



## Minister for Water

Ref: DSE071744

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The Hon. Tony Burke MP  
Minister for Sustainable Population, Communities, Environment and Water  
Parliament House  
CANBERRA ACT 2600

24 SEP 2010

Dear Minister Burke

### WATER CHARGE (INFRASTRUCTURE) RULES 2010

I am writing in response to a letter dated 6 July 2010 from the former Minister for Climate Change, Energy Efficiency and Water, Senator Wong, regarding proposed Water Charge (Infrastructure) Rules 2010.

I appreciate the opportunity to comment on the proposed rules.

The Victorian Government has previously raised a number of concerns with the draft version of these rules as proposed by the Australian Competition and Consumer Commission (ACCC).

In particular, the Government was concerned that:

- i. The terms and conditions for accreditation provided the ACCC with considerable discretion in making decisions with regard to accreditation.
- ii. The proposed rules did not allow for a merits review of the ACCC's decisions on accreditation.
- iii. In undertaking pricing determinations in strict accordance with Part 6 of the proposed rules, the Victorian regulator, the Essential Services Commission, would not be able to take into account the interests of customers, given that Part 6 does not make specific mention of their interests.

I note that the proposed rules now clarify that the ACCC can only determine, vary or impose terms, conditions or obligations in relation to the accreditation of arrangements which contribute to achieving the Basin water charging objectives and principles as set out in the *Water Act 2007 (Commonwealth)*.

#### ***Terms and conditions for accreditation***

The ability to set and vary terms and conditions for accreditation is useful to ensure that necessary or beneficial changes to the accreditation arrangements can occur over time. However, it is important that this ability not be open ended or overly prescriptive.

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While the proposed rule limits the kinds of terms and conditions that the ACCC can set to terms and conditions that contribute to achieving the Basin water charging objectives and principles, this still leaves significant uncertainty as to how prescriptive the terms and conditions for accreditation may turn out to be. Such uncertainty could adversely impact the Essential Services Commission (ESC) with regard to the efficient discharge of its functions.

I therefore request that you modify the rules to provide greater certainty to State regulators with regard to the terms and conditions that will apply to accreditation arrangements. For example, terms and conditions could be made specific to the pricing principles that the ACCC is developing to guide accredited regulators in making pricing determinations.

I also request that the regulatory principles be finalised by July 2011 to enable the ESC to undertake appropriate preparation for the next regulatory period in Victoria which begins on 1 July 2013.

#### *Merits review*

I note the advice, from your department, that the *Water Act 2007 (Commonwealth)* does not provide for merits reviews of decisions made by the ACCC under the Act.

Given that the decisions that the ACCC makes with regard to accreditation will have significant implications for customers throughout the Murray-Darling Basin it is important that the rules minimise the discretion available to the ACCC by requiring the ACCC to grant accreditation so long as the relevant State regulator meets the criteria for accreditation.

#### *Interests of customers*

As noted in the Victorian Government's previous submission to the ACCC's draft rule advice, the long-term interests of Victorian customers are fundamental to the ESC's governing Act. In particular, Section 8 of the *Essential Services Commission Act 2001 (Victoria)* specifies that the ESC's key objective is to promote the long-term interests of Victorian customers.

Taking account of customers' long-term interests is well recognised internationally as best practice regulation. The *Trade Practices Act 1974 (Commonwealth)* requires the ACCC to take into account customers' long-term interests when undertaking pricing determinations in the telecommunications sector. It is also worth noting that customer interest is well recognised as a driving objective for the Water Services Regulation Authority and the Office of the Gas and Electricity Markets in determining utility prices in the United Kingdom.

As noted by the ACCC in its recently released draft pricing principles, economic efficiency provides for wide discretion in allocating shared fixed costs (specifically between incremental and stand-alone costs), and rural water infrastructure costs are predominantly fixed.

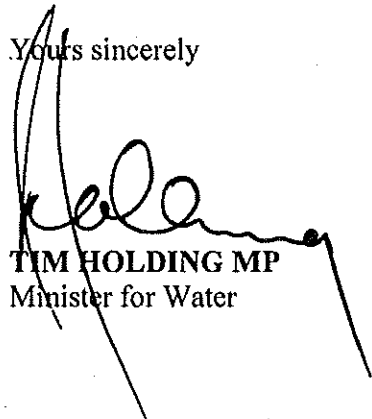
This discretion can result in large price differentials across customers with little benefit in terms of efficiency. These price differentials can result in adverse outcomes for disadvantaged customers, particularly where stock and domestic customers are supplied within an irrigation infrastructure operator's irrigation network.

I note that this wide discretion provides scope for the ACCC or an accredited regulator to informally have regard to customers' interests in terms of smoothing prices across regulatory periods and potentially maintaining uniform prices. However, the absence of any specific reference to customer interests does not require the ACCC or an accredited regulator to do this but rather relies on their goodwill. It is our position that customers, particularly disadvantaged customers, deserve greater certainty that their interests will be considered by the regulator.

I request that you amend the rules to make specific reference to the long-term interests of all customers, including low income and vulnerable customers. This will ensure that regulators have regard to these interests, especially where economic efficiency allows for wide discretion in allocating fixed costs. This is an issue of critical importance, not just for Victorian customers, but water users and disadvantaged communities across the Basin.

I trust this information is of assistance to you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Holding', is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**TIM HOLDING MP**  
Minister for Water