

1995

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

**ELECTRICITY AND WATER (CORPORATISATION)
(CONSEQUENTIAL AMENDMENTS) BILL 1995**

EXPLANATORY MEMORANDUM

**Circulated by Authority of the Minister for Urban Services
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The Electricity and Water (Corporatisation) (Consequential Amendments) Bill 1995 is part of a package of two Bills required to enable the Australian Capital Territory Electricity and Water Authority ("the Authority") to be converted into a Territory owned corporation under the provisions of the *Territory Owned Corporations Act 1990*. The other Bill is entitled the Electricity and Water (Corporatisation) (Consequential Provisions) Bill 1995.

The provisions of these two Bills provide for the Authority to be corporatised basically by transferring rights and liabilities from the Authority to the new corporation, for the transfer of various regulatory functions from the Authority to the Territory, for transitional matters and for the consequential amendment of a number of Territory enactments .

The Electricity and Water (Corporatisation) (Consequential Amendments) Bill 1995 amends the following Territory enactments as a consequence of the corporatisation of the Authority:

- *Electricity and Water Act 1988*
- *Public Interest Disclosure Act 1994*
- *Public Sector Management Act 1994*
- *Territory Owned Corporations Act 1990*

The Bill also contains transitional provisions to ensure that after 1 July 1995 certain actions taken prior to that date continue to have effect. This will facilitate an orderly administrative change and negate the need for such actions to be commenced anew.

There are no direct costs associated with this Bill. The corporatisation should result in significant efficiency gains to Government

Details of the Bill follow.

DETAILS

Citation and Commencement

Clauses 1 and 2 - provide that the Bill, when enacted will be known as the *Electricity and Water (Corporatisation) (Consequential Amendments) Act 1995* and will commence on 1 July 1995. This is the commencement day specified in the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*

Amendment of Acts

Clause 3 - provides that the Acts appearing in the Schedule are amended as set out therein.

Transitional Provisions

Clause 4 - makes various transitional amendments

Subclause 4(1) is an interpretation provision for the purposes of this clause. The term "Authority" is defined as the Australian Capital Territory Electricity and Water Authority set up under the *Electricity and Water Act 1988*, "Company" means the newly established ACTEW Corporation Limited and "relevant day" means 1 July 1995.

Subclause 4(2) requires the Company to, on behalf of the Authority, lodge an annual report and appropriate financial statements in respect of the year ending 30 June 1995 for the purpose of complying with section 93 of the *Audit Act 1989*.

Subclause 4(3) provides that an act or thing done by the Authority under another law before the relevant day is deemed to have been done by the Company for the purposes of that law after that day.

Subclause 4(4) ensures that an evidentiary certificate given under section 79 of the *Electricity and Water Act 1988* continues to be evidence of the matters stated in it despite the amendment of section 79 by clause 3 and the Schedule.

Schedule

The Schedule amends the Acts as follows:

Electricity and Water Act 1988-

Amendments to this Act remove provisions which are no longer relevant in light of the corporatisation of the Authority. Fundamentally, provisions relating to the establishment and powers of the Authority, such as Parts II to VI of the Act, have been repealed. Some provisions have been amended or new provisions have been added as a consequence of the corporatisation and various purely technical amendments have been made to substitute references to the "Authority" or "Chief Executive Officer" with "Company".

The regulation making power in section 82 of the Act has been made more specific and includes a list of matters which may be dealt with by regulation. The maximum penalties for offences against the regulations are 50 penalty units for a body corporate or 10 penalty units for a natural person.

Section 88 has been amended to provide that an instrument in force prior to 1 July 1995 continues in force after that date as if references to the Authority or references to the former Australian Capital Territory Electricity Authority were references to the Company.

Public Interest Disclosure Act 1994

An amendment has been made to section 3 of the Act to enable the Minister to declare that a specified body is not a Territory instrumentality for the purposes of the Act. This amendment brings the Act into line with the *Public Sector Management Act 1994* subsection 3(2) of which is in the same terms as the proposed amendment

Public Sector Management Act 1994 -

Section 5 of the Act has been amended to the effect that the provisions of this Act do not apply to ACTEW Corporation Limited. The various other amendments basically excise references to the former Australian Capital Territory Electricity and Water Authority given these will be redundant as a consequence of the corporatisation of the Authority

Territory Owned Corporations Act 1990

The amendments basically update references to the *Corporations Act 1989* of the Commonwealth with references to the Corporations Law. More significantly, the *Territory Owned Corporations Act 1990* is amended by inserting "ACTEW Corporation Limited" into Schedule 1. The effect of this

provision is to make the Company a Territory owned corporation under the umbrella of the *Territory Owned Corporations Act 1990*.

Further, a new Schedule has been added to the Act which specifies modifications of the Act in relation to ACTEW Corporation Limited only. New Schedule 4 qualifies the operation of sections 14,16 and 30. The effect of the modifications of sections 14 and 16 is to facilitate the acquisition or establishment by the Company of subsidiaries which will not be wholly owned.

Schedule 4 qualifies the operation of section 30 in respect of the vesting of the assets of the Authority in the Company by virtue of section 4 of the *Electricity and Water (Corporatisation)(Consequential Provisions) Act 1995*. The intention is that the Company will not be liable for the payment to the Territory of capital gains tax on the transfer of those assets to the Company on 1 July 1995 which were acquired by the Authority before 20 September 1985 and that assets which were acquired by the Authority on or after that date and are disposed of by the Company will have cost base equal to the cost base, the indexed cost base or the reduced cost base which would have applied if the Authority had disposed of the asset