



**ACT**  
Government

## **REGULATORY IMPACT STATEMENT**

*Utilities (Technical Regulation) Operating Certificate Fees Determination 2016*

***Disallowable Instrument DI2016-263***

Technical Regulator

Environment and Planning Directorate

August 2016

## **Purpose**

The purpose of this Regulatory Impact Statement is to provide information about the regulatory impact of the *Utilities (Technical Regulation) Operating Certificate Fees Determination 2016* (the Instrument), made under the *Utilities (Technical Regulation) Act 2014* (the Act). The Instrument determines general fees the Technical Regulator may impose in granting or regulating an operating certificate for an unlicensed regulated utility service.

## **Policy Problem**

A user-pays regulatory system was established for licensed utilities under the *Utilities Act 2000*. Similarly, it is reasonable and equitable to expect unlicensed regulatory utilities to contribute to the costs of their regulation.

The fees established by this Instrument are on a cost recovery basis only. However, they will assist in preventing cost-shifting (from the utility to the Technical Regulator) and cross-subsidisation from 'compliant utilities' (responsible, reliable, safe, compliant) to those utilities that do not meet the required standards. Instead the burden of cost will fall where the Technical Regulator has to do the most work.

## **The Authorising Law**

The Instrument is made and approved by the Technical Regulator under Section 110 of the Act. The Act relates to the safe, reliable and efficient delivery of regulated utility services. The objects of the Act include promoting the long-term serviceability of regulated utility networks and services ensuring the safe and reliable operation of regulated utility networks and service, including protecting the public, workers, property and the environment.

An unlicensed regulated utility provides, or proposes to provide, a regulated utility service under the Act, but is either not required to be licensed under the *Utilities Act 2000*, or is exempt from the requirement to be licensed. An unlicensed regulated utility must apply to the Technical Regulator for an operating certificate.

## **Objectives of the Fees Instrument**

The Instrument solves the policy problem outlined above by establishing a user-pays regulatory scheme for key regulatory activities for unlicensed regulated utilities.

An application for an operating certificate usually requires the submission of a regulatory plan, which needs to be assessed by the Technical Regulator. An operating certificate may also have conditions attached requiring reporting, auditing, monitoring, compliance, site inspections and other relevant activities, which may create costs for the Technical Regulator.

The purpose of this Instrument is to determine fees to assist in recovering the costs incurred by the Technical Regulator in meeting the Regulator's obligations under the Act. The fees relate to the Technical Regulator's role in the grant of an operating certificate and the

ongoing audit and compliance of the operating certificate. Cost recovery is not sought for policy development or for reasonable initial advice.

### **Consistency of the Instrument with the Act**

The Instrument is made and approved by the Technical Regulator under Section 110 of the Act.

The Instrument is consistent with the objects of the Act as it assists the Technical Regulator, through cost recovery fees, to assess applications for operating certificates and undertake reporting, auditing, monitoring, compliance, site inspections and other relevant activities to ensure the safe, reliable and efficient delivery of unlicensed regulated utility services, including protecting the public, the people working with the regulated utility services, property and the environment.

### **Consideration of Alternative Options**

There are no reasonable alternatives available that simultaneously facilitate meeting the obligations of the Technical Regulator and the unlicensed regulated utilities, and link the costs incurred to the responsible utility. The Act specifically provides for the imposition of fees on unlicensed regulated utilities.

### **Cost/Benefit Analysis of Implementing the Instrument**

While it is acknowledged that the fee instrument imposes costs on each unlicensed regulated utility, the fees are reasonable, proportionate and appropriate. The fees are necessary to ensure that the Technical Regulator can recover costs for assessing and monitoring operating certificates. Applying fees based on an hourly rate to each unlicensed regulated utility encourages a high level of compliance with the requirements of the Act at the earliest possible stage.

If the Technical Regulator is not able to implement this minimal cost recovery framework, the costs of regulating the unlicensed regulated utilities would need to be derived entirely from either consolidated revenue (the ACT Government thereby subsidising private commercial industry) or a large general fee from each unlicensed regulated utility.

The large general fee would remove the transparency of specific fees for specific work; establish cross-subsidisation between the unlicensed regulated utilities (better performers paying for lesser performers) and create a higher barrier of entry to the sector. This would have the effect of limiting growth and innovation in a dynamic sector of the economy that is essential to the ACT Government's broader policy and societal goals, such as sourcing energy from 100 percent renewables by 2020.

## **Consultation**

The Utilities Technical Regulation team has consulted with the current known unlicensed regulated utilities: three solar farms (developers and engineering contractors building the facilities), and Transport Canberra and City Services (as CMA and TAMS, for the light rail, inner north reticulation network, and dams).

## **Consistency of the Code with Scrutiny of Bills Committee Principles**

The Scrutiny of Bills Committee's terms of reference require it to consider whether (among other things) any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):

- is in accord with the general objects of the Act under which it is made;
- unduly trespasses on rights previously established by law;
- makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
- contains a matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly.

The Instrument is consistent with the objects of the Act as it assists the Technical Regulator, through cost recovery fees, to undertake reporting, auditing, monitoring, compliance, site inspections and other relevant activities to ensure the safe, reliable and efficient delivery of regulated utility services, including protecting the public, the people working on regulated utility services, property and the environment.

The Instrument does not unduly trespass on rights previously established by law. The Instrument is made as a disallowable instrument under the Act. The relevant utilities have been consulted and are supportive of the regulatory fee framework.

The Instrument creates obligations on the affected unlicensed regulated utilities to contribute towards the cost of their regulation. However, it does not make any decision-making functions, obligations or rights unduly dependent on non-reviewable decisions.

Charging the unlicensed regulated utilities is a matter which is expressly considered in the Act. Section 110 grants the Technical Regulator authority to determine fees. These fees will assist in giving effect to the objects of the Act, and are an appropriate and necessary measure to provide for the technical regulation of important utility services to ensure their safety, reliability and efficiency. Applicants for an operating certificate will be given an indication of the likely time required to assess their application. The applicant will have the opportunity to keep their application and ongoing compliance costs to a minimum by ensuring that their regulatory plan and ongoing project are of a high quality and demonstrate compliance with the Act. The scope of the fees is made clear in the Instrument.