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

**UTILITIES (STREETLIGHT NETWORK) LEGISLATION  
AMENDMENT BILL 2017**

**EXPLANATORY STATEMENT**

**Presented by  
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## UTILITIES (STREETLIGHT NETWORK) LEGISLATION AMENDMENT BILL 2017

### **INTRODUCTION**

This explanatory statement relates to the *Utilities (Streetlight Network) Legislation Amendment Bill 2017* (the bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill.

The bill introduces a new method of regulating access to infrastructure and for authorising people to work on a Territory service network. It is designed to ensure safe and efficient operation and maintenance services can be procured through a competitive process.

These amendments ensure the Streetlight Network is clearly defined, and that the distinction between the streetlight network and electricity distribution network is clear. It will facilitate access to streetlighting assets, and clarify the technical standards that apply. The legislative clarity is required to facilitate the procurement of streetlight maintenance and operation services through a competitive process.

There are two aspects to the relationship between the Territory and the streetlight service provider—the Territory is the owner of the Streetlight Network and needs to ensure that access arrangements are well defined to manage the scope of works.

The Territory is also the regulator for work health and safety, construction occupations licensing, electrical and construction work. A streetlight service provider is already required to comply with general Territory legislation and regulation. Additional requirements that are specific to the Streetlight Network will be contained in the *Utilities Act 2000* (the Act), the Streetlight Network Code, and the contract between the Government and the streetlight service provider.

The Streetlight Network is in close proximity to the Territory's electricity distribution network, and in some cases there is a degree of overlap between them. This bill establishes the ability for the Territory and electricity distributor to reach a framework agreement to structure and regulate the processes and procedures for the interface between the Streetlight and electricity distribution networks. The framework agreement includes requirements governing mutual access to infrastructure located within the other party's structures or premises. The framework will be a notifiable instrument under section 229A of the Act.

A streetlight services provider will require an ongoing working relationship with the electricity distributor. The Streetlight Network Code may require a streetlight services

contractor to reach an agreement with the electricity distributor to facilitate this relationship. In particular, practical matters for access to streetlighting facilities within electricity distribution substations will be arranged through an agreement between the streetlight service provider and the electricity distributor in line with the Streetlight Code, and other Territory legislation.

The regulatory approach for the streetlight network will be revisited as needed, to ensure the Streetlight Network and its interface with the electricity distribution network are safely and efficiently managed over time.

### Defining the Streetlight Network

The Streetlight Network is defined by the Act as “the infrastructure used, or for use, in relation to the provision of streetlighting” (section 229). This does not define a streetlight network *boundary*, nor does it place restrictions on boundaries of other networks and utilities in the Territory. The Act provides examples of infrastructure included in the streetlight network.

The boundary of the electricity distribution network is defined by the *Utilities (Electricity Network Boundary Code) Determination 2013*. This electricity network boundary code determines the boundary between an electricity distribution network and a customer’s premises, including the case of the Territory’s streetlight network. Clause 3.3 of the code defines the boundary of an electricity distribution network as the customer’s side of the service fuse at:

- a) the point of attachment of an overhead service line to the customer’s building or structure; or
- b) the point of entry of an underground service cable to the customer’s building or structure.

Where (a) and (b) do not apply, the electricity distributor and the customer (in this case, the Territory) can agree to an alternative boundary, in accordance with sub-clause 3.3(1)(c) and clause 3.4 of the Electricity Network Boundary Code.

The bill extends the definition of the Streetlight Network to include infrastructure for the provision of services in relation to the provision of streetlighting. This is to ensure that as new technologies are used by the Territory to provide services in conjunction with the streetlight infrastructure, the same regulation applies. In the future, the Territory expects to introduce technology for a smart city backbone through the streetlight network. As this infrastructure will be connected to and powered through the streetlight network, it will be important that it is treated as part of the streetlight network for regulation purposes.

### Authorisation to work on and perform functions in relation to the Streetlight Network

Under subdivision 14.2.3 of the Act, the director-general of Transport Canberra and City Services Directorate may authorise territory service people to work on streetlights. The director-general may approve authorisation arrangements nominated by an entity engaged by the Territory to service Territory networks. The authorisation arrangements must be consistent with the Act, the Streetlight Codes, and other Commonwealth and Territory Legislation.

Territory service authorised people must exercise their functions in accordance with directions given by the appointer. When the Territory engages an entity to perform functions in relation to the Streetlight Network, such as a streetlight service provider, authorisation arrangements should be consistent with criteria set out in the Streetlight Network Code. This does not exempt the entity, or the authorised territory service people, from other Commonwealth and Territory legislation and regulations.

Division 14.3 of the Act sets out that it is an offence to recklessly interfere with Territory networks. In the case of the Streetlight Network, this may include a person presuming to perform a function relating to the Streetlight Network without authorisation, or in violation of the conditions of their authorisation.

### Accessing streetlighting facilities

Subdivision 14.2.1 of the Act sets out powers for the Territory (and by extension, territory service authorised people) for the installation and maintenance of streetlighting. To remove any doubt, this will include access to structures not owned by the Territory but required to service the streetlight asset. This bill clarifies arrangements required for accessing territory network facilities within structures that are not owned by the Territory. In particular, this includes streetlighting facilities located within electricity distribution structures; for example, streetlight controllers within electricity distribution substations. The requirements for working on or near an electricity distribution network under the Act or the *Utilities (Technical Regulation) Act 2014* (Technical Regulation Act) also continue to apply. In particular, it is an offence to recklessly interfere with an electricity distribution network and to work on or near an electricity distribution network may require approval from the distributor. Furthermore, a streetlight service provider accessing streetlight facilities within structures not belonging to the Territory must do so in accordance with the Streetlight Network Code.

There are mutual powers and obligations between the Territory and the electricity distributor to facilitate access to their infrastructure located within each others' structures and premises. For this reason, the bill provides for the Territory and the electricity distributor to reach a framework agreement to outline obligations regarding access to these facilities.

### Technical standards for the Streetlight Network

Any regulation or legislation that would usually apply to the provision of streetlight services continues to apply unless an explicit exemption is provided. This means that wiring work is subject to the *Electrical Safety Act 1971* (ESA) and thus (unless exempt by regulations under the ESA) must comply with AS/NZS 3000. Similarly, anyone conducting electrical work on the Streetlight network must be appropriately licensed under the *Construction Occupations (Licensing) Act 2004*. All such work must comply with the *Work Health and Safety Act 2011*, and building work must comply with the *Building Act 2004*.

Given the application and intended use of wiring for the Streetlight Network, the Bill specifies in the *Electrical Safety Regulations 2004* (ESR) that the network may use the compliance by specific design and installation method in AS/NZS 3000 Part 1. (Note that this also leaves AS/NZS 3000 Part 2 open as a path to compliance.)

As the Streetlight Network is often in close proximity with utilities, it is important to note technical codes (under the Technical Regulation Act) may apply to work on the Streetlight Network. Moreover, any work on streetlighting facilities within structures belonging to the electricity distributor must comply with requirements agreed to by the utility, the Territory, and the streetlight service provider.

Further technical requirements for the safe and efficient operation of the Streetlight Network may be included in the Streetlight Network Code.

### The Act, Streetlight Network Code, Streetlight Framework and Access Arrangements

The bill refines the purpose and consultation processes for a Streetlight Network Code, and introduces the concepts of a streetlight framework and access arrangements. There is an implicit hierarchy to these instruments. All three instrument types are intended to be compatible with the Act. The streetlight framework is an agreement between the Territory and the electricity distributor. The Act and this instrument will establish the baseline obligations for access to streetlight facilities in the distributor's assets, along with other issues to do with the interface between the streetlight and electricity distribution networks.

General access to streetlight facilities is governed by the Act and the Streetlight Network Code. Where these facilities are within structures owned by the electricity distributor, access must also comply with any access arrangements agreed to with the electricity distributor (and all other legislation relevant to the electricity distribution network). These agreements will allow a streetlight services provider to use arrangements for accessing streetlight facilities that improve on the baseline set out in the Act and framework agreement. Access arrangements are made under the Streetlight Network Code, but are implicitly expected to be consistent with the streetlight framework, as the electricity

distributor is a party to both agreements. An access agreement will allow a streetlight service provider and the electricity distributor to negotiate and agree on detailed best practice arrangements for managing the interface between the two networks.

## **OVERVIEW OF THE BILL**

This bill makes amendments to provide a regulatory structure to enable the safe, efficient operations and maintenance of the Streetlight Network. The bill regulates entities engaged by the Territory for functions in relation to the Streetlight network to approved authorisation systems. To eliminate doubt, the bill also establishes the arrangements for accessing streetlighting facilities within structures not owned by the Territory. The purpose of the Streetlight Code is clarified by including further examples of what it may contain. The bill also makes some additional minor amendments and clarifications.

### Authorised people

The bill amends section 242 of the Act so that entities (whether or not a utility) engaged to exercise a function in relation to Territory Networks can no longer automatically appoint territory service authorised people. This is primarily a power of the Director-General of Transport Canberra and City Services Directorate, who can approve appointment arrangements for a territory service entity to use. Requirements regarding the appointment arrangements may be included in the Streetlight Network Code.

### Access to all streetlighting facilities

Sections 231 and 232 of the Utilities Act set out provisions for installing and maintaining territory network facilities, including powers to occupy and enter land. This bill clarifies that the Territory can access structures that contain territory network facilities for the provision of operational and maintenance services.

The relevant structures typically belong to the Territory's electricity distributor. The bill recognises that the electricity distributor is equally entitled to access its assets that are within Territory owned structures. To manage this interaction, the bill sets out that the electricity distributor and the Territory may reach a framework agreement to cover the processes for access to infrastructure, and the electricity distributor may provide notice to the Territory to access its facilities within Territory structures.

### Streetlight Network Code

The bill expands on the role of the territory service network codes. In particular, territory service network codes may cover details of access agreements and the appointment arrangements for territory network authorised people. The bill also allows the director general for the streetlight network to draft a code and consult with key stakeholders on the draft.

### Other amendments

In order to avoid misunderstandings that have previously occurred in the Territory and in other jurisdictions, the bill clarifies that while wiring work must comply with AS/NZS 3000, wiring work on the streetlight network may comply by the specific design and installation method in AS/NZS 3000 Part 1.

The bill amends the penalty for interfering with the Streetlight Network, bringing it in line with the penalty for interference with a utility.

### **HUMAN RIGHTS IMPLICATIONS**

The Bill is considered to not unreasonably limit rights under the *Human Rights Act 2004* (HRA).

Clauses 12 and 13 of the Bill may be considered to engage and limit the right to privacy and reputation under Section 12 of the HRA. Section 12 states that –

*Everyone has the right:*

*(a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and*

*(b) not to have his or her reputation unlawfully attacked.*

The right to privacy and reputation is ‘one of the broadest and most flexible of human rights’<sup>[1]</sup> and may be reasonably limited by laws which can be demonstrably justified in a free and democratic society. Despite this, an interference that is lawful may still be arbitrary if it is unreasonable or unjustified in all the circumstances of the case.

Clauses 12 and 13 may affect a person’s privacy by granting the Territory authority to, at any time, enter and occupy structures on territory land (i.e. a person’s workplace). These rights of entry are necessary to undertake installation and maintenance of territory network facilities, in particular the streetlight network, thereby securing the integrity of these facilities and furthering public safety in relation to these facilities.

The Bill seeks to limit the extent to which the Territory’s right to enter and occupy structures on territory land for network operations may interfere with a person’s reasonable expectation of privacy. As an important safeguard, both Clauses 12 and 13 strictly provide that the Territory must not use the rights of entry in Clause 12 and 13 to access territory network facilities located in structures used for residential purposes.

Clause 15 inserts a new section 235A into the *Utilities Act 2000*, which acts as a safeguard to a person’s privacy by setting out strict notice requirements that the Territory must observe when exercising the rights of entry under Clauses 12 and 13. Under this clause the Territory must give at least seven days notice to the owner of an affected structure on territory land

before beginning installation or maintenance of a territory network. In so far as is practical, this notice must identify the structure to be accessed, the purpose of the installation or maintenance, the sort of activities required and the period or periods during which these should occur.

The notice must also inform the owner of the Territory's obligations under the *Utilities Act 2000*, including that it must:

- take all reasonable steps to cause as little inconvenience, detriment and damage as practicable (s 234);
- remove its property and waste (s 239); and
- restoring the land (s 240).

The application of these safeguards complemented by the Territory's need to ensure the integrity of territory network facilities (by installation or maintenance) promote Clauses 12 and 13 as being reasonable and justifiable limits on the right to privacy under s 12 of the HRA.

## **OUTLINE OF THE PROVISIONS**

### **Clause 1      Name of Act**

This clause sets out the name of the Act as the *Utilities (Streetlight Network) Legislation Amendment Act 2017*.

### **Clause 2      Commencement**

This clause sets out that the commencement date for the proposed amendments of the bill is the day after its notification.

### **Clause 3      Legislation amended**

This clause specifies that the Acts being amended by this bill are the *Electricity Safety Act 1971*, the *Electricity Safety Regulation 2004*, and the *Utilities Act 2000*.

### **Clause 4 and 5      Compliance with AS/NZS 3000 and regulation making powers**

To remove any doubt, these clauses specify that wiring work on the streetlight network may comply by the specific design and installation method in AS/NZS 3000 Part 1.



This clarification is inserted into the ESR and the regulation making powers of the ESA are amended to explicitly permit this.

#### **Clause 6      Notice to access Territory structures**

This clause sets out procedures for utilities accessing infrastructure within structures owned by the Territory. The structures will typically be owned by the Transport Canberra and City Services Directorate, and do not include residential structures or structures leased to private firms.

This new section is included in recognition that the need to access structures is reciprocal between the electricity distributor and the Territory. For this reason, this section is similar to the new section 235A introduced by clause 16 below.

A notice period is not required in urgent circumstances, where it is necessary to protect the network, people, property, and the environment.

Notice under this section is also not required if the utility and the Territory have an agreement in place for accessing the streetlight network infrastructure. For example, an agreement pursuant to the streetlight network code and framework agreement.

#### **Clause 8, 9 and 10      Definition of the Streetlight Network**

The bill updates the streetlight network definition to include infrastructure for the provision of services in relation to streetlighting. This will clarify that new smart technology that will be used for providing services to the Territory, when it is connected and powered through the street light network, is part of the streetlight network. The revised definition will not alter any existing requirements to meter certain types of smart technology.

This definition corresponds closely to definitions in the National Electricity Rules (6.1.1). In jurisdictions where the distributor owns streetlights and provides streetlighting services these are described as ‘in connection with’ its distribution network. In the definition of ‘in relation to’ *Legislation Act 2001* includes ‘in connection with’.

#### **Clause 7, 11, 19 and 20      Streetlight network framework and streetlight network code**

This clause sets out that the Minister may approve a framework, as a notifiable instrument, for the interaction between the streetlight network and the electricity distribution network. This will be a framework agreed to by the Territory and the electricity distributor setting out processes and procedures where the two networks are in close proximity.

The framework sets out arrangements to facilitate the relationships between the ACT Government and ActewAGL Distribution by setting out the principles and approach in dealing with each other and the third party streetlight service provider. Therefore the framework will include matters to achieve this, including problem resolution procedures. The framework may also set out, for example, general requirements that any streetlight service provider may be required to meet. It may also include principles for accessing streetlighting facilities in distribution structures. The Agreement provides a common framework for all streetlight service providers. The framework may be updated from time to time.

This clause also clarifies the purposes of the streetlight network code. The Minister may approve a streetlight network code covering any matter necessary or convenient for the safe and efficient operation of the streetlight network. This may include arrangements for the Territory or streetlight service provider accessing streetlighting infrastructure, arrangements for the appointment of territory service authorised people, and the implementation of the streetlight network framework.

Neither the streetlight network framework nor the streetlight network code may limit the operation of any Act or other legal right.

#### **Clause 12 and 13      Entering and occupying structures**

Clause 12 clarifies that the Territory may enter and occupy a structure (other than a structure used for residential purposes), for the provision of a Territory service, if the structure is on territory land and streetlighting infrastructure is installed in the structure.

Clause 13 clarifies that the Territory may enter and occupy a structure (other than a structure used for residential purposes), for the maintenance of territory network facilities.

#### **Clause 14      Upgrading of Territory network facilities**

This clause includes upgrading a Territory network facility as an example of maintenance of the facility. In particular, this will include a Territory network service provider improving the energy efficiency of the facility or installing new technology on the network.

## **Clause 15      Notice to owner of structures on territory land**

Clauses 12 and 13 clarify that the Territory is entitled to enter and occupy structures for the provision Territory services and the maintenance of Territory network facilities, under certain conditions. Clause 15 sets out particular obligations on the Territory, and its service providers, when these powers are used.

These obligations include providing written notice to the owner of the structure at least seven days before operations commence. The notice must provide the owner with information on the purpose and nature of the operations. The notice must also include information regarding the Territory's responsibilities to the owner under Part 14.

The Territory is not required to provide notice if the operations are to be carried in urgent circumstances, where it is necessary to protect the streetlight network, the safety of people, property, or the environment. Urgent circumstances do not warrant the limitation of any other section of this Act, any other Act, or any other legal right. In particular, in urgent circumstances the Territory and any streetlight service provider must still comply with the Act, the Technical Regulation Act, and all relevant Codes.

The Territory is not required to provide notice if the operations are to be carried out in accordance with an agreement between the Territory and the owner made under the streetlight network code. The regulatory structure for the operation and maintenance of the streetlight network is intended to include such an agreement between any streetlight service provider engaged by the Territory and the Territory's electricity distributor. This agreement will allow a streetlight service contractor to come to agree with the electricity distributor to improved arrangements for accessing these facilities.

## **Clause 16      Territory service authorised people**

The clause amends the procedure for appointing territory service authorised people. The director-general of Transport Canberra and City Services Directorate has primary responsibility for appointing territory authorised people, but may approve an appropriate entity to appoint people if satisfied with the entities appointment arrangements. Conditions on appointment arrangements may be set out in the streetlight network code.

## **Clause 17      Penalty**

Prior to November 2014, interference with a utility and a Territory network were both under the Act and included the same maximum penalty. The *Utilities (Technical Regulation) Bill 2014* removed the section for general interference with a utility from the Act

and placed it in the Technical Regulation Act, which was established by that bill. At the same time the maximum penalty for interference with a utility was increased. Clause 15 updates the maximum penalty for interference with a Territory network to bring it back in line with interference with a utility.