



16 February 2010

To: ACCC – Water Branch

Re: Submission to ACC Draft Advice on proposed amendments to the Water Market Rules 2009 and Water Charge (termination fees) Rules 2009

Western Murray Irrigation Limited (WMI) acknowledges this submission is late and requests consideration of its contents when drafting the final advice to the Minister. WMI notes a number of submissions have been due in the first two weeks of February and it has been difficult to respond to all requests in a considered manner within specified timeframes.

This submission supports the fact the ACCC has used the 6-month transitional period for the operation of the rules to highlight areas where the rules were subject to interpretation. The impact of the amendments is to tighten the rules and clarify some of the ambiguity for both operators and irrigators. The aim should be to minimise the risk of legal actions occurring where they may be loopholes in the rules.

The following are specific comments on the recommendations:

Recommendation 1.1 – WMI supports the removal of any reference to allocation in the determination of irrigation right.

Recommendation 1.2 – WMI supports the provision of details of the calculation of the irrigation right to an irrigator. This will promote transparency and should reduce the risk of dispute if the calculation is accurate and fair to all irrigators. WMI believes most operators if they have not already done so will have to determine irrigation rights in the short term to comply with the rules and this issue will then fade in importance.

Recommendation 1.3 – WMI’s delivery entitlements are based on a volumetric amount. This allows for an easily understood framework for both delivery and charging arrangements. The rules do need to cater for “flow rate” delivery rights and each operator must manage system operations in the best way for their business. WMI’s preference would be for Option 2 where a consistent conversion formula is applied by the operator to determine a volumetric amount to apply security. As WMI has just made comment on the ACCC compliance reporting framework, it would make sense to have a volumetric amount for reporting for terminations and transformations.

Recommendation 1.4 – WMI does not agree with the condition that operators facilitate transformation without receipt of a request for transformation in writing. While the amendment suggested is to broaden what the operator must or must not do WMI remains concerned as to how this should be “practically” implemented by the operator. Given in some circumstances there may be up to 5 owners of the same water entitlement any request needs to be supported by authorisation of each of these owners. This can only be done in writing. In business a written application is the means of triggering a professional response from an operator.

WMI also notes the amendment mentions “transformation” only and not “trade”. WMI has noted in a number of submissions about the distinction of the two terms and if there is any difference applied in the interpretation of the rules.

Recommendation 2.2 – WMI is not sure the wording of the amendment is clear. WMI was pleased to see in the explanatory notes the ACCC is attempting to ensure all operators in each of the basin states will be covered by the termination fee rules.

However, WMI is concerned the amendment may prevent the operator terminating the delivery right for valid breaches of the contractual obligations by the entitlement owner. The operator may impose a termination fee even if the water is not traded if the breach is significant enough.

The bracketed comment at the end adds that the reason for the termination itself cannot be the act of the trade. WMI suggests this should not be in a bracket but a separate rule.

Recommendation 2.3 – WMI agrees that access fees should not be raised for the period after the termination fee is paid but notes all fees due and payable before the date of termination remain payable. WMI raises bills quarterly in arrears. If a termination fee was paid on 31 March the entitlement owner would be expected to pay for the March quarter access fees. If LPI has not removed the water entitlement from the WMI licence before the next quarterly invoice is raised fixed government charges will still be applied to that customer water entitlement.

Recommendation 2.4 – WMI has advised the ACCC it raises the termination fee at the date the NSW Office of Water provides their approval and a dealing number. In the majority of cases this will be the same year notice has been provided. WMI supports the amendment to reflect more fairly for the operator when the termination or surrender is to take effect under the notice.

As a final comment WMI supports the MIL request for further consideration of the issues associated with changing entitlements to allow compliance with the water market rules. The ACCC notes that any gain to MIL in additional protection from legal action is significantly outweighed by the unnecessary imposition on irrigator’s personal rights and liberties. It has been one of WMI’s arguments throughout the consultation process that the rules are skewed heavily to favour the individual against the collective which the infrastructure operators support.

The irrigation corporations are privately owned business managed by a Board who are charged with the responsibility to act in the interest of the company as a whole. The rules at times will continue to be at odds with the effective management of the company.

Only time will tell what actions individuals will take against operators.

In light of the amendments made the ACCC may wish to review the compliance-reporting framework.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Cheryl Rix". The signature is written in a cursive style with a prominent loop at the end.

Cheryl Rix
General Manager