



fact sheet



Water Licences

This Fact Sheet provides information about the laws and management regimes applying to water licences and water trading in NSW.

This is one of a series of Fact Sheets which have been developed for Local Aboriginal Land Councils (LALCs) and the Aboriginal community by the NSW Aboriginal Land Council (NSWALC). Copies of Fact Sheets are available from www.alc.org.au or by calling the NSWALC Resource Centre on 02 9689 4444.

Note: While all care has been taken in the preparation of this Fact Sheet, it is not a substitute for legal advice in individual cases. This Fact Sheet is current as of June 2013.

1. What are water licences?

Water licences and approvals are generally needed to take water from a river, lake or ground water source in NSW. Licences are issued by the NSW Office of Water in the Department of Primary Industry under two pieces of legislation:

- The *Water Management Act 2000* governs the issue of new Water Access Licences and the trade of Water Access Licences and allocations, where a Water Sharing Plan is in place (see Water Sharing Plans below).
- The *Water Act 1912* governs water licences in areas where there is no Water Sharing Plan.

Note: Water licences are not needed for:

Domestic and Livestock – where a property owner has direct access to the water source, water can be used for domestic household and livestock purposes.

Native Title Rights – as per the Native Title Act, holders can access water for personal, domestic and non-commercial communal purposes.

Harvestable Water – Using rainwater and run-off collected in private dams.

2. Different types of water licences.

Water Access Licences under the *Water Management Act 2000* and water sharing plans, give the licence holder the right to a share of the available water in a particular area or water source, allowing water to be taken at specified times, rates or in specified circumstances.

Importantly, Water Access Licences are not tied to land ownership or title. They are a form of personal property, and where they are not time limited, they can be sub-divided, consolidated or traded independently of land (see Water Trading below).

Note: Water licences under the *Water Act 1912*, are tied to the land and can only be transferred or sold with the land to which they are attached.

There are different categories of Water Access Licences; the most common are:

- **Regulated River (high security) and Regulated River (general security):** exist on regulated rivers (rivers below large dams) and allow the licence holder to order water for release from the dam. High security licences are given a higher priority to access water than general security licences (see Water Sharing Plans below).
- **Unregulated River:** exist on rivers without dams or above dams on regulated rivers. Allow licence holders to access water based on river flow and the Water Sharing Plan.
- **Aquifer:** exist where there is underground water which can be recharged. Allow the licence holder to access water based on storage, recharge, and the Water Sharing Plan.
- **Supplementary:** generally exist on regulated rivers (rivers below large dams) and allow the licence holder to access a share of an uncontrolled high flow event.

Note: A **Water Use Approval** is also needed from the NSW Office of Water to use water allocated under a Water Access Licence.

Aboriginal Cultural Water Access Licences allow Aboriginal peoples to access water for personal, domestic, cultural and spiritual purposes. They are to be made available for all water sources, including rivers, lakes and groundwater where there is a Water Sharing Plan in place. The main conditions for such licences are:

- Applicants must be Aboriginal.
- The cultural purpose must be clearly defined and endorsed by the relevant Traditional Owners and Local Aboriginal Land Council.
- The licence is time limited to its cultural purpose and cannot be traded.
- The water cannot be used to make money.
- It is limited to 10 megalitres.

Aboriginal Community Development Water Access Licences are available to support Aboriginal businesses, but only in coastal areas and in some groundwater systems with Water Sharing Plans. They are also only available for groundwater or for unregulated rivers (a river above a large dam or without a large dam) during high flows

There are similar conditions to Aboriginal Cultural Water Access Licences that apply to these licences, but they can be up to 500 megalitres and can be traded in limited circumstances.

Note: LALCs have a range of Water Access Licences. To find out what licences your LALC has contact the Water Access Licence Register (see Find Out More below).

3. Water Sharing Plans

Water Sharing Plans are prepared under the *Water Management Act 2000* and establish the rules for trading water and for sharing water between environmental needs and the needs of water users.

Water Sharing Plans operate for ten years before they are reviewed and can be prepared for specific river or groundwater systems or for larger areas.

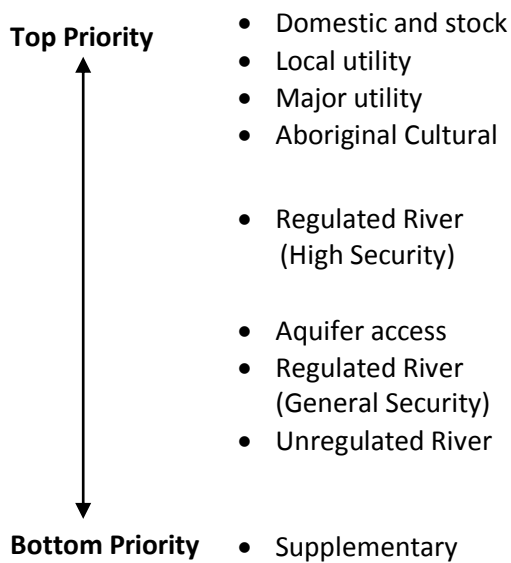
Water Sharing Plans allocate shares in available water to the environment and water users ranked in order of priorities that can change with conditions; so that:

When there is lots of water – everyone gets what they need.

When water flow is getting low – everyone gets less but the environment, livestock and domestic uses take top priority, followed by some other water users such as town water supply and holders of High Security Water Access Licences.

When it's really dry – town water supply, livestock and domestic uses take priority over all licences and the environment.

Priority of Water Access Licences & users



The NSW Office of Water is responsible for developing Water Sharing Plans, and consulting with stakeholders in their development. Draft Water Sharing plans are also placed on public exhibition for comment, before the Minister for Primary Industries, with agreement from the Minister for the Environment finally approves them.

The Aboriginal Water Initiative has been designed to ensure Aboriginal communities are engaged in the development and review of Water Sharing Plans (see Aboriginal Water initiatives below).

Note: Water Sharing Plans are being rolled out across NSW, replacing the older water management arrangements of the *Water Act 1912*. Existing water licence rights will be recognised under the new Water sharing plans which will eventually cover the entire state.

4. Water Trading

Water Access Licences and water allocated under such licences can be valuable economic assets, as they can be bought, sold, mortgaged, or leased fully or in part.

There are two classes of water dealings:

General dealings - are where the Water Access Licence itself is traded, the share component of the Water Access Licence (the entitlement to the share of available water) is wholly or partially traded, or the Water Access Licence is changed in any other way.

All general dealings must be registered with the Water Access Licence Register and some changes such as share component assignment also require NSW Office of Water Approval.

Water allocation assignment dealings – are where the water allocated under a Water Access Licence is traded and there is no change of ownership or otherwise to the licence itself.

Water allocation assignment dealings must be approved and registered by the following:

- On *Regulated Rivers*; – State Water rivers below large dams.
- On *Unregulated Rivers*; – NSW Office of Water rivers above or without large dams.

Note: Water Access Licence dealings are not a land dealing under the *Aboriginal Land Rights Act 1983*, as such the LALC Board may make such a decision and NSWALC approval is not required.

Case Study:

A LALC with a rural property leased to a farmer also has both High and General Security Water Access Licences.

The Water Access Licences are not tied to the land and the LALC was able to negotiate the sale of the water allocations under the Water Access Licences to the farmer. The sale of water made money in addition to the rent paid on the property's lease agreement.

The deal has provided the farmer with water to continue agricultural activities and the LALC has gained an income stream from the Water Access Licence, whilst retaining it as an economic asset for the future.

Water trading has complex commercial and legal aspects to it and careful consideration needs to be given to any water trade.

A possible model for LALC water trading:

Understand what water assets you have?

Water Access Licences may be checked on the *Water Access Licence Register* (see Find out More below).
NSWALC staff can assist with this.



Understand what your options are.

Consider the pros and cons of water trade options (see above).
Find out the current market prices and trading charges– checking with multiple water traders to ensure competitive terms.
NSWALC staff can assist with this.



The Board needs to make an informed decision on any water trade.

The Board needs to consider all aspects of the water trade before it makes a decision.
NSWALC staff can provide advice on what the Board should consider.

5. Aboriginal Water Initiatives

There are a number of State and Commonwealth Government Aboriginal water initiatives which LALCs may wish to engage with.

NSW Office of Water – *Aboriginal Water Initiative* – aims to raise Aboriginal capacity to engage in water planning and management. To find out more call 02 8838 7898 or visit their website:
<http://www.water.nsw.gov.au/Water->

[management/Water-sharing-plans/Aboriginal-Water-Initiative/Aboriginal-communities](http://www.water.nsw.gov.au/Water-management/Water-sharing-plans/Aboriginal-Water-Initiative/Aboriginal-communities)

National Water Commission – *National Water Initiative* – works in partnership with the NSW Office of Water to integrate non-Aboriginal knowledge with Aboriginal community knowledge and values. To find out more visit their website: <http://www.nwc.gov.au/nwi>

The Commonwealth Department of Sustainability, Environment, Water Populations & Community – Water Reform Division, *Indigenous Water Advisory Committee* – provides advice on incorporating Indigenous views, beliefs and interests into the development and implementation of Commonwealth water politics and programs. To find out more, visit their website: <http://environment.gov.au/water/australia/community-input/indigenous-committee.html>

6. Find out more

The NSW Office of Water breaks down the various elements of water licences in a general sense. Start on the licence page: <http://www.water.nsw.gov.au/Water-Licensing/About-licences/default.aspx>

Our Water Our Country is a publication by the NSW Office of Water providing a look at water in NSW in relation to Aboriginal people and communities. It can be downloaded from their website:

<http://www.water.nsw.gov.au/Water-management/Water-sharing-plans/Aboriginal-Water-Initiative/Aboriginal-communities>

For the Water Access Licence Register call 1300 052 637 or visit the NSW Land and Property Information website:

http://www.lpi.nsw.gov.au/land_titles/public_registers/water_access_licence_register

For Water Access Licence dealings visit the Registrar General's Directions Website: http://rgdirections.lpi.nsw.gov.au/water_dealings/components_of_wal_dealing_forms

