

**2014**

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

**UTILITIES (TECHNICAL REGULATION) BILL 2014**

**REVISED EXPLANATORY STATEMENT**

**Presented by  
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Minister for the Environment**

## UTILITIES (TECHNICAL REGULATION) BILL 2014

### Introduction

The Utilities (Technical Regulation) Bill 2014 (the Bill) amends part 5 of the *Utilities Act 2000*. The *Utilities Act 2000* provides a technical and industry regulatory framework for electricity, gas, water and sewerage utility services. Part 5 of the *Utilities Act 2000* sets out technical regulation.

The Bill provides for the principles of safety and reliability in conjunction with respective utility's network infrastructure concerning operational efficiencies in performance and maintenance whilst conforming to legislative requirements as licensees or regulated services.

The aim of the Bill is to establish a demonstrable framework for measuring performance requirements. The foreshadowed Act, under part 9, aims to consolidate all strategic requirements affecting technical regulation — in particular the long term serviceability of a utility network.

### Overview of the Bill

The Bill will modernise technical regulation taken from part 5 of the *Utilities Act 2000* and creates stand-alone legislation, the *Utilities (Technical Regulation) Act 2014*. The foreshadowed Act intends, (1) to clarify statutory objectives and the scope of technical regulation, (2) to update regulatory functions and powers for more practical enforcement of technical regulation, (3) to set out clear requirements for technical performance and compliance, and (4) to provide a complete and flexible framework for the full range of electricity, gas, other energy, water and sewerage network services in response to emerging technologies and development.

Part 5 of the existing *Utilities Act 2000* does not provide objectives of technical regulation. The Bill will provide objectives of technical regulation. Technical codes are made for the purpose of the objectives and the technical regulator has functions consistent with the objectives. The Bill will give more flexibility and clarity to functions of the technical regulator.

Responding to the emerging energy and water services including solar energy and secondary water, the Bill proposes to extend a definition of a utility service as a regulated utility service. Regulated utility services will include electricity transmission, electricity generation, and owning, leasing or subleasing regulated dams, as well as existing utility services under part 2 of the *Utilities Act 2000*.

The Bill will define electricity transmission as a regulated utility service. Electricity generation connected to the network with a capacity of 5MW and above will also be a regulated utility service. They must comply with the *Utilities (Technical Regulation) Act 2014* as regulated utility services. These changes will be reflected to the *Utilities Act 2000* as consequential amendments. Under part 2 of the amended Act, electricity generation and electricity transmission will be utility services and will be required to have either a licence under section 21 of the *Utilities Act 2000* or an exemption from licensing under section 22 of the *Utilities Act 2000*.

Electricity generators connected to the network with a capacity from 30kW up to 5MW will be also defined as a regulated utility service. Considering the size of generation, there will be no consequential amendment to the *Utilities Act 2000* about this type of generation. It must comply with the *Utilities (Technical Regulation) Act 2014*. There will be no licensing requirement for this type of generation under the *Utilities Act 2000* unless it is prescribed to be a utility service under section 15 of the *Utilities Act 2000*.

A district energy service is a regulated utility service under this Bill. If the service satisfies the criteria provided by the Bill, the service is deemed to be a district energy service and must comply with the *Utilities (Technical Regulation) Act 2014*.

The Bill will vest the Minister with a power to determine a regulated utility service if the Minister is satisfied on reasonable grounds that it is appropriate. The determination for a regulated utility service will be disallowable instrument. Fees and other requirements for regulated utilities may be prescribed by subordinated regulations to the *Utilities (Technical Regulation) Act 2014*.

The Bill will create provisions for dam safety. These provisions will apply to dams in the ACT exceeding 5 metres in height or with a storage capacity in excess of 250 megalitres, and Googong Dam in the NSW. The Bill will define owners, lessees or sublessees of these dams as regulated utilities. As regulated utilities, they must comply with the *Utilities (Technical Regulation) Act 2014*. The Bill will vest the Minister with a power to determine a dam safety code for specific requirements.

The accountability of regulated utility services will be subject to proportionate regulation: warning notices, directions, conditions on licence or operating certificate and a penalty framework for compliance. The Bill also includes stop work notices, reporting of notifiable incidents, and injunction powers. The Bill also requires the Technical Regulator to report on these matters annually.

### **Important principles of Technical Regulation**

Regulated utility services must be designed, constructed, maintained and operated to meet the minimum safety, reliability and functional requirements of that installation. Functionality of the network during the life cycle of the network is also an important factor.

The Bill contemplates regulated utility services that could be any or all of the followings:

- Gas installation—compressed or vacuum;
- Water in piping—hot or cold installation;
- Water in piping or open channel—drinking water, storm water, grey-water or sewage;
- Micro hydro installation; and
- Electricity networks—high voltage or low voltage urban and rural distribution, and high voltage transmission and sub transmission tower systems.

These kinds of installations and networks that have a public effect, must meet the test of a regulated utility service and the principles of safety etc should apply to the infrastructure and its operation.

## The changing face of utilities and technical regulation

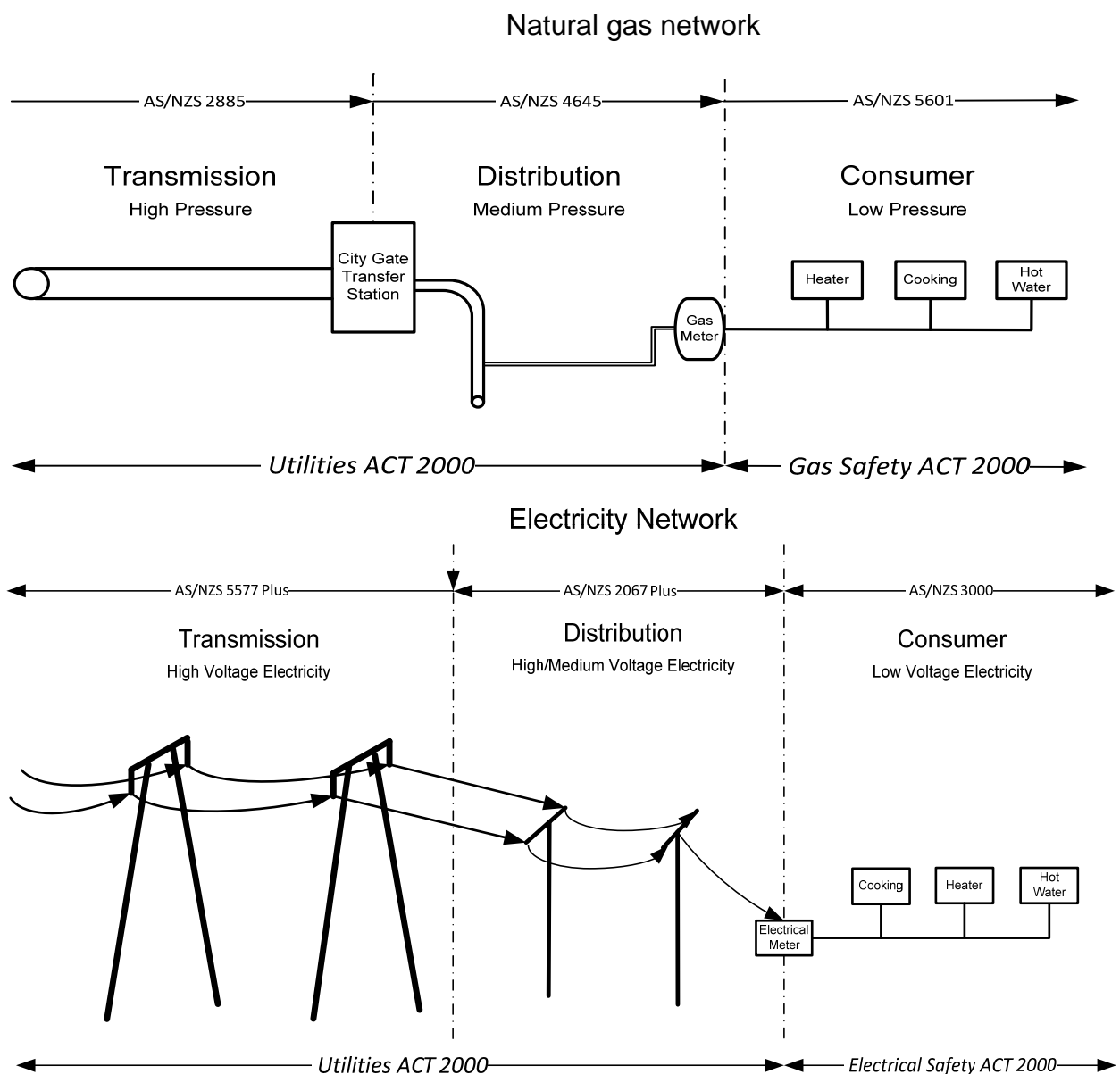
Traditionally technical regulation of the transmission, distributions and consumer natural gas or electricity networks draws upon the methodology and technical standards applied by Australian Standards, and forms the basic framework of the ACT regulatory system for natural gas and electricity.

For example, the relevant standards that apply to a whole gas network are:

Transmission (AS/NZS 2885);  
 Distribution (AS/NZS 4645); and  
 Consumer (AS/NZS 5601).

The within these three frameworks, areas of responsibility are given lawful effect by applying the Australian Standards in law.

The diagram is typical of an historical gas and electrical utility network and the division of coverage provided by the existing Acts.



With reduction in energy use, efficient use of energy, the need to prudently manage water systems etc becoming a major influence for government policy and industry investment, new ways of generating harnessing, and distributing energy and water are being constructed.

A paradigm shift has occurred as to how energy is generated and used. The world is moving away from the traditional large scale generation and transfer of this large scale energy source via complex transmission and distribution systems through to local networks. These types of networks are often referred to as ‘end to end’ networks.

Much smaller locally constructed energy farms and consumer energy generation systems are arising.

For example:

- Bi and Tri gas generation systems—using gas to generate peak load electricity, hot water and/or steam;
- Blue Gen (electrochemically convert natural gas into electricity—also generating base load electricity, hot water and/or steam);
- Solar (Photo Voltaic cells—generation of base load electricity during daylight hours);
- District energy networks—utilisation of forms of energy by one large or a collective of commercial consumers that distribute this energy within a collective network; and
- Wind generation—generation of base load energy when wind conditions enable operation.

Moving away from the traditional ‘end to end’ base load systems is bringing significant challenges for technical regulation. This is mainly due to the breakdown of the traditional network boundaries.

For consumers there is and will always be expectations of the following;

Quality—the right voltage reference when needed;

Quantity—the right amount of available energy when needed; and

Reliability—certainty of continuous energy supply.

Reliability is a key factor for numerous consumers, but especially for hospitals, nursing homes, commercial and industrial manufacturers. Poor reliability and quality of energy supply will inevitably lead loss of plant and equipment, reduced longevity of plant and equipment, loss of productivity etc.

In the national and ACT context, the private and commercial infrastructure has been built on the basis of a high level of reliability and quality of energy, consistent with Australian Standards. Consequently loss of electricity or gas, for example, has a significant effect on the economy and people’s lives.

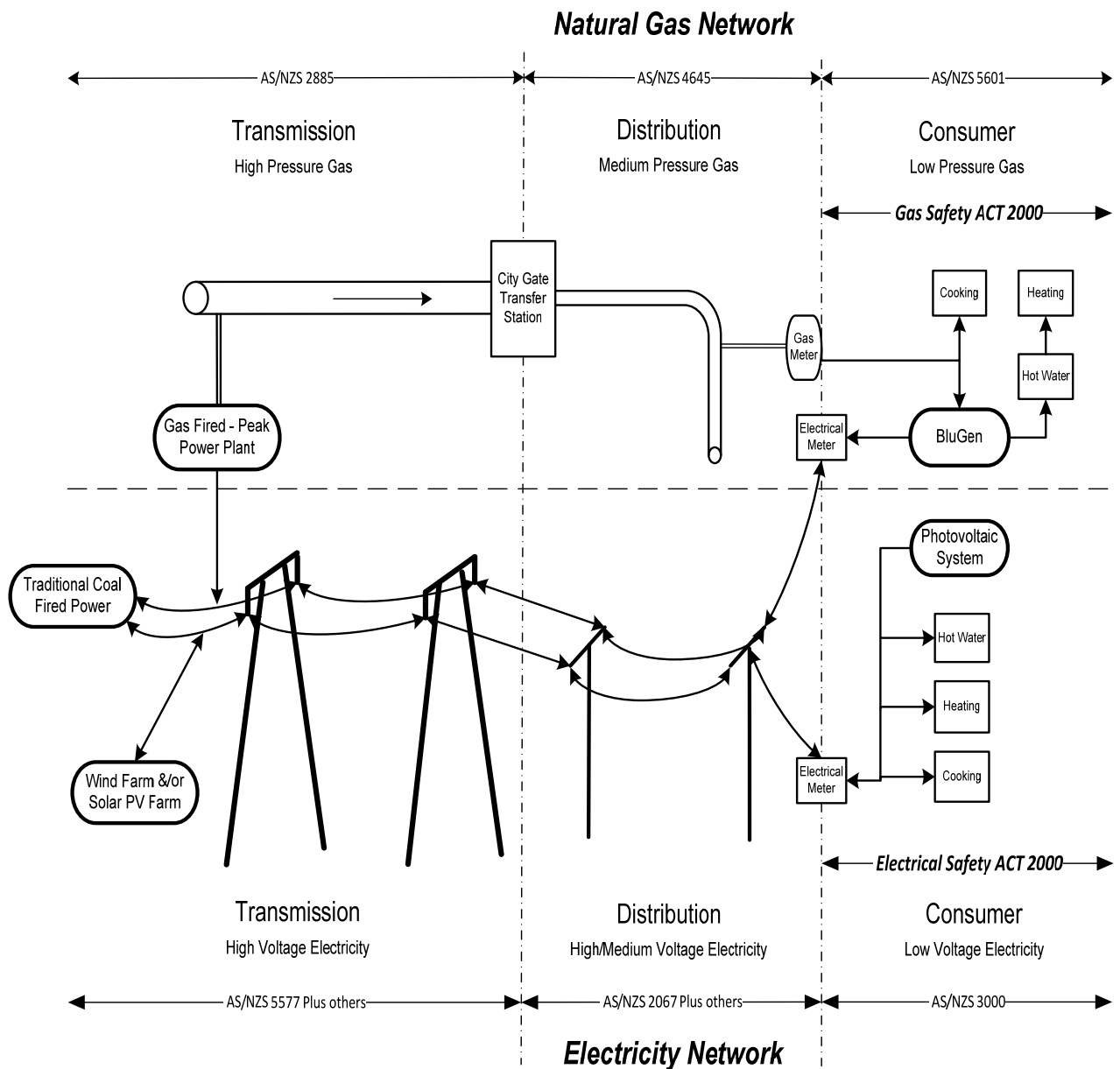
Technical regulation is fundamentally based on Australian Standards and gives effect to the methodology and technical requirements set out in the relevant standards.

For regulated utilities and networks, the Australian Standards require continuity of planning, operation, maintenance and supply of service. Utilities are expected to operate with minimal interruption to supply. Utilities are also expected to design, plan and construct new infrastructure and provide un-interrupted supply to that infrastructure.

Technical regulation law in all jurisdictions aims to give effect to the Australian Standards and industry practice.

Technical regulation around the country is facing significant challenges to meet the dramatic changes to traditional networks and the creation of bespoke networks. Compounding this issue is that the Australian Standards cannot always keep pace with emerging technology and application of technology. Traditional networks which form the backbone of utilities are now becoming interactive and over-lapping.

Consumers whom once only consumed energy are now becoming generators of energy. This is changing the dynamics of traditional boundaries of supply and demand and how the regulated utility networks systems have been constructed and operate.



To give an idea of the issues, the above diagram shows the kinds of interactions that may be typical of contemporary networks.

The change of approach towards power generation, power sharing, energy efficiency, and utilisation energy through heating and cooling does not change the fundamentals for technical regulation, being life safety, health, reliability and efficiency.

District energy networks are also being developed or considered to make the best use of energy and new technology. Within these types of schemes, there are numerous options, including but not limited to:

- power generation and power sharing across leased boundaries;
- distribution of waste products such as heating and cooling utility systems that can be shared with buildings within close proximity;
- reliability;
- dispute resolution;
- legal responsibilities (insurance and indemnity for the ACT Government);
- network construction, maintenance and emergency response;
- protection from harm to people, property and existing utility networks and damage to the environment;
- licensing and/or operators certification; and
- legal responsibilities for damage caused through operation or negligence of maintenance, etc.

The aim of this Bill is to better regulate traditional utilities and create a flexible framework to tailor technical codes for modern, bespoke utilities at an efficient cost.

Renewable energy concepts integral to investments in energy efficiencies and energy management are significant elements of utility infrastructure design, construction, operational safety and technical performance of utility assets.

Renewable energy projects, contemplated by this Bill have technical regulation in gas, water and sewerage, electricity networks and future expansion into other forms of energy distribution network such as district energy.

Energy distribution systems also have a strategic reliance on the operational sustainability of the ACT electricity distribution network. The network is monitored for its safety, reliability and performance by technical codes and relevant standards. Without technical regulation of both traditional and new networks, existing network infrastructure and renewable energy generation will become unreliable, inefficient and unsafe.

As reliance on innovative energy systems grow, it is envisaged that the Bill will facilitate cooperative dialogue and mutual agreements regarding the development of codes and regulation between the renewable energy entities and the ACT's technical regulator.

The Bill will address energy reticulation to more than one premises or building not connected to a distribution network which is described as a discrete district network infrastructure that is self sufficient in energy. Energy storage, for instance large modular battery bank supplementing solar energy, is dealt with as part of a discrete or existing network.

## Human Rights Implications

The Bill is consistent with the *Human Rights Act 2004*. A regulated utility has an obligation to comply with the *Human Rights Act 2004*. Under part 5A of the *Human Rights Act 2004*, a public authority, an entity that includes a function of public nature, must act consistently with human rights. In section 40A of the *Human Rights Act 2004*, the provision of energy and water is of a public nature. The Bill will ensure the safe and reliable supply of regulated utility services and supports consumers' human rights.

The significance of the Bill lies in the protection of human rights under section 9 (1) of the *Human Rights Act 2004*, article 6 (1) of the International Covenant on Civic and Political Rights, and articles 11 and 12 of International Covenant on Economic, Social and Cultural Rights by ensuring the safe supply of energy and water to the community. In relation to these Covenants, the General Assembly of the United Nations adopted the resolution on the human right to water and sanitation (A/RES/64/292) in August 2010. The Human Rights Commission of the ACT Government also issued a background paper, *Economic, Social and Cultural Rights: Implications for the Environment, Energy and Water in 2010*, emphasising the right to access energy and water.

The supply of energy and water is essential to daily life. The failure of safe and reliable supply of energy and water is a risk to life, health and safety. It must be designed to limit or avoid failure of supply.

Section 28 (Human rights may be limited) of the *Human Rights Act 2004* may apply only under the circumstance that the failure of regulated utility networks would pose a risk the ACT community. The supply of energy or water is the highly specialised area of work. Any person providing or engaged with a regulated utility service is required to have specialised knowledge and skills and is obliged to understand the significance of the service the person provides, or is engaged with. To prevent any urgent risk to the community, an urgent action might be required in relation to the regulated utility network and might limit particular rights of a person who has obligations within the regulated utility. The Bill is consistent with human rights, noting that the limit of particular rights is a result of protecting the overall rights and needs of the community.

Part 3 requires a person to provide information and documentation in relation to the regulated utility service and networks and limits the privilege of self-incrimination. Under part 5, a person who interferes with a regulated utility network must remove the interference with a given notice by the responsible utility or the technical regulator. Under part 9 of the Bill, a person might be required to act, with a given notice by the technical regulator, to ensure the safety of the regulated utility networks.

These provisions engage the right to fair trial, under section 21 of the *Human Rights Act 2004*. The sections providing lawful entry to private property also engages the right to private life in section 12 of the *Human Rights Act 2004*. The provisions that give authority to obtain evidence, whether because the place is a public place, by force of statute, by consent or by warrant are under the provisions are consistent with standard investigation powers.



Clause 82 provides for a strict liability offence for not returning an inspector's identity card. The offence engages the right to be presumed innocent under section 22 (1) of the *Human Rights Act 2004*. The application of strict liability places a burden upon a defendant to raise a defence in a prosecution. The Government is of the view that the strict liability offence has the legitimate aim of ensuring that inspectors' identity cards are not misused by former inspectors, or other parties. The offence places an obligation on inspectors to return the card to the regulator no later than 7 days.

The offence applies only to people who have been a technical inspector and as a matter of law must exercise their powers in accordance with the law. Inspectors are on notice of their obligations to exercise their powers lawfully and not to purport to exercise a power if they have none to exercise. The Government is of the view that former inspectors are inherently on notice of their legal obligations and entered into service as an inspector knowing their obligations. The offence is also critical for maintaining the integrity of the regulatory scheme to prevent individuals from purporting to exercise powers with no authority.

Clause 84 provides inspectors with an authority to enter private land without consent, but not private homes, buildings or other residential or commercial buildings. This power is consistent with the power that utilities currently have to enter a land, but not buildings, without consent.

Alternative means have been considered. An example of the practical problems shows that alternatives would be unreasonable. To inspect a 500 metre length of 11kV overhead electrical line on sections 3 and 4 of Antill St, Hackett would require 43 consents or warrants. Extrapolating that to a line of five kilometres would require 400 to 500 consents or warrants.

The Bill is designed to ensure the safe and reliable supply of energy and water. The Government considers this limitation on the right to private life to be proportionate in the context that prime functions of the technical regulator are for public safety and reliability of supply of water, sewerage, electricity and gas. The limitation on the right is not open-ended and can only be exercised on the basis of a demonstrable need or probative evidence.

## **Clause Notes**

In these clause notes, the Act or this Act refers to the *Utilities (Technical Regulation) Act 2014*.

### **Part 1 Preliminary**

#### **Clause 1 Name of Act**

This clause names the Act as the *Utilities (Technical Regulation) Act 2014*.

#### **Clause 2 Commencement**

This clause provides for the commencement of the Act on the day fixed by the Minister by written notice.

#### **Clause 3 Dictionary**

This clause notes that the dictionary provided at the end of the Act is part of the Act.

#### **Clause 4 Notes**

This clause clarifies that a note included in the Act is explanatory and is not part of the Act in accordance with the *Legislation Act 2001*.

#### **Clause 5 Offences against Act—application of Criminal Code etc**

This clause notes that the other legislation applies in relation to offences against the Act. The *Criminal Code 2002* applies to all offences against the Act. The *Legislation Act 2001* defines penalty units applied to the Act.

#### **Clause 6 Objects**

This clause sets out the objects of the Act.

#### **Clause 7 Other laws not affected**

This clause notes that the Act does not affect other laws.

### **Part 2 Regulated utility services**

#### **Clause 8 Meaning of regulated utility**

This clause defines a regulated utility as a person who provides a regulated utility service under this Act.

This Act does not require a regulated utility to hold a licence to provide a regulated utility service. However, if the regulated utility service is a utility service under part 2 of the *Utilities Act 2000*, a person must not provide a utility service without either a licence or an exemption from licensing under part 3 of the *Utilities Act 2000*. When a regulated utility provides a regulated utility service that is not a utility service or is a utility service with an exemption from licensing under the *Utilities Act 2000*, a regulated utility is an unlicensed regulated utility under clause 42 of this Act and must have an operating certificate under clause 43 of this Act.

### **Clause 9 Meaning of *regulated utility service***

This clause defines a regulated utility service. A utility service under part 2 of the *Utilities Act 2000* is a regulated utility service under the Act.

In relation to electricity, part 2 of the *Utilities Act 2000* only includes electricity generation with the capacity of 5MW or more and connected to an electricity network. Under the Act, electricity generation with the capacity of 30kW or more but less than 5MW and connected to an electricity network is also a regulated utility.

Under the Act, owning, leasing or subleasing a regulated dam is defined as a regulated utility service. A person that owns, leases or subleases a regulated dam is a regulated utility and must comply with the Act. Part 8 of the Act provides specific requirements for a regulated utility that owns, leases or subleases a regulated dam.

A district energy service is a regulated utility service. If a service is a provision of (a) electricity or another form of energy and/or (b) reticulated gas, water or another fluid through a discrete district network, the service is a district energy service. The discrete district network is defined under clause 9 (2).

### **Clause 10 Prescribed regulated utility service**

This clause enables a regulation to prescribe a regulated utility service if the Minister is satisfied on reasonable grounds. This clause will respond to the development of new technology in relation to the provision of electricity, gas, water, sewerage or other forms of energy.

## **Part 3 Technical Codes**

### **Division 3.1 Purpose of technical codes**

#### **Clause 11 Technical codes—purpose**

This clause clarifies that a technical code are to be consistent with the objects of the Act. Major contents of the technical code are listed in this clause but do not stop other contents to be included in the code as long as the code is consistent with the objects of the Act.

### **Division 3.2 Making technical codes**

#### **Clause 12 Draft technical codes—proposed by regulated utility**

A regulated utility may propose a draft technical code to the technical regulator. The technical regulator must consider the draft technical code submitted by the regulated utility and may prepare the technical regulator's draft technical code with or without amendments for consultation in clause 13. However, the Technical Regulator is not required to proceed to consult or make a code proposed by the regulated utilities.

#### **Clause 13 Draft technical codes—consultation**

This clause provides the procedures to draft a technical code. The technical regulator may draft a technical code and consult with ICRC and relevant regulated utilities on the drafted code. The technical regulator must give reasonable consideration to submissions made by

ICRC or relevant regulated utilities and may make a recommendation to the Minister for approval.

#### **Clause 14 Technical codes—approval**

This clause vests a power with the Minister to approve a technical code. The Minister may approve a technical code given that the technical code was drafted in accordance with clause 13. An approved technical code is a disallowable instrument.

A technical code may apply, adopt or incorporate Australian Standards (AS) or Australian Standards / New Zealand Standards (AS/NZS). Section 47 (6) of the *Legislation Act 2001* does not apply to AS or AS/NZS in a technical code and a regulated utility will have to gain an access to AS or AS/NZS through the organisation that publishes the standards. The Bill provides a hyperlink to Standards Australia to facilitate organisation's and individual's access to referenced standards.

AS and AS/NZS are national technical standards that are not accessible on the ACT Legislation Register. Subsection 47 (6) does not apply to AS and AS/NZS due to the Commonwealth Government's decision to privatise the national standard certifier and to protect its copy right. AS and AS/NZS can be inspected at the National Library of Australia or purchased from a private company, Standard Australia or SAI Global. Since the Commonwealth Governments decided to privatise the national standard certifier in 1980s, the lack of access to AS and AS/NZS through the Legislation Register has been consistently applied in all the States and Territories.

#### **Clause 15 Technical codes—public access**

This clause notes that a copy of technical codes is available for public inspection during office hours. A person may request to the technical regulator to make a copy available in electronic form.

AS or AS/NZS applied, adopted or incorporated in technical codes are available through the organisation that publishes the standards.

### **Division 3.3 Enforcement of technical codes**

#### **Clause 16 Offence—fail to comply with technical code**

This clause creates an offence for non-compliance with a technical code. If a regulated utility fails to comply with a technical code that applies to the regulated utility, a maximum penalty of 2000 penalty units may apply to the regulated utility.

#### **Clause 17 Technical regulator's warning notice**

This clause enables the technical regulator to give a warning notice to a regulated utility if the technical regulator is satisfied on reasonable grounds that the regulated utility has contravened or is likely to contravene this Act or a technical code.

Prior to giving a warning notice, the technical regulator must issue a show cause notice to the regulated utility about the proposed warning notice. The reason for making a show cause notice for a warning notice is to give the details of the proposed warning notice. Subclause 17 (2) requires a show cause notice to state the details of the proposed warning notice including the reason for the proposed warning notice. Subclause 17 (3) requires the warning notice to state the reasons for the warning notice.

The regulated utility may, not later than 20 days after the day of the show cause notice, give the technical regulator a written submission about the proposed warning notice. If the submission fails to prove that the regulated utility complies with this Act or technical codes, the technical regulator may give a written warning notice to the regulated utility. The warning notice provides the reasons for the notice, the action required to the regulated utility, and the time period allowed for the action.

There is no offence for contravening the warning notice. A warning notice is used to monitor a regulated utility. A summary of the warning notice given to each regulated utility will be included in the technical regulator's compliance report to present the compliance and performance of each regulated utility.

This clause is consistent with section 38 of the *Human Rights Act 2004*. Natural justice for a regulated utility is well preserved under this clause.

#### **Clause 18 Technical regulator's directions**

This clause enables the technical regulator to direct a regulated utility to take action if the technical regulator is satisfied on reasonable grounds that the regulated utility has contravened or is likely to contravene this Act or a technical code. The action stated in the direction ensures compliance with the Act or a technical code. The direction and the statement of reasons are notifiable instruments.

The Bill allows for a four stage process which starts with a show cause notice for a warning notice in clause 17 (2), followed by a warning notice in clause 17 (3), then a show cause notice for a direction in clause 18 (2) and a direction to the regulated utility in clause 18 (3). The regulated utility may receive at least three advance notices before a direction is issued. Natural justice for a regulated utility is preserved under these clauses. For each notice, the regulated utility has 20 days to respond.

Before giving a direction, the technical regulator must give a regulated utility either a warning notice in clause 17 or a show cause notice about the proposed direction. If the regulated utility is found to be non-compliant with the direction, the regulated utility has a right of review against the direction which has resulted from the notices in schedule 1.

**Clause 19 Offence—fail to comply with technical regulator’s direction**

This clause creates an offence for non-compliance with a technical regulator’s direction. If a regulated utility fails to take reasonable steps to comply with the direction given, a maximum penalty of 2000 penalty units may apply to the regulated utility.

**Clause 20 Technical regulator’s urgent directions**

This clause enables the technical regulator to direct a regulated utility to take action in urgent circumstances. To respond to the urgent circumstances, no notice prior to the urgent direction is given to the regulated utility. The technical regulator’s urgent direction is given in writing, but it is not made as a notifiable instrument. Only a technical regulator’s statement of reasons for the urgent direction is a notifiable instrument.

**Clause 21 Offence—fail to comply with technical regulator’s urgent direction**

This clause creates an offence for non-compliance with a technical regulator’s urgent direction. If a regulated utility fails to take reasonable steps to comply with the urgent direction given, a maximum penalty of 3000 penalty units may apply to the regulated utility.

**Clause 22 Technical regulator—obtaining information and documents**

This clause enables the technical regulator to obtain information and a document from a person in relation to a regulated utility. The technical regulator may require a person for information or a document by written notice if the technical regulator is satisfied that the person is capable of providing information or producing the document required by the technical regulator.

The technical regulator is only able to exercise the power and functions given under the Act. When the technical regulator requires a person to supply information or documents, the information or documents must be for use in relation to the technical regulator’s power and functions under the Act. This clause preserves client legal privilege in common law.

This clause applies to either a regulated utility or a person who is engaged with the work of the regulated utility. When it applies to a regulated utility as a corporate entity, section 12 of the *Human Rights Act 2004* does not apply as in accordance with section 6 only an individual has human rights. If the information or documents provided by the individual who is engaged with the work of the regulated utility contains either directly or indirectly information or documents not related to the regulated utilities services, in these circumstances, the individual retains the right against self-incrimination in clause 24.

**Clause 23 Offence—contravention of requirement under s 22**

This clause creates an offence for non-compliance with a technical regulator’s notice to require information or a document. If a person fails to take reasonable steps to comply with the technical regulator’s notice, a maximum penalty of 2000 penalty units, imprisonment for 6 months or both may apply to the person.

### **Clause 24 Self-incrimination etc**

This clause notes that a person is not excused from providing information or a document under clause 20 even if the information or document might incriminate the person. However, the information or document provided under clause 22 is evidence against the person only in criminal proceedings for an offence against the Act or any other offence in relation to the falsity of the information or document provided.

This provision only applies to the matter in part 3 of the Bill. The offences in part 3 only apply to regulated utilities and the information can only be gathered in relation to the offences in part 3. Consequently, the information applies to a regulated utility that provides a regulated utility service such as energy or water. The foreshadowed Act applies to entities that voluntarily enter into the scheme, either through licence or operating certificate. The individuals who form part of the entity covered by the law are expected to understand their legal obligations under the governing law. The nature of this type of law is one that is protective: protective of life, health and environment.

The displacement of the privilege against self-incrimination in this subclause is proportionate given: the protective nature of the law; the expectation that those who enter into this regulatory context do so with notice of their obligations under the law; and the abrogation is limited to specific regulatory offences.

### **Division 3.4 Application to NERL retailers and NERL exempt sellers**

#### **Clause 25 Application to part to NERL retailers and NERL exempt sellers**

This clause notes that this part applies to a NERL retailer or a NERL exempt seller as if a reference to a regulated utility were a reference to a NERL retailer or a NERL exempt seller. A reference to a regulatory utility service is a reference to the activity of selling electricity or gas to a person for premises and a reference to a customer were a reference to a customer under the *National Energy Retail Law (ACT)*.

#### **Clause 26 NERL retailers and NERL exempt sellers---determination of application technical code**

This clause vests the Minister with a power to determine that a technical code applies to a NERL retailer or a NERL exempt seller if the Minister is satisfied on reasonable ground that the code is appropriate to apply to the NERL retailer or the NERL exempt seller. The determination is a disallowable instrument.

#### **Clause 27 Inconsistency between the Act and NERL**

This clause notes that the National Energy Retail Law (ACT) prevails the Act if the Act has any inconsistency with the National Energy Retail Law (ACT) in relation to a NERL retailer or a NERL exempt seller.

## **Part 4 Reporting of notifiable incidents**

### **Clause 28 Definitions**

This clause provides definitions of terms used for this part. A dangerous incident includes an incident that exposes, or potentially exposes, a person to a serious risk to the person's health. In this clause, a serious risk to the person's health includes a serious injury of the person or a serious risk to death. The clause intends to contemplate both the risk and the manifestation of risk in the form of an injury.

### **Clause 29 Offence—reporting of notifiable incidents by regulated utility**

This clause creates an offence for non-compliance when a regulated utility fails to report the technical regulator about the notifiable incident by telephone within 24 hours after the regulated utility becomes aware of the incident. A maximum penalty of 200 penalty units may apply to the regulated utility.

## **Part 5 Protection of regulated utility networks**

### **Division 5.1 General**

#### **Clause 30 Meaning of *interference*—pt 5**

This clause provides a meaning of interference for this Act.

### **Division 5.2 General Interference**

#### **Clause 31 Offence—interference with regulated utility networks**

This clause creates an offence for non-compliance when a person interferes with a regulated utility network. A maximum penalty of 200 penalty units, imprisonment for 2 years or both may apply to the person.

#### **Clause 32 Network protection notices**

This clause applies if a regulated utility is satisfied that the regulated utility network is interfered or is likely to be interfered with. The regulated utility may give a written notice to the landholder to take any action necessary to stop or avoid the interference with the regulated utility network.

The regulated utility's notice must explain the consequence of the landholder's non-compliance with the notice. If the landholder fails to comply with the regulated utility's notice within the stated period of at least 14 days, the regulated utility may take a necessary action to stop the interference or remove the likelihood of the interference. The regulated utility may charge the landholder for reasonable expenses incurred to stop or avoid the interference, if the interference relates to the existing installation of the regulated utility network.

In urgent circumstances, the regulated utility may take any necessary action to stop or avoid the interference without a notice to the landholder at the own expense of the regulated utility. As soon as practicable after the necessary action is taken, the regulated utility must give a



written notice to the landholder and the technical regulator about the action taken and the urgent circumstances that required the action taken.

If the regulated utility acts to stop or avoid the interference relates to the existing installation of the regulated utility network and a person suffers loss or damage due to the action taken by the regulated utility, the expense for the loss or damage of the person is covered by the regulated utility.

This clause restates the existing long-standing provisions that give statutory authority to networks to operate with minimum interruptions and without significant interferences to enable the regulated utilities to consistently provide energy and water to the community. This clause places the responsibility on the regulated utility network operator to protect and maintain the network. The responsible utility is given a power to stop the interference after giving a notice to the landlord because the responsibility for protection and maintenance of the network rests with the regulated utility. The actions taken by each responsible utility in these subclauses are reported to the technical regulator every year and regularly audited by the technical regulator.

This clause also notes its effect in relation to a registered tree under part 3 of the *Tree Protection Act 2005*.

### **Clause 33 Network protection—action affecting heritage significance**

This clause applies if the necessary action taken under clause 32 may affect a place or object under the *Heritage Act 2004*. A regulated utility must give a copy of the written notice given under the clause 32 to the heritage council as soon as practicable.

## **Division 5.3 Contamination of water or sewerage networks**

### **Clause 34 Offence—contamination of water**

This clause creates an offence for a person engaging in conduct that contaminates or is likely to contaminate water in a water network. A maximum penalty of 100 penalty units, imprisonment for 1 year or both may apply to the person.

### **Clause 35 Offence—prohibited substances—water or sewerage network**

This clause creates an offence for a person introducing a substance or allowing a substance to be introduced into a water network or a sewerage network. A maximum penalty of 100 penalty units, imprisonment for 1 year or both may apply to the person.

### **Clause 36 Exempt water treatments**

This clause allows a regulated utility to add a certain chemical and fluoride to the regulated utility's water network. The chemical or fluoride added must meet the requirement under this clause.

## **Division 5.4 Miscellaneous**

### **Clause 37 Offence—unauthorised network connections**

This clause creates an offence for a person connecting premises to a regulated utility network without an authorisation by the regulated utility. If the person is not either a regulated utility responsible for the regulated utility network, an agent of the regulated utility, or an authorised person of the regulated utility, a maximum penalty of 50 penalty units, imprisonment for 6 months or both may apply to the person for unauthorised network connections.

### **Clause 38 Offence—unauthorised abstraction etc of electricity**

This clause creates an offence for a person abstracting, diverting or using electricity from a regulated electricity network. If the person is not authorised to abstract, divert or use the electricity by the regulated electricity utility, a maximum penalty of 50 penalty units, imprisonment for 6 months or both may apply.

### **Clause 39 Offence—unauthorised abstraction etc of gas**

This clause creates an offence for a person abstracting, diverting or using gas from a regulated gas network. If the person is not authorised to abstract, divert or use the gas by the regulated electricity utility, a maximum penalty of 50 penalty units, imprisonment for 6 months or both may apply.

### **Clause 40 Offence—unauthorised abstraction etc of water**

This clause creates an offence for a person abstracting, diverting or using water from a regulated water network. If the person is not authorised to abstract, divert or use the water by the regulated electricity utility, a maximum penalty of 50 penalty units, imprisonment for 6 months or both may apply.

### **Clause 41 Extended meaning of *network***

This clause extends the meaning of regulated utility network for clauses 38, 39 and 40.

## **Part 6 Operating certificates**

### **Division 6.1 General**

#### **Clause 42 Meaning of *unlicensed regulated utility*—pt 6**

This clause provides a definition of unlicensed regulated utility for this part.

### **Division 6.2 Operating certificates—unlicensed regulated utilities**

#### **Clause 43 Operating certificate—application**

This clause requires an unlicensed regulated utility to apply for an operating certificate. A regulated utility is an unlicensed regulated utility when the regulated utility provides or proposes to provide a regulated utility service and either does not require a licence or is exempted from a licence under the *Utilities Act 2000*. The unlicensed regulated utility must apply for an operating certificate to provide the regulated utility service.

An operating certificate is not equivalent to a licence under the *Utilities Act 2000*. The operating certificate is issued by the technical regulator to ensure the safe and reliable supply

of a regulated utility service in relation to technical regulation. This certificate does not stop any other laws to require an unlicensed regulated utility to hold a licence to provide the service. The certificate is not made to set out the economic regulation of the service such as pricing, competition, investment and employment.

**Clause 44 Operating certificate—further information**

This clause enables the technical regulator to require an unlicensed regulated utility for further information about the application when the unlicensed regulated utility has applied for an operating certificate.

**Clause 45 Operating certificate—information on likely compliance cost**

This clause enables the technical regulator to give the applicant information in writing before granting an operating certificate. The information is about auditing and compliance schedules, technical codes, and costs and fees for auditing, compliance and technical codes that are likely to apply to the applicant. Fees are determined under clause 110 of this Act.

**Clause 46 Operating certificate—grant**

This clause gives the technical regulator a power to grant an unlicensed regulated utility an operating certificate if the technical regulator is satisfied on reasonable grounds that the unlicensed regulated utility service is, or will be, a regulated utility service provided in accordance with this Act.

If the regulated utility service provided by the unlicensed regulated utility is not covered by a technical code, the technical regulator may either grant an operating certificate with a condition, or refuse to grant it, until the technical code is approved. In either case, the unlicensed regulated utility is considered to be a regulated utility for clause 12 of this Act and the utility may propose a draft technical code that would apply to the unlicensed regulated utility.

An operating certificate is not an authorisation of any sale of product or service provided by an unlicensed regulated utility and does not stop any other laws to set requirements for the utility's products or services.

**Clause 47 Operating certificate—term**

This clause notes that an operating certificate granted under clause 46 is in force for a certain period of time stated in the certificate. A renewal of the operating certificate can be applied for before the operating certificate expires. Once the operating certificate expires, the unlicensed regulated utility must stop operating the regulated utility service apply for a new operating certificate under clause 43.

**Clause 48 Operating certificate—grant condition**

This clause enables the technical regulator to notify an unlicensed regulated utility in writing of auditing and compliance schedules, technical codes and costs and fees. Costs and fees are determined under clause 110 of this Act. If a technical code is required to be made for the

regulated utility service the unlicensed regulated utility provides or will provide, the technical regulator informs the unlicensed regulated utility of making the technical code.

#### **Clause 49 Operating certificate—revocation**

This clause gives the technical regulator a power to revoke an operating certificate if the technical regulator is satisfied on reasonable grounds that an unlicensed regulated utility does not comply with this Act or a condition of the operating certificate under clause 48. Before revocation, the technical regulator must give the unlicensed regulated utility a written notice of proposed revocation, the reasons for it and a 20 day written submission period. The technical regulator must consider the submission given by the unlicensed regulated utility.

### **Division 6.3 Enforcement of operating certificates**

#### **Clause 50 Offence—providing regulated utility service without operating certificate**

This clause creates an offence for an unlicensed regulated utility providing a regulated utility service without an operating certificate. A maximum penalty of 3000 penalty units may apply to the regulated utility.

#### **Clause 51 Offence—constructing regulated utility service without operating certificate**

This clause creates an offence for an unlicensed regulated utility constructing a regulated utility service without an operating certificate. A maximum penalty of 3000 penalty units may apply to the regulated utility.

## **Part 7 Network boundaries and isolated infrastructure**

### **Division 7.1 General**

#### **Clause 52 Definitions—pt 7**

This clause provides definitions for this part of the Act. In accordance with clause 53, a network boundary is defined by a technical code under this Bill. Previously, according to section 16 of the *Utilities Act 2000*, a network boundary was defined by an industry code. Either the technical code or the industry code in relation to the boundary may have a provision to create an alternative boundary. If the code allows a regulated utility to create the alternative boundary, isolated infrastructure may be created between the regulated utility network and premises.

### **Division 7.2 Network boundaries**

#### **Clause 53 Network boundary**

This clause amends section 16 of the *Utilities Act 2000* and requires a code in relation to a network boundary to be a technical code. Previously, the industry code set up requirements for the network boundary under section 16 of the *Utilities Act 2000*. The industry code for the network boundary is valid until the new technical code for the network boundary is introduced.

This clause notes that if the technical code allows an alternative network boundary to be agreed between a regulated utility and another person, the location and properties of any

isolated infrastructure must be clearly identified and the alternative boundary must be agreed by the technical regulator in writing.

### **Division 7.3 Isolated infrastructure—maintenance requirements**

#### **Clause 54 Technical inspector’s warning notice—isolated infrastructure**

This clause enables a technical inspector to inspect isolated infrastructure. If the technical inspector is satisfied on reasonable grounds that isolated infrastructure is not being maintained, the technical inspector must give the owner of the infrastructure a written warning notice to require the action to maintain the infrastructure.

If the owner of the infrastructure fails to comply with the technical inspector’s warning notice within the time period stated in the notice, the technical regulatory may give a direction to the owner without any further notice. Depending on the network boundary, the owner of the infrastructure can be a regulated utility or a customer of a regulated utility.

This clause requires the technical regulator to give a regulated utility a show cause notice before a warning notice is issued. The reason for making a show cause notice for a warning notice is to give the details of the proposed warning notice. A show cause notice is required to state the details of the proposed warning notice including the reason for the proposed warning notice. The warning notice is required to state the reasons for the warning notice.

#### **Clause 55 Technical regulator’s directions—isolated infrastructure**

This clause applies if the technical regulator is satisfied on reasonable grounds that isolated infrastructure is not being maintained and has a risk of significant adverse effects on the community network or environment. After either the technical inspector’s warning notice under clause 54 or the technical regulator’s show cause notice, the technical regulator may direct the owner of the infrastructure to maintain the infrastructure and/or reduce the risk of significant adverse effects.

The technical regulator may also give a direction to the owner of the infrastructure to begin negotiations about the alternative network boundary. The technical regulator must give a written notice to the relevant regulated utility.

The technical regulator’s direction and the statement of reasons for the direction are notifiable instrument.

This clause is consistent with section 38 of the *Human Rights Act 2004*. Natural justice for a regulated utility is well preserved under this clause. The regulated utility may receive at least three advance notices before a direction is issued: a show cause notice for the warning notice in clause 54 (2); the warning notice in clause 54 (4); and a show cause notice for the direction in clause 55 (2). There is no offence for contravening the warning notice. For each notice, the regulated utility has 20 days to respond. If the regulated utility is found to be non-compliant with the direction, the regulated utility has a right of review against the direction which has resulted from the notices in schedule 1.

### **Clause 56 Offence—owner of isolated infrastructure failing to comply with technical regulator’s direction**

This clause creates an offence for non-compliance with a technical regulator’s direction. If an owner of isolated infrastructure fails to take reasonable steps to comply with the direction, a maximum penalty of 2000 penalty units may apply to the owner of the infrastructure.

## **Part 8 Dams Safety**

### **Division 8.1 General**

#### **Clause 57 Definitions—pt 8**

This clause provides definitions of terms used in relation to dams safety for this Act.

### **Division 8.2 Register of dams**

#### **Clause 58 Dams register**

This clause requires the technical regulator to keep the dams register which register registrable dams and related information. The dam register may be made fully or partially available to the public on the technical regulator’s website.

#### **Clause 59 Required information for dams register**

This clause requires the technical regulator to determine the information required for the dams register. The determination is a notifiable instrument.

#### **Clause 60 Notice to give required information**

This clause notes that the technical regulator may, by written notice, require the owner of a registrable dam to give the required information determined under clause 59. The notice must state the time period, of not less than 30 days, within which the owner of the registrable dam must give the required information.

#### **Clause 61 Offence—fail to give required information**

This clause creates an offence for non-compliance with a technical regulator’s notice to require the required information. If the owner of a registrable dam fails to give the technical regulator the required information within the time stated in the notice, a maximum penalty of 20 penalty units may apply to the owner of the registrable dam.

#### **Clause 62 Technical regulator may require further information**

This clause allows the technical regulator to require the owner of a registrable dam to give any further information about the registrable dam. The notice must state the time period within which the owner of the registrable dam must give the further information.

#### **Clause 63 Offence—fail to give required information**

This clause creates an offence for non-compliance with a technical regulator’s notice to require the further required information. If the owner of a registrable dam fails to give the

technical regulator the further required information within the time stated in the notice, a maximum penalty of 20 penalty units may apply to the owner of the registrable dam.

**Clause 64 Requirement to report change in ownership**

This clause requires the owner of a registrable dam to report a change in the ownership as soon as practical if the ownership of the registrable dam is changed. The reporting by the owner of the registrable dam must be no later than 14 days after the day the change of ownership occurs. Once the change is reported by the owner, the technical regulator must reflect the change in the dams register.

**Clause 65 Offence—fail to give required information**

This clause creates an offence for non-compliance when the owner of a registrable dam fails to report the change of the ownership to the technical regulator. If the owner of the registrable dam fails to report the technical regulator within 14 days after the day the change of ownership occurs, a maximum penalty of 20 penalty units may apply to the owner of the registrable dam.

**Clause 66 Requirement to update required information and further information**

This clause requires the owner of a registrable dam to update the technical regulator with a change of the required information under clause 29 or a change of the further information under clause 30. The owner must update the technical regulator as soon as practicable but not later than 30 days after the day the change occurs. The technical regulator must reflect the change in the dams register.

**Clause 67 Offence—fail to update required information or further information**

This clause creates an offence for non-compliance when the owner of a registrable dam fails to update the technical regulator with a change of the required information or a change of the further information. If the owner of the registrable dam fails to update the technical regulator within 30 days after the day the change of ownership occurs, a maximum penalty of 20 penalty units may apply to the owner of the registrable dam.

**Clause 68 Owner of registrable dam may correct dams register**

This clause enables the owner of a registrable dam to request, in writing, the technical regulator for a copy of the information held in the dams register in relation to the owner and the owner's registrable dam. The technical regulator must provide the owner with the requested information as soon as practicable but not later than 14 days after the owner's request. The owner of the registrable dam may request the technical regulator to amend any incorrect information held in the dams register. If the technical regulator is satisfied that the information is incorrect, the technical regulator must correct the information in the dams register. Otherwise, the technical regulator must notify the owner of the registrable dam of the reason for changing the information requested to correct by the owner.

## **Division 8.3 Listed dams**

### **Clause 69 Listing of certain dams**

This clause provides the technical regulator with a power to determine a list of the dams that present a risk of significant adverse effects on the community in the event of the failure of the dam. The determination is a disallowable instrument.

### **Clause 70 Notification of listing of certain dams**

This clause requires the technical regulator to notify the owner of each listed dam that the dam is a listed dam. The list of dams is available to the public on the technical regulator's website.

## **Division 8.4 Technical codes for listed dams**

### **Clause 71 Draft technical codes for listed dam—proposed by owner of listed dams**

This clause enables the owner of a listed dam to propose a draft technical code for listed dams. The technical regulator must consider the draft technical code submitted by the owner of the listed dam and may prepare the technical regulator's draft technical code with or without amendments for consultation in clause 72. This clause does not require the technical regulator to consult on the draft code or make a code.

### **Clause 72 Technical codes for listed dams—consultation**

This clause provides the procedure to draft a technical for listed dams. The technical code must be consistent with the objects of the Act under clause 6. The technical regulator must consult ICRC and each owner of listed dams with providing a copy of the draft technical code. ICRC and each owner of listed dams may make a submission on the draft technical code within a stated period of not less than 20 days. The technical regulator must consider a submission by ICRC or each owner of listed dams and may make a recommendation to the Minister about the approval of the code.

### **Clause 73 Technical codes for listed dams—approval**

This clause vests the Minister with a power to approve a technical code for listed dams if the Minister is satisfied on reasonable grounds that consultation under clause 72 has occurred. The approval is a disallowable instrument.

Subsection 47 (6) of the *Legislation Act 2001* does not apply to Australian Standards (AS) or Australian/New Zealand Standards (AS/NZS) adopted under a technical code. AS and AS/NZS are national technical standards that are not accessible on the ACT Legislation Register. They are created by the specialised committees and hold their own copy right. They can be inspected at the National Library of Australia or purchased from a private company, Standard Australia or SAI Global. Since the Commonwealth Governments decided to privatise the national standard certifier in 1980s, it has been a common practice for utilities and utility contractors in all the States and Territories to purchase technical standards. Subsection 47 (6) does not apply to AS and AS/NZS due to the Commonwealth's Government's decision to privatise the national standard certifier and to protect its copy right. The lack of access to AS and AS/NZS through the Legislation Register has been consistently



applied since the decision was made to privatise AS and AS/NZS. The Bill provides a hyperlink to Standards Australia to facilitate organisation's and individual's access to referenced standards.

#### **Clause 74 Technical codes for listed dams—public access**

This clause notes that a copy of a technical code for listed dams is available for public inspection during office hours. A person may request to the technical regulator to make a copy available in electronic form.

### **Division 8.5 Enforcement of technical codes for listed dams**

#### **Clause 75 Offence—fail to comply with technical code for listed dams**

This clause creates an offence for non-compliance with a technical code for listed dams. If the owner of the listed dam fails to comply with a technical code that applies to the listed dam, a maximum penalty of 2000 penalty units may apply to the owner.

## **Part 9 Enforcement**

### **Division 9.1 General**

#### **Clause 76 Definitions—pt 9**

This clause provides definitions of terms used in this part.

### **Division 9.2 Technical regulator**

#### **Clause 77 Technical regulator**

This clause clarifies the director-general is the technical regulator. The director-general responsible for administering this Act is determined by the relevant Administrative Arrangements (NI) under *the Australian Capital Territory (Self-Government) Act 1988* (Cwlth) and the *Public Sector Management Act 1994*.

#### **Clause 78 Technical regulator's functions**

This clause provides the technical regulator's functions. The Minister is responsible for this Act and the technical regulator administers and enforces this Act through its functions listed in this clause.

#### **Clause 79 Technical regulator may impose conditions on licence**

This clause enables the technical regulator to impose a condition on the licence of a utility service licensed under the *Utilities Act 2000*. Before imposing the condition, the technical regulator must give the utility a show cause notice about the proposed condition and a 20 day submission period. A copy of the show cause is sent to ICRC. The technical regulator must consider any submissions given by the utility or ICRC before imposing the condition. The technical regulator's compliance report must include the details conditions imposed under this clause and reasons for it.

### **Clause 80 Technical regulator’s compliance report**

This clause requires the technical regulator to prepare and publish a compliance report each year. The compliance report includes information about the operation of this Act, the compliance of regulated utilities, owners of listed dams and owners of isolated infrastructure with this Act, and details about warning notices given under this Act. The report will be published in line with the *Annual Reports (Government Agencies) Act 2004* that requires an annual report for each financial year.

### **Division 9.3 Technical inspectors**

#### **Clause 81 Technical inspectors—appointment**

This clause enables the technical-regulator to appoint a technical inspector for this Act. A technical inspector must exercise the functions under this Act and must meet the criteria listed under clause 81(3).

#### **Clause 82 Identity cards**

This clause requires the technical regulator to give a technical inspector an identity card of the technical inspector.

If the person is no longer a technical inspector and does not return the identity card to the technical regulator within 7 days after the day the person stops being a technical inspector, a maximum penalty of 10 penalty unit may apply to the person. This offence is a strict liability offence. The offence engages the right to be presumed innocent under section 22 (1) of the *Human Rights Act 2004*. The application of strict liability places a burden upon a defendant to raise a defence in a prosecution. The Government is of the view that the strict liability offence has the legitimate aim of ensuring that inspectors’ identity cards are not misused by former inspectors, or other parties.

#### **Clause 83 Power not to be exercised before identity card shown**

This clause notes that a technical inspector must show its identity card to exercise a power under this Act.

### **Division 9.4 Powers of technical inspectors**

#### **Clause 84 Power to enter premises**

This clause enables a technical inspector to enter premises. With the consent of the occupier of the building under clause 86 or 87, or with a warrant under clause 88, a technical inspector may enter a residential building or a building used for a private business to which a regulated utility service is provided.

A technical inspector may enter the land and any common property to ask the occupier for the consent to enter the premises without the consent or a warrant to enter the land or the common property. This provision allows the technical inspector to ask for the consent or a warrant when the consent or the warrant is required under clause 84 (1).

Without the consent of the occupier or a warrant, a technical inspector may enter premises occupied by a regulated utility at any time the premises are being used and the front yard, back yard or side yards of premises to which a regulated utility service is provided. This provision allows the technical inspector to inspect the regulated utility's premises and the regulated utility networks outside the residential or business buildings for monitoring and enforcement purposes.

This power is consistent with the power that utilities currently have under *the Utilities Act 2000* to enter a land, but not buildings, without consent.

The consent in this division 9.4 includes advance consent under clause 87.

#### **Clause 85 Production of identity card**

This clause notes that a technical inspector may remain on premises if the technical inspector presents the identity card to the occupier of premises on request by the occupier.

#### **Clause 86 Consent to entry**

This clause provides procedures to receive consent from an occupier of premises when a technical inspector enters the premises for inspection in accordance with clause 84.

#### **Clause 87 Advance consent to entry**

This clause enables a technical inspector to seek the advance consent of an occupier for entering premises. A technical inspector must seek the advance consent in writing with a copy of the identity card. The occupier may refuse the consent. If the occupier signs and returns the acknowledgement of advance consent, the technical inspector must enter the premises at the proposed time and day stated in the acknowledgement, produce the identity card and the acknowledgement and give the occupier a copy of the acknowledgement.

This clause allows a technical inspector to efficiently arrange the inspection and also allows the occupier to expect the inspection in the proposed time and day.

#### **Clause 88 Warrants**

This clause provides procedures to apply to a magistrate for a warrant when a technical inspector enters premises in accordance with clause 84.

#### **Clause 89 Warrants—application made other than in person**

This clause notes that a technical inspector may apply for a warrant other than in person if the technical inspector considers it necessary.

#### **Clause 90 General powers on entry to premises**

This clause provides technical inspector's powers when the technical inspector enters premises. If the occupier or a person on the premises fails to take reasonable steps to comply with a requirement made under subclause 90 (1) (e), a maximum penalty of 20 penalty units may apply to the occupier or the person on the premises.

### **Clause 91 Power to seize evidence**

This clause clarifies that a technical inspector may seize a thing for evidence in relation to this Act or a related law when the technical inspector enters premises. In relation to the thing seized for evidence, if an occupier or a person on the premises interferes the technical inspector without the technical inspector's approval, a maximum penalty of 20 penalty units may apply to the occupier or the person.

### **Clause 92 Receipt for things seized**

In relation to the thing seized for evidence, this clause requires a technical inspector to give its receipt to the person on the premises or reasonably leave its receipt at the premises.

### **Clause 93 Access to things seized**

In relation to the thing seized for evidence, this clause clarifies that a person who is entitled to the thing may have an access to it apart from the seizure of it.

### **Clause 94 Return of things seized**

This clause allows the thing seized for evidence to be returned to its owner unless the court orders a forfeiture of the thing. If a prosecution is not instituted within 90 days of the seizure or the court does not find the offence relating to the thing, the loss of the thing must be compensated by the technical regulator.

## **Division 9.5 Stop work**

### **Clause 95 Meaning of *utility infrastructure work*—div 9.5**

This clause provides a definition of a utility infrastructure work.

### **Clause 96 Stop notice**

This clause gives a technical inspector a power to require a person to stop the utility infrastructure work. If the technical inspector is satisfied on reasonable grounds that a regulated utility or a person undertaking utility infrastructure work has not complied with this Act or a technical regulator's direction or urgent direction, or is undertaking the work related to a utility service without a licence under the *Utilities Act 2000*, the technical inspector may issue a stop notice in writing. The stop notice applies for a maximum period of 8 weeks.

### **Clause 97 Offence—fail to comply with stop work**

This clause creates an offence for a person failing to take reasonable steps to comply with the stop notice. The maximum penalty of 2000 penalty units may apply to the person.

### **Clause 98 Cancellation of stop notice—application**

This clause allows a person who is issued a stop notice to apply to the technical regulator for cancellation of the stop notice. The person must provide in writing the reasons why the stop notice should be cancelled. The technical regulator may cancel the stop notice if the technical regulator is satisfied on reasonable grounds given in clause 98 (3).

### **Clause 99 Rectification work allowed under stop notice**

This clause allows a person who is issued a stop notice to fix or reverse the utility infrastructure work for which the notice is given. The person may also undertake the utility infrastructures work if a technical inspector or the technical regulator gives written approval.

### **Division 9.6 Injunctions**

#### **Clause 100 Injunctions to restrain offences against Act or failure to comply with directions**

This clause applies if a person including a regulated utility commits or is likely to commit an offence against this Act, or fails to comply with a technical regulator's direction under clause 16 or urgent direction under clause 18. The technical regulator may apply to the Supreme Court for an injunction. The Supreme Court may grant an injunction restraining the person from contravening this Act, or before deciding the injunction, may grant an interim injunction restraining the person from committing an offence against this Act.

#### **Clause 101 Enforcement of injunctions**

This clause notes that the Magistrate Court has the same power of granting an injunction and an interim injunction as the Supreme Court has under this division.

#### **Clause 102 Amendment or discharge of injunctions**

This clause notes that the Supreme Court may amend or discharge an injunction and an interim injunction made under this part.

#### **Clause 103 Interim injunctions—undertaking about damages**

This clause clarifies undertakings about costs or damages in relation to an interim injunction.

#### **Clause 104 Supreme Court—other powers not limited**

This clause notes that powers given to the Supreme Court are not limited to granting an injunction under this part.

### **Part 10 Notification and review of decisions**

#### **Clause 105 What is a reviewable decision—pt 10**

This clause provides a definition of a reviewable decision for this part.

#### **Clause 106 Reviewable decision notices**

This clause requires the technical regulator to give a reviewable decision notice to each entity in schedule 1 if the technical regulator makes a reviewable decision.

#### **Clause 107 Applications for review**

This clause notes that a person may apply to ACAT for a review of a reviewable decision if the person is an entity mentioned in schedule 1 in relation to the decision or any other person whose interests are affected by the decision.

## **Part 11 Miscellaneous**

### **Clause 108 Protection from civil liability**

This clause ensures a person with protection from civil liability.

### **Clause 109 Evidentiary certificates**

This clause enables the technical regulator to issue a certificate for evidence with the technical regulator's signature regarding technical codes, registrable dams, listed dams, operating certificates or licensing conditions.

This clause enables the technical regulator to issue a certificate on the official record held by the technical regulator. The certificate does not contain the technical regulator's view regarding the fact. For example, under subclause 109 (1) (e), the technical regulator may issue an evidentiary certificate stating that a named person did, or did not, have an operating certificate for a stated regulated utility service at the time of issuing the certificate. However, this certificate does not indicate the technical regulator's view that the named person is, or is not, required to hold an operating certificate. Evidentiary certificates simply provide the objective fact and do not imply subjective judgement or legal determination by the technical regulator about the fact.

Evidentiary certificates do not oust evidence that would prove a fact different to that stated in the certificate. This clause is consistent with subsection 22 (1) of the *Human Rights Act 2004*.

### **Clause 110 Determination of fees**

This clause gives the technical regulator a power to determine fees for this Act. The determination is a disallowable instrument.

### **Clause 111 Approved forms**

This clause gives the technical regulator a power to approve forms for this Act. The approved form is a notifiable instrument.

### **Clause 112 Regulation-making power**

This clause vests the Executive with a power to make regulations for this Act.

## **Part 12 Consequential amendments**

### **Clause 113 Legislation amended—sch 2**

This clause notes that the Act amends the legislation stated in schedule 2.

## **Part 20 Transitional**

### **Clause 200 Definitions—pt 20**

This clause provides a definition of commencement day for this part.

### **Clause 201 Technical codes under Utilities Act 2000**

This clause clarifies that technical codes made under the *Utilities Act 2000* are in force immediately before the commencement day and that technical codes made under the *Utilities Act 2000* are taken to be technical codes made under this Act.

### **Clause 202 Application of offence of providing regulated utility service without operation certificate**

This clause notes that, if a person is providing a regulated utility service immediately before the commencement day and becomes an unlicensed regulated utility immediately after the commencement day, the offence of clause 50 does not apply to the person until 2 years after the commencement day.

The person can continue to provide the regulated utility service that was provided before the commencement day until 2 years after the commencement day without an operating certificate. However, the person must apply for the operating certificate before 2 years after the commencement day to continue the regulated service after 2 years.

### **Clause 203 Transitional regulations**

This clause enables a regulation to prescribe transitional matters necessary.

### **Clause 204 Expiry—pt20**

This clause sets out an expiration of this part 20. This part expires 3 years after the commencement day.

### **Schedule 1 Reviewable decisions**

This schedule presents a table of reviewable decisions set out under part 10 of the Act.

### **Schedule 2 Consequential amendments**

#### **Part 2.1 Building (General) Regulation 2008**

This part notes consequential amendments to the *Building (General) Regulation 2008*. Clauses 2.1, 2.2 and 2.3 insert definitions of a licensed utility service, a regulated utility service, and the technical regulator.

#### **Part 2.2 Independent Competition and Regulatory Commission Act 1997**

This part notes consequential amendments to the *Independent Competition and Regulatory Commission Act 1997*. Clause 2.4 changes a technical code under the *Utilities Act 2000* to a technical code under this Act.

#### **Part 2.3 Tree Protection Act 2005**

This part notes consequential amendments to the *Tree protection Act 2005*. Clauses 2.5 and 2.6 reflects clause 32 of this Act about a network protection notice.

## **Part 2.4 Utilities Act 2000**

### **Clause 2.7 Section 3 (g)**

This clause omits a reference of the director-general under part 5 of the *Utilities Act 2000*, as part 5 of the *Utilities Act 2000* is omitted.

### **Clause 2.8 New section 6 (c) and (d)**

As consequential amendments, the electricity generation with a capacity of 5MW or more connected to an electricity network is a utility service under the *Utilities Act 2000*. The electricity transmission is also a utility service. Both of them are required to apply for utility licensing to provide the utility services. As a utility under part 2 of the *Utilities Act 2000* is a regulated utility under clause 8 of this Act, the electricity generation with a capacity of 5MW or more connected to an electricity network and the electricity transmission are regulated utilities under this Act.

### **Clause 2.9 Section 16**

Under clause 53 of this Act, a network boundary of a regulated utility including a utility under the *Utilities Act 2000* is defined in accordance with a technical code. Section 16 of the *Utilities Act 2000* is omitted to give effect to clause 53 of this Act.

### **Clause 2.10 Section 25 (2) (a) (vi)**

This clause reflects a technical regulator's direction under this Act.

### **Clause 2.11 Section 25, new note**

This clause inserts a note referring to a licensing condition imposed by the technical regulator under clause 79 of this Act.

### **Clause 2.12 Section 45 (2)**

The annual licence fee consists of the cost of ICRC, the cost of ACAT and the cost of technical regulation. Under section 45 (1) of the *Utilities Act 2000*, ICRC determines the annual licence fee. According to current section 45 (2) of the *Utilities Act 2000* before this amendment is made, the annual licence fee is the amount considered by ICRC to be a reasonable contribution towards the costs of ICRC, technical regulation and the ACAT. This section 45 (2) is amended to enable the technical regulator to determine a technical regulation component of the licence fee. ICRC remains to consider the costs of ICRC and the ACAT. The determination of the total annual licence fee also remains a decision of ICRC.

### **Clause 2.13 New section 45 (3A) to (3C)**

This clause reflects an amendment made under clause 2.12. This amendment enables the technical regulator to determine its own cost. Under new section 45 (3A) to (3C), the technical regulator must determine the amount of technical regulation and give ICRC a written notice of the determination. The determination is a notifiable instrument.



**Clause 2.14 Section 45 (4)**

This clause reflects amendments made under clauses 2.13 and 2.14.

**Clause 2.1 Section 54 (1) (a) on page 86**

This clause substitutes the director-general under part 5 of the *Utilities Act 2000* with the technical regulator under this Act as part 5 of the *Utilities Act 2000* is omitted.

**Clause 2.2 Section 54F (1)**

According to current section 54F (1) of the *Utilities Act 2000*, the local regulatory cost is the cost of providing ‘regulatory activities in relation to safety, technical operations, consumer service and environmental behaviour for energy utility services’ and of the administration. This cost of providing ‘technical operations’ is considered to be the cost of technical regulation. The local regulatory cost is determined by the administrator that is currently ICRC. This clause amends section 54F (1) and enables the technical regulator to determine a technical regulation component of the local regulatory cost. The determination of the total local regulatory costs remains a decision of ICRC.

**Clause 2.3 New Section 54FA**

This clause reflects an amendment made under clause 2.16. Before 1 October of each levy year, the technical regulator must determine the technical regulation component of the local regulatory cost and give ICRC a written notice of the determination. The determination is a notifiable instrument.

**Clause 2.4 Section 58 (2) (a)**

This clause substitutes the Minister responsible for part 5 of the *Utilities Act 2000* with the Minister responsible for this Act as part 5 of the *Utilities Act 2000* is omitted.

**Clause 2.5 Section 59 (1) (a)**

As part 5 of the *Utilities Act 2000* is amended and included in this Act, a definition of the technical regulator is provided by section 77 of this Act.

**Clause 2.6 Part 5**

Part 5 of the *Utilities Act 2000* is amended and included in this Act. Provisions related to technical regulation is removed from the *Utilities Act 2000* as this Act is created.

**Clause 2.7 and clause 2.8**

These clauses omit references to part 5 (Technical regulation) as part 5 of the *Utilities Act 2000* is omitted.

**Clause 2.9 Part 8**

Part 8 of the *Utilities Act 2000* is amended and included in this Act.

**Clause 2.10, 2.11, 2.12, 2.13**

These clauses omit the power and functions of technical inspectors under division 10.3 of the *Utilities Act 2000*. The power and functions of technical inspectors are stipulated by division 9.4 of this Act.

**Clause 2.14 Dictionary, definition of *interference*, paragraph (a)**

Part 8 of the *Utilities Act 2000* is omitted and amended to be included in this Act. A definition of interference is provided by this Act.

**Clause 2.15 Dictionary, definition of *network boundary***

Section 16 of the *Utilities Act 2000* is omitted and amended to be included in this Act. A network boundary is defined by a technical code under this Act.

**Clauses 2.16 and 2.17**

These clauses omit definitions of network and a network protection notice as these definitions are provided by this Act.

**Clause 2.18 Dictionary, definition of *technical code***

This clause notes a definition of a technical code is provided by this Act and omits the definition under the *Utilities Act 2000*.

**Clause 2.19 Dictionary, definition of *technical inspector***

This clause notes a definition of a technical inspector is provided by this Act and omits the definition under the *Utilities Act 2000*.

**Clause 2.20 Dictionary, new definition of *technical regulator***

As part 5 of the *Utilities Act 2000* is amended and included in this Act, a definition of the technical regulator is provided by section 77 of this Act.

**Dictionary**

This Dictionary defines terms used in this Bill as provided by clause 3.