

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

ACTEW (Transfer Scheme) Bill 1998

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1998
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ACTEW (Transfer Scheme) Bill 1998

A BILL

FOR

**An Act relating to the transfer of certain ACTEW
body assets and shares, and for related matters**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

1. Short title

5 This Act may be cited as the *ACTEW (Transfer Scheme) Act 1998*.

2. Commencement

(1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

3. Interpretation

(1) In this Act, unless the contrary intention appears—

“ACTEW” means ACTEW Corporation Limited;

“ACTEW body” means—

- 5 (a) ACTEW; or
- (b) a subsidiary of ACTEW within the meaning of the *Corporations Law*;

“asset” means—

- 10 (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; or
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective;

“contract” includes a deed;

15 “land registration official”, in relation to land, means the Registrar-General under the *Land Titles Act 1925* or the corresponding official of the State or Territory in which the land is situated;

“liability” means any liability, duty or obligation (however created or recorded), whether actual, contingent or prospective;

20 “public asset” means an asset in respect of which a declaration under section 4 is in force;

“receiving employer”, in relation to a transferred employee, means the entity by which the employee becomes employed under section 7;

“Territory owned corporation” has the meaning given by the *Territory Owned Corporations Act 1990*;

25 “transfer time”, in relation to a transferred employee, has the meaning given by section 7;

“transferred employee” means a person whose employment is transferred under section 7.

30 (2) A reference in this Act to a contractual right in relation to a public asset shall be read as including a reference to a right under a lease, franchise or concession in connection with the operation, maintenance and management of a public asset.

35 (3) A reference in this Act to a specified asset, instrument, right, obligation, liability or share shall be read as including a reference to such a thing specified by name, by inclusion in a specified class of such things or in any other way.

PART II—TRANSFER OF ASSETS, LIABILITIES ETC.

4. Public assets

(1) The Minister may, in writing, declare that a specified asset of an ACTEW body is a public asset to be held in public ownership.

5 (2) A public asset may not be transferred under section 5 except to the Territory, a Territory authority, a Territory owned corporation or a subsidiary of such a corporation.

(3) A copy of a declaration under subsection (1) shall be published in the *Gazette* within 21 days after the date of the making of the declaration.

10 (4) For the purposes of this Act, the Minister may, on behalf of an ACTEW body or a person to whom a public asset is transferred under section 5, enter into an agreement with a person about a contractual right in relation to such an asset.

5. Transfer by declaration

15 (1) For the purposes of this Act, the Minister may make a declaration to the effect of any or all of the following matters, namely that:

- (a) a specified asset of an ACTEW body vests in a specified person at a specified time without any conveyance, transfer or assignment;
- 20 (b) a specified right or obligation of an ACTEW body under a specified contract ceases to be a right or obligation of the body at a specified time and becomes a right or obligation, as appropriate, of a specified person at that time;
- (c) a specified liability of an ACTEW body ceases to be a liability of the body at a specified time and becomes a liability of a specified person at that time;
- 25 (d) a specified share in the body vests in a specified person at a specified time without any transfer or assignment.

30 (2) For the purposes of this Part, the Minister may make a declaration, in relation to an asset, right, obligation, liability or share to which a declaration under subsection (1) relates, to the effect of any or all of the following matters, namely that:

- (a) a specified instrument relating to a specified asset continues to have effect after the asset vests in a specified person as if a reference in the instrument to an ACTEW body were a reference to the person;
- 35 (b) a specified person becomes an ACTEW body's successor in law in relation to a specified asset immediately after the asset vests in a specified person;
- (c) a specified contract continues to have effect after a specified time as if a reference in the contract to a specified ACTEW body were a reference to a specified person;
- 40

- 5 (d) a specified instrument relating to a specified contract continues to have effect after the rights and obligations of a specified ACTEW body under the contract become rights and obligations of a specified person, as if a reference in the instrument to the body were a reference to the person;
- (e) a specified person becomes an ACTEW body's successor in law in relation to the body's rights and obligations under a specified contract, immediately after the body's rights and obligations under the contract become rights and obligations of the person.
- 10 (3) If a share in a company vests in a person under this section, the company shall register the person as the holder of the share.
- (4) A declaration under this section—
- (a) shall be in writing; and
- (b) has effect according to its terms.
- 15 (5) A copy of a declaration under this section shall be published in the *Gazette* within 21 days after the date of the making of the declaration.
- (6) In this section—
- “person” includes the Territory, a Territory authority, a Territory owned corporation and a subsidiary of such a corporation.
- 20 **6. Certain assets cease to be fixtures**
- (1) For the purposes of this Act, the Minister may, in writing, declare that at a specified time—
- (a) a specified asset that is affixed to land shall be taken for all purposes to be a separate asset that is a chattel personal and not a
- 25 fixture; and
- (b) the asset vests in ACTEW without any conveyance, transfer or assignment.
- (2) A declaration under subsection (1) has effect according to its terms.
- (3) A copy of a declaration under subsection (1) shall be published in the
- 30 *Gazette* within 21 days after the date of the making of the declaration.

PART III—TRANSFER OF STAFF

7. Transfer by declaration

- (1) This section applies to an employee of an ACTEW body.
- (2) For the purposes of this Act, the Minister may, in writing, declare
- 35 that a specified employee at a specified time (in this Act called the “transfer time”)—

- (a) ceases to be employed by the body; and
- (b) shall be taken to become an employee of—
 - (i) a specified person to whom shares in, or assets of, the body have been, or are to be, transferred at the transfer time;
 - 5 (ii) the Territory, a Territory authority, a Territory owned corporation or a subsidiary of such a corporation; or
 - (iii) a person to whom contractual rights are, or are to be, granted at the transfer time.

(3) A declaration under subsection (2) has effect according to its terms.

- 10 (4) A time specified in an instrument under subsection (2) shall be—
- (a) not later than the time at which the relevant transfer or grant referred to in paragraph (2) (b) occurs; or
 - (b) within 12 months after the time at which that transfer or grant occurs.

- 15 (5) A copy of a declaration under subsection (2) shall be published in the *Gazette* within 21 days after the date of the making of the declaration.

8. Terms and conditions

- 20 (1) A transferred employee shall be taken to have been engaged by the receiving employer on the same terms and conditions that applied to the person, immediately before his or her transfer time, as an employee of the relevant ACTEW body.

(2) The terms and conditions referred to in subsection (1) are those set out in—

- (a) a written contract of employment;
- 25 (b) an award (as defined by section 4 of the *Workplace Relations Act 1996*);
- (c) a certified agreement (as defined by section 4 of the *Workplace Relations Act 1996*);
- 30 (d) an Australian workplace agreement (as defined by section 4 of the *Workplace Relations Act 1996*); or
- (e) a certified agreement that continues to have effect because of the *Workplace Relations and Other Legislation Amendment Act 1996*.

(3) A reference in subsection (2) to an Act by its short title shall be read as a reference to an Act of the Commonwealth so entitled.

35 9. Accrued benefits

A transferred employee shall be taken to have accrued an entitlement to benefits, in connection with his or her employment by the receiving employer, that is equivalent to the entitlement that he or she had accrued, as

an employee of the relevant ACTEW body, immediately before the transfer time.

10. Continuity of service

5 The service of a transferred employee as an employee of the receiving employer shall be taken, for all purposes, to have been continuous with the service of the employee, immediately before his or her transfer time, as an employee of the relevant ACTEW body.

11. Termination payments

10 A transferred employee is not entitled to any payment or other benefit merely because he or she ceased to be an employee of the relevant ACTEW body under section 7.

12. Variation of terms and conditions

15 (1) Nothing in this Part shall be taken to prevent the terms and conditions of a transferred employee's employment after his or her transfer time from being varied—

- (a) in accordance with those terms and conditions; or
- (b) by or under a law, award, determination or agreement.

(2) In this section—

“vary”, in relation to terms and conditions, includes—

- 20
- (a) omitting any of those terms and conditions;
 - (b) adding to those terms and conditions; and
 - (c) substituting new terms or conditions for any of those terms and conditions.

PART IV—MISCELLANEOUS

25 13. Use of corporate information

(1) The Territory, an ACTEW body or an associated person may, in connection with the implementation of this Act, use or disclose information provided by such a body, or a director or manager of such a body, for that purpose.

30 (2) For the avoidance of doubt, such use, disclosure or provision of the information does not result in a contravention of, or give rise to a liability or remedy under, a law of the Territory.

(3) In this section—

“associated person” means any of the following persons:

- 35
- (a) a Minister;

- 5 (b) an individual who holds an office under, or is employed by, the Territory;
- (c) a public employee;
- (d) a person who performs services for or on behalf of the Territory in connection with—
- (i) the implementation of this Act; or
- (ii) the Territory's capacity as a shareholder in an ACTEW body;
- 10 (e) a director or manager of an ACTEW body;
- (f) an officer or employee of an ACTEW body;
- (g) a person who performs services for or on behalf of an ACTEW body in connection with—
- (i) the implementation of this Act; or
- 15 (ii) ACTEW's capacity as a shareholder in a subsidiary of ACTEW.

14. Registration of land transfer

(1) This section applies if—

- (a) any right, title or interest in particular land vests in a person under section 5; and
- 20 (b) there is lodged with a land registration official a certificate that—
- (i) is signed by the Minister;
- (ii) identifies the land; and
- (iii) states that the right, title or interest has become vested in the person under section 5.

25 (2) The land registration official may—

- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
- (b) deal with, and give effect to, the certificate.

- 30 (3) A document purporting to be a certificate under subsection (1), shall, unless the contrary is established, be taken to be such a certificate and to have been duly given.

15. Pending proceedings in court

Where—

- 35 (a) under Part II, a person becomes the successor in law of another person in relation to a thing at a particular time; and

- (b) immediately before that time, proceedings that relate wholly or partially to that thing had been commenced by or against that other person but had not been completed;

the proceedings may be continued, subject to any direction of the court or tribunal, by or against the successor in relation to that thing.

16. Effect of Act on contractual obligations etc.

For the avoidance of doubt, the operation of this Act shall not be taken to—

- (a) place a person in breach of contract or confidence;
- 10 (b) otherwise make a person guilty of a civil wrong;
- (c) place a person in breach of any contractual provision prohibiting, restricting or regulating—
 - (i) the assignment or transfer of any asset, liability, right or obligation; or
 - 15 (ii) the disclosure of any information; or
- (d) release any surety from any of the surety's obligations in relation to a liability or obligation that is transferred under Part II.

17. Compensation

(1) If—

- 20 (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
- (b) the acquisition would be unlawful because of subsection 23 (1) of the Self-Government Act;

25 the Territory is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

(2) In this section—

“acquisition of property” has the same meaning as in subsection 23 (1) of the Self-Government Act;

30 “just terms” has the same meaning as in subsection 23 (1) of the Self-Government Act;

“Self-Government Act” means the *Australian Capital Territory Self-Government Act 1988* of the Commonwealth.

18. Application of certain laws

- 35 (1) A prescribed law does not apply, and shall be taken never to have applied, in relation to any defined activity that occurred before the commencement of this section.

(2) Subsection (1) is not intended to imply anything about—

- (a) the application, in relation to a defined activity, of any law of the Territory (other than a prescribed law); or
- (b) the application of any law of the Territory in relation to an activity other than a defined activity.

(3) A prescribed law does not apply in relation to a building, structure or other facility that—

- (a) was occupied or owned by an ACTEW body immediately before the commencement of this section; and
- (b) was used at any time before the commencement of this section in connection with a defined activity.

(4) Subsection (1) does not apply in relation to a defined activity carried out after the commencement of this section.

(5) Subsection (3) does not apply in relation to a building, structure or other facility the construction of which commenced after the commencement of this section.

(6) In this section—

“defined activity” means an activity carried out—

- (a) by the Territory or an ACTEW body; or
- (b) on behalf of the Territory or an ACTEW body; solely or principally in connection with the provision of water, sewerage services or electricity in the Territory;

“prescribed law” means a law of the Territory that relates to any of the following matters:

- (a) town planning;
- (b) the use of land;
- (c) standards applicable to the design, or manner of construction, of a building, structure or facility;
- (d) approval of the construction, occupancy or use of a building, structure or facility;
- (e) alteration or demolition of a building, structure or facility;
- (f) the protection of the environment;
- (g) dangerous goods;
- (h) licensing in relation to—
 - (i) carrying on a particular kind of business or undertaking; or
 - (ii) conducting a particular kind of activity.

19. Regulations

The Executive may make regulations for the purposes of this Act.

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