



Submission to the Australian Competition and
Consumer Commission on the Review of Water
Charge Rules: Issues Paper

By

Victorian Farmers Federation

June 2015

Foreword

The Victorian Farmers Federation (VFF) is Australia's largest state farmer organisation, and the only recognised, consistent voice on issues affecting rural Victoria.

The VFF consists of an elected Board of Directors, a member representative Policy Council to set policy and eight commodity groups representing dairy, grains, livestock, horticulture, chicken meat, pigs, flowers and egg industries.

Farmers are elected by their peers to direct each of the commodity groups and are supported by Melbourne-based staff.

Each VFF member is represented locally by one of the 230 VFF branches across the state and through their commodity representatives at local, district, state and national levels. The VFF also represents farmers' views at many industry and government forums.

A handwritten signature in black ink, appearing to read 'PJT S', with a stylized flourish at the end.

Peter Tuohey
President

Executive Summary

The VFF is a key voice for Victorian irrigators and rural communities. We have a keen interest in the regulation of Goulburn-Murray Water and the rural component of Lower Murray Water. We welcome the opportunity to comment on the Review of Water Charge Rules: Issues Paper.

We have made the following recommendations in response to the Issues Paper:

Recommendation 1

The VFF supports the existing tiered regulatory approach. (Question 13)

Recommendation 2

The VFF supports more clarity being provided to Part 6 operators about what constitutes effective customer consultation. (Question 24)

Recommendation 3

The VFF supports the regulator being able to vary the regulatory periods. (Question 28)

Recommendation 4

The VFF does not support ordering the pricing principles into a hierarchy. (Question 30)

Recommendation 5

The VFF supports Part 6 operators being required to clearly explain and justify any changes in their annual review of regulated charges. (Question 31)

Recommendation 6

The VFF supports the accreditation of Basin State regulators. (Question 39)

Recommendation 7

The VFF does not support the MDBA imposing charges directly. (Question 48)

Recommendation 8

The VFF supports greater transparency in how the MDBA calculates their costs and spends funds provided by the Basin States. (Question 48)

Recommendation 9

The VFF supports Basin States being required to publish information about how their Water Planning and Management charges are derived and how these funds are spent. (Questions 55 and 60)

For enquiries about this submission please contact Rachel Astle, Senior Policy Adviser – Water on 03 9207 5522.

The VFF notes that the Australian Competition and Consumer Commission (ACCC) Water Charge Rules were developed in 2009 and 2010. The Victorian regulator for the water sector, the Essential Services Commission (ESC) was accredited by the ACCC in 2012 and the ESC's first determination came into effect on 1 July 2013.

In the VFF's view the operation of the Water Charge Rules is in its early stages and there is limited evidence to assess the impact of the existing rules in driving efficient and effective economic regulation.

Water Charge (Infrastructure) Rules 2010

Q13. What are the advantages and disadvantages of the tiered regulatory approach in the WCIR? Do you think the criteria are set appropriately?

The VFF supports the size and ownership criteria for establishing the tiers. In Victoria all the rural and urban water corporations are large government owned entities. There are no longer any small or medium sized member-owned infrastructure operators.

We believe that a higher level of regulation is appropriate for large non-member owned infrastructure operators. A large water corporation holds a monopoly position and has the opportunity to take advantage of a large number of customers. The customers of a non-member owned infrastructure operator have weaker opportunities to hold them to account.

Recommendation 1

The VFF supports the existing tiered regulatory approach.

Q.24 What other measures could be used to address the potential misuse of market power by large infrastructure operators, beside the approval or determination of regulated charges under the WCIR? What are the advantages and disadvantages of these measures?

The VFF is concerned about the commitment of rural water corporations to effectively engage with their customers and customer representatives. Customers of Goulburn-Murray Water are currently frustrated about the process for developing the common pricing policy.

GMW started with a customer engagement process. In June 2012 GMW released a consultation brochure for irrigation district customers which flagged the intention to develop a varied tariff strategy for Water Plan 3 (WP3). WP3 noted that a tariff strategy was being developed. It included the principles which had been agreed to help guide the development of the tariff strategy. In April 2013 GMW released their Blueprint for comment.

Then there was a gap until February 2015 when the GMW Board approved the Tariff Strategy. To date the Tariff Strategy has not been publicly released. Yet the contents of the Tariff Strategy are being used to inform pricing decisions such as GMW's *Application for Annual Price Review of Fees and Charges* submitted to the ESC on 15 April 2015. The VFF is concerned that the process has been

finalised without full and open consideration of customers' views and is being implemented ahead of customer knowledge and understanding. Customers are frustrated about the outcome and about the fact that they haven't had a fair chance to discuss alternative tariffing models or understand the deliberations of the Board.

The VFF is also concerned that insufficient information was provided on the impacts of this pricing change. Customers are highly concerned about the implications of changes to a pricing regime which is proposed to replace the model where there has been devolved and autonomous management of irrigation districts. It is not clear how the differences in the standard of capital assets of different districts has been taken into account, nor how the funds generated in different districts will be managed into the future.

Improving consultation with customers would support a greater level of transparency and accountability in the water sector.

Recommendation 2

The VFF supports more clarity being provided to Part 6 operators about what constitutes effective customer consultation.

Q.28 Are the provision relating to regulatory periods set out in the WCIR appropriate?

The VFF supports more flexibility for the regulator to determine the regulatory periods. We believe this would enable local circumstances to be taken into account. This has already occurred in Victoria under the Water Charge Rules and under the *Water Infrastructure Regulatory Order 2012 (Victoria)*.

In Victoria the ESC was approved to align the timing of the five year regulatory period of the rural component of Lower Murray Water's business with the urban component. This enables Lower Murray Water to complete all regulatory processes at the same time.

We also support the regulator being able to vary the duration of the regulatory period. The ESC made a determination for Melbourne Water which only applied for three years, instead of the usual five years as it wasn't fully satisfied with the submission from the water corporation. Whilst Melbourne Water is not regulated under the ACCC directions, the point stands – that if a regulator is not satisfied with a pricing proposal then reducing the regulatory period is one option for the regulator to maintain clear oversight.

This should not be a substitute for effective long term planning on the part of the water authorities. Nor is it envisaged that the regulatory period would be varied without due cause. But it is another tool in the regulatory box which can be used when required.

Recommendation 3

The VFF supports the regulator being able to vary the regulatory periods.

Q.30 What are the advantages and disadvantages of the ACCC's pricing principles defining the terms used in the BWCOP and/or ordering them into a hierarchy to guide the discretion of regulators and provide greater certainty to industry participants?

The VFF does not support ordering the pricing principles into a hierarchy as this provides less flexibility for the regulator to take account of local circumstances.

The Murray Darling Basin Plan is in the early days of implementation. Water has been, and will continue to be recovered for the environment. We now need to understand the long term impacts of these water recovery efforts.

The environmental water holders have expanded their volume of permanent entitlements and irrigators have reduced theirs. The change in ownership of permanent water entitlements from irrigators to the environment has tightened the revenue base for the maintenance and investment in infrastructure in the irrigation districts. There is an increasing cost burden across fewer entitlements in the irrigation districts. This change has been partly recognised by water corporations as they move to more fixed cost pricing to protect their revenue in years where there are low water allocations. However this also includes the risk that customers will be paying more for less when water security is variable.

Modernisation of delivery systems in the Sunraysia and Goulburn-Murray Irrigation Districts is not yet complete. The funding for these projects has been provided by government to support the water recovery objective, but the maintenance costs will need to be generated from charges on irrigators. It is not clear what the maintenance and renewal burden will be in the future.

In light of these ongoing changes, there needs to be flexibility to adapt regulatory responses to the impacts of these changes.

Recommendation 4

The VFF does not support ordering the pricing principles into a hierarchy.

Q.31 Are the provisions regarding the annual review of regulated charges for Part 6 operators appropriate?

The VFF accepts that there may be significant changes within a regulatory period of five years which may necessitate a review of regulated charges. However we are concerned that the annual review may be seen as an opportunity for price creep. The information which a Part 6 operator is currently required to provide does not hold them accountable for impacts which may be attributable to poor planning and management.

Providing updated estimates and information about the methodology is not sufficient. The VFF believes Part 6 operators should be required to provide a detailed explanation of how and why the estimates are different from those in the original application. This should include an analysis of what factors have changed, how this has influenced the revised forecast and why these differences were not identified in the earlier forecast.

The Part 6 operator should also be required to explain what alternatives to price increases were considered and why a price increase is the preferred solution. The Part 6 operator should be encouraged to find the shortfall in revenue from efficiency measures.

Recommendation 5

The VFF supports Part 6 operators being required to clearly explain and justify any changes in their annual review of regulated charges.

Q.39 What are the advantages and disadvantages of accrediting Basin State regulators?

The VFF supports the accreditation of Basin State regulators. In Victoria, the ESC was accredited by the ACCC in 2012. The ESC regulates all rural and urban water businesses in Victoria. This enables the ESC to maintain knowledge and expertise in regulating the water sector across the State. It provides the ESC with the ability to take a broader overview of factors influencing the operating environment of rural water corporations.

The VFF recognises that whilst Victoria has one regulator, there are two regulatory regimes. Currently these are both based on the building block approach. The ESC is currently considering alternative pricing approaches to regulating the water sector. In our submission to the ESC we argued that there needs to be consistency in the principles which underpin both regulatory regimes. We recommended adding two principles to the criteria for assessing different pricing approaches - encouraging effective engagement with customers and stakeholders and considering the future operating environment. The VFF is keen to ensure that the principles underpinning both regulatory regimes will create value for customers and enhance transparency.

The VFF believes that the pricing of Victorian rural water corporations need to be benchmarked against each other. Farmers across the state are interested in and concerned about the price of water and how water corporations expend their revenue. Whilst we appreciate that there are some local differences that need to be taken into account, there are also fundamental principles which should apply across the board. With the ESC as the common regulator across all rural water corporations in Victoria, there is an opportunity to encourage water corporations to provide information which can be easily compared and bench-marked.

Recommendation 6

The VFF supports the accreditation of Basin State regulators.

Q.48 Are there any features unique to the MDBA or Borders Rivers Commission that would complicate the application of the WCIR to charges imposed by these entities?

The VFF does not support the MDBA imposing charges directly. The MDBA is funded by contributions from the Commonwealth and Basin State governments on an agreed cost sharing arrangement. This can be renegotiated if circumstances require.

However, we do believe there needs to be greater transparency about how funding provided to the MDBA is spent on river operations as well as on planning, management, monitoring and reporting activities.

The National Farmers Federation (NFF) made the same point in their submission on the *Water Act 2007*:

“NFF recognises that the mechanism to recover the costs of MDBA’s service functions (such as asset management, River Murray Water operations) is subject to the agreement of all parties to the Murray-Darling Basin Agreement. NFF also recognises that the governance and efficiency of joint Basin activities is currently being examined by the Murray-Darling Basin Ministerial Council.

NFF takes this opportunity to reiterate our view that there needs to be a clear and transparent process for establishing the efficient costs of agreed services delivered by the MDBA. Ultimately, in some jurisdictions it is irrigators who pay the costs of this service provision.

Consistent with the National Water Initiative and the competition policy reforms required of State-based water service providers, NFF is of the view that in recovering costs associated with water user service provision the MDBA should be subject to:

- independent regulatory oversight for monopoly service provision;
- transparency in the process of establishing the cost base to be recovered and then how these costs are to be recovered;
- a sound process of benchmarking of the costs to be recovered to determine whether these are efficient, prudent and relevant;
- periodic review of cost recovery
- processes to establish agreed service standards with end users and to independently review the effectiveness of the business in achieving these service standards.

In NFF’s view, a comprehensive process to establish agreed service levels and an transparent mechanism to recover efficient costs negates the need for the MDBA to have specific powers (such as those provided in section 212) to charge ad hoc fees for service.”

The VFF supports the NFF position.

Recommendation 7

The VFF does not support the MDBA imposing charges directly.

Recommendation 8

The VFF supports greater transparency in how the MDBA calculates their costs and spends funds provided by the Basin States.

Water Charge (Planning and Management Information) Rules 2010

Q.55 Should Basin States be required to publish information about their Water Planning and Management charges?

Q.60 Is the level of detail of information required to be published under the WCPMIR about WPM charges appropriate?

The Victorian Government applies an Environmental Contribution Levy (ECL) on all water corporations' revenue – 2% for rural water corporations and 5% for urban water corporations. These funds are to be spent for the purposes of funding initiatives that seek to promote the sustainable management of water or address adverse water-related environmental impacts (s.194 *Water Industry Act 1994*). The Minister is required to report on this expenditure each financial year through the department's annual report.

The Victorian Auditor-General's report into the *Administration and Effectiveness of the Environmental Contribution Levy* (June 2014) recommended:

“That as a priority the Department of Environment and Primary Industries establishes guideline to inform the selection and prioritisation of initiatives funded under the Environmental Contribution Levy.” p xii

“That as a priority the Department of Environment and Primary Industries enhances public reporting of the Environmental Contribution Levy in annual reports and other mechanisms. This should clearly describe the purpose, benefits and achievements of the Environmental Contribution Levy and its funded projects and/or initiatives” p xiii

The VFF supports greater transparency in allocating funding from the ECL and reporting on expenditure. The criteria for guiding decision-making should be made public so that customers and stakeholders are able to clearly understand how the funds are being used to deliver on the legislated objectives.

The VFF will monitor progress on developing guidance for more effective decision making and creating greater transparency on reporting.

Recommendation 9

The VFF supports Basin States being required to publish information about how their Water Planning and Management charges are derived and how these funds are spent.