

# Transfer Rules

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## Contents

|  |           |
|--|-----------|
| <b>Part A: General</b> .....                       | <b>4</b>  |
| 1. Introduction .....                              | 4         |
| 2. Guide to this document .....                    | 4         |
| 3. Definitions and interpretation .....            | 5         |
| 4. Transactions generally .....                    | 7         |
| 5. Applications .....                              | 8         |
| 6. Company does not give advice.....               | 8         |
| 7. Limitation of liability .....                   | 8         |
| 8. Costs and outlays .....                         | 9         |
| 9. Delivery .....                                  | 9         |
| 10. Change or suspension of laws.....              | 9         |
| <b>Part B: Annual Transfers</b> .....              | <b>10</b> |
| 11. Types of annual transfers .....                | 10        |
| 12. Single water allocation accounts .....         | 10        |
| 13. Prohibited annual transfers .....              | 12        |
| 14. Deadlines .....                                | 12        |
| 15. Determination.....                             | 13        |
| 16. Implementation .....                           | 13        |
| <b>Part C: Leases</b> .....                        | <b>15</b> |
| 17. Term.....                                      | 15        |
| 18. Prohibited leases .....                        | 15        |
| 19. Deadlines .....                                | 15        |
| 20. Determination.....                             | 15        |
| 21. Implementation .....                           | 17        |
| 22. Termination .....                              | 17        |
| 23. Charges .....                                  | 18        |
| <b>Part D: Permanent transfers</b> .....           | <b>19</b> |
| 24. Internal permanent transfers.....              | 19        |
| 25. Types of external permanent transfers in ..... | 19        |
| 26. Prohibited internal permanent transfers.....   | 19        |
| 27. Deadlines .....                                | 20        |
| 28. Determination.....                             | 20        |
| 29. Implementation .....                           | 21        |
| 30. Security .....                                 | 22        |
| <b>Part E: Transformation</b> .....                | <b>24</b> |
| 31. Information .....                              | 24        |
| 32. Types of transformation .....                  | 24        |
| 33. Non-complying transformation.....              | 25        |
| 34. Details of irrigation rights .....             | 25        |
| 35. Details of water delivery rights .....         | 26        |
| 36. Formal negotiation .....                       | 26        |
| 37. Application .....                              | 27        |

|     |                      |    |
|-----|----------------------|----|
| 38. | Determination.....   | 28 |
| 39. | Implementation ..... | 30 |
| 40. | Security .....       | 30 |
| 41. | Delivery .....       | 32 |
| 42. | Tagging.....         | 32 |

# Part A: General

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## 1. Introduction

- 1.1 This document contains the Transfer Rules of the Company that are binding under the Water Entitlements Contract and Water Delivery Contract (together, the **Contract**). A Customer's Contract binds them to these Rules.
- 1.2 These Rules:
- (1) apply to all Transactions;
  - (2) should be read in conjunction with, and are subject to:
    - (a) the Contract;
    - (b) any relevant Rules;
    - (c) the *Water Act 2007* (Cth) and any Regulations, water market rules, and water charge rules made under it;
    - (d) all other relevant laws, regulations, orders, and Licences; and
  - (3) may also be affected by rules or processes stipulated by the relevant Minister or Government Agencies.
- 1.3 The documents referenced in rules 1.2(2) and 1.2(3) relate to these Rules as follows:
- (1) all of the documents, other than any other relevant Rules, take precedence over these Rules to the extent necessary to resolve any inconsistency; and
  - (2) to the extent that there is any inconsistency between a provision in these Rules and a provision in any other relevant Rules, a specific provision takes precedence over a general provision.
- 1.4 These Rules must be published on the Company's web site ([www.mirrigration.com.au](http://www.mirrigration.com.au)).<sup>1</sup> If a person requests a copy of these Rules, the Company must give a copy of these Rules to that person as soon as practicable, but in any case within 30 days after receiving the request.<sup>2</sup> If these Rules change, the Company must, as soon as practicable, but in any case within 30 days after the change, publish the new Rules on the Company's web site<sup>3</sup> and send an e-mail to [watermarkets@mdba.gov.au](mailto:watermarkets@mdba.gov.au) containing a hyperlink to the Rules on the Company's web site.<sup>4</sup>

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## 2. Guide to this document

- 2.1 These Rules are set out in separate Parts.
- 2.2 Part A, which contains definitions and general rules, always applies.
- 2.3 Parts B to E apply as follows:
- (1) Part B applies only to Annual Transfers and Single Water Allocation Accounts;

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<sup>1</sup> Subsection 12.47(4) of the Water Trading Rules.

<sup>2</sup> Subsection 12.47(3) of the Water Trading Rules.

<sup>3</sup> Paragraph 12.47(4)(b) of the Water Trading Rules.

<sup>4</sup> Paragraph 12.47(5)(b) of the Water Trading Rules.

- (2) Part C applies only to Leases;
- (3) Part D applies only to Permanent Transfers; and
- (4) Part E applies only to Transformation.

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### 3. Definitions and interpretation

3.1 In these Rules, the following words have these meanings unless the contrary intention appears:

- (1) **Annual Transfer** means an Internal Annual Transfer or an External Annual Transfer;
- (2) **Applicant** means a party to an Application;
- (3) **Application** means an application for a Transaction, which is completed to the Company's satisfaction, which includes all documents required for the application, and in respect of which the relevant Charge has been paid;
- (4) **Corresponding Access Licence** means the category of Access Licence held by the Company which corresponds with the relevant category of Water Entitlements held by the Customer;
- (5) **Corresponding Shares** means:
  - (a) in relation to General Security Water Entitlements of category 1 (as defined in Schedule 2 of the Water Entitlements Contract) – B class shares in the Company;
  - (b) in relation to High Security Water Entitlements of category 3 (as defined in Schedule 2 of the Water Entitlements Contract) – A class shares in the Company or C class shares in the Company, at the election of the transferor named in the Application;
  - (c) in relation to High Security Water Entitlements of category 5 (as defined in Schedule 2 of the Water Entitlements Contract) – B class shares in the Company; and
  - (d) in relation to High Security Water Entitlements of category 6 or 7 (as defined in Schedule 2 of the Water Entitlements Contract) – C class shares in the Company,and **Corresponding Water Entitlements** has a corresponding meaning in relation to shares in the Company;
- (6) **Dealing Principles** means the *Access Licence Dealing Principles Order 2004* (NSW);
- (7) **External Annual Transfer** means an External Annual Transfer In or an External Annual Transfer Out by one of the dealings set out in rules 11.1(2), (3) and (4);
- (8) **External Annual Transfer In** means an assignment dealing (as defined in the Act) to an Access Licence held by the Company and crediting of Water Allocation to

Water Allocation Account of the Applicant who is the transferee named in the Application;

- (9) **External Annual Transfer Out** means an assignment dealing (as defined in the Act) from an Access Licence held by the Company and debiting of Water Allocation from a Water Allocation Account of the Applicant who is the transferor named in the Application;
- (10) **External Permanent Transfer In** means an arrangement set out in rule 25 to allow an Applicant to be issued Water Entitlements under a Water Entitlements Contract;
- (11) **Internal Annual Transfer** means the debiting of Water Allocation from the Water Allocation Account of the Applicant who is the transferor named in the Application and the crediting of Water Allocation to the Water Allocation Account of the Applicant who is transferee named in the Application;
- (12) **Internal Permanent Transfer** means:
- (a) the termination of Water Entitlements held by the Applicant who is the transferor named in the Application and issue of Water Entitlements to the Applicant who is the transferee named in the Application who will hold the Water Entitlements under a Water Entitlements Contract, and which does not have the effect of increasing or reducing the share component of an Access Licence of the Company;
  - (b) either:
    - (i) the termination of Delivery Entitlements associated with one point of supply and issue of Delivery Entitlements with another point of supply, to be held under a Water Delivery Contract;<sup>5</sup> or
    - (ii) the termination of Delivery Entitlements held by the Applicant who is the transferor named in the Application and issue of Delivery Entitlements to the Applicant who is the transferee named in the Application who will hold the Delivery Entitlements under a Water Delivery Contract; or
  - (c) a transfer of Shares by the Applicant who is the transferor named in the Application to the Applicant who is the transferee named in the Application;
- (13) **Irrigation Right** means a right that:
- (a) a person has against the Company to receive water (such as a Water Entitlement);
  - (b) is not a right conferred by or under a law of a state to do either or both of the following:
    - (i) to hold water from a water resource;
    - (ii) to take water from a water resource; (such as an Access Licence); and
  - (c) is not a right to have water delivered by the Company (such as a Right of Access);
- (14) **Lease** means an arrangement between a Customer (lessor) and another person who has a Water Allocation Account (lessee) during which the lessee is taken, for the purposes set out in rule 21.3, to be the holder of the lessor's Water Entitlements which are the subject of the arrangement;

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<sup>5</sup> This means, for example, that an Applicant may apply for an Internal Permanent Transfer of Delivery Entitlements between different Landholdings of the Applicant.

- (15) **Murrumbidgee Regulated River Water Source** has the meaning given to that term in the Water Sharing Plan;
- (16) **Part A** means rules 1 to 10;
- (17) **Part B** means rules 11 to 16;
- (18) **Part C** means rules 17 to 23;
- (19) **Part D** means rules 24 to 30;
- (20) **Part E** means rules 31 to 42;
- (21) **Permanent Transfer** means an Internal Permanent Transfer or an External Permanent Transfer In;
- (22) **Single Water Allocation Account** means:
- (a) an arrangement between two or more Customers as described in rule 12.1; or
  - (b) the Water Allocation Account nominated by the Customers in the Application for the purposes of rule 12.1,
- as the context requires;
- (23) **Specific Purpose Access Licence** means a major utility Access Licence, a local water utility Access Licence, a domestic and stock Access Licence, an Access Licence of a subcategory of Access Licence, a domestic and stock (conveyance) Access Licence, a salinity and water table management Access Licence, unregulated river (regulated supply—local water utility) Access Licence, unregulated river (regulated supply) Access Licence, each as defined in the Act;<sup>6</sup>
- (24) **Transaction** means an Annual Transfer, Single Water Allocation Account, Lease, Permanent Transfer, or Transformation;
- (25) **Transformation** has the same meaning in these Rules as transformation arrangements has in the *Water Act 2007* (Cth) and includes the arrangements set out in rule 32;
- (26) **Transformed Water Allocation** means the water allocation (as defined in the Act or interstate equivalent) to which the Customer is entitled from time to time under an Access Licence (or interstate equivalent);
- (27) **Water Act** means the *Water Act 2007* (Cth) including any amendments from time to time;
- (28) **Water Market Rules** means the *Water Market Rules 2009* (Cth);
- (29) **Water Sharing Plan** means the *Water Sharing Plan for the Murrumbidgee Regulated River Water Source 2016* (NSW); and
- (30) **Water Trading Rules** means the Water Trading Rules in Chapter 12 of the *Basin Plan 2012* (Cth).

3.2 In these Rules, unless the contrary intention appears, a word or phrase defined in the Water Entitlements Contract or Water Delivery Contract has the same meaning in these Rules.

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#### 4. Transactions generally

<sup>6</sup> Dictionary of the Act and regulation 5 of the *Water Management (General) Regulation 2018* (NSW)

- 4.1 Transactions:
- (1) must comply with these Rules; and
  - (2) are conditional on the approval of the Company.
- 4.2 The Company may, at its discretion, from time to time:
- (3) embargo Transactions other than Transformation and Internal Permanent Transfers of Delivery Entitlements;<sup>7</sup> or
  - (4) make exceptions to these Rules, other than with respect to Transformation and Internal Permanent Transfers of Delivery Entitlements, on a case-by-case basis.

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## **5. Applications**

- 5.1 An Application is required for a Transaction.
- 5.2 An Application, other than an Application in respect of Transformation, must be in the form prescribed by the Company and be duly executed by all Applicants.
- 5.3 Application forms may be downloaded from the Company's web site ([www.mirrigation.com.au](http://www.mirrigation.com.au)) or obtained at the Company's office during office opening hours.
- 5.4 Applications must be accompanied by payment of the relevant Charges applicable to the Application.
- 5.5 Applications in respect of a Lease or Permanent Transfer must, unless the Company agrees otherwise, be accompanied by:
- (1) results of searches of the Personal Property Securities Register for security interests granted by the Customer, carried out in respect of the Customer's name, ACN (if the Customer is a company) and ABN (if applicable); and
  - (2) a search of the Torrens Titles Register in respect of each of the Customer's Landholdings or, in the case of an Internal Permanent Transfer of Delivery Entitlements, each of the Customer's Landholdings associated with the Delivery Entitlements.
- 5.6 The terms of an Application bind the Applicants.

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## **6. Company does not give advice**

- 6.1 The Company does not give advice to the Applicant about these Rules, or anything connected with the subject matter of these Rules.
- 6.2 The Applicant should seek his, her or its own professional advice about these Rules and anything connected with these Rules, including legal, taxation, accounting, and financial advice.

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## **7. Limitation of liability**

- 7.1 The Company may change or reverse a determination with respect to an Application or a Transaction if a decision of the relevant Minister or a Government Agency

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<sup>7</sup> All Conversions are currently embargoed by the relevant Minister for the purposes of the Water Sharing Plan.

(including a change to, or reversal of, a previous decision) affects the Application or the Transaction.

- 7.2 Without limiting the Water Entitlements Contract or Water Delivery Contract, to the maximum extent permitted by law, all liability for any determination of the Company with respect to an Application or a Transaction or the determination or decision of the Company, the relevant Minister or a Government Agency with respect to an Application or a Transaction is excluded.

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## **8. Costs and outlays**

- 8.1 The Applicants must pay, and indemnify the Company against, all Costs and outlays (including stamp duty and government imposts) connected with the negotiation, preparation, execution, stamping and registration of Transactions other than Transformations.

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## **9. Delivery**

- 9.1 An Applicant will have no right to the delivery of any water, except under a Water Delivery Contract between the Applicant and the Company.

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## **10. Change or suspension of laws**

- 10.1 Without limiting the Company's rights under the Water Entitlements Contract or Water Delivery Contract, the Company may suspend or vary the operation of anything in these Rules that is affected by or is inconsistent with a new Legal Requirement, a change to a Legal Requirement (including its interpretation) or the suspension or reinstatement of a Legal Requirement.

## Part B: Annual Transfers

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### 11. Types of annual transfers

- 11.1 An Annual Transfer means any of the following arrangements provided that it is permitted by law:
- (1) **(internal annual transfers)** an Internal Annual Transfer;
  - (2) **(external annual transfers – same water source)**<sup>8</sup> an External Annual Transfer where the other party holds an Access Licence in the Murrumbidgee Regulated River Water Source;
  - (3) **(external annual transfers – different NSW water source)**<sup>9</sup> an External Annual Transfer where the other party holds an Access Licence with respect to a water source other than the Murrumbidgee Regulated River Water Source; or
  - (4) **(external annual transfers – different state)**<sup>10</sup> an External Annual Transfer where the other party holds from an interstate Access Licence equivalent;

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### 12. Single water allocation accounts

- 12.1 Any two or more Customers who are eligible under rule 12.2 may make an Application for:
- (1) an Internal Annual Transfer of all Water Allocation credited to each Applicant's Water Allocation Account as at the date the Application is approved; and
  - (2) an Internal Annual Transfer to be carried out automatically of all Water Allocation subsequently credited to each Applicant's Water Allocation Accounts during a specified period concluding at the end of a Water Year,  
  
to the Water Allocation Account of one of the Applicants who is the transferee nominated in the Application.
- 12.2 Two or more Customers are eligible to make an Application for a Single Water Allocation Account if:
- (1) the Customers are treated as a single entity for the purposes of assessment of income tax;
  - (2) the Customers are treated as a single business entity under one registered Australian Business Number; or
  - (3) the Customers have established a share-farming relationship to the satisfaction of the Company.
- 12.3 By submitting to the Company an Application for a Single Water Allocation Account, each Applicant acknowledges that:
- (1) the Applicants are responsible for any arrangements that they make between themselves with respect to the Application for, operation of, and termination of, the Single Water Allocation Account; and

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<sup>8</sup> Sections 71T of the Act, clause 17 of the Dealing Principles and Part 10 of the Water Sharing Plan.

<sup>9</sup> Sections 71T of the Act, clause 17 of the Dealing Principles and Part 10 of the Water Sharing Plan.

<sup>10</sup> Sections 71V of the Act, clause 19 of the Dealing Principles and Part 10 of the Water Sharing Plan.

- (2) all limitations of liability and indemnities set out in the Water Entitlements Contract and Water Delivery Contract in favour of the Company apply to the Single Water Allocation Account.
- 12.4 An Application for a Single Water Allocation Account must specify the proportion of the Water Allocation credited to it to which each Customer is entitled if the Customer exits the Single Water Allocation Account or it is terminated (Final Proportion).
- 12.5 The term of a Single Water Allocation Account commences on the date on which it is registered by the Company after the Application is approved.
- 12.6 All of the Customers participating in a Single Water Allocation Account may jointly make an Application for the termination of the Single Water Allocation Account.
- 12.7 Any Customer participating in a Single Water Allocation Account may make an Application to exit the Single Water Allocation Account.
- 12.8 The Company may approve or refuse (at its discretion) an Application for termination or exit. Approval may be given subject to fulfilment of specified conditions.
- 12.9 A Customer will exit a Single Water Allocation Account:
- (1) if an Application by the Customer to exit the Single Water Allocation Account is approved under rule 12.7 – on the later of the date nominated in the Application or the date of approval; or
- (2) if the Customer ceases to be eligible under rule 12.2 to participate in the Single Water Allocation Account – on the date on which the Customer's eligibility ceases.
- 12.10 A Single Water Allocation Account terminates on the later of the date nominated in the Application for termination, or the date on which the Application for termination is approved by the Company (unless the Single Water Allocation Account is terminated earlier by the Company).
- 12.11 Upon termination of a Single Water Allocation Account, all of the Water Allocation will be debited from it and credited to the respective Water Allocation Accounts of the Customers in their Final Proportions.
- 12.12 If a Customer exits a Single Water Allocation Account:
- (1) the Customer's Final Proportion of the Water Allocation in it will be debited and credited to that Customer's Water Allocation Account; and
- (2) corresponding adjustments will be made to the remaining Customers' Final Proportions.
- 12.13 A Customer named in a Single Water Allocation Account is authorised to complete an Annual Transfer in respect of all Water Allocation held within the Single Water Allocation Account, irrespective of whether that Water Allocation is allocated to his, her, or its Water Entitlements. However, Customers are not authorised to complete a Permanent Transfer or an External Permanent Transfer Out of Water Entitlements that are owned by another Customer named in the Single Water Allocation Account.
- 12.14 If an Event of Default occurs in relation to a Customer participating in a Single Water Allocation Account, then, without limiting the Company's rights under the Water Entitlements Contract or Water Delivery Contract:
- (1) that Customer ceases to be a party to the Single Water Allocation Account; and

- (2) the volume of Water Allocation according to the Customer's Final Proportion will be debited from the Single Water Allocation Account and credited to the Customer's Water Allocation Account.

12.15 If the Customer removed from a Single Water Allocation Account pursuant to clause 12.14(1) is the Primary Applicant, then the Single Water Allocation Account will be terminated, in which case all of the Water Allocation will be debited from it and credited to the respective Water Allocation Accounts of those Applicants in their Final Proportions.

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### 13. Prohibited annual transfers

13.1 In relation to Water Allocation determined in respect of category 5 (high security (domestic and stock)) Water Entitlements or category 6 (high security (non-potable domestic)) Water Entitlements:

- (1) Internal Annual Transfers are permitted provided that the Water Allocation must be used only for domestic and stock purposes; and
- (2) External Annual Transfers are prohibited.

13.2 Certain Annual Transfers are prohibited by the Surplus Water Rules.

13.3 An Annual Transfer is, by definition and for the purposes of this clause, a Transaction in respect of Water Allocation and it does not apply in respect of Delivery Entitlements.

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### 14. Deadlines

14.1 Applications for Internal Annual Transfers in respect of a Water Year must be received by the Company by 30 June in that Water Year unless a different date is determined by the Company.

14.2 Applications for External Annual Transfers in respect of a Water Year must be received by the Company by the following dates, unless a different date is determined by the Company:<sup>11</sup>

- (1) **(same water source – high security)** where the other party holds an Access Licence in the Murrumbidgee Regulated River Water Source and the Access Licence from which water allocation is to be assigned is a regulated river (high security) Access Licence – 31 May in that Water Year;<sup>12</sup>
- (2) **(same water source – general security)** where the other party holds an Access Licence in the Murrumbidgee Regulated River Water Source and the Access Licence from which water allocation is to be assigned is a regulated river (general security) Access Licence – 31 May in that Water Year;<sup>13</sup>
- (3) **(different NSW water source)** where the other party holds an Access Licence with respect to a water source other than the Murrumbidgee Regulated River Water Source – 31 May in that Water Year;<sup>14</sup> and
- (4) **(different state)** where the other party holds an interstate Access Licence equivalent – 30 April in that Water Year.<sup>15</sup>

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<sup>11</sup> The relevant Minister may make orders from time to time changing the relevant deadlines. While such an order is in force, the deadlines under the order will apply. When no such order is in force, the relevant deadlines under the Water Sharing Plan will apply, as set out in rule 14.2.

<sup>12</sup> Part 10 of the Water Sharing Plan.

<sup>13</sup> Part 10 of the Water Sharing Plan.

<sup>14</sup> Part 10 of the Water Sharing Plan.

<sup>15</sup> Part 10 of the Water Sharing Plan.

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## **15. Determination**

- 15.1 The Company may approve or refuse (at its discretion) each Application. Approval may be given subject to fulfilment of specified conditions.
- 15.2 To the maximum extent permitted by law, the Company may, at its discretion, delay the processing of an Application, including:
- (1) where a requirement of a law (including but not limited to the Water Trading Rules and the Water Act) cannot be satisfied or has not yet been satisfied; or
  - (2) where the Annual Transfer would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement.
- 15.3 To the maximum extent permitted by law, the Company may, at its discretion, refuse an Application, including:
- (3) where the Application is incomplete or not in accordance with these Rules;
  - (4) where the Application is not accompanied by payment of the relevant Charge applicable to the Application;
  - (5) where there are outstanding Charges payable by an Applicant to the Company and arrangements satisfactory to the Company have not been made to settle those outstanding Charges;
  - (6) where an Applicant has not fully repaid water debts or water borrowings;
  - (7) where a person who holds a legal or equitable interest in the Water Allocation the subject of the Application, has refused to give approval to the Annual Transfer;
  - (8) where a requirement of a law (including a requirement for approval by any relevant Government Agency) cannot be satisfied;
  - (9) where the Annual Transfer would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement; or
  - (10) where there is insufficient Water Allocation credited to the Water Allocation Account of the transferor named in the Application.

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## **16. Implementation**

- 16.1 After an Application for an External Annual Transfer Out is approved:
- (1) the Company will debit the relevant volume of Water Allocation from the Customer's Water Allocation Account and record that volume of Water Allocation separately in the Customer's name; and
  - (2) the Customer may not order any part of the Water Allocation so recorded for delivery under a Water Delivery Contract or make any Application for a Transaction in relation to that volume of Water Allocation.
- 16.2 An approved Annual Transfer takes effect:
- (1) in the case of an Internal Annual Transfer or an External Annual Transfer In, on the date on which it is registered by the Company; and

- (2) in the case of an External Annual Transfer Out, on the date on which it is registered by the Company after it has been registered by the relevant Government Agencies.
- 16.3 In an approved Annual Transfer, the Company must debit or credit Water Allocation from the Water Allocation Account of the relevant Applicant as the case requires.
- 16.4 In an External Annual Transfer In, if the relevant assignment dealing (as defined in the Act) to an Access Licence held by the Company is rejected after the Company has credited Water Allocation to the Water Allocation Account of the Applicant, then, without limiting the Company's rights under any Water Delivery Contract or Water Entitlements Contract, the Company may debit that volume of Water Allocation from the Water Allocation Account of the Applicant.

## Part C: Leases

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### 17. Term

- 17.1 Subject to clause 17.4, there is no minimum or maximum term of a Lease.
- 17.2 Unless the Company approves otherwise, the commencement date of a Lease must be 1 July.
- 17.3 The term of a Lease may be extended, by agreement between the lessor, lessee, and the Company, while the Lease remains in force.
- 17.4 Clause 17.1 does not apply to any Lease that commenced before 1 July 2023.
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### 18. Prohibited leases

- 18.1 Leases of the following are permitted, provided that the Company is satisfied that the Lease will not be in contravention of the Company's Water Access Licences, and the Water Allocation derived from the Water Entitlements is used only for its permitted purpose:
- (1) category 5 (high security (domestic and stock)) Water Entitlements;
  - (2) category 6 (high security (non-potable domestic)) Water Entitlements; and
  - (3) category 7 (high security (towns)) Water Entitlements.
- 18.2 Leases of Surplus Water, as defined in the Surplus Water Rules, is prohibited.
- 18.3 A Lease is, by definition, a Transaction in respect of Water Entitlements and it does not apply in respect of Delivery Entitlements.
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### 19. Deadlines

- 19.1 Applications may be submitted to the Company at any time.
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### 20. Determination

- 20.1 The Company may approve or refuse (at its discretion) each Application. Approval may be given subject to fulfilment of specified conditions.
- 20.2 To the the maximum extent permitted by law, the Company may, at its discretion, delay the processing of an Application, including:
- (1) where a requirement of a law (including but not limited to the Water Trading Rules and the Water Act) cannot be satisfied or has not yet been satisfied; or
  - (2) where the Annual Transfer would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement.
- 20.3 To the maximum extent permitted by law, the Company may, at its discretion, refuse an Application, including:
- (1) where the Application is incomplete or not in accordance with these Rules;

- (2) where the Application is not accompanied by payment of the relevant Charge applicable to the Application;
- (3) where there are outstanding Charges payable by an Applicant to the Company and arrangements satisfactory to the Company have not been made to settle those outstanding Charges;

- (4) where there is insufficient Water Allocation credited to the Water Allocation Account of the lessor to carry out an Annual Transfer under rule 21.5, or that Annual Transfer would not comply with Part B;
- (5) where an Applicant has not fully repaid water debts or water borrowings;
- (6) where a person who holds a legal or equitable interest in the Water Entitlements the subject of the Application, has refused to give approval to the Lease;
- (7) where a requirement of a law (including a requirement for approval by any relevant Government Agency) cannot be satisfied; or
- (8) where the Lease would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement.

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## **21. Implementation**

- 21.1 An approved Lease takes effect on the date on which it is registered by the Company, noting the Term of a Lease must be consistent with clause 17 of these Rules.
- 21.2 During the period for which a Lease has effect, dealings by the lessor in respect of the relevant Water Entitlements, including Transactions, are permitted only with the consent of the lessee.
- 21.3 During the period for which a Lease has effect, the lessee is taken to be the holder of the relevant Water Entitlements for the following purposes:
- (1) the determination of Annual Allocation in respect of the Water Entitlements;
  - (2) compliance with the terms and conditions of the lessor's Water Entitlements Contract, other than payment of Charges in respect of the relevant Water Entitlements;
  - (3) compliance with any notice issued under the lessor's Water Entitlements Contract with which the lessor must comply; and
  - (4) any other purpose determined by the Company, other than payment of Charges in respect of the relevant Water Entitlements.
- 21.4 After the commencement of a Lease, any Carryover Water credited in respect of the leased Water Entitlements will be credited to the lessee's Water Allocation Account.
- 21.5 If a Lease commences partway through a Water Year, the Company will, subject to Part B, debit from the Water Allocation Account of the lessor and credit to the Water Allocation Account of the lessee a volume of Water Allocation equal to the volume of Carryover Water previously credited in respect of the leased Water Entitlements in the Water Year.
- 21.6 After the expiration of a Lease, any Carryover Water credited in respect of the leased Water Entitlements will be credited to the lessor's Water Allocation Account. Any alternate arrangements that differ from this clause 21.6 will need to be managed by the lessor and the lessee.

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## **22. Termination**

- 22.1 A Lease may be terminated before expiry of its term only by:
- (1) agreement between the lessor, lessee and the Company, in which case termination takes effect on the next 30 June occurring thereafter; or

- (2) by notice from the Company to the lessor and lessee at any time if the Company is satisfied that the lessee has failed to comply with his, her or its obligations under rule 21.3 or the parties are otherwise in breach of these Rules, in which case termination takes effect on the date stated in the notice.

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## **23. Charges**

- 23.1 The lessor must pay all Charges in respect of Water Entitlements subject to a Lease.

## Part D: Permanent transfers

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### 24. Internal permanent transfers

- 24.1 Water Entitlements are transferable by an Internal Permanent Transfer, with the transferor named in the Application required to either:
- (1) transfer a number of Corresponding Shares (other than C class shares in the Company) that is either equal to, or less than, the Water Entitlements being transferred, or
  - (2) transfer the Water Entitlements without transferring any number of Corresponding Shares.
- 24.2 Shares are transferable by an Internal Permanent Transfer only if an equal or greater number of Corresponding Water Entitlements is also transferred by an Internal Permanent Transfer to the transferee named in the Application for the Internal Permanent Transfer of Shares.
- 24.3 If after an Internal Permanent Transfer the transferor holds by number more Corresponding Shares than equivalent Water Entitlements, then the excess Corresponding Shares will be forfeited in accordance with the Company's Constitution.

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### 25. Types of external permanent transfers in

- 25.1 An External Permanent Transfer In means any of the following arrangements, provided that it is permitted by law:
- (1) **(transfers in – same water source)**<sup>16</sup> an arrangement that would reduce the share component of an Access Licence held by someone other than the Company to allow the share component to be permanently transferred to an Access Licence that is held by the Company;
  - (2) **(transfers in – different NSW water source)**<sup>17</sup> an arrangement that would cancel an Access Licence held by someone other than the Company to allow an Access Licence with a share component specifying a different water source to be issued to the Company; or
  - (3) **(transfers in – different state)**<sup>18</sup> an arrangement that would cancel a right conferred by a law of a state to hold or take water from a water resource in another state held by someone other than the Company to allow an Access Licence to be issued to the Company.

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### 26. Prohibited internal permanent transfers

- 26.1 Internal Permanent Transfers of category 7 (high security (towns)) Water Entitlements are permitted unless they are otherwise prohibited under the Dealing Principles or the Water Sharing Plan.
- 26.2 Internal Permanent Transfers of category 5 (high security (domestic and stock)) Water Entitlements and category 6 (high security (non-potable domestic)) Water Entitlements are permitted provided that the Water Allocation derived from those Water Entitlements must be used only for domestic and stock purposes.

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<sup>16</sup> Section 71Q of the Act, clause 14 of the Dealing Principles and Part 10 of the Water Sharing Plan.

<sup>17</sup> Section 71R of the Act, clause 15 of the Dealing Principles and Part 10 of the Water Sharing Plan.

<sup>18</sup> Section 71U of the Act, clause 18 of the Dealing Principles and Part 10 of the Water Sharing Plan.

26.3 Certain Internal Permanent Transfers are prohibited by the Surplus Water Rules.

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## **27. Deadlines**

27.1 Applications may be submitted to the Company at any time.

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## **28. Determination**

28.1 The Company may approve or refuse (at its discretion) each Application, provided that the Company must not unreasonably restrict the Internal Permanent Transfer of Delivery Entitlements.<sup>19</sup> Approval may be given subject to fulfilment of specific conditions.

28.2 To the maximum extent permitted by law, the Company may, at its discretion, delay the processing of an Application, including:

- (1) where a requirement of a law (including but not limited to the Water Trading Rules and the Water Act) cannot be satisfied or has not yet been satisfied; or
- (2) where the Annual Transfer would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement.

28.3 To the maximum extent permitted by law, the Company may, at its discretion, refuse an Application, including:

- (1) where the Application is incomplete or not in accordance with these Rules;
- (2) where the Application is not accompanied by payment of the relevant Charge applicable to the Application;
- (3) where there are outstanding Charges payable by an Applicant to the Company and arrangements satisfactory to the Company have not been made to settle those outstanding Charges;
- (4) where there is insufficient Water Allocation in the Water Allocation Account of the transferor named in the Application to carry out an Annual Transfer under rule 29.2(1), or that Annual Transfer would not comply with Part B;
- (5) where an Applicant has not fully repaid water debts or water borrowings;
- (6) where a person who holds a legal or equitable interest in the Water Entitlements, Delivery Entitlements or Shares the subject of the Application, has refused to give approval to the Permanent Transfer;
- (7) where the relevant Applicant does not provide the security required under rule 30;
- (8) where an Applicant applies for Corresponding Shares and the Company does not agree to issue them;
- (9) where an Applicant applies for Rights of Access and the Company does not agree to issue them;
- (10) where a requirement of a law (including a requirement for approval by any relevant Government Agency) cannot be satisfied;
- (11) where the Permanent Transfer would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement; or

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<sup>19</sup> Section 12.28 of the Water Trading Rules.

- (12) where an Applicant applies for an Internal Permanent Transfer of Delivery Entitlements and the Company, acting reasonably, restricts the transfer, having taken into account factors which include the following:
- (a) overall capacity in the Company's irrigation network;
  - (b) capacity in the parts of the Company's irrigation network to which water would potentially be delivered under the transferred Delivery Entitlements;
  - (c) reconfiguration or decommissioning work in the parts of the Company's irrigation network to which water would potentially be delivered under the transferred Delivery Entitlements;
  - (d) connectivity between specific parts of the Company's irrigation network relevant to the proposed transfer;
  - (e) payment of fees or charges for access, changing access, or terminating or surrendering access, to the Company's irrigation network;
  - (f) the number of Delivery Entitlements reasonably required to irrigate a person's Landholding for both current and expected future water use;
  - (g) the net costs to the Company of assessing and giving effect to the transfer of the Delivery Entitlements;
  - (h) the provision of reasonable security to the Company for the payment of fees or charges for access to the Company's irrigation network by the person acquiring the Delivery Entitlements;
  - (i) whether the proposed transfer would result in the Delivery Entitlements being held by a person who does not own or occupy land in the area serviced by the Company;<sup>20</sup>

28.4 If the Company decides to restrict an Internal Permanent Transfer of Delivery Entitlements within its irrigation network, it must notify each party to the transfer in writing of the decision and the reasons for the decision (including findings on material questions of fact and references to the evidence or other material on which those findings were based) as soon as practicable, but in any case within 30 days, after the decision is made.<sup>21</sup>

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## 29. Implementation

29.1 An approved Permanent Transfer takes effect:

- (1) in the case of an Internal Permanent Transfer, on the date on which it is registered by the Company; and
- (2) in the case of an External Permanent Transfer In, on the date on which it is registered by the Company after it has been registered by the relevant Government Agencies.

29.2 An approved Internal Permanent Transfer of Water Entitlements or Delivery Entitlements takes effect as follows:

- (1) the rights to any Annual Allocations made in respect of the Water Entitlements the subject of the Internal Permanent Transfer that are made prior to approval

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<sup>20</sup> Sections 12.28 and 12.29 of the Water Trading Rules. This does not preclude the Company from taking into account factors of the types specified in rules 28.2(1)-(11) or other factors. For example, the Company may take into account whether an Applicant who is the proposed transferee of Delivery Entitlements has installed a Meter to measure the water delivered from the Company's Works.

<sup>21</sup> Section 12.30 of the Water Trading Rules.

of the Internal Permanent Transfer will remain with the transferor, unless the parties indicate otherwise;

- (2) the rights to any Carryover Water connected to the Water Entitlements the subject of an approved Internal Permanent Transfer will remain with the transferor;
- (3) the Water Entitlements or Delivery Entitlements being transferred by the transferor will be terminated; and
- (4) the Water Entitlements or Delivery Entitlements to be held by the transferee will be issued,

on and subject to the terms and conditions of the relevant Water Entitlements Contracts and Water Delivery Contracts.

29.3 Subject to rule 29.2(1), Internal Permanent Transfers do not affect Water Allocation already credited to a Water Allocation Account before the Internal Permanent Transfer takes effect. Part B applies to transfers of Water Allocation.

29.4 In an approved External Permanent Transfer In, the Company:

- (1) must issue Water Entitlements to the relevant Applicant;
- (2) may, at its discretion, agree to issue Corresponding Shares to the relevant Applicant if the relevant Applicant applies for Corresponding Shares; and
- (3) may, at its discretion, agree to issue Rights of Access to the relevant Applicant if the relevant Applicant applies for Rights of Access.

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## 30. Security

30.1 Where an Applicant applies for a Permanent Transfer and will, after the Permanent Transfer, either:

- (1) hold a Right of Access but no Water Entitlements; or
- (2) hold at least five times more Delivery Entitlements than Water Entitlements,

the Company may, to the maximum extent permitted by law, require security to be given by the Applicant for the payment of Charges for access to the Company's Works for the delivery of water to the Applicant after the Permanent Transfer.

30.2 The Company must not require security to be given by the Applicant under rule 30.1 in an amount that, at the time the security is given:

- (1) exceeds the amount that, under Part 10 of the *Water Charge Rules 2010* (Cth), would be payable to the Company for the termination of the Rights of Access held by the Applicant at that time; (this will generally be the amount of the termination fee that would be payable to the Company for the termination of all of the Rights of Access held by the Applicant at that time); or
- (2) if there is no such amount, exceeds the amount calculated in accordance with Part 10 of the *Water Charge Rules 2010* (Cth) payable to the Company in respect of the financial year in which the security is given.

30.3 The Company may refuse to accept security required under rule 30.1 unless the Applicant offers it in one or more of the following forms:

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

- (2) a deposit lodged with the Company (**Deposit**); or
  - (3) any other form of security agreed upon by the Company and the Applicant.
- 30.4 If the security given by the Applicant is a Bank Guarantee, the Bank Guarantee must:
  - (1) be unconditional; and
  - (2) not have an expiry date, except with the Company's consent.
- 30.5 If the security given by the Applicant is a Deposit, the Company must (and the Applicant authorises the Company to) deposit the Deposit in an interest-bearing cash management account.
- 30.6 The Company must pay interest earned on the Deposit to the Applicant periodically as determined by the Company.
- 30.7 For the purposes of this rule 30, a reference to interest means interest actually earned on the Deposit less all duty, bank charges and any other money properly payable in respect of the investment of the Deposit.
- 30.8 The Company may apply the security given by the Applicant in accordance with rule 30.1 to any outstanding Charges if they remain unpaid for 14 days after they fall due or upon termination of the Applicant's Rights of Access or Water Delivery Contract.
- 30.9 Subject to rule 30.8, the Company must return any surplus of the security after deduction under rule 30.8 to the Applicant after 14 days have elapsed from the termination of the Applicant's Rights of Access or Water Delivery Contract.

## Part E: Transformation

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### 31. Information

- 31.1 The Water Market Rules commenced on 23 June 2009.<sup>22</sup> The transitional period ended on 31 December 2009.
- 31.2 The *Water Act 2007* (Cth), Water Market Rules and other relevant federal legislative instruments are available on the Federal Register of Legislative Instruments: [www.frli.gov.au](http://www.frli.gov.au). Copies of the Water Market Rules may also be downloaded from the web site of the Department of Climate Change, Energy, the Environment and Water (DCCEEW) or obtained by contacting DCCEEW. DCCEEW's web site is [www.environment.gov.au](http://www.environment.gov.au), its telephone number for queries about the Water Market Rules is 1800 803 772 and its postal address is GPO Box 858, Canberra ACT 2601.<sup>23</sup>
- 31.3 You may wish to contact the ACCC to request further information about the Water Market Rules and the ACCC's role in relation to the Water Market Rules. The ACCC's web site is [www.accc.gov.au](http://www.accc.gov.au), its telephone number is (03) 9290 1800 and its postal address is GPO Box 520, Melbourne VIC 3001.<sup>24</sup>
- 31.4 These Rules may be downloaded from the Company's web site ([www.mirrigation.com.au](http://www.mirrigation.com.au)) or obtained at the Company's office during office opening hours.<sup>25</sup>
- 31.5 If the Company varies its Constitution, Water Entitlements Contract, Water Delivery Contract, Rules or any other contract, arrangement or understanding in a way that affects, or may affect, the respective rights and obligations of the Company and holders of Irrigation Rights in relation to Transformation, the Company will give written notice about the variation to holders of Irrigation Rights within 10 Business Days after the variation occurs.<sup>26</sup>

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### 32. Types of transformation

- 32.1 Transformation includes any of the following arrangements, provided that it is permitted by law:
- (1) **(transfers out – same water source)**<sup>27</sup> an arrangement that would reduce the share component of an Access Licence held by the Company to allow Irrigation Rights to be permanently transformed into a share component of an Access Licence that is held by someone other than the Company;
  - (2) **(transfers out – different NSW water source)**<sup>28</sup> an arrangement that would cancel an Access Licence held by the Company to allow Irrigation Rights to be permanently transformed into a share component of an Access Licence specifying a different water source that is issued to someone other than the Company; or

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<sup>22</sup> Rule 2 of the Water Market Rules.

<sup>23</sup> Rule 5 of the Water Market Rules.

<sup>24</sup> Rule 5 of the Water Market Rules.

<sup>25</sup> Rule 6(1)(b) of the Water Market Rules.

<sup>26</sup> Rule 21 of the Water Market Rules.

<sup>27</sup> Section 71Q of the Act, clause 14 of the Dealing Principles and clause 53 of the Water Sharing Plan.

<sup>28</sup> Section 71R of the Act, clause 15 of the Dealing Principles and clause 54 of the Water Sharing Plan.

- (3) **(transfers out – different state)**<sup>29</sup> an arrangement that would cancel an Access Licence held by the Company to allow Irrigation Rights to be permanently transformed into a corresponding interstate Access Licence equivalent that is issued to someone other than the Company.

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### 33. Non-complying transformation

- 33.1 Transformation of the following is permitted unless they are otherwise prohibited under the Dealing Principles and the Water Sharing Plan:
- (1) category 5 (high security (domestic and stock)) Water Entitlements;
  - (2) category 6 (high security (non-potable domestic)) Water Entitlements; and
  - (3) category 7 (high security (towns)) Water Entitlements.
- 33.2 Transformation of Lake Wyangan [Supplementary] Water, Lake Wyangan [Surplus] Water, Lake Wyangan [Storage] Water, Mirrool Creek [Supplementary] Water, Mirrool Creek [Surplus] Water, Mirrool Creek [Storage] Water, each as defined in the Surplus Water Rules, is not permitted, as these rights are connected to the Murrumbidgee Irrigation Area.

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### 34. Details of irrigation rights

- 34.1 If a person who holds an Irrigation Right gives written notice to the Company that the person:
- (1) intends to apply, or applies, for Transformation of the whole or part of the Irrigation Right; and
  - (2) requests the Company to provide details of the contractual or other arrangements between the Company and the person relating to the Irrigation Right,
- the Company 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 under the Irrigation Right, as at the date of receipt of the notice and such details as are reasonably necessary to confirm the accuracy of the calculation of the number of units or volume.<sup>30</sup>
- 34.2 Requests for details under rule 34.1 can be made in the form prescribed by the Company which may be downloaded from the Company's web site ([www.mirrigation.com.au](http://www.mirrigation.com.au)) or obtained at the Company's office during office opening hours. Customers will be directed to their Water Entitlements Contract.
- 34.3 If the holder of an Irrigation Right believes that the details provided under rule 34.1 are not complete or are incorrect and:
- (1) seeks to reach agreement with the Company as to the details of the irrigation Right; and
  - (2) the parties do not agree on the details within 10 Business Days after receipt of the details,

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<sup>29</sup> Section 71U of the Act, clause 18 of the Dealing Principles and clause 56 of the Water Sharing Plan.

<sup>30</sup> Subrule 7(1) of the Water Market Rules.

the holder may give notice in writing to the Company that the holder seeks a formal negotiation of the matter.<sup>31</sup>

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## 35. Details of water delivery rights

35.1 If a person who holds an Irrigation Right gives written notice to the Company that the person:

- (1) intends to apply, or applies, for Transformation of the whole or part of the Irrigation Right; and
- (2) requires the continuation of a right to have water delivered by the Company after Transformation,

the Company must, within 20 Business Days after receiving the notice, provide details of the contractual terms and conditions between the Company 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 as are permitted under rule 35.3.<sup>32</sup>

35.2 Notices under rule 35.1 can be made in the form prescribed by the Company which may be downloaded from the Company's web site ([www.mirrigration.com.au](http://www.mirrigration.com.au)) or obtained at the Company's office during office opening hours. Customers will be directed to their Water Delivery Contract.

35.3 The Company will not make any variations to the contractual terms and conditions between the Company and the person referred to in rule 35.1 other than variations that:

- (1) are necessary as a consequence of the Transformation; or
- (2) are agreed in writing by the Company and that person.<sup>33</sup>

35.4 If:

- (1) a person who gives notice to the Company under rule 35.1 believes that the terms and conditions of the right to have water delivered after Transformation have not been provided by the Company under rule 35.1 or that the details provided are incorrect; or
- (2) the Company and the person do not agree on a variation of the terms or conditions within 10 Business Days after the Company provides written details under rule 35.1,

the person may give notice in writing to the Company that the person seeks a formal negotiation of the matter.<sup>34</sup>

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## 36. Formal negotiation

36.1 A formal negotiation for the purposes of rules 34.3 and 35.4 is a genuine attempt by the Company to reach agreement with the person, within 30 Business Days after the giving of the notice under rule 34.3 or 35.4, as to the details of the Irrigation Right or the terms and conditions of the right to have water delivered as the case requires. The

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<sup>31</sup> Subrule 7(5) of the Water Market Rules.

<sup>32</sup> Subrule 8(1) of the Water Market Rules.

<sup>33</sup> Subrule 8(2) of the Water Market Rules.

<sup>34</sup> Subrule 8(3) of the Water Market Rules.

Company 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 as the case requires. A genuine attempt for the purposes of this rule includes the taking of such steps as would reasonably be expected to result in the appointment of a third person to resolve the dispute.<sup>35</sup>

- 36.2 If a third person is appointed to resolve the dispute, the third person's costs (including remuneration and expenses) will be either:
- (1) treated as costs in the cause and paid by the Company and the Applicant in accordance with the resolution of the dispute by the third person if so determined by the third person; or
  - (2) if the third person does not make such a determination, paid by the Company and the Applicant in equal shares.
- 36.3 The Company and the Applicant must pay their own Costs of the formal negotiation.
- 36.4 If the Company 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, as the case requires, within 30 Business Days after the giving of the notice under rule 34.3 or 35.4, the Company must, within that period, notify the ACCC of the reasons why the Company is unable to reach agreement within that period.<sup>36</sup>

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## **37. Application**

- 37.1 Applications must be made by:
- (1) if the Applicant is the sole holder of the Irrigation Rights, the Applicant; or
  - (2) if several persons are joint holders of the Irrigation Rights, all those persons.
- 37.2 Applications must either be in the form prescribed by the Company or include the following (except to the extent waived by the Company):
- (1) the name and address of the Applicant;
  - (2) the Water Allocation Account number of the Applicant;
  - (3) the number and category of Irrigation Rights held by the Applicant;
  - (4) the number and category of Irrigation Rights the subject of the Application;
  - (5) if another person holds a legal or equitable interest in the Irrigation Rights the subject of the Application, confirmation that the person has given approval to the Transformation;
  - (6) the Rights of Access held by the Applicant;
  - (7) the Rights of Access (if any) which will be terminated;
  - (8) the name of the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation;

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<sup>35</sup> Subrules 7(6), (7) and (10) and 8(4), (5) and (6) of the Water Market Rules.

<sup>36</sup> Paragraph 15(1)(a) and (b) of the Water Market Rules.

- (9) details of the Access Licence (or interstate equivalent) to which the entitlement that is sought is to be appended; and
- (10) any other information reasonably necessary for the purposes of the Application.<sup>37</sup>

37.3 An Application must not specify an Access Licence held by the Company for the purposes of rule 37.2(8). The Company is not obliged to subdivide any of its Access Licences.

37.4 Applications:

- (1) must be accompanied by payment of the relevant Charge applicable to the Application;<sup>38</sup>
- (2) may be accompanied by an application, in accordance with the Charges Rules, for termination or surrender of any Rights of Access that the Applicant wishes to apply to terminate or surrender, in which case, the Application must also be accompanied by payment of the Charges (including the termination fees) relating to any Rights of Access that will be terminated or surrendered;<sup>39</sup>
- (3) 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 (other than the Company); and
- (4) may be submitted to the Company at any time.<sup>40</sup>

37.5 Applications will be considered in the order of the sequence numbers they are allocated by the Company. The Company's web site sets out details of Applications which have been allocated a sequence number.

37.6 The Company will notify the Applicant if:

- (1) the Application is not complete or not in accordance with these Rules or the Water Market Rules;
- (2) the Application is not accompanied by payment of the relevant Charge applicable to the Application; or
- (3) there are outstanding Charges payable by the Applicant to the Company in respect of the Irrigation Right,

and specify the further information that is required, the Charge applicable to the Application or the outstanding Charges.<sup>41</sup> The Application will not be allocated a sequence number until the Company receives the further information, payment of the Charge applicable to the Application, or payment of the outstanding Charges (or an agreement is made between the Company and the Applicant for the payment of the outstanding Charges).

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## 38. Determination

38.1 The Company must determine each Application and either:

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<sup>37</sup> Subrule 11(1) of the Water Market Rules.

<sup>38</sup> Paragraph 13(1)(a) of the Water Market Rules.

<sup>39</sup> Paragraph 13(1)(b) of the Water Market Rules.

<sup>40</sup> Persons are encouraged to prepare a medium-term water budget before transforming Irrigation Rights.

<sup>41</sup> Subrule 14(1) of the Water Market Rules.

- (1) notify the Applicant that the Application is approved; or
  - (2) notify the Applicant and the ACCC that the Application has not been approved for one or more of the reasons referred to in rule 38.5. This includes notifying the Applicant that the ACCC has been notified.<sup>42</sup>
- 38.2 The Company must give notice under rule 38.1 within 25 Business Days after the later of:
- (1) receipt by the Company of the Application; or
  - (2) where the Company gives notice under rule 37.6, receipt by the Company of the further information, payment of the Charge applicable to the Application, or payment of the outstanding Charges (or an agreement being made between the Company and the Applicant for the payment of the outstanding Charges).<sup>43</sup>
- 38.3 The period referred to in rule 38.1 does not include:
- (1) where an Applicant requests details under rule 34.1 or gives notices under rule 35.1, any period before the Company 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 requires; or
  - (2) the Business Days after steps have been taken:
    - (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,
 

but before the approval is given or refused or the requirement satisfied, or advice received to the effect that it cannot be satisfied.<sup>44</sup>
- 38.4 To the maximum extent permitted by law, the Company may, at its discretion, approve an Application (including by imposing conditions).
- 38.5 To the maximum extent permitted by law, the Company may, at its discretion, delay the processing of an Application, including:
- (1) where a requirement of a law (including but not limited to the Water Trading Rules and the Water Act) cannot be satisfied or has not yet been satisfied; or
  - (2) where the Annual Transfer would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement.
- 38.6 To the maximum extent permitted by law, the Company may, at its discretion, refuse an Application, including:
- (1) where the Application is incomplete or not in accordance with these Rules;<sup>45</sup>
  - (2) where the Application is not accompanied by payment of the relevant Charge applicable to the Application;<sup>46</sup>

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<sup>42</sup> Subrule 14(2) of the Water Market Rules.

<sup>43</sup> Subrules 14(2) and (3) of the Water Market Rules.

<sup>44</sup> Subrule 14(3) of the Water Market Rules.

<sup>45</sup> Paragraph 14(2)(b)(iii) of the Water Market Rules.

<sup>46</sup> Paragraph 14(2)(b)(iii) of the Water Market Rules.

- (3) where there are outstanding Charges payable by the Applicant to the Company;<sup>47</sup>
- (4) where a person who holds a legal or equitable interest in the Irrigation Rights the subject of the Application, has refused to give approval to the Transformation;<sup>48</sup>
- (5) where the Applicant does not provide the security required under rule 40;<sup>49</sup>
- (6) where a requirement of a law (including a requirement for approval by any relevant Government Agency) cannot be satisfied;<sup>50</sup>
- (7) where the Transformation would contravene the Company's obligations under a Legal Requirement;<sup>51</sup> or
- (8) where either the Applicant or the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation will, after Transformation, have a right to have water delivered by the Company but does not have an approved Meter to measure the water delivered from the Company's Works.<sup>52</sup>

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## 39. Implementation

- 39.1 An approved Transformation takes effect on the date on which it is registered by the Company after it has been registered by the relevant Government Agencies.
- 39.2 In an approved Transformation:
  - (1) the Company must cancel the relevant Irrigation Rights of the Applicant; and
  - (2) the Applicant must forfeit an equal number of Corresponding Shares, unless the Applicant holds, by number, more Water Entitlements than Corresponding Shares.
- 39.3 Transformation does not affect Water Allocation already credited to a Water Allocation Account before the Transformation takes effect. Part B applies to transfers of Water Allocation.

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## 40. Security

- 40.1 Where an Applicant applies for Transformation and will, after Transformation, either:
  - (1) have a right to have water delivered by the Company but no Irrigation Rights; or
  - (2) have a right to have a volume of water delivered by the Company in respect of the current financial year (disregarding any constraints on delivery) which is more than five times the volume of water that the Applicant is entitled to

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<sup>47</sup> Paragraph 14(2)(b)(iii) of the Water Market Rules.

<sup>48</sup> Paragraph 14(2)(b)(i) of the Water Market Rules.

<sup>49</sup> Subrule 10(1) and paragraphs 14(1)(a) and 14(2)(b)(iii) of the Water Market Rules.

<sup>50</sup> Paragraph 14(2)(b)(ii) of the Water Market Rules.

<sup>51</sup> Paragraph 14(2)(b)(ii) of the Water Market Rules.

<sup>52</sup> Paragraph 20(2)(b) of the Water Market Rules.

receive in respect of that year under the Irrigation Rights held by the Applicant,<sup>53</sup>

the Company may, to the maximum extent permitted by law, require security to be given by the Applicant for the payment of Charges for access to the Company's Works for the delivery of water to the Applicant after Transformation.<sup>54</sup> The Company may also require security to be given by the Applicant for the payment of Charges for access to the Company's Works for the delivery of water to the Applicant after Transformation in any other circumstance permitted by rule 10 of the Water Market Rules.

40.2 The Company must not require security to be given by the Applicant under rule 40.1 in an amount that, at the time the security is given:

- (1) exceeds the amount that, under Part 10 of the *Water Charge Rules 2010* (Cth), would be payable to the Company for the termination of the Rights of Access held by the Applicant at that time; or
- (2) if there is no such amount, exceeds the amount calculated in accordance with Part 10 of the *Water Charge Rules 2010* (Cth) payable to the Company in respect of the financial year in which the security is given.<sup>55</sup>

40.3 The Company must not refuse to accept security required under rule 40.1 by reason only of the form in which it is offered if an Applicant offers it in one or more of the following forms:

- (1) a charge over an Irrigation Right that the Applicant continues to hold;
- (2) a charge over an unencumbered Access Licence (or interstate equivalent), or an unencumbered part thereof, obtained by the Applicant as the result of the Transformation of part of an Irrigation Right;
- (3) a charge over an unencumbered Access Licence (or interstate equivalent), or an unencumbered part thereof, held by the Applicant;
- (4) a guarantee given by an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth) (**Bank Guarantee**);
- (5) a deposit lodged with the Company (**Deposit**); or
- (6) any other form of security agreed upon by the Company and the Applicant.<sup>56</sup>

40.4 If the security given by the Applicant is a Bank Guarantee, the Bank Guarantee must:

- (1) be unconditional; and
- (2) not have an expiry date, except with the Company's consent.

40.5 If the security given by the Applicant is a Deposit, the Company must (and the Applicant authorises the Company to) deposit the Deposit in an interest-bearing cash management account.

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<sup>53</sup> This refers to the situation where the Applicant will, after Transformation, hold at least five times more Delivery Entitlements than Water Entitlements.

<sup>54</sup> Subrule 10(1) of the Water Market Rules.

<sup>55</sup> Subrule 10(2) of the Water Market Rules.

<sup>56</sup> Subrule 10(3) of the Water Market Rules.

- 40.6 The Company must pay interest earned on the Deposit to the Applicant periodically as determined by the Company.
- 40.7 For the purposes of this rule 40, a reference to interest means interest actually earned on the Deposit less all duty, bank charges and any other money properly payable in respect of the investment of the Deposit.
- 40.8 The Company may apply the security given by the Applicant in accordance with rule 40.1 to any outstanding Charges if they remain unpaid for 14 days after they fall due or upon termination of the Applicant's Rights of Access or Water Delivery Contract.
- 40.9 Subject to rule 40.8, the Company must return any surplus of the security after deduction under rule 40.8 to the Applicant after 14 days have elapsed from the termination of the Applicant's Rights of Access or Water Delivery Contract.

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## 41. Delivery

- 41.1 The Company will not, as a condition of approving an Application, terminate, or require the Applicant to terminate, any Rights of Access.<sup>57</sup>
- 41.2 The Applicant or the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation will, after Transformation, have no right to the delivery of any water, except under a Water Delivery Contract between the Applicant or the person and the Company.
- 41.3 A Customer who holds an Access Licence (or interstate equivalent) obtained as a result of Transformation must, if he, she or it wishes the Company to deliver Transformed Water Allocation to the Customer's Landholding, do an External Annual Transfer In.
- 41.4 If:
- (1) a Customer does an External Annual Transfer In under rule 41.3; and
  - (2) any of the relevant Water Allocation remains in a Water Allocation Account at the end of the Water Year,
- it cannot be carried over to the next Water Year and it will be cancelled without compensation at the end of the Water Year, except to the extent that the Customer is otherwise permitted to carry it over in accordance with the Documents. To avoid cancellation, the Customer must complete an External Annual Transfer Out in respect of the relevant Water Allocation before the end of the Water Year.

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## 42. Tagging

- 42.1 Where the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation obtains approval to nominate a water supply work (as defined in the Act) which is not in the same NSW water tagging zone (as defined in subsection 71W of the Act) as the Access Licence held by the Company whose share component was reduced by the Transformation, the person's Access Licence (or interstate equivalent) will be tagged. This means that the Access Licence (or interstate equivalent) will retain the characteristics of Access Licences that are subject to the Water Sharing Plan, rather than being converted into any other form.<sup>58</sup>

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<sup>57</sup> Rule 19 of the Water Market Rules.

<sup>58</sup> Section 71W of the Act and clause 21 and Schedule 1 of the Access Licence Dealing Principles.