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INTRODUCTION

The ACT Government is committed to embracing new and innovative technology and moving toward a more sustainable future. For the public to benefit from new technologies, new infrastructure must be constructed and maintained. Any new infrastructure relating to the provision of a utility service to the public needs to be adequately regulated. If it is not licensed by the Independent Competition and Regulatory Commission (ICRC) under the Utilities Act 2000, it will require an operating certificate issued by the Technical Regulator for initial construction and continued operation.

1. PURPOSE OF THIS GUIDE

This guide supports and guides the application and assessment process for operating certificates. There is flexibility within the process for assessing and issuing operating certificates. Each application is assessed on its own merits against specific criteria outlined in Part 6 Section 46 of the Utilities (Technical Regulation) Act 2014 (the Act), which can be found on the ACT Legislation Register at http://www.legislation.act.gov.au/a/2014-60/default.asp.

The process is simple and straightforward for small and medium scale electrical generators connected to the low voltage network, and there is flexibility for larger generators and other regulated utility services. Applicants are advised to contact the Utilities Technical Regulation Team (UTR) within Access Canberra early in the design process for advice.

2. LICENSED AND UNLICENSED UTILITIES

Utilities in the ACT are regulated by the ICRC and the Utilities Technical Regulator.

The ICRC administers the licensing framework for utilities and determines industry codes for licensed utilities. Licensed utilities can be in the areas of: electricity generation, distribution, connection and transmission; gas distribution, connection and transmission; and water and sewerage collection, treatment, distribution and conveyance. This framework is established in the Utilities Act 2000 Part 3.

The Technical Regulator provides technical regulation of licensed utility services and a range of unlicensed regulated utility services. Regulated utility services are defined in Part 2 of the Act. Licensed utilities do not require operating certificates. Unlicensed utilities require operating certificates from the Technical Regulator.
3. WHO SHOULD USE THIS GUIDE?

Developers, government agencies and community organisations considering the construction of regulated utility services in the ACT that are not otherwise licensed under the Utilities Act 2000.

4. WHAT IS AN OPERATING CERTIFICATE?

An operating certificate allows an unlicensed regulated utility service to demonstrate compliance with the Act. Operating certificates can be flexible so you can meet your regulatory requirements in accordance with your wider project planning.

5. DO I NEED AN OPERATING CERTIFICATE?

If the service you propose is regulated under the Act, but not licensed under the Utilities Act 2000, you require an operating certificate. Part 2 Section 9 of the Act sets out the different regulated utility services. Here is a summary of regulated utility services that require operating certificates. Click on each heading for more information:

- **Dams** – registrable dams which are greater than 5 metres in height and/or have a water storage capacity of more than 250 megalitres.

- **District energy services** – any discrete district network operating electricity (or another form or energy), reticulated gas, water, water vapour or other fluid. The Inner North Reticulation Network for stormwater falls within this category.

- **Electrical generation** – small, medium and larger scale, for example solar energy generating facilities (solar farms), mini hydro generating systems, micro wind turbines and waste heat recovery. The form of operating certificate will depend on the size of the generator.

- **Light rail** – network and infrastructure only.

If you intend to construct a utility service that is not mentioned in this document, please contact the Utilities Technical Regulation Team to discuss your proposal.
6. KEY CONCEPTS AND TERMS COVERED WITHIN THIS GUIDE

6.1 TECHNICAL REGULATION AND ROLE OF THE TECHNICAL REGULATOR

The Director-General of the Environment and Planning Directorate (EPD) is the Technical Regulator under the Act. The Technical Regulator has carriage of the Act on behalf of the Minister for the Environment and Climate Change.

The team supporting the Technical Regulator is the UTR team within Access Canberra, the regulatory arm of the Chief Minister Treasury and Economic Development Directorate (CMTEDD).

Technical regulation provides a regulatory mechanism that fosters the development of regulated utility services while ensuring community protection and the reliability, serviceability and functionality of these services.

The regulatory system is designed to reduce costs for proponents who can demonstrate engineering competency at each stage of a project. This places the regulatory burden on proponents who fail to engage adequate engineering resources for their projects. This prevents cross-subsidies from well-managed projects to poorly managed projects.

Developers, government agencies and community organisations considering the construction of regulated utility services are encouraged to contact the UTR team early to discuss their proposal with one of our engineers. There is no charge for this initial advice, which is no longer than two hours, to support your application.

6.2 REGULATORY PLAN

A regulatory plan is required with an application for a Design and Construct Operating Certificate and a Provision of Service Operating Certificate. The regulatory plan should consider the design, operation and maintenance of the regulated utility service, and identify key milestones within this process. The plan should identify the entities involved with the service, and demonstrate the suitability of any key staff for their identified role.

There is no prescribed format for the regulatory plan. The Technical Regulator will grant the relevant operating certificate once satisfied you have met the following criteria under section 46 of the Act:

1) The technical regulator must grant an operating certificate if satisfied on reasonable grounds that—

   a. for an unlicensed regulated utility providing a regulated utility service—the regulated utility service is being provided in accordance with the following criteria:
      i. provision in accordance with this Act
      ii. delivery in a safe, reliable and efficient manner
      iii. sufficient consideration of long-term serviceability
      iv. sufficient consideration of design integrity and functionality
      v. safe and reliable operation and maintenance in a manner that protects the following:
         (A) the public
         (B) people working on the regulated utility service
         (C) property near the regulated utility service
         (D) the environment or

   b. for an unlicensed regulated utility service that is proposing to provide a regulated utility service—
      i. the proposed service will be a regulated utility service
      ii. the proposed service can be constructed in such a way that it will operate, in accordance with the criteria in subsection (1)(a).
If the failure of a proposed regulated utility service represents a safety risk to people dependent on that service, for example a district energy service providing the only source of electricity or heating to residential premises, the regulatory plan will need to demonstrate thorough consideration of this increased risk with an appropriate contingency plan.

**Demonstrating compliance**
The regulatory plan must demonstrate compliance with each of the criteria listed in 6.2. To demonstrate compliance you will need to provide evidence; for example, details of engineering design, safe work method systems, maintenance schedules, and environmental control plans, among other documents. The regulatory plan should be completed by the engineering contractor delivering the project and endorsed by an independent certifier (where engaged). Additional requirements for medium and larger scale grid connected electricity generators are provided in section 11.3.

**Length of operating certificate**
The regulatory plan should state the length of time for which the operating certificate is sought. You will need to justify this time frame and include time-appropriate operation and maintenance considerations within the regulatory plan.

The regulatory plan should consider future inspections for more complex projects (and audits for a percentage of design and/or operation and maintenance documentation), once the regulated utility service is operational. These inspections could coincide with some future maintenance activity to reduce costs for both parties.

In your regulatory plan, and/or in consultation with the UTR team, you may nominate or negotiate future inspections and audits. If future inspections and audits are required, the operating certificate granted may be conditional. Conditional operating certificates are explained in section 6.3 of this guide.
6.3 DIFFERENT TYPES OF OPERATING CERTIFICATE

The types of operating certificate you require will depend upon the installation:

**Design and Construct – larger installations**

The Design and Construct Operating Certificate is issued for an unlicensed utility service **before the construction of the infrastructure** required to provide a regulated utility service. You are required to apply to the Technical Regulator for an operating certificate using the appropriate form and enclosing a regulatory plan.

To remove any doubt, you can carry out some site works (in accordance with any other approvals) before applying for a Design and Construct Operating Certificate. The Design and Construct Operating Certificate is required when you start constructing the infrastructure providing the regulated utility service (see section 51 of the Act).

The Design and Construct Operating Certificate will normally be conditioned to end upon completion and commissioning of a regulated utility service and prior to provision of service. Other conditions that may apply to the operating certificate will be determined during the assessment process, for example:

- that Safe Work Method Statements must be project and task specific
- that all trades involved in the construction of the project must be licensed where required by law
- that sections of the design are approved progressively.

**Provision of Service – larger installations**

The Provision of Service Operating Certificate is issued for an operator of an unlicensed regulated utility service **that is ready to commence** providing the service. It will cover the design, construction, testing, operation and maintenance of the facility.

Whether the Provision of Service Operating Certificates will be conditional or unconditional will be determined in the assessment process.

**Compliance – small installations only**

If you operate smaller installations that have been constructed as electrical work, water supply, sanitary plumbing work or gasfitting work by licensed construction practitioners, you can apply for a Compliance Operating Certificate. This certificate is for an existing unlicensed regulated utility service that has been designed, built and inspected in compliance with the *Electricity Safety Act 1971*, the *Water and Sewerage Act 2000* or the *Gas Safety Act 2000*.

Applicants for a Compliance Operating Certificate are generally the licensed construction practitioners who carried out the work, that is, electricians, gasfitters and plumbers among other practitioners. Copies of certificates of electrical safety, plumbing completion of work certificates and gas compliance certificates must be enclosed with the application. A regulatory plan will not be required with an application, but may be requested in support of an application. An assessment will be undertaken by the UTR team and a Compliance Operating Certificate may be issued.

6.4 CONDITIONAL AND UNCONDITIONAL OPERATING CERTIFICATES

An **unconditional** operating certificate will be issued where no further regulatory action can be reasonably anticipated for the operational service of the utility. The service life of the installation will typically be the term of an unconditional operating certificate.

A **conditional** operating certificate may be granted in order to manage risks to allow you to better manage a complex project or where there is a future process that needs to be undertaken to ensure that a service continues to operate safely and as intended. The conditions applied to the operating certificate will require you to demonstrate certain activity is being undertaken in accordance with these conditions. The conditions will vary, but will typically be stated objectives within the associated regulatory plan. They may include demonstrating routine maintenance activity, submission of an independent auditor’s report for a complex installation and any future inspections undertaken by Access Canberra.
They may require a maintenance schedule or a requirement provided by a utility, such as a PV inverter testing regime.

Where the Technical Regulator places a condition that does not require future inspections or auditing, an annual fee will not be charged.

Where future inspections and audits are required, you will need to pay an annual fee after the operating certificate is issued. Where this is sought through the regulatory plan, the operating certificate will be conditioned to require an annual fee plus recovery of any regulatory costs. The annual fee is outlined in section 9 of this guide.

7. WHO SHOULD APPLY?

In most cases it is expected that the applicant would be the owner of the regulated utility service. The application form allows the owner to appoint an agent to discuss the application on their behalf.

8. HOW CAN I APPLY FOR AN OPERATING CERTIFICATE? STEP-BY-STEP:

1. Contact the UTR to discuss your proposal
2. Prepare the regulatory plan
3. Submit draft regulatory plan to UTR team*
4. Receive feedback from UTR officers/ engineers with invoice for time spent reviewing application
5. Incorporate feedback into final regulatory plan
6. Download Application for an Operating Certificate Form (make link)
7. Submit final regulatory plan and application form to UTR for assessment

*This step is optional; however, it is recommended.
9. SERVICE FEES AND CHARGES

Full cost recovery will be sought by the Technical Regulator for unlicensed regulated utility services. To enable cost recovery for consideration of draft and final regulatory plans, assessment and granting of operating certificates, inspections, audits, investigations (such accidents or damage to utility services), you will be charged fees in accordance with the fee determination under the Act at [http://www.legislation.act.gov.au/a/2014-60/li.asp](http://www.legislation.act.gov.au/a/2014-60/li.asp)

9.1 FEE FOR ASSESSMENT OF REGULATORY PLAN

A fee will be charged based on the time taken to assess the regulatory plan. You should develop an estimate of the fee payable with the UTR team. This estimate will be based on the anticipated time required for the staff supporting the Technical Regulator to consider the evidence provided. To avoid delays in your project, you will need to provide reasonable notice to the UTR team when inspections are required.

9.2 ANNUAL FEES PAYABLE FOR A CONDITIONAL OPERATING CERTIFICATE AND COST RECOVERY FOR COMPLIANCE ACTIVITY

If an operating certificate is conditional on you undertaking future compliance, reporting or other relevant activity, it is a condition of the operating certificate that an annual fee is paid. This fee will typically be applied to Provision of Service Operating Certificates.

In addition to the annual fee, you will be required to pay for any compliance, inspection or other relevant activity. This cost recovery charge is per hour of UTR time rounded up to the nearest hour.

9.3 ESTABLISHING AN UPPER LIMIT FOR REGULATORY COSTS

Assessment of operating certificates is undertaken on a cost recovery basis. To support you in budgeting for regulatory costs, an estimate of fees can be developed in consultation with the UTR team.

Using an independent certifier (a suitably qualified independent engineer) reduces the risk associated with a more complex proposal, and significantly reduces the level of assessment required, with a corresponding reduction in fees payable to the Technical Regulator.

10. REVOCATION OF AN OPERATING CERTIFICATE

If an unlicensed regulated utility is providing a regulated utility service in contravention of the Utilities (Technical Regulation) Act 2014, or is not complying with the condition of an operating certificate, the Technical Regulator may revoke the operating certificate.

Before this takes place, written notice will be provided to the holder of the operating certificate, stating the reasons for the proposed revocation. If this happens, the operating certificate holder will have 20 calendar days to provide a written submission stating reasons the operating certificate should not be revoked.
11. FURTHER INFORMATION

Further information is provided in this section regarding application requirements for specific utility services, as a continuation from section 5 of this document.

11.1 DAMS

You will require an operating certificate if you own, lease or sub-lease a registrable dam. Registrable dams are greater than 5 metres in height and/or have a water storage capacity of more than 250 mega litres.

The Utilities (Dam Safety Code) Determination 2014 applies to the operation of dams. It ensures the proper management of dams to prevent unsafe operation and/or failure. It can be found on the Legislation Register at the following link: http://www.legislation.act.gov.au/a/2014-60/li.asp

11.2 DISTRICT ENERGY SERVICE

A district energy service is a discrete district network operating either electricity or another form of energy; or reticulated gas, water, water vapour or other fluid. A discrete district network is not connected to an electricity, gas, sewerage, water or prescribed utility service network.

A district energy services that is a discrete district network includes electricity generators without an electricity network connection, connected to multiple buildings. A district water service is tank or bore water connected to multiple buildings without a water network connection.

You will be considered a utility service if you own, lease or sub-lease a district energy service and intend to provide that service to customers. You will require a licence from the ICRC, or will need to apply for and receive an exemption from requiring a licence from the Minister for the Environment and Climate Change. An exempt utility requires an operating certificate. Information on licensing can be found on the ICRC website at http://www.icrc.act.gov.au/utilities-licensing/licence-applications-surrenders-variations-and-revocations

### Electrical Generation Operating Certificates

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<th>Low Voltage Network</th>
<th>High Voltage Network</th>
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<tr>
<td>Small scale electrical generation Under 30kW</td>
<td>Large scale electrical generation 1500kW—30MW</td>
</tr>
<tr>
<td>Compliance Operating Certificate No Regulatory Plan required Installed under Construction Occupations (Licensing) Act 2004 using Certificate of Electrical Safety</td>
<td>Regulatory Plan required</td>
</tr>
<tr>
<td>Small scale electrical generation 30kW—200kW</td>
<td>Medium scale electrical generation* 200kW—1500kW</td>
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*Note: The UTR Team and Electrical Inspectorate of Access Canberra will consider the risk and complexity of medium scale electrical generators when considering which type of Operating Certificate is required.*
11.3 ELECTRICAL GENERATION

Generators of electricity with capacity between 30kW and 30 MW require an operating certificate from the Technical Regulator. The form of the operating certificate will vary based on the size of the generator. For larger generators the form of the operating certificate is likely to vary on a case-by-case basis.

Further information on utility connection requirements for micro, small, medium and larger scale generation is provided by ActewAGL Distribution. Your connection agreement with ActewAGL Distribution will vary based on the size of your generator. You will need to provide a copy of your connection agreement with any application for grid connected electrical generation.

For the purposes of this guide, electrical generation can be divided into small, medium and larger scale:

Small and medium scale electrical generation connected to low voltage network – certificate of electrical safety and operating certificate

A Compliance Operating Certificate is required if you operate a generator between 30kW and 200kW. If you have installed a generator in accordance with the Electricity Safety Act 1971, with electrical work completed by ACT licensed electricians who are Clean Energy Council accredited and who have submitted certificates of electrical safety for their installation, you should include copies of the certificates with your application for an operating certificate.

A Compliance Operating Certificate will be granted where all relevant certificates of electrical safety are submitted with your application. No regulatory plan is required to support this application. Access Canberra will not audit existing installations or new installations to inform you of your responsibilities under the Act.

If you operate medium scale generators (200kW–1500kW) with a low voltage network connection, you may use this pathway to an operating certificate at the discretion of the Technical Regulator and Access Canberra electrical inspectorate.

Larger scale electrical generation connected to high voltage network – regulatory plan and operating certificate

There are two stages to the operating certificate process for operators of generators connected to the high voltage network, and a regulatory plan is required at each stage. The first stage is a Design and Construct Operating Certificate, which is required before the construction of infrastructure. The second stage is a Provision of Service Operating Certificate, which is required post commissioning but before provision of service. This is granted when the generator is ready to start providing service.

Independent certifier for generators connected to the high voltage network

You are encouraged to engage an independent certifier for any high voltage project and more complex low voltage projects. For any complex projects, the Technical Regulator may recommend you engage an independent certifier to manage the regulatory plan process on your behalf. Once contractual independence and competence are demonstrated, the Technical Regulator will liaise with the independent certifier directly.

The independent certifier can help demonstrate that you meet each of the criteria for issuing an operating certificate, and provide a signed certificate of compliance to support a regulatory plan. This reduces the risk associated with a more complex proposal for the Technical Regulator, and significantly reduces the level of assessment required, with a corresponding reduction in fees payable to the Technical Regulator.
Further information required for Medium and Large Scale Grid Connected Electricity Generators

The regulatory plan must include the following additional information for medium and large scale grid connected electricity generators.

Design and Construct Operating Certificate
Design elements:
- Copy of the Generator Connection Agreement
- Statement that design will comply with applicable Australian Standards and codes of practice
- Methodology
- Safety in design
- Competency of designers
- Independent certification

Construction elements:
- Competency of construction team
- Construction Plans; for example, Workplace Health and Safety Management Plan, Emergency Response Plan, Construction Environmental Management Plan, Inspection and Testing

Testing and commissioning:
- Testing and Commissioning Plan/Methodology

Certification by the independent Certifier (before connection to the grid):
- The design complies with the applicable Australian Standards and is fit for purpose
- The construction is in accordance with the design
- The testing has been successfully completed as far as practical and the facility is ready for energisation
- The operating procedures are sufficient to safely operate the plant

 Provision of Service Operating Certificate

Operating procedures:
- Isolation Procedures
- HV Switching Procedures (where applicable)
- Operating protocols with other authorities
- Emergency Response Procedures
- Normal Operating Procedures

Maintenance procedures:
- Equipment maintenance
- Control system maintenance
- Protection system maintenance

Certification by the independent certifier:
- Final testing has been successfully completed
- Operating procedures are appropriate
- Maintenance procedures are appropriate
- Environmental management plans, if appropriate

11.4 LIGHT RAIL

The light rail network and the infrastructure it consists of is a regulated utility service. Technical codes define the boundary between the light rail network and the electricity distribution network and establish electrical and management requirements for the service. The light rail network will require an operating certificate.


The Light Rail Regulated Utility (Electrical) Network Boundary Code defines the boundary between a light rail regulated utility (electrical) network and an electricity distribution network. It can be found on the legislation register at the following link: http://www.legislation.act.gov.au/di/2016-19/default.asp
11.5 EXEMPT UTILITIES
The Minister for the Environment and Climate Change can exempt an entity from requiring a licence for providing electricity distribution and transmission; gas distribution and transmission; or water and sewerage collection, treatment, distribution and conveyance.

Any exemption would be based on consideration of economic, social, environmental and technical factors relating to the service. An exempted utility does not have all of the powers of a licensed utility under the Utilities Act 2000. There is still a requirement for an operator of an exempted utility to hold an operating certificate issued by the Technical Regulator.

11.6 RELEVANT LEGISLATION
The Utilities (Technical Regulation) Act 2014, Utilities Act 2000 and all relevant legislation can be found at www.law.gov.au

12. CONTACT INFORMATION
For initial advice, or if you want to discuss alternative methods of controlling activity during design, construction and/or operation of your facility, please contact the Utilities Technical Regulation Team.

Postal address:
GPO Box 158, Canberra City ACT 2601

Access Canberra Environment, Planning and Land Shopfront:
8:30am to 4:30pm Monday to Friday
Ground Floor South Building
Dame Pattie Menzies Building
16 Challis Street Dickson ACT 2602
Phone: 13 22 81

Email:
Techregulator.Utilities@act.gov.au

Website:
www.accesscanberra.act.gov.au and
www.environment.act.gov.au