



EDO Qld.

Environmental Defenders Office

*Using the law to protect
our environment.*

Community Rights and the Water Act 2000 (Qld)

This Factsheet is for general information purposes and is not legal advice. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

1. General Overview

The main law concerning allocation and management of water is found in Chapter 2 of the *Water Act 2000 (Qld)*. That Chapter deals with (amongst other matters):

- water rights to take water without entitlements;
- water planning (such as water resource plans);
- implementation of water resource plans, including the issue of allocations and interim measures while the plans are being finalised;
- water licences and permits; and
- provisions to protect riverine banks and vegetation and manage certain quarry materials.

2. Public Involvement in Water Planning

There are opportunities for public inspection of and submission on draft and amended water resources plans and also on the resource operation plan that implements each water resource plan.

Look up your plan area on the website of the Department of Natural Resources www.nrw.qld.gov.au/wrp/catchments.html to see the stage that your plan is up to. The plan will indicate whether it will cover overland flow and subartesian water - check which types of water are covered by the plan. Most plans have a community reference group and technical advisory panel to aid informed public comment and decision making by government. Sometimes however in order to build controversial dams such as that proposed for the Burnett River, the government uses special legislative amendments to avoid the planning requirements set out in the *Water Act 2000 (Qld)*.

3. Trading and Compensation

Depending on the scope of a particular water resource plan, its implementation through a resource operation plan may lead to water licences being converted to *water allocations* that can be traded. Trading rules are to be set out in the resource operation plan. Once this conversion occurs, government cannot reduce those allocations without *compensating* the holder during the life of the water resource plan (10 years). There are no rights of submission for the general public on issue of individual water allocations.

4. Public Involvement in Water Licensing

Any member of the general public or incorporated group, not just riparian landowners, may make a submission on many water licence applications (to take or interference with water) under the *Water Act 2000* (Qld). Applicants will now need to apply separately for both the licence to take or interfere with the water and then for “development” under the *Integrated Planning Act 1997* for the equipment used to take the water. One example where this right applies is for an application for an impoundment or weir in a watercourse.

Watch the public notices section in newspapers for relevant advertisements and contact the Department of Natural Resources and Water to view copies of the licence application. Water *permits* (to take water for an activity with a specific end date) are not advertised.

Riparian landowners are allowed to take water in a watercourse, lake or spring or overland flow water without a licence or permit for stock or domestic purposes. Any person can take water without a permit (i) for camping or watering travelling stock, (ii) in an emergency situation for a public purpose or fire fighting, and (iii) overland flow or subartesian water can be taken for any purpose except where a moratorium notice, water resource plan, regulation or wild river declaration prohibits it.

5. Public Access to Information

Section 1009 of the *Water Act 2000* (Qld) includes a list of those documents that you are entitled to access at the head office or regional offices of the Department of Natural Resources without the bother of making a Freedom of Information Act application. The lengthy list includes licences, permits, water resource plans and many other documents.

6. Appeals and Enforcement

There are enforcement provisions in Chapter 5 Part 2 of the *Water Act 2000* (Qld), so that any member of the public can seek a Court enforcement order for most offences against Chapter 2 with the helpful general rule that each side pays his or her own court costs, irrespective of the outcome. You don't need to demonstrate a special interest (eg financial or proprietary) to have the right to go to the Court for an enforcement order (have “standing”). Appeals against decisions (such as compliance notes or rates notices) are dealt with in Chapter 6 of the *Water Act 2000* (Qld).

7. Protection of the Environment under the Water Act 2000

Environmental protection is given a much more significant role under the *Water Act 2000* (Qld) as compared to the previous legislation. All water resource plans are required to include environmental flow objectives and outcomes including ecological outcomes. However many draft plans fail to ensure a strong legal connection between *each* ecological outcome and the strategies in the plan. This gives poor security for achieving those ecological outcomes.

8. Useful References

EDO Qld www.edo.org.au/edoqld/, especially the *Toolkit for making submissions on Water Resource Plans*.
EDO NQ www.edo.org.au/edonq/
DNRW Website www.drnw.qld.gov.au/