



ICRC

independent competition and regulatory commission

Annual Utility Licence Fee **Guide - Utilities**

The Independent Competition and Regulatory Commission is a Territory Authority established under the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act). The Commission is constituted under the ICRC Act by one or more standing commissioners and any associated commissioners appointed for particular purposes. Commissioners are statutory appointments. Joe Dimasi is the current Senior Commissioner who constitutes the Commission and takes direct responsibility for delivery of the outcomes of the Commission.

The Commission has responsibilities for a broad range of regulatory and utility administrative matters. The Commission has responsibility under the ICRC Act for regulating and advising government about pricing and other matters for monopoly, near-monopoly and ministerial declared regulated industries, and providing advice on competitive neutrality complaints and government-regulated activities. The Commission also has responsibility for arbitrating infrastructure access disputes under the ICRC Act. In discharging its objectives and functions, the Commission provides independent robust analysis and advice.

The Commission's objectives are set out in section 7 of the ICRC Act and section 3 of the *Utilities Act 2000*.

Correspondence or other inquiries may be directed to the Commission at the following addresses:

Independent Competition and Regulatory Commission
PO Box 161
Civic Square ACT 2608

Level 8
221 London Circuit
Canberra ACT 2601

The Commission may be contacted at the above addresses, by telephone on (02) 6205 0799, or by fax on (02) 6207 5887. The Commission's website is at www.icrc.act.gov.au and its email address is icrc@act.gov.au.

Contents

1	Introduction	1
1.1	Legislation	1
1.2	Utilities	1
1.3	Regulators	2
2	Methodology of the licence fee determination	2
2.1	Reasonable costs	3
2.2	August-September assessment	4
3	Timeline	5
4	Licence fee	6
	Appendix 1 Division 3.4 Annual licence fee	7
	Abbreviations and acronyms	9

Tables

Table 1	Annual utility licence fee timeline.....	5
---------	--	---

1 Introduction

This guide sets out the process by which the Independent Competition and Regulatory Commission ('Commission') determines the annual utility licence fee payable by certain utilities operating in the ACT. The Commission will aim to review this guide 12 months from publication.

1.1 Legislation¹

Section 44 of the *Utilities Act 2000* (Utilities Act) requires that licensees pay an annual licence fee to the Commission for each financial year (or part thereof) for which the licence is in force. The Commission determines the annual licence fee payable by each utility as being '*the amount considered ... to be a reasonable contribution towards the costs incurred, or expected to be incurred by*' the Commission, the technical regulator and the ACT Civil and Administrative Tribunal (the ACAT).²

The decision making power in relation to the annual licence fee determination is held by the Commissioner/s.³

Section 45(3) of the Utilities Act sets out the factors the Commission must consider in determining the reasonable contribution towards costs incurred by the regulators. They include, but are not limited to:

- (a) the extent of those costs in relation to each utility;
- (b) the annual licence fees payable by all utilities; and
- (c) the relative scope and nature of the services provided by all utilities.

1.2 Utilities

Utilities subject to the annual utility licence fee

All utilities entering the ACT's utility licensing framework and providing a utility service set out under the Utilities Act,⁴ and not falling within an energy industry sector under the energy industry levy, will also be subject to an annual utility licence fee.

¹ See appendix 1 in this guide for Division 3.4, sections 44-45 of the *Utilities Act 2000*. All legislative references in this guide refer to the *Utilities Act 2000* unless otherwise stated

² Utilities Act section 45(2).

³ *Independent Competition and Regulatory Commission Act 1997* (ICRC Act) section 6.

⁴ Utilities Act Part 2.

Utilities that fall within the energy industry sectors under section 54D of the Utilities Act are not subject to the annual utility licence fee framework, and instead pay the annual energy industry levy.

Regulated utilities that fall within the *Utilities (Technical Regulation) Act 2014* (UTR Act), and which are not licensed utilities (smaller unlicensed regulated utilities with an operating certificate (e.g. small scale generation)), are not subject to the annual utility licence fee framework.

1.3 Regulators

For consistency and the ease of reference, this guide refers to the three ACT Government entities subject to the licence fee provisions of the Utilities Act as ‘the regulators’.

The three regulators who in the exercise of their functions in relation to utility services can have associated costs recovered through the annual utility licence fee framework are:

- the ACT Civil and Administrative Tribunal;
- the technical regulator; and
- the Independent Competition and Regulatory Commission.

Only those costs incurred or expected to be incurred by the regulators in the exercise of their functions in relation to utility services can be recovered via the fee provisions of the Utilities Act. For example, the technical regulator’s costs relating to regulating an unlicensed regulated utility with an operating certificate under the UTR Act, such as a small scale generator, cannot be recovered.

2 Methodology of the licence fee determination

Each year in August, each regulator provides to the Commission details of the actual costs for the previous financial year and estimated costs for the current financial year as they relate to each of the utilities subject to the annual utility licence fee. An assessment is made on the reasonableness of those costs (see section 2.1).

A utility’s annual licence fee is made up of an over- or under-recovery from the previous year and the estimated costs for the current fee year. An under-estimation in costs (negative figure) from the previous year results is added to the estimated costs for the fee year; while an over-estimation in costs (positive figure) from the previous year results in a reduction of the same figure to the estimated costs for the fee year.

For example: a regulator **estimates** based on planned workload (in August 2015) their costs for regulating a utility during 2015-16 as likely to be \$300,000. In August 2016, the Commission will ask the regulator to provide the **actual costs** for regulating the utility for 2015-16 and the **estimated costs** for regulating the utility for 2016-17. In August 2016, the regulator reports their actual costs for regulating the utility for 2015-16 as \$280,000 and estimated costs for regulating the utility for 2016-17 as \$310,000. The Commission then calculates that there was an over-recovery of \$20,000 for 2015-16 (\$300,000 (est.) - \$280,000 (act.)) and subtracts that figure from the estimated costs (\$310,000) for 2016-17. The resulting net cost of \$290,000 (\$310,000-\$20,000) for the regulator is then aggregated to produce a fee by the utility for 2016-17 for that regulator. The same calculation is undertaken for the other two regulators.

An under-recovery works in the opposite way by increasing the net costs recovered for the fee year. For example, had the regulator undertaken work with an actual cost of \$320,000 in 2015-16 after reporting an estimated cost of \$300,000 there would have been an under-estimation (short-fall) of \$20,000. The figure of \$20,000 is needed to be recovered in 2016-17. So assuming the same estimate of \$310,000 holds for 2016-17, the net cost to be recovered for 2016-17 for the regulator would be \$330,000 (\$310,000 + (-\$20,000)).

This process of determining the adjustment from the previous year and subtracting it from the estimated costs for the fee year then rolls over each year.

2.1 Reasonable costs

For the Commission to determine the reasonableness of the costs requested by each regulator it undertakes two assessments each year: a 'mid-year' assessment in March, and an assessment on full year costs and forward year estimates is undertaken in August-September when the determination is made.

2.1.1 March assessment

In early March, the Commission will meet with the other two regulators to assess how each regulator is tracking relevant to their estimations (provided in August) of workload and costs for the year.

Once the March assessment is complete, the Commission will notify each utility of the findings. In particular, the Commission will provide each utility with information on any expected over- or under-estimations in costs for the year and any expected anomalies in the costs and work plans for the upcoming year, that is, the information will provide each utility with an indication as to whether there is likely to be an increase or decrease in the licence fee for the upcoming year.

As there are multiple factors feeding into the calculation of the licence fee it is not possible to provide an estimated licence fee in March – primarily because a complete set of actual costs incurred for the year and estimated figures for the upcoming year are

required from all regulators to determine the licence fee. However the general information provided to the utilities on whether any anomalies in a regulator's costs or forward plans are expected should greatly assist each utility's own forward planning in relation to the payment of the licence fee in November. The utilities will also have an opportunity, at this stage, to query the costs estimated by the regulators.

2.2 August-September assessment

In or around August - September, the Commission will assess the costs incurred by the regulators in the previous year and their estimated costs for the upcoming year. Apart from the Commission seeking from the regulator a justification of the reasonableness of its costs, the Commission may also seek an opinion from the utility. For example, a regulator may state during the March assessment that there are no expected increases in workload for a particular utility for the rest of the financial year, however in August the regulator reports a significant increase in workload towards the end of the year.

The Commission's assessment methodology in relation to the Commission and the technical regulator, reasonableness of costs are been assessed against statutory requirements, current and forward work plans. Costs associated with carrying out a regulator's statutory functions are also considered reasonable. In relation to the ACAT, it is accepted practice that a particular utility will bear the costs for any matters relating to it that are brought before the ACAT. Any administrative costs associated with the ACAT President's involvement in any of these matters are also considered to be reasonable.

3 Timeline

As the annual utility licence fee framework rolls over each year and the calculations span two years, there is no effective start or finishing date in the administrative timeline – apart from the rare situation when a utility enters (start date) or exits (finish date) the market entirely. However, the licence fee determined relates to a financial year. Table 1 sets out the key tasks in the fee review and setting process in a financial year.

Table 1 Annual utility licence fee timeline

Date	Description	Comments
Late September	Commission makes determination	The Commission makes a determination on the final costs that are a reasonable contribution towards the costs incurred, or expected to be incurred, by each regulator. The Commission may correspond with a utility on making the determination particularly if there was an anomaly in the mid-year assessment made in March, or if a regulator has reported a significant divergence from cost estimates (see below for mid-year assessment).
Late September to Early October	Commission releases notifiable instrument	The final determination is set out in a notifiable instrument, along with relevant tables showing the cost breakdown in the licence fee and an explanatory statement. See http://www.legislation.act.gov.au/ni/default.asp for notifiable instruments.
Early October	Commission notifies licensees and regulators of determination	The Commission notifies licensees of the annual utility licence fee to be paid. The Commission provides, as per section 45(6) of the Utilities Act at least 28 days' notice for when payment of the licence fee is due. The Commission notifies each regulator of the determination made.
Early November	Licence fee payment is made by utility. Commission forwards funds to regulator.	Utility pays annual utility licence fee. The Commission forwards the full amount collected for each regulator, as it relates to each utility, as per the determination made in late September (estimated costs for current year minus an adjustment for an over- or under-recovery from the previous year).
March	Commission undertakes mid-year assessment and meets with utilities	The Commission communicates with utilities to provide a summary of regulatory costs to date the Commission will provide notice to a utility if it expects there to be a significant divergence in the actual costs for that year.

4 Licence fee

In late September to early October of each year, the Commission will set out its final decision on each utilities' annual licence fee in the form of a notifiable instrument. The Commission will also publish an explanatory statement with details of the decision.

Notifiable instruments are available on the ACT Legislation website at:

<http://www.legislation.act.gov.au/ni/default.asp>

The Commission will notify each utility of its licence fee payable for the year and provide at least 28 days' notice to pay the licence fee. The licence fee will generally be payable in early November. The licence fee is paid directly to the Commission. Non-payment of licence fees can constitute a breach of the licence.

Appendix 1 Division 3.4 Annual licence fee⁵

44 Liability

- (1) A person to whom a licence is granted must pay the annual licence fee to ICRC for each financial year, or part of a financial year, in which the licence is in force.
- (2) The fee is payable in accordance with the notice of the relevant determination under section 45.

45 Determination of fee

- (1) ICRC may determine the annual licence fee payable by each utility.

Note Under s 52, the ICRC must prepare a notice of a determination of annual licence fees. The notice is a notifiable instrument.

- (2) The annual licence fee for a particular utility is the amount considered by ICRC to be a reasonable contribution towards the costs incurred, or expected to be incurred—
 - (a) by the following in the exercise of functions, in the ACT or elsewhere, in relation to utility services:
 - (i) ICRC;
 - (ii) the technical regulator on behalf of the Territory; and
 - (b) by the ACAT in hearing and deciding matters to which a utility is a party.
- (3) The matters that ICRC must have regard to when working out the costs mentioned in subsection (2) include, for example—
 - (a) the extent of those costs in relation to each utility; and
 - (b) the annual licence fees payable by all utilities; and
 - (c) the relative scope and nature of the services provided by all utilities.

⁵ *Utilities Act 2000*

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) A determination must be in writing stating the following matters:

- (a) ICRC's findings on the matters mentioned in subsections (2) and (3) in relation to the relevant utility;
- (b) the amount of the fee and the way it is worked out;
- (c) ICRC's reasons for the amount of the fee and any instalment;
- (d) how the fee is to be paid (for example, as a lump sum, or by instalments).

(5) ICRC must give to a utility—

- (a) a copy of the determination of each annual licence fee payable by the utility; and
- (b) written notice stating when the fee, or any instalment, is due for payment.

Note For how documents may be given, see the Legislation Act, pt 19.5.

(6) The day on which an annual licence fee, or any instalment, is due for payment must be at least 28 days after the day the notice is given to the relevant utility.

(7) In this section: costs does not include—

- (a) **costs** payable by a utility under the ICRC Act; and
- (b) any fees, charges, costs or other amounts prescribed under the regulations for this definition.

***Example for par (a)** costs of an investigation on an industry reference into a regulated industry under the ICRC Act, s 19*

Abbreviations and acronyms

ACAT	ACT Civil and Administrative Tribunal
ACT	Australian Capital Territory
Commission	Independent Competition and Regulatory Commission
EAPL	East Australian Pipeline Limited
ICRC	Independent Competition and Regulatory Commission
ICRC Act	<i>Independent Competition and Regulatory Commission Act 1997</i>
Legislation Act	<i>Legislation Act 2001</i>
TR	Technical regulator
Utilities Act	<i>Utilities Act 2000</i>
UTR Act	<i>Utilities (technical Regulation) Act 2014</i>
Legislation Act	<i>Legislation Act 2001</i>