

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**ELECTRICITY (NATIONAL SCHEME) (CONSEQUENTIAL  
AMENDMENTS) BILL 1997**

**EXPLANATORY MEMORANDUM**

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Minister for Urban Services**

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**ELECTRICITY (NATIONAL SCHEME)**  
**(CONSEQUENTIAL AMENDMENTS) BILL 1997**

**Outline**

The objective of the Bill is to provide for the amendments to ACT legislation as a consequence of the Territory applying the National Electricity Law (the Law)

The amendments relate to certain possible anomalous and unexpected application of the ACT accountability framework over a number of matters not under the control of the ACT. In addition, the Bill puts beyond doubt that any functions (by definition, commercial) performed by ACTEW as an agent of the National Electricity Market Management Company (NEMMCO) and the National Electricity Code Administrator (NECA) would also be excluded from Freedom of Information coverage. As such, the provision is consistent with the current ACT Freedom of Information regime

It has been agreed between jurisdictions participating in the National Electricity Market (NEM) that the application of the Law and the Code will be identical in all jurisdictions.

Putting the matters covered in the Bill beyond doubt is considered important to ensure that Market participants, including private sector participants, are not exposed to a possibly inconsistent range of state- and Territory-based public sector accountability regimes.

It is also important that there is no overlap or inconsistency with the comprehensive and nationally consistent accountability regime established by the Law and the National Electricity Code (the Code) as described below.

*Legislative background*

Section 6 the National Electricity Law provides for the approval and implementation of the Code.

The Code makes extensive provision to regulate the NEM. It provides for the functions and powers of the National Electricity Market Management Company (NEMMCO) and the National Electricity Code Administrator (NECA) Both NEMMCO and NECA are bodies incorporated under the Corporations Law.

The Code includes provisions that regulate the conduct of NEM participants. It provides for the establishment and functions of the following bodies and officers

- the Inter-regional Planning Committee, which examines the adequacy of the interconnected interstate transmission system (the National Grid) and reports on proposals for new connections between the state systems,

- Dispute Resolution Advisers and Dispute Resolution Panels
- the Code Change Panel, which examines and reports to NECA on proposals for changes to the Code, and
- the Reliability Panel, whose focus is planning for adequate reserve capacity and other system security issues

Section 9 of the National Electricity (South Australia) Act 1996 (the South Australian legislation) establishes the National Electricity Tribunal. Section 17 of the Law sets out the Tribunal's functions.

The Tribunal may operate in any jurisdiction that applies the Law. This arrangement will ensure that due process is followed in enforcing the Code. Appeals from decisions of the Tribunal may be made to the Supreme Court. Other provisions of the Law ensure that where persons' rights and liberties are made dependent on an administrative power, the administrative power is appropriately defined.

The Tribunal has powers

- to review decisions of NEMMCO and NECA that are stated to be "reviewable decisions" in the Code and, in particular, to review decisions of NECA to require a Code participant to pay a civil penalty for a Code breach, and
- to hear and determine any application by NECA under the National Electricity Law alleging that a Code participant has breached the Code.

It should be noted that administrative decisions made under the Law and the Code are to be subject to judicial review.

#### *Freedom of Information*

NEMMCO and NECA are not "agencies" for the purposes of the *Freedom of Information Act 1989*. This is because the ACT Government does not control these companies and that their functions are national rather than Territory.

It is possible, however, that the Freedom of Information Act would extend to the bodies and offices established under the Code referred to above. Given that the bodies and offices are established by NEMMCO and NECA this would be anomalous.

The Bill puts it beyond doubt that the bodies and officers established under the Code are excluded from the coverage of the Freedom of Information Act.

This arrangement is consistent with that adopted by all other participating jurisdictions.

It may be that NEMMCO and NECA will engage a body such as ACTEW Corporation to act as an agent for the purpose of the Code. ACTEW Corporation is an agency for the purposes of the Freedom of Information Act. The Bill puts beyond doubt that functions performed by a "prescribed authority" under the Act (the most likely authority would be ACTEW Corporation) as an agent for NEMMCO and NECA (which would be by definition commercial functions) would be excluded from Freedom of Information Act coverage. It is therefore

consistent with the exemptions in relation to commercial-in-confidence material accorded generally and to ACTEW Corporation under the ACT's Freedom of Information regime. The reason for this exclusion is that it is desirable to provide total certainty to public- and private-sector Market participants that there will be no "back door" access to commercially sensitive information by use of state-based Freedom of Information legislation.

It should be noted that no agency arrangement with ACTEW Corporation is intended at present.

#### *Ombudsman Act 1989*

NEMMCO and NECA are not agencies for the purposes of the *Ombudsman Act 1989*. This is appropriate given that the ACT Government does not control these companies and that their functions are national rather than Territory.

It is possible, however, that the Ombudsman Act would extend to the bodies and officers established under the Code referred to above. Given that the bodies and offices are established by NEMMCO and NECA this would be anomalous

The Bill makes it clear that the bodies and officers established under the Code are excluded from the provisions of the Ombudsman Act.

This arrangement is consistent with that adopted by all other participating jurisdictions.

It may be that NEMMCO and NECA will engage a body such as ACTEW Corporation to act as an agent for the purpose of the Code. ACTEW Corporation is an agency for the purposes of the Ombudsman Act. The Bill puts beyond doubt that functions performed by a "prescribed authority" under the Act (the most likely authority would be ACTEW Corporation) as an agent for NEMMCO and NECA would be excluded from Ombudsman Act coverage.

The reason for this is that there is a comprehensive accountability framework (as described above) established under the Law and Code that is available for review of decisions.

#### *Public Interest Disclosure Act 1995*

The *Public Interest Disclosure Act 1994* (PIDA) provides a scheme for the investigation of wrongdoing in the ACT public sector, and provides remedies and protections for persons making such disclosures. The PIDA has a wide ambit to capture the full range of ACT public sector bodies and statutory appointees.

There is a possibility that the bodies and officers established under the Code referred to above may be captured by the PIDA.

This is despite the fact that there is no question that either the National Electricity Market Management Company (NEMMCO) or the National Electricity Code Administrator (NECA), the two companies that would make the appointments, would qualify as "government agencies".

Such functions are either functions not previously carried out in the ACT or elsewhere, or functions presently carried out by staff of corporations owned by other jurisdictions. Coverage of such entities under the new scheme would be an inappropriate extension of a law that applies to the reporting of wrongdoing in ACT public sector bodies and by ACT public officials. The relevant functions are national, not Territory, and are not appropriately included in the ACT's accountability framework.

ACTEW Corporation is currently covered by the PIDA. There is no intention that National Electricity Market legislation would make any changes to this coverage.

**Revenue/cost implications**

It is not expected that the Bill will involve any significant costs for the Government.

## DETAILED NOTES

### PART 1 - PRELIMINARY

*Clause 1* is a formal provision typically found in legislation setting out the short title of the Bill

*Clause 2* provides for the commencement of the legislation. There is no provision for automatic commencement. The legislation will commence on the day on which the *Electricity (National Scheme) Act 1997* commences.

*Clause 3* makes reference to a Schedule of Acts which are amended by the Bill.

### SCHEDULE - AMENDMENT OF ACTS

In relation to the *Freedom of Information Act 1989*, the Schedule provides for the following amendments:

- the National Electricity Law is specifically excluded from the definition of “enactment” in the Freedom of Information Act This has the effect of putting beyond doubt that offices and bodies set up under the Law and Code will be excluded from coverage; and
- functions of an authority provided under the Freedom of Information Act carried out as an agent for NECA or NEMMCO under the National Electricity Code are excluded from coverage.

In relation to the *Ombudsman Act 1989*, the schedule provides for the following amendments:

- the National Electricity Law is specifically excluded from the definition of “enactment” in the Ombudsman Act. This has the effect of putting beyond doubt that offices and bodies set up under the Law and Code will be excluded from coverage; and
- functions of an authority provided under the Ombudsman Act carried out as an agent for NECA or NEMMCO under the National Electricity Code are excluded from coverage.

In relation to the *Public Interest Disclosure Act 1994*, the schedule provides for an amendment to ensure that a holder of a statutory office under the National Electricity Code is excluded from the definition of a “government agency” under the Act.