


Mildura (Head Office)

Telephone 03 5051 3400
 Facsimile 03 5051 3480
 741-759 Fourteenth Street
 Mildura Vic 3500
 PO Box 1438
 Mildura Vic 3502
 AUSDOC DX 50023

Swan Hill (Area Office)

Telephone 03 5036 2150
 Facsimile 03 5036 2180
 73 Beveridge Street
 Swan Hill Vic 3585
 PO Box 1447
 Swan Hill Vic 3585
 AUSDOC DX 30164

Kerang (Area Office)

Telephone 03 5450 3960
 Facsimile 03 5450 3967
 56 Wellington Street
 Kerang Vic 3579
 PO Box 547
 Kerang Vic 3579
 AUSDOC DX 57908

All Emergencies
 1800 808 830

www.lmw.vic.gov.au

ABN 18 475 808 826



2 March 2016

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

Dear Sir or Madam,

RE: Submission response to the proposed draft Water Charge Rules

Lower Murray Water would like to thank the ACCC for the opportunity to comment and contribute to the review on the draft Water Charge Rules currently being undertaken.

The individual Rules have been in place for some 5-6 years with the ACCC seemingly observing strong compliance in their monitoring activities from the infrastructure operators.

Lower Murray Water's submission is in line with its objectives and that of Victorian Government in reducing "red tape" wherever possible, in this case reducing the regulatory burden on those impacted by the Rules.

In general, LMW support the changes under the proposed draft rules as it will remove the requirement for two regulators to determine LMW business' tariffs and charges.

Lower Murray Water's submission is enclosed and only includes items of concern or recommendations of amendments to the Rules.

If you would like any to discuss any of the comments made or seek clarification please feel free to contact me.

Kind regards,

PHILIP ENDLEY
 MANAGING DIRECTOR

Lower Murray Water – Submission to the ACCC on the review of the proposed draft Water Charge Rules.

General Comments

Lower Murray Water (LMW) is a not for profit, state owned water corporation reporting to the Victorian Minister for Environment, Climate Change and Water. As an urban and rural water provider, LMW is highly regulated. The common law, specific public sector legislation, guidelines, conventions, agreements, standards and Ministerial orders outline the “must do” elements of its governance which shapes policies and its operating framework.

LMW is committed to delivering cost effective customer service with continuous customer consultation. LMW has recently completed an independent rural service benchmarking study against similar services from other interstate and intrastate infrastructure operators. One of the key findings of the study was the difference in compliance and regulation between the participants in the study, which also became one of the main recommendations from the study, to reduce the “red tape” wherever possible as it comes at a cost to the customer.

LMW is captured in the current rules as a Tier 3 infrastructure operator (the most onerous category) along with two other water infrastructure operators within the Basin, WaterNSW (State Water) and Goulburn Murray Water. Both are considerably larger rural infrastructure operators than LMW. Other operators, such as Murray Irrigation and Murrumbidgee Irrigation, who have a larger number of customers and also have more water usage, are not. LMW believe this is a discrepancy.

LMW has 4 pumped irrigation districts and 1 stock and domestic (rural) district which have a collective entitlement ownership of approximately 120 GL with usage of approximately 100 GL. This does not meet the current rules threshold for even Tier 2 with the current Rules being set at 125 GL. LMW has delegated powers to manage approximately 300 GL of extraction to private diverters from Nyah to the SA Border, however the private diverters own and operate their own infrastructure and should not be included in the assessment of total volume of entitlement held.

On initial reading of the proposed draft Rules, it appeared that LMW would be captured under the rules as a Part 6 operator. Again the most onerous category. However, further discussions with the Victorian Department of Environment, Land, Water and Planning (DELWP) Water and Catchments – Economic Regulation and Pricing it appears this will not be the case. As LMW understand it, other Victorian legislation will also need to be put in place to facilitate this.

LMW would recommend that Item 23 of the proposed draft Rules, Part 6 Operators be amended to further clarify the definition of a *Part 6 Operator*. LMW has been advised that Rule 23 (b) is intended to capture only “on river operators” however the rules do not state this with the risk of misinterpretation.

Overall, LMW would welcome a common reporting and compliance system across providers, aimed at minimising the cost to its customers.

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

Rule 9 (1)

One of the purposes of the Rules is to enable customers to identify the infrastructure charges, planning and management fees that are applicable to them and their associated services and what the cost of the service is going to be to them.

Customers should be able to do this without an overly complicated schedule of charges. The schedule of charges should be an accurate and concise document where possible.

The draft proposed Rules require publication of all infrastructure charges unless they have been granted exemption by the ACCC. An exemption under Rule 9(9) looks unlikely in most cases.

LMW consider that provision of other infrastructure services that are specifically unique to an individual customer and not applicable to others, captured in a written contract need not be included in the schedule of charges. To do so will create a complex document.

LMW has devoted considerable effort in making its schedule of charges easier to understand by the end user. Additional, non-applicable information around service and pricing can lead to customer confusion.

The individual contracted service customers have detailed information within their contract and have legislated avenues should a dispute arise between the parties and LMW.

LMW believe if any other persons have any concerns over LMW's entering into a specifically unique individual contract for the provision of service, they have the Freedom of Information Act 1982 as the legislative instrument as an option in this instance.

LMW does not believe the re-issue of a schedule of charges to all customers is warranted when LMW enter into a new service contract for a specifically unique infrastructure service. It is not practical or feasible. The requirement of an exemption, if applied for, is also an unnecessary time consuming process which is to occur before a contract is entered into. One customer annoyance can be the time taken by application or approval processes by Government entities.

Put simply, when LMW are entering into a new unique infrastructure service the Rules are requiring:

1. When the new infrastructure service is intended, LMW to send a copy of the amended schedule of charges 10 business days prior to the effective date of the unique infrastructure charge to all customers.

This could be potentially be several times a year which is costly, time consuming and confusing to the customers. This is not desirable.

OR;

2. Apply for the infrastructure charge to be exempt from the schedule of charges. So before the contract is entered into, and perhaps not all conditions have been settled on, apply to the ACCC for exemption which may take months.

This requirement also could be potentially be several times a year. Another costly, time consuming process for the infrastructure operator that is not desirable.

3. Then, even if an exemption is granted by the ACCC, after the 2016 amendment date, the infrastructure operator is still required to list the details of the exemption on the schedule of charges. (Rule 13A)

This requirement would then force LMW to amend its schedule of charges and send a copy to all customers 10 business days prior to the effective date of the exempt infrastructure charge anyway.

Rule 9 (9) states;

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.

It would appear the ACCC have no regard for the commercial confidentiality clauses in a legal contractual agreement. LMW are not putting forward a legal argument here; but surely what also should be considered is; what is the actual benefit to the community in disclosing the information?

The draft proposed draft Rules also places an administration burden on the ACCC. Not only does the ACCC need to monitor compliance with these requirements but the proposed Rules 9 (5) to (13A) also requires unnecessary action for the ACCC.

Firstly, LMW recommends the removal of the requirement of including the individual contract information on the schedule of charges. Removing this requirement would also remove the need for an application of exemption for having to list these unique infrastructure charges from the schedule of charges.

Doing this would remove the "red tape" burden of having to apply for exemption, the potentially time consuming back and forth communication for further information before the ACCC's decision.

Rule 9A (3)

As LMW understands it, the schedule of charges are the tariffs (if applicable) that appear on a customer's bill.

LMW finds the requirements of this new proposed rule 9A to be inconsistent with a current stakeholder direction.

Also, LWM has previously considered and deliberated with customer consultative committees on the make-up of the tariffs that detail the charges on a customer's bill.

LMW considers that in its case, the addition of small inconsequential infrastructure charge tariffs such as the distribution losses have no benefit.

For example, LMW's current shared distribution loss of 1,714 ML at a cost of \$20,225 for the Red Cliffs Irrigation District is less than 1% (approximately 0.5%) of a customer's total bill. In dollar terms around the \$3.80 per delivery share.

LMW already informs its customers on almost all "pass through" charges where it has deemed to be appropriate and meaningful. The additional requirement of many varied small charge tariffs by the draft proposed Rules is considered unwarranted.

LMW does not believe it should be an objective of the Rules to specify the tariff suites of infrastructure operators. The tariff structure should reflect what the infrastructure operator and the customer consider appropriate.

LMW notes that Rule 9A (3) has implications within Rule 72 – Calculation of termination fee which is discussed in Part 10 – Termination fees of this submission.

LMW recommends that the 9A requirements be removed from the Rules.

Part 4 – Infrastructure operator and other persons to provide schedule of charges

LMW have issue with Rule 11(5)(b);

11(5)

- (b) *for a customer that becomes a customer of the operator after the day 10 business days before the schedule of charges takes effect – the operator must send a copy of the schedule of charges to the customer on or before the day the customer becomes a customer of the operator.*

How is LMW to know who is going to become a customer before they become a customer? And to respond on the very day they do become a customer is not reasonable or feasible.

Persons considering to become new customers should undertake due diligence to make informed decisions. The customer should ensure they are informed of the service they are securing by investigating this firstly themselves.

LMW has other information that we provide to new customers. The provision of the schedule of charges should be within the same information package sent to the new customer.

LMW recommends that operators be given 15 days to send out a schedule of charges to a new customer. The LMW website is always available for immediate access to the schedule of charges should a customer desire to view the schedule of charges at any time.

Rule 11 Table

LMW notes enhancement of the planning and management charge requirements with in the schedule of charges.

LMW finds no issue with these enhancements should the Water Charge (planning and management) Rules be repealed.

LMW notes that the draft Rules do not reference a repeal of the Water Charge (planning and management) Rules. As LMW understand it, the repeal of this would occur with the introduction, when or if, the draft Rules are legislated.

Part 10 – Termination fees

LMW notes that the draft Rules do not reference a repeal of the Water Charge (termination fee) Rules. As LMW understand it, the repeal of this would occur with the introduction, when or if, the draft Rules are legislated.

It is LMW's opinion that the termination fee Rules is supported by other infrastructure operators.

The current Water Charge (termination fee) Rules are supported by LMW. Significant water reform has been occurring in the Murray Darling Basin and within the environment LMW

operates. LMW see the termination fee as a fair mechanism for all parties, the customer wanting to exit the industry, the remaining customers and the infrastructure operator. The possibility of stranded assets continues to be a risk and infrastructure operators need time to adjust so that the remaining irrigators do not carry the burden from exiting irrigators.

Rule 72

The calculation of the termination fee in the draft Rules has been amended from current approved rules. The new proposed calculation method potentially creates a major issue for LMW as it does not see the requirement (as per previously discussed in the response to 9A (3)) for a shared distribution losses separate tariff which is supported by LMW's concerns with Rule 9(1).

The draft Rules would mean that under LMW's current tariff structure, LMW would only be able to apply a multiple of 1 instead of a multiple of LMW's choice (noting the allowed maximum multiple is 10). As previously expressed in the submission, LMW does not believe the draft Rules 9(1) and 9A (3), as proposed, are practical or provide benefit to the customer.

LMW is unsure why shared distribution losses would need to be listed on the schedule of charges in order to be included in the termination fee. The same distribution losses would more than likely still be incurred by LMW with the totally terminating customer until possible changes to the distribution system could be made, indeed if at all. Even more so if the terminating customer was only to part terminate as LMW would be still be delivering water.

The introduction of item 'B' to the calculation of the termination fee will make the disclosure of the value in the schedule of charges of the termination fee problematic.

Item B is described in the proposed Rules as;

B is the lesser of the following:

- (a) $10 \times C$; and
- (b) $D - E$;

where:

C is the amount, for a full financial year, of an infrastructure charge levied for infrastructure that is used exclusively by the terminating customer.

D is the total amount of any capital expenditure incurred by the infrastructure operator in relation to the infrastructure exclusively used by the terminating customer, excluding any contributions made by the customer (other than through infrastructure charges), a government or other party towards that expenditure.

E is the total amount of all infrastructure charges paid by the terminating customer for the exclusive use of the infrastructure.

(3) When calculating E:

- (a) if an infrastructure operator has levied a separate infrastructure charge at any time since initially incurring any capital expenditure in relation to the infrastructure, but has not levied the charge in each year since that initial capital expenditure—the operator is taken to have levied an infrastructure charge in each year since the capital expenditure was initially incurred by the operator; and*
- (b) the amount of the charge in each year is taken to be the average of the amounts paid by the customer to the operator for all years for which the operator levied a separate infrastructure charge in relation to the exclusive use of the infrastructure.*

The proposed calculation method could vary for individual customers and the termination fee be incalculable by themselves from the schedule of charges. LMW wish to point out that in practice, it could only describe the method in which a termination fee is calculated.

This information is not readily available to customers unless the customers enquire to LMW. The information is also not readily available to LMW. The proposed Rules are potentially generating unnecessary complication. Generally, these types of infrastructure service arrangements should be made in written contracts which would describe the conditions of the customer terminating.

It is noted that item B is only applicable if LMW levies a separate infrastructure charge on a customer for infrastructure that is used exclusively by the terminating customer.

Whilst LMW supports the ability for infrastructure operators to recoup these sunken costs, as previously discussed in this submission under Rule 9 (1), LMW does not support the need to include all these types of individual unique infrastructure charges on the schedule of charges. Generally, these types of arrangements are in legal written contracts. Rule 9 (1) now has further implications; in the calculation of the termination fee for item B.

LMW recommend that the proposed Rules for calculating the termination fee be amended with the removal of Rule 72 (2)(a)(ii) and LMW reiterates its thoughts on Rule 9 (1).

LMW Commitment

LMW endeavours to achieve complete compliance and is prepared to work in conjunction with regulators to deliver desired outcomes in the best interest of its customers and stakeholders.

LMW points out that with not for profit Government Business Entities any fines are paid by tax payers/customers; the very people LMW and the ACCC are attempting to service and protect.

LMW believes that the compliance regime should be one of cooperative rectification with fines and penalties being an outcome of last resort. This should be even more so in an environment where regulation is very high and the legal instruments can be technical and the intent of the regulation is not always clear.