



**Minister for Climate Change and Water**

B09/2361

Mr Graeme Samuel  
Chairman  
Australian Competition and Consumer Commission  
GPO Box 520  
MELBOURNE VIC 3001

30 SEP 2009

Dear Mr Samuel

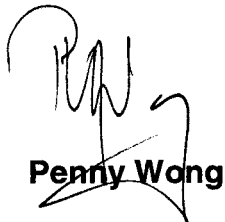
I am writing to request advice from the Australian Competition and Consumer Commission (ACCC) on amendments to the *Water Market Rules 2009* and the *Water Charge (Termination Fees) Rules 2009* (the rules), in accordance with sections 93(1) and 98(1) of the *Water Act 2007*.

A number of technical issues have arisen in the implementation of the rules during the transition period. These issues are listed at Attachment A. I am seeking your advice on amendments to the rules to address these issues, including draft amendments to the rules.

In developing its advice, I would appreciate the ACCC undertaking the relevant consultations with Basin State Ministers, infrastructure operators and the public to satisfy the consultation requirements as set out in regulations 4.05 and 4.18 of the *Water Regulations 2008*.

I ask that the ACCC provide me with advice on amendments to the rules by the end of March 2010.

Yours sincerely

  
**Penny Wong**



## **Attachment A – Technical issues to be addressed by amendments**

### *Technical issues with the Water Market Rules 2009*

- 1. Murray Irrigation Limited's variation to its members' water entitlements**  
The ACCC advice on water market rules of December 2008 recommended that Murray Irrigation Limited (MIL) realise the benefits of holding a separate conveyance entitlement and re-issue its water entitlements to account for this separation. On 1 July 2009, MIL varied its members' water entitlements to remove the 17 per cent conveyance component. Due to the specific circumstances of this case, MIL has expressed concern that it may not benefit from the protection against legal action that s 97(10) of the *Water Act 2007* provides to operators who are adjusting their arrangements to comply with the water market rules. Advice is sought on an amendment to the rules to ensure that protection from legal action is provided to MIL in these specific circumstances.
- 2. Rule 10(1) allowing operators to seek security from irrigators in certain circumstances**  
Rule 10(1), allowing operators to require security against payment of future access fees in certain circumstances, is based on delivery rights being defined in terms of volume of water. However, operators who have issued delivery rights on a flow-rate basis may not be entitled to require security under this rule. Advice is sought on an amendment to ensure all operators are treated the same way with regard to their ability to require security.
- 3. Rule 16(1) preventing operators from delaying or preventing transformation**  
Rule 16(1) prevents actions, or failures to act, by operators that would prevent or delay transformation, but only where an application for transformation has been received. As such, the rule may not catch all actions by operators that could prevent or delay transformation. Advice on an amendment to the rules is sought to address this issue.
- 4. Rule 7(1) requiring provision of details of irrigation rights**  
Rule 7(1) requires operators to provide irrigators with details of their irrigation rights; however it does not expressly require operators to provide the necessary information to show how the rights are calculated. Advice is sought on an amendment to the rules to address this issue.
- 5. Rule 7(1)(c) requiring operators to provide details of irrigation rights that can be transformed**  
Rule 7(1)(c) states that an operator must provide an irrigator with the details of their irrigation rights. The drafting of the rule may suggest 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 the conveyance provisions. Advice is sought on an amendment to clarify that an irrigator is entitled to transform the entire amount of water they are entitled under their irrigation right, subject to the conveyance provision.

*Technical issues with the Water Charge (Termination Fees) Rules 2009*

**6. Rule 7 imposition of termination fee**

While the policy position in the ACCC advice on water charge (termination fees) rules of December 2008 was that operators should not impose ongoing water access fees on irrigators who have terminated delivery and have paid a termination fee, this position may not be clear in the rules as currently drafted. Advice is sought on an amendment to the rules to address this issue.

**7. Rule 7(a) timing of termination of access and calculation of termination fee**

Rule 7 provides that termination fees are to be calculated in respect of the financial year in which the notice of termination is given. The rules may not provide sufficient certainty about the timeframe within which termination must occur following a notice of termination for the purposes of calculating the termination fee. Advice is sought on an amendment to the rules to address this issue.

**8. Rule 4 prohibition of fees payable in respect of compulsory termination of delivery rights on the sale of water**

While the ACCC advice on water charge (termination fees) rules of December 2008 recommended that fees not be payable in respect of compulsory termination of delivery rights upon the sale of water, the rules do not expressly prohibit this action. Advice is sought on an amendment to the rules to address this issue.