

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Utilities (Network Facilities Tax) Bill 2006

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## **EXPOSURE DRAFT**

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## Utilities (Network Facilities Tax) Bill 2006

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### **A Bill for**

An Act to impose a tax on owners of utility network facilities, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## 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.

## 2 Commencement

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

## 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*network facility*—see section 6.' means that the term '*network facility*' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

## 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

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## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 6 What is a *network facility*?

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

*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).

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**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
- (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)).

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**9 Registration of owners of network facilities**

The commissioner must register a person as the owner of a network facility if—

- (a) the person owns a network facility; and
- (b) all or any part of the facility is on land in the ACT; and
- (c) the person has applied to the commissioner for registration as the owner of the facility.

**10 Offence—failure to register**

- (1) A person commits an offence if—
  - (a) the person becomes the owner of a network facility; and
  - (b) the network facility is on land in the ACT; and
  - (c) the person does not apply to the commissioner to be registered under this Act within 90 days after the day the person becomes the owner of the network facility.

Maximum penalty: 250 penalty units.

- (2) Strict liability applies to subsection (1) (a) and (b).
- (3) A person commits an offence if—
  - (a) on the commencement of this Act, the person owns a network facility; and
  - (b) the network facility is on land in the ACT; and
  - (c) the person does not apply to the commissioner to be registered under this Act within 90 days after the day this Act commences.

Maximum penalty: 250 penalty units.

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- (4) Strict liability applies to subsection (3) (a) and (b).
- (5) Subsections (3) and (4) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (6) Subsections (2), (3), (4) and (5) and this subsection expire 1 year after the day this section commences.

**11 Ownership of network facility—fixtures to land**

For this Act, 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.

**12 Returns**

- (1) The owner of a network facility must lodge a return for a year if, at any time during the year, the owner was the owner of a network facility on land in the ACT.
- (2) The return for a year must—
  - (a) be in writing; and
  - (b) be lodged with the commissioner not later than 60 days after the end of the year; and
  - (c) state—
    - (i) the route length of each network facility to which the return relates; and
    - (ii) the way the owner calculated the route length for the facility.

*Note* If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for this provision, the form must be used.

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**13 Assessment**

If the route length used in the commissioner's assessment of the tax payable in relation to a network facility for a year is different from that stated in the owner's return for the facility for the year, the assessment must also include a statement about—

- (a) the information the commissioner used in the assessment; and
- (b) the way the commissioner estimated the route length.

*Note* Assessments are made under the *Taxation Administration Act 1999* and objections may be made under that Act, s 100 (1) (a).

**14 Regulation-making power**

The Executive may make regulations for this Act.

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

**15 Taxation Administration Act 1999, new section 4 (ka)**

*insert*

- (ka) the *Utilities (Network Facility Tax) Act 2006*;

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following term:

- the Territory.

**assessment**—see the *Taxation Administration Act 1999*, dictionary.

**commissioner**—see the *Taxation Administration Act 1999*, dictionary.

**land** includes water.

**network facility**—see section 6.

**network facility tax** means tax payable under section 8.

**on**—a network facility is **on** land if the facility, or any part of the facility, is on, over or under the land.

**owner**, for a network facility, means the legal owner, whether or not the legal owner also has rights to operate the facility.

**registered** means registered under section 9.

**route length**, of a network facility on land, means the length of the horizontal projection of the facility on the land.

**utility network**—see section 7.

**year** means a year ending on 31 March.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2006.

**2 Notification**

Notified under the Legislation Act on 2006.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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