

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

UTILITIES BILL 2000

EXPLANATORY MEMORANDUM

Circulated by the authority of

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Treasurer

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INTRODUCTION

The Utilities Bill sets out a robust, ownership-neutral regulatory regime, which applies equally to entities supplying regulated utility services in the ACT and protects and enhances the interests of the ACT community as consumers of utility services.

The regime is based on relevant utilities being required to have operating licences for the specific utility services they provide (e.g. electricity and gas distribution, electricity and gas retail, water supply and sewerage). Licences will contain a range of specific conditions with which utilities must comply. Some of these conditions will be embodied in detailed industry and technical codes to be approved by a regulatory commission and the Minister respectively.

The Bill makes standard customer contracts enforceable subject to minimum terms and conditions and subject to variation by agreement between utilities and customers in accordance with any other applicable laws of the Territory.

The Bill also sets out specific legal rights of utilities, including rights of access to and ownership of, assets, as well as allowing for the Minister to give disallowable directions as to the provision of certain utility services.

The responsibilities of three key bodies are defined by the Bill, namely:

Independent Competition and Regulatory Commission (ICRC)—which acquires the role of licence regulator in addition to existing functions;

Essential Services Consumer Council (ESCC)—which replaces the existing Essential Services Review Committee and functions as the appeal body for consumer complaints of up to \$10,000; and

Chief Executive—as technical regulator.

Provisions of existing legislation in relation to electricity and gas supply, water rates and other matters are dealt with by this Bill and the cognate Utilities (Consequential Provisions) Bill 2000.

PART 1—PRELIMINARY

1. This clause gives the short title of the Act.
2. This clause fixes commencement of the majority of the Act at either (a) a date fixed by the Minister or 6 months after gazettal, whichever is sooner, or (b) such other date as is stated in regulations made within 6 months of gazettal.
These dates will be particularly significant to the operation of Part 16, which links commencement of first codes to the dates other Parts of the Act commence and allows for certain existing instruments to prevail for 6 months after commencement (e.g. ESA standard customer contracts—see s.234).
3. This clause states that for this Act the objects of the ICRC, i.e. Independent Competition and Regulatory Commission (which is established under a separate Act), are a range of measures relating to the provision, protection and promotion of sound, high quality utility services in a properly regulated competitive environment. In addition to requiring ICRC to deal with Government programs and Ministerial directions, it also emphasises the requirement of ICRC to have due regard to ecologically sustainable development and consumers' interests.
4. The purpose of this clause is to incorporate the Dictionary at the end of the Act as part of the Act itself.
5. This clause makes it clear that notes in the Act (of which the clause itself has an example) are for explanation purposes only.

PART 2—UTILITIES

This Part primarily outlines the terminology that underpins the utility structures used in the Act.

Division 2.1—Electricity

6. This clause defines the electricity services that amount to *utility services*—namely: distribution through, and supply of electricity from, an electricity network (defined in the next clause), and electricity connection service (see clause 76).
7. This clause lists all the types of electricity distribution infrastructure within a network's boundaries that go to make up an *electricity network*.

Division 2.2—Natural Gas

8. This clause defines *gas* to mean natural gas to which the Gas Pipelines Access (ACT) Law applies and provides for terms used in various Gas Pipelines Access legislation to have the same meanings for this Act as they do for those, subject to any contrary indication or requirement in this Act.
9. This clause defines transmission, distribution, connection and supply of gas through different types of *gas networks* (described in the next clause) as the four types of gas services that amount to *utility services*.
10. The effect of the definitions in this clause is to clarify how gas gets to a person's home or other premises—namely by pipeline transmission (from gasfields) through the infrastructure of a *gas transmission network* to the pipelines of a *gas distribution network*, the infrastructure of which in turn is used to distribute it ready for supply to the premises. Once the premises are connected to the distribution network, gas can be supplied (see also clauses 78 and 79). The clause also lists all the types of infrastructure within a network's boundaries that go to make up a *gas network*, for example excluding customer piping between the outlet from a customer's meter to the inlet of an appliance.

Division 2.3—Water

11. This clause defines the water services that amount to *utility services*—namely: collection and treatment for, and distribution of water through, a water network (defined in the next clause), connection and supply services (see clauses 80 and 81) and making a water network available for water connection services.
12. This clause lists all the types of water collection, treatment and distribution infrastructure within a network's boundaries that go to make up a *water network*.

Division 2.4—Sewerage

13. This clause defines the sewerage services that amount to *utility services*—in addition to collection, conveyance, treatment and disposal of sewage, and connection services (see clause 82) and making a sewerage network available for sewerage connection services, regulations may prescribe other services.
14. This clause lists all the types of sewerage infrastructure within a network's boundaries that go to make up a *sewerage network*.

Division 2.5—Miscellaneous

15. This clause allows for regulations to prescribe utility services that are ancillary or complimentary to utility services mentioned above, also allowing for the regulations relating to this clause to fix the way any exemptions to under this Act might apply to a person.
(An example of a 'complimentary' service at the time of tabling this Bill is ACTEW's TransACT service.)
16. This clause provides for the way a *network boundary* may be defined in a relevant industry code approved under Part 4 of the Act.
17. This clause defines a *customer* as a person for whom a utility service is provided under a customer contract (see also clauses 89 and 92), as well as a person who has applied for a service in some situations. For electricity, gas and water supply services a further distinction is also made between those who are *non-franchise customers*—either by force of a declaration (see next clause) or because they use more than a certain amount of energy (in the case of electricity 160MWh/premises/year; or gas 1TJ/premises/year), and those who are not, i.e.

franchise customers. (The latter receive utility services from a utility which is 'franchised' to provide the service to them. At the time of introduction of this Bill it is expected this category will include most householders).

18. This clause provides for the Minister to declare that, from the day notice of it is published in the Gazette (or from a date stated in the notice), a person (or class of people) is a non-franchise customer for the Act. A declaration relating to a user of <160 MWh/year of electricity, or 1TJ/year of gas, must state that fact and is disallowable.
19. This clause provides for disallowable written direction by the Minister to ICRC about, and ICRC attention to, results to be achieved through licence conditions (see Part 3) and industry codes (see Part 4).
20. This clause makes it clear that the Act applies in addition to other laws generally, and certain enactments in particular.

PART 3—LICENSING OF UTILITIES

A utility is a person licensed to provide a utility service. This Part describes a scheme for the granting of utility licences by ICRC.

Division 3.1—General

21. This clause makes it clear that a person must not provide a utility service except under a licence, and makes it a separate offence punishable by heavy fine for each successive day of contravention.
22. Under this clause exemption from the operation of the previous clause (subject to any stated conditions) may given by disallowable Ministerial instrument.

Division 3.2—Terms of licences

23. This clause makes it clear that a licence may be for more than 1 utility service.
24. This clause allows for a licence to be of fixed or indefinite duration.
25. This clause makes it clear that a utility's licence is subject to conditions imposed by the Act and conditions stated in the licence by ICRC. Importantly these include compliance with:
 - the Act, defined *related laws* (i.e. the ICRC Act and Regulations as well as Regulations under this Act) and other laws applicable to utility services,
 - industry and technical codes applicable to the utility, and
 - directions by ICRC and the chief executive (see also e.g. clauses 54, 67).Other conditions included by the operation of this clause are the ongoing capacity to comply with licence conditions and operate a viable business, and the requirement to keep certain records and documents and to provide an annual report to ICRC.
26. This clause requires ICRC to adopt technical and prudential criteria for assessing capacity to comply with licence conditions and operate a viable business (as referred to in the previous clause). Variation procedures for the criteria are to be the same as for licences, and in any event ICRC is to make particulars of the criteria available to people who are applying, or want to apply, for a licence.

27. In addition to licence conditions referred to in clause 25, this clause sets out special conditions attaching to electricity, gas and water supply services—namely that supply is only to be to customers of the kind to which the licence relates, and if they are franchise customers then in accordance with standard contracts (or as agreed between the parties).
28. In addition to licence conditions referred to in clause 25, this clause sets out special conditions attaching to electricity distribution and supply—namely that utilities comply with ICRC's determinations under the National Electricity Code.
29. In addition to licence conditions referred to in clause 25, this clause sets out special conditions attaching to gas transmission and distribution—namely that utilities comply with applicable determinations by relevant entities (e.g. in the case of distribution, local Regulators under Gas Pipelines Access laws).
30. In addition to licence conditions referred to in clause 25, this clause sets out special conditions attaching to gas distribution and supply services—namely that utilities comply with ring-fencing requirements under the National Gas Code (which is defined in the clause) when providing services.
31. This clause makes it clear that any rights conferred by licences are subject to the Act and related laws and are not exclusive (unless the licence provides otherwise).
32. This clause defines how the Act, related laws and licences are to be construed in relation to *groups*, which are defined by the clause to be partnerships under the *Partnerships Act 1963*, joint venturers, consortia, syndicates and unincorporated bodies of 2 or more people.

Division 3.3—Licences

33. This clause requires any application to ICRC for grant, transfer or variation of a licence, or exemption from a licence condition, to be made on an appropriate ICRC form and accompanied by any required document, information and fee.
34. This clause allows for ICRC to request further information from an applicant and to await that information before determining the application.
35. This clause *allows* for ICRC to grant licences on application, and *requires* it to do so in certain circumstances. It also *insists* that ICRC has Ministerial

approval before granting licences for the provision of utility services to franchise customers, and *requires* it to give any applicant, on request, written notice and reasons for refusing an application or for a grant subject to ICRC conditions.

36. This clause allows for ICRC to vary licences either on application (in which case any determined fee is to be paid on variation), or of its own initiative. In the latter case ICRC must give the licensee reasonable written notice of the proposed variation and the reasons for it, and allow the licensee reasonable opportunity to make representations about it. Subclause (3) allows exceptions to the provision for notice and representations in certain circumstances and subclause (5) requires ICRC to give an applicant, on request, written notice and reasons for refusing a variation application.
37. This clause allows for ICRC to grant a utility's application for exemption from compliance with any licence condition to the extent and for the period stated in the exemption notice.
38. This clause provides that a licence may only be transferred with ICRC's written agreement, which it may only give if satisfied that the proposed transferee would have been entitled to a licence under clause 35 if it had applied. Again this clause requires ICRC to give an applicant, on request, written notice and reasons for refusing an application.
39. This clause allows for a utility to give ICRC notice that it is surrendering its licence with effect from 90 days after notice is given or earlier if accepted by ICRC.
40. This clause allows for ICRC to revoke a utility's licence in certain circumstances, provided always that it gives the utility reasonable written notice of the proposed revocation and the reasons for it, allows the utility reasonable opportunity to make representations about it and then considers any such representations.

Division 3.4—Annual licence fee

41. This clause requires a licensee to pay ICRC the annual licence fee determined by ICRC under the next clause.

42. This clause allows for ICRC to determine the annual licence fee payable by each utility, based on a range of specific factors set out in subclauses (2) and (3). ICRC must give the utility concerned written notice of: its findings on those factors, the amount of the fee, the manner of its calculation, the reason for the fee (and any instalment), and how and when (with at least 28 days notice) it is to be paid.

Division 3.5—Review and enforcement

43. This clause allows for ICRC to review licence conditions to determine if they are appropriate for meeting ICRC's objects under clause 3. ICRC must publish certain details in relation to a proposed review in a daily newspaper, and must allow any affected utility to examine and make representations on any submissions received as part of the review. ICRC must also consider any submissions and further representations received, and give submission authors and affected utilities a written statement of its expected findings and supporting reasons before finalising them. Once finalised, written statement of those finding and reasons and any action taken by ICRC is to be given to the utility, with notice of the findings again published in the newspaper indicating where a record of the statement can be inspected.
44. This clause makes it clear that a person must not contravene a licence condition without reasonable excuse, and makes it a separate offence punishable by very heavy fine for each successive day of contravention.
45. After reasonable consultation with a utility this clause allows for ICRC to give the utility written direction to rectify any actual or likely contravention of licence condition.
46. This clause allows for ICRC to give a utility written direction to keep accounts and records in relation to the utility's functions if ICRC is satisfied it is necessary or convenient to do so under the ICRC Act. The clause lists examples of various directions that might be given.
47. This clause again makes it clear that a person must not contravene a direction given under the two previous clauses without reasonable excuse, and also makes it a separate offence punishable by heavy fine for each successive day of contravention.

Division 3.6—Miscellaneous

48. This clause requires a utility which holds personal information to apply the information privacy principles set out in the Commonwealth *Privacy Act 1988* to that information. *(Those principles relate to the collection, storage, use and disclosure of personal information.)* However, this clause does not have the further effect of applying the rest of the obligations of the Privacy Act (e.g. in relation to the functions of the Privacy Commissioner) to utilities under this Act.
49. This clause requires ICRC to gazette various actions under the Act, including grant, refusal, variation, transfer (and refusal to transfer), surrender or revocation of a utility licence, as well as exemption from licence conditions and determination of annual licence fees. Gazette notices are to include a statement about access and inspection rights given by the next clause.
50. This clause provides that ICRC must make licences and documents recording the actions also referred to in the previous clause reasonably available for inspection and hard copy or electronic copying by the public on payment of any determined fee. It also makes clear that the provision of the ICRC Act restricting general disclosure of confidential information does not apply to these documents.
51. When ICRC receives an annual report from a utility in accordance with its licence requirements, this clause requires ICRC to give the chief executive the section of the report about compliance with technical codes and the Environment Management Authority the section of the report about protecting the environment (which sections ICRC may direct the utility to prepare separately).

PART 4—INDUSTRY CODES

This Part mainly provides for industry to put forward codes defining practices, standards and other matters relating to the operation of utility services for approval by ICRC.

- 52. This clause gives examples of the sorts of practices, standards and other matters that can be included in industry codes. The clause anticipates that codes may incorporate existing provisions from other areas and may establish requirements for certain matters to be included in customer contracts for utility services.**
- 53. This clause provides that an industry code applies to a utility if it relates to utility services that the utility is licensed to provide, but in any event the code is subject to the operation of the Act, related laws and technical codes (see Part 5).**
- 54. A utility or its representative may submit a code to ICRC for approval under this clause, or ICRC may direct a utility to submit one within a reasonable stated time.**
- 55. This clause provides for ICRC to approve (or refuse to approve) industry codes submitted for approval under the last clause, having first consulted with relevant Ministers and satisfied itself that the code is appropriate, has been publicly consulted on, and is not inconsistent with technical codes. ICRC must give a code proponent notice of a refusal decision and may invite it to develop issues further or submit a further draft within a stated reasonable time. ICRC must give affected utilities written notice of code approval decisions.**
- 56. ICRC may determine industry codes itself under this clause, having first consulted with relevant Ministers and satisfied itself that the code is appropriate and is not inconsistent with technical codes. This might occur, for example, where no appropriate code is submitted for approval under the previous two clauses, or in response to a Ministerial direction to ICRC. ICRC must give affected utilities written notice of codes determined in this way.**
- 57. This clause provides that ICRC must not approve or determine an industry code before giving the public at least 30 days notice in a daily newspaper that the**

code has been prepared and can be inspected and calling for submissions, which it must also then consider.

58. This clause provides for ICRC to approve or determine variations to industry codes under this Part in the same way as it does for new codes, except that the consultation requirements of the previous clause do not apply in various circumstances—namely if all affected utilities agree to the variation, if the variation relates to a Ministerial direction, review of a licence or legislative amendment, or if it does not materially affect the relevant code.
59. This clause requires ICRC to gazette notices of approval, determination and variation of industry codes and provides that the codes commence on the date of gazettal or such other day as is fixed in the notice. It also makes clear that approved, determined and varied codes are disallowable instruments.
60. This clause states that ICRC must make copies of codes and records of their approval, determination and variation reasonably available to the public in hard or electronic copy. It also makes clear that the provision of the ICRC Act restricting general disclosure of confidential information does not apply to these documents.

PART 5—TECHNICAL REGULATION

Technical codes are different from industry codes in that they only relate to performance and protection issues, and they prevail over industry codes to the extent of any inconsistency.

Division 5.1—Technical Codes

61. This clause states that technical codes must only consist of requirements necessary or convenient for specific ends—namely **protection** (of network integrity, personal health and safety, public and private property, and the environment), **performance** (through ensuring proper connection of services, proper design features and compliance with performance requirements for networks and facilities) and **planning** (for emergencies). By way of example the clause indicates that a technical code could deal with accreditation of network connection personnel.
62. The effect of this clause is to deem Part 4 of the Act (e.g. about approval, determination and variation of codes) to apply to technical codes as if they were industry codes, with the following exceptions: it is the Minister who does the approving, determining or varying of technical codes (as well as publishing notices and making copies available) not ICRC, though the Minister must consult with, and have regard to representations of, ICRC and affected utilities.

Division 5.2—Enforcement

63. This clause establishes the chief executive of the department having administrative responsibility for the Act (*i.e. Department of Urban Services at the time this Bill is tabled*) as technical regulator for utility services, with statutory functions given in the clause of monitoring and enforcing compliance with technical codes, advising the Minister on them and reporting at least annually to ICRC about this Part of the Act and the Territory's costs associated with this Part.
64. This clause specifies that it is the chief executive who may specify qualifications to be held by technical inspectors, appoint inspectors and give inspectors directions they are to follow.

65. This clause provides for technical inspectors to be issued with ID cards by the chief executive, which it is an offence for them not to return when they cease to be inspectors.
66. This clause links powers of technical inspectors to inspectors' powers under Part 10.
67. This clause allows for the chief executive to give a utility written direction to rectify any actual or likely contravention of a technical code. The direction must not be given until the chief executive has given the affected utility notice of the proposed direction and the reasons for it, and considered any representations the utility might make within a reasonable time. The chief executive must also gazette the direction and a statement of his or her reasons for it.
68. This clause makes it clear that a person must not contravene a direction under the previous clause without reasonable excuse, and makes it a separate offence punishable by heavy fine for each successive day of contravention.
69. This clause states that if the chief executive is satisfied that a person may be able to provide him or her with information or documents required for this Part of the Act, the chief executive may give them written notice requiring them to do so at a stated time and place. This clause goes on to allow the chief executive to take, copy and keep a document for as long as is needed for this Part, but requires him or her to make the document available for inspection to anyone who would have been entitled to inspect it if the chief executive did not have it.
70. This clause sets the penalty for unreasonable non-compliance with a requirement of the chief executive under the last clause.

Division 5.3—Miscellaneous

71. This clause makes it clear that even the tendency of information or a document required under clause 66 to incriminate a person does not excuse its non-production, but goes on to limit the uses to which the document or information may be put in evidence to proceedings connected with an offence under this Part or in relation to the falsity of the information or the document.

72. However this clause does allow for non-production of information or a document, or refusal to answer a question, on the basis of a claim for legal professional privilege.
73. This clause creates an offence and penalty for unreasonably obstructing the chief executive in the exercise of his or her functions under this Part.

PART 6—ACCESS TO UTILITY SERVICES

This Part deals with contracts and rights relating to the supply of utility services.

Division 6.1—Standard rights

74. This clause makes it clear that rights conferred on people in relation to utility connection and supply services under this Division are only exercisable in accordance with the Division and are subject to the Act and relevant industry and technical codes and any customer contracts applying to the services.
75. This clause provides that application to a utility for a connection or supply service under this Division may be made orally, in writing or by whatever electronic means is acceptable to the utility.
76. This clause makes it clear that, subject to its standard customer contract, an electricity distributor must connect the premises of a person who asks for it to the distributor's network (or vary the capacity of a connection at the premises); and the distributor must allow the connection work (other than network augmentation, relocation or alteration work) to be done by an accredited person if the customer wishes. The clause also makes clear that connection work undertaken by an accredited person does not constitute a utility service.
77. This clause makes it clear that, subject to its standard customer contract, an electricity supplier must supply electricity to premises owned or occupied by a person (other than a non-franchise customer) who asks for it.
78. This clause makes it clear that, subject to its standard customer contract, a gas distributor must connect the premises of a person who asks for it to the distributor's network (or vary the capacity of a connection at the premises).
79. This clause makes it clear that, subject to its standard customer contract, a gas supplier must supply gas to premises owned or occupied by a person who asks for it.
80. This clause makes it clear that, subject to its standard customer contract, a water distributor must connect the premises of a person who asks for it to the distributor's network (or vary the capacity of a connection at the premises); and the distributor must allow the connection work (other than network augmentation, relocation or alteration work) to be done by an accredited person

if the customer wishes. The clause also makes clear that connection work undertaken by an accredited person does not constitute a utility service.

81. This clause makes it clear that, subject to its standard customer contract, a water supplier must supply water to premises owned or occupied by a person (other than a non-franchise customer) who asks for it.
82. This clause makes it clear that, subject to its standard customer contract, a sewerage utility must connect the premises of a person who asks for it to the distributor's network (or vary the capacity of a connection at the premises); and the distributor must allow the connection work (other than network augmentation, relocation or alteration work) to be done by an accredited person if the customer wishes. The clause also makes clear that connection work undertaken by an accredited person does not constitute a utility service.
83. This clause makes it clear that, subject to its standard customer contract, a sewerage utility must provide a sewerage service to the premises of a person who asks for it.

Division 6.2—Standard customer contracts

84. This clause provides for a utility to use a standard customer contract to set the terms on which it provides one or more utility services or classes of service.
85. This clause provides for a utility to submit a draft contract to ICRC for consideration and for ICRC to direct a utility to submit such a draft, a direction the clause requires the utility to comply with in a reasonable time.
86. This clause provides for ICRC to approve or refuse to approve a draft contract submitted to it under the previous clause. *Approval* will only be granted if ICRC is satisfied that: the contract's terms would be fair and reasonable as well as consistent with the utility's licence, the Act, related laws and any relevant technical and industry codes; and that charges under the contract would be consistent with any relevant ICRC price direction. Written notice of *refusal* must give reasons for refusal and may indicate any matters ICRC considers require further attention or even require the utility to submit a further draft contract for consideration within a reasonable stated time.
87. If a utility does not submit a draft contract to ICRC, or does not submit any further or adequate contract as required by ICRC under the previous clause, this

clause provides for ICRC to determine a standard customer contract itself as long as it is fair and reasonable and consistent with the same matters as would have been required of a contract submitted by a utility.

88. This clause requires ICRC to gazette notices of approval, determination or variation of standard customer contracts, and states that the notice must indicate to members of the public that they can get a copy of the relevant contract from the relevant utility, and that the terms of the contracts commence on the date of the notice or as otherwise stated in the notice itself.
89. This clause makes it clear that the enforceable terms on which a utility is taken to provide a utility service to a person are the terms of any contract specifically negotiated between the two parties (see also next Division) or, in the absence of such a contract, the terms of the relevant standard customer contract in force when the person applies for the service or when the utility provides the service. This clause also makes it clear that a standard customer contract can be varied in line with the next clause, but cannot have effect prior to the date of its approval or determination as set by the previous clause or to the extent that it is not consistent with any of the measures set out in subclause 86(2).
90. This clause provides for ICRC to approve or determine a variation to a standard customer contract and has the effect of applying to the variation process all the provisions of this Division about getting the contract itself into operation, as well as allowing for ICRC to determine variations that would not materially alter the terms of the standard customer contract or that are necessary or convenient as a result of legislative amendment.
91. This clause makes clear that, where sewerage services or water are supplied to land under a standard customer contract, the *owner* of the land (i.e. a holder in fee simple, by lease or by the Territory's granted tenancy or other consent) is liable for any amount payable under the contract which has not already been paid by the 'customer' named in the contract. The liability is stated by the clause to be joint and several with any other owners, and the amount payable to include any outstanding amount not paid by previous owners.

Division 6.3—Negotiated customer contract etc.

92. This clause makes any contract, apart from a standard customer contract, negotiated between a utility and a customer unenforceable to the extent that it is not consistent with 'core requirements' set out in regulations, which requirements may for example be linked by the regulations to the utility's standard customer contract or an industry or technical code.
93. This clause makes it clear that no person can enforce an arrangement for provision of a utility service otherwise than under a standard customer contract negotiated contract unless that person is licensed to provide such a service or exempt from the requirement to hold such a licence.

Division 6.4—Passing on supply costs

94. This clause defines an *approved meter* as one which complies with a relevant technical code.
95. This clause makes it clear that if utility A supplies electricity to person B under a customer contract, then it is an offence for B to supply the electricity to the premises of another person C and charge C for the *supply* unless:
- (1) the electricity supplied by B is measured by an approved meter, and
 - (2) the rate of charge is not higher than the maximum that could apply under a utility's standard customer contract if it supplied the same amount of electricity to C's premises directly, and
 - (3) B imposes no other charge on C for the supply (i.e. not the usage); or
 - (4) B is either licensed or exempted from the requirement for a licence to provide that service.

Also B may not impose any separate charge on C for *use* of such supplied electricity unless:

- (5) (if regulations require it) C's usage is measured by an approved meter, and
 - (6) the rate of charge is not higher than the maximum A could apply under a standard customer contract for supplying the electricity used, and
 - (7) B imposes no other charge on C for the usage.
96. This clause makes it clear that if utility A supplies gas to person B under a customer contract, then it is an offence for B to supply the gas to the premises of another person C and charge C for the *supply* unless:

- (1) the gas supplied by B is measured by an approved meter, and
- (2) the rate of charge is not higher than the maximum that could apply under a utility's standard customer contract if it supplied the same amount of gas to C's premises directly, and
- (3) B imposes no other charge on C for the supply (i.e. not the usage); or
- (4) B is either licensed or exempted from the requirement for a licence to provide that service.

Also B may not impose any separate charge on C for *use* of such supplied gas unless:

- (5) (if regulations require it) C's usage is measured by an approved meter, and
- (6) the rate of charge is not higher than the maximum A could apply under a standard customer contract for supplying the gas used, and
- (7) B imposes no other charge on C for the usage.

97. This clause makes it clear that if utility A supplies water to person B under a customer contract, then it is an offence for B to supply the water to the premises of another person C and charge C for the *supply* unless:

- (1) the water supplied by B is measured by an approved meter, and
- (2) the rate of charge is not higher than the maximum that could apply under a utility's standard customer contract if it supplied the same amount of water to C's premises directly (or if C's premises are unmetered, then the charge is not higher than the maximum that could apply under a standard customer contract for unmetered water at or near C's premises), and
- (3) B imposes no other charge on C for the supply (i.e. not the usage); or
- (4) B is either licensed or exempted from the requirement for a licence to provide that service.

Also B may not impose any separate charge on C for *use* of such supplied water unless:

- (5) (if regulations require it) C's usage is measured by an approved meter, and
- (6) the rate of charge is not higher than the maximum A could apply under a standard customer contract for supplying the water used, and
- (7) B imposes no other charge on C for the usage.

Division 6.5—Miscellaneous

98. This clause allows for a utility, in line with the relevant industry code, to impose a ***capital contribution charge*** on a customer, which it describes as a charge for either developing or augmenting the utility network in order to make utility services available to land not already connected to the network or varying the capacity of existing connections.
99. This clause defines ***alternative energy services*** and states that, just because a person uses or supplies them, neither electricity nor gas suppliers may refuse supply (i.e. of electricity or gas) to the person or supply on less advantageous terms than the person could get under a standard customer contract.

PART 7—NETWORK OPERATIONS

This Part deals with installation and work on network facilities and the role of authorised persons in relation to them.

Division 7.1—General

100. This clause defines *installation of a network facility* to include construction, extension and attachment (and anything ancillary or incidental to them) of the facility—see subclause 102(2) for many examples of this; and *network operations* as appropriate work carried out by or for a utility under this Part.

Division 7.2—General powers

101. This clause makes it clear that a utility may compulsorily acquire land or an interest in it for the purposes of its functions under the Act if it does so in accordance with the *Lands Acquisition Act 1994*.
102. In connection with provision of a utility service, this clause allows for a utility to enter and occupy land, and lists a very wide range of activities that it is permissible for the utility to perform as part of necessary or desirable installation work. This clause also makes it clear that those activities must not be of permanent nature unless either the utility owns an appropriate interest in the relevant land or the landowner agrees. Furthermore, if the activity involves diverting or stopping traffic on a road or bridge, the clause provides that the utility must ensure that inconvenience and disruption to others is kept to a minimum.
103. In connection with maintenance of a network facility (e.g. ranging from inspection to alteration, repair, replacement and augmentation to removal), this clause allows for a utility to enter and occupy land, and imports from the previous clause the very wide range of activities that it is permissible for the utility to perform as part of necessary or desirable maintenance work.
104. This clause makes it clear that installation, maintenance and other network operations under this Part may only be performed on National Land with Commonwealth approval.

Division 7.3—Performance of network operations

105. This clause makes it clear that a utility must ensure that as little inconvenience, detriment or damage as reasonably practicable is caused in carrying out its network operations.
106. This clause sets out the notice requirements for network operations on public or private land—namely that the utility must give the relevant land-holder 7 days written notice of the work (or such other notice period as appears in a relevant industry code), stating the purpose, nature, proposed place and period of the work, and indicating the utility's obligation to restore the land on completion and the power of the Essential Services Consumer Council (ESCC) to make compensation payment directions. This clause also makes it clear that the land-holder may waive any part of the notice period, and that no notice at all is required for urgent work to protect the integrity of a network or network facility, personal health or safety, public or private property or the environment.
107. If proposed network operations involve felling, lopping, root-trimming, clearing or removal of vegetation on private land, this clause requires 7 days written notice to the relevant land-holder unless the land-holder waives the notice period or the work is urgently needed to protect the integrity of a network or network facility, personal health or safety, public or private property or the environment. The notice referred to must indicate which activity and which plant are concerned, and may require the land-holder themselves to carry out the work as long as the notice also indicates that if the land-holder does not do so then the utility may do the work and charge the land-holder for its reasonable costs. No charge may be made if the plant concerned was growing on the land prior to the installation of the network facility.
108. This clause sets out the notice requirements for network operations which affect or are likely to affect a public utility's facilities (e.g. including those of a telecommunications or stormwater utility)—namely that the relevant utility is to be given 7 days written notice of the work, stating the purpose, nature and period of the work, and indicating the facility affected. The utilities involved must make reasonable efforts to reach and comply with an agreement as to how the work is to be done. This clause also makes it clear that the utility may waive

its right to notice, and that no notice at all is required for urgent work to protect the integrity of a network or network facility, personal health or safety, public or private property or the environment.

109. Subject to any contrary agreement between a utility and a land-holder, this clause makes it clear that, after carrying out network operations on the land-holder's land, the utility is to remove everything the utility put on the land to do the work (except the network facility itself) and any spoil, waste, rubbish or cleared vegetation involved.
110. In addition to other requirements in this Part to minimise disruption and remove working materials, this clause requires a utility that has worked on another land-holder's land, subject to contrary agreement with the land-holder, to take all reasonably practicable steps to restore the land to its pre-work condition when it has finished (unless to do so would interfere with a network or network facility or be a breach of Territory law).

Division 7.4—Authorised persons

111. This clause allows for a utility to appoint *authorised persons*, who are to act in accordance with the terms of their written appointment or at the direction of the utility.
112. This clause provides for authorised persons to be issued with ID cards by the utility, which it is an offence for them not to return when they cease to be authorised.
113. For the reasonable and necessary purposes of network operations which a utility is entitled to perform under the previous Division, this clause provides that an authorised person may enter, remain and work on premises with such assistance and materials as required, but the person is not entitled to remain on the premises if he or she does not produce an ID card when asked to do so by a person in charge of the premises.
114. By the operation of this clause an authorised person is entitled at any reasonable time and with appropriate assistance to enter and remain on premises (to which a utility does or will provide a utility service) for various purposes associated with inspection of meters or connection of the premises to the utility's network, but again the person is not entitled to remain on the premises if he or she does

not produce an ID card when asked to do so by a person in charge of the premises.

115. This clause creates an offence and penalty for unreasonably obstructing an authorised person in the exercise of his or her functions under this Part.

Division 7.5—Miscellaneous

116. Whereas previous clauses in this part have allowed for an authorised person to use required assistance, this clause is applicable if that assistance amounts to involving the police. The clause provides for an authorised person, who is obstructed or likely to be obstructed from performing his or her proper functions at premises, to apply to the Magistrate Court for an order for police assistance. The 'obstructor' is to be given notice of the application and may appear and be heard on it.
117. This clause makes it clear that ownership of a network facility does not accrue to a person just because it is on the person's land. Furthermore the network facility may not be taken in execution of a judgment debt against anyone apart from the utility.

PART 8—PROTECTION OF NETWORKS

This Part deals with interference with, and contamination of, networks.

Division 8.1—General

118. This clause defines *interference* with a network or network facility to include interference with their safe or efficient operation or inhibiting or obstructing lawful access to them.

Division 8.2—General interference

119. This clause makes it an offence punishable by fine and/or imprisonment for a person to interfere with a network or network facility, an offence capable of being made out if it can be proven that there were reasonable grounds for believing an action was likely to cause interference, regardless of the intention of the person concerned.

120. This clause provides for a utility, which is satisfied that a structure or activity interferes with a network or network facility (or is likely to do so), to give a relevant land-holder 14 days written notice to stop (or remove the likelihood of) the interference, the notice stating the nature of the interference, the steps the land-holder is to take and the consequences of non-compliance. The clause states that the consequence is that the utility may do the work and charge the land-holder for its reasonable costs, though no charge may be made in relation to a structure or activity on the land from prior to the installation of the network or facility, and indeed if the utility's actions in relation to such a structure or activity cause another person to suffer loss or damage then it is the utility which may owe the debt. The clause also states that no notice need be given if the utility stopping or removing the likelihood of the interference at its own expense is urgently needed in the defined *urgent circumstances* of protecting the integrity of a network or network facility, personal health or safety, public or private property or the environment.

Division 8.3—Contamination of water or sewerage networks

121. This clause makes it an offence punishable by fine and/or imprisonment for a person to contaminate water in a water network, an offence capable of being made out if it can be proven that there were reasonable grounds for believing an action was likely to cause interference, regardless of the intention of the person concerned, but for which it is a defence for a person to show that the alleged act was done with the authority of the responsible utility.
122. This clause makes it an offence also punishable by fine and/or imprisonment for a person to introduce (or allow introduction of) any substance to a water or sewerage network that is likely to interfere with a network or network facility (or form compounds likely to do so), the offence being capable of being made out if it can be proven that there were reasonable grounds for believing an action was likely to cause interference, regardless of the intention of the person concerned, but for which it is a defence for a person to show that the alleged act was done with the authority of the responsible utility.
123. By the operation of this clause, the previous two clauses do not apply to a utility which adds to a water network either fluoride @ $\leq 1\text{mg/L}$ (or @ $\leq 1.2\text{mg/L}$ if $\leq 1\text{mg/L}$ when averaged over 24 hours), or another non-injurious, clarifying, purifying or treating chemical.

Division 8.4—Miscellaneous

124. This clause makes it an offence punishable by fine and/or imprisonment for a person other than the responsible utility or an accredited person to connect premises to a network.
125. This clause makes it an offence punishable by fine and/or imprisonment for a person to take or use electricity from an electricity network otherwise than with the authority of the responsible utility or under a customer contract.
126. This clause makes it an offence punishable by fine and/or imprisonment for a person to take or use gas from a gas network otherwise than with the authority of the responsible utility or under a customer contract.
127. This clause makes it an offence punishable by fine and/or imprisonment for a person to take or use water from a water network otherwise than with the authority of the responsible utility or under a customer contract.

128. This clause makes clear that, for the previous 3 clauses, a *customer meter* is one which measures supply to a customer's premises and a *network* includes any infrastructure which might exist between the network boundary and the customer meter.

PART 9—CONTROLLER'S POWER TO TAKE OVER OPERATIONS

This Part establishes a procedure for action where provision of utility services is threatened.

Division 9.1—General

129. This clause makes clear that *utility* in this Part is extended to include a former utility.
130. If licence breach threatens the provision of a utility's services to customers and other remedies are inadequate to ensure licence compliance, this clause allows for the Minister, after consulting with ICRC, to appoint a **controller** for all or part of the operations of a utility. The clause goes on to make clear that the controller holds office for the period stated in the instrument of appointment, which is also to set out the controller's functions, and that the Minister can revoke an appointment by further instrument.
131. This clause cites taking control of relevant operations or activities of a utility, access to network facilities or a utility's premises, and the giving of written directions for specific action as examples of the necessary and convenient things a controller has the power to do under the clause to ensure ongoing utility services in relation to his or her functions.
132. This clause requires responsible utilities to facilitate a controller's actions and makes clear that a utility following a controller's directions is not in breach of the law.
133. This clause requires the controller to give the Minister requested information.
134. This clause allows for the Minister to give the controller written directions about his or her functions, which the controller must facilitate.
135. This clause creates an offence and penalty for unreasonably contravening a direction of the controller in the exercise of his or her functions under this Part.
136. This clause creates an offence and penalty for unreasonably obstructing the controller in the performance of his or her functions under this Part.
137. This clause gives immunity from personal liability to a present or past controller for his or her acts done, or omissions made, in good faith under this Act, but it

does not affect any liability the Territory would otherwise have for its part in relation to such acts or omissions.

Division 9.2—Compensation

138. This clause provides for reasonable compensation to be paid to a person who suffers loss as a result of any act or omission of a controller, but not where the loss-causing event would have occurred despite the controller's actions or to the extent that the person contributes to the loss or recovers separately for the loss under an insurance policy.
139. This clause sets out the mechanism for claiming compensation under the previous clause—namely by written claim to the chief executive setting out the particulars of the loss and the amount and grounds for the claim.
140. This clause sets out the mechanism for the Minister to deal with a claim for compensation under the previous clause—namely by written notice either rejecting or offering to accept it, respectively stating reasons for refusal or the amount and basis of calculation of the offer.
141. This clause allows for a person to accept or reject a compensation offer made under the previous clause.
142. This clause requires the Territory to pay a person the amount of any offer of compensation accepted by the person under this Division.
143. This clause allows for a court of competent jurisdiction to determine an appropriate amount of compensation in relation to a person's claim if the person applies to the court after failing to agree an amount with the Territory.
144. This clause makes clear that if compensation is payable to a person because of the act or omission of a controller appointed because of a utility's licence breach, then the amount of the compensation becomes a debt due to the Territory by the utility.

PART 10—ENFORCEMENT

This Part describes the powers of inspectors in relation to enforcement of ICRC's functions concerning utility services.

Division 10.1—General

145. For this Part this clause defines *occupier* as a person reasonably believed to be, or apparently, in charge of premises.
146. In relation to offences in this Part, this clause makes clear that an *offence* includes reasonable grounds for a belief about a past, present or future commission of an offence; and that a thing is *connected with an offence* if it was, is being or is intended to be, used for the commission of the offence, or as evidence of it, as well as being a thing in respect of which the offence was committed.

Division 10.2—ICRC inspectors

147. This clause allows for ICRC to appoint *ICRC inspectors*, who are to act in accordance with the terms of their written appointment or at the direction of ICRC.
148. This clause requires ICRC to issue inspectors with ID cards, which it is an offence for them not to return when they cease to be inspectors.
149. This clause allows for an inspector to enter any premises with the consent of the occupier (and to enter land around premises to ask for consent), and otherwise: where the premises are occupied by a utility, to enter at any time the premises are being used; where a utility service is or will be provided at the premises, to enter any part of the premises that is not a residence at any reasonable time; or under a warrant.
150. This clause makes clear that an inspector is not entitled to remain on premises if he or she does not produce an ID card when asked to do so by the occupier of the premises.
151. This clause sets out the procedure to be followed by an inspector when obtaining consent to enter premises and the consequences of those procedures. The *procedure* is that the inspector must produce his or her ID card, tell the

occupier the purpose of entry, explain that entry may be refused and that anything found may be seized and used in a court as evidence, ask the occupier to sign to confirm those steps were taken, and then give the occupier a copy of the signed confirmation indicating the time and date that consent was given.

The *consequence* is that a presumption of non-consent will be made if the issue arises in court proceedings and no confirmation document or proof of consent can be produced.

152. This clause allows for a magistrate to issue a detailed warrant to enter premises to an inspector who makes a suitably detailed written application and provides the magistrate with any required information. The magistrate is only to issue the warrant if satisfied that there are reasonable grounds for suspecting a thing or activity, which may provide evidence of an offence under this Act or a related law, is on, or is likely within 14 days to be on, the relevant premises.
153. Whereas the previous clause relates to warrants issued by a magistrate on seeing an original written application, this clause sets out the procedure for a warrant to be issued in urgent or special circumstances on application by phone, fax, radio or otherwise. The clause still requires the inspector to prepare an application document, but it allows for him or her to apply to the magistrate before the document is sworn. It also requires the magistrate to fax a copy of the warrant to the inspector once granted, or at least to tell the inspector the precise terms of the warrant, which the inspector must record on a warrant form. The form can be used when executing the warrant and the inspector must send it to the court with the original application as soon as practicable for the court to attach to the original warrant. Subclause 9 states that a presumption of action without warrant will be made if the issue arises in court proceedings and no actual warrant is produced in evidence.
154. This clause lists the activities an inspector may perform on premises entered under this Division and allows for the inspector to seek help from the occupier of the premises (or any person on them), which help it is an offence for the person to withhold without reasonable excuse.
155. In addition to the activities mentioned in the previous clause, this clause describes procedures for seizure of things at premises in various situations—it allows for an inspector on premises: *with a warrant*, to seize the evidence for

which the warrant was issued; *without a warrant* but with the occupier's consent, to seize something connected with an offence against this Act or a related law if seizure is consistent with the reason given by the inspector for the entry; *in any case*, to seize something else connected with an offence against this Act or a related law if seizure is necessary to prevent the thing being hidden, lost, destroyed, used or reused for the commission of an offence. The clause also makes clear that after seizing something, the inspector may either remove it from the premises or cause it to be kept safe on the premises, in the latter case making it an offence for a person to tamper with the thing without ICRC's approval.

156. This clause requires an inspector to give an occupier a receipt for anything seized at the occupier's premises, or else to leave a receipt there in a safe and obvious place.
157. In relation to anything seized, this clause requires an inspector to make the thing available for inspection to anyone who would have been entitled to inspect it if it had not been seized (and if it is document, to allow copying).
158. This clause provides for return, forfeit or compensation in relation to any seized thing—namely by providing that the thing must be returned, or just compensation paid for it by ICRC, if no prosecution is launched for an offence connected with thing within 90 days of seizure, or if no such offence is proven on prosecution, or if the offence is proven and the court does not order forfeiture. However the clause also provides that a thing can be forfeited to a court if the court finds the offence proven and orders forfeiture.

Division 10.3—Technical inspectors

159. This clause links the powers of inspectors under the previous Division to those of technical inspectors under part 5 subject to the following changes: technical inspectors can only exercise the powers in relation to offences concerning breach of technical codes or chief executive's directions or requirements for production.

Division 10.4—Authorised persons for utility

160. For the purposes of Part 8 this clause equates authorised persons for utilities with ICRC inspectors under Division 10.2 and applies that Division as if it referred to authorised persons not inspectors and to offences against Part 8. By operation of this clause, seizure and compensation provisions in Division 10.2 also apply to this Division.

Division 10.5—Miscellaneous

161. This clause makes it clear that even the tendency of information or a document required under this Part to incriminate a person does not excuse its non-production, but goes on to limit the uses to which the document or information may be put in evidence to proceedings connected with an offence under this Part or in relation to the falsity of the information or the document.
162. However this clause does allow for non-production of information or a document, or refusal to answer a question, on the basis of a claim for legal professional privilege.
163. This clause creates an offence and penalty for unreasonably obstructing an ICRC inspector, a technical inspector or an authorised person in the exercise of a function under this Part.

PART 11—ESSENTIAL SERVICES CONSUMER COUNCIL

This Part establishes ESCC as a body to hear complaints about any utility service (and non-service issues such as access to premises by utilities).

Division 11.1—Establishment and functions

164. This clause establishes ESCC.
165. This clause sets out the functions of ESCC.
166. This clause makes clear that a utility must give a customer 7 days written notice before bringing certain debt recovery proceedings or other proceedings against the customer for which the customer would have had a right to make a complaint to ESCC. Under this clause the notice must set out the customer's complaint rights and the effect of the proposed consequential amendment to s.12B of the *Magistrates Court (Civil Jurisdiction) Act 1982*, which removes the jurisdiction of the court to the extent that it is the subject of an ESCC complaint, direction or declaration.
167. This clause requires the ESCC, when it holds information about a person (including personal, competition or commercially sensitive information), to keep the information confidential, and has the effect of applying the same provisions to ESCC about disclosure of information as apply to ICRC under sections 44-48 of the ICRC Act.
168. This clause sets out the requirement on ESCC to include certain complaints and system issues in its annual reports under ACT law.

Division 11.2—Constitution

169. This clause makes clear that ESCC will comprise 3 or more members, including a chairperson and deputy chairperson, and that its ability to function is not compromised by a membership vacancy.
170. This clause limits ESCC members' office-holding to the period and terms stated in their appointments (or reappointments), provided that the period of appointment of the chairperson shall not exceed 5 years, and of the other members—2 years.

171. This clause allows for an ESCC member to resign by giving signed notice to the Minister.
172. This clause allows for the Minister to terminate appointment of an ESCC member for misbehaviour or incapacity.
173. This clause requires the chief executive to establish the position of registrar of ESCC as a public service position.
174. This clause allows for ESCC to agree with the chief executive that public servants may assist ESCC subject to ESCC applying public sector law in managing those staff.
175. This clause gives immunity from personal liability to a present or past ESCC member (or a public servant acting under the previous clause) for his or her acts done, or omissions made, in good faith under this Act, but it does not affect any liability the Territory would otherwise have for its part in relation to such acts or omissions.

Division 11.3—Organisation of Council

176. This clause provides for the chairperson of ESCC (or deputy chairperson if necessary) to organise the business of ESCC, including to give directions as to who is to form and preside over the council to hear a particular complaint.
177. This clause provides for the chairperson or a person with a direction under the previous clause to exercise ESCC's powers in relation to a particular complaint, provided that if participating members have divided opinions about the complaint, the matter is to be resolved in line with the opinion of the majority of members or, if that is not feasible, in line with the opinion of the presiding member.
178. This clause describes what happens when one member of a multi-member council ceases to be available to deal with a particular complaint—namely by allowing for the parties to the complaint to agree for the remaining members to finalise the complaint or for the chairperson to reconstitute the council. In either case the 'new' council may have regard to anything done or received as evidence by the 'old' one.

PART 12—COMPLAINTS

This Part deals with the complaints that may be brought to ESCC and the way ESCC can deal with them.

Division 12.1—General

179. This clause defines the *parties* to a complaint as the *complainant* consumer or other aggrieved person and the *respondent* utility. It also defines *customer debt* as the amount owed by a customer to a utility for utility services provided to the customer by the utility, and *withdrawal* as the reduction or termination of a utility service by a utility.

180. This clause makes clear that the types of complainant who can come to ESCC under this Part, and the types of complaint they can bring, are:

<i>Complainant</i>	<i>Complaint about</i>
Consumer	<ul style="list-style-type: none">• utility's breach of a customer contract;• substantial hardship resulting from failure or withdrawal of a utility service by a utility;
any person (other than a utility)	<ul style="list-style-type: none">• breach by a utility of a privacy requirement under clause 48;• breach by a utility of a network operations obligation;• an act or omission of an authorised person in relation to network operations;• a capital contribution charge (se clause 98).

181. This clause allows for a complainant to make a complaint in any form that is acceptable to ESCC, including by way of application for relief, but also requires the complainant to make such further information about the complaint available to ESCC as requested.

182. This clause allows for ESCC, having received a complaint, to check with a relevant respondent utility whether this Part and the complaint-resolution mechanisms in the next Division apply.

183. This clause allows for a complainant to withdraw a complaint by written notice to ESCC.

184. This clause lists a range of circumstances in which ESCC may dismiss a complaint, provided that it gives written notice and reasons for the dismissal to each party.

Division 12.2—Consideration of complaints

185. This clause requires ESCC to give a utility written notice of each complaint it is going to consider and the utility, in turn, then to make its records about the issue available to ESCC.

186. Subject to the other provisions of this Part and any consistent regulations, this clause allows for ESCC to consider complaints as quickly and informally as is reasonable (and not necessarily subject to the rules of evidence) in order to examine the issues thoroughly and to allow each party to present its case; and for this purpose requires a respondent utility to facilitate the process.

187. This clause allows for ESCC to give parties interim directions as to the preservation of the position or rights of a party pending final determination of a complaint, including by directing a utility to maintain or reinstate utility services that have been cut off solely due to non-payment of a customer debt.

188. This clause allows for ESCC to let a person participate by telephone or other remote means in its consideration of a complaint.

189. This clause provides for ESCC to hold hearings about complaints, which ESCC may arrange as it sees fit, including by making directions as to who may be included or excluded at the hearing.

190. This clause allows for a person to appear at a hearing in person or by a representative.

191. This clause allows for evidence at a hearing to be given under oath or affirmation.

192. This clause makes it an offence for a person to refuse to take an oath or affirmation at a hearing when required by ESCC to do so.

193. If ESCC is satisfied that a person has information or documents relevant to a complaint, this clause allows ESCC to give the person written notice to produce it or to appear before ESCC at a stated time and place. The clause goes on to allow ESCC to receive, copy and retain any document produced accordingly as

long as it makes the document available for inspection to anyone who would have been entitled to inspect it if ESCC did not have it.

194. This clause makes unreasonable refusal to comply with a production direction under the previous clause an offence punishable by a fine and/or imprisonment.
195. This clause allows for ESCC to require a person appearing before it to answer questions or produce documents relevant to a complaint and makes unreasonable refusal to comply an offence also punishable by a fine and/or imprisonment.
196. This clause makes it clear that even the tendency of information or a document required under this Division to incriminate a person does not excuse its non-production, but goes on to limit the uses to which the document or information may be put in evidence to proceedings connected with an offence under this Part or in relation to the falsity of the information or the document.
197. However this clause does allow for non-production of information or a document, or refusal to answer a question, on the basis of a claim for legal professional privilege.
198. This clause allows for ESCC, by written direction in the Gazette or given to particular affected people, to restrict or prohibit publication of evidence, documentary information or other information that may enable a witness to be identified.
199. This clause makes unreasonable failure to comply with a publication direction under the previous clause an offence punishable by a fine and/or imprisonment.
200. This clause allows for the chairperson to agree that ESCC refer a question of law in a proceeding to the Supreme Court for decision, and goes on to require that, having done so, ESCC must not (a) give a final direction or declaration on the complaint until it has the Court's decision and (b) proceed in a way that is inconsistent with the Court's decision once it has it.

Division 12.3—Determination of a complaint

201. If ESCC upholds a complaint of a type referred to in clause 180 (other than about a capital contribution charge), this clause provides that it may give a remedial direction to a utility or make another direction or declaration under this

Division. A utility is required by the clause to comply with any direction given to it.

202. In the case of a complaint about withdrawal or possible withdrawal by a utility of a utility service for non-payment of a customer debt, this clause allows for ESCC to direct the utility (subject to time restriction or other stated conditions) not to withdraw the service, or promptly to reinstate it as the case may be.
203. In the case of a complaint by a residential consumer about payment of a customer debt causing substantial hardship, this clause allows for ESCC to direct that the payment be waived in whole or in part, subject to any stated payment conditions. The clause makes clear that the maximum amount of a debt ESCC can discharge by this means is \$10,000 or such other amount as is fixed by regulation.
204. This clause allows for ESCC to make a compensation direction (but not by way of punitive damages) for loss or damage suffered by a person as a result of: a utility's or an authorised person's withdrawal of, or failure to provide, a utility service; or their breach of a customer contract, privacy requirement, network operations obligation. Such a direction may be in amount up to \$10,000 or other sum fixed by regulation, but must take into account any extent to which the person contributed to their loss or damage, or obstructed or interfered with the utility's functions.
205. This clause requires ESCC to give relevant parties notices of directions or declarations made under this Division. A notice of a direction to pay an amount under the previous clause must refer to the effect of the proposed consequential amendment to s.380A of the *Magistrates Court (Civil Jurisdiction) Act 1982*, which makes such directions, when certified by the ESCC registrar and filed at the court, equivalent to judgments of the Small Claims Court for the purposes of enforcement.
206. This clause allows for parties to a complaint to write down agreed terms of a direction or declaration for resolving the complaint, and for ESCC to make the direction or declaration in those terms if satisfied that it is permissible to do so under this Division.

Division 12.4—Miscellaneous

207. This clause requires ESCC to keep a record of its decisions.
208. This clause allows for ESCC to correct clerical or accidental errors in its decisions.
209. This clause gives lawyers or other representatives for parties to ESCC proceedings the same protections and immunities as barristers in Supreme Court proceedings enjoy, and makes witnesses before ESCC equivalent to witnesses before the Supreme Court in terms of their benefits and liabilities.
210. This clause creates an offence and penalty for disrupting ESCC proceedings or obstructing ESCC in the performance of its functions.
211. This clause makes it an offence for a person, when producing information or a document to ESCC, or answering ESCC questions, to be intentional or reckless in giving false or misleading material.
212. This clause makes it an offence for a person, when producing information or a document to ESCC, or answering ESCC questions, to produce knowingly false or misleading material, unless at the time of doing so the person also produces a statement about the person's knowledge of the extent to which the material is false or misleading.
213. This clause makes clear that if ESCC discharges a debt under clause 203, the amount of the discharge becomes a debt owed to the utility by the Territory.

PART 13—COMMUNITY SERVICE OBLIGATIONS

This Part relates to the way utilities are to provide utility services in line with Government programs on matters such as community, social or environmental issues.

214. This clause makes clear that the purposes of this Part are to oblige utilities, either by agreement or by direction and with appropriate recompense, to provide utility services in line with Government programs on matters such as community, social or environmental issues.
215. This clause makes clear that a Minister must not give a direction about community service obligations under the next clause unless satisfied that all reasonable attempts to try to agree on a utility's obligations and the costs associated with them have failed.
216. This clause allows for a Minister responsible for a Government program to give a utility written direction (with an estimate of the likely costs involved) on how the utility is to provide services in line with the program, including by providing the services free of charge or at reduced cost or with a rebate to people or classes of people.
217. This clause states that the likely costs (as mentioned in the previous clause) involved in complying with a direction under this Part, are the costs that a utility could save if it did not provide an existing utility service as directed, or the cost that would be incurred in providing a new service.
218. This clause makes clear that a direction under this Part has no effect unless the Treasurer has given written confirmation that the Territory can meet the costs it would have to pay to the utility for complying with the direction. The clause also states that those costs may either be as stated in the direction or as resolved by ICRC arbitration under this Part, and that once so fixed they become a debt due to the utility by the Territory.
219. This clause requires a utility to comply with a direction given to it under this Part.
220. This clause allows for either a utility or the Territory to refer a dispute about the costs of complying with a direction under this Part to ICRC for arbitration. For

the purposes of the arbitration the clause has the effect of applying certain provisions of the ICRC Act.

PART 14—VICARIOUS LIABILITY

This Part provides for matters such as the way liability and the state of mind of people who are companies are to be gauged for the purposes of the Act.

221. This clause makes clear that the term *proceeding under this Act* includes an action under the Act or the regulations and a proceeding connected with an offence against the Act.
222. For proceedings under this Act this clause links the *state of mind* of a corporation to the intention, opinion, belief or purpose of a director (or in the case of a statutory public corporate entity—a constituent member), employee or agent of the corporation, who is engaged in relevant conduct in the scope of his or her actual or apparent authority.
223. For proceedings under this Act (but not for an offence related to providing a utility service without a utility licence under clause 21), this clause links the *state of mind* of a person other than a corporation to the intention, opinion, belief or purpose of an employee or agent of the person, who is engaged in relevant conduct in the scope of his or her actual or apparent authority.

PART 15—MISCELLANEOUS

224. By way of disallowable instrument, this clause allows for ICRC to gazette determination of fees payable to ICRC (but not annual licence fees—which are dealt with under Division 4, Part 3).
225. This clause makes clear that a certificate signed by a Minister stating that a matter is, or is part of, a Government program is evidence of that fact. (*This is of particular significance to community service obligations under Part 13.*)
226. This clause explains the application of the repealed *Water Rates Act 1959* (WRA) even after this Act has started—in relation to services which would be governed by a standard customer contract under this Act, WRA continues to apply until such a contract takes effect; in relation to amounts payable under WRA at the time this Act starts, WRA continues to apply; and in relation to amounts payable for services to which a standard customer contract under this Act would apply, WRA continues to apply to all amounts which become payable until such a contract takes effect.
- The clause also make comparable provision for the continued operation of the repealed *Sewerage Rates Act 1968* (SRA) in relation to services and amounts payable under SRA even after this Act has started.
227. This clause makes clear that if, apart from the operation of this clause and Division 9.2, this Act operates to achieve an acquisition of property from a person on unjust terms which would be unlawful according to the ACT Self-Government Act, the person may agree on compensation with the acquirer or may apply to a court of competent jurisdiction for compensation.
228. This clause allows for the Executive to make regulations under the Act, provided that any offence provisions in them do not carry a penalty of more than 10 penalty units.

PART 16—REPEAL AND TRANSITIONAL

Division 16.1—First codes

229. This clause allows for the Minister to determine industry codes after the Act has been gazetted but before the commencement of Part 4, which otherwise deals with industry codes. First codes are taken to be like codes determined under Part 4 of the Act. The clause anticipates that codes may incorporate existing provisions from other areas and may establish requirements for certain matters to be included in customer contracts for utility services.

The clause also requires the Minister to provide copies of determined codes to ICRC and affected utilities and then applies clause 60 to those codes—i.e. ICRC must make copies of codes and records of their approval, determination and variation reasonably available to the public in hard or electronic copy.

The clause further requires the Minister to gazette notice of determination of codes, which are disallowable instruments, and provides that they must commence within 1 year of the date Part 4 of this Act commences.

230. This clause allows for the Minister to determine technical codes after the Act has been gazetted but before the commencement of Part 5, which otherwise deals with technical codes. First codes are taken to be like codes determined under Part 5 of the Act. The clause anticipates that codes may incorporate existing provisions from other areas and may establish requirements for certain matters to be included in customer contracts for utility services.

The clause also requires the Minister to provide copies of determined codes to ICRC and affected utilities and then applies clause 60 to those codes—i.e. ICRC must make copies of codes and records of their approval, determination and variation reasonably available to the public in hard or electronic copy.

The clause further requires the Minister to gazette notice of determination of codes, which are disallowable instruments, and provides that they must commence within 1 year of the date Part 5 of this Act commences.

Division 16.2—Electricity Supply Acts, repeals and savings

In this Division ESA means the *Electricity Supply Act 1997*.

231. This clause makes clear that for this Division the term *commencement day* means the date this Division commences.
232. This clause details enactments repealed by this Act.
233. This clause has the effect of continuing the operation of certain licences under ESA and related legislation (and subject to those Acts, as if they had not been repealed by this Act) for 6 months after the commencement of this Division.
234. This clause deals with standard (i.e. not 'negotiated') customer contracts under ESA by providing for them to remain in force for up to 6 months after this Division commences or, if an ESA distributor or supplier submits a customer contract to ICRC under this Act for approval within that period, until such time as ICRC approves the submitted contracts or determines others that will apply to that distributor's or supplier's services.
235. This clause makes clear that this Division expires 1 year after it commences.
(*This clause links the anticipated commencement of standard customer contracts with subclauses 229(10) and 230 (10) which anticipate that industry and technical codes will also be functioning under this Act within 12 months of Parts 4 and 5 commencing.*)

Division 16.3—Gas Supply Act, repeals and savings

In this Division GSA means the *Gas Supply Act 1998*.

236. This clause makes clear that for this Division the term *commencement day* means the date this Division commences.
237. This clause repeals GSA.
238. This clause explains what is to happen to existing authorisations and pending authorisation applications under GSA when this Act starts—namely by providing that *authorisations* continue to operate for 6 months under that Act as if it had not been repealed by this Act, and *applications* are deemed to be corresponding utility service licence applications under clause 33.
239. This clause makes clear that a notice, that has been issued but not yet effected under GSA and that requires connection of premises to a gas distribution pipeline, is to be deemed an application for a gas connection service under this

Act. Likewise such a pending GSA notice concerning supply of gas to premises, is to be deemed an application for that service under this Act.

240. This clause makes clear that this Division expires 1 year after it commences.

Division 16.4—Miscellaneous

241. This clause makes clear that for this Division the term *commencement day* means the date this Division commences.

242. This clause details enactments repealed by this Act.

243. This clause explains what is to happen to existing negotiated arrangements and approved agreements about payment for water supply and sewerage services under the *Energy and Water Act 1988* when this Act starts—namely by providing that the provisions of that Act continue to apply to them as if it had not been repealed and by deeming the daily consumption of water to be equal for the purposes of calculating liability for water rates for a rating year. The clause also continues to apply certain provisions of that Act in relation to emergencies until such time as a technical code for emergency planning for utility services takes effect under this Act.

244. This clause explains what is to happen to existing directions and declarations of, and applications pending before, the essential Services Review Committee under the *Essential Services (Continuity of Supply) Act 1992* when this Act starts—namely by providing that they are respectively deemed to be declarations and directions of, and complaints before, ESCC under this Act.

245. This clause explains that the Executive may make regulations for transitional and savings measures that are additional to, or modifications of, measures covered by this Part, including by way of specifying whether a stated person is to do a stated thing for the purposes of a repealed enactment.

246. This clause makes clear that this Division expires 1 year after it commences.

DICTIONARY

The Dictionary forms part of the Act by virtue of the operation of clause 4. It contains three different type of definition, namely:

- signpost definitions, which refer to the clause in the Act where the term is to be found and explained—e.g. ‘authorised person’, ‘controller’, ‘gas network’;
- definitions by reference to other enactments—e.g. ‘ICRC’, ‘personal information’; and
- the following detailed definitions of terms used in the Act:

term	defined to mean
<i>consumer</i>	a customer for a utility service or an occupier of premises at which the service is provided to the customer, or their respective invitees
<i>customer contract</i>	a standard or a negotiated customer contract (see Divisions 2 and 3 of Part 6)
<i>daily newspaper</i>	one circulating generally in the ACT on a daily basis (<i>e.g. for the purposes of advertising notices</i>)
<i>data processing device</i>	something like a computer disk from which a person will be able to reproduce a document such as a copy of a code
<i>electricity distributor</i>	a utility licensed to provide electricity through an electricity network, or to provide an electricity connection service to premises
<i>electricity supplier</i>	a utility licensed to supply electricity to premises
<i>gas distributor</i>	a utility licensed to provide gas through a gas network, or to provide a gas connection service to premises
<i>gas supplier</i>	a utility licensed to supply gas to premises
<i>land-holder</i>	an owner or occupier of land, the ACT (for unleased Territory land) and the Commonwealth (for National Land)

<i>network</i>	electricity, gas, sewerage or water networks
<i>network facility</i>	any part of the infrastructure of a network
<i>occupier</i>	one or more people with lawful possession or control of premises
<i>owner</i>	one or more people who own premises or lease them from the Commonwealth for more than 5 years, or who are unit proprietors under the <i>Unit Titles Act 1970</i>
<i>related law</i>	laws related to this Act, namely regulations under this Act or ICRC Act or Regulations
<i>sewerage service</i>	conveyance, collection, treatment and disposal of sewage from premises
<i>sewerage utility</i>	a utility licensed to provide a sewerage service or sewerage connection service
<i>water distributor</i>	a utility licensed to distribute water, or to collect and/or treat it for distribution, through a water network; and to provide a water connection service
<i>water supplier</i>	a utility licensed to supply water to premises