



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# What do the new Water Charge Rules mean for infrastructure operators and irrigators?

## Frequently Asked Questions

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Weir at Lake Wetherell, Andrew Beer, MDBA

The ACCC has prepared the following information to assist infrastructure operators in the Murray–Darling Basin to understand the key requirements under the new Water Charge Rules.

This document is not intended to be a comprehensive summary of infrastructure operators' obligations under the Water Charge Rules 2010 (Water Charge Rules) and infrastructure operators should refer to the Water Charge Rules to determine the obligations that are relevant to their particular circumstances.

### What are the new Water Charge Rules?

The Water Charge Rules commenced on **1 July 2020** and combine the Water Charge (Infrastructure) Rules 2010, Water Charge (Termination Fees) Rules 2009 and Water Charge (Planning and Management Information) Rules 2010 into one set of rules, which:

- make clearer the schedule of charges requirements
- simplify the calculation of termination fees, and
- simplify the regulatory framework by returning the regulation of water infrastructure charges levied by on-river infrastructure operators back to Basin States, subject to certain requirements being met.

## What is an infrastructure operator?

The Water Charge Rules apply to all infrastructure operators. An infrastructure operator is any person or entity that owns or operates infrastructure for one or more of the following purposes the:

- storage of water
- delivery of water
- drainage of water

for the purpose of providing a service to someone who does not own or operate the infrastructure.

## Schedule of charges

### What should be included on a schedule of charges?

Under Rules 11 and 13 of the Water Charge Rules, an infrastructure operator's schedule of charges must set out the infrastructure and planning and management charges that it levies on its customers. Unless the ACCC has granted an exemption from these rules (or some other specified exclusion applies),<sup>1</sup> it must include certain information about its charges, including, but not limited to:

- the name and amount<sup>2</sup> of each charge, who must pay the charge, when and in what circumstances the charge is payable
- if applicable, the water resource, and class of water access right, irrigation right or delivery right to which each charge relates
- how charges are determined, and if the charge is not determined by and/or payable to the operator, who determined the charge, to who the charge is payable and for who the charge is being collected
- if applicable, how the infrastructure operator has determined or calculated the infrastructure charges it passes-through
- a description of the infrastructure service to which each infrastructure charge relates
- the legislative, contractual or other authority for each planning and management charge
- how a customer can be involved in processes for deciding charges and make an enquiry or seek to resolve a dispute about the operator's charges
- if applicable, any generally available discounts, surcharges or hardship policies
- the date on which the schedule comes into effect and a statement that this is the date from which each individual charge applies, unless a different date of application is specified.

1 Subrule 11(7) of the Water Charge Rules sets out specific charges that do not need to be included on an infrastructure operator's schedule of charges.

2 For a charge that reflects the cost of physically connecting, or physically disconnecting a customer from the operator's water service infrastructure, the schedule of charges should include a statement that the charge will be determined at the time of the connection or disconnection.

3 A bulk water service is a service for the storage and/or delivery of water that is primarily on-river.

A schedule of charges must also provide any other information that is reasonably necessary or desirable to explain the charges to the customer.

The ACCC has developed an [example schedule of charges](#) to help explain what needs to be included.

### When does an infrastructure operator need to give its schedule of charges to its customers?

- An infrastructure operator must give a copy of its schedule of charges to each of its customers at least **10 business days** before the day the schedule of charges comes into effect.
- An infrastructure operator who levies infrastructure charges in relation to a bulk water service<sup>3</sup> in respect of water access rights must give its schedule of charges to its customers at least **25 business days** before the schedule of charges comes into effect.

From the day an infrastructure operator is made aware of a new customer (or an existing customer's written request for the details of the operator's current charges), an operator must give the customer a copy of its current schedule of charges within **10 business days**. If a new schedule of charges has been adopted but is not yet in effect, the operator must also give the new schedule of charges at this time.

Where an infrastructure operator is required to give its schedule of charges to a customer, the schedule can be given by post or in electronic form (such as fax, email or text message) and can be given in different forms to different customers. The schedule of charges is taken to be 'given' to a customer on the day that it is sent (by post or electronic medium).

### Does an infrastructure operator need to publish its schedule of charges?

If an infrastructure operator has a website, the schedule of charges must be published on a publicly accessible part of the operator's website at least **10 business days** before the schedule of charges comes into effect.

An infrastructure operator who levies infrastructure charges in relation to a bulk water service in respect of water access rights must publish its schedule of charges on its website (if it has one) at least **25 business days** before the schedule of charges comes into effect.

If an infrastructure operator does not have a website, it is not required to publish its schedule of charges.

## What if a state regulator or the ACCC does not approve or determine an infrastructure operator's charges in time for the operator to update, publish and distribute its schedule as required by the Rules?

If a schedule of charges includes:

- charges that are required to be determined or approved by a State Agency or the ACCC, and
- the timing of the determination or approval of the charges prevents an infrastructure operator from updating and publishing its schedule of charges in accordance with the timeframes specified in the Water Charge Rules

the operator will have complied with this part of the Water Charge Rules as long as the required actions (like updating and publishing its schedule of charges) are satisfied **as soon as practicable** after the charges are determined or approved.

## Pass-through of charges

### What do the Water Charge Rules say about pass-through charges?

Certain charges are levied on infrastructure operators. For example, a bulk water operator may levy a charge on an infrastructure operator (on the basis of the water access rights held or used by the operator) to cover distribution losses, or a State government may levy a charge to recover costs for water planning and water management activities.

In general, an infrastructure operator recovers these charges by passing them through to its customers. Rule 9A of the Water Charge Rules requires that an infrastructure operator pass through these charges in a transparent manner and Part 4 of the Water Charge Rules sets out how they should be presented on a schedule of charges.

There are two types of charges that can be passed through in this way, 'network operation charges' and 'ancillary charges.'

### What is a network operation charge?

A network operation charge is an infrastructure charge or a planning and management charge levied on an infrastructure operator (taking account of any discounts) on the basis of:

- water access rights held or used by the operator specifically for the purpose of meeting distribution losses, or
- infrastructure used by the operator to extract water from a watercourse or discharge water to a watercourse in the course of providing a service to the operator's customers.

An example of a network operation charge is a government charge associated with a conveyance licence held by the infrastructure operator.

### How can an infrastructure operator pass-through a network operation charge?

An infrastructure operator may recover a network operation charge from its customer by means of one or more separate charges **or** as a component of general charges levied on the customer.

If the infrastructure operator chooses to levy separate charges, these must not recover in total more than the total amount of the network operation charges (levied on the operator).

### What is an ancillary charge?

An ancillary charge is any infrastructure charge or planning and management charge levied on an infrastructure operator (taking account of any discounts) that are not network operation charges.

Most government charges imposed on an infrastructure operator will be ancillary charges. An example of an ancillary charge is a bulk water charge or a planning and management charge.

### How can an infrastructure operator pass-through ancillary charges?

To recover ancillary charges, an infrastructure operator **must** levy one or more separate charges and recover (as far as practicable) the same total amount of the ancillary charge/s levied on the operator.

Ancillary charges should be levied on the same basis as the charge/s being recovered (or if that is not practicable, on a similar basis) and must not be levied on the basis of the number of units of water delivery right or water drainage right held.

Ancillary charges must not be incorporated into general charges levied on customers.

## Exemption from publication requirements

### Can I apply for an exemption from the requirement to publish certain charges?

Yes. The ACCC can grant an exemption if it is satisfied that the disclosure of the infrastructure charges under a contract between an infrastructure operator and its customer **would result in a material financial loss for, or material detriment to**, the infrastructure operator or the customer.

If an infrastructure operator and its customer entered into a written contract **before 1 July 2020** for the provision of infrastructure services to the customer that specifies the charges for those services, the application for an exemption from the obligation to publish those charges must be made **before 30 June 2021**.

**After 1 July 2020**, if an infrastructure operator and its customer would like an exemption from the infrastructure operators' obligation to publish infrastructure charges specified in a contract between them, one of the parties must apply for an exemption **before** they enter into the contract.

If the exemption is granted, certain information must be published on the schedule of charges within 12 months of the exemption being granted, including, a statement that the exemption has been granted, the name of the customer, the infrastructure service to which the exemption from disclosure relates, and the time period of the contract(s) to which the exemption applies.

## Termination Fees

### What is a termination fee?

A termination fee is a fee that an infrastructure operator can impose on a customer who terminates or surrenders the whole or part of their right of access to the operator's water service infrastructure. This includes a water delivery right and a right to the drainage of water through the operator's infrastructure.

A termination fee can include a **general termination fee** and an **additional termination fee**.

### What is the maximum general termination fee?

Setting a maximum general termination fee is intended to strike a balance between allowing a customer to terminate, and providing for the ongoing costs of the infrastructure operator.

#### *Where trade of delivery of rights is allowed*

The maximum general termination fee that an infrastructure operator can levy is 10 times the fixed volumetric charges for the rights of access the customer wishes to terminate (levied per unit of water delivery or drainage right for a full financial year). This is only the case if the operator *allows the trade* of the kind of water delivery or drainage right that the customer wishes to terminate.

For example, a customer owns 50ML of delivery entitlements (DE) and intends to terminate all of them in circumstances where:

- the infrastructure operator *does allow* the trade of this kind of right, and
- there is a \$12 per ML access charge for this kind of delivery right for the full financial year.

The maximum general termination fee in this example is  $(\$12 \times 50\text{ML of DE}) \times 10 = \$6000$ .

#### *Where trade of delivery of rights is not allowed*

If an infrastructure operator *does not allow the trade* of the kind of water delivery or drainage right that the customer wishes to terminate, the maximum general termination fee is the amount (not 10 times the amount) of the fixed volumetric charges for the rights the customer wishes to terminate (levied per unit of water delivery or drainage right for a full financial year).

### What about infrastructure that is for the exclusive use of the terminating customer?

The general termination fee can also include a fee related to dedicated infrastructure that is exclusively used by the customer.

Where there is a separate charge for dedicated infrastructure used exclusively by the terminating customer, which will no longer be used by the customer after the termination, the maximum general termination fee relating to that **dedicated** infrastructure is the **lesser** of:

- 10 times the amount of the separate charge for that infrastructure for a full financial year, or
- a reasonable estimate of the total cost of the dedicated infrastructure, net of a reasonable estimate of any contribution towards that cost made by the terminating customer, whether via direct contribution (for example, a lump sum payment) or via the payment of the separate infrastructure charge.

For example, where:

- the terminating customer had dedicated infrastructure built for them, which will no longer be used once they terminate
- a reasonable estimate of the total cost of that dedicated infrastructure is \$16 000
- over five years, the customer has paid a separate infrastructure charge of \$1200 per year for that dedicated infrastructure; therefore a reasonable estimate of the customer's contribution to the cost of that dedicated infrastructure is  $\$1200 \times 5$  (\$6000).

The maximum general termination fee relating to that **dedicated** infrastructure is the **lesser** of:

- \$16 000 less a reasonable estimate of the contribution towards that cost made by the customer (\$16 000 - \$6000 = \$10 000)
- 10 times the separate charge for that infrastructure for a full financial year (\$1200 x 10 = \$12 000)

Therefore, the maximum general termination fee relating to the customer's dedicated infrastructure is \$10 000.

Where there is no separate charge for the dedicated infrastructure, the operator cannot charge a general termination fee relating to that dedicated infrastructure.

### What about GST, storage and disconnection fees?

A general termination fee must **exclude**:

- any amount in respect of the storage of water
- any amount of goods and services tax
- any charge that reflects the costs of physically connecting, or disconnecting, the customer from the operator's water services infrastructure
- any amount payable under an approved contract in respect of the recovery of expenditure on capital works.

### What is an additional termination fee?

In some circumstances where an infrastructure operator and its customer have a contract involving capital works relating to the operator's water service infrastructure, the ACCC can approve an additional termination fee to allow for the recovery of expenditure relating to those works.

### What is a termination information statement?

A termination information statement is a written statement by an infrastructure operator that sets out the following (amongst other things):

- the general termination fee (and a statement that the fee will be valid for 6 months from the day the statement is given to a customer)
- any additional termination fee
- any disconnection fee known at the time the statement is given, if it is not practicable to know the fee at that time, an estimate of the amount of such a fee
- how the above fees were calculated or estimated.

The ACCC has developed an [example termination information statement](#) to help demonstrate to infrastructure operators and their customers the types of content that must be included on a statement under the Water Charge Rules.

The general termination fee provided in a termination information statement must not exceed the maximum amount set by the Water Charge Rules.

### When does an infrastructure operator need to give a customer a termination information statement?

If an infrastructure operator receives a written information request from a customer, the operator must give the customer a termination information statement within **25 business days** after the day the request is received.

If an infrastructure operator receives an oral information request from a customer, the operator must either

- inform the customer **as soon as practicable** that the operator will give the customer a termination information statement on receiving a written information request, or
- give the customer a termination information statement within **25 business days** after the day the oral request is received.

An information request can either be a request from a customer for information on the termination fee that *would* apply or notice from a customer of their intention to terminate.

### How long is a termination information statement valid for?

The amount of the general termination fee specified in a termination information statement is valid for 6 months after the day on which the statement is given to the customer.

If a customer's notification of their intention to terminate specifies a termination date that is more than 6 months after the date of the notice, the general termination fee may be calculated based on the schedule of charges in effect on the termination date, and may therefore be higher than if the fee were calculated within the 6 month period.

## Bulk water operators' charges

### What do the Water Charge Rules say about how bulk water operators' infrastructure charges are determined?

The Water Charge Rules contain requirements regarding who determines bulk water operators' infrastructure charges.

An operator that levies an infrastructure charge for a bulk water service in respect of water access rights will be a 'Part 6 operator' if its infrastructure charges are not set by a single State Agency in a way that is consistent with the prudence and efficiency requirements set out in the Water Charge Rules.

If an operator is a Part 6 operator and the ACCC has not granted an exemption, then the ACCC will determine its infrastructure charges. In considering whether to grant an exemption the ACCC must have regard to a range of matters including:

- the volume of water access rights serviced by the operator
- the proportion of the operator's revenue to be recovered from the infrastructure charges, and
- whether the relevant State law is being transitioned so that the operator's infrastructure charges will at a future date be determined in a way consistent with the prudence and efficiency requirements of the Water Charge Rules.

If the ACCC does grant an exemption or the bulk water operator is not a Part 6 operator then the operator's infrastructure charges will be determined under State law.