



Australian Capital Territory

Electricity and Water Act 1988

A1988-30

Republication No 1 (RI)

Effective: 4 June 1992 – 26 August 1993

Republication date of printed version: 4 June 1992
Reissued electronically: 13 February 2006

Last amendment made by A1992-21
(republication for initial republication
since self-government)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Electricity and Water Act 1988* effective from 4 June 1992 to 26 August 1993.

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Australian Capital Territory

ELECTRICITY AND WATER ACT 1988

As at 15 July 1992

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
- 3A. Position of Crown

**PART II—ESTABLISHMENT, FUNCTIONS AND
POWERS OF AUTHORITY**

4. Establishment
5. Functions
6. Powers
8. Limitations on formation of, and investment in, companies
9. Limitations on formation of partnerships
10. Limitations in participation in joint ventures
12. Delegation by Authority
13. Committees

PART III—CONSTITUTION OF AUTHORITY

14. Constitution
15. Tenure of office
16. Appointed members—remuneration and allowances
17. Acting appointments
18. Acting members—resignation
19. Leave of absence

TABLE OF PROVISIONS—continued

Section	
20.	Appointed members—resignation
21.	Termination of appointment
22.	Disclosure of interest
23.	Meetings
	PART IV—CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS
24.	Chief Executive Officer
25.	Tenure of office
26.	Chief Executive Officer—remuneration and allowances
27.	Leave of absence
28.	Resignation
29.	Chief Executive Officer—termination of appointment
30.	Acting Chief Executive Officer
31.	Employment of other staff
32.	Consultants
	PART IVA—PERSONNEL MANAGEMENT
32A.	Interpretation
32B.	Employment practices
	PART V—OPERATION OF AUTHORITY
33.	Corporate plan
34.	Corporate plan etc. to Minister
35.	Financial targets and performance indicators
36.	Minister may vary financial plan
37.	Directions to Authority
38.	Reimbursement of cost of complying with directions
	PART VI—FINANCE
39.	Capital of Authority
40.	Interest—payments to Commonwealth
41.	Dividends—payments to Commonwealth
42.	Borrowing
43.	Borrowing otherwise than from Commonwealth
44.	Security
45.	Borrowings not otherwise permitted
46.	Application of money of Authority
47.	Audit Act to apply
47A.	Financial reporting and audit
	PART VII—DETERMINATIONS OF AUTHORITY
48.	Charges for supply of electricity, water and sewerage services

TABLE OF PROVISIONS—continued

Section	
49.	Disallowance of determinations
50.	Payments of charges etc.
51.	Terms and conditions—variation
	PART VIII—POWERS OF ENTRY AND DECLARATIONS OF EMERGENCIES
	<i>Division 1—Interpretation</i>
52.	Interpretation
	<i>Division 2—Powers of entry and inspection</i>
53.	Authorised persons
54.	Identity cards
55.	Entry to premises
56.	Powers of authorised persons
58.	Interruption to services
59.	Obstruction of authorised officers
	<i>Division 3—Emergency provisions</i>
60.	Interpretation
62.	Declaration of emergencies
63.	Powers of Authority during emergency
64.	Expiration of directions
65.	Offences
66.	Authorised persons—emergency powers
67.	Consent to entry
68.	Search warrants
69.	Emergency plans
70.	Contents of emergency plan
71.	Commencement of emergency plans and notices
72.	Emergency plan—tabling requirements
73.	Emergency plan—disallowance or commencement
74.	Amendment or revocation of emergency plan
	PART VIIIA—CHEMICAL TREATMENT OF WATER SUPPLY
74A.	Interpretation
74B.	Prohibition on adding certain chemicals
74C.	Restriction on powers of Authority
74D.	Exempt treatments
	PART IX—MISCELLANEOUS
75.	Offences by body corporate
76.	Interference with apparatus etc.

TABLE OF PROVISIONS—continued

Section

- 77. Recovery of charges
- 78. Refund and remission of charges
- 78A. Refund and remission of charges—notification
- 78B. Refund and remission of charges—review
- 79. Evidentiary certificates
- 79A. Annual report
- 80. Power of Minister to determine fees
- 81. Fees payable to Authority
- 82. Regulations

PART X—TRANSITIONAL

- 83. Interpretation
- 84. Transfer of assets, liabilities etc.
- 85. Employees of Authority
- 86. Determinations in relation to electricity, water or sewerage services
- 87. Contracts, agreements and arrangements
- 88. References in instruments
- 89. Authority deemed to have done certain things
- 90. Legal proceedings
- 91. Registration of changes to title to land etc.



Australian Capital Territory

ELECTRICITY AND WATER ACT 1988

An Act to establish an Electricity and Water Authority for the Australian Capital Territory and for related purposes

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Electricity and Water Act 1988*.¹

Commencement

2. This Act shall come into operation on 1 July 1988.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
 - “appoint” includes re-appoint;
 - “appointed member” means a member of the Authority other than the Chief Executive Officer;
 - “authorised person” means a person appointed under section 53;
 - “Authority” means the Australian Capital Territory Electricity and Water Authority;
 - “basic water allowance” means the basic water allowance determined under subsection 48 (1A);
 - “Chairperson” means the Chairperson of the Authority;

“Chief Executive Officer” means the person holding office under section 24;

“Commonwealth land” means land the property of the Commonwealth not comprised in a lease granted to a person;

“Deputy Chairperson” means the Deputy Chairperson of the Authority;

“electrical installation” means the wires, cables, fittings, appliances, meters, insulators, switchboards, outlet sockets and apparatus in, on, under or over any premises for the transmission to, and use on, the premises of electricity supplied by the Authority, but does not include—

- (a) appliances, fittings or apparatus capable of being connected to an outlet socket—
 - (i) at which fixed wiring terminates; and
 - (ii) that are or is installed for the purposes of connecting appliances, fittings or apparatus operated by electricity; or
- (b) cables and other things required for connecting the appliances, fittings or apparatus to an electrical outlet socket;

“Government Law Office” means the unit of the Public Service designated by that title;

“joint venture” means an undertaking carried on by 2 or more persons in common otherwise than as partners;

“member” means a member of the Authority;

“premises” includes land;

“securities” includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents;

“sewerage services” means the sewerage system provided by, or under the authority or control of, the Authority;

“share” means a share in the share capital of a corporation and includes stocks;

“staff”, in relation to the Authority, means persons appointed or engaged under section 31.

(2) For the purposes of this Act—

- (a) the Chairperson may be referred to as the Chairman or Chairwoman, as the case requires;
- (b) the Deputy Chairperson may be referred to as the Deputy Chairman or Deputy Chairwoman, as the case requires;
- (c) the acting Chairperson may be referred to as the acting Chairman or acting Chairwoman, as the case requires; and
- (d) the acting Deputy Chairperson may be referred to as the acting Deputy Chairman or acting Deputy Chairwoman, as the case requires.

(3) The question whether a company is a subsidiary of the Authority shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the *Companies Act 1981* of the Commonwealth.

(4) A reference in this Act to dealing with securities includes a reference to—

- (a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities;
- (b) creating, selling, purchasing, or re-selling rights or options in respect of securities; and
- (c) entering into agreements or other arrangements relating to securities.

Position of Crown

3A. The following provisions bind the Crown, namely, sections 50 and 51, Parts VIII and VIIIA and sections 75, 76 and 77.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF AUTHORITY

Establishment

4. (1) There is established by this Act an authority by the name of the Australian Capital Territory Electricity and Water Authority.

(2) The Authority—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a common seal; and

(c) may sue and be sued in its corporate name.

(3) The common seal of the Authority shall be kept in such custody as the Authority directs and shall not be used except as authorised by the Authority.

(4) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

Functions

5. The functions of the Authority are—

- (a) to supply electricity and water;
- (b) to promote and manage the use of electricity and water;
- (c) to collect and treat sewage and otherwise to provide and manage sewerage services;
- (d) to produce sewage treatment by-products; and
- (e) to do such other things in relation to electricity or water or the provision of sewerage services as are conferred on the Authority by or under this Act or any other law of the Territory.

Powers

6. (1) The Authority has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions and, in particular, may—

- (a) acquire, hold and dispose of real and personal property;
- (b) purchase and sell electricity or water;
- (c) generate and transmit electricity;
- (d) reticulate electricity or water;
- (e) participate in the assessment, management and development of water resources;
- (f) collect, carry, contain and treat water;
- (g) collect, contain, treat and dispose of sewage;
- (h) develop policies and strategies relating to electricity or water usage and the provision of sewerage services;

- (i) provide for the treatment and purification of water supplied or to be supplied by the Authority;
- (j) provide consultative services;
- (k) supply electricity or water for use, or provide sewerage services, in a place outside the Territory that is the subject of an agreement to which the Authority is a party;
- (l) provide for the inspection and approval of work done in relation to the treatment and purification of water and the collection and treatment of sewage;
- (m) enter into agreements with the Territory or the Commonwealth for the provision of electricity, water or sewerage services;
- (n) supply, install, maintain or repair electrical equipment (including equipment required or used to generate, transmit or reticulate electricity)—
 - (i) required or used by the Commonwealth, the Authority or a body established by a law of the Commonwealth or the Territory; or
 - (ii) as otherwise approved by the Minister;
- (o) supply, install, maintain or repair equipment, required or used by the Commonwealth, the Authority or a body established by a law of the Commonwealth or the Territory, or as otherwise approved by the Minister, which is required or used—
 - (i) to collect, carry, contain, treat, or reticulate water; or
 - (ii) to collect, carry, contain, treat, or dispose of, sewage or to produce sewage treatment by-products;
- (p) participate in the setting and enforcement of standards relating to—
 - (i) water extraction;
 - (ii) the protection of water catchment;
 - (iii) the treatment and disposal of sewage; and
 - (iv) the production of sewage treatment by-products;
- (q) participate in the setting and enforcement of standards relating to electrical installations used or available for use in the Territory in the generation, reticulation or consumption of electricity;

- (r) research, evaluate and participate in research activities with respect to matters arising out of or incidental to its functions;
- (s) develop, sell, license and collect royalties on technology, software and other intellectual works;
- (t) determine the conditions upon or subject to which any electricity or water will be supplied or sewerage services will be provided by the Authority;
- (u) hire out plant, equipment or labour of the Authority that is not immediately needed for use by the Authority;
- (v) form, and participate in the formation of, companies;
- (w) enter into partnerships;
- (x) participate in joint ventures;
- (y) enter into contracts;
- (z) occupy, use and control any land or building owned or held by the Commonwealth and made available for the use of the Authority;
- (aa) make charges for work done, and services rendered, by the Authority;
- (ab) appoint agents and attorneys and act as an agent for other persons; and
- (ac) do anything incidental to any of its powers.

(2) The Minister and the Authority may enter into arrangements with respect to any matter arising under, or as a result of, the *Canberra Water Supply (Googong Dam) Act 1974* of the Commonwealth or the agreements referred to in that Act, being a matter relating to the supply of water for use in the Territory, and such an arrangement may authorise the Authority to act as agent of the Minister in respect of any such matter.

(3) Except as provided in Division 2 of Part VIII, nothing in this Act shall be taken to authorise the Authority to do anything, or cause anything to be done—

- (a) on Territory Land otherwise than with the consent of the Territory or that of a body established under a law of the Territory having control of that land;
- (b) on National Land otherwise than with the consent of the Commonwealth or that of a body established under a law of the Commonwealth having control of that land; or

- (c) on land other than Territory Land or National Land otherwise than in pursuance of rights conferred on the Authority by agreement or by a law in force in the Territory.

Limitations on formation of, and investment in, companies

8. (1) The Authority shall not, without the written approval of the Minister—

- (a) subscribe for, or purchase, shares in, or debentures or other securities of, a company; or
- (b) form, or participate in the formation of, a company that would, upon its formation, be a subsidiary of the Authority.

(2) An approval under subsection (1)—

- (a) shall not be given until after the Minister has consulted the Minister administering the *Audit Act 1989*;
- (b) may relate to a particular company or proposed company; and
- (c) may be given subject to specified conditions or restrictions.

(4) Where the Authority holds a controlling interest in a company, the Authority shall endeavour to ensure that the audit arrangements for the company are acceptable to the auditors of the Authority and that the company does not do anything that the Authority is not itself empowered to do.

(5) Without limiting the generality of subsection (4), the Authority shall endeavour to ensure that a company in which it holds a controlling interest does not—

- (a) borrow money otherwise than from the Territory or the Commonwealth; or
- (b) raise money otherwise than by borrowing;

except on terms and conditions that are specified in, or consistent with, the written approval of the Minister administering the *Audit Act 1989*.

(6) Subsection (5) applies to a borrowing or raising of money whether the money is borrowed or raised by dealing in securities or otherwise, and whether or not the money is borrowed or raised, in whole or in part, in a currency other than Australian currency.

(7) For the purposes of subsection (5), the issue by a company of an instrument acknowledging a debt in consideration of the payment or deposit of

money or of the provision of credit shall, to the extent of the amount of that money or of that credit, as the case may be, be deemed to be a borrowing by that company.

Limitations on formation of partnerships

9. (1) The Authority shall not, without the written approval of the Minister, enter into partnership with another person.

(2) An approval under subsection (1)—

- (a) may relate to a particular person or proposed partnership; and
- (b) may be given subject to specified conditions or restrictions.

(4) Where the authority is able to control the acts and things done by the partnership of which it is a member, the Authority shall endeavour to ensure that the audit arrangements for the partnership are acceptable to the auditors of the Authority and that the partnership does not do anything that the Authority is not itself empowered to do.

Limitations in participation in joint ventures

10. (1) The Authority shall not, without the written approval of the Minister, participate in a joint venture.

(2) An approval under subsection (1)—

- (a) may relate to a particular proposed joint venture; and
- (b) may be given subject to specified conditions or restrictions.

(4) Where the Authority is able to control the acts and things done by a joint venture of which it is a participant, the Authority shall endeavour to ensure that the audit arrangements for the joint venture are acceptable to the auditors of the Authority and that the joint venture does not do anything that the Authority is not itself empowered to do.

Delegation by Authority

12. (1) The Authority may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to—

- (a) the Chief Executive Officer;
- (b) an appointed member; or
- (c) a member of the staff of the Authority;

any of its powers under this Act or any other law of the Territory, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Authority.

(3) A delegation under this section does not prevent the exercise of a power by the Authority.

Committees

13. (1) The Authority may appoint such committees as it thinks fit to assist it in performing any of its functions.

(2) A committee shall—

- (a) furnish advice to the Authority with respect to such matters relating to the functions of the Authority as the Authority refers to the committee; or
- (b) assist the Authority in the performance of such of its functions as the Authority requires.

PART III—CONSTITUTION OF AUTHORITY

Constitution

14. (1) The Authority shall consist of—

- (a) a Chief Executive Officer; and
- (b) 6 other members.

(2) The Minister shall appoint a member to be Chairperson and another member to be Deputy Chairperson.

(3) The members referred to in paragraph (1) (b) shall be appointed by the Minister as part-time members with effect from such day as the Minister specifies in the instrument of appointment of the members.

(4) Appointed members hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined in writing by the Minister.

(5) The appointment of a member is not invalidated, and shall not be called in question, by reason of a defect or irregularity in or in connection with the appointment of the member.

(6) The performance of the functions and the exercise of the powers of the Authority are not affected by reason only of there being a vacancy or vacancies in the membership of the Authority.

Tenure of office

15. (1) Subject to this Part, an appointed member holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed as a member referred to in paragraph 14 (1) (b) and a person shall not be appointed as a member referred to in that paragraph for a period that extends beyond the date on which the person will attain the age of 65 years.

Appointed members—remuneration and allowances

16. (1) An appointed member shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply in relation to—

- (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to an appointed member; or
- (b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to an appointed member.

(3) In subsection (2), “determination” means a determination of the Remuneration Tribunal.

Acting appointments

17. (1) The Minister may appoint a person to act as Chairperson or Deputy Chairperson, as the case requires—

- (a) during a vacancy in the office of the Chairperson or Deputy Chairperson, as the case may be, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when the Chairperson or Deputy Chairperson, as the case may be, is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of his or her office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

- (2)** The Minister may appoint a person to act as an appointed member—
- (a) during a vacancy in the office of an appointed member, whether or not an appointment has previously been made to that office; or
 - (b) during any period, or during all periods, when an appointed member is acting as Chairperson or Deputy Chairperson, is absent from the Territory, or is, for any other reason, unable to perform the duties of his or her office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(3) An appointment of a person under subsection (1) or (2) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(4) Where a person is acting as Chairperson, Deputy Chairperson or an appointed member otherwise than by reason of a vacancy in the office of Chairperson, Deputy Chairperson or the appointed member, as the case may be, and the office in which the person is acting becomes vacant while that person is so acting, then, subject to subsection (3), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever occurs first.

- (5)** The Minister may—
- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as the Chairperson, the Deputy Chairperson or an appointed member; and
 - (b) terminate such an appointment at any time.

(6) While a person is acting as Chairperson, Deputy Chairperson or an appointed member, the person has and may exercise all the powers, and shall perform all the functions, of the Chairperson, Deputy Chairperson or the appointed member, as the case requires.

(7) Anything done by or in relation to the person purporting to act as Chairperson, Deputy Chairperson or appointed member is not invalid because—

- (a) the occasion for the appointment had not arisen;
- (b) there is a defect or irregularity in or in connection with the appointment;

- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Acting members—resignation

18. A person appointed to act as Chairperson, Deputy Chairperson or an appointed member may resign office by writing signed by the person and delivered to the Minister.

Leave of absence

19. (1) The Minister may grant leave of absence to the Chairperson on such terms and conditions (including remuneration and allowances) as the Minister determines.

(2) The Chairperson may grant leave of absence to an appointed member from a meeting of the Authority.

Appointed members—resignation

20. An appointed member may resign office by writing signed by him or her and delivered to the Minister.

Termination of appointment

21. (1) The Minister may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.

(2) If an appointed member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) is absent from duty, except on leave granted by the Chairperson, for 3 consecutive meetings of the Authority;
- (c) fails, without reasonable excuse, to comply with his or her obligations under section 22; or
- (d) is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer;

the Minister shall terminate his or her appointment.

Disclosure of interest

22. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Authority shall as soon as practicable after the relevant facts have come to the member's knowledge disclose the nature of the interest at a meeting of the Authority.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Authority and the member shall not, unless the Minister or the Authority otherwise determines—

- (a) be present during any deliberation of the Authority with respect to that matter; or
- (b) take part in any decision of the Authority with respect to that matter.

(3) For the purposes of making a determination by the Authority under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Authority for the purpose of making the determination; or
- (b) take part in the making by the Authority of the determination.

(4) A member shall not be taken to have a direct or indirect pecuniary interest when the Authority makes or considers a determination for charges for or in connection with the supply of electricity or water or the provision of sewerage services by reason only that the member is liable to pay a charge under this Act.

Meetings

23. (1) The Authority shall hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chairperson—

- (a) may, at any time, convene a meeting of the Authority; and
- (b) shall, on receipt of a written request signed by not less than 2 other members, convene a meeting of the Authority.

(3) The Minister may, at any time, convene a meeting of the Authority.

(4) The Chairperson shall preside at all meetings of the Authority at which he or she is present.

(5) Where the Chairperson is not present at a meeting of the Authority the Deputy Chairperson shall preside at the meeting.

(6) At a meeting of the Authority, 4 members constitute a quorum.

(7) Questions arising at a meeting of the Authority shall be determined by a majority of the votes of the members present and voting.

(8) The person presiding at a meeting of the Authority has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

PART IV—CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS

Chief Executive Officer

24. (1) The Minister shall appoint a person to be the Chief Executive Officer of the Authority.

(2) The Chief Executive Officer shall, subject to and in accordance with the general directions of the Authority, manage the affairs of the Authority.

Tenure of office

25. (1) The Chief Executive Officer holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed as Chief Executive Officer and a person shall not be appointed as Chief Executive Officer for a period that extends beyond the date on which the person will attain the age of 65 years.

(3) The Chief Executive Officer holds office on such terms and conditions in respect of matters not provided for by this Act as are determined by the Authority with the approval of the Minister.

(4) Except for the first appointment, in making an appointment under subsection (1) the Minister shall have regard to the views of the Authority.

Chief Executive Officer—remuneration and allowances

26. (1) The Chief Executive Officer shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply in relation to—

- (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the Chief Executive Officer; or
- (b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to the Chief Executive Officer.

(3) In subsection (2), “determination” means a determination of the Remuneration Tribunal.

Leave of absence

27. The Minister may grant leave of absence to the Chief Executive Officer on such terms and conditions (including remuneration and allowances) as the Authority determines.

Resignation

28. The Chief Executive Officer may resign office by writing signed by him or her and delivered to the Minister.

Chief Executive Officer—termination of appointment

29. (1) The Minister may terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity.

(2) If the Chief Executive Officer—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) engages in paid employment outside the duties of his or her office without the approval of the Authority;
- (c) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months;
- (d) fails, without reasonable excuse, to comply with his or her obligations under section 22; or
- (e) is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer;

the Minister shall terminate his or her appointment.

Acting Chief Executive Officer

30. (1) The Minister may appoint a person to act as Chief Executive Officer—

- (a) during a vacancy in the office of the Chief Executive Officer, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of Chief Executive Officer;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Minister may terminate an appointment under subsection (1) at any time.

(3) While a person is acting as Chief Executive Officer the person has and may exercise all the powers and shall perform all the functions of the Chief Executive Officer.

(4) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid because—

- (a) the occasion for the appointment had not arisen;
- (b) there is a defect or irregularity in or in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Employment of other staff

31. (1) The Authority may appoint such officers or engage such employees as the Authority considers necessary for the purposes of this Act.

(2) The terms and conditions of employment of persons appointed or engaged under subsection (1) are such as are determined in writing by the Authority.

(3) The Chief Executive Officer may, on behalf of the Authority, arrange with the administrative head, the Secretary of a Department of the Australian Public Service or another person—

- (a) for the services of a public servant, an officer or employee employed in that Department or an officer or employee of that other person, as

the case may be, to be made available for the purposes of the Authority; or

- (b) for the services of an employee of the Authority to be made available for the purposes of the Territory, that Department or that other person, as the case may be.

Consultants

32. (1) The Authority may engage persons having suitable qualifications and experience as consultants to the Authority.

(2) The terms and conditions of engagement of persons engaged under subsection (1) are as determined in writing by the Authority.

PART IVA—PERSONNEL MANAGEMENT

Interpretation

32A. (1) In this Part, unless the contrary intention appears—

“advancement” means movement within the Authority resulting in an employee undertaking work, and being remunerated, at a higher level than previously;

“designated group” means any of the following classes of persons:

- (a) members of the Aboriginal race of Australia or persons who are descendants of indigenous inhabitants of the Torres Strait Islands;
- (b) persons who have migrated to Australia and whose first language is a language other than English, and the children of such persons;
- (c) persons with physical or mental disabilities;
- (d) any other class of persons declared by the regulations to be a designated group for the purposes of this definition;

“employment matters”, in relation to the Authority, means—

- (a) the selection of persons for appointment as officers in, or for engagement as employees in relation to, the Authority;
- (b) the promotion and transfer of officers to offices in the Authority;

- (c) the selection of employees by the Authority for transfer and advancement;
- (d) training and staff development for officers and employees in the Authority;
- (e) conditions of service of officers and employees in the Authority; and
- (f) any other matter related to the employment of officers and employees in the Authority;

“equal employment opportunity program”, in relation to the Authority, means a program designed to ensure that—

- (a) appropriate action is taken to eliminate unjustified discrimination against women and persons in designated groups in relation to employment matters in the Authority; and
- (b) measures are taken to enable women and persons in designated groups to—
 - (i) compete, if they are officers, for promotion and transfer in the Authority;
 - (ii) compete, if they are employees, for transfer and advancement in the Authority; and
 - (iii) pursue careers in the Authority;
 as effectively as other persons;

“relevant staff organisation”, in relation to an office, or to employment in a particular capacity, in the Authority, means an organisation—

- (a) that is an organisation within the meaning of the *Industrial Relations Act 1988* of the Commonwealth;
- (b) for membership of which the person holding that office or employed in that capacity would be eligible; and
- (c) that is a party to an industrial award that applies in relation to the salary payable in respect of the office, or in respect of employment in that capacity, being an industrial award to which the Minister is also a party;

“unjustified discrimination” includes—

- (a) discrimination that is unlawful under the *Discrimination Act 1991* and
- (b) unjustified discrimination on the ground of age or social origin;

but does not include—

- (c) discrimination that is essential for the effective performance of the relevant duties, is not unlawful under the *Discrimination Act 1991* and is prescribed; or
- (d) discrimination that is not unlawful under the *Discrimination Act 1991* and is in accordance with the equal employment opportunity program for the Authority or with a prescribed program.

Employment practices

32B. (1) The powers of the Authority in relation to employment matters shall be exercised—

- (a) without patronage, favouritism or unjustified discrimination; and
- (b) with regard to the equal employment opportunity program for the Authority.

(2) Without limiting the generality of paragraph (1) (a), and subject to paragraph (1) (b), the powers of the Authority in relation to employment matters shall be exercised in accordance with procedures that ensure that where a person is to be selected for engagement for a period exceeding 3 months, or for promotion or advancement, by the Authority—

- (a) all persons who are eligible have, so far as practicable, a reasonable opportunity to apply for selection; and
- (b) the selection is made on the basis of an assessment of the relative suitability of the applicants for the appointment having regard to—
 - (i) the nature of the duties to be performed; and
 - (ii) the abilities, qualifications, experience, personal qualities and potential for development of each applicant that are relevant to the performance of those duties.

(3) A reference in this section to the exercise of a power shall be read as including a reference to the making of a report or recommendation in relation to the exercise of that power.

(4) The equal employment opportunity program for the Authority, being the program in force immediately before the commencement of this section, continues in force subject to this section.

(5) From time to time, the Authority shall, after consulting with each relevant staff organisation and such other persons as the Authority considers appropriate, review the equal employment opportunity program for the Authority.

(6) As soon as practicable after the development or review of the equal employment opportunity program, the Authority shall provide the Head of Administration with written particulars of the program.

(7) The Head of Administration may, by notice in writing given to the Authority, issue guidelines to the Authority on the provisions to be made by the equal employment opportunity program, and on the development, implementation or review of the program.

(8) The Authority shall take any action necessary to give effect to the equal employment opportunity program and to comply with any guidelines issued under subsection (7).

PART V—OPERATION OF AUTHORITY

Corporate plan

33. (1) The Authority—

- (a) shall, as soon as practicable after the commencement of this Act, develop a corporate plan;
- (b) shall, as soon as practicable before the commencement of each financial year other than the first financial year covered by the plan, review and revise the corporate plan; and
- (c) may from time to time review and revise the corporate plan.

(2) The corporate plan developed under paragraph (1) (a) shall include a statement of the objectives of the Authority—

- (a) where the plan is developed in the first 9 months of a financial year—
for that year and at least the next 2 financial years; or

- (b) where the plan is developed in the last 3 months of a financial year—
for the next financial year and at least the 2 financial years immediately following that next financial year.

(3) The corporate plan as revised under paragraph (1) (b) shall include a statement of the objectives of the Authority for the financial year immediately before the commencement of which the plan was revised and at least 2 financial years immediately following that year.

(4) The corporate plan shall include a statement outlining the Authority's strategies and policies which it intends to adopt in order to achieve its objectives.

Corporate plan etc. to Minister

34. (1) The Authority shall, as soon as practicable after developing or revising a corporate plan, give the Minister a copy of that plan or the plan as revised, as the case requires.

(2) Where the Authority complies with subsection (1) in relation to the corporate plan or that plan as revised, as the case may be, the Authority shall also give to the Minister a copy of a financial plan that includes, in relation to each financial year covered by the plan—

- (a) a forecast, in a form approved by the Minister, of the Authority's receipts and expenditures;
- (b) the Authority's financial targets for profits, rate of returns and dividends; and
- (c) the performance indicators it has adopted.

Financial targets and performance indicators

35. (1) The Authority, when setting its financial targets to be included in a financial plan under paragraph 34 (2) (b), shall consider the following matters:

- (a) objectives and policies of the Territory known to the Authority or the subject of directions of the Minister;
- (b) any directions given by the Minister under section 36;
- (c) the need for the Authority to earn a reasonable rate of return on assets used;
- (d) the need for the Authority to establish and maintain a reasonable level of reserves having regard to the estimated future requirements for the supply of electricity or water or the provision of sewerage services in

the Territory, and estimated future earnings to finance capital expansion, reduce borrowings or improve the Authority's cash flow;

(e) any other relevant commercial considerations.

(2) For the purposes of paragraph 34 (2) (c), a performance indicator shall be in such terms as the Authority thinks fit.

Minister may vary financial plan

36. (1) Without limiting the generality of the Minister's powers under subsection 37 (2), the Minister may, by notice in writing, direct the Authority to vary financial targets of, and performance indicators adopted by, the Authority.

(2) When exercising his or her powers under subsection (1), the Minister shall have regard to—

- (a) the matters referred to in subsection 35 (1);
- (b) the trading conditions in which the Authority operates;
- (c) the commercial and market strengths of the operations of the Authority;
- (d) community service obligations required to be met by the Authority; and
- (e) such other commercial considerations as the Authority considers appropriate.

(3) Where the Minister has given the Authority—

- (a) a direction under subsection (1); and
- (b) the reasons for the direction;

the Authority shall comply with the direction.

Directions to Authority

37. (1) Except as provided by this section or as otherwise expressly provided by this Act, the Authority is not subject to direction by or on behalf of the Territory.

(2) Subject to subsection (1), where the Minister is satisfied that it is desirable in the public interest to do so, the Minister may, by notice in writing to the Authority, give directions to the Authority with respect to the performance of its functions or the exercise of its powers.

(3) The Authority shall comply with any direction under subsection (2).

(4) Where the Minister gives a direction to the Authority under subsection (2), particulars of the directions shall be included in the annual report of the Authority.

Reimbursement of cost of complying with directions

38. (1) Where the Authority satisfies the Minister that it has suffered financial detriment as a result of complying with a direction of the Minister under section 37, the Authority is entitled to be reimbursed by the Territory the amount that the Minister determines in writing to be the amount of that financial detriment.

(2) The reference in subsection (1) to suffering financial detriment includes a reference to—

- (a) incurring costs that are greater than would otherwise have been incurred; or
- (b) forgoing revenue that would otherwise have been received.

(3) This section does not apply to a direction of the Minister under section 36 or 41.

PART VI—FINANCE

Capital of Authority

39. (1) The capital of the Authority is the aggregate of—

- (a) the amount determined by the Minister to be the value, at the date of vesting in the Authority, of the rights, property and assets vested in the Authority pursuant to section 84;
- (b) any amounts paid to the Authority by the Minister out of moneys appropriated by the Legislative Assembly, or by the Commonwealth Minister for Finance out of moneys appropriated by the Parliament of the Commonwealth, for the purpose of providing further capital to the Authority; and
- (c) the surplus of the Authority for each financial year;

less the aggregate of—

- (d) the sum of, at the date the Authority incurred liability for, the debts, liabilities and obligations that the Authority became, by virtue of section 84, liable to pay or discharge; and

- (e) amounts of capital paid to the Territory or the Commonwealth by the Authority.
- (2) The capital of the Authority is payable to the Territory at such times, and in such amounts, as the Minister determines.
- (3) In making a determination under subsection (2), the Minister shall have regard to any advice that the Authority has given to him or her in relation to its financial affairs.
- (4) A determination under this section shall be made by instrument in writing.
- (5) For the purposes of this Act, the surplus of the Authority for a financial year is the amount (if any) of revenue remaining after deducting from the revenue received or receivable by the Authority in respect of the financial year the expenditure and provision for expenditure properly chargeable against that revenue.

Interest—payments to Commonwealth

40. (1) Interest is payable to the Territory on the prescribed capital of the Authority at such rate and at such times as the Minister determines from time to time.

(2) In subsection (1), “prescribed capital” means the amounts referred to in paragraph 39 (1) (b) less the amounts referred to in paragraph 39 (1) (e).

Dividends—payments to Commonwealth

41. (1) The Authority shall, within 4 months after the end of each financial year, by notice in writing given to the Minister, recommend that it—

- (a) pay to the Territory, in relation to its operations in the financial year, a dividend of an amount specified in the notice; or
 - (b) not pay a dividend to the Territory for the financial year.
- (2) In making a recommendation, the Authority shall have regard to—
- (a) the matters specified in section 35; and
 - (b) the extent of the Territory’s equity in the Authority.
- (3) Subject to subsection (6), the Minister shall, within 30 days after receipt of the recommendation, give notice in writing to the Authority—
- (a) where the recommendation is that a dividend be paid—

- (i) approving the recommendation; or
 - (ii) directing the Authority to pay a dividend of a different specified amount; or
- (b) where the recommendation is that a dividend not be paid—
- (i) approving the recommendation; or
 - (ii) directing the Authority to pay a dividend of a specified amount.
- (4) For the purpose of giving a notice under subsection (3), the Minister shall have regard to—
- (a) the matters specified in section 35 (other than paragraph (1) (b));
 - (b) the objectives and policies of the Territory Government;
 - (c) the extent of the Territory’s equity in the Authority; and
 - (d) any other commercial considerations the Minister thinks appropriate.
- (5) Where payment of a dividend for a financial year is approved or directed under subsection (3), the Authority shall pay it to the Territory within 8 months after the end of that year.
- (6) A payment under this section may be made—
- (a) out of the profits of the Authority for the financial year to which the payment relates;
 - (b) out of the profits of the Authority for any preceding financial year or years; or
 - (c) partly out of the profits of the Authority for the financial year referred to in paragraph (a) and partly out of the profits of the Authority for any preceding financial year or years.

Borrowing

42. (1) The Authority may, subject to Part VII of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth, borrow money—

- (a) from the Commonwealth; or
- (b) with the approval of the Minister administering the *Audit Act 1989*— from any other person.

(2) In this section, “borrow” has the same meaning as in the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.

Borrowing otherwise than from Commonwealth

43. (1) The Authority may, with the approval of the Treasurer—

- (a) borrow money, otherwise than from the Commonwealth; or
- (b) raise money, otherwise than by borrowing;

that is from time to time necessary for the exercise of its powers or the performance of its functions.

(2) Without limiting the generality of subsection (1), the Authority may, under that subsection, borrow money, or raise money otherwise than by borrowing, by dealing with securities.

(3) An approval under subsection (1) shall be in writing.

(4) A borrowing of money, or a raising of money otherwise than by borrowing under subsection (1), may be made, in whole or in part, in a currency other than Australian currency.

(5) An approval may be given under subsection (1) in relation to a particular transaction or in relation to transactions included in a class of transactions.

(6) For the purposes of this section—

- (a) the issue by the Authority of an instrument acknowledging a debt in consideration of—
 - (i) the payment or deposit of money; or
 - (ii) the provision of credit;

otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Authority shall be deemed to be a raising by the Authority, otherwise than by borrowing, of the amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

- (b) the obtaining of credit by the Authority otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Authority shall be deemed to be a raising by the Authority, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

Security

44. The Authority may give security over the whole or any part of its assets for—

- (a) the repayment by the Authority of money borrowed under section 42 or paragraph 43 (1) (a) and the payment by the Authority of interest on money so borrowed; or
- (b) the payment by the Authority of money (including any interest) that the Authority is liable to pay with respect to money raised by virtue of section 43.

Borrowings not otherwise permitted

45. The Authority shall not borrow, or raise money otherwise than by borrowing, except in accordance with sections 42 and 43.

Application of money of Authority

46. The money of the Authority shall be applied by the Authority—
- (a) in payment of the costs and expenses incurred by the Authority in connection with the carrying out of its functions under this Act;
 - (b) in payment of any remuneration or allowance payable to members of the Authority; and
 - (c) in making any other payments authorised or required to be made by the Authority by or under this Act or any other law of the Territory.

Audit Act to apply

47. For the purposes of subsection 87 (2) of the *Audit Act 1989*, the Authority is declared to be a public authority to which Divisions 1 and 2 of Part IX of that Act apply.

Financial reporting and audit

47A. (1) The Authority shall, within 1 month after the day on which this section commences, submit to the Minister, for presentation to the Legislative Assembly, an audited financial statement of its operations for the period commencing on 1 July 1988 and ending at the expiration of 30 June 1989.

(2) The first period of reporting for the Authority under section 93 of the *Audit Act 1989* commences on 1 July 1989 and ends at the expiration of 30 June 1990.

(3) The Authority shall include in reports of its operations, submitted in accordance with section 93 of the *Audit Act 1989* or in accordance with this section, details of any direction given under section 36 or 41.

PART VII—DETERMINATIONS OF AUTHORITY**Charges for supply of electricity, water and sewerage services**

48. (1) The Authority may, by notice in writing published in the *Gazette*, determine the charges for or in connection with the supply of electricity or water or the provision of sewerage services.

(1A) The Minister may, by notice in writing published in the *Gazette*, determine a quantity of water to be the basic water allowance.

(2) A determination under subsection (1) shall, unless disallowed under section 49, take effect on the date specified in the determination being a date not earlier than 14 days after the date on which the determination was published in the *Gazette*.

(2A) A determination under subsection (1A) shall take effect on the date specified in the determination.

(3) The Authority may determine different charges for or in connection with the supply of electricity or water or the provision of sewerage services for different uses, in different localities or in different circumstances.

Disallowance of determinations

49. (1) The Minister may, within 14 days after a determination under subsection 48 (1) was published in the *Gazette*, by notice in writing published in the *Gazette*, disallow the determination.

(2) A determination under subsection 48 (1A) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Payments of charges etc.

50. (1) A person—

(a) to whom electricity is supplied; or

(b) by whom—

(i) water rates are payable under section 12 of the *Water Rates Act 1959*; or

(ii) sewerage rates are payable under section 14 of the *Sewerage Rates Act 1968*;

is liable to make payments to the Authority in accordance with a determination in force under section 48.

(2) The Authority may make such arrangements as are fair and equitable for adjustments to amounts payable under this section whether by permitting payment on a pro rata basis or otherwise to accord with fluctuations in the rate of charges for electricity or water or the provision of sewerage services during a year.

(3) The Authority may with the approval of the Minister make an agreement with the person for or in connection with the supply of electricity or water or the provision of sewerage services to that person under which rates of charges in accordance with the agreement are payable instead of the charges applicable under subsection (1).

(4) In determining charges, the Authority shall take into consideration the financial position of the Authority and the future requirements of the undertaking of the Authority, with a view to making those charges as low as practicable having regard to the revenue required for the maintenance of the affairs of the Authority on a sound commercial basis.

(5) Where the liability of a person to pay a charge is not discharged within 28 days after the day on which that charge became due and payable, that person is, unless the Authority exempts that person from the operation of this subsection in relation to that charge, liable to pay to the Authority, by way of penalty, in addition to the amount of that charge, an amount calculated upon the amount of that charge remaining unpaid, at the prescribed rate of interest, for each month or part of a month for which that amount is unpaid to be computed from the day on which that charge became due and payable and to be compounded.

Terms and conditions—variation

51. (1) The Authority may, from time to time, by notice in writing, vary the terms and conditions for or in connection with the supply of electricity or water or the provision of sewerage services.

(2) Where the Authority makes a variation under subsection (1), it shall cause to be published in a daily newspaper circulating in the Territory a notice setting out particulars of the variation specifying the date, not being earlier than the date of publication of the notice, on and from which the variation has effect.

(3) Where the Authority has made an agreement under subsection 50 (3), the terms or conditions of that agreement shall not be varied unless the agreement provides that the terms or conditions of the agreement may be varied in accordance with this section.

PART VIII—POWERS OF ENTRY AND DECLARATIONS OF EMERGENCIES***Division 1—Interpretation*****Interpretation**

52. (1) For the purposes of this Part, a thing is connected with a particular offence if—

- (a) the offence has been committed with respect to it;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or is or was intended to be used, for the purpose of committing the offence.

(2) Unless the contrary intention appears, a reference in this Part to an offence shall be read as a reference to any act done, or about to be done, which is, or would be if it were done, or which it is believed on reasonable grounds is, or would be, if it were done, an offence against this Act or the regulations.

Division 2—Powers of entry and inspection**Authorised persons**

53. (1) The Chief Executive Officer may, by instrument, appoint such persons as the Chief Executive Officer considers necessary to be authorised persons for the purposes of this Act.

(2) In addition to the duties required to be performed by an authorised person under this Act, an authorised person shall perform such other duties as the Chief Executive Officer from time to time directs.

Identity cards

54. (1) The Chief Executive Officer shall cause to be issued to each authorised person an identity card that specifies the name and appointment of the authorised person and on which appears a recent photograph of the person.

(2) A person appointed under subsection 53 (1) shall, on ceasing to be an authorised person, return his or her identity card to the Chief Executive Officer.

(3) A person who, without reasonable excuse, fails to comply with subsection (2) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

Entry to premises

55. (1) For the purposes of this Act or the regulations, an authorised person may, without the authority of a warrant, at any reasonable time, enter premises to which electricity or water is being or has been supplied, or sewerage services are or have been provided, by the Authority, or over which electricity or water of the Authority is being or has been conducted or carried, or on which sewerage services are or have been provided, and, subject to subsection (2), may exercise the powers referred to in section 56.

(2) An authorised person who enters premises under subsection (1) is not authorised to remain on the premises if, on request by the occupier, he or she does not show his or her identity card to the occupier.

(3) For the purposes of this Act or the regulations, an authorised person may, without the authority of a warrant, enter premises at any reasonable time without the consent of the occupier for the purpose of reading any meter which indicates the quantity or amount of electricity or water supplied by the Authority which has been used or is being used on the premises.

Powers of authorised persons

56. For the purposes of section 55, an authorised person may inspect, test, obtain information from, repair, replace or remove any apparatus, equipment or other thing, the property of the Authority.

Interruption to services

58. An authorised person may interrupt the supply of electricity or water or the provision of sewerage services to any premises if he or she has reasonable grounds for believing that it is necessary to do so in order to protect any person or property from injury or damage or to prevent a risk to public health.

Obstruction of authorised officers

59. A person shall not, without reasonable excuse, obstruct or hinder an authorised person in the exercise of his or her powers under this Act or the regulations.

Penalty: \$1,000 or imprisonment for 6 months, or both.

Division 3—Emergency provisions

Interpretation

60. In this Division—

“declaration” means a declaration under section 62;

“direction” means a direction under section 63.

Declaration of emergencies

62. (1) Where the Minister has reasonable grounds for believing—

- (a) that the supply of electricity or water available in the Territory is, or is likely to be, inadequate for the needs of the Territory as to require the restriction of the use of electricity or water in the Territory; or
- (b) that the supply of water or the maintenance of the provision of sewerage services in the Territory is, or is about to be, so affected that there is, or is likely to be, a danger to public health;

the Minister may, by notice published in the *Gazette*, declare that an emergency exists in relation to the supply of electricity or water, or the provision of sewerage services, as the case requires.

(2) Unless it is sooner revoked, a declaration remains in force for such period, not exceeding 28 days, as is specified in the notice, commencing on the date on which the notice is published in the *Gazette*.

(3) A declaration may be made immediately upon the expiration of a previous declaration.

Powers of Authority during emergency

63. (1) While a declaration is in force, the Authority may, by direction published in the *Gazette* or in a daily newspaper circulating in the Territory, or both, prohibit, ration, control or otherwise regulate the use or the use for a particular purpose of electricity or water, or the provision of sewerage services, in accordance with the emergency plan.

(2) A direction shall come into operation on such date as is specified in the direction, being a date not earlier than the date on which the direction is published.

Expiration of directions

64. (1) Subject to subsection (2) and unless it is sooner revoked, a direction ceases to have effect when the declaration to which it relates ceases to be in force.

(2) Where—

- (a) a declaration ceases to be in force; and
- (b) a further declaration is made immediately upon the expiration of the first-mentioned declaration in relation to the same matters;

a direction made while the first-mentioned declaration was in force remains in force as if it had been made after the second-mentioned declaration was made.

Offences

65. A person shall not, without reasonable excuse, contravene a direction.

Penalty:

- (a) in the case of a natural person—\$5,000;
- (b) in the case of a body corporate—\$25,000.

Authorised persons—emergency powers

66. (1) Where an authorised person has reasonable grounds for believing that an offence has been or is being committed on any premises to which electricity or water is supplied, or sewerage services are provided, by the Authority, the authorised person may, at any time, without warrant, enter the premises if the entry is made with the consent of the occupier of those premises, for the purposes of—

- (a) inspecting the premises;
- (b) searching for and seizing any thing that the authorised person believes on reasonable grounds is connected with an offence; or
- (c) exercising any of the powers referred to in section 56.

(2) Where an authorised person enters premises pursuant to subsection (1), the authorised person is not authorised to exercise his or her powers under the subsection if, on request by or on behalf of the person apparently in charge of the premises, the authorised person does not produce his or her identity card.

Consent to entry

67. (1) Before obtaining the consent of a person for the purposes of section 66, an authorised person shall inform that person that he or she may refuse to give consent.

(2) Where the authorised person obtains the consent of a person for the purposes of section 66, the authorised person shall ask that person to sign a written acknowledgement—

- (a) of the fact that the person has been informed that he or she may refuse to give consent;
- (b) of the fact that the person has voluntarily given consent; and
- (c) of the day on which, and the time at which, that consent was given.

(3) An entry by the authorised person under section 66 by virtue of the consent of a person is not lawful unless that person voluntarily consented to the entry.

(4) Where it is material, in any proceedings, for a court to be satisfied of the voluntary consent of a person for the purposes of section 66 and an acknowledgement, in accordance with subsection (2), signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such a consent.

Search warrants

68. (1) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for believing that an offence has been or is being committed on any premises and the information sets out those grounds, the Magistrate may issue a search warrant authorising an authorised person named in the warrant, with such assistance and by such force as is necessary and reasonable to enter the premises for the purpose of—

- (a) inspecting the premises;
- (b) searching for and seizing any thing that the authorised person believes on reasonable grounds is connected with an offence; or
- (c) exercising any of the powers referred to in section 56.

(2) A Magistrate shall not issue a warrant under subsection (1) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) There shall be stated in a warrant issued under this section—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which the entry is authorised;
- (b) whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) a date, not being later than 1 month after the date of issue of the warrant, upon which the warrant ceases to have effect.

Emergency plans

69. The Authority shall, as soon as practicable after the date of commencement of this Act, prepare an emergency plan.

Contents of emergency plan

70. (1) An emergency plan prepared under section 69 shall set out a description of the manner in which it is proposed to prohibit, ration, control or otherwise regulate the supply of electricity or water, or the provision of sewerage services, during the period for which a declaration remains in force.

(2) The Authority shall submit an emergency plan prepared under section 69 to the Minister.

(3) The Minister may, in relation to a plan submitted under subsection (2),—

(a) accept the plan without alteration or with such alterations as the Minister thinks fit; or

(b) reject the plan.

(4) Where an emergency plan has been accepted by the Minister under this section, the Minister shall, by notice published in the *Gazette*, adopt the emergency plan.

(5) A notice under subsection (4) shall specify an address or addresses at which copies of the plan may be inspected or may, on payment of the determined fee, be purchased.

Commencement of emergency plans and notices

71. (1) A notice under subsection 70 (4), 72 (3) or 74 (1) does not take effect unless and until the notice comes into operation in accordance with subsection 73 (4).

(2) An emergency plan adopted under section 70 comes into force for the purposes of this Act on the day on which the notice adopting the plan comes into operation in accordance with subsection 73 (4).

Emergency plan—tabling requirements

72. (1) The Minister shall, as soon as practicable after the publication of a notice under subsection 70 (4), cause a copy of the notice and the emergency plan to which the notice relates to be laid before the Legislative Assembly.

(2) If the Legislative Assembly, within 15 sitting days after a copy of the emergency plan has been laid before it, passes a resolution recommending amendments of the emergency plan, the Minister may, after giving due consideration to the recommendations contained in that resolution, amend the emergency plan.

(3) Where, pursuant to subsection (2), the Minister amends an emergency plan, the Minister shall, by notice published in the *Gazette*, adopt the plan as so amended.

(4) The Minister shall, as soon as practicable after publication of a notice under subsection (3), cause a copy of the notice and the emergency plan to which the notice relates to be laid before the Legislative Assembly.

Emergency plan—disallowance or commencement

73. (1) If the Legislative Assembly, within 15 sitting days after a copy of a notice referred to in subsection 70 (4), 72 (3), or 74 (1) has been laid before it, passes a resolution disallowing the adoption, revocation or amendment, as the case may be, to which the notice relates—

- (a) in the case of a notice referred to in subsection 70 (4)—the adoption shall cease to have any force or effect; and
- (b) in the case of a notice referred to in subsection 72 (3) or 74 (1)—the adoption, revocation or amendment shall have no force or effect.

(2) If, before the expiration of 15 sitting days after a copy of a notice referred to in subsection 70 (4), 72 (3), or 74 (1) has been laid before the Legislative Assembly—

- (a) the Legislative Assembly is dissolved; and
- (b) a resolution for the disallowance of the adoption, revocation or amendment to which the notice relates has not been passed by the Legislative Assembly;

the notice shall, for the purposes of this section, be deemed to have been laid before the Legislative Assembly on the first sitting day after its dissolution.

(3) If the Legislative Assembly passes a resolution in accordance with subsection (1) in respect of a notice adopting an emergency plan, the Minister shall direct the Authority to prepare a fresh emergency plan and, for the purposes of the preparation of that plan, section 70 applies in the same manner as that provision applies in relation to the preparation of an emergency plan under section 69.

(4) If the Legislative Assembly does not pass a resolution—

- (a) in accordance with subsection 72 (2) in relation to an emergency plan that has been laid before it pursuant to subsection 72 (1); or
- (b) in accordance with subsection (1) in relation to a notice referred to in 70 (4), 72 (3) or 74 (1);

the notice adopting the emergency plan or the notice under the subsection referred to in paragraph (b) comes into operation on the day immediately following the last day upon which such a resolution could have been passed by the Legislative Assembly.

Amendment or revocation of emergency plan

74. (1) The Minister may, by a notice published in the *Gazette*—

- (a) amend an emergency plan in force under this Division; or
- (b) revoke an emergency plan in force under this Division by a new emergency plan.

(2) Section 70 applies in relation to an amendment of an emergency plan, other than an amendment made pursuant to subsection 72 (2), in the same manner as it applies in relation to an emergency plan.

(3) Where an emergency plan is revoked by a new emergency plan, the revocation does not take effect until the new emergency plan comes into force.

PART VIIIA—CHEMICAL TREATMENT OF WATER SUPPLY

Interpretation

74A. In this Part—

“fluoride” means—

- (a) sodium fluoride; or
- (b) any other salt or compound of fluorine.

Prohibition on adding certain chemicals

74B. A person shall not add a chemical to the water supply system of the Territory.

Penalty:

- (a) in the case of a body corporate—\$50,000;
- (b) in the case of a natural person—\$10,000.

Restriction on powers of Authority

74C. Section 6 does not extend to empower the Authority to do any act that would contravene section 74B.

Exempt treatments

74D. (1) Section 74B does not apply in relation to the addition by the Authority to the water supply system of the Territory of—

- (a) a chemical for the purpose of clarifying, purifying or otherwise treating the water in that system at a concentration that would not be injurious to public health; or
 - (b) fluoride at a concentration not exceeding 1.0 milligram per litre.
- (2)** For the purposes of paragraph (1) (b), a concentration that—
- (a) would result in an average concentration of 1.0 milligram per litre during a period of 24 hours; and
 - (b) does not exceed 1.2 milligrams per litre;

shall be taken to be a concentration of 1.0 milligram per litre.

PART IX—MISCELLANEOUS**Offences by body corporate**

75. (1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

- (2)** Any conduct engaged in on behalf of a body corporate—
- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person other than a body corporate—

- (a) by a servant or agent of the person within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in by the first-mentioned person.

(5) A reference in subsection (1) to the state of mind of a person shall be read as including a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.

Interference with apparatus etc.

76. A person shall not, without reasonable excuse, interfere with any apparatus, equipment or installation the property of the Authority.

Penalty:

- (a) in the case of a natural person—\$2,000;
- (b) in the case of a body corporate—\$10,000.

Recovery of charges

77. Charges under this Act are a debt due and payable to the Authority and may be recovered by action in a court of competent jurisdiction.

Refund and remission of charges

78. The Authority may, upon the application of a person who is liable to pay to the Authority a charge under this Act, or upon its own motion, refund or remit such a charge or a portion of such a charge if the Authority considers it just and equitable to do so.

Refund and remission of charges—notification

78A. (1) Where the Authority makes a decision, upon an application under section 78, to refuse to refund or remit a charge or a portion of a charge, or to refund or remit an amount which is less than the amount of refund or remission applied for, the Authority shall, within 28 days after the date of the decision, cause notice in writing of the decision to be given to the applicant.

(2) A notice shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Australian Capital Territory Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

(3) The validity of a decision referred to in subsection (1) shall not be taken to be affected by a failure to comply with subsection (2).

Refund and remission of charges—review

78B. Application may be made to the Australian Capital Territory Administrative Appeals Tribunal for a review of a decision referred to in subsection 78A (1).

Evidentiary certificates

79. In proceedings under this Act, a certificate purporting to be signed by the Chief Executive Officer stating that a quantity of electricity or water was supplied by the Authority to a specified person or premises during a specified period or that sewerage services were provided to a specified person or premises during a specified period is evidence of the matters stated in the certificate.

Annual report

79A. (1) The Authority shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report for presentation to the Legislative Assembly concerning the operation of the Act and the financial and business affairs of the Authority during the period of 12 months ending at the expiration of that day.

Power of Minister to determine fees

80. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

Fees payable to Authority

81. Fees determined under section 80 shall be paid to the Authority.

Regulations

82. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing, for offences against the regulations, penalties not exceeding a fine of—

- (c) if the offender is a body corporate—\$2,500; or
- (d) if the offender is a natural person—\$500.

PART X—TRANSITIONAL

Interpretation

83. In this Part—

“commencement date” means the date of commencement of this Act;

“former Authority” means the Australian Capital Territory Electricity Authority constituted under the Act;

“the Act” means the *Australian Capital Territory Electricity Supply Act 1962* of the Commonwealth.

Transfer of assets, liabilities etc.

84. On the commencement date—

- (a) any rights, property or assets that, immediately before that date, were vested in the former Authority are, by force of this section, vested in the Authority;

- (b) the Authority becomes, by force of this section, liable to pay or discharge any debts, liabilities or obligations of the former Authority that existed immediately before that date; and
- (c) the Minister may, by notice in writing published in the *Gazette*, direct that rights, property or assets held by the Commonwealth for the supply of water or the provision of sewerage services be transferred to the Authority.

Employees of Authority

85. (1) A person who, immediately before the commencement date, was appointed or engaged by the former Authority shall, on and from the commencement date, be deemed to be appointed or engaged, as the case requires, by the Authority under section 31 and shall be deemed to be so appointed or engaged on the same terms and conditions as the terms and conditions on which the person was appointed or engaged immediately before the commencement date.

(2) The Authority has, in relation to a person to whom subsection (1) applies, the same rights and obligations in relation to that person and in relation to that person's appointment or engagement as the former Authority had in relation to that person and in relation to that person's employment immediately before the commencement date.

Determinations in relation to electricity, water or sewerage services

86. A determination in force under section 19 of the Act immediately before the commencement date shall, on that date, have effect as if it were a determination made by the Authority under section 48 of this Act.

Contracts, agreements and arrangements

87. (1) A contract, agreement or arrangement entered into by the former Authority as a party and in force immediately before the commencement date continues in force and has effect, on and after that date, as if—

- (a) the Authority were substituted for the former Authority as a party to the contract, agreement or arrangement; and
- (b) any reference in the contract, agreement or arrangement to the former Authority were (except in relation to matters that occurred before that date) a reference to the Authority.

(2) A contract, agreement or arrangement continued in force by virtue of section 35 of the Act and in force immediately before the commencement date continues in force and has effect on and after that date, as if—

- (a) the Authority were substituted for the former Authority as a party to the contract, agreement or arrangement; and
- (b) any reference in the contract, agreement or arrangement that, by virtue of paragraph 35 (c) of the Act, was to be taken to be a reference to the former Authority were (except in relation to matters that occurred before that date) a reference to the Authority.

References in instruments

88. (1) A reference to the former Authority in any instrument made, granted or issued before the commencement date and in force immediately before that date has effect, on and after that date, as if that reference were (except in relation to matters that occurred before that date) a reference to the Authority.

Authority deemed to have done certain things

89. An act or thing done by or on behalf of the former Authority under the *Electricity Act 1971* before the commencement date shall, for the purposes of the operation of that Act after the commencement date, be deemed to have been done by or on behalf of the Authority.

Legal proceedings

90. (1) Where, before the commencement date, a cause of action by or against the former Authority had arisen but proceedings in respect of that cause of action had not been instituted before that date, proceedings in respect of that cause of action may be instituted by or against the Authority.

(2) Where, before the commencement date, proceedings by or against the former Authority had been instituted in a court, tribunal, commission or other body and those proceedings had not been completed before that date, the Authority is, by force of this section, substituted for the former Authority as a party to the proceedings and those proceedings may be continued by or against the Authority.

(3) In proceedings instituted or continued pursuant to this section each party to the proceedings has the same rights, and is subject to the same obligations, as if the Authority were the former Authority and the proceedings had been instituted or continued by or against the former Authority.

Registration of changes to title to land etc.

91. Where, by reason of the operation of section 84, any interest in land situated in the Territory becomes vested in the Authority, the Government Solicitor may lodge with the Registrar of Titles a notice, signed by the Government Solicitor or by an officer of the Government Law Office authorised by the Government Solicitor, stating that that interest in land is vested in the Authority by virtue of the operation of section 84 and the Registrar shall make such entries in the relevant registers kept by the Registrar, and do such other things, as are necessary to reflect the operation of section 84 in relation to that interest in land.

NOTE

1. The *Electricity and Water Act 1988* as shown in this reprint comprises Act No. 30, 1988 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Electricity and Water Ordinance 1988</i>	30, 1988	30 June 1988	1 July 1988	
<i>Electricity and Water (Amendment) Ordinance 1988</i>	57, 1988	7 Sept 1988	7 Sept 1988	—
<i>Interim Territory Planning Ordinance 1988</i>	88, 1988	21 Dec 1988	Ss. 1 and 2: 21 Dec 1988 Remainder: 31 Jan 1989 (see <i>Gazette</i> 1989, No. S38)	S. 19 (2)
<i>Electricity and Water (Amendment) Ordinance 1989</i>	28, 1989	3 May 1989	3 May 1989	—
<i>Government Solicitor Ordinance 1989</i>	36, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—

Self-Government day 11 May 1989

NOTE—continued

Table 2

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Electricity and Water (Amendment) Act (No. 2) 1989</i>	13, 1989	9 Oct 1989	9 Oct 1989	—
<i>Statutory Authorities (Audit Arrangements) Act 1990</i>	25, 1990	22 June 1990	Ss. 1 and 2: 22 June 1990 Remainder: 22 June 1990 (see <i>Gazette</i> 1990, No. S35)	Ss. 19 and 20
<i>Electricity and Water (Amendment) Act 1990</i>	58, 1990	21 Dec 1990	21 Dec 1990	—
<i>Interim Planning (Consequential Amendments) Act 1990</i>	60, 1990	24 Dec 1990	S. 3: 12 Mar 1991 (see <i>C'wealth Gazette</i> 1991, No. S62) (a) Remainder: 24 Dec 1990	—
<i>Electricity and Water (Amendment) Act 1991</i>	31, 1991	26 Aug 1991	26 Aug 1991	S. 6
<i>Electricity and Water (Amendment) Act (No. 2) 1991</i>	48, 1991	20 Sept 1991	20 Sept 1991	—
<i>Land (Planning and Environment) (Consequential Provisions) Act 1991</i>	118, 1991	15 Jan 1992	Ss. 1 and 2: 15 Jan 1992 Ss. 3-8, 17-27 and 32-44: 2 Apr 1992 (see <i>Gazette</i> 1992, No. 13, p. 478) Remainder: 15 July 1992	Ss. 25-27
<i>Electricity and Water (Amendment) Act 1992</i>	18, 1992	2 June 1992	2 June 1992	—
<i>Electricity and Water (Amendment) Act (No. 2) 1992</i>	21, 1992	2 June 1992	Ss. 1-3: 2 June 1992 Remainder: 4 June 1992 (see <i>Gazette</i> 1992, No. S67, p. 2)	—

- (a) The *Electricity and Water Act 1988* was amended by section 3 only of the *Interim Planning (Consequential Amendments) Act 1990*, subsection 2 (2) of which provides as follows:

“(2) Section 3 commences on the day specified at the end of the transition period under the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth in the Proclamation of the Governor-General under section 57 of that Act.”

NOTE—continued

- (b) The *Electricity and Water Act 1988* was amended by section 23 and Schedule 1 only of the *Land (Planning and Environment) (Consequential Provisions) Act 1991*, subsection 2 (2) of which provides as follows:

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

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 3	am. No. 36, 1989; Act No. 48, 1991
S. 3A	ad. Act No. 21, 1992
S. 6	am. No. 57, 1988; No. 38, 1989
S. 7	am. No. 88, 1988 rs. Act No. 60, 1990 rep. Act No. 118, 1991
S. 8	am. Nos. 28 and 38, 1989
Ss. 9, 10.....	am. No. 28, 1989
S. 11	rep. No. 28, 1989
S. 14	am. Act No. 58, 1990
S. 21	am. No. 57, 1988
S. 23	am. Act No. 58, 1990
S. 29	am. No. 57, 1988
S. 31	am. No. 38, 1989
Heading to Part IVA	rs. Act No. 18, 1992
Part IVA (ss. 32A-32C)	ad. No. 38, 1989
S. 32A	ad. No. 38, 1989 am. Act No. 18, 1992
S. 32B	ad. No. 38, 1989 rs. Act No. 18, 1992
S. 32C	ad. No. 38, 1989 rep. Act No. 18, 1992
S. 35	am. No. 38, 1989
Ss. 37-41	am. No. 38, 1989
S. 42	rs. No. 38, 1989
S. 47	rep. No. 38, 1989 ad. Act No. 25, 1990
S. 47A	ad. Act No. 25, 1990
Ss. 48, 49.....	am. Act No. 48, 1991
S. 50	am. No. 57, 1988
S. 52	am. No. 57, 1988
S. 57	rep. No. 57, 1988
S. 61	rs. No. 38, 1989 rep. Act No. 21, 1992
Ss. 72, 73.....	am. No. 38, 1989
Part VIIIA (ss. 74A-74F).....	ad. Act No. 13, 1989
S. 74A	ad. Act No. 13, 1989 am. No. 31, 1991

NOTE—continued**Table of Amendments**—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
Ss. 74B, 74C.....	ad. Act No. 13, 1989
S. 74D.....	ad. Act No. 13, 1989
	rs. No. 31, 1991
	am. Act No. 21, 1992
Ss. 74E, 74F.....	ad. Act No. 13, 1989
	rep. No. 31, 1991
S. 76.....	am. No. 57, 1988
S. 78.....	am. No. 28, 1989
Ss. 78A, 78B.....	ad. No. 28, 1989
	am. No. 38, 1989
S. 79.....	am. No. 38, 1989
S. 79A.....	ad. No. 28, 1989
	am. No. 38, 1989
S. 82.....	am. No. 38, 1989
Ss. 87, 88.....	am. No. 38, 1989
S. 91.....	am. No. 36, 1989