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

ELECTRICITY SAFETY LEGISLATION AMENDMENT BILL 2022

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Rebecca Vassarotti MLA
Minister for Sustainable Building and Construction
September 2022**

ELECTRICITY SAFETY LEGISLATION AMENDMENT BILL 2022

The Bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW AND PURPOSE OF THE BILL

The object of the *Electricity Safety Legislation Amendment Bill 2022* (the Bill) is to remove duplication of regulation of electrical wiring work for the current and future stages of the light rail project; and to modernise the regulation of utilities to adapt to new developments in electrical technologies.

In 2016, the Territory Executive anticipated the forthcoming ACT light rail project and made the *Utilities (Technical Regulation) (Light Rail – Regulated Utility Service) Regulation 2016*, which established a mechanism to regulate electrical aspects of the construction of, and provision of service for, the light rail utility network.

Specifically, the service that is regulated is the ‘supply of electricity from a light rail network.’ This allowed the light rail network to be regulated under the existing *Utilities (Technical Regulation) Act 2014* by way of an operating certificate. The operating certificate regime allows for flexibility and innovation in design, staggered construction and commissioning phases and proper oversight during construction.

The construction of stage 1 of the Canberra light rail network during 2018 and 2019 identified aspects of the electrical work to which the *Electricity Safety Act 1971* still applied in addition to requirements under the *Utilities (Technical Regulation) Act 2014*. This duplication was not intended when the *Utilities (Technical Regulation) (Light Rail – Regulated Utility Service) Regulation 2016* was introduced. Additionally, by operation of sections 11, 84 and 85 of the *Construction Occupations (Licensing) Act 2004*, electrical wiring work was required to be undertaken by a licensed electrician.

Regulation of stage 1 of the light rail network confirmed that the electrical work carried out as part of the project was of a unique and large-scale nature that did not

align with the licensing, inspection and verification regime under the *Electricity Safety Act 1971*, which generally applies to commercial and residential construction.

Once the regulatory duplication was identified, the three technical codes under the *Utilities (Technical Regulation) Act 2014* relevant to the light rail network were revised to provide more robust regulatory oversight for electrical components of the light rail network. Independent certification requirements were established throughout the design, construction, testing, commissioning, augmentation and expansion of a light rail utility network by an Independent Electrical Certifier. In addition, the revisions clearly establish a requirement for one (or more) Electrical Supervisors to be appointed who hold an 'unrestricted' electrician licence under the *Construction Occupations (Licensing) Act 2004*. The revised technical codes cover any perceived regulatory gap by establishing clear requirements around the safety of electrical wiring work on electrical installations.

In addition, the utilities sector is changing rapidly through the development of new electrical technologies that were not contemplated when the *Electricity Safety Act 1971* was enacted, such as large-scale battery energy storage systems. The *Utilities (Technical Regulation) Act 2014* is equipped to regulate such projects and additional regulation would impose an unnecessary regulatory hurdle for some projects.

This Bill gives the Minister the discretion to exempt regulated utilities from the operation of the *Electricity Safety Act 1971* where the Minister is reasonably satisfied there is an adequate alternate regulatory framework in place and the exemption will not increase the risk to public safety. The Minister will be able to exempt the light rail utility network upon consideration of the framework of the technical codes and operating certificate conditions under the *Utilities (Technical Regulation) Act 2014*, if satisfied under the proposed section 62B. The Minister will also be able to facilitate innovations by exempting future regulated utilities from the operation of the *Electricity Safety Act 1971* utilising the same provision.

CONSULTATION ON THE PROPOSED APPROACH

In developing the policy for this Bill, the Government consulted with stakeholders including the Electrical Inspectorate (Access Canberra), Major Projects Canberra, Light Rail Operations (TCCS) and the Electrical Trades Union.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

The Bill could potentially engage the right to work (section 27B of the *Human Rights Act 2004*).

Rights Promoted

The Bill gives the Minister the ability to remove the requirement that a person be licensed under the *Electricity Safety Act* if they are appropriately licensed under a separate regulatory framework. This removes the current duplicative regulatory requirements and supports people to work on light rail and other projects without the need to be licensed under the *Electricity Safety Act*. This may indirectly promote the right to work. The right to just and favourable conditions of work, including safe working conditions, is upheld through the establishment of exemption criteria under the *Electricity Safety Act 1971* that requires the Minister be reasonably satisfied that the regulated utility is adequately regulated under an alternate regulatory framework, and that the exemption does not increase the risk to public safety.

Rights Limited

Amendments to the *Construction Occupations (Licensing) Act 2004* may engage and limit the right to be presumed innocent.

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

Sections 84 and 85 make it an offence for a person to provide a service in a construction occupation, or occupation class, and not be licensed in the occupation or class, and for a person to engage someone else, or allow an employee, to provide a construction service for which the worker is not licensed.

Amendments proposed by clauses 5 and 9 intend to create an exception to these offences where an entity provides an electrical wiring service and the entity is, or provides the service for, an exempted regulated utility.

Section 22 of the *Human Rights Act* protects the right to be presumed innocent until proven guilty according to law, when charged with a criminal offence. The Guide for Framing Offences provides that provisions that operate as an exception to an element of an offence have the effect of reversing the onus of proof. Reverse burdens of proof engage and limit the right to be presumed innocent.

2. *Legitimate purpose (s 28(2)(b))*

Creating these exceptions to offences in the *Construction Occupations (Licensing) Act 2004* supports the Ministerial declarations of exempted regulated utilities made under the *Electricity Safety Act*, which have the legitimate purpose of removing the requirement that a person be licensed under the *Electricity Safety Act* if they are appropriately licensed under a separate regulatory framework.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

Exceptions to these offences are necessary for the effective operation of the new licensing exemptions. They will ensure people are not discouraged to participate on the light rail and other large projects, if they aren't licensed under the *Electricity Safety Act*, but nonetheless meet the 'exempt regulated utility' exception to those licensing requirements.

4. *Proportionality (s 28(2)(e))*

Although casting the provision as an exception may engage and limit the right to be presumed innocent, any limitation is reasonable and proportionate as it will provide greater protections from prosecution by excluding people who are captured by the new licensing exemptions. The offence carries a maximum penalty of 50 penalty units which is appropriate to the seriousness of the conduct. The amendments create an evidential, rather than a legal burden and the prosecution retains the burden of proof in all other elements of the offence. Furthermore, the knowledge that the exception engaged is reasonably within the knowledge of the defendant.

Electricity Safety Legislation Amendment Bill 2022

Human Rights Act 2004 – Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Electricity Safety Legislation Amendment Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is /is not** consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Electricity Safety Legislation Amendment Act 2022*.

Clause 2 Commencement

This clause provides that the Act commences on the day after it is notified under the *Legislation Act 2001*.

Clause 3 Legislation amended

This clause provides that the *Electricity Safety Act 1971* and the *Construction Occupations (Licensing) Act 2004* are amended by this Act.

Part 2 Construction Occupations (Licensing) Act 2004

Clause 4 Certain entities not to provide construction services Section 84 (3), new note

This note tells a reader that a defendant wishing to deny criminal responsibility by relying on section 84 (3) or (3A) has an evidential burden in relation to the matter.

Clause 5 New section 84 (3A)

Section 84 (1) of the *Construction Occupation (Licensing) Act 2004* (COLA) creates an offence where a person provides a service in a 'construction occupation' if they are not licensed in that occupation. Construction occupations are defined in section 7 of COLA and include 'electrician'. Electrician is further defined in section 11 of COLA as an entity that provides electrical wiring services.

This clause inserts a new exemption to the offence in section 84 (1). This exemption is limited to an entity that provides an electrical wiring service, and that the entity is an 'exempt regulated utility'. Exempt regulated utility is defined in new section 84 (6)

as a regulated utility that has an exemption issued under new section 62B of the *Electricity Safety Act 1971*.

Clause 6 New section 84 (4), new note

This note tells a reader that a defendant wishing to deny criminal responsibility by relying on section 84 (4) has a legal burden in relation to the matter.

Clause 7 New section 84 (6)

This clause inserts new definitions of ‘exempt regulated utility’ and ‘regulated utility’ for the purposes of section 84.

**Clause 8 Allowing unlicensed people to provide construction service
Section 85 (3), new note**

This note tells a reader that a defendant wishing to deny criminal responsibility by relying on section 85 (3) or (3A) has an evidential burden in relation to the matter.

Clause 9 New section 85 (3A)

Section 85 (1) of COLA creates an offence where a person engages someone else, or allows an employee, to provide a ‘construction service’ for the person if they are not licensed to provide the service. Construction service is defined in section 6 of COLA as the doing or supervision of work in a ‘construction occupation’.

Construction occupations are defined in section 7 of COLA and include ‘electrician’. Electrician is further defined in section 11 of COLA as an entity that provides electrical wiring services.

This clause inserts a new exemption to the offence in section 85 (1). This exemption is limited to the situation where a regulated utility engages someone else, or allows an employee, to provide an electrical wiring service for the regulated utility, and that the regulated utility is an ‘exempt regulated utility’. Exempt regulated utility is defined in new section 85 (5) to have the same definition as the new section 84 (6).

Clause 10 – New section 85 (4), new note

This note tells a reader that a defendant wishing to deny criminal responsibility by relying on section 85 (4) has a legal burden in relation to the matter.

Clause 11 – New section 85 (5)

This clause inserts new definitions of ‘exempt regulated utility’ and ‘regulated utility’ for the purposes of section 85.

Part 3 Electricity Safety Act 1971

Clause 12 New section 62B – Minister may exempt regulated utility

This clause inserts a new section into part 9 of the *Electricity Safety Act 1971*. This clause provides the Minister with a power to exempt by disallowable instrument a regulated utility from the *Electricity Safety Act 1971* if reasonably satisfied that the regulated utility is adequately regulated under another Territory or Commonwealth law; and there is no increase in the risk to public safety.

In addition to the light rail project, the utilities sector is changing rapidly through the development of new electrical technologies that were not contemplated when the *Electricity Safety Act 1971* was enacted, such as large-scale battery energy storage systems. This clause will enable the Minister to determine the applicability of the *Electricity Safety Act 1971* to regulated utilities on a case-by-case basis, giving regard to the limitations of the *Electricity Safety Act 1971* and the potential to provide adequate safety mechanisms within technical codes under the *Utilities (Technical Regulation) Act 2014* and/or the well-established operating certificate framework.

This clause provides flexibility for alternative regulation frameworks to be considered and provides assurance that the Minister will give due consideration to the applicability of the legislation.

Schedule 1 Electricity Safety Act 1971

Technical Amendments

Schedule 1 provides for technical amendments to the *Electricity Safety Act 1971*. These amendments do not change the effect of the provisions they amend but update the language used so the provisions are in line with current drafting practice.