

Re: Easements v Deeds of Release and the relevant Background

In the table attached, we lay out the four alternative mechanisms available to the Government by which to make environmental flows, the legal protection they provide, the Government's intention, the terms of compensation for each and how compensation will be calculated.

These mechanisms include:

1. Legislation - S.398 Water Management Act 2000 (releases Government from legal liability)
2. Easements (releases Government from legal liability)
3. Deed of Release (releases Government from legal liability)
4. Fee for Flow combined with legislation and/or deed of release (releases Government from legal liability)

Notably, **the Government would have no legal liability under any of those mechanisms** and so, therefore, claims that easements are required for the flow of water to be enduring and for protection against prosecution for trespass and/or nuisance are illegitimate.

With regard to **compensation** and, although the compensation under the Act is for the imposition of the burden of an easement to convey environmental water and which constitutes an acquisition triggering the just terms, the LNS regulations allows us to evidently negotiate compensation that properly reflects the actual damages caused by the water itself, not the mere existence of the easement itself. **The LNS operates alongside the Just Terms Act.**

The Water Management Act 2000 S.399B and Schedule 9 of the Water Management (General) Regulation 2025, authorises a negotiation scheme. **Schedule 9 of those regulations operationalise the LNS.**

Water Management (General) Regulation 2025 Schedule 9 includes:

- 2) The purposes of the scheme are:
 - (a) to require the Ministerial Corporation to negotiate with affected landholders and other relevant persons in relation to the declared releases, and
 - (b) to ensure negotiations are in good faith and are carried out in a consistent and certain way, and
 - (c) to facilitate agreement in relation to mitigating the adverse effects of the declared releases on affected landholders and other relevant persons.

Therefore, **a deed of release is a legally binding contract**; an agreement between two or more parties to resolve a dispute or release each other from legal obligations.

Negotiations do not need to be limited to easements. **The Minister must consider all reasonable options to reach agreement .**

Table 1: Mechanisms available enabling the legal flow of environmental water

Mechanisms / Criteria	Legal Protection	Government Intention	Terms of Compensation	Calculation Compensation
Legislation s. 398	THIS IS A STATUTORY IMMUNITY. No liability attaches to the Crown, a statutory body representing the Crown or an officer, employee or agent of any of them in respect of any loss or damage arising, directly or indirectly, from . The flow or use of water . The construction, maintenance or use of any water work, or . The exercise of function under this Act.	Overall legal protection irrespective of subordinate mechanisms used.	Nothing in this section prevents proceedings for compensation under the Land Acquisition (Just Terms compensation) Act 1991.	Combination of any or all mechanisms listed below.
Easements	Registered on title providing enduring use and legal protection against legal liability such as trespass and nuisance.	Direct control over land to be flooded and indirect control of access to land severed. Once in place the easement usage could be varied by statutory override or variation by a legislative instrument. Further, any changes would not allow us to sue for compensation for new or intensified water use.	One off compensation payment. Easement registered on title. Payment to current owner effectively severing compensation from the land, hence land devaluation to that amount or more (if under compensated)	Damages to land and infrastructure. Severance of land and infrastructure. Loss in market value. Single lump sum payment.

Mechanisms / Criteria	Legal Protection	Government Intention	Terms of Compensation	Calculation Compensation
Deed of Release	Contract to release the Government from any liability including trespass and nuisance and is enduring.	RRCP considering use for less effected landholders (Cavallaro, 23/07/25). Therefore, considered a workable mechanism by Government and would be inequitable if applied selectively.	A binding agreement that settles claims in exchange for compensation or other consideration. A Deed of Release does not let the Government off the hook for compensation.	Damages to land and infrastructure. Severance of land and infrastructure. Loss in market value. And/or Fee for Flow calculations.
Fee for Flow (under S.398 or deed of release)	Legal protection provided under S.398 legislation and/or a deed of release contract, which also makes enduring.	Reasons for refusal of this mechanic was not provided. However, this mechanism enables the Government to defer costs into the future from a one-off up-front payment to pay-as-you-go as events occur. If events don't occur no payment will be required. Empowers Government for ongoing management of cost/benefit.	Ongoing compensation per events. Compensation therefore stays with the land, therefore no loss in market value is required. Land value holds for compensation amount. Devaluation could still occur if under compensated.	Damages to land and infrastructure. Severance of land and infrastructure. Multiple ongoing payments per event. Calculated based on area x duration x frequency Plus any initial works undertaken i.e. constraints.