

AUSTRALIAN CAPITAL TERRITORY
ACTEW/AGL PARTNERSHIP FACILITATION ACT 2000
DECLARATION FOR ACTEW ENERGY LIMITED
PURSUANT TO SECTION 11

I, Gary Humphries, Treasurer of the Australian Capital Territory, under sub-section 11(1) of the *ACTEW/AGL Partnership Facilitation Act 2000* (**the Act**), **DECLARE:**

- 1 All of the assets, rights and liabilities of ACTEW or a subsidiary of ACTEW comprising the ACTEW Retail Contribution as defined in the Schedule to this Declaration (plus, for the purposes of this Declaration only, the Non-Transferred ACTEW Retail Receivables) vest in ACTEW Energy Limited (ACN 074 371 207).
- 2 Subject to paragraph 3, paragraph 1 takes effect on the day that the Minister receives the Completion Notice duly executed by all the parties to it.
- 3 If paragraph 2 does not take effect on or before the Cut Off Date, this Declaration will be of no effect.
- 4 Expressions used in this Declaration (including in the Schedule and Annexure) and not otherwise defined in the Schedule have the same meaning as in the Act.

Date: 29th August 2000

Gary Humphries MLA
Treasurer

SCHEDULE

ACT Area means the geographical area comprising:

- (a) the Australian Capital Territory; and
- (b) the shires of Queanbeyan and Yarrowlumla in New South Wales.

ACTEW means ACTEW Corporation Limited (ACN 069 381 960).

ACTEW Business Names mean the registered and unregistered business names of the ACTEW Group other than the ACTEW Transferred Subsidiaries and all associated goodwill.

ACTEW China means ACTEW China Pty Ltd (ACN 080 515 635).

ACTEW Confidential Information means all trade secrets and all financial, marketing and technical information, ideas, concepts, know how, technology, processes and knowledge of the ACTEW Group in relation to the Electricity Businesses or the ACTEW Transferred Subsidiaries, Mindata or Australia China Holdings which is confidential or of a sensitive nature, but excludes that which is in the public domain.

ACTEW Distribution Proforma Statement of Net Working Assets at Completion means the statement of net working assets in respect of the ACTEW Distribution Contribution, prepared in accordance with the Completion Agreement.

ACTEW Distribution Contribution has the same meaning as in the Declaration made pursuant to section 11 of the Act for Ecowise Services Limited on the same day as this Declaration.

ACTEW Electricity Distribution Infrastructure means electricity distribution network facilities comprising the infrastructure of the ACTEW electricity network owned and used or held for use by the ACTEW Group in carrying on the Electricity Distribution Business on the day this Declaration takes effect.

ACTEW Excluded Assets means:

- (a) the Retained Water and Sewerage Assets;
- (b) the ACTEW Excluded Reserves;
- (c) the Retained Records;
- (d) the Retained Memorabilia;
- (e) all cash, short term deposits, accrued interest receivable and other investments of the ACTEW Group (other than investments in the ACTEW Transferred Subsidiaries and the Mindata Shares).
- (f) the ACTEW Interstate Business Assets;
- (g) the contracts of employment of all employees of the ACTEW Group;

- (h) the Transact Communications Shares; and any other asset of the ACTEW Group relating to the business of TransAct Communications (excluding the ACTEW TransAct Contracts)
- (i) shares in the ACTEW Partners and ACTEW Investments and any property, rights or other assets held by ACTEW Investments;
- (j) the purchase contract between ACTEW or a Related Entity of ACTEW and Joe White Maltings Ltd
- (k) the CRANOS Joe White Maltings WA Plant;
- (l) the Ernst & Young Contingent Asset;
- (m) the future income tax benefit (excluding any future income tax benefit relating to employee entitlements);
- (n) the ACTEW Trade Marks and ACTEW Business Names;
- (o) the rights of ACTEW or a Related Entity of ACTEW pursuant to the Completion Agreement and the Establishment Agreements (other than the rights of an ACTEW Partner held as a Partner);
- (p) the “Hedges” as defined in the Electricity Hedge Pass Through Agreement; and
- (q) any rights of the ACTEW Group pursuant to the Agreement of Intent between ACTEW Energy Limited and Yallourn Pty Limited, dated as of 26 November 1997, as amended.

ACTEW Excluded Liabilities means:

- (a) the ACTEW Interstate Business Liabilities;
- (b) ACTEW Excluded Reserves;
- (c) any liabilities of or relating to ACTEW Investments;
- (d) any indebtedness of the ACTEW Parties (including, without limitation the ACTEW Government Debt);
- (e) Ernst & Young Counterclaim;
- (f) any liability of a member of the ACTEW Group to, or in respect of, the ACTEW Transferred Subsidiaries or Mindata (including; without limitation, the guarantee by ACTEW of certain obligations of Mindata);
- (g) any liabilities relating to the Water and Sewerage Business;
- (h) any liabilities for Tax other than as specifically disclosed; and
- (i) the following liabilities of members of the ACTEW Group:
 - (i) sales tax;
 - (ii) dividend payable;

- (iii) workers compensation excess;
- (iv) provisions for deferred tax;
- (v) interest payable;
- (j) the ACTEW retained employee liabilities;
- (k) any liabilities associated with the CRANOS Joe White Maltings WA Plant; and
- (l) any obligations of the ACTEW Group pursuant to the Agreement of Intent between ACTEW Energy Limited and Yallourn Pty Limited, dated as of 26 November 1997, as amended.

ACTEW Excluded Reserves means the public liability and environmental impact reserve disclosed in ACTEW's audited financial statements as at 30 June 2000 to the extent not funded by cash on the day this Declaration takes effect.

ACTEW Government Debt means indebtedness of ACTEW to a governmental authority.

ACTEW Group means ACTEW and each of its Related Entities.

ACTEW Interstate Business Assets means the assets forming part of the ACTEW Interstate Electricity Business (including any ACTEW National Contracts).

ACTEW Interstate Business Liabilities means the liabilities forming part of the ACTEW Interstate Electricity Business.

ACTEW Interstate Electricity Business means the Electricity Retail Business carried on by ACTEW and its Related Entities outside of the ACT Area.

ACTEW Inventory means all stock in trade (including raw materials, packaging and containers, work in progress and finished goods) in use or intended for use in connection with the Electricity Businesses as at the close of business on the day this Declaration takes effect.

ACTEW Investments means ACTEW Investments Pty Limited (ACN 074 545 734).

ACTEW National Contract means an agreement for the supply of electricity under which ACTEW Energy Limited, as supplier, is required to supply electricity to the other party to the agreement in the ACT and also in New South Wales and/or Victoria.

ACTEW Partners means Ecowise Services Limited and ACTEW Energy Limited.

ACTEW Parties means **ACTEW** and the ACTEW Partners.

ACTEW Retail Completion Loan Note means the promissory note of ACTEW Energy Limited evidencing its obligation to pay the ACTEW Retail Completion Receivable to the Retail Partnership.

ACTEW Retail Completion Receivable means the receivable of ACTEW Energy Limited to the Retail Partnership in the amount shown against "Completion Loan" for the "ACTEW Retail Contribution" in schedule 60 of the Completion Agreement, as evidenced by the ACTEW Retail Completion Loan Note.

ACTEW Retail Contracts means:

- (a) the Sponsorship Agreements; and
- (b) contracts and commitments with franchise and contestable customers entered into by the ACTEW Group in connection with the Electricity Retail Business before the date of this Declaration and between the date of this Declaration and the day this Declaration takes effect which are not fully performed as at the day this Declaration takes effect.

ACTEW Retail Contribution means:

- (a) the Total ACTEW Retail Assets; and
- (b) the Total ACTEW Retail Liabilities.

ACTEW Retail Equipment Leases means those leases of, agreements to hire and rights to use plant, equipment and other facilities used in connection with the Electricity Retail Business on the date this Declaration takes effect.

ACTEW Retail Goodwill means the goodwill of the Electricity Retail Business including, but not limited to, the exclusive right of the Retail Partnership to represent itself as carrying on the Electricity Retail Business as the successor to the ACTEW Group excluding the goodwill comprised in the ACTEW Business Names and ACTEW Trade Marks.

ACTEW Retail Intellectual Property Licences means all agreements under which ACTEW Group obtains the right to use, but not ownership of, any of the ACTEW Retail Intellectual Property Rights referred to in paragraphs (a) and (b) of the definition of that term.

ACTEW Retail Intellectual Property Rights means:

- (a) the ACTEW Confidential Information;
- (b) all patents, patent applications, discoveries, inventions, registered and unregistered designs, copyright and similar rights;
- (c) the ACTEW Retail Intellectual Property Licences, in each case owned or used by the ACTEW Group in connection with the Electricity Retail Business on the date this Declaration takes effect, but to avoid doubt, does not include:
- (d) the ACTEW Business Names; and
- (e) the ACTEW Trade Marks.

ACTEW Retail Inventory means all stock in trade (including raw materials, packaging and containers, work in progress and finished goods) in use or intended for use in connection with the Electricity Retail Business as at the close of business on the date this Declaration takes effect.

ACTEW Retail Plant and Equipment means:

- (a) all plant, equipment, motor vehicles, machinery, furniture, fixtures and fittings; and
- (b) all consumables, spare parts, tools and maintenance items, and office supplies;

in each case owned and used by the ACTEW Group in carrying on the Electricity Retail Business

ACTEW Retail Prepayments and Security Deposits means the prepayments and security deposits held by the ACTEW Group in relation to the Electricity Retail Business.

ACTEW Retail Property Leases means the leases of property to the ACTEW Group for use in connection with the Electricity Retail Business and any other right or licence to use property held by the ACTEW Group on the day this Declaration takes effect in connection with the Electricity Retail Business.

ACTEW Retail Pro Forma Statement of Net Working Assets at Completion means the statement of net working assets in respect of the ACTEW Retail Contribution, prepared in accordance with clause 16 of the Completion Agreement.

ACTEW Retail Receivables means the trade and other receivables of the ACTEW Group in connection with the Electricity Retail Business excluding ACTEW Unbilled Receivables.

ACTEW Retail Statutory Licences means all licenses, consents, rights, permits and certificates relating to the Electricity Retail Business issued by any governmental authority (whether Commonwealth, State or local) insofar as they may be transferred to the Retail Partnership or the Retail Partners.

ACTEW Trade Marks means all logos, symbols, get up, trade marks, trade names, service marks, brand names and similar rights, whether registered or unregistered, and all associated goodwill of the ACTEW Group.

ACTEW TransACT Contracts means the following agreements required to be entered into pursuant to the TransACT Shareholders Agreement dated 19 May 2000:

- (a) Infrastructure Access Deeds;
- (b) Customer Support Agreements; and
- (c) Services Agreements,

and any other agreements in relation to the TransAct project entered into by ACTEW in its capacity as owner of ACTEW electricity distribution infrastructure.

ACTEW Transferred Subsidiaries means each of ACTEW China and Ecowise Environmental.

ACTEW Unbilled Receivables means receivables of the ACTEW Group in relation to the Electricity Businesses as at the day this Declaration takes effect which have not at such date been billed to customers of the ACTEW Group.

AGL means The Australian Gas Light Company ARBN 052 167 405.

Australia China Holdings means Australia China Holdings Pty Limited (ACN 072 149 994).

Australia China Holdings Shares means the 249,716 shares in the issued share capital of Australia China Holdings Pty Ltd.

Completion Agreement means the ACTEW / AGL completion agreement dated on or around the date of this Declaration between:

- (a) ACTEW Corporation Limited (ACN 069 381 960);
- (b) The Australian Gas Light Company (ARBN 052 167 405);
- (c) Ecowise Services Limited (ACN 073 025 224);
- (d) ACTEW Energy Limited (ACN 074 371 207);
- (e) AGL Gas Company (ACT) Limited (ACN 008 552 663); and
- (f) AGL ACT Retail Investments Pty Limited (ACN 093 631 586).

Completion Notice means the notice in the form set out in the Annexure.

CRANOS Assets means any assets, rights and benefits, including the CRANOS Trademark, used in connection with the CRANOS Business and owned or used by the ACTEW Group on the Completion Date excluding the CRANOS Joe White Maltings WA Plant.

CRANOS Business means the business of developing the CRANOS sewerage treatment technology and system.

CRANOS Joe White Maltings WA Plant means the plant expected to be valued at approximately \$2.6 million contemplated to be supplied by ACTEW or a Related Entity of ACTEW under a purchase contract with Joe White Maltings Ltd.

CRANOS Trademark means:

- (a) Australian Trade Mark Registration No 648635 for the mark **CRANOS** in Class 11; and
- (b) United States Trade Mark Application No 75/788968 for the mark **CRANOS**.

Cut Off Date means the day six months after the date of the Completion Agreement.

Distribution Partnership means the partnership to be formed under the Distribution Partnership Agreement.

Distribution Partnership Agreement means the partnership agreement between AGL Gas Company (ACT) Limited and Ecowise Services Limited dated on or about the date of this Declaration.

Ecowise Environmental means Ecowise Environmental Limited (ACN 074 205 780).

Electricity Businesses means the Electricity Distribution Business and the Electricity Retail Business.

Electricity Distribution Business means the business of distributing electricity in the ACT Area through an electricity network carried on by ACTEW and its Related Entities by means of, among other things, the ACTEW Electricity Distribution Infrastructure.

Electricity Hedge Pass Through Agreement means the agreement in the form contained in schedule 12 of the Completion Agreement.

Electricity Retail Business means the business of supplying electricity from an electricity network to end users in the ACT Area, New South Wales and Victoria for consumption carried on by ACTEW and its Related Entities.

Ernst & Young Contingent Asset means all rights against Ernst & Young in proceedings numbered SC 00396 of 1999 – ACTEW and ACTEW Investments v Ernst & Young, in the ACT Supreme Court relating to advice given by Ernst & Young on an investment in Water & Energy Technology Pty Limited.

Ernst & Young Counterclaim means the cross-claim filed by Ernst & Young in proceedings numbered SC 00396 of 1999 – ACTEW and ACTEW Investments v Ernst & Young, in the ACT Supreme Court.

Establishment Agreements means all the following agreements dated on or about the date of this Declaration:

- (a) Distribution Partnership Agreement;
- (b) Retail Partnership Agreement;
- (c) Umbrella Agreement between ACTEW, AGL, the ACTEW Partners, AGL ACT Retail Investments Pty Limited and AGL Gas Company (ACT) Limited;
- (d) Water & Sewerage Managing Contractor Alliance Agreement among ACTEW, Ecowise Services Limited and AGL Gas Company (ACT) Limited;
- (e) Wholesale Electricity Sale Agreement among AGL Electricity Limited, ACTEW Energy Limited and AGL ACT Retail Investments Pty Limited;
- (f) Wholesale Gas Supply Agreement among AGL Wholesale Gas Limited, AGL ACT Retail Investments Pty Limited, ACTEW Energy Limited, AGL Energy Sales & Marketing Limited and AGL Retail Energy Limited;
- (g) ACTEW Staff Services Agreement among ACTEW, Ecowise Services Limited, AGL Gas Company (ACT) Limited, ACTEW Energy Limited and AGL ACT Retail Investments Pty Limited;
- (h) Retail Management Services Agreement among AGL Retail Energy Limited, ACTEW Energy Limited and AGL ACT Retail Investments Pty Limited;
- (i) Distribution Asset Management Services Agreement among Agility Management Pty Limited, Ecowise Services Limited and AGL Gas Company (ACT) Limited;
- (j) ACTEW Trade Mark Licence Agreement among ACTEW and the Distribution Partnership and Retail Partnership;
- (k) AGL Trade Mark Licence Agreement among AGL and the Distribution Partnership and Retail Partnership;
- (l) any Inter-partnership agreements agreed prior to the date on which this Declaration takes effect pursuant to clause 9.9(f) of the Completion Agreement;
- (m) the Electricity Hedge Pass Through Agreement among AGL Electricity Limited and ACTEW Energy Limited;

- (n) ACTEW Retail Equitable Charge among ACTEW and ACTEW Energy Limited;
- (o) ACTEW Distribution Equitable Charge among ACTEW and Ecowise Services Limited;
- (p) AGL Retail Equitable Charge among AGL and AGL ACT Retail Investments Pty Limited; and
- (q) AGL Distribution Equitable Charge among AGL and AGL Gas Company (ACT) Limited.

GST means goods and services tax or similar value added tax in the Commonwealth of Australia pursuant to GST law.

GST law has the meaning given to such term in A New Tax System (Goods and Services Tax) Act 1999 of Australia or a successor Act.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

Implementation Agreement means the agreement of that name between ACTEW and AGL dated 23 March 2000.

Mindata means Mindata Australia Pty Limited (ACN 065 352 409).

Non-Transferred ACTEW Unbilled Retail Receivables means the ACTEW Unbilled Receivables in respect of the Electricity Retail Business in the amount of the ACTEW Retail Completion Loan Notes.

Related Entity of an entity means another entity which is related to the first within the meaning of section 9 of the Corporations Law or is in any economic entity (as defined in any approved accounting standard) which contains the first (but neither the Territory nor any of its statutory authorities or statutory instrumentalities is a Related Entity of any of the ACTEW Parties).

Retail Partners means ACTEW Energy Limited and AGL ACT Retail Investments Pty Limited.

Retail Partnership means the partnership formed under the Retail Partnership Agreement.

Retail Partnership Agreement means the partnership agreement between ACTEW Energy Limited and AGL ACT Retail Investments Pty Limited dated on or about the date of this Declaration.

Retained Memorabilia means all those memorabilia, wall hangings (including the Ben Shearer Triptych painting "Sundown Canberra"), trophies, decorations, awards, bark paintings, theodolites, pictures, photographs, furnishings, mementos, and the like located in:

- (a) the entrance foyer or the ground floor of ACTEW House;
- (b) the entrance area, corridor, Chairman's annex, boardroom, meeting room, executive offices and boardroom annex of the fifth floor of ACTEW House;
- (c) the sixth floor foyer area adjacent to the lifts; and
- (d) the other offices reserved for use by ACTEW pursuant to the Umbrella Agreement.

Retained Records means:

- (a) any document to the extent that it relates to the ACTEW Excluded Assets or the ACTEW Excluded Liabilities;
- (b) any document, including board papers and advices, to the extent that they relate to the due diligence undertaken by the ACTEW Group contemplated by the Implementation Agreement;
- (c) any document, including board papers and advices, to the extent that they relate to consideration by ACTEW or its shareholder of any of the transactions contemplated by the Implementation Agreement, this agreement or the Establishment Agreements or the negotiation, performance and construction of the matters in the Implementation Agreement, this agreement or the Establishment Agreements.

Retained Water and Sewerage Assets means the Northern Service Centre (Mitchell) and the Fyshwick Service Centre (together with all buildings, fixtures and other improvements) and any assets, or rights of the ACTEW Group owned, used or for use solely in carrying on the Water and Sewerage Business including:

- (i) the Water and Sewerage Goodwill;
- (ii) the Water and Sewerage Infrastructure Assets;
- (iii) the Water and Sewerage Land and Buildings;
- (iv) the Water and Sewerage Property Leases;
- (v) receivables of ACTEW in respect of customers of the Water & Sewerage Business;

but excluding the Water and Sewerage Operations and Maintenance Assets and the CRANOS Assets.

Sponsorship Agreements means those agreements listed in schedule 29 to the Completion Agreement.

Tax means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature, including, without limitation, stamp and transaction duty or any goods and services tax (including GST), value added tax or consumption tax, which is imposed or collected by a Government Agency, except where the context requires otherwise. This includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.

Total ACTEW Retail Assets means:

- (a) ACTEW Retail Contracts;
- (b) ACTEW Retail Goodwill;
- (c) ACTEW Retail Receivables;
- (d) ACTEW Retail Prepayments and Security Deposits;
- (e) ACTEW Retail Plant and Equipment;
- (f) ACTEW Retail Inventory;

- (g) ACTEW Retail Equipment Leases;
- (h) ACTEW Retail Property Leases;
- (i) ACTEW Retail Intellectual Property Rights;
- (j) ACTEW Retail Statutory Licences; and
- (k) the issue of the ACTEW Retail Completion Loan Note,

but in any event excluding:

- (l) ACTEW Excluded Assets; and
- (m) Non-Transferred ACTEW Unbilled Retail Receivables.

Total ACTEW Retail Liabilities means liabilities of the ACTEW Group, including Transferred ACTEW Employee Liabilities to the extent only that they are expressly provided for in the ACTEW Retail Pro Forma Statement of Net Working Assets at Completion but in any event excluding the ACTEW Excluded Liabilities.

TransACT Communications means Transact Communications Pty Ltd ACN 091 752 297.

TransACT Communications Shares means the ordinary shares in the issued share capital of Transact Communications Pty Ltd ACN 091 752 297 currently held by ACTEW and the rights of ACTEW to acquire additional ordinary shares.

Transferred ACTEW Employee Liabilities means liabilities in respect of ACTEW personnel seconded under the ACTEW Staff Services Agreement to the extent that they are provided for in the ACTEW Distribution Pro Forma Statement of Net Working Assets at Completion or the ACTEW Retail Pro Forma Statement of Net Working Assets at Completion in each case as at the day this Declaration takes effect.

Umbrella Agreement means the agreement described in paragraph (c) of the definition of Establishment Agreements.

Water and Sewerage Business means the business carried on by the ACTEW Group on the date of this Declaration of providing sewerage and water treatment and transport services in the ACT Area.

Water & Sewerage Equipment Leases means those leases of, agreements to hire and rights to use the Water and Sewerage Plant and Equipment and other facilities used in connection with the Water and Sewerage Business as at the date this Declaration takes effect.

Water & Sewerage Goodwill means the goodwill of the Water and Sewerage Business including, but not limited to, the exclusive right of the ACTEW Group to represent itself as carrying on the Water and Sewerage Business.

Water & Sewerage Infrastructure Assets means the sewerage and water treatment and transport facilities comprising the infrastructure of the ACTEW water and sewerage network used or for use by the ACTEW Group in carrying on the Water and Sewerage Business as at the date this Declaration takes effect.

Water & Sewerage Inventory means consumables, spare parts, chemicals, maintenance items and office supplies used or held for use solely in the conduct of the Water and Sewerage Business.

Water & Sewerage Land and Buildings means the property used or held for use in the conduct of the Water and Sewerage Business together with all buildings, fixtures and other improvements.

Water & Sewerage Operations and Maintenance Assets means:

- (a) Water and Sewerage Inventory;
- (b) Water and Sewerage Plant and Equipment;
- (c) Water and Sewerage Equipment Leases; and
- (d) Water and Sewerage Supplier Contracts.

Water & Sewerage Plant and Equipment means all non-system plant and equipment including movable plant equipment, motor vehicles, machinery, furniture and tools owned and used or held for use by the ACTEW Group on the date this Declaration takes effect solely in carrying on the Water and Sewerage Business.

Water & Sewerage Property Leases means the leases of property to the ACTEW Group for use in connection with the Water and Sewerage Business as at the date of this Declaration and any other right or licence to use property held by the ACTEW Group in connection with the Water and Sewerage Business as at the date this Declaration takes effect.

Water & Sewerage Supplier Contracts means the contracts and commitments entered into by the ACTEW Group for the supply of goods and services to the ACTEW Group in connection with the Water and Sewerage Business before the date of this Declaration and between the date of this Declaration and the day this Declaration takes effect that are not fully performed as at the day this Declaration takes effect.

**Annexure
Completion Notice**

To: The Treasurer of the Australian Capital Territory

**NOTICE PURSUANT TO CLAUSE 11.4(b) OF THE COMPLETION AGREEMENT
BETWEEN ACTEW CORPORATION LIMITED (ACN 069 381 960) AND THE
AUSTRALIAN GAS LIGHT COMPANY (ARBN 052 167 405) AND OTHERS
("COMPLETION AGREEMENT")**

This is the notice for the purpose of clause 11.4(b) of the Completion Agreement.

Dated:

ACTEW Corporation Limited

The Australian Gas Light Company