

WATER RIGHTS

Do you own a property with water rights attached? The recent unbundling of water rights may affect you.

Major changes to the way water entitlements are regulated have been in effect in northern Victoria since 1 July 2007. Southern and Grampians Water areas have been grappling with changes since July 2008. This new system or framework is generally referred to as “unbundling”.

What is unbundling?

Historically, the right to water in Victoria was regarded as being linked to the land that the person owned. In essence, the right to the water and the land were one. The amount of water that a person could draw from the irrigation system (known as the water right) would vary depending on the year. This was expressed in volume (megalitres) and each year the farmer would get a percentage of that water right.

The water right could be traded to other land owners and was often of very significant value, sometimes more than the land to which it had been attached. Given that the water right was at least to some degree linked to the land, the water was often affected by dealings with the land. For example a mortgage over the land was effectively a mortgage over the water. A caveat over the land was effectively a caveat over the water.

The traditional water right has now been split (unbundled) into three components: a water share, a delivery share, and a water use licence.

Inability to lodge caveats

Under the old system the lodging of a caveat over land had the practical effect of placing a caveat over any water right which might be attached to the land. This protection no longer applies. A farmer may own a farm (including land and water) that is in excess of \$1 million. The value of the water might be in excess of half that amount. The ability of an interested party to caveat is now limited to the value of the land, whereas previously it would have been for the full value of the land and water.

Estate Planning

The unbundling of water rights has also raised an issue in relation to existing wills where the client has bequeathed specific irrigated land. If only the land has been bequeathed and not the water share, then the water share may end up in the residue of the estate, something which may not have been intended by the testator. If you think you fall into this category, please contact us to see whether a new will needs to be made.

Water Register

In order to record ownership of water rights in Victoria, a new water register has been established. The register is a public document and is to water what the land titles system is to land. The register records who owns what water rights at a particular time and also whether any other party holds an interest in relation to the water, such as a mortgage or lease.

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