



ICRC

independent competition and regulatory commission

Annual Utility Licence Fee Guide - Regulators

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*.

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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, are subject to an annual utility licence fee.

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

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.

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. Other costs such as 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.

1.3.1 Commission

The Commission is in a unique position in that it is a regulator with certain costs being recovered through the annual utility licence fee framework, and is also the independent entity tasked under the Utilities Act to determine and recover the costs, and administer the annual utility licence fee being paid. This administration also includes the movement of funds being received in the form of a licence fee payment through to the relevant regulator to cover costs that have been accrued.

It is important to note that the Commission is subject to the same process, transparency requirements and assessment as the ACAT and the Technical Regulator. To this end, the Commission has instituted internal processes and procedures to manage its resources in an efficient and effective way as well as to ensure that there is appropriate separation between the fee determiner and those in the Commission who have operational oversight.

All costs (for all three regulators), as they relate specifically to each licensed utility subject to the annual utility licence fee, are reported in a notifiable instrument in September/October of each year.

2 Methodology of the licence fee determination

Each year in August, the Commission will obtain, from each regulator, 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 below). If all costs are accepted, the Commission then calculates the difference between the actual costs reported for the previous year and the estimated costs for that year, and then subtracts the difference from the costs estimated for the current fee year. 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 current 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 current 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 seen as a minus figure in the calculations. 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.

To undertake this assessment the Commission will also request from each regulator the following information:

- Information relating to any lumpiness or spikes in actual costs for first half of the year that were not part of the estimations made for that year;
- Information on expected workload and costs for the remaining half of the year;
- Information on the estimated workload and costs for the upcoming year; and
- Information outlining that all costs (in the above three points) relate to the regulatory activities of the specific utility for which the costs are being sought. That is, there is no cross-subsidisation where regulatory costs relating to a particular utility (or even unlicensed utility service) are being paid for through the licence fee of another licensed utility.

An assessment of the Commission's cost estimates and work plan is undertaken in accordance with the same requirements as the ACAT and Technical Regulator.

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.

The licence fee determination made in September each year is based on actual costs incurred for the financial year, estimated costs for the next financial year and a determination made by the Commission on the costs incurred and the estimates submitted by the regulators, including adjustments for any over or under recovery. The provision of high-level information on how each regulator is progressing against their costs incurred and their estimates to the utilities in March, recognises the financial impost of the licence fee and should assist each utility's budgeting and forward planning.

2.1.2 August-September assessment

At or around August-September, the Commission will undertake the final assessment of the costs incurred by the regulators in the previous year and their estimated costs for the upcoming year. As noted above in section 1, section 45(2) of the Utilities Act the licence fee is the amount considered by the ICRC to be a reasonable contribution to the costs incurred, or expected to be incurred by the regulators.

The Commission will request the following information from each regulator:

- Information relating to the actual costs for the entire financial year just passed and how those costs were incurred; and
- Information on expected workload and the estimated costs for the entire upcoming financial year.

The Commission, in making this assessment, will compare the information and figures which were provided by the regulators during the March assessment. For example, are the figures as reported in August expected given the information provided in March or has there been a considerable spike in costs relating to a particular utility that was not reported on in March, and if so, each regulator will be required to explain why this has occurred.

The Commission's assessment methodology in relation to the Commission and the Technical Regulator, reasonableness of costs are assessed against statutory requirements, current and forward work plans. Costs associated with carrying out a regulator's statutory functions are also considered reasonable. Regulators may wish to provide detailed budgets which are linked to the ACT Budget process, timesheets or any other information which can be used to evidence how actual costs incurred are recoverable and future costs are for activities that are recoverable. 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.

The Commission may also provide a utility with an invitation for a comment should there be the need to look into an activity of a regulator. 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. Apart from the Commission questioning the regulator on this under-estimation in cost and its reasonableness, the Commission may also seek an opinion from the utility.

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
Early July	Request for regulator's costs	The Commission sends a request, along with a template, for each regulator to return (by mid-August) their actual costs for the financial year just ended and estimated costs for the financial year just beginning. The regulator breaks down the costs per utility. The Commission also seeks a breakdown of costs and evidence that the costs relate to the relevant utility.
Mid-August	Regulators return actual and estimated costs figures and supporting information	Each regulator returns their actual and estimated costs as requested and provide supporting documentation for the Commission to assess the reasonableness of the costs.
August-September	Commission undertakes work to calculate the licence fee	The Commission undertakes work on calculating the licence fee and undertaking an assessment of reasonableness. The Commission will discuss with each regulator the costs to make this determination.
Late September	Commission makes determination	The Commission makes a determination on those 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 September minus an adjustment.
February/March	Commission undertakes mid-year assessment and meets with regulators	The Commission meets with each regulator to assess how actual costs are progressing relevant to the costs as estimated back in August. The Commission will be particularly interested in lumpiness or spikes in costs that were not estimated for. Information provided at the mid-year assessment will inform the Commission's assessment of reasonableness undertaken in August/September.

March	Commission undertakes mid-year assessment and meets with utilities	The Commission meets with utilities to provide a summary of how the regulators and the ACAT are tracking, in particular the Commission will provide notice to a utility if it expects there to be a significant divergence in the actual costs for that year.
Early July	Request for regulator's costs	The annual utility licence fee process rolls over into the next financial year as per row 1 of this table.

4 Licence fee

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

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 be payable in early November. The licence fee is paid directly to the Commission.

5 Administration of the regulatory costs

Upon collection in early November of the licence fees by the Commission, the Commission will calculate the portion of each licence fee that is provided to each regulator. For example, the Technical Regulator will have reported regulatory costs relating to all three utilities, which were aggregated along with the other two regulators at the time of determining the fee, but now has to be disaggregated for the portioning out the fee.

Assuming costs have been determined as reasonable through the various assessments undertaken throughout the year (see section 2), each regulator will be paid their estimated costs for the licence fee year minus their over- or under-estimation for the previous year.

This process of administering the funds directly to each regulator ensures that each regulator is responsible and accountable for the use of their own funds throughout the year in relation to the work undertaken. The over- or under-estimation therefore results

from their own management of funds and work programmes and must account for their actual and estimates. The Commission still oversees this ‘self-management’ process through its ongoing assessment as set out in section 2.

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>