



Submission to the Australian Competition and
Consumer Commission on the Review of Water
Charge Rules: Draft Advice

By

Victorian Farmers Federation

March 2016

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', positioned above the name and title of the signatory.

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: Draft Advice.

The VFF response to the draft advice has a focus on the issues of transparency of charge composition and clarity of information provided to water users. We have made the following recommendations in response to the draft advice:

Recommendation 1

The VFF supports the application of non-discrimination rules to all operators insofar as the changes are not cost prohibitive for smaller Victorian infrastructure operators.

Recommendation 2

That the ACCC consult with and consider the response of smaller Victorian infrastructure operators in regards to the impact of Part 3 applicability.

Recommendation 3

The VFF recommends the ACCC demonstrate the potential changes in the treatment of environmental water under the Water Charge Rules due to the proposed non-discrimination requirements.

Recommendation 4

The VFF support Rule advice 5-E and the production of a Schedule of Charges template that *may* be used as guidance by infrastructure operators.

Recommendation 5

The VFF provides in principle support for Rule advice 5-M on the condition the quality of regulatory oversight is not diminished.

Recommendation 6

The VFF support changes proposed under 6-A, 6-B, 6-C and 6-D.

Recommendation 7

The VFF support the exclusion of 'any capital contribution by the customer, government or other party' in the calculation of termination fees as per Rule advice 6-C.

Recommendation 8

The VFF supports the operation of Rule advice 5-E as a transparency mechanism in regards to the use of termination fee revenue.

Recommendation 9

That the Rule advice is amended to require; *if a termination fee is imposed the infrastructure operator is required to describe the basis upon which the fee has been calculated, including customer specific calculations, at the time when the customer is charged.*

Recommendation 10

That the Water Charge Rules maintain current flexibilities (i.e regulate cap only) to allow infrastructure operators to waive and discount termination fees at their discretion.

For enquiries about this submission please contact Luke Hooke, Policy Adviser – Water on 03 9207 5522.

Tiered regulation of infrastructure operators

In its submission to the Issues Paper the VFF supported the existing tiered regulatory approach. VFF rationale for this position was based on a belief that in Victoria, where there are no longer any small member-owned infrastructure operators, a higher level of regulation is appropriate for non-member owned infrastructure operators. The changes to the existing tiered regulatory approach proposed in the draft advice amend the mechanisms through which Victorian infrastructure operators are regulated but do not significantly alter the level of regulation applicable to these operators. These amendments are discussed below.

Part 3 - Non-discrimination

Under the proposed changes Victorian non-member owned operators would have non-discrimination requirements applied to them. Previously non-discrimination requirements applied only to member-owned operators in order to prevent these operators from charging a different infrastructure charge to a customer based on whether or not that customer holds an irrigation right against the operator. The proposed changes broaden both the application and the proscribed grounds for price discrimination. These proscribed grounds are;

1. The size of the irrigator's water access entitlement, water allocation, irrigation right or water delivery right holdings
2. The purpose for which water has been or will be used by a customer, and dealings with location-related rights
3. Whether a person has traded, or transforms water access right, water delivery right or irrigation right

The VFF believes the application of non-discrimination rules to all operators will assist to ensure water users are treated more consistently. However the ACCC must consider the impact of these changes on all operators and in particular to appease our concern, smaller Victorian operators.

The VFF supports the impact the proposed non-discrimination rules will have in reducing the difference in termination fees payable by different users. This is done indirectly by regulating infrastructure charges upon which termination fees are calculated.

VFF members have consistently raised concerns regarding the treatment of environmental water under the water charge rules. The VFF recognised in its submission to the Issues Paper the flow of permanent entitlements from irrigators to environmental water holders and the impact this has had on the revenue base for infrastructure operators in the irrigation districts. The VFF recognises that the proposed non-discrimination rules may assist in alleviating some of this concern by ensuring that all water users are treated consistently.

Recommendation 1

The VFF supports the application of non-discrimination rules to all operators insofar as the changes are not cost prohibitive for smaller Victorian infrastructure operators.

Recommendation 2

That the ACCC consider the response of smaller Victorian infrastructure operators in regards to the impact of Part 3 applicability.

Recommendation 3

The VFF recommends the ACCC demonstrate the potential changes in the treatment of environmental water under the Water Charge Rules due to the proposed non-discrimination requirements.

Part 4 - Schedule of Charges

The VFF supports all reasonable attempts to improve transparency of charges and clarity of information provided to water users. The VFF notes the feedback the ACCC received from end users regarding the complexity of schedules. Part 4 will still apply to all Victorian infrastructure operators however Rule advice 5-E and 5-F propose changing the rules from defining *outcomes* to defining specific items to be included. In addition the proposed changes recommend the introduction of a schedule of charges template. The VFF notes the difference in charging schemes and the composition of charges between jurisdictions and infrastructure operators. Rule advice 5-E and 5-F provide flexibility for operators to modify schedule of charge requirements to suit their charging regime whilst also ensuring end users are provided all appropriate and relevant information.

Recommendation 4

The VFF support Rule advice 5-E and 5-F and the production of a Schedule of Charges template that *may* be used as guidance by infrastructure operators.

Part 6 Operators

The VFF believes it is important to ensure large Victorian infrastructure operators (GMW, LMW) have their water charges and prices subject to approval. The VFF supported the existing regulatory approach and the accreditation of Basin State regulators in its submission to the Issues Paper. The VFF is willing to support the changes to Part 6 having given consideration to the safeguards that ensure that proper and appropriate regulatory oversight is ensured through the expansion of the non-discrimination requirements and fall-back provisions included in the proposed Part 6 changes.

The need for regulatory oversight was demonstrated most recently in the Essential Services Commission's draft decision on the GMW Price Review 2016. The Commission's proposed revenue of \$467.7 million for the regulatory period was \$25.6 million lower than GMW's proposal. Further this determination proposed against GMW's plan to implement a common pricing regime. Whilst a final determination has not yet been made the degree and importance of these proposed and rejected changes demonstrates the importance of ensuring that proper regulatory oversight of pricing and charges is maintained.

Recommendation 5

The VFF provides in principle support for Rule advice 5-M on the condition the quality of regulatory oversight is not diminished.

Termination fees

Termination fees provide infrastructure operators with a tool to ensure they can recover some costs associated with a right of access being terminated. This negates the risk of leaving infrastructure operators with insufficient revenue to maintain services to remaining customers. Termination fees act both as an encouragement to retain water users within irrigation districts and also as an inhibiting factor on the mobility of irrigators and water. The positive or negative value of these impacts depends on factors such as whether the water access right is subject to modernisation or the nature of the operator. This is an issue that has become topical in the Goulburn Murray Water irrigation districts through the GMW Connections project.

The GMW Connections project has demonstrated the impact of termination fees upon network rationalisation projects. The GMW Connections project is an example of a situation where termination fees operate to prohibit exits from the system where they may benefit the progression of a project.

Method of calculating termination fees

Currently the Water Charge Termination Fees Rules (WCTFR) cap maximum termination fees as 10 times the relevant total network access charge (TNAC), unless a lesser contract or arrangement between parties exists. Under the proposed changes the maximum termination fee would be either;

- (a) Any capital cost the infrastructure operator can demonstrate it has incurred (i.e. excluding any capital contribution by the customer, government or other party) in relation to the dedicated infrastructure, minus the cumulative amount paid under the relevant infrastructure charge (or other infrastructure charge previously imposed specifically in relation to the dedicated infrastructure); and
- (b) 10x the amount of the relevant infrastructure charge (i.e. the separate charge that relates to the specific infrastructure).

The VFF supports the proposed modified approach to termination fees calculation. This approach ensures that end users past contributions are taken into account.

Recommendation 6

The VFF support changes proposed under 6-A, 6-B, 6-C and 6-D.

Recommendation 7

The VFF specifically support the exclusion of ‘any capital contribution by the customer, government or other party’ in the calculation of termination fees as per Rule advice 6-C.

Use of termination fee revenue

ACCC draft advice states; ‘the ACCC does consider it appropriate and beneficial for the operator to be transparent about how it uses termination fee revenue. Rule advice 5-E, which requires that an infrastructure operator advise its customers as to how they can make an enquiry or resolve a dispute with the infrastructure operator in relation to regulated water charges, which would in the ACCC’s view include an inquiry about how termination fees revenues are used.’

The VFF agrees that it is appropriate and beneficial for the operator to be transparent about how it uses termination fee revenue and that this proposed mechanism is an appropriate tool for customers to enquire regarding the use of this revenue.

Recommendation 8

The VFF supports the operation of Rule advice 5-E as a transparency mechanism in regards to the use of termination fee revenue.

Transparency of termination fee calculation

The safeguard provided by Rule advice 5-E for enquiry regarding the use of termination fee revenue is not an appropriate mechanism in regards to the calculation of termination fees given the complexity of the Water Charge Rules. The Water Charge Rules should require the provision of an explanation of the customer specific termination fee calculation. Termination fees are a considerable cost to end users and a significant source of revenue for infrastructure operators, transaction specific termination fee break downs are a reasonable expectation.

Recommendation 9

That the Rule advice be amended to require; *if a termination fee is imposed the infrastructure operator is required to describe the basis upon which the fee has been calculated, including customer specific calculations, at the time when the customer is charged.*

Discounting and waiver of termination fees

The VFF support infrastructure operators having the ability to at any time waive or discount termination fees. Regulation of termination fees determines the maximum termination fee (cap) that an operator can charge however infrastructure operators can reduce this fee at their discretion. This is an important, and appropriate, tool for infrastructure operators, especially in the process of system modernisation or rationalisation.

Recommendation 10

That the Water Charge Rules maintain current flexibilities (i.e regulate cap only) to allow infrastructure operators to waive and discount termination fees at their discretion.