further 6-month negotiation with the landholder with the intent of reaching a voluntary agreement.</p> |
| Section 5.4 Ending of negotiation - in addition to the Minister’s gazette notice, notification should also be sent to all impacted landholders and other interest holders that received the Commencement of Negotiation letter. | The Negotiation Guidelines have been amended to require that the Minister must take all reasonable steps to contact landholders and people with an interest in land to notify them that an end to all negotiations has been declared.  |

## 7.2.6 Negotiation Guidelines Section 6 – Conduct and procedure of negotiations

| What We Heard  | Response  |
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| <p>Landholders should be able to request additional information be provided to enable them to engage in fully informed negotiations, including:</p> <ul style="list-style-type: none"> <li>• flood information and modelling</li> <li>• details on timing, maximum frequency and duration of flows</li> <li>• accurate mapping showing where environmental water will go</li> <li>• buffer zones</li> <li>• information about treatment of flood risk</li> <li>• detailed impact assessments</li> <li>• information on reimbursement of legal, valuation and accounting expenses.</li> </ul> <p>The government must be able to provide all relevant and essential information within the required timeframe for landholders to begin the journey of assessing impacts.</p> <p>Landholders must be given a fair chance to fully understand or challenge this program.</p> | <p>The Negotiation Guideline requires the program provide such information. Section 6.2. has been amended to clarify the information the Ministerial Corporation must provide to the landholder. Further specific (but not exclusive) examples of matters to be included in the initial negotiation meeting has been included.</p>          |
| <p>The proposed process of confirming the nature and extent of the impacts to the landholders is flawed, landholders are the ones who will have a better chance of predicting future impacts of proposed easements on their land.</p>  | <p>As per section 6.3 of the Negotiation Guidelines, the nature and extent of impacts will be confirmed and agreed through discussions between the Ministerial Corporation and affected landholder.</p> <p>During negotiations, landholders will have the opportunity to discuss the likely impacts of the easements on their property.</p> |

| What We Heard  | Response   |
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| <p><b>Modelled inundation footprint mapping should not be the definitive basis for calculating compensation. The historical experience of affected landholders and their broader community is much more relevant to inform discussions on impacts and should hold as much value in the compensation negotiations as modelling and forecasts.</b></p> | <p>It is not intended that inundation mapping be the sole basis for valuing compensation. Section 6.3 of the Negotiation Guidelines is, in part, intended to ensure landholders are able to provide their own perspectives and experiences on inundation impacts – including on the accuracy of inundation mapping, and the likely nature and scale of impacts.</p>  |
| <p><b>A plain English prospectus should be provided to each landholder, at least 1 month prior to a negotiation, to ensure landholders are given adequate information.</b></p>   | <p>The procedures set out in section 6 of the Negotiation Guidelines, together with the requirements of the Just Terms Act and access to negotiation assistance re legal and valuation advice, are considered sufficient.</p>  |
| <p><b>The Negotiation Guidelines don't sufficiently address how to maintain ongoing communication with landholders throughout the negotiation process, risking misunderstandings.</b></p>  | <p>Once a landholder accepts an invitation to negotiate and negotiations commence, the landholder and the Ministerial Corporation will have agreed on the basis for ongoing communication. Each landholder will be assigned a dedicated Personal Manager and Acquisition Manager to guide them through the process and provide support.</p>  |
| <p><b>It is unclear how the Land Acquisition Team can be trusted to act in good faith and provide accurate and non-biased assessments.</b></p>   | <p>The LNS Regulation (s 247G (1)) requires that the Ministerial Corporation must negotiate in accordance with the Negotiation Guidelines. Officers conducting negotiations will do so under delegation from the Ministerial Corporation and must do so consistent with the LNS Regulation and Negotiation Guidelines.</p> <p>Section 6 of the Negotiation Guidelines has been amended to consider including examples of key components of good faith negotiation that the Ministerial Corporation will expect from negotiation teams.</p> <p>The Negotiation Guidelines have been amended to refer to the NSW Land and Property Acquisition Guidelines which address appropriate conduct.</p> |
| <p><b>The draft guidelines are missing clarification of some key needs for good faith negotiation including:</b></p>   | <p>Section 6 of the Negotiation Guideline has been amended in consideration of these suggestions, including reference to the NSW Land and Property Acquisition Guidelines</p>  |

| What We Heard   | Response  |
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| <ul style="list-style-type: none"> <li>• the process from initial notification to agreed or compulsory acquisition is to be explained in detail with clear timelines for activities and decisions to be made.</li> <li>• all relevant information including offer provided to landholder as early as possible in the negotiating period to facilitate understanding.</li> <li>• Ministerial Corporation to have dedicated negotiating resources to proactively drive negotiations forward and respond to landholder queries in a timely manner.</li> <li>• the Ministerial Corporation should nominate an entity that the landholders and impacted entities/parties can contact for complaints if they feel negotiations are not being undertaken in good faith.</li> </ul> | <p>which address appropriate conduct. The Negotiation Guidelines state the information that the Ministerial Corporation must provide to the landholder.</p>   |
| <p>Sections 6.2 and 6.3 should be combined and the negotiation process should be:</p> <ol style="list-style-type: none"> <li>1. Ministerial Declaration Order.</li> <li>2. Invitation to negotiate.</li> <li>3. Pre-negotiation meeting where department supply all information as per Section 6.2 of the Negotiation Guidelines.</li> <li>4. Initial negotiation where impacts and mitigation strategies are agreed.</li> <li>5. Valuations and expert advice &amp; Landholder's valuations and expert advice.</li> </ol>  | <p>Acknowledging it may require more than one meeting to confirm and agree the nature and extent of impacts, the government considers it is not appropriate to refer to this stage as an 'initial negotiation meeting'.</p> <p>Moreover, it is appropriate to commence negotiations with an introductory meeting, giving the landholder the chance to consider information provided before discussion of on-property impacts.</p> <p>A flow diagram of the negotiation process has been added to the Negotiation Guidelines. The suggestions in this submission have been taken into consideration, where consistent with legislation, the LNS Regulation and the NSW Government's policy position.</p> |

| What We Heard  | Response   |
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| <p>6. Letter of offer.</p> <p>7. Negotiation meeting if required and the offer is seen as inadequate.</p>  |  |
| <p>The review of the Just Terms Act may result in operational costs being included, but if not then they should be addressed as an additional point of negotiation in section 6.3.</p>   | <p>Operational impacts are factored into the impact on market value of the land by valuers whenever applicable, on a property-by-property basis. This is an established practice for qualified valuers and in accordance with the Just Terms Act. Refer to Section 4.1.2 of this report for further information on the Just Terms Act.</p>   |
| <p>The final paragraph of section 6.5.1 should be modified to take out the words “should endeavour”.</p>   | <p>The Negotiation Guidelines have been amended to ensure consistency with the LNS Regulation that the Ministerial corporation must take all reasonable steps.</p>   |
| <p>Wording in section 6.5.3 should be modified to ensure that landholders are provided with a reminder.</p>  | <p>Section 6.5.3 of the Guidelines has been amended to require the Ministerial Corporation to provide the landholder with a reminder.</p>  |
| <p>Section 6.7 should allow landholders to appoint their own independent facilitator. The independent facilitator should be truly independent, and there must be a guarantee of independent advice or support during negotiations.</p>   | <p>Please refer to Section 4.1.7 of this report.</p>   |
| <p>Existing environmental flow impacts should be included given this has been occurring for number of years without compensation and now will be exacerbated further. Compensation should include ongoing annual payments for maintenance and recovery after each flow. Easements and covenants should have fixed terms and then reviewed.</p> | <p>Please refer to Section 4.1.3 of this report.</p> <p>The purpose of the LNS Regulation and the government's intent is that it applies only to new enduring changes to water releases for environmental purposes as Declared by Order under s 247C. The LNS Regulation is not intended to apply to existing environmental flow arrangements.</p> <p>See Sections 7.4.4 and 7.5.1 regarding event-based payments.</p> <p>Once an agreement is reached, any agreement terms (including flow easement terms) are legally binding. Flow easement terms are enduring and registered on title. Any amendments to the agreement terms would require further</p> |

| What We Heard  | Response   |
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|  | negotiations between the NSW Government and the landholder.  |
| <p>The Just Terms Act was not designed to deal with this program and is inappropriate. It does not deal with the complexities of farm business or longevity and emotional attachment.</p>          | <p>All acquisitions by government of interests in land (such as flow easements), whether by negotiated agreement or compulsory acquisition, must be undertaken in accordance with the provisions of the Just Terms Act. In this context it is appropriate that the Negotiation Guidelines reference s 55 of the Act.</p>   |
| <p>Mitigation works may conflict with other legislation and/or Water Sharing Plans.</p>  | <p>All agreed on-farm works will be subject to all relevant approval and regulatory processes.</p>   |
| <p>There are circumstances where a whole of community approach should be taken to negotiations rather than individual negotiations. Flexibility is required in the Guidelines to support this.</p> | <p>The nature of negotiations must consider individual circumstances, including the valuation requirements set out in the Just Terms Act. This requires that negotiations be conducted on an individual, case-by-case basis.</p>   |
| <p>The offer should be made within 6 months of the commencement of the negotiation period.</p>   | <p>Provision of an offer within the first 6 months of a negotiation period is a reasonable request, however for a variety of reasons there may be cases when this is not possible (for example, change in the personal circumstances of a landholder). As such, it is not appropriate to stipulate an offer must be provided within a 6 month timeframe. However, it should be noted that the intention is always to provide an offer as soon as possible.</p> |
| <p>Easements should have a sunset clause to allow for re-assessment and consideration of unintended impacts.</p>   | <p>The nature of flow easements is they are enduring and registered on title.</p>  |
| <p>There is some opposition to the use of easements. Alternatives to easements, including mitigating infrastructure, must be considered to support farmer buy in.</p>                              | <p>The LNS provides for a negotiation framework for the acquisition of an interest in land, which may include flow easements.</p> <p>See sections 7.4.4 and 7.5.1 for Reconnecting River Country and Reconnecting Watercourse Country Programs' rationale for flow easements.</p>  |
| <p>Some submissions suggested that landholders should be able to</p>   | <p>The assessment of impacts on properties from a proposed environmental water release and the compensation payable is specific to each individual landholding. As such,</p>   |

| What We Heard                                | Response  |
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| participate in negotiations as a collective. | collective negotiations are not possible or appropriate under the LNS Regulation. |

## 7.2.7 Negotiation Guidelines Section 7 – Negotiation Assistance

| What We Heard  | Response  |
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| <p>Negotiation assistance must be made available with or without an agreement being reached.</p> <p>Funding should be available to landholders to assist with legal advice and the landholder must be in position to negotiate for themselves, for example in good health.</p> <p>There must be a process of payment of fees incurred to facilitate agreement.</p> | <p>Please refer to Section 4.1.8 for further information about negotiation assistance for costs reasonably incurred.</p>  |
| <p>Landholders should be able to choose their legal advisors for negotiation assistance.</p>   | <p>The Negotiation Guidelines and Just Terms Act specify the obligation to pay legal fees reasonably incurred, which does not prevent the landholder choosing their own legal representation. Landholders are encouraged to engage with their chosen legal provider who has experience in property acquisition once they have received the offer to negotiate letter.</p> |
| <p>Landholders who are typically time poor will need to devote considerable time to the negotiation process. Consideration should be given to how this diversion of time can be properly compensated.</p>  | <p>The Just Terms Act provides that compensation must include reimbursement of legal and independent valuation fees reasonably incurred. However, landholders will not be compensated for their time.</p>   |

## 7.2.8 Negotiation Guidelines Section 8 – Deeds of Agreement

| What We Heard  | Response   |
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| <ul style="list-style-type: none"> <li>• A clause should be placed in the agreement that the landholder notify any potential purchaser or an acquirer of an interest in the land of the landholder’s agreement with the Ministerial Corporation.</li> <li>• The Ministerial Corporation should be allowed to lodge a caveat on title if it determines the caveat is necessary to protect its interests, for example, if an option to purchase or lease has been agreed with the landholder.</li> </ul> | <p>Section 8.2 of the Negotiation Guidelines has been amended to ensure it does not prevent Deeds including an obligation on the landholder to notify a potential purchaser or lessee of the terms of the Deed.</p>  |
| <p>Deeds of agreement should include:</p> <ul style="list-style-type: none"> <li>• the property map of the maximum inundation extent, including a separate ‘buffer area’</li> <li>• the timing, frequency and maximum duration of flows.</li> </ul>  | <p>The Negotiation Guidelines have been amended to reflect the Declaration Order will describe the proposed environmental water release/s.</p> <p>The exact content of the Deed of Agreement will be a matter for each program.</p>  |
| <p>The agreement should enable the Ministerial Corporation to acquire the easement via an option.</p>  | <p>The Negotiation Guidelines have been amended to ensure that where programs seek to negotiate with landholders for the acquisition of a flow easement, they do not prevent this approach. However, acquiring an easement through an option is not likely to be necessary as constraints projects will have modelling to determine the area of impact and funding to proceed before commencing the acquisition process.</p> |
| <p>Landholders should have the option to review agreements.</p>  | <p>It is standard practice that the opportunity to review agreements must be given to landholders, including sourcing their own independent legal advice, prior to signing.</p>  |
| <p>Agreement should include a failure clause if water exceeds modelling and a right for additional</p>   | <p>The agreements and resulting flow easements provide the right, with compensation payable, to inundate land up to the adopted flow limit and a nominated buffer. The buffer</p>  |

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| <p><b>compensation and full restitution of any damages.</b></p> | <p>is intended to address the risk of exceedance of the target flow limit.</p> <p>River operators will be required to adhere with the flow easement terms when making environmental water releases. Individual programs are investing multiple risk mitigation strategies to prevent exceeding the flow corridor. These include updating river operating procedures, flow notification system, flow buffers and existing risk management practices around weather monitoring and forecasting.</p> <p>River operators take a risk-based approach to releasing flows. They closely monitor predicted weather events and will reduce flow releases from the headwater storages if rainfall events are predicted in the catchment. In the event the flow limit, including the buffer in the easement terms, is exceeded an assessment may be required to understand the cause on a case-by-case basis and determine further required actions.</p> |
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## 7.2.9 Negotiation Guidelines Section 9 – Notification of flows to landholders

| What We Heard  | Response   |
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| <p><b>Communication with landholders on flow releases is essential.</b></p> <p><b>Landholders must be individually notified per their preferred option of communication.</b></p> <p><b>Landholders require transparency and notifications of future inundation.</b></p> <p><b>Clarity is needed around what reasonable steps and the approach WaterNSW will take to ensure affected landholders are contacted</b></p> <p><b>Section 9 should ensure WaterNSW considers lack of mobile and internet coverage when</b></p> | <p>The LNS Regulation requires that WaterNSW must take reasonable steps to enable registration for notifications to affected landholders and to notify those who have registered. These landholders will be individually notified via their nominated modes of notification.</p> <p>The Negotiation Guidelines have been amended to include “in developing a procedure for notifying landholders of planned environmental water releases, WaterNSW should consider a range of relevant factors”. Landholders and the community will be encouraged to opt-in to receiving notifications.</p> <p>The Negotiation Guidelines have been amended to enable landholders to nominate their reasonable and preferred mode(s) for receiving advance notifications of environmental flow releases.</p> <p>However, WaterNSW is not able to consider mobile and internet coverage. Landholders who have poor coverage can nominate an alternate method of notification, such as</p> |

| What We Heard   | Response   |
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| <p>providing notifications of flow to landholders</p>   | <p>the text-to-voice service for landline telephones and these notifications will also be publicly available on the WaterNSW website.</p>  |
| <p>Notification should also be provided to the relevant communities in the region(s).</p>   | <p>Under s 247I of the LNS Regulation, WaterNSW must take reasonable steps to notify releases to affected landholders</p> <p>Any person, including non-landholders and interested community members, can opt in to be notified of releases and these notifications will also be publicly available on the WaterNSW website.</p>  |
| <p>Details of water releases should be made public via local newspapers and other local media.</p>  | <p>Section 9 of the Negotiation Guidelines provides guidance to WaterNSW on the matters to be considered in developing a notification procedure for forthcoming environmental flow events.</p>   |
| <p>Landholders must be provided with clear, detailed information about water releases, to help get some certainty of the timeline of the flows and make the best decision for their business and farm. The annual communication should include targets, objectives and predicted flow volumes.</p>  | <p>The Declaration Order will describe the proposed new environmental water release arrangements – including frequency, timing, duration, magnitude and extent – and a description of the hydrology and affected area.</p> <p>Annual communication of the proposed releases will occur through the environmental water planning process (annual environmental water priorities as required under the Basin Plan).</p> <p>Event-based notifications will made by WaterNSW.</p>  |
| <p>The flow notification system must be updated to include:</p> <ul style="list-style-type: none"> <li>• the Minister must regulate a maximum total flow, including environmental water, irrigation water and rainfall</li> <li>• notifications cannot be limited to environmental water</li> <li>• notifications must be issued where total flow is greater than 15,000ML per day</li> <li>• notifications of environmental releases must be given 2 weeks in advance of the release.</li> </ul> | <p>Under s 247I of the LNS Regulation, WaterNSW must take reasonable steps to provide advance notification of releases of environmental water where the release of water is subject to a Declaration Order.</p> <p>Section 9 of the Negotiation Guidelines provides further guidance to WaterNSW on the relevant factors that should be considered for notifications.</p> <p>WaterNSW currently has an opt in automated flow notification system which alerts registered parties to dam and supply activities, and is not limited to environmental water – see <a href="#">Early Warning Network - WaterNSW</a>. The WaterNSW WaterInsights portal also allows users to register to receive alerts for nominated conditions on particular gauges/water sources – see <a href="#">WaterInsights - WaterNSW</a>.</p> |

## 7.2.10 Negotiation Guidelines – General comments

| What We Heard   | Response   |
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| <p>There is a lack of clear enforcement mechanisms to ensure compliance with the Negotiation Guidelines, which could undermine their effectiveness.</p>   | <p>The Negotiation Guidelines serve to inform the Minister, Ministerial Corporation and landholders with more information to assist in applying and interpreting the LNS Regulation. The Ministerial Corporation must negotiate in accordance with the Guidelines (s 247G(1) of the LNS Regulation), however the Negotiation Guidelines don't include penalties or other enforcement provisions.</p> |
| <p>The wording and structure of the Negotiation Guidelines must ensure that there is no over-interpretation of the legislation or attempt to build on, strengthen or to use the Guidelines to insert other processes.</p> | <p>The Negotiation Guidelines are drafted to be consistent with the LNS Regulation.</p>  |
| <p>Co-design principles should be implemented through the Negotiation Guidelines.</p>   | <p>The LNS Regulation requires government to negotiate in good faith. Securing flow easements triggers an obligation on government to compensate in accordance with the Just Terms Act.</p>  |

## 7.3 Appendix C – Summary of submissions received on the Regulatory Impact Statement

### 7.3.1 Costs and benefits

| What we heard  | Government response  |
|--|--|
| <p>Costs and benefits assessed under the RIS should be re-considered using different methods or incorporating additional costs and benefits.</p> <p>Many submissions requested access to program-specific cost-benefit analyses.</p> <p>Concerns and proposals included:</p> <ul style="list-style-type: none"> <li>• a qualitative assessment of costs, benefits and risks be undertaken using a Multi-Criteria Decision Analysis Approach and incorporated into the RIS</li> <li>• RIS seen as not comprehensive, not fully articulating costs/benefits of the 3 options</li> <li>• the LNS may have material impacts on negotiations therefore compensation costs which are not considered</li> <li>• the benefits could have been assessed in terms of proportion of the negotiations that are likely to be successful under each option.</li> </ul> | <p>The scope of the RIS is in accordance with the <u>NSW Treasury Guide to Better Regulation (TPP 19-01)</u>. The RIS compares the economic costs to both government and landholders of engaging in negotiations under the proposed option as compared with 2 other options.</p> <p>The RIS does not assess the costs and benefits of the Reconnecting River Country Program and Reconnecting Watercourse Country Program, which are dealt with under separate business cases. To ensure the RIS is fit for purpose, it assessed the regulation costs associated with each of the options rather than program costs which are subject to differences in individual program objectives.</p> |

### 7.3.2 Basin Plan

| What we heard   | Government response   |
|---|---|
| <p>RIS does not consider the triple bottom line (economic, social and environmental) of the Basin Plan.</p> | <p>The scope of the RIS, which was prepared in accordance with NSW Treasury Guidelines, is confined to the costs and benefits of the proposed LNS Regulation. In this way, the RIS compares the economic costs to both government and landholders of engaging in negotiations under the proposed option, compared to 2 other regulatory options to administer negotiations. The RIS does not assess the costs and benefits of the Basin Plan, which is existing Commonwealth legislation.</p> |

### 7.3.3 Sensitivity analysis

| What we heard  | Government response   |
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| <p>Input parameters that were varied for the Monte Carlo simulations should be identified.</p> | <p>The RIS was prepared in accordance with the <a href="#">NSW Treasury Guide to Better Regulation (TPP 19-01)</a>. The level of detail provided in the analysis and in support of the costs estimated for each option and the Monte Carlo analysis is considered sufficient.</p> |

### 7.3.4 Options

| What we heard  | Government response   |
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| <p>Concerns included:</p> <ul style="list-style-type: none"> <li>• insufficient alternatives have been investigated and the RIS is lacking a comprehensive exploration of non-regulatory approaches or alternative mechanisms that could also achieve the desired outcomes</li> <li>• insufficient detail provided for Option 3.</li> <li>• the RIS does not consider the costs of comparing a program that includes compulsory</li> </ul> | <p>The RIS did include a comparison against a non-regulatory option (Option 1) and concluded that it is likely to entail higher costs than the preferred option (Option 2).</p> <p>Option 3 was constructed as a hypothetical option and only exists within the RIS document. No further details exist.</p> <p>As the potential use of compulsory acquisition powers, as a last resort and subject to the Minister's approval, is government policy utilising existing legislation and powers, compulsory acquisition of an interest in land was included in all options considered in the RIS. Therefore, the options do not differ in cost in this respect.</p> |

| What we heard  | Government response |
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| <p>acquisition and one that does not</p> <ul style="list-style-type: none"> <li>it is not clear from the RIS why Option 2 is considered the most cost-effective option.</li> </ul> |                     |

### 7.3.5 Purpose of the RIS

| What we heard   | Government response  |
|---|--|
| <p>The wording of Part 1.3 of the RIS, which states that before implementing any such new and enduring arrangements the government will ‘put in place a scheme that will facilitate negotiations between affected landholders and government’.</p> <p>A submission raised whether this was an indication that the NSW Government has already decided to implement the LNS Regulation, before this consultation process.</p> | <p>The decision to develop an LNS Regulation was taken by a previous government and remains the policy position of this government. Provision was made for the LNS Regulation in a 2018 amendment to the WM Act.</p> |

### 7.3.6 Timeframes

| What we heard  | Government response  |
|--|--|
| <p>The framing of Option 1 implies it carries more significant timeframe risks than Option 2, given that Option 2 can still end with compulsory acquisition.</p> | <p>The focus of the RIS is the costs and benefits associated with the proposed LNS Regulation and potential alternatives to the regulation. The preferred option (the LNS) is considered least likely to result in negotiations in accordance with the Just Terms Act, and any potential use of compulsory acquisition powers as a last resort.</p> <p>Given this, the LNS option is likely to result in negotiations that are easier to progress and less resource intensive.</p> |

## 7.4 Appendix D – Reconnecting River Country Program

### 7.4.1 General

| What We Heard  | Response   |
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| <p>Submissions expressed general opposition to the Reconnecting River Country Program.</p>   | <p>The Reconnecting River Country Program is a NSW Government commitment as part of the Murray Darling Basin Plan. It forms part of the Sustainable Diversion Limit Adjustment Mechanism and is a notified supply and constraints project.</p> <p>Delivering the program will help reduce the need for further water buybacks from Murray and Murrumbidgee communities. The program is critical to achieving the objectives of the Murray-Darling Basin Plan and essential to creating healthier functioning river systems in the Murray and Murrumbidgee valleys.</p>   |
| <p>Program objectives could be achieved with infrastructure measures such as pumping, and that greater efficiency in water use is required to apply to environmental watering.</p> | <p>Pumping of water into wetlands does occur at specific sites along the Murray and Murrumbidgee Rivers, but these river systems are large and there are 1000s of wetlands. Pumping, and the use of other irrigation infrastructure, can be complementary but it is not a viable option to maintain the health of our wetland and river systems.</p> <p>The Reconnecting River Country Program is proposing to use existing environmental water to reinstate some of the higher environmental flows, lost due to river regulation and consumptive use of water, to deliver environmental benefits along the full length of the river system.</p> |
| <p>There was interest in understanding the measures of success and how this will be communicated to the public.</p>  | <p>The NSW and Commonwealth governments together routinely monitor environmental watering events, to ensure the water reaches its intended locations and to assess the ecological outcomes. This includes water level monitoring at selected wetlands, to guide water releases and monitor conditions over time. The environmental watering events are guided by the Long-Term Water Plans that include objectives and targets and annual environmental priority statements.</p>   |
| <p>The Environmental Benefit and Risk Analysis (EBRA) is</p>   | <p>The Reconnecting River Country Program has undertaken extensive environmental benefit and risk assessments,</p>   |

| What We Heard  | Response  |
|--|---|
| <p>insufficient, and the EBRA is unable to effectively consider all variables.</p>   | <p>using the latest and best science and leading researchers who are actively involved in managing and monitoring the ecosystems of the basin. This has been supported by modelling of long-term flow regimes identifying when and how often higher environmental flows could be released, over the observed historical climate since the 1890s and also for climate change datasets spanning 10,000 years of stochastic data representing a wide range of climate variability.</p> <p>These assessments give confidence it will be possible to deliver higher environmental flows in the future, and these flows will provide meaningful benefits along the Murrumbidgee River for wetlands, floodplain vegetation communities, native fish and other aquatic fauna.</p> |
| <p>Concern contamination risks from industrial developments and waste facilities had not been adequately considered.</p>   | <p>Flow limits considered by the Reconnecting River Country Program, including the highest flow limit (40,000ML/day at Wagga Wagga gauge) are below minor flood level in almost all locations along the Murrumbidgee River.</p> <p>Concerns regarding contamination risks or events at particular sites should be referred to the NSW Environment Protection Authority (EPA).</p>   |
| <p>The greatest constraints are trees, logs and timber debris which form banks and blockages throughout lagoons and billabongs that environmental flows are designed to flood.</p>                                 | <p>Fallen gum trees are not considered a constraint to flows. They are known to be native fish habitat and are protected under NSW Fisheries legislation. They can only be removed or re-aligned following consultation with, and a permit issued by, NSW Fisheries.</p>  |
| <p>Concerns that the Reconnecting River Country Program would not be able to provide concurrent external expertise to the large number of landholders in the same area, at the same time, during negotiations.</p> | <p>The Reconnecting River Country Program has been engaging with landholders along the Murrumbidgee and Murray Rivers since 2021. This has included face to face engagement with individual landholders regarding impacts to properties and business activities.</p> <p>When the program commences delivery, and when a negotiation with a landholder commences, a dedicated Acquisition Manager and Personal Manager will work with landholders to understand how the affected land is used and managed, as well as the impact of the proposed program flows. Landholders will have an opportunity to provide all relevant information to the appointed</p>  |

| What We Heard | Response   |
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|               | <p>independent valuer to inform their valuation report and to obtain their own independent valuation.</p> <p>The Negotiation Guidelines also enable the Ministerial Corporation to undertake negotiations in stages where there is a large project area.</p> <p>Additionally, consideration is being given to the most effective way to deliver the program, noting the program will not be able to be fully delivered by December 2026.</p> |

## 7.4.2 Relationship between RRC program and other programs

| What We Heard  | Response   |
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| <p><b>Stakeholders expressed confusion as to how the Reconnecting River Country Program interacts with Reconnecting Watercourse Country Program, Sustainable Diversion Limit Adjustment Mechanism, the MDBA Constraints Roadmap and Floodplain Management Program.</b></p> | <p>The Reconnecting River Country Program is a NSW SDLAM project under the Murray Darling Basin Plan (Basin Plan). The program is separate to the 5 projects included in the SDLAM Acceleration Program that will deliver 45 GL of the outstanding amount needed to reach the 605 GL target required by the Basin Plan each year.</p> <p>The Constraints Relaxation Implementation Roadmap (the roadmap), developed by the Murray Darling Basin Authority, aims to assist governments in delivering constraints projects up to and possibly beyond 2026. For the Murrumbidgee, the roadmap recommends continued support for existing project delivery arrangements to maintain progress on constraints relaxation between now and 2026.</p> <p>Floodplain Management Plans provide the framework for coordinating the development of flood works on a whole of valley basis. The draft Murrumbidgee Valley Floodplain Management Plan was on public exhibition from 19 August to 29 September 2024. The draft plan includes the proposed floodplain boundary, management zones and rules and assessment criteria for granting or amending approvals for flood works. Further information about the Floodplain Management Plans can be found here: <a href="#">Floodplain management plans   NSW Government Water</a>.</p> <p>A factsheet with further information and frequently asked questions about the floodplain management plans and the Reconnecting River Country Program can be found here:</p> |

| What We Heard   | Response   |
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|   | <p><u>Floodplain management plans and the Reconnecting River Country Program factsheet.</u></p>  |
| <p><b>Concerns constraints programs will not align with federal Constraints Roadmap requirements.</b></p> <p><b>Concerns negotiations could be stalled due to Victoria not agreeing to Constraints Relaxation Roadmap</b></p>   | <p>The proposed LNS Regulation is a statewide regulation that is currently expected to apply to the Reconnecting River Country and Reconnecting Watercourse Country Programs. The LNS Regulation does not specify the content or substance of negotiations or program specific issues such as flow targets.</p> <p>NSW has actively contributed to the Constraints Relaxation Implementation Roadmap (the roadmap) that was released in December 2024. The roadmap developed by the Murray Darling Basin Authority aims to assist governments in delivering constraints projects up to and possibly beyond 2026. Further information about the Roadmap can be found here: <a href="#">Constraints Relaxation Implementation Roadmap   Murray-Darling Basin Authority</a>. The roadmap also provides a series of recommendations focused on facilitating full delivery of constraints projects across the Murray Darling Basin. Decisions on funding and delivery beyond December 2026 are a pending matter for Basin States and the Australian Government.</p> |
| <p><b>The Reconnecting River Country Program and LNS should be delayed until landholders are fully informed of the collective impacts of the Reconnecting River Country Program, Cultural Flows, and Water Sharing Plan remakes.</b></p> <p><b>Stakeholders are having difficulty in understanding and keeping track of the many projects focused on relaxing constraints and environmental water delivery.</b></p> <p><b>Submissions expressed confusion relating to several parallel initiatives including the consultation for LNS and Reconnecting River Country Program.</b></p> | <p>NSW Government agencies work together to deliver government objectives, outcomes and programs. Water management is complex with multiple agencies and jurisdictions involved. The NSW Government's reform agenda for water management is made up of numerous projects and programs overlapping in time and space.</p> <p>The department recognises this can be confusing for communities and stakeholders. Any specific questions or concerns about the interrelationships between projects, can be directed to the Water Enquiries hotline on 1800 081 047.</p> <p>The proposed LNS Regulation is a statewide regulation, currently expected to apply to the Reconnecting River Country and the Reconnecting Watercourse Country Programs. The LNS Regulation is separate to the Reconnecting River Country Program. It is intended to outline how negotiations will be conducted with landholders affected by proposed environmental water releases. The LNS Regulation does not specify the content</p>  |

| What We Heard  | Response   |
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|  | or substance of negotiations or program specific issues such as flow targets.  |
| <p><b>Why does the LNS not apply to the Tuppal Creek Restoration project?</b></p>  | <p>Negotiations for the Tuppal Creek Restoration Project have already commenced. The proposed LNS Regulation is not expected to be made until June 2025 and so cannot apply to this project. Once the LNS Regulation is made, it is intended to apply in situations where there is a proposed new and enduring change to environmental water arrangements as defined in a Declaration Order. It is currently expected that the LNS Regulation will apply to the Reconnecting River Country Program and the Reconnecting Watercourse Country Program.</p> |
| <p><b>Questions about the relationship between the Reconnecting River Country Program and the Mid Murray Anabranches Project including whether landholder concerns, which have not been addressed through the provision of access infrastructure, will be eligible for additional infrastructure or compensation under the Reconnecting River Country Program.</b></p> | <p>Submission comments regarding the Mid-Murray Anabranches project will be responded to directly by the department's Water Infrastructure Delivery Division.</p>  |
| <p><b>Has the program met with institutions such as APRA and the ATO?</b></p>  | <p>The program met with institutions including the Australian Prudential Regulation Authority (APRA) and the Australian Taxation Office (ATO) as part of the development of the Murrumbidgee Final Business Case.</p>  |

### 7.4.3 Consultation and engagement process

| What We Heard  | Response  |
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| <p><b>The range of programs and engagement have contributed to consultation fatigue and confusion. Feedback included:</b></p> <ul style="list-style-type: none"> <li>• large volume of information</li> <li>• lack of clarity</li> </ul> | <p>The department seeks to improve the way it delivers projects and engages with communities. Feedback is important to help the department continue to refine its approach. Consultation is tailored for project requirements to most effectively engage with stakeholders, and may include consultation periods, town hall meetings, drop-in</p> |

| What We Heard  | Response  |
|--|---|
| <ul style="list-style-type: none"> <li>• struggle to understand the full scope of impacts</li> <li>• a significant sense of frustration and exhaustion among stakeholders.</li> </ul>  | <p>sessions, webinars and websites for information and feedback.</p> <p>The department recognises landholders and stakeholder groups have been actively engaged on Murray Darling Basin plan projects and reforms for over a decade. The input received from landholders and stakeholders has been integral to the development of the Reconnecting River Country Program.</p>   |
| <p><b>Landholders expressed the need for government to work more collaboratively with communities and affected landholders on the Reconnecting River Country Program, including some suggestions of using co-design.</b></p> <p><b>To date consultation has been inadequate and inaccurate, with insufficient information provided to landholders.</b></p> <p><b>NSW Government and MDBA have not undertaken genuine co-design with affected landholders and locally based stakeholders' groups. This is a major impediment to seeking practical solutions for delivering environmental flows.</b></p> | <p>Since 2021, the Reconnecting River Country Program has been working with Murray and Murrumbidgee communities to inform its development. This includes direct engagement with over 250 landholders to understand benefits and impacts from the program. The program also established several reference groups through an expression of interest process. These groups focussed on reviewing draft policy approaches. The program continues to encourage landholders to become involved in the program through multiple awareness raising campaigns.</p> <p>The program has run 2 large scale awareness raising programs in 2021 and 2024, over 2,000 letters to landholders and multiple radio stations, newspapers and social media platforms. The program advertised in various media for reference group membership in 2022 to inform program development.</p> <p>Feedback from landholders has informed the program's development and consideration of benefits, impacts and mitigation options in the final business case. The program will continue to engage with landholders and stakeholder groups throughout the life of the program. Regular updates on the program status are also published on our website.</p> <p>When the program commences delivery and a negotiation with a landholder commences, a dedicated Personal Manager and Acquisition Manager will work with landholders to understand how the affected land is used and managed, as well as the impact of the proposed program flows. Landholders will have an opportunity to provide all relevant information to the appointed independent valuer to inform their valuation report.</p> <p>The Murray River component of the Reconnecting River Country Program is still in development. No date has been</p> |

| What We Heard   | Response  |
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|   | <p>set to commence delivery and the flow limit has not been selected. NSW has actively contributed to the Constraints Relaxation Implementation Roadmap (the roadmap) that was released in December 2024. The roadmap developed by the Murray Darling Basin Authority, aims to assist governments in delivering constraints projects up to and possibly beyond 2026. Further detail on the Roadmap can be found at <a href="#">Constraints Relaxation Implementation Roadmap   Murray-Darling Basin Authority</a>.</p>  |
| <p><b>Clearer, more organised consultation procedures are needed to ensure landholders are informed and empowered enough to effectively engage with the Program.</b></p>  | <p>The department seeks to improve the way it delivers projects and engages with communities. Feedback is important to help the department continue to refine its approach. Consultation is tailored for project requirements to most effectively engage with stakeholders, and may include consultation periods, town hall meetings, drop-in sessions, webinars and websites for information and feedback.</p>   |
| <p><b>Concerns were raised over current lack of transparency about the Reconnecting River Country Program business case and approach of the program, and that the final business case will not be made public.</b></p>            | <p>The Final Business Case for the Murrumbidgee component of the Reconnecting River Country Program has been considered by both the Australian and NSW and Australian governments. The importance of, and rationale for, the confidentiality of matters considered by Cabinet in NSW is outlined in the Premier's Memorandum M2006-08 Maintaining Confidentiality of Cabinet Documents and other Cabinet Conventions. The business case also contains commercial in confidence information.</p> <p>The program will make a summary of the Final Business Case publicly available.</p>   |
| <p><b>Landholders raised concerns that they have received no direct communication regarding the Reconnecting River Country Program</b></p> <p><b>Concern the majority of affected landholders are unaware of the program.</b></p> | <p>Local Land Services are undertaking individual engagement with landholders on behalf of the Reconnecting River Country Program. Since 2021, the program has engaged with more than 250 landholders, representing 85% of the program area. Landholders can register to participate in this engagement on the program website. <a href="http://www.water.nsw.gov.au/rrcp">www.water.nsw.gov.au/rrcp</a></p> <p>No negotiations have commenced on the Reconnecting River Country Program. Discussions to date with landholders have been to understand the potential impacts and benefits of the program, to inform policies and positions. Formal negotiations will not commence until the program is in delivery.</p> |

| What We Heard  | Response   |
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| <p><b>Concern local councils along the river have not been kept informed of the program or its possible implications.</b></p>  | <p>The program has been engaging with local government authorities (LGAs) in the Murrumbidgee project area since 2021. Engagement has been focused on understanding the potential impacts, benefits, measures and sentiment towards the project.</p> <p>In addition to extensive engagement with LGAs on inundation of lands, affected assets, evaluation and preliminary design and costs, the program team has collaborated to develop potential mitigation measures at several sites. Two early works projects (Mundarlo Bridge and Mundowry Lane), developed in consultation with relevant LGAs are funded for delivery by December 2026 and are currently underway.</p> <p>Council specific briefing sessions the draft Landholder Negotiation Scheme (LNS) Regulation were held in late 2024. A broader program update was also provided at these briefings.</p> <p>The program will continue to engage with local councils as it moves into delivery.</p> |
| <p><b>Concerns about the Reconnecting River Country Program Advisory Committee and reference groups, including that community reference groups were disbanded.</b></p> | <p>In 2023, the program established and engaged with several reference groups and an advisory committee regarding several key program elements. Engagement was focused on testing draft methodologies for refinement prior to broader public-facing engagement. Through this process the program received, considered and responded to extensive feedback which was published on the program website:<br/> <a href="https://water.dpie.nsw.gov.au/___data/assets/pdf_file/0020/623612/policy-approaches-to-mitigation-feedback-summary-next-steps-report.pdf">https://water.dpie.nsw.gov.au/___data/assets/pdf_file/0020/623612/policy-approaches-to-mitigation-feedback-summary-next-steps-report.pdf</a></p> <p>Continuation of these reference groups and the Advisory Committee will be subject to review, outcomes of the roadmap, and will be informed by feedback received to date.</p>   |

## 7.4.4 Flow easements and compensation

| What We Heard   | Response  |
|---|---|
| <p><b>Landholders expressed opposition to the acquisition of flow easements as part of the program.</b></p>                                     | <p>As part of program development, options for establishing the flow corridor were considered, including:</p> <ul style="list-style-type: none"> <li>• easements in gross (flow easements)</li> <li>• covenants without easements</li> <li>• land use planning zones and Floodplain Management Zones</li> </ul> <p>Flow easements have been selected as the preferred approach because they provide an enduring right for river operators to inundate land affected by the proposed environmental water release.</p> <p>Flow easements terms also provide certainty to landholders and ensure landholders are appropriately compensated for any impacts from the proposed environmental water release.</p> <p>The Reconnecting River Country Program is aware that many landholders do not support flow easement acquisition. The program is exploring alternative approaches for properties that are minimally affected by the program flows (e.g. deed of release).</p> |
| <p><b>Landholders expressed concerns that flow easements would allow for public access.</b></p>   | <p>Flow easements acquired as part of the Reconnecting River Country program will not allow for public access.</p> <p>If access is required by government officials (e.g. for the construction of works), these access arrangements will be negotiated as part of the terms of any agreement (and associated flow easement terms, if relevant).</p>   |
| <p><b>Landholders suggested that event-based payments are more appropriate for providing compensation for the impacts of program flows.</b></p> | <p>Event-based payments are not supportable under Commonwealth funding conditions<sup>4</sup>, nor do they provide an enduring right for the river operator to inundate land as a result of the proposed environmental water releases.</p> <p>Event-based payments are also considered unfeasible due to the significant administrative costs involved in managing these payments.</p>  |

<sup>4</sup> For example, the Reconnecting River Country Program is funded by the Commonwealth Government through the Water for the Environment Special Account (WESA). Please see [Stage 1 Funding for Sustainable Diversion Limits \(SDL\) Adjustment Supply and Constraints Measures in the Murray-Darling Basin | Federal Financial Relations](#) for further information.

| What We Heard  | Response   |
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|  | <p>The Reconnecting River Country Program acknowledges that many landholders do not support flow easements. The program is exploring alternative approaches for properties that are minimally affected by the program flows (e.g. deed of release).</p>  |
| <p><b>Landholders expressed concern over liability if flows were to exceed the upper flow limit and what remedies would be available. Concerns were raised for the need to ground truth modelling. Suggestions were received that compensation should also apply to the buffer flow limit above the upper limit.</b></p> | <p>Please see Section 4.1.5 for further information on risk management procedures in environmental watering and consequences of buffer exceedance.</p> <p>Comprehensive hydraulic modelling, checked against satellite imagery and aerial photography collected during several high flow events, has been used to develop interactive maps showing the estimated upper limits of the flow options (with buffer) being considered by the program. This interactive mapping can be viewed at <a href="http://water.nsw.gov.au/rrcp-inundation-mapping">water.nsw.gov.au/rrcp-inundation-mapping</a>. It enables landholders and other stakeholders to get a greater understanding of the periodic and low-level inundation along the proposed flow corridors that would occur during future environmental flow deliveries.</p> <p>Flow buffers are not used for flow delivery but are proposed to be used as the design level for the flow corridor extent. This provides a safeguard to landholders if flow targets are exceeded due to unforeseen rainfall and tributary flows. When the program has completed negotiations with landholders under the LNS Regulation and is ready to commence the delivery of environmental water, river operators will use the best available modelling and forecasting to determining the volume and timing of environmental water releases under the program. In the event the flow limit, including any buffer specified in the agreement, is exceeded an assessment may be required to understand the cause on a case-by-case basis and determine further required actions.</p> <p>River operators take a risk-based approach to releasing flows. They closely monitor predicted weather events and will reduce flow releases from the headwater storages if rainfall events are predicted in the catchment. The flow limit specifies the upper limit of targeted environmental flows. The specified flow limit for the program does not mean this volume of water will be released, it designates the target that may be met from a combination of dam releases, tributary flows and rainfall events.</p> |

| What We Heard | Response  |
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|               | <p>The program acknowledges landholder concerns about potential damages from proposed environmental flows that may exceed the flow easement and buffer area. In response, the program is actively exploring options to address and mitigate these concerns.</p> |

### 7.4.5 Program impacts

| What We Heard   | Response  |
|---|---|
| <p><b>Landholders expressed opposition to the program due to the potential impacts including:</b></p> <ul style="list-style-type: none"> <li>• environmental damage</li> <li>• stress to landholders</li> <li>• financial impacts to agricultural businesses</li> <li>• increased insurance costs</li> <li>• reduced access to pumps for irrigation and stock and domestic use</li> <li>• operational changes to landholders</li> <li>• clean up costs from increased flooding</li> <li>• loss of aesthetics and recreation</li> <li>• reduced property values, including long-term value</li> <li>• increased administrative burden to landholders</li> <li>• damage to infrastructure</li> <li>• safety, welfare and biosecurity risks</li> <li>• increased regional flood risk.</li> </ul> | <p>The Reconnecting River Country Program aims to improve the health of river systems in the Murray and Murrumbidgee valleys. It aims to connect rivers to wetlands with environmental water to improve environmental outcomes for rivers, wetlands and wildlife, making the best use of existing water recovered from communities. Increasing the health and resilience of riverine ecosystems will provide generational benefits for local communities and the broader Basin community.</p> <p>The highest flow considered in the Murrumbidgee (40,000 ML/day at Wagga Wagga) is well below minor flood level in most areas and well below the 2022 flood level. Forward notification of flows will allow landholders to relocate any stock or machinery which could be affected by the new environmental water deliveries.</p> <p>Please refer to Section 4.1.4 for further information on how compensation is determined in accordance with the Just Terms Act.</p> <p>Where required, landholders are encouraged to obtain their own personal legal and tax advice. Please refer to Section 4.1.8 for further information about reimbursement for costs reasonably incurred.</p> <p>Biosecurity plans for individual properties are the responsibility of landholders. The program will follow these plans and assess potential biosecurity risks for construction activities where required, if the program proceeds.</p> |
| <p><b>Negotiation timelines are being set prior to a cost benefit analysis of</b></p>   | <p>The LNS Regulation is intended to be a statewide regulation. The purpose of the LNS Regulation is to outline</p>   |

| What We Heard  | Response  |
|--|---|
| <p><b>the entire program (including the Murray Reconnecting River Country Program) and/or any proper evaluation or inclusion of what the costs and risks will be to landholders.</b></p>   | <p>how negotiations must be conducted with landholders affected by proposed environmental water releases that are subject to a Declaration Order. The proposed LNS Regulation provides for a good-faith, voluntary negotiation process that is fair, consistent and transparent, and ensures the interests of landholders are appropriately considered. It does not specify the content or substance of negotiations, or program-specific issues such as environmental water flow targets or limits.</p>  |
| <p><b>There has been insufficient consideration of costs and benefits of the program.</b></p>  | <p>An assessment of the quadruple bottom line (social, environmental, economic and First Nations outcomes) costs and benefits of the program was undertaken as part of the Murrumbidgee Final Business Case. The cost benefits analysis was informed by an independent review of the program’s finance and economic methodologies.</p> <p>The Murrumbidgee Final Business Case has been informed by extensive engagement with landholders within the project area and was also subject to the Infrastructure NSW (INSW) Gate 2 review process. More information on the INSW assurance process can be found here: <a href="#">INSW Investor Assurance Framework</a>.</p> |
| <p><b>Inundation to billabongs will not recede within the flow period but will remain for longer periods causing sustained impacts to farming activities such as lack of access and rusting of fences.</b></p>   | <p>Billabong inundation is a key intended outcome of the program, providing benefits to fish, frogs, waterbirds and other aquatic plants and animals that use billabongs for habitat. The compensation offered to landholders will be on a case-by-case basis, taking into account the specific characteristics of each property and consider severance of land for the duration that this affects the properties, be it months or days.</p>  |
| <p><b>Landholders expressed uncertainty over the proposed flow limits at their property, and the level of impact over potential major or minor flooding. This has limited their ability to provide comment on the LNS due to the limit not being decided yet.</b></p> <p><b>Concern over the duration of environmental watering.</b></p> | <p>Flow limit options are a program-level matter and are separate to the LNS Regulation. The LNS Regulation is intended to be a statewide regulation. The purpose of the LNS Regulation is to outline how negotiations must be conducted with landholders affected by proposed environmental water releases that are subject to a Declaration Order. The proposed LNS Regulation provides for a good-faith, voluntary negotiation process that is fair, consistent and transparent, and ensures the interests of landholders are appropriately considered. It does not specify the content or substance of negotiations, or</p>   |

| What We Heard   | Response   |
|---|--|
|   | <p>program-specific issues such as environmental water flow targets or limits.</p>   |
| <p><b>Concern the additional flows smother crops and may be a vector for biosecurity risks including weeds and disease.</b></p>   | <p>The Reconnecting River Country Program is proposing to use existing environmental water to reinstate natural flow cycles that periodically connect rivers to floodplains and wetlands.</p> <p>The program has undertaken an environmental benefits and risk assessment of the program for the Murrumbidgee River. A synthesis of the findings can be found here: <a href="https://water.dpie.nsw.gov.au/___data/assets/pdf_file/0004/559543/synthesis-murrumbidgee-river-report.pdf">https://water.dpie.nsw.gov.au/___data/assets/pdf_file/0004/559543/synthesis-murrumbidgee-river-report.pdf</a></p> <p>Biosecurity plans for individual properties are the responsibility of landholders. The program will follow these plans and assess potential biosecurity risks for construction activities where required, if the program proceeds.</p> <p>Affected landholders, invited to negotiate under the Landholder Negotiation Scheme Regulation, will have the opportunity to discuss the specific impacts of the flow easement and environmental water releases on their property and negotiate appropriate compensation for the acquisition of the flow easement.</p> |
| <p><b>Landholders expressed a need to understand the timing and impact of these proposed flows into the future to plan farm operations for the next generation.</b></p> | <p>The highest flow considered in the Murrumbidgee (40,000 ML/day at Wagga Wagga) is well below minor flood level in most areas and well below the 2022 flood level.</p> <p>Environmental water deliveries under the program are expected to occur about 3 to 5 years per decade, for 3 to 5 days at the peak flow, followed by a gradual recession, primarily between the months of August and October.</p> <p>When the program has completed negotiations with landholders under the LNS Regulation and is ready to commence the delivery of environmental water, river operators will use the best available information to determine the volume and timing of environmental water releases.</p>  |
| <p><b>Concerns about mental health impacts and questions about available support.</b></p>   | <p>The program has heard from landholders that mental health impacts are a concern, and the program takes this very seriously. In addition to existing avenues for support such as the Property Acquisition Support Line, the program is investigating additional landholder support</p>   |

| What We Heard  | Response   |
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|  | <p>options as part of the development of the Murrumbidgee Final Business Case.</p> <p>As the program proceeds to delivery, it will ensure affected landholders are aware of, and have access to, the support options available.</p>  |
| <p><b>Concerns about increased carp populations.</b></p>   | <p>Carp are a significant pest across the Murrumbidgee valley under existing conditions. Carp breed in large flood events (for example the 2022 floods) when large areas of floodplain are inundated, providing large areas of breeding habitat. Whilst the program will inundate areas of wetlands and floodplain, the area is small relative to the area inundated during flood events, and no significant long-term change to Carp populations is expected.</p>   |
| <p><b>Concern environmental water is contributing to increased flooding and relaxation of constraints will increase flooding risk further.</b></p> <p><b>Concern environmental flows will replicate flooding.</b></p> <p><b>Concern landholders have not been given mapping of higher flows making it impossible to cost impact of higher flow option.</b></p> | <p>Flooding in recent years (for example, 2022) has occurred due to prolonged periods of above average rainfall, together with high intensity rainfall events associated with La Nina and other weather cycles, leading to wet catchments, high tributary inflows and dam spills. Flooding of this scale is associated with very large volumes of water, far greater than the amount of water recovered for the environment.</p> <p>Comprehensive hydraulic modelling, checked against satellite imagery and aerial photography collected during several high flow events, has been used to develop interactive maps showing the estimated upper limits of the flow options (with buffer) being considered by the program. This interactive mapping can be viewed at <a href="http://water.nsw.gov.au/rrcp-inundation-mapping">water.nsw.gov.au/rrcp-inundation-mapping</a></p> <p>It enables landholders and other stakeholders to get a greater understanding of the periodic and low-level inundation along the proposed flow corridors that would occur during future environmental flow deliveries.</p> <p>Flow buffers are not used for flow delivery but are proposed to be used as the design level for the flow corridor extent. This provides a safeguard to landholders if flow targets are exceeded due to unforeseen rainfall and tributary flows.</p> <p>When the program has completed negotiations with landholders under the LNS Regulation and is ready to commence the delivery of environmental water, river operators will use the best available modelling and</p> |

| What We Heard  | Response  |
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|  | <p>forecasting to determine the volume and timing of environmental water releases under the program. In the event the flow limit, including the any buffer specified in the terms of the agreement, is exceeded an assessment may be required to understand the cause on a case-by-case basis and determine further required actions.</p> <p>The program acknowledges landholder concerns about potential damages from proposed environmental flows that may exceed the flow easement and buffer area. In response, the program is actively exploring options to address and mitigate these concerns.</p> |
| <p><b>Concern models do not consider isolated rainfall events.</b></p>   | <p>River operators take a risk-based approach to releasing flows. They closely monitor predicted weather events and will reduce flow releases from the headwater storages if rainfall events are predicted in the catchment. When selected, upper flow limit for the program does not mean this volume of water will be released, it designates the target that may be met from a combination of dam releases, tributary flows and rainfall events.</p>   |
| <p><b>It is unclear what additional risks will come from the inclusion of cultural flows.</b></p>                            | <p>Cultural flows are outside of the scope of the Reconnecting River Country Program. Further information on cultural flows and current projects can be found here: <a href="https://water.dpie.nsw.gov.au/our-work/projects-and-programs/aboriginal-water-program/cultural-watering-plans">https://water.dpie.nsw.gov.au/our-work/projects-and-programs/aboriginal-water-program/cultural-watering-plans</a></p> <p>In the event a cultural flow is released concurrently with program environmental flows, they cannot exceed the adopted flow limit, including any specified buffer.</p>               |
| <p><b>Question around the inclusion of flows from tributaries, such as Tarcutta Creek, in the assessment of impacts.</b></p> | <p>Program modelling considers flows from tributaries, such as Tarcutta Creek, although they are currently not modelled in detail. The program is working to improve modelling of these tributaries to better represent these flows and extend the models and mapping further upstream in the tributaries.</p> <p>The intent, when delivering these environmental flow releases, is to time dam releases to occur after peak flows in the tributaries have receded to minimise adverse impacts in the tributaries.</p>  |

| What We Heard   | Response   |
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| <p><b>Concern about impacts of environmental water on the volume available for consumptive supply.</b></p>  | <p>Environmental water entitlements are subject to allocations and accounting under the water sharing plan provisions in the same way as consumptive entitlements are. This means the proposed environmental flows do not impact on the volume or reliability of consumptive supply.</p> <p>River regulation for consumptive supply of water has reduced the frequency of higher flow pulses in winter and spring that connected wetlands and floodplains, and increased flows in summer due to irrigation deliveries. This has disrupted natural processes such as fish spawning and recruitment which are dependent on higher flows in spring. The program is proposing to use existing environmental water to deliver higher environmental flow pulses, primarily in spring, to improve environmental outcomes.</p>   |
| <p><b>There is need to recognise cumulative environmental impacts.</b></p>  | <p>The Reconnecting River Country Program has undertaken an environmental benefits and risk assessment of the program for the Murrumbidgee River. A synthesis of the findings can be found at:<br/> <a href="https://water.dpie.nsw.gov.au/_data/assets/pdf_file/0004/559543/synthesis-murrumbidgee-river-report.pdf">https://water.dpie.nsw.gov.au/_data/assets/pdf_file/0004/559543/synthesis-murrumbidgee-river-report.pdf</a></p>  |
| <p><b>The flood models and inundation maps are incorrect. The 2019 Victorian and NSW Government Constraints modelling report<sup>5</sup> found that modelling at the time was not suitable for assessing and communicating third party risks.</b></p> | <p>The 2019 independent review assessed the status of modelling at that time and provided recommendations to Victorian and NSW governments.</p> <p>Since 2019 NSW Government has undertaken an extensive program of hydraulic modelling to meet the requirements of the Reconnecting River Country Program and address the recommendations of the independent review. The program has included extensive data collection (including river channel surveys, floodplain topography surveys, aerial photography of high flow events), development of new hydrodynamic models for the full project area, publishing of high-resolution inundation maps on the department website, and extensive ground truthing with landholders and other stakeholders.</p> <p>The interactive maps show the estimated upper limits of the flow options (with buffer) being considered by the program and can be viewed at <a href="http://water.nsw.gov.au/rrcp-">water.nsw.gov.au/rrcp-</a></p> |

<sup>5</sup> Murray-Darling Basin constraints modelling, Report by the NSW and Victorian Ministers' Independent Expert Panel 2019 available at [Murray-Darling Basin constraints modelling](#)

| What We Heard | Response  |
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|               | <p><u>inundation-mapping</u>. The program now has a solid base of inundation modelling and mapping which will continue to be reviewed and updated with landholder feedback.</p> <p>The department is currently reviewing the modelling based on landholder feedback during 2025 with any revisions to be uploaded to the program’s website. Any changes to the mapping will be published prior to the commencement of negotiations under the LNS Regulation. If a landholder is invited to negotiate under the LNS Regulation, they will have the opportunity to provide further feedback on the inundation mapping for their property.</p> |

### 7.4.6 Flow notification

| What We Heard   | Response   |
|---|--|
| <p>Concerns around flow notification, including:</p> <ul style="list-style-type: none"> <li>• questions around what might happen if sufficient notification is not provided.</li> <li>• lack of sufficient gauges in the Murrumbidgee</li> <li>• concern around accuracy of gauging and flow levels.</li> </ul> | <p>Section 247 I of the LNS Regulation requires WaterNSW to take reasonable steps to enable registration for notifications and then to notify those registered of planned environmental water releases. The program is working with WaterNSW to develop an enhanced environmental flow notification system. It will include early advice on planned environmental flow releases, to enable landholders and other stakeholders to take action to reduce impacts ahead of environmental flows being released. The improved notifications together with inundation mapping published by the program should enable landholders to make more informed decisions.</p> <p>Flow easement terms will specify the flow limit and include a buffer to provide increased confidence. Compensation for the easement will be calculated up to the buffer. These easement terms will be enduring and give certainty to landholders on the nature and extent of environmental deliveries in the flow corridor. The buffer is a risk mitigation strategy and will not be targeted in environmental releases.</p> <p>River operators take a risk-based approach to releasing flows. They closely monitor predicted weather events and will reduce flow releases from the headwater storages if rainfall events are predicted in the catchment. They also</p> |

| What We Heard | Response  |
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|               | <p>regularly review and maintain the river gauge network to ensure that it is fit for purpose.</p> <p>In the event the flow limit, including any buffer specified in the agreement terms, is exceeded an assessment may be required to understand the cause on a case-by-case basis and determine further required actions.</p> |

### 7.4.7 Requests for further information

| What We Heard  | Response  |
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| <p>Questions about the Murray River component of the program, including:</p> <ul style="list-style-type: none"> <li>• when the Murray Final Business Case will be complete</li> <li>• the impact of changing seasonal patterns of environmental water availability on the Murray</li> <li>• the Victorian Government’s position on compulsory acquisition of easements</li> <li>• concerns releases from Hume Dam to coincide with Victorian unregulated flows will be risky and unpredictable.</li> </ul> | <p>Currently the LNS Regulation is expected to apply to the Murrumbidgee component of the program and the Reconnecting Watercourse Country Program. The Murray River component of the program is still in development. A future Final Business Case for the Murray would be required before the program could be approved to proceed to delivery.</p> <p>NSW has actively contributed to the Constraints Relaxation Implementation Roadmap (the roadmap) that was released in December 2024. The roadmap developed by the Murray Darling Basin Authority, aims to assist governments in delivering constraints projects up to and possibly beyond 2026. For the Murrumbidgee, the roadmap recommends continued support for existing project delivery arrangements to maintain progress on constraints relaxation between now and 2026. The roadmap also provides a series of recommendations focused on facilitating full delivery of constraints projects across the Murray Darling Basin. Decisions on funding and delivery beyond December 2026 are pending and are a matter for Basin States and the Australian Government.</p> <p>The proposed LNS Regulation can only apply to projects within NSW. Currently, it is expected that the LNS Regulation will apply to the Murrumbidgee component of the Reconnecting River Country Program and also the Reconnecting Watercourse Country Program.</p> |
| <p>Landholders expressed a desire to have access to the program’s Final Business Case for transparency:</p>  | <p>The Final Business Case for the Murrumbidgee component of the program will be considered by both the NSW and Australian Governments and is Cabinet and Commercial in Confidence. The importance of, and rationale for, the</p>   |

| What We Heard   | Response   |
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| <ul style="list-style-type: none"> <li>• <b>concerns cost of flows and cost of acquiring easements not adequately considered</b></li> <li>• <b>concerned the Business Case has been prepared with incomplete and inaccurate information.</b></li> </ul> | <p>confidentiality of matters considered by Cabinet in NSW is outlined in the Premier's Memorandum M2006-08 Maintaining Confidentiality of Cabinet Documents and other Cabinet Conventions. However, the program will make a summary of the Final Business Case publicly available.</p> <p>When a negotiation with a landholder commences, a dedicated Personal Manager and dedicated Acquisition Manager will work with landholders to understand how the affected land is used and managed, as well as the impact of the proposed program flows. Landholders will have an opportunity to provide all relevant information to the appointed independent valuer to inform their valuation report. The compensation payable will include consideration of how the flow corridor, future environmental flow arrangement and the enduring agreement impacts any current operations on the land.</p> |

## 7.5 Appendix E – Reconnecting Watercourse Country Program

### 7.5.1 Impacts of the LNS

| What We Heard  | Response   |
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| <p>The LNS needs to take into account:</p> <ul style="list-style-type: none"> <li>• historical flows and impacts</li> <li>• other/all environmental flows</li> <li>• other/all flows, that is including natural and irrigation</li> <li>• cumulative impacts.</li> </ul> | <p>The LNS Regulation applies only to proposed new environmental water deliveries. It does not apply to historic or existing environmental water deliveries, including the Three Tributaries (3T) rules, irrigation or natural flows.</p> <p>The proposed new environmental water arrangements are specifically to provide summer flows, however only following extended dry periods (that is, not if there is already sufficient summer rainfall and inflows, or deliveries during winter). These proposed environmental water deliveries are relatively small, albeit important flows, which are much smaller in flow rate and magnitude than a small natural flood.</p> |
| <p>Landholders expressed opposition to the acquisition of flow easements as part of the program.</p>   | <p>Flow easements (easements in gross) are the preferred option to establish flow corridors under the Reconnecting Watercourse Country Programs because they provide an enduring right for the river operator to inundate land affected by proposed environmental water releases.</p>  |
| <p>Landholders expressed concerns that flow easements would allow for public access.</p>   | <p>Flow easements acquired as part of the Reconnecting Watercourse Country program will not allow for public access.</p> <p>If access is required by government officials (e.g. for ecological or hydrological monitoring purposes or the construction of works), these access arrangements will be negotiated as part of the terms of any agreement (and associated flow easement terms, if relevant).</p>  |
| <p>Landholders suggested that event-based payments are more appropriate for providing compensation for the impacts of program flows.</p>   | <p>Event-based payments are not supportable under Commonwealth funding conditions, nor do they provide an enduring right for the river operator to inundate land as a result of the proposed environmental water releases.</p> <p>Event-based payments are also considered unfeasible due to the significant administrative costs involved in managing these payments.</p>   |

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| Three Tributary Rule flows | The '3T rules' are determined by the <i>Water Sharing Plan for the Gwydir Regulated River Water Source 2016</i> (Division 1 Environmental flow rules). The Plan expires 30 June 2026. There will be a public consultation process as part of the Plan remake, including matters regarding the 3T Rule. |
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## 7.5.2 Environmental water

| What We Heard  | Response   |
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| <p>Concerns from stakeholders that environmental water:</p> <ul style="list-style-type: none"> <li>• can't be targeted</li> <li>• goes off-target</li> <li>• goes beyond the easement and buffer.</li> </ul> | <p>A TUFLOW hydraulic model has been developed, utilising 2023-2024 data (Light-Detection and Ranging (LiDAR) and bathymetry), to improve the quality, accuracy and functionality of hydraulic modelling for the project. TUFLOW is a commonly used hydraulic modelling software tool.</p> <p>Flow easement terms will map the inundation extent on a plan. The inundation will be based upon the proposed new flow limit and include a buffer, to provide increased confidence.</p> <p>River operators take a risk-based approach to releasing flows. They closely monitor predicted weather events and will reduce flow releases from the headwater storages if rainfall events are predicted in the catchment.</p> <p>There will be forward notification of the proposed new flows to registered landholders.</p> <p>In the event the flow limit, including the buffer in the easement terms, is exceeded an assessment may be required to understand the cause on a case-by-case basis and determine further required actions.</p> |

## 7.5.3 The Gwydir Raft

| What We Heard   | Response  |
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| <p>Concerns for the impact of environmental water releases on the Gwydir Raft</p> | <p>Environmental water deliveries have been reduced in flow rate to minimise diversions caused by the Gwydir Raft, though larger natural and other flows are still being affected.</p> <p>A geomorphological assessment is currently underway to determine options to restore flows to the Gingham Watercourse.</p> |

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|  | Flows through/around the Gwydir Raft will need to be resolved prior to the implementation of the proposed new environmental water arrangements into the Gingham Watercourse. |
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## 7.5.4 Modelling

| What We Heard   | Response   |
|---|--|
| <b>Modelling is complex and poor</b>                              | A TUFLOW hydraulic model has been developed, utilising 2023-2024 data (Light-Detection and Ranging (LiDAR) and bathymetry), to improve the quality, accuracy and functionality of hydraulic modelling for the project. TUFLOW is a commonly used hydraulic modelling software tool.  |
| <b>Concerns hydro lines are inaccurate</b>                        | The Gwydir RWC Program team are working with other agencies within the NSW Government to have the Gwydir hydro-lines reviewed and updated, where needed, to reflect their current locations.<br><br>Flow easement terms will map the inundation extent on a plan. The inundation will be based upon the proposed new flow limit and include a buffer, to provide increased confidence.   |
| <b>Concerns it is not possible to accurately identify impacts</b> | River operators take a risk-based approach to releasing flows. They closely monitor predicted weather events and will reduce flow releases from the headwater storages if rainfall events are predicted in the catchment.<br><br>There will be forward notification of the proposed new flows to affected landholders.<br><br>In the event the flow limit, including the buffer in the easement terms, is exceeded an assessment may be required to understand the cause on a case-by-case basis and determine further required actions. |

## 7.5.5 Communication and stakeholder consultation

| What We Heard  | Response  |
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| <p>The Government is not communicating and consulting in a transparent way.</p>                        | <p>The Reconnecting Watercourse Country Program team has been working extensively with stakeholders – particularly affected landholders, First Nation communities and government agencies – continuously since work began in 2021 on the Gwydir RWC Program Business Case.</p> <p>The approach adopted by the Reconnecting Watercourse Country Program is both evidence and place-based, using the tools of co-design and participatory design to empower, tackle complexity and deliver genuine engagement.</p> <p>Fostering and facilitating greater connections with key stakeholders is critical to ensuring enduring outcomes.</p> |
| <p>Stakeholders expressed a lack of understanding of what is being proposed, for example easements</p> | <p>Details of the proposed easement terms, and other associated agreements, will be provided early in the LNS negotiation process, as outlined in the Negotiation Guidelines (s6.3).</p>  |

## 7.5.6 Biosecurity, weed and pest impacts

| What We Heard  | Response  |
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| <p>Concerns on biosecurity and the risk of inundation increasing the impact of weeds and pests</p> | <p>The proposed new environmental water arrangements are specifically to provide flows following extended dry periods. These proposed environmental water deliveries are relatively small, albeit important, flows, which are much smaller in flow rate and magnitude than a small natural flood.</p> <p>For lippia particularly, inundation for longer than 30 days, and to a deeper level, may help native species to compete more successfully against this weed.</p> <p>Biosecurity plans for individual properties are the responsibility of landholders. The program will follow these plans and assess potential biosecurity risks for construction activities where required.</p> |

## 7.5.7 How the Reconnecting Watercourse Country Program fits with other NSW programs.

| What We Heard   | Response   |
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| <p>Submissions requested clarification on how the Reconnecting Watercourse Country Program fits in with all other NSW programs.</p> | <p>The Reconnecting Watercourse Country Program is an environmental works and measures program funded by the Australian Government under the Northern Basin Toolkit (NBTK). The NBTK includes a collection of projects aimed at improving the ecological health of rivers in the northern Murray-Darling Basin that contribute to the objectives of the Murray-Darling Basin Plan 2012 (Basin Plan).</p> <p>These projects help balance the ecological needs of the river systems with the socio-economic needs of the communities and complement the 70 GL reduced water recovery target in the northern Basin.</p> <p>The Reconnecting Watercourse Country Program focuses on more efficient and effective use of the existing environmental water portfolio during dry times.</p> <p>The other projects in the NBTK are:</p> <ul style="list-style-type: none"> <li>• NSW Fish for the Future: Reconnecting the Northern Basin project</li> <li>• NSW Scoping Initiative: Macquarie Marshes enhanced watering project</li> <li>• NSW Fish for the Future: Fish-friendly Water Extraction project.</li> <li>• Queensland Fish-friendly Water Extraction: Condamine-Balonne and Border Rivers project</li> <li>• Pindari Dam: Cold-water pollution project.</li> </ul> <p>The Reconnecting Watercourse Country Program’s targeted outcomes extend beyond the Basin Plan to Commonwealth, State and regional legislation and policy, including the <i>Water Management Act 2000</i> (WMA 2000), <i>Commonwealth Water Act 2007</i> (WA 2007) and the National Water Initiative.</p> <p>The Reconnecting Watercourse Country Program operational approach also aligns with the principles and watering requirements established in the Gwydir Wetlands Adaptive Environmental Management Plan (2011), Commonwealth Environmental Water Holder watering priorities, Annual Watering Plans and the Gwydir Long-term Water Plan.</p> |

| What We Heard | Response   |
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|               | <p>The Reconnecting Watercourse Country Program further aligns with the water theme of the NSW State Infrastructure Strategy 2018-2038 and has been integrated into Regional Priority 3: 'Make the best use of the water for the environment' of the Gwydir Regional Water Strategy established under the State Infrastructure Strategy. The Reconnecting Watercourse Country Program has been listed as a proposed action under this strategy which seeks to address physical and operational barriers to delivering water for the environment in the western Gwydir catchment.</p> |

### 7.5.8 Water management in the Gwydir catchment

| What We Heard  | Response   |
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| <p><b>Submissions noted water should be kept in wetlands and in channel, and that storage should be built.</b></p> | <p>The Reconnecting Watercourse Country Program includes consideration of physical constraints which affect the capacity of the watercourses to deliver the proposed new environmental flows.</p> <p>Hydraulic modelling has been done for the proposed new environmental flows. This modelling will inform negotiations with affected landholders and the potential for physical mitigation works.</p> <p>More specifically, the Reconnecting Watercourse Country Program are investigating the feasibility of low-level training embankments as Ecological Enhancement Works in strategic locations. These would direct flows to the target ecological assets and away from off-target impacts, such as surrounding farmland. The suitability of any physical works will be discussed with respective landholders and considered on a case-by-case basis. All works will need to follow existing approval and licensing processes.</p> <p>The proposed environmental water corridor will be situated within Management Zones A (MZA) and D (MZD). Any and all training embankments, as flood works, will need to be approved and meet the MZA or MZD rules of the <i>Gwydir Valley Floodplain Management Plan 2016</i>.</p> <p>Nonetheless, meeting the environmental watering requirements of the Gwydir Wetlands will involve some</p> |

| What We Heard | Response  |
|---------------|---|
|               | <p>level of inundation, as the volume of the required flows exceeds the channel capacity of the watercourses. This is especially relevant for the lower-western areas of the wetlands, where the watercourse is more braided in nature than a defined channel.</p> <p>Flow easement terms will map the inundation extent on a plan. The inundation will be based upon the proposed new flow limit and include a buffer, to provide increased confidence. Compensation for acquisition of the easement will be calculated up to the buffer. These easement terms will be enduring and give certainty to landholders on the nature and extent of environmental deliveries in the flow corridor.</p> <p>The river operator will be required to adhere with the flow easement terms when making environmental water deliveries.</p> |

### 7.5.9 Tareelaro Weir upgrade

| What We Heard   | Response  |
|---|---|
| <p>A small number of submissions raised the possibility of upgrading the Tareelaro Weir</p> | <p>Upgrading the Tareelaro Weir is out-of-scope for the Reconnecting Watercourse Country Program.</p> |

### 7.5.10 Timing and availability of landholders for engagement

| What We Heard  | Response   |
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| <p>Many submissions raised asked the program consider the timing and availability of landholders</p> | <p>The Reconnecting Watercourse Country Program places a high priority on ensuring that all engagement with landholders is scheduled to work within their farming schedules and priorities.</p> <p>However, we are aware that the Reconnecting Watercourse Country Program is one of many government parties which needs to engage with landholders in the Gwydir.</p> |