

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

ELECTRICITY AND WATER ORDINANCE 1988

ORDINANCE NO. 30 OF 1988

The Electricity and Water Ordinance 1988 (the Ordinance) establishes the ACT Electricity and Water Authority (the Authority) which replaced the ACT Electricity Authority established under the Australian Capital Territory Electricity Supply Act 1962. The Act was repealed by Proclamation on 1 July 1988 under the Statute Law (Miscellaneous Provisions) Act 1988.

The Ordinance, which commenced on 1 July 1988, arose out of the Government's objective of rationalising statutory authorities and will amalgamate the diverse areas which supply electricity and water and provide sewerage services.

The expertise and infrastructure of the former ACT Electricity Authority will provide a sound basis for ensuring the provision of water and sewerage services, in addition to the provision of electricity, on a proper commercial basis.

The Authority consists of a Chief Executive Officer, a Chairperson, a Deputy Chairperson and one other member.

All members are appointed by the Minister for a period not exceeding 5 years but are eligible for re-appointment. The terms and conditions of appointments are determined by the Minister. The remuneration of the members is as determined by the Remuneration Tribunal.

The functions of the Authority are to supply and manage electricity and water and to provide sewerage services. Sufficient powers are conferred on the Authority to enable it to effectively carry out its functions.

The Ordinance provides, inter alia, for the disclosure of pecuniary interests by members, the engagement of consultants, the development of a corporate plan and the submission of that plan to the Minister, Ministerial power to vary financial targets and performance indicators of the Authority and the payment of dividends and interest to the Commonwealth.

The Minister may give directions to the Authority with respect to the performance of its functions or the exercise of its powers where the Minister is satisfied that it is desirable in the public interest to do so.

The emergency provisions are an important feature of the Ordinance. The Ordinance provides the Minister with the power to declare an emergency where the Minister has reasonable grounds for believing that the supplies of electricity or water are inadequate for the needs of the ACT or where the supply of water or the maintenance of the provision of sewerage services is so affected as to be a danger to public health. On a declaration of emergency the Authority may give directions in accordance with an emergency plan previously approved by the Minister and tabled in the Parliament. The emergency plan sets out a description of the manner in which it is proposed that the Authority may prohibit, ration, control or otherwise regulate the supply of electricity or water or the provision of sewerage services.

Details of the Ordinance are included in the Attachment.

ISSUED BY AUTHORITY OF THE  
MINISTER OF STATE FOR THE  
ARTS AND TERRITORIES

Electricity and Water Ordinance 1988

Part I comprises sections 1 to 3 and deals with preliminary matters.

Section 1 cites the short title of the Ordinance.

Section 2 provides that the Ordinance shall come into operation on 1 July 1988.

Section 3 deals with interpretation.

Part II comprises sections 4 to 13 and deals with the establishment, functions and powers of the Authority.

Subsection 4(1) establishes the Australian Capital Territory Electricity and Water Authority (the Authority).

Subsection 4(2) provides that the Authority is a body corporate, with perpetual succession, a common seal and is able to sue and be sued in its corporate name.

Subsections 4(3) and (4) deal with the common seal and provide that it be kept and used only by the Authority and that the Courts are to take judicial notice of the seal.

Section 5 defines the functions of the Authority. These functions are:

- (a) to supply electricity and water;
- (b) to promote and manage the use of electricity and water;
- (c) to collect and treat sewage and to provide sewerage services;
- (d) to produce sewage treatment by-products; and
- (e) other incidental functions conferred on the Authority in relation to electricity or water or the provision of sewerage services by this Ordinance or any other law of the Territory.

Subsection 6(1) provides that the Authority has all powers necessary or convenient to carry out its functions. Particular powers include:

- (a) dealing in real and personal property;
- (b) buying and selling electricity or water;
- (c) generating and transmitting electricity;
- (d) reticulating electricity or water;
- (e) assessing, managing and developing water resources;
- (f) collecting, carrying, containing, treating and reticulating water;
- (g) collecting, containing, treating and disposing of sewage;
- (h) developing policies in relation to the use of electricity or water or the provision of sewerage services;

- (i) providing for the treatment and purification of water supplied or to be supplied by the Authority;
- (j) providing consultative services;
- (k) supplying electricity or water or providing sewerage services outside the Australian Capital Territory where subject to an agreement to which the Authority is a party;
- (l) providing for the inspection and approval of work done in relation to the treatment and purification of water and the collection and treatment of sewage;
- (m) entering into agreements with the Commonwealth for the provision of electricity, water or sewerage services;
- (n) supplying, installing, maintaining or repairing electrical equipment (including equipment required or used to generate, transmit or reticulate electricity) -
  - (i) required or used by the Commonwealth, the Authority or a body established by a law of the Commonwealth or the Territory; or
  - (ii) as otherwise approved by the Minister;
- (o) supplying, installing, maintaining or repairing equipment, required or used by the Commonwealth, by the Authority or a body established by a law of the Commonwealth or the Territory, or as otherwise approved by the Minister, which is required or used -
  - (i) to collect, carry, contain, treat, or reticulate water; or
  - (ii) to collect, carry, contain, treat, or dispose of, sewage or to produce sewage treatment by-products;
- (p) the setting and enforcement of standards relating to -
  - (i) water extraction;
  - (ii) the protection of water catchment;
  - (iii) the treatment and disposal of sewage; and
  - (iv) the production of sewage treatment by-products;
- (q) the setting and enforcement of standards relating to electrical installations used or available for use in the Territory in the generation, reticulation or consumption of electricity;
- (r) researching, evaluating and participating in research activities with respect to matters arising out of or incidental to its functions;
- (s) developing, selling, licensing and collecting royalties on technology, software and other intellectual works;
- (t) determining the conditions upon or subject to which any electricity or water will be supplied or sewerage services will be provided, by the Authority;
- (u) hiring out plant, equipment or labour of the Authority that is not immediately needed for use by the Authority;
- (v) forming, and participating in the formation of, companies;
- (w) entering into partnerships;
- (x) participating in joint ventures;
- (y) entering into contracts;

- (z) occupying, using and controlling any land or building owned or held by the Commonwealth and made available for the use of the Authority;
- (aa) making charges for work done, and services rendered, by the Authority;
- (ab) appointing agents and attorneys and to act as an agent for other persons;

as well as other incidental powers.

Subsection 6(2) enables the Authority to enter into arrangements with the Minister in relation to matters concerning the supply of water under the Canberra Water Supply (Googong Dam) Act 1974.

Subsection 6(3) ensures that the Authority shall not cause anything to be done on Commonwealth property without Commonwealth consent, or on property other than Commonwealth property, that is not pursuant to rights conferred on the Authority by agreement or by a law of the Territory.

Section 7 imposes a duty on the Authority to abide by Commonwealth policies concerning the planning, development and construction of Canberra.

Subsection 8(1) provides that the Authority shall not subscribe for, or purchase, shares in, or other securities of, a company or form or participate in a company without the written approval of the Minister.

Subsection 8(2) provides that the Minister's approval shall not be given until after the Minister has consulted the Minister for Finance and the Attorney-General. The approval may be subject to specified conditions.

Where the Authority obtains an interest in a company, subsection 8(3) requires the Minister to table in Parliament a statement detailing that interest.

Where the Authority obtains a controlling interest in a company, subsection 8(4) requires the Authority to endeavour to ensure that the company has adequate audit arrangements and that the company does not exceed the powers vested in the Authority.

Subsections 8(5)-(7) also apply in situations where the Authority obtains a controlling interest in a company and provides guidelines limiting that company's power to borrow money. In particular, subsection 8(5) requires the Authority to endeavour to ensure that the company borrows money only from the Commonwealth or raises money only on terms and conditions approved by the Treasurer. Subsection 8(6) states that borrowing or raising money includes dealing in securities or in currency other than Australian currency. Subsection 8(7) deems instruments issued by a company acknowledging a debt to be a borrowing of money.

Section 9 makes similar provisions to section 8 in relation to the entering into partnerships by the Authority. It includes requirements for the Minister's written approval, the tabling in Parliament of statements detailing the Authority's interest in the partnership, audit arrangements and the powers of the partnership.

Section 10 provides similarly for joint ventures entered into by the Authority.

Section 11 provides for the Minister to reconsider each financial year his or her opinion pursuant to sections 8, 9 or 10 that disclosure of the Authority's participation in a company, partnership or joint venture in the statement tabled in Parliament would be commercially detrimental to the Authority.

Section 12 empowers the Authority to delegate to the Chief Executive Officer, an appointed member of the Authority, or an employee of the Authority and of its powers, other than the power of delegation.

Section 13 empowers the Authority with committees to advise or assist the Authority in performing its functions.

Part III comprises sections 14 to 23 and deals with the constitution of the Authority.

Subsections 14(1)-(3) provide that the Authority consists of a Chief Executive Officer and 3 other part-time members. The three part-time members are appointed by the Minister and include a Chairperson and Deputy Chairperson. Any irregularity in an appointment does not invalidate the appointment (subsection 14(5)).

Subsection 14(4) provides that appointed members hold office on terms and conditions as provided by the Ordinance or as determined by the Minister in writing.

Subsection 14(6) ensures that a vacancy in the membership does not affect the exercise of the Authority's powers or the performance of its functions.

Subsection 15(1) provides that a member's appointment must not exceed 5 years and that a member may be reappointed.

Subsection 15(2) provides for compulsory retirement of appointed members at age 65.

Section 16 provides that members be paid such remuneration and allowances as are prescribed except where a determination of the Remuneration Tribunal provides for such remuneration or allowances.

Section 17 provides for the appointment, terms and conditions of appointment and remuneration of acting members.

Subsection 17(1) provides that the Minister may appoint a person to act (for not more than 12 months) as the Chairperson or Deputy Chairperson when there is a vacancy in the office of the Chairperson or Deputy Chairperson, or the Chairperson or Deputy Chairperson is absent, or unable to perform his or her functions.

Subsection 17(2) confers a similar power of appointment upon the Minister with respect to a vacancy in the office of, or absence of, an appointed member.

Subsection 17(3) provides that the instrument of appointment may specify the circumstances in which an acting appointment may take effect.

Subsection 17(4) provides that where a person is acting as a Chairperson, Deputy Chairperson or appointed member because a person is absent from office, and that office becomes vacant, then that person may continue to act in the office until the Minister directs otherwise, the vacancy is filled, or a period of 12 months from which the vacancy occurred expires, whichever occurs first.

Subsection 17(5) gives the Minister the discretion to determine the terms and conditions of appointment and remuneration of acting appointments and to terminate any such appointment at any time.

Subsection 17(6) ensures that an acting appointee has all the powers and performs all the functions of the office of the Chairperson, Deputy Chairperson or the appointed member, as the case requires.

Subsection 17(7) provides that things done by an acting appointee shall not be invalidated by reason:

- (a) that the occasion for the appointment had not arisen;
- (b) of defects or irregularities in the appointment;
- (c) that the appointment had ceased to have effect; or
- (d) that the occasion for the person to act had not arisen or had ceased.

Section 18 provides that an acting appointee may resign his or her office by writing delivered to the Minister.

Section 19 provides that the Minister may grant a Chairperson leave of absence and the Chairperson may grant leave of absence to other members.

Section 20 provides that an appointed member may resign his or her office by writing delivered to the Minister.

Subsection 21(1) provides that the Minister may terminate a member's appointment on grounds of misbehaviour or physical or mental incapacity.

Subsection 21(2) deals with the grounds on which the Minister must terminate a member's appointment. These are:

- (a) bankruptcy;
- (b) absence from 3 consecutive Authority meetings without the Chairperson's approval;
- (c) failing without reasonable excuse to disclose a pecuniary interest in a matter under consideration by the Authority; and
- (d) conviction of an offence punishable by imprisonment for at least one year.

Subsection 22(1) requires members to disclose direct or indirect pecuniary interests in any matter under consideration by the Authority.

Subsections 22(2) and (3) require the Authority to record such disclosures and for the member making such disclosure not to be present at any deliberation or determination made by the Authority concerning that matter.

Subsection 22(4) provides that a member is not to be taken to have a pecuniary interest in charges determined for the supply of electricity or water or the provision of sewerage services by reason only that the member is liable to pay such a charge.

Subsection 23(1) relates to meetings of the Authority.

Subsection 23(2) enables the Chairperson to convene meetings from time to time and requires him or her to convene a meeting on the written request of not less than 2 members. Subsection 23(3) enables the Minister to convene a meeting at any time.

Subsection 23(4) provides that the Chairperson is to preside at meetings.

Subsection 23(5) provides that when the Chairperson is absent, the Deputy Chairperson is to preside.

Subsection 23(6) provides that three members constitute a quorum.

Subsection 23(7) ensures that questions are determined by a majority of members present and voting.

Subsection 23(8) provides that the person presiding at a meeting has both a deliberative and casting vote.

Part IV comprises sections 24 to 32 and deals with the Chief Executive Officer, staff, and consultants.

Subsection 24(1) provides for the appointment of a Chief Executive Officer by the Minister.

Subsection 24(2) states that the Chief Executive Officer is to manage the affairs of the Authority.



Subsection 25(1) provides that the Chief Executive Officer is to be appointed to office for not more than 5 years, but is eligible for reappointment.

Subsection 25(2) provides that a person shall retire as Chief Executive Officer at age 65.

Subsection 25(3) provides that the terms and conditions of the Chief Executive Officer's appointment are to be determined by the Authority with the approval of the Minister.

Subsection 25(4) ensures that except for the first appointment, the Authority's views are taken into account when the Minister appoints a Chief Executive Officer.

Section 26 provides for the prescription of the Chief Executive Officer's remuneration and allowances. The remuneration and allowances will not be prescribed if a determination by the Remuneration Tribunal is in force.

Section 27 allows the Minister to grant the Chief Executive Officer leave of absence on such terms and conditions as to remuneration as the Minister determines.

Section 28 provides for the resignation of office by the Chief Executive Officer by writing delivered to the Minister.

Subsection 29(1) provides that the Minister may terminate the Chief Executive Officer's appointment on grounds of misbehaviour or physical or mental incapacity.

Subsection 29(2) provides that the Minister must terminate the Chief Executive Officer's appointment if the Chief Executive Officer:

- (a) becomes bankrupt;
- (b) is otherwise employed without Authority approval;
- (c) is absent from duties without the Minister's approval;
- (d) fails to disclose a pecuniary interest in a matter; or
- (e) is convicted of an offence punishable by imprisonment for one year or more.

Subsection 30(1) allows the Minister to appoint an acting Chief Executive Officer during a vacancy in office or absence of the Chief Executive Officer. Subsection 30(2) allows the Minister to terminate such an appointment at any time.

Subsection 30(3) provides the acting Chief Executive Officer with all the powers and functions of the Chief Executive Officer.

Subsection 30(4) provides that irregularities in the appointment of an acting Chief Executive Officer do not invalidate actions done by such an acting Chief Executive Officer.

Subsection 31(1) gives the Authority power to employ staff (by appointing officers or by engaging employees) and subsection 31(2) provides that the terms and conditions of employment of such staff are to be determined by the Authority.

Subsection 31(3) allows the Chief Executive Officer to arrange for the transfer of staff from the Australian Public Service to the Authority and vice versa.

Subsection 32(1) allows the Chief Executive Officer to engage consultants to the Authority. Subsection 32(2) allows the Authority to determine the terms and conditions of engagement of such consultants.

Part V comprises sections 33 to 38 and deals with the operation of the Authority.

Subsection 33(1) provides that the Authority shall develop a corporate plan and shall annually, or at other times, review and revise the corporate plan.

Subsections 33(2) and (3) ensure that the corporate plan or revised corporate plan include a statement of the Authority's objectives for the financial year and at least the next two financial years.

Subsection 33(4) provides that a statement outlining the Authority's strategies and policies with which it intends to achieve its objectives be included in the corporate plan.

Section 34 requires the Authority to provide to the Minister a copy of the corporate plan (or revised plan) as well as a copy of the Authority's financial plan, which is to include an annual forecast (in a form approved by the Minister) of expenditure and receipts, targets for its profits, rate of returns and dividends and its performance indicators.

Section 35 sets out matters that the Authority must consider when determining its financial targets. The matters to be considered are:

- (a) Commonwealth policies and objectives and any Ministerial directions;
- (b) Ministerial directions that have been given under section 36;
- (c) the need to earn a reasonable rate of return;
- (d) the need to have a reserve of resources for, among other things, future capital expansion and for the future supply of electricity and water and provision of sewerage services; and
- (e) other relevant commercial considerations.

Section 36(1) allows the Minister to direct the Authority in writing to vary its financial targets and performance indicators.

Subsection 36(2) sets out various matters that the Minister must consider in giving a direction to the Authority and these are:

- (a) those matters the Authority must consider referred to in subsection 35(1);
- (b) the trading conditions in which the Authority operates;

- (c) the commercial and market strengths of the Authority;
- (d) the community service obligations to be met by the Authority; and
- (e) other commercial interests.

Subsection 36(3) requires the Authority to comply with the Minister's directions where reasons for the direction have been given.

Section 37 deals with other directions. Subsection 37(1) provides that, unless expressly provided, the Authority shall not be subject to direction by or on behalf of the Commonwealth.

Subsection 37(2) however, provides that the Minister may give directions to the Authority in relation to its functions and powers if the Minister considers it in the public interest to do so.

Subsection 37(3) requires the Authority to comply with such a direction.

Subsection 37(4) requires details of a Ministerial direction under subsection 37(1) to be included in the Authority's annual report.

Subsection 38(1) entitles the Authority to be reimbursed for financial detriment resulting from complying with a Ministerial direction under section 37.

Subsection 38(2) defines the amount of financial detriment to include costs incurred that would not otherwise have been incurred and revenue foregone that would otherwise have been received.

Part VI comprises sections 39 to 51 and deals with the capital of the Authority.

Subsection 39(1) defines the capital of the Authority as the aggregate of:

- (a) the value (as determined by the Minister in consultation with the Minister for Finance) of the rights, property and assets, which were vested in the ACT Electricity Authority, and are vested in the Authority, after the transfer of assets and liabilities from the ACT Electricity Authority to the Authority (under section 84);
- (b) any amounts paid as capital to the Authority by the Minister for Finance out of moneys appropriated by Parliament; and
- (c) the Authority's annual surplus; less the aggregate of:
  - (d) the sum of the debts, liabilities and obligations that became liable for the Authority to pay or discharge after the transfer of assets and liabilities from the former Authority to the Authority under section 84;
  - (e) amounts of capital paid by the Authority to the Commonwealth.

Subsection 39(2) provides that the capital of the Authority is payable to the Commonwealth at such times, and in such amounts as the Minister, in consultation with the Minister for Finance, determines.

Subsection 39(3) provides that the above determinations shall be made by the Minister having regard to advice given by the Authority in relation to its financial affairs.

Subsection 39(4) provides that such determinations shall be made by instrument in writing.

Subsection 39(5) provides that the Authority's annual surplus is to be determined by deducting from revenue received or receivable for the financial year any expenditure and provision for expenditure properly chargeable against that revenue.

Section 40 provides that interest will be payable by the Authority on its prescribed capital to the Commonwealth at such rates as the Minister for Finance determines from time to time. The prescribed capital is that referred to in paragraph 39(1)(b) less the amounts referred to in paragraph 39(1)(c).

Section 41 provides that the Authority shall, within 4 months after the end of each financial year, recommend to the Minister taking into account the matters specified in section 35 and the extent of the Commonwealth's equity in the Authority, either that it pay the Commonwealth a dividend, or not pay to the Commonwealth a dividend for the financial year. The section provides for the Minister's consideration of the recommendation and further matters the Minister shall have regard to, in approving or varying the recommendation. The dividend, where approved for payment is to be paid to the Commonwealth, within 8 months after the end of that year, out of the profits of the Authority.

Section 42 permits the Minister for Finance to lend money to the Authority out of money appropriated by Parliament on such terms and conditions as he or she determines.

Section 43 deals with the Authority borrowing money other than from the Commonwealth. Subsection 43(1) allows the Authority to borrow or raise money with the approval of the Treasurer.

Subsection 43(2) allows the Authority to borrow or raise money by dealing in securities.

Subsection 43(3) requires the Treasurer's approval to be in writing.

Subsection 43(4) allows the money borrowed or raised to be in a currency other than Australian.

Subsection 43(5) allows the Treasurer's approval to be in relation to a single transaction or to a class of transactions.

Subsection 43(6) defines the raising of money, otherwise than by borrowing.

Section 44 provides that the Authority may give security over the whole or part of its assets in relation to the payment or repayment of money borrowed or raised (including interest) pursuant to sections 42 and 43.

Section 45 provides that the Authority shall not borrow or raise money except in accordance with sections 42 and 43.

Section 46 provides the ways in which the Authority's money shall be applied. These are:

- (a) paying costs and expenses incurred in relation to carrying out the Authority's functions;
- (b) the payment of allowances, fees and remuneration to the members; and
- (c) other payments authorised or required to be made by the Authority under the Ordinance or any other law of the Australian Capital Territory.

Section 47 provides for delegation of the Treasurer's powers under section 43 of the proposed Ordinance to an officer of the Department of the Treasury. The exercise of a delegated power is deemed to have been exercised by the Treasurer and a delegate shall be subject to the Treasurer's directions. The delegation of a power does not prevent the exercise of the power by the Treasurer.

Part VII comprises sections 48 to 51 and deals with the determinations of the Authority.

Subsection 48(1) enables the Authority, by notice published in the Gazette, to determine charges for or in connection with the supply of electricity or water, or the provision of sewerage services.

Subsection 48(2) provides that a determination under subsection (1), shall, unless disallowed under section 49, take effect at the expiration of 30 days after the date on which it was published in the Gazette.

Subsection 48(3) enables the Authority to also determine charges in relation to different uses, localities or circumstances in relation to the supply of electricity, water or provision of sewerage services.

Section 49 provides that the Minister may, within 30 days after a determination was published in the Gazette, disallow the determination.

Subsection 50(1) provides that a person to whom electricity is supplied, or by whom water rates, under section 12 of the Water Rates Ordinance 1959 or sewerage rates, under section 14 or the Sewerage Rates Ordinance 1968, are payable, is liable to make payments to the Authority in accordance with a determination in force under section 48.

Subsection 50(2) enables the Authority to make such arrangements as are fair and equitable for adjustments to amounts payable under this section, whether by permitting payment on a pro rata basis or otherwise, to accord with fluctuations in the rate of charges for electricity or the provision of water or sewerage services during a year.

Subsection 50(3) enables the Authority, with the Minister's approval, to charge a person or persons at rates agreed to between the person or persons and the Authority, rather than at the determined charge.

Subsection 50(4) requires the Authority to determine charges at the lowest rate possible taking into account the financial position of the Authority and the need to maintain the Authority on a sound commercial basis.

Subsection 50(5) provides where a person with a liability to pay a fee or charge to the Authority does not discharge that fee or charge within 28 days, that person then also becomes liable to pay a penalty of a prescribed rate of interest on the amount unpaid charges.

Subsection 51(1) enables the Authority to vary the terms and conditions in relation to the supply of electricity or water or the provision of sewerage services.

Subsection 51(2) requires the Authority to publish such a variation in a daily newspaper circulating in the ACT and the variation is not to commence until a date on or after publication.

Subsection 51(3) refers to agreements made under subsection 50(3) and prevents variation of the terms and conditions of such an agreement unless the agreement states that it may be varied under section 51.

Part VIII comprises sections 52 to 74 and deals with powers of entry and declaration of emergencies.

Section 52 deals with interpretation for Part VIII.

Subsection 53(1) enables the Chief Executive Officer to appoint / by instrument authorised persons.

Subsection 53(2) requires authorised persons to carry out duties under the Ordinance as well as such other duties as the Chief Executive Officer directs.

Subsection 54(1) requires the Chief Executive Officer to issue to each authorised person an identity card that specifies the name and appointment of the authorised person and on which appears a recent photograph of the person.

Subsection 54(2) requires an authorised person to return her or his identity card to the Authority on ceasing to be an authorised person.

Subsection 54(3) imposes a fine not exceeding \$100 on a person failing to return her or his identity card without reasonable excuse.

Subsection 55(1) empowers an authorised person to enter premises to which electricity or water is supplied or over which electricity or water is conducted, or to which sewerage services are provided at any reasonable time without a warrant for the purpose of the Ordinance or Regulation, and to exercise the powers conferred by section 56.

Subsection 55(2) provides that an authorised person is not authorised to remain on premises if that person does not show her or his identity card to the occupier upon request.

Subsection 55(3) empowers an authorised person to enter premises at any reasonable time and without the consent of the occupier to read the electricity or water meter.

Section 56 deals with the powers of authorised persons and provides that an authorised person may inspect, test, obtain information from, repair, replace or remove any apparatus, equipment or other thing, which is the property of the Authority.

Subsection 57(1) provides that an authorised person may enter any premises in which he or she believes on reasonable grounds that is anything connected with an offence against this Ordinance to prevent the concealment, loss or destruction of the thing or to exercise the powers and search referred to in subsection (2) where the circumstances are of such seriousness and urgency as to justify immediate entry or exercise of that power.

Subsection 57(2) provides that, for the purposes of subsection (1) an authorised person may, without the authority of a warrant, search a person, the clothing being worn by the person or property in, or apparently in the immediate control of the person, and seize anything found in the course of that search.

Subsection 57(3) provides that where a person is searched under this section, the search shall be carried out by an authorised officer of the same sex.

Subsection 58 provides an authorised person with a power to interrupt the supply of electricity or water or the provision of sewerage services if the authorised person has reasonable grounds for believing that it is necessary to do so in order to protect any person or property from injury or damage, or to prevent a risk to public health.

Section 59 makes it offence (subject to a penalty of \$1000 or imprisonment for 6 months, or both) for a person to obstruct or hinder an authorised person in the exercise of her or his powers, without reasonable excuse.

Section 60 is an interpretation provision for sections 61 to 70.

Section 61 binds the Crown with respect to the Commonwealth and the States, but does not render the Crown liable to prosecution for an offence.

Subsection 62(1) provides for a declaration of an emergency in relation to the supply of electricity or water or the provision of sewerage services where the Minister has reasonable grounds for believing that either:

- (a) there is, or is likely to be, an inadequate supply of electricity or water in the ACT, or
- (b) there is, or there is likely to be, a danger to public health in relation to the provision of sewerage services.

The Minister shall declare an emergency by notice published in the Gazette.

Subsection 62(2) provides that a declaration of emergency will, unless sooner revoked, remain in force for not more than 28 days. Subsection 62(3) provides that a new declaration may be made immediately upon the expiration of a previous declaration.

Subsection 63(1) enables the Authority during a declaration of emergency, by direction published in both the Gazette and in a daily newspaper circulating in the territory, to prohibit, ration, control or otherwise regulate the use, or the use for a particular purpose of electricity or water, or the provision of sewerage services, in accordance with its emergency plan.

Subsection 63(2) provides that a direction will commence on a date specified in the direction, but not before the date of its publication.

Section 64 provides that a direction ceases to have effect when the declaration to which it relates ceases to have effect unless the direction was earlier revoked. Where a second declaration takes effect from the expiration of the first declaration, a direction under the first declaration remains in force under the second declaration.

Subsection 65(1) creates an offence in relation to a person contravening or failing to comply with a direction without reasonable excuse. Penalties of \$5000 in the case of a natural person and \$25,000 in the case of a body corporate are provided.

Section 66 provides for the emergency powers of authorised persons.

Subsection 66(1) enables an authorised person to enter premises at any time without a warrant, but only with the consent of the occupier of the premises, if the authorised person believes, on reasonable grounds, that an offence under section 65 has occurred or is occurring.

Subsection 66(2) ensures that an authorised person is not authorised to exercise powers under subsection (1) if that person does not show his or her identity card on request.



Subsection 67(1) requires an authorised person to inform the occupier of premises that he or she may refuse to give consent before the authorised person obtains consent to enter premises under section 66.

Subsection 67(2) requires the authorised person to ask the person, from whom consent (for the purposes of section 66) was obtained, to sign an acknowledgment:

- (a) of the fact that he or she has been informed of the right to refuse consent;
- (b) of the fact that he or she voluntarily gave consent; and
- (c) of the day on which, and the time at which, that consent was given.

Subsection 67(3) makes unlawful, entry on to premises by an authorised person under section 66, in the absence of the voluntary consent of the occupier of the premises.

Subsection 67(4) is an evidentiary provision in relation to the question of voluntary consent. In court proceedings, if an acknowledgement pursuant to subsection 66(2) is not produced, the Court shall assume such consent to be involuntary, unless otherwise proved.

Section 68 provides for search warrants.

Subsections 68(1) and 68(2) enables a Magistrate to issue a search warrant authorising a named authorised person to enter premises with such assistance and by such force as is necessary and reasonable, where information provided on oath or by affidavit shows there are reasonable grounds for believing that a contravention or failure to comply with a direction has occurred or is occurring on those premises.

Subsection 68(2) further provides that a Magistrate shall not issue a warrant unless such further evidence as the Magistrate requires is given and the Magistrate is satisfied there are reasonable grounds for issuing the warrant.

Subsection 68(3) requires the inclusion in a warrant:

- (a) a statement of the purpose of the warrant and the nature of the offence complained of;
- (b) the time for which entry is authorised; and
- (c) the date, not being later than one month after the date of issue of the warrant, when the warrant ceases to have effect.

Section 69 requires the Authority to prepare an emergency plan.

Subsection 70(1) requires the emergency plan to describe the way in which it is proposed to prohibit, ration, control or otherwise regulate the use, or the use for a particular purpose of electricity or water, or the provision of sewerage services, during an emergency period.

Subsection 70(2) requires the Authority to submit the emergency plan to the Minister.

Subsection 70(3) enables the Minister to either accept the plan (with or without alterations) or to reject the plan.

Subsection 70(4) provides for a plan that has been accepted by the Minister to be adopted by the Minister by notice published in the Gazette.

Subsection 70(5) requires the notice to specify a place at which copies of the plan may be inspected or purchased.

Subsection 71(1) provides that a notice pursuant to subsections 70(4), 72(3) or 74(1) shall not come into effect unless and until the notice comes into operation under subsection 73(4).

Subsection 71(2) provides that an emergency plan comes into force on the day on which the notice adopting the plan comes into operation under subsection 73(4).

Subsection 72(1) requires the Minister, as soon as practicable after publication of a notice under subsection 70(4), to lay a copy of the notice and the emergency plan before each House of Parliament.

Subsection 72(2) enables either House within 15 days of the plan being tabled to recommend amendment of the emergency plan. The Minister may amend the plan after giving due consideration to the recommendations contained in a resolution passed by either House.

Subsection 72(3) requires that if the Minister so amends the emergency plan, the Minister shall adopt by notice published in the Gazette, the amended plan.

Subsection 72(4) requires that a copy of the amended emergency plan and relevant notice be laid before both Houses of Parliament as soon as practicable after publication of the notice under subsection 73(3).

Subsection 73(1) enables either House within 15 sitting days to disallow the adoption, amendment or revocation as the case may be (pursuant to notices published under subsection 72(1) or (4) or subsection 74(1) respectively), of the emergency plan. Disallowance shall cause the adoption, amendment or revocation to be of no effect.

Subsection 73(2) deals with the situation where the Parliament is prorogued or a House is dissolved or prorogued, or the House of Representatives expires, and the notice is still being considered. In that situation, the notice shall be deemed to be tabled on the first sitting day after dissolution, expiry or prorogation, as the case may be.

Subsection 73(3) requires the Minister to direct the Authority to prepare a fresh emergency plan where the notice adopting a plan is disallowed.

Subsection 73(4) provides that, if Parliament does not disallow a notice adopting, amending or revoking an emergency plan, then that notice shall come into effect the day after the last day on which Parliament could have disallowed the notice.

Subsection 74(1) provides that the Minister may, by notice published in the Gazette, either amend an emergency plan or revoke an emergency plan by a new plan.

Subsection 74(2) applies the operation of section 70 to the amendment (other than an amendment made pursuant to Parliamentary recommendation) of an emergency plan.

Subsection 74(3) provides that revocation of a plan by a new plan does not take effect until the new emergency plan comes into force.

Part IX comprises sections 75 to 82 and deals with miscellaneous matters.

Section 75 deals with offences by a body corporate.

Subsection 75(1) provides that where it is necessary to establish a body corporate's state of mind it is sufficient to show that a director, servant or agent of the body corporate, by whom the conduct was engaged in within the scope of his or her actual or apparent authority had that state of mind.

Subsection 75(2) provides that conduct engaged in or on behalf of a body corporate:

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by another person at the direction or with the consent or agreement of a director, servant or agent of the body corporate (where that direction, consent or agreement is within the actual or apparent authority of the director, servant or agent);

shall be deemed to have been engaged in by the body corporate.

Subsection 75(3) specifies how the state of mind of a servant or agent is to be established by showing that a person acting within the scope of actual or apparent authority had that state of mind.

Section 76 makes it an offence to destroy, damage or interfere with any apparatus, equipment or installation which is the property of the Authority, without reasonable excuse. Penalties of \$2,000 or imprisonment for 6 months in the case of a natural person and \$10,000 in the case of a body corporate will be provided.

Section 77 provides that charges payable under the Ordinance are a debt due and payable to the Authority and recoverable by action in a court.

Section 78 provides that the Authority may remit or refund any, or any portion of, charges if the Authority considers it just and equitable to do so.

Section 79 provides that a certificate signed by the Chief Executive Officer stating that a quantity of water or electricity has been supplied to a specific person or premises over a particular period, or that sewerage services were similarly provided, is evidence of the matters stated in the certificate for the purposes of proceedings under the Ordinance.

Section 80 empowers the Minister to determine fees by notice published in the Gazette.

Section 81 provides that fees determined under section 80 shall be payable to the Authority.

Section 82 confers a regulation-making power on the Minister providing for penalties not exceeding \$2,500 for a body corporate or \$500 for an individual.

Part X comprises sections 83 to 91 and deals with transitional matters.

Section 83 is the interpretation section for the purposes of the Part.

Section 84 provides for the transfer of assets and liabilities from the ACT Electricity Authority (the former Authority) to the Authority. In particular, on the commencement date the:

- (a) rights, property and assets vested in the former Authority vest in the Authority;
- (b) Authority is liable to pay or discharge any debts, liabilities or obligations of the former Authority; and
- (c) rights, property or assets held by the Commonwealth for the supply of water or provision of sewerage services may be directed by the Minister (by notice in the Gazette) to be transferred to the Authority.

Section 85 similarly provides for the continuation of employment of staff from the former Authority to the Authority.

Section 86 provides that certain pre-existing determinations in force on the commencement date of the Ordinance, become determinations deemed to have been made by the Authority under subsection 48(1).

Subsections 87(1) and (2) preserve contracts, agreements and arrangements to which the former Authority was a party.

Subsection 87(3) enables the Minister to declare specific agreements and arrangements to which the Commonwealth is a party and relating to water supply or sewerage services, to continue in force. Such a declaration is to be notified by the Minister in the Gazette.

Subsection 88(1) deems all references to the former Authority in any instruments made, granted or issued by the former Authority, and in force immediately before the commencement date, to be references to the Authority.

Subsection 88(2) provides that the Minister may, by notice in the Gazette, declare all references to the Commonwealth or the Commonwealth Government in any instrument in force relating to the supply of water or the provision of sewerage services, to be references to the Authority.

Section 89 provides that acts or things done by the former Authority under the Electricity Ordinance 1971 are deemed to have been done by or on behalf of the Authority.

Section 90 deals with legal proceedings.

Subsection 90(1) provides that causes of action that had arisen by or against the former Authority but in respect of which proceedings had not been instituted before the commencement date of the Ordinance, can be instituted by or against the Authority.

Subsection 90(2) similarly provides that proceedings already instituted by or against the former Authority before the commencement date of the Ordinance, whether in a Court, tribunal or other body, may be continued by or against the Authority.

Subsection 90(3) provides that proceedings instituted or continued under section 90 subject each party to the same rights and obligations as if the proceedings had been instituted by or continued against the former Authority.

Section 91 provides for the transfer (under section 84) of registration of title to land where land that was vested in the former Authority becomes vested in the Authority. This is done by the Australian Government Solicitor lodging a notice to this effect signed by either the Australian Government Solicitor or by an officer of the Attorney-General's Department, with the Registrar of Titles and the Registrar making such entries in the relevant register as necessary.