



AUSTRALIAN CAPITAL TERRITORY

Electricity and Water (Corporatisation) (Consequential Amendments) Act 1995

No. 7 of 1995

An Act to amend certain laws of the Territory in consequence of the corporatisation of the body providing electricity, water and sewerage services

[Notified in ACT Gazette S148: 28 June 1995]

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

Short title

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

Commencement

2. This Act commences on the day referred to in subsection 2 (2) of the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*.

Amendments of Acts

3. The Acts specified in the Schedule are amended as set out in that Schedule.

Transitional provisions

4. (1) In this section—

“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 section 2.

(2) For the purpose of enabling compliance with section 93 of the *Audit Act 1989* in respect of the year ending on 30 June 1995, the Company shall, on behalf of the Authority, prepare and submit a report of the operations of the Authority in respect of that year.

(3) Subject to subsection (2), an act or thing done by or on behalf of the Authority under another law before the relevant day shall, for the purposes of the operation of that law after that date, be taken to have been done by or on behalf of the Company.

(4) Notwithstanding the amendment of section 79 of the *Electricity and Water Act 1988* effected by section 3, where before the relevant day—

(a) a certificate had been given in accordance with that section for the purpose of proceedings; and

(b) those proceedings had not been disposed of before the relevant day; the certificate continues to be evidence of the matters it states for the purpose of those proceedings as if this Act had not been passed.

SCHEDULE

Section 3

AMENDMENTS OF ACTS

Electricity and Water Act 1988

Title—

Repeal the title, substitute the following title:

“An Act relating to the supply of energy and water and the provision of drainage and sewerage services”.

Section 1—

Omit “*Electricity*”, substitute “*Energy*”.

Subsection 3 (1) (definitions of “appoint”, “appointed member”, “Authority”, “Chairperson”, “Chief Executive Officer”, “Deputy Chairperson”, “joint venture”, “member”, “securities”, “share” and “staff”)—

Omit the definitions.

Subsection 3 (1)—

Insert the following definitions:

“ ‘Authority’ means the former Australian Capital Territory Electricity and Water Authority established by this Act;

‘Company’ means ACTEW Corporation Limited;”.

Subsections 3 (2), (3) and (4)—

Omit the subsections.

Parts II, III, IV, V and VI—

Repeal the Parts.

SCHEDULE—continued

Section 48—

After subsection (1) insert the following subsection:

“(1AA) For the purposes of subsection (1), charges shall be in accordance with any relevant direction given by a body referred to in section 49A.”.

After section 49—

Insert the following section:

Regulation of charges

“49A. The regulations may provide for—

- (a) the establishment of a body having the function of regulating charges for or in connection with the supply of electricity or water or the provision of sewerage services;
- (b) the giving of directions by that body to the Company for the purposes of subsection 48 (1);
- (c) the membership, procedures and staffing of that body;
- (d) the matters that should be taken into account by that body in giving directions; and
- (e) other powers and functions of that body, including the conduct of investigations for the purpose of performing the function referred to in paragraph (a).”.

Section 74C—

Repeal the section.

Section 79—

Omit “the Chief Executive Officer”, substitute “an officer of the Company”.

Section 79A—

Repeal the section.

Section 82—

Repeal the section, substitute the following section:

Regulations

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

“(2) Without limiting the generality of subsection (1), the regulations—

- (a) may make provision for or in relation to—

SCHEDULE—continued

- (i) carrying out plumbing and drainage work and building work affecting drains or sewers or the supply of water;
 - (ii) the types of materials and methods of construction to be used for plumbing, drainage and sewerage work;
 - (iii) water closets, urinals, sinks, troughs, lavatories or baths;
 - (iv) protecting the quality of water and the infrastructure associated with the supply of water;
 - (v) supplying, appropriating and using water and avoiding the wastage of water;
 - (vi) meters for measuring the amount of water supplied or sewerage collected and requiring the use of meters;
 - (vii) discharging matter into drains or sewers;
 - (viii) protecting the infrastructure associated with the collection, disposal and treatment of sewage;
 - (ix) connecting equipment to infrastructure related to the supply of water or to drains and sewers; and
 - (x) removing or repairing defective plumbing work, drains or sewers; and
- (b) may prescribe, for offences against the regulations, penalties not exceeding a fine of—
- (i) if the offender is a body corporate—50 penalty units; or
 - (ii) if the offender is a natural person—10 penalty units.

“(3) The Canberra Sewerage and Water Supply Regulations and the Electricity and Water Regulations, as in force immediately before the commencement of this section, continue in force as if made under this section.”.

Sections 83, 84, 85, 86 and 87—

Repeal the sections.

Subsection 88 (1)—

Omit “former”, substitute “Commonwealth”.

Section 88—

Add at the end the following subsections:

“(2) A reference to the Authority in an instrument made, granted or issued before 1 July 1995 and in force immediately before that date has effect, on and after that date, as if that reference were (except in relation to matters that occurred before that date) a reference to the Company.

SCHEDULE—continued

“(3) In this section—

‘commencement date’ means 1 July 1988;

‘Commonwealth Authority’ means the Australian Capital Territory Electricity Authority constituted under the *Australian Capital Territory Electricity Supply Act 1962* of the Commonwealth.”.

Sections 89, 90 and 91—

Repeal the sections.

Further amendments—

1. The following provisions are amended by omitting “Authority” (wherever occurring) and substituting “Company”:

Subsection 3 (1) (definitions of “electrical installation” and “sewerage services”), heading to Part VII, subsections 48 (1) and (3), 50 (1), (2), (3), (4) and (5), 51 (1), (2) and (3) and 55 (1) and (3), section 56, subsections 63 (1) and 66 (1), section 69, subsections 70 (2), 73 (3) and 74D (1), sections 76, 77 and 78, subsection 78A (1) and sections 79 and 81.

2. The following provisions are amended by omitting “Chief Executive Officer” (wherever occurring) and substituting “Company”:

Subsections 53 (1) and (2) and 54 (1) and (2).

Freedom of Information Act 1989

Subsection 4 (1) (definition of “prescribed authority”, paragraph (c))—

Omit “or” (last occurring).

Subsection 4 (1) (definition of “prescribed authority”, paragraph (d))—

Add at the end “or”.

Subsection 4 (1) (definition of “prescribed authority”)—

Add at the end the following paragraph:

“(e) ACTEW Corporation Limited;”.

Subsection 4 (1) (definition of “principal officer”, paragraph (a))—

Omit “or”.

Subsection 4 (1) (definition of “principal officer”, paragraph (b))—

After “prescribed authority” insert “other than ACTEW Corporation Limited”.

Subsection 4 (1) (definition of “principal officer”, subparagraph (b) (ii))—

Add at the end “or”.

SCHEDULE—continued

Subsection 4 (1) (definition of “principal officer”)—

Add at the end the following paragraph:

“(c) in relation to ACTEW Corporation Limited—the Chief Executive Officer of the Company;”.

Ombudsman Act 1989

Subsection 3 (1) (definition of “prescribed authority”, paragraph (c))—

Omit “or” (last occurring).

Subsection 3 (1) (definition of “prescribed authority”, paragraph (d))—

Add at the end “or”.

Subsection 3 (1) (definition of “prescribed authority”)—

Add at the end the following paragraph:

“(e) ACTEW Corporation Limited;”.

Public Sector Management Act 1994

Subsection 3 (1) (definition of “autonomous instrumentality”)—

Omit the definition, substitute the following definition:

“ ‘autonomous instrumentality’ means the Office of the Director of Public Prosecutions;”.

Subsection 3 (1) (definition of “officer”, paragraph (b))—

Omit “or” (last occurring).

Subsection 3 (1) (definition of “officer”, paragraph (c))—

Add at the end “or”.

Subsection 3 (1) (definition of “officer”)—

Add at the end the following paragraph:

“(d) a person who is to be taken to be an officer in accordance with section 115A;”.

Section 5—

After paragraph (f) insert the following paragraph:

“(g) ACTEW Corporation Limited”.

Subsection 57 (2)—

Omit the subsection, substitute the following subsection:

SCHEDULE—continued

“(2) The power of the Commissioner under subsection (1) shall, in relation to the classification of offices in the Office of the Director of Public Prosecutions, be exercised by the Director of Public Prosecutions.”.

Section 59—

Repeal the section, substitute the following section:

Application of subsection 58 (2) to Office of the Director of Public Prosecutions

“59. The Commissioner shall not give a direction under subsection 58 (2) in relation to an office in the Office of the Director of Public Prosecutions.”.

Section 64—

Repeal the section, substitute the following section:

Application

“64. (1) Unless the contrary intention appears, the provisions of this Part apply, subject to subsection (2), in relation to the Office of the Director of Public Prosecutions as if a reference in those provisions to the Commissioner were a reference to the Director of Public Prosecutions.

“(2) Sections 73 and 74 do not apply in relation to the Office of the Director of Public Prosecutions.”.

Paragraph 68 (1) (a)—

Omit “the Australian Capital Territory Electricity and Water Authority or”.

Paragraph 68 (1) (b)—

- (a) Omit “the Australian Capital Territory Electricity and Water Authority or”.
- (b) Omit “the Authority or the Director of Public Prosecutions respectively”, substitute “the Director of Public Prosecutions”.

Section 75—

Repeal the section, substitute the following section:

Appointment or promotion of SES officers in Office of the Director of Public Prosecutions

“75. Where the Director of Public Prosecutions receives a recommendation for the appointment or promotion of a person to a Senior Executive Service Office in the Office of the Director of Public Prosecutions, the Director may, after consultation with the Commissioner, appoint or promote the person to fill that office.”.

SCHEDULE—continued

After section 115—

Insert the following section:

Mobility rights of certain persons

“115A. (1) Notwithstanding subsection 7 (2) of the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*, the following provisions have effect in relation to employees of the Company.

“(2) A transferred employee of the Company shall, within a period of 3 years commencing on the relevant day, be taken to be an officer within the meaning of this Act for the purposes of the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* of the Commonwealth.

“(3) For the purposes of transfer or promotion to an office in the Service in accordance with this Part, an employee of the Company shall be taken to be an officer within the meaning of this Act.

“(4) Unless the contrary intention appears, an expression used in this section has the same meaning as in section 7 of the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*.”

Public Sector Management (Consequential and Transitional Provisions)
Act 1994

Section 15—

Add at the end the following subsection:

“(2) Where a person to whom subsection (1) applies becomes a transferred employee within the meaning of section 7 of the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*, the subsection shall continue to apply in relation to that person.”

Territory Owned Corporations Act 1990

Subsection 3 (1) (definition of “company”)—

Omit “a law of the Commonwealth, a State or another Territory dealing with the formation or regulation of companies”, substitute “the Corporations Law”.

Subsection 3 (1) (definition of “Corporations Act”)—

Omit the definition.

Subsection 3 (1) (definition of “subsidiary”, paragraph (a))—

Omit “Corporations Act”, substitute “Corporations Law”.

Section 4—

SCHEDULE—continued

Repeal the section, substitute the following section:

Application

“4. In its application to ACTEW Corporation Limited, this Act applies subject to the modifications specified in Schedule 4.”.

Subsection 14 (2) (definition of “partially owned subsidiary”, paragraph (a))—

Omit “Corporations Act”, substitute “Corporations Law”.

Subsection 22 (5) (definition of “subsidiary”)—

Omit “Corporations Act”, substitute “Corporations Law”.

Schedule 1—

Insert before “Totalcare Industries Limited” the following item:

“ACTEW Corporation Limited”.

Schedule 4—

Add at the end the following Schedule:

SCHEDULE 4

Section 4

MODIFICATIONS IN RELATION TO ACTEW CORPORATION
LIMITED

Interpretation

1. In this Schedule, 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.

Substitution of section 7

2. Section 7 is to be taken to be replaced by the following section:

Principal objectives of Company

“7. (1) The principal objectives of the Company are to—

- (a) operate at least as efficiently as any comparable business;
- (b) maximise the sustainable return to the Territory on its investment in the Company in accordance with the performance targets contained in the latest statement of corporate intent of the Company;
- (c) exhibit a sense of social responsibility by having regard to the interests of the community in which it operates; and

SCHEDULE—continued

- (d) where its activities affect the environment—conduct its operations in compliance with the principles of ecologically sustainable development.

“(2) For the purposes of paragraph (1) (d), ecologically sustainable development is to be taken to require the effective integration of economic and environmental considerations in decision-making processes and to be achievable through implementation of the following principles:

- (a) the precautionary principle, namely, that if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (b) the inter-generational equity principle, namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (c) conservation of biological diversity and ecological integrity;
- (d) improved valuation and pricing of environmental resources.

“(3) The principal objectives of the Company are of equal importance.”.

Operation of section 14

3. Section 14 applies as if subsection (1) were omitted and the following subsections substituted:

“14. (1) Subject to subsection (1A), a Territory owned corporation or a subsidiary shall not enter into a specified transaction if, as a result of the transaction, a company would or could become a partially owned subsidiary of the Territory owned corporation or subsidiary.

“(1A) Subsection (1) does not apply to the Company.”.

Operation of section 16

4. Section 16 applies as if the following subsection were inserted:

“(4) In this section—

‘subsidiary’, in relation to a Territory owned corporation, means a body corporate that under the Corporations Law is a subsidiary of the corporation.”.

Operation of section 30

5. (1) In this section—

“acquired”, in relation to an asset, means an acquisition of the asset for the purposes of Part IIIA of the Commonwealth Act;

“asset” has the same meaning as in Part IIIA of the Commonwealth Act;

SCHEDULE—continued

“Commonwealth Act” means the *Income Tax Assessment Act 1936* of the Commonwealth;

“cost base” has the meaning given by section 160ZH of the Commonwealth Act;

“disposed of”, in relation to an asset, means a disposal of the asset for the purposes of Part IIIA of the Commonwealth Act;

“indexed cost base” has the meaning given by section 160ZH of the Commonwealth Act;

“reduced cost base” has the meaning given by section 160ZH of the Commonwealth Act;

“vested” means vested under section 4 of the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*.

(2) For the purposes of section 30, an asset vested in the Company which was acquired by the Authority before 20 September 1985 shall be taken to have been acquired by the Company before that date.

(3) For the purposes of section 30, where an asset vested in the Company—

- (a) was acquired by the Authority on or after 20 September 1985; and
- (b) is disposed of by the Company;

the asset shall be taken to have been acquired by the Company at a cost base to the Company equal to the cost base that would have been the cost base, the indexed cost base or the reduced cost base, as the case may be, to the Authority of that asset if the asset had been disposed of by the Authority at the time it was disposed of by the Company.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

Section headings

On the day on which the *Electricity and Water Act 1988* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, headings to sections of the *Electricity and Water Act 1988* are altered as set out in the following table:

Section	Alteration
63	Omit from the heading “ Authority ”, substitute “ Company ”.
81	Omit from the heading “ Authority ”, substitute “ Company ”.

[Presentation speech made in Assembly on 1 June 1995]