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Draft water infrastructure charge rules

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What has the ACCC been asked to do?

- Advise the Minister for Climate Change and Water on water charge rules.
- These rules cover water infrastructure fees and charges levied by water infrastructure operators in the MDB (including bulk water operators and irrigation infrastructure operators).
- Excludes Fees and charges under the 'Water Charge (Termination Fees) Rules' and fees and charges for water planning and management activities.



Process for advice to the Minister

- Issues paper on water charge rules for charges payable to irrigation infrastructure operators released in May 2008.
- Issues paper on bulk water charge rules released in July 2008.
- Position paper on water infrastructure charge rules released September 2008.
- Draft advice on water infrastructure charge rules released April 2009
- Final advice to Minister due June 2009.



Form of regulation

- Key issue is the form of regulation to apply to the various types of operators across the MDB.
- The ACCC has considered the following factors:
 - the Basin water charging objectives and principles
 - the underlying market failure
 - the governance arrangements of infrastructure operators
 - the current and historical charging arrangements of infrastructure operators
 - ensuring that the benefits that accrue from the proposed regulation outweigh any associated costs



Form of regulation (cont)

- ACCC is proposing a three-tiered approach:
 - Tier 1 rules that require the publishing of regulated fees and charges and prohibit discriminatory charging against non-member customers.
 - Tier 2 rules to require operators to publish certain documents and undertake certain procedural requirements in determining charges.
 - Tier 3 rules to allow for the approval or determination of regulated water charges by the ACCC.



Tier 1 rules

- Tier 1 rules will apply to all operators (including those covered by the tier 2 and tier 3 rules).
- There are 3 elements to the tier 1 rules:
 - Requirements for operators to publish, or otherwise make available, their schedule of regulated fees and charges.
 - Prohibition on unwarranted price discrimination by operators against non-member customers.
 - Requirement for regulated fees and charges to be approved/determined by the ACCC in the case where member-owned operators pay distributions.



Tier 1 rules – publishing requirements

- All operators will be required to provide a schedule of regulated fees and charges
 - to their customers whenever fees and charges are changed
 - to any new customers when they become a customer
 - to any person who requests it in writing within 20 working days of receiving the request.
 - Where the total volume of entitlement to which an operator and its customers are entitled exceeds 10 GL, the operator will also be required to publish its schedule either in a paper circulated in their area of operations or in the Government Gazette.



Tier 1 rules – non-discrimination

- Applies only to member-owned operators.
- Differences in charges to members and non-members must be due to differences in ‘actual costs necessarily incurred’.
- Does not prevent price differences or any type of charge – such as casual use charge.
- Differences in member/ non-member charges must be cost based – operators should be able to demonstrate and explain this cost differential.



Tier 1 rules – non-discrimination (cont)

- Discrimination against non-member customers could occur through the payment of distributions to members.
- Adoption of for-profit model represents a shift from current pricing and governance arrangements.
- Payment of distributions to investors is not, of itself, a concern.
- However, this creates the opportunity for operators increase charges to all customers and distribute monopoly rents back to members – circumvent non-discrimination rule and inflate termination fees.
- Decision to make a distribution to members will trigger a truncated (3 month) approval or determination process by ACCC if the operator meets a threshold (10 GL MDB water within its network).



Tier 1 rules – implementation

- Transitional period of three months from the registration of the rules has been given to allow for any administrative tasks and approvals or determinations.
- ACCC will issue guidelines to assist operators with compliance with the tier 1 rules - including the truncated approval/determination process.



Tier 2 rules

- Apply to :
 - member-owned operators where the total volume of entitlement to which the operator and its customers are entitled within the MDB exceeds 125GL
 - non-member owned operators where the total volume of entitlement to which the operator and its customers are entitled within the MDB exceeds 125 GL but is less than 250 GL.
- Under current arrangements, Murrumbidgee Irrigation, Murray Irrigation Limited, Coleambally Irrigation Limited, Central Irrigation Trust and SunWater will be subject to the tier 2 rules.

Tier 2 rules (cont)

- The proposed rules will require tier 2 operators to:
 - develop a **network consultation paper** (NCP) that details options for the operator's network over a five-year period
 - consult on the NCP
 - develop and provide to customers a **network service plan** (NSP), based on the outcomes of the NCP consultation process, which details major capital works and associated expenditure, required revenue and expected levels of charges over a five-year period
 - have NSP reviewed by an external engineering consultant
 - develop and provide customers with a copy of an **information statement** that outlines any changes in charges and the cost drivers giving rise to those changes, each time charges are to change.



Tier 2 rules - implementation

- A 12-month transitional period from the time of the registration of the rules is proposed.
- After the transitional period, regulated water charges imposed by operators must reflect those as determined through the tier 2 process.
- A 12 month transitional period will also apply in the case of an operator that becomes a tier 2 operator after the rules take effect.
- The ACCC will develop guidelines and templates, as necessary, to assist operators satisfy the tier 2 requirements.

Tier 3 rules

- Apply to non-member owned operators where the total volume of entitlement to which the operator and its customers are entitled within the MDB exceeds 250 GL.
- Under current arrangements this threshold is expected to capture State Water, Goulburn-Murray Water and Lower Murray Water.
- Tier 3 operators will be required to seek ACCC approval (or determination) for their charges over a defined regulatory period—three years initially and four years for all subsequent periods.
- Operators will pricing application which details forecast expenditure, required revenue and proposed levels of charges over the regulatory period.
- The ACCC will approve/determine maximum charges for each year of the regulatory period on an annual basis using updated demand forecasts.



Tier 3 rules- pricing principles

- The ACCC must be satisfied of the following factors in approving or determining the maximum regulated charges:
 - regulated water charges contribute to the Basin water charging objectives and principles
 - the total forecast revenue represents the prudent and efficient costs of providing the service including costs incurred in complying with regulatory obligations and requirements.
- In support of an application, an operator will be required to provide information on its service standards, forecast expenditures, required revenue and proposed charges.



Tier 3 rules- process

- Main steps in process include:
 - Operator **submits an application** to the ACCC 15 months before the expiry of the current regulatory period
 - The ACCC publishes application and supporting documents and seeks submissions from interested parties
 - The ACCC issues **draft decision** to approve or determine regulated water charges and seeks submissions
 - The ACCC publishes its **final decision** by 1 May of the final year of the regulatory period.
 - This decision has maximum charges for the first year of the regulatory period and indicative charges for subsequent years in the regulatory period.
 - Each subsequent year, the operator submits demand forecasts and its proposed charges for annual ACCC approval/determination.



Tier 3 rules - transitional arrangements

- Transitional arrangements include:
 - NSW Independent Pricing and Regulatory Tribunal undertaking the next determination for State Water to apply from 1 July 2010.
 - Current determinations made by the Essential Services Commission in Victoria will remain in force until their expiry - 30 June 2013 for GMW and LMW .
- Upon the expiry of these price paths, the ACCC will assume responsibility for undertaking approvals or determinations across the MDB - this would be the most effective way to contribute to the achievement of the Basin water charging objectives and principles.



Tier 3 rules - implementation

- The ACCC will develop information guidelines and templates to assist operators satisfy the tier 3 requirements.
- The ACCC will develop pricing methodology guidelines to assist operators satisfy the tier 3 requirements prior to it undertaking approvals/determinations.



Next steps

- Submissions due 8 May
- Final advice provided to the Minister June 2009
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