



1 May, 2009

Ref CTS 03237/09

The Director  
Water Market Section  
Department of Environment, Water, Heritage, and the Arts  
GPO Box 787  
CANBERRA ACT 2601

Dear Ms Arnaud

I refer to your invitation for our department to make comments regarding the development of regulations under sections 4(1) and 91 (1)(d) of the Commonwealth Water Act 2007 (Water Act).

I would like to acknowledge the proposed development of the regulations under Sections 4 (1) and 91 (1)(d) of the Water Act as clearly there are gaps in existing charges which the Act does not cover.

With respect to the bulk water charges, we note the amendments under draft Regulation 1.06, Definition of bulk water charge in subsection 4(1) of the Water Act – prescribed persons. The amendment now implies that the charges paid by SunWater's irrigation, industrial and stock and domestic customers diverting water from surface watercourses will be covered under the Water Act.

In addition, I note that, now covered by the Water Act under this definition, will be the Department of Environment and Resource Management's charge to irrigation customers in the Border Rivers Water Supply Scheme. It is our interpretation that the department will be a Tier 1 operator for the purposes of the proposed water charge rules as defined by the Australian Competition and Consumer Commission (ACCC), and, with a service greater than 10GL, will also have to meet the water charge rules publishing requirements.

However, we would like to point out that the "purposes" for which water can be taken may be too narrow, in that it may not cover all water diverters from watercourses. In particular, it is unclear to what extent dairy, aquaculture, flowers and nursery farming, for example, would be covered.

Consequently, we suggest that the following words be inserted under proposed Regulation 1.06 (1) (a) (i): *"Irrigation and other agricultural primary production"*.

Under the proposed amendment relating to section 91(1)(d) of the Water Act, we point out that there is the potential that a much greater number of SunWater's currently commercially negotiated contracts would be subject to the water charge rules. For example, contracts with pipeline customers, in the event Queensland decides to 'opt-in' under the provisions of the

Water Act to have SunWater water charges regulated by the ACCC at some stage in the future.

It is our expectation that the ACCC would honour contracts which exist when the water charge rules are registered. There may be some exceptions to this situation especially where the contracts may not have a termination date. However we are seeking guidance as to how the ACCC will deal with charges set out under existing contracts. We raise this matter here as this proposed amendment has raised the issue of how the water charge rules deal with SunWater charges set out under commercially-in-confidence contracts. We require more clarity on how the ACCC will deal with this issue. We therefore would ask that you seek the ACCC's guidance on this issue and provide further information to us prior to seeking the approval of Basin States' Premiers.

We understand that this letter will be posted on your department's website along with the other submissions on the proposed regulations.

We would like to thank you for the opportunity to comment on these proposed amendments. Should you have any further enquiries, please do not hesitate to contact Ms Judith Jensen, Director of Water Legislation, Policy and Pricing of the department on telephone 07 3225 1502.

Yours sincerely



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