



Water Market Rules guidance for irrigation infrastructure operators: Application of the rules

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Key terms

infrastructure operator: any person or entity that owns or operates infrastructure for one or more of the following purposes:

- i) the storage of water
- ii) the delivery of water
- iii) the drainage of water

for the purpose of providing a service to someone who does not own or operate the infrastructure.

irrigation infrastructure operator: an infrastructure operator that operates water service infrastructure for delivering water for the primary purpose of irrigation.

irrigation right: a right against an irrigation infrastructure operator to receive water, which is not a water access right or a water delivery right.

infrastructure service: a service provided to access water service infrastructure, including the storage, delivery, drainage and taking of water.

transformation: the process where an irrigator (or anybody other than the irrigation infrastructure operator) 'transforms' the whole or part of their irrigation right into a water access entitlement.

water access entitlement: a perpetual or ongoing entitlement, by or under a law of a State, to exclusive access to a share of the water resources of a water resource plan area.

water access right: any right conferred by or under a law of a State to hold and/or take water from a water resource, including a stock and domestic rights, riparian rights, a water access entitlement and a water allocation.

water delivery right: a right to have water delivered by an infrastructure operator. It typically represents the holder's right of access to an irrigation network (there may also be a right to drainage) and can be terminated.

About this guidance

The ACCC is responsible for monitoring and enforcing compliance with the Water Market Rules 2009 (water market rules) under the *Water Act 2007* (Cth) (the Water Act).

These rules prohibit irrigation infrastructure operators from preventing or unreasonably delaying irrigators in the Murray-Darling Basin permanently transforming their irrigation right into or onto a statutory water access entitlement (the process of transformation).

This guidance has been designed to assist irrigation infrastructure operators to develop and implement policies to comply with the water market rules, while also assisting irrigation infrastructure operators' customers to understand how these rules apply.

Application of the Water Market Rules

The water market rules apply to irrigation infrastructure operators in the Murray-Darling Basin that meet the definition of an irrigation infrastructure operator and are able to give effect to transformation arrangements.

Irrigation infrastructure operator

Under the Water Act, an irrigation infrastructure operator is an infrastructure operator who owns or operates infrastructure for the purposes of storage, delivery or drainage of water for the purpose of:

- providing a service to another person and
- delivering water for the primary purpose of irrigation.

Determining the 'primary purpose' of irrigation requires consideration of the facts of each individual operator. Matters that may be relevant when determining the primary purpose may include:

- the number of people receiving water for irrigation purposes compared to the total number of people receiving water deliveries for other purposes (such as stock and domestic or water for the environment)
- the volume of water delivered for irrigation purposes relative to the total volume of water delivered.

Irrigation infrastructure operators are usually either corporations, cooperatives or private water trusts. Irrigation infrastructure operator customers include irrigators, livestock farmers or environmental water holders.

Transformation arrangements

Many irrigators, particularly in New South Wales and South Australia, do not hold a water access entitlement. Instead, the irrigation infrastructure operator holds the water access entitlement collectively on behalf of some (or all) of its customers.

Transformation is the process of converting ('transforming') the whole or part of an irrigation right into a statutory water access entitlement. It allows customers to permanently transform their irrigation right into or onto a statutory water access entitlement which they can then trade or hold in their own name, free of any trade restrictions imposed by the irrigation infrastructure operator.

Under the water market rules, for an irrigation infrastructure operator to be able to give effect to transformation arrangements, the following criteria must be met:

- **The irrigation infrastructure operator must hold a water access entitlement**

An irrigation infrastructure operator must hold the water access entitlement(s) used to supply customers. In this case, the first requirement for transformation is satisfied. However, some irrigation infrastructure operators do not hold water access entitlements in their own name.

A common example of where this requirement is not met is a joint water supply scheme. These schemes may meet the definition of an irrigation infrastructure operator. However, because the water access entitlement used by scheme members is co-held by those members, the requirement for the irrigation infrastructure operator to hold the water access entitlement cannot be satisfied.

- **A person must hold an irrigation right against the irrigation infrastructure operator**

An irrigation right is a right that a person has against an irrigation infrastructure operator to receive water. An irrigation right is not a water access right (for example, a water access entitlement) or a water delivery right.

Joint water supply scheme members are likely to co-hold a water access entitlement, rather than an irrigation right, and are unable to satisfy this requirement.

- **Transformation of that person's irrigation right would result in a reduction in the share component of a water access entitlement held by the irrigation infrastructure operator**

Transformation of the person's irrigation right must result in a reduction in the share component (or volume of water) of the irrigation infrastructure operator's water access entitlement.

- **The person's irrigation right would be permanently transformed into a water access entitlement held by someone other than the irrigation infrastructure operator**

Transformation must result in the person's irrigation right being permanently transformed into or onto a water access entitlement held by someone other than the irrigation infrastructure operator (either the person who applied for transformation, or a third party).

Case studies

We have prepared several case studies to demonstrate how an infrastructure operator may meet the definition of an irrigation infrastructure operator and if so, whether they are able to give effect to transformation arrangements.

Case study number 1: A joint water supply scheme can be an irrigation infrastructure operator but not be capable of giving effect to transformation arrangements

Remote Pumping Ltd (Remote Pumping) is a joint water supply scheme registered under the Co-operatives (Adoption of National Law) Act 2012 (NSW) (the Co-operatives Act).

Remote Pumping holds a work approval and a water use approval and owns and operates the water service infrastructure it uses to deliver water to its members. The Co-operatives Act deems Remote Pumping to be a separate legal person. This means it supplies water to people (its members) who do not own or operate the infrastructure.

Remote Pumping uses its infrastructure, such as its channels and pumps, to deliver water for several purposes. It supplies irrigation water to 72 members, stock and domestic water to 100 members and environmental water for one environmental water holder.

Of the total 10,000 ML of water that Remote Pumping delivers to all its customers, 7500 ML is delivered for the purposes of irrigation.

It is likely that Remote Pumping is an irrigation infrastructure operator for the purposes of the water market rules.

However, Remote Pumping's customers co-hold the relevant water access entitlement between themselves. Therefore, Remote Pumping does not hold a water access entitlement.

This means that Remote Pumping is not capable of transformation because it does not hold a water access entitlement which can be reduced to allow for transformation (and its members do not hold irrigation rights against it).

Case study number 2: An irrigation infrastructure operator that does not hold a water access entitlement which can be reduced to allow for transformation

Rural Irrigation Ltd (Rural Irrigation) is a government-owned corporation that operates water service infrastructure primarily for the purpose of delivering irrigation water to its customers. Rural Irrigation meets the criteria of an irrigation infrastructure operator.

Rural Irrigation customers are local farmers who do not own or operate the infrastructure. They use the water delivered primarily for growing crops. Each customer owns their own water access entitlement. They do not hold irrigation rights against Rural Irrigation.

Rural Irrigation is not capable of transformation because it does not hold a water access entitlement which can be reduced to allow for transformation.

Case study number 3: A trust that is an irrigation infrastructure operator and is capable of transformation arrangements

River Irrigation Trust delivers and drains water diverted from the Mountains River through a network consisting of gravity-fed open channels to its customers. As it owns and operates the off-river water service infrastructure for the primary purpose of irrigation, River Irrigation Trust is an irrigation infrastructure operator. The infrastructure is River Irrigation Trust's irrigation network.

River Irrigation Trust holds a water access entitlement on behalf of its customers. Its customers hold irrigation rights against River Irrigation Trust which entitle them to receive water from River Irrigation Trust.

River Irrigation Trust holds a water access entitlement that can be reduced to allow a customer's entitlement to water under an irrigation right to be permanently transformed into a water access entitlement that is held by someone other than River Irrigation Trust.

This means that River Irrigation Trust is capable of giving effect to transformation and must comply with the requirements of the water market rules.

Further related guidance

- Water Market Rules guidance for irrigation infrastructure operators: Transformation processes and transformation application fees.
- Water Market Rules guidance for irrigation infrastructure operators: Security.
- Water Market Rules guidance for irrigation infrastructure operators: Fixed network losses.
- Water Market Rules guidance for irrigation infrastructure operators: Dispute resolution.