



Australian Government

Commonwealth Environmental Water Holder

Sale of Water Allocation Guidelines

Last Updated 13 January 2023

IMPORTANT INFORMATION ABOUT THE GUIDELINES AND OTHER KEY DOCUMENTS

These Sale of Water Allocation Guidelines (Guidelines) will assist you in making a Bid to purchase Water Allocations owned by us (the Commonwealth, as represented by and acting through the Commonwealth Environmental Water Holder in the Department of Climate Change, Energy, the Environment and Water).

The Guidelines are intended to assist you in navigating the Sale Process by providing key information on conditions that must be complied with when submitting a Bid, how to submit a Bid, how Bids are assessed, and what happens after a Bid has been assessed.

Prior to submitting a Bid, you should have carefully read and considered the most recent version of these Guidelines, the Terms, and the Glossary dated January 13 2023. These documents, and any amendments to these documents, are available on the [Trade of Commonwealth environmental water](#) website.

You should seek your own professional advice as appropriate and must not construe these Guidelines or other materials released in relation to the Sale Process as providing investment, legal, business, or tax advice.

If you have any further questions regarding this Sale Process please check if the information you need is in the Frequently Asked Questions (FAQs) available on the the [Trade of Commonwealth environmental water](#) website or contact us via email on ewatertrade@dcceew.gov.au or **02 6275 9810**.

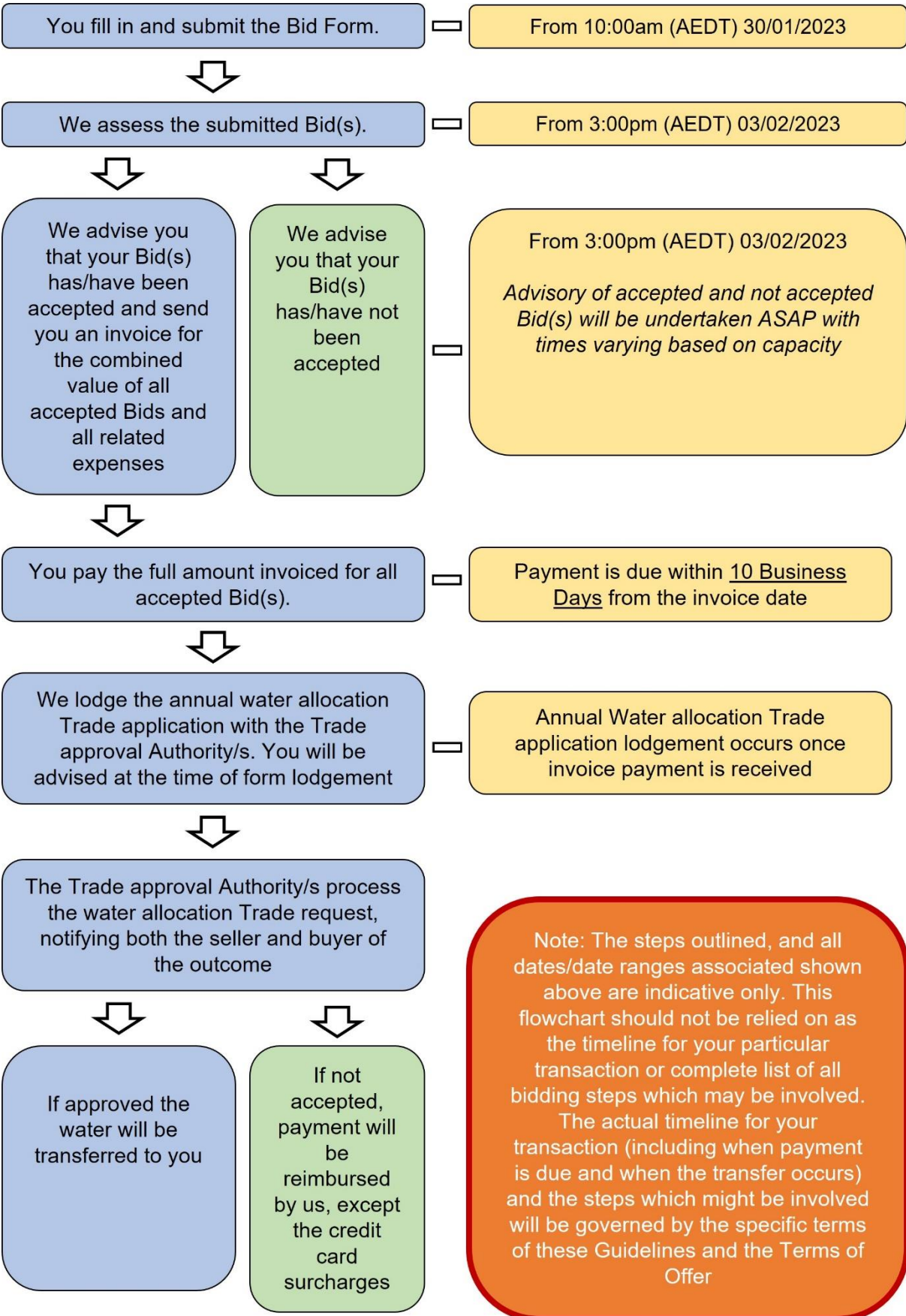
Unless stated otherwise, terms which are capitalised in these Guidelines and which are also defined in the Glossary have the same meaning.

1. Important conditions that must be complied with

Conditions applicable to the Sale Process

- 1.1 Your Bid will only be eligible for consideration if you (and the Account Holder if applicable) meet all of the following conditions:
- (a) you have not engaged in any misleading or deceptive conduct, collusive bidding, anti-competitive conduct, or any other unlawful or unethical conduct in connection with your Bid;
 - (b) you have not attempted to solicit, or solicit information from, or influence improperly, any current or former officer, employee, contractor, or agent of the Commonwealth, or violate any Laws or Australian Government policies regarding the offering of inducements in connection with your Bid;
 - (c) you understand that the collection and disclosure by us of any personal information contained in the Bid Form and any attachments is in accordance with the *Privacy Act 1988* (Cth), and you have read and understood our [Privacy Policy](#);
 - (d) neither you nor the Account Holder (if applicable) are subject to a judicial decision against you or the Account Holder (as relevant) relating to employee entitlements, not including decisions under appeal, and you or the Account Holder (as relevant) have not paid the claim;
 - (e) you have not engaged in, or procured or encouraged others to engage in, activity that would result in a breach of the Attorney-General's Department Lobbying Code of Conduct (AGD, 2019); and
 - (f) you have not been named by the Workplace Gender Equality Agency in a report to the Minister responsible for the *Workplace Gender Equality Act 2012* (Cth), as an employer currently not complying with the requirements of that Act.
- 1.2 You are required to declare on the Bid Form that you have read and agreed to comply with these Guidelines, including the above conditions. If you cannot make this declaration, then you should not submit a Bid. If we become aware that you do not satisfy the above conditions, then your Bid will be excluded from further consideration as we have the sole and absolute discretion to do this.

2. Overview and indicative timeline of Sale Process for buying Commonwealth Water Allocations



3. Submitting a Bid to buy Water Allocation

- 3.1 By submitting a completed Bid Form, you are making a Bid to purchase from us the Bid Volume stated in the Bid Form on the terms set out in the Bid Form and the Terms.
- 3.2 If your Bid is successful, a legally binding Agreement will be made between you and us on the date we send you the Acceptance of Bid. We may include multiple successful Bids from the same Bidder where the same ABN has been nominated in the same Acceptance of Bid. You will be responsible for payment of the total Value and all other obligations under the Agreement.

Method for submitting a Bid

- 3.3 You must submit your Bid electronically using the Bid Form publically available on the [Trade of Commonwealth environmental water](#) website. Please see paragraph 3.11 for details on how to manage any technical difficulties submitting attachments to your Bid Form.

Timeframes affecting a Bid

- 3.4 You must ensure that Bid Forms are received by us after the Sale Open Time and before the Sale Close Time. Attachments to Bid Forms may only be accepted after the Sale Close Time in accordance with paragraphs 3.12 and 3.13.
- 3.5 You acknowledge:
- (a) Bid Forms received before the Sale Open Time will not be considered by us;
 - (b) it is your responsibility to ensure that the Bid Form is received by us before the Sale Close Time;
 - (c) any Bid Form(s) received by us after the Sale Close Time will not be considered by us unless it was late solely due to mishandling of the Bid Form by us;
 - (d) a record of the time each Bid Form is received will be kept by us; and
 - (e) you are responsible for allowing enough time before the Sale Close Time to complete and submit the Bid Form including correcting any errors and, where paragraph 3.11 applies, to obtain instructions from us and submit any attachments by email as instructed by us.

Receiving Bids

- 3.6 We may, at our sole and absolute discretion, extend the Sale Close Time by up to 10 Business Days. If we do, we will:
- (a) publish details of such an extension on the [Trade of Commonwealth environmental water](#) website; and
 - (b) issue an addendum on the [Trade of Commonwealth environmental water](#) website notifying any decision to extend the Sale Close Time.

You should refer to the the [Trade of Commonwealth environmental water](#) website for up to date details of any extension.

- 3.7 Your Bid will remain open for acceptance by us for the duration of the Bid Period.

Bid Form Requirements

- 3.8 You will not be able to electronically submit a Bid Form unless:
- (a) a Trading Zone is specified;
 - (b) if transferring to New South Wales or South Australia, a relevant Trade Form is attached;
 - (c) the Allocation Account type is specified and the Allocation Account number is supplied;
 - (d) an email address is provided which we can use to communicate with you;
 - (e) a valid ABN is supplied;
 - (f) the Bid Volume specified:
 - (i) is greater than or equal to the Minimum Bid Volume; and
 - (ii) is less than or equal to the Maximum Bid Volume; and
 - (g) the declaration in the Bid Form is completed, which includes reference to conditions in paragraph 1.1.
- 3.9 Within the Bid Form, you may be required to submit a Trade Form electronically. The Trade Form(s) should be as complete as possible, legible and correctly signed. It is your responsibility to ensure that the information provided in the Trade Form(s) is complete and accurate and in the particular form required by the relevant Authority.

Issues affecting submission of a Bid Form

- 3.10 The Bid Form requires declarations to be made and will validate some details at the point of submission. You will need to allow enough time to complete and submit the Bid Form including correcting any errors before the Sale Close Time.

Unable to submit required attachments to Bid Form

- 3.11 If you are unable to submit online any required attachments to the Bid Form (including Trade Forms and/or evidence of authority) or are having technical difficulty doing so, we may, at our discretion, accept those attachments via email prior to the Sale Close Time. To receive instructions on how to complete and submit attachments to the Bid Form by email, you will need to contact us via ewatertrade@dcceew.gov.au or on **02 6275 9810**, ensuring sufficient time to complete the submission process for those attachments before the Sale Close Time.
- 3.12 Subject to paragraph 3.13, any attachments received after the Sale Close Time will not be considered by us unless the lateness was solely due to mishandling by us.
- 3.13 We may, at our sole and absolute discretion, choose to consider your attachments received after the Sale Close Time only where it does not give you an unfair advantage over other Bidders.

Confirmation email not received

- 3.14 Once you submit your Bid Form, a confirmation message will appear in your internet browser indicating it has been sent for processing.
- 3.15 On receipt of your Bid Form, a confirmation of receipt will be generated and issued to the email address you entered in the Bid Form. If you do not receive this confirmation of receipt then it is possible that the email address you entered on the Bid Form is incorrect. If you do not receive this confirmation of receipt:
- (a) you should check any junk mail folders in case the confirmation of receipt has been filed there; and

- (b) you may contact us via ewatertrade@dcceew.gov.au or on **02 6275 9810** before the Sale Close Time to advise that you did not receive a confirmation of receipt. In this case you may, before the Sale Close Time, then resubmit your Bid Form subject to any further directions we give you. Following the Sale Close Time, we will determine if your Bid Form was submitted twice and, if two identical (price and volume) Bid Forms were submitted, we will remove the first Bid Form that we received of the duplicate Bid Forms.

3.16 If:

- (a) you either:
 - (i) do not contact us in accordance with paragraph 3.15(b); or
 - (ii) you contact us in accordance with paragraph 3.15(b) but do not comply with our directions (including if you submit a second Bid Form which is not identical (price and volume) to the first Bid Form); and

- (b) we receive two (or more) Bid Forms from you;

all Bids may be evaluated by us and in the event that you are successful Bidder for some or all Bids, you will be liable to pay the purchase amount for all successful Bids.

Submitting multiple Bid Forms

3.17 You may submit more than one Bid per Sale Process, however a new Bid Form must be submitted for each Bid. Each Bid Form must be complete, contain all requested information, and be capable of being read independently.

3.18 Do not submit multiple Bid Forms for a single Bid. Each Bid Form that we receive will be treated as a separate Bid (including if it is for the same volume and at the same price as another Bid Form from the same Bidder), unless paragraph 3.15 above applies to the circumstances. If multiple Bids are received and accepted, you will be bound to multiple purchases in accordance with the Terms.

Amending and withdrawing a Bid Form

3.19 Once you have submitted a Bid Form, you cannot propose amendments to the Bid (including the Bid Price and Bid Volume). To change a submitted Bid Form you will need to:

- (a) withdraw your Bid Form; and
- (b) submit a new Bid Form,

prior to the Sale Close Time.

- 3.20 Withdrawing a Bid before the Sale Close Time requires us receiving written notice of your withdrawal to ewatertrade@dcceew.gov.au that includes in the email subject title 'Withdraw Bid reference number XXXXXXXX', where XXXXXXXX is the bid reference number of the Bid that is to be withdrawn. The written notice must be received by us before the Sale Close Time. You will know if we have received your written notice when you receive an automatic reply from us to your email.
- 3.21 You cannot withdraw your Bid after the Sale Close Time.
- 3.22 If you do not withdraw your Bid before the Sale Close Time in accordance with paragraph 3.19, we will evaluate your Bid as a valid Bid and, in the event that your Bid is accepted by us, you will be bound to pay the Bid Price for the Bid Volume as stated in your Bid Form.

4. How Bids are evaluated

- 4.1 After the Sale Close Time we will conduct an evaluation process with a view to determining which eligible Bid or Bids represent the best value for the Commonwealth.
- 4.2 Bids withdrawn in accordance with paragraph 3.20 will not be evaluated.
- 4.3 Bids will be eligible to be evaluated if they meet the following eligibility criteria:
- (a) the Bid Form is submitted electronically via the Trade of Commonwealth environmental water website. in accordance with paragraph 4.7;
 - (b) you and the Account Holder(s), if applicable, comply with the conditions set out in paragraph 1.1;
 - (c) the system-generated time and date stamp shows that the Bid Form is received after the Sale Open time and before the Sale Close Time (unless paragraph 3.13 applies);
 - (d) the Destination Jurisdiction into which the Bid Volume is to be transferred can accept the transfer within current trading restrictions
 - (e) the Bid Price is at or above Bid Price Limit, and
 - (f) no errors or omissions are unresolved through the minor errors process or would materially affect the Bids' competitiveness.
- 4.4 We may elect to not evaluate and may exclude an eligible Bid if we consider that:
- (a) there is a material risk of a Trade not proceeding or being unreasonably delayed due to your conduct, or the conduct of the Account Holder(s) (if applicable), in tenders or programs for the sale or purchase of water access rights to or from us (or any resulting Trades) within the preceding 2 years;
 - (b) there is a material risk that the Trade relating to the Bid would not be completed or would not proceed in a timely way (including due to restrictions on transfers out of the Source Jurisdiction or the corresponding Trading Zone or restrictions on transfers into the Destination Jurisdiction or the corresponding Trading Zone); and/or

- (c) rectifying a failure of yours to submit any Trade Form(s), or the submission of incomplete or inaccurate Trade Form(s) or other Bid information is reasonably likely to delay the progression of the Trade.

- 4.5 As the timeframes available for the Sale Process are compressed, Bids may also be excluded at any time if we seek clarification or otherwise request information from you or the Account Holder(s), if applicable, and you or the applicable Account Holder(s) do not respond in the timeframe requested.

- 4.6 Bids which satisfy the Bid Form requirements at paragraph 3.8, meet the eligibility requirements under paragraph 4.3 and have not been excluded from evaluation under paragraphs 4.4 or 4.5, will be grouped by Bid Price (highest to lowest) and within each price group, ranked by Bid Volume (highest to lowest). Bids will be accepted in order of their ranking until:
 - (a) all Bids have been accepted; or
 - (b) the Water Available has been fully allocated; or
 - (c) accepting all the next ranked Bids at the same Bid Price would exceed the Water Available. In determining whether to accept any further Bids we may, at our sole and absolute discretion:
 - (i) not accept some or all of the remaining Bids;
 - (ii) accept Bids which would see the Water Available exceeded; and/or
 - (iii) enter into negotiations with some or all remaining Bidders in relation to volume or price of a Bid (including, but not limited to, a best and final offer process).

- 4.7 We may at our discretion clarify with you minor errors or omissions in form or content we identify with a submitted Bid Form or Trade Form(s) (including any errors in Allocation Account reference, email address or the Trade Form(s) or evidence of authority or the non-submission of Trade Form(s) or evidence of authority), but we are under no obligation to do so.

- 4.8 We reserve the right to contact you to ascertain:
 - (a) a valid email address; and/ or
 - (b) a valid Allocation Account reference;
 if the details provided in the Bid Form are or appear to us to be invalid.

- 4.9 Despite any other provision in these Guidelines we:

- (a) are not bound to accept any Bid(s) to sell any volume at any price;
- (b) may ask you to extend the Bid Period;
- (c) may exclude or not accept a Bid if we consider that you, or the Account Holder(s), if applicable, has contravened paragraph 1.1 of these Guidelines;
- (d) may add or remove you from consideration at any time after the Sale Close Time;
- (e) may negotiate or decline to negotiate with you, and discontinue negotiations at any time; and/or
- (f) may allow, or refuse to allow, a preferred Bidder to enter into an Agreement in the name of a different legal entity to that which submitted the Bid.

Confidentiality

- 4.10 Subject to relevant Laws and Australian Government policy, we will treat the information contained in the Bid Form as confidential information. Where a Bid is accepted, we may disclose information regarding the Bid for the purposes of completing Trade Forms and other steps necessary to effect the Trade.
- 4.11 We will treat the information contained in the Bid Form consistently with our obligations under the *Privacy Act 1988*, the Department's [Privacy Policy](#).
- 4.12 Prior to submitting the information in the Bid Form, you are required to read the Department's [Privacy Policy](#), and consent to the collection and disclosure of all personal information and sensitive information contained in this Bid Form and any attachments, for the purposes outlined in the Privacy Notice. You are also required to obtain the consent of all persons whose personal and sensitive information has been included in the Bid Form, to disclose their personal and sensitive information to us, and have provided them with a copy of the Department's [Privacy Policy](#).
- 4.13 We are also subject to a range of Laws and Australian Government policies which may require us to publish or disclose certain details of the information in the Bid Form and other details relating to the Trade (subject to the *Privacy Act 1988* (Cth) and without identifying you, unless required by law).

5. What happens after your Bid is submitted

- 5.1 On receipt of your Bid Form, a confirmation of receipt will be generated and issued to the email address you entered in the Bid Form. We will subsequently notify you whether your Bid(s) has/have been successful or unsuccessful within the Bid Period. Notification may be issued on a staggered basis reflecting the progression of evaluation. Please contact us if you have not received notification within this time. If your Bid(s) is unsuccessful, you will be offered an opportunity for a debrief.
- 5.2 If your Bid(s) is successful, you will receive an Acceptance of Bid notice via email advising you that your Bid(s) has/have been accepted and confirming relevant details.
- 5.3 Where negotiation has taken place after the submission of the Bid Form (such as in the circumstance stated in paragraph 4.9), the terms of the newly negotiated Bid will be included in the Acceptance of Bid and override any inconsistency with the information in the Bid Form.
- 5.4 If we determine or anticipate that it will take longer than the Bid Period to complete evaluation of Bids or if further consideration of your or other Bids is needed, then we may request in writing that you agree to an extension of the Bid Period. Such extension may be subject to conditions (such as a deadline for acceptance) and will not be binding until and unless you agree to it. Any agreement to an extension does not necessarily mean that we will accept your Bid.
- 5.5 A legally binding Agreement is formed between you and us at the time we send you the Acceptance of Bid (whether by email or by any other method of delivery), despite any subsequent delays in delivery or receipt by you of this communication. The Agreement comprises of the Glossary, Acceptance of Bid, the Terms and the Bid Form. Among other obligations, you must pay the total of all amounts set out in the Acceptance of Bid within the Payment Period.
- 5.6 Once we have received payment we will complete and lodge an application for the Trade with the appropriate Authority. We will notify you once the Trade Form is lodged.
- 5.7 Trade approval may take a number of weeks. You may be advised of the outcome of the request for Trade approval by the relevant Authority with which the Trade Form was lodged. If there are any queries regarding the status or progress of the Trade approval, you should contact the relevant Authority directly.
- 5.8 The Terms detail the process to be followed by the Parties where Trade approval is not granted by the relevant Authority.

6. Payment and charges

- 6.1 You are liable for all Trade Approval Lodgement Costs, Usage Charges and registration fees associated with the Trade. If there are any queries regarding these charges, you should contact the relevant Authority directly.
- 6.2 We will only accept payment by electronic funds transfer (EFT) or by credit card. Payment by any other method including cheque and cash is not permitted.
- 6.3 If you are successful, details for payment will be provided to you in the Acceptance of Bid.
- 6.4 If you choose to pay by credit card, please note that any charges and fees imposed on us by the credit provider in connection with that payment will be passed on to you (surcharge). A copy of the surcharges is available at the [What are the credit card surcharges?](#) website. Please note that the credit card surcharge is non-refundable. There are no additional fees payable for an electronic transfer.
- 6.5 If you have any further questions regarding this process please contact us via ewatertrade@dceew.gov.au or on **02 6275 9810**.

7. Further information

- 7.1 We may use email automation platforms to communicate effectively and efficiently with you. For information on how we are using personal information that we collect, please see our [Privacy Policy](#)
- 7.2 We have no liability to you or the Account Holder(s) (if applicable), should any information or material provided with respect to these Guidelines, the Terms or the Bid Form be inaccurate or incomplete, or if actual volumes or other relevant matters in relation to any sale or allocation vary from those advised by us at any time.
- 7.3 Nothing in these Guidelines is to:
- (a) be taken to be; or
 - (b) relied upon,
- as an offer capable of acceptance, or as creating any form of contractual (including a process contract), quasi contractual, restitutionary or promissory estoppel rights, or rights based on similar legal or equitable grounds, whether implied or otherwise.
- 7.4 We will not be responsible for any costs or Losses incurred whatsoever by you in complying with the requirements of these Guidelines or submitting a Bid Form.
- 7.5 Notwithstanding paragraphs 7.3 and 7.4, if a court finds there to be a contract between us and you (or other legal right for you against us) regarding the conduct of this Sale Process, you agree that our general liability in connection with this Sale Process (e.g. for negligence, breach of contract or statute or otherwise), and any breach of the terms of such a contract (or right) is limited to your direct substantiated costs of participation in this Sale Process excluding Consequential Loss.
- 7.6 By lodging a Bid, you will be deemed to have made your own judgements relating to the Sale Process, and not to have relied upon:
- (a) any representation (whether oral or in writing) other than as expressed in these Guidelines; or
 - (b) other conduct by us or any of our officers, employees, agents, advisers or subcontractors.
- 7.7 We are not bound to accept any Bid(s). We may also, at our sole and absolute discretion, suspend or discontinue the Sale Process altogether.

- 7.8 We are committed to continuing assessment of the impact of water trading and will publish findings of that assessment. We may seek feedback from you and other Bidders as part of the assessment.
- 7.9 Following completion of the Sale Process, records of Bids will be kept in accordance with the requirements of relevant Laws including the *Privacy Act 1988* (Cth) and the *Archives Act 1983* (Cth) and any applicable Australian Government or Department privacy policies. These records may be used to support our ongoing functions including as a source of data to analyse and report on historical water markets.
- 7.10 You are solely responsible for all costs and expenses that you incur in connection with participating in the Sale Process, including the costs associated with preparing and lodging a Bid and responding to requests from us.
- 7.11 Unless otherwise specified, where we have a right or discretion under these Guidelines, we can exercise that right or give that discretion in our sole and absolute discretion.
- 7.12 If you have any further questions regarding this process please contact us via ewatertrade@dcceew.gov.au or on **02 6275 9810**.