



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Guidance for infrastructure operators on pass-through charges

Water Charge Rules 2010

March 2023

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601
© Commonwealth of Australia 2021

This work is copyright. In addition to any use permitted under the *Copyright Act 1968*, all material contained within this work is provided under a Creative Commons Attribution 3.0 Australia licence, with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration, diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright, but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 3.0 AU licence.

Requests and inquiries concerning reproduction and rights should be addressed to the Director, Corporate Communications, ACCC, GPO Box 3131, Canberra ACT 2601.

Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern. The ACCC has made every reasonable effort to provide current and accurate information, but does not guarantee the accuracy, currency or completeness of that information.

Parties who wish to re-publish or otherwise use the information in this publication must check this information for currency and accuracy prior to publication. This should be done prior to each publication edition, as ACCC guidance and relevant transitional legislation frequently change. Any queries parties have should be addressed to the Director, Corporate Communications, ACCC, GPO Box 3131, Canberra ACT 2601.

ACCC 03/23_23-13

www.accc.gov.au

Contents

Key terms	1
About this guidance	2
The rural water supply chain	2
Why pass-through charges are regulated	3
Infrastructure charges and planning and management charges	3
Infrastructure charges	3
Planning and management charges	3
Pass-through charges are divided into 2 categories	3
Network operation charges	4
Ancillary charges	5
Multiple water access entitlements	7
Three month period to adjust	7
Discounts	7

Key terms

bulk water service: one or more of the following:

- a service that is provided for the storage of water that is primarily stored on-river
- a service that is provided for the delivery of water that is primarily delivered on-river.

bulk water charge: includes a charge payable for either or both the storage of water for, or the delivery of water to, infrastructure operators.

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

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

- storage of water
- delivery of water
- drainage of water

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

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

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

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

schedule of charges: a document that sets out an infrastructure operator's infrastructure charges and planning and management charges in accordance with the requirements set out in the Water Charge Rules 2010.

water access entitlement: Perpetual or ongoing entitlement, by or under a law of a State, to exclusive access to a share of the water resources of a water resource plan area. Also referred to as a water share (Victoria) water allocation (Queensland) water access license (NSW) or water access entitlement (SA).

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

water planning and management activities aim to:

- protect natural ecosystems impacted by consumptive water use
- plan and manage water resources and
- plan for future use of the water resources.

About this guidance

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

The WCR aim to enhance pricing transparency and set out the requirements for what must be included in a schedule of charges. The WCR are made under the *Water Act 2007* (Cth) (Water Act). The objectives of the Water Act include giving effect to the principles of user-pays, achieving pricing transparency in respect of water storage and delivery in irrigation systems and cost recovery for water planning and management.

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

- publish and distribute a schedules of charges
- list all infrastructure charges on their schedule of charges, including details, and
- list planning and management charges (WCR 11–15).

The rural water supply chain

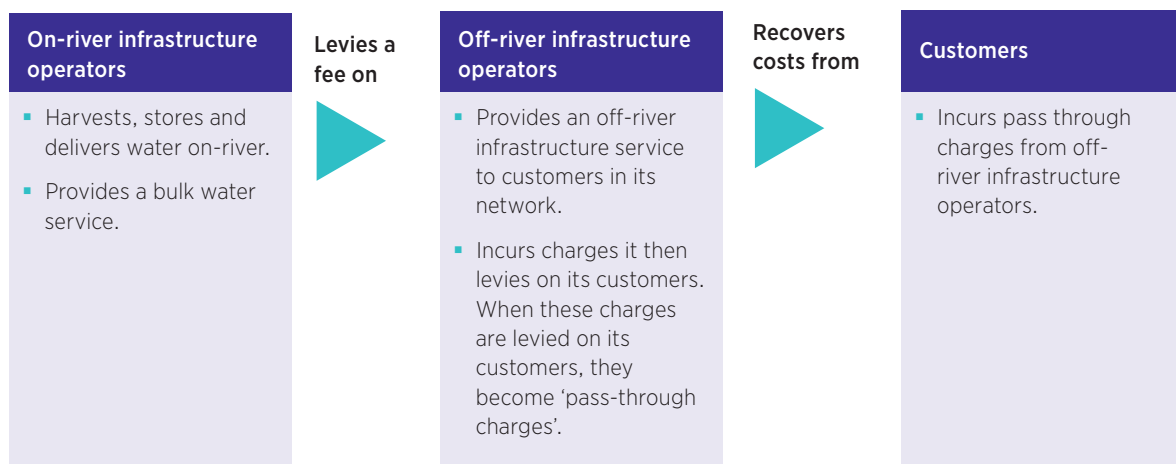
In the Murray–Darling Basin, water is harvested, stored and delivered on-river by on-river infrastructure operators (sometimes referred to as bulk water operators). These include SunWater in Queensland, Goulburn–Murray Water in Victoria, and WaterNSW. Where these operators provide a service for the storage or delivery of water and the water is stored or delivered primarily on-river, these operators provide a bulk water service.

On-river infrastructure operators deliver water to:

- private diverters who take water from a natural watercourse for their own use, and
- other infrastructure operators who extract water from a river for delivery through their own networks.

When one operator provides on-river infrastructure services (usually a bulk water service) to another infrastructure operator, that second operator (usually an off-river infrastructure operator)¹ is likely to incur infrastructure charges payable to the on-river infrastructure operator.

Under the WCR, these charges may be recovered by the off-river infrastructure operator by passing them through to its customers. These charges are commonly referred to as ‘pass-through’ charges.



The WCR require infrastructure operators to pass through these charges in a transparent manner.

¹ Off-river infrastructure operators provide an off-river water delivery and/or drainage service through a network of channels and/or pipes (which can be gravity fed or pressurised) to another person. Off-river infrastructure operators usually meet the definition of an irrigation infrastructure operator.

Why pass-through charges are regulated

Rule 9A of the WCR specifies how pass-through charges should be recovered from an infrastructure operators' customers and how they should be displayed on the infrastructure operator's schedule of charges.

This rule allows the customer ultimately paying the charges to understand the basis and cost of each charge. This promotes pricing transparency and helps customers to make informed decisions about trade, transformation and termination.

Infrastructure charges and planning and management charges

Infrastructure charges

Infrastructure charges include bulk water charges, which include charges payable for either or both the storage of water for, or the delivery of water to, infrastructure operators.

Pass-through charges are often bulk water charges.

Planning and management charges

A planning and management charge is set by or on behalf of an agency of the Commonwealth or an agency of a State and is a charge for water planning and water management activities. It does not include charges determined by a local government body. Water planning and management activities aim to:

- protect natural ecosystems impacted by consumptive water use
- manage the water entitlement systems
- plan for future use of the water resources.

Water planning and management charges are usually payable to an on-river operator in addition to bulk water charges.

Pass-through charges are divided into 2 categories

There are different types of charges that may be recovered by passing them through to customers. The WCR divide pass-through charges into 2 categories:

- network operation charges
- ancillary charges.

Network operation charges

A network operation charge is an infrastructure charge, or a planning and management charge levied on an infrastructure operator on the basis of:

- water access rights held by the operator specifically for the purpose of meeting distribution (conveyance) losses, or
- infrastructure used by the operator to extract water from a watercourse or discharge water to a watercourse in the course of providing a service to the operator's customers.²

Passing through network operation charges

An infrastructure operator may recover a network operation charge from its customer by means of:

- one or more separate charges, **or**
- as component of general charges levied on a customer.

If the infrastructure operator chooses to levy separate charges, these must not recover more than the total amount of the network operation charges (levied on the operator).

Case study: Deakin Irrigation recovering network operation charges

Deakin Irrigation (Deakin) holds a WaterNSW water access right specifically to meet its distribution losses. WaterNSW levied the charge on Deakin at a rate of \$1.50 per water entitlement.

Deakin is not required to recover the WaterNSW charge from its customers. However, if it chooses to do so it could be done in the following ways.

- ✓ Deakin can correctly recover these charges as a separate charge on its schedule of charges:

Charge name	Amount
<i>Deakin Irrigation pass-through charge: all water entitlement classes</i>	\$1.50 per water entitlement
Recovery of WaterNSW conveyance license charge	

- ✗ However, if Deakin chose to recover these charges as a separate charge, it must not recover more than the charges it pays to WaterNSW for the water access right it holds specifically to meet its distribution losses.

Charge name	Amount
<i>Deakin Irrigation pass-through charge: all water entitlement classes</i>	\$2.00 per water entitlement
Recovery of WaterNSW conveyance license charge	

- ✓ Deakin can alternatively recover these charges as component of general charges levied on customers.

Charge name	Amount
<i>Deakin annual general water delivery fee</i>	\$12.50 per delivery entitlement

² A network operation charge is usually levied by an on-river infrastructure operator on an off-river infrastructure operator.

Ancillary charges

Ancillary charges are allowable pass-through charges that are not network operations charges.

Ancillary charges are usually charges that can be directly attributed to a single customer. For example, if an off-river infrastructure operator incurs a charge from an on-river infrastructure operator which is levied per megalitre of:

- water access entitlement held by the off-river infrastructure operator to underpin irrigation right held by particular customer(s) of the off-river infrastructure operator, or
- water delivered by an on-river infrastructure operator (a usage charge) to the off-river infrastructure operator, and that water usage can be attributed to particular customer(s).

The requirements for passing through ancillary charges are stricter than the requirements for passing through network operation charges.

Passing through ancillary charges

If an infrastructure operator incurs ancillary charges, the operator can only recover the charges from its customers through one or more separate charges.³ Ancillary charges must not be incorporated into general charges levied on customers.

When an infrastructure operator recovers ancillary charges, it must:

- as far as practicable, equal the ancillary charges imposed on the infrastructure operator⁴,
- not levy the charges on the basis of the number of units of water delivery right or water drainage right held⁵
- as far as practicable, levy the charges on the same basis as the ancillary charges being recovered through it, or if that is not practicable, on a reasonably similar basis.⁶

If an ancillary charge is incurred as a direct result of actions by particular customer(s), the charge can, as far as practicable, only be levied on those customer(s).

3 WCR 9A (3).

4 WCR 9A (4).

5 WCR 9A (5).

6 WCR 9A (6) a - b.

Case study: Valley Infrastructure Limited recovering ancillary charges through one or more separate charges.

Valley Infrastructure Limited (Valley) is an off-river infrastructure operator in NSW that extracts water from the Murrumbidgee River. Valley incurs costs from WaterNSW, the on-river infrastructure operator, that it passes through to its customers.

- ✓ This is an example of how Valley could correctly list the ancillary charges levied on it by WaterNSW on its 2022–23 schedule of charges:

	High Security (Per megalitre of water access entitlement)	General security (Per megalitre of water access entitlement)	Usage (Per megalitre of water used)
WaterNSW charges	\$4.38	\$1.50	\$5.22
WAMC charges collected by WaterNSW	\$1.03	\$1.03	\$0.76
Rural Murray Darling Basin Authority charges	\$1.95	\$0.67	\$0.39
WAMC Murray-Darling Basin authority charges	\$0.68	\$0.68	\$0.29
Total charges collected by WaterNSW	\$8.04	\$3.88	\$6.66

- ✗ Valley must not recover these charges by grouping all the charges into a single government charge. They must levy the charges on the same basis as the ancillary charges.

	High Security (Per megalitre of water access entitlement)	General security (Per megalitre of water access entitlement)	Usage (Per megalitre of water used)
Government charges	\$8.04	\$3.88	\$6.66

- ✗ Valley must not combine any of the ancillary charges – including the Water Administration and Ministerial Corporation Charges (WAMC) – into a single charge.

	High Security (Per megalitre of water access entitlement)	General security (Per megalitre of water access entitlement)	Usage (Per megalitre of water used)
WaterNSW charges	\$4.38	\$1.50	\$5.22
WAMC charges	\$1.71	\$1.71	\$1.05
Rural Murray Darling Basin Authority charges	\$1.95	\$0.67	\$0.39
Total charges collected by WaterNSW (Per ML)	\$8.04	\$3.88	\$6.66

- ✗ Valley must not round up the charges because then they are recovering more than the total amount of the ancillary charges. They must recover no more than the total amount of the ancillary charges (where practical).

Multiple water access entitlements

Infrastructure operators hold water access entitlements that provides them with certain rights to take water under State law.⁷ Some infrastructure operators will hold multiple water access entitlements for different purposes. For example, an off-river infrastructure operator could hold one water access entitlement to underpin the irrigation rights held by its customers and a different water access entitlement specifically for meeting its conveyance losses.

In this example, the infrastructure operator must not incorporate charges for these water access entitlements into a single charge if any of those charges is an ancillary charge. The ancillary charge should be levied separately.

Three month period to adjust

There may be a change in circumstances meaning that separate network operation or ancillary charges, set out in a current schedule, are no longer correct.

For example, an ancillary charge incurred by an off-river infrastructure operator could increase. In these circumstances, the off-river infrastructure operator might choose to:

- update its schedule of charges immediately, or
- continue to levy the charge specified in its current schedule for no more than 3 months after the day the change in circumstances occurred.⁸ It could use these 3 months to, for example, seek approval from its Board to change the charges it passes through to its customers, and then update its schedule of charges to reflect the new charges.

In these circumstances, after adopting the new schedule of charges, the off-river infrastructure operator must give a copy of the schedule of charges, or a notice setting out details of the changes, to each customer with their next invoice, and publish the schedule of charges on a publicly accessible part of its website (if it has one) as soon as practicable.⁹

Discounts

Some infrastructure operators might receive rebates or discounts from a government authority. For example, in NSW the irrigation corporation districts (ICD) rebate is paid annually to certain infrastructure operators located in the Lachlan, Murray and Murrumbidgee valleys. It reflects WaterNSW's 'avoided costs' of not directly servicing a larger number of smaller customers.

Discounts such as the ICD rebate might affect how an infrastructure operator recovers pass-through charges from its customers. Infrastructure operators' schedules of charges must include a statement on their schedule of charges setting out how they have determined or calculated their pass-through charges.¹⁰ It must also include details of any general discount or surcharge, including the circumstances under which the discount or surcharge applies for each infrastructure charge or planning and management charge.¹¹

7 Perpetual or ongoing entitlement, by or under a law of a state, to exclusive access to a share of the water resources of a water resource plan area. Also called water share (Victoria) water allocation (Queensland) water access license (NSW) or water access entitlement (SA).

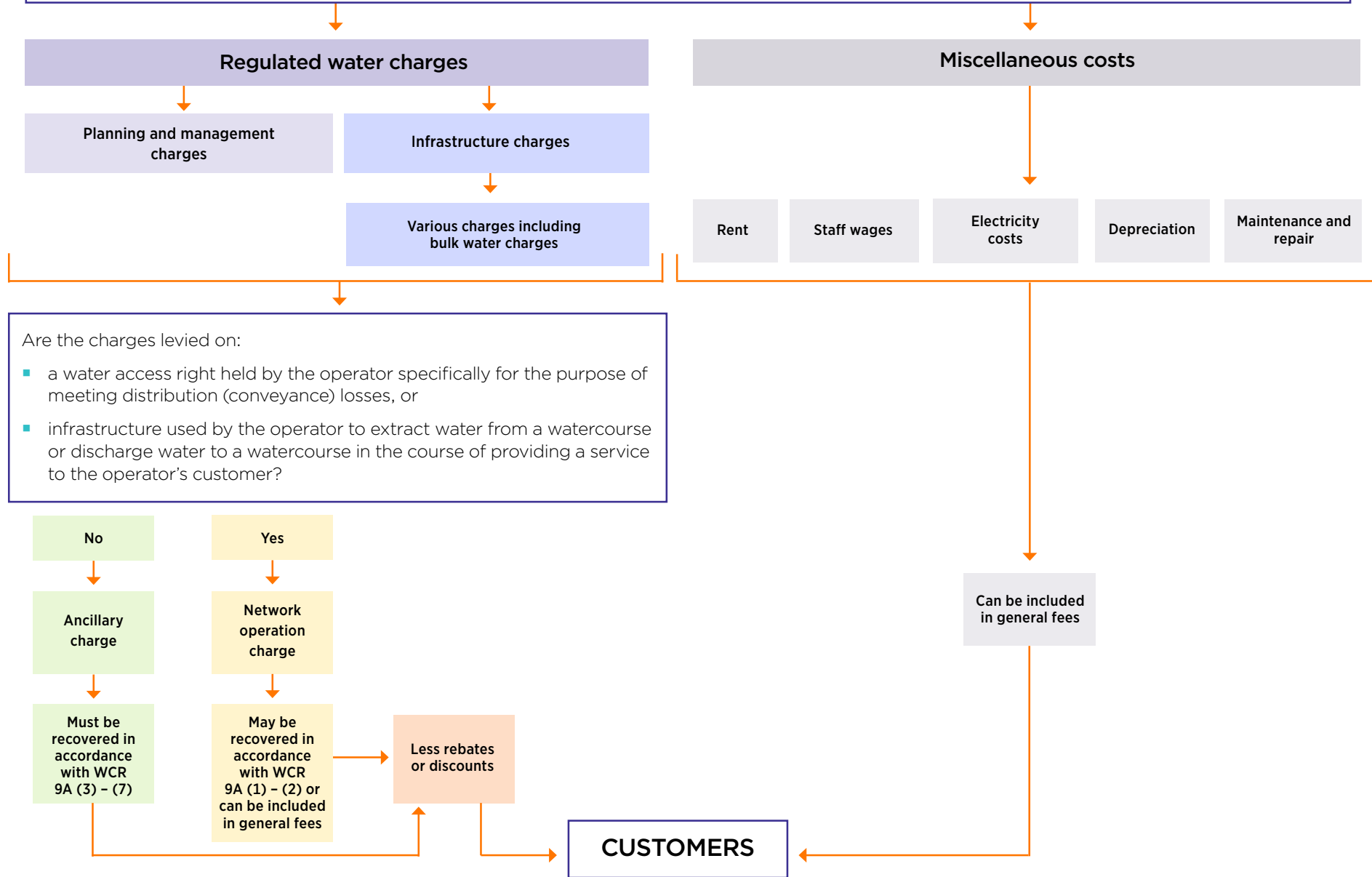
8 WCR 9A (8).

9 WCR r 15 (5) (a) – (b).

10 WCR r 13 4 (b) (iv).

11 WCR r 13 1 (d).

HOW OFF-RIVER INFRASTRUCTURE OPERATORS PASS THROUGH COSTS TO CUSTOMERS



Note: This diagram is a guide only and is not intended to include all the costs incurred by off-river infrastructure operators.



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

