



Murray Irrigation

Transfer Rules Policy

Effective: 1 July 2014

Registered office

443 Charlotte Street
(PO Box 528)
Deniliquin NSW 2710

Phone : 03 5898 3300

Fax : 03 5898 3301

www.murrayirrigation.com.au

Contents

| | |
|--|----|
| Part A: General..... | 1 |
| 1. Introduction | 1 |
| 2. Guide to this document..... | 1 |
| 3. Definitions and interpretation..... | 1 |
| 4. Customer must obtain own advice | 4 |
| 5. Limitation of liability | 4 |
| 6. Costs..... | 4 |
| Part B: Annual Transfers | 5 |
| 7. Annual transfers generally | 5 |
| 8. Types of annual transfers | 5 |
| 9. Prohibited annual transfers..... | 5 |
| 10. Deadlines..... | 6 |
| 11. Application | 6 |
| 12. Determination | 7 |
| 13. Implementation | 7 |
| 14. Delivery..... | 8 |
| Part C: Permanent Transfers | 9 |
| 15. Permanent transfers generally | 9 |
| 16. Internal permanent transfers | 9 |
| 17. External permanent transfers in | 9 |
| 18. Prohibited transfers | 10 |
| 19. Application | 10 |
| 20. Determination | 10 |
| 21. Implementation | 11 |
| 22. Security..... | 12 |
| 23. Delivery..... | 13 |
| Part D: Transformation | 14 |
| 24. Information..... | 14 |
| 25. Transformation generally | 14 |
| 26. Types of transformation..... | 14 |
| 27. Prohibited transformation | 15 |
| 28. Details of irrigation rights | 15 |
| 29. Details of delivery rights | 15 |
| 30. Formal negotiation | 16 |
| 31. Application | 17 |
| 32. Determination | 18 |
| 33. Implementation | 19 |
| 34. Carryover consequences of transformation | 20 |
| 35. Security..... | 21 |
| 36. Delivery..... | 22 |
| 37. Tagging..... | 22 |
| Part E: Conversions | 24 |
| 38. Conversions generally | 24 |
| 39. Types of conversion | 24 |
| 40. Prohibited conversions | 25 |
| 41. Application | 25 |
| 42. Determination | 26 |
| 43. Implementation | 26 |
| 44. Carryover consequences of conversion | 27 |
| 45. Security..... | 28 |
| 46. Risks..... | 28 |

Part A: General

1. Introduction

1.1 A Customer's Entitlements Contract binds them to this Policy.

1.2 This Policy:

(1) applies to:

- (a) Annual Transfers;
- (b) Permanent Transfers;
- (c) Transformation; and
- (d) Conversions.

(2) should be read in conjunction with, and is subject to, the Contract, any relevant Policies, the *Water Act 2007* (Cth), the *Basin Plan 2012* (Cth), the Water Market Rules, the *Water Charge (Termination Fees) Rules 2009* (Cth), the Act, the Dealing Principles, the Water Sharing Plan, the terms of the relevant Access Licences, and all other relevant laws, regulations and orders; and

(3) may also be affected by rules or processes stipulated by the NSW Minister for Water or Government Agencies.

1.3 The documents referenced in rules 1.2(2) and (3) relate to this Policy as follows:

- (1) all of the documents, other than any relevant Policies, take precedence over this Policy to the extent necessary to resolve any inconsistency;
- (2) to the extent that there is any inconsistency between a provision in these Rules and a provision in any relevant Policies, a specific provision takes precedence over a general provision.

2. Guide to this document

2.1 This Policy is 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;
- (2) Part C applies only to Permanent Transfers;
- (3) Part D applies only to Transformation; and
- (4) Part E applies only to Conversions.

3. Definitions and interpretation

3.1 In this Policy, 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:
- (a) in the form prescribed by the Company, for a Transaction, which is completed and duly executed to the Company's satisfaction, which includes all documents required for the application, and in respect of which the relevant Charge has been paid; or
 - (b) for an Internal Annual Transfer of Water Allocation using the Company's automated telephone ordering system, in accordance with the procedure established by the Company from time to time and using the Secondary PIN;
- (4) **Carryover Unit** has the meaning given to that term in the Distribution Rules Policy;
- (5) **Conversion** means cancellation of Water Entitlements of one class and the issue of Water Entitlements of another class by one of the arrangements set out in rule 39;
- (6) **Dealing Principles** means the *Access Licence Dealing Principles Order 2004 (NSW)*;
- (7) **Department** means the Commonwealth department responsible for implementing the Commonwealth government's policies with respect to water;
- (8) **External Annual Transfer** means an External Annual Transfer In or an External Annual Transfer Out by one of the arrangements set out in rules 8.1(3), (4) and (5);
- (9) **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 a Water Allocation Account of an Applicant;
- (10) **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 an Applicant;
- (11) **External Permanent Transfer In** means an arrangement set out in rule 17 to allow an Applicant to be issued Water Entitlements under an Entitlements Contract;
- (12) **Internal Annual Transfer** means:
- (a) in relation to Water Allocation, the debiting of Water Allocation from the Water Allocation Account of one Applicant and the crediting of Water Allocation to the Water Allocation Account of the other Applicant;
 - (b) in relation to a Delivery Entitlement either:
 - (i) the variation of the Delivery Entitlement to relate to another of the Applicant's Landholdings for one Water Year; or
 - (ii) the variation of the Delivery Entitlement to relate to the transferee's Landholding for one Water Year and the assignment by the transferor to the transferee of the right to exercise the Delivery Entitlement, as varied, for one Water Year and reversion of that right to the transferor at the end of that Water Year;
 - (c) in relation to a Carryover Unit, the transfer of the Carryover Unit by one Applicant to another Applicant who is a party to an Entitlements Contract;
- (13) **Internal Permanent Transfer** means:
- (a) a transfer of Water Entitlements by one Applicant to another Applicant who will hold the Water Entitlements under an Entitlements Contract, and which does not

- have the effect of increasing or reducing the share component of an Access Licence of the Company;
- (b) a transfer of Delivery Entitlements by one Applicant to another Applicant who will hold the Delivery Entitlements under an Entitlements Contract;
 - (c) a transfer of Shares by one Applicant to another Applicant; or
 - (d) a transfer of Delivery Entitlements by an Applicant between the Landholdings of that Applicant;
- (14) **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 Delivery Entitlement);
- (15) **Lower Darling Regulated River Water Source** has the meaning given to that term in the Water Sharing Plan;
- (16) **New South Wales Murray Regulated River Water Source** has the meaning given to that term in the Water Sharing Plan;
- (17) **Part A** means rules 1 to 6;
- (18) **Part B** means rules 7 to 14;
- (19) **Part C** means rules 15 to 23;
- (20) **Part D** means rules 24 to 37;
- (21) **Part E** means rules 38 to 46;
- (22) **Permanent Transfer** means an Internal Permanent Transfer or an External Permanent Transfer In;
- (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, or a domestic and stock (conveyance) Access Licence, each as defined in the Act;¹
- (24) **Transaction** means Annual Transfer, Permanent Transfer, Transformation or Conversion,
- (25) **Transformation** has the same meaning in this Policy as *transformation arrangements* has in the *Water Act 2007* (Cth) and includes the arrangements set out in rule 26;

¹ Dictionary of the Act and regulation 8A of the *Water Management (General) Regulation 2004* (NSW).

- (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) held by the Customer;
- (27) **Water Market Rules** means the *Water Market Rules 2009* (Cth); and
- (28) **Water Sharing Plan** means the *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2003* (NSW).
- 3.2 In this Policy, unless the contrary intention appears, a word or phrase defined in the Contract has the same meaning in this Policy.
- 3.3 Clause 1.2 (Interpretation) of the Contract applies to this Policy with the necessary changes.
- 3.4 Reference to the Internal Permanent Transfer of Water Entitlements or Delivery Entitlements is to be construed in accordance with rule 21.4.
-

4. Customer must obtain own advice

- 4.1 The Company does not give advice to the Customer about this Policy or anything connected with the subject matter of this Policy.
- 4.2 The Customer should seek his, her or its own professional advice about this Policy and anything connected with the subject matter of this Policy, including legal, taxation, accounting and financial advice.
-

5. Limitation of liability

- 5.1 The Company may change or reverse a determination with respect to an Application or a Transaction if a decision of the NSW Minister for Water or a Government Agency (including a change to, or reversal of, a previous decision) affects the Application or the Transaction.
- 5.2 Without limiting the 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 NSW Minister for Water or a Government Agency with respect to an Application or a Transaction is excluded.
-

6. Costs

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

Part B: Annual Transfers

7. Annual transfers generally

7.1 Annual Transfers:

- (1) must comply with this Policy; and
- (2) require the approval of the Company.

7.2 To the maximum extent permitted by law, the Company may, at its discretion, from time to time:

- (1) embargo Annual Transfers; or
 - (2) make exceptions to this Policy on a case-by-case basis.
-

8. Types of annual transfers

8.1 An Annual Transfer means any of the following arrangements:

- (1) **(internal annual transfers – one-off)** an Internal Annual Transfer of Water Allocation, Delivery Entitlements or Carryover Units;
 - (2) **(internal annual transfers – recurring)** an Internal Annual Transfer of all the Annual Allocation credited to an Applicant's Water Allocation Account in respect of specified Water Entitlements:
 - (a) for a specified number of Water Years; or
 - (b) for each Water Year until the end of the Water Year in which the Applicant gives the Company at least one month's notice that the Internal Annual Transfer is terminated;
 - (3) **(external annual transfers – same water source)** an External Annual Transfer where the other party holds an Access Licence in the New South Wales Murray Regulated River Water Source, provided that the External Annual Transfer is permitted by law;²
 - (4) **(external annual transfers – different NSW water source)** an External Annual Transfer where the other party holds an Access Licence with respect to a water source other than the New South Wales Murray Regulated River Water Source, provided that the External Annual Transfer is permitted by law;³ and
 - (5) **(external annual transfers – different state)** an External Annual Transfer where the other party holds an interstate Access Licence equivalent, provided that the External Annual Transfer is permitted by law.⁴
-

9. Prohibited annual transfers

9.1 Subject to rule 9.2, Annual Transfers of Water Allocation determined in respect of Class A Water Entitlements are prohibited.

9.2 Internal Annual Transfers of Water Allocation determined in respect of Class A Water Entitlements to Applicants holding Class A Water Entitlements are not prohibited by rule 9.1.

² Sections 71T of the Act, clause 17 of the Dealing Principles and clause 51 of the Water Sharing Plan.

³ Sections 71T of the Act, clause 17 of the Dealing Principles and clause 55 of the Water Sharing Plan.

⁴ Sections 71V of the Act, clause 19 of the Dealing Principles and clause 56 of the Water Sharing Plan.

- 9.3 Carryover Units are not transferable except to an Applicant who holds at least one Delivery Entitlement.

10. Deadlines

- 10.1 Applications for Internal Annual Transfers in respect of a Water Year must be received by the Company by the last Business Day of May or any other date determined by the Company in that Water Year.
- 10.2 Applications for External Annual Transfers in respect of a Water Year must be received by the Company by 30 April in that Water Year⁵ or any other date determined by the Company in that Water Year.

11. Application

- 11.1 An Application is required for an Annual Transfer.
- 11.2 Application forms may be downloaded from the Company's web site (www.murrayirrigation.com.au) or obtained at the Company's Deniliquin, Finley or Wakool offices.
- 11.3 Applications must be submitted to the Company before the relevant deadline under rule 10.
- 11.4 Application forms must be duly executed by:
- (1) if the Customer is the sole holder of the Water Allocation, Delivery Entitlements or Carryover Units, the Customer; or
 - (2) if several Customers are joint holders of the Water Allocation, Delivery Entitlements or Carryover Units, all the joint holders or an authorised representative of all the joint holders.
- 11.5 An Applicant making an Application using the Company's automated telephone ordering system must use the Secondary PIN associated with the Applicant's Water Allocation Account.
- 11.6 Payment of the relevant Charge applicable to the Application must be made:
- (1) if an Application form is submitted, at the time and place of submission; or
 - (2) if the Application is submitted using the Company's automated telephone ordering system, by the next Business Day.
- 11.7 Applications for Internal Annual Transfers under rule 8.1(2) must specify the number of Water Years to which the Application relates, or that the Internal Annual Transfer is ongoing.
- 11.8 Applications will be considered at the office of the Company at which they are submitted in the order in which they are validly submitted at that office.
- 11.9 The Company may determine that Applications may not be submitted to one or more of its offices.
- 11.10 The Company will notify an Applicant if:
- (1) the Application is not complete or not in accordance with this Policy;

⁵ The deadline for External Annual Transfers has been imposed by the NSW Minister for Water's order made under made under section 71Z of the Act and published in Government Gazette No. 47, 30 April 2008. This order continues in force while the order dated 10 November 2006 made under section 60(2) of the Act for the New South Wales Murray Regulated River Water Source and the Lower Darling Regulated River Water Source remains in force. That order suspended the operation of the rules of distribution in subsection 60(1) of the Act so that instead the rules of distribution in subsection 60(3) apply.

- (2) payment of the relevant Charge applicable to the Application has not been made;
- (3) there are outstanding Charges payable by the Applicant to the Company; or
- (4) in the Company's opinion, the Annual Transfer might result in adverse environmental impacts;

and specify the further information that is required, the Charge applicable to the Application or the outstanding Charges. The Application will not be considered 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).

12. Determination

- 12.1 The Company must determine each Application.
- 12.2 To the maximum extent permitted by law, the Company may, at its discretion, approve an Application (including by imposing conditions).
- 12.3 To the maximum extent permitted by law, the Company may, at its discretion, refuse an Application without giving any reason for refusal, including:
 - (1) where the Application is incomplete or not in accordance with this Policy;
 - (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;
 - (4) where an Applicant has not fully repaid water debts or water borrowings, such as any that may have arisen as a result of arrangements made for the early release of water by Snowy Hydro Limited;
 - (5) where an Applicant applies for an Internal Annual Transfer in relation to Delivery Entitlements that have already been exercised in the relevant Water Year;
 - (6) a person who holds a legal or equitable interest in the Water Allocation, Delivery Entitlements or Carryover Units the subject of the Application, has refused to give approval to the Annual Transfer;
 - (7) where completion of the Annual Transfer would cause the Applicant's Water Allocation Account to have a negative balance;
 - (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 an Applicant will, after the Annual Transfer, have a right to have water delivered by the Company but has not installed a Meter to measure the water delivered from the Company's Works.

13. Implementation

- 13.1 An approved Annual Transfer takes effect:

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

13.2 In an approved Annual Transfer, the Company must:

- (1) debit or credit Water Allocation from the Water Allocation Account of the relevant Applicant;
- (2) make a notation of the Annual Transfer on the Delivery Entitlements Register, including of the Company's Supply Works associated with the Applicant's Landholding to which Water Allocation is to be delivered; or
- (3) terminate the Carryover Units being transferred by the transferor and grant the Carryover Units to be held by the transferee;

as the case requires.

13.3 An Annual Transfer of Carryover Units does not affect Water Allocation already credited to a Water Allocation Account before the Annual Transfer of Carryover Units takes effect.

14. Delivery

14.1 An Applicant:

- (1) will have no right to the delivery of any water, except under an Entitlements Contract between the Applicant and the Company; and
- (2) is responsible for ensuring that he, she or it has sufficient Delivery Entitlements for the delivery of all of the Water Allocation which he, she or it wishes to have delivered.

Part C: Permanent Transfers

15. Permanent transfers generally

15.1 Permanent Transfers:

- (1) must comply with this Policy; and
- (2) require the approval of the Company.

15.2 To the maximum extent permitted by law, the Company may, at its discretion, from time to time:

- (1) embargo Permanent Transfers; or
 - (2) make exceptions to this Policy on a case-by-case basis.
-

16. Internal permanent transfers

16.1 In an Internal Permanent Transfer, Water Entitlements and Delivery Entitlements are transferable separately.

16.2 Delivery Entitlements are not transferable unless:

- (1) the Applicant to which the Delivery Entitlements are to be transferred under the relevant Application is the registered proprietor of a Landholding;
 - (2) the Landholding is connected, or is able to be connected, to the Company's Works, to the satisfaction of the Company; and
 - (3) there is sufficient capacity in the Company's Works or the Works on the Landholding for delivery of water to the Landholding, to the satisfaction of the Company.
-

17. External permanent transfers in

17.1 An External Permanent Transfer In means any of the following arrangements:

- (1) **(transfers in – same water source)** 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, provided that the arrangement is permitted by law;⁶
- (2) **(transfers in – different NSW water source)** 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, provided that the arrangement is permitted by law;⁷ and
- (3) **(transfers in – different state)** 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, provided that the arrangement is permitted by law.⁸

⁶ Section 71Q of the Act, clause 14 of the Dealing Principles and clause 51 of the Water Sharing Plan.

⁷ Section 71R of the Act, clause 15 of the Dealing Principles and clause 52 of the Water Sharing Plan.

⁸ Section 71U of the Act, clause 18 of the Dealing Principles and clause 54 of the Water Sharing Plan.

18. Prohibited transfers

18.1 Transfers of Class A Water Entitlements are prohibited.

19. Application

19.1 An Application is required for a Permanent Transfer.

19.2 Applications may be downloaded from the Company's web site (www.murrayirrigation.com.au) or obtained at the Company's Deniliquin, Finley or Wakool offices.

19.3 Applications must be duly executed by:

- (1) if Customer is the sole holder of the Water Entitlements, Delivery Entitlements or Shares, the Customer; or
- (2) if several Customers are joint holders of the Water Entitlements, Delivery Entitlements or Shares, all the joint holders.

19.4 Applications:

- (1) must be accompanied by payment of the relevant Charge applicable to the Application;
- (2) must be accompanied by the original certificates for the Water Entitlements, Delivery Entitlements or Shares; and
- (3) may be submitted to the Company at any time.

19.5 Applications will be considered in the order of the sequence numbers they are allocated by the Company.

19.6 The Company may determine that Applications may not be submitted to one or more of its offices.

19.7 The Company will notify an Applicant if:

- (1) the Application is not complete or not in accordance with this Policy;
- (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;

and specify the further information that is required, the Charge applicable to the Application or the outstanding Charges. 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).

20. Determination

20.1 The Company must determine each Application and notify the Applicants of the determination.

20.2 To the maximum extent permitted by law, the Company may, at its discretion, approve an Application (including by imposing conditions).

20.3 To the maximum extent permitted by law, the Company may, at its discretion, refuse an Application without giving any reason for refusal, including:

- (1) where the Application is incomplete or not in accordance with this Policy;
- (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;
- (4) where an Applicant has not fully repaid water debts or water borrowings, such as any that may have arisen as a result of arrangements made for the early release of water by Snowy Hydro Limited;
- (5) 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;
- (6) where the relevant Applicant does not provide the security required under rule 22;
- (7) where an Applicant applies for Shares and the Company does not agree to issue them;
- (8) where an Applicant applies for an Internal Permanent Transfer of Delivery Entitlements and the Company does not agree to transfer them (including where the Delivery Entitlements have already been exercised in the relevant Water Year);
- (9) where an Applicant applies for Delivery Entitlements 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
- (12) where an Applicant will, after the Permanent Transfer, have a right to have water delivered by the Company but has not installed a Meter to measure the water delivered from the Company's Works.

21. Implementation

21.1 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.

21.2 The Company will register approved Permanent Transfers in the order in which their conditions of approval are fulfilled, or if the conditions of approval of two or more Permanent Transfers are fulfilled at the same time, in the order of the sequence numbers they are allocated by the Company.

21.3 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.

21.4 An approved Internal Permanent Transfer of Water Entitlements or Delivery Entitlements all the conditions of which have been fulfilled will be effected as follows:

- (1) the Water Entitlements or Delivery Entitlements being transferred by the transferor will be terminated; and

- (2) 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 Contract.

21.5 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 Delivery Entitlements to the relevant Applicant if the relevant Applicant applies for Delivery Entitlements; and
- (3) may, at its discretion, agree to issue Shares to the relevant Applicant if the relevant Applicant applies for Shares.

22. Security

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

- (1) hold Delivery Entitlements but no Water Entitlements; or
- (2) hold at least 5 times more Delivery Entitlements than Water Entitlements and at least 250 Delivery 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.

22.2 The Company must not require security to be given by the Applicant under rule 22.1 in an amount that, at the time the security is given:

- (1) exceeds the amount that, under the *Water Charge (Termination Fees) Rules 2009 (Cth)*, would be payable to the Company for the termination of the Delivery Entitlements 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 Delivery Entitlements held by the Applicant at that time); or
- (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 the Company in respect of the financial year in which the security is given.

22.3 The Company may refuse to accept security required under rule 22.1 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.

22.4 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.

- 22.5 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 at 24-hour call.
- 22.6 The Company must pay interest earned on the Deposit to the Applicant monthly.
- 22.7 The Applicant bears the risk of loss of the Deposit.
- 22.8 For the purposes of this clause 22, 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.
- 22.9 The Company may apply the security given by the Applicant in accordance with clause 22.1 to any outstanding Charges if they remain unpaid for 14 days after they fall due or upon termination of the Applicant's Delivery Entitlements or the Entitlements Contract.
- 22.10 Subject to clause 22.9, the Company must return any surplus of the security after deduction under clause 22.9 to the Applicant after 14 days have elapsed from the termination of the Applicant's Delivery Entitlements or the Entitlements Contract.
-

23. Delivery

- 23.1 An Applicant:
- (1) will have no right to the delivery of any water, unless he, she or it holds Delivery Entitlements; and
 - (2) is responsible for ensuring that he, she or it has sufficient Delivery Entitlements for the delivery of all of the Water Allocation which he, she or it wishes to have delivered.

Part D: Transformation

24. Information

- 24.1 The Water Market Rules commenced on 23 June 2009.⁹ The transitional period ends on 31 December 2009.
- 24.2 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. Copies of the Water Market Rules may also be downloaded from the web site of the Department or obtained by contacting the Department. The Department's web site is www.environment.gov.au, its telephone number for queries about the Water Market Rules is (02) 6274 1420 and its postal address is GPO Box 787, Canberra ACT 2601.¹⁰
- 24.3 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, its telephone number is (03) 9290 1800 and its postal address is GPO Box 5203, Melbourne VIC 3001.¹¹
- 24.4 This Policy may be downloaded from the Company's web site (www.murrayirrigation.com.au) or obtained at the Company's Deniliquin, Finley or Wakool offices.¹²
- 24.5 If the Company varies its Constitution, Entitlements Contract, Policies 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.¹³

25. Transformation generally

- 25.1 Transformation:
- (1) must comply with this Policy; and
 - (2) requires the approval of the Company.
- 25.2 To the maximum extent permitted by law, the Company may, at its discretion, from time to time:
- (1) embargo Transformation; or
 - (2) make exceptions to this Policy on a case-by-case basis.

26. Types of transformation

- 26.1 Transformation includes any of the following arrangements:
- (1) **(transfers out – same water source)** 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 share component of an Access Licence that is held by someone other than the Company, provided that the arrangement is permitted by law;¹⁴

⁹ Rule 5 of the Water Market Rules.

¹⁰ Rule 5 of the Water Market Rules.

¹¹ Rule 5 of the Water Market Rules.

¹² Rule 6(1)(b) of the Water Market Rules.

¹³ Rule 21 of the Water Market Rules.

¹⁴ Section 71Q of the Act, clause 14 of the Dealing Principles and clause 51 of the Water Sharing Plan.

- (2) **(transfers out – different NSW water source)** an arrangement that would cancel an Access Licence held the Company to allow Irrigation Rights to be permanently transformed into share component of an Access Licence specifying a different water source that is issued to someone other than the Company, provided that the arrangement is permitted by law;¹⁵ and
- (3) **(transfers out – different state)** 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, provided that the arrangement is permitted by law.¹⁶

27. Prohibited transformation

- 27.1 To the maximum extent permitted by law, Transformation of Class A Water Entitlements is prohibited.

28. Details of irrigation rights

- 28.1 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, including the number of units or volume of water to which the person is entitled under 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 in respect of the current financial year, as at the date of receipt of the notice.¹⁷

- 28.2 Requests for details under rule 28.1 can be made in the form prescribed by the Company which may be downloaded from the Company's web site (www.murrayirrigation.com.au) or obtained at the Company's Deniliquin, Finley or Wakool offices. Customers will be directed to their Entitlements Contract.

- 28.3 If the holder of an Irrigation Right believes that the details provided under rule 28.1 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;

the holder may give notice in writing to the Company that the holder seeks a formal negotiation of the matter.¹⁸

29. Details of delivery rights

- 29.1 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

¹⁵ Section 71R of the Act, clause 15 of the Dealing Principles and clause 52 of the Water Sharing Plan.

¹⁶ Section 71U of the Act, clause 18 of the Dealing Principles and clause 54 of the Water Sharing Plan.

¹⁷ Subrule 7(1) of the Water Market Rules.

¹⁸ Subrule 7(5) of the Water Market Rules.

- (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 29.3.¹⁹

29.2 Notices under rule 29.1 can be made in the form prescribed by the Company which may be downloaded from the Company's web site (www.murrayirrigation.com.au) or obtained at the Company's Deniliquin, Finley or Wakool offices. Customers will be directed to their Entitlements Contract.

29.3 The Company will not make any variations to the contractual terms and conditions between the Company and the person referred to in rule 29.1 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.²⁰

29.4 If:

- (1) a person who gives notice to the Company under rule 29.1 believes that the terms and conditions of the right to have water delivered after Transformation have not been provided by the Company under rule 29.1 or that the details provided are incorrect; or
- (2) the parties do not agree on a variation of the terms or conditions within 10 Business Days after the Company provides written details under rule 29.1;

the person may give notice in writing to the Company that the person seeks a formal negotiation of the matter.²¹

30. Formal negotiation

30.1 A formal negotiation for the purposes of rules 28.3 and 29.4 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 28.3 or rule 29.4, 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 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.²²

30.2 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.

30.3 The Company and the Applicant must pay their own Costs of the formal negotiation.

¹⁹ Subrule 8(1) of the Water Market Rules.

²⁰ Subrule 8(2) of the Water Market Rules.

²¹ Subrule 8(3) of the Water Market Rules.

²² Subrules 7(6), (7) and (10) and 8(4), (5) and (6) of the Water Market Rules.

- 30.4 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 28.3 or 29.4, the Company must, within that period, notify the ACCC of the reasons why the Company is unable to reach agreement within that period.²³

31. Application

- 31.1 An Application is required for Transformation.
- 31.2 Applications may be downloaded from the Company's web site (www.murrayirrigation.com.au) or obtained at the Company's Deniliquin, Finley or Wakool offices.
- 31.3 Applications must be duly executed by:
- (1) if the Customer is the sole holder of the Irrigation Rights, the Customer; or
 - (2) if several Customers are joint holders of the Irrigation Rights, all the joint holders.
- 31.4 Applications must include the following:
- (1) the name and address of the Applicant;
 - (2) the Water Allocation Account number of the Applicant;
 - (3) the number and class of Irrigation Rights held by the Applicant;
 - (4) the number and class 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 name of the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation;
 - (7) details of the Access Licence (or interstate equivalent) to which the entitlement that is sought is to be appended; and
 - (8) any other information reasonably necessary for the purposes of the Application.
- 31.5 An Application must not specify an Access Licence held by the Company for the purposes of paragraph 31.4(7). The Company is not obliged to subdivide any of its Access Licences.
- 31.6 Applications:
- (1) must be accompanied by payment of the relevant Charge applicable to the Application;²⁴
 - (2) may be accompanied by an application, in accordance with the Charges Policy, for termination or surrender of any Delivery Entitlements that the Applicant wishes to apply to terminate or surrender;
 - (3) must be accompanied by the original certificates for the Irrigation Rights;
 - (4) 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

²³ Paragraphs 15(1)(a) and (b) of the Water Market Rules.

²⁴ Subrule 13(1) of the Water Market Rules.

- (5) may be submitted to the Company at any time.
- 31.7 Applications will be considered in the order of the sequence numbers they are allocated by the Company.
- 31.8 The Company will notify the Applicant if:
- (1) the Application is not complete or not in accordance with this Policy 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.²⁵ 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).

32. Determination

- 32.1 The Company must determine each Application and either:
- (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 32.5. This includes notifying the Applicant that the ACCC has been notified.²⁶
- 32.2 The Company must give notice under rule 32.1 within 25 Business Days after the later of:
- (1) receipt by the Company of the Application; and
 - (2) where the Company gives notice under rule 31.8, 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).²⁷
- 32.3 The period referred to in rule 32.2 does not include:
- (1) where an Applicant requests details under rule 28.1 or gives notices under rule 29.1, 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;

²⁵ Subrule 14(1) of the Water Market Rules.

²⁶ Subrule 14(2) of the Water Market Rules.

²⁷ Subrules 14(2) and (3) of the Water Market Rules.

but before the approval is given or refused or the requirement satisfied, or advice received to the effect that it cannot be satisfied.²⁸

- 32.4 To the maximum extent permitted by law, the Company may, at its discretion, approve an Application (including by imposing conditions).
- 32.5 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 this Policy;²⁹
 - (2) where the Application is not accompanied by payment of the relevant Charge applicable to the Application;³⁰
 - (3) where there are outstanding Charges payable by the Applicant to the Company;³¹
 - (4) where a person who holds a legal or equitable interest in the Irrigation Rights, Shares or Delivery Entitlements the subject of the Application, has refused to give approval to the Transformation;^{32 33}
 - (5) where the Applicant does not provide the security required under rule 35;³⁴
 - (6) where a requirement of a law (including a requirement for approval by any relevant Government Agency) cannot be satisfied;³⁵
 - (7) where the Transformation would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement;³⁶ 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 has not installed a Meter to measure the water delivered from the Company's Works.³⁷

33. Implementation

- 33.1 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.
- 33.2 In an approved Transformation, the Company must:
- (1) cancel the relevant Irrigation Rights of the Applicant; and
 - (2) record the termination or surrender of any Delivery Entitlements which the Applicant has terminated or surrendered in accordance with the Charges Policy.
- 33.3 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.

²⁸ Subrule 14(3) of the Water Market Rules.

²⁹ Paragraph 14(2)(b)(iii) of the Water Market Rules.

³⁰ Paragraph 14(2)(b)(iii) of the Water Market Rules.

³¹ Paragraph 14(2)(b)(iii) of the Water Market Rules.

³² Paragraph 14(2)(b)(i) of the Water Market Rules.

³³ Security interests in relation to arrangements made for the early release of water by Snowy Hydro Limited may be relevant.

³⁴ Paragraph 14(2)(b)(iii) of the Water Market Rules.

³⁵ Paragraph 14(2)(b)(ii) of the Water Market Rules.

³⁶ Paragraph 14(2)(b)(ii) of the Water Market Rules.

³⁷ Paragraph 20(2)(b) of the Water Market Rules.

34. Carryover consequences of transformation

34.1 If:

- (1) during a Water Year, an Applicant has been granted a number of Carryover Units calculated by reference to the number of Water Entitlements of a class held by the Applicant; and
- (2) subsequently during the relevant Water Year, an approved Transformation takes effect in respect of the relevant class of Water Entitlements held by the Applicant:

then clauses 34.2 to 34.6 apply.

34.2 Before the end of the relevant Water Year, either:

- (1) a number of Carryover Units held by the Applicant which is equal to the number granted to the Applicant in respect of the number of Water Entitlements the subject of the approved Transformation (**Required Number**); or
- (2) all of the Carryover Units held by the Applicant;

whichever is less, will be cancelled.

34.3 If the number of Carryover Units cancelled under clause 34.2 is less than the Required Number, the Applicant must, before the end of the Water Year, acquire from persons other than the Company a number of Carryover Units equal to the shortfall. Immediately after the transfer of the relevant Carryover Units to the Applicant takes effect, the Carryover Units will be cancelled.

34.4 If, at the end of the Water Year, the number of Carryover Units cancelled under clause 34.2 and clause 34.3 is less than the Required Number, either:

- (1) a number of Megalitres of Water Allocation in the Applicant's Water Allocation Account which is equal to the remaining shortfall; or
- (2) all of the Water Allocation in the Applicant's Water Allocation Account;

whichever is less, will be cancelled.

34.5 If the number of Megalitres of Water Allocation cancelled under clause 34.4 is less than the remaining shortfall referred to in that clause, the Company may recover from the Applicant, by way of agreed damages for the Applicant's breach of clause 34.3, the Cost of, at the Company's option:

- (1) before the end of the Water Year, acquiring from persons other than the Applicant a number of Carryover Units equal to the remaining shortfall and cancelling them;
- (2) before the end of the Water Year, acquiring from persons other than the Applicant a number of Megalitres of Water Allocation which is equal to the remaining shortfall and cancelling it; or
- (3) after the next Water Year commences, acquiring a number of Megalitres of water allocation from a holder of an Access Licence.

34.6 The agreed damages referred to in clause 34.5 are a genuine pre-estimate of the Company's loss arising from the Applicant's breach of clause 34.3 and any amounts payable under clause 34.5 will constitute a debt due from the Applicant to the Company that must be paid by the Applicant to the Company on demand.

35. Security

35.1 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 Company³⁸ 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 Applicant³⁹, and hold at least 250 Delivery 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 Transformation.⁴⁰

35.2 The Company must not require security to be given by the Applicant under rule 35.1 in an amount that, at the time the security is given:

- (1) exceeds the amount that, under the *Water Charge (Termination Fees) Rules 2009* (Cth), would be payable to the Company for the termination of the Delivery Entitlements held by the Applicant at that time;⁴¹ or
- (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 the Company in respect of the financial year in which the security is given.⁴²

35.3 The Company must not refuse to accept security required under rule 35.1 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.⁴³

35.4 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.

³⁸ This will usually be equal to the number of Delivery Entitlements that the Applicant holds.

³⁹ This refers to the situation where the Applicant will, after Transformation, hold at least 5 times more Delivery Entitlements than Water Entitlements.

⁴⁰ Subrule 10(1) of the Water Market Rules.

⁴¹ This will generally be the amount of the termination fee that would be payable to the Company for the termination of all of the Delivery Entitlements held by the Applicant at that time.

⁴² Subrule 10(2) of the Water Market Rules.

⁴³ Subrule 10(3) of the Water Market Rules.

- 35.5 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 at 24-hour call.
- 35.6 The Company must pay interest earned on the Deposit to the Applicant monthly.
- 35.7 The Applicant bears the risk of loss of the Deposit.
- 35.8 For the purposes of this clause 35, 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.⁴⁴
- 35.9 The Company may apply the security given by the Applicant in accordance with clause 35.1 to any outstanding Charges if they remain unpaid for 14 days after they fall due or upon termination of the Applicant's Delivery Entitlements or the Entitlements Contract.
- 35.10 Subject to clause 35.9, the Company must return any surplus of the security after deduction under clause 35.9 to the Applicant after 14 days have elapsed from the termination of the Applicant's Delivery Entitlements or the Entitlements Contract.

36. Delivery

- 36.1 The Company will not, as a condition of approving an Application, terminate, or require the Applicant to terminate, any Delivery Entitlements.⁴⁵
- 36.2 The Applicant or the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation:
- (1) will, after Transformation, have no right to the delivery of any water unless he, she or it holds Delivery Entitlements; and
 - (2) is responsible for ensuring that he, she or it will, after Transformation, have sufficient Delivery Entitlements for the delivery of all of the Water Allocation which he, she or it wishes to have delivered.
- 36.3 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.
- 36.4 If:
- (1) a Customer does an External Annual Transfer In under clause 36.3; 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. To avoid cancellation, the Customer must complete an External Annual Transfer Out of the relevant Water Allocation before the end of the Water Year.

37. Tagging

- 37.1 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(4) 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

⁴⁴ Subrule 13(2) of the Water Market Rules.

⁴⁵ Rule 19 of the Water Market Rules.

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.⁴⁶

⁴⁶ Section 71W of the Act and clause 21 and schedule 1 of the Access Licence Dealing Principles.

Part E: Conversions

38. Conversions generally

38.1 Conversions:

- (1) must comply with this Policy; and
- (2) require the approval of the Company.

38.2 To the maximum extent permitted by law, the Company may, at its discretion, from time to time:

- (1) embargo Conversions;⁴⁷ or
- (2) make exceptions to this Policy on a case-by-case basis.

39. Types of conversion

39.1 Conversion means any of the following arrangements:

- (1) **(water entitlements – general security to high security)** an arrangement that would result in the cancellation of a Customer's Class C Water Entitlements and the issue of Class B Water Entitlements to the Customer,⁴⁸ provided that:
 - (a) a conversion factor, established by the NSW Minister for Water and published in an Order made under section 71Z of the Act that protects environmental water, domestic and stock rights, native title rights and the reliability of supply to all other Access Licences in the New South Wales Murray Regulated River Water Source, is applied;⁴⁹ and
 - (b) the volume of corresponding Water Allocation in the Water Allocation Account is equal to or greater than the notional volume of the Class C Water Entitlements;⁵⁰ or
- (2) **(water entitlements – high security to general security)** an arrangement that would result in the cancellation of a Customer's Class B Water Entitlements and the issue of Class C Water Entitlements to the Customer,⁵¹ provided that:
 - (a) a conversion factor, equal to 1 divided by the conversion factor referred to in rule 39.1(1)(a), is applied;⁵² and
 - (b) such an arrangement does not result in an increase in the total volume of regulated river (general security) Access Licence share components above the total volume of regulated river (general security) Access Licence share components at the commencement of the Water Sharing Plan.⁵³

⁴⁷ All Conversions of Water Entitlements are embargoed at least until a conversion factor is established by the Minister for Water for the purposes of paragraph 53(3)(a) of the Water Sharing Plan. On 2 July 2008, the previously established conversion factor (0.6) was revoked by an order under paragraph 71Z(1)(c) of the Act.

⁴⁸ Section 71O of the Act, clause 11 of the Dealing Principles and clause 53 of the Water Sharing Plan.

⁴⁹ Paragraph 53(3)(a) of the Water Sharing Plan.

⁵⁰ Paragraph 53(3)(b) of the Water Sharing Plan.

⁵¹ Section 71O of the Act, clause 11 of the Dealing Principles and clause 53 of the Water Sharing Plan.

⁵² Paragraph 53(4)(a) of the Water Sharing Plan.

⁵³ Paragraph 53(4)(b) of the Water Sharing Plan. This would allow conversion of a regulated river (high security) Access Licence to a regulated river (general security) Access Licence only if there had been a corresponding or larger amount of regulated river (general security) Access Licence share component converted to regulated river (high security) Access Licence.

40. Prohibited conversions

40.1 Conversion of Water Entitlements is prohibited:

- (1) unless it is one of the arrangements set out in rule 39.1(1) or 39.1(2);⁵⁴ for example, Conversion of Class A Water Entitlements is prohibited;
- (2) if the Corresponding Access Licence is suspended;⁵⁵
- (3) if the Corresponding Access Licence is a Specific Purpose Access Licence and there is provision in the regulations under the Act or the Water Sharing Plan for applications to be made under section 61 of the Act for new Access Licences of that category/subcategory in relation to the New South Wales Murray Regulated River Water Source;⁵⁶
- (4) if the Corresponding Access Licence is a Specific Purpose Access Licence and that Access Licence nominates a water supply work (as defined in the Act) on land that gives rise to a domestic and stock right under section 52 of the Act;⁵⁷ or
- (5) unless a conversion factor, established by the NSW Minister for Water and published in an Order made under section 71Z of the Act that protects environmental water, domestic and stock rights, native title rights and the reliability of supply to all other Access Licences in the New South Wales Murray Regulated River Water Source, is applied.⁵⁸

41. Application

41.1 An Application is required for a Conversion.

41.2 Applications may be downloaded from the Company's web site (www.murrayirrigation.com.au) or obtained at the Company's Deniliquin, Finley or Wakool offices.

41.3 Applications must be duly executed by:

- (1) if the Customer is the sole holder of the Water Entitlements, the Customer; or
- (2) if several Customers are joint holders of the Water Entitlements, all the joint holders.

41.4 Applications:

- (1) must be accompanied by payment of the relevant Charge applicable to the Application;
- (2) must be accompanied by the original certificates for the Water Entitlements; and
- (3) may be submitted to the Company at any time unless the Company has published a deadline for receipt of Applications on the Company's web site, in which case, Applications must be received before the deadline.

41.5 Applications will be considered in the order of the sequence numbers they are allocated by the Company.

41.6 The Company will notify an Applicant if:

- (1) the Application is not complete or not in accordance with this Policy;

⁵⁴ Subclause 53(2) of the Water Sharing Plan but subject to subclauses 53(7) and 53(8) of the Water Sharing Plan.

⁵⁵ Paragraph 11(2)(b) of the Dealing Principles.

⁵⁶ Paragraph 11(2)(c) of the Dealing Principles.

⁵⁷ Paragraph 11(2)(d) of the Dealing Principles.

⁵⁸ Subclauses 11(3) and (6) of the Dealing Principles and paragraphs 53(3)(a) and 53(4)(a) of the Water Sharing Plan.

- (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;

and specify the further information that is required, the Charge applicable to the Application or the outstanding Charges. 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).

42. Determination

42.1 The Company must determine each Application and notify the Applicant of the determination.

42.2 To the maximum extent permitted by law, the Company may, at its discretion, approve an Application (including by imposing conditions).

42.3 To the maximum extent permitted by law, the Company may, at its discretion, refuse an Application without giving any reason for refusal, including:

- (1) where the Application is incomplete or not in accordance with this Policy;
- (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 the Applicant to the Company;
- (4) where the Applicant has not fully repaid water debts or water borrowings, such as any that may have arisen as a result of arrangements made for the early release of water by Snowy Hydro Limited;
- (5) 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 Conversion;
- (6) where a requirement of a law (including a requirement for approval by any relevant Government Agency) cannot be satisfied;
- (7) where the Conversion would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement; or
- (8) where an Applicant will, after the Conversion, have a right to have water delivered by the Company but has not installed a Meter to measure the water delivered from the Company's Works.

43. Implementation

43.1 Between making an Application and before the date on which the Conversion takes effect or the Application is refused (as applicable):

- (1) the relevant Water Entitlements will not be cancelled;
- (2) Transactions in respect of the relevant Water Entitlements are prohibited;
- (3) Transactions in respect of Annual Allocation determined in respect of the relevant Water Entitlements are prohibited;
- (4) dealings in the relevant Delivery Entitlements (eg transfers) are prohibited.

- 43.2 An approved Conversion takes effect on the date on which it is registered by the Company after the conversion of the Corresponding Access Licence has been registered by the relevant Government Agencies.
- 43.3 In an approved Conversion of Water Entitlements:
- (1) the Company must cancel the relevant Water Entitlements of the Applicant;
 - (2) the Company must issue the new class of Water Entitlements to the Applicant; and
 - (3) Annual Allocation remaining in a Water Allocation Account in respect of cancelled Water Entitlements will:
 - (a) be credited in respect of the new Water Entitlements provided that there will be forfeiture of an amount that is equal to the difference between the notional volume of the cancelled Water Entitlements and the new Water Entitlements where the new notional volume is lower;⁵⁹ and
 - (b) will assume the characteristics of Annual Allocation determined in respect of the new class of Water Entitlements.

44. Carryover consequences of conversion

44.1 If:

- (1) during a Water Year, an Applicant has been granted a number of Carryover Units calculated by reference to the number of Water Entitlements of a class held by the Applicant; and
- (2) subsequently during the relevant Water Year, an approved Conversion takes effect in respect of the relevant class of Water Entitlements held by the Applicant:

then clauses 44.2 to 44.6 apply.

44.2 Before the end of the relevant Water Year, either:

- (1) a number of Carryover Units held by the Applicant which is equal to the number granted to the Applicant in respect of the number of Water Entitlements the subject of the approved Conversion minus the number (if any) that would have been granted to the Applicant during the relevant Water Year in respect of the Water Entitlements issued pursuant to the approved Conversion (**Required Number**); or
- (2) all of the Carryover Units held by the Applicant;

whichever is less, will be cancelled.

44.3 If the number of Carryover Units cancelled under clause 44.2 is less than the Required Number, the Applicant must, before the end of the Water Year, acquire from persons other than the Company a number of Carryover Units equal to the shortfall. Immediately after the transfer of the relevant Carryover Units to the Applicant takes effect, the Carryover Units will be cancelled.

44.4 If, at the end of the Water Year, the number of Carryover Units cancelled under clause 44.2 and clause 44.3 is less than the Required Number, either:

- (1) a number of Megalitres of Water Allocation in the Applicant's Water Allocation Account which is equal to the remaining shortfall; or
- (2) all of the Water Allocation in the Applicant's Water Allocation Account;

⁵⁹ Subclause 11(5) of the Dealing Principles. The forfeiture of Water Allocation from the Water Allocation Account of the converted Water Entitlements is required to minimise potential impacts on the reliability of allocations to other Customers in the following Water Year.

whichever is less, will be cancelled.

44.5 If the number of Megalitres of Water Allocation cancelled under clause 44.4 is less than the remaining shortfall referred to in that clause, the Company may recover from the Applicant, by way of agreed damages for the Applicant's breach of clause 44.3, the Cost of, at the Company's option:

- (1) before the end of the Water Year, acquiring from persons other than the Applicant a number of Carryover Units equal to the remaining shortfall and cancelling them;
- (2) before the end of the Water Year, acquiring from persons other than the Applicant a number of Megalitres of Water Allocation which is equal to the remaining shortfall and cancelling it; or
- (3) after the next Water Year commences, acquiring a number of Megalitres of water allocation from a holder of an Access Licence.

44.6 The agreed damages referred to in clause 44.5 are a genuine pre-estimate of the Company's loss arising from the Applicant's breach of clause 44.3 and any amounts payable under clause 44.5 will constitute a debt due from the Applicant to the Company that must be paid by the Applicant to the Company on demand.

45. Security

45.1 Any of the Company's interests that subsisted in the cancelled Water Entitlements, as in force immediately before they were cancelled, become equivalent interests in the new Water Entitlements.⁶⁰

46. Risks

46.1 Applicants for Conversion of Water Entitlements acknowledge and agree that:

- (1) the duration of the period between making an Application and before the date on which the Conversion takes effect or the Application is refused (as applicable) cannot be predicted or guaranteed;⁶¹
- (2) the Applicant bears all risks associated with the time taken to determine the Application, including:
 - (a) lapse of key dates such as trade cut-off dates, the end of a Water Year, and dates for planting and water use; and
 - (b) the Applicant being left with Water Allocation in their Water Allocation Account that they do not wish to, or cannot, use or transfer (due to the lapse of cut-off dates), and which exceeds the maximum carryover permitted.⁶²

⁶⁰ Subsection 71O(5) of the Act.

⁶¹ The time taken depends on a number of factors. The Company cannot apply to the relevant Government Agency to convert part of the corresponding category of Access Licence held by the Company; it must first be subdivided. This makes Conversion a relatively time-consuming and complicated process. Generally, the Company will announce a deadline for receipt of Applications under rule 41.4(3) with the intention of aggregating Applications received by the deadline and only then apply to the relevant Governmental Agency for conversion. The Government Agency will then need time to determine the Company's application.

⁶² Unless the NSW Minister for Water orders otherwise, Annual Allocation determined in respect of Class B Water Entitlements cannot be carried over from one Water Year to the next.