



Information paper

Water Market Rules and Water Charge (Termination Fee) Rules

February 2009

The following information has been compiled to provide more detailed information about the Water Market Rules and Water Charge (Termination Fee) Rules for Murray Irrigation's member customers.

Background

- The Rules are a legislative instrument made under section 92 of the *Water Act 2007 (Comm)* hereafter called the Act. The Rules legislate Murray Irrigation's conditions for the transfer (trade) of Murray Irrigation Water Entitlements from our licence and also determine how the Termination Fee on Delivery Entitlements will be calculated by the Company.
- The Rules are before the Parliament, it is expected the Rules will be legislated in approximately one month. (It is possible there may be some modification to the rules before they become law).
- Murray Irrigation as an unlisted public company will be required under the *Water Act 2007* to comply with the Rules. A range of civil penalties apply for non compliance.
- The Market Rules only apply to organisations, where the organisation holds the statutory Water Access Licence. (This means the Market Rules do not apply to the majority of irrigation organisations in Victoria, because their irrigators already own Statutory Water Rights. This also means the two significant barriers to the transfer of Victorian Water Rights, the 4% annual limit on transfers and the 10% limit on ownership of Water Rights without land are not affected by the Rules). The Market Rules also only apply to entitlement trade (permanent trade) not to annual trade.
- The Rules are based on advice to the Minister from the Australian Competition & Consumer Commission (ACCC). The ACCC developed the Rules after a period of investigation including opportunities for public input during 2008.
- There are two key dates in the Rules which Murray Irrigation will need to comply with;
 - 1st July 2009 for setting the Termination Fee applying in 2009/10
 - 1st September 2009 for changes to procedures, transfer rules, etc.
- The Rules and the Act include a number of definitions and use terminology which is different to Murray Irrigation's. Below is Murray Irrigation's interpretation of the definitions and terminology used in the Act and the Rules.
 - **infrastructure operator** - Murray Irrigation is considered an irrigation infrastructure operator under the *Water Act* because it operates an irrigation network for the purpose of delivering irrigation water.
 - **irrigation right** – means a right that;
 - a) a person has against an irrigation infrastructure operator to receive water; and
 - b) is not a water access right or water delivery right. Murray Irrigation Water Entitlements are irrigation rights.

- **water delivery right** – means a right to have water delivered by an infrastructure operator, Murray Irrigation Delivery Entitlements are water delivery rights
- **transformation** – transformation in the Act refers to arrangements where Water Entitlements, which are not on a State Register (statutory rights), are permanently changed to Water Access Entitlements held by another operator, for example converting Murray Irrigation Water Entitlements to NSW General Security Water Entitlements (Unit Shares) on the State Register. (The Rules do not require transformation).

Summary of the Water Market Rules

There are 22 Water Market Rules. The rules cover both policy issues and also administration procedures including timelines for administration of transfers. The substantive rules relevant to Murray Irrigation and its member customers are summarised below (please note the numbers below do not relate to Rule numbers). Murray Irrigation is used where the rules refer to irrigation infrastructure operator.

A link to the Rules including the Government's summary of the Rules is on our website www.murrayirrigation.com.au.

1. Transition period - Murray Irrigation has until the 1st September 2009 to change its current rules for Water Entitlement transfers to make these rules consistent with the Water Market Rules. (The Market Rules relate specifically to the actions by Murray Irrigation that prevent or unreasonably delay arrangements that would reduce the share component of the Company's Water Access Licence).
2. Information about Water Market Rules - Murray Irrigation is required to provide member customers with written notice of details of the Water Market Rules.
3. Murray Irrigation is to establish and make available a process which allows its member customers to convert their Murray Irrigation Water Entitlements to Water Entitlements on the State Register by 31st August 2009. This is called transformation. There is no obligation for Water Entitlements to be transformed.
4. Determination of Irrigation Rights – The Rules require member customers to be issued with Irrigation Rights when a person wishes to transform. This is equivalent to Murray Irrigation Water Entitlements, which have already been issued.
5. Conveyance losses – The Rules permit operators to withhold a portion of Water Entitlements for conveyance losses, where the operator does not hold a conveyance licence. In Murray Irrigation's case the ACCC (in their advice the Minister) recommends Water Entitlements owned by our member customers be equivalent to the NSW General Security licence component.
6. Ongoing delivery – The Rules require Murray Irrigation to provide ongoing access to the same services where a member customer transforms their Water Entitlements to the State Register and does not terminate their Delivery Entitlements.

7. Security for ongoing access charges – Murray Irrigation is able to require security for the Termination Fee where Delivery Entitlements are five times greater than the number of Water Entitlements on a landholding. Security equal to the termination fee can be required. The security can be in a range of forms including cash and a bank guarantee or any other form agreed to between Murray Irrigation and the transferor.
8. Applications for transformation – The Rules detail timelines and processes for administering the transformation of Water Entitlements from Murray Irrigation’s licence. This includes fees for transformation and a fee for delivery entitlements.
9. Restrictions – The Rules detail the circumstances where Murray Irrigation would be able to prevent or delay a transfer. This includes payment of outstanding accounts, requirement for security and approval of third parties.
10. Prohibited restrictions – The Rules prohibit Murray Irrigation from requiring termination of Delivery Entitlements when Water Entitlements are transferred.
11. Notification of changes to Constitution and contracts – The Rules require Murray Irrigation to notify its member customers of changes to the Constitution and other contracts. (This is required by Corporations Law).

Summary of Water Charge (Termination Fee) Rules

There are 11 Water Charge (Termination Fee) Rules. A link to the Rules including the Government’s summary of the Rules is on our website www.murrayirrigation.com.au.

The substantive rules relevant to Murray Irrigation and its member customers are summarised below (please note the numbers below do not relate to Rule numbers);

1. Transition period – Murray Irrigation has until the 1st July 2009 to establish the termination fee that will apply in 2009/10.
2. Circumstances where termination fees can be charged – Murray Irrigation is able to charge a termination fee where a member customer terminates their access to the irrigation network (or part of the network) or where a customer member has breached their obligations under their contract with Murray Irrigation.
3. Calculation of termination fees – The maximum termination fee that can be imposed is 10 times the irrigators total network access charge. A higher termination fee may be charged where there is a separate contract for capital works between the member customer and Murray Irrigation. The access charge does not include government fixed charges which are charged per Water Entitlement.
4. Disconnection fee – The Rules allow Murray Irrigation to charge a disconnection fee to cover the costs of removing or disabling physical connection between the irrigation network and infrastructure of the person who holds or has held a right of access to the irrigation network; for example removing a point of supply. (The question of whether fencing and easements are a legitimate part of disconnection is not clear).

Major points of difference between the Murray Irrigation's current policy and the Rules

1. Murray Irrigation requires compulsory termination of Delivery Entitlements when Water Entitlements are transferred without the corresponding Delivery Entitlements. Murray Irrigation does not require security for future access charges because termination is compulsory. Under the new Rules member customers are to have the choice of paying on-going access charges or paying the termination fee.
2. Under the new Rules, compulsory termination will not be permitted, however Murray Irrigation can require security for on-going access charges in specific circumstances. Murray Irrigation has until the 1st September to comply with this Rule.
3. The 2008/09 termination fee is based on 15 times the shadow access charge, increased for company tax. A shadow access charge is what our access charge per Delivery Entitlement would be if we collected **our** fixed costs from our fixed charges. Murray Irrigation's current charges policy assumes that 60% of our fixed costs are collected from fixed charges and 40% from usage charges. In setting our charges it is also assumed that Murray Irrigation's average annual water sales over five years are 700,000ML per year. Under the Rules the termination fee is 10 times the actual access charge. Murray Irrigation has until the 1st July 2009 to comply with this Rule.
4. The minimum of five Water Entitlements, five Delivery Entitlements and five shares on a landholding, which is in our Constitution is not allowed because it is not a requirement of NSW legislation. Murray Irrigation has until 1st September 2009 to comply with this Rule.

Murray Irrigation has commenced actions to address the Company's policies and procedures in order to comply with the Rules. This will require review and modification to at least the following documents;

- Constitution
- Water Entitlements Contract
- Transfer Rules Policy
- Charges Policy

Copies of these documents are available on our website in the customer area, to access the information you will need to enter your six digit landholding number followed by your PIN number. The rules will also require review and modification of our existing forms and procedures for the sale (transfer of Water Entitlements).

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