



Australian
Competition &
Consumer
Commission

Compliance with the Water Rules: Information for Irrigation Infrastructure Operators

Guidelines on Transformation Application Fees

These guidelines are provided by the Australian Competition and Consumer Commission (ACCC) to assist irrigation infrastructure operators (IIOs) to comply with rule 13 of the Water Market Rules 2009 (WMR). These guidelines form part of, and should be read in conjunction with, the ACCC's publication *A guide to the water market rules and water delivery contracts*.

The ACCC encourages IIOs to determine their transformation application fees in accordance with these guidelines. IIOs should ensure that all fees relating to transformation are made available to customers before they apply to transform. For example, transformation application fees could be provided to customers together with the IIO's transformation procedures or published on IIO's website.

These guidelines are for guidance purposes only and do not constitute legal advice. If an IIO is uncertain about how the guidance applies to them, it can seek further clarification from the ACCC or consider obtaining independent legal advice.

The ACCC is responsible for monitoring and enforcing compliance with the WMR under the *Water Act 2007* (Cwlth).

What fees can IIOs impose on customers for processing their applications for transformation?

If a customer applies to an IIO to transform their irrigation right¹, the WMR require the IIO to take all the necessary steps to process the application. This typically involves the IIO reviewing the application and collecting information necessary for the completion of the transformation, giving approval to the transformation and lodging an application with the relevant government department.

The WMR permit the IIO to charge the customer an administrative fee for the processing of their transformation application.² However, the WMR limit the scope of the costs the IIO can recover through the transformation application fee to the 'reasonable and efficient costs incurred, or likely to be incurred, by the IIO in processing the application'.³

This requires the IIO to make an assessment of the costs that would meet the criteria of 'reasonable and efficient' when setting the transformation application fee.

What are 'reasonable and efficient' costs?

Reasonable and efficient costs of processing an application for transformation are limited to those costs that have a discernible relation with activities that either:

- form an integral part of the service of processing the transformation application provided by the IIO to the customer; or
- are necessarily undertaken by the IIO in processing an application for transformation in order to comply with a relevant regulatory obligation.

¹ The term 'irrigation right' is defined in section 4 of the *Water Act 2007* (Cwlth).

² Subrule 13(1) of the WMR.

³ Subrule 13(2) of the WMR.

A customer who applies to transform their irrigation right may also simultaneously seek to terminate their right of access or trade their water. Processing a termination or trade will result in an IIO undertaking a range of activities that are additional to the processing of an application for transformation, including activities associated with termination, disconnection and permanent or temporary trade of water. The costs associated with these activities cannot be recovered through the transformation application fee but can generally be recovered through other fees or charges (e.g. access fee). IIOs should be careful not to include any costs in their transformation application fees that are already recovered through other fees and charges.

Reasonable and efficient costs are also limited to costs that are likely to be incurred by an IIO acting so as to practicably achieve the minimum sustainable cost of processing an application for transformation.

This means that IIOs may not be permitted to recover all the costs actually incurred by them in processing transformation applications if they implement transformation procedures that are unnecessarily complicated or burdensome, or indulge in expenditure that is extravagant or unnecessary in the course of processing transformation applications.

To ensure consistency with the WMR, IIOs should develop and make available to all their customers clear and detailed transformation procedures that minimise delay and cost to all parties.

What costs can generally be included in transformation application fees?

The following are generally the types of costs that are likely to be considered reasonable and efficient costs of processing a transformation application:

- cost of staff time spent processing a transformation application where:
 - the rates for staff time are based only on wages (plus oncosts) and not a commercial or professional rate
 - the rates applied to a task are commensurate with the level of skill required to complete that task, and
 - the amount of time spent by staff in processing a transformation application reflects the nature and complexity of the service
- cost of staff time devoted to handling customer queries relating directly to the processing of their application for transformation
- cost of stationary, photocopying and postage
- costs incurred by the IIO in lodging the application with the relevant government department.

IIOs can also collect from transforming customers any fees payable to government departments in the course of the transformation process; however, to ensure transparency these fees should be identified and requested separately.

What costs must be excluded from transformation application fees?

The following are generally the types of costs that are unlikely to be considered reasonable and efficient costs of processing a transformation application and should therefore be excluded from any transformation application fee:

- costs associated with activities undertaken by an IIO that are not directly related to the processing of a customer's application for transformation, including costs associated with:
 - termination
 - disconnection
 - trade of permanent or temporary water
 - provision of general customer service to customers not directly attributable to the processing of a specific application for transformation, such as responding to general inquiries about the transformation process
- costs to the business that would have been incurred regardless of an application for transformation being received, such as overheads
- costs arising from activities undertaken by an IIO for the purpose of meeting internal or external reporting obligations not directly related to the processing of a particular application for transformation
- costs (including legal costs) that have been incurred to become generally compliant with other provisions of the WMR or the Water Act
- costs arising from activities undertaken by an IIO as part of its usual business practices that are already recovered through other fees and charges
- costs for which an IIO has already been compensated by a government agency.

Can IIOs charge a standard transformation application fee?

An IIO can set a standard application fee that applies to all transformation applications it receives, based on the IIO's estimate of the reasonable and efficient costs likely to be incurred by the IIO, on average, in processing transformation applications.

Are transformation application fees likely to vary among IIOs?

The process of transformation is substantially uniform across the Murray Darling Basin. Therefore, the ACCC does not expect there to be significant variance in the amount of transformation application fees charged by IIOs, notwithstanding that the assessment of the reasonable and efficient costs likely to be incurred by a particular IIO may depend on the individual circumstances of that IIO.

Information available to the ACCC indicates that the amount of reasonable and efficient costs incurred by a typical IIO in processing a transformation application in 2011–12 was unlikely to exceed \$250–\$350 (exclusive of GST).

IIOs that impose transformation application fees in 2012–13 that exceed this range may be required to substantiate to the ACCC that their transformation application fees are compliant with the WMR. Failure by an IIO to do so on request may result in the ACCC investigating and, where appropriate, taking enforcement action.