

EXPLANATORY STATEMENT

**AUSTRALIAN CAPITAL TERRITORY
ELECTRICITY (AMENDMENT) ORDINANCE 1987
ORDINANCE NO. 5 OF 1987
ISSUED BY AUTHORITY OF THE MINISTER
OF STATE FOR TERRITORIES**

The Electricity Ordinance 1971 (the Principal Ordinance) provides for the licensing of electrical contractors and electricians and controls the carrying out of electrical wiring work. Part VII of the Principal Ordinance was inserted by the Electricity (Amendment) Ordinance 1985. This amendment provides a comprehensive scheme for the registration and control of the sale and distribution of prescribed articles of electrical equipment and enforcement of safety standards.

The Senate Standing Committee on Regulations and Ordinances expressed concern with several aspects of the Electricity (Amendment) Ordinance 1985. The matters of concern to the Committee were that:

- there was no provision for review on the merits, by the Administrative Appeals Tribunal, of decisions made under sections 32C and 32D by the ACT Electricity Authority prohibiting or prescribing articles of electrical equipment;
- sections 32C, 32E, 32F, 32G(6), 32M(2), 32R(3) and 32ZB appeared to provide for strict liability offences. The offences include selling or hiring prohibited articles of electrical equipment and obstructing or hindering an inspector in the exercise of his or her powers or the performance of his or her duties;
- statutory conditions for entry by consent were not set out in detail in section 32X;
- the need to use force and the extent of the force necessary to effect entry to premises under section 32X was not qualified by any requirement of objectivity;

- . sub-section 32Y(4) allowed seizure of material not adequately described in a search warrant;
- . section 32Z conferred power on a Magistrate to grant warrants by telephone. The Committee expressed strong reservations about anyone other than a Superior Court Judge exercising a power to issue a search warrant to Government officials on the basis of an application by telephone;
- . the emergency powers of entry upon any land, or upon or into any premises, vessel or vehicle by an inspector without a warrant in section 32ZA were too wide; and
- . there was some gender specific language used in the legislation.

The Electricity (Amendment) Ordinance 1987 amends the Principal Ordinance to answer these concerns of the Senate Standing Committee. Section 32Z dealing with search warrants granted by telephone, section 32ZA dealing with emergency search and entry powers and sub-section 32Y(4) which allowed seizure of material not covered in a search warrant are repealed. Provision is made for review by the Administrative Appeals Tribunal of decisions under sections 32C and 32D. The element of intent in the offences in sections 32C, 32E, 32F, 32G(6), 32M(2), 32R(3) and 32ZB is explicitly stated. Statutory conditions for entry by consent under section 32X are set out in detail. A requirement of reasonableness is inserted into section 32Y and minor amendments are made to several sections to remove any gender specific references.

The effect of each of the provisions of the amending Ordinance is set out in detail in the Attachment.

ELECTRICITY (AMENDMENT) ORDINANCE 1987

Section 1 cites the short title of the Ordinance as the Electricity (Amendment) Ordinance 1987.

Section 2 defines "Principal Ordinance" for the purposes of the amending Ordinance as the Electricity Ordinance 1971.

Section 3 amends section 32C of the Principal Ordinance. Paragraph 3(a) amends a typographical error in paragraph 32C(1)(b) of the Principal Ordinance. Paragraph 3(b) inserts into sub-section 32C(3) the requirement that to be guilty of an offence under that sub-section a person must have known that the article was a prohibited article of electrical equipment or might reasonably be expected to have known.

Section 4 of the amending Ordinance amends section 32E of the Principal Ordinance. Paragraph 4(a) inserts into sub-section 32E(1) the requirement that to be guilty of an offence under that sub-section the approved first seller must have known that the article was a prescribed article of electrical equipment or might reasonably be expected to have known.

Paragraph 4(b) inserts into sub-section 32E(2) of the Principal Ordinance the requirement that to be guilty of an offence under that sub-section a person must have known that the article was a prescribed article of electrical equipment or might reasonably be expected to have known.

Section 5 inserts into section 32F of the Principal Ordinance the requirement that to be guilty of an offence under that section a person must have known that the prescribed article of electrical equipment did not comply with the standards referred to in the relevant declaration of compliance or might reasonably be expected to have known that this was so.

Section 5 also increases the penalties provided in section 32F of the Principal Ordinance.

Section 6 inserts into sub-section 32G(6) the requirement that to be guilty of an offence under that sub-section an approved first seller must have known of the change in the relevant particulars or might reasonably be expected to have known.

Section 7 amends section 32M of the Principal Ordinance. Paragraph 7(a) amends sub-section 32M(1) to include a reference to "or her" at the end of the phrase "imported by him". Paragraph 7(b) inserts into sub-section 32M(2) of the Principal Ordinance the requirement that to be guilty of an offence under that sub-section a person must have known that the prescribed article of electrical equipment was not marked, stamped or labelled as required or might reasonably be expected to have known.

Section 8 amends sub-section 32Q(5) of the Principal Ordinance to include a reference to "or her" at the end of the phrase "loss suffered by him".

Section 9 amends section 32R of the Principal Ordinance. Paragraph 9(a) amends paragraph 32R(1)(c) by including a reference to "or her" at the end of the phrase "let on hire by him". Paragraph 9(b) amends sub-section 32R(3) of the Principal Ordinance to provide that it is an offence under that sub-section to fail to take reasonable steps to comply with a requirement given under sub-section 32R(1). Paragraph 9(c) amends sub-section 32R(3) by removing a reference to "him" and substituting a reference to "that person".

Section 10 amends a typographical error in sub-section 32V(2) of the Principal Ordinance.

Section 11 amends section 32X of the Principal Ordinance. Paragraph 11(a) amends sub-section 32X(1) by removing references to "he" and substituting references to "the inspector". Paragraph 11(b) removes paragraph 32X(1)(d) from the Principal Ordinance. Paragraph 32X(1)(d) refers to section 32ZA of the Principal Ordinance which is repealed by section 14 of the amending Ordinance.

Section 12 inserts new section 32XA into the Principal Ordinance.

- Sub-section 32XA(1) requires that before an inspector obtains the consent of a person to enter and search premises under section 32X of the Principal Ordinance the inspector must inform that person that he or she may refuse to give consent.
- Sub-section 32XA(2) requires that where an inspector obtains the consent of a person for the purposes of section 32X the inspector shall ask the person to sign a written acknowledgment that the person voluntarily gave consent, that they were informed that they could refuse to give consent and the date and time at which they gave consent.

- Sub-section 32XA(3) provides that unless a person voluntarily consents to the inspector entering premises under section 32X then that entry is not lawful.

- Sub-section 32XA(4) provides that unless a written acknowledgement of consent is produced in evidence the court will assume, unless the contrary is proved, that the person did not voluntarily give consent.

Section 13 amends section 32Y of the Principal Ordinance. Paragraph 13(a) amends sub-section 32Y(1) to provide that an inspector may use only such force as is necessary and reasonable in exercising his powers under a search warrant. Paragraph 13(b) removes a gender specific reference from paragraph 32Y(1)(e) of the Principal Ordinance. Paragraph 13(c) removes sub-section 32Y(4) from the Principal Ordinance.

Section 14 repeals sections 32Z and 32ZA of the Principal Ordinance.

Section 15 repeals section 32ZB of the Principal Ordinance and substitutes a new section 32ZB. This new section provides that it is an offence to knowingly hinder or obstruct an inspector in the exercise of his or her powers or the performance of his or her duties. The penalties prescribed for the offence are, in the case of a body corporate - a fine not exceeding \$10,000 and, in the case of a natural person - a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months.

Section 16 inserts into section 32ZD of the Principal Ordinance new paragraphs (aa), (ab), (ac) and (ad). These paragraphs provide that application may be made to the Administrative Appeals Tribunal for a review of a decision of the ACT Electricity Authority-

- declaring that an article of electrical equipment or a class of articles of electrical equipment is prohibited for the purposes of section 32C;
- declaring that an article of electrical equipment or a class of articles of electrical equipment is prescribed for the purposes of Part VII.

Section 17 inserts new section 36A into Part IX of the Principal Ordinance.

- Sub-section 36A(1) provides that where it is necessary to establish the state of mind of a corporation for the purposes of the Ordinance it is sufficient to show that a director, servant or agent of the corporation had that state of mind.

- Sub-section 36A(2) provides that any conduct engaged in on behalf of a corporation by a director, servant or agent of the corporation, which is within the scope of his or her actual or apparent authority, shall be deemed to have been engaged in by the corporation. The deeming provision also extends to conduct engaged in on behalf of the corporation by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the corporation, where the giving of such direction, consent or agreement is within the actual or apparent authority of the director, servant or agent.

- Sub-section 36A(3) provides that a reference to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.

Section 18 sets out further amendments to some of the penalties provided in the Principal Ordinance.