

1994

The Legislative Assembly for the Australian Capital Territory

Electricity (Amendment) Bill 1994

EXPLANATORY MEMORANDUM

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Outline

This is an amending Bill. It amends the *Electricity Act 1971*, which is referred to in the amending Bill as the Principal Act. The *Electricity Act* provides for the issue of electrician's licences, safety inspection of electrical installations, regulation of the safety of electrical appliances offered for sale, trimming of trees which encroach on electricity lines and other matters related to regulation of electrical installations and electrical licensing.

The purpose of the Bill is to amend the *Electricity Act* to:

- provide for the establishment of an Electrical Licensing Board (hereinafter "the Board") which will:
 - administer electrical licensing and, directly or by its delegates, determine applications for licences and permits under the Act; and
 - advise the Minister on matters related to electrical licensing;
- provide for restricted electrical licences which will permit trades persons other than electricians to perform limited electrical work which is incidental to their trade. For example, to permit a plumber to disconnect and reconnect electrical wiring in the course of repairing an electrical hot water system;
- provide for electrician permits or electrical permits which will permit a person who satisfies most of the criteria for an electrician's licence or a restricted electrical licence, but who lacks experience, to work under the supervision of a holder of the appropriate licence while he or she gains the necessary experience;
- provide a right of application to the Administrative Appeals Tribunal for review of Board decisions;
- generally bring electrical licensing provisions into line with agreements at the national level for consistency in regulation of trades persons across the States and Territories, and make other changes for purposes including duration of licences and simplified notification procedures where it is necessary to lop trees which encroach on powerlines.

Financial impact

The ACT Electricity and Water Authority ("ACTEW") will fund operations of the Board and provide administrative support staff. Costs involved are minor (estimated at about \$4000 per four meetings) and create no implications for ACTEW pricing or dividend policies.

Formal clauses

Clauses 1, 2 and 3 are formal requirements which refer to the short title of the Bill, commencement, and definition of the Principal Act. The Bill commences on a day or days fixed by the Minister by notice in the *Gazette* apart from clauses 1 and 2, which commence on the day on which the Act is notified in the *Gazette*.

Concept of permits

The Bill amends the *Electricity Act* at many points to add to the existing concept of an electrician's licence, the concept of restricted electrical licence and electrician's permit or restricted electrical permit as explained above in the Outline. Amendments of this type are referred to only briefly in this memorandum.

Definitions

Clause 4 amends Section 4 of the Principal Act by inserting or amending definitions including definitions which introduce the concept of 'restricted electrical licence' and 'permit' as explained in the Outline section, above.

Clause 5 repeals Section 5 of the Principal Act which provides for the functions of the Registrar of electrical licensing. These functions are transferred to the Board by the Bill.

Clause 6 inserts into the Principal Act Part 1A, with Section numbers 5 to 5R.

New Section 5 establishes the Board as a body corporate.

New Section 5A provides that the Board shall be made up of 5 members appointed by the Minister in writing, with notice in the *Gazette*. Of the 5 members one shall be appointed after consultation by the Minister with the Electrical, Electronic, Plumbing and Allied Workers' Union, one after consultation with the National Electrical Contractors Association (ACT Chapter), one after consultation with the Canberra Institute of Technology, one shall be an employee of ACTEW and there shall be one other person appointed. The ACTEW appointee and the three persons appointed after consultation as specified are required to be eligible to hold a Grade A electrician's licence or electrical engineering qualifications. The Minister may appoint deputies of Board members.

New Section 5B provides that the Minister is to appoint a Chairperson and Deputy Chairperson from amongst the members while 5C provides that the term of office will be a maximum of 3 years and appointees are eligible for reappointment, and 5D provides that members may resign in writing delivered to the Minister.

New Section 5E provides that the functions of the Board are to consider and decide applications for licences and permits, to advise the Minister on electrical licensing matters and to carry out other functions conferred on the Board under the *Electricity Act* or other legislation. 5F gives the Board all necessary powers for its functions and 5G permits the Board to delegate its powers to the Registrar.

New Section 5H provides that the Board may report to the Minister making recommendations on matters relating to its powers and that Board shall comply with any request from the Minister on matters related to the Boards powers.

New Section 5J provides that in the absence of a member his or her deputy may attend any Board meeting and exercise voting rights of the member; 5K provides for payment of allowances as prescribed by the Minister to Board members apart from the Canberra Institute of Technology and the ACTEW representatives.

New Sections 5L, 5M, 5N, 5P and 5Q provide for the staff of the Board to be made available by ACTEW; for meetings to be called by the Chairperson as necessary with at least 4 meetings to be held in every year; for a quorum to be a majority of the members of the Board, effectively 3; voting arrangements; and for meeting procedure to be determined by the Board.

New Section 5R provides for the Board to approve courses of education and arrange examinations and for candidates to pay the determined fee before undertaking an examination.

Clause 7 amends Section 8 of the *Electricity Act* to provide for the name and address details, which are to be kept in the register of licence and permit holders.

Clause 8 amends Section 9 to provide that a body corporate or partnership shall carry on business as an electrical contractor only if it holds an electrical contractor's licence and either employs or has as a director of the company, or as one of the partners, a person who holds an electrician's licence Grade A.

Clause 9 amends Section 10 to provide that electrical wiring work can be carried out by a person who is an apprentice or the holder of an electrician's permit, Grade A and who is apprenticed to / employed by the holder of an electrical contractor's licence and who is supervised by the holder of an electrician's licence.

Clause 10 inserts new section 10A which provides that incidental electrical wiring work (being prescribed types of electrical work carried out incidental to the trade of a person who is not the holder of an electrician's licence) shall not be carried out except by the holder of an electrician's licence, of a restricted electrical licence, or of a restricted electrical permit, who is working under supervision of a person with an appropriate electricians, or restricted electrical, licence. The penalty of \$5000, or imprisonment for 6 months, or both, may appear inconsistent with penalties elsewhere in the *Electricity Act* for similar offences, being \$200. Those outdated penalties are subject to separate revision under an omnibus bill dealing with penalties generally and which, at time of drafting this memorandum, is expected to reach the Assembly before this Bill.

Clauses 11 and 12 amend Sections 11 and 13 in a minor way by deletion of words.

Clause 13 inserts new sections 13A, 13B and 13C which make it an offence with a maximum penalty of \$5000 or imprisonment for 6 months, or both, for a permit holder

to carry out work without appropriate supervision, or for the holder of a restricted electrical licence to carry out work except incidentally to the occupant specified in his or her licence. Comments under Clause 10 concerning the penalty are relevant to Clause 13 as well.

Clause 14 amends the heading to Part IV of the *Electricity Act* to make clear that it deals with permits as well as licences.

Clause 15 repeals Sections 15 and 16 and inserts replacement sections and new sections 16A, 16B and 16C. The new section 15 provides that an electrical contractor's licence may be granted to a person who holds an electrician's licence Grade A, has passed the relevant tests of basic business practices and ethics; is considered by the Board to be capable of directing people carrying out electrical wiring work and is otherwise a fit and proper person to hold a licence. New sections 16 and 16A set out the conditions under which an electrical contractor's licence may be granted to a body corporate and to a partnership. New section 16B provides that when the Board determines a person is a fit and proper person to hold an electrical contractor's licence it shall take into account any conviction in the preceding 10 years for dishonesty or fraud, whether any such charge is pending, whether there has been a conviction for an offence against the *Electricity Act* or similar legislation elsewhere in Australia, or whether the person has been refused a licence under a corresponding law elsewhere in Australia. New section 16C requires public liability insurance of not less than \$1 million to be in force for all persons holding or obtaining an electrical contractor's licence.

Clause 16 amends Section 17 of the *Electricity Act* which sets out the criteria to be considered by the Board in deciding whether to grant an electrician's licence Grade A to an applicant. The changes make clear that the Board is the decision maker and delete references to the Authority (ie ACTEW) being the decision maker.

Clause 17 deletes Sections 19 and 20 and sets out new Sections 19, 20, 20A, 20B, 20C, and 20D. New Section 20 provides that the Board may grant a restricted electrical licence to a person who satisfies the Board he or she has the necessary skill and experience to carry out electrical work which is incidental to the main occupation. New Sections 19 and 20 provide that where a person applying for an electrician's licence or a restricted electrical licence meets all criteria except that of experience, the Board shall grant a relevant permit to allow the applicant to work under supervision while gaining the necessary experience to qualify for the licence.

New Section 20B has the same effect as the *Mutual Recognition Act 1992* in specifying that where a person holds a relevant electrician's or electrical licence or permit in a State or another Territory participating under the *Mutual Recognition Act*, is entitled to hold the corresponding licence or permit in the ACT. The advantage of this section is that a person consulting the *Electricity Act 1971* will gain a clear understanding of this entitlement without the need to be aware that the *Mutual Recognition Act* has an important bearing on electrical licensing matters where interstate licence holders are concerned.

New Section 20C covers administrative details of lodging a licence application and the necessity to pay the determined fee. New Section 20D permits the Board to require additional information from a person who has applied for a licence.

Clause 18 amends Section 22 by deleting subsections (1) and (2) and substituting new subsections (1), (2) and (3) which provide that the Board shall consider each licence application under new Section 20C and shall approve or refuse the application (subject to the new sections 19 and 20A which permit the Board to grant a permit where the reason for refusal to grant a licence or restricted licence is nothing more than the applicant's lack of experience). New subsection (3) provides that Section 22 does not apply to a person who is entitled to a licence or permit by operation of the *Mutual Recognition Act*. Such an application can be refused only for reasons consistent with requirements of the *Mutual Recognition Act*.

Clause 19 inserts after Section 22 new Sections 22A, 22B and 22C. New Section 22A provides that the Board shall not grant a licence unless satisfied the applicant has sufficient physical capacity and communication skills, including adequate command of English language, sufficient to carry out the work authorised by the licence, with the exception that a licence cannot be refused on the above grounds where the application has been lodged under the *Mutual Recognition Act* by a person entitled to registration because of that Act. New Section 22B provides that the Board can impose conditions on a grant of a licence and 22C provides that if, after a licence has been granted to a person under the *Electricity Act*, a condition is imposed on an equivalent licence held by that person in another State or Territory, the Board shall impose a similar condition on the relevant ACT licence.

Clause 20 repeals Section 23 of the *Electricity Act* which dealt with notification of refusal to grant a licence.

Clause 21 provides that Section 24 is repealed and a new section inserted providing for the Board to give notice and issue a licence when an application has been approved.

Clause 22 amends Section 25 to provide changed terms for licences issued after the Bill comes into effect: 1 year for an electrical contractor's licence and permits; 5 years for an electrician's licence and a restricted electrical licence.

Clause 23 makes minor technical changes to Section 26 and provides that no new electrician's Grade B licences shall be issued after commencement of section 4 of the *Electricity (Amendment) Act 1994*. The Grade B licences are obsolete and fewer than 9 holders retain Grade B licences. They will be permitted to renew if required.

Clause 24 amends the heading to Part V to indicate it deals with permits as well as licences.

Clause 25 amends Section 27 to provide that the Board, and no longer ACTEW, has responsibility for cancellation or suspension of licences; to provide that permits as well as licences are covered; and to indicate some grounds for suspension or cancellation of licences, one ground being failure of an electrical contractor to maintain the necessary

public liability insurance cover. Other amendments to Section 27 are predominantly minor changes replacing the term "Authority" with the term "Board" or inserting references to permits.

Clause 26 inserts new Section 27A which provides that where a person licensed under the *Electricity Act* had his or her licence cancelled in the other Territory or in a State for reasons relating to physical capacity or work done under the licence, the Board may cancel that person's ACT licence.

Clause 27 amends Section 28, dealing with inquiries related to disciplinary matters, by replacing references to "Authority" [ACTEW] with references to the Board and by introducing references to permits. **Clause 28** makes corresponding changes to Section 29 and **Clause 29** does likewise for Section 30.

Clause 30 repeals Part VI of the *Electricity Act* which dealt with appeals to a court on refusal to grant a licence or suspension of a licence while **Clause 31** deletes from Section 32 two definitions which are no longer needed, being "regulatory authority" and "Tribunal". **Clause 32** deletes sections 32ZD, 32ZE and 32ZJ. Section 32ZD related to applications for review by the Administrative Appeals Tribunal of decisions relating to declaration or an article of electrical equipment as prohibited, and generally on matters related to decisions adverse to sellers of electrical equipment and testers of electrical equipment. Section 32ZE provided that people affected by decisions should be notified in writing and advised of their rights under the *Administrative Appeals Tribunal Act 1989* and Section 32ZJ provided that the Minister could determine fees for the purposes of Part VII which deals generally with prohibition of the sale of certain electrical articles.

Clause 33 amends Section 33 by removing the need for the Chief Executive of the Authority to personally sign notices relating to the need to trim trees which are too close to powerlines, permitting the Authority to indicate the extent to which the trees need to be trimmed and the relevant timing of the trimming (being not less than 7 days' notice), and making minor changes to the wording of the provisions within Section 33 which permit the Authority to enter land and trim or fell trees where an occupier or owner has not done so within the required period.

Clause 34 inserts a new Part VIIIA which provides at new Section 36AA for review by the Administrative Appeals Tribunal of the range of decisions taken under the *Electricity Act* range from licensing matters through the safety of electrical goods to notices from the Authority requiring the lopping of trees. New Section 36AB requires the Board or the Authority when making a decision as referred to in new Section 36AA, to give written notice within 28 days to the person adversely affected, advising of the right to seek review by the Administrative Appeals Tribunal and staying operation of the decision pending withdrawal of the AAT action or a decision by the AAT.

Clause 35 amends Section 37 to permit persons authorised to require production of a licence, to require production of a permit.

Clause 36, 37, and 38 amend Sections 38, 39 and 40 respectively by providing that permit holders, in addition to licence holders as at present, will be required to notify to the registrar change of name or address, loss of permit and to require return of an expired permit.

Clause 39 amends Section 41 which is a provision for evidentiary purposes. It relates to certification by the Registrar that a relevant licence was held on a particular date, and to certification by a regulatory authority in a State or another Territory that a particular class of electrical equipment was approved by the relevant authority on a specified date.

Clause 40 amends Section 42 which deals with service of notices by adding "or permit" to "licence" wherever "licence" is mentioned.

Clause 41 inserts a new Section 43AA permitting the Minister to determine fees for purposes of the *Electricity Act* by notice published in the *Gazette*.

Clause 42 notes that the *Electricity Act* is amended as set out in the Schedule to the Bill. These are technical drafting changes related to use of terminology and the like.

Clause 43, 44, 45, 46 and 47 form Part III - Transitional and Savings. This part provides that none of the changes affect the right of current licence holders to renewal of their licences once the Bill comes into effect; provides that the changed term for licences applies only to licences granted or renewed after commencement and does nothing to vary the term of existing licences; provides that the Board may determine any licence applications lodged but not decided prior to commencement; provides that any inquiry which was begun prior to commencement may be continued by the Board; provides that any decision which is the subject of a pending appeal to a Court may be the subject of an application for review to the Administrative Appeals Tribunal. In the event of any pending application to a Magistrate's Court under Section 33 not having been determined prior to commencement, the *Electricity Act* as in force immediately prior to commencement will continue to apply in relation to that application.

Clause 48 provides for the amended Act to be renumbered and for this not to affect any references to the *Electricity Act* in other legislation.