

How to count the days in the ‘relevant period’ for processing a transformation under Rule 14 of the Water Market Rules

ACCC Note: The requirements of Rule 14 of the Water Market Rules are important to ensure IIOs do not delay irrigators who wish to permanently transform their irrigation right into or onto a statutory water access entitlement which they can trade or hold in their own name, free of any trade restrictions imposed by the IIO

Deakin Irrigation is an off-river irrigation infrastructure operator (IIO) in NSW. On 2 March 2020, a customer submits a complete application to Deakin Irrigation to transform all of their irrigation right. Before the customer submitted this application, they used a water broker to sell the entitlement to water associated with their irrigation right to a private diverter located outside Deakin Irrigation’s network. With the water broker’s help, they correctly complete and sign:

- the Deakin Irrigation ‘Application to Transform’ form (which is on the IIO’s website)
- the WaterNSW ‘Application to assign the share component/s between water access licences’ pursuant to section 71Q of the Water Management Act 2000 (NSW).

These forms include details of the irrigation right being transformed, and the water access licence onto which the entitlement to water or ‘share component’ will be transferred. The customer also attached written approval of the application from the customer’s bank (which had taken the irrigation right as security for a now repaid loan), payment of Deakin Irrigation’s transformation application fee (\$200), and payment of the fees and charges for WaterNSW approval.

The business days when Deakin Irrigation processes the application form and attachments are counted within the ‘relevant period’:

- The clock stops on 6 March (four business days after the application lodgement), when Deakin Irrigation submits the application (by post) to WaterNSW.
- On 13 March, Deakin Irrigation receives the approved application back from WaterNSW.
- On 17 March (two business days later), Deakin Irrigation sends the application to NSW Land Registry Services (which maintains the NSW Water Access Licence Register) to register the transaction.
- On 20 March, Deakin Irrigation receives notice from Land Registry Services that the transformation has been registered.
- On 25 March (three business days later), Deakin Irrigation amends its records to record that the transformation application is approved.
- On 26 March (one business day later), Deakin Irrigation writes to the customer advising that their transformation is approved.

In total, Deakin Irrigation took nine business days to approve the transformation application:

- four business days between when the customer submitted the application for approval and when Deakin Irrigation submitted the application to WaterNSW, plus
- two business days between when Deakin Irrigation received the approved application back from WaterNSW and then sent it to Land Registry Services, plus
- three business days between when Deakin Irrigation received the registered application back from Land Registry Services and then amended its records to reflect the approved transformation application. The ‘relevant period’ ends with this step.

Under Rule 14 of the Water Market Rules, IIOs must process applications for transformation within the ‘relevant period’, which is the 20 business days after the IIO receives a complete transformation application.

Under Rule 16 of the Water Market Rules, an IIO must not do, or fail to do, an act in a way that prevents or unreasonably delays the transformation. An example of this conduct may include where an IIO does not take reasonable steps to request all the information reasonably necessary to process a transformation application.

The relevant period begins when the IIO receives a complete transformation application from a customer, including any outstanding fees and further information requested by the IIO. It ends when the IIO approves the application after all requirements under state law necessary for the IIO to be able to approve the transformation are satisfied.

Alternatively, the relevant period ends when the IIO is unable to approve the application because:

- a person who holds a legal or equitable interest in the irrigation right refuses to give approval, or
- a requirement under a state law cannot be satisfied—for example, the state government approval authority refuses to approve the application because it breaches a state government water trading rule, or
- the applicant has not provided the information required, or has not paid a fee for the transformation or, if applicable, a fee relating to a water delivery right.

While relevant third party and/or government authority requirements are being processed, ‘stop the clock’ provisions may apply. If applicable, this means the ‘relevant period’ will not include any business days between when appropriate steps are taken to obtain the:

- approval of a person holding a legal or equitable interest in the irrigation right, or
- approval and/or registration of the transformation by a state government authority as per any requirement of a state law (or any other requirement of state law if applicable), and
- when that third party and/or state government authority notifies the IIO of the outcome.

After the application is approved or not approved, the IIO must inform the applicant in writing of the outcome no later than five business days after the end of the relevant period.