

**PROPOSED AMENDMENTS TO
WATER MARKET RULES 2009
and
WATER CHARGE (TERMINATION FEES) RULES 2009**

1. WATER MARKET RULES 2009

1.1 Details of irrigation right – timing

An amendment is required to remove any suggestion that the amount of water an irrigator is entitled to transform is determined by the amount of water received in the current year in annual allocations rather than the entire amount an irrigator is entitled to under their irrigation right, subject to conveyance provisions.

Recommendation

That “*in respect of the current financial year*” be omitted from rule 7 (where 3 times occurring—in paragraph (1)(c) and in the definitions of B and C in paragraph (2)(a)).

1.2 Details of irrigation right– how calculated

An amendment is needed to expressly require that operators must provide irrigators with the necessary information to show how their irrigation rights are calculated.

Recommendation

That rule 7(1)(c) be amended to include a requirement to provide details of the manner of calculation, with a corresponding alteration in rule 7(1)(b) to remove the duplication of the reference to details.

Amendment of rule 7(1)—new paragraphs 7(1)(b) and(c) and amendment of paragraph 7(2)(a)

"(b) requests the operator to provide details of the contractual or other arrangements between the operator and the person relating to the irrigation right:

the operator must, within 20 business days after receiving the notice, provide:

- (c) the details of the contractual or other arrangements, including—*
- (i) the number of units or volume of water to which the person is entitled under the irrigation right as at the date of receipt of the notice; and*
 - (ii) such details as are reasonably necessary to confirm the accuracy of the calculation of the number of units or volume; and”.*

AND

In paragraph 7(2)(a), in the definitions of B and C **omit** “*in respect of the current financial year*”.

1.3 Operators seeking security when delivery rights are defined as flow rate or other basis

A provision is required to enable operators to require security where delivery rights are defined as a flow rate or other basis.

Recommendation

To provide for security where delivery is defined as a flow rate or other basis and not in terms of volume, either—

Option 1 (Reasonably required threshold): Amend paragraph 10(1)(b) and insert a new subrule 10(1A).

or

Option 2 (Conversion formula): Retain paragraph 10(1)(b) and insert a new subrule 10(1A).

Option 1: Amendment to paragraph 10(1)(b) and insertion of new subrule 10(1A)

"(b) the person holds a part of the irrigation right but:

(i) the volume of water to delivery of which the person is entitled under the water delivery right in respect of the current financial year (disregarding any constraints on delivery) is more than 5 times the volume of water that the person is entitled to receive in respect of that year under the part of the irrigation right held by the person (excluding, if the person holds a part of an irrigation right as provided in subrule 7(8), the volume of water taken to be the share of a fixed network loss); or

(ii) if the person's delivery right is not in terms of a volume of water but on a flow rate basis or other basis and the person is entitled under that right in respect of the current financial year to delivery of more than 5 times what is reasonably required to provide the person in that year with an average standard delivery of the number of units or volume of water to which the person is entitled under the part of the irrigation right:".

"(1A) For the purposes of subparagraph 10(1)(b)(ii), an irrigation infrastructure operator—

(a) must, in determining a reasonable requirement relating to an average standard delivery to the person of the number of units or volume of water to which the person is entitled under the part of the irrigation right, have regard to the water delivery right of holders of similar irrigation rights against the operator; and

(b) must provide to the person details in writing that reasonably confirm that the requirement for security is in accordance with subparagraph 10(1)(b)(ii)."

Option 2: Insert a new subrule 10(1A) (no change to paragraph 10(1)(b))

"(1A) If a person's water delivery right has been converted from an entitlement to a volume of water to an entitlement on a flow rate basis or other basis—

(a) paragraph 10(1)(b) applies to the entitlement under the water delivery right as if it were an entitlement to the delivery of a volume of water; and

(b) for the purposes of determining that volume, the irrigation infrastructure operator—

(i) must convert the entitlement under the water delivery right to a volume of water by applying the same formula as was used when the entitlement was converted to the flow rate basis or other basis; and

(ii) must provide to the person details in writing that reasonably confirm that the requirement for security is in accordance with paragraph 10(1)(b)."

1.4 Operators not to delay transformation

The requirement that operators facilitate transformation should not be dependent on receipt of a request for transformation but should be more broadly expressed.

Recommendation

That rule 16(1) be amended to remove the precondition of a request for transformation.

Amendment of subrule 16(1)

"(1) An irrigation infrastructure operator must not, at any time after the commencement of these Rules, do, or fail to do, an act in a way that prevents, or unreasonably delays, the transformation of the whole or part of an irrigation right against the operator."

2. WATER CHARGE (TERMINATION FEES) RULES 2009

2.2 Fees not payable on compulsory termination of delivery rights upon sale of water

The Rules should make it clear that termination fees are not payable in respect of compulsory termination of delivery rights upon the sale of water.

Recommendation

That rule 6(1)(b) be amended to make it clear that termination fees are not payable where delivery rights are terminated, in accordance with a contractual provision, upon the trading of water.

Amendment of paragraph 6(1)(b)

"(b) the operator, by notice in writing given to a person who holds a right of access to the operator's irrigation network, terminates the whole or any part of that right or services provided in relation to that right in accordance with a contract applicable to the right on the grounds that an act or omission by the person is in breach of the person's obligations under that contract (other than the act of trading the whole or a part of a water access right)."

2.3 Water access fees not to be charged after termination fee paid

The Rules should make it clear that operators should not impose ongoing water access fees on irrigators who have terminated delivery and have paid a termination fee.

Recommendation

That rule 5 be amended to include a provision that an operator must not charge and a person ceases to be liable to pay any fee in relation to a right of access after it is terminated or surrendered and the termination fee is paid.

Amendment to insert a new subrule (3) in rule 5

"(3) Where—

- (a) a person's right of access, and services in relation to that right, are terminated or surrendered in whole or in part; and*
- (b) the person has paid the fees (if any) payable under Part 3 to the irrigation infrastructure operator:*

the operator must not charge, and the person is not liable to pay, any fee in relation to that right, or a part of that right, that is terminated or surrendered, or services provided in relation to that right or part, in respect of a period after the termination or surrender.

Civil Penalty: 200 penalty units."

2.4 Calculation of termination fee—time at which quantum is determined

The Rules presently provide for calculation of the termination fee be on the basis of the total network access charge of the year in which notice of termination or surrender is given but may not provide sufficient certainty about the timeframe within which termination must occur following a notice of termination or surrender.

Recommendation

That rule 7(a) be amended to provide that the termination fee is to be calculated in relation to the network access charge in respect of the year in which notice of termination or surrender is given or the year in which termination or surrender is to take effect under the notice, whichever is the later.

Amendment of paragraph 7(a)

- "(a) the amount determined by multiplying by 10:*
- (i) where the whole of a right of access, or services provided in relation to the whole of such a right, are terminated or surrendered, the total network access charge payable to the operator by the holder of the right in respect of the financial year:*
- (A) in which notice of termination or surrender is given; or*
- (B) in which, under the notice of termination or surrender, termination or surrender is to take effect:*
- whichever is the later; or*
- (ii) where a part of a right of access, or services provided in relation to a part of such a right, are terminated or surrendered, the proportion applicable to that part of the total network access charge payable to the operator by the holder of the right in respect of the financial year:*
- (A) in which notice of termination or surrender is given; or*
- (B) in which, under the notice of termination or surrender, termination or surrender is to take effect:*
- whichever is the later."*