



Australian Capital Territory

# **Utilities Act 2000    No 65**

## **Republication No 5**

Republication date: 21 June 2002

Last amendment made by Act 2002 No 11

Amendments incorporated to 21 June 2002

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Utilities Act 2000* as in force on 21 June 2002. It includes any amendment, repeal or expiry affecting the republished law to 21 June 2002 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
21 June 2002



Australian Capital Territory

# Utilities Act 2000

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Amendments incorporated to  
21 June 2002



Australian Capital Territory

## **Utilities Act 2000**

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An Act to regulate the provision of services by certain utilities, and for other matters

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Utilities Act 2000*.

### 3 ICRC's objects

ICRC's objects under this Act are as follows:

- (a) to encourage the provision of safe, reliable, efficient and high quality utility services at reasonable prices;
- (b) to minimise the potential for misuse of monopoly power in the provision of utility services;
- (c) to promote competition in the provision of utility services;
- (d) to encourage long-term investment, growth and employment in utility service industries;
- (e) to promote ecologically sustainable development in the provision of utility services;
- (f) to protect the interests of consumers;
- (g) to ensure that advice given to ICRC by the council, or the chief executive under part 5 (Technical Regulation), is properly considered;
- (h) to ensure the Government's programs about the provision of utility services are properly addressed;
- (i) to give effect to directions of the Minister under section 19.

### 4 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost*



*definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*customer*—see section 17 (Customers).' means the word 'customer' is defined in that section.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

## 5 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

## Part 2                    Utility services

### Division 2.1            Electricity

#### 6            Electricity services

For this Act, each of the following is a *utility service*:

- (a) the distribution of electricity through an electricity network;
- (b) an electricity connection service;
- (c) the supply of electricity from an electricity network to premises for consumption.

#### 7            Electricity network

(1) For this Act, an electricity network consists of infrastructure used, or for use, in relation to the distribution of electricity by a person for supply to the premises of another person.

(2) In this section:

*infrastructure* means—

- (a) powerlines; or
  - (b) substations and equipment for monitoring, distributing, converting, transforming, or controlling electricity; or
  - (c) a structure supporting overhead powerlines; or
  - (d) wires, ducts or pipes for wires, or equipment; or
  - (e) any other thing ancillary to any other part of the infrastructure.
- (3) An electricity network does not include infrastructure that is outside the network boundary.

## Division 2.2      Natural gas

### 8      Gas—terminology

(1) In this Act:

*gas* means natural gas to which the *Gas Pipelines Access (A.C.T.) Law* applies.

(2) Words and expressions used in this Act in relation to gas that are used in any of the following laws:

- (a) *Gas Pipelines Access Act 1998*;
- (b) the *Gas Pipelines Access (A.C.T.) Law*;
- (c) the *Gas Pipelines Access (A.C.T.) Regulations*;

have the same respective meanings in this Act as they have in that law.

(3) Subsection (2) does not apply to the extent that the context or subject matter otherwise indicates or requires.

### 9      Gas services

For this Act, each of the following is a *utility service*:

- (a) the transmission of gas through a gas transmission network;
- (b) the distribution of gas through a gas distribution network;
- (c) a gas connection service;
- (d) the supply of gas from a gas distribution network to premises for consumption.

### 10      Gas networks

(1) For this Act, a gas transmission network consists of infrastructure used, or for use, in relation to the transmission of gas by a person through a pipeline to a distribution network owned or operated by another person.

- (2) For this Act, a gas distribution network consists of infrastructure used, or for use, in relation to the distribution of gas by a person through a pipeline for supply to premises of another person.
- (3) In this section:
- infrastructure* means—
- (a) pipelines; or
  - (b) meters; or
  - (c) any equipment (including pressure control devices, excess flow valves, control valves, actuators, electrical equipment, telemetry equipment, cathodic protection installations, compounds, pits, buildings, signs and fences); or
  - (d) any other thing ancillary to any other part of the infrastructure.
- (4) A gas network does not include infrastructure that is outside the network boundary.

## Division 2.3            Water

### 11    Water services

For this Act, each of the following is a *utility service*:

- (a) the collection or treatment of water, or both, for distribution through a water network;
- (b) making a water network available for the provision of water connection services;
- (c) the distribution of water through a water network;
- (d) a water connection service;
- (e) the supply of water from a water network to premises for consumption.

## **12 Water network**

- (1) For this Act, a water network consists of the infrastructure mentioned in subsection (2) used, or for use, in relation to any of the following purposes:
  - (a) the collection and treatment of water for distribution by a person to premises of another person;
  - (b) the distribution of water by a person for supply to premises of another person.
- (2) For subsection (1), the infrastructure consists of the following:
  - (a) water storages, mains and treatment plants;
  - (b) pumps, facilities and equipment for distributing water, or monitoring or controlling the distribution of water;
  - (c) pipes or equipment;
  - (d) any other thing ancillary to any other part of the infrastructure.
- (3) A water network does not include infrastructure that is outside the network boundary.

## **Division 2.4 Sewerage**

### **13 Sewerage services**

For this Act, each of the following is a *utility service*:

- (a) making a sewerage network available for the provision of sewerage connection services;
- (b) a sewerage connection service;
- (c) a sewerage service.

### **14 Sewerage network**

- (1) For this Act, a sewerage network consists of the infrastructure mentioned in subsection (2) used, or for use, in relation to the

provision of sewerage services by a person to premises of another person.

- (2) For subsection (1), the infrastructure consists of the following:
  - (a) sewage storages, trunk sewers, mains and treatment plants;
  - (b) pumps, facilities and equipment for conveying sewage, or monitoring or controlling the conveyance of sewage;
  - (c) pipes or equipment;
  - (d) any other thing ancillary to any other part of the infrastructure.
- (3) A sewerage network does not include infrastructure that is outside the network boundary.

## **Division 2.5                      Miscellaneous**

### **15      Prescribed utility services**

- (1) The regulations may prescribe—
  - (a) a service related or ancillary to a utility service mentioned in division 2.1, 2.2, 2.3 or 2.4; or
  - (b) a service complementary to the operations of a utility;to be a utility service.
- (2) The regulations may prescribe the utility network, and the infrastructure it consists of, for a utility service prescribed by regulations under subsection (1).
- (3) Regulations made for this section may—
  - (a) exempt a person from a stated requirement under this Act; and
  - (b) state the circumstances in which an exemption applies.

### **16      Network boundary**

- (1) The boundary of a network is to be ascertained in accordance with the relevant industry code.

- (2) Without limiting the operation of subsection (1), the industry code may deal with the boundary of a network by reference to a point of connection between the network and—
- (a) customers' premises; or
  - (b) any other network.

## **17 Customers**

- (1) In this Act:

*customer*, for a utility service, means—

- (a) a person for whom the service is provided under a customer contract; or
- (b) a person who has applied, orally or in writing, to the relevant utility for the service to be provided under a customer contract.

*franchise customer*, in relation to the supply of electricity, gas or water to premises, means a customer other than a non-franchise customer for the supply to the premises.

*non-franchise customer*—

- (a) for the supply of electricity to premises, means—
  - (i) a person who uses 160MW.h of electricity or more at particular premises in a particular year; or
  - (ii) a person who has that status because of a declaration under section 18; and
- (b) for the supply of gas to premises, means—
  - (i) a person who uses 1TJ of gas or more at particular premises in a particular year; or
  - (ii) a person who has that status because of a declaration under section 18; and
- (c) for the supply of water to premises—means a person who has that status because of a declaration under section 18.

- (2) For the definition of *customer*, paragraph (b) in subsection (1), an application for a connection or supply service in relation to water or sewerage includes an application by, or for, a person for approval of a plan for plumbing or drainage work to connect premises to the relevant network.
- (3) For this Act, a customer to whom a declaration under section 18 applies is a non-franchise customer for a utility service only in the circumstances to which the declaration relates.

## **18 Declaration of non-franchise customers**

- (1) The Minister may, in writing, declare a person to be a non-franchise customer in relation to the supply of electricity, gas or water to premises.

*Note*     Power given under an Act to make a statutory instrument includes power to make different provision for different categories, eg different classes of people or premises (see *Legislation Act 2001*, s 48).

- (2) A declaration is a notifiable instrument.

*Note*     A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) A declaration is a disallowable instrument if it is expressed to apply in relation to a person's use of—
  - (a) less than 160 MW.h of electricity at premises in a year; or
  - (b) less than 1 TJ of gas at premises in a year.

*Note*     A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **19 Ministerial directions**

- (1) A direction under this section may be given only to ensure the achievement of the objects set out in section 3 (a) to (h).
- (2) The Minister may give a written direction to ICRC about the results it must achieve by—
  - (a) licence conditions; or



- (b) industry codes.
- (3) A direction may be given generally or in relation to a particular matter.
- (4) ICRC must give effect to the direction as far as practicable.
- (5) A direction is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **20 Other laws not affected**

- (1) This Act is in addition to, and does not limit, any other Act.
- (2) In particular, nothing in this Act affects the performance of a function under, or the obligation of a utility to comply with a requirement of or under, any of the following Acts:
  - (a) the *Electricity Safety Act 1971*;
  - (b) the *Emergency Management Act 1999*;
  - (c) the *Environment Protection Act 1997*;
  - (d) the *Fair Trading Act 1992*;
  - (e) the *Gas Act 2000*;
  - (f) the *Gas Pipelines Access Act 1998*;
  - (g) the *Gas Pipelines Access (A.C.T.) Law*;
  - (h) the *Gas Pipelines Access (A.C.T.) Regulations*;
  - (i) the *Land (Planning and Environment) Act 1991*;
  - (j) the *Occupational Health and Safety Act 1989*;
  - (k) the *Water and Sewerage Act 2000*;

(1) the *Water Resources Act 1998*.

*Note*        A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, 104).

## **Part 3                      Licensing of utilities**

### **Division 3.1              General**

#### **21      Requirement for licence**

- (1) A person must not provide a utility service except in accordance with a licence.

Maximum penalty: 3 000 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence for each day (after the first day) during any part of which the contravention continues.
- (3) An offence against subsection (2) is punishable, on conviction, by a fine not exceeding 600 penalty units.
- (4) To avoid any doubt, subsection (1) does not apply to the provision of a utility service by a person as an agent of a utility.

#### **22      Exemption**

- (1) The Minister may, in writing, exempt a person from the requirement for a licence in relation to a utility service.

*Note*      Power given under an Act to make a statutory instrument includes power to make different provision for different categories, eg different classes of people or services (see *Legislation Act 2001*, s 48).

- (2) An exemption is subject to compliance with any condition stated in the instrument of exemption.
- (3) A exemption is a disallowable instrument.

*Note 1*      Large institutions, such as shopping centres, caravan parks, universities, retirement villages, apartment buildings or office blocks, may have their own facilities and network for the distribution and supply of electricity to tenants, and the distribution and supply may be regulated by the business arrangements between the institutions' managers and tenants. In some of these cases, the usual licence conditions concerning

distribution and supply of electricity to the public may be inappropriate, and hence could be subject to an exemption.

*Note 2* The conditions on an exemption may, for example, require compliance with certain requirements under the Act in relation to safety and technical matters.

*Note 3* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **Division 3.2 Terms of licences**

### **23 Licensed utility services**

A licence may be for 1 or more stated utility services, for example—

- (a) in 1 or more areas; or
- (b) for 1 or more classes of persons.

### **24 Duration**

A licence may be in force indefinitely or for a term stated in the licence.

### **25 General conditions**

- (1) A licence is subject to—
  - (a) the conditions imposed from time to time by this Act; and
  - (b) any other condition stated in the licence by ICRC that is not inconsistent with a requirement of, or under, this Act or any other law of the Territory.
- (2) A licence is subject to the following conditions:
  - (a) that the utility comply with each of the following:
    - (i) any requirement under this Act or a related law;
    - (ii) a requirement under any other law in force in the Territory that applies to the utility in relation to the provision of a utility service;

- (iii) each industry code that applies to the utility;
- (iv) each technical code that applies to the utility;
- (v) a direction given to it by ICRC under this Act or a related law;
- (vi) a direction given to it by the chief executive under part 5;
- (b) that the utility maintains the capacity, as determined in accordance with the relevant technical and prudential criteria adopted by ICRC from time to time under section 26—
  - (i) to comply with the licence conditions; and
  - (ii) to operate a viable business as a licensee;
- (c) that the utility keep all records and documents necessary to enable it to meet any reporting requirement, or any requirement to produce a record or document, under this Act or another condition of its licence;
- (d) that the utility give ICRC, in accordance with any written requirements by ICRC, an annual report for each financial year in relation to—
  - (i) the performance of its functions under this Act; and
  - (ii) its compliance with the conditions of the licence.

## **26 Technical and prudential criteria**

- (1) ICRC must, in writing, adopt technical and prudential criteria for determining whether a utility, or an applicant for a licence, has the capacity—
  - (a) to comply with licence conditions; and
  - (b) to operate a viable business as licensee.
- (2) ICRC must, on request in writing by a utility, or an applicant or prospective applicant for a licence, give the person particulars of the relevant technical and prudential criteria.

- (3) Section 38 applies to a variation of the criteria adopted in relation to a particular utility in the same way as it applies to a variation of a licence.

## **27 Special conditions—electricity, gas or water supply services**

A licence to supply electricity, gas or water is, in addition to the conditions mentioned in section 25, subject to the following conditions:

- (a) that the utility supply only customers of the kind to which the licence relates;
- (b) if the licence is for supply to franchise customers—that the electricity, gas or water is supplied in accordance with the terms of the utility's standard customer contract for the supply (except to the extent that the customer and utility agree to other terms).

## **28 Special conditions—electricity distribution or supply**

- (1) A licence to distribute or supply electricity is, in addition to the conditions mentioned in section 25, subject to the condition that the utility comply with each applicable determination made by ICRC as the jurisdictional regulator under the National Electricity Code.
- (2) In this section:

*jurisdictional regulator*—see the ICRC Act, section 4A (4) (National Electricity Code—electricity distribution and transmission pricing).

*national electricity code*—see the ICRC Act, section 3 (1) (Interpretation).

## **29 Special conditions—gas transmission or distribution**

A licence—

- (a) to transmit gas through a gas transmission network to a gas distribution network; or
- (b) to distribute gas through a gas distribution network for supply to premises for consumption;

is in addition to the conditions mentioned in section 25, subject to the condition that the utility comply with each applicable determination made by the local regulator under the *Gas Pipelines Access (A.C.T.) Law*.

### **30 Special conditions—gas distribution or supply**

- (1) If a utility is licensed to distribute or supply gas, the licence is, in addition to the conditions mentioned in section 25, subject to the condition that the utility provides utility services in accordance with the ring-fencing requirements under the National Gas Code.
- (2) In subsection (1):

*National Gas Code* means the National Third Party Access Code for Natural Gas Pipeline Systems, within the meaning of the *Gas Pipelines Access (A.C.T.) Law*.

*Note* The *Gas Pipelines Access Act 1998*, s 8 defines the code for the *Gas Pipelines Access (A.C.T.) Law*.

### **31 Special conditions—gas distribution**

A licence to distribute gas is, in addition to the conditions mentioned in section 25, subject to the condition that the distributor must—

- (a) on request by a gas supplier or other person; and
- (b) on payment to the distributor of any relevant capital contribution charge;

connect the premises to which the request relates to the distributor's network.

### **32 Rights under licences**

The rights conferred by a licence—

- (a) are subject to the operation of this Act and each related law and, in particular, are subject to a declaration under section 18; and
- (b) are not exclusive, unless the licence provides otherwise.

### **33 Partnerships and other groups**

- (1) A licence granted to a member of a group on behalf of the group is taken to have been granted to the group.
- (2) This Act and each related law apply to the group as if it were a person, but with the following changes:
  - (a) a function that would be exercisable by the group may be exercised by any member;
  - (b) an obligation that would be imposed on the group is imposed instead on each member, but may be discharged by any member;
  - (c) a liability that would be imposed on the group is imposed instead, jointly and severally, on each member;
  - (d) an offence against this Act or a related law that would otherwise be committed by the group is taken to have been committed by each member.
- (3) In a prosecution of a person for an offence that the person is taken to have committed because of subsection (2) (d), it is a defence if the person proves that he or she—
  - (a) did not aid, abet, counsel or procure the relevant act or omission; or
  - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the person).



(4) If, under this Act or a related law, a document is given to a member of a group, it is taken to have been given to the group.

(5) In this section:

*group* means—

- (a) a partnership under the *Partnership Act 1963*; or
- (b) joint venturers or a consortium, syndicate or other unincorporated body of 2 or more persons.

### **Division 3.3                    Licences**

#### **34       Applications for certain licence decisions**

An application for any of the following must be made to ICRC:

- (a) the grant of a licence;
- (b) ICRC's agreement to the transfer of a licence;
- (c) the variation of a licence;
- (d) an exemption from compliance with a licence condition.

*Note 1*    A fee may be determined under s 229 (Determination of fees) for this section.

*Note 2*    If a form is approved under section 229A (Approved forms—ICRC) for an application, the form must be used.

#### **35       Further information**

- (1) ICRC may, by written notice given to an applicant, require the applicant to give ICRC further stated information or documents that ICRC reasonably requires to determine the application.
- (2) ICRC is not required to determine an application until the applicant complies with the requirement.

### 36 Public consultation

- (1) Before ICRC makes a defined licence decision under this division, it may give public notice about the matter to be decided and invite submissions about that matter from interested people.
- (2) The public notice must—
  - (a) be published in a daily newspaper and on ICRC's web site on the Internet; and
  - (b) state where copies of relevant documents may be inspected; and
  - (c) state—
    - (i) where submissions may be lodged; and
    - (ii) the closing date for submissions, that is at least 28 days after the notice is published.
- (3) If ICRC gives public notice under subsection (1) about a defined licence decision, it must not make the decision unless it has—
  - (a) allowed the utility a reasonable opportunity—
    - (i) to examine submissions lodged with ICRC in accordance with the public notice; and
    - (ii) to make representations to ICRC about any matter raised in the submissions; and
  - (b) considered the matters raised in all the submissions and representations properly made to ICRC.
- (4) In this section:  
*defined licence decision* means a decision to—
  - (a) grant a licence under section 37; or
  - (b) vary a licence under section 38; or
  - (c) exempt a utility under section 39; or

- (d) agree to the transfer of a licence under section 40.

*utility*—

- (a) in relation to the grant of a licence—means the applicant for the licence; and
- (b) in relation to the transfer of a licence—includes the intended transferee.

### **37 Grant**

- (1) ICRC may, on application, grant a licence to a person to provide a utility service.
- (2) ICRC must grant the licence if satisfied that—
- (a) the applicant has the capacity, as determined in accordance with the relevant technical and prudential criteria adopted by ICRC under section 26—
- (i) to comply with the licence conditions; and
- (ii) to operate a viable business as licensee; and
- (b) the applicant satisfies any other requirement that is relevant to ICRC's objects under this Act.
- (3) A licence to provide utility services to franchise customers, whether exclusively or otherwise, may be granted by ICRC only with the written approval of the Minister.
- (4) If ICRC—
- (a) refuses an application for a licence; or
- (b) grants a licence subject to a condition imposed by ICRC;
- it must, on request, give the applicant written notice of the decision and its reasons for the decision.

### **38 Variation**

- (1) ICRC may, in writing, vary a utility's licence—

- (a) on application by the utility; or
  - (b) on its own initiative, by written notice given to the utility.
- (2) ICRC may vary a licence on its own initiative only if ICRC—
- (a) has given the utility reasonable notice of the proposed variation and its reasons for the variation; and
  - (b) has allowed the utility a reasonable opportunity to make representations to ICRC about the proposal; and
  - (c) has taken account of any representation; and
  - (d) is satisfied that the variation is appropriate.
- (3) However, ICRC may vary a licence on its own initiative without complying with subsection (2) (a), (b) and (c) if satisfied that—
- (a) the variation is necessary or convenient—
    - (i) to give effect to a direction by the Minister under section 19; or
    - (ii) following a review of the licence under section 46; or
    - (iii) because of an amendment of an Act or a subordinate law; or
  - (b) the variation—
    - (i) is unlikely to adversely affect anyone; and
    - (ii) would not materially alter the licence.
- (4) A variation takes effect—
- (a) on the day ICRC gives written notice of the variation to the utility; or
  - (b) if the notice specifies a later date of effect—on that day.
- (5) If, on an application, ICRC refuses to vary a licence, it must, on request, give the licensee written notice of the refusal and its reasons for the refusal.

- (6) A utility whose licence is varied on application by the utility must pay the determined fee (if any) to ICRC.

### **39 Exemption from licence condition**

- (1) ICRC may, on application and by written notice given to a utility, exempt the utility from compliance with a condition of its licence in relation to a stated activity or in stated circumstances.
- (2) An exemption may be given in relation to a condition, whether imposed by this Act or by ICRC.
- (3) An exemption—
- (a) must state the period for which it is given; and
  - (b) is subject to any further condition stated in the instrument of exemption.
- (4) This section does not limit ICRC's other powers under this Act in relation to the licence.
- (5) An exemption notice is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### **40 Transfer**

- (1) A licence is transferable only with ICRC's written agreement.
- (2) ICRC may, on application, agree to a transfer of a licence only if satisfied that the intended licensee satisfies the requirements mentioned in section 37 (2) that apply at the time of the transfer.
- (3) A transfer takes effect—
- (a) on the day ICRC gives written notice of its agreement to the licensee; or
  - (b) if the notice provides for a later date of effect—on that day.

- (4) If ICRC refuses to agree to the transfer of a licence, it must, on request, give the licensee written notice of the refusal and its reasons for the refusal.

#### **41 Surrender**

- (1) A utility may surrender its licence by giving written notice of surrender to ICRC.
- (2) The surrender takes effect—
- (a) 90 days after the written notice is given to ICRC; or
  - (b) if ICRC accepts an earlier surrender—on the day ICRC gives written notice of the acceptance to the utility.

#### **42 Revocation**

- (1) Before ICRC revokes a licence, it must—
- (a) in writing, give the utility reasonable notice of the proposed revocation and its reasons for the revocation; and
  - (b) allow the utility a reasonable opportunity to make representations to ICRC; and
  - (c) take account of any representation; and
  - (d) comply with any other requirements about revocation set out in the licence.
- (2) ICRC may, in writing, revoke a licence—
- (a) if—
    - (i) in the past 5 years, the licensee has been convicted of 2 or more offences against this Act (other than a daily offence); and
    - (ii) the offences involve a contravention of 1 or more licence conditions; and

- (iii) ICRC is satisfied that each contravention is material to the licensee's continuing operations, having regard to the nature and scope of the activities to which the licence relates; or
  - (b) if an annual licence fee, or any instalment, remains unpaid more than for 28 days after it is due for payment in accordance with the notice of the relevant determination under section 45.
- (3) A revocation takes effect—
- (a) on the day ICRC gives written notice of the revocation to the licensee; or
  - (b) if the notice provides for a later date of effect—on that day.

#### **43 AAT review of decisions**

- (1) Application may be made to the administrative appeals tribunal for review of the following ICRC decisions:
- (a) refusing to grant a licence under section 37;
  - (b) granting a licence under section 37 with conditions stated by ICRC;
  - (c) refusing to vary a licence under section 38 on application by the utility;
  - (d) varying a licence under section 38 on its own initiative;
  - (e) refusing to agree to the transfer of a licence under section 40;
  - (f) revoking a licence under section 42.
- (2) A notice under section 37, 38, 40 or 42 of a decision mentioned in subsection (1) must be in accordance with the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

## **Division 3.4 Annual licence fee**

### **44 Liability**

- (1) A person to whom a licence is granted must pay the annual licence fee to ICRC for each year, or part of a year, in which the licence is in force.
- (2) The fee is payable in accordance with the notice of the relevant determination under section 45.

### **45 Determination of fee**

- (1) ICRC may determine the annual licence fee payable by each utility.
- (2) The annual licence fee for a particular utility is the amount considered by ICRC to be a reasonable contribution towards the costs incurred, or expected to be incurred, by—
  - (a) ICRC; and
  - (b) the council; and
  - (c) the chief executive under part 5 (Technical regulation) on behalf of the Territory;in the performance of functions under this Act or the regulations in relation to the relevant utility service.
- (3) The matters that ICRC must have regard to when working out the costs mentioned in subsection (2) include, for example—
  - (a) the extent of those costs in relation to each utility; and
  - (b) the annual licence fees payable by all utilities; and
  - (c) the relative scope and nature of the services provided by all utilities.
- (4) A determination must be in writing stating the following matters:
  - (a) ICRC's findings on the matters mentioned in subsections (2) and (3) in relation to the relevant utility;



- (b) the amount of the fee and the manner in which it is worked out;
  - (c) ICRC's reasons for the amount of the fee and any instalment;
  - (d) how the fee is to be paid (for example, as a lump sum, or by instalments).
- (5) ICRC must give to a utility—
- (a) a copy of the determination of each annual licence fee payable by the utility; and
  - (b) written notice stating when the fee, or any instalment, is due for payment.
- (6) The day on which an annual licence fee, or any instalment, is due for payment must be at least 28 days after the notice is given to the relevant utility.

## **Division 3.5                      Review and enforcement**

### **46      Review of licence conditions**

- (1) ICRC may review a licence at any time to determine whether the licence conditions are appropriate for achieving ICRC's objects under this Act.
- (2) ICRC must publish notice of a proposed review in a daily newspaper.
- (3) The notice must state the following matters:
  - (a) ICRC's objects under this Act;
  - (b) the purpose of the review;
  - (c) the identity of the utility;
  - (d) the utility services to which the licence relates;
  - (e) where a copy of the licence may be inspected;
  - (f) where submissions in relation to the review should be lodged;

- (g) the closing date for submissions, that is at least 28 days after the day on which the notice is published.
- (4) For a review, ICRC must ensure that the utility has a reasonable opportunity—
  - (a) to examine submissions lodged with ICRC in accordance with the newspaper notice; and
  - (b) to make representations to ICRC about any matter raised in the submissions.
- (5) ICRC must not finish a review unless it has—
  - (a) given the utility and each person who made a submission in accordance with the newspaper notice a written statement of its expected findings and supporting reasons and the action (if any) that ICRC proposes to take because of the review; and
  - (b) allowed the utility and each such person a reasonable opportunity to make further representations to ICRC; and
  - (c) considered the matters raised in all the submissions and representations duly made to ICRC.
- (6) When ICRC finishes a review, it must—
  - (a) give the utility a written statement of its findings and supporting reasons and the action (if any) taken by ICRC because of the review; and
  - (b) publish notice of the findings in a daily newspaper, stating the place where a record of the statement is available for public inspection.

#### **47 Contravention of licence condition**

- (1) A utility must not, without reasonable excuse, contravene a condition of its licence.

Maximum penalty: 3 000 penalty units.

- (2) A utility that, without reasonable excuse, contravenes a condition of its licence commits a separate offence for each day (after the first day) during any part of which the contravention continues without reasonable excuse.
- (3) An offence against subsection (2) is punishable, on conviction, by a fine not exceeding 600 penalty units.

#### **48 Directions about licence condition**

- (1) This section applies if ICRC is satisfied that a utility has contravened, or is likely to contravene, a condition of its licence.
- (2) ICRC may give a direction under this section only if it has taken reasonable steps to consult the utility concerned about the giving of the direction.
- (3) ICRC may give a written direction to the utility to take action stated in the direction to ensure compliance with the condition, including action—
  - (a) to rectify the contravention; or
  - (b) to avoid the likely contravention.

#### **49 Directions about accounts and records**

- (1) If ICRC is satisfied that it is necessary or convenient to do so in relation to the performance of its functions under the ICRC Act, part 3, 4, 4A or 4B, ICRC may give a written direction to a utility about the keeping of accounts and records in relation to the utility's functions under this Act.
- (2) A direction may require the utility, for example, to do all or any of the following:
  - (a) to set up and maintain separate accounts for a stated activity;
  - (b) to set up and maintain a consolidated set of accounts for a stated activity;

- (c) to apportion costs shared between different activities in a stated manner;
- (d) to deal with information about its functions under this Act in a stated manner;
- (e) to keep records of a stated class;
- (f) to maintain accounts or records in a stated manner.

## **50 Contravention of direction**

- (1) A utility must not, without reasonable excuse, contravene a direction under section 48 or 49.

Maximum penalty: 2 000 penalty units.

- (2) A utility that, without reasonable excuse, contravenes a direction under section 48 or 49 commits a separate offence for each day (after the first day) during any part of which the contravention continues without reasonable excuse.
- (3) An offence against subsection (2) is punishable, on conviction, by a fine not exceeding 200 penalty units.

## **Division 3.6 Miscellaneous**

### **51 Protection of personal information**

- (1) In this section:

*Information Privacy Principles* means the Information Privacy Principles under the *Privacy Act 1988* (Cwlth, s 6), other than Principle 5, clause 4 (b).

- (2) This section applies to personal information gained by a utility in relation to the provision of a utility service.
- (3) A utility must deal with personal information in accordance with the Information Privacy Principles as if it were a prescribed authority, within the meaning of the *Freedom of Information Act 1989*, to which the *Privacy Act 1988* (Cwlth) applies.

*Note* An Act of the Territory generally cannot apply the Privacy Act (Cwlth) to utilities. However, this section would oblige utilities to observe the Information Privacy Principles under the Privacy Act as if the Act applied to them. The arrangement does not allow complaints to be made to the privacy commissioner about utilities, nor for the application of remedies under the Privacy Act.

## **52 Public notice of licence decisions**

- (1) ICRC must prepare a written notice of each of the following matters as soon as practicable after it happens:
  - (a) the grant of a utility licence;
  - (b) the refusal of a utility licence;
  - (c) the variation of a utility licence;
  - (d) an exemption from compliance with a licence condition;
  - (e) the determination of an annual licence fee;
  - (f) ICRC's agreement to the transfer of a utility licence;
  - (g) ICRC's refusal to agree to the transfer of a utility licence;
  - (h) the surrender of a utility licence;
  - (i) the revocation of a utility licence.
- (2) The notice must include a statement about the rights available under section 53 in relation to documents about the matter.
- (3) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **53 Public access to licences etc**

- (1) ICRC must make copies of each of the documents mentioned in subsection (2) available for inspection by members of the public—
  - (a) during ordinary office hours at the office of ICRC; and
  - (b) at any other place determined by ICRC; and

- (c) on ICRC's web site on the Internet.
- (2) Subsection (1) applies to each of the following documents:
- (a) each utility licence;
  - (b) a record of each of the following decisions by ICRC:
    - (i) to grant a utility licence;
    - (ii) to refuse to grant a utility licence;
    - (iii) to vary a utility licence;
    - (iv) the determination of an annual licence fee;
    - (v) to grant an exemption from compliance with a licence condition;
    - (vi) to agree to the transfer of a utility licence;
    - (vii) to refuse to agree to the transfer of a utility licence;
    - (viii) to revoke a utility licence;
  - (c) ICRC's findings on a review under section 46, and its supporting reasons;
  - (d) the notice of the surrender of a licence.
- (3) A person may—
- (a) without charge, inspect a document made available in accordance with subsection (1); and
  - (b) make a copy of all or any part of the document, during ordinary office hours, at ICRC's office.
- Note* A fee may be determined under s 229 (Determination of fees) for par (b).
- (4) If a person requests that a copy be made available in electronic form, ICRC may provide the relevant information—
- (a) on a data storage device; or

- (b) by electronic transmission.
- (5) The ICRC Act, section 46 does not apply to a document mentioned in subsection (2).

#### **54 Annual reports—technical and environmental matters**

- (1) As soon as practicable after ICRC receives an annual report by a utility in accordance with the licence condition mentioned in section 25 (2) (d), it must—
  - (a) give a copy of the technical section of the report to the chief executive under part 5 (Technical regulation); and
  - (b) give a copy of the environmental section of the report to the environment management authority.
- (2) For this section—
  - (a) the technical section of the report is the part concerning the utility's compliance with the requirements under this Act in relation to technical codes; and
  - (b) the environmental section of the report is the part concerning the utility's compliance with the requirements under this Act in relation to the protection of the environment.
- (3) Without limiting the requirements mentioned in section 25 (2) (d), ICRC may, in writing, require a utility to prepare annual reports with separate technical and environmental sections.

## Part 4 Industry codes

### 55 Contents

- (1) An industry code may set out practices, standards and other matters about the provision of a utility service.
- (2) An industry code may deal, for example, with all or any of the following matters:
  - (a) network boundaries;
  - (b) connections to a network;
  - (c) utility service standards;
  - (d) the protection of customers and consumers;
  - (e) the metering of utility services;
  - (f) the provision of utility services generally and on a last resort basis;
  - (g) the termination or interruption of utility services;
  - (h) disconnections from a network;
  - (i) arrangements between licensed distributors and suppliers concerning the use of a network;
  - (j) the development of a network.
- (3) An industry code may deal with a matter by stating requirements to be dealt with by the terms of a standard customer contract for a utility service.
- (4) An industry code may apply, adopt or incorporate (with or without change) an instrument, or a provision of an instrument, as in force from time to time.

*Note 1* A statutory instrument may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or



instrument) as in force at a particular time (see *Legislation Act 2001*, s 47 (1)).

*Note 2* If a statutory instrument applies, adopts or incorporates a law or instrument (or a provision of a law or instrument), the law, instrument or provision may be taken to be a notifiable instrument that must be notified under the *Legislation Act 2001* (see s 47 (2)-(6)).

## **56 Application**

- (1) For this Act, an industry code applies to a utility if it applies to the provision of utility services of a kind that the utility is licensed to provide.
- (2) An industry code may apply to—
  - (a) a utility service of a stated class or utility services generally; or
  - (b) a stated utility, a utility of a stated class or utilities generally;and may make different provisions for different classes of services or utilities.
- (3) An industry code has no effect to the extent of any inconsistency with this Act, a related law or a technical code.

## **57 Draft codes**

- (1) ICRC must consider a draft industry code submitted for approval by—
  - (a) a utility; or
  - (b) a person whom ICRC is satisfied represents a utility or 2 or more utilities.
- (2) ICRC may give a written direction to a utility to submit a draft industry code about a stated matter to ICRC for consideration.
- (3) A utility must comply with a direction within the period stated in the direction, being a period that ICRC is satisfied is reasonable in the circumstances.

## **58 Approved codes**

- (1) ICRC may, in writing—
  - (a) approve; or
  - (b) refuse to approve;an industry code a draft of which has been submitted in accordance with section 57.
- (2) ICRC may approve an industry code only if—
  - (a) it has consulted the Minister, and the Minister responsible for part 5 (Technical regulation), in relation to the code; and
  - (b) is satisfied that—
    - (i) the code is not inconsistent in material respects with another industry code or a technical code; and
    - (ii) the requirements of section 60 for public consultation have been satisfied; and
    - (iii) the code is appropriate.
- (3) ICRC must give the proponent of a draft industry code submitted in accordance with section 57 written notice of its decision on the draft code.
- (4) If ICRC refuses to approve an industry code, the notice of the decision must set out the reasons for the refusal and may—
  - (a) state any matter that ICRC is satisfied requires further consideration or development; and
  - (b) require the proponent to submit a further draft industry code to ICRC for consideration.
- (5) If subsection (4) (b) applies, the notice must state the period, that ICRC is satisfied is reasonable in the circumstances, within which the further draft industry code is to be submitted.

- (6) ICRC must, as soon as practicable, give a copy of each approved code to each utility to which the code would apply.

## **59 Determined codes**

- (1) ICRC may, in writing, determine an industry code if it—
- (a) has consulted the Minister, and the Minister responsible for part 5 (Technical regulation), in relation to the code; and
  - (b) is satisfied that—
    - (i) the code is not inconsistent in material respects with another industry code or a technical code; and
    - (ii) it is necessary or convenient to determine the code.
- (2) ICRC may determine an industry code, for example, in the following circumstances:
- (a) if a utility fails to submit a draft industry code in accordance with a direction under section 57;
  - (b) the proponent of a draft industry code fails to submit a further draft of the code in accordance with a requirement in a notice of refusal under section 58;
  - (c) ICRC is satisfied that a draft industry code submitted for consideration or approval is not appropriate;
  - (d) to give effect to a direction by the Minister under section 19.
- (3) ICRC must, as soon as practicable, give a copy of each determined code to each utility to which the code would apply.

## **60 Public consultation**

- (1) Before ICRC approves or determines an industry code, it must—
- (a) publish a notice in a daily newspaper that—
    - (i) states that the draft code has been prepared; and

- (ii) states the place or places where copies of the draft code may be inspected or obtained; and
  - (iii) invites interested persons to make submissions to ICRC about the draft code within the period stated in the notice; and
- (b) make copies of the draft code available for public inspection in accordance with the notice.
- (2) The period stated in the notice must run for at least 30 days after the publication of the notice.
- (3) ICRC must have due regard to any submission made in accordance with the notice when approving or determining the industry code.

## 61 Variation

- (1) ICRC may, in writing, approve, or determine, a variation of an industry code and, for that purpose, the other sections of this part apply to the variation, subject to subsections (2) and (3), in the same way as they apply to a new industry code.
- (2) ICRC may approve a variation of an industry code under section 58 without the public consultation required by section 60 if—
  - (a) apart from the proponent, each utility to which the code applies has given ICRC written notice of its agreement to the variation; or
  - (b) ICRC is satisfied that the variation is necessary or convenient—
    - (i) to give effect to a direction by the Minister under section 19; or
    - (ii) following a review of a licence under section 46; or
    - (iii) because of an amendment of an Act or a subordinate law; or

- (c) ICRC is satisfied that the variation is unlikely to adversely affect anyone and would not materially alter the code.
- (3) ICRC may determine a variation of an industry code under section 59 on its own initiative, without the public consultation required by section 60, in the circumstances mentioned in subsection (2) (b) or (c).

## **62 Notification and disallowance of codes etc**

Each of the following is a disallowable instrument:

- (a) an industry code approved under section 58 (Approved codes);
- (b) an industry code determined under section 59 (Determined codes);
- (c) the variation of an industry code approved or determined under section 61 (Variation).

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **63 Public access**

- (1) ICRC must make copies of each of the documents mentioned in subsection (2) available for public inspection during ordinary office hours, at the office of ICRC and any other place determined by ICRC.
- (2) Subsection (1) applies to each of the following documents:
  - (a) each industry code;
  - (b) a record of each of the following decisions by ICRC:
    - (i) to approve an industry code;
    - (ii) to refuse to approve an industry code, a draft of which has been submitted to ICRC for consideration;
    - (iii) to determine an industry code;
    - (iv) to approve, or determine, a variation of an industry code.

- (3) A person may inspect, or make a copy of, all or part of a document mentioned in subsection (2).

*Note* A fee may be determined under s 229 (Determination of fees) for this subsection.

- (4) If a person requests that a copy be made available in electronic form, ICRC may provide the relevant information—

- (a) on a data storage device; or
- (b) by electronic transmission.

- (5) The ICRC Act, section 46 does not apply to a document mentioned in subsection (2).

## **Part 5**                      **Technical regulation**

### **Division 5.1**              **Technical codes**

#### **64**      **Contents**

- (1) A technical code is to consist only of requirements necessary or convenient for the following purposes:
- (a) protecting the integrity of a network or network facility;
  - (b) protecting the health or safety of persons who—
    - (i) operate; or
    - (ii) work on; or
    - (iii) are otherwise reasonably likely to be affected by the operation of;  
a network or network facility;
  - (c) ensuring the proper connection of customers' premises to a network for the provision of a utility service;
  - (d) ensuring, directly or indirectly, as a condition of connecting customers' premises to a network, that facilities or equipment on customer's premises—
    - (i) have particular design features; or
    - (ii) meet particular performance requirements;
  - (e) ensuring, directly or indirectly, that a network or network facility—
    - (i) has particular design features; or
    - (ii) meets performance requirements stated in a relevant industry code;
  - (f) protecting—

- (i) public and private property; and
  - (ii) the environment;
  - (g) emergency planning by a utility.
- (2) For the purposes of subsection (1) but without limiting its operation, a technical code may make provision in relation to the accreditation of persons for work associated with the connection of premises to a network or varying the capacity of such a connection.

## **65      Application of industry code provisions**

Part 4 (Industry codes) applies to a technical code as if it were an industry code, but with the following changes:

- (a) the approval or determination of a technical code, or any variation of a technical code, is to be done by the Minister;
- (b) the Minister may act as stated in paragraph (a) only if the Minister has—
  - (i) consulted ICRC and each utility to which the technical code applies, or would apply; and
  - (ii) had due regard to any representation by ICRC or the utility about the Minister's action;
- (c) the Minister must make copies of each technical code available for public inspection in accordance with section 63 (Public access).

## **Division 5.2                      Enforcement**

### **66      Functions of chief executive**

The chief executive has the following functions:

- (a) to monitor and enforce compliance with technical codes;



- (b) to provide advice to the Minister and ICRC about technical codes, including advice about compliance by utilities with the codes;
- (c) to report to ICRC, at least annually, about—
  - (i) the operation of this part; and
  - (ii) the costs incurred by the Territory in relation to the operation of this part.

## **67 Technical inspectors**

- (1) The chief executive may, in writing, appoint a person holding qualifications mentioned in subsection (2) to be a technical inspector.
- (2) The chief executive may, in writing, determine the qualifications to be held by technical inspectors.
- (3) A determination under subsection (2) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (4) A technical inspector must perform his or her functions under this Act in accordance with the conditions of appointment and any direction given to the inspector by the chief executive.

## **68 Identity cards**

- (1) The chief executive must give to each technical inspector an identity card that specifies the inspector's name and office, and on which appears a recent photograph of the inspector.
- (2) A person must, within 7 days after ceasing to be a technical inspector, return the identity card to the chief executive.

Maximum penalty (subsection (2)): 1 penalty unit.

## **69 Inspectors' powers**

For this Act, a technical inspector may exercise the powers given to the inspector under part 10 (Enforcement).

## **70    Directions about technical codes**

- (1) This section applies if the chief executive is satisfied that a utility has contravened, or is likely to contravene, a technical code.
- (2) The chief executive may give a written direction to the utility to take action stated in the direction to ensure compliance with the code, including action—
  - (a) to rectify the contravention; and
  - (b) to avoid the likely contravention.
- (3) The chief executive may give the direction only if the chief executive—
  - (a) has given the utility reasonable notice of the proposed direction and the reasons for the direction; and
  - (b) has allowed the utility a reasonable opportunity to make representations to the chief executive; and
  - (c) has taken account of any representation; and
  - (d) is satisfied that the direction is appropriate.
- (4) As soon as practicable after a direction is given, the chief executive must prepare a written statement about the direction and the reasons for it.
- (5) The direction and statement are notifiable instruments.

*Note*     A notifiable instrument must be notified under the *Legislation Act 2001*.

## **71    Contravention of direction**

- (1) A utility must not, without reasonable excuse, contravene a direction under section 70.

Maximum penalty: 2 000 penalty units.

- (2) A utility that, without reasonable excuse, contravenes a direction under section 70 commits a separate offence for each day (after the

first day) during any part of which the contravention continues without reasonable excuse.

- (3) An offence against subsection (2) is punishable, on conviction, by a fine not exceeding 200 penalty units.

## **72 Obtaining information and documents**

- (1) If the chief executive is satisfied that a person is capable of providing information or producing a document that the chief executive reasonably requires for this part, the chief executive may, by written notice given to the person, require the person—
- (a) to give the information to the chief executive in writing signed by the person or, in the case of a body politic or corporate, by an officer of the body; or
  - (b) to produce the document to the chief executive.
- (2) The notice must state—
- (a) the place at which the information or document is to be given or produced to the chief executive; and
  - (b) the time at which, or the period within which, the information or document is to be given or produced.
- (3) If a document is produced in accordance with a requirement under subsection (1), the chief executive—
- (a) may—
    - (i) take possession of, and may make a copy of, or take extracts from, the document; and
    - (ii) retain possession of the document for such period as is necessary for the purposes of this part; and
  - (b) must, during that period allow a person who would be entitled to inspect the document, if it was not in the possession of the chief executive, to inspect the document at any reasonable time.

### **73      Contravention of requirement under s 72**

A person must not, without reasonable excuse, contravene a requirement under section 72.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **Division 5.3                      Miscellaneous**

### **74      Selfincrimination etc**

(1) A person is not excused from providing information or producing a document when required to do so under section 72 on the ground that the information or document might tend to incriminate the person.

(2) However—

- (a) the provision of the information or document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of providing the information or document;

is not admissible in evidence against the person in criminal proceedings, other than proceedings for—

- (c) an offence against this part; or
- (d) any other offence in relation to the falsity of the information or document.

*Note 1*    A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1900*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

*Note 2*    The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

**76 Obstruction**

A person must not, without reasonable excuse, obstruct the chief executive in the exercise of a function under this part.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **Part 6 Access to utility services**

### **Division 6.1 Standard rights**

#### **77 Exercise of rights**

- (1) A right conferred on a person under this division is—
  - (a) exercisable only in accordance with this division; and
  - (b) subject to—
    - (i) the requirements and limitations applying to the relevant utility under this Act in relation to the provision of utility services; and
    - (ii) the operation of any industry code or technical code that applies to the service.
- (2) A right conferred on a person under this division is subject to any negotiated customer contract between the person and the relevant utility in relation to the service concerned.

#### **78 Form of application**

An application mentioned in this division may be made to the relevant utility—

- (a) orally or in writing; or
- (b) if acceptable to the utility—by telephone, fax or other electronic means.

#### **79 Electricity connection service**

- (1) An electricity distributor must, on application by a person for any of the following utility services, provide the service in accordance with the utility's standard customer contract:

- (a) connect the premises to which the application relates to the distributor's network;
  - (b) vary the capacity of the connection between the premises to which the application relates and the distributor's network;
  - (c) if the applicant elects accordingly—allow the connection, or the variation of the capacity of the connection, and the associated work, to be done by another person accredited under the relevant technical code.
- (2) For subsection (1) (c), work associated with the connection or variation does not include any augmentation, relocation or other alteration of the distributor's network.
- (3) To avoid any doubt, action taken by an accredited person under subsection (1) (c) does not constitute the provision of a utility service.

## **80 Electricity supply service**

- (1) An electricity supplier must, on application by a person, and in accordance with the supplier's standard customer contract, supply electricity to premises owned or occupied by the person.
- (2) This section does not apply to the supply of electricity to premises for a non-franchise customer.

## **81 Gas connection service**

A gas supplier must, on application by a person, and in accordance with the supplier's standard customer contract, request a gas distributor to—

- (a) connect the premises to which the application relates to the distributor's network; or
- (b) vary the capacity of the connection between the premises to which the application relates and the distributor's network.

*Note* The gas distributor to whom the request is made generally must connect the applicant's premises to the distributor's network, or vary the

capacity of the connection. See s 31 (Special conditions—gas distribution).

## **82 Gas supply service**

- (1) A gas supplier must, on application by a person, and in accordance with the supplier's standard customer contract, supply gas through a gas distribution network to premises owned or occupied by the person.
- (2) This section does not apply to the supply of gas to premises for a non-franchise customer.

## **83 Water connection service**

- (1) A water distributor must, on application by a person for any of the following utility services, provide the service in accordance with the distributor's standard customer contract:
  - (a) connect the premises to which the application relates to the distributor's network;
  - (b) vary the capacity of the connection between the premises to which the application relates and the distributor's network;
  - (c) if the applicant elects accordingly—allow the connection, or the variation of the capacity of the connection, and the associated work, to be done by another person accredited under the relevant technical code.
- (2) For subsection (1) (c), work associated with the connection or variation does not include any augmentation, relocation or other alteration of the distributor's network.
- (3) To avoid any doubt, action taken by an accredited person under subsection (1) (c) does not constitute the provision of a utility service.



#### **84 Water supply service**

- (1) A water supplier must, on application by a person, and in accordance with the supplier's standard customer contract, supply water to premises owned or occupied by the person.
- (2) This section does not apply to the supply of water to premises for a non-franchise customer.

#### **85 Sewerage connection service**

- (1) A sewerage utility must, on application by a person for any of the following utility services, provide the service in accordance with the utility's standard customer contract:
  - (a) connect the premises to which the application relates to the utility's network;
  - (b) vary the capacity of the connection between the premises to which the application relates and the utility's network;
  - (c) if the applicant elects accordingly—allow the connection, or the variation of the capacity of the connection, and the associated work, to be done by another person accredited under the relevant technical code.
- (2) For subsection (1) (c), work associated with the connection or variation does not include any augmentation, relocation or other alteration of the utility's network.
- (3) To avoid any doubt, action taken by an accredited person under subsection (1) (c) does not constitute the provision of a utility service.

#### **86 Sewerage service**

A sewerage utility must, on application by a person, and in accordance with the utility's standard customer contract, provide a sewerage service for the premises to which the application relates.

## **Division 6.2 Standard customer contracts**

### **87 Terms**

- (1) For this Act, the terms of a standard customer contract for the provision of a utility service by a particular utility are the terms of the contract, as approved or determined from time to time under this division, for the provision of the service by the utility.
- (2) A standard customer contract—
  - (a) may apply to 2 or more stated utility services; or
  - (b) may set out different terms for different classes of utility services.

### **88 Draft contracts**

- (1) ICRC must consider a draft standard customer contract submitted by a utility to ICRC for approval.
- (2) ICRC may give a written direction to a utility to submit to ICRC for consideration a draft standard customer contract for the provision of a utility service.
- (3) A utility must comply with a direction within the period stated in the direction that ICRC is satisfied is reasonable in the circumstances.

### **89 Approval of terms**

- (1) ICRC may, in writing—
  - (a) approve; or
  - (b) refuse to approve;the terms of a standard customer contract, a draft of which has been submitted to ICRC in accordance with section 88.
- (2) ICRC may approve the terms of a standard customer contract only if satisfied that, when in force as a standard customer contract—
  - (a) the terms would be consistent with—

- (i) the conditions of the utility's licence; and
  - (ii) the requirements imposed by or under this Act or a related law, including in particular, the requirements of each industry code and technical code that is applicable; and
- (b) the charges payable under the contract would be consistent with the relevant price direction by ICRC; and
- (c) the terms would be fair and reasonable.
- (3) ICRC must give written notice of a refusal under this section to the utility.
- (4) A notice of refusal must set out the reasons for the refusal and may—
  - (a) state any matter that ICRC is satisfied requires further consideration or development; and
  - (b) require the utility to submit a further draft standard customer contract to ICRC for consideration.
- (5) If subsection (4) (b) applies, the notice must state the period, that ICRC is satisfied is reasonable in the circumstances, within which the further draft standard customer contract is to be submitted.

## **90 Determination of terms**

- (1) ICRC may, in writing, determine the terms of a standard customer contract if—
  - (a) a utility fails to submit a draft standard customer contract in accordance with a direction under section 88; or
  - (b) a utility fails to submit a further draft standard customer contract in accordance with a requirement under section 89; or
  - (c) ICRC is satisfied that a further draft standard customer contract submitted in accordance with a requirement under section 89 (4) (b) is not appropriate.

- (2) The determined terms must comply with the requirements of section 89 (2).

## **91 Notification and application of terms etc**

Each of the following is a notifiable instrument:

- (a) the terms of a standard customer contract approved under section 89 (Approval of terms) or determined under section 90 (Determination of terms);
- (b) a variation of a standard customer contract approved or determined under section 93 (Variation of terms).

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **92 Creation of standard customer contracts**

- (1) The terms on which a utility may provide a utility service to a person are—
  - (a) to the extent that the service is provided under a negotiated customer contract—the terms of the contract; or
  - (b) in any other case—the terms of the standard customer contract for the provision of the service by the utility that apply—
    - (i) when the person applies to the utility for the service on those terms; or
    - (ii) when the service is provided by the utility to the person in the absence of an application by the person.
- (2) Where subsection (1) (b) applies, the terms of the standard customer contract constitute an enforceable contract between the utility and the person for the provision of the service.
- (3) A standard customer contract—
  - (a) has no effect in relation to anything occurring before it comes into operation; and
  - (b) is subject to any variation under section 93; and

- (c) is unenforceable by the relevant utility to the extent (if any) to which it does not comply with the requirements set out in section 89 (2) (a) and (b).

### **93 Variation of terms**

- (1) ICRC may approve, or determine, a variation of the terms of a standard customer contract and, for that purpose, the other provisions of this division apply to the variation in the same way as they apply to terms for a new standard customer contract.
- (2) However, ICRC may determine a variation of the terms of a standard customer contract if satisfied that the variation—
  - (a) would not materially alter the terms; or
  - (b) is necessary or convenient because of an amendment of an Act or a subordinate law.
- (3) If the terms of a standard customer contract for a utility service provided by a particular utility are varied under this part, each standard customer contract for the provision of the service by the utility is varied accordingly.

### **94 Water supply and sewerage services—owner’s liability for payment**

- (1) The owner of land where water is supplied under a standard customer contract is liable for an amount payable by the customer under the contract.
- (2) The owner of land where sewerage services are provided under a standard customer contract is liable for an amount payable by the customer under the contract.
- (3) Subsections (1) and (2) do not apply to an amount paid by the customer.
- (4) Joint owners of land are jointly and severally liable under subsections (1) and (2).

- (5) The owner's liability under subsection (1) or (2) includes any undischarged liability of a former owner of the land for an amount payable under that subsection.
- (6) In this section:
- owner* means—
- (a) for land held in fee simple—the person in whom the fee simple is vested for the time being; or
  - (b) for land held under a lease—the lessee for the time being; or
  - (c) for land occupied under a tenancy granted by the Territory—the tenant for the time being; or
  - (d) for other land occupied by a person with the consent of the Territory—that person.

## **Division 6.3 Negotiated customer contracts etc**

### **95 Negotiated customer contracts**

- (1) This section applies to a contract, between a utility and a customer, for a utility service on terms other than those of the standard customer contract for the provision of the service by the utility.
- (2) The contract is unenforceable by the utility to the extent (if any) to which it is inconsistent with—
- (a) the conditions of the utility's licence; or
  - (b) the requirements imposed by or under this Act or a related law, including in particular, the requirements of each industry code or technical code that is applicable.
- (3) Without limiting the operation of subsection (2), the regulations may provide for the core requirements to be ascertained by reference to—
- (a) the standard customer contract that would otherwise apply to the provision of the service by the utility; or

- (b) an industry code or technical code.

**96 Unauthorised arrangements for utility services**

An arrangement for the provision of a utility service, other than a standard customer contract or a negotiated customer contract, is unenforceable by the person responsible for the provision of the service unless the person is—

- (a) licensed to provide the service; or  
(b) exempt from the requirement for such a licence.

**Division 6.4 Passing on supply costs**

**97 Approved meters**

In this division:

*approved meter* means a meter that complies with the relevant technical code.

**98 Passing on the cost of electricity**

- (1) A person to whom electricity is supplied under a customer contract must not impose a charge for supplying the electricity to premises of another person unless each of the following conditions is satisfied:
- (a) the quantity supplied to those premises must be measured separately by an approved meter;
- (b) the rate at which the charge is made does not exceed the maximum rate a utility may charge under a standard customer contract if it were to supply that quantity of electricity directly to those premises of the other person;
- (c) subject to subsection (3), the person makes no other charge in relation to the supply of the electricity.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply to—

- (a) a utility licensed for the distribution or supply of electricity to the premises of the other person; or
  - (b) a person who is exempt from the requirement for such a licence.
- (3) A person to whom electricity is supplied under a customer contract must not impose a charge for use of that electricity (whether the charge is separate or incorporated in another charge, for example for services or facilities) unless each of the following conditions is satisfied:
- (a) the rate at which the charge is made must not exceed the maximum rate a utility may charge under a standard customer contract for the supply of the electricity used;
  - (b) the person makes no other charge in relation to the use of the electricity;
  - (c) if required by the regulations—the usage is metered in accordance with the regulations.

Maximum penalty: 50 penalty units.

## **99 Passing on the cost of gas**

- (1) A person to whom gas is supplied under a customer contract must not impose a charge for supplying the gas to premises of another person unless each of the following conditions is satisfied:
- (a) the quantity supplied to those premises must be measured separately by an approved meter;
  - (b) the rate at which the charge is made must not exceed the maximum rate a utility may charge under a standard customer contract if it were to supply that quantity of gas directly to those premises of the other person;
  - (c) subject to subsection (3), the person makes no other charge in relation to the supply of the gas.

Maximum penalty: 50 penalty units.



- (2) Subsection (1) does not apply to—
- (a) a utility licensed for the distribution or supply of gas to the premises of the other person; or
  - (b) a person who is exempt from the requirement for such a licence.
- (3) A person to whom gas is supplied under a customer contract must not impose a charge for use of that gas (whether the charge is separate or incorporated in another charge, for example for services or facilities) unless each of the following conditions is satisfied:
- (a) the rate at which the charge is made must not exceed the maximum rate a utility may charge under a standard customer contract for the supply of the gas used;
  - (b) the person makes no other charge in relation to the use of the gas;
  - (c) if required by the regulations—the usage is metered in accordance with the regulations.

Maximum penalty: 50 penalty units.

## **100 Passing on the cost of water**

- (1) A person to whom water is supplied under a customer contract must not impose a charge for supplying the water to premises of another person unless each of the following conditions is satisfied:
- (a) for metered premises—
    - (i) the quantity supplied to the premises must be measured separately by an approved meter; and
    - (ii) the rate at which the charge is made must not exceed the maximum rate a utility may charge under a standard customer contract if it were to supply that quantity of water directly to those premises of the other person;

- (b) for unmetered premises—the charge must not exceed the maximum charge determined by ICRC for the supply of water to unmetered premises at or near the premises of the other person;
- (c) for all premises—subject to subsection (3), the person makes no other charge in relation to the supply of the water.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply to—
  - (a) a utility licensed for the distribution or supply of water to the premises of the other person; or
  - (b) a person who is exempt from the requirement for such a licence.
- (3) A person to whom water is supplied under a customer contract must not impose a charge for use of that water (whether the charge is separate or incorporated in another charge, for example for services or facilities) unless each of the following conditions is satisfied:
  - (a) the rate at which the charge is made must not exceed the maximum rate a utility may charge under a standard customer contract for the supply of the water used;
  - (b) the person makes no other charge in relation to the use of the water;
  - (c) if required by the regulations—the usage is metered in accordance with the regulations.

Maximum penalty: 50 penalty units.

## **Division 6.5 Miscellaneous**

### **101 Capital contribution charges—network development**

- (1) A utility may impose a charge (a capital contribution charge) payable by customers for the development or augmentation of its network for the following purposes:

- (a) making utility services available to parcels of land not already connected to a network;
  - (b) varying the capacity of connections to its network.
- (2) A capital contribution charge must be in accordance with the relevant industry code.

**102 Alternative energy—supply utilities not to discriminate**

- (1) If a person uses or supplies alternative energy services, an electricity supplier must not, for that reason only—
- (a) refuse to supply electricity to the person; or
  - (b) supply electricity to the person on terms that are less advantageous than the terms of the supplier's standard customer contract.
- (2) If a person uses or supplies alternative energy services, a gas supplier must not, for that reason only—
- (a) refuse to supply gas to the person; or
  - (b) supply gas to the person on terms that are less advantageous than the terms of the supplier's standard customer contract.
- (3) In this section:
- alternative energy services* means—
- (a) services relating to energy from alternative sources; or
  - (b) products, processes, designs or services that reduce the demand for energy.

## **Part 7                      Network operations**

### **Division 7.1              General**

#### **103    Definitions for pt 7**

In this part:

*installation*, of a network facility, includes—

- (a) the construction or extension of the facility on, over or under any land or water; and
- (b) the attachment of the facility to any building or other structure; and
- (c) any activity that is ancillary or incidental to an activity mentioned in paragraph (a) or (b).

*network operations* means work carried out by a utility, or an authorised person for a utility, under this part in the performance of its functions under this Act.

### **Division 7.2              General powers**

#### **104    Acquisition of land**

- (1) A utility may compulsorily acquire land (including an interest in land) for the purpose of performing its functions under this Act.
- (2) The acquisition must be in accordance with the *Lands Acquisition Act 1994*.

#### **105    Installation of network facilities**

- (1) For purposes connected with the provision of a utility service, a utility may—
  - (a) enter and occupy land; and

- (b) undertake any work on the land that is necessary or desirable for installing a network facility.
- (2) Under subsection (1) (b), the utility may, for example, undertake any of the following work:
- (a) make surveys, take samples and examine the soil;
  - (b) construct, install or place any plant, machinery, equipment or goods;
  - (c) fell or lop trees, or clear and remove vegetation;
  - (d) interrupt the provision of utility services by the utility;
  - (e) make cuttings and excavations;
  - (f) level the land or make roads;
  - (g) erect offices, workshops, sheds, other buildings, fences and other structures;
  - (h) demolish, destroy or remove any network facility installed or used by the utility in relation to the provision of a utility service;
  - (i) put a gate or passageway in a fence or wall (except a wall of a building) that prevents or hinders the work of the utility under this section, or remove such a gate or passageway;
  - (j) temporarily divert or stop traffic on a public road or bridge;
  - (k) restore the land, or fences, walls or other structures on the land, affected by the work of the utility and, for that purpose, remove and dispose of soil, vegetation and other material.
- (3) This section does not entitle a utility to act under subsection (1) on land that it does not own unless—
- (a) it owns an appropriate interest in the land; or
  - (b) the owner of the land agrees to the undertaking.

- (4) If subsection (2) (i) applies, the utility must ensure, so far as practicable that the work is carried out in a way that minimises inconvenience and disruption to the passage of persons, vehicles and vessels.

### **106 Maintenance of network facilities**

- (1) A utility may, at any time, maintain a network facility and, for that purpose, do anything necessary or desirable, including, for example—
- (a) entering and occupying land; and
  - (b) undertaking any work of a kind mentioned in section 105.
- (2) For subsection (1), the maintenance of a network facility includes, for example, the following work:
- (a) the alteration, removal, repair or replacement of any part of the facility;
  - (b) the provisioning of the facility with material or information (whether in electronic form or otherwise);
  - (c) inspecting or otherwise ensuring the proper functioning of the facility from time to time;
  - (d) action to which a network protection notice relates.

### **107 National land**

Functions of the kind exercisable by a utility under this part are exercisable in relation to national land only by agreement with the Commonwealth.

## **Division 7.3                      Performance of network operations**

### **108    Damage etc to be minimised**

In carrying out network operations, a utility must take all reasonable steps to ensure that it causes as little inconvenience, detriment and damage as is practicable.

### **109    Notice to land-holder**

- (1) Before a utility begins network operations in relation to public land or private land, it must give the land-holder written notice of the proposed operations.
- (2) The notice must be given to the land-holder —
  - (a) at least 7 days before the operations begin; or
  - (b) if the relevant industry code requires a minimum period of notice—in accordance with the code.
- (3) The notice must, so far as practicable, state the following matters:
  - (a) the purpose of the operations;
  - (b) the nature of the activities involved;
  - (c) the parts of the land likely to be affected;
  - (d) the period or periods during which the activities are expected to be carried out;
  - (e) contain a statement indicating—
    - (i) the utility's obligation under this part to restore the land; and
    - (ii) the council's power to direct payment by the utility for loss or damage resulting from the operations.
- (4) The land-holder may waive its right to all or part of the minimum period of notice under subsection (2).

- (5) Subsection (1) does not apply if the operations are to be carried out in urgent circumstances in which it is necessary to protect—
- (a) the integrity of a network or network facility; or
  - (b) the health or safety of persons; or
  - (c) public or private property; or
  - (d) the environment.

**110 Notice about lopping trees etc on private land**

- (1) This section applies to network operations to the extent that they involve—
- (a) the felling or lopping of trees on private land; or
  - (b) the trimming of roots of trees or other plants on private land; or
  - (c) the clearing or removal of vegetation on private land.
- (2) Before a utility begins such operations, it must give the land-holder notice of the proposed operations.
- (3) The notice—
- (a) must be given at least 7 days before the operations begin; and
  - (b) must indicate the trees or vegetation affected and the activity proposed; and
  - (c) may require the land-holder to carry out the activity within a stated period; and
  - (d) if paragraph (c) applies—must contain a statement about the effect of subsection (5); and
  - (e) if the operations relate to other network operations for which notice is required under this division—may be given in or with the notice of the other operations.
- (4) The land-holder may waive its right to all or part of the minimum period of notice under subsection (2) (a).



- (5) If subsection (3) (c) applies, the stated period within which the land-holder is required to carry out the activity must run for at least 7 days commencing on the day the notice is given to the land-holder.
- (6) If the land-holder does not carry out the activity in accordance with a requirement in the notice mentioned in subsection (3) (c)—
  - (a) the utility may carry out the activity; and
  - (b) the reasonable expenses thus incurred by the utility are a debt due to the utility by the land-holder.
- (7) Subsection (6) (b) does not apply to a tree or vegetation growing on the land before a network facility was installed on the land.
- (8) In urgent circumstances in which it is necessary to protect—
  - (a) the integrity of a network or a network facility; or
  - (b) the health or safety of persons; or
  - (c) public or private property; or
  - (d) the environment;subsections (2) and (3) do not apply and the utility may carry out the operations at its own expense.

### **111 Notice to other utilities**

- (1) This section applies to network operations by a utility that consist of, or include, an activity that—
  - (a) affects; or
  - (b) is reasonably likely to affect;a network facility under the care and management of a public utility.
- (2) Before the utility begins such operations, it must give the public utility written notice of the proposed operations.
- (3) The notice must—

- (a) be given to the public utility at least 7 days before the operations begin; and
- (b) so far as practicable, state the following matters:
  - (i) the purpose of the operations;
  - (ii) the nature of the activities involved;
  - (iii) the network facility affected;
  - (iv) the period or periods during which the activities are expected to be carried out.
- (4) The utility must—
  - (a) make reasonable efforts to enter into an agreement with the public utility about the manner in which the activities would be carried out; and
  - (b) comply with any such agreement.
- (5) The public utility may waive its right to notice under subsection (1).
- (6) Subsection (1) does not apply if the operations are to be carried out in urgent circumstances in which it is necessary to protect—
  - (a) the integrity of a network or a network facility; or
  - (b) the health or safety of persons; or
  - (c) public or private property; or
  - (d) the environment.
- (7) In this section:
  - network facility* includes—
    - (a) a telecommunications facility; and
    - (b) a stormwater facility.
  - public utility* includes—
    - (a) a utility licensed under this Act; and

- (b) a carrier or network operator under the *Telecommunications Act 1997* (Cwlth); and
- (c) the person or authority responsible for the operation of the stormwater network.

**stormwater facility** means a drain, channel, floodway, main, pipe, storage or other facility forming part of the stormwater network.

**stormwater network** means the infrastructure used for the collection and conveyance of water run-off in an urban area.

**telecommunications facility** means a facility under the *Telecommunications Act 1997* (Cwlth).

## **112 Removal of utility's property and waste**

- (1) A utility that undertakes an activity as network operations on land for which it is not the land-holder must, as soon as practicable, remove from the land—
  - (a) all—
    - (i) items of plant, machinery, equipment and other goods; and
    - (ii) offices, workshops, sheds and other buildings; and
    - (iii) roads and tracks;that the utility constructed, installed or placed on the land and that do not form part of, or are not to be used in the operation of, the network facility to which the activity related; and
  - (b) all spoil, waste and rubbish and cleared vegetation resulting from the activity.
- (2) The obligation in subsection (1) is subject to any agreement to the contrary between the utility and the land-holder.

### **113 Land to be restored**

- (1) A utility that carries out network operations on land for which it is not the land-holder must take all reasonable steps to ensure that the land is restored as soon as practicable to a condition that is similar to its condition before the operations began.
- (2) Subsection (1) does not require the restoration of land to a condition that would involve—
  - (a) an interference with a network or network facility; or
  - (b) a contravention of a law of the Territory.
- (3) The obligation in subsection (1) is subject to any agreement to the contrary between the utility and the land-holder.

## **Division 7.4 Authorised persons**

### **114 Appointment**

- (1) A utility may, in writing, appoint a person to be an authorised person for the utility for the purposes of this Act.
- (2) An authorised person must perform his or her functions under this Act in accordance with the conditions of appointment and any direction given to the person by the utility.

### **115 Identity cards**

- (1) A utility must give each of its authorised persons an identity card that specifies the person's name and appointment as an authorised person for the utility, and on which appears a recent photograph of the person.
- (2) A person must, within 7 days after ceasing to be an authorised person, return the identity card to the utility.

Maximum penalty (subsection (2)): 1 penalty unit.

### **116 Entry to premises—network operations**

- (1) Where a utility is entitled under this part to undertake network operations affecting particular premises, an authorised person for the utility may—
  - (a) enter the premises, with such persons, vehicles and things as are reasonable and necessary for the operations; and
  - (b) carry out the activities necessary for those operations.
- (2) The authorised person may not remain on the premises if, on request by the land-holder or person apparently in charge of the premises, the authorised person does not produce his or her identity card.
- (3) The authorised person may enter and remain on the premises under this section with such assistance as is necessary and reasonable.

### **117 Entry to premises—inspection of meters etc**

- (1) An authorised person for a utility may enter and remain on any premises to which the utility provides, or is to provide, a utility service—
  - (a) to read, or check the accuracy of, a meter for recording the provision of the service to the premises; or
  - (b) to check work associated with the connection of premises to the utility's network that is performed by a person accredited under the relevant technical code; or
  - (c) to check the operation of a connection between the premises and the utility's network, or install, repair, remove or replace such a connection; or
  - (d) for a purpose related to the connection of the premises to the utility's network, or its withdrawal; or
- (2) The authorised person may not remain on the premises if, on request by the land-holder or person apparently in charge of the premises, the authorised person does not produce his or her identity card.

- (3) The authorised person may enter and remain on the premises under this section—
- (a) at any reasonable time; and
  - (b) with such assistance as is necessary and reasonable.

### **118 Obstruction**

A person must not, without reasonable excuse, obstruct an authorised person in the exercise of a function under this part.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **Division 7.5 Miscellaneous**

### **119 Order to enforce exercise of powers**

- (1) If —
- (a) an authorised person is entitled to perform a function under this part in relation to premises; and
  - (b) another person obstructs, or proposes to obstruct, the authorised person in the performance of the function;

the Magistrates Court may, on the application of the authorised person, make an order authorising a police officer or other person named in the order to use such assistance and force as are reasonably necessary to enable the function to be performed.

- (2) A copy of an application under subsection (1) must be given to the obstructor, and the obstructor is entitled to appear and be heard on the hearing of the application.

### **120 Ownership of network facilities**

- (1) The owner or occupier of land to which a network facility is affixed has no proprietary interest in the facility only because it is affixed to the land.

- (2) A network facility of a utility is not to be taken in execution of a judgment against a person other than the utility under any process of a court.

### **121 Clarifying ownership of certain network facilities**

- (1) The purpose of this section is to remove uncertainty about the ownership of network facilities that—
- (a) are used, or for use, by a utility or a subsidiary of the utility in providing a utility service; and
  - (b) are treated by the Territory and the utility or subsidiary as being owned by the utility or subsidiary; and
  - (c) are affixed to land owned or occupied by a person other than the utility or subsidiary.
- (2) The Minister may, in writing, declare that this section applies to network facilities.

*Note* Power given under an Act to make a statutory instrument includes power to make different provision for different categories, eg declarations in relation to different classes of network facilities or that apply by reference to stated exceptions (see *Legislation Act 2001*, s 48).

- (3) A declaration must include sufficient particulars to identify the facilities to which the declaration applies.
- (4) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **122 Effect of declaration under s 121**

- (1) On the day a declaration under section 121 takes effect in relation to a network facility, the facility, by force of this section—
- (a) is severed from the land and remains severed; and
  - (b) vests in the person in whom the declaration states that the facility vests, without any conveyance, transfer or assignment.

- (2) A facility severed under subsection (1) ceases for all purposes to be a fixture.
- (3) A person in whom a facility is vested has, by force of this section, the following rights in relation to the facility;
  - (a) to have the facility (including any lines, pipes, equipment and any other thing ancillary to any other part of the facility) remain on, under or over the land for the provision of utility services;
  - (b) for that purpose, to use, or continue to use, the facility;
  - (c) to enter and occupy land on, above or under which the facility is located, and to undertake work on that land, for the purpose of maintaining the facility.
- (4) To ensure the proper provision of utility services, the Minister may, in writing, determine conditions for the exercise of a right given by subsection (3) (c).
- (5) The right is exercisable only in accordance with the determined conditions.
- (6) A determination under subsection (4) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (7) A declaration under section 121 has no effect to the extent that it would vest a facility in a person if the facility had not been used, or for use, by the person in providing a utility service before the declaration.



## **Part 8**                      **Protection of networks**

### **Division 8.1**              **General**

#### **123**    **Meaning of *interference***

In this part:

*interference*, with a network or network facility, includes an action that—

- (a) interferes with the safe or efficient operation of the network or facility; or
  - (b) inhibits or obstructs lawful access to the network or facility;
- or is likely to have that effect.

### **Division 8.2**              **General interference**

#### **124**    **Interference with networks**

- (1) A person must not interfere with a network, or a network facility, unless authorised to do so by a responsible utility.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether an action interfered with a network or a network facility—
  - (a) it is sufficient to prove that, when the action occurred, there were reasonable grounds for believing it was likely to interfere with the network or facility; and
  - (b) the offence may be found to be proved even if, at that time, the defendant did not believe the action would be likely to interfere with the network or facility.

## **125 Network protection notices**

- (1) This section applies if a responsible utility is satisfied that a structure or activity on, under or over land or water interferes, or is reasonably likely to interfere, with the network or a network facility.
- (2) The utility may give the land-holder written notice to take whatever action is necessary to stop the interference with the network or facility, or to remove the likelihood of that interference.
- (3) The notice must—
  - (a) indicate the structure or activity; and
  - (b) require the land-holder to take stated action to stop the interference, or remove the likelihood of the interference, within a stated period; and
  - (c) contain a statement about the effect of subsection (5).
- (4) The stated period must be no less than 14 days starting on the date the notice is given to the land-holder.
- (5) If the land-holder does not comply with the notice—
  - (a) the utility may do whatever is necessary to stop the interference or remove the likelihood of the interference; and
  - (b) the reasonable expenses thus incurred by the utility are a debt due to the utility by the land-holder.
- (6) Subsection (5) (b) does not apply to a structure that was, or an activity that commenced, on, under or over the land before the installation of the network or facility to which the interference relates.
- (7) In urgent circumstances, subsection (2) does not apply and the utility may do whatever is necessary to stop the interference or to remove the likelihood of the interference—
  - (a) without notice to the land-holder; and
  - (b) at the expense of the utility.

- (8) If—
- (a) a utility acts under this section in relation to a structure that was, or an activity that commenced, on, under or over the land before the installation of the network or facility to which the interference relates; and
  - (b) a person suffers loss or damage because of the utility's action;  
the amount of the loss or damage is a debt due to the person by the utility.
- (9) In subsection (7):
- urgent circumstances* means circumstances in which it is necessary to protect—
- (a) the integrity of the network or facility; or
  - (b) the health or safety of persons; or
  - (c) public or private property; or
  - (d) the environment.

## **Division 8.3                      Contamination of water or sewerage networks**

### **126    Contamination of water**

- (1) A person must not contaminate water in a water network unless authorised to do so by the responsible utility.
- Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether an action contaminated water—
- (a) it is sufficient to prove that, when the action occurred, there were reasonable grounds for believing it was likely to contaminate the water; and

- (b) the offence may be found to be proved even if, at that time, the defendant did not believe it would be likely to contaminate the water.

### **127 Prohibited substances—water or sewerage network**

- (1) A person must not introduce, or allow to be introduced, into a water network or sewerage network any substance which is likely to interfere with the network or a network facility, or form compounds that would be likely to do so, unless authorised to do so by a responsible utility.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether a substance was likely to interfere with a network or facility (or to form compounds that would be likely to do so)—
  - (a) it is sufficient to prove that, when the action occurred, there were reasonable grounds for believing it was likely to interfere with the network or facility (or form compounds likely to do so); and
  - (b) the offence may be found to be proved even if, at that time, the defendant did not believe the action would be likely to have that effect.

### **128 Exempt water treatments**

- (1) Sections 126 and 127 do not apply to the addition by the responsible utility to a water network of—
  - (a) a chemical for the purpose of clarifying, purifying or otherwise treating the water in that network at a concentration that would not be injurious to public health; or
  - (b) fluoride at a concentration not exceeding 1.0mg/L.
- (2) For subsection (1) (b), a concentration that—

- (a) would result in an average concentration of 1.0mg/L during a period of 24 hours; and
  - (b) does not exceed 1.2mg/L;
- is taken to be a concentration of 1.0mg/L.

## **Division 8.4                      Miscellaneous**

### **129    Unauthorised network connections**

A person, other than the responsible utility, must not connect premises to a network unless accredited under the relevant technical code to do so.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **130    Unauthorised abstraction etc of electricity**

A person must not abstract, divert or use electricity from an electricity network except in accordance with—

- (a) the authority of the responsible utility; or
- (b) a customer contract.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **131    Unauthorised abstraction etc of gas**

A person must not abstract, divert or use gas from a gas network except in accordance with—

- (a) the authority of the responsible utility; or
- (b) a customer contract.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**132    Unauthorised abstraction etc of water**

A person must not abstract, divert or use water from a water network except in accordance with—

- (a) the authority of the responsible utility; or
- (b) a customer contract.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**133    Extended meaning of *network***

In sections 130, 131 and 132:

*customer meter*, in relation to the supply of electricity, gas or water, means a meter used to measure the supply to a customer's premises.

*network* includes related infrastructure between the network boundary and a customer meter.

## **Part 9**                      **Controller's power to take over operations**

### **Division 9.1**              **General**

#### **134**    **Extended meaning of *utility***

In this part:

*utility* includes a former utility.

#### **135**    **Appointment of controller**

- (1) This section applies if the Minister is satisfied—
  - (a) that—
    - (i) a contravention by a utility of a licence condition threatens the provision of the utility's service to customers; and
    - (ii) other remedies are inadequate to ensure compliance with the licence condition; or
  - (b) that, following the expiry or cessation of a licence, the provision of utility services to customers is threatened.
- (2) In either case, the Minister may, after consulting ICRC, appoint a controller for all or part of the operations of the responsible utility.
- (3) The controller has the functions stated in the instrument of appointment.
- (4) A controller holds office on the terms stated in the controller's appointment.
- (5) The Minister may revoke an appointment by written notice given to the person.

### **136 Functions and powers**

- (1) A controller must, so far as practicable, ensure the provision or continued provision of the utility service to which the appointment relates.
- (2) For that purpose, the controller may—
  - (a) take control of the relevant operations of the utility; and
  - (b) take control of the activities of an associate of the utility so far as they relate to the provision of the relevant utility services; and
  - (c) have access to a network facility or other premises of the responsible utility or an associate, so far as is reasonable and necessary; and
  - (d) give a written direction to a person to take stated action.
- (3) The controller has power to do all things necessary or convenient to be done in connection with the performance of the controller's functions.

### **137 Utility to cooperate**

- (1) The responsible utility must facilitate the taking of action by the controller and, in particular must comply with any direction by the controller.
- (2) A utility is not to be taken to contravene a requirement under this Act or any other Act by complying with a direction of the controller.

### **138 Reports to Minister**

The controller must furnish to the Minister such information relating to the controller's functions as the Minister requires.



### **139 Ministerial directions**

- (1) The Minister may give written directions to the controller in relation to the performance of the controller's functions, either generally or in relation to a particular matter.
- (2) The controller must give effect to any such direction.

### **140 Contravention of controller's direction**

A person must not, without reasonable excuse, contravene a direction given by the controller in the performance of functions under this part.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **141 Obstructing controller**

A person must not, without reasonable excuse, obstruct a controller in the performance of functions under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **142 Immunity from personal liability**

- (1) No personal liability attaches to a person who is, or has been, a controller for any act or omission in good faith in the performance, or purported performance, of a function under this Act.
- (2) Subsection (1) does not affect any liability that the Territory would have, but for the operation of subsection (1), in relation to the act or omission.

## **Division 9.2                      Compensation**

### **143    Right to compensation**

- (1) Subject to this section, a person who suffers loss because of an act or omission of a controller is entitled to be paid reasonable compensation by the Territory in relation to the loss.
- (2) Compensation is not payable to a person in relation to a loss to the extent—
  - (a) of any amount recovered or recoverable by the person under a policy of insurance; or
  - (b) that the conduct of the person contributed to the loss.
- (3) Compensation is not payable to a person in relation to a loss if the loss would have arisen despite the act or omission of the controller.

### **144    Claims**

A claim for compensation must—

- (a) be in writing; and
- (b) set out particulars of the claimant's loss, the amount of compensation claimed and the grounds for the claim of that amount; and
- (c) be lodged with the chief executive.

### **145    Acceptance or rejection of claim**

- (1) Where the Minister is satisfied that a claimant is entitled to compensation under section 143, the Minister must accept the claim by giving written notice of acceptance to the claimant setting out—
  - (a) an offer to the claimant of the amount of compensation to which the Minister considers the claimant is entitled; and
  - (b) an explanation of how that amount was assessed.

- (2) Where the Minister is satisfied that a claimant is not entitled to compensation under section 143, the Minister must reject the claim by giving written notice of rejection to the claimant setting out the reasons for the rejection.

#### **146 Acceptance or rejection of compensation offer**

A claimant to whom an offer has been made under section 145 may—

- (a) accept the offer; or
- (b) reject the offer;

by giving written notice to that effect to the chief executive.

#### **147 Payment**

Where a claimant accepts an offer of an amount of compensation, the Territory must pay the amount to the claimant.

#### **148 Role of court**

If the Territory and the person to whom compensation is payable under section 143 do not agree on the amount of compensation, the person may, in a court of competent jurisdiction, recover from the Territory such reasonable compensation as the court determines.

#### **149 Recovery of compensation**

If—

- (a) a controller is appointed because of a contravention by a utility of a licence condition; and
- (b) a person suffers loss because of an act or omission of the controller; and
- (c) the controller's act or omission was in good faith in performance or purported performance of a function under this part;

the amount of compensation payable under this part for the loss is a debt due to the Territory by the utility.

## **Part 10**                      **Enforcement**

### **Division 10.1**              **General**

#### **150**    **Definitions for pt 10**

In this part:

*connected*—a thing is *connected* with a particular offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be committed.

### **Division 10.2**              **ICRC inspectors**

#### **152**    **Appointment**

- (1) ICRC may, in writing, appoint a person to be an ICRC inspector for the purposes of this Act.
- (2) An ICRC inspector must perform his or her functions under this Act in accordance with the conditions of appointment and any direction given to the inspector by ICRC.
- (3) A person must not be appointed under subsection (1) unless—

- (a) the person is an Australian citizen or a permanent resident of Australia; and
  - (b) the chief executive has certified in writing that, after appropriate inquiry, the chief executive is satisfied that the person is a suitable person to be appointed, having regard in particular to—
    - (i) whether the person has any criminal convictions; and
    - (ii) the person's employment record; and
  - (c) the chief executive has certified in writing that the chief executive is satisfied that the person—
    - (i) has satisfactorily completed adequate training; and
    - (ii) is competent;
- to exercise the powers of an inspector proposed to be given to the person.

### **153 Identity cards**

- (1) ICRC must give each of its inspectors an identity card that specifies the inspector's name and appointment as an ICRC inspector, and on which appears a recent photograph of the person.
- (2) A person must, within 7 days after ceasing to be an ICRC inspector, return the identity card to ICRC.

Maximum penalty (contravention of subsection (2)): 1 penalty unit.

### **154 Power to enter premises**

- (1) An ICRC inspector may, for the purpose of ICRC's functions under this Act—
  - (a) enter any premises at any time with the consent of the occupier; or
  - (b) enter premises occupied by a utility at any time the premises are being used; or

- (c) at any reasonable time, enter premises to which a utility service is provided (other than a part used for residential purposes); or
  - (d) enter premises in accordance with a warrant under section 157.
- (2) An ICRC inspector may, without the occupier's consent or a warrant, enter the land around premises to ask the occupier for consent to enter the premises.

### **155 Production of identity card**

An ICRC inspector may not remain on premises entered under this division if, on request by the occupier, the inspector does not produce his or her identity card.

### **156 Consent to entry**

- (1) When seeking the consent of an occupier for entering premises under this division, an ICRC inspector must—
- (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized may be used in evidence in court; and
    - (iii) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment—
- (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized may be used in evidence in court; and
    - (iii) that consent could be refused; and
  - (b) that the occupier consented to the entry; and

- (c) the time, and day, when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) Unless the contrary is proven, a court must presume that an occupier of premises did not consent to an entry to the premises by an ICRC inspector under this division if—
  - (a) the question whether the occupier consented to the entry arises in proceedings in the court; and
  - (b) an acknowledgment under this section is not produced in evidence for the entry or exercise of power; and
  - (c) it is not proved that the occupier consented to the entry.

### **157 Warrants**

- (1) An ICRC inspector may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the evidence) that may provide evidence of an offence against this Act or a related law; and
  - (b) the evidence is, or may be within the next 14 days, at the premises.
- (5) The warrant must state—



- (a) that an ICRC inspector may, with necessary help and force, enter the premises and exercise the inspector's powers under this division; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours when the premises may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

### **158 Warrants—application made other than in person**

- (1) An ICRC inspector may apply for a warrant by phone, fax, radio or other form of communication if the inspector considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to do so.
- (5) If it is not reasonably practicable to fax a copy to the inspector—
  - (a) the magistrate must—
    - (i) tell the inspector what the terms of the warrant are; and
    - (ii) tell the inspector the date and time the warrant was issued; and
  - (b) the inspector must complete a form of warrant (warrant form) and write on it—

- (i) the magistrate's name; and
  - (ii) the date and time the magistrate issued the warrant; and
  - (iii) the warrant's terms.
- (6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.
- (7) The inspector must, at the first reasonable opportunity, send the magistrate—
  - (a) the sworn application; and
  - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) Unless the contrary is proven, a court must presume that a power exercised by an ICRC inspector was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence.

### **159 Powers on entry to premises**

- (1) An ICRC inspector who enters premises under this division may, for the purpose of ICRC's functions under this Act—
  - (a) inspect, measure, photograph or film the premises or anything on the premises; or
  - (b) copy a document on the premises; or
  - (c) test or take samples of or from anything on the premises; or

- (d) take into the premises any persons, equipment or material the inspector reasonably needs for exercising a power under this division; or
  - (e) require the occupier, or a person on the premises to give the inspector reasonable help to exercise a power under this division.
- (2) A person must not, without reasonable excuse, contravene a requirement under subsection (1) (e).

Maximum penalty (subsection (2)): 50 penalty units.

#### **160 Power to seize evidence**

- (1) An ICRC inspector who enters premises with a warrant under this division may seize the evidence for which the warrant was issued.
- (2) An ICRC inspector who enters premises under this division with the consent of the occupier may seize a thing on the premises if—
  - (a) the inspector is satisfied the thing is connected with an offence against this Act or a related law; and
  - (b) seizure of the thing is consistent with the purpose of the entry as told to the occupier in seeking the occupier's consent.
- (3) An ICRC inspector may also seize another thing on the premises if the inspector is satisfied—
  - (a) the thing is connected with an offence against this Act or a related law; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an ICRC inspector may—
  - (a) remove the thing from the premises where it was seized (the place of seizure) to another place; or

- (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person must not, without ICRC's approval, interfere with a thing to which access has been restricted under subsection (4).

Maximum penalty (subsection (5)): 50 penalty units, imprisonment for 6 months or both.

### **161 Receipt for things seized**

- (1) As soon as practicable after a thing is seized by an ICRC inspector under this division, the inspector must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the ICRC inspector must leave the receipt at the place of seizure in a reasonably secure way and in a conspicuous position.

### **162 Access to things seized**

A person who would, but for the seizure, be entitled to a thing seized under this division may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

### **163 Return of things seized**

- (1) A thing seized under this division must be returned to its owner, or reasonable compensation must be paid to the owner by ICRC for the loss of the thing, if—
  - (a) a prosecution for an offence relating to the thing is not instituted within 90 days of the seizure; or
  - (b) the court does not find the offence proved in a prosecution for an offence relating to the thing.
- (2) A thing seized under this division is forfeited to ICRC if a court—
  - (a) finds an offence relating to the thing to be proved; and

- (b) orders the forfeiture.
- (3) If subsection (2) (a) applies, but a court does not order forfeiture of the thing seized, ICRC must return the thing to its owner or pay reasonable compensation to the owner in relation to the loss of the thing.

## **Division 10.3            Technical inspectors**

### **164    Powers to enter and inspect premises**

For part 5 (Technical regulation), a technical inspector has all the powers of an ICRC inspector under division 10.2, and, for that purpose, division 10.2 applies but with the following changes:

- (a) a reference to functions of an ICRC inspector are to be read as a reference to functions of a technical inspector for the purposes of part 5;
- (b) in relation to an offence, it applies only in relation to an offence concerning a contravention of—
  - (i) a technical code; or
  - (ii) a direction by the chief executive under part 5 about a technical code; or
  - (iii) a written requirement by the chief executive under part 5 for the provision of information or a document for that part; or
- (c) a provision requiring ICRC to return a thing seized under division 10.2 or pay compensation in relation to the loss of the thing is to be read as applying to the Territory in relation to a thing seized under this division.

## **Division 10.4 Authorised persons for utility**

### **165 Powers to enter and inspect premises**

For part 8, an authorised person for a utility has all the powers of an ICRC inspector under division 10.2 and, for that purpose, division 10.2 applies but with the following changes:

- (a) a reference to functions of an ICRC inspector are to be read as a reference to functions of an authorised person in relation to part 8;
- (b) it applies only in relation to an offence against part 8;
- (c) a provision requiring ICRC to return a thing seized under division 10.2 or pay compensation in relation to the loss of the thing is to be read as applying to the utility in relation to a thing seized under this division.

## **Division 10.5 Miscellaneous**

### **166 Selfincrimination etc**

- (1) A person is not excused from providing information, producing a document or answering a question when required to do so under this part on the ground that the information, document or answer might tend to incriminate the person.
- (2) However—
  - (a) the provision of the information, document or answer; or
  - (b) any information, document or thing obtained as a direct or indirect consequence of providing the information, document or answer;is not admissible in evidence against the person in criminal proceedings, other than proceedings for—
  - (c) an offence to which this part applies; or

- (d) any other offence in relation to the falsity of the information, document or answer.

*Note 1* A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1900*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

*Note 2* The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

## **168 Obstruction**

A person must not, without reasonable excuse, obstruct an ICRC inspector, a technical inspector or an authorised person in the exercise of a function under this part.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **Part 11** Essential Services Consumer Council

### **Division 11.1** Establishment and functions

#### **169** Establishment

The Essential Services Consumer Council is established by this section.

#### **170** Functions

The council has the following functions:

- (a) to facilitate the resolution of complaints, for example, by—
  - (i) providing information to consumers and the public about its functions; and
  - (ii) assisting the parties to a complaint to resolve the issue themselves or to reach agreement about the terms of any direction or declaration to be made by the council;
- (b) to determine unresolved complaints under part 12 (Complaints);
- (c) to ensure, so far as practicable, that utility services continue to be provided to persons suffering financial hardship;
- (d) to protect the rights of customers and consumers under the Act;
- (e) to advise the Minister, the Minister responsible for part 5 (Technical regulation) or ICRC on any matter about the council's functions;
- (f) to do anything incidental to any of its other functions.

*Note* The *Legislation Act 2001*, s 196 (1) provides that a provision of an Act that gives an entity (including the council) a function also gives the entity the powers necessary and convenient to exercise the function.



## **171 Proceedings in Magistrates Court**

- (1) A utility may not institute proceedings in the Magistrates Court for—
  - (a) the recovery of a customer debt, as defined in section 184; or
  - (b) any other cause of action against a customer in relation to which a complaint may be made to the council under part 12 (Complaints);unless it has given the customer a written notice of its intention to do so.
- (2) The notice—
  - (a) must be given at least 7 days before the proceedings are instituted; and
  - (b) must include a statement about—
    - (i) the customer's rights to make a complaint to the council under part 12; and
    - (ii) the effect of the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 12B in relation to the complaint.

## **172 Protection of personal and confidential information**

- (1) The council must preserve the confidentiality of information gained in the performance of its functions, including—
  - (a) personal information; and
  - (b) information that—
    - (i) could affect the competitive position of a utility or another person; or
    - (ii) is commercially sensitive for some other reason.
- (2) The ICRC Act, sections 44 to 48 apply, so far as applicable, in relation to the functions of the council as if a reference to ICRC were a reference to the council or any member of the council.

### **173 Annual reports**

In its reports under the *Annual Reports (Government Agencies) Act 1995*, the council must include details of the following matters:

- (a) the number of complaints received about each utility;
- (b) the cost of handling complaints about each utility;
- (c) the number of complaints handled by each member;
- (d) any systemic issues identified by the council.

## **Division 11.2                      Constitution**

### **174 Members**

- (1) The council consists of the following members appointed by the Minister in writing:
  - (a) a chairperson;
  - (b) a deputy chairperson;
  - (c) 1 or more other members.
- (2) Before appointing a member of the council, the Minister must ensure that, collectively, the members have qualifications or experience in the following fields:
  - (a) assisting or working with people suffering financial hardship;
  - (b) law;
  - (c) business;
  - (d) consumer affairs.

*Note*            The *Legislation Act 2001*, s 199 (3) provides that if an Act gives a function or power to a body (including the council), the exercise of the function or power is not affected only because of vacancies in the body's membership.

## 175 Appointment

- (1) A member of the council holds office, subject to this Act—
  - (a) for the period stated in the member's appointment; and
  - (b) on the terms (if any) stated in the member's appointment about matters not provided for by this Act.
- (2) The appointment of the chairperson must be for not more than 5 years.
- (3) The appointment of any other member (including the deputy chairperson) must be for not more than 3 years.

*Note* A person may be reappointed to a position if the person is eligible for appointment to the position (see *Legislation Act 2001*, s 208 (3) (c) and dict, pt 1, def of *appoint*).

## 177 Termination of appointment

The Minister may terminate the appointment of a member of the council for misbehaviour or physical or mental incapacity.

*Note* A member's appointment also ends if the member resigns (see *Legislation Act 2001*, s 210).

## 178 Registrar

- (1) There is to be a registrar of the council.
- (2) The chief executive must create and maintain an office in the public service the duties of which include performing the functions of the registrar.
- (3) The registrar is the public servant for the time being performing the duties of the office mentioned in subsection (2).

## 179 Staff

- (1) The council may make an arrangement with the chief executive for public servants to assist the council in the performance of its functions.

- (2) The *Public Sector Management Act 1994* applies in relation to the management by the council of the public servants to which the arrangement applies.

### **180 Immunity from personal liability**

- (1) No personal liability attaches to a person who is, or has been—
- (a) a member of the council; or
  - (b) the registrar; or
  - (c) a public servant acting under an arrangement mentioned in section 179;

for an act or omission in good faith in relation to the performance, or purported performance, of a function of the council under this Act.

- (2) Subsection (1) does not affect any liability that the Territory would have, but for the operation of subsection (1), in relation to the act or omission.

## **Division 11.3 Organisation of council**

### **181 Arrangement of business**

- (1) Subject to this part, the chairperson is responsible for ensuring the orderly and expeditious discharge of the business of the council.
- (2) Without limiting the operation of subsection (1), the chairperson may give directions about any of the following matters:
- (a) the arrangement of the business of the council;
  - (b) the member or members who will constitute the council to consider a particular complaint;
  - (c) if the council is to be constituted by 2 or more members to consider a particular complaint—the member who is to preside;

- (d) the procedure of the council generally.
- (3) If the chairperson is absent from duty or otherwise unable to perform the functions of chairperson, the deputy chairperson may perform the functions of the chairperson.

## **182 Exercise of powers**

- (1) The council's powers may be exercised in relation to a particular complaint by—
  - (a) the chairperson; or
  - (b) if a direction has been given under section 181 for 1 or more members to constitute the council—the member or members who constitute the council for the purposes of the complaint.
- (2) If 2 or more members constituting the council for the purposes of a particular complaint are divided in opinion about a matter, the matter is to be decided as follows:
  - (a) if a majority of the members are of a particular opinion—the matter is to be decided according to that opinion;
  - (b) in any other case—the question is to be decided according to the opinion of the member presiding.

## **183 Member ceasing to be available**

- (1) This section applies if—
  - (a) the council is constituted by 2 or more members for a particular complaint; and
  - (b) 1 of the members ceases to be a member or ceases to be available to consider that complaint.
- (2) The consideration of the complaint may be completed by the council as constituted by the remaining member or members only if—
  - (a) the parties agree; and

- (b) the chairperson does not direct that the council be reconstituted.
- (3) Except where subsection (2) applies, the complaint must be considered by the council as reconstituted in accordance with the directions of the chairperson.
- (4) The council, as reconstituted under subsection (2) or (3), may, for the purpose of considering the complaint, have regard to any record of the council as previously constituted, including a record of any evidence received by the council.

## **Part 12**                      **Complaints**

### **Division 12.1**              **General**

#### **184**    **Definitions for pt 12**

In this part:

*customer debt* means an amount payable by a customer to a utility in relation to the provision of a utility service to premises for the customer.

*party*, to a complaint, means the complainant or the respondent.

*registrar* means the registrar of the council.

*respondent*, to a complaint, means the utility the subject of the complaint.

*withdrawal*, of a utility service, includes the reduction or termination of the service, whether by disconnection from a network or otherwise.

#### **185**    **Complaints to which pt 12 applies**

- (1) This part applies to the following complaints:
  - (a) a complaint by a consumer affected by a contravention by a utility of a customer contract;
  - (b) a complaint by a consumer about substantial hardship caused, or likely to be caused, by a utility failing to provide a utility service or withdrawing a utility service;
  - (c) a complaint by a person affected by a contravention by a utility of section 51 in relation to personal information;
  - (d) a complaint by a person affected by a contravention by a utility of an obligation under this Act in relation to its network operations;

- (e) a complaint by a person about an act or omission of an authorised person for a utility in relation to network operations;
  - (f) a complaint by a person about a capital contribution charge imposed under section 101.
- (2) This part does not apply to a complaint by a utility.

### **186 Complaints to council**

- (1) A complaint may be made to the council in any form acceptable to the council.
- (2) Without limiting the operation of subsection (1), a complaint may be made as an application for particular relief stated in the application.
- (3) The council may, by written notice given to a complainant, require the complainant to give the council further stated information or documents that the council reasonably requires to consider the complaint.

### **187 Preliminary inquiries**

If a complaint is made in accordance with section 186, the council may make inquiries of the respondent or any other person to determine—

- (a) whether this part applies to the matter complained of; and
- (b) if so, whether it should consider the matter under division 12.2.

### **188 Withdrawal of complaint**

A complainant may withdraw a complaint by giving a signed notice of withdrawal to the registrar.

### **189 Dismissal of complaint**

- (1) The council may dismiss a complaint without consideration, or further consideration, under division 12.2 if satisfied that—
  - (a) this part does not apply to the matter complained of; or



- (b) the complaint has been withdrawn or abandoned (for example, where the complainant fails to proceed with the complaint within a reasonable time); or
  - (c) the complaint relates to a matter, or the last of a series of matters, that occurred more than 12 months before the complaint was made; or
  - (d) the complainant has not given the council information or documents in accordance with a requirement under section 186 (3); or
  - (e) the complainant has not made reasonable efforts to resolve the matter complained of with the utility concerned, particularly in accordance with the utility's complaint handling procedures; or
  - (f) the complaint is frivolous, vexatious, misconceived or lacking in substance or was not made in good faith; or
  - (g) the matter complained of has already been dealt with adequately by the council or otherwise; or
  - (h) a remedy more appropriate than action under this part is readily available to the complainant; or
  - (i) it is otherwise appropriate to do so.
- (2) If the council dismisses a complaint, it must give each party written notice of the dismissal, setting out its reasons for the dismissal.

## **Division 12.2          Consideration of complaints**

### **190    Notice to utility**

- (1) The council must give the respondent utility written notice of each complaint to be considered by the council under this division.
- (2) On receiving the notice, the utility must make its records about the matter complained of available to the council.

## **191 Procedure**

- (1) Subject to this part, the council—
  - (a) must consider each complaint and, for that purpose, must—
    - (i) proceed with as little formality and technicality, and with as much expedition, as the proper consideration of the matter permits; and
    - (ii) make a thorough examination of all matters relevant to the complaint; and
    - (iii) ensure that each party is given a reasonable opportunity to present a case; and
  - (b) may conduct its consideration of a complaint in such manner as it thinks fit.
- (2) The council is not bound by the rules of evidence in considering a complaint.
- (3) The respondent utility must facilitate the consideration of a complaint by the council.
- (4) The regulations may make provision, not inconsistent with this part, in relation to complaints.

## **192 Interim directions**

- (1) The council may, on application by a party to a complaint, give any direction to a party that it considers to be necessary or desirable—
  - (a) to preserve the status quo between the parties; or
  - (b) to protect the rights of a party;pending the dismissal or determination of the complaint by the council.
- (2) Without limiting subsection (1), if a complaint is made about the withdrawal of a utility service following the nonpayment of a customer debt, the council may direct the utility—

- (a) to maintain the service pending the dismissal or determination of the complaint by the council; or
- (b) if the service has been withdrawn—
  - (i) to restore the service as soon as practicable and, in any event, within 24 hours after the direction is given to the utility; and
  - (ii) to maintain the service as mentioned in paragraph (a).
- (3) Before giving a direction under subsection (2), the council must have regard to the utility's reasons for the withdrawal of the utility service.

### **193 Participation by telephone etc**

The council may allow a person to participate in its consideration of a complaint by telephone, closed-circuit television or by any other means of communication.

### **194 Hearings**

- (1) For this part, the council may conduct a hearing in relation to a complaint.
- (2) Subject to this part, the council may determine the procedure at the hearing.
- (3) If the council is satisfied that it is necessary or desirable to do so, it may—
  - (a) direct that a hearing, or part of a hearing, take place in private; and
  - (b) give directions about who may be present.

### **195 Appearance and representation**

At a hearing in relation to a complaint, each party may appear in person or, with the consent of the council, be represented by another person.

### **196 Taking evidence**

In its consideration of a complaint, the council may take evidence on oath or affirmation and, for that purpose may—

- (a) require a person appearing before the council to take an oath or make an affirmation; and
- (b) administer an oath or affirmation to such a person.

### **197 Refusing to take oath or make affirmation**

A person must not, without reasonable excuse, fail to take an oath or make an affirmation when required to do so under section 196.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **198 Obtaining information and documents**

- (1) If the council is satisfied that a person is capable of providing information or producing a document relevant to its consideration of a complaint, it may, by written notice given to the person, require the person—
  - (a) to give the information to the council in writing signed by the person or, in the case of a body politic or corporate, by an officer of the body; or
  - (b) to produce the document to the council.
- (2) The notice must state—
  - (a) the place at which the information or document is to be given or produced to the council; and
  - (b) the time at which, or the period within which, the information or document is to be given or produced.
- (3) If the council is satisfied that a person has information relevant to a complaint, it may, by written notice given to the person, require the

person to appear before the council at a time and place stated in the notice to answer questions relevant to the complaint.

- (4) If a document is produced to the council in accordance with a requirement under subsection (1), the council—
- (a) may—
    - (i) take possession of, and may make a copy of, or take extracts from, the document; and
    - (ii) retain possession of the document for such period as is necessary for the purposes of this part; and
  - (b) must, during that period allow a person who would be entitled to inspect the document, if it was not in the possession of the council, to inspect the document at any reasonable time.

### **199 Contravention of requirement under s 198**

A person must not, without reasonable excuse, contravene a requirement under section 198.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **200 Witnesses to answer questions etc**

- (1) For this part, the council may require a person appearing before the council—
- (a) to answer a question relevant to a complaint; or
  - (b) to produce a document relevant to a complaint.
- (2) A person must not, without reasonable excuse, contravene a requirement under subsection (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **201 Selfincrimination etc**

- (1) A person is not excused from providing information, producing a document or answering a question when required to do so under section 198 or 200 on the ground that the information, document or answer might tend to incriminate the person.
- (2) However—
  - (a) the provision of the information, document or answer; or
  - (b) any information, document or thing obtained as a direct or indirect consequence of providing the information, document or answer;

is not admissible in evidence against the person in criminal proceedings, other than proceedings for—

- (c) an offence against this part; or
- (d) any other offence in relation to the falsity of the information, document or answer.

*Note 1* A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1900*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

*Note 2* The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

## **203 Restrictions on publication**

- (1) The council may direct that—
  - (a) evidence given before the council in relation to a complaint; or
  - (b) the contents of a document produced to the council in relation to a complaint; or
  - (c) information that might enable a person who has appeared before the council in relation to a complaint to be identified;

is not to be published, or is not to be published except in the manner, or to the persons, stated by the council.

- (2) A direction to a particular person must be given to the person in writing.
- (3) A direction to people generally is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

#### **204 Contravention of direction about publication**

A person must not, without reasonable excuse, publish matter in contravention of a direction under section 203.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

#### **205 Reference of question of law to Supreme Court**

- (1) The council may, on its own initiative or at the request of a party, refer a question of law arising in a proceeding to the Supreme Court for decision but a question may not be referred without the agreement of the chairperson.
- (2) The Supreme Court has jurisdiction to hear and determine the question referred.
- (3) If a question of law has been referred to the Supreme Court under this section, the council may not, in the relevant proceeding—
  - (a) give a direction or declaration under division 12.3 to which the question is relevant while the reference is pending; or
  - (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Supreme Court on the question.

## **Division 12.3           Determination of complaint**

### **206   Decisions of council**

- (1) This division applies if the council is satisfied that, in relation to a complainant—
  - (a) the respondent utility has—
    - (i) contravened a customer contract; or
    - (ii) contravened section 51 in relation to personal information; or
    - (iii) contravened an obligation under this Act in relation to its network operations; or
  - (b) the respondent utility has caused, or would cause, substantial hardship by failing to provide, or withdrawing, a utility service; or
  - (c) an authorised person for a utility has acted improperly in relation to network operations.
- (2) In that case, the council may—
  - (a) give such written directions to the utility as it considers necessary requiring the utility to remedy the matter mentioned in subsection (1); or
  - (b) give any other direction under this division; or
  - (c) make a declaration under this division.
- (3) A utility must comply with a direction given to it under this division.

### **207   Continuity of utility services—nonpayment of customer debt**

- (1) This section applies to a complaint about the actual or potential withdrawal of a utility service because of a failure to pay a customer debt in relation to residential premises.



- (2) If the council is satisfied that the withdrawal of the utility services causes, or would cause, substantial hardship for a consumer, it may give the utility a written direction—
  - (a) not to withdraw the service; or
  - (b) if the service has been withdrawn—to restore the service as soon as practicable and, in any event, within 24 hours after the direction is given to the utility.
- (3) A direction may contain ancillary directions, for example, that the service not be withdrawn—
  - (a) during a stated period; or
  - (b) unless the consumer fails to comply with a stated condition.

## **208 Discharge of customer debt**

- (1) If the council is satisfied that payment of a customer debt in relation to residential premises would cause substantial hardship for the customer, it may, in writing, declare that the debt is discharged in whole or to a stated extent.
- (2) The declaration may provide for the discharge to be conditional on payment by the customer of a stated amount or amounts in accordance with the declaration.
- (3) A declaration has effect for all purposes according to its terms.
- (4) The amount of the debt discharged by a declaration may not exceed—
  - (a) \$10 000; or
  - (b) if another amount is prescribed by the regulations—that amount.

## **209 Payment for loss or damage**

- (1) If the council is satisfied that a complainant suffered loss or damage because of an act by a utility, or an authorised person for a utility, of

a kind mentioned in section 206, the council may give the utility a written direction to pay a stated amount to the complainant for the loss or damage.

- (2) The direction may not be given in relation to an amount of a punitive character.
- (3) The amount payable under the direction is a debt due to the complainant in whose favour the direction is given.
- (4) In giving the direction, the council must take account of the extent (if any) to which the complainant—
  - (a) caused, or contributed to, the loss or damage; or
  - (b) obstructed, or interfered with, the performance of the utility's functions under this Act.
- (5) The amount stated in a direction may not exceed—
  - (a) \$10 000; or
  - (b) if another amount is prescribed by the regulations—that amount.
- (6) The registrar must, on request by the complainant in whose favour a direction is made, give the complainant a copy of the direction certified by the registrar.

## **210 Notice of decision**

- (1) The council must give written notice of each direction, or declaration, under this division to each party to the relevant complaint.
- (2) The notice about a direction to pay an amount under section 209 must include a statement about the right to enforce the direction under the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 380A.

## **211 Decisions by agreement**

- (1) If, at any stage of a proceeding—
  - (a) the parties agree about the terms of a direction or declaration to be made by the council under this division in relation to any part of the complaint or a matter arising out of the complaint; and
  - (b) the terms of the agreement are reduced to writing, signed by or on behalf of the parties and lodged with the council; and
  - (c) the council is satisfied that a direction or declaration in those terms may be made under this division;the council may make a direction or declaration in those terms.
- (2) If subsection (1) applies, the council may make the direction or declaration without further consideration of the complaint.

## **Division 12.4 Miscellaneous**

### **212 Records**

The council must keep a record of its decisions.

### **213 Correction of errors**

The council may correct an error in a decision of the council that arises from a clerical mistake or an accidental slip or omission.

### **214 Protection of lawyers and witnesses**

- (1) A lawyer or other person appearing before the council on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (2) Subject to this Act, a person summoned to attend or appearing before the council as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

### **215   Obstructing council etc**

A person must not—

- (a) obstruct the council in the performance of a function under this Act; or
- (b) disrupt proceedings of the council.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **216   Providing false information**

A person must not, in purported compliance with a requirement under section 198 or 200, intentionally or recklessly give information that is false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **217   Providing false or misleading documents**

- (1) A person must not, in purported compliance with a requirement under section 198 or 200 produce a document (or a copy of a document) that, to the knowledge of the person, is false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply to a person who produces a document (or a copy of a document) that, to the knowledge of the person, is false or misleading in a material particular if the document or copy is accompanied by a statement signed by the person, or in the case of a body corporate, by a competent officer of the body corporate—
  - (a) stating that the document or copy is, to the knowledge of the person, false or misleading in a material particular; and

- (b) setting out, or referring to, the material particular in which the document or copy is, to the knowledge of the person, false or misleading.

**218 Reimbursement of utilities for customer debts discharged**

If a customer debt is discharged under section 208, the amount discharged is a debt due to the relevant utility by the Territory.

## **Part 13 Community service obligations**

### **219 Purposes of pt 13**

The purposes of this part are:

- (a) to oblige utilities to provide utility services in accordance with relevant Government programs, for example, for community services, the environment or other social issues; and
- (b) to achieve that result by agreement with particular utilities or, where agreement is not reached, by directions under this part; and
- (c) to provide utilities with a reasonable recompense for the provision of services in accordance with such directions.

### **220 Agreement to be sought**

A direction must not be given under section 221 unless the responsible Minister is satisfied that, despite all reasonable efforts having been made, no agreement has been reached with the utility about achieving the intended result or about the liability for the associated costs.

### **221 Direction by Minister**

- (1) The Minister responsible for a Government program may give a written direction to a utility to take stated action that the Minister considers appropriate to ensure that the utility's services are provided in accordance with the program.
- (2) A direction may, for example, require the utility to provide particular services to particular classes of persons free of charge, at stated charges or subject to stated discounts or rebates.

- (3) A direction must state the Minister's estimate of the cost to be incurred by the utility in complying with the direction.

### **222 Determination of costs**

The cost of giving effect to a direction under section 221 is—

- (a) in relation to a utility service of a kind currently provided by the utility—the additional cost that would be avoided by the utility if it did not give effect to the direction; and
- (b) in relation to a proposed utility service—the cost that would be incurred by the utility in providing the service in accordance with the direction.

### **223 Liability for costs**

- (1) A direction under section 221 has no effect unless the Treasurer certifies in writing that proper arrangements exist for the Territory to pay to the utility the amount of the costs—
- (a) stated in the direction; or
- (b) where a dispute about the cost is determined by arbitration because of section 225—as so determined.
- (2) Where a direction is given to a utility, the amount of the costs fixed in accordance with subsection (1) is a debt due to the utility by the Territory.

### **224 Compliance with direction**

A utility must comply with a direction given to it under section 221.

### **225 Arbitration of dispute about cost**

- (1) If the responsible Minister and the utility concerned dispute the cost of complying with a direction under section 221, either party may refer the dispute to ICRC for arbitration.
- (2) ICRC must arbitrate a dispute so referred.

- (3) The following provisions of the ICRC Act, part 6 apply, so far as applicable, to the arbitration:
- (a) section 33 (1), (2) and (5) (appointment and powers of arbitrator);
  - (b) section 34 (draft determinations);
  - (c) section 36 (1) (parties to give effect to determination);
  - (d) section 37 (termination by parties);
  - (e) section 38, but not paragraph (d) (termination by arbitrator);
  - (f) section 39 (variation of arbitration);
  - (g) section 40 (application of *Commercial Arbitration Act 1986*).



## Part 14 Vicarious liability

### 226 References in pt 14 to *proceeding under this Act*

A reference in this part to a *proceeding under this Act* includes a reference to—

- (a) an action under this Act; and
- (b) proceeding for an offence against this Act.

*Note* A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1900*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

### 227 Liability of corporations

- (1) If, in a proceeding under this Act in relation to conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that—
  - (a) a director, employee or agent of the corporation engaged in that conduct; and
  - (b) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
  - (c) the director, employee or agent had that state of mind.
- (2) If—
  - (a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and
  - (b) the conduct is within the scope of his or her actual or apparent authority;

the conduct is taken, for the purposes of a proceeding under this Act, to have been engaged in by the corporation unless the

corporation establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

- (3) A reference in subsection (1) to the *state of mind* of a person includes a reference to—
  - (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (4) A reference in this section to a *director* of a corporation includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.
- (5) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

## **228 Liability of persons other than corporations**

- (1) This section does not apply to a proceeding for an offence against section 21 (Requirement for licence).
- (2) If, in a proceeding under this Act in relation to conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that—
  - (a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) the employee or agent had that state of mind.
- (3) If—
  - (a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and
  - (b) the conduct is within the employee's or agent's actual or apparent authority;

the conduct is taken, for the purposes of a proceeding under this Act, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

- (4) Despite any other provision of this Act, if—
- (a) a person is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subsections (2) and (3) had not been in force;
- the person is not liable to be punished by imprisonment for that offence.
- (5) A reference in this section to the *state of mind* of a person includes a reference to—
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (6) A reference in this section to *engaging* in conduct includes a reference to failing or refusing to engage in conduct.

## Part 15 Miscellaneous

### 229 Determination of fees

- (1) This section does not apply to an annual licence fee.
- (2) ICRC may, in writing, determine fees for this Act.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (3) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### 229A Approved forms—ICRC

- (1) ICRC may, in writing, approve forms in relation to its functions under this Act.
- (2) If ICRC approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### 229B Approved forms—Minister

- (1) The Minister may, in writing, approve forms for this Act except in relation to ICRC's functions under this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

**230 Evidentiary certificate—Government programs**

For this Act or a related law, a certificate signed by the Minister stating whether a matter is, or is part of, a Government program is evidence of the matter so stated.

**231 Evidence of authorisation by utility**

For this Act or a related law, a certificate that appears to be signed by or on behalf of a utility and contains a statement to the effect that—

- (a) a stated thing was done by a stated person in accordance with an authorisation by the utility; or
- (b) an authorisation by the utility was subject to a stated condition at a stated time or date;

is evidence of the matters stated.

**232 Former water and sewerage rates schemes—extended operation**

- (1) Despite the repeal of the *Water Rates Act 1959*, the following provisions have effect:
  - (a) the provisions of that Act immediately before the repeal continue to apply in relation to—
    - (i) an amount payable under that Act immediately before the repeal; or
    - (ii) an amount payable because of the operation of paragraph (b);
  - (b) until a standard customer contract takes effect in relation to the provision of a utility service for water, the conditions applying to the provision of the service (including conditions concerning amounts payable) are the conditions that would have applied but for the repeal of that Act.

- (2) Despite the repeal of the *Sewerage Rates Act 1968*, the following provisions have effect:
- (a) the provisions of that Act immediately before the repeal continue to apply in relation to—
    - (i) an amount payable under that Act immediately before the repeal; or
    - (ii) an amount payable because of the operation of paragraph (b);
  - (b) until a standard customer contract takes effect in relation to the provision of sewerage services, the conditions applying to the provision of the service (including conditions concerning amounts payable) are the conditions that would have applied but for the repeal of that Act.

### **233 Compensation—safety net**

- (1) If—
- (a) apart from this section and division 9.2, the operation of any provision of this Act would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be unlawful because of the Self-Government Act, section 23 (1);

the person acquiring the property (the *acquirer*) is liable to pay reasonable compensation to the other person in relation to the acquisition.

- (2) If the acquirer and the other person do not agree on the amount of compensation, the other person may, in a court of competent jurisdiction, recover from the acquirer such reasonable compensation as the court determines.

### **234 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision in relation to the safe or efficient provision of utility services, including provision prohibiting or regulating activities—
  - (a) to ensure the safe or efficient operation of a utility network or network facility; and
  - (b) to protect people or property in relation to the operation of a utility network or network facility.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Dictionary

(see s 4)

**annual licence fee**, for a licence, means the fee determined under section 45 (Determination of fee) for the licence for the relevant year.

**approved meter**, for division 6.4 (Passing on supply costs)—see section 97.

**authorised person** means a person appointed as an authorised person under section 114.

**capital contribution charge**—see section 101 (Capital contribution charges—network development).

**complaint** means a complaint to which part 12 (Complaints) applies.

**connected** with an offence, for part 10 (Enforcement)—see section 150.

**consumer**, in relation to a utility service, means—

- (a) a customer for the service; or
- (b) an occupier of a customer's premises to which the service is provided;

and includes an invitee of the customer or occupier.

**controller**—see section 135 (Appointment of controller).

**council** means the Essential Services Consumer Council established under part 11.

**customer**—see section 17 (Customers).

**customer contract** means—

- (a) a standard customer contract; or
- (b) a negotiated customer contract.



**customer debt**, for part 12 (Complaints)—see section 184.

**daily newspaper** means a daily newspaper that circulates generally in the Territory.

**data storage device** means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device.

**electricity connection service**—see section 79 (Electricity connection service).

**electricity distributor**—

- (a) means a utility licensed for the distribution of electricity through an electricity network; and
- (b) in relation to an electricity connection service for premises—means a utility licensed to provide the service for the premises.

**electricity network**—see section 7 (Electricity network).

**electricity supplier**, in relation to the supply of electricity to premises, means a utility licensed to supply electricity to the premises.

**franchise customer**—see section 17 (Customers).

**gas**—see section 8.

**gas connection service**—see section 81 (Gas connection service).

**gas distribution network**—see section 10 (2).

**gas distributor**—

- (a) means a utility licensed for the distribution of gas through a gas network; and
- (b) in relation to a gas connection service for premises—means a utility licensed to provide the service for the premises.

**gas network**—see section 10 (Gas networks).

**gas supplier**, in relation to the supply of gas to premises, means a utility licensed to supply gas to the premises.

**gas transmission network**—see section 10 (1).

**industry code**, for a utility service, means an industry code approved or determined under part 4 (Industry codes) that applies to the service.

**ICRC** means the Independent Competition and Regulatory Commission.

**ICRC Act** means the *Independent Competition and Regulatory Commission Act 1997*.

**ICRC inspector** means a person appointed as an ICRC inspector under section 152.

**installation**, for part 7 (Network operations)—see section 103.

**interference**, for part 8 (Protection of networks)—see section 123.

**land-holder**—

- (a) in relation to private land, means—
  - (i) an owner of the land; or
  - (ii) if the land is occupied by a person other than the owner—  
an occupier of the land; and
- (b) in relation to unleased Territory land—means the Territory;  
and
- (c) in relation to national land—means the Commonwealth, and  
includes a lessee of the land.

**licence** means a licence under this Act.

**negotiated customer contract** means a contract to which section 95 (Negotiated customer contracts) applies.

**network**—

- (a) for this Act—means any of the following:

- 
- (i) an electricity network;
  - (ii) a gas network;
  - (iii) a sewerage network;
  - (iv) a water network;
  - (v) a network prescribed for a prescribed utility service under section 15 (Prescribed utility services); or
- (b) for sections 130, 131 and 132—see section 133 (Extended meaning of *network*).

***network boundary***—see section 16 (Network boundary).

***network facility*** means any part of the infrastructure of a network.

***network operations***—for part 7 (Network operations)—see section 103.

***network protection notice***—means a notice under section 125 (Network protection notices).

***non-franchise customer***—see section 17 (Customers).

***occupier***, of premises—

- (a) for this Act—means a person who has, or is entitled to, lawful possession or control of the premises (whether alone or together with 1 or more other people); or
- (b) for part 10 (Enforcement)—see section 150.

***offence***, for part 10 (Enforcement)—see section 150.

***owner***, of premises, means—

- (a) a person who owns the premises; or
- (b) a lessee of the premises under a lease granted by or for the Commonwealth; or
- (c) in the case of a unit under the *Unit Titles Act 1970*—the person who is the unit proprietor;

whether alone or together with 1 or more other persons.

**party**, for part 12 (Complaints)—see section 184.

**personal information**—see the *Privacy Act 1988* (Cwlth), section 6 (Interpretation), but does not include information available to a section of the public.

**premises** includes land and place.

**private land** means land other than public land.

**proceeding under this Act**, for part 14 (Vicarious liability)—see section 226.

**public land** means national land or unleased Territory land.

**registrar**, for part 12 (Complaints)—see section 184.

**related law** means the ICRC Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, 104).

**respondent**, for part 12 (Complaints)—see section 184.

**responsible utility**, for a network or network facility, means a utility licensed to provide utility services using the network or network facility.

**satisfied** means satisfied on reasonable grounds.

**sewerage connection service**—see section 85 (Sewerage connection service).

**sewerage network**—see section 14 (Sewerage network).

**sewerage service** means the conveyance, collection, treatment and disposal of sewage by a person from the premises of another person.

**sewerage utility**, in relation to the provision of a sewerage connection service or sewerage service for premises, means a utility licensed to provide the relevant service for the premises.

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**standard customer contract**—see section 92 (Creation of standard customer contracts).

**technical code**, for a utility service, means a technical code approved or determined under part 5 (Technical regulation) that applies to the service.

**technical inspector** means a person appointed as a technical inspector under section 67 (Technical inspectors).

**utility**—

- (a) for this Act—means a person licensed to provide a utility service; or
- (b) for part 9 (Controller’s power to take over operations)—see section 134.

**utility service**—

- (a) in relation to electricity—see section 6 (Electricity services); or
- (b) in relation to gas—see section 9 (Gas services); or
- (c) in relation to water—see section 11 (Water services); or
- (d) in relation to sewerage—see section 13 (Sewerage services); or
- (e) in relation to a prescribed service—see section 15 (Prescribed utility services).

**water connection service**—see section 83 (Water connection service).

**water distributor** means—

- (a) in relation to the collection or treatment of water, or both, for distribution through a water network—a utility licensed for the service; and
- (b) in relation to the distribution of water through a water network—a utility licensed for the service; and

(c) in relation to the provision of a water connection service to premises—a utility licensed to provide the service for the premises.

***water network***—see section 12 (Water network).

***water supplier***, in relation to the supply of water to premises, means a utility licensed to supply water to the premises.

***withdrawal***, for part 12 (Complaints)—see section 184.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

|   |   |
|---|---|
| am = amended  | ord = ordinance   |
| amdt = amendment                                    | orig = original   |
| ch = chapter  | p = page  |
| cl = clause   | par = paragraph   |
| def = definition                                    | pres = present  |
| dict = dictionary                                   | prev = previous   |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously  |
| div = division                                      | prov = provision  |
| exp = expires/expired                               | pt = part   |
| Gaz = Gazette                                       | r = rule/subrule  |
| hdg = heading                                       | reg = regulation/subregulation                                    |
| IA = Interpretation Act 1967                        | renum = renumbered  |
| ins = inserted/added                                | reloc = relocated   |
| LA = Legislation Act 2001                           | R[X] = Republication No   |
| LR = legislation register                           | s = section/subsection  |
| LRA = Legislation (Republication) Act 1996          | sch = schedule  |
| mod = modified / modification                       | sdiv = subdivision  |
| No = number   | sub = substituted   |
| num = numbered                                      | SL = Subordinate Law  |
| o = order   | <u>underlining</u> = whole or part not commenced or to be expired |
| om = omitted/repealed                               |   |

## Endnotes

3 Legislation history

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### 3 Legislation history

#### Utilities Act 2000 No 65

notified 20 December 2000 (Gaz 2000 No S68)  
s 1, s 2 commenced 20 December 2000 (IA s 10B)  
pt 11, pt 12 commenced 1 March 2001 (Gaz 2000 No S69)  
div 16.3 commenced 20 June 2001 (s 2 (2) (a))  
s 249 commenced 20 June 2001 (s 2 (2) (a) but see Gaz 2000 No S69)  
s 250 commenced 1 June 2001 (Gaz 2000 No S69)  
remainder commenced 1 January 2001 (Gaz 2000 No S69)

as amended by

#### Legislation (Consequential Amendments) Act 2001 No 44 pt 405

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 405 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

#### Statute Law Amendment Act 2001 (No.2) No 56 pt 3.52

notified 5 September 2001 (Gaz 2001 No S65)  
commenced 5 September 2001 (s 2 (1))

#### Legislation Amendment Act 2002 No 11 pt 2.49

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.49 commenced 28 May 2002 (s 2 (1))

### 4 Amendment history

#### Commencement

s 2 om R2 LA

#### Customers

s 17 def *customer* am 2001 No 56 amdt 3.861, amdt 3.862

#### Declaration of non-franchise customers

s 18 sub 2001 No 44 amdt 1.4171

#### Ministerial directions

s 19 am 2001 No 44 amdt 1.4172

#### Other laws not affected

s 20 am 2001 No 44 amdt 1.4173, amdt 1.4174



**Exemption**

s 22 am 2001 No 44 amds 1.4175-1.4177

**Special conditions—electricity distribution or supply**

s 28 am 2001 No 56 amdt 3.863

**Applications for certain licence decisions**

s 34 sub 2001 No 44 amdt 1.4178

**Exemption from licence condition**

s 39 am 2001 No 44 amdt 1.4179

**Public notice of licence decisions**

s 52 am 2001 No 44 amdt 1.4180, amdt 1.4181

**Public access to licences etc**

s 53 am 2001 No 44 amdt 1.4182

**Contents**

s 55 am 2001 No 44 amdt 1.4183

**Notification and disallowance of codes etc**

s 62 sub 2001 No 44 amdt 1.4184

**Public access**

s 63 am 2001 No 44 amdt 1.4185

**Application of industry code provisions**

s 65 am 2001 No 44 amdt 1.4186

**Technical inspectors**

s 67 am 2001 No 44 amdt 1.4187; ss renum R2 LA (see 2001 No 44 amdt 1.4188)

**Directions about technical codes**

s 70 am 2001 No 44 amdt 1.4189

**Selfincrimination etc**

s 74 am 2002 No 11 amdt 2.99

**Legal professional privilege**

s 75 om 2002 No 11 amdt 2.100

**Notification and application of terms etc**

s 91 sub 2001 No 44 amdt 1.4190

**Clarifying ownership of certain network facilities**

s 121 am 2001 No 44 amdt 1.4191

**Effect of declaration under s 121**

s 122 am 2001 No 44 amdt 1.4192; ss renum R2 LA (see 2001 No 44 amdt 1.4193)

**Definitions for pt 10**

s 150 hdg sub 2001 No 56 amdt 3.864

s 150 def **connected** ins 2001 No 56 amdt 3.865

## Endnotes

4 Amendment history

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def **offence** ins 2001 No 56 amdt 3.865

### **Things connected with offences**

s 151 om 2001 No 56 amdt 3.866

### **Selfincrimination etc**

s 166 am 2002 No 11 amdt 2.101

### **Legal professional privilege**

s 167 om 2001 No 11 amdt 2.102

### **Functions**

s 170 am 2001 No 56 amdts 3.867-3.869

### **Members**

s 174 am 2001 No 56 amdt 3.870, amdt 3.871

### **Appointment**

s 175 am 2001 No 56 amdt 3.872, amdt 3.873

### **Resignation**

s 176 om 2001 No 56 amdt 3.874

### **Termination of appointment**

s 177 am 2001 No 56 amdt 3.875

### **Selfincrimination etc**

s 201 am 2002 No 11 amdt 2.103

### **Legal professional privilege**

s 202 om 2002 No 11 amdt 2.104

### **Restrictions on publication**

s 203 am 2001 No 44 amdt 1.4194

### **References in pt 14 to *proceeding under this Act***

s 226 hdg sub 2001 No 56 amdt 3.876

s 226 am 2001 No 44 amdt 1.4195, amdt 1.4196; 2002 No 11  
amdt 2.105

### **Liability of persons other than corporations**

s 228 am 2002 No 11 amdt 2.106

### **Determination of fees**

s 229 sub 2001 No 44 amdt 1.4197

### **Approved forms—ICRC**

s 229A ins 2001 No 44 amdt 1.4197

### **Approved forms—Minister**

s 229B ins 2001 No 44 amdt 1.4197

### **Regulation-making power**

s 234 hdg sub 2001 No 44 amdt 1.4198

am 2001 No 44 amdt 1.4199, amdt 1.4200

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|   |                                |
|---|--------------------------------|
| <b>Transitional</b>                                 |                                |
| pt 16 hdg   | om R5 LA                       |
| <b>First codes</b>                                  |                                |
| div 16.1 hdg  | om 2001 No 44 amdt 1.4201      |
| <b>First industry codes</b>                         |                                |
| s 235   | om 2001 No 44 amdt 1.4201      |
| <b>First technical codes</b>                        |                                |
| s 236   | om 2001 No 44 amdt 1.4201      |
| <b>Electricity Supply Acts, repeals and savings</b> |                                |
| div 16.2 hdg  | exp 1 January 2002 (s 241)     |
| <b>Commencement day for div 16.2</b>                |                                |
| s 237   | exp 1 January 2002 (s 241)     |
| <b>Repeals</b>                                      |                                |
| s 238   | om R1 LRA                      |
| <b>Electricity Supply Act—licences etc</b>          |                                |
| s 239   | exp 1 January 2002 (s 241)     |
| <b>Existing standard customer contracts</b>         |                                |
| s 240   | exp 1 January 2002 (s 241)     |
| <b>Expiry of div 16.2</b>                           |                                |
| s 241   | exp 1 January 2002 (s 241)     |
| <b>Gas Supply Act, repeals and savings</b>          |                                |
| div 16.3 hdg  | exp 20 June 2002 (s 247)       |
| <b>Commencement day for div 16.3</b>                |                                |
| s 242   | exp 20 June 2002 (s 247)       |
| <b>Repeal</b>                                       |                                |
| s 243   | exp 21 June 2001 (IA s 43 (3)) |
| <b>Gas Supply Act—authorisations</b>                |                                |
| s 244   | exp 20 June 2002 (s 247)       |
| <b>Pending customer applications</b>                |                                |
| s 245   | exp 20 June 2002 (s 247)       |
| <b>Safety and operating plans</b>                   |                                |
| s 246   | exp 20 June 2002 (s 247)       |
| <b>Expiry of div 16.3</b>                           |                                |
| s 247   | exp 20 June 2002 (s 247)       |
| <b>Miscellaneous</b>                                |                                |
| div 16.4 hdg  | exp 1 July 2001 (s 253)        |
| <b>Commencement day for div 16.4</b>                |                                |
| s 248   | om 2001 No 56 amdt 3.877       |

## Endnotes

4 Amendment history

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### Repeals

s 249 exp 21 June 2001 (IA s 43 (3))

### Energy and Water Act

s 250 (1) exp 2 June 2001 (IA s 43 (3))  
(2)–(6) exp 1 July 2001 (s 253)

### Essential Services (Continuity of Supply) Act

s 251 exp 1 July 2001 (s 253)

### Regulations—transitional matters

s 252 exp 1 July 2001 (s 253)

### Expiry of div 16.4

s 253 am 2001 No 56 amdt 3.878  
exp 1 July 2001 (s 253)

### Dictionary

dict

def **approved meter** ins 2001 No 56 amdt 3.879  
def **authorised person** sub 2001 No 56 amdt 3.880  
def **connected** ins 2001 No 56 amdt 3.881  
def **customer debt** ins 2001 No 56 amdt 3.881  
def **determined fee** om 2001 No 44 amdt 1.4202  
def **function** om 2001 No 56 amdt 3.882  
def **gas distribution network** ins 2001 No 56 amdt 3.883  
def **gas transmission network** ins 2001 No 56  
amdt 3.883  
def **industry code** sub 2001 No 44 amdt 1.4203  
def **ICRC inspector** sub 2001 No 56 amdt 3.884  
def **installation** ins 2001 No 56 amdt 3.885  
def **interference** ins 2001 No 56 amdt 3.885  
def **network** sub 2001 No 56 amdt 3.886  
def **network operations** sub 2001 No 56 amdt 3.886  
def **occupier** sub 2001 No 56 amdt 3.886  
def **offence** ins 2001 No 56 amdt 3.887  
def **party** ins 2001 No 56 amdt 3.887  
def **personal information** sub 2001 No 56 amdt 3.888  
def **proceeding under this Act** ins 2001 No 56  
amdt 3.889  
def **registrar** ins 2001 No 56 amdt 3.889  
def **related law** sub 2001 No 44 amdt 1.4204  
def **respondent** ins 2001 No 56 amdt 3.889  
def **technical code** sub 2001 No 44 amdt 1.4205  
def **technical inspector** sub 2001 No 56 amdt 3.890  
def **utility** sub 2001 No 56 amdt 3.890  
def **withdrawal** ins 2001 No 56 amdt 3.891

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

| Republication No | Amendments to  | Republication date |
|------------------|----------------|--------------------|
| 1                | not amended    | 24 May 2001        |
| 2                | Act 2001 No 56 | 5 September 2001   |
| 3                | Act 2001 No 56 | 10 January 2002    |
| 4                | Act 2002 No 11 | 29 May 2002        |

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