



Australian Capital Territory

Utilities (Technical Regulation) Amendment Act 2017

A2017-34

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Australian Capital Territory

Utilities (Technical Regulation) Amendment Act 2017

A2017-34

An Act to amend the *Utilities (Technical Regulation) Act 2014*, and for other purposes

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

1 Name of Act

This Act is the *Utilities (Technical Regulation) Amendment Act 2017*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the *Utilities (Technical Regulation) Act 2014*.

Note This Act also amends the *Tree Protection Act 2005* (see sch 1).

4 Draft technical codes—consultation New section 13 (2) (aa)

insert

- (aa) if the draft technical code is for protecting the environment—the conservator of flora and fauna; and

**5 Offence—fail to comply with technical code
New section 16 (2) and (3)**

insert

- (2) A regulated utility commits an offence if—
- (a) a technical code applies to the regulated utility; and
 - (b) the regulated utility fails to comply with a requirement of the technical code.

Maximum penalty: 30 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

6 Section 30

substitute

30 Meaning of *interference*—pt 5

- (1) In this part:
- interference***, with a regulated utility network or network facility—
- (a) includes an action that—
 - (i) interferes with, or is likely to interfere with, the safe or efficient operation of the network, the facility or the environment; or
 - (ii) inhibits or obstructs, or is likely to inhibit or obstruct, lawful access to the network or facility; but
 - (b) does not include the encroachment of vegetation within the minimum distance from an aerial line, worked out under section 41D, on unleased territory land, rural leased land or national land.

Note Under s 41D, a responsible utility for an electrical network is responsible for the clearance of vegetation near an aerial line on unleased territory land, rural leased land or national land.

(2) In this section:

aerial line—see section 41C.

rural leased land—see section 41A.

7 New part 5A

insert

Part 5A Vegetation and electrical infrastructure management

Division 5A.1 General

41A Definitions—pt 5A

In this part:

occupier, of premises, includes—

- (a) a person whom a responsible utility believes on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

owner, in relation to land—

- (a) means a person who leases or subleases the land; and
- (b) includes an occupier of premises on the land.

responsible utility means the responsible utility for an electricity network.

rural lease—see the *Planning and Development Act 2007*, section 234.

rural leased land means land in relation to which a rural lease is granted.

41B National land

Functions of the kind exercisable by a responsible utility under this part are exercisable in relation to national land only by agreement with the Commonwealth.

Division 5A.2 Vegetation management**41C Definitions—div 5A.2**

In this division:

aerial cable means any insulated or covered conductor or assembly of cores (with or without protective covering) that is above ground or water, suspended in the open air between 2 or more supports and forms part of an electricity network.

aerial conductor means any bare conductor that is above ground or water, suspended in the open air between 2 or more supports and forms part of an electricity network.

aerial line means an aerial cable, aerial conductor or aerial service line.

aerial service line means the final span or section of a low voltage aerial conductor of an upstream network that is connected to a point of supply.

conductor means a finished circular stranded assembly consisting of 3 or more metallic wires laid up together that has the specific function of carrying electrical current.

covered conductor means a conductor around which is applied a specified thickness of insulating material.

insulated, for a thing, means the thing is surrounded by a nonconducting substance that provides resistance to—

- (a) the passage of current; or
- (b) disruptive discharges through or over the surface of the thing at the operating voltage; or
- (c) the injurious leakage of current.

U, for an aerial line, means its nominal voltage.

41D Clearance from aerial lines—vegetation

- (1) A responsible utility is responsible for the clearance of vegetation near an aerial line on the following (the *land*):

- (a) unleased territory land;
- (b) rural leased land;
- (c) national land.

Examples—par (a)

park, nature strip, nature reserve, national park

Example—par (b)

farm

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) A responsible utility may—
- (a) enter and occupy the land; and

- (b) undertake any activity or work on the land that is reasonably necessary for the clearance of vegetation near an aerial line, including—
 - (i) the felling or lopping of trees; or
 - (ii) the trimming of roots of trees or other plants; or
 - (iii) the clearing or removal of vegetation.

Note A responsible utility must give notice to the owner of the land before entering or occupying the land (see s 41L).

- (3) However, the responsible utility may only undertake an activity or work under subsection (2) (b) in accordance with a technical code (if any) that applies to the activity or work.

Note A responsible utility commits an offence if a technical code applies to the utility, and the utility fails to comply with a requirement of the code (see s 16 (2)).

- (4) A responsible utility commits an offence if the responsible utility—
 - (a) is responsible for the clearance of vegetation near an aerial line on the land; and
 - (b) allows any part of a tree or other vegetation on the land to be too close to the aerial line.

Maximum penalty: 10 penalty units.

- (5) An offence against subsection (4) is a strict liability offence.
- (6) Subsection (4) does not apply if the responsible utility has a reasonable excuse.
- (7) A part of a tree or other vegetation on the land is too close to an aerial line if at any time it is within the minimum distance from any part of the line worked out in accordance with table 41D.

- (8) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

Note Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree damaging activity or prohibited groundwork (including in urgent circumstances).

Table 41D

column 1	column 2	column 3	column 4	column 5
direction in which minimum distance must be observed	minimum distance from insulated aerial cable or insulated aerial service line, where- $U \leq 1 \text{ kV}$	minimum distance from aerial conductor or covered aerial cable, where- $U \leq 1 \text{ kV}$	minimum distance from aerial conductor or aerial cable, where- $1 \text{ kV} < U \leq 33 \text{ kV}$	minimum distance from aerial conductor or aerial cable, where- $33 \text{ kV} < U \leq 132 \text{ kV}$
any direction	1.0m	1.5m	2.0m	3.0m

41E Measuring clearances from aerial lines

For this Act, the minimum distance from any part of an aerial line is to be measured from the nearest point to which the line sags or swings.

Division 5A.3 Electrical infrastructure management

41F Definitions—div 5A.3

In this division:

electrical infrastructure, means—

- (a) powerlines and cables; and
- (b) substations and equipment for monitoring, distributing, converting, transforming or controlling electricity; and

- (c) a structure supporting overhead powerlines and cables; and
- (d) wires, ducts or pipes for wires or equipment; and
- (e) communication equipment for the management of an electricity network; and
- (f) anything else ancillary to paragraphs (a) to (e).

network boundary means a boundary between an electricity network and customers' premises worked out under section 53.

41G Maintenance of electrical infrastructure within network boundary

- (1) A responsible utility is responsible for maintaining electrical infrastructure within the network boundary.
- (2) A responsible utility commits an offence if the responsible utility—
 - (a) is responsible for maintaining electrical infrastructure within the network boundary; and
 - (b) fails to adequately maintain the electrical infrastructure.

Maximum penalty: 10 penalty units.

- (3) Subsection (2) does not apply if the responsible utility has a reasonable excuse.

41H Maintenance of electrical infrastructure within network boundary—powers

- (1) For section 41G, a responsible utility may maintain electrical infrastructure and, for that purpose, do anything reasonably necessary, including—
 - (a) entering and occupying land; and

- (b) undertaking any work on the land for maintaining electrical infrastructure.

Note A responsible utility must give notice to the owner of land before entering or occupying the land (see s 41L).

- (2) However, the responsible utility may only undertake work under subsection (1) (b) in accordance with a technical code (if any) that applies to the work.

Note A responsible utility commits an offence if a technical code applies to the utility, and the utility fails to comply with a requirement of the code (see s 16 (2)).

- (3) For subsection (1) (b), the maintenance of electrical infrastructure includes the following:

- (a) the alteration, removal, repair or replacement of any part of the electrical infrastructure;
- (b) inspecting or otherwise ensuring the proper functioning of the electrical infrastructure from time to time;
- (c) constructing, installing or placing any plant, machinery, equipment or goods;
- (d) interrupting the provision of utility services by the responsible utility;
- (e) demolishing, destroying or removing any electrical infrastructure installed or used by the responsible utility in relation to the provision of a utility service.

- (4) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

Note Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree damaging activity or prohibited groundwork (including in urgent circumstances).

411 Inspection of electrical infrastructure outside network boundary

- (1) This section applies in relation to electrical infrastructure—
- (a) on rural leased land (the *land*); and
 - (b) outside the network boundary.
- (2) A responsible utility—
- (a) must inspect the electrical infrastructure at least every 3 years to check if it is maintained adequately and in a safe state; and
 - (b) may enter the land to carry out the inspection.
- Note* A responsible utility must give notice to the owner of the land before entering the land (see s 41L).
- (3) If, on inspection of the electrical infrastructure, the responsible utility is satisfied on reasonable grounds that the electrical infrastructure is not being maintained adequately and is in an unsafe state, the responsible utility may give the owner written notice to take whatever action is necessary to repair and restore the electrical infrastructure to a safe state.
- (4) The notice must—
- (a) state the repairs needed to restore the electrical infrastructure to a safe state; and

- (b) require the owner to take stated action to repair and restore the electrical infrastructure within a stated period; and
- (c) contain a statement about the effect of subsection (6); and
- (d) contain a statement about the effect of section 41M (Management operations outside network boundary—dispute); and

Note The owner may make a submission to the responsible utility and apply to the ACAT for a determination under s 41M.

- (5) The stated period must be a reasonable period (not less than 14 days) starting on the date the notice is given to the owner.
- (6) If the owner does not comply with the notice—
 - (a) the responsible utility may do whatever is necessary to repair and restore the electrical infrastructure to a safe state; and
 - (b) the reasonable expenses incurred by the responsible utility are a debt due to the responsible utility by the owner.

Note A responsible utility must give notice to the owner of the land before repairing and restoring the electrical infrastructure to a safe state (see s 41L).

- (7) In urgent circumstances, the responsible utility may do whatever is necessary to repair and restore the electrical infrastructure to a safe state—
 - (a) without giving notice to the owner under subsection (3); and
 - (b) at the utility's expense.
- (8) The responsible utility must, as soon as practicable after taking action under subsection (7), give written notice to the owner and the technical regulator about—
 - (a) the action taken to repair and restore the electrical infrastructure to a safe state; and
 - (b) the urgent circumstances that required the action.

- (9) This section has effect in relation to a tree that is a registered tree under the *Tree Protection Act 2005* subject to that Act, part 3 (Protection of trees).

Note Under the *Tree Protection Act 2005*, pt 3 it is an offence to damage a registered tree (or do prohibited groundwork in the tree's protection zone) unless the damage or groundwork is allowed under that Act. Application may be made to the conservator for approval of tree damaging activity or prohibited groundwork (including in urgent circumstances).

- (10) In this section:

urgent circumstances means circumstances in which it is necessary to protect—

- (a) the integrity of a regulated utility network or network facility; or
- (b) the health or safety of people; or
- (c) public or private property; or
- (d) the environment.

Division 5A.4 Performance of management operations

41J Definitions—div 5A.4

In this division:

management operations means an activity or work undertaken by a responsible utility—

- (a) to clear vegetation near an aerial line under division 5A.2 (Vegetation management); or
- (b) to maintain electrical infrastructure within the network boundary under division 5A.3 (Electrical infrastructure management); or

- (c) to inspect electrical infrastructure outside the network boundary under division 5A.3; or
- (d) to repair and restore electrical infrastructure outside the network boundary to a safe state under section 41I (6) if the owner does not comply with a notice under section 41I (3).

private land means land other than public land.

public land means national or unleased territory land.

41K Damage etc to be minimised

In carrying out management operations, a responsible utility must take all reasonable steps to ensure that it causes as little inconvenience, detriment and damage as practicable.

41L Notice to owner

- (1) This section applies to management operations on private land.
- (2) Before a responsible utility starts the management operations, it must give the owner written notice of the proposed operations.

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (3) The notice must—
 - (a) be given a reasonable period (not less than 7 days) before the management operations start; and
 - (b) so far as practicable, state the following:
 - (i) for vegetation clearance near an aerial line—the trees and vegetation affected and the activity proposed;
 - (ii) for maintenance of electrical infrastructure—the electrical infrastructure requiring maintenance and the activity proposed;
 - (iii) for the inspection of electrical infrastructure—the electrical infrastructure to be inspected;

-
- (iv) for the repair and restoration of electrical infrastructure under section 41I (6)—
 - (A) that the utility intends to repair and restore the electrical infrastructure to a safe state; and
 - (B) that the reasonable expenses incurred by the responsible utility are a debt due to the responsible utility by the owner; and
 - (C) the effect of section 41M (Management operations outside network boundary—dispute); and

Note The owner may make a submission to the responsible utility and apply to the ACAT for a determination under s 41M.

- (v) the period during which the activity is expected to be carried out.
- (4) The owner may waive its right to all or part of the minimum period of notice under subsection (3) (a).
 - (5) Subsection (2) does not apply if the management operations are to be carried out in urgent circumstances in which it is necessary to protect—
 - (a) the integrity of a network or network facility; or
 - (b) the health or safety of people; or
 - (c) public or private property; or
 - (d) the environment.

41M Management operations outside network boundary—dispute

- (1) This section applies if—
 - (a) a responsible utility gives notice to an owner to repair and restore electrical infrastructure under section 41I (4); or

- (b) the responsible utility gives notice to the owner under section 41L (3) (b) (iv) that—
- (i) the utility intends to repair and restore the electrical infrastructure to a safe state; and
 - (ii) the reasonable expenses incurred by the responsible utility are a debt due to the responsible utility by the owner.
- (2) The owner may—
- (a) make a submission to the responsible utility about the repairs; or
 - (b) propose a different period for the repairs to be carried out.
- (3) If the responsible utility and the owner cannot agree on the repairs, or the period for the repairs to be carried out, either the utility or the owner may apply to the ACAT for a determination of the repairs or the period.

8 Dictionary, note 2

insert

- conservator of flora and fauna
- national land
- territory land

9 Dictionary, new definitions

insert

aerial cable, for division 5A.2 (Vegetation management)—see section 41C.

aerial conductor, for division 5A.2 (Vegetation management)—see section 41C.

aerial line, for division 5A.2 (Vegetation management)—see section 41C.

aerial service line, for division 5A.2 (Vegetation management)—see section 41C.

conductor, for division 5A.2 (Vegetation management)—see section 41C.

covered conductor, for division 5A.2 (Vegetation management)—see section 41C.

electrical infrastructure, for division 5A.3 (Electrical infrastructure management)—see section 41F.

insulated, for a thing, for division 5A.2 (Vegetation management)—see section 41C.

management operations, for division 5A.4 (Performance of management operations)—see section 41J.

network boundary, for division 5A.3 (Electrical infrastructure management)—see section 41F.

10 Dictionary, definitions of *occupier* and *owner*

substitute

occupier, of premises—

- (a) for part 5A (Vegetation and electrical infrastructure management)—see section 41A; and
- (b) for part 9 (Enforcement)—see section 76.

owner—

- (a) for part 5A (Vegetation and electrical infrastructure management)—see section 41A; and
- (b) in relation to a dam or proposed dam, for part 8 (Dams safety)—see section 57.

11 Dictionary, new definitions

insert

private land, for division 5A.4 (Performance of management operations)—see section 41J.

public land, for division 5A.4 (Performance of management operations)—see section 41J.

12 Dictionary, definition of *responsible utility*

substitute

responsible utility—

- (a) for this Act generally—for a regulated utility network or network facility, means a regulated utility that provides utility services using the regulated utility network or network facility; and
- (b) for part 5A (Vegetation and electrical infrastructure management)—see section 41A.

13 Dictionary, new definitions

insert

rural lease, for part 5A (Vegetation and electrical infrastructure management)—see the [Planning and Development Act 2007](#), section 234.

rural leased land, for part 5A (Vegetation and electrical infrastructure management)—see section 41A.

U, for an aerial line, for division 5A.2 (Vegetation management)—see section 41C.

Schedule 1 Tree Protection Act 2005— Consequential amendments

(see s 3)

[1.1] Section 19 (1) (d) (iii)

substitute

- (iii) any of the following under the *Utilities (Technical Regulation) Act 2014*:
- a network protection notice given under section 32;
 - section 41D (Clearance from aerial lines—vegetation);
 - section 41H (Maintenance of electrical infrastructure within network boundary—powers);
 - section 41I (Inspection of electrical infrastructure outside network boundary); or

[1.2] New section 19 (1) (ea)

insert

- (ea) anything done in relation to a registered tree under any of the following provisions of the *Utilities (Technical Regulation) Act 2014* for protecting life or property if it is not practicable because of the urgency of the situation to obtain an approval under section 29:
- (i) section 41D (Clearance from aerial lines—vegetation);
 - (ii) section 41H (Maintenance of electrical infrastructure within network boundary—powers);
 - (iii) section 41I (Inspection of electrical infrastructure outside network boundary); or

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 21 September 2017.

2 Notification

Notified under the [Legislation Act](#) on 8 November 2017.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Utilities (Technical Regulation) Amendment Bill 2017, which was passed by the Legislative Assembly on 24 October 2017.

Acting Clerk of the Legislative Assembly

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