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WATER ACT 2007

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN UNDER SECTION 163**

BY

MURRUMBIDGEE IRRIGATION LIMITED

(ACN 084 943 037)

PERSONS GIVING THIS UNDERTAKING

- (1) This undertaking (**the Undertaking**) is given to the Australian Competition and Consumer Commission (**the ACCC**) by Murrumbidgee Irrigation Limited ACN 084 943 037 (**MI**) of Lot 255, Research Station Road, Hanwood in the State of New South Wales under section 163 of the *Water Act 2007* (**the Act**).

BACKGROUND

- (2) **MI** is a corporation that owns and operates water service infrastructure for the purpose of delivery of water for irrigation to approximately 3,200 farms in the Murrumbidgee Irrigation Area, located in the vicinity of Griffith and Leeton in New South Wales.
- (3) The Water Charge (Termination Fees) Rules 2009 (**the Rules**) were registered by the Minister for Climate Change and Water (**the Minister**) on 22 June 2009 and took full effect from 1 September 2009.

IMPOSITION OF TERMINATION FEES

- (4) **MI** groups its customers into nine different pricing groups. **MI** charges each customer an annual fee calculated with reference to the number of delivery entitlements held by the customer. For the purpose of calculating the applicable annual fee, each customer's delivery entitlement is characterised as "standard" or "premium" and placed in 3 pricing "Tiers", depending on the number of delivery entitlements held.
- (5) The Tier 1 fee is payable in respect of a customer's first 50 delivery entitlements, the Tier 2 fee is payable in respect of a customer's next 200 delivery entitlements and the Tier 3 fee is payable in respect of any delivery entitlements held in excess of 250. Different Tier 1, Tier 2 and Tier 3 charges apply to each of the nine pricing groups and to each type of delivery entitlement.
- (6) In most of **MI**'s nine pricing groups, customers are also charged an annual fee for each outlet connection and farm serviced by **MI**. This fee varies according to the customer's pricing group.
- (7) In or about July 2009, **MI** determined a methodology for calculating termination fees it would impose on customers in each of its pricing groups

upon termination or surrender of their right of access in 2009-10, being an amount calculated by applying:

- (a) a flat rate per delivery entitlement terminated or surrendered (i.e. by multiplying the flat rate for the pricing group by the number of delivery entitlements being terminated or surrendered and multiplying the result by 10); and
 - (b) a fixed \$2,500 fee for termination or surrender of all the farm and outlet connections to MI's irrigation network
(termination fees methodology).
- (8) MI's **termination fees methodology** involved applying the flat rate, based on customer's pricing group, to each delivery entitlement terminated or surrendered without regard to:
- (a) the type of delivery entitlement being terminated or surrendered; and
 - (b) the pricing Tier which the delivery entitlement fell under.
- (9) The flat rate used in MI's **termination fees methodology** included an amount apportioned from the annual farm and outlet connection charges payable by MI's customers, being an amount that accounted for the difference between MI's fixed \$2,500 fee and an amount 10 times the customers' total annual farm and outlet charges.
- (10) In the period between the commencement of **the Rules** on 1 September 2009 and 31 March 2010, MI imposed, demanded and/or received fees from 27 customers in respect of 31 instances of termination or surrender of the whole or a part of their right of access, based on MI's **termination fees methodology**. In 27 out of 31 instances, the fee imposed by MI was in excess of the amount equal to 10 times the total network access charge applicable to the whole or a part of the right of access surrendered or terminated by the customer.
- (11) Further, in the period between the commencement of **the Rules** on 1 September 2009 and 31 March 2010, MI imposed, demanded and/or received fees in respect of termination or surrender of the whole or a part of a right of access prior to or in the absence of written notice of termination or surrender of the whole or a part of their right of access having been given by 12 customers.
- (12) The ACCC has raised concerns that MI had imposed termination fees on some of its customers:
- (a) that were in excess of the maximum authorised fees under rule 7 of **the Rules**; and
 - (b) prior to, or in the absence of, a written notice of termination or surrender as required under rule 6(1) of **the Rules**.

THE RELEVANT RULES

- (13) Rule 5(1) of **the Rules** prohibits an irrigation infrastructure operator from imposing, demanding or receiving or causing to be imposed, demanded or received, a fee, charge or payment of any kind for, or in respect of, the termination or surrender of the whole or a part of a right of access to that operator's irrigation network or of services provided in relation to that right or a

part of that right (**the termination fee**), unless expressly authorised under **the Rules**.

- (14) Rule 6(1) of **the Rules** authorises an irrigation infrastructure operator to impose a termination fee, in accordance with rule 7, if its customer gives a written notice of termination or surrender to the operator or receives a written notice of termination from the operator (either notice being referred to in this Undertaking as **the written notice**).
- (15) Rule 7 of **the Rules** authorises an irrigation infrastructure operator to impose a termination fee on a customer if the fee does not exceed the lesser of:
 - (a) 10 times the total network access charge, or a proportion thereof, payable by the customer to the operator in respect of the financial year in which **the written notice** is given; or
 - (b) the termination fee provided for in a contract or arrangement between the customer and the operator;and rule 8 authorises additional fees if approved, or taken to have been approved, by the ACCC (considered together, the **maximum authorised fee**).
- (16) Rule 3 of **the Rules** defines the term 'total network access charge' to mean the total amount payable in respect of the financial year in which **the written notice** is given by a customer to the operator, subject to various inclusions and exclusions (**the TNAC**).

IRRIGATION INFRASTRUCTURE OPERATOR'S RESPONSE

- (17) MI admits that:
 - (a) it did not have procedures to ensure compliance with **the Rules** at the time of the relevant conduct;
 - (b) between 1 September 2009 and 31 March 2010, MI breached rule 5(1) of **the Rules** by imposing, demanding and/or receiving termination fees:
 - i. in excess of **the maximum authorised fee** under rule 7 of **the Rules**;
 - ii. prior to, or in the absence of, **the written notice** being given by the customers as set out in rule 6(1) of **the Rules**.
- (18) In response to concerns raised by the ACCC, MI has:
 - (a) ceased imposing or demanding termination fees on the basis of its previous non-compliant **termination fees methodology**;
 - (b) taken steps to rectify its **termination fees methodology** by changing or discontinuing practices which previously led to it breaching **the Rules**;
 - (c) sought guidance from a suitably qualified, independent compliance professional or legal practitioner with expertise in **the Rules**;
 - (d) issued refunds to all affected customers, totalling \$640,134 representing the total of:

- i. the amount imposed, demanded and/or received by MI in excess of the maximum amount authorised for each individual customer under **the Rules**; and
 - ii. the amount of interest on the refund;
- (e) agreed to pay 3 infringement notice penalties totalling \$66,000 under section 160 of the Act;
 - (f) appointed an officer of MI, who has undertaken general compliance training, in a role of a full-time governance co-ordinator, with a significant focus on compliance with **the Rules**; and
 - (g) appointed an officer of MI as a full time regulatory and records officer, with 50% of this role dedicated to regulatory matters including compliance with **the Rules**.
- (19) MI has also offered to give this Undertaking on the terms set out below to the ACCC under section 163 of the Act.
- (20) The ACCC has agreed to accept the Undertaking under section 163 of the Act.

COMMENCEMENT OF UNDERTAKING

- (21) This Undertaking comes into effect when:
- (a) the Undertaking is executed by MI; and
 - (b) the ACCC accepts the Undertaking so executed.
- (22) Upon the commencement of this Undertaking, MI undertakes to assume the obligations set out in the following paragraphs 23 to 28 below.

UNDERTAKING

- (23) For the purposes of section 163 of the Act, MI undertakes that, to the extent that it is prohibited by **the Rules** from doing so, it will refrain, for a period of 3 years from the commencement of this Undertaking, from imposing, demanding or receiving, or causing to be imposed, demanded or received, a fee, charge or payment of any kind for or in respect of the termination or surrender of the whole or a part of a right of access to the operator's irrigation network or of services provided in relation to that right or a part of that right if:
- (a) the **written notice** required by **the Rules** has not been given;
 - (b) the termination fee for each customer exceeds the **maximum authorised fee**; or
 - (c) MI would be unable, upon request by the ACCC, to verify that each termination fee is authorised under **the Rules** to the reasonable satisfaction of the ACCC.
- (24) For the purposes of section 163 of the Act, MI undertakes at its own expense:
- (a) within 2 months of the commencement of this Undertaking, to implement a Water Charge (Termination Fees) Rules Compliance Program (**the Compliance Program**) in accordance with requirements set out in Annexure A for the relevant staff and other persons involved in MI's business, being a program designed to:

- i. minimise MI's risk of future breaches of the Rules; and
 - ii. ensure MI is aware of its responsibilities and obligations in relation to the requirements of the Rules;
 - (b) to maintain and continue to implement the Compliance Program for a period of 3 years from the commencement of this Undertaking;
 - (c) ensure all termination fees imposed, demanded and/or received by MI are approved by a member of MI's Executive team, namely a person undertaking the role of Managing Director, General Manager, Chief Financial Officer or Executive Manager of MI (Senior Executive team) and who has completed compliance training in relation to the Rules, for a period of 3 years from the commencement of this Undertaking; and
 - (d) to provide a copy of any documents requested by the ACCC in accordance with paragraphs 13-19 of Annexure A within the timeframes specified in those paragraphs.
- (25) Within 14 days of the commencement of this Undertaking, MI will cause a copy of the pro forma letter set out in Annexure B of this Undertaking to be sent to each current MI customer and each of those persons who have ceased to be MI customers since 1 September 2009.
- (26) Within 30 days of the commencement of this Undertaking and for a period of 3 years thereafter, MI will ensure that all invoices imposing or demanding a termination fee on a customer of MI will include:
- (a) the prominent words: "Under the Water Charge (Termination Fees) Rules 2009, the maximum authorised termination fee is the lesser of 10 times your total network access charge payable to MI in the financial year in which notice of termination/surrender was given in respect of the portion of the right of access being terminated/surrendered or the fee provided for in a contract or arrangement between MI and you, unless an additional termination fee has been approved, or taken to have been approved, by the ACCC"; and
 - (b) the actual calculation of the maximum authorised fee for the portion of the right of access being terminated or surrendered by that customer, accompanied by an explanation for each fee or charge included or excluded in the calculation.
- (27) MI undertakes, within 7 days of the commencement of this Undertaking, to publish for a period of 3 months in the top one third of the home page of its website (www.mirrigation.com.au), a hyperlink in 12pt bold Arial or similar font (the Hyperlink) to the notice set out in Annexure C of this Undertaking with the heading being in 18pt bold Arial or similar font and text being in 14pt Arial or similar font. Immediately preceding the Hyperlink will appear the words "Murrumbidgee Irrigation Limited gives ACCC undertaking for breach of Water Charge (Termination Fees) Rules 2009" in 18pt bold Arial or similar font.
- (28) MI undertakes, for a period of 3 years from the commencement of this Undertaking, that it will make MI's Schedule of Charges (as updated from time

to time) available continually on a part of its website to which access is unrestricted.

ACKNOWLEDGMENTS

(29) MI acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of s.163 undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications;
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
- (d) for the purposes of this Undertaking, **the Rules** are those Water Charge (Termination Fees) Rules in force as at the time of the relevant conduct.

EXECUTED BY

Murrumbidgee Irrigation Limited, ACN 084 943 037 and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.

.....
Secretary/Director *DORIAN RABE*
.....
Director *BRETT TUCKER - MANAGING DIRECTOR*
This*2nd*..... day of *September* 2010

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 163 OF WATER ACT 2007.

.....
Graeme Julian Samuel
Chairman
This*13*..... day of *September* 2010

ANNEXURE A

WATER CHARGE (TERMINATION FEES) RULES COMPLIANCE PROGRAM

Appointments

1. MI will, within one month of the commencement of this Undertaking, appoint an officer of MI to be the **Compliance Officer**. The **Compliance Officer**'s responsibilities are to include the development, implementation and maintenance of the **Compliance Program** and they will report directly to a member of the **Senior Executive team**.
2. MI will, within one month of the commencement of this Undertaking, appoint a qualified independent compliance professional with expertise in **the Rules** (**the Compliance Advisor**) for the purpose of assisting in developing the **Compliance Program** and ensuring that the **Compliance Program** complies with each of the requirements set out in the Undertaking. The Compliance Advisor will qualify as independent on the basis that he or she is not: a present or past staff member or a director of MI, or a family member or relative of a staff member or director of MI, and has no shareholding or other interests in MI.

Compliance Policy

3. MI will, within two months of the commencement of this Undertaking, issue a policy statement, approved by MI's Board of Directors (**the Board**), outlining MI's commitment to compliance with **the Rules** (**the Compliance Policy**). MI will ensure that the **Compliance Policy**:
 - 3.1. is written in plain language;
 - 3.2. contains a statement of commitment to compliance with **the Rules**; and
 - 3.3. contains a strategic outline of how compliance with **the Rules** will be realised within MI.

Training

4. MI will cause the **Compliance Officer**, all members of the **Senior Executive team**, and all MI staff whose duties could result in them being concerned with conduct that may contravene **the Rules** to receive training from the **Compliance Advisor** that focuses on the practical implementation of **the Rules** by MI within two months of:
 - 4.1. the commencement of this Undertaking;
 - 4.2. any amendments to **the Rules** being made by the Minister after the commencement of this Undertaking; and
 - 4.3. taking up a position at MI where duties could result in that person being concerned with conduct that may contravene **the Rules**.

Internal procedures

5. MI will cause the **Compliance Officer** to implement and, for a period of 3 years from the commencement of this Undertaking, maintain procedures, including a record of matters set out in paragraphs 6-8, to ensure that termination fees imposed, demanded and/or received by MI in respect of each customer whose right of access is terminated or surrendered in whole or in part (**the terminated customer**) are in accordance with the **Rules**.
6. MI will ensure that its procedures will include a process for ensuring that termination fees are not imposed by MI in the absence of the **written notice** if, and as required by the **Rules**. For this purpose, MI will cause the **Compliance Officer** to maintain a record, for each occasion on which MI imposes termination fees, which includes:
 - 6.1. the date the **written notice** is received by MI from the terminated customer or given by MI to the terminated customer;
 - 6.2. the date of the termination or surrender;
 - 6.3. the date the termination fee is imposed by MI; and
 - 6.4. a copy of the **written notice**.
7. MI will ensure that its procedures will include a process for ensuring that the amount of the termination fee imposed by MI does not exceed the **maximum authorised fee under the Rules**. For this purpose, MI will cause the **Compliance Officer** to maintain a record which includes, for each terminating customer:
 - 7.1. their name, address and contact phone number;
 - 7.2. the customer code or reference used by MI to identify the customer;
 - 7.3. all identifying features assigned by MI to the customer that affect the amount of fixed charges payable by the customer (e.g. the customer's pricing group) to the extent that these are relevant to the calculation of the total network access charge;
 - 7.4. the number and type of delivery entitlements terminated and the number and type of delivery entitlements still held by the terminated customer immediately after the termination or surrender;
 - 7.5. the number of farm and outlet connections terminated or surrendered and the number still held by the terminated customer immediately after the termination or surrender;
 - 7.6. if there is a contract prescribing termination fees, that contract, and the termination fees prescribed in that contract;
 - 7.7. the actual calculation of the **maximum authorised fee** MI is authorised to impose in respect of termination or surrender, GST inclusive;
 - 7.8. the fees or charges used to calculate the **maximum authorised fee** for that customer;

- 7.9. the amount and the date of each fee imposed by **MI** in respect of termination or surrender of the whole or a part of their right of access;
 - 7.10. the amount and the date of the receipt by **MI** of any payments in respect of termination or surrender of the whole or a part of their right of access;
 - 7.11. the amount and the date of any refunds issued by **MI** in respect of the termination or surrender of the whole or a part of their right of access; and
 - 7.12. any other details required to determine whether the termination fee imposed by **MI** under rule 7 of **the Rules** is authorised under rule 7 of **the Rules**.
8. **MI** will cause the **Compliance Officer** to maintain a record of any decisions made by **MI** that affect the calculation of the **maximum authorised fee** **MI** is authorised to impose under **the Rules**, including any decisions made by **MI** to suspend any fixed charges or to provide discounts to the terminating customer in respect of any fixed charges.
9. **MI** will, within two months of the commencement of the Undertaking, implement procedures to ensure that each termination fee imposed, demanded and/or received by **MI** is authorised by a member of the **Senior Executive team** who has undertaken the training described in paragraph 4:
 - 9.1. prior to the termination fee being imposed on or demanded from each terminating customer, whichever occurs first, or
 - 9.2. in the circumstances where the termination fee is received by **MI** without having been imposed or demanded, within three weeks of the date of the receipt of the termination fee by **MI**.
10. **MI** will cause the **Compliance Officer** to:
 - 10.1. provide in writing to the relevant member of the **Senior Executive team** for the purpose of authorisation under paragraph 9, all the details maintained in accordance with paragraphs 6-8 relevant to each authorisation;
 - 10.2. obtain each authorisation described in paragraph 9 in writing from the Senior Executive officer, and
 - 10.3. maintain a record of all authorisations for a period of 3 years from the commencement of the Undertaking.

Reports to the Board

11. **MI** will cause a member of the **Senior Executive team** responsible for authorising termination fees, as set out in paragraph 9, to report to the Board at the minimum every two months, for a period of 3 years from the commencement of the Undertaking, on the effectiveness of the **Compliance Program**, including providing for its consideration all details maintained in accordance with paragraphs 6-8.

Review

12. **MI** will, at its own expense, cause a review of the **Compliance Program** (**the Review**) to be carried out in accordance with each of the following requirements:
 - 12.1. **Scope of the Review** – the Review should be broad and rigorous enough to provide **MI** and the ACCC with supportable verification that **MI** has in place a program that complies with each of the requirements in the **Compliance Program** and to provide the Review Reports detailed at paragraphs 17-19.
 - 12.2. **Reviewer** – **MI** will ensure that the Review is carried out by its Compliance Advisor or a suitably qualified, independent compliance professional with expertise in **the Rules**.
 - 12.3. **Regularity of the Review** – the Review is to be completed within one year and one month of the commencement of the Undertaking and each subsequent Review is to be completed within one year thereafter for the duration of the **Compliance Program**.

Reports to the ACCC

13. **MI** will, at its own expense, within three months of the commencement of the Undertaking, cause to be produced and provided to the ACCC:
 - 13.1. a copy of the **Compliance Policy** (paragraph 3); and
 - 13.2. a letter from the Board confirming that the Compliance Program has been implemented in accordance with the requirements of the Undertaking including that a **Compliance Officer** has been appointed, a **Compliance Advisor** has been appointed, and that the training required under paragraph 4 has occurred.
14. **MI** will, where **MI** imposes a termination fee that is likely to be in breach of **the Rules** within 3 years from the commencement of the Undertaking, notify the ACCC within two weeks of becoming aware of the likely breach, that it had imposed a termination fee not authorised under **the Rules**, accompanied by an explanation as to the surrounding circumstances and steps taken by **MI**.
15. **MI** will, by 30 September 2011, 30 September 2012 and 30 September 2013, provide, at its own expense, a report to the ACCC detailing the following information in respect of each termination fee imposed, demanded and/or received by **MI** during the financial year 2010–11, 2011–12, and 2012–13 (respectively):
 - 15.1. all details maintained by the **Compliance Officer** in accordance with paragraphs 6-8 (excluding the copy of the written notice); and
 - 15.2. any other details required so that the ACCC can independently calculate the **maximum authorised fee** under **the Rules** for each terminated customer.
16. If requested by the ACCC in writing, **MI** will provide within two weeks, at its own expense, copies of any relevant documents to verify **MI**'s compliance with

the Undertaking, including for each terminated customer named in the report provided pursuant to paragraph 15:

- 16.1. **the written notice** given or received by **MI**;
 - 16.2. the invoice incorporating fixed charges for the financial year in which **the written notice** is given or received by **MI**;
 - 16.3. the invoice incorporating termination fee imposed by **MI**;
 - 16.4. the receipt in respect of the amount received by **MI** in payment of the termination fee;
 - 16.5. all documents that constitute a contract or agreement between **MI** and the terminated customer, however, **MI** need only provide one copy of any standard form contract and policies;
 - 16.6. all documents used by **MI** to notify the terminated customer of the amount payable by the customer or the basis on which **MI** would calculate the amount payable in the financial year in which **the written notice** is given, including any documents published on **MI**'s website or provided to the terminated customer by correspondence; and
 - 16.7. any other documents requested by the ACCC for the purpose of verifying **MI**'s compliance with the Undertaking.
17. **MI** will use its best endeavours to ensure that the Reviewer sets out the findings of the Review undertaken pursuant to paragraph 12 in a Water Charge (Termination Fees) Rules Compliance Program Review Report (**Review Report**), which will provide particular and specific information regarding the scope of the Review and the effectiveness of the **Compliance Program**.
 18. **MI** will ensure that each Review Report is completed and provided to **MI** within one month of completion of the Review.
 19. **MI** will cause the Review Report to be provided to the ACCC within two weeks of its receipt from the Reviewer.

ANNEXURE B



Murrumbidgee Irrigation
ABN 39 084 943 037

www.mirrigation.com.au

[DATE] 2010

[Murrumbidgee Irrigation Customer]

[Address 1]

[Address 2]

Dear [Murrumbidgee Irrigation Customer]

Murrumbidgee Irrigation Limited gives ACCC court enforceable undertakings

Murrumbidgee Irrigation Limited (MI) has given the Australian Competition and Consumer Commission (the ACCC) a court enforceable undertaking in accordance with s.163 of the *Water Act 2007* in which it admits to multiple breaches of the *Water Charge (Termination Fees) Rules 2009* (the Rules).

In or about July 2009, MI determined a methodology for calculating termination fees it would impose on customers in each of its pricing groups upon termination or surrender of their right of access to MI's network in 2009/10 irrigation season (refer to **Attachment A**). In the period between the commencement of the Rules on 1 September 2009 and 31 March 2010, MI imposed termination fees on 27 customers based on this methodology.

Rule 5(1) of the Rules prohibits MI (and other operators to whom the Rules apply) from imposing or receiving termination fees from its customers except as expressly authorised under the Rules. Rule 5(2) specifies the circumstances in which rule 5(1) does not apply.

Rule 6 allows MI to impose termination fees on a customer, calculated in accordance with rule 7, only if a written notice of termination or surrender is given to MI by the customer (or in some circumstances, if MI has given a written notice of termination to the customer).

Rule 7 allows MI to impose termination fees on a customer following receipt of written notice of termination or surrender from a customer and the maximum termination fees MI is permitted to charge the customer under this rule is the lesser of:

- 10 times the total amount payable by the customer for the portion of the right of access being surrendered in respect of the financial year in which written notice is given, subject to various inclusions and exclusions as set out in rule 3 of the Rules (**the TNAC**); or
- the termination fee provided for in a contract between the customer and MI.

Following a detailed investigation by the ACCC, MI has admitted that it has breached rule 5(1) of the Rules on multiple occasions by charging:

- 23 customers termination fees in excess of 10 times the TNAC applicable to each customer (refer to **Attachment B** for further details); and
- 12 customers termination fees prior to, or in the absence of, written notice of surrender having been given by the customers.

In response to the ACCC's investigation, MI has voluntarily taken measures to address its future compliance with the Rules by:

- ceasing charging termination fees in breach of the Rules;
- seeking guidance from a suitably qualified, independent legal practitioner with expertise in the Rules;
- taking steps to implement internal procedures to ensure compliance with the Rules, including appointing and training staff responsible for compliance with the Rules; and
- issuing refunds with interest to all affected customers, totalling \$640,134.

MI has also paid 3 infringement notice penalties totalling \$66,000.

In addition, to address the ACCC's concerns about its future compliance, MI has given a court enforceable undertaking to the ACCC, in which, among other things, MI has undertaken that it will refrain from imposing, demanding or receiving termination fees that are not authorised under the Rules and, for a period of 3 years, will institute a Compliance Program which requires MI to:

- develop a compliance policy setting out how compliance with the Rules will be realised;
- appoint staff responsible for compliance with the Rules and provide them with training in respect of requirements and practical implementation of the Rules;
- implement appropriate procedures and record keeping practices to ensure ongoing compliance with the Rules;
- conduct regular reviews of its compliance practices;
- keep MI's Board regularly informed of MI's compliance with the Rules; and
- report to the ACCC on termination fees charged by MI and its ongoing compliance with the Rules.

For further information about the Rules, the undertaking given by MI to the ACCC and MI's compliance with the undertaking and the Rules, please contact MI's Governance Co-ordinator, Brad Power, on 6962 0200 or see MI's website www.mirrigation.com.au or the ACCC's website www.accc.gov.au/water.

Yours faithfully

Brett Tucker
Managing Director

Attachment A (of the letter)

MI's Termination Fee Methodology in 2009/10

In the period between 1 September 2009 and 31 March 2010, MI charged customers surrendering their right of access:

- a flat rate per delivery entitlement surrendered; and
- a fixed \$2,500 fee for disconnection of the farm and closure of the outlet connections to MI's irrigation network.

MI applied the flat rate, based on the customer's pricing group, to each surrendered delivery entitlement without regard to:

- the type of delivery entitlement being surrendered (standard or premium); and
- the pricing Tier which the delivery entitlement fell under.

In addition, MI included in the flat rate, for each surrendered delivery entitlement, an amount apportioned from all its customers' annual farm and outlet connection charges, being an amount that accounted for the difference between MI's fixed \$2,500 fee and an amount 10 times all its customers' total annual farm and outlet charges.

MI set out the amount of the flat rate (multiplied by 10) for each pricing group in its Schedule of Charges for 2009/10 irrigation season published on its website.

Attachment B (of the letter)

Calculation of the maximum permitted fee (10 times TNAC) in 2009/10

On each occasion MI charged a termination fee for the surrender of a customer's right of access in 2009/10, the Rules required MI to calculate the amount equal to 10 times the customer's total network access charge (TNAC) and ensure that the termination fee charged by MI did not exceed this amount (refer to explanation of rule 7 in the letter).

For each customer who surrendered their right of access in 2009/10, the applicable TNAC consisted of the portion of the annual access charge payable or paid by the customer to MI for:

- the surrendered delivery entitlements (with reference to the type of delivery entitlement, the Tier under which it fell and the customer's pricing group):
 - less the amount of the bulk water charge applicable to the surrendered delivery entitlements (the bulk water charges are included in the annual access charge, but cannot be included in the TNAC); and
- the farm and outlet connections surrendered by the customer with reference to the customer's pricing group.

The Rules prohibit MI from including in the TNAC any amount in respect of the charges for the farms, outlets and delivery entitlements that are not surrendered by the customer.

Example: A customer in MI's LAS pricing group held 1 farm with 1 outlet and 500 standard delivery entitlements at the start of 2009/10 irrigation season. In December 2009, the customer gave MI a written notice of surrender of 100 standard delivery entitlements (all falling under Tier 3). The customer requested to continue paying annual charges for 1 farm and 1 outlet and 400 standard delivery entitlements.

For the purpose of determining the maximum fee MI was permitted to impose on the customer under the Rules for the termination of 100 delivery entitlements, MI was required to calculate the customer's TNAC:

$$\text{TNAC} = 100 \times (8.44 - 2.25) = \$619, \text{ where:}$$

100 is the number of delivery entitlements surrendered

8.44 is the facilities charge per standard Tier 3 delivery entitlement for LAS customers as set out in MI's Schedule of Charges for 2009/10

2.25 is the component of the facilities charge that relates to the bulk water charge, per standard delivery entitlement, paid by the customer to MI

The charges for the farm, outlet and 400 delivery entitlements were not surrendered by the customer and could not be included in the calculation of the TNAC by MI.

The maximum termination fee MI was permitted to charge this customer was **\$6,190** (being an amount equal to 10 times the TNAC)¹.

Under MI's 2009/10 termination fee methodology, this customer would have been charged a termination fee = $100 \times \$105.80 = \$10,508$, which would have exceeded the maximum fee of **\$6,190** MI was permitted to charge this customer under the Rules.

¹ For simplicity, the calculations do not include references to GST

ANNEXURE C

Murrumbidgee Irrigation Limited gives ACCC court enforceable undertakings

Murrumbidgee Irrigation Limited (**MI**) has given the Australian Competition and Consumer Commission (**the ACCC**) a court enforceable undertaking in accordance with s.163 of the *Water Act 2007* (**the Act**) in which it admits to multiple breaches of the *Water Charge (Termination Fees) Rules 2009* (**the Rules**).

Between 1 September 2009 and 31 March 2010, MI breached the Rules on multiple occasions by imposing termination fees on:

- 23 customers in excess of the maximum fee permitted under the Rules; and
- 12 customers prior to, or in the absence of, written notice of surrender having been given by the customers.

To address the ACCC's concerns about its future compliance with the Rules, MI has taken steps to amend its practices, provided refunds with interest to affected customers totalling \$640,134, and has given the ACCC a court enforceable undertaking under s.163 of the Act.

The undertaking includes, among other things, a commitment by MI to refrain from imposing termination fees that are not authorised under the Rules and to institute a Compliance Program.

MI has also paid 3 infringement notice penalties totalling \$66,000.

MI has also written to each of its customers setting out in more detail an explanation of its conduct and measures taken by MI to address it. A copy of this letter can be found at www.mirrigation.com.au.

A copy of the undertaking given by MI to the ACCC can be found at the ACCC website www.accc.gov.au/water.