



# Water Charge (Consolidation) Amendment Rule 2016

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I, [insert name], Minister for [insert portfolio], make the following amendment Rule.

Dated [Date]

**DRAFT**

**24 November 2015**

[name] **[DRAFT ONLY—NOT FOR SIGNATURE]**

Minister for [insert portfolio]

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# Contents

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<b>Part 1 —Preliminary</b>	<b>4</b>
1 Name	4
2 Commencement	4
3 Authority	4
4 Schedules	4
<b>Schedule 1 —Repeals</b>	<b>5</b>
<i>Water Charge (Planning and Management Information) Rules 2010</i>	5
<i>Water Charge (Termination Fees) Rules 2010</i>	5
<b>Schedule 2 —Amendments of the <i>Water Charge (Infrastructure) Rules 2010</i></b>	<b>6</b>
1 Name of Rules	6
6A Transfer or assignment of right of access does not constitute termination or surrender	9
7 Conditions applying to infrastructure operator’s infrastructure charges and planning and management charges	9
8 Additional conditions applying to Part 6 and 7 operators	10
9A Infrastructure operator to pass through certain charges	11
<b>Part 3 Non-discrimination requirements</b>	<b>13</b>
10 Restriction of certain infrastructure charges	13
10A Prohibition of certain infrastructure charges	14
11 Infrastructure operators and other persons to provide schedule of charges	15
23 Part 6 operators	19
23A Part 6 operators and prospective Part 6 operators must notify ACCC	19
23B ACCC must notify Part 6 operators and prospective Part 6 operators of its view	20
23C ACCC may exempt a Part 6 operator from requirements in this Part	20
24 Approval of application for a different regulatory period	21
24A Application for approval of charges—first regulatory period	21
43A Variation of determination by ACCC in response to certain regulatory or taxation events	26
45 Part 7 operators	27
45A Part 7 operators and prospective Part 7 operators must notify ACCC	28
45B ACCC must notify Part 7 operators and prospective Part 7 operators of its views	28
45C ACCC may exempt a Part 7 operator from requirements in this Part	28
46 Application by Part 7 operator to ACCC	29
55 Exempt contracts	31
<b>Part 10—Termination fees</b>	<b>31</b>
<b>Division 1—Certain fees prohibited</b>	<b>31</b>
70 Prohibition of certain fees and charges	31
<b>Division 2—Termination fees</b>	<b>31</b>
71 Termination fee may be levied in certain circumstances	31

72	Calculation of termination fee	32
73	Approval of additional fee payable under certain contracts relating to capital works	34
74	Infrastructure operator to provide information on amount of termination fee, disconnection fee and related matters to customer	35
75	Liability to pay termination fee	35
<b>Division 3—Disconnection fees</b>		<b>36</b>
76	Disconnection fee	36
<b>Division 4—Right to terminate right of access not affected</b>		<b>36</b>
77	Right to terminate not affected	36
<b>Part 11—Transitional provisions for 2016 amendment</b>		<b>36</b>
78	Transition for rule 9	36
79	Transition for rule 11	36
80	Transition for rule 23 and Divisions 2, 3 and 4 of Part 6	36
81	Transition for rule 45 and Division 2 of Part 7	37
82	Transition for Part 9	37
<b>Schedule 3 —Consequential amendments</b>		<b>38</b>

## **Part 1—Preliminary**

### **1 Name**

This is the *Water Charge (Consolidation) Amendment Rule 2016*.

### **2 Commencement**

This Rule commences on the day after it is registered.

### **3 Authority**

This Rule is made under section 92 of the *Water Act 2007*.

### **4 Schedules**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

# Schedule 1—Repeals

## *Water Charge (Planning and Management Information) Rules 2010*

### **[1] The whole of the Rules**

Repeal the Rules.

## *Water Charge (Termination Fees) Rules 2010*

### **[2] The whole of the Rules**

Repeal the Rules.

## Schedule 2—Amendments of the *Water Charge (Infrastructure) Rules 2010*

### [1] Rule 1

Repeal the rule, substitute:

#### 1 Name of Rules

These Rules are the *Water Charge Rules 2010*.

### [2] Subrule 3(1) (definitions of *accredited agency*, *accredited arrangements*, *application period*, *applied provisions*, *business day*, *civil penalty*, *initial period*, *levy*, *managed water resources*, *member owned operator*, *network service plan*, *Part 5 operator*, *Regulator*, *regulatory asset base*, *regulated charge*, *regulatory period*, *related customer*, *State water resource*, *surcharge*, *transitional period*)

Repeal the definitions.

### [3] Subrule 3(1) (note at the end of the definition of *civil penalty*)

Repeal the note.

### [4] Subrule 3(1)

Insert:

*2016 amendment date* means [insert actual date if it can be specified—otherwise date of commencement of the *Water Charge (Consolidation) Amendment Rule 2016*].

*aggregate revenue requirement* has the meaning given by subrule 40(5).

#### *application period*:

- (a) in relation to a Part 6 operator, has the meaning given by rule 23; and
- (b) in relation to a Part 7 operator, has the meaning given by rule 45.

*business day* does not include a Saturday or a Sunday and—

- (a) in relation to an obligation of an infrastructure operator, does not include a day that is a public holiday in the place where the operator's principal place of business is situated;
- (b) in relation to the ACCC, does not include a day that is a public holiday in the Australian Capital Territory.

*directly attributable charge* has the meaning given by subrule 9A(4).

*distribution loss shared charge* has the meaning given by subrule 9A(4).

*infrastructure charge* means a charge of a kind referred to in paragraph 91(1)(a), (b) or (d) of the Act other than:

- (a) a fee to which rule 13 of the *Water Market Rules 2009* applies; or

(b) a fee to which rule 71 or 73 applies.

*levy* includes impose or demand or cause to be imposed or demanded.

*planning and management charge* means a charge of the kind referred to in paragraph 91(1)(c) of the Act that is determined by or on behalf of an agency of the Commonwealth or an agency of a State excluding charges determined by a local government body.

*regulatory asset base* means the value determined in accordance with Schedule 2.

*regulatory event* means:

- (a) a change to the regulatory requirements imposed on an infrastructure operator relating to the provision of an infrastructure service; or
- (b) the approval or determination by the ACCC or by a State Agency under State water management law of regulated water charges incurred by an infrastructure operator;

but does not include a requirement to pay a fine, penalty or compensation in relation to a breach of any law.

*regulatory period*, for a Part 6 operator, means:

- (a) the period of 3 years commencing on the regulatory start date for the operator, and each subsequent period of 3 years; or
- (b) if the ACCC has approved a changed regulatory period under rule 24, that changed period, and each subsequent period of 3 years;

as the case requires.

Note: See the transition provision in rule 80 for the regulatory period for an infrastructure operator that was a Part 6 operator immediately before the 2016 amendment date.

*regulatory start date* means:

- (a) for a Part 6 operator—see rule 23C; and

Note: Under that rule, the regulatory start date is the date from which the operator will first be subject to the requirements of Divisions 2 and 3 of Part 6. See also subrule 30(3).

- (b) for a Part 7 operator—see rule 45C.

*relevant tax* means any tax payable by an infrastructure operator other than:

- (a) income tax and capital gains tax;
- (b) stamp duty, financial institutions duty and bank accounts debts tax;
- (c) penalties, charges, fees and interest on late payments, or deficiencies in payments, relating to any tax; or
- (d) any tax that replaces or is the equivalent of or similar to any of the taxes referred to in paragraphs (a) to (b) (including any State equivalent tax).

*right of access* means a right of access to an infrastructure operator's water service infrastructure or to services provided in relation to that right or a part of that right including a water delivery right and a right to the drainage of water through that infrastructure.

*schedule of charges* has the meaning given by subrule 11(11).

*shared charge* has the meaning given by subrule 9A(4).

*taxation event*: an event that consists of:

- (a) a change in a relevant tax, in the application or official interpretation of a relevant tax, in the rate of a relevant tax, or in the way a relevant tax is calculated; or

- (b) the removal of a relevant tax; or
- (c) the imposition of a relevant tax;

is a *taxation event* for an infrastructure operator if, as a consequence, the costs to the service provider of providing an infrastructure service are increased or decreased.

*terminating customer* means:

- (a) a customer who terminates or surrenders the whole or a part of a right of access by notice in writing given to the infrastructure operator; or
- (b) a customer whose right of access is terminated by the infrastructure operator:
  - (i) by notice in writing given in accordance with the contract or arrangement applicable to that right; and
  - (ii) on grounds that the customer is in breach of their obligations under the contract or arrangement.

*trade* has the same meaning as subsections 1.07(2) and (3) of the *Basin Plan 2012*.

## [5] At the end of subrule 3(1)

Add:

Note: *Civil penalties and penalty units*

Section 146 of the Act provides that if the words ‘civil penalty’ and one or more amounts in penalty units (eg Civil Penalty: 200 penalty units) are set out at the foot of a provision in the rules, the provision is a civil penalty provision for the purposes of the Act (see Division 4 of Part 8 of the Act).

Subsection 147(3) of the Act provides that the pecuniary penalty for a contravention of a civil penalty provision must not exceed:

- (a) if the wrongdoer is an individual—the relevant amount specified for the civil penalty provision; or
- (b) otherwise—an amount equal to 5 times the amount of the relevant amount specified for the civil penalty provision.

‘Penalty unit’ is defined in section 4AA of the *Crimes Act 1914*.

## [6] Subrules 3(2), (3), (4), (5) and (6).

Repeal the subrules, substitute:

- (4) A reference in these Rules to a water access entitlement includes a reference to a perpetual or ongoing entitlement, by or under a law of a State or Territory, to a share of the Basin water resources as if the entitlement were a water access entitlement.
- (6) In these Rules, where an infrastructure operator is required to provide or give a copy of a document, such as its schedule of charges, to its customers, the relevant document may be provided in electronic form.

Example:

The relevant document may be provided by fax, by email or by text message, including by attaching the document to an email or referring, in an e-mail or text message, the customer to an Internet address where the document can be found.

## [7] Rules 4, 5 and 6

Repeal the rules.



**[8] At the end of Part 1**

Add:

**6A Transfer or assignment of right of access does not constitute termination or surrender**

To avoid doubt, a person who transfers or assigns a right of access, or part of the right, to another person does not terminate or surrender the right, or part of the right, for the purposes of these Rules.

Note: This provision clarifies the effect of paragraph 10A(1)(c) and rules 70 and 71, which deal with circumstances in which termination fees are permitted.

**[9] Part 2 (heading)**

Omit “regulated charges” substitute “infrastructure charges and planning and management charges”.

**[10] Rule 7**

Repeal the Rule, substitute:

**7 Conditions applying to infrastructure operator’s infrastructure charges and planning and management charges**

- (1) An infrastructure operator contravenes this subrule if the operator:
- (a) levies an infrastructure charge or planning and management charge on a customer; or
  - (b) collects a planning and management charge or infrastructure charge from a customer determined by a person other than the operator;

that is greater than the amount specified in the schedule of charges in effect under rule 11.

Civil penalty: 200 penalty units.

- (2) Subrule (1) does not apply to an infrastructure charge that is exempted under rule 9.

- (3) A person, other than an infrastructure operator, who determines a planning and management charge contravenes this subrule if the person levies a planning and management charge that is greater than the amount specified in the schedule of charges in effect under rule 11.

Civil penalty: 200 penalty units.

**[11] Rule 8**

Repeal the Rule, substitute:

## **8 Additional conditions applying to Part 6 and 7 operators**

- (1) Subject to rules 33, 39 and Division 4 of Part 6, a Part 6 operator that has not been exempted under rule 23C must not, after the regulatory start date, levy an infrastructure charge relating to an infrastructure service provided by the operator to a customer unless:
- (a) the operator's infrastructure charges have been approved or determined in accordance with:
    - (i) Division 2 of Part 6; and
    - (ii) except in the case of the first year of a regulatory period—Division 3 of Part 6; and
  - (b) the infrastructure charge for that infrastructure service does not exceed the charge for that infrastructure service approved or determined in accordance with Division 2 or Division 3 of Part 6, as applicable.

Civil penalty: 200 penalty units

- (2) A Part 7 operator that has not been exempted under rule 45C, must not, after the regulatory start date, levy an infrastructure charge relating to an infrastructure service provided by the operator to a customer unless:
- (a) the operator's infrastructure charges have been approved or determined in accordance with Part 7; and
  - (b) the infrastructure charge for that infrastructure service does not exceed the charge for that infrastructure service approved or determined in accordance with Part 7.

Civil penalty: 200 penalty units

## **[12] Rule 9 (heading)**

Omit "entered into before, on or after relevant date".

## **[13] Subrules 9(1), (2), (3), (4), (5), (9) and (10)**

Repeal the subrules, substitute:

- (1) If:
- (a) an infrastructure operator proposes to enter into a contract in writing for the provision of infrastructure services to a customer at agreed infrastructure charges specified in the contract;
- and either:
- (b) the customer believes, on reasonable grounds, that disclosure of the details of those charges would result in a material financial loss for, or material detriment to, the customer; or
  - (c) the operator believes, on reasonable grounds, that disclosure of the details of those charges would result in a material financial loss for, or material detriment to, the operator;

the operator or the customer, or both the operator and customer, may apply in writing to the ACCC for an exemption from the requirement under these Rules that the operator include the charges in its schedule of charges.

- (4) An application must:
- (a) be made before the contract is entered into; and

- (b) include the reasons for the belief referred to in paragraph (1)(b) or (c), as applicable.
- (5) Before the ACCC makes a decision in relation to an application under this rule, the ACCC may, in writing, request the infrastructure operator or the customer to provide further information relating to the application within a period specified by the ACCC.
- (9) The ACCC must refuse to grant the exemption if it is not satisfied that disclosure of details of the infrastructure charges under the proposed contract would have a material financial loss for, or material detriment to, the infrastructure operator or the customer.
- (10) The ACCC must give notice in writing of its decision on an application under this rule to the customer and infrastructure operator and, if it refuses to grant the exemption, must include in the notice the reasons for its refusal.

**[14] After subrule 9(13)**

Insert:

- (13A) Despite subrule 13, if the ACCC grants an exemption under this rule in relation to an application made after the 2016 amendment date, the infrastructure operator must include the following information in its schedule of charges:
  - (a) the name of the entity or entities that are subject to the exemption;
  - (b) the time period of the arrangement;
  - (c) the nature of the infrastructure service to which the charge exempt from disclosure relates;
  - (d) the nature of the access to which the charge exempt from disclosure relates.

**[15] Subrule 9(14) (definitions of *material and adverse effect* and *relevant date*)**

Repeal the definitions.

**[16] After Rule 9**

Insert:

**9A Infrastructure operator to pass through certain charges**

- (1) If an infrastructure operator incurs directly attributable charges, distribution loss shared charges or other shared charges, the operator must recover the amount of those charges, taking into account any discounts received by the operator, by levying 1 or more separate infrastructure charges on its customers in accordance with this rule.
- (2) The amount of each directly attributable charge must be recovered in an infrastructure charge that is separate to the operator's other infrastructure charges, and only:
  - (a) from a customer whose actions in relation to the water access right or irrigation right, including holding those rights, results in the operator incurring the directly attributable charge; and
  - (b) by reference to the customer's water access right or irrigation right, as applicable; and

Example:

If the infrastructure operator incurs a charge in relation to a water access entitlement held, it must recover the charge by reference to the customer's water access entitlement, or if the customer does not hold a water access entitlement but instead holds an irrigation right against the operator, the customer's irrigation right.

- (c) on the same basis that the directly attributable charge was incurred by the operator.

Example:

If the infrastructure operator incurs a charge per ML of water delivered to the infrastructure operator by a different infrastructure operator, the charge must be recovered from the customer per ML of water delivered to the customer.

Civil penalty: 200 penalty units.

- (3) The total amount of distribution loss shared charges must be recovered using infrastructure charges that are separate from the operator's other infrastructure charges.

Note: The cost to the operator from multiple distribution loss shared charges may be recovered through one or more separate infrastructure charges.

Civil penalty: 200 penalty units.

- (4) The total amount of all other shared charges must be recovered using infrastructure charges that are separate from the operator's other infrastructure charges, and by reference to the volume of the customer's water access right or irrigation right, as applicable.

Note: The cost to the operator from multiple shared charges (other than distribution loss shared charges) may be recovered through one or more separate infrastructure charges.

Civil penalty: 200 penalty units.

- (5) A discount on a charge of the kind referred to in subrule (1) includes a discount received by an operator that is not specific to a particular charge but is related to directly attributable charges, distribution loss shared charges or other shared charges incurred by the operator.

- (6) In this rule:

***directly attributable charge*** means an infrastructure charge or planning and management charge levied by reference to a water access right that is incurred by an infrastructure operator as a direct consequence of a customer holding a water access right or irrigation right, or taking some action in relation to those rights.

***distribution loss shared charge*** means a shared charge relating to water under a water access right that is lost during distribution of water to customers.

***shared charge*** means an infrastructure charge or planning and management levied by reference to a water access right that is incurred by an infrastructure operator other than a directly attributable charge.

## [17] Part 3

Repeal the Part, substitute:

## Part 3 Non-discrimination requirements

### 10 Restriction of certain infrastructure charges

- (1) An infrastructure operator must not specify different infrastructure charges, rates or discounts in relation to an infrastructure service, or infrastructure services that are of the same class, if:

- (a) doing so would have the effect that those different infrastructure charges, rates or discounts would apply:

- (i) because of the purpose for which water has been or will be used; or

Example:

An infrastructure operator could not levy different charges for a class of infrastructure service for a customer who uses water for irrigation compared to a customer who uses water for other commercial activities if the difference between the two charges is more than the difference between the actual costs necessarily incurred by the infrastructure operator to provide the services.

- (ii) because a tradeable water right has been traded or transformed; or

Note: Section 4 of the Act defines 'tradeable water right'.

Example:

An infrastructure operator could not levy different charges for a class of infrastructure service for a customer who holds an irrigation right compared to a customer who does not hold such a right if the difference between the two charges is more than the difference between the actual costs necessarily incurred by the infrastructure operator to provide the services.

- (iii) because of the holding, volume or use of a tradeable water right or separate location-related right; or

Example:

An infrastructure operator could not levy higher charges for a class of infrastructure service for a customer who holds a small volume of water delivery right compared to the infrastructure charges levied on a customer who holds a large volume of water delivery right if the difference between the two charges is more than the difference between the actual costs necessarily incurred by the infrastructure operator to provide the services.

- (iv) because there is an association between a water access right and a separate location-related right; or

- (v) because of the area of land owned, occupied or irrigated, including because an area of land is not owned, occupied or irrigated by a customer; and

- (b) the difference exceeds what is necessary to reflect the difference between the actual costs necessarily incurred in providing the infrastructure service or infrastructure services.

Civil penalty: 200 penalty units.

- (2) If an infrastructure operator limits the availability of an infrastructure service by reference to:

- (a) the purpose for which water has been or will be used; or

- (b) whether a tradeable water right has been traded or transformed; or

Note: Section 4 of the Act defines 'tradeable water right'.

- (c) the holding, volume, or use of a tradeable water right or separate location-related right; or

- (d) whether there is an association between a water access right and a separate location-related right; or

- (e) the area of land owned, occupied or irrigated, including because an area of land is not owned, occupied or irrigated by a customer;

the operator must not levy any infrastructure charges in relation to those services.

Civil penalty: 200 penalty units.

- (3) Subrule (2)(a) does not apply to an infrastructure service that is limited to customers using water for stock and domestic purposes.
- (4) Subrule (2)(c) does not apply to the extent that the availability of an on-river infrastructure service is limited by reference to:
  - (a) the priority or reliability of a class of water access entitlement; or
  - (b) the water resource of a water access entitlement.
- (5) Nothing in this rule is intended to prevent an infrastructure operator from specifying different infrastructure charges or discounts for different classes of infrastructure services.
- (6) To avoid doubt, the delivery of water to a customer beyond the volume provided for in the customer's water delivery right is a different class of infrastructure service to the delivery of water up to that volume.
- (7) This rule does not apply to infrastructure charges that are negotiated, offered, arbitrated or otherwise specified under a dispute resolution process undertaken consistently with any of the following arrangements made under Part IIIA of the *Competition and Consumer Act 2010*:
  - (a) an access undertaking or access code;
  - (b) a declared service;
  - (c) an effective access regime;
  - (d) a competitive tender process.

- (8) In this rule:

**location-related right** means any of the following:

- (a) a water delivery right;
- (b) a works approval;
- (c) a water use approval.

Note: See also section 12.06 of the Basin Plan.

**on-river infrastructure services** include harvesting and storing water through infrastructure such as dams, lakes, weirs and reservoirs, and delivering water, primarily through natural watercourses, to a point of extraction on a natural watercourse.

## 10A Prohibition of certain infrastructure charges

- (1) An infrastructure operator must not levy an infrastructure charge:
  - (a) when a customer makes an application to the operator or any other person to terminate or trade a tradeable water right; or
  - (b) as a condition of the infrastructure operator granting its consent or approval to the termination or trade of a tradeable water right; or
  - (c) when, or because, a customer's tradeable water right is terminated or traded.

Civil penalty: 200 penalty units.

- (2) Nothing in this rule is intended to prohibit an infrastructure operator from:
- (a) levying a termination fee from a customer consistently with Part 10 of these Rules; or
  - (b) where the operator’s approval or consent to the trade is required—levying an infrastructure charge that reflects the reasonable and efficient administrative costs of processing a trade; or
  - (c) levying an infrastructure charge on a customer who seeks to have a volume of water delivered that is in excess of the volume provided for under the water delivery right held by the customer with the operator; or
  - (d) demanding the payment of an infrastructure charge that was levied before the 2016 amendment date as a condition of the operator providing their consent or approval to a trade, provided the charge was levied consistently with the rules that applied before that date.

**[18] Part 4 (heading)**

Omit “to provide schedule of charges to existing customers and new customers” substitute “and other persons to provide schedule of charges”.

**[19] Rule 11**

Repeal the rule and substitute:

**11 Infrastructure operators and other persons to provide schedule of charges**

*Infrastructure operator*

- (1) An infrastructure operator may adopt a schedule of charges that will take effect on the date specified in the schedule of charges.
- (2) The schedule of charges ceases to be in effect when a replacement schedule of charges adopted by the infrastructure operator takes effect.
- (3) The infrastructure operator contravenes this subrule if the schedule of charges does not include all the information specified in column 2 of the table in subrule (11).

Civil penalty: 200 penalty units

- (4) If the infrastructure operator satisfies paragraph 23(b) (whether or not its infrastructure charges are approved or determined by a single State Agency under State water management law):
  - (a) the operator must send a copy of the schedule of charges to its customers on or before the day 25 business days before the schedule of charges takes effect; and
  - (b) for a customer that becomes a customer of the operator after the day 25 business days before the schedule of charges takes effect—the operator must send a copy of the schedule of charges to the customer on or before the day the customer becomes a customer of the operator; and
  - (c) if the operator has an Internet site—the operator must publish the schedule of charges on a publicly accessible part of the operator’s Internet site on or before the day 25 business days before the schedule of charges takes effect.

Civil penalty: 200 penalty units

- (5) If the infrastructure operator is of any other kind:
- (a) the operator must send a copy of the schedule of charges to the customer on or before the day 10 business days before the schedule of charges takes effect; and
  - (b) for a customer that becomes a customer of the operator after the day 10 business days before the schedule of charges takes effect—the operator must send a copy of the schedule of charges to the customer on or before the day the customer becomes a customer of the operator; and
  - (c) if the operator has an Internet site—the operator must publish the schedule of charges on a publicly accessible part of the operator’s Internet site on or before the day 10 business days before the schedule of charges takes effect.

Civil penalty: 200 penalty units

- (6) For subrules (4) and (5), if the copy of the schedule of charges is a paper copy that is sent to the customer by post, it is taken to be sent on the day that it is posted.

*Person, other than an infrastructure operator, who determines planning and management charges*

- (7) A person, other than an infrastructure operator, who determines a planning and management charge may adopt a schedule of charges that will take effect on the date specified in the schedule of charges.
- (8) The schedule of charges ceases to be in effect when a replacement schedule of charges adopted by the person takes effect.
- (9) The person contravenes this subrule if the schedule of charges does not include all the information specified in column 3 of the table in subrule (11).

Civil penalty: 200 penalty units

Note: See section 12 of the Act, which limits the types of agencies of the Commonwealth or of a State that can be liable to be subject to civil proceedings for a civil penalty or given an infringement notice, and exempts the Crown entirely.

- (10) The person must, 25 or more business days before the schedule of charges takes effect:
- (a) publish the schedule of charges on the Internet site of:
    - (i) the person who determined the charge; or
    - (ii) the agency or person to whom the charge is payable; and
  - (b) make the schedule of charges available at the principal place of business of:
    - (i) the person who determined the charge; or
    - (ii) the agency or person to whom the charge is payable.

Civil penalty: 200 penalty units

Note: See section 12 of the Act, which limits the types of agencies of the Commonwealth or of a State that can be liable to be subject to civil proceedings for a civil penalty or given an infringement notice, and exempts the Crown entirely.

*Content of schedule of charges*

- (11) A ***schedule of charges*** must include the following information:

Item	Information requirements for an infrastructure operator	Information requirements for a person, other than an infrastructure operator, who
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		<b>determines planning and management charges</b>
1	The date that the schedule of charges takes effect.	The date that the schedule of charges takes effect.
2	<p>For each infrastructure charge or planning and management charge:</p> <p>(a) the name of the charge; and</p> <p>(b) the circumstances in which the charge is incurred including:</p> <p style="padding-left: 40px;">(i) the class of person required to pay the charge; and</p> <p style="padding-left: 40px;">(ii) if applicable—the water resource, catchment or district, and the water resource plan or other plan, to which the charge relates; and</p> <p style="padding-left: 40px;">(iii) if applicable—the class of water access right, irrigation right or water delivery right to which the charge relates; and</p> <p>(c) the amount of the charge or details of rates and all other details necessary to determine that amount; and</p> <p>(d) when the charge is payable and, if payable by instalments, the number of instalments and intervals at which the charge is payable; and</p> <p>(e) for a planning and management charge that the operator may determine:</p> <p style="padding-left: 40px;">(i) the legislative, contractual or other authority for the charge; and</p> <p style="padding-left: 40px;">(ii) the agency or person to whom the charge is payable; and</p> <p>(f) for a planning and management charge recovered</p>	<p>For each planning and management charge that the person may determine:</p> <p>(a) the name of the charge; and</p> <p>(b) the circumstances in which the charge is incurred including:</p> <p style="padding-left: 40px;">(i) the class of person required to pay the charge; and</p> <p style="padding-left: 40px;">(ii) if applicable—the water resource, catchment or district, and the water resource plan or other plan, to which the charge relates; and</p> <p style="padding-left: 40px;">(iii) if applicable—the class of water access right, irrigation right or water delivery right to which the charge relates; and</p> <p>(c) the amount of the charge or details of rates and all other details necessary to determine that amount; and</p> <p>(d) when the charge is payable and, if payable by instalments, the number of instalments and intervals at which the charge is payable; and</p> <p>(e) the legislative, contractual or other authority for the charge; and</p> <p>(f) the agency or person to whom the charge is payable.</p>

	<p>from customers in accordance with rule 9A—the name of the entity levying the charge on the infrastructure operator; and</p> <p>(g) for an infrastructure charge—a description of the infrastructure services to which the charge relates; and</p> <p>(h) for each infrastructure charge levied in accordance with rule 9A:</p> <p style="padding-left: 40px;">(i) the name, amount and entity levying any directly attributable charge, shared charge or distribution loss shared charge being recovered; and</p> <p style="padding-left: 40px;">(ii) how the infrastructure charge levied by the infrastructure operator was determined; and</p> <p>(i) for a planning and management charge or infrastructure charge determined by a person other than the operator but collected by the operator—the person for whom the operator is collecting the charge; and</p> <p>(j) despite paragraph (c), for a charge that reflects the costs of physically connecting, or physically disconnecting, the customer from the operator’s water services infrastructure, the operator may instead include a statement that the charge will be determined at the time of the connection or disconnection.</p>	
3	A statement setting out the process used by the infrastructure operator to determine its infrastructure charges and how a customer may participate in that process.	A statement setting out the process used by the person to determine the planning and management charges and how a customer may participate in that process.
4	A statement setting out how a customer may make an enquiry or resolve a dispute with the	A statement setting out how a customer may make an enquiry or resolve a dispute with the person in

	infrastructure operator in relation to a regulated water charge.	relation to a regulated water charge.
5	Any other information the operator considers necessary or desirable to explain the charges to the customer.	Any other information the person considers necessary or desirable to explain the charges to the customer.

**[20] Rule 12**

Repeal the rule.

**[21] Rule 13**

Omit “, after the transitional period.”.

**[22] Rules 14 and 15**

Repeal the rules.

**[23] Part 5**

Repeal the Part.

**[24] Rule 23**

Repeal the rule, substitute:

**23 Part 6 operators**

An infrastructure operator is a **Part 6 operator** if it satisfies the following:

- (a) the operator is not required to have all its infrastructure charges approved or determined by a single State Agency under State water management law;
- (b) either:
  - (i) holders of a class of water access rights must obtain infrastructure services from the operator in order to have water relating to that water access right stored or delivered; or
  - (ii) a person must obtain infrastructure services from the operator in relation to the storage or delivery of water to give effect to an arrangement for the sharing of water between more than one Basin State.

**23A Part 6 operators and prospective Part 6 operators must notify ACCC**

If an infrastructure operator:

- (a) becomes aware that it has become a Part 6 operator; or
- (b) becomes aware of a matter that may result in the operator becoming a Part 6 operator on a specified date;

the operator must notify the ACCC of that fact, or that matter, as soon as practicable.

**23B ACCC must notify Part 6 operators and prospective Part 6 operators of its view**

If the ACCC:

- (a) receives a notice under rule 23A; or
- (b) otherwise becomes aware that an infrastructure operator is a Part 6 operator, or is likely to become one from a specified date;

the ACCC must:

- (c) form a view as to whether the infrastructure operator is a Part 6 operator, or will become a Part 6 operator from a specified date; and
- (d) notify the infrastructure operator of the ACCC's view; and
- (e) if the ACCC is of the view that the operator is, or will be, a Part 6 operator—advise the operator that the ACCC will decide whether the operator should be granted an exemption under rule 23C.

**23C ACCC may exempt a Part 6 operator from requirements in this Part**

- (1) An infrastructure operator that is, or expects to become, a Part 6 operator may apply to the ACCC for an exemption under this rule.
- (2) The ACCC may grant to an infrastructure operator a written exemption from the requirements of Divisions 2 and 3:
  - (a) following an application made by an infrastructure operator; or
  - (b) if it has given the infrastructure operator a notice under rule 23B that it is of the view that the operator is, or will be, a Part 6 operator.
- (3) The ACCC may on its own initiative, and by written notice, extend the period of an existing exemption if the ACCC continues to be satisfied of the matters specified in subrule (4).
- (4) The ACCC may grant the exemption only if the ACCC is satisfied that the application of those requirements would not materially contribute to the achievement of the Basin water charging objectives and principles set out in Schedule 2 of the Act.
- (5) In making the decision, the ACCC must have regard to the following matters:
  - (a) the total volume of water access rights in relation to which the class of water access rights holders must obtain infrastructure services from the operator, if applicable;
  - (b) the total volume of water subject to water sharing arrangements in relation to which a person must obtain infrastructure services from the operator, if applicable;
  - (c) the classes of the infrastructure services provided by the operator;
  - (d) any preferences expressed by the operator's customers to the ACCC;
  - (e) any views expressed by a State Agency to the ACCC;
  - (f) any other matters that the ACCC considers relevant.
- (6) The exemption may be:
  - (a) for a specified period; or
  - (b) for an unspecified period but subject to review at specified times.
- (7) Before making the decision, the ACCC may undertake public consultation in relation to its proposed decision.

- (8) Before making the decision, the ACCC may, in writing, request the operator to provide further information within a period specified by the ACCC in that request.
- (9) If the ACCC fails to make a decision under this rule within 3 months after receiving the application, or giving the notice under rule 23B, the ACCC is taken to have decided to grant the operator an exemption from the requirements of Divisions 2 and 3 for 3 years from the expiry of that 3 month period.
- (10) If the ACCC decides not to grant the operator an exemption, the ACCC must:
  - (a) invite the views of the operator on the appropriate date from which the operator should be subject to the requirements of Divisions 2 and 3; and
  - (b) set that date.
- (11) The date set in subrule (10) is the *regulatory start date* for the operator.
- (12) The ACCC must notify the infrastructure operator as soon as practicable of:
  - (a) a decision under this rule (including a decision deemed to have been made under subrule (9)) as soon as practicable; and
  - (b) if the ACCC does not grant the exemption—the regulatory start date for the operator.

**[25] Rule 24**

Repeal the rule, substitute:

**24 Approval of application for a different regulatory period**

- (1) This section applies to a Part 6 operator that is also a supplier of urban water services or infrastructure services in relation to non-Basin water resources, the charges for which are determined by an agency of a State, under a law of the State, in respect of periods (the *agency periods*) that are not aligned with the regulatory periods of the operator.
- (2) The Part 6 operator may apply in writing to the ACCC to change the end date of its next regulatory period to align with an agency period.
- (3) The ACCC may approve the application if:
  - (a) it is satisfied that the change is for the purpose of aligning the approvals of charges for urban water services or infrastructure services in relation to non-Basin water resources with the approval of charges under these Rules; and
  - (b) the next regulatory period, with the changed end date, will not be more than 5 years.

Note: The regulatory periods following the changed period will be of 3 years unless a later period is also amended under this rule—see definition of *regulatory period* in rule 3.

- (4) If changing the end date of a regulatory period under this section results in a period that does not have a whole number of years, the remainder after all the whole years are completed is treated as a year for the purposes of this Division and Divisions 3 and 4.

**24A Application for approval of charges—first regulatory period**

- (1) This section applies to an infrastructure operator that:
  - (a) has received a notice under rule 23B, stating that the ACCC is of the view that the operator is, or will be, a Part 6 operator; and

- (b) was subsequently refused an exemption under rule 23C, or was given an exemption that has now expired; and
- (c) has had its regulatory start date set under subrule 23C(10); and
- (d) proposes to levy infrastructure charges on or after the regulatory start date.

Note: The process in this provision is for the initial approval of charges. After this process is completed, rule 25 or Division 3 as appropriate will apply.

- (2) The infrastructure operator must, at least 15 months before the regulatory start date, apply in writing to the ACCC for approval or determination of its infrastructure charges under this Division in respect of the first regulatory period.
- (3) Unless the ACCC approves a different period under rule 24, the *first regulatory period* for the infrastructure operator is the period of 3 years beginning on the regulatory start day.
- (4) The application must include the information referred to in Schedule 1.

**[26] Subrule 25(1)**

Omit “initial period” insert “first regulatory period”.

**[27] Subrule 25(2)**

Repeal the subrule, substitute:

- (2) The application under subrule (1) must include the information referred to in Schedule 1.
- (3) The application must be made no later than 15 months before the regulatory period to which the approval or determination relates.

**[28] Rule 27**

Omit “which”, substitute “that”.

**[29] Paragraph 28(b)**

Omit “which”, substitute “that”.

**[30] Paragraph 29(2)(b)**

Repeal the paragraph, substitute:

- (b) that the forecast revenue from the charges is reasonably likely to meet:
  - (i) the prudent and efficient costs of providing the infrastructure services; less
  - (ii) any government contributions related to the provision of those infrastructure services; and
- (c) that the infrastructure charges contained in the application are otherwise consistent with these rules.

**[31] After subrule 29(3)**

Insert:

- (3A) If the ACCC is satisfied that there is sufficient uncertainty about the cost, timing, necessity, likelihood or feasibility of a capital expenditure project proposed by the infrastructure operator in its application to be funded by the infrastructure charges, the infrastructure charges must be determined on the basis that funding the capital expenditure project would not be a prudent and efficient cost of providing the infrastructure service.

**[32] Subrules 30(1), (2) and (3)**

Repeal the rules, substitute:

- (1) The ACCC must, within the period ending on the day 30 business days before the start of the regulatory period, approve or determine the infrastructure charges set out in the application and provide written notice of its decision in accordance with rule 31.
- (3) If the ACCC:
- (a) is unable to make a decision within the period mentioned in subrule (1); and
  - (b) within that period, gives written notice to the Part 6 operator who made the application under this Division explaining why the ACCC has been unable to make the decision within that period;

then:

- (c) that period is extended, or further extended by a period of 3 months; and
- (d) if the application relates to the first regulatory period for the operator—the regulatory start date is changed to the day 30 business days after the end of the period as extended.

**[33] After subrules 31(1)**

Insert:

- (1A) If the circumstances in subrule 29(3A) apply, the notice may also set out the conditions that the operator must satisfy in relation to a capital expenditure project before the operator may apply for a variation of an approval or determination of its infrastructure charges under Division 4.

**[34] After subrules 31(2)**

Omit “or after”.

**[35] Subrules 33(1), (2) and (4)**

Repeal the subrules, substitute:

- (4) In this rule, *specified period* means:
- (a) the period ending 6 months after the end of the regulatory period; or
  - (b) if the period of 30 business days before the start of the regulatory period referred to in subrule 30(1) is adjusted under subrule 30(3), the period ending when that period as adjusted ends.

**[36] After paragraph 34(2)(a)**

Insert:

- (aa) an explanation of why the forecasts are different from those set out in the application made under rule 24A or 25, if applicable; and

**[37] After subrule 34(2)**

Insert:

- (3) An application must be made no later than 4 months before the start of the year of the regulatory period to which the approval or determination relates.

**[38] Paragraph 36(b)**

Omit “which”, substitute “that”.

**[39] Subrule 37(1)**

Omit “within 3 months after receiving an application under this Division from a Part 6 operator”, insert “within the period ending on the day 30 business days before the start of the second or subsequent year of the regulatory period”.

**[40] At the end of paragraph 37(2)(a)**

Add “from those set out in the application under rule 25”.

**[41] At the end of paragraph 37(2)(b)**

Add:

stability; and

**[42] After paragraph 37(2)(b)**

Insert:

- (c) the consistency of the infrastructure charges with these rules.

**[43] Subrule 37(4)**

Repeal the subrule.

**[44] Paragraph 37(5)(a)**

Repeal the paragraph, substitute:

- (a) is unable to make a decision within the period mentioned in subrule (1); and

**[45] Subrule 39(1)**

Repeal the subrule.



**[46] Subrule 39(3)**

Omit “of 3 months”.

**[47] Paragraph 40(1)(b)**

Before “the operator”, insert “for an event other than a taxation event or regulatory event—”.

**[48] Subparagraph 40(2)(c)(ii)**

Repeal the subparagraph, substitute:

- (ii) whether that amount is likely to exceed:
  - (A) for a taxation event or a regulatory event—1% of the aggregate revenue requirement;
  - (B) otherwise—5% of the aggregate revenue requirement; and

**[49] Subparagraph 40(2)(d)**

Omit “reliability and safety”, insert “reliability or safety”.

**[50] After subrule 40(2)**

Insert:

- (3) A Part 6 operator may also apply in writing to the ACCC for a variation of the approval or determination made under Division 2 if the infrastructure operator is of the view that the conditions specified under subrule 31(1A) have been satisfied.
- (4) An application made under subrule (3) must set out:
  - (a) the reasons for the infrastructure operator’s belief that the conditions in subrule 31(1A) have been satisfied; and
  - (b) the total amount that the Part 6 operator anticipates will be required during the remainder of the regulatory period to meet the prudent and efficient costs of delivering the capital expenditure project; and
  - (c) the proportion of the costs of the capital expenditure project that the operator seeks to recover through infrastructure charges; and
  - (d) the infrastructure charges the operator is seeking to vary and the amount of that variation.
- (5) In this rule:

*aggregate revenue requirement* means the sum of the forecast revenue from infrastructure charges that is reasonably likely to meet the prudent and efficient costs of providing the infrastructure services for the current and remaining years of the regulatory period.

**[51] Subrule 42**

Omit “which”, substitute “that”.

**[52] Subrule 43(5)**

After “must not” insert “, in relation to an application made under subrule 40(1),”.

**[53] Subparagraph 43(5)(b)(i)**

Repeal the subparagraph, insert:

- (i) the total amount required during the remainder of the regulatory period to rectify the material and adverse effects of the event exceeds:
  - (A) for a taxation event or a regulatory event—1% of the aggregate revenue requirement;
  - (B) otherwise—5% of the aggregate revenue requirement; and

**[54] Subparagraph 43(5)(b)(ii)**

Omit “that”.

**[55] Paragraph 43(5)(c)**

After “materially”, insert “and”.

**[56] Paragraph 43(5)(c)**

Omit “reliability and safety”, substitute “reliability or safety”.

**[57] After subrule 43(5)**

Insert:

- (6) In relation to an application made under subrule 40(3), the ACCC must not vary the infrastructure charges as proposed in the operator’s application under paragraph 40(4)(d) unless the ACCC is satisfied of the following in relation to the capital expenditure project:
  - (a) that the conditions specified under paragraph 31(1A) have been satisfied;
  - (b) as to the matters set out in paragraphs 29(2)(b) and (c).
- (7) The variation may commence at a time determined by the ACCC but must not commence any earlier than the next year of the regulatory period.

**[58] After rule 43**

Insert:

**43A Variation of determination by ACCC in response to certain regulatory or taxation events**

- (1) The ACCC may, on its own initiative, vary an approval or determination of an infrastructure operator’s infrastructure charges if it is satisfied that a regulatory event or taxation event provides a benefit to an infrastructure operator of more than 1% of the operator’s aggregate revenue requirement.

- (2) Before varying an approval or determination, the ACCC must give the infrastructure operator written notice of its intention to vary an approval or determination of the operator's infrastructure charges.
- (3) The notice must:
  - (a) identify the regulatory event or taxation event giving rise to the intended variation; and
  - (b) set out the estimated amount for the proposed variation of the operator's infrastructure charges; and
  - (c) advise the operator that they may respond to the ACCC's notice within 30 business days of the notice.
- (4) The ACCC must not vary the determination of infrastructure charges made under Division 2 for the regulatory period unless it is satisfied of the matters set out in paragraphs 29(2)(b) and (c).
- (5) The variation may commence at a time determined by the ACCC but must not commence any earlier than the next year of the regulatory period.

**[59] Rule 45**

Repeal the rule, substitute:

**45 Part 7 operators**

- (1) An infrastructure operator becomes a *Part 7 operator* if it makes a distribution, other than a standard distribution, to any customer.
- (2) An infrastructure operator ceases to be a Part 7 operator upon the expiration of 3 years after:
  - (a) the day the operator last made a distribution, other than a standard distribution, to customers; or
  - (b) the regulatory start date for the operator;
 whichever occurs later.
- (3) For the purposes of this rule, an infrastructure operator is to be taken to have made a distribution to a customer if it has:
  - (a) declared a dividend for a customer; or
  - (b) distributed profits, or any part of its profits, whether in the form of dividends or otherwise to a customer; or
  - (c) distributed its reserves, or any part of its reserves to a customer; or
  - (d) issued bonus shares to a customer; or
  - (e) traded or allocated water in the form of a water allocation or an allocation of water to an irrigation right, other than the following:
    - (i) an allocation of water from the irrigation infrastructure operator to the holder of an irrigation right that reflects the allocation of water by a State Agency to the operator in relation to a water access entitlement held by the operator on behalf of the holder; and
    - (ii) a trade or allocation necessary to give effect to a trade of a water access right or irrigation right by a customer.

- (4) For the purposes of this rule, a *standard distribution* by an infrastructure operator is a distribution that:
- (a) is made to all customers of the operator, in proportion to each customer's right of access; or
  - (b) reflects the repayment of contributions made by customers towards the replacement cost of infrastructure in circumstances where the contribution is no longer required, and is made in proportion to each customer's contribution; or
  - (c) is made in the form of a reasonable honorarium; or
  - (d) is made to all customers in a specific part of the area serviced by the operator in a way that reflects water savings achieved by the operator in that part, and is made in proportion to each customer's right to access to that part; or
  - (e) is made by an operator to its owners, where the operator's infrastructure charges are approved or determined under Part 6 or by a State Agency under State water management law.

**45A Part 7 operators and prospective Part 7 operators must notify ACCC**

If an infrastructure operator:

- (a) becomes aware that it has become a Part 7 operator; or
- (b) becomes aware of a distribution that it proposes to make that may result in the operator becoming a Part 7 operator on a specified date;

the operator must notify the ACCC of that fact, or that matter, as soon as practicable.

**45B ACCC must notify Part 7 operators and prospective Part 7 operators of its views**

If the ACCC:

- (a) receives a notice under rule 45A; or
- (b) otherwise becomes aware that an infrastructure operator is a Part 7 operator, or is likely to become one;

the ACCC must:

- (c) form a view as to whether the infrastructure operator is a Part 7 operator, or will become a Part 7 operator from a specified date; and
- (d) notify the infrastructure operator of the ACCC's view; and
- (e) if the ACCC is of the view that the operator is, or will be, a Part 7 operator—advise the operator that the ACCC will decide whether the operator should be granted an exemption under rule 45C.

**45C ACCC may exempt a Part 7 operator from requirements in this Part**

- (1) An infrastructure that is, or expects to become, a Part 7 Operator may apply to the ACCC for an exemption under this rule.
- (2) The ACCC may grant to an infrastructure operator a written exemption from the requirements in this Part:
  - (a) following an application made by an infrastructure operator; or
  - (b) if it has given the infrastructure operator a notice under rule 45B that it is of the view that the operator is, or will be, a Part 7 operator.

- (3) The ACCC may on its own initiative, and by written notice, extend the period of an existing exemption if the ACCC continues to be satisfied of the matters specified in subrule (4).
- (4) The ACCC may grant an exemption to an infrastructure operator from the requirements in this Part for a specified distribution only if the ACCC is satisfied that providing the exemption is unlikely to have a negative impact on the achievement of the Basin water charging objectives and principles set out in Schedule 2 of the Act.
- (5) In making the decision, the ACCC must have regard to the following matters:
  - (a) the nature of the operator's infrastructure services;
  - (b) the nature of the distributions made by the operator to its customers;
  - (c) any preferences expressed by the operator's customers;
  - (d) any action taken by the operator in response to any concerns expressed by the ACCC to the operator about distributions it has made or intends to make.
- (6) The exemption may relate to:
  - (a) a specific distribution; or
  - (b) a distribution to be made in the future that meets particular conditions specified by the ACCC.
- (7) Before making a decision, the ACCC may undertake public consultation in relation to its proposed decision.
- (8) Before making the decision, the ACCC may, in writing, request the operator to provide further information within a period specified by the ACCC in that request.
- (9) If the ACCC fails to make a decision under this rule within 3 months after receiving the application, or giving the notice under rule 45B, the ACCC is taken to have decided that the operator is exempt from the requirement in this Part in relation to the distribution set out in that application or notice, as applicable.
- (10) If the ACCC decides not to grant the operator an exemption, the ACCC must:
  - (a) invite the views of the operator on the appropriate date from which the operator should be subject to the requirements of Divisions 2 and 3; and
  - (b) set that day (the *regulatory start date* for the operator).
- (11) The ACCC must notify the infrastructure operator as soon as practicable of:
  - (a) a decision under this rule (including a decision deemed to have been made under subrule (9)); and
  - (b) if the ACCC does not grant the exemption—the regulatory start date for the operator.

**[60] Rule 46**

Repeal the rule, substitute:

**46 Application by Part 7 operator to ACCC**

- (1) This section applies to an infrastructure operator that:
  - (a) has received a notice under rule 45B, stating that the ACCC is of the view that the operator is, or will be, a Part 7 operator; and

- (b) has subsequently received a notice under subrule 45C(10) that it will not be given an exemption under that rule; and
  - (c) proposes to levy infrastructure charges on or after the regulatory start date.
- (2) The infrastructure operator must, at least 4 months before the regulatory start date, apply in writing to the ACCC for approval or determination of its infrastructure charges under this Division in respect of a period commencing on the regulatory start date.
- (3) The application must include the information referred to in Schedule 3.

**[61] Paragraph 48(b)**

Omit “which”, substitute “that”.

**[62] Subrule 50(2)**

Repeal the subrule.

**[63] Rule 52**

Omit “Part 6, 7 or 9”, substitute “Part 6 or 7”.

**[64] Rule 53**

Omit “Part 6, 7 or 9” wherever occurring, substitute “Part 6 or 7”.

**[65] Subrule 53(3)**

Omit “rule 26, 35, 41, 47 or 61”, substitute “rule 23C, 26, 35, 41, 45C or 47”.

**[66] Rule 54**

Omit “Part 6, 7 or 9” wherever occurring, substitute “Part 6 or 7”.

**[67] Subparagraph 54(2)(c)(ii)**

Omit “or making a decision under Part 9”.

**[68] Subparagraph 54(4)(b)**

Omit “or making a decision under Part 9”.

**[69] Subrule 54(5)**

Omit “rule 26, 35, 41, 47 or 61”, substitute “rule 23C, 26, 35, 41, 45C or 47”.

**[70] Rule 55**

Repeal the rule, substitute:

**55 Exempt contracts**

If, under rule 9, an exemption has effect, or is granted, in respect of a contract between an infrastructure operator and a customer, the ACCC must not publish any information to which the exemption relates other than:

- (a) in relation to an application made before the 2016 amendment date—the names of the parties to the contract and the date on which the exemption was granted;
- (b) in relation to an application made after the 2016 amendment date—the information specified in subrule 9(13A).

**[71] Part 9**

Repeal the Part.

**[72] After Part 9**

Insert:

## **Part 10—Termination fees**

### **Division 1—Certain fees prohibited**

**70 Prohibition of certain fees and charges**

- (1) An infrastructure operator must not levy a fee, charge or payment of any kind for or in respect of the termination or surrender of the whole or a part of a right of access.

Civil penalty: 200 penalty units.

- (2) Subrule (1) does not apply to:
  - (a) fees authorised under the *Water Market Rules 2009*; or
  - (b) a fee authorised under Division 2.
- (3) Where—
  - (a) a person's right of access has been terminated or surrendered in whole or in part; and
  - (b) the person has paid the fees (if any) payable under rule 72 or 73 to the infrastructure operator:

the operator must not charge, and the person is not liable to pay, any fee in relation to that right, or part of that right, that has been terminated or surrendered in respect of a financial year commencing after the termination or surrender.

Civil penalty: 200 penalty units.

### **Division 2—Termination fees**

**71 Termination fee may be levied in certain circumstances**

- (1) An infrastructure operator may levy a fee calculated in accordance with rule 72 if:
  - (a) a person who holds a right of access terminates or surrenders the whole of any part of that right by notice in writing given to the operator; or

- (b) the operator, by notice in writing given to a person who holds a right of access terminates the whole or any part of that right in accordance with a contract applicable to the right on the grounds that an act or omission by the person is in breach of the person's obligations under that contract (other than the act of trading the whole or a part of a water access right).
- (2) Subrule (1) does not apply:
- (a) if:
    - (i) the holder of the right of access is not liable to pay charges to the operator in respect of the right; and
    - (ii) a fee in respect of the termination or surrender of the right or a part of the right is not specified in any contract or arrangement between the holder and the operator; or
  - (b) if the following apply to the holder of the right of access:
    - (i) it is provided by the operator with a service for the storage of water in addition to the service for the delivery of water or drainage of water; and
    - (ii) the charges for the service for the storage of water are included in the charges in respect of the right of access.

## 72 Calculation of termination fee

- (1) A fee levied by an infrastructure operator under subrule 71(1) must not exceed the lesser of the following:
- (a) the amount calculated in accordance with subrule (2); and
  - (b) if the fee for the termination or surrender of a right of access or a part of a right of access is provided for in a contract or arrangement between the operator and the holder of the right—the fee determined in accordance with the contract.
- (2) For paragraph (1)(a), the amount is to be determined in accordance with the formula:

$$X = (M \times A) + B$$

Note: B is only applicable if the infrastructure operator levies a separate infrastructure charge on a customer for infrastructure that is used exclusively by the terminating customer.

where:

*X* is the amount for paragraph (1)(a).

*M*, the termination fee multiple, is:

- (a) 1, if the infrastructure operator does not:
  - (i) provide for the trade of water delivery rights; or
  - (ii) have separate infrastructure charges to recover the cost of directly attributable charges, shared charges and distribution loss shared charges it incurs;

Note: See the requirement in rule 9A.
- (b) 10, otherwise.

*A* is the sum of:

- (a) for each infrastructure charge levied per unit of water delivery right held by the customer—the amount, for a full financial year, of the charge payable per unit of water delivery right held multiplied by the number of units of water delivery right being terminated or surrendered; and



- (b) for each separate infrastructure charge levied per unit of water drainage right held by the customer—the amount, for a full financial year, of the charge payable per unit of water drainage right held multiplied by the number of units of water drainage right being terminated or surrendered.

**B** is the lesser of the following:

- (a)  $10 \times C$ ; and
- (b)  $D - E$ ;

where:

**C** is the amount, for a full financial year, of an infrastructure charge levied for infrastructure that is used exclusively by the terminating customer.

**D** is the total amount of any capital expenditure incurred by the infrastructure operator in relation to the infrastructure exclusively used by the terminating customer, excluding any contributions made by the customer (other than through infrastructure charges), a government or other party towards that expenditure.

**E** is the total amount of all infrastructure charges paid by the terminating customer for the exclusive use of the infrastructure.

- (3) When calculating **E**:
  - (a) if an infrastructure operator has levied a separate infrastructure charge at any time since initially incurring any capital expenditure in relation to the infrastructure, but has not levied the charge in each year since that initial capital expenditure—the operator is taken to have levied an infrastructure charge in each year since the capital expenditure was initially incurred by the operator; and
  - (b) the amount of the charge in each year is taken to be the average of the amounts paid by the customer to the operator for all years for which the operator levied a separate infrastructure charge in relation to the exclusive use of the infrastructure.
- (4) When calculating **A**, **C**, **D** and **E**, the following must be excluded, as applicable:
  - (a) any amount in respect of a service for the storage of water; and
  - (b) any amount of GST; and
  - (c) a charge that reflects the costs of physically connection, or physically disconnecting, the customer from the operator's water services infrastructure; and
  - (d) if a fee payable under a contract is approved under rule 73—any amount payable under the contract in respect of the recovery of expenditure on capital works relating to the operator's water services.
- (5) In calculating **A** and **C**, the relevant infrastructure charges are those specified in the schedule of charges that is in effect:
  - (a) at the time the customer provides notice of their intention to terminate or surrender the whole or any part of a right of access; or
  - (b) 30 days before the customer provides that notice;

whichever produces the lesser amount as calculated in accordance with this section.

- (6) Despite subrule (1), if GST is payable in respect of a taxable supply relating to the termination or surrender of the whole or a part of a right of access:
  - (a) the fee levied by the infrastructure operator under subrule 71(1) may be increased by an amount not exceeding the GST payable in respect of that taxable supply; and

- (b) the fee determined in accordance with a contract referred to in paragraph (1)(b) may be increased by an amount not exceeding the GST payable in respect of that taxable supply.

### **73 Approval of additional fee payable under certain contracts relating to capital works**

- (1) This rule applies if there is a contract between an infrastructure operator and 1 or more holders of rights of access involving the following:
  - (a) the carrying out, within 5 years after the entering into of the contract, of capital works relating to the operator's water service infrastructure; and
  - (b) the payment, by a terminating customer, of a fee relating to the recovery of that capital expenditure.
- (2) A party to the contract may, within 3 months after the date on which the contract was made, apply to the ACCC for approval of that fee as a fee payable by each terminating customer in addition to the fee determined under rule 72.
- (3) If:
  - (a) an application is made to the ACCC for approval of the fee as determined in accordance with the contract; and
  - (b) the ACCC is satisfied that the contract:
    - (i) relates to, or is made in anticipation of, the carrying out by the operator, within 5 years after the contract is entered into, of capital works relating to the operator's water service infrastructure; and
    - (ii) provides for fees payable for access to the operator's water service infrastructure by the holders of rights of access that reasonably relate to the recovery by the operator of expenditure on those capital works in an amount not exceeding the actual, or a reasonable estimate of, expenditure by the operator; and
    - (iii) provides for a fee payable to the operator by a terminating customer that was agreed by each party to the contract in the course of fair and reasonable negotiation, is clearly stated and is not subject to variation without the agreement of the holders of the rights of access; and
  - (c) the ACCC is satisfied that the operator advised the holders of rights of access who are parties to the contract of the general effect of these Rules; and
  - (d) the ACCC, in accordance with this rule, and having regard to the water charging objectives and principles, approves the fee referred to in subparagraph (b)(iii);

the fee is payable by each terminating customer.

- (4) If a person makes an application to the ACCC for approval of a fee determined in accordance with the contract and provides the ACCC with:
  - (a) a copy of the contract; and
  - (b) the contact details of the parties to the contract; and
  - (c) such details of contracts entered into, and arrangements made, for the carrying out of capital works relating to the operator's water service infrastructure within the period referred to in subparagraph (3)(b)(i) as are sufficient to confirm that the works have been, are being or are to be carried out; and
  - (d) any further information requested by the ACCC;

the ACCC:

- (e) must decide whether or not to approve the fee; and
  - (f) must give notice in writing of its decision to each of the parties to the contract; and
  - (g) if it decides not to approve the fee, must include in the notice under paragraph (f) the reasons for refusing approval.
- (5) If the ACCC does not make a decision under subrule (4) within a period of 30 business days after receiving an application under subrule (1), the ACCC is taken to have made a decision, at the end of that period, to approve the fee and to have given notice of the decision under paragraph (4)(f).
- (6) In calculating a period of 30 business days referred to in subrule (5), disregard, if the ACCC has requested further information in relation to the application, a day during any part of which the request, or any part of the request, remains unfulfilled.
- (7) If the ACCC:
- (a) is unable to make a decision within the period of 30 business days referred to in subrule (5); and
  - (b) within that period, gives written notice to the person who makes an application under subrule (1) explaining why the ACCC has been unable to make a decision on the fee within that period of 30 business days;

the period of 30 business days referred to in subrule (5) is extended by a further period of 30 business days.

**74 Infrastructure operator to provide information on amount of termination fee, disconnection fee and related matters to customer**

If:

- (a) an infrastructure operator receives a written notice from a customer of their intention to terminate the whole or part of a right of access; or
- (b) the customer requests information on the termination fee that would apply if the customer were to terminate a right of access;

the infrastructure operator must, no later than 20 business days after receiving the application, advise the customer in writing of the following matters:

- (c) the amount of any fee that would be payable under this Division and Division 3 if, within 30 days of the date of the notice, the customer terminated the whole or a part of a right of access;
- (d) how those amounts were calculated;
- (e) whether the customer may trade the water delivery right it holds against the operator and any rules governing the trade of that water delivery right.

Civil penalty: 200 penalty units.

**75 Liability to pay termination fee**

- (1) A person who, after receiving notification of the matters set out in rule 74, by notice in writing given to an infrastructure operator, terminates or surrenders the whole or any part of a right of access:
- (a) must pay the fees (if any) levied by the operator under rule 71; and
  - (b) if any fees are payable by that person under rule 73, must pay those fees.

- (2) A person whose right of access is terminated in whole or in part by an infrastructure operator by notice in writing given to the person:
  - (a) must pay the fees (if any) levied by the operator under rule 71; and
  - (b) if any fees are payable by that person under rule 73, must pay those fees.

### **Division 3—Disconnection fees**

#### **76 Disconnection fee**

- (1) Subject to subrule (2), nothing in these Rules prevents an infrastructure operator imposing a fee in respect of the reasonable costs incurred by the operator by reason only of removing or disabling a physical connection between the operator's water service infrastructure and the infrastructure of a person who holds or has held a right of access to that water service infrastructure.
- (2) A fee levied for the purposes of subrule (1) must be identified as a disconnection fee, whether or not it is payable at the same time as a fee under Division 2.

### **Division 4—Right to terminate right of access not affected**

#### **77 Right to terminate not affected**

Nothing in these Rules affects the right of an infrastructure operator to terminate the whole or any part of a right of access in accordance with a contract or arrangement applicable to that right but a fee, charge or payment of any kind is not payable in respect of such a termination except as expressly authorised under Division 2.

## **Part 11—Transitional provisions for 2016 amendment**

#### **78 Transition for rule 9**

To avoid doubt, an exemption granted under rule 9 before the 2016 amendment date in relation to a particular infrastructure charge continues to apply.

Note: The principal effect is that rule 7 does not apply in relation to the charge.

#### **79 Transition for rule 11**

If:

- (a) an infrastructure operator gave a customer a schedule of charges before the 2016 amendment date in accordance with rules 11 or 12 as they stood at the time; and
- (b) the schedule of charges was in effect immediately before the 2016 amendment date;

the schedule of charges continues to be in effect for the customer under rule 11 as amended.

#### **80 Transition for rule 23 and Divisions 2, 3 and 4 of Part 6**

Note: Under this rule, an infrastructure operator that was a Part 6 operator at the time of the 2016 amendments continues as a Part 6 operator up to the end of its current regulatory period. At that point, the application of Part 6 to the operator is re-assessed, and it is possible that it will cease to be a Part 6 operator, as the amendments have changed the definition.

- (1) If an infrastructure operator was a Part 6 operator immediately before the 2016 amendment date, then, on the amendment:
  - (a) it continues to be a Part 6 operator, until the end of the regulatory period that applied immediately before the 2016 amendment date; and
  - (b) infrastructure charges of the operator that, immediately before 2016 amendment date, were approved or determined under Part 6, continue to be approved or determined after that date as if approved under Part 6 as amended.
- (2) Divisions 2, 3 and 4 of Part 6, as amended, apply to the infrastructure operator as though:
  - (a) a reference to the ACCC were a reference to the Regulator; and
  - (b) **Regulator** had the same meaning as immediately before the 2016 amendment date.

Note: At the end of the regulatory period referred to in paragraph (1)(a), if the infrastructure operator will still be a Part 6 operator under Part 6 as amended, the ACCC will notify the operator under rule 23B.

## **81 Transition for rule 45 and Division 2 of Part 7**

- (1) If an infrastructure operator was a Part 7 operator immediately before the 2016 amendment date, then, on the amendment it continues to be a Part 7 operator until it ceases to be a Part 7 operator in accordance with subrule 45(3) as it stood immediately before the 2016 amendment date.
- (2) Division 2 of Part 7 as amended, applies to the infrastructure operator as though:
  - (a) a reference to the ACCC were a reference to the Regulator; and
  - (b) **Regulator** had the same meaning as immediately before the 2016 amendment date.

## **82 Transition for Part 9**

If a State Agency was a Regulator immediately before the 2016 amendment date, it continues to be a Regulator for the purposes of:

- (a) Divisions 2, 3 and 4 of Part 6 as applied by subrule 80(2); and
- (b) Division 2 of Part 7 as applied by subrule 81(2);

until the accreditation of the Regulator is revoked by the ACCC, withdrawn by a Basin State or expires.

## **[73] Schedule 1**

Omit every occurrence of “the initial period or the regulatory period” or “the initial period or regulatory period”, substitute “the regulatory period”.

## **[74] After Schedule 1, paragraph 4(a)**

Insert:

Note: A reference to the regulatory period that is set to expire is:

- (a) a regulatory period set by these Rules;
- (b) a regulatory period set by a Basin State agency under State water management law; or
- (c) if paragraph (a) and (b) do not apply—a period of 3 years.

- [75] **Schedule 1, paragraph 8(a)**  
Omit “in respect” first appearing.
- [76] **Schedule 1, paragraph 9(a)**  
Omit “in respect” first appearing.
- [77] **Schedule 1, Item 10**  
Omit “the initial period or preceding regulatory period”, substitute “the preceding regulatory period”.
- [78] **Schedule 2, paragraph 1(a)**  
Omit “A is the value of the operator’s assets that were used for the preceding period.”, substitute “A is the value of the operator’s assets at the beginning of the preceding period.”.
- [79] **Schedule 2, Item 2**  
Omit “A is the regulatory asset base of the operator determined under this Schedule or the applied provisions in respect of the preceding regulatory period.”, substitute “A is the regulatory asset base of the operator determined under this Schedule in respect of the preceding regulatory period.”.
- [80] **Schedule 3, Item 5**  
Omit every occurrence of “related”.
- [81] **Schedules 4 and 5**  
Repeal the Schedules.

## **Schedule 3—Consequential amendments**

- [1] **The whole of the Rules**  
Omit every occurrence of “regulated charges”, substitute “infrastructure charges”.
- [2] **The whole of the Rules**  
Omit every occurrence of “Regulator”, substitute “ACCC”.
- [3] **The whole of the Rules**  
Omit every occurrence of “Regulator’s”, substitute “ACCC’s”.

