

Summary of the *Water Charge (Termination Fees) Rules 2009*

Subsection 92(1) of the *Water Act 2007* permits the Minister for Climate Change and Water to make water charge rules, which relate to 'regulated water charges'. Regulated water charges include:

- fees or charges payable to an irrigation infrastructure operator (an operator) for access, changing access, or terminating access to its irrigation network, including for surrendering a water delivery right;
- bulk water charges; and
- water planning and management charges.

The *Water Charge (Termination Fees) Rules 2009* relate only to termination fees.

Rules 1, 2, 3 and 4 - Name of rules, commencement and definitions

Rule 1 sets out the name of the rules.

Rule 2 specifies that rules 1-4 and rule 8 commence on the day after the termination fees rules are registered on the Federal Register of Legislative Instruments, and that the other rules commence on 1 July 2009.

Rule 8 allows the ACCC to approve certain termination fees that would otherwise be prohibited under the termination fees rules. Because rule 8 commences earlier than the rest of the rules, operators can apply in advance to the ACCC for approval of such fees, so that they can charge those fees when the rest of the rules commence on 1 July 2009.

Rule 3 sets out definitions of certain terms that are used in the rules.

Rule 4 makes it clear that if a person transfers his or her right of access to an operator's network to another person, this is not a termination of access for the purposes of the termination fees rules.

Rule 5 - Prohibition of certain termination fees

Rule 5 prohibits operators charging or receiving termination fees, unless those fees are expressly authorised under rules 6-9, or under the *Water Market Rules 2009*.

Rule 6 - Circumstances in which termination fees can be levied

Under rule 6, an operator is only permitted to impose a termination fee on an irrigator if:

- the irrigator terminates his or her right of access to the operator's irrigation network (or part of that right) by notifying the operator; or
- the operator terminates the irrigator's right of access due to the irrigator breaching his or her obligations under a contract relating to the right of access.

However, an operator is not permitted to impose a termination fee on an irrigator if:

- the irrigator is not liable to pay ongoing access fees and is not liable to pay a termination fee under any contract with the operator; or
- the operator does not separate out fees for the storage of water from the access fees charged to the irrigator.

Rules 7 and 8 - Calculation of termination fees

Under rule 7, the maximum termination fee that can be imposed by an operator on an irrigator is a fee of 10 times the irrigator's total network access charge payable to the operator in the financial year in which notice of termination is given, except where:

- the irrigator and the operator have agreed to a lower termination fee under a contract or arrangement (in which case, the maximum is that agreed fee); or
- the ACCC has approved an additional fee under rule 8.

Rule 7 and the definition of 'total network access charge' in rule 3 operate so that an irrigator's termination fee must be calculated using actual fixed access fees, and not shadow access fees.

Rule 8 provides that the ACCC may approve an additional termination fee under an existing or new contract between an operator and an irrigator. In granting approval for a termination fee contained in a contract, the ACCC must be satisfied of certain matters, including that the termination fee (however calculated) is:

- clearly stated within the contract;
- relates to capital works that are to occur within five years of the inception of the contract;
- is reasonably required to recover the capital expenditure; and
- is a product of a genuine contract stipulating the rights and obligations of the parties.

Rule 9 - Liability to pay termination fees

Rule 9 requires a terminating irrigator to pay to the relevant operator any fees that have been imposed by the operator under rule 7, and any fees that the ACCC has approved under rule 8.

Rule 10 - Disconnection fees permitted

Rule 10 clarifies that the termination fee rules do not prohibit an operator from imposing a disconnection fee, which is a fee to cover the costs of the removal or disabling of a physical connection between the operator's irrigation network and the irrigator's infrastructure. Rule 10 does, however, require that a disconnection fee be identified separately to other fees.

Rule 11 - Operator's right to terminate right of access

Rule 11 clarifies that where an operator has a contractual right to terminate an irrigator's right of access, nothing in the termination fees rules affects that right to terminate. The rules do, however, affect the fees and charges that an operator may impose in relation to a termination.

Penalties

Rule 5, which prohibits the imposition of termination fees other than in accordance with the termination fees rules or *Water Market Rules 2009*, is designated as a civil penalty provision. The maximum penalty is 200 penalty units (currently \$22,000) for individuals and 1000 penalty units (currently \$110,000) for corporations.