

NORTHERN TERRITORY OF AUSTRALIA
POWER AND WATER AUTHORITY ACT 1987

No. 20 of 1987

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NORTHERN TERRITORY OF AUSTRALIA

No. 20 of 1987

AN ACT

to establish the Power and Water Authority and for related purposes

[Assented to 25 June, 1987]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Power and Water Authority Act 1987*.

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 -

"Authority" means the Power and Water Authority established under section 4;

"member" means a member of the Authority and includes the Chairman and Deputy Chairman;

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

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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.

(4) The Authority is a prescribed statutory corporation within the meaning of and for the purposes of the *Financial Administration and Audit Act*.

5. COMPOSITION OF AUTHORITY

(1) Subject to this Act, the Authority shall consist of at least 5 members, appointed by the Administrator, of whom one shall be appointed as Chairman and another as Deputy Chairman of the Authority.

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(2) The exercise of a power or the performance of a function of the Authority is not affected by reason only of there being a vacancy in the membership of the Authority.

6. TERMS OF APPOINTMENT

(1) Subject to this Act, a member holds office until the expiration of such period, not exceeding 3 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, the member holds office, subject to this Act, for 3 years.

(3) Notwithstanding subsections (1) and (2), every member, unless he sooner vacates his office or is removed from office under this Act, shall continue in office until his successor is appointed.

(4) The Chairman shall, subject to the direction of the Authority, administer the affairs of the Authority.

(5) The Chairman shall -

(a) be paid such salary, allowances and expenses; and

(b) subject to subsection (6), hold office on such terms and conditions,

as the Administrator may determine.

(6) The Administrator may at any time terminate the appointment of the Chairman.

(7) Payments of salary, remuneration, allowances and expenses to a member or the Chairman shall, unless otherwise determined by the Treasurer, be made from the revenue of the Authority.

7. TERMINATION OF MEMBERSHIP

(1) The Chairman or a member may resign his office by writing under his hand addressed to the Minister.

(2) A resignation under subsection (1) does not have effect until accepted by the Minister.

(3) Without limiting the generality of section 6(6), the Administrator may remove the Chairman or a member from office -

(a) for misbehaviour or incompetence;

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- (b) if the person becomes incapable of performing their duties and the Administrator is of the opinion that it is reasonable in the circumstances to terminate the appointment; or
 - (c) if the person fails to disclose a financial interest as required under section 11.
- (4) The Administrator shall remove the Chairman or a member from office if -
- (a) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
 - (b) the member is absent without leave granted by the Minister in any 12 months from 3 meetings of the Authority of which reasonable notice and a requirement to attend have been given to him personally or in the ordinary course of post; or
 - (c) the member becomes of unsound mind.

8. MEETINGS OF AUTHORITY

(1) Meetings of the Authority shall be held at such times and places as the Chairman may from time to time appoint, and as often as may be necessary to carry out its functions.

(2) The Chairman shall preside at all meetings he attends, and, in his absence, the Deputy Chairman shall preside and shall have all the powers of the Chairman.

(3) At any meeting the quorum necessary for the transaction of business shall be the Chairman or, in his absence, the Deputy Chairman, and -

- (a) where the total number of members is even, one half of that total number; or
- (b) where the total number of members is odd, one half of that total number as increased by one.

(4) A question arising at a meeting of the Authority shall be determined by a majority of the votes of the members present.

(5) A resolution assented to by letter, telegram, telex, telephone, radio or other form of long distance communication by at least 4 members shall be as valid and effectual as if it had been passed at a meeting of the Authority duly called and constituted.

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(6) The Chairman or, as the case may be, Deputy Chairman presiding at a meeting of the Authority shall have a deliberative vote and, in the event of an equality of votes, a casting vote.

(7) The Minister may convene a meeting of the Authority.

(8) The Minister may attend and observe at a meeting of the Authority.

(9) The Authority shall cause minutes to be kept of its meetings.

(10) The Minister shall be entitled to receive a copy of minutes of any meeting of the Authority.

(11) Subject to this Act, the Authority may regulate its own procedure.

9. LEAVE OF ABSENCE

The Minister may grant leave of absence to a member.

10. ACTING APPOINTMENTS

Where a member is -

(a) absent from duty; or

(b) precluded from acting by the operation of section 11,

the Minister may appoint a person to act in the place of the member during the period of absence or for the purpose of dealing with the contingency, and that person, when acting as such, shall be deemed for all purposes to be a member.

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 Authority, 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 Authority.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Authority, and the member -

(a) except as otherwise provided by a resolution of the Authority, shall not, while the member has that interest, take part after the disclosure in any deliberation or decision of the Authority in relation to that matter; and

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- (b) shall be disregarded for the purpose of constituting a quorum of the Authority 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 Chairman 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 the Chairman or another member for or in respect of an act or thing done or omitted to be done in good faith by that person in their capacity as Chairman or member.

13. DELEGATION

(1) Subject to this Act, the Authority may, by instrument in writing delegate to the Chairman, another member, 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 for the time being of a specified office or appointment; or
- (d) the holders for the time being of offices or appointments of a specified class.

(3) A delegation under subsection (1) to a specified person may, notwithstanding the exceptions in that subsection, include a power of delegation of certain functions or powers by that person, 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.

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(6) The Authority may, with the consent of the Minister, delegate a power to a licensee within the meaning of the *Electricity Act* in accordance with and subject to this section.

14. FUNCTIONS OF AUTHORITY

(1) The functions of the Authority are, in relation to electricity -

- (a) to supply electricity within the Territory;
- (b) to plan and co-ordinate the generation and supply of electricity in and for the Territory;
- (c) to promote the safe use of electricity in the Territory;
- (d) to control the supply of electricity in the Territory;
- (e) to purchase and sell electricity;
- (f) to set and enforce standards of electrical installation, apparatus, equipment, implement or thing used or available for use within the Territory in the generation, reticulation or consumption of electricity;
- (g) to enforce standards set under any law in force in the Territory relating to electrical workers or contractors;
- (h) to advise the Minister on all matters concerning electricity;
- (j) to evaluate the present and future needs of the Territory in respect of fuel, energy and power for the purpose of generating electricity;
- (k) to investigate, research and evaluate the optimum utilization of fuel, energy and power for the purpose of generating electricity; and
- (m) to consult with the Commonwealth or a State or an instrumentality, body, corporation or person on matters relating to fuel, power or energy which is being used, or has the potential to be used, for the generation of electricity.

(2) The functions of the Authority are, in relation to water and sewerage services -

- (a) to carry out the functions and duties imposed upon it, and to exercise the discretions given to it, by or pursuant to the *Water Supply and Sewerage Act*;

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- (b) to assess, manage and develop water resources in the Territory;
 - (c) to advise the Minister on all matters concerning water and the provision of sewerage services; and
 - (d) to consult with the Commonwealth or any State or any instrumentality, body, corporation or person on any matters relating to water or sewerage.
- (3) The functions of the Authority are, in relation to gas -
- (a) to buy, sell, process, store or transport -
 - (i) gas or products derived from gas; or
 - (ii) products associated with gas or the products derived from it; and
 - (b) to carry out such specific functions in respect of the items specified in paragraph (a) as the Minister may, in writing, direct.
- (4) The Authority shall have such other functions as are conferred on it by or under this Act or any other enactment.

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 the generality of subsection (1), the Authority has power -
- (a) to generate electricity in and for the Territory;
 - (b) to transmit and reticulate electricity and water in the Territory;
 - (c) to determine the conditions, other than tariffs, upon or subject to which any electricity, water, gas or sewerage or other service will be supplied or provided by the Authority;
 - (d) to license persons for the purposes of generating and selling electricity;
 - (e) to enter into contracts, agreements or partnerships with persons for or incidental to the carrying out of the functions of the Authority, and to act as an agent for any person (including a Minister);

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- (f) to restrict or ration the supply of electricity;
- (g) to acquire, hold and dispose of real or personal property, rights, privileges, permits, licences and authorities;
- (h) to construct, improve and maintain plant, equipment and buildings for the purposes of carrying out the functions of the Authority;
- (j) to hold as trustee any property or money so vested in it and to manage and carry out the terms of any such trust;
- (k) to appoint receivers, agents and attorneys;
- (m) to participate in research projects;
- (n) to conduct and participate in training schemes and to award scholarships;
- (p) to affiliate and co-operate with other organizations with similar powers or functions;
- (q) to prohibit the sale of certain goods prescribed by by-laws;
- (r) to collect fees and charges for the supply of electricity, water or other services provided by the Authority;
- (s) to receive money by way of grant or subsidies from any authority;
- (t) to insure the property of the Authority;
- (u) to hire out plant or equipment of the Authority that is not immediately needed for use by the Authority;
- (v) to call for and let out tenders for the carrying out of the functions of the Authority;
- (w) to, either solely or jointly, apply for and hold such licences or permits as are necessary for the investigation, prospecting, surveying, exploration and mining of any material capable of being used in the carrying out of its functions and to engage in the activities for which those licences or permits are held;
- (x) to obtain equity in any venture or any company engaged in a venture relating to the investigation, prospecting, surveying, exploration and mining or extraction of any material which is capable of being used, or has the potential to be used, in the carrying out of its functions;

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- (y) to engage such employees or other persons as it requires to carry out its functions; and
- (z) to determine, subject to this Act and to any other law in force in the Territory, terms and conditions (including rates of pay) of service of employees.

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 the Minister considers it necessary or desirable for electricity, water, gas or sewerage or other services to be provided in any area or areas, whether for domestic or non-domestic purposes, and where the Authority considers it appropriate to seek a contribution from the Territory whether by grant, subsidy or loan to provide the services, the Treasurer may make such contribution towards the capital outlay necessary to provide the services or towards their operation as may be estimated by the Authority and agreed by the Treasurer.

PART III - MISCELLANEOUS

18. PRESCRIBED AUTHORITY UNDER *PUBLIC SERVICE ACT*

In relation to the Chairman, the Authority is a prescribed authority within the meaning and for the purposes of the *Public Service Act*.

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 municipal 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 municipal 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

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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 Chairman.

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;
- (c) the appointment of a member, officer, employee or agent of the Authority; or
- (d) the presence of a quorum at a meeting at which a determination is made or an act done by 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.

25. BY-LAWS

The Authority may make by-laws not inconsistent with this Act for those matters specifically referred to in this Act and may also make by-laws -

- (a) for prescribing the form of contracts and agreements which may be entered into with the Authority; or

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- (b) for fixing the terms and conditions of supply of electricity or water or other services, other than tariffs, by the Authority or its agents.

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.

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(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 within the meaning of the *Real Property Act* 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.

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31. REFERENCES TO ELECTRICITY COMMISSION

(1) On the lodgment of a copy of this Act with the Registrar-General within the meaning of the *Real Property Act* 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.