



Water Market Rules guidance for irrigation infrastructure operators: Transformation processes and transformation application fees

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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 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 operators to develop and implement policies related to transformation processes and transformation application fees, while also assisting operators' customers to understand how the water market rules apply.

Transformation processes

Transformation is the process of converting ('transforming') the whole or part of an irrigation right into or onto a statutory water access entitlement, reducing the water access entitlement of the irrigation infrastructure operator.

In addition to providing information about how to apply for transformation, irrigation infrastructure operators need to have a formal process to respond to transformation requests. This usually includes:

- reviewing the transformation application and collecting information necessary for the completion of the transformation
- ensuring everyone who holds a legal or equitable interest in the irrigation right approves of the transformation
- collecting transformation application fees, and any outstanding fees associated with the applicant's irrigation right
- subject to all the application requirements being satisfied, approving the transformation and lodging the required application forms with the relevant state government authority.

Large irrigation infrastructure operators (those holding more than 10,000 ML of water access entitlements) must make information on their transformation processes readily available to irrigators. This may include publishing the information on their website.

Irrigation infrastructure operators holding less than 10,000 ML of water access entitlements must make their transformation procedures available to any irrigator who notifies the irrigation infrastructure operator in writing of their intention to apply for transformation.

Details of irrigation right

Under the water market rules, if a person who holds an irrigation right against an irrigation infrastructure operator gives written notice to the irrigation infrastructure operator that the person:

- intends to apply, or applies, for transformation of the whole or a part of their irrigation right, and
- requests the irrigation infrastructure operator provide details of the contractual or other arrangements between the irrigation infrastructure operator and the person relating to the irrigation right

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

- the details of the contractual or other arrangements relating to the irrigation right, including:
 - the number of units or volume of water to which the person is entitled under their irrigation right on the date the irrigation infrastructure operator received the irrigator's written notice, and
 - details that are reasonably necessary to confirm the accuracy of the calculation of the number of units or volume of water to which the person is entitled to under their irrigation right at that date, and
- if the irrigation infrastructure operator does not have a separate water access entitlement for network (conveyance) losses and reduces the irrigator's entitlement to water for the purpose of transformation of the right, the number or units or volume water by which the irrigator's irrigation right has been reduced.

The ACCC has prepared guidance on fixed network losses under the water market rules.

Transformation applications

Under the water market rules, an irrigation infrastructure operator who receives a transformation application for all or part of an irrigation right must advise the applicant in writing if:

- the application is incomplete or contrary to the requirements of the water market rules, or
- the application does not include any transformation application fees that apply to the application, or
- there are any outstanding charges or fees payable by the applicant to the irrigation infrastructure operator in respect of the irrigation right

and must specify the further information that is required, the fees payable or the outstanding charges payable, as the case requires.

The irrigation infrastructure operator must advise an applicant in writing no later than 5 business days after the 'relevant period' whether the application is approved, or if the irrigation infrastructure operator is unable to approve the application, that it cannot approve the application because:

- a person who holds a legal or equitable interest in the irrigation right has refused to give approval
- a requirement under a law of a State cannot be satisfied
- the irrigator has not provided the information required, or paid the fees or outstanding charges payable by the irrigator in respect of the irrigation right

and that the ACCC has been advised of this.

The 'relevant period' is 20 business days after:

- the irrigation infrastructure operator receives the application, or
- where the irrigation infrastructure operator requests further information, a fee or outstanding charge—the date on which the operator receives that information or money, or an agreement is formed between the operator and the applicant for the payment of the outstanding charge

whichever is later.

However, if the applicant requested details of the irrigation right, or required the continuation of a right to have water delivered after transformation, the 20 business days does not include:

- the period before the details of the irrigation right, or right to have water delivered are agreed, and
- if appropriate steps are taken to obtain the approval of a person holding a legal or equitable right in the irrigation right, or to satisfy a requirement under a law of the State, the business days:
 - after the steps are taken, and
 - before the approval is given or refused or the requirement satisfied, or advice is received to the effect that it cannot be satisfied.

An irrigation infrastructure operator must not require from an applicant for transformation any information that is not reasonably necessary to process the transformation.

Water delivery rights

Transforming an irrigation right and maintaining water delivery right

Most irrigators that receive water or drainage service from an irrigation infrastructure operator hold a water delivery right against the irrigation infrastructure operator in addition to their irrigation right.

If an irrigator transforms their irrigation right into a water access entitlement, this does not extinguish their water delivery right, or obligation to pay infrastructure charges to their irrigation infrastructure operator for their water delivery right.

An irrigation infrastructure operator **cannot** terminate an irrigator's water delivery right as a condition of approving a transformation.

If an irrigator advises their operator in writing that they are applying for, or intend to apply for, transformation and require continuation of their water delivery right, the irrigation infrastructure operator:

- must provide details of the contractual terms and conditions of the irrigator's water delivery right within 20 business days
- must not vary the terms and conditions unless:
 - variations are necessary as a consequence of transformation, or
 - are agreed to in writing by the irrigation infrastructure operator and the irrigator.

Transforming an irrigation right and terminating water delivery right

If an irrigator decides to terminate a water delivery right, the irrigation infrastructure operator can levy a termination fee.

Termination fees contribute to the ongoing costs of maintaining the irrigation infrastructure. The Water Charge Rules 2010 ensure there is a balance between the interests of irrigators terminating their right of access to an irrigation network and irrigators who remain. This includes setting a cap on the maximum termination fee that an irrigation infrastructure operator can charge.

The ACCC has issued guidance about termination under the [Water Charge Rules 2010](#).

Transformation application fees

The water market rules allow an irrigation infrastructure operator to charge an administrative fee for processing transformation applications.

The fee must not exceed the reasonable and efficient costs incurred, or likely to be incurred, by the irrigation infrastructure operator in processing the application. The ACCC may investigate and take enforcement action if an irrigation infrastructure operator breaches this requirement.

Reasonable and efficient costs

The ACCC considers that the reasonable and efficient costs of processing an application for transformation are limited to costs that:

- form an integral part of the service of processing the transformation application
- are necessary to comply with a relevant legal obligation.

An irrigation infrastructure operator should only recover the minimum sustainable cost of processing an application for transformation. An irrigation infrastructure operator should not seek to recover costs that:

- relate to processes that are unnecessarily complicated or burdensome
- indulge in expenditure that is extravagant or unnecessary for processing transformation applications.

The following table details what is likely to constitute reasonable and efficient costs:

Likely	Unlikely
<ul style="list-style-type: none">• staff time spent processing a transformation application where:<ul style="list-style-type: none">○ the rates for staff time are based only on wages, and not a commercial or professional rate○ the rates applied to a task reflect the level of skill required to complete that task○ the amount of time spent by staff in processing a transformation application reflects the nature and complexity of the service• staff time devoted to handling customer queries relating directly to processing an application for transformation• stationery, photocopying and postage• costs incurred in lodging the application with the relevant state government department• any fees payable to state government departments during the transformation process (to ensure transparency, these fees should be identified and requested separately).	<ul style="list-style-type: none">• activities undertaken by an irrigation infrastructure operator that are not directly related to the processing of an application for transformation, including costs associated with:<ul style="list-style-type: none">○ termination○ disconnection○ water trades○ provision of general customer service to customers not related to transformation• activities undertaken by an irrigation infrastructure operator for the purpose of meeting internal or external reporting obligations not directly related to processing an application for transformation• costs (including legal costs) that have been incurred to become compliant with other provisions of the water market rules or the Water Act• costs arising from activities undertaken by an irrigation infrastructure operator as part of its usual business practices that are already recovered through other fees and charges• costs for which an irrigation infrastructure operator has already been compensated by a government agency.

ACCC may investigate transformation application fees

We may investigate and take enforcement action if we consider an irrigation infrastructure operator may be imposing a transformation application fee that exceeds the reasonable and efficient costs incurred by the irrigation infrastructure operator. Our approach to enforcement will depend on a range of factors, as outlined in our guidance: [ACCC compliance and enforcement guide for infrastructure operators to the Water Market and Water Charge Rules](#).

Irrigation infrastructure operators should ensure that all transformation fees are made available to customers before they apply to transform. For example, transformation application fees could be provided to customers together with the irrigation infrastructure operator's transformation procedures or published on the operator's website.

Further related guidance

- Water Market Rules guidance for irrigation infrastructure operators: Application of the rules.
- 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.
- [How to count the days in the 'relevant period' for processing a transformation under Rules 14 of the water market rules.](#)
- [What the water charge rules means for infrastructure operators and irrigators.](#)
- [Guidance for infrastructure operators about additional termination fees.](#)
- [Compliance and enforcement guide for infrastructure operators on the water rules.](#)