

Access Licence Dealing Principles Order 2004

under the
Water Management Act 2000

PURSUANT to section 71Z of the *Water Management Act 2000*, I, CRAIG JOHN KNOWLES, MP, Minister for Natural Resources, make the following Order under the *Water Management Act 2000*.

This Order takes effect on 1 July 2004.

Dated at Sydney, this 28th day of June 2004.

CRAIG JOHN KNOWLES, MP,
Minister for Natural Resources

Explanatory note

Section 71Z of the *Water Management Act 2000* provides that the Minister may, by order published in the Gazette, establish access licence dealing principles to regulate or prohibit access licence dealing rules and kinds of access licence dealings. Dealings refer to trading in water licences and water entitlements under those licences. The purpose of this Order is to establish access licence dealing principles. The *Access Licences Dealing Principles Order 2002* is revoked.

Access Licence Dealing Principles Order 2004

Part 1 Introduction

1 Name of Order

This Order is the *Access Licence Dealing Principles Order 2004*.

2 Commencement

This Order commences on 1 July 2004.

3 Establishment of access licence dealing principles and revocation of *Access Licence Dealing Principles Order 2002*

- (1) The access licence dealing principles set out in this Order are established.
- (2) The *Access Licence Dealing Principles Order 2002* as published in Government Gazette of 27 December 2002 is revoked by this Order.

4 Interpretation

Notes in this Order do not form part of the Order.

5 Effect

- (1) Consistent with section 71Y (1) of the Act, all applications for access licence dealings under Division 4 of Part 2 of Chapter 3 of the Act which require the Minister's consent are to be dealt with in accordance with:
 - (a) the water management principles, and
 - (b) the principles in this Order, and
 - (c) access licence dealing rules established by any relevant management plan.
- (2) Consistent with section 71Z of the Act, any access licence dealing rules established by management plans must be consistent with the principles in this Order.

6 Definitions

In this order the following definitions apply:

farm dam is a privately owned dam typically of earthen construction designed to collect and/or store water for use on one or a few properties. It does not include publicly owned dams or weirs.

groundwater source means a water source specified in a groundwater management plan.

hydrologically connected water sources are water sources where water from one flows into the other, or, in the case of river systems, where flow from both goes into a common river downstream.

management plan means a plan made under section 41 or 50 of the *Water Management Act 2000*.

regulated river water source means a water source specified in a regulated river management plan.

runoff harvesting dam is a farm dam on a hillside or minor stream which collects and stores rainfall runoff. Minor streams are as defined in an order made under section 53 of the *Water Management Act 2000*. For the purposes of this order references to runoff harvesting dams as water supply works include any associated pumps or other works which take water from the dam.

unregulated river water source means a water source specified in an unregulated river management plan.

Part 2 General principles

7 Impacts on water sources

- (1) Dealings should not adversely affect environmental water and water dependent ecosystems as identified in any relevant management plan.
- (2) Dealings should be consistent with any strategies to maintain or enhance water quality identified in any relevant management plan.
- (3) In unregulated river water sources, dealings should not increase commitments to take water from water sources or parts of water sources identified in any relevant management plan as being of high conservation value.
- (4) In unregulated river water sources or a groundwater sources, dealings should not increase commitments to take water from water sources or parts of water sources above sustainable levels identified in any relevant management plan.
- (5) In regulated river water sources, dealings should not increase daily demand for water delivery at those locations and times where it is identified in any relevant management plan that demand exceeds delivery capacity.
- (6) In this clause, **commitments to take water** refers, in relation to all access licences with nominated works in that water source or part of a water source, to:
 - (a) the total volume of water allocations in water allocation accounts, or
 - (b) where relevant, the sum of limits on rates of extraction in extraction components.

8 Impacts on indigenous, cultural, heritage or spiritual matters

- (1) Dealings should not adversely affect geographical and other features of indigenous significance.
- (2) Dealings should not adversely affect geographical and other features of major cultural, heritage or spiritual significance.

9 Impacts on water users

- (1) Dealings should not adversely affect the ability of a person to exercise their basic landholder rights.
- (2) Dealings should have no more than minimal effect on the ability of a person to take water using an existing approved water supply work and any associated access licences. This should be addressed by constraints on dealings established in access licence dealing rules in relevant management plans.

10 Maximising social and economic benefits

- (1) The objective of access licence dealings is to help to facilitate maximising social and economic benefits to the community of access licences as required under the objects of the Act. Dealings do this by:
 - (a) allowing water to move between alternative uses, and
 - (b) allowing the establishment of water markets that value the access licences, thereby encouraging investment in water efficient infrastructure, and
 - (c) allowing greater flexibility to access licence holders.
- (2) Subject to other principles in this Order, access licence dealing rules should allow maximum flexibility in dealings to promote the objectives set out in subclause (1).

Part 3 Principles for specific types of access licence dealings**11 Conversion of access licence to new category**

- (1) This clause applies to access licence dealings under section 71O of the Act.
- (2) Dealings under section 71O are prohibited:
 - (a) if the licence is proposed to be converted to category regulated river (conveyance) or category estuarine or category coastal or category supplementary, or
 - (b) if the licence is suspended, or
 - (c) if the licence is a specific purpose access licence, unless there is no provision in the regulations or the relevant water sharing plan for applications to be made under section 61 of the Act for new licences of that category/subcategory in relation to the water source to which the licence relates.
- (3) Dealings under section 71O are prohibited unless provisions of the relevant management plan:
 - (a) protect environmental water from being affected by such dealings, and
 - (b) protect basic landholder rights from being affected by such dealings, and
 - (c) protect the available water under other access licences from being affected by such dealings.
- (4) The share and extraction components of a new licence issued under a dealing under section 71O must comply with any requirements that are specified in the relevant

management plan for a licence granted under section 63 of the Act for the new category.

- (5) Except for where it is otherwise specified in access licence dealing rules in the relevant management plan water allocations remaining in the water allocation account of the cancelled licence are to be credited to the new licence.
- (6) The share component on a new access licence issued under a dealing under section 71O is to be of a quantity equal to the quantity on the cancelled licence multiplied by a conversion factor determined by the Minister in accordance with any rules set out in the relevant management plan.
- (7) Conversion factor rules in management plans:
 - (a) must be based on protecting environmental water and basic landholder rights as specified in the management plans, and maintaining available water to other access licences, and
 - (b) are not to be set for the purpose of achieving a reduction in overall water extraction from water sources.
- (8) Subject to (4), the extraction component and nominated water supply works on the new licence are to be the same as those that were on the cancelled licence.
- (9) Subject to the other parts of this clause, access licence dealing rules may prohibit or regulate these dealings provided this is done consistent with the principles in Part 2 of this Order.

Note. Under section 71O applications to convert local water utility access licences and supplementary access licences are prohibited, and licences granted are subject to the mandatory conditions applicable to the category or subcategory of licence to which it belongs. Also licences may only be granted in relation to the same water source or water management area as the cancelled licence.

12 Subdivision of access licences

- (1) This clause applies to subdivision dealings under section 71P of the Act.
- (2) Dealings under section 71P are prohibited if the licence is suspended.
- (3) The category or subcategory of the new licences is to be the same as the category or subcategory of the cancelled licence.
- (4) Apart from the quantity of shares and any quantified rights in the extraction component, the share and extraction components and the nominated works specified in the new licences are to be the same as those that were on the cancelled licence.
- (5) Water allocations remaining in the water allocation account of the cancelled licence are to be credited to the new licences so that the combined water allocations in the accounts of the new licences are no greater than the water allocations which remained in the account of the cancelled licence.
- (6) Access licence dealing rules established by a management plan shall not regulate or prohibit subdivision dealings under section 71P of the Act.

Note. As indicated in section 71P (3), the combined share components and combined extraction components of the new licences are to be no greater than the share and extraction components of the cancelled licence, and conditions on the cancelled licence are to be carried over to the new licences.

13 Consolidation of access licences

- (1) This clause applies to consolidation dealings under section 71P of the Act.
- (2) Consolidation dealings under section 71P are prohibited:
 - (a) if any of the licences are suspended, or
 - (b) if the share and extraction components and the nominated works specified in the licences are not the same, apart from the quantity of shares and any quantified rights in the extraction component.
- (3) The category or subcategory of the new licence is to be the same as the category or subcategory of the cancelled licences.
- (4) Apart from the quantity of shares and any quantified rights in the extraction component, the share and extraction components and the nominated works specified in the new licence are to be the same as those that were on the cancelled licences.
- (5) The quantity of shares and any quantified rights in the extraction component of the new licence is to be the sum of those on the cancelled licences.
- (6) Water allocations remaining in the water allocation accounts on the cancelled licences are to be credited to the new licence so that the water allocations in the account of the new licence is no greater than the sum of the water allocations remaining in the accounts of the cancelled licences.
- (7) Access licence dealing rules established by a management plan shall not regulate or prohibit consolidation dealings under section 71P of the Act.

Note. as indicated in section 71P, the licences to be consolidated must be of the same category or subcategory, the combined share components and combined extraction components of the new licences are to be no greater than the share and extraction components of the cancelled licence, and conditions on the cancelled licences are to be carried over to the new licences.

14 Assignment of rights under access licences

- (1) This clause applies to assignment of rights dealings under section 71Q of the Act.
- (2) Dealings under section 71Q are prohibited:
 - (a) if any of the licences are suspended, or
 - (b) if any of the licences is a specific purpose access licence.
- (3) Only share or extraction components, or parts thereof, that are numerically quantified may be assigned from one licence to another.
- (4) Subject to the other parts of this clause, access licence dealing rules may prohibit or regulate these dealings provided this is done consistent with the principles in Part 2 of this order.

Note. As indicated in section 71Q, the licences which are involved in a dealing under section 71Q must be of the same category and have share components in the same water source or water management area. This dealing does not apply to local water utility access licences.

15 Change of water source

- (1) This clause applies to amendment of share component dealings under section 71R of the Act.

- (2) Dealings under section 71R are prohibited:
 - (a) if the licence is suspended, or
 - (b) if the licence a specific purpose access licence, or
 - (c) from an unregulated river water source to a regulated river water source, or
 - (d) from a groundwater source to a regulated river or unregulated river water source, or vice versa, or
 - (e) if the licence is of category supplementary.
- (3) A dealing under section 71R is prohibited unless there is a hydrologic connection between the water sources of the cancelled and issued licences.
- (4) A dealing under section 71R is prohibited unless provisions of the relevant management plans:
 - (a) protect environmental water from being affected by such dealings, and
 - (b) protect basic landholder rights from being affected by such dealings, and
 - (c) protect the available water under other access licences from being affected by such dealings.
- (5) The share and extraction components of a new licence issued under this dealing must comply with any requirements that are specified in the relevant management plan for a licence granted under section 63 of the Act.
- (6) The quantity of shares on the new access licence is to be of a quantity equal to the quantity on the cancelled licence multiplied by a conversion factor determined by the Minister in accordance with any rules set out in relevant management plans.
- (7) Conversion factors rules in management plans:
 - (a) must be based on protecting environmental water and basic landholder rights as specified in the management plans, and maintaining the available water to other access licences, and
 - (b) are not to be set for the purpose of achieving a reduction in overall water extraction from water sources.
- (8) No water allocations remaining in the water allocation account of the cancelled licence may be credited to the new licence.
- (9) Subject to the other parts of this clause, access licence dealing rules may prohibit or regulate these dealings provided this is done consistent with the principles in Part 2 of this Order.

Note. As indicated in section 71R, the new licence arising from a dealing under section 71R is subject to the mandatory conditions relevant to its category or subcategory and water source. This dealing does not apply to local water utility access licences.

16 Amendment of extraction component of access licence

- (1) This clause applies to amendment of extraction component dealings under section 71S of the Act.
- (2) Dealings under section 71S are prohibited:
 - (a) if the licence is suspended, or

- (b) if the licence is a specific purpose access licence, apart from local water utility access licences.
- (3) Amendment of the times, rates and circumstances part of the extraction component may only occur where:
 - (a) access licence dealing rules in the relevant plan make provision for it consistent with the principles in Part 2 of this Order, and
 - (b) those rules specifically indicate the nature of those amendments which are allowed.
- (4) Subject to the other parts of this clause, access licence dealing rules may prohibit or regulate these dealings provided this is done consistent with the principles in Part 2 of this Order.

Note. As indicated in section 71S, the area or location arising from a variation of an access licence under this dealing must relate to the same water management area or water source as that to which the original area or location related.

17 Assignment of water allocations between access licences

- (1) This clause applies to assignment of water allocation dealings under section 71T of the Act.
- (2) Dealings under section 71T are prohibited:
 - (a) if the access licence from which water allocations are proposed to be assigned from is suspended, or
 - (b) if either of the access licences are specific purpose access licences, apart from local water utility access licences and major water utility access licences and access licences of subcategory Aboriginal commercial, or
 - (c) if a method of measurement of water extraction which is satisfactory to the Minister is not established for all nominated water supply works on both access licences, or
 - (d) if any of the access licences has a nominated work which is a runoff harvesting dam, or
 - (e) if any of the access licences is of category major utility, unless specific provision is made in access licence dealing rules to allow this, or
 - (f) from a supplementary water access licence to a licence of any other category.
- (3) Assignment of water allocations between access licences relating to different water sources is prohibited if:
 - (a) either licence is of category supplementary, or
 - (b) there is no hydrologic connection between the water sources, or
 - (c) one water source is a regulated river and the other is an unregulated river, or
 - (d) one water source is a groundwater source and the other is a regulated river or unregulated river water source.
- (4) Assignment of water allocations between access licences relating to different water sources is prohibited unless provisions of the relevant management plans:
 - (a) protect environmental water from being affected by such dealings, and

- (b) protect basic landholder rights from being affected by such dealings, and
 - (c) protect the available water under other access licences from being affected by such dealings.
- (5) Assignment of water allocations from a local water utility access licence is prohibited unless:
- (a) the Minister has approved a demand management plan for all NSW town water supply schemes supplied under the local water utility access licence, and
 - (b) the Minister has approved a drought management plan for all NSW town water supply schemes supplied under the local water utility access licence, and
 - (c) the Minister is satisfied the assignment will not put the water supply for NSW towns supplied by the local water utility at risk.
- (6) Subject to the other parts of this clause, access licence dealing rules may prohibit or regulate these dealings provided this is done consistent with the principles in Part 2 of this Order.

18 Interstate transfer dealings

- (1) This clause applies to dealings under section 71U of the Act.
- (2) Any dealings under section 71U must be consistent with the relevant inter-state agreement.
- (3) Dealings under section 71U are prohibited unless the waters for which the interstate access licence equivalent has or will have rights to are hydrologically connected to the water source in which to which the access licence to be issued or revoked relates.
- (4) Dealings under section 71U which revoke an access licence are prohibited:
- (a) if there is an outstanding debt under the Act in respect of the licence, or
 - (b) if the licence is suspended, or
 - (c) if the licence is a specific purpose access licence.
- (5) The share and extraction components of a new licence issued under this dealing must comply with any requirements that are specified in the relevant management plan for a licence granted under section 63 of the Act.
- (6) Dealings under section 71U are prohibited unless arrangements are in place which:
- (a) protect environmental water from being affected by such dealings, and
 - (b) protect basic landholder rights from being affected by such dealings, and
 - (c) protect the available water under other access licences from being affected by such dealings.
- (7) Subject to the other parts of this clause, access licence dealing rules may prohibit or regulate these dealings provided this is done consistent with the principles in Part 2 of this Order.

19 Interstate assignment of water allocations

- (1) This clause applies to interstate assignment of water allocation dealings under section 71V of the Act.

- (2) Any dealings under section 71V must be consistent with the relevant inter-state agreement.
- (3) Dealings under section 71V are prohibited:
 - (a) if the access licence is suspended, or
 - (b) if the licence is a specific purpose access licence, apart from local water utility access licences, or
 - (c) if a method of measurement of water extraction which is satisfactory to the Minister is not established for all nominated water supply works on the access licence, or
 - (d) if the access licence is of category supplementary.
- (4) This dealing is prohibited unless arrangements are in place which:
 - (a) protect environmental water from being affected by the dealing, and
 - (b) protect basic landholder rights from being affected by the dealing, and
 - (c) protect the available water under other access licences from being affected by the dealing.
- (5) Interstate assignment of water allocations from a local water utility access licence is prohibited unless:
 - (a) the Minister has approved a demand management plan for all NSW town water supply schemes supplied under the local water utility access licence, and
 - (b) the Minister has approved a drought management plan for all NSW town water supply schemes supplied under the local water utility access licence, and
 - (c) the Minister is satisfied the assignment will not put the water supply for NSW towns supplied by the local water utility at risk.
- (6) Subject to the other parts of this clause, access licence dealing rules may prohibit or regulate these dealings provided this is done consistent with the principles in Part 2 of this Order.

20 Nomination of water supply works

- (1) This clause applies to nomination of water supply works dealings under section 71W of the Act.
- (2) Dealings under section 71W are prohibited if the access licence is suspended.
- (3) Dealings under section 71W are prohibited if the access licence is a specific purpose access licence, with the following exceptions:
 - (a) if the licence is a local water utility access licence or a major water utility access licence, or
 - (b) if new or additional works are to be nominated, where those works supply the same property as the current nominated works, or a contiguous property to the property supplied by the current nominated works which is occupied by the same landholder.
- (4) Dealings under section 71W are prohibited if the access licence is of category local water utility, with the following exceptions:

- (a) if new or additional works are to be nominated, that those works supply the same town water supply scheme as the current nominated works, or
 - (b) if a nominated work is withdrawn, that there remains at least one nominated work.
- (5) Nomination of a water supply work is prohibited if the access licence does not have an extraction component allowing taking of water at the location of the nominated work.
- (6) Where a nominated water supply work is a runoff harvesting dam, the withdrawal of that nominated work may only be granted where arrangements are in place to ensure that the nominated work does not conserve any more water than is permitted pursuant to the exercise of basic landholder rights
- (7) Where the application is to add a nominated water supply work that is a runoff harvesting dam, the application must be refused unless the runoff harvesting dam is of no greater capacity than that which the Minister considers would conserve water consistent with the share component of the access licence.
- (8) Withdrawal of nomination may not be prohibited by access licence dealing rules, except for as otherwise specified in this clause.
- (9) Subject to the other parts of this clause, access licence dealing rules may prohibit or regulate these dealings provided this is done consistent with the principles in Part 2 of this Order.