

# Application to Transfer a Water Share

## Explanatory Notes

### General

1. Transfer of a water share means changing ownership of the water share. It was previously called a permanent trade.
2. The transferees (buyer) and the transferors (seller) must first obtain Water Authority approval to transfer the water share. After that, a separate application must be made to the Water Registrar to record the transfer.
3. A separate application for Water Authority approval is needed for each water share being transferred.
4. Under this application only the whole of the water share can be transferred or the whole of the portion within that water share.
5. As a part of the process of transferring the water share, the transferee (buyer) can also:
  - Vary the Water Authority, trading zone use, delivery system, and Allocation Bank Account water share attributes.
  - Associate the water share with land in a water-use licence or water-use registration, or else nominate the water share to be included in the non water user limit (i.e the 10% or other limit on water shares in a system held by non water users).
6. The transfer of a water share does not have the effect of changing the ownership of water allocations that have been previously issued to the water share. Allocations issued up until the date and time of the transfer being recorded in the water register by the Water Registrar, will be issued into the transferor's (seller) Water Allocation Bank Account and remain the property of the transferor (seller).
7. If the water share is subject to a limited term transfer, the limited term transfer will remain on the water share.

### Process for obtaining approval

#### Lodgement

8. The parties first need to agree on the volume to be traded and the price.
9. The parties must complete the *Application to Transfer a Water Share* form and lodge the completed form including payment of the application fee with the transferor's (seller) Water Authority over the counter.
10. The Water Authority will not accept:
  - Photocopied forms as the application number on the top right-hand corner must be unique.
  - Faxed forms as original signatures are required.
11. The Water Authority also requires proof of the identification of all the transferors (seller) (a water share may be owned by more than one person). This requires each transferor (seller) presenting identity check documentation to the Water Authority as specified in the document *100 Point Check: Proving Your Identity to the Water Authority*.
12. The *Application to Transfer a Water Share* form, a schedule of application fees, and the *100 Point Check: Proving Your Identity to the Water Authority* document are available from the Water Authority.

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#### If you require further information please contact your Water Authority:

Goulburn-Murray Water  
40 Casey Street  
TATURA T: (03) 5833-5500

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Lower Murray Water  
741-759 Fourteenth Street  
MILDURA T: (03) 5051-3400

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First Mildura Irrigation Trust  
120 Ninth Street  
MILDURA T: (03) 5021-1811

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### Approval by the Water Authority and Recording by the Registrar

13. The transfer of a water share does not take effect until it has been recorded in the water register by the Water Registrar. The Water Registrar will not record the transfer unless the transfer has previously been approved by the Water Authority, and the transferees (buyer) have lodged the pre-filled *Transfer of Water Share* with the Water Registrar along with either discharges of any mortgages over the water share or written consent of the mortgagee(s) to the transfer. An approved form of consent is available from the Registrar.
14. If the transfer is approved by the Water Authority:
  - The Water Authority will send a letter of approval to the first listed transferee (buyer) and transferor (seller), with a copy to the water broker if a water broker coordinated the trade. A pre-filled *Transfer of Water Share* will also be sent to the transferees (buyer). (Please see point 15 below).
  - The transfer must be recorded in the water register within two calendar months from the date of Water Authority approval of the transfer. If the transfer is not recorded within the two months, the Water Authority approval lapses and the Water Registrar will not record the transfer. A new application for approval would need to be lodged with the Water Authority with another application fee.
15. The Water Registrar will not accept any alterations or erasures to the pre-filled *Transfer of Water Share*. The document must be signed by the transferors (sellers) and transferees (buyers).
16. Once the Water Registrar has recorded the transfer, a letter advising of the recording will be sent to the transferees (buyers) and transferors (sellers), and to the water broker, if applicable. Attached to the letter to the transferees (buyers) will be a copy of the Water Share Record.

### Registrar's Directions

17. The Water Registrar may from time to time publish Directions setting out procedures for recording Limited Term Transfers and other transactions. The Directions will be available from the Office of the Water Registrar, Level 9, 570 Bourke Street, Melbourne 3000.

### Refusal of the application

18. If the Water Authority refuses the application, the Water Authority will send a letter stating the reasons for the refusal to the transferee (buyer) and transferor (seller). A copy of the letter will be forwarded to the water broker, if applicable.
19. Reasons for refusal may include:
  - i. The proposed transfer does not comply with trading zone rules.

- ii. The annual limits on trade out of irrigation areas or districts would be exceeded.
- iii. The monetary consideration for the transfer is not provided.
- iv. There are outstanding charges on the water share being transferred.
- v. The water share is to be associated with a water-use licence but the water-use license holding limit would be exceeded.
- vi. The proposed transfer would include associating the water share but the non water user limit would be exceeded.

### More information required

20. If the Water Authority requires more information, the original application form and a letter making clear the missing information and/or incorrect information that requires correction will be sent to the appropriate party.
21. Applicants must provide missing information or correct information within two calendar months or the application will lapse and a new application would need to be lodged with another application fee.

**Note: A reference in these notes to actions to be undertaken by the Water Authority may mean the Water Authority is acting as delegate of the Minister under section 306 of the Water Act 1989.**

# How to complete the Application to Transfer a Water Share

## Question 1 – Water Share Identification Number

This number can be found on the transferors (sellers) Water Share Record. The number will remain the same when the transfer of water share is recorded.

## Question 2 (a) and (b)i – ML

Enter the volume of the water share being transferred in ML or portion to be transferred.

## Question 2 (a) and (b)iii – Monetary consideration

Under section 84ZG of the Water Act 1989, any transfer of a water share must state the monetary consideration in relation to the transfer. If this question is not completed the application will not be approved.

## Question 3 – Signatures of Transferor(s) – i.e Seller(s)

Only the recorded owners of a water share or their legal personal representatives can apply to transfer the water share, except where a tenant in common transfers their existing portion of the water share. All notices and invoices will be sent to the postal address of the first named person.

For transfers of water shares to the Crown (surrender of a water share), only the transferor (seller) section needs to be completed.

## Question 4 – Association

To associate your new water share with a water-use licence/water-use registration there must be capacity within the holding limit (twice the annual use limit of your licence or registration). If the water share is not to be associated with a water-use licence or water-use registration there must be capacity within the non water user limit (i.e the 10% or other limit on water shares in a system held by non water users).

## Question 5 – Water Allocation Bank Account

To associate the water share with a water-use licence/water-use registration, the nominated Allocation Bank Account must be the same as the Allocation Bank Account for the water-use licence/water-use registration with which the water share will be associated.

If a new Water Allocation Bank Account is required, it will only be linked to the transferred water share. The water share owners will be the only people able to buy/sell water allocation. To authorise an agent to buy/sell water allocation on the owners' behalf, application form *Authorisation of an Agent* will need to be completed.

For the new Water Allocation Bank Account to be linked to other water shares an *Application to Vary a Water Share* will need to be lodged.

## Question 6 – Variation of Water Share

Only the Water Authority, trading zone use, and delivery system can be varied. All variations are subject to trading zone rules and must be within the annual limit on trade out of irrigation areas or districts.

## Question 7 – Proposed Manner of Holding of Transferee(s) – i.e Buyer(s)

The 'manner of holding' refers to the way in which a person or a legal entity owns a water share. (Hereafter any reference to 'person' includes legal entity).

A water share can be owned by one person or it can be owned by two or more persons:

### Sole Owner

Only one person owns the water share.

### Joint Owners

Two or more persons can own a water share as joint owners. On the death of one joint owner the whole of the water share remains with the surviving joint owners.

### Tenants in Common

Two or more persons can own a water share as tenants in common. In this case there are defined portions of the water share. For example Farmer A as to 1/2 water share and Farmer B as to 1/2 water share. A tenant in common can sell their portion (1/2) without the approval of the owners of the other portion(s). If the person dies their portion passes either in accordance with their Will, or in accordance with the laws of intestacy should they die without a Will.

A Portion may be Owned by Joint Owners

Multiple persons may own a portion of a water share. For example, in a share divided into two portions Farmer A and Farmer B may own 1 of the 2 portions (1/2) as joint owners, and Farmer C may solely own the other portion (1/2). This ownership structure would be expressed:

- Farmer A and Farmer B as joint owners of 1/2 water share and Farmer C as to 1/2 water share as tenants in common.

If Farmers A and B wanted to own their portion as tenants in common, the fractions would need to be re-expressed as:

- Farmer A as to 1/4 water share, Farmer B as to 1/4 water share, and Farmer C as to 2/4 water shares as tenants in common.

For each portion, the size must be recorded (expressed as a fraction), the sole owner or multiple owners named, and their manner of holding expressed. A common denominator must be used for the shares held by the tenants in common.

Share portions may be unequal. If a portion size is not provided in the application the portions will be considered equal.

Disclaimer

This explanation of the 'manner of holding' does not constitute legal advice. Please note that you may require legal advice in order to determine your manner of holding requirements.

## Signature of Transferee(s) i.e. Buyers

The transferee(s) (buyers) to sign the application should be the person(s) who will be recorded as the owner(s) of the water share. The new owner(s) will be required to sign for all future transactions such as transfer, division, consolidation, and cancellation of a water share.

## Question 8 – Water Broker

Please provide the name, contact telephone number and party identification number if a water broker is coordinating the application. If the water broker has not received a party identification number, a number will be issued on receipt of this application.