



Commonwealth Environmental Water Office

PROTOCOLS FOR MANAGING TRADE OF COMMONWEALTH ENVIRONMENTAL WATER

VERSION 1.1

DECEMBER 2014

PROTOCOLS FOR MANAGING TRADE OF COMMONWEALTH ENVIRONMENTAL WATER

1. Introduction to protocols for managing trade of Commonwealth environmental water

The Murray-Darling Basin Plan (Basin Plan) contains water trading rules that govern how persons or agencies are to behave if they are aware of information that has not been made generally available to the public that could materially affect a person's decision to trade water. These rules come into effect on 1 July 2014.

The *Water Act 2007* (Water Act) provides authority to the Commonwealth Environmental Water Holder (CEWH) to trade Commonwealth environmental water. Trade of Commonwealth environmental water must be undertaken in accordance with s. 106 of the Water Act.

The CEWH is supported by staff in the Commonwealth Environmental Water Office (CEWO). CEWO officers are staff members of the Australian Government Department of the Environment (the Department) and rely on its administrative support, corporate and management functions, including accommodation and IT support. However, in most of its functions the CEWO operates independently from other divisions within the Department.

As part of a Commonwealth agency, the CEWH and CEWO staff are required to comply with the Basin Plan water trading rules. In conducting trade, the CEWH and CEWO staff also has corporate values which require it to behave in a way which is responsible, equitable, transparent and accountable. The CEWO's corporate values also require it to avoid engaging in any misleading, deceptive or unconscionable conduct and to avoid operating on the basis of information gained by virtue of its position as a government agency which could provide an unfair advantage over other market participants.

The CEWH has developed Protocols for managing trade of Commonwealth environmental water that respond to the requirements of the Basin Plan water trading rules; and which also reflect the CEWO's corporate values.

2. What do the Basin Plan water trading rules say?

The Basin Plan contains water trading rules 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. They also identify mechanisms that agencies can apply to assist in managing this obligation.

The water trading rules in summary

A person is not to trade water if that water's price or value could be reasonably expected to be materially affected by a decision that they are aware of that is not generally available.

3. Implications of the Basin Plan water trading rules for the CEWH and CEWO staff

In undertaking day-to-day business the CEWH and CEWO staff may be exposed to information that has not been made generally available to the market and inadvertently, or deliberately, use it to make decisions to trade, and gain subsequent benefit for the Commonwealth, individual staff members or external contacts.

If aware of a decision, which constitutes a water announcement, before it is made generally available, the CEWH cannot trade if that water announcement would materially affect a person's decision to trade. Furthermore, some of the decisions the CEWH makes constitutes a water

announcement. Therefore CEWO staff need to ensure that the information they receive, and provide to others, is managed appropriately.

4. What is a 'trade'?

The definition of a trade under the Basin Plan is much broader than just the commercial trade of water allocations or entitlements. Trade includes transfers (zero dollar trades) of water access rights between accounts, locations and account holders. It also includes transfers between accounts owned by the same person and the establishment of leasing arrangements and tagged water access entitlements. Therefore, the Basin Plan water trading rules affect transfers to delivery partners for environmental watering, and transfers for water account management, not just the CEWH's decisions to buy or sell water.

5. The CEWH and CEWO's corporate values

The CEWH and CEWO staff has corporate values which require it to behave in a way which is responsible, equitable, transparent and accountable. These corporate values are enshrined in legislation covering financial management arrangements for Commonwealth agencies; freedom of information; and policies relating to information management, auditing, employee conduct and accountability.

In particular, the CEWH and CEWO staff has to abide by the APS Code of Conduct, which requires the identification of, and steps required to avoid, conflicts of interest. The APS Code of Conduct also requires individuals to not make improper use of inside information. The relevant components of the APS Code of Conduct require staff to:

- 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.

6. Development of protocols for managing trade of Commonwealth environmental water

In developing the Protocols the CEWH has made a number of assumptions about its behaviour in the market.

The CEWH has assumed that commercial trade of Commonwealth environmental water will be at the margins, with the main focus being on delivery of environmental water. The CEWO has developed the protocols to minimise the cost of their application in line with perceived risks, and assumptions about how the water trading rules will apply. The CEWH has assumed that the majority of its transfers (zero dollar trades) of water access rights will not have a material effect on the price or value of water access rights. Further, where these transfers do not have a material effect, the CEWH does not intend to make them the subject of a water announcement.

In developing the Protocols, the CEWO assessed that the greatest risk of breaching the trade rules arises from CEWO staff interacting with staff from the Water Division. Amongst other things, the Water Division is responsible for recovering water for the environment. The risks are reciprocal as either the CEWO or the Water Division may be aware of announcements that

have not been made generally available, which if disclosed, may prevent the other party from undertaking their trading activities.

The CEWH sought guidance from the Murray-Darling Basin Authority; and the Australian Securities and Investments Commission (ASIC) in developing the Protocols. The CEWH also consulted internally with governance and legal experts at the Department of Environment on the appropriateness of the Protocols for managing information within the Department.

The final draft Protocols document was externally reviewed by Ernst and Young. In undertaking this review Ernst and Young compared and contrasted the protocols to other external governance regimes; and protocols set up for other trading regimes including electricity, gas and carbon. Ernst and Young also stress tested the protocols for possible breaches.

Through their review Ernst and Young determined that the Protocols were reasonably robust for the known circumstances in which the CEWH would be trading (i.e. monetary trading is at the margins of the CEWH's operations). Ernst and Young made a number of recommendations for enhancing the effectiveness of the Protocols, including that the CEWH ensures that record-keeping and audit processes provide checks and balances that enable the demonstration of compliance. The Protocols document has been refined to incorporate this recommendation, and will continue to be refined as the CEWO trades, and if circumstances change.

7. Definitions

For the trade of Commonwealth environmental water, the key sections of the Basin Plan water trading 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

12.52 – Chinese Wall arrangements for agencies

a) Material effect

A water announcement is taken to have a material effect on the price or value of water access rights if the announcement is reasonably likely to influence persons who commonly acquire water access rights in deciding whether or not to acquire or dispose of such rights.

b) Water announcements

A water announcement is defined very broadly by Section 12.49(b) of the Basin Plan. It includes carryover and allocation announcements made by water authorities, and a public announcement by a Commonwealth agency or a Basin State agency of:

- a decision that relates to actions that an agency is undertaking or may, or will, undertake; and
- can reasonably be expected if made generally available to have a material effect on the price or value of water or water access rights.

This definition encompasses a wide range of announcements relating to policies, programs and legislation, and announcements relating to particular trades.

c) Chinese walls

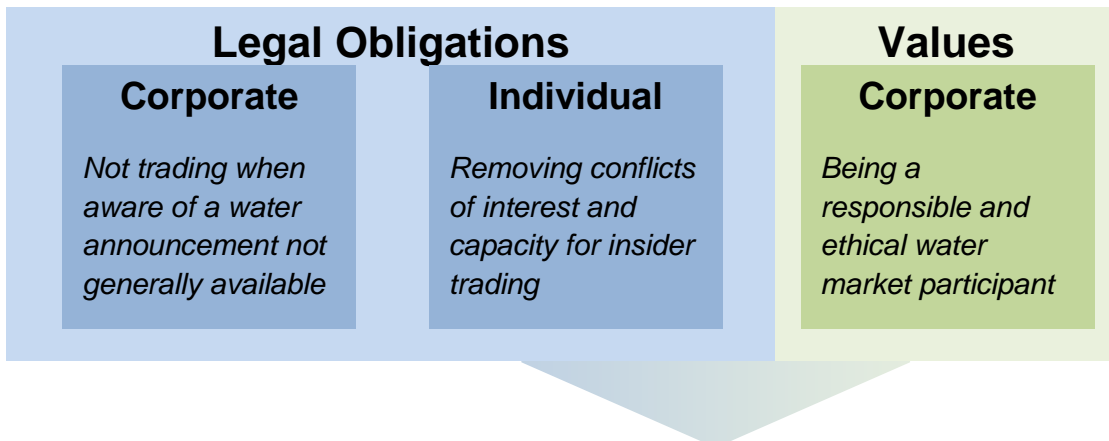
Section 12.52 of the Basin Plan provides a mechanism for agencies to manage these requirements internally by instituting a Chinese wall arrangement. A Chinese wall is a system or process for managing the flow of information between different parts of an organisation.

d) Trading strategy

Section 12.49(3) (b) of the Basin Plan allows a person to continue to undertake trade, while aware of a water announcement that has not been made generally available, if the water announcement concerns a trade which is to be undertaken consistent with and conducted pursuant to a trading strategy that has been the subject of water announcement and is generally available.

The Murray Darling Basin Authority is preparing guidelines for the water trading rules which, when available, are expected provide further explanation of defined terms.

Figure 1: Trade Protocols Framework.



Framework	
Legislative Requirements	Protocols
<p>Basin Plan</p> <p>12.52 – Chinese Wall <i>Stop disclosure of information occurring</i></p> <p>12.50 – Being aware of a water announcement <i>Recognising when a disclosure could occur and when it has occurred</i></p> <p>12.51 – Not trading when aware of a water announcement <i>Rules governing what has to happen when a disclosure occurs</i></p>	<p>Information sharing arrangements</p> <p>Meeting Protocols</p> <p>External meeting register</p> <p>Electronic Security</p> <p>Physical document security</p> <p>Water Trade Strategy</p> <p>Decision to Trade Water</p> <p>Water Trade Announcement and Entering into a contract</p> <p>Appropriate response to a <i>disclosure</i></p> <p>Effect of a <i>disclosure</i> on trade</p>
<p>APS Code of Conduct</p> <p><i>Managing conflicts of interest</i></p> <p><i>Managing Inside information</i></p>	<p>Avoiding and managing conflicts of interest</p> <p>Action when there is a conflict of interest</p> <p>Avoiding and managing inside information.</p>

PROTOCOLS FOR MANAGING TRADE OF COMMONWEALTH ENVIRONMENTAL WATER

Objectives

1. To manage information sharing between staff in the Commonwealth Environmental Water Office (CEWO) and the Department of Environment (the Department).
2. To manage information sharing with organisations and/or individuals who may have information (inside information) relevant to trading decisions that has not been made generally available.
3. To avoid the possibility of trading when aware of a water announcement that has not been made generally available.
4. To provide for trading activities to be conducted in the absence of inside information, and actual conflicts of interest, or perceived conflicts of interest that are reasonably founded.
5. To provide a way to manage any conflicts if and when they occur.
6. Appropriate record-keeping and audit processes to demonstrate compliance.

A. Information sharing and management between CEWO and the Department:

A1: Chinese wall arrangements between the CEWO and the Water Division.

- a) The Commonwealth Environmental Water Holder (CEWH) will communicate with Water Division executives advising them of the CEWH and CEWO staff's new obligations under the Basin Plan water trading rules and to seek their cooperation in helping to ensure these obligations are met.
- b) The Water Division is developing water trading instructions to manage their requirements under the Basin Plan trading rules which will prevent the CEWH and CEWO staff from receiving information which has not been made generally available and could constitute a water announcement.

A2. Meeting protocols

- a) CEWO staff will adhere to the following protocols when meeting formally and informally with other Departmental staff.

Prior to a meeting the CEWO representative will:

- b) Advise meeting participants of the CEWO representatives' obligation that they should avoid receiving information which has not been made generally available and could constitute a water announcement.
- c) Ask meeting participants to provide the CEWO representative warning to allow them to withdraw from a meeting agenda item, or, not attend the meeting in extreme cases.

During the meeting:

- d) In the event that the potential for disclosure of a water announcement that has not been made generally available becomes apparent, the CEWO representative should advise that Chair that he/she believes this to be the case and withdraw from the discussion.

- e) If exposed to information that the CEWO representative considers may constitute a water announcement, ask if it is to be a water announcement, and if so, whether that water announcement has been, or will be made, generally available to the public.
- f) Any withdrawal of the CEWO officer from the meeting should be noted in the minutes.

After the meeting:

- g) If a water announcement has been disclosed, the CEWO representative must make note of what was discussed and advise the CEWH. The information will also be recorded on an inside information register to be maintained by the CEWO. The CEWH is to take the appropriate course of action. See Section C below.

A3. Information sharing

- a) When engaging with staff of the Department in the ordinary course of their duties the CEWH and CEWO staff must take reasonable steps to prevent Departmental staff from sharing information that could be considered a water announcement that has not been made generally available.
- b) If information that could be considered a water announcement has been disclosed, the CEWO representative must make note of what was discussed and advise the CEWH of the disclosure of a possible water announcement and record it on the CEWO inside information register. The CEWH is to take the appropriate course of action. See Section C below.
- c) When engaging with staff of the Water Division in the ordinary course of their duties the CEWH and CEWO staff must take reasonable steps to prevent the sharing of information with Water Division staff that could be considered a water announcement that has not been made generally available.
- d) If the CEWH or CEWO staff has disclosed information to other staff in the Water Division then the CEWH may take any of the following actions:
 - i. Inform the recipient of their obligations under the Basin Plan water trading rules;
 - ii. Make the water announcement generally available; if it is within the CEWH's power to do so; or,
 - iii. Any other appropriate action.

A4. Electronic security

- a) Access to CEWO internal electronic files will be restricted to the CEWH and CEWO staff.
- b) CEWO staff will not have access to the electronic files of other areas of the Department.
- c) A restricted electronic mailbox will be used for the conduct of commercial trade activities.
- d) If a facsimile machine is required for commercial trade activities, it will be secure.
- e) The visibility of documents related to commercial trade will be restricted in the CEWO's electronic management systems.

A5. Physical document security

- a) Staff members who work on, or assist with preparation of commercial trade documents, should ensure that printed copies of the document in various forms of draft are classified and treated as in confidence documents and are secured appropriately.
- b) At all times, when leaving their workspace unattended, individual staff members should ensure that no material left in view may include information that could be considered to be of value as inside information in a trading action or is considered commercial-in-confidence.
- c) This information will be removed from sight and stored securely, consistent with requirements for storing commercial-in-confidence information.
- d) A clear desk policy is to be enforced at night.

B. Information sharing and management between CEWO and external stakeholders

- a) The CEWH will write to state government agencies; water authorities and other relevant stakeholders seeking their cooperation in helping to ensure the CEWH can meet his / her obligations under the Basin Plan water trading rules. The CEWO will engage with these agencies on how they intend to comply with the Basin Plan water trading rules, with a view to discussing arrangements for the management of information, and communication of information, that constitutes a water announcement

B1. Meetings

- a) The same information sharing arrangements and meeting protocols should be put in place as for the management of internal information.
- b) For external meetings, if there are no formal meeting notes, notes will be kept by the CEWO representative that reflect what was discussed and declare whether there were any potential points where information which may constitute a water announcement, that has not been made generally available may have been disclosed. Any potential water announcements that have not been made generally available will be recorded on the CEWO inside information register.
- c) A register of meetings and workshops in which CEWO representatives take part with external groups or participants will be established.

B2. Information sharing

- a) When engaging with stakeholders in the ordinary course of their duties CEWO staff must take reasonable steps to prevent the stakeholder sharing information regarding a water announcement that has not been made generally available.
- b) If a water announcement has been disclosed, or information which the CEWO staff member could reasonably expect to be a water announcement the CEWO representative must make note of what was discussed and advise the CEWH of the disclosure of a possible water announcement. The CEWH is to take the appropriate course of action. See Section C below. The staff member must also record the disclosure on the CEWO inside information register.

- c) If the CEWH or CEWO staff has disclosed a water announcement that has not been made generally available to stakeholders then the CEWH may take any of the following actions:
 - iv. Inform the recipient of their obligations under the Basin Plan water trading rules;
 - v. Make the water announcement generally available; if it is within the CEWH's power to do so; or,
 - vi. Any other appropriate action.

C. Avoiding and managing exposure to water announcements

C1. Water trade strategy

- a) The CEWO will prepare and publicly release a water trading strategy consistent with s 12:50 of the Basin Plan. The trading strategy will include the CEWO's annual plans for Commonwealth environmental water use options and trade updates.

C2. Decision to trade water

- a) In preparing a recommendation to the CEWH to trade, a checklist will be completed that requires consideration of the potential for a breach of the Basin Plan water trading rules:
 - i. Whether the CEWO is aware of any water announcements by the CEWH, the Department, the MDBA, or any other Commonwealth or Basin State agency, which has not been made generally available and is not covered by a water trade strategy.
 - ii. Whether the information in the announcement could reasonably be expected to have a material effect on the price or value of the water access right to be traded if it were to be made generally available.
- b) If the answer to (i) and (ii) is yes the CEWH will not trade until the water announcement is made generally available, except where:
 - i. The water announcement relates to a particular trade that is consistent with a trading strategy which has previously been the subject of a water announcement that has been made generally available.
- c) Based on the check list, any recommendation to trade will contain a declaration stating that CEWO staff are not aware of a water announcement that would have a material effect on a person's decision to trade with respect to the water entitlements or water allocations being traded.
- d) If an announcement that will have a material effect is known but the announcement relates to a trade which will be consistent with and is to be conducted pursuant to a previously announced trading strategy this will be declared in the recommendation, however this will not stop a trade taking place.
- e) A decision by the CEWH to trade water will acknowledge the declaration. This decision will then constitute a water announcement not yet made available, until the decision is publicly announced. The CEWH will ensure that any decisions that are water announcements will be made generally available.

C3. Water trade announcements and entering into a contract and lodging trade forms

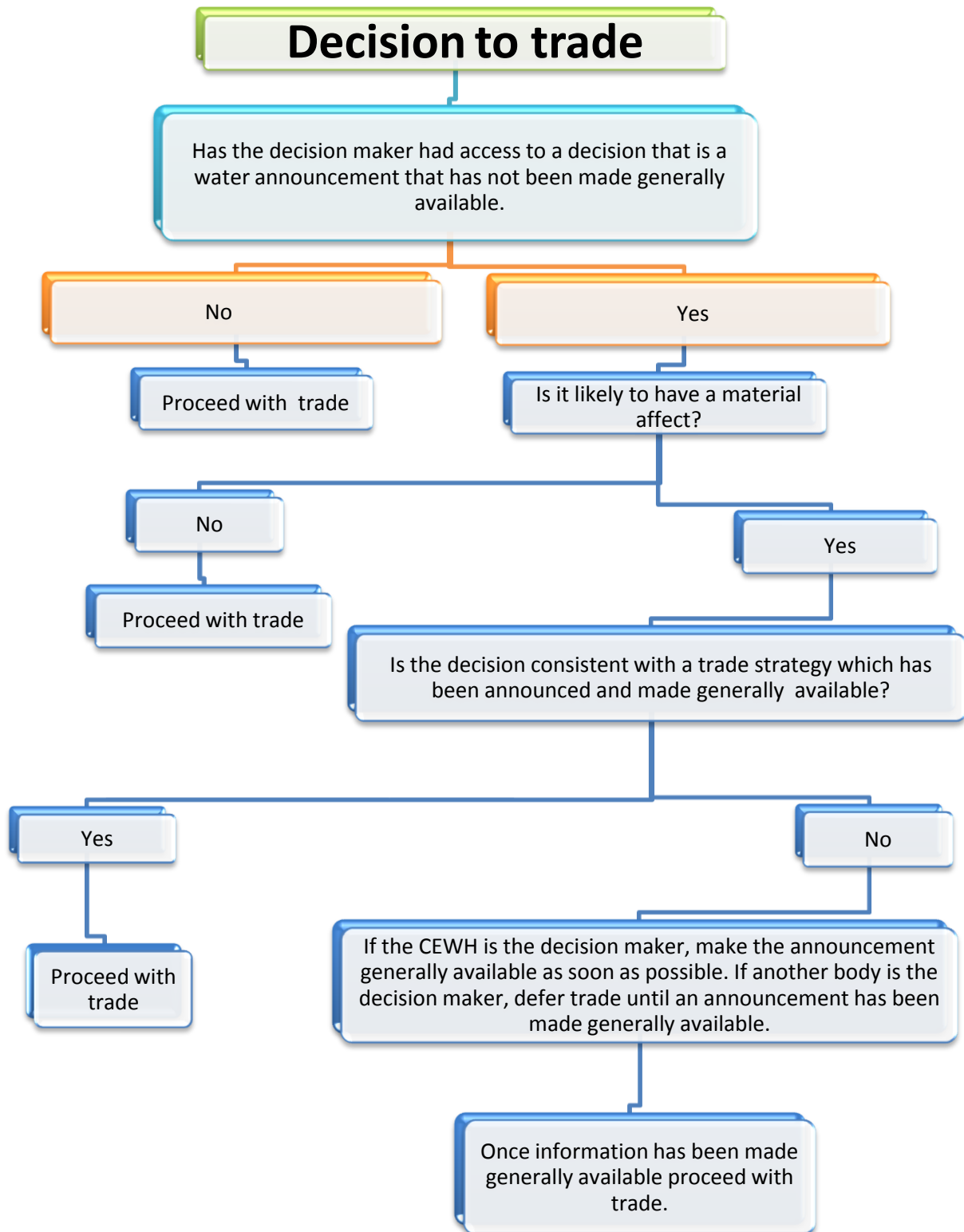
- a) Any recommendation that the CEWH enter into a contract to trade or apply to an approval authority or registration authority will recertify that no known water announcement, that will have a material effect, influences the trade, or that the announcement relates to a trade which will be consistent with and is to be conducted pursuant to a previously announced trading strategy this will be declared in the recommendation.

D. Appropriate response to a disclosure of information

D1. Appropriate response to a disclosure of information

- a) In the event that information that is the subject of a water announcement that has not been made generally available is known to have been disclosed (with either the CEWH or CEWO staff as the discloser or recipient of information), the following course of action needs to be taken:
 - i. The CEWH is to be advised of the disclosure and the disclosure is to be recorded on the inside information register.
 - ii. Determine if the water announcement is reasonably likely to have a material effect on the price or value of water access rights.
 - iii. Determine if the announcement relates to a trade which is to be conducted consistent with a previously announced trading strategy which has been made generally available.
- b) If the answer to ii is yes and iii is no, and the CEWO representative was the recipient of the information, the CEWH will undertake the following actions:
 - i. the CEWH will make the water announcement generally available; if it is within the CEWH's power to do so; and
 - ii. the CEWH will not enter into a contract to trade, or apply to an approval authority or registration authority in relation to the trade, until the information has become generally available.
- c) If the CEWH or CEWO staff has disclosed the information to a third party then the CEWH may take any of the following actions:
 - i. Inform the recipient of their obligations under the Basin Plan water trading rules;
 - ii. Make the water announcement generally available; if it is within the CEWH's power to do so; or,
 - iii. Any other appropriate action.

Figure 2: CEWO Trade Decision Process



E. Corporate values

- a) When engaging in commercial trade, the CEWH and CEWO staff will behave in a way which is responsible, equitable, transparent and accountable. The CEWH and CEWO staff will also uphold the APS values, and adhere to the APS code of conduct as a condition of employment. In particular, the CEWH and CEWO staff will avoid engaging in any misleading, deceptive or unconscionable conduct and will avoid operating on the basis of information gained by virtue of its position as a government agency which could provide an unfair advantage over other market participants. These circumstances may apply even if the information is not in contravention of the Basin Plan water trading rules, for example, if the CEWH or CEWO staff is aware of a firm proposal that is not yet a decision.

E1. Managing Conflicts of Interest and Confidentiality

- a) A conflict of interest register will be maintained and will be used to identify any current or future risk of conflict of interest situations within the CEWO, including conflicts which are relevant to commercial trade of Commonwealth environmental water.

An officer working within the CEWO must:

- b) Sign a conflict of interest and confidentiality statement which sets out whether they, or their immediate family: hold any water licences; land; have any personal relationships which might be, or be perceived to be, a conflict of interest; or other relevant interests in areas that the Commonwealth has its environmental water holdings.
- c) If a conflict or a perceived conflict exists, the catchment and type of conflict must be disclosed and entered onto the CEWO conflict of interest register.
- d) Strive to avoid situations in which there may be actual, potential or perceived of conflicts of interest, including not allowing themselves to be improperly influenced by family, personal or business relationships.
- e) Avoid placing themselves in a position where there is the potential for claims of bias.
- f) Immediately advise their immediate manager of any information that may constitute a conflict of interest that has not previously been disclosed, and update the Conflict of interest register.
- g) Not seek or receive hospitality, gifts or benefits from a person likely to engage in the water market.
- h) Maintain appropriate confidentiality with regard to management of Commonwealth environmental water.

E2. Action when there is a conflict of interest

- a) The staff member cannot be directly engaged in the commercial trading process, including seeking approval to approach the market and sale or purchase activity.
- b) This decision is to be noted on the Conflict of Interest register and all Directors of CEWO are to be made aware of the potential conflict and apply common sense and discretion in working with the staff member and ensuring they are isolated from all knowledge or involvement with the commercial trading process.
- c) Potential breaches of the APS Code of Conduct are to be dealt with in accordance with the Department's *Conduct and Ethical Behaviour Framework* specifically the *Procedures for*

Suspected Breaches of the APS Code of Conduct.-Serious potential breaches of criminal legislation are to be dealt with in accordance with the policy document, *Allegations of Fraud and Criminal Behaviour.*

E3. Managing Inside information

When engaging in commercial trade of Commonwealth environmental water, an officer working within the CEWO must:

- a) Strive to avoid situations in which inside information may be received.
- b) Be aware of circumstances when they are likely to receive inside information and take reasonable steps to prevent this information from being shared.
- c) Be aware of circumstances when they are likely to receive knowledge of the future water market activities of another water market participant, and take reasonable steps to prevent this information from being shared.
- d) Immediately advise the CEWH of any information that may constitute inside information that may not have been previously disclosed, and update the inside information register.
- e) Not make improper use of inside information to gain benefit or advantage, particularly as it relates to decisions to commercial trade of Commonwealth environmental water.
- f) In the course of their duties, not use their position with the CEWO to solicit information about the water market intentions of others that has not been made generally available to the market, for the purpose of informing commercial trade of Commonwealth environmental water.

E4. Action when aware of inside information

- a) The staff member may be excluded from the trading process, including seeking approval to approach the market and sale or purchase activity.

F. Sanctions for breaches of the APS Code of Conduct

The Department has formal processes in place for handling potential breaches of the APS Code of Conduct and potential criminal behaviour by employees. These processes are outlined in the *Conduct and Ethical Behaviour Framework* available on the *Code of Conduct and Ethics* page of the intranet under the *People* menu and on the Departments public website. This framework is guided by the *Public Service Act 1999*, the *Public Service Regulations 1999* and the *Australian Public Service Commissioner's Directions 2013*.

F1. Reporting alleged and/or suspected breaches of the APS Code of Conduct

- a) If an employee becomes aware of behaviour that appears to be inconsistent with the APS Code of Conduct they have a responsibility to act, either by.
 - i. Informing their EL1 manager or above; and/or
 - ii. Informing/discussing the matter with the department's Workplace Behaviour and Conduct Unit (WBCU).

The Workplace Behaviour and Conduct Unit

Provides assistance to managers and employees with concerns raised about the workplace conduct and behaviour of departmental employees and supports the department's legal and ethical standards of conduct

Conducts preliminary inquiries and assessments of allegations made about the conduct and behaviour of departmental employees and makes recommendations to the Director, Workforce Capability and Performance Section (WCPS) and Primary Delegate about any further action that may be required in the circumstances

Closely liaises with all areas of the Department and other Commonwealth agencies including the Australian Public Service Commission and the Merit Protection Commissioner, about APS Code of Conduct and ethical behaviour issues

Provides education, guidance and advice to departmental employees and managers on the APS Code of Conduct and Fraud awareness initiatives to promote integrity in the performance of employees duties, in departmental processes and procedures and in the use of the department's resources and Information and Communications Technology (ICT) systems

Reports on trends and systemic policy, process and/or procedural deficiencies identified during investigations to positively assist with the Department's strategic direction.

F2. Investigating alleged and/or suspected breaches of the APS code of conduct

- a) WBCU staff have responsibility for making initial inquiries into and assessing allegations received by the department about suspected breaches of the Code of Conduct by departmental employees.
- b) When allegations of suspected breaches of the Code of Conduct are received, WBCU staff will in most cases undertake discreet and confidential preliminary inquiries into the matter to assess the issues raised and make recommendations to the Director Capability and Performance Section (CPS) as to any further action that may be required or appropriate in the circumstances.
- c) Initial preliminary inquiries are in most cases essential to enable a thorough and informed assessment of the issues with a view to establishing whether the allegations may be frivolous and/or vexatious and/or lacking in substance or merit, or if further action may be required either through less formal administrative action/mechanisms or through a formal Code of Conduct investigation process under these procedures.
- d) It is important for employees to be aware that an allegation made that an employee is suspected to have breached the Code of Conduct, does not automatically or necessarily mean that a formal Code of Conduct investigation process under these procedures is required or will be conducted. In many cases less formal management action such as counselling, further training and development and/or other people management practices may be adopted where considered appropriate to the circumstances to address and resolve the matter.
- e) Examples include cases where the suspected breach is considered to be more minor in nature, in cases where the employee admits to the behaviour of concern and/or admits that their behaviour fell short of the department's conduct and ethical behaviour expectations and the APS Code of Conduct.

- f) Where the Director WCPS considers that the circumstances of a particular matter warrants the commencement of a formal Code of Conduct investigation process under these procedures the matter will be referred to the Primary Delegate for consideration of the commencement of a formal Code of Conduct investigation process. Where the Primary Delegate determines that a formal Code of Conduct investigation process is required an Investigator will be appointed by the Primary Delegate to conduct the formal Code of Conduct investigation process. The Investigator may be an external consultant or another APS employee.
- g) If at the completion of a formal Code of Conduct investigation process a departmental employee is determined to have breached the APS Code of Conduct sanctions may be imposed. The standard of proof used by the Delegate in determining whether a breach of the APS Code of Conduct has or has not occurred is the 'balance of probabilities' civil standard of proof. This means that the Delegate must be satisfied that a breach is more probable than not. This civil standard of proof differs from the criminal standard of proof which is 'beyond reasonable doubt'.

F3. Sanctions for breaches of the APS Code of Conduct

- a) If a Delegate has found that an employee has breached the APS Code of Conduct, the Delegate may also make a decision on the imposition of sanction/s. Sanctions available to the Delegate include:
 - i. termination of employment;
 - ii. reduction in classification;
 - iii. re- assignment of duties;
 - iv. reduction in salary;
 - v. deductions from salary, by way of fine; and
 - vi. a reprimand.
- b) The Public Service Regulations 1999 provide that an Agency Head may suspend an APS employee if, on reasonable grounds, the Agency Head believes:
 - i. the employee has, or may have breached the Code of Conduct
 - ii. suspension is in the public, or the Agency's, interest.
- c) A Delegate of the Secretary may give consideration to suspending an employee from duties, with or without remuneration or temporarily transferring the employee to another area of the department, either prior to or after the commencement of a formal Code of Conduct investigation process.

G. Record Keeping

- a) CEWO staff will sign a conflict of interest and confidentiality statement which sets out whether they, or their immediate family: hold any water licences; land; have any personal relationships which might be, or be perceived to be, a conflict of interest; or other relevant interests in areas that the Commonwealth has its environmental water holdings.
- a) The CEWH and CEWO staff will update, as necessary, a register of conflicts of interest and receipt of inside information.
- f) In preparing a recommendation to the CEWH to trade, a checklist will be completed that requires consideration of the potential for a breach of the Basin Plan water trading rules.
- g) Based on the check list, any recommendation to commercially trade or transfer water will contain a provision stating that CEWO staff are not aware of a water announcement that would have a material effect on a person's decision to trade with respect to the water entitlements or water allocations being commercially traded or transferred.
- h) The CEWH will make his / her own declaration that he / she is not aware of a water announcement that would have a material effect on a person's decision to trade with respect to the water entitlements or water allocations being commercially traded or transferred.
- i) A register of meetings and workshops in which CEWO representatives take part with external groups or participants will be established.
- j) The CEWH will write to water authorities and other relevant stakeholders seeking their cooperation in helping to ensure the CEWH can meet his / her obligations under the Basin Plan water trading rules.
- k) The CEWO Environmental Water Management System will allow for a record to be kept of the date and time of a commercial trade and transfer decision; and announcement of a commercial trade.

Table 1: Record Keeping

Item
1. Staff member declaration of conflict of interest statement
2. Register of conflicts of interest and inside information.
3. CEWO staff quick reference guide on their obligations as a result of the Basin Plan water trading rules
4. Recommendation to commercially trade check list
5. Declaration paragraph in any recommendation to commercially trade or transfer
6. Register of formal water related meetings and working groups
7. Letters to water authorities

I. Staff Training

- a) Training to be given to all CEWO staff, and staff in other Divisions of the Department (as relevant), in how to apply the protocols.
- b) A record will be kept of all staff who have attended the training.
- c) CEWO staff will be provided with a quick reference guide on their obligations as a result of the Basin Plan water trading rules which they can refer to when exchanging information internally (within the Department) and externally.

H. Audit

- a) The record keeping outlined above will allow for the CEWH to maintain an audit trail to demonstrate compliance with the Basin Plan water trading rules.
- b) Auditing of compliance of the CEWH and CEWO staff with the protocols, once they are in place, will be undertaken by the Department of Environment Audit Committee.

Revision history

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