



# ACCC Decision

The classification of Lower Murray  
Water Urban and Rural Water  
Authority (LMW) under Part 6 of the  
Water Charge Rules 2010

Date: 27 October 2021

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Attachment A: LMW's notification and exemption application – 8 September 2021

## 1. Decision

The ACCC has formed the view that Lower Murray Urban and Rural Water Corporation (trading as Lower Murray Water) (LMW) will be a Part 6 operator under rule 23 of the *Water Charge Rules 2010* (WCR) after 30 June 2023.

This is on the basis that LMW is an infrastructure operator in the Murray-Darling Basin (the Basin) that:

- as Victorian State law currently stands, will not be required to have all of its infrastructure charges determined or approved by a single State Agency under a law of the State in a way that is consistent with subrule 29(2)(b) of the WCR after the end of the 2018-23 regulatory period on 30 June 2023; and
- levies an infrastructure charge in relation to a bulk water service in respect of water access rights.

## 2. Introduction

### 2.1. Background

LMW provides urban water services to residential and non-residential customers and rural water services for irrigators, private diverters, the Mallee Catchment Authority, and Victorian communities from Kerang to the South Australian border. It provides services to around 4,700 irrigation customers and several hundred private diverters. It is owned by the Victorian Government.

### 2.2. Legal framework

The *Water Charge Amendment Rules 2019*<sup>1</sup> (the amending rules) amended and combined the *Water Charge (Infrastructure) Rules 2010* (WCIR), *Water Charge (Termination Fees) Rules 2009* and *Water Charge (Planning and Management Information) Rules 2010* into a single set of rules—the WCR.

Relevantly, an intent of the new WCR was to hand back regulatory responsibility for Part 6 infrastructure operators to Basin states under Basin state laws, where Basin state regulatory approaches ensure that relevant infrastructure operators' costs are prudent and efficient and infrastructure charges are set at levels that would not allow the operator to earn monopoly returns.

The WCR are made under section 92 of the *Water Act 2007* (Cth) (the Water Act) and apply in Basin states in accordance with Part 4 of the Water Act.<sup>2</sup>

Pursuant to subsections 91(2) and (3) of the Water Act, the WCR:

- only relate to Basin water resources<sup>3</sup>

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<sup>1</sup> Available at: <https://www.legislation.gov.au/Details/F2019L00521>

<sup>2</sup> However, the WCR do not relate to charges in respect of urban water supply activities beyond the point at which the water has been removed from a Basin water resource. See: section 91(3) of the Water Act.

<sup>3</sup> Section 4 of the Water Act provides that Basin water resources means all water resources within, or beneath, the Murray-Darling Basin, but does not include: (a) water resources within, or beneath, the Murray-Darling Basin that are prescribed by the regulations for the purposes of this paragraph; or (b) ground water that forms part of the Great Artesian Basin.

- do not apply to urban water supply activities beyond the point at which the water has been removed from a Basin water resource.

### **2.2.1. Application of the accredited arrangements under the Water Charge (Infrastructure) Rules 2010**

LMW met the test to be a Part 6 operator under subrule 23(1) the WCIR, relevantly because it is a non-member owned operator which provides services in relation to more than 250 GL of water access entitlements held by the operator, its customers, or the owner of water service infrastructure operated by the operator.

In February 2012, the ACCC accredited arrangements that allowed the Victorian Essential Services Commission (ESCV) to determine and approve the infrastructure charges of infrastructure operators in Victoria (including LMW) under Part 9 of the WCIR, meaning the ACCC was not responsible for approving or determining LMW's infrastructure charges.<sup>4</sup> These arrangements were implemented in Victorian State law through Part 1B of the *Water Industry Act 1994 (Vic)* (the WI Act).

On 19 June 2018, the ESCV made a determination under section 33 of the *Essential Services Commission Act 2001* (the ESC Act), pursuant to rule 29 of the WCIR and clauses 10 and 14 of the *Water Industry Regulatory Order 2014* (WIRO),<sup>5</sup> which determined the infrastructure charges<sup>6</sup> that LMW could levy or charge during the current regulatory period.

The regulatory period for the determination took effect on 1 July 2018 and runs until 30 June 2023.

Under the WCIR, in the absence of the accreditation of arrangements providing for a State Agency to approve or determine regulated charges, the ACCC was responsible for approving or determining the infrastructure charges of Part 6 operators.

### **2.2.2. Transitional provisions for existing Part 6 operators**

Rule 81 of the WCR sets out transitional provisions dealing with infrastructure operators that were Part 6 operators immediately before 1 July 2020. Given the amendments changed the definition of a Part 6 operator in the WCR, subrule 81(4) of the WCR provides that an infrastructure operator would continue to be treated as a Part 6 operator until the end of the transition period, which is at least the remainder of its current regulatory period.

LMW did not submit a 'transitional application' before 1 July 2020. Under subrule 81(3), this means that the transition period for LMW began on 1 July 2020 and ends on 30 June 2023, which is the last day of LMW's current regulatory period (that is, the day on which the determination made by the ESCV on 19 June 2018 ends).

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<sup>4</sup> Part 9 of the WCIR allowed for accreditation arrangements whereby a State agency (such as the ESCV) would be responsible for approving or determining the charges of Part 6 operators under the WCIR instead of the ACCC.

<sup>5</sup> ESCV 'Lower Murray Water Determination: 1 July 2018 - 30 June 2023. Available at: <https://www.lmw.vic.gov.au/wp-content/uploads/2019/03/2018-water-price-review-lower-murray-water-determination-20180619.pdf>. Accessed 6 April 2021. The *Water Industry Regulatory Order 2014* was made under section 4D(1) of the WIA.

<sup>6</sup> The WCIR, the accreditation arrangements and the ESCV's determination refer to 'regulated charges' rather than 'infrastructure charges'. However, the definition of 'regulated charges' under the previous WCIR is the same as the definition of 'infrastructure charges' under the new WCR. That is, a charge of a kind referred to in subrule 91(1)(a), (b) or (d) of the *Water Act* other than: (a) a fee to which rule 13 of the *Water Market Rules 2009* applies [a transformation application fee]; or (b) a termination fee.

Under subrule 81(4), the WCR apply to the infrastructure operator during the transition period as if it continued to be a Part 6 operator under rule 23 of the WCR.

Under subrule 81(5), LMW's infrastructure charges (which were determined by the ESCV under the accreditation arrangements established under the WCIR) are taken to have been made under Part 6 of the WCR after 1 July 2020.

### **2.2.3. Test to determine Part 6 classification under the current WCR**

As already noted, the test to determine whether an infrastructure operator is a Part 6 operator is different under the current WCR compared to the former WCIR.

Rule 23 of the WCR provides that:

*An infrastructure operator is a **Part 6 operator** if:*

- (a) the operator is not required to have all its infrastructure charges determined or approved by a single State Agency under a law of the State in a way that is consistent with paragraph 29(2)(b); and*
- (b) the operator levies an infrastructure charge in relation to either:
  - (i) a bulk water service in respect of water access rights; or*
  - (ii) infrastructure services in relation to the storage or delivery of water that is necessary to give effect to an arrangement for the sharing of water between more than one Basin State.**

*Note: Subparagraph (b)(i) would not normally apply to an off-river infrastructure operator.*

Subrule 29(2)(b) relates to the ACCC's consideration of whether infrastructure charges levied by an infrastructure operator are reasonably likely to meet, but not materially exceed, the prudent and efficient costs of providing the infrastructure service.

If an infrastructure operator is a Part 6 operator under the WCR, then its infrastructure charges will be determined or approved by the ACCC under Part 6 of the WCR (unless the ACCC grants the operator an exemption from the operation of the requirements in divisions 2, 3 and 4 of Part 6 of the WCR under rule 23C of the WCR).

### **2.2.4. The ACCC will decide whether to grant LMW an exemption from its Part 6 obligations**

Subrule 81(12) is a transition provision for assessment of existing Part 6 operators against the criteria in the WCR. That rule provides that the ACCC must:

- a) form a view as to whether the infrastructure operator is a Part 6 operator under rule 23 as amended by the amending rules, or is likely to cease to be one or to become one before the end of the transition period; and*
- b) notify the operator of the ACCC's view, and*
- c) if the ACCC is of the view that the operator is, or is likely to be, a Part 6 operator—advise the operator that the ACCC will decide whether the operator should be granted an exemption from the operation of Divisions 2, 3 and 4 of Part 6 after the end of the transition period.*

Relevantly, the ACCC must decide whether such an exemption should be granted by applying rule 23C (as modified by subrule 81(15)).

Subrule 23C(2) provides that the ACCC may grant an infrastructure operator a written exemption from the requirements of divisions 2, 3 and 4 of Part 6:

- a) following an application made by the infrastructure operator, or*

- b) *if it has given the infrastructure operator a notice under rule 23B or paragraph 81(12)(b) that it is of the view that the operator is, or will be, a Part 6 operator.*

If the ACCC does not grant an exemption, the ACCC will regulate LMW's infrastructure charges under divisions 2, 3 and 4 of Part 6 of the WCR.

Pursuant to subrules 81(15), if the ACCC fails to make a decision within 3 months of receiving an exemption application, or giving notice that the ACCC considers that the operator is a Part 6 operator, then the ACCC is taken to have decided to grant the operator an exemption from the operation of divisions 2, 3 and 4 of Part 6 for a period of 3 years that begins immediately after the end of the transition period for the operator.<sup>7</sup>

### 2.3. LMW notification to the ACCC of its Part 6 status

Subrule 81(11) provides that, as soon as practicable after 1 July 2020, the infrastructure operator must notify the ACCC of:

- a) whether or not it is a Part 6 operator under rule 23 as amended by the amending rules; and
- b) any matter that it is aware of that may result in the infrastructure operator ceasing to be a Part 6 operator, or becoming one, on a specified date.

On 8 September 2021 LMW notified the ACCC that it considers itself to be a Part 6 operator under the WCR (see **Attachment A**).

## 3. Consultation - stakeholder views

The ACCC conducted public consultation on LMW's exemption application by publishing information on the ACCC website and seeking submissions on whether LMW is a Part 6 operator within the meaning of the WCR via the ACCC consultation hub from 13 September 2021 to 4 October 2021. No submissions were received in response to this consultation.

## 4. Reasons for ACCC decision

The ACCC has formed the view that LMW will be a Part 6 operator under rule 23 of the WCR after the current regulatory period ends on 30 June 2023 on the basis of Victorian State law as it currently stands. This is because LMW is an infrastructure operator that:

- as Victorian State law currently stands, will not be required to have all of its infrastructure charges determined or approved by a single State Agency under a law of the State in a way that is consistent with subrule 29(2)(b) of the WCR after the end of the 2018-23 regulatory period, and
- levies an infrastructure charge in relation to a bulk water service in respect of water access rights

The detailed reasons for the ACCC's decision that LMW will be a Part 6 operator are set out below.

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<sup>7</sup> Under subrule 81(15)(d) the **regulatory start date** for the operator is taken to be i) for the purpose of the definition of '**regulatory period**' in subrule 3(1) – the date on which the operator's first regulatory period. Subrule 3(1) means the first regulatory period begins on the regulatory start date for the operator.

## 4.1. LMW is an infrastructure operator

Under section 7 of the Water Act, an infrastructure operator is a person that owns or operates infrastructure for one or more of the following purposes:

- (a) *the storage of water*
- (b) *the delivery of water*
- (c) *the drainage of water*

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

LMW extracts water from a natural watercourse (the River Murray) and delivers that water to its customers through a network of channels and pipes (both gravity fed and pressurised) in its irrigation districts. LMW's submits it provides these services to:

- *2 666 irrigation and 2 240 stock and domestic customers in the four pumped irrigation districts of Mildura, Merbein, Red Cliffs and Robinvale,*
- *309 Millewa rural district customers, and*
- *areas of the waterworks district of Yelta.*

LMW also provides drainage services to some of these customers.

Having regard to the above, the ACCC considers that LMW is an infrastructure operator because it owns and operates the infrastructure referred to above, which is used to provide services (water delivery and drainage) to customers who do not own or operate the infrastructure.

## 4.2. LMW will not be required to have all its infrastructure charges determined or approved by a State Agency

Pursuant to rule 3 of the WCR, a 'State Agency' means an 'agency of the State within the meaning of paragraph (c) of the definition of agency of a State in the [Water] Act', namely 'a body (whether incorporated or not) established or appointed for a public purpose by or under a law of the State (including a local government body)'.<sup>8</sup>

As noted already, in February 2012, the ACCC accredited arrangements that allowed the ESCV to determine and approve the infrastructure charges of infrastructure operators in Victoria (including LMW) under Part 9 of the WCIR. These arrangements were implemented in Victorian State law through Part 1B of the WI Act.

Part 1B of the WI Act gives effect to the accreditation arrangements but does not require or authorise the ESCV to determine or approve LMW's infrastructure charges independent of these accreditation arrangements. Following the implementation of the new WCR, which does not provide for accreditation, the ACCC considers that there would be no ability or requirement for the ESCV to determine or approve LMW's infrastructure charges after the current regulatory period.

While Part 1A of the WI Act and the ESC Act provide a regulatory framework by which ESCV can set some charges that LMW levies, these charges are limited to urban water supply activities (which are not infrastructure charges for the purposes of the WCR).

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<sup>8</sup> Section 4(1) of the Water Act.

Ultimately, in light of the above, the ACCC considers that as things presently stand, after 30 June 2023 LMW will not be required to have all of its infrastructure charges determined or approved by a single State Agency under a law of the State.

As LMW's infrastructure charges will not be determined by a single State Agency after 30 June 2023, subrule 23(a) of the WCR would be satisfied. As such, it is unnecessary to consider the balance of that subrule, namely whether these charges would be set in a way that is consistent with subrule 29(2)(b) of the WCR.

#### 4.3. LMW levies an infrastructure charge in relation to a bulk water service in respect of water access rights

Goulburn-Murray Water (GMW), as the Northern Victorian resource manager,<sup>9</sup> manages the Northern Victorian on-river storages and the infrastructure to convey bulk water to a point where LMW can extract the water for delivery to its customers.

GMW charges LMW for its services. Relevantly, GMW charges LMW 'entitlement storage fees', which were approved by the ESCV in its 2018 determination for LMW.<sup>10</sup> These charges are listed on LMW's schedule of charges, and may be summarised as follows:

- *GMW Entitlement Storage Fee*: LMW's schedule of charges states that this fee is a pass through from the Northern Victorian Resource Manager (GMW) based on a person's total water share volume, covering the cost of maintaining and operating headworks and river regulation.<sup>11</sup> The costs are charged per ML of entitlement [water share].<sup>12</sup>
- *GMW Above Entitlement Storage Fee*: LMW's schedule of charges states that this fee is a pass through fee from the Northern Victorian Resource Manager (GMW).<sup>13</sup> GMW's website states that this fee is levied to ensure customers who hold more water in storage than their [water access] entitlement volume contribute their fair share to water storage costs.<sup>14</sup>

LMW passes through GMW's entitlement storage fees to its customers, and LMW remits the revenue it collects from its customers to GMW. This reflects a historical arrangement as, prior to the development of Victorian Water Register in 2007, there was no public register of all Victorian water access rights and GMW relied on the customer information held by LMW to enable the levying of bulk water charges for the on-river storage of water.

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<sup>9</sup> The Victorian Minister for Water appointed GMW to be the Northern Victoria Resource Manager in accordance with the Victorian water sharing rules. See: <https://nvrn.net.au/>. Accessed 7 April 2021

<sup>10</sup> ESCV 'Lower Murray Water Determination (1 July 2018 – 30 June 2023)', 19 June 2018. See: <https://www.lmw.vic.gov.au/wp-content/uploads/2019/03/2018-water-price-review-lower-murray-water-determination-20180619.pdf>. Accessed 7 April 2021

<sup>11</sup> For example, see LMW (2020) *Explanation of Tariffs 2020/21 Merbein Irrigation District* <https://www.lmw.vic.gov.au/wp-content/uploads/2020/07/2020-2021-Explanation-of-Tariffs-Merbein.pdf>, Schedules of charges for each of LMW's irrigation districts (Merbein, First Mildura, Robinvale and Red Cliffs) are at: <https://www.lmw.vic.gov.au/billing-charges-fees/rural-charges-fees/>. Accessed 28 May 2021

<sup>12</sup> GMW, see: <https://www.g-mwater.com.au/customer-services/manage-my-account/feedescriptions>. Accessed 7 April 2021

<sup>13</sup> LMW. See: <https://www.lmw.vic.gov.au/wp-content/uploads/2020/08/2020-2021-Explanation-of-Tariffs-First-Mildura-Irrigation-District.pdf>. Accessed 7 April 2021

<sup>14</sup> GMW, see: <https://www.g-mwater.com.au/customer-services/manage-my-account/feedescriptions>. Accessed 7 April 2021



For the reasons that follow, the ACCC considers that LMW levies infrastructure charges in relation to a bulk water service in respect of water access rights within the meaning of subrule 23(b) of the WCR. In summary, the ACCC has formed this view because:

- (a) GMW's entitlement storage fees are infrastructure charges
- (b) LMW levies these infrastructure charges; and
- (c) these infrastructure charges are levied 'in relation to' a bulk water service in respect of water access rights because the charges are 'in relation to' GMW's bulk water services and are calculated by reference to an LMW customer's water shares (or water access rights).

The reasons for these findings are explained in more detail below.

#### **4.3.1. GMW's entitlement storage fees are infrastructure charges**

Rule 3 of the WCR defines infrastructure charge as 'a charge of a kind referred to in subsection 91(1)(a), (b) or (d) of the Water Act'.<sup>15</sup> Relevantly, subsection 91(b) of the Water Act refers to 'bulk water charges'. A 'bulk water charge' is defined in section 4(1) of the Water Act as follows:

*bulk water charge means a charge payable for either or both the storage of water for, or the delivery of water to, any of the following:*

- (a) infrastructure operators*
- (b) other operators of reticulated water systems*
- (c) and other persons prescribed by the regulations for the purposes of this paragraph.*

As noted, GMW manages the Northern Victorian on-river water storages and the infrastructure to convey bulk water to a point where LMW can extract the water for delivery to its customers.

In these circumstances, the ACCC considers that GMW's entitlement storage fees that it charges to LMW are 'bulk water charges' within the meaning of subsection 4(1)(a) of the definition of 'bulk water charge', because the charges relate to the storage of water for an infrastructure operator, namely LMW. Therefore, GMW's entitlement storage fees are 'infrastructure charges' pursuant to rule 3 of the WCR.

#### **4.3.2. LMW levies GMW's infrastructure charges**

Rule 3 of the WCR relevantly defines 'levy' as including to 'impose or demand or cause to be imposed or demanded'.

In the present case, LMW passes through GMW's entitlement storage fees to its customers, and the ACCC considers that, by invoicing its customers for these charges on behalf of GMW, LMW is *demanding* payment of these charges from its customers on behalf of GMW, within the meaning of 'levy' in rule 3 of the WCR.

On this basis, notwithstanding that the charges are ultimately remitted to GMW, the ACCC considers that LMW is levying GMW's entitlement storage fees, or in other words, levying infrastructure charges within the meaning of the WCR.

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<sup>15</sup> Other than: (a) a fee to which rule 13 of the *Water Market Rules 2009* applies; or (b) a termination fee.

### **4.3.3. These infrastructure charges are levied ‘in relation to’ a bulk water service ‘in respect of’ water access rights**

Regulation 1.03 of the Water Regulations provides that:

*a bulk water service means one or more of the following:*

- (a) a service that is provided for the storage of water that is primarily stored on-river;*
- (b) a service that is provided for the delivery of water that is primarily delivered on-river.*

Relevantly, subsection 4(1) of the Water Act then defines a ‘water access right’ as meaning ‘any right conferred by or under a law of a State to do either or both of the following: (i) to hold water from a water resource; (ii) to take water from a water resource’, which relevantly includes a ‘water access entitlement’.<sup>16</sup>

Section 4 of the Water Act defines a ‘water access entitlement’ as a ‘perpetual or ongoing entitlement, by or under a law of a State, to exclusive access to a share of the water resources of a water resource plan area’.

A ‘water access right’ is referred to as a ‘water share’ in Victoria. Water shares are issued under division 2 of Part 3A of the *Water Act 1989 (Vic)* (Victorian Water Act). Under section 33F(2) of the Victorian Water Act, a water share ‘authorises the taking of water under the water allocation for the share during the water season for which the water allocation is allocated.’ As such, the ACCC considers that ‘water shares’ come within the meaning of ‘water access right’ in the WCR.

The ACCC considers that an infrastructure charge in relation to a bulk water service will be ‘in respect of’ a water access right where there is a sufficiently material connection between the charges and a customer’s water access rights.

Applying the above to this case, firstly, because GMW only provides on-river water storage and delivery to LMW’s customers, the ACCC considers that GMW’s services constitute a ‘bulk water service’ within the meaning of regulation 1.03 of the Water Regulations.

Secondly, because the GMW entitlement storage fees are charged for water storage services provided by GMW, the ACCC considers that LMW levies those infrastructure charges on its customers ‘in relation to’ a bulk water service – namely, GMW’s bulk water services.

Thirdly, the ACCC notes that the ‘GMW entitlement storage fee’ is levied based on volume (in mega litres) of Victorian water shares owned by a person; and that the ‘GMW above entitlement storage fee’ is levied on customers who hold more water in storage than they are entitled to, based on the volume of water share they own. In other words, the GMW entitlement storage fees are both determined by reference to water access rights. On this basis, the ACCC considers there is a sufficiently material connection between GMW’s entitlement storage fees and a customer’s water access rights, such that it can be said that the GMW entitlement storage fees are levied ‘in respect of’ water access rights.

In light of the above, the ACCC ultimately considers that LMW levies an infrastructure charge in relation to a bulk water service in respect of water access rights, notwithstanding that the charges levied are passed through to GMW, for bulk water services ultimately provided by GMW.

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<sup>16</sup> Section 4(1) of the Water Act.

## 5. Conclusion

The ACCC has formed the view that LMW will be a Part 6 operator under rule 23 of the *Water Charge Rules 2010* (WCR) after 30 June 2023.

This is on the basis that LMW is an infrastructure operator in the Basin that:

- as Victorian State law currently stands, will not be required to have all of its infrastructure charges determined or approved by a single State Agency under a law of the State in a way that is consistent with subrule 29(2)(b) of the WCR after the end of the 2018-23 regulatory period on 30 June 2023, and
- levies an infrastructure charge in relation to a bulk water service in respect of water access rights.

# Attachment A - LMW's notification and exemption application – 8 September 2021

## Lower Murray Corporation Application for Exemption - Water Charge Rules 2010

### Purpose

To confirm Lower Murray Water (LMW) are a 'Part 6 operator' under the Water Charge Rules 2010 (WCR 2010) and to apply for an exemption in accordance with Rule 23C under the WCR 2010 to enable LMW to be regulated by the Victorian State Agency, being the Essential Services Commission (ESC).

### Background

LMW confirms that it continues to be deemed as a Part 6 operator under the criteria of Division 1 Rule 23 of the Water Charge Rules 2010 (WCR 2010).

As LMW is deemed a Part 6 operator, all rural associated infrastructure charges are to be regulated and determined by the Australian Competition and Consumer Commission (ACCC) to ensure achievement of the Basin water charging objectives and principles set out in Schedule 2 to the Water Act 2007 (Cth). Under WCR 2010 Rule 29, the ACCC must determine or approve the infrastructure charges set out in a price application subject to Rule 29(2)(b) and (c).

The State of Victoria has a comprehensive regulation regime with encompassing legislation in place for all LMW urban and associated services charges, which are regulated and determined by the ESC with charging objectives and principles that fundamentally align with the WCR 2010 Rule 29(2)(B).

For the Victorian water agencies that are deemed Part 6 operators, the rural associated charges have been regulated and determined by the ESC under approved accreditation arrangements within the Water Industry Act 1994 Part 1B Section 40, Power of Commission to apply for accreditation. These accreditation arrangements are to remain in place for the remainder of the current pricing determination period, however the next pricing submission determination and approval would be undertaken by the ACCC under current legislation.

The WCR 2010 has the provision under Rule 23C (1) to allow LMW to apply to the ACCC for an exemption. The ACCC may grant an infrastructure operator a written exemption from the operation of the requirements of Divisions 2, 3 and 4 of the WCR 2010.

In making the decision Rule 23C(5)(f) of the WCR 2010 states the ACCC must consider;

*whether the relevant law of a State is being transitioned so that the operator's infrastructure charges will at a future date be determined or approved by a single State Agency in a way that is consistent with paragraph 29(2)(b)*

The Victorian government supports state-based regulation of Basin charges by the ESC and is proposing new arrangements that, once in effect, will ensure the state's regulatory framework

meets the requirements set out in the Water Charge Rules 2010 and the Commonwealth's objectives for the economically efficient and sustainable use of Basin resources.

We understand that DELWP is in discussions with the ACCC to ensure that state-based regulation regime accords with the ACCC's expectations.

### Application for Exemption

LMW are applying for an exemption under Rule 23C and provide the supporting information to assist the ACCC to make a decision having regard to matters contained in Rule 23C(5).

***(a) the total volume of water access rights in relation to which bulk water services are provided by the operator, if applicable.***

In Victoria, a water access right is the perpetual ongoing entitlement being a 'Water Share'.

LMW do not provide bulk water services. LMW do not incur costs for providing a service to be recouped via an (on-river) bulk water charge.

LMW is an off-river infrastructure operator whereby the storage, delivery and/or drainage of water diverted from a natural watercourse, through a network consisting of channels and/or pipes (which can be gravity fed or pressurised) to another person.

LMW does charge its customers a levy for bulk water, on a 'pass through' basis, whereby no additional margin is applied to the Goulburn Murray Water (GMW) bulk water charge. LMW has historically enabled GMW (the bulk water service provider) to levy their bulk water charge to recoup their costs of providing the service to their customers.

Prior to the Victorian Water Register 2007, there was no public register of all water-related entitlements in Victoria. GMW relied on LMW customer database and billing processes to enable the levying of the GMW bulk water charges on its behalf. This practice continues today, although it could technically be completed by GMW via the Victoria Water Register water share database.

The total volume of water share entitlements that LMW levied the bulk water charge on the 'pass through' basis 1 July 2020 was;

Entitlement Type	Bulk Water Charge Volume (ML)
Murray – High Reliability	296,315.09
Murray – Low Reliability	7,099.10
Goulburn – High Reliability	18,116.73
Goulburn – Low Reliability	6,290.94

Of the bulk water charges levied, 221,806.6 ML was for Private Diverter customers (operate their own infrastructure on-river) or Non-water Users.

The bulk water charges billed as a “pass through” depend on the volume of Water Shares that LMW customers hold as of 1 July of any given year. Based on the previous billing date of 1 July 2020, LMW billed \$2,545,471 (includes Private Diverters \$1,700,325) bulk water charges in FY2021 which represents 9.3% of LMW’s total rural revenue for FY2021 of \$27,282,447.

GMW manage the river storages and the infrastructure to convey bulk water down the river to a point where LMW can extract the water for delivery to our customers. LMW act as the infrastructure operator and on-charge as a pass-through the GMW bulk water fee to the individual end customer. LMW do charge a small bulk water component for the loss of water within its infrastructure via its infrastructure charges.

***(b) the total volume of water subject to water sharing arrangements in relation to which the operator provides infrastructure services, if applicable.***

Not applicable.

As an off-river infrastructure operator LMW does not have any responsibilities in water sharing arrangements.

The Northern Victoria Resource Manager (NVRM) makes seasonal determinations for all northern Victorian regulated river systems including the Goulburn, Broken, Campaspe, Loddon, Bullarook and Murray regulated river systems. The Minister for Water appointed GMW to undertake this role in accordance with Victorian water sharing rules.

The water necessary to give effect to inter-state water-sharing arrangements is stored, managed and operated by GMW as the NVRM.

***(c) the infrastructure services provided by the operator;***

LMW provides off-river infrastructure operator services.

LMW’s infrastructure service is mainly delivery and/or drainage of water diverted from a natural watercourse, through a network consisting of channels and/or pipes (which can be gravity fed or pressurised).

LMW provides infrastructure services to;

- Irrigation - river quality water services to:
  - 2,666 irrigation and 2,240 stock and domestic customers in the four pumped irrigation districts of Mildura, Merbein, Red Cliffs and Robinvale
  - 309 Millewa rural district customers
  - waterworks district of Yelta.
- Manage the extraction of the region’s rural bulk water entitlements;
- The collection and disposal of subsurface drainage water from the four pumped irrigation districts, as well as from private diverters in Nangiloc, Robinvale and Boundary Bend;

- Oversight of irrigation and drainage design in new agricultural developments ensuring conformity with salinity management plan development guidelines;
- Management of the private diversion licences of 1,313 water users along the Murray River in Victoria between Nyah and the South Australian border;
- The assessment and approval of licensing, water share and allocation trade applications; and
- Water supply delivery to important environmental and recreational sites.

***(d) any preferences expressed by the operator's customers to the ACCC;***

LMW has not obtained nor have any indication of preference expressed from our customers.

***(e) any views expressed by a State Agency to the ACCC;***

LMW has contacted the ESC (State Agency) informally, whereby the ESC has indicated support of the intent of LMW's application for exemption, with a transition to State Agency regulation. The ESC is confident that the Victorian regulatory framework provides a thorough and robust regime for the benefit of the Victorian customers.

For the ESC's formal view, the ACCC should contact the ESC directly.

***(f) whether the relevant law of a State is being transitioned so that the operator's infrastructure charges will at a future date be determined or approved by a single State Agency in a way that is consistent with paragraph 29(2)(b);***

We understand that DELWP is in discussions with the ACCC to ensure that state-based regulation accords with the ACCC's expectations.

The Victorian government supports state-based regulation of Basin charges by the ESC and is proposing new arrangements that, once in effect, will ensure the state's regulatory framework meets the requirements set out in the Water Charge Rules 2010 and the Commonwealth's objectives for the economically efficient and sustainable use of Basin resources.

***(g) the proportion of the infrastructure operator's revenue to be recovered from infrastructure charges;***

As LMW is an irrigation infrastructure operator, LMW's rural irrigation revenue predominantly consists of infrastructure charges.

Audited revenue received from irrigation services for 2020 is detailed below:

<b>Rural Revenue</b>	<b>2019-20</b> <b>\$</b>
<b>Infrastructure Charges</b>	
Water Infrastructure	17,968,875
Drainage Infrastructure	1,479,512
Irrigation water delivery	5,877,546
<b>Total Infrastructure Revenue</b>	<b>25,325,933</b>
<b>Other Income</b>	
Termination Fees	52,208
Interest on Charges	68,280
Interest on Investments	45,786
Other Income	538,595
Proceeds Sale Assets	455,183
Fees	290,117
Abnormal Income	440,084
Rental/Lease Income	22,163
Assets rec'd by developers	157,780
Fees paid by developers	4,667,666
Govt Contributions (Noncapital)	2,375
<b>Total Rural Income</b>	<b>32,066,170</b>
<b>Infrastructure Revenue % Total Rural Revenue</b>	<b>79%</b>

*(h) any other matters that the ACCC considers relevant.*

LMW undertake to provide, where applicable, any further information the ACCC requests to assist them to make a decision on the exemption application.