

1995

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

**ELECTRICITY AND WATER (CORPORATISATION) (CONSEQUENTIAL
PROVISIONS) BILL 1995**

EXPLANATORY MEMORANDUM

**Circulated by authority of the Minister for Urban Services
Tony De Domenico**

ELECTRICITY AND WATER (CORPORATISATION) (CONSEQUENTIAL PROVISIONS) BILL 1995

The Electricity and Water (Corporatisation) (Consequential Provisions) Bill 1995 enables the Australian Capital Territory Electricity and Water Authority ("the Authority") to be converted into a Territory owned corporation under the provisions of the *Territory Owned Corporations Act 1990*.

The Bill facilitates the corporatisation of the Authority by providing, among other things, for the following matters -

- the transfer of rights and liabilities from the Authority to the new company known as ACTEW Corporation Limited, ("the Company") or, in certain circumstances to the Territory;
- the substitution of the Company or the Territory for the Authority in certain contracts, agreements or arrangements;
- the continuation of proceedings by or against the Authority which had arisen before the relevant day (defined as 1 July 1995) but had not been instituted, or had been instituted before that day but had not been completed;
- the amendment of relevant registers by the Registrar-General to reflect changes in title to an interest in land which has become vested in the Company or the Territory; and
- treating transferred and new employees similarly in their terms and conditions of employment and, subject to any agreement between the employers and the Company, the terms and conditions of any award continue to apply whilst other specific benefits continue on the same basis as they applied prior to corporatisation.

A further feature of the Bill is a provision which enables regulations to be made during a 12 month period to modify any other enactment or subordinate law necessary as a consequence of the corporatisation. This modification power expires on 1 July 1996.

The proposals will be budget neutral, however there are expected to be significant efficiency gains to Government.

Details of this Bill follow.

DETAILS

Short Title

Clause 1 - provides that the Bill, when enacted, will be known as the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*.

Commencement

Clause 2 - provides that clauses 1, 2, 3 and 4 will commence upon notification of the Act in the Gazette and the remaining provisions will commence on 1 July 1995.

Interpretation

Clause 3 - is an interpretation clause.

Subclause 3(1) defines the following terms:

- “Authority” means the Australian Capital Territory Electricity and Water Authority set up by the *Electricity and Water Act 1988*.
- “Company” means the new corporation, that is, ACTEW Corporation Limited.
- “relevant day” means 1 July 1995.

Subclause 3(2) which is to be read in conjunction with clause 4, provides that the phrase “rights and liabilities of a person” includes a reference to the assets of the person and the rights and liabilities of the person in relation to contracts, agreements or arrangements to which the person is a party.

Transfer of rights and liabilities

Clause 4 - deals with the transfer of rights and liabilities from the Authority to the new Company, or if related to the Authority’s regulatory functions, to the Territory.

Subclause 4(1) provides that the rights and liabilities of the Authority existing immediately before the relevant day vest in the Company on that day. However, this does not include those rights and liabilities of

the Authority which the Minister specifies, before the relevant day, that vest in the Territory.

Subclause 4(2) provides that the Minister may, by a notice in the Gazette, specify rights and liabilities of the Authority that vest in the Territory.

Subclauses 4(3) and 4(4) allow the Minister to identify and vest contracts, agreements and arrangements relating to Territory regulatory functions in the Territory. Subclause 4(3) provides for the name of the Territory to be substituted for the Authority in such contracts, agreements or arrangements.

Subclause 4(5) provides for the substitution of the name of either the Company or the Territory, as appropriate, in contracts, agreements or arrangements affected by subclause 4(1) or 4(4).

Registration of changes in title to land

Clause 5 - provides for the registration of changes in title to land. In respect of an interest in land in the Territory which becomes vested in the Company under clause 4, it provides that the Company may lodge a notice with the Registrar-General. In respect of an interest in land which becomes vested in the Territory under clause 4 the Minister may lodge a notice with the Registrar-General. The Registrar-General must accordingly make the appropriate changes to the registers to reflect the transfer of any interest in land to the Company or the Territory as the case may be.

Proceedings

Clause 6 - provides for the transfer of causes of action by or against the Authority which arose prior to the relevant day, as well as proceedings which had been commenced by or against the Authority concerning a right or liability vested in the Company or the Territory under clause 4. Such proceedings may be instituted or continued, subject to the direction of the relevant court, tribunal, commission or other body concerned.

Employees and employment conditions

Clause 7 -ensures that transferred and new staff of the Company are treated equally in their terms and conditions of employment.

Subclause 7(2) provides that the present staff of the Authority (formerly employed by the Territory under the *Public Sector Management Act 1994*) shall after 1 July 1995 be employed by the Company.

Subclause 7(3) deals with the contract of employment in respect of transferred employees and new employees and provides that the same terms and conditions shall apply to such employees as previously applicable to transferred employees under an award made under the *Industrial Relations Act 1988* of the Commonwealth.

Subclause 7(4) further provides that an employee of the Company is entitled to the same benefits as a transferred employee had before 1 July 1995 in respect of long service leave, maternity leave, parental leave, recreation leave, and sick leave.

Subclause 7(5) modifies the *Public Sector Management Act 1994* for the purposes of subclause (4) by providing corresponding references for the terms "Commissioner", "Chief Executive" and "officer" and subclause 7(6) provides that regulations may be made to provide for other corresponding references.

Subclause 7(7) requires that the Company establish appeal, review and grievance procedures in respect of employment matters in consultation with staff.

Subclause 7(8) provides that for the purposes of an entitlement to a benefit for a transferred employee, any period of employment served with the Authority or the Territory or an employer that was recognised by the Authority or the Territory for the purpose of such benefits shall be deemed to be employment with the Company.

Subclauses 7(9) & (10) provide that any matter or thing relating to the employment of a transferred employee that occurred before the relevant day or was in effect under the *Public Sector Management Act 1994* may be dealt with as if the person had been employed by the Company at that time.

Subclause 7(11) provides that any matter or thing relating to the employment of a transferred employee that was pending under the *Public Sector Management Act 1994* before 1 July 1995 may be completed by the Company.

Subclause 7(12) ensures that employees of the new corporation are covered by the *Occupational Health and Safety Act 1989* to the same extent as it applies to employees under the *Public Sector Management Act 1994*.

Subclause 7(13) provides that this clause is subject to any applicable award made under the *Industrial Relations Act 1988* of the

Commonwealth or an agreement between the Company and its employees.

Transfer of records relating to Territory functions

Clause 8 - provides for the Company to transfer to the Territory, documents which were maintained by the Authority in relation to a power or function conferred on the Authority under a law prior to the relevant day and which, by virtue of an amendment to the law, on that day, becomes a power or function of the Territory. Where it is not practicable to transfer a document within a reasonable time, the Company must grant the Territory reasonable access to the document until it can be transferred.

References to the Authority, etc.

Clause 9 - provides that a reference in any enactment or subordinate law to the Authority, an officer of the Authority or any matter relating to the Authority is to be read as a reference to the Company, an officer of the Company or a corresponding matter relating to the Company as appropriate. It is intended that regulations made under clause 11 will make specific provision for references to the Authority in each and every case. This clause is merely a "safety net" in case a reference to the Authority is overlooked, pending the making of a regulation to amend the reference.

Arrangements

Clause 10 - enables the Minister and the Company to enter into an arrangement by instrument in respect of any matter relating to, or in connection with the establishment of the new corporation. In particular, an arrangement may allow one party to exercise a power vested in the other party, where it becomes necessary to do so. The instrument is disallowable and therefore subject to scrutiny by the Assembly. This clause operates as a further "safety net" (in conjunction with clauses 9 and 11), where urgent action is required and where there may not be time to make a regulation under clause 11.

Regulations

Clause 11 - enables the Executive to make regulations for the purposes of this Bill in relation to any matter connected with the establishment of the new corporation. The regulations may also modify the operation of any enactment or subordinate law including making various technical changes. Regulations modifying an enactment or subordinate law may not be made under this provision after 1 July 1996. The modification clause is included because of the complexity of the corporatisation project and builds in some flexibility. The 12 months sunset clause (which applies only to the power to make

modifications) and the ability of the Assembly to disallow regulations provide a safeguard. It is contemplated that regulations will be made under this clause, to operate from the relevant day, to modify various references in the *Electricity Act 1971*, for example, and other legislation.