

EXPLANATORY STATEMENT

Issued by Authority of the Deputy Prime Minister and Minister for Agriculture and Water Resources

Water Act 2007

Water Charge (Infrastructure) Amendment Rules 2017

Legislative Authority

The *Water Act 2007* (the Act) provides for the management of the water resources of the Murray–Darling Basin and other matters of national interest in relation to water and water information.

Section 92 of the Act provides that the Minister may make rules (to be called water charge rules), applying in Basin States that: regulate water charges; deal with the matters listed in subsection 92(3) of the Act; and contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act. The Minister must ask for the advice of the Australian Competition and Consumer Commission (ACCC) before making or amending water charge rules (subsection 93(1) of the Act).

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The purpose of the *Water Charge (Infrastructure) Amendment Rules 2017* (the Rules) is to significantly reduce the regulatory requirements and associated compliance costs on operators to whom Part 5 applies. Following the repeal of Part 5, these operators will no longer be required to produce five-yearly Network Service Plans (NSPs) and associated consultation papers and information statements in undertaking their infrastructure services planning processes.

Background

Recommendation 11 of the *Report of the Independent Review of the Water Act 2007* (the Water Act Review) recommended the ACCC conduct a review of the water charge rules. The Australian Government response to the Water Act Review agreed to this recommendation. The terms of reference for the review of the water charge rules proposed the rules be reviewed to assess opportunities to reduce cost to industry and governments. In particular, the ACCC were asked to consider whether to remove the current requirements for member-owned operators under Part 5 of the Principal Rules. These Rules implement Rule Advice 5L of the *ACCC Water Charge Rules Final Advice* (the Final Advice).

Impact and Effect

The *Water Charge (Infrastructure) Rules 2010* (the Principal Rules) contain requirements for larger member-owned operators and medium-sized non-member-owned operators (known as Part 5 operators) to produce a five-yearly NSP, consultation paper and information statement in undertaking their infrastructure services planning processes. During the consultation process undertaken by the ACCC in reviewing the water charge rules, stakeholders expressed significant concerns regarding the regulatory burden imposed by the NSP provisions and questioned what benefits, if any, they achieved. Stakeholders noted that, in some Basin States, the NSP requirements duplicate some requirements in state legislation. The ACCC's Final Advice concluded that NSPs were a costly and prescriptive way to facilitate customer awareness of, and participation in, operators' processes for setting charges. The Final Advice also noted that there was merit in repealing these requirements in the near term to avoid operators incurring unnecessary expenditure. The Rules remove these requirements, resulting in reductions in regulatory costs for Part 5 operators (who will continue to be subject to other requirements in the Principal Rules).

Consultation

Section 17 of the *Legislation Act 2013* requires that the rule-maker must be satisfied that any consultation that the rule-maker considers to be appropriate and reasonably practicable to undertake has been undertaken. During the process of developing its Final Advice, the ACCC engaged in extensive consultation with persons likely to be affected by these Rules and with persons having expertise in fields relevant to these Rules. This included public consultation on an issues paper, public forums and targeted industry consultation, which informed the draft and Final Advice and the rule amendments. Those consulted included the Basin States, infrastructure operators within the Murray–Darling Basin, the public, customers of infrastructure operators, the Murray–Darling Basin Authority, the Bureau of Meteorology, and representatives from industries, including agriculture and irrigation.

In accordance with the requirements under regulation 4.04 of the *Water Regulations 2008*, the proposed Rules were made available for not less than four weeks prior to the amendment being made. No changes were made to the proposed Rules.

Other

The Office of Best Practice Regulation (OBPR) was consulted by the ACCC regarding the amendments made by the Rules. The ACCC certified that the Final Advice meets the OBPR's requirements for a process and analysis equivalent to a Regulation Impact Statement (RIS). The estimated change in regulatory costs to business, community and organisations were agreed by the OBPR (ID: 19056).

The Rules are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the [Attachment](#).

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

The Rules commence on 1 July 2017 as the current NSPs expire at the end of 30 June 2017. Operators will not be required to have NSPs in place after the current NSPs expire.

Details of the *Water Charge (Infrastructure) Amendment Rules 2017*

Section 1 – Name

This section provides that the name of the Rules is the *Water Charge (Infrastructure) Amendment Rules 2017*.

Section 2 – Commencement

This section provides for the Rules to commence on 1 July 2017.

Section 3 – Authority

This section provides that the Rules are made under section 92 of the *Water Act 2007*.

Section 4 – Schedule

This section provides that the *Water Charge (Infrastructure) Rules 2010* are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Subrule 3(1)—definition of *network service plan*

Item 1 repeals the definition of *network service plan*.

Item [2] – Subrule 3(1)—definition of *Part 5 operator*

Item 1 repeals the definition of *Part 5 operator*.

Item [3] – Rule 8, heading

Item 3 omits the reference to Part 5 operators from those operators to which Rule 8 applies.

Item [4] – Subrule 8(1)

Item 4 repeals the subrule to remove the additional conditions that applied to Part 5 operators that prohibited operators from levying regulated charges without having provided a NSP and an information statement to its customers.

Item [5] – Rule 12, Note

Item 5 omits the reference to Part 5 operators in the note.

Item [6] – Rule 14

Item 6 repeals the rule removing the requirement for Part 5 operators to provide information statements.

Item [7] – Part 5

Item 7 repeals Part 5. This removes all elements that relate to a *Part 5 operator*, including the requirements for those Part 5 operators to: prepare, consult on and complete NSPs; and to provide information statements to their customers with the operator's schedule of charges.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Water Charge (Infrastructure) Amendment Rules 2017

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument amends the *Water Charge (Infrastructure) Rules 2010* to implement Rule Advice 5L of the Australian Competition and Consumer Commission's (ACCC) *ACCC Water Charge Rules Final Advice* (the Final Advice) to repeal Part 5 of the Rules to remove the requirements for larger member-owned operators and medium-sized non-member-owned operators (known as Part 5 operators) to prepare Network Service Plans, network consultation papers and information statements in undertaking their infrastructure planning processes.

Human rights implications

The amendments in this Schedule have been considered against each of the seven core international human rights treaties. This Legislative Instrument engages the right to an adequate standard of living and the right to health in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to an adequate standard of living and to the continuous improvement of living conditions is protected in Article 11 of the ICESCR. The right to the highest attainable standard of physical and mental health is protected in Article 12 of the ICESCR. The Committee on Economic, Social and Cultural Rights, established to oversee the implementation of the ICESCR, has interpreted these articles as including a human right to water which encompasses an entitlement to 'sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses' (CESCR General Comment No.15: The Right to Water E/C 12/2002/11).

Section 10 of the *Water Act 2007* sets out the basis on which it deals with water charges relating to water access rights, irrigation rights and water delivery rights in relation to the resources of the Murray-Darling Basin (the Basin). Those bases include the promotion of more efficient use of the Basin water resources, their continued availability and health, the health of the associated environmental assets, and the economic and social wellbeing of the communities in the Basin. The amendments made to the *Water Charge (Infrastructure) Rules 2010* are consistent with, respect and protect the human right to water by improving the operation and effectiveness of the management of water resources.

Conclusion

This Legislative Instrument is compatible with human rights.

The Hon. Barnaby Joyce MP
Deputy Prime Minister and Minister for Agriculture and Water Resources