

2005

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

## **Utilities Amendment Bill 2005**

### **Explanatory Statement**

Circulated by authority of  
John Hargreaves MLA  
Minister for Urban Services

## OVERVIEW

The government is responsible for providing a range of municipal services to the ACT, including streetlighting and urban stormwater drainage. Access to the infrastructure, which supports the streetlighting and stormwater drainage networks, for the purpose of installation, repairs or maintenance, must often be obtained by entering onto residential premises. The Utilities Amendment Bill 2005 (the Bill) amends the *Utilities Act 2000* to provide a clear and consistent legal authority for Territory officials or those contracted to provide maintenance service to go onto leased land, for the purpose of installing or maintaining streetlight or stormwater drainage infrastructure.

The Bill also:

- makes it an offence for a person to interfere with the streetlight or stormwater network unless authorised to do so; and
- enables the Territory to take action to stop interference with the networks, eg arising from encroaching vegetation or structure on the land, including requiring the landholder to remove the source of interference.

The provisions mirror parts 7 and 8 of the *Utilities Act 2000*, which relate to entry to land by utilities for the purpose of installing or accessing electricity, gas, water or sewerage infrastructure. The *Utilities Act 2000* generally refers to such infrastructure as “networks” or “network facilities”. This Bill distinguishes that infrastructure from streetlight and stormwater infrastructure by generally referring to the latter as “territory networks” or “territory network facilities”.

## CLAUSES 1 TO 3: FORMAL CLAUSES

Clauses 1 to 3 are formal clauses which:

- state the name of the Act being created;
- provide for commencement of the Act; and
- state the name of the Act being amended.

**CLAUSES 4 & 5** amend sections 110(3)(d) and 111(5) to correct incorrect cross references.

**CLAUSE 6** amends section 111(1) to bring it into line with current drafting practices.

**CLAUSE 7: NOTICE TO OTHER UTILITIES, SECTION 111(7)**

Section 111 requires a utility to provide notice for network operations, which will affect or are likely to affect another public utility's facilities.

Clause 4 expands the operation of this section to include operations which will affect (or are likely to affect) a territory network and network facility by amending subsection 111(7) to:

- expand the existing definition of a network facility to include a streetlight facility for the purpose of the section;
- expand the definition of public utility for the purpose of the section to include a streetlight network;
- bring the definition of stormwater facility into line with the definition in new part 14; and
- omit the definition of stormwater network from the existing section, which means that the new dictionary definition for that term will apply.

**CLAUSE 8: SECTION 113(2)**

Section 113 requires a utility that has worked on another land-holder's land to take all reasonably practicable steps to restore the land to its pre-work condition, unless to do so would interfere with a network or network facility or be a breach of Territory law or where there is a contrary agreement with the land-holder.

Clause 8 amends subsection 113(2) to expand the circumstance where restoration work will not be required, to include where the work would interfere with a territory network or territory network facility.

**CLAUSE 9: NEW PART 14 (STREETLIGHTING AND STORMWATER)**

This clause amends the *Utilities Act 2000* to insert a new part.

**Division 14.1 General**

**New section 225A** defines a number of new terms found throughout part 14.

**New section 225B** defines a stormwater network to consist of infrastructure, (such as pipes, drains, channels and access holes), that is used, or is available for use, in relation to stormwater drainage, but does not include infrastructure outside the stormwater network boundary, or excluded under the stormwater network code.

**New section 225C** provides that the Minister may approve a stormwater network boundary code for part 14 and that the stormwater network boundary is to be worked out in accordance with the stormwater network boundary code.

**New section 225D** defines a streetlight network to consist of infrastructure (such as power cables, switching equipment, lamps and equipment, supporting structures and conduits), that is used, or is available for use in relation to the provision of streetlighting. It does not include infrastructure that has been excluded under the streetlight network code.

**New section 225E** provides that the Minister may approve a streetlight network code for part 14.

### **Division 14.2 Territory network operations**

This division deals with installation and work on network facilities and the role of territory service authorised people.

#### **Subdivision 14.2.1 General powers**

**New section 225F** makes it clear that the Territory may enter and occupy land, and lists a wide range of activities that it may perform, as part of necessary or desirable installation work on territory network facilities.

Among other activities, the section permits the installation and removal of a gate or passageway within a fence or wall, other than a building wall. However the Territory must

ensure that inconvenience and disruption to the passage of people, vehicles and vessels is minimised, so far as is practicable.

The Territory is not entitled to enter land for the purpose of installation related work if it is not the land-holder, unless it has an appropriate interest in the land, or the owner of the land agrees to the action.

**New section 225G** relates to the maintenance of a network facility, and makes it clear that the Territory may enter and occupy land, for the purpose of a wide range of activities imported from section 225F, as part of necessary and desirable maintenance works to territory network and network facilities.

Maintenance work is broadly defined in section 225G(2) to include, amongst other things, inspection, alteration, repair, cleaning, replacement and removal work.

**New section 225H** makes it clear that functions exercisable under part 14 are exercisable in relation to national land only by agreement with the Commonwealth.

### **Subdivision 14.2.2 Performance of Territory network operations**

**New section 225I** requires the Territory, in carrying out territory network operations, to take all reasonable steps to ensure that it causes as little inconvenience, detriment and damage as is practicable.

**New section 225J** sets out the notice requirements for territory network operations on national or private land. The Territory must give the relevant land-holder 7 days written notice of the work, state the purpose, nature and proposed place and period of the work, and indicate the Territory's obligation to take all reasonable steps to ensure that the work causes as little inconvenience, detriment and damage as is practicable, and to restore the land. This section also makes it clear that the land holder may waive any part of the notice period, and that no notice is required for urgent work to protect the integrity of a Territory network or network facility, personal health or safety, public or private property or the environment.

**New section 225K** states that if proposed network operations involve felling, lopping, root trimming, clearing or removal of vegetation on private land, the Territory must give the land holder 7 days written notice of the proposed operations, unless the land holder waives the notice period, or the work is urgently needed to protect the integrity of a territory network or network facility, personal health or safety, public or private property or the environment.

The notice must indicate the activity, and which trees or vegetation are concerned. The Territory may require the land-holder to carry out the work as long as the notice also indicates that if the land-holder does not do so the Territory may do the work and charge the land-holder reasonable costs. No charge may be levied if the tree or vegetation concerned was growing on the land prior to the installation of the network facility. The landholder must be given at least 7 days from the day that notice is given to carry out the activity.

**New section 225L** requires the Territory to also give a copy of a notice under section 225J or section 225K to the heritage council where the notice relates to network operations that may affect a place or object registered, or nominated for provisional registration under the *Heritage Act 2004*. No notice is required if the work is urgently needed to protect the integrity of a territory network or network facility, personal health or safety, public or private property or the environment. The *Heritage Act 2004* is due to commence on 9 March 2005.

**New section 225M** sets out the notice requirements for territory network operations that consist of, or are likely to affect a network facility under the care and management of a utility. The Territory must give the relevant utility 7 days written notice of the work, state the purpose, nature and proposed place and period of the work. This section also makes it clear that the utility may waive any part of the notice period, and that no notice is required for urgent work to protect the integrity of a territory network or network facility, personal health or safety, public or private property or the environment.

**New section 225N** makes it clear that, subject to any contrary agreement between the Territory and a land holder, the Territory is to remove everything the Territory put on the land

to do the work (except the network facility itself) and any soil, waste, rubbish or cleared vegetation involved, as soon as practicable.

**New section 225O** requires the Territory, subject to a contrary agreement with the land holder, to take all reasonably practicable steps to restore the land to its pre-work condition before the activities began (unless to do so would interfere with a network or network facility or be a breach of Territory law).

**New section 225P** permits a person to claim reasonable compensation from the Territory if the person suffers loss or expense because of territory network operations. The court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case. In considering whether it is just to make an order, the court may take into account whether the Territory has satisfied its obligation under section 225N (Removal of Territory's property and waste) and section 225O (Land to be restored).

### **Subdivision 14.2.3 Authorised people and entry to premises**

**New section 225Q** makes provision for the appointment (or deemed appointment) of territory service authorised people for the purpose of part 14. These people are required to act in accordance with the terms of their written appointment or directions (if any) given by their appointer.

Where the Territory engages a utility to exercise a function under part 14, a person authorised by the utility under section 114 (Appointment) to exercise functions under part 14 is deemed to be a territory service authorised person.

Where the Territory engages an entity (other than a utility or public servant) to exercise a function under part 14; a person appointed by the entity is deemed to be a Territory service authorised person for part 14.

In all other cases, the person must be a public servant appointed by the chief executive.

**New section 225R** requires that territory service authorised person have an identity card and return it if they cease to be an authorised person. The identity card must be issued by the relevant appointer (ie. where the Territory engages a utility - the utility, where the Territory engages an entity – the entity, or the chief executive).

**New section 225S** empowers territory service authorised persons to enter, remain and work on premises with such assistance and materials as required, where reasonable and necessary to perform work under division 14.2 (Territory network operations). Such persons are not entitled to remain on the premises if they do not produce an identity card when asked to do so by a person in charge of the premises.

**New section 225T** empowers territory service authorised persons, at any reasonable time and with appropriate assistance, to enter and remain on premises (to which the Territory does or will provide a Territory service) for various purposes associated with the connection of the premises to the network. Such persons are not entitled to remain on the premises if they do not produce an identity card when asked to do so by a person in charge of the premises.

#### **Subdivision 14.2.4 Miscellaneous**

**New section 225U** states that where someone obstructs (or proposes to obstruct) a person in the exercise of a function under division 14.2, the Magistrates Court may, on application by the Territory, make an order authorising a police officer or anyone else named in the order, to use the assistance and force that is reasonably necessary to enable the function to be exercised.

**New section 225V** makes it clear that ownership in a territory network facility does not accrue to a person because it is on the person's land.

#### **Division 14.3 Protection of Territory networks**

This division deals with interference with, and contamination of Territory networks.



**New section 225W**, when read with section 20 of the Criminal Code, makes it an offence to knowingly, intentionally or recklessly interfere with a Territory network or network facility. Section 43 of the Criminal Code operates to ensure that a person will not be guilty of an offence under section 225W to the extent that they are authorised to work on a territory network.

**New section 225X** enables the Territory to give a relevant land-holder 7 days written notice to remove a structure or stop an activity, where it is satisfied that the structure or activity interferes with a territory network or network facility (or is likely to do so). The notice must state the nature of the interference, the steps the land-holder is to take and the consequences of non-compliance. If the land owner fails to comply with the notice the Territory may do what is required to remove the activity and charge the land-holder its reasonable costs. No charge may be levied in relation to a structure on the land or an activity that pre-dates the installation of the network or facility. If the Territory's actions in relation to such a structure or activity cause another person to suffer loss or damage then it is the Territory that may owe a debt.

No notice need be given if urgent action is required to stop or remove the likelihood of the interference in order to protect the integrity of the Territory network or network facility, personal health or safety, public or private property or the environment. Such action must be taken at the Territory's own expense.

**New section 225Y** requires the Territory, as soon as practicable, to give a copy of a notice given under section 225W to the heritage council where the action to which the notice relates may affect a place or object registered, or nominated for provisional registration, under the *Heritage Act 2004*.

If the Territory acts in urgent circumstances, it must give the heritage council written notice of the action as soon as is practicable.

The *Heritage Act 2004* is due to commence on 9 March 2005.

**CLAUSE 10: VICARIOUS LIABILITY**

Clause 10 renumbers part 14 (Vicarious Liability) as part 15.

**CLAUSE 11: SECTION 226 HEADING**

Clause 11 makes a consequential amendment to the heading of section 226 to reflect the renumbering of part 14.

**CLAUSE 12: MISCELLANEOUS**

This clause renumbers part 15 (Miscellaneous) as part 16.

**CLAUSE 13: SECTION 229**

Clause 13 amends section 229 to provide that the Minister may determine fees for part 14 (Streetlighting and stormwater). The ICRC continues to determine fees for all other parts of the Act other than part 11 (Essential Services Consumer Council).

**CLAUSE 14: SECTION 233(1)(a)**

The existing section 233 makes it clear that if, apart from division 9.2, the *Utilities Act 2000* operates to achieve an acquisition of property on unjust terms, the person may agree on compensation or may apply to a court of competent jurisdiction for compensation.

Clause 14 amends section 233 to make it clear that this compensation provision also does not apply if the operation of new section 225P (Compensation) has resulted in the acquisition.

**CLAUSE 15: REGULATION-MAKING POWER**

This clause amends section 234 to expand the power to make regulations in relation to the safe or efficient provision of Territory services, including provision prohibiting or regulating activities to ensure the safe and efficient operation of a territory network or territory network facility, and protect people or property.

**CLAUSE 16: PARTS 14 TO 16**

This clause provides for the renumbering of the sections when the Act is next republished under the Legislation Act.

**CLAUSE 17: DICTIONARY, DEFINITIONS OF *INSTALLATION* AND *INTERFERENCE***

This clause expands the dictionary definition of *installation* and *interference* to include for a territory network or territory network facility a stormwater or streetlighting network.

**CLAUSE 18: DICTIONARY, DEFINITIONS OF *PROCEEDING UNDER THIS ACT***

Clause 13 makes a consequential amendment to the reference to the former part 14 (Vicarious Liability) in the definition of a 'proceeding under this Act'.

**CLAUSE 19: DICTIONARY, NEW DEFINITIONS**

This clause includes a number of new definitions for various terms used in the new part 14.

**CLAUSE 20: OMBUDSMAN ACT 1989, SECTION 5(2)(H)**

Section 5(2)(h) of the Ombudsman Act states that the Ombudsman is not authorised to investigate action taken by the Territory for the management of the environment.

To avoid any doubt that the Ombudsman can investigate action taken by the Territory in relation to the Territory's networks, clause 20 makes it clear that the exclusion in section 5(2)(h) does not extend to action taken under the Bill.