



SA Policy Statement

WATER FOR GOOD

Policy on the Implementation of Unbundling Water Rights in South Australia

Aim

To set out the principles and processes for determining the appropriate level and timing of unbundling of water rights for each prescribed water resource.

Introduction

The unbundling of water rights provides opportunities to significantly reform the development and content of water allocation plans. It will enable South Australia to better respond to requirements for water planning under the COAG Water Reform agenda, National Water Initiative (NWI), in particular the NWI Guidelines for Water Planning and Management, as well as the Water Resource Plan Requirements in the Basin Plan.

For South Australia, unbundling of water rights can create significant benefits such as:

- Clarification of the ownership attributes of the water as separate from the commitments and obligations associated with its taking and use,
- Improved ability to trade water rights both within South Australia and between South Australia and other States,
- Faster processing times that will provide greater certainty and flexibility in the management of water portfolios,
- The ability to more easily trade the seasonal volume of water independently of the ongoing water right (the water access entitlement), and
- Greater flexibility in the options for managing water including dealing with variability in a water resource.

The *Natural Resources Management Act 2004* (NRM Act) was amended in 2007 to create the system for unbundled water rights across the State. The amendments came into force on 1 July 2009, with transitional arrangements in place to allow water rights for prescribed water resources to not explicitly reflect unbundling of water rights until the water allocation plan for that prescribed water resource has been amended to reflect unbundled water rights.

Unbundling of the current water rights and responsibilities, expressed on a water licence, means clearly describing and specifying these rights and responsibilities in separate instruments:

- **Water access entitlement:** this is the ongoing right to a specified share of the water available in a consumptive pool for the prescribed water resource and is issued on a **water licence**;

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- **Water allocation:** the right to take a specific volume of water for a given period of time, not exceeding 12 months, based on the volume of water available for allocation in that period;
- **Delivery capacity entitlement:** the ongoing right to access a proportion of the capacity of a water distribution system;
- **Water resource works approval:** the permission to construct, operate and maintain works for the purpose of taking prescribed water at a particular location, in a particular manner; and
- **Site use approval:** the permission to use the water at a particular site in a particular manner.

The first three of these are personal property and can be sold or transferred to another person. The last two attach to the land to which the relevant approval relates and cannot be transferred. A **consumptive pool** is a part of a prescribed water resource that is available for authorised take of water under the NRM Act.

Water affecting activity permits already exist alongside water licences and can authorise a number of activities, such as construction of wells and dams or the use of effluent and imported water. These permits continue to exist after water rights are unbundled, but in some cases a water resource works approval can replace the water affecting activity permit.

Policy

Since the amendment to the NRM Act, there has been an expectation that all instruments (with the possible exception of the delivery capacity entitlement) would apply to all prescribed water resources.

It has been determined that apart from regulated¹ river systems the applicability and benefits of unbundling water rights are less obvious. Interstate, the implementation of unbundling beyond regulated river systems has seen limited progress. Victoria, for example is not intending to pursue full unbundling of water rights for groundwater resources at this stage.

As such South Australia is committed to implementation of unbundling for surface water, watercourses and groundwater systems, where demonstrated to be feasible and of overall net benefit, in consultation with stakeholders on a case by case basis.

It is therefore important that flexibility for the implementation of unbundling is provided in a clear and transparent manner both in legislation and water management systems (operational procedures and databases used to manage water rights/instruments).

¹ Regulated in this context means that there are large storages that allow regulation and releases of flows in a watercourse

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Water access entitlements and consumptive pools

Defining a consumptive pool and water access entitlements, is considered to be beneficial for all prescribed water resources, as it provides a clearer definition of water rights. It also provides a more transparent and robust mechanism for managing short-term variability in the water resource.

Delivery capacity entitlement

The delivery capacity entitlement is an optional water right provided for under the NRM Act. When water allocation plans are developed or amended, consideration will be given to whether delivery capacity entitlements will provide additional value.

Conditions for the taking and use of water

For certain prescribed water resources it may be necessary to link conditions for taking and use to the water licence and/or the water allocation, either as an interim or ongoing arrangement. This is because the potential benefits of fully unbundling water rights, particularly in relation to the transferability of the water rights, cannot be realised without creating complexity or increased risks to the water resource or third parties in certain circumstances.

Where this is found to be the case, an exemption from the need for separate water resource works approvals and/or site use approvals should be considered, to avoid duplication or inconsistency between the water licence and/or water allocations on the one hand and the approvals on the other.

The NRM Act envisages separate approvals for the use of water, and for the construction, operation and maintenance of works for the purpose of taking water. At the same time the NRM Act still provides flexibility to attach conditions for the take and use of water to the water licence and to the water allocations and provides the water affecting activity permit as an instrument to authorise and provide conditions for the construction and maintenance of works.

In its purest form the water access entitlement is an entitlement to a share of water available in a consumptive pool, free from any conditions in relation to taking and use of water. A water allocation is simply a volume of water. This enables quick and low cost transfer of the entitlement and/or allocation, free from any site specific assessments.

However, for certain types of prescribed water resources, the entitlement to a share of the resource is strongly linked to the location from which the water is taken. For example, in fractured rock groundwater systems, the entitlement depends on the location of the well and the well yield at that location. For surface water systems, where farm dams are used, the size and location of the dam in the catchment will determine diversion rights into the dam and extraction rights from the dam.

Therefore a transfer of a water access entitlement to another owner will in certain cases need to be combined with obtaining or amending a diversion right and/or extraction right, in order to create a usable water right for the new owner. This introduces a level of complexity that may or may not be manageable for water users, depending on their level of understanding and experience with the transfer of water

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rights. It can also create additional implementation and compliance issues as well as risks to water resources and third parties.

Feasibility and benefit assessment

A feasibility and benefit assessment will be undertaken to determine the extent and timing of unbundling water rights for each prescribed water resource.

A feasibility and benefit assessment needs to consider the following questions:

- Are there gaps in knowledge about the water resource that impact on determining consumptive pool boundaries?
- What are the required water resource management arrangements and are they better supported by unbundling water rights?
- Does unbundling streamline or complicate water resource management, water rights administration and processes for water users?
- Does unbundling facilitate water markets and water trade; this may depend on the complexity of water resource management issues, but can also depend on the maturity of the market and the level of understanding and confidence of the licensees. In addition, any assessment should consider any advantages from expediting trade.
- To what extent are other prescribed water resources within the same region unbundled?
- To what extent are inter-catchment or inter-basin water transfers occurring and what is the impact of potential different management arrangements between these catchments?
- Are there other outstanding issues that may need to be resolved prior to the introduction of unbundled water rights, for example, conversion to volumetric allocations, addressing over-allocation, dealing with unlicensed water use, such as stock and domestic water use or interception and use by forestry?
- Are there intergovernmental issues that need to be considered, for example the Border Groundwater Agreement, and the benefits of consistency with interstate arrangements?
- What are the current administrative practices and how will they have to change under an unbundled water rights system? Are there barriers in terms of costs, skills, IT systems, etc?

Each question requires a varying degree of detail and analysis as not all issues arise to the same degree in each water allocation plan.

In most cases a fully-documented feasibility analysis that identifies strengths, weaknesses, opportunities and threats of unbundling each prescribed water resource, based on current knowledge will be sufficient and can be the result of an expert panel workshop.

Process for determining the extent and timing of unbundling

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The process to implement unbundling will be undertaken as part of the normal water allocation plan review and amendment cycle, subject to the outcome of a feasibility assessment.

Unbundling will be implemented through the full statutory water allocation plan amendment process as detailed in the NRM Act, which allows for substantial stakeholder engagement. Unbundling of water rights for existing prescribed water resources will not occur through any other mechanism.

The feasibility and benefit assessment will be a joint exercise by the department responsible for water and the regional Natural Resources Management Boards, resulting in joint advice to the Minister for Sustainability, Environment and Conservation on the extent and timing of unbundling for each prescribed water resource.

Flexibility in legislative arrangements

Proposals for amendments to the NRM Act are to be developed to provide more clear and transparent flexibility for the implementation of unbundling water rights in the long-term.

The transitional provisions of the *Natural Resources Management (Water Resources and Other Matters) Amendment Act 2007*, together with regulation 47 of the *Natural Resources Management (General) Regulations 2005*, provide flexibility in the timing of unbundling of water rights.

They allow:

- the adoption of water allocation plans that commenced development prior to 1 July 2009, without explicitly providing for unbundling of water rights;
- the continuation of existing water licences that are not unbundled;
- the issuing of new water licences that are not explicitly unbundled, until a water allocation plan is developed for the prescribed water resource that provides for unbundling.

The *Natural Resources Management (General) Regulations 2005* expire in September 2016.

A water allocation plan must set out principles associated with the taking and use of water. The Minister has a broad power to impose water licence conditions, including conditions relating to the taking and use of water, guided by the water allocation plan.

The NRM Act allows for regulations to be developed to create exemptions from the need for site use and/or water resource works approvals for a specific prescribed water resource. If the result of the feasibility and benefit assessment indicates the need to attach conditions for taking and/or use of water to the water licence and/or water allocation, such exemptions need to be considered to avoid duplication and/or inconsistency between the water licence/water allocation on the one hand and the site use approval and water resource works approval on the other. A water affecting activity permit would then continue to apply for the construction and maintenance of works.

The exemption regulations cannot be so broad in scope that they effectively vary the NRM Act itself under which they are made. This is not a short-term risk for individual prescribed water resources, but

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could pose a long-term risk if the outcome of this policy would be that the majority of prescribed water resources would require exemptions.

This risk will be addressed through the development of proposed amendments to the NRM Act.

Water Management Systems

The flexibility in timing and the extent of unbundling water rights in South Australia will need to be supported by the South Australian water management system and the National Water Market System.

National Water Reform

South Australia will advocate for continued reform of water rights nationally, consistent with this policy.

The policy is considered to be consistent with current national water reform commitments as they allow for decisions against further unbundling of water rights, as long as the reasons are made public.

South Australia will meet its water reform commitments through undertaking the feasibility and benefit assessments and progressing unbundling in line with the outcomes of that assessment.

Review

The Policy on the implementation of unbundling water rights in South Australia (this document) will be reviewed by March 2014.

Further Information:

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