

Financial Interests and Tenancy Arrangements

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1 Purpose

This document outlines the process of converting water entitlements to water allocations, including the various financial implications of this process. It aims to provide information to assist solicitors, accountants, financial institutions and water entitlement holders.

2 Water framework

The management and allocation of Queensland's water is regulated under the *Water Act 2000* (the Act). The financial interests and tenancy arrangements are processed under section 73 of the Act.

2.1 Water plan

Water plans are strategic plans that evaluate a catchment's water resources and detail how the water will be allocated to support human interests and protect the environment. The water planning process provides for:

- converting water entitlements to water allocations
- granting new water allocations
- operating and managing water infrastructure
- trading and sharing water
- monitoring and reporting on water use and ecosystem health.

Water plans and related information can be found on the Business Queensland website at www.business.qld.gov.au.

3 Draft Water Entitlement Notice

Prior to making a Water Entitlement Notice (WEN), the department must publish a draft WEN.

The steps involved in this process include:

- publishing the draft WEN
- publishing a notice to invite written submissions by any affected person
- receiving submissions about proposed water allocations for consideration by the referral panel
- receiving notices from proposed water allocation holders stating the way the allocation should be held, or from existing interest holders stating their interest in the proposed water allocation
- preparing a final WEN after considering all submissions and the recommendations of the referral panel.

The WEN takes effect on the day it is notified in the Queensland Government Gazette.

After the commencement of the WEN, any new mortgage papers or any changes to water allocations including tenancy arrangements will incur fees as they are processed directly through the Titles Registry Office (Titles).

3.1 Notice to modify interests in a water allocation

Under the Act, if a water allocation is granted to more than one holder, the default position is to grant as tenants in common in equal shares.

If the water entitlement holders require a different share of the entitlement, they can notify the department before the WEN is finalised. A notice to modify interests in a water allocation (notice to modify) can be submitted to the department.

Changing the name of a water allocation holder is completed through a separate process.

3.2 Notice of intention to register interests

The Registrar of Water Allocations (the registrar) is required to register interests in a water allocation (notice of intention to register).

The interests and dealings that may be registered on a land title under the *Land Title Act 1994* may also be registered on a water allocation (for example, mortgages, leases, caveats).

Existing interests registered on a land title will not automatically be registered against a water allocation. It is the responsibility of the interest holder to register existing and new interests on the Water Allocation Register (WAR).

The land title practice manual provides additional information regarding Titles Registry forms. This information can be found on the Business Queensland website.

3.2.1 Identifying existing interests

Proposed water allocations can be identified in the schedule of the draft WEN.

Contact the department for assistance in identifying the water entitlements in the draft WEN that you may have an interest in.

3.2.2 Effects of giving a notice of intention to register

Interest holders can give a notice to the department stating the interest they intend to hold in a water allocation. Upon commencement of the WEN the department will lodge the notice with the registrar.

This notice 'freezes' the water allocation for a period of 60 business days, allowing the interest holder to lodge any new interests over the allocation.

During this period the existing interest holder can lodge a caveat which could potentially extend the period further.

3.3 Notice of consent to encumber

A notice of consent to encumber a water allocation (notice of consent) allows an existing interest holder to carry over an existing mortgage to a water allocation, without the need to prepare new mortgage documents or pay lodgement fees. Existing interest holders can submit a notice to encumber prior to commencement of the WEN.

An existing interest holder must submit a notice of intention to register before submitting a notice of consent.

All existing holders of the proposed water allocation must sign the notice to confirm their consent to the encumbrance. The proposed holders must be the registered owners of the land attached to the converting water entitlement.

3.3.1 Effects of giving a notice to encumber

If an existing interest holder gives a notice they do not need to lodge new mortgage documents. The recording of this notice is taken to be a mortgage for the purposes of the *Land Title Act 1994*.

4 Priority of notices

Notices are processed by the registrar on the day the WEN takes effect. A notice of intention to register is processed before a notice of consent to encumber.

If more than one notice of intention is received for the same water allocation, they are lodged and processed in the order received. This notice is removed upon registration of the notice to encumber.

If more than one notice to encumber is received for the same water allocation they are recorded on the water allocation title in the same priority as the land title.

If an existing interest holder lodges an instrument, for example a mortgage, for registration after the 60 business day period, the instrument is registered in the order lodged.

5 Granting water allocations

On the day the WEN commences, existing water entitlements are converted and water allocations are granted. Water allocations are recorded on the WAR and the holders are notified.

5.1 Water Allocations Register

The WAR centrally records the interests in, dealings in and holding of water allocations. It is maintained separately from the land registry. A registrar is appointed to administer the WAR and the public can access the register and obtain copies of water allocation titles and dealings for a fee.

On commencement of a WEN, the registrar is required to record on the WAR the attributes of each water allocation granted under the approved WEN. A water allocation takes effect from the day it is recorded on the WAR.

6 Other financial and legal considerations

Water allocations are separate assets to land with their own registrable title. You should consider obtaining independent advice for your own individual circumstances for any issues that may arise as a result of the separation of water from land title.

Before undertaking any dealing with a water allocation such as buying, selling or leasing, independent advice should also be sought in relation to financial, contractual and legal matters.