

**Coleambally Irrigation Co-operative Limited (CICL)**

**Submission to**

**ACCC’s 2015 Review of Water Charge Rules**

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**Introduction**

The town of Coleambally was developed in the 1960s for the sole purpose of supporting farmers who were encouraged by the NSW Government to move to the area and commence irrigated farming following the completion of the Snowy Hydro Scheme. The town remains solely dependent on irrigated farming to this day.

Coleambally Irrigation Cooperative Limited (CICL) is wholly-owned by its farmer members and it operates the fourth largest irrigation operation in Australia and the most modern open-channel irrigation system in the country; indeed it is one of the most modern open-channel systems in the world. The system, which attracts significant international interest, is gravity fed; solar powered; incorporates state of the art metering and flow regulation technologies and provides for automated water ordering and water accounting. In addition, CICL’s members have spent $104m over the last decade improving their land and water management practices and enhancing local biodiversity. CICL also manages 1700ha of Crown land that has been set aside for biodiversity purposes.

**Discussion**

CICL considers that aspects of Water Charge Rules (WCRs), and in particular the requirement to submit Network Service Plans to the ACCC, are overly proscriptive; accordingly, CICL welcomes the ACCC’s review of the WCRs.

In responding to the specific questions posed by the ACCC, CICL makes the following comments:

**Opportunities to reduce cost to industry and governments (Questions 1-2)**

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| 1. Can you identify areas where you believe there is significant scope to simplify or shorten the water charge rules while still achieving effective regulation? 2. Can you identify options for amending the water charge rules requirements in the water charge rules where the costs of compliance outweigh the benefits achieved? Could the benefits be achieved through a different approach to regulation? |

**Questions 1 & 2**

CICL considers that the requirement for Tier 2 Operators to submit a **Network Service Plan (NSP)** every five years and the requirement to annually benchmark annual pricing against the revenue and expenditure projections in the NSPs as being far in excess of what IIOs customers want and what is required for the ACCC to maintain oversight of IIOs’ pricing. CICL also submits that the ACCC’s requirements in terms of the way customers have to be engaged are similarly excessive. Further, that the NSP requirements reflect a lack of understanding of the nature of the relationship between IIO and their customers.

By way of elaboration, CICL submits that:

* Tier 2 IIOs have business planning cycles that span at least five years and longer and proscription of what must be addressed in those planning cycles should not be a matter dictated by the ACCC.
* Communication of major plans and changes to major plans to IIO customers is a normal business function within IIOs and the nature of their relationships with their customers is defined in Company Rules, Policies and/or Service Contracts – as such, the means and content of communication from IIOs to customers need not be proscribed by the ACCC.
* Customers of the Tier 2 operators clearly ‘voted with their feet’ when provided with the opportunity to engage in the NSP process in 2012 with less than 1% of them responding to IIO invitations for them to provide input into the development of the NSPs. This is not to say that IIOs customers are not interested in matters that underpin pricing or in having their say – but is to say that IIO customers were already being engaged on the those matters that were underpinning pricing.

CICL’s pricing has trended downwards in real terms every year since 2008/09 (approx.17% in real over terms) and its pricing for 2015/16 is unchanged from 2014/15. CICL has no objection to publishing its charges in the way proscribed in the WCIRs but submits that Tier 2 IIO customers are provided with significant financial data in annual reports, normal business processes and have more opportunity to express their dissatisfaction (to the extent if displacing Boards and Management) than in most businesses - Board Members and CEOs of IIOs cannot hide from their customers given that business in conducted in small communities and at very close ‘range’. Even if this were not the case, those same customers have the same recourse to the ACCC as any customer in Australia.

CICL submits that rather than burdening Tier 2 IIOs with the NSP requirement, the ACCC need only review the IIOs charges at the time they are published – if there is a significant an unexplained increase in charges or the pricing path from year to year is cause for concern to the ACCC, then the Commission has the right to require the IIO concerned with a full explanation for those charges. CICL notes that the ACCC’s annual review of rural water provider’s performance also serves as another opportunity to review charges. A move to a ‘by exception’ approach would in no way diminish the ACCC’s authority but it would represent a dramatic decrease in red tape for the IIOs currently bound by the NSP requirements. It would also mean that the ACCC’s reliance on external engineering and financial consultants would be contained to instances where their services might appear warranted.

**The Basin Water Charging Objectives and Principles (Question 3)**

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| 1. How could the water charge rules more effectively contribute to achieving the Basin water charging objectives and principles? |

No comment

**Drafting amendments to improve clarity (Question 4)**

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| 1. Are there any particular provisions of the water charge rules that are not clearly drafted, unnecessarily complex or otherwise ambiguous? How could this drafting be improved? |

Compliance with WCRs would be assisted if the rules were consolidated into a single document. The fact that the current suite that comprises the WCRs has also had to be amplified by extensive guidance from the ACCC suggests that it would be appropriate for the ACCC and those bound by the WCRs to jointly explore the prospect of simplifying and clarifying the rules.

**Combining the water charge rules and water market rules (Question 5)**

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| 1. What do you think are the advantages and disadvantages of combining the water charge rules into one set of rules and/or combining the water market rules with the water charge rules? |

CICL considers the more relevant issue to be that of placing both the WCRs and the WMRs under the same regulator, the ACCC, on the basis that the MDBA is ill-equipped to be a regulator and because there are efficiencies to be gained by both Government and irrigators if there are fewer regulators in the water domain. In making this observation, CICL acknowledges that the ACCC might be required to seek advice on water matters from the MDBA were it to take on an expanded role but this is not a sufficient impediment to stand in the way of an opportunity to consolidate rules and regulation and to remove the MDBA from a construct which sees it operating in a highly political environment on the one hand and playing the role of a dispassionate/independent regulator on the other, all the while trying to function as a deliver of services in its own right.

**ACCC guidance material (Question 6)**

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| 1. Is the ACCC’s guidance material useful? In what ways could it be improved? |

The material is useful but remains complex. The ACCC’s willingness to engage in face to face conversations with IIOs form time to time helps bridge the complexity and is greatly appreciated by CICL.

**Enforcement and compliance approach (Questions 7 and 8)**

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| 1. What are your views on how the ACCC has used its enforcement powers in relation to the water charge rules? 2. How could the ACCC improve its approach to achieving compliance with the water charge rules? |

CICL has limited visibility of the extent to which the ACCC has exercised its powers under the WCRs and even less in relation to the number of complaints bought against IIOs to the ACCC by customers. In the one compliance matter that has been raised with CICL in recent years, CICL considers the Commission to have pursued the matter appropriately and intelligently.

As a general principle, CICL considers that the ACCC should avoid making an ‘example’ of an IIO unless that IIO’s transgression has been deliberate and /or the IIO has been under the notice of the Commission previously.

**Future reviews of the water charge rules (Question 9)**

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| 1. What are the advantages and disadvantages of indicating in advance the timing and scope of future reviews of the water charge rules? |

CICL questions the real purpose of many reviews that confront it specially when it sees on the one hand, senior Commonwealth officials promoting the sophistication of Australia’s water markets and water management to international audiences but on the other urging more reform domestically – just how far in front of the rest of the world does Australia need to be? CICL questions whether some Government agencies have a vested interest in reform at all cost; whether some regulators are intent on ‘shadow-boxing’; and/or whether Government has lost sight of original objectives in the pursuit of what has become some form of holy grail?

In general, IIOs are exhausted by what seems to be a never-ending list of invitations to contribute to some form of water related review – all of these hold out the promise of bringing greater efficiency, transparency and greater certainty to irrigators (the consumer) but few deliver. The fact that each review often involves multiple phases of engagement (discussion paper, issue paper, first draft, final drafts etc.) contributes to that exhaustion. CICL considers that a far more efficient way of approaching the matter of reviews would be for regulators to host workshops with industry at the very onset of a review process to examine the matters that warrant review and the scope of such review. It also considers that until such time as there is better coordination across Government regarding the conduct of reviews, IIOs and their members will continue to be disadvantaged by current Government processes. At this very juncture, there are more water related reviews in front of the Tier 2 IIOs, than there are Tier 2 Operators.

In general, IIOs are being overwhelmed by the water reform process and one need look no further than this week’s update from NSW Irrigators’ Council’s for evidence - it relayed invitations for IIOs to contribute to reviews by the Senate Environment and Communications Legislation Committee on the the Water Amendment Bill 2015; the Senate Inquiry into the Murray-Darling Basin Plan and IPART’s Issues Paper on the review of prices to be charged by the Water Administration Ministerial Corporation.

**Tiered regulation of infrastructure operators**

**Definitions and differentiations (Questions 10-14)**

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| 10. How do you think the differential treatment of member owned  11. Do you think the differential treatment of member owned operators is still appropriate?  12. Do you think member owned operators have sufficient regard to the interests of all their customers, particularly smaller customers, when determining their charges and tariff structures?  13. What are the advantages and disadvantages of the tiered regulatory approach in the SCIR? Do you think the criteria are set appropriately?  14. Are there other types of price discrimination that that are of concern (including by infrastructure operators that are not member owned)? |

CICL contends that the only differentiation that should exist between IIOs is that between those that are publically versus privately owned.

**Schedule of charges (questions 14-20)**

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| 14. Are there other types of price discrimination that are of concern (including by infrastructure operators that are not member owned)?  15. Are there non-regulatory measures that should be considered to address the potential for detrimental price discrimination by infrastructure operators?  16. Are there any non-regulatory measures that could ensure the provision of accurate and timely information about infrastructure operators’ regulated charges?  17. Are the schedules of charges produced by infrastructure operators sufficiently clear and detailed to meet the needs of customers and potential customers?  18. Would a prescribed template enable easier comparison across infrastructure operators? Would it assist infrastructure operators to comply with the pricing transparency requirements of the WCIR?  19. Are the publication requirements in relation to schedule of charges appropriate?  20. In what circumstances should an infrastructure operator be exempt from the obligation to include all their regulated charges in their schedule of charges? What procedural requirements should they be required to meet? |

CICL considers that attempts to compare charges across IIOs have been and will remain ‘fraught’ because no two IIO’s customers, area of operations or service levels are the same. That is not to say that such comparisons should not be attempted but it is to say that the limitations of such exercises need to be clearly stated and that the extent of effort that the ACCC might devote to this exercise should be limited. What is happening within an IIO over time in terms of pricing and service levels is of much more relevance than what is happening elsewhere.

**Network Services Plan (questions 21-23)**

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| 21. What are the advantages and disadvantages of requiring Part 5 operators to publish their NCP and NSP online, instead of the current requirement to ensure all customers are aware of and can access these documents?  22. What do you think the advantages and disadvantages of removing the requirements for Part 5 operators in relation to NCPs and NSPs are?  23. Are there alternative ways to ensure an operator’s customers are aware of, and have input into, planned water infrastructure investment, other than the NCP and NSP provisions of the WCIR? |

This matter has been commented on earlier by CICL – the NSP requirement was one which allowed the ACCC to gain an overview of how the Tier 2 IIOs developed their pricing but at the end of the day, the ACCC concluded, after much expense to it and the IIOs, that pricing was reasonable; that IIOs were making reasonable provisions for the replacement of assets over time; and that financial management within the IIOs was prudent. That being the case, the ACCC might redirect its focus to interrogating pricing when there is an apparent need for it to do so.

**Determination of Regulated Charges (Questions 24-33)**

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| 24. What other measures could be used to address the potential misuse of market power by large infrastructure operators, beside the approval or determination of regulated charges under the WCIR? What are the advantages and disadvantages of these measures?  25. Are there ways to reduce the regulatory burden of information requirements relevant to a Part 6 operator without compromising the regulator’s ability to property approve or determine the operator’s regulated charges?  26. Should the WCIR impose different time limits on the regulator in relation to regulated water charge approvals or determinations?  27. Should the WCIR impose a statutory deadline by when a Part 6 operator must lodge its application?  28. Are the provisions relating to regulatory periods set out in the WCIR appropriate?  29. Are the tests set out in rule 29 sufficiently clear to regulators and operators?  30. What are the advantages and disadvantages of the ACCC’s pricing principles defining the terms used in the BWCOP and/or ordering them into a hierarchy to guide the discretion of regulators and provide greater certainty to industry participants?  31. Are the provisions regarding the annual review of regulated charges for Part 6 operators appropriate?  32. Are there better alternatives (to the annual review process in the WCIR) for updating regulated charges when demand or consumption forecasts change?  33. Are the requirements that must be met before an approval or determination of regulated charges can be varied set appropriately? |

CICL is satisfied with the extent of scrutiny that Water NSW’s pricing is subjected toand does not wish to comment further.

**Distributions (Questions 34-36)**

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| 34. Should the requirement in the definition of Part 7 operator that the operator is member owned by removed?  35. Should the definition of a Part 7 operator extend to an infrastructure operator that makes a distribution to some (but not all) of its related customers?  36. Are there examples of non-financial distributions that might provide material benefit to related customers? |

CICL considers that the ACCC should only concern itself with two questions in this regard: is an IIO acting in a way that discourages competition or limits customers' rights to transformation. The ACCC should also understand that there is a clear distinction between dividends and member benefits. Where a customer of an IIO does not seek to be a member of an IIO, they should not be eligible for member benefits and that is a precedent that is clearly established throughout the business world – one only earns frequent flyer points if one if a member of a frequent flyer program; one pays a higher price to have a causal round of golf than does a member of a golf club; and one has to be a shareholder in a company to receive a dividend - and the ACCC should not seek to blur these distinctions. In making this point, CICL has no difficulty in the ACCC taking a continuing and close interest in the charges that IIOs levy non member customers.

**Appeal mechanisms under the WCIR and lessons learnt from other sectors (Questions 37-38)**

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| 37. What models for review of administrative decisions have been successfully adopted in other infrastructure sectors? What are the arguments for and against applying these models to the water sector under the WCIR?  38. Who should have the ability to appeal a decision under the WCIR? |

No Comment.

**Accreditation of Basin State regulators (Questions 39-40)**

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| 39. What are the advantages and disadvantages of accrediting Basin State regulators?  40. Do you think the current procedure for accrediting Basin State regulators under the WCIR could be improved? |

No Comment.

**Differences in charging arrangements (Questions 41-44)**

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| 41. Under what circumstances could differences in charging arrangements between infrastructure operators distort an irrigator’s decisions regarding water use or trade?  42. Are there examples of infrastructure operator charging practices imposing a barrier to trade?  43. What measures could be taken to address any distortions arising from different infrastructure operator charging practices?  44. Should there be a general requirement for all infrastructure operators’ charging arrangements to be consistent with the Basin water charging objectives and principles? |

CICL does not apply any conditions on the trade of water within or beyond its area of operations. It does apply limits on the amount of water that can be applied/used per hectare within its area of operations but does so in order to control ground water levels/salinity (which it is obliged to do under its operating and environmental licences).

CICL is not aware of differences in other IIOs that would constitute a barrier to trade.

CICL cannot agree with the proposition that there be a “general requirement for all IIOs charging arrangements to be consistent with Basin water charging objectives and principles” when those objectives and principles have yet to be articulated.

**Transparency of cost pass-through (Question 49)**

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| 49. Should the WCIR regulate how WPM and bulk water charges incurred by infrastructure operators are passed on to customers? |

In the absence of any discussion of whether there is a problem or issue associated with the status quo, CICL must question the need for further regulation.

**Method of calculating termination fees (Questions 50-51)**

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| 50. Is the definition of the TNAC (total network access charge) used in the WCTFR (water charge termination fee rules) clear and appropriate?  51. Do you think the approach to termination fees could be modified in order to improve the operation of markets? |

CICL has had no difficulty in interpreting the extant definition of the TNAC; nor does it see that any change is required to the current approach to termination fees. Termination fees were not intended to facilitate water trading; they were intended to provide a form of buffer to IIOs and in particular to the remaining customers within a group-owned scheme when others decided to remove themselves either in part or in full from such schemes – and the need for that buffer is not diminished. Those who wish to terminate are not obliged to pay a termination fee – it is but one of a number of courses open to them.

**Circumstances in which a termination fee can be imposed (Questions 52-53)**

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| 52. Do you have any concerns about the limits on when a termination fee can be imposed under the WCTFR?  53. Do the WCTFR inhibit IIOs from making efficient network augmentation or rationalisation decisions? If so, how? |

CICL thinks it would be very difficult for anyone to contend that the WCTFR inhibit IIOs from making efficient augmentation or rationalization decisions and has yet to see that case be put. Rationalisation of group schemes is easily said but much harder to achieve because it inevitably comes down to some customers being pressed to accept relocation, reduced service levels and/or higher charges. That said, where an IIO is intent on rationalization, access to a pool of terminations fees that might be used fund rationalization is far more likely to assist that inhibit the process.

**Approval of additional termination fees (Questions 54-59)**

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| 54. Are the application requirements for approval of an additional termination fee appropriate? |

The NIC has no comment.

**The scope of the WCPMIR and the utility of published information (Questions 55-59)**

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| 55. Should Basin States be required to publish information about their WPM charges?  56. Have you accessed and used the information published on WPM charges under the WCPMIR by Basin States? If so, was the information useful to you and how did you use the information?  57. What are the compliance costs associated with the WCPMIR?  58. What changes to the WCPMIR could be made to enhance their effectiveness? How could the obligations in the WCPMIR be reduced, expanded or amended to make them more effective?  59. Should some or all of the WCPMIR be repealed? Please explain the reasons for your views |

No comment.

**Requirements about information to be published (Questions 60-61)**

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| 60. Is the level of detail of information required to be published under the WCPMIR about WPM charges appropriate?  61. Are there specific requirements to publish information in the WCPMIR that are unnecessary, onerous, unreasonable or unduly costly? |

No comment.

**Requirement as to timing and place of publication (Question 62)**

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| 62. Are there specific requirements as to the timing and place of publication of information that are unnecessary, onerous, unreasonable or unduly costly? |

Other than the comments already made in relation to the NSP requirement, CICL has no comment.