

SOUTH AUSTRALIA



RevenueSA

Stamp Duties

Circular No. 239

**CONVEYANCES OF WATER LICENCES
(INCLUDING THE WATER ALLOCATION OF THE LICENCE)**

INTRODUCTION

The transfer of water licences, including the transfer of water allocations from one water licence to another, is a transfer of property for the purposes of both the *Water Resources Act 1997* (“WRA”) and the *Stamp Duties Act 1923* (“the Act”).

Section 29(5) of the WRA states that:

*“A licence (including the water allocation of the licence) is **personal property** vested in the licensee and will pass to another person under Division 3 or (subject to that Division) in accordance with any other law for the passing of property.”*

Water licences and transfers of water allocation (including temporary transfers of water allocation) **are property and, therefore, are subject to stamp duty**. Instruments that convey or evidence the conveyance of a water licence, or a transfer of water allocation of a water licence are chargeable with duty under the Act.

STAMP DUTIES ACT 1923

A conveyance of property is chargeable with duty pursuant to Section 60 and the Second Schedule of the Act.

Section 60 of the Act states:

“60. In this Act-

"conveyance" includes-

- (a) every conveyance, assignment, transfer or declaration of trust and every application under the Real Property Act 1886 or the Community Titles Act 1996; and*
- (b) every decree or order of any court, judge or commissioner; and*

- (c) every other application or request of any kind; and
- (d) every other assurance or instrument of any kind,

by which or by virtue of which or by the operation of which, whether upon registration or otherwise, or by the issue of a certificate of title in pursuance of which, any real or personal property or any estate or interest in any such property is assured to, or vested in, any person, and "to convey" has a meaning coextensive with the meaning of "conveyance", as extended by this section;"

LEASES OF WATER LICENCE ALLOCATIONS

Whilst the use of terms such as "lease" to describe the temporary transfer of a licence or its water allocation for a specified period of time may have popular usage, such transfers are more accurately described as the transfer of the whole or part of a water allocation for a limited period in accordance with section 38(2) of the WRA.

Therefore, any instrument that conveys such property is subject to stamp duty including temporary transfers (or "leases") which are considered outright conveyances of a limited duration and accordingly the total consideration is subject to duty at *ad valorem* rates (refer to Page 3 of this Circular for stamp duty rates).

Temporary Transfers of Water Allocations – *Ex gratia* relief from Stamp Duty

The Treasurer has approved *ex gratia* relief from stamp duty payable on temporary transfers of water allocations entered into on or after 1 July 2003, for the period that the current water restrictions remain in place. In order to receive the stamp duty relief, the relevant transfers must be submitted to RevenueSA.

VALUE SUBJECT TO DUTY

Section 60A of the Act states:

"60A. (1) Subject to subsection (2), a reference in this Act (other than in Part 4) to the value of property conveyed or transferred is a reference to the market value of the property-

- (a) *in the case of a conveyance on sale-as at the date of the sale; or*
- (b) *in any other case-as at the date of the conveyance,*

assuming, in either case, that the property had, at that date, been free from any encumbrances.

(2) In the case of a conveyance on sale, the Commissioner may treat the consideration for the sale as being the value of the property conveyed or transferred unless it appears to the Commissioner that the consideration may be less than the value of the property as referred to in subsection (1)."

Where the value of property conveyed cannot be readily ascertained or estimated at the time of the conveyance, the Commissioner has the power to appoint a valuer and assess the duty payable on the value advised by the valuer.

COMPLIANCE ACTIVITY

RevenueSA has previously undertaken compliance programs with respect to stamp duty on the conveyance of property.

These programs have shown that compliance in relation to the voluntary lodgement of instruments which convey water licences and/or water allocations that are subject to stamp duty needs to be improved. Accordingly, a compliance program is being conducted to ensure that stamp duty is paid on instruments that convey water licences, or permanent or temporary water allocations of a water licence. For these reasons, persons involved with any such transactions are encouraged to review any such transfers and ensure that they are stamped appropriately. Refer to page 2 for details of *ex gratia* relief in respect to temporary transfers of water allocation.

RATE OF STAMP DUTY

Stamp duty on a conveyance of property is charged at *ad valorem* (according to value) rates ranging from 1% to 5.5% of consideration or value, (whichever is higher), as follows (these rates are listed in Schedule 2 of the Act but are set out here for convenience):

Where value of the property conveyed	Amount of Duty
Does not exceed \$12,000	\$1.00 for every \$100 or part of \$100
Exceeds \$12,000 but not \$30,000	\$120 plus \$2.00 for every \$100 or part of \$100 over \$12,000
Exceeds \$30,000 but not \$50,000	\$480 plus \$3.00 for every \$100 or part of \$100 over \$30,000
Exceeds \$50,000 but not \$100,000	\$1,080 plus \$3.50 for every \$100 or part of \$100 over \$50,000
Exceeds \$100,000 but not \$200,000	\$2,830 plus \$4.00 for every \$100 or part of \$100 over \$100,000
Exceeds \$200,000 but not \$250,000	\$6,830 plus \$4.25 for every \$100 or part of \$100 over \$200,000
Exceeds \$250,000 but not \$300,000	\$8,955 plus \$4.75 for every \$100 or part of \$100 over \$250,000
Exceeds \$300,000 but not \$500,000	\$11,330 plus \$5.00 for every \$100 or part of \$100 over \$300,000
Exceeds \$500,000	\$21,330 plus \$5.50 for every \$100 or part of \$100 over \$500,000

A transfer of a water licence as part of a “walk in walk out” transaction, as described in section 31A of the Act, is not exempt from stamp duty pursuant to section 31A of the Act.

PAYMENT OF STAMP DUTY

The transfer form required to be completed for the Department of Water, Land & Biodiversity Conservation (“DWLBC”) to effect a transfer of a water licence or water allocation will be liable for the payment of stamp duty. After the Minister for Environment and Conservation approves the transfer, RevenueSA will obtain the transfer form (or a copy of it) and assess the appropriate amount of stamp duty payable in relation to the transfer.

Alternatively, in the absence of a completed DWLBC transfer form and a contract or an agreement in writing has been created and executed thus formally recording the transfer of a water licence or water allocation, that document must be presented to RevenueSA to have the appropriate stamp duty assessed.

Once documentation has been obtained by RevenueSA, an assessment of the amount payable will be issued to the parties or the agent lodging the transfer on their behalf. Upon receipt of payment, the document will be stamped and returned to the lodging party as evidence that duty has been paid in relation to the transfer.

FURTHER INFORMATION

Enquiries relating to this Circular, or issues concerning the lodgement of any instruments evidencing transfers of water licences or water allocations, should be directed to:

Location

RevenueSA – Compliance Services Branch
Level 10
63 Pirie Street
ADELAIDE SA 5000

Postal

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RevenueSA
GPO Box 2149
ADELAIDE SA 5001

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SOUTH AUSTRALIA



RevenueSA

Information Sheet

Stamp Duty on Transfer of Water Licences

(Including the Water Allocation of the Licence)

This Information Sheet has been issued to clarify the requirement to pay stamp duty on instruments lodged with the Department of Water, Land & Biodiversity Conservation, (DWLBC), or with RevenueSA, where a change in ownership occurs as a result of the transfer of a water licence or the permanent or temporary transfer of the allocation of a water licence.

Background

The transfer of water licences, including the transfer of water allocations from one water licence to another is a transfer of property for the purposes of both the *Water Resources Act 1997* (“WRA”) and the *Stamp Duties Act 1923* (“the Act”).

Do I have to pay duty?

Transfers of water licences and water allocations (including temporary transfers of water allocation) **are transfers of property and, therefore, subject to stamp duty.** Documents that convey or evidence the conveyance of a water licence, or a transfer of water allocation of a water licence are chargeable with stamp duty under the provisions of the Act. Pursuant to section 42 of the *Taxation Administration Act 1996*, stamp duty can be recovered by the Commissioner of State Taxation from any party to the transaction.

What is required?

The transfer form you are required to complete for DWLBC to effect a transfer of a water licence or a water allocation is liable to stamp duty. After the Minister for Environment and Conservation approves the transfer, RevenueSA will obtain the transfer form (or a copy of it) and assess the appropriate amount of stamp duty payable in relation to the transfer.

Alternatively, in the absence of a completed DWLBC transfer form and a contract or an agreement in writing has been created and executed thus formally recording the transfer of a water licence or water allocation, that document must be presented to RevenueSA to have the appropriate stamp duty assessed.

Sometimes a water licence or allocation is transferred together with land. If stamp duty has been paid on the land transfer (which includes the value associated with the water licence/allocation) the transfer form lodged with DWLBC to effect the transfer of water must also be stamped by

RevenueSA. However, stamp duty is only paid once in relation to the same transfer, regardless of which document is assessed.

Once documentation has been obtained by RevenueSA, an assessment of the amount payable will be issued to the parties or the agent lodging the transfer on their behalf. Upon receipt of payment, the document will be stamped and returned to the lodging party as evidence that duty has been paid in relation to the transfer.

Temporary Transfers of Water Allocation – *Ex gratia* relief from Stamp Duty

The Treasurer has approved *ex gratia* relief from stamp duty payable on temporary transfers of water allocations entered into on or after 1 July 2003, for the period that the current water restrictions remain in place. In order to receive the stamp duty relief, the relevant transfers must be submitted to RevenueSA.

Value subject to Stamp Duty

The Act states that the value upon which duty is assessed is the market value or the consideration paid (whichever is higher) for the property at the date of the conveyance.

Where no consideration is paid (eg in family transfers) or the value of property conveyed cannot be readily ascertained or estimated at the time of the conveyance, the Commissioner has the power to appoint a valuer and assess the duty payable based on the value advised by the valuer.

How much do I have to pay?

Stamp duty on the transfer of water licences and/or water allocations is charged (as at the date of this Information Sheet) as follows:

Where value of the property conveyed	Amount of Duty
Does not exceed \$12,000	\$1.00 for every \$100 or part of \$100
Exceeds \$12,000 but not \$30,000	\$120 plus \$2.00 for every \$100 or part of \$100 over \$12,000
Exceeds \$30,000 but not \$50,000	\$480 plus \$3.00 for every \$100 or part of \$100 over \$30,000
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Do I have to pay Penalties for Late Lodgement whilst the Minister approves my transfer?

No. Penalties will not apply to documents lodged with DWLBC within 2 months of execution. Neither will penalty or interest accrue while the documents are with DWLBC or RevenueSA.

Why is a Temporary Transfer of a Water Allocation not regarded as a Lease for Stamp Duty purposes?

Whilst the use of terms such as “lease” to describe the temporary transfer of a licence or its water allocation for a specified period of time may have popular usage, such transfers are more accurately described as the transfer of the whole or part of a water allocation for a limited period in accordance with section 38(2) of the WRA.

Compliance Activity

RevenueSA has previously undertaken compliance programs with respect to stamp duty on the conveyance of property. RevenueSA’s assessment of stamp duty on the transfer of water licences and/or water allocations as a conveyance of property is consistent with its treatment of transfers of other types of similar property such as fishing licences and taxi licences.

These programs have shown that not all relevant parties are aware of their obligations in regard to the transfer of water licences. Accordingly, a compliance program is being conducted to ensure that stamp duty is paid on documents that convey water licences, or permanent or temporary water allocations of a water licence. For these reasons, persons involved with any such transactions are encouraged to review any such transactions and ensure that they are stamped appropriately.

Refer to page 2 for details of *ex gratia* relief in respect to temporary transfers of water allocation.

Further Information

Enquiries relating to this Information Sheet, or issues concerning the lodgement of any instruments evidencing transfers of water licences or water allocations, should be directed to:

Location

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