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

ENERGY AND WATER ACT 1988

**ENERGY AND WATER (REGULATION OF CHARGES) REGULATIONS
(AMENDMENT)**

EXPLANATORY STATEMENT

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EXPLANATORY STATEMENT

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ENERGY AND WATER (REGULATION OF CHARGES) REGULATIONS (AMENDMENT)

Outline

The Energy and Water (Regulation of Charges) Regulations (Amendment) (hereafter referred to as the "Amending Regulations" provide for amendments to the Energy and Water (Regulation of Charges) Regulations (hereafter referred to as the "Regulations") which are intended to clarify the decision making powers of the ACT Energy and Water Charges Commissioner.

Legislative background

Subsection 48(1) of the Energy and Water Act 1988 (hereafter "the Act") provides that the Company may determine charges for or in connection with the supply of electricity or water or the provision of sewerage services.

Section 49A of the Act states that Regulations may provide for:

- the establishment of a body having the function of regulating charges for, or in connection with, the supply of electricity or water or the provision of sewerage services;
- the giving of directions by that body to the Company for the determination of charges by the Company under subsection 48(1) of the Act;
- the membership, procedures and staffing of that body;
- the matters that should be taken into account by that body in giving directions; and
- other powers and functions of that body, including the conduct of investigations.

The Regulation was made pursuant to section 49A of the Act.

The Regulations

The Regulations establish the ACT Energy and Water Charges Commission and its functions. The Regulations described the issues which may be referred by the Minister to the Commission.

The Regulations provide that the Commission shall at the end of its investigations decide on the level of charges, and make a direction to the Company. This direction forms the basis of the report to the Minister, and is tabled in the Legislative Assembly.

Regulation 18 deals with the regulation of charges and the form that the Commission's decision should take.

Subregulation 18(1) provides that the Commission shall decide on a level of charges for services at the conclusion of its investigation and give a direction to the Company.

Subregulation 18(2) sets out the matters which the Commission shall have regard in making its decision. These include economic factors such as the need for greater efficiency in the supply of services, the appropriate rate of return to the Territory on its investment in the Company and the borrowing, capital and cash flow requirements of the Company; consumer protection matters such as protection of consumers from abuse of monopoly power by the Company and standards of quality, reliability and safety of the services; environmental factors such as the need to comply with the principles of ecologically sustainable development and considerations of demand management; and the social impacts of decisions.

Subregulation 18(3) provides that in a decision the Commission shall record the extent to which it has had regard to the matters listed in subregulation 2.

Subregulations 18(4) and 18(5) relate to the matters which a direction shall specify: either the maximum charge for a particular service or the method by which that charge is to be ascertained.

Objective of Amending Regulation

The amendment is intended to clarify the methods which may be used by the Regulator when a direction is made to the Company concerning particular charges.

The policy intent of amending the Regulations, is to allow for the use of common regulatory devices, such as a revenue or price cap.

The power of the Commissioner under the existing regulation 18 (4) is limited to a maximum charge for a service either expressly or by way of a method provided that in the opinion of the Commission it is impractical to specify a maximum charge.

By comparison with regulatory regimes in other States, this definition of "maximum" charge in the Regulations is narrow and may be subject to relatively subjective interpretation by a Court should it be challenged. It also has a restrictive impact on the scope of regulatory approaches possible.

The Amending Regulation seeks to broaden the number of approaches, within the power of section 48 (1) of the enabling legislation. The amendment now provides for the setting of a charge, or a maximum charge, or a maximum and minimum charge; and a formula or method to calculate these charges. This broadens the regulatory options available, within existing legislative powers.

Amending Regulations

Regulation 1 provides for commencement of the Amending Regulations on the day of gazettal.

Regulation 2 amends sub-regulations 18 (4), (5) and (6) of the Regulations.

The amendments bring together in the new sub-regulation 18 (4) the provisions previously contained in subregulations 18 (4) and 18 (5).

The requirement for the Regulator to notify the reasons for choice of method or direction still holds. The requirement previously stated in subregulation 18 (6) has now been placed in subregulation 18 (4).