Jackson Smith solicitors

Newsletter

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Water Management Act.

Governments around Australia are undertaking an extensive review of the policy and laws relating to the use of water for agriculture. There is to be a shift of emphasis to the environment.

In New South Wales the introduction of the Water Management Act 2000 (NSW) looks set to cause substantial changes in the rights of the rural community to use water for agricultural purposes.

In the past, agricultural water use had been regulated primarily by the Water Act 1912. During this transition period, both Acts are in force. The new Act will eventually replace the old.

Our rural community should be aware of the following ramifications of the new legislation:

Potential reduction in water use rights following the introduction of Water Management Plans.

Water Management Plan Committees have been established in order to develop Water Management Plans.

All agricultural water use must abide by the plan. Based on the existing drafting plans which are in the public domain, it is highly likely that under the new management plans, parties with existing water allocations will have those allocations diminished.

Water Use Rights May Be Reduced….

It is therefore highly advisable for parties with water allocations to be aware of any plans that are in development and what changes that plan may have on one's water rights.

The three-part water access system

The licensing system to use water has been overhauled. Under the old system, water rights were incorporated in one license. Under the new system, water rights exist as a 3-part process.

Firstly, there is an *access licence*. This states how much water can be taken from a particular source.

Jackson Smith
Solicitors
Level 3
48 Hunter Street
SYDNEY NSW 2000

GPO Box 3645
SYDNEY NSW 2001

DX 10134 SSE

Tel: (02) 9233 5355
Fax: (02) 9233 2839

www.jacksonsmith.com.au
info@jacksonsmith.com.au

For any further information or assistance contact Peter Jackson, at Jackson Smith, free call, 1800 687 217.

We hope that our newsletters are of interest to you. If you wish a particular topic examined, please let us know.

Professional advice should be sought before applying the information in this newsletter to particular circumstances.

The access licence is a tradeable licence and is potentially a valuable asset. Details of access licences will be placed on a public register (much like the Torrens Title register). Secondly, there is a *works approval,* which states what constructions can be made to access water e.g. bores, pumps etc. Thirdly, there is a *use approval*, which outlines the permitted purposes for which water can be used.

Impact of the new licence scheme on land burdened by security

The Department of Water and Land Conservation is currently in the process of converting licences issued under the old Water Act 1912 to new '3-part' water rights packages under the Water Management Act 2000.

Farmers may have borrowed money using their land as security. The valuation of the land would have incorporated water rights. Now that water rights are becoming tradeable, one presumes that the value of the land and hence the value of the security will diminish.

Banks and other lending institutions are particularly concerned about this. It is likely that their interests will be in some way considered when converting old water rights to the new system. One option may be that the new system rights will be subject to burdens which were acquired on the land upon which they arise e.g. If you borrow money with your farm as security, then when you are granted a new 'access licence', that licence will be subject to the same security burdens as your farm. An obvious difficulty arises when the ownership of water rights is different to the ownership of the farm or the land.

It is anticipated that converting the old licences to the new system will be completed towards the end of 2002.

How Jackson Smith can help you

We have expertise in:

- Protecting the rights of parties who will potentially have their water allocations diminished under a Water Management Plan.
- Dealing with legal issues surrounding the transition from old system Water Act 1912 licences to new system Water Management Act 2000 water rights.
- Negotiating with lenders on matters of security arising from changes to the water licensing system.