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AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

ELECTRICITY AND WATER (AMENDMENT) BILL (NO. 3) 1991

EXPLANATORY MEMORANDUM

**Circulated by authority of
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AUSTRALIAN CAPITAL TERRITORY**ELECTRICITY AND WATER (AMENDMENT) BILL (NO. 3) 1991****OUTLINE**

This Bill amends the *Electricity and Water Act 1988* to provide for equal opportunity in appointment and promotion of staff, and to ensure that these are based on the principle of merit. The Bill also requires the establishment of an equal opportunity program to assist in preventing unlawful discrimination and to promote equal opportunity for women and people in minority groups, as well as for others, to advance their careers in the ACT Electricity and Water Authority ('the Authority').

These amendments correspond to similar amendments being made to the establishing Acts of ACT public authorities as part of the package of legislation surrounding the introduction of the *Human Rights and Equal Opportunity Bill 1991*.

The amendments are based on the equal opportunity provisions of the *Public Authority Act 1922* and will therefore make the *Electricity and Water Act* consistent with the law applying in the rest of the ACT public sector.

Financial Considerations: There are no financial considerations involved.

FORMAL CLAUSES

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill, and definition of the Principal Act.

Clause 3 Substitutes a new heading for Part IVA - 'PART IVA - PERSONNEL MANAGEMENT'.

AMENDMENTS

Clause 4 amends section 32A of the Principal Act by removing some of the interpretations and inserting others. It provides

- . a definition of "advancement" and "designated group";
- . a new definition of "unjustified discrimination" referred to below in paragraph 32B(1)(a); and
- . removes the definition of "program";

Clause 5 inserts a substitute section for section 32B, and repeals section 32C

Section 32B contains subsections (1) to (8):

Application of the Bill to the Authority's powers in relation to employment matters'

The key provisions of the Bill appear in paragraphs 32B(1) and 32B(2). These apply respectively

- to the exercise of the Authority's 'powers in relation to employment matters'; and
- in relation to selection of persons for engagement as employees of the Authority.

An 'employment matter' is defined in section 32A of the Principal Act and includes selection for engagement as an officer or employee, promotion and transfer of officers, transfer and advancement of employees, training and staff development, conditions of service and any other matter related to the employment of persons by the Authority.

Prohibition of unjustified discrimination, patronage and favouritism:

Paragraph 32B(1)(a) provides that decisions in relation to employment matters shall be made without unjustified discrimination, patronage and favouritism. 'Unjustified discrimination' as inserted in section 32A of the Principal Act includes discrimination on the ground of age and social origin, and discrimination prohibited by the *Human Rights and Equal Opportunity Act 1991*. According to the definition discrimination is not unjustified and is therefore permissible if:

- it is not unlawful under the Human Rights and Equal Opportunity Act 1991, is essential for the effective performance of the work required and is prescribed; or
- it is not unlawful and is in accordance with an equal opportunity program for the Authority or other program established by the regulations.

Paragraph 32B(1)(b) provides that employment decisions must be made with regard to the equal opportunity program of the Authority.

An equal employment opportunity program is defined in section 32A as a program designed to ensure that unjustified discrimination against designated groups such as Aboriginal people is eliminated and that such groups and women can have, along with others, equal opportunity to compete for promotion and transfer and for advancement and career development.

Subsections 32B(4) to 32B(7) set out procedures for establishing and reviewing the programs.

Application of Merit Based Principles to Employment Decisions:

Subsection 32B(2) requires that decisions on the selection of persons for engagement, promotion or advancement by the Authority are made in accordance with procedures ensuring

- potential applicants, as far as is practicable, have a reasonable opportunity to apply for positions; and
- assessment is on the basis of merit, that is the relative suitability for the position, given the nature and requirements of

the job, and the relevant abilities, qualifications, experience, personal qualities and potential for development of the applicant.

The subsection does not apply to temporary staff employed for a period of less than 3 months.

The legislation makes it clear that practicality and reasonableness are the benchmarks for required procedures. It is not the intention of the Bill to impose impractical measures or unreasonable and unaffordable advertising and selection procedures as a requirement for appointment and promotion or advancement.

Subsection 32B(3) ensures that the Authority can also make reports or recommendations for carrying out of the principles established by this Act.

Equal opportunity program:

Subsection 32B(4) provides that any equal employment opportunity program of the Authority existing immediately before this Bill comes into force remains in force.

Subsection 32B(5) requires the relevant authority to review the program from time to time, in consultation with each relevant staff organisation and other organisations considered appropriate. A 'relevant staff organisation' is defined in section 4 of the Principle Act as an organisation within the meaning of the *Industrial Relations Act 1988 (C'th)* of which employees of the Authority would be eligible for membership.

Subsections 32B(6), (8) and (9) require the Authority to provide written details of the program to the Head of Administration who may issue guidelines on the provisions, development, implementation or review of the program. The Authority is to take any necessary action to give effect to the equal employment opportunity program.

Measures adopted by the smaller statutory authorities in establishing equal employment opportunity programs will not have to be as extensive or complex as those of the larger authorities. Also EEO programs may be adapted to the particular nature and needs of the authority involved. Details can also be dealt with in the Guidelines as established by the Head of Administration.