

2, 3 **Part 49 – Water Allocations**

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^{2, 3}Part 49 – Water Allocations

This part provides general information relating to water allocations and the Water Allocation Register (WAR). It also provides registry requirements and practice for the preparation and processing of dealings lodged in respect of water allocations that do not appear in other parts of this manual.

General Law

[49-0000]

A water allocation is an entitlement created under the *Water Act 2000* which is established on commencement of a Resource Operations Plan (ROP) for an area. Water allocations are assets that are separate to land and may be owned and traded by non-landholders. All water allocations are registered in the Water Allocation Register (WAR). WAR records ownership information on water allocations in a similar way in which details of land ownership are recorded in the Freehold Land Registry. The *Water Act 2000* provides for a Registrar of Water Allocations who was given the responsibility of maintaining WAR.

Resource Operations Plan

[49-0010]

A resource operations plan (ROP) is the statutory instrument that contains details of the existing water entitlements to be converted to water allocations, and any new water allocations to be granted, upon commencement of the ROP. It also sets out the operational mechanisms that implement the broader management provisions previously defined by a Water Resource Plan for a catchment.

On the day a ROP commences, existing water entitlements to be converted under the ROP expire, and water allocations are granted to the holders of the expired water entitlements and recorded on the WAR. Any new allocations to be granted under the ROP are also recorded on the WAR at this time. Water allocation holders are notified of the registration.

Resource Operations Licence

[49-0020]

A resource operations licence (ROL) is a licence granted to operators of water supply storage infrastructure such as dams or weirs on commencement of a ROP.

If a water allocation is managed under a ROL (ie the water allocation is an entitlement to supplemented supply through water delivered from infrastructure), the ROL holder and the allocation holder must have a supply contract for the allocation. If on the day the water allocation is granted, the allocation holder and the ROL holder have not entered into a supply contract for the allocation, a standard supply contract (approved by the chief executive of the Department of Natural Resources and Mines) for the area applies.

Non-Resource Operations Licence

[49-0030]

A water allocation not managed under a resource operations licence is commonly referred to as an unsupplemented water allocation or a 'non-resource operations licence' water allocation, ie NRL.

NRL water allocations are taken from unsupplemented supply, ie natural flow that is not dependent on water infrastructure. Unsupplemented water is managed by the Department of Natural Resources and Mines.

Water Allocation Register

[49-0040]

Water allocations are registered in WAR. WAR records ownership and other information for water allocations in a similar way to which details of land ownership and dealings are recorded in the Freehold Land Register. The Registrar is only concerned with maintaining WAR by the registration of water allocations on the commencement of a resource operations plan and registration of dealings with water allocations when lodged.

In addition to those aspects which normally appear on a title for freehold land, WAR also records the following resource related elements of a water allocation:

- the location from which the water may be taken under the allocation;
- the purpose for which the water may be taken under the allocation;
- any conditions required by the chief executive to entered on the WAR;
- the nominal volume for the allocation;
- the priority group to which the allocation belongs – only for allocations managed under a resource operations licence (ROL), ie supplemented water allocations;
- the maximum rate for taking water – only for allocations not managed under a ROL (ie an NRL or unsupplemented water allocation)
- the flow conditions under which the water may be taken – only for allocations not managed under a ROL (ie an NRL or unsupplemented water allocation)
- the volumetric limit – only for allocations not managed under a ROL (ie an NRL or unsupplemented water allocation)
- the water allocation group to which the allocation belongs – only for allocations not managed under a ROL (ie an NRL or unsupplemented water allocation).

Resource related elements are determined and administered by staff of the Department of Natural Resources and Mines responsible for water management and use. The Registrar is only concerned with the recording of resource elements on the title for the water allocation.

Searches of WAR may be conducted in the same manner as searches for freehold land.

The forms and the requirements for the registration of many dealings in WAR are the same as those under the *Land Title Act 1994* (s 150 of the *Water Act 2000*). However, some dealings have further requirements. All dealings that can be registered under the *Land Title Act 1994*, with the exception of those mentioned in ss 150(2) and 151(1) of the *Water Act 2000*, may be registered in WAR. In addition, it is also possible to change the attributes of an allocation, subdivide an allocation and amalgamate two or more allocations into one allocation.

Water Allocations

[49-0050]

To enable a water allocation to be given a unique lot/plan identifier it was necessary to provide water allocations with a plan number. As it is not possible to physically survey a water allocation it was determined that with the implementation of each new water scheme all the allocations within that scheme would be allocated a common administrative plan number. The associated water allocations become 'lots' on that plan.

The plan prefix for an administrative plan is always 'AP'. As an example, for the Fitzroy scheme the plan number is AP6829, for all allocations (or 'lots'). Therefore, water allocation 40 in the Fitzroy Scheme would be described as Lot 40 on AP6829 (or 'WA on Plan' or 'Water Allocation on Plan'). A water allocation does not have a county or parish as a part of the description.

Although a water allocation is described in the same manner as a lot of land, the plan is an administrative plan as mentioned earlier, and does not represent a defined physical location, or show any dimensions. Maps of the various scheme areas have been captured in ATS as the relevant administrative plan.

Each water allocation recorded in WAR will be allocated a title reference beginning with '46', eg 46012345.

As with land, only an entity with legal capacity may hold a water allocation or a share in a water allocation.

A search of the title will show whether the water allocation is managed under a ROL (supplemented water supply) or is a NRL (un-supplemented water supply) and the resource related elements for the allocation.

Certificates

[49-0060]

A certificate (Water Allocation Dealing Certificate) by the Chief Executive of the Department of Natural Resources and Mines is required to be deposited with the following dealings lodged for registration in WAR:

- subdivision of a water allocation
- amalgamation of water allocations
- change (of resource attributes) of a water allocation
- transfer (of un-supplemented allocations)
- lease (of un-supplemented allocations).

The certificate is issued by the relevant office of Department of Natural Resources and Mines which administers the Resource Operations Plan in which the water allocation is located.

A certificate is valid until the date shown on the certificate or if the certificate does not show an expiry date for 40 business days, whichever occurs first. Dealings presented for lodgement must be accompanied by a valid certificate. If a certificate expires before it is deposited with a dealing lodged in WAR a new certificate must be obtained.

Legislation

[49-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of ss 150(1) and 151 of the *Water Act 2000*, subject to the exceptions provided in ss 150(2) and 151(1) of the *Water Act 2000*, the *Land Title Act 1994* applies to the registration of an interest or dealings for a water allocation on the water allocation register.

Under s 151(3) of the *Water Act 2000* an interest or dealing mentioned in s 150 may be registered in a way mentioned in the *Land Title Act 1994* and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act 1994*:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar appointed under Chapter 2 Part 4 Division 6 of the *Water Act 2000*; and
- (b) as if a reference to the freehold land register were a reference to the water allocation register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

Practice

Dealings that may not be Registered

[49-2000]

Section 151 of the *Water Act 2000* sets out how the *Land Title Act 1994* applies to WAR. Section 151(1) prescribes which parts of the *Land Title Act 1994* do not apply to the *Water Act 2000*.

Consequently, the following dealing types are not capable of registration in WAR:

- Lease of part of an allocation
- Transfer of part of an allocation (other than a share)
- Transfer of Timeshares
- Transfer of Life Estates
- Easement
- Covenant
- Profit a prendre
- Application for Title by Adverse Possession

- Application for Title
- Building Management Statement
- Plan of Survey.

Dealings with an Interest in a Water Allocation

[49-2010]

Once a water allocation is created in the water allocation register, a person may lodge dealings over that water allocation and conduct searches in the same manner as for the land registry. A dealing must be registered in WAR for it to have effect. For the purpose of registering dealings, interests and encumbrances, the water legislation makes the concept of a 'lot' in the *Land Title Act 1994* the same as a 'water allocation' in the water allocation register. Land Registry Forms are applicable for transactions with water allocations and a somewhat similar fee structure to that applicable to freehold is prescribed in the *Water Regulation 2002*. It is also permissible to lodge a single registry form to deal with a water allocation and land tenures, eg the fee simple and a water allocation.

Subdivision of a Water Allocation

[49-2020]

Under s 128A of the *Water Act 2000* an allocation holder may subdivide an allocation into two or more smaller allocations. Before a subdivision may be registered it is necessary to obtain a Water Allocation Dealing Certificate.

A Form 14 – General Request is appropriate to record a subdivision of a water allocation. See part 14 – General Request, esp ¶[14-2950].

Amalgamation of Water Allocations

[49-2030]

Under s 128A of the *Water Act 2000* an allocation holder may amalgamate two or more allocations into one. Before an amalgamation may be registered it is necessary to obtain a Water Allocation Dealing Certificate.

A Form 14 – General Request is appropriate to record an amalgamation of a water allocation. See part 14 – General Request, esp ¶[14-2960].

Change of a Water Allocation

[49-2040]

Under s 129 of the *Water Act 2000* an allocation holder may change the resource related elements of an allocation, for example, the purpose. Before a change of a resource related element may be registered it is necessary to obtain a Water Allocation Dealing Certificate.

A Form 14 – General Request is appropriate to record a change a resource related element of an allocation. See part 14 – General Request, esp ¶[14-2970].

Water Allocation Notice

[49-2050]

Under s 101(1)(b) of the *Water Act 2000* existing interest holders in a water licence may give the Chief Executive a notice in the approved form stating the interest holder intends, upon the

commencement of the ROP, to take action to have the holder's interest recorded on the water allocation register. The notice referred to as Water Allocation Notice (WAN) is recorded on the water allocation register at the commencement of the ROP.

A Form 14 – General Request, prepared by departmental staff responsible for water management and use, is appropriate to record a water allocation notice. See part 52 – Administrative Advices, esp ¶[52-0060].

Notice of Consent to Encumber Water Allocation

[49-2060]

An existing interest holder who has given notice to the Chief Executive under s 101(1)(b) of the *Water Act 2000*, and has obtained the consent of the proposed water allocation holder to encumber the proposed water allocation with the interest mentioned in the notice may, prior to the commencement of the ROP also give the Chief Executive notice of the consent in the approved form (s 101(1)(c) of the *Water Act 2000*).

A notice under s 101(1)(c) of the *Water Act 2000* in Form ROP 03 – Notice of Consent to Encumber a Water Allocation is given by the Chief Executive to the Registrar for recording. The Registrar must record the notice for the water allocation within 60 business days from the commencement of the ROP. Section 150B(1)(b) of the *Water Act 2000* requires that the notice must be recorded with the priority the interest mentioned in the notice had in the land registry for the land to which the interest relates as at the day the allocation is recorded.

Once the notice is recorded on the water allocation title, it has the effect of encumbering the water allocation with the interest mentioned in the notice and under s 150B(2) it is taken to be a mortgage under the *Land Title Act 1994*. It is recorded on the water allocation title as a mortgage under s 101(1)(c) *Water Act 2000*.

A notice under s 101(1)(c) of the *Water Act 2000* may only be deposited:

- (a) with the consent of the mortgagor/holder of the water allocation;
- (b) before the relevant resource operations plan commences; and
- (c) if a notice under s 101(1)(b) of the *Water Act 2000* has previously been deposited.

¶[49-2070] deleted

Notice of Distribution Operations Licence

[49-2080]

Notice of Distribution Operations Licence

Some water allocations managed under a ROL also receive water via a distribution network (such as diversion works for off-stream channels). These networks are managed by a distribution operations licence (DOL) holder who authorises the distribution of water.

A water allocation managed under a DOL will have an administrative advice recorded on its title stating that the allocation is one to which a DOL applies.

A Form 14 – General Request is appropriate to record the notice of the existence of a licence. See part 52 – Administrative Advices, esp ¶[52-0240].

Notice of Removal of Distribution Operations Licence

A Form 14 – General Request, prepared by departmental staff responsible for water management and use, is appropriate to record the notice of removal of a notice of a distribution operations licence. See part 52 – Administrative Advices, esp ¶[52-0240].

Forfeiture under s 138 *Water Act 2000*

[49-2090]

Under s 138 of the *Water Act 2000* the chief executive may give an allocation holder a show cause notice if the allocation holder is convicted of an offence against the Act.

If after considering any properly made submissions the chief executive is still satisfied that the allocation should be forfeited the Chief Executive may forfeit the allocation.

Section 138(4) and (5) sets out the requirements for forfeiture and if these requirements are met the chief executive must sell the allocation by public auction, public ballot or public tender.

A purchaser of an allocation in this instance takes the allocation free of all interests and any money received by the Chief Executive is applied in accordance with s 138(7) and (8) of the Act.

Case Law

[49-7000]

Nil.

Fees

[49-8000]

Fees payable to the registry are subject to an annual review. See the current *Water Regulation 2002* – Schedule 16, item numbers 7 to 24.

Cross References and Further Reading

[49-9000]

Part 1 – Transfer

Part 2 – Mortgage

Part 11 – Caveat

Part 14 – General Request

Part 52 – Administrative Advices

Notes in text

[49-9050]

Note² – This part does not apply to State land.

Note³ – This part does not apply to freehold land.