



Government of **Western Australia**
Department of **Water**

Stamp duty requirements for water licensing

March 2014

Looking after all our water needs

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Department of Water

Water licensing delivery series

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Department of Water
168 St Georges Terrace
Perth Western Australia 6000
Telephone +61 8 6364 7600
Facsimile +61 8 6364 7601
National Relay Service 13 36 77
www.water.wa.gov.au

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1 Introduction

1.1 Issue

A water licence issued in accordance with section 5C of the *Rights in Water and Irrigation Act 1914* is defined as dutiable property under the *Duties Act 2008*.

The transfer of dutiable property is classified as a dutiable transaction under the *Duties Act 2008*. Therefore, the transfer of a water licence, or a water entitlement under a licence, is subject to duty.

The Office of State Revenue must collect stamp duty on dutiable transactions, when a water licence or a water entitlement is transferred from one entity to another for an agreed value.

1.2 Intent

The intent of this standard is to:

- meet the obligations of the *Duties Act 2008* in relation to stamp duty on the transfer of a water entitlement or licence
- achieve consistent decision making related applications that are subject to stamp duty.

1.3 Application

This standard applies to applications for the transfer of a water licence or a water entitlement made under Schedule 1, Clause 29 of the *Rights in Water and Irrigation Act 1914*, resulting in a licence issued in accordance with section 5C of the Act.

Duty is not chargeable on every water licence. This standard does not apply to the following (as they are not dutiable transactions under the *Duties Act 2008*):

- The initial grant of a section 5C water licence.
- The renewal or amendment of section 5C licences.
- Agreements under a section 5C licence, made under Schedule 1, Clause 30.

1.4 Obligations

Applicant's obligations

It is the applicant's responsibility to contact the Office of State Revenue directly for a decision on whether stamp duty is chargeable.

The applicant should ensure that Part 1 of the department's **application form 4T** indicates either "yes" or "no" to the question "Is the water included as part of the property sale?". If the answer is "no", the applicant should declare the dollar value in the space provided on the application form 4T.

In order for the department to process the application and grant a licence, the applicant must provide the department with written evidence from the Commissioner of State Revenue that the transaction has been duty endorsed or is exempt from stamp duty. This may include:

- an Office of State Revenue stamp duty form with stamp affixed indicating payment
- a certificate of duty
- a letter from the Office of State Revenue notifying the applicant of their exempt status
- electronic stamp on the Form 4T obtained from OSR upon payment of duty.

Department of Water's obligations

In accordance with the *Duties Act 2008*, the department must not register (grant) the transfer until it receives evidence that the required duty has been paid or is exempt from payment.

In accordance with *Operational policy no. 5.11: Timely submission of required further information*, the department may return the application if the applicant has not provided the necessary information on the application form or has not provided evidence that the duty has been paid or is exempt.

Other agency's obligations

1. Under the *Duties Act 2008*, the Commissioner of State Revenue is responsible for:
 - a) Identifying if an application is subject to duty (or is eligible for an exemption).
 - b) Determining the amount of duty that must be paid.
 - c) Duty endorsing the transaction record for a transfer of a water licence or water entitlement (exemptions are also duty endorsed).

2 Standard requirements

This standard replaces all transfer of a dutiable transaction rules set in previous allocation plans, policies and guidelines.

1. The department must not register a transfer of a dutiable transaction (e.g. grant the transfer of a water licence or a water entitlement) until the department has received written evidence that the transfer of the water licence or water entitlement has been duty endorsed by the Commissioner of State Revenue unless:
 - The applicant indicated on the application form that the sale of the water is included as part of the property sale.
 - The application is made by a local government authority. Local government authorities are exempt from duty under the *Duties Act 2008*. The department can proceed to assess applications – where a local government authority is the transferee – without receiving evidence of duty endorsement.
 - The application is made by the Water Resources Ministerial Body. The Water Resources Ministerial Body (the Minister for Water) is exempt from duty under the *Duties Act 2008* as declared in the Government Gazette on 4 December 2008. The department can proceed to assess applications – involving the transfer of licences and water entitlements to the Minister in accordance with Division 8 of the *Rights in Water and Irrigation Act 1914* – without receiving evidence of duty endorsement.
 - The department refuses the application, then duty will not apply as the transfer will not occur.
2. The department must record the amount of money paid for the water as declared on the application form.
3. The department must retain record of the written evidence of duty endorsement provided by the applicant.
4. In the case that an exemption from duty under the *Duties Act 2008* applies or the department will refuse the application, the department must record a comment against the instrument number(s) involved in the transfer, noting that duty endorsement was not requested due to exemption or refusal (whichever is applicable).

3 Review

As part of an adaptive management decision review cycle, improvements may be made to existing processes and standards to ensure they remain relevant, practical and up to date.

This standard will be audited within the first year of implementation to determine effectiveness and reviewed within five years (or earlier if the need arises).

Glossary

Dutiable property	A right, defined under the <i>Duties Act 2008</i> , as a licence, or a water entitlement under a licence, under the <i>Rights in Water and Irrigation Act 1914</i> section 5C.
Dutiable transaction	The transfer of dutiable property (e.g. the transfer of a water licence, or a water entitlement under a licence).
Duty endorsed	Under the <i>Duties Act 2008</i> , duty endorsed is evidence that the duty on a dutiable transaction has been paid, or in circumstances where duty is not chargeable due to an exemption or other reason, the transaction is endorsed by the Commissioner of State Revenue to indicate that duty is not chargeable.
Register	The Department of Water's water register showing details of all 'In Force' licences. Under the <i>Duties Act 2008</i> , a register of legal or beneficial interests in dutiable property (e.g. the water register) must not register a dutiable transaction, unless the transaction is duty endorsed.
Stamp duty	A tax levied upon the sale of shares and/or property, used to cover the cost of the legal documents of such transactions. In Western Australia, the Office of State Revenue is the designated authority assigned to collect stamp duty under the <i>Duties Act 2008</i> .
Transfer	<p>In accordance with the <i>Rights in Water and Irrigation Act 1914</i> and the <i>Duties Act 2008</i>, transfer refers to situations where a licence, or a water entitlement under a licence, is exchanged from one licensee to another. A transfer is sub-divided under <i>Operational policy 5.13 – Water entitlements transactions for Western Australia</i> into two types:</p> <ul style="list-style-type: none">• transfer transaction – where the water entitlement will be taken from the same location as that currently licensed; and• trade transaction – where the water entitlement will be taken from a different location to that currently licensed.
Transferee	The person (eligible to be a licensee) who will receive water from a transaction with an existing licensee.
Water Resources Ministerial Body	A body corporate that is an agent of the Crown through which the Minister for Water can perform any of the Minister's functions. This body has been established under the provisions of the <i>Water Agencies (Powers) Act 1984</i> and is an exempt body under section 92 of the <i>Duties Act 2008</i> (as declared in Government Gazette dated 4 December 2008).

References

Government of Western Australia 2008, *Duties Act 2008*.

Government of Western Australia 1914, *Rights in Water and Irrigation Act 1914*.

Department of Water 2010, *Operational policy 5.13 Water entitlement transactions for Western Australia*, Department of Water, Perth.

Department of Water 2009, *Operational policy 5.11 Timely submission of required further information*, Department of Water, Perth.

Department of Water (website), <http://www.water.wa.gov.au/ags/WaterRegister/>

Department of **Water**

168 St Georges Terrace, Perth, Western Australia
PO Box K822 Perth Western Australia 6842

Phone: 08 6364 7600

Fax: 08 6364 7601

www.water.wa.gov.au

8828 0 0212