

## EXPLANATORY STATEMENT

### *Water Act 2007*

### *Water Charge (Infrastructure) Rules 2010*

#### Authority

The *Water Charge (Infrastructure) Rules 2010* (Rules) are made under section 92(1) of the *Water Act 2007* (Water Act). Section 92(1) provides that the Minister for Sustainability, Environment, Water, Population, and Communities (Minister) may make *water charge rules* that relate to regulated water charges. Regulated water charges include:

- (a) fees or charges payable to an irrigation infrastructure operator for access, changing access, or terminating access to its irrigation network, including for surrendering a water delivery right;
- (b) bulk water charges;
- (c) charges for water planning and management activities; and
- (d) certain other charges prescribed by regulation.

The Rules deal with fees for access and changing access to an irrigation network and bulk water charges. The charges covered by the Rules also include any charges prescribed by regulations made for the purposes of s 91(1)(d) of the Water Act.

The Water Regulations 2008 (Water Regulations) extend the scope of the Rules by:

- prescribing as persons for the purposes of the definition of ‘bulk water charge’ in section 4(1) of the Water Act persons who divert water directly from a watercourse for the person’s use, including for agricultural or industrial purposes, irrigation, or stock and domestic use if the water is made available through a bulk water service; and
- prescribing as regulated water charges under section 91(1)(d) certain charges payable to operators, that do not relate to an irrigation network or an urban water supply network, or are not bulk water charges.

Parts 4 and 4A of the Water Act which deal with water charge rules are referred provisions which, since the enactment of the *Water Amendment Act 2008*, are supported by the referral of powers by the Basin States to the Commonwealth for the purposes of s 51(xxxvii) of the *Constitution*.

Section 10 of the Water Act sets out the basis on which it deals with water charges relating to water access rights, irrigation rights and water delivery rights in relation to the resources of the Murray-Darling Basin (Basin). In particular, those bases include promotion of more efficient use of the Basin water resources, their continued availability and health, the health of the associated environmental assets, and the economic and social wellbeing of the communities in the Basin.

## Basin water charging objectives and principles

Water charge rules must contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Water Act (s 92). Broadly these objectives and principles seek to:

- (a) promote the economically efficient and sustainable use of water resources, water infrastructure assets and government resources devoted to the management of water resources;
- (b) ensure sufficient revenue streams to allow efficient delivery of the required services;
- (c) facilitate the efficient functioning of water markets;
- (d) give effect to the principle of user-pays and achieve pricing transparency in respect of water storage and delivery in irrigation systems and cost recovery for water planning and management; and
- (e) avoid perverse or unintended pricing outcomes.

These objective and principles were agreed to between the Commonwealth and all states and Territories under the NWI.

## Application of the Rules

Water charge rules made under Division 1, Part 4 of the Water Act apply to Basin water resources, water service infrastructure that carries Basin water resources or water that has been taken from a Basin water resource, and water access rights, irrigation rights or water delivery rights in relation to Basin water resources (s 91(2) of the Water Act). The water charge rules do not apply to charges in respect of urban water supply activities beyond the point at which the water has been removed from a Basin water resource. Part 4A of the Water Act provides for the extended operation of water charge rules in the referring States and the Northern Territory if so provided for by legislation of the State or the Northern Territory and regulations under the Water Act.

The Rules apply to infrastructure operators. The Water Act defines an ‘infrastructure operator’ as any person or entity that owns or operates water service infrastructure for the storage, delivery or drainage of water for the purpose of providing a service to another person. An infrastructure operator which operates water service infrastructure for the purpose of delivering water for the primary purpose of being used for irrigation is an irrigation infrastructure operator and the infrastructure is the operator’s irrigation network.

The Rules do not relate to application fees for transformation which are dealt with by the *Water Market Rules 2009* and termination fees which are dealt with by the *Water Charge (Termination Fees) Rules 2009*. Charges for water planning and management activities are covered by the *Water Charge (Planning and Management Information) Rules 2010*.

## Background

The Water Act, which builds on earlier reform initiatives including the National Water Initiative (NWI), creates new institutional and governance arrangements to improve the sustainability and management of water resources in the Murray-Darling Basin (Basin).

A key element of this reform is a consistent approach to the pricing of water storage and delivery services across the Basin to promote the efficient use of and investment in water infrastructure, and to improve the efficiency of water markets.

The infrastructure associated with water supply and delivery exhibits natural monopoly characteristics, which means that competition is unlikely to develop between water infrastructure operators (operators). In the absence of competition, prices, quality, service levels and innovation can diverge from competitive levels, which could result in less efficient market outcomes.

Each of the Basin jurisdictions currently has different arrangements in place for regulating fees and charges levied by operators on water users. Inconsistent pricing policies across interconnected markets can create trade distortions with ramifications for the economically efficient use of, and investment in, water infrastructure.

### Purpose and operation

The purpose of the Rules is to address the various issues that arise from operators having market power as natural monopoly service providers, and to introduce a more consistent approach to pricing across Basin jurisdictions.

The risk of adverse outcomes in the absence of regulation is strongest for non-member owned operators. Many operators currently involved in water supply and delivery in the Basin predominantly provide services to member customers. For example, customers of NSW irrigation corporations are generally also shareholders of the corporation. Member ownership of natural monopolies is likely to provide stronger incentives to ensure efficient investment and charging outcomes for member customers than would be the case for non-member owned operators. Notwithstanding this, there is potential for asymmetric information and a lack of transparency in the processes used by the larger member-owned operators to determine their charges.

Member owned operators may also have incentives to unfairly discriminate against their non-member or transformed customers. Such discrimination could deter transformation and the trade of water entitlements out of the operator's district. This in turn could distort outcomes in the water market.

To address these concerns, the Rules adopt a three-tiered, increasingly rigorous, approach for the regulation of the various types of operators. The 3 tiers apply to operators depending on their size and ownership arrangements.

Tier 1 rules (Parts 3, 4 and 7 of the Rules) address issues of discriminatory pricing and pricing transparency. Publishing requirements to promote transparency will apply to all operators, with broader requirements applying for operators servicing more than 10 gegalitres of water entitlements. Non-discriminatory pricing rules apply to all member owned operators, with the requirement to have regulated charges approved or determined applying to member owned operators that make a distribution to their members and that provide services in relation to more than 10 gegalitres of entitlement (Part 7 of the Rules).

Tier 2 rules (Part 5 of the Rules) address concerns about asymmetric information and a lack of transparency in the processes used by operators to determine their charges. These will apply to the larger member owned operators and any medium-sized non-member owned operators not captured under the tier 3 rules (Part 6 of the Rules). These operators will be required to produce network service plans and information statements and to consult with customers in undertaking their infrastructure planning processes.

Tier 3 (Part 6 of the Rules) addresses the potential misuse of market power and resulting inefficiencies, and will apply to the larger non-member owned operators. This will involve these operators applying to the ACCC or an accredited State regulator for approval or determination of their maximum charges.

Part 9 of the Rules provide for the accreditation of State agencies by the ACCC to undertake price approvals or determinations under Parts 6 and 7 of the Rules.

The Rules contribute to the water charging objectives and principles by:

- promoting the economically efficient and sustainable use of water resources by signalling the true costs of storing and delivering water;
- promoting the economically efficient and sustainable use of water infrastructure assets by signalling the true costs of providing infrastructure services;
- ensuring that infrastructure operators earn sufficient revenue streams to allow for the efficient delivery of the required services by approving or determining charges levied by Part 6 and 7 infrastructure operators and improving the transparency and rigour of planning processes of Part 5 operators;
- facilitating the efficient functioning of water markets by promoting consistency in charging practices thereby removing pricing distortions;
- improving the transparency of fees and charges through the requirement that all operators provide a copy of their schedule of charges to their customers and to anyone that requests a copy and that larger operators also publish this schedule on their website, in a newspaper (or newspapers) or in the Australian Government Gazette;
- avoiding perverse or unintended consequences by improving transparency and consultation on developing charges.

The Regulation Impact Statement for the Rules is set out at [Attachment II](#).

### Enforcement

Section 137 of the Water Act the ACCC is the appropriate enforcement agency for contraventions of the Rules. In accordance with sections 92(8), (9) and 147 (3) of the Act contravention of a number of the provisions of the rules is subject to a civil penalty.

In addition, rule 57 provides a right, in accordance with section 92(10) of the Water Act, for a person who suffers loss or damage through a contravention of these Rules to take private action to recover the loss or damage.

### Process for making the Rules

Section 93 of the Water Act and Subdivision 4.1.1 of the Water Regulations set out the process for making water charge rules.

In accordance with section 93 of the Water Act the former Minister for Climate Change, Energy Efficiency and Water (the former Minister) wrote to the ACCC in December 2007 requesting its advice on water charge rules by June 2009. At the same time the former Minister requested the ACCC to provide draft rules as part of its advice. In June 2009, the ACCC provided its final advice on the Rules, including draft rules, to the former Minister. In September 2009, in accordance with regulation 4.08, the former Minister requested further advice from the ACCC on the accreditation of State regulators to undertake approvals or determinations under the Rules. The ACCC provided the former Minister with this further advice, including draft rules, in February 2010.

### Consultation

In developing its advice and draft rules the ACCC undertook a comprehensive three stage consultation process, which included holding a public forum in Sydney. The first stage involved publication of an issues paper on charges payable to irrigation infrastructure operators and an issues paper on bulk water charge rules. The second stage involved a position paper outlining the ACCC's initial policy position, and the third stage was the release of a draft set of rules and advice. At the former Minister's request, the ACCC also undertook a further one-stage consultation on the accreditation of State agencies under the Rules.

Further consultation was undertaken by the former Minister in accordance with regulation 4.05 of the *Water Regulations*. Regulation 4.05 provides that, in making the Rules, the Minister is required to consult on the water charge rules unless the Minister is satisfied that the ACCC has already undertaken the required consultation in developing its advice, and the Rules are, in the Minister's opinion, substantially the same as those provided by the ACCC. In accordance with the process set out in regulation 4.06 the Minister consulted on the proposed rules with Basin State ministers, infrastructure operators in the Basin, and invited public submissions.

More detail on the consultation on the Rules can be found in the Regulation Impact Statement at Attachment II.

### Other

The Rules are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Rules commence the day after they are registered.

Details of the Rules are set out at Attachment I.

DETAILS OF THE *WATER CHARGE (INFRASTRUCTURE) RULES 2010***Part 1 Preliminary****1. Name of Rules**

Rule 1 provides that the title of the Rules is the *Water Charge (Infrastructure) Rules 2010*.

**2. Commencement**

Rule 2 specifies that the Rules commence on the day after the Rules are registered on the Federal Register of Legislative Instruments.

**3. Definitions**

Rule 3 sets out definitions of certain terms used in the Rules.

The definitions include ‘State water resources’ which is defined as ‘managed water resources in that State’ (rule 3(1) defines ‘managed water resources’). The managed water resources of an operator will include water resources in addition to Basin water resources, where the Rules have been applied to water resources other than Basin water resources by referring State legislation and regulations under the Water Act in accordance with Part 4A of the Water Act (s 100B). The water charge rules may also apply to water resources in the Northern Territory by Northern Territory legislation and regulations under the Water Act in accordance with s 100B. However the wider application of managed water resources in the referring States and the Northern Territory will not apply to urban water supply activities beyond the point at which the water has been removed from the water resource in the referring State or the Northern Territory or water resources that have been prescribed for the purpose of s 100B(3). The definition of managed water resources is relevant to rules 15, 16, 23 and 45.

Rule 3(6) provides that where an infrastructure operator is required to provide or give a copy of a document to its customers, the relevant document may be provided in electronic form, either attached to or as a hyperlink in an e-mail sent to the customer’s e-mail address.

**4. Schedule of charges**

Rule 4 provides that the schedule of charges for the purposes of the Rules must include details sufficient to enable a customer to determine their liability under the regulated charges.

Where the schedule is issued by an irrigation infrastructure operator and contains charges payable for access, or changing access to that operator’s irrigation network, it must also include information setting out the process for determining those charges and show separately certain components of the charges.

**5. Member owned operator**

Rule 5 defines a member owned operator for the purpose of the Rules.

## **6. Related customer**

Rule 6 defines a related customer for the purpose of the Rules.

## **Part 2 Conditions applying to regulated charges and exemptions relating to certain contracts**

### **7. Conditions applying to regulated charges**

Rule 7 prohibits an infrastructure operator, after the transitional period, from levying a regulated charge relating to the provision of an infrastructure service on a customer unless it has given a copy of its schedule of charges to its customers. Rule 3 defines the transitional period as the period of 3 months after the date the Rules commence.

Rule 7 also specifies minimum timeframes for the operator to provide its schedule to customers before the service is provided - 10 business days for customers that were customers before the end of the transitional period – and before the service is provided for those customers that become customers after the transitional period. This requirement will ensure that customers will not incur costs before those costs are known to them.

An exception to rule 7 is provided for regulated charges to which a publication exemption under rule 9 applies.

Rule 7 is designated as a civil penalty provision. The maximum penalty is 200 penalty units (currently \$22,000) for individuals and five times that amount otherwise, in accordance with sections 92(9) and 147(3) of the Water Act.

### **8. Additional conditions applying to Part 5, 6 and 7 operators**

Rule 8 requires operators imposing regulated charges to meet further conditions depending on whether the operator is also a Part 5 operator, Part 6 operator or Part 7 operator. An infrastructure operator may be both a Part 5 operator and a Part 7 operator, depending on their particular circumstances.

Subrule 8(1) applies to infrastructure operators that are Part 5 operators for the purposes of the Rules. In addition to the requirements in rule 7, a Part 5 operator (defined in rule 16) is prohibited from levying a regulated charge on or after the relevant date unless it has provided the relevant network service plan and information statement to its customers in accordance with Part 5 of the Rules. The relevant date (defined in rule 17) is 1 July 2012 if the operator is a Part 5 operator before 1 July 2011, and in all other cases the date is 24 months after the operator becomes a Part 5 operator.

Subrule 8(2) applies to infrastructure operators that are Part 6 operators for the purposes of the Rules. In addition to the requirements in rule 7, a Part 6 operator (defined in rule 23) is prohibited, after the initial period, from levying a regulated charge that has not been approved or determined, or that exceeds the charge that has been approved or determined by the Regulator, in accordance with Part 6 of the Rules.

These obligations under subrule 8(2) do not apply until after the initial period. This is defined in rule 3 as the period during which the operator's charges are subject to a decision or determination of a State agency under state law and that decision was in

force immediately before the Rules commence. This clause ensures existing State government price paths in place before the Rules commence are respected and provides a transitional period to the Part 6 rules for operators that fall within this definition. For new Part 6 operators, the initial period is as calculated under subrule 23(2) of the Rules.

These obligations under subrule 8(2) are also subject to the operation of the provisions in rules 33 and 39 which allow an operator to continue to levy existing charges for a limited period in certain circumstances. Once this transitional period has passed, a Part 6 operator will be in breach of rule 8 if they levy a regulated charge and have not had their charges approved or determined by the Regulator.

Subrule 8(3) applies to infrastructure operators that are Part 7 operators for the purposes of the Rules. In addition to the requirements in rule 7 and 8(1) (if the operator is also a Part 5 operator), a Part 7 operator (defined in rule 45) is prohibited from levying a regulated charge that has not been approved or determined, or that exceeds the charge that has been approved or determined by the Regulator, in accordance with Part 7 of the Rules. These obligations apply after the application period, which is defined in rule 3.

Rule 8 is designated as a civil penalty provision. The maximum penalty is 200 penalty units (currently \$22,000) for individuals and five times that amount otherwise, in accordance with sections 92(9) and 147(3) of the Water Act.

## **9. Exemption relating to regulated charges under certain contracts**

Rule 9 provides that the ACCC may grant an exemption from the requirement under rule 7 for an infrastructure operator to include regulated charges in its schedule of charges where the regulated charges are specified in an existing contract (or are to be specified in a new contract) between an operator and a customer.

Under subrule 9(1), for contracts entered into before the relevant date, an operator can exclude regulated charges for infrastructure services from its schedule of charges if:

- the contract specifies the charges for those services and period for which the charges apply; and
- the operator believes on reasonable grounds that disclosure of the details of the charges for those services would found an action by the customer against the operator for breach of confidence.

The essential elements for establishing that details of regulated charges are subject to an obligation of confidence are that:

- there is an equitable obligation to protect the information as confidential – such as because of the nature of the information and the circumstances in which it was provided; or
- the information is specifically protected as confidential under a contract.

For contracts entered into, or proposed to be entered into, on or after the relevant date, subrules 9(2) and 9(3) provide that the ACCC may grant a publication exemption if:



- the operator and the customer each believe on reasonable grounds that disclosure of details of the regulated charges contained in the contract would have a material and adverse effect for the operator and the customer and jointly apply to the ACCC for an exemption, and the ACCC is satisfied that publication would have a material and adverse effect on the operator and the customer; or
- a customer believes on reasonable grounds that disclosure of details of the regulated charges contained in the contract would have a material and adverse effect for the customer and applies to the ACCC for an exemption, and the ACCC is satisfied that publication would have a material and adverse effect on the customer. Material and adverse effect is defined in subrule 9(14).

Subrule 9(4) requires an application to the ACCC for an exemption to be made within 3 months of the commencement date of the Rules if the contract was entered into before this date, or in any other case before the contract is entered into. The application must also include the reasons for the belief that disclosure would have a material and adverse impact for the operator and/or customer.

Subrule 9(5) provides for the ACCC to request further information from the operator and/or customer relating to an application under this rule, within a time period specified by the ACCC.

Subrule 9(6) specifies that the ACCC must, within 30 business days of receiving an application, grant, or refuse to grant the exemption. If the ACCC has requested further information, any day during which the request, or any part of the request, remains unfulfilled, can be disregarded when calculating the 30 day period.

If the ACCC is unable to make a decision within the 30 day period, providing the ACCC gives written notice to the applicant(s) explaining why it has been unable to make a decision, subrule 9(8) provides for the ACCC to extend, or further extend this period by 10 business days.

Subrule 9(9) specifies that the ACCC must not grant an exemption if it is not satisfied that disclosure of details of regulated charges under the contract, or proposed contract, would have a material and adverse effect for the operator and/or customer.

Subrule 9(10) requires the ACCC to give notice in writing of its decision on an application to the applicant(s), including its reasons for refusal if it does not grant the exemption. Under subrule 9(11), if the ACCC has not granted, or refused to grant an exemption within 30 business days, or within that period as extended or further extended by the ACCC, after receipt of the application, the exemption is to be taken to have been granted at the expiration of that period.

Subrule 9(12) specifies that if the ACCC grants an exemption under rule 9, the ACCC must, subject to rule 55, publish on the ACCC's Internet site a notice to the effect that the exemption has been granted.

Subrule 9(13) specifies that if an exemption has effect, or is granted, in respect of a contract, or proposed contract:

- the operator must not include the regulated charges under the contract in its schedule of charges; and
- if the Regulator is aware that an exemption has effect, or is granted, under this rule, the Regulator must not include those regulated charges in any matter that it publishes on its Internet site.

Rule 3 defines the Regulator as the accredited State agency where accreditation of arrangements has effect in a State, or otherwise the ACCC.

Subrule 9(14) defines material and adverse effect, in relation to an infrastructure operator and a customer, or an infrastructure operator or a customer, as:

- a financial loss for, or detriment to, the operator or customer or both the operator and the customer; or
- a direct benefit to a competitor of the operator or customer or both the operator and the customer.

Subrule 9(14) also specifies that the relevant date is 14 July 2010 for the purposes of rule 9. This is the date on which the Minister published the proposal to make the Rules and invited public consultation on the draft Rules.

Subrule 9(14) also specifies that customer includes prospective customer, where relevant.

### **Part 3 Restriction of differing regulated charges for same infrastructure service**

#### **10. Restriction of certain regulated charges**

Under Rule 10, after the transitional period a member owned operator is only permitted to specify a different regulated charge for an infrastructure service provided to a customer that holds an irrigation right, from a charge that is specified for an infrastructure service of the same class provided to a customer that does not hold an irrigation right, where the differences in the charge is based on the actual costs necessarily incurred in providing each of those infrastructure services.

The purpose of this rule is to prevent price discrimination against transformed customers that may deter transformation of irrigation rights (dealt with in the *Water Market Rules 2009*). This rule does not prevent differential charging where this reflects actual cost differences.

Rule 10 is designated as a civil penalty provision. The maximum penalty is 200 penalty units (currently \$22,000) for individuals and five times that amount otherwise, in accordance with sections 92(9) and 147(3) of the Water Act.

### **Part 4 Infrastructure operator to provide schedule of charges to customers**

#### **11. Infrastructure operators to provide schedule of charges to existing customers and new customers**

Rule 11 requires an operator to provide a current schedule of regulated fees and charges to its customers before the end of the 3-month transitional period after the

Rules commence, and provide a schedule of regulated fees and charges to any new customers when they become a customer.

This rule links to rule 7 which prohibits an operator from levying charges unless it has provided a copy of its schedule of charges to customers within certain timeframes before the service is provided.

#### **12. Infrastructure operators to provide schedule of charges when changes occur**

Rule 12 requires an operator to provide a schedule of regulated fees and charges to its customers whenever there are changes to those fees and charges, and give notice at least 10 business days before the changes take effect.

Rule 12 is designated as a civil penalty provision. The maximum penalty is 200 penalty units (currently \$22,000) for individuals and five times that amount otherwise, in accordance with sections 92(9) and 147(3) of the Water Act.

#### **13. Infrastructure operators to provide schedule of charges on request**

Rule 13 requires an infrastructure operator to provide a schedule of charges to any person that requests in writing details of its current regulated charges for infrastructure services within 20 business days after receiving the request. This obligation applies after the transitional period, which is defined in rule 3 as the period of 3 months after the date the Rules commence.

#### **14. Part 5 operators to provide information statements**

Rule 14 requires a Part 5 operator, when giving a copy of its current schedule of charges to its customers, to also provide the relevant information statement prepared in accordance with rule 22. This obligation will apply once a Part 5 operator has given its customers a copy of its network service plan in accordance with Part 5 of the Rules.

#### **15. Publication of schedule of charges**

Rule 15 requires certain infrastructure operators to also publish a copy of their current schedule of charges on their website, in a newspaper (or newspapers) or in the Commonwealth Government *Gazette*, when required to provide a copy of their schedule of charges to customers under rule 11 or rule 12.

This rule applies to infrastructure operators servicing at least 10 GL of water access entitlements from managed water resources.

Rule 3(1) defines 'managed water resources'.

### **Part 5 Regulated charges of Part 5 operators and network service plans**

#### **16. Application of Part**

Rule 16 specifies that an operator is a Part 5 operator for the purpose of the Rules if it is:

- a member owned operator and servicing more than 125 GL of water access entitlements from managed water resources; or

- not a member owned operator and servicing between 125 GL and 250 GL of water access entitlements from managed water resources.

Rule 3(1) defines ‘managed water resources’.

### **17. Part 5 operators to provide network service plan and information statement**

Rule 17 prohibits a Part 5 operator, on or after the relevant date, from providing to its customers, or publishing its regulated charges, unless:

- it has provided a network service plan and related information statement to its customers; and
- the period of 5 years to which the plan applies has not expired; and
- the regulated charges are those shown in the plan, or in the relevant information statement prepared in accordance with rule 22 if changes to charges are made after the plan was provided to customers.

The relevant date is 1 July 2012 if an operator is a Part 5 operator before 1 July 2011, otherwise the relevant date is 24 months after the date the operator becomes a Part 5 operator. This provides a transition period to 30 June 2012 for existing Part 5 operators, and 24 months for new Part 5 operators, to adjust to the new requirements under the Rules.

Rule 17 is designated as a civil penalty provision. The maximum penalty is 200 penalty units (currently \$22,000) for individuals and five times that amount otherwise, in accordance with sections 92(9) and 147(3) of the Water Act.

### **18. Consultation before network service plan completed**

Rule 18 requires a Part 5 operator to consult with and provide its customers with a network consultation paper indicating options and alternatives for maintaining its water service infrastructure before completing a network service plan.

Subrule 18(2) sets out the information that must be included in a network consultation paper.

Subrule 18(3) requires a Part 5 operator to give its customers at least 2 months to comment in writing on the network consultation paper. The period for consultation must be specified in the network consultation paper.

Subrule 18(4) provides that a Part 5 operator may invite its customers to attend a meeting, for which at least 10 business days’ notice is given, to comment on the network consultation paper.

### **19. Network service plan**

Rule 19 requires a Part 5 operator to complete a 5 year network service plan and to provide that plan to its customers.

A Part 5 operator must have regard to the outcome of its consultation with customers undertaken in accordance with rule 18 when developing the plan.

Subrule 19(1) sets out the mandatory information to be included in the plan.

Subrule 19(2) requires the operator to provide a copy of the plan to its customers, together with a summary of submissions and comments received from customers on the plan, and an explanation of the decisions made by the operator in completing the plan.

## **20. Part 5 operator to give ACCC a copy of the network service plan**

Rule 20 requires a Part 5 operator to give a copy of the network service plan prepared under rule 19 to the ACCC no later than the date it is provided to its customers.

The ACCC is required to submit the plan to a qualified engineer for comment and advice on the prudence and efficiency of the plan, and must give the Part 5 operator a copy of any comment and advice received.

A Part 5 operator is required to provide a copy of the comment or advice to its customers within 20 business days of receiving it from the ACCC. A Part 5 operator must also give a copy to a customer within 20 business days after receiving a request in writing to do so.

Subrule 20(4) allows the operator to amend or vary its network service plan to give effect to any comment or advice from the engineer. For the purposes of rule 21, if the plan has already been provided to its customers, this does not affect the date on which the plan commences.

Consistent with the requirements of this rule, a Part 5 operator may provide a copy of the network service plan to the ACCC at an earlier stage than it is provided to customers, to enable the operator to make changes to the plan to reflect the engineer's comments before providing the plan to customers.

## **21. The 5 year period of a network service plan**

Rule 21 sets out how the 5 year period of a network service plan is to be determined.

Rule 21 specifies that the 5 year period of a network service plan commences on the date specified in the plan if the plan is provided to customers at least one month before this date or if this is not the case one month after the plan is provided to customers. The rule also specifies that the plan ends:

- five years after the commencement date of the plan; or
- if the operator completes another plan before the five years, immediately before the new plan commences; or
- upon the operator ceasing to be a Part 5 operator.

## **22. Part 5 operator to provide an information statement with schedule of charges**

Rule 22 sets out the information that must be included in an information statement to be given to customers by a Part 5 operator when giving its customers a copy of its current schedule of charges under Part 4 of the Rules. This obligation applies once a

Part 5 operator has provided its customers with a network service plan prepared and completed for the purposes of Part 5 of the Rules.

The purpose of this statement is to provide a link between charges estimated in the network service plan and the actual charges that are payable as set out in a new schedule of charges. The statement must include an explanation of the factors contributing to any divergence between the estimated charges in the network service plan and the regulated charges contained in the schedule of fees and charges.

The information statement is also required to include an explanation of the reasons for differences in regulated charges determined in accordance with rule 10 (restrictions on discriminatory pricing).

## **Part 6 Approval or determination of regulated charges of Part 6 operators**

### **Division 1 - General**

#### **23. Application of Part**

Subrule 23(1) specifies that an operator is a Part 6 operator for the purpose of the Rules if it is not a member owned operator and it provides services in relation to more than 250 gigalitres of water access entitlements from managed water resources.

Rule 3(1) defines 'managed water resources'.

Subrule 23(2) provides that an infrastructure operator that becomes a Part 6 operator after the commencement of the Rules is not required to have their regulated charges approved or determined by the Regulator until the period commencing on 1 July next occurring at least 15 months after they became a Part 6 operator.

The purpose of this subrule is to give a new Part 6 operator sufficient time to apply to the Regulator to have its regulated charges approved or determined in time to provide a new schedule of fees and charges to customers before the start of the next regulatory period. For example, an infrastructure operator that became a Part 6 operator on 30 April 2011 would not be required to have their regulated charges approved or determined by the Regulator until 1 July 2013.

Subrule 23(3) provides that the obligations in Part 6 (other than the obligation to apply for approval or determination of regulated charges) continue to apply to an infrastructure operator that ceases to be a Part 6 operator for the remainder of the year of the regulatory period in respect of which its charges have been approved or determined.

### **Division 2 Approval or determination of regulated charges for each year of each regulatory period**

Division 2 sets out the price approval or determination process for Part 6 operators undertaken prior to the commencement of the regulatory period for charges in each year of the regulatory period.

#### **24. Approval of application for a different regulatory period**

Rule 24 provides that a Part 6 operator that provides urban water services and has charges for these services determined under State law may apply to the Regulator for a different regulatory period to those set out in the Rules, to be the regulatory period applying to it for the purposes of the approval or determination of charges under Division 2 of Part 6 of the Rules.

The purpose of this rule is to allow operators subject to approvals or determinations in respect of their charges for urban water services to apply to have the timing of the approval or determination of charges under the Rules aligned with the urban water pricing process. Aligning the timing of these processes seeks to minimise costs arising from having separate approval or determination processes for an operator's rural and urban charges.

#### **25. Application by Part 6 operator to Regulator**

Rule 25 requires a Part 6 operator that proposes to levy regulated charges after the initial period (defined in rule 3) to apply to the Regulator for approval or determination of its regulated charges for each year of the relevant regulatory period. The application must include the information set out in Schedule 1 for each year of the regulatory period.

#### **26. Regulator may request further information**

Rule 26 provides that the Regulator may request further information from a Part 6 operator, with such further information to be provided within a time period specified by the Regulator in the request, before making a decision on an application under this Division.

#### **27. Regulator must publish application**

Rule 27 requires the Regulator, after receiving an application, subject to the information disclosure provisions in Part 8 of the Rules, to publish a notice on its Internet site that includes a copy of the application and a copy of any further information requested and received under rule 26. The notice must also include an invitation to interested parties to make submissions to the Regulator on the application by a date specified in the notice.

#### **28. Regulator to consider submissions and publish draft approval or determination**

Rule 28 provides that the Regulator must, after considering submissions received under rule 27, prepare a draft approval or determination of the applicant's regulated charges in respect of the first and each subsequent year of the relevant regulatory period.

The Regulator must also publish, subject to the information disclosure provisions in Part 8 of the Rules, the draft approval or determination, the reasons for its decisions, and a notice inviting interested parties to make submissions in relation to the draft by a specified date.

#### **29. Regulator to approve or determine the regulated charges**

Rule 29 requires the Regulator, after considering submissions received under rule 28, to approve or determine the regulated charges set out in the application.

Under subrule 29(2) the Regulator must not approve the regulated charges set out in an application unless the Regulator is satisfied:

- (a) that the applicant's regulatory asset base used to calculate the charges has been set in accordance with the methodology set out in Schedule 2 of the Rules; and
- (b) that:
  - (i) the applicant's total forecast revenue from all sources for the regulatory period is reasonably likely to meet the prudent and efficient costs of providing the infrastructure services in that regulatory period; and
  - (ii) the forecast revenue from regulated charges is reasonably likely to meet that part of the prudent and efficient costs of providing infrastructure services that is not met from other revenue.

If the Regulator is not satisfied that the regulated charges were calculated in accordance with the above criteria, the Regulator must determine the regulated charges on the basis of the applicant's regulatory asset base determined in accordance with Schedule 2 (where relevant) and so as to be satisfied that the criteria set out in 29(2)(b)(i) and 29(2)(b)(ii) are met.

The Regulator must also have regard to whether the regulated charges would contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Water Act when approving or determining regulated charges under this rule.

This rule provides for revenue contributions from government or other sources to be subtracted from the operator's total revenue requirement when calculating customer charges.

This rule also provides flexibility to deal with customer impacts in the form of price stability and the maintenance of cross-subsidies, such as postage stamp pricing, where the efficiency distortions are small. Where they are large and a government subsidy is required, or where price smoothing over more than one regulatory period is contemplated, this can be accommodated as long as they are transparently agreed between the operator and the government outside of (either before or after) the Part 6 approval/ determination process.

### **30. Period within which Regulator to approve or determine regulated charges**

Rule 30 specifies that the Regulator must approve or determine the regulated charges set out in an application under this Division within 13 months of receiving the application.

If the Regulator has requested further information from the applicant under rule 26, any day during which the request, or any part of the request, remains unfulfilled can be disregarded when calculating the 13 month period. If the Regulator is unable to make a decision within the 13 month period, subrule 30(3) provides for the Regulator to extend, or further extend, this period by 3 months, provided the Regulator gives written notice to the applicant explaining why it has been unable to make a decision within the original period.



The Regulator must publish on its Internet site a copy of any notice given to an operator under subrule 30(3).

**31. Regulator to give notice to Part 6 operator of its approval or determination and publish the decision**

Subrule 31(1) requires the Regulator to give notice in writing to the Part 6 operator of its approval or determination of the operator's regulated charges under rule 29.

Subrule 31(2) requires the Regulator to publish a copy of the notice given under subrule 31(1) on its Internet site. The Regulator is also required to make the reasons for its decision available on its Internet site.

**32. Effect of approval or determination under this Division**

Rule 32 provides that an approval or determination by the Regulator of regulated charges under Division 2 of Part 6 has effect for the first year of the regulatory period to which the application relates. The approval or determination also has effect as an approval or determination of regulated charges in respect of each subsequent year of the regulatory period, subject to review and further approval or determination in accordance with Division 3 of Part 6.

A Part 6 operator is required under Division 3 of Part 6 to apply to the Regulator for a review of its regulated charges in respect of the second year and each subsequent year of the regulatory period.

**33. Transitional provision for temporary continuation of existing charges**

With two exceptions, subrule 33(1) prohibits a Part 6 operator from levying regulated charges relating to a regulatory period if the Regulator has not approved or determined the charges in respect of the first and each subsequent year of that period before the end of the initial period, or a subsequent regulatory period, as the case requires.

The first exception, specified in subrule 33(2), relates to the initial period. Rule 3 defines the initial period as the period during which the operator's charges are subject to a decision or determination of a State agency under State law that is in force immediately before the Rules commence. This exception permits the operator to levy fees and charges that do not exceed those in force immediately before the end of the initial period until 6 months after the end of the initial period, or until the Regulator approves or determines the regulated charges for the regulatory period, whichever comes first.

The second exception, specified in subrule 33(3), relates to subsequent regulatory periods. This exception permits the operator to levy fees and charges in respect of the first year of the new regulatory period that do not exceed the charges in force for the last year of the preceding regulatory period until 6 months after the end of the regulatory period, or until the Regulator approves or determines the regulated charges for the regulatory period, whichever comes first.

If, under rule 30, the Regulator extends the 13 month maximum approval or determination period and this results in this period ending later than the 6 month

period set out in the two exceptions, rule 33 permits the latter period to be extended to match the former. This provides more time for the operator to continue levying previously set fees and charges until such time as the Regulator approves or determines the charges.

This rule seeks to provide some flexibility to allow for delays that may occur in the normal approval or determination process while also ensuring that an operator does not have the incentive to delay lodging an application with the Regulator, should a delay be financially beneficial.

### **Division 3            Annual review of regulated charges for second or subsequent year of a regulatory period**

The purpose of Division 3 is to provide operators with some degree of revenue stability in the presence of variable and uncertain rainfall outcomes. Rainfall variability and uncertainty can lead to significant differences between the actual and forecast level of demand or consumption of water. This can lead to revenue shortfalls or surpluses. The annual review of regulated charges will allow charges to be updated in the second, third and fourth years of a regulatory period to reflect more current estimates of demand or consumption. This measure seeks to limit the scope for the under or over-recovery of revenue due to inaccurate demand or consumption forecasts.

#### **34. Application by Part 6 operator to the Regulator for annual review of regulated charges**

Subrule 34(1) requires a Part 6 operator whose regulated charges are approved or determined under Division 2 in respect of a regulatory period, to apply to the Regulator for approval or determination of its regulated charges for the second and subsequent years of the regulatory period.

Subrule 34(2) sets out the information that must be included in the application.

#### **35. Regulator may request further information**

Rule 35 provides that the Regulator may request further information from the operator, with such further information to be provided within a time period specified by the Regulator in the request, before making a decision on an application made under Division 3.

#### **36. Regulator to publish application and draft approval or determination**

Rule 36 requires the Regulator, after receiving an application under rule 34, to prepare a draft approval or determination of the applicant's regulated charges in respect of the year to which the application relates.

Subject to the Part 8 information disclosure provisions in the Rules, the Regulator is also required to publish a notice on its Internet site that includes a copy of the application, any further information requested and received under rule 35, the draft approval or determination and the reasons for its decisions, and an invitation to interested parties to make submissions to the Regulator on the draft approval or determination by a specified date.

### **37. Regulator to approve or determine regulated charges**

Subrule 37(1) requires the Regulator, after considering submissions received under rule 36, to approve or determine the regulated charges set out in the application under Division 3 within 3 months after receiving an application.

Subrule 37(2) specifies that the Regulator must not approve regulated charges under Division 3 that are different to those approved or determined under Division 2 (or as varied under Division 4, where relevant) except to the extent that it is reasonably necessary to do so having regard to the changes in the demand or consumption forecasts sets out in the application, and price stability.

If the Regulator is not satisfied that the changes to the approved or determined charges under Division 2 as set out in the application under Division 3 are reasonably necessary, the Regulator is required by subrule 37(3) to determine the regulated charges so as to be satisfied that the two criteria above are met.

If the Regulator has requested further information under rule 35, subrule 37(4) specifies that any day during which the request, or any part of the request, remains unfulfilled, can be disregarded when calculating the 3 month decision-making period.

Subrule 37(5) provides for the Regulator to extend, or further extend, the 3 month period by periods of one month provided that it gives the operator written notice as to why it has been unable to make a decision within the original decision-making period. The Regulator must publish a copy of any notice given to the operator under subrule 37(5) on its internet site.

The purpose of this rule is to provide for the Regulator to approve or determine charges to reflect changes in demand or consumption forecasts from the approval or determination undertaken under Division 2 of Part 6 of the Rules. In this way, the operator will be more likely to recover sufficient revenue to cover its efficient costs. However, in approving or determining charges under this Division the Regulator will also be required to have regard to the impact of the proposed charges on price stability

### **38. Notice of the decision and effect of approval or determination under this Division**

Rule 38 requires the Regulator to give notice in writing to the Part 6 operator of its approval or determination of the operator's regulated charges under rule 37, and publish this notice, and the reasons for its decisions, on its Internet site.

Rule 38 also specifies that an approval or determination of regulated charges by the Regulator under this Division has effect in respect of the year of a regulatory period to which the application relates.

### **39. Transitional provision for temporary continuation of existing regulated charges**

With one exception, subrule 39(1) prohibits a Part 6 operator from levying regulated charges in respect of the second or subsequent year of a regulatory period if the Regulator has not approved or determined the charges in respect of that year.

The exception, set out in subrule 39(2), permits the operator to levy fees and charges that do not exceed the regulated charges for the year already approved by the

Regulator under Division 2 until 3 months after the end of the preceding year of the regulatory period, or until the Regulator approves or determines the regulated charges for the year in question, whichever occurs first.

If, under rule 37, the Regulator extends the 3 month maximum approval or determination period so that this period ends later than 3 months after the end of the preceding year of the regulatory period, rule 39 permits the latter period to be extended to match the former. This provides further time for the operator to continue levying previously set fees and charges until such time as the Regulator approves or determines the charges.

This rule provides some flexibility to allow for delays that may occur in the normal approval or determination process while also ensuring that an operator does not have the incentive to delay lodging an application with the Regulator, should a delay be financially beneficial.

#### **Division 4 – Variation of approval or determination**

The purpose of Division 4 is to allow a Part 6 operator to apply to have its approval or determination varied in the case of unforeseen circumstances. This Division will only apply where the event has an adverse and material effect on the operator's business. This Division seeks to provide a safeguard for Part 6 operators subject to such circumstances.

#### **40. Regulator may vary approval or determination in certain circumstances**

Subrule 40(1) provides that a Part 6 operator may apply to the Regulator for a variation of an approval or determination made under Division 2 or 3 of Part 6 (or, if previously varied under Division 4, as so varied) if :

- an event occurs during the regulatory period that has a material and adverse effect on the operator's water service infrastructure or business; and
- the operator could not have reasonably foreseen the event.

Subrule 40(2) sets out the information that an application must include.

#### **41. Regulator may request further information**

Rule 41 provides for the Regulator to request further information from a Part 6 operator that has made an application under this Division, with such further information to be provided within a time period specified by the Regulator.

#### **42. Regulator must publish application**

Subject to the Part 8 information disclosure provisions of the Rules, rule 42 requires the Regulator to publish a notice on its Internet site that includes a copy of an application received under this Division and a copy of any additional information requested and received under rule 41.

#### **43. Regulator to decide whether or not to vary its approval or determination**

Subrule 43(1) requires the Regulator to decide whether or not to approve the variation to the operator's regulated charges within 3 months after the application is received.

Subrule 43(2) specifies that if the Regulator has requested further information under rule 41, any day during which the request, or any part of the request, remains unfulfilled, can be disregarded when calculating the 3 month period.

If the Regulator is unable to make a decision within the 3 month period, subrule 43(3) provides for the Regulator to extend, or further extend, this period by one month. The Regulator must publish a copy of any notice given to the operator under this subrule on its internet site.

Subrule 43(5) specifies that the Regulator must not vary an approval or determination of an operator's regulated charges under this Division unless the Regulator is satisfied of the matters referred to in rule 40(1)(a) and (b) and that:

- the total amount required during the remainder of the regulatory period to rectify the material and adverse effects of the event exceeds \$15 million or five per cent of the value of the operator's regulatory asset base at the start of the current regulatory period whichever is the lesser; and
- is such that it is reasonably likely that the total expenditure during the remaining of the regulatory period is likely to exceed the operator's total forecast expenditure for that remaining part; and
- the applicant has demonstrated that it is not able to reduce expenditure to avoid the consequences of the event in question without materially adversely affecting the reliability and safety of the operator's network or its ability to meet any relevant regulatory or legislative obligations.

#### **44. Regulator to give notice of its decision under this Division and publish the decision**

Subrule 44(1) requires the Regulator to give notice in writing to the Part 6 operator of its decision on the application for a variation.

Subrule 44(2) requires the Regulator, subject to the Part 8 information disclosure provisions of the Rules, to publish a copy of the notice given under subrule 44(1) on its Internet site.

### **Part 7 Approval or determination of regulated charges of Part 7 operators**

Part 7 sets out the process for the Regulator to approve or determine regulated charges for Part 7 operators.

#### **45. Application of Part**

Subrule 45(1) specifies that an operator is a Part 7 operator for the purpose of the Rules if the operator:

- is a member owned operator; and
- provides services in relation to more than 10 GL of water access entitlements from managed water resources; and

- has made a distribution to all of its related customers (defined in rule 6) at any time after the commencement of the Rules.

Rule 3(1) defines ‘managed water resources’.

Subrule 45(2) specifies the circumstances under which a member owned operator is taken to have made a distribution to all of its related customers. This includes declaring a dividend, distributing profits or reserves, or issuing bonus shares to all related customers. A distribution may be made in a manner other than those specified in the rule 45(2).

Subrule 45(2) also specifies that a member owned operator is not taken to have made a distribution if the distribution was made without distinction between related and other customers.

Subrule 45(3) specifies that a Part 7 operator ceases to be a Part 7 operator if it ceases to be member owned operator, ceases to be a member owned operator to whom this Part applies, or five years after the operator last made a distribution to all of its related customers.

#### **46. Application by Part 7 operator to Regulator**

Subrule 46(1) requires a Part 7 operator that proposes to levy regulated charges after the application period to apply to the Regulator for approval or determination of its regulated charges under this Part. The application period, defined in rule 3, provides a 3 month transition period for a Part 7 operator to prepare and lodge an application with the Regulator.

Subrule 46(2) specifies that the application must include the information set out in Schedule 3.

#### **47. Regulator may request further information**

Rule 47 provides for the Regulator to request further information from the operator, with such information to be provided within a time period specified by the Regulator in the request, before making a decision on the application.

#### **48. Regulator must publish application and draft approval or determination**

Rule 48 requires the Regulator to prepare a draft of an approval or determination of the regulated charges of the Part 7 operator set out in an application under rule 46.

Subject to the Part 8 information disclosure provisions, the Regulator is required to publish a notice on its internet site that includes a copy of the application, any further information requested and received under rule 47, the draft approval or determination, the reasons for its decisions, and an invitation to interested parties to make submissions to the Regulator on the draft approval or determination by a specified date.

#### **49. Regulator to approve or determine the regulated charges**

Subrule 49(1) requires the Regulator, after considering submissions received under rule 48, to approve or determine the regulated charges set out in the application under Part 7.

Subrule 49(2) specifies that the Regulator must not approve or determine regulated charges in an application under Part 7 that include a return on investment unless the Regulator is satisfied that the return is commensurate with the commercial risks involved.

Subrule 49(3) specifies that if the Regulator is not satisfied that the criteria in subrule 49(2) are met, it must determine such changes to the regulated charges as will enable the Regulator to be satisfied that the criteria have been met.

Subrule 49(4) specifies that in approving or determining regulated charges under this Part, the Regulator may have regard to whether or not the charges contribute to the Basin charging objectives and principles set out in Schedule 2 of the Water Act.

#### **50. Period within which Regulator to approve or determine regulated charges**

Subrule 50(1) requires the Regulator to approve or determine the regulated charges set out in an application under this Part within 3 months, or such period as extended or further extended, after the application is received.

If the Regulator has requested further information under rule 47, any day during which the request, or any part of the request, remains unfulfilled can be disregarded when calculating the 3 month period.

If the Regulator is unable to make a decision within the 3 month period, subrule 50(3) provides for the Regulator to extend, or further extend, this period by one month provided that it gives the operator written notice as to why it has been unable to make a decision within the original decision-making period.

The Regulator must publish a copy of any notice given to the operator under subrule 50(3) on its Internet site.

#### **51. Regulator to give notice to Part 7 operator of its approval or determination and publish the decision**

Subrule 51(1) requires the Regulator to give notice in writing to the Part 7 operator of its approval or determination under rule 49.

Subrule 51(2) requires the Regulator to publish a copy of the notice given under subrule 51(1), and the reasons for its decision, on its Internet site.

### **Part 8    General**

#### **Division 1            Disclosure of information**

#### **52. Regulator to publish submissions**

Rule 52 requires the Regulator to publish submissions received under Part 6, 7 or 9 of the Rules on its Internet site, subject to the information disclosure provisions in this Division.

**53. Regulator not to publish applications and submissions if confidential**

Subrule 53(1) prevents the Regulator from publishing an application or a submission under Part 6, 7 or 9 of the Rules where it accepts that the application or submission contains confidential information. The Regulator is also prevented from publishing such information in its reasons for its decisions under Part 6, 7 or 9.

If the Regulator agrees with the confidentiality claim, subrule 53(2) provides for the Regulator to publish the application or submission, or information contained in it, with the confidential information omitted. The Regulator is required to place a note to this effect at the place in the document from which the information is omitted.

For the purposes of this rule, application includes any further information that has been provided by the applicant at the request of the Regulator under rules 26, 35, 41, 47 or 61.

**54. Where Regulator disagrees with claim that information is confidential**

Where the Regulator disagrees with the person's confidentiality claim and the Regulator wishes to publish the application or submission, subrule 54(1) requires the Regulator to give notice of its decision to the person within 10 business days after receiving the application or submission.

Subrule 54(2) specifies that the notice must state that the person may withdraw the confidentiality claim within 10 business days after receiving the notice. It must also state that if the person decides not to withdraw the claim, the Regulator may publish the application or submission with the confidential information omitted and a note placed to this effect in the document. Under these circumstances, the Regulator must not have regard to the omitted information.

Subrule 54(3) provides for the Regulator to publish the entire application or submission where the confidentiality claim is withdrawn.

Where the person does not withdraw their claim for confidentiality within 10 business days after receiving the Regulator's notice under subrule 54(1), subrule 54(4) requires the Regulator to not publish the confidential information and to not have regard to the omitted information when approving or determining the regulated charges under Part 6 or 7, or making a decision under Part 9.

For the purposes of this rule, application includes any further information that has been provided by the applicant at the request of the Regulator under rules 26, 35, 41, 47 or 61.

**55. Exempt contracts**

If an exemption under rule 9 has been granted, or has effect, in respect of a contract between an operator and a customer, rule 55 specifies that the Regulator must not publish any information to which the exemption relates other than the names of the parties to the contract and the date on which the exemption was granted.



## **56. Monitoring water charges and compliance**

Rule 56 clarifies that nothing in Division 1 of Part 8 of the Rules prevents the ACCC from including information to which Part 8 applies in its reports to the Minister under section 94 of the Water Act.

Section 94 of the Water Act requires the ACCC to monitor regulated water charges and compliance with the water charge rules, and to give the Minister a report on the results of such monitoring. The purpose of rule 56 is to ensure that the ACCC can include confidential information, and information to which an exemption under rule 9 relates, in any report given to the Minister for the purposes of section 94 of the Water Act.

## **Division 2            Proceedings**

### **57. Proceedings to recover loss or damage**

Rule 57 provides a right, in accordance with section 92(10) of the Water Act, for a person who suffers loss or damage through a contravention of these Rules to take private action to recover the loss or damage.

## **Part 9            Accreditation of Arrangements**

### **58. Purpose of Part**

Rule 58 clarifies that the purpose of Part 9 of the Rules is to provide for the accreditation of arrangements under which regulated charges of Part 6 and 7 operators relating to State water resources are approved or determined by an agency of the relevant State, rather than by the ACCC. State water resources are defined in rule 3(1) as managed water resources in that state. Rule 3(1) also defines 'managed water resources'.

### **59. Terms, conditions and obligations applying to accreditation**

Rule 59 sets out a number of conditions to which the accreditation of arrangements that provide for a State Agency to approve or determine regulated charges of Part 6 and Part 7 operators relating to State water resources are subject. These are:

- the applied provisions – which are the relevant provisions of the Rules that relate to the approval or determination of regulated charges of Part 6 and Part 7 operators – must apply as a law of the relevant State and be in force; and
- the accredited state agency must carry out the approval or determination of regulated charges for all Part 6 and Part 7 operators relating to State water resources in that State in accordance with the accredited arrangements and the applied provisions; and
- such terms, conditions and obligations as are determined by the ACCC – not inconsistent with the Rules or applied provisions and which contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Water Act.

### **60. Application by state agency**

Subrule 60(1) provides for a State Agency of a State in which the applied provisions are a law of the State to apply to the ACCC for the accreditation of arrangements

under which the agency is to approve or determine regulated charges of Part 6 or 7 operators relating to State water resources in the State in which the agency is established or appointed.

Subrule 60(2) specifies that the application must include information set out in Schedule 4 of the Rules. The application must be made at least 18 months before the commencement of a regulatory period applying to Part 6 operators in the State, if the regulatory period starts on or before 1 July 2013. If the regulatory period commences after this date, the State Agency is required to apply 24 months in advance.

Rule 60 also specifies that the application must be accompanied by written evidence that the application has the support of the Minister, or the Head of a Department, of the state having responsibility for the State Agency.

#### **61. ACCC may request further information**

Rule 61 provides for the ACCC to request further information from an applicant, with such further information to be provided within a time period specified by the ACCC in its request.

#### **62. ACCC must publish draft decision**

Rule 62(1) requires the ACCC, after receiving an application under this Part, to make a draft decision on the application. Subject to the Part 8 information disclosure provisions of the Rules, the ACCC is also required to publish a notice on its Internet site that includes:

- a copy of the application;
- any further information received under rule 61;
- a copy of the ACCC's draft decision – including the reasons for the decision and if the draft decision is to approve the application – any proposed terms, conditions or obligations that the application would be subject to that contribute to achieving the Basin water charging objectives and principles; and
- an invitation to interested parties to make submissions to the ACCC in relation to the draft decision and any proposed terms, conditions or obligations, by a specified date.

Subrule 62(2) requires the ACCC to publish on its Internet site all submissions received in response to the invitation, subject to the information disclosure provisions in Part 8 of the Rules.

#### **63. ACCC to determine whether or not to approve the application**

Subrule 63(1) specifies that the ACCC must, within 3 months from the date the application was received, approve the application including any terms, conditions or obligations to which the approval is subject, or refuse to approve the application.

Subrule 63(2) specifies that the ACCC must not approve an application unless it is satisfied that the arrangements are in accordance with the criteria set out in Schedule 5 of the Rules. Subrule 63(2) also specifies that the ACCC must not refuse to approve

an application unless the ACCC is satisfied that the arrangements are not in accordance with Schedule 5. Schedule 5 provides that:

- there must be a law of the State under which the applied provisions are a law of the State and which includes provisions to the effect that the applied provisions operate in the State only during the period or periods as an accreditation under Part 9 has effect;
- the functions of the State agency must include the functions conferred on the Regulator under the applied provisions;
- the State agency must not be subject to the direction or control of a State Minister in carrying out its functions under the applied provisions; and
- the State agency must not be, or have a relevant interest in, a Part 6 or Part 7 operator.

Subrule 63(3) specifies that in calculating the 3 month period, if the ACCC has requested further information under rule 61, any day during which the request, or any part of the request, remains unfulfilled can be disregarded.

If the ACCC is unable to make a decision within the 3 month period, subrule 63(4) provides for the ACCC to extend, or further extend, this period by one month, provided that it gives the operator written notice as to why it has been unable to make a decision within the original decision-making period. The ACCC must publish a copy of any notice given to the operator under subrule 63(4) on its Internet site.

Subrule 63(6) requires the ACCC to give notice in writing to the applicant and each relevant Part 6 and 7 operator of its decision on the application. Subject to the Part 8 information disclosure provisions of the Rules, the ACCC is required to publish on its Internet site the notice, the reasons for its decision, and if the decision is to approve the application, any terms, conditions or obligations to which the approval is subject. If the application is approved by the ACCC, the accreditation of arrangements comes into effect, subject to rule 59, on the date specified in the notice.

#### **64. Effect of accredited arrangements and transitional provisions**

Subrule 64(1) specifies that where the accreditation of arrangements comes into effect in a State and the applied provisions are in force in that State, the accredited agency is the Regulator for the purposes of the applied provisions.

Subrule 64(2) sets out that if immediately before accredited arrangements come into effect in a state, an application by a Part 7 operator in that state made under rule 46 before that date has not been determined by the ACCC, the accredited arrangements do not apply in relation to that operator until the ACCC has given notice of its decision under rule 51.

#### **65. Accredited arrangements - new terms, conditions and obligations and variations**

Where accredited arrangements have effect in a State, subrule 65(1) provides for the ACCC, of its own accord, or at the written request of the accredited agency, to vary existing terms and conditions or impose new terms, conditions and obligations to

which the accreditation is subject – if the ACCC determines that it is necessary to do so. The new or varied terms and conditions must contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Water Act.

If an accredited agency applies for a variation, subrule 65(2) provides for the ACCC to request further information from the agency, with such further information to be provided within a timeframe specified by the ACCC in the request.

Subrule 65(3) requires the ACCC, before making a variation of existing terms and conditions, or imposing new terms, conditions or obligations, to publish a notice on its Internet site that, subject to the information disclosure provisions in Part 8 of the Rules, includes:

- a draft of its decision and the reasons for it;
- if the accredited agency made an application, a copy of the application and any further information received; and
- an invitation to interested parties to make submissions to the ACCC on the proposed variation or imposition of new terms, conditions or obligations, by a specified date.

#### **66. ACCC to decide whether or not to vary terms and conditions or impose new terms, conditions or obligations**

Subrule 66(1) specifies that the ACCC must, within 3 months after publishing a notice or receiving a request from an accredited agency under rule 65 – whichever is the earlier – decide whether or not to vary the terms and conditions to which the accreditation is subject or impose new terms, conditions or obligations.

Subrule 66(2) specifies that in calculating the 3 month period, if the ACCC has requested further information under rule 65, any day during which the request, or any part of the request, remains unfulfilled can be disregarded.

If the ACCC is unable to make a decision within the 3 month period, subrule 66(3) provides for the ACCC to extend, or further extend, this period by one month, provided that it gives the relevant agency written notice as to why it has been unable to make a decision within the original decision-making period. The ACCC must publish a copy of any notice given to the operator under subrule 66(3) on its internet site.

Subrule 66(5) requires the ACCC to give notice to the accredited agency and each relevant Part 6 and 7 operator of its decision. Subrule 66(6) requires the ACCC to publish the notice on its Internet site, subject to the information disclosure provisions in Part 8 of the Rules.

Subrule 66(7) specifies that a variation of terms and conditions, or the imposition of new terms, conditions or obligations, takes effect on the date specified in the notice.

#### **67. Revocation of accreditation**

Subrule 67(1) provides for the ACCC to revoke the accreditation of arrangements if it is satisfied that:

- the accredited agency has failed to comply with the accredited arrangements in a material respect; or with the terms, conditions and obligations to which the arrangements are subject; or
- the accredited arrangements are no longer in accordance with the criteria in Schedule 5; or
- the State agency does not have the support, in relation to the accredited arrangements, of either the Minister, or the Head of a Department, of the State having responsibility for the State Agency.

Before revoking the accreditation, subrule 67(2) requires the ACCC, subject to the Part 8 information disclosure provisions of the Rules, to publish a notice on its Internet site that includes a draft of the ACCC's decision and reasons for it, and an invitation to interested parties to make submissions to the ACCC on the proposed revocation before a date specified in the notice. The ACCC is also required to give a copy of the notice to the accredited agency and to each relevant Part 6 and 7 operator.

Subrule 67(3) specifies that the ACCC, after considering submissions, must determine whether or not to revoke the accreditation within 2 months after the draft decision notice was given. The ACCC is required to give notice of its final decision and reasons to the accredited agency and to each Part 6 and 7 operator whose regulated charges are subject to approval or determination by the accredited agency. The notice must be published on the ACCC's Internet site.

If the ACCC is unable to make a decision within the 2 month period, subrule 67(4) provides for the ACCC to extend, or further extend, this period by 2 months, provided that it gives the relevant agency written notice as to why it has been unable to make a decision within the original decision-making period. The ACCC must publish a copy of any notice given to the operator under subrule 67(4) on its Internet site.

Subrule 67(6) provides for an accredited agency to request in writing that the ACCC revoke its accreditation. If an accredited agency makes such a request, the ACCC must revoke the accreditation and publish a notice to this effect on its Internet site.

Subrule 67(7) specifies that a revocation of accreditation under this rule takes effect from the day specified in the notice published on the ACCC's Internet site.

#### **68. Term of accreditation**

Rule 68 specifies that the term of an accreditation is 10 years after the date on which the accreditation took effect, unless revoked sooner under the Rules.

#### **69. Renewal of accredited arrangements**

Rule 69 specifies that where accredited arrangements have effect in a State and the accredited agency wishes the arrangements to continue after the 10 year term, the agency must make an application to the ACCC under rule 60 for another 10 year term at least 2 years before the current term expires.

**Schedule 1 Information to be included in an application under Division 2 of**

**Part 6** (Rule 25)

Schedule 1 sets out the information a Part 6 operator is required to include in an application to the Regulator for approval or determination of its regulated charges for each year of the regulatory period. The information to be included relates to customer consultation, regulatory and legislative obligations, infrastructure service standards, revenue for the regulatory period about to expire and the one following, the regulatory asset base, rate of return, renewals annuity where relevant, capital and operating expenditure, forecast and actual tax liabilities, demand for or consumption of infrastructure services and regulated charges.

**Schedule 2 Determination of regulatory asset base in relation to Part 6**

**operator** (Rule 29)

Schedule 2 specifies the methodology to be followed by a Part 6 operator in determining its regulatory asset base for the purposes of the first regulatory period under the Rules, and subsequent regulatory periods.

**Schedule 3 Information to be included in an application under Part 7** (Rule 46)

Schedule 3 sets out the information a Part 7 operator is required to include in an application to the Regulator for approval or determination of its regulated charges under Part 7 of the Rules. The information to be included relates to the operator's regulated charges, asset base, costs recovered through charges, demand for or consumption of infrastructure services and information on the distributions the operator has made or will make.

**Schedule 4 Information to be included in an application under Part 9** (Rule 60)

Schedule 4 sets out information a State Agency is required to include in an application to the ACCC for the accreditation of arrangements under which the agency is to approve or determine regulated charges of relevant Part 6 and Part 7 operators. The information to be included relates to contact details of the applicant, title of the State Act under which it is established or appointed and for what purpose, the title of the State Act under which the applied provisions are applied as a law of the State, a statement as to whether the criteria set out in Schedule 5 are satisfied, and details of the arrangements for which the applicant seeks accreditation.

**Schedule 5 Criteria for accreditation of arrangements** (Rule 63)

Schedule 5 sets out the criteria that a state agency is required to satisfy for the ACCC to approve the accreditation of arrangements under which the agency is to approve or determine regulated charges of relevant Part 6 or 7 operators. The criteria are:

- there must be a law of the State under which the applied provisions are a law of the state but only operate during such period or periods as an accreditation of arrangements under Part 9 has effect;
- the functions of the State Agency must include the functions conferred on a Regulator under the applied provisions;
- the State Agency must not be subject to the direction or control of a Minister of the state in carrying out its functions under the applied provisions. This does not exclude agencies that are subject to Ministerial control in respect of other

activities and functions unrelated to the approval or determination of Part 6 or Part 7 operators' regulated charges; and

- the State agency must not be, or have a relevant interest in, a Part 6 operator or a Part 7 operator.