



# Water Market Rules guidance for irrigation infrastructure operators: Security

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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.

**termination:** when a person terminates or surrenders the whole or part of a right of access to an infrastructure operators' network, typically by terminating a water delivery right.

**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 the 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).

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 related to security that comply with the water market rules, while also assisting irrigation infrastructure operators' customers to understand how these rules apply.

## Security

Where an irrigator wishes to transform their irrigation right but retain water delivery right, the water market rules permit irrigation infrastructure operators to require security as a condition of transformation in certain circumstances.

Security ensures the payment of network access fees if the irrigator is unable or unwilling to pay future access fees when they fall due.

## Security requests

Under the water market rules, an irrigation infrastructure operator may require 'security' as a condition of transformation when an irrigator applies to transform:

- their entire irrigation right, or
- if the irrigator transforms a part of their irrigation right—where the volume of water that the irrigator is entitled to have delivered under their water delivery right is more than 5 times the volume of water they are entitled to receive under the irrigation right they will continue to hold after transformation.

### **Case study 1: Security where delivery rights are based on volume**

Peter holds an irrigation right against Lake Infrastructure Limited which entitles him to receive 200 ML of water per year. Peter also holds a water delivery right which entitles him to have 200 ML of water delivered each year.

Peter decides that he will transform 170ML of water held under his irrigation right but that he will keep 200 ML of water delivery right.

Once Peter has transformed 170ML of his irrigation right, he will hold 30 ML of irrigation right and 200 ML of water delivery right. This means that Peter's water delivery right (200ML) will be more than 5 times of his irrigation right after transformation (30ML).

The 5:1 ratio of delivery rights to irrigation rights is satisfied and Lake Infrastructure Limited can require Peter to provide security as a condition of transformation.

## Where delivery rights are converted to a flow rate or other basis

Some irrigation infrastructure operators may decide to convert delivery entitlements held by the operator's customers from entitlements based on volume to entitlements based on flow rate (or another basis), by using a predetermined formula or ratio ('the conversion'). A water delivery right based on flow rate may, for example, entitle the irrigator to a share of the network's capacity over a time limited period (for example, 1 ML per day) rather than delivery of a volume of water over the course of a year or irrigation season.

Where this approach is adopted:

- Irrigation infrastructure operators should keep a record of the calculations made during conversion and recording any re-structuring of water delivery rights after the date of conversion.
- If a customer wants to transform some of their irrigation right, the irrigation infrastructure operator must first use the same formula or conversion to convert the transforming irrigator's water delivery right back into a right defined on a volumetric basis. The irrigation infrastructure operator must make any adjustments necessary to take account of any restructure of water delivery rights that has taken place after the date of the conversion.
- Following the above adjustment calculation, the irrigation infrastructure operator can request security if, after the transformation, the volume of water that the irrigator is entitled to have delivered under their water delivery right (worked out using the nominal conversion) is more than 5 times the volume of water they are entitled to receive under their irrigation right—excluding any volume of water held by the irrigator as an irrigation right that represents the irrigator's share of the fixed network loss.
- If the irrigation infrastructure operator assesses the security threshold is met and requests security from a transforming irrigator, the irrigation infrastructure operator must provide the irrigator with sufficient details in writing to support the irrigation infrastructure operator's assessment—including the conversion formula or ratio used by the irrigation infrastructure operator and its calculations.

### **Case study 2: Security where water delivery rights have been converted to flow rate entitlements**

Mr Seasons holds an irrigation right against River Water which entitles him to receive 200 ML of water per annum. Mr Seasons also holds a water delivery right for the delivery of 200 ML of water over the irrigation season of 100 days.

River Water decides to convert all water delivery rights held by its customers from an entitlement based on a delivery of an annual volume of water to an entitlement based on a daily flow rate. For this purpose, River Water divides the volume of delivery rights held by its customers by the number of days in the irrigation season (100 days). River Water converts the water delivery rights of Mr Seasons from 200 ML to 2 ML/day.

Soon after, Mr Seasons seeks to transform 150 ML of his irrigation right onto a water access entitlement held in his own name, but to maintain his delivery right of 2 ML/day.

River Water considers whether it is entitled to request security from Mr Seasons. River Water first nominally converts the 2 ML/day delivery right of Mr Seasons into a volumetric entitlement by multiplying it by the conversion ratio of 100. That is, Mr Season's entitlement of 2 ML/day is nominally converted to an entitlement to 200 ML.

After his transformation is processed, Mr Seasons will hold an irrigation right that entitles him to 50 ML of water and a water delivery right equivalent to 200 ML. Given that the nominal volume of water Mr Seasons is entitled to have delivered under his delivery right (200 ML) is less than five times the volume of water Mr Seasons is entitled to under an irrigation right (50 ML), River Water is not permitted under the water market rules to require security from Mr Seasons.

## Maximum security an operator can request

The amount of security an irrigation infrastructure operator can request from an irrigator must not be more than the termination fee that could be charged if the irrigator were to terminate their water delivery rights.

## Types of security

Under the water market rules, an irrigation infrastructure operator cannot refuse to accept the following forms of security:

- cash deposit
- bank guarantee
- where part of an irrigation right is transformed, a charge over a part of the irrigation right that the irrigator continues to hold
- a charge over an unencumbered water access entitlement, or part of an unencumbered water entitlement.

The water market rules provide that an irrigation infrastructure operator may require an application for transformation to be accompanied by a fee related to a water delivery right. A fee of this kind may include the costs of the irrigation infrastructure operator establishing and maintaining a bank account holding a cash security deposit.

Irrigation infrastructure operators and irrigators can also negotiate and agree on any other form of security to reflect their individual needs.

## Returning security

The irrigation infrastructure operator and the irrigator should agree when security will be returned to the irrigator and this agreement should be specified in the water delivery contract. For example, security should be returned when:

- the irrigator decides to terminate their water delivery right and pays a termination fee
- the irrigator no longer holds a water delivery right which is more than 5 times the volume of irrigation right and therefore no longer triggers the threshold for security.

Where a cash deposit is used as security, the irrigation infrastructure operator and the irrigator could agree:

- that the irrigation infrastructure operator will return the cash deposit to the irrigator along with any interest earned
- where a termination fee is payable, that the cash deposit will be treated as payment towards the termination fee.

## Further related guidance

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