



Water Charge Amendment Rules 2017

Made under the *Water Act 2007*

I, Barnaby Joyce, Minister for Agriculture and Water Resources, having regard to advice given by the Australian Competition and Consumer Commission, make the following Rules under section 92 of the *Water Act 2007*.

Dated

**Version for Minister
16 Sept 2016**

Barnaby Joyce [DRAFT ONLY—NOT FOR SIGNATURE]

Minister for Agriculture and Water Resources

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Part 1 Preliminary

1 Name of Rules

These Rules are the *Water Charge Amendment Rules 2017*.

2 Commencement

These Rules commence on [date to be set]

3 Authority

These Rules are made under section 92 of the *Water Act 2007*.

4 Schedule 1—amendments of the *Water Charge (Infrastructure) Rules 2010*

The *Water Charge (Infrastructure) Rules 2010* are amended as set out in Schedule 1.

5 Repeal

The following instruments are repealed:

- (a) *Water Charge (Planning and Management Information) Rules 2010*;
- (b) *Water Charge (Termination Fees) Rules 2009*.

Schedule 1—Amendments to the *Water Charge (Infrastructure) Rules 2010*

Part 1—Substantive changes

[1] Rule 1

Omit “(*Infrastructure*)”.

[2] Rule 2

Repeal the rule.

[3] Subrule 3(1)

Repeal the following definitions:

- (a) *accredited agency*;
- (b) *accredited arrangements*;
- (c) *application period*;
- (d) *applied provisions*;
- (e) *civil penalty*;
- (f) *initial period*;
- (g) *managed water resources*;
- (h) *member owned operator*;
- (i) *network service plan*;
- (j) *Part 5 operator*;
- (k) *Regulator*;
- (l) *regulated charge*;
- (m) *related customer*;
- (n) *State water resources*;
- (o) *surcharge*;
- (p) *the Act*;
- (q) *transitional period*.

[4] Subrule 3(1), definition of *business day*

Repeal the definition, substitute:

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.

[5] Subrule 3(1), definition of *levy*

Repeal the definition, substitute:

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

[6] Subrule 3(1), definition of *regulatory asset base*

Repeal the definition, substitute:

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

[7] Subrule 3(1), definition of *regulatory period*

Repeal the definition, substitute:

regulatory period, for a Part 6 operator means the first regulatory period or a subsequent regulatory period, where:

- (a) the first regulatory period for the operator begins on the regulatory start date for the operator;
- (b) each subsequent regulatory period begins when the previous one ends; and
- (c) the length of each regulatory period is 3 years unless the ACCC has approved a greater length under rule 24.

Note: If the operator ceases to be a Part 6 operator, it continues to be treated as one for the remainder of its current regulatory period, but has no further regulatory periods—see rule 23D.

See the transition provision in rule 81 for the regulatory period for an infrastructure operator that was a Part 6 operator immediately before the transition date.

[8] Subrule 3(1), definition of *schedule of charges*

Repeal the definition, substitute:

schedule of charges means a schedule of charges adopted under subrule 11(1) or 12(1).

[9] Subrule 3(1)

Insert the following definitions in the appropriate alphabetical positions:

Act means the *Water Act 2007*.

additional termination fee—see subrule 71(4).

aggregate revenue requirement, in relation to infrastructure services provided by a Part 6 operator, means the sum of revenue from infrastructure charges and government contributions that was forecast for the regulatory period at the time that the ACCC made the initial approval or determination of the charges under rule 29.

general termination fee—see subrule 71(4).

information request—see subrule 74(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.

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

regulatory 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 an agency of a State under a law of the State 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 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 Divisions 2, 3 and 4 of Part 6 will apply to the operator. See also subrule 30(2).

- (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 (c) (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.

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.

termination fee—see subrule 71(1).

termination information statement—see subrule 74(5).

terminating customer means:

- (a) a customer who terminates or surrenders the whole or a part of a right of access by notice in writing given to the infrastructure operator; or
- (b) a customer whose right of access is terminated by the infrastructure operator:

- (i) by notice in writing given in accordance with the contract or arrangement applicable to that right; and
- (ii) on grounds that the customer is in breach of their obligations under the contract or arrangement.

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

transition date means [date to be set].

Note: This is the date on which a major set of amendments was made to these Rules by the *Water Charge Amendment Rules 2017*.

[10] Subrule 3(1)

Add at the end the following note at the margin:

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*.

[11] Subrules 3(2) to (6)

Repeal the subrules, substitute:

- (4) A reference in these Rules to a water access entitlement includes a reference to a perpetual or ongoing entitlement, by or under a law of a State, to a share of the Basin water resources as if the entitlement were a water access entitlement.
- (6) In these Rules, where an infrastructure operator is required to give a copy of a document, such as its schedule of charges, to its customers:
 - (a) the relevant document may be given to any customer in electronic form; and
 - (b) the document may be sent in different forms, or by different mediums, to different customers; and
 - (c) if the document is sent by post or an electronic medium, it is taken to be given on the day that it is posted or otherwise sent.

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.

[12] Rules 4 to 6

Repeal the rules, substitute:

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

To avoid doubt, a person who trades 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. “Trade” has the same meaning as subsections 1.07(2) and (3) of the *Basin Plan 2012* (see definition in rule 3).

[13] Part 2, heading

Repeal the heading, substitute:

Part 2 Conditions on infrastructure charges and planning and management charges and exemptions relating to certain contracts

[14] Rules 7 and 8

Repeal the rules, substitute:

7 Conditions applying to infrastructure charges and planning and management charges

Charges must be in accordance with, or exempt from appearing in, a schedule of charges

- (1) A person must not levy an infrastructure charge or a planning and management charge that is not either:
 - (a) specified, for the circumstances in which it is levied, in a schedule of charges that is in effect for the person at the relevant time; or
 - (b) covered by subrule 11(7).

Civil penalty: 200 penalty units.

Relevant time

- (2) For an infrastructure charge, the relevant time is the time when the infrastructure services that gave rise to the charge were provided.
- (3) For a planning and management charge, the relevant time is the time when the circumstances set out in the schedule of charges for incurring the charge are met.

Effect of retrospective provisions in a schedule of charges

- (4) Paragraph (1) (a) is taken to be satisfied if:
 - (a) the charge is specified in a schedule of charges that came into effect for the person later than the relevant time; and
 - (b) the charge is specified as applying at the relevant time.

Note: Retrospective application of charges may occur if subrule 11(3), 11(4) or 12(3) applies.

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

[15] Rule 9, heading

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

[16] Subrules 9(1) to (5)

Repeal the subrules, substitute.

- (1) If:
- (a) an infrastructure operator proposes to enter into a contract in writing for the provision of infrastructure services to a customer that specifies the infrastructure charges that will apply (whether directly or by specifying a formula by which they will be determined);
- 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 rule 11 that the operator include the charges in its schedule of charges.

- (3) 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.
- (4) Where:
- (a) the infrastructure operator proposes to enter into contracts in identical terms with more than one customer; and
 - (b) paragraph (1)(b) or (c) applies in relation to each customer;
- the applications may be combined in a single application.

Note: The combined application will need to specify each customer in relation to whom the exemption is applied for, and provide reasons for the belief referred to in paragraph (1)(b) or (c) in relation to each customer.

- (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 give the ACCC further information relating to the application within a period specified by the ACCC.

[17] Subrules 9(7) and(8)

Omit “30 day period” wherever occurring, substitute “period of 30 business days”.

[18] Subrules 9(9) and(10)

Repeal the subrules, substitute:

- (9) The ACCC must refuse to grant the exemption if it is not satisfied that disclosure of details of the infrastructure charges under the proposed contract would have a material financial loss for, or material detriment to, the infrastructure operator or the customer.
- (10) The ACCC must give notice in writing of its decision on an application under this rule to the customer and infrastructure operator and, if it refuses to grant the exemption, must include in the notice the reasons for its refusal.

[19] After subrule 9(13)

Insert:

- (13A) Despite subrule (13), if the ACCC grants an exemption under this rule in relation to an application made after the transition date, the infrastructure operator must, within 12 months after the exemption is granted include the following information in its schedule of charges:
- (a) a statement that the exemption has been granted under this rule;
 - (b) the name of the customer or customers;
 - (c) the time period of the contract or contracts;
 - (d) the infrastructure service to which the charge exempt from disclosure relates.

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

Repeal the definitions.

[21] After rule 9

Insert:

9A Infrastructure operator to pass through certain charges

Network operation charges

- (1) If an infrastructure operator incurs network operation charges, the operator may recover the charges from its customers by means of one or more separate charges or as a component of general charges levied on customers.
- (2) If an infrastructure operator levies separate charges under subrule (1), the separate charges must not recover in total more than the total amount of the network operation charges.

Civil penalty: 200 penalty units.

Ancillary charges

- (3) If an infrastructure operator incurs ancillary charges, the operator must recover the charges from its customers by means of one or more separate charges in accordance with this rule.

Civil penalty: 200 penalty units.

- (4) The charges levied under subrule (3) must, as far as practicable, recover the same total amount as the ancillary charges.
- (5) A charge levied under subrule (3) must not be levied on the basis of the number of units of water delivery right or water drainage right held.
- (6) A charge levied under subrule (3) must:
 - (a) as far as practicable—be levied on the same basis as the ancillary charges that are being recovered through it; and
 - (b) where that is not practicable—be levied on a basis that is reasonably similar to the basis on which the ancillary charges that are being recovered through it are levied.

Example: A volumetric charge incurred by an operator in relation to the water access entitlement held by the operator should be recovered through similar charges on its customers' irrigation rights.

- (7) Where the ancillary charge being recovered by a charge levied under subrule (3) is incurred as a direct result of the actions of a particular customer or customers, the charge under subrule (3) must, as far as practicable, be levied only on that customer or those customers.

3-month period for adjustment of charges

- (8) However, if:

- (a) any separate charges levied under subrule (1) or charges levied under subrule (3), as set out in the current schedule of charges, satisfy the requirements of this rule; and
- (b) there is a change in circumstances that would mean that the charges no longer satisfy those requirements;

the charges may continue to be levied in accordance with the current schedule of charges for a period of 3 months after the change in circumstances.

Example: The amounts of several ancillary charges incurred by an infrastructure operator increase due to another infrastructure operator adopting a new schedule of charges, which has the effect that the charges previously levied by the operator to recover ancillary charges no longer recover the same total amount of all ancillary charges.

(9) In this rule:

network operation charges means infrastructure charges and planning and management charges levied on an infrastructure operator (taking account of any discounts) on the basis of:

- (a) water access rights held or used by the operator specifically for the purpose of meeting distribution losses; or
- (b) 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 their customers

Example: Charges levied on off-take works used by the operator to extract water from or deliver water to a natural watercourse.

ancillary charges means any infrastructure charges or planning and management charges levied on an infrastructure operator (taking account of any discounts) that are not network operation charges.

[22] Parts 3, 4 and 5

Repeal the Parts, substitute:

Part 3 Non-discrimination requirements

10 Differences in charges and restrictions on the availability of infrastructure services must be reasonable

- (1) This section applies on and after [date to be set].
- (2) If an infrastructure operator levies or specifies charges, rates or discounts in relation to an infrastructure service that are different for different customers, or for customers in different circumstances, the differences in the charges, rates or discounts (*differences in charges*) must be reasonable.

Civil penalty: 200 penalty units.

- (3) If an infrastructure operator restricts the availability of an infrastructure service that it offers, the restriction must be reasonable.

Civil penalty: 200 penalty units.

Assessing whether differences and restrictions are reasonable

- (4) Factors to be taken into account in deciding whether the differences in charges or the restriction are reasonable include, but are not limited to, the following:
 - (a) the nature of the infrastructure that is required to provide the infrastructure service, including any capacity constraints that apply generally, in particular areas or at particular times;
Example:
A restriction that defines an upper limit to the total volume of water that will be delivered to customers, based on the maximum network capacity, is likely to be reasonable.
 - (b) the costs to the infrastructure operator of providing the infrastructure service, and the extent to which differences in charges reflect differences in the estimated costs of providing the service in different circumstances;
 - (c) the extent to which any differences in charges relating to the delivery or drainage of water are based on the ratio of the volume of water delivered or drained to the volume of the customer's right of access to the operator's water service infrastructure;
Example:
The difference between a 'standard' usage charge applied for delivery of water up to the volume of a customer's water delivery right, and a higher 'casual' usage charge applied to delivery of water above that volume, is likely to be reasonable.
 - (d) the payment of fees or charges of the type described in section 91 of the Act;
Example:
A restriction on the availability of an infrastructure service while a customer is in arrears for infrastructure charges previously levied is likely to be reasonable.
 - (e) the extent to which a difference in charges reflects a Community Service Obligation provided by a Basin State;
 - (f) for a difference in charges relating to a discount for an infrastructure service to customers affected by hardship such as a natural disaster (eg, flood, fire or drought):
 - (i) whether the discount is appropriate in relation to the kind of hardship; and
 - (ii) whether the discount is limited in time and scope to reflect the duration and scope of the hardship; and

- (iii) whether the infrastructure operator specifies reasonable circumstances for the discount, and the discount applies to all customers in those circumstances;
- (g) for an infrastructure operator whose infrastructure charges are approved or determined under Part 6, or are otherwise approved or determined by a State Agency—whether there is an established transition path to a full cost recovery or upper bound pricing charge level for particular customers or classes of customers;
- (h) the existence of any pre-existing contracts setting out a specific infrastructure charge, the terms on which such contracts can be amended and whether any amendments reduce unreasonable charge differences or limitation of infrastructure services;
- (i) whether it is reasonably necessary for a customer to hold a particular type of tradeable water right or separate location-related right, or obtain other infrastructure services, in order to receive an infrastructure service

Example:

A person must have water allocation available (under an irrigation right or as a water access right) in order to be able to have water delivered.

- (j) whether an operator provides water to a customer other than in relation to a volumetric irrigation right or a water access right held by the customer;
- (k) the extent to which a difference in charges is necessary to comply with rule 9A;
- (l) for a restriction—the extent to which it is necessary to comply with a requirement under a law of a State to limit the availability of a service.

Example:

Restrictions imposed because an infrastructure operator is required to limit delivery of water to customers who hold non-volumetric rights (eg non-volumetric stock and domestic rights) in order to give effect to state-mandated water restrictions during a period of drought.

Prudent discount

- (5) A prudent discount is taken to be reasonable.
- (6) For this rule, a ***prudent discount*** is a discount for an infrastructure service, offered by the infrastructure operator to a particular customer or class of customers, that can reasonably be expected to result in charges for the operator's other customers being lower than they would otherwise have been.

Example: A discount given because the operator reasonably believes that the customer or class of customers would not obtain infrastructure services at the standard rate, but would do so at the discounted rate and in this way contribute towards the operator's fixed costs.

No application in relation to charges or restrictions arrived at under the Competition and Consumer Act 2010

- (7) This rule does not apply in relation to charges, rates or discounts, or restrictions on the availability of infrastructure services, that are:
 - (a) negotiated, offered, arbitrated, or otherwise specified under an arrangement of any of the following kinds made under Part IIIA of the *Competition and Consumer Act 2010*:
 - (i) an access undertaking or access code;
 - (ii) a declared service;
 - (iii) an effective access regime;
 - (iv) a competitive tender process; or
 - (b) arrived at under a dispute resolution process undertaken consistently with such an arrangement.

Water for stock and domestic purposes

- (8) A restriction that limits the use of an infrastructure service to customers using water for stock and domestic purposes is taken to be reasonable.

10A Prohibition of certain infrastructure charges related to trade or termination

- (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 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) Subrule (1) does not prohibit an infrastructure operator from:
- (a) levying a termination fee on a customer consistently with Part 10 of these Rules; or
 - (b) levying an infrastructure charge that reflects the reasonable and efficient administrative costs of processing a termination; or
 - (c) 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
 - (d) 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
 - (e) demanding the payment of any outstanding infrastructure charge as a condition of the operator providing their consent or approval to a trade or a termination; or
 - (f) levying an infrastructure charge in relation to a trade when:
 - (i) the operator has provided an infrastructure service for the harvesting or storage of the water relating to the water access right being traded; or
 - (ii) the operator is required to provide a service for the storage or delivery of water to give effect to the trade; or
 - (iii) both the following apply:
 - (A) the operator is required to provide a service for the storage or delivery of water to the buyer after a trade occurs; and
 - (B) the operator is unable to levy a charge on the person receiving the service because the operator has no authority to levy a charge on that person (for example, because that person is located in a different jurisdiction to the infrastructure operator).

Part 4 Schedule of charges

11 Requirements for a schedule of charges—infrastructure operator

Note: In order for an infrastructure operator to levy a charge (other than an exempt charge or other charge listed in subrule (7)), the charge must be in a schedule of charges that is in effect for the infrastructure operator at the relevant time—see rule 7.

To come into effect, a schedule of charges must be adopted in accordance with this rule and include the information set out in rule 13. It must be published and distributed in accordance with rule 15. It remains in effect until a replacement schedule comes into effect.

- (1) An infrastructure operator must adopt a schedule that:
 - (a) sets out its infrastructure charges and planning and management charges in accordance with this rule and rule 13 (a *schedule of charges*); and
 - (b) sets the date on which the schedule of charges comes into effect for the operator, which must not be earlier than the date of adoption.

Note: The date is set under item (j) of the table in rule 13.

When individual charges may apply

- (2) The period during which a charge applies (the *application period* for the charge) is the period that the schedule of charges is in effect for the person who levies the charge, unless a different application period is specified in the schedule of charges. Subject to subrules (3) and (4), the application period must not begin earlier than the date on which the schedule of charges comes into effect.
- (3) If:
 - (a) an infrastructure charge or a planning and management charge in the schedule of charges is required to be determined or approved by another person who is a State Agency or the ACCC; and
 - (b) the determination or approval of the charges includes provisions relating to the dates when the charge applies:any specification of the application period for the charge under subrule (2) must be in accordance with those provisions of the determination or approval.
- (4) If the schedule of charges that is adopted differs from the schedule of charges that it replaces only in relation to charges that are:
 - (a) separate charges levied under subrule 9A(1); or
 - (b) charges levied under subrule 9A(3);

such a charge may be specified, under subrule (2), as applying not earlier than the date of application of the network operation charge or ancillary charge that caused the change in the charge.

Replacing one schedule with another

- (5) The schedule of charges ceases to be in effect for the infrastructure operator when another schedule of charges that has been adopted by the infrastructure operator comes into effect.

Schedule must comply with rule 13

- (6) Subject to subrules (7) and (8), the infrastructure operator contravenes this subrule if the schedule of charges does not include:
- (a) the information specified in items (a) to (i) of the table in rule 13 in relation to each charge; and
 - (b) the information specified in items (j) and (k) of the table.

Civil penalty: 200 penalty units

Charges for which information is not required

- (7) The schedule of charges need not include the following:
- (a) for a charge in relation to which an exemption has been granted under rule 9—details of the charge;
Note: Information relating to the exemption is required—see subrule 9(13A).
 - (b) for a discount on an infrastructure charge that is provided to an individual customer or customers for reasons of the customers' hardship (eg a natural disaster), or in recognition of a service disruption experienced by the customer (eg a temporary channel closure)—the amount of the discount or any other information relating to that discount;
 - (c) for an infrastructure charge levied by the infrastructure operator in accordance with rule 9A to recover the amount of any infrastructure charge or planning and management charge incurred (but not determined) by the operator in relation to a transaction undertaken on behalf of a customer, such as a trade application charge—details of the charge;
 - (d) the details of an infrastructure charge to be levied in circumstances such that:
 - (i) the nature of the service is known, but:
 - (A) the information required for paragraph (i) of item (c) in the table in rule 13 cannot reasonably be determined; and
 - (B) paragraph (ii) of the item does not apply; or
 - (ii) the nature of the service is not known sufficiently early for it to be practicable to include the charge in the schedule of charges.
- (8) However, if an infrastructure operator levies an infrastructure charge for an infrastructure service to which paragraph (7)(d) applies, the operator must adopt a new schedule of charges that includes the details of that charge within 12 months after the infrastructure charge is levied.

12 Requirements for a schedule of charges—other person

Note: In order for a person other than an infrastructure operator to levy a planning or management charge, the charge must be in a schedule of charges that is in effect for the person at the relevant time —see rule 7.

To come into effect, a schedule of charges must be adopted in accordance with this rule and include the information set out in rule 13. It must be published in accordance with rule 15. It remains in effect until a replacement schedule comes into effect.

- (1) A person, other than an infrastructure operator, who determines or levies planning and management charges, or on whose behalf the charges are collected, may adopt a schedule that:
- (a) sets out the planning and management charges that may be levied, in accordance with this rule and rule 13 (a *schedule of charges*); and

- (b) sets the date on which the schedule of charges comes into effect for the person who levies the charges, which must not be earlier than the date of adoption.

Note: The date is set under item (j) of the table in rule 13.

When individual charges may apply

- (2) The period during which an individual charge in a schedule of charges applies (the **application period** for the charge) is the period that the schedule of charges is in effect for the person who levies the charge, unless a different application period is specified in the schedule of charges. Subject to subrule (3), the application period must not begin earlier than the date on which the schedule of charges comes into effect.
- (3) If:
- (a) the person who determines the charges:
 - (i) is not the person who levies the charges; and
 - (ii) is a State Agency; and
 - (b) the determination of the charges includes provisions relating to the dates when the charges apply;

any specification of the application period for the charge under subrule (2) must be in accordance with those provisions of the determination.

Replacing one schedule with another

- (4) The schedule of charges ceases to be in effect for the person who levies the charges when another schedule of charges that has been adopted in accordance with this rule comes into effect for the person.

Schedule must comply with rule 13

- (5) The person who adopts the schedule of charges contravenes this subrule if the schedule of charges does not include:
- (a) the information specified in items (a) to (i) of the table in rule 13 in relation to each charge; and
 - (b) the information specified in items (j) and (k) of the table.

Civil penalty: 200 penalty units

Note: Section 12 of the Act 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.

13 Content of schedule of charges

A schedule of charges adopted under subrule 11(1) or 12(1) must include the information set out in the table below:

	Item	Information requirements
For each infrastructure charge or	(a)	The name of the charge and, if its application period is not the same as the period that the schedule of charges is in effect for the person who levies the charge, its application period.

planning and management charge		Note: For application periods, see subrules 11(2) and 12(2).
	(b)	The circumstances in which the charge is payable, including, if applicable, the following: <ul style="list-style-type: none"> (i) the water resource, catchment or district, and the water resource plan or other plan, to which the charge relates; (ii) the class of person required to pay the charge; (iii) the class of water access right, irrigation right or water delivery right to which the charge relates.
	(c)	Either: <ul style="list-style-type: none"> (i) The amount of the charge or details of rates and all other details necessary to determine that amount; or (ii) for a charge that reflects the costs of physically connecting, or physically disconnecting a customer from the operator's water service infrastructure—a statement that the charge will be determined at the time of the connection or disconnection.
	(d)	Details of any general discount or surcharge, including the circumstances under which the discount or surcharge applies (eg a discount for early payment).
	(e)	When the charge is payable, and if payable by instalments, the number of instalments and intervals at which the charge is payable.
	(f)	If applicable, the following: <ul style="list-style-type: none"> (i) who determined the charge (if it was not determined by the operator or person adopting the schedule of charges); (ii) who the charge is payable to (if it is not payable to the operator or person adopting the schedule of charges); (iii) the name of the agency or person for whom the charge is being collected.
For each infrastructure charge	(g)	A description of the infrastructure service to which the charge relates.
	(h)	If applicable – the information required by subrule 9(13A).
For each planning and management charge	(i)	The legislative, contractual or other authority for the charge.

General information	(j)	The date on which the schedule of charges comes into effect (or will be taken to have come into effect) and a statement that this is the date from which each individual charge applies unless a different date of application is specified for it.
	(k)	A statement from the entity adopting the schedule of charges setting out the following: <ul style="list-style-type: none"> (i) the process used to determine the infrastructure charges or planning and management charges and how a person may participate in that process; (ii) how a person can make an enquiry or resolve a dispute with the entity in relation to a regulated water charge; (iii) if applicable—any generally available discounts, surcharges or hardship policies; (iv) any other information that is reasonably necessary or desirable to explain the charges to the customer; (v) if applicable—how the infrastructure operator has determined or calculated the infrastructure charges it levies to recover charges in accordance with rule 9A.

15 Distributing and publishing schedule of charges

Note: Documents may be given in electronic form and documents posted or sent electronically are taken to be given on the day they are posted or sent—see subrule 3(6).

Infrastructure operator—provision of schedule of charges to new customer or on request

- (1) If a person becomes a customer of an infrastructure operator, the operator must give the person, within 10 business days, a copy of:
- (a) its current schedule of charges; and
 - (b) if a schedule of charges that is not yet in effect has been given to existing customers in accordance with paragraph (3)(a) or (4)(a)—the new schedule of charges.

Civil penalty: 200 penalty units

- (2) If a person gives an infrastructure operator a request in writing for details of its current infrastructure charges for infrastructure services provided to its customers, the operator must give the person, within 10 business days after receiving the request, a copy of:
- (a) its current schedule of charges; or
 - (b) if a new schedule of charges has been adopted but is not yet in effect—the new schedule of charges.

Civil penalty: 200 penalty units

Infrastructure operator—adoption of new schedule of charges

- (3) If an infrastructure operator that satisfies subparagraph 23(b)(i) or (ii) (whether or not its infrastructure charges are approved or determined by a single State Agency under a law of the State) adopts a schedule of charges under subrule 11(1):
- (a) the operator must give a copy of the schedule of charges to its customers on or before the day 25 business days before the schedule of charges comes into effect; and
 - (b) 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 comes into effect.

Civil penalty: 200 penalty units

- (4) If an infrastructure operator of any other kind adopts a schedule of charges under subrule 11(1):
- (a) the operator must give a copy of the schedule of charges to its customers on or before the day 10 business days before the schedule of charges comes into effect; and
 - (b) 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 comes into effect.

Civil penalty: 200 penalty units

Infrastructure operator—adoption of new schedule of charges updating rule 9A charges only

- (5) For subrules (3) and (4), if the schedule of charges is one to which subrule 11(4) applies, the infrastructure operator:
- (a) is taken to comply with paragraphs (3)(a) and (4)(a) if it gives a copy of the schedule of charges, or a notice setting out the details of the changes, to each customer with the next invoice it gives to the customer after adopting the schedule of charges; and
 - (b) is taken to comply with paragraphs (3)(b) and (4)(b) if it publishes the schedule of charges on a publicly accessible part of the operator’s internet site as soon as practicable after adopting the schedule of charges.

Person other than an infrastructure operator—adoption of schedule under rule 12

- (6) A person who adopts a schedule of charges under subrule 12(1) must, 25 or more business days before the schedule of charges comes into effect for the person who levies the charges:
- (a) cause the schedule of charges to be published on its own internet site, or the site of:
 - (i) the person who determined the charge; or
 - (ii) the agency or person to whom the charge is payable; or
 - (iii) the agency or person on whose behalf the charges are collected; and
 - (b) ensure that the schedule of charges is made available at its principal place of business, or 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; or
 - (iii) the agency or person on whose behalf the charges are collected.

Civil penalty: 200 penalty units

Note: Section 12 of the Act 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.

Where publication or distribution delayed by approval or determination requirements

- (7) If:
- (a) a schedule of charges adopted by a person includes charges that are required to be approved or determined by another person who is a State Agency or the ACCC; and
 - (b) the timing of the determination or approval of the charges prevents the person who adopts the schedule from performing the actions required by subrule (3), (4) or (6) within the specified times;

the person who adopts the schedule is taken to comply with the relevant subrule if it performs the required actions as soon as practicable after the charges are determined or approved.

Becoming a customer

- (8) For this rule, a person becomes a **customer** of an infrastructure operator on the day that the operator first receives notice, or otherwise becomes aware, that the person is a customer.

[23] Rule 23

Repeal the rule, substitute:

23 Part 6 operators

An infrastructure operator is a **Part 6 operator** if:

- (a) the operator is not required to have all its infrastructure charges approved or determined by a single State Agency under a law of the State in a way that is consistent with paragraph 29(2)(b); and
- (b) the operator levies an infrastructure charge in relation to either:
 - (i) a bulk water service in respect of water access rights; or
 - (ii) infrastructure services in relation to the storage or delivery of water that is necessary to give effect to an arrangement for the sharing of water between more than one Basin State.

Note: Subparagraph (b)(i) would not normally apply to an off-river infrastructure operator.

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 operation of Divisions 2, 3 and 4:
 - (a) following an application made by an infrastructure operator; or
 - (b) if it has given the infrastructure operator a notice under rule 23B or paragraph 81(12)(b) 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 as to 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 bulk water services are provided by the operator, if applicable;
 - (b) the total volume of water subject to water sharing arrangements in relation to which the operator provides infrastructure services, if applicable;
 - (c) 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) whether the relevant law of the State is being transitioned so that the operator's infrastructure charges will at a future date be approved or determined by a single State Agency in a way that is consistent with subrule 29(2)(b);
 - Note: Once that is the case, paragraph 23(a) will cease to apply to the operator, and it will no longer be a Part 6 operator.
 - (g) the proportion of the infrastructure operator's revenue to be recovered from infrastructure charges;
 - (h) 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 give the ACCC 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 operation of Divisions 2, 3 and 4 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 Divisions 2, 3 and 4 should apply to the operator; 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 taken 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.

23D Ceasing to be a Part 6 operator

- (1) If an infrastructure operator that is a Part 6 operator:
 - (a) ceases to be a Part 6 operator; or
 - (b) becomes aware of a matter that may result in the operator ceasing to be a Part 6 operator on a specified date;
 the operator must notify the ACCC of that fact, or that matter, as soon as practicable.
- (2) If a Part 6 operator ceases to be a Part 6 operator during a regulatory period, these Rules apply to it as if it continued to be a Part 6 operator for the remainder of the regulatory period.

Note 1: Rule 25 will not have any application to an operator that will not be a Part 6 operator after its current regulatory period.

Note 2: See also rule 81 for an operator that was a Part 6 operator immediately before the transition date.

[24] Rules 24 and 25

Repeal the rules, substitute:

24 Changing the length of a regulatory period

- (1) The ACCC may set a new length, not less than 3 years and not more than 5 years, for:
 - (a) a specified future regulatory period of a Part 6 operator (by changing the end date of the specified future regulatory period); or

- (b) all the regulatory periods following a specified future regulatory period of a Part 6 operator;

if:

- (c) it has consulted the operator or received a request from the operator under subrule (2); and
- (d) it is satisfied that the change is appropriate in the circumstances.

(2) If:

- (a) a Part 6 operator 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; and
- (b) the charges are determined in respect of periods (the *agency periods*) that are not aligned with the regulatory periods of the operator; and
- (c) the operator requests the ACCC to approve changes to its future regulatory periods in accordance with subrule (1) in order to align the future regulatory periods with the agency periods;

the ACCC must consider whether the changes requested are appropriate in the circumstances.

- (3) Subrule (1) does not apply in relation to a regulatory period for which a draft approval or determination has been published under rule 28.
- (4) If a period length approved under this rule is not 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 or determination of charges—first regulatory period

- (1) This rule 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 during the first regulatory period.

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 each year of the first regulatory period.
- (3) Unless the ACCC sets 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 date.
- (4) The application must include the information referred to in Schedule 1.

25 Application for approval or determination of charges—subsequent regulatory periods

- (1) A Part 6 operator that proposes to levy infrastructure charges in a regulatory period after the first regulatory period must apply in writing to the ACCC for approval or determination of its infrastructure charges under this Division 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.

[25] Paragraph 29(2)(b)

Repeal the paragraph, substitute:

- (b) that the forecast revenue from the charges is reasonably likely to meet, but not materially exceed, the prudent and efficient costs of providing the infrastructure services, less:
 - (i) any government contributions related to the provision of those infrastructure services; and
 - (ii) any amount reflecting a direction by a government forgoing a return on its share of capital in an infrastructure operator; and
 - (iii) any revenue (other than from infrastructure charges) derived from the water service infrastructure used to provide infrastructure services; and
- (c) that the infrastructure charges contained in the application are otherwise consistent with the requirements in other provisions of these Rules.

Note: There are relevant provisions in other Parts as well as in Part 6.

[26] Subrule 29(3)

Omit “paragraph (2)(b)”, substitute “paragraphs (2)(b) and (c)”.

[27] After subrule 29(3)

Insert the following:

- (3A) If the ACCC is satisfied that:
 - (a) there is sufficient uncertainty about the cost, timing, necessity, likelihood or feasibility of a capital expenditure project proposed by the Part 6 operator in its application; and
 - (b) the inclusion of the proposed capital expenditure project would have a material impact on the infrastructure charges to be approved or determined;

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 services.

Note: The ACCC may otherwise assess the costs relating to proposed capital expenditure as not being prudent and efficient for the purposes of paragraph 29(2)(b). See rules 31(1A) and Division 4.

[28] Rule 30

Repeal the rule, substitute:

30 Period within which ACCC must approve or determine infrastructure charges

- (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 give written notice of its decision in accordance with rule 31.
- (2) If the ACCC:
 - (a) is unable to make a decision within the period mentioned in subrule (1) or, if that period is extended, the 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 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.
- (3) As soon as practicable after the ACCC gives a notice under subrule (2), the ACCC must publish the notice on the ACCC's internet site.

[29] After subrule 31(1)

Insert:

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

[30] Subrules 33(1) and (2)

Repeal the subrules.

[31] Subrule 33(4)

Repeal the subrule, substitute:

- (4) In this rule, *specified period* means the period ending on the later of:
 - (a) the day 6 months after the end of the preceding regulatory period; and
 - (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 day when that period as adjusted ends.

[32] Subrule 34(1)

Omit “as reviewed”, substitute “to be reviewed”

[33] Paragraph 34(2)(a)

Repeal the paragraph, substitute:

- (a) the operator’s forecasts 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

[34] After subrule 34(2)

Insert the following:

- (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] Subrule 37(1)

Repeal the subrule, substitute:

- (1) Subject to subrule (2), the ACCC must, within the period ending on the day 30 business days before the start of the year to which the application relates, and after considering any submissions received before the date specified in the notice under paragraph 36(b), approve or determine the infrastructure charges in respect of the year to which the application relates.

[36] Paragraphs 37(2)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the changes in the demand or consumption forecasts set out in the application under rule 34 from those used in the approval or determination of infrastructure charges under Division 2; and
- (b) price stability; and
- (c) the consistency of the infrastructure charges with the requirements in other provisions of these Rules.

[37] Subrule 37(4)

Repeal the subrule.

[38] Paragraph 37(5)(a)

Repeal the paragraph, substitute:

- (a) is unable to make a decision within the period mentioned in subrule (1) or, if that period is extended, the period as extended; and

[39] Subrule 39(1)

Repeal the subrule.

[40] Paragraph 39(3)(b)

Omit “of 3 months”.

[41] Rule 40, heading

Omit “Regulator may vary”, substitute “Operator may apply for variation of”.

[42] Paragraph 40(1)(b)

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

[43] Subparagraph 40(2)(c)(ii)

Repeal the subparagraph, substitute

(ii) whether that amount is likely to exceed:

- (A) for a taxation event or a regulatory event—1% of the aggregate revenue requirement; and
- (B) otherwise—3% of the aggregate revenue requirement; and

[44] Subparagraph 40(2)(d)

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

[45] After subrule 40(2)

Insert the following:

- (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 or 3 (or, if previously varied under this Division, as so varied) if the infrastructure operator is of the view that the conditions specified under subrule 31(1A) in relation to a contingent project have been satisfied.
- (4) An application made under subrule (3) must set out:
 - (a) the reasons for the infrastructure operator’s view 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 contingent project; and
 - (c) the proportion of the costs of the contingent 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.

[46] Subrule 43(1)

Omit “under Division 2 or 3”.

[47] Subrule 43(5)

Repeal the subrule, substitute;

- (5) The ACCC must not, in relation to an application made under subrule 40(1), vary an approval or determination of infrastructure charges under this Division unless the 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:
 - (A) for a taxation event or a regulatory event—1% of the aggregate revenue requirement;
 - (B) otherwise—3% of the aggregate revenue requirement; and
 - (ii) 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 Part 6 operator has demonstrated that it is not able to reduce its expenditure to avoid the consequences referred to in paragraph (b) without materially and adversely affecting the 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
 - (d) as to the matters set out in paragraphs 29(2)(b) and (c).
- (6) The ACCC must not, in relation to an application made under subrule 40(3), vary an approval or determination of infrastructure charges under this Division unless the ACCC is satisfied:
- (a) that the conditions specified under subrule 31(1A) have been satisfied; and
 - (b) that the contingent project is prudent and efficient; and
 - (c) as to the matters set out in paragraphs 29(2)(b) and (c).
- (7) The ACCC must, if varying an approval or determination of infrastructure charges under this rule, decide:
- (a) each infrastructure charge to be varied and the amount of the variation; and
 - (b) the date from which each varied charge will apply, which must not be earlier than the next year of the regulatory period.

[48] After rule 43

Insert the following:

43A Variation of approval or 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, in relation to an application made under subrule 40(3), vary an approval or determination of infrastructure charges unless the ACCC is satisfied as to the matters set out in paragraphs 29(2)(b) and (c).
- (5) The ACCC must, if varying an approval or determination of infrastructure charges under this rule, decide:
 - (a) each infrastructure charge to be varied and the amount of the variation; and
 - (b) the date from which each varied charge will apply, which must not be earlier than the next year of the regulatory period.

[49] Rule 45

Repeal the rule, substitute:

45 Part 7 operators

- (1) An infrastructure operator becomes a **Part 7 operator** if it makes a distribution, other than a standard distribution, to any customer.
- (2) An infrastructure operator ceases to be a Part 7 operator upon the expiration of 3 years after:
 - (a) the day the operator last made a distribution, other than a standard distribution, to customers; or
 - (b) the regulatory start date for the operator;whichever occurs later.
- (3) For the purposes of this rule, an infrastructure operator is to be taken to have made a distribution to a customer if it has:
 - (a) declared a dividend for a customer; or
 - (b) distributed profits, or any part of its profits, whether in the form of dividends or otherwise to a customer; or

- (c) distributed its reserves, or any part of its reserves to a customer; or
 - (d) issued bonus shares to a customer; or
 - (e) traded or allocated water to a customer 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 to fulfil its contractual obligations to its customers arising from their irrigation rights; 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) However, an infrastructure operator who makes a payment to customer as an incentive to participate in network rationalisation undertaken by the operator is not taken to have made a distribution to the customer.
- (5) For the purposes of this rule, a **standard distribution** by an infrastructure operator is a distribution that:
- (a) is made or offered to all customers of the operator;
 - (i) in proportion to each customer's right of access; or
 - (ii) in proportion to each customer's contribution to the total revenue from all customers from infrastructure charges levied per unit of water delivery right held; or
 - (b) reflects the repayment of contributions made by customers towards the replacement or upgrade cost of infrastructure in circumstances where:
 - (i) the contribution is no longer required, or was greater than required; and
 - (ii) the repayment is made in proportion to each customer's contribution; or
 - (c) is made in the form of a reasonable honorarium; or
 - (d) is made in the form of a trade or allocation of water that was offered to all customers on the same terms (whether or not the offer was in return for consideration); or
 - (e) is made in relation to a specific part of the area serviced by the operator in which water savings have been achieved by the operator, where the distribution is made or offered to all customers in that part, either:
 - (i) in proportion to each customer's right of access, or
 - (ii) in proportion to each customer's contribution to the total revenue from all customers in that part from infrastructure charges levied per unit of water delivery right held; or
 - (f) 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 a law of the State.
- (6) For the purposes of this rule, any value that has been withheld by an infrastructure operator from a customer to pay off arrears owed by the customer, but would otherwise have been given to the customer in accordance with subrule (3), is taken to have been made as a distribution, or part of a distribution, as appropriate.

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 operation of Division 2:
 - (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 as to the matters specified in subrule (4).
- (4) The ACCC may grant an exemption to an infrastructure operator from the operation of Division 2 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 distributions made by the operator to its customers;
 - (c) any terms, conditions or obligations associated with distributions made by the operator to its customers;
 - (d) any preferences expressed by the operator's customers;
 - (e) 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 give the ACCC 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 operation of Division 2 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 Division 2 should apply to the operator; and
 - (b) set that date (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.

[50] Rule 46

Repeal the rule, substitute:

46 Application by Part 7 operator to ACCC

- (1) This rule 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.

[51] Subrule 49(4)

Repeal the subrule, substitute:

- (4) In approving or determining infrastructure charges set out in an application under this Part, the ACCC may:

- (a) have regard to whether or not the infrastructure charges would contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act; and
- (b) have regard to distributions made or proposed to be made by the operator, and
- (c) specify terms and conditions in relation to particular charges.

[52] Subrule 50(2)

Repeal the subrule.

[53] Part 8—heading

Repeal the heading, substitute:

Part 8 Disclosure of information

[54] Division 1 of Part 8—heading

Repeal the heading.

[55] Rule 52

Repeal the rule, substitute:

52 ACCC to publish submissions

Where the ACCC receives a submission in response to an invitation under Part 6 or 7, the ACCC must, subject to this Division, publish the submission on the ACCC's internet site as soon as practicable.

[56] Subrule 53(3)

Repeal the subrule, substitute:

- (3) In this rule, *application* includes further information given by the applicant at the request of the ACCC under rule 23C, 26, 35, 41, 45C or 47.

[57] Subrule 54(5)

Repeal the subrule, substitute:

- (5) In this rule, *application* includes further information given by the applicant at the request of the ACCC under rule 23C, 26, 35, 41, 45C or 47.

[58] Rule 55

Repeal the rule, substitute:

55 Exempt contracts

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

- (a) in relation to an application made before the transition 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 transition date—the information specified in subrule 9(13A).

[59] Division 2 of Part 8

Repeal the Division.

[60] Part 9

Repeal the Part, substitute:

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 termination 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 termination fee (if any) payable under rule 71 to the infrastructure operator:

the operator must not levy, and the person is not liable to pay, any fee, charge or other payment in relation to the right, or the part of the 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) A fee levied in accordance with this rule is a *termination fee*.
- (2) An infrastructure operator may levy a termination fee if a person who holds a right of access terminates or surrenders the whole or any part of that right by notice in writing given to the operator, and either:
- (a) before the person gave the notice, the operator had given the person a termination information statement in relation to the right, or the part of the right being terminated or surrendered within 6 months before:
 - (i) if the notice specified a future date for the termination or surrender to take effect—the specified date; and
 - (ii) otherwise—the date of the notice; or
 - (b) the following apply:
 - (i) the notice specified a date for the termination or surrender to take effect that was more than 6 months after the date of the notice; and

- (ii) on receiving the notice, the operator gave the person a termination information statement that included a statement in accordance with paragraph 74(5)(h); and
 - (iii) the person has confirmed that they wish to proceed with the termination or surrender; or
 - (c) the following apply:
 - (i) neither paragraph (a) nor paragraph (b) applies; and
 - (ii) on receiving the notice, the operator gave the person a termination information statement; and
 - (iii) the person has confirmed that they wish to proceed with the termination or surrender.
- (3) An infrastructure operator may also levy a termination fee if 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).
- (4) A termination fee must consist of one or both of:
- (a) a **general termination fee**; and
 - (b) an **additional termination fee**.

Maximum general termination fee

- (5) If paragraph (2)(a) or (c) applies, the general termination fee must not exceed the general termination fee set out in the termination information statement.
- (6) If paragraph (2)(b) applies, the general termination fee must not exceed the maximum amount set by rule 72, calculated using infrastructure charges specified in the schedule of charges in effect at the time of the termination or surrender.
- (7) If subrule (3) applies, the general termination fee must not exceed the maximum amount set by rule 72.

Maximum additional termination fee

- (8) The additional termination fee:
 - (a) may be imposed only if such a fee has been approved under rule 73; and
 - (b) must not exceed the fee approved.

Exceptions to subrules (2) and (3)

- (9) Subrules (2) and (3) do 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 the part of the right is not specified in any contract or arrangement between the holder and the operator; or
 - (b) if the following apply:

- (i) the holder of the right of access is provided by the operator with a service for the storage of water using the operator's water service infrastructure, 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 maximum general termination fee

(1) For subrules 71(6), 71(7) and 74(6), the maximum amount for a general termination fee is 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.

Note: The fee may be lower than the maximum calculated in accordance with this rule.

(2) For paragraph (1)(a), the amount is to be determined in accordance with the formula:

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

Note: B is zero unless the infrastructure operator levies a separate infrastructure charge on a customer for infrastructure that is used exclusively by the terminating customer. Because X is a maximum, B need not be calculated if the operator does not wish to levy a fee greater than $M \times A$.

where:

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

M, the termination fee multiple, is:

- (a) 1, if the infrastructure operator does not allow for the trade of a water delivery right of the kind applicable to the right of access that the customer wishes to terminate;
- (b) 10, otherwise.

A is the sum of the amounts, for a full financial year, of:

- (a) the amount of each infrastructure 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) the amount of each infrastructure charge payable per unit of water drainage right held multiplied by the number of units of water drainage right being terminated or surrendered.

B relates to dedicated infrastructure that is used exclusively by the terminating customer and will no longer be used by the customer after the termination or surrender, and is:

- (a) if there is no separate charge for that infrastructure—zero; and
- (b) if there is a separate charge—the lesser of:
 - (i) $10 \times C$; and
 - (ii) *D*;

where:

C is the amount of the charge, for a full financial year.

D is a reasonable estimate of the total cost of the dedicated infrastructure, net of a reasonable estimate of any contribution towards that cost made by the terminating

customer, whether via direct contribution (eg a lump sum payment) or via the payment of the separate infrastructure charge.

- (3) When calculating *A*, *C* and *D*, 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 connecting, 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.
- (4) In calculating *A* and *C*, subject to subrule (5), the relevant infrastructure charges are those specified in the schedule of charges that is in effect on the following dates:
- (a) if the calculation is in relation to an amount of a general termination fee that will be specified in a termination information statement under rule 74—the date the information request is received;
 - (b) if the calculation is for the purposes of subrule 71(6)—the date of the termination or surrender;
 - (c) if the calculation is for the purposes of subrule 71(7)—the date the operator gives the notice of termination to the terminating customer.

Note: Subrule 71(6) relates to a termination or surrender taking effect on a date that was specified in the notice and is more than 6 months after the date of the notice.

Subrule 71(7) relates to a termination by the operator because of a breach of contract by the customer.

- (5) However, if:
- (a) paragraph (4)(a) applies; and
 - (b) a different schedule of charges had been in effect for the operator on the date 25 business days before the information request was received; and
 - (c) using that earlier schedule of charges would produce a lesser maximum amount under subrule (2);

the relevant infrastructure charges are those specified in that earlier schedule of charges.

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

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

- (1) This rule applies if there is a contract between an infrastructure operator and 1 or more holders of rights of access involving the following:
- (a) the carrying out, within 5 years after the entering into of the contract, of capital works relating to the operator's water service infrastructure; and

- (b) the payment, by a terminating customer, of a fee relating to the recovery of that capital expenditure.
- (2) A party to the contract may, within 3 months after the date on which the contract was made, apply to the ACCC for approval of that fee as a fee payable by each terminating customer as an additional termination fee for the purposes of rule 71.
- (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 gives the ACCC:
- (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 give information on amount of termination fee, disconnection fee and related matters to customer

- (1) Subject to subrule (3), if an infrastructure operator receives a written information request from a customer, the infrastructure operator must give the customer a termination information statement within 25 business days after receiving the request.

Civil penalty: 200 penalty units.

- (2) Subject to subrule (3), if an infrastructure operator receives an oral information request from a customer, the infrastructure operator must either:
 - (a) inform the customer as soon as practicable that it will give the customer a termination information statement on receiving a written information request; or
 - (b) give the customer a termination information statement, within 25 business days after receiving the oral request.

Civil penalty: 200 penalty units.

- (3) The infrastructure operator is not required to give a customer a termination information statement in response to an information request if it has already given the customer a termination information statement in relation to the right of access, or the specified part of the right of access within 6 months before the following date:
 - (a) if the information request:
 - (i) is a notice that satisfies paragraph (4)(b); and
 - (ii) specifies a future date for the termination or surrender to take effect; —that date;
 - (b) otherwise—the date of the request.

- (4) In these Rules:

information request means:

- (a) a request from a customer for information on the termination fee that would apply if the customer were to terminate or surrender the whole or a specified part of a right of access; or
- (b) notice from a customer of their intention to terminate or surrender the whole or a specified part of a right of access, including a notice that terminates or surrenders the right, or the specified part of the right, for the purposes of subrule 71(2).

- (5) In these Rules:

termination information statement means a statement in writing, in response to an information request, that sets out the following:

- (a) the amount of any general termination fee that would be payable if the right, or the part of the right, were terminated or surrendered at a time within 6 months after the information is given to the customer;
- (b) the amount of any additional termination fee that would be payable if the right, or the part of the right, were terminated or surrendered at a time within 6 months after the information is given to the customer;
 - Note: If the operator has not yet received the relevant approval under Rule 73, the operator may include the amount that is expected to apply, with a statement that this fee is subject to approval by the ACCC under that rule.
- (c) where practicable, the amount of any disconnection fee under rule 76 that would be payable if the right, or the part of the right, were terminated or surrendered within 6 months after the information is given to the customer;
- (d) where it is not practicable to give the exact amount for paragraph (c) (eg because a site visit is required to determine it)—an estimate of that amount;
- (e) how any amount for paragraph (a), (b) or (c) was calculated and how any amount for paragraph (d) was or estimated;
- (f) whether the customer may trade a water delivery right relevant to the right of access referred to in the information request and a copy of any rules governing the trade of that water delivery right or an internet address where they can be found;
- (g) a statement that the amount of the general termination fee is valid for 6 months from the date when it is given to the customer;
- (h) if the information request is a notice that:
 - (i) terminates or surrenders the right for the purposes of subrule 71(2); and
 - (ii) specifies a date for the termination or surrender to take effect (the **termination date**) that is more than 6 months after the date of the notice;
—a statement that, if the customer confirms that they wish to proceed with the termination or surrender, the general termination fee may be calculated on the basis of the schedule of charges in effect on the termination date, and may therefore be higher than the amount set out under paragraph (5)(a).

Note: If the termination information statement is given to the customer in circumstances to which paragraph 71(2)(b) or (c) applies, the customer must confirm that they wish to proceed with the termination or surrender before the operator can levy a termination fee.

Maximum termination fees in a termination information statement

- (6) The general termination fee provided in a termination information statement must not exceed the maximum amount set by rule 72.
- (7) The additional termination fee:
 - (a) may be provided in a termination information statement only if such a fee has been approved under rule 73; and
 - (b) must not exceed the fee approved.

75 Liability to pay termination fee

A person must pay a termination fee (if any) levied by the operator on the person in accordance with rule 71.

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 in the operator's applicable schedule of charges, 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

Note: This Part deals with transitional issues arising from amendments made to these Rules on the transition date, [date], by the *Water Charge Amendment Rules 2017*.

78 Transition for rule 9

- (1) An exemption granted under rule 9 before the transition date in relation to an infrastructure charge under a particular contract continues to apply after that date as if granted under rule 9 as amended.

Note: The effect is that the charge need not appear in a schedule of charges, and rule 7 does not apply in relation to the charge. However, any replacement schedule of charges adopted after the transition date must include the information about the exemption specified in the new subrule 9(13A).

- (2) During the period of 12 months following the transition date, despite paragraph 9(3)(a), an application for an exemption under rule 9 may be made in relation to a contract that was entered into before that date.

79 Transition for rule 10

- (1) This rule applies for the period beginning on the transition date and ending on [day before the date of application of new rule 10].
- (2) A member owned operator must not, in specifying infrastructure charges in relation to an infrastructure service of the same class, specify different infrastructure 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.

- (3) For the purposes of this rule:
 - (a) an infrastructure operator is a **member owned operator** if the majority of its customers are related customers; and
 - (b) 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.

80 Transition for schedule of charges provisions (rule 7 and Part 4)

Note: The effect of this rule is that infrastructure charges and planning and management charges that were in effect immediately before the transition date may continue for up to 12 months without further action by the person levying or determining the charges.

However, if any charge levied by an infrastructure operator or other person is to change, a new schedule of charges must first be adopted and come into effect for that operator or other person in accordance with Part 4 as amended.

- (1) This rule applies for the period of 12 months beginning on the transition date.

Infrastructure operator

- (2) An infrastructure operator is taken to comply with rule 7 and Part 4 as amended after the transition date so long as:
- (a) each infrastructure charge that it levies on a customer is either:
 - (i) a charge specified in a schedule of charges (within the meaning of that term before the transition date) that:
 - (A) if rule 15 as it then stood was applicable—was published before the transition date in accordance that rule; and
 - (B) was in effect for the operator immediately before the transition date; and
 - (C) has been given to the customer; or
 - (ii) covered by subrule 11(7); and
 - (b) each planning and management charge that it levies on a customer is a charge about which information was published before the transition date in accordance with the *Water Charge (Planning and Management Information) Rules 2010* and was in effect for the operator immediately before the transition date.

Other person levying planning and management charges

- (3) A person other than an infrastructure operator is taken to comply with rule 7 and Part 4 after the transition date so long as each planning and management charge that it levies on a customer is a charge about which information was published before the transition date in accordance with the *Water Charge (Planning and Management Information) Rules 2010* and was in effect for the operator immediately before the transition date.

81 Transition for existing Part 6 operators

Note: This rule deals with an infrastructure operator that was a Part 6 operator immediately before the transition date (when substantial amendments were made to the Rules). Because the amendments have changed the definition of Part 6 operator, it is possible the operator will no longer satisfy it. The operator will, however, continue to be treated as a Part 6 operator until the end of the transition period, which is at least the remainder of its current regulatory period. In particular, it will be subject to rule 8 and Part 6.

During the transition period its status will be re-assessed. If it will continue to be a Part 6 operator after the end of the transition period, it is required to make an application in relation to the next regulatory period under rule 25. Otherwise, it will cease to be treated as a Part 6 operator.

- (1) This rule applies to an infrastructure operator that, immediately before the transition date, was a Part 6 operator in a regulatory period in respect of which its infrastructure charges had been approved or determined by the Regulator.

Transitional application and transition period

- (2) If:
 - (a) the infrastructure operator had made an application for approval or determination of charges under Part 6 before the transition date; but
 - (b) the charges to which the application related had not been determined or approved before the transition date;

then the application is a **transitional application** for the infrastructure operator.

- (3) The **transition period** for the infrastructure operator begins on the transition date and ends at the end of:
 - (a) if the operator had made a transitional application—the regulatory period in relation to which the application was made; and
 - (b) otherwise—the latest regulatory period in relation to which charges had been determined or approved before the transition date.

Application of these Rules during the transition period

- (4) These Rules apply to the infrastructure operator during the transition period as if it continued to be a Part 6 operator under rule 23 as amended, except as provided in this rule.
- (5) Where infrastructure charges of the operator were approved or determined before the transition date in relation to a period after the transition date (ie, they were determined or approved under Part 6 as it then stood), the approval or determination is taken to have been made under Part 6 as amended on the transition date.
- (6) If the infrastructure operator had made a transitional application, then:
 - (a) the charges to which the application relates are to be approved or determined in accordance with Part 6 as it stood before the transition date; and
 - (b) the approval or determination is taken to have been made under Part 6 as amended on the transition date.
- (7) In applying Divisions 2, 3 and 4 of Part 6, as amended, to the infrastructure operator:
 - (a) a reference to the ACCC is taken to be a reference to the Regulator; and
 - (b) **Regulator** has the same meaning as immediately before the transition date.
- (8) Rules 23A, 23B, and 23D do not apply to the infrastructure operator until it has received the notification from the ACCC under subrule (12).
- (9) In applying rule 23D to the infrastructure operator, the reference in subrule 23D(2) to the remainder of the regulatory period is taken to be a reference to the remainder of the transition period.
- (10) Rule 25 does not apply to the operator unless it has been notified in accordance with paragraph (15)(d)(ii) that the next regulatory period for the operator will begin immediately after the end of the transition period for the operator.

Assessment of transitioning Part 6 operator against amended criteria

- (11) As soon as practicable after the transition date, the infrastructure operator must notify the ACCC of:
- (a) whether or not it is a Part 6 operator under rule 23 as amended; and
 - (b) any matter that it is aware of that may result in the infrastructure operator ceasing to be a Part 6 operator, or becoming one, on a specified date.
- (12) The ACCC must:
- (a) form a view as to whether the infrastructure operator is a Part 6 operator under rule 23 as amended, or is likely to cease to be one or to become one before the end of the transition period; and
 - (b) notify the operator of the ACCC's view; and
 - (c) if the ACCC is of the view that the operator is, or is likely to be, a Part 6 operator—advise the operator that the ACCC will decide whether the operator should be granted an exemption from the operation of Divisions 2, 3 and 4 of Part 6 after the end of the transition period.
- (13) If paragraph (12)(c) applies, the ACCC must decide whether such an exemption should be granted by applying rule 23C as modified by subrule (14).
- Note: The ACCC will be required to notify the infrastructure operator of its decision under subrule 23C(12).
- (14) If paragraph 12(c) does not apply but, later in the transition period, rule 23B applies so that the ACCC is to consider an exemption for the operator under rule 23C:
- (i) any exemption may apply only after the transition period; and
 - (ii) the ACCC must apply rule 23C as modified by subrule (15).
- (15) For subrules (13) and (14), rule 23C is applied as if subrules 23C(9), (10), (11) and (12) were replaced by the following provisions:
- (a) if the ACCC fails to make a decision under this rule (rule 23C as modified by subrule 81(15)) within 3 months after receiving the application, or giving the notice under rule 23B or paragraph 81(12)(b), the ACCC is taken to have decided to grant the operator an exemption from the operation of Divisions 2, 3 and 4 for 3 years from the expiry of the transition period;
 - (b) if the ACCC decides not to grant the operator an exemption, the ACCC must set the next regulatory period as a period that begins immediately after the end of the transition period for the operator;
 - (c) the **regulatory start date** for the operator is taken to be:
 - (i) for the purposes of the definition of 'regulatory period' in rule 3—the date on which its first regulatory period began; and
 - (ii) for other purposes—the transition date;
 - (d) the ACCC must notify the infrastructure operator as soon as practicable:
 - (i) of a decision under this rule (including a decision taken to have been made under paragraph 81(15)(a)); and
 - (ii) if the ACCC does not grant the exemption—that the next regulatory period for the operator will begin immediately after the end of the transition period for the operator.

Note: The effect of this provision is that there is no discontinuity in the status of the operator as a Part 6 operator. In particular, rule 24A will not apply to applications for approval or determination of charges for the regulatory period following the transition period, only rule 25.

82 Transition for existing Part 7 operators

- (1) If an infrastructure operator was a Part 7 operator immediately before the transition 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 transition date.

Application of Division 2 of Part 7 to existing Part 7 operators

- (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 transition date.

83 Transition for Regulators under Part 9

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

- (a) Divisions 2, 3 and 4 of Part 6 as applied by subrule 81(4); and
- (b) Division 2 of Part 7 as applied by subrule 82(2);

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

- Note: A State Agency to which this rule applies will act as Regulator only to:
- (a) a transitioning Part 6 operator, for the remainder of the transition period for the operator; or
 - (b) a transitioning Part 7 operator, for the remainder of its period under the former subrule 45(3).

[61] Schedule 1, before clause 1

Insert the following:

Note: The regulatory period that is set to expire, referred to in this Schedule, may be:

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

1AA Use of forecasts in application

Where information specified by this Schedule for inclusion in the application is not yet available, the application must instead include a forecast of the information, with an annotation to the effect that the information is not yet available.

[62] Schedule 1, clause 4

Repeal the clause, substitute:

4 Revenue

- (1) Details of the Part 6 operator's:
 - (a) actual revenue to date for each completed or part-completed year of the regulatory period that is set to expire, from each of the following sources:
 - (i) revenue from infrastructure charges

- (ii) revenue from government contributions related to the provision of those infrastructure services; and
 - (iii) revenue (other than from infrastructure charges) derived from the water service infrastructure used to provide infrastructure services; and
 - (b) forecast revenue for each remaining year or part year of the current regulatory period and the following regulatory period, from each of the sources mentioned in subparagraphs (a) (i), (ii), and (iii); and
 - (c) forecast revenue from providing infrastructure services for each year of the following regulatory period.
- (2) If the revenue is derived from charges levied by reference to a period (an *agency revenue period*) that:
- (a) is set by an agency of a State under a law of the State; and
 - (b) does not align with the regulatory periods of the operator under these Rules;
- the revenue may be stated as for each year or part year of the agency revenue period.

[63] Schedule 1, paragraph 8(a)

At the end, add the following:

- ;
- (v) details of differences between actual capital expenditure and that approved by the regulator, with reference to the amount of capital expenditure and the selection and scope of projects undertaken; and

[64] Schedule 2, paragraph 1(a), definition of A

Omit “that were used for”, substitute “at the beginning of”.

[65] Schedule 2, paragraph 1(a), definition of C

Repeal the definition, substitute:

C is the actual (or, where relevant, 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, other than any expenditure that:

- (i) was made in relation to:
 - (A) a major project not previously approved; or
 - (B) a project whose scope as undertaken materially differed from what was approved; or
 - (C) a project on which expenditure materially exceeded the amount previously approved; and
- (ii) that the ACCC is not satisfied was prudent and efficient expenditure.

[66] Schedule 2, paragraph 1(a), definition of E

Omit “in the case of the last year of the preceding period,”, substitute “where relevant,”.

[67] Schedule 2, clause 2, definitions of A and B

Repeal the definitions, substitute:

A is the regulatory asset base of the operator determined under this Schedule in respect of the preceding regulatory period as calculated under either clause 1 or this clause, and adjusted as appropriate by replacing any forecast amounts in the calculations of that asset base by the amounts actually spent or received.

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, other than any expenditure that:

- (a) was made in relation to:
 - (i) a major project not previously approved; or
 - (ii) a project whose scope as undertaken materially differed from what was approved; or
 - (iii) a project on which expenditure materially exceeded the amount previously approved; and
- (b) that the ACCC is not satisfied was prudent and efficient expenditure.

[68] Schedule 2, clause 2, definition of D

Omit “in the case of the last year of the preceding regulatory period,”, substitute “where relevant,”.

[69] Schedule 2, after clause 2

Insert the following:

3 Approved capital expenditure project

For the purposes of calculating **C** in clause 1 or **B** in clause 2, a capital expenditure project should be taken to have been approved to the extent that the scope of, and expenditure on, a project proposed by an infrastructure operator was accepted by the Regulator or the ACCC in forecasting the amount of capital expenditure to be used when approving, determining or varying the operator’s infrastructure charges.

[70] Schedule 3, clause 5

Omit “related” wherever occurring.

[71] Schedules 4 and 5

Repeal the Schedules.

Part 2—Changes in terminology, changes in cross-references and typographical corrections

[72] Replacement of term *applicant*

Omit “applicant’s” wherever occurring, substitute “Part 6 operator’s” in each of the following provisions:

- (a) paragraph 28(a);
- (b) paragraph 29(2)(a) and subrule 29(3);
- (c) paragraph 36(a);
- (d) subrule 43(1).

[73] Removal of term *initial period*

- (1) Omit “the initial period or” (first occurring) in each of the following provisions:
 - (a) Schedule 1, paragraph 5(a);
 - (b) Schedule 1, paragraph 6(a);
 - (c) Schedule 1, paragraph 7(a);
 - (d) Schedule 1, paragraph 8(a);
 - (e) Schedule 1, paragraph 9(a);
 - (f) Schedule 1, paragraph 10(a);
 - (g) Schedule 1, paragraph 11(a);
 - (h) Schedule 1, clause 12.
- (2) Omit “initial period or” (second occurring) in Schedule 1, paragraph 10(a).

[74] Replacement of term *provide*

Omit “provide”, substitute “give the ACCC” in each of the following provisions:

- (a) rule 26;
- (b) rule 35;
- (c) rule 41;
- (d) rule 47.

[75] Replacement of term *regulated charges*

- (1) Omit “regulated charges” wherever occurring, substitute “infrastructure charges” in each of the following provisions:
 - (a) paragraphs 9(13)(a) and (b);
 - (b) heading to Part 6;
 - (c) heading to Division 2 of Part 6;
 - (d) rule 26;
 - (e) paragraph 28(a);
 - (f) subrules, 29(1), (2) (chapeau), (3) and (4);
 - (g) subrule 31(1);

- (h) rule 32 (chapeau);
 - (i) subrule 33(3);
 - (j) heading to Division 3 of Part 6;
 - (k) rule 34 (including heading);
 - (l) rule 35;
 - (m) rule 36;
 - (n) rule 37 heading, subrules 37(2) and (3);
 - (o) subrules rule 38(1) and (3);
 - (p) rule 39 heading, subrule 39(2);
 - (q) subrule 40(1) (chapeau) and paragraph 40(2)(e);
 - (r) subrule 43(1);
 - (s) subrule 44(1);
 - (t) heading to Part 7;
 - (u) heading to Division 2 of Part 7;
 - (v) paragraph 48 (a);
 - (w) rule 49 heading, subrules (1), (2) and (3);
 - (x) rule 50 heading, subrule 50(1);
 - (y) subrule 51(1);
 - (z) subparagraph 54(2)(c)(ii) and paragraph 54(4)(b);
 - (za) Schedule 1, clauses 2, 3 and 12 (not including heading);
 - (zb) Schedule 1, clause 2 (not including heading);
 - (zc) Schedule 3, clause 1 (not including heading);
 - (zd) Schedule 3, clause 3 (including heading);
 - (ze) Schedule 3, clause 4.
- (2) Omit “the regulated charges”, substitute “infrastructure charges” in the heading to rule 29.
- (3) Omit “Regulated charges”, substitute “Infrastructure charges” in the headings to each of the following provisions:
- (a) Schedule 1, clause 12;
 - (b) Schedule 3, clause 1.

[76] Replacement of term *Regulator*

Omit “Regulator” and “Regulator’s” wherever occurring, substitute “ACCC” or “ACCC’s” as appropriate in each of the following provisions:

- (a) paragraph 9(13)(b);
- (b) rule 26 (including heading);
- (c) rule 27 (including heading);
- (d) rule 28 (including heading);
- (e) rule 29 (including heading);
- (f) rule 31 (including heading);
- (g) rule 32 (chapeau);
- (h) subrule 33(3);
- (i) rule 34 (including heading);
- (j) rule 35 (including heading);

- (k) rule 36 (including heading);
- (l) rule 37 heading, subrules 37(2), (3), (5) and (6);
- (m) rule 38;
- (n) subrule 39(2);
- (o) subrule 40(1);
- (p) rule 41 (including heading);
- (q) rule 42 (including heading);
- (r) rule 43 heading, subrules 43(1), (2), (3) and (4);
- (s) rule 44 (including heading);
- (t) rule 47 (including heading);
- (u) rule 48 (including heading);
- (v) rule 49 heading, subrules (21), (2) and (3);
- (w) rule 50 heading, subrules 50(1), (3), (4);
- (x) rule 51 (including heading);
- (y) rule 53 heading, subrules (1) and (2);
- (z) rule 54 heading, subrules (1), (2), (3) and (4).

[77] Replacement of phrase *cause...to be...available*

- (1) Omit “cause the notice, and the reasons for its decision, to be made available”, substitute “publish the notice, and the reasons for its decision” in subrule 31(2).
- (2) Omit “cause the notice, and the reasons for its decisions, to be made available” wherever occurring, substitute “publish the notice, and the reasons for its decisions” in each of the following provisions:
 - (a) subrule 38(2);
 - (b) subrule 44(2);
 - (c) subrule 51(2).
- (3) Omit “cause a copy of the notice to be made available” wherever occurring, substitute “publish the notice” in each of the following provisions:
 - (a) subrule 37(6);
 - (b) subrule 50(4).
- (4) Omit “cause a copy of the notice to be available”, substitute “publish the notice” in subrule 43(4).

[78] Replacement of phrase *on or after*

- Omit “or after” wherever occurring in each of the following provisions:
- (a) subrule 31(2);
 - (b) subrule 38(2);
 - (c) subrule 44(2);
 - (d) subrule 51(2).

[79] Replacement of reference to Part 9

- (1) Omit “Part 6, 7 or 9” wherever occurring, substitute “Part 6 or 7” in each of the following provisions:
 - (a) rule 53;
 - (b) subrule 54(1).
- (2) Omit “or making a decision under Part 9” in each of the following provisions:
 - (a) subparagraph 54(2)(c)(ii);
 - (b) paragraph 54(4)(b).

[80] Replacement of *has the meaning given by*

- Omit “has the meaning given by”, substitute “—see” in each of the following provisions:
- (a) subrule 3(1), definition of “Part 6 operator”;
 - (b) subrule 3(1), definition of “Part 7 operator”.

[81] Replacement of *Internet* with *internet*

- Omit “Internet” wherever occurring, substitute “internet” in each of the each of the following provisions:
- (a) subrules 9(12) and (13);
 - (b) rule 27;
 - (c) paragraph 28(b);
 - (d) subrule 31(2);
 - (e) paragraph 36(b);
 - (f) subrule 37(6);
 - (g) subrule 38(2);
 - (h) rule 42;
 - (i) subrule 43(4);
 - (j) subrule 44(2);
 - (k) paragraph 48(b);
 - (l) subrule 50(4);
 - (m) subrule 51(2).

[82] Typographical correction—*in respect* repeated

- Omit “in respect” first occurring each of the following provisions:
- (a) Schedule 1, paragraph 8(a);
 - (b) Schedule 1, paragraph 9(a).

[83] Typographical correction—paragraph 6(b) of Schedule 1

Omit the colon at the end of paragraph 6(b) of Schedule 1; substitute a semi-colon.

[84] Typographical corrections—clause 3 of Schedule 3

- (a) In subclause (1), omit “years financial years”, substitute “financial years”.

- (b) In paragraph (b), omit “assets for”, substitute “assets used for”. paragraph 6(b) in Schedule 1

[85] Typographical corrections—clause 4 of Schedule 3

In subclause (1), omit “years financial years”, substitute “financial years”.