

Trading your liquid assets

By Paul Frederick, Partner, Kemp Strang Lawyers

The water trading provisions of the Water Management Act 2000 are now in full swing. So is the new system simpler, easier, quicker and cheaper?

The answer, for the most part, has to be “no” — at least for the present. For example, significant delays are currently experienced where transactions involve “old” licenses and authorities which have not yet been converted to water access licenses.

Conversion is a pre-requisite to the processing of dealings by the Department of Natural Resources and Land and Property Information. In due course, once conversion has been completed and persons dealing with and processing transactions become more conversant with the new system, transaction times should be reduced.



Paul Frederick.

The types of transactions available to irrigators under the new Act have been increased. Set out below is a brief description of the types of transactions available to those dealing in water.

Transfer of an Access License (Section 71M)

The most basic form of transfer is where a person sells their property and their access license (or their interest in the access license if a number of people each hold a share component under the access license). In such a case there is merely a transfer of the access license (or interest therein) with no other change to the license.

But a holder may sell only their access license (and not the property) to a purchaser wanting to use the water on another property in the same water source. Indeed, the purchaser may, at the time of purchase, not

even own any lands which can be irrigated. But before the license can be used on the purchaser's land, the purchaser will need to apply to the Minister under Section 71W to change the works approval nominated on the access license. This is usually done as part of, and as a pre-requisite to completion of, the purchase transaction.

Term Transfer of Entitlements under an Access License (Section 71N)

Such a transaction is commonly referred to as a "lease" of an entitlement or share component. The term of the transfer must be not less than six months. During the term the transferee is taken to be the holder of the access license as regards the use of the entitlement, payment of fees, compliance with terms and so on.

The transferee will, of course, need to amend the access license to nominate their own works approval so that water can be extracted via their works on their property. Further, the holder of an interest (with others as tenants in common) in an access license may enter into a term transfer of their interest alone.

Assignment of Rights under an Access License (Section 71Q)

The holders of two or more access licenses of the same category in the same water source may apply to the Minister for consent to reduce the share component of one or more access licenses and correspondingly increase the share component of the other(s). This procedure is used if the vendor and purchaser each hold an access license and the vendor desires to sell part only of their share component. It may also be used if the vendor wishes to sell all their share component but retain their access license with a "nil" share component, giving the opportunity to acquire share component to add to their access license at a future time.

Assignment of Water Allocations between Access Licenses (Section 71T)

This section permits water allocations currently credited to the vendor's access license to be assigned to that of the purchaser with the consent to the Minister. This equates to the old "temporary transfer".

COMPLICATIONS

Transactions will not always be relatively straightforward as described above. It may be that a combination of steps may be required to effect a particular transaction.

For example, if a vendor wishes to transfer to a purchaser part only of an access license but the purchaser does not already hold an access license, the vendor will need to make application to subdivide his access license into two access licenses, retaining one of those access licenses and then transferring the other one to the purchaser under Section 71M.