

# Recovery of Unused Licensed Water Entitlements Policy



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## Disclaimer

The information in this policy is for general guidance only and must be read subject to the *Water Act 1992* and *Water Regulations 1992*. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law. Licence holders should obtain professional advice if they have any specific concerns.

This policy does not in any way fetter the Controller's discretion to make water extraction licence decisions, and all statutory decisions concerning unused water will be considered on a case by case basis in accordance with the Act.

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# 1 Terms used

Some of these terms are defined for use in this Policy only. These are shown **bold** in the table.

Acronyms	Definition
Act	Water Act 1992 (NT)
annual announced allocation	a decision of the Controller to apply a seasonal water reduction for a period, via a percentage, which reduces the <b>maximum annual entitlement</b> for the relevant <b>period</b> .
buyer	refer to <u>Trading Licensed Water Entitlements Policy</u>
Controller	the Controller of Water Resources, a person appointed under section 18 of the Water Act 1992, with powers to carry out functions in administering the Act, the principal licensing and regulatory decision-maker in terms of the Act.
department or DENR	NT Department of Environment and Natural Resources, or otherwise the Agency responsible for administering the Act, as defined by the Administrative Arrangements Order from time to time.
licence	in this policy refers only to a water extraction licence granted by the Controller: <ul style="list-style-type: none"> <li>• under section 45 of the Act to take water from a waterway; or</li> <li>• under section 60 of the Act to take water from a bore.</li> </ul>
licensed entitlement	a volume of water that may be taken by a licence holder in a <b>period</b> .
maximum annual entitlement	maximum volume of water that may be taken in one <b>period</b> , which is listed on the licence and may vary from <b>period</b> to <b>period</b> (increase or decrease).
minimum extraction limit	the percentage of the <b>maximum annual entitlement</b> for any <b>period</b> as set in the licence, noting that if the <b>maximum annual entitlement</b> for a period is subject to an annual announced allocation, the minimum extraction limit is calculated as the percentage of the reduced licensed entitlement for that period.
Minister	the Minister responsible for the Act under the Administrative Arrangements Order
NT	Northern Territory
period	the water accounting year listed on the licence. In the Top End, the water accounting year is 1 May until 30 April. In the Arid Zone, the water accounting year is 1 July to 30 June.
public water supply	defined in the Act as a beneficial use for the supply of drinking water through community water supply systems.
seller	refer to the <u>Trading Licensed Water Entitlements Policy</u>
trade (temporary and ongoing)	refer to the <u>Trading Licensed Water Entitlements Policy</u>
unused licensed entitlement	the difference between the <b>minimum extraction limit</b> and the actual volume of water extracted by the licence holder in any one <b>period</b> .

## 2 Purpose

To establish policy for when the Controller of Water Resources (Controller) will consider commencing a process for the recovery of unused licensed water entitlements (unused licensed entitlements) by reducing the maximum annual entitlement of a water extraction licence.

## 3 Objective

The objective of recovering unused licensed entitlements is to:

- ensure that licensed entitlements are fully utilised for the benefit of the licence holder, the community and the Territory, and
- reduce speculation in licensed entitlements, requiring licence holders to demonstrate a genuine need to retain a maximum licensed entitlement in future periods.

The objective of this policy is to provide clear information about when the Controller will commence the process for recovery of unused licensed entitlements.

## 4 Scope

This policy applies to surface water and groundwater extraction licences granted under sections 45 or 60 of the Water Act 1992 (the Act).

It does not apply to any water extraction licences granted for the beneficial use of public water supply.

## 5 Commencement

This Policy applies from 21 July 2020. Upon commencement this policy supersedes the NT Government's Management of Unused Water Entitlements Policy of 17 April 2019.

## 6 Context

Ensuring that licensed entitlements reflect a licence holder's actual need to take water facilitates the appropriate allocation of water resources, particularly when there is strong competition for limited resources.

### 6.1 Powers and functions under the Water Act 1992

The Controller has the power to set the terms and conditions of a licence. Licences are granted subject to conditions, including setting a minimum and a maximum volume of water that can be extracted by the licence holder in any period.

Section 93(1) of the Act gives the Controller the power to amend or modify a licence, including by reducing the maximum annual entitlement specified in a licence.

In deciding whether to amend a licence, the Controller is required to take into consideration the relevant factors set out in section 90(1) of the Act, including any other factor the Controller considers relevant (section 90(1)(k)).

## 7 Policy statement

If a licence holder has an unused licensed entitlement in three or more consecutive periods, the Controller will consider reducing a maximum annual entitlement by the average of the unused licensed entitlements.

An unused licensed entitlement is the difference between the minimum extraction limit and the actual volume of water extracted by the licence holder in any period.

### 7.1 Controller considerations

In determining whether to recover unused licensed entitlements, the Controller will consider all relevant factors under section 90(1) of the Act. Where relevant, licence holders should be aware that the Controller may consider the following factors under s 90(1)(k):

- evidence of progress against a proposed development plan, water use plan or other relevant plans;
- capability and capacity to take the maximum annual entitlement; and
- any mitigating factors as to why a licence holder has not taken the minimum water entitlement in any period.

### 7.2 Trade and recovery of unused licensed entitlements

When determining whether a licence holder has an unused licensed entitlement, the Controller will have regard to the licence holder's history of trading licensed entitlements.

#### 7.2.1 Licence holders who were the seller in a trade agreement

Where the licence holder was the seller of a licensed entitlement through a trade agreement, the Controller will generally apply the following principles:

- If a licence holder made an ongoing trade of a licensed entitlement, the licensed entitlement no longer forms part of the licence holder's maximum (and hence minimum) extraction limit. Accordingly, the traded licence entitlement will not form part of the calculation of the licence holder's average unused licensed entitlement, from the date the trade was approved.
- If a licence holder temporarily traded a licensed entitlement for one or two out of three consecutive periods, the licence holder will be considered to have used the traded volume of water for the purposes of the calculation of the licence holder's average unused licensed entitlement.
- If a licence holder temporarily traded a licensed entitlement for three consecutive periods, the volume of water traded for each period will be considered to be 'unused' by the licence holder for the relevant periods. If it is determined that the licence holder has unused licensed entitlements, the licence holder will have the opportunity to explain the reasons for the water being traded and how the licence holder plans to use that volume of water in the future, before the Controller determines whether to proceed to recover unused licensed entitlements.

For more information on trading a licensed entitlement, see the [Trading Licensed Water Entitlements Policy](#).

## 7.2.2 Licence holders who were the buyer in a trade agreement

Where the licence holder was the buyer of a licensed entitlement through a trade agreement, the licensed entitlement/s acquired through the trade will be considered as forming part of the licence holder's maximum (and hence minimum) extraction limit for the term of the trade agreement.

## 8 Process for recovery of unused licensed entitlements

If the Controller decides to commence the process for recovery of unused licensed entitlements, the Controller will adopt the following steps:

1. The Controller will write to the licence holder advising that the recovery of unused licensed entitlements is being commenced for the licence holder. The letter will explain why the process is being commenced, how the process works and where the licence holder can get more information.
2. The licence holder will be given an opportunity to respond to the Controller. The response may include licence holder's opinion on whether they have unused licensed entitlements; an explanation of why there was unused licensed entitlements; how the licence holder proposes to use the unused licensed entitlement in the future; and any other matters the licence holder wants the Controller to consider.
3. The Controller will consider the information provided and make a decision. The Controller may decide not to recover unused licensed entitlements, or may decide to recover all, or part of, the average unused licensed entitlement. The Controller may also accept a licence holder's submission that there are no unused licensed entitlements.
4. The Controller will write to the licence holder advising of the outcome of the process.

For more information on the procedure for recovery of licensed entitlements, see the [Recovery of Unused Licensed Water Entitlements Procedure](#) (DENR).

## 9 Right to review

Section 30 of the Act allows licence holders to seek a review of a decision made by the Controller to recover unused licensed entitlements. Applications for review must be made within 30 days of the notification of the Controller's decision. The form and process for seeking a review is available at: [nt.gov.au/waterdecision](http://nt.gov.au/waterdecision).

## 10 Related documents and legislation

[Water Act 1992](#)

[Water Regulations 1992](#)

[Trading Licensed Water Entitlements Policy](#) (NT Government policy)

[Recovery of Unused Licensed Water Entitlements Procedure](#) (DENR)

