

1996

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

ENERGY AND WATER ACT 1988

ENERGY AND WATER (REGULATION OF CHARGES) REGULATIONS

EXPLANATORY STATEMENT

Circulated by authority of

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Minister for Urban Services

EXPLANATORY STATEMENT

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Outline

The Energy and Water (Regulation of Charges) Regulations ("the Regulations") provide for a scheme of independent regulation of the charges of ACTEW Corporation.

Legislative background

Subsection 48(1) of the Energy and Water Act 1988 ("the Act") provides that ACTEW Corporation 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 provides 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 ACTEW Corporation for the determination of charges by ACTEW Corporation 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 Regulations are made pursuant to section 49A of the Act.

Outline of Regulations

The Regulations provide for the creation of an Energy and Water Charges Commission, which will be constituted by a Commissioner.

The Commission will have the function of investigating the electricity, water and sewerage charges to be determined by ACTEW Corporation. These matters will be referred to the Commission by the Minister for Urban Services.

Following conclusion of the investigation, the Commission will make a decision on the appropriate pricing level to apply. Under subsection 48(1AA) of the Act, ACTEW Corporation's charges must be in accordance with this direction.

In relation to the conduct of investigations, the Commission may enter into arrangements with other agencies/consultants in relation to the performance of its function. To facilitate the pricing regulation framework the NSW Independent Pricing and Regulatory Tribunal will be contracted to provide its services to the Commission.

Revenue/Cost Implications

Remuneration for the Energy and Water Charges Commissioner is to be determined under the terms of the Remuneration Tribunal Act 1995.

As is provided for in Regulation 21, the costs of the independent pricing oversight exercise is to be met by ACTEW Corporation.

Detailed notes

Part 1: Preliminary

Regulations 1, 2 and 3 are formal provisions typically found in legislation.

Regulation 1 sets out the short title of the Regulations.

Regulation 2 specifies that the Regulations will commence on the day on which they are notified in the Gazette.

Regulation 3 provides for the interpretation of a number of words and phrases used in the Regulations.

Part II: The Commission

Regulations 4 to 9 relate to the Energy and Water Charges Commission.

Regulation 4 states that there shall be such a Commission and that the Commission is to be constituted by a Commissioner.

Regulation 5 provides that the details relating to the appointment and terms of office of the Commissioner are set out in the Schedule to the Regulations.

Regulation 6 sets out the function of the Commission: to regulate charges for or in connection with the supply of electricity or water or the provision of sewerage services.

Regulation 7 provides that the Minister may not exercise control over the Commission in relation to the making of a decision in relation to the level of charges for services, i.e. the matter provided for in subregulation 18(1).

Regulation 8 provides that the staff of the Commission shall be public servants. Subregulation (2) clarifies that such staff are to perform their services in accordance with the direction of the Commission.

Regulation 9 provides that the Commission may enter into arrangements with government agencies or other bodies or persons for the provision of assistance to the

Commission in relation to the regulation of charges. This will facilitate the provision of consultancy assistance to the Commission.

Part III: Investigations

Regulations 10 to 17 deal with investigations into the regulation of charges for services.

Regulation 10 provides for references to the Commission by the Minister in relation to regulating charges for services. The Minister may withdraw or amend a reference at any time prior to receipt of a report from the Commission.

Regulation 11 provides for the conduct of investigations by the Commission following receipt of a reference. Subregulation 2 makes it clear that the investigation shall also include the charging policies of ACTEW Corporation. Subregulation 3 clarifies that the Commission may request submissions from the public or any specified person or body or conduct hearings. Subregulation 4 provides that, unless the Commission otherwise orders, hearings shall be open to be public.

Regulation 12 allows the Minister to specify requirements in relation to the conduct of an investigation or a report on an investigation. These include a specification of the period within which a report is due, requirements for provision of draft reports and a requirement that the Commission consider certain matters. Specification is by way of a disallowable instrument.

Regulation 13 provides that the Commission is otherwise able to conduct an investigation in any manner it considers appropriate.

Regulation 14 deals with attendance at hearings held by the Commission and the provision of documents. It provides that the Commission may, by notice in writing, require a person to attend a hearing to give evidence. In addition, it provides that a person may be required by notice to send to the Commission, by a certain date, specified documents or statement setting out requested information. It will be an offence to fail to comply, without reasonable excuse, to contravene such a notice. Penalties are set out in subregulation 2.

Regulation 15 allows the Commission to give directions prohibiting or restricting the publication of evidence given before a hearing or matters contained in documents given to the Commission. It will be an offence to contravene such a notice. Penalties are set out in subregulation 2.

Regulation 16 provides that, notwithstanding Regulation 15, the Commission shall make a document or a statement setting out requested information available for inspection by a person unless that document is an exempt documents under Freedom of Information legislation, e.g. a commercial-in-confidence matter.

Regulation 17 makes it clear that the Commission may not require information relating to confidential proceedings of the ACT Executive, or request or inspect an official record of the Executive.

Part IV: Directions

Regulations 18 to 20 deals with the regulation of charges following an investigation.

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 ACTEW Corporation.

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 ACTEW Corporation and the borrowing, capital and cash flow requirements of the Corporation; consumer protection matters such as protection of consumers from abuse of monopoly power by the Corporation 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 indicate 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. The latter process is to be used only when the Commission is of the opinion that it is impractical to give a direction fixing a maximum charge.

Regulation 19 provides that a copy of the direction given to ACTEW Corporation must be forwarded to the Minister along with particulars of the results of the Commission's investigations.

Regulation 20 provides for the tabling of the directions in the Legislative Assembly within six sitting days after the time that the Minister receives the directions.

Part V: Miscellaneous

Regulation 21 provides that ACTEW Corporation will be liable for the reasonable costs of the Commission in relation to its function, including costs incurred in relation to assistance from another agency, body or person.

Regulation 22 deals with protections afforded to the Commission, the Commissioner or a person acting under the Commission's direction, or a person required to attend a hearing of the Commission to give evidence or to send to the Commission a statement or other document.

Regulation 23 deals with the service of documents to the Commission.

Schedule

The schedule deals with the appointment and terms of office of the Commissioner.

Regulation 1 deals with the appointment of the Commissioner by the Minister.

Regulation 2 provides for the disclosure by the Commissioner of interests relevant to a regulation under Regulation 10 of the Regulations.

Regulation 3 deals with the resignation of the Commissioner.

Regulation 4 deals with the conditions under which the Minister may or must terminate the appointment of the Commissioner.

Regulation 5 contains standard provisions dealing with the appointment of an Acting Commissioner.