

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELECTRICITY SUPPLY BILL 1997

EXPLANATORY MEMORANDUM

Circulated by authority of

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

EXPLANATORY MEMORANDUM

ELECTRICITY SUPPLY BILL 1997

Outline

The Bill provides a regulatory framework for electricity retailing and distribution in the ACT. The framework aims to achieve a transition from ACTEW Corporation's monopoly status in electricity to a market of multiple electricity retailers in the ACT so customers can choose their own preferred retailer.

Legislative background

National electricity reform agenda

The ACT is a party to arrangements agreed by the Council of Australian Governments to the form a national electricity market. The key features of this market are that:

- (a) it be competitive,
- (b) customers should be able to choose which supplier (including generators, retailers and traders) with which they will trade;
- (c) there should be non-discriminatory access to the interconnected transmission and distribution network,
- (d) there should be no discriminatory legislative or regulatory barriers to entry for new participants in generation or retail supply, and
- (e) there should be no discriminatory legislative or regulatory barriers to the interstate and/or intrastate trade of electricity.

The Electricity (National Scheme) Bill 1997 provides for part of this framework. It does not, however, provide for the transition to competition in retailing.

Retail competition in other jurisdictions

In both NSW and Victoria, Governments have issued timetables to open up various categories of customers to competition. Retail competition is now well underway in both jurisdictions. The South Australian and the Queensland Governments have also announced timetables for retail competition.

All jurisdictions have adopted an approach to retail competition whereby the largest customers (assessed by either their energy use or their load on the system) are untied from their traditional retailer first.

Current ACT position

ACTEW Corporation Limited is the only provider of electricity in the ACT apart from a very small number of properties supplied from NSW by the local provider Great Southern Energy.

ACTEW's electricity business falls into two parts operating a distribution system for electricity and the retailing electricity. The distribution system is linked with a high-voltage transmission system owned/operated by TransGrid, a statutory corporation of the NSW Government.

The framework is minimal compared with that of all other jurisdictions. It is inadequate for introducing competition in retailing in that there is no explicit monopoly status given to ACTEW Corporation, either as a distributor or retailer and thus no base from which to wind back this monopoly.

There is no regime whereby new retailers may access ACTEW's distribution network. In addition, there is no explicit statement of the right of access of end-use customers to the network.

General statement of the aims of the proposed legislation

The legislation deals with matters directly relevant to introducing retail competition through the entry of new retailers into the ACT and the gradual definition of groups of customers who are "non-franchise", i.e. customers who are not included in the "franchise" of the retailer associated with the electricity distributor.

A crucial consideration is that customers must have confidence in their retailer, both in terms of their overall financial viability and an agreed standard of customer service.

The Bill is confined to matters that, in all jurisdictions, will remain state/territory matters after the introduction of the National Electricity Market, i.e. retailer and distributor licensing, focussing on protection of franchise customers and the customers of the distributor.

Consistency with NSW

The framework adopted in the Bill mirrors that of the equivalent NSW legislation, the *Electricity Supply Act 1995* to the maximum extent practicable.

ACTEW's distribution system is an integral part of the overall NSW power system. Power to the Territory is supplied via NSW transmission lines and, for its purchasing, ACTEW participates in the NSW wholesale electricity market. Settlements about power taken from the NSW transmission lines by retailers are handled by TransGrid.

In addition, adopting a regulatory scheme similar to that in NSW will avoid the possibility of barriers to entry in the small ACT market. It will reduce regulatory compliance costs for retailers that would otherwise need to be factored into ACT customers' energy bills. It should be noted that the NSW regulatory scheme is up to date and designed specifically with retail competition in mind.

Distributor licensing

Consistent with the practice in other states, it is not intended to introduce competition into the distribution sector at this stage. ACTEW's status, therefore, will not change.

The Bill does not purport to provide a full regulatory framework for distributors. The provisions introduced in this Bill are those necessary to facilitate retail competition. Other

legislative provisions covering ACTEW's distribution function, including powers in relation to tree clearance and electrical emergencies, remain in other legislation

The Bill introduces an explicit right of connection for end-user customers to the distribution network. In addition, there will be an explicit right of supply from the retailer associated with the distribution network (ACTEW)

Retailer licensing

ACTEW, and its subsidiary ACTEW Energy, will be deemed to hold a retailer licence in the ACT. This arrangement is consistent with the practice adopted in NSW and Victoria. New retailers in the ACT will be licensed on application on the basis that they are licensed in NSW. Recognition of NSW licences is adopted to provide a simple regulatory approach, to avoid barriers to entry of new players and to ensure that ACT customers can have confidence in the viability of new retailers. NSW licences are granted on the basis of tough prudential requirements and extensive public and industry consultation.

Consistent with NSW law, the Bill provides for a scheme of conditions on retailer licences. It covers certain matters relating to conditions that may be imposed and also specifies certain mandatory conditions.

It is intended that the detailed form of these conditions and instructions for compliance will be determined following full consultation. It is desirable that this matter be resolved in the light of experience, both in NSW and in the ACT, so that the right balance is struck between the advantages of market competition and the need to protect and enhance consumer rights and environmental benefit. It is also important that that licensing conditions do not constitute a barrier to entry.

Customer contracts

Electrical supply is by way of ACTEW's General Conditions of Supply (in accordance with section 51 of the Energy and Water Act) and other arrangements negotiated between ACTEW and individual customers.

The Bill reforms this arrangement, consistent with the NSW framework, to recognise the separation of the distribution and the retailer functions. There will be standard form customer connection contracts, developed by the distributor, covering general connection arrangements. Standard form customer supply contracts will cover ACTEW's retail supply to its "franchise" customers. Negotiated contracts will be possible when the customer and the licence holder agree. "Non-franchise" customers, whether of ACTEW or any other licensed retailer, will be covered by negotiated retail supply contracts.

Electricity matters not covered in the Bill

Regulated electricity pricing for customers who remain "franchise" customers is not altered by the provisions of this Bill. There is no alteration to community service obligations or to the operations of the Essential Services Review Committee.

The Bill does not deal with the wholesale arrangements between retailers, other traders and generators.

As an interim arrangement, this will be handled under the NSW State Electricity Market established by the NSW Electricity Supply Act 1995. Such NSW arrangements will cease with the introduction of the National Electricity Market in both NSW and the ACT. This issue is covered by the Electricity (National Scheme) Bill 1997.

Revenue/cost implications

It is not expected that the Bill will involve any significant costs to the Government. The cost of the regulatory scheme will depend on the precise nature of the mandatory conditions on distribution and electricity licences. As is noted above, it is intended that these conditions be finalised following consultation. In any event, it is intended that the licence fees imposed on licensed retailers and distributors should cover the regulatory cost.

The introduction of retail competition will inevitably affect the dividend paid by ACTEW to 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 deals with commencement provisions. As is common in ACT legislation, it contains a provision to provide for the automatic start of the legislation six months after gazettal if it has not been commenced earlier.

Clause 3 deals with the interpreting certain expressions used in the Bill.

PART II - NETWORK OPERATIONS

Part II of the Bill provides for matters relating to electricity wires networks in the ACT.

Division 1 — Distribution systems

Clause 4 provides that operation of an electricity distribution system other than in accordance with an electricity distributor's licence is an offence. A licence will relate to a "distribution district" set out in the licence. It is intended that ACTEW's district will be the ACT.

Clause 5 provides for the granting of electricity distributors' licences by the Minister to ACTEW Corporation or to any other person/company. Detailed arrangements in about granting, varying, transferring and cancelling licences is set out in the Schedule to the Bill.

Clause 6 provides for a right of connection to a distribution system by the distributor or by another party on behalf of the distributor. Note, however, subclause 15(2).

Clause 7 provides that it will be a condition of the distributor's licence that the distributor convey electricity for or on behalf of licensed retail suppliers only.

Clause 8 provides that it is a condition of the distributor's licence that the distributor also hold a retail licence.

Clause 9 provides that customer connection services to the distribution network must be under a customer connection contract.

Division 2 — Standard form customer connection contracts

Clause 10 provides that a distributor shall prepare a standard form customer connection contract or different forms of standard contract for different classes of customer, to establish the conditions on which it will provide customer connection services. The distributor is required to consult on the form of the contract and take account of the results of such consultation. Standard form customer connection contracts are therefore the successors to present "general conditions of supply".

Clause 11 provides for the matters for which a standard form customer connection contract is to provide. These include

- the basis on which charges for customer connection are to be calculated,
- any security to be provided by customers for payment of such charges,
- the standard of service to be provided by customers,
- the requirements on customers set out in Division 4 of this Bill,
- the circumstances under which premises may be disconnected from the distribution system,
- procedures of handling enquiries and complaints and for resolving disputes

Subclauses 11(2), 11(3) and 11(4) deal with matters that impinge on the enforcement of standard form customer connection contracts

Clause 12 deals with the coming into effect of standard form customer connection contracts. Subclause 12(1) provides that standard form customer connection contracts are to be notified in a daily newspaper circulating throughout the ACT and subclause 12(2) provides that the notice must specify the day on which the contract is to take effect. Subclause 12(3) provides that a notice may be of general application or be limited by reference to specified exceptions or factors. Such an exception might possibly include restriction of the notice to customers with energy usage or demand over a certain level. Subclause 12(4) provides that a standard form customer connection contract does not have retrospective effect. Subclause 12(5) provides that on the day on which a customer applies to the distributor for connection, the customer and distributor are taken to have entered into an agreement for connection on the conditions set out in the relevant standard form customer connection contract.

Clause 13 provides that a distributor may amend a standard form customer connection contract to vary the terms of connection. Arrangements for amending the contract are in line with those for the initial contract.

Division 3 — Negotiated customer connection contracts

Clause 14 provides for negotiated customer connection contracts, i.e. where connection services are not to be provided in accordance with a standard form customer contract. As provided in subclause 14(2), such negotiated contracts may contain such terms as the distributor and the customer may agree. While subclause 14(3) provides that such a contract shall comply with any conditions imposed on the distributor by its licence, the contract is not unenforceable simply because of a failure to do so. Subclause 14(4), on the other hand, provides that such a contract shall not be inconsistent with this Act or the regulations and is unenforceable to the extent of any such inconsistency.

Division 4 — Requirements relating to customer connection services

Clause 15 deals with the application of the Division. Subclause 15(2) provides that a distributor may refuse to provide customer connection services to a person who fails to comply with a requirement imposed under the Division.

Clause 16 provides that distributors may require a new customer to contribute to the costs incurred, or to be incurred, by the distributor in extending its distribution system or increasing the capacity of the system to enable the customer connection services to be provided

To ensure that such costs are equally borne by subsequent customers in the same vicinity, subclause 16(2) provides that a distributor may require these customers to contribute towards the costs and apply the whole or any part of the contributions received from those customers to repaying existing customers who have already contributed towards extending or increasing the capacity of the distribution system

Subclause 16(3) sets out two restrictions on contributions by subsequent customers. Further contributions may not be required if the total costs associated with the extending or increasing the capacity of the distribution system have been recovered or the costs were incurred more than six years prior to application for connection by the new customer

Clause 17 provides that a distributor may require the installation of services lines as it considers necessary to supply electricity to a customer. The distributor will determine the type, construction and route of a service line and its point of connection. If the distributor considers it necessary, more than one point of connection may be required per premises

Clause 18 provides that a distributor may require the installation of such service equipment as it considers necessary for the provision of a safe and efficient supply of electricity to a customer. The distributor shall determine the position and standards of installation of service equipment

Clause 19 deals with provision of transformers, switchgear and other equipment. When a distributor believes that the supply of electricity required by a customer exceeds that which can be provided by a service line from its street mains and can best be given by installing transformers, switchgear or other equipment, the distributor may require the customer to provide, free of cost, a place within the premises to accommodate the necessary equipment.

Clause 20 provides that a distributor may require the installation of such meters as it considers necessary in order to measure the electricity supplied to a consumer, with the position and standard of the meters to be determined by the distributor

Clause 21 deals with requirements that may be imposed by the distributor in relation to the installation and use of various electrical apparatus. These include

- requirements relating to installation and use of appliances and equipment considered by the distributor necessary to prevent or minimise adverse effects on the supply of electricity to other customers;
- requirements relating to the loading of, and the balancing of load over, the phases of a customer's electricity supply,
- requirements relating to the minimum rupture rating or minimum breaking capacity of a customer's main protective devices,

- requirements for the customer to install relays, current transformers and other protective equipment in line with the distributor's protective system

Clause 22 establishes a right, in relation to the requirements under this Division or under a customer connection contract generally, for a customer to elect to have the required work or service provided by the distributor (if they are provided by the distributor) or by any other person accredited, in accordance with the regulations, to provide these services. It is an offence for an unaccredited person to provide such services

Clause 23 provides that a distributor may attach seals to a customer's electrical installations

PART III — RETAIL SUPPLY OF ELECTRICITY

Division 1 — Electricity Supply

Clause 24 deals with retail suppliers' licences. Subclause 24(1) provides that the Minister may grant such licences. Subclause 24(2) provides that only ACTEW or a person licensed as a retail supplier in NSW may be granted such licence. As provided in subclause 24(3), further provisions relating to retail licences are set out in the Schedule.

Clause 25 deals with a right of retail supply of electricity to all customers from the distributor in whose distribution district the customers' premises are located. The supply, however, may not exceed the maximum capacity of the connection to the distribution system. Subclause 25(2) clarifies that such right of supply may include arrangements to ensure that the customer is supplied by another supplier. Subclause 25(3) provides that the right of retail supply is subject to provisions that authorise the refusal, suspension or discontinuance of the supply. Subclause 25(4) provides that it is a condition of a retail supplier's licence held by an electricity distributor that the distributor fulfil the obligations of the clause.

Clause 26 deals with discrimination in relation to retail supply of electricity to customers on the basis that the person uses or supplies alternative forms of energy or products, processes, designs or services that reduce the demand for energy. Such discrimination is defined to include both refusal to supply or supply on disadvantageous terms and is unlawful.

Clause 27 provides that holders of retail suppliers' licences not supply electricity to the premises of a "franchise" customer other than

- for a distributor — for the purpose of supplying electricity under the obligation imposed under clause 25, or
- for other retailers — for the purpose of supplying electricity on behalf of the distributor under clause 25

Subclause 27(2), however, does not affect any arrangements approved by the Minister in relation to supply of electricity to customers in a distribution district adjacent to its

own This is intended to handle any future situation in which there were multiple distribution districts

Clause 28 provides that a retail supplier other than the distributor may, but is not required to, supply the premises of a “non-franchise” customer

Clause 29 makes it a condition of a retail supplier’s licence that the supplier not supply electricity to the premises of a retail customer otherwise than under a customer supply contract

Division 2 — Standard form customer supply contracts

Clause 30 sets out requirements for making standard form customer supply contracts by the retail supplier authorised to supply “franchise” customers. A standard form customer supply contract is to be prepared to establish the conditions on which it will supply electricity to the premises of such customers. Subclause 30(2) provides that the retailer shall notify any prescribed body, and have due regard to the body’s comments, before completing preparation of a standard form customer supply contract. Subclause 30(3) provides that different forms of contract may be prepared for different classes of franchise customers

Clause 31 sets out in subclause 31(1) the matters for which standard form customer supply contracts must provide. These are

- the basis on which charges for the supply of electricity to franchise customers is to be calculated (e.g. under relevant legislation)
- any security to be provided by franchise customers for payment of charges,
- the standard of services to be provided to franchise customers by the supplier,
- the circumstances under which the supply of electricity to franchise customers may be discontinued,
- the procedures for handling enquires and complaints and resolving disputes,
- processes for estimating electricity consumption, including cases in which a meter fails to operate or fails to operate correctly,
- the rate at which electricity is taken to have been supplied between consecutive meter readings.

Subclause 31(2) provides that a standard form customer supply contract shall acknowledge and briefly describe the powers, duties, rights and obligations of the retail supplier and the franchise customer

Subclauses 31(3) and 31(4) parallel 14(3) and 14(4) in relation to customer connection contracts. While a standard form customer supply contract shall comply with any conditions imposed on the retailer by its licence, the contract is not unenforceable by reason only of a failure to do so. A contract, however, shall not be inconsistent with this Act or the regulations and is unenforceable to the extent of any such inconsistency

Clause 32 deals with the coming into effect of standard form customer supply contracts. Subclause 32(1) provides that standard form customer supply contracts are to be notified in a daily newspaper circulating throughout the ACT and subclause 32(2) provides that the notice must specify the day on which the contract is to take effect

Subclause 32(3) provides that a notice may be of general application or be limited by reference to specified exceptions or factors. Subclause 32(4) provides that a standard form customer supply contract does not have retrospective effect. Subclause 32(5) provides that on the day on which a customer applies to the distributor for supply, the customer and retail supplier are taken to have entered into an agreement for supply on the conditions set out in the relevant standard form customer supply contract.

Clause 33 provides that a retail supplier may amend a standard form customer supply contract to vary the terms of supply to franchise customers. Arrangements for amendment of the contract are in line with those for the initial contract.

Division 3 — Negotiated customer retail supply contracts

Clause 34 provides for negotiated customer supply contracts in two cases: customer supply contracts for non-franchise customers, and customer supply contracts where the supplier and a franchise customer agree for electricity to be supplied otherwise than by a standard form customer supply contract.

As provided in subclause 34(2), such negotiated contracts may contain such terms as the retailer and the customer may agree. While subclause 34(3) provides that such a contract shall comply with any conditions imposed on the distributor by its licence, the contract is not unenforceable by reason only of a failure to do so. Subclause 34(4), on the other hand, provides that such a contract shall not be inconsistent with this Act or the regulations and is unenforceable to the extent of any such inconsistency.

PART IV — REVIEW OF DECISIONS

Clause 35 sets out decisions of the Minister in relation to which an application for review may be made to the Administrative Appeals Tribunal.

Clause 36 provides for provision of notice in writing of the decision to a licence holder or the applicant for a licence. The notice shall be in accordance with the requirements of the Code in Practice in force under the *Administrative Appeals Tribunal Act 1989*.

Clause 37 provides that persons may appeal against the decision of a distributor as to charge payable by the person under a standard form customer connection contract or the decision of a retail supplier about the classification of the person as “franchise” or “non franchise” and a charge payable under a standard form customer supply contract.

PART V — MISCELLANEOUS

Clause 38 provides that a person to whose premises electricity is supplied shall not charge any other person for the use of the electricity. Under subclause 38(2), however, a separate charge for using a service or facility on the basis that the use of that service or facility involves the consumption of electricity is not prohibited. Subclauses 38(3) to 38(6) provide that a landlord may charge a tenant if the supply is measured by a separate electricity meter, records of the supply are maintained, and the charge for the tenant does not exceed the “maximum allowable amount”. This amount is, in the absence of relevant regulations, is the amount that the local distributor would have

charged under a standard form customer supply contracts for a similar quantity of electricity during the same period

Clause 39 provides that the Minister may, by order published in the Gazette, declare any specified person or any specified class of persons to be “non-franchise” customers

Clause 40 provides that electricity supply arrangements unauthorised by licence are unenforceable by any person other than a retail customer under a customer supply contract

Clause 41 clarifies that a customer connection contract and a customer supply contract may be contained in a single document

Clause 42 provides that any monetary penalty imposed by the Minister on the holder of a licence may be recovered in any court of competent jurisdiction

Clause 43 provides for the payment by licensed retailers and distributors or retailers and distributors deemed to be licensed of annual fees in relation to the licence

Clause 44 provides a power for the Minister to determine, by notice in the Gazette, fees for the purposes of this Act.

Clause 45 provides a regulation making power Subclause 43(2) sets out some of the matters that may be covered in regulations Subclause 43(3) sets upper limits for the penalties for an offence against the regulations

SCHEDULE

The Schedule to the Act deals with licences

Clause 1 provides that a distributor’s licence authorise holders to operate a distribution system A retail supplier’s licence authorises its holder to supply electricity to retail customers

Clause 2 sets out requirements for an application for a licence

Clause 3 sets out requirements for consultation on an application for an electricity distributor’s licence before the Minister finalises an application The requirements are not to apply to a distributor’s licence granted to ACTEW

Clause 4 deals with the determination of applications for licences The Minister may grant a licence, transfer a licence or refuse the application The grounds for refusal are set out in subclause 4(2) Subclause 4(3) provides that the Minister shall consult with the Minister shall consult with the Minister administering the Air Pollution Act 1984 before granting a licence

Clause 5 provides that, subject to conditions imposed on it a licence remains in force until it is cancelled

Clause 6 provides that a licence is subject to conditions imposed by this Act and the regulations and such other conditions as the Minister may from time to time impose in

relation to the licence. These additional conditions may not be inconsistent with those imposed by this Act and the regulations.

Subclause 6(2) sets out in detail some of the conditions that the Minister may impose on a licence:

- the period for which the licence is to remain in force,
- requiring the holder to exercise its functions under this Act in accordance with specified guidelines or subject to specified restrictions,
- requirements relating to technical and prudential criteria adopted by the Minister to determine whether the licence holder is able to operate a viable business,
- insurance requirements,
- a requirement to “ring fence” distribution activities from retailing activities,
- a requirement to submit a plan setting out a licence holder’s policies, practices and procedures in relation to the conduct of its affairs under the licence,
- information provision requirements

Subclause 6(3) makes further provision in relation to “ring fencing” in that it provides that affairs that are to be kept separate may be required to be conducted by separate divisions of the same legal entity or by separate legal entities.

Subclause 6(4) sets out conditions that must be imposed on each retail supplier’s licence:

- a requirement for the holder of the licence to develop strategies in relation to the reduction of greenhouse emissions (as is elaborated in subclause 6(6)),
- a requirement for auditing of the effectiveness of these strategies by the Pollution Control Authority,
- a requirement for development of plans for energy efficiency and demand management strategies, and strategies for purchasing energy from sustainable sources including consideration of cogeneration and purchasing of renewable energy,
- a requirement to prepare and publish annual reports in relation to implementation of demand management, carbon dioxide emissions arising from the production of electricity supplied by it (as measured in accordance with a methodology approved by the Minister after consultation with the Pollution Control Authority), its performance in meeting the minimum standards of service required under its standard form customer supply contracts, and the sources of energy supplied by it and the quantity of electricity supplied from those sources.

These requirements are consistent with those imposed on NSW retail suppliers. It is anticipated that the methodologies for achieving these tasks would be, to the extent possible, also be consistent with NSW.

Subclause 6(5) sets out conditions that must be imposed on each distributor’s licence:

- a requirement to investigate alternatives to expansion of its distribution system (such as demand management strategies) when it would be reasonable to expect

that it would be cost effective to avoid or postpone the expansion by implementing such strategies,

Subclause 6(6) sets out requirements in relation in relation to greenhouse gas emission reduction strategies

Subclause 6(7) sets out requirements in relation to auditing of the effectiveness of greenhouse reduction strategies (see notes against subclause 6(4)) including requirements for tabling in the Legislative Assembly

Subclause 6(8) provides for the review of conditions of a retail supplier's licence relating to greenhouse reduction strategies, the auditing of such strategies and strategies in relation to energy efficiency, demand management, and strategies for purchasing energy from sustainable sources at the end of the years after the conditions are imposed.

Subclause 6(9) provides that the Minister shall consult with the Minister administering the Air Pollution Act 1984 before imposing conditions under clause (6)

Clause 7 provides that the Minister may vary the conditions of a licence Consultation is required with the Minister administering the Air Pollution Act 1984.

Clause 8 deals with the enforcement of licences It provides that the Minister may impose a monetary penalty not exceeding \$100,000 on the holder of a licence or cancel a licence Such action is only possible if the holder of the licence has knowingly contravened the requirements of this Act or the regulations or a condition of the licence A retail supplier's licence held by a distributor shall not be cancelled unless the associated distributor's licence is also cancelled

Clause 9 provides that before the Minister imposes conditions on licences, varies the conditions on licences, or imposes the enforcement arrangements set out in clause 8, notice of the proposed action must be given to the holder of the licence, the holder of the licence must be given a reasonable opportunity to make submissions in relation to the proposed action, and the Minister must give due consideration to any such submissions

Clause 10 provides for the keeping of a register of licences and for public access to this register.