

NORTHERN TERRITORY OF AUSTRALIA

POWER AND WATER AUTHORITY ACT

As in force at 1 April 2000

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 April 2000

POWER AND WATER AUTHORITY ACT

An Act to establish the Power and Water Authority and for related purposes

Part I Preliminary

1 Short title

This Act may be cited as the *Power and Water Authority Act*.

2 Commencement

- (1) Sections 1 and 2 shall come into operation on the day on which the Administrator's assent to this Act is declared
- (2) The remaining provisions of this Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

In this Act, unless the contrary intention appears:

Advisory Council means the Power and Water Authority Advisory Council established by section 7;

Authority means the Power and Water Authority established by section 4;

Chief Executive Officer means the Chief Executive Officer of the Authority appointed under the *Public Sector Employment and Management Act*;

member means a member of the Advisory Council and includes the Chief Executive Officer;

Northern Territory Electricity Commission or **Commission** means the body corporate established under section 4 of the *Electricity Commission Act 1978*.

Part II Power and Water Authority

4 Power and Water Authority

- (1) There is hereby established the Power and Water Authority.
- (2) The Authority:
 - (a) is a body corporate with perpetual succession;
 - (b) shall have a common seal;
 - (c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued; and
 - (d) notwithstanding the repeals effected by the *Electricity Commission Amendment Act 1987*, is declared to be the same body corporate known immediately before the commencement of that Act as the Northern Territory Electricity Commission and:
 - (i) all property of whatever nature and however described and whether real or personal, vested or contingent or corporeal or incorporeal;
 - (ii) all debts, obligations and liabilities whether actual, contingent or accrued; and
 - (iii) all contracts and arrangements,

of the Commission as at the commencement of this Act shall continue to be the property, debts, obligations and liabilities and contracts and arrangements of that body corporate.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall assume that it was duly affixed.

5 Composition of Authority

The Authority shall consist of the Chief Executive Officer.

6 Chief Executive Officer

- (1) The powers and functions of the Authority under this or any other Act shall be exercised and performed by the Chief Executive Officer.

- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority under this or any other Act by the Chief Executive Officer, or with the authority of the Chief Executive Officer, shall be deemed to be have been done by the Authority.
- (3) The Regulations may make provision for the use of the common seal of the Authority or a facsimile of the common seal in the Territory or elsewhere and, where the use is so prescribed, the common seal shall be used in accordance with those Regulations.

Part IIA Power and Water Authority Advisory Council

7 Advisory Council

- (1) There is hereby established the Power and Water Authority Advisory Council.
- (2) The Advisory Council shall consist of:
 - (a) the Chief Executive Officer or an employee of the Authority nominated in writing by the Chief Executive Officer; and
 - (b) 6 members appointed by the Minister who, in the opinion of the Minister, represent community or commercial interests in the Territory.

8 Terms of appointment

- (1) Subject to this section, a member appointed under section 7(2)(b) holds office until the expiration of such period, not exceeding 2 years, as is specified in the instrument of appointment, but is eligible for re-appointment.
- (2) Where a period of appointment is not specified in the instrument of appointment of a member appointed under section 7(2)(b), the member holds office, subject to this section, for 2 years.
- (3) Notwithstanding subsections (1) and (2), a member appointed under section 7(2)(b), unless the member sooner vacates the office or is removed from office under this section, shall continue in office until a successor is appointed.
- (4) The Minister may, at any time, terminate the appointment of a member appointed under section 7(2)(b).
- (5) A member appointed under section 7(2)(b) may resign the office by writing delivered to the Minister.

- (6) Payments of remuneration, allowances and expenses to a member appointed under section 7(2)(b) shall, unless otherwise determined by the Treasurer, be made from the revenue of the Authority.

9 Meetings of Advisory Council

- (1) The Chief Executive Officer may convene meetings of the Advisory Council and shall convene a meeting whenever directed to do so by the Minister.
- (2) At a meeting of the Advisory Council the Chief Executive Officer, or the employee nominated by the Chief Executive Officer, and 3 other members constitute a quorum.
- (3) The Chief Executive Officer, or, in his or her absence, the employee nominated by the Chief Executive Officer, shall preside at all meetings of the Advisory Council.
- (4) To the extent that they are not prescribed, the proceedings of the Advisory Council shall be as determined by the Advisory Council.

10 Functions of Advisory Council

Without affecting the functions conferred or imposed on the Authority by this or any other Act, the functions of the Advisory Council are to advise the Minister on all matters concerning electricity and water and the provision of sewerage services.

11 Disclosure of interest

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Advisory Council, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which the member is not a director shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Council.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the Advisory Council, and the member:
 - (a) except as otherwise provided by a resolution of the Advisory Council, shall not, while the member has that interest, take part after the disclosure in any deliberation or decision of the Advisory Council in relation to that matter; and
 - (b) shall be disregarded for the purpose of constituting a quorum of the Advisory Council in relation to that matter.

- (3) The member may withdraw from the meeting during any period of deliberation or decision in which the member is prohibited from taking part but, if directed to do so by the Chief Executive Officer or other person presiding, the member shall withdraw during any such period.

12 Protection of members

No action or proceeding, civil or criminal, shall lie against a member for or in respect of an act or thing done or omitted to be done in good faith by that person in his or her capacity as a member.

13 Delegation

- (1) Subject to this Act, the Authority may, by instrument in writing delegate to an employee or other person engaged in the work of the Authority or an agent, either generally or otherwise as provided by the instrument of delegation, all or any of the functions or powers of the Authority under this Act except this power of delegation and its power to make by-laws.
- (2) A delegation under subsection (1) may be made to:
- (a) a specified person;
 - (b) a person of a specified class;
 - (c) the holder from time to time of a specified office or appointment; or
 - (d) the holders from time to time of offices or appointments of a specified class.
- (3) A delegation under subsection (1) may, notwithstanding the exceptions in that subsection, include a power of delegation of certain functions or powers by the delegate, but the exercise of that power shall not include a power of further delegation.
- (4) A power delegated under this section may be exercised by the delegate in accordance with the instrument of delegation and, where so exercised, shall, for the purposes of this Act, be deemed to have been exercised by the Authority.
- (5) A delegation under this section is revocable at will and does not prevent the exercise of a power so delegated by the Authority.

14 Functions of Authority – electricity

- (1) The functions of the Authority in relation to electricity are:
 - (a) to generate, acquire, exchange, transport, distribute, market and otherwise supply electricity;
 - (b) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose referred to in paragraph (a);
 - (c) to use its expertise and resources to provide consultative, advisory or other services for profit;
 - (d) to develop and turn to account any technology, software or other intellectual property that relates to a function referred to in paragraph (a) or (b); and
 - (e) to manufacture and market any product that relates to a function referred to in paragraph (a), (b) or (d).
- (2) In addition to subsection (1), it is also a function of the Authority:
 - (a) to use or exploit its fixed assets for profit so long as the proper performance of its functions under subsection (1)(a) and (b) is not affected;
 - (b) to do anything that the Authority determines to be conducive or incidental to the performance of a function referred to in subsection (1); and
 - (c) to do anything that it is authorised to do by any other written law.

14A Functions of Authority – water and sewerage

- (1) The functions of the Authority in relation to water and sewerage are:
 - (a) to acquire, store, treat, distribute, market and otherwise supply water for any purpose;
 - (b) to collect, store, treat, market and dispose of wastewater;
 - (c) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose referred to in paragraph (a) or (b);
 - (d) to use its expertise and resources to provide consultative, advisory or other services for profit;

- (e) to develop and turn to account any technology, software or other intellectual property that relates to a function referred to in paragraph (a), (b) or (c); and
 - (f) to manufacture and market any product or by-product that relates to a function referred to in paragraph (a), (b), (c) or (e).
- (2) In addition to subsection (1), it is also a function of the Authority:
- (a) to use or exploit its fixed assets for profit so long as the proper performance of its functions under subsection (1) (a), (b) and (c) is not affected;
 - (b) to do anything that the Authority determines to be conducive or incidental to the performance of a function referred to in subsection (1); and
 - (c) to do anything that it is authorised to do by any other written law.
- (3) If the performance of any of the Authority's functions referred to in subsection (1)(a), (b) or (c) requires that the Authority hold a licence under the Water Act, the Authority may only perform the function in accordance with the terms and conditions of the licence.
- (4) In subsection (1), **wastewater** means liquid waste, whether domestic or otherwise, and includes faecal matter and urine.

14B Functions of Authority – gas

The functions of the Authority in relation to gas are to buy, sell, process, store or transport:

- (a) gas or products derived from gas; or
- (b) products associated with gas or the products derived from it.

14C Functions of Authority – general

- (1) The Authority has any other functions that are conferred on it by or under this Act or any other enactment.
- (2) Subject to subsection (3), the Authority has the functions of:
 - (a) providing communications facilities and services; and
 - (b) providing other facilities and services.

- (3) The Authority may only provide a particular kind of facility or service under subsection (2):
 - (a) if the provision of the facility or service is consistent with the requirement that the Authority act in a commercial manner; and
 - (b) with the approval of the Minister.
- (4) The Authority may perform any of its functions in the Territory or elsewhere.
- (5) This section and sections 14, 14A and 14B do not impose on the Authority any duty to perform any function that is enforceable by proceedings in a court.
- (6) Subsection (3) does not apply to any direction given under this Act by the Minister.

15 Powers of Authority

- (1) The Authority has power to do all things necessary or convenient to be done in connection with or incidental to the performance of its functions and all things related to the performance of its functions.
- (2) Without limiting subsection (1) or the other powers conferred on the Authority by this Act or any other Act, the Authority may for the purpose of performing any function:
 - (a) acquire, hold, manage, improve, develop and dispose of any real or personal property;
 - (b) construct, improve and maintain plant, equipment and buildings for the purposes of carrying out any function of the Authority;
 - (c) enter into any contract or arrangement;
 - (d) apply for the grant or transfer of any mining or petroleum authority, licence, permit or tenement, or any other licence or authority, to the Authority;
 - (e) acquire, establish and operate:
 - (i) any undertaking (including any necessary tenements and licences) for the production, recovery, conversion, processing or transport of any fuel or source of energy; and
 - (ii) any associated undertaking;

- (f) produce and deal in:
 - (i) any by-product resulting from; or
 - (ii) any equipment, facilities or system associated with, the performance of any function of the Authority;
 - (g) collect fees and charges for supplying electricity, water or gas or for providing sewerage, communications or other services;
 - (h) receive money by way of grant or subsidies from any authority;
 - (j) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the Authority;
 - (k) participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement;
 - (m) carry out any investigation, survey, exploration or boring;
 - (n) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research;
 - (p) for the purposes of section 14(1)(d) – apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
 - (q) promote and market the Authority and its activities.
- (3) A power of the Authority referred to in subsection (2) includes the power to determine:
- (a) when, where and to whom accounts for services may be rendered;
 - (b) the time after which unpaid accounts bear interest payable to the Authority and the rate of interest;
 - (c) the time after which the Authority will restrict, cease or disconnect a service the account for which is not paid in full, and the conditions under which the Authority will restore or reconnect the service;
 - (d) discounts for payments made in advance or the rate of interest payable by the Authority for accounts held in credit; and

- (e) methods of assessing the supply of a product to a customer of the Authority where it is not possible to read a meter at an appropriate time, or there is no meter.
- (4) If the generality of any power conferred on the Authority by this Act is restricted by any provision of the *Electricity Reform Act*, *Water Act* or *Water Supply and Sewerage Act* that restriction applies despite this Act.
- (5) In subsection (2):

business arrangement means a company, a partnership, a trust, a joint venture or an arrangement for sharing profits.

participate includes form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement.

16 Ministerial control

The Authority, in the exercising of its powers and the performance of its functions, is subject to the directions of the Minister.

17 Authority to take general commercial approach

- (1) Subject to this Act and within a budget approved by the Minister, the Authority shall act in a commercial manner.
- (2) Where:
 - (a) the Minister considers it necessary or desirable for electricity, water or gas to be supplied or sewerage, communications or other services to be provided in an area (whether for domestic or non-domestic purposes); and
 - (b) the Authority considers it appropriate to seek a contribution from the Territory (whether by grant, subsidy or loan) towards that supply or those services,

the Treasurer may make the contribution towards the establishment of the supply or services or toward their operation that is estimated by the Authority and agreed by the Treasurer.

Part III Miscellaneous**19 Exemption from rates, &c.**

- (1) Land vested in, committed to the care, control and management of, or acquired by the Authority under or pursuant to this Act is exempted from local government rates, charges and taxes.
- (2) Subsection (1) does not exempt the Authority from payment of charges for any commodity or service provided or supplied by a local government authority, whether the charge made be assessed upon the value of land occupied or owned by, vested in, committed to the care, control and management of, or acquired by the Authority or otherwise.
- (3) Where land vested in, committed to the care, control and management of, or acquired by the Authority is leased or let to a person, that land is not exempt from rates, charges or taxes under this section but any rates, charges or taxes payable in respect of the land are not payable by the Authority but, if the law authorizing the imposition or levy of the rate, charge or tax so allows, are payable by the lessee or tenant of that land.

20 Protection of employees from personal liability

An employee or agent of the Authority is not personally liable for any act or default of that person or the Authority done or omitted to be done in good faith in the course of the operations of the Authority or for the purposes of this Act.

21 Service of proceedings

A notice, summons, writ or other proceeding required to be served on the Authority may be served by being left at the office of the Authority or, in the case of a notice, by post.

22 Authentication of documents

A summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Authority is sufficiently authenticated without the seal of the Authority if signed by the Chief Executive Officer.

23 Proof of certain matters

In any proceeding by or against the Authority, proof is not required, unless evidence is given to the contrary, of:

- (a) the constitution of the Authority;

- (b) a resolution of the Authority; or
- (c) the appointment of the Chief Executive Officer or of a member, officer, employee or agent of the Authority.

24 Money due to Authority

Any money due to the Authority under this Act may be recovered by the Authority as a debt.

26 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

27 Act binds the Crown

This Act binds the Crown in right of the Territory.

Part IV Savings and transitional

28 Certain property to vest in Authority

- (1) Subject to section 30, on the commencement of this Act in respect of the operations of the unit of administration within the meaning of the *Public Service Act* known as the Northern Territory Water Authority:
 - (a) any levy, fee, charge, interest, debt, or money payable to the Territory shall become payable to and be recoverable by the Authority;
 - (b) all liabilities, contracts, and engagements, and all rights and authorities of any nature whatever of the Territory shall become liabilities, contracts, engagements, rights, and authorities of the Authority; and
 - (c) all rights, authorities, and licences granted or issued by the Territory shall continue in force on the same terms and conditions on which they were granted or issued or on which they arose as if such rights, authorities, and licences had been granted or issued by the Authority.

- (2) All estates and interests in property, real and personal, and rights (except property mentioned in subsection (1)) held by the Territory immediately before the commencement of this Act that is or are utilized by, or required for the purposes of the operation of, the unit of administration within the meaning of the *Public Service Act* known as the Northern Territory Water Authority shall, by virtue of this section and without further assurance, vest in the Authority in pursuance of subsection (3) subject to any liabilities, charges, obligations or trusts affecting the estates or interests.
- (3) The Minister shall from time to time as the estates and interests referred to in subsection (2) are identified or ascertained declare by instrument in writing that the property specified, either generally or specifically, in the instrument is property to which subsection (2) applies, and the Authority thereupon has such powers as are necessary to take possession of, recover, and deal with the property and enforce the rights.
- (4) On the lodgement of a copy of an instrument under subsection (3) with the Registrar-General or an officer controlling any register or other record of interests in property, the Registrar-General or that officer, as the case may require, shall, in respect of registrable estates or interests specified in the instrument, make the necessary entries in the relevant registers or records and generally do all such things as may be necessary to give effect to subsection (2).

29 Treasurer may create debt owing by Authority

- (1) The Treasurer may, from time to time by instrument in writing, in relation to property of the Territory vested in the Authority under or pursuant to section 28:
 - (a) specify an amount as being the value of the property mentioned in the instrument; and
 - (b) specify whether or not the amount is to be treated as a debt owing by the Authority to the Territory and, if so, the terms and conditions, including the rate of interest (if any), upon which the debt is to be repaid.
- (2) The value of all property vested in the Authority under or pursuant to section 28 shall be accounted for on the basis of the book value of the property immediately before its vesting.

30 Proceedings under *Water Supply and Sewerage Act*

An action, prosecution or other proceeding begun under the *Water Supply and Sewerage Act* as then in force before the commencement of this Act may be continued as if this Act had

never commenced, and an action, prosecution or other proceeding in respect of a thing done or omitted to be done under the *Water Supply and Sewerage Act* as then in force before the commencement of this Act may be brought, taken and prosecuted in the same manner as if this Act had never commenced.

31 References to Electricity Commission

- (1) On the lodgment of a copy of this Act with the Registrar-General or a proper officer controlling any official register or record of real property vested in the Northern Territory Electricity Commission before the commencement of this Act (other than sections 1 and 2) or in which the Commission held, immediately before that commencement, an interest, the Registrar-General or that officer shall make the necessary entries in the relevant registers and other records to record the change of name of the body corporate of the Commission.
- (2) All references to the Commission in any security, licence, bank account or instrument (including a contract, arrangement, Act, regulation, by-law or rule or court document relating to an action, prosecution or proceeding) which is subsisting immediately before the date of commencement of this Act, or in any notice or other communication served, given, or sent before, on, or after that date in relation to any such security, licence, bank account, or instrument shall, unless the context otherwise requires, be read as references to the Authority.
- (3) By-laws made by the Commission under the Electricity Commission Act and in force as at the commencement of this Act, being by-laws which, after the commencement, could be made by the Authority under this Act shall not expire but continue in force as if they were made by the Authority, and may be amended by the Authority accordingly.

32 Territory to indemnify Authority

The Territory shall indemnify the Authority, and keep the Authority indemnified, against all actions, claims or demands brought or made against the Authority in relation to an act done or omitted to be done under or pursuant to the *Water Supply and Sewerage Act* before the commencement of this Act, being actions, claims or demands that, but for this Act, could be brought or made against the Territory.

33 No duty or fee payable

Neither the Territory nor the Authority is liable for a duty, fee or other charge in relation to the transfer or vesting of property transferred to or vested in the Authority under this Act.

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Power and Water Authority Act 1987 (Act No. 20, 1987)***

Assent date	25 June 1987
Commenced	1 July 1987 (<i>Gaz S48, 29 June 1987</i>)

Power and Water Authority Amendment Act 1988 (Act No. 36, 1988)

Assent date	14 September 1988
Commenced	14 September 1988

Statute Law Revision Act 1989 (Act No. 60, 1989)

Assent date	2 October 1989
Commenced	2 October 1989

Power and Water Authority Amendment Act 1989 (Act No. 75, 1989)

Assent date	12 December 1989
Commenced	2 January 1992 (<i>Gaz S65, 20 December 1991</i>)

Statute Law Revision Act 1990 (Act No. 33, 1990)

Assent date	11 June 1990
Commenced	11 June 1990

Power and Water Authority Amendment Act 1991 (Act No. 52, 1991)

Assent date	26 September 1991
Commenced	26 September 1991

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993 (Act No. 11, 1993)</i> and <i>Gaz S53, 29 June 1993</i>)

Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)

Assent date 31 December 1993
 Commenced 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and *Gaz S35*, 20 May 1994)

Power and Water Authority Amendment Act 1994 (Act No. 6, 1994)

Assent date 16 March 1994
 Commenced 13 May 1994 (*Gaz S33*, 13 May 1994)

Amending Legislation

Statute Law Revision Act 1994 (Act No. 50, 1994)

Assent date 20 September 1994
 Commenced 20 September 1994

Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)

Assent date 21 March 1995
 Commenced 1 April 1995 (s 2, s 2 *Financial Management Act 1992* (Act No. 4, 1995) and *Gaz S13*, 31 March 1995)

Power and Water Authority Amendment Act 1998 (Act No. 39, 1998)

Assent date 27 May 1998
 Commenced 27 May 1998

Power and Water Authority Amendment Act 2000 (Act No. 8, 2000)

Assent date 21 March 1999
 Commenced 1 April 2000 (*Gaz S14*, 31 March 2000)

3 LIST OF AMENDMENTS

s 3	amd No. 28, 1993, s 3; No. 6, 1994, ss 4 and 6
s 4	amd No. 5, 1995, s 19
ss 5 – 6	amd No. 28, 1993, s 3 sub No. 6, 1994, s 5
pt IIA hdg	ins No. 6, 1994, s 5
s 7	amd No. 28, 1993, s 3 sub No. 6, 1994, s 5
ss 8 – 10	sub No. 6, 1994, s 5
s 11	amd No. 28, 1993, s 3; No. 6, 1994, s 6
s 12	amd No. 6, 1994, s 6
s 13	amd No. 33, 1990, s 9; No. 28, 1993, s 3; No. 6, 1994, s 6; No. 8, 2000 s 4
s 14	amd No. 52, 1991, s 3; No. 39, 1998, s 3 sub No. 8, 2000, s 5
ss 14A – 14C	ins No. 8, 2000, s 5
s 15	amd No. 36, 1988, s 2; No. 75, 1989, s 3; No. 52, 1991, s 4; No. 28, 1993, s 3; No. 39, 1998, s 4; No. 8, 2000, s 6
s 17	amd No. 39, 1998, s 5
s 18	rep No. 28, 1993, s 3
s 19	amd No. 84, 1993, s 6
s 22	amd No. 6, 1994, s 6
s 23	amd No. 28, 1993, s 3; No. 6, 1994, s 6
s 25	amd No. 39, 1998, s 6 rep No. 8, 2000, s 7
s 28	amd No. 60, 1989, s 6
s 31	amd No. 60, 1989, s 6