

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**ACTEW (TRANSFER SCHEME) BILL 1998**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
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Treasurer**

**ACTEW (TRANSFER SCHEME) BILL 1998****EXPLANATORY MEMORANDUM****1. SUMMARY OF BILL**

The Bill contains a scheme of arrangement to enable the sale and transfer of certain assets of ACTEW bodies and the granting of contractual rights with respect to assets of an ACTEW body declared by the Minister to be public assets and therefore to be held in public ownership.

**2. PART I: PRELIMINARY***Clause 1*

Clause 1 sets out the short title of the Act.

*Clause 2*

Clause 2 provides for the commencement of the Act generally on a day to be fixed by the Minister.

*Clause 3*

Clause 3 sets out all defined terms used in the Bill. Subclause 3(2) provides that the term contractual rights is to be interpreted to include a right under a lease, franchise or concession in connection with the operation, maintenance and management of a public asset.

**3. PART II: TRANSFER OF ASSETS, LIABILITIES ETC.***Clause 4*

Subclause 4(1) provides for the Minister to declare certain assets of an ACTEW body to be "public assets". It is intended that the dams and water and sewerage treatment plants will remain in public ownership and will be the subject of a declaration under this part. Declarations will be made in respect of other assets which the Minister considers it is in the public interest to retain in public ownership.

Subclause 4(2) provides that the Minister may only transfer a "public asset" to the Territory, a Territory authority, a Territory owned corporation or a subsidiary of a Territory owned corporation. This provision will ensure that such assets are retained in public ownership.

Subclause 4(4) provides that the Minister may, on behalf of the owner of "public assets", grant contractual rights with respect to those public assets. This provision will enable the Minister to enter into contracts in relation to a concession and/or other rights over the dams and water and sewerage treatment plants.

### *Clause 5*

Clause 5 overrides the operation of the Territory Owned Corporations Act 1990 sections 13 and 16 in relation to the transfer of shares, assets and liabilities of ACTEW and its subsidiaries. The clause allows for the transfer of assets owned by ACTEW and of shares in ACTEW to another party.

Subclause 5(1) provides that the Minister may, by declaration, transfer assets, rights or obligations and liabilities of an ACTEW body to another person. Any such transfer is effective without the need for any conveyance, transfer or assignment.

Subclause 5(2) provides that the transferee of an asset may become the successor in law to the relevant ACTEW body with respect to that asset.

Subclause 5(3) requires a company to register as a shareholder a person to whom shares are transferred under clause 5.

### *Clause 6*

Clause 6 allows the Minister by declaration to sever ownership of certain fixtures from ownership of the real property upon which they are constructed. The Minister may by that same declaration vest those assets in ACTEW without any conveyance, transfer or assignment. This has the effect of severing the assets from the land on which they are situated and enables their transfer under the Act.

## 4. PART III: TRANSFER OF STAFF

This part deals with the transfer of staff from ACTEW to a person to whom ACTEW's assets have been transferred, to the Territory, a Territory Authority or a Territory owned corporation (TOC). The intention is to preserve employees rights and entitlements whether they are transferred to the Government, a government body, a TOC or another person.

### *Clause 7*

Clause 7 provides for the Minister by declaration to transfer the employees of an ACTEW body to another body. That other body must be a body to whom shares in or the assets of the ACTEW body are to be transferred, the Territory, a Territory authority or a Territory owned corporation or a person to whom contractual rights are granted. This provision enables employees to follow functions and retain their employment with the relevant ACTEW operations following any asset or share transfers or grant of contractual rights under the Act.

### *Clause 8*

Clause 8 provides that transferred employees are taken to be employed on the same terms and conditions, subject to a lawful variation of those terms and conditions in accordance with any applicable contract of employment, award, certified agreement or Australian workplace

agreement. If employees are transferred to a non-Territory body, this provision does not override Commonwealth legislation and existing arrangements in relation to Commonwealth superannuation and workers compensation schemes cannot be maintained. In this circumstance, the existing level of conditions for transferred employees in relation to superannuation will be maintained through administrative means.

#### *Clause 9*

Clause 9 provides for the preservation of entitlements to benefits accrued by staff prior to their transfer. This entitlement includes benefits in relation to recreation, long service and sick leave.

#### *Clause 10*

Clause 10 provides that transferred staff are to be taken to have had continuous service with their new employer as they had as an employee of the relevant ACTEW body. This provision protects the entitlements of employees in relation to accruing future long service leave credits and in relation to other matters where entitlements are based on length and continuity of service.

#### *Clause 11*

Clause 11 provides that a transferred employee is not entitled to any payment or benefit merely because their employment is transferred under clause 7.

#### *Clause 12*

Clause 12 provides for the lawful variation of the terms and conditions of transferred employees.

### 5. PART IV: MISCELLANEOUS

#### *Clause 13*

Clause 13 allows specified persons to use commercial in confidence or other protected information for a purpose in connection with the implementation of the Act without contravention or giving rise to liability or remedy under the Territory's laws. This provision is intended to facilitate actions related to the transfer of shares or assets or the establishment of contractual arrangements.

#### *Clause 14*

Clause 14 provides for the registration of a transfer of real property under clause 5. Transfers of land may be registered by the relevant registration official on presentation of a certificate by the Minister about a declaration of transfer under clause 5 of the proposed Act, but the provision does not of itself modify registers kept by land registration officials.

*Clause 15*

Clause 15 provides for pending court proceedings to which an ACTEW body is a party to be transferred to the person whom the Minister has declared is the successor in law to the ACTEW body in relation to the matter. The provision is intended to avoid current legal proceedings being aborted

*Clause 16*

Clause 16 provides that nothing in the Act is taken to constitute a breach of contract or confidence or otherwise make a person guilty of a civil wrong. It also facilitates transfer of existing contractual rights.

*Clause 17*

Clause 17 provides that if the operation of the Act would result in the acquisition of property otherwise than on just terms, the Territory is liable to pay compensation to the relevant person.

*Clause 18*

Clause 18 provides that a prescribed law is to be taken never to have applied to a defined activity that occurred before the commencement of the proposed clause 18.

This provision, inter alia, protects preexisting electricity, water and sewerage networks and other ACTEW assets and activities in the event that they are currently non-compliant with planning and other laws; and deems previous activities of ACTEW not to be in breach of such laws.

*Clause 19*

Clause 19 provides for the making of regulations for the purposes of the Act.