



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Guidance for infrastructure operators about capital contributions on a schedule of charges

Water Charge Rules 2010

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Australian Competition and Consumer Commission
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Key terms

capital contribution: payment by a customer to an infrastructure operator to develop or augment the operator's water service infrastructure, for example, the operator's irrigation network.

infrastructure charges: charges that infrastructure operators impose for access, or a change of access, to their water service infrastructure, and for services provided in relation to that access.

infrastructure operator: any person or entity that owns or operates infrastructure for one or more of the following purposes:

- (i) storage of water
- (ii) delivery of water
- (iii) drainage of water

for providing a service to someone who does not own or operate the infrastructure.

irrigation infrastructure operator: an infrastructure operator that owns or operates water service infrastructure for delivering water for the primary purpose of irrigation.

irrigation network: the water service infrastructure of an irrigation infrastructure operator, as defined in section 7(4) of the *Water Act 2007*. In practice, an irrigation network typically constitutes a network of carriers (open channels, pipes and/or natural waterways) that convey water from a water source through customer service points to customer properties. It may be either a gravity fed network (typically using channels and/or natural waterways) or a pressurised network (using pipes).

infrastructure service: access, or a service provided in relation to access, to water service infrastructure and includes the storage, delivery, drainage and taking of water.

Water Charge Rules 2010: rules applying to fees and charges payable to an infrastructure operator for bulk water charges; access to the irrigation infrastructure operator's network, or services provided in relation to that access; and matters specified in regulations made under section 91(1)(d) of the *Water Act 2007*. Also included are rules for water planning and management activities and terminating access to an operator's irrigation network.

About this guidance

The Water Charge Rules 2010 (WCR) came into effect on 1 July 2020. The WCR are based on ACCC advice to the Minister on 21 September 2016 and incorporate and modify the previous Water Charge (Infrastructure) Rules 2010.

This guidance is to help infrastructure operators in the Murray–Darling Basin understand the types of charges that must be included in a schedule of charges. These can include one-off charges or ‘capital contributions’.

This document is not intended to be a comprehensive summary of the obligations of infrastructure operators under the WCR. Infrastructure operators should refer to the WCR to clarify the obligations relevant to their circumstances.

Pricing transparency under the water charge rules

The WCR aim to enhance pricing transparency and set out the requirements for what must be included in a schedule of charges.

Pricing transparency is an essential objective of the WCR because it:

- helps customers compare prices
- improves decision-making in water markets and infrastructure service provision
- maximises customers’ ability to participate in price-setting processes without undue regulatory burden.

Infrastructure operators in the Murray-Darling Basin are required to:

- publish and distribute a schedule of charges (rule 15)
- list all infrastructure charges in their schedule of charges, including details (rules 11 and 13)
- list planning and management charges (rule 11).

If the ACCC grants an operator an exemption from its obligation to disclose certain charges, these charges must not be included in the operator’s schedule of charges.¹

However, the infrastructure operator must, within 12 months after the day on which the exemption is granted, include the following information in its schedule of charges:

- a statement that the exemption has been granted under this rule
- the name of the customer or customers
- the time period of the contract or contracts
- the infrastructure service to which the charge exempt from disclosure relates.

Infrastructure charges

The WCR apply to infrastructure charges. Under the WCR, infrastructure charges are a category of ‘regulated water charge’ as defined in the *Water Act 2007* (Cth).

Infrastructure charges include fees or charges (however described) payable to an irrigation infrastructure operator for:

¹ ACCC (2022) [Guidance for applicants seeking an exemption from disclosing certain charges in a schedule of charges](#).

- access to the operator's irrigation network (or services provided in relation to that access)
- changing access to the operator's irrigation network (or services provided in relation to that access).

Bulk water charges² and in certain circumstances, other charges for services that relate to access to or the operation of water infrastructure, or the taking of water from a water resource, can also be infrastructure charges.³

A charge will only be covered by the WCR if it relates to:

- basin water resources
- water service infrastructure that carries Basin water resources
- water service infrastructure that carries water that has been taken from a Basin water resource
- water access rights, irrigation rights or water delivery rights in relation to Basin water resources.⁴

Some charges cannot be infrastructure charges

The following fees cannot be infrastructure charges:

- termination fees
- fees to which rule 13 of the Water Market Rules 2009 applies – this rule relates to fees for the transformation of an irrigation right into a water access entitlement, and if applicable, a fee relating to a water delivery right
- charges that are in respect of urban water supply activities beyond the point at which the water has been removed from a Basin water resource.

When one-off charges or 'capital contributions' are 'infrastructure charges'

Most infrastructure charges are ongoing. In some circumstances a one-off charge can be an infrastructure charge. For example, a capital contribution charged to a customer to develop or augment the operator's irrigation network could be an infrastructure charge for the purposes of the WCR.

A capital contribution will be an infrastructure charge under the WCR where it is paid by a customer in exchange:

- for access to the operator's network or services provided in relation to that access, or
- for changing access to the operator's network or services provided in relation to that access.

It does not matter what a capital contribution is called in a contract, it is the substance of the commercial exchange that determines whether it is an infrastructure charge under the WCR.

If the capital contribution is an infrastructure charge, the operator is required to set out the charge in its schedule of charges in accordance with rules 11 and 13 of the WCR.⁵ This includes:

- the amount of the charge or details of rates and all other details necessary to determine that amount
- when the charge is payable
- a description of the infrastructure service to which the charge relates.⁶

2 A bulk water charge is defined in section 4 of the *Water Act 2007* (Cth) as a charge payable for either or both the storage of water for, or the delivery of water to, any of the following: (a) infrastructure operators; (b) other operators of reticulated water systems; (c) other persons prescribed by the regulations for the purposes of this paragraph. Regulation 1.05A of the *Water Regulations 2008* states that a charge is so prescribed if: (a) the person diverts water directly from a watercourse for the person's use, including for one of the following purposes: (i) agricultural purposes; (ii) industrial purposes; (iii) irrigation; (iv) stock and domestic water use; and (b) the water is made available through a bulk water service.

3 See section 91(d) of the *Water Act 2007* (Cth) and regulation 4.01A of the *Water Regulations 2008* (Cth).

4 See section 91(2) of the *Water Act 2007* (Cth).

5 Unless the operator or its customer(s) applies to the ACCC for an exemption from the requirement from the requirement to list charges in the operator's schedule of charges (any application must be made before entering into a contract). See ACCC (2022) [Guidance for applicants seeking an exemption from disclosing certain charges in a schedule of charges](#).

6 More information about the schedule of charges requirements in the ACCC's guidance ['What do the new Water Charge Rules mean for infrastructure operators: Frequently Asked Questions'](#).

► **Case study: an infrastructure operator funds an infrastructure upgrade using customers' capital contributions in exchange for delivery rights**

Valley Infrastructure Limited is an infrastructure operator planning on raising funds to increase the capacity of its water delivery infrastructure. Valley Infrastructure Limited has 100 customers who hold water delivery rights.

At its Annual General Meeting, Valley Infrastructure Limited shareholders agree to a plan to increase the capacity of its main channel by 5,000 megalitres (ML). The infrastructure upgrade will be funded by customers in exchange for delivery rights.

For each \$2,000 that a Valley Infrastructure Limited customer agrees to pay, the customer will receive one water delivery right. Under Valley Infrastructure Limited's standard delivery contract, one delivery right equates to the right to have one ML of water delivered each year.

Each customer of Valley Infrastructure Limited who holds delivery rights subsequently signs a written contract with Valley Infrastructure Limited to buy 50 extra water delivery rights at a cost of \$2,000 per water delivery right. This means each customer will pay \$100,000 for the right to have an extra 50 ML of water delivered each year. The formal contract between Valley Infrastructure Limited and its customers describes the charge as a 'charge for a capital contribution to infrastructure'.

Each customer agrees to pay a 20% deposit (\$20,000) immediately, and the balance on completion of the infrastructure upgrades.

The contract makes clear that the customer's payment of the capital charge (\$100,000) is made in exchange for the water delivery rights. This means that the capital contribution is likely to be an infrastructure charge for the purposes of the WCR. Valley Infrastructure Limited's schedule of charges should include the information specified in rules 11 and 13 of the WCR about the charge.

When the amount of the infrastructure charge is not known

If the nature of the service to be provided is known, but:

- the amount and details of the charge or rates cannot reasonably be determined
- the charge does not reflect the costs of physically connecting or disconnecting a customer from the operator's water service infrastructure⁷, or
- the nature of the service is not known sufficiently early for it to be practicable to include in the schedule of charges

the charge does not need to be included in the operator's current schedule of charges.

If the operator levies this charge, a new schedule must be issued, detailing the charges. This must happen within 12 months after the charge is levied.

⁷ Rule 13, item 1 (c) (ii) states that an operator's schedule must include: for a charge that reflects the costs of physically connecting, or physically disconnecting a customer from the operator's water service infrastructure - a statement that the charge will be determined at the time of the connection or disconnection.

► Case study: when the details of a charge are not known

River Infrastructure Limited is an infrastructure operator planning on raising funds to increase the capacity of its water delivery infrastructure by 400 ML. It has decided the infrastructure upgrade will be funded by customers in exchange for delivery entitlements (water delivery rights).

The exact cost per ML of delivery entitlement is not known before the project begins because:

- although River Infrastructure Limited estimates the total cost of the works to be between \$1 million and \$1.5 million dollars, it will not know the final cost until the soil conditions have been determined following large excavation work
- only some of River Infrastructure Limited's customers will want to contribute to the upgrade by paying a capital contribution in exchange for delivery right.

River Infrastructure Limited asks for expressions of interest from its 200 customers. Each customer who signs up is required to pay a deposit of \$1,000 per ML of delivery right immediately. It is estimated that the total cost will be around \$2,500-\$3,750 per ML of extra delivery right and the balance will be payable on completion of the works.

River Infrastructure Limited includes the deposit in its schedule of charges in compliance with the WCR. River Infrastructure Limited does not include the amount of the final instalment of the capital contribution on its schedule of charges. This is because the amount cannot be reasonably determined until the works are complete.

When the works are complete and all of the customers who expressed in interest in contributing to the capital upgrade in exchange for delivery rights confirm whether they wish to proceed, River Infrastructure Limited issues a new, updated schedule of charges that includes details of that charge. This occurs within 12 months after the final instalment (infrastructure charge) is levied.

Exemptions from an operator's disclosure obligations

The ACCC can grant an operator an exemption from the requirement to list certain charges in its schedule of charges. An exemption may be granted if the ACCC is satisfied that disclosure of these charge(s) would result in a material financial loss for, or material detriment to, the infrastructure operator and/or the customer.⁸

Additional termination fees

The ACCC can approve an additional termination fee in certain circumstances. Information about this process is in the ACCC's 'Guidance for infrastructure operators about additional termination fees'.⁹

8 More information about this process is in the ACCC's ['Guidance for applicants seeking an exemption from disclosing certain charges in a schedule of charges'](#).

9 ACCC (2020) [Guidance for infrastructure operators about additional termination fees](#).



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