



ICRC

independent competition and regulatory commission

Twenty-five years of economic regulation in the Australian Capital Territory

September 2021



The Independent Competition and Regulatory Commission is a Territory Authority established under the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act). The commission is constituted under the ICRC Act by one or more standing commissioners and any associated commissioners appointed for particular purposes. Commissioners are statutory appointments. Joe Dimasi is the current Senior Commissioner who constitutes the commission and is responsible for delivering the commission's outcomes.

We have responsibilities for a broad range of regulatory and utility administrative matters. We are responsible under the ICRC Act for regulating and advising government about pricing and other matters for monopoly, near-monopoly and ministerially declared regulated industries, and providing advice on competitive neutrality complaints and government-regulated activities. We also have responsibility for arbitrating infrastructure access disputes under the ICRC Act.

We are responsible for managing the utility licence framework in the ACT, established under the *Utilities Act 2000* (Utilities Act). We are responsible for the licence determination process, monitoring of licensees' compliance with their legislative and licence obligations, and determination of utility industry codes.

Our objectives are set out in section 7 and 19L of the ICRC Act and section 3 of the Utilities Act. In discharging our objectives and functions, we provide independent robust analysis and advice.

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Correspondence or other inquiries may be directed to:

Independent Competition and Regulatory Commission
PO Box 161
Civic Square ACT 2608
Telephone: 02 6205 0799
Fax: 02 6207 5887
Email: icrc@act.gov.au
Website: www.icrc.act.gov.au

This report is also available online at www.icrc.act.gov.au

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Message from the Senior Commissioner



Since 1996, the Independent Competition and Regulatory Commission and its predecessors have worked to promote the wellbeing of the Territory community. The commission started operations in its current form in March 2000.

Our functions and work program have changed over time to respond to changes in government policy priorities, consumer expectations, and industry conditions, and to developments in national regulatory frameworks.

But we have always kept our focus on protecting consumers and the broader Territory community by promoting competition that works for consumers and the delivery of safe, reliable, efficient, high-quality utility services at reasonable prices.

Over the past 25 years, we have also developed advice on a diverse range of complex and contentious issues in response to Government requests, which has allowed us to contribute more broadly to meeting the needs of the ACT community.

In line with the objectives in our enabling legislation, we strive to balance economic efficiency, environmental and social considerations so our regulatory decisions and advice to Government are fair and reasonable and reflect the diversity of community perspectives. We value the contributions and engagement of our stakeholders—consumers, businesses, the utilities, Government, other regulators, and the Territory community—in helping us ensure our decisions and advice are based on facts, strong evidence, and robust analysis.

Over the past 25 years, the commission has successfully managed the perennial challenges inherent in being a small agency with a heavy and diverse workload. I want to thank the commission's staff, whose hard work and commitment have made us a small organisation with a big impact.

Joe Dimasi
Senior Commissioner

September 2021

OUR BEGINNINGS—AND NOW

Since 1996, the Independent Competition and Regulatory Commission and its predecessors have worked to promote the well-being of the Territory community through economic regulation and consumer protection activities and by developing advice for the Territory Government on a variety of competition and consumer issues.

Our responsibilities and activities as the Territory’s economic regulator have changed over time. We have responded to changes in the Government’s priorities, consumer expectations, industry conditions, and national policies and regulation. However, our fundamental objectives—which are set out in legislation—have remained the same:

- to promote effective competition in the interests of consumers
- while appropriately balancing efficiency, environmental and social considerations
- and ensuring non-discriminatory access to monopoly and near-monopoly infrastructure.



Our predecessors

In 1996, the Territory Government set up the Energy and Water Charges Commission (EWCC). The EWCC set regulated prices for electricity, water and sewerage services supplied by ACTEW¹ in 1997-98.

In November 1997, the Legislative Assembly created the Independent Pricing and Regulatory Commission (IPARC) as a statutory authority by passing the *Independent Pricing and Regulatory Commission Act 1997* (IPARC Act). The IPARC’s role was broader than the EWCC’s role. As well as making price directions and recommendations about price regulation, the IPARC also advised the minister about proposed access arrangements, was responsible for arbitrating access disputes, and

¹ The ACTEW Corporation was established in 1995, taking over the functions of the Australian Capital Territory Electricity and Water Authority (ACTEW). In October 2000, ACTEW Corporation joined with the Australian Gas Light Company (AGL) to form ActewAGL to jointly provide electricity and gas services in the ACT and south-east New South Wales. On 4 May 2015, ACTEW Corporation was renamed Icon Water Limited.

investigated and reported on matters referred to it by the minister and other referring authorities. The EWCC was merged into the IPARC.

The IPARC did not have a permanent secretariat. The IPARC purchased technical analysis through consultancy arrangements with the NSW regulator, the Independent Pricing and Regulatory Tribunal (IPART), and with Sinclair Knight Merz (SKM).

The IPARC did one price investigation in 1997-98—to set the maximum prices ACTEW could charge for electricity, water and sewerage services in 1998-99.

1998-99 was a busier year for the IPARC. It set the maximum prices ACTEW could charge for electricity, water and sewerage services for 1999-2000 to 2003-04. And it set ACTION's bus fares for 1999-2000. The IPARC advised the Minister for Urban Services on taxi charges for 1999-2000. It also started work on certifying AGL's third party gas pipeline access regime, and on developing advice to the Treasurer on milk prices in the Territory.



Decision to set up the commission—October 1998

In October 1998, the Chief Minister told the Legislative Assembly that the Government would expand IPARC's role. This would recognise the IPARC's increasing workload and be a cost-effective way to improve independent economic oversight within the Territory. The IPARC would be renamed the Independent Competition and Regulatory Commission to reflect its expanded role in both competition and regulation issues.

The Explanatory Memorandum for the 1999 amending Bill said:

The amendments do not represent a significant shift in emphasis in the role of the independent regulator. Rather the changes are adjustments to the existing legislation to facilitate broadening the regulator's role and strengthening the regulator's ability to provide independent high quality advice. ...

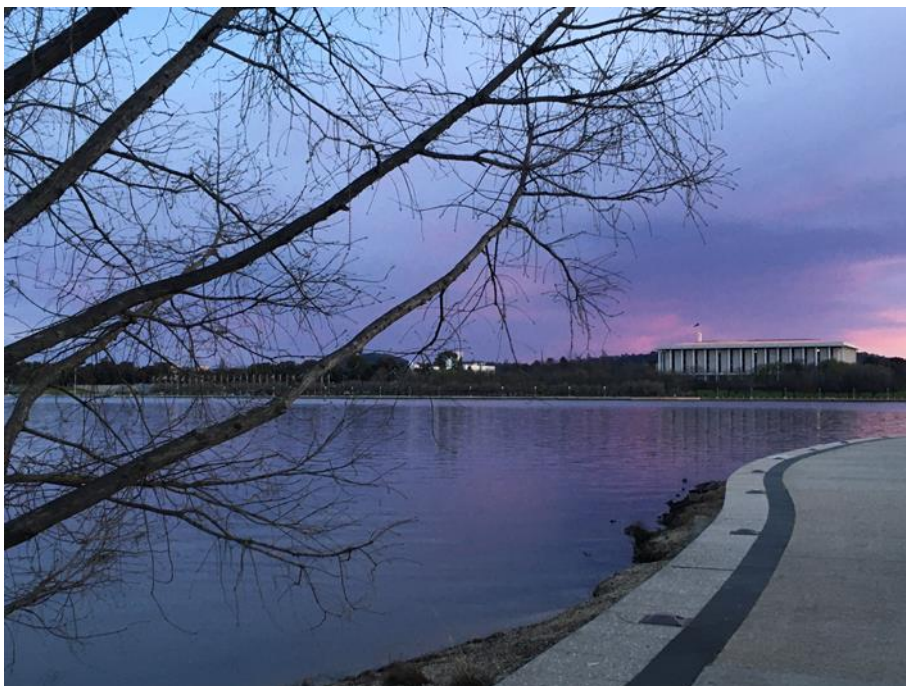
The primary objective for the legislative amendments is to provide the regulator with a wider regulatory oversight function and to ensure that the existing functions are adequate to deal with emerging market issues.²

Like the IPARC, the commission's regulatory responsibilities were:

- making price directions and recommendations about price regulation
- advising the minister about proposed access arrangements
- arbitrating on access disputes
- investigating and reporting on industry references from a minister or other 'referring authority'. These could be about: prices, competition and other issues for regulated industries; issues for other industries or industries in general; and any other matters allowed for by Territory laws.

We were also given new responsibilities for promoting competition. We became responsible for investigating and reporting on competitive neutrality complaints. And we can investigate and report on government-related activities, in response to a reference (or request) from the Government or other 'referring authority'. In certain circumstances, we can initiate an investigation ourselves (a self-referral).

The Explanatory Memorandum said the new arrangements were 'important ... for the development of an effective regulatory environment in the ACT generally' and would also help in implementing proposed new legislation to regulate the provision of utility services.



² Independent Competition and Regulatory Commission Amendment Bill 1999, Explanatory Memorandum.

Setting up the commission—March 2000

The commission was created by the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act). Between 1 July 1999 and 23 March 2000, we operated under the IPARC Act, until the amending legislation (which the Legislative Assembly passed on 27 February 2000) came into operation.

The ICRC Act allows for up to three standing commissioners. Associate commissioners can be appointed to specific inquiries for their expertise.

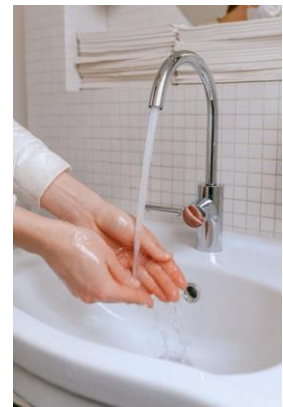
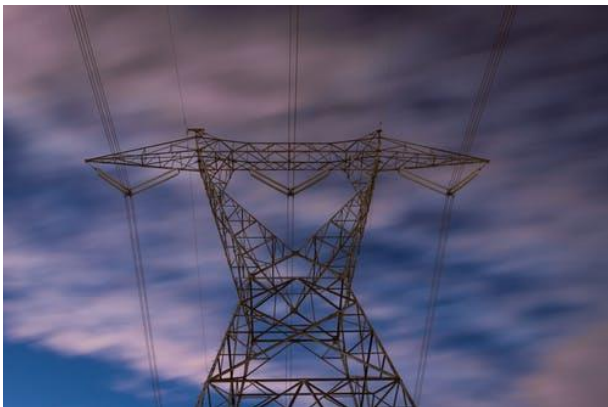
A small permanent secretariat was created to support the commissioners. Our 1999-2000 annual report said:

The development of the new permanent secretariat arrangements makes it possible for the commission to coordinate activities more effectively and potentially to take on a wider range and greater number of references than possible in the past.³

We continued to use contractors and consultants for specialist accounting support, legal advice, and regulatory advice. For example, the IPART provided specialist advice for the gas access inquiry and taxi fares inquiry.⁴ But the secretariat was responsible for the core services the commissioners needed to perform their role.

After the *Utilities Act 2000* (Utilities Act) was passed in late 2000, there was a significant increase in our functions. The Utilities Act gave us responsibility for

- licensing utility services
- making or approving industry codes
- regulating compliance with licence conditions and the obligations in utility industry codes.



³ ICRC Annual Report 1999-2000 at <https://www.icrc.act.gov.au/wp-content/uploads/2013/02/annualreport1999-2000cw.pdf>, p. 10.

⁴ ICRC Annual Report 2000-01 at <https://www.icrc.act.gov.au/wp-content/uploads/2013/02/annualreport2000-2001cw.pdf>, p. 16.

Our current operational approach

Overtime, the commission's permanent secretariat has grown and now averages around 13 people, organised into two regulatory teams and a small administration and finance team.

Our work is highly technical, and requires a good understanding of regulatory economics, financial and economic modelling, quantitative analysis and data analytics, regulatory law, and regulatory policy. The secretariat is led by the Chief Executive Officer, who is responsible for ensuring our Statement of Intent (agreed between the senior commissioner and the Treasurer) is implemented effectively and efficiently, managing day-to-day operations, and monitoring our operations and financial performance.

We receive legal advice from the Government Solicitor's Office, specialist accounting and finance services from Shared Services Finance, specialist human resources advice from Shared Services HR, and payroll and other transactional services from Shared Services.

While we still use consultants to provide specialist technical advice as needed, most work is done in-house by our highly skilled staff. We have built the capability, expertise and capacity of the secretariat to manage a heavy and diverse workload, which comprises our core regulatory work and policy advice requested by the Government. We have a collaborative and supportive organisational culture that:

- values diversity of skills, ideas and experiences, which promote more robust analysis and decisions and help us better understand and appreciate the diverse needs of our stakeholders
- offers flexible working arrangements to support staff in managing their work, family and personal responsibilities and commitments
- provides interesting and diverse work that challenges our staff, develops their knowledge and expertise, and helps to attract and retain highly qualified and experienced people
- promotes team cohesion and makes work more enjoyable and fun!

Our ongoing efforts to maintain a deep pool of expertise have improved our responsiveness to ministers' requests for advice. Such requests allow us to use our expertise to deliver high-quality analysis, findings and recommendations that contribute to improving the wellbeing of the Territory community.

In all our work, we place a high priority on making it easier for consumers, regulated businesses and other interested parties to participate in our decision-making processes, and be informed about our decisions, consumer protections, and regulatory obligations. We have a continuing focus on improving the presentation and readability of our reports and publishing clear guidance material for utilities and the public on our website. Over recent years, we have made increasing use of digital technologies, including videoconferencing, to make it easier for stakeholders to participate in our public forums, workshops, customer consultative committee meetings, and targeted meetings.

OUR CHANGING ROLE

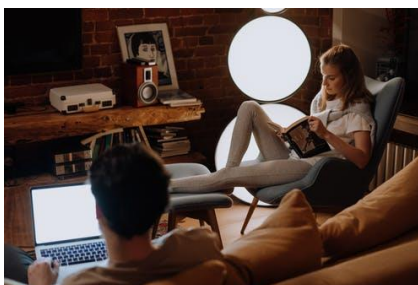
Over the past 25 years, our responsibilities and activities have changed, in line with changes in the Government's priorities, growing consumer expectations, industry developments, and an expansion of national energy regulation.

What has not changed over the past 25 years is that our work deals with highly complex, technical and contentious matters. These matters are typically important for the cost of living for households and the operating environment for business, especially small businesses, in the Territory.

Price regulation functions

We have set regulated prices for electricity (since 1997), water and sewerage services (since 1997), bus fares (from 1999 to 2007), and taxi fares (from 2000 to 2007).

Energy price regulation



We were initially the price regulator of electricity distribution and retail services and gas distribution services in the Territory. These responsibilities were transferred to the Australian Energy Regulator (AER) in 2008 under a national agreement to transfer significant responsibilities for energy sector utilities (distribution and transmission services) to a national regulator. Responsibility for the pricing of retail electricity and gas remained with the states and territories.

While retail electricity prices were gradually deregulated in most other jurisdictions, retail electricity prices have continued to be regulated in the Territory. In September 2011, the Territory Government did not accept a recommendation of the Australian Energy Market Commission (AEMC) that retail electricity prices in the Territory be deregulated. The Government highlighted that the AEMC had found that ActewAGL Retail had a dominant position in the Territory market and that competition in the Territory electricity retail market was not effective.

In 2018, following an inquiry into retail electricity pricing, the Australian Competition and Consumer Commission (ACCC) recommended actions that effectively reregulated aspects of retail electricity

pricing in National Electricity Market (NEM) jurisdictions where retail prices were not already regulated by the state or territory regulator.⁵

In the Territory, we have continued to regulate retail electricity prices. In June 2021, in response to a ministerial direction, we made a new ACT Retail Electricity (Transparency and Comparability) Code to help Territory households and small businesses find an electricity plan that is right for them and will save them money.⁶

We have in the past regulated retail gas prices, but these prices are no longer regulated in the Territory. In 2001, we determined a price path for default tariffs for small gas customers (who were consuming less than 10 TJ) to apply from 1 July 2001 to 30 June 2004. The default tariffs were set as safety net prices during the transition to competition. The default tariffs were designed to protect customer interests while giving ActewAGL certainty.

Water and sewerage services price regulation



We have regulated water and sewerage services prices since 1997. Under the Utilities Act, we approve Icon Water's standard customer contract each year. The standard customer contract sets out the terms and conditions for supplying water and sewerage services and the annual schedule of regulated prices.

In late 2017, in response to a request by Icon Water, we made a capital contributions code for developer contributions to water and sewerage infrastructure upgrades. The code set a fairer and more transparent way of charging for infrastructure upgrades. Under the code, we approve annual precinct map updates and developer charges proposed by Icon Water.

⁵ The ACCC's report is available at <https://www.accc.gov.au/regulated-infrastructure/energy/electricity-supply-prices-inquiry/final-report>. Like the Territory, retail price regulation had been maintained in Tasmania and regional Queensland. The NEM is an interconnected electricity grid that delivers electricity to all states and territories except Western Australia and the Northern Territory.

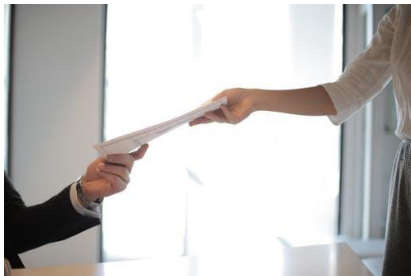
⁶ <https://www.icrc.act.gov.au/energy/act-retail-electricity-transparency-and-comparability-code>

Public transport fares



We set bus fares in the Territory for around eight years, and taxi fares for seven years. Since mid-2007, the relevant Territory Government department (at the time, the Department of Territory and Municipal Services; now Transport Canberra and City Services directorate) has been responsible for setting fares for these services.

Utility licensing and compliance functions



Since 2000, we have licensed energy service providers operating in the ACT and the ACT's water and sewerage service provider under the Utilities Act. We have also made utility industry codes under the Act. We monitor and report annually on the performance of the licensed utilities operating in the Territory to ensure consumers receive safe, reliable, and high-quality utility services.

With the implementation of the National Energy Customer Framework (NECF), some of our functions under the Utilities Act were transferred to the AER from 1 July 2012. This transfer of functions means that we no longer license energy retailers operating in the Territory or approve the terms and conditions of standard customer contracts for energy.

In 2014, the *Utilities (Technical Regulation) Act 2014* (UTR Act) established a separate legislative framework for technical regulation. Responsibility for technical compliance work and making technical codes moved to the Technical Regulator. Since then, our compliance functions and code responsibilities have focussed on economic, financial and consumer protection issues, including determining utility licence conditions and setting the energy industry levy and licence fees that utilities must pay to recover the costs of regulation.

Greenhouse gas and feed-in tariff functions



From 2005 to 2012, we gave advice and information to the ACT Government on climate change policies and programs, reported on performance in achieving greenhouse gas reductions, and had various roles in the electricity feed-in arrangements.

The *Electricity (Greenhouse Gas Emissions) Act 2004* established the commission as the administrator for the Greenhouse Gas Abatement Scheme. From 1 January 2005 until 1 July 2012, we set annual greenhouse gas benchmarks under the Act for participating utilities, monitored compliance and determined penalties for non-compliance. The scheme was closed on 30 June 2012 following the introduction of the Commonwealth Carbon Trading Scheme.

The *Electricity Feed-in (Renewable Energy Premium) Act 2008* (Feed-in Tariff Act) established the Electricity Feed-in Scheme. Under the Feed-in Tariff Act, we advised the minister on the premium rate to be charged for electricity fed into the network by relevant small-scale generators from 2009 to 2012. We monitored compliance with the Electricity Feed-in Scheme through licence conditions for electricity suppliers and for ActewAGL Distribution.

In 2009, we determined a Feed-in Tariff Code to set out practices and standards for the operation of the Electricity Feed-in Scheme applying to electricity distributors and suppliers. The code continues to apply to premium feed-in tariff customers.

In late 2009, the Minister for the Environment, Climate Change and Water announced that we would have new roles under the *Climate Change and Greenhouse Gas Reduction Act 2010* for advice and reporting in relation to climate change policies and programs, and performance in achieving greenhouse gas reductions. We published our first greenhouse gas inventory report for 2008-09 in September 2011, after advising the minister on the methodology for measuring emissions. The final greenhouse gas inventory report was for 2011-12 and was published in 2014.

Access arrangement reviews

Until 2008, when national regulation replaced Territory regulation, we regulated access arrangements for natural gas pipelines.

In January 2001, we approved the revised access arrangement proposed by ActewAGL Distribution for the natural gas system in the ACT, Queanbeyan and Yarrowlumla. In October 2004, we approved

the amended revisions proposed by ActewAGL to its approved access arrangement. The revisions related to access terms and conditions, tariffs and service, and other policies on which third parties may access ActewAGL's gas distribution network in the ACT and Greater Queanbeyan.

In October 2005, we approved two proposed associate contracts between ActewAGL Distribution and ActewAGL Retail in relation to gas transport services for large customers and for small customers.

In March 2004, we gave conditional approval of an associate contract for the provision of gas transportation services by ActewAGL Distribution to AGL Wholesale Gas as part of interim gas supply arrangements introduced following a fire at the Moomba gas plant in South Australia. Approval was required under the then National Third-Party Access Code for Natural Gas Pipeline Systems.

In 2008, under the national agreement to transfer significant responsibilities for energy sector utilities to a national regulator, the AER became responsible for approving third-party access arrangements for natural gas distribution and transmission pipelines.

Independent advice to Government

We have provided advice to the Government on a wide range of industry competition and competitive neutrality issues.



Milk pricing (1999)



Wheelchair accessible taxi licence allocations (2001-02)



Petrol prices in the ACT (2001-02)

Petrol prices and competition in the Territory petrol market (2019)

Future direction of the Territory taxi and hire car industries (2001 - 2003)



Ambulance service fees and charges (2004-05)



Competitive neutrality of Capital Linen Services (2005-06)



Government funding for the Territory racing industry (2010-11)



Making the retail electricity market fully contestable (2001 - 2003)

Contestability of electricity infrastructure works (2003-04)

Regulation of greenfield electricity infrastructure development (2004-05)

Competitive neutrality of the new public crematorium's operations (2020-21)



Water abstraction charge (2003-04)

Provision of water and sewerage services to Uriarra, stormwater and other water-related issues (2008-09)

Prudence and efficiency of the costs of the Cotter Dam enlargement (2009-10)

Pricing of non-potable water from Territory's pilot stormwater reuse projects (2009-10)

Secondary water use (2011 - 2013)

Pricing of recycled water supplied to high-intensity club users (2021)



Competition in the Territory supermarket industry (2010-11)



Container Deposit Scheme—price and competition impacts on the Territory beverage industry (2018-19)

ABBREVIATIONS AND ACRONYMS

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
commission	Independent Competition and Regulatory Commission
EWCC	Energy and Water Charges Commission (a predecessor to the commission)
Feed-in Tariff Act	<i>Electricity Feed-in (Renewable Energy Premium) Act 2008</i>
ICRC Act	<i>Independent Competition and Regulatory Commission Act 1997 (ACT)</i>
IPARC	Independent Pricing and Regulatory Commission (a predecessor to the commission)
IPARC Act	<i>Independent Pricing and Regulatory Commission Act 1997</i>
IPART	Independent Pricing and Regulatory Tribunal (NSW)
Utilities Act	<i>Utilities Act 2000 (ACT)</i>



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