

2000

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

WATER AND SEWERAGE BILL 2000

EXPLANATORY MEMORANDUM

**CIRCULATED BY AUTHORITY OF
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TREASURER**

WATER AND SEWERAGE BILL 2000

OUTLINE

The *Water and Sewerage Bill 2000* regulates the supply of plumbing and sanitary drainage services in the ACT.

Previously, matters dealt with in this Bill were covered in the Canberra Sewerage and Water Supply Regulations in force under the *Energy and Water Act 1988*. The Energy and Water Act is to be repealed under the *Utilities Bill 2000*. This Bill will keep alive those regulations.

Substantive matters within the existing regulations now in this *Water and Sewerage Bill 2000* include a plan approval scheme requiring the approval of plans for certain classes of sanitary plumbing, sanitary drainage and water supply plumbing. This includes the requirement for certifiers, to approve the plan.

The *Water and Sewerage Bill 2000* also specifies offences for unlicensed persons working at a consumers' premises. This includes work on sprinkler systems, sanitary plumbing, household drainage, and where the customer's service pipe connects with the utility's water network.

Enforcement and inspectorate powers have been brought up to date with current legal policy and drafting practices. They parallel the provisions of the *Utilities Bill 2000* and the *Electricity Amendment Bill 2000*.

This Bill essentially re-organises and updates existing regulations to ensure effective regulation of plumbing and sanitary drainage services.

Financial Implications

There are no financial implications.

CLAUSE NOTES

Part 1 - Preliminary

Clauses 1, 2, 3 and 4 are formal clauses that deal with the short title of the Act, its commencement, the Dictionary and matters of interpretation.

Part 2 – Plan Approvals

Division 2.1 - Certifiers

5. Subclause 5(1) deals with the appointment of certifiers. It states that the owner of the premises where plumbing or drainage work is to be done must appoint a certifier. The appointment must be in writing.

Subclause 5(2) states that a certifier is not required for work on single residential buildings or work on pipes connected to a water pipe that at its connection with the water main has a diameter of less than 50 mm.

Subclause 5(3) states that an appointment ends if the owner gives the certifier written notice or if the certifier gives the owner written notice and subclause 5(4) provides that an appointment ends if the certifier ceases to be eligible to be appointed.

6. Clause 6 makes void a provision in a contract or agreement that tries to limit or modify the operation of the Act in relation to a certifier. The intention is to prevent conflicts between a certifier's statutory duty and the certifier's contractual obligations.

Division 2.2 – Issue of plan approvals

7. Clause 7 states that the owner of premises may apply to a certifier for plan approval for plumbing or sanitary drainage work. The application must be in a form approved by the chief executive.

- 8.** Subclause 8(1) states that a certifier must not approve a plan unless certain approvals have been obtained, namely from the responsible utility:
- (i) if non-domestic waste is to be disposed, for its disposal and manner of its disposal;
 - (ii) if an increase in water demand or sewer load is likely, for the increase;
 - (iii) for a change in the location of the points of connection to sewerage or water networks if a change is required;
 - (iv) for a new point of connection to sewerage or water networks if one is required;
 - (v) for a proposed new fire service;
 - (vi) for the discharge of surface water or storm water where it is to be discharged into the sewerage network;
 - (vii) if a pumping device is being connected to the network, for the connection and the manner of the connection.

Approval must also be obtained from the chief health officer for the disposal and manner of disposal to the sewerage system of radioactive materials.

Subclause 8(2) states that the certifier must not approve plans unless

- (a) the application is in a form that accords with clause 7;
- (b) the applicant has obtained any approvals required by subclause 8(1);
- (c) the plan complies with the requirements of the Act; and
- (d) the proposed work complies with Australian Standard 3500.

Subclause 8(3) requires the certifier to give copies of the approved plans and the approval to the applicant as soon as possible and to the chief executive within 7 days of approval.

- 9.** Subclause 9 allows the owner of premises to apply to a certifier for approval of amendment to an approved plan. The application must be in a form approved by the chief executive.

The certifier must refuse the application if satisfied that the proposed amendment requires reconsideration of the plan approval. However, the certifier may approve the amendment if satisfied that reconsideration of the plan approval is not required and the requirements of all but paragraph (2)(a) of subclause 8(2) have been complied with.

References to plan approvals include references to plan amendment approvals.

- 10.** This clause requires a certifier who has become the certifier for plumbing or drainage work to notify, in writing, the chief executive if he or she ceases to act in that capacity within 7 days after the appointment ends.

A penalty of 1 penalty unit is provided for contravention of this provision.

Part 3 - Offences

- 11.** Subclause 11(1) prohibits anyone other than a person holding a water supply plumber's licence, a journeyman plumber's licence or a sprinkler fitter's licence from installing or fitting a sprinkler system or any part of a sprinkler system.

A penalty of 50 penalty units and/or 6 months imprisonment is provided for contravention of this provision.

Subclause 11(2) requires a person installing or fitting a sprinkler system or any part of a sprinkler system to give two business days' notice, in writing, to the chief executive of his or her intention to undertake the work. Subclause 11(3) requires the determined fee to accompany the notice.

A penalty of 20 penalty units is provided for contravention of subclause 11(2).

- 12.** Subclause 12(1) requires people who do sanitary plumbing work to hold a sanitary plumber's licence.

A penalty of 50 penalty units and/or 6 months imprisonment is provided for contravention of this provision.

Subclause 12(2) states that the requirement in 12(1) does not apply if the person does water supply plumbing necessary for the sanitary plumbing work and holds a water plumber's licence or the person holds a journeyman plumber's licence and does sanitary plumbing work under the supervision of a holder of a sanitary plumber's licence.

- 13.** Clause 13 requires people who lay or repair drains to hold advanced sanitary drainer's licences or operative drainer's licences if the work is carried out under the supervision of the holder of an advanced sanitary drainer's licence.

A penalty of 50 penalty units and/or 6 months imprisonment is provided for contravention of this provision.

- 14.** Clause 14 requires people who carry out water supply plumbing linked to the water network to hold water supply plumbers' licences.

A penalty of 50 penalty units and/or 6 months imprisonment is provided for contravention of this provision.

- 15.** Subclause 15(1) requires a person carrying out water supply plumbing linked to the water network to first give the chief executive 2 business days' notice, in writing, of his or her intention to start the work and to have any approval required under the regulations. The person must comply with any directions given by the chief executive and the work must be in accordance with MP52.

A penalty of 20 penalty units is provided for contravention of this provision.

Subclause 15(2) provides that notice required under 15(1) must be signed by the licensed plumber actually undertaking the work or by a licensed plumber supervising another plumber to do the work. Subclause 15(3) prohibits a licensed plumber from signing a notice for work that is not actually done or supervised by him or her and from carrying out work under a notice not signed by the licensed plumber.

A penalty of 50 penalty units is provided for contravention of this provision.

Subclause 15(4) makes clear that communication to the water network includes communication through the medium of a storage tank.

- 16.** Subclause 16(1) requires a person undertaking work connected to a sewerage system to first give the chief executive 2 business days' notice, in writing, of his or her intention to start the work. If the work is minor sanitary or drainage work the person must submit to the chief executive a minor works notice within 7 days of completing the work.

A penalty of 20 penalty units is provided for contravention of this provision.

Subclause 16(2) provides that notice required under 16(1) be accompanied by the determined fee. With the exception of minor works notices, notices for work relating to single residential buildings must also be accompanied by site plans and, in all other cases, by a plan approved under clause 8.

Subclause 16(3) provides that site plans must be in accordance with AS1100 on a scale of not less than 1:200; must be in the form approved by the chief executive and must contain the information required by the form.

Subclause 16(4) excludes from 16(1) persons holding a journeyman plumber's licence performing minor sanitary plumbing work under the supervision of a person who holds a sanitary plumber's licence and who has given notice under 16(1)(a) or has submitted a minor works notice within 7 days of completing the work. Also excluded are persons holding operative drainers' licences performing minor drainage work under the supervision of persons holding advanced sanitary drainers' licences and who have given notice under 16(1)(b) or have submitted a minor works notice within 7 days of completing the work.

Subclause 16(5) defines minor sanitary plumbing work as work that is limited to the maintenance of existing work, and is to be undertaken by the holder of a sanitary plumber's licence, and the cost of the work (excluding the cost of sanitary fixtures) is less than \$1,000.

Subclause 16(6) defines minor drainage work as work that involves the replacement or repair of drains, and is to be undertaken by the holder of an advanced sanitary drainer's licence, and the cost of the work (excluding the cost of sanitary fixtures) is less than \$1,000.

Subclause 16(7) specifies that minor works notices must be in a form approved by the chief executive, certify that the work was completed in accordance with the regulations, and contains the information required by the form.

- 17** Clause 17 prohibits licensed plumbers or drainers, without reasonable excuse, from hiring unlicensed people to do plumbing work.

A penalty of 50 penalty units is provided for contravention of this provision.

Part 4 - Enforcement

Division 4.1 – General

- 18** Clause 18 defines certain terms used in Part 4. Thus an "occupier of premises" includes the apparent occupier and a person apparently in charge of the premises. The term "reasonably believes" is defined as meaning having reasonable grounds for believing.
- 19** Clause 19 states what references to offences and things connected to an offence mean in Part 4. Something is connected to an offence if it was a thing in respect of which the offence was committed; if it is evidence that an offence has been committed; or if it was, is being, or is intended to be, used to commit the offence. An offence includes an offence for which there are reasonable grounds to believe it has occurred, is being, or will be committed.
- 20** Clause 20 allows the chief executive to require, in writing, a person to give written information or produce a document. The notice must say where and when the information or document is to be provided. The chief executive may keep part or all of a document or keep it while it is relevant to something under the Act. If the document is kept, it must be made available to anyone who would otherwise have been entitled to look at it.
- 21** Clause 21 makes it an offence to act contrary to clause 20.
- A penalty of 50 penalty units, six months' imprisonment, or both is provided for contravention of this provision.
- 22** Clause 22 provides for the rectification of defective work to the water service, plumbing system or sanitary drainage system. If the work does not comply with a direction given by an inspector under clause 32 of the Act and the chief executive reasonably believes that the work does not comply with the Act or the regulations and poses a threat to public safety, property or the environment, he or she may direct the owner, in writing, to rectify the problem within a given time. The chief executive may arrange for the work to be done if the owner fails to comply with his or her notice and reasonable expenses are a debt due to the Territory by the owner.

Division 4.2 – Inspectors

- 23** Clause 23 allows the chief executive to appoint an inspector in writing. Inspectors may be appointed in relation to specific provisions of the Act or the regulations and must act according to any conditions that are part of their appointment and any other direction.

Clause 23(3) specifies that to be appointed as an inspector, a person must be an Australian citizen or permanent resident of Australia; the chief executive must state in writing that checks have been made and the person is suitable for appointment; and the person must have adequate training and competencies.

- 24** Clause 24 requires the chief executive to issue inspectors with identity cards. Inspectors must return their cards when they cease to be inspectors.

A penalty of 1 penalty unit is provided for failure to return an identity card.

- 25** Clause 25 provides for the chief executive to exercise inspectors' powers.

- 26** Clause 26 allows the chief executive to delegate all of his or her powers under Part 4 (except for appointment of inspectors) to inspectors or public servants.

- 27** Clause 27 sets out the conditions under which an inspector may enter premises. An inspector may enter any premises at any time if the occupier or person in charge agrees; may enter premises connected to a water or sewerage network (except for that part of the premises used for residential purposes), at any reasonable time; and may enter premises with a warrant. Nothing in this prevents an inspector from entering land around premises to ask for permission to come in.

- 28** Clause 28 states that an inspector must leave premises if the occupier or person in charge of the premises asks the inspector to produce his or her identity card and he or she does not do so.

- 29** Clause 29 sets out the procedure inspectors must follow to obtain consent to remain on premises. Inspectors must produce their identity card, say why they want to come in, say that if anything is found and seized, it may be produced in court as evidence and that the person does not have to let the inspector in. The occupier or person in charge of the premises must then sign a statement that the inspector provided the information mentioned in the previous sentence, and the occupier agreed to the entry. The statement must specify the date and time. If the occupier does sign, the inspector must give the occupier a copy of the signed statement.

Courts will assume that the occupier did not agree to entry if the issue arises and no written document can be produced. Other proof of consent may be provided.

- 30** Clause 30 allows an inspector to apply to a magistrate for a warrant to enter premises. The application must be sworn, state the grounds for the application and state that the warrant allows entry with necessary help and force to exercise the inspector's powers under the Act. It must identify the offence concerned, the evidence that may be seized, the proposed hours of entry and the date when the warrant will cease to be valid. The magistrate may only issue the warrant if satisfied that there are reasonable grounds that evidence related to an offence against the Principal Act is on the premises or will be at some time before the warrant expires. The magistrate may first ask for additional information.
- 31** Clause 31 allows a warrant to be issued without a written application in urgent or other special circumstances. Application may, for instance, be made by telephone, facsimile, or radio. The inspector must still make out a written application, but may apply to the magistrate before the warrant is sworn. The magistrate must then send a copy of the warrant to the inspector by facsimile. If this is not reasonably possible, the magistrate must at least tell the inspector what the terms of the warrant are and when it was issued and the inspector must record these details and the magistrate's name on the warrant form. The facsimile of the warrant or the warrant form can be used when executing the warrant. The inspector must as soon as practicable send the sworn application and the completed warrant form, if there was one, to the magistrate to be attached to the original warrant.

Courts will assume that a warrant did not authorise an inspector to exercise an inspection power if the issue arises and the warrant is not produced. Other proof may be provided.

Division 4.3 – Powers of inspectors on entry to premises

- 32** Clause 32 lists the actions that inspectors may carry out on the premises after entering and allows inspectors to have assistance or take things with them and obtain assistance from anyone present in carrying the actions out. The assistance or things must be relevant to the inspector's powers under the Act. It is an offence to fail to provide reasonable assistance to the inspector and a penalty of 50 penalty units is provided for contravention.

The clause also allows an inspector to open up premises or excavate land and requires them to cause as little damage as reasonably practicable.

If the inspector finds that any part of a water service, plumbing system or sanitary drainage system does not comply with the Act or the regulations, or are in bad order or condition, or require cleansing, alteration, amendment or to be filled up, he or she may give the owner a written direction requiring them to rectify the problem within a specified time. The owner must not, without reasonable excuse, contravene an inspector's direction and a penalty of 50 penalty units is provided for.

If the inspector finds that the water service, plumbing or sanitary drainage systems are not defective the inspector must arrange for the service to be

promptly restored. Any expenses thus incurred must be borne by the Territory.

- 33** Clause 33 allows an inspector who finds a person committing an offence against the Act, or has good grounds to think the person has committed such an offence, to make the person provide their name and address. The inspector must tell the person why he or she wanted the information and must then write down the reason as soon as possible.

The person does not have to comply if the inspector does not produce an identity card or if there is a reasonable ground not to comply. Otherwise refusal is an offence and a penalty of 5 penalty units is provided for contravention of this provision.

- 34** Clause 34 allows an inspector to remove things from premises as evidence. An inspector acting under a warrant may seize evidence of a kind mentioned in the warrant. An inspector who enters with the agreement of the occupier or person in charge of the place may seize something if it is connected with an offence against the Act and the seizure is consistent with the purpose that the inspector told the occupier was the reason for the proposed entry. In either case, the inspector may seize something else if the inspector considers that it is connected with an offence against the Act and that seizure is necessary to prevent the thing from being hidden, lost or destroyed or from being used or reused to commit the offence.

After seizing the thing, the inspector may remove it from the premises whence it was seized or leave it behind but restrict access to it.

If the thing is left behind but access is restricted, it is an offence to tamper with it without the approval of the chief executive and a penalty of 50 penalty units, imprisonment for six months or both is provided for contravention.

- 35** Clause 35 requires an inspector to make out a receipt for anything seized as soon as practicable and give it to the person from whom it was seized or else, if this is impracticable, leave it behind in an obvious place.
- 36** Clause 36 allows anyone who would have been entitled to something seized if it had not been seized to inspect it after seizure and, if it is a document, make a copy of part or all of it.

- 37** Clause 37 requires the chief executive to return anything that has been seized or pay reasonable compensation for it if no prosecution is begun within 90 days of the seizure or if there is a prosecution and the court does not find that the offence is proved and order the thing to be forfeited.

- 38** In addition to the power given to inspectors to enter premises under clause 27, clause 38 allows an inspector to enter premises at any reasonable time, take someone or something to help him or her, and to carry out tests or inspections on plumbing or sanitary drainage work as provided for under the Act. The inspector must leave the place if the occupier or person in charge of

the place asks the inspector to produce the inspector's identity card and the inspector does not do so. If a place is being used as a residence, the occupier or person in charge must agree to the entry.

Division 4.4 — Miscellaneous

- 39** Clause 39 states that the tendency of something provided or said to incriminate the person who provides or says it does not excuse the person from providing or saying it, but limits use of the information and anything obtained directly or indirectly as a result of that information as evidence in criminal proceedings. It may not be used as evidence except in relation to an offence under this Part of the Act, an offence relating to the falsity of the information or a related offence under Part 8 ("Aiding and abetting, accessories, attempts, incitement and conspiracy") of the Crimes Act 1900.
- 40** Despite clause 39, clause 40 allows a person who can claim legal privilege to refuse to provide or say something.
- 41** Clause 41 makes it an offence for a person to knowingly provide false or misleading information in response to a demand under this Part of the Act and a penalty of 50 penalty units, imprisonment for six months or both is provided for contravention.
- 42** Clause 42 makes it an offence for a person to knowingly provide a false or misleading document in response to a demand under this Part of the Act. A penalty of 50 penalty units, imprisonment for six months or both is provided for contravention.
- 43** Clause 43 makes it an offence to hinder or obstruct an inspector who is acting under this Part of the Act and a penalty of 50 penalty units, imprisonment for six months or both is provided for contravention.

Part 5 – Miscellaneous

- 44** Clause 44 provides for review by the Administrative Appeals Tribunal of decisions relating to directions made by the chief executive under clause 22 and by inspectors under clause 32(4). The clause also requires anyone making such decisions to give written notice of their decision to affected persons in a form that accords with the relevant code of practice under the *Administrative Appeals Tribunal Act 1989*.
- 45** Clause 45 allows the Minister to determine fees payable under the Act. The determination, which must be in writing, must state the amount of the fee and how the fee is to be calculated and is disallowable by the Assembly.
- 46** Clause 46 provides for the Executive to make regulations for the Act. The regulations may be in relation to:
 - (a) certification of plumbing or sanitary drainage work;
 - (b) doing plumbing or sanitary drainage work;

- (c) inspection of plumbing or sanitary drainage system or plumbing or sanitary drainage work;
- (d) notification requirements for plumbing or sanitary drainage work;
- (e) standards for plumbing or sanitary drainage work and the approval of materials used;
- (f) connection of equipment to water and sewerage infrastructure;
- (g) removal or repair of defective plumbing or sanitary drainage;
- (h) review of decisions made under the regulations; and
- (i) payment of fees.

The regulations may make provision for matters by applying, adopting or incorporating any matter that is contained in a prescribed standard. The regulations may also create offences punishable by penalties not exceeding 10 penalty units.

Part 6 – Transitional

This part deals with transitional matters and preserves certain provisions contained in the *Canberra Sewerage and Water Supply Regulations* which are repealed under this Act.

- 47** Clause 47 makes clear that for this Part the “commencement day” is the day on which this Part commences. References to “former regulations” are to the *Canberra Sewerage and Water Supply Regulations* in force under the *Energy and Water Act 1988* immediately before the commencement day.
- 48** Clause 48 repeals the *Canberra Sewerage and Water Supply Regulations* and a number of other regulations. The former will be remade as new regulations.
- 49** This clause preserves certifier appointments made under the *Canberra Sewerage and Water Supply Regulations*.
- 50** Likewise, clause 50 preserves applications for any plan approvals granted under the *Canberra Sewerage and Water Supply Regulations*, as well as plan approvals and approvals for amendments to plans.
- 51** Clause 51 gives the Executive limited powers to make regulations for transitional purposes that are additional to, or modifications of, matters covered by this Part. Any regulations made under this Part must be consistent with the Act.
- 52** Clause 52 provides for the expiry of this Part one year after it commences.

Dictionary

The Dictionary forms part of the Act by virtue of the operation of clause 4.