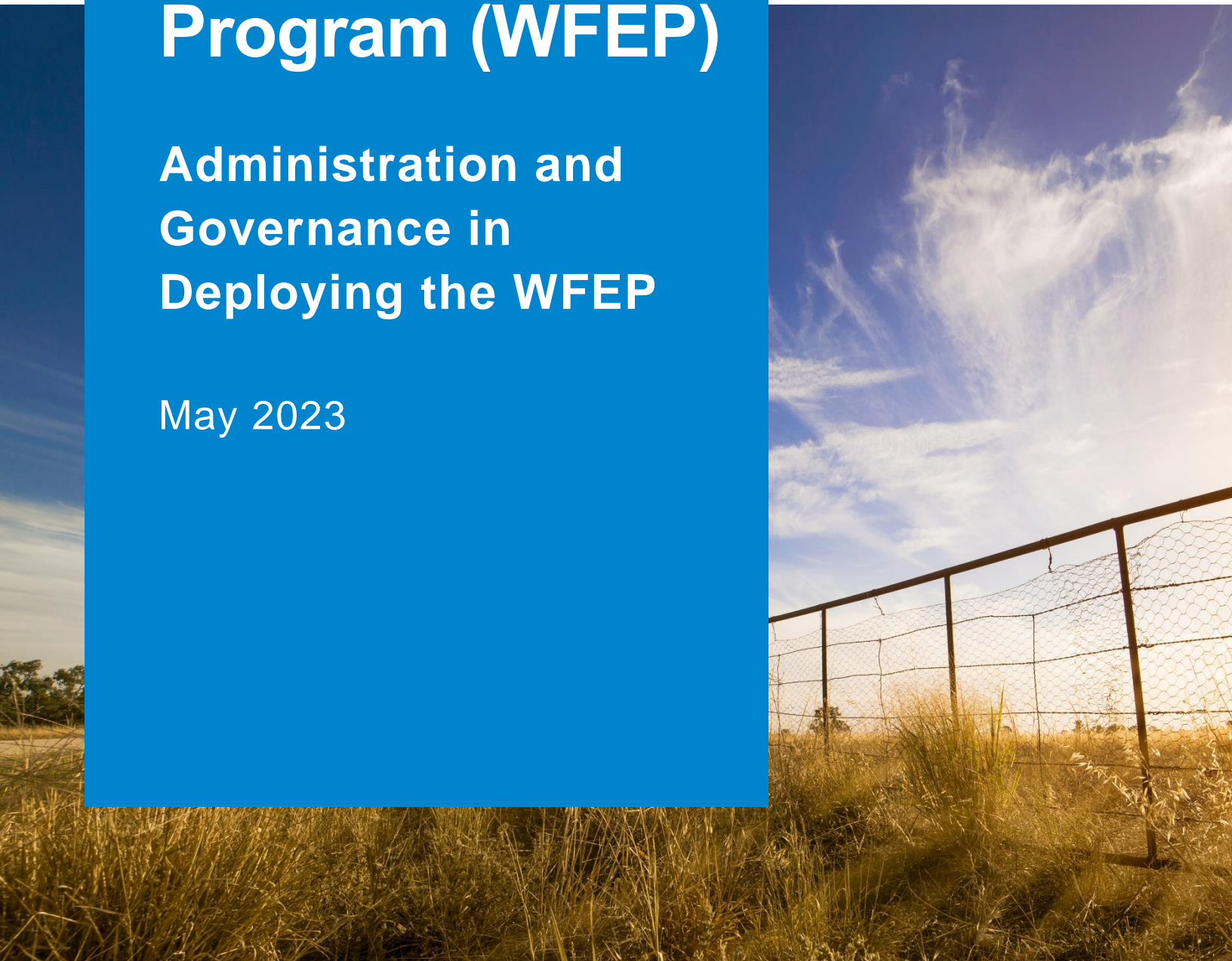




# Water Futures Efficiency Program (WFEP)

Administration and  
Governance in  
Deploying the WFEP

May 2023



## Contents

<b>Executive summary</b> .....	<b>2</b>
<b>About Waterfind</b> .....	<b>4</b>
<b>The Water Futures Efficiency Program</b> .....	<b>5</b>
<b>Deed of Standing Offer</b> .....	<b>6</b>
1. Standing Offer to deliver Water Sharing Option Agreements .....	6
2. Payment Guidelines .....	6
3. Execution of the Water Covenant and Option Mechanism .....	7
4. Records and Audit .....	7
5. Reporting .....	7
6. Insurance .....	8
7. Governance requirements .....	8
<b>WFEP Program Management</b> .....	<b>10</b>
1. Proponent intention registration.....	10
2. Proponent Product Disclosure Statement and option to commit water .....	11
3. Delivery Partner due diligence and Proponent Funding Agreement .....	11
4. Water Covenant and Option Mechanism engagement and registration .....	11
5. Proponent Program Establishment Payment .....	12
6. CEWH annual environmental watering projects identification .....	12
7. Delivery Partner promotion of environmental projects.....	12
8. Post-selection Proponent option payment.....	13
9. Water transfer to CEWH.....	13
<b>Further considerations</b> .....	<b>14</b>
<b>Concluding remarks</b> .....	<b>18</b>

# Administration and Governance in Deploying the WFEP

## Executive summary

This paper proposes a mechanism for the administration and governance of the Water Futures Efficiency Program (WFEP), building upon the suggestions made in the earlier paper from Waterfind titled "Waterfind 2023-24 Pre-Budget Submission" dated January 2023.

Given the critical importance of the Program, high standards of governance and administration are essential.

One option for the WFEP program management could be through accredited and vetted program 'Delivery Partners' who adhere to certain WFEP delivery standards.

Furthermore, to ensure sound governance, financial probity, and systems integrity, the Program could be established using an over-arching 'Deed of Standing Offer' that would establish essential processes, terms and conditions. These relate to seven areas:

1. Standing Offer to deliver Water Sharing Option Agreements
2. Payment Guidelines
3. Execution of the water covenant and option mechanism
4. Records and audit
5. Reporting
6. Insurance
7. Governance requirements

The WFEP program management process could involve the following steps:

1. Proponent intention registration
2. Proponent Product Disclosure Statement and option to commit water
3. Delivery Partner due diligence and Proponent Funding Agreement
4. Water covenant and Option Mechanism engagement and registration
5. Proponent Program Establishment Payment
6. Commonwealth Environmental Water Holder (CEWH) annual environmental watering projects identification
7. Delivery Partner promotion of environmental projects to Proponent
8. Post-selection Proponent option payment
9. Water transfer activation to CEWH

Waterfind welcomes the opportunity to discuss the details of this paper further.

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## About Waterfind

Waterfind is a quality assured, award-winning Australian-owned and operated family business, founded in 2003.

Our services include the provision of water market information, specialised reports, water market strategy development, water brokerage, water resource and water market infrastructure development and consulting, water transfer processing and escrow management services.

We provide irrigators, water authorities and investors a simple, efficient solution to manage their water market requirements.

Our award-winning online water market platform has been used by more than 12,000 customers across water markets across Australia. We have facilitated the trade of over 3,000 gigalitres (GL) across over 22,000 transactions and built a client base that holds over 65 percent of all water entitlements on issue in Australia.

Waterfind prides itself as always being at the forefront of the water market, offering a range of water market products and insights. For example, Waterfind conducted the first forward market<sup>1</sup> contract trade in Australia, and developed Australia's first environmental water donation platform as part of its Environmental Water Fund in 2005.

We have a long history of delivering environmental water and, since 2013, Waterfind has returned almost 46 GL of water to the environment through a range of water efficiency and donation projects across the Murray-Darling Basin.

Additionally, Waterfind is one of a small group to have been previously selected by government as a Delivery Partner to administer projects that would deliver water savings to be transferred to the Commonwealth Environmental Water Holder.

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<sup>1</sup> This is the ability to lock in a price for delivery of water at a later date, allowing for enhanced forward planning and price security.

## The Water Futures Efficiency Program

The Basin Plan aims to restore the sustainability of the Basin, while continuing to support Basin-reliant industries for the benefit of the broader Australian economy.

With less than 18 months until the 2024 deadline for environmental water recovery targets, the options currently before the Australian and Basin-state governments are likely to have significant and far-reaching impacts on Basin communities, the environment and the Budget.

To this end, Waterfind has designed and developed a further option available to the Government – the Water Futures Efficiency Program (WFEP).

The WFEP would be a partnership between Australian water right holders and the CEWH. It contributes to achieving desired environmental outcomes until permanent environmental water recovery targets can be met (i.e. via water efficiency projects, more strategic buy backs).

The Program has been designed to allow the Commonwealth, via the CEWH, to achieve environmental water outcomes through an option arrangement on a privately held irrigation water right with a perpetual ability to access water under certain flow conditions.

Given the critical importance of the Program, high standards of governance and administration will be essential.

Waterfind has therefore prepared this paper, which proposes a mechanism for the administration and governance of the WFEP. A key component of this is the establishment of an over-arching “Deed of Standing Offer” that establishes terms and conditions relating to the various functioning levels of an organisation. These terms and conditions are detailed below.

## Deed of Standing Offer

To ensure sound governance, financial probity, and systems integrity, it is proposed that the Program be established using an over-arching Deed of Standing Offer, which is a legal document that establishes terms and conditions under which a supplier or contractor can provide goods or services over a specified period.

For the purposes of the WFEP, it is proposed that a Deed would include the following seven areas:

### 1. Standing Offer to deliver Water Sharing Option Agreements

This section aims to establish the terms and conditions under which the Delivery Partner may prepare and submit an Option Agreement offer at any time during the Deed Period.

This is important because it ensures that the Delivery Partner has the flexibility to submit offers as and when required, allowing for the timely delivery of environmental water.

Example clauses in this part of the Deed could include:

*The Delivery Partner may prepare and submit an Option Agreement offer at any time during the Deed Period, subject to the terms and conditions set out in the Deed.*

*The Proponent may accept or reject any Option Agreement offer submitted by the Delivery Partner.*

### 2. Payment Guidelines

This section aims to establish the payment guidelines for the Water Futures Efficiency Program, including the program establishment payment, annual option payment, administration fee payment, and bank account requirements.

This is important because it ensures that all parties understand their financial obligations and provides a clear framework for payment processing.

Example clauses in this part of the Deed could include:

*The Deed Period shall commence on [insert start date] and shall continue until [insert end date].*

*The Proponent shall receive a program establishment payment of [insert amount] upon execution of this Deed.*

*The Proponent shall receive an annual option payment of [insert amount] for each Option Agreement executed under the Deed.*

*The Delivery Partner shall receive an administration fee payment of [insert amount] for each Option Agreement executed under the Deed.*

*All payments under this Deed shall be made to the bank account nominated by the relevant party.*

*The Proponent shall receive an annual option payment of [insert amount] for each Option Agreement executed under the Deed. The annual option payment shall be made on or before [insert payment date].*

### **3. Execution of the Water Covenant and Option Mechanism**

This section aims to establish the process for executing the Water Covenant and Option Mechanism, including the execution of Proponent agreements.

It is essential that all parties understand their obligations and there is a clear framework for executing the Water Covenant and Option Mechanism.

Example clauses in this part of the Deed could include:

*The Delivery Partner shall execute Proponent agreements in accordance with the terms and conditions set out in the Deed.*

*The Proponent shall execute the Water Covenant and Option Mechanism in accordance with the terms and conditions set out in the Deed.*

### **4. Records and Audit**

This section aims to establish the record-keeping and auditing requirements for the Water Futures Efficiency Program.

Robust record-keeping and auditing requirements are important to ensure that all parties keep accurate records and provides a framework for auditing compliance with the Deed.

Example clauses in this part of the Deed could include:

*The Proponent and Delivery Partner shall keep full and accurate financial accounts and records in accordance with applicable Australian Accounting Standards.*

*The Proponent and Delivery Partner shall allow auditing in accordance with the Australian Auditing Standards.*

### **5. Reporting**

This section aims to establish the reporting requirements for the Water Futures Efficiency Program.

This is important because it ensures that all parties understand their reporting obligations and provides a framework for monitoring the progress and financial position of the program.



Example clauses in this part of the Deed could include:

*The Proponent shall provide progress and closure reporting to the Government for Proponent activity.*

*The Delivery Partner shall provide audited financial statements of income and expenditure in respect of Delivery Partner activity under the Deed.*

*The Proponent and Delivery Partner shall provide a statement of financial position including all assets and liabilities for the relevant financial year compared with the budget.*

*The Proponent and Delivery Partner shall provide a report from an approved auditor.*

## 6. Insurance

This section aims to outline the insurance requirements for both the Proponent and Delivery Partner, ensuring that they have the necessary levels of public and professional indemnity insurance to protect their interests in case of any liabilities or damages.

Having appropriate insurance coverage is crucial for the parties involved to manage any risks that may arise during the program, and to ensure that they are protected in case of any legal issues or disputes.

Example clauses in this part of the Deed could include:

*Proponent and Delivery Partner to maintain public liability and professional indemnity insurance coverage for the duration of the Deed.*

*Insurance policies should be maintained with reputable insurance providers and provide coverage for any liabilities or damages arising from the program.*

## 7. Governance requirements

This section aims to establish governance structures and procedures to manage conflicts of interest and ensure compliance with all relevant regulations and standards, and to outline the roles and responsibilities of the Delivery Partner.

Establishing clear governance structures and procedures is critical for managing the program effectively, ensuring compliance with all relevant laws and regulations, and providing transparency and accountability to stakeholders.

Example clauses in this part of the Deed could include:

*The Delivery Partner is responsible for establishing appropriate governance structures and contract management procedures to ensure compliance with all relevant regulations and standards.*

*The Delivery Partner must manage conflicts of interest and ensure that they do not interfere with the delivery of the program.*

*The Delivery Partner is responsible for preparing a risk management plan and managing its exposure and risk through its contracts with any third party, including the Proponent or other subcontractors.*

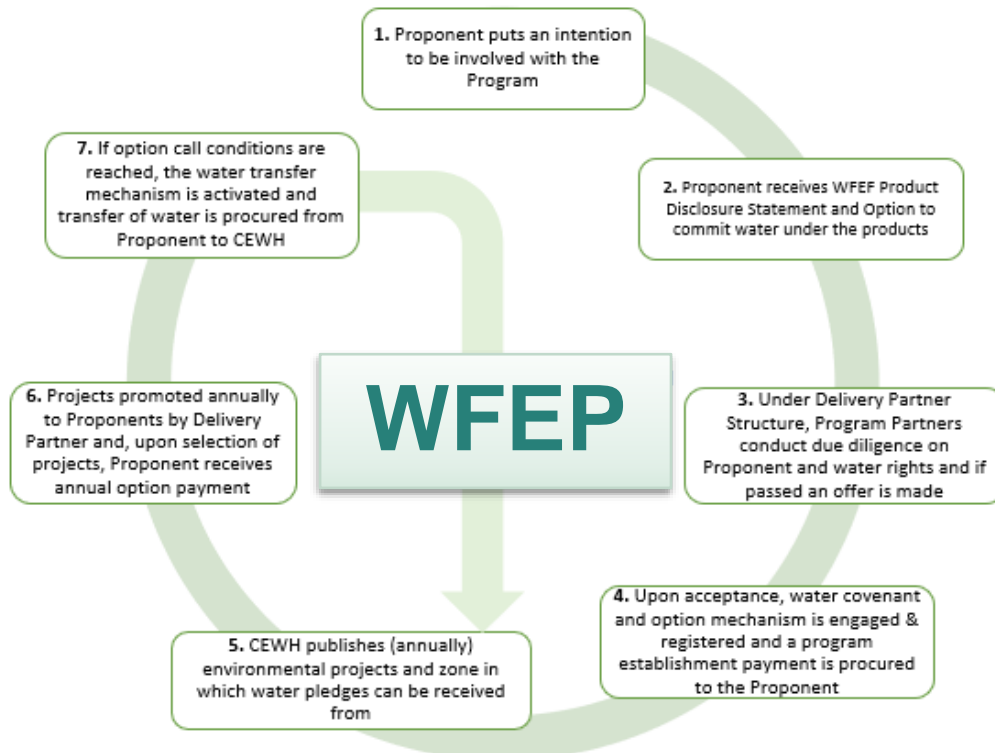
*The Delivery Partner must seek necessary approval for marketing and other communications related to the program.*

*The Delivery Partner must meet all corporate and other compliance obligations and conduct progress meetings as agreed.*

# WFEP Program Management

Diagram 1 outlines the Program's management process.

**Diagram 1: Seven stages of the WFEP program management**



Further to the above, annual reporting of the outcomes and expenditure should be part of the Program.

## 1. Proponent intention registration

This initial stage in the Program's management, the Proponent registers an intention to be involved with the Program.

This could include basic information about their intention to participate in the program, which helps to initiate the program management process.

This initial stage helps to identify potential partners for the program and begins the process of establishing a relationship between the program and the proponent.

## **2. Proponent Product Disclosure Statement and option to commit water**

Once a proponent has expressed interest in the program, they are provided with a Product Disclosure Statement which outlines the available water products under the program. The proponent is then given the option to commit to purchasing one or more of these water products. This stage helps to clarify the program's offerings and enables the proponent to make an informed decision about their level of participation.

A proponent may opt for one product, or assemble a portfolio of water products.

## **3. Delivery Partner due diligence and Proponent Funding Agreement**

This stage in the Program's management would ensure that, under the Delivery Partner structure, Program Partners conduct due diligence on the Proponent and water rights.

This helps to ensure that the proponent is a legitimate and credible participant.

This could include ensuring relevant information is available for water assets, to ensure that trades are conducted with the highest level of due diligence, and to help minimise the likelihood of a trade failing. A robust water register and asset systems would be important.

Background checks would preferably also be conducted to ensure that only legitimate and credible license holders can access the Program.

If the proponent meets the requirements, they will receive an offer.

## **4. Water Covenant and Option Mechanism engagement and registration**

Upon acceptance into the program, the proponent engages in a Water Covenant and Option Mechanism, which involves committing to purchasing a certain amount of water at a fixed price.

The Water Covenant is a legally binding agreement between the proponent and CEWH that outlines the specific conditions under which the water can be used.

An Option Mechanism is a contractual provision that grants a holder the right, but not the obligation, to purchase or sell an asset at a specified price and within a specified time frame.

To ensure enforceability, the Water Covenant and Option Mechanism should be registered on the water rights register and comply with applicable laws and regulations. This agreement helps to provide a level of certainty to both parties involved and minimise potential conflicts.

## 5. Proponent Program Establishment Payment

Upon acceptance of the Water Covenant and Option Mechanism, the proponent would receive a Program Establishment Payment. The Program Establishment Payment is an important component of the Program as it provides the proponent with the necessary financial support to participate in the Program.

The payment is based on the agreed pricing, which takes into account the market value of the water being traded, and the terms and conditions agreed upon between the proponent and the program partners.

This payment would need to be market-tested (see Further Consideration section below).

The Program Establishment Payment is a one-time payment made at the beginning of the proponent's participation in the program, and it helps to ensure that the proponent is committed to fulfilling their obligations under the Water Covenant and Option Mechanism.

## 6. CEWH annual environmental watering projects identification

Next, the CEWH would publish, annually, a range of desired environmental projects.

These projects would be identified based on the CEWH's strategic priorities and their potential to deliver significant ecological benefits. Along with the list of projects, the CEWH would also identify the water catchment zones from which water pledges can be received.

The identification of these projects provides an important first step in unlocking the regional community-based potential of the Program.

## 7. Delivery Partner promotion of environmental projects

After the CEWH has identified the annual environmental projects and water catchment zones, the Delivery Partner will promote these projects to Proponents on an ongoing basis. Promotion rules and guidelines may be established as part of the Program.

A key objective of the Program is to connect environmental projects with regional communities. As an irrigation community-driven initiative, the Program provides an opportunity for these communities to take ownership of a solution to the environmental water recovery challenges facing the Basin.

Moreover, the WFEP seeks to create employment and leadership opportunities for First Nations peoples through education and stewardship of our river systems.

By openly promoting environmental projects, the Program can engage regional communities and First Nations in supporting high-priority projects early on.

## 8. Post-selection Proponent option payment

After the CEWH publishes the range of desired environmental projects and the water catchment zones, the Proponents can review the list and select the project(s) that they wish to participate in. The CEWH would provide them with all the necessary information about the project(s), such as the scope, implementation schedule, and potential ecological benefits, to help them make an informed decision.

Once the Proponent has made their selection, they would be eligible to receive an annual option payment. This payment serves as a compensation for the Proponent's commitment to provide a certain amount of water for the environmental project(s) every year.

The amount of the option payment would be based on the agreed pricing, terms, and conditions outlined in the Program Establishment Payment and Water Covenant and Option Mechanism. The payment would cover the Proponent's costs of committing to the project(s), such as forgone irrigation water sales or additional infrastructure investment needed to deliver the water.

The annual option payment provides the Proponents with a predictable revenue stream and helps them plan their long-term investments.

## 9. Water transfer to CEWH

Upon reaching the option call conditions, the water transfer mechanism would be activated, and the Proponent required to transfer the agreed amount of water to the CEWH. This transfer of water is a crucial aspect of the Program as it provides the necessary environmental water to support the identified environmental projects.

To ensure that the water transfer occurs smoothly, the Program should establish a clear framework for managing the water transfer process. This could include outlining the procedures for transferring the water, monitoring the water transfer to ensure compliance with the Water Covenant, and resolving any disputes that may arise during the transfer process.

The water transfer is a significant step towards achieving the Program's environmental objectives.

## Further considerations

Prices paid for, and procurement practices of acquiring, water entitlements in the Murray-Darling Basin (Basin) have been the subject of scrutiny and criticism in recent years.

For example, an audit<sup>2</sup> conducted in 2020 by the Australian National Audit Office (ANAO) examined \$190 million of strategic water procurements in the Basin through limited tender arrangements to provide assurance to the Parliament and the public that those procurements were planned for and executed appropriately and achieved value for money.

The audit found that:

- The relevant department did not consistently apply approved policy, planning and guidance to the assessment of all limited tender procurements.
- The department did not develop a framework designed to maximise the value for money of strategic water entitlements purchased through limited tender arrangements.
- The department has not reviewed the water recovery strategy or its approach to procurement of strategic water entitlements.

It is essential that the WFEP Program management takes into account any relevant recommendations from the audit, and meets the current Commonwealth Procurement Rules.<sup>3</sup>

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<sup>2</sup> Refer to <https://www.anao.gov.au/work/performance-audit/procurement-strategic-water-entitlements>.

<sup>3</sup> Refer to <https://www.finance.gov.au/sites/default/files/2022-06/CPRs%20-%201%20July%202022.pdf>.

# Water Futures Efficiency Program Pilot

To test the administration and governance arrangements proposed above, and to take into account the findings of the 2020 ANAO audit, Waterfind suggests that a pilot region be used to test the uptake of the various water options and to refine pricing of these options.

Waterfind has estimated that this pilot itself could result in approximately 160 GL of water delivery, or 112 GL at an average of 0.7 Long Term Cap Equivalent (LTCE). This represents a very significant contribution to the environmental water recovery targets under the Basin Plan.

Following the conclusion of this pilot, further pilots, and ultimately the program more generally, can be implemented.

The following outlines possible steps to commence and implement such a pilot.

## 1. Create an over-arching contract for service delivery

There is a range of operational and strategic merits in the Australian Government conducting a pilot via a third party, such as a Delivery Partner.

Should this approach be adopted, similar to the proposed over-arching Deed of Standing Offer for the WFEP, it would be advisable to create a legal agreement that establishes terms and conditions for the contractor of a pilot.

## 2. Selecting the pilot parameters

The pilot's parameters could be determined to be region-based (that is, confined within a certain water resource catchment) or volume-based (defined by a predetermined volume of water to be recovered).

In any instance, for this step it is critical to have capacity to provide robust water market analysis and water market knowledge. Waterfind notes its long-standing experience in this area, and offers its services if required.

It will also be critical to form strong partnerships with relevant water authorities, the CEWH and First Nations leaders/organisations to deliver watering projects.

## 3. Promoting the program

The promotion of the WFEP pilot will require engagement with the following:

- Water right holders
- Water authorities



- Regional media (radio and print)
- Local government
- Government agencies
- First Nations leaders and NGO's

Waterfind possesses a client system that holds over 65% of all water entitlements on issue in Australia. It currently has around [XXX] registered clients, which include irrigators, water authorities, investors, government-related and other market participants.

Waterfind is able to use its system to enable communications to be sent according to their water market, water asset or by other characteristics.

#### **4. Testing the products**

One of the most important aspects of the pilot will be to determine the exact range of products and benchmark an appropriate price for each product.

Waterfind has longstanding experience in developing water market products and assisting water right holders to sell and buy water. It is our view that the best approach for this stage will be to conduct comprehensive analyses and determine a price range before market testing. This data-driven and objective approach, consistent with the principles of market research and pricing strategy development, is likely to yield more accurate and reliable results.

This will require collecting and analysing information about the target markets, including needs and preferences, other related products and prices, and the overall market environment. It is recommended this be used to determine a price range for the various products which can then be tested with potential interested water right holders. These water right holders can be selected for input into the testing process, based on a range of characteristics including:

- water catchment
- trade history (e.g. trade timing, volumes and prices paid)
- crop type

Waterfind's water market platform is able to support such analysis and market segmentation.

#### **5. Development of legal instruments**

Following product development and pricing points, a range of legal instruments will need to be prepared to support the process outlined in Figure 1.

Waterfind can assist in this process, as it has a long-standing history of preparing similar documents as part of its development of new water market products and participation in Australia Government water efficiency programs.

## 6. Implementation and review

Waterfind estimates that the stages above could be completed within 6 months. At this stage the first pilot would be ready for implementation, and the next iteration could commence.

Waterfind recommends that, as the pilot is implemented, ongoing feedback from stakeholders be sought and reported. This provides good transparency for stakeholders, and will assist in improving aspects of the program as it is wound out.

## 7. Cost

In its pre-budget submission Waterfind estimated that up to \$200 million in funding should be set aside for a Water Futures Efficiency Program Pilot, with a further \$20 million in funding to administer the Pilot.

## Concluding remarks

The WFEP can be deployed quickly to help meet the 2024 Basin Plan water recovery target deadline.

The urgency of alternative solutions has been heightened by recent events such as the Victorian Government's halting of nine Sustainable Diversion Limit Adjustment Mechanism (SDLAM) projects<sup>4</sup> and a report from the South Australian River Murray Commissioner<sup>5</sup>.

Given the critical importance of the Program, high standards of governance and administration are essential. One option for WFEP program management could be through accredited and vetted program 'Delivery Partners' who adhere to certain WFEP delivery standards.

Furthermore, to ensure sound governance, financial probity, and systems integrity, the Program could be established using an over-arching 'Deed of Standing Offer' that would establish essential processes, terms and conditions.

This paper has provided a possible approach to meeting a high standard of governance and administration, by providing an outline of what an over-arching Deed of Standing Offer may contain, and possible stages for the Program's management.

Waterfind welcomes the opportunity to meet with the Australian Government to discuss the details of this report further. Any questions or points of clarification should be directed to Mr Tom Rooney at [tom@waterfind.com.au](mailto:tom@waterfind.com.au) or 0407 974 100.

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<sup>4</sup> Refer to

[https://www.weeklytimesnow.com.au/news/1/?sourceCode=WTWEB\\_WRE170\\_a&dest=https%3A%2F%2Fwww.weeklytimesnow.com.au%2Fnews%2Fwater%2Fbasin-attack-tidal-wave-of-water-buyouts-about-to-hit-irrigation-communities%2Fnews-story%2F192dc67bb30a17c05be90c8c0158c931&memtype=anonymous&mode=premium](https://www.weeklytimesnow.com.au/news/1/?sourceCode=WTWEB_WRE170_a&dest=https%3A%2F%2Fwww.weeklytimesnow.com.au%2Fnews%2Fwater%2Fbasin-attack-tidal-wave-of-water-buyouts-about-to-hit-irrigation-communities%2Fnews-story%2F192dc67bb30a17c05be90c8c0158c931&memtype=anonymous&mode=premium)

<sup>5</sup> Refer to [https://indaily.com.au/news/2023/04/27/fear-mongering-unforgivable-as-droughts-threaten-river-murray-basin/?utm\\_medium=email&utm\\_campaign=InDaily%20Lunchtime%20%2027%20April%202023&utm\\_content=InDaily%20Lunchtime%20%2027%20April%202023+CID\\_acf35f4bb321543352399dee62731910&utm\\_source=EDM&utm\\_term=READ%20MORE](https://indaily.com.au/news/2023/04/27/fear-mongering-unforgivable-as-droughts-threaten-river-murray-basin/?utm_medium=email&utm_campaign=InDaily%20Lunchtime%20%2027%20April%202023&utm_content=InDaily%20Lunchtime%20%2027%20April%202023+CID_acf35f4bb321543352399dee62731910&utm_source=EDM&utm_term=READ%20MORE).