

# Your guide to completing an Application to Confirm Ownership of a Water Share

Version 2

## Further Information

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[www.dse.vic.gov.au](http://www.dse.vic.gov.au)

## THIS BROCHURE IS A GENERAL GUIDE ONLY

### Fees

Fees are not applicable.

### Form and use

The correct form is the *Application to Confirm Ownership of a Water Share*. This is not an approved form but it is available over-the-counter on Level 9, 570 Bourke Street, Melbourne or online at <http://www.dse.vic.gov.au>. The Application is to be used to confirm water shares which are unconfirmed pursuant to Schedule 15, Clause 17(1)(a), 17(1)(b) or 18(2) of the *Water Act 1989* and for which the entitled persons (or members of an unincorporated association) have reached agreement as to ownership structure and mortgage ranking.

This guide does not apply where a determination as to ownership has been made by an Arbitrator.

The Application document provides space at the top for inserting the Customer ID. Generally the Customer ID will not be known to applicants, so it may be left blank.

### Where lodged

The *Application to Confirm Ownership of a Water Share* form may be lodged by mail or in person with either:

The Victorian Water Register  
Level 9, 570 Bourke Street  
Melbourne 3000

or

the relevant water authority.

For persons wishing to trade their water share subsequent to confirmation, it may be more expedient to lodge the *Application to Confirm Ownership of a Water Share* directly with the water authority.

### Applicants

To confirm ownership of a water share, Schedule 15, Clause 17(4) of the *Water Act 1989* requires an agreement to be reached by all 'entitled persons'.

'Entitled persons' is defined in Schedule 15 of the Act as including owners, holders of mortgages and persons who are entitled to a limited term transfer.

The applicants must therefore be every owner and every person who has a recorded mortgage or a recorded limited term transfer on the water share. Subject to the following exception, each applicant must provide

their full name in the 'Applicants' panel (no addresses in this panel) and sign the application. A signature from an Australian Legal Practitioner representing an applicant will not be accepted.

If a person (usually a bank) holds a recorded mortgage over the water share, the person may indicate their Agreement to confirm ownership of the water share by doing either of the following –

1. execute the Application – if the mortgagee is a company, this means executing in accordance with the *Corporations Act 2001*. Usually the mortgagee will be a bank. Banks must execute the Agreement in the same way as they would execute a Discharge of Mortgage to be lodged at Land Victoria. This generally entails the execution of the Agreement by a person who is an attorney under power. The Power of Attorney document may or may not have been filed in the Permanent Order Book kept by the Registrar of Titles. If the Power of Attorney is not in the Permanent Order Book, a certified copy must be submitted. (The Registrar will not accept Applications where the bank has placed its stamp on the agreement and had an officer or manager sign next to it.)

OR

2. the mortgagee may choose to provide a letter on letterhead which sets out explicitly the ownership structure (i.e. joint tenants, tenants in common in equal shares, or otherwise) and mortgage rankings agreed to by the mortgagee. If there is more than one mortgagee, each mortgagee must provide the letter. The letters must be expressed as follows:

*"X bank (or non-bank lender's name) agrees to the following ownership structure (repeat exactly the ownership structure in the Application, i.e. joint tenants, tenants in common in equal portions or otherwise) for water share/s identified as [insert WEE number/s] and agrees that its mortgage numbered [insert mortgage number or numbers] will be ranked 1st/2nd/3rd [as the case may be] upon confirmation of the water shares AND FURTHER ACKNOWLEDGES that the person signing this letter has authority to bind the mortgagee"*

### Owners

If a listed owner of a water share is deceased, the deceased's legal personal representative

or surviving joint proprietor/s may sign the application. If it is accepted by all entitled persons that the deceased's interest was held as a joint tenant, the ownership panel in the Application should reflect this, and a certified copy of the death certificate of the deceased must be submitted with the Application. If it is accepted by all entitled persons that the deceased's interest was held as a tenant in common, then the deceased's legal personal representative must be set out as an owner in the ownership panel, and a certified copy of the Probate or Letters of Administration submitted with the Application. If the evidence is satisfactory the Registrar will, as part of the confirmation process, record the legal personal representative as owner of the deceased's share, or record the survivorship.

### Confirming ownership of a water share that is unconfirmed under Clause 17(1)(a) or (b)

If multiple parcels of land were listed as a 'holding' in the water authorities' Section 230 Registers as at 1 July 2007, the Act required the creation of water shares for those holdings as 'unconfirmed – Clause 17(1)(a) or (b)' if the parcels in the holding were:

- owned by different persons
- owned by the same persons but in a different manner, or
- if the parcels in the holding were subject to different mortgages.

For each holding falling into these categories, **one** unconfirmed water share was created in the names of **all** of the owners of the land parcels in the holding. Any mortgages over the land parcels were extended to the water share without ranking (except if the share value was less than 5 megalitres).

### Case studies

The case studies below illustrate some possible structures of unconfirmed water shares, as listed above, and whether it is appropriate to use Part A or Part B of the *Application to Confirm Ownership of Water Share* form.

#### Case study 1

*A water authority Section 230 Register listed three parcels in a 'holding'. A reference to the Victorian Online Titles System (VOTS) folios for each parcel in*

*the holding reveals that each parcel is owned by James Smith and Maree Smith, but on folio one they own as joint tenants, whereas on folios two and three they own as tenants in common.*

*The water share created on 1 July 2007 therefore lists the owners as James Smith and Maree Smith, but the share would be unconfirmed because of the different manner of holding.*

In this case, the owners may be content to leave their water share WHOLE and simply define their manner of holding of the share, i.e. as joint tenants or as tenants in common.

If so, they would complete PART A of *Application to Confirm Ownership of a Water Share* form.

#### Case study 2

*A water authority Section 230 Register listed three parcels in a 'holding'. A reference to the VOTS folios for each parcel in the holding reveals that each folio is owned by a different person as follows:*

**Parcel 1** owned by Craig Citizen (mortgage to National Australia Bank)

**Parcel 2** owned by David Dyson (mortgage to Westpac Banking Corporation)

**Parcel 3** owned by Eleanor Espy (mortgage to Commonwealth Bank of Australia).

*The water share created on 1 July 2007 listed the owners as Craig Citizen, David Dyson and Eleanor Espy. It would also list the three mortgages without ranking.*

*In such cases, where it may be difficult to resolve the ownership structure of an unconfirmed water share whilst still leaving the share WHOLE, the water share may be SPLIT. The entitled persons may, for example, choose to split the share in a manner that reflects as closely as possible the ownership structure that applies to the land folios. See below:*

**Water Share 1** to be owned by Craig Citizen (mortgage to National Australia Bank)

**Water Share 2** to be owned by David Dyson (mortgage to Westpac Banking

1 The exception is where the unconfirmed water share is owned by an unincorporated association. In that case, only the members of the association need agree.

2 It is the responsibility of the holder of the recorded mortgage to ensure that the Power of Attorney filed in the Permanent Order book is drafted sufficiently widely to cover mortgages over water shares. If this is not the case, a new power of attorney should be filed in the permanent order book.

### *Corporation and*

**Water Share 3** owned by *Eleanor Espy* (mortgage to Commonwealth Bank of Australia).

Note the above is an example of a possible ownership structure **only**. The decision as to ownership structure and mortgage placement is to be made by the entitled persons. Other variations are of course possible.

If the share is to be split, entitled persons would complete PART B of the *Application to Confirm Ownership of a Water Share*.

If a water share is split as part of the confirmation process, future water allocations will be directed to the pre-existing Allocation Bank Account. If water share owners desire creation of further Allocation Bank Accounts, they must make a separate application to the relevant water authority.

### **Confirming ownership of a water share owned by an unincorporated association —Schedule. 15, Clause 18(2)**

Certain 'take and use' licences have been converted to water shares pursuant to Schedule 15, Clause 13 of the Act.

Where the holder of the 'take and use' licence was an unincorporated association, the water share was created as unconfirmed in the name of the unincorporated association. Members of the unincorporated associations may use the *Application to Confirm Ownership of Water Share* in the same way as already described, however the application must be accompanied by evidence that satisfies the Registrar that the applicants are all the members of the unincorporated association. Guidelines on acceptable evidence are available at [www.dse.vic.gov.au](http://www.dse.vic.gov.au).

### **Removing mortgages**

To totally 'discharge' a mortgage a *Discharge of Mortgage of Water Share* form must be lodged with the Registrar prior to, or with, the *Application to Confirm Ownership of a Water Share*.

However, when a water share is split, it is acknowledged that mortgages may not be required to affect all of the new water shares. Any mortgage that is not going to affect a new water share must be numerically identified in the 'mortgage ranking' panel of Part B, and followed with the words 'does not affect'. The

mortgagee must sign the application as an entitled person.

### **Use of confirmation process**

The *Application to Confirm Ownership of a Water Share* may not be used to add new mortgages to an unconfirmed water share. Mortgages must be recorded using normal procedure by preparation and recording (once the share is confirmed) of a *Mortgage of Water Share*.

Similarly, a water share may not be transferred to a third party using the *Application to Confirm a Water Share*. Transfers must commence with submission by the seller of an *Application to Transfer Water Share* to the relevant water authority.

### **Limited term transfers**

The holder of a limited term transfer is an entitled person under the Act, and must sign the *Application to Confirm a Water Share*. Any limited term transfer will remain on the water share once it is confirmed. If the share is split as part of the confirmation process, the limited term transfer will remain recorded on each of the newly divided water shares.

### **No annexures or inclusions by reference**

Entitled persons, or their Australian Legal Practitioners, may choose to enter into a more detailed written agreement to determine ownership and mortgage rankings. If so, the relevant details of that agreement must be translated into the *Application to Confirm Ownership of a Water Share*. The agreement is not to be submitted instead of, or annexed to, the application nor is it to be included in the application by reference.

### **Insufficient space in application to confirm a water share**

If there is insufficient space in the *Application to Confirm Ownership of a Water Share*, please use an approved annexure form, which is available at [www.dse.vic.gov.au](http://www.dse.vic.gov.au).

### **Disclaimer**

*This document is intended to be a functional guide to formal requirements for the preparation of the Application to Confirm Ownership of Water Share. It is not intended as advice on the content of such document. Customers who may be unsure about the nature, effect and preparation of the document are advised to obtain independent legal advice.*