

# Water Trading

## Permanent Water Trading





# Water trading

Water trading is one of the keys to using water efficiently. It encourages everyone to place a higher value on our scarce water resources.

Queensland's active water trading market is a means of reallocating water on a voluntary basis to the use where it will be more highly valued. Market forces allow water to shift to most efficient and profitable businesses. Water trading also addresses the increasing demand and competition for water, while ensuring the protection of our natural water resources.

A water allocation is a new entitlement established on completion of a water resource plan (WRP) and resource operations plan (ROP) for a catchment and may be thought of as entitlements to a share of the available water resource in that catchment.

A water allocation has a title separate from a land title, and can be bought and sold independently in a similar way to land. Permanent water trading may involve transferring or leasing a water allocation to another party. It may also relate to other dealings, such as:

- changing the attributes of a water allocation  
or
- subdividing a water allocation  
or
- amalgamating water allocations.

These dealings are explained below.

## Water Allocations Register

Water allocations are recorded on the Water Allocations Register. This is managed by the state's Registrar of Titles and Water Allocations, and is an accurate and secure system that centrally records the holder(s) and other attributes of water allocations, similar to the way that land ownership and dealings are recorded in the Land Registry. Other interests and encumbrances, such as financial securities or caveats and settlement notices, may also be recorded against a water allocation on the register. To have effect, all permanent water allocation dealings must be lodged and registered on the Water Allocations Register.



## Water allocation attributes

As well as specifying the details of the holder(s) and tenancy arrangements, the Water Allocations Register also records resource-related attributes of a water allocation such as its location, purpose, conditions and nominal volume.

Further attributes are recorded depending on whether water under an allocation is taken from a supplemented or unsupplemented supply.

If the allocation takes water from a supplemented supply—that is, water delivered from infrastructure such as dams—it will also specify the resource operations licence and the priority group.

A water allocation that takes water from an unsupplemented supply—that is, a natural stream flow that does not rely on water infrastructure—will also specify the:

- water management area
- extraction rate
- flow conditions
- volumetric limit
- water allocation group.

## Registering dealings on the Water Allocations Register

To have effect, any permanent dealing must be registered on the Water Allocations Register at a titles lodgement centre. There are two main types of dealings:

- those that do not require Department of Environment and Resource Management (the department) approval before registration on the Water Allocations Register
- those involving an assessment of the resource-related attributes of a water allocation, and therefore require approval from the department before registration.

Irrespective of whether prior approval is required from the department, there are also further registration requirements, which will vary depending on whether the allocation is for supplemented or unsupplemented supply (see ‘Further registration requirements’ below). Buyers and sellers may choose to retain a solicitor to handle the lodgement and registration of a water allocation dealing on the Water Allocations Register.



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## Dealings that do not require approval

Some dealings do not affect a water allocation's resource-related attributes but may affect the proprietary or tenancy interests—that is, the way in which the allocation is held. A transfer or a lease does not require prior approval from the department; the relevant documents to give effect to such transactions may be lodged directly with a titles lodgement centre. However, further notification requirements must be satisfied for the registration of a transfer or a lease on the Water Allocations Register. These requirements vary depending on whether the water allocation is supplemented or unsupplemented (see 'Further registration requirements' below).

## Transferring water allocations

For the transfer of a water allocation to take effect, the relevant documents must be registered on the Water Allocations Register. This process is similar to and uses the same forms as for land transfers. The new water allocation holder can then take the water according to its attributes, provided all required works and other relevant approvals are obtained.

## Leasing water allocations

A water allocation may be leased as a whole in the same manner as land may be leased—that is, all of the benefits and responsibilities of holding the water allocation are transferred to the lessee for the period of the lease. For a lease to have effect, relevant documents must be registered on the Water Allocations Register. This process is similar to that for land leases and uses the same forms. The lessee can then take the water according to its attributes, provided all required works and other relevant approvals are obtained.

## Dealings requiring approval from the department

Particular dealings with a water allocation require prior approval from the department before registration on the Water Allocations Register. These include subdivisions, amalgamations and/or changes to a water allocation. On approval, the department will issue a *water allocation dealing certificate*. Importantly, for such dealings to have effect, the relevant certificate must be lodged with a titles lodgement centre for registration on the Water Allocations Register before it lapses. If it lapses, a new certificate is required for the dealing to be registered—that is, a new application must be made to the department.



Although dealings such as transfers and leases may not strictly require approval from the department, it should be noted that further notification requirements must be satisfied for registration of such transactions on the Water Allocations Register (see ‘Further registration requirements’ below).

## Change to a water allocation

A water allocation may need to be changed in some way to meet a buyer’s or seller’s needs, or a holder may want to change their allocation in some way without selling it. To change a water allocation means to modify its resource-related attributes—for example, the priority group or purpose.

The most common change sought by a water allocation holder is to move the allocation to a different location. A location may be described as a zone from which water can be taken, and which is specified in a ROP—typically as a reach of a river as shown on a map. The department’s website provides current information on the combined volumes of water allocations for each zone. This information may be needed when considering a change to a water allocation’s location.

If a water allocation buyer intends to draw the water from the same location, then no change is needed and therefore there is no need to obtain approval from the department. The transfer documents can be lodged directly with the Registrar.

## Change rules

A water allocation holder must seek approval from the department to change their water allocation before registering relevant documents on the Water Allocations Register. The ROP details the permitted and prohibited changes to a water allocation. When a proposed change is approved, a water allocation dealing certificate will be issued by the department, and it must be registered on the Water Allocations Register to take effect. If a proposed change is prohibited, it will be refused.

## Other changes

If a proposed change does not specifically relate to the change rules, then a more substantial investigation and decision-making process—including the public advertisement of the application—must be undertaken. There is no guarantee that the proposed change will be approved.



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## Subdividing a water allocation

A water allocation can be subdivided, so that a part of the original allocation can be sold or leased, or some of its attributes changed. For a subdivision to take effect, a water allocation dealing certificate must first be obtained from the department, and then registered on the Water Allocations Register.

Note: When a subdivision is registered on the Water Allocations Register, the original water allocation title is cancelled and new water titles are created.

## Amalgamating water allocations

Two or more water allocations with the same attributes can be amalgamated to create one new allocation. If the specific attributes are not the same, the holder(s) must apply to the department to change one or more of their water allocations. For example, if two water allocations authorise the taking of water from different locations, then the location of one allocation must be changed before amalgamation. Similarly, if two supplemented water allocations have different priority groups, then one must also be changed so that both are the same.

Multiple holders must also ensure, prior to an amalgamation, that the tenancy arrangements recorded on the Water Allocations Register are identical for each water allocation. For an amalgamation to take effect, a water allocation dealing certificate must first be obtained from the department, and then registered on the Water Allocations Register.

Note: When an amalgamation is registered on the Water Allocations Register, the original water allocation titles are cancelled and a new one is created.

## Further registration requirements

When lodging documents for registration with a titles lodgement centre, there may be additional requirements, depending on whether the allocation is for supplemented or unsupplemented supply.



## Supplemented supply

### Evidence of supply contract

For a supplemented water allocation, a transfer, lease, change, subdivision or amalgamation will not be registered on the Water Allocations Register unless accompanied by the form *ROP 13—Notice to registrar of existence of supply contract*. This form is obtained from and executed by the water supply scheme operator.

A water supply scheme operator, for example SunWater, manages water storage infrastructure such as dams or weirs. If a water allocation is managed by a water supply scheme operator—that is, it is an entitlement to supplemented supply—the operator and the allocation holder must have a ‘supply contract’ for the allocation. This supply contract deals with arrangements between the operator and allocation holder for the storage and delivery of water under the allocation.

A holder or a buyer should discuss this requirement with the relevant operator at an early stage, and the buyer may consider entering into a sale contract that is conditional on the establishment of a supply contract with the scheme operator.

## Unsupplemented supply

### Notice of proposed transaction

A transfer or lease of an unsupplemented water allocation will not be registered on the Water Allocations Register unless accompanied by a water allocation dealing certificate, acknowledging the proposed transfer or lease. To obtain this certificate, a water allocation holder must give the department the form *ROP 04—Notice of proposed transfer or lease of an unsupplemented water allocation*. Although not an approval, the subsequent dealing certificate issued by the department acknowledges receipt of notification about the proposed transaction.

## Distribution network obligations

As well as having a supply contract with a water supply scheme operator—dealing with arrangements about the storage and delivery of water from storage infrastructure—some water allocations also receive water via works that further distribute water into off-stream channels and/or watercourses. These ‘distribution networks’ are managed by a distribution operations licence holder, who is authorised to take or interfere with the flow of water for the purpose of distributing water under an allocation.



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A water allocation managed under a distribution operations licence will have an administrative advice recorded on its title stating that the allocation is one to which a distribution operations licence applies. This makes it known (to the allocation holder and the market generally) that the licence holder can require payment from the allocation holder.

This obligation to pay a charge continues with the water allocation, even when the title is transferred or leased, or if an allocation is changed, subdivided or amalgamated. How this charge is paid is a matter for the licence holder and the allocation holder.

If the distribution operations licence holder provides the department with a notice stating that the obligation for payment has been satisfied, the department must give the Registrar of Titles and Water Allocations notice of this. In this case, the administrative advice on the allocation's title will be removed.

## Mortgage issues

If an allocation being transferred is subject to a mortgage, the seller must obtain a release of the mortgage so that the transfer documents can be registered. Similarly, if an allocation which is being subdivided or amalgamated is mortgaged, the registrar will not record either without the mortgagee's consent. If a water allocation being changed is mortgaged, the holder should also consider any mortgagee requirements.

## Searching the Water Allocations Register

Anyone can search the Water Allocations Register at a titles lodgement centre—for a fee—and obtain copies of a water allocation title and any dealing lodged or registered. Searches of titles and copies of dealings are also available via the internet by using one of the department's approved public access providers—visit [www.derm.qld.gov.au/property/titles](http://www.derm.qld.gov.au/property/titles) to obtain a current list of providers.

It is also possible to conduct a free online search for the status of a lodged dealing yet to be registered on the Water Allocations Register—visit [www.derm.qld.gov.au/property](http://www.derm.qld.gov.au/property) and enter the relevant dealing number.

## Lot number, crown plan and title reference

Like land, a water allocation is described by reference to a lot number—for example, Lot 777. The lot number is the water allocation number. Each ROP also has its own crown plan number—for example, Crown Plan AP6688 (the prefix AP stands for administrative plan). Again, just as for land, each water allocation has a unique title reference—for example, 46001234.

These descriptors are required when conducting any dealings with a water allocation, such as applying for a subdivision, or lodging transfer documents.



## Market information

The commercial value of a water allocation is determined by the market. Such information is important when water users seek to use the value of their water allocation as collateral in raising finance, or when buying or selling a water allocation.

Prices paid for water allocations are publicly available. This sales information can be obtained—for a fee—at specified departmental service centres throughout Queensland. The department's website also has summary information on the latest water trade prices and volumes.

## Water brokerage services

Water brokers and exchanges play an important role in the market. Real estate and stock and station agents may offer water brokerage services. Online brokerage services and exchanges are also being established in Queensland. Water supply scheme operators may also provide online brokerage services and exchanges for some water trading markets. Further brokering services and exchanges are likely to develop over time.

Fair trading laws contain certain rights and obligations for brokers and exchange operators as well as water users when doing business. These obligations are in addition to any contractual or other rights and obligations between water users, brokers and exchange operators.

## Land and water management plans

The buyer or lessee of a water allocation requires a land and water management plan, approved by the department, before irrigating land using the water taken under the allocation. An exception to this requirement exists when a water allocation is purchased with land as a 'going concern', provided the seller does not already need to operate under a land and water management plan.

Guidelines on developing a land and water management plan are available from the department.

It should be noted that:

- the user is responsible for preparing the plan
- a plan can be prepared and approved prior to, and independently of, water trading
- the early preparation of a plan will avoid any delays in using the traded water.



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## Works approvals

Before taking water under an allocation, the holder(s) should ensure that the necessary development approvals have been obtained (for example, a development permit for a watercourse pump).

## Fees

### Application fees

The department charges fees to assess applications to change, subdivide or amalgamate a water allocation and to assess a land and water management plan. The prescribed fee must be paid at the time the application is submitted.

An application to change a water allocation in a manner that is not specifically permitted under the change rules for a ROP, may incur additional fees associated with the expense of researching and assessment of the application, and for public advertisement. Further information on fees can be obtained from the department.

### Lodgement fees

The prescribed fee(s) must accompany documents lodged with the registrar. Fees may vary depending on the type of transaction—for example, in addition to a lodgement fee, each new title created as a result of a subdivision will also incur a fee.

## Financial and legal considerations

A water allocation is a valuable asset that may be financially encumbered in the same way as land. Before buying, selling, leasing or dealing with a water allocation in any way, professional advice should be sought in relation to financial (including taxation and duties), contractual and legal matters (e.g. wills). In particular, consideration should be given as to whether a will needs to be reviewed and updated to specifically refer to any water allocation that is acquired.

These issues are beyond the scope of the legislative provisions of the *Water Act 2000*; however, they need to be taken into account when dealing with water allocations.

## Disclaimer

This information brochure has been prepared to draw attention to the *Water Act 2000* in force as at 1 January 2009. While every effort has been made to ensure accuracy at the time of publication, the information presented here does not purport to be definitive or to constitute legal advice. This brochure is not designed to be a substitute for the Act and/or seeking legal advice. The Department of Environment and Resource Management does not accept responsibility for any loss or damage caused by actions based on information in this brochure.

## Further information

This brochure is one of a series of publications explaining water trading and associated issues. Others in the series include:

- *An overview of Queensland water markets*
- *Seasonal water assignments and leases*
- *Water allocations and land valuations*
- *Financial interests and tenancy arrangements.*

For more detail on the titles registration process and other related matters, refer to the following brochures:

- *Lodging a release of mortgage*
- *Functions and services*
- *The titling process*
- *Witnessing Land Registry forms for individuals.*

For further information, guidelines on land and water management plans, or application forms for any water allocation dealings, please contact your nearest the departmental business centre.

Telephone: 13 74 68 (13QGOV)

Website: [www.derm.qld.gov.au](http://www.derm.qld.gov.au)

Note: Departmental staff do not provide legal advice. To protect your interests, or if you are unsure of your legal entitlements or financial interests, please contact a solicitor or taxation advisor.