



Guide to water access licence certificates and searches

A guide to interpreting a water access licence certificate and the information provided by a search of the Water Access Licence Register

Background

The Water Access Licence Register

Both the water access licence certificates and searches are generated from the data held in the Water Access Licence Register, maintained by the Land and Property Information (LPI) Division of the NSW Department of Lands.

This data includes the names of the licence holder/s, type of tenancy if more than one holder (either tenants in common or joint tenants), type of licence, encumbrances, any water dealings (except water allocation assignments) and the licence details such as the share component, extraction component and associated works.

Information on the Water Access Licence Register is not at this stage guaranteed; though every effort is being made to ensure the information is accurate.

Changes to information on the Water Access Licence Register about the licence holder (through a transfer of ownership) and encumbrances (such as mortgages or caveats over the licence and any term transfer arrangements) are managed directly by LPI. The lodgement forms can be obtained from the Department of Lands' website or LPI office.

Changes as a result of other water dealings (eg. subdivisions, change of location or licence category) must be approved firstly by the Department of Natural Resources (DNR) before they are registered on the Water Access Licence Register. An information sheet and application forms can be obtained from DNR's website (see: section on dealings in water under Licences, approvals, trading) or DNR offices. Contact details are included below.

To find the most-up-to-date edition of a licence, you can search the Water Access Licence Register by going to the online search on the Department of Lands website (or go to www.lpi-online.lpi.nsw.gov.au). Type in the WAL number of the licence in the 'Title Search' option in the online search. There is a nominal fee for each search.

Water Access Licence Certificates

Water access licence certificates are valuable legal documents which should be stored carefully.

The certificates are produced by LPI and issued to either the licence holder or, in most cases where a mortgage or charge is registered against the licence, the security interest holder.

In the case of a former joint water supply authority, where there are a number of separate holders, certificates will only be issued where all parties agree on who should hold it.

Where a licence certificate has been issued it must be produced to register a dealing in the Water Access Licence Register.

A new licence certificate or edition of the certificate is generated each time a new dealing is registered.

What is not available from the Water Access Licence Register

The conditions that apply to a water access licence are not included on the Water Access Licence Register. They can be obtained from the DNR website (see: water access licence condition register) or contact a DNR office.

Taking water under a water access licence requires a current water supply works approval for the work. Use of water on land for irrigation also requires a current water use approval. Only the approval numbers, but not the details of the approvals that are associated with a water access licence, are

included on the Water Access Licence Register. The details of the approval, including conditions, are available from the DNR website (see: Licensing and Trading under the *Water Management Act 2000*) or contact your local DNR office.

Information on water allocation assignments (regulated river licences) is available from the DNR website (see: Licensing and Trading under the *Water Management Act 2000*) or contact a DNR office.

For details of any outstanding water fees and charges associated with a water access licence, contact State Water.

For details of the water held in the water allocation account on a regulated river contact State Water.

For water allocation account information for unregulated rivers or aquifers contact DNR.

Key components shown on a Licence Certificate or Water Access Licence Search

1. WAL number

This is the key identifier of a water access licence. This number should be quoted in correspondence or enquiries about a licence and in all licence dealings and is required to search the Water Access Licence Register. Include the reference to 'WAL' with the number.

2. Edition and date

The date specifies when the current licence certificate was issued. A new edition of a water access licence certificate is generated when a new licence certificate is issued (usually when changes are made because of a dealing).

Some dealings (such as a subdivision) require a new licence to be created.

3. Tenure type

There are three tenure types – continuing, specific purpose and supplementary.

A water access licence with continuing tenure is generally used for a commercial purpose (such as irrigation or industrial use) and does not need to be renewed – it is issued in perpetuity. Continuing tenure, however, does not provide the licence holder with a guaranteed access to a particular volume of water. This is because the amount of water made available depends on:

- a. the water sharing plans;
- b. provisions for extending or making replacement plans; and

- c. decisions on seasonal water allocations which are largely influenced by climate.

A water access licence with specific purpose tenure (ie for town water or domestic and stock purposes) generally has higher priority access to water than continuing licences, but must be cancelled when the purpose for which the licence was issued ceases. Otherwise, the licence also continues without need for renewal. Further, as these licences are issued for a set purpose, often at a specific location, mortgages and third party interests do not apply to them.

Water access licences with supplementary tenure type currently exist in a number of regulated river systems and replace the previous "off-allocation" access to water. They must be cancelled when the relevant water sharing plan no longer provides for extraction of water under these licences. Otherwise they continue without need for renewal.

Note: Irrespective of the tenure type, a water access licence can be cancelled if there is a breach of the licence conditions.

4. Licence holders

A water access licence may be 'held' by one or more persons (person meaning an individual or legal entity such as a corporation). If a number of people hold a WAL, this must be either as joint tenants or tenants in common.

Where there are **tenants in common**, each co-holder has a defined holding expressed as a fraction of the entire licence, eg 1/2 and 1/2, or 1/3 and 2/3 holding. If a tenant in common dies, that co-holding remains intact and passes to the beneficiary of their estate.

With a **joint tenancy**, each co-holder jointly holds an equal share of the entire licence (or holding). If one joint tenant dies, then their proportion of the holding goes into the name of the surviving joint tenant(s).

A co-holding does not equate to, or represent direct rights to any particular component of a water access licence. For example, a co-holder is not entitled to deal separately with any of the unit shares in the share component or water in the water allocation account. This is the same as for land ownership, where land specified as being owned by multiple parties does not entitle any one of those parties to a particular part of the block.

A holder(s) of a holding may sell their holding to another party without the consent of the other co-holders in the licence. The water access licence certificate is required for registration of the transfer on the Water Access Licence Register. However, any dealing which subdivides the licence, changes the share component or alters the location where water is taken under the licence, requires the consent of all holders.

The volume of water that may be taken under a water access licence by a particular co-holder from time to time may be governed by private agreement between the licence holders.

5. Encumbrances

Security interests

Like land, a water access licence can be used as security for a loan. Security interests (mortgages and charges) can be registered against the licence, and the security interest holder/s have certain rights under the *Water Management Act 2000* that ensure their interests are protected.

Any mortgage or charge which used an entitlement issued under the *Water Act 1912* as security (by virtue of it being part of the land or otherwise) continues as an equivalent interest in any water access licence that replaces this entitlement.

If such an interest is registered on the water access licence register within three years after the date of commencement of the licence (note: this commencement date is specified in the encumbrances), it ranks:

- a. with respect to any other such interest, in the same priority as it previously ranked under section 184G of the *Conveyancing Act 1919*, section 36 of the *Real Property Act 1900*, or Part 2K.3 of the *Corporations Act 2001* of the Commonwealth, as the case may be; and
- b. before any interest in the licence that arises after the commencement date, regardless of when that other interest is registered.

These interests will be registered on request, subject to:

1. The security interest holder notifying the licence holder of their intention to register the interest against the water access licence, and a period of 90 days lapses; and
2. The security interest holder certifying that they have undertaken step 1.

In the event that the licence holder disputes the registration, the security interest holder can still request its registration, but a notation will be added to the Water Access Licence Register indicating it is disputed.

Where there were registered mortgages or charges over the land to which the replaced *Water Act 1912* entitlement was attached, the water access licence certificate is withheld until the mortgage or charge is registered against the licence on the water access licence register, or the mortgagee/chargee indicates they are not going to proceed with registration. The same process applies for company charges recorded on the Australian Securities and Investment Commission (ASIC) Register.

After three years from the commencement date of the licence, only those interests in the licence which are registered on the Water Access Licence Register are effective. Any interests which have not been registered on the water access licence register within that time period are extinguished. Within that period it is recommended that, in relation to any dealings in the licence, a search is undertaken of the:

- General Register of Deeds and/or the Torrens Land Title Register at LPI with respect to the land that the replaced *Water Act 1912* entitlement was attached; and the
- ASIC Company Register where the licence holder is a company.

Note: the issue of the licence certificate is withheld until mortgages or charges which are identified on the LPI Register and the Company Charges Register are dealt with.

In the case of a water access licence which replaces a surface water authority, dealings are allowed without the certificate being issued. In such cases, searches of the LPI and Company Charge Registers (where relevant) are also recommended before dealings with the licence occur.

The land to which the replaced *Water Act 1912* entitlement applied is specified in the replacement WAL.

Pending Water Act 1912 applications

In some cases applications for permanent transfers or replacement licences under the *Water Act 1912* may have been lodged before the conversion to water access licences. These applications will be completed under the *Water Act 1912*, and then the resulting licences converted to water access licences and approvals under the *Water Management Act 2000*.

Such action will occur without reference to licence holders or security interest holders of the licence, other than as would occur as part of processing the *Water Act 1912* application.

A note is added to the encumbrance section of the licence if the licence is subject to a pending *Water Act 1912* application. For information on the status of a pending application, contact your local DNR office.

Term transfers

Similar to a rental agreement, a licence or a co-holding in a licence may be transferred to another person for a period of time. The ownership of the licence does not change and a term transfer is registered against a water access licence or a co-holding in a licence.

During the period for which a term transfer has effect, the term transferee is taken to be the holder (to the exclusion of the actual holder) for the following purposes:

- a. taking of water;
- b. payment of fees and charges;
- c. compliance with the terms and conditions – the term transferee is responsible for any breaches of the Act or the licence; and
- d. applying to change the nominated water supply works or assign water allocations.

Apart from change of nominated water supply works and assignment of water allocations, the licence holder remains the only one who can apply for other dealings. However the term transferee must consent to the dealing where this affects the entitlements in the licence or where the licence can be used.

Term transfers apply for a fixed period. The minimum period is six months, with no maximum period.

Any person in lawful occupation of the land to which the *Water Act 1912* entitlement applied before conversion is taken to hold a term transfer of the replacement water access licence. The right continues until the occupation concludes. The person is required to notify DNR of that occupation so that it may be recorded on the Water Access Licence Register.

6. Notations

The following notations may appear on a replacement water access licence.

Dealings may not be registered.

This notation will apply if the ownership of the water access licence has not been verified and/or registered security interests in the prior licence have not been registered on the water access licence register or otherwise resolved.

Contact DNR for more information on ownership verification and secured interest registration or download the information sheet and application forms from the DNR website.

Licence certificate not issued. Dealings may be registered.

In the case of a water access licence for a joint water supply scheme, where ownership and prior licence security interests have been resolved, the parties may elect to hold their water access licence without a certificate.

In some cases where there are multiple prior interests, the relevant interest may be resolved but the ranking has not been registered.

In these cases, dealings in the licence can still be undertaken subject to certain requirements of LPI.

Unregistered dealings.

Any dealings which have been lodged at LPI but not registered at the time of issue of the search or licence certificate will be listed in the notations.

7. Access Licence Details

Share Component

The share component is the licence holder's right to a given number of shares in the available water in the water source. In the case of specific purpose water access licences, the share component is expressed in megalitres per year.

The available water is announced by the Minister for Natural Resources via an available water determination (AWD) made under the *Water Management Act 2000*. Separate AWDs are made for each category of licence in a water source. There is a public register of AWDs on DNR's website (see: Available Water Determinations Register).

The water allocation account for each licence is credited with a volume of water as a result of a relevant AWD. This water allocation is the amount that can be taken under the licence. Water allocation account statements are available from State Water for regulated river licences and from DNR for unregulated river and aquifer licences.

Extraction Component

This designates where the licence can be used. It may also specify limits on the times, rates or circumstances of extraction.

Note: conditions on the licence and on the approval for the nominated works may include further restrictions.

Nominated Works

This shows the approval number for the works (pumps, bores etc) authorised to take water under the licence. Water may only be taken under the licence via these nominated works. The nominated works are thus the linkage between the licence and the land where the water is used.

More information about the works approval, including conditions, can be obtained from the DNR website (see: works approval register) or your local DNR office.

Conditions

Water access licences are subject to conditions of various types. Most conditions relate to aspects such as water ordering and reporting.

Specific purpose licences have a condition limiting the use of water to a certain purpose, usually at a set location.

At the current time, licence conditions are not included on the Water Access Licence Register and therefore do not appear on the licence certificate or in a water access licence search.

Licence conditions can be obtained from the DNR website (see: water access licence conditions register) or your local DNR office.

8. Notes

The DNR reference number for the water access licence and the previous *Water Act 1912* entitlement number (where relevant) are shown for information and to assist in searches.

Contact Information

Department of Natural Resources

free call: 1800 353 104

Information: 02 9228 6333
Centre

email: wma.info@dnr.nsw.gov.au

web: www.naturalresources.nsw.gov.au

(Refer to: *Licensing and trading under the Water Management Act* for information sheets, application forms for water dealings, and DNR registers)

State Water

Dubbo: 02 6841 2000

email: statewater@statewater.nsw.gov.au

web: www.statewater.com.au/

Department of Lands

Sydney: 02 9228 6666

toll free: 1300 0LANDS

email: feedback@lands.nsw.gov.au

web: www.lands.nsw.gov.au

Refer to: *Online Services* for searches of the Water Access Licence Register and Forms and Fees for various lodgement forms for dealings such as transfers, mortgages, term transfers.

Also refer to: *Registrar General's Directions for Water Access Licences* at www.lands.nsw.gov.au/land_titles

Note: This information does not constitute formal legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this information sheet.

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