

ACTEW/AGL PARTNERSHIP FACILITATION BILL 2000

EXPLANATORY MEMORANDUM

Circulated by authority of
Gary Humphries MLA
Treasurer
March 2000

EXPLANATORY MEMORANDUM

ACTEW/AGL Partnership Facilitation Bill 2000

Outline

The Act facilitates the process and establishment of joint venture partnerships between the subsidiaries of ACTEW Corporation ("ACTEW") and the Australian Gas Light Company ("AGL") to supply multi-utility services.

ACTEW will retain ownership of assets, rights and liabilities associated with water and sewerage operations and will contract the partnership to maintain, manage and operate these business activities.

Subsidiary companies of ACTEW and AGL intend to enter into partnerships to provide electricity and gas services. ACTEW and AGL will vest existing assets, rights and liabilities in one or more joint venture entities or the joint venture partnerships owned by them.

An agent company or companies may be established to manage the operations of the partnerships. ACTEW will have a beneficial interest of not less than 50% in an agent company and will be able to appoint 50% of the directors appointed to the board of an agent company.

The joint venture partnership agreement will provide that ACTEW's approval must be given before AGL directly or indirectly disposes of any part of its beneficial interests in a joint venture partnership's assets to an unrelated third party.

Employees of ACTEW will be seconded to joint venture entities to perform their duties and ACTEW will delegate its powers as an employer to these joint venture entities. The employees will remain employees of ACTEW and the joint venture entities will not have the authority to discipline or terminate an employee.

The accounts and records of the partnership will be jointly audited by the Territory's auditor-general and a qualified auditor appointed by AGL.

IPARC will be the regulating body responsible for price determination, access issues and other matters that would normally fall within its jurisdiction.

Objectives

The Act seeks to establish a framework to facilitate a partnership between the subsidiaries of ACTEW and AGL in relation to the provision of electricity, gas, water and sewerage activities. Water and sewerage assets remain in the ownership of ACTEW.

The Act seeks to protect the Territory's interests in the assets of ACTEW and develop corporate structures that are commercially viable and attractive to ACTEW and AGL. It seeks to ensure that ACTEW maintains at least 50% beneficial interest in the joint venture partnerships and that it is able to appoint at least 50% of the directors of the partnerships.

The Act seeks to facilitate an efficient and structured transfer of assets, rights and liabilities from ACTEW and AGL to the joint venture entities.

The Act seeks to facilitate the secondment of labour from ACTEW to the joint venture entities, while maintaining ACTEW as the employer and retaining disciplinary and termination powers with ACTEW.

The Act seeks to confirm the role of the Independent Pricing and Regulatory Commission as the regulatory body for the partnerships.

THE BILL

PART 1

PRELIMINARY

Clause 1

Name of Act

States the name of the Bill. The title will assist quick location of the Act having regard to the matters it deals with.

Clause 2

Commencement

Sets the dates of commencement of the provisions.

Clause 3

Dictionary

Provides that certain words used in the Act have specific meanings.

Clause 4

Notes

Ensures that notes contained in the Act do not have legal status.

Clause 5

Object of this Act

Defines the purpose of the Act and states that the Act is intended to facilitate a joint venture between ACTEW Corporation Limited ("ACTEW") and The Australian Gas Light Company ("AGL").

Clause 6

Extra-territorial operation

Provides for the extension of the operation of the Act in territories and activities defined within this section.

Clause 7

Relationship with the Territory Owned Corporations Act

Provides that the Act does not in anyway, directly or indirectly, seek to derogate the application of the Territory Owned Corporations Act 1990 to ACTEW or its subsidiaries.

PART 2

RIGHTS CONCERNING CERTAIN NETWORK FACILITIES

Clause 8

Definitions for pt 2

Provides specific definitions for terms used in Part 2 of the Act.

- Clause 9 **Purpose of pt 2**
- Provides that Part 2 of the Act is intended to be used to remove any uncertainty about the ownership of certain defined network facilities following the implementation of a joint venture between ACTEW and AGL.
- Clause 10 **Facilities on non-ACTEW land on non-AGL land**
- Provides that the Minister may declare that a network facility is vested in a corporation or a subsidiary of a corporation. ACTEW will be vested with rights that will assist it operate, maintain or otherwise use such network facilities. This section describes the procedures for making a declaration and the effect and scope of the declaration.

PART 3 VESTING OF ASSETS AND LIABILITIES

Division 3.1 - At commencement of joint venture

- Clause 11 **Vesting of assets and liabilities**
- Provides that the Minister may make a declaration to vest the assets, rights and liabilities of ACTEW and AGL and subsidiaries of either company to one or more joint venture entities or a partnership, conditional upon agreement by both companies.
- This section is not to supersede any provisions related to main undertakings contained within the *Territory Owned Corporations Act 1990*.

Division 3.2 – At end of joint venture

- Clause 12 **Application of div 3.2**
- This section states that Division 3.2 of the Act applies only when ACTEW or AGL certify to the Minister in writing that an ACTEW-AGL joint venture partnership has been, or will be, dissolved.
- Clause 13 **Vesting of assets and liabilities**
- Provides that in the event the joint venture is dissolved, the Minister is able to make a declaration to transfer the assets, rights and liabilities of the joint venture to a person, conditional upon agreement by both companies. Assets, rights and liabilities that relate to reticulation or distribution of electricity are to be treated separately and may only be vested in ACTEW or a subsidiary of ACTEW.

Division 3.3 - Provisions applicable to all vestings under pt 3

- Clause 14** **Description of assets, etc**
An interpretive clause. Provides that a notice that makes a reference to assets, rights or liabilities made under sections 11 or 13 is sufficient if the reference relates to a class of assets, rights or liabilities, or if the reference relates to the assets, rights or liabilities by way of exclusion from a class.
- Clause 15** **Effect of notices under pt 3**
Provides that after the vesting of assets, rights or liabilities under sections 11 or 13, the transferee is in law considered to be vested with those assets, rights or liabilities without further conveyance, transfer or assignment.
- Clause 16** **Evidence of vesting**
An authorised person may complete a certificate to certify and provide documentary evidence of the vesting of assets, rights or liabilities transferred under sections 11 or 13.
- Clause 17** **Completion of necessary transactions**
Provides that transferors and transferees may take all practicable steps to ensure that a vesting under sections 11 or 13 meet all requirements of Territory legislation or the laws of any other place within a reasonable period of time.
- Clause 18** **Registration of changes of ownership of assets**
Provides that a transferee may present a certificate prepared in compliance with section 16 to a registering body as evidence of the vesting of a registrable asset vested lawfully under sections 11 or 13 of the Act. The registering authority must accept the certificate as evidence of the vesting.
- Clause 19** **Part 3 does not place person in breach of contract etc.**
A person who acts in accordance with Part 3 of this Act is not in breach of any law or contract etc. as a result of according with Part 3.
- Clause 20** **Application of Lands Acquisition Act**
Provides that the *Lands Acquisition Act 1994* does not apply to actions under this Act.

- Clause 21 **Proceedings and evidence**
- Provides that any proceedings relating to assets, rights and liabilities that have been vested under Part 3 of this Act are to be commenced or continued against the transferee.
- PART 4 SECONDMENT OF ACTEW EMPLOYEES**
- Clause 22 **Meaning of *joint venture entity* for pt 4**
- Includes an agent company and a partnership within the definition of joint venture entity.
- Clause 23 **Secondment**
- Provides that ACTEW may, by terms agreed with the other joint venture entity, second its employees to an entity of the joint venture and, that it may terminate the secondment of the employees to the joint venture within the terms of the agreement between ACTEW and the relevant joint venture entity.
- Clause 24 **Employer–employee relationship**
- Provides that ACTEW may direct employees to perform duties on secondment. Seconded employees are not employees of the joint venture entity they are seconded to and remain employees of ACTEW.
- Clause 25 **Day-to-day supervision of seconded staff**
- ACTEW may delegate all its powers as employer of staff seconded to a joint venture entity to a joint venture entity to act as its agent, except for the power to discipline or terminate an employee.
- Clause 26 **Employment conditions only affected as expressly provided**
- Provides that the employment conditions of ACTEW employees are not affected by any part of this Act other than the provisions contained in Part 4 of this Act.

PART 5

PUBLIC ACCOUNTABILITY

Clause 27

ACTEW to maintain at least 50% interest in partnerships

Provides that ACTEW must maintain at least a 50% beneficial interest in the total equity of a joint venture partnership unless it has the prior approval of the Legislative Assembly.

Clause 28

ACTEW control over its joint venture entities

Provides that ACTEW must hold 100% beneficial interest in a company for it to be eligible to be a representative of ACTEW's interests as a joint venture entity, unless otherwise approved by the Legislative Assembly.

Clause 29

ACTEW interest in agent companies

ACTEW must hold at least 50% beneficial interest in a company for it to be eligible to be an agent company, unless otherwise approved by the Legislative Assembly.

Clause 30

Agent companies not to dispose of undertakings without consent

Provides that an agent company may not dispose of its main undertakings, unless otherwise approved by the Legislative Assembly. Provides that agent company may not dispose of significant assets or give a charge over significant assets or a significant part of its undertakings, unless otherwise approved by the voting shareholders of ACTEW.

Clause 31

Public interest safeguards in partnership agreements

Provides that a joint venture partnership agreement must contain provisions that require ACTEW's approval prior to AGL directly or indirectly disposing of its beneficial interests in a joint venture partnership's assets to an unrelated entity.

Provides that a joint venture partnership agreement must contain provisions that entitle ACTEW, or the joint venture entity that represents it in a partnership, to appoint 50% of the directors of an agent company.

PART 6

MISCELLANEOUS

Division 6.1 - Audit of accounts of partnerships

Clause 32

Audits

Provides that each financial year the Auditor General and a qualified auditor appointed by AGL will jointly audit the accounts of the partnership. The auditors must provide ACTEW and AGL with a copy of the accounts and audit report. The Act imposes a penalty for failure to comply with this section.

Clause 33

Auditor to be qualified

Provides that an auditor appointed by AGL must be qualified to audit accounts.

Division 6.2 - General

Clause 34

Agents

Provides that a joint venture entity may appoint an agent to facilitate in the fulfilment of its obligations or functions.

Clause 35

Compensation

Provides that if property is acquired from a person by unjust or unlawful means, then the Territory is liable to pay reasonable compensation to that person.

Clause 36

Regulation of prices, access and other matters

Provides that the Independent Pricing and Regulatory Commission ("IPARC") has jurisdiction over the entities within the joint venture partnership to the same extent that it would ordinarily have jurisdiction over ACTEW.