



TRANSFORMATION RULES

**4 Fowles Street
Barmera SA 5345
Tel: (08) 8580 7100
Fax: (08) 8588 2001
www.cit.org.au**

**Effective: 1 July 2010
(updated 1 July 2014)**

1. INTRODUCTION

1.1. The Irrigation Act 2009(SA), Natural Resources Management Act 2004(SA) and Commonwealth Water Market Rules enable a person who has a right against an Irrigation Trust to receive water (other than a right to have water delivered) to permanently transform this right into an ongoing entitlement to access to a share of the water resources of a water resource planning area e.g. an Irrigation Right holder within a SA Irrigation Trust may permanently transform their Irrigation Right under the Irrigation Act 2009 into a Water Access Entitlement on a Water Licence under the Natural Resources Management Act 2004.

1.2. These Rules:

- (1) apply to Transformation;
- (2) apply to the delivery of water to customers who have transformed their Irrigation Rights;
- (3) are subject to the Irrigation Act 2009(SA), Natural Resources Management Act 2004(SA), Water Act 2007(Cwth), Water Market Rules, Water Charge (Termination Fees) Rules 2009, the Water Allocation Plan for the River Murray Prescribed Watercourse, and the terms of the relevant Water Licence, and all other relevant laws; and
- (4) may be affected by rules or requirements of the Minister for Sustainability, Environment and Conservation, Minister for the River Murray or other Government Agencies.

1.3. All enquiries in relation to these Rules should be directed to either:

- (1) CIT's customer services team in respect of Irrigation Rights or Water Delivery Rights; or
- (2) the SA Department for Environment, Water and Natural Resources in respect of Water Licences and Water Access Entitlements.

2. DEFINITIONS AND INTERPRETATION

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

- (1) **ACCC** means the Australian Competition and Consumer Commission;
- (2) **Applicant** means a party to an Application;
- (3) **Application** means an application, in the form prescribed by CIT, for a Transformation, which is completed and duly executed to CIT's satisfaction, including all documents required for the application, and payment of the required fee;
- (4) **Bank Guarantee** means a guarantee given by an authorised deposit-taking institution within the meaning of the Banking Act 1959 (Cwth),
- (5) **CIT** means Central Irrigation Trust Ltd Pty;
- (6) **CIT Trust** means an Irrigation Trust constituted under the *Irrigation Act 2009* (SA) and managed by CIT;
- (7) **Corresponding Shares** means Class 3a or Class 3b Water Access Entitlements;

- (8) **Water Allocation Transfer In** means a water allocation transfer, as defined in the Natural Resources Management Act 2004 (SA) to a Water Account held by a CIT Trust and crediting of water allocation to a CIT Account of an Applicant;
- (9) **Water Allocation Transfer Out** means a water allocation transfer, as defined in the Natural Resources Management Act 2004 (SA) from a Water Account held by a CIT Trust and debiting of water allocation from a CIT Account of an Applicant;
- (10) **External Permanent Transfer In Out** means a Water Access Entitlement transfer, as defined in the Natural Resources Management Act 2004 (SA) from a Water Licence held by a CIT Trust;
- (11) **Internal Permanent Transfer** means an Irrigation Right transfer, as defined in the Irrigation Act 2009(SA), by a CIT Trust resulting in the debiting of CIT Account of an selling applicant and crediting of the CIT Account of the purchasing applicat;
- (12) **Irrigation Right** means a right that:
 - (a) a person has against an Irrigation Trust to receive water.
 - (b) is not a right, such as a Water Licence, 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;
 - (c) is not a right to have water delivered by an Irrigation trust (such as a Water Delivery Right);
- (13) **Permanent Transfer** means an Internal Permanent Transfer or an External Permanent Transfer Out;
- (14) **Transformation** has the same meaning in these Rules as transformation arrangements has in the Water Act 2007 (Cwth);
- (15) **Transformed Water Allocation** means the water allocation, as defined in the Natural Resources Management Act 2004 (SA) to which the customer is entitled from time to time under a Water Licence.
- (16) **Water Market Rules** means the Water Market Rules 2009 (Cwth);
- (17) **Water Year** means the period from 1 July in any year to the 30 June in the following year, and
- (18) **WAP** means the Water Allocation Plan for the SA River Murray Prescribed Water Course.

3. INFORMATION

- 3.1. The Irrigation Act 2009 and Natural Resources Management Act 2004 and other relevant South Australian legislative instruments are available at <http://www.legislation.sa.gov.au/index.aspx>
- 3.2. The Water Act 2007 (Cth), Basin Plan, Water Market Rules and other relevant federal legislative instruments are available at www.frli.gov.au
- 3.3. Further information on the ACCC's role in relation to the Water Market Rules can be obtained from the ACCC's web site at www.accc.gov.au

4. TRANSFORMATION GENERALLY

4.1. Transformation:

- (1) must comply with these Rules; and
- (2) requires the approval of the CIT Trust in which the Irrigation Right being transformed is held.
- (3) Transformation is an arrangement to reduce a Water Licence share component held by a CIT Trust to allow Irrigation Rights to be permanently transformed into a Water Access Entitlement of a Water Licence that is held by someone other than a CIT Trust.

5. DETAILS OF IRRIGATION RIGHTS

5.1. If a person who holds an Irrigation Right gives written notice to CIT that the person:

- (1) Intends to apply, or applies, for Transformation of the whole or part of the Irrigation Right; and
- (2) Requests CIT to provide details of the Irrigation Right, contractual or other arrangements between CIT and the person relating to the Irrigation Right, CIT will within 20 Business Days after receiving the notice provide those details.
- (3) Requests for details under rule 5.1 must be made in writing and lodged with CIT.
- (4) If the holder of an Irrigation Right believes that the details provided under rule 5 are not complete or are incorrect and:
 - (a) seeks to reach agreement with CIT as to the details of the irrigation Right; and
 - (b) 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 CIT that the holder seeks a formal negotiation of the matter.

6. DETAILS OF DELIVERY RIGHTS

6.1. If a person who holds an Irrigation Right gives written notice to CIT 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 a CIT Trust after Transformation; CIT will after receiving the notice, provide details of the conditions to apply between the CIT Trust 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 6.3.
- (3) Requests for details under rule 6.1 must be made in writing and lodged with CIT.

6.2. CIT will not make any variations to the conditions to apply between CIT and the person referred to in rule 6.1 other than variations that are either necessary as a consequence of the Transformation or are agreed in writing by CIT and that person.

6.3. If:

- (1) a person who gives notice to CIT under rule 7.1 believes that conditions to apply to the right to have water delivered after Transformation have not been provided by CIT under rule 7.1 or that the details provided are incorrect; or
- (2) CIT and the person do not agree on a variation of the conditions within 10 Business Days after CIT provides written details under rule 7.1;

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

7. FORMAL NEGOTIATION

7.1. A formal negotiation for the purposes of rules 5.3 and 6.3 is a genuine attempt by CIT to reach agreement with the person within 30 Business Days after the giving of the notice under rule 5.3 or rule 6.4, as to the details of the Irrigation Right or the conditions to apply to the right to have water delivered as the case requires.

7.2. CIT and the Applicant must pay their own costs of the formal negotiation.

7.3. If CIT is unable to reach agreement with the holder of the Irrigation Right as to the details of the Irrigation Right or conditions to apply to the right to have water delivered, as the case requires, within 30 Business Days after the giving of the notice under rule 5.3 or rule 6.4, CIT will, within that period, notify the ACCC of the reasons why CIT is unable to reach agreement within that period.

8. APPLICATION

8.1. An Application is required for Transformation.

8.2. Applications may be downloaded from CIT's web site at www.cit.org.au or obtained from CIT's office. Potential Applicants requiring assistance with Applications may make an appointment to see a member of CIT's customer services team.

8.3. Applications must be duly executed 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.

8.4. Applications:

- (1) must be accompanied by payment of the relevant charge applicable to the Application (including the termination fees relating to any Water Delivery Entitlements that will be terminated);
- (2) must be accompanied by all forms that will need to be submitted to a Government Agency to carry out the Transformation to which the Application relates, correctly completed and signed by all necessary signatories; and
- (3) may be submitted to the Company at any time.

8.5. CIT 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 CIT in respect of the Irrigation Right;

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 CIT receives the further information, payment of the charge applicable to the Application, or payment of the outstanding charges (or an agreement is made between CIT and the Applicant for the payment of the outstanding charges).

9. DETERMINATION

9.1. CIT will determine each Application and either:

- (1) notify the Applicant that the Application is approved; or
- (2) notify the Applicant that the Application has not been approved for one or more of the reasons referred to in rule 9.5.

9.2. CIT will give notice under rule 9.1 within 25 Business Days after the later of:

- (1) receipt by CIT of the Application; or
- (2) where CIT gives notice under rule 9.6, 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).

9.3. The period referred to in rule 9.2 does not include:

- (1) where an Applicant requests details under rule 5.1 or gives notices under rule 6.1, any period before CIT 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.

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

9.5. To the maximum extent permitted by law CIT 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 the Applicant to the Company;

- (4) where a person who holds a legal or equitable interest in the Irrigation Rights, subject of the Application, has refused to give approval to the Transformation;
 - (5) where the Applicant does not provide the security required under rule 11;
 - (6) where a requirement of a law (including a requirement for approval by any relevant Government Agency) cannot be satisfied;
 - (7) where the Transformation would, in the reasonable opinion of CIT, contravene its obligations under law, regulations or its Licences; or
- 9.6. If CIT does not approve an application for Transformation, it will advise the ACCC of the reasons for the refusal within 5 business days.

10. IMPLEMENTATION

- 10.1. An approved Transformation takes effect on the date on which it is registered by CIT which can only occur after it has been approved by Minister for Sustainability, Environment and Conservation
- 10.2. In an approved Transformation:
- (1) CIT will cancel the relevant Irrigation Rights of the Applicant;
 - (2) the Applicant may, at their discretion, elect to terminate Water Delivery Rights (in which case termination fees will be payable).
- 10.3. Transformation does not affect Water Allocation already credited to a Water Account before the Transformation takes effect.

11. SECURITY

- 11.1. Where an Applicant applies for Transformation and will, after Transformation, either:
- (1) have a right to have water delivered by a CIT Trust but no Irrigation Rights; or
 - (2) have a right to have a volume of water delivered by a CIT Trust which is more than 5 times the volume of Irrigation Rights held by the Applicant;
- CIT will require security to be given, as per the Water Markey Rules 2009, by the Applicant for the payment of charges for access to a CIT Trusts works for the delivery of water to the Applicant after Transformation.
- 11.2. CIT will not refuse to accept security required under rule 11.1 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 Water Licence 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 Water 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);

- (5) a deposit lodged with CIT (Deposit); or
- (6) any other form of security agreed upon by CIT and the Applicant.

11.3. If the security given by the Applicant is a Bank Guarantee, the Bank Guarantee must be unconditional and not have an expiry date.

12. CHARGES

12.1. The Applicant must pay all applicable CIT fees and charges.

12.2. Transformation of an Irrigation Right or termination of Water Delivery Rights does not affect the obligation of the Customer to pay the charges in respect of the period before Transformation or termination.

13. DELIVERY

13.1. CIT will not, as a condition of approving a Transformation Application, terminate, or require the Applicant to terminate, any Water Delivery Entitlements.

13.2. The Applicant or the person who is to hold the Water Licence obtained as a result of the Transformation:

- (1) will, after Transformation, have no right to the delivery of any water, except as provided for by holding Water Delivery Rights within a CIT Trust.;
- (2) is responsible for ensuring that after Transformation they have sufficient Water Delivery Entitlements for the delivery of all of the Water Allocation which they wish to have delivered; and
- (3) must comply with all other policies of the CIT Trust.

13.3. A CIT Customer who holds a Water Licence obtained as a result of Transformation must, if they wish a CIT Trust to deliver transformed Water Allocation to the customer's CIT outlet undertake an External Water Allocation Transfer In.

13.4. If:

- (1) a Customer does an **External Water Allocation Transfer In** under clause 13.3; and any of the relevant Water Allocation remains unused in a CIT Water Account at the end of a water year; it cannot be carried over to the next water year and it will be cancelled without compensation. To avoid cancellation, the Customer must complete an **External Water Allocation Transfer Out** of the relevant Water Allocation before end of that water year.

14. DELIVERY AND USE OF WATER OUTSIDE CIT

14.1. Where the person who is to hold a Water Licence under the *Natural Resources Management Act 2009 (SA)* obtained as a result of the Transformation wishes to use any of the transformed water allocation other than by delivery through a CIT Trust delivery system, it is their responsibility to obtain and/or put in place all required agreements, contracts or approvals to lawfully undertake this extraction and use.

15. APPLICANT MUST OBTAIN OWN ADVICE

- 15.1. An Applicant should seek their own professional advice about these Rules and anything connected with these Rules, including legal, taxation, accounting and financial advice.

16. LIMITATION OF LIABILITY

- 16.1. CIT may change or reverse a determination with respect to an Application for a Transformation if a decision of the Minister for Sustainability, Environment and Conservation (SA) or their delegate (including a change to, or reversal of, a previous decision) affects the Application or the Transformation.
- 16.2. To the maximum extent permitted by law, all liability for any determination of CIT with respect to an Application for a Transformation or the determination or decision by CIT, the SA Minister for Sustainability, Environment and Conservation or a Government Agency with respect to an Application or a Transformation is excluded.

COSTS AND OUTLAYS

- 16.3. The Applicant must pay, and indemnify CIT against, all costs and outlays (including government imposts) connected with the Transformation.