

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

ESSENTIAL SERVICES (CONTINUITY OF SUPPLY) BILL 1992

EXPLANATORY MEMORANDUM

**Circulated by authority of
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OUTLINE

The *Essential Services (Continuity of Supply) Bill 1992* gives effect to the recommendations of the ACT Community Law Reform Committee (the Committee) made in its fifth report.

The Bill proposes the establishment of an Essential Services Review Committee which would be able to provide relief to a person threatened with the disconnection of a domestic essential service.

Examples of how the proposed system would work:

A household does not pay an essential service account. The subsequent notice of intention to disconnect clearly states that if the account cannot be paid because of substantial financial hardship, an application for relief can be made to the Essential Services Review Committee [ESRC]. A household member contacts the ESRC and applies for relief. Action to disconnect the service stops until the ESRC considers the issue. The ESRC can reduce the debt or make it payable by instalment.

A rogue, not suffering financial hardship, receives an account and attempts to avoid paying it by contacting the ESRC and applying for relief. Action to disconnect the service stops until the ESRC considers the issue. The ESRC can impose a penalty charge on the rogue and let disconnection action proceed.

A service is disconnected (the family may have been interstate or in hospital). A household member contacts The ESRC and applies for relief. The service is reconnected until the ESRC considers the issue. The ESRC can reduce the debt or make it payable by instalment.

FINANCIAL CONSIDERATIONS

This Bill will have a financial impact on the providers of essential services (clauses 12(3) and 21(2)). Increases in the number of essential service accounts waived will be compensated, in part, by increased efficiencies in debt management processes.

CLAUSE NOTES

Application of law to Essential Services

It is intended that this law will initially apply to the domestic supply of electricity. Other essential services may be prescribed by regulation (clause 3).

Disconnection of an Essential Service

It is intended that the supplier of an essential service should not disconnect an essential service for failure to pay an account without giving a domestic customer 7 days notice in writing of the intention to disconnect. If the supplier of an essential service fails to comply with this requirement, the notice has no legal effect and the service shall not be disconnected on the basis of the notice (clause 14).

This process is not intended to otherwise effect assistance made available by service providers to customers who have particular difficulty from time to time in meeting their bills for the supply of electricity. These include extension of time for payment, the adoption of budget payment plans and referrals to debt counselling services.

Applications for relief

Any person who is or would be directly affected by the disconnection of an essential service may apply for relief to the ESRC if that person is suffering substantial financial hardship (clause 15). The phrase "substantial financial

hardship" is not defined by the legislation. It is intended that the words have their natural meaning.

The term is intended to cover a wider range of persons than those who normally pay accounts or in whose name accounts are held. Examples of this extended class include:

An impecunious elderly person who is reliant on another person to pay an essential service bill.

A non-working spouse or child who is reliant on a third person to pay an essential service bill.

An application for relief may be made in writing or orally to the ESRC. If the application for relief is oral, it must be confirmed in writing within five working days. The ESRC may extend this period of time if the applicant has satisfactory reasons for failing to confirm the application in writing. If the ESRC does not extend the time, the oral application lapses. A written application (or written confirmation of an application) must be in a form approved by the chairperson of the ESRC and published in the Gazette (clause 15).

When an application lapses or is dismissed, the service provider, having complied with the legislation may proceed to disconnect the service unless the account is paid in full (see also abuse of process below).

Effect of Application for relief

Once an application for relief has been lodged the ESRC shall immediately notify the service provider (clause 16).

Once notified, the service provider shall not disconnect a service until the ESRC makes a direction about the application or the application lapses. If the service has been disconnected, it must be immediately reconnected and the service provider shall not disconnect it until the ESRC makes a direction about the application or the application lapses (clauses 14 and 16).

Once notified, the service provider will provide to the the ESRC all relevant information about the account (clause 16).

Essential Services Review Committee

The Essential Services Review Committee (ESRC) is formally established as a statutory body (clause 5).

Composition

Under the legislation, the responsible Minister shall appoint a chairperson and deputy chairperson. These people should be seen to be independent of both service providers and welfare agencies (clause 6).

Under the legislation, the responsible Minister shall appoint panels of possible community members and essential service providers (clause 7).

When an application for relief is made, the chairperson shall convene an Essential Services Review Committee to consider the matter comprised of the following members:

- (a) the chairperson or deputy chairperson;
- (b) one community member chosen from the community member panel; and
- (c) the relevant service provider member chosen from the essential service provider panel (clause 7).

Where, before the completion of a hearing, one member of the ESRC ceases to be available for the purpose of the hearing, the remaining two members may complete the hearing (clause 7).

The chairperson or deputy chairperson may resign by notice in writing to the Minister (clause 10) and may be removed from office in certain exceptional situations (clause 9). Any terms of appointment not provided for in the Act may be determined by the Minister (clause 13).

Remuneration

ESRC members will be remunerated in accordance with a determination by the Remuneration Tribunal or an amount prescribed where no determination exists (clause 12).

Function

The role of the committee, constituted by three members, is to determine applications for relief. In doing so, the ESRC will determine whether a domestic consumer of an essential service is suffering substantial financial hardship. (clause 11)

Powers

If an applicant establishes substantial financial hardship, the ESRC may:

- (a) direct that there shall be no direct disconnection of the service in question for failure to pay the account the subject of the application (unless a condition referred to below is broken by the applicant); or
- (b) waive, in part or in whole, the account the subject of the application (clause 22).

Where the ESRC makes a direction it may be expressed to be contingent upon one or more of the following conditions:

- (a) restricted supply of the service;
- (b) payment of the account by instalments;
- (c) referral to financial counselling;
- (d) deferred payment of an account;
- (e) direct payment arrangements between the applicant's financial institution and the service provider;
- (f) the account be furnished more regularly than usual; and/or
- (g) any other reasonable condition (clause 23).

Hearings

Parties to the application are the applicant and the relevant service provider (clause 18).

Parties may proceed orally or in writing (or both). Hearings will be in private at such time and place as is determined by the ESRC and notified to the parties (clause 17). It is intended that, where appropriate, the applicant's argument may be put by an agent (clause 18).

It is intended that the ESRC should not be bound by the strict rules of evidence and should resolve applications economically, speedily and fairly. Hearings should be informal and should proceed quickly with no recording of the proceedings (clause 20).

Each party shall bear its own costs (clause 21).

Decisions

Decisions of the ESRC shall be made in writing, made available to the parties. Decisions are binding on the parties. Where the ESRC believes that publication of a decision would be in the public interest, it may publish the decision ensuring that the identity of the applicant is kept confidential (clause 24).

Abuse of Process

The ESRC has a discretion to impose an administrative fee of \$50 upon the applicant if the ESRC finds the application for relief made to the ESRC (whether in writing or oral, whether lapsed or not) is entirely without merit (clause 25).

Offences

A service provider commits an offence where that service provider fails to maintain a service despite an application to the ESRC for relief or a decision by the ESRC that the service should be maintained. In the event of such an offence, the service provider is liable to a fine of \$5,000 for each day the offence continues and any outstanding debt on the relevant account shall be wholly discharged (clause 27).

Formal Issues

The substance of the Act shall commence on a day fixed by the Minister and notified in the Gazette (clause 2). The Minister may make any relevant and necessary Regulations (clause 28).

