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Response to ACCC

Bulk Water Charge Rules

Issues Paper

080818

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Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators are on regulated, unregulated and groundwater systems. Our members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

In responding to Australian Competition & Consumer Commission's (ACCC) *Water market rules issues paper*, NSWIC is responding with the views of its members. However, each member reserves the right to make independent submissions on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

Comments on consultation

NSWIC notes that the timeframes for the consultation currently being undertaken by the ACCC are inconsistent with those being proposed in the draft Water Amendment Regulations 2008.

The *Bulk Water Charge Rules Issues Paper* was publicly released on 7 July 2008 with submissions closing on 18 August 2008, a period of less than five weeks. Note that the release date was the same as the *Water Market Rules Position Paper* with a submission due date differing by only three days. These are significant and important issues with far-reaching implications for the irrigation industry particularly as these new rules will be legislative instruments. NSWIC believes that the current timeframe for consultation is totally inadequate given the complexity and the significance of the subject matter involved. Many NSWIC members are simply not in a position to provide detailed responses in the timeframe they have been given.

Further, the ACCC must recognise that responses will be provided by representative groups in many instances, rather than directly from individuals. The nature of those representative groups, such as NSWIC, is such that they must consult with their membership as a draft response is drawn. This serves to severely limit the timeframe available. It is vital that the ACCC recognise not only that this timeframe is limited, but that there are currently three separate papers being pursued by the ACCC along with two Senate Inquiries, a Productivity Commission Inquiry and a Green Paper.

It is our very strong view that this and any future consultative processes undertaken by the ACCC must be at least consistent with the eight week timeframe proposed in the current draft regulations.

NSWIC is extremely disappointed that the ACCC did not take our comments on this matter in response to the *Water Market Rules Issues Paper* into consideration in setting a further inconsistent and limited timeframe.

1.1 Consultation Process

NSWIC recognises the opportunity to provide a submission on behalf of its members and irrigators. We note, again, that each of those members reserves the right to make their own submission, as does each and every irrigator should they so choose.

We note that the ACCC seek “submissions from stakeholders, including: IIO’s”. Irrigation Infrastructure Operators, pursuant to the Act and many and varied in NSW. They range from major irrigation corporations to irrigation districts to micro-level organisations that, in some instances, might consist of only a handful of irrigators.

Particular regard must be given to the word “might” in the previous paragraph – as it is used with some intent. In NSW, the State Government determined some time ago that only a single Water Access License (WAL) could be attached to a single Works Approval. The result is that any irrigator who shares infrastructure – for example, a single river pump that supplies a channel accessed by more than one farmer – is an infrastructure operator.

We estimate that there are in excess of 400 such schemes. Some will be formal – companies, trusts, partnerships and the like – whilst others will be informal. We are unable to provide exact information as *such information is not available*. In many instances, these IIO’s will not even know that they are IIO’s.

NSWIC submits that it is disingenuous to suggest that consultation is open to these IIO’s when no attempt – by the state or federal governments or the ACCC – has been made to contact these entities, to advise them that they are an IIO or to seek their input.

In light of this, the consultation timeframe is inadequate. Even for those organisations that have access to resources sufficient to reply to this paper, the timeframes are inadequate. Whilst this Issues Paper recognises that the ACCC are engaged in three separate processes, no acknowledgement is provided that they are occurring simultaneously – and each is relevant to all stakeholders. Whilst the ACCC may be able to segregate the issues across staff teams, stakeholders certainly cannot. Consideration must be given to submission dates and the like being spread across the range of issues that the ACCC seeks comment on.

3.2 Demand Side Characteristics

The demand for bulk water services is described viz:

“Bulk water services are acquired by various types of customers for agricultural, residential and industrial uses.”

The ACCC has rather pointedly escaped the fact that the environment is also a consumer of these services – and will become a larger consumer as the federal buy-back of entitlement proceeds.

Similarly, if full cost recovery is to be pursued then all users of services – including assets – must be considered customers. This must include recreational users.

4.1 Economically Efficient and Sustainable Use of Resources and Infrastructure

In defining the “generally recognised ... dimensions to economic efficiency” (Productive, Allocative and Dynamic), the ACCC demonstrates well why strict economic theory simply cannot be appropriately applied to water.

Neither environmental nor recreational use fit any of these categories. The ACCC must recognise that an attempt to impose economic theory on a sector that is not a textbook good or service is destined to fail.

Consideration of the nature of this sector must be given.

4.2 Sufficient Revenue Stream

Whilst NSWIC concurs with the ACCC interpretation of the Act with respect to efficient delivery of required services, we are particularly disappointed that no detail whatsoever in this respect is provided. Who will decide what is efficient? How will that be decided? What if the cost is not efficient? Who will enforce compliance with efficiency? What is a required service? Who will decide what is a required service? How often will required services be reviewed? By whom?

4.3 Efficient Functioning of Water Markets

Whilst not considered elsewhere, the paper in this section attempts to draw together one of the other areas that the ACCC is considering – the operation of water markets and the drive to facilitate effective and efficient markets. This section concludes that:

“The best way to ensure that bulk water charge rules facilitate the efficient functioning of water markets is to ensure that the resulting charges reflect underlying costs, removing any potential market distortions.”

NSWIC does not concur. NSWIC submits that the best way to ensure market facilitation is to ensure that the cost-base of operators is level.

4.4 User Pays and Pricing Transparency

Within the text of this section lies a statement concerning an issue significantly larger than what is being contemplated by the ACCC at present.

“User pays pricing should incorporate the marginal cost of supplying each additional unit to a particular user...”

NSWIC warns the ACCC that delivery charges based on geographic location – and socialisation of delivery costs – is an issue that does not lie within the scope of this paper. Significant consultation – and a clear proposal – with respect to this issue must be made patently clear prior to submissions being provided.

5. Form of Regulatory Framework

Question 1 What form of regulatory oversight is the most effective method for achieving the basin charging objectives and principles?

NSWIC reiterates its position that the role of the ACCC should be limited to setting rules only and that the role of price recommendations should be retained in NSW by IPART. IPART has the corporate knowledge, human resources and stakeholder trust that is necessary to complete this task in an efficient and effective manner. NSWIC sees no reason to abandon this system to seek unquantified goals or aims.

As such, NSWIC submits that the “principles and monitoring” framework is the most appropriate conditional upon the existing pricing mechanism – IPART – being unchanged.

Question 2 What other factors or criteria, if any, should the ACCC consider in assessing the effectiveness of various forms of regulation for setting bulk water charges?

NSWIC submits that certainty of process is absolutely necessary to gain the confidence of stakeholders. In NSW, the IPART process is well understood. Stakeholders are able to engage with IPART in a meaningful fashion and wish this system to remain in place.

Question 3 What are the advantages and disadvantages of using a pricing principles and monitoring framework as part of the bulk water charge rules?

See above.

Question 4 What are the advantages and disadvantages of creating more or less prescriptive water charge rules?

The more prescriptive the rules, the greater the monitoring role of the ACCC. The ACCC must therefore report on its capacity to engage in both monitoring and enforcement. Along with capacity, reporting of the cost burden to so engage must be provided along with an understanding of who must pay those costs.

Question 5 What are the advantages and disadvantages of adopting a price approval/determination framework?

See above.

6. Process Considerations

6.1 Principles and Monitoring Approach

Question 6 What other functions would the ACCC need to undertake if the rules determine broad pricing principles and give the ACCC a monitoring and enforcement role?

NSWIC has no comment at this point.

Question 7 What information should the ACCC seek from industry stakeholders to undertake its monitoring and enforcement functions?

Until such point as the monitoring and enforcement functions are clearly defined, NSWIC does not wish to speculate with a response.

6.2 Price Approval/Determination Process

The commentary on this section notes that “This approach draws on the approaches of other regulators”. In a NSW context, NSWIC understands that this refers to IPART.

Without an explanation as to the benefits that would be accrued by moving away from the IPART process to a yet-to-be-determined ACCC process, NSWIC does not support the move and makes no comment with respect to its efficacy.

Question 8 Are there any other steps that the regulator should include in its process if it is to undertake approvals or determinations? If so, please provide details.

See above.

Question 9 Are there any other issues that should be considered in the process if an approval/determination framework is adopted? If so, please provide details.

See above.

6.2.2 Duration and Timing of the Determination

NSWIC will not countenance any process that does not recognise current price paths as set by IPART. The current determination must, under any circumstances, be allowed to continue to its conclusion.

Question 10 What are the advantages and disadvantages of specifying a set regulatory period in the bulk water charge rules as opposed to delegating the power to determine it?

The benefits lie in certainty and equality across state boundaries. The disadvantage lies in lack of flexibility.

Question 11 What would be an appropriate term for the regulatory period? Please provide details.

NSWIC remains content with the IPART process and timeframe.

6.2.3 Guidelines

Question 12 What are the advantages and disadvantages of having rules that allow the regulator to produce guidelines as required?

Guidelines will clearly be useful to all involved in the sector.

Question 13 What issues should the guidelines cover?

NSWIC concurs with the 4 suggested areas raised by the ACCC, but notes that this list cannot be exhaustive until such time as any new scheme is detailed.

Question 14 What consultation process should there be in developing any guidelines.

The multi-stage process identified by the ACCC is appropriate. Please refer to our opening commentary in this submission with respect to consultation timeframes.

6.2.4 Information Requirements

Question 15 What information should the regulator seek from industry stakeholders in undertaking determinations/approvals?

The information identified by the ACCC is appropriate and should be readily available.

NSWIC reiterates that it is content with the current IPART process.

6.2.5 Consultation

Question 16 Are there any other ways in which the regulator should consult with stakeholders? Please provide details.

NSWIC remains extremely concerned at the lack of attempts in this process to identify, contact and seek opinions from IIO's. If the consultation that the ACCC suggests in this section is mirrored on current consultation – in terms of both IIO's and timeframes – then NSWIC submits that it is entirely inappropriate.

7. Pricing Methodology

In the narrative fronting this section, the ACCC state that “prices should be ... reflective of user pays and full cost recovery.”

NSWIC submits that the ACCC should define who a *user* is in this context to ensure that costs are attributed across all classes of user. This must include not only consumptive users of water (Town, Human, Industry, Stock & Domestic and Irrigators) but also Environmental and Recreational users of water and the infrastructure used to deliver bulk water. As specific examples, account must be made for:

- The flood mitigation role played by infrastructure (primarily dams) in terms of both environmental and hard assets (houses, infrastructure and the like);
- The recreational role played by bulk delivery infrastructure, encompassing activities such as fishing, sailing, swimming, water skiing and the like; and
- The environmental role played by infrastructure to the extent that water can be stored in wet years for delivery to environmental assets in dry years

NSWIC readily admits that determining a cost share for these users will be a difficult task, but submits that changes to existing mechanisms such as is being proposed by the ACCC must necessarily encompass both ends of the spectrum.

Later in the narrative, the ACCC note that prices must be set to include “a return on capital”. NSWIC notes and agreement reached with the NSW state government that pre-1996 assets are to be considered as sunk costs. NSWIC cannot countenance a view contrary to that agreement.

7.1 Service Standards and Obligations

Question 17 Are there any implications or issues that ACCC should be aware of in relation to service standards? Please provide details including:

- (a) To what extent the proposed level of service is or should be communicated to customers during the price-setting process*
- (b) The role of customers when establishing service standards*

- (c) *The role of customers in determining the balance between the level of prices and the standard of service*
- (d) *The extent to which service standards are, or should be, reported publicly*
- (e) *The extent to which service standards form, or should form, part of a customer service contract*
- (f) *The types of service standards that currently exist*

NSWIC reiterates its support for the current IPART process, including the issuing of a license to State Water based subsequent to stakeholder negotiations that include Key Performance Indicators.

We are particularly cogniscent of the fact that “the costs of operating these benchmarks and efficiency review systems are to be met through recovery of regulated water charges.” In short, users will fund an array of documentation and an army of regulators.

NSWIC does not support a Victorian-style regime where customer service codes, customer charters, service targets, performance reporting frameworks and myriad other documentary processes produce mountains of paperwork, significant costs (to be borne by users) and little result in terms of efficiency.

We believe that the KPI system as used in the licensing process by IPART is appropriate and efficient.

Question 18 Are there any issues the ACCC should be aware of in relations to legislative and regulatory obligations? Please provide details including:

- (a) *To what extent obligations are, or should be, clearly articulated by regulators and government*
- (b) *The types of obligations placed on bulk water service providers*
- (c) *How the obligations currently placed on bulk water service providers are, or should be, funded*
- (d) *The extent to which obligations are applied consistently across the basin.*

Any existing regulatory obligations must remain in place unless negotiations to remove them are undertaken with stakeholders. Any obligations that result in cost inefficiency should be considered in that process.

7.2 Level of Charges

7.2.1 Capital Financing

Question 19 Are there circumstances in which upper bound pricing cannot or should not be achieved?

NSWIC remains opposed to upper bound pricing.

Question 20 To what extent are the two approaches applied consistent with the conditions listed above? Are there any issues that the ACCC should be aware of when considering the two approaches?

NSWIC supports an opening RAB value determined by an independent arbiter, such as the IPART process in relation to State Water.

No submission is made on the balance of this question.

7.2.2.2 Revaluing the RAB

Question 21 What are the main advantages and disadvantages of using the RAB or annuity approach?

NSWIC makes no submission on this matter.

Question 22 Are there any characteristics of bulk water assets that lend themselves to any particular asset valuation methodology?

NSWIC makes no submission on this matter.

Question 23 If the ACCC advises that State Water, GMW and GWMWater should continue to operate under a RAB approach, should the ACCC accept the RAB values given by IPART and the Victorian Minister for Water? Please provide details as to why or why not these values should be accepted.

As an independent body set the NSW RAB (IPART), there should be no need for a review. Where RAB was set by a political body, even on external advice, such determination should be reviewed by an independent body.

Question 24 How do State Water and SA Water currently finance capital investments?

This question of fact is best answered by State Water and SA Water.

Question 25 If the RAB approach were adopted for all regulated businesses, would a RAB value of zero be appropriate for SunWater and SA Water? Please provide details as to why or why not a RAB value of zero would be appropriate in either case.

NSWIC makes no submission on this technical matter.

7.2.3 Expenditure Efficiency

Question 26 To what extent do bulk water service providers prepare plans in relation to the future capital and operating expenditure requirements?

This question of fact is best answered by bulk water service providers.

7.2.4 Taxation

NSWIC notes that IPART applied a statutory tax rate of 30% to State Water whilst GMW and GMMWater are both subject to the National Tax Equivalence Regime and have predicted no expense for the foreseeable future because of carried forward losses. In developing a “level playing field”, it is inappropriate the operating losses be carried forward to such an extent.

Question 27 Are there any taxation issues that the ACCC should be aware of? Please provide details, including:

- (a) Whether bulk water service providers are subject to either federal income tax or NTER?*
- (b) The implications for prices where varying tax obligations apply across the basin*
- (c) Any relevant issues, rulings, or tax laws that may influence the estimation of taxable income for the purpose of constructing a revenue requirement for pricing.*

NSWIC makes no submission on this question of fact.

7.3 Structure of Charges

7.3.1 Cost Allocation

General Comments

The section of the Issues Paper deals with an issue of critical importance to irrigators – the distribution of fixed versus variable charges. Irrigators in NSW – lead by NSWIC – have invested considerable resources to making a case before IPART for an increase in the proportion of variable charges.

We are greatly frustrated that we must again make that case, this time to the ACCC.

NSWIC agrees with a two part pricing structure, but with an emphasis on variable charges to take into account the variable nature of the delivery of the service.

Whilst the ACCC paper has concentrated on basic economic principles that reflect cost as the only market variation mechanism in a monopoly environment, NSWIC submits that a far more realistic approach must be taken. That is, a regulatory mechanism that mirrors a competitive environment must be pursued. Such a

mechanism would recognise that the provider of a service whose costs mirrored the revenue profile of the customer would hold receive far more business than a competitor who modelled revenue around costs alone.

In short, the ACCC must ensure that bulk water charges are set not by a simplistic understanding of economics, but by comparison to the real world. Service providers in this sector must meet the needs of their customers in the same way that a competitive market would.

As an aside, NSWIC is concerned that the paper refers to the ACIL Consulting report of 2001. Consideration must not be given to material that is not publicly available as no opportunity is afforded for response.

Question 28 What principles and approaches are most appropriate when allocating the fixed or common costs of bulk water services (i.e. those costs that do not vary with the volume of water supplied)? Provide details, including:

- (a) To what extent there are embedded cross-subsidies or CSO's; in what circumstances and to what extent such cross-subsidies or CSO's should be maintained in perpetuity; and what processes are, or could be, used to reduce or eliminate cross subsidies and CSOs.*
- (b) To what extent do, or should, charges reflect a uniform or postage stamp pricing policy*
- (c) To what extent do, or should, charges reflect the costs of providing services to different segments of the market?*

NSWIC refers to the comments at the commencement of this section. A single-minded approach to costs alone being the driver of price settings – whilst attractive in simplistic economic terms – does not reflect what a competitive market would provide. The ACCC must recall that its role is to ensure *consumers* are not harmed by monopoly.

Question 29 What activities provided by each of the bulk water service providers are likely to benefit the broader community as well as their customers (rather than just their customers)?

The paper identifies that the major roles of bulk water service providers are storage and delivery of water. Both roles provide significant broader-community benefit. Recreational users enjoy the facilities in the form of fishing, water-skiing, camping and the simple aspect of waterside locations where such location would not otherwise exist. The environment enjoys a more secure water flow, particular in dry years, from the ability to regulate water. Humans, infrastructure and the environment all benefit from the mitigation of flood events brought about by regulation.

In respect of the “externalities” issue and whether account should be taken of it, NSWIC maintains its position that both positive and negative

externalities must be considered. As such, the economic drivers that irrigators provide for surrounding communities and regions ought also be taken into account.

Question 30 What activities do each of the bulk water service providers undertake in order to fulfill legislative or other obligations (that are not core functions of the business)?

This is a question best answered by bulk water service providers.

Question 31 For each of the activities listed in response to questions 29 and 30, what share of the costs (if any) is contributed by government?

This is a question best answered by bulk water service providers.

Question 32 What role should user-shares play in allocating costs between bulk water customers and the government (on behalf of the broader community)?

User shares, the system employed in NSW, is a useful and readily understandable way of determining what costs ought be borne by which party.

Question 33 What other methods are available for allocating costs between bulk water customers and the government?

NSWIC makes no submission on this matter.

7.3.2 Tariff Structures

NSWIC refers to its general comments in respect of the previous section.

In this section, the paper again resorts to textbook contemplation of economic theory substantially divorced from reality.

As an example, NSWIC refers to this excerpt:

“A pricing structure where the volumetric charge exceeds the actual variable cost of supply will generally result in underutilization of the service, since the price for delivery of an additional unit (ML) of water exceed the marginal cost of delivery”.

Whilst an analysis of marginal pricing is useful in a theoretical context, it is of little value in this context. When viewed in terms of quantum, the marginal cost of delivery of a megalitre (a few cents) when compared to the value of the item delivered (averaging around \$1,000), it is clear that the marginal price of delivery will place no dictate whatsoever on the decision to utilise the service or not. It will be the cost of

the asset – the water – together with the value of the resultant crop that determines at the margin whether further service will be demanded.

The ACCC should consider water an input, not a commodity in and of itself.

Fixed Versus Variable Charges

This section further deals with the issue of fixed versus variable charges. In particular, the paper notes that *“the concern for the ACCC is whether such pricing approaches are efficient and whether the bulk water service provider is best placed to provide a cash management or insurance service”*.

The elevation of variable charges above fixed charges is neither a cash management nor an insurance service – it is a simple recognition of the needs of consumers. The ACCC would do well to recognise its role with respect to consumers rather than focusing on simplistic economic theory couched in terms bordering on offensive.

Question 34 To what extent and in what circumstances should the setting of fixed and volumetric charges be allowed to deviate from the underlying (fixed and variable) cost structure of the bulk water service provider?

The phrasing of this questions continues the lack of understanding that NSWIC points out in general comments in this and previous sections. To describe alternate methods of determining fixed versus variable charges as “to deviate” is unnecessary.

NSWIC submits that prices based on cost structures is but one method. It is a method with which we do not agree. Instead, prices should be set via the method employed by IPART to take into account the variable nature of customer revenue to mirror what would occur in a competitive market.

Question 35 Are there any instances in which the structure of water delivery charges should not reflect the underlying cost structure of the bulk water service provider?

See above.

Question 36 Should water charge rules provide a bulk water service provider with the flexibility to vary prices as a result of uncertainly associated with the future supply of water? If so, under what circumstances would such a mechanism be considered appropriate?

NSWIC makes no submission on this matter

Question 37 To what extent is pricing used as a cash management tool or insurance fund for bulk water service providers? Are these businesses best

placed to provide this service? What are the practical implications for the trade of water under such a pricing arrangement?

This question is phrased in an inflammatory fashion showing the underlying bias of the ACCC. NSWIC refers to its general comments in this matter.

There are no practical implications for the trade of water under such a pricing arrangement.

8. Application and Implementation

8.1 Scope of the Act

Question 38 What implications do these potential limitations have for the making and application of bulk water charge rules? In particular:

- (a) What implications are there due to the Act being phrased in terms of the charge rather than the service?

This distinction results from a reading of the Act that is far too limited. We submit that “charges” and “services” ought be read interchangeably in this respect. Clearly the Act contemplated that any external charging regime imposed upon State Water in NSW would also be imposed upon SA Water in South Australia.

- (b) What implications are there due to the scope of the Act being limited to the MDB?

The operational nature of systems within the MDB are vastly different to those outside the MDB, particularly with respect to coastal valleys. As a result, the charging structure of a hypothetical business that was operating in *either* the MDB *or* outside it would not be similar. Given that, it would be inappropriate to insist that a monopoly operator operate in a fashion that does not model the competitive world. It should not be a difficult process for an operators to identify separate sections of their business in the way that they must identify separate operations regions.

- (c) What implications are there due to the scope of the Act being limited to certain water users?

The Rules should be clear from the moment that they begin operation. To suggest that inadequacies can be overcome by the use of regulations pursuant to Section 4 does not begin to provide the certainty that businesses in the irrigation sector seek.

It is the understand of NSWIC that the ACCC seek to set both the price of bulk water to infrastructure operators and also the fees that infrastructure operators then charge their customers. The ACCC has

not yet linked how the two issues will be resolved – and it would appear to date that the two processes are operating separately.

Using the example of State Water in NSW, they are both a bulk water deliverer as well as an infrastructure operator.

Question 39 If regulations were to be made to extend the definition of a bulk water charge, what sort of water users (for example, industrial water users, irrigators or stock and domestic water users) should be included and for what reasons?

See above.

8.2 Transitional Arrangements

NSWIC remains opposed to the adoption of upper bound pricing.

Under no circumstances must current price-paths, particularly with respect to that set in NSW by IPART, be abandoned.

It is NSWIC's understanding that the work of the ACCC in this field is to ensure competitive prices across state jurisdictions. Given that bulk water pricing in NSW is government by IPART – by nature an independent regulator – NSWIC can see no need for the ACCC to be involved in determinations.

For clarity, NSWIC supports the current role played by IPART and can see no reason for change.

Question 40 How should existing price paths be incorporated into the rules?

See above.

Question 41 What sort of transitional arrangements should the rules provide for?

The ACCC should accredit IPART to undertake determinations pursuant to the manner in which it currently does.

8.3 Monitoring and Enforcement Compliance

Question 42 In what ways can the ACCC reduce the compliance costs associated with the provision of information by regulated businesses for the purposes of the ACCC's monitoring and enforcement role?

Clearly, the most cost effective manner is for the current IPART process to remain in place.

In the event that the ACCC do wish to assume the power of setting prices, NSWIC submit that a pricing determination that will affect a

number of customers is sufficient for that price to be adhered to. The ACCC must expect that any deviation from price paths will result in appeals back to the ACCC. As such, a complaints handling and investigation process is the most effective manner of investigating deviations.

8.4 Avoiding Perverse or Unintended Consequence

Question 43 What considerations are relevant to establishing measures to mitigate the risk of perverse or unintended outcomes? More specifically:

The safest way to avoid perverse or unintended outcomes is to recognise those systems in place that already provide intended outcomes – such as the IPART system in NSW – and make a decision not to change them.

(a) How long after the commencement of the water charge rules should a comprehensive review of the water charge rules as a whole occur?

A review should be held after a short period of the first determination, with future reviews at greater intervals.

(b) If the water charge rules were to confer a decision-making power onto some entity (for example, the determination of bulk water charges by the ACCC), what criteria should that entity use in deciding whether to vary or revoke a decision?

If the matter were conferred, then the obligations contingent on that conferral must be carried. That is, if the ACCC are under an obligation in setting rules to not revoke a decision, then such obligation must be borne by the external entity.

In general, any revocation or change of rules subsequent to it being made and prior to the price-path conclusion that adversely affects irrigators must be met by compensation.