



Water Charge (Infrastructure) Rules 2010¹

Water Act 2007

I, TONY BURKE, Minister for Sustainability, Environment, Water, Population and Communities, having regard to advice given by the Australian Competition and Consumer Commission, make the following Rules under section 92 of the *Water Act 2007*.

Dated 21 December 2010

Tony Burke

Minister for Sustainability, Environment, Water, Population and Communities

Contents

Part 1	Preliminary	
	1 Name of Rules	6
	2 Commencement	6
	3 Definitions	6
	4 Schedule of charges	9
	5 Member owned operator	9
	6 Related customer	9
Part 2	Conditions applying to regulated charges and exemptions relating to certain contracts	
	7 Conditions applying to regulated charges	11
	8 Additional conditions applying to Part 5, 6 and 7 operators	11
	9 Exemption relating to certain contracts entered into before, on or after relevant date	12
Part 3	Restriction of differing regulated charges for same infrastructure service	
	10 Restriction of certain regulated charges	15
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	16
	12 Infrastructure operators to provide schedule of charges when changes occur	16
	13 Infrastructure operators to provide schedule of charges on request	16
	14 Part 5 operators to provide information statements	16
	15 Publication of schedule of charges	17
Part 5	Regulated charges of Part 5 operators and network service plans	
	16 Application of Part	18
	17 Part 5 operators to provide network service plan and information statement	18
	18 Consultation before network service plan completed	19
	19 Network service plan	20
	20 Part 5 operator to give ACCC a copy of the network service plan	21
	21 The 5 year period of a network service plan	21
	22 Part 5 operator to provide an information statement with schedule of charges	22

		Page
Part 6	Approval or determination of regulated charges of Part 6 operators	
Division 1	General	
	23 Application of Part	23
Division 2	Approval or determination of regulated charges for each year of each regulatory period	
	24 Approval of application for a different regulatory period	23
	25 Application by Part 6 operator to Regulator	24
	26 Regulator may request further information	24
	27 Regulator must publish application	24
	28 Regulator to consider submissions and publish draft approval or determination	24
	29 Regulator to approve or determine the regulated charges	25
	30 Period within which Regulator to approve or determine regulated charges	25
	31 Regulator to give notice to Part 6 operator of its approval or determination and publish the decision	26
	32 Effect of approval or determination under this Division	26
	33 Transitional provision for temporary continuation of existing charges	26
Division 3	Annual review of regulated charges for second or subsequent year of a regulatory period	
	34 Application by Part 6 operator to Regulator for annual review of regulated charges	27
	35 Regulator may request further information	28
	36 Regulator to publish application and draft approval or determination	28
	37 Regulator to approve or determine regulated charges	28
	38 Notice of the decision and effect of approval or determination under this Division	29
	39 Transitional provision for temporary continuation of existing regulated charges	29
Division 4	Variation of approval or determination	
	40 Regulator may vary approval or determination in certain circumstances	30
	41 Regulator may request further information	31
	42 Regulator must publish application	31
	43 Regulator to decide whether or not to vary its approval or determination	31
	44 Regulator to give notice of its decision under this Division and publish the decision	32

	Page
Part 7	Approval or determination of regulated charges of Part 7 operators
Division 1	General
45	Application of Part 33
Division 2	Approval or determination of regulated charges
46	Application by Part 7 operator to Regulator 34
47	Regulator may request further information 34
48	Regulator to publish application and draft approval or determination 34
49	Regulator to approve or determine the regulated charges 34
50	Period within which Regulator to approve or determine regulated charges 35
51	Regulator to give notice to Part 7 operator of its approval or determination and publish the decision 35
Part 8	General
Division 1	Disclosure of information
52	Regulator to publish submissions 36
53	Regulator not to publish applications and submissions if confidential 36
54	Where Regulator disagrees with claim that information is confidential 36
55	Exempt contracts 37
56	Monitoring water charges and compliance 38
Division 2	Proceedings
57	Proceedings to recover loss or damage 38
Part 9	Accreditation of Arrangements
58	Purpose of Part 39
59	Terms, conditions and obligations applying to accreditation 39
60	Application by State Agency 39
61	ACCC may request further information 40
62	ACCC must publish draft decision 40
63	ACCC to determine whether or not to approve the application 41
64	Effect of accredited arrangements and transitional provisions 42
65	Accredited arrangements—new terms, conditions and obligations and variations 42
66	ACCC to decide whether or not to vary terms and conditions or impose new terms, conditions or obligations 43
67	Revocation of accreditation 43
68	Term of accreditation 45
69	Renewal of accredited arrangements 45

		Page
Schedule 1	Information to be included in an application under Division 2 of Part 6	46
Schedule 2	Determination of regulatory asset base in relation to a Part 6 operator	50
Schedule 3	Information to be included in an application under Part 7	52
Schedule 4	Information to be included in an application under Part 9	54
Schedule 5	Criteria for accreditation of arrangements	55

Rule 1

Part 1 Preliminary**1 Name of Rules**

These Rules are the *Water Charge (Infrastructure) Rules 2010*.

2 Commencement

These Rules commence on the day after these Rules are registered.

3 Definitions

(1) In these Rules, unless the contrary intention appears:

accredited agency, in relation to a State in which accredited arrangements are in force, means the State Agency specified in the accredited arrangements.

accredited arrangements means arrangements accredited under Part 9 providing for a State Agency to approve or determine regulated charges of Part 6 operators and Part 7 operators relating to State water resources.

application period, in relation to a Part 7 operator, means the period commencing:

- (a) on the commencement date; or
- (b) on the day on which the operator becomes a Part 7 operator—
whichever is the later, and ending:
- (c) 3 months after that date or day, as the case requires; or
- (d) if the operator makes an application to the Regulator under rule 46 during that period of 3 months— when the Regulator approves or determines the regulated charges set out in the application.

applied provisions has the meaning given by subrule 59(2).

business day does not include a Saturday or a Sunday and—

- (a) in relation to an obligation of an infrastructure operator, does not include a day that is a public holiday in the place where the operator's principal place of business is situated;
- (b) in relation to the ACCC, does not include a day that is a public holiday in the Australian Capital Territory;
- (c) in relation to an accredited agency, does not include a day that is a public holiday in the State.

civil penalty means a civil penalty within the meaning of Division 4 of Part 8 of the Act.

Note: Subsection 92(9) of the Act provides that the civil penalty for a contravention of a provision of the water charge rules is 200 penalty units.

Subsection 147(3) of the Act provides that the pecuniary penalty for a contravention of a civil penalty provision must not exceed:

- (a) if the wrongdoer is an individual—the relevant amount specified for the civil penalty provision; or

Rule 3

- (b) otherwise—an amount equal to 5 times the amount of the relevant amount specified for the civil penalty provision.

commencement date means the day after these Rules are registered.

contract includes agreement.

customer, in relation to an infrastructure operator, means a person who is entitled to infrastructure services, such as the holder of a water delivery right, from the operator.

discount includes bonus, rebate and allowance.

infrastructure service means access, or a service provided in relation to access, to water service infrastructure and includes the storage, delivery, drainage and taking of water.

initial period, in relation to a Part 6 operator, means the period in respect of which a decision or determination by an agency of a State, under a law of the State relating to infrastructure services, has effect in relation to fees or charges of the operator, being a decision or determination that is in force immediately before the commencement date.

levy, in relation to a regulated charge, includes impose or demand or cause to be imposed or demanded.

managed water resources means all water resources that are—

- (a) Basin water resources;
- (b) water resources (not being Basin water resources) in a referring State, or part of a referring State, if—
 - (i) a law of the referring State provides that section 100B of the Act applies to the State, or that part of the State; and
 - (ii) the regulations under the Act provide that section 100B of the Act applies to the State, or that part of the State;
- (c) water resources (not being Basin water resources) in the Northern Territory, or a part of the Northern Territory, if—
 - (i) a law of the Northern Territory provides that section 100B of the Act applies to the Territory, or that part of the Territory; and
 - (ii) the regulations provide that section 100B of the Act applies to the Northern Territory, or that part of the Northern Territory—

but does not include water resources that are prescribed for the purposes of paragraph 100B(3)(a) of the Act.

member owned operator has the meaning given by rule 5.

network service plan means a plan prepared and completed in accordance with Part 5.

Part 5 operator has the meaning given by rule 16.

Part 6 operator has the meaning given by rule 23.

Part 7 operator has the meaning given by rule 45.

Regulator, in relation to the approval or determination of regulated charges under Part 6 or 7, means:

- (a) unless paragraph (b) applies, the ACCC;

Rule 3

- (b) where the accreditation of arrangements has effect in a State, the accredited agency in relation to that State.

regulatory asset base, in relation to a Part 6 operator, means the value, as determined in accordance with Schedule 2, for the purposes of the relevant regulatory period, of the operator's assets that are used by the operator to provide infrastructure services for which regulated charges apply.

regulated charge means a charge of a kind referred to in paragraph 91(1)(a), (b) or (d) of the Act but does not include:

- (a) a fee to which rule 13 of the *Water Market Rules 2009* applies; or
(b) a fee to which rule 6 or 8 of the *Water Charge (Termination Fees) Rules 2009* applies.

regulatory period, in relation to a Part 6 operator, means:

- (a) the period of 3 years commencing immediately after the initial period; or
(b) the period of 4 years commencing immediately after the end of the period referred to in paragraph (a) and each subsequent period of 4 years; or
(c) if the Regulator has approved another period under rule 24, that other period:

as the case requires.

related customer, in relation to an infrastructure operator, has the meaning given by rule 6.

schedule of charges has the meaning given by rule 4.

State Agency means an agency of a State within the meaning of paragraph (c) of the definition of **agency** of a State in the Act.

State water resources, in relation to a State, means managed water resources in that State.

surcharge includes penalty.

the Act means the *Water Act 2007*.

transitional period means the period of 3 months after the commencement date.

- (2) In these Rules:

GL is an acronym for gigalitre.

- (3) Where an accreditation of arrangements has effect in a State, a reference in these Rules to a provision of these Rules includes a reference to the corresponding provision of the applied provisions in force in that State.
- (4) Subject to subrule (5), a reference in these Rules to a water access entitlement includes a reference to a perpetual or ongoing entitlement, by or under a law of a State or Territory, to a share of the Basin water resources as if the entitlement were a water access entitlement.
- (5) Subrule (4) does not apply after the Basin Plan takes effect.

Rule 6

- (6) In these Rules, where an infrastructure operator is required to provide or give a copy of a document, such as its schedule of charges, 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

For the purposes of these Rules, a *schedule of charges* is a document that:

- (a) is issued by or on behalf of an infrastructure operator that sets out all regulated charges that the operator may levy in respect of an infrastructure service provided by the operator; and
- (b) includes details of the regulated charges sufficient to enable a customer of the infrastructure operator to determine the customer's liability under the regulated charges in respect of a period during which the customer receives, or is entitled to receive, infrastructure services from the infrastructure operator; and
- (c) if a discount or surcharge applies to a regulated charge, includes details of the discount or surcharge and the circumstances in which it is applicable; and
- (d) if the schedule is issued by an irrigation infrastructure operator and sets out regulated charges that include fees or charges of a kind referred to in paragraph 91(1)(a) of the Act, includes a statement setting out the process for determining the amount of those regulated charges and showing separately, as applicable, the components of those charges attributable to—
 - (i) the storage of water in connection with infrastructure services provided through the irrigation network;
 - (ii) bulk water charges imposed on the operator by another infrastructure operator;
 - (iii) connecting or disconnecting a customer to water service infrastructure;
 - (iv) the holding of, or management of, a water access entitlement by the irrigation infrastructure operator.

5 Member owned operator

For the purposes of these Rules, an infrastructure operator is a *member owned operator* if the majority of its customers are related customers.

6 Related customer

In these Rules, a customer of an infrastructure operator is a *related customer* in relation to that infrastructure operator if:

- (a) the customer is a beneficiary of a trust of which the infrastructure operator is a trustee; or
- (b) where the infrastructure operator is a company within the meaning of the *Corporations Act 2001*, the customer is—

Rule 6

- (i) a related body corporate within the meaning of that Act in relation to the infrastructure operator; or
- (ii) a member of the company; or
- (c) where the infrastructure operator is a body corporate incorporated under a law of a State or of the Commonwealth (other than the *Corporations Act 2001*), the customer is a member of the body corporate; or
- (d) the customer has any other legal or equitable interest in the infrastructure operator.

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

7 **Conditions applying to regulated charges**

Except as expressly authorised by these Rules, an infrastructure operator must not, after the transitional period, levy a regulated charge relating to an infrastructure service provided by the operator to a customer unless the operator has, in accordance with these Rules, given a copy of its current schedule of charges:

- (a) in the case of a customer who was a customer before the end of the transitional period, at least 10 business days before the service is provided; or
- (b) in the case of a customer who becomes a customer after the transitional period, before the service is provided:

and, except to the extent that an exemption under rule 9 applies, the regulated charge for that service is the charge specified for that service in that schedule of charges.

Civil penalty: 200 penalty units.

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

- (1) Except as expressly authorised by these Rules, a Part 5 operator must not, on or after the relevant date within the meaning of rule 17, levy a regulated charge relating to an infrastructure service provided by the operator to a customer, unless the operator has provided to its customers the relevant network service plan and information statement in accordance with Part 5.
- (2) Except as expressly authorised by these Rules, but subject to rules 33, 39 and Division 4 of Part 6, a Part 6 operator must not, after the initial period, levy a regulated charge relating to an infrastructure service provided by the operator to a customer unless:
 - (a) the operator's regulated charges have been approved or determined in accordance with Division 2 of Part 6 and (except in the case of the first year of a regulatory period) Division 3 of Part 6; and
 - (b) the regulated charge for that infrastructure service does not exceed the maximum charge for that infrastructure service approved or determined in accordance with Division 2 or 3 of Part 6, as the case requires.
- (3) Except as expressly authorised by these Rules, a Part 7 operator must not, after the application period, levy a regulated charge relating to an infrastructure service provided by the operator to a customer unless:
 - (a) the operator's regulated charges have been approved or determined in accordance with Part 7; and

Rule 9

- (b) the regulated charge for that infrastructure service does not exceed the maximum charge for that infrastructure service approved or determined in accordance with Part 7.

Civil penalty: 200 penalty units

9 Exemption relating to certain contracts entered into before, on or after relevant date

- (1) Where, before the relevant date, an infrastructure operator and a customer:
- (a) entered into a contract in writing for the provision of infrastructure services to the customer:
- (i) at agreed regulated charges specified in the contract; and
- (ii) for a period specified in the contract; and
- (b) the operator believes on reasonable grounds that disclosure of the details of the regulated charges for those services would found an action by the customer against the operator for breach of confidence:
- the operator is exempt from the requirement under these Rules that the operator include its regulated charges for those services in its schedule of charges.
- (2) Where, on or after the relevant date, an infrastructure operator and a customer:
- (a) enter into, or propose to enter into, a contract in writing for the provision of infrastructure services to the customer at agreed regulated charges specified in the contract; and
- (b) the operator and the customer each believe, on reasonable grounds, that disclosure of the details of the regulated charges for those services would have a material and adverse effect for the operator and the customer:
- the operator and the customer jointly may apply in writing to the ACCC for an exemption from the requirement under these Rules that the operator include its regulated charges for those services in its schedule of charges.
- (3) Where, on or after the relevant date, an infrastructure operator and a customer:
- (a) enter into, or propose to enter into, a contract in writing for the provision of infrastructure services to the customer at agreed regulated charges specified in the contract; and
- (b) the customer believes, on reasonable grounds, that disclosure of the details of the regulated charges for those services would have a material and adverse effect for the customer:
- the customer may apply in writing to the ACCC for an exemption from the requirement under these Rules that the operator include its regulated charges for those services in its schedule of charges.

Rule 9

- (4) An application under subrule (2) or (3):
 - (a) must be made:
 - (i) in the case of a contract entered into before the commencement date— within 3 months after the commencement date; and
 - (ii) in any other case—before the contract is entered into; and
 - (b) must include the reasons for the belief referred to in subrule (2) (b) or (3)(b), as the case requires.
- (5) Before the ACCC makes a decision in relation to an application under this rule, the ACCC may, in writing, request the infrastructure operator and the customer, or the customer, as the case requires, to provide further information relating to the application within a period specified by the ACCC.
- (6) The ACCC must, within 30 business days after receiving an application, grant, or refuse to grant, the exemption.
- (7) In calculating the 30 day period referred to in subrule (6), disregard, if the ACCC has requested further information under subrule (5)—a day during any part of which the request, or any part of the request, remains unfulfilled.
- (8) If the ACCC:
 - (a) is unable to make a decision within the 30 day period referred to in subrule (6) or, if that period is extended or further extended, that period as extended; and
 - (b) within that period, gives written notice to the applicants, or applicant, explaining why the ACCC has been unable to make the decision within that period:
that period is extended, or further extended, by a period of 10 business days.
- (9) The ACCC must refuse to grant the 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 infrastructure operator and the customer, or for the customer, as the case requires.
- (10) The ACCC must give notice in writing of its decision on an application under this rule to each of the applicants or, in the case of the grant of an exemption on the application of the customer, to the applicant and the infrastructure operator and, if it refuses to grant the exemption, must include in the notice the reasons for its refusal.
- (11) If the ACCC has not either granted, or refused to grant, an exemption sought in an application under this rule within the period of 30 business days, or within that period as extended or further extended under subrule (8), after receipt of the application, the exemption is to be taken to have been granted at the expiration of that period.
- (12) If the ACCC grants an exemption under this rule, 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.

Rule 9

- (13) If, under this rule, an exemption has effect, or is granted, in respect of a contract, or proposed contract:
- (a) the operator must not include the regulated charges under the contract in its schedule of charges; and
 - (b) 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.

- (14) In this rule:

material and adverse effect, in relation to an infrastructure operator and a customer, or an infrastructure operator or a customer, means:

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

relevant date means 14 July 2010.

customer also includes prospective customer, where relevant.

Part 3 Restriction of differing regulated charges for same infrastructure service

10 Restriction of certain regulated charges

After the transitional period, a member owned operator must not, in specifying the regulated charges in relation to an infrastructure service of the same class, specify different regulated charges payable for:

- (a) an infrastructure service provided to a customer that holds an irrigation right against the member owned operator; and
- (b) an infrastructure service provided to a customer that does not hold an irrigation right against the member owned operator:

if the difference between the amount of the charge referred to in paragraph (b) and the amount of the charge referred to in paragraph (a) is more than the difference between the actual costs necessarily incurred in providing each of those infrastructure services.

Civil penalty: 200 penalty units.

15 Publication of schedule of charges

- (1) Where, under subrule 11 (1) or rule 12, an infrastructure operator to whom this rule applies is required to give a copy of its current schedule of charges to its customers, the infrastructure operator must also cause that schedule to be published within the period within which that schedule is required to be provided to customers:
- (a) if the operator has a business Internet site, on a part of that site to which access is unrestricted; or
 - (b) in a newspaper circulating generally in the area where the infrastructure operator's water service infrastructure is situated or, if there is no such newspaper, in such newspapers as circulate generally in each part of the area; or
 - (c) in the *Gazette*.
- (2) This rule applies to an infrastructure operator if the sum of the maximum volume of water from managed water resources in respect of which the operator provides infrastructure services in relation to:
- (a) water access entitlements held by the operator (otherwise than for the purpose of providing infrastructure services to customers who hold water access entitlements to that water); and
 - (b) water access entitlements held by its customers; and
 - (c) water access entitlements held by the owner (not being the operator) of the water service infrastructure operated by the operator:
- is at least 10 GL.

Note: In subrule 15(2) the maximum volume of water refers to that held under water access entitlements.

Rule 16

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

16 Application of Part

- (1) This Part applies to:
- (a) a member owned operator if the sum of the maximum volume of water from managed water resources in respect of which the operator provides infrastructure services in relation to:
 - (i) water access entitlements held by the operator (otherwise than for the purpose of providing infrastructure services to customers who hold water access entitlements to that water); and
 - (ii) water access entitlements held by its customers; and
 - (iii) water access entitlements held by the owner (not being the operator) of the water service infrastructure operated by the operator:
is more than 125 GL; and
 - (b) an infrastructure operator that is not a member owned operator if the sum of the maximum volume of water from managed water resources in respect of which the operator provides infrastructure services in relation to:
 - (i) water access entitlements held by the operator (otherwise than for the purpose of providing infrastructure services to customers who hold water access entitlements to that water); and
 - (ii) water access entitlements held by its customers; and
 - (iii) water access entitlements held by the owner (not being the operator) of the water service infrastructure operated by the operator:
is more than 125 GL but not more than 250 GL.
- (2) An infrastructure operator to whom this Part applies is a *Part 5 operator*.

Note: In rule 16 the maximum volume of water refers to that held under water access entitlements.

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

- (1) A Part 5 operator must not, on or after the relevant date, provide to its customers, or publish, regulated charges for infrastructure services relating to the operator's water service infrastructure unless:
- (a) the Part 5 operator has provided to its customers for those infrastructure services a network service plan relating to the water service infrastructure, and an information statement relating to that plan, in accordance with this Part; and
 - (b) the period of 5 years to which the network service plan applies has not expired; and

Rule 18

- (c) the regulated charges are those shown in the network service plan or, in the case of changes to regulated charges made after the network service plan was provided, those regulated charges as varied, or further varied, as explained in the information statement prepared in accordance with rule 22 that accompanies the schedule of charges as required under rule 14.
- (2) In this rule, *relevant date* means:
 - (a) if the Part 5 operator is a Part 5 operator before 1 July 2011—1 July 2012;
 - (b) in any other case, the date that is 24 months after the Part 5 operator became a Part 5 operator.

Civil penalty: 200 penalty units.

18 Consultation before network service plan completed

- (1) A Part 5 operator must, before completing a network service plan relating to its water service infrastructure, provide to the operator's customers for infrastructure services relating to that water service infrastructure, a network consultation paper indicating options and alternatives, as appropriate, for maintaining the water service infrastructure during a 5 year period.
- (2) The network consultation paper referred to in subrule (1) must include at least the following:
 - (a) the proposed date of commencement of the period of 5 years to which the network service plan is to apply, being—
 - (i) if the Part 5 operator was a Part 5 operator on 1 July 2011—a date no later than 1 July 2012; and
 - (ii) in any other case, a date no later than 24 months after the Part 5 operator became a Part 5 operator; and
 - (b) options and alternatives, as appropriate, for works, other than minor works, for the maintenance, improvement, enhancement or expansion of the operator's water service infrastructure and levels of service during the 5 year period, together with estimates of capital and recurrent expenditure proposed in each year of the 5 year period for each option or alternative and, where appropriate, a suggested ranking in priority for implementation; and
 - (c) details of known or anticipated factors that are or may be relevant to the several options and alternatives, such as risks, compliance with requirements under applicable legislation relating to environmental, safety or construction matters and contractual obligations; and
 - (d) anticipated regulated charges (other than regulated charges to which an exemption having effect, or granted, under rule 9 applies) during the 5 year period to which the plan relates; and
 - (e) any relevant reports of consultant engineers or other experts identifying maintenance or other requirements of the water service infrastructure or options for meeting such requirements.

Rule 19

- (3) A Part 5 operator, when providing the network consultation paper to customers, must invite the customers to submit comments in writing addressed to the operator, including suggestions for additional options or alternatives, and preferred options and alternatives, within a period specified by the operator, not being less than 2 months after the network consultation paper is provided to the customers.
- (4) A Part 5 operator may, when providing the network consultation paper to customers, or at a later time, invite the customers to attend a meeting with the operator at which comments on the paper may be made, being a meeting of which the operator gives at least 10 business days' notice.

19 Network service plan

- (1) A Part 5 operator must prepare and complete a 5 year plan relating to its water service infrastructure having regard to the outcome of its consultation with its customers in accordance with rule 18 that includes:
 - (a) the date on which it is intended that the 5 year period to which the plan relates begins, being a date:
 - (i) if the Part 5 operator was a Part 5 operator on 1 July 2011— no later than 1 July 2012; and
 - (ii) in any other case, no later than 24 months after the Part 5 operator became a Part 5 operator; and
 - (b) details of the operator's plans for the levels of service it intends to provide for customers in each year of the 5 year period;
 - (c) details of the operator's plans for works, other than minor works, for the maintenance, improvement, enhancement or expansion of the water service infrastructure in each year of the 5 year period; and
 - (d) estimates of capital and recurrent expenditure relating to the water service infrastructure in each year of the 5 year period and estimates of revenue, including revenue from regulated charges, required for that expenditure; and
 - (e) plans for the financing of capital and recurrent works during each year of the 5 year period; and
 - (f) details of any grants or subsidies that have been or may be received or applied for, together with details of conditions to which grants or subsidies may be subject; and
 - (g) estimates of the regulated charges (other than regulated charges to which an exemption having effect, or granted, under rule 9 applies) during each year of the 5 year period stated without an inflation factor but identifying the inflation index published by the Australian Bureau of Statistics that the operator will apply to those estimates during each year of the period.
- (2) A Part 5 operator must give, or cause to be given, a copy of the network service plan, prepared and completed in accordance with this Part:

Rule 21

- (a) to each person who is a customer when the plan is completed, together with a summary of the consultation under rule 18, a summary of submissions and comments received from customers and an explanation of the decisions made by the operator in completing the plan; and
- (b) to each person who becomes a customer during the period to which the plan relates.

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

- (1) A Part 5 operator must give a copy of a network service plan prepared under rule 19 to the ACCC no later than the date on which the Part 5 operator provides copies of the plan to its customers in accordance with that rule.
- (2) The ACCC, after receiving a copy of a network service plan under this rule:
 - (a) must submit the plan to a qualified engineer for comment and advice on the prudence and efficiency of the plan; and
 - (b) must give the Part 5 operator a copy of any comment and advice received from the qualified engineer.
- (3) A Part 5 operator:
 - (a) must, within 20 business days after receiving a copy of the qualified engineer's comment or advice, give a copy to each of its customers;
 - (b) must, within 20 business days after receiving a request in writing from a customer for a copy of the qualified engineer's comment or advice received by the operator, give a copy to the customer.
- (4) A Part 5 operator may amend or vary its network service plan to the extent appropriate to give effect to any comment or advice given by the qualified engineer but, for the purposes of rule 21, if the plan has been provided to customers before the operator received the qualified engineer's comment and advice, the 5 year period of the plan commences when the plan was first provided to customers.

21 The 5 year period of a network service plan

The 5 year period of a network service plan provided by an infrastructure operator to its customers under rule 19 is the period that commences on:

- (a) if the plan is provided to customers in accordance with subrule 19 (2) at least one month before the date for that commencement specified in the plan, that date; or
- (b) if the plan is not provided at least one month before the date for that commencement specified in the plan, one month after the plan was provided to customers in accordance with subrule 19 (2):
and, in either case, ends:
 - (c) immediately before the fifth anniversary of the date of commencement specified in the plan; or

Rule 22

- (d) if the infrastructure operator prepares and completes another network service plan before that anniversary, immediately before the 5 year period of that plan commences; or
- (e) upon the infrastructure operator ceasing to be a Part 5 operator.

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

After a Part 5 operator has provided its customers with a network service plan prepared and completed in accordance with this Part, the operator, when giving to each of its customers a copy of its current schedule of charges, must also provide an information statement that includes:

- (a) a statement of the actual revenue received from regulated charges in respect of each completed year of the network service plan; and
- (b) a statement of the anticipated revenue from regulated charges in respect of the current year of the period and each future year of the period; and
- (c) details of, and an explanation of the reasons for, any adjustments made to the regulated charges in respect of that year as estimated in the network service plan, whether on account of unforeseen circumstances and events or changes in estimated costs, financing, grants or subsidies; and
- (d) an explanation of the reasons for different regulated charges determined in accordance with rule 10 in respect of each completed year of the network service plan.

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

Division 1 General

23 Application of Part

- (1) This Part applies to an infrastructure operator that is not a member owned operator if the sum of the maximum volume of water from managed water resources in respect of which the operator provides infrastructure services in relation to:
- (a) water access entitlements held by the operator (otherwise than for the purpose of providing infrastructure services to customers who hold water access entitlements to that water); and
 - (b) water access entitlements held by its customers; and
 - (c) water access entitlements held by the owner (not being the operator) of the water service infrastructure operated by the operator:
- is more than 250 GL.

Note: In subrule 23(1) the maximum volume of water refers to that held under water access entitlements.

- (2) Where an infrastructure operator becomes an operator to whom subrule (1) applies after the commencement date, this Part applies to the operator as if a reference in this Part or in subrule 8 (2) to the initial period were a reference to the period ending on 30 June next occurring not earlier than 15 months after the operator became an operator to whom subrule (1) applies.
- (3) An infrastructure operator to whom subrule (1) applied at the commencement of a regulatory period in respect of which its regulated charges have been approved or determined by the Regulator but to whom subrule (1) ceases to apply during that period, is to be taken, for the purposes of this Part, except rule 25 or 34, to be an operator to whom this Part applies for the remainder of the year of the regulatory period in respect of which its regulated charges have been approved or determined.
- (4) An infrastructure operator to whom this Part applies is a *Part 6 operator*.

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

24 Approval of application for a different regulatory period

- (1) A Part 6 operator that is also a supplier of urban water services the charges for which are determined by an agency of a State, under a law of the State,

Rule 25

in respect of a period other than a period referred to in paragraph (a) or (b) of the definition of regulatory period, may make an application in writing to the Regulator for that other period, or a part of that other period, to be a regulatory period in relation to that operator for the purposes of an application under rule 25.

- (2) The Regulator, having regard to the circumstances, may approve the application.

25 Application by Part 6 operator to Regulator

- (1) A Part 6 operator that proposes to levy regulated charges after the initial period must apply in writing to the Regulator for approval or determination of its regulated charges under this Division in respect of the first and each subsequent year of each relevant regulatory period.
- (2) An application under subrule (1) must include the information referred to in Schedule 1 in respect of each year of the regulatory period.

26 Regulator may request further information

Before the Regulator makes a decision in relation to the regulated charges of a Part 6 operator that makes an application under this Division, the Regulator may, in writing, request the operator to provide further information relating to the application within a period specified by the Regulator.

27 Regulator must publish application

After receiving an application under this Division, the Regulator must publish on the Regulator's Internet site a notice which includes, subject to Division 1 of Part 8:

- (a) a copy of the application;
- (b) a copy of any further information received in response to a request under rule 26;
- (c) an invitation to interested parties to make submissions to the Regulator in relation to the application before a date specified in the notice.

28 Regulator to consider submissions and publish draft approval or determination

The Regulator, after considering submissions received before the date specified in the notice published under rule 27 in relation to an application under this Division:

- (a) must prepare a draft of an approval or determination of the applicant's regulated charges in respect of the first and each subsequent year of the relevant regulatory period; and
- (b) must publish on its Internet site a notice which, subject to Division 1 of Part 8, includes:
 - (i) the draft approval or determination; and

- (ii) the reasons for its decisions; and
- (iii) an invitation to interested parties to make submissions to the Regulator in relation to the draft approval or determination before a date specified in the notice.

29 Regulator to approve or determine the regulated charges

- (1) The Regulator, after considering submissions received before the date specified in the notice published under paragraph 28 (b), must, subject to subrule (2), approve, or determine, the regulated charges set out in the application under this Division.
- (2) The Regulator must not approve the regulated charges set out in an application under this Division unless the Regulator is satisfied:
 - (a) that the determination of the applicant's regulatory asset base used to calculate those charges (where relevant) is in accordance with Schedule 2; 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 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.
- (3) If the Regulator is not satisfied as to the matters referred to in subrule (2), 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 as to the matters referred to in paragraph (2) (b).
- (4) In approving or determining regulated charges under this rule, the Regulator must 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 Act.

30 Period within which Regulator to approve or determine regulated charges

- (1) The Regulator must, within 13 months after receiving an application under this Division from a Part 6 operator, approve or determine the regulated charges set out in the application.
- (2) In calculating the 13 month period referred to in subrule (1), disregard, if the Regulator has requested further information under rule 26—a day during any part of which the request, or any part of the request, remains unfulfilled.

Rule 31

- (3) If the Regulator:
- (a) is unable to make a decision within the period of 13 months referred to in subrule (1) or, if that period is extended, that period as extended; and
 - (b) within that period, gives written notice to the Part 6 operator who made the application under this Division explaining why the Regulator has been unable to make the decision within that period:
that period is extended, or further extended by a period of 3 months.
- (4) As soon as practicable after the Regulator gives a notice under subrule (3), the Regulator must cause a copy of the notice to be made available on the Regulator's Internet site.

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

- (1) The Regulator must give notice in writing to the Part 6 operator of its approval or determination, as the case requires, under rule 29 of the operator's regulated charges.
- (2) The Regulator must, on or after the day on which it gives notice to the Part 6 operator under subrule (1), cause the notice, and the reasons for its decision, to be made available on the Regulator's Internet site.

32 Effect of approval or determination under this Division

An approval or determination by the Regulator of regulated charges under this Division has effect as an approval or determination of regulated charges:

- (a) in respect of the first year of the regulatory period to which the application relates; and
- (b) in respect of each subsequent year of the regulatory period, subject to review and further approval or determination in accordance with Division 3.

33 Transitional provision for temporary continuation of existing charges

- (1) Except as provided in subrule (2) or (3), a Part 6 operator must not levy regulated charges in respect of a regulatory period if the Regulator has not, under this Division, approved or determined the regulated charges in respect of the first and each subsequent year of that regulatory period before the end of the initial period, or a subsequent regulatory period, as the case requires.
- (2) If the Regulator has not approved or determined the regulated charges of a Part 6 operator in respect of the first and each subsequent year of a regulatory period before the end of the initial period, the operator may levy fees and charges not exceeding its fees and charges as in force immediately before the end of the initial period until, and only until:
- (a) the expiration of the specified period; or

- (b) the Regulator approves or determines the regulated charges in respect of the first and each subsequent year of the regulatory period in accordance with this Division:
whichever first occurs.
- (3) If the Regulator has not approved or determined the regulated charges of a Part 6 operator in respect of the first and each subsequent year of a regulatory period before the end of the preceding regulatory period, the operator may levy fees and charges in respect of the first year of the regulatory period that do not exceed the regulated charges for the last year of the preceding regulatory period approved or determined under Division 3 (or, if varied under Division 4, as so varied) until, and only until:
- (a) the expiration of the specified period; or
- (b) the Regulator approves or determines the regulated charges in accordance with this Division:
whichever first occurs.
- (4) In this rule, *specified period* means:
- (a) the period ending 6 months after the end of the initial period or regulatory period, as the case requires; or
- (b) if the period of 13 months referred to in subrule 30 (1) is extended, or further extended, under subrule 30 (3), the period ending when that period, as extended or further extended, ends:
whichever is the later.

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

34 Application by Part 6 operator to Regulator for annual review of regulated charges

- (1) A Part 6 operator whose regulated charges in respect of a regulatory period have been approved or determined under Division 2 and, if varied under Division 4, as so varied, must apply to the Regulator for approval or determination of its regulated charges in respect of the second year and each subsequent year of the regulatory period, as reviewed in accordance with this Division.
- (2) An application by a Part 6 operator under subrule (1) must include:
- (a) the operator's forecast of demand for, or consumption of, infrastructure services for the year to which the application relates; and
- (b) the operator's estimate of demand or consumption during the current year; and
- (c) information about how the forecast and estimate were calculated; and
- (d) proposed regulated charges in respect of the year to which the application relates.

Rule 35

35 Regulator may request further information

Before the Regulator makes a decision in relation to the regulated charges of a Part 6 operator who makes an application under this Division, the Regulator may, in writing, request the operator to provide further information relating to the application within a period specified by the Regulator.

36 Regulator to publish application and draft approval or determination

After receiving an application under rule 34, the Regulator:

- (a) must prepare a draft of an approval or determination of the applicant's regulated charges in respect of the year to which the application relates; and
- (b) must publish on its Internet site a notice which, subject to Division 1 of Part 8, includes:
 - (i) a copy of the application; and
 - (ii) a copy of any further information received in response to a request under rule 35; and
 - (iii) the draft approval or determination; and
 - (iv) the reasons for its decisions; and
 - (v) an invitation to interested parties to make submissions to the Regulator in relation to the draft approval or determination before a date specified in the notice.

37 Regulator to approve or determine regulated charges

- (1) Subject to subrule (2), the Regulator must, within 3 months after receiving an application under this Division from a Part 6 operator, and after considering any submissions received before the date specified in the notice under paragraph 36 (b), approve or determine the regulated charges in respect of the year to which the application relates.
- (2) The Regulator must not approve regulated charges under subrule (1) other than the regulated charges approved or determined under Division 2 and, if varied under Division 4, as so varied, in respect of the year to which the application relates except to the extent, if any, that it is reasonably necessary to make variations to those charges having regard to:
 - (a) the changes in the demand or consumption forecasts set out in the application under rule 34; and
 - (b) price stability.
- (3) If the Regulator is not satisfied as to the matters referred to in subrule (2), the Regulator must determine the regulated charges with such changes as enable the Regulator to be satisfied as to those matters.
- (4) In calculating the 3-month period referred to in subrule (1), disregard, if the Regulator has requested further information under rule 35 – a day during any part of which the request, or any part of the request, remains unfulfilled.

- (5) If the Regulator:
- (a) is unable to make a decision within the period of 3 months referred to in subrule (1) or, if that period is extended, that period as extended; and
 - (b) within that period, gives written notice to the Part 6 operator who made the application under subrule (1) explaining why the Regulator has been unable to make the decision within that period:
that period is extended, or further extended, by a period of one month.
- (6) As soon as practicable after the Regulator gives a notice under paragraph (5) (b), the Regulator must cause a copy of the notice to be made available on the Regulator's Internet site.

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

- (1) The Regulator must give notice in writing to the Part 6 operator of its approval or determination, as the case requires, under rule 37 of the operator's regulated charges under this Division.
- (2) The Regulator must, on or after the day on which it gives notice to the Part 6 operator under subrule (1), cause the notice, and the reasons for its decisions, to be made available on the Regulator's Internet site.
- (3) An approval or determination of an application under this Division has effect as an approval or determination of the regulated charges in respect of the year of a regulatory period in respect of which the application was made.

39 Transitional provision for temporary continuation of existing regulated charges

- (1) Except as provided in subrule (2), a Part 6 operator must not levy regulated charges in respect of the second or a subsequent year of a regulatory period if the Regulator has not, under this Division, approved or determined the regulated charges of the operator in respect of that year.
- (2) If the Regulator has not, under this Division, approved or determined the regulated charges of a Part 6 operator in respect of the second or a subsequent year of a regulatory period before the beginning of that year, the operator may levy regulated charges in respect of that year that do not exceed the regulated charges for that year approved or determined under Division 2 (or, if varied under Division 4, as so varied) until, and only until:
 - (a) the expiration of the specified period; or
 - (b) the Regulator approves or determines the regulated charges in accordance with this Division:whichever first occurs.
- (3) In this rule, *specified period* means:
 - (a) the period ending 3 months after the end of the preceding year of the regulatory period; or

Rule 40

- (b) if the period of 3 months referred to in subrule 37 (1) is extended, or further extended, under subrule 37 (5), the period ending when that period, as extended or further extended, ends:
whichever is the later.

Division 4 Variation of approval or determination

40 Regulator may vary approval or determination in certain circumstances

- (1) A Part 6 operator may apply in writing to the Regulator for a variation of the approval or determination under Division 2 or 3 (or, if previously varied under this Division, as so varied) of its regulated charges in respect of a regulatory period if:
- (a) an event occurs during the regulatory period that materially and adversely affects the operator's water service infrastructure or otherwise materially and adversely affects the operator's business; and
 - (b) the operator could not reasonably have foreseen the event.
- (2) An application under subrule (1):
- (a) must set out details of the event; and
 - (b) must state the Part 6 operator's proposals for rectifying the material and adverse effects of the event; and
 - (c) must state—
 - (i) the total amount that the Part 6 operator anticipates will be required during the remainder of the regulatory period to rectify those material and adverse effects;
 - (ii) whether that amount is likely to exceed \$15 million or 5% of the value of the operator's regulatory asset base as at the beginning of the regulatory period whichever is the lesser amount; and
 - (iii) whether it is reasonably likely (in the absence of any reduction of any other expenditure) that the total expenditure during the remaining part of the regulatory period will exceed the total forecast expenditure for that remaining part; and
 - (d) must demonstrate that the Part 6 operator is not able to reduce its expenditure to avoid the consequences referred to in subparagraphs (c) (ii) and (iii) without materially and adversely affecting the reliability and safety of the operator's water service infrastructure or the operator's ability to comply with any relevant regulatory or legislative obligations; and
 - (e) must set out details of the variation of its regulated charges sought by the Part 6 operator.

41 Regulator may request further information

Before the Regulator makes a decision in relation to an application under this Division, the Regulator may, in writing, request the Part 6 operator to provide further information relating to the application within a period specified by the Regulator.

42 Regulator must publish application

After receiving an application under this Division, the Regulator must publish on the Regulator's Internet site a notice which, subject to Division 1 of Part 8, includes:

- (a) a copy of the application;
- (b) a copy of any further information received in response to a request under rule 41.

43 Regulator to decide whether or not to vary its approval or determination

- (1) The Regulator must, within 3 months after receiving an application under this Division, decide whether or not to vary its approval or determination of the applicant's regulated charges under Division 2 or 3.
- (2) In calculating the 3-month period referred to in subrule (1), disregard, if the Regulator has requested further information under rule 41—a day during any part of which the request, or any part of the request, remains unfulfilled.
- (3) If the Regulator:
 - (a) is unable to make a decision within the period of 3 months or, if that period is extended, or further extended, that period as extended; and
 - (b) within that period, gives written notice to the Part 6 operator who made the application explaining why the Regulator has been unable to make the decision within that period:
that period is extended, or further extended, by a period of one month.
- (4) As soon as practicable after the Regulator gives a notice under paragraph (3)(b), the Regulator must cause a copy of the notice to be available on the Regulator's Internet site.
- (5) The Regulator must not vary an approval or determination of regulated charges under this Division unless the Regulator is satisfied:
 - (a) as to the matters relating to the event referred to in paragraphs 40 (1) (a) and (b) as set out in the application; and
 - (b) that:
 - (i) 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 5% of the value of the applicant's regulatory asset base as at the beginning of the regulatory period whichever is the lesser; and

Rule 44

- (ii) that it is reasonably likely that the total expenditure during the remaining part of the regulatory period is likely to exceed the total forecast expenditure for that remaining part; and
- (c) that the applicant has demonstrated that it is not able reduce its expenditure to avoid the consequences referred to in paragraph (b) without materially adversely affecting the reliability and safety of the applicant's water service infrastructure or the applicant's ability to comply with any relevant regulatory or legislative obligations.

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

- (1) The Regulator must give notice in writing to the Part 6 operator of its decision on the variation of the operator's regulated charges under this Division.
- (2) The Regulator must, on or after the day on which it gives notice to the Part 6 operator under subrule (1), cause the notice, and the reasons for its decisions, to be made available on the Regulator's Internet site, subject to Division 1 of Part 8.

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

Division 1 General

45 Application of Part

- (1) This Part applies to a member owned operator if:
- (a) the sum of the maximum volume of water from managed water resources in respect of which the operator provides infrastructure services in relation to:
 - (i) water access entitlements held by the operator (otherwise than for the purpose of providing infrastructure services to customers who hold water access entitlements to that water); and
 - (ii) water access entitlements held by its customers; and
 - (iii) water access entitlements held by the owner (not being the operator) of the water service infrastructure operated by the operator:

is more than 10 GL; and

- (b) the member owned operator has made a distribution to all its related customers at any time after the commencement date:

Note: In subrule 45(1) the maximum volume of water refers to that held under water access entitlements.

- (2) For the purposes of this rule, a member owned operator:
- (a) is to be taken to have made a distribution to all its related customers if it has:
 - (i) declared a dividend for all its related customers; or
 - (ii) distributed profits, or any part of its profits, whether in the form of dividends or otherwise, to all its related customers; or
 - (iii) distributed its reserves, or any part of its reserves, to all its related customers; or
 - (iv) issued bonus shares to all its related customers;
 - (b) is not to be taken to have made a distribution, whether as referred to in paragraph (a) or in any other manner, if the distribution was made without distinction between related customers and other customers.
- (3) An infrastructure operator to whom this Part has applied ceases to be an operator to whom this Part applies:
- (a) if it ceases to be a member owned operator; or
 - (b) if it ceases to be a member owned operator to whom this Part applies; or
 - (c) upon the expiration of 5 years after the operator last made a distribution to all of its related customers.

Rule 46

- (4) An infrastructure operator to whom this Part applies is a *Part 7 operator*.

Division 2 Approval or determination of regulated charges

46 Application by Part 7 operator to Regulator

- (1) A Part 7 operator that proposes to levy regulated charges after the application period must apply in writing to the Regulator for approval or determination of its regulated charges under this Part.
- (2) An application under subrule (1) must include the information referred to in Schedule 3.

47 Regulator may request further information

Before the Regulator makes a decision in relation to an application under this Part from a Part 7 operator, the Regulator may, in writing, request the operator to provide further information relating to the application within a period specified by the Regulator.

48 Regulator to publish application and draft approval or determination

After receiving an application under this Part from a Part 7 operator, the Regulator:

- (a) must prepare a draft of an approval or determination of the regulated charges set out in the application; and
- (b) must publish on the Regulator's Internet site a notice which, subject to Division 1 of Part 8, includes:
 - (i) a copy of the application; and
 - (ii) a copy of any further information received in response to a request under rule 47; and
 - (iii) the draft approval or determination; and
 - (iv) the reasons for its decisions; and
 - (v) an invitation to interested parties to make submissions to the Regulator in relation to the draft approval or determination before a date specified in the notice.

49 Regulator to approve or determine the regulated charges

- (1) The Regulator, after considering submissions received before the date specified in the notice published under paragraph 48 (b), subject to subrule (2), must approve or determine the regulated charges set out in the application under this Part.
- (2) The Regulator must not approve regulated charges set out in an application under this Part that include a return on investment unless the Regulator is satisfied that the return is commensurate with the commercial risks involved.

- (3) If the Regulator is not satisfied as to the matters referred to in subrule (2), the Regulator must determine such changes to the regulated charges as will enable the Regulator to be satisfied as to the matters referred to in that subrule.
- (4) In approving or determining regulated charges set out in an application under this Part, the Regulator may have regard to whether or not the regulated charges would contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act.

50 Period within which Regulator to approve or determine regulated charges

- (1) The Regulator must, within 3 months or, if that period is extended or further extended, that period as extended, after receiving an application under this Part from a Part 7 operator, approve or determine the regulated charges set out in the application.
- (2) In calculating the 3-month period referred to in subrule (1), disregard, if the Regulator has requested further information under rule 47—a day before the end of the period specified in the request during any part of which the request, or any part of the request, remains unfulfilled.
- (3) If the Regulator:
 - (a) is unable to make a decision within the period of 3 months referred to in subrule (1) or, if that period is extended or further extended, that period as extended; and
 - (b) within that period, gives written notice to the Part 7 operator who made the application under this Part explaining why the Regulator has been unable to make the decision within that period:

that period is extended, or further extended, by a further period of one month.
- (4) As soon as practicable after the Regulator gives a notice under subrule (3), the Regulator must cause a copy of the notice to be made available on the Regulator's Internet site.

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

- (1) The Regulator must give notice in writing to the Part 7 operator of its approval or determination, as the case requires, of regulated charges under rule 49.
- (2) The Regulator must, on or after the day on which it gives notice to the Part 7 operator under subrule (1), cause the notice, and the reasons for its decisions, to be made available on the Regulator's Internet site.

Part 8 General

Division 1 Disclosure of information

52 Regulator to publish submissions

Where the Regulator receives a submission in response to an invitation under Part 6, 7 or 9, the Regulator must, subject to this Division, cause the submission to be available on the Regulator's Internet site as soon as possible.

53 Regulator not to publish applications and submissions if confidential

- (1) Except as provided in subrule (2), the Regulator must not publish an application or a submission under Part 6, 7 or 9, or include any information from an application or submission in its reasons for its decisions under Part 6, 7 or 9, if:
 - (a) the person who made the application or submission claimed, when making the application or submission, that it contains confidential information; and
 - (b) the Regulator decides that the application or submission contains confidential information.
- (2) If a person claimed, when making an application or submission under Part 6, 7 or 9, that the application or submission contained confidential information and the Regulator considers that it does contain confidential information, the Regulator may publish the application or submission, and any information from an application or submission, if the confidential information is omitted but, before so doing, must cause a note to that effect to be included in the document at the place in the document from which the information is omitted.
- (3) In this rule, *application* includes further information provided by the applicant at the request of the Regulator under rule 26, 35, 41, 47 or 61.

54 Where Regulator disagrees with claim that information is confidential

- (1) If:
 - (a) a person who makes an application or submission under Part 6, 7 or 9 claims that the application or submission contains confidential information; and
 - (b) the Regulator decides that the application or submission does not contain confidential information as claimed; and

- (c) the Regulator wishes to publish the application or submission:
the Regulator must give the person written notice of the Regulator's decision within 10 business days after receiving the application or submission.
- (2) The notice under subrule (1) must include:
- (a) a statement that the person may withdraw the claim of confidentiality by giving the Regulator written notice to that effect; and
 - (b) a statement that, if the person wishes to withdraw the claim, the person must do so within 10 business days after receiving the Regulator's notice under subrule (1); and
 - (c) a statement that, if the person decides not to withdraw the claim, the following applies:
 - (i) the Regulator may publish the application or submission if the information claimed to be confidential is omitted and a note to the effect that confidential information is omitted is inserted in the application or submission at the place from which the information is omitted; and
 - (ii) the Regulator must not have regard to the omitted information when approving or determining regulated charges under Part 6 or 7 or making a decision under Part 9.
- (3) If the person withdraws the claim, the Regulator may publish the entire application or submission.
- (4) If the person does not withdraw the claim within 10 business days after receiving the Regulator's notice under subrule (1), then the Regulator:
- (a) may publish the application or submission if the confidential information is omitted and a note to the effect that confidential information is omitted is inserted in the application or submission at the place from which the information is omitted; and
 - (b) must 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.
- (5) In this rule, **application** includes further information provided by the applicant at the request of the Regulator under rule 26, 35, 41, 47 or 61.

55 Exempt contracts

If, under rule 9, an exemption has effect, or is granted, in respect of a contract between an infrastructure operator and a customer, 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.

Rule 56

56 Monitoring water charges and compliance

Nothing in this Division prevents the ACCC from including information to which this Part applies in its reports to the Minister under section 94 of the Act.

Division 2 Proceedings

57 Proceedings to recover loss or damage

A person who suffers loss or damage as a result of conduct, or an omission, of another person that contravenes these Rules may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

Part 9 Accreditation of Arrangements

58 Purpose of Part

The purpose of this Part is to make provision for the accreditation of arrangements under which regulated charges of Part 6 operators and Part 7 operators relating to State water resources are approved or determined by an agency of the relevant State (instead of by the ACCC).

59 Terms, conditions and obligations applying to accreditation

- (1) The accreditation of arrangements providing for a State Agency to approve or determine regulated charges of Part 6 operators and Part 7 operators relating to State water resources is subject to:
 - (a) a condition that the applied provisions apply as a law of the State and are in force; and
 - (b) a condition that the approval or determination of regulated charges of all Part 6 operators and Part 7 operators relating to State water resources of that State must be carried out by the State Agency specified in the accredited arrangements in accordance with the accredited arrangements and the applied provisions; and
 - (c) such terms, conditions and obligations not inconsistent with these Rules or the applied provisions as are determined by the ACCC in accordance with this Part in relation to the accreditation of the arrangements, being terms, conditions and obligations which contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act.
- (2) *Applied provisions* means:
 - (a) Divisions 2, 3 and 4 of Part 6;
 - (b) Division 2 of Part 7;
 - (c) Division 1 of Part 8;
 - (d) Schedules 1, 2 and 3;
 - (e) Part 1, so far as is relevant to the interpretation of the provisions referred to in paragraphs (a), (b), (c) and (d).

60 Application by State Agency

- (1) A State Agency of a State in which the applied provisions are a law of the State may apply in writing to the ACCC for the accreditation of arrangements under which regulated charges of Part 6 operators and Part 7 operators relating to State water resources in the State in which the State Agency is established or appointed are to be approved or determined by the State Agency in accordance with the applied provisions.
- (2) An application under subrule (1):
 - (a) must include the information set out in Schedule 4; and

Rule 61

- (b) must be made:
 - (i) at least 18 months before the commencement of a regulatory period applying to Part 6 operators in the State if the regulatory period commences on or before 1 July 2013; or
 - (ii) if the regulatory period commences after 1 July 2013, 24 months before the commencement a regulatory period; and
- (c) must be accompanied by evidence in writing that the application has the support of the Minister, or the Head of a Department, of the State Agency's State having responsibility for the State Agency.

61 ACCC may request further information

Before the ACCC makes a decision in relation to an application under this Part, the ACCC may, in writing, request the applicant to provide further information relating to the application within a period specified by the ACCC.

62 ACCC must publish draft decision

- (1) After receiving an application under this Part and if, further information is requested under rule 61, receiving that further information, the ACCC must publish, on the ACCC's Internet site, a notice which includes, subject to Division 1 of Part 8:
 - (a) a copy of the application;
 - (b) a copy of any further information received in response to a request under rule 61;
 - (c) a copy of the ACCC's draft decision on the application and the reasons for the decision;
 - (d) if the draft decision is a decision to approve the application, a draft of any terms, conditions or obligations to which the ACCC proposes that its approval of the application would be subject, being terms or conditions and obligations that contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act;
 - (e) an invitation to interested parties to make submissions to the ACCC in relation to the draft decision, and any proposed terms, conditions or obligations referred to in paragraph (d), before a date specified in the notice.
- (2) The ACCC must publish on the ACCC's Internet site a copy of each submission received in response to the invitation referred to in subrule (1), subject to Division 1 of Part 8.

63 ACCC to determine whether or not to approve the application

- (1) The ACCC, after considering submissions received before the date specified in the notice published under rule 62 in relation to an application by a State Agency must, within 3 months after receiving the application:
 - (a) approve the application and determine the terms, conditions or obligations (if any) to which the approval is subject, being terms, conditions and obligations that contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act; or
 - (b) refuse to approve the application.
- (2) The ACCC:
 - (a) must not approve an application under this Part for the accreditation of arrangements unless the ACCC is satisfied that the arrangements are in accordance with the criteria set out in Schedule 5; and
 - (b) must not refuse to approve an application under this Part for the accreditation of arrangements unless the ACCC is satisfied that the arrangements are not in accordance with the criteria set out in Schedule 5.
- (3) In calculating the 3-month period referred to in subrule (1), disregard, if the ACCC has requested further information under rule 61—a day during any part of which the request, or any part of the request, remains unfulfilled.
- (4) If the ACCC:
 - (a) is unable to make a decision within the period of 3 months referred to in subrule (1) or, if that period is extended, that period as extended; and
 - (b) within that period, gives written notice to the applicant under subrule (1) explaining why the ACCC has been unable to make the decision within that period:
that period is extended, or further extended, by a period of one month.
- (5) As soon as practicable after the ACCC gives a notice under paragraph (4) (b), the ACCC must cause a copy of the notice to be made available on the ACCC's Internet site.
- (6) The ACCC:
 - (a) must give notice in writing to the applicant and each relevant Part 6 operator and Part 7 operator of its decision on the application, and the reasons for the decision and, if it approves the application and determines any terms, conditions or obligations to which the accreditation is to be subject, a copy of those terms, conditions and obligations; and
 - (b) must publish, on the ACCC's Internet site:
 - (i) the notice of its decision and the reasons for the decision;
 - (ii) if it approves the application, a copy of the accredited arrangements and, if it determines any terms, conditions or obligations to which the accreditation is subject, a copy of those terms, conditions and obligations.

Rule 64

- (7) If the application is approved by the ACCC, the accreditation of the arrangements comes into effect, subject to rule 59, on the date specified in the notice published under subrule (6).

64 Effect of accredited arrangements and transitional provisions

- (1) Where, under this Part, the accreditation of arrangements comes into effect in respect of 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.
- (2) If, immediately before the accreditation of arrangements comes into effect in respect of a State, an application under rule 46 made before that date by a Part 7 operator in that State has not been determined by the ACCC, the accredited arrangements and the applied provisions in force in that State do not apply in relation to that Part 7 operator until the ACCC gives notice of its decision in accordance with rule 51.

65 Accredited arrangements—new terms, conditions and obligations and variations

- (1) Where an accreditation of arrangements has effect in a State, the ACCC may, in accordance with this rule, if it determines that it is necessary to do so:
- (a) on its own motion or on the application in writing of the accredited agency, vary the terms or conditions to which the accreditation is subject; or
 - (b) impose new terms, conditions or obligations on the accreditation under this rule:
being terms, conditions or obligations that contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act.
- (2) If an accredited agency applies for a variation of the terms or conditions to which the accreditation of arrangements is subject, the ACCC may, in writing, request the accredited agency to provide further information relating to the application within a period specified by the ACCC.
- (3) Before making a variation of the terms or conditions of accredited arrangements, or imposing new terms, conditions or obligations on the accreditation of arrangements, the ACCC must publish on the ACCC's Internet site a notice which, subject to Division 1 of Part 8, includes:
- (a) a draft of its decision and the reasons for it;
 - (b) if the accredited agency made application for the variation, a copy of the application and a copy of any further information received in response to a request under subrule (2);
 - (c) an invitation to interested parties to make submissions to the ACCC in relation to the proposed variation, or imposition of terms, conditions or obligations, before a date specified in the notice.

Rule 67

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

- (1) The ACCC must, within 3 months after publishing a notice under rule 65(3) or receiving a request from an accredited agency under that rule, whichever is the earlier, decide whether or not to vary the terms or conditions to which the accreditation of arrangements is subject or to impose terms, conditions or obligations.
- (2) In calculating the 3-month period referred to in subrule (1), disregard, if the ACCC has requested further information under subrule 65(2)—a day during any part of which the request, or any part of the request, remains unfulfilled.
- (3) If the ACCC:
 - (a) is unable to make a decision within the period of 3 months referred to in subrule (1) or, if that period is extended, that period as extended; and
 - (b) within that period, gives written notice to the relevant accredited agency explaining why the ACCC has been unable to make the decision within that period:

that period is extended, or further extended, by a period of one month.
- (4) As soon as practicable after the ACCC gives a notice under paragraph (3) (b), the ACCC must cause a copy of the notice to be made available on the ACCC's Internet site.
- (5) The ACCC must give notice in writing of its decision whether or not to make the variation or impose terms, conditions or obligations and the reasons for the decision to the accredited agency and each Part 6 operator and Part 7 operator whose regulated charges are subject to approval or determination under the accredited arrangements.
- (6) The ACCC must, on or after the day on which it gives notice under subrule (5), publish the notice on its Internet site, subject to Division 1 of Part 8.
- (7) A variation of terms or conditions, or the imposition of terms, conditions or obligations, takes effect on the date specified in the notice published under subrule (6).

67 Revocation of accreditation

- (1) The ACCC may revoke the accreditation of arrangements under these Rules if the ACCC is satisfied that:
 - (a) the accredited agency has failed to comply with the accredited arrangements in a material respect; or
 - (b) the accredited agency has failed to comply with any terms, conditions or obligations to which the accreditation of the arrangements is subject; or
 - (c) the accredited arrangements have ceased to be in accordance with the criteria set out in Schedule 5; or

Rule 67

- (d) the State Agency does not have the support, in the carrying out of accredited arrangements, of either the Minister, or the Head of a Department, of the State Agency's State having responsibility for the State Agency.
- (2) Before revoking the accreditation of arrangements under subrule (1), the ACCC:
 - (a) must publish on the ACCC's Internet site a notice which, subject to Division 1 of Part 8, includes:
 - (i) a draft of its decision and the reasons for it;
 - (ii) an invitation to interested parties to make submissions to the ACCC in relation to the proposed revocation before a date specified in the notice; and
 - (b) must give a copy of the notice to the accredited agency and each Part 6 operator and Part 7 operator whose regulated charges are subject to approval or determination by the accredited agency.
 - (3) The ACCC, after considering any submission received before the date specified in the notice under subrule (2), within 2 months after the notice was given:
 - (a) must determine whether or not to revoke the accreditation; and
 - (b) must give notice in writing to the accredited agency and each relevant Part 6 operator and Part 7 operator of its decision and the reasons for it; and
 - (c) must publish a copy of the notice on the ACCC's Internet site.
 - (4) If the ACCC:
 - (a) is unable to make a decision within the period of 2 months referred to in subrule (3) or, if that period is extended, that period as extended; and
 - (b) within that period, gives written notice to the relevant accredited agency explaining why the ACCC has been unable to make the decision within that period:
that period is extended, or further extended, by a period of two months.
 - (5) As soon as practicable after the ACCC gives a notice under paragraph (4) (b), the ACCC must cause a copy of the notice to be made available on the ACCC's Internet site.
 - (6) If an accredited agency gives notice in writing to the ACCC requesting that the accreditation of arrangements be revoked, the ACCC:
 - (a) must revoke the accreditation; and
 - (b) publish a notice of the revocation on the ACCC's Internet site.
 - (7) A revocation of the accreditation of arrangements under this rule takes effect on the date specified in the notice of revocation published on the ACCC's Internet site.

68 Term of accreditation

Accredited arrangements, unless sooner revoked under these Rules, cease to have effect at the end of the period of 10 years after the date on which the accredited arrangements took effect.

69 Renewal of accredited arrangements

Where:

- (a) accredited arrangements have effect in a State; and
- (b) the accredited agency wishes accredited arrangements to continue after the expiration of the period of 10 years:

the accredited agency must make an application under rule 60 at least 2 years before the expiration of that period for the accreditation of arrangements in respect of a further period of 10 years.

Schedule 1 Information to be included in an application under Division 2 of Part 6

(Rule 25)

1 Consultation

Information on whether the Part 6 operator, in putting together its application under Division 2 of Part 6, consulted with its customers and if so, details of the extent and nature of the consultation processes including matters consulted on and customer feedback received.

2 Regulatory and legislative obligations

Details of any regulatory and legislative obligations, including any changes or proposed changes to the those obligations since the Part 6 operator's regulated charges were last approved or determined under these Rules, under relevant Acts, legislative instruments and licences that apply to the Part 6 operator in respect of its infrastructure services.

3 Infrastructure service standards

Details of the infrastructure service standards the Part 6 operator has or will deliver in respect of its infrastructure service including minimum standards for key performance indicators or performance targets and of any changes made or proposed to be made since the Part 6 operator's regulated charges were last approved or determined under these Rules.

4 Revenue

Details of the Part 6 operator's:

- (a) actual revenue from providing infrastructure services for each year of the initial period or the regulatory period that is set to expire and forecast revenue for the remainder of the initial period or regulatory period set to expire;
- (b) forecast revenue from providing infrastructure services for each year of the following regulatory period.

5 Regulatory asset base

Details of the Part 6 operator's assets, and their value, that are used to provide infrastructure services:

- (a) in respect of each year of the initial period or the regulatory period that is set to expire:
 - (i) actual contributions from customers and government;
 - (ii) actual proceeds from asset disposals and the nature and type of assets sold;
 - (iii) the regulatory depreciation of assets and the reasons for the depreciation;

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- (iv) from the above, the actual regulatory asset base; and
 - (b) in respect of each year of the following regulatory period:
 - (i) forecast contributions from customers and government and the assumptions underpinning those forecasts;
 - (ii) forecast proceeds from asset disposals and the nature and type of assets anticipated to be sold;
 - (iii) the regulatory depreciation of assets and the reasons for the depreciation;
 - (iv) from the above, the forecast regulatory asset base.

6 Rate of return

Details of the rate of return:

- (a) in respect of each year of the initial period or the regulatory period that is set to expire; and
- (b) proposed by the Part 6 operator for each year of the following regulatory period:

and the basis for that rate, including the methodology used to determine the rate and the values of all inputs used in the calculation of the rate.

7 Renewals annuity

If the Part 6 operator uses a renewals annuity to fund capital or operating expenditure for the provision of infrastructure services, details of the annuity including:

- (a) in respect of each year of the initial period or the regulatory period that is set to expire:
 - (i) the nature of the assets included in the annuity calculation;
 - (ii) the basis of the long term capital expenditure forecasts that supported the annuity calculation—when and on what basis the forecasts were made;
 - (iii) the service levels that underpinned the capital expenditure forecasts;
 - (iv) the term of the annuity;
 - (v) the discount rate used to calculate the annuity;
 - (vi) from the above, the actual balance of the annuity; and
- (b) in respect of each year of the following regulatory period:
 - (i) the nature of the assets included in the annuity calculation;
 - (ii) the basis of the long term capital expenditure forecasts that support the annuity calculation—when and on what basis the forecasts are made;
 - (iii) the service levels that underpin the capital expenditure forecasts;
 - (iv) the term of the annuity;
 - (v) the discount rate used to calculate the annuity;
 - (vi) from the above, the forecast balance of the annuity.

8 Capital expenditure

Details of the Part 6 operator's capital expenditure required to provide infrastructure services:

- (a) in respect in respect of each year of the initial period or the regulatory period that is set to expire including:
 - (i) actual capital expenditure;
 - (ii) the major projects completed including the actual cost and timing of the projects;
 - (iii) the outcomes of the major projects and their justification;
 - (iv) evidence that the levels of expenditure were prudent and efficient—for example, the results of an independent engineer's assessment.
- (b) in respect of each year of the following regulatory period including:
 - (i) forecast capital expenditure;
 - (ii) the major projects to be completed including the forecast cost and timing of the projects;
 - (iii) the expected outcomes of the projects and their justification;
 - (iv) evidence that the expected levels of expenditure are prudent and efficient—for example, the results of an independent engineer's assessment.

9 Operating expenditure

Details of the Part 6 operator's operating and maintenance expenditure:

- (a) in respect in respect of each year of the initial period or the regulatory period that is set to expire including:
 - (i) actual operating expenditure;
 - (ii) the key reasons for the expenditure;
 - (iii) a justification of the actual operating expenditure;
 - (iv) evidence of productivity improvements;
- (b) in respect of each year of the following regulatory period including:
 - (i) forecast operating expenditure;
 - (ii) the key reasons for the proposed expenditure;
 - (iii) a justification of the forecast operating expenditure;
 - (iv) proposed productivity improvements.

10 Tax

Details of the Part 6 operator's tax liabilities relating to the provision of infrastructure services:

- (a) in respect of each year of the initial period or the regulatory period that is set to expire, including carried forward losses and tax depreciation in each year of the initial period or preceding regulatory period; and
- (b) in respect of each year of the following regulatory period, including forecast carried forward losses and tax depreciation.

11 Demand or consumption

Details of the Part 6 operator's demand or consumption for its infrastructure services:

- (a) in respect of each year of the initial period or the regulatory period that is set to expire;
- (b) in respect of each year of the following regulatory period, including:
 - (i) forecast demand or consumption;
 - (ii) a description of the methodology used to forecast demand or consumption;
 - (iii) assumptions on which the forecasts are based;
 - (iv) consistency with historical data.

12 Regulated charges

Details of the Part 6 operator's regulated charges for its infrastructure services for each year of the initial period or the regulatory period that is set to expire and of its proposed regulated charges for each year of the following regulatory period.

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

(Rule 29)

1 **Determination of regulatory asset base for first Part 6 period**

The regulatory asset base of a Part 6 operator, for the purposes of the first regulatory period under these Rules in relation to the operator as a Part 6 operator (*first Part 6 period*):

- (a) in the case of an operator whose fees and charges were determined by an agency of a State under a law of the State in respect of the period immediately before the first Part 6 period (*preceding period*), is to be determined in accordance with the formula:

$$\{(A - B) + C\} - (D + E)$$

where:

A is the value of the operator's assets that were used for the preceding period.

B is the value of such of those assets that were not used by the operator to provide infrastructure services during the preceding period and any assets contributed by customers or government.

C is the actual (or, in the case of the last year of the preceding period, forecast) capital expenditure on assets used by the operator to provide infrastructure services (net of actual customer and government capital expenditure contributions) in respect of each year of the preceding period.

D is the regulatory depreciation in respect of assets used to provide infrastructure services (as determined for each year of the preceding period).

E is the actual (or, in the case of the last year of the preceding period, forecast) revenue received by the operator from disposal of assets used to provide infrastructure services in the preceding period; and

- (b) in the case of any other Part 6 operator, is to be determined by applying a recognised valuation methodology.

2 **Determination of regulatory asset base for a regulatory period after the first Part 6 period**

The regulatory asset base of a Part 6 operator, for the purposes of the second or a subsequent regulatory period in relation to the operator as a Part 6 operator, is to be determined in accordance with the formula:

$$(A + B) - (C + D)$$

where:

A is the regulatory asset base of the operator determined under this Schedule or the applied provisions in respect of the preceding regulatory period.

B is the total of the actual (or, in the case of the last year of the preceding regulatory period, forecast) capital expenditure on assets used by the operator to provide infrastructure services (net of actual customer and government capital expenditure contributions) in respect of each year of the preceding regulatory period.

C is the regulatory depreciation in respect of assets used to provide infrastructure services in respect of each year of the preceding regulatory period.

D is the actual (or, in the case of the last year of the preceding regulatory period, forecast) revenue received by the operator from disposal of assets used to provide infrastructure services in respect of each year of the preceding regulatory period.

Schedule 3 Information to be included in an application under Part 7

(Rule 46)

1 Regulated charges

Details of the Part 7 operator's:

- (a) current regulated charges;
- (b) regulated charges for which the operator is seeking approval;
- (c) the period for which those regulated charges will apply, where relevant.

2 Asset base

Details of the Part 7 operator's asset base required for provision of infrastructure services including:

- (a) the nature and type of assets on which returns to investors have, or will be, paid;
- (b) the valuation of the assets on which returns to investors have been, or will be, paid;
- (c) the method and assumptions used to calculate the valuation of those assets including estimated remaining economic lives and the basis for past and future depreciation;
- (d) the financing of those assets showing—
 - (i) the proportion contributed or financed by its members;
 - (ii) the proportion of assets contributed or financed by government;
 - (iii) the proportion financed through renewals annuity charges;
 - (iv) the proportion financed through non-annuity charges, whether or not debt funding is used;
- (e) the Part 7 operator's method and assumptions used to calculate the return on those assets.

3 Costs recovered through the Part 7 operator's regulated charges

- (1) Details, in relation to the Part 7 operator's infrastructure services for each of the preceding three years financial years, of:
 - (a) the actual total operating costs incurred in providing the infrastructure services;
 - (b) the depreciation of capital assets for provision of the infrastructure services;
 - (c) the actual taxation in relation to the provision of the infrastructure services;
 - (d) the rate of return on investment in relation to the provision of the infrastructure services.

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- (2) Details, for the period for which the regulated charges for which approval or determination is sought will apply, of the forecast of:
 - (a) the total operating costs to be incurred in providing the infrastructure services;
 - (b) the depreciation of capital assets required for provision of the infrastructure services;
 - (c) the taxation in relation to the provision of the infrastructure services;
 - (d) the rate of return on investment in relation to the provision of the infrastructure services.

4 Demand or consumption

- (1) Details, in relation to the Part 7 operator's infrastructure services for each of the preceding three years financial years, of the actual demand for, or consumption of, the infrastructure services.
- (2) Details, for the period for which the regulated charges for which approval or determination is sought will apply, of the forecast of the demand for, or consumption of, the infrastructure services, including:
 - (a) the methodology used to determine that forecast demand or consumption; and
 - (b) the assumptions on which the forecast is based.

5 Distributions

- (1) Details, in relation to distributions that the Part 7 operator has made to related customers in each of the preceding three financial years, including:
 - (a) the amount of the distribution pool and the source of the reserve or surplus from which the distribution was drawn;
 - (b) for each class of related customer, the methodology used to determine a related customer's share of the distribution pool;
 - (c) the timing of the distribution;
 - (d) details of how the distribution was made to related customers;
 - (e) any terms, conditions or obligations associated with the distribution.
- (2) Details, in relation to forecast distributions to be made by the Part 7 operator to related customers during the period for which approval or determination is sought, including:
 - (a) the amount of the distribution pool and the source of the reserve or surplus from which the distribution is to be drawn;
 - (b) for each class of related customer, the methodology to be used to determine a related customer's share of the distribution pool;
 - (c) the timing of the distribution;
 - (d) details of how the distribution is to be made to related customers;
 - (e) any terms, conditions or obligations to be associated with the distribution.

Schedule 4 Information to be included in an application under Part 9

(Rule 60)

- (1) The name and address of the applicant.
- (2) The title of the State Act under which the applicant is established or appointed.
- (3) The title of the State Act under which the applied provisions are applied as a law of the State.
- (4) The public purpose for which the applicant is established or appointed.
- (5) A statement as to whether the criteria set out in Schedule 5 are satisfied.
- (6) The arrangements for which the applicant seeks accreditation, being arrangements for approving or determining regulated charges of Part 6 operators and Part 7 operators under the applied provisions.

Schedule 5 Criteria for accreditation of arrangements

(Rule 63)

- (1) There must be a law of the State:
 - (a) under which the applied provisions are a law of the State; and
 - (b) that includes provision to the effect that the applied provisions operate in the State only during such period or periods as an accreditation of arrangements under Part 9 has effect.
- (2) The functions of the State Agency must include the functions conferred on a Regulator under the applied provisions.
- (3) 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.
- (4) The State Agency must not be, or have a relevant interest in, a Part 6 operator or a Part 7 operator.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.