



Goulburn-Murray Water

Transformation Procedures

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Introduction

- 1.1 Transformation allows an irrigator to permanently transform their perpetual or ongoing entitlement to a share of water resources under an irrigation right against an irrigation infrastructure operator into a water access entitlement.
- 1.2 The Water Market Rules 2009 were made under the *Water Act 2007* (Cth). The Rules require irrigation infrastructure operators to facilitate and not prevent or unreasonably delay transformation of all or part of an irrigation right, where requested by an irrigator.
- 1.3 These Transformation Procedures set out the process for transformation of irrigation rights by Goulburn-Murray Water (**G-MW**). They also explain the process regarding delivery of water in cases where irrigation rights have been transformed.
- 1.4 All enquiries in relation to these Transformation Procedures should be directed to David Morrison at G-MW's Tatura Office on telephone number: (03) 5833 5530 or e-mail: davidm@g-mwater.com.au

Definitions

2.1 In these Procedures, the following words have these meanings unless the contrary intention appears:

ACCC means the Australian Competition and Consumer Commission.

Applicant means a party to an Application.

Application means an application, in the form prescribed by G-MW, for a Transformation, which is completed and signed to G-MW's satisfaction and includes all documents required for the application, and in respect of which the relevant Fee has been paid.

Fee means the fee for making an Application for Transformation of an Irrigation Right. At present, G-MW does not intend to set a fee for an Application for Transformation of an Irrigation Right. However, normal applications fees apply for associated applications.

Irrigation Right means a right that:

- (a) a person has against G-MW to receive water for the purpose of irrigation;
- (b) is not:
 - (i) a water access right, including a right conferred by or under a law of a state to hold or take water from a water resource, including stock, domestic and riparian rights;
 - (ii) a water delivery right, that is the right to have water delivered by an irrigation infrastructure operator.

Procedures mean these Transformation Procedures.

Transformation has the same meaning as 'transformation arrangements' in section 97 of the *Water Act 2007* (Cth), in particular arrangements that would reduce the share component of a water access entitlement of the irrigation infrastructure operator to allow a person's entitlement to water under an irrigation right against the operator to be permanently transformed into a water access entitlement that is held by someone other than the operator.

Water Market Rules means the *Water Market Rules 2009* (Cth).

Water Share means an on-going share of a consumptive pool of water in a particular water system.

Legislative Context

- 3.1 Transformation of Irrigation Rights:
 - 3.1.1 must comply with the Water Market Rules; and
 - 3.1.2 requires the approval of G-MW.
- 3.2 The Water Market Rules can be found at:
<http://www.environment.gov.au/water/australia/water-act/market-charge-rules.html>
- 3.3 Further information regarding the Water Market Rules can be obtained from G-MW by contacting David Morrison at G-MW's Tatura Office on telephone number: (03) 5833 5530 or e-mail: davidm@g-mwater.com.au

Details of Irrigation Rights

- 4.1 If a person who holds an Irrigation Right gives written notice to GMW that the person:
- 4.1.1 intends to apply, or applies, for Transformation of the whole or part of the Irrigation Right; and
 - 4.1.2 requests G-MW to provide details of the contractual or other arrangements between G-MW and the person relating to the Irrigation Right, including the number of units or volume of water to which the person is entitled under the Irrigation Right;

G-MW must, within 20 Business Days after receiving the notice, provide those details, including the number of units or volume of water to which the person is entitled in respect of the current financial year, as at the date of receipt of the notice.

- 4.2 Requests for details of an Irrigation Right must be made in the form prescribed by G-MW which may be downloaded from G-MW's website.
<http://www.g-mwater.com.au/applicationtotransformentitlement>

- 4.3 If the holder of an Irrigation Right believes that the details provided by G-MW are not complete or are incorrect and:

- 4.3.1 seeks to reach agreement with G-MW as to the details of the Irrigation Right; and
- 4.3.2 the parties do not agree on the details within 10 Business Days after receipt of the details;

the holder may give notice in writing to G-MW that the holder seeks a formal negotiation of the matter.

Details of Delivery Rights

- 5.1 If a person who holds an Irrigation Right gives written notice to G-MW that the person:
- 5.1.1 intends to apply, or applies, for Transformation of the whole or part of the Irrigation Right; and
 - 5.1.2 requires the continuation of a right to have water delivered by G-MW after Transformation;

G-MW must, within 20 Business Days after receiving the notice, provide details of the contractual terms and conditions between G-MW and the person applicable to the right to have water delivered when the notice is received with such variations (if any) to take effect from the Transformation.

- 5.2 Notices under paragraph 5.1 can be made in the form prescribed by G-MW which may be downloaded from G-MW's website.
<http://www.g-mwater.com.au/applicationtotransformentitlement>

- 5.3 If:

- 5.3.1 a person who gives notice to G-MW under paragraph 5.1 believes that the terms and conditions of the right to have water delivered after Transformation have not been provided by G-MW under paragraph 5.1 or that the details provided are incorrect; or
- 5.3.2 G-MW and the person do not agree on a variation of the terms or conditions within 10 Business Days after G-MW provides written details under paragraph 5.1;

the person may give notice in writing to G-MW that the person seeks a formal negotiation of the matter.

Formal Negotiation

- 6.1 A formal negotiation for the purposes of paragraphs 4.3 and 5.3 is a genuine attempt by G-MW to reach agreement with the person, within 30 Business Days after the giving of notice under paragraphs 4.3 and 5.3, as to the details of the Irrigation Right or the terms and conditions of the right to have water delivered as the case may be.
- 6.2 G-MW will make a genuine attempt to reach agreement within 30 Business Days as to the details of the Irrigation Right or the terms and conditions of the right to have water delivered.
- 6.3 G-MW and the Applicant must pay their own costs associated with the formal negotiation.
- 6.4 If G-MW is unable to reach agreement with the holder of the Irrigation Right as to the details of the Irrigation Right or the terms and conditions of the right to have water delivered, within 30 Business Days after the giving of the notice under paragraphs 4.3 and 5.3, G-MW must, within that period, notify the ACCC of the reasons why G-MW is unable to reach agreement within that period.

Application

- 7.1 An Application is required for Transformation.
- 7.2 Applications may be downloaded from G-MW's website.
<http://www.g-mwater.com.au/applicationtotransformentitlement>
- 7.3 Applications must be signed by:
 - 7.3.1 the Applicant, if the Applicant is the sole holder of the Irrigation Rights; or
 - 7.3.2 all persons who are joint holders of the Irrigation Rights.
- 7.4 Applications must include the following:
 - 7.4.1 the name and address of the Applicant;
 - 7.4.2 the account number, or other details, identifying the Applicant as the holder of an Irrigation Right against G-MW;
 - 7.4.3 the number and type of units, or the volume, of water to which the Applicant is entitled under the whole, or the part, of the Irrigation Right;
 - 7.4.4 if another person holds a legal or equitable interest in the whole or the part of the Irrigation Right, confirmation that that person has given approval to the Application;
 - 7.4.5 whether the Applicant wishes to have, or to continue to have, a right to have water delivered by G-MW after the Transformation, whether or not the Applicant continues to hold an Irrigation Right or a Water Share obtained as a result of the Transformation;
 - 7.4.6 any other information reasonably necessary for the purposes of Transformation.
- 7.5 In cases where the Water Share is to be held by a person other than the Applicant, Applications must also include:
 - 7.5.1 the name of the person who is to hold the Water Share obtained as a result of transformation;
 - 7.5.2 details of any Water Share to which the whole or part of the entitlement that is sought to be appended;
 - 7.5.3 any other information reasonably necessary for the purposes of Transformation.
- 7.6 Applications:
 - 7.6.1 must be accompanied by payment of the Fee applicable to the Application;

7.6.2 must be accompanied by all forms that will need to be submitted to a government agency to carry out the Transformation to which the Application relates, correctly completed and signed by all necessary signatories; and

7.6.3 may be submitted to G-MW at any time.

7.7 G-MW will notify the Applicant if:

7.7.1 the Application is not complete or not in accordance with the Water Market Rules;

7.7.2 the Application is not accompanied by payment of the Fee applicable to the Application; or

7.7.3 there are outstanding charges payable by the Applicant to G-MW in respect of the Irrigation Right;

The notice will specify the further information that is required, the Fee applicable to the Application or the outstanding charges.

7.8 Applications will be considered in the order of receipt by G-MW. However, an Application will not be progressed until G-MW receives the further information, payment of the Fee applicable to the Application, or payment of the outstanding charges as the case may be.

Determination

- 8.1 G-MW must determine each Application and either:
 - 8.1.1 notify the Applicant that the Application is approved; or
 - 8.1.2 notify the Applicant and the ACCC that the Application has not been approved for one or more of the reasons referred to in paragraph 8.5.
- 8.2 G-MW must give notice under paragraph 8.1 within 25 Business Days after the later of:
 - 8.2.1 receipt by G-MW of the Application; or
 - 8.2.2 where G-MW gives notice under paragraph 7.7, receipt by G-MW of the further information, payment of the Fee applicable to the Application, or payment of the outstanding charges.
- 8.3 The period referred to in paragraph 8.2 does not include:
 - 8.3.1 where an Applicant requests details under paragraph 4.2 or gives notice under paragraph 4.1, any period before G-MW and the Applicant agree as to the details of the Irrigation Right and as to the terms and conditions of the right to have water delivered, as the case may be; or
 - 8.3.2 the period required:
 - (a) to obtain the approval of a person holding a legal or equitable interest in the Irrigation Right; or
 - (b) to satisfy a requirement under a law of a state.
- 8.4 To the maximum extent permitted by law, G-MW may, at its discretion, approve an Application (including by imposing conditions).
- 8.5 To the maximum extent permitted by law, G-MW may, at its discretion, refuse an Application, including:
 - 8.5.1 where the Application is incomplete or not in accordance with the Water Market Rules;
 - 8.5.2 where the Application is not accompanied by payment of the relevant Fee applicable to the Application;
 - 8.5.3 where there are outstanding charges payable by the Applicant to G-MW;
 - 8.5.4 where a person who holds a legal or equitable interest in the Irrigation Rights has refused to give approval to the Transformation;
 - 8.5.5 where the Applicant does not provide the security required under paragraph 10.1;

- 8.5.6 where a requirement of a law (including a requirement for approval by any relevant Government Agency) cannot be satisfied;
- 8.5.7 where the Transformation would, in the reasonable opinion of G-MW, contravene G-MW's legal obligations; or
- 8.5.8 where either the Applicant or the person who is to hold the Water Share obtained as a result of the Transformation will, after Transformation, have a right to have water delivered by G-MW but has not installed a meter to measure the water delivered from G-MW's works.

Implementation

- 9.1 An approved Transformation takes effect on the date on which the relevant Water Share is recorded by the Victorian Water Registrar.
- 9.2 For an approved Transformation:
 - 9.2.1 G-MW must cancel the relevant Irrigation Rights of the Applicant;
 - 9.2.2 the Applicant may, at his, her or its discretion, elect to terminate the delivery of water by G-MW after Transformation.

Security

10.1 Where an Applicant applies for Transformation and will, after Transformation, either:

10.1.1 have a right to have water delivered by G-MW but no Irrigation Rights; or

10.1.2 have a right to have a volume of water delivered by G-MW in respect of the current financial year (disregarding any constraints on delivery) which is more than 5 times the volume of water that the Applicant is entitled to receive in respect of that year under the Irrigation Rights held by the Applicant;

G-MW may, to the maximum extent permitted by law, require security to be given by the Applicant for the payment of charges for access to G-MW's works for the delivery of water to the Applicant after Transformation.

10.2 G-MW must not require security to be given by the Applicant under paragraph 10.1 in an amount that, at the time the security is given:

10.2.1 exceeds the amount that, under the *Water Charge (Termination Fees) Rules 2009* (Cth), would be payable to G-MW for the termination of the delivery entitlements held by the Applicant at that time; or

10.2.2 if there is no such amount, exceeds the amount of the "total network access charge" within the meaning of the *Water Charge (Termination Fees) Rules 2009* (Cth) payable to G-MW in respect of the financial year in which the security is given.

10.3 G-MW must not refuse to accept security required under paragraph 10.1 by reason only of the form in which it is offered if an Applicant offers it in one or more of the following forms:

10.3.1 a charge over an Irrigation Right that the Applicant continues to hold;

10.3.2 a charge over an unencumbered Water Share, or an unencumbered part thereof, obtained by the Applicant as the result of the Transformation of part of an Irrigation Right;

10.3.3 a charge over an unencumbered Water Share, or an unencumbered part thereof, held by the Applicant;

10.3.4 a guarantee given by an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth);

10.3.5 a deposit lodged with G-MW; or

10.3.6 any other form of security agreed upon by G-MW and the Applicant.