

1995
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

**Electricity and Water (Corporatisation)
(Consequential Provisions) Bill 1995**

**A BILL
FOR**

**An Act to provide for various matters as a
consequence of the corporatisation of the body
providing electricity, water and sewerage services**

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

Short title

- 5 **1.** This Act may be cited as the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*.

Commencement

2. (1) Sections 1, 2, 3 and 4 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on 1 July 1995.

85018 1995/59 (T18/95)

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“Authority” means the former Australian Capital Territory Electricity and Water Authority established by the *Electricity and Water Act 1988*;

“Company” means ACTEW Corporation Limited;

“relevant day” means the day referred to in subsection 2 (2).

(2) In this Act, a reference to rights and liabilities of a person shall be read as including a reference to—

(a) assets of the person; and

(b) in relation to any contract, agreement or arrangement to which the person is a party—the rights and liabilities of the person in relation to the contract, agreement or arrangement.

Transfer of rights and liabilities

4. (1) Rights and liabilities of the Authority existing immediately before the relevant day shall, by force of this subsection, vest in the Company on the relevant day except to the extent that the Minister, before the relevant day, specifies under subsection (2) rights and liabilities of the Authority that vest in the Territory.

(2) For the purposes of subsection (1), the Minister may, by notice in writing published in the *Gazette*, specify rights and liabilities of the Authority that vest in the Territory.

(3) A notice under subsection (2) may provide that the Territory is substituted for the Authority in a contract, agreement or arrangement specified in the notice and the notice shall be taken to specify the rights and liabilities of the Authority in the contract, agreement or arrangement.

(4) Rights and liabilities specified or taken to be specified in a notice under subsection (2) shall, by force of this subsection, vest in the Territory on the relevant day.

(5) A reference to the Authority in a contract, agreement or arrangement shall (except in relation to matters that occurred before the relevant day) be read as a reference—

(a) in the case of a contract, agreement or arrangement affected by subsection (1)—to the Company; and

(b) in the case of a contract, agreement or arrangement affected by subsection (4)—to the Territory.

Registration of changes in title to land

5 5. (1) Where, by reason of the operation of section 4, an interest in land in the Territory becomes vested in the Company, the Company may lodge with the Registrar-General a notice signed by the Company stating that that interest in land is vested in the Company by virtue of the operation of section 4.

10 (2) Where, by reason of the operation of section 4, an interest in land in the Territory becomes vested in the Territory, the Minister may lodge with the Registrar-General a notice signed by the Minister stating that that interest in land is vested in the Territory by virtue of the operation of section 4.

 (3) Where the Registrar-General receives a notice under this section, he or she shall make such entries in the relevant registers kept by the Registrar, and do such other things, as are necessary to reflect the operation of section 4.

15 Proceedings

 6. Where, immediately before the relevant day—

- 20 (a) a cause of action by or against the Authority had arisen concerning a right or liability vested in the Company or the Territory under section 4 but proceedings in respect of that cause of action had not been instituted before that date; or
- (b) proceedings by or against the Authority concerning a right or liability vested in the Company or the Territory under section 4 had been instituted in a court, tribunal, commission or other body but those proceedings had not been completed before that date;

25 those proceedings may be instituted or continued, subject to the direction of the relevant court, tribunal, commission or other body by or against the Company or the Territory, as the case requires.

Employees and employment conditions

 7. (1) In this section—

30 “eligible employment”, in relation to a benefit relating to the employment of a transferred employee, means—

- (a) employment with the Authority or the Territory; or
- 35 (b) employment with an employer other than the Authority or the Territory that was recognised by the Authority or the Territory, as the case may be, as employment for the purposes of that benefit;

 “employee” means a transferred employee or a new employee;

“new employee” means a person, other than a transferred employee, who becomes an employee of the Company on or after the relevant day;

“Public Sector Act” means the *Public Sector Management Act 1994*;

5 “relevant staff organisation” has the same meaning as in the Public Sector Act;

“transferred employee” means a person taken to be employed by the Company in accordance with subsection (2).

10 (2) Where, immediately before the relevant day, a person was employed by the Territory as part of the staff of the Authority under the Public Sector Act, the person ceases on the relevant day to be employed under that Act and shall, on and after the relevant day, be employed by the Company.

15 (3) The contract of employment between the Company and an employee shall be taken to provide for employment by the Company on the terms and conditions that were applicable immediately before the relevant day under any applicable award that applied to transferred employees.

20 (4) In addition to the terms and conditions provided for under subsection (3), an employee of the Company is entitled to the same benefits in respect of—

- (a) long service leave;
- (b) maternity leave;
- (c) parental leave;
- (d) recreation leave; and
- 25 (e) sick leave;

as existed immediately before the relevant day as benefits in respect of the employment of transferred employees.

30 (5) For the purposes of subsection (4), a reference in the Public Sector Act to a person or thing mentioned in Column 1 of the following table shall be taken to be a reference to the corresponding person or thing mentioned in Column 2 of the following table:

Public Sector reference	Corresponding Company reference
Commissioner	Board of Directors of the Company
Chief Executive officer	Chief Executive Officer of the Company employee of the Company

5 (6) For the purposes of subsection (4), the regulations may provide that a reference to a person or thing provided for in or under the Public Sector Act relating to the Government Service shall be taken to be a reference to a person or thing relating to the Company that is specified for that purpose in the regulations.

(7) The Company shall, in consultation with relevant staff organisations, establish and maintain appeal, review and grievance procedures in respect of employment matters.

10 (8) To the extent that the entitlement of a transferred employee to a benefit relating to his or her employment is determined by the employee's period of employment before he or she became a transferred employee, the period of eligible employment of the employee that is relevant to that benefit shall be taken to have been employment with the Company.

15 (9) Any matter or thing relating to the employment of a transferred employee that occurred before the relevant day may be dealt with or provided for on or after that day as if the person had been employed by the Company at that time.

20 (10) Any matter or thing relating to the employment of a transferred employee that was in effect under the Public Sector Act immediately before the relevant day and that would, but for this subsection, cease to have effect on that day shall, on and after that day, continue in effect as if the person had been employed by the Company at that time.

25 (11) Any matter or thing relating to the employment of a transferred employee that was pending under the Public Sector Act immediately before the relevant day and that would, but for this subsection, lapse on that day may, on and after that day, be completed by the Company.

(12) The provisions of the *Occupational Health and Safety Act 1989* apply in relation to employees of the Company—

- (a) subject to the modifications and adaptations specified in Schedule 3 to the Public Sector Act; and
- (b) unless the contrary intention appears, as if—
 - (i) each such employee were an employee within the meaning of that Act; and
 - (ii) the Company were an employer within the meaning of that Act.

(13) This section is intended to operate subject to any applicable award or any applicable agreement between the Company and employees of the Company.

Transfer of records relating to Territory functions

8. (1) Where, immediately before the relevant day, a power or function was conferred on the Authority under a law and by reason of an amendment of the law that took effect on that date the power or function became a power or function of the Territory or an officer of the Territory, the Company shall transfer to the Territory the documents maintained by the Authority for the purpose of the law.

(2) Where it is not practicable for the Company to transfer a document to the Territory within a reasonable period after the relevant day, the Company shall grant the Territory reasonable access to the document pending its transfer to the Territory.

References to the Authority etc.

9. Subject to any regulation made under this Act, a reference to the Authority, an officer of the Authority or any matter or thing relating to the Authority in any enactment or subordinate law shall (except in relation to matters that occurred before the relevant day) be read as a reference to the Company, an officer of the Company or to any corresponding matter or thing relating to the Company, respectively.

Arrangements

10. (1) The Minister and the Company may, by instrument, enter into an arrangement relating to any matter arising from, connected with or consequential upon—

- (a) the assumption by the Company or the Territory of any powers or functions; or
- (b) the vesting of any assets, rights or liabilities previously vested in the Authority.

(2) Without limiting the generality of subsection (1), an arrangement may provide, whether or not subject to conditions or limitations, for the exercise—

- 5 (a) by the Minister of any power vested in the Company by an enactment or subordinate law; or
- (b) by the Company of any power vested in the Territory by an enactment or subordinate law.

(3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

10 **Regulations**

11. (1) The Executive may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision—

- 15 (a) in relation to any matter arising from, connected with or consequential upon the assumption by the Company or the Territory of any powers or functions or the vesting of any assets, rights or liabilities previously vested in the Authority; and
- 20 (b) modifying an enactment or subordinate law for any purpose mentioned in paragraph (a) including (but not limited to) changing references to the Authority, an officer of the Authority or any matter or thing relating to the Authority to substitute references to the Territory, an officer of the Territory or any matter or thing relating to the Territory, respectively.

25 (3) A regulation that is expressed to modify an enactment or subordinate law may take the form of an alteration of the text of the enactment or subordinate law so that the enactment or subordinate law operates as modified but the regulation does not amend the text of the enactment or subordinate law.

30 (4) The power conferred by this section to modify an enactment or subordinate law expires on 1 July 1996.

(5) Subsection (4) does not apply to a regulation that is expressed to be made for the purposes of paragraph (2) (a).