



Guidelines for Water Trading Rules

Rules for irrigation infrastructure operators

Rules covered by this guideline

The water trading rules covered by this guideline are contained in sections 12.28–12.30 (referencing 12.15), 12.32–12.35 and 12.47 of Chapter 12 of the Basin Plan. This guideline should be read together with these sections.

Purpose of the rules

The purpose of the water trading rules that apply to irrigation infrastructure operators (IIOs), is to contribute to an effective and efficient water market in the Murray–Darling Basin, consistent with the National Water Initiative (NWI) objectives for water markets, including:

- facilitating the operation of efficient water markets and the opportunities for trading, within and between states and territories
- minimising transaction costs, including through good information flows
- enabling the appropriate mix of water products to develop
- recognising and protecting the needs of the environment and
- protecting third-party interests.

The water trading rules for IIOs contribute to achieving these objectives by ensuring there is the ability to trade water delivery rights and there is information provided to IIO members about their rights.

Defined terms

This guideline contains a number of defined terms. These terms are defined in the *Basin Plan 2012*, the *Water Act 2007*, or the *Water Markets Rules 2009*. An explanation of these terms can be found at the back of this document.

To ensure accurate understanding for reading this guideline, two key terms are defined as follows.

Water delivery right means a right to have water delivered by an infrastructure operator.

NOTE: The water trading rules only apply to certain types of water delivery rights — see ‘Scope of the rules’ below.

Irrigation right means a right that:

- a person has against an IIO to receive water; and
- is not a water access right or a water delivery right.

Explanation of the rules

This guideline covers all of the rules that apply directly to IIOs. However, other water trading rules may also be applicable to IIOs in specific circumstances.

Irrigation infrastructure operators are required to not unreasonably restrict the trade of a water delivery right under section 12.28. Section 12.29 lists the factors to be taken into account when determining whether a trade is reasonable, this list is non-exhaustive. If an IIO restricts the trade of a water delivery right within its network, it must notify each party to the trade in writing of the decision and the reasons for the decision within 30 days of the decision being made under section 12.30.

Irrigation infrastructure operators are required to specify water delivery rights under section 12.32. For each person that holds a water delivery right against them, an IIO must decide on:

- the volume or unit share of the person's water delivery right; and
- the units applicable to the water delivery right; and
- what specific part of the irrigation network (if any) that the water delivery right relates to.

The IIO must notify the holder of the delivery right in writing of their decision and the reasons for the decision, along with the terms and conditions of the contract between the IIO and the holder, which are applicable to the water delivery right.

Irrigation infrastructure operators are required to specify irrigation rights under section 12.34. For each person that holds an irrigation right against them, an IIO must decide on the volume or unit share of the person's irrigation right. The IIO must notify the holder of the irrigation right in writing of their decision and the reason for their decision.

If changes are made to the specified water delivery right or irrigation right, the IIO must notify the holder of the right within 30 days of the changes taking effect under section 12.35.

NOTE: Where notification has already occurred prior to 1 July 2014, and it is current at that date, no further notification is required under sections 12.32 or 12.34.

Irrigation infrastructure operators are required to document their rules relating to the trade of irrigation rights, water delivery rights or water access rights within, into, or out of their network under section 12.47. These rules must be available upon request and published on the IIO's website, if it has one.

Who do these rules apply to?

These rules apply to irrigation infrastructure operators (IIOs).

What is an irrigation infrastructure operator?

Under the *Water Act 2007*, an infrastructure operator is a person (or entity) who owns or operates infrastructure (called *water service infrastructure*) for one or more of the following purposes:

- storing water
- delivering water
- draining water

for the purpose of providing a service to another person.

If an *infrastructure operator* operates water service infrastructure for the purpose of delivering water for the primary purpose of it being used for irrigation, the operator is considered to be an IIO, and the *infrastructure* is the operator's *irrigation network*.

If IIOs are currently subject to the *Water Charge (Termination Fees) Rules 2009*, which use the same definition in the *Water Act 2007*, then they are subject to the water trading rules.

Scope of the rules

The water trading rules of the Basin Plan cover all *water delivery rights* that meet all three elements set out in section 12.03 of the water trading rules:

1. the water delivery right must be held against an IIO; and
2. the IIO is entitled to impose a fee on the termination/surrender of the right, or services provided in relation to that right; and
3. the *Water Charge (Termination Fees) Rules 2009* regulates any fees that may be imposed.

Many IIOs have issued separate water delivery rights (sometimes referred to as *delivery entitlements* or *delivery shares*) specifying the volume/unit share, relevant part of the irrigation network, setting out the terms and conditions applicable to their water delivery rights as well as, a delivery contract with each of their customers.

Other IIOs have specified the details of a water delivery right (volume/unit share and relevant part of the irrigation network) as part of the delivery contract itself.

Regardless of whether the water delivery right is a separate right or part of a delivery contract, if these rights meet the criteria in rule 12.03, then the water trading rules apply.

In the water trading rules a reference to *irrigation right* is a reference to a right to receive water from an IIO that is not a water access right or a water delivery right.

The water trading rules provide that a person may trade a water access right or an irrigation right free of any condition that would require the person to hold, buy, sell, obtain, accept, terminate, or vary the volume or unit share of, a water delivery right (section 12.15).

Rule requirements

Specify water delivery rights and irrigation rights

The intent of the water trading rules relating to the specification of water delivery rights and irrigation rights is to facilitate the trade of these rights by making information about the rights available to the holders of the rights.

Specify irrigation rights

An IIO must, for each person holding an irrigation right against it, decide the person's entitlement to water under their irrigation right (section 12.34). The entitlement must be expressed as either a number of megalitres or a unit share of the IIO's water access entitlement.

The IIO is required to notify the holder of the right in writing of the decision and the reasons for the decision within 30 days of the commencement of the Basin Plan water trading rules (that is, by 31 July 2014).

There is no requirement on the IIO to notify a person holding a right against them under section 12.34 if notification occurred before 1 July 2014 and the notification is accurate on that date.

If an IIO subsequently decides to change a person's irrigation right (other than because of a trade or transformation by the holder), they must notify the person of their decision, and the reasons for the decision, within 30 days (section 12.35).

If a new irrigation right comes into existence after 1 July 2014, the IIO must provide a notification to the holder as soon as is practicable, but in any case within 30 days of the right coming into existence. The MDBA considers that the 30-day period does not commence until agreement has been finalised with the IIO for the new irrigation right and the new right can reasonably be issued.

The MDBA is aware that specification typically takes different formats for different IIOs; there is no obligation for IIOs to provide the information in a standard form.

Specify water delivery rights

An IIO must, for each person holding a water delivery right against it, decide the volume or unit share of the person's water delivery right, the units applicable to the water delivery right and if the water delivery right relates to a specific part of the IIO's irrigation network (section 12.32).

The IIO is required to notify the holder of the right in writing of the decision and the reasons for the decision within 30 days of the commencement of the Basin Plan water trading rules. This notification must include the terms and conditions of the contract between the IIO and the person, which are applicable to the water delivery right.

There is no requirement on the IIO to notify a person holding a right against them under section 12.32 if notification occurred before 1 July 2014 and the notification is accurate on that date.

If an IIO subsequently decides to change a person's water delivery right (other than because of a trade or termination by the holder), the IIO must notify the person of their decision, and the reasons for the decision, within 30 days (section 12.33).

If a new water delivery right comes into existence after 1 July 2014, the IIO must provide a notification to the holder as soon as is practicable, but in any case within 30 days of the right coming into existence. The MDBA considers that the 30-day period does not commence until agreement has been finalised with the IIO for the new delivery right and the new right can reasonably be issued.

The MDBA is aware that specification of rights typically takes different formats for different IIOs; there is no obligation for IIOs to provide the information in a standard form.

Trade of water delivery rights

The intent of the water trading rules relating to the trade of water delivery rights is to facilitate the trade of water delivery rights within irrigation networks. Trade of water delivery rights provides holders with greater flexibility and an alternative to termination and the payment of termination fees.

An IIO must not unreasonably restrict the trade of a water delivery right under the water trading rules (section 12.28). 'Restrict' in relation to trade is defined in the Basin Plan and includes for example to deter or delay a trade (see *Defined terms* in this guideline for more information).

A 'trade' of water delivery right includes:

- a change in the ownership of the right
- a change in the location of the right
- a change in both the ownership and location of the right.

Trading part of a water delivery right

Section 12.03(2) provides that where the water trading rules refer to the trade, termination or surrender of a water delivery right, this includes a reference to trade, termination or surrender of part or all of the entitlement to delivery under the water delivery right.

For example, if an irrigator has a water delivery right entitling them to the delivery of 100 ML per annum, the trade of part of this volume (for instance, 50 ML) is considered to be a trade of water delivery right for the purposes of the water trading rules.

Section 12.29 lists factors that may be taken into account when determining if a restriction on the trade of a water delivery right is reasonable. However, there may also be other factors that are reasonable. Whether a restriction is reasonable will depend on the circumstances in which it is applied. Additional factors may develop over time and the construct of this section provides flexibility for this to occur.

A restriction on the trade of a water delivery right is likely to be considered reasonable if, for example, it would have also been restricted if an individual has applied to trade both the water delivery right and an irrigation right or water access entitlement.

Restrictions on trade of a water delivery right may be for physical or non-physical factors. Factors listed in the water trading rules that may be taken into consideration when deciding whether or not a restriction is reasonable include, but are not limited to:

- overall capacity in the irrigation infrastructure operator’s irrigation network
- capacity in the parts of the irrigation infrastructure operator’s irrigation network to which water would potentially be delivered under the traded water delivery right
- reconfiguration or decommissioning work in the parts of the irrigation infrastructure operator’s irrigation network to which water would potentially be delivered under the traded water delivery right
- connectivity between specific parts of the irrigation infrastructure operator’s irrigation network relevant to the proposed trade
- payment of fees or charges of the type described in paragraph 91(1)(a) of the Act
- the volume of a water delivery right reasonably required to irrigate a person’s property for both current and expected future water use
- the net costs to the irrigation infrastructure operator of assessing and giving effect to the trade of a water delivery right
- the provision of reasonable security to the irrigation infrastructure operator for the payment of fees or charges for access to the operator’s irrigation network by the person acquiring the water delivery right
- whether the proposed trade would result in the water delivery right being held by a person who does not own or occupy land in the area serviced by the irrigation infrastructure operator.

If an IIO decides to restrict the trade of a water delivery right within its network, the IIO must notify each party to the trade in writing as soon as practicable but within 30 days of the decision to restrict the trade being made, and include the reasons for the restriction (section 12.30).

This means that the IIO is required to set out its decision in full, including reference to the evidence or other material on which its decision was based.

For more information on the allowable restrictions for the trade of water delivery rights, see **Appendix A**.

Trade and contractual arrangements

Where an IIO has issued separate water delivery rights, a trade of these water delivery rights will not necessarily require an amendment to a delivery contract between the IIO and their customer. However, where the water delivery right is specified in the delivery contract between the customer and the IIO, a trade will generally require a contractual amendment.

Where a new holder of a water delivery right was not previously a customer of the IIO, a new contract will typically be required. Conversely, if a trade will result in a person no longer holding any water delivery right against their IIO, a contract between them may no longer be required.

Leasing and temporary trade of water delivery rights

The Basin Plan defines trade as including ‘the establishment of a leasing arrangement’.

It is a matter for individual IIOs as to whether they offer the option to lease or trade temporarily their water delivery right to others. If they do, the requirements of the rules in sections 12.28–12.30 will apply.

The factors used when considering a restriction on the permanent trade of a water delivery right, are also relevant in considering whether or not restricting the lease or temporary trade of a water delivery right is reasonable. However, a restriction that may be reasonable on a proposed permanent water delivery right trade, may not be reasonable on a proposed lease of the same volume of water delivery right relating to the same locations, and vice versa.

The MDBA is aware that a number of different arrangements exist for the management and trade of water delivery rights across irrigation networks. In some cases, it may not currently be possible to lease or temporarily trade water delivery rights within some IIO networks if the IIOs do not have the administrative arrangements in place to allow for this to occur. However, the MDBA anticipates that over time these arrangements will be put in place where appropriate.

Whether restricting the lease or temporary trade of a water delivery right is reasonable or not, there should be consideration with regard to the specific arrangements of the IIO network in question.

Availability of trading rules

Access to information is critical to a well-functioning water market because it allows participants to make informed decisions about managing their water access right, irrigation rights and water delivery rights.

The intent of section 12.47 is to ensure information about trading rules within irrigation networks is available to the wider market. Irrigators may be familiar with the terminology; product characteristics and trading rules associated with tradable water rights in their own network, but may lack access to this information as it applies in other networks, or if they are not currently a member of a network.

Irrigation infrastructure operators are required under section 12.47 to make their trading rules available. If an IIO has rules that govern the trade of irrigation rights, water delivery rights or water access rights within, into or out of their network, these rules must be documented.

This rule does not require IIOs to create trading rules if no rules exist. However, if trading activity has occurred, the MDBA considers that trading rules are likely to exist.

The Basin Plan does not contain a definition of ‘trading rules’ as these will be different for each IIO. However, the documentation of rules relating to administrative procedures are excluded from this requirement; it does not include rules about the payment of fees, the completion of forms or information that must be supplied by a person applying for a trade (e.g. administrative requirements).

If a person requests a copy of an IIO’s rules, the IIO must respond to the request to provide a copy of the trading rules within 30 days of the request being received.

If the IIO has a website, the rules must be published on that website within seven days of:

- 1 July 2014; or
- the day the IIO establishes a website; or
- the day the IIO is established.

If changes are made to the rules, a revised version must be published on the IIO's website as soon as practicable but within 30 days of the changes being made.

All of the reporting obligations for IIOs are outlined below.

Summary — reporting of trading rules

1. Irrigation infrastructure operators must document their trading rules and make them available upon request to their customers or other individuals (section 12.47 (1) and (3)).
2. If an IIO has a website, it must publish its trading rules on its website within seven days of 1 July 2014. If the rules change, an updated version must be published as soon as practicable, but in any case within 30 days after the change (section 12.47 (4)). Note: If the IIO does not have trading rules, there is no requirement for rules to be created.
3. Irrigation infrastructure operators to whom Rule 15 of the *Water Charge (infrastructure) Rules 2010* applies to must also supply a copy of their trading rules to the MDBA (the central information point determined by the MDBA under section 12.47(5)).
 - Rule 15 of the *Water Charge (Infrastructure) Rules 2010* applies to infrastructure operators that service a total volume of water held under water access entitlements from managed water resource of at least 10 GL.
 - The rules must be provided within seven days of 1 July 2014.
 - The format in which IIOs should provide their rules to the MDBA is via a hyperlink to their website. If the IIO does not have a website, they should provide a PDF document. Rules should be sent to the MDBA via email to watermarkets@mdba.gov.au. Upon the receipt of the rules, the MDBA will notify the IIO via return email of the receipt of their trading rules.
 - In the event of a rule change, an updated version must be supplied to the MDBA as soon as practicable, but in any case within 30 days after the change.
4. IIOs must, for each person holding a water delivery right (section 12.32) and irrigation right (section 12.34) specify these rights and notify the holders of the rights within 30 days of 1 July 2014.
 - If the holder of the right has been notified before 1 July 2014 and the notice is still accurate at this date, then no additional notification is required.
 - If the IIO decides to change a person's irrigation right or water delivery right, it must notify the person in writing as soon as practicable, but in any case within 30 days of the decision. This does not apply to changes only to reflect a trade, transformation or termination of the right by the person.
 - If a new right is established, the holder of this new right must be notified within 30 days of the right coming into existence, and if there are any subsequent changes to the rights notification of changes must occur within 30 days of them taking effect (section 12.33, section 12.35).
5. If an IIO decides to restrict the trade of a water delivery right within its irrigation network, it must notify each party to the trade in writing of the decision and the reasons for the decision (section 12.30).

Defined terms

The following defined terms are contained in the *Basin Plan 2012*, the *Water Act 2007* or the *Water Market Rules 2009*.

Approval authority, in relation to the proposed trade of a water access right, means a person whose approval is required under state water management law for the trade to proceed.

NOTE: Where an approval authority is referenced in the water trading rules it refers to the persons whose approval (not just consent) is required under state water management law for the trade of water access rights to proceed.

In some cases, an IIO may be an approval authority through a delegated approval role from a Basin State. For example, the MDBA considers that Goulburn–Murray Water is an IIO that also acts separately as an approval authority.

Irrigation infrastructure operator

If a person owns or operates infrastructure for one or more of the following purposes:

- (a) the storage of water;
- (b) the delivery of water;
- (c) the drainage of water;

for the purpose of providing a service to another person.

The person is an *infrastructure operator*.

The infrastructure is *water service infrastructure*.

If the infrastructure operator operates the water service infrastructure for the purposes of delivering water for the primary purpose of being used for irrigation:

- (a) the operator is an *irrigation infrastructure operator*; and
- (b) the infrastructure is the operator's *irrigation network*.

Irrigation right means a right that:

- a person has against an irrigation infrastructure operator to receive water; and
- is not a water access right or a water delivery right.

Reconfiguration or decommissioning work means activities whereby irrigation networks are closed, rationalised, or otherwise changed, in order to change their capacity or efficiency.

Restrict in relation to trade, includes to refuse, prevent, deter, delay or impose a condition or a barrier on, and restriction has a corresponding meaning.

Trade includes:

- (a) a trade that does not involve the payment of consideration; and
- (b) a trade between places under which ownership of the right being traded does not change; and
- (c) the establishment of a leasing arrangement; and
- (d) the establishment of a tagged water access entitlement.

Water access entitlement means a perpetual or ongoing entitlement, by or under a law of a state, to exclusive access to a share of the water resources of a water resource plan area.

Water access right means any right conferred by or under a law of a state to do either or both of the following:

- to hold water from a water resource;
- to take water from a water resource;

and includes the following rights referred to above:

- stock and domestic rights
- riparian rights
- a water access entitlement
- a water allocation

and includes any other right in relation to the taking or use of water that is prescribed by the regulations.

Water delivery right means a right to have water delivered by an infrastructure operator.

NOTE: the water trading rules apply only to certain types of water delivery rights — see ‘*Scope of the rules*’ above.

Disclaimer: This Guideline is one of a series of guidelines on the water trading rules and as such it may be appropriate to also consider the information that is set out in other guidelines.

The provisions in the *Water Act 2007* and the *Basin Plan 2012* govern the water trading rules. All decisions regarding the water trading rules need to be made by reference to these laws. This Guideline is intended as guidance only and does not constitute legal advice. Users should seek their own legal advice where appropriate. This Guideline has no statutory force.

Whilst decisions in relation to water trading rules may consider this Guideline, decisions will be based on the aforementioned laws. Reasonable care has been taken in the compilation of this Guideline, however the Murray–Darling Basin Authority does not guarantee or warrant the accuracy, or completeness, or currency of its contents and shall not be liable for any loss or damage that may be occasioned directly or indirectly through the use of or reliance on this Guideline.

Note that the Guideline will be a living document, to be updated from time to time, in consultation with relevant stakeholders, in order to incorporate new knowledge and best practice.

Allowable restrictions for trade of water delivery rights under section 12.29

This appendix expands upon the list of factors to be taken into account when deciding if a restriction on trade of water delivery rights is reasonable.

Section 12.29 lists factors that may be taken into account when determining if a restriction on the trade of a water delivery right is reasonable. However, there may also be other factors that are reasonable. Whether a restriction is reasonable will depend on the circumstances in which it is applied. Additional factors may develop over time, therefore the construct of this section provides flexibility for this to occur.

A restriction on the trade of a water delivery right is likely to be considered reasonable if, for example, it would have also been restricted if an individual has applied to trade both the water delivery right and an irrigation right or water access entitlement.

Attaching conditions to trades and delaying trade are within the definition of *restrict*, so that the *reasonableness test* in section 12.28 applies in both cases. An IIO may have reasonable concerns about a proposed trade. In such cases, the MDBA considers that if it is possible to approve the trade subject to certain conditions that address these concerns, then this is a preferable outcome compared with refusing the trade altogether.

An example of such conditions could include where the IIO has authority to do so, it could approve a lower volume of water delivery right being traded. This is because trading the proposed volume would result in unacceptable negative impacts on other irrigators because of capacity constraints.

The IIO could require payment of security by the person acquiring the water delivery right, because the person does not hold a sufficient volume of irrigation right. The MDBA acknowledges that suitable administrative arrangements to allow trade (and/or temporary trade and leasing) of water delivery rights may not exist in the short term and are a necessary precursor to enabling trade.

The MDBA has divided the list in section 12.29 into physical and non-physical factors that may be taken into consideration when restricting the trade of a water delivery right.

Restrictions based on physical factors

Restrictions on trade of a water delivery right due to physical factors may be reasonable in certain scenarios. Restrictions may be reasonable if it is not possible to accommodate the water delivery right at the proposed new location due to potential negative impacts on other water delivery right holders. Such an impact may occur if:

- there is insufficient capacity in the IIO's network to deliver the water to the destination (section 12.29(1)(a))
- there is insufficient capacity in the parts of the IIO's network to which water would potentially be delivered under the traded water delivery right (section 12.29(1)(b))
- there will be insufficient capacity to deliver water to the destination location once anticipated reconfiguration work is complete or the IIO anticipates decommissioning part of its network essential to deliver water to the destination location (section 12.29(1)(c))

- there is insufficient connectivity between specific parts of the IIOs network relevant to the proposed trade (12.29(1) (d)).

The MDBA does not consider restrictions due to capacity constraints that are irrelevant to the proposed trade to be reasonable. Similarly, restrictions on the delivery of water through an area that is constrained but will not be placed under any additional demand because of the trade will not be considered reasonable.

Where an IIO's water delivery rights specify a standard of delivery (e.g. volume/flow rate/pressure) a trade involving a change in location of water delivery rights should be assessed with reference to this standard. Where a change in location of the delivery right would prevent other delivery right holders in that area of the network receiving the same standard they had been receiving, restricting a trade may be reasonable.

Where an IIO's water delivery rights do not specify a standard of delivery, consideration should be given to what standard of delivery should apply to the IIOs customers; beyond which additional water delivery rights could not be accommodated for particular parts of its irrigation network.

Restrictions based on non-physical factors

Restrictions on the trade of a water delivery right due to non-physical factors may be reasonable in certain scenarios. Restrictions may be reasonable if, there are outstanding fees owing to the IIO, the net cost of giving effect to the trade is unreasonable, the volume of water delivery right held is unreasonable or the person obtaining the right does not own or occupy land in the IIO's irrigation network.

Payment of fees or charges (section 12.29 (1) (e))

Restrictions such as conditions on a trade or a delaying of trade because of outstanding fees or charges may be reasonable where the IIO is owed fees or charges for:

- access to the operator's irrigation network
- changing access to the operator's irrigation network
- terminating access to the operator's irrigation network
- surrendering to the operator a right to the delivery of water through the operator's network.

Where outstanding fees or charges are the sole reason for the restriction, the IIO may come to arrangements to allow trade on the condition that outstanding fees or charges are paid, or alternatively delay the trade until payment is received.

In some cases refusal of the trade may be reasonable, if for example a person does not accept the conditions of the trade, or where a person has repeatedly not paid outstanding fees and charges.

The volume of water delivery right reasonably required for irrigation (section 12.29 (1) (f))

A restriction may be considered reasonable if the proposed trade would result in a person holding a volume of water delivery right in excess of the amount needed to irrigate the land occupied or owned by that person and able to be serviced by the irrigation network.

The IIO's consideration should consider any impending land purchases/leases by the person in the area served by the IIO's irrigation network. Also, an assessment of the amount of water (and water delivery right) reasonably required to irrigate should take into account possible alternative cropping decisions and irrigation methods from those that have previously been used in the area.

Net cost of assessing and giving effect to the proposed trade (section 12.29 (1) (g))

In some instances, an IIO may lack the information required to assess whether or not a proposed trade is physically possible. In these instances, it may be possible to obtain the necessary information, if the person requesting the trade is willing to bear the costs of acquiring the necessary information. There also may be administrative costs associated with the trade.

These costs may be recovered in part or full, through trade processing fees or otherwise absorbed by the IIO. Where this is not the case, the following restrictions may be considered reasonable in relation to the costs of obtaining the information necessary for an assessment:

- imposing a condition on the proposed trade that one or both of the trading parties must bear some or all of the costs of assessing the feasibility of the trade or carrying out any necessary administrative tasks to give effect to the trade; or
- where one or both of the trading parties are unwilling or unable to bear the cost, refusal of the trade on the grounds that the net cost of assessing the trade are prohibitive.

In imposing the above restrictions, the IIO should:

- not require trading parties to bear the cost of assessing and giving effect to the trade where the IIO would not require trading parties to bear the cost of a similar trade of a water delivery right bundled with an irrigation right or a water access right
- not refuse a trade on the grounds that the costs are prohibitive without first having checked whether the trading parties are willing to bear these costs.

Requiring security as a condition of trade (section 12.29 (1) (h))

A requirement to provide security as a condition on the trade of a water delivery right may be considered reasonable if:

- acquisition of a water delivery right through trade results in a person holding a water delivery right of a total volume equalling more than five times the volume of irrigation right held; or
- a person who does not hold irrigation rights acquires a water delivery right through trade.

The threshold for when security can be required as a condition of approving a proposed trade of a water delivery right is reached when the ratio of water delivery right to irrigation rights held by the irrigator would be more than 5:1 if the trade was approved. To ensure consistency, the MDBA has used the same threshold point for an operator requiring security contained in the Water Market Rules.

Where the water delivery right is defined on the basis of a flow rate, or other basis, the operator must first convert the water delivery right held by the irrigator back into a water delivery right that is

defined on a volumetric basis before assessing whether the 5:1 threshold is met. For further information on this, see the ACCC's *A guide to the water market rules and water delivery contracts*.¹

The amount of security required by an IIO as a condition of approving a trade of a water delivery right should be no more than the termination fee that would be charged if the person were to terminate the water delivery right. If the IIO does not charge termination fees the maximum security fee charged should be no more than the total network access charge in that year.

Restrictions where a party to the trade does not own or occupy land in the area serviced by the IIO (section 12.29 (1) (i))

Owning or occupying land serviced by an IIO's irrigation network is considered to be a reasonable prerequisite for holding a water delivery right against that IIO. Therefore, the MDBA generally considers restrictions of the following kind reasonable:

- if the IIO is aware that the trade would result in a person holding a water delivery right who does not currently or does not intend to hold or occupy land in the area serviced by the IIO, the IIO may refuse the proposed trade
- if the IIO is aware that the trade would result in a person holding a water delivery right who does not, but intends to, within a reasonable period of time, hold or occupy land in the network, the IIO may delay the proposed trade until the person can provide evidence that they will hold or occupy land in the network area.

¹ [A guide to the water market rules & water delivery contracts](#) is available from the ACCC website