



ICRC

independent competition and regulatory commission

Annual Report **2009–10**

September 2010

The Independent Competition and Regulatory Commission

The Commission is established by the *Independent Competition and Regulatory Commission Act 1997* to determine prices for regulated industries, approve access arrangements and arbitrate disputes on access to infrastructure. The Commission also provides advice on competitive neutrality complaints and on government-regulated activities.

The Commission also has responsibilities under the *Utilities Act 2000*. Under the Utilities Act, the Commission licenses utility services in the Australian Capital Territory. It also ensures compliance with legislation, codes and licence conditions, and approves industry codes of practice and the form of standard customer contracts.

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Transmittal certificate

Mr Simon Corbell MLA
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Dear Attorney

This report has been prepared under section 6(1) of the *Annual Reports (Government Agencies) Act 2004* and in accordance with the requirements referred to in the Chief Minister's *Annual Report Directions*. It has been prepared in conformity with other legislation applicable to the preparation of the Annual Report by the Independent Competition and Regulatory Commission.

We hereby certify that the attached Annual Report is an honest and accurate account and that all material information on the operations of the Independent Competition and Regulatory Commission during the period from 1 July 2009 to 30 June 2010 has been included and that it complies with the Chief Minister's *Annual Report Directions*.

We also certify that fraud prevention has been managed in accordance with Public Sector Management Standard 2, Part 2.4.

Section 13 of the *Annual Reports (Government Agencies) Act 2004* requires that you cause a copy of the report to be laid before the Legislative Assembly within three months of the end of the financial year.

Yours sincerely

Paul Baxter
Senior Commissioner

Shelley Schreiner
Chief Executive Officer

23 September 2010



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Foreword

It is my pleasure to present the 11th annual report of the Independent Competition and Regulatory Commission (the Commission).

The *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act) establishes the Commission and sets out its objects. These are to promote effective competition in the interests of consumers, to facilitate an appropriate balance between efficiency and environmental and social considerations, and to ensure non-discriminatory access to monopoly and near monopoly infrastructure.

The ICRC Act provides for the Commission's key functions, and for open and accountable processes for their discharge. These are to regulate pricing, access and other matters in relation to industries involving the provision of water, electricity and sewerage services, and other industries, and to investigate competitive neutrality complaints and government-regulated activities. These roles were established in the context of the national competition policy agenda and the ACT Government's commitment to microeconomic reform.

Under the *Utilities Act 2000* (the Utilities Act), the Commission has responsibilities for the regulation of utility services, including licensing, and compliance and performance oversight. The Commission is also the regulator of the Greenhouse Gas Abatement Scheme established through the *Electricity (Greenhouse Gas Emissions) Act 2004* (the Greenhouse Gas Emissions Act).

The Greenhouse Gas Abatement Scheme role represents a shift to matters of climate change and environmental regulation not foreseen when the Commission was established. More recently, the *Electricity Feed-in (Renewable Energy Premium) Act 2008* (Electricity Feed-in Act) established the Electricity Feed-in Scheme. The Electricity Feed-in Act provides a role for the Commission in providing advice to the minister about the premium rate for electricity fed into the network. The Commission also monitors compliance with the scheme through licence conditions for electricity suppliers and for ActewAGL Distribution.

In late 2009, the Minister for the Environment, Climate Change and Water, Simon Corbell MLA—in response to recommendations on greenhouse gas reduction targets made by the Legislative Assembly's Standing Committee on Climate Change, Environment and Water—announced the government's intention to give the Commission new roles for advice and reporting in relation to climate change policies and programs, and performance in achieving greenhouse gas reductions.

This widening of the Commission's roles in the context of the climate change agenda provides important signals about its future once the transition to national regulation of energy utilities is completed over the next few years. While the Commission's functions as the regulator for energy utilities will become less significant, there is potential for new and different roles to develop around a wider set of issues facing the ACT community. At the same time, the Commission's critical responsibilities for the economic and non-economic regulation of water and sewerage services will continue.

This annual report commences with an introductory essay which looks back over the period since the establishment of the Commission (and its predecessors) and considers the forward challenges facing the Commission in energy and water regulation. It also recognises that climate change and environmental sustainability are important areas of policy and administration for both the Commission and the community as a whole. The annual report details not only the change the Commission is experiencing but the widening opportunities for providing advice to government on a wide range of matters supporting policy development.

Underscoring the contribution that it continues to make, the Commission meets its challenges with limited resources and with a small financial impact on the community. These community benefits are maintained by the efforts and commitment of the Commission's staff, which the Commission acknowledges. At the same time, the Commission's success is also dependent on the quality of its interactions with government agencies, for which the Commission is grateful, and on the expertise of external consultants periodically engaged to assist the Commission in the discharge of its responsibilities.

In conclusion, the Commission observes that 2009–10 has been a year in which significant matters have been brought to it—in particular, retail electricity pricing, the feed-in tariff, and the enlarged Cotter Dam. In 2010–11, the Commission's attention will shift to the mid-term review of the current water and wastewater price determination, and to developing the Commission's new responsibilities for monitoring and reporting on the Territory's performance against greenhouse gas emission targets.

The report's structure conforms to the Chief Minister's *2007–2010 Annual Report Directions* and thus addresses a common range of issues consistent with the government's objectives for transparency and accountability.

I commend the report to the community not only as a record of the Commission's performance in the past year but also as an indicator of the breadth and substance of the roles that the Commission plays as an instrument of good governance in the Territory.

Paul Baxter
Senior Commissioner

Senior Commissioner's comments

The Independent Competition and Regulatory Commission: Past experience and future issues

Introduction

In different forms, the Commission has existed for 14 years. During that time it has evolved in ways that were not fully anticipated at the time of the establishment of the Energy and Water Charges Commission (EWCC) in 1996. This essay looks back briefly over the life of the Commission, and explores some of the issues that will be at the forefront of the Commission's activities over the next 12 months.

Establishing the role of the Commission

The forerunner of the Commission, the EWCC, was established in response to the 1993 Hilmer Committee report on national competition policy¹, and the decision of the Council of Australian Governments (COAG) to reform the public utility sector. The EWCC's first task was to determine prices for electricity, water and sewerage services provided by the ACT Government-owned entity ACTEW Corporation (ACTEW). The EWCC delivered its first report on ACTEW's charges in May 1997, with the prices set by the EWCC to take effect from 1 July 1997.

In November 1997, the Legislative Assembly enacted the *Independent Pricing and Regulatory Commission Act 1997* establishing the Independent Pricing and Regulatory Commission (IPARC). The role of the EWCC was subsumed into the IPARC, which acquired a wider role and set of responsibilities than those of the EWCC. One additional responsibility related to arrangements for gas retail prices and access charges under the *Gas Supply Act 1998* and the (then) new national gas third-party access code.

During 1997–98, the IPARC conducted an investigation into the maximum prices to be charged by ACTEW for electricity, water and sewerage services for the year commencing 1 July 1998. These initial determinations played an important role in establishing the concept of an independent pricing regulator in the ACT, replacing previous arrangements in which pricing was a role for the monopoly provider and the relevant minister.

In October 1998, the ACT Government announced its intention to expand the role of the IPARC through the introduction of legislation to establish the Independent Competition and Regulatory Commission. The broader role of the Commission as announced was to include:

- oversight of the implementation of competition policy in the ACT
- responsibility for investigating competitive neutrality complaints
- assessment of the quality of regulatory impact statements
- a general advisory role on regulatory matters.

The *Independent Competition and Regulatory Commission Amendment Act 2000* was gazetted in March 2000. Section 7 of the renamed *Independent Competition and Regulatory Act 1997* (the ICRC Act) defined the Commission's objectives in relation to regulated industries, access regimes, competitive neutrality complaints and government-regulated entities as:

- to promote effective competition in the interests of consumers

¹ FG Hilmer, M Rayner and G Taperell, *National competition policy: report by the Independent Committee of Inquiry*, Australian Government Publishing Service, 1993 (<http://ncp.ncc.gov.au/docs/Hilmer-001.pdf>).

- to facilitate an appropriate balance between efficiency and environmental and social considerations
- to ensure non-discriminatory access to monopoly and near-monopoly infrastructure.

The passage of the *Utilities Act 2000* brought with it a significant widening of the Commission's role. Licensing of electricity and natural gas utilities in the ACT had been the responsibility of relevant ministers and had been administered within departments. This was replaced by a considerably broader licensing and compliance regime extended to water and sewerage services, for which the Commission had a pivotal role.

When established in 1996, the EWCC consisted of one part-time commissioner with no secretariat or support staff. The EWCC relied on the direct input of its part-time commissioner, and utilised staffing resources on a consultancy basis from the New South Wales Independent Pricing and Regulatory Tribunal (IPART). This arrangement with IPART lasted until the formal establishment of the Commission in March 2000.

On establishment, the Commission's responsibilities were expanded to include pricing oversight of public transport services (buses and taxis). Provision was made for the funding of a full-time secretariat. The position of Senior Commissioner was created and two part-time commissioners were appointed, resulting in a Commission of three. Currently, the Commission has a part-time Senior Commissioner—no additional standing or associate commissioners are currently appointed—supported by a staff of six full-time officers.

The Commission's changing role

Since the establishment of the EWCC, the role of the Commission has evolved in the context of changes in the national regulatory reform program, and in response to policy decisions of the ACT Government. For example, while the Commission was initially the pricing regulator of electricity and gas distribution in the ACT, these responsibilities have transferred to the Australian Energy Regulator (AER) under a national agreement to transfer significant responsibilities for energy sector utilities to a national regulator. While responsibility for the pricing of retail electricity and gas will remain with the states and territories, many elements of energy utility regulation will be assumed by the AER with the implementation of the national energy customer framework over the coming two or three years.

At a jurisdictional level, regulation of bus and taxi charges in the ACT was removed from the Commission's responsibilities after mid-2007, and responsibility for setting fares for these services has been internalised within the Department of Territory and Municipal Services (TAMS).

Not all 'regulated industries' have been comfortable with the introduction of an 'independent pricing regulator'. In the authorised history of ACTEW, Peter Donovan, commenting on the establishment of the EWCC in 1996, noted:

Appointment of the regulator became another irritant for [the then CEO] and others within ACTEW, who considered it an example of the government unnecessarily constraining a business, during a time of deregulation, which it—the government—expected to act commercially. Moreover, they argued there was no evident need for price regulation. They conceded that there was a need to ensure that ACTEW did not abuse its monopolistic powers, but believed the shareholders, the board and the minister—who had veto over price rises—provided sufficient safeguards.²

² P Donovan, *Lights! Water! ... ACTEW! a history of ACTEW and its predecessors*, ACTEW Corporation, Canberra, 1999, p. 265.

Times have changed and, as noted by the Commission in its recent review of the enlarged Cotter Dam project³, ACTEW management and board have fully cooperated in the Commission's review processes, including making relevant information available to the Commission to facilitate its inquiries. And while the Commission's price determinations, or findings and recommendations from specific inquiries, have not always been fully supported by the relevant businesses or agencies under review, there has been general acknowledgement that the Commission has been fully transparent in its processes and the reasoning for its decisions, and open to argument and views from all parties and interested stakeholders.

The role of the Commission is now moving from that of being simply the 'price controller' and licensing agent for utility service providers in the ACT, although completion of the national energy reform program will not alter the Commission's responsibilities for water and wastewater services pricing, regulation of these utility sectors, and retail pricing for electricity for household consumers who have not chosen alternative arrangements.

The Commission is increasingly seen by the government and the Legislative Assembly as the source of independent advice underpinned by statutory powers to undertake public inquiries and provide the opportunity for wide and open public debate. Through its legislation and funding arrangements, the Commission is also able to quickly access appropriate resources and expertise as part of a public inquiry process, and has the capacity to be an independent source of data and information on government policies, programs and matters of public import. Examples are:

- the recent inquiry into the enlarged Cotter Dam
- the legislated role in providing advice on the premium rate for the electricity feed-in tariff
- the proposed role in monitoring and reporting on performance in relation to greenhouse gas reduction targets⁴
- the monitoring of the supermarket competition policy.

Achievements and missed opportunities

The role originally envisaged for the Commission covered a number of issues. While much attention has been given to the Commission's decisions on pricing for electricity, gas and water and wastewater services in the ACT, the Commission has had wider responsibilities which are perhaps not as well known within the general community. The 1998 announcement of the establishment of the Commission envisaged the regulator having a role in overseeing the implementation of competition policy in the ACT, as well as investigating competitive neutrality complaints, assessing the quality of regulatory impact statements, and providing advice on regulatory matters in general.

Since that time, the Commission has been called upon to undertake studies and provide advice to government on a number of competition policy matters in the ACT. Inquiries have included a report into competition in the supply of milk in the ACT, the potential benefits from the deregulation of the taxi and hire car industry, the contestability of electricity connection work, the pricing of petrol in the ACT, the competitive position of Capital Linen Services in relation to other private sector laundry service providers, the costs and benefits of opening the retail electricity and gas markets to full competition, and the application of the supermarket competition policy.

In the period immediately following the signing of the Competition Principles Agreement there was a concerted effort within the ACT Government to identify and address issues of competition

³ ICRC, *Enlarged Cotter Dam water security project: final report*, Report No 9 of 2010, June 2010.

⁴ The Government's announcement on the expanded Commission role was made in response to recommendations of the Standing Committee on Climate Change, Environment and Water on ACT greenhouse gas reduction targets (<http://www.parliament.act.gov.au/committees/index1.asp?committee=112&inquiry=753&category=19>).

reform, and the establishment of the Commission was central to this endeavour. However, in more recent years there have been few commissioned studies in this area.

Of particular note has been the lack of interest in references for competitive neutrality reviews. While the issue of competitive neutrality was high on the agenda of the Hilmer Committee, the Commission has received only a small number of preliminary approaches. This may be a result of the requirements in the Act for a person formally issuing terms of reference for a competitive neutrality inquiry to meet the Commission's costs in undertaking such a review. Although there have been instances of interest in the holding of a competitive neutrality review, interest has waned once the 'user pays' principle of meeting the Commission's costs was explained.

For whatever reason, the role initially mooted for the Commission in independent review of regulatory impact statements for policy proposals has not developed. Statutory requirements for the preparation of regulatory impact assessments have been legislated in relation to proposed subordinate laws and disallowable instruments where these are likely to impose appreciable costs on the community⁵, and the ACT Department of Treasury continues to carry policy responsibility for oversight and guidance on their preparation.

Thus, the focus of the Commission has primarily been upon the determination of prices for regulated industries, the licensing of participants in the energy and water/wastewater sectors, and various ad hoc inquiries in response to terms of reference issued by the government, including the inquiry into ambulance fees and cost recovery, the review of the methodology for setting the water abstraction charge, and the review into the decision to undertake the enlarged Cotter Dam project.

Following a decision by the government to remove the declaration of these services, responsibility for setting the relevant bus and taxi charges reverted to the relevant government agency.⁶ Although the community's response to the decision to remove the role of the independent regulator from setting the prices for these services⁷ was muted, there has been a loss of public transparency and accountability for these monopoly-like services in the reversion to the pre-COAG competition reform approach. There has also been a loss of any regular independent and public accountability by the service providers for the efficiency and quality of the services that they perform and the cost that is being incurred not only in the fares that are charged, but in the case of ACTION, in the subsidy that is provided from the public purse.

Pricing of urban water

The pricing of urban water has been a primary task undertaken by the Commission (and its predecessors) since 1996. The most recent determination set a price path for potable water for the period 2008–09 to 2012–13 with provisions for the pass-through of certain cost increases or cost savings not foreseeable at the time of its making.⁸

During 2009–10, the Commission was also called upon to provide advice on the pricing of water that can be abstracted from various ornamental and stormwater management ponds located across Canberra. The objective has been to make greater use of stormwater and reduce the dependence on treated water for use in irrigating public sporting grounds and similar public amenities.

The pricing of water, within the context of further national reform of the water sector at both the urban and rural level, is being increasingly debated. The National Water Commission has released a set of pricing principles which COAG has agreed should be applied to the pricing of urban water

⁵ *Legislation Act 2001*, Part 5.2 (Requirements for regulatory impact statements).

⁶ Nevertheless, TAMS still refers to the pricing model used to set taxi fares as the 'Commission's model'.

⁷ This task continues to be undertaken by some of the other state regulators, in particular IPART in New South Wales.

⁸ ICRC, *Water and wastewater price review: final report and price determination*, Report 1 of 2008, April 2008.

throughout Australia. Furthermore, in July 2010, the federal government issued terms of reference to the Productivity Commission requiring it to report on:

Opportunities for efficiency gains in the structural, institutional, regulatory and other arrangements in the Australian urban water and wastewater sectors.

The Productivity Commission review will undoubtedly build upon its 2008 discussion paper, which concluded:

The direction, if not the end point, for reform [of the water and wastewater sector] seems clear. The potential gains are sufficient to warrant a comprehensive public review to determine the extent to which a more market-oriented focus could be pursued and to alert the community to the tradeoffs. Key areas that warrant investigation include an assessment of the costs and benefits of:

- allowing a greater role for prices to signal water scarcity and to allocate resources
- removing the artificial impediments to rural urban water trading
- removing barriers to competition in the supply and retailing of urban water.⁹

The Commission has been in discussions with ACT policy agencies on the need for a more comprehensive consideration of possible competition in the supply of water and wastewater services in the ACT. These matters have been presented in the context of the ACT Government's policies and objectives addressing climate change and the anticipated impact of reduced rainfall on the availability of water from the ACT's catchments. Reform in this area has already been the subject of reviews in New South Wales, Victoria and South Australia. It is clear that at a national level there will be further consideration of the opportunities for greater competition and access to alternative water sources as part of a national approach to addressing Australia's future water needs. There continues to be a need for consideration of what level and form of reform are required to best meet the requirements and particular circumstances of the Territory.

After four years of Stage 3 water restrictions in the ACT, the question of pricing water to address scarcity issues as an alternative to using quantitative restrictions has attracted particular public interest. In its 2008 Water and Wastewater Pricing Determination, the Commission considered proposals by a number of stakeholder groups, including ACTEW, for the introduction of some form of scarcity pricing of water. ACTEW argued:

In its most simple form, higher prices of water could be applied to all users when dam levels fell below specific trigger levels. The trigger levels and prices would be announced in advance so that price expectations would be tied to an objective fact before the event was triggered.¹⁰

In its discussion paper, the Productivity Commission argued that water restrictions were inequitable and that the 'hidden costs' of restrictions are high. The Productivity Commission recommended that strong consideration be given to arrangements which increase prices during times of scarcity in order to balance supply and demand. The advantages of such an approach are that users can make their own water use decisions. Customers have the incentive to reduce water use in whatever ways they find least costly. The Productivity Commission argued that while restrictions result in irrecoverable time and inconvenience costs, using higher prices in times of scarcity results in financial costs to water users that are transferred to water utilities or governments. That is, costs are recovered and can be used in ways that benefit the community.

Several studies have attempted to quantify the social costs of water restrictions within Australia and internationally. Hensher, Shore and Train measured the willingness of water customers in the ACT to pay to avoid water restrictions.¹¹ The Hensher study did not model the alternative of raising prices; rather, it focused on the 'disutility' that water customers get from water

⁹ Productivity Commission, *Towards urban water reform: a discussion paper*, March, 2008.

¹⁰ ICRC, *Water and wastewater price review: final report and price determination*, Report 1 of 2008, April 2008, p. 133.

¹¹ D Hensher, N Shore and K Train, 'Water supply security and willingness to pay to avoid drought restrictions', *Economic Record*, vol. 82, 56–66, 2006.

restrictions. The data used in this analysis comes from a ‘willingness to pay’ study conducted in 2003. The Hensher study found that customers were not willing to pay to avoid short-term or low-level water restrictions; however, customers were willing to pay up to 35% of their annual bill to avoid high-level restrictions if the restrictions occurred once in every ten years. Stage 3 water restrictions were in force in the ACT for nearly four years from late-2006. ACT customers may have been willing to pay a significant amount to avoid this outcome if they had known at the time how long water restrictions would be in effect.

Grafton and Ward attempted to measure the economic loss of water restrictions as compared to the economic costs of using price increases to reduce water consumption.¹² Using daily water consumption, climate variables and price data from Sydney for the period 1994 to 2005, Grafton and Ward found that the social cost of water restrictions imposed in Sydney in the year 2004–05 were in the order of \$150 per residential customer. This equates to nearly half the annual residential water bill in Sydney at that time.

In a recently published survey article, Olmstead and Stavins summarised research on the costs of water restrictions:

On the basis of both economic theory and the emerging empirical estimates, the inescapable conclusion is that using price increases to reduce demand, allowing consumers to adjust their end uses of water, is more cost effective than implementing nonprice demand management programs. This holds true empirically in both the short and the long run.¹³

The Commission noted in its 2007–08 annual report that there are some merits in using market-based arrangements as alternatives or complements to water restrictions. However, there are practical issues and concerns with their implementation. For example, the Productivity Commission discussion paper identified the following broad difficulties and disadvantages of scarcity pricing:

- It can be difficult to estimate accurately the appropriate scarcity charge.
- Scarcity-based pricing might simply provide excess revenue to water utilities.
- There are likely to be equity concerns regarding low income households facing higher prices in times of scarcity.
- Price volatility would increase if there was scarcity-based pricing, and many water users may find this undesirable. It is more difficult to make appropriate investment decisions in such circumstances.
- Communicating prices to customers is important and current metering and billing arrangements can mute price signals.

Nevertheless, it is appropriate to explore these matters further given the continuing debate on this issue and the likely focus in the forthcoming Productivity Commission review of possible further reform in urban water and wastewater services. While there may be a theoretical and empirical consensus that water restrictions are an economically inefficient means of reducing water usage, this provides little comfort to a regulator that must set prices for the water which is viewed as an essential service.

Over the past several years, the ACT’s water restrictions have been finetuned. This has been done to ensure that water restrictions balance the appropriate reduction in water usage with the impact on water customers. The goal of water restrictions is to reduce water usage today so that water is available in the future for basic needs in the context of the enormous amount of uncertainty about

¹² RQ Grafton & M Ward, ‘Prices versus rationing: Marshallian surplus and mandatory water restrictions’, *Economic Record*, vol. 84, S57–S65, 2008.

¹³ S Olmstead & R Stavins, ‘Comparing price and nonprice approaches to urban water conservation’, *Water Resources Research*, vol. 45, 1–10, 2009, p. 3.

future water availability. To highlight just one potential aspect of the difficulties facing the Commission, consider the question of how much to raise price to achieve a desired reduction in water consumed.

The tool economists use to measure the responsiveness of demand for a good to changes in the price of the good is the elasticity of demand. The elasticity of demand is measured as the percentage change in quantity demanded divided by the percentage change in the price of the good. This is shown in the following equation:

$$\varepsilon = \frac{\% \text{ change in quantity}}{\% \text{ change in price}}$$

where ε is the price elasticity of demand.

Turning this relationship around allows the calculation of the necessary price increase to achieve a given or required reduction in water demand. That is, the percentage price increase equals the required reduction in demand divided by the elasticity of demand for water. If a 30% reduction in water demand is required and the elasticity of demand for water is -0.30 , a 100% increase in the price of water would achieve this outcome. This result is very sensitive to the quantum of the elasticity of demand. If the elasticity of demand were -0.15 , a 200% increase in the price of water would be required. The greater the value of the elasticity of demand in absolute value terms, the more responsive is the demand for water to changes in the price of water. It is commonly observed that the elasticity of demand for water is very low in the short run and that demand is more responsive to changes in price when longer time horizons are considered.

There is no generally agreed value for the elasticity of demand for water. Indeed, given that the value of the elasticity of demand must be estimated statistically, the resulting estimate depends on a myriad of factors. There is considerable variation in reported estimates of the elasticity of demand for water in Australia and internationally. Grafton and Ward used a value of -0.17 in their determination of the economic costs of water restrictions while Grafton and Kompas estimated an elasticity of water of -0.37 using the same data set but a different statistical model.¹⁴ Hoffman, Worthington and Higgs estimated a value for the elasticity of demand for residential customers in Brisbane over the period 1998 to 2003 of -0.56 .¹⁵

As can be seen, published estimates of the elasticity of demand for water vary considerably. For a regulator charged with setting prices, the operational complications can overwhelm the theoretical and empirical economic evidence. This is before addressing issues such as how to deal with equity or social effects or what to do with the extra revenue that the regulated water business will earn above and beyond the efficient costs of providing water.

Therefore, any decision to mandate the use of scarcity pricing as a means of rationing water use in times of drought or limited supply needs careful consideration. Given the lack of definitive forward data on likely water availability and consumer response, as reflected in the different estimates of elasticity of demand, the regulator could determine an inappropriate scarcity price. That could result in serious social as well as water use efficiency problems that could prove difficult to resolve by way of other government policies and actions in the short term.

In the ACT, the government imposes a water abstraction charge. When, in 2003, the Commission provided advice on the construct of the charge, it incorporated, among other things, a value for

¹⁴ RQ Grafton & T Kompas, 'Pricing Sydney water', *Australian Journal of Agricultural and Resource Economics*, vol. 51, pp. 227–241, 2007.

¹⁵ M Hoffman, A Worthington & H Higgs, 'Urban water demand with fixed volumetric charging in a large municipality: the case of Brisbane, Australia', *Australian Journal of Agricultural and Resource Economics*, vol. 50, pp. 347–359, 2006.

water scarcity.¹⁶ In this sense, the ACT does have a mechanism whereby water scarcity pricing could be applied. This provides a template for how a scarcity price element could be included in the price of urban water under the current institutional arrangements in the ACT. However, it does not seek to limit water usage necessarily, although it will have an impact on consumers' water use decisions.

Prudent and efficient expenditure

In 2009–10, the Commission undertook a major inquiry into the Enlarged Cotter Dam Water Security Project. Under the terms of reference, the Commission was to consider whether the projected costs of the enlarged Cotter Dam were prudent and efficient in terms of meeting the water security standards required of ACTEW. In order to address this requirement, the Commission considered not only the efficiency of the anticipated cost of the project, but also the whether the proposed investment was prudent and efficient in terms of meeting the service delivery obligations applying to ACTEW and the net economic benefit to the ACT.

Whether current or capital expenditure incurred or projected by regulated entities subject to price control by the Commission is prudent and efficient is a fundamental issue that must be considered under the Commission's enabling legislation. The requirement to do so is established under section 20A of the ICRC Act, and is embodied in the objectives of the Act (section 7) and in section 19J, which sets out the competition policy considerations and principles the Commission must take into account in conducting an investigation under a regulatory reference.

In undertaking its price review and other regulatory inquiries, the Commission primarily uses a 'building block' approach to determine the revenue requirements of the regulated entity. This informs the Commission as to what total revenue should be recovered by the entity, and allows the setting of appropriate prices to meet this revenue requirement. In order to arrive at a decision on the level of costs to be included in the calculation of the revenue requirement, the Commission must consider whether these costs are prudent and efficient. The process whereby the Commission undertakes this task becomes central to discussion and debate on final price determinations and recommendations that the Commission makes in fulfilling its regulatory role.

As part of the inquiry into the enlarged Cotter Dam project, the Commission expanded on its previous discussions of the key principles used in assessing whether proposed expenditure by a regulated entity was prudent and efficient. The Commission enunciated some general principles to be used as a guide for assessing whether expenditure can be considered to be prudent and efficient. In broad terms, these principles are:

- A reasonable person test should be applied.
- The reasonable person test encompasses whether the decision was made in the public interest, not merely to meet the interests of the business concerned.
- The assessment should be made in the context of the available information and conditions at the time, including expectations about the future.
- The assessment should also consider what management should have known and should have considered.
- The assessment should consider how the decision is applied and executed by the business.
- The assessment should consider to what extent other options and/or solutions to meet the desired objective were considered.

¹⁶ ICRC, *Final report: water abstraction charge*, October 2003. The Commission's report included a scarcity value in the price of water which used, as a proxy, the price of traded water in the Murrumbidgee Valley. If water is scarce in the ACT, it could be expected to be at times when the price of water is high in the Murrumbidgee Valley. The Commission's 2008 price direction only allows for passing through changes in the water abstraction charge on an annual basis. ICRC, *Water and wastewater price review, final report and price determination*, Report 1 of 2008, April 2008, p. 122.

The application of these principles raises a number of practical questions, not the least of which relates to the information held by the regulated entity and the Commission's ability to access relevant information to support decisions on price or other regulatory matters. Good regulatory practice relies on both the regulated entity and the regulator understanding fully the process that will be applied to decision making. It also relies on full transparency of the process for other stakeholders who may wish to contribute to consideration of the merits of the proposed expenditure.

In its findings on the enlarged Cotter Dam project, the Commission made a number of observations concerning the process used by ACTEW in arriving at a decision to proceed with the Cotter Dam enlargement in the context of other available options. The Commission gave broad endorsement of the use of the net economic benefit (NEB) methodology used by ACTEW, but was critical of the application of this methodology and the data inputs used in the process of calculating the NEB for various investment options. The Commission, having applied six tests derived from the principles outlined above, concluded that it had concerns about aspects of the process that was undertaken and on this basis determined that the decision taken to proceed with the enlarged Cotter Dam project at the time of the 2009 decision ultimately failed a 'reasonable person' application of the prudence tests.

In terms of the application of the NEB methodology used by ACTEW, the Commission concluded that there was a need to develop further the principles and practical application of NEB. This issue is likely to again arise as part of the next price review for water and wastewater services; early discussion on the matter will help to remove any uncertainty that may exist within ACTEW about the approach the Commission is likely to take at that time.

The Commission also acknowledges that there may be a need for greater transparency in the process that it uses to review data in terms of the prudent and efficiency requirements. This is particularly relevant considering the past practice of the Commission to employ its own consultants (often engineering, but also cost accounting) to examine data provided by the regulated entity. A clearer statement of the process that will be adopted by the Commission, linked with further work clarifying the Commission's expectation regarding the cost-effectiveness evaluations that may be undertaken by the regulated entity and relied upon as proof of prudent and efficient expenditure, would contribute to better regulatory practice in this sensitive area.

The Commission notes that the New South Wales regulator, IPART, has announced that it will be re-examining its own processes in terms of assessing the prudence and efficiency of expenditures by regulated entities, and to this end anticipates releasing a series of reports during 2010–11. The Commission will consider these reports and deliberations by IPART as part of its own examination of this issue during 2010–11.

Retail electricity competition

In the ACT, the retailing of electricity to customers consuming more than 160 megawatt hours (MWh) per year (predominantly large businesses) was made contestable from 1998. The electricity supply industry in the ACT was opened for retail competition to customers consuming more than 100 MWh/year (mainly medium-sized businesses) from 1 July 2001.

Following the Commission's recommendation that full retail contestability (FRC) be introduced for all customers in the ACT, the government opened the market to competition for small customers using less than 100 MWh/year (customers with an annual electricity bill of less than about \$13,000) from 1 July 2003. This allowed small businesses and households to select electricity retailers of their choice. At the same time, the government decided to maintain certain transitional arrangements. These were intended to ensure that small customers could remain on non-negotiated contracts with the incumbent retailer, ActewAGL Retail, if they did not wish to enter into a negotiated contract with one of the electricity retailers licensed in the ACT. These customers were referred to as 'franchise customers'.

The Commission made its first pricing direction under this transitional arrangement (commonly referred to as the transitional franchise tariff or TFT) to take effect from 1 July 2003. Since then, the Commission has been required to determine a TFT for each year, with the most recent TFT being determined for the period 1 July 2010 to 30 June 2012.¹⁷

In its April 2006 electricity price determination, in response to a request from the Treasurer, the Commission reported on whether the transitional arrangements should continue and, if so, what form of price protection should apply to franchise contracts in future and how long such protection should last. In its 2006 report, the Commission recommended that the TFT cease to exist. The Commission concluded that there was evidence that the retail market in the ACT was sufficiently competitive to support the removal of the TFT. This recommendation reflected the then significant uptake of competitive price offers from both the incumbent retailer, ActewAGL Retail, and also competing suppliers, together with the then anticipated impending entry of new competitors into the ACT market.

Since the release of its 2006 report, the electricity retail market in the ACT has changed. The increase in competitive behaviour between licensed retailers across all customer groups has not eventuated. In its 2010 retail price determination, the Commission concluded—based on customer switching data, the number of customers on the TFT, and activity by retailers—that vigorous competition does not currently exist in the small customer segment of the market. Relatively few small customers have taken up market offers or remained with these offers, and the market continues to be dominated by ActewAGL Retail.¹⁸ Active price competition is weak, and participants other than ActewAGL Retail have virtually ceased marketing activity in the ACT. Increased competitive activity as envisaged by the Commission in its 2006 review of competition has not eventuated.

A number of suggestions have been put forward as to why the level of contestable behaviour in the ACT has declined since 2006. In the Commission's 2010 inquiry, the retail industry focused on the level of the TFT determined by the Commission, and in particular on the issue of the inclusion of a customer acquisition cost (CAC) or customer acquisition and retention cost (CARC).

The process by which the Commission determines the TFT is based on a 'cost build up' model of the retail electricity price. Essentially this involves the determination of the wholesale price, the various network charges, and the retailer operating costs and margin. The Commission uses market data to determine the wholesale electricity price, regulatory determinations for the various network charges, and a combination of survey and broad industry benchmarks to determine the other costs. This approach is similar to that adopted in other Australian jurisdictions, and is designed to minimise the cost of regulation while at the same time meeting the requirements for making a price determination under the provisions of the ICRC Act.

As part of its 2010 determination, the Commission reviewed and revised the market-based costing model used to derive the wholesale electricity price. Essentially, the Commission made full use of the public information available from the wholesale market for electricity purchased by retailers, and then made allowances for various risk and volatility exposure faced by these retailers in meeting customer demand over the relevant period.

The approach used by the Commission does not accord with the approach used in other eastern states. In New South Wales, the regulator (IPART) is required to determine the wholesale market price as the greater of the market price or the long run marginal cost (LRMC). In Queensland, the regulator (the Queensland Competition Authority) is required to use a model which incorporates a

¹⁷ ICRC, *Retail prices for non-contestable electricity customers 2010–2012*, Report 7 of 2010, June 2010.

¹⁸ Under the FRC arrangements, customers could return to the incumbent retailer as a franchise customer despite having had for a time accepted a competitive price and become a non-franchise customer for that period.

50-50 split between the market price (itself determined by a model, not the observed market price) and the LRMC. The use of the LRMC is intended to reflect the cost of the next increment of generating capacity to be developed and brought on line to meet emerging demand.

However, the Commission has not been convinced that the higher price that can occur as a result of using anything but the market price necessarily results in greater revenue flows to generators who ultimately make new generating capacity decisions. Rather, the 'benefit' of these higher prices is captured by the retailers, with no apparent benefit for decisions regarding future generating capacity other than possibly sending a price signal to consumers. Given the relative size of the ACT market, the Commission has not been of the view that this pricing signal for consumers in the Territory will significantly impact on generators' decisions on future investment requirements as part of the national grid. Thus, the Commission has continued to adopt an 'observed market price' approach to determining the TFT.

The Commission has examined closely the allowance made for retail operating costs (ROCs), particularly the question of the inclusion of a specific allowance for CAC and CARC costs in the derivation of the TFT. As demonstrated in the Commission's 2010 TFT report, the ROC allowance that the Commission included in the TFT is consistent with that used in other jurisdictions. In addition, the ROC allowance includes an allowance for sales and marketing costs, although these have not been specifically designated as CAC or CARC allowances.

In submissions to the 2010 inquiry, some retailers indicated that they wanted price increases in the ACT of between 5% and 10% before they would consider re-entering the ACT market as active competitors. However, the specific CAC and CARC allowances made by jurisdictions such as New South Wales and Queensland, if included in the ACT's TFT, would not add this level of increase to the price determined by the Commission. Thus, the Commission does not consider the CAC-CARC issue to be the fundamental issue driving the absence of strong competitive market behaviour in the ACT.

Some retailers have argued that it is the lower level of the TFT in the ACT in general that has discouraged their active participation in this market or, for some, encouraged their active withdrawal from the market. However, this does not appear to reflect the history of retail competition in the ACT. For example, the noticeable reduction in vigorous competitive activity for customers in the ACT has occurred not just among the smaller franchise customers: within the larger unregulated customer segment (which includes federal government departments and agencies, Parliament House, the Australian National University and larger commercial customers), there has also been a noticeable decline in competition between retailers over recent years.

This apparent change in competitive behaviour can be traced back to 2007 and the period of a significant national price spike for wholesale electricity. At that time, the TFT in the ACT was increased by around 17% in nominal terms, reflecting movement in market-determined wholesale market prices. Despite the fact that this rise was considerably higher than that in New South Wales for the same period, competing retailers began to withdraw from active marketing in the ACT. This behaviour was notable because it occurred not only within the TFT segment of the market, but also in the unregulated segment incorporating larger corporate and government customers.

This suggests that there are other factors influencing the competitive behaviour of electricity retailers in the ACT market. These factors need to be more fully considered by the Australian Energy Market Commission (AEMC) as part of its current review of the effectiveness of competition in the electricity market in the ACT. The AEMC review, to be completed by the end of 2010, is to assess the competitiveness of the ACT market and then to provide advice through the Ministerial Council on Energy (MCE) on options to phase out retail price regulation or provide advice on ways to promote competition.

Notwithstanding that competition in the ACT market is currently weak (and certainly much less than in the period up to 2007), the Commission is still of the view that the removal of the regulated franchise tariff from the market is desirable. The Commission recognises that there may be a need to monitor the price of electricity to protect consumers from the possibility of excessive prices while encouraging the development of competition over the long term. However, the Commission recognises the artificial nature of the setting of a regulated franchise tariff, and that, by discouraging active and vigorous competition at the retail level, there are potential long-term benefits that are not available to customers in the ACT. These benefits may be the prices that are paid, but may also be the range of services offered to consumers.

The Commission has been particularly conscious of the effective competitive response shown by ActewAGL Retail to full retail competition in its bundled service offers, but notes that in the future there may be retailers who are able to combine electricity and gas services, and compete with ActewAGL Retail in terms of offering telecommunications and internet services. Furthermore, with the expanding capacity to market 'online' rather than using the more costly 'door to door' approach initially used in the ACT and elsewhere in Australia, there may be the potential for competitors to better target the ACT market in a cost-effective manner. These may allow a more effective means of competitively targeting a market that, while small, is generally acknowledged as being attractive from the perspective of its energy consumption characteristics. In addition, the successful implementation of the National Energy Customer Framework in terms of national, best practice energy customer regulation presents a major opportunity for removing any real or perceived barriers to the entry of retailers into the ACT market.

Removal of a regulated retail price for electricity in the ACT would not mean that appropriate safeguards for consumers would be removed. The need for enhanced or updated consumer protection frameworks would be examined as part of the decision to remove price regulation.

Under the withdrawal of the TFT arrangements proposed by the Commission, it is recommended that the government would maintain a price monitoring role similar to that used in Victoria. Effectively this is the practice that has been adopted in the ACT in relation to retail gas prices where the Commission exercises a degree of 'moral suasion' but has no direct control of prices which are set by the market.

Water pricing review

The current price for water and wastewater services in the ACT is set under a price determination made by the Commission in 2008.¹⁹ At the time this price determination was made, there was considerable uncertainty about the likely level of available water supplies over the five-year period of the determination and it was possible that demand could be further constrained because of the need to implement or extend water restrictions. In addition, consideration was being given to contingent capital works or investment projects, particularly the transfer of water from Tantangara Dam and the construction of a demonstration water purification plant linked to the Lower Molonglo Treatment Works.

As a consequence, the Commission incorporated into the 2008 determination a provision whereby the X factors in the CPI +X price adjustment mechanism for 2011–12 and 2012–13 could be varied on a once-off basis to account for contingent project pass-throughs and revised forecasts of demand in the last two years of the five-year price period. The purpose of this mechanism was to allow for appropriate adjustments to prices to reflect outcomes of decisions on water security matters that could not be reasonably forecast at the time the determination was made.

¹⁹ ICRC, *Water and wastewater price review: final report and price determination*, Report 1 of 2008, April 2008.

In terms of the arrangements for the contingent water security projects, the Commission determined that the adjustment process should occur in the following manner:

- A once-off adjustment will be made to the X factor for 2011–12 and 2012–13 to reflect capital and operating expenditure incurred and forecast to be incurred on the contingent projects during the regulatory period.
- Adjustments will be made to tariffs for capital expenditure on contingent projects only where that expenditure results in total capital expenditure exceeding the forecasts in this final decision, taking into account the timing of that capital expenditure. Thus any additional expenditure as a result of the contingent projects will be netted off against any ‘underspend’ on other projects. This ‘netting off’ will also take into account the timing of expenditure.
- The X factor adjustment will reflect all prudent incurred and forecast operating expenditure on contingent projects. Unlike capital expenditure there will be no netting off in relation to operating expenditure in other areas.
- ACTEW will be required to provide a submission to the Commission prior to 1 March 2011 detailing the expenditure on the contingent projects that it is seeking to recoup. The Commission will review the submission and may engage consultants to advise it on the prudence and efficiency of the forecasts.

The mechanism implemented by the Commission will ensure that the contingent projects are accepted for price determination purposes only if the Commission concludes that the expenditure is both prudent and efficient and that it is subject to appropriate balancing with capital expenditure efficiency savings or ‘savings’ as a result of delays in the timing of capital works that may have occurred in other projects foreshadowed at the time the price determination was made. This process will ensure that the overall objective of achieving water security for consumers in the ACT is met at a cost to consumers commensurate with the security of supply being provided.

To ensure that actual revenue is consistent with forecast revenue and to avoid the asymmetric revenue risk arising from uncertainty regarding the volume of water that can be supplied in the second half of the price determination period, the Commission has also allowed for an adjustment process which is contingent on water availability over the five-year determination period. Under this arrangement, should water revenue be more than 7% different from that forecast over the first two and a half years of the regulatory period (that is, until 31 December 2010), the Commission will revisit the usage forecasts for the remaining two years of the regulatory period and adjust tariffs for these last two years to realign the forecast revenue set out in the 2008 price determination with the new demand forecasts. In making this adjustment:

- Volumetric water prices will change to better match forecast and actual water volumetric revenue only in 2011–12 and 2012–13 and will not be amended to provide for a ‘catch-up’ of any revenue shortfalls in the preceding three years. (These will be addressed by the end of period deadpans mechanism which has also been included in the 2008 price determination.)
- While the Commission will work with ACTEW to agree to a usage forecast for 2011–12 and 2012–13, a final decision on the usage forecast will be entirely up to the Commission to determine.
- There will be no rebalancing of prices in 2011–12 or 2012–13; rather, both volumetric prices will change by the same proportion.

Since the 2008 price determination was made, the ACT has continued in Stage 3 water restrictions, and it has only been in the second half of 2009–10 that there was any sign that stored water reserves may reach levels that on face value would warrant the removal of possibly all water restrictions other than the now agreed permanent water conservation measures. Certainly at the time of the 2008 price determination, it had been anticipated that the enlarged Cotter Dam project would have been further advanced by mid-2010, and could have helped to augment the ACT’s stored water reserves a little earlier than now seems probable.

In its Performance Audit Report on Water Demand Management²⁰, the ACT Auditor-General commented upon the process whereby ACTEW determines the level of water restrictions that are applied in the ACT. The Auditor-General noted that ‘water restrictions are not aligned with the dam trigger levels’ in its examination of restrictions over the period 2003 to 2006.²¹ The Commission has also been acutely aware of the apparent ‘stickiness’ of the process whereby restriction levels are adjusted as dam storages grow by comparison to the trigger points for restrictions as dam levels fall.

In response to the Auditor-General, ACTEW has noted that there are a number of factors other than dam levels that are considered when adjusting restriction levels, including the time of the year and likely consumption levels, the currently available weather forecast, the desirability of avoiding excessive reliance on only one of the ACT’s water catchments, and the need to avoid excessive changes between stages. The apparent unwillingness of ACTEW to be more transparent in this process only serves to further confuse consumers, particularly when they are presented with public displays which provide advice on current consumption rates and dam levels but then are told that the modelling whereby ACTEW makes decisions on restrictions ‘cannot be effectively communicated by laying out the complex underlying modelling and all factors taken into account’.²²

In making a decision on the forward volumetric estimates for the periods 2011–12 and 2012–13, the Commission will give particular attention to the basis upon which ACTEW prepares its estimates, particularly having regard to the volumetric estimates that have been used to justify the enlarged Cotter Dam project and the associated additional water security capital works for which water consumers are required ultimately to pay. While there is provision in the 2008 price determination for an adjustment at the end of the five-year price path for any under- or over-recovery of revenue by ACTEW, the Commission is conscious of the direct influence that ACTEW has on the level of restrictions and thus the volume of water that is available for consumption over this period. The Commission notes the advice provided by ACTEW to the Auditor-General on this issue:

The modelling used to derive the values [used for determining the level of water restrictions] assumes relatively trouble-free, reliable operation of the water supply system, and doesn’t take into account unforeseen events resulting in major long-term inoperability of components of the system. Given the storages are low in restriction events, the system is now more vulnerable to such unforeseen events *and the higher individual storages can be maintained-by imposing water restrictions—the better* [emphasis added].²³

It is the imprecision in the statement that ‘the higher individual storages can be maintained ... the better’ that concerns the Commission when considering the appropriate recovery of the regulated revenue requirements by ACTEW. The Commission is not inclined to consider favourably volumetric estimates constrained by ACTEW-imposed restrictions on use, which would result in higher prices for consumers who have already been required to pay for the additional water security that ACTEW is providing through its water security investment program.

The mid-term review of volumetric levels incorporated in the 2008 price determination which will occur during 2010–11 will need to be carefully considered and should not be dependent on decisions concerning the continuation of water restrictions that cannot be clearly explained and demonstrated to the wider community. The Commission will be seeking a clear and consistent

²⁰ ACT Auditor-General’s Office, *Water demand management: administration of selected initiatives*, performance audit report, June 2010.

²¹ ACT Auditor-General’s Office, *Water demand management: administration of selected initiatives*, p. 51.

²² Advice from ACTEW to the Auditor-General, reported in ACT Auditor-General’s Office, *Water demand management: administration of selected initiatives*, p. 52. ACTEW has advised that the factors that are taken into account are available on its website at www.actew.com.au/publications/TemporaryWaterRestrictionsScheme.pdf.

²³ Advice from ACTEW to the Auditor-General, reported in ACT Auditor-General’s Office, *Water demand management: administration of selected initiatives*, June 2010, p. 52.

presentation of both the mechanism for determining water restrictions and the level of volumetric demand projections presented by ACTEW for purposes of setting prices and for purposes of justifying the significant capital works expenditure on additional infrastructure projects such as the enlarged Cotter Dam.

Concluding comments

The role and functions of the Commission have changed since the establishment of the EWCC in 1996, and are likely to undergo further changes in the period ahead. At the same time, the Commission has ongoing responsibility for pricing for both electricity (at the retail level) and water and wastewater services. During the 2010–11 year, the Commission will need to consider a number of fundamental issues in terms of carrying out its functions in these two sectors alone. Additionally, the Commission expects to be asked to undertake other tasks linked to energy and water matters and to give independent advice and assistance to the government and the Legislative Assembly. The Commission is well placed to undertake these roles and acquit itself with the same degree of professionalism and independence of thought and advice that it has demonstrated over the past 14 years.

Part A Performance and financial management reporting

Section 9 of the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act) requires the Commission to prepare a report under the *Annual Reports (Government Agencies) Act 2004*. The Chief Minister's 2007–2010 Annual Report Directions set out the issues against which the Commission is required to report. In addition, the ICRC Act requires the Commission to report on the following matters:

- investigations
- final reports and special reports
- price directions
- advice about proposed access agreements
- the number of access agreements notified
- arbitration disputes
- determinations of arbitration disputes
- the number of notices issued under section 41 (Provision of information to Commission)
- the general use made by the Commission of information and documents obtained as a result of notices issued under section 41
- any other functions exercised by the Commission.

A.1 The organisation

This section deals with the Commission's role and functions, values, structure, and clients and stakeholders.

A.1.1 Role and functions

The Commission's primary roles and responsibilities are established under the ICRC Act and the *Utilities Act 2000* (Utilities Act). Together, the Acts set out the functions of the Commission as:

- providing price directions
- providing recommendations about price regulation
- providing advice to the minister about proposed access regimes
- arbitrating disputes about access to services under access regimes
- maintaining a register of access agreements
- investigating and reporting on matters referred by the minister and other referring authorities
- investigating and reporting on competitive neutrality complaints
- investigating and reporting on government-regulated activities
- issuing licences for the provision of utility services
- determining licence conditions
- ensuring compliance with the licence conditions
- approving and reviewing standard customer contracts and industry codes for utility services.

In addition to those functions, the Commission is the regulator under the *Electricity (Greenhouse Gas Emissions) Act 2004*. That role requires the Commission to establish emission benchmarks for scheme participants each year and to monitor and report on compliance with the benchmarks. The Commission also has a statutory role under the *Electricity Feed-in (Renewable Energy*

Premium) Act 2008 in providing the Minister with advice relevant to the determination of the premium rate payable by electricity suppliers to renewable energy generators.

The Commission's objectives are defined in the ICRC Act and the Utilities Act.

The objectives set out in the ICRC Act relate to industry pricing and access to infrastructure, competitive neutrality and government-regulated activities. Specifically, the objectives in section 7 of the ICRC Act are to:

- promote effective competition in the interests of consumers
- facilitate an appropriate balance between efficiency and environmental and social conditions
- ensure non-discriminatory access to monopoly and near-monopoly infrastructure.

Section 3 of the Utilities Act reinforces those objectives and adds others. They are:

- to encourage the provision of safe, reliable, efficient and high-quality utility services at reasonable prices
- to minimise the potential for misuse of monopoly power in the provision of utility services
- to promote competition in the provision of utility services
- to encourage long-term investment, growth and employment in utility services
- to promote ecologically sustainable development in the provision of utility services
- to protect the interests of consumers
- to ensure that advice given to the Commission by the ACT Civil and Administrative Tribunal (the ACAT)²⁴ or the chief executive under Part 5 (technical regulation) is properly considered
- to ensure that the government's programs concerning the provision of utility services are properly addressed
- to give effect to directions of the minister under section 19 (which may only be given to ensure the achievement of the objects set out in the subsections above).

The legislation report in section B.4 of this report lists other legislation under which the Commission has obligations.

A.1.2 Mission and values

The Commission is committed to ensuring that the ACT Government receives the best possible return from the resources it devotes to the Commission, through efficient and business-like management of those resources and prudent management of financial risk.

A key element of prudent management involves ensuring that staff are aware of the values and principles that guide public administration, which are set out in the *Public Sector Management Act 1994* and underpin the ACT Public Service Code of Ethics. These principles are:

- service to the public
- responsiveness to the government and the needs of the public
- accountability
- fairness and integrity
- efficiency and effectiveness.

The Commission seeks to foster a culture that is transparent in its activities, accountable for its actions, consultative in its interactions with interested parties, independent in its decision-making processes, and ethical in all aspects of its behaviour.

²⁴ In February 2009, the Energy and Water Consumer Council (EWCC) was subsumed into the ACAT.

The Senior Commissioner and Commission staff, collectively and as individuals, seek to:

- use our professional skills, expertise, experience and professional judgement to promote efficient competition in the ACT economy in the interests of consumers
- use our professional experience and mature judgement to achieve a sustainable balance between efficiency and environmental and social needs
- use our resources wisely, efficiently and to good effect
- work together to provide a working environment that is safe, healthy and productive
- encourage, support, develop and challenge its individual members.

A.1.3 Structure

The Commission is a statutory agency of the ACT Government and reports to the Attorney-General under the Administrative Arrangements Orders. The Commission is constituted by one or more standing commissioners, and any associated commissioners appointed for particular purposes. Under the ICRC Act, the Executive must appoint one or more standing commissioners. If the Commission is constituted by more than one standing commissioner, the Executive must appoint one as the senior commissioner.

Figure 1 shows how the Commission was structured at 30 June 2009; Figure 2 shows the structure at 30 June 2010.

The Commission secretariat provides the primary support for the Commission's activities and in 2009–10 had a core staffing complement of five to six officers. In addition, the Commission makes periodic use of external consultants and fixed-term appointments to complement the capabilities of Commission staff and ensure that it is able to meet its ongoing responsibilities.

Figure 1 Organisational structure at 30 June 2009

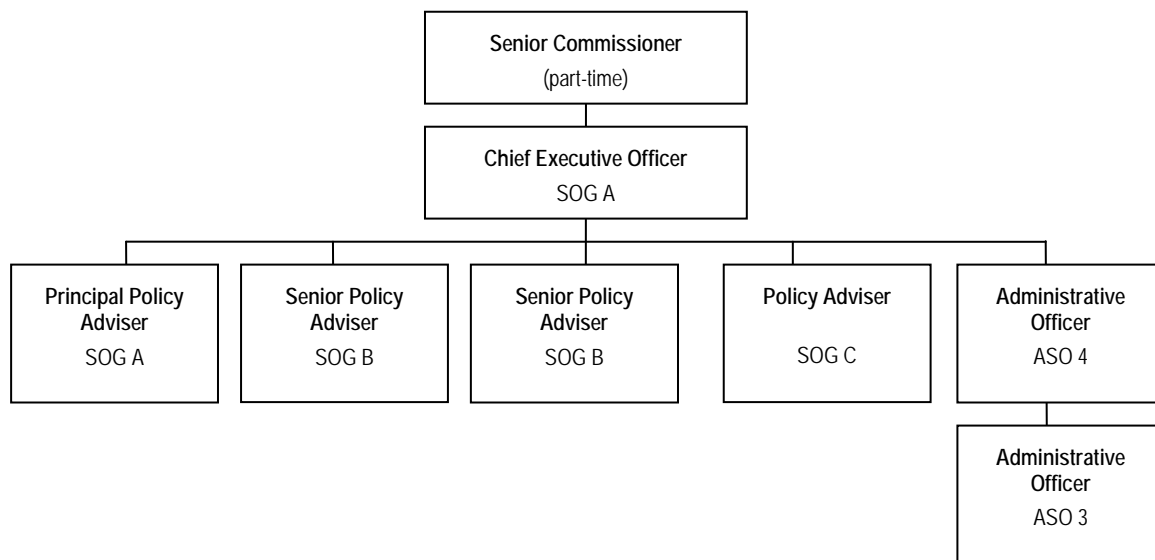
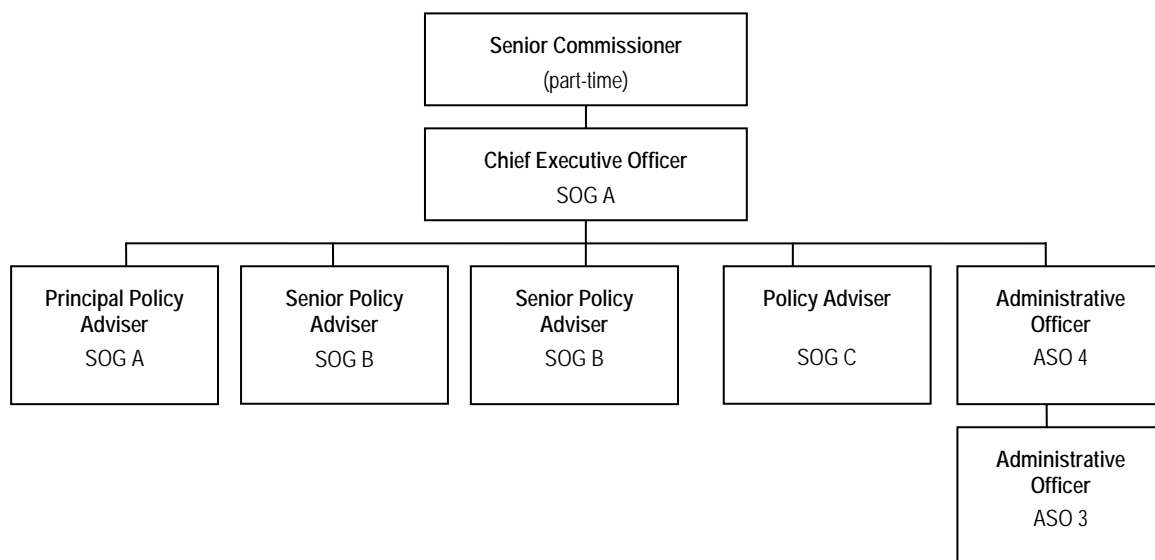


Figure 2 Organisational structure at 30 June 2010



Note: ASO = Administrative Service Officer; SOG = Senior Officer Grade

A.1.4 Clients and stakeholders

The Commission's principal stakeholders are the ACT Government and its agencies, members of the Legislative Assembly, licensed and prospective utility service providers, regulated industries, businesses, and members of the ACT community generally. The Commission also participates in a wider community of stakeholders, including national and interjurisdictional regulatory bodies and other intergovernmental regulatory forums.

A.2 Overview of performance in 2009–10

A.2.1 Overview

In 2009–10, the Commission completed a program of inquiries following the receipt of industry references under the ICRC Act for the provision of:

- a price direction for the supply of electricity to non-contestable franchise ('transitional franchise tariff', or TFT) customers for the period 1 July 2010 to 30 June 2012
- advice to the Minister for Energy on the determination of the premium rate to be paid for electricity supplied by compliant renewable energy generators to the distribution network under the provisions of the *Electricity Feed-in (Renewable Energy Premium) Act 2008*
- a report and findings on the projected costs and other matters provided by ACTEW of the enlarged Cotter Dam project to provide enhanced water security for the ACT.

In addition, the Commission entered in agreements with the Department of the Environment, Climate Change, Energy and Water (DECCEW) under section 12 of the ICRC Act for provision of analysis and advice on:

- the review of the Electricity Feed-in Scheme (Stage 2) established under the *Electricity Feed-in (Renewable Energy Premium) Act 2008*
- the appropriate pricing of non-potable water from the Territory's pilot stormwater reuse projects

During the year, the Commission continued to deliver a program of regulatory services including;

- overseeing the utility services licensing regime established under the Utilities Act
- monitoring and reporting on licensed electricity, gas and water and wastewater utility compliance and performance
- determining the energy industry levy under the Utilities Act
- regulating the ACT's Greenhouse Gas Abatement Scheme
- monitoring compliance with, and reporting on, the Electricity Feed-in Scheme
- working cooperatively with the national energy regulator (the Australian Energy Regulator, or AER) to effect the orderly transfer of responsibilities

A.3 Highlights of performance in 2009–10

Reports and documents relating to the activities described below can be read in full on the Commission's website (www.icrc.act.gov.au). Appendix 3 provides contact details for staff who can provide more information on the Commission's activities.

A.3.1 Determination of retail prices for non-contestable electricity customers

In August 2009, the Attorney-General referred to the Commission the provision of a price direction for the supply of electricity to franchise customers. The reference, issued under the ICRC Act was for the period 1 July 2010 to 30 June 2012. The pricing inquiry was conducted in

two stages. The first focused on the method for determining the energy purchase cost component in the build-up of the efficient costs of supplying electricity to franchise customers in the ACT. The second was the development of the price direction.

A.3.2 Advice on premium rate under the *Electricity Feed-in (Renewable Energy Premium) Act 2008*

The *Electricity Feed-in (Renewable Energy Premium) Act 2008* was amended with effect from 1 March 2009. The amendments included a new provision requiring the minister to seek the advice of the Commission when determining the premium rate. The Commission also has a role in monitoring compliance with the Electricity Feed-in Scheme through licence conditions for electricity suppliers and for ActewAGL Distribution.

In October 2009, the Minister for Energy made a reference to the Commission to provide advice to assist with the determination of the premium rate to be paid for electricity generated under the provisions of the *Electricity Feed-in (Renewable Energy Premium) Act 2008*. The reference was made under sections 15 and 16 of the ICRC Act.

The Electricity Feed-in Act provides for electricity retailers to make payments, at a price known as the ‘premium rate’, to ‘occupiers’ of residential and certain non-residential premises with compliant renewable electricity generators installed and connected to the electricity network. The Commission’s final report²⁵, released in March 2010, made a recommendation on the premium rate for 2010–11 and the manner in which it should be determined in subsequent years.

A.3.3 Enlarged Cotter Dam inquiry

In November 2009, the Attorney-General referred to the Commission an “investigation of the projected costs and other matters provided by ACTEW of the enlarged Cotter Dam project to provide enhanced water security for the ACT”. The Commission’s final report was presented to the Minister at the end of June 2010.

A.3.4 Competition policy advice

In 2009–10, the Commission continued to respond to government’s requests for advice on competition policy matters. In particular, it participated in the Supermarket Competition Co-ordination Committee and advised on the development of an implementation and monitoring program.

A.3.5 Transfer of energy regulation to the Australian Energy Regulator

Reflecting the transition of energy regulation from states and territories to the national regulatory framework, the Commission and the AER in August 2009 entered into a memorandum of understanding that covers regular exchanges of views on issues, sharing of appropriate information and documents and cooperation on transitional issues. The memorandum can be viewed on the Commission’s website.

Consistent with the memorandum of understanding, the Commission throughout 2009–10 has participated in the consultation processes facilitated by the AER as part of that body’s preparation for the specific tasks envisaged for it under the national energy retail regulatory framework. Issues have included retailer authorisations, performance reporting and consumer protection information.

²⁵ ICRC, *Electricity feed-in renewable energy premium: determination of premium rate*, Report 4 of 2010.

A.3.6 AEMC review of competition in the ACT retail electricity market

In December 2009, the Ministerial Council on Energy (the MCE) asked the Australian Energy Market Commission (AEMC) to undertake a review of the effectiveness of competition in the electricity retail market in the ACT. The review is being conducted in accordance with the terms of the Australian Energy Market Agreement (AEMA). It formally commenced in March 2010 when the AEMC released an issues paper for public consultation; a first draft report was released in July 2010. The Commission met the AEMC and provided commentary on key issues and documents. The AEMC's primary draft finding in its first report is that competition in the ACT retail electricity market for small electricity customers is not effective. The review is scheduled for completion in December 2010, with the release of a second, final report.

A.3.7 Other regulatory activities under the ICRC Act

Access agreements

Part 5 of the ICRC Act sets out the Commission's responsibilities for access agreements in relation to infrastructure facilities. During 2009–10, the Commission did not provide advice on any proposed access agreements, and no access agreements were notified to the Commission.

Arbitration of disputes

Part 6 of the ICRC Act provides for the referral to the Commission of disputes in relation to an access regime for arbitration. During 2009–10, no disputes were referred to the Commission.

Notices issued under section 41

Section 41 of the ICRC Act provides that the Commission can, by written notice, require a person to give it information or a document that may assist it in exercising its functions. The Commission did not issue any notices under section 41 during 2009–10.

Competitive neutrality complaints

There were no competitive neutrality complaints in 2009–10.

Other functions exercised by the Commission

Under section 12 of the ICRC Act, the Commission may enter into assistance arrangements with any agency, body or person with the minister's written approval. During 2009–10, the Commission entered into arrangements with DECCEW in relation to the provision of assistance and advice on:

- the pricing of harvested stormwater
- the review of the Electricity Feed-in Scheme (Stage 2) established under the *Electricity Feed-in (Renewable Energy Premium) Act 2008*.

A.3.8 Ministerial directions

During 2009–10, the Commission did not receive any ministerial directions under the provisions of the Utilities Act.

A.3.9 Utility licensing issues

Licence applications and grants

The licences of two new electricity supply utilities, both the subject of applications to the Commission during 2008–09, became effective in 2009–10. Sanctuary Energy’s licence was effective from 1 July 2009 and Momentum Energy’s licence was effective from 7 August 2009.

There were no further applications for utility service licences during 2009–10.

Licence variations

The licences of all gas supply utilities, and the gas connection and distribution utility (ActewAGL Distribution), were varied effective from 3 July 2009²⁶ to reflect the establishment of the Australian Energy Market Operator. The former requirement for utilities to participate in the Gas Market Company’s gas market scheme was replaced by a requirement for registration as a participant with the Australian Energy Market Operator. A range of minor corrections and updates to licence documentation were also made.

Licence exemptions

The Minister for the Environment, Climate Change and Water exempted TransGrid, effective from 30 June 2009, from the requirement to hold a licence in relation to electricity transmission.²⁷

Licence surrenders

No licences were surrendered during 2009–10.

Other licensing issues

On 18 December 2009, the Australian Energy Market Operator issued a suspension notice to Jackgreen International Pty Ltd under the National Electricity Rules. This made Jackgreen ineligible to trade or enter into any transaction on the National Electricity Market.

Jackgreen’s customers in New South Wales, Victoria, South Australia and Queensland were transferred to alternative retailers on 19 December 2009 under agreed retailer-of-last-resort procedures. Jackgreen had no ACT electricity or gas customers.

Following the suspension, the Commission initiated discussions with Jackgreen’s administrators on the future of Jackgreen’s ACT electricity and gas supply licences.

Licensees at 30 June 2010

Table 1 lists the holders of utility licences at 30 June 2010.

²⁶ NI 2009-315 (gas supply) and NI2009-316 (gas connection and distribution)

²⁷ Under the Utilities Exemption 2006 (No 1) DI2006-47, TransGrid was exempted from the requirement for a licence. This instrument extended the exemption.

Table 1 Utilities licence holders, at 30 June 2010

Service	Licensees
Electricity distribution and connection	ActewAGL Distribution
Electricity supply	ActewAGL Retail AGL Sales Pty Ltd AGL Sales Queensland Electricity Pty Ltd Aurora Energy Pty Ltd Australian Power and Gas Pty Ltd Country Energy Dodo Power and Gas Pty Ltd Energy Australia ERMPower Retail Pty Ltd Integral Energy Australia Jackgreen (International) Pty Ltd Momentum Energy Pty Ltd Origin Energy Electricity Ltd Powerdirect Pty Ltd Red Energy Pty Ltd Sanctuary Energy Pty Ltd SUN Retail Pty Ltd TRUenergy Pty Ltd TRUenergy Yallourn Pty Ltd
Gas transmission	East Australian Pipeline Ltd
Gas distribution and connection	ActewAGL Distribution
Gas supply	ActewAGL Retail Australian Power and Gas Pty Ltd Country Energy Dodo Power and Gas Pty Ltd Energy Australia Jackgreen (International) Pty Ltd SUN Retail Pty Ltd TRUenergy Pty Ltd
Water supply	ACTEW Corporation Ltd
Sewerage	ACTEW Corporation Ltd

Licence fees and energy industry levy

The Utilities Act provides for the Commission to determine annual licence fees for utilities. Those fees cover a reasonable contribution towards the costs incurred, or expected to be incurred, by the Commission, the ACT Civil and Administrative Tribunal (ACAT) and the Technical Regulator (located in the ACT Planning and Land Authority).

In May 2007, the Utilities Act was amended to provide for an energy industry levy to cover the Territory's national and local regulatory costs. The legislation commenced on 1 July 2007 with the effect of progressively replacing licence fees for prescribed energy utilities. The levy provisions in Part 3A are subject to the *Taxation Administration Act 1999*.

The levy administrator, currently the chief executive officer of the ICRC, determines applicable regulatory costs for each levy year and for each energy industry sector before 1 October of the levy year. The administrator also determines the number of energy utilities that provide services in the respective energy industry sectors during the levy year. The four energy industry sectors are electricity distribution, electricity supply, gas distribution and gas supply. During 2009–10, the administrator made three determinations consistent with the provisions of the Act.²⁸

During 2009–10, the Commission determined licence fees for utilities involved in gas transmission and in water and sewerage.²⁹

A.3.10 Industry codes and guidelines

Consumer Protection Code

Variations to the Consumer Protection Code determined by the Commission in May 2009 became effective from 1 July 2009.³⁰ Key variations and clarifications related to acknowledgement of complaints, telemarketing, protections accorded to customers using life support equipment, and customer requests for disconnection. In addition, legislative references were updated.

On 11 June 2010, the Commission determined further variations to the Consumer Protection Code. The principal variation was insertion of a new clause 32A dealing with the transfer of a customer's energy supply to a new energy supplier associated with the transfer to the new energy supplier party of all or substantially all of the previous energy supplier's business. The varied code was effective from 1 July 2010.³¹

A.3.11 Standard customer contract variations

The Commission approved a number of variations to ACTEW Corporation and ActewAGL standard customer contracts during 2009–10. All were associated with changes to the schedules of charges that form part of utilities' standard customer contracts.

In June 2010, the Commission approved variations to schedules of charges for gas supply, electricity distribution and electricity supply submitted by ActewAGL³², and variations to the standard customer contract for water and sewerage services submitted by ACTEW Corporation.³³

A.3.12 Compliance and performance monitoring

Under the Utilities Act, the Commission is responsible for ensuring that licensed utilities in the ACT comply with the Act, utility licences, and relevant codes of practice. The Commission makes its assessment primarily through information provided to it through annual performance and compliance reports. In addition, the Commission seeks the advice of other government agencies that may be in a position to comment on the performance of utilities. As a condition of their licences, utilities must report material breaches of licence conditions, legislation, codes of practice, directions or guidelines as soon as they become aware of them.

The annual compliance and performance reports are the principal means by which the Commission monitors licensees' compliance with their obligations under the Utilities Act and subordinate conditions included in their licences.

²⁸ NI2009–474, NI2009–475, and NI2009–476.

²⁹ NI2009–4672.

³⁰ DI2009–75.

³¹ DI2010–108.

³² NI2010–290, NI2010–295, and NI2010–307.

³³ NI2010–282.

During 2009–10, the Commission progressed preparation of the 2008–09 report, *Licensed electricity, gas and water and sewerage utilities—Compliance and performance report for 2008–09*. The report will be published in early 2010–11.

A.3.13 Greenhouse Gas Abatement Scheme

The ACT Greenhouse Gas Abatement Scheme was established in the ACT through the *Electricity (Greenhouse Gas Emissions) Act 2004* and commenced on 1 January 2005. The scheme is designed to reduce or offset greenhouse gas emissions associated with the production of electricity.

The ACT scheme mirrors the NSW Greenhouse Gas Reduction Scheme (GGAS) administered by the Independent Pricing and Regulatory Tribunal (IPART). The New South Wales scheme commenced in January 2003. The New South Wales and ACT schemes are, in many respects, operated as a single scheme. Under this arrangement, IPART administers the overall scheme and accredits abatement projects, while the Commission regulates the scheme in the ACT under section 49 of the *Electricity (Greenhouse Gas Emissions) Act*.

As regulator of the scheme, the Commission has a number of functions. These include:

- determining the greenhouse gas reduction target, or electricity sector benchmark, for the ACT in any given year
- allocating a share of the benchmark to participants based on their market share of electricity sales in the ACT
- ensuring that electricity retailers in the ACT meet legislated targets for offsetting emissions.

Under the scheme, electricity suppliers reduce or offset a portion of their greenhouse gas emissions through the purchase and surrender of NSW Greenhouse Gas Abatement Certificates (NGACs). A per capita cap on emissions establishes how many NGACs each electricity supplier must surrender. In June 2010, the Commission provided the Minister for the Environment, Climate Change and Water with the fourth annual report on the operation of the scheme. The report covered the 2009 compliance year.

A.3.14 Electricity Feed-in Scheme reporting

The Electricity Feed-in Code sets out practices and standards for the operation of the scheme for feed-in from renewable energy generators to the electricity network established under the *Electricity Feed-in (Renewable Energy Premium) Act 2008*. Under the Electricity Feed-in Code, licensed electricity suppliers and ActewAGL Distribution are required to report quarterly to the Commission on a number of key indicators. The first quarterly reports covered the period to 30 June 2009.

During 2009–10, the Commission commenced publishing quarterly summary reports covering matters such as the number of new connections of renewable generators, total numbers of renewable generators and total installed capacity, and premium payments made under the Feed-in Scheme. The reports provide a statistical overview of the development of the Feed-in Scheme.

A.4 Outlook

This section of the report focuses on future priorities for the Commission, likely trends and changes in the operating environment, and risks and issues facing the Commission in the immediate future.

A.4.1 Responsibilities under the ICRC Act

During 2010–11, the Commission will continue to discharge important responsibilities under its enabling legislation, in particular:

- undertaking the mid-term review consistent with the current water and wastewater determination for the period 1 July 2008 to 30 June 2013
- reviewing electricity retail prices (the TFT) for the period 1 July 2011 to 30 June 2012 consistent with the current pricing determination
- providing advice on any other matters that might be referred to the Commission, or on complaints that require investigation or arbitration.

A.4.2 Responsibilities under the Utilities Act

During 2010–11, the Commission will continue to discharge responsibilities under the Utilities Act, in particular:

- monitoring, enforcing and reporting on utility compliance and performance
- managing the utility licensing regime, including assessing applications to provide services, variations and exemptions, and changes to standard customer contracts
- reviewing industry codes
- determining licence fees and the energy industry levy.

A.4.3 Responsibilities for the Greenhouse Gas Abatement Scheme

During 2010–11, the Commission will continue to discharge responsibilities under the Electricity (Greenhouse Gas Emissions) Act, in particular:

- setting annual per capita benchmarks for greenhouse gas emission reductions
- ensuring that electricity retailers in the ACT meet legislated targets for offsetting emissions
- reporting on compliance outcomes to the portfolio minister (the Minister for the Environment, Climate Change and Water).

In 2008, the New South Wales Government reviewed the GGAS in the context of the federal government's commitment to develop a national emissions trading scheme. The New South Wales Energy Savings Scheme (ESS), which commenced on 1 July 2009, subsumed the energy efficiency elements of the GGAS in New South Wales, and much of the architecture of GGAS as it relates to electricity generation has been carried forward into the ESS. In New South Wales, the ESS and the remaining part of the GGAS will run as parallel schemes until the GGAS ceases in that state. The ACT is not party to the new ESS, and the ACT scheme continues to operate as it has since commencement in 2005.

A.4.4 Responsibilities under the Electricity Feed-in (Renewable Energy Premium) Act

During 2010–11, the Commission will provide the prescribed advice on the determination of the premium tariff rate in response to a request from the minister (see section A.3.2). The Commission will continue to monitor and report on activity under the scheme.

In September 2010, the Minister for Energy announced the government's intention to expand the scheme to include medium- and large-scale renewable generators and to provide, among other

things, for the participation of not-for-profit community groups to organise and operate communal generators. The Commission will work with DECCEW on the implementation of the expanded scheme, examining in the process the need for additional or refined industry codes and other regulatory instruments.

A.4.5 Greenhouse gas reduction targets – monitoring and reporting

In December 2008, the Legislative Assembly referred an inquiry into ACT Greenhouse Gas Reduction Targets to the Standing Committee on Climate Change, Environment and Water. The Committee's Interim Report was released in October 2009. In November 2009, the Minister for the Environment, Climate Change and Water, Simon Corbell MLA, tabled the Government's Response to the Interim Report in the Legislative Assembly. The Response announced that the Government will be widening the role of the Commission in line with the Interim Report's recommendation for annual reporting by the Commission on major ACT Government climate change policies, programs and projects related to managing greenhouse gas emissions.

On 24 August 2010, the Committee tabled its Final Report in the Assembly. Subsequently, the Government introduced the Climate Change and Greenhouse Gas Reduction Bill 2010 into the Assembly. The proposed legislation will establish the statutory framework for monitoring and reporting on greenhouse gas emissions in the ACT. In his presentation speech, the Minister, Simon Corbell MLA, stated that following commencement of the legislation, the Commission will be requested to prepare an annual report on greenhouse gas emissions.³⁴ Developing methodologies and a reporting framework will be an important task for the Commission in 2010–11.

A.4.6 Progress on the transfer of energy retail regulation

During 2010–11, the Commission anticipates an increased level of participation in the national and jurisdictional program of work associated with the transition of energy retail regulation to national arrangements.

The work will include the Commission's continued involvement in the program of preparatory work that is being undertaken by the AER, as described above. In addition, the Commission will continue to work with DECCEW and the ACT Planning and Land Authority on matters relating to transitioning the present ACT utilities regulatory framework.

A.4.7 Competition and industry policy advice

During 2010–11, the Commission will continue to provide analysis and advice to the government on a range of matters. Those matters will include the establishment of a reporting framework for monitoring supermarket competition in the ACT.

A.5 Management discussion and analysis

This discussion and analysis provides a high-level narrative of the Commission's financial results. It explains the significance of key financial information presented in the annual financial report and has been prepared in conjunction with that report. The audited report is reproduced in appendix 1. The discussion also outlines key areas of risk and the strategies the Commission has in place for their management.

³⁴ Presentation speech: Climate change and Greenhouse Gas Reduction Bill 2010, Hansard, Legislative Assembly for the ACT, 26 August 2010, pp. 4029–4033.

A.5.1 Overview

Risk management

The Commission has developed business continuity, business risk management, and fraud control plans as part of an overall approach to managing the risk environment. It has also identified specific risk areas, in particular:

- consultant risk
- operational risk
- information risk
- workplace safety and related employee risks
- financial risk.

These risks are actively monitored and managed by the Commission. The sections below provide more detail on each of the areas.

Consultant risk

The Commission has reduced contractual risk through close liaison with ACT Procurement Solutions to ensure appropriate adherence to whole-of-government procurement processes. The risks associated with non-performance under contracts for expert advice are considered low because the Commission manages consulting contracts closely during their course. There have been no incidents of contractual non-performance in 2009–10.

Operational risk

The Commission's operational risk arises from the adequacy of its workforce, in terms of both size and expertise. The highly specialised and expert nature of the Commission's work can make it more difficult to attract and retain suitably qualified staff than in many other government agencies. The small number of permanent staff in the Commission can put constraints on its capacity to provide a career path.

To a large extent, the Commission manages the risk by engaging consultant expertise in circumstances where Commission resources are insufficient or specialist skills are required. This is the case, for example, in relation to pricing reviews and industry investigations. Similarly, the Commission relies on contractors and non-ongoing appointments from time to time when additional resources are needed.

Information risk

Information risks can arise from failures in the management of information, including loss, or inappropriate use or disclosure. Risks arising from inappropriate treatment of information are addressed in the Commission's policies in relation to the use and disclosure of confidential information, care in relation to the publication of information on the website or in reports, and appropriate and secure physical storage of information. Where applicable, the Commission is guided by the 2007 *ACT Protective security policy and guidelines*. The Commission specifically addresses information management issues by complying with ACT public sector policies and practices on records management.

Workplace safety and related employee risks

Workplace risks are managed on a daily basis. Management has close oversight of employee work practices, and office facilities. Responsibility for occupational health and safety representation is shared across the Commission's team. One staff member is a trained fire warden. Another is a trained first aid officer. Responsibility for physical safety and security is supported through the

Department of Justice and Community Safety, which manages accommodation services on the Commission's behalf.

During 2009–10, no occupational health and safety incidents or dangerous occurrences were notified. The Commission provides a high level of support for staff and promotes sustainable work–family balance practices.

Financial risk

Financial risk is identified as a consequence of the Commission receiving revenue and making payments to suppliers. Very low levels of cash are held in the Commission's office. The risks of mishandling or fraud are actively managed by adequate separation of powers appropriate to a small office, and regular monitoring of accounts. Most revenue transactions are by cheque or by direct credit to the Commission's accounts. There are no cash payments for services supplied and there is an appropriate authorisation process and separation of account cheque preparation, payment authorisation and signature (including countersigning by two parties).

A.5.2 Financial performance

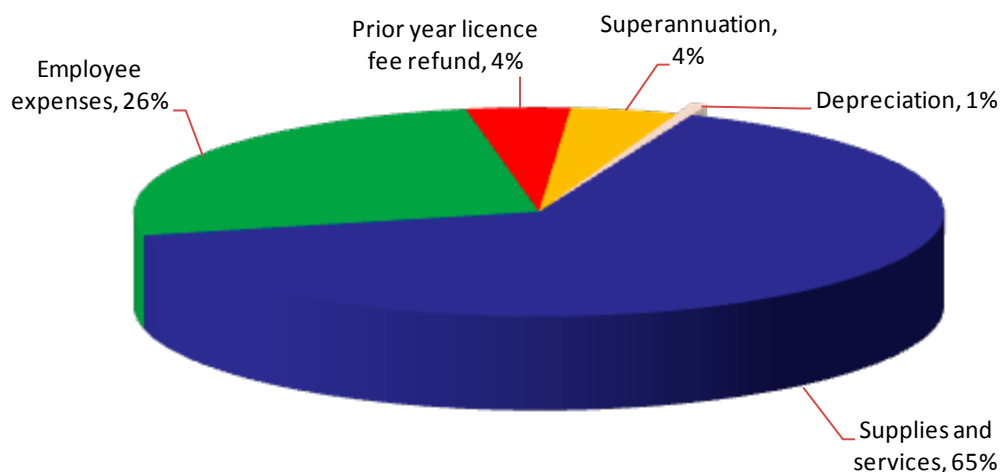
The following financial information is based on audited financial statements for 2008–09 and 2009–10, and the forward estimates contained in the 2009–10 Budget Paper No. 4.

Total expenditure

Components of expenditure

Figure 3 indicates the components of the Commission's expenditure for 2009–10. The largest component of expenditure, supplies and services, represents 65% of expenditure on ordinary activities, or \$1.425 million. Overall total employee and superannuation expenses were slightly lower than in 2008–09. Depreciation charges remained unchanged.

Figure 3 Components of expenditure, 2009–10



Comparison to budget

Total expenditure of \$2.185 million was \$0.286 million (15.1%) higher than the budgeted figure of \$1.899 million. The increase in expenditure was largely attributed to the greater external consultant costs incurred with reviews and inquiries undertaken during the year. This was offset by the reduction in other areas of budgeted supplies and services expenditure.

Comparison to 2008–09 actual expenditure

Total expenditure was \$2.185 million, or 15% higher than the 2008–09 actual result. The main reason for the increase was an increase in the use of external professional services from \$0.105 million in 2008–09 to \$0.781 million in 2009–10. The additional expenditure was necessary in delivering the Commission’s responsibilities for utilities regulation and the inquiry into the enlarged Cotter Dam project. The total employee and superannuation expenditure reduced marginally from \$0.668 million in 2008–09 to \$0.656 million in 2009–10 (2%).

Future trends

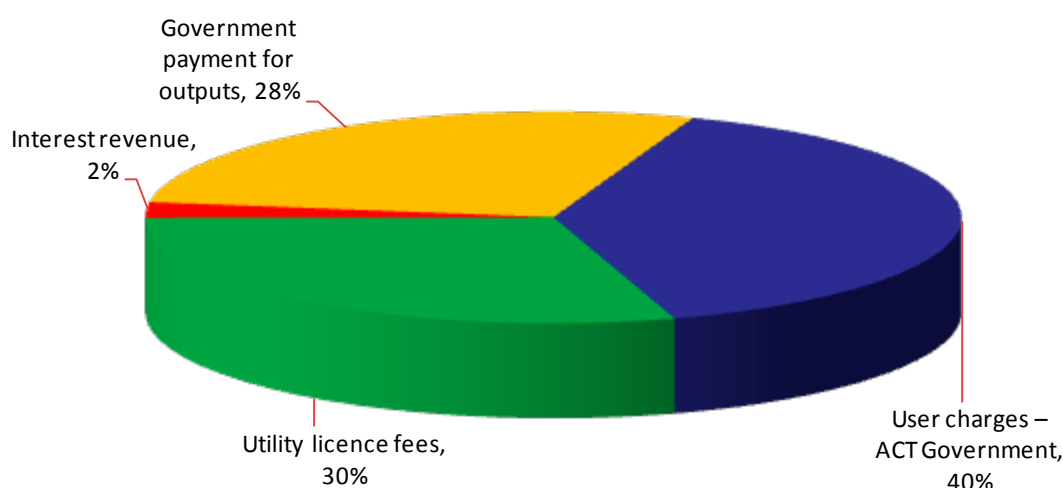
For the two years to 2011–12, expenditure arising from the regulation of utilities and discharge of the Commission’s other statutory responsibilities is expected to remain relatively constant. Future transfers of energy utility regulatory functions to the national regulator (the AER) are unlikely to occur before mid-2012. After that time, the Commission will need to spend less on energy utility regulatory activities. More generally, expenditure may vary over the forward estimates as a consequence of unanticipated references or other requests for Commission services from government and non-government sources.

Total income

Components of income

Figure 4 shows that the main source of income in 2009–10 came from ACT Government user charges (\$0.933 million). This was made up of payments from Treasury for services under the ICRC Act, from DECCEW for regulatory services in relation to the GGAS, from payments for commissioned advice, and from the recovery of costs associated with the Enlarged Cotter Dam Water Security Project investigation. Government payment for outputs (\$0.665 million) is for the Commission’s energy industry regulatory activities. Utility licence fees (\$0.699 million) cover the estimated costs incurred by the Commission, the ACT Planning and Land Authority and ACAT for regulatory activities for water, sewerage and gas transmission utilities. Interest income remains a minor source of the Commission’s income (\$0.056 million).

Figure 4 Components of income, 2009–10



Comparison to Budget

Revenue for the year was \$2.353 million. This was \$0.417 million higher than expected. Government payment for outputs was \$0.180 million greater, reflecting the Treasurer’s Advance

payment to cover unanticipated costs of investigations (regulated retail electricity pricing and electricity feed-in premium rates). ACT Government user charges were \$0.060 million higher (6.8%), while the figure for utility licence fees collected was \$0.168 million or 32% higher than expected. Interest income remained at a constant 2.4% of budgeted revenue.

Comparison to 2008–09 actual income

Total revenue in 2009–10 was \$2.353 million, an increase of \$0.796 million, or 51.1%, from \$1.557 million in the previous financial year. ACT Government user charges accounted for the largest rise in Commission revenue—124.3%, or \$0.517 million, compared to \$0.416 million in 2008–09. Licence fee revenue increased by \$0.098 million.

The average rate of interest on deposits again reduced this year, from 4.64% in 2008–09 to 3.60% in 2009–10. Interest revenue was 18.8% lower as a result.

Future trends

For the two years to 2011–12, revenue arising from the regulation of utilities and discharge of the Commission's other statutory responsibilities is expected to remain relatively constant. Future transfers of energy utility regulatory functions to the national regulator (the AER) are unlikely to occur before mid-2012. After that time, the Commission will need to spend less on energy utility regulatory activities. More generally, revenue may vary over the forward estimates as a consequence of unanticipated references or other requests for Commission services from government and non-government sources.

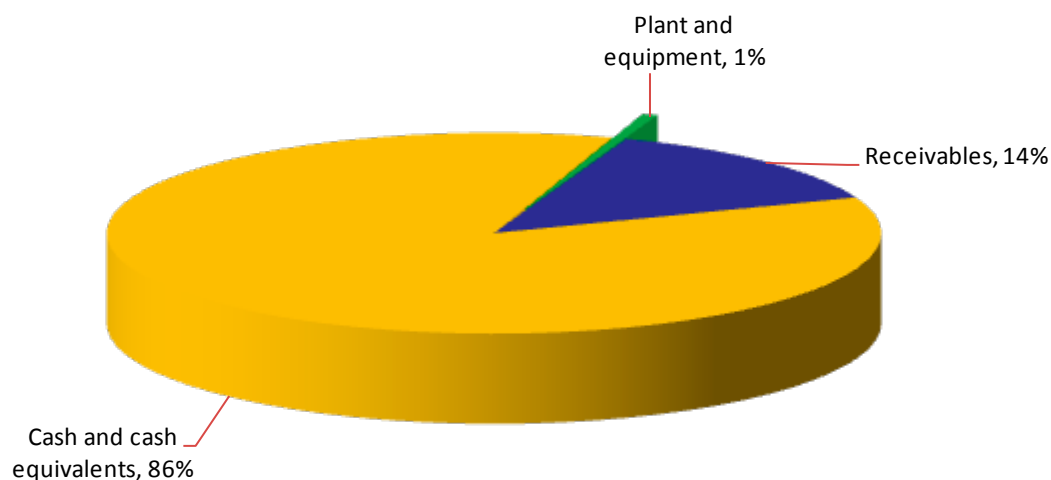
A.5.3 Financial position

Total assets

Components of total assets

The Commission continues to hold the majority of its assets in cash reserves. As shown in figure 5, 99% of total assets are cash and receivables; the remaining assets are plant and equipment.

Figure 5 Total assets, as at 30 June 2010



Comparison to Budget

At 30 June 2010 total assets amounted to \$2.019 million. This is \$0.292 million (12.6%) lower than the expected budget position at 30 June 2010 (\$2.311 million). Cash reserves at year end are more than was budgeted, but receivables are \$0.383 million lower than anticipated. Collection of receivables was better than expected.

Comparison to 2008–09 actuals

The Commission's total asset position is higher than for the same time last year due to the increase in total receivables at 30 June 2010. Total assets were \$0.192 million higher than the comparable figure of \$1.827 million at 30 June 2009. Cash and cash equivalents reduced by \$0.037 million over the 12-month period.

Liquidity

'Liquidity' is the ability of the Commission to satisfy its short-term debts as they fall due. A common indicator for liquidity is the current ratio, which compares the ability to fund short-term liabilities from short-term assets. A ratio of less than 1:1 may indicate a reliance on the next financial year's ACT Government user charges to meet short-term debts. Table 2 shows the Commission's liquidity position.

Table 2 Current ratio

Description	Prior year actual \$'000 2008–09	Current year budget \$'000 2009–10	Current year actual \$'000 2009–10	Forward year budget \$'000 2010–11	Forward year budget \$'000 2011–12	Forward year budget \$'000 2012–13
Current assets	1,801	2,298	2,006	1,886	1,922	1,951
Current liabilities	549	588	569	553	553	553
Current ratio	3.3:1	3.9:1	3.5:1	3.4:1	3.5:1	3.5:1

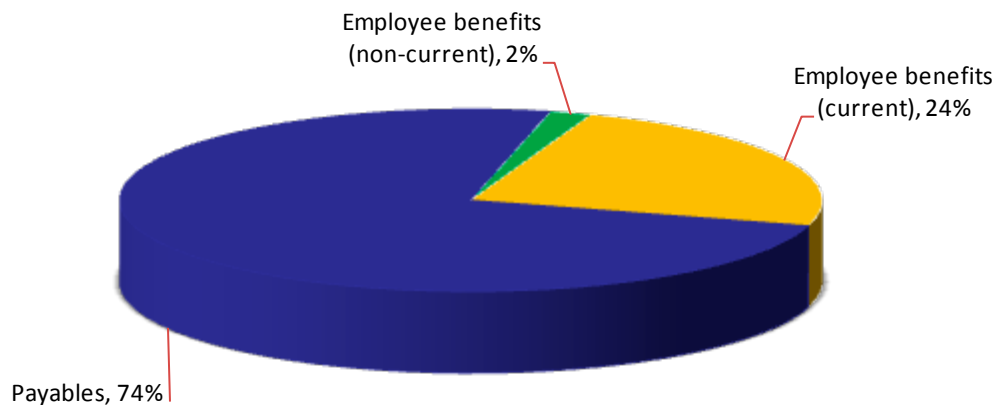
The Commission's current ratio of 3.5:1 for the financial year is a decrease from the budgeted current ratio of 3.9:1. The difference is mainly due to the higher than expected level of current debt collection at year end.

The Commission is expected to maintain its strong level of liquidity.

Total liabilities

Figure 6 indicates that most of the Commission's liabilities relate to payables (74%). This percentage remains relatively unchanged from the previous period.

Figure 6 Total liabilities, as at 30 June 2010



The Commission's total liabilities for the year ended 30 June 2010 were \$0.580 million, \$0.082 million (12.3%) lower than budget and \$0.024 million (4.3%) more than at the year ended 30 June 2009. While total employee benefits remain unchanged, total payables have increased marginally, by \$0.022 million (5.4%), from \$0.408 million to \$0.430 million at 30 June 2010.

A.6 Financial report

The Commission has prepared financial statements for 2009–10 in accordance with the relevant accounting standards. The statements were independently audited as required by the *Financial Management Act 1996*, ACT Accounting Standards, and the *Chief Minister's 2007–2010 Annual Report Directions*. The audit opinion, financial statements and accompanying notes to the statements are in appendix 1.

A.7 Statement of performance

Each year, the Commission nominates a set of performance measures and targets through its Statement of Intent. The Statement of Intent is prepared as part of the Budget process and is agreed between the Senior Commissioner and the Treasurer. The measures indicate the expected outputs for the coming year.

The Commission notes in this regard that some of its actual outputs are not reflected in the measures. For example, the Commission may receive a reference under the provisions of the ICRC Act, such as the Enlarged Cotter Dam Water Security Project investigation, which was undertaken in 2009–10 but which could not be anticipated at the time the Statement of Intent was framed.

In 2009–10, the Commission met all but one of its performance measures. The statement of performance and the auditor’s opinion and statement of responsibility are included in appendix 2 of this annual report.

A.8 Strategic indicators

This section does not apply to the Commission.

A.9 Analysis of agency performance

This section is addressed in other sections of the report, in particular sections A.2, A.3 and A.5.

A.10 Triple bottom line report

	Indicator	2009–10 result	2008–09 result	% change
	Employee expenses			
	Number of staff employed (head count, not FTE)	5	6	-17%
	Total employee expenditure ('000 dollars) ^(a)	562	575	-2%
ECONOMIC	Operating statement			
	Total expenditure ('000 dollars)	2,185	1,902	15%
	Total own source revenue ('000 dollars) ^(b)	1,688	1,086	55%
	Total net cost of services ('000 dollars) ^(c)	497	816	-39%
	Economic viability			
	Total assets ('000 dollars)	2,019	1,827	11%
	Total liabilities ('000 dollars)	580	556	4%
	Transport			
	Total number of fleet vehicles	0	0	n/a
	Total transport fuel used (kilolitres)	0	0	n/a
	Total direct greenhouse emissions) of the fleet (tonnes of CO ₂ e)	0	0	n/a
	Energy use^(d)			
	Total office energy use (megajoules)	Refer to JACS's annual report	Refer to JACS's annual report	n/a
	Office energy use per person (megajoules)	Refer to JACS's annual report	Refer to JACS's annual report	n/a
ENVIRONMENTAL	Office energy use per m ² (megajoules)	Refer to JACS's annual report	Refer to JACS's annual report	n/a
	Greenhouse emissions^(d)			
	Total office greenhouse emissions—direct and indirect (tonnes of CO ₂ -e)	Refer to JACS's annual report	Refer to JACS's annual report	n/a
	Total office greenhouse emissions per person (tonnes of CO ₂ -e)	Refer to JACS's annual report	Refer to JACS's annual report	n/a
	Total office greenhouse emissions per m ² (tonnes of CO ₂ -e)	Refer to JACS's annual report	Refer to JACS's annual report	n/a
	Water consumption^(d)			
Total water use (kilolitres)	Refer to JACS's annual report	Refer to JACS's annual report	n/a	
Office water use per person (kilolitres)	Refer to JACS's annual report	Refer to JACS's annual report	n/a	

Indicator	2009–10 result	2008–09 result	% change
Office water use per m ² (kilolitres)	Refer to JACS's annual report	Refer to JACS's annual report	n/a
Resource efficiency and waste^(d)			
Total co-mingled office waste per FTE (litres)	Refer to JACS's annual report	Refer to JACS's annual report	n/a
Total paper recycled (litres)	Refer to JACS's annual report	Refer to JACS's annual report	n/a
Total paper used (by reams) per FTE (litres)	Refer to JACS's annual report	Refer to JACS's annual report	n/a
Percentage of paper recycled (%)	Refer to JACS's annual report	Refer to JACS's annual report	n/a
The diversity of our workforce			
Women (female FTEs as a percentage of the total workforce)	40% (2)	50% (3)	-33%
People with a disability (as a percentage of the total workforce)	20% (1)	40% (2)	-50%
Aboriginal and Torres Strait Islander people (as a percentage of the total workforce)	0	0	0%
Staff with English as a second language (as a percentage of the total workforce)	0	0	0%
Staff health and wellbeing			
OH&S incident reports	0	0	0%
Accepted claims for compensation (as at 31 August 2010)	0	0	0%
Staff receiving influenza vaccinations ^(e)	3	6	-50%
Workstation assessments requested	0	1	-100%

(a) Does not include superannuation expenses.

(b) Own source revenue is made up of user charges (ACT Government), fees and interest.

(c) Total net cost of services is calculated as total expenditure less own source revenue.

(d) Commission performance aggregated in the Department of Justice and Community Safety (JACS) annual report.

(e) Includes staff and statutory officer holder.

Part B Commission's performance on consultation and scrutiny

B.1 Community engagement

In the fulfilment of its statutory responsibilities and organisational objectives, the Commission is committed to full and open consultation with the community on matters under investigation. The Commission encourages and provides opportunities for participation at all stages of its inquiries by individuals and by representatives of community groups, industry, peak bodies, regulatory agencies and other interested parties.

The Commission publishes public notices seeking input on all references received for price and regulatory inquiries, and encourages submissions from interested parties. Where public hearings are held, members of the public are invited to attend to make personal submissions.

During 2009–10, the Commission undertook an inquiries into:

- the regulated electricity industry to determine retail prices for non-contestable electricity customers for the two years from 1 July 2010
- the determination of the electricity feed-in tariff premium rate
- the enlarged Cotter Dam.

The Commission prepared issues papers and draft reports for the inquiries and consulted widely on each before releasing final reports. Consistent with Commission practice, copies of all submissions received in relation to the inquiry were published on the Commission's website, with the exception of those the submitter identified as confidential, and this was accepted by the Commission.

The Commission prepares a statement of reasons for its regulatory decisions and has made this available to interested stakeholders and to the general public by way of its website. All consultation documents (including transcripts of hearing) and submissions received appear on the Commission's website.

In addition, the Commission plays an important role in informing the debate on regulatory issues in the broader community. In 2009–10, the Commission continued to provide information to the community through presentations at meetings, conferences and seminars, and through media interviews.

B.2 Internal and external scrutiny

B.2.1 Auditor-General's reports

The Commission was included in the Auditor-General's report on annual financial statements for the year ended 30 June 2010. The Auditor-General gave an unqualified opinion on the Commission's financial statements and statement of performance. The Commission has maintained an unbroken record of unqualified audit opinions since it was first subject to the audit requirement in 2000. The Commission's unqualified audited financial statements for 2009–10 appear in appendix 1.

B.2.2 ACT Ombudsman's reports

During 2009–10, the Commission was not the subject of any complaint to or investigation by the ACT Ombudsman.

B.3 Legislative Assembly committee inquiries and reports

The Commission was not the subject of a review by a Legislative Assembly committee in 2009–10. The Commission participated in Legislative Assembly Estimates Committee and Public Accounts Committee reviews of Budget estimates for the period to 30 June 2010 and annual reports for the period to 30 June 2009.

B.4 Legislation report

During 2009–10, the Commission’s principal responsibilities were established through the:

- *Independent Competition and Regulatory Commission Act 1997*
- *Utilities Act 2000*.

In December 2009, the provisions regarding the constitution of the Commission in the ICRC Act were amended to clarify that the Commission is constituted by only one commissioner, but that other commissioners may be appointed to it. The intention of the amendment was to resolve any doubt that the Commission is validly constituted by only one commissioner.³⁵

The Commission also had obligations under a range of other laws,³⁶ including:

- *Electricity (Greenhouse Gas Emissions) Act 2004*
- *Electricity Feed-in (Renewable Energy Premium) Act 2008*³⁷
- *Financial Management Act 1996*
- *Annual Reports (Government Agencies) Act 1995*
- *Government Procurement Act 2001*
- *Public Access to Government Contracts Act 2000*
- *Public Sector Management Act 1990*
- *Territory Records Act 2002*.

The Commission does not have policy carriage for the enactment of legislation, but is responsible for the approval of a number of statutory instruments. These include industry codes under the Utilities Act. Detailed information on codes is provided in section A.3.10.

³⁵ This follows the explanatory statement for the *Justice and Community Safety Legislation Amendment Act 2009* (No 3).

³⁶ The move to national regulation of electricity and natural gas distribution systems has removed previous Commission roles under the *Electricity (National Scheme) Act 1997* and the now repealed *Gas Pipelines Access (ACT) Act 1998*.

³⁷ The passage of the *Electricity Feed-in (Renewable Energy Premium) Act 2008* establishes the Electricity Feed-in Scheme. The Act provides a role for the Commission in providing advice to the Minister about the premium rate to be charged for electricity fed into the network by relevant small-scale generators.

Part C Legislative and policy-based reporting

C.1 Risk management and internal audit

The Commission's approach to risk management is outlined in section A.5 (Management discussion and analysis). The discussion covers:

- consultant risk
- operational risk
- information risk
- workplace safety and related employee risks
- financial risk.

As noted in section A.5, these risks continue to be assessed as low and are actively monitored and managed by the Commission. Nevertheless, the Commission is committed to ongoing improvement of its approach to risk management.

The Commission notes that it is a very small organisation, and the establishment of a formal internal audit committee of the type envisaged in the Annual Report Directions is not appropriate. However, the Commission is attentive to the need for strong internal audit controls. The Commission developed the following plans in 2008–09:

- Business Continuity Plan
- Business Risk Management Plan
- Fraud Policy and Fraud Control Plan.

In latter 2009–10, the Commission began to review these documents with a view to endorsing revised plans in 2010–11.

C.2 Fraud prevention

The Commission manages the risk of fraud through a *Fraud Policy and Fraud Control Plan*. The Commission's financial risk management practices are designed to prevent financial fraud. The Commission restricts the control of financial transactions, invoicing, payments and banking to reduce fraud and mishandling of funds. Similar tight controls are applied to cash; no cash, other than petty cash, is kept in the Commission's office. The Senior Commissioner and the chief executive officer maintain regular oversight of activities and principal transactions.

All procurement processes are conducted in accordance with endorsed procedures and legislative requirements, and in close liaison with ACT Procurement Solutions.

C.3 Public interest disclosure

Like other government agencies, the Commission has obligations under the *Public Interest Disclosure Act 1994*. In particular, the Commission is required to have in place procedures to facilitate the making of public interest disclosures and to deal with public interest disclosures that the Commission is the proper authority to receive, and to ensure that those procedures are maintained.

The Commission has adopted the procedures established by the ACT Government, including those dealing with:

- making public interest disclosures
- assisting and providing information to a person who makes a public interest disclosure

- protecting a person who makes a public interest disclosure from unlawful reprisals, including unlawful reprisals taken by public officials in relation to the government agency
- acting on public interest disclosures.

Copies of the Commission's procedures are publicly available.

During 2009–10, the Commission received no public interest disclosure requests, and was involved in no incidents involving public interest disclosure.

C.4 Freedom of information

C.4.1 Section 7 statement

Section 7 of the *Freedom of Information Act 1989* (FOI Act) sets out requirements for the publication of information concerning the functions and documents of agencies. The Commission is also subject to requirements under both the ICRC Act and the Utilities Act to make public all decisions, submissions to inquiries, reports, draft reports and reasons for the Commission's decisions. Guidelines about information access and confidentiality are available on the Commission's website (www.icrc.act.gov.au).

Organisational functions and powers

Section A.1.1 sets out a summary of the Commission's organisational functions. Section B.4 lists legislation under which the Commission exercises statutory powers.

Public participation in decision making

Section B.1 sets out the Commission's activities and obligations under legislation to promote public participation in decision making.

Categories of documents

The Commission holds several basic categories of documents:

- those that are freely available on request and without charge
- all other kinds of documents that may be available under the FOI Act.

Documents available on request and without charge

Documents within this category include draft and final reports on investigations on all issues relating to prices, access disputes, access arrangement proposals, and decisions on utilities licensing, and approval of industry codes and code variations. These documents are distributed from the Commission's office, are made available to libraries throughout the ACT, and are available on the Commission's webpage and/or the ACT Legislation Register.

The Commission does not charge for any of its publications.

Documents of other kinds that may be available under the FOI Act

Documents of other kinds that may be available under the FOI Act include:

- general files, including internal, interagency and public documents, minutes of meetings, agendas and background papers
- financial and accounting records
- details of contracts and tenders
- utility licensing-related files

- utility performance and compliance data and records
- inquiry-specific files, including analyses and modelling, and stakeholder submissions.

Access arrangements

People seeking information are encouraged to seek access through contact with the Commission before initiating formal access through the FOI Act.

The chief executive officer of the Commission is the contact for requests of this type.

The Commission's offices at 12 Moore Street, Canberra City, are wheelchair accessible. Public parking is nearby. Public transport is readily available.

C.4.2 Section 8 statement

Section 8 provides that agencies should make available documents which guide decision making. The Commission promotes transparency in decision making. The documents are available on request. In addition, the Commission's policies on the treatment of confidential and personal information under the ICRC Act and its determined disclosure guidelines are available on the Commission's website and the ACT Legislation Register.³⁸

C.4.3 Section 79 statement

During 2009–10, the Commission received no requests for information disclosure under the terms of the FOI Act.

C.5 Internal accountability

The structure of the Commission is set out in Figure 2 in Section A.1.3 of this annual report.

In 2009–10, Paul Baxter was the Senior Commissioner (appointed 1996; reappointed 2004; reappointed for one year from 1 July 2009; reappointed for one year from 1 July 2010). From 1 July 2009 to 30 June 2010, the Commission's chief executive officer was Ms Shelley Schreiner.

As set out in the ICRC Act, the Senior Commissioner is responsible for the governance of the Commission and the achievement of its objectives. The major corporate objectives of the Commission, as distinct from the Commission's statutory objectives, are:

- subject to the ICRC Act, to operate as a businesslike, customer service-oriented entity
- to use benchmarking, to the extent possible for a regulatory agency, in order to operate at least as efficiently as alternative service providers and to provide quality, value-for-money services in all aspects of the Commission's operations
- to use financial practices and maintain accounts and records that satisfy the requirements of the *Financial Management Act 1996*, including the associated ACT Accounting Policy Manual, modelled on the requirements of Australian Accounting Standards, and fairly present the Commission's financial position and operational and cash flow results for planning and reporting purposes
- to adopt high-standard operating practices to safeguard the environment and health and safety of staff
- to provide a productive and satisfying working environment for staff, and a commitment to high standards of human resource management based on the principles of equal employment opportunity.

³⁸ DI2005-191.

During 2009–10, the Senior Commissioner continued to provide a high level of corporate governance oversight of the Commission.

Remuneration for the Senior Commissioner is subject to determination by the ACT Remuneration Tribunal.

Section 10B of the ICRC Act sets out the functions of the chief executive officer as follows:

- ensuring, as far as practicable, that the Commission’s statement of intent is implemented effectively and efficiently
- managing the day-to-day operations of the Commission secretariat in accordance with applicable governmental policies (if any) for the Commission; the policies set by the Commission (if any); and each legal requirement that applies to the Commission
- regularly advising the Commission about its operation and financial performance.

Given the size of the Commission, there are no formally constituted senior management committees.

The Commission continued to pursue best practice in its corporate governance and management. All determinations, regulatory decisions and advice developed by the Commission, and the processes by which those outputs are developed, remain accessible and transparent and include extensive opportunities for public consultation.

The Commission promotes appropriate ethical standards to guide conduct. Staff are aware of the expectations of government and the community for professionalism and probity in the ACT Public Service, and of the ethical framework of values and principles developed under the *Public Sector Management Act 1994* that underpin public administration.

C.6 Human resources performance

This section describes the Commission’s approach to human resources management and workforce planning, including the alignment of the workforce profile to meet its objectives and responsibilities.

As noted in previous reports, the Commission’s approach to managing human resources efficiently and effectively is to maintain a core permanent staff with critical skills and experience. Areas of expertise include regulatory economics and regulatory law and policy. The Commission also employs a strategy of accessing specialist skills through contract and non-ongoing staff and consultants (see section C.14 for details of such consultancies in 2009–10). This strategy recognises the need for the Commission to respond when references or other requests require additional capacity. It provides the flexibility to respond to future challenges, particularly in an environment in which the future regulatory framework has yet to be finalised.

The Commission also seeks to work collaboratively with other parties within the ACT Government and other Australian regulatory bodies, in particular with the Australian Energy Regulator, to ensure that it is able to make use of work being undertaken elsewhere and avoid unnecessary duplication.

The Commission aims to sustain community confidence in its work through high-quality work and processes that emphasise transparency and consultation.

The Commission’s overriding goal is to remain, as far as possible, an ‘employer of choice’—that is, one with conditions and practices that attract and retain high-calibre staff.

The constraints imposed on a small organisation with few permanent staff have resulted, over time, in relatively high staff turnover, particularly as the key capability areas identified above are

in high demand Australia-wide. On the other hand, the Commission's small scale, which provides opportunities for broad experience and substantial responsibility for outcomes, is a factor that may attract staff to the organisation.

Given its small size, the Commission has not implemented any specific employment strategies, including for people with a disability, apprenticeships and traineeships.

C.7 Staffing profile

The following tables provide details of the Commission's staffing profile at 30 June 2010.

Table 3 Full-time equivalent and headcount, as at 30 June 2010

	Female	Male
Full-time equivalent by gender	2.00	3.00
Headcount by gender	2	3
% of workforce	40.0	60.0

Note: The Senior Commissioner is not included in the headcount.

Table 4 Employment type, as at 30 June 2010

Permanent	Temporary	Casual
4	1	0

Table 5 Classifications, as at 30 June 2010

Classification group	Female	Male	Total
Administrative Officers	1	0	1
Senior Officers	1	3	4
Total	2	3	5

Table 6 Employment category by gender, as at 30 June 2010

Employment category	Female	Male	Total
Casual	0	0	0
Permanent full-time	2	2	4
Permanent part-time	0	0	0
Temporary full-time	0	1	1
Temporary part-time	0	0	0
Total	2	3	5

Table 7 Average length of service by gender, as at 30 June 2010

Average length of service (years)	Female	Male	Total
0–2	0	1	1
2–4	1	1	2
4–6	1	0	1
6–8	0	1	1
8–10	0	0	0
10–12	0	0	0
12–14	0	0	0
14+	0	0	0

Table 8 Total average length of service by gender, as at 30 June 2010

Gender	Average length of service (years)
Female	3.8
Male	3.8
Total	3.8

Table 9 Age profile, as at 30 June 2010

Age group	Female	Male	Total
<20	0	0	0
20–24	0	0	0
25–29	0	0	0
30–34	0	0	0
35–39	0	0	0
40–44	0	0	0
45–49	0	0	0
50–54	0	2	2
55–59	1	0	1
60–64	1	1	2
65–69	0	0	0
70+	0	0	0

Table 10 Agency profile, as at 30 June 2010

Agency	Full-time equivalent	Headcount
ICRC	5	5
Total	5	5

Table 11 Agency profile by employment type, as at 30 June 2010

Agency	Permanent	Temporary	Casual
ICRC	4	1	0
Total	4	1	0

Table 12 Equity and workplace diversity, as at 30 June 2010

	A Aboriginal and/or Torres Strait Islander employment	B Culturally and linguistically diverse (CALD) employment	C Employment of people with a disability	Number of employees who identify in any of the equity and diversity categories (A, B, C)	Women
Headcount	0	0	1	0	2
% of total staff	0.0	0.0	20.0	0.0	40.0

C.8 Learning and development

This section outlines how learning and development programs and activities have ensured that skills and knowledge are retained and enhanced within the Commission.

During 2009–10, the Commission continued to be guided by the objectives for learning and development in the Department of Justice and Community Safety’s Union Collective Agreement 2007–2010. The department supported the Commission in this, enabling Commission staff to access learning and development opportunities. Information on the department’s programs and initiatives is available separately in its annual report.

In addition to this support, the Commission encouraged staff to take advantage of other learning and development opportunities, including attendance at conferences, seminars and training sessions and programs relevant to the Commission’s specific responsibilities.

C.9 Workplace health and safety

This discussion complements that in section A.5.1 on risk management, which was prepared as part of the management discussion and analysis supporting the audited annual financial report.

During 2009–10, Commission staff participated in the Department of Justice and Community Safety’s consultation processes established through the *Work Safety Act 2008*. More generally, the department supports the Commission in relation to workplace health and safety planning and initiatives.

During 2009–10, Commission staff were able to access wellness programs provided through the Department of Justice and Community Safety, including flu vaccinations and health assessments.

No investigations were conducted during 2009–10, and no notices were given under sections 171 and 172 of the Work Safety Act.

C.10 Workplace relations

Staff of the Commission are covered by the Department of Justice and Community Safety Union Collective Agreement 2007–2010.

In 2009–10, one staff member was covered by a special employment arrangement. There were no Australian workplace agreements in place.

There was no special employment arrangement providing for a privately plated vehicle.

C.11 Strategic Bushfire Management Plan

The Commission has no reporting obligations under the Strategic Bushfire Management Plan.

C.12 Strategic asset management

The Commission's only assets are the furniture and fittings in its offices. The repairs and maintenance of those assets are managed, but they have no manageable capital value in the sense that property has. Since 2000, the assets have been depreciated using a straight line on historical cost method. Other operating assets, such as IT equipment, printers and communications equipment, are leased. The Commission has no need for a formal asset management plan.

C.13 Capital works

The Commission did not undertake capital works in 2009–10. The Commission has no capital assets, other than the furniture and fittings referred to above.

C.14 Government contracting

This discussion complements that in section A.5.1 on risk management, which was prepared as part of the management discussion and analysis supporting the audited annual financial report.

The Commission confirms that during 2009–10 selection and management processes complied with the *Government Procurement Act 2001* and the *Government Procurement Regulation 2007*. The Commission worked closely with ACT Procurement Solutions on procurement processes.

Table 13 lists consultants and contractors involved in the Commission's operations in 2009–10. It lists only contractors and consultants external to the ACT Government.

Table 13 Contractor and consultant services, 2009–10

Consultant/contractor	Description of service (date contract let)	Value (\$)
WordsWorth Writing	Provision of editorial and design services	29,578
CopyQik	Provision of printing services	26,589
Hays Recruitment	Provision of staff placement services	14,612
Jindabyne Business Services	Provision of financial management and accounting services (Rollover of contract—July 2009)	56,766
PricewaterhouseCoopers	Provision of regulatory analysis and advice—development of model for energy purchase cost of retail electricity—regulated retail electricity price review (November 2009)	94,255
Blake Dawson	Provision of legal advice	20,390
Halcrow Pacific	Provision of regulatory analysis and advice—Enlarged Cotter Dam Water Security Project investigation (January 2009)	238,151
Deloitte Touche Tohmatsu	Provision of regulatory analysis and advice—electricity feed-in premium tariff advice (January 2010)	88,433
Deloitte Touche Tohmatsu	Provision of regulatory analysis and advice—regulated retail electricity price review (March 2010)	58,650
Deloitte Touche Tohmatsu	Provision of regulatory analysis and advice—review of licensed utilities compliance and performance reporting (April 2010)	16,250
Strategic Economics Consulting Group	Provision of regulatory analysis and advice—Enlarged Cotter Dam Water Security Project investigation (February 2010)	135,545

Note: All figures are exclusive of goods and services tax and rounded to whole dollars; they are based on accrued liabilities.

C.15 Community grants, assistance and sponsorship

The Commission neither provided community grants, assistance or sponsorship nor administered grants, assistance or sponsorships on behalf of government agencies.

C.16 Territory records

The handling, storage and retrieval of information is a high-risk area for the Commission. To mitigate risk, the Commission has implemented the requirements of the *Territory Records Act 2002* by creating and complying with a records management program, which has applied formally since 1 July 2004. The program includes a records management policy and procedures detailing the practical requirements of the Commission's record keeping, including standard operating procedures for all Commission staff and consultants to follow when carrying out record keeping, and the identification of who is responsible for each of the tasks in the record-keeping process.

The Commission's approved records disposal schedule is found on the ACT Legislation Register (*see* Territory Records (Records Disposal Schedule—Independent Competition and Regulation Records) Approval 2006 (No 1) Notifiable instrument NI2006–28). The Commission holds no records subject to Part 3 (Access to records) of the *Territory Records Act*.³⁹

³⁹ Part 3, section 26 of the *Territory Records Act 2002* provides that a record of an agency is open to public access under the Act if 20 years has elapsed since the record, or the original of which it is a copy, came into existence. Section 28 refers to sections 'disapplying' certain provisions of the *Freedom of Information Act 1989*.

C.17 *Human Rights Act 2004*

During 2009–10, Commission staff attended a training workshop on the *Human Rights Act 2004* and new obligations for public authorities. The Senior Commissioner and the chief executive officer also participated in a Human Rights Commission Forum on Economic, Social and Cultural Rights—Implications for the Environment, Energy and Water. The Commission recognises the importance of economic, social and cultural rights—broadly encompassing matters such as environmental protection and access to essential services—in its decision making. Under section 20 of the ICRC Act, the Commission must give regard to matters including:

- the protection of consumers from abuses of monopoly power in terms of prices, pricing policies (including policies relating to the level or structure of prices for services) and standard of regulated services
- standards of quality, reliability and safety of the regulated services
- the need for greater efficiency in the provision of regulated services to reduce costs to consumers and taxpayers
- the principles of ecologically sustainable development (the precautionary principle, the inter-generational equity principle, conservation of biological diversity and ecological integrity, and improved valuation and pricing of environmental resources)
- the social impacts of the decision.

The Commission also gives regard to the matters prescribed in section 20 of the ICRC Act when making non-price directions.

C.18 Commissioner for the Environment

There were no requests during 2009–10 from the Commissioner for the Environment for staff to assist in the preparation of the State of the Environment report.

C.19 ACT Multicultural Strategy 2010–2013

The Commission has no specific activities to report in relation to the ACT Multicultural Strategy.

The Commission encourages access to its processes by all members of the community. The Commission does not provide its reports in languages other than English, as the cost would be prohibitive. Where appropriate, the Commission will assist members of the community through use of, or referral to, translation services.

C.20 Aboriginal and Torres Strait Islander reporting

The Commission has no specific activities to report in relation to Aboriginal and Torres Strait Islander peoples. As noted in section C.17, the ICRC Act requires the Commission to have regard to consumer protections, service quality and the social impacts of its pricing decisions. In this context, the Commission is mindful of the impact of its decisions on Aboriginal and Torres Strait Islander peoples.

C.21 Ecologically sustainable development

Regulatory objectives

As noted in section C.17, section 20 of the ICRC Act requires the Commission to give regard to a range matters when conducting a pricing review. These include the principles of ecologically sustainable development (the precautionary principle, the inter-generational equity principle,

conservation of biological diversity and ecological integrity, and improved valuation and pricing of environmental resources).

In the delivery of its core responsibilities, the Commission continued to further objectives of the ACT Climate Change Strategy⁴⁰, in particular through its role as compliance regulator for the ACT Greenhouse Gas Abatement Scheme, through oversight of the Electricity Feed-in Scheme, and through its responsibility for compliance oversight of the GreenPower scheme.

Operational objectives

In its operations, the Commission encourages staff to manage resource use responsibly. Consistent with the government's 'no waste' policies, the Commission continued its commitment to reduce the amount of paper it uses and increase its recycling activities. During 2009–10, the Commission continued to participate in the Department of Justice and Community Safety's commingled recycling initiative, commenced during 2008–09.

The Commission receives corporate support for accommodation through the department. Commission consumption data is aggregated with that of the department and is reported in the department's annual report.

Table 14 summarises Commission paper consumption data in 2009–10. Table 15 summarises the Commission's ecological sustainability priorities.

Table 14 Commission paper consumption data, 2009–10

Resource	Size/amount	Collection	Annual total
Secure paper	1 × 240-litre bin	Fortnightly	13 × 240-litre bins (estimated)
Non-secure paper	1 × 240-litre bin	Weekly	50 × 240-litre bins (estimated)
Paper (used)	2.7 reams	Weekly	140 reams

⁴⁰ Information on the strategy is available at http://www.environment.act.gov.au/climate_change/weathering_the_change.

Table 15 Commission activities supporting ecologically sustainable development, 2009–10

Issue	Activity	Outcome
<i>Core business</i>		
Utility compliance regulation and performance reporting	Establishing benchmarks, monitoring compliance and penalising non-compliance under the ACT Greenhouse Gas Abatement Scheme Monitoring compliance the GreenPower scheme Monitoring compliance with the Electricity Feed-in Code Reporting on a range of environmental indicators in relation to energy and water	Reduced greenhouse gas emissions Improved information on energy and water performance in the Territory
Inquiries	Considering social and environmental impacts, including the application of the precautionary principle	Inquiry outcomes reflect an appropriate balance between economic, social and environmental impacts
Price setting	Considering social and environmental costs	Service pricing for regulated industries that reflects full costs, including environmental costs and the social impact of prices
<i>Operations</i>		
Consumables	Reducing print runs and mail-outs of published documents, complemented by greater reliance on website availability	Reduced resource use
Consumables	Recycling used fax, printer and copier cartridges	Improved recycling practices
Disposables	Recycling paper and cardboard	Reduced impact on landfill
Energy use	Encouraging shutdown of PCs	Reduced energy use

C.22 ACT Women's Plan 2010–2015

The Commission has no specific activities to report in relation to the ACT Women's Plan.

As noted in section C.17, the ICRC Act requires the Commission to have regard to consumer protections, service quality and the social impacts of its pricing decisions. In this context, the Commission is mindful of the impact of its decisions on women.

C.23 Model litigant guidelines

During 2009–10, the Commission was not involved in any litigation.

Appendixes



Appendix 1 Financial statements and audit report

Independent Competition and Regulatory Commission

Financial Statements

For the Year Ended 30 June 2010

Auditor's opinion on the financial statements



ACT AUDITOR-GENERAL'S OFFICE

INDEPENDENT AUDIT REPORT

INDEPENDENT COMPETITION AND REGULATORY COMMISSION

To the Members of the ACT Legislative Assembly

Report on the financial statements

I have audited the financial statements of the Independent Competition and Regulatory Commission (the Commission) for the year ended 30 June 2010. The financial statements are comprised of the operating statement, balance sheet, statement of changes in equity, cash flow statement, statement of appropriation and accompanying notes.

Responsibility for the financial statements

The Chief Executive Officer of the Commission is responsible for the preparation and fair presentation of the financial statements in accordance with the *Financial Management Act 1996*. This includes responsibility for maintaining adequate accounting records and internal controls that are designed to prevent and detect fraud and error and for the accounting policies and estimates used in the preparation of the financial statements.

The auditor's responsibility

My responsibility is to express an independent audit opinion on the financial statements of the Commission based on my audit as required by the *Financial Management Act 1996*.

The audit was conducted in accordance with Australian Auditing Standards to provide reasonable assurance that the financial statements are free of material misstatement.

I formed the audit opinion by performing audit procedures to obtain evidence about the amounts and disclosures in the financial statements. As these procedures are influenced by the use of professional judgement, selective testing of evidence supporting the amounts and other disclosures in the financial statements, inherent limitations of internal control and the availability of persuasive rather than conclusive evidence, an audit cannot guarantee that all material misstatements have been detected.

Although the effectiveness of internal controls is considered when determining the nature and extent of audit procedures, the audit was not designed to provide assurance on internal controls.

The audit is not designed to provide assurance on the appropriateness of budget information included in the financial statements or to evaluate the prudence of decisions made by the Commission.

Level 4, 11 Moore Street, Canberra City, ACT 2601 | PO Box 275, Civic Square, ACT 2608.
Telephone: 02 6207 0833 | Facsimile: 02 6207 0826 | Email: actauditorgeneral@act.gov.au

Electronic presentation of the audited financial statements

Those viewing an electronic presentation of the financial statements should note that the audit does not provide assurance on the integrity of information presented electronically and does not provide an opinion on any other information which may have been hyperlinked to or from this report. If users of the report are concerned with the inherent risks arising from the electronic presentation of information, they are advised to refer to the printed copy of the audited financial statements to confirm the accuracy of this electronically presented information.

Independence

I followed applicable independence requirements of Australian professional ethical pronouncements in conducting the audit.

Audit opinion

In my opinion, the financial statements of the Commission for the year ended 30 June 2010:

- (i) are presented in accordance with the *Financial Management Act 1996*, Accounting Standards and other mandatory financial reporting requirements in Australia; and
- (ii) present fairly the financial position of the Commission as at 30 June 2010 and the results of its operations and its cash flows for the year then ended.

This audit opinion should be read in conjunction with the above information.

Bernie Sheville
Director, Financial Audits
9 August 2010

Statement of responsibility

**Independent Competition and Regulatory Commission
Financial Statements
For the Year Ended 30 June 2010**

Statement of Responsibility

In my opinion, the financial statements are in agreement with the Commission's accounts and records and fairly reflect the financial operations of the Commission for the year ended 30 June 2010, and the financial position of the Commission on that date.


Shelley Schreiner
Chief Executive Officer
Independent Competition and Regulatory Commission

16 July 2010

Independent Competition and Regulatory Commission

Operating Statement for the year ended 30 June 2010

	Note No.	Actual 2010 \$'000	Original Budget 2010 \$'000	Actual 2009 \$'000
Income				
<i>Revenue</i>				
Government Payment for Outputs	4	665	485	471
User Charges – ACT Government	5	933	873	416
Fees	6	699	531	601
Interest	7	56	47	69
<i>Total Revenue</i>		<u>2,353</u>	<u>1,936</u>	<u>1,557</u>
Total Income		<u>2,353</u>	<u>1,936</u>	<u>1,557</u>
Expenses				
Employee Expenses	8	562	522	575
Superannuation Expenses	9	94	78	93
Supplies and Services	10	1,425	1,286	828
Prior Year Licence Fee Refund	11	91	–	393
Depreciation	12	13	13	13
Other Expenses		–	14	–
Total Expenses		<u>2,185</u>	<u>1,913</u>	<u>1,902</u>
Operating Surplus/(Deficit)		<u>168</u>	<u>23</u>	<u>(345)</u>
Total Comprehensive Income		<u>168</u>	<u>23</u>	<u>(345)</u>

The above Operating Statement should be read in conjunction with the accompanying notes.

Independent Competition and Regulatory Commission

Balance Sheet as at 30 June 2010

	Note No.	Actual 2010 \$'000	Original Budget 2010 \$'000	Actual 2009 \$'000
Current Assets				
Cash and Cash Equivalents	15	1,730	1,639	1,767
Receivables	16	276	659	34
Total Current Assets		2,006	2,298	1,801
Non-Current Assets				
Plant and Equipment	17	13	13	26
Total Non-Current Assets		13	13	26
Total Assets		2,019	2,311	1,827
Current Liabilities				
Payables	18	430	512	408
Employee Benefits	19	139	76	141
Total Current Liabilities		569	588	549
Non-Current Liabilities				
Employee Benefits	19	11	74	7
Total Non-Current Liabilities		11	74	7
Total Liabilities		580	662	556
Net Assets		1,439	1,649	1,271
Equity				
Accumulated Funds		1,439	1,649	1,271
Total Equity		1,439	1,649	1,271

The above Balance Sheet should be read in conjunction with the accompanying notes.

Independent Competition and Regulatory Commission

Statement of Changes in Equity for the year ended 30 June 2010

	Accumulated Funds Actual 2010 \$'000	Total Equity Actual 2010 \$'000	Original Budget 2010 \$'000
Balance at the Beginning of the Reporting Period	1,271	1,271	1,626
<i>Comprehensive Income</i>			
Operating Surplus	168	168	23
Total Comprehensive Income	168	168	23
Balance at the End of the Reporting Period	1,439	1,439	1,649

The above Statement of Changes in Equity should be read in conjunction with the accompanying notes.

Independent Competition and Regulatory Commission

Statement of Changes in Equity—continued for the year ended 30 June 2010

	Accumulated Funds Actual 2009 \$'000	Total Equity Actual 2,009 \$'000
Balance at the Beginning of the Reporting Period	1,616	1,616
<i>Comprehensive Income</i>		
Operating (Deficit)	(345)	(345)
	(345)	(345)
Total Comprehensive (Deficit)	(345)	(345)
	1,271	1,271
Balance at the End of the Reporting Period	1,271	1,271

Independent Competition and Regulatory Commission

Cash Flow Statement for the year ended 30 June 2010

	Note No.	Actual 2010 \$'000	Budget 2010 \$'000	Actual 2009 \$'000
Cash Flows from Operating Activities				
Receipts				
Government Payments for Outputs		665	485	471
Fees		608	531	460
User Charges – ACT Government		681	873	648
User Charges – Non-ACT Government		–	–	377
Interest Received		56	47	74
Goods and Services Tax Collected from Customers		34	–	70
Other Tax Credits		–	86	65
Total Receipts from Operating Activities		2,044	2,022	2,165
Payments				
Employee		553	515	614
Superannuation		94	78	101
Supplies and Services		1,307	1,285	1,131
Goods and Services Tax Remitted to Australian Tax Office		6	–	45
Goods and Services Tax Paid to Suppliers		121	101	69
Total Payments from Operating Activities		2,081	1,979	1,960
Net Cash (Outflows)/Inflows from Operating Activities	22	(37)	43	205
Net (Decrease)/Increase in Cash and Cash Equivalents Held		(37)	43	205
Cash and Cash Equivalents at the Beginning of the Reporting Period		1,767	1,596	1,562
Cash and Cash Equivalents at the End of the Reporting Period	22	1,730	1,639	1,767

The above Cash Flow Statement should be read in conjunction with the accompanying notes.

Independent Competition and Regulatory Commission

Statement of Appropriation for the year ended 30 June 2010

	Original Budget 2010 \$'000	Total Appropriated 2010 \$'000	Appropriation Drawn 2010 \$'000	Appropriation Drawn 2009 \$'000
Government Payment for Outputs	485	665	665	471
Total Appropriation	485	665	665	471

The above Statement of Appropriation should be read in conjunction with the accompanying notes.

Column Heading Explanations

The *Original Budget* column shows the amounts that appear in the Cash Flow Statement in the Budget Papers. This amount also appears in these financial statements, in the Cash Flow Statement of the Commission.

The *Total Appropriated* column is inclusive of all appropriation variations occurring after the Original Budget.

The *Appropriation Drawn* is the total amount of appropriation received by the Agency during the year. This amount appear in these financial statements, in the Cash Flow Statement of the Commission.

Variances between 'Original Budget' and 'Total Appropriated'

Government Payment for Outputs

Government Payment for Outputs meet the estimated cost of the Commission's regulatory activities under the *Utilities Act 2000* in relation to prescribed electricity and gas distribution and supply utilities subject to the energy industry levy. The difference between the Original Budget and the Total Appropriated is due to increased regulatory costs incurred during 2009–10 by the Commission. Regulatory costs include costs incurred in the conduct of investigations referred to the Commission into the regulated retail price of electricity and the electricity feed-in premium rate. These regulatory costs are recovered by the Territory through the energy industry levy under the *Utilities Act* and hence the additional appropriation is revenue neutral.

Notes to and forming part of the Financial Statements for the year ended 30 June 2010

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Notes to and forming part of the Financial Statements for the year ended 30 June 2010

Note 1 Objectives of the Independent Competition and Regulatory Commission

Operations and principal activities

The Independent Competition and Regulatory Commission (the Commission) has regulatory rather than commercial objectives and functions. The Commission's primary roles and responsibilities are established under the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act) and the *Utilities Act 2000* (Utilities Act). Together, the Acts set out the functions of the Commission as:

- providing price directions;
- providing recommendations about price regulation;
- providing advice to the minister about proposed access regimes;
- arbitrating disputes about access to services under access regimes;
- maintaining a register of access agreements;
- investigating and reporting on matters referred by the minister and other referring authorities;
- investigating and reporting on competitive neutrality complaints;
- investigating and reporting on government-regulated activities;
- issuing licences for the provision of utility services;
- determining licence conditions;
- ensuring compliance with the licence conditions; and
- approving and reviewing standard customer contracts and industry codes for utility services.

In addition to those functions, the Commission is the regulator of the Greenhouse Gas Abatement Scheme established under the *Electricity (Greenhouse Gas Emissions) Act 2004*. The Commission also has a statutory role under the *Electricity Feed-in (Renewable Energy Premium) Act 2008* in providing advice to the minister relevant to the determination of the premium rate payable by electricity suppliers to renewable energy generators, and in monitoring compliance with the Electricity Feed-in Scheme through licence conditions for electricity suppliers and for ActewAGL Distribution.

The Commission's objectives are defined in the ICRC Act and the Utilities Act. The objectives set out in the section 7 of the ICRC Act are to:

- promote effective competition in the interests of consumers;
- facilitate an appropriate balance between efficiency and environmental and social conditions; and
- ensure non-discriminatory access to monopoly and near-monopoly infrastructure.

Section 3 of the Utilities Act reinforces those objectives and adds others, as follows:

- to encourage the provision of safe, reliable, efficient and high-quality utility services at reasonable prices;
- to minimise the potential for misuse of monopoly power in the provision of utility services;
- to promote competition in the provision of utility services;
- to encourage long-term investment, growth and employment in utility services;
- to promote ecologically sustainable development in the provision of utility services;
- to protect the interests of consumers;

- to ensure that advice given to the Commission by the ACT Civil and Administrative Tribunal (the ACAT) or the chief executive under Part 5 (technical regulation) is properly considered;
- to ensure that the government's programs concerning the provision of utility services are properly addressed; and
- to give effect to directions of the minister under section 19 (which may only be given to ensure the achievement of the objects set out in the subsections above).

Note 2 Summary of significant accounting policies

(a) Basis of accounting

The *Financial Management Act 1996* (FMA) requires the preparation of financial statements for Territory Authorities.

The FMA and the *Financial Management Guidelines* issued under the Act, requires that a Territory Authority's financial statements include:

- (i) an Operating Statement for the year;
- (ii) a Balance Sheet at the end of the year;
- (iii) a Statement of Changes in Equity for the year;
- (iv) a Cash Flow Statement for the year;
- (v) a Statement of Appropriation for the year;
- (vi) a summary of the significant accounting policies adopted for the year; and
- (vii) such other statements as are necessary to fairly reflect the financial operations of the Territory Authority during the year and its financial position at the end of the year.

These general-purpose financial statements have been prepared to comply with 'Generally Accepted Accounting Principles' (GAAP) as required by the FMA. These financial statements have been prepared in accordance with:

- (i) Australian Accounting Standards; and
- (ii) ACT Accounting Policies.

The financial statements have been prepared using the accrual basis of accounting, which recognises the effects of transactions and events when they occur. The financial statements have also been prepared according to the historical cost convention.

These financial statements are presented in Australian Dollars, which is the Commission's functional currency.

The Commission is an individual reporting entity.

(b) The reporting period

These financial statements state the financial performance, changes in equity and cash flows of the Commission for the year ending 30 June 2010 together with the financial position of the Commission as at 30 June 2010.

(c) Comparative figures

Budget Figures

The *Financial Management Act 1996* requires the statements to facilitate a comparison with the Statement of Intent. The budget numbers are as per the Statement of Intent.

Prior Year Comparatives

Comparative information has been disclosed in respect of the previous period for all amounts reported in the financial statements, except where an Australian Auditing Standard does not require comparative information to be disclosed.

Where the presentation or classification of items in the financial statements is amended, the comparative amounts have been reclassified where practical. Where a reclassification has occurred, the nature, amount and reason for the reclassification is provided.

(d) Rounding

All amounts in the financial statements have been rounded to the nearest thousand dollars (\$'000). Use of “–” represents zero amounts or amounts rounded down to zero.

(e) Revenue recognition

Revenue is recognised at the fair value of the consideration received or receivable in the Operating Statement. All revenue is recognised to the extent that it is probable that the economic benefits will flow to the Commission and the revenue can be reliably measured. In addition, the following specific recognition criteria must also be met before revenue is recognised:

- a *purchase agreement* with Treasury for core funding for the Commission under the ICRC Act;
- a *purchase agreement* with the Department of Environment, Climate Change, Energy and Water (DECCEW) for costs of regulatory activities under the *Electricity (Greenhouse Gas Emissions) Act 2004*; and
- *utility licence fees* determined by the Commission under the Utilities Act for utilities providing water and wastewater services and gas transmission services to recover the estimated costs incurred by the Commission, the Technical Regulator in the ACT Planning and Land Authority, and the ACT Civil and Administrative Tribunal in undertaking their respective regulatory activities (see also Note 2(s) Utility Licence Fee Adjustments).

(f) Taxation

The Commission activities are exempt from all forms of taxation except Fringe Benefits Tax and Goods and Services Tax.

(g) Current and non-current items

Assets and liabilities are classified as current or non-current in the Balance Sheet. Assets are classified as current where they are expected to be realised within 12 months after the reporting date. Liabilities are classified as current when they are due to be settled within 12 months after the reporting date or the Commission does not have an unconditional right to defer settlement of the liability for at least 12 months after the reporting date. Assets or liabilities which do not fall within the current classification are classified as non-current.

(h) Cash and cash equivalents

For the purposes of the Cash Flow Statement and the Balance Sheet, cash includes cash at bank, cash on hand and demand deposits. Cash equivalents are short-term, highly liquid investments that are readily convertible to known amounts of cash which are subject to an insignificant risk of changes in value. Bank overdrafts are included in cash and cash equivalents in the cash flow statement but not in the cash and cash equivalents line on the Balance Sheet.

(i) Receivables

Accounts receivable (including trade receivables and other receivables) are initially recognised at fair value and are subsequently measured at amortised cost, with any adjustments to the carrying amount being recorded in the Operating Statement.

Trade receivables arise in the normal course of providing services to other agencies and to the public. Trade receivables are payable within 30 days after the issue of an invoice or the services have been provided under a contractual arrangement.

Other receivables arise outside the normal course of providing services to other agencies and to the public. Other receivables are payable within 30 days after the issue of an invoice or the services have been provided under a contractual arrangement.

(j) Acquisition and recognition of plant and equipment

Plant and equipment is initially recorded at cost. Cost includes the purchase price, directly attributable costs and the estimated cost of dismantling and removing the item where, upon acquisition, there is an obligation to remove the item. Where plant and equipment is acquired at no, or minimal cost, it is recognised at fair value as at date of acquisition.

Plant and equipment with a minimum value of \$5,000 is capitalised.

(k) Measurement of plant and equipment after initial recognition

The Commission measures Office Furniture and Equipment at Cost.

(l) Depreciation of non-current assets

Non-current assets, with a limited useful life, are systematically depreciated over their useful lives in a manner that reflects the consumption of their service potential. The useful life commences when an asset is ready for use.

Depreciation for non-current assets is determined as follows:

Class of Asset	Depreciation Method	Useful Life (Years)
Office Furniture and Equipment	Straight Line	10 Years

The useful lives of all assets are reassessed on an annual basis.

(m) Payables

Payables are a financial liability and are measured at the fair value of the consideration received when initially recognised and at amortised cost subsequent to initial recognition, with any adjustments to the carrying amount being recorded in the Operating Statement. All amounts are usually settled within 30 days after the invoice date.

Payables include Trade Payables and Accrued Expenses.

Trade payables represent the amounts owing for goods and services received prior to the end of the reporting period and unpaid at the end of the reporting period and relating to the normal operations of the Commission.

Accrued expenses represent goods and services provided by other parties during the reporting period that are unpaid at the end of the reporting period and where an invoice has not been received by period end.

(n) Leases

The Commission has entered into operating leases.

Operating Leases

Operating leases do not effectively transfer to the Commission substantially all the risks and rewards incidental to ownership of the asset under an operating lease. Operating lease payments are recorded as an expense in the Operating Statement on a straight-line basis over the term of the lease.

(o) Employee benefits

Employee benefits include wages and salaries, annual leave, long service leave and applicable on-costs. On-costs include annual leave, long service leave, superannuation and other costs that are incurred when employees take annual and long service leave. These benefits accrue as a result of services provided by employees up to the reporting date that remain unpaid. They are recorded as a liability and as an expense.

Wages and Salaries

Accrued wages and salaries are measured at the amount that remains unpaid to employees at the end of the reporting period.

Annual and Long Service Leave

Annual leave and long service leave that fall due wholly within the next 12 months is measured based on the estimated amount of remuneration payable when the leave is taken.

Annual and long service leave including applicable on-costs that do not fall due within the next 12 months are measured at the present value of estimated future payments to be made in respect of services provided by employees up to the reporting date. Consideration is given to the future wage and salary levels, experience of employee departures and periods of service. At each reporting period end, the estimated future payments are discounted using market yields on Commonwealth Government bonds with terms to maturity that match, as closely as possible, the estimated future cash flows. In 2009–10, the discount factor used to calculate the present value of these future payments is 92.9% (90.5% in 2008–09).

The long service leave liability is estimated with reference to the minimum period of qualifying service. For employees with less than the required minimum period of 7 years of qualifying service, the probability that employees will reach the required minimum period has been taken into account in estimating the provision for long service leave and the applicable on-costs.

The provision for annual leave and long service leave includes estimated on-costs. As these on-costs only become payable if the employee takes annual and long service leave while in-service, the probability that employees will take annual and long service leave while in service has been taken into account in estimating the liability for on-costs.

Annual leave and long service leave liabilities are classified as current liabilities in the Balance Sheet where there are no unconditional rights to defer the settlement of the liability for at least 12 months. However, where there is an unconditional right to defer settlement of the liability for at least 12 months, annual leave and long service leave have been classified as a non-current liability in the Balance Sheet.

(p) Superannuation

Superannuation payments are made to the Territory Banking Account each year, to cover the Commission's superannuation liability for the Commonwealth Superannuation Scheme (CSS) and the Public Sector Superannuation Scheme (PSS). This payment covers the CSS/PSS employer contributions but does not include the productivity component. The productivity component is paid directly to Comsuper by the Commission. The CSS and PSS are defined benefit superannuation plans, meaning that the defined benefits received by employees of the Commission are based on the employee's years of service and average final salary.

Superannuation payments have also been made directly to superannuation funds for those members of the Public Sector who are part of superannuation accumulation schemes. This includes the Public Sector Superannuation Scheme Accumulation Plan (PSSAP) and schemes of employee choice.

Superannuation employer contribution expense payments, for the CSS and PSS, are calculated by taking the salary level at an employee's anniversary date and multiplying it by the actuarially assessed nominal CSS or PSS employer contribution rate for each employee. The productivity component are calculated by taking the salary level, at an employee's anniversary date, and multiplying it by the employer contribution rate (approximately 3%) for each employee. Superannuation payments for the PSSAP are calculated by taking the salary level, at an employee's anniversary date, and multiplying it by the appropriate employer contribution rate. Superannuation payments for fund of choice arrangements are calculated by taking an employee's salary each pay and multiplying it by the appropriate employer contribution rate.

A superannuation liability is not recognised in the Balance Sheet as the Superannuation Provision Account recognises the total Territory superannuation liability for the CSS and PSS and Comsuper and the external schemes recognises the superannuation liability for the PSSAP and other schemes respectively.

The ACT Government is liable for the reimbursement of the emerging costs of benefits paid each year to members of the CSS and PSS in respect of the ACT Government service after 1 July 1989. These reimbursement payments are made from the Superannuation Provision Account.

(q) Insurance

The Commission insures all of its major risks through the ACT Insurance Authority. The excess payable, under this arrangement, varies depending on each class of insurance held by the Commission.

(r) Significant accounting estimates and judgements

In the process of applying the accounting policies listed in this note, the Commission has made the following judgements and estimates that have the most significant impact on the amounts recorded in the financial statements.

Employee Benefits: Significant judgements have been applied in estimating the liability for employee benefits. The estimated liability for employee benefits requires a consideration of the future wage and salary levels, experience of employee departures and periods of service. The estimate also includes an assessment of the probability that employees will meet the minimum service period required to qualify for long service leave and that on-costs will become payable. Further information on this estimate is provided in Note 2(o) *Employee Benefits* and Note 3 *Change in Accounting Estimates*.

(s) Utility licence fee adjustments

The *Utilities Act 2000* provides that the regulatory bodies in the ACT, the Commission, the ACT Civil and Administrative Tribunal (ACAT) and the technical regulator (ACT Planning and Land Authority), may recover a reasonable contribution toward the costs of providing their services through utility licence fees. The Commission determines annual licence fees for utilities providing prescribed services in the ACT.

Fees charged to the utilities are calculated at the beginning of the financial year on the basis of the estimated costs expected to be incurred. Under the Commission's approved policy, adjustments are made to fees charged in the following year if the actual costs incurred at the end of the financial year varies from the costs estimated at the beginning of the year.

Licence fees are calculated by reference to the weighted amount of regulatory activity for prescribed services. The calculation also takes into account the difference between fixed and variable costs.

(t) Impact of accounting standards issued but yet to be applied

The following new and revised accounting standards and interpretations have been issued by the Australian Accounting Standards Board but do not apply to the current reporting period. These standards and interpretations are applicable to future reporting periods. The Commission does not intend to adopt these standards and interpretations early. It is estimated that the effect of adopting the below pronouncements, when applicable, will have no material financial impact on the Commission in future reporting periods:

- AASB 7 Financial Instruments: Disclosures (application 1 July 2010);
- AASB 9 Financial Instruments (application date 1 Jan 2013);
- AASB 101 Presentation of Financial Statements (application date 1 Jan 2010);
- AASB 107 Statement of Cash Flows (application date 1 Jan 2010);
- AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors (application date 1 Jan 2011);
- AASB 110 Events after the Reporting Period (application date 1 Jan 2011);
- AASB 117 Leases (application date 1 Jan 2010);
- AASB 118 Revenue (application date 1 Jan 2010);
- AASB 119 Employee Benefits (application date 1 Jan 2011);
- AASB 132 Financial Instruments: Presentation (application date 1 Feb 2010);
- AASB 136 Impairment of Assets (application date 1 Jan 2010);
- AASB 137 Provisions, Contingent Liabilities and Contingent Assets (application date 1 Jan 2011);
- AASB 139 Financial Instruments: Recognition and Measurement (application date 1 Jan 2010);
- AASB 1031 Materiality (application date 1 Jan 2011);
- AASB 2009-11 Amendments to Australian Accounting Standards arising from AASB 9 [AASB 1, 3, 4, 5, 7, 101, 102, 108, 112, 118, 121, 127, 128, 131, 132, 136, 139, 1023 & 1038 and Interpretations 10 & 12] (application date 1 Jan 2013); and
- AASB 2010-2 Amendments to Australian Accounting Standards arising from Reduced Disclosure Requirements [AASB 1, 2, 3, 5, 7, 8, 101, 102, 107, 108, 110, 111, 112, 116, 117, 119, 121, 123, 124, 127, 128, 131, 133, 134, 136, 137, 138, 140, 141, 1050, 1052 and Interpretations 2, 4, 5, 15, 17, 127, 129 & 1052] (application date 1 Jan 2013).

Note 3 Change in accounting estimates

Change in an accounting estimate for annual and long service leave liabilities

As disclosed in Note 2 (o) Employee Benefits, annual and long service leave liabilities that do not fall due within the next 12 months are measured at the present value of estimated future payments to be made in respect of services provided by employees up to the reporting date. The discount factor used to estimate the present value of the payments increased from 90.5% in 2008–09 to 92.9% in 2009–10.

This change has resulted in an increase to the estimated long service leave liability of \$1,738.

Note 4 Government payment for outputs

	2010 \$'000	2009 \$'000
Revenue from the ACT Government		
Government Payment for Outputs	665	471
Total Government Payment for Outputs	<u><u>665</u></u>	<u><u>471</u></u>

Government Payment for Outputs meet the estimated cost of the Commission's regulatory activities under the *Utilities Act 2000* in relation to prescribed electricity and gas distribution and supply utilities subject to the energy industry levy. The variation is due to increased regulatory costs incurred during 2009–10 by the Commission. Regulatory costs include costs incurred in the conduct of investigations referred to the Commission into the regulated retail price of electricity and the electricity feed-in premium rate. These regulatory costs are recovered by the Territory through the energy industry levy under the Utilities Act and hence the additional appropriation is revenue neutral.

Note 5 User charges—ACT Government

User charges – ACT Government revenue is derived by providing services to other ACT Government entities. These services are provided under purchase agreements with the Department of Treasury for activities under the *Independent Competition and Regulatory Commission Act 1997* and with the Department of Territory and Municipal Services and Department of Environment, Climate Change, Energy and Water for regulation of the Greenhouse Gas Abatement Scheme. The services also include provision of commissioned advice, and the conduct of referred inquiries for which costs are recovered.

	2010 \$'000	2009 \$'000
User Charges – ACT Government		
User Charges – ACT Government – General Government Sector (GGS)	429	416
User Charges – ACT Government – Public Trading Enterprise (PTE)	504	–
Total User Charges – ACT Government	<u><u>933</u></u>	<u><u>416</u></u>

The increase in revenue for User Charges is due to the recovery of the costs of the investigation into the Enlarged Cotter Dam Water Security Project (\$0.504 million).

Note 6 Fees

	2010 \$'000	2009 \$'000
Revenue from Regulatory Activities		
Fees	699	601
Total Fees	<u>699</u>	<u>601</u>

Utility Licence Fees are collected under the *Utilities Act 2000* to cover the estimated costs incurred by the Commission, the ACT Planning and Land Authority (ACTPLA), and the ACT Civil and Administrative Tribunal (ACAT) for regulatory activities in relation to water, sewerage, and gas transmission utilities. The increase in revenue from Fees is due primarily to the estimated increased costs of technical regulation incurred by ACTPLA.

Note 7 Interest

	2010 \$'000	2009 \$'000
Revenue from Non-ACT Government Entities		
Interest Revenue from the Commonwealth Bank	56	69
Total Interest Revenue from Non-ACT Government Entities	<u>56</u>	<u>69</u>
Total Interest Revenue	<u>56</u>	<u>69</u>

Note 8 Employee expenses

	2010 \$'000	2009 \$'000
Wages and Salaries	553	564
Annual Leave Expense	15	(12)
Long Service Leave Expense (a)	(16)	24
Fringe Benefits Tax	7	(1)
Other Employee Expense (b)	3	–
Total Employee Expenses	<u>562</u>	<u>575</u>

- a) The decrease in Long Service Leave Expense is due to a staff member transferring to another agency and the LSL liability was then recognised by the new agency at year end.
- b) The increase in Other Employee Expenses is due to the Sign on Bonus for the new Clerical Enterprise Agreement being recognised as an employee expense.

Note 9 Superannuation expenses

The Commission makes payments on a fortnightly basis for its liability of the annual superannuation expense.

	2010	2009
	\$'000	\$'000
Superannuation Contributions	94	93
Total Superannuation Expenses	94	93

Note 10 Supplies and services

	2010	2009
	\$'000	\$'000
Leased Equipment and Charges	50	60
Professional Services (a)	781	105
Staff Development	2	3
Travel and Accommodation	14	5
Postage and Printing	29	26
Fees to Commissioner	133	94
Advertising	7	3
Utilities Act – Administration Expenses	282	357
Rent/Occupation Expenses	58	50
Other	69	125
Total Supplies and Services	1,425	828

- (a) The increase in Professional Services is due to the use of external consultants for inquiries into the Enlarged Cotter Dam Water Security Project, the electricity feed-in premium rate, and the regulated retail price of electricity.

Note 11 Prior year licence fee refund

	2010	2009
	\$'000	\$'000
Licence Fee Rebate Applied	91	393
Total Licence Fee Rebate	91	393

See also Note 2 (s) Utility Licence Fee Adjustments. Utility licence fees are determined on estimated expenditure for the regulatory activities of the Commission, the ACT Planning and Land Authority (ACTPLA), and the ACT Civil and Administrative Tribunal (ACAT). Licence fee adjustments are made on the basis of actual costs in the following year. In 2009–10, \$91,000 was refunded to utilities for estimated costs in the 2008–09 determination which were not subsequently incurred. In 2008–09, \$393,000 was refunded to utilities for estimated costs in the 2007–08 determination which were not subsequently incurred. The refund in 2008–09 was largely attributed to underspend by ACTPLA in relation to technical regulation.

Note 12 Depreciation

	2010	2009
	\$'000	\$'000
Depreciation		
Office Furniture and Equipment	13	13
Total Depreciation	<u><u>13</u></u>	<u><u>13</u></u>

Note 13 Waivers, impairment losses and write-offs

Under Section 131 of the *Financial Management Act 1996* the Treasurer may, in writing, waive the right to payment of an amount payable to the Territory.

A waiver is the relinquishment of a legal claim to a debt over which the Commission has control. The write-off of a debt is the accounting action taken to remove a debt from the books but does not relinquish the legal right of the Commission to recover the amount. The write-off of debts may occur for reasons other than waivers.

No waivers, impairment losses or write-offs have occurred during the reporting period for the Commission. (2008–09:Nil)

Note 14 Auditor's remuneration

Auditor's remuneration consists of financial audit services provided to the Commission by the ACT Auditor-General's Office. No other services were provided by the ACT Auditor-General's Office.

	2010	2009
	\$'000	\$'000
Audit Services		
Audit Fees Paid to the ACT Auditor-General's Office	12	11
Total Audit Fees	<u><u>12</u></u>	<u><u>11</u></u>

Note 15 Cash and cash equivalents

The Commission holds a number of bank accounts with the Commonwealth Bank as part of the whole-of-government banking arrangements. As part of these arrangements, the Commission receives interest revenue on these accounts.

	2010	2009
	\$'000	\$'000
Cash at Bank	1,730	1,767
Total Cash and Cash Equivalents	<u><u>1,730</u></u>	<u><u>1,767</u></u>

Note 16 Receivables

	2010	2009
	\$'000	\$'000
Current Receivables		
Accrued Revenue (a)	251	–
Accrued Interest	5	4
Net GST Receivable	20	30
Total Current Receivables	<u><u>276</u></u>	<u><u>34</u></u>
Total Receivables	<u><u>276</u></u>	<u><u>34</u></u>

(a) Increase due to costs of the Enlarged Cotter Dam review to be recovered by the Commission.

Ageing of Receivables

	Past Due				Total \$'000
	Not Overdue \$'000	Less Than 30 Days \$'000	30 to 60 Days \$'000	Greater Than 60 Days \$'000	
2010					
Not Impaired¹					
Receivables	276	–	–	–	276
Impaired					
Receivables	–	–	–	–	–
2009					
Not Impaired¹					
Receivables	34	–	–	–	34
Impaired					
Receivables	–	–	–	–	–

1) 'Not Impaired' refers to Net Receivables (that is Gross Receivables less Impaired Receivables).

The above table must be read in conjunction with the Commission's accounting policy in relation to receivables. The Commission's policy regarding the normal credit terms of receivables is that debtors must pay an invoice within 30 days.

Classification of ACT Government/Non-ACT Government Receivables**Receivables with ACT Government Entities**

Accrued Revenue	251	–
Total Receivables with ACT Government Entities	<u><u>251</u></u>	<u><u>–</u></u>

Receivables with Non-ACT Government Entities

Accrued Revenue	–	–
Accrued Interest	5	4
Net Goods and Services Tax Receivable	20	30
Total Receivables with Non-ACT Government Entities	<u><u>25</u></u>	<u><u>34</u></u>
Total Receivables	<u><u>276</u></u>	<u><u>34</u></u>

Note 17 Plant and equipment

Plant and Equipment held includes office furniture, fixtures and fittings.

	2010	2009
	\$'000	\$'000
Plant and Equipment		
Office Furniture and Equipment at Cost	129	129
Less: Accumulated Depreciation	(116)	(103)
Total Written Down Value of Plant and Equipment	<u><u>13</u></u>	<u><u>26</u></u>

	2010	2009
	\$'000	\$'000
Reconciliation of Plant and Equipment		
Carrying Amount at the Beginning of the Reporting Period	26	39
Depreciation	(13)	(13)
Carrying Amount at the End of the Reporting Period	<u><u>13</u></u>	<u><u>26</u></u>

Note 18 Payables

	2010	2009
	\$'000	\$'000
Current Payables		
Trade Payables (a)	331	249
Accrued Expenses (b)	99	159
Total Current Payables	<u>430</u>	<u>408</u>
Total Payables	<u>430</u>	<u>408</u>
(a)	Increase mainly due to timing of payments to other ACT departments for Utility Licence Fees.	
(b)	Decrease due to reduction in accrued expenses to other ACT departments compared year end 2008–09.	
Payables are aged as follows:		
Not Overdue	427	400
Overdue for Less than 30 Days	–	–
Overdue for 30 to 60 Days	–	–
Overdue for More than 60 Days	3	8
Total Payables	<u>430</u>	<u>408</u>
Classification of ACT Government/Non-ACT Government Payables		
Payables with ACT Government Entities		
Trade Payables	257	202
Accrued Expenses	19	66
Total Payables with ACT Government Entities	<u>276</u>	<u>268</u>
Payables with Non-ACT Government Entities		
Trade Payables	74	47
Accrued Expenses	80	93
Total Payables with Non ACT Government Entities	<u>154</u>	<u>140</u>
Total Payables	<u>430</u>	<u>408</u>

Note 19 Employee benefits

	2010	2009
	\$'000	\$'000
Current Employee Benefits		
Annual Leave	67	52
Long Service Leave (a)	59	78
Accrued Salaries and Superannuation	10	11
Other Employee Benefits (b)	3	–
Total Current Employee Benefits	139	141
Non-Current Employee Benefits		
Long Service Leave (a)	11	7
Total Non-Current Employee Benefits	11	7
Total Employee Benefits	150	148

<i>For Disclosure Purposes Only</i>		
Estimate of when Leave is Payable	2010	2009
	\$'000	\$'000
Estimated Amount Payable within 12 Months		
Annual Leave	67	52
Long Service Leave	26	27
Accrued Salaries and Superannuation	10	11
Other Employee Benefits (b)	3	–
Total Employee Benefits Payable within 12 Months	106	90
Estimated Amount Payable after 12 Months		
Long Service Leave	44	58
Total Employee Benefits Payable after 12 Months	44	58
Total Employee Benefits	150	148

- a) Reduction in Long Service Leave liability due to a staff member transferring to another agency and the associated Long Service Leave liability also transferred to the agency involved.
- b) The increase was due to the Sign on Bonus for the new Clerical Enterprise Agreement expense.

Note 20 Financial instruments

Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates.

Nearly all of the Commission's financial assets are held in floating interest rate arrangements. In contrast, the Commission has no financial liabilities that are subject to floating interest rates. This means that the Commission is only exposed to movements in interest receivable. The weighted average interest rate decreased during the year ended 30 June 2010 and this has resulted in a decrease in the amount of interest received.

Interest rate risk for financial assets is managed by the Commission by only investing in floating interest rate investments that are low risk.

Sensitivity Analysis

A sensitivity analysis has not been undertaken for interest rate risk as it has been determined that the possible impact on income and expenses or total equity from fluctuations in interest rates is immaterial.

Credit risk

Credit risk is the risk that one party to a financial instrument will fail to discharge an obligation and cause the other party to incur a financial loss. The Commission's credit risk is limited to the amount of the financial assets it holds net of any provision for impairment. Credit risk is managed by only investing surplus funds with the Commonwealth Bank resulting in an insignificant credit risk. These funds are held in demand deposits.

As receivables are not material, there is no other significant concentration of credit risk that has been identified by the Commission for financial assets.

Liquidity risk

Liquidity risk is the risk that the Commission will encounter difficulties in meeting obligations associated with financial liabilities that are settled by delivering cash or another financial asset. To limit its exposure to liquidity risk, the Commission ensures that at any particular point in time it has a sufficient amount of funds in bank accounts to meet its current financial liabilities. This is achieved by constantly monitoring receivables and payables levels and ensuring ongoing cash flows meet objectives.

The Commission's exposure to liquidity risk and the management of this risk has not changed since the previous reporting period.

Price risk

Price risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices, whether these changes are caused by factors specific to the individual financial instrument or its issuer, or factors affecting all similar financial instruments traded in the market.

The Commission does not have any financial assets or liabilities that are exposed to price risk.

Fair value of financial assets and liabilities

The fair value of cash and cash equivalents is the carrying value recorded in the Balance Sheet.

The carrying amounts and fair values of financial assets and liabilities at the end of the reporting period are:

	Carrying Amount 2010 \$'000	Fair Value 2010 \$'000	Carrying Amount 2009 \$'000	Fair Value 2009 \$'000
Financial Assets				
Cash and Cash Equivalents	1,730	1,730	1,767	1,767
Receivables	276	276	34	34
Total Financial Assets	2,006	2,006	1,801	1,801
Financial Liabilities				
Payables	430	430	408	408
Total Financial Liabilities	430	430	408	408

The following table sets out the Commission's maturity analysis for financial assets and liabilities as well as the exposure to interest rates, including the weighted average interest rates by maturity period as at 30 June 2010. All financial assets and liabilities which have a floating interest rate or are non-interest bearing will mature in 1 year or less. All amounts appearing in the following maturity analysis are shown on an undiscounted cash flow basis.

2010

Financial Instruments	Note	Floating Interest Rate \$'000	Fixed Interest maturing in:			Non- Interest Bearing \$'000	Total \$'000
			1 Year or Less \$'000	Over 1 Year to 5 Years \$'000	Over 5 Years \$'000		
Financial Assets							
Cash and Cash Equivalents	15	1,730	–	–	–	–	1,730
Receivables	16	–	–	–	–	276	276
Total Financial Assets		1,730	–	–	–	276	2,006
Weighted Average Interest Rate		3.60%					
Financial Liabilities							
Payables	18	–	–	–	–	430	430
Total Financial Liabilities		–	–	–	–	430	430
Net Financial Assets		1,730	–	–	–	(154)	1,576

The following table sets out the Commission's maturity analysis for financial assets and liabilities as well as the exposure to interest rates, including the weighted average interest rates by maturity period as at 30 June 2009. All financial assets and liabilities which have a floating interest rate or are non-interest bearing will mature in 1 year or less. All amounts appearing in the following maturity analysis are shown on an undiscounted cash flow basis.

2009

Financial Instruments	Note	Fixed Interest maturing in:					Non-Interest Bearing	Total
		Floating Interest Rate	1 Year or Less	Over 1 Year to 5 Years	Over 5 Years	Over Interest		
		\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	
Financial Assets								
Cash and Cash Equivalents	15	1,767	–	–	–	–	1,767	
Receivables	16	–	–	–	–	34	34	
Total Financial Assets		1,767	–	–	–	34	1,801	
Weighted Average Interest Rate		4.64%						
Financial Liabilities								
Payables	18	–	–	–	–	408	408	
Total Financial Liabilities		–	–	–	–	408	408	
Net Financial Assets/(Liabilities)		1,767	–	–	–	(374)	1,393	

	2010	2009
	\$'000	\$'000
Carrying Amount of Each Category of Financial Asset and Financial Liability		
Financial Assets		
Loans and Receivables	276	34
Financial Liabilities		
Financial Liabilities Measured at Amortised Cost	433	408

The Commission does not have any financial assets in the 'Financial Assets at fair value through Profit and Loss' category, 'Available for Sale' category or the 'Held to Maturity' category and as such these categories are not included above. Also, the Commission does not have any financial liabilities in the 'Financial Liabilities at Fair Value through Profit and Loss' category and, as such, this category is not included above.

Note 21 Commitments

	2010	2009
	\$'000	\$'000
Operating Lease Commitments – Plant and Equipment		
Non-Cancellable operating lease commitments are payable as follows:		
Within one year	33	27
Later than one year but not later than five years	70	11
Total Operating Lease Commitments – Plant and Equipment	<u>103</u>	<u>38</u>

Note 22 Cash flow reconciliation

(a) Reconciliation of Cash and Cash Equivalents at the end of the reporting period in the Cash Flow Statement to the equivalent items in the Balance Sheet.

	2010	2009
	\$'000	\$'000
Total Cash and Cash Equivalents Recorded in the Balance Sheet	1,730	1,767
Cash and Cash Equivalents at the End of the Reporting Period as Recorded in the Cash Flow Statement	<u>1,730</u>	<u>1,767</u>

(b) Reconciliation of Net Cash (Outflows)/Inflows from Operating Activities to the Operating (Deficit)/Surplus

Operating Surplus/(Deficit)	168	(345)
Add/(Less) Non-Cash Items		
Depreciation of Property, Plant and Equipment	13	13
Cash Before Changes in Operating Assets and Liabilities	<u>181</u>	<u>(332)</u>
Changes in Operating Assets and Liabilities		
(Increase)/Decrease in Receivables	(242)	625
Increase/(Decrease) in Payables	22	(105)
(Decrease)/Increase in Employee Benefits	(2)	17
Net Changes in Operating Assets and Liabilities	<u>(218)</u>	<u>537</u>
Net Cash (Outflows)/ Inflows from Operating Activities	<u>(37)</u>	<u>205</u>

Note 23 Events occurring after balance date



There were no events occurring after balance date.

Note 24 Contingent liabilities

There are no known contingent liabilities as at 30 June 2010. (Nil: 2008–09)

Appendix 2 Statement of Performance

Auditor's opinion of the Statement of Performance



ACT AUDITOR-GENERAL'S OFFICE

REPORT OF FACTUAL FINDINGS

INDEPENDENT COMPETITION AND REGULATORY COMMISSION

To the Members of the ACT Legislative Assembly

Report on the statement of performance

I have reviewed the statement of performance of the Independent Competition and Regulatory Commission (the Commission) for the year ended 30 June 2010.

Responsibility for the statement of performance

The Chief Executive Officer of the Commission is responsible for the preparation and fair presentation of the statement of performance in accordance with the *Financial Management Act 1996*. This includes responsibility for maintaining adequate records and internal controls that are designed to prevent and detect fraud and error and for the systems and procedures to measure the results reported in the statement of performance.

The auditor's responsibility

My responsibility is to provide a report of factual findings that expresses an independent review opinion on the statement of performance of the Commission as required by the *Financial Management Act 1996* and the *Financial Management (Statement of Performance Scrutiny) Guidelines 2008*.

I have reviewed the statement of performance of the Commission to report on whether any matters came to my attention which indicate that the statement of performance is not fairly presented in accordance with the *Financial Management Act 1996*.

This review was conducted in accordance with the Australian Auditing Standards applicable to review engagements. A review is primarily limited to inquiries of the representatives of the Commission, analytical and other review procedures and the examination of other available evidence. As review procedures do not provide all of the evidence that would be required in an audit, the level of assurance provided is less than given in an audit. I have not performed an audit and have not expressed an audit opinion on the statement of performance.

The review did not include an assessment of the relevance or appropriateness of the performance indicators reported in the statement of performance or the related performance targets.

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Telephone: 02 6207 0833 | Facsimile: 02 6207 0826 | Email: actauditorgeneral@act.gov.au

I have not expressed an opinion on the accuracy of explanations provided for variations between actual and targeted performance due to the often subjective nature of such explanations.

Electronic presentation of the statement of performance

Those viewing an electronic presentation of this statement of performance should note that the review does not provide assurance on the integrity of information presented electronically and does not provide an opinion on any other information which may have been hyperlinked to or from this statement. If users of this report are concerned with the inherent risks arising from the electronic presentation of information, they are advised to refer to the printed copy of the reviewed statement of performance to confirm the accuracy of this electronically presented information.

Independence

I followed applicable independence requirements of Australian professional ethical pronouncements in conducting this review.

Review opinion

Based on my procedures, no matters have come to my attention which indicate that the statement of performance of the Commission for the year ended 30 June 2010 does not fairly present the performance of the Commission in accordance with the *Financial Management Act 1996*.

Bernie Sheville
Director, Financial Audits
26 August 2010


Statement of responsibility

INDEPENDENT COMPETITION AND REGULATORY COMMISSION

Statement of Performance For the Year Ended 30 June 2010

Statement of Responsibility

In my opinion, the Statement of Performance is in agreement with the Commission's records and fairly reflects the service performance of the Commission for the year ended 30 June 2010 and also fairly reflects the judgements exercised in preparing it.



Shelley Schreiner
Chief Executive Officer
Independent Competition and Regulatory Commission
18 August 2010

Non-financial performance

Description of objectives

To provide economic regulatory services and advice in accordance with the objects set out in the *Independent Competition and Regulatory Commission Act 1997* and the *Utilities Act 2000*, and their associated codes, including licensing utility services, monitoring utility performance and compliance and determining prices for regulated services.

Table A1 Statement of performance for the year ended 30 June 2010

Statement of Intent measures	Original target 2008–09	Actual result 2008–09	% Variance from original target	Explanation of material variances
Water and retail electricity pricing ¹	Annual price adjustments ¹	2 adjustments	0	
Feed-in tariff advice on determination of premium rate ²	1 report	1 report	0	
Utilities compliance and performance ³	1 report	0	(100)	A full draft of the 2008–09 report was prepared as of 30 June 2010. It is anticipated that the finalised report will be published in September 2010.
Greenhouse gas emissions compliance ⁴	1 report ²	1 report	0	
Utility licence fees (water, wastewater, and energy sector utilities not subject to energy industry levy) ⁵	1 determination	1 determination	0	
Utility levies (energy sector) ⁶	3 determinations	3 determinations	0	
Advice on referred matters ⁷	Subject to receipt of references	1 report	0	

The above Statement of Performance should be read in conjunction with the accompanying notes.

Explanation of measures

- The Commission determines prices for 'regulated services' under the *Independent Competition and Regulatory Commission Act 1997*. Regulated services are provided by 'regulated industries' which include utility services. Price directions are made following receipt of a reference by the Minister (the Attorney-General under the current administrative arrangement orders). Water and wastewater prices are determined for a regulatory period, usually five years, and are reset each year. A water and wastewater determination was made in 2008 for the period 2008–09 to 2012–13 (Report 1 of 2008, *Water and Wastewater Price Review - Final Report and Price Determination*, April 2008). Under the determination, on or before 1 March each year, ACTEW must submit proposed tariffs to the Commission for approval. On 12 March 2010, the Commission reviewed the proposed tariffs and determined that they complied with the price direction. The decision on the reset is effected through approval of the tariff schedule to the ACTEW Corporation standard customer contract, (Utilities (Variation of Terms – ACTEW Corporation Standard Customer Contract) Approval Notice 2010, NI2010-282).

On 28 August 2009, the Attorney-General, Simon Corbell MLA, referred the provision of a price direction for the supply of electricity to franchise customers to the Commission. The reference, issued under the *Independent Competition and Regulatory Commission Act 1997*, is for the period 1 July 2010 to 30 June 2012. The Commission released its final decision and price direction on 11 June 2010, (Report 7 of 2010, *Final Report - Retail Prices for Non-contestable Electricity Customers 2010-2012*, June 2010). The decision on regulated retail prices is effected through approval of the tariff schedule to the ActewAGL Retail's standard customer contract, (Utilities (Variation of Terms – ActewAGL Retail Standard Customer Contract) Approval Notice 2010, NI2010-290).

2. On 30 October 2009, the Minister for Energy, Simon Corbell MLA, requested the Commission to provide him with advice to assist with the determination of the premium rate to be paid for electricity supplied by compliant renewable energy generators to the distribution network under the provisions of the *Electricity Feed-in (Renewable Energy Premium) Act 2008*. The referral was subject to the provisions of the *Independent Competition and Regulatory Commission Act 1997* (Report 4 of 2010: *Final Report - Electricity Feed-in Renewable Energy Premium: Determination of Premium Rate*, March 2010).
3. Utilities performance and compliance measures arise from requirements of the *Utilities Act 2000*, in particular the requirement under section 25(d) for utilities to submit annual reports to the Commission. Each year, the Commission assesses the compliance of utilities against their statutory obligations (including their licence obligations) and reports on performance against agreed indices, including indices agreed through national arrangements.
4. The Commission is the regulator of the Greenhouse Gas Abatement Scheme which is established through the *Electricity (Greenhouse Gas) Act 2004*. Each year the Commission determines greenhouse gas emissions benchmarks for participating electricity supply utilities (Electricity (Greenhouse Gas Emissions) Determination 2009, NI2009-586). The Commission reports each year on the operation of the Scheme, and on utility compliance with Scheme requirements. The Commission transmitted its report for the 2009 compliance year to the Minister on 25 June 2010 (Report 8 of 2010, *ACT Greenhouse Gas Abatement Scheme - Compliance and Operation of the Scheme for the 2009 Compliance Year*, June 2010).
5. Utility licence fees are determined by the Commission under section 45 the *Utilities Act 2000*, to reflect the costs of regulatory activities in relation to utilities incurred by the Commission, the Administrative and Civil Appeals Tribunal (ACAT) and the technical regulator (ACTPLA). In 2009–10, licence fees were determined for water and wastewater utility services, and for gas transmission utility services (Utilities (Annual Licence Fees Determination) Notice 2009, NI2009-467).
6. Under Part 3A of the *Utilities Act 2000*, energy industry levies are imposed on energy utilities to recover the Territory's national and local regulatory costs, in relation to the energy industry sectors. The Commission's chief executive officer is currently appointed as the levy administrator, Utilities (Levy administrator) Appointment 2007, NI 2007-191). Energy industry levy determinations are made by the levy administrator. In 2009–10, three determinations were made under sections 54E, 54F and 54H of the Utilities Act (Utilities (Energy industry levy – local regulatory costs) Determination 2009, NI2009-475; Utilities (Energy industry levy – national regulatory obligations and costs) Determination 2009, NI2009-474; Utilities (Energy industry levy – other) Determination 2009, NI2009-476).
7. Advice can be sought from the Commission under reference through the *Independent Competition and Regulatory Commission Act 1997*. On 12 November 2009, the Attorney-General, Simon Corbell MLA, referred an investigation to the Commission of the projected costs and other matters provided by ACTEW of the enlarged Cotter Dam project to provide enhanced water security for the ACT. In accordance with the terms of the reference, the Commission transmitted its report to the Attorney-General on 30 June 2010 (Report 9 of 2010, *Final Report - Enlarged Cotter Dam Water Security Project*, June 2010).

The above Accountability Indicators were examined by the ACT Auditor-General's Office in accordance with the *Financial Management Act 1996*.

Appendix 3 Contact officers, website address and other sources of information

Information about the Commission, particular inquiries, competitive neutrality complaints, advice on government-regulated activities and utility licensing and compliance may be found on the Commission's website (www.icrc.act.gov.au). Alternatively, the Commission may be contacted on (02) 6205 0799, or via the contact officers for particular subjects of interest, as set out below.

Subject	Contact name and details
Overview of Commission performance Freedom of information Staffing issues	Shelley Schreiner (02) 6205 0799 (02) 6207 5887 fax shelley.schreiner@act.gov.au www.icrc.act.gov.au
Electricity pricing Water and sewerage pricing Enlarged Cotter Dam water security project inquiry	John Logan (02) 6205 0799 (02) 6207 5887 fax john.logan@act.gov.au www.icrc.act.gov.au
Utilities licensing Utilities compliance and performance monitoring and reporting	Shelley Schreiner (02) 6205 0799 (02) 6207 5887 fax shelley.schreiner@act.gov.au www.icrc.act.gov.au
Greenhouse Gas Abatement Scheme Electricity Feed-in Scheme	Shelley Schreiner (02) 6205 0799 (02) 6207 5887 fax shelley.schreiner@act.gov.au www.icrc.act.gov.au

Appendix 4 Commission publications, 2009–10

Papers and reports

Report 7 of 2009: Issues Paper—Model for Determining the Energy Purchase Cost Component of the Transitional Franchise Tariff (October 2009)

Report 8 of 2009: Draft Technical Paper—Model for Determining the Energy Purchase Cost Component of the Transitional Franchise Tariff (November 2009)

Report 9 of 2009: Issues Paper—Electricity Feed-in Renewable Energy Premium: Determination of Premium Rate (November 2009)

Report 1 of 2010: Draft Report—Electricity Feed-in Renewable Energy Premium: Determination of Premium Rate (February 2010)

Report 2 of 2010: Issues Paper—Retail Prices for Non-contestable Electricity Customers 2010-2012 (March 2010)

Report 3 of 2010: Final Technical Paper—Model for Determining the Energy Purchase Cost of the Transitional Franchise Tariff (March 2010)

Report 4 of 2010: Final Report—Electricity Feed-in Renewable Energy Premium: Determination of Premium Rate (March 2010)

Report 5 of 2010: Draft Report—Retail Prices for Non-contestable Electricity Customers 2010-2012 (April 2010)

Report 6 of 2010: Draft Report—Enlarged Cotter Dam Water Security Project (April 2010)

Report 7 of 2010: Final Report—Retail Prices for Non-contestable Electricity Customers 2010-2012 (June 2010)

Report 8 of 2010: ACT Greenhouse Gas Abatement Scheme—Compliance and Operation of the Scheme for the 2009 Compliance Year (June 2010)

Report 9 of 2010: Final Report—Enlarged Cotter Dam Water Security Project (June 2010)

ACT Electricity Feed-in Scheme summary reports

ACT Electricity Feed-in Scheme Summary Report (1 March 2009 – 31 March 2010)

ACT Electricity Feed-in Scheme Summary Report (1 March 2009 – 31 December 2009)

Commissioned reports

Halcrow Pacific Pty Ltd, Enlarged Cotter Dam Water Security Project Investigation: Final Report, March 2010

Glossary and abbreviations

ACAT	ACT Civil and Administrative Tribunal
ACTEW	ACTEW Corporation Ltd
AEMA	Australian Energy Market Agreement
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
CAC	customer acquisition cost
CARC	customer acquisition and retention cost
Commission, the	Independent Competition and Regulatory Commission
COAG	Council of Australian Governments
DECCEW	Department of the Environment, Climate Change, Energy and Water
DSA	demand side abatement
ESS	Energy Savings Scheme
EWCC	Energy and Water Consumer Council
EWCC	Energy and Water Charges Commission
FOI Act	<i>Freedom of Information Act 1989</i>
FRC	full retail contestability
GGAS	ACT Greenhouse Gas Abatement Scheme New South Wales Greenhouse Gas Reduction Scheme
ICRC Act	<i>Independent Competition and Regulatory Commission Act 1997</i>
IPARC	Independent Pricing and Regulatory Commission
IPART	Independent Pricing and Regulatory Tribunal of New South Wales
LRMC	long run marginal cost
MCE	Ministerial Council on Energy
MWh	megawatt hours
NEB	net economic benefit
NGAC	New South Wales Greenhouse Gas Abatement Certificate
price direction	statement issued by the Commission, setting price paths and revenue caps for a utility for a specified period
ROCs	retail operating costs
TAMS	Department of Territory and Municipal Services
TFT	transitional franchise tariff
utility services	electricity supply and network operations, gas supply and network operations and water and sewerage supply

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