



10 March 2026

Our ref: [SS:WA]

Email: policy@qls.com.au

Ms Bronwyn Blagoev
Director-General
Department of Local Government, Water and Volunteers
1 William Street
BRISBANE QLD 4000

By email: [REDACTED]

Dear Director-General

Water Regulation 2016 – boundary realignment of land with attached water licence

Thank you for the opportunity to provide further information to the Department of Local Government, Water and Volunteers (**Department**) in relation to concerns raised in our letter of 11 October 2023.

As requested, we have provided additional information about the Queensland Law Society (**QLS**) Water and Agribusiness Law Committee (**Committee**) below. We have also provided two examples where the treatment of a water licence attaching to subdivided land has become an issue and an example of a potential issue that we expect will have unjust implications as water plans are reviewed throughout Queensland. This letter also responds to your additional questions about the issue and potential solutions.

About the Committee

You requested we provide some insight into the Committee, including what matters are generally addressed, committee membership and regularity of meetings.

The Committee was formed in early 2020 to provide expert advice to the QLS Council, develop policy positions, guidance materials and submissions on legislative and policy initiatives in relation to water and agribusiness.

Committee membership currently consists of 11 volunteer legal practitioners with substantial experience advising clients in the agribusiness and primary production industries. Many of the Committee members are partners or principals in law firms across Queensland.

The Committee meets four times per year. In between meetings, Committee members provide feedback on legal policy reform initiatives and assist with drafting submissions.

Water and agribusiness law encompasses a broad range of issues such as buying and selling rural properties, financing, tax advice, leasing, water licensing and regulation, biosecurity and renewables. Matters that the Committee has addressed include rural conveyancing and

property sales, land tax and stamp duty, reducing red tape for agribusinesses, food security, Federal water markets reform, and renewable energy regulation.

Examples of difficulties arising from application of the current policy

Example 1: Transfer of part of farmland to adjoining cattle property

The water licence holder (Owner A) owns a large property used for cattle grazing and cropping. Substantial cropping takes place on the western side of the property, which has good soil and is irrigated from a large dam the subject of the water licence. Cattle grazing occurs on the eastern side of the property, which is harder country and does not require water from the dam.

Owner A was approached by a neighbour on the eastern boundary of their land (Owner B), who wanted to buy a small area of Owner A's land to extend their stockyard. Owner A agreed to sell a small area to Owner B for a nominal amount. The two owners conducted the sale and transfer themselves.

After the land was subdivided and the transfer to Owner B was registered, Owner A found out that the irrigation licence for the dam attached to both Owner A's property and Owner B's property, even though Owner B had no means of accessing the dam.

The relationship between the two owners broke down and Owner B refused to surrender their interest in the water licence. Owner A was forced to make a large ex gratia payment to Owner B before Owner B agreed to relinquish their interest in the water licence.

Example 2: Urban subdivision of former dairy farm

Following nearby urban expansion, a landowner subdivided their large property that had formerly been a dairy farm and that was the subject of a water licence. The land was subdivided into approximately 90 lots comprising residential, commercial and local government infrastructure land to be transferred to the local government, and a balance development lot for future stages of the subdivision. After registration of the plan of subdivision, all 90 lot owners jointly held the water licence.

It was a condition of development approval that the infrastructure land be transferred to the local government immediately following registration of the subdivision plan. Therefore, there was no gap between registration of the subdivision plan and lodgement of the transfer to the local government. This is a common development condition.

In this example, the local government was accommodating and agreed to join the landowner in transferring the water licence to the balance development lot before the residential and commercial lots were transferred to new owners. However, the local government was within its rights to refuse to cooperate, which would have also prevented the water licence from being removed from the residential and commercial lots. If this had occurred, the landowner would have been required to apply to court orders to remove the water licence from all lots except the balance development lot.

There will be nine further stages of the development with the water licence being retained in the balance development lot in the next eight stages, which will trigger the same issue in each remaining stage.

Example 3: Conversion of water licence to water allocation

In the instance of Example 1 where Owner A and Owner B hold a water licence jointly and the water licence is cancelled and re-issued as a water allocation under a new water plan, Owner B

will be unjustly enriched by the issue of a water allocation to which it should not have been entitled as it was unable to use or take any water under the original water licence.

Discussion of issues

You asked we raise the following scenarios with the committee:

- a. *A water licence becoming jointly held because of part disposal of subdivided land has been in operation since 2011.*

- *When did the concerns presented in the letter start to be raised, and how frequently?*

The issue arises on an ad-hoc basis as land with attached water licences is reconfigured.

One of our Committee members sees this issue arise approximately four or five times a year. As there are a large number of lawyers working with these issues, it would be reasonable to assume other lawyers in this field experience this issue at a similar frequency.

We expect the issue will become more prevalent as more former farmland is subsumed by urban growth and subdivided into residential and commercial lots, particularly in south-east Queensland and as water plans are reviewed. Further, as the value of all forms of water available in the water market has increased, the issue has come more into focus.

Although the prevalence of this issue is not tracked by QLS or its members, we suggest the Department would be able to identify how often it deals with subdivided water licences that are initiated as a result of subdivision of the land the licence is attached to.

- *Are there any related changes that have occurred that have precipitated this issue?*

QLS is not aware of any changes to the *Water Act 2000* or *Water Regulation 2016* that triggered this issue coming to our attention.

- *Were there any issues reported under previous processes relating to land dealings and water licences i.e., prior to 2011?*

As the Committee was formed in 2020, we had not reported any issues under previous processes.

- b. *To what extent can this issue be avoided with relevant searches and administrative actions prior to disposal of land? i.e., Necessary changes to a water licence could be made between subdivision of land and the disposal of land to avoid the issue raised.*

In Example 2, the necessary changes to the water licence were made between subdivision of the land and transfer of the residential and commercial lots to new owners. However, the development approval required the infrastructure land to be transferred to the local government immediately after registration of the plan of subdivision, so the landowner could not avoid the issue arising in relation to the infrastructure land. Therefore, this may not be a practical solution for all subdivisions.

In Example 3, the water licence holders could make submissions under a draft Water Plan, though there is no statutory mechanism for the unjust enrichment to be remedied before a water allocation is granted. An aggrieved licence holder could apply to the Supreme Court for relief, though doing so could cost a considerable amount and be avoided by a change to Departmental policy to resolve the issue before it causes a loss.

One challenge is that the subdivision of the land and the water licence are administered by two different bodies – Titles Queensland and the Department. The subdivision or boundary realignment process through Titles Queensland triggers a change to the water licence, but there is no alert or reference within the Titles Queensland system to warn landowners and their advisors that this will occur. Further, this issue is not mentioned in the Queensland Land Title Practice Manual published by Titles Queensland, which is the main resource for legal practitioners when registering plans of reconfiguration. In our view, there should be a note in the Land Titles Practice Manual that registering a plan of subdivision will trigger a change to the water licence that will result in the water licence attaching to all of the subdivided lots.

Further, there is currently no acknowledgement in the Titles Queensland system that a water licence attaches to a lot. A potential approach could be to note the existence of the water licence attaching to the land on the title to the land as an administrative advice. This is the approach taken with resource compensation agreements, which bind a succeeding landowner, and has proven to effectively alert parties to the existence of the issue.

However, taking this approach will merely alert the parties of the existence of a water licence when they search the title to the land; it will not alert them of the effect subdividing the land will have on the water licence – they will need to find this information elsewhere. Therefore, conducting searches will not prevent the issue from occurring, particularly for self-represented parties and legal practitioners inexperienced in this field.

- *How well understood is this?*

As far as our Committee is aware, the issue is not widely understood. The issue is unlikely to be understood or potentially even considered at all when a simple boundary realignment is undertaken because the existence of the water licence attaching to the lot is not noted on the title.

As noted in Example 1, self-represented landowners may not be aware of the issue or the need to remove the water licence from the subdivided lots before the lots are transferred to new owners. Similarly, in rural areas, boundary realignments are often undertaken by surveyors or the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development when road closures are undertaken who may not understand this issue.

Additionally, solicitors who do not regularly deal with land subject to water licences may not be aware of the issue.

The prevalence of this issue amongst the Committee indicates that it is a relatively common issue that warrants intervention by the Department.

- *Are there suggestions about how to better communicate this?*

The suggestion above to note the water licence on the title to the land will alert the landowner or advisor as to the existence of the water licence. However, this will not alert them to the effect subdividing the land will have on the licence and it will not prevent the water licence from automatically attaching to all of the subdivided lots.

As noted in Example 1, the parties may conduct a transaction themselves without obtaining legal advice. Therefore, broader education of licence holders by the Department may be required. We suggest the Department issue an information sheet

with annual invoices to alert licence holders to the fact that dealing with their land may affect their licence and suggest they seek advice before reconfiguring their land.

QLS would also be willing to assist the Department to communicate this to our members via an article in our online Proctor magazine and our weekly QLS Update email to members.

- *Are there any barriers to this approach?*

As noted in Example 2, one barrier to the approach of removing the water licence from the subdivided lots immediately after the plan registers, is where a local government imposes development conditions that require land to be transferred to the local government immediately after registration of the plan of subdivision. This is not something the landowner can control or negotiate with the local government.

Another barrier would be where the parties or their advisors are not aware of the need to amend the water licence before the subdivided land is transferred to the new owner, as in Example 1. While the approach of noting the water licence on the title to the land will alert the parties to the existence of the water licence, the parties may not be aware they need to remove the water licence from the subdivided lots.

If the parties are aware of this requirement, the contract between the parties will need to be conditional on the water licence being removed before settlement and registration of the transfer. Depending on how long it takes to remove the water licence, this process could delay settlement. If there is a lengthy delay, the buyer might become entitled to terminate the contract, depending on the terms of the contract.

- *How might barriers be overcome?*

To avoid the above issues when subdividing land, we recommend the Department allow:

1. the water licence holder immediately before the subdivision to direct which lot/s are to take the benefit of the licence instead of the licence automatically attaching to each subdivided lot; and
2. permit the holder of a water licence who holds the title to the land on which the water licence can be used to apply for the removal of other licensees who are unable to use water under the water licence.

Further, as mentioned above, we suggest noting the existence of the water licence as an administrative advice on the title to the affected land.

Additionally, the surveyor's guidelines could be updated to require the surveyor to depict the location of any water access points (e.g., bores or dams) on the property on the survey plan and note on the back of the plan the lots that the water licence will attach to after subdivision, as directed by the water licence holder.

While this process may increase the cost of preparing survey plans, in our members' view, the benefit gained by preventing disputes will outweigh the additional cost.

The Committee would welcome the opportunity to discuss this issue further with you.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED] [REDACTED]

Yours faithfully



Peter Jolly
President