

# Commonwealth environmental water Trading Framework

December 2014



Australian Government

Commonwealth Environmental Water Office



## **Acknowledgement of the Traditional Owners of the Murray-Darling Basin**

The Commonwealth Environmental Water Holder and the Commonwealth Environmental Water Office respectfully acknowledges the Traditional Owners, their Elders past and present, their Nations of the Murray– Darling Basin, and their cultural, social, environmental, spiritual and economic connection to their lands and waters.

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## EXECUTIVE SUMMARY

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The Commonwealth Environmental Water Holder (CEWH) has legislated responsibility for decisions relating to Commonwealth environmental water. The purpose of Commonwealth environmental water is protecting or restoring the environmental assets of the Murray-Darling Basin. To maximise the benefits of environmental water, the Commonwealth environmental water portfolio is actively managed which means the water may be:

- delivered to meet environmental outcomes;
- carried over to the following year to meet future environmental outcomes; or
- traded.

The purpose of this paper is to provide interested parties with the framework within which the CEWH and Commonwealth Environmental Water Office (CEWO) staff are required to behave when involved in commercial trading. The implementation of the Commonwealth environmental water trading framework (the Trading Framework) will ensure that CEWH's trading activities:

- support enhanced environmental outcomes;
- have regard to social and economic outcomes;
- consider impacts on the market, including any third-party impacts;
- are undertaken in a manner which meets legislative requirements;
- are financially responsible, fair, equitable, transparent and accountable; and that
- the CEWH and CEWO staff act with integrity and high ethical standards.

The development of the Trading Framework takes into account stakeholder responses to the *Commonwealth Environmental Water – Trading Arrangements* discussion paper released in November 2011, and addresses many of the concerns raised. The Trading Framework consists of:

1. Legislative requirements that must be met by the CEWH as a statutory office holder and CEWO staff as Commonwealth government employees.
2. Operating rules, which are internal governance arrangements covering the CEWH and CEWO staff in relation to the different stages involved in trade.
3. Procedures and Protocols, which are the processes that support legislative requirements and the operating rules, and must be complied with by the CEWH and CEWO staff.

The focus of this paper is on the CEWH and CEWO's legislative requirements and the operating rules. The operating rules provide clear guidelines on how the CEWH will behave through the trading process including:

- identifying trading opportunities that will enhance capacity to support environmental objectives;
- making a trade decision;
- approaching the market, including announcements;
- evaluation of offers;
- trade approvals; and
- announcement of results.

Over the next two years, the Trading Framework will be refined if necessary as the CEWH's involvement in the water market matures. Three years after the CEWH's first trade there will be an independent review of the Trading Framework to establish its appropriateness and effectiveness. The review will also assess the CEWO's compliance with the Trading Framework.

David Papps  
Commonwealth Environmental Water Holder  
December 2014

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## 1. INTRODUCTION

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Commonwealth environmental water has been acquired for the purpose of protecting or restoring the environmental assets of the Murray-Darling Basin. Under the *Water Act 2007* (the Water Act), the Commonwealth Environmental Water Holder<sup>1</sup> (CEWH) is responsible for management of the Commonwealth environmental water holdings. The Commonwealth Environmental Water Office (CEWO) supports this statutory position, and sits within the Australian Government Department of the Environment (the Department).

As employees of the Australian Public Service (APS), CEWH and CEWO staff are required to comply with a significant range of legislation. In addition to these legislative requirements, as an organisation within the APS, the CEWO has corporate values that commit the CEWH and CEWO staff to behave, and be seen to behave, in a responsible and ethical manner. Further to this, the CEWH intends to take a conservative risk based approach to both delivery and trade of Commonwealth environmental water, so unintended impacts do not occur.

The primary role of the CEWO is the delivery of Commonwealth environmental water. To ensure maximum environmental outcomes are achieved with the available water, the Commonwealth environmental water portfolio is actively managed. At any point in time, the options for managing water include delivery to environmental assets within the current year; carrying over water to future years by leaving it in storage (where possible); or trading. The CEWH expects to deliver the majority of its available water to the environment each year. This is reflected by the fact that since Commonwealth environmental water became available for use, over 3,487 GL has been used across the Basin to the end of the 2013 – 14 water year, representing 87 percent use of total available water. Each year the balance has been carried over for use in future years, in particular early in the next water year before most of the new allocations are available (less than 1 GL has been forfeited because it could not be used or carried over). Further information relating to Commonwealth environmental water use is available at: [Commonwealth environmental water annual use options: Planning Approach](#).

This paper sets out the framework within which the CEWH will trade. Implementation of a Trading Framework will ensure that CEWH's trading activities: support enhanced environmental outcomes; are undertaken in a manner which meets legislative requirements; are financially responsible, fair, equitable, transparent and accountable; and that the CEWH and CEWO staff act with integrity and high ethical standards. In undertaking trade, the CEWH will also have regard to social and economic outcomes; will consider any impacts on the market, and adopt strategies to minimise potential impacts on third parties.

The Commonwealth environmental water Trading Framework (the Trading Framework) has been informed by responses to the *Commonwealth Environmental Water – Trading Arrangements* discussion paper (the Discussion Paper), and addresses many of the concerns raised.

There are three elements to the proposed Trading Framework:

1. Compliance with Commonwealth and state legislative requirements.
2. Operating Rules.
3. Procedures and Protocols.

Figure 1 illustrates the practical application of the Trading Framework, as well as how the framework influences the trade process.

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<sup>1</sup> The CEWH is a statutory position created by the Water Act to manage the Commonwealth's environmental water holdings. The operating rules apply only to the CEWH. The CEWH is supported by CEWO in performing its functions under the Water Act. The CEWO will undertake its role to assist the CEWH's compliance with the operating rules.

The focus in this paper is on regulatory requirements and operating rules, which governs the manner in which the CEWH trades. Chapter 2 of the paper outlines the legislation that governs the CEWH and CEWO staff in relation to trade. Chapter 3 outlines the operating rules which are additional directives on the CEWH and CEWO staff in relation to trade. These operating rules establish the general framework within which trade will occur. They support the CEWH and CEWO staff in meeting their legislative requirements, and reflect the CEWO's corporate values. In addition, they will ensure that CEWH's trading activities is conducted in such a manner that is financially responsible, fair, equitable, transparent and accountable.

### **1.1. Commonwealth environmental water trade**

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Trade of Commonwealth environmental water, either allocations or entitlements, is one of the management tools that provides the ability to enhance the capacity of the portfolio to meet environmental watering requirements. Trade can be used to:

- Manage inter-spatial variability in water availability and environmental water demand across the Basin, for example by selling allocation in one catchment where environmental watering needs have largely been met and purchasing in another catchment where additional environmental water would be particularly beneficial.
- Manage inter-temporal variability, for example by selling allocations when environmental needs have largely been met and/or market conditions are favourable and setting aside the proceeds for a later purchase of allocations that will result in a net improvement in environmental outcomes.
- Re-balance the portfolio of entitlements based on improvements in the knowledge of environmental watering requirements.
- Overcome constraints on the delivery of environmental water, for example by selling allocations in one location and using the proceeds to purchase in another location should it not be possible to otherwise transfer the allocations between locations.
- Realise a return on allocations that are not required for environmental watering within a given water year and cannot be carried over into the following year.

In this context, the CEWH does not expect to sell or buy more than a small proportion of water in any given year, and the approach to trade will be conservative and managed so that unintended impacts are minimised.

Note: Within this paper, 'trade' is used in the sense of a commercial exchange, between two parties, of water allocation or entitlement for some form of consideration (typically monetary). The term is not intended to cover the transfer of water allocations between the accounts of one or more parties performed for the primary purpose of physically delivering water, such as to an environmental asset, or for managing carryover. This differs from the definition of trade in the Basin Plan's trading rules, which defines trade as any change in ownership and/or location with or without consideration.

### **1.2. Compliance with Commonwealth and State legislation**

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As a government entity, there is a wide range of existing legislative requirements on the CEWH and CEWO staff. This includes: legislation governing financial management arrangements for Commonwealth agencies; freedom of information; and policies relating to information management, auditing, employee conduct and accountability.

Commonwealth legislation applies specifically to the way CEWO operates, including its trading function. State water management legislation sets out the rules that apply to all water

entitlements, including those that become part of the Commonwealth environmental water portfolio.

### **1.3. Operating Rules**

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While the CEWH and CEWO staff are subject to substantial Commonwealth and state legislative requirements, the CEWH believes there is additional benefit in implementing operating rules to guide its water trade activities.

The operating rules provide additional directives to the CEWH and CEWO staff in relation to how it will interact with the water market. These operating rules also support CEWO's corporate values, which require the CEWH and CEWO staff to behave in a way which is financially responsible, equitable, transparent and accountable when engaging with the water market.

While the CEWH is not subject to direction from the Minister or Secretary on specific decisions related to water trade, section 109 of the Water Act provides for the Minister to make operating rules relating to trade of Commonwealth environmental water. Three years after the CEWH's first trade there will be a review of the operating rules to establish their appropriateness and effectiveness. The review will also establish if there is a need for legislated operating rules.

Legislated operating rules are a mechanism for placing a regulatory obligation on the CEWH to trade in a certain manner.

### **1.4. Procedures and Protocols**

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Procedures and protocols are internal documents and processes which support the CEWH and CEWO staff in complying with Commonwealth and state legislative requirements and the operating rules. They also assist in promoting CEWO's corporate values at each stage of the trading process (Figure 1). These procedures and protocols will continue to be refined as the CEWO trades, to ensure they are appropriate, effective and efficient.

#### **1.4.1. Procedures**

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The procedures support each step of the trade process and cover a number of areas including:

- the investigation of trading possibilities;
- the justification and approval to trade;
- development of an appropriate approach to market;
- internal financial processes;
- an evaluation plan which details how offers to sell / buy water will be assessed;
- the approval process; and
- public announcements and timely release of information.

#### **1.4.2. Protocols**

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The recently adopted Basin Plan contains water-trading rules (discussed further in chapter 2) that govern how persons or agencies are to behave, including if they are aware of a water announcement that has not been made generally available. It also identifies mechanisms that

agencies can apply in order to help manage this obligation. These rules limit the capacity of people or agencies to trade if aware of such information.

These rules have a number of ramifications for the CEWH and CEWO staff. The CEWH will have to structure its' water-trading practices to ensure that the trade rules are not breached. The CEWH and CEWO staff will have to consider whether decisions relating to government policies, programs and legislation, that have not been made generally available, that it has knowledge of, constitute a water announcement. If this is the case, the CEWH must consider whether the price or value of a water access right proposed to be traded could reasonably be expected to be materially affected by the information contained in the water announcement. If the answer to this question is 'yes', then the CEWH must not trade until the information has been made generally available.

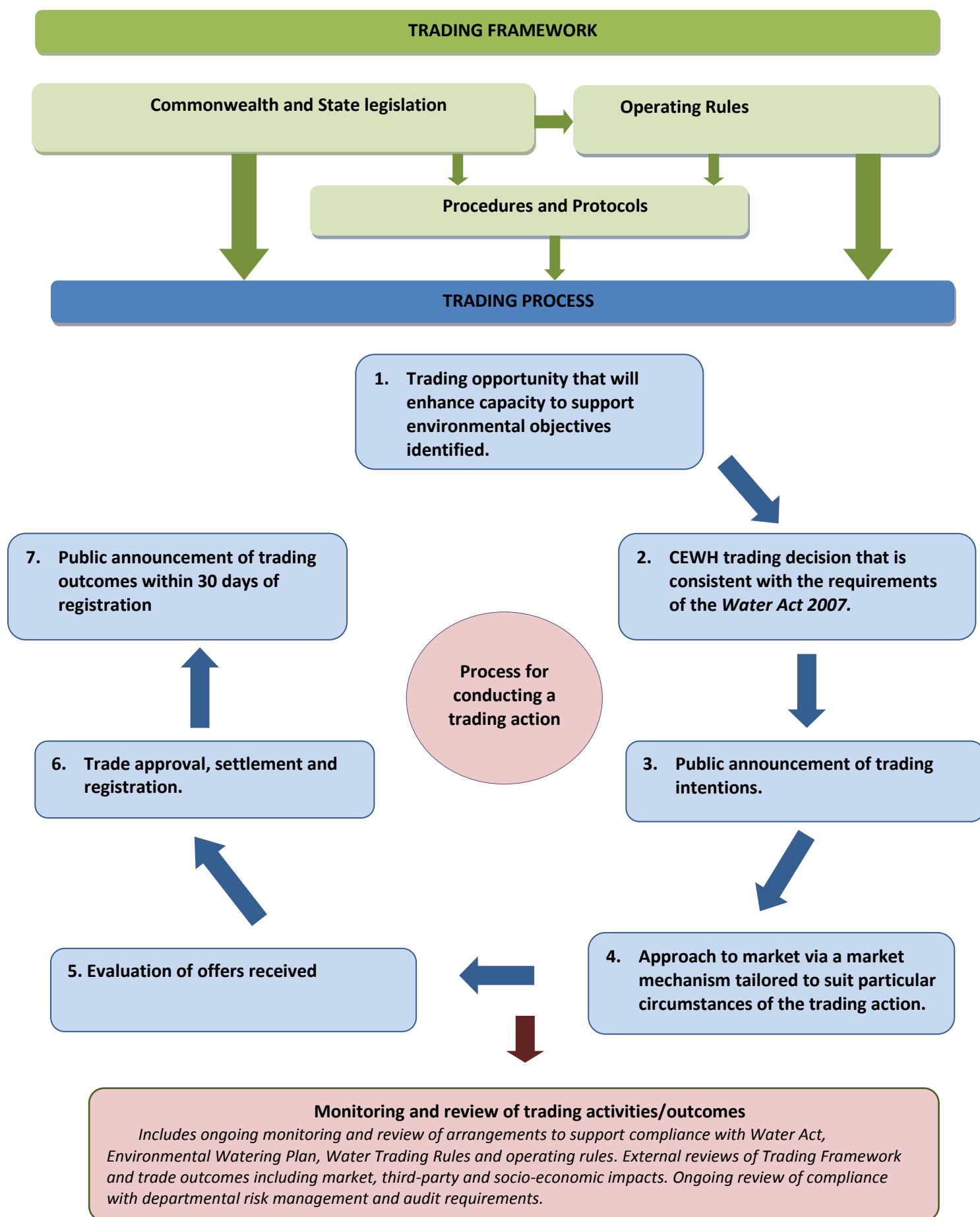
In addition to complying with the Basin Plan trade rules, the CEWO has corporate values, which are built on the APS Code of Conduct. These corporate values requires the CEWH and CEWO staff to avoid engaging in any misleading, deceptive or unconscionable conduct, or to operate on the basis of information that, although it does not contravene the Basin Plan trade rules, could be considered to have been gained by virtue of CEWO's position as a government agency.

As a result of these dual requirements, the CEWH has developed Protocols which are available at: <http://www.environment.gov.au/water/cewo/trade/trading-framework#protocols> and include:

- Chinese wall arrangements;
- avoiding, exposure to inside information and conflicts of interest;
- disclosing and managing inside information and conflicts of interest if they arise ;
- record keeping and information management;
- being aware of water announcements and decisions to trade; and
- sanctions for breaches of the APS Code of Conduct.



*Figure 1: Trading Framework and Trading Process*



## 1.5. Consultation

The Trading Framework has been informed by issues raised by stakeholders in response to the *Commonwealth Environmental Water – Trading Arrangements* discussion paper (the Discussion Paper) that was released in November 2011.

The Discussion Paper explored a range of issues related to the trade of Commonwealth environmental water. The Discussion Paper outlined CEWO's broad approach to portfolio management, provided an overview of the legislative and governance framework for trade, included a brief discussion of the benefits of trade and identified several possible approaches to market engagement. In addition, the Discussion Paper posed a number of specific questions which stakeholders were asked to consider.

The Discussion Paper received a high response rate, with 44 submissions received from a range of stakeholders including irrigation industry representatives, state agencies, irrigation infrastructure operators and water market intermediaries. The distribution of submissions received is summarised below.

**Figure 2: Distribution of submissions by stakeholder group**

Stakeholder Group	Number of Submissions Received
Irrigation industry representatives	13
State agencies	9
Water market intermediaries	9
Irrigation infrastructure operators	4
Environmental groups	2
Community groups	2
Local government	2
Other	3

The majority of respondents to the Discussion Paper either explicitly supported, or were accepting of, the trade of Commonwealth environmental water. Most submissions indicated that the Discussion Paper was a positive step in developing the CEWO Trading Framework and welcomed the opportunity to participate in the consultation process.

Whilst there was broad general support for trade, most stakeholders identified a number of issues that they would like to see addressed through the development of the Trading Framework:

- Nearly 75 per cent of submissions identified the issue of potential market impacts arising from CEWO trading activity as requiring further attention;
- Approximately 65 per cent of submissions identified the need for trading arrangements that were transparent and accountable;
- More than 50 per cent of submissions were concerned about potential third party impacts resulting from the trade of Commonwealth environmental water, particularly in relation to impacts on carryover; and
- Just under 33 per cent commented on the need for more information about the Basin Plan's Environmental Watering Plan and portfolio management activities;

- Approximately 15 per cent raised concerns about:
  - potential conflicts of interest; and
  - the need for additional controls and monitoring of trading activity;
- Approximately 10 per cent suggested that:
  - the Water Act should be amended to provide CEWO with greater flexibility for trading; and
  - socio-economic issues should be considered as part of CEWO trade decisions.

In response to feedback received from a number of water market intermediaries<sup>2</sup>, an additional Request for Information was issued on 23 February 2012 seeking information on the specific services that intermediaries could provide to support the trade of Commonwealth environmental water. CEWO received seven submissions from water market intermediaries, all of which indicated a willingness to provide services to CEWO. Around half of intermediaries who responded indicated an ability to meet special requirements that the Commonwealth may have. CEWO will continue to investigate the ways in which water market intermediaries can support the future trade of Commonwealth environmental water.

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<sup>2</sup> Includes both water brokers and the operators of online water trading platforms.

## 2. COMPLIANCE WITH COMMONWEALTH AND STATE LEGISLATION

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Legislation is a necessary feature of the administration and accountability of government, and underpins a broad range of government functions. In addition, a significant body of law governs the operating environment of government agencies in their day-to-day activities.

Commonwealth legislation applies specifically to the way in which the CEWH and CEWO operates, including its trading function. State water management legislation sets out the rules that apply to all water entitlements, including those that form part of the Commonwealth environmental water holdings.

The CEWH and CEWO staff is required to comply with the following legislation and subservient regulations:

- The *Water Act 2007* and Basin Plan;
- *Public Service Act 1999*, *Public Service Regulations 1999*, the *Australian Public Service Commissioners Directions 2013*, and the APS Values and Code of Conduct;
- The [\*Public Governance, Performance and Accountability Act 2013\*](#) (PGPA Act) and the Commonwealth Procurement Rules 2014 (CPR);
- *Freedom of Information Act 1982* (FOI Act); and
- Relevant State water management legislation.

### 2.1. The Water Act

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The Water Act and Basin Plan limit the circumstances under which trade can occur, and, the information that can be used when making a trade decision. The Water Act is the primary legislation governing the CEWH; it allows for the establishment of and carrying out of the functions of the CEWH.

Section 105 of the Water Act requires all decisions relating to use, carryover, or trade of Commonwealth environmental water made by CEWH to be justified (and documented) by reference to the objectives of managing the holdings for the purpose of protecting or restoring the environmental assets of the Basin. Trade is not an end unto itself but rather a tool for enhancing environmental watering capacity.

In relation to trade, the Water Act outlines the powers of the CEWH, which includes under what circumstance trade can be undertaken, and the purpose of the trade. Section 106 'Limitation on disposal of water and Commonwealth environmental water holdings' states:

*(1) The Commonwealth Environmental Water Holder may dispose of water and Commonwealth environmental water holdings during a water accounting period if the water or the water holdings:*

- (a) are not required in the water accounting period to meet the objectives of:*
  - (i) if the water is in, or the water holdings relate to water in, the Murray-Darling Basin—the environmental watering plan; or*
  - (ii) if the water is in, or the water holdings relate to water in, an area outside the Murray-Darling Basin—any plans specified in the regulations in relation to that area; or*
  - (iii) any applicable environmental watering schedules; and*
- (b) cannot be carried over into the next water accounting period.*



*(2) However, this section does not apply to a disposal of water or Commonwealth environmental water holdings if water or water holdings acquired with the proceeds of the disposal will improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of one or more of the following:*

- (a) the environmental watering plan;*
- (b) a plan specified in the regulations in relation to an area outside the Murray-Darling Basin;*
- (c) protecting or restoring the environmental assets of an area outside the Murray-Darling Basin in relation to which those regulations do not specify a plan.*

The Water Act also provides for the independence of the CEWH from direction by either the Minister or Secretary of the Department on functions related to trade.

### **2.1.1. The Basin Plan**

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The Water Act places an obligation on the CEWH “to perform its functions and exercise its powers consistently with and in a manner that gives effect to the Basin Plan”. The Basin Plan places a number of obligations on the use, trade and monitoring of Commonwealth environmental water, as well as reporting requirements.

Chapter 12 of the Basin Plan sets out the water trade rules. Requirements relating to information to be made available are expressly stated in Division 5. These rules govern how persons or agencies are to behave if they are aware of information that has not been made generally available and that could materially affect a person’s decision to trade water.

For the trade of Commonwealth environmental water, the key elements of the trade rules are:

- 12.49(1) – *Definition of material effect;*
- 12.49(2) – *Definition of a water announcement;*
- 12.49(3)(b) – *Trading in accordance with a trading strategy;*
- 12.50 – *Water announcements to be made generally available;*
- 12.51 – *Person not to trade if aware of a water announcement not generally available; and*
- 12.52 – *Chinese Wall arrangements for agencies.*

Details relating to the implications and handling of the Basin Plan trade rules can be found in Section 1.4.2 of this paper.

## **2.2. Public Service Act 1999**

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Together the *Public Service Act 1999*, *Public Service Regulations 1999*, and the *Australian Public Service Commissioners Directions 2013* provide the legislative framework governing APS employment. *The Public Service Act 1999* is the principal act governing the establishment and operation of, and employment in, the Australian Public Service. The Public Service Act contains the APS Values, Employment Principles and Code of Conduct.

### **2.2.1. APS Values, Employment Principles and Code of Conduct**

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APS Values and Employment Principles are the basis of good public administration and are intended to provide the public with confidence in the way public servants exercise authority when meeting government objectives.

All APS employees are required to comply with the APS Code of Conduct, which includes behaving in a way that upholds the APS Values and Employment Principles, and the integrity and good reputation of the their agency and the APS. A breach of the Code of Conduct can result in sanctions, ranging from a reprimand to termination of employment. The APS Code of Conduct also outlines employees' obligations and responsibilities with regard to conflicts of interest and use of inside information.

The specific components of the APS Code of Conduct that directly relate to behavior of staff in relation to conducting trade of Commonwealth environmental water are:

- staff behave honestly and with integrity in connection with APS employment;
- take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest of the employee in connection with the employee's APS employment; and
- not improperly use inside information or the employee's duties, status, power or authority:
  - to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or
  - to cause, or to seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.

### **2.3. The Public Governance, Performance and Accountability Act 2013 (PGPA Act)**

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The PGPA Act replaces the Financial Management and Accountability 1997 (FMA Act) and the Commonwealth Authorities and Companies Act 1997 (CAC Act). The PGPA Act establishes the framework for managing resources by the Commonwealth and relevant entities. The PGPA Act has 4 objects including: to establish a coherent system of governance and accountability across Commonwealth entities; to establish a performance framework for all Commonwealth entities; and to require Commonwealth entities to: meet high standards of governance; meet high standards of performance; meet high standards of accountability; provide meaningful information to the Parliament; ensure that public resources are used and managed properly; and cooperate with others to achieve common objectives. The CEWO must abide by the PGPA Act when acquiring and disposing of Commonwealth environmental water.

#### **2.3.1. Commonwealth Procurement Rules 2014 (CPR)**

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The CPRs are an instrument attached to the PGPA Act which outline the key principles and governance arrangements that CEWO must abide by when undertaking procurement. The CPRs mandate that CEWO's affairs be managed in a way that:

- achieves value for money;
- encourages competition;
- ensures procurement is efficient, effective and ethical; and
- is accountable and transparent.

## **2.4. Freedom of Information Act 1982 (FOI Act)**

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The FOI Act promotes government accountability and transparency by providing a legal framework for individuals to request access to government documents. This includes documents containing information about policy-making, administrative decision-making and government service delivery. The FOI Act also requires agencies to publish other specified classes of information online.

## **2.5. State water management legislation**

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State governments have their own water management legislation. In general, these cover:

- water entitlement and planning frameworks;
- the determination of water allocations each year; and
- how water is shared, held, used and traded.

When water entitlements are purchased for the purpose of Commonwealth environmental watering they retain the same characteristics as existed before their acquisition and are governed by the same rules that apply to other holders of equivalent water entitlements.

As such, the CEWO environmental water portfolio is subject to the same carryover arrangements, fees and charges, allocations, and trade restrictions as any other water market participant and is not afforded priority over other rights held by other water users. State authorities are responsible for ensuring that these management frameworks are applied equitably and to manage third party impacts associated with these management frameworks.

### 3. OPERATING RULES

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The CEWH and CEWO staff are subject to substantial existing and impending Commonwealth and state legislative requirements in relation to trading activities (chapter 2), and in addition, the CEWH intends to implement operating rules to guide its water trading activities. The operating rules support legislative requirements and reflect the CEWO's corporate values. They are also reflective of the conservative approach the CEWH intends to take in relation to the trade of Commonwealth environmental water.

Figure 1 (pg 7) demonstrates how the operating rules fit within the trading framework and influence the trade process. There are three elements to the proposed operating rules:

1. governance;
2. trade decision making; and
3. announcements.

The operating rules will be trialed for three years from the commencement of the CEWH's first trading action. At that time an independent review will be commissioned and advice will be provided to the Minister on whether there is a need for legislated operating rules. Section 109 of the Water Act allows the Minister to make, by legislative instrument, operating rules relating to trade of Commonwealth environmental water.

#### 3.1. Governance

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These operating rules provide instruction to the CEWH and CEWO staff in relation to the overarching operations and behaviours relating to trade of Commonwealth environmental water. They support legislation and reflect the CEWH's intentions in relation to trade.

**The CEWH will not trade if aware of a water announcement that has not been made generally available [OR 1]**

The recently adopted Basin Plan contains water-trading rules that govern how persons or agencies are to behave. The rules include provisions that limit the capacity of people or agencies to trade if:

- they are aware of a decision made by an agency of the Commonwealth or of a Basin State which would be the subject of a water announcement that has not been made generally available; and
- the trading action is in relation to a water access right whose price or value could reasonably be expected to be materially affected if the information were made generally available.

In addition, the CEWH and CEWO staff are legally required to comply with the APS Values, Employment Principles and Code of Conduct when carrying out the functions of the CEWH. Among other things, these values, principles and code of conduct place requirements on staff behavior in relation to managing inside information and conflicts of interest. Protocols have been developed to assist the CEWH and CEWO staff manage water trade related information. The protocols are available at <http://www.environment.gov.au/water/cewo/trade/trading-framework#protocols>.

This rule will ensure that the CEWH and CEWO staff cannot use their position in government to take advantage of information which is not generally available.



### All trades will be undertaken using a competitive process [OR2]<sup>3</sup>

In conducting a trade the CEWH will:

- ensure that processes are consistent with Commonwealth Procurement Rules and are efficient, effective, economical, appropriate, and provide value for money;
- seek to promote competition within the water market and opportunity for involvement of interested parties. This includes announcing trading actions; using market engagement mechanisms that encourage wide participation; and providing efficient means through which market participants can communicate an offer to buy or sell; and
- ensure that its processes do not unreasonably disadvantage certain categories of market participants (including small and medium enterprises);

For each trading action, the CEWH will approach the market in a way that reflects the nature of the market and the conditions associated with the proposed trade. CEWO staff will continue to investigate different market engagement mechanisms, including the ways in which water market intermediaries can support the trade of Commonwealth environmental water.

If the CEWH was to use water market intermediaries to trade, the engagement of and use of their services will comply with Commonwealth Procurement Rules.

## **3.2. Trade decision making**

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These operating rules guide the CEWH and CEWO staff when engaging with the water market and making decisions to trade.

### Decisions to trade will be informed by a market assessment [OR3]

In addition to existing legislative requirements, when making trading decisions the CEWH will give reasonable consideration to the matters that include, but are not limited to:

- the likely supply and demand of water within the relevant market at the expected time of trading, informed by current and historical market information; and
- potential market impacts of the proposed trade on the supply and market price of water.

This information could be used, for example, to inform the break-up of a large purchase or sale into smaller tranches that are traded over a more extended period of time. This approach aims to reduce market impacts by reducing the volatility in market prices and tailoring the volumes available for trade to the market circumstances at the time.

### Price limits to be used in any trading action [OR4]

Prior to bids or offers being received, the CEWH will identify a price limit, informed by current and historical market conditions, based on the above market assessment. The price limit will be reviewed prior to each trading action. Setting such a price limit will:

- assist the CEWH in achieving value for money by establishing a price that the CEWH will not pay above (when buying) or accept below (when selling); and
- help minimise market impacts by being reflective of prevailing market conditions and limiting the range in which prices may move.

Depending on the trading mechanism used, the price limit may not be disclosed to the market; for example, where a competitive tender is used.

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<sup>3</sup> Consistent with the Commonwealth Procurement Rules, trades with a value above the FMA Act threshold of \$80,000 will use an open approach to market, which includes the release of a market assessment. Trades below this threshold may use an approach that is efficient, effective and appropriate to the circumstances.

### Consistent, equitable and transparent assessment of trade offers [OR5]

CEWO staff are developing, and will continue to refine, internal procedures to make certain that the assessment and decisions for each individual trade process are rigorous, consistent and equitable. This will include an evaluation plan, approved by the CEWH prior to undertaking a trading action, which outlines the process for evaluating the offers received.

## **3.3. Announcements**

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The purpose of public announcements is to ensure transparency and accountability of the CEWO in relation to trade, and inform other market participants of the CEWH's trading intentions. These operating rules cover announcements relating to trading intentions, decisions and outcomes.

### Regular guidance on trading intentions [OR6]

The CEWH will provide the public with a summary of trading intentions early in the water year. These trading intentions are subject to review and will be updated quarterly, or more regularly as required, to reflect changing conditions. If trading intentions change, the CEWH will ensure that this information is made generally available, as is required by the Basin Plan trading rules. The timely provision and updating of information on the CEWO website will increase the transparency of CEWO operations and reduce uncertainty for water market participants

### Trading actions to be announced prior to trade [OR7]

At least two days prior to undertaking a trading action, the CEWH will publicly announce its intention to trade. The announcement may include, but is not limited to:

- location of the trade;
- type of water product to be traded;
- proposed volume to be traded (subject to suitable offers);
- market engagement mechanism to be used for the trade;
- time period within which the trade is sought; and
- reason for the trade, referencing the requirements of the Water Act (including whether the trade is under Section 106(1) or 106(2)) and the Basin Plan.

The CEWH will make reasonable efforts to ensure that the announcement becomes generally available to interested water market participants.

### Market information to be released prior to each trading action [OR8]<sup>4</sup>

The CEWH will release market information at the time of announcing a trading action. Provided the information is readily available, the information will include, but is not limited to:

- the proportion of the total entitlements issued that are owned by the Commonwealth;
- the proposed volume to be traded compared to historical volumes traded within the catchment;
- current and forecast climate conditions within the catchment;
- historical and current season price information and trading patterns;
- historical and current season level of water use within the catchment; and
- current water availability.

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<sup>4</sup> Consistent with the Commonwealth Procurement Rules, trades with a value above the FMA Act threshold of \$80,000 will use an open approach to market, which includes the release of a market assessment. Trades below this threshold may use an approach that is efficient, effective and appropriate to the circumstances.

The provision of this information should provide interested parties with confidence that current conditions and impacts have been considered when making a trade decision. It will also inform other parties interested in trading with the CEWH about market conditions.

#### **Public reporting following trading actions [OR9]**

To enhance public scrutiny, within 30 days of the registration of the last trade made through a given trading action, the CEWH will make information publicly available (in a way that protects the privacy of trading partners) on its website that includes, but is not limited to:

- actual and weighted average price at which trades occurred;
- the volume traded; and
- confirmation of details that were announced prior to the trading action being conducted (including a description of any variance).

Alternatively, if there were no successful trades in a given trading action, the CEWH will announce this on its website.

A summary of all trading activity undertaken in a given water year will be provided in the CEWO annual report and tabled in parliament.

### **3.4. Review and audit**

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#### **3.4.1. Independent review of the operating rules**

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The operating rules will be refined if necessary as the CEWH becomes more experienced in the water market. The government will ensure an independent review of the operating rules within three years of the first CEWH trade to ensure that they are appropriate, effective and efficient. The review will:

- identify if there is a need for any additional operating rules;
- identify if changes need to be made to existing operating rules;
- identify if there is a need to make legislated operating rules; and
- assess compliance of the CEWH and CEWO staff with the operating rules.

Additionally the review will include assessing the effectiveness of arrangements put in place to promote compliance with relevant legislation relating to conflicts of interest, inside information and access to information that is not made generally available. The findings of the review will be made publicly available.

At this time the Minister will be provided with advice on whether there is a need for legislated operating rules as is provided for under section 109 of the Water Act.

#### **3.4.2. Independent assessment of the impacts of trading activity**

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Within three years of the first CEWH trade, the CEWH will commission an independent expert to conduct an assessment of the impacts of its trading on the water market, including consideration of third-party and socio-economic impacts. The findings of the assessment will be made publicly available.

## Revision history

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VERSION CONTROL AND REVISION HISTORY				
Date	Version	Description	Author	Approved
<i>January 2014</i>	1.0	Document creation	Michelle Bancroft Assistant Director, Portfolio Management Section	David Papps Commonwealth Environmental Water Holder
<i>December 2014</i>	1.1	Document revision	Jessica Hartmann Director, Portfolio Management Section	Steve Costello Assistant Secretary, Policy, Community Engagement & Portfolio Management Branch