

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Resources, Water and Northern Australia

Water Act 2007

Water Charge Amendment (Termination Fees) Rules 2020

Legislative Authority

The *Water Act 2007* (the Water Act) makes provision for the management of the water resources of the Murray-Darling Basin, and for other matters of national interest in relation to water and water information, and for related purposes.

The *Water Charge Amendment (Termination Fees) Rules 2020* (Amendment Rules) are made under subsection 92(1) of the Water Act.

Subsection 92(1) of the Water Act provides that the Minister may make rules (to be called ***water charge rules***) that apply in Basin States that regulate and deal with water charges, and contribute to achieving the Basin water charging objectives and principles.

The Amendment Rules insert subrule 74(6) in the *Water Charge Amendment Rules 2019* (2019 Amendment Water Charge Rules), which will in turn include that provision in the *Water Charge Rules 2010* with effect from 1 July 2020.

Purpose

The purpose of the Amendment Rules is to make a minor or technical amendment to clarify the limit on termination fees under certain circumstances. This has the effect of imposing a quantitative cap on termination fees in the circumstances set out in subrules 71(2)(a) and (c), including where a customer gives less than 6 months' notice of exit to the relevant infrastructure operators.

Background

On 21 September 2016, the Australian Competition and Consumer Commission (ACCC) provided its *Review of the Water Charge Rules: Final Advice* to the then Minister for Water, including proposed amendments to the water charge rules.

On 3 April 2019, pursuant to the ACCC's advice, the former Minister for Water then made the Amended Water Charge Rules to combine the three sets of rules (the *Water Charge (Infrastructure) Rules 2010*, the *Water Charge (Planning and Management Information) Rules 2010* and the *Water Charge (Termination Fees) Rules 2009*). The rules, as amended, will be known as the *Water Charge Rules 2010*. To allow operators time to prepare for commencement, the Amended Water Charge Rules are due to commence on 1 July 2020.

The 2019 Amendment Water Charge Rules relevantly amend the current *Water Charge (Infrastructure) Rules 2010* to repeal Part 9 and replace it with new Part 10 which deals with termination fees. The Amendment Rules will, by amending the 2019 Amendment Water Charge Rules, make minor amendments to new Part 10.

The Amended Water Charge Rules are designed to improve pricing transparency and make it easier for operators to comply. The broad intent of the amendments are to:

- a. make schedule of charges requirements clearer
- b. simplify the calculation of termination fees, and
- c. simplify the regulatory framework by largely returning the regulation of water infrastructure charges levied by on-river infrastructure operators back to Basin States.

Impact and Effect

It is not anticipated that the Amendment Rules will have any adverse implications for stakeholders, as the Amendment Rules are technical in nature. The Amendment Rules will have the effect of providing greater certainty for water users and infrastructure operators.

Consultation

The Department of Agriculture, Water and the Environment has consulted with the ACCC on the development of the proposed Amendment Rules. Basin States, infrastructure operators within the Murray-Darling Basin and the public have been invited to make submissions. A public notice was published on the department's website on 27 May 2020 (www.agriculture.gov.au/water/markets), and in a nationally circulating newspaper, as well as a newspaper with an agribusiness focus circulating in all Basin States, consistent with the requirements in the *Water Regulations 2008*. No submissions were received during the four week public notice period.

The Office of Best Practice Regulation (OBPR) was consulted by the ACCC to inform the *Review of the Water Charge Rules: Final Advice*. The ACCC certified that the Final Advice meets the OBPR's requirements for a process and analysis equivalent to a Regulation Impact Statement (RIS). The estimated change in regulatory costs to business, community and organisations were agreed by the OBPR (ID: 19056).

Details/ Operation

The *Water Charge Amendment Rules 2019*, and therefore the *Water Charge Rules 2010*, are amended to prescribe the limit on termination fees under certain circumstances for the purpose of the Water Act.

Other

The Amendment Rules are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *Water Charge Amendment (Termination Fees) Rules 2020*

Section 1 – Name

This section provides that the name of the Amendment Rules is the *Water Charge Amendment (Termination Fees) Rules 2020*.

Section 2 – Commencement

This section provides for the Amendment Rules to commence the day after the instrument is registered.

Section 3 – Authority

This section provides that the Amendment Rules are made under section 92 of the *Water Act 2007*.

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned. This is the formal enabling provision for the amendments to the 2019 Amendment Water Charge Rules made by Schedule 1 of this instrument.

Schedule 1 – Amendments to the *Water Charge Amendment Rules 2019*

A termination fee is a fee levied in accordance with subrule 71(1) of *Water Charge Rules 2010*, to be included by the 2019 Amendment Water Charge Rules. Paragraphs (a) to (c) of subrule 71(2) outline the circumstances in which an infrastructure operator may levy a termination fee if a person who holds a right of access terminates or surrenders the whole or any part of that right by notice in writing given to the operator. Rule 72 provides details of the method for calculating the maximum general termination fee

Item 1 - Item 85 of Schedule 1 (subrule 72(1))

Item 1 inserts subrule 74(6) after subrules 71(6) and (7).

Subrules 71(6) and (7) provide that the general termination fee must not exceed the amount set out in the termination information statement or by the amount set by rule 72. Inserting a reference to subrule 74(6) makes it clear that rule 72 also sets out how the maximum general termination fee is calculated for the purposes of subrule 74(6).

Item 2 - Item 85 of Schedule 1 (at the end of note 3 to subrule 74(5))

Item 2 inserts the reference to subrule (6) of rule 74 at the end of note 3 to subrule 74(5). As note 3 makes reference to the maximum amounts that may be levied as general termination fees or additional termination fees, this note should also refer to subrule 74(6).

Item 3 - Item 85 of Schedule 1 (at the end of rule 74)

Item 3 inserts subrule 74(6), specifying that the general termination fee set out in a termination information statement must not exceed the maximum amount set out by rule 72.

This item provides a quantitative cap on termination fees in the circumstances set out in subrules 71(2)(a) and (c) in item 85 of Schedule 1 to the 2019 Amendment Water Charge Rules.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Water Charge Amendment (Termination Fees) Rules 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Section 92 of the Water Act provides that rules may be made by the Minister applying to Basin States that are referring States and in the Australian Capital Territory that relate to regulating and dealing with water charges, and contributing to achieving the Basin water charging rules and objectives set out in Schedule 2. The Amendment Rules insert subrule 74(6) in the *Water Charge Amendment Rules 2019* outlining that the general termination fee set out in a termination information statement must not exceed the maximum amount set out by rule 72 of the *Water Charge Amendment Rules 2019*. The *Water Charge Amendment Rules 2019* will in turn include these amendments in the *Water Charge Rules 2010*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Keith Pitt MP
Minister for Resources, Water and Northern Australia