

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**UTILITIES (CONSEQUENTIAL PROVISIONS) BILL 2000**

**EXPLANATORY MEMORANDUM**

Circulated by the authority of

**Gary Humphries MLA**

**Treasurer**

## PART 1—PRELIMINARY

1. This clause is the short title of the Act.
2. This clause fixes commencement of the majority of the Act at a date to be fixed by the Minister by notice in the Gazette.

## PART 2—AMENDMENTS OF LAWS

3. This clause makes it clear that the Acts and regulations referred to in Schedules 1 and 2 to this Act respectively are amended as set out in those schedules.

*Note: The various enactments repealed by the Utilities package are referred to in either the Utilities Bill 2000 (e.g. see Part 16 of that Bill) or in a separate law reform Bill.*

## PART 3—MISCELLANEOUS

4. This clause allows for the Executive to make regulations for this Act.
5. This clause sets a 12 month sunset on the operation of this Part.

## SCHEDULE 1

This Schedule makes a range of different types of amendment to various Acts on the Territory statute books, including:

- small formal amendments (e.g. making minor grammatical changes),
- relatively minor amendments to reflect terminology used in the *Utilities Bill 2000* on which this Bill is consequent (as well as simple deletions of provisions that have effectively been removed to the *Utilities Bill 2000*), and
- more substantial consequential amendments.

## SCHEDULE 2

This Schedule makes relatively minor amendments to Territory regulations to reflect terminology used in the *Utilities Bill 2000* on which this Bill is consequent (as well as simple deletions of provisions that have effectively been removed to the *Utilities Bill 2000*), and

Each type of amendment in the schedules is referred to in more detail in the following pages.

## SCHEDULE 1

### 1. Small formal amendments

(e.g. adding the word 'or' or 'and', or indicating plural terms or making other minor grammatical changes)

<i>Name of Act</i>	<i>Section/s or subsection/s affected or added</i>
Common Boundaries Act 1981	2(2)
Fair Trading Act 1992	5(1)
Independent Competition and Regulatory Commission Act 1997	19(1), 18(1), 20(2)
Ombudsman Act 1989	5(1) and (2)
Scaffolding and Lifts Act 1912 (NSW)	3(1)
Trade Measurement Act 1991	6(2)

SCHEDULE 1 (cont.)

2. Relatively minor amendments

to reflect terminology used in, or as a result of, the *Utilities Bill 2000* and make simple deletions of provisions that have effectively been removed to that Bill

<i>Name of Act</i>	<i>Section/s or subsection/s affected or added</i>
Building Act 1972	53(9), (13)
Crimes Act 1900	114
Electricity Act 1971	Long title, 3(1), 33, 55(1), 90, 93, 94(1), 95(4) and (5)
Fair Trading Act 1992	5(1)
Independent Competition and Regulatory Commission Act 1997	Long title, 3(1)—adds a range of definitions including ‘signpost’ definitions, 3A, 8(g), 9, 10, 18(2) and (4), 19(1) and (3),
Lands Acquisition Act 1994	3, 9(3); 96A, 96B (a new Part 7A is added for the purpose of including these 2 sections); 97A
Nature Conservation Act 1980	76A
Ombudsman Act 1989	5(2), 6B
Plumbers, Drainers and Gasfitters Board Act 1982	3, 5(1), 10(2), 26(1), 31(2) and (4)
Public Health Act 1997	5(1); and a various sections in which penalty provisions have been adjusted to set out the penalties for utilities and other people respectively—namely 20, 21, 25, 57, 66, 73, 82, 83, 93, 98, 118, 120, 129, 138
Rates and Land Rent (Relief) Act 1974	2(1), 2AB, 2B, 21A, 21B, 21H
Scaffolding and Lifts Act 1912 (NSW)	3(1)

SCHEDULE 1 (cont.)

3. More substantial consequential amendments.

<i>Name of Act</i>	<i>Sub/section affected or added</i>	<i>Amendment</i>
Electricity Act 1971	Long title	This is amended to refer to electricity safety issues.
	1	This amendment changes the short title of the Act from 'Electricity Act' to 'Electricity Safety Act'.
Independent Competition and Regulatory Commission Act 1997	various	see below
Lands Acquisition Act 1994	97A	
Magistrates Court (Civil Jurisdiction Act) 1982	12B	This section removes the jurisdiction of the court to the extent that it is the subject of an ESCC complaint, direction or declaration.
	380A	This section makes ESCC directions for payment of loss or damage, when certified by the ESCC registrar and filed at the court, equivalent to judgments of the Small Claims Court for the purposes of enforcement.
Public Health Act 1997	Part 6A	A new section 118A allows for the Chief Health Officer to publish public health alert notices to protect the public from, or give the public information about, public health risks.
	Part 6B	see below
Rates and Land Rent (Relief) Act 1974	25	This section provides transitional and savings measures in relation to rates instruments in force under the Act as at the date certain provisions of the <i>Utilities Bill 2000</i> commences.

## **Independent Competition and Regulatory Commission Act 1997**

In relation to this Act, *ICRC* means Independent Competition and Regulatory Commission.

New sections **4A** and **4B** are added:

- 4A** This section deals with referrals under the ICRC Act for price regulation investigation once electricity distribution becomes regulated by the National Electricity Code (NEC)—namely by providing that any existing price direction provisions continue until such time as the jurisdictional regulator under NEC makes a direction about them, but otherwise there are to be no further referrals after NEC takes over (*which is expected to happen from 1/7/2000*). The section also notes that there are to be no referrals in relation to ACT transmission service pricing (*which came under NEC from 1/7/1999*).
- 4B** This section provides that there are to be no price regulation investigation referrals under this Act in relation to pipeline transmission of natural gas under the ACT Gas Pipelines Access law.

Subsection **17(3A)** is added:

- 3A** This subsection requires ICRC, when investigating price regulation, to invite public submissions and hold public hearings, but does not require it to hear submissions from every person at such a hearing.

Subsection **18(2A)** is added:

- 2A** This subsection requires ICRC to include any proposed directions (with reasons and any dissenting member's report) in any draft investigation report on price regulation or variation.

Subsection **20(2)** is amended:

- 20(2)(f)** In this paragraph the reference to 'ecologically sustainable development' is changed from one connected to the meaning of that term in the Territory Owned Corporations Act to one for which a full description is now inserted in this section (see next item).

Subsections **20(4), (5) and (6)** are replaced by one subsection:

- 20(4)** This subsection describes the 4 principles required to be implemented for the purposes of *ecologically sustainable development*—namely, the precautionary principle, the inter-generational equity principle, conservation of biological diversity and ecological integrity, and improved valuation and pricing of environmental resources.

Sections 20A, 20B and 20C are added:

- 20A This section picks up on the requirements for price directions previously contained in subsection 20(4) to the extent that it requires directions to contain information on prices, maximum prices and price calculation formulae, but it also expands on the previous subsection by linking price directions to *revenue caps, reset principles* (see next section) and *price variation triggers*.
- 20B For the purposes of the previous section, this section defines *current* and *future reset principles* which are to govern redetermination of prices or revenue caps in a regulated industry.
- 20C This section is equivalent to the former subsection 20(5) to the extent that it relates to commencement of a price direction, but goes on to provide for a direction to last for the period stated in the direction, and to allow for different parts of directions to begin and end at different times.

Subsection 21 is amended:

- 21(c) This paragraph is expanded by adding (to the requirement for ICRC to provide a copy of price directions with investigation reports) a requirement to provide copies of reasons, methodology statements and review rights.

Parts 4A and 4B are added, comprising of sections 24C to 24W inclusive:

## PART 4B—VARIATION OF PRICE DIRECTIONS

### *Division 1—Consent variations*

- 24C This section allows for regulated service utilities or referring authorities for regulated services to apply to ICRC for consent to a price variation, and indicates when ICRC may and may not give consent as well as when a consent variation commences.

### *Division 2—Non-consent variations*

- 24D This section allows for referring authorities for regulated services to refer current price directions to ICRC for investigation, and indicates when ICRC may accept such a referral.
- 24E This section allows for regulated service utilities to refer current price directions to ICRC for investigation, and indicates when ICRC may accept such a referral and how terms of reference may be set.
- 24F This section allows for ICRC to initiate its own reference for investigation of current price directions, and indicates when ICRC may do so and how terms of reference may be set.
- 24G This section makes clear when ICRC may vary a price direction otherwise than by consenting to an application.
- 24H This section requires ICRC to carry out price variation investigations in the same manner as it would carry out price direction investigations.

24I This section states that price variations commence 14 days after the day that relevant price variation investigation reports are tabled in the Assembly, or on such earlier day/s after tabling as is stated in the report.

#### PART 4C—REVIEW OF PRICE DIRECTIONS

24J This section defines who is an *eligible person* for the purposes of price direction (and price direction variation) reviews.

24K This section allows for regulated service utilities or referring authorities for regulated services to apply to ICRC for review of a price direction within 3 months of the relevant final investigation report being tabled, and sets out the requirements of the ICRC to give notice of the application.

24L This section describes the parties to a review and allows for parties to be represented.

24M This section requires applications for review to be heard by 3-member industry panels constituted as per a new Schedule 2 to the Act (and to which the *Statutory Appointments Act 1994* does not apply).

24N This section allows for an industry panel to confirm or substitute price directions on review, having first considered matters referred to in sections 20, 20A, 20B and 20C of the Act (but not including matters not raised by the applicant in submissions to ICRC about the investigation originally).

24O This section makes clear that an industry panel on review has the same powers ICRC would have had when conducting a price regulation investigation.

24P This section allows for an industry panel to refer any matter raised in a review to ICRC for an advisory opinion, after which ICRC must consider and report on the referral and then the panel must take account of ICRC's findings.

24Q This section allows for parties to request an industry panel to call witnesses to provide information or documents to the panel at the requesting party's expense.

24R This section allows for an industry panel to deal with review applications it considers to be frivolous or vexatious.

24S The effect of this section is to allow for price directions or variations under review to have effect despite the review unless the reviewing industry panel declares in writing that the direction is suspended or altered, and states the effect of such a declaration.

24T This section states when substitute price directions are to take effect following an industry panel review, as well as precluding further review of such substitution.

24U This section requires ICRC to give a reviewing industry panel such assistance as necessary, including by way of providing information and ensuring that any final review decisions are implemented.

24V This section makes clear that each party to a review bears its own costs and that the costs of the reviewing industry panel are to be borne by the affected utilities in such proportions as ICRC directs.

24W This section gives reviewing industry panel members, and review parties and witnesses, immunity from adverse legal consequences in relation to their review activities carried out in good faith.

A detailed **Schedule 2A** is added:

#### SCHEDULE 2A—CONSTITUTION AND PROCEDURE

The purpose of this Schedule is to describe the constitution and procedure of industry panels convened to conduct reviews of price directions or price variation directions under the Act. Matters covered include:

- Appointment and eligibility for appointment,
- Qualifications of appointees
- Defects in appointments
- Remuneration for members
- Presiding members
- Decision-making processes to be applied
- Requirement for disclosure of pecuniary interests
- Resignation and removal from office

#### Public Health Act 1997

A new Part 6B is added introducing sections 118B to 118K inclusive:

#### PART 6B—DRINKING WATER AND SEWERAGE PROCESSING

##### *Division 1—Drinking Water*

118B This section gives definitions for use in this Division.

118C This section makes clear that, despite this Part, other provisions of the Act continue to apply to the processing of drinking water by a water utility.

118D This section requires a water utility to alert the chief health officer and the public (by newspaper notice and other reasonable means) when it reasonably believes its processing of drinking water could lead to imminent serious risk to public health.

118E This section allows for the chief health officer to direct a water utility to correct any misleading alert it may have given under the previous section and makes it an offence for the utility not to comply.

118F This section allows for the chief health officer to direct a water utility to provide him or her with information about its processing of drinking water and makes it an offence for the utility not to comply.

*Division 2—Sewage*

118G This section gives definitions for use in this Division.

118H This section makes clear that, despite this Part, other provisions of the Act continue to apply to the processing of sewage by a sewerage utility.

118I This section requires a sewerage utility to alert the chief health officer and the public (by newspaper notice and other reasonable means) when it reasonably believes its processing of sewage could lead to imminent serious risk to public health.

118J This section allows for the chief health officer to direct a sewerage utility to correct any misleading alert it may have given under the previous section and makes it an offence for the utility not to comply.

118K This section allows for the chief health officer to direct a sewerage utility to provide him or her with information about its processing of sewage and makes it an offence for the utility not to comply.

## SCHEDULE 2

Relatively minor amendments to Territory regulations reflect terminology used in, or as a result of, the *Utilities Bill 2000* and make simple deletions of provisions that have effectively been removed to that Bill.

<b><i>Name of Regulations</i></b>	<b><i>Regulation/s or subregulation/s affected or added</i></b>
Building Regulations	12(2)
Construction Practitioners Registration Regulations	4(2) and (3)
Dangerous Goods Regulation 1978	225(7) and (8)
Electricity Regulations	1, 2—These amendments reflect changes to the short title of the Regulations from 'Electricity Regulations' to 'Electricity Safety Regulations' in line with the change to the name of the head Act.
Public Health Regulations	71, 74, 75