

## CENTRAL IRRIGATION TRUST

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Review of the Water Charge Rules  
Australian Competition and Consumer Commission  
GPO Box 520  
Melbourne Victoria 3001

Sent by email [waterchargerules@acc.gov.au](mailto:waterchargerules@acc.gov.au)

CIT welcome the review of the Water Charge Rules with the objective of reducing the regulatory burden on those impacted by the rules.

Our submission is attached.

If you would like any further information or clarification please feel free to contact me.

Regards

A handwritten signature in black ink that reads 'Gavin McMahon'.

Gavin McMahon  
Chief Executive Officer

## **General: Comments**

The Water Charge (Infrastructure Rules) 2010, Water Charge (Termination Fee) Rules 2009, and the Water Charge (Planning and Management Information) Rules 2010 were all developed with significant consultation. After 5 to 6 years of experience with the rules we believe that it is possible to make some amendments to reduce the administrative burden on businesses and the ACCC without removing or altering the principles for the rules.

Significant savings in compliance costs are possible without jeopardising outcomes of the rules if the ACCC implemented a reactive compliance regime rather than the proactive approach it has used to date. A reactive approach would involve only investigating complaints of breaches rather than the proactive approach which requires reams of data to be produced by Infrastructure Operators for the ACCC to review in search of breaches.

Significant diversity between infrastructure operators occurs within the basin which dictates that consistent pricing whilst an aspirational target is impossible to achieve. Some of the reasons are as follows; Irrigation infrastructure can be gravity channels, pressurised pipelines or a hybrid of the two; they can be automated or manually operated; lifts from the River vary significantly and whilst power has a national market it is still a state based cost structure.

Differentiation between member and non- member based infrastructure operators should continue to be recognised as each group of operators have very different accountability to their customers and owners. Member based infrastructure operators through their structure operate a business model where their customer is their owner. This means that the customer has a direct say in who runs the business, how the business is run and the future directions of the business. If they do not like the way the business is operating they have direct in built mechanisms to bring about change such as changing the Board. Such change mechanisms are not available to Government agencies or corporations.

The Water Charge Termination fee rules are strongly supported by CIT. With the significant water reform still occurring in the Murray Darling Basin and the massive movement of water from private to public ownership stranded assets continue to be a real risk and Infrastructure Operators need time to adjust so that the remaining irrigators do not carry the burden on the exiting irrigators.

### **Answers to specific questions**

CIT provides the responses to the following questions. Where there is no answer for a question we believe that we cannot contribute constructively to the debate.

1

CIT supports the differentiation between member and non-member organisations, the removal of Tier 2 classification and removal of Part 5 of the Water Charge (Infrastructure) Rules. Tier 2 Infrastructure Operators should then be subject to Tier 1 rules and Part 5 Operators subject to Part 3 and Part 4 conditions. This would remove significant costs from the complying organisations, estimated to be in excess of \$50 000 per annum for CIT, without any detrimental impact on the customers' knowledge or understanding. Substantial savings would also be made by the ACCC.

2

CIT believe that after 5 years of proactive compliance by the ACCC, industry compliance with the rules could easily be achieved by implementing a system of reactive compliance which is often referred to as "compliance by exception".

Proactive compliance has raised awareness of irrigators within the Murray Darling Basin and as reported by the ACCC compliance has been high. This is reinforced by the low number of breaches that have been identified and rectified.

Now that compliance is high, regulation by exception offers significant cost savings to both the ACCC and currently reporting entities without diminishing the required outcomes. If a consumer has a complaint they can take this to the ACCC who can investigate the complaint and if a breach occurs then the current remedies still exist. Such a compliance regime means that most of the current reporting is not required and the ACCC would not have to develop, instigate and overview reports. Consequently the ACCC could reduce its compliance costs and CIT would save 3 weeks (\$15,000) preparing reports for the ACCC and continually amending its IT processes or systems to comply with changing data requests.

3

As a result of the diversity in Infrastructure Operators across the Murray Darling CIT does not believe that any changes to the rules would contribute to more effective implementation of the Basin water charging objectives and principles. The significant interstate trading of water allocations and entitlement would indicate that the current arrangements are not an impediment to efficient use of water or water migrating to its most efficient use.

5

There are advantages in having all the Rules incorporated into 1 set of Rules and CIT would support such action if the cost of doing so did not outweigh the convenience of a single set of rules.

The major improvement and efficiency gains would be having the Water Market Rules regulated by the ACCC. This would provide a single reporting entity with a similar vigour and enthusiasm applied to the compliance across all rules. Under such a regime the MDBA team dealing with the Water Market Rules could be disbanded realising the gains of the associated expenditure and the compliance could be undertaken by the current ACCC team. If any technical information is required and not available within the ACCC this could be outsourced to other organisations with that capability. Under MDBA regulation compliance of the Water Market Rules to date has been very lax with many of the State Governments non-compliant. This is in stark contrast to the compliance regime used by the ACCC on the Irrigation Infrastructure Operators.

7/8

CIT believe that any compliance regime should be one of cooperative rectification with fines and heavy handedness being an outcome of last resort. This should be even more so in an environment where compliance is very high as we see in the Murray Darling Basin regulatory environment. Only the ACCC knows if this has been the process followed. It should be noted that with not for profit member owned organisations any fines are eventually paid by the customers you are attempting to protect. CIT would like to see a compliance regime where fines and heavy handedness is used as a last resort.

9

Many of the organisations operating in the Murray Darling Basin are suffering from reform fatigue. There are a plethora of organisations undertaking regulatory reviews or consultation. Recent or current examples are the AER Regulatory Proposal process and reviews, this review of the Water Charge Rules, BOM review of data collection, State Water Allocation Plans, Green Paper on Agriculture and Senate Inquiries into the energy industry. We believe that after the current review of the Water Charge rules the next review should in 15 years time.

10/11/12

CIT is currently happy with the clarity of the Rules and suggest no changes.

Member owned organisations have much more direct accountability to their customers who are also their owners than non-member owned organisations. The Board of member owned organisations is elected from the members who have the ability to change the board members at an election. The Board then is directly responsible for the direction and operations of the organisation. Consequently we believe that differential treatment of member owned operators is still appropriate.

CIT believes there is no evidence supporting a view that member owned operators do not have sufficient regard to the interests of all of their customers particularly smaller customers when determining their charges and tariff structures. As most charges and tariffs are volumetric based customer size becomes irrelevant.

13

CIT believes that there is no necessity for a Part 5 Operator. The requirements of a Part 5 Operator to date have added significant costs to our business with little to no value to CIT, the Trusts managed by CIT or its customers. We estimate the development of the Network Services Plan and the associated consultation cost CIT in excess of \$50 000 and the ACCC also incurred significant costs in the process. CIT received only 1 reply to the consultation paper commenting negatively on the need for the NCP process and the cost associated.

We received a 79 page Review report from the ACCC engaged consulting engineers ARUP overviewing our 14 page Network Services Plan. Unfortunately the feedback provided little value that we could use to improve our business and some of the suggestions made by ARUP such as demand forecasting have proven to be vastly incorrect.

The question that must be answered is “has this regulation provided the Infrastructure Operators or their owners/customers a positive cost benefit?” In our experience the answer to this question is a resounding no, therefore we believe the Part 5 Operator classification should be removed.

14/15

We believe that the current Part 3 Non-discrimination requirements are adequate.

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We believe that publishing regulated charges is adequate.

17/18

CIT has not encountered any customer or potential customer who has been unhappy with the schedule of charges we produce or would like to see it produced in a different format. We do not believe that a template would add any value to the process. There are many factors that a new investor considers when deciding to purchase in an area and from our experience water prices and charges are well down on their list of priorities. In fact very few new customers inquire about a schedule of fees and charges before purchasing properties within the footprint of our infrastructure. We do not believe that the regulator has had any requests for further intrusion into the businesses or standardisation of fees and charges process and protocols.

19

The ACCC should have evidence in the form of a log of request from the public demonstrating a desire to change the Publication Requirement. CIT has not received any requests and believes that there is no evidence to require changes to the Publication Requirements.

20

CIT believes this section to be satisfactory.

21/22/23

Do the ACCC have evidence of Infrastructure Operators customers or potential customers requesting NCPs or NSPs? In our experience very few if any customers read the NSP or NCP and the only feedback that we received was 1 written comment that questioned the need for this process and the financial cost of the process imposed. I believe that the reactions were similar across all Part 5 Infrastructure Operators. In developing, reviewing and consulting with the NCP and NSP process we believe that there is little benefit gained by the customers in the process for the cost involved. Consequently we believe that the Part 5 Operators sections should be removed from the rules.

There is a disparity in what Infrastructure Operators are required to do in providing information to customers in respect the NCP/NSP compared to other government submission processes. In the case of NCPs and NSPs they must be posted to all customers however many other reviews by government departments believe that placing material on a website is sufficient consultation. We believe that if Part 5 operators are to remain with the same criteria then at least placing information on the Operators websites should be sufficient notification. Generally these websites are used regularly by customer to order water and view telemetry and account information.

24-36

No comment

37/38

CIT is emphatically opposed to a merits review process. As a significant participant in the electricity industry we find the merits review process to be a failure for the customers. The electricity merits review process touted as an example favours the participant that has the financial resources to fund the challenge and access to the expertise to assemble a case.

CIT would support an Ombudsman review process only if covered all aspects of the Water Act, the MDBA Plan and associated Federal and State government rules, regulations and operations. We would not support such a review process if it was only limited to the 3 Rules being reviewed.

39/40

No comment

41/42/43/44

CIT believes that there is no evidence or reason to change the current charging arrangements. There is no evidence that the current charging arrangements are impeding water trading in fact data would suggest that water trading is occurring unimpeded across the Murray Darling Basin.

45/46/47

Third party access agreements should be encouraged and negotiated outcomes should be outside the WCIR. This will encourage business to be innovative in attracting further and varied customers.

48

CIT believe that the MDBA and BRC should be subject to the WCIR.

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Unless the ACCC has evidence to the contrary CIT believe that the WCIR should not regulate how the bulk water charges incurred by Infrastructure Operators should be passed through to customers.

50/51

Of all of the submissions made to the Water Act Review from which this review arose there was not 1 comment made on the Water Charge Termination Fee Rules. The Water Act Review was an extensive process and this is evidence that the Water Charge Termination Fee Rules are operating as designed and not impeding water trade.

CIT believe that the definition of TNAC used in the WCTFR is clear and appropriate. The conditions being experienced in the Murray Darling Basin and reasons for these rules have not changed. There is no evidence that approach to termination fees is impeding the operation of Markets. Within CIT approximately 30% of the Irrigation Rights have been traded out of the Trusts since 2009 which demonstrates that current rules are not causing impediments in the market place.

52/53

CIT believes that the current limits on when a termination fee can be imposed under WCTFR are appropriate and that the WCTFR do not inhibit IIOs from efficient network augmentation or rationalisation decisions.

54

No comment

55/62

No comment