

AUSTRALIAN CAPITAL TERRITORY
ELECTRICITY (AMENDMENT) ORDINANCE 1985

ORDINANCE NO. 20 OF 1985

EXPLANATORY STATEMENT

The Electricity (Amendment) Ordinance ("the amending Ordinance") 1985 amends the Electricity Ordinance 1971 ("the principal Ordinance") to provide for a comprehensive scheme ("the Scheme") for the registration and control of the sale and distribution of prescribed articles of electrical equipment ("articles") and enforcement of safety standards.

The State of Queensland has introduced a similar scheme with effect from 1 January 1985 and the State of New South Wales proposes to introduce such a scheme in the near future. The States of Victoria, Tasmania, South Australia, and Western Australia together with the Northern Territory propose to introduce legislation to implement such schemes. The object is to achieve Australia-wide control.

It is proposed to bring the scheme into effect in the Australian Capital Territory immediately prior to the day on which the scheme commences in New South Wales because existing controls in the Territory are dependent on the present law of that State. It is also proposed, as an interim measure, to exclude articles, which are approved for sale in a State or Territory which has not yet introduced a similar scheme and are marked in accordance with the requirements of that State or Territory, from the operation of the Scheme pursuant to proposed sub-section 32D(4).

The Scheme is to function as follows:

- . persons manufacturing prescribed electrical articles or importing them into Australia are to be eligible to be registered as "first sellers" in the State or Territory in which they manufacture, or into which they import, the articles;
- . a "first seller" of prescribed electrical articles is to be able to register a "declaration of compliance", undertaking that the articles will meet prescribed safety standards;
- . it is to be unlawful to sell, hire, advertise or install prescribed electrical articles unless a declaration of compliance has been registered in respect of that article (whether in the ACT, a State or the Northern Territory).
- . where the ACT Electricity Authority ("the Authority") finds that prescribed electrical articles do not meet the prescribed standards it will be able to order the first seller to recall all such articles sold;

- . the Authority is to be able to prohibit the sale of any electrical articles which are unsafe;
- . the Authority is to be able to appoint inspectors who will be able to enter commercial premises and inspect electrical articles and undertake other investigations.

The Australian Capital Territory House of Assembly has agreed to the making of the Electricity (Amendment) Ordinance 1985 without amendment.

Details of the amending Ordinance are attached.

Ord 79/84
Cat No.

DETAILS OF THE AMENDING ORDINANCE

Clause 1 deals with interpretation.

Clause 2 provides that the Ordinance will come into effect on a date to be notified in the Gazette.

Clause 3 deals with interpretation.

Clause 4 repeals Part VII of the principal Ordinance and inserts a new Part VII ("the part") which provides as follows:

- . Section 32 deals with interpretation.
- . Section 32A provides that the new provisions are not to apply to articles approved under the existing New South Wales law at the commencement of the amending Ordinance unless the Minister has declared otherwise by notice in the Gazette.
- . Section 32B provides that the Minister may declare a law of a State or another Territory to be a corresponding law for the purposes of the part.
- . Section 32C provides for the prohibition of the sale, hire, advertisement or installation of articles. Sub-section 32C(1) provides that the Authority may, by notice in the Gazette, declare that an article or a class of articles or a class of electrical equipment, is a prohibited article or class.
- . Sub-section 32C(2) provides that the Authority is not to make such a declaration unless it is satisfied that there are reasonable grounds for believing that by reason of its design or construction, the article is, or is likely to become, unsafe to use and that by reason of the risk of injury or damage, the article should be so declared.
- . Sub-section 32C(3) provides that it is an offence to sell, hire out, expose or advertise for sale or hire, or install in or connect to an electrical installation a prohibited article. Penalties are \$10,000 in the case of a body corporate and \$2,000 in the case of a natural person.
- . Sub-section 32C(4) provides that persons are entitled to compensation for loss or damage caused to them by reason of their being sold a prohibited article.
- . Sub-section 32C(5) deals with the interpretation for the section.

- . Sub-section 32D(1) provides that the Authority may by notice in the Gazette declare that an article or a class of articles is a prescribed article or class of articles for the purposes of the part.
- . Sub-section 32D(2) provides that the Authority shall not make such a declaration unless it is satisfied that there are reasonable grounds for believing that because of its design or construction the article or class of articles is or is likely to become unsafe to use and because of the risk of death, injury or damage to property, should be so declared.
- . Sub-section 32D(3) provides that where the Authority declares that an article or a class of articles is a prescribed article or class it shall also specify the safety standards with which such articles must comply.
- . Sub-section 32D(4) provides that the Authority may, by notice in the Gazette, declare that an article or class of articles is not a prescribed article or prescribed class for the purposes of the part.
- . Sub-section 32E(1) prohibits an approved first seller from selling, hiring out, exposing or advertising for sale or hire, or installing in or connecting to, an electrical installation, a prescribed article if a declaration of compliance in respect of that article is not registered in the Territory or a State or another Territory or if the first seller has been served with a notice of recall under sub-section 32R.
- . Sub-section 32E(2) prohibits a person other than an approved first seller from selling, hiring out, exposing or advertising for sale or hire or installing in or connecting to an electrical installation, a prescribed article if a declaration of compliance has not been registered in respect of that article or he or she has received a notice of recall under sub-section 32R(2).
- . Sub-section 32E(3) provides for penalties of \$5,000 for a body corporate and \$1,000 for a natural person for contravention of sub-sections 32E(1) and 32E(2).
- . Section 32F prohibits the sale, hiring out, exposing, or advertising for sale or hire, or installing in or connecting to, an electrical installation a prescribed article that does not comply with the prescribed standards. Penalties are \$5,000 for a body corporate and \$1,000 for a natural person.
- . Sub-section 32G(1) provides that a person who manufactures prescribed articles in, or imports prescribed articles from overseas into, the Territory may apply to the Authority to be registered as an approved first seller in relation to those articles.
- . Sub-section 32G(2) provides that, subject to sub-section 32G(3), upon receipt of such an application, together with the determined fee, the Authority shall register the applicant as an approved first seller.

- . Sub-section 32G(3) provides that the Authority may refuse to register an applicant if the Chairman is satisfied that the applicant:
 - (a) is insolvent;
 - (b) has been refused registration in the Territory or a State or another Territory;
 - (c) has had his or her registration in the Territory or a State or another Territory cancelled otherwise than at his or her request;
 - (d) has been convicted of an offence under the part or a similar offence under the repealed law or the law of a State or another Territory; or
 - (e) has not complied with such other requirements as are prescribed.
- . Sub-section 32G(4) provides that the Authority may cancel the registration of an approved first seller where:
 - (a) the Chairman is satisfied that the approved first seller:
 - (i) is insolvent;
 - (ii) has been refused registration in a State or another Territory;
 - (iii) has had his registration under the law of a State or another Territory cancelled otherwise than at his own request;
 - (iv) has been convicted of an offence under the part, the repealed law or the law of a State or another Territory; or
 - (v) has supplied an article in breach of an undertaking in a declaration of compliance; or
 - (b) the approved first seller:
 - (i) requests it;
 - (ii) being a corporation, is dissolved; or
 - (iii) being a natural person, dies.
- . Sub-section 32G(5) deals with interpretation.
- . Sub-section 32G(6) provides that an approved first seller must notify the Authority of changes in his relevant particulars and the particulars of the relevant class of article. Penalties are \$2,500 for a body corporate and \$500 for a natural person.

- . Sub-section 32G(7) requires the Authority to cause particulars of such changes to be entered in the register of approved first sellers.
- . Sub-section 32H(1) provides that an approved first seller may apply to the Authority for registration of a declaration of compliance in respect of a prescribed article by lodging:
 - (a) an application together with the determined fee;
 - (b) the declaration of compliance;
 - (c) a report on the article by an approved testing laboratory; and
 - (d) where practical, an example of the article.
- . Sub-section 32H(2) provides that where it is impracticable to supply an example of the article, the Authority or its employees shall be given reasonable access to such an article.
- . Sub-section 32H(3) provides that a declaration shall be in such form as the Authority requires and shall contain:
 - (a) the name and business address of the approved first seller;
 - (b) a description of the article identifying it by model or catalogue number or such other means as the Authority determines;
 - (c) a declaration that the article complies with the prescribed standard;
 - (d) an undertaking that the applicant will not supply articles of that kind, unless:
 - (i) they comply with the prescribed standards;
 - (ii) they are marked, stamped or labelled as prescribed; and
 - (iii) modifications have been recorded in the appropriate register; and
 - (e) such other information as is required by the Authority.
- . Sub-section 32J(1) provides that the Authority shall register a declaration of compliance where it is satisfied that the article complies with the prescribed standards.
- . Sub-section 32J(2) provides that a declaration of compliance is not to be registered if registration of an article of the same brand and model has been refused in a State or another Territory.

- . Sub-section 32J(3) provides that registration of a declaration of compliance is to remain in force for a period which the Authority determines being not less than 1 year and not more than 5 years and shall be renewed upon application.
- . Sub-section 32K(1) provides that the Authority may cancel or suspend registration of a declaration for such period as it thinks fit if:
 - (a) the Chairman is satisfied that an article to which the declaration relates has been found not to comply with the prescribed standards in a manner likely to be characteristic of articles of the same brand and model;
 - (b) the holder of the registration has misrepresented the significance of the registration or the safety registration mark;
 - (c) the person who lodged the declaration ceases to be an approved first seller; or
 - (d) the approved first seller who lodged the declaration so requests.
- . Sub-section 32K(2) provides that where a declaration of compliance is suspended or cancelled the Authority shall give written notification to the regulatory authorities of each State and Territory.
- . Sub-section 32K(3) provides that the Authority may reduce the period of a suspension.
- . Sub-section 32K(4) provides that the Authority shall rescind a suspension where the reason for the suspension no longer exists.
- . Sub-section 32L(1) provides that registration of a declaration may be transferred to the name of another approved first seller.
- . Sub-section 32L(2) provides that an application is to be signed by the transferor and the transferee and is to contain:
 - (a) their names and addresses;
 - (b) particulars of the declaration; and
 - (c) an undertaking on the part of the transferee to comply with undertakings.
- . Sub-section 32L(3) provides that, subject to sub-section 32L(4), the Authority is to transfer registration of a declaration upon receipt of an application together with the determined fee.

- . Sub-section 32L(4) provides that a transfer is not to be registered if a transfer of registration of a declaration relating to an article of the same brand and model has been refused to the same transferee under the corresponding law of a State or another Territory.
- . Sub-section 32M(1) provides that an approved first seller is to mark each article to which a declaration of compliance relates with the prescribed safety registration mark, as soon as practicable.
- . Sub-section 32M(2) provides that it is an offence to sell, hire out, expose, or advertise for sale or hire, or install in or to connect to an electrical installation, a prescribed article which has not been marked with the prescribed safety registration mark. Penalties are \$5,000 in the case of a body corporate and \$1,000 in the case of a natural person.
- . Sub-section 32N(1) provides that the Authority may approve premises to be used as a testing laboratory for the purposes of the Ordinance.
- . Sub-section 32N(2) provides for the cancellation of approval as a testing laboratory.
- . Sub-section 32N(3) provides the following criteria for the Authority to take into account in determining whether premises are suitable to be used as a testing laboratory:
 - (a) whether the premises have been approved or refused approval under a corresponding law of a State or another Territory;
 - (b) the facilities at the premises for testing;
 - (c) any previous record of accuracy or otherwise;
 - (d) whether the premises have been accredited by the National Association of Testing Authorities;
 - (e) in the case of Overseas premises, whether the premises have been accredited by a body having functions similar to those of the National Association of Testing Authorities; and
 - (f) any other information which the Authority considers relevant.
- . Sub-section 32P(1) provides that the Authority is to keep the following registers:
 - (a) a register of prescribed articles containing the particulars specified in notices referred to in section 32D;
 - (b) a register of approved first sellers containing:
 - (i) the name and address;
 - (ii) the principal place of business;

- (iii) the date of registration;
 - (iv) particulars of cancellations of registration; and
 - (v) other prescribed particulars in respect of each approved first seller;
- (c) a register of declarations of compliance containing:
- (i) the name and address of the declarant;
 - (ii) a description of the article to which the declaration relates;
 - (iii) a description of the mark, stamp or label applicable to the article;
 - (iv) the date of registration;
 - (v) the period of registration and of any renewal;
 - (vi) particulars of any modifications to the article;
 - (vii) particulars of any suspension or cancellation of registration; and
 - (viii) such further particulars as the Authority thinks fit; and
- (d) a register of approved Testing Laboratories containing:
- (i) the name and address of the proprietor;
 - (ii) the address of the approved premises; and
 - (iii) the date of the approval.
- . Sub-section 32P(2) provides that each register is to be available for inspection and copies of entries are to be available, upon payment of the determined fee.
 - . Sub-section 32Q(1) provides that the Authority may cause articles to be examined for safety purposes.
 - . Sub-section 32Q(2) provides that the Authority may require an approved first seller to provide articles or access to articles for the purposes of testing.
 - . Sub-section 32Q(3) provides that it is an offence to fail to comply with such a requirement. Penalties are \$5,000 in the case of a body corporate and \$1,000 for a natural person.
 - . Sub-section 32Q(4) provides for the Authority to return the article within 2 months.
 - . Sub-section 32Q(5) provides that where the article is damaged or destroyed while in the possession of the Authority the person who provided it is entitled to compensation.

- . Sub-section 32R(1) provides that where, after examination and testing, the Authority is satisfied that the article fails to comply with the prescribed standards or is unsafe, the Authority may require the approved first seller to:
 - (a) advertise warnings of the risks associated with the use of the article;
 - (b) refrain from selling, hiring out, exposing or advertising for sale or hire, or installing in or connecting to an electrical installation, articles of that brand or model; and
 - (c) recall articles of that brand and model which he has sold or let on hire.
- . Sub-section 32R(2) requires notice of recall to be given by the approved first seller to any person to whom he has sold the articles or to whom he has reasonable grounds for believing that such articles have been sold.
- . Sub-section 32R(3) makes it an offence not to comply with such a requirement. Penalties are \$5,000 for a body corporate and \$1,000 for a natural person.
- . Sub-section 32R(4) provides that where a person suffers loss or damage by reason of the recall of an article that person may recover compensation from the person who sold him or her the article.
- . Sub-section 32S(1) provides that the Authority may publish warnings or information concerning the risks associated with the use of articles of electrical equipment.
- . Sub-section 32S(2) specifically provides that where the Authority has given notice to an approved first seller in accordance with sub-section 32R(1), the Authority may advertise warnings concerning articles which are the subject of the notice.
- . Sub-section 32S(3) provides that a civil or criminal action cannot be taken against the Authority or an officer of the Authority for anything done, in good faith, in pursuance of the section.
- . Sub-section 32T(1) provides that the Chairman of the Authority may appoint such inspectors as he considers necessary for the purposes of the Ordinance.
- . Sub-section 32T(2) provides for inspectors to be issued with identity cards.
- . Section 32U provides that an inspector is to return his or her identity card upon ceasing to be an inspector. The penalty is \$100.

- . Sub-section 32V(1) provides that an inspector may enter onto commercial premises, during normal business hours, where he or she has reasonable grounds for believing that prescribed articles are on the premises for the purpose of sale, hire or installation in or connection to, an electrical installation and may:
 - (a) inspect prescribed articles;
 - (b) inspect and copy relevant accounts and documents;
 - (c) seize, for testing, prescribed articles; and
 - (d) direct the proprietor to refrain from selling, hiring or installing in, or connecting to, an electrical installation prescribed articles which he or she believes, on reasonable grounds, are potentially unsafe or do not comply with the prescribed standards.
- . Sub-section 32V(2) provides that an inspector is not to remain on premises without producing his or her identity card for inspection by the proprietor.
- . Sub-section 32V(3) provides that it is an offence not to comply with an inspector's direction. Penalties are \$2,000 for a body corporate and \$400 for a natural person.
- . Sub-section 32V(4) deals with interpretation for the section.
- . Sub-section 32W deals with interpretation in relation to an offence referred to in this Division.
- . Sub-section 32X(1) provides an exhaustive list of circumstances in which searches on premises and inspection, testing and seizure of records or articles or things may be conducted.
- . Sub-section 32X(2) provides for an inspector to be able to inspect articles or records, test or seize articles, seize things connected with an offence and seize things that are unsafe or do not comply with the safety standards.
- . Sub-section 32Y(1) provides for the issue, by a Magistrate, of a warrant authorizing the search of premises, vessels, vehicles or land where information on oath has been provided to the Magistrate that there are reasonable grounds for suspecting that a thing connected with an offence or articles which do not comply with safety standards may be upon those premises, vessels, vehicles or land.
- . Sub-section 32Y(2) requires that a Magistrate shall not issue such a warrant unless any further information he or she requires has been furnished to him or her concerning the grounds on which the issue of the warrant is being sought and the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

- . Sub-section 32Y(3) requires a warrant issued under sub-section 32Y(2) to state: the purpose for which the search is authorised; a description of the kinds of things authorized to be seized; the date on which the warrant ceases to have effect, being a date not later than one month after the warrant was sought; and the times during which entry is authorized.
- . Sub-section 32Y(4) allows an inspector who, in the course of searching for things connected with a particular offence specified in a warrant, finds another thing he or she believes on reasonable grounds to be connected with the offence for which the warrant is issued or another offence against the Ordinance and considers it necessary to seize that thing to prevent its concealment, loss or destruction or its continued use in regard to the offence or the other offence, to seize that thing.
- . Sub-section 32Y(5) allows an inspector who, in the course of searching for articles which are unsafe or do not comply with the prescribed standards and are specified in a warrant, finds another article he or she believes on reasonable grounds is unsafe or does not comply with the prescribed standards, and believes it to be necessary to seize that article to prevent its concealment, loss or destruction or its sale, letting or hire, being exposed for sale or hire, or installation in or connection to an electrical installation, to seize that article.
- . Sub-section 32Z(1) permits an inspector, in circumstances of urgency where he or she considers it necessary to do so, to make an application for a search warrant to a Magistrate by telephone.
- . Sub-section 32Z(2) provides that before proceeding to make the application the inspector must prepare an information of a kind required by sub-section 32Y(1) but may make the application before the information is sworn.
- . Sub-section 32Z(3) provides for a Magistrate to complete and sign a warrant where he or she has considered the information, received such further information as he or she requires and is satisfied that there are reasonable grounds for issuing the warrant.
- . Sub-section 32Z(4) provides for the Magistrate to inform the inspector of the details of the warrant and for the inspector to complete a form of the warrant in the terms and noting the time advised by the Magistrate.
- . Sub-section 32Z(5) provides for the inspector to forward the form of warrant to the Magistrate no later than the day after its expiry.
- . Sub-section 32Z(6) requires the Magistrate to attach the form of warrant to the warrant he or she has signed and deal with the documents as if an application for a warrant had been made in person.

- . Sub-section 32Z(7) provides that the form of warrant completed by the inspector is authority for search, entry or seizure.
- . Sub-section 32Z(8) provides that if the warrant signed by the Magistrate is not produced in proceedings before a court, the court shall presume, unless the contrary is proved, that the search, entry or seizure was not authorized by the warrant.
- . Section 32ZA provides for searches in emergencies. It authorizes an inspector to make searches of land, premises, vessels or vehicles in which he believes that a thing connected with an offence under the Ordinance, or an article which is unsafe or does not comply with the prescribed standards, may be situated provided that he believes that it is necessary to do so to prevent the concealment, loss, or destruction of a thing connected with an offence or the concealment, loss or destruction, sale, or letting on hire, exposing or advertising for sale or hire, or installing in or connecting to an electrical installation of an article which is unsafe or does not comply with the prescribed standards and the search or entry was made in circumstances of such seriousness and urgency as to require and justify immediate search and entry without an order of the court or a warrant.
- . Section 32ZB makes it an offence to hinder or obstruct an inspector in the course of his duties. The penalty is \$1,000 or imprisonment for six months.
- . Section 32ZC provides for a review of a direction of an inspector given under sub-section 32V.
- . Section 32ZD provides for a review by the Administrative Appeals Tribunal of the following decisions:
 - (a) refusal to register an approved first seller;
 - (b) cancellation of the registration of an approved first seller;
 - (c) refusal to register a declaration of compliance;
 - (d) suspension or cancellation of a declaration of compliance;
 - (e) refusal to approve premises as a testing laboratory;
 - (f) cancellation of approval of premises as a testing laboratory;
 - (g) giving a notice, pursuant to section 32R, requiring an approved first seller to advertise, refrain from dealing in, or recall articles;
 - (h) confirming a direction given by an inspector;

- (j) determining the period of validity of a declaration of compliance; and
- (k) determining not to reduce or rescind a period of suspension.
- . Sub-section 32ZE(1) provides that the Authority is to give written notice of its decision and of the right of appeal to a person who has a right of appeal under sub-section 32ZD.
- . Sub-section 32ZE(2) provides that the validity of a decision is not affected by a failure to give notice of appeal rights.
- . Section 32ZF makes it an offence to falsely represent that a declaration of compliance is registered under the Electricity Ordinance or under the law of a State or another Territory. Penalties are \$5,000 for a body corporate and \$1,000 for a natural person.
- . Section 32ZG provides that in proceedings for an offence under the part, a certificate issued by the Authority is evidence of the fact that a declaration of compliance was registered.
- . Sub-section 32ZH(1) provides that a document that is required by the Ordinance to be given to a body corporate may be so given:
 - (a) by delivery to a director, manager or secretary of the body corporate;
 - (b) by leaving at the registered office in the Territory of the body corporate;
 - (c) by leaving at an office or place of business of the body corporate in the Territory with a person apparently employed at that office or place; or
 - (d) by sending by post addressed to the body corporate at its registered office in the Territory.
- . Sub-section 32ZH(2) provides that a document that is required by the Ordinance to be given to a natural person may be so given:
 - (a) by delivery to the person personally; or
 - (b) by leaving at the last-known place of residence or business of the person with a person apparently over the age of 16.
- . Section 32ZJ provides for the Minister to be able to determine fees for the purpose of the part by notice in the Gazette.

OKD 79/84

Section 3 amends section 5 of the Principal Ordinance by deleting the definition in that section of "Deputy Crown Solicitor".

Section 4 repeals section 27A of the Principal Ordinance. That section allowed an authorized person employed in the office of the Deputy Crown Solicitor, who was not a barrister and solicitor, to appear on behalf of an informant in a criminal proceeding. As there are now no such persons conducting prosecutions in the Australian Capital Territory on behalf of the Commonwealth, the section was redundant.

Sections 5, 6, 7, and 8 amend sections 101, 106, 107 and 225, respectively, of the Principal Ordinance by omitting references to the Deputy Crown Solicitor and substituting references to the Director of Public Prosecutions or a person authorized by the Director of Public Prosecutions.

Authorised by the
Attorney-General

2/85

