



25 June 2015

Review of the water charge rules
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

Dear Sir/Madam,

Waterfind believes that effective regulation of water charges is critical for the ongoing growth of water markets and for maintaining the trust of water right holders in the water market.

Since their commencement, water charge and water market rules have greatly contributed to reducing barriers to water trade and improved irrigators' access to water markets outside of their irrigation districts.

While the benefits have been significant, there is still work to be done to improve the efficiency and effectiveness of the water market by making it easier for water market participants to trade, and ensuring they have the same rights regardless of where they are trading. Therefore, Waterfind makes the following recommendations in relation to the water charge rules:

- That water charge rules be combined into one set of rules and merged with the water market rules as well;
- That charges for water planning and water management activities be included in the definition of a regulated charge in the combined rules (and, if rules are not combined into one set of rules, such charges be included in the definition of a regulated charge in the Water Charge (Infrastructure) Rules 2010);
- That transaction fees (e.g. fees for applications to obtain, vary or trade water access rights or lodgement of a transaction with a water registry) be subject to regulator's approval regardless of the Irrigation Infrastructure Operator's size or ownership type; and
- That certain transaction fees (e.g. trade-out fees for temporary water) be prohibited or capped.

Attached to this cover letter is Waterfind's response to specific questions raised by the ACCC relating to water charge rules providing details to the above recommendations.

Sincerely

A handwritten signature in blue ink, appearing to be "Alister Walsh", written in a cursive style.

Alister Walsh
CEO Waterfind

WATERFIND – RESPONSE TO SPECIFIC ACCC QUESTIONS

Below Waterfind has provided response to a selection of specific questions raised in the ACCC Review of Water Charge Rules Issue Paper Briefing.

GENERAL MATTERS

Question 3

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

In regards to facilitate the efficient functioning of water markets, Waterfind considers that stricter regulation of water transfer fees (e.g. transfer application fees & trade out fees) would be needed to reduce trade barriers and to ensure consistency across sectors and jurisdictions where water can be traded. These matters are discussed in greater detail in the remainder of this submission.

Touching on the scope of this review, one specific issue Waterfind would like to flag is dealing with smaller private irrigation trusts or joint water supply schemes that are outside of the water charge rules regulation. Waterfind has come across with several cases where these smaller operators set their members unjust restrictions to water trading (just recently a client -was unable to sell their permanent water right outside the water trust they were a member in as the trustee wouldn't give permission), and the trustees have been able to use their own rules to place unjustified restriction, or in some cases even benefit monetarily or in other ways due to imposed restrictions and their position. In such cases the individual members currently lack an official or legal avenue to challenge these unjust rules or charges regarding water trading.

To solve enforcement of rules issues like this, which unfortunately are not uncommon, Waterfind suggests that the ACCC could investigate the possibility of the introduction of a water ombudsman. Waterfind believes that the opening for an ombudsman or tribunal type oversight would provide an option for individual trust members to claim their rights to manage their own water assets in problematic situations, as well as provide some pressure to trusts or schemes practicing unjust policies.

It should be also mentioned that after the positive changes water charge and water market rules have brought to the irrigation districts across the Murray-Darling Basin so far, it would be prudent for the ACCC to consider an extension of its current duties of oversight (Waterfind acknowledges that this would necessitate changes to the Commonwealth Water Act 2007). For instance, many of Queensland's water districts are outside the Murray-Darling Basin (and the ACCC's jurisdiction as we understand it). Although QLD does have its own price regulator, this doesn't necessarily deal with all the relevant issues in relation to reducing barriers to water trade and improving irrigators' opportunities in managing their water assets in the most effective way. In order to provide all Australian irrigation water users equal rights to use and trade their water entitlements and allocations, Waterfind believes expanding the reach of water charge and water market rules, and consequently the ACCC's authority, outside the Basin would benefit the Australian irrigation industry and water markets greatly.

Question 5

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?

Firstly, regarding the combination of the three water charge rules, Waterfind cannot see any clear negatives to this.

The rules as they currently stand use the same terminology, with only the Water Charge (Infrastructure) Rules 2010 having more than 5 parts. There is even some overlap within the rules, with some mention of other Charge Rules, as well as the Water Market Rules 2009.

Waterfind believes that the combination of the Water Charge and Market Rules would provide clarity to end users, rather than requiring reference to multiple documents.

Water Charge (Infrastructure) Rules 2010

In general, Waterfind thinks that Water Charge (Infrastructure) Rules 2010 (WCIR) has been successful in its key objective of addressing the market power that infrastructure operators have as natural monopolies in the rural water market. However, from a water market point of view attention is needed with regard to the definition of a regulated charge in the WCIR. Currently the definition of a 'regulated charge' does not include s91(1)(c) *Regulated water charges* (Water Act 2007):

(c) Charges for water planning and water management activities

This means that transaction fees (e.g. fees for applications to obtain, vary or trade water access rights or lodgement of a transaction with a water registry) which fall under water planning and management (WPM) charges are not included in the WCIR.

Waterfind appreciates that WPM charges are included in the Water Charge (Planning and Management Information) Rules 2010 (WCPMIR). However, as these rules concentrate on publishing information regarding WPM charges, at present transaction fees are not explicitly regulated under any instrument of the water charge rules.

Consequently, Waterfind believes that significant water market trade barriers stem from the fact that at present, member owned infrastructure operators can freely set their transaction fee arrangements.

Question 11

Do you think the differential treatment of member owned operators is still appropriate?

Question 13

What are the advantages and disadvantages of the tiered regulatory approach in the WCIR? Do you think the criteria are set appropriately?

The differential treatment of member owned operators has certainly provided some positive results, especially in relation to WCIR Part 3 Non-discrimination requirements. Having said this, Waterfind acknowledges that from a water market point of view some specific examples have arisen as a consequence of the fact that member owned operators are not subject to the requirements of Part 6 (approval or determination of charges) of the WCIR. This has resulted in trade barriers in the water market regarding Water planning and management (WPM) charges.

Waterfind does not suggest that all operators, regardless of their size or ownership type, should be subject to the requirements of Part 6. However, water markets would benefit if transaction fees and potentially other WPM charges would be subject to regulator's approval.

Question 17

Are the schedules of charges produced by infrastructure operators sufficiently clear and detailed to meet the needs of customers and potential customers?

Question 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?

Question 19

Are the publication requirements in relation to schedule of charges appropriate?

In general, Waterfind believes that the requirements regarding publication of schedule of charges are appropriate. As previously mentioned, transaction fees which fall under water planning and management (WPM) charges are not included in the WCIR. Consequently, some charges related to water trading are hard to research (e.g. WaterNSW's Variable Usage Charges) and can thus sometimes be undefined until the transaction process causing confusion to both parties involved. Therefore, we suggest that the reach of publication requirements is extended to include WPM charges as well. As this process would make WCPMIR redundant, combining the water charge rules into one set of rules would be the logical solution for this overlap¹.

In addition, Waterfind believes that a prescribed template combining both WCIR and WPM charges would provide clarity to water users and assist infrastructure operators to comply with the pricing transparency requirements.

These reporting requirements could be suggested to provide further clarity to new entrants into an irrigation district by publishing all the individual irrigation district fees and requirements publicly. While the bigger operators already publish this information in a sufficient manner, some of the smaller member owned operators publish this in an opaque way if at all, making it difficult for potential new entrants to obtain the necessary information (e.g. an irrigator purchasing a new property serviced by an Irrigation District Operator). A prescribed schedule of charges template would standardise these requirements and enable clearer due diligence processes to be undertaken by a potential new entrant to the irrigation network.

Question 41

Under what circumstances could differences in charging arrangements between infrastructure operators distort an irrigator's decisions regarding water use or trade?

Question 42

Are there examples of infrastructure operator charging practices imposing a barrier to trade?

As mentioned, Waterfind believes that significant water market trade barriers stem from transaction fees charged by some operators. Mostly these fees are in relation to trading temporary allocation water out of the member owned private irrigation districts.

¹ In any case, even with the current WCPMIR publishing requirements not all water trading charges can be clearly found from the operators' website (e.g. Variable Usage Charges of WaterNSW)

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Waterfind considers that such trade-out fees are not justified, and are also in breach of the National Water Initiative (NWI) objectives as well as the Basin water charging objectives and principles (BWCOP) to facilitate the efficient functioning of water markets, and the ACCC should consider prohibiting such fees, or alternatively set a cap that can be charged via these fees in any single transaction.

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Question 43

What measures could be taken to address any distortions arising from different infrastructure operator charging practices?

As mentioned above, Waterfind suggests the ACCC to either prohibit or cap trade-out fees. In general, more stringent regulation of transaction fees (application fees & trade out fees) is needed in order to reduce trade barriers and to ensure consistency across the Murray-Darling Basin.

Question 44

Should there be a general requirement for all infrastructure operators' charging arrangements to be consistent with the Basin water charging objectives and principles?

Yes. Waterfind believes that compliance (and monitoring) of the BWCOP are of great benefit for all water market participants.

Question 49

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

As mentioned, Waterfind is a strong supporter of bringing WPM charges (especially transaction fees) within WCIR regulation. This would improve the transparency and efficiency of water markets as well as comparability of water market transactions across the Murray-Darling Basin.

Water Charge (Termination Fees) Rules 2009

Question 50

Is the definition of the TNAC (Total Network Access Charge) used in the WCTFR clear and appropriate?

Question 51

Do you think the approach to termination fees could be modified in order to improve the operation of markets?

On the whole, Waterfind sees that Water Charge (Termination Fees) Rules 2009 (WCTFR) have succeeded in addressing potential barriers to trade and contributed to the efficient functioning of water markets, remaining clear and appropriate. However, in order to improve the comparability of termination fees across different operators, it might be of use to review and possibly unify the units that are used in defining water delivery rights (that form the basis of TNAC) in different states. Whereas in NSW delivery rights are of the form 'one delivery entitlement equals to the right to deliver 1ML of water to the customer', in Victoria delivery rights are allocated as ML/day units. The latter unit is often

hard to interpret and makes comparison and proportional adjustment of the delivery rights (should the irrigators e.g. want to reduce the amount of their delivery rights) difficult. Thus, Waterfind suggest that the ACCC consider actions needed to standardise the delivery right units across the Murray-Darling Basin.

Water Charge (Planning and Management Information) Rules 2010

Question 55

Should Basin States be required to publish information about their WPM charges?

Question 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?

Question 58

What changes to 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?

Waterfind accesses and uses the WPM charge information on a regular basis. In fact, Waterfind has implemented all the necessary WPM charges, especially transaction fees to its online water trading platform so that each trade conducted through the platform automatically includes all the government and authority fees payable by both parties involved. Therefore, it is of essential importance that this information is easily available, as it enables Waterfind to provide clear and transparent total cost information when an irrigator seeks to enter the Water Market.

As previously mentioned Waterfind supports bringing WPM charges (especially transaction fees) within the scope of the WCIR. As all required parties have not published information that meets the requirements of the WCPMIR to date, consolidating WPM charge publication requirements with the WCIR would make the rules more effective in general. By extending the current WCIR reach of publication requirements to include WPM charges, and potentially predisposing the setting of WPM costs to regulator's approval would provide more rigour, transparency and comparability around water market transaction fees.

These actions would make the WCPMIR redundant. Therefore, combining the water charge rules into one set of rules would be logical to avoid overlap.