

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELECTRICITY (NATIONAL SCHEME) BILL 1997

EXPLANATORY MEMORANDUM

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**Trevor T Kaine MLA
Minister for Urban Services**

EXPLANATORY MEMORANDUM**ELECTRICITY (NATIONAL SCHEME) BILL 1997****Outline**

The objective of the Bill is to provide for the application of the National Electricity Law in the Australian Capital Territory

The governments of South Australia, Victoria, New South Wales, Victoria and the Australian Capital Territory have agreed to establish a National Electricity Market (NEM) to establish a competitive framework for the supply of electricity within those jurisdictions.

The NEM is an integral part of the overall micro-economic reform package agreed by governments. It replaces previous arrangements whereby wholesale supply electricity was handled through bulk supply tariffs set by government-owned utilities. The NEM sets up a central pool to which all suppliers in southern and eastern Australia must sell and from which all eligible customers (in this context, retailers and any customer large enough to buy wholesale) must buy, at prices set by rules in the National Electricity Code. The NEM, does not handle arrangements between retailers and their customers.

Legislative background

The operation of the NEM is to be governed by rules contained in the National Electricity Code (the Code). The Code covers entry into the NEM and technical rules about the NEM's operation, and sets out the functions of two new companies, the National Electricity Market Management Company (NEMMCO) and the National Electricity Code Administrator (NECA). The Code is now being examined by the Australian Competition and Consumer Commission (ACCC) for authorisation and approval as an access regime under the *Trade Practices Act 1974* (C'wealth)

It is appropriate to support the operation of the Code through legislation. The aim is to ensure that the rules of the NEM are consistent and enforceable across all of the participating jurisdictions. This will optimise the efficiency and effectiveness of the NEM and, in particular, assure NEM participants that the NEM is governed under a stable regime. Against this background, on 9 May 1996, the ACT and the other participating jurisdictions signed the National Electricity Market Legislation Agreement (the Agreement)

The Agreement provides for the enactment by South Australia of legislation to establish the force and effect of the Code. To ensure the Code's consistent application across the NEM, the Agreement requires the ACT and the other remaining participating jurisdictions to give force to South Australia's legislation through the enactment of application of laws legislation.

South Australia enacted the *National Electricity (South Australia) Act 1996* (the South Australian legislation) in June 1996. Under the terms of the Agreement, the ACT and the other remaining participating jurisdictions are to apply as law in their jurisdictions a schedule to the South Australian legislation known as the National Electricity Law (the Law)

The Electricity (National Scheme) Bill 1997 is in a form nearly identical to Part 2 of the South Australian legislation which provides for the Law's application in South Australia. The application Bills of the other remaining participating jurisdictions are also in this form. Application of laws Bills achieved passage during 1997 in Victoria, NSW and Queensland.

It is proposed that the ACT will proclaim its application legislation when the South Australian legislation is proclaimed and the NEM begins. This is expected to be in early 1998. However, it should be noted that the Agreement requires each jurisdiction to apply the Law by June 1998, unless jurisdictions agree otherwise.

Provisions of the National Electricity Law

The Law, which the Bill provides will be applied in the ACT as the National Electricity (Australian Capital Territory) Law, provides for Designated Ministers to approve the Code. This process will be followed after the Code has passed successfully through the ACCC.

A number of constitutional provisions of the Code, relating particularly to NECA and its functions, are classed as protected provisions which can be amended only with the unanimous approval of the Designated Ministers. Changes to the Code are otherwise to be in accordance with its relevant provisions.

The Law requires all market participants to register with NEMMCO to operate in the NEM, unless they are exempted from the effect of the Code. NECA is to administer the Code and make decisions about its application to particular persons. However, NECA must pursue certain proceedings and civil penalties in regard to the operation of the Law and the Code through the National Electricity Tribunal.

The Tribunal is established under the *National Electricity (South Australia) Act 1996* and its functions and powers are set out in the Law. 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 Law also provides for the establishment and maintenance of statutory funds by NECA and NEMMCO to cover, respectively, the receipt and payment of civil penalties imposed under the Code (and associated costs) and the receipt and payment of moneys incurred through the management of the NEM.

Schedule 1 to the Law sets out provisions relating to the interpretation of the Law to ensure that it is given consistent meanings across the jurisdictions participating in the NEM.

National scheme

The Electricity (National Scheme) Bill is drafted to provide for the application, as a law of the ACT, the National Electricity Law, which is, as noted above, a schedule to the South Australian legislation.

There are many precedents for such arrangements. In particular, the Corporations Law and the Australian Financial Institutions Code operate under applications of laws schemes.

A copy of the Law has been tabled with the Electricity (National Scheme) Bill together with an explanatory note. These documents provide the Assembly and the Scrutiny of Bills Committee with a background to the purpose of, and operations proposed by, the Bill.

The application of law regime is essential to ensuring the nationally consistent operation of the electricity supply industry. Further, the establishment and maintenance of a consistent and stable legislative regime is necessary for the efficient operation of, and sound investment decisions in, the National Electricity Market.

Revenue/cost implications

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

There are implications for NEM participants including ACTEW Corporation in that the operations of the NEM, including the running costs of NEMMCO and NECA, are financed through pool fees. Such fees are determined following a process set out in the National Electricity Code which includes participant consultation.

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 relates to the commencement of the provisions of the Bill. There is no provision for the automatic commencement of provisions other than clause 1 and clause 2. The remaining provisions will commence on a date fixed by the Minister and notified in the Gazette. This is to ensure that commencement will align with the proclamation of the *National Electricity (South Australia) Act 1996*.

Clause 3 contains a number of definitions for the purposes of the Bill

Clause 4 provides for the extra-territorial effect of the Bill, the National Electricity (ACT) Law and the National Electricity (ACT) Regulations

PART 2 - NATIONAL ELECTRICITY (ACT) LAW AND NATIONAL ELECTRICITY (ACT) REGULATIONS

Clause 5 applies the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* as a law of the ACT. The clause also provides that the Law as so applying may be referred to as the National Electricity (ACT) Law.

Clause 6 provides that the regulations in force under Part 4 of the *National Electricity (South Australia) Act 1996* apply as regulations in force for the purposes of the National Electricity (ACT) Law and, as so applying, may be referred to as the National Electricity (ACT) Regulations

Clause 7 contains a number of definitions for the purposes of the National Electricity (the ACT) Law and the National Electricity (the ACT) Regulations