

IN THE HIGH COURT OF AUSTRALIA  
CANBERRA REGISTRY

No C3 of 2011

ON APPEAL FROM THE FULL COURT, FEDERAL COURT OF AUSTRALIA

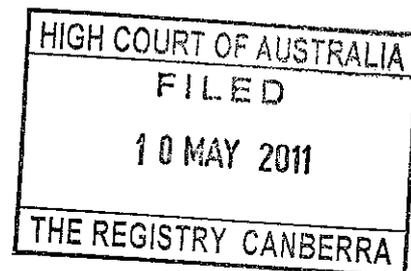
BETWEEN:

**QUEANBEYAN CITY COUNCIL**  
Appellant

**ACTEW CORPORATION LTD**  
First Respondent

**THE AUSTRALIAN CAPITAL TERRITORY  
(DEPARTMENT OF TREASURY)**  
Second Respondent

**APPELLANT'S SUBMISSIONS**  
*(Re Utilities Network Facilities Tax)*



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**PART I: PUBLICATION OF SUBMISSIONS**

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1. The submissions are in a form suitable for publication on the internet.

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**PART II: STATEMENT OF ISSUES**

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2. As noted in the submissions in matter C2 of 2011, the submissions in that proceeding are directed to the water abstraction charge (**WAC**), and the submissions in this proceeding to the Utilities Network Facilities Tax (**UNFT**), which was imposed pursuant to the *Utilities (Network Facilities Tax) Act 2006* (**ACT**) (the **UNFT Act**).
3. This appeal presents the following issues for determination in relation to the UNFT:
  - 10 3.1. whether a fee said to be for the exercise of legislative power (authorising utilities to trespass on land) can be characterised as a fee for service and thus not a tax;
  - 3.2. whether some or all of the factors identified by Keane CJ at [136] of his judgment are sufficient to establish that a levy on network facilities, some of which are used in the production and/or distribution of goods, is not an excise;
  - 3.3. whether the UNFT imposes a duty of excise on the production and distribution of water.

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**PART III: SECTION 78B NOTICES**

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- 20 4. The Appellant (**QCC**) has served notices in compliance with s 78B of the *Judiciary Act 1903*.

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**PART IV: JUDGMENTS BELOW**

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5. The judgment of the primary judge (Buchanan J) is reported as *Queanbeyan City Council v ACTEW Corp Ltd* (2009) 178 FCR 510. The Full Federal Court's judgment is reported as *Australian Capital Territory v Queanbeyan City Council* (2010) 188 FCR 541.

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**PART V: MATERIAL FACTS**

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6. QCC adopts Buchanan J's account of the legal and factual context as set out at [3]-[9] and [53]-[59] of his Honour's judgment.
- 30 7. The UNFT was announced in the 2006-07 ACT Budget, although its description at that time differed from the final form of the UNFT. Buchanan J observed that the "proposed utility infrastructure charge was introduced by Mr Stanhope unambiguously as a revenue measure along with other revenue measures": at [54].
8. The levy as proposed was associated with a land use permit, relating to unleased Territory land. That aspect was further explained in the relevant budget speech, quoted by Buchanan J at [53]. However, as enacted, the UNFT Act makes no reference to a land use permit, nor does it operate as a fee for the use of unleased Territory land. The Treasurer/Chief Minister stated in the Second Reading Speech:
  - 40 "The charge will be applied as a tax on ownership. This is because the charge can be applied far more simply this way" – quoted by Buchanan J at [131].

9. The UNFT is administered as an annual tax, payable upon lodging an annual return at the end of each year ending on 31 March: see s 12, and the definition of “year” in the Dictionary, of the UNFT Act. The liability to pay the UNFT is imposed, by s 8(1) of the Act, on the owner of each “network facility”:
- 9.1. The term “network facility” is defined in s 6 of the UNFT Act to mean “any part of the infrastructure of a utility network”: s 6(1); except facilities or parts of facilities that are affixed to land which is the subject of a lease, a licence granted by the ACT, or a right prescribed by regulation, where the lease, licence or right relates to the use of the land for the utility network: s 6(2).
- 10 9.2. “Utility network” is defined in s 7(a)(vi) of the UNFT Act to include a water network under the *Utilities Act 2000* (ACT) (the **Utilities Act**).
10. Section 12 of the Utilities Act provides that a “water network” consists of the infrastructure (including treatment plants, equipment for distributing water and pipes) used, or for use, in relation to either the collection and treatment of water for distribution by a person to premises of another person, or the distribution of water by a person for supply to premises of another person.
11. Section 8(1) of the UNFT Act provides that the tax is to be paid at the rate worked out by multiplying the route length of the network by the “determined rate” – the rate determined under s 139 of the *Taxation Administration Act 1999* (ACT). At all relevant times since its imposition, the UNFT has been set by the ACT Government. The rate for the UNFT was initially set at \$355 per kilometre of network route length, then increased by a series of disallowable instruments to \$676/km, \$697/km, \$722/km and \$749/km;<sup>1</sup> contrast Keane CJ at [107].
- 20 12. The UNFT is payable by the owner of a “network facility on land in the ACT” at the determined rate multiplied by the “route length” of the network facility: see s 8 of the UNFT Act. The term “route length” is defined in the UNFT Act Dictionary to mean “the length of the horizontal projection of the facility on the land”. The word “land” is given only an inclusive definition in the UNFT Act Dictionary, so that the term “includes water”.
- 30 13. QCC’s position was and is that the “route length” includes infrastructure on:
- 13.1. private leasehold land – that is, land subject to long term leases to private residents or businesses, where land in the ACT is not held on freehold title;
- 13.2. National Land – that is land that is used by, or intended to be used by, the Commonwealth and has been so declared under s.27(1) of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).
14. Thus the route length of ACTEW’s water network will include the entire length of the pre-treatment pipes, the bulk supply mains and the reticulation pipes – whether

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<sup>1</sup> *Taxation Administration (Amounts payable – Utilities (Network Facilities Tax)) Determination 2006 (No 1)*, Disallowable Instrument DI2006-271, cl 3 (\$355); *Taxation Administration (Amounts payable – Utilities (Network Facilities Tax)) Determination 2008 (No 1)*, Disallowable Instrument DI2008-37, cl 3 (\$676); *Taxation Administration (Amounts payable – Utilities (Network Facilities Tax)) Determination 2008 (No 2)*, Disallowable Instrument DI2008-204, cl 3 (\$697); *Taxation Administration (Amounts payable – Utilities (Network Facilities Tax)) Determination 2010 (No 1)*, Disallowable Instrument DI2010-39, cl 3 (\$722); *Taxation Administration (Amounts payable – Utilities (Network Facilities Tax)) Determination 2011 (No 1)*, Disallowable Instrument DI2011-47, cl 3 (\$749).

travelling over land owned or controlled by the ACT (for example, on roadways or paths), over National land or over private leasehold land.

14.1. This was accepted by Buchanan J at [134].

14.2. Keane CJ, speaking for the Full Court, said at [109] that it “is apparent that the UNFT is calculated by reference to that part of a network facility that is affixed to land which is not the subject of relevant private rights or interests held by the utility of the owner of the network”.

14.3. That statement appeared directed to the exception contained in s 6(2), rather than to National land or ordinary private leasehold land.

- 10 15. The ACT and ACTEW disputed below that the UNFT was either a tax or an excise. Buchanan J held it was both, in contravention of s 90: at [133]-[135] and [160]-[164]. The Full Court, speaking through Keane CJ, did not decide if the levy imposed a tax: see [124]-[125]; but held it was not an excise, overturning the trial judge’s decision.
16. QCC has, since the introduction of the UNFT, declined to pay that portion of its water bills from ACTEW which relate to this levy (where the amounts referable to UNFT have always been separately identified). There is thus no restitutionary claim made with respect to the UNFT (in contrast to the WAC, where there is a restitutionary claim with respect to one year’s worth of payments).

#### PART VI: APPELLANT’S ARGUMENT

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- 20 17. The principles relating to the construction and application of s 90 of the Constitution are set out at the beginning of Part VI of QCC’s written submission on the WAC. Here, it is convenient to address the issues that arise as follows:
- A. The UNFT is a tax.
- B. The UNFT is an excise.

##### A. THE UNFT IS A TAX

18. It was not disputed below that the UNFT had the positive attributes of a tax, in the sense identified in *Air Caledonie International v The Commonwealth* (1988) 165 CLR 462 at 466. Specifically, ACTEW accepted that the positive attributes were satisfied, and the ACT did not dispute the point. As Buchanan J said at [133]:

30           There seems no doubt that the UNFT has the positive attributes identified in *Air Caledonie* which give a charge the character of a tax. It is compulsory, for public purposes, and enforceable by law. The ACT and ACTEW contended, however, that the UNFT is not a tax because it is properly to be seen as a charge for the use or occupation of land.

19. Buchanan J went on to reject that contention: see [134]-[141]. The issue was raised again by the Respondents before the Full Court. Keane CJ saw arguments that could be made either way, but said it was not necessary to resolve the issue: at [124]-[125]. However, one of the factors in his Honour’s conclusion that the UNFT was not an excise was that “the UNFT is imposed by reference to the conferral of the right to use and occupy land on which its facility is situated”: at [136], second factor. The factor
- 40           substantially overlaps with the Respondents’ argument that the UNFT was not a tax. It is thus appropriate to deal here with the issue whether the UNFT is a tax or a fee for the use of land.

20. QCC submits that the UNFT is a tax, taking account of its form, the fact that it cannot be characterised as a mere fee for the use of land, and its revenue-raising purpose.

### The form of the UNFT Act

21. QCC accepts that whether or not a measure is a tax is to be assessed as a matter of substance. That does not mean that matters of form are irrelevant.<sup>2</sup> The form of the UNFT Act reflects a deliberate choice by the ACT in light of some practical difficulties with achieving what the ACT and ACTEW now claim the UNFT has done – namely, implementing a land use charge (see further below). The following points are material:

- 10 21.1. The short and long titles of the Act identify the UNFT as a tax.
- 21.2. The operative provision of the Act, s 8, imposes a “tax”.
- 21.3. The measure was to be administered as a tax under the provisions of the *Taxation Administration Act 1999* (ACT), as the note to s 1 of the UNFT Act indicated.
- 21.4. Section 15 of the UNFT Act amended s 4 of the *Taxation Administration Act* so as to include the UNFT Act as one of the list of “tax laws for the purposes of this Act”.
- 21.5. The Second Reading Speech referred to the measure as a tax.
- 20 21.6. As discussed below, a considered decision had been taken by the ACT not to implement a land use charge, as initially proposed, but rather to enact a simpler generic tax.

### Not a payment for the privilege of using/occupying Territory land

22. ACT and ACTEW both contended in their Notices of Appeal to the Full Federal Court that the UNFT is “a fee for the privilege of using or occupying Territory land”. This was said to be a species of the genus which includes fees for service.
23. The first difficulty with that contention is that, whilst such a fee was originally proposed, it was not what was enacted – see paragraph 8 above. As the Treasurer/Chief Minister said in the Second Reading Speech: “The charge will be applied as a tax on ownership. This is because the charge can be applied far more simply this way”: see Buchanan J at [131].
- 30 24. Secondly, the claimed benefit of providing the privilege of using or occupying Territory land falls away when it is understood that the tax applies with respect to utility infrastructure, not only on land in the possession of the Territory, but also National land, along with private leasehold land (the general form of land “ownership” in the ACT). As Buchanan J said at [134], “the charge applies to all land in the ACT excluding only land identified by s 6 of the UNFT Act”. The exclusion in s 6(2), to which his Honour referred, only addresses the situation where the utility itself has a lease or licence, or a right prescribed by regulation, in relation to use of the land.
- 40 25. That the UNFT applies to both National and private leasehold land follows from the words imposing the tax in s 8(1) of the UNFT Act, which imposes liability to pay tax

<sup>2</sup> Note *Anderson's Pty Ltd v Victoria* (1964) 111 CLR 353 at 365-366 (Barwick CJ).

worked out as “determined rate x route length”. The term “route length” is defined in the Act’s Dictionary to mean “the length of the horizontal projection of the facility on the land”. The word “land” is simply defined to “include[] water”. Because there is no exclusion of National or private leasehold land, the definition of route length would naturally be taken to encompass all land within the ACT.

- 10 26. The ACT has rights of management over “Territory Land”, but not over National land, pursuant to ss 27-29 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). It thus has no right to give away the benefit of installing utility infrastructure over that land, and no right to charge for having given away that benefit.
27. Insofar as the ACT authorises placement of infrastructure over private leasehold land pursuant to ss 103-121 of the Utilities Act, it is infringing on the owner’s rights of quiet possession. Although such legislation may be valid (leaving aside any issues of acquisition of property without just terms), the ACT is not simply giving away its own right to quiet and exclusive enjoyment of its own land. Rather, the ACT is exercising its legislative authority to override one property interest in favour of another. Thus the supposed “fee for the privilege of using or occupying Territory land” is in substance a fee for the exercise of legislative power.
- 20 28. Such an exercise of legislative power does not belong to the same genus as a fee for a service, use of property or privilege.<sup>3</sup> Charges for the acquisition of property, use of property or a privilege all convey the notion of a transmission of a benefit from the government to the person being charged (fines and penalties can be put to one side as different in nature). It is implicit that the benefit is being transferred from the government, so that it is entitled to charge for it, and not merely being transferred by the government. That view is implicit, for example, in *Harper v Minister for Sea Fisheries* (1989) 169 CLR 314. Although the Court did not find it necessary to decide whether Tasmania owned the abalone in question, there was no doubt that there were no competing private rights involved: note Brennan J at 335.
- 30 29. Thirdly, and in any case, insofar as a right to occupy such land had been given by the ACT, this had been done independently of and prior to the introduction of the UNFT.
30. Fourthly, and connected to this, “ACTEW’s right to operate the water network to which the charge applies does not depend upon the UNFT Act but by the Utilities Act”: Buchanan J at [135]. Under s 21 of that Act, ACTEW needed a licence in order to provide a utility service. ACTEW has to pay an annual licence fee as a utility pursuant to ss 44-45 of that Act, the fee being set by the Independent Competition and Regulatory Commission. Those rights and obligations pre-dated and are separate from the imposition of the UNFT.
- 40 31. In *Hematite Petroleum Pty Ltd v Victoria* (1983) 151 CLR 599 at 634, Mason J indicated that one factor leading to characterisation of the impost there as a tax upon goods was “that it is a fee payable for permission to operate a pipeline for which the plaintiffs otherwise hold a permit to own and use”. The same point applies here.

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<sup>3</sup> As discussed in *Air Caledonie International v Commonwealth* (1988) 165 CLR 462 at 467.

### A revenue-raising purpose

32. As explained in paragraphs 36-38 of QCC's WAC Submissions, the presence of a revenue-raising purpose is an indicium that a measure is a tax.<sup>4</sup>

33. The UNFT was a budget measure designed to raise revenue. As Buchanan J said of the initial infrastructure charge proposal, this "was introduced by Mr Stanhope unambiguously as a revenue measure": at [54]. It was "expected to raise revenue of \$7.967 million in 2006-07, increasing to \$16.525 million in its full year of effect in 2007-08".<sup>5</sup>

10 34. This revenue-raising purpose was not altered by the change in form to a tax. So much is confirmed by a number of documents:

The main policy object of the Government in imposing the [UNFT] charge is to raise ACT Government Revenue.<sup>6</sup>

The Government, in introducing the Utilities Network Facilities Charge, is raising revenue necessary to support important public services for the ACT community.<sup>7</sup>

20 The introduction of the UNFT was one of the revenue measures adopted by my Government in the 2006-07 Budget to address the mismatch in the Territory's finances. My Government is committed to putting the Territory's finances on a sustainable footing to maintain capacity for investment in physical and social infrastructure, preserve high quality services and outcomes they deliver in priority areas, and provide a buffer against fiscal shocks.<sup>8</sup>

35. Much like the Water Fee component of the WAC, there is no evidence that any attempt was made by the ACT to calculate the cost and/or value of any land use rights for which the ACT might charge – neither when first enacted, nor when subsequently increased.

36. Further, when the ACT purported to charge for benefits that it could not give away – use by utilities of National Land and private land – it is evident that it was not imposing a fee in return for a benefit given, but simply to raise revenue.

### B. THE UNFT IS AN EXCISE

30 37. QCC's position was and is that the UNFT is a duty of excise imposed contrary to s 90 of the Constitution, given that:

37.1. it imposes a tax on a network, use of which is an essential step in the production and distribution of potable water to consumers;

37.2. the length of the network bears a natural relation to the quantity and value of the commodity being produced and distributed; and

37.3. the UNFT was intended to be, was permitted to be, and was, passed on to consumers of the commodity: see Buchanan J at [58]-[59] and [162].

<sup>4</sup> See eg *Airservices Australia v Canadian Airlines International Ltd* (1999) 202 CLR 133 at [91].

<sup>5</sup> ACT Budget 2006-07 Paper No 3, Revenue and Forward Estimates, quoted by Buchanan J at [54].

<sup>6</sup> Regulatory Impact Statement – Utilities (Network Facilities) Tax (2006).

<sup>7</sup> Treasury memorandum on telecommunications and UNFT (12 December 2006).

<sup>8</sup> Letter from ACT Chief Minister to Richard Mulcahy MLA (18 October 2007): tendered by QCC at trial as Document 155.

38. We shall address each of those considerations in turn, and then address the factors which appeared to be decisive in Keane CJ's judgment. Before doing so, we refer to some relevant legal principles.

### Legal principles

39. Duties of excise are:<sup>9</sup>

... taxes on the production, manufacture, sale or distribution of goods, whether of foreign or domestic origin. Duties of excise are inland taxes in contradistinction from duties of customs which are taxes on the importation of goods.

- 10 40. Specifically, they are a tax on "a step" in the production, manufacture, sale or distribution of goods.<sup>10</sup>

41. In the context of s 90 of the Constitution, the concept of "goods" as the subject of a tax must be read in its widest sense and includes commodities as well as manufactured goods;<sup>11</sup> and, in this context, it is appropriate to treat any property that is capable of being bought and sold as a "commodity" or a "good". It was not disputed below that s 90 applies with respect to the production, distribution and sale of potable water.

- 20 42. At one time, it was thought that the characterisation of a tax as a duty of excise depended solely on the "criterion of liability", by reference to which the tax applied.<sup>12</sup> However, that approach has been rejected as part of the broader recognition of the importance of issues of substance and practical effect with respect to all constitutional matters, but especially constitutional guarantees.<sup>13</sup> More recent authorities indicate that the exercise involves taking into account a range of factors, none of which is necessarily decisive.<sup>14</sup> In *Anderson's Pty Ltd v Victoria* (1964) 111 CLR 353 at 365, Barwick CJ described the exercise of considering the relevant factors as follows (in a passage which has been subsequently adopted):<sup>15</sup>

30 But, of course, in arriving at the conclusion that a tax is a tax upon the relevant step, consideration of many factors is necessary, factors which may not be present in every case and which may have different weight or emphasis in different cases. The "indirectness" of the tax, its immediate entry into the cost of the goods, the proximity of the transaction it taxes to the manufacture or production or movement of the goods into consumption, the form and content of the legislation imposing the tax – all these are included in the relevant considerations. But in the end what must be decided is that the tax is in substance a tax upon the relevant step.

43. Of obvious relevance to the present case is the judgment of the High Court in *Hematite* (1983) 151 CLR 599, where a majority held that an annual licence fee imposed in respect of three trunk pipelines was a duty of excise. The pipelines were used by the plaintiff licensees to convey crude oil and gas liquids from a processing

<sup>9</sup> *Ha v State of New South Wales* (1997) 189 CLR 465 at 499 (Brennan CJ, McHugh, Gummow and Kirby JJ); see also, for example, *Capital Duplicators Pty Ltd v Australian Capital Territory [No 2]* (1993) 178 CLR 561 at 587 (Mason CJ, Brennan, Deane and McHugh JJ);

<sup>10</sup> *Ha v New South Wales* (1997) 189 CLR 465 at 490.

<sup>11</sup> *Mutual Pools and Staff Pty Ltd v Federal Commissioner of Taxation* (1992) 173 CLR 450 at 454.

<sup>12</sup> For example, *Bolton v Madsen* (1963) 110 CLR 265 at 271.

<sup>13</sup> *Ha v New South Wales* (1997) 189 CLR 465 at 498-499.

<sup>14</sup> *Capital Duplicators (No 2)* (1993) 178 CLR 561 at 583 (Mason CJ, Brennan, Deane and McHugh JJ).

<sup>15</sup> See *Hematite* (1983) 151 CLR 599 at 629, 633 (Mason J), 658 (Brennan J), 666 (Deane J); *Capital Duplicators [No 2]* (1993) 178 CLR 561 at 583 (Mason CJ, Brennan, Deane and McHugh JJ).

plant at Longford in Victoria to another plant at Long Island Point in Victoria, where the crude oil and gas liquids underwent further processing to produce petroleum products that were then sold.

44. The fact that there are similarities between the cases – in particular that they both involve pipelines – does not mean that that decision represents a template into which this case must be fitted. Each levy must be assessed by reference to its own terms and effect, set against the legal principles with respect to s 90.

#### A tax on an essential step in production or distribution

- 10 45. QCC's case is that the UNFT is an excise duty in both the "production" and "distribution" senses. The UNFT applies to the pre-treatment pipes in ACTEW's network and to the bulk supply mains and reticulation pipes (which convey potable water to consumers).<sup>16</sup>
46. This conveyance of raw and potable water is an essential step in, and directly proximate to:
- 46.1. the production of potable water (in the case of the pre-treatment pipes); and
- 46.2. the distribution of potable water (in the case of the bulk supply mains and reticulation pipes).
- 20 47. The pre-treatment pipes are exclusively used to convey raw water to the Googong and Mt Stromlo treatment plants. The bulk supply mains and reticulation pipes are exclusively used to convey potable water to consumers. They are not used for any other purpose and do not convey any other thing. They are similar to the trunk pipelines in *Hematite*.<sup>17</sup>
48. In addition:
- 48.1. the pre-treatment pipes are the only practicable method of conveying raw water to the water treatment plants; and
- 48.2. the bulk supply mains and reticulation pipes are the only practicable method of conveying potable water to customers in the ACT (and to QCC).<sup>18</sup>
- 30 49. No suggestion to the contrary has ever been made. Indeed, the very discussion of "monopoly power" in relation to the WAC was based on the premise that the ACT had a relevant monopoly in supply of water to ACT consumers – being a direct monopoly over untreated water, and a monopoly through its corporate entity ACTEW over distribution of potable water.
50. The use of such pipelines is thus an essential step in the production and distribution of water.<sup>19</sup> The UNFT, while levied on the ownership of the pipelines, "is a convenient means of taxing what they convey...": *Hematite* (1983) 151 CLR 599 at 635 (Mason J).
51. As Buchanan J noted at [151], the "principal foundation" of the Respondents' arguments that the UNFT was not an excise "was that it was not a charge levied on goods but upon persons, namely the owner of a network facility".

<sup>16</sup> ACTEW's water network is described in paragraphs 13-14 of the affidavit of Ross Knee, 29 August 2008.

<sup>17</sup> *Hematite* (1983) 151 CLR 599 at 625, 635 (Mason J), 668-669 (Deane J).

<sup>18</sup> Note paragraphs 40-49 of the affidavit of Gregory Patrick Fogarty, 26 May 2008.

<sup>19</sup> cf *Hematite* (1983) 151 CLR 599 at 634 (Mason J) and 668 (Deane J).

52. As a matter of form, the “transaction” or step to which the UNFT attaches is indeed ACTEW’s *ownership* of the relevant network facilities. That point was a matter of great significance to the Full Court in overturning Buchanan J’s decision on the UNFT – it was referred to a number of times by the Chief Justice: see [128]-[129], [136] (the first factor), [145], [148] and [151].
53. In *Hematite*, the tax was imposed on the operation of, and not the ownership of, the pipelines. However, to attribute such significance to this feature of the UNFT Act is to ignore the substance of the matter, and to revert to the argument that the levy is not an excise because its “criterion of liability” is not the production or distribution of goods.
54. In *Logan Downs Pty Limited v Queensland* (1977) 137 CLR 59, the tax was imposed on owners of stock, in their capacity as such, by reference to the number of stock held. The tax was not imposed on any action or transaction. Yet in substance, in the view of the statutory majority, the tax was still an excise because of its substantive operation.<sup>20</sup>
55. The substance of the matter here is as follows:
- 55.1. ACTEW’s water network is the only water network in the ACT.
- 55.2. ACTEW is the only entity licensed under the Utilities Act to treat and distribute water in the ACT.<sup>21</sup>
- 55.3. ACTEW is both the owner and operator of the water network: see Buchanan J at [6], [11] and [135]. Reflecting this, the invoices for the water supplied to QCC were issued by ACTEW.
- 55.4. ACTEW is under an *obligation* to supply water to connected consumers within the ACT:<sup>22</sup> see Buchanan J at [110] and [117].
- 55.5. As is discussed further in paragraphs 69-79 below, the burden of the levy was always intended to be, and was, passed straight through from the owner to the ultimate consumers.
56. The fact that the water network is owned and operated by the same entity is not mere matter of happenstance. There is only one such network. The entity in question is wholly owned by government. That reflects basic practice all over Australia.
57. In these circumstances, it is a triumph of form over substance to attach vital significance to the distinction between ownership and operation of the water network.

**A natural relationship between the tax and the value/quantity of the good supplied**

58. Brennan J said the following in *Hematite* (1983) 151 CLR 599 at 657:

Though the presence or absence of a proportionate relationship between a tax and a quantity or value of goods is a relevant and important factor for consideration in ascertaining whether the tax is imposed upon or in respect of goods, such a relationship is neither an exhaustive nor an universal criterion for determining whether a particular tax is a duty of excise.

...

<sup>20</sup> (1977) 137 CLR 59 at 61 (Barwick CJ), 70-71 (Stephen J) and 78 (Mason J).

<sup>21</sup> See *Utilities (Annual Licence Fees Determination) Notice 2006 (No 2)*; *Utilities (Annual Licence Fees Determination) Notice 2007 (No 1)*; and *Utilities (Annual Licence Fees Determination) Notice 2008*.

<sup>22</sup> Utilities Act, s 83 (water connection); s 84 (water supply).

In principle, it is sufficient to establish that a tax is a duty of excise if it is a tax, however calculated, upon a step in the process of production, manufacture or distribution.

59. The key issue is that the tax is imposed upon production or distribution. That point has been established – see paragraphs 45-57 above. Further, the factor of a relationship between the amount of the levy and the quantity or value of goods may be of less significance where the tax is imposed at the stage of production of the goods rather than their distribution to consumers.<sup>23</sup> The UNFT is imposed at the stage of production in respect of the pre-treatment pipes, as well being imposed at the distribution stage. In any event, there was, a natural relationship between the amount of the tax and the value or quantity of the good supplied.
60. The decisions of this Court make it clear that no arithmetical relationship is required. The issue was dealt with in each of *Matthews v Chicory Marketing Board (Vic)* (1938) 60 CLR 263, *Logan Downs* (1977) 137 CLR 59, and *Hematite*. Dixon J made the point in *Matthews* (1938) 60 CLR 263 at 303-304, in a passage worth quoting at length:

By calculating the levy upon the number of half acres which the producer plants with chicory the board makes it at least theoretically possible that owing to a failure of his crop the levy upon him has little or no relation to his actual production of chicory. But the basis adopted for the levy has a natural, although not a necessary, relation to the quantity of the commodity produced. Although many other factors go to the determination of the actual quantity of chicory produced, the area planted is, if not the chief, at all events a controlling element. By adopting area planted as the criterion of the amount of the levy upon each producer the board has taxed the production of the commodity as effectually as if it had selected, for instance, the weight of the chicory gathered in its raw state, the quantity treated or the gross returns. For it has placed upon an essential step in production, namely, planting, an impost computed quantitatively. There is no distinction of substance and scarcely any even of form between levying a tax upon the area planted and levying a tax upon the act of planting the area. The levy is directed to the normal case of a man reaping even as he sows. The fact that the tax would also fall upon a chicory farmer whose expectations are disappointed through some of the mischances of agriculture does not seem to me to make the levy any less a tax upon production. The natural or practical relations between manufacture or production and activities or conditions chosen as the tests or standards of liability to taxation depend, not upon logical definitions, but upon the actual course of industrial organization and technique and of the productive arts.

If the word “excise” received a meaning which confined its application to taxes the relation of which to the commodity concerned was of some narrow and strictly defined nature, as, for instance, by an arithmetical relation to quantity, it would not only miss the principle contained in the use of the word “excise”, but it would expose the constitutional provision made by sec. 90 to evasion by easy subterfuges and the adoption of unreal distinctions. To be an excise the tax must be levied “upon goods”, but those apparently simple words permit of much flexibility in application. The tax must bear a close relation to the production or manufacture, the sale or the consumption of goods and must be of such a nature as to affect them as the subjects of manufacture or production or as articles of commerce. But if the substantial effect is to impose a levy in respect of the commodity the fact that the basis of assessment is not strictly that of quantity or value will not prevent the tax falling within the description, duties of excise.

<sup>23</sup> *Logan Downs* (1977) 137 CLR 59 at 77 (Mason J); *Hematite* (1983) 151 CLR 599 at 630 (Mason J), 668 (Deane J).

61. In the Full Court, Keane CJ said that there was “not only no arithmetical relationship between the UNFT and the quantity or value of water which passes through the network, there is no relationship at all”: at [137], original emphasis. His Honour said that the quantum of the UNFT “is fixed without any evident regard to the quantity or value of the water which may or may not pass through the network”: *ibid*; apparently suggesting that flow rates may vary. His Honour also said at [151] that “the amount or volume of water transported depends not upon the length of the pipeline of the facility but upon its diameter”.
62. The Full Court’s conclusions on this issue were in error.
- 10 63. First, the text of the UNFT Act discloses an express relationship with the potable water conveyed by ACTEW’s network. The definition of “utility network” in s 7 includes a “water network”, which term is defined in s 12 of the Utilities Act, by reference to the potable water produced and distributed. Section 12(1) refers to a “water network” as consisting of the infrastructure used for the purposes of “the collection and treatment of water for distribution by a person to premises of another person”, or for “the distribution of water by a person for supply to premises of another person”. Section 12(2) then identifies the relevant infrastructure. Analogously, the text of the legislation under challenge in *Hematite* disclosed a relationship between the licence fee and the hydrocarbons conveyed through the trunk pipelines: see (1983) 151 CLR 599 at 635 (Mason J).
- 20 64. Secondly, the UNFT is imposed on a per-kilometre basis – according to the length of the water network. The imposition creates a nexus between the volume of water produced/distributed and the amount of the tax, so that it can be said that “the basis adopted for the levy has a natural although not a necessary relation to the quantity of the commodity produced”: *Matthews* (1938) 60 CLR 263 at 303 (Dixon J).
- 64.1. It is self-evident that more pipeline – at least on the distribution side – is needed to service more customers. As each new suburb of Canberra is built, new pipeline must be laid to service those consumers.
- 30 64.2. No doubt some suburbs will consume more per kilometre of pipeline than others – for example depending on the population density, affluence and amount of green space in the suburb. That is so regardless of the exact diameter of the pipeline. But there will always be a natural relationship between the tax on ownership of the water network and the price of water.
- 64.3. Water is always moving through ACTEW’s water network in response to consumer demand.<sup>24</sup> Any suggestion that the flow of water might cease ignores the reality that urban water supply is a core function of ACTEW and water itself is a necessity of life; and note Buchanan J at [110].
- 40 64.4. The volume of water flowing through the network taken as a whole is relatively stable over time, subject to seasonal variation.<sup>25</sup> The Respondents pointed below to the fact that ACT consumers had reduced their water consumption in a range of 20-40% during the peak of the drought in response to the severe water restrictions in place. That is not disputed. Yet such significant seasonal variations would no doubt have affected the amount and

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<sup>24</sup> Evidence of Mr Knee in cross-examination, Ts 281/28-34.

<sup>25</sup> Knee affidavit, paragraph 14(e), discussing the division of the reticulation system into pressure zones; and cross-examination of Mr Knee, Ts 281/29-38.

value of the crops grown from the acreage levied in *Matthews* and of saleable commodities produced from the stock levied in *Logan Downs*. Yet in neither case did such variation prevent characterisation as an excise.<sup>26</sup> Similarly, in *Hematite* little heed was paid to an argument that the tax was not imposed on the hydrocarbons because the flow might cease.<sup>27</sup>

65. The relationship between the length of the network (and thus the amount of the levy) and the amount/value of water transmitted is not a precise one. But it need not be. There is a natural relationship, which is sufficient.
- 10 66. Perram J drew an analogy, at [180], with the charge considered in *Hughes and Vale Pty Ltd v New South Wales* (1953) 87 CLR 49, which was levied on road hauliers and calculated by reference to the potential load which could be carried by a truck and the number of miles travelled, which was not an excise. But such a levy may well have no natural relationship to the production or distribution of any goods – because it applied to all trucks carrying a very wide variety of goods, or not carrying any goods at all (for example, on return trips). As Dixon CJ said at 75, “the tonnage rate is not a tax directly affecting commodities”, being “calculated on the combined weight of the vehicle and weight of the load it is capable of carrying and is payable in respect of the employment of the vehicle upon a journey independently of the weight or quantity of the commodities carried”. That situation is not analogous to this case.
- 20 Further, only three of the seven members of the Court addressed the s 90 argument in *Hughes and Vale*, and it was decided well before the “criterion of liability” approach was definitively rejected in *Ha v New South Wales*.
67. Thirdly, as discussed in paragraphs 75 below, ACTEW has passed the charge on by reference to the amount of water sold. Thus, in practice, there is a direct relationship between the quantity of water sold and the amount of the levy. The ACT Government itself authorised the UNFT being passed through to consumers.
- 30 68. Fourthly, the UNFT is not in the nature of a licence fee or a fee for the right to carry on ACTEW’s business generally. ACTEW holds a licence to provide water (and sewerage) services to customers in the ACT, issued by the ICRC on 29 June 2001 under the Utilities Act. ACTEW is the only holder of such a licence, and has paid (or is liable to pay) substantial annual fees for the licence.<sup>28</sup> ACTEW is liable to pay the UNFT in addition to those licence fees. The amounts of UNFT paid are not negligible.<sup>29</sup> In these circumstances, the UNFT cannot sensibly be regarded as no more than an element in a scheme for the regulatory control of businesses producing and distributing water.<sup>30</sup>

<sup>26</sup> See *Matthews* (1938) 60 CLR 263 at 303 (Dixon J); *Logan Downs* (1977) 137 CLR 59 at 78 (Mason J).

<sup>27</sup> *Hematite* (1983) 151 CLR 599 at 635 (Mason J).

<sup>28</sup> See *Utilities (Annual Licence Fees Determination) Notice 2006 (No 2)*; *Utilities (Annual Licence Fees Determination) Notice 2007 (No 1)*; and *Utilities (Annual Licence Fees Determination) Notice 2008*. The licence fees were \$445,000 for 2006-7, \$500,845 for 2007-8, and \$534,914 for 2008-9.

<sup>29</sup> ACTEW paid UNFT of \$1,391,600 in 2006-07, and \$2,672,228 in 2007-08: ACTEW Utilities (Network Facilities Tax) Annual Lodgement forms.

<sup>30</sup> Cf *Ha v New South Wales* (1997) 189 CLR 465 at 500-503 (Brennan CJ, McHugh, Gummow and Kirby JJ); *Hematite* (1983) 151 CLR 599 at 633-634 (Mason J), 658 (Brennan J).

### The levy was intended to be and was passed on to consumers

69. The indirect character of a tax has always been a key element of the notion of an excise duty.<sup>31</sup> As this Court said in *Browns Transport Pty Ltd v Kropp* (1958) 100 CLR 117 at 129 (citation omitted):

It would perhaps be going too far to say that it is an essential element of a duty of excise that it should be an “indirect” tax. But a duty of excise will generally be an indirect tax, and, if a tax appears on its face to possess that character it will generally be because it is a tax upon goods rather than a tax upon persons. “... a direct tax is one that is demanded from the very person who it is desired and intended should pay it. An indirect tax is one which is demanded from one person in the expectation and with the intention that he shall indemnify himself at the expense of another”.

70. Tied to this point is whether the levy enters into the price of the goods in question. Thus in *Hematite* (1982) 151 CLR 599 at 632, Mason J said, echoing Dixon J in *Matthews*:

To justify the conclusion that the tax is upon or in respect of the goods it is enough that the tax is such that it enters into the cost of the goods and is therefore reflected in the prices at which the goods are subsequently sold. It is not necessary that there be an arithmetical relationship between the tax and the quantity or value of the goods produced or sold ...

71. These considerations are linked to the purposes that s 90 serves (as to which see paragraphs 32-34 of QCC’s submissions in matter C2 of 2011 on the WAC). Where taxes are imposed on production or distribution of goods and are likely to be passed on to consumers, this will increase prices and thus lower demand for the goods in question, which in turn will tend to:

- 71.1. impede the fostering and creation of national markets in the goods;
- 71.2. undermine the Commonwealth’s real control over the taxation of commodities; and
- 71.3. undermine the Commonwealth’s ability to stimulate or dampen demand by imposition of taxation on such goods.

72. Here, the UNFT was always intended to be, was permitted to be, and was, passed on to consumers.

73. The UNFT Act came into operation on 21 December 2006. The initial rate was fixed by a determination of the Chief Minister/Treasurer on the same date: Buchanan J at [56]-[57]. Water prices are regulated in the ACT. On 22 December 2006 – the day after commencement of the UNFT Act – the Deputy Chief Minister made a declaration under the *Independent Competition and Regulatory Commission Act 1997* (ACT) that the UNFT “may be passed on in full to consumers of utility services”: Buchanan J at [58].

74. That the passing through of the fee was authorised immediately after the Act commenced leads to a natural inference that this was always the ACT’s intention.

75. In practice, ACTEW’s invoices to its customers, including QCC, separately identify an amount payable in respect of the UNFT.<sup>32</sup>

<sup>31</sup> See, eg, Dixon J’s detailed discussion and analysis in *Matthews* (1938) 60 CLR 263 at 300-303.

<sup>32</sup> See Knee affidavit, paragraph 29.

76. As Buchanan J correctly concluded. at [162]-[163]:

Although, in form, the UNFT is charged to the owner of a network facility the charge is in fact converted into a charge to customers and consumers. In the case of QCC it was identified separately in accounts provided by ACTEW. As the network facility is the means by which water is carried, first for treatment and then, as potable water, distributed to customers, I think it right to regard the UNFT as a tax on a step in the production, sale and distribution of goods.

10 That conclusion, it seems to me, accords with the requirement to pay regard to the practical operation of the *UNFT Act*, as well as its terms, and with the approach taken by the High Court in *Chicory Marketing Board and Hematite* of acknowledging the inevitable operation of the charge as an indirect tax on consumers.

77. In *Hematite* (1982) 151 CLR 599, although there was no evidence that any part of the tax was in fact passed on, the intention that the tax should enter into the price of the goods could be inferred primarily because of the quantum of the tax. Deane J said at 668 (and see also Mason J at 634):

The magnitude of the tax and its recurrent nature ... make inevitable the conclusion that the tax is an indirect one in the sense that it will be and is intended to be regarded as a component of the costs and expenses of manufacture or production which will, subject to the vagaries of market conditions, be passed down the line to the consumer.

20 78. With the UNFT, there is no need to rely on inference. In relation to this factor, the UNFT is a much stronger candidate for an excise than the tax in *Hematite*. There can be no doubt that the UNFT increases the price of potable water in the ACT and Queanbeyan, that this was always understood, and that it was always intended that such fees be passed on.

79. Despite the significance of this factor, it was given little weight in the Full Court's analysis. Keane CJ said that the fact that a tax was apt to increase or affect the price of goods was insufficient to characterise a tax as an excise: see [140]-[142]; giving the example of payroll tax, which QCC had accepted was not likely to be regarded as an excise. But, although his Honour's point may be correct – merely being apt to affect price is not sufficient – that analysis fails to grapple with the issue.

30 79.1. As with many such constitutional questions, there are questions of fact and degree involved. There is a difference between a tax imposed on employers with respect to their number of employees, across all industries, and regardless of the range of goods or services being produced, on the one hand, and a tax imposed on a narrow range of entities, by reference to an essential step in production or distribution, and which was intended to be, permitted to be, and was, passed on to consumers.

40 79.2. The factor was not suggested by QCC to be definitive, but to be important and relevant. Yet Keane CJ, having indicated that he did not consider it to be sufficient, did not give it any further consideration. The fact that a consideration may not be definitive does not mean that it can be ignored.

#### **Factors that Keane CJ saw as distinguishing this case from *Hematite***

80. The critical part of the reasoning of Keane CJ appears to be his list of the six factors that his Honour considered distinguished this case from *Hematite*: at [136]:

81. The Court's reliance on these factors involved error.

- 81.1. As to the **first** factor – that the fee is payable by the owner, not the operator, of the network – that has been dealt with in paragraphs 45-57 above.
- 81.2. Similarly, the **second** factor – the UNFT is imposed by reference to the conferral of the right to use and occupy land – has been addressed in substance in paragraphs 18-36 above. It is, in any event, simply incorrect to say that the UNFT is imposed by reference to the right to use and occupy land – there is no basis for that assertion in the UNFT Act.
- 10 81.3. **Thirdly**, Keane CJ said that the quantum of the impost in this case tax is referable to “the length of the land occupied”. This factor has been addressed in substance in paragraphs 18-36 and 58-68 above.
- 81.4. **Fourthly**, Keane CJ said that the quantum of the UNFT is not explicable “only on the footing that it is imposed in virtue of the quantity and value of the [water] supplied”. But so much is not required. It is true that this phrase was used by Mason J in *Hematite* (1982) 151 CLR 599 at 634. Yet his Honour was not suggesting that this notion stood in lieu of an assessment of whether there was a natural relationship.
- 81.5. **Fifthly**, Keane CJ said that payment of the fee is not a condition upon the transportation of the water. This point is one of form, not substance, for the reasons addressed in paragraphs 51-57 above.
- 20 81.6. **Sixthly**, Keane CJ said that the UNFT did not select the water network for discrimination. It is correct that the UNFT is not limited in its application to ACTEW’s water network but also applies to gas, electricity, telecommunication and sewerage networks. It may well be that in its application to some of those networks it would not be an excise. Nevertheless, this Court’s decisions establish that a levy may in part be an excise, even though it only operates as such in part:
- 30 (a) In *Western Australia v Chamberlain Industries Pty Ltd*, a tax imposed on the receipt of money was found to be an excise duty when it fell on the receipt of the purchase price by the seller of goods, even though the tax would not be an excise duty when it fell on the receipt of money in transactions not involving goods.<sup>33</sup> As Barwick CJ said at 15, the proposition “that unless a tax by an Act is in all circumstances to which the Act is intended to apply a duty of excise, it cannot be an excise in any of those circumstances ... is evidently fallacious”.
- (b) Similarly, in *Logan Downs*, a tax payable by the owners of stock (cattle, horses, sheep and swine) was found to be an excise duty when it fell on the ownership of stock used for production of meat, milk and wool, even though the tax would not be an excise duty when it fell on the ownership of stock not kept for production.<sup>34</sup>
- 40 81.7. The UNFT Act could be read down so as not to apply to the water network of ACTEW to avoid its invalidity with respect to that network, whilst saving any other valid application of the Act: see s 120 of the *Legislation Act 2001* (ACT).

<sup>33</sup> (1970) 121 CLR 1 at 14-15 (Barwick CJ), 26 (Menzies J), 29 (Windeyer J), 30-31 (Owen J).

<sup>34</sup> (1977) 137 CLR 59 at 71 (Stephen J), 78 (per Mason J, with whom Barwick CJ agreed).

- 81.8. It is correct that discrimination was a factor referred to in *Hematite*. That does not mean that discrimination is always required, as the cases just mentioned illustrate. In *Hematite* what was significant was that, whereas there had previously been a simple and low licence fee for all pipelines, a new unique high fee was applied to the three pipelines used to transport Bass Strait hydrocarbons. The key issue was whether the new fee could be characterised as simply a licence fee or a tax on goods. The discriminatory context tended to suggest it was a tax on goods.
- 10 81.9. Here, as explained in paragraphs 29-30 above, ACTEW was already licensed to operate as a utility, and had been authorised under the Utilities Act to place infrastructure over others' land. The UNFT cannot be said to be a licence to carry on business. The UNFT was a new and separate fee. For the reasons articulated in paragraphs 58-68 above, it has a natural relationship to the quantity or value of water transported to consumers. There may well be a similar natural relationship between the tax and the value of the goods transmitted over the other relevant networks. The monetary value of that relationship may differ according to the different value of the goods supplied – but that does not prevent there being a relationship, even if that relationship varies for the different networks.
- 20 81.10. It is, however, unnecessary to decide that issue. In the context outlined, the UNFT is an excise, and the fact that the UNFT applies to the other networks does not detract from that characterisation.

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#### PART VII: RELEVANT PROVISIONS

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82. Annexure A sets out the applicable constitutional provisions, statutes, regulations and ministerial determinations.

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#### PART VIII: ORDERS SOUGHT

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83. QCC seeks that the appeal be upheld, with costs. The orders sought are those set out in the Notice of Appeal.

30 10 May 2011



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**ANNEXURE A TO APPELLANT'S SUBMISSIONS (UNFT)****Table of Contents**

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<i>Australian Capital Territory (Planning and Land Management) Act 1988 (Cth)</i>	ss 27–29	18–19
<i>Utilities Act 2000 (ACT)</i>	ss 7, 12, 21, 44-45, 83-84, 103-114, 115-121	19–31
<i>Taxation Administration Act 1999 (ACT)</i>	ss 4, 139	31–32
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*Commonwealth of Australia Constitution Act*

(Chapter IV—Finance and Trade)

**90 Exclusive power over customs, excise, and bounties**

On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

10 On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

Currency – s 90 is still in force, in that form, at the date of making the attached submissions.

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*Australian Capital Territory (Planning and Land Management) Act 1988 (Cth)*

**Part V—Land management**

**27 National Land**

- 20 (1) The Minister may, by notice published in the *Commonwealth Gazette* declare specified areas of land in the Territory to be National Land.
- (2) The Minister shall not declare an area to be National Land unless the land is, or is intended to be, used by or on behalf of the Commonwealth.
- (3) If an Act vests the management (however described) of specified land in the Territory in a person or body, the land is National Land for the purposes of this Act.
- (4) Subsection (3) does not apply to the vesting of an estate in land.

**28 Territory Land**

30 At any time when any land in the Territory is not National Land, that land is Territory Land for the purposes of this Act.

**29 Administration of Territory Land**

- (1) The Executive, on behalf of the Commonwealth:
- (a) has responsibility for the management of Territory Land; and
  - (b) subject to section 9 of the *Seat of Government (Administration) Act 1910*, may grant, dispose of, acquire, hold and administer estates in Territory Land.
- (2) The Executive shall perform its functions under subsection (1) subject to enactment and in accordance with the principles:

- (a) that new estates in Territory Land shall be granted only in accordance with procedures that are notified to the public; and
  - (b) that appropriate classes of decisions relating to the administration of estates in Territory Land shall be subject to just and timely review without unnecessary formality.
- (3) The term of an estate in Territory Land granted on or after Self-Government Day shall not exceed 99 years or such longer period as is prescribed, but the estate may be renewed.
- 10 (4) The Authority may intervene in any proceedings for review of a decision relating to the administration of an estate in Territory Land.

Currency – ss 27-29 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) are still in force, in that form, at the date of making the attached submissions

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#### *Utilities Act 2000 (ACT)*

##### 7 Electricity network

- 20 (1) For this Act, an *electricity network* consists of infrastructure used, or for use, in relation to the distribution of electricity by a person for supply to the premises of another person.
- (2) In this section:  
*infrastructure* means—
- (a) powerlines; or
  - (b) substations and equipment for monitoring, distributing, converting, transforming, or controlling electricity; or
  - (c) a structure supporting overhead powerlines; or
  - (d) wires, ducts or pipes for wires, or equipment; or
  - (e) any other thing ancillary to any other part of the infrastructure.
- 30 (3) An *electricity network* does not include infrastructure that is outside the network boundary.

#### *Utilities Act 2000 (ACT)*

##### 12 Water network

- (1) For this Act, a *water network* consists of the infrastructure mentioned in subsection (2) used, or for use, in relation to any of the following purposes:
- (a) the collection and treatment of water for distribution by a person to premises of another person;
  - (b) the distribution of water by a person for supply to premises of another person.
- 40 (2) For subsection (1), the *infrastructure* consists of the following:
- (a) water storages, mains and treatment plants;



*Note* Under s 52, the ICRC must prepare a written 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, by—
- (a) ICRC; and
  - (b) the council; and
  - (c) the chief executive under part 5 (Technical regulation) on behalf of the Territory;

10 in the exercise of functions, in the ACT or elsewhere, in relation to utility services.

**Examples of ICRC's functions**

1 functions under this Act

2 functions under the Gas Pipelines Access (A.C.T.) Law

- (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.

20 *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.
- (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)**

40 costs of an investigation on an industry reference into a regulated industry under the ICRC Act, s 19

Currency – following the commencement of the *Utilities (Network Facilities Tax) Act 2006* (ACT) on 21 December 2006, s 45 of the *Utilities Act 2000* (ACT) was relevantly amended by the following amending provisions:

*ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2)*  
(repealed) (ACT) A2008-37 amdt 1.520 (notified 4 September 2008)

[1.520] Section 45(2)(b)

*omit*

10

*Justice and Community Safety Legislation Amendment Act 2009 (No 4)* (repealed)  
(ACT) am A2009-54 amdt 1.41 (notified 18 September 2009)

Part 1.6 Utilities Act 2000

[1.41] Section 45 (2)

*substitute*

(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—

20

(a) by the following in the exercise of functions, in the ACT or elsewhere, in relation to utility services:

(i) ICRC;

(ii) the chief executive under part 5 (Technical regulation) on behalf of the Territory; and

(b) by the ACAT in hearing and deciding matters to which a utility is a party.

*Utilities Act 2000* (ACT)

30

**83 Water connection service**

(1) A water distributor must, on application by a person for any of the following utility services, provide the service in accordance with the distributor's standard customer contract:

(a) connect the premises to which the application relates to the distributor's network;

(b) vary the capacity of the connection between the premises to which the application relates and the distributor's network;

(c) if the applicant elects accordingly—allow the connection, or the variation of the capacity of the connection, and the associated work, to be done by another person accredited under the relevant technical code.

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(2) For subsection (1) (c), work associated with the connection or variation does not include any augmentation, relocation or other alteration of the distributor's network.

(3) To avoid any doubt, action taken by an accredited person under subsection (1) (c) does not constitute the provision of a utility service.

**84 Water supply service**

- (1) A water supplier must, on application by a person, and in accordance with the supplier's standard customer contract, supply water to premises owned or occupied by the person.
- (2) This section does not apply to the supply of water to premises for a non-franchise customer.

Currency – ss 83 and 84 of the *Utilities Act 2000* (ACT) are still in force, in that form, at the date of making the attached submissions.

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10 **Utilities Act 2000 (ACT)****Part 7 Network operations****Division 7.1 General****103 Definitions for pt 7**

In this part:

*installation*, of a network facility, includes—

- (a) the construction or extension of the facility on, over or under any land or water; and
- (b) the attachment of the facility to any building or other structure; and
- (c) any activity that is ancillary or incidental to an activity mentioned in paragraph (a) or (b).

*network operations* means work carried out by a utility, or an authorised person for a utility, under this part in the exercise of its functions under this Act.

**Division 7.2 General powers****104 Acquisition of land**

- (1) A utility may compulsorily acquire land (including an interest in land) for the purpose of exercising its functions under this Act.
- (2) The acquisition must be in accordance with the *Lands Acquisition Act 1994*.

**105 Installation of network facilities**

- (1) For purposes connected with the provision of a utility service, a utility may—
  - (a) enter and occupy land; and
  - (b) undertake any work on the land that is necessary or desirable for installing a network facility.
- (2) Under subsection (1) (b), the utility may, for example, undertake any of the following work:
  - (a) make surveys, take samples and examine the soil;
  - (b) construct, install or place any plant, machinery, equipment or goods;
  - (c) fell or lop trees, or clear and remove vegetation;
  - (d) interrupt the provision of utility services by the utility;

- (e) make cuttings and excavations;
- (f) level the land or make roads;
- (g) erect offices, workshops, sheds, other buildings, fences and other structures;
- (h) demolish, destroy or remove any network facility installed or used by the utility in relation to the provision of a utility service;
- (i) put a gate or passageway in a fence or wall (except a wall of a building) that prevents or hinders the work of the utility under this section, or remove such a gate or passageway;
- (j) temporarily divert or stop traffic on a public road or bridge;
- (k) restore the land, or fences, walls or other structures on the land, affected by the work of the utility and, for that purpose, remove and dispose of soil, vegetation and other material.

*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).

(3) This section does not entitle a utility to act under subsection (1) on land that it does not own unless—

- (a) it owns an appropriate interest in the land; or
- (b) the owner of the land agrees to the undertaking.

(4) If subsection (2) (i) applies, the utility must ensure, so far as practicable that the work is carried out in a way that minimises inconvenience and disruption to the passage of people, vehicles and vessels.

(5) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

*Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree damaging activity or prohibited groundwork (including in urgent circumstances).

### 30 106 Maintenance of network facilities

(1) A utility may, at any time, maintain a network facility and, for that purpose, do anything necessary or desirable, including, for example—

- (a) entering and occupying land; and
- (b) undertaking any work of a kind mentioned in section 105.

*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).

(2) For subsection (1), the maintenance of a network facility includes, for example, the following work:

- (a) the alteration, removal, repair or replacement of any part of the facility;
- (b) the provisioning of the facility with material or information (whether in electronic form or otherwise);
- (c) inspecting or otherwise ensuring the proper functioning of the facility from time to time;
- (d) action to which a network protection notice relates.

- (3) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

*Note* Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree damaging activity or prohibited groundwork (including in urgent circumstances).

## 107 National land

10 Functions of the kind exercisable by a utility under this part are exercisable in relation to national land only by agreement with the Commonwealth.

### Division 7.3 Performance of network operations

## 108 Damage etc to be minimised

In carrying out network operations, a utility must take all reasonable steps to ensure that it causes as little inconvenience, detriment and damage as is practicable.

Currency – ss 103-108 of the *Utilities Act 2000* (ACT) are still in force, in that form, at the date of making the attached submissions.

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### *Utilities Act 2000* (ACT)

## 109 Notice to land-holder

- 20 (1) Before a utility begins network operations in relation to public land or private land, it must give the land-holder written notice of the proposed operations.
- (2) The notice must be given to the land-holder —
- (a) at least 7 days before the operations begin; or
  - (b) if the relevant industry code requires a minimum period of notice—in accordance with the code.
- (3) The notice must, so far as practicable, state the following matters:
- (a) the purpose of the operations;
  - (b) the nature of the activities involved;
  - (c) the parts of the land likely to be affected;
  - (d) the period or periods during which the activities are expected to be carried out;
  - (e) contain a statement indicating—
    - (i) the utility's obligation under this part to restore the land; and
    - (ii) the council's power to direct payment by the utility for loss or damage resulting from the operations.
- 30 (4) The land-holder may waive its right to all or part of the minimum period of notice under subsection (2).
- (5) Subsection (1) does not apply if the operations are to be carried out in urgent circumstances in which it is necessary to protect—
- (a) the integrity of a network or network facility; or

- (b) the health or safety of people; or
- (c) public or private property; or
- (d) the environment.

Currency – s 109 of the *Utilities Act 2000* (ACT) was amended by the *ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2)* (ACT), which relevantly provided:

**[1.521] Section 109(3)(e)(ii)**  
*Substitute*

- (ii) the ACAT's power to direct payment by the utility for loss or damage resulting from the operations

10 ***Utilities Act 2000* (ACT)**

**110 Notice about lopping trees etc on private land**

- (1) This section applies to network operations to the extent that they involve—
  - (a) the felling or lopping of trees on private land; or
  - (b) the trimming of roots of trees or other plants on private land; or
  - (c) the clearing or removal of vegetation on private land.
- (2) Before a utility begins such operations, it must give the land-holder notice of the proposed operations.
- (3) The notice—
  - (a) must be given at least 7 days before the operations begin; and
  - 20 (b) must indicate the trees or vegetation affected and the activity proposed; and
  - (c) may require the land-holder to carry out the activity within a stated period; and
  - (d) if paragraph (c) applies—must contain a statement about the effect of subsection (6); and
  - (e) if the operations relate to other network operations for which notice is required under this division—may be given in or with the notice of the other operations.
- (4) The land-holder may waive its right to all or part of the minimum period of notice under subsection (3) (a).
- 30 (5) If subsection (3) (c) applies, the stated period within which the land-holder is required to carry out the activity must run for at least 7 days commencing on the day the notice is given to the land-holder.
- (6) If the land-holder does not carry out the activity in accordance with a requirement in the notice mentioned in subsection (3) (c)—
  - (a) the utility may carry out the activity; and
  - (b) the reasonable expenses thus incurred by the utility are a debt due to the utility by the land-holder.

- (7) Subsection (6) (b) does not apply to a tree or vegetation growing on the land before a network facility was installed on the land.
- (8) In urgent circumstances in which it is necessary to protect—
  - (a) the integrity of a network or a network facility; or
  - (b) the health or safety of people; or
  - (c) public or private property; or
  - (d) the environment;
 subsections (2) and (3) do not apply and the utility may carry out the operations at its own expense.

10    **110A    Network operations affecting heritage significance**

- (1) If a notice under section 109 or section 110 is about network operations that may affect a place or object registered, or nominated for provisional registration, under the *Heritage Act 2004*, the utility must also give a copy of the notice to the heritage council at least 7 days before the day operations begin.
- (2) Subsection (1) does not apply if the operations are to be carried out in urgent circumstances in which it is necessary to protect—
  - (a) the integrity of a network or network facility; or
  - (b) the health or safety of people; or
  - (c) public or private property; or
  - (d) the environment.

20

**111    Notice to other utilities**

- (1) This section applies to network operations by a utility that consist of, or include, an activity that—
  - (a) affects; or
  - (b) is reasonably likely to affect;
 a network facility under the care and management of a public utility.
- (2) Before the utility begins such operations, it must give the public utility written notice of the proposed operations.
- (3) The notice must—
  - (a) be given to the public utility at least 7 days before the operations begin; and
  - (b) so far as practicable, state the following matters:
    - (i) the purpose of the operations;
    - (ii) the nature of the activities involved;
    - (iii) the network facility affected;
    - (iv) the period or periods during which the activities are expected to be carried out.
- (4) The utility must—
  - (a) make reasonable efforts to enter into an agreement with the public utility about the way the activities would be carried out; and
  - (b) comply with any such agreement.
- (5) The public utility may waive its right to notice under subsection (2).

30

40

- (6) Subsection (2) does not apply if the operations are to be carried out in urgent circumstances in which it is necessary to protect—
- (a) the integrity of a network or a network facility; or
  - (b) the health or safety of people; or
  - (c) public or private property; or
  - (d) the environment.

- (7) In this section:

*network facility* includes—

- (a) a telecommunications facility; and
- (b) a stormwater facility; and
- (c) a streetlight facility.

*public utility* includes—

- (a) a utility licensed under this Act; and
- (b) a carrier or network operator under the *Telecommunications Act 1997* (Cwlth); and
- (c) the entity responsible for the operation of the stormwater network; and
- (d) the entity responsible for the operation of the streetlight network.

*stormwater facility* means any part of the infrastructure of a stormwater network.

*streetlight facility* means any part of the infrastructure of a streetlight network.

*telecommunications facility* means a facility under the *Telecommunications Act 1997* (Cwlth).

## 112 Removal of utility's property and waste

- (1) A utility that undertakes an activity as network operations on land for which it is not the land-holder must, as soon as practicable, remove from the land—
- (a) all—
    - (i) items of plant, machinery, equipment and other goods; and
    - (ii) offices, workshops, sheds and other buildings; and
    - (iii) roads and tracks;
 that the utility constructed, installed or placed on the land and that do not form part of, or are not to be used in the operation of, the network facility to which the activity related; and
  - (b) all spoil, waste and rubbish and cleared vegetation resulting from the activity.
- (2) The obligation in subsection (1) is subject to any agreement to the contrary between the utility and the land-holder.

## 113 Land to be restored

- (1) A utility that carries out network operations on land for which it is not the land-holder must take all reasonable steps to ensure that the land is restored as soon as practicable to a condition that is similar to its condition before the operations began.

- (2) Subsection (1) does not require the restoration of land to a condition that would involve—
- (a) an interference with—
    - (i) a network or network facility; or
    - (ii) a territory network or territory network facility; or
  - (b) a contravention of a territory law.
- (3) The obligation in subsection (1) is subject to any agreement to the contrary between the utility and the land-holder.

#### **Division 7.4                      Authorised people**

##### **10    114            Appointment**

- (1) A utility may appoint a person as an authorised person for the utility for this Act.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) An authorised person must exercise his or her functions under this Act in accordance with the conditions of appointment and any direction given to the person by the utility.

##### **20    115            Identity cards**

- (1) A utility must give each of its authorised people an identity card that specifies the person's name and appointment as an authorised person for the utility, and on which appears a recent photograph of the person.
- (2) A person must, within 7 days after ceasing to be an authorised person, return the identity card to the utility.

Maximum penalty (subsection (2)): 1 penalty unit.

##### **116            Entry to premises—network operations**

- (1) Where a utility is entitled under this part to undertake network operations affecting particular premises, an authorised person for the utility may—
- 30            (a) enter the premises, with such people, vehicles and things as are reasonable and necessary for the operations; and
- (b) carry out the activities necessary for those operations.
- (2) The authorised person may not remain on the premises if, on request by the land-holder or person apparently in charge of the premises, the authorised person does not produce his or her identity card.
- (3) The authorised person may enter and remain on the premises under this section with such assistance as is necessary and reasonable.

##### **117            Entry to premises—inspection of meters etc**

- 40            (1) An authorised person for a utility may enter and remain on any premises to which the utility provides, or is to provide, a utility service—
- (a) to read, or check the accuracy of, a meter for recording the provision of the service to the premises; or

- (b) to check work associated with the connection of premises to the utility's network that is performed by a person accredited under the relevant technical code; or
  - (c) to check the operation of a connection between the premises and the utility's network, or install, repair, remove or replace such a connection; or
  - (d) for a purpose related to the connection of the premises to the utility's network, or its withdrawal.
- (2) The authorised person may not remain on the premises if, on request by the landholder or person apparently in charge of the premises, the authorised person does not produce his or her identity card.
- (3) The authorised person may enter and remain on the premises under this section—
- (a) at any reasonable time; and
  - (b) with such assistance as is necessary and reasonable.

## **Division 7.5                      Miscellaneous**

### **119            Order to enforce exercise of functions**

- (1) If—
- (a) an authorised person is entitled to exercise a function under this part in relation to premises; and
  - (b) another person obstructs, or proposes to obstruct, the authorised person in the exercise of the function;
- the Magistrates Court may, on the application of the authorised person, make an order authorising a police officer or other person named in the order to use such assistance and force as are reasonably necessary to enable the function to be exercised.
- (2) A copy of an application under subsection (1) must be given to the obstructor, and the obstructor is entitled to appear and be heard on the hearing of the application.

### **120            Ownership of network facilities**

- (1) The owner or occupier of land to which a network facility is affixed has no proprietary interest in the facility only because it is affixed to the land.
- (2) A network facility of a utility is not to be taken in execution of a judgment against a person other than the utility under any process of a court.

### **121            Clarifying ownership of certain network facilities**

- (1) The purpose of this section is to remove uncertainty about the ownership of network facilities that—
- (a) are used, or for use, by a utility or a subsidiary of the utility in providing a utility service; and
  - (b) are treated by the Territory and the utility or subsidiary as being owned by the utility or subsidiary; and
  - (c) are affixed to land owned or occupied by a person other than the utility or subsidiary.

- (2) The Minister may, in writing, declare that this section applies to network facilities.

*Note* Power given under an Act to make a statutory instrument includes power to make different provision for different categories, eg declarations in relation to different classes of network facilities or that apply by reference to stated exceptions (see Legislation Act, s 48).

- (3) A declaration must include sufficient particulars to identify the facilities to which the declaration applies.
- (4) A declaration is a notifiable instrument.

10

*Note* A notifiable instrument must be notified under the Legislation Act.

Currency – ss 110-121 of the *Utilities Act 2000* (ACT) are still in force, in that form, at the date of making the attached submissions.

### ***Taxation Administration Act 1999* (ACT)**

#### **4 Meaning of tax law**

For this Act, each of the following is a *tax law*:

- (a) this Act;
- (b) the *Debits Tax Act 1997*;
- (c) the *Duties Act 1999*;
- 20 (d) the *Emergencies Act 2004*, schedule 1 (Ambulance levy);
- (e) the *Financial Institutions Duty Act 1987*;
- (f) the *Insurance Levy Act 1998*;
- (g) the *Land Tax Act 2004*;
- (h) the *Payroll Tax Act 1987*;
- (i) the *Rates Act 2004*;
- (j) the *Stamp Duties and Taxes Act 1987*;
- (k) the *Taxation (Administration) Act 1987*;
- (l) the *Utilities (Network Facilities Tax) Act 2006*;
- (m) an Act declared by regulation to be a tax law.

30

Currency – s 4 of the *Taxation Administration Act 1999* (ACT) was amended by s 15 of the *Utilities (Network Facilities Tax) Act 2006* (ACT) on 21 December 2006 by the insertion of “(ka) the *Utilities (Network Facilities Tax) Act 2006*,” (and subsequent renumbering of the section); s 4 was further amended by the *Utilities (Energy Industry Levy) Amendment Act 2007* (ACT) on 9 July 2007 by the insertion of “(ka) the *Utilities Act 2000*, part 3A (Energy industry levy);”; s 4 was further amended by the *Land Rent Act 2008* (ACT) on 1 July 2008 by the insertion of “(fa) the *Land Rent Act 2008*,”

40

**Taxation Administration Act 1999 (ACT)****139 Determination of amounts payable under tax laws**

- (1) The Minister may determine the following:
- (a) the amount of tax, duty or licence fee payable under a tax law;
  - (b) the rate or differential rates at which, or the method by which, an amount of tax, duty, a licence fee or interest, payable under a tax law is to be calculated;
  - (c) a scale of allowances for expenses of witnesses under section 82 (5);
  - (d) the value of meals or other sustenance or the value of the use of premises for the *Payroll Tax Act 1987*, section 3 (2);
  - (e) a rate for the *Payroll Tax Act 1987*, section 10 (1) or (2), 11 (1), (2) or (3), 12 (1) or (2) or 13 (1) or (2);
  - (f) an amount for the *Payroll Tax Act 1987*, section 16 (1);
  - (g) an amount for the *Debits Tax Act 1997*, section 10 (1) or 16 (7) or (8);
  - (h) an amount for the *Emergencies Act 2004*, schedule 1, section 1.4.
- (2) A determination under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

20 Currency – s 139 of the *Taxation Administration Act 1999* (ACT) was relevantly amended by the following amending provisions:

***Statute Law Amendment Act 2007 (ACT) (repealed)*****[3.122] Section 139(1)(f)***Omit*

Section 16(1)

*Substitute*

Section 7

**Explanatory note**

30 This amendment updates a cross-reference to a provision in the *Payroll Tax 1987* that was inserted by the *Revenue Legislation Amendment Act 2006*, section 23.

***Land Rent Act 2008*****[1.16] New section 139(1)(i) and (j)***insert*

(i) a percentage for the *Land Rent Act 2008*, section 8 (Land rent payable), section 15 (Discount—loss of eligibility because of income), section 16 (Discount—loss of eligibility for other reasons) and section 17 (Transfer of lease—land rent);

40 (j) an income threshold amount for the *Land Rent Act 2008*, section 11.

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*Utilities (Network Facilities Tax) Act 2006 (ACT) (as made)*

**1 Name of Act**

This Act is the *Utilities (Network Facilities Tax) Act 2006*.

*Note* This Act is a tax law under the *Taxation Administration Act 1999*. As a tax law, this Act is subject to provisions of the *Taxation Administration Act 1999* about the administration and enforcement of tax laws generally.

**6 What is a network facility?**

(1) A *network facility* means any part of the infrastructure of a utility network.

10 (2) However, a network facility does not include any facility, or part of a facility, that is affixed to land for which any of the following is in force in relation to the use of the land for the utility network:

- (a) a lease;
- (b) a licence granted by the Territory;
- (c) any right prescribed by regulation.

**Examples of a network facility**

- 1 powerlines or pipes over or under land
- 2 telecommunications cabling

20 *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).

**7 What is a utility network?**

A utility network is—

(a) any of the following under the *Utilities Act 2000*:

- (i) an electricity transmission network;
- (ii) an electricity network (for the distribution of electricity);
- (iii) a gas transmission network;
- (iv) a gas distribution network;
- (v) a sewerage network;
- (vi) a water network; or

30 (b) a telecommunications network under the *Telecommunications Act 1997* (Cwlth) for communication between members of the public; or

(c) any other network prescribed by regulation.

**8 Network facility tax**

(1) The owner of a network facility on land in the ACT is liable to pay tax in relation to the facility at the rate worked out as follows:

$$\text{determined rate} \times \text{route length}$$

(2) In this section:

***determined rate*** means the rate determined under the *Taxation Administration Act 1999*, section 139.

*Note* The *Taxation Administration Act 1999* provides for the Minister to determine the rate at which, or the method by which, an amount of tax payable under a tax law is to be calculated (see s 139 (1) (b)).

Currency – ss 1 and 6-8 of the *Utilities (Network Facilities Tax) Act 2006* (ACT) are still in force, in that form, at the date of making the attached submissions.

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Australian Capital Territory

## **Taxation Administration (Amounts payable - Utilities (Network Facilities Tax)) Determination 2006 (No 1)\***

Disallowable instrument DI2006-271

made under the

*Taxation Administration Act 1999*, s139 (Determination of amounts payable under tax laws)

---

**1 Name of Instrument**

This instrument is the *Taxation Administration (Amounts payable - Utilities (Network Facilities Tax) Determination 2006 (No 1)*.

**2 Commencement**

This instrument commences 1 January 2007.

**3 Determination of rate**

I determine the rate for section 8 of the *Utilities (Network Facilities) Act 2006* to be \$355 per kilometre of network route length.

**4 Payment of fees**

This is a new tax and, under section 8, is payable to the ACT Government by the owner of a network facility as defined in the *Utilities (Network Facilities Tax) Act 2006*.

Jon Stanhope  
Treasurer  
21 December 2006

\*Name amended under Legislation Act, s 60

Australian Capital Territory

## **Taxation Administration (Amounts payable - Utilities (Network Facilities Tax)) Determination 2008 (No 1)**

Disallowable instrument DI2008-37

made under the

*Taxation Administration Act 1999, s139 (Determination of amounts payable under tax laws)*

---

**1 Name of Instrument**

This instrument is the *Taxation Administration (Amounts payable - Utilities (Network Facilities Tax) Determination 2008 (No 1)*.

**2 Commencement**

This instrument commences on the day after its notification day.

**3 Determination of rate**

I determine the rate for section 8 of the *Utilities (Network Facilities) Tax Act 2006* for the year ending 31 March 2008 to be \$676 per kilometre of network route length.

**4 Payment of fees**

Fees are payable to the ACT Government by the owner of a network facility under section 8 of the *Utilities (Network Facilities Tax) Act 2006*.

**5 Revocation**

I revoke Disallowable Instrument DI2006-271.

Jon Stanhope  
Treasurer

12 March 2008

Australian Capital Territory

## **Taxation Administration (Amounts payable - Utilities (Network Facilities Tax)) Determination 2008 (No 2)**

**Disallowable instrument DI2008-204**

made under the

*Taxation Administration Act 1999, s139 (Determination of amounts payable under tax laws)*

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**1 Name of Instrument**

This instrument is the *Taxation Administration (Amounts payable - Utilities (Network Facilities Tax) Determination 2008 (No 2)*.

**2 Commencement**

This instrument commences on the day after its notification day.

**3 Determination of rate**

I determine the rate for section 8 of the *Utilities (Network Facilities) Tax Act 2006* for the year ending 31 March 2009 to be \$697 per kilometre of network route length.

**4 Payment of fees**

Fees are payable to the ACT Government by the owner of a network facility under section 8 of the *Utilities (Network Facilities Tax) Act 2006*.

**5 Revocation**

I revoke Disallowable Instrument DI2008-37.

Jon Stanhope  
Treasurer  
13 August 2008

Australian Capital Territory

## **Taxation Administration (Amounts payable - Utilities (Network Facilities Tax)) Determination 2010 (No 1)**

**Disallowable instrument DI2010-39**

made under the

*Taxation Administration Act 1999*, s139 (Determination of amounts payable under tax laws)

---

**1 Name of Instrument**

This instrument is the *Taxation Administration (Amounts payable - Utilities (Network Facilities Tax)) Determination 2010*.

**2 Commencement**

This instrument commences on the day after its notification day.

**3 Determination of rate**

I determine the rate for section 8 of the *Utilities (Network Facilities Tax) Act 2006* for the year ending 31 March 2010 to be \$722 per kilometre of network route length.

**4 Payment of fees**

Fees are payable to the ACT Government by the owner of a network facility under section 8 of the *Utilities (Network Facilities Tax) Act 2006*.

**5 Revocation**

I revoke Disallowable Instrument DI2008-204

Treasurer  
Katy Gallagher MLA  
17 March 2010

Australian Capital Territory

## **Taxation Administration (Amounts payable - Utilities (Network Facilities Tax)) Determination 2011 (No 1)**

Disallowable instrument DI2011-47

made under the

*Taxation Administration Act 1999, s139 (Determination of amounts payable under tax laws)*

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**1 Name of Instrument**

This instrument is the *Taxation Administration (Amounts payable - Utilities (Network Facilities Tax)) Determination 2011*.

**2 Commencement**

This instrument commences on the day after its notification day.

**3 Determination of rate**

I determine the rate for section 8 of the *Utilities (Network Facilities Tax) Act 2006* for the year ending 31 March 2011 to be \$749 per kilometre of network route length.

**4 Payment of fees**

Fees are payable to the ACT Government by the owner of a network facility under section 8 of the *Utilities (Network Facilities Tax) Act 2006*.

**5 Revocation**

I revoke Disallowable Instrument DI2010-39

Treasurer  
Katy Gallagher MLA  
30 March 2011

Australian Capital Territory

## Utilities (Annual Licence Fees Determination) Notice 2008

Notifiable instrument NI2008– 582

made under the

***Utilities Act 2000, s 52 (Public notice of licence decisions) (see also s 45 (Determination of fee) and s 53 (Public access to licences etc))***

---

**1 Name of instrument**

This instrument is the *Utilities (Annual Licence Fees Determination) Notice 2008*.

**2 Commencement**

This instrument commences on the day after it is notified.

**3 Determination of licence fees**

The Independent Competition and Regulatory Commission (the Commission) gives notice that the Commission has determined the annual licence fees, payable by licensed utilities under the *Utilities Act 2000* for the year ending on 30 June 2009, set out in the attached schedule (in table 3).

Table 1 in the schedule sets out the costs expected to be incurred by the Commission, the Energy and Water Consumer Council and the chief executive under part 5 (Technical regulation) of the Act, in the exercise of functions in the ACT or elsewhere, in relation to utility services.

In determining the licence fee payable by each utility, the Commission had regard to:

- the costs in relation to each utility;
- the annual licence fees payable by all utilities; and
- the relative scope and nature of the services provided by all utilities (set out in table 2 in the schedule).

Table 3 in the schedule sets out the annual licence fee for 2008-09 payable by each utility. Unless otherwise agreed in writing with the Commission, determined fees are payable by the licensee to the Commission in three (3) equal instalments to be paid by 9 January 2009, 9 February 2009, and 9 March 2009.

#### 4 Public access to determination of annual licence fees

Copies of the Commission's determination of annual licence fees are available for inspection by members of the public:

- on the Commission's webpage ([www.icrc.act.gov.au](http://www.icrc.act.gov.au));
- at the Commission's offices (located at Level 2, 12 Moore Street, Canberra City, ACT) during ordinary office hours; and
- on the ACT Legislation Register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)).

A person may inspect a determination without charge, and may make a copy of all or any part of the document. A fee may apply for making a copy.

#### 5 Explanatory Notes

In May 2007, the *Utilities Act 2000* was amended to provide for an energy industry levy. The amendments commenced on 1 July 2007 with the effect of progressively replacing licence fees for prescribed energy utilities.

For the 2007-08 levy year, the energy levy was determined only for national costs. Separately, the Commission continued to determine licence fees for local regulatory costs.

For the 2008-09 financial year, levy determinations covered both national and local regulatory costs for all licensed energy industry utilities. Annual licence fees for prescribed energy industry utilities have not been determined for 2008-09. From 2008-09, annual licence fees will continue to be determined for utilities providing water and wastewater services, and for gas transmission services.

Paul Baxter  
Senior Commissioner  
Independent Competition and Regulatory Commission  
5 December 2008

This is page 1 of the Schedule to the Utilities (Annual Licence Fees Determination) Notice 2008, NI2008-582

### SCHEDULE: Annual Licence Fees Determination, 2008-09

**Table 1: Expected Costs relating to licensees, 2008-09**

Licensee	Utility Service	Technical Regulator (ACTPLA & Workcover) (\$)	Energy & Water Consumer Council (\$)	Independent Competition & Regulatory Commission (\$)	Totals (\$)
East Australian Pipeline Limited	Gas transmission	31,000	0	535	31,535
ACTEW Corporation Ltd	Water collection and treatment	45,942	0	21,920	67,862
	Water network	45,942	1,500	21,920	69,362
	Water distribution	45,942	0	21,920	67,862
	Water connection service	45,942	0	21,920	67,862
	Water supply	0	79,400	21,920	101,320
	Sewerage network	45,942	1,500	21,920	69,362
	Sewerage connection service	45,942	0	21,920	67,862
	Sewerage service	0	1,500	21,920	23,420
Sub-total ACTEW Corporation		275,653	83,900	175,361	534,914
<b>TOTAL</b>		<b>306,653</b>	<b>83,900</b>	<b>175,896</b>	<b>566,449</b>

This is page 2 of the Schedule to the Utilities (Annual Licence Fees Determination) Notice 2008, NI2008-582

**Table 2: Scope and nature of services provided by licensee**

Section of the Act/ Utility Service	Scope and nature of services
9(a) Gas transmission	Transmission of gas through a gas transmission network.
11(a) Water collection and treatment	Collection or treatment of water, or both, for distribution through a water network.
11(b) Water network	Making a water network available for the provision of water connection services.
11(c) Water distribution	Distribution of water through a water network.
11(d) Water connection Services	Connection of premises to a water network; or variation of the capacity of the connection between premises and a water network.
11(e) Water supply	Supply of water from a water network to premises for consumption.
13(a) Sewerage network	Making a sewerage network available for the provision of sewerage connection services.
13(b) Sewerage connection Services	Connection of premises to a sewerage network; or variation of the capacity of the connection between premises and a sewerage network.
13 (c) Sewerage service	Conveyance, collection, treatment and disposal of sewage by a person from the premises of another person.

**Table 3: Annual licence fees payable, 2008-09**

Licensee	Licence fees payable (\$)
East Australian Pipeline Limited	31,535
ACTEW Corporation Ltd	534,914
<b>TOTAL</b>	<b>566,449</b>

Australian Capital Territory

## Utilities (Annual Licence Fees Determination) Notice 2006 (No 2)

Notifiable instrument NI2006-364

made under the

*Utilities Act 2000, s 52 (1)*

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### 1 Name of instrument

This instrument is the *Utilities (Annual Licence Fees Determination) Notice 2006 (No 2)*.

### 2 Commencement

This instrument commences on the day after notification.

### 3 Determination of licence fees

The Independent Competition and Regulatory Commission (the Commission) has determined that the Annual Licence Fees payable by licensed utilities under the Utilities Act 2000 (the Act) for the year ending on 30 June 2007 are as set out in the attached schedule.

Table 1 sets out the costs expected to be incurred by the Commission, the Essential Services Consumer Council and the chief executive under part 5 (Technical regulation) of the Act, in the exercise of functions in the ACT or elsewhere in relation to utility services. The Annual Licence Fee determined for each utility is the amount considered by the Commission to be a reasonable contribution by that utility to the sum of these expected costs.

In determining the licence fee payable by each utility, the Commission had regard to:

- the extent of costs in relation to each utility;
- the annual licence fees payable by all utilities; and
- the relative scope and nature of the services provided by all utilities (as set out in Table 2).

Table 3 sets out the annual licence fee payable by each utility.

Unless otherwise agreed in writing with the Commission, determined fees that are over \$15,000 are payable by the Licensee to the ICRC in three (3) instalments to be made on 13 October 2006, 15 December 2006 and 16 February 2007 being as nearly as practicable equal instalments. Any fees under \$15,000 are payable by 13 October 2006.

#### **4 Public access to determination of annual licence fees**

Copies of the Commission's determination of annual licence fees are available for inspection by members of the public on the Commission's Webpage (<http://www.icrc.act.gov.au>) and from the ICRC during ordinary office hours at Level 7, Eclipse House, 197 London Circuit, Civic ACT.

Paul Baxter  
Commissioner  
for the Independent Competition and Regulatory Commission  
04 September 2006

**Table 1: Expected costs relating to licensees**

Licensee	Utility Service	Technical Regulator (ACTPLA and Workcover)	Essential Services Consumer Commission	Independent Competition and Regulatory Commission	Total 2006-07 Licence Fee
ActewAGL Distribution (Electricity)	Electricity distribution	\$81,300	\$100,800	\$162,300	\$344,400
	Electricity connection service	\$40,600	\$0	\$80,000	\$120,600
ActewAGL Retail (Electricity)	Electricity supply	\$0	\$303,400	\$16,600	\$320,000
AGL Electricity Ltd (Electricity) <sup>1</sup>	Electricity supply	\$0	\$0	\$1,000	\$1,000
AGL Sales Pty Ltd (Electricity)	Electricity supply	\$0	\$2,000	\$7,000	\$9,000
Aurora Energy Pty Ltd (Electricity)	Electricity supply	\$0	\$2,000	\$4,000	\$6,000
Country Energy (Electricity)	Electricity supply	\$0	\$2,700	\$7,300	\$10,000
ENERGEX Retail Pty Ltd (Electricity)	Electricity supply	\$0	\$2,200	\$3,800	\$6,000
Energy Australia (Electricity)	Electricity supply	\$0	\$4,200	\$10,800	\$15,000
EnergyOne Pty Ltd (Electricity)	Electricity supply	\$0	\$2,000	\$4,000	\$6,000
Ergon Energy Pty Ltd (Electricity)	Electricity supply	\$0	\$2,100	\$5,900	\$8,000
Integral Energy Australia (Electricity)	Electricity supply	\$0	\$2,100	\$7,900	\$10,000
Origin Energy Electricity Ltd (Electricity)	Electricity supply	\$0	\$2,100	\$5,900	\$8,000
Powerdirect Pty Ltd (Electricity)	Electricity supply	\$0	\$2,000	\$4,000	\$6,000
Red Energy (Electricity)	Electricity supply	\$0	\$2,000	\$4,000	\$6,000
TRUenergy Pty Ltd (Electricity)	Electricity supply	\$0	\$2,000	\$4,000	\$6,000
TRUenergy Yallourn Pty Ltd (Electricity)	Electricity supply	\$0	\$2,000	\$6,000	\$8,000
East Australian Pipeline Limited (Gas)	Gas transmission	\$5,800	\$0	\$200	\$6,000
ActewAGL Distribution (Gas)	Gas distribution	\$100,100	\$49,200	\$101,900	\$251,200
	Gas connection service	\$50,100	\$0	\$48,700	\$98,800
ActewAGL Retail (Gas)	Gas supply	\$9,200	\$168,300	\$17,500	\$195,000
ENERGEX Retail Pty Ltd (Gas)	Gas supply	\$0	\$2,200	\$8,800	\$11,000
Country Energy (Gas)	Gas supply	\$0	\$2,500	\$10,500	\$13,000
TRUenergy Pty Ltd (Gas)	Gas supply	\$0	\$1,900	\$9,100	\$11,000
Energy Australia (Gas)	Gas supply	\$0	\$4,900	\$10,100	\$15,000
ACTEW Corporation Ltd	Water collection and treatment	\$21,000	\$3,400	\$14,700	\$39,100
	Water network	\$20,700	\$3,900	\$10,900	\$35,500
	Water distribution	\$20,700	\$3,900	\$10,900	\$35,500
	Water connection service	\$20,700	\$0	\$11,100	\$31,800
	Water supply	\$0	\$47,300	\$35,200	\$82,500
	Sewerage network	\$41,200	\$11,800	\$21,900	\$74,900
	Sewerage connection service	\$41,200	\$0	\$22,100	\$63,300
	Sewerage service	\$0	\$47,300	\$35,100	\$82,400
<b>Total</b>		<b>\$452,600</b>	<b>\$780,200</b>	<b>\$703,200</b>	<b>\$1,936,000</b>

<sup>1</sup> AGL Electricity Ltd surrendered their electricity retail licence effective 1 September 2006. AGL Electricity Ltd's customers are expected to be transferred to AGL Sales Pty Ltd. The total annual licence fee payable by the two entities is \$10,000.

**Table 2: Scope and nature of services provided by licensee**

Section of the Act/ Utility Service	Scope and nature of services
6(a) Electricity distribution	Distribution of electricity through an electricity network.
6(b) Electricity connection services	Connection of premises to an electricity distribution network; or variation of the capacity of the connection between premises and an electricity distribution network.
6(c) Electricity supply	Supply of electricity from an electricity network to premises for consumption.
9(a) Gas transmission	Transmission of gas through a gas transmission network.
9(b) Gas distribution	Distribution of gas through a gas distribution network.
9(c) Gas connection services	Connection of premises to a gas distribution network; or variation of the capacity of the connection between premises and a gas distribution network.
9(d) Gas supply	Supply gas through a gas distribution network to premises for consumption.
11(a) Water collection and treatment	Collection or treatment of water, or both, for distribution through a water network.
11(b) Water network	Making a water network available for the provision of water connection services.
11(c) Water distribution	Distribution of water through a water network.
11(d) Water connection Services	Connection of premises to a water network; or variation of the capacity of the connection between premises and a water network.
11(e) Water supply	Supply of water from a water network to premises for consumption.
13(a) Sewerage network	Making a sewerage network available for the provision of sewerage connection services.
13(b) Sewerage connection Services	Connection of premises to a sewerage network; or variation of the capacity of the connection between premises and a sewerage network.
13(c) Sewerage service	Conveyance, collection, treatment and disposal of sewage by a person from the premises of another person.

<b>Table 3: Annual licence fees</b>	
<b>Licensee</b>	<b>Total licence fee 2006-07</b>
ActewAGL Distribution (Electricity)	\$465,000
ActewAGL Retail (Electricity)	\$320,000
AGL Electricity Ltd (Electricity)	\$1,000
AGL Sales Pty Ltd (Electricity)	\$9,000
Aurora Energy Pty Ltd (Electricity)	\$6,000
Country Energy (Electricity)	\$10,000
ENERGEX Retail Pty Ltd (Electricity)	\$6,000
Energy Australia (Electricity)	\$15,000
EnergyOne Pty Ltd (Electricity)	\$6,000
Ergon Energy Pty Ltd (Electricity)	\$8,000
Integral Energy Australia (Electricity)	\$10,000
Origin Energy Electricity Ltd (Electricity)	\$8,000
Powerdirect Pty Ltd (Electricity)	\$6,000
Red Energy (Electricity)	\$6,000
TRUenergy Pty Ltd (Electricity)	\$6,000
TRUenergy Yallourn Pty Ltd (Electricity)	\$8,000
East Australian Pipeline Limited (Gas)	\$6,000
ActewAGL Distribution (Gas)	\$350,000
ActewAGL Retail (Gas)	\$195,000
ENERGEX Retail Pty Ltd (Gas)	\$11,000
Country Energy (Gas)	\$13,000
TRUenergy Pty Ltd (Gas)	\$11,000
Energy Australia (Gas)	\$15,000
ACTEW Corporation Ltd	\$445,000
<b>Total</b>	<b>\$1,936,000</b>

Australian Capital Territory

## Utilities (Annual Licence Fees Determination) Notice 2007 (No 1)

Notifiable instrument NI2007-409

made under the

*Utilities Act 2000, s 52 (1)*

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### 1 Name of instrument

This instrument is the *Utilities (Annual Licence Fees Determination) Notice 2007 (No 1)*.

### 2 Commencement

This instrument commences on the day after notification.

### 3 Determination of licence fees

The Independent Competition and Regulatory Commission (the Commission) has determined that the Annual Licence Fees payable by licensed utilities under the Utilities Act 2000 (the Act) for the year ending on 30 June 2008 are as set out in the attached schedule.

Table 1 sets out the costs expected to be incurred by the Commission, the Essential Services Consumer Council and the chief executive under part 5 (Technical regulation) of the Act, in the exercise of functions in the ACT or elsewhere in relation to utility services. The Annual Licence Fee determined for each utility is the amount considered by the Commission to be a reasonable contribution by that utility to the sum of these expected costs.

In determining the licence fee payable by each utility, the Commission had regard to:

- the extent of costs in relation to each utility;
- the annual licence fees payable by all utilities; and
- the relative scope and nature of the services provided by all utilities (as set out in Table 2).

Table 3 sets out the Annual Licence Fee payable by each utility.

Unless otherwise agreed in writing with the Commission, determined fees that are over \$20,000 are payable by the Licensee to the ICRC in three (3) instalments to be made on 31 December 2007, 28 February 2008 and 28 April 2008 being as nearly as practicable equal instalments. Any fees that are \$20,000 or less are payable by 31 December 2007.

**4 Public access to determination of annual licence fees**

Copies of the Commission's determination of annual licence fees are available for inspection by members of the public on the Commission's Webpage (<http://www.icrc.act.gov.au>) and from the ICRC during ordinary office hours at Level 2, 12 Moore Street, Canberra City, ACT.

Paul Baxter  
Senior Commissioner  
for the Independent Competition and Regulatory Commission  
30 November 2007

**Table 1: Expected costs relating to licensees**

Licensee	Utility Service	Technical Regulator (ACTPLA and Workcover)	Essential Services Consumer Commission	Independent Competition and Regulatory Commission	Total 2007-08 Licence Fee
ActewAGL Distribution (Electricity)	Electricity distribution	\$181,200	\$1,500	\$110,000	\$292,700
	Electricity connection service	\$90,600	\$0	\$55,000	\$145,600
ActewAGL Retail (Electricity)	Electricity supply	\$0	\$345,000	\$45,000	\$390,000
AGL Sales Pty Ltd (Electricity)	Electricity supply	\$0	\$3,750	\$5,250	\$9,000
AGL Sales (Queensland Electricity) Pty Ltd (Electricity)	Electricity supply	\$0	\$3,750	\$4,250	\$8,000
Aurora Energy Pty Ltd (Electricity)	Electricity supply	\$0	\$3,750	\$2,350	\$6,100
Country Energy (Electricity)	Electricity supply	\$0	\$5,000	\$5,000	\$10,000
Dodo Power and Gas Pty Ltd (Electricity)*	Electricity supply	\$0	\$2,400	\$1,425	\$3,825
Energy Australia (Electricity)	Electricity supply	\$0	\$20,000	\$5,000	\$25,000
EnergyOne Pty Ltd (Electricity)	Electricity supply	\$0	\$3,750	\$2,350	\$6,100
Integral Energy Australia (Electricity)	Electricity supply	\$0	\$3,750	\$10,000	\$13,750
Jackgreen International Pty Ltd (Electricity)	Electricity supply	\$0	\$3,750	\$2,350	\$6,100
Origin Energy Electricity Ltd (Electricity)	Electricity supply	\$0	\$3,750	\$4,250	\$8,000
Powerdirect Pty Ltd (Electricity)	Electricity supply	\$0	\$3,750	\$2,350	\$6,100
Red Energy Pty Ltd (Electricity)	Electricity supply	\$0	\$3,750	\$2,350	\$6,100
SUN Retail Pty Ltd (Electricity)	Electricity supply	\$0	\$3,750	\$2,350	\$6,100
TRUenergy Pty Ltd (Electricity)	Electricity supply	\$0	\$6,000	\$2,500	\$8,500
TRUenergy Yalloom Pty Ltd (Electricity)	Electricity supply	\$0	\$3,750	\$4,750	\$8,500
East Australian Pipeline Limited (Gas)	Gas transmission	\$12,000	\$0	\$500	\$12,500
ActewAGL Distribution (Gas)	Gas distribution	\$173,200	\$1,500	\$110,000	\$284,700
	Gas connection service	\$78,600	\$0	\$55,000	\$133,600
ActewAGL Retail (Gas)	Gas supply	\$0	\$120,000	\$48,000	\$168,000
Country Energy (Gas)	Gas supply	\$0	\$6,300	\$4,750	\$7,750
Dodo Power and Gas Pty Ltd (Gas)*	Gas supply	\$0	\$1,775	\$2,425	\$4,200
Energy Australia (Gas)	Gas supply	\$0	\$8,250	\$5,750	\$14,000
Jackgreen International Pty Ltd	Gas supply	\$0	\$2,850	\$3,750	\$6,600
SUN Retail Pty Ltd	Gas supply	\$0	\$2,850	\$3,750	\$6,600
TRUenergy Pty Ltd (Gas)	Gas supply	\$0	\$3,500	\$4,100	\$7,600
ACTEW Corporation Ltd	Water collection and treatment	\$45,400	\$0	\$20,500	\$65,900
	Water network	\$45,400	\$1,500	\$20,500	\$67,400
	Water distribution	\$45,400	\$0	\$20,500	\$65,900
	Water connection service	\$45,400	\$0	\$20,500	\$65,900
	Water supply	\$0	\$59,945	\$20,500	\$80,445
	Sewerage network	\$45,400	\$1,500	\$20,500	\$67,400
	Sewerage connection service	\$45,400	\$0	\$20,500	\$65,900
	Sewerage service	\$0	\$1,500	\$20,500	\$22,000
<b>Total</b>		<b>\$808,000</b>	<b>\$629,320</b>	<b>\$668,650</b>	<b>\$2,105,870</b>

\* Fee is for 9 months of the year only, as licence was issued in late September 2007.

**Table 2: Scope and nature of services provided by licensee**

Section of the Act/ Utility Service	Scope and nature of services
6(a) Electricity distribution	Distribution of electricity through an electricity network.
6(b) Electricity connection services	Connection of premises to an electricity distribution network; or variation of the capacity of the connection between premises and an electricity distribution network.
6(c) Electricity supply	Supply of electricity from an electricity network to premises for consumption.
9(a) Gas transmission	Transmission of gas through a gas transmission network.
9(b) Gas distribution	Distribution of gas through a gas distribution network.
9(c) Gas connection services	Connection of premises to a gas distribution network; or variation of the capacity of the connection between premises and a gas distribution network.
9(d) Gas supply	Supply gas through a gas distribution network to premises for consumption.
11(a) Water collection and treatment	Collection or treatment of water, or both, for distribution through a water network.
11(b) Water network	Making a water network available for the provision of water connection services.
11(c) Water distribution	Distribution of water through a water network.
11(d) Water connection Services	Connection of premises to a water network; or variation of the capacity of the connection between premises and a water network.
11(e) Water supply	Supply of water from a water network to premises for consumption.
13(a) Sewerage network	Making a sewerage network available for the provision of sewerage connection services.
13(b) Sewerage connection Services	Connection of premises to a sewerage network; or variation of the capacity of the connection between premises and a sewerage network.
13(c) Sewerage service	Conveyance, collection, treatment and disposal of sewage by a person from the premises of another person.

<b>Table 3: Annual licence fees</b>	
<b>Licensee</b>	<b>Total licence fee 2007-08</b>
ActewAGL Distribution (Electricity)	\$438,300
ActewAGL Retail (Electricity)	\$390,000
AGL Sales Pty Ltd (Electricity)	\$9,000
AGL Sales (Queensland Electricity) Pty Ltd (Electricity)	\$8,000
Aurora Energy Pty Ltd (Electricity)	\$6,100
Country Energy (Electricity)	\$10,000
Dodo Power and Gas Pty Ltd (Electricity)	\$3,825
Energy Australia (Electricity)	\$25,000
EnergyOne Pty Ltd (Electricity)	\$6,100
Integral Energy Australia (Electricity)	\$13,750
Jackgreen International Pty Ltd (Electricity)	\$6,100
Origin Energy Electricity Ltd (Electricity)	\$8,000
Powerdirect Pty Ltd (Electricity)	\$6,100
Red Energy Pty Ltd (Electricity)	\$6,100
SUN Retail Pty Ltd (Electricity)	\$6,100
TRUenergy Pty Ltd (Electricity)	\$8,500
TRUenergy Yallourn Pty Ltd (Electricity)	\$8,500
East Australian Pipeline Limited (Gas)	\$12,500
ActewAGL Distribution (Gas)	\$418,300
ActewAGL Retail (Gas)	\$168,000
Country Energy (Gas)	\$7,750
Dodo Power and Gas Pty Ltd (Gas)	\$4,200
Energy Australia (Gas)	\$14,000
Jackgreen International Pty Ltd (Gas)	\$6,600
SUN Retail Pty Ltd (Gas)	\$6,600
TRUenergy Pty Ltd (Gas)	\$7,600
ACTEW Corporation Ltd	\$500,845
<b>Total</b>	<b>\$2,105,870</b>

Australian Capital Territory

## Utilities (Annual licence fees determination) Notice 2010 (No 1)

Notifiable Instrument NI2010-574

made under the

*Utilities Act 2000*, s 52 (Public notice of licence decisions) (see also s 45 (Determination of fee) and s 53 (Public access to licences etc))

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### 1 Name of instrument

This instrument is the *Utilities (Annual licence fees determination) Notice 2010 (No 1)*.

### 2 Commencement

This instrument commences on the day after it is notified.

### 3 Determination of licence fees

The Independent Competition and Regulatory Commission (the Commission) gives notice that the Commission has determined the annual licence fees payable by licensed utilities under the *Utilities Act 2000* for the years ending on 30 June 2010 and 30 June 2011, as set out in the attached schedule (in tables 1 and 2).

Unless otherwise agreed in writing with the Commission, determined fees are payable by the licensee to the Commission in three (3) equal instalments to be paid by 30 November 2010, 31 January 2011 and 31 March 2011.

Table 3 in the schedule sets out the costs incurred by the Commission, the ACT Civil and Administrative Tribunal, and the chief executive under part 5 (Technical regulation) of the Act, in the exercise of functions in the in the ACT or elsewhere, in relation to utility services for the year ending on 30 June 2010.

Table 4 in the schedule sets out the costs expected to be incurred by the Commission, the ACT Civil and Administrative Tribunal, and the chief executive under part 5 (Technical regulation) of the Act, in the exercise of functions in the in the ACT or elsewhere, in relation to utility services for the year ending on 30 June 2011.

In determining the licence fee payable by each utility, the Commission had regard to:

- the extent of costs in relation to each utility;
- the annual licence fees payable by all utilities; and
- the relative scope and nature of the services provided by the utilities (set out in table 5 in the schedule).

#### 4 Public access to determination of annual licence fees

Copies of the Commission's determination of annual licence fees are available for inspection by members of the public:

- on the Commission's webpage ([www.icrc.act.gov.au](http://www.icrc.act.gov.au));
- at the Commission's offices (located at Level 2, 12 Moore Street, Canberra City, ACT) during ordinary office hours; and
- on the ACT Legislation Register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)).

A person may inspect a determination without charge, and may make a copy of all or any part of the document. No charge will apply.

Paul Baxter  
Senior Commissioner  
Independent Competition and Regulatory Commission  
12 October 2010

This is page 1 of the Schedule to the Utilities (Annual licence fees determination) Notice 2010 (No 1), NI2010-574

## SCHEDULE

**Table 1: Annual licence fees (gas transmission, and water and wastewater utility services), 2009-10<sup>1</sup>**

Licensee	Licence fees payable (\$)
East Australian Pipeline Limited (gas transmission)	24,592
ACTEW Corporation Ltd (water and waste water services)	450,468
<b>Total</b>	<b>475,060</b>

Note:

<sup>1</sup>Annual licence fees for 2009-10 have been redetermined based on actual costs incurred by the Commission, the ACT Civil and Administrative Tribunal, and the chief executive under part 5 (Technical regulation) of the Act as set out in Table 3. Licensees will receive a refund where actual costs are less than expected costs determined for 2009-10.

**Table 2: Annual licence fees payable (gas transmission, and water and wastewater utility services), 2010-11<sup>1</sup>**

Licensee	Licence fees payable (\$)
East Australian Pipeline Limited (gas transmission)	52,521
ACTEW Corporation Ltd (water and waste water services)	696,356
<b>Total</b>	<b>748,877</b>

Note:

<sup>1</sup>Annual licence fees for 2010-11 have been determined based on expected costs as set out in Table 4. The licence fees will be redetermined in 2011-12 based on actual costs incurred by the Commission, the ACT Civil and Administrative Tribunal, and the chief executive under part 5 (Technical regulation) of the Act.

This is page 2 of the Schedule to the Utilities (Annual licence fees determination) Notice 2010 (No 1), NI2010-574

**Table 3: Costs incurred (gas transmission, and water and wastewater utility services), 2009-10**

Licensee	Utility Service	Technical Regulator <sup>1</sup> (\$)	ACAT <sup>2</sup> (\$)	ICRC <sup>3</sup> (\$)	Totals (\$)
East Australian Pipeline Limited	Gas transmission	23,892	0	700	24,592
ACTEW Corporation Ltd	Water collection and treatment	33,351	0	24,825	58,176
	Water network	33,351	1,500	24,825	59,676
	Water distribution	33,351	0	24,825	58,176
	Water connection service	33,351	0	24,825	58,176
	Water supply	0	47,264	24,825	72,089
	Sewerage network	33,351	1,500	24,825	59,676
	Sewerage connection service	33,351	0	24,825	58,176
	Sewerage service	0	1,500	24,825	26,325
<i>Sub-total ACTEW Corporation</i>		<i>200,106</i>	<i>51,764</i>	<i>198,598</i>	<i>450,468</i>
<b>Total</b>		<b>223,998</b>	<b>51,764</b>	<b>199,298</b>	<b>475,060</b>

Notes:

<sup>1</sup> The chief executive under part 5 (Technical regulation) of the Act is the chief executive of the ACT Planning and Land Authority.

<sup>2</sup> The ACT Administrative and Civil Tribunal (Energy and Water Unit) in hearing and deciding matters to which a utility is party.

<sup>3</sup> The Independent Competition and Regulatory Commission.

This is page 3 of the Schedule to the Utilities (Annual licence fees determination) Notice 2010 (No 1), NI2010-574

**Table 4: Costs expected to be incurred (gas transmission, and water and wastewater utility services), 2010-11**

Licensee	Utility service	Technical Regulator <sup>1</sup> (\$)	ACAT <sup>2</sup> (\$)	ICRC <sup>3</sup> (\$)	Totals (\$)
East Australian Pipeline Limited	Gas transmission	51,821	0	700	52,521
ACTEW Corporation Ltd	Water collection and treatment	71,684	0	25,720	97,404
	Water network	71,684	1,500	25,720	98,904
	Water distribution	71,684	0	25,720	97,404
	Water connection service	71,684	0	25,720	97,404
	Water supply	0	55,990	25,720	81,710
	Sewerage network	71,684	1,500	25,720	98,904
	Sewerage connection service	71,684	0	25,720	97,404
	Sewerage service	0	1,500	25,720	27,220
<i>Sub-total ACTEW Corporation</i>		430,103	60,490	205,763	696,356
<b>Total</b>		<b>481,924</b>	<b>60,490</b>	<b>206,463</b>	<b>748,877</b>

Notes:

<sup>1</sup> The chief executive under part 5 (Technical regulation) of the Act is the chief executive of the ACT Planning and Land Authority.

<sup>2</sup> The ACT Administrative and Civil Tribunal (Energy and Water Unit) in hearing and deciding matters to which a utility is party.

<sup>3</sup> The Independent Competition and Regulatory Commission.

This is page 4 of the Schedule to the Utilities (Annual licence fees determination) Notice 2010 (No 1), NI2010-574

**Table 5: Scope and nature of services provided by licensees (gas transmission, and water and wastewater)**

Section of the Act/ Utility service	Scope and nature of services
9(a) Gas transmission	Transmission of gas through a gas transmission network.
11(a) Water collection and treatment	Collection or treatment of water, or both, for distribution through a water network.
11(b) Water network	Making a water network available for the provision of water connection services.
11(c) Water distribution	Distribution of water through a water network.
11(d) Water connection Services	Connection of premises to a water network; or variation of the capacity of the connection between premises and a water network.
11(e) Water supply	Supply of water from a water network to premises for consumption.
13(a) Sewerage network	Making a sewerage network available for the provision of sewerage connection services.
13(b) Sewerage connection Services	Connection of premises to a sewerage network; or variation of the capacity of the connection between premises and a sewerage network.
13 (c) Sewerage service	Conveyance, collection, treatment and disposal of sewage by a person from the premises of another person.