



AUSTRALIAN CAPITAL TERRITORY

ACTEW/AGL Partnership Facilitation Act 2000

No 13 of 2000

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AUSTRALIAN CAPITAL TERRITORY

ACTEW/AGL Partnership Facilitation Act 2000

No 13 of 2000

An Act to facilitate the formation by ACTEW and AGL of a joint venture by way of partnerships between their subsidiaries

[Notified in ACT Gazette No. 14: 6 April 2000]

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

PART 1—PRELIMINARY

1 Name of Act

This Act is the *ACTEW/AGL Partnership Facilitation Act 2000*.

2 Commencement

(1) This Act commences on a single day fixed by the Minister by notice in the Gazette.

Note The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

(2) Section 10E of the *Interpretation Act 1967* does not apply to this Act.

(3) If this Act, other than section 1 and this section, has not commenced before 1 January 2001, this section expires on that day.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Interpretation Act 1967*, s 12(1), (4) and (5) for the legal status of notes.

5 Object of this Act

The object of this Act is to facilitate the implementation of any future agreement between ACTEW and AGL to form a joint venture by way of partnerships between subsidiaries of each of them for the provision of electricity and gas, and for the undertaking of certain water and sewerage operations and maintenance activities.

6 Extra-territorial operation

The Legislative Assembly intends that the operation of this Act, should, as far as possible, extend to the following:

- (a) things situated in or outside the Territory;
- (b) acts, transactions and matters done, entered into or occurring in or outside the Territory;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a State, another Territory, the Commonwealth or a foreign country.

7 Relationship with the Territory Owned Corporations Act

The provisions of this Act are in addition to, and not in derogation of, the *Territory Owned Corporations Act 1990*.

PART 2—RIGHTS CONCERNING CERTAIN NETWORK FACILITIES

8 Definitions for pt 2

In this Part—

maintenance, for a network facility, includes, for example, the following work:

- (a) the alteration, removal, repair or replacement of any part of the facility;
- (b) the provisioning of the facility with material or information (whether in electronic form or otherwise);
- (c) inspecting or otherwise ensuring the proper functioning of the facility from time to time.

network facility means any part of the infrastructure of an electricity, gas, water or sewerage network—

- (a) affixed to non-ACTEW or non-AGL land; and
- (b) used, or formerly used, by ACTEW, AGL or a subsidiary of either or them in the course of operating such a network.

non-ACTEW land means any land in the Territory not owned by ACTEW or a subsidiary of ACTEW, other than national land.

non-AGL land means any land in the Territory not owned by AGL or a subsidiary of AGL, other than national land.

utility service means the operation of, or connection to, an electricity or a gas, water or sewerage network.

9 Purpose of pt 2

The purpose of this Part is to remove uncertainty about the ownership of certain network facilities that are—

- (a) used, or for use, by ACTEW, AGL or a subsidiary of either of them in providing a utility service; and
- (b) treated by the Territory and the corporation that uses them or for the use of which the facilities are available as being owned by the corporation.

10 Facilities on non-ACTEW or non-AGL land

(1) The Minister may make declarations that this section applies to stated network facilities.

- (2) Without limiting the operation of section 27 of the *Interpretation Act 1967*, network facilities may be stated in a declaration particularly or by reference to a stated class, for example, all network facilities or all network facilities apart from stated exceptions.
- (3) A declaration, or a particular provision of a declaration, takes effect—
- (a) on the day notice of the making of the declaration is published in the Gazette; or
 - (b) if the declaration provides for a later date of effect—on that day.
- (4) A publication in the Gazette of the making of a declaration must include sufficient particulars from the declaration to identify the facilities to which the declaration relates.
- (5) A declaration is not valid if it would have the effect of vesting a facility in a corporation other than the corporation that had used it or for the use of which it was available.
- (6) On the day a declaration takes effect in relation to a network facility, the facility, by force of this section—
- (a) is severed from the land and remains severed; and
 - (b) vests in the corporation in which the declaration states that the facility vests, without any conveyance, transfer or assignment.
- (7) A facility severed under subsection (6) ceases for all purposes to be a fixture.
- (8) A corporation in which a facility has vested has, by force of this section, the following rights in relation to a network facility to which this section applies:
- (a) to have the facility (including any lines, pipes, equipment and any other thing ancillary to any other part of the facility) remain on, under or over the land for the provision of utility services;
 - (b) for that purpose, to use, or continue to use, the facility;
 - (c) to enter and occupy land on, above or under which the facility is located, and to undertake work on that land, for the purpose of maintaining the facility.
- (9) To ensure the proper provision of utility services, the Minister may, by notice in the Gazette, determine conditions for the exercise of a right conferred by paragraph (8) (c) and, if any such conditions are determined, the right may only be exercised in accordance with the conditions.

PART 3—VESTING OF ASSETS AND LIABILITIES

Division 3.1—At commencement of joint venture

11 Vesting of assets and liabilities

(1) The Minister may, by notice in the Gazette, declare that assets, rights or liabilities that—

- (a) are vested in ACTEW or AGL or a company that, under the Corporations Law, is a subsidiary of ACTEW or AGL; and
- (b) are specified or described in the notice;

vest in 1 or more joint venture entities or in a partnership specified or described in the notice.

(2) If a declaration under subsection (1) vests assets, rights or liabilities in a partnership, the assets, rights or liabilities are taken, for all purposes, to vest jointly and severally for the purposes of the partnership in each joint venture entity that is a partner.

(3) The Minister may not make a declaration under subsection (1) unless—

- (a) ACTEW and AGL have agreed to the terms of the declaration; and
- (b) in the case of assets, rights and liabilities that are a main undertaking of ACTEW or a subsidiary for section 16 of the *Territory Owned Corporations Act 1990*—the Legislative Assembly has, by resolution, approved the vesting.

(4) A declaration, or a particular provision of a declaration under subsection (1), takes effect—

- (a) on the day notice of the making of the declaration is published in the Gazette; or
- (b) if the declaration provides for a later date of effect—on that day.

Division 3.2—At end of joint venture

12 Application of div 3.2

This Division applies if ACTEW and AGL certify to the Minister in writing that they have resolved to dissolve a partnership on a day mentioned in the certificate.

13 Vesting of assets and liabilities

(1) If this Division applies, the Minister may, subject to subsection (2), by notice in the Gazette, declare that assets, rights or liabilities that—

- (a) are vested in joint venture entity or an agent company; and
- (b) are specified or described in the notice;

vest—

- (c) in the case of assets, rights or liabilities that relate to the reticulation and distribution of electricity—in ACTEW or a subsidiary of ACTEW specified in the declaration; or
- (d) in any other case—in a person specified in the declaration.

(2) The Minister may not make a declaration under subsection (1) unless ACTEW and AGL have agreed to the terms of the declaration.

(3) A declaration under subsection (1) has effect in relation to a vesting—

- (a) on the day stated in the declaration; or
- (b) if no day is stated—on the day when the relevant partnership ended or will end (as the case requires).

Division 3.3—Provisions applicable to all vestings under Part 3

14 Description of assets, etc

(1) For sections 11 and 13, assets, rights or liabilities are sufficiently specified or described in a notice—

- (a) if they are within a class that is specified or described in the notice; or
- (b) if the notice refers to them by way of exclusion from a class that is specified or described in the notice.

(2) This section is in addition to, and not in derogation of, section 27 of the *Interpretation Act 1967*.

15 Effect of notices under pt 3

(1) An asset, right or liability specified or described in a notice under section 11 or 13 vests, by force of this section, in the transferee on the vesting day without any conveyance, transfer or assignment.

(2) On the vesting day the transferee becomes, in relation to an asset, right or liability that vests in the transferee under this section, the successor in law of the transferor.

(3) If an asset, right or liability that vests in a transferee under this section is mentioned in an instrument, contract, or other document in effect on the vesting day, any reference in the instrument, contract, or document to the transferor is to be read as a reference to the transferee.

16 Evidence of vesting

(1) The Minister, or a person appointed in writing by the Minister, may certify in writing that an asset, right or liability mentioned in the certificate has vested under section 11 or 13 (as the case requires) in a person mentioned in the certificate.

(2) A notice under section 11 or 13 or a certificate under subsection (1) is evidence of the matters it states.

(3) A document that purports—

- (a) to be such a notice and to have been signed by the Minister; or
- (b) to be such a certificate and to have been signed by a person mentioned in subsection (1);

is to be taken, unless the contrary is proved, to be such a notice or such a certificate (as the case requires).

17 Completion of necessary transactions

If, because of the operation of a law of the Territory or any other place, a notice under section 11 or 13 is not fully effective in vesting, or providing evidence of the vesting, of an asset, right or liability, the Minister, the transferor and the transferee may take all practicable steps as soon as practical after the vesting day for the purpose of securing the full effectiveness at law of the instrument.

18 Registration of changes of ownership of assets

(1) If a registrable asset vests in a transferee under section 11 or 13, the transferee may give to the relevant registering authority a certificate under section 16 for that asset.

(2) On receipt of a certificate under section 16 that relates to a registrable asset, a registering authority must make such entries in the relevant registers kept by it, and do such other things, as are necessary to reflect the operation of section 11 or 13 (as the case requires).

(3) The operation of this section is in addition to, and not in derogation of, any procedures for ensuring the full legal effectiveness of a vesting under this Part that may be available to a transferee or a registering authority under any other law.

(4) In this section—

registering authority means a person who, under a law of the Territory, is required to enter in a register particulars relating to the ownership of, or entitlement to, a registrable asset.

registrable asset means an asset, including an interest in land, particulars of the ownership of which, or entitlement to which, are required under a law of the Territory to be entered in a register.

19 **Pt 3 does not place person in breach of contract etc**

The operation of this Part is not to be regarded as—

- (a) placing a person in contravention of a law of the Territory; or
- (b) placing a person in breach of any agreement, understanding or undertaking, or any judgment, order or process of a court; or
- (c) otherwise making a person guilty of a civil wrong; or
- (d) placing a person in breach of any agreement, understanding or undertaking that prohibits, restricts or regulates—
 - (i) the assignment, vesting or transfer of an asset or a liability; or
 - (ii) the disclosure of any information; or
 - (iii) releasing a surety from any of his or her obligations in relation to a liability that is vested under this Part.

20 **Application of Lands Acquisition Act**

The *Lands Acquisition Act 1994* does not apply in relation to anything done under this Act.

21 **Proceedings and evidence**

(1) In this section—

proceeding means a civil or administrative proceeding relating to an asset, right or liability vested in a transferee under this Part and includes a right of appeal or review (including a right of review under the *Ombudsman Act 1989*).

(2) For a proceeding started before the vesting day to which a transferor is a party, the relevant transferee is substituted as a party to the proceeding.

(3) A proceeding that—

- (a) was not started before the vesting day; and

- (b) apart from this section could, after that day, be brought by or against a transferor;

may be brought by or against the relevant transferee.

(4) Part 3 of the *Limitation Act 1985* applies to the institution of proceedings by or against a transferee as if the cause of action had accrued by or against the transferee.

(5) The court, tribunal, commission or other body in which, or before which, proceedings may be or have been instituted or continued under this section may give directions in relation to the institution or continuance of those proceedings.

(6) Any evidence that, but for this section, would have been admissible for or against a transferor is admissible for or against the relevant transferee.

(7) A transferor and a transferee must endeavour to assist each other in the provision of evidence relevant to a proceeding for a cause of action arising before the vesting day.

PART 4—SECONDMENT OF ACTEW EMPLOYEES

22 Meaning of *joint venture entity* for pt 4

In this Part—

joint venture entity includes an agent company and a partnership.

23 Secondment

(1) ACTEW may, on such terms as are agreed between it and another joint venture entity, second to the entity, for the purposes of the joint venture, the services of any of its employees.

(2) ACTEW may, subject to any agreement with the relevant joint venture entity, terminate at any time the secondment of an employee or a class of employees.

(3) A provision in an agreement is void so far as—

- (a) it is inconsistent with subsection (2) or a right or remedy arising from the subsection; or
- (b) it would make it unduly impractical or disadvantageous for ACTEW to exercise its power under subsection (2).

(4) Subsection (2) applies even if the proper law of the agreement is that of another jurisdiction.

(5) Nothing in subsection (2) affects the operation of an agreement so far as it can operate consistently with that subsection.

24 Employer–employee relationship

(1) ACTEW may direct an employee to perform duties on secondment, for the purposes of the joint venture, to a joint venture entity.

(2) The right to give a direction under subsection (1) is to be taken, for any law or agreement that governs the employment of persons employed by ACTEW, to be a condition of the employment.

(3) A secondment under this Part—

- (a) does not affect the employment relationship between ACTEW and a seconded employee; and
- (b) does not create an employment relationship between a joint venture entity and an employee seconded to it.

25 Day-to-day supervision of seconded staff

(1) ACTEW may delegate to a joint venture entity to which the services of an employee have been seconded all its powers as employer of the employee other than the power—

- (a) to take disciplinary action; or
- (b) to terminate the employment.

(2) ACTEW may appoint a joint venture entity to which the services of an employee have been seconded as its agent—

- (a) in relation to the discharge by ACTEW of any of its powers or functions as employer, other than a power or function mentioned in subsection (1), but including, for example, the payment of wages in acquittal of the indebtedness of ACTEW for them, providing counselling and conducting performance appraisals; or
- (b) to act on behalf of ACTEW in the negotiation of, and agreement to, new terms or conditions of employment.

26 Employment conditions only affected as expressly provided

This Part, other than as provided by sections 24 and 25, does not affect—

- (a) any term or condition of the employment of any employee of ACTEW whose services have been seconded; or
- (b) any rights and entitlements that have accrued before the secondment; or
- (c) the accrual of any rights or entitlements that are due to accrue after the secondment.

PART 5—PUBLIC ACCOUNTABILITY

27 ACTEW to maintain at least 50% interest in partnerships

(1) ACTEW must not, without the prior approval of the Legislative Assembly, dispose of so much of its beneficial interest in a partnership as would result in the beneficial interest of ACTEW being reduced to less than 50% of the total equity of the partnership.

(2) The approval of the Legislative Assembly is to be expressed by resolution.

(3) The grant of a mortgage or the giving of security is not a disposal for subsection (1) if done with the consent required under subsection 16 (1) of the *Territory Owned Corporations Act 1990* and in accordance with any conditions to which the consent may be subject.

28 ACTEW control over its joint venture entities

(1) A company is not eligible to become a joint venture entity to represent the interests of ACTEW in a partnership unless the full beneficial interest in all its shares vests in ACTEW.

(2) ACTEW may reduce its beneficial interest in a company that is a joint venture entity mentioned in subsection (1) only in accordance with a resolution of the Legislative Assembly.

(3) The grant of a mortgage or the giving of security over shares in a joint venture entity is not a reduction of beneficial interest for subsection (2) if done with the consent required under subsection 16 (1) of the *Territory Owned Corporations Act 1990* and in accordance with any conditions to which the consent may be subject.

29 ACTEW interest in agent companies

(1) A company is not eligible to become an agent company unless at least 50% of the beneficial interest in its shares vests in ACTEW.

(2) ACTEW may reduce its beneficial interest in the shares of an agent company to less than 50% only in accordance with a resolution of the Legislative Assembly.

(3) The grant of a mortgage or the giving of security over shares in an agent company is not a reduction of beneficial interest for subsection (2) if done with the consent required under subsection 16 (1) of the *Territory Owned Corporations Act 1990* and in accordance with any conditions to which the consent may be subject.

30 Agent companies not to dispose of undertakings without consent

(1) An agent company may not dispose of any of its main undertakings unless the Legislative Assembly has, by resolution, approved the disposal.

(2) Paragraph 16 (1) (d) and subsection 16 (2) of the *Territory Owned Corporations Act 1990* apply to an agent company as if it were a subsidiary of ACTEW.

Note The provisions of the *Territory Owned Corporations Act 1990* mentioned in subsection (2) apply to ACTEW and its subsidiaries.

31 Public interest safeguards in partnership agreements

(1) An agreement that is or purports to be a partnership agreement is not binding on ACTEW or any person representing ACTEW unless it contains provisions that require—

- (a) the prior approval of ACTEW to the disposal by AGL directly or indirectly of all or any part of its beneficial interest in the assets of the partnership; and
- (b) that ACTEW or the joint venture entity that represents ACTEW in the partnership be entitled to appoint 50% of any directors of the partnership who may be appointed under a partnership agreement.

(2) Paragraph (1) (a) does not apply to a disposal to a corporation that is, for AGL, a related body corporate within the meaning of the Corporations Law.

PART 6—MISCELLANEOUS

Division 6.1—Audit of accounts of partnerships

32 Audits

- (1) The members of a partnership must ensure that—
- (a) the accounts and records of the partnership for each financial year are audited jointly by the auditor-general and an auditor appointed by AGL; and
 - (b) copies of the audited accounts and records and of the report of the auditors are given to ACTEW and AGL within 3 months after the end of the financial year.
- (2) If there is a contravention of subsection (1), each member of the partnership at the time of the contravention is guilty of an offence.

Maximum penalty: 500 penalty units.

33 Auditor to be qualified

The auditor appointed by AGL for section 32 must be a person who is qualified to audit accounts under the Corporations Law.

Division 6.2—General

34 Agents

- (1) Subject to subsection (4), a joint venture entity may appoint a company that is under the control of 2 or more joint venture entities to fulfil any obligation, or perform any other function, under a law of the Territory.
- (2) The entity that makes an appointment under subsection (1) is not required to be one of the entities that control the agent company.
- (3) Anything done by an agent on behalf of a joint venture entity is, for any law of the Territory, as valid and effective as if it had been done by the entity itself.
- (4) This section does not apply so as to enable a delegation to an agent company in relation to any matter that may be delegated under section 25, but does not affect the operation of that section in relation to the secondment of any ACTEW employee whose services may have been seconded to the agent company.
- (5) This section does not affect the power to appoint agents that a joint venture entity has apart from this section.

35 Compensation

(1) If—

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

the Territory is liable to pay reasonable compensation to the person in relation to the acquisition.

(2) If the Territory and the person do not agree on the amount of compensation, the person may, in a court of competent jurisdiction, recover from the Territory such reasonable compensation as the court determines.

36 Regulation of prices, access and other matters

(1) In this section—

ICRC Act means the *Independent Competition and Regulatory Commission Act 1997*.

(2) The ICRC Act applies to the joint venture entities as if a reference to ACTEW or AGL in—

- (a) a price direction under section 20 of the ICRC Act; or
- (b) an access agreement registered under Part 5 of the ICRC Act; or
- (c) a determination under section 35 of the ICRC Act;

that is in effect at the commencement of this Act were a reference to ACTEW, AGL and the joint venture entity that—

- (d) provides the service to which the price direction relates; or
- (e) owns, controls or operates the infrastructure facility to which the access agreement relates; or
- (f) provides the service the access for which is the subject of the determination.

DICTIONARY

(See s 3)

ACTEW means ACTEW Corporation Limited.

agent company means a company that is appointed to act as agent under section 34.

AGL means The Australian Gas Light Company.

asset includes—

- (a) property of any kind; and
- (b) a right, privilege or immunity, including a contingent or prospective one; and
- (c) a right, privilege or immunity, whether absolute or conditional, under a law of the Territory, whether or not conferred by virtue of a licence, registration, approval or other authorisation; and
- (d) an asset arising under a law of a place other than the Territory or a contract governed by such a law.

joint venture means the arrangement described in section 5.

joint venture entity means—

- (a) ACTEW; or
- (b) AGL; or
- (c) a company that is—
 - (i) a participant in a partnership; and
 - (ii) is, under the Corporations Law, a related body corporate to ACTEW or AGL.

liability includes—

- (a) a duty or obligation; and
- (b) a contingent or prospective liability; and
- (c) a liability arising under contracts wherever formed.

partnership means 1 of the partnerships mentioned in section 5.

subsidiary has the same meaning as in the Corporations Law.

transferee means a person in whom an asset, right or liability vests under a notice under section 11 or 13.

transferor, in relation to an asset, right or liability that vests in a transferee by virtue of section 11 or 13, means the person in whom the asset, right or liability had vested immediately before the vesting day.

DICTIONARY—continued

vesting day, for an asset, right or liability that is vested under Part 3, means the day on which the asset, right or liability vests in the transferee under section 11 or 13.

Endnote

Penalty units

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.

[Presentation speech made in Assembly on 17 February 2000]