



Australian Capital Territory

Energy and Water (Regulation of Charges) Regulations

Subordinate Law No. 18 of 1996

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**APPOINTMENT AND TERMS OF OFFICE OF
COMMISSIONER**



Australian Capital Territory

Energy and Water (Regulation of Charges) Regulations

Subordinate Law No. 18 of 1996¹

The Australian Capital Territory Executive makes the following Regulations under the *Energy and Water Act 1988*.

Dated 22 August 1996.

TONY DE DOMENICO
Minister

KATE CARNELL
Minister

PART I—PRELIMINARY

Citation

1. These Regulations may be cited as the Energy and Water (Regulation of Charges) Regulations.

Commencement

2. These Regulations commence on the day on which they are notified in the *Gazette*.

Interpretation

3. In these Regulations, unless the contrary intention appears—
- “charges” means charges for the supply of electricity or water or the provision of sewerage services;
 - “charging policies” includes policies relating to the level or structure of charges for services;
 - “Commission” means the Energy and Water Charges Commission established under regulation 4;
 - “Commissioner” means the person appointed under subclause 1 (1) of the Schedule;
 - “direction” means a direction for the purposes of subsection 48 (1) of the Act;
 - “government agency” has the same meaning as in the *Public Sector Management Act 1994*;
 - “investigation” means an investigation under Part III;
 - “the Act” means the *Energy and Water Act 1988*.

PART II—THE COMMISSION

Establishment

4. (1) There shall be an Energy and Water Charges Commission.
(2) The Commission is constituted by the Commissioner.

Appointment and terms of office

5. The Schedule has effect in relation to the appointment and terms of office of the Commissioner.

Function

6. The function of the Commission is to regulate charges for or in connection with the supply of electricity or water or the provision of sewerage services.

Ministerial control

7. (1) Subject to subregulation (2) the Commission is subject to the control of the Minister.

(2) The Minister shall not exercise control over the Commission in making its decision under subregulation 18 (1).

Staff

8. (1) The staff of the Commission shall be public servants made available to the Commission by the Chief Executive.

(2) While a public servant is performing services for the Commission, he or she shall perform those services in accordance with the directions of the Commission, and not otherwise.

Arrangements with other agencies, consultants etc.

9. The Commission may enter into arrangements with government agencies or other bodies or persons for the provision of assistance to the Commission in relation to the performance of its function.

PART III—INVESTIGATIONS

References to Commission

10. (1) The Minister, by notice in writing, may refer to the Commission the question of regulating charges for services in respect of a period specified in the notice.

(2) The Minister may withdraw or amend a reference made to the Commission under subregulation (1) at any time before the Minister has received the report from the Commission.

Investigations by Commission

11. (1) Where the Commission receives a notice under regulation 10, the Commission shall conduct an investigation into charges for services in respect of the period specified in the notice.

(2) In conducting an investigation under subregulation (1), the Commission shall also investigate the charging policies of the Company.

(3) For the purpose of conducting an investigation, the Commission may—

- (a) request submissions from the public or any specified person or body; or
- (b) conduct hearings.

(4) Unless the Commission otherwise orders, hearings shall be open to the public.

Requirements in relation to investigations

12. (1) The Minister may, by instrument, specify requirements in relation to the conduct of an investigation or a report on an investigation by the Commission.

(2) The requirements referred to in subregulation (1) may be any 1 or more of the following:

- (a) a specification of a period within which a report is required to be submitted to the Minister;
- (b) a requirement that the Commission make a draft report available to the public, or to any specified person or body, during the investigation;
- (c) a requirement that the Commission consider matters specified in the instrument referred to in subregulation (1) when conducting its investigation.

(3) An instrument under subregulation (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Manner of investigation

13. Subject to regulation 12, the Commission may conduct an investigation in any manner the Commission considers appropriate.

Attendance at hearing and provision of documents

14. (1) For the purpose of an investigation the Commission may, by notice in writing served on a person, require the person to attend a hearing of the Commission to give evidence or to send to the Commission, on or before the day specified in the notice—

- (a) a statement setting out such information as is specified to be provided; or
 - (b) specified documents.
- (2) A person shall not, without reasonable excuse, contravene a notice under subregulation (1).

Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.

Restrictions on publication

15. (1) The Commission may, where it is satisfied that for any reason it is desirable to do so, give directions prohibiting or restricting the publication of—

- (a) evidence given before a hearing;
- (b) matters contained in documents given to the Commission during an investigation.

(2) A person shall not contravene a notice under subregulation (1).

Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.

Inspection of documents

16. Notwithstanding regulation 15 the Commission shall make a document (including any statement or document given to the Commission under regulation 14) available for inspection on request by a person unless the document is an exempt document within the meaning of the *Freedom of Information Act 1989*.

Executive documents

17. Nothing in these Regulations shall be taken to entitle the Commission—

- (a) to require any person to give any statement of information or answer any question which relates to confidential proceedings of the Executive;

- (b) to require any person to produce an official record of the Executive; or
- (c) to inspect an official record of the Executive.

PART IV—DIRECTIONS

Regulation of charges

18. (1) At the conclusion of its investigation, the Commission shall, subject to subregulation (2), decide on the level of charges for services in respect of the period specified in the notice under regulation 10 and give a direction to the Company accordingly.

(2) In making its decision under subregulation (1), the Commission shall have regard to—

- (a) the protection of consumers from abuses of monopoly power in terms of charges, charging policies and standard of services;
- (b) standards of quality, reliability and safety of the services concerned;
- (c) the need for greater efficiency in the supply of services to reduce costs to consumers and taxpayers;
- (d) the appropriate rate of return to the Territory on its investment, including appropriate payment of dividends to the Territory for the benefit of the people of the Territory;
- (e) the cost of providing the services concerned;
- (f) the need to comply with the principles of ecologically sustainable development within the meaning of section 7 of the *Territory Owned Corporations Act 1990* as modified by virtue of section 4 of, and Schedule 4 to, that Act;
- (g) social impacts of the decision;
- (h) considerations of demand management and least cost planning;
- (j) the borrowing, capital and cash flow requirements of the Company and the need to renew or increase relevant assets of the Company;
- (k) the effect on general price inflation over the medium term; and
- (m) any arrangements that the Company has entered into for the exercise of its functions by some other body or person.

(3) In a direction, the Commission shall indicate to what extent it has had regard to the matters referred to in subregulation (2).

(4) A direction shall specify in relation to a particular service—

- (a) the maximum charge for that service; or
- (b) the method by which that charge is to be ascertained.

(5) The Commission may only give a direction of the type referred to in paragraph (4) (b) where it is of the opinion that it is impractical to give a direction fixing a maximum charge.

(6) Where the Commission gives a direction of the type referred to in paragraph (4) (b) the direction shall be accompanied by a statement of reasons.

Report to Minister

19. Where the Commission gives a direction to the Company, the Commission shall forward to the Minister a report containing—

- (a) particulars of the results of its investigations; and
- (b) a copy of the direction.

Tabling of directions

20. The Minister shall cause a copy of each direction forwarded to him or her under paragraph 19 (b) to be laid before the Legislative Assembly within 6 sitting days after the day on which he or she receives the direction.

PART V—MISCELLANEOUS

Payment of various costs

21. (1) The Company shall pay to the Commission the reasonable costs assessed by the Commission of performing its function under these Regulations.

(2) The costs referred to in subregulation (1) include any costs incurred by the Commission in obtaining the assistance of any other government agency or other body or person.

Protection of Commission etc.

22. (1) No action lies against the Commission, the Commissioner or a person acting under the direction of the Commission by reason of any matter or thing done in good faith pursuant to these Regulations.

(2) A person required to attend a hearing of the Commission to give evidence or to send to the Commission a statement or other document has the same protection and is subject to the same liabilities as a witness in proceedings in the Supreme Court.

Service of documents

23. A document may be served on the Commission by leaving it at, or by sending it by post, telex, facsimile or similar facility to—

- (a) the office of the Commission; or
 - (b) if it has more than 1 office, any 1 of its offices.
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SCHEDULE

Regulation 5

APPOINTMENT AND TERMS OF OFFICE OF COMMISSIONER

Appointment

1. (1) The Minister shall appoint a person to be the Energy and Water Charges Commissioner for the period (not exceeding 5 years) specified in the instrument of appointment.

(2) The appointment of the Commissioner is not invalid because of a defect or irregularity in connection with the Commissioner's appointment.

Disclosure of interests

2. The Commissioner shall give notice in writing to the Minister of all direct or indirect pecuniary interests that he or she has or acquires that relate to a question referred to the Commission under regulation 10.

Resignation

3. The Commissioner may resign by giving a signed notice of resignation to the Chief Minister.

Termination of appointment

4. (1) The Minister may terminate the appointment of the Commissioner at any time.

(2) The Minister shall terminate the appointment of the Commissioner if the Commissioner—

- (a)** becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for the benefit of his or her creditors;
- (b)** fails, without reasonable excuse, to comply with clause 2; or
- (c)** is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.

Acting appointment

5. (1) The Minister may, in writing, appoint a person to act as the Commissioner—

- (a)** during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or

SCHEDULE—continued

(b) during any period, or during all periods, when the Commissioner is for any reason unable to perform the duties of the office.

(2) A person appointed to act as the Commissioner during a vacancy in the office of Commissioner shall not so act continuously for more than 12 months.

(3) Anything done by or in relation to a person purporting to act pursuant to an appointment under subclause (1) is not invalid on the ground that—

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

NOTE

Notification

1. Notified in the ACT Gazette on 28 August 1996.

Penalty units

See section 33AA of the *Interpretation Act 1967* and section 9 of the *Subordinate Laws Act 1989*.