



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.

What is this factsheet about?

This factsheet gives an overview of community rights under the *Water Act 2000* (Qld). It sets out the basic objectives of the Water Act, and how you can make sure our water is allocated in a safe and sustainable way.

The **key points** you need to be aware of are:

- The *Water Act 2000* (Qld) (**Water Act**) deals with the allocation and use of water as a ‘resource’ in Queensland. The quality of water (e.g. pollution) is largely dealt with under the *Environmental Protection Act 1994* (Qld).
- Generally, anyone who wants to take or interfere with water in Queensland must obtain a water licence under the Water Act, unless that take or interference is allowed under a water plan or statutory right.
- The community has rights under the Water Act to make submissions on draft water resource plans and the issuing of water licences. Members of the public can also bring third party enforcement actions for certain breaches of the Water Act.

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1. General overview

The *Water Act 2000* (Qld) (**Water Act**) establishes a system for the planning, allocation and use of water as a resource. Impacts to water quality can also be considered under the Act in assessing proposed take or interference with water, but generally impacts to the quality of water are dealt with under the *Environmental Protection Act 1994* (Qld).

The Water Act sets out certain requirements for specific authorisations, such as water allocations, licences, permits or seasonal water assignments, as well as broader water plans, which can each provide a power to take and interfere with the flow of water. It also provides for the management of impacts on underground water caused by resource activities such as mining and petroleum and gas (e.g. coal seam gas activities).¹ Lastly, the Water Act provides enforcement provisions and the review and appeal of some decisions made under the Water Act.

There are public rights to be involved in decision making through submissions for water plans and licence applications. For ‘associated water’ take by the resource industry under the statutory right, the public may only comment on certain plans, such as an underground water impact assessments, produced by a resource company or other entity under Water Act chapter 3.

The public only has the right to apply to the court for merits review of a decision about the take or interference with water where they put in a submission to a water licence application.

2. Overview of when someone can take or interfere with water

Under the Water Act, various people have rights to take water for specified activities without any regulation. For example, 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.² Any person can also take water without a permit in the following circumstances:

- for camping or watering travelling stock;
- in an emergency situation for a public purpose or firefighting; and
- overland flow water that is contaminated agricultural run-off.³

¹ For information on gas and mining activities, see EDO’s factsheets: https://www.edoqld.org.au/fact_sheets

² *Water Act 2000* (Qld) s 96.

³ *Water Act 2000* (Qld) s 93.

Anyone may also interfere with overland flow water without a licence.⁴ Overland flow is water not within a watercourse, such as may occur after rainfall. Aboriginal and Torres Strait Islanders may take or interfere with water for traditional activities or cultural purposes on land for which they are an ‘Aboriginal party’.⁵ Where these rights apply, there is no opportunity for public involvement in the decision to take or interfere with this water as it is not regulated.

A person may also take overland flow water up to the volume necessary to satisfy the requirements of an environmental authority or development permit.⁶ There are typically rights of public involvement in the decision making around these two approvals.

There may also be a statutory right to take the water, such as the statutory right held by holders of a mining lease, mineral development licence or petroleum tenure to take ‘associated water’ needed to access a resource, as long as they fulfil their ‘underground water obligations’.⁷ However, this right may not apply depending on the timing of the project applications, as detailed further below.

For other uses, water users may need to apply for an authorisation, such as a permit to temporarily take water, or a licence to take or interfere with water, or it may be allowed under a water plan.

When is a water permit needed?

Any person can apply for a water permit to take water for a defined period,⁸ as opposed to water licences which are for a long term period.

When is a water licence needed?

A water licence may be required for taking or interfering with surface water, overland flow water or also for underground water.

An application to take or interfere with water is made under the Water Act separately from any application for “development” (the equipment/activities used to take the water) that might be needed under the *Planning Act 2016* (Qld) or from an application for an environmental authority under the *Environmental Protection Act 1994* (Qld).

⁴ *Water Act 2000* (Qld), s94A. See also <https://www.business.qld.gov.au/industries/mining-energy-water/water/authorisations/overland-flow>

⁵ *Water Act 2000* (Qld) s 95; ‘Aboriginal party’ as defined in the *Aboriginal Cultural Heritage Act 2003* (Qld), s 35.

⁶ *Water Act 2000* (Qld), s97.

⁷ See *Mineral Resources Act 1989* (Qld), s334ZP; *Petroleum and Gas (Production and Safety) Act 2004* (Qld), s185.

⁸ *Water Act 2000* (Qld), s137.

Surface water

A water licence is typically needed to take or interfere with water in a watercourse, lake or spring for the following purposes:

- industrial or commercial use;
- stock or domestic use on lands that do not adjoin a watercourse, lake or spring;
- irrigation;
- impounding water behind a storage structure;
- storing water behind a weir; or
- storing water in excavations that are within or connected to a watercourse.

Overland flow water

A water licence may be needed to take or interference with overland flow water in areas where a moratorium notice or a water plan applies to require this.

Underground water

A water licence may be needed to take underground water in groundwater areas established through the [Water Regulation 2016](#) or under a water plan. This includes groundwater management areas and sub-artesian management areas. The water plan may set out the public notification requirements for a water licence.

In regulated underground water areas, a water entitlement or water permit may be required under chapter 2 of the Water Act.

Associated water licences

Resource activities such as mining, petroleum and oil activities do not require a water licence to take groundwater that is necessary to be taken to access the resource they are seeking (known as ‘associated water’). These activities have a statutory right to take that water, however to do so they must comply with various ‘underground water obligations’, including preparing an underground water impact assessment and baseline assessments.

Mining activities that, as at 6 December 2016:

- held an environmental authority (EA); or
- had commenced the approval process for an EA application or amendment application; or
- were a "notified coordinated project",

but did not have a water licence at that date may be required to obtain an associated water licence. This will only apply if they would have needed a water licence normally to take underground ‘associated’ water prior to this date on which the Water Act was amended.

An associated water licence is open to public submissions and appeal, however it is not assessed against the principles of ecological sustainability under the Water Act, unlike other water licences.

3. How can the public comment on water licence and water permit applications?

Any individual member of the general public or an incorporated group may make a submission on notified water licence applications (to take or interfere with water) under the Water Act. There may not always be notification required for water licences provided under a water plan; this is determined by the specific area plan.

Where public notification is required under the Act, written submissions must be made within 30 business days after public notice of the application and must state the names and addresses of those making the submission and the grounds of the submission.⁹ The submission must also state the facts and circumstances relied on to support those grounds. In other words, you should outline the problems you have with the decision, and why.

Public notices are advertised on the website of Department of Natural Resources, Mines and Energy (DNRME) here: <https://www.business.qld.gov.au/industries/mining-energy-water/water/authorisations/licences/public-notices>. This page also provides instructions as to how to make a submission.

Water *permits* (to take water for an activity with a specific end date) are not advertised, along with some water licences such as for prescribed activities or taking underground water for stock or domestic purposes. There are no rights to appeal these decision by way of merits review.

4. Water planning

What is a water plan?

A water plan provides a framework for sharing water between human consumption needs and environmental values for a particular catchment. A water plan will also recognise and provide for non-consumptive water uses such as fisheries, grazing and tourism. Water plans may specify the strategies that will be used to address the social, economic and environmental goals for each area. Each plan is a statutory instrument.

A water plan will generally apply to rivers, dams, lakes and springs, as well as groundwater and overland flow within major catchment areas. Water plans have not been developed for all catchment areas in Queensland.

⁹ *Water Act 2000* (Qld) s 112.

How can the public comment on draft and amended water plans?

Look up your catchment on the website of the Department of Natural Resources, Mines and Energy: <http://www.dnrm.qld.gov.au/water/catchments-planning/catchments> to see whether there is a plan for your region and access a copy of the plan.

The overview report of the draft plan will outline how you can make submissions regarding the draft plan. Most plans have a community reference group and technical advisory panel to aid informed public comment and decision making by the government.

Can a water plan affect a water licence?

Depending on the scope of the particular water plan, its implementation (through a water management protocol or operation manual, which replaced ‘resource operations plans’) may lead to water licences being converted to tradeable water allocations. While a water licence attaches to land, water allocations attach only to water and are therefore more easily able to be traded. Trading rules are to be set out in the water management protocol or operations manual. A water management protocol may outline how water licences are to be assessed and when you can make submissions regarding the draft plan.

Once this conversion occurs, government cannot reduce those allocations without *compensating* the holder during the life of the water plan (10 years).¹⁰ There are no rights of submission for the general public on issues of individual water allocations.

5. Riverine protection permits

What is a riverine protection permit?

A riverine protection permit authorises a person to excavate; place fill; or destroy native vegetation in any watercourse, lake or spring.¹¹

Who can apply for a riverine protection permit?

Anyone can apply for a riverine protection permit as long as they include the written consent of the adjacent landowner of the watercourse, lake or spring in their application.¹²

Can the public comment on riverine protection permits?

There is no opportunity for public comment concerning applications for riverine protection permits. Members of the public are able to inspect riverine protection documents at the head or regional offices of the Department of Natural Resources, Mines and Energy.¹³ This will allow the public to consider whether activities at particular locations are authorised or not.

¹⁰ *Water Act 2000* (Qld) s 986.

¹¹ *Water Act 2000* (Qld) s 218.

¹² *Water Act 2000* (Qld) s 218(2).

¹³ *Water Act 2000* (Qld) s 1009.

6. Public access to information

Can I view documents related to water plans, licences and permits?

Section 1009 of the Water Act contains a list of documents that you are entitled to access and copy at the head or regional offices of the Department of Natural Resources, Mines and Energy, without having to make an application under the *Right to Information Act 2009* (Qld).

Such documents include: draft and approved water plans, each approved water plan, operations licenses, water licences, water permits and riverine protections permits.

There may be some fees related to accessing this information.

There is no right to obtain a copy of an application for a water licence under the Water Act, however you may inspect a copy of the application during the public notification period.¹⁴

7. What can I do if I think water take is illegal?

Who enforces breaches of the Water Act?

Most of the Water Act is the responsibility of the DNRME, which has responsibility for monitoring and compliance for all other enforcement issues of the Water Act such as water licences, riverine protection permits etc.

The Department of Environment and Science (**DES**) has responsibility for managing some underground water impacts of petroleum, gas and mining activities under chapter 3 of the Water Act.

What can I do if I know of an unlawful use of water?

You should direct your complaint firstly to DNRME. There is no compliance hotline for DNRME; call the general Qld Government hotline on 13 74 68 and they will put you through to the relevant unit.

You should seek a copy of any water licence or permit that might apply to the water take or interference.

Alternatively, if your complaint regards groundwater contamination, pollution of local creeks, lakes or waterways you should direct your enquiry to DES on the details below.

The Departments should be able to assist you to determine whether the water take or interference is authorised or not.

Before you make a complaint it is best to try to make sure you have some form of evidence to support your concerns, such as photographs, videos or diary notes

¹⁴ *Water Act 2000* (Qld), s112(4)(b).

What if nothing is done about my complaint?

The enforcement provisions in Chapter 5 of the Water Act allow any member of the public to seek a court enforcement order for most offences against Chapter 2 of the Water Act. You do not need to demonstrate a special interest (e.g. financial or proprietary) to have the right to apply to the Court for an enforcement order.

Any person may bring a proceeding in the District Court seeking one or more of the following orders;

1. An order to remedy or restrain an offence (enforcement order);
2. An order that someone pay damages to compensate for any loss or damage to a property because of the offence; and
3. An interim enforcement order which allow for urgent action whilst the proceeding is decided.¹⁵

The Court may, amongst other orders, order the demolition, removal or modification of works undertaken for taking or interfering with water.¹⁶ If the Court is satisfied that an offence has been committed, it may also make an order for exemplary damages to be paid into the government's consolidated fund.¹⁷ In deciding whether to make an order for exemplary damages, the Court will consider;

1. any impact on water available to other water entitlement holders and natural ecosystems, resulting or likely to result from the offence; and
2. any effect on a watercourse, lake, spring, aquifer or water quality; and
3. any financial saving or benefit the person who committed the offence received or is likely to receive because of the commission of the offence.¹⁸

What are the risks of having to pay costs of other parties in court proceedings?

You should seek legal advice before taking any matter to court. This will assist in determining whether you have good legal grounds to bring an action in court. The general rule is that each side pays their own court costs, irrespective of the outcome.¹⁹ However, in certain circumstances the Court may order a community member to pay costs. For example, costs may be ordered against a party where the court action was brought to delay or obstruct or could be

¹⁵ *Water Act 2000* (Qld) s 784.

¹⁶ *Water Act 2000* (Qld) s 789(2).

¹⁷ *Water Act 2000* (Qld) s 788(2).

¹⁸ *Water Act 2000* (Qld) s 788(3).

¹⁹ *Water Act 2000* (Qld) s 792.

considered to be frivolous or vexatious, or even for insufficient notice being provided to other parties of an adjournment being requested.²⁰

If an interim enforcement order is made the Court may impose a condition that the person bringing the court action is liable for any costs resulting from damage suffered by the other party as a result of the interim order.²¹

Please see our [Mining and Coal Seam Gas Law Handbook](#) for more information on enforcement of water issues for resource activities.

8. Federal water regulation – CSG and mining water trigger

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) is federal legislation which may apply to regulation of take or interference with water resources by coal seam gas and large coal mining activities. The EPBC Act is regulated by the federal Department of Environment and Energy (**DoEE**).

‘Water resource’ is defined for the purposes of the EPBC Act as:

(a) ‘surface water or ground water; or

(b) a watercourse, lake, wetland or aquifer (whether or not it currently has water in it);

and includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource).’²²

Where a resource activity is likely to have a ‘significant impact’ on a water resource the activity should be referred for assessment under the EPBC Act.²³ There are public rights to be involved in decision making under the EPBC Act.

If you think a coal seam gas or large coal mining activity is likely or is currently having a significant impact on a water resource and it has not been referred to DoEE for assessment, you can raise this to the attention of DoEE and the federal Minister for Environment and Energy. While you don’t have the power to refer the project directly under the EPBC Act, you can ask the Queensland Government to refer the activity,²⁴ or you can ask the federal Minister to request referral of the activity.²⁵

²⁰ *Water Act 2000* (Qld) s 792(2).

²¹ *Water Act 2000* (Qld) s 786(2).

²² *Water Act 2007*, section 4 definition, referred to by *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s528.

²³ See <http://www.environment.gov.au/resource/significant-impact-guidelines-13-coal-seam-gas-and-large-coal-mining-developments-impacts>

²⁴ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s69.

²⁵ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s70.

See our EDO Qld Factsheet on the EPBC Act for information on the decision making process and your rights to be involved in decisions under this Act [here](#).

9. Judicial review and reasons for decisions

If you are a ‘person aggrieved’ by a decision, under the *Judicial Review Act 1991* (Qld) (**JR Act**) you may seek a written statement of reasons for the decision to approve a water permit or water licence. A ‘person aggrieved’ is a person whose interests are adversely affected by the decision.²⁶

If you are a ‘person aggrieved’, you may also apply under the JR Act to the Supreme Court for judicial review to argue whether or not a decision was made in accordance with the Act. For example, for water permits, the decision maker is required to consider all relevant criteria under section 138, which includes existing water entitlements and authorisations to take or interfere with water; any information about the impacts on natural ecosystems; any information about the impacts on the physical integrity of watercourses, lakes, springs or aquifers; and the public interest.

The right to apply for reasons and judicial review of decisions also applies to decisions under the EPBC Act in accordance with the *Administrative Decisions (Judicial Review) Act 1977* (Cth). Under the EPBC Act there is specific standing provided for Australian individuals or groups incorporated or established in Australia who have at any time in the 2 years immediately before the decision, failure or conduct, engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment.²⁷

IMPORTANT! We strongly recommend you seek legal advice prior to applying to court for judicial review of a decision. There may be risk of adverse costs orders if you do not have sufficient grounds for your application. You should always obtain reasons for a decision before applying for judicial review as this will assist in establishing whether you have legal grounds of review.

²⁶ *Judicial Review Act 1991* (Qld) s 7.

²⁷ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s487.

10. Example

Jane has evidence that XYZ Company is taking more water than its water licence allows. She obtained a copy of the licence by requesting it from the DNRME office. Jane is concerned about the impact on her water availability, as she lives next door. She wrote to DNRME and asked the Department to do something about it but they have decided not to take action.

Jane sought legal advice and found she had sufficient legal grounds to bring an enforcement action in court herself. Jane may bring a proceeding in the District Court seeking one or more of the following orders;

1. An order to remedy or restrain XYZ's offence (enforcement order);
2. An order that XYZ pay damages to compensate Jane for any loss or damage to her property because of XYZ's offence; and
3. An interim enforcement order whilst the proceeding is decided.²⁸

The Court may, amongst other orders, order the demolition, removal or modification of works XYZ has for taking or interfering with water.²⁹ If the Court is satisfied that XYZ has committed an offence, it may also make an order for exemplary damages to be paid into the government's consolidated fund.³⁰ In deciding whether to make an order for exemplary damages, the Court will consider;

1. any impact on water available to other water entitlement holders and natural ecosystems, resulting or likely to result from XYZ's offence; and
2. any effect on a watercourse, lake, spring, aquifer or water quality; and
3. any financial saving or benefit the person who committed the offence received or is likely to receive because of the commission of the offence.³¹

If an interim enforcement order is made Jane will need to be aware that the Court may impose a condition that Jane is liable for any costs resulting from damage suffered by XYZ as a result of the interim order.³² Jane had reasonably legal grounds and participated actively in the court proceedings, so the general rule that each party pays their own costs applies and each party paid their own costs for bringing and participating in the proceeding to Court.³³

IMPORTANT! An application to the Court does not automatically 'stay' the decision so work can start on the activity. To halt a mining or CSG activity until your review is heard, a separate application must be made to the Land Court.³⁴

²⁸ *Water Act 2000* (Qld) s 784.

²⁹ *Water Act 2000* (Qld) s 789(2).

³⁰ *Water Act 2000* (Qld) s 788(2).

³¹ *Water Act 2000* (Qld) s 788(3).

³² *Water Act 2000* (Qld) s 786(2).

³³ *Water Act 2000* (Qld) s 792(1).

³⁴ *Environmental Protection Act 1994* (Qld) s 521(6).

11. Useful contacts and further information

Environmental Defenders Office (Qld) Inc.

Ph: 07 3211 4466
Fax: 07 3844 0766
Post: Unit 8 / 205 Montague Rd, West End 4101
Email: edoqld@edoqld.org.au
Web: www.edoqld.org.au

NOTE! EDO also has a free advice line running Tuesday and Thursday nights on (07) 3211 4466. If your query involves public interest environmental law, we may be able to help you.

The EDO's *Mining and CSG Law in Queensland; a guide for the community* (EDO Qld, 2013) is a comprehensive guide to assessment and approval of mining and CSG projects including example submissions, diagrams, flow charts and checklists. The guide is available for purchase through EDO's website: www.edoqld.org.au Community and landholder discounts apply.

Department of Natural Resources, Mines and Energy

Ph: There is no water compliance hotline for DNRME; call 13 74 68 and they will put you through to the relevant unit. You can also use this number to request a water licence or permit.

Email: WaterServicesSupport@dnrme.qld.gov.au

Web: <https://www.dnrm.qld.gov.au/water>
<https://www.business.qld.gov.au/industries/mining-energy-water/water>

You can view resources tenures (which have been granted) on a map using DNRME's Interactive Resource and Tenure Maps (**IRTM**) online: <http://www.dnrm.qld.gov.au/mapping-data/maps/minesonlinemaps> or you can find a summary of each tenure by requesting a free 'public enquiry report' to be emailed to you from DNRME's website: <https://www.business.qld.gov.au/industries/mining-energy-water/resources/online-services/searches>

Department of Environment and Science (DES)

Ph: (07) 3330 5715 for further information on specific CSG projects

Ph: Pollution Hotline 1300 130 372 if you wish to report a breach of conditions of approval.

Ph: 13 74 68 to find out where your local DEHP Business Centre is (or search <http://www.ehp.qld.gov.au/contactus/businesscentres.html>) so that you can search the public register under the EP Act for environmental authorities, environmental reports, monitoring reports etc. A fee may be charged for copies of documents.

Post: 'The Energy Assessments Unit', Department of Environment and Heritage Protection, GPO Box 2454, Brisbane, QLD, 4001. **However, for submissions check the public notice for the correct address before sending submissions.**

Email: palm@ehp.qld.gov.au (for general licence and permit enquiries)

Web: Search for current Environmental Authorities:
<http://www.ehp.qld.gov.au/management/env-authorities/list.php>

Search for projects undergoing an EIS process:
<http://www.ehp.qld.gov.au/management/impact-assessment/eis-processes/current.html>

Federal Government

Department of Environment and Energy

Ph: 1800 803 772

Web: <http://www.environment.gov.au/heritage/management/referrals>

<http://www.environment.gov.au/about-us/business-us/permits-assessments-licences>

Web: The Independent Expert Scientific Committee on CSG and Large Coal Mining Development (**IESC**) provides advice to the State Government on CSG projects during the impact assessment stage: <http://www.environment.gov.au/coal-seam-gas-mining/>

IESC Fact Sheet: <http://www.iesc.environment.gov.au/publications/fact-sheet-independent-expert-scientific-committee-coal-seam-gas-and-large-coal-mining>