

Queensland



Subordinate Legislation 1999 No. 95

Water Resources Act 1989

WATER RESOURCES REGULATION 1999

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DICTIONARY

PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Water Resources Regulation 1999*.

Dictionary

2. The dictionary in schedule 3 defines particular words used in this regulation.

PART 2—SALE OF RIGHTS TO NOMINAL ALLOCATION

Right to sell rights to part 4 or 9 allocation

3.(1) A person may sell all or some of the person's rights to a part 4 or 9 allocation.

(2) However, subsection (1) applies only if—

- (a) the allocation is granted for land within an irrigation area mentioned in schedule 1; and
- (b) the buyer is the owner of land situated in the same irrigation area as the land for which the allocation is granted; and
- (c) the sale results in the buyer acquiring rights to a nominal allocation (the “**buyer's allocation**”) for the land of the buyer in the irrigation area; and
- (d) the existing allocation is applied for primary production; and
- (e) the buyer's allocation is intended to be applied by the buyer for primary production; and
- (f) the sale is made in accordance with the written approval of the chief executive.

Application for approval to sell rights to part 4 or 9 allocation

4.(1) This section applies for obtaining the chief executive's approval of the sale by a person (the **"proposed seller"**) of all or some of the person's rights to a part 4 or 9 allocation to another person (the **"proposed buyer"**).

(2) An application must be made to the chief executive.

(3) The application must—

- (a) be made jointly by the proposed seller and proposed buyer; and
- (b) be in the approved form.

(4) The application must be accompanied by the following—

- (a) a copy of the proposed seller's licence under which the rights to the allocation are held;
- (b) a statutory declaration by the proposed seller that each person (an **"interested person"**) who has a financial or other interest in the land of the proposed seller for which the part 4 or 9 allocation is granted (the **"proposed seller's land"**) has been notified in writing of the proposed sale;
- (c) the written consent of each interested person to the proposed sale;
- (d) the fee for the application;
- (e) the fee for searching data bases about water charges and fees.

Publication of notice about proposed sale

5.(1) As soon as practicable after receiving an approval application, the chief executive must publish a notice of the proposed sale in a newspaper circulating in the irrigation area in which the proposed seller's land is situated.

(2) The notice must state the following—

- (a) the name of the proposed seller;
- (b) a description of the proposed seller's land;
- (c) information about the subject allocation, including—
 - (i) details of the licence under which the proposed seller's rights to the nominal allocation are held; and

- (ii) the volume of water to which the subject allocation relates;
- (d) the date for the proposed sale which must be at least 28 days after the date the notice is published.

Consideration of approval application

6.(1) In deciding whether to approve the proposed sale to which an approval application relates, the chief executive must have regard to the following—

- (a) the effect of the proposed sale on the availability of the supply of water to other nominal allocation holders;
- (b) whether the existing water distribution scheme would, after the sale, remain economically viable;
- (c) whether the water distribution scheme under which water is intended to be supplied to the proposed buyer—
 - (i) can accommodate the water to which the subject allocation relates; or
 - (ii) is already functioning at full capacity;
- (d) the effect of the proposed sale on the sustainability of land and water resources in the irrigation area;
- (e) the purpose for which the proposed buyer intends to apply the subject allocation;
- (f) whether approval of the proposed sale would result in a condition mentioned in schedule 1, for the irrigation area, not being satisfied;
- (g) whether any charges or other amounts remain payable by the proposed seller in relation to the subject allocation;
- (h) whether any charges remain payable by the proposed buyer in relation to a part 4 or 9 allocation already held by the proposed buyer;
- (i) any other matter the chief executive considers appropriate.

(2) In this section—

“existing water distribution scheme”, for the proposed sale of rights to a

part 4 or 9 allocation, means the water distribution scheme under which water to which the subject allocation relates is, or may be, supplied to the proposed seller.

Chief executive's decision about approval application

7.(1) After considering the matters mentioned in section 6 for an approval application, the chief executive may—

- (a) approve the proposed sale without conditions; or
- (b) approve the proposed sale on conditions; or
- (c) refuse to approve the proposed sale.

(2) The chief executive must refuse to approve a proposed sale if—

- (a) the approval would result in a condition mentioned in schedule 1, for the irrigation area, not being satisfied; or
- (b) the proposed buyer does not intend to apply the subject allocation for primary production.

(3) Without limiting subsection (1)(b), the conditions the chief executive may impose for an approval include the following—

- (a) a condition that the subject allocation is to be adjusted to avoid a negative effect on—
 - (i) the sustainability of land and water resources; or
 - (ii) the availability of the supply of water to other nominal allocation holders in the irrigation area;
- (b) a condition that the fee for reading the proposed seller's water meter is paid before the sale takes place;
- (c) a condition that any charges or other amounts currently payable by the proposed seller in relation to the subject allocation are paid before the sale takes place;
- (d) a condition that any charges currently payable by the proposed buyer in relation to a part 4 or 9 allocation already held by the proposed buyer are paid before the sale takes place.

(4) If the chief executive decides to approve the proposed sale without conditions, the chief executive must immediately give written notice of the

approval to the proposed seller and proposed buyer.

(5) If the chief executive decides to refuse to approve the proposed sale, or to approve the sale on conditions, the chief executive must immediately give the proposed seller and proposed buyer an information notice about the decision.

(6) If the chief executive decides to approve the proposed sale (whether or not on conditions), the chief executive also must give the proposed buyer a written notice advising the proposed buyer of the effect of sections 11 and 12.¹

Fixing licence conditions on approval of proposed sale

8.(1) This section applies if, after considering an approval application, the chief executive decides to approve the proposed sale (whether or not on conditions).

(2) The chief executive must fix the conditions (if any) (the “**licence conditions**”) that are to be imposed on a licence issued or amended to give effect to the sale.

(3) Without limiting subsection (2), the conditions the chief executive may fix include the following—

- (a) a condition that the nominal allocation the rights to which are acquired under the sale is applied only for primary production;
- (b) a condition that the supply of water to the proposed buyer is limited to periods of low demand for irrigation water.

(4) If the chief executive decides not to fix any licence conditions, the chief executive must immediately give written notice of the decision to the proposed buyer.

(5) If the chief executive decides to fix licence conditions, the chief executive must immediately give the proposed buyer an information notice about the decision.

¹ Sections 11 (Requirement about land and water management plan affecting use of rights by buyer) and 12 (Compliance by buyer with current land and water management plan)

Action by parties after sale

9.(1) This section applies if a person (the “**seller**”) sells all or some of the person’s rights to a part 4 or 9 allocation to another person (the “**buyer**”).

(2) As soon as practicable after the sale, the seller and buyer must each give the chief executive written notice of the sale signed by both parties.

(3) As soon as practicable after the sale, the seller must return to the chief executive the licence under which the seller’s rights to the allocation were held.

(4) The buyer must, if asked by the chief executive, return a licence held by the buyer to the chief executive as soon as practicable after receiving the request.

(5) Subsection (2) does not apply to the seller or buyer if the other party complies with the subsection.

PART 3—LAND AND WATER MANAGEMENT PLANS

Land and water management plans

10.(1) A “**land and water management plan**” is a document that—

- (a) describes infrastructure and practices for irrigation and land management at a farm level that are consistent with the sustainable use and protection of water resources and the physical integrity of watercourses, lakes and springs; and
- (b) to the extent it is reasonably practicable, complies with the plan guidelines.

(2) A land and water management plan may include a schedule for the progressive introduction of changes to the existing use of water on the land to which the plan relates to achieve sustainable use of the land and water resources.

Requirement about land and water management plan affecting use of rights by buyer

11.(1) A buyer must not exercise the rights to a part 4 or 9 allocation purchased by the buyer unless—

- (a) the chief executive has, after the acquisition of the rights by the buyer, approved a land and water management plan for the buyer's land; and
- (b) the period for which the plan is approved has not ended.

Maximum penalty—40 penalty units.

(2) The buyer does not commit an offence against subsection (1) if—

- (a) the chief executive has given a deferral of the requirement (the **“plan requirement”**) arising because of the application of subsection (1) for a land and water management plan to be approved by the chief executive for the buyer's land; and
- (b) the period of the deferral has not ended.

(3) Also, the buyer does not commit an offence against subsection (1) if the chief executive has given an exemption from the plan requirement for the buyer's land.

Compliance by buyer with current land and water management plan

12.(1) This section applies if—

- (a) after the acquisition of the rights to a part 4 or 9 allocation by a buyer, the chief executive approves a land and water management plan for the buyer's land; and
- (b) the period for which the plan is approved has not ended.

(2) The buyer must comply with the plan in exercising the rights.

Maximum penalty for subsection (2)—40 penalty units.

Approval of land and water management plans

13.(1) A buyer may ask the chief executive to approve a land and water management plan for the buyer's land.

(2) A request under subsection (1) must be accompanied by—

- (a) a copy of the plan; and
- (b) the fee for carrying out an assessment of the plan.

(3) On receiving the request, the chief executive must assess the plan and either—

- (a) approve the plan for a stated period of not longer than 5 years; or
- (b) refuse to approve the plan.

(4) If the chief executive considers the plan does not comply with the plan guidelines, the chief executive may, before making a decision on the request, by written notice given to the buyer, ask the buyer to give the chief executive further information that is necessary and reasonable to enable the chief executive to assess the plan.

(5) If the chief executive decides to approve the plan, the chief executive must immediately give written notice of the approval to the buyer.

(6) The notice mentioned in subsection (5) must state the period for which the plan is approved.

(7) If the chief executive decides to refuse to approve the plan, the chief executive must immediately give the buyer an information notice about the decision.

Application for deferral of, or exemption from, plan requirement

14.(1) A buyer may apply to the chief executive for a deferral of, or exemption from, the plan requirement for the buyer's land.

(2) However, a buyer may apply for an exemption only if—

- (a) the buyer's land is not high risk land; and
- (b) the rights purchased are rights to—
 - (i) a nominal allocation of not more than 10 ML (whether or not the buyer's land has been irrigated previously); or
 - (ii) a nominal allocation of not more than 10 % of the average volume of water applied annually to the buyer's land for the last 5 water years before the sale; and

- (c) an exemption has not previously been granted for the buyer's land.
- (3) The application must be in writing and state the following—
- (a) the reasons for seeking the deferral or exemption;
 - (b) the area of the buyer's land;
 - (c) the area of the buyer's land under irrigation before the sale;
 - (d) the types of crops to be irrigated;
 - (e) the method of irrigation to be used;
 - (f) the volume of water applied to the buyer's land in each of the last 5 water years before the sale;
 - (g) the additional volume of water proposed to be applied annually to the buyer's land after the sale;
 - (h) the volume of water proposed to be applied annually, after the sale, to any part of the buyer's land that has not been irrigated previously;
 - (i) the suitability of the buyer's land for irrigation.

Chief executive's decision about deferral or exemption

15.(1) For an application for a deferral of the plan requirement for the buyer's land, the chief executive may—

- (a) defer the requirement for a stated period of not longer than 12 months; or
- (b) refuse to defer the requirement.

(2) For an application for an exemption from the plan requirement for the buyer's land, the chief executive may—

- (a) give an exemption from the requirement; or
- (b) refuse to give an exemption from the requirement.

(3) In making a decision about an application, the chief executive must have regard to the following—

- (a) whether the buyer's land is high risk land;

- (b) the impact of the proposed irrigation, or proposed changes to irrigation practices, on the buyer's land;
- (c) for an application for an exemption—the volume of water to which the rights purchased relate.

(4) If the chief executive decides to give a deferral or exemption, the chief executive must immediately give written notice of the decision to the buyer.

(5) If the chief executive decides to refuse to give a deferral or exemption, the chief executive must immediately give the buyer an information notice about the decision.

PART 4—APPEALS

Appeal from chief executive's decision about approval application—part 4 allocation

16.(1) A proposed seller or proposed buyer may appeal to the Land Court against a decision of the chief executive on an approval application relating to a part 4 allocation—

- (a) refusing to approve the proposed sale to which the application relates; or
- (b) approving the proposed sale on conditions.

(2) A proposed buyer may appeal to the Land Court against a decision of the chief executive fixing licence conditions following the giving of the chief executive's approval of a proposed sale for an approval application relating to a part 4 allocation.

(3) Section 51² of the Act applies to an appeal mentioned in subsection (1) or (2) in the same way as it applies to an appeal by an applicant for a licence against a decision of the chief executive about the application.

(4) However, for the application of section 51 to an appeal mentioned in

² Section 51 (Appeal to Land Court) of the Act

subsection (1) or (2), the notice of appeal must be filed within 30 days after the proposed seller or proposed buyer receives written notice of the chief executive's decision about the approval application or the fixing of the licence conditions.

Appeal from chief executive's decision about approval application—part 9 allocation

17.(1) A proposed seller or proposed buyer may appeal to the Minister against a decision of the chief executive on an approval application relating to a part 9 allocation—

- (a) refusing to approve the proposed sale to which the application relates; or
- (b) approving the proposed sale on conditions.

(2) A proposed buyer may appeal to the Minister against a decision of the chief executive fixing licence conditions following the giving of the chief executive's approval of a proposed sale for an approval application relating to a part 9 allocation.

(3) Section 237³ of the Act applies to an appeal mentioned in subsection (1) or (2) in the same way as it applies to an appeal by a person aggrieved by a decision of the chief executive under section 120(1) or (2)⁴ of the Act.

(4) For the application of section 237 to an appeal mentioned in subsection (1) or (2), the notice of appeal must be given to the Minister within 30 days after the proposed seller or proposed buyer receives written notice of the chief executive's decision about the approval application or the fixing of the licence conditions.

Appeal from chief executive's decision about land and water management plan

18.(1) A buyer may appeal to the Land Court against the following decisions of the chief executive—

³ Section 237 (Appeal to Minister) of the Act

⁴ Section 120 (Grant of water allocation) of the Act

- (a) a decision refusing to defer, or to give an exemption from, the plan requirement for the buyer's land;
- (b) a decision refusing to approve a land and water management plan for the buyer's land.

(2) Section 51 of the Act applies to an appeal mentioned in subsection (1) in the same way as it applies to an appeal by an applicant for a licence against a decision of the chief executive about the application.

(3) However, for the application of section 51 to an appeal mentioned in subsection (1), the notice of appeal must be filed within 30 days after the buyer receives written notice of the chief executive's decision mentioned in subsection (1).

PART 5—MISCELLANEOUS

Charges associated with sale of rights to part 4 or 9 allocation

19.(1) For the sale by a person of all or some of the person's rights to a part 4 or 9 allocation, the chief executive may make and levy on the person a charge to recover the corporation's costs, expenses and losses resulting for any reason from the sale.

(2) The charge may be for—

- (a) the corporation's administrative costs and expenses; or
- (b) costs and expenses resulting from construction or maintenance of headworks or other works; or
- (c) losses of revenue to the corporation because of a decrease in the use or potential use of works or increased delivery costs; or
- (d) costs, expenses or losses of the corporation over a future period.

(3) The amount of the charge—

- (a) is the amount calculated by the chief executive; and
- (b) is payable at the time stated by the chief executive.

(4) If an amount of the charge is not paid by the person as required under this section, the corporation may recover the amount from the person as a debt.

Fees

20. The fees payable under the Act are in schedule 2.

SCHEDULE 1**IRRIGATION AREAS AND CONDITIONS**

sections 3 and 7

Irrigation area	Conditions
1. Mareeba-Dimbulah Irrigation Area	1. The rate of supply of water to the buyer's land under rights acquired under the sale approved by the chief executive under section 7 must not reduce the rate of supply to the land of any other allocation holder in the irrigation area.

SCHEDULE 2

FEES

section 20

\$

1.	Approval application (s 4)	200.00
2.	Searching data bases (s 4)	50.00
3.	Reading a water meter (s 7)	50.00
4.	Assessing a land and water management plan (s 13)—	
	(a) re-assessment of previously approved plan (without amendments)	50.00
	(b) re-assessment of previously approved plan (with amendments that relate only to existing irrigated land and do not involve the introduction of different irrigation methods)	50.00
	(c) re-assessment of previously approved plan (with amendments providing for irrigation of additional land or the introduction of different irrigation methods)	100.00
	(d) assessment of a new plan	150.00

SCHEDULE 3**DICTIONARY**

section 2

“approval application” means an application made by a proposed seller and proposed buyer under section 4 for the chief executive’s approval of the sale by the proposed seller to the proposed buyer of all or some of the proposed seller’s rights to a part 4 or 9 allocation.

“buyer” see section 9.

“buyer’s land”, of a buyer, means the land of the buyer to which the allocation, the rights to which the buyer has purchased, is intended to be applied.

“high risk land” means land in an area—

- (a) that is known to be subject to—
 - (i) high or rising groundwater levels; or
 - (ii) salinisation; or
- (b) in which there is a high risk of—
 - (i) degradation of groundwater or surface water by irrigation; or
 - (ii) degradation or erosion of soil by irrigation; or
 - (iii) drainage line or watercourse instability.

“information notice”, for a decision of the chief executive, means a written notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) for a decision under section 7(1)(b) approving a sale on conditions or a decision under section 8(2) fixing licence conditions—the conditions; and
- (d) that the person to whom the notice is given—

SCHEDULE 3 (continued)

- (i) for a decision mentioned in section 16(1) or (2) or 18(1)—may appeal against the decision to the Land Court within 30 days; and
- (ii) for a decision mentioned in section 17(1) or (2)—may appeal against the decision to the Minister within 30 days.

“land and water management plan” see section 10.

“licence conditions” see section 8(2).

“part 4 or 9 allocation” means a nominal allocation under a licence issued under part 4 or 9 of the Act.

“plan guidelines” means the guidelines for the preparation and presentation of land and water management plans contained in the document called ‘Guidelines for Land and Water Management Plans’ issued by the department.⁵

“plan requirement” see section 11(2).

“primary production” does not include operation of a cattle feedlot or piggery.

“proposed buyer” see section 4.

“proposed seller” see section 4.

“proposed seller’s land” see section 4.

“subject allocation”, for the proposed sale of rights to a part 4 or 9 allocation, means—

- (a) if all of the rights are proposed to be sold—the allocation; or
- (b) if only some of the rights are proposed to be sold—the part of the allocation the rights to which are proposed to be sold.

“water year”, for an irrigation area mentioned in schedule 1, means the period of 12 months that is the water year for the area for the *Water Resources (Rates and Charges) Regulation 1992*.

⁵ Copies of the document may be inspected at the head office of the department, Brisbane or at any regional office of the department.

ENDNOTES

1. Made by the Governor in Council on 27 May 1999.
2. Notified in the gazette on 28 May 1999.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Natural Resources.