

Regulatory Impact Statement — Utilities (Network Facilities) Tax

Introduction

The ACT Government announced in the 2006-07 budget a new charge called the Utility Land Use Permit (ULUP), to take effect from 1 January 2007. Following consultation with utility companies, the nature of the charge was changed to a tax on ownership of utility network infrastructure in the ACT and is called the Utilities (Network Facilities) Tax. It requires:

- amendment to the *Taxation Administration Act 1999*;
- information to be provided by utilities; and
- receipting, compliance, monitoring and reporting by the Revenue Office.

Utility network owners are not currently charged for the network infrastructure they have installed in the ACT. The utilities network facilities charge will impose a charge on the owners of such utility network infrastructure. The charge is 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.

The main implementation issues are to:

- a) establish the legislative basis to support compliance and enforcement; and
- b) consult with the utilities and government agencies to maximise the ease of implementation and to minimise the risk of litigation by one or more of the utilities against the charge.

The Problem

The key regulatory problem is to minimise the burden of the provision of information by the utility companies while ensuring the most fair and equitable assessment of the revenue payable to the Territory, and consequential compliance in paying the charge.

Government Policy Objectives

The main policy objective of Government in imposing the charge is to raise ACT Government revenue.

Consultation

Consultation has been undertaken and is continuing with stakeholders. In particular, the consultation is to discuss:

- the nature of the charge and the proposed implementation requirements;
- how data about infrastructure network linear measures can most easily be provided by utility companies, with a particular focus on using the utilities' existing data sets in order to minimise compliance effort;
- the most effective reporting and compliance regime; and
- other issues identified by affected stakeholders.

Treasury has consulted with various parties including ACT Planning and Land Authority, ACTEW, ActewAGL, TransACT, Country Energy, TransGrid, Telstra, Optus, the Government Solicitor's Office, Chief Minister's Department and the Essential Services Consumer Council.

Options for achieving the Government's objective

- 1) Create an administrative charge regime without supporting legislation. This option would most likely require the utilities to self-assess the extent of their assets on ACT land and pay the charge without any particular force of law.
- 2) Impose the charge by law, requiring the utilities to identify their network route length on land within the ACT.
- 3) As for option 2) with the Territory providing some property rights or formal tenure in 'return' for the charge.
- 4) Calculate the charge by other than the linear network length x \$rate method. This option could apply in conjunction with any of the above options.

Mutual recognition

No specific mutual recognition issues have been identified. Various laws exist in other jurisdictions, both at the State and local government levels, that relate to utility infrastructure on public land. Each system varies significantly in its application and comprehensiveness. Other jurisdictions' methods have been researched, however, none have been assessed as being potentially directly applicable in the ACT.

No other Australian jurisdiction has a regime as comprehensive as that proposed in Option 3 above.

Impact Analysis:

One of the most significant impacts of the charge is likely to be the provision of data from the utilities. Most utilities, with the exception of telecommunications companies, have advised that they have reasonably good digital data holdings of their infrastructure, and that the proposed method of measurement does not impose any significant workload. However, telecommunications companies have advised that they do not have such data. The legislation therefore allows for a methodology to be approved for a proxy for the line length, thus reducing the compliance burden on utilities with data limitations.

Regulated price directions determine the ability of most of the utilities to pass through the costs of this tax. In summary:

- Water and sewerage costs can be passed through (under provisions of the Independent Competition and Regulatory Commission Act);
- Electricity costs cannot be passed through until the new price directions are made in mid 2009;
- Gas costs can be passed through under the existing price direction; and
- Telecommunications costs may be passed through subject to commercial and other regulatory conditions.

Further details are at Attachment A.

Community Service Obligation funding has been provided to reduce the impact of this tax on eligible pensioners and Department of Veterans’ Affairs gold card holders. Rebates for these eligible persons will apply in accordance with established arrangements, noting that the network owners decide whether the charge to customers is a fixed amount or part of the volumetric charge, and that electricity costs will not be passed through until mid 2009.

The following costs and benefits for the first three options have been identified.

Option 1 Create an administrative regime without supporting legislation

Sector	Costs	Benefits
Business	<ul style="list-style-type: none"> • Where utilities cannot pass the tax through to customers because of regulatory and / or commercial considerations, they will bear all or some of the cost of the tax. This is most likely to happen in the short term with telecommunications and electricity. Further information on this issue is at Attachment A. • The cost also relates to the extent to which utilities were willing to comply. For those utilities that choose to ignore the charge, or only partially comply with it, the cost to business would be reduced. • Utilities need to provide data describing the extent of their assets on ACT land. The costs for each utility would vary according to the comprehensiveness, accuracy and technology basis of their data holdings. • Other costs may include some data holding system changes, and billing system changes, although these are not likely to be significant. 	<ul style="list-style-type: none"> • No benefit to business over existing arrangement. • Compared to other options, utilities might find that reporting and payments could be done at times to suit themselves because the Territory would have little capacity to enforce compliance. • The voluntary nature of this option could lead to a competitive advantage for those utilities that decided not to comply. (Similarly there would be a cost for complying utilities).
Community	<ul style="list-style-type: none"> • The ACT community will directly bear the cost of this fee to the extent that the cost can be passed through to customers. Where the cost is borne by ActewAGL for electricity, and cannot be passed through, the cost to the community will be borne through the reduced dividend to Government. 	<ul style="list-style-type: none"> • A minimal benefit exists in more transparency of cost allocation. There is a broader benefit of Government revenues being allocated to community priorities.
Government	<ul style="list-style-type: none"> • The Territory will incur some costs in establishing processes and system support. Some costs may also be incurred in supporting compliance. • Potentially reduced revenue, depending on level of compliance. 	<ul style="list-style-type: none"> • There will be minimal administration costs. • There is some potential for access to the data provided by the utilities becoming available for better land management. This would be subject to separate negotiations with the utilities.

Option 2 Impose the charge by law, requiring the utilities to identify the length of their network infrastructure on land within the ACT.

Sector	Costs	Benefits
Business	<ul style="list-style-type: none"> Costs would be similar to Option 1, but without the option for discretion with regard to compliance. 	<ul style="list-style-type: none"> No benefits over the current 'no charge' arrangement. Greater clarity about obligations. More certainty that competitors would be facing similar charges.
Community	<ul style="list-style-type: none"> As for Option 1 	<ul style="list-style-type: none"> As for Option 1.
Government	<ul style="list-style-type: none"> Implementation compliance costs will include system changes, administration, ensuring compliance, auditing and any negotiations to achieve the 'agreed method' of measurement. This cost is expected to be minor and absorbed within existing budgets. There may be some other costs, such as if the ACTPLA system is used to 'receive' the utilities' data. 	<ul style="list-style-type: none"> Significantly increased likelihood of full compliance and therefore meeting revenue targets. As for Option 1, except for the ACT Revenue costs.

Option 3 Impose the charge by law, requiring the utilities to identify their use and occupation of land within the ACT, with the Territory providing some property rights or formal tenure in 'return' for the charge.

Sector	Costs	Benefits
Business	<ul style="list-style-type: none"> As for Option 2, plus ongoing costs associated with registration of easements in gross, or similar land interest. During consultations, utilities have indicated the benefit of obtaining easements would not offset the costs and would not provide any worthwhile benefits. 	<ul style="list-style-type: none"> As for Option 2. It is unlikely that the utilities will see any specific extra benefit in this Option because they already have access by law. Any improvements to access would be better achieved by other means.
Community	<ul style="list-style-type: none"> As for Option 1. 	<ul style="list-style-type: none"> As for Option 1
Government	<ul style="list-style-type: none"> As for Option 2, with extra costs associated with maintaining the system to record easements. 	<ul style="list-style-type: none"> As for Option 2.

Option 4 Calculate the charge by other than the linear network length multiplied by the \$rate method. This option could apply in conjunction with any of the above options. A range of alternatives and permutations could apply.

Sector	Costs	Benefits
Business	<ul style="list-style-type: none"> • The overall cost would not vary because the total cost will equate to the budgeted revenue. • The proportion per utility of the total cost could vary according to the calculation formula, and this could be seen as a cost to any utility adversely affected by the change. • There could be some cost in data collection, management and reporting but this would depend on the nature of the alternative calculation. Utilities have not proposed any other preferred method. 	<ul style="list-style-type: none"> • Overall benefits would not change significantly even if the alternative formula were much simpler. • Benefits, if any, to individual utilities would be the reduced cost resulting from a smaller proportion of the total tax being applicable to the utility.
Community	<ul style="list-style-type: none"> • The direct overall cost to the community would probably not vary. • The cost per utility service could vary. 	As for Option 1.
Government	<ul style="list-style-type: none"> • As for Option 2. • Subject to the alternative method used, there would be a risk that the charge may discriminate against telecommunications carriers which would be inconsistent with Federal legislation. 	<ul style="list-style-type: none"> • As for Options 1 or 2 according to which Option this alternative calculation was combined with.

Conclusions:

Option 1:

Option 1, to create an administrative regime, without the force of law, would be likely to result in poor compliance. This would then result in reduced revenue to the Territory. Although the utilities may be more willing to comply if they can fully pass through the cost to consumers, it would only take one utility to default to any extent, for the system to be unfair and inequitable. Such default might also encourage other utilities to stop complying.

Given the potential for litigation even with the force of law, there is a high risk of some utilities not complying in the early stages.

If the utilities were to comply there would be minimal difference in the cost to the utilities between Options 1 and 2 because under both options they would need to provide the best available data.

Option 2:

This option applies the force of law of both the Utilities (Facilities Network) Tax and taxation legislation to enforce compliance. There is a much greater likelihood of the Territory receiving the revenue it is entitled to without providing any additional, and possibly unnecessary, benefits to the utilities, such as easements. This option also supports equitable and uniform imposts between the utilities in that non-compliance would be significantly less attractive.

There is no significant regulatory impost perceived at this stage in this Option compared with Option 1.

Other issues identified in Option 1 remain.

Option 3:

Option 3 is the same as Option 2, but with the provision of some interest in the land to the utilities. This option has no benefit relative to cost.

Option 4:

Calculate the charge by other than the linear network length x \$rate method. This option could apply in conjunction with any of the above options. A range of alternatives and permutations could apply, however any calculation based on goods and services could be determined to be an excise tax, and therefore unconstitutional for the ACT to apply. It could also result in discrimination against telecommunications carriers which would be inconsistent with Federal legislation and could therefore provide grounds for litigation.

Preferred Option:

At this stage, Option 2 is preferred as it is the most practical option to achieve compliance while minimising the administrative and regulatory impact.

Implementation

Government:

Legislation to support this tax was passed by the Legislative Assembly on 14 December 2006. Taxation administration function to continue implementation from this date in accordance with standard taxation administration procedures.

Stakeholders:

Treasury has been consulting, and will continue to consult, with network infrastructure owners throughout the implementation process. There is expected to be a moderate implementation cost on owners of infrastructure, as they will have to provide details of their network infrastructure on land within the ACT. However, the costs of implementation will be minimised by giving the owners time to comply, and by working with utility companies to minimise any other compliance costs. Also, consultation with the utilities is intended to develop an 'agreed method' of measurement that is achievable by the utilities and acceptable to Government.

Utilities (Network Facilities) Tax

Pass through provisions for Utility Companies

The following table provides details of regulatory provisions for, and constraints on the ability of, utility companies to pass through the utilities network facilities charge.

Utility / Company	Pass Through Provisions
Electricity	Context: electricity transmission and distribution prices are governed at a relatively high level by the National Electricity Law to which the ACT is a signatory. Each jurisdiction then appoints a regulating authority for distribution networks to determine details of the pricing, including conditions for pass through of additional unforeseen costs. In the ACT the distribution network regulator is the Independent Competition and Regulatory Commission. In New South Wales the regulator is the Independent Pricing and Regulatory Tribunal (IPART). The Australian Competition and Consumer Commission regulates the extra high voltage transmission networks.
ActewAGL – distribution network	ActewAGL’s current price direction, which continues until 1 July 2009, and is supported by the National Electricity Law, does not provide for changes in ACT taxes and charges to be immediately passed through. ActewAGL will therefore need to absorb the charge in its operating expenses until mid 2009. Part of this cost will flow through to reduced dividends to the ACT Government.
Country Energy – distribution network	Country Energy (CE) may not be able to pass through this charge under the terms of its current price direction which is regulated by IPART.
TransGrid – transmission network	As an extra high voltage transmission network TransGrid is regulated by the ACCC. The price direction indicates that TransGrid can immediately pass through the charge to the distribution network utilities.

Utilities (Network Facilities) Tax

Utility / Company	Pass Through Provisions
Gas	Context: Gas pricing is also regulated by a national code and jurisdictional regulators.
ActewAGL – mains and distribution network	The gas price direction allows the cost to be immediately passed through to ACT customers.
Water and sewerage	<p>Context: The ACT Independent Competition and Regulatory Commission regulates water and sewerage pricing. The Water and Sewerage Price Direction pass through provisions do not include ACT Government taxes. However, because there is no overriding law (such as apply to electricity and gas) the Minister can declare, under section 4C of the ICRC Act, that the tax is a statutory charge which affects the cost of providing a utility service and may be passed on in full to consumers.</p> <p>The next price direction for water and sewerage is to be effective on 1 July 2008.</p>
Telecommunications	Context: Telecommunications access prices for Telstra's network are regulated by the ACCC and apply nationally. Retail prices are contestable and therefore not regulated.
Telstra	Telstra is required to negotiate access price changes with the ACCC. National uniform pricing may be a constraint in passing through the cost to ACT customers only.
Optus	Optus will make pass through decisions based on commercial considerations.
TransACT	TransACT will also make pass through decisions based on commercial considerations.