



Commonwealth Environmental Water Office

Discussion Paper:

Development of a Framework for Investing in Environmental Activities

Contents

Executive summary	2
1. How can I provide feedback?	3
2. Discussion questions	4
3. Introduction	4
4. Identifying environmental needs	6
5. Scope of potential environmental activities	7
6. Out of Scope for potential environmental activities	9
7. Who are potential proponents?	10
8. Criteria to assess potential environmental activities	10
9. Funding arrangements	11
10. Delivery arrangements	13
Attachment A: <i>Water Act 2007</i> review recommendations	15
Attachment B: <i>Water Act 2007</i> provisions that enable CEWH trade and reporting requirements	17
Attachment C: Flow charts demonstrating ways the CEWH can trade under the <i>Water Act</i>	20

Executive summary

Recent changes to s106 (3)-(6) of the *Water Act 2007* have increased the flexibility for the Commonwealth Environmental Water Holder (the CEWH) to sell water allocations if the proceeds are used for water acquisitions or environmental activities. Under the legislation, the CEWH can only invest in environmental activities that will improve environmental outcomes from the use of Commonwealth environmental water, and are undertaken for the purpose of protecting and restoring environmental assets in the Basin.

The option of selling water allocations and investing the proceeds in environmental activities will be considered alongside other available water management options. These include carrying water allocations over into the next watering year, or purchasing water at another time or place. It is important to note that the majority of annual water allocations assigned to the CEWH will be used in rivers, wetlands and floodplains to meet environmental needs.

This discussion paper provides background on the guiding environmental priorities and legislative scope limitations for future investment in environmental activities. In short, environmental activities funded by the CEWH must be linked with current or future Commonwealth environmental water delivery. Investment will also have to be consistent with the environmental objectives of the [environmental watering plan](#) and the [Basin-wide environmental watering strategy, and be made having regard to the Basin annual environmental watering priorities](#).

Environmental activities could include activities that enable or improve the efficiency of environmental water delivery, that complement and improve the effectiveness of environmental water delivery, or that improve the knowledge base that informs the management of Commonwealth environmental water. In addition, priority will be given to environmental activities that:

- contribute to long-term and Basin-wide environmental benefits
- will improve environmental water management
- have strong community support
- will be undertaken collaboratively
- are demonstrably viable and cost-effective.

It is important to note that the CEWH will not provide funding for projects that would otherwise be principally funded by state or local government natural resource management bodies.

The CEWH is seeking feedback on what type of activities stakeholders would like the CEWH to consider when developing a framework for future investment in environmental activities.

Section 1 below describes how to provide feedback and includes a link to an electronic template which we encourage you to use when submitting your feedback.

Examples of projects that may be eligible for funding include:

- Community-based activities such as tree planting days in priority wetland and riverbank areas, or establishing monitoring programs for fish, water birds or other fauna.
- Works to facilitate fish passage or the flushing of wetlands such as the removal of obstructions.
- Regulators to enable a wetland to be watered during drier times or enhance the inundation of wetlands to improve vegetation and aquatic fauna.
- Investigations into options to improve the effectiveness of environmental water.

1. How can I provide feedback?

1.1 Call for submissions

The purpose of this discussion paper is to get your views on how and what types of environmental activities you would like to see the CEWH invest in when using the proceeds from the sale of Commonwealth environmental water allocations.

In particular, we seek your views and feedback in response to the discussion questions listed below (Section 2), either as a whole or with respect to specific questions. The discussion questions do not seek to limit your feedback and authors should include all information they consider relevant as part of their submission.

Your feedback can be submitted using a template available on our website:

<http://www.environment.gov.au/water/cewo/investment-framework/discussion-paper>

We encourage you to use the available template but you are welcome to send feedback in other formats.

The request for written feedback to this discussion paper opens on 12 September 2017 and will close on 30 November 2017.

You can email or post your feedback to the following addresses:

Email: CEWOInvestmentFramework@environment.gov.au

Mail to: Environmental Water Policy
Commonwealth Environmental Water Office
GPO Box 787
Canberra ACT 2601
Australia

A report presenting the key findings raised by stakeholders and the CEWH's response will be posted on the CEWH website at: <http://www.environment.gov.au/water/cewo>

2. Discussion questions

The CEWH is interested in feedback on the following discussion questions to inform the development of a framework for future investment in environmental activities:

1. What sort of environmental activities, that complement current or future Commonwealth water delivery, could be a focus for investment by the CEWH?
2. Are there any environmental activities that you think should not be eligible for investment by the CEWH?
3. What criteria do you think should be used for assessing environmental activities?
4. What types of environmental activities would be most appropriate for joint funding arrangements?
5. What types of in-kind contributions could support environmental activities?
6. Are there other delivery partners that the CEWH could consider?
7. Are there any other types of partnership opportunities or investment approaches that could be considered by the CEWH?
8. Are there practical ways that small groups or individuals could be supported to apply for funding?
9. By which methods (for example, grants and procurement) do you think the CEWH should fund environmental activities?
10. Do you have any other feedback?

3. Introduction

3.1 The Commonwealth Environmental Water Holder

The CEWH is a statutory position established under the Water Act and is responsible for managing the Commonwealth's environmental water holdings. This water must be managed to protect and restore the rivers, wetlands and floodplains (and the native animals and plants they support) of the Murray-Darling Basin. The CEWH is governed by the Water Act and the Murray-Darling Basin Plan. Recent changes to the Water Act increase the flexibility for the CEWH to sell water allocations and use the proceeds to fund environmental activities.

Mr David Papps is the current CEWH. He is supported by staff of the Commonwealth Environmental Water Office, a division in the Australian Government Department of the Environment and Energy. The Office includes six local engagement officers who live and work in regional centres across the Murray-Darling Basin.

Expenses incurred in the performance of the CEWH's functions (including fees and charges associated with maintaining and using the water portfolio) are paid for using funds from the Environmental Water Holdings Special Account, with the exception of staff costs, which are provided by the Department of the Environment and Energy.

3.2 Selling Commonwealth environmental water

There are broadly three options for managing Commonwealth environmental water:

- delivering water to a river or wetland to meet an identified environmental need
- leaving water in storage and carrying it over for use in the next water year
- trading water (sale or purchase).

The Water Act sets out the conditions under which the CEWH can sell environmental water, along with how the proceeds from sales can be used. The CEWH can only sell water if at least one of the following circumstances applies:

- if water allocations are not required in the current year to meet environmental objectives and cannot be carried over for use in the next year
- if water allocations are not required to meet environment objectives and, if retained, would likely reduce future allocations due to account limits being reached
- if the proceeds are used to purchase water and/or for environmental activities that would improve the capacity to achieve the environmental objective set out in the Basin Plan through environmental water use.

It is not required at the time of sale that the CEWH commit to using proceeds for either water purchase or environmental activities, or commit to any specific type of purchase or environmental activity.

Information on the review of the Water Act is provided at **Attachment A** and an excerpt of the relevant sections of the Water Act is at **Attachment B**.

Flow charts which show how the CEWH can trade under the Water Act are provided at **Attachment C**.

3.3 The Commonwealth Environmental Water Trading Framework

The Commonwealth Environmental Water Trading Framework¹ was published in 2012 following extensive internal and external consultation. The Trading Framework describes the way that the CEWH undertakes trade and not the investment of proceeds in environmental activities.

¹ <http://www.environment.gov.au/water/cewo/publications/water-trading-framework-dec2014>

4. Identifying environmental needs

Environmental activities must improve the capacity to achieve objectives of the environmental watering plan through the use of Commonwealth environmental water. Proposals for environmental activities will need to be linked to specific plans and proposals for the use of environmental water, the CEWH's environmental watering priorities, and/or the CEWH's forward plans for environmental water use. Existing processes that could assist to identify environmental activities include:

- In developing watering actions, consideration is given to the existence (or lack) of complementary natural resource management activities and accredited management plans supporting the long-term management of the asset.²
- Consultation with delivery partners could identify needs for complementary environmental activities. Environmental watering advisory groups could provide advice to state agencies, which could then put forward project proposals. Local engagement officers could work with community groups and other interested people to develop proposals.
- Existing operational and long-term intervention monitoring of Commonwealth environmental water use can help to identify where there are barriers to achieving the environmental outcomes sought through watering, which could be addressed through environmental activities. Specifically, the Murray-Darling Basin Environmental Water Knowledge and Research Project aims to better understand the impact of threats such as pests, grazing or poor water quality on ecological improvements through environmental flows.³

Case study

Another example of a project currently being funded by the CEWH is the Tar-Ru Lands Study Case.

This project initiated the spread of nearly one billion litres of environmental water across five sites on Tar-Ru Lands. These sites included 11 wetlands within the Carrs, Capitts and Bunberro Creeks systems incorporating over 60 hectares. The creek system had not received environmental water since 2006, but the wetlands had been inundated several times by overbank flows from natural flood events.

This watering is expected to increase the population and diversity of native waterbirds and the Southern Bell frog, and improve the health of River Red gums and surrounding wetlands.

The project is a collaborative effort between the CEWO, Murray-Darling Wetlands Working Group, Tar-Ru Lands board of Management, Local Land Services Western Region, NSW Office of Environment and Heritage, NSW National Parks and Wildlife Services, NSW Department of Primary Industries Water, Moorna Station, SA Water and The Nature Conservancy.

² From the Criteria for assessing options for Commonwealth environmental water use, available at <http://www.environment.gov.au/water/cewo/publications/criteria-assessing-options-cew-use>

³ <http://www.environment.gov.au/water/cewo/monitoring>

5. Scope of potential environmental activities

Most Commonwealth environmental water will be required to be used or carried over in order to meet environmental objectives under the Basin Plan, Basin annual environmental watering priorities, and expected outcomes under the Basin-wide environmental watering strategy. This will limit the water allocations available for sale, and hence the potential revenue available for environmental activities. These environmental objectives also guide the scope of what can be considered as an environmental activity in this context.

5.1 Legislative constraints on the scope of potential environmental activities

The scope of potential environmental activities is limited by the following obligations under the Water Act, Basin Plan and subsidiary documents:

- The CEWH must have a reasonable belief that activities using revenue from allocation sales under section 106(3) will improve the capacity to achieve environmental objectives from Commonwealth environmental water use (section 106(3)(c)).
- Activities must be undertaken for the purpose of protecting and restoring environmental assets (section 105(3)).
- Activities must assist in managing the environmental water holdings (section 113 on using Special Account funds consistent with the CEWH's functions together with section 105(1) on the CEWH's functions).
- The CEWH must manage holdings in the Basin (including using revenue derived from the holdings) in accordance with the Basin Plan environmental watering plan (section 105(4)(a)).
- The CEWH must perform its functions and exercise its powers (including investing in activities) consistently with the environmental watering plan and Basin-wide environmental watering strategy, and having regard to the Basin annual environmental watering priorities (Basin Plan section 8.03).
- Environmental activities should not be inconsistent with the obligations under international agreements (section 20 (a)).

5.2 Priorities for environmental activities

Priority will be given to environmental activities that:

- Contribute to long-term and Basin-wide environmental benefits, including activities that:
 - support long-term environmental watering programs over one-off events
 - will provide the best Basin-wide environmental outcomes (rather than tying the investment of trade proceeds to the catchment of sale)
 - complement other environmental watering across the landscape (i.e. part of multisite watering or for similar objectives) and river operations
 - demonstrably improve the effectiveness of environmental watering actions
 - provide support for critical habitat for and/or recovery of threatened species and threatened ecological communities, and critical ecosystem processes
 - protect and restore the ecological character of key environmental sites in the Basin.

- Will improve environmental water management through:
 - improving our understanding of environmental watering and support improved long-term management of environmental water
 - new and innovative watering actions and trials to achieve more efficient and effective outcomes.
- Have strong community support.
- Will be undertaken collaboratively, including activities that:
 - are undertaken in close partnership with delivery partners with in-kind or cash contributions, or leverage investments from other parties
 - support complementary Aboriginal cultural flow objectives and are undertaken in partnership with Indigenous communities/groups.
- Are demonstrably viable and cost-effective including having:
 - a sound business plan and budget
 - arrangements in place for capital works projects to ensure ongoing operation and maintenance costs are met
 - where appropriate, confirmed partner or third party funding for elements of jointly funded projects.

Regard will also be given to potential social, economic or cultural benefits from a particular water purchase or environmental activity, and to the extent that projects also support Australian Government biodiversity priorities.

To meet the requirement for environmental activities to enhance the outcomes from Commonwealth environmental water use, a proposed activity could, for example:

- Enable environmental water use that would otherwise not be possible, either physically or because of potential third party impacts (for example, pumping costs, levees).
- Improve the efficiency of environmental watering, achieving the same outcomes with less water (for example, works to off-takes, regulators or weirs).
- Increase the volume of water available to the environment (such as a contract with a landholder not to pump their allocation but to leave it in the river for environmental use, or a contract providing options to use water for the environment).
- Improve the effectiveness of environmental watering: achieving better outcomes from a particular volume of water use (for example, screens to prevent native fish from entering irrigation pumps, carp exclusion screens, monitoring, evaluation and applied research, and investigations that directly inform future use).

5.3 Connection between environmental activities and water use

Whether a particular project would be sufficiently connected to Commonwealth environmental water use would depend on the type of activity but also factors such as:

- Where the activity is located and the likely availability and use of Commonwealth environmental water there.

- The timing of likely water use compared to the timing of the activity or the asset life of any works (for example, activities would need a strong connection to immediate or near-term water use).
- How, and the degree of certainty that, the activity would contribute to the objectives of Commonwealth environmental water use, including whether it would contribute to a Basin annual environmental watering priority or expected outcome under the Basin-wide environmental watering strategy.

Legislative requirements enable the CEWH to make an assessment of whether an environmental activity is within scope based on all the relevant circumstances.

6. Out of Scope for potential environmental activities

There are a range of activities that will not be eligible to receive funding from the sale of water allocations. This is due primarily to the legislative constraints that the CEWH must operate within.

The CEWH must perform its functions for the purposes of protecting and restoring environmental assets in the Basin and therefore will not fund activities that do not provide benefits of this nature or provide such benefits outside the Basin. The CEWH will also not use trade revenue to pay fees and charges related to holding and delivering environmental water as this is funded through a separate process.

For trade to improve environmental outcomes, and to obtain value for money from Special Account funds, environmental activities must be genuinely additional to activities that are already being carried out, or would be likely to be carried out. Because of this, the CEWH will not generally invest trade revenue in projects which would ordinarily be funded through programs operated by state or local governments. There may be situations where funded projects would provide additional relevant benefits if new elements were included. The CEWH may consider investing in new and as yet un-funded elements of existing projects.

The following types of activities are considered to be out of scope:

- Activities which have impacts primarily in areas beyond where Commonwealth environmental water can be applied.
- Activities which are primarily of private/commercial benefit rather than public benefit.
- Research activities that are theoretical rather than applied, i.e. the outcomes are by definition too uncertain to link to future water use.
- Activities on land that do not have the support of the landholder (government or private).

Another legislative constraint on potential environmental activities is that the Lands Acquisition Act prevents the CEWH from owning or managing land.⁴ It is not feasible or practicable for the CEWH to own or operate infrastructure without owning the land that it is located on, whether public or

⁴ Only the Commonwealth or a Commonwealth authority can acquire an interest in relation to land under that Act. The CEWH is an individual statutory office holder and not an authority or an agency.

private. Therefore, the CEWH will not be considering investment in environmental activities that might include the CEWH owning infrastructure.

7. Who are potential proponents?

It is anticipated that project proponents could include:

- Community groups
- Aboriginal nation representative bodies
- Private landholders
- State government and agencies
- Catchment management authorities and Local Land Services
- Irrigation or agribusiness organisations
- Non-governmental organisations such as environmental groups.

To be eligible for funding, proponents must be able to enter into a contract with the Commonwealth as an individual, an incorporated entity (for example, companies, incorporated associations or Indigenous corporations) or government. Details of all eligibility requirements will be made publicly available once the framework for investing in environmental activities has been finalised.

8. Criteria to assess potential environmental activities

Once environmental activities have been assessed as eligible for funding and evaluated against the CEWH priorities, the choice of one activity over another would be based on a relative assessment of the expected benefits, costs, risks, and a comparison with alternative investment options.

Expected benefits from the investment include:

- improving the effectiveness of proposed Commonwealth environmental water use
- enhancing the CEWH's capacity to meet:
 - the environmental objectives of the environmental watering plan
 - Basin-wide annual environmental watering priorities
 - expected outcomes and water management strategies to maximise and achieve outcomes under the Basin-wide environmental watering strategy
 - Australia's obligations under relevant international agreements (for example, in relation to Ramsar wetlands or internationally listed species) and Commonwealth or state legislation regarding threatened or listed species, or related policies or programs such as the Australian Government's Threatened Species Strategy
- strengthening the evidence base to support the expected outcomes
- providing complementary social, economic or cultural benefits
- assessing the adequacy of proposed arrangements for monitoring and evaluating project outcomes.

Cost and resources required for the investment, including:

- the likely cost of the environmental activity, including ancillary costs, such as delivery charges for water purchases or ongoing operational and maintenance costs for works and the associated arrangements (noting that the CEWH will not commit to the ongoing costs of operating and maintenance but will continue to pay fees and charges associated with environmental water use).
- for any project involving construction of physical infrastructure, evidence of appropriate government approvals, advanced planning feasibility, and work place health and safety management arrangements.
- resource requirements for a water purchase or environmental activity, which could include feasibility studies, grant guidelines, partnership agreements and project management.
- the feasibility and practicability of the project considered against costs and project risks.

Risks of the investment, such as:

- potential risks of environmental damage
- potential third party impacts, such as flood damage or market impacts
- risks associated with the proponent, such as their degree of experience in undertaking similar projects
- risks associated with the ongoing maintenance of the investment
- risks of duplication or substitution with environmental activities undertaken by other entities.

The long-term sustainability of targeted outcomes, including:

- the existence and adequacy of long-term management arrangements and strategies for the targeted assets
- the accreditation and compliance assessment of any management plans.

Comparison with alternative investment options:

- the outcomes that could be obtained from a particular environmental activity compared to the outcomes that could be obtained from using those funds for a water purchase. This would assist to ensure investments provide value-for-money and that the opportunity cost of not having the funds available for another purpose is considered in investment decisions.

9. Funding arrangements

9.1 Joint funding arrangements

The CEWH is considering prioritising investment in environmental activities that are going to be undertaken in partnership with other entities, and that these entities will provide joint funding.

There is scope to improve environmental outcomes by jointly funding environmental activities that would not otherwise occur that could provide greater benefits for Commonwealth environmental water than would be achievable from the CEWH's funding contribution alone.

Any investments that involve physical assets would need to be carried out with a partner agency or entity, as the CEWH will not own or operate infrastructure.

When partnering with state agencies and investing in activities on public land, the CEWH could require a minimum level of joint funding from the state, including a commitment to any ongoing operational and maintenance costs (given that the CEWH will only pay fees and charges associated with use).

Case study

A current example of a partnership arrangement is the one between the CEWH and Renmark Irrigation Trust. This is a grant funded project for infrastructure works to support environmental water delivery by the Trust.

The project works to protect and restore floodplains in the Renmark Irrigation district following the signing of a five-year Partnership Agreement between the CEWH and the irrigation infrastructure provider, the Renmark Irrigation Trust. The partnership allows the delivery of Commonwealth environmental water to around six floodplains in the Renmark Irrigation area, using the Trust's extensive infrastructure during off-peak irrigation seasons (usually May to August).

It is anticipated that this watering will increase the vegetation and native fish populations, while restoring River Red gums, for the benefit of the environment and the many people - locals and tourists alike - who appreciate what's special about the region.

Under the Partnership Agreement, the CEWH is treated as a customer of the Trust on an equivalent basis to existing irrigators.

9.2 In-kind funding contributions

In-kind contributions are one type of support for projects that do not involve a cash contribution. Examples of in-kind contributions could include:

- goods provided by the proponent
- use of services and facilities such as delivery infrastructure
- professional services
- expertise in the form of staff time.

The availability of in-kind contributions will depend on the type of project under consideration, and must be agreed by the CEWH and regarded as necessary to carry out the project and achieve the project objectives.

Any in-kind contributions should be valued according to the accounting rules agreed by the CEWH and must also be incurred by the project proponent as part of the project.

10. Delivery arrangements

There are a number of ways in which the CEWO could invest in environmental activities, and the approach we use to fund environmental activities may depend on the type of activity that is being put forward. For example, grants or a procurement process. Any arrangements utilised by the CEWH will have to meet the requirements of all relevant existing legislation and associated rules including, but not limited to:

- The *Public Governance, Performance and Accountability Act 2013*
- The Commonwealth Grant Rules and Guidelines (2014)
- The Commonwealth Procurement Rules (2014).

In considering which delivery arrangement is best, we will consider cost effectiveness and value for money while getting the best possible environmental outcomes for the CEWH. We will also consider the broader issues of community and other benefits.

10.1 Grants

Grants are used to achieve government policy objectives and involve providing funding to third parties to deliver a range of outcomes, following an open call for project proposals.

- Grants could be one-off or offered through a program which may open for two or more application rounds a year.
- One-off grants to eligible proponents could be used where the CEWH intends to invest in only some parts of a broader existing project, or where the environmental activity requires the expertise of a specific proponent.
- Delivery arrangements could be put in place where partner organisations put forward a range of projects which they would deliver and manage. This may include the delivery partner managing and making payments to third parties on behalf of the CEWH, particularly where activities may be small scale but across a number of catchments (such as the construction of a series of carp exclusion screens).
- An investment prospectus could be developed which involves a call for proposals for specific activities that directly link to environmental watering priorities.

All grants paid by the CEWH must be considered value for money. The CEWH may consider setting a minimum value for grants and/or a maximum amount of funding that could be sought.

10.2 Procurements

Procurement relates to the process of acquiring goods and services. For example, if the CEWH needed expert advice relating to waterbird breeding in a specific wetland then these services may be procured using an existing panel or through an open approach to the market.

- The Department of the Environment and Energy manages and has access to a wide range of panel arrangements and Multi-Use Lists that exist as ongoing engagements between agencies and suppliers to provide goods and services.

- Based on what services may be required, estimated value and market, a procurement method such as an Open Tender or a Prequalified Tender may be used with an approach that involves seeking a Request for Quote, Request for Tender or an Expression of Interest to undertake the services required.

The fundamental procurement principle is value for money.

Attachment A: *Water Act 2007* review recommendations

The *Water Act 2007* was reviewed by an independent expert panel in 2014. The Panel considered a variety of stakeholder submissions to maintain or amend the provisions relating to the trade of Commonwealth environmental water and made the following recommendations.

Recommendation 15

The Panel recommends that section 106(2) of the Act be amended to allow trade revenue to be used for other environmental activities in addition to water acquisitions to maximise environmental outcomes from the use of Commonwealth environmental water, with the following safeguards:

- (a) only revenue generated from the trade of Commonwealth environmental water allocations (not Commonwealth environmental water entitlements) may be used for environmental activities other than acquisitions
- (b) any disposal of water and use of proceeds for non-water acquisition purposes must reasonably be expected to improve environmental outcomes from the use of Commonwealth environmental water
- (c) trading activity should not impact on the achievement of sustainable diversion limits in the long-term
- (d) trade revenue cannot be used to fund operational expenses of the Commonwealth Environmental Water Holder such as holding and delivery fees and charges.

Recommendation 16

The Panel recommends that section 106(1) of the Act be amended to remove the restriction on disposal of allocations that could be reasonably expected to result in forgoing future allocations, such as in continuous accounting systems.

Recommendation 17

The Panel recommends that section 114 of the Act be amended to require the Commonwealth Environmental Water Holder to report annually on trading decisions.

The Australian Government accepted in full the three recommendations relating to trade by the CEWH. The Water Amendment (Review Implementation and Other Measures) Bill 2015 was passed to implement those recommendations.

Under the amendments, the CEWH can sell water allocations where one of two conditions is met:

- 1) Allocations can be sold if they are not required during the water year and either:
 - a) cannot be carried over; or

- b) retaining the water is likely to result in forgoing future allocations due to account limits (section 106(2))

Proceeds can be used in the same way as other Special Account funds.

- 2) Allocations can be sold if the proceeds will be used to purchase water and/or invest in environmental activities, where the CEWH reasonably believes this will provide greater capacity to achieve environmental objectives from Commonwealth environmental watering than retaining the allocations (new section 106(3)). Investing in environment activities is subject to:
 - a) the allocations being sold in a catchment that the CEWH is satisfied, based on information published by the MDBA, was compliant with its sustainable diversion limit in the most recent water year for which there is information published. This provision has no effect until 2020 or later, after the first year that sustainable diversion limits take effect (new sections 106(5–6)).
 - b) environmental activities exclude paying holding and delivery fees and charges described in Water Act section 91 (new section 106(4)).

At the time of investing the funds raised by trading, the Water Act gives no preference to environmental activities over water purchases, except in the case of non-compliance with sustainable diversion limits. What this means is that the CEWH must use proceeds from sales of allocations to fund water purchases (rather than environmental activities) if information published by the Murray-Darling Basin Authority indicates that a catchment is not compliant with the sustainable diversion limit.

Attachment B: *Water Act 2007* provisions that enable CEWH trade and reporting requirements

106 Limitation on disposal of water and Commonwealth environmental water holdings

- (1) The Commonwealth Environmental Water Holder may only dispose of water or Commonwealth environmental water holdings in accordance with subsection (2) or (3).

Water or holdings that cannot be carried over, or that are likely to result in a reduced allocation

- (2) The Commonwealth Environmental Water Holder may dispose of water or Commonwealth environmental water holdings during a water accounting period if he or she reasonably believes that:
- (a) the water or the water holdings 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) either:
 - (i) the water or the water holdings cannot be carried over into the next water accounting period; or
 - (ii) a water allocation in respect of particular Commonwealth environmental water holdings is likely to be reduced (including to nil) if the disposal does not occur.

Proceeds of disposal used for new acquisitions or environmental activities

- (3) The Commonwealth Environmental Water Holder may dispose of water or Commonwealth environmental water holdings if:
- (a) the Commonwealth Environmental Water Holder uses the proceeds of the disposal for either or both of the following activities:
 - (i) acquiring water or Commonwealth environmental water holdings;
 - (ii) for a disposal of a water allocation—environmental activities; and
 - (b) if the disposal is of a water allocation and any of the proceeds of the disposal are used for environmental activities—the long-term annual diversion limit condition is satisfied in relation to the disposal (see subsections (5) and (6)); and
 - (c) in any case—the Commonwealth Environmental Water Holder reasonably believes, at the time of the disposal, that using the proceeds for activities of the kind mentioned in subparagraph (a)(i) or (ii) (if applicable) would improve the capacity of the Commonwealth environmental water holdings to be applied to meet the objectives of one or more of the following:
 - (i) the environmental watering plan;
 - (ii) a plan specified in the regulations in relation to an area outside the Murray-Darling Basin;

- (iii) 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.

Note: Paragraph (c) is modified in relation to water access rights acquired by the Commonwealth with amounts debited from the Water for the Environment Special Account (see subsection 86AE(2)).

- (4) For the purposes of subparagraph (3)(a)(ii) and paragraph (3)(b), environmental activities do not include paying a fee or charge of the kind referred to in paragraph 91(1)(a), (b) or (c), or subparagraph 91(1)(d)(i), (ii), (iii) or (iv), in relation to Commonwealth environmental water holdings.

Note: Section 91 is about regulated water charges.

- (5) For the purposes of paragraph (3)(b), the long-term annual diversion limit condition is satisfied in relation to a disposal of a water allocation if:
 - (a) before the disposal, the Authority had published information indicating whether the long-term annual diversion limit had been complied with for a water accounting period for the part of the water resources of the water resource plan area to which the water allocation relates; and
 - (b) the Commonwealth Environmental Water Holder is satisfied, at the time of the disposal and on the basis of information published as mentioned in paragraph (a), that, for the most recent water accounting period for which such information had been published, the limit had been complied with for that part of those water resources.
- (6) The long-term annual diversion limit condition is also satisfied in relation to a disposal of a water allocation if the Authority had not published information of the kind mentioned in paragraph (5)(a) before the disposal for any water accounting period.

114 Annual report

Annual report to be given to Minister

- (1) The Commonwealth Environmental Water Holder must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report on the Commonwealth Environmental Water Holder's operations during that year.

Contents of annual report

- (2) The Commonwealth Environmental Water Holder must include in the report particulars of the following:
 - (a) achievements against the objectives of the environmental watering plan;
 - (aa) for each disposal of water or Commonwealth environmental water holdings by the Commonwealth Environmental Water Holder during the year:
 - (i) sufficient information to identify the water or water holdings disposed of;
and
 - (ii) the amount of the proceeds of the disposal;
 - (ab) the purposes for which the proceeds of disposals of water or Commonwealth environmental water holdings have been used during the year;
 - (b) management of the Environmental Water Holdings Special Account;
 - (c) all directions that the Secretary of the Department, or the Minister, gave to the Commonwealth Environmental Water Holder during the year.

Annual report to be tabled in Parliament

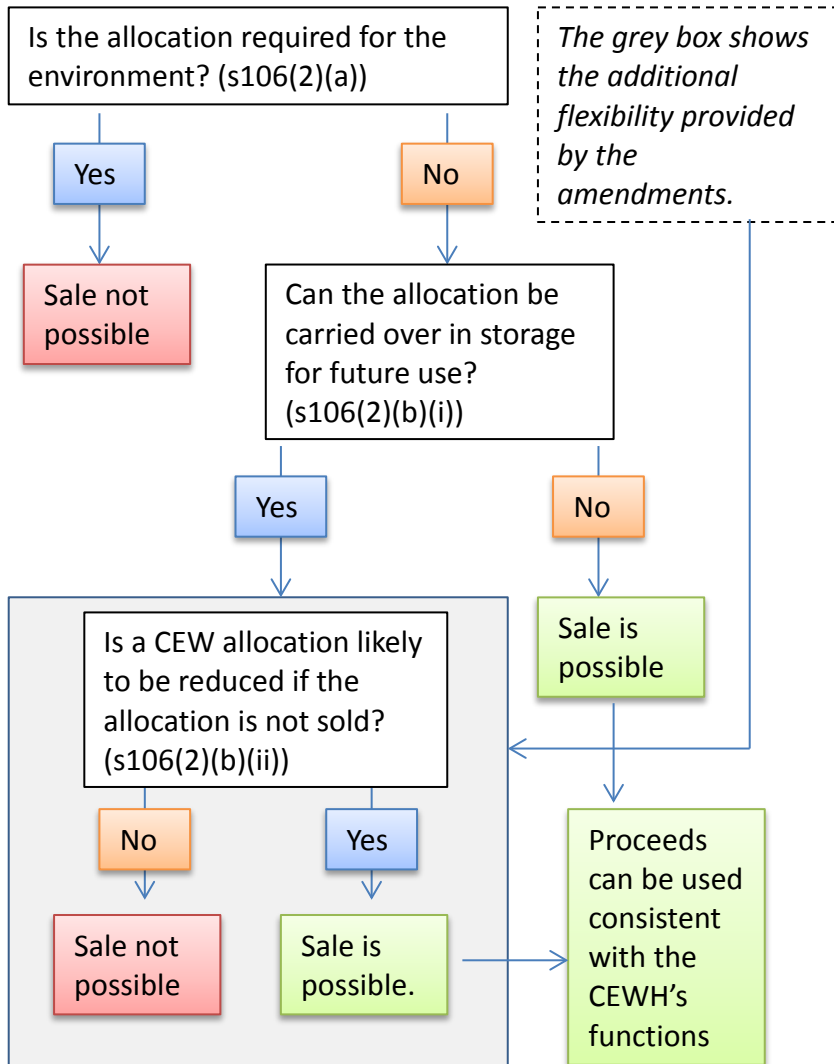
- (3) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Annual report to be given to Basin States

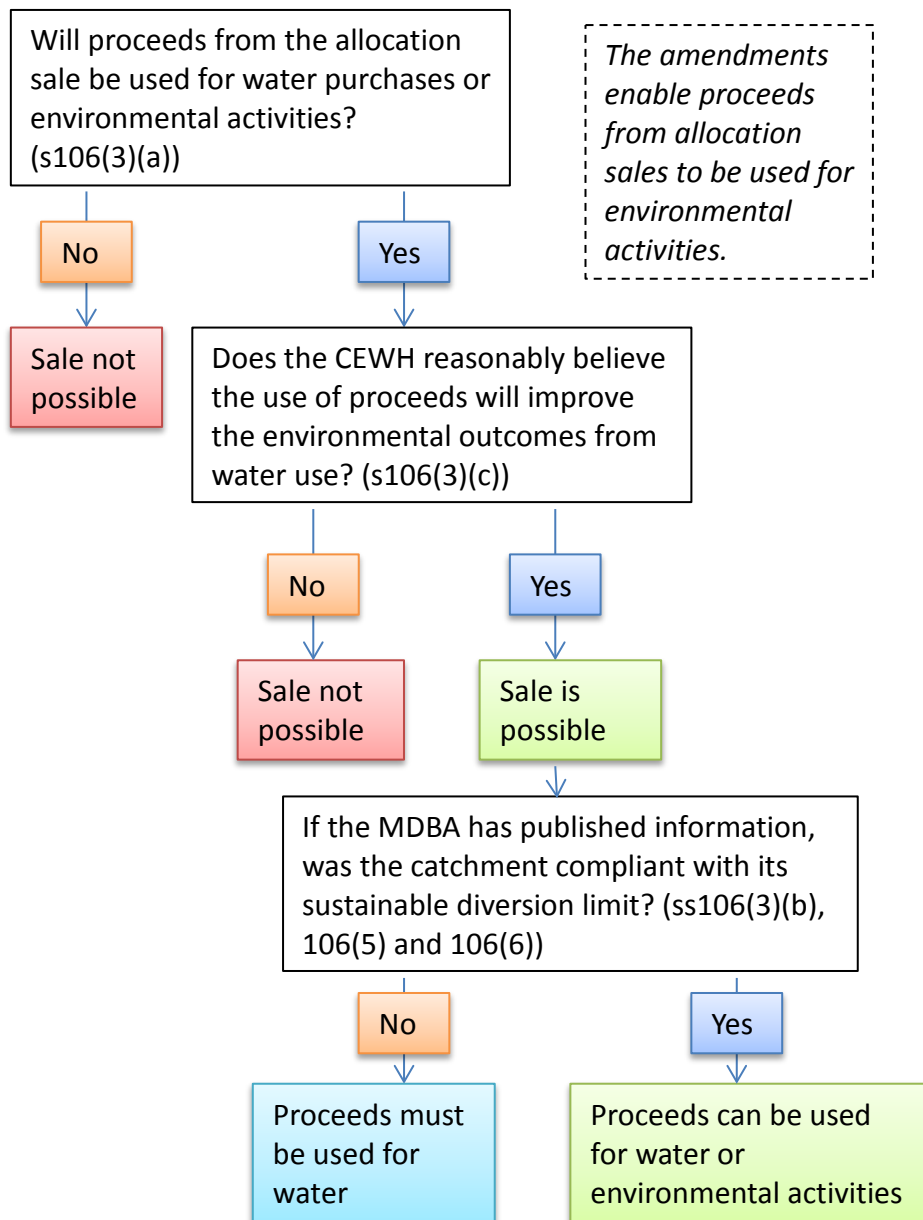
- (4) The Minister must cause a copy of each annual report to be given to the relevant State Minister for each of the Basin States on or before the day the report is first tabled in a House of the Parliament.

Attachment C: Flow charts demonstrating ways the CEWH can trade under the Water Act

Allocation trade where water is not required



Allocation trade for improved environmental outcomes



Entitlement trade for improved environmental outcomes

