

The Auditor-General  
Auditor-General Report No.23 2024–25  
Performance Audit

# **Strategic Water Purchasing — Bridging the Gap 2023**

Department of Climate Change, Energy, the Environment and Water

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Canberra ACT  
12 February 2025

Dear President  
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Department of Climate Change, Energy, the Environment and Water. The report is titled *Strategic Water Purchasing — Bridging the Gap 2023*. I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Caralee'.

Dr Caralee McLiesh PSM  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

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# Audit snapshot

## Auditor-General Report No. 23 2024–25

*Strategic Water Purchasing — Bridging the Gap 2023*



### Why did we do this audit?

- ▶ The Murray–Darling Basin Plan was developed in 2012 and sets limits on the amount of water that can be taken from the Basin for consumptive purposes while maintaining environmental sustainability.
- ▶ Water recovery is a topic of parliamentary and public interest. This audit provides assurance to the Parliament over the arrangements in place to support the strategic procurement of water entitlements in 2023, and the conduct of the procurement process to achieve value for money.



### What did we find?

- ▶ The department’s strategic procurement of water entitlements to meet the Bridging the Gap target under the Murray–Darling Basin Plan was largely effective.
- ▶ The arrangements to support the strategic purchasing of water entitlements were largely appropriate.
- ▶ The department conducted an effective procurement process and demonstrated how it assessed and achieved value for money.



### Key facts

- ▶ The Murray–Darling Basin covers over 1 million square kilometres, provides water to more than 2.4 million people and supports 8,400 irrigated agriculture businesses.
- ▶ The Australian Government recovers water for the environment through various mechanisms, including water entitlement purchases.
- ▶ The Department of Climate Change, Energy, the Environment and Water (the department) commenced a procurement process in March 2023 to recover 44.3 gigalitres of water.



### What did we recommend?

- ▶ There were two recommendations to the department aimed at: reviewing and revising the evaluation framework; and updating procurement-related policies and guidance to provide clarity on establishing probity requirements.
- ▶ The department agreed to both recommendations.

251

offers to sell water entitlements to the Commonwealth in the 2023 Bridging the Gap open tender.

\$147.7 m

total expenditure for the 2023 Bridging the Gap open tender (as at January 2025).

21.62 GL/y

of water recovered in the 2023 Bridging the Gap open tender (as at January 2025).

# Summary and recommendations

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## Background

1. The Murray–Darling Basin (the Basin) is a system of interconnected rivers and lakes in the south-east of Australia with significant environmental, cultural and economic value.
2. The Murray–Darling Basin Plan (the Basin Plan) was developed in 2012 in response to a significant period of drought in the Basin in the early 2000s (the Millennium Drought), which resulted in a recognition across the governments that a plan was needed to manage the Basin’s water resources carefully and protect the Basin for future generations. The Basin Plan sets limits on the amount of water that can be taken from the Basin for consumptive purposes by communities, farmers and businesses, while maintaining environmental sustainability, known as the Sustainable Diversion Limits (SDLs).
3. The establishment of the SDLs was accompanied by a water recovery target to ‘bridge the gap’ between the SDLs and how much water was taken from the Basin before the introduction of the Basin Plan. At the time the Basin Plan was agreed in 2012, the ‘Bridging the Gap’ target was set at 2,750 gigalitres. This was amended in 2018 to 2,075 gigalitres. As at 31 December 2022, the Murray–Darling Basin Authority (MDBA) estimated that a gap of 49.2 gigalitres of water remained in seven catchments to reach the ‘Bridging the Gap’ target.
4. The Department of Climate Change, Energy, the Environment and Water (the department) is the Australian Government entity responsible for recovering water to bridge the gap through: monitoring water recovery programs; funding, implementing and managing water infrastructure projects and efficiency measures; and undertaking purchases of water entitlements.
5. In March 2023, the department commenced an open tender process to purchase water entitlements to recover 44.3 gigalitres of water against the remaining gap of 49.2 gigalitres. The 4.9 gigalitres of surface water located in the ACT that also needed to be recovered to achieve the Bridging the Gap target was not included in the procurement process as water rights in the ACT are held and owned by a government entity. Separate arrangements were established with the ACT Government to bridge the gap in the territory.
6. The procurement process was finalised in January 2024. As at 17 January 2025, approximately 21.62 gigalitres of water has been recovered, fully bridging the gap in two of the six target catchments, with a gap of approximately 23.07 gigalitres remaining in the other four catchments.

## Rationale for undertaking the audit

7. This audit examined the effectiveness of the department’s strategic procurement of water entitlements to meet the Bridging the Gap target under the Basin Plan. It followed on from Auditor-General Report No. 2 2020–21 *Procurement of Strategic Water Entitlements* to provide assurance to Parliament over the arrangements in place to support the procurement process, and the conduct of the procurement process to achieve value for money.
8. Water recovery is a topic of parliamentary and public interest. The Joint Committee of Public Accounts and Audit (JCPAA) identified the audit as a priority of the Parliament for 2023–24.

## Audit objective and criteria

9. The audit objective was to assess the effectiveness of the department's strategic procurement of water entitlements to meet the Bridging the Gap target under the Basin Plan.
10. To form a conclusion against the objective, the following high-level criteria were adopted.
- Did the department establish appropriate arrangements to support strategic water procurement?
  - Did the department conduct an effective procurement process to achieve value for money?
11. The audit focused on the 2023 Bridging the Gap procurement process, including arrangements to support the procurement and whether value for money was achieved. It also examined whether the recommendations from Auditor-General Report No. 2 2020–21 and the JCPAA Report 492 were implemented.
12. The audit did not examine: water recovery initiatives for targets other than the 2,075 GL/y Bridging the Gap target; compliance with water trading rules in the Basin Plan; activities of related bodies such as the MDBA or state water regulatory authorities; or the socioeconomic impacts of water recovery on local communities, except to the extent considered by the department as part of the procurement process.

## Conclusion

13. The department's strategic procurement of water entitlements to meet the Bridging the Gap target under the Murray–Darling Basin Plan was largely effective. While the department conducted an effective procurement process and demonstrated how it assessed value for money in accordance with its value for money framework, it was not able to meet the intended policy objective of fully bridging the gap through the procurement process. The current evaluation framework requires revision to enable an accurate measurement of the program's impact on intended policy objectives, including in the context of broader evaluation activities planned for the Basin Plan. Further improvements are being made for subsequent tender processes to incorporate lessons learned, increase efficiency, and ensure better management of probity risks.
14. The department has established largely appropriate arrangements to support strategic water procurement. There are appropriate procurement frameworks in place, including a Strategic Water Purchasing Framework developed specifically for the water purchasing program outlining the scope of the program and the investment principles that would underpin water purchasing. The department has established appropriate oversight mechanisms to oversee the program and is managing program and procurement risks. An evaluation framework to monitor, report on and evaluate the strategic water purchasing program has been established. The evaluation framework does not enable an accurate measurement of the program's impact on intended policy objectives, and requires revision to ensure that outcomes are appropriately defined, including in the context of other evaluation activities planned for the Basin Plan.
15. The department established a value for money framework for the procurement, specifying the key factors that would inform its purchasing decisions. The department documented and demonstrated how it assessed value for money in each of the six SDL resource units in accordance with its value for money framework. The procurement was compliant with the Commonwealth



Procurement Rules (CPRs), except in relation to minor errors in reporting contracts on AusTender. Negotiations were undertaken to maximise value for money outcomes, and revised value for money assessments were undertaken where negotiated prices differed from the delegate's original approved figure. Relevant information and clear recommendations were provided to the delegate to enable them to make an informed procurement decision. The department provided sound advice to the minister on options to bridge the gap in the ACT and in SDL resource units with remaining gaps to bridge.

## Supporting findings

### Arrangements to support procurement

16. The department has established a procurement framework that aligns with the PGPA Act and the CPRs. This framework includes Accountable Authority Instructions providing guidance on the duties of officials when conducting a procurement, and departmental policies and guidance on key aspects of procurement. The department developed a Strategic Water Purchasing Framework specific to the water purchasing program, outlining the scope of the program and the investment principles that would underpin water purchasing. (See paragraphs 2.3 to 2.14)

17. The department has established appropriate oversight mechanisms for the water purchasing program, with clearly documented roles and responsibilities. The department is managing risks to the program and there is an appropriate level of oversight over program and procurement risks. (See paragraphs 2.15 to 2.52)

18. The department has established an evaluation framework to monitor, report on and evaluate the strategic water purchasing program. The evaluation framework is focussed on short- and medium-term program outputs and does not enable an accurate measurement of the program's impact on intended policy objectives or link the program to evaluation activities planned for the Basin Plan. Monitoring and reporting arrangements have been established, and process improvements are being made following a lessons learned review of the 2023 Bridging the Gap procurement process. (See paragraphs 2.53 to 2.85)

### Procurement process and value for money

19. The procurement process was compliant with the Commonwealth Procurement Rules (CPRs), except in relation to minor errors in reporting contracts on AusTender. The department complied with the requirements relating to procurement planning and approach to market, and the tender evaluation process was conducted in accordance with the tender evaluation plan. Management of conflicts of interest was impacted by deficiencies in the declaration process. Manual tender screening and assessment processes resulted in some process inefficiencies and errors that were later discovered and corrected. (See paragraphs 3.3 to 3.46)

20. The department established a value for money framework for the strategic water purchasing program, specifying the relevant financial and non-financial factors it would consider in assessing value for money. The Tender Evaluation Panel's value for money assessments were conducted in accordance with the approved value for money framework, and its discussions and recommendations were clearly documented in the tender evaluation reports and briefs to the delegate. Of 57 tenders approved for negotiation, the department negotiated reduced prices for 33 tenders. Revised value for money assessments were undertaken where negotiated prices

differed from the delegate's original approved figure. All tenders that were accepted or counteroffered were those recommended to the delegate as representing value for money. (See paragraphs 3.47 to 3.82)

21. The advice provided to the delegate contained relevant information to enable them to make an informed procurement decision. The department provided sound advice to the minister on options to bridge the gap in the ACT, including on whether the ACT's proposal would contribute to bridging the gap and achieve value for money, and on strategies to bridge the remaining gap following the conclusion of 2023 Bridging the Gap procurement process. (See paragraphs 3.83 to 3.107)

## Recommendations

**Recommendation no. 1** The Department of Climate Change, Energy, the Environment and Water:  
**Paragraph 2.71**

- (a) review and update the evaluation framework for the strategic water purchasing program to ensure the chosen evaluation approach remains appropriate for the program; and
- (b) if relevant, revise the outcomes in the evaluation framework to enable an accurate measurement of the impact of the strategic water purchasing program on intended policy objectives.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

**Recommendation no. 2** The Department of Climate Change, Energy, the Environment and Water update its procurement-related policies and guidance to provide clarity on establishing appropriate probity requirements, including on:  
**Paragraph 3.28**

- (a) determining who is required to complete probity forms and declarations;
- (b) maintaining a complete and accurate record of individuals who have completed the relevant forms; and
- (c) clearly documenting any conflicts that were declared and how they are being managed, to ensure the delegate has clear oversight of probity risks.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

## Summary of entity response

22. The proposed audit report was provided to the department. The department's summary response to the audit is provided below and its full response is at Appendix 1.

The Department of Climate Change, Energy, the Environment and Water (the department) welcomes the ANAO's audit report on the Strategic Water Purchasing – Bridging the Gap 2023 procurement. The department appreciates ANAO's recognition that administration of the Strategic Water Purchasing program for the 2023 procurement process was largely effective, with appropriate procurement frameworks and oversight mechanisms in place to support an effective procurement process, undertaken in accordance with the value for money framework.

The department agrees with the ANAO's two recommendations identified in the audit report. Implementation of the recommendations has already commenced. The department is committed to providing meaningful evaluation of the program outcomes and has commenced a review of the evaluation framework. The department has also implemented strengthened arrangements to improve the oversight of conflict-of-interest requirements for its water purchasing programs.

## Key messages from this audit for all Australian Government entities

23. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Procurement

- Officials planning for a procurement process should first articulate what they are trying to achieve through the procurement, identify challenges and risks that may eventuate such as market conditions and movements, and consider what value for money would look like in this context. This enables value for money considerations to be incorporated into the procurement process from tender design to final delegate decision.

### Performance and impact measurement

- Evaluation arrangements should be established prior to the commencement of the program and, where necessary, reviewed and revised as the program is implemented to better align the planned approach with program direction. When developing arrangements for program evaluation, entities should carefully design the outcomes it will be evaluating against to allow for accurate measurement of both the impact of the program and its contribution to broader policy goals.



# Audit findings

# 1. Background

## Introduction

1.1 The Murray–Darling Basin (the Basin) is a system of interconnected rivers and lakes in the southeast of Australia, covering over 1 million square kilometres in New South Wales (NSW), the Australian Capital Territory (ACT), Victoria, Queensland and South Australia (the Basin states). The Basin provides water to more than 2.4 million people living in the Basin, and supports 8,400 irrigated agriculture businesses. The Basin is home to 16 internationally significant wetlands, 35 endangered species, 120 species of waterbird, and is an area of cultural heritage to First Nations peoples. Figure 1.1 shows the location of the Murray–Darling Basin.

**Figure 1.1: Murray–Darling Basin**



Source: Murray–Darling Basin Authority, *Basin location*, available from <https://www.mdba.gov.au/basin/basin-location> [accessed 6 November 2024].

1.2 Water entitlements are rights to an ongoing share of water within a particular area of the Basin. An entitlement to water in the Basin can be bought or sold, either permanently or temporarily, on water markets. This allows water users to buy and sell water according to their individual needs. The financial value of a water entitlement is determined by the water market, which has different levels of trading activity across catchments, including some with little to no trading activity or available trade data.

## Commonwealth water recovery under the Murray–Darling Basin Plan

### Bridging the Gap target

1.3 Following a severe drought in the early 2000s in much of the Basin (the Millennium Drought) that resulted in significant impact to Basin communities, industries and the environment, there was a recognition across the Australian and Basin state governments that a plan was needed to manage the Basin’s water resources carefully and protect the Basin for future generations.

1.4 In 2012, the Murray–Darling Basin Plan (the Basin Plan) was developed under the *Water Act 2007*, with the aim of bringing the Basin back to a healthier and sustainable level, while continuing to support farming and other industries. Section 5.02 of the Basin Plan states that the outcome of the Basin Plan as a whole is:

a healthy and working Murray–Darling Basin that includes:

- (a) communities with sufficient and reliable water supplies that are fit for a range of intended purposes, including domestic, recreational and cultural use; and
- (b) productive and resilient water-dependent industries, and communities with confidence in their long-term future; and
- (c) healthy and resilient ecosystems with rivers and creeks regularly connected to their floodplains and ultimately, the ocean.

1.5 The Basin Plan sets limits on the amount of water, on average, that can be taken from the Basin for consumptive purposes by communities, farmers and businesses, while maintaining environmental sustainability, known as Sustainable Diversion Limits (SDLs). SDLs are specified at local catchment levels<sup>1</sup> (known as SDL resource units), which are added together for a Basin-wide SDL. Schedules 2 and 4 of the Basin Plan set out the SDL for each surface water and groundwater<sup>2</sup> SDL resource unit.

1.6 The establishment of the SDLs was accompanied by a water recovery target to ‘bridge the gap’ between the SDLs and how much water was taken from the Basin before the introduction of the Basin Plan. The original Bridging the Gap target was set at 2,750 gigalitres.<sup>3</sup> The Basin Plan also contains a provision for the recovery of an additional 450 gigalitres of water to achieve ‘enhanced environmental outcomes’ specified in Schedule 5 of the Basin Plan.<sup>4</sup> Water can be recovered in a number of ways, including:

- water purchasing — where the government purchases water from the market;
- infrastructure investments — such as building water storages (dams or reservoirs), weirs, locks and barrages;

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1 A catchment is an area of land, usually surrounded by hills or mountains, where water naturally collects. A map of the 22 catchments in the Murray–Darling Basin is available at: Murray–Darling Basin Authority, *Catchments*, available from <https://www.mdba.gov.au/basin/catchments> [accessed 6 November 2024].

2 Water existing below ground level is called groundwater. Groundwater can be connected to surface water, which includes the water in the rivers and wetlands.

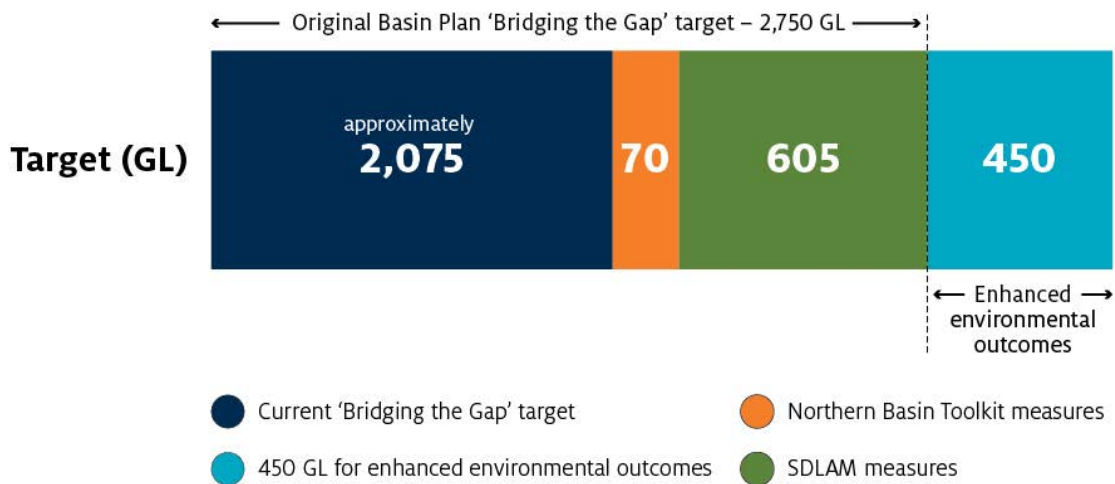
3 A gigalitre is equivalent to 1 billion litres.

4 Enhanced environmental outcomes include reducing salinity levels and maintaining or increasing water levels or flows to specific parts of the Basin.

- efficiency measures — such as by upgrading irrigation systems on farms and reducing water losses from irrigation delivery systems;
- supply projects — which seek to reduce water storage evaporation and manage environmental water more efficiently through changes to infrastructure or river operating rules; and
- constraint relaxation projects — which seek to reduce barriers to delivering environmental water.

1.7 The Basin Plan has a mechanism called the Sustainable Diversion Limit Adjustment Mechanism (SDLAM). The SDLAM allows for the water recovery target of 2,750 gigalitres to be reduced if supply and constraints-easing projects or efficiency measures can provide similar or better environmental outcomes while reducing the amount of water that needs to be recovered. In 2017, Basin states proposed a package of supply measures which could achieve equal or better environmental outcomes while reducing the water recovery target by 605 gigalitres.<sup>5</sup> In 2018, a review into the Northern Basin by the Murray–Darling Basin Authority (MDBA) found that an additional 70 gigalitres could be saved by improving environmental water management (known as the Northern Basin Toolkit measures).<sup>6</sup> The Basin Plan was amended to reflect these changes, reducing the water recovery target from 2,750 gigalitres to 2,075 gigalitres (Figure 1.2).

**Figure 1.2: Water recovery targets under the Murray–Darling Basin Plan**



Source: Department of Climate Change, Energy, the Environment and Water, *How we recover water in the Murray–Darling Basin*, available from <https://www.dcceew.gov.au/water/policy/water-recovery/how> [accessed 6 November 2024].

1.8 The MDBA is a key agency responsible for coordinating how the Basin’s water resources are managed through the Basin Plan. The MDBA determines the volume of water recovered for the relevant water year as part of its annual accounting of water taken from the Basin. The water

5 The Basin states’ SDLAM proposals can be found at: Murray–Darling Basin Authority, *Sustainable diversion limit adjustment mechanism – reports and business cases*, available from <https://www.mdba.gov.au/publications-and-data/publications/sustainable-diversion-limit-adjustment-mechanism-reports-and> [accessed 8 November 2024].

6 More information on the Northern Basin Review is available at: Murray–Darling Basin Authority, *Basin Plan amendments for the northern basin*, available from <https://www.mdba.gov.au/water-management/northern-basin/basin-plan-amendments-northern-basin> [accessed 8 November 2024].



recovery volume is calculated based on data on held environmental water entitlements provided by the Basin states and the Commonwealth Environmental Water Holder (CEWH)<sup>7</sup>, and is expressed as gigalitres per year (GL/y).

1.9 Separately from its annual reporting, the MDBA publishes a quarterly estimate of further recovery required in each SDL resource unit on its website, along with the recovery estimates as at the point at which water savings or purchase have been received, estimated or agreed in signed contracts.

1.10 As at 31 December 2022, the MDBA estimated that a gap of 49.2 GL/y — comprising 46 GL/y of surface water and 3.2 GL/y of groundwater — remained to reach the 2,075 GL/y water recovery target (Table 1.1).

**Table 1.1: Remaining gap to bridge as at 31 December 2022**

SDL resource unit	Total target (GL/y)	Recovered volume as at 31 December 2022 (GL/y) <sup>a</sup>	Remaining gap to bridge (GL/y)
<b>Surface water</b>			
Condamine–Balonne	100.00	86.00	14.00
Barwon–Darling	32.00	30.40	1.60
Namoi	20.00	10.50	9.50
NSW Border Rivers	7.00	1.90	5.10
NSW Murray	303.00	293.00	10.00
Lachlan	48.00	47.10	0.90
ACT	4.90	–	4.90
Subtotal for surface water			46.00
<b>Groundwater</b>			
Upper Condamine Alluvium (Central Condamine Alluvium)	35.40	35.15	0.25
Upper Condamine Alluvium (Tributaries)	3.05	0.10	2.95
Subtotal for groundwater			3.20
<b>Total</b>			<b>49.20</b>

Note a: The MDBA report on progress on water recovery notes that 'Water recovery is reported at the point at which water savings or purchase have been received, estimated or agreed in signed contracts. Until water transfer contracts have been exchanged, however these figures may be subject to change over time.'

Source: ANAO summary of MDBA report on progress on water recovery, 31 December 2022.

## Strategic Water Purchasing — Bridging the Gap 2023

1.11 The Department of Climate Change, Energy, the Environment and Water (the department) is the Australian Government entity responsible for recovering water to bridge the gap to SDLs. This

<sup>7</sup> The CEWH is a position established by the *Water Act 2007*. The CEWH's role is to manage the Commonwealth environmental water holdings.

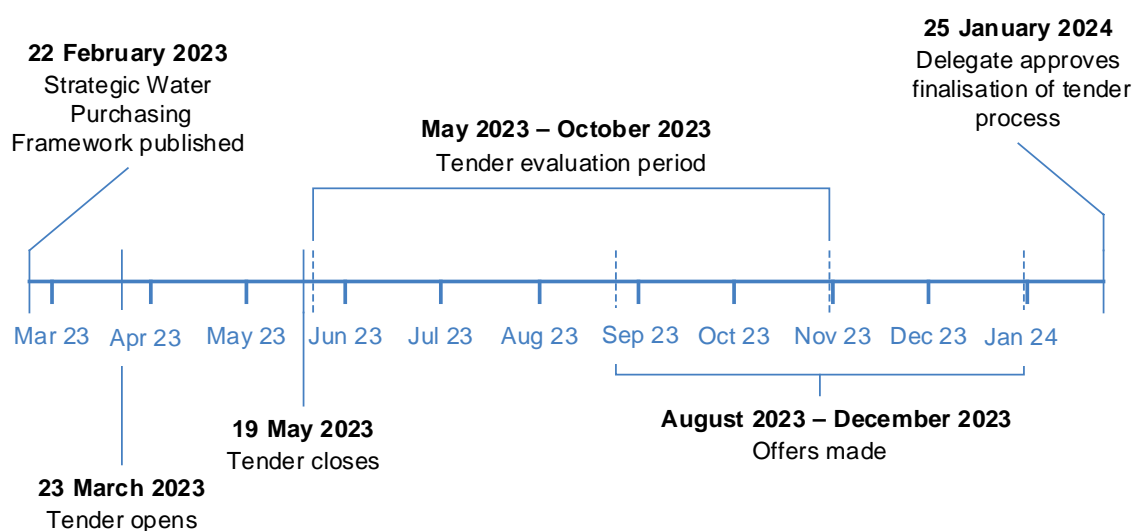
includes monitoring water recovery programs; funding, implementing and managing SDLAM projects and efficiency measures; and undertaking water entitlement purchases.

1.12 Once water has been recovered by the department, it is registered to the CEWH. The CEWH is responsible for managing the Commonwealth environmental water holdings for the purpose of protecting or restoring the Basin’s environmental assets.

1.13 In March 2023, the department commenced an open tender process to purchase water entitlements to bridge the gap of 44.3 GL/y to reach the water recovery target (see paragraph 1.10). The 4.9 GL/y of surface water to be recovered in the ACT was not included in the procurement process as water rights in the ACT are held and owned by a government entity, and separate arrangements were established with the ACT Government.

1.14 Figure 1.3 shows a timeline of the procurement process.

**Figure 1.3: Timeline of the procurement process**



Source: ANAO summary of the procurement process.

1.15 The Strategic Water Purchasing Framework, published on the department’s website on 22 February 2023 ahead of tender opening, outlined the purpose and scope of the water purchasing program, the gap to be bridged in target catchments, and the investment principles that would underpin the government’s purchasing decisions, comprising:

- contribution to the SDLs;
- water market price and other financial factors; and
- environmental utility.

1.16 The investment principles reflected the key factors that went on to inform the value for money assessment for water entitlement purchases. These factors were considered alongside analysis of market activity, trends and movements, and the estimated costs of delayed water recovery, to determine whether a tender offer represented value for money. The potential socioeconomic impact of water recovery was not considered in the value for money assessment, following consultation and advice from the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES).

1.17 As at 17 January 2025, contract settlement and registration of purchased water entitlements remain in progress for five tender offers (see Appendix 4). The gap is expected to be fully bridged in Lachlan and NSW Murray, with a gap of approximately 23.07 GL/y remaining in the other four SDL resource units (Condamine–Balonne; Barwon–Darling; NSW Border Rivers; and Namoi).

## Previous reviews

1.18 The ANAO reported on the Australian Government’s purchase of water entitlements in Auditor-General Report No. 2 2020–21 *Procurement of Strategic Water Entitlements*. The audit concluded that although the strategic water purchases contributed to the Australian Government policy to bridge the gap and obtain water for the environment, the arrangements in place to support the procurements were not fully effective. The audit made four recommendations aimed at:

- reviewing and updating procurement guidance;
- developing assurance mechanisms for procurement processes;
- updating arrangements for managing conflicts of interest; and
- developing a clear evaluation framework.

1.19 The department agreed to all four recommendations.

1.20 Auditor-General Report No. 2 2020–21 was examined in Joint Committee of Public Accounts and Audit (JCPAA) Report 492: *Governance in the Stewardship of Public Resources*. The JCPAA expressed concerns that the shortcomings identified in the audit report made it difficult for the department to demonstrate that the procurements of water entitlements met policy objectives and provided value for money. Two recommendations were made for the department relating to conflict-of-interest management and probity and negotiation training. The department noted the first recommendation and agreed to the second recommendation.<sup>8</sup>

## Rationale for undertaking the audit

1.21 This audit examined the effectiveness of the department’s strategic procurement of water entitlements to meet the Bridging the Gap target under the Basin Plan. It followed on from Auditor-General Report No. 2 2020–21 *Procurement of Strategic Water Entitlements* to provide assurance to Parliament over the arrangements in place to support the procurement process, and the conduct of the procurement process to achieve value for money.

1.22 Water recovery is a topic of parliamentary and public interest. The JCPAA identified the audit as a priority of the Parliament for 2023–24.

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8 The JCPAA Report 492 and the government’s response to the JCPAA’s recommendations are available at: Joint Committee of Public Accounts and Audit, *Governance in the stewardship of public resources: Inquiry into Auditor-General’s Reports 11, 31, 39 (2019-20) and 2 and 9 (2020-21)*, available from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Public\\_Accounts\\_and\\_Audit/Governance](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/Governance) [accessed 26 November 2024].

## Audit approach

### Audit objective, criteria and scope

1.23 The audit objective was to assess the effectiveness of the department's strategic procurement of water entitlements to meet the Bridging the Gap target under the Basin Plan.

1.24 To form a conclusion against the objective, the following high-level criteria were adopted.

- Did the department establish appropriate arrangements to support strategic water procurement?
- Did the department conduct an effective procurement process to achieve value for money?

1.25 The audit focused on the 2023 Bridging the Gap procurement process, including arrangements to support the procurement and whether value for money was achieved. It also examined whether the recommendations from Auditor-General Report No. 2 2020–21 and the JCPAA Report 492 were implemented.

1.26 The audit did not examine: water recovery initiatives for targets other than the 2,075 GL/y Bridging the Gap target; compliance with water trading rules in the Basin Plan; activities of related bodies such as the MDBA or state water regulatory authorities; or the socioeconomic impacts of water recovery on local communities, except to the extent considered by the department as part of the procurement process.

### Audit methodology

1.27 The audit methodology included:

- examination of the department's documentation;
- assessment of whether the procurement process was compliant with the Commonwealth Procurement Rules (CPRs);
- meetings with departmental staff, including officers supporting the CEWH; and
- meetings with the Inspector-General of Water Compliance, and with the MDBA.

1.28 The ANAO did not receive any submissions from the public via the citizen contribution facility on the ANAO website.

1.29 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$285,995.

1.30 The team members for this audit were Se Eun Lee, Megan Cook, Jacqueline Hedditch and Corinne Horton.

## 2. Arrangements to support procurement

### Areas examined

This chapter examines whether the Department of Climate Change, Energy, the Environment and Water (the department) established appropriate arrangements to support strategic water procurement.

### Conclusion

The department has established largely appropriate arrangements to support strategic water procurement. There are appropriate procurement frameworks in place, including a Strategic Water Purchasing Framework developed specifically for the water purchasing program outlining the scope of the program and the investment principles that would underpin water purchasing. The department has established appropriate oversight mechanisms to oversee the program and is managing program and procurement risks. An evaluation framework to monitor, report on and evaluate the strategic water purchasing program has been established. The evaluation framework does not enable an accurate measurement of the program's impact on intended policy objectives, and requires revision to ensure that outcomes are appropriately defined, including in the context of other evaluation activities planned for the Murray–Darling Basin Plan (Basin Plan).

### Areas for improvement

The ANAO made one recommendation aimed at reviewing and revising the evaluation framework to ensure it remains appropriate for the strategic water purchasing program and enables an accurate measurement of the impact of the strategic water purchasing program on intended policy objectives.

2.1 The Commonwealth Procurement Rules (CPRs) are issued by the Minister for Finance under subsection 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). It sets out rules that Commonwealth entities must comply with when undertaking procurements, as well as indications of good practice to help ensure that entities properly use and manage public resources, and procurements achieve their objectives and value for money outcomes.

2.2 Under the CPRs, appropriate arrangements to support procurement activities include establishing:

- an appropriate procurement framework, including setting out entity-specific procurement instructions, policies and guidance<sup>9</sup>;
- effective oversight arrangements to facilitate accountable and transparent decision-making and appropriate engagement with risk<sup>10</sup>; and
- appropriate monitoring, reporting and evaluation arrangements to support the Australian Government's commitment to ensuring accountability and transparency in its procurement activities.<sup>11</sup>

9 Department of Finance, *Commonwealth Procurement Rules*, Finance, 1 July 2022, paragraphs 2.5 and 3.4.

10 *ibid.*, paragraphs 4.4(c) and (d).

11 *ibid.*, paragraph 7.1.

## Did the department establish an appropriate procurement framework for strategic water purchasing?

The department has established a procurement framework that aligns with the PGPA Act and the CPRs. This framework includes Accountable Authority Instructions providing guidance on the duties of officials when conducting a procurement, and departmental policies and guidance on key aspects of procurement. The department developed a Strategic Water Purchasing Framework specific to the water purchasing program, outlining the scope of the program and the investment principles that would underpin water purchasing.

### Accountable Authority Instructions

2.3 Section 20A of the PGPA Act states that ‘the accountable authority of a Commonwealth entity may, by written instrument, give instructions to an official of the entity about any matter relating to the finance law’. The Department of Finance provides further guidance in its Resource Management Guide (RMG) 206 on issuing Accountable Authority Instructions (AAIs). RMG 206 includes model AAI templates covering procurement, risk management and disclosure of interests.

2.4 Three versions of the AAIs were in place in the department during the period examined by the audit: versions dated July 2022, August 2023, and August 2024. The three versions of the AAIs aligned with the requirements of PGPA Act and with RMG 206. They outlined the key duties and responsibilities of officials under the PGPA Act and the CPRs, including in relation to: requirements for entering into commitments of relevant money; the proper use and management of public resources; value for money requirements; transparency and accountability in decision-making; and appropriate engagement with risk.

### Procurement policies and guidance

2.5 The department has established a procurement policy and guidance to assist staff in understanding their duties in relation to procurement processes. The department’s procurement policy, last updated in August 2024, outlines key CPR requirements, mandatory departmental processes, and other good practice considerations for staff when undertaking procurements. The procurement policy is available on the department’s intranet along with associated guidance for staff. The department has a centralised procurement team that supports staff with all stages of the procurement process.

2.6 The procurement policy and guidance material are supplemented by other departmental policies, including:

- Fraud Risk Management and Control Policy<sup>12</sup> (March 2023), which outlines roles and responsibilities for managing fraud risks;
- Internal Control Framework (March 2023), which sets out the department’s approach to managing controls and meeting legislative and policy requirements under the PGPA Act, the Commonwealth Risk Management Policy and the AAIs;

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12 As at 29 November 2024, the Fraud Risk Management and Control Policy is being updated by the department.

- Conflict-of-Interest Policy (November 2022), which details the department’s process for Australian Public Service (APS) employees and supervisors to fulfill their obligations concerning the identification, disclosure and management of conflicts of interest<sup>13</sup>; and
- Gifts and Benefits Policy (August 2024), which sets out the department’s requirements for giving or receiving gifts and benefits in the course of official duties.

## Strategic Water Purchasing Framework

2.7 As outlined in paragraphs 1.5 to 1.7, the Basin Plan specifies a water recovery target of 2,075 gegalitres per year (GL/y) to ‘bridge the gap’ between the amount of water that can be taken from the Basin while maintaining environmental sustainability, known as Sustainable Diversion Limits (SDLs), and how much water was taken from the Basin before the introduction of the Basin Plan. As at the end of 2022, the Murray–Darling Basin Authority (MDBA) estimated that a gap of 49.2 GL/y of water remained to reach the Bridging the Gap target specified in the Basin Plan.

2.8 On 12 October 2022, the Murray–Darling Basin Ministerial Council<sup>14</sup> agreed that ‘achieving sustainable levels of water extraction through water recovery under the Basin Plan is important, not just for the millions who live and work in the Basin, but for all Australians’, and decided that:

As a matter of priority, the Commonwealth will work with relevant communities and Basin states on options to bridge the remaining gap in water recovery, including through strategic purchase, and to consider carefully opportunities to achieve the 450 GL.

2.9 In late October 2022, the department began developing the Strategic Water Purchasing Framework (the framework) in consultation with the Basin states<sup>15</sup>, the Commonwealth Environmental Water Holder (CEWH), and the departments of the Prime Minister and Cabinet (PM&C) and Treasury. The framework outlines the government’s approach to recovering the remaining 49.2 GL/y of water needed to bridge the gap. A detailed breakdown of the remaining gap in each SDL resource unit is included in the framework.

2.10 The framework describes three principles ‘that underpin how water purchasing will proceed to bridge the gap’.

- Achieving the Sustainable Diversion Limits (eligibility threshold): a water entitlement must contribute to bridging the gap in the remaining SDL resource units to be considered for purchase by the government.

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13 The policy notes that ‘contractors are required to advise of any potential conflicts of interest arising during the period of the contract’ as a condition of their contract, and that those with responsibility for making panel or board appointments ‘must ensure they have an adequate process in place to allow appointees to declare any conflicts of interest’. See paragraphs 2.27 to 2.31 on conflict-of-interest management arrangements for the Water Recovery Program Senior Officials Advisory Group.

14 The Murray–Darling Ministerial Council has policy and decision-making roles in relation to: state water shares; funding and delivery of natural resource management programs; and issues relating to critical human needs under the *Water Act 2007*. It comprises the ministers responsible for water from the Australian Government and the five Basin states.

15 The Murray–Darling Basin spans Queensland, New South Wales (NSW), the Australian Capital Territory (ACT), Victoria, and South Australia. Collectively, these are known as the Basin states.

- Water market price and other financial factors: including the price of the water entitlement, transaction costs such as tendering, conveyance and administrative costs, and other whole-of-life costs such as yearly fees and charges.<sup>16</sup>
- Environmental utility: greater value could be assigned to entitlements with high environmental utility, based on considerations such as the ability to water local environmental assets or achieve system-wide benefits; and contribution to broader Basin Plan outcomes.

2.11 The framework was provided to and approved by the Minister for the Environment and Water on 20 February 2023 and published on the department’s website on 22 February 2023.<sup>17</sup>

### *Strategic Water Purchasing Framework – Trading Strategy Addendum 2024–25*

2.12 The 2023 tender process was finalised on 25 January 2024. At the time of tender finalisation, the department estimated that a gap of approximately 18.05 GL/y remained to reach the water recovery target.

2.13 On 11 June 2024, the department published the Strategic Water Purchasing Framework – Trading Strategy Addendum 2024–25 (the addendum) on its website.<sup>18</sup> The addendum outlines the Australian Government’s approach to bridge the gap remaining after the 2023 Bridging the Gap procurement process and specifies indicative timelines for future tenders.

2.14 Advice provided to the minister in determining strategies to bridge the gap remaining after the 2023 tender process, as well as progress on new tender processes, are examined further at paragraphs 3.102 to 3.107.

## **Did the department establish appropriate oversight arrangements for the procurement?**

The department has established appropriate oversight mechanisms for the water purchasing program, with clearly documented roles and responsibilities. The department is managing risks to the program and there is an appropriate level of oversight over program and procurement risks.

16 The fees and charges that apply to a water entitlement vary depending on the type of water right and where the entitlement is held. For example, for Namoi High Security water, WaterNSW charges a fee of \$36.90 (for 2024–25) per entitlement share, comprising: WaterNSW charges; charges collected by WaterNSW on behalf of the Water Administration Ministerial Corporation; and Murray–Darling Basin Authority charges. See WaterNSW, *Fees and charges*, available from <https://www.waternsw.com.au/customer-services/water-pricing/fees-and-charges> [accessed 6 November 2024].

17 The framework is available at Department of Climate Change, Energy, the Environment and Water, *Strategic Water Purchasing Framework (Bridging the Gap) and supporting documents*, available from <https://www.dcceew.gov.au/water/publications/strategic-water-purchasing-framework-and-factsheet> [accessed 6 November 2024].

18 The addendum is available at Department of Climate Change, Energy, the Environment and Water, *Strategic Water Purchasing Framework (Bridging the Gap) and supporting documents*, available from <https://www.dcceew.gov.au/water/publications/strategic-water-purchasing-framework-and-factsheet> [accessed 6 November 2024].



## Oversight arrangements

2.15 The department is responsible for recovering water, including by undertaking water purchases, to reach the Bridging the Gap target under the Basin Plan. The business area within the department responsible for undertaking strategic water entitlement purchases is the Water Recovery Branch in the Water Infrastructure and Investment Division.

2.16 In February 2023, the department developed a project plan to establish and implement a water purchasing program to recover 49.2 GL/y of water across seven SDL resource units. The project plan was endorsed by the Water Recovery Program Senior Officials Advisory Group<sup>19</sup> (Advisory Group) on 7 March 2023. Paragraphs 2.20 to 2.26 examine the Advisory Group in further detail.

2.17 The project plan outlined key governance roles and responsibilities in relation to the program, comprising:

- the Business Owner (Head of the Water Infrastructure and Investment Division);
- the Program Sponsor (Branch Head of Water Recovery); and
- program and project managers (directors leading relevant sections within the Water Recovery Branch).

2.18 The project plan also outlined a list of outputs to be delivered to provide appropriate governance for the program, such as developing a value for money framework and an evaluation framework; establishing probity arrangements; and engaging market intelligence and commercial advisory services. All 20 governance outputs specified in the project plan were delivered ahead of tender closing date of 19 May 2023.

2.19 On 12 April 2024, a new governance framework was approved by the Branch Head of Water Recovery, outlining governance arrangements to support ongoing water purchasing activities to bridge the gap remaining following the conclusion of the 2023 procurement process, and for the recovery of 450 GL/y of additional water to achieve enhanced environmental outcomes.

## Water Recovery Program Senior Officials Advisory Group

2.20 The Advisory Group was established and held its inaugural meeting on 2 February 2023. The terms of reference for the Advisory Group state that its purpose is to provide oversight of the purchasing program's design, establishment and operations. The scope of the Advisory Group's functions include:

- reviewing program implementation against agreed deliverables and timeframes;
- advising on the identification and management of risks and issues;
- ensuring governance arrangements follow best practice; and
- acting as an advisory body to support the department as the accountable body for delivering the program.

2.21 The terms of reference state that the Advisory Group 'has no role in reviewing or advising on individual water acquisitions'.

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<sup>19</sup> Previously known as the Water Recovery Program Advisory Group. The name of the Advisory Group was updated in July 2024 to clarify that it is a senior officials group.

2.22 As at November 2024, membership of the Advisory Group comprises:

- the Deputy Secretary with responsibility for water from the department, as Chair;
- the Head of the Water Infrastructure and Investment Division, as Deputy Chair;
- three SES officers from the department; and
- two SES officers from the Department of Finance (Finance).<sup>20</sup>

2.23 Nominated SES officers from PM&C, Finance, and Treasury, as well as the Chief Executive Officer of the MDBA and a representative from the department's probity adviser, Maddocks, sit on the Advisory Group as permanent observers.<sup>21</sup>

2.24 The Advisory Group met eight times between February 2023 and November 2024, with the next meeting scheduled for June 2025. Meeting records are complete, with agendas and papers prepared for each meeting, minutes circulated and endorsed, and action items tracked, implemented and closed in a timely manner.

2.25 The Advisory Group received updates on the water purchasing program at each meeting, including on:

- the progress of the procurement process — at all eight meetings; and
- the water recovery arrangement being negotiated with the ACT Government — in May, September and November 2023, and May 2024 (see paragraphs 3.90 to 3.101).

2.26 The Advisory Group also provided feedback, advice and endorsement for key documents developed to support the program, including the Strategic Water Purchasing Framework, the Water Market Valuations Policy, the probity framework, the value for money framework, and the monitoring, evaluation, reporting, and improvement (MERI) framework.

### *Conflict-of-interest management*

2.27 The terms of reference for the Advisory Group state that:

All members and observers, including any supporting staff with access to the group's papers, must complete a conflict of interest declaration and advise the Secretariat of any updates and/or changes of their circumstances related to any previously submitted conflicts of interests.

2.28 There is a standing agenda item in meetings of the Advisory Group for attendees to declare conflicts of interests. The meeting minutes record:

- whether any declarations of conflicts were made, including nil declarations, and note that conflicts of interests are reviewed on an ongoing basis by the Secretariat;
- the Chair's reminder to all members of sensitivity of information, probity obligations and requirement to disclose any conflicts of interest; and
- that all members, observers and related staff had completed their conflict-of-interest declarations and acknowledgement of confidentiality obligations as of the meeting date.

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20 The terms of reference note that the Department of Finance 'provides expertise on best practice for whole of government procurements in line with the Commonwealth Procurement Rules', and as such were included as members.

21 The terms of reference note that due to financial and technical complexity associated with water recovery, '[t]here is value in having observers from other government agencies to provide further advice to support best practice, help identify and address program risks.'

2.29 The department maintained a register of conflict-of-interest declarations for Advisory Group members, observers and attendees. The 7 June 2024 register listed a total of 90 personnel, comprising:

- 52 departmental personnel;
- 26 personnel from PM&C, Finance and Treasury;
- six personnel from the MDBA; and
- six personnel from consultancy firms engaged to assist with the procurement process.

2.30 The register indicated that conflict-of-interest declarations had been received from all 90 listed personnel, and that three departmental personnel had declared an actual or apparent conflict of interest. The register did not state what the potential or actual conflict was, or how they were being managed.

2.31 The department was not able to provide the ANAO with completed conflict-of-interest declarations for two people on the register. For one individual, the department advised the ANAO on 5 July 2024 that the form ‘may have been missed in filing’. For the second individual, the department advised the ANAO on 5 July 2024 that the relevant conflict-of-interest form was stored in the Department of Agriculture, Fisheries and Forestry’s (DAFF) IT system and would therefore have to be requested from DAFF.<sup>22</sup>

2.32 Probity management for the program is further examined at paragraphs 3.13 to 3.27.

## Risk management

2.33 Section 16 of the PGPA Act requires accountable authorities to establish and maintain an appropriate system of risk oversight and management for the entity. Paragraph 8.2 of the CPRs states that ‘[r]elevant entities must establish processes to identify, analyse, allocate and treat risk when conducting a procurement’, which should be commensurate with the scale, scope and risk of the procurement.

2.34 The department’s Enterprise Risk Management Framework (ERMF) was published in March 2023 and updated in September 2023. The ERMF outlines the department’s approach to effective risk management, and defines the departmental risk appetite and tolerance.

2.35 The ERMF is supported by:

- the Enterprise Risk Reference Guide (August 2023), which provides ‘detailed guidance and information to assist staff in identifying and managing risk in their day-to-day work’;
- related policies, including the Fraud Risk Management and Control Policy, and the Internal Control Framework and Reference Guide (see paragraph 2.6); and
- information sheets on managing risk for projects and procurements, and risk register and assessment templates for staff.

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22 Prior to the 1 July 2022 machinery of government changes that established the department, water functions were administered by the Department of Agriculture, Water and the Environment, which was renamed the Department of Agriculture, Fisheries and Forestry. The department did not request this form from DAFF.

## Risk management for the Water Recovery Branch

2.36 The ERMF states that '[b]usiness areas **must** record their risks using a risk register [emphasis in original]', which should inform risk reporting. The Water Recovery Branch established six branch risk registers during the period examined in the audit: in December 2022, February 2023, March 2024, June 2024, September 2024, and December 2024. Each risk register was approved by the Branch Head of Water Recovery.

2.37 The December 2022 and February 2023 risk registers each identified six risks relating to the delivery of water recovery programs by the branch (Table 2.1).

**Table 2.1: Risks identified in Water Recovery Branch risk registers, December 2022 and February 2023**

Risks in December 2022 branch risk register	Initial risk rating	Target risk rating <sup>a</sup>	Risks in February 2023 branch risk register	Initial risk rating	Target risk rating <sup>a</sup>
R1: Water recovery targets and objectives are not achieved	Medium	Medium	R1: Water recovery targets and objectives are not achieved	High	High
R2: Misalignment of policy and legal, inadequate governance frameworks resulting in criticism of the department and government	High	Medium	R2: Misalignment of policy and legal, inadequate governance frameworks	High	Medium
R3: Negative impact on stakeholders leading to social impacts on regional communities	Medium	Low	R3: Breach of water-trading rules for water announcements and water trades, and other water management legislation	Medium	Low
R4: Negative socioeconomic impact on communities	Medium	Low	R4: Negative socioeconomic impact on communities	High	High
R5: Negative impacts on staff health and wellbeing as a result of engaging with communities	Medium	Medium	R5: Negative impacts on staff health and wellbeing	Medium	Low
R6: Environmental factors related to the purchase of water	Not specified	Not specified	R6: Inability to deliver program in time, quality and resourcing constraints	High	Medium

Note a: Post-treatment risk rating.

Source: ANAO summary of Water Recovery Branch risk registers.

2.38 The February 2023 risk register replaced two risks from the December 2022 register (R3 and R6) with new risks relating to breach of water rules and legislation; and time, quality and resourcing constraints. Risk ratings, controls and treatments from the December 2022 register were also updated throughout, with changes marked in red text.

2.39 The February 2023 risk register was updated following a risk workshop with the department's central risk management team in January 2024. The updated risk register, dated March 2024, as well as a new risk strategy outlining roles and responsibilities for risk management, was presented to the Branch Head of Water Recovery for approval on 25 March 2024.

2.40 The approval brief to the Branch Head noted that the revised branch risk register contained three risks relating to the overarching risk of program success that were assessed as 'high', comprising:

- we cannot recover the volumes of water required within the timeframes;
- there is a lack of willing sellers; and
- there are unrealistic stakeholder expectations of premium prices.

2.41 In proposing to accept the three risks rated 'high', the brief advised that the risks remained within the department's risk appetite and tolerance levels specified in the ERMF.

2.42 The risk strategy and the risk register were approved by the Branch Head on 25 March 2024. Both documents were reviewed as scheduled in June, September, and December 2024. The updated risk registers outlined how the risks, controls and treatments were reviewed and reasons for changes made. The documents are next scheduled for review in March 2025.

#### *Risk management for the procurement*

2.43 The department's procurement policy states that high value and/or complex procurements should be supported by a risk assessment, which should be consistent with the ERMF.

2.44 A detailed risk assessment for the procurement was prepared along with other procurement planning documents. The risk assessment was provided to the procurement delegate as an attachment to the procurement plan and approved on 22 March 2023, with a plan for it to be reviewed and updated 'with insights from the early stages of the tender period.'

2.45 The risk assessment outlined 25 risks, along with risk causes, initial risk ratings, risk treatments, and target (post-treatment) risk ratings. Risks identified included the risks outlined in the December 2022 and February 2023 branch risk registers, as well as specific risks relating to various stages of the procurement process such as approach to market, receiving tender offers, tender evaluation, negotiation, and conveyancing processes. The risk treatments identified in the risk assessment were implemented.

2.46 In May 2023, an updated risk assessment was provided to the delegate for approval. The updated risk assessment contained seven risks, removing the risks relating to procurement planning and approach to market and focusing on value for money assessment, adequacy of funding and resourcing, the impact of market operations on the tender process, and adhering to probity requirements. The delegate approved the updated risk assessment on 19 May 2023.

#### *Risk reporting to the Advisory Group*

2.47 The Advisory Group's terms of reference state that the group will, amongst other roles, 'advise on the identification and management of risks and issues'.

2.48 A summary of risks for the program was provided to the Advisory Group on three occasions: February 2023, March 2023 and May 2024. The risks identified in each of the summary documents

were largely consistent with the risks identified in the relevant branch risk registers.<sup>23</sup> The Advisory Group discussed and provided comments on the risks for the department's consideration. Action items were raised at the meeting for the department to address the Advisory Group's comments and update the register, and they were completed and closed at the next meeting of the Advisory Group.

2.49 For the Advisory Group's November 2024 meeting, the department added risk as a standing agenda item, recognising its role 'in being able to provide expertise, support and advice on the identification and management of risk in relation to broader government policies, obligations and objectives'.

#### *Risk reporting to the minister*

2.50 Between February 2023 and February 2024, four written briefs were provided to the minister in relation to the strategic water purchasing program. Key sensitivities and risks outlined in the briefs included:

- risks arising from significant public interest in water recovery and the contention surrounding water purchasing as a mechanism for recovering water;
- stakeholder risks arising from current or potential negative media commentary in relation to the program or the procurement process; and
- risks relating to probity, including a need to limit the risk of prejudicing any active counteroffer negotiations, which were ongoing at time of briefing.

2.51 The minister noted the relevant briefs, and made two comments in relation to two risks:

- regarding the stakeholder risks due to negative media attention — whether there were measures to respond to the criticisms; and
- regarding the risks relating to the ongoing counteroffer process — to ensure the unsuccessful tenderers are kept in the loop in case they are interested in future opportunities to sell water.

2.52 Negative media attention and criticism of government is one of the risks identified in the procurement risk assessment approved by the delegate in May 2023. The risk treatments identified to manage the risk were implemented. In an email to all tenderers on 14 February 2024 notifying them of tender outcomes, the department stated that it would welcome further discussions with tenderers if there was a requirement for further water recovery in the relevant areas.

### **Did the department establish appropriate arrangements to monitor, report on and evaluate the strategic water purchasing program?**

The department has established an evaluation framework to monitor, report on and evaluate the strategic water purchasing program. The evaluation framework is focussed on short- and medium-term program outputs and does not enable an accurate measurement of the program's impact on intended policy objectives or link the program to evaluation activities planned for the Basin Plan. Monitoring and reporting arrangements have been established,

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23 There were minor differences in wording, and two additional risks (rated low) in the March 2023 reporting to the Advisory Group that had not been included in the branch risk register.

and process improvements are being made following a lessons learned review of the 2023 Bridging the Gap procurement process.

2.53 The Commonwealth Evaluation Policy was ‘developed to support entities to improve evaluation practices and capability, including the quality of performance reporting’. It states that key governance actions supporting an evaluative culture include ‘plan to conduct fit for purpose monitoring and evaluation activities before beginning any program or activity’.<sup>24</sup>

2.54 The accompanying Commonwealth Evaluation Toolkit includes practical guidance materials and supporting resources to help entities to appropriately monitor and evaluate government programs and activities over the policy cycle.<sup>25</sup>

2.55 Auditor-General Report No. 2 2020–21 found that ‘the department had not defined any evaluation criteria or measures’ for the water purchasing program examined in that audit. The ANAO made a recommendation for the department to ‘implement a framework which requires the development of evaluation strategies early in the program design process and regular monitoring and review throughout the lifecycle’, which was agreed to.<sup>26</sup>

### Evaluation framework for Bridging the Gap

2.56 In February 2023, the department engaged Proximity Advisory Services to develop a monitoring, evaluation, reporting and improvement (MERI) plan for the strategic water purchasing program.<sup>27</sup> The Strategic Water Purchasing Program: Evaluation Framework for Bridging the Gap (the evaluation framework) was provided to and endorsed by the Advisory Group on 4 May 2023. An updated version of the evaluation framework for external publication was provided to the Advisory Group for information on 21 September 2023.<sup>28</sup>

2.57 The evaluation framework ‘details how future evaluations of the Program may be conducted’, and notes that it ‘anticipates that two evaluations will be undertaken to evaluate the program outcomes, in 2024–25 and 2026–27’ (see paragraphs 2.62 to 2.70). The evaluation framework is supported by an internal document (the supporting framework), which outlines in greater detail the proposed evaluation activities and how future evaluations of the program may be conducted. The supporting framework contains three key products that will inform MERI activities for the program:

24 Australian Centre for Evaluation, *Commonwealth Evaluation Policy*, available from <https://evaluation.treasury.gov.au/about/commonwealth-evaluation-policy> [accessed 6 November 2024].

25 Australian Centre for Evaluation, *Commonwealth Evaluation Toolkit*, available from <https://evaluation.treasury.gov.au/toolkit/commonwealth-evaluation-toolkit> [accessed 6 November 2024].

26 Auditor-General Report No. 2 2020–21, *Procurement of Strategic Water Entitlements*, ANAO, Canberra, 2020, paragraphs 4.45–4.49, available from <https://www.anao.gov.au/work/performance-audit/procurement-strategic-water-entitlements>.

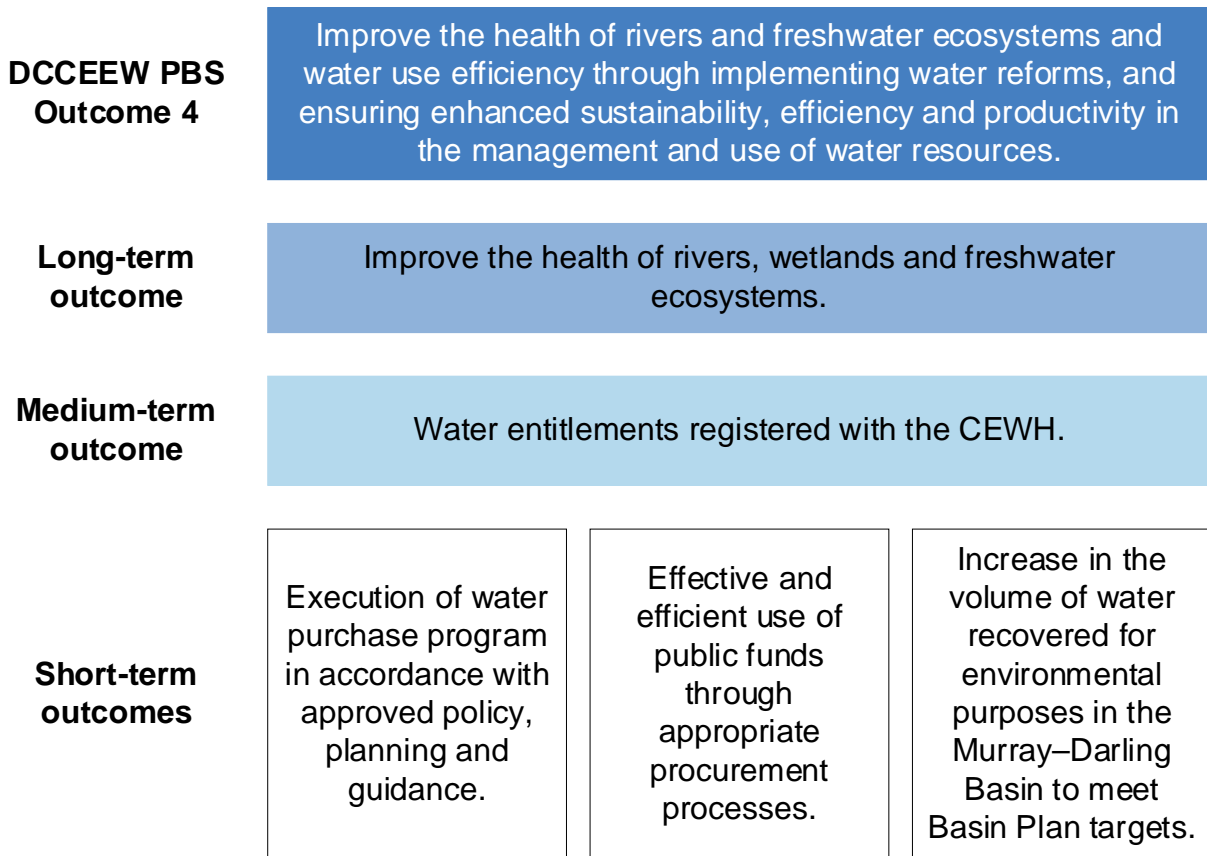
27 The total contract value is \$159,873.40. See AusTender, *Contract Notice View – CN3950055*, available from <https://www.tenders.gov.au/Cn/Show/65c8e0d6-180b-4ebf-9b4e-91a5f4953506> [accessed 6 November 2024].

28 The framework is available on the department’s website: Department of Climate Change, Energy, the Environment and Water, *Strategic water purchasing – Bridging the Gap*, available from <https://www.dceew.gov.au/water/policy/water-recovery/government-water-purchasing/strategic> [accessed 6 November 2024].

- a program logic — which outlines the inputs, activities and outputs for the strategic water purchasing program, and how they will contribute to the short-, medium- and long-term outcomes specified for the program;
- evaluation questions — which ‘have been developed to align with the program logic document’ and to ‘form the basis of the evaluation plan and the terms of reference’ that will be established closer to the evaluations; and
- a data/evaluation matrix — which ‘outlines the sources and types of data which will need to be collected by the program’s policy and delivery teams, as well as by the evaluator at the time of the evaluation, to ensure that the evaluation questions can be answered’.

2.58 The outcomes in the program logic are depicted in Figure 2.1. The program logic aligns the program outcomes to the department’s Portfolio Budget Statement (PBS) Outcome 4.

**Figure 2.1: Outcomes in the program logic**



Source: ANAO representation of program logic outcomes.

### Performance indicators and data collection

2.59 The data/evaluation matrix in the supporting framework is closely modelled on the evaluation matrix template provided in the Commonwealth Evaluation Toolkit.<sup>29</sup> The data/evaluation matrix outlines, for each proposed evaluation question:

<sup>29</sup> Australian Centre for Evaluation, *Commonwealth Evaluation Toolkit: Templates, tools and resources*, available from <https://evaluation.treasury.gov.au/toolkit/templates-tools-and-resources> [accessed 6 November 2024].



- indicators ('what are you going to track?');
- metrics ('how are you going to track it?');
- context ('what will the indicators be compared to?'); and
- the types of data required and when the data will be collected.

2.60 A total of 34 indicators were developed across 15 evaluation questions. The supporting framework notes that 'not every evaluation will address all the evaluation questions, and that they will be dispersed across the two (2) planned evaluations'.

2.61 The types of data and information required to be collected throughout delivery of the program primarily comprised program data (such as number of tender offers received, requests for information and clarifications, and complaints and feedback), and policy and program documents (such as the tender evaluation plan and guideline, tender evaluation reports, and probity and risk documents). All program data and documents required to be collected during the delivery of the program have been collected or developed.

## Evaluation

2.62 The supporting framework outlines two planned evaluations to be conducted 'at different points in time, in order to evaluate the achievement of program outcomes' (Table 2.2).

**Table 2.2: Planned evaluations within the evaluation framework**

Evaluation	Intended timeframe	Outcomes to be evaluated
Impact evaluation 2024–25	Upon completion of the program <sup>a</sup>	Program outputs and short-term outcomes
Impact evaluation 2026–27	Two to three years following completion of the program	Medium-term outcome

Note a: The program was initially intended to be completed by 30 June 2024. The department advised the ANAO on 11 October 2024 that: 'With the 2023 tender now almost complete, the department is commencing planning for the first evaluation, with the intention of commencing it within the current 2024–25 timeframe proposed in the Evaluation Framework.'

Source: ANAO summary of planned evaluations.

2.63 The Commonwealth Evaluation Toolkit defines 'impact evaluations' as '[e]ffectiveness evaluations that develop a counterfactual'. According to the Toolkit, impact evaluations are intended to help answer a causal question on government policy or program; that is, 'if the program *caused* a change in outcomes [emphasis in original].'<sup>30</sup> The Toolkit notes that:

Evaluating effectiveness can be particularly challenging because of the need to tease out whether the outcomes have been caused by the program or activity or by other factors. It also requires the development of a counterfactual (that is, what would have happened to the program or activity beneficiaries in the absence of the program or activity?).<sup>31</sup>

2.64 The 2023 strategic water purchasing program was established 'to deliver the purchasing mechanisms to allow recovery of the remaining gaps to the SDLs totalling 49.2 GL', in order to meet

30 Australian Centre for Evaluation, *Commonwealth Evaluation Toolkit*, 'Impact evaluation', available from <https://evaluation.treasury.gov.au/toolkit/impact-evaluation> [accessed 6 November 2024].

31 Australian Centre for Evaluation, *Commonwealth Evaluation Toolkit*, 'How to evaluate: 2. Set evaluation objectives', available from <https://evaluation.treasury.gov.au/toolkit/set-evaluation-objectives> [accessed 6 November 2024].

the government's commitment to deliver in full the water recovery required under the Basin Plan. The Strategic Water Purchasing Framework states that the objective of water recovery is 'to recover water entitlements to reduce the volume of water extracted for consumptive use ... to achieve the new SDL.' Subsection 5.05(2) of the Basin Plan outlines four outcomes in relation to the establishment of the SDLs:

- (a) the restoration and protection of water-dependent ecosystems and ecosystem functions in the Murray–Darling Basin; and
- (b) well-informed water recovery measures, including water purchasing and infrastructure, enable a transition to long-term average sustainable diversion limits; and
- (c) greater certainty of access to Basin water resources; and
- (d) water access entitlement holder and communities of the Murray–Darling Basin are better adapted to reduced quantities of available water.

2.65 As outlined in Figure 2.1, the medium-term outcome for the program specified in the program logic is 'water entitlements registered with the CEWH'. The registration of the water entitlements with the CEWH is a step within the conveyance process outlined in the conveyance plan established for the procurement. 'Water entitlement transfer data held by CEWH' is also listed in the data/evaluation matrix as data that will be collected throughout the delivery of the program. Measuring the registration of water entitlements with the CEWH two to three years after the completion of the program does not provide a measure of the program's impact on or contribution towards achieving the broader policy objectives underpinning water recovery.

2.66 The long-term outcome for the program specified in the program logic is to 'improve the health of rivers, wetlands and freshwater ecosystems'. The supporting framework states that '[e]valuation of the achievement of long-term outcomes is out of scope of this Framework', as it is an outcome for the entirety of the Basin and the operation of the Basin Plan, of which the program only represents a part. The supporting framework notes that the Basin Plan has broadly allocated the responsibility for monitoring and reporting on environmental outcomes to the MDBA, the Basin states and the CEWH, and as such 'evaluation of this long-term outcome will be undertaken as part of their monitoring and evaluation activity across the life of the Plan, and beyond'.

2.67 The program's target recovery volume of 49.2 GL/y amounts to around 2.4 per cent of the overall Bridging the Gap target of 2,075 GL/y. Of the 49.2 GL/y program target, around 26.52 GL/y, or 1.3 per cent of the overall 2,075 GL/y target, has been recovered (including the water recovered for the ACT).

2.68 On 23 August 2024, the department advised the ANAO that it is 'in the process of considering opportunities to further refine and update the scope of the Framework to ensure it is clearly centred on delivering a meaningful evaluation', and stated that:

[it] is not possible nor appropriate for the impact evaluation to separate the longer-term impacts of the Program from other programs and outcomes completed under the Basin Plan, and the department feels this could be better articulated within the document.

2.69 Where there may be difficulties in accurately determining whether, or to what extent, the program has caused a change in specified outcomes, it is relevant to consider:

- whether impact evaluations are the appropriate type of evaluation for the program<sup>32</sup>; and
- if so, whether the outcomes in the framework have been defined appropriately to enable an accurate measurement of program impact.

2.70 Should the department decide to proceed with impact evaluations of the program, there is a need to revise the framework to ensure that the outcomes are appropriately defined for the program, including in the context of other Basin Plan evaluation activities planned by the MDBA.<sup>33</sup>

### Recommendation no. 1

2.71 The Department of Climate Change, Energy, the Environment and Water:

- review and update the evaluation framework for the strategic water purchasing program to ensure the chosen evaluation approach remains appropriate for the program; and
- if relevant, revise the outcomes in the evaluation framework to enable an accurate measurement of the impact of the strategic water purchasing program on intended policy objectives.

**Department of Climate Change, Energy, the Environment and Water response: Agreed.**

2.72 *The department developed the strategic water purchasing program evaluation framework to be a living document that will be reviewed as the program is implemented, or in response to significant program events. This includes reviewing the evaluation questions which may be crafted to account for changes in the policy context, key stakeholders, or performance indicators.*

2.73 *With the 2023 open tender now complete and the next phase of the water purchasing program underway, the department agrees with ANAO's recommendation to undertake this review before the first evaluation of the program is undertaken. The department has established an Evaluation Reference Group to oversee the first evaluation.*

### Reporting

2.74 The department publishes updates on the progress of the water purchasing program, including the volumes of water purchased, on its website.<sup>34</sup> As at 17 January 2025, the website contains a summary of volumes agreed to be purchased to 27 November 2024, as well as the average and median price per water right type.

32 The Toolkit outlines other types of evaluations, including: outcome evaluation, summative evaluation, ex-post, theory of change evaluation, and economic evaluation. See Australian Centre for Evaluation, *Commonwealth Evaluation Toolkit*, 'When to evaluate: After program in operation', available from <https://evaluation.treasury.gov.au/toolkit/when-evaluate/after-program-operation> [accessed 6 November 2024].

33 A five-yearly evaluation of the Basin Plan is planned for 2025, which will inform a 10-year Basin Plan review in 2026.

34 Department of Climate Change, Energy, the Environment and Water, *Strategic water purchasing – Bridging the Gap*, available from <https://www.dcceew.gov.au/water/policy/water-recovery/government-water-purchasing/strategic> [accessed 17 January 2025].

## Annual performance statements

2.75 Commonwealth entities are subject to performance measurement and reporting requirements under the PGPA Act, the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) and accompanying guidance issued by the Department of Finance. These are collectively referred to as the Commonwealth performance framework.

2.76 Under the framework, entities must publish corporate plans for each financial year. Corporate plans must set out the entity's purpose and provide performance measures that will measure the entity's performance in achieving its purpose. Results against these performance measures are required to be provided in the entity's annual performance statements, to provide accountability information to the Parliament and the public.<sup>35</sup>

2.77 During the period relevant to the audit, the department has reported on the following performance measure in its annual reports:

Increase in the volume of water recovered for environmental purposes in the Murray–Darling Basin to meet Basin Plan targets.<sup>36</sup>

2.78 Targets and reported results for each year of reporting are summarised in Table 2.3.

**Table 2.3: Reporting against performance measure, 2021–22 to 2023–24**

Financial year	Target	Result
2021–22	Bridging the Gap surface water recovery: +20 GL recovered	Not achieved. There was no progress on surface or groundwater Bridging the Gap targets.
	Bridging the Gap groundwater recovery: +1.6 GL recovered	
	Progress towards the recovery of 450 GL of additional water	Not achieved. An additional 5.5 GL/y of water was contracted through the Murrumbidgee Irrigation Automation Finalisation project, and an additional 0.1 GL/y of previously contracted water was registered with the CEWH.
2022–23	Bridging the Gap surface water recovery: +46.0 GL recovered	Not achieved. There was no progress on surface or groundwater Bridging the Gap targets.
	Bridging the Gap groundwater recovery: +3.2 GL recovered	
	Progress towards the recovery of 450 GL of additional water	Achieved. An additional 10.1 GL of water was registered to the Commonwealth's environmental water holdings.

35 The ANAO undertakes annual audits of the annual performance statements of selected Australian Government entities. Following a request from the Minister for Finance on 2 July 2024, the annual performance statements audit program for 2024–25 will expand from 14 entities to include seven new entities, including the department.

36 The department (then the Department of Agriculture, Water and the Environment) was one of six entities examined in the ANAO's audit of the Annual Performance Statements of Australian Government entities in 2021–22. The ANAO assessed the department's 2021–22 Bridging the Gap performance measure as appropriate. See: Auditor-General Report No. 13 2022–23, *Audits of the Annual Performance Statements of Australian Government Entities — 2021–22*, ANAO, Canberra, 2023, available from <https://www.anao.gov.au/work/performance-statements-audit/audits-the-annual-performance-statements-australian-government-entities-2021-22> [accessed 29 November 2024].

Financial year	Target	Result
2023–24	Bridging the gap surface water recovery complete	Partially achieved. During 2023–24, a total 19.5 GL/y of additional surface water was registered towards the remaining 49.2 GL/y Bridging the Gap target. No groundwater was recovered.
	Bridging the Gap groundwater recovery complete	
	Increase in volume of water recovered against the legislated target and timeframe for additional water to enhance the environmental outcomes that can be achieved by the Basin Plan (450 GL target)	Achieved. In 2023–24, an additional 4.6 GL/y was registered to the Commonwealth’s environmental water holdings.

Source: ANAO summary of the department’s annual reports.

## Lessons learned

2.79 The department undertook two lessons learned reviews of the program:

- in April/May 2023, following a ‘dry run’ of the tender evaluation process prior to the commencement of the tender evaluation; and
- in November 2023, to perform an assessment of the department’s implementation of the procurement process, following conclusion of the tender evaluation process.

### *‘Dry run’ lessons learned review*

2.80 From 28 April to 3 May 2023, the department conducted a ‘dry run’ of the tender evaluation process using 17 ‘dummy tender responses’. This run was ‘to test and amend the [tender evaluation] guidelines where they don’t work or lead to inconsistencies’. The dry run did not test the value for money process, the conveyance process and direct communication with potential tenderers.

2.81 Sententia Consulting was appointed as ‘readiness advisers’ for the tender evaluation process.<sup>37</sup> It oversaw the dry run and facilitated a lessons learned workshop following the dry run. Key lessons were identified, and changes made, in relation to:

- evaluation guidelines — including clarifying roles and responsibilities and escalation pathways; and adding more detailed, step-by-step instructions for evaluation officers;
- evaluation templates — including making clearer delineation between the individual tender evaluation forms and evaluation panel spreadsheets; and removing repetition in sections and unnecessary fields; and
- supporting roles for the process — including confirming the boundaries of the role of the Contact Officer; clarifying timeframes required for probity advisers to provide advice; and determining the preferred format and terminology of value for money information provided by Marsden Jacob Associates (MJA).

37 The total contract value is \$48,425. See AusTender, *Contract Notice View - CN3968621*, available from <https://www.tenders.gov.au/Cn/Show/570129b1-125b-4a6d-985f-58abf83fa04c> [accessed 6 November 2024]. Sententia Consulting was the only supplier approached for the engagement from the whole-of-government Management Advisory Services panel (SON3751667).

*Post-tender lessons learned review*

2.82 The department engaged Sententia Consulting on 22 August 2023 to perform an assessment of the department’s implementation of the procurement process and provide a lessons learned report.<sup>38</sup> A draft report was provided to the Advisory Group in its 23 November 2023 meeting for noting. The final report was delivered to the department on 7 December 2023.

2.83 The lessons learned report identified the ‘level of opportunity for improvement’ across 16 purchasing framework ‘components’ (Table 2.4). The report did not contain guidance or thresholds to define the different levels of opportunity.

**Table 2.4: Level of opportunity for improvement identified by Sententia**

Component	Level of opportunity for improvement		Component	Level of opportunity for improvement	
Effective governance	▲	Medium	Approach to market	■	High
Strategic focus	▲	Medium	Stakeholder engagement	■	High
Value for money	■	High	Vendor selection	■	High
Responsible purchasing	▲	Medium	Contract negotiation	▲	Medium
Reputable suppliers	◆	Low	Probity management	◆	Low
Market analysis	▲	Medium	Fairness and impartiality	◆	Low
Procurement strategy	■	High	Accountability and transparency	◆	Low
Stakeholder strategy	▲	Medium	Conflict-of-interest management	◆	Low

Key: ■ High ▲ Medium ◆ Low.

Source: ANAO adaptation of Sententia lessons learned report.

2.84 Sententia Consulting identified five components as having ‘high’ opportunity for improvement: value for money; procurement strategy; approach to market; stakeholder engagement; and vendor selection. Key lessons in each of these components are summarised in Table 2.5.

**Table 2.5: Summary of lessons in ‘high’ opportunity components**

Component	Summary of key lessons identified
Value for money	The value for money framework and the assessment process required consideration of multiple factors, whose intersection and relative priority could have been made clearer to assist delegate decision-making. <sup>a</sup>
Procurement strategy	A more rigorous, risk-assessed review of different approaches to purchasing, including to cater for different levels of activity in the different catchments, may have identified other approaches that may have resulted in different outcomes.

<sup>38</sup> The total contract value is \$38,110, increased from \$28,210. See AusTender, *Contract Notice View - CN4003819*, available from <https://www.tenders.gov.au/Cn/Show/6e8aa62c-fa8e-4fc0-b721-5a6ebb69ec8b> [accessed 6 November 2024]. Sententia Consulting was the only supplier approached for the engagement from the whole-of-government Management Advisory Services panel (SON3751667).

Component	Summary of key lessons identified
Approach to market	The approach to market was an extensive and relatively complicated document which was confusing for organisations not used to engaging with the Commonwealth. It was a manual document that drove a highly manual assessment process. This resulted in challenges in receiving complete and compliant submissions. <sup>b</sup>
Stakeholder engagement	The purchasing team did not have a single comprehensive and consistent tool to track and record all stakeholder engagement and communication. The level of incomplete and non-compliant responses indicates that an engagement model that supported respondents to complete their submissions in a 'probity-managed' way would have been beneficial. <sup>b</sup>
Vendor selection	The assessment process was highly manual, linear, and consequently inefficient, time-consuming and subject to errors (some of which occurred but were identified). <sup>c</sup> Issues with the valuation information and lack of consideration of the extent to which premiums over valuation would be appropriate, the consequences of deferral of purchasing of water rights and of not achieving the Basin Plan targets meant that assessment decisions required complex exercises of judgement by the delegate. <sup>a</sup>

Note a: See paragraphs 3.47 to 3.69 for analysis on value for money assessments.

Note b: See paragraphs 3.34 to 3.37 for analysis on the initial tender screening process.

Note c: See paragraph 3.38 for analysis on errors that occurred during the evaluation process.

Source: ANAO summary of lessons learned report.

2.85 Key lessons identified from the tender process are being incorporated into the design of future water recovery programs.



### 3. Procurement process and value for money

#### Areas examined

This chapter examines whether the Department of Climate Change, Energy, the Environment and Water (the department) conducted an effective procurement process to achieve value for money.

#### Conclusion

The department established a value for money framework for the procurement, specifying the key factors that would inform its purchasing decisions. The department documented and demonstrated how it assessed value for money in each of the six Sustainable Diversion Limit (SDL) resource units in accordance with its value for money framework. The procurement was compliant with the Commonwealth Procurement Rules (CPRs), except in relation to minor errors in reporting contracts on AusTender. Negotiations were undertaken to maximise value for money outcomes, and revised value for money assessments were undertaken where negotiated prices differed from the delegate's original approved figure. Relevant information and clear recommendations were provided to the delegate to enable them to make an informed procurement decision. The department provided sound advice to the minister on options to bridge the gap in the ACT and in SDL resource units with remaining gaps to bridge.

#### Areas for improvement

The ANAO made one recommendation aimed at providing more clarity in procurement-related policies and guidance for establishing appropriate probity requirements.

3.1 On 22 February 2023, the department released the Strategic Water Purchasing Framework (the framework) on its website. The framework outlined the purpose and scope of the water purchasing program to reach the water recovery target under the Murray–Darling Basin Plan (Basin Plan), and the investment principles that would underpin the government's approach to purchasing water, comprising: contribution to the SDLs; water market price and other financial factors; and environmental utility (see paragraph 2.10).

3.2 The CPRs set out mandatory requirements and good practice for Commonwealth officials undertaking procurement activities to help to ensure that public resources are used in the most efficient, effective, ethical and economic manner. An effective procurement process includes:

- undertaking appropriate planning including approaches to market and tender evaluation processes in a manner that is fair and transparent and compliant with the requirements of the CPRs;
- considering both financial and non-financial costs and benefits of a procurement to achieve value for money outcomes<sup>39</sup>; and
- providing sound and complete advice to decision-makers to support an assessment of the proper use of public money consistent with the requirements of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).<sup>40</sup>

39 Department of Finance, *Commonwealth Procurement Rules*, Finance, 1 July 2022, paragraphs 3.4, 4.4 and 4.5.

40 *Public Governance, Performance and Accountability Act 2013*, section 15; Department of Finance, *Commonwealth Procurement Rules*, Finance, 1 July 2022, paragraph 6.1.



## Did the procurement process comply with the Commonwealth Procurement Rules?

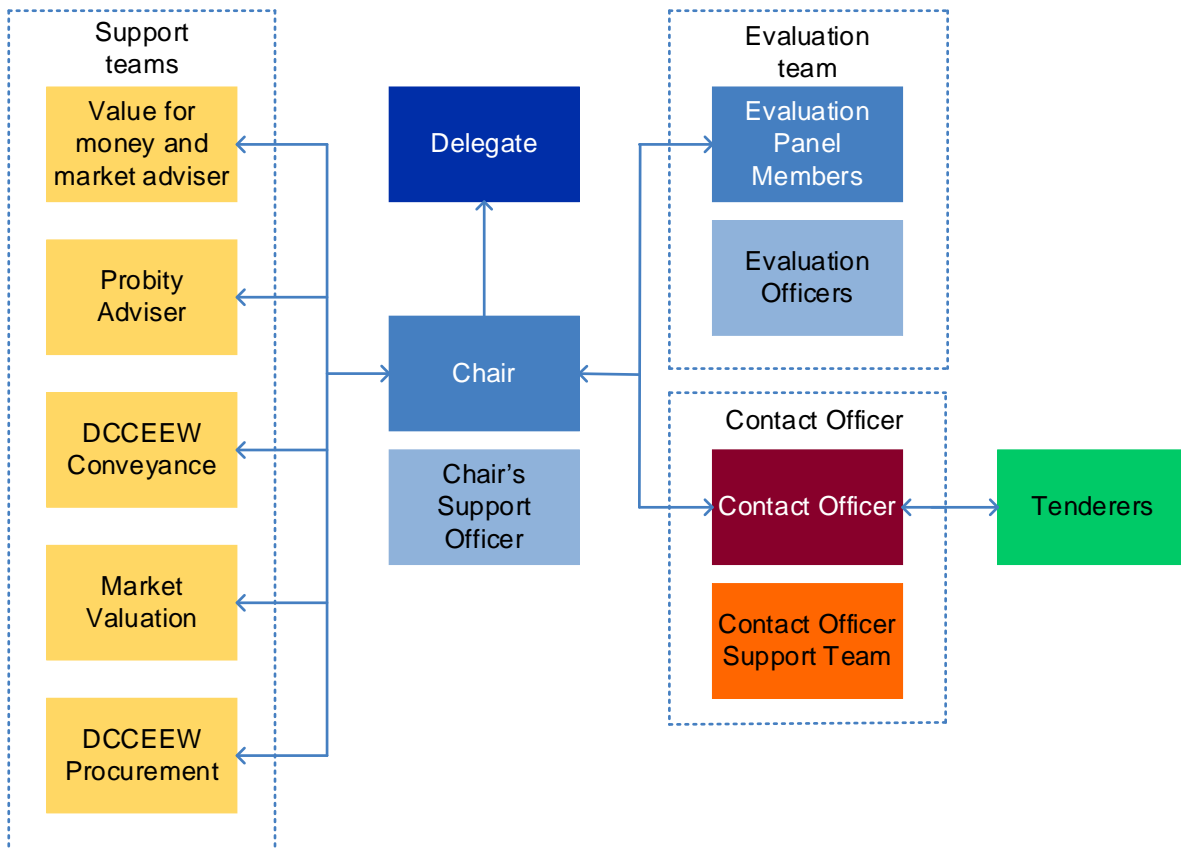
The procurement process was compliant with the Commonwealth Procurement Rules (CPRs), except in relation to minor errors in reporting contracts on AusTender. The department complied with the requirements relating to procurement planning and approach to market, and the tender evaluation process was conducted in accordance with the tender evaluation plan. Management of conflicts of interest was impacted by deficiencies in the declaration process. Manual tender screening and assessment processes resulted in some process inefficiencies and errors that were later discovered and corrected.

### Overview of the procurement process

3.3 The tender process for the strategic water purchasing program commenced on 23 March 2023 when the approach to market was published on AusTender. The tender closed at 5pm on 19 May 2023. A total of 251 offers to sell water entitlements were received from 198 tender submissions. No tender responses were received for Condamine–Balonne groundwater.<sup>41</sup>

3.4 Figure 3.1 outlines the arrangements established for tender evaluation.

**Figure 3.1: Tender evaluation arrangements**



Source: Adapted by the ANAO from departmental records.

41 The 49.2 GL/y recovery target includes 3.2 GL/y of groundwater in the Upper Condamine Alluvium SDL resource units, which are located in Queensland’s Condamine and Balonne water plan area. See Table 1.1 in Chapter 1.

3.5 The procurement delegate was the Head of the Water Infrastructure and Investment Division. The Tender Evaluation Panel comprised four members, including the evaluation panel chair. The panel was supported by a team of 10 evaluation officers. All panel members and evaluation officers were departmental officers.

3.6 The Contact Officer was responsible for ‘all direct communication with Tenderers during the Tender period as well as during Tender evaluation’. The Contact Officer was not involved in the evaluation process. The role included:

- responding to questions from tenderers regarding the tender process;
- issuing requests for clarification to, and receiving responses from, tenderers in relation to their tender submissions; and
- maintaining a register of communication sent to and received from tenderers.






3.7 The procurement process was supported by both internal and external advisers. Internal advisers included the department’s central procurement team, the water market valuation team in the Water Reform Taskforce Division, and the water conveyance team in the Water Policy Division. The role of the water market valuation team and the water conveyance team are examined further at paragraphs 3.57 to 3.59 and 3.87 to 3.88 respectively.

3.8 Maddocks was engaged as the external probity adviser for the program.<sup>42</sup> Marsden Jacob Associates (MJA) was engaged to provide water market analysis and value for money assessment support.<sup>43</sup>

### Compliance with Commonwealth Procurement Rules

3.9 The procurement commenced in March 2023 and the ANAO assessment of the procurement was against the July 2022 version of the CPRs that was in place at the time the tender was issued.<sup>44</sup> Table 3.1 outlines the ANAO’s assessment of the department’s compliance with the mandatory requirements of the CPRs.

**Table 3.1: Assessment of CPR compliance**

CPR group assessed	Assessment results
Value for money (Part 4)	
Encouraging competition (Part 5)	
Efficient, effective, economic and ethical (Part 6)	
Accountability and transparency (Part 7) <sup>a</sup>	
Procurement risk (Part 8)	

42 The total contract value is \$247,106.70, increased from \$55,000. See AusTender, *Contract Notice View - CN3935071*, available from <https://www.tenders.gov.au/Cn/Show/2f02bdf8-6d68-455e-a0a7-dfd747fb6f7c> [accessed 6 November 2024].

43 The total contract value is \$531,150, increased from \$72,270. See AusTender, *Contract Notice View - CN3950054*, available from <https://www.tenders.gov.au/Cn/Show/7c0e4e7d-25a2-49bf-a49b-bbfb7e614589> [accessed 6 November 2024].

44 There have been two subsequent versions of the CPRs: 13 June 2023 and 1 July 2024 (current).

CPR group assessed	Assessment results
Procurement method (Part 9)	◆
Additional rules (Part 10)	◆

Key: ◆ Compliant ▲ Partly compliant ■ Not compliant.

Note a: Paragraph 7.18 of the CPRs requires that entities report contracts and amendments on AusTender within 42 days of entering into or amending a contract valued at or above the reporting threshold. The department's reporting of contracts on AusTender is outlined in paragraphs 3.44 to 3.46.

Source: ANAO analysis of CPR compliance.

3.10 The department's procurement planning complied with the relevant requirements of the CPRs, as well as its procurement policy and relevant elements of the Department of Finance's procurement-related guidance. The department developed a procurement plan that clearly outlined the business case, objective and scope of procurement; market analysis and stakeholder consultation undertaken; arrangements to manage procurement risk; probity considerations; estimated value of procurement; procurement method and rationale; and consideration of relevant procurement-connected policies.

3.11 The procurement plan was accompanied by a suite of documents, including: a probity plan (see paragraphs 3.14 to 3.15); a risk assessment (see paragraphs 2.43 to 2.46); a tender evaluation plan (see paragraphs 3.32 to 3.33); a conveyance plan (see paragraphs 3.87 to 3.88); and a communication plan. The procurement plan and other documents were approved by the delegate on 22 March 2023.

3.12 Under Appendix A of the CPRs, the procurement of water entitlements is exempt from the additional rules in Division 2 (Part 10).<sup>45</sup> The procurement plan stated that 'where possible, this procurement will endeavour to address relevant Division 2 requirements where it will assist in achieving value for money and efficient, effective, economical and ethical procurement relevant to water purchase'. The procurement plan contained as an attachment the list of rules in Division 2 that were to be complied with, and outlined the rules that were determined to be not applicable to the procurement.<sup>46</sup> Complying with the relevant rules to the extent practicable, and clearly documenting the rationale for not applying certain rules, helped the department demonstrate that the procurement was conducted in a way that promoted transparency and accountability.

### *Management of probity*

3.13 The CPRs require that procuring entities act ethically throughout the procurement, including by recognising and dealing with actual, potential and perceived conflicts of interest.<sup>47</sup> The CPRs also contain requirements relating to treatment of confidential information, including treating tender submissions as confidential before and after the award of a contract.<sup>48</sup>

45 The exemption in Appendix A applies to 'Procurement including leasing of land, existing buildings or other immovable property or any associated rights'. Department of Finance's guidance explains that the exemption includes 'any rights associated with property, such as water entitlements and air rights.'

46 The rules that were determined to be not applicable were paragraphs 10.23, 10.25, 10.26, 10.29 and 10.31, which comprised rules for procurements with non-electronic submissions, multi-stage procurements, and tenders that specify conditions for participation.

47 Department of Finance, *Commonwealth Procurement Rules*, Finance, 1 July 2022, paragraph 6.6.

48 *ibid.*, paragraph 7.23.

3.14 The department established a probity framework and appointed Maddocks as the external probity adviser for the strategic water purchasing program. A probity plan was prepared for the procurement requiring all ‘Water Procurement Personnel’<sup>49</sup> to:

- declare any real, apparent, potential or perceived conflict of interest, with declared conflicts to be referred to the evaluation panel chair and the probity adviser, where necessary, to be managed; and
- complete a confidentiality acknowledgement (for APS employees) or a confidentiality undertaking (for non-APS employees<sup>50</sup>), as applicable.

3.15 The probity plan required departmental personnel to submit their conflict-of-interest declarations through the department’s Lighthouse system.<sup>51</sup> Forms submitted via Lighthouse are reviewed by the employee’s immediate supervisor, and may be viewed by the department’s central integrity unit.<sup>52</sup> Those unable to access the Lighthouse system, including external advisers involved in the procurement, completed their declarations using separate declaration forms which were filed in the department’s records management system. There were also individuals who have done both, or a mix of the two — for instance, by filling in a declaration form and writing in a Lighthouse reference number in the declaration section.

3.16 The department established three probity registers tracking the completion of various probity forms for 181 individuals (Table 3.2).

**Table 3.2: Probity registers established by the department**

Register	Purpose	No. of personnel listed
Confidentiality Acknowledgement (CA) Register	Lists ‘Core Personnel’ (personnel directly involved in evaluation or decision-making process for the 2023 Bridging the Gap open tender procurement) who were required to and have completed a Confidentiality Acknowledgement form contained in Schedule 1 of the probity plan (Schedule 1 CA form).  It does not capture personnel who did not work directly on the procurement, or left before the evaluation period.	59
Conflict-of-Interest (COI) Register	Original register set up by the Water Recovery Branch. Includes forms completed by attendees to the Water Recovery Program Senior Officials Advisory Group <sup>a</sup> (Advisory Group) meetings, branch members, and consultants to the branch.	129

49 The probity plan defined ‘Water Procurement Personnel’ as those who are directly involved in the procurement or may have access to confidential information relating to the procurement.

50 Including external consultants and contractors.

51 Lighthouse is a financial management compliance system, hosting forms related to finance, integrity, security and other corporate functions.

52 The department’s integrity unit is located in the Professional & Ethical Standards Branch in the People Division. The department’s conflict-of-interest policy states that the integrity unit ‘may view declarations to ensure any actual, perceived or potential conflicts of interest or other threats to the integrity of the department are identified and managed effectively.’

Register	Purpose	No. of personnel listed
Advisory Group COI Register	Additional register created to ensure all attendees at the Advisory Group had completed the appropriate Confidentiality Acknowledgement and COI form, or a Lighthouse COI form, prior to each meeting. See paragraphs 2.29 to 2.31 for analysis relating to the Advisory Group COI Register.	90

Note a: Previously known as the Water Recovery Program Advisory Group. The name of the Advisory Group was updated in July 2024 to clarify that it is a senior officials group.

Source: ANAO summary of probity registers.

3.17 There were six additional individuals who were not listed on any probity register kept by the department, although all six have completed both a CA form and a COI declaration.

‘Core Personnel’

3.18 As noted in the table above, the CA Register was established to track the completion of ‘Schedule 1 CA forms’ by those the department identified as ‘Core Personnel’, who worked directly on the open tender process. Along with completing a Schedule 1 CA form, these ‘Core Personnel’ were required to complete a COI declaration under the requirements of the probity plan (either through the Lighthouse system or by completing a separate form).

3.19 Of the 59 ‘Core Personnel’ on the CA Register, 27 were not present on any COI register. These 27 personnel are described as having performed roles relating to ‘water recovery reporting’, ‘procurement advice and input’, ‘communications and accessibility advice’ and ‘conveyancing processing’.

3.20 On 1 November 2024, the department advised the ANAO that ‘there are some individuals included on the Confidentiality Acknowledgement register who ultimately were not directly involved in the tender’, as CA forms were provided to all personnel in whole work areas (such as the department’s central procurement team) ‘due to an overly cautious approach which led to a wider than necessary coverage’. The department advised the ANAO that of the 27 personnel who were not listed on the COI register, eight individuals were actual ‘Core Personnel’ who were directly involved in the tender process and therefore should have been included on the COI register. The department advised that ‘[o]missions to the COI register likely occurred due to the strict control of information between work areas, which resulted in the creation of the three separate registers’, as well as restructuring of the Water Recovery Branch during the tender period which may have impacted recording on the register.

3.21 The department updated the COI register on 30 October 2024 to include the eight core personnel that were not previously listed. All eight personnel had completed a COI declaration for the procurement. No conflicts were declared.

‘Non-core’ personnel

3.22 On 11 October 2024, the department advised the ANAO that separate probity arrangements, including confidentiality requirements, were in place for ‘Advisory Group attendees and other external consultants and advisors’ that were not identified as ‘Core Personnel’. The department advised that these ‘non-core’ personnel were not required to complete the Schedule 1 CA form nor were intended to be listed on the CA register, although they were required to complete a COI declaration. Of 128 ‘non-core’ personnel not listed on the CA register:

- 92 personnel had completed a (non-Schedule 1) CA form. Of these:
  - 74 personnel were involved in the Advisory Group or were external consultants; and
  - 16 were various departmental staff providing conveyancing, communications and financial processing advice to the program team; and
- 36 personnel had not completed a CA form (Schedule 1 or otherwise). Of these 36 individuals:
  - 18 personnel were involved in the Advisory Group or were external consultants;
  - eight personnel did not have a direct role in the procurement process; and
  - the remaining 10 individuals were departmental staff who held various roles comprising: ‘water recovery reporting’; ‘communications and accessibility advice’; ‘valuation advice and input’; ‘procurement advice’; ‘governance, planning and contract management’; and ‘advice on financial processing’. One individual was an evaluation officer, who left the department in June 2023.

3.23 The department was unable to provide COI declarations for three out of 128 ‘non-core’ personnel as two had been misfiled and the COI declaration for one personnel was stored in DAFF’s Lighthouse system (see paragraph 2.31).

#### COI management

3.24 A total of 129 personnel were listed on the COI register, comprising a mix of ‘Core Personnel’ who were also listed on the CA Register (32 personnel) and ‘non-core’ personnel (97 personnel). Key sections of the COI register were incomplete, including whether conflicts were declared and if so, how they were being managed. Of the 129 personnel on the register:

- 127 completed a conflict-of-interest declaration. The department was unable to provide declarations for two people on the conflict-of-interest register as they had been misfiled (as referred to in paragraph 3.23); and
- 13 personnel declared a potential or actual conflict, including one ‘Core Personnel’. Declared conflicts primarily related to the declarant or their family members owning properties in relevant catchments with associated water rights. Plans to mitigate or manage risks arising from the declared conflict were not specified for four of 13 declarations. The ‘Core Personnel’ who had declared a potential conflict had a management plan in place.

3.25 The complexity of probity arrangements, including inconsistent approaches to completing the forms by individuals and the absence of a clearly defined population required to complete one or both forms, makes it difficult for the delegate to have assurance that probity risks are being adequately managed. Managing conflict declarations primarily through the Lighthouse system has resulted in lack of visibility by the program sponsor and the delegate of whether any conflict is declared by employees they are not directly supervising, and if so, how those conflicts are being managed. The completion of different probity forms by the participants, which were saved in different systems, has also required manual collating of information in multiple spreadsheets, which has ended up being incomplete and difficult to reconcile.

3.26 On 11 October 2024, the department advised the ANAO that ‘[d]espite the identified procedural issues, the department is confident that any declared conflicts relevant to purchasing

decisions were documented and managed, and that the delegate had full visibility of any probity risks.’ The department stated that updated probity arrangements had been established since the 2023 open tender, including:

- a revised definition of ‘Water Procurement Personnel’ in the probity plan developed in August 2024 for the new tender process to bridge the gap remaining after the 2023 open tender, to improve clarity around who is required to complete probity forms and declarations;
- a single, comprehensive probity register, established on 3 July 2024, consolidating the various probity registers previously maintained, which: records all confidentiality acknowledgements and COI declarations (including noting declared conflicts and if a management plan is in place); whether the listed individual has received the probity plan and probity training; and differentiates between personnel involved in wider program development or implementation and those directly involved in a procurement; and
- a new probity team established on 25 September 2024 to oversee probity requirements, implement process improvements and provide status reports to the Water Recovery Branch Head.

3.27 Both Auditor-General Report No. 2 2020–21 and the Joint Committee of Public Accounts and Audit (JCPAA) Report 492 made recommendations to the department regarding conflict-of-interest management.<sup>53</sup> On 13 September 2024, the Inspector-General of Water Compliance tabled a compliance audit making similar findings regarding the department’s management of conflicts of interest in relation to activities that could impact its water trading activities.<sup>54</sup> As outlined at paragraph 3.26, changes were introduced by the Water Recovery Branch to improve its management of probity requirements in its subsequent procurement activities. Updating departmental policies and guidance to capture these learnings will provide greater clarity and best practice guidance in establishing and managing probity requirements for staff in all areas.

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53 Auditor-General Report No. 2 2020–21, *Procurement of Strategic Water Entitlements*, ANAO, Canberra, 2020, Recommendation no. 3, paragraph 4.43, available from <https://www.anao.gov.au/work/performance-audit/procurement-strategic-water-entitlements>; Joint Committee of Public Accounts and Audit, Report 492: *Governance in the Stewardship of Public Resources*, Recommendations 9 and 10, paragraphs 5.75, 5.78.

54 Inspector-General of Water Compliance, *Controls supporting compliance with Basin Plan Requirements*, 13 September 2024, available from <https://www.igwc.gov.au/audits-investigations/audits> [accessed 6 November 2024].

## Recommendation no. 2

3.28 The Department of Climate Change, Energy, the Environment and Water update its procurement-related policies and guidance to provide clarity on establishing appropriate probity requirements, including on:

- (a) determining who is required to complete probity forms and declarations;
- (b) maintaining a complete and accurate record of individuals who have completed the relevant forms; and
- (c) clearly documenting any conflicts that were declared and how they are being managed, to ensure the delegate has clear oversight of probity risks.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

3.29 *The department updated its conflict-of-interest policy in November 2024 and prepared accompanying guidance materials for staff. These have been published on the department's intranet, providing greater clarity around probity requirements for all staff.*

3.30 *The department will, as soon as practicable, review the current systems in place for recording and monitoring conflicts of interest to improve functionality and reporting to the delegate.*

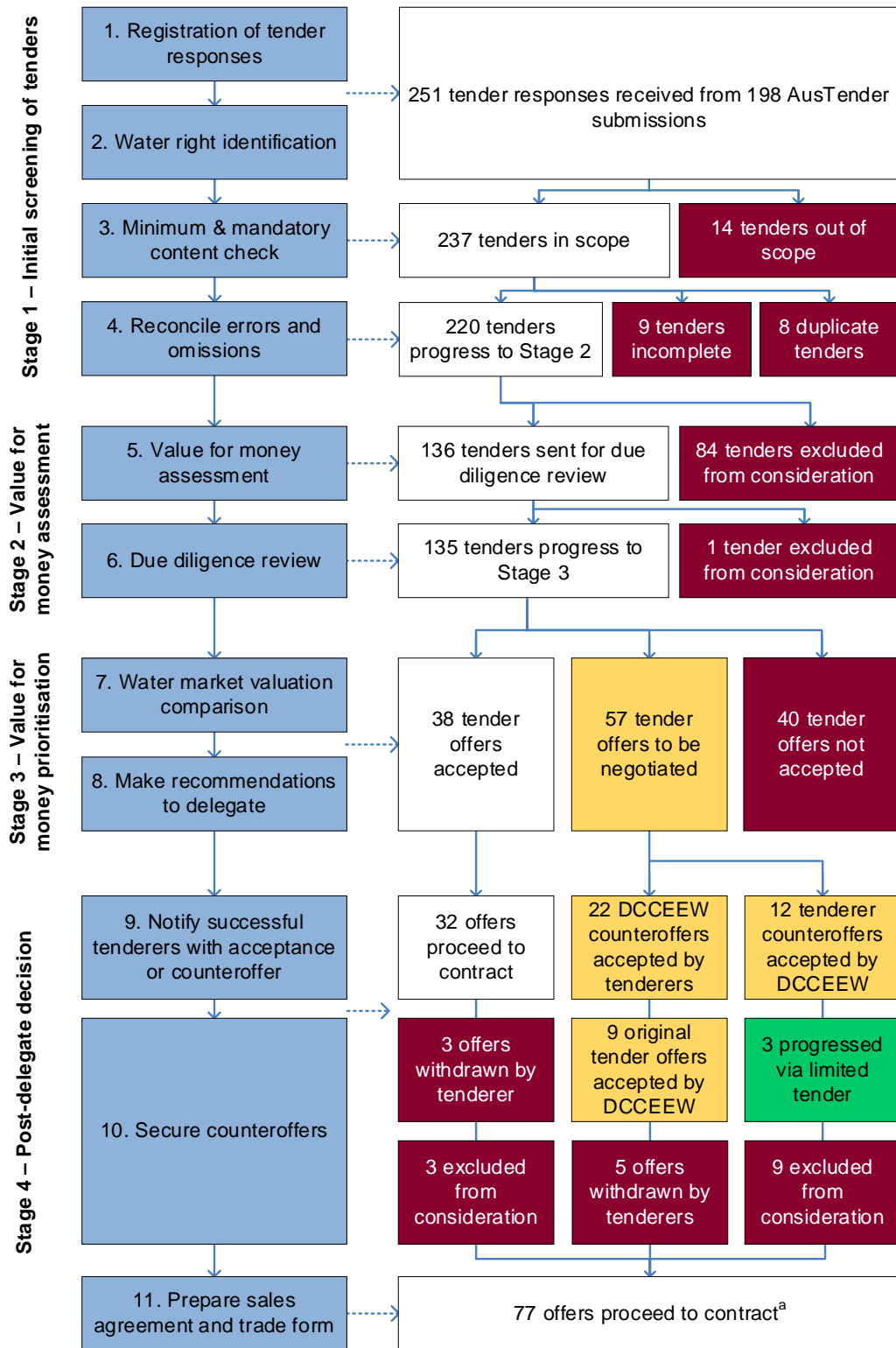
3.31 *The department annually reviews its Accountable Authority Instructions and related finance policies, including procurement-related policies. This recommendation will be addressed in the next annual review.*

## Tender evaluation process

3.32 A tender evaluation plan was prepared and approved by the delegate on 22 March 2023. Tender evaluation followed a three-stage process comprising: (1) initial tender screening; (2) value for money assessment; and (3) value for money prioritisation. Figure 3.2 illustrates the tender evaluation process.



Figure 3.2: Tender evaluation process



Key: ■ Steps in the tender evaluation process □ Tenders progressed ■ Tenders excluded ■ Tenders negotiated ■ Tenders progressed under limited tender.

Note a: Of these, five applications are in-progress as at 17 January 2025. See Appendix 4.

Source: ANAO representation of the tender evaluation process.

3.33 The tender submissions were evaluated in accordance with the tender evaluation plan. Manual processes resulted in some process inefficiencies and errors that were later discovered and corrected, as examined below.

#### *Process inefficiencies*

3.34 Stage 1 initial tender screening comprised a review of tender responses to ensure that minimum and mandatory requirements under the approach to market had been met. The screening was conducted by each evaluation officer in a template called 'Individual Tender Evaluation' form, as well as recorded in each evaluation officer's evaluation spreadsheet, and then collated in a 'master spreadsheet'.

3.35 Where a tender response had errors, omissions or ambiguities, the department requested further information or clarification from the tenderer to ensure tender responses were complete. Tenderers were provided with 10 business days to respond to the department's request for information (RFI).

3.36 As outlined in paragraph 3.6, the department established a process by which all communications to tenderers would be sent via a Contact Officer. During Stage 1 of the process, all requests to clarify or correct unintentional errors in the tender submissions were first sent to the evaluation panel chair for review, then to the probity advisers for clearance, and then to the Contact Officer to be issued to the tenderer. Due to a high rate of noncompliance with minimum and mandatory requirements, 172 RFIs were sent in the first instance to tenderers, with some tenderers requiring further follow-up emails.

3.37 A post-tender lessons learned review conducted in November 2023 (see paragraphs 2.82 to 2.84) identified a lesson relating to the approach to market, including the complexity of the document that resulted in challenges in receiving complete and relevant submissions, and the highly manual nature of the documents that drove a manual assessment process. The department advised the ANAO on 11 October 2024 that the following process improvements had been made for subsequent water purchasing tenders to improve efficiency and remove duplication.

- The Tender Response form has been simplified to remove unnecessary information, including changing to an editable PDF form with drop down menus and fields that allows digital data extraction.
- The evaluation process has been refined so that movement between stages is more flexible to allow incomplete or non-competitive tender responses to be paused while others are progressed, and due diligence requirements were refined to remove unnecessary duplication.
- The department's Contact Centre<sup>55</sup> is able to accept phone calls from tenderers and can assist with basic questions regarding the tender process, with more difficult questions forwarded to the Contact Officer via the established mailbox.
- The Water Recovery Branch has purchased an online tender management solution, Tender360, to reduce manual handling of data, which is being piloted for the 2024 Bridging the Gap tender. Tender360 filters tenderer choices according to answers provided and provides prompts for mandatory answers and attachments; allows users to return to the

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55 The Contact Centre is the department's point of contact for general inquiries from the public.

form multiple times until complete; only allows eligible water products in specified catchments to be tendered; automatically converts volumes to a price per megalitre; and allows information to be downloaded and imported directly to a master spreadsheet for the initial screening stage.

### *Errors during tender evaluation process*

3.38 As outlined in paragraph 3.33, errors occurred during the tender evaluation process. They are examined in the case studies below. In both instances, the errors were later discovered and corrected.

#### **Case study 1. Errors in RFI process and completion of Part 2B.2**

There were two tender responses in the NSW Murray SDL resource unit where a water right identification number was not included in Part 2B.2 of the tender application due to the department's error during the RFI process.

- In Tender 1, there was no editable field in form 2B.2 provided to the tenderer by the department.
- In Tender 2, the omission in the form was not identified by the department until the end of the RFI period.

The department determined in both cases that the tenderer should not be penalised for the errors caused by the department and progressed the tenderers to Stage 2 (value for money assessment).

A different tender response in NSW Murray (Tender 3) was excluded from the process following no response from the tenderer to an RFI requesting that the water right number for Part 2B.2 be provided. On 22 August 2023, the evaluation panel chair noted that other tender responses had progressed to Stage 2 without a water right number being provided in Part 2B.2, and reviewed Tender 3 to see if should be progressed to Stage 2. Based on the Tender Evaluation Panel's decision that any tender responses in NSW Murray asking for more than a certain percentage above maximum market valuations should be excluded from further assessment as not representing value for money, the chair determined that Tender 3 would have been excluded before due diligence review even if it had initially progressed with the other tender responses.

#### **Case study 2. Data handling errors**

Two tender responses (Tender 4 and Tender 5) in the NSW Murray SDL resource unit that had passed Stage 1 (initial tender screening) were not included in the spreadsheet forwarded to MJA for Stage 2 (value for money assessment) due to what the department called 'manual data handling errors'.

Once this error was discovered, the department undertook the initial value for money assessment that would have been performed in Stage 2 had the tender responses progressed as intended. The evaluation panel chair noted that:

- Tender 4 would have been excluded before due diligence review, as their offer price was above the value for money price threshold applied by the Tender Evaluation Panel for the NSW Murray SDL resource unit; and
- although Tender 5 was within the relevant price threshold and would not have been excluded, it would not have been recommended to the delegate on a relative value for money basis.

The department undertook a review to ensure no other data handling errors occurred, and sought probity advice to make sure that no tenderer was unfairly disadvantaged from a probity perspective. On 10 October 2023, the delegate approved for Tender 4 to be formally excluded from the tender process, and noted that Tender 5 may progress to due diligence review if required to meet volumetric targets in the SDL resource unit.

3.39 Stage 2 value for money assessment and Stage 3 value for money prioritisation processes are examined in further detail at paragraphs 3.62 to 3.69.

### **Tender outcomes**

3.40 A tender evaluation report outlining the Tender Evaluation Panel's recommendations for the delegate was prepared for each of the six SDL resource units. At the end of Stage 3 (see Figure 3.2), the delegate approved for:

- 38 offers to be accepted;
- 57 offers to be negotiated; and
- 40 offers to be excluded from further consideration.

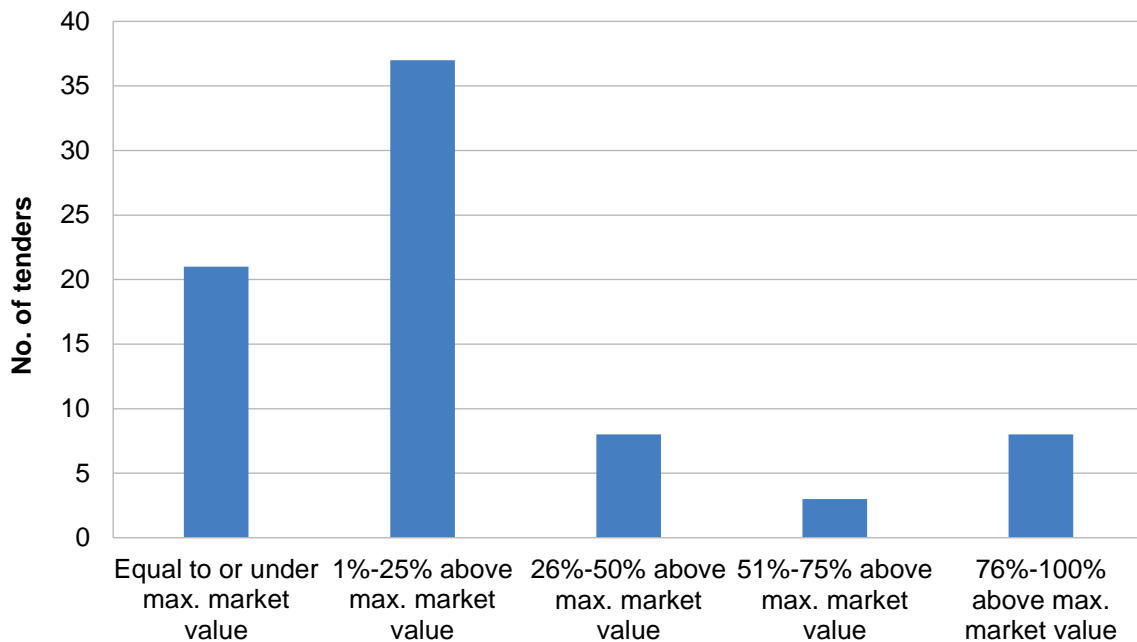
3.41 Due diligence review<sup>56</sup> was conducted at the end of Stage 2. One tenderer did not satisfy due diligence and was excluded from Stage 3. An additional tenderer was excluded during the negotiation process due to unresolved legal issues. As at 17 January 2025, 77 of 95 offers approved to be accepted or negotiated have progressed to contract, and 72 of the 77 have been finalised. Appendix 4 outlines the status of offers in-progress.

3.42 Of the 77 purchases made, the department paid equal to or under the tenderers' asking price for 76 purchases (99 per cent). When comparing the final purchase price to the maximum market valuation obtained and used by the Tender Evaluation Panel for its value for money assessment, the department paid equal to or under maximum market valuation for 21 purchases (28 per cent) (Figure 3.3). Appendix 3 contains further details of the offer and counteroffer outcomes for the 77 applications that proceeded to contract.

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56 A standard due diligence review is designed to verify: the registered owner of the water entitlement; water entitlement type and reference number; whether the volume offered is available and able to be transferred; and whether there are any encumbrances registered against the entitlement.

**Figure 3.3: Comparison between final purchase price and maximum market valuation for 77 purchases**



Source: ANAO analysis of purchase prices compared to maximum market valuation.

3.43 On 25 January 2024, the delegate approved the finalisation of the 2023 Bridging the Gap procurement process. All tenderers were notified of the outcome of the tender process on 14 February 2024 and offered an opportunity to debrief. Four requests for debriefs were received (including from tenderers who submitted multiple offers) and debrief meetings were held with the relevant tenderers.

#### *AusTender reporting*

3.44 Paragraph 7.16 of the CPRs requires contracts above \$10,000 to be reported on AusTender within 42 days of entering into a contract. Accurate and timely reporting of contracts and amendments on AusTender provides transparency in the use of public money.

3.45 All 77 contracts executed following the 2023 tender process have been reported on AusTender (see Appendix 3). Of these, two were published 42 days or more after the reported start date.<sup>57</sup>

3.46 The accuracy of contract data published by AusTender is largely dependent on the entity correctly entering contract particulars. From the 77 contracts on AusTender examined by the ANAO, the following errors were identified:

- one incorrectly reported the contract start date; and
- two incorrectly reported supplier details.

<sup>57</sup> The two contracts were published 62 and 44 days after their respective contract start dates.

## Did the department demonstrate the achievement of value for money?

The department established a value for money framework for the strategic water purchasing program, specifying the relevant financial and non-financial factors it would consider in assessing value for money. The Tender Evaluation Panel's value for money assessments were conducted in accordance with the approved value for money framework, and its discussions and recommendations were clearly documented in the tender evaluation reports and briefs to the delegate. Of 57 tenders approved for negotiation, the department negotiated reduced prices for 33 tenders. Revised value for money assessments were undertaken where negotiated prices differed from the delegate's original approved figure. All tenders that were accepted or counteroffered were those recommended to the delegate as representing value for money.

### Value for money framework

3.47 Achieving value for money is the core rule of the CPRs. The CPRs state that achieving value for money requires a consideration of the relevant financial and non-financial costs and benefits of each submission. Officials responsible for a procurement must be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome.<sup>58</sup>

3.48 In February 2023, the department engaged MJA to establish a value for money framework for the strategic water purchasing program. The value for money framework was approved by the delegate on 22 March 2023 and provided to the Advisory Group for noting at its 5 April 2023 meeting.

3.49 The value for money framework states that:

- the primary financial considerations include the water entitlement price, transaction costs, and whole-of-life costs; and
- the primary non-financial consideration is environmental utility, with a higher priority placed on entitlements that can support higher environmental utility as assessed by the Commonwealth Environmental Water Holder (CEWH).

3.50 The value for money framework was designed to assign each entitlement a Water Recovery Benefit Index (WRBI) value. The WRBI represented 'the water entitlement that provides the highest environmental utility and contribution towards the SDL targets relative to their cost and catchment'. The WRBI value was calculated by applying a formula comprising four elements, in addition to each tender's offered volume and price:

- the Environmental Delivery Utility (EDU) score — which represents the environmental value the water provides to the CEWH;
- Long Term Diversion Limit Equivalent (LTDLE) factor — which is an accounting tool to keep track of how much water has been recovered for the environment as required under the Basin Plan;
- whole-of-life costs — which comprise fixed costs per megalitre (ML) associated with holding a water entitlement (such as yearly fees and charges); and

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58 Department of Finance, *Commonwealth Procurement Rules*, Finance, 1 July 2022, paragraphs 4.4–4.5.

- transaction costs — which comprise internal and external conveyance and administrative costs associated with purchasing a water entitlement.

3.51 Socioeconomic factors<sup>59</sup> were excluded from value for money assessment. This approach was based on consultation and advice from the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), that:

- when the Basin Plan was initially established in 2012, socioeconomic considerations of the Bridging the Gap water recovery target were already factored into the recovery volume;
- there is no data available at granular level to be able to determine the impact of water purchase at individual transaction scale; and
- even if the value for money assessment is adjusted and purchasing decisions are made to avoid negative socioeconomic impacts on communities, subsequent water trade will likely undo outcomes, as the water market self-adjusts in response to the government's purchasing activity.

3.52 In March 2023, the department sought the minister's approval to exclude socioeconomic considerations from the value for money assessment based on the above considerations. On 21 March 2023, the minister agreed to the department's proposal to exclude socioeconomic considerations from the value for money assessment.

#### *Revised value for money framework for future procurements*

3.53 At the 8 May 2024 meeting of the Advisory Group, the department provided for noting and discussion a draft Water Purchases Value for Money Framework (the revised framework). The revised framework states that its purpose is to provide consistency across:

- all procurement methods including open and limited tenders
- different water purchasing programs, both Bridging the Gap to the SDLs and the 450 [GL of additional environmental water]
- assessment of proposals that differ in water entitlement type, price, volume, location and environmental utility.

3.54 The revised framework incorporated lessons from the 2023 Bridging the Gap procurement process. In particular, it noted the limitations of relying on market valuations to guide delegate decision-making on value for money outcomes, especially in markets without significant trading activity and where the majority of tenderers are seeking prices above market valuations.

3.55 The revised framework replaced the WRBI formula with 'a number of potential pricing considerations that may help guide the delegate in determining value for money', comprising: environmental utility; price growth; large-scale transaction; market scarcity; cost of repeated procurements; and other factors unique to a proposal. Along with market valuations, these pricing considerations would be applied where relevant to arrive at a 'value for money guidance range' that would assist the delegate to make an informed decision on whether a water entitlement represents value for money.

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59 Socioeconomic factors consider the social and economic impact of water recovery on local communities. See Department of Climate Change, Energy, the Environment and Water, *Socio-economic impacts of water recovery*, available from <https://www.dcceew.gov.au/water/policy/water-recovery/socio-economic-impact> [accessed 16 September 2024].

3.56 The revised framework was approved on 11 July 2024. The department advised the ANAO on 11 October 2024 that '[t]he updated Value for Money framework, including use of reserve pricing, is being applied in the 2024 Selected Catchment Open Tender and 2024 Bridging the Gap Open Tender.'

### Water market valuations

3.57 The department developed a Water Markets Valuation Policy (valuation policy) outlining its approach to sourcing independent water market valuations<sup>60</sup> to inform the strategic water purchasing program. The valuation policy was endorsed by the Advisory Group in March 2023, and an updated version was provided for noting in May 2023.

3.58 Following feedback from the Advisory Group, the department incorporated some of the key lessons arising from Auditor-General Report No. 9 2020–21 *Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport* into the valuation policy. The valuation policy adopted a risk-based approach for sourcing valuations, with:

- low risk valuations requiring one valuation;
- higher risk valuations<sup>61</sup> requiring a minimum of two valuations; and
- where two valuations differ from each other in excess of 10 per cent, a mediation conference was to be held with the valuers.

3.59 The key steps in the valuation policy were followed in sourcing the valuations for the strategic water purchasing program. A register of valuers was created, and five to eight potential suppliers were approached for quotes for each SDL resource unit.

3.60 Two independent valuations were obtained for each SDL resource unit. The valuers provided the department with a minimum and maximum price range for specific water entitlement types<sup>62</sup> within the relevant SDL resource unit. In accordance with the valuation policy, where the valuation ranges provided by the two valuers differed by more than 10 per cent, the department held a conference with the two valuers to discuss their methodologies and data sources, and attempted to close the difference. At least one conference was held for valuations in each of the six SDL resource units, and a difference greater than 10 per cent remained for at least one water entitlement type within each SDL resource unit. The valuation reports were provided to the Tender Evaluation Panel for consideration in their value for money discussions, along with information regarding each valuer's methodology and data sources, where applicable.

3.61 The maximum valuation range provided by the valuers was used to exclude some tender responses during Stage 2 value for money assessment (see paragraphs 3.62 to 3.63). In the tender evaluation reports, the Tender Evaluation Panel outlined how the valuations were applied to their

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60 A valuation is an estimated value of a water entitlement or allocation at a particular time.

61 Under the valuation policy, factors that would make a valuation higher risk include: the water entitlement being in an inactive market; the water entitlement exceeding \$500,000 in value; the proposed acquisition comprising more than 10 per cent of entitlements in that catchment; the purchase exceeding 25 per cent of water recovery target in the local water trading zone; or otherwise requested by the program area to get two or more valuations.

62 There are over 150 different classes of water entitlements in the Murray–Darling Basin. For more information on water entitlements in different Basin states, see: Murray–Darling Basin Authority, *Water entitlements in Basin states*, available from <https://www.mdba.gov.au/water-use/allocations/water-entitlements-basin-states> [accessed 13 August 2024].



value for money assessment, including documenting reasons where one valuer's valuation ranges were preferred over the other.

### Value for money assessment

3.62 At Stage 2 value for money assessment, the WRBI score was calculated for each tender response and used to rank the tenderers within the relevant SDL resource unit. The WRBI score and rank for each response was then considered alongside the maximum market valuation range for that particular water entitlement type. Based on this assessment, for each SDL resource unit the Tender Evaluation Panel agreed to exclude the tender responses that were 'clearly not competitive or otherwise [did] not represent value for money', such as those that asked for a price 'well above' maximum market valuation and were unlikely to be required to meet volumetric targets in the relevant SDL resource unit.

3.63 Of the 220 applications that progressed to Stage 2, 84 applications that were considered clearly not competitive or otherwise not representing value for money were excluded and did not progress to due diligence review (Table 3.3).

**Table 3.3: Tender responses excluded at Stage 2 value for money assessment**

SDL resource unit	Number of tender responses that progressed to Stage 2	Number of tender responses excluded at Stage 2 value for money assessment	Number of tender responses progressed to due diligence review
Barwon–Darling	5	0	5
Condamine–Balonne	11	4	7
Lachlan	15	1	14
Namoi	47	15	32
NSW Border Rivers	8	1	7
NSW Murray	134	63	71
<b>Total</b>	<b>220</b>	<b>84</b>	<b>136</b>

Source: ANAO summary of Tender Evaluation Panel's Stage 2 assessment.

### Value for money prioritisation

3.64 As noted at paragraph 3.41, one application was excluded following due diligence review at the end of Stage 2, and 135 tender responses progressed to Stage 3 value for money prioritisation. For each SDL resource unit, the Tender Evaluation Panel considered between three to five 'purchase scenarios' that would provide best value for money while delivering the required volume to bridge the gap and having the greatest environmental utility.

3.65 A number of purchase scenarios incorporated into consideration the estimated additional costs that could be incurred by the Australian Government if water recovery is delayed. These 'price considerations', expressed as \$/ML, were calculated by MJA and comprised:

- the government cost of undertaking another tender process, estimated on a Full-Time Equivalent basis; and

- potential increases in market value of relevant class of water entitlements, based on market trend analysis.

3.66 Based on the analysis of different purchase scenario outcomes, the Tender Evaluation Panel presented a list of recommendations to the delegate in the tender evaluation reports. All tender evaluation reports were signed and dated by the panel members, and by the delegate following approval of the reports.

3.67 An example of the different purchase scenarios considered for Lachlan SDL resource unit is outlined in Table 3.4.

**Table 3.4: Example of purchase scenarios considered for Lachlan SDL resource unit**

Purchase scenarios	Analysis and recommendations to delegate	
Scenario 1 — At market value (using JLL valuations)	✘	Scenarios 1 and 2 would recover minimum volumes towards government objectives and may mean that future water purchase activities are required in this SDL resource unit.
Scenario 2 — At market value (using Acumentis valuations)	✘	
Scenario 3 — At market value (+ price considerations)	✓	Scenario 3 would purchase sufficient water to almost bridge the gap, and would comprise a significant volume of unregulated water rights which are cheaper than Regulated (General Security) water rights. As this scenario does not include negotiations, there is minimal risk that purchases will not proceed and volumes not recovered.  However, unregulated water rights have low WRBI and low EDU score. Water use would not be recognised and protected once it enters the Lachlan River, and there is no ability to prevent downstream extraction.
Scenario 4 — Highest utility at market value (+ price considerations)	✘	Scenario 4 would prioritise high WRBI rankings only, which would only recover minimal volumes towards target.
Scenario 5 — Highest utility at market value (+ price considerations + negotiate)	✓	Scenario 5 is the only scenario that would have capacity to bridge the gap in Lachlan. It would include negotiations with a tenderer offering Regulated (General Security) water rights, and therefore would deliver water rights with higher environmental utility compared to scenario 3.  It is more expensive on a \$/ML basis as well as total price basis compared to other scenarios and there is a risk from negotiating a significant volume (over 600 ML) that agreement may not be reached.

Key: ✓ Recommended to the delegate ✘ Not recommended to the delegate.

Source: ANAO summary of purchase scenarios considered by the Tender Evaluation Panel for Lachlan.

3.68 In the Lachlan SDL resource unit, the Tender Evaluation Panel determined that either scenarios 3 or 5 could offer value for money, and recommended that the delegate choose to:

- pursue Scenario 3 and bridge the gap at a low cost, but accept that the Water Rights may have limited utility; or
- pursue Scenario 5 and negotiate on price for Water Rights with high utility but retain the option to 'fallback' to Scenario 3 should negotiations be unsuccessful.

3.69 The delegate approved pursuing scenario 5 'as it represents best value for money as it [delivers] dual benefits of water [and] environmental benefits'.

## Negotiations

3.70 Negotiation allows the buyer to seek to improve value for money outcomes, or confirm that value for money has been maximised. The tender evaluation plan approved for the 2023 Bridging the Gap procurement stated that:

A process for conducting negotiations will be identified and documented, including:

- (i) the details of the Negotiation Team;
- (ii) a summary of the negotiation process or protocols; and
- (iii) the key issues to be resolved including the Department's preferred and fall-back positions.

3.71 The negotiation arrangements were established and communicated to the delegate on 25 August 2023. The Negotiation Team comprised the evaluation panel chair and the Branch Head of Water Recovery.

3.72 Where the Tender Evaluation Panel recommended that a counteroffer be made, the proposed counteroffer price was included in the tender evaluation reports for delegate approval. Revised value for money assessments were undertaken and provided to the delegate where negotiated prices differed from the delegate's originally approved figure. Revised analysis included considerations of:

- market trends and movement;
- characteristics of specific water entitlement types, including their environmental utility;
- progress in bridging the gap in the relevant SDL resource unit, including responses to counteroffers from other tenderers;
- results of counteroffer process from other SDL resource units; and
- price and price considerations (see paragraph 3.65).

3.73 Of 57 tender offers approved by the delegate for negotiation, the department negotiated reduced prices for 33 offers. Outcomes of the negotiation process for applications that proceeded to contract are outlined in more detail in Appendix 3.

### *Limited tender processes in Namoi*

3.74 There were three tender offers from two tenderers in Namoi that were found to be value for money but did not progress to contract under the 2023 open tender process.

- For the first tenderer, the department determined that the offered volume was not required to bridge the gap in Namoi.
- For the second tenderer who offered two water rights for sale, the tenderer had requested contracts to be executed after 1 July 2024, which was unable to be accommodated by the department at the time and the offers were subsequently withdrawn.

3.75 On 25 January 2024, the delegate approved the finalisation of the 2023 open tender process. At the time of tender finalisation, the department had agreed to purchase 9,503.06 ML/y against the target of 9,500 ML/y in Namoi, thus bridging the gap to SDLs.

3.76 On 2 April 2024, a tenderer in Namoi who had offered a significant volume of water withdrew their offer. This meant that there was no longer enough water recovered in Namoi to fully bridge the gap.

3.77 On 22 April 2024, the delegate was provided with an update on the progress of bridging the gap in Namoi. Noting that ‘there remain value for money Tender responses from the 2023 Open Tender that were not purchased’, the delegate approved returning to the two tenderers outlined at paragraph 3.74 and offering to purchase the water previously offered in order to make progress toward bridging the gap in Namoi. As the open tender process had already been concluded, the delegate approved for the tenderers to be approached via a limited tender process.

3.78 Paragraph 9.10 of the CPRs states that:

For procurements at or above the relevant procurement threshold, limited tender can only be conducted in accordance with paragraph 10.3, or when a procurement is exempt as detailed in Appendix A.

3.79 Purchase of water entitlements is an exempt procurement under Appendix A of the CPRs. Exempt procurements and limited tenders are required to comply with the relevant provisions in Division 1 of the CPRs, including documenting how value for money was considered and achieved.<sup>63</sup>

3.80 In the procurement plan prepared for the limited tender process, the department noted:

While this is [a] limited tender process and therefore can be seen as non-competitive, the three tenderers targeted through this process have already participated in a competitive open tender and found to represent value for money under ATM E01548 based on the Tender Evaluation criteria and ATM scope. ...

Tenderers will not be invited or instructed to negotiate pricing or quantities through this process, as value for money has already been determined for the proposals through open tender. However, should the department receive any counteroffers under this procurement, these will be addressed in line with the principles and criteria set up for ATM E01548.

3.81 The procurement plan included as attachments:

- an updated market assessment report in Namoi by MJA, dated 23 April 2024;
- a risk assessment, approved by the Branch Head of Water Recovery on 29 April 2024; and
- a probity plan for the Namoi limited tender process.

3.82 On 1 May 2024, the delegate approved for the commitment of \$9.6 million and release of sales agreements to the two tenderers for three offers, and signed the procurement plan. The offers were made to the two tenderers on 10 May 2024, and all three offers have proceeded to contract (see Appendix 4).

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63 Department of Finance, *Commonwealth Procurement Rules*, Finance, 1 July 2022, paragraph 7.3.

## Did the department provide sound advice to decision-makers, including on how the remaining gap will be bridged?

The advice provided to the delegate contained relevant information to enable them to make an informed procurement decision. The department provided sound advice to the minister on options to bridge the gap in the ACT, including on whether the ACT's proposal would contribute to bridging the gap and achieve value for money, and on strategies to bridge the remaining gap following the conclusion of 2023 Bridging the Gap procurement process.

### Advice to delegate on procurement decisions

3.83 Paragraphs 7.2 and 7.3 of the CPRs require officials to maintain for each procurement 'a level of documentation commensurate with the scale, scope and risk of the procurement', including documentation that 'provides accurate and concise information on ... relevant decisions and the basis of those decisions'.

3.84 In Auditor-General Report No. 2 2020–21, the ANAO raised findings relating to the clarity of advice provided to the delegate in decision briefs on whether the procurements represented value for money, and in relation to the correct exercise of delegations. The ANAO made a recommendation to the department to 'review and update internal procurement guidance to ensure delegations are accurately identified in approval briefs'.<sup>64</sup>

3.85 A decision brief was provided to the procurement delegate along with the final tender evaluation report for each SDL resource unit. The decision briefs contained a summary of key points relating to the tender process, relevant preceding decisions, and analysis relating to the relevant SDL resource unit. The analysis comprised an overview of the previous stages of tender evaluation process, key matters relating to the due diligence review and valuations, and key points from the Tender Evaluation Panel's discussions.

3.86 The Tender Evaluation Panel's recommendations to the delegate were presented in a table form, with a column in which the delegate could indicate approval. The delegate was advised whether the Tender Evaluation Panel's recommendations would achieve value for money. The delegate clearly indicated their decision against each recommendation. All recommendations of the Tender Evaluation Panel were accepted by the delegate.

3.87 Following the acceptance of an offer or a counteroffer, the tenders proceeded to conveyance, which was facilitated by the department's conveyance team and conducted by the department's legal services provider, the Australian Government Solicitor (AGS). Under the approved conveyance plan, there are two key decision points at which an exercise of delegation is required under section 23 of the PGPA Act:

- for the execution of the sales agreement, which enables the agreement to be exchanged and binds the parties to the transfer process; and
- for the signing of the Settlement Adjustment Statement, which releases the funds for settlement and authorises settlement.

3.88 The appropriate delegate specified in the department's delegations instrument was engaged at the relevant steps for all tenders whose conveyancing records were examined by the

<sup>64</sup> Auditor-General Report No. 2 2020–21, *Procurement of Strategic Water Entitlements*, paragraphs 3.27–3.35.

ANAO<sup>65</sup>, comprising SES Band 1 for matters under \$10 million, and SES Band 2 for matters above \$10 million. Each delegate brief identified whether the relevant matter was within delegation, and the department's delegations instrument was included as an attachment to each brief. Records of supporting documentation for the conveyance process, including declarations from an assurance officer that the trade is compliant with the Basin Plan trading rules, trade approvals from the relevant state water authority, and confirmations of settlement and registration, were well-maintained.

3.89 As at 17 January 2025, 72 tenders have been finalised — that is, contracts settled and water rights registered with the CEWH — and five are in progress. Appendix 4 outlines the status of the in-progress tenders.

### **Bridging the gap in the ACT**

3.90 As outlined in paragraph 1.13, the 2023 Bridging the Gap procurement process aimed to purchase 44.3 GL/y of water entitlements in six SDL resource units to reach the water recovery target specified in the Basin Plan. The ACT was not included in the procurement process because water rights in the ACT are held and owned by a government entity.

3.91 On 31 May 2023, the department received a proposal from the ACT Government to enter into an agreement to 'provide 6.36 GL of ACT surface water access entitlement to contribute to the environmental outcomes of the Murray–Darling Basin'. Under the proposal, the Australian Government would make a one-off payment of \$58.83 million (\$9,250/ML) to the ACT at the time of the entitlement being granted to the CEWH. This would meet the ACT's water recovery target of 4.9 GL/y and bridge the gap in the ACT resource unit, and provide an additional 1.46 GL of water to contribute to other Basin water recovery targets (see paragraph 3.101).

3.92 In line with the valuation policy developed for the strategic water purchasing program (see paragraphs 3.57 to 3.59), the department obtained two independent market valuations for water entitlements in the ACT. The two valuers noted that there is no active water market in the ACT, and both relied on market activity in adjacent catchments to base their valuations.

3.93 The department commissioned a value for money report from MJA using the WRBI methodology (see paragraph 3.50) and conducted an additional value for money assessment of the proposal against the investment principles outlined in the Strategic Water Purchasing Framework (see paragraph 2.10). MJA's value for money report concluded that although the environmental utility of the ACT water was low without the ability for the CEWH to call and deliver the water from NSW storage to the Murrumbidgee and downstream systems, the value for money will increase substantially when regulations to allow the trade of ACT water are established.<sup>66</sup>

3.94 The department's value for money assessment noted that:

- the ACT's proposal falls within the lower bound of the valuation range for a NSW Murrumbidgee High Security equivalent product;

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65 Conveyancing processes for five tenders in Namoi commenced after the conclusion of audit fieldwork and remain in progress as at 17 January 2025. See Appendix 4.

66 As at November 2024, the trade mechanism between the ACT and NSW have not been established.

- the proposed entitlement falls within a resource unit where no entitlements are currently held by the Commonwealth, thereby complementing and balancing the current CEWH portfolio; and
- the environmental utility of the recovered water will be significantly improved once a trade mechanism between ACT and NSW is established, with the department having obtained ‘reasonable assurance’ that such a trade mechanism will be established.

3.95 Based on the above analysis, the department’s value for money assessment concluded that the ACT proposal meets Bridging the Gap requirements and represents value for money.

3.96 A detailed risk assessment of the ACT proposal was conducted and approved by the Branch Head of Water Recovery. An outline of the key risks and mitigations were included in the department’s value for money assessment report.

#### *Advice to the minister on ACT water recovery*

3.97 The Australian Public Service Commission’s (APSC) ‘Delivering Great Policy’ model states that policy advice should be: relevant and focused on achieving outcomes; informed by a robust evidence-base; and consider key risks and benefits of various courses of action and make clear recommendations.

3.98 The department provided four written briefs to the minister providing updates on the progress of bridging the gap in the ACT, in: July 2023; October 2023; February 2024; and May 2024.

3.99 The department’s advice to the minister focused on the proposal’s ability to bridge the gap in the ACT, including key timeframes to be achieved to enable the water to be transferred by 30 June 2024. The briefs contained an outline of sensitivities and risks, primarily comprising those relating to ACT–NSW interstate trade and its impact on environmental utility of ACT water, and how incidental over-recovery will be handled. The February 2024 brief contained advice that, based on its analysis, the department considered the ACT’s proposal value for money. The department’s value for money assessment report was attached to the minister’s brief.

3.100 The minister signed the Federation Funding Agreement<sup>67</sup> on 8 February 2024, committing to provide \$58.83 million to the ACT to recover 6.36 GL/y of water towards the water recovery target.<sup>68</sup> The \$58.83 million was separate from funding allocated to the 2023 Bridging the Gap procurement process, and comprised \$48.5 million of funding in the Sustainable Rural Water Use and Infrastructure Program (SRWUIP)<sup>69</sup> which was committed to delivering the 4.9 GL ACT water recovery target in 2019, and an additional \$10.33 million drawn from the remaining SRWUIP Treasury appropriation.

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67 The Federation Funding Agreements (FFA) Framework governs Commonwealth–state funding agreements. There are two forms of agreements under the framework — National Agreements and sectoral agreements. The agreement with the ACT Government was signed under the FFA for the Environment sector.

68 The agreement is available on the Federal Financial Relations website: see Federal Financial Relations, *Australian Capital Territory Bridging the Gap Project*, available from <https://federalfinancialrelations.gov.au/agreements/australian-capital-territory-bridging-gap-project> [accessed 6 November 2024].

69 The Sustainable Rural Water Use and Infrastructure Program (SRWUIP) is a national program investing in rural water use, management and efficiency, including improved water knowledge and market reform, and water purchase for the environment. See Department of Climate Change, Energy, the Environment and Water, *Sustainable Rural Water Use and Infrastructure Program*, available from <https://www.dcceew.gov.au/water/policy/mdb/programs/basin-wide/srwuip> [accessed 6 November 2024].

3.101 The 6.36 GL/y of water recovered from the ACT was registered to the CEWH on 18 April 2024. In the May 2024 brief, the department advised the minister that under the *Water Amendment (Restoring Our Rivers) Act 2023*, the Minister for Water can specify a water entitlement as an additional held water entitlement that contributes to the 450 GL/y environmental water recovery target. The department conducted an assessment of the ACT entitlement against the criteria set out in section 7.08B of the Basin Plan and advised the minister that all criteria were met to enable the ACT water entitlement to be specified as an additional held environmental water entitlement. On 30 May 2024, the minister signed a written instrument specifying the 1.46 GL/y of ACT water as additional held environmental water.

### Bridging the remaining gap

3.102 The 2023 tender process was finalised on 25 January 2024. At the time of tender finalisation, the department estimated that a gap of approximately 18.05 GL/y remained to reach the water recovery target.

3.103 On 30 May 2024, the department provided a brief to the minister with an outline of outstanding volumes in the four SDL resource units and a strategy to bridge the remaining gap. The department recommended a ‘staged and tailored’ approach, with open tenders commencing in late August 2024.

3.104 The department advised the minister on other recovery options that had been considered and were not recommended at the time of the briefing, summarised in Table 3.5.

**Table 3.5: Other recovery options outlined for the minister**

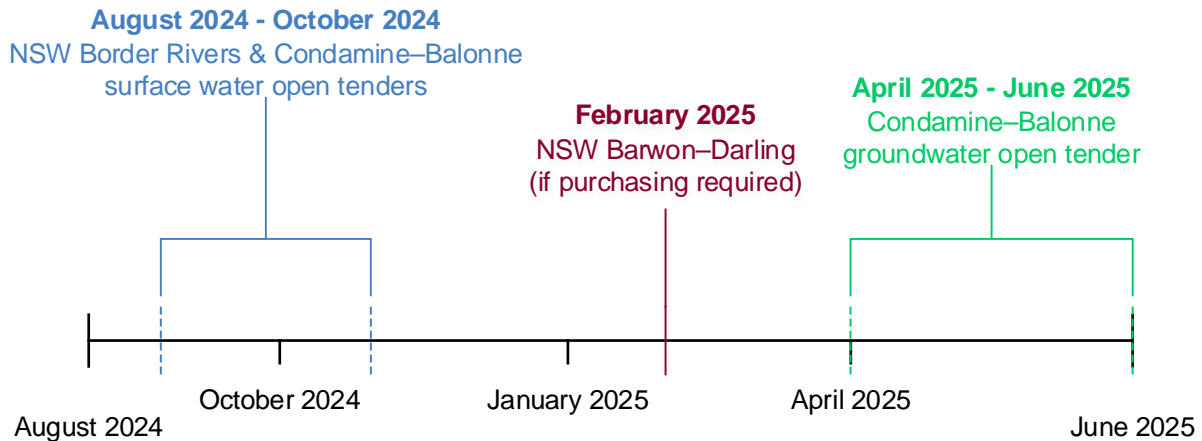
Recovery option	Reason not recommended
Queensland and New South Wales governments can submit water efficiency proposals under the Resilient Rivers Water Infrastructure program.	There likely would not be sufficient water savings generated to bridge the remaining gap.
Non-purchase-based options such as leasing from the consumptive pool.	These are temporary arrangements and would not help bridge the gap to SDLs.
Relying on the <i>Water Act 2007</i> risk assignment framework. <sup>a</sup>	This is inconsistent with the government's commitment to bridge the gap and may result in entitlement holders applying for compensation from the Commonwealth. <sup>a</sup>

Note a: Where the Commonwealth has not been able to recover all the water needed in areas throughout the Basin to meet the SDLs, the Water Resource Plans may include rules that reduce water allocations or change the reliability of those allocations. Section 77 of the Water Act provides that entitlement holders may qualify for a payment if: entitlement holders experience a reduction in market value of their entitlement; and the reduction in market value is due to a reduction in or change in reliability of water allocations to meet the SDLs under the Basin Plan.

Source: ANAO summary of recovery options considered and not recommended.

3.105 The minister approved the purchasing strategy on 30 May 2024. On 11 June 2024, the department published an addendum to the Strategic Water Purchasing Framework on its website, outlining indicative timeframes for tender processes to bridge the remaining gap (Figure 3.4).



**Figure 3.4: Indicative timeframes for tender processes to bridge the remaining gap**

Source: ANAO summary of the department's strategy to bridge the remaining gap.

3.106 As at 17 January 2025, a gap of approximately 23.07 GL/y remains in four SDL resource units following the 2023 Bridging the Gap procurement process and the recovery of water in the ACT (Table 3.6). The gap is expected to be fully bridged in Lachlan, NSW Murray and the ACT.

**Table 3.6: Remaining gap to be bridged as at January 2025**

SDL resource unit	2023 tender target volume (GL/y)	Recovered volume as at 17 January 2025 (GL/y)	Remaining gap (GL/y)
<b>Surface water</b>			
Condamine–Balonne	14.00	1.15	12.85
Barwon–Darling	1.60	0.32	1.28
Namoi	9.50	8.85	0.65
NSW Border Rivers	5.10	0.01	5.09
NSW Murray	10.00	10.38	–
Lachlan	0.90	0.91	–
ACT	4.90	6.36 <sup>a</sup>	–
Subtotal for surface water			19.87
<b>Groundwater</b>			
Upper Condamine Alluvium (Central Condamine Alluvium)	0.25	–	0.25
Upper Condamine Alluvium (Tributaries)	2.95	–	2.95
Subtotal for groundwater			3.20
<b>Total</b>			<b>23.07</b>

Note a: 1.46 GL/y of water was specified as additional held environmental water. See paragraph 3.101.

Source: ANAO summary of the remaining gap to be bridged.

3.107 A second tender to purchase water to bridge the gap in Condamine–Balonne and NSW Border Rivers opened on 18 September 2024 and closed at 11am on 13 November 2024. The department advised the ANAO on 11 October 2024 that offers are expected to be made to any successful tenderers by March 2025.

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Dr Caralee McLiesh PSM  
Auditor-General

Canberra ACT  
30 January 2025

# Appendices

## Appendix 1 Entity response



**Australian Government**  
**Department of Climate Change, Energy,  
the Environment and Water**

**Simon Duggan**  
**Acting Secretary**

Our Ref: EC24-002778

Dr Caralee McLiesh PSM  
Auditor-General  
Australian National Audit Office  
Office of the Auditor-General  
[officeoftheauditorgeneralperformanceaudit@anao.gov.au](mailto:officeoftheauditorgeneralperformanceaudit@anao.gov.au)

Dear Dr McLiesh

Thank you for your correspondence of 13 December 2024 seeking comment on the audit report for the performance audit of the *Strategic Water Purchasing program— Bridging the Gap 2023*.

Pursuant to section 19 of the *Auditor-General Act 1997*, the Department of Climate Change, Energy, the Environment and Water (the department) has prepared a response to the report (Appendix A).

I am pleased that the audit found that the 2023 Bridging the Gap procurement process was largely effective and was conducted with the appropriate procurement frameworks in place. The department places a high priority on implementing robust governance arrangements and integrity of programs.

The department agrees with the audit's two recommendations. Ensuring that the water purchase program evaluation framework remains current will support meaningful assessment of the outcomes. The department will also continue to strengthen its procurement related policies and guidance to ensure high standards of probity are maintained. The department is committed to a process of continuous improvement.

I have appreciated the ANAO's approach in conducting the audit, with constructive engagement and regular updates provided to the department throughout the audit process. I welcomed the audit team's efforts to understand the context in which this program was delivered.

Please find enclosed with this letter the Department's response to the proposed recommendations (Appendix A) and editorial matters for your consideration (Appendix B).

Yours sincerely

Simon Duggan

15 January 2025

Encl. Appendix A - Department Response to s19 Audit Report  
Appendix B – Editorial comments

DCCEEW.gov.au

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## Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.

2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's corporate plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.

3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:

- strengthening governance arrangements;
- introducing or revising policies, strategies, guidelines or administrative processes; and
- initiating reviews or investigations.

4. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.

- In June and October 2024, the department updated its confidentiality acknowledgement register and conflict-of-interest register following reconciliation of the registers with the list of procurement personnel with the ANAO (see paragraph 3.21).
- In June, September and December 2024, the department reviewed and updated the risk register and strategy for the Water Recovery Branch (see paragraph 2.42).
- For the November 2024 meeting of the Water Recovery Program Senior Officials Advisory Group, the department added risk as a standing agenda item (see paragraph 2.49).
- In October 2024, the department advised that it has established updated probity arrangements for subsequent water purchasing tender processes, including: clarifying who is required to complete probity forms and declarations; establishing a single, comprehensive probity register; and establishing a probity team to oversee the probity requirements and provide reports to the relevant branch head (see paragraphs 3.26).
- In October 2024, the department advised that updated and refined tender evaluation processes were established for the subsequent water purchasing tender processes, incorporating lessons learned from the 2023 Bridging the Gap procurement to reduce duplication and improve efficiencies (see paragraph 3.37).

## Appendix 3 Summary of tender offer and negotiation outcomes

1. Table A.1 summarises the tender offer and negotiation outcomes for the 77 applications that proceeded to contract. The Harvey balls in the last two columns compare the final purchase price paid by the department to: the price offered by the tenderer; and the maximum market valuation obtained and used by the Tender Evaluation Panel for its value for money assessment.

- indicates that the final price was equal to or under comparison value.
- ◐ indicates that the final price was 1%–25% above comparison value.
- ◑ indicates that the final price was 26%–50% above comparison value.
- ◒ indicates that the final price was 51%–75% above comparison value.
- indicates that the final price was 76%–100% above comparison value.

**Table A.1: Summary of tender offer and negotiation outcomes**

AusTender contract reference	Delegate decision at Stage 3	Final agreed offer (\$/ML)	Total price paid (\$)	Volume of water purchased (Nominal ML) <sup>a</sup>	Volume of water purchased (LTDLE ML) <sup>a</sup>	Comparison between offered price and final price	Comparison between maximum market valuation <sup>b</sup> and final price
<b>Barwon–Darling</b>							
CN4036896	Accept	3,000.00	219,000.00	73.00	73.00	○	○
CN4054677	Counteroffer	3,500.00	308,000.00	88.00	88.00	○	○
CN4054676	Counteroffer	3,357.00	523,692.00	156.00	156.00	○	○
<b>Condamine–Balonne</b>							
CN4036891	Counteroffer	8,000.00	720,000.00	90.00	81.99	○	●
CN4036892	Counteroffer	8,000.00	4,968,000.00	621.00	586.22	○	●
CN4054669	Counteroffer	8,000.00	4,000,000.00	500.00	477.00	○	●

AusTender contract reference	Delegate decision at Stage 3	Final agreed offer (\$/ML)	Total price paid (\$)	Volume of water purchased (Nominal ML) <sup>a</sup>	Volume of water purchased (LTDLE ML) <sup>a</sup>	Comparison between offered price and final price	Comparison between maximum market valuation <sup>b</sup> and final price
Lachlan							
CN4019491	Accept	1,850.00	925,000.00	500.00	198.00	○	◐
CN4029569	Accept	1,911.00	235,053.00	123.00	48.71	○	◐
CN4019493	Accept	1,850.00	55,500.00	30.00	11.88	○	◐
CN4019492	Accept	1,850.00	111,000.00	60.00	23.76	○	◐
CN4024147	Counteroffer	2,350.00	1,814,200.00	772.00	305.71	○	◑
CN4024148	Counteroffer	2,350.00	1,814,200.00	772.00	305.71	○	◑
CN4066725	Accept	2,000.00	100,000.00	50.00	19.80	○	◐
Namoi							
CN4024155	Counteroffer	9,913.00	431,215.50	43.50	32.76	○	◐
CN4024143	Counteroffer	2,400.00	1,440,000.00	600.00	380.40	○	◐
CN4039162	Counteroffer	9,913.00	2,111,469.00	213.00	160.39	○	◐
CN4024146	Counteroffer	9,913.00	9,367,785.00	945.00	711.59	○	◐
CN4108955 <sup>c</sup>	Counteroffer	10,000.00	620,000.00	62.00	46.69	○	◐
CN4109215 <sup>c</sup>	Counteroffer	10,000.00	1,380,000.00	138.00	103.91	○	◐
CN4024156	Counteroffer	4,053.00	2,431,800.00	600.00	167.40	○	◐
CN4024154	Counteroffer	4,053.00	1,621,200.00	400.00	111.60	○	◐

AusTender contract reference	Delegate decision at Stage 3	Final agreed offer (\$/ML)	Total price paid (\$)	Volume of water purchased (Nominal ML) <sup>a</sup>	Volume of water purchased (LTDLE ML) <sup>a</sup>	Comparison between offered price and final price	Comparison between maximum market valuation <sup>b</sup> and final price
CN4029565	Counteroffer	4,053.00	3,434,106.90	847.30	236.40	○	◐
CN4029567	Counteroffer	4,053.00	1,387,139.25	342.25	95.49	○	◐
CN4024144	Counteroffer	4,053.00	196,773.15	48.55	13.55	○	◐
CN4029568	Counteroffer	4,053.00	4,510,989.00	1,113.00	310.52	○	◐
CN4024145	Counteroffer	4,053.00	705,424.65	174.05	48.56	○	◐
CN4029566	Counteroffer	4,053.00	1,813,717.50	447.50	124.85	○	◐
CN4039157	Counteroffer	4,053.00	9,477,129.90	2,338.30	652.39	○	◐
CN4066724	Counteroffer	2,053.00	831,465.00	405.00	256.77	○	◐
CN4090698 <sup>c</sup>	Counteroffer	3,800.00	5,700,000.00	1,500.00	951.00	○	◑
CN4054674	Counteroffer	5,050.00	310,575.00	61.50	17.16	○	◑
CN4054668	Counteroffer	13,000.00	15,795,000.00	1,215.00	914.90	○	◑
CN4045978	Counteroffer	5,050.00	1,245,835.00	246.70	68.83	○	◑
CN4054673	Counteroffer	5,050.00	4,712,660.00	933.20	260.36	○	◑
CN4054672	Counteroffer	5,050.00	1,794,265.00	355.30	99.13	○	◑
CN4054671	Counteroffer	5,050.00	669,125.00	132.50	36.97	○	◑
CN4054675	Counteroffer	5,050.00	9,306,140.00	1,842.80	514.14	○	◑
CN4039161	Counteroffer	3,750.00	2,430,000.00	648.00	410.83	○	●



AusTender contract reference	Delegate decision at Stage 3	Final agreed offer (\$/ML)	Total price paid (\$)	Volume of water purchased (Nominal ML) <sup>a</sup>	Volume of water purchased (LTDLE ML) <sup>a</sup>	Comparison between offered price and final price	Comparison between maximum market valuation <sup>b</sup> and final price
CN4039159	Counteroffer	3,750.00	67,500.00	18.00	11.41	○	●
CN4039158	Counteroffer	3,750.00	2,430,000.00	648.00	410.83	○	●
CN4039160	Counteroffer	3,750.00	2,430,000.00	648.00	410.83	○	●
CN4054667	Counteroffer	13,000.00	3,588,000.00	276.00	207.83	○	◐
CN4098096	Counteroffer	3,800.00	6,463,800.00	1,701.00	1,078.43	○	●
NSW Border Rivers							
CN4024149	Counteroffer	774.00	10,836.00	14.00	9.97	◐	○
NSW Murray							
CN4029563	Accept	2,125.00	503,625.00	237.00	165.66	○	◐
CN4024151	Accept	3,250.00	1,504,750.00	463.00	323.64	○	◐
CN4024153	Accept	1,200.00	559,200.00	466.00	466.00	○	○
CN4024152	Accept	3,200.00	96,000.00	30.00	20.97	○	◐
CN4024150	Accept	3,000.00	90,000.00	30.00	20.97	○	○
CN4029564	Accept	11,000.00	6,242,500.00	567.50	495.43	○	◐
CN4024139	Accept	1,995.00	399,000.00	200.00	139.80	○	○
CN4032732	Counteroffer	2,150.00	430,000.00	200.00	139.80	○	◐
CN4036895	Accept	1,848.00	951,720.00	515.00	359.99	○	○

AusTender contract reference	Delegate decision at Stage 3	Final agreed offer (\$/ML)	Total price paid (\$)	Volume of water purchased (Nominal ML) <sup>a</sup>	Volume of water purchased (LTDLE ML) <sup>a</sup>	Comparison between offered price and final price	Comparison between maximum market valuation <sup>b</sup> and final price
CN4036893	Accept	1,848.00	687,456.00	372.00	260.03	○	○
CN4039149	Accept	1,900.00	437,000.00	230.00	160.77	○	○
CN4039154	Counteroffer	2,150.00	494,500.00	230.00	160.77	○	◐
CN4039153	Counteroffer	2,200.00	330,000.00	150.00	104.85	○	◐
CN4039155	Accept	2,150.00	430,000.00	200.00	139.80	○	◐
CN4029562	Accept	2,070.00	103,500.00	50.00	34.95	○	◐
CN4045177	Accept	1,891.89	140,000.60	74.00	51.73	○	○
CN4054670	Accept	1,995.00	578,550.00	290.00	202.71	○	○
CN4024140	Accept	1,999.00	1,399,300.00	700.00	489.30	○	○
CN4039152	Counteroffer	2,150.00	1,130,900.00	526.00	367.67	○	◐
CN4024141	Accept	2,100.00	1,260,000.00	600.00	419.40	○	◐
CN4029561	Accept	2,100.00	270,900.00	129.00	90.17	○	◐
CN4036894	Accept	1,850.00	277,500.00	150.00	104.85	○	○
CN4039151	Accept	1,985.00	297,750.00	150.00	104.85	○	○
CN4039148	Accept	1,890.00	756,000.00	400.00	279.60	○	○
CN4039150	Counteroffer	3,375.00	253,125.00	75.00	52.43	○	◐
CN4024142	Counteroffer	2,200.00	8,800,000.00	4,000.00	2,796.00	○	◐

AusTender contract reference	Delegate decision at Stage 3	Final agreed offer (\$/ML)	Total price paid (\$)	Volume of water purchased (Nominal ML) <sup>a</sup>	Volume of water purchased (LTDLE ML) <sup>a</sup>	Comparison between offered price and final price	Comparison between maximum market valuation <sup>b</sup> and final price
CN4039156	Accept	1,360.76	2,150,000.80	1,580.00	1,580.00	○	○
CN4029560	Accept	2,100.00	459,900.00	219.00	153.08	○	◐
CN4045179	Accept	1,995.00	99,750.00	50.00	34.95	○	○
CN4045178	Accept	2,000.00	200,000.00	100.00	69.90	○	○
CN4024137	Counteroffer	2,150.00	1,182,500.00	550.00	384.45	○	◐
CN4024138	Accept	1,990.00	398,000.00	200.00	139.80	○	○
CN4039147	Accept	3,000.00	300,000.00	100.00	69.90	○	○
		<b>Total</b>	<b>147,721,023.25</b>	<b>36,625.95</b>	<b>21,615.87</b>		

Key: ○ Equal to or under comparison value ◐ 1%–25% above comparison value ◑ 26%–50% above comparison value ◒ 51%–75% above comparison value ◓ 76%–100% above comparison value.

Note a: Nominal volume is the stated volume on the water entitlement and what is purchased. Water recovery to bridge the gap to SDLs is expressed using Long-Term Diversion Limit Equivalence (LTDLE) factors, which takes into account the different reliability of different water entitlement types. See Department of Climate Change, Energy, the Environment and Water, *Water recovery accounting*, available from <https://www.dcceew.gov.au/water/policy/water-recovery/progress/accounting> [accessed 6 November 2024].

Note b: Different classes of water entitlements have different market value. There are over 150 different classes of water entitlements in the Murray–Darling Basin. For more information on water entitlements in different Basin states, see: Murray–Darling Basin Authority, *Water entitlements in Basin states*, available from <https://www.mdba.gov.au/water-use/allocations/water-entitlements-basin-states> [accessed 6 November 2024].

Note c: These tenders were progressed under a limited tender process. See paragraphs 3.74 to 3.82.

Source: ANAO summary of tender offer and negotiation outcomes.

## Appendix 4 Status of tenders in progress as at 17 January 2025

AusTender contract reference	SDL resource unit	Status as at 17 January 2025
CN4066724	Namoi	Contract exchanged and settled, awaiting registration.
CN4090698	Namoi	Contract exchanged under Limited Tender, awaiting trade approval and settlement.
CN4108955	Namoi	Contract exchanged under Limited Tender, awaiting settlement.
CN4109215	Namoi	Contract exchanged under Limited Tender, awaiting settlement.
CN4098096	Namoi	Contract exchanged and settled, awaiting registration.

Source: ANAO summary of tender offer status as at 17 January 2025.