

Guide to Permanent Trading

The permanent trade (sale/purchase) of water entitlements, history of use supplementary water or delivery entitlements and or the associated infrastructure located on your land are important transactions. All permanent trade functions and approvals are performed via application to Coleambally Irrigation Cooperative Limited (CICL) and are subject to CICL approval. Permanent trades also include transformations of water entitlements.

CICL recommends customers seek their own independent legal and financial advice relevant to their individual circumstances when undertaking a permanent trade.

This Fact Sheet provides a summary of the key elements of permanent trades and includes answers to frequently asked questions. It is intended to assist interested parties understand their options and what is involved when undertaking a permanent trade of water entitlements, delivery entitlements, shares or a change of ownership of land (including associated infrastructure) in the CICL area of operations. All interested parties should get their own legal and financial advice which relates to their specific circumstances.

1 Key points

- Permanent trades are approved by CICL's Board in accordance with CICL [Rules](#).
- Water entitlements, delivery entitlements and shares can be permanently transferred either with infrastructure and land or separately. Water entitlements can be transferred to another proprietor of a farm, to a Non-Member Water Entitlement Holder Account, or transferred from CICL's Water Access Licence (WAL) (Transformation) to another WAL in the Murrumbidgee.
- Customers can trade "unit shares" (like water entitlements) from the Regulated Murrumbidgee to CICL's Water Access Licence and receive CICL water entitlements equal to the unit shares and of the same class as the unit shares purchased, e.g. Class B general security water entitlements for general security unit shares.
- Delivery entitlements can only be transferred to a Member or customer that is the registered proprietor of a farm connected to CICL's supply system in CICL's area of operations or terminated.
- Shares can only be transferred to another proprietor of a farm connected to CICL's supply system in CICL's area of operations or cancelled.
- If land is being transferred, CICL requires an application to be made to transfer the associated infrastructure located on that land, along with confirmation of the new ownership of the land where the land is within CICL's area of operations¹.
- The trade of general security tier one delivery entitlements will only be approved if the transfer does not reduce the minimum irrigation flow below 14ML/day per 1,400 tier one delivery entitlements on the destination channel. Tier one delivery entitlements have priority access to a share of the daily flow if there is a capacity constraint in the destination channel.

¹ It is important where land is being sold that application is made to CICL to transfer the CICL infrastructure to the new owner. This is an additional step and separate to the land conveyancing transaction but should be referred to in the conveyancing transaction contracts.

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- If the transfer cannot be approved because there is no spare capacity on the destination channel at the time the application is finalised, the delivery entitlements can be transferred as Tier two delivery entitlements. Tier two delivery entitlements do not have access to flow share if there is a capacity constraint, but they have access during a restriction. (More information about delivery entitlements, capacity sharing and restrictions is available on our website [here](#)).
- Customers can apply to terminate delivery entitlements and or cancel shares at any time. There is a fee payable for termination, which is available on the current year's [schedule of charges here](#).
- CICAL may request security for on-going access fees when the number of delivery entitlements on a farm after the transfer exceeds five times the number of water entitlements.
- Where an encumbrance is noted on CICAL's registers, CICAL requires the written consent of an encumbrancee or a copy of a discharge of mortgage prior to approving a permanent trade.
- Any outstanding debts (financial and non-financial) to CICAL must be paid and or resolved prior to settlement and approval by CICAL.

2 Forms

Application forms are available on our website [here](#).

Different forms apply depending on the nature of the transaction. The table describes the main CICAL forms.

Transaction type	Form No/link
Land, infrastructure, water entitlement, and delivery entitlement transfers This form is to be used where the land, infrastructure and or associated entitlements, and or shares, are being transferred to a new owner.	Form 1
Transformation – water entitlement transfer from CICAL Water Access Licence. This form is to be used where water entitlements are being transferred from CICAL's Water Access Licence.	Form 2
External permanent transfer to CICAL This form is to be used where water entitlements are being transferred to CICAL's Water Access Licence from another Water Access Licence.	Form 3
Internal permanent transfer of water entitlement, delivery entitlement, and or shares. This form is to be used where there is no transfer of land or infrastructure.	Form 4
Application to terminate delivery entitlements or cancel shares This form is to be used where delivery entitlements are being terminated and or shares cancelled.	Form 6

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Each form has a check list which includes the documentation required for the application to be processed.

Each form includes general notes covering relevant information about CICAL's requirements and processes.

Applicants are strongly encouraged to read this fact sheet **carefully before** submitting their forms. Incomplete or incorrect applications will delay approval of applications.

3 Frequently asked questions and answers

What is a non-member contract?

CICAL's members are bound by its [Rules](#). Division Eight of the Rules are the Water Supply Rules and Division Nine are the Water Trade Rules.

CICAL's [Rules](#) also define the qualifications to be a Member. A breach of these Rules is serious and can result in cancellation of membership and entitlements.

The non-member contract is the legal contract that applies where the legal entity owning water entitlements and or delivery entitlements or a farm does not qualify to be a member. CICAL has a single contract which applies to non-member water entitlement holders and includes the Non-member Water Supply contract.

Non-member water entitlement accounts allow customers to hold CICAL water entitlements in the CICAL Water Access Licence independent of land.

The non-member water entitlement holder receives the annual allocation applying to the class of water entitlement held. Carryover is available to Class B general security water entitlements held in non-member water entitlement holder accounts.

A non-member water entitlement holder can be part of a Single Farming Unit (SFU).

A non-member water entitlement holder can access Waterways to track their water allocation account.

A non-member water entitlement holder can only use the water allocation in their non-member water entitlement holder account if it is part of a SFU or by completing an internal annual transfer to a farm or an external annual transfer to another Water Access Licence.

This non-member contract also applies where a customer may own a farm connected to the supply, but does not hold the minimum number of delivery entitlements or shares to become a member. In this case the contract is the water supply contract between CICAL and the customer.

Can farms, delivery entitlements and or water entitlements be owned by different legal entities?

Delivery entitlements can only be held by the same legal entity that is the registered owner of the farm connected to CICAL's supply system in CICAL's area of operations. Shares can only be held by the same legal entity that is the registered owner of the farm connected to CICAL's supply system in CICAL's area of operations.

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Water entitlements, if they are attached to a farm, can only be held in the same legal entity as the registered owner of the farm.

However, water entitlements can be held by a different legal entity than delivery entitlements, shares, infrastructure and land. The legal entity that holds the water entitlement in this ownership is required to enter into a non-member contract.

Can delivery entitlements and or shares be held by a non-member?

Delivery entitlements and or shares must be attached to a CICL farm capable of taking supply. In most cases farm owners will be members of CICL.

Where a farm has less than 10 delivery entitlements and 10 shares they do not qualify as a member and a non-member contract is required for the supply of water to the farm.

Is water allocation and carryover transferred with water entitlements?

CICL will transfer any associated allocation not used and or carryover with the water entitlement to the new owner unless instructed otherwise.

If the vendor and purchaser require a different arrangement, it is essential clear and written instructions are provided to CICL.

It is also important to understand that CICL will not finalise transactions where as a result of the transfer the water allocation account of the vendor will result in a negative balance on their farm.

Is a member benefit transferred with delivery entitlements?

The associated member benefit and/or additional water offers will be transferred to the new owner of the delivery entitlements, as will the financial liability associated, unless otherwise instructed.

If the vendor and purchasers require a different arrangement, it is essential clear and written instructions are provided to CICL.

It is also important to understand CICL will not finalise transactions where as a result of the transfer the water allocation account of the vendor will result in a negative balance on their farm.

Is the infrastructure and usage transferred with land ownership transfers?

The infrastructure and season-to-date usage will be transferred to the new owner of the farm. The financial liability will also be transferred. CICL will accept prepayment of charges which will be a credit on the annual invoice.

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What are the requirements for being a member of CICL?

Rule 9 of CICL [Rules](#) describes the requirements for active membership of CICL. The requirements to establish active membership are:

- a) continue to own or lease a landholding within the CICL's Area of Operations capable of accepting delivery of water from the CICL's infrastructure;
- b) continue to hold a minimum of 10 delivery entitlements attached to the landholding and a minimum of 10 shares;
- c) use or trade a minimum of 10 megalitres of available water from the member's available water account each year;
- d) pay, or undertake to pay in a manner acceptable to CICL, on or before the due date the contributions determined in accordance with Rule 120;
- e) not be in breach of any provision of the relevant water supply rules and relevant By-Laws.

How are shares relevant?

CICL is a co-operative and to be an active member of CICL (as well as other things set out above) you need to hold a minimum of 10 shares.

An Active Member of CICL has one vote, and active membership includes the requirement to hold a minimum of 10 shares.

Shares have a nominal value of \$1 per Share as shown on the issued share certificate.

As a non-distributing co-operative, CICL does not issue a dividend on its shares.

What happens if CICL is not formally advised of the transfer of ownership of land and its associated infrastructure?

If a Form 1 is not lodged with CICL to inform it of a transfer of ownership of land and its associated infrastructure (being the metered outlet/s and drainage connection where applicable), CICL will not allow the purchaser to order or use water until the vendor has provided authorisation. CICL will continue to invoice the entity CICL's records show as the registered owner. This includes charges associated with any delivery entitlements, the outlet/s, accumulated usage and/or casual usage fees as provided for in the Schedule of Charges. The vendor would also continue to be responsible for all obligations as per the CICL Rules, including the Water Supply, Water Trade and Drainage obligations relating to that landholding.

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What is a 71Q form and when is it relevant?

A 71Q form is the WaterNSW form which needs to be completed when applying to assign (transfer) share components between Water Access Licences.

This form must be completed as part of the transformation process (permanent trade of water from CICL's licence). CICL (as the Water Access Licence holder from which the owner gets its water entitlement) will complete the WaterNSW Form 71Q which must also be signed by the Transferee (WAL holder).

What is a liability statement and how do I request one?

A Liability Statement provides written confirmation of the following:

- Current year's water charges and/or any outstanding accounts with CICL.
- A National Irrigation Corporation Water Entitlement Register (NICWER) search. A search from the register produces information on who owns the entitlement, volume of entitlement and any encumbrances, charges or mortgages that have been registered over the entitlement.
- Water usage for the current season.

A liability statement can be requested by completing a Liability Statement Request Form which is [here](#) and paying the administration charge. A liability statement should be requested in conjunction with a permanent trade application to provide the information required for adjustments required upon settlement by the vendor's and purchaser's legal representatives

It is important to be aware that CICL invoices its customers annually in arrears in June with payment due in 30 days. This includes invoices for any additional water offers taken up. The registered owner, in June, will be liable for all charges for the financial year ending in June, unless liabilities are paid to CICL on or before settlement.

What is an encumbrance?

An encumbrance is an interest in land, water or delivery entitlements. Where an encumbrance is noted on the titles of any delivery entitlement or water entitlement, consent to the transfer from the encumbrancee is required by CICL.

A certified copy of a Discharge of Mortgage may be provided in lieu of Consent.

Information relative to water and delivery entitlements on the CICL Register is provided to the National Irrigation Corporation Water Entitlement Register (NICWER) which is uploaded daily.

CICL holds the first charge over water entitlements held on CICL's Water Access Licence.

What is security?

Security is some form of protection for CICL for the recovery of ongoing access fees. It may be requested whenever after a permanent trade of water entitlements or delivery entitlements the number of delivery entitlements on a farm exceeds five times the number of water entitlements remaining.

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Security may be in the form of a cash deposit, bank guarantee, or another acceptable form of security, including a registered caveat. The security must be lodged with and accepted by CICL prior to settlement.

The maximum value of security will be equal to the termination fee that would apply to all delivery entitlements for the current water year.

If security is required, the applicant will receive a notice from CICL confirming the security required and the relevant form to be completed.

Why do the forms ask if the applicant is foreign owned?

Foreign ownership information is requested as Irrigation Corporations are required to monitor the ownership status of their water entitlement holders and keep a record if the member is foreign owned. Further details regarding this requirement can be found at <https://www.ato.gov.au/General/Foreign-investment-in-Australia/Water-Register/>

Water entitlement holders, if they qualify as foreign owned, are also required to provide information to the ATO regarding their Foreign Ownership status.

How long does the application and approval process take?

Internal trades – once a completed application is received it will be lodged with the CICL Board for approval with notice of approval provided to the owner and or solicitors so they can proceed with settlement. Settlement is able to occur the day after Board approval is provided.

External trades - once a completed application is received it will be lodged with the CICL Board for approval with notice of approval provided to the owner and or solicitors. WaterNSW approval is also required. Once both the CICL Board and WaterNSW approvals have been received, notice will be provided to the owner and or solicitor so they can proceed with settlement. Settlement is able to occur the day after both approvals are provided.

The length of time taken to process a trade application is dependent on CICL receiving correctly completed applications.

4 Further information

CICL is pleased to assist interested parties navigate the requirements for completing a purchase or sale of land, water entitlements, delivery entitlements or shares in the CICL area of operations. Further information is available at the following, T. 02 6954 4003 or email cosec@colyirr.com.au.

Disclaimer

The information included in this fact sheet is intended to assist interested parties' understanding of CICL's requirements for transactions including the sale of land, infrastructure, water entitlements, delivery entitlements and or shares. The information does not constitute specific legal or financial advice to a party. Interested parties should seek their own legal and professional advice in relation to any transfer of ownership of land, infrastructure, water entitlements, delivery entitlements or shares.