



Water Charge Rules 2010

made under the

Water Act 2007

Contents

Part 1	Preliminary	6
	1 Name of Rules	6
	1 Name of Rules	6
	2 Commencement	6
	3 Definitions	6
	4 Schedule of charges	11
	5 Member-owned operator	11
	6 Related customer	11
	6A Transfer or assignment of right of access does not constitute termination or surrender	11
Part 2	Conditions applying to regulated charges infrastructure charges and planning and management charges and exemptions relating to certain contracts	12
	7 Conditions applying to regulated charges	12
	7 Conditions applying to infrastructure operator's infrastructure charges and planning and management charges	12
	8 Additional conditions applying to Part 5, 6 and 7 operators	12
	8 Additional conditions applying to Part 6 and 7 operators	13
	9 Exemption relating to certain contracts entered into before, on or after relevant date	13
	9A Infrastructure operator to pass through certain charges	16
Part 3	Restriction of differing regulated charges for same infrastructure service	17
	10 Restriction of certain regulated charges	17
Part 3	Non-discrimination requirements	18
	10 Restriction of certain infrastructure charges	18
	10A Prohibition of certain infrastructure charges	19
Part 4	Infrastructure operator to provide schedule of charges to existing customers and new customers and other persons to provide schedule of charges	20
	11 Infrastructure operators to provide schedule of charges to existing customers and new customers	20
	11 Infrastructure operators and other persons to provide schedule of charges	20
	12 Infrastructure operators to provide schedule of charges when changes occur	24
	13 Infrastructure operators to provide schedule of charges on request	24
	14 Part 5 operators to provide information statements	24
	15 Publication of schedule of charges	24
Part 5	Regulated charges of Part 5 operators and network service plans	25
	16 Application of Part	25
	17 Part 5 operators to provide network service plan and information statement	25
	18 Consultation before network service plan completed	26
	19 Network service plan	27
	20 Part 5 operator to give ACCC a copy of the network service plan	27
	21 The 5 year period of a network service plan	28
	22 Part 5 operator to provide an information statement with schedule of charges	28
Part 6	Approval or determination of regulated charges infrastructure charges of Part 6 operators	29
	Division 1 General	29
	23 Application of Part	29

23	Part 6 operators	29
23A	Part 6 operators and prospective Part 6 operators must notify ACCC	29
23B	ACCC must notify Part 6 operators and prospective Part 6 operators of its view	30
23C	ACCC may exempt a Part 6 operator from requirements in this Part	30
Division 2	Approval or determination of regulated charges infrastructure charges for each year of each regulatory period	31
24	Approval of application for a different regulatory period	31
24	Approval of application for a different regulatory period	31
24A	Application for approval of charges—first regulatory period	32
25	Application by Part 6 operator to Regulator for approval of charges—subsequent regulatory periods	32
26	Regulator ACCC may request further information	32
27	Regulator ACCC must publish application	33
28	Regulator ACCC to consider submissions and publish draft approval or determination	33
29	Regulator ACCC to approve or determine the regulated charges infrastructure charges	33
30	Period within which Regulator ACCC to approve or determine regulated charges infrastructure charges	34
31	Regulator ACCC to give notice to Part 6 operator of its approval or determination and publish the decision	35
32	Effect of approval or determination under this Division	35
33	Transitional provision for temporary continuation of existing charges	35
Division 3	Annual review of regulated charges infrastructure charges for second or subsequent year of a regulatory period	36
34	Application by Part 6 operator to Regulator ACCC for annual review of regulated charges infrastructure charges	36
35	Regulator ACCC may request further information	36
36	Regulator ACCC to publish application and draft approval or determination	37
37	Regulator ACCC to approve or determine regulated charges infrastructure charges	37
38	Notice of the decision and effect of approval or determination under this Division	38
39	Transitional provision for temporary continuation of existing regulated charges infrastructure charges	38
Division 4	Variation of approval or determination	38
40	Regulator ACCC may vary approval or determination in certain circumstances	38
41	Regulator ACCC may request further information	40
42	Regulator ACCC must publish application	40
43	Regulator ACCC to decide whether or not to vary its approval or determination	40
43A	Variation of determination by ACCC in response to certain regulatory or taxation events	41
44	Regulator ACCC to give notice of its decision under this Division and publish the decision	42
Part 7	Approval or determination of regulated charges infrastructure charges of Part 7 operators	42
Division 1	General	42
45	Application of Part	42
45	Part 7 operators	43
45A	Part 7 operators and prospective Part 7 operators must notify ACCC	43
45B	ACCC must notify Part 7 operators and prospective Part 7 operators of its views	44
45C	ACCC may exempt a Part 7 operator from requirements in this Part	44
Division 2	Approval or determination of regulated charges infrastructure charges	45
46	Application by Part 7 operator to Regulator	45
46	Application by Part 7 operator to ACCC	45
47	Regulator ACCC may request further information	45

48	Regulator ACCC to publish application and draft approval or determination	45
49	Regulator ACCC to approve or determine the regulated charges infrastructure charges	46
50	Period within which Regulator ACCC to approve or determine regulated charges infrastructure charges	46
51	Regulator ACCC to give notice to Part 7 operator of its approval or determination and publish the decision	47
Part 8 General		47
Division 1 Disclosure of information		47
52	Regulator ACCC to publish submissions	47
53	Regulator ACCC not to publish applications and submissions if confidential	47
54	Where Regulator ACCC disagrees with claim that information is confidential	47
55	Exempt contracts	48
55	Exempt contracts	48
56	Monitoring water charges and compliance	49
Division 2 Proceedings		49
57	Proceedings to recover loss or damage	49
Part 9 Accreditation of Arrangements		49
58	Purpose of Part	49
59	Terms, conditions and obligations applying to accreditation	49
60	Application by State Agency	50
61	ACCC may request further information	50
62	ACCC must publish draft decision	50
63	ACCC to determine whether or not to approve the application	50
64	Effect of accredited arrangements and transitional provisions	51
65	Accredited arrangements — new terms, conditions and obligations and variations	52
66	ACCC to decide whether or not to vary terms and conditions or impose new terms, conditions or obligations	52
67	Revocation of accreditation	53
68	Term of accreditation	54
69	Renewal of accredited arrangements	54
Part 10—Termination fees		54
Division 1—Certain fees prohibited		54
70	Prohibition of certain fees and charges	54
Division 2—Termination fees		54
71	Termination fee may be levied in certain circumstances	54
72	Calculation of termination fee	55
73	Approval of additional fee payable under certain contracts relating to capital works	57
74	Infrastructure operator to provide information on amount of termination fee, disconnection fee and related matters to customer	58
75	Liability to pay termination fee	58
Division 3—Disconnection fees		59
76	Disconnection fee	59
Division 4—Right to terminate right of access not affected		59
77	Right to terminate not affected	59
Part 11—Transitional provisions for 2016 amendment		59
78	Transition for rule 9	59
79	Transition for rule 11	59
80	Transition for rule 23 and Divisions 2, 3 and 4 of Part 6	59
81	Transition for rule 45 and Division 2 of Part 7	60
82	Transition for Part 9	60

Schedule 1	Information to be included in an application under Division 2 of Part 6	61
1	Consultation	61
2	Regulatory and legislative obligations	61
3	Infrastructure service standards	61
4	Revenue	61
5	Regulatory asset base	61
6	Rate of return	62
7	Renewals annuity	62
8	Capital expenditure	62
9	Operating expenditure	63
10	Tax	63
11	Demand or consumption	63
12	Regulated charges Infrastructure charges	63
Schedule 2	Determination of regulatory asset base in relation to a Part 6 operator	65
1	Determination of regulatory asset base for first Part 6 period	65
2	Determination of regulatory asset base for a regulatory period after the first Part 6 period	65
Schedule 3	Information to be included in an application under Part 7	67
1	Regulated charges Infrastructure charges	67
2	Asset base	67
3	Costs recovered through the Part 7 operator's regulated charges infrastructure charges	67
4	Demand or consumption	68
5	Distributions	68
Schedule 4	Information to be included in an application under Part 9	69
Schedule 5	Criteria for accreditation of arrangements	70

Part 1 Preliminary

~~1 Name of Rules~~

~~These Rules are the *Water Charge (Infrastructure) Rules 2010*.~~

1 Name of Rules

These Rules are the *Water Charge Rules 2010*.

2 Commencement

These Rules commence on the day after these Rules are registered.

3 Definitions

(1) In these Rules, unless the contrary intention appears:

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

~~*accredited agency*, in relation to a State in which accredited arrangements are in force, means the State Agency specified in the accredited arrangements.~~

~~*accredited arrangements* means arrangements accredited under Part 9 providing for a State Agency to approve or determine regulated charges of Part 6 operators and Part 7 operators relating to State water resources.~~

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

~~*application period*, in relation to a Part 7 operator, means the period commencing:~~

~~(a) on the commencement date; or~~

~~(b) on the day on which the operator becomes a Part 7 operator—~~

~~whichever is the later, and ending:~~

~~(c) 3 months after that date or day, as the case requires; or~~

~~(d) if the operator makes an application to the Regulator under rule 46 during that period of 3 months—when the Regulator approves or determines the regulated charges set out in the application.~~

~~*applied provisions* has the meaning given by subrule 59(2).~~

~~*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;~~

~~(c) in relation to an accredited agency, does not include a day that is a public holiday in the State.~~

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.

civil penalty means a civil penalty within the meaning of Division 4 of Part 8 of the Act.

~~— Note: Subsection 92(9) of the Act provides that the civil penalty for a contravention of a provision of the water charge rules is 200 penalty units.~~

~~— 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.~~

commencement date means the day after these Rules are registered.

contract includes agreement.

customer, in relation to an infrastructure operator, means a person who is entitled to infrastructure services, such as the holder of a water delivery right, from the operator.

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

discount includes bonus, rebate and allowance.

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.

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

initial period, in relation to a Part 6 operator, means the period in respect of which a decision or determination by an agency of a State, under a law of the State relating to infrastructure services, has effect in relation to fees or charges of the operator, being a decision or determination that is in force immediately before the commencement date.

levy, in relation to a regulated charge, includes impose or demand or cause to be imposed or demanded.

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

managed water resources means all water resources that are—

- ~~— (a) Basin water resources;~~
- ~~— (b) water resources (not being Basin water resources) in a referring State, or part of a referring State, if—~~
 - ~~— (i) a law of the referring State provides that section 100B of the Act applies to the State, or that part of the State; and~~
 - ~~— (ii) the regulations under the Act provide that section 100B of the Act applies to the State, or that part of the State;~~
- ~~— (c) water resources (not being Basin water resources) in the Northern Territory, or a part of the Northern Territory, if—~~
 - ~~— (i) a law of the Northern Territory provides that section 100B of the Act applies to the Territory, or that part of the Territory; and~~

(ii) ~~the regulations provide that section 100B of the Act applies to the Northern Territory, or that part of the Northern Territory~~

~~but does not include water resources that are prescribed for the purposes of paragraph 100B(3)(a) of the Act.~~

~~*member owned operator* has the meaning given by rule 5.~~

~~*network service plan* means a plan prepared and completed in accordance with Part 5.~~

~~*Part 5 operator* has the meaning given by rule 16.~~

~~*Part 6 operator* has the meaning given by rule 23.~~

~~*Part 7 operator* has the meaning given by rule 45.~~

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.

~~*Regulator*, in relation to the approval or determination of regulated charges under Part 6 or 7, means:~~

~~(a) unless paragraph (b) applies, the ACCC;~~

~~(b) where the accreditation of arrangements has effect in a State, the accredited agency in relation to that State.~~

~~*regulatory asset base*, in relation to a Part 6 operator, means the value, as determined in accordance with Schedule 2, for the purposes of the relevant regulatory period, of the operator's assets that are used by the operator to provide infrastructure services for which regulated charges apply.~~

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

~~*regulated charge* means a charge of a kind referred to in paragraph 91(1)(a), (b) or (d) of the Act but does not include:~~

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

~~(b) a fee to which rule 6 or 8 of the *Water Charge (Termination Fees) Rules 2009* applies.~~

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*, in relation to a Part 6 operator, means:~~

~~(a) the period of 3 years commencing immediately after the initial period; or~~

~~(b) the period of 4 years commencing immediately after the end of the period referred to in paragraph (a) and each subsequent period of 4 years; or~~

~~(c) if the Regulator has approved another period under rule 24, that other period:~~

~~as the case requires.~~

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.

~~**related customer**, in relation to an infrastructure operator, has the meaning given by rule 6.~~

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).

State Agency means an agency of a State within the meaning of paragraph (c) of the definition of **agency** of a State in the Act.

~~**State water resources**, in relation to a State, means managed water resources in that State.~~

~~**surcharge** includes penalty.~~

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.

the Act means the *Water Act 2007*.

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

~~*transitional period* means the period of 3 months after the commencement date.~~

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*.

~~(2) In these Rules:~~

~~*GL* is an acronym for gigalitre.~~

~~(3) Where an accreditation of arrangements has effect in a State, a reference in these Rules to a provision of these Rules includes a reference to the corresponding provision of the applied provisions in force in that State.~~

~~(4) Subject to subrule (5), 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.~~

(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.

~~(5) Subrule (4) does not apply after the Basin Plan takes effect.~~

~~(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, either attached to or as a hyperlink in an e-mail sent to the customer’s e-mail address.~~

(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.

4 Schedule of charges

For the purposes of these Rules, a *schedule of charges* is a document that:

- (a) is issued by or on behalf of an infrastructure operator that sets out all regulated charges that the operator may levy in respect of an infrastructure service provided by the operator; and
- (b) includes details of the regulated charges sufficient to enable a customer of the infrastructure operator to determine the customer's liability under the regulated charges in respect of a period during which the customer receives, or is entitled to receive, infrastructure services from the infrastructure operator; and
- (c) if a discount or surcharge applies to a regulated charge, includes details of the discount or surcharge and the circumstances in which it is applicable; and
- (d) if the schedule is issued by an irrigation infrastructure operator and sets out regulated charges that include fees or charges of a kind referred to in paragraph 91(1)(a) of the Act, includes a statement setting out the process for determining the amount of those regulated charges and showing separately, as applicable, the components of those charges attributable to
 - (i) the storage of water in connection with infrastructure services provided through the irrigation network;
 - (ii) bulk water charges imposed on the operator by another infrastructure operator;
 - (iii) connecting or disconnecting a customer to water service infrastructure;
 - (iv) the holding of, or management of, a water access entitlement by the irrigation infrastructure operator.

5 Member owned operator

For the purposes of these Rules, an infrastructure operator is a *member owned operator* if the majority of its customers are related customers.

6 Related customer

In these Rules, a customer of an infrastructure operator is a *related customer* in relation to that infrastructure operator if:

- (a) the customer is a beneficiary of a trust of which the infrastructure operator is a trustee; or
- (b) where the infrastructure operator is a company within the meaning of the *Corporations Act 2001*, the customer is
 - (i) a related body corporate within the meaning of that Act in relation to the infrastructure operator; or
 - (ii) a member of the company; or
- (c) where the infrastructure operator is a body corporate incorporated under a law of a State or of the Commonwealth (other than the *Corporations Act 2001*), the customer is a member of the body corporate; or
- (d) the customer has any other legal or equitable interest in the infrastructure operator.

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.

Part 2 Conditions applying to ~~regulated charges~~ infrastructure charges and planning and management charges and exemptions relating to certain contracts

~~7~~ Conditions applying to ~~regulated charges~~

~~Except as expressly authorised by these Rules, an infrastructure operator must not, after the transitional period, levy a regulated charge relating to an infrastructure service provided by the operator to a customer unless the operator has, in accordance with these Rules, given a copy of its current schedule of charges:~~

~~(a) in the case of a customer who was a customer before the end of the transitional period, at least 10 business days before the service is provided; or~~

~~(b) in the case of a customer who becomes a customer after the transitional period, before the service is provided;~~

~~and, except to the extent that an exemption under rule 9 applies, the regulated charge for that service is the charge specified for that service in that schedule of charges.~~

~~Civil penalty: 200 penalty units.~~

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.

~~8~~ Additional conditions applying to ~~Part 5, 6 and 7 operators~~

~~(1) Except as expressly authorised by these Rules, a Part 5 operator must not, on or after the relevant date within the meaning of rule 17, levy a regulated charge relating to an infrastructure service provided by the operator to a customer, unless the operator has provided to its customers the relevant network service plan and information statement in accordance with Part 5.~~

~~(2) Except as expressly authorised by these Rules, but subject to rules 33, 39 and Division 4 of Part 6, a Part 6 operator must not, after the initial period, levy a regulated charge relating to an infrastructure service provided by the operator to a customer unless:~~

- ~~———— (a) the operator’s regulated charges have been approved or determined in accordance with Division 2 of Part 6 and (except in the case of the first year of a regulatory period) Division 3 of Part 6; and~~
- ~~———— (b) the regulated charge for that infrastructure service does not exceed the maximum charge for that infrastructure service approved or determined in accordance with Division 2 or 3 of Part 6, as the case requires.~~
- ~~———— (3) Except as expressly authorised by these Rules, a Part 7 operator must not, after the application period, levy a regulated charge relating to an infrastructure service provided by the operator to a customer unless:~~
 - ~~———— (a) the operator’s regulated charges have been approved or determined in accordance with Part 7; and~~
 - ~~———— (b) the regulated charge for that infrastructure service does not exceed the maximum charge for that infrastructure service approved or determined in accordance with Part 7.~~

~~Civil penalty: ——— 200 penalty units~~

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

9 Exemption relating to certain contracts entered into before, on or after relevant date

- ~~———— (1) Where, before the relevant date, an infrastructure operator and a customer:~~
 - ~~———— (a) entered into a contract in writing for the provision of infrastructure services to the customer:~~
 - ~~———— (i) at agreed regulated charges specified in the contract; and~~
 - ~~———— (ii) for a period specified in the contract; and~~

~~(b) the operator believes on reasonable grounds that disclosure of the details of the regulated charges for those services would found an action by the customer against the operator for breach of confidence:~~

~~the operator is exempt from the requirement under these Rules that the operator include its regulated charges for those services in its schedule of charges.~~

~~(2) Where, on or after the relevant date, an infrastructure operator and a customer:~~

~~(a) enter into, or propose to enter into, a contract in writing for the provision of infrastructure services to the customer at agreed regulated charges specified in the contract; and~~

~~(b) the operator and the customer each believe, on reasonable grounds, that disclosure of the details of the regulated charges for those services would have a material and adverse effect for the operator and the customer:~~

~~the operator and the customer jointly may apply in writing to the ACCC for an exemption from the requirement under these Rules that the operator include its regulated charges for those services in its schedule of charges.~~

~~(3) Where, on or after the relevant date, an infrastructure operator and a customer:~~

~~(a) enter into, or propose to enter into, a contract in writing for the provision of infrastructure services to the customer at agreed regulated charges specified in the contract; and~~

~~(b) the customer believes, on reasonable grounds, that disclosure of the details of the regulated charges for those services would have a material and adverse effect for the customer:~~

~~the customer may apply in writing to the ACCC for an exemption from the requirement under these Rules that the operator include its regulated charges for those services in its schedule of charges.~~

(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 under subrule (2) or (3):~~

~~(a) must be made:~~

~~(i) in the case of a contract entered into before the commencement date within 3 months after the commencement date; and~~

~~(ii) in any other case before the contract is entered into; and~~

~~(b) must include the reasons for the belief referred to in subrule (2) (b) or (3)(b), as the case requires.~~

- (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 and the customer, or the customer, as the case requires, to provide further information relating to the application within a period specified by the ACCC.~~
- (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.
- (6) The ACCC must, within 30 business days after receiving an application, grant, or refuse to grant, the exemption.
- (7) In calculating the 30 day period referred to in subrule (6), disregard, if the ACCC has requested further information under subrule (5)—a day during any part of which the request, or any part of the request, remains unfulfilled.
- (8) If the ACCC:
- (a) is unable to make a decision within the 30 day period referred to in subrule (6) or, if that period is extended or further extended, that period as extended; and
 - (b) within that period, gives written notice to the applicants, or applicant, explaining why the ACCC has been unable to make the decision within that period:
- that period is extended, or further extended, by a period of 10 business days.
- ~~(9) The ACCC must refuse to grant the exemption if it is not satisfied that disclosure of details of regulated charges under the contract, or proposed contract, would have a material and adverse effect for the infrastructure operator and the customer, or for the customer, as the case requires.~~
- (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 each of the applicants or, in the case of the grant of an exemption on the application of the customer, to the applicant and the infrastructure operator and, if it refuses to grant the exemption, must include in the notice the reasons for its refusal.~~
- (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.
- (11) If the ACCC has not either granted, or refused to grant, an exemption sought in an application under this rule within the period of 30 business days, or within that period as extended or further extended under subrule (8), after receipt of the application, the exemption is to be taken to have been granted at the expiration of that period.
- (12) If the ACCC grants an exemption under this rule, the ACCC must, subject to rule 55, publish on the ACCC's Internet site a notice to the effect that the exemption has been granted.
- (13) If, under this rule, an exemption has effect, or is granted, in respect of a contract, or proposed contract:

- (a) the operator must not include the ~~regulated charges~~ **infrastructure charges** under the contract in its schedule of charges; and
 - (b) if the ~~Regulator~~ **ACCC** is aware that an exemption has effect, or is granted, under this rule, the ~~Regulator~~ **ACCC** must not include those ~~regulated charges~~ **infrastructure charges** in any matter that it publishes on its Internet site.
- (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 class of the infrastructure service to which the charge exempt from disclosure relates.

(14) In this rule:

~~**material and adverse effect**, in relation to an infrastructure operator and a customer, or an infrastructure operator or a customer, means:~~

- ~~(a) a financial loss for, or detriment to, the operator or customer or both the operator and the customer; or~~
- ~~(b) a direct benefit to a competitor of the operator or customer or both the operator and the customer.~~

~~**relevant date** means 14 July 2010.~~

customer also includes prospective customer, where relevant.

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.

~~Part 3 — Restriction of differing regulated charges for same infrastructure service~~

~~10 — Restriction of certain regulated charges~~

~~After the transitional period, a member owned operator must not, in specifying the regulated charges in relation to an infrastructure service of the same class, specify different regulated charges payable for:~~

- ~~(a) an infrastructure service provided to a customer that holds an irrigation right against the member owned operator; and~~
- ~~(b) an infrastructure service provided to a customer that does not hold an irrigation right against the member owned operator;~~

~~if the difference between the amount of the charge referred to in paragraph (b) and the amount of the charge referred to in paragraph (a) is more than the difference between the actual costs necessarily incurred in providing each of those infrastructure services.~~

~~Civil penalty: 200 penalty units.~~

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.

Part 4 Infrastructure operator to provide schedule of charges to existing customers and new customers and other persons to provide schedule of charges

11 Infrastructure operators to provide schedule of charges to existing customers and new customers

- (1) A person who:
 - (a) is an infrastructure operator on the commencement date; or
 - (b) becomes an infrastructure operator during the transitional period:
 must, before the end of the transitional period, give to each of its customers a copy of its schedule of charges that are to have effect immediately after the end of the transitional period.
- (2) An infrastructure operator must give a copy of its current schedule of charges to each person who becomes a customer of the operator after the transitional period.

Note: Rule 7 requires the schedule of charges to be given to customers before an infrastructure service is provided and, in the case of existing customers, at least 10 business days before an infrastructure service is provided.

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 determines planning and management charges
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>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>(ii) the agency or person to whom the charge is payable; and</p> <p>(f) for a planning and management charge recovered 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	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.

	process.	
4	A statement setting out how a customer may make an enquiry or resolve a dispute with the infrastructure operator in relation to a regulated water charge.	A statement setting out how a customer may make an enquiry or resolve a dispute with the person in 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.

~~12~~ **Infrastructure operators to provide schedule of charges when changes occur**

- ~~(1) When, after the transitional period, an infrastructure operator proposes to change any regulated charges, the operator must give to each of its customers a copy of its schedule of charges, incorporating those changes.~~
- ~~(2) The infrastructure operator must give the notice under subrule (1) at least 10 business days before the changes take effect.~~

~~Civil penalty: 200 penalty units.~~

~~Note: Conditions apply under rule 8 to changes made by Part 5, 6 or 7 operators.~~

13 Infrastructure operators to provide schedule of charges on request

An infrastructure operator who, ~~after the transitional period,~~ receives a request in writing from any person for details of its current ~~regulated charges~~ **infrastructure charges** for infrastructure services provided by the operator to its customers must give the person a copy of its current schedule of charges within 20 business days after receiving the request.

~~14~~ **Part 5 operators to provide information statements**

- ~~A Part 5 operator, when giving a copy of its current schedule of charges to each of its customers, must also provide the relevant information statement prepared in accordance with rule 22.~~

~~15~~ **Publication of schedule of charges**

- ~~(1) Where, under subrule 11 (1) or rule 12, an infrastructure operator to whom this rule applies is required to give a copy of its current schedule of charges to its customers, the infrastructure operator must also cause that schedule to be published within the period within which that schedule is required to be provided to customers:~~
- ~~(a) if the operator has a business Internet site, on a part of that site to which access is unrestricted; or~~
- ~~(b) in a newspaper circulating generally in the area where the infrastructure operator's water service infrastructure is situated or, if there is no such newspaper, in such newspapers as circulate generally in each part of the area; or~~
- ~~(c) in the *Gazette*.~~
- ~~(2) This rule applies to an infrastructure operator if the sum of the maximum volume of water from managed water resources in respect of which the operator provides infrastructure services in relation to:~~

- ~~_____ (a) water access entitlements held by the operator (otherwise than for the purpose of providing infrastructure services to customers who hold water access entitlements to that water); and~~
- ~~_____ (b) water access entitlements held by its customers; and~~
- ~~_____ (c) water access entitlements held by the owner (not being the operator) of the water service infrastructure operated by the operator;~~

~~is at least 10 GL.~~

~~_____ Note: In subrule 15(2) the maximum volume of water refers to that held under water access entitlements.~~

~~Part 5 — Regulated charges of Part 5 operators and network service plans~~

~~16 — Application of Part~~

- ~~_____ (1) This Part applies to:~~
 - ~~_____ (a) a member owned operator if the sum of the maximum volume of water from managed water resources in respect of which the operator provides infrastructure services in relation to:~~
 - ~~_____ (i) water access entitlements held by the operator (otherwise than for the purpose of providing infrastructure services to customers who hold water access entitlements to that water); and~~
 - ~~_____ (ii) water access entitlements held by its customers; and~~
 - ~~_____ (iii) water access entitlements held by the owner (not being the operator) of the water service infrastructure operated by the operator;~~

~~is more than 125 GL; and~~

- ~~_____ (b) an infrastructure operator that is not a member owned operator if the sum of the maximum volume of water from managed water resources in respect of which the operator provides infrastructure services in relation to:~~
 - ~~_____ (i) water access entitlements held by the operator (otherwise than for the purpose of providing infrastructure services to customers who hold water access entitlements to that water); and~~
 - ~~_____ (ii) water access entitlements held by its customers; and~~
 - ~~_____ (iii) water access entitlements held by the owner (not being the operator) of the water service infrastructure operated by the operator;~~

~~is more than 125 GL but not more than 250 GL.~~

- ~~_____ (2) An infrastructure operator to whom this Part applies is a *Part 5 operator*.~~

~~_____ Note: In rule 16 the maximum volume of water refers to that held under water access entitlements.~~

~~17 — Part 5 operators to provide network service plan and information statement~~

- ~~_____ (1) A Part 5 operator must not, on or after the relevant date, provide to its customers, or publish, regulated charges for infrastructure services relating to the operator's water service infrastructure unless:~~
 - ~~_____ (a) the Part 5 operator has provided to its customers for those infrastructure services a network service plan relating to the water service infrastructure, and an information statement relating to that plan, in accordance with this Part; and~~

- ~~_____ (b) the period of 5 years to which the network service plan applies has not expired; and~~
- ~~_____ (c) the regulated charges are those shown in the network service plan or, in the case of changes to regulated charges made after the network service plan was provided, those regulated charges as varied, or further varied, as explained in the information statement prepared in accordance with rule 22 that accompanies the schedule of charges as required under rule 14.~~

- ~~_____ (2) In this rule, *relevant date* means:~~
 - ~~_____ (a) if the Part 5 operator is a Part 5 operator before 1 July 2011—1 July 2012;~~
 - ~~_____ (b) in any other case, the date that is 24 months after the Part 5 operator became a Part 5 operator.~~

~~Civil penalty: _____ 200 penalty units.~~

~~18 _____ Consultation before network service plan completed~~

- ~~_____ (1) A Part 5 operator must, before completing a network service plan relating to its water service infrastructure, provide to the operator's customers for infrastructure services relating to that water service infrastructure, a network consultation paper indicating options and alternatives, as appropriate, for maintaining the water service infrastructure during a 5 year period.~~
- ~~_____ (2) The network consultation paper referred to in subrule (1) must include at least the following:~~
 - ~~_____ (a) the proposed date of commencement of the period of 5 years to which the network service plan is to apply, being—~~
 - ~~_____ (i) if the Part 5 operator was a Part 5 operator on 1 July 2011—a date no later than 1 July 2012; and~~
 - ~~_____ (ii) in any other case, a date no later than 24 months after the Part 5 operator became a Part 5 operator; and~~
 - ~~_____ (b) options and alternatives, as appropriate, for works, other than minor works, for the maintenance, improvement, enhancement or expansion of the operator's water service infrastructure and levels of service during the 5 year period, together with estimates of capital and recurrent expenditure proposed in each year of the 5 year period for each option or alternative and, where appropriate, a suggested ranking in priority for implementation; and~~
 - ~~_____ (c) details of known or anticipated factors that are or may be relevant to the several options and alternatives, such as risks, compliance with requirements under applicable legislation relating to environmental, safety or construction matters and contractual obligations; and~~
 - ~~_____ (d) anticipated regulated charges (other than regulated charges to which an exemption having effect, or granted, under rule 9 applies) during the 5 year period to which the plan relates; and~~
 - ~~_____ (e) any relevant reports of consultant engineers or other experts identifying maintenance or other requirements of the water service infrastructure or options for meeting such requirements.~~
- ~~_____ (3) A Part 5 operator, when providing the network consultation paper to customers, must invite the customers to submit comments in writing addressed to the operator, including suggestions for additional options or alternatives, and preferred options and alternatives, within a period specified by the operator, not being less than 2 months after the network consultation paper is provided to the customers.~~

- ~~(4) A Part 5 operator may, when providing the network consultation paper to customers, or at a later time, invite the customers to attend a meeting with the operator at which comments on the paper may be made, being a meeting of which the operator gives at least 10 business days' notice.~~

~~19~~ **Network service plan**

- ~~(1) A Part 5 operator must prepare and complete a 5 year plan relating to its water service infrastructure having regard to the outcome of its consultation with its customers in accordance with rule 18 that includes:~~
- ~~(a) the date on which it is intended that the 5 year period to which the plan relates begins, being a date:
 - ~~(i) if the Part 5 operator was a Part 5 operator on 1 July 2011 — no later than 1 July 2012; and~~
 - ~~(ii) in any other case, no later than 24 months after the Part 5 operator became a Part 5 operator; and~~~~
 - ~~(b) details of the operator's plans for the levels of service it intends to provide for customers in each year of the 5 year period;~~
 - ~~(c) details of the operator's plans for works, other than minor works, for the maintenance, improvement, enhancement or expansion of the water service infrastructure in each year of the 5 year period; and~~
 - ~~(d) estimates of capital and recurrent expenditure relating to the water service infrastructure in each year of the 5 year period and estimates of revenue, including revenue from regulated charges, required for that expenditure; and~~
 - ~~(e) plans for the financing of capital and recurrent works during each year of the 5 year period; and~~
 - ~~(f) details of any grants or subsidies that have been or may be received or applied for, together with details of conditions to which grants or subsidies may be subject; and~~
 - ~~(g) estimates of the regulated charges (other than regulated charges to which an exemption having effect, or granted, under rule 9 applies) during each year of the 5 year period stated without an inflation factor but identifying the inflation index published by the Australian Bureau of Statistics that the operator will apply to those estimates during each year of the period.~~
- ~~(2) A Part 5 operator must give, or cause to be given, a copy of the network service plan, prepared and completed in accordance with this Part:~~
- ~~(a) to each person who is a customer when the plan is completed, together with a summary of the consultation under rule 18, a summary of submissions and comments received from customers and an explanation of the decisions made by the operator in completing the plan; and~~
 - ~~(b) to each person who becomes a customer during the period to which the plan relates.~~

~~20~~ **Part 5 operator to give ACCC a copy of the network service plan**

- ~~(1) A Part 5 operator must give a copy of a network service plan prepared under rule 19 to the ACCC no later than the date on which the Part 5 operator provides copies of the plan to its customers in accordance with that rule.~~
- ~~(2) The ACCC, after receiving a copy of a network service plan under this rule:~~
- ~~(a) must submit the plan to a qualified engineer for comment and advice on the prudence and efficiency of the plan; and~~
 - ~~(b) must give the Part 5 operator a copy of any comment and advice received from the qualified engineer.~~

- ~~(3) A Part 5 operator:~~
- ~~(a) must, within 20 business days after receiving a copy of the qualified engineer's comment or advice, give a copy to each of its customers;~~
 - ~~(b) must, within 20 business days after receiving a request in writing from a customer for a copy of the qualified engineer's comment or advice received by the operator, give a copy to the customer.~~
- ~~(4) A Part 5 operator may amend or vary its network service plan to the extent appropriate to give effect to any comment or advice given by the qualified engineer but, for the purposes of rule 21, if the plan has been provided to customers before the operator received the qualified engineer's comment and advice, the 5 year period of the plan commences when the plan was first provided to customers.~~

21 The 5 year period of a network service plan

~~The 5 year period of a network service plan provided by an infrastructure operator to its customers under rule 19 is the period that commences on:~~

- ~~(a) if the plan is provided to customers in accordance with subrule 19 (2) at least one month before the date for that commencement specified in the plan, that date; or~~
- ~~(b) if the plan is not provided at least one month before the date for that commencement specified in the plan, one month after the plan was provided to customers in accordance with subrule 19 (2);~~

~~and, in either case, ends:~~

- ~~(c) immediately before the fifth anniversary of the date of commencement specified in the plan; or~~
- ~~(d) if the infrastructure operator prepares and completes another network service plan before that anniversary, immediately before the 5 year period of that plan commences; or~~
- ~~(e) upon the infrastructure operator ceasing to be a Part 5 operator.~~

22 Part 5 operator to provide an information statement with schedule of charges

~~After a Part 5 operator has provided its customers with a network service plan prepared and completed in accordance with this Part, the operator, when giving to each of its customers a copy of its current schedule of charges, must also provide an information statement that includes:~~

- ~~(a) a statement of the actual revenue received from regulated charges in respect of each completed year of the network service plan; and~~
- ~~(b) a statement of the anticipated revenue from regulated charges in respect of the current year of the period and each future year of the period; and~~
- ~~(c) details of, and an explanation of the reasons for, any adjustments made to the regulated charges in respect of that year as estimated in the network service plan, whether on account of unforeseen circumstances and events or changes in estimated costs, financing, grants or subsidies; and~~
- ~~(d) an explanation of the reasons for different regulated charges determined in accordance with rule 10 in respect of each completed year of the network service plan.~~

Part 6 Approval or determination of ~~regulated charges~~ infrastructure charges of Part 6 operators

Division 1 General

~~23~~ Application of Part

- ~~(1) This Part applies to an infrastructure operator that is not a member owned operator if the sum of the maximum volume of water from managed water resources in respect of which the operator provides infrastructure services in relation to:~~
- ~~(a) water access entitlements held by the operator (otherwise than for the purpose of providing infrastructure services to customers who hold water access entitlements to that water); and~~
 - ~~(b) water access entitlements held by its customers; and~~
 - ~~(c) water access entitlements held by the owner (not being the operator) of the water service infrastructure operated by the operator:~~
- ~~is more than 250 GL.~~

~~Note: In subrule 23(1) the maximum volume of water refers to that held under water access entitlements.~~

- ~~(2) Where an infrastructure operator becomes an operator to whom subrule (1) applies after the commencement date, this Part applies to the operator as if a reference in this Part or in subrule 8 (2) to the initial period were a reference to the period ending on 30 June next occurring not earlier than 15 months after the operator became an operator to whom subrule (1) applies.~~
- ~~(3) An infrastructure operator to whom subrule (1) applied at the commencement of a regulatory period in respect of which its regulated charges have been approved or determined by the Regulator but to whom subrule (1) ceases to apply during that period, is to be taken, for the purposes of this Part, except rule 25 or 34, to be an operator to whom this Part applies for the remainder of the year of the regulatory period in respect of which its regulated charges have been approved or determined.~~
- ~~(4) An infrastructure operator to whom this Part applies is a **Part 6 operator**.~~

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.

Division 2 Approval or determination of regulated charges infrastructure charges for each year of each regulatory period

~~24 — Approval of application for a different regulatory period~~

- ~~(1) A Part 6 operator that is also a supplier of urban water services the charges for which are determined by an agency of a State, under a law of the State, in respect of a period other than a period referred to in paragraph (a) or (b) of the definition of regulatory period, may make an application in writing to the Regulator for that other period, or a part of that other period, to be a regulatory period in relation to that operator for the purposes of an application under rule 25.~~
- ~~(2) The Regulator, having regard to the circumstances, may approve the application.~~

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.

25 Application by ~~Part 6 operator to Regulator~~ for approval of charges—subsequent regulatory periods

- (1) A Part 6 operator that proposes to levy ~~regulated charges~~ infrastructure charges after the ~~initial period~~ first regulatory period must apply in writing to the ~~Regulator~~ ACCC for approval or determination of its ~~regulated charges~~ infrastructure charges under this Division in respect of the first and each subsequent year of each relevant regulatory period.

- ~~(2) An application under subrule (1) must include the information referred to in Schedule 1 in respect of each year of the regulatory period.~~
- (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.

26 ~~Regulator~~ ACCC may request further information

Before the ~~Regulator~~ ACCC makes a decision in relation to the ~~regulated charges~~ infrastructure charges of a Part 6 operator that makes an application under this Division, the ~~Regulator~~ ACCC may, in writing, request the operator to provide further information relating to the application within a period specified by the ~~Regulator~~ ACCC.

27 Regulator ACCC must publish application

After receiving an application under this Division, the Regulator ACCC must publish on the Regulator's ACCC's Internet site a notice which that includes, subject to Division 1 of Part 8:

- (a) a copy of the application;
- (b) a copy of any further information received in response to a request under rule 26;
- (c) an invitation to interested parties to make submissions to the Regulator ACCC in relation to the application before a date specified in the notice.

28 Regulator ACCC to consider submissions and publish draft approval or determination

The Regulator ACCC, after considering submissions received before the date specified in the notice published under rule 27 in relation to an application under this Division:

- (a) must prepare a draft of an approval or determination of the applicant's regulated charges infrastructure charges in respect of the first and each subsequent year of the relevant regulatory period; and
- (b) must publish on its Internet site a notice which that, subject to Division 1 of Part 8, includes:
 - (i) the draft approval or determination; and
 - (ii) the reasons for its decisions; and
 - (iii) an invitation to interested parties to make submissions to the Regulator ACCC in relation to the draft approval or determination before a date specified in the notice.

29 Regulator ACCC to approve or determine the regulated charges infrastructure charges

- (1) The Regulator ACCC, after considering submissions received before the date specified in the notice published under paragraph 28(b), must, subject to subrule (2), approve, or determine, the regulated charges infrastructure charges set out in the application under this Division.
- (2) The Regulator ACCC must not approve the regulated charges infrastructure charges set out in an application under this Division unless the Regulator ACCC is satisfied:
 - (a) that the determination of the applicant's regulatory asset base used to calculate those charges (where relevant) is in accordance with Schedule 2; and
 - ~~(b) that:~~
 - ~~(i) the applicant's total forecast revenue (from all sources) for the regulatory period is reasonably likely to meet the prudent and efficient costs of providing infrastructure services in that regulatory period; and~~
 - ~~(ii) the forecast revenue from regulated charges is reasonably likely to meet that part of the prudent and efficient costs of providing infrastructure services that is not met from other revenue.~~
 - (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.

- (3) If the ~~Regulator~~ ACCC is not satisfied as to the matters referred to in subrule (2), the ~~Regulator~~ ACCC must determine the ~~regulated charges~~ infrastructure charges on the basis of the applicant's regulatory asset base determined in accordance with Schedule 2 (where relevant) and so as to be satisfied as to the matters referred to in paragraph (2)(b).
- (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.

Note: See rules 31(1A) and Division 4.

- (4) In approving or determining ~~regulated charges~~ infrastructure charges under this rule, the ~~Regulator~~ ACCC must have regard to whether the ~~regulated charges~~ infrastructure charges would contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act.

30 Period within which ~~Regulator~~ ACCC to approve or determine ~~regulated charges~~ infrastructure charges

- ~~(1) The Regulator must, within 13 months after receiving an application under this Division from a Part 6 operator, approve or determine the regulated charges set out in the application.~~
- (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.
- ~~(2) In calculating the 13 month period referred to in subrule (1), disregard, if the Regulator has requested further information under rule 26—a day during any part of which the request, or any part of the request, remains unfulfilled.~~
- ~~(3) If the Regulator:~~
- ~~(a) is unable to make a decision within the period of 13 months referred to in subrule (1) or, if that period is extended, that period as extended; and~~
- ~~(b) within that period, gives written notice to the Part 6 operator who made the application under this Division explaining why the Regulator ACCC has been unable to make the decision within that period:~~
- ~~that period is extended, or further extended by a period of 3 months.~~
- (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.

- (4) As soon as practicable after the ~~Regulator~~ ACCC gives a notice under subrule (3), the ~~Regulator~~ ACCC must cause a copy of the notice to be made available on the ~~Regulator's~~ ACCC's Internet site.

31 ~~Regulator~~ ACCC to give notice to Part 6 operator of its approval or determination and publish the decision

- (1) The Regulator must give notice in writing to the Part 6 operator of its approval or determination, as the case requires, under rule 29 of the operator's ~~regulated charges~~ infrastructure charges.
- (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.
- (2) The ~~Regulator~~ ACCC must, on ~~or after~~ the day on which it gives notice to the Part 6 operator under subrule (1), cause the notice, and the reasons for its decision, to be made available on the ~~Regulator's~~ ACCC's Internet site.

32 Effect of approval or determination under this Division

An approval or determination by the ~~Regulator~~ ACCC of ~~regulated charges~~ infrastructure charges under this Division has effect as an approval or determination of ~~regulated charges~~ infrastructure charges:

- (a) in respect of the first year of the regulatory period to which the application relates; and
- (b) in respect of each subsequent year of the regulatory period, subject to review and further approval or determination in accordance with Division 3.

33 Transitional provision for temporary continuation of existing charges

- (1) ~~Except as provided in subrule (2) or (3), a Part 6 operator must not levy regulated charges in respect of a regulatory period if the Regulator has not, under this Division, approved or determined the regulated charges in respect of the first and each subsequent year of that regulatory period before the end of the initial period, or a subsequent regulatory period, as the case requires.~~
- (2) ~~If the Regulator has not approved or determined the regulated charges of a Part 6 operator in respect of the first and each subsequent year of a regulatory period before the end of the initial period, the operator may levy fees and charges not exceeding its fees and charges as in force immediately before the end of the initial period until, and only until:~~
- (a) ~~the expiration of the specified period; or~~
- (b) ~~the Regulator approves or determines the regulated charges in respect of the first and each subsequent year of the regulatory period in accordance with this Division;~~
- ~~whichever first occurs.~~
- (3) If the ~~Regulator~~ ACCC has not approved or determined the ~~regulated charges~~ infrastructure charges of a Part 6 operator in respect of the first and each subsequent year of a regulatory period before the end of the preceding regulatory period, the operator may levy fees and charges in respect of the first year of the regulatory period that do not exceed the ~~regulated charges~~ infrastructure charges for the last year of the preceding

regulatory period approved or determined under Division 3 (or, if varied under Division 4, as so varied) until, and only until:

- (a) the expiration of the specified period; or
- (b) the ~~Regulator~~ ACCC approves or determines the ~~regulated charges~~ infrastructure charges in accordance with this Division:

whichever first occurs.

~~(4) In this rule, *specified period* means:~~

- ~~(a) the period ending 6 months after the end of the initial period or regulatory period, as the case requires; or~~
- ~~(b) if the period of 13 months referred to in subrule 30 (1) is extended, or further extended, under subrule 30 (3), the period ending when that period, as extended or further extended, ends:~~

~~whichever is the later.~~

(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.

Division 3 Annual review of ~~regulated charges~~ infrastructure charges for second or subsequent year of a regulatory period

34 Application by Part 6 operator to ~~Regulator~~ ACCC for annual review of ~~regulated charges~~ infrastructure charges

- (1) A Part 6 operator whose ~~regulated charges~~ infrastructure charges in respect of a regulatory period have been approved or determined under Division 2 and, if varied under Division 4, as so varied, must apply to the ~~Regulator~~ ACCC for approval or determination of its ~~regulated charges~~ infrastructure charges in respect of the second year and each subsequent year of the regulatory period, as reviewed in accordance with this Division.
- (2) An application by a Part 6 operator under subrule (1) must include:
 - (a) the operator's forecast of demand for, or consumption of, infrastructure services for the year to which the application relates; and
 - (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
 - (b) the operator's estimate of demand or consumption during the current year; and
 - (c) information about how the forecast and estimate were calculated; and
 - (d) proposed ~~regulated charges~~ infrastructure charges in respect of the year to which the application relates.
- (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.

35 ~~Regulator~~ ACCC may request further information

Before the ~~Regulator~~ ACCC makes a decision in relation to the ~~regulated charges~~ infrastructure charges of a Part 6 operator who makes an application under this Division, the ~~Regulator~~ ACCC may, in writing, request the operator to provide further information relating to the application within a period specified by the ~~Regulator~~ ACCC.

36 Regulator ACCC to publish application and draft approval or determination

After receiving an application under rule 34, the ~~Regulator ACCC~~:

- (a) must prepare a draft of an approval or determination of the applicant's ~~regulated charges~~ **infrastructure charges** in respect of the year to which the application relates; and
- (b) must publish on its Internet site a notice ~~which~~ **that**, subject to Division 1 of Part 8, includes:
 - (i) a copy of the application; and
 - (ii) a copy of any further information received in response to a request under rule 35; and
 - (iii) the draft approval or determination; and
 - (iv) the reasons for its decisions; and
 - (v) an invitation to interested parties to make submissions to the ~~Regulator ACCC~~ in relation to the draft approval or determination before a date specified in the notice.

37 Regulator ACCC to approve or determine ~~regulated charges~~ infrastructure charges

- (1) Subject to subrule (2), the ~~Regulator ACCC~~ must, ~~within 3 months after receiving an application under this Division from a Part 6 operator~~ **within the period ending on the day 30 business days before the start of the second or subsequent year of the regulatory period**, and after considering any submissions received before the date specified in the notice under paragraph 36(b), approve or determine the ~~regulated charges~~ **infrastructure charges** in respect of the year to which the application relates.
- (2) The ~~Regulator ACCC~~ must not approve ~~regulated charges~~ **infrastructure charges** under subrule (1) other than the ~~regulated charges~~ **infrastructure charges** approved or determined under Division 2 and, if varied under Division 4, as so varied, in respect of the year to which the application relates except to the extent, if any, that it is reasonably necessary to make variations to those charges having regard to:
 - (a) the changes in the demand or consumption forecasts set out in the application under rule 34 ~~from those set out in the application under rule 25~~; and
 - (b) price **stability**; and
 - (c) **the consistency of the infrastructure charges with these rules.**
- (3) If the ~~Regulator ACCC~~ is not satisfied as to the matters referred to in subrule (2), the ~~Regulator ACCC~~ must determine the ~~regulated charges~~ **infrastructure charges** with such changes as enable the ~~Regulator ACCC~~ to be satisfied as to those matters.
- (4) ~~In calculating the 3 month period referred to in subrule (1), disregard, if the Regulator has requested further information under rule 35 — a day during any part of which the request, or any part of the request, remains unfulfilled.~~
- (5) If the ~~Regulator ACCC~~:
 - ~~(a) is unable to make a decision within the period of 3 months referred to in subrule (1) or, if that period is extended, that period as extended; and~~
 - (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 subrule (1) explaining why the ~~Regulator ACCC~~ has been unable to make the decision within that period:

that period is extended, or further extended, by a period of one month.

- (6) As soon as practicable after the ~~Regulator~~ ACCC gives a notice under paragraph (5)(b), the ~~Regulator~~ ACCC must cause a copy of the notice to be made available on the ~~Regulator's~~ ACCC's Internet site.

38 **Notice of the decision and effect of approval or determination under this Division**

- (1) The ~~Regulator~~ ACCC must give notice in writing to the Part 6 operator of its approval or determination, as the case requires, under rule 37 of the operator's ~~regulated charges~~ **infrastructure charges** under this Division.
- (2) The ~~Regulator~~ ACCC must, on or after the day on which it gives notice to the Part 6 operator under subrule (1), cause the notice, and the reasons for its decisions, to be made available on the ~~Regulator's~~ ACCC's Internet site.
- (3) An approval or determination of an application under this Division has effect as an approval or determination of the ~~regulated charges~~ **infrastructure charges** in respect of the year of a regulatory period in respect of which the application was made.

39 **Transitional provision for temporary continuation of existing ~~regulated charges~~ infrastructure charges**

- ~~(1) Except as provided in subrule (2), a Part 6 operator must not levy regulated charges in respect of the second or a subsequent year of a regulatory period if the Regulator has not, under this Division, approved or determined the regulated charges of the operator in respect of that year.~~
- (2) If the ~~Regulator~~ ACCC has not, under this Division, approved or determined the ~~regulated charges~~ **infrastructure charges** of a Part 6 operator in respect of the second or a subsequent year of a regulatory period before the beginning of that year, the operator may levy ~~regulated charges~~ **infrastructure charges** in respect of that year that do not exceed the ~~regulated charges~~ **infrastructure charges** for that year approved or determined under Division 2 (or, if varied under Division 4, as so varied) until, and only until:
- (a) the expiration of the specified period; or
 - (b) the ~~Regulator~~ ACCC approves or determines the ~~regulated charges~~ **infrastructure charges** in accordance with this Division:

whichever first occurs.

- (3) In this rule, *specified period* means:
- (a) the period ending 3 months after the end of the preceding year of the regulatory period; or
 - (b) if the period of 3 months referred to in subrule 37(1) is extended, or further extended, under subrule 37(5), the period ending when that period, as extended or further extended, ends:

whichever is the later.

Division 4 Variation of approval or determination

40 **~~Regulator~~ ACCC may vary approval or determination in certain circumstances**

- (1) A Part 6 operator may apply in writing to the ~~Regulator~~ ACCC for a variation of the approval or determination under Division 2 or 3 (or, if previously varied under this

Division, as so varied) of its ~~regulated charges~~ **infrastructure charges** in respect of a regulatory period if:

- (a) an event occurs during the regulatory period that materially and adversely affects the operator's water service infrastructure or otherwise materially and adversely affects the operator's business; and
 - (b) **for an event other than a taxation event or regulatory event**—the operator could not reasonably have foreseen the event.
- (2) An application under subrule (1):
- (a) must set out details of the event; and
 - (b) must state the Part 6 operator's proposals for rectifying the material and adverse effects of the event; and
 - (c) must state—
 - (i) the total amount that the Part 6 operator anticipates will be required during the remainder of the regulatory period to rectify those material and adverse effects;
 - ~~(ii) whether that amount is likely to exceed \$15 million or 5% of the value of the operator's regulatory asset base as at the beginning of the regulatory period whichever is the lesser amount; and~~
 - (ii) whether that amount is likely to exceed:**
 - (A) for a taxation event or a regulatory event—1% of the aggregate revenue requirement; and**
 - (B) otherwise—5% of the aggregate revenue requirement; and**
 - (iii) whether it is reasonably likely (in the absence of any reduction of any other expenditure) that the total expenditure during the remaining part of the regulatory period will exceed the total forecast expenditure for that remaining part; and
 - (d) must demonstrate that the Part 6 operator is not able to reduce its expenditure to avoid the consequences referred to in subparagraphs (c)(ii) and (iii) without materially and adversely affecting the ~~reliability and safety~~ **reliability or safety** of the operator's water service infrastructure or the operator's ability to comply with any relevant regulatory or legislative obligations; and
 - (e) must set out details of the variation of its ~~regulated charges~~ **infrastructure charges** sought by the Part 6 operator.
- (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.

41 ~~Regulator~~ ACCC may request further information

Before the ~~Regulator~~ ACCC makes a decision in relation to an application under this Division, the ~~Regulator~~ ACCC may, in writing, request the Part 6 operator to provide further information relating to the application within a period specified by the ~~Regulator~~ ACCC.

42 ~~Regulator~~ ACCC must publish application

After receiving an application under this Division, the ~~Regulator~~ ACCC must publish on the ~~Regulator's~~ ACCC's Internet site a notice ~~which~~ that, subject to Division 1 of Part 8, includes:

- (a) a copy of the application;
- (b) a copy of any further information received in response to a request under rule 41.

43 ~~Regulator~~ ACCC to decide whether or not to vary its approval or determination

- (1) The ~~Regulator~~ ACCC must, within 3 months after receiving an application under this Division, decide whether or not to vary its approval or determination of the applicant's ~~regulated charges~~ infrastructure charges under Division 2 or 3.
- (2) In calculating the 3-month period referred to in subrule (1), disregard, if the ~~Regulator~~ ACCC has requested further information under rule 41—a day during any part of which the request, or any part of the request, remains unfulfilled.
- (3) If the ~~Regulator~~ ACCC:
 - (a) is unable to make a decision within the period of 3 months or, if that period is extended, or further extended, that period as extended; and
 - (b) within that period, gives written notice to the Part 6 operator who made the application explaining why the ~~Regulator~~ ACCC has been unable to make the decision within that period:

that period is extended, or further extended, by a period of one month.

- (4) As soon as practicable after the ~~Regulator~~ ACCC gives a notice under paragraph (3)(b), the ~~Regulator~~ ACCC must cause a copy of the notice to be available on the ~~Regulator's~~ ACCC's Internet site.
- (5) The ~~Regulator~~ ACCC must not, in relation to an application made under subrule 40(1), vary an approval or determination of ~~regulated charges~~ infrastructure charges under this Division unless the ~~Regulator~~ ACCC is satisfied:
 - (a) as to the matters relating to the event referred to in paragraphs 40(1)(a) and (b) as set out in the application; and
 - (b) that:
 - (i) the total amount required during the remainder of the regulatory period to rectify the material and adverse effects of the event exceeds \$15 million or 5% of the value of the applicant's regulatory asset base as at the beginning of the regulatory period whichever is the lesser; and

- (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
 - (ii) ~~that~~ it is reasonably likely that the total expenditure during the remaining part of the regulatory period is likely to exceed the total forecast expenditure for that remaining part; and
 - (c) that the applicant has demonstrated that it is not able reduce its expenditure to avoid the consequences referred to in paragraph (b) without materially ~~and~~ adversely affecting the ~~reliability and safety~~ **reliability or safety** of the applicant's water service infrastructure or the applicant's ability to comply with any relevant regulatory or legislative obligations.
- (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.

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.

44 Regulator ACCC to give notice of its decision under this Division and publish the decision

- (1) The Regulator ACCC must give notice in writing to the Part 6 operator of its decision on the variation of the operator's regulated charges infrastructure charges under this Division.
- (2) The Regulator ACCC must, on or after the day on which it gives notice to the Part 6 operator under subrule (1), cause the notice, and the reasons for its decisions, to be made available on the Regulator's ACCC's Internet site, subject to Division 1 of Part 8.

Part 7 Approval or determination of regulated charges infrastructure charges of Part 7 operators

Division 1 General

45 Application of Part

- (1) This Part applies to a member owned operator if:
 - (a) the sum of the maximum volume of water from managed water resources in respect of which the operator provides infrastructure services in relation to:
 - (i) water access entitlements held by the operator (otherwise than for the purpose of providing infrastructure services to customers who hold water access entitlements to that water); and
 - (ii) water access entitlements held by its customers; and
 - (iii) water access entitlements held by the owner (not being the operator) of the water service infrastructure operated by the operator:

is more than 10 GL; and

- (b) the member owned operator has made a distribution to all its related customers at any time after the commencement date:

Note: In subrule 45(1) the maximum volume of water refers to that held under water access entitlements.

- (2) For the purposes of this rule, a member owned operator:
 - (a) is to be taken to have made a distribution to all its related customers if it has:
 - (i) declared a dividend for all its related customers; or
 - (ii) distributed profits, or any part of its profits, whether in the form of dividends or otherwise, to all its related customers; or
 - (iii) distributed its reserves, or any part of its reserves, to all its related customers; or
 - (iv) issued bonus shares to all its related customers;
 - (b) is not to be taken to have made a distribution, whether as referred to in paragraph (a) or in any other manner, if the distribution was made without distinction between related customers and other customers.
- (3) An infrastructure operator to whom this Part has applied ceases to be an operator to whom this Part applies:
 - (a) if it ceases to be a member owned operator; or
 - (b) if it ceases to be a member owned operator to whom this Part applies; or
 - (c) upon the expiration of 5 years after the operator last made a distribution to all of its related customers.

~~(4) An infrastructure operator to whom this Part applies is a Part 7 operator.~~

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 customers' 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.

Division 2 Approval or determination of ~~regulated charges~~ infrastructure charges

46 ~~Application by Part 7 operator to Regulator~~

- ~~(1) A Part 7 operator that proposes to levy regulated charges after the application period must apply in writing to the Regulator for approval or determination of its regulated charges under this Part.~~
- ~~(2) An application under subrule (1) must include the information referred to in Schedule 3.~~

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(11) 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.

47 ~~Regulator~~ ACCC may request further information

Before the ~~Regulator~~ ACCC makes a decision in relation to an application under this Part from a Part 7 operator, the ~~Regulator~~ ACCC may, in writing, request the operator to provide further information relating to the application within a period specified by the ~~Regulator~~ ACCC.

48 ~~Regulator~~ ACCC to publish application and draft approval or determination

After receiving an application under this Part from a Part 7 operator, the ~~Regulator~~ ACCC:

- (a) must prepare a draft of an approval or determination of the ~~regulated charges~~ **infrastructure charges** set out in the application; and
- (b) must publish on the ~~Regulator's~~ **ACCC's** Internet site a notice ~~which that~~, subject to Division 1 of Part 8, includes:
 - (i) a copy of the application; and
 - (ii) a copy of any further information received in response to a request under rule 47; and
 - (iii) the draft approval or determination; and
 - (iv) the reasons for its decisions; and
 - (v) an invitation to interested parties to make submissions to the ~~Regulator~~ **ACCC** in relation to the draft approval or determination before a date specified in the notice.

49 Regulator ACCC to approve or determine the ~~regulated charges~~ infrastructure charges

- (1) The ~~Regulator~~ **ACCC**, after considering submissions received before the date specified in the notice published under paragraph 48(b), subject to subrule (2), must approve or determine the ~~regulated charges~~ **infrastructure charges** set out in the application under this Part.
- (2) The ~~Regulator~~ **ACCC** must not approve ~~regulated charges~~ **infrastructure charges** set out in an application under this Part that include a return on investment unless the ~~Regulator~~ **ACCC** is satisfied that the return is commensurate with the commercial risks involved.
- (3) If the ~~Regulator~~ **ACCC** is not satisfied as to the matters referred to in subrule (2), the ~~Regulator~~ **ACCC** must determine such changes to the ~~regulated charges~~ **infrastructure charges** as will enable the ~~Regulator~~ **ACCC** to be satisfied as to the matters referred to in that subrule.
- (4) In approving or determining ~~regulated charges~~ **infrastructure charges** set out in an application under this Part, the ~~Regulator~~ **ACCC** may have regard to whether or not the ~~regulated charges~~ **infrastructure charges** would contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act.

50 Period within which ~~Regulator~~ ACCC to approve or determine ~~regulated charges~~ infrastructure charges

- (1) The ~~Regulator~~ **ACCC** must, within 3 months or, if that period is extended or further extended, that period as extended, after receiving an application under this Part from a Part 7 operator, approve or determine the ~~regulated charges~~ **infrastructure charges** set out in the application.
- ~~(2) In calculating the 3 month period referred to in subrule (1), disregard, if the Regulator has requested further information under rule 47 — a day before the end of the period specified in the request during any part of which the request, or any part of the request, remains unfulfilled.~~
- (3) If the ~~Regulator~~ **ACCC**:
 - (a) is unable to make a decision within the period of 3 months referred to in subrule (1) or, if that period is extended or further extended, that period as extended; and
 - (b) within that period, gives written notice to the Part 7 operator who made the application under this Part explaining why the ~~Regulator~~ **ACCC** has been unable to make the decision within that period:

that period is extended, or further extended, by a further period of one month.

- (4) As soon as practicable after the ~~Regulator~~ ACCC gives a notice under subrule (3), the ~~Regulator~~ ACCC must cause a copy of the notice to be made available on the ~~Regulator's~~ ACCC's Internet site.

51 ~~Regulator~~ ACCC to give notice to Part 7 operator of its approval or determination and publish the decision

- (1) The ~~Regulator~~ ACCC must give notice in writing to the Part 7 operator of its approval or determination, as the case requires, of ~~regulated charges~~ infrastructure charges under rule 49.
- (2) The ~~Regulator~~ ACCC must, on or after the day on which it gives notice to the Part 7 operator under subrule (1), cause the notice, and the reasons for its decisions, to be made available on the ~~Regulator's~~ ACCC's Internet site.

Part 8 General

Division 1 Disclosure of information

52 ~~Regulator~~ ACCC to publish submissions

Where the ~~Regulator~~ ACCC receives a submission in response to an invitation under ~~Part 6, 7 or 9~~ Part 6 or 7, the ~~Regulator~~ ACCC must, subject to this Division, cause the submission to be available on the ~~Regulator's~~ ACCC's Internet site as soon as possible.

53 ~~Regulator~~ ACCC not to publish applications and submissions if confidential

- (1) Except as provided in subrule (2), the ~~Regulator~~ ACCC must not publish an application or a submission under ~~Part 6, 7 or 9~~ Part 6 or 7, or include any information from an application or submission in its reasons for its decisions under ~~Part 6, 7 or 9~~ Part 6 or 7, if:
 - (a) the person who made the application or submission claimed, when making the application or submission, that it contains confidential information; and
 - (b) the ~~Regulator~~ ACCC decides that the application or submission contains confidential information.
- (2) If a person claimed, when making an application or submission under ~~Part 6, 7 or 9~~ Part 6 or 7, that the application or submission contained confidential information and the ~~Regulator~~ ACCC considers that it does contain confidential information, the ~~Regulator~~ ACCC may publish the application or submission, and any information from an application or submission, if the confidential information is omitted but, before so doing, must cause a note to that effect to be included in the document at the place in the document from which the information is omitted.
- (3) In this rule, *application* includes further information provided by the applicant at the request of the ~~Regulator~~ ACCC under ~~rule 26, 35, 41, 47 or 61~~ rule 23C, 26, 35, 41, 45C or 47.

54 Where ~~Regulator~~ ACCC disagrees with claim that information is confidential

- (1) If:

- (a) a person who makes an application or submission under ~~Part 6, 7 or 9~~ **Part 6 or 7** claims that the application or submission contains confidential information; and
- (b) the ~~Regulator~~ **ACCC** decides that the application or submission does not contain confidential information as claimed; and
- (c) the ~~Regulator~~ **ACCC** wishes to publish the application or submission:

the ~~Regulator~~ **ACCC** must give the person written notice of the ~~Regulator's~~ **ACCC's** decision within 10 business days after receiving the application or submission.

- (2) The notice under subrule (1) must include:
 - (a) a statement that the person may withdraw the claim of confidentiality by giving the ~~Regulator~~ **ACCC** written notice to that effect; and
 - (b) a statement that, if the person wishes to withdraw the claim, the person must do so within 10 business days after receiving the ~~Regulator's~~ **ACCC's** notice under subrule (1); and
 - (c) a statement that, if the person decides not to withdraw the claim, the following applies:
 - (i) the ~~Regulator~~ **ACCC** may publish the application or submission if the information claimed to be confidential is omitted and a note to the effect that confidential information is omitted is inserted in the application or submission at the place from which the information is omitted; and
 - (ii) the ~~Regulator~~ **ACCC** must not have regard to the omitted information when approving or determining ~~regulated charges~~ **infrastructure charges** under ~~Part 6 or 7 or making a decision under Part 9.~~
- (3) If the person withdraws the claim, the ~~Regulator~~ **ACCC** may publish the entire application or submission.
- (4) If the person does not withdraw the claim within 10 business days after receiving the ~~Regulator's~~ **ACCC's** notice under subrule (1), then the ~~Regulator~~ **ACCC**:
 - (a) may publish the application or submission if the confidential information is omitted and a note to the effect that confidential information is omitted is inserted in the application or submission at the place from which the information is omitted; and
 - (b) must not have regard to the omitted information when approving or determining the ~~regulated charges~~ **infrastructure charges** under ~~Part 6 or 7 or making a decision under Part 9.~~
- (5) In this rule, **application** includes further information provided by the applicant at the request of the ~~Regulator~~ **ACCC** under ~~rule 26, 35, 41, 47 or 61~~ **rule 23C, 26, 35, 41, 45C or 47.**

~~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 Regulator must not publish any information to which the exemption relates other than the names of the parties to the contract and the date on which the exemption was granted.~~

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; and
- (b) in relation to an application made after the 2016 amendment date—the information specified in subrule 9(13A).

56 **Monitoring water charges and compliance**

Nothing in this Division prevents the ACCC from including information to which this Part applies in its reports to the Minister under section 94 of the Act.

Division 2 Proceedings

57 **Proceedings to recover loss or damage**

A person who suffers loss or damage as a result of conduct, or an omission, of another person that contravenes these Rules may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

~~**Part 9 Accreditation of Arrangements**~~

~~58 **Purpose of Part**~~

~~The purpose of this Part is to make provision for the accreditation of arrangements under which regulated charges of Part 6 operators and Part 7 operators relating to State water resources are approved or determined by an agency of the relevant State (instead of by the ACCC).~~

~~59 **Terms, conditions and obligations applying to accreditation**~~

~~(1) The accreditation of arrangements providing for a State Agency to approve or determine regulated charges of Part 6 operators and Part 7 operators relating to State water resources is subject to:~~

- ~~(a) a condition that the applied provisions apply as a law of the State and are in force; and~~
- ~~(b) a condition that the approval or determination of regulated charges of all Part 6 operators and Part 7 operators relating to State water resources of that State must be carried out by the State Agency specified in the accredited arrangements in accordance with the accredited arrangements and the applied provisions; and~~
- ~~(c) such terms, conditions and obligations not inconsistent with these Rules or the applied provisions as are determined by the ACCC in accordance with this Part in relation to the accreditation of the arrangements, being terms, conditions and obligations which contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act.~~

~~(2) *Applied provisions* means:~~

- ~~(a) Divisions 2, 3 and 4 of Part 6;~~
- ~~(b) Division 2 of Part 7;~~
- ~~(c) Division 1 of Part 8;~~
- ~~(d) Schedules 1, 2 and 3;~~
- ~~(e) Part 1, so far as is relevant to the interpretation of the provisions referred to in paragraphs (a), (b), (c) and (d).~~

60 — **Application by State Agency**

- ~~———— (1) A State Agency of a State in which the applied provisions are a law of the State may apply in writing to the ACCC for the accreditation of arrangements under which regulated charges of Part 6 operators and Part 7 operators relating to State water resources in the State in which the State Agency is established or appointed are to be approved or determined by the State Agency in accordance with the applied provisions.~~
- ~~———— (2) An application under subrule (1):~~
 - ~~———— (a) must include the information set out in Schedule 4; and~~
 - ~~———— (b) must be made:~~
 - ~~———— (i) at least 18 months before the commencement of a regulatory period applying to Part 6 operators in the State if the regulatory period commences on or before 1 July 2013; or~~
 - ~~———— (ii) if the regulatory period commences after 1 July 2013, 24 months before the commencement a regulatory period; and~~
 - ~~———— (c) must be accompanied by evidence in writing that the application has the support of the Minister, or the Head of a Department, of the State Agency's State having responsibility for the State Agency.~~

61 — **ACCC may request further information**

- ~~———— Before the ACCC makes a decision in relation to an application under this Part, the ACCC may, in writing, request the applicant to provide further information relating to the application within a period specified by the ACCC.~~

62 — **ACCC must publish draft decision**

- ~~———— (1) After receiving an application under this Part and if, further information is requested under rule 61, receiving that further information, the ACCC must publish, on the ACCC's Internet site, a notice which includes, subject to Division 1 of Part 8:~~
 - ~~———— (a) a copy of the application;~~
 - ~~———— (b) a copy of any further information received in response to a request under rule 61;~~
 - ~~———— (c) a copy of the ACCC's draft decision on the application and the reasons for the decision;~~
 - ~~———— (d) if the draft decision is a decision to approve the application, a draft of any terms, conditions or obligations to which the ACCC proposes that its approval of the application would be subject, being terms or conditions and obligations that contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act;~~
 - ~~———— (e) an invitation to interested parties to make submissions to the ACCC in relation to the draft decision, and any proposed terms, conditions or obligations referred to in paragraph (d), before a date specified in the notice.~~
- ~~———— (2) The ACCC must publish on the ACCC's Internet site a copy of each submission received in response to the invitation referred to in subrule (1), subject to Division 1 of Part 8.~~

63 — **ACCC to determine whether or not to approve the application**

- ~~———— (1) The ACCC, after considering submissions received before the date specified in the notice published under rule 62 in relation to an application by a State Agency must, within 3 months after receiving the application:~~
 - ~~———— (a) approve the application and determine the terms, conditions or obligations (if any) to which the approval is subject, being terms, conditions and obligations that~~

~~contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act; or~~

~~(b) refuse to approve the application.~~

~~(2) The ACCC:~~

~~(a) must not approve an application under this Part for the accreditation of arrangements unless the ACCC is satisfied that the arrangements are in accordance with the criteria set out in Schedule 5; and~~

~~(b) must not refuse to approve an application under this Part for the accreditation of arrangements unless the ACCC is satisfied that the arrangements are not in accordance with the criteria set out in Schedule 5.~~

~~(3) In calculating the 3 month period referred to in subrule (1), disregard, if the ACCC has requested further information under rule 61—a day during any part of which the request, or any part of the request, remains unfulfilled.~~

~~(4) If the ACCC:~~

~~(a) is unable to make a decision within the period of 3 months referred to in subrule (1) or, if that period is extended, that period as extended; and~~

~~(b) within that period, gives written notice to the applicant under subrule (1) explaining why the ACCC has been unable to make the decision within that period:~~

~~that period is extended, or further extended, by a period of one month.~~

~~(5) As soon as practicable after the ACCC gives a notice under paragraph (4) (b), the ACCC must cause a copy of the notice to be made available on the ACCC's Internet site.~~

~~(6) The ACCC:~~

~~(a) must give notice in writing to the applicant and each relevant Part 6 operator and Part 7 operator of its decision on the application, and the reasons for the decision and, if it approves the application and determines any terms, conditions or obligations to which the accreditation is to be subject, a copy of those terms, conditions and obligations; and~~

~~(b) must publish, on the ACCC's Internet site:~~

~~(i) the notice of its decision and the reasons for the decision;~~

~~(ii) if it approves the application, a copy of the accredited arrangements and, if it determines any terms, conditions or obligations to which the accreditation is subject, a copy of those terms, conditions and obligations.~~

~~(7) If the application is approved by the ACCC, the accreditation of the arrangements comes into effect, subject to rule 59, on the date specified in the notice published under subrule (6).~~

64 Effect of accredited arrangements and transitional provisions

~~(1) Where, under this Part, the accreditation of arrangements comes into effect in respect of a State and the applied provisions are in force in that State, the accredited agency is the Regulator for the purposes of the applied provisions.~~

~~(2) If, immediately before the accreditation of arrangements comes into effect in respect of a State, an application under rule 46 made before that date by a Part 7 operator in that State has not been determined by the ACCC, the accredited arrangements and the applied provisions in force in that State do not apply in relation to that Part 7 operator until the ACCC gives notice of its decision in accordance with rule 51.~~

65 ~~Accredited arrangements — new terms, conditions and obligations and variations~~

- ~~(1) Where an accreditation of arrangements has effect in a State, the ACCC may, in accordance with this rule, if it determines that it is necessary to do so:~~
- ~~(a) on its own motion or on the application in writing of the accredited agency, vary the terms or conditions to which the accreditation is subject; or~~
- ~~(b) impose new terms, conditions or obligations on the accreditation under this rule:~~
- ~~being terms, conditions or obligations that contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act.~~
- ~~(2) If an accredited agency applies for a variation of the terms or conditions to which the accreditation of arrangements is subject, the ACCC may, in writing, request the accredited agency to provide further information relating to the application within a period specified by the ACCC.~~
- ~~(3) Before making a variation of the terms or conditions of accredited arrangements, or imposing new terms, conditions or obligations on the accreditation of arrangements, the ACCC must publish on the ACCC's Internet site a notice which, subject to Division 1 of Part 8, includes:~~
- ~~(a) a draft of its decision and the reasons for it;~~
- ~~(b) if the accredited agency made application for the variation, a copy of the application and a copy of any further information received in response to a request under subrule (2);~~
- ~~(c) an invitation to interested parties to make submissions to the ACCC in relation to the proposed variation, or imposition of terms, conditions or obligations, before a date specified in the notice.~~

66 ~~ACCC to decide whether or not to vary terms and conditions or impose new terms, conditions or obligations~~

- ~~(1) The ACCC must, within 3 months after publishing a notice under rule 65(3) or receiving a request from an accredited agency under that rule, whichever is the earlier, decide whether or not to vary the terms or conditions to which the accreditation of arrangements is subject or to impose terms, conditions or obligations.~~
- ~~(2) In calculating the 3 month period referred to in subrule (1), disregard, if the ACCC has requested further information under subrule 65(2) — a day during any part of which the request, or any part of the request, remains unfulfilled.~~
- ~~(3) If the ACCC:~~
- ~~(a) is unable to make a decision within the period of 3 months referred to in subrule (1) or, if that period is extended, that period as extended; and~~
- ~~(b) within that period, gives written notice to the relevant accredited agency explaining why the ACCC has been unable to make the decision within that period:~~
- ~~that period is extended, or further extended, by a period of one month.~~
- ~~(4) As soon as practicable after the ACCC gives a notice under paragraph (3) (b), the ACCC must cause a copy of the notice to be made available on the ACCC's Internet site.~~
- ~~(5) The ACCC must give notice in writing of its decision whether or not to make the variation or impose terms, conditions or obligations and the reasons for the decision to the accredited agency and each Part 6 operator and Part 7 operator whose regulated charges are subject to approval or determination under the accredited arrangements.~~

- ~~(6) The ACCC must, on or after the day on which it gives notice under subrule (5), publish the notice on its Internet site, subject to Division 1 of Part 8.~~
- ~~(7) A variation of terms or conditions, or the imposition of terms, conditions or obligations, takes effect on the date specified in the notice published under subrule (6).~~

67 ~~Revocation of accreditation~~

- ~~(1) The ACCC may revoke the accreditation of arrangements under these Rules if the ACCC it is satisfied that:~~
- ~~(a) the accredited agency has failed to comply with the accredited arrangements in a material respect; or~~
 - ~~(b) the accredited agency has failed to comply with any terms, conditions or obligations to which the accreditation of the arrangements is subject; or~~
 - ~~(c) the accredited arrangements have ceased to be in accordance with the criteria set out in Schedule 5; or~~
 - ~~(d) the State Agency does not have the support, in the carrying out of accredited arrangements, of either the Minister, or the Head of a Department, of the State Agency's State having responsibility for the State Agency.~~
- ~~(2) Before revoking the accreditation of arrangements under subrule (1), the ACCC:~~
- ~~(a) must publish on the ACCC's Internet site a notice which, subject to Division 1 of Part 8, includes:
 - ~~(i) a draft of its decision and the reasons for it;~~
 - ~~(ii) an invitation to interested parties to make submissions to the ACCC in relation to the proposed revocation before a date specified in the notice; and~~~~
 - ~~(b) must give a copy of the notice to the accredited agency and each Part 6 operator and Part 7 operator whose regulated charges are subject to approval or determination by the accredited agency.~~
- ~~(3) The ACCC, after considering any submission received before the date specified in the notice under subrule (2), within 2 months after the notice was given:~~
- ~~(a) must determine whether or not to revoke the accreditation; and~~
 - ~~(b) must give notice in writing to the accredited agency and each relevant Part 6 operator and Part 7 operator of its decision and the reasons for it; and~~
 - ~~(c) must publish a copy of the notice on the ACCC's Internet site.~~
- ~~(4) If the ACCC:~~
- ~~(a) is unable to make a decision within the period of 2 months referred to in subrule (3) or, if that period is extended, that period as extended; and~~
 - ~~(b) within that period, gives written notice to the relevant accredited agency explaining why the ACCC has been unable to make the decision within that period:
 - ~~that period is extended, or further extended, by a period of two months.~~~~
- ~~(5) As soon as practicable after the ACCC gives a notice under paragraph (4) (b), the ACCC must cause a copy of the notice to be made available on the ACCC's Internet site.~~
- ~~(6) If an accredited agency gives notice in writing to the ACCC requesting that the accreditation of arrangements be revoked, the ACCC:~~
- ~~(a) must revoke the accreditation; and~~
 - ~~(b) publish a notice of the revocation on the ACCC's Internet site.~~

~~(7) A revocation of the accreditation of arrangements under this rule takes effect on the date specified in the notice of revocation published on the ACCC's Internet site.~~

~~68~~ **Term of accreditation**

~~Accredited arrangements, unless sooner revoked under these Rules, cease to have effect at the end of the period of 10 years after the date on which the accredited arrangements took effect.~~

~~69~~ **Renewal of accredited arrangements**

~~Where:~~

- ~~(a) accredited arrangements have effect in a State; and~~
- ~~(b) the accredited agency wishes accredited arrangements to continue after the expiration of the period of 10 years:~~

~~the accredited agency must make an application under rule 60 at least 2 years before the expiration of that period for the accreditation of arrangements in respect of a further period of 10 years.~~

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 that 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.

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.

Schedule 1 Information to be included in an application under Division 2 of Part 6

(Rule 25)

1 Consultation

Information on whether the Part 6 operator, in putting together its application under Division 2 of Part 6, consulted with its customers and if so, details of the extent and nature of the consultation processes including matters consulted on and customer feedback received.

2 Regulatory and legislative obligations

Details of any regulatory and legislative obligations, including any changes or proposed changes to the those obligations since the Part 6 operator's ~~regulated charges~~ [infrastructure charges](#) were last approved or determined under these Rules, under relevant Acts, legislative instruments and licences that apply to the Part 6 operator in respect of its infrastructure services.

3 Infrastructure service standards

Details of the infrastructure service standards the Part 6 operator has or will deliver in respect of its infrastructure service including minimum standards for key performance indicators or performance targets and of any changes made or proposed to be made since the Part 6 operator's ~~regulated charges~~ [infrastructure charges](#) were last approved or determined under these Rules.

4 Revenue

Details of the Part 6 operator's:

- (a) actual revenue from providing infrastructure services for each year of ~~the initial period or the regulatory period~~ [the regulatory period](#) that is set to expire and forecast revenue for the remainder of ~~the initial period or regulatory period~~ [the regulatory period](#) set to expire;

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.
- (b) forecast revenue from providing infrastructure services for each year of the following regulatory period.

5 Regulatory asset base

Details of the Part 6 operator's assets, and their value, that are used to provide infrastructure services:

- (a) in respect of each year of ~~the initial period or the regulatory period~~ [the regulatory period](#) that is set to expire:
 - (i) actual contributions from customers and government;
 - (ii) actual proceeds from asset disposals and the nature and type of assets sold;
 - (iii) the regulatory depreciation of assets and the reasons for the depreciation;

- (iv) from the above, the actual regulatory asset base; and
- (b) in respect of each year of the following regulatory period:
 - (i) forecast contributions from customers and government and the assumptions underpinning those forecasts;
 - (ii) forecast proceeds from asset disposals and the nature and type of assets anticipated to be sold;
 - (iii) the regulatory depreciation of assets and the reasons for the depreciation;
 - (iv) from the above, the forecast regulatory asset base.

6 Rate of return

Details of the rate of return:

- (a) in respect of each year of ~~the initial period or the regulatory period~~ **the regulatory period** that is set to expire; and
- (b) proposed by the Part 6 operator for each year of the following regulatory period:

and the basis for that rate, including the methodology used to determine the rate and the values of all inputs used in the calculation of the rate.

7 Renewals annuity

If the Part 6 operator uses a renewals annuity to fund capital or operating expenditure for the provision of infrastructure services, details of the annuity including:

- (a) in respect of each year of ~~the initial period or the regulatory period~~ **the regulatory period** that is set to expire:
 - (i) the nature of the assets included in the annuity calculation;
 - (ii) the basis of the long term capital expenditure forecasts that supported the annuity calculation—when and on what basis the forecasts were made;
 - (iii) the service levels that underpinned the capital expenditure forecasts;
 - (iv) the term of the annuity;
 - (v) the discount rate used to calculate the annuity;
 - (vi) from the above, the actual balance of the annuity; and
- (b) in respect of each year of the following regulatory period:
 - (i) the nature of the assets included in the annuity calculation;
 - (ii) the basis of the long term capital expenditure forecasts that support the annuity calculation—when and on what basis the forecasts are made;
 - (iii) the service levels that underpin the capital expenditure forecasts;
 - (iv) the term of the annuity;
 - (v) the discount rate used to calculate the annuity;
 - (vi) from the above, the forecast balance of the annuity.

8 Capital expenditure

Details of the Part 6 operator's capital expenditure required to provide infrastructure services:

- (a) ~~in respect~~ in respect of each year of ~~the initial period or the regulatory period~~ **the regulatory period** that is set to expire including:
 - (i) actual capital expenditure;
 - (ii) the major projects completed including the actual cost and timing of the projects;
 - (iii) the outcomes of the major projects and their justification;

- (iv) evidence that the levels of expenditure were prudent and efficient—for example, the results of an independent engineer’s assessment.
- (b) in respect of each year of the following regulatory period including:
 - (i) forecast capital expenditure;
 - (ii) the major projects to be completed including the forecast cost and timing of the projects;
 - (iii) the expected outcomes of the projects and their justification;
 - (iv) evidence that the expected levels of expenditure are prudent and efficient—for example, the results of an independent engineer’s assessment.

9 **Operating expenditure**

Details of the Part 6 operator’s operating and maintenance expenditure:

- (a) ~~in respect~~ in respect of each year of ~~the initial period or the regulatory period~~ **the regulatory period** that is set to expire including:
 - (i) actual operating expenditure;
 - (ii) the key reasons for the expenditure;
 - (iii) a justification of the actual operating expenditure;
 - (iv) evidence of productivity improvements;
- (b) in respect of each year of the following regulatory period including:
 - (i) forecast operating expenditure;
 - (ii) the key reasons for the proposed expenditure;
 - (iii) a justification of the forecast operating expenditure;
 - (iv) proposed productivity improvements.

10 **Tax**

Details of the Part 6 operator’s tax liabilities relating to the provision of infrastructure services:

- (a) in respect of each year of ~~the initial period or the regulatory period~~ **the regulatory period** that is set to expire, including carried forward losses and tax depreciation in each year of ~~the initial period or preceding regulatory period~~ **the preceding regulatory period**; and
- (b) in respect of each year of the following regulatory period, including forecast carried forward losses and tax depreciation.

11 **Demand or consumption**

Details of the Part 6 operator’s demand or consumption for its infrastructure services:

- (a) in respect of each year of ~~the initial period or the regulatory period~~ **the regulatory period** that is set to expire;
- (b) in respect of each year of the following regulatory period, including:
 - (i) forecast demand or consumption;
 - (ii) a description of the methodology used to forecast demand or consumption;
 - (iii) assumptions on which the forecasts are based;
 - (iv) consistency with historical data.

12 ~~Regulated charges~~ **Infrastructure charges**

Details of the Part 6 operator’s ~~regulated charges~~ **infrastructure charges** for its infrastructure services for each year of ~~the initial period or the regulatory period~~ **the**

regulatory period that is set to expire and of its proposed regulated charges infrastructure charges for each year of the following regulatory period.

Schedule 2 Determination of regulatory asset base in relation to a Part 6 operator

(Rule 29)1 Determination of regulatory asset base for first Part 6 period

The regulatory asset base of a Part 6 operator, for the purposes of the first regulatory period under these Rules in relation to the operator as a Part 6 operator (*first Part 6 period*):

- (a) in the case of an operator whose fees and charges were determined by an agency of a State under a law of the State in respect of the period immediately before the first Part 6 period (*preceding period*), is to be determined in accordance with the formula:

$$\{(A - B) + C\} - (D + E)$$

where:

~~A is the value of the operator's assets that were used for the preceding period.~~

A is the value of the operator's assets at the beginning of the preceding period.

B is the value of such of those assets that were not used by the operator to provide infrastructure services during the preceding period and any assets contributed by customers or government.

C is the actual (or, in the case of the last year of the preceding period, forecast) capital expenditure on assets used by the operator to provide infrastructure services (net of actual customer and government capital expenditure contributions) in respect of each year of the preceding period.

D is the regulatory depreciation in respect of assets used to provide infrastructure services (as determined for each year of the preceding period).

E is the actual (or, in the case of the last year of the preceding period, forecast) revenue received by the operator from disposal of assets used to provide infrastructure services in the preceding period; and

- (b) in the case of any other Part 6 operator, is to be determined by applying a recognised valuation methodology.

2 Determination of regulatory asset base for a regulatory period after the first Part 6 period

The regulatory asset base of a Part 6 operator, for the purposes of the second or a subsequent regulatory period in relation to the operator as a Part 6 operator, is to be determined in accordance with the formula:

$$(A + B) - (C + D)$$

where:

~~A is the regulatory asset base of the operator determined under this Schedule or the applied provisions in respect of the preceding regulatory period.~~

A is the regulatory asset base of the operator determined under this Schedule in respect of the preceding regulatory period.

B is the total of the actual (or, in the case of the last year of the preceding regulatory period, forecast) capital expenditure on assets used by the operator to provide

infrastructure services (net of actual customer and government capital expenditure contributions) in respect of each year of the preceding regulatory period.

C is the regulatory depreciation in respect of assets used to provide infrastructure services in respect of each year of the preceding regulatory period.

D is the actual (or, in the case of the last year of the preceding regulatory period, forecast) revenue received by the operator from disposal of assets used to provide infrastructure services in respect of each year of the preceding regulatory period.

Schedule 3 Information to be included in an application under Part 7

(Rule 46)1 ~~Regulated charges~~ Infrastructure charges

Details of the Part 7 operator's:

- (a) current ~~regulated charges~~ infrastructure charges;
- (b) ~~regulated charges~~ infrastructure charges for which the operator is seeking approval;
- (c) the period for which those ~~regulated charges~~ infrastructure charges will apply, where relevant.

2 Asset base

Details of the Part 7 operator's asset base required for provision of infrastructure services including:

- (a) the nature and type of assets on which returns to investors have, or will be, paid;
- (b) the valuation of the assets on which returns to investors have been, or will be, paid;
- (c) the method and assumptions used to calculate the valuation of those assets including estimated remaining economic lives and the basis for past and future depreciation;
- (d) the financing of those assets showing—
 - (i) the proportion contributed or financed by its members;
 - (ii) the proportion of assets contributed or financed by government;
 - (iii) the proportion financed through renewals annuity charges;
 - (iv) the proportion financed through non-annuity charges, whether or not debt funding is used;
- (e) the Part 7 operator's method and assumptions used to calculate the return on those assets.

3 Costs recovered through the Part 7 operator's ~~regulated charges~~ infrastructure charges

- (1) Details, in relation to the Part 7 operator's infrastructure services for each of the preceding three years financial years, of:
 - (a) the actual total operating costs incurred in providing the infrastructure services;
 - (b) the depreciation of capital assets for provision of the infrastructure services;
 - (c) the actual taxation in relation to the provision of the infrastructure services;
 - (d) the rate of return on investment in relation to the provision of the infrastructure services.
- (2) Details, for the period for which the ~~regulated charges~~ infrastructure charges for which approval or determination is sought will apply, of the forecast of:
 - (a) the total operating costs to be incurred in providing the infrastructure services;
 - (b) the depreciation of capital assets required for provision of the infrastructure services;
 - (c) the taxation in relation to the provision of the infrastructure services;
 - (d) the rate of return on investment in relation to the provision of the infrastructure services.

4 Demand or consumption

- (1) Details, in relation to the Part 7 operator's infrastructure services for each of the preceding three financial years, of the actual demand for, or consumption of, the infrastructure services.
- (2) Details, for the period for which the ~~regulated charges~~ **infrastructure charges** for which approval or determination is sought will apply, of the forecast of the demand for, or consumption of, the infrastructure services, including:
 - (a) the methodology used to determine that forecast demand or consumption; and
 - (b) the assumptions on which the forecast is based.

5 Distributions

- (1) Details, in relation to distributions that the Part 7 operator has made to ~~related~~ customers in each of the preceding three financial years, including:
 - (a) the amount of the distribution pool and the source of the reserve or surplus from which the distribution was drawn;
 - (b) for each class of ~~related~~ customer, the methodology used to determine a ~~related~~ customer's share of the distribution pool;
 - (c) the timing of the distribution;
 - (d) details of how the distribution was made to ~~related~~ customers;
 - (e) any terms, conditions or obligations associated with the distribution.
- (2) Details, in relation to forecast distributions to be made by the Part 7 operator to ~~related~~ customers during the period for which approval or determination is sought, including:
 - (a) the amount of the distribution pool and the source of the reserve or surplus from which the distribution is to be drawn;
 - (b) for each class of ~~related~~ customer, the methodology to be used to determine a ~~related~~ customer's share of the distribution pool;
 - (c) the timing of the distribution;
 - (d) details of how the distribution is to be made to ~~related~~ customers;
 - (e) any terms, conditions or obligations to be associated with the distribution.

Schedule 4 — Information to be included in an application under Part 9

~~(Rule 60) — (1) The name and address of the applicant.~~

- ~~———— (2) The title of the State Act under which the applicant is established or appointed.~~
- ~~———— (3) The title of the State Act under which the applied provisions are applied as a law of the State.~~
- ~~———— (4) The public purpose for which the applicant is established or appointed.~~
- ~~———— (5) A statement as to whether the criteria set out in Schedule 5 are satisfied.~~
- ~~———— (6) The arrangements for which the applicant seeks accreditation, being arrangements for approving or determining regulated charges of Part 6 operators and Part 7 operators under the applied provisions.~~

~~Schedule 5 — Criteria for accreditation of arrangements~~

~~(Rule 63)~~

- ~~(1) There must be a law of the State:
 - ~~(a) under which the applied provisions are a law of the State; and~~
 - ~~(b) that includes provision to the effect that the applied provisions operate in the State only during such period or periods as an accreditation of arrangements under Part 9 has effect.~~~~
- ~~(2) The functions of the State Agency must include the functions conferred on a Regulator under the applied provisions.~~
- ~~(3) The State Agency must not be subject to the direction or control of a Minister of the State in carrying out its functions under the applied provisions.~~
- ~~(4) The State Agency must not be, or have a relevant interest in, a Part 6 operator or a Part 7 operator.~~