

26 June 2015

Australian Competition & Consumer Commission  
GPO Box 520  
Melbourne VIC 3001

VIA EMAIL: [waterchargerules@acc.gov.au](mailto:waterchargerules@acc.gov.au)

Dear Sir/Madam,

**RE:** Submission to ACCC Water Charge Rules Review (May 2015)

We write in response to the issues paper released by the ACCC in early May 2015.

Western Murray Irrigation Limited (WMI) accepts the need for rules in the area of water markets and water charges. WMI believes that a material reduction in the amount and complexity of regulation is warranted.

WMI, which is a member owned IIO, incurs significant costs (which are in turn passed on to customers as part of our full cost recovery policy) in achieving compliance. A change in approach by the ACCC to an exception reporting regime would result in significant savings for both WMI's customers and the ACCC.

As a member owned IIO, WMI customers (owners) are able to gain direct access to the Board and Management to raise any topic they would like to discuss. Shareholders are ultimately able to effect change in the Board and hence the organisation, through yearly elections.

The issue of stranded assets is a risk that the WMI Board and Management have front of mind at all times. WMI supports the Water Charge Termination fee rules as they protect the remaining customers from the undue burden of exiting customers.

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?

**Question 1:** WMI has no comment

**Question 2:** WMI believes that a system of exception reporting is now warranted due to the high levels of compliance and the low numbers of breaches that have been identified. Moving to a system of exception reporting would result in significant cost savings to both the ACCC and WMI.

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

**Question 3:** WMI has no comment

4. 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?

**Question 4:** WMI has no comment

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?

**Question 5:** The costs for a member owned IIO such as WMI are increased with multiple sets of rules and therefore having one set would assist in keeping compliance costs down. It is noted that many State Governments are still not fully compliant with the Water Market Rules and should the ACCC regulate the rules, it is assumed that this situation would not be likely to continue unchanged.

6. Is the ACCC's guidance material useful? In what ways could it be improved?

**Question 6:** WMI has no comment

7. What are your views on how the ACCC has used its enforcement powers in relation to the water charge rules?

8. How could the ACCC improve its approach to achieving compliance with the water charge rules?

**Questions 7 - 8:** As a member owned IIO, WMI is keenly aware that any penalties or fines levied by the ACCC are borne ultimately by customers (owners). With compliance already very high, an approach that seeks to work collaboratively with organisations to correct breaches would be one that could see costs reduced.

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

**Question 9:** WMI has no comment

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| 10. How do you think the WCIR could be amended to improve the clarity of the criteria used to determine infrastructure operators' size and ownership?   |
| 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 WCIR? Do you think the criteria are set appropriately?   |

**Questions 10 - 13:** As a member owned IIO, WMI is always focused on trying to keep all costs (especially compliance) to a minimum. Customers (owners) actively engage with Management and the Board throughout the year which ensures that any queries, concerns or suggestions regarding operations and costs are made known quickly.

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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? |

**Questions 14 - 20:** As a member owned IIO, WMI is always looking at ways of reducing costs whilst ensuring customers (owners) are kept fully informed. Whilst WMI supports the requirement to provide customers with a schedule of charges, the effective mandating that this be carried out via posting out to all customers is counter-productive as it results in an increase in costs.

Recently WMI was hours away from releasing its 2015/16 schedule of charges when the ACCC issued its final decision on Water NSW's 2015-16 charges for infrastructure services. This resulted in WMI expending a considerable sum to destroy the original envelopes, prepare new envelopes, insert the revised schedule and then post off. If it was possible to avoid physical posting out of the schedule of charges and replace this solely with uploading on the WMI website, it would result in significant cost savings for customers (owners).

Given our previous experience with prescribed templates, WMI does not believe that such an approach should be introduced as it would only add complexity and thus costs to our customers (owners) without improving their understanding of the charges.

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| <p>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?</p> <p>22. What do you think the advantages and disadvantages of removing the requirements for Part 5 operators in relation to NCPs and NSPs are?</p> <p>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?</p> |
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**Questions 21 - 23:** WMI has no comment

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| <p>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?</p> |
| <p>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 properly approve or determine the operator's regulated charges?</p>                                    |
| <p>26. Should the WCIR impose different time limits on the regulator in relation to regulated water charge approvals or determinations?</p>  |
| <p>27. Should the WCIR impose a statutory deadline by when a Part 6 operator must lodge its application?</p>   |
| <p>28. Are the provisions relating to regulatory periods set out in the WCIR appropriate?</p>  |
| <p>29. Are the tests set out in rule 29 sufficiently clear to regulators and operators?</p>  |
| <p>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?</p>       |
| <p>31. Are the provisions regarding the annual review of regulated charges for Part 6 operators appropriate?</p>   |
| <p>32. Are there better alternatives (to the annual review process in the WCIR) for updating regulated charges when demand or consumption forecasts change?</p>  |
| <p>33. Are the requirements that must be met before an approval or determination of regulated charges can be varied set appropriately?</p>   |

**Questions 24 - 33:** It would be beneficial to WMI (and thus its customers) if the final determinations of regulated charges could be finalised well before June (say mid-late April) in order to allow sufficient time for WMI to incorporate the determination into its schedule of charges for the coming year.

34. Should the requirement in the definition of Part 7 operator that the operator is member owned be 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?

**Questions 34 - 36:** The purpose of the review is to assess opportunities to reduce costs to member owned organisations such as WMI and to government. The definition of a Part 7 operator should not extend to an infrastructure operator that makes a distribution to some (but not all) of its related customers. If it were extended, more operators could then be exposed to the burdensome regulation described in Part 7 and this would increase costs to operators and government, not reduce them. If the scope of the rule were extended, in order to avoid regulation as a Part 7 operator, an operator which makes a distribution to any one or more related customers would have to contend that “the distribution was made without distinction between related customers and other customers” for the purposes of rule 45(2)(b). There is room for debate about the meaning of those words and they open up the potential for time-consuming and burdensome investigations by, and debates with, the ACCC in relation to the issue. If the scope of the rule were extended, prudent operators would probably need to go to the additional expense of obtaining legal advice before making any distributions. The existing rule is clear and straightforward because it applies only if a distribution is made to all related customers. This is easy to interpret and apply and it minimises cost and regulation.

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?

**Questions 37 - 38:** WMI has no comment.

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?

**Questions 39 - 40:** WMI has no comment.

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?

**Questions 41 - 44:** Whilst WMI (which is a member owned IIO) is accountable to many parties for its charges and conduct, the MDBA costs it is levied (via Water NSW charges) are not subject to the same level of accountability. WMI believes that any such MDBA costs should be subject to ACCC review to ensure that they are fair and least cost.

45. Is there merit in the WCIR explicitly recognising that they do not seek to preclude the operation of third party access regimes?
46. What, if any, modification to the test in WCIR rule 29 should be made to accommodate commercially negotiated / arbitrated charges?
47. Do the WCIR otherwise need to be amended to accommodate third-party access regimes in relation to water service infrastructure?
48. Are there any features unique to the MDBA or BRC that would complicate the application of the WCIR to charges imposed by these entities?

**Questions 45 - 48:** WMI has no comment.

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

**Question 49:** WMI does not support any new or modified regulation that increases costs as these are borne by customers (owners).

50. Is the definition of the TNAC used in the WCTFR clear and appropriate?
51. Do you think the approach to termination fees could be modified in order to improve the operation of markets?

**Questions 50 - 51:** WMI does not believe that there is any evidence to support any change in the approach to termination fees as the operation of markets appears unimpeded.

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?

**Questions 52 - 53:** WMI believes that the current limits are appropriate and that the WCTFR do not inhibit it from making efficient network augmentation or rationalisation decisions.

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

**Question 54:** WMI has no comment.

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.

**Questions 55 - 59:** WMI has no comment.

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?

**Question 60 - 61:** WMI has no comment.

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

**Question 62:** WMI has no comment.