



**National Farmers' Federation**

**Public Submission to the  
ACCC Water Market Rules Position Paper**

15 August 2008



# National Farmers' FEDERATION

## Member Organisations



CANEGROWERS



COTTON  
AUSTRALIA



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# National Farmers' Federation

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The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers, and more broadly agriculture across Australia.

The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

Each of these state farm organisations and commodity council's deal with state-based 'grass roots' issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

## Introduction

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The NFF welcomes the opportunity to comment on the ACCC position paper for water market rules.

The NFF understands that the water market rules position paper relates to permanent trades into and out of a collective licence held by an irrigation infrastructure operator on behalf of its members. The position paper reflects the ACCC's current thinking in regard to draft rules.

NFF also understands that the majority of these licences are held by NSW based trusts, corporations and private irrigation districts and to a lesser extent in Victoria and South Australia. The rules are unlikely to apply in Queensland.

The ACCC should be aware of the difficulties, in some instances, that irrigators within Irrigation Infrastructure Operators (IIOs) have, which relate to restrictions on the annual trade of water (also known as temporary trade) into and out irrigation. The development of water market rules will not resolve this situation.

NFF supports the position that consistent water market rules be applied across all IIOs, both large and small, and that operators are afforded appropriate transitional arrangements to comply with any new regulation.

NFF remains concerned about the effect of the draft position on small IIOs and those IIOs where transformation is not an issue. A proposal for a legal alternative is included as a way forward.

This submission deals with outstanding issues identified by NFF followed by specific comments on the draft rules.

# Issues

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## *Options for transformation*

The NFF are aware that the issue of transformation remains a vexed issue for both irrigators and the IIOs. On the one hand, irrigators and IIOs wish to protect their water delivery business and community, while on the other hand irrigators wish to realise the maximum value for their asset via transformation (for continued use or trade). There is a perception, real or otherwise, of individuals being pitted against one another.

Transformation is a complex situation and the current transformation model may be too blunt an instrument to deliver balanced outcomes. Issues that need further consideration include:

- How to maintain the integrity of viable IIOs?
- How to address smaller and less viable IIOs – should exit schemes be considered?
- How to ensure equity and a balance of power between operators and scheme members?
- How to ensure efficiency with regard to registration and transfer of water title for individuals within IIOs?
- How to ensure efficient operation of the market in the context of group schemes?
- The additional administrative burden on state agencies that will be created by disaggregation of group licenses?

The situation is analogous to the problems experienced with apartment buildings established under company title. The solution developed in that regard was strata title. Under the strata title model, the unit owner holds clear, individual title (which satisfies the requirement of financiers for security) and the legislation clearly defines the mutual responsibilities of the owner and the body corporate.

As with an apartment building, there are obvious structural impediments to removing a unit from a group scheme. The degree of difficulty is primarily dependent on factors such as the degree of investment and dependence on shared infrastructure. While full disaggregation of title may be appropriate in small schemes with low overheads and low joint capitalization, a strata license model may be a better solution for larger schemes.

NFF believes that such a system may provide the appropriate balance between the powers and responsibilities of irrigators and IIOs.

## *Need for better information*

The NFF is of the view that systematic documentation and analysis of group schemes (particularly in NSW where there are around 300) is needed before robust solutions can be developed. Currently, many small IIOs and their members are unaware of the proposed changes. NFF reinforces its previous statements that a process of engagement and dialogue needs to be established with these parties so they can be assisted in planning the future of their joint and individual operations.

## *Unintended consequences*

One issue not raised in NFF's earlier submission to the issues paper is the unintended consequences for individual irrigators, wishing to participate in Federal or State Government initiatives for on farm water efficiency projects. In many cases, such projects require the sale of part of the irrigators' entitlement to Government. Governments rightly have sought that these entitlements are taken out of IIO bulk water entitlement, where this complies with current policies (e.g. 4% permanent trade cap).

However, in those situations where individual IIOs (usually smaller IIOs) have a prohibition the sale of permanent entitlements from the group licence, the ability for irrigators to invest in on farm water efficiencies is limited to capital that can be raised from their own resources. In many situations, particularly on the back of a severe drought, irrigators may not be able to invest in these works.

In many ways this is a difficult situation. On the one hand, irrigators want to invest to ensure that their on farm infrastructure is the most efficient whilst maintaining or improving production with less water. The fundamental principle for IIOs to prevent the sale of these entitlements is to maintain the critical mass of the water delivery business and community by using all the water in the local area. This principle in many ways prevents the achievement of the same outcomes it is intended to achieve.

## *Interaction with other ACCC Rules Papers*

NFF notes that some of the issues raised in the various rules papers being released by ACCC have direct interaction and consequences with other rules papers. The issues around access termination fees (announced 14 August 2008) and security in this paper are a good example.

The various rules papers are essentially parts of the whole picture. NFF accepts that need to "break" these complex and interrelated issues into more manageable process. However, how all these rules look when finally placed together should be subject for a final round of consultation to ensure that no unintended consequences occur.

NFF reserves the right to comment on those issues individually as each paper is released and at the conclusion when all the final rules are placed together.

# Draft Rules

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The ACCC draft rules are presented in italics in the following sections. NFF's response is provided underneath each rule, where appropriate.

## *Enabling transformation and/or trade*

*ACCC draft position:*

- 1. An operator must do all things necessary to facilitate transformation and/or trade of all or part of an irrigator's entitlement in accordance with the water market rules.*
- 2. An operator must not prevent or unreasonably delay transformation of all or part of an irrigator's entitlement under any circumstances, other than in accordance with the water market rules.*

## *Terms and conditions*

- 3. Operators should have in place clearly stated terms and conditions to facilitate transformation and/or trade.*
- 4. The terms and conditions relating to transformation and/or trade approvals should:*
  - be readily available to all parties and rationalised where possible*
  - be published on the operator's website (if applicable) and customers of the operator should be notified in writing of the existence of these documents.*
- 5. Operators should clearly define and document the process associated with making any required changes to the terms and conditions for transformation and/or trade approvals (the ACCC may also provide guidance to operators on the appropriateness of the process undertaken to implement such changes).*
- 6. Operators must consult with irrigators who may be materially affected by a change to the terms and conditions (the ACCC may also provide guidance to operators on what could be considered 'material').*
- 7. Operators must notify irrigators of all changes to their terms and conditions.*
- 8. In consulting with or notifying irrigators, operators should outline the reasons for the proposed change and supply supporting documentation if applicable.*
- 9. At the completion of the transitory adjustment period of the water market rules (date TBC), an operator must notify all its irrigators in writing of the application of the water market rules; specifically, an information pack should be provided to irrigators that includes a copy of the water market rules and applicable transformation application forms.*

## **NFF response**

The NFF, with the exception of rule 9, generally agrees with the above rules. However, the following points should be noted:

- The information regarding water market rules should be made available in a range of different formats, including internet, fax stream, newsletters, and letters to members. This is particularly important where smaller IIOs may not host a website for access.

- NFF notes the constraints for irrigation corporations in providing information to members. The ACCC should consider where these water market rules may contravene the Corporations Act and provide appropriate remedies.
- Rule 9; Completion of transitory adjustment period. The NFF does not support the proposed rule as it is currently drafted. The draft rule will result in additional costs to irrigators and IIOs. NFF suggests that the ACCC must take responsibility for funding and the notification of the water market rules.

#### ***Application process***

10. *Operators must develop a base set of forms for both transformation applications and transformation and trade applications. The basic information required for both processes may include:*
- *applicant details*
  - *account number*
  - *confirmation of identity*
  - *the number and type of units/volume to be transformed and/or traded*
  - *confirmation that all fees have been paid.*

#### **NFF response**

The NFF reiterates its earlier submissions to the ACCC, that the ACCC must develop a base set of forms for use by all IIOs. The IIOs should then have the discretion to use these ACCC base forms, or adapt the base forms for their individual situation or alternatively, develop their own forms.

11. *In addition, additional information for transformation and trade may include:*
- *buyer details, including details of any existing water access entitlement for the transformed units to be appended to*
  - *the number and type of units/volume of water to be traded.*
12. *An operator must not request details relating to the purpose for transformation and/or trade from applicants.*

#### **NFF response**

The NFF does not support Rule 12 as it is currently drafted. The NFF supports the right of the IIO to request this information, as this may be relevant to members of the IIO or alternatively, the wider irrigation sector (including market participants).

13. *An operator must make information regarding the applicant's irrigation right readily available upon request and within a reasonable time frame.*

#### **NFF response**

The NFF has some concerns about Rule 13. In the first instance, clarification is sought regarding to whom such information may be made available and secondly, what information would be made available. As a general rule, generic market information that improves trade is reasonable. Information relating to individual irrigators' business interests may not be appropriate. There must be an appropriate

balance transparency and market information and commercial in confidence information.

The NFF are also concerned about the ability for smaller IIOs to comply with a reasonable time frame. If “reasonable” is defined and limited, e.g. say three business days, then this may not be appropriate. As an example, if a small IIO is managed by an irrigator without administrative staff, and that person is away from their property (the place of business for the IIO), he or she may not have received the request and contravened this provision. Again, further information is sought on the definition of reasonable.

#### *Time limits*

14. *Operators must process applications efficiently, and not unduly delay the approval process.*

15. *Time limits for processing transformation and/or trade applications are as follows:*

- *initial assessment period – upon lodgement of an application, the operator must ensure that the application has been properly completed and request further details as required within three business days.*
- *approval period – upon acceptance of a correctly completed application, the operator must process the application within 10 business days, including completion of the following steps:*
  - *processing and checking of the application*
  - *final approval by the operator*
  - *advising the applicant of the status of the application*
- *referral of the application to the relevant jurisdictional authority for further approval (where applicable).*
- *updating the register – once the operator has been advised of the final approval, it must ensure that the relevant register has been updated within two business days.*

16. *These time limits do not include any time taken by the relevant jurisdictional authority in approving the transformation and/or trade.*

17. *These time limits apply irrespective of an operator’s approval procedure or the size of the operator.*

#### **NFF response**

NFF generally supports the implementation of time limits for processing transformation applications. However, as stated previously, the time frames that could be reasonably applied to both large and small IIOs may be vastly different due to the differences in administrative support.

NFF suggests the ACCC revise the time frames suggested above in recognition that small IIOs may not have the resources (staff and time) to comply with those limits stated above. For this reason, NFF does not support Rule 17.

There should be recognition that the majority of the time delays for processing both temporary and permanent trade is due to State Government regulatory authorities (approvals process) or solicitors.

#### *Administrative fees and charges*

18. *Any administrative fees and charges for processing a transformation and/or trade must be based on cost recovery.*
19. *Any administrative fees for processing a transformation and/or trade must be contained within an operator's terms and conditions for transformation and/or trade.*

### **NFF response**

NFF supports the ability for IIOs to recover the administrative costs of processing transformation and/or trade applications. NFF however, advocates that such costs must be efficient and relevant to the activity of processing the application.

### ***Water delivery rights***

*ACCC draft position:*

1. *An operator must provide delivery arrangements for a transformed water entitlement if required by an irrigator.*

### **NFF response**

NFF supports the draft position.

However, one issue that has been raised by members and that has so far not been addressed is when trade results in a larger IIO water access entitlement and the IIO may not have the infrastructure and or capacity to deliver a larger volume of water. In such situations, investment by the IIO would be required, or alternatively restrictions placed on all members, when full delivery capacity is reached, in order to supply all members. The irrigation corporations, as a result of the ACCC's rulings on termination fees, generally have or are putting in place access entitlements. However, smaller IIOs have not been required to implement these.

NFF recommends consideration of this issue for non-corporatised IIOs.

2. *Upon transformation, terms and conditions of a delivery contract may reflect those contained in the arrangements as they previously related to the irrigation right. Alternatively, if a delivery contract is re-negotiated this must be done so in good faith between an operator and the irrigator with a transformed water entitlement.*

### **NFF response**

The NFF supports that IIOs should have the right to offer additional benefits to those irrigators who chose to remain part of the IIO bulk entitlement, e.g. enhanced carry over provisions.

3. *Unless otherwise negotiated, the terms and conditions of new delivery contracts should be substantially equivalent to those terms and conditions attached to delivery services provided under the previous supply contract governing the irrigation right.*
4. *In circumstances where an operator's standard delivery contract is not available or negotiation of a new delivery contract is required, the operator must use their best endeavours to negotiate a new contract within 30 days of the transformation being completed.*

## **NFF response**

The NFF does not support Rule 4 as it is currently written. The ACCC must provide a template contract to assist small IIOs.

5. *During the time of negotiation, the operator must provide delivery services in accordance with the terms and conditions of delivery services under the previous supply contract governing the irrigation right.*

## ***Restrictions on Transformation or Trade***

ACCC draft position:

### ***A general prohibition on restrictions***

1. *Subject to limited explicit exceptions, provided for in the water market rules, an operator should not be permitted to impose any restrictions in contracts, arrangements or understandings.*

## **NFF response**

NFF generally agrees provided an appropriate arrangement for bad debtors is made.

2. *Prohibited restrictions on trade and/or transformation that may be imposed by operators include but are not limited to:*
  - *Any fees or charges levied on the transformation and/or trade of a water access entitlement except where the fee is an administrative fee or charge for processing a transformation and/or trade, calculated in accordance with the water market rules, or is a regulated water charge as defined under the Act.*
  - *Any restrictions based on the identity of the water purchaser.*

## **NFF response**

NFF has concerns about the purchase of water by foreign interests. At present, the purchase of Australia assets (e.g. land) is assessed by the Foreign Investment Review Board. NFF supports the addition of water entitlements to such assessments.

- *Requirements to transform a separately held water access entitlement back into the scheme entitlement.*
- *Requirement to maintain a minimum irrigation right on the transformation and/or trade, where this is not a requirement of a community service obligation contained in a state legislative instrument.*

## **NFF response**

The provision of stock and domestic water has been significantly highlighted during the drought, particularly for gravity fed irrigation systems (mainly irrigation corporations). The ACCC notes that unless IIOs can demonstrate a linkage with state legislation or a CSO, there ought to be no restrictions on the transformation and / or trade of stock and domestic licences, providing it doesn't undermine the integrity of other members of the group scheme.

The NFF suggests that where an IIO cannot prevent trade of stock and domestic water, there should be a clear enunciation that the IIO is not required to provide stock & domestic water in contingency situations. This provision should be included in the service contract between the irrigator and the IIO. Unless this is clearly provided in the contract, those irrigators who chose to trade or transform this water will be strongly demanding its provision in contingency situations, disadvantaging those irrigators (and the IIO) who chose to retain a right to stock and domestic water.

- *Restrictions relating to regulating land use and environmental effects of water use.*
- *Restrictions relating to the category of the water entitlement.*

### **NFF response**

See above response to stock & domestic water.

- *Restrictions to manage delivery and the physical constraints of the irrigation infrastructure, except where the transformed water entitlement is sold within the district.*
- *Restrictions for the purposes of covering conveyance losses.*

### **NFF response**

The issue of conveyance losses requires much wider consultation prior to NFF supporting this position. It is of particular importance to Murray Irrigation where conveyance losses are deducted prior to water delivery at farm gate. Other corporations have conveyance losses as additional entitlements. How this issue affects smaller IIOs is perhaps less well known and even less formally provided for. Analysis of the different IIOs and their conveyance components would assist in understanding the different situations and hence development of this draft rule. NFF notes that conveyance water is very much about the IIOs managing water to be able to deliver ordered water to farmers. It is an issue for the each group to decide the best ways to manage this issue.

3. *Imposition of cut-off dates and trading seasons.*

### **NFF response**

NFF supports this position providing cut off dates and trading seasons are removed from state legislative instruments, such as legislation and water management / sharing plans. The NFF notes that a common accounting period which gives an end point for the reconciliation and auditing of water accounts (e.g. similar to that of a financial year) would also assist this measure.

### ***Permitted Restrictions***

4. *Administrative fees or charge for processing a transformation and/or trade, calculated in accordance with the water market rules, or a regulated water charge as defined under the Act.*
5. *Restrictions that relate to minimum water holdings explicitly maintained for stock and domestic purposes, where this obligation is contained in a state legislative instrument.*

6. *Requirements for an irrigator to have a metered supply before being permitted to transform and/or trade, except where the irrigator is terminating access to the operator's network.*

### **NFF response**

NFF supports this draft rule, providing there is an agreed metering standard and consistent application across all jurisdictions.

7. *The cap on permanent trade out of an irrigation district as agreed to by the federal government and state governments.*

### **NFF response**

NFF supports this draft rule, providing there is consistent application across all jurisdictions.

## ***Security***

NFF are concerned that the discussion and rules developed under this section are somewhat confusing. NFF understands that the major issue of concern for IIOs will be the recovery of access fees (fixed charges) from irrigators who chose to mostly or wholly sell their entitlements from the group scheme. This situation is of particular concern where a previously profitable irrigation farm is converted to dryland agriculture in mostly semi arid regions.

The ACCC draft position appears to confuse normal credit protocols and the real credit risk for payment of access fees where entitlements are largely sold. NFF recommends that this section of draft rules be retargeted to better reflect the concerns about future payment of access fees in situations where the irrigation property is or is to be largely dewatered, and where the land holder has a history of bad debts with the IIO.

Termination fees are legitimate mechanisms to assist corporations deal ongoing payment of access fees. NFF supports the right for the irrigation corporations to invoke their right to demand payment of the access termination fee where there is a history of bad debts, to deliver practical cost effective security. NFF reserves the right to comment on this further in the termination fee draft position paper.

NFF are also concerned that IIOs (the exception being perhaps the corporations) are in a position of vulnerability where the bad debtor is not only a customer but also the neighbour and part of a close knit social network. As a resolution, NFF suggests that the ACCC established a set of credit policies that all IIOs can follow, and if a irrigator does not pay the debt owed to the IIO, then the IIO has the right to refer the debt to an ACCC outsourced collection agency (funded via Federal Government in recognition of the water reforms designed to free up trade). This removes the likelihood of an untenable situation in smaller irrigation communities.

An issue of concern raised by NFF is the capability for non-corporatised IIOs to implement indemnification provisions, particularly because of their structure. NFF

asks that the ACCC further assess this situation and make recommendations in its draft report and rules paper.

*ACCC draft position:*

1. *An operator should have the ability to seek security to mitigate the risk of an irrigator's default on the future payment of access fees in specific circumstances.*

### **NFF response**

NFF generally supports the need for security in specific circumstances and that this is strongly linked to a poor credit history rather than a perception of credit risk. There must be an appropriate weighting of risk and security for the IIO and the consequences for irrigators.

It should be noted that there are many service providers to farmers who conduct business without the provision of security for the payment of future debts. NFF acknowledges the particular situation for fixed charges when an irrigation farm has been effectively dewatered.

In many situations, input suppliers (particularly fertiliser) have exposure to debts as much as or exceeding those debts payable to IIOs. The difficulty facing IIO's is that they cannot terminate their commercial arrangement with a bad debtor, unlike other input suppliers. Each year they may have to pursue charges associated with access fees (principally fixed charges) from members who may have no interest in irrigating.

Whilst NFF is aware of the potential impact of bad debtors on the IIO's; there should be wider discussions on the options available that balance the needs of IIOs with tying up members assets and restricting the efficient use of those assets. As an example, perhaps the use of crop liens, appropriate interest levels for bad debts (e.g. above bank lending rates), stop orders for water delivery, litigation options, and the formal right to seize seasonal allocations for sale to recover bad debts ought be explored as options for IIOs.

#### ***When security may be needed***

2. *An operator can only require security for future payment of fees when:*
  - *the irrigator will retain less than 20 per cent of their original water access entitlement, and*

### **NFF response**

NFF recommends that this provision must be linked to a poor credit history, not just used because there is only 20 per cent of entitlement remaining and there is "significant risk".

- *the infrastructure operator considers, on reasonable grounds, that there is a significant risk that the irrigator may be unable or unwilling to pay future access fees, when they fall due.*

### **NFF response**

NFF recommends that significant risk should be better defined and not left to the judgement of the IIO to ascertain. Again, this provision must be strongly linked to a poor credit history.

NFF are concerned that these rules may trigger unintentional consequences due to the financial impacts of drought. These rules may also be triggered where young farmers or highly geared farmers are perceived to be a credit risk.

The ACCC must develop an appropriate and balanced approach that provides for both the IIO and the irrigator, and particularly where an irrigator's (effectively quarantined) assets may be better utilised more effectively for other purposes.

The NFF also recommends the development of rules that will trigger a cessation of the requirement for security. This is an omission from the draft position.

3. *Reasonable grounds include where an irrigator:*

- *has been in arrears in failing to pay the access charge for a period of more than 60 days on more than occasion in the last three years, or*
- *is a new landholder and has been a member of the scheme for fewer than three years.*

### **NFF response**

The NFF again notes concern for unintended consequences, particularly for financiers. New landholders should be provided an option to demonstrate their credit history prior to this clause being invoked.

4. *An operator may register a charge over 20 per cent of the irrigator's water access entitlement upon transformation to protect its right to require security in the future.*

### **NFF response**

Again, this must be linked to poor credit history.

5. *Under a registered charge, an operator must give its consent to the trade unless the operator concludes, on reasonable grounds, that there is a significant risk that the irrigator may be unable or unwilling to pay future access fees when they fall due.*

6. *An operator must not require security for the future payment of access fees as a condition of the transformation of an irrigator's irrigation right.*

### ***Form security may take***

7. *If an operator seeks security for future payment of fees, the irrigator has the option to offer the operator security over:*

- *an unencumbered portion of the irrigator's water access entitlement, or*
- *a bank guarantee, or*
- *a cash deposit to be used as a form of bond.*

### **NFF response**

NFF notes that it is unlikely that any irrigator will have unencumbered water entitlements. To utilise water entitlements, irrigators may be required to invoke requirements for release of security from financiers, and incur significant costs in subdividing entitlements and registration of registered encumbrances. NFF suggests that crop liens, right to seize unused seasonal allocations for sale to pay debts, litigation, appropriate levels of interest, stop order on water delivery are all valid options that should be available to IIOs (some of which are already in use) to provide appropriate flexibility.

8. *If the irrigator offers one of these forms of security, the operator must give due consideration to that offer.*
9. *In any other case, the operator may accept any other form of security as negotiated between the operator and the irrigator.*

#### ***Limit on level of security***

10. *The value of security should be limited to the greater of:*
  - *50 per cent of the value of the termination fee as applied by the operator in accordance with the cap on termination fees provided under the water charge rules; or*
  - *where an operator does not charge a fee on termination, the value of the annual access fee multiplied by 1.*

#### **NFF response**

NFF notes that Rule 10 may be unnecessarily restrictive and suggests a more flexible approach linked to normal business protocols and service contracts.

#### ***Application and implementation of the water market rules***

*ACCC draft position:*

##### ***Application***

1. *The water market rules should apply to all operators within the MDB, subject to the provisions of the Water Act.*

#### **NFF response**

NFF agrees that the market rules should apply to all IIOs in the Basin. However, as outlined in the submission on the issues paper, NFF remains concerned about the ability for small IIOs to adapt and implement these rules, particularly if some are not aware of the development of these draft rules. NFF also noted that there is a real concern that many IIOs will simply seek to return the operation of the IIO to the State Government (both management and delivery). This would be a most unfortunate outcome.

NFF suggested the development of templates to assist all operators, but particularly smaller operators. NFF are pleased that the ACCC has adopted this recommendation.

However, NFF remain concerned that smaller IIOs do not have sufficient resources (human capital and money) to implement these reforms. NFF seeks a recommendation from ACCC that the Federal Government provide financial assistance to aid this structural adjustment process.

NFF also seeks a longer time frame for implementation for smaller IIOs. At least 2-3 years is warranted, with demonstration of progress of work towards implementing these reforms as annual reporting requirements.

NFF concurrence of the proposed time frames is dependent on assistance by the ACCC and Federal Government as outlined above.

### ***Implementation***

2. *Transition to water market rules is proposed to occur according to the following timetable:*

- *Stage 1 – rules tabled to September 2009 – implementation period for operators to amend contracts and other documents. During stage 1 operators must endeavour to ensure that they do not prevent or unreasonably delay transformation and/or trade.*

### **NFF response**

NFF supports this draft rule as it relates to preventing or delaying transformation and / or trade. NFF notes that the approval process for larger IIO may take considerably time and must be considered in the timeframe. NFF suggests that Stage 1 should be complete by September 2010, i.e. two years.

- *Stage 2 – September 2009 onwards – full enforceability of the water market rules and a yet-to-be-determined form of monitoring.*

### ***Monitoring***

3. *The ACCC proposes to keep reporting requirements to a minimum for the purposes of monitoring.*

4. *The ACCC is developing the water market rules while having regard to the potential monitoring requirements and associated administrative burden on operators.*

### **NFF response**

NFF agrees, in general terms, with the draft position. However, again, NFF would reiterate concerns about monitoring and reporting capacity and cost burden for smaller IIO.

## **Conclusion**

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The ACCC draft position paper, in general terms, is supported. In general, NFF supports the need for and provision of water market rules. The NFF has provided comments regarding specific issues and concerns in relation to each of these matters.

In particular, the issue of transformation remains a vexed issue for IIOs and irrigators. As a way forward, an alternative to transformation has been raised, i.e. a strata title type of water entitlement. Due consideration of this proposal is encouraged. NFF recognises that this concept will require a longer time frame to implement, as this will require amendments to a number of state Acts and legislative instruments. NFF encourages a robust discussion on the concept, which NFF believes has merit.

NFF remain concerned regarding smaller IIOs and would caution against water market rules that would result in unintended consequences.

The major IIO's believe that members that sell water should not have the right to choose to retain their delivery right. This is driven by the belief that no viable mechanism has been developed to shield the remaining members from the impact of unviable dewatered farms. NFF continues to encourage Government to underwrite the bad debts of IIOs that conform to an agreed set of credit standards via credit protocols and ACCC debt collection service. This would remove a major obstacle to freer trade.

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