



ICRC

independent competition and regulatory commission

Annual Report

2004–05

September 2005

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 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.

The Commission has three standing Commissioners:

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Transmittal certificate

Mr Ted Quinlan MLA
Deputy Chief Minister and Treasurer
ACT Legislative Assembly
CANBERRA ACT 2600

Dear Treasurer

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 Reports 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 1 July 2004 to 30 June 2005 has been included and that it complies with the Chief Minister's Annual Reports Directions.

We also hereby certify that fraud prevention has been managed in accordance with Public Sector Management Standard 1, Part 4.

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

Yours sincerely

Paul Baxter
Senior Commissioner

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Ian Primrose
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September 2005



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Foreword

The Commission's annual report for 2002–03 was the first to be introduced by a brief essay to complement the mandatory reporting information later in the report. That first essay described the background to and state of utility regulation activities in Australia and, in particular, in the ACT. The annual report for 2003–04 was introduced by building on the previous discussion, providing an ACT perspective on the role of state and territory regulators in the new Australian energy regulatory environment.

For this Annual Report 2004–05, the introductory essay focuses on the pricing and regulation of water—in particular, the pricing of externalities considered in the Commission's comprehensive pricing review during the financial year. The essay is based on an address made by Senior Commissioner Paul Baxter to the Water '05 conference held in Melbourne in February 2005.

Introduction

Governments, businesses and members of the wider community are expressing great concern about Australia's future ability to provide sufficient water to meet our needs, and the way in which we should regulate and control the use of water to ensure we not only meet our immediate needs but also provide for the future. Our aspirations are not restricted simply to ensuring the supply of water for general consumptive purposes; they also include a quite proper concern about the future environmental impact of the decisions on water use we make today.

Much of the current debate has been heightened by the lengthy period of drought that appears to be abating in some areas, and the real concern that we may have entered into a period of significant climate change adversely affecting our future water resources.

It is sometimes possible to confuse immediate drought issues with longer term issues of the allocation of water for consumptive use as against environmental purposes. While there is clearly a link between the two (and some would argue that one is a very strong consequence of the other), it is important to try to differentiate between the two when considering policy options—particularly matters to do with pricing policy.

This does not deny the link between the two or the need for any policy responses to be complementary and supportive. For example, reliance upon short-term solutions—such as water restrictions or ‘drought penalty charges’—as a means of restricting the use of existing water supplies during the current drought may create the false expectation that we can go back to ‘the good old days’ as soon as the drought breaks. Clearly, ‘the good old days’ are gone. Our policy response to the drought must complement our policy response to guaranteeing long-term water availability for both consumptive and environmental purposes.

My focus in this foreword is on pricing regulation. In particular, I want to address pricing in relation to environmental issues and other externalities that are not as readily costed as the more direct issues of capturing, storing and reticulating water and collecting and treating wastewater.

Pricing of water in ACT

In recent years, attention has increasingly focused on the pricing of water for urban consumptive purposes, and thus there has been a growing awareness of the practical issues that this presents. While the competition policy reforms included water reform together with energy and transport reforms, their main focus has been upon energy regulation and the creation of national codes and even national regulators. The regulation of water has been a poor second cousin in the policy debate.

Victoria and Western Australia have recently taken up the challenge of applying, in a practical way, some form of independent regulation of water prices. In New South Wales, the Independent Pricing and Regulatory Tribunal has a decade of experience in setting urban water prices. In the ACT, the ICRC, in its various guises, has been regulating water prices as an independent regulator for around eight years.

Over this period, the ICRC has developed a degree of expertise in this area that is now being shared with other jurisdictional regulators. This experience extends not only to the direct cost of the capture and reticulation of water and final treatment of wastewater, but also to the assessment of the cost of externalities (that is, secondary or unintended consequences) and the inclusion of this cost in the final prices paid by consumers.

Regulatory framework for water in ACT

The *Independent Competition and Regulatory Commission Act 1997* (ICRC Act) provides the legislative powers for the ICRC to determine prices for regulated industries. Regulated industries are those declared by the minister to be regulated. They are usually monopoly or near-monopoly public enterprises/corporations, or supply situations where there is no effective market.

Water was regulated directly by government prior to 1995, under the *Energy and Water Act 1988*. Since 1995, water has been regulated in accordance with the National Competition Policy under the authority of existing legislation. Initially this involved the Electricity and Water Pricing Commission (the predecessor to the ICRC) establishing the price, which was subsequently gazetted by the government of the day.

From 1997, the power to regulate water pricing was included in the ambit of the ICRC Act. Since 2000, licensing of water utility services and compliance requirements has been authorised by the *Utilities Act 2000*. Under these legislative arrangements, prices are determined according to a process independent of government, but initiated by reference from government.

The ICRC determines the form of the investigation process to be used in setting prices, including by assessing whether public hearings would benefit the process. A transparent public process provides opportunities for public and industry submissions on issues and elements of the regulatory decision. Under the ICRC Act there is a requirement for draft and final reports to be made public, with ample opportunity for public consultation, as part of the process.

The ICRC Act requires the ICRC to take into account a number of issues, including environmental, social and economic impacts of any pricing decision the ICRC may make. The ICRC must therefore have regard to these issues and report against them when explaining the rationale for the final decisions taken on price and service standards.

Directions are tabled in the Legislative Assembly as notifiable but not disallowable instruments. Decisions are subject to appeal, in the first instance to an industry body appointed by the Executive under the ICRC Act. To date this appeal process has not been used.

Price path

The price path developed for water and wastewater services is based on a volumetric charge with a CPI+/-X price control mechanism. This provides an incentive regulatory mechanism, which is usually applied over a five-year period (although a four-year price path is currently operating).

Under the current price direction, a multi-step tariff has been devised with a flat service charge and price steps at 100 kilolitre and 300 kilolitre annual consumption.¹ The objective has been to structure the tariff such that average costs for water consumption increase as consumption grows, particularly as consumption grows beyond the level sufficient to meet basic household needs. Previous multi-step tariff regimes, while increasing the marginal cost at each step, actually resulted in declining average prices beyond levels consistent with basic household demand requirements. Clearly, such an approach was not conducive to encouraging restraint in the use of water and discouraging excessive water consumption.

The revenue requirements of the water utility, ACTEW Corporation, are determined on a cost build-up (or building-block) approach, and include reference to information on operating expenditure and capital expenditure, industry risk factors (industry and organisational risks), and forecasts of demand growth. These cost projections are linked with service standard requirements and the timing of new investment to meet anticipated future demand to generate models of the financial requirements of the business.

It is important, when considering the approach adopted by the ICRC, to recognise what costs have been included in the pricing of water (and wastewater) services at this stage. The focus to this point has been upon the recovery of the legitimate, efficient costs of the water and wastewater services provider, ACTEW Corporation. These costs include all direct operating costs for the operation of the dams that collect the water; the treatment and piping of the water to the urban area; the reticulation of the water within the urban area; the collection of wastewater (and associated industrial wastes); the treatment of the wastewater; and the return of the

¹ ICRC, *Final Report and Price Direction—Investigation into Prices for Water and Wastewater Services in the ACT*, March 2004.

treated water to the Murrumbidgee River system for subsequent consumptive and environmental use downstream within the Murray–Darling Basin.

There are some important inclusions in this summation of costs recovered by ACTEW Corporation, particularly the costs of the high level of treatment of the wastewater which is returned to the river system. Nearly 45% of the water that is taken from the river system for consumptive use is fully treated and returned. In other words, the price that consumers pay in the ACT includes the full cost of the tertiary treatment and recovering for reuse of 45% of the water that is taken for consumptive purposes in the ACT. Rather than this water being discarded, as is the case for ocean or coastal river outfalls, it is in effect recycled within the Murray–Darling Basin for future use, thereby mitigating some of the environmental costs of extracting the water from the basin system in the first place.

While it is not claimed that this addresses all the environmental costs of water use in the ACT, it does go to addressing a significant part of those environmental impacts. Indeed, for purposes of the cap on water usage set by the Murray–Darling Basin Ministerial Council, it is the net volume of water extracted from the river system that is proposed to be used to measure the ACT’s cap, not the gross off-take. Thus, there is recognition that the ACT does not have as great an impact on the basin and river health as is indicated by its gross off-take of water from the system.

The implication is that, for the ACT at least, a significant part of what some might regard as externalities in terms of environmental costs is included in the price that consumers pay.

Notable exclusions from the costs that are included in the regulated revenue allowance for the ACTEW Corporation are the costs of maintaining the catchment areas that feed the Cotter and Queanbeyan river system dams, providing water to the ACT; and the environmental impacts of the net reduction in water flows in these rivers, and beyond, as a result of the ACT’s use of water. The treatment of these costs will be discussed later in this foreword.

In considering what costs should be included in the building-block model upon which the water utility’s revenue needs are determined, the ICRC has regard to the need for various new investments and the trade-off between operating costs and capital expenditure proposals. The ACT Government, in a major policy statement, *Think water, act water*, has enunciated a policy

objective which will see the ACT reduce per capita water use by 25% by 2023 and achieve a 12% reduction by 2013. In addition, the government has targeted an increase in water reuse in the ACT, from 5% to 20%, by 2013.

In these circumstances, the ICRC must consider the efficiency and prudence of various proposals to meet these and other public policy objectives. As noted above, the ACT already has a high level of reuse of water for consumptive purposes, with around 45% of the gross water taken for consumptive purposes being returned in high-quality condition to the river system. However, this is not water reuse within the ACT, although it does represent a high level of water reuse for the river valley as a whole.

ACTEW Corporation has initiated projects designed to reuse water within the ACT. Thus, for example, some of the outflow from the Lower Molonglo Treatment Works is reused within the ACT for the irrigation of vineyards. ACTEW Corporation also operates two water mining/reuse facilities within the city, where grey water and sewage are treated for reuse in the irrigation of public parks and playing fields. The costs associated with these mini treatment works are recovered through the regulated price path for water and wastewater services.

The ICRC, in its 2004 pricing direction for water and wastewater, has drawn attention to the need for careful consideration of the economic efficiency of establishing such mini water treatment facilities, particularly when the ACT already has an internationally recognised, premium-standard water treatment facility which is returning high-quality water to the river system for downstream consumptive and environmental purposes. In the current climate of zeal and enthusiasm for water reuse and water-saving schemes, there is a need for caution lest investments are made which are not cost-effective even after taking into account all the environmental externalities. This can present an interesting policy conundrum for governments keen to demonstrate their 'environmental credentials', and for regulators seeking to ensure that consumers are required to pay efficient costs only (albeit efficient costs that include externalities).

Therefore, under the building-block model and tariff structures of the type used in the ACT to recover required revenue and send appropriate pricing signals to consumers, there is a need to establish a clear understanding of the full costs and benefits that are embodied in various water-saving and water reuse proposals, and to apply this information in any cost-benefit evaluation prior to making spending or investment decisions. This helps to focus

attention on the need to develop some means of measuring externalities and specifying the costs that will be saved by various water reduction or reuse programs.

Water Abstraction Charge

In 1999 the ACT Government introduced a new charge for water: the Water Abstraction Charge (WAC). The WAC was introduced initially to recover the costs that were not recovered directly in the charges made by the water supplier, ACTEW Corporation. These costs included catchment management costs and various other public expenditures directly related to the supply of water in the ACT. While not always being directly identifiable in government public expenditure records, the identification of these costs is still important in arriving at the true cost of the consumptive use of water.

In May 2003, the ICRC was asked by the ACT Government to investigate, and provide advice on, an appropriate level for the WAC.² In undertaking that review, the ICRC broadly defined the costs captured by the WAC as the ‘water supply costs’ and the ‘flow costs’. This extended the coverage of the WAC beyond the simple recovery of catchment management and direct administration costs, to include both the environmental costs associated with the removal of water from the river system and the cost of using water primarily for urban domestic purposes versus alternative uses (that is, the scarcity value). In terms of the 2004–05 WAC, 20 cents per kilolitre, the water supply costs and flow costs each represent about half of the total charge.

The WAC is set by the ACT Government although the rate is based on advice from the ICRC. The WAC charge itself, which is calculated on a cents per kilolitre rate for water taken from the catchment dams, is initially paid by ACTEW Corporation then recovered by way of its charges to customers. Funds collected under the WAC are paid into consolidated revenue as a regulatory charge levied by Environment ACT on ACTEW Corporation and are not directly hypothecated from the budget. The WAC of 20 cents per kilolitre of water taken from the catchment dams was to increase to 25 cents per kilolitre from 1 July 2005.

² ICRC, *Final Report—Water Abstraction Charge*, October 2003.

The WAC applies to all urban water consumed. However, surface water captured in dams or rainwater tanks is outside the scope of the WAC. The WAC applies to both ACT and Queanbeyan consumers who are supplied by ACTEW Corporation from the ACT water supply.

Calculating the WAC

Methodology

The ACT Government sought advice from the ICRC on the methodology for calculating the WAC. The ICRC reported on this matter in October 2003, and in so doing proposed a number of principles and ‘good practice’ rules that could be applied in determining the value of the WAC. The need to establish these principles and practice rules reflects the subjectivity of valuing some of the costs—particularly those referred to as ‘flow costs’, being the environmental costs and the scarcity value of water.

The two main principles adopted by the ICRC are that the costs must be:

- reasonable
- measurable.

The ‘reasonability test’ goes to the question of whether the costs can appropriately be characterised as directly related to the provision of water and related services in the ACT.

The ‘measurability test’ is seen as being crucial if the WAC is not to be characterised as being arbitrary.

In applying the reasonability and measurability tests to the water supply costs component of the WAC, the ICRC has adopted a process under which actual costs incurred by government are identified and aggregated. These costs can be isolated in government accounts, and relate to activities such as catchment management, biodiversity and environmental monitoring, health monitoring and regulation, water utility regulation, and water policy and administration activities, which are spread across a number of government departments and agencies. These are costs that are not recovered by ACTEW Corporation itself or recouped directly from consumers in any other way.

Quantification of the flow costs represents a more difficult task in terms of the reasonability and measurability tests. The environmental and scarcity value (alternative use) costs, which are incorporated in this component of the WAC, go to the wider issues of externalities and how a government or regulator might value these factors.

The environmental impacts relate to a wide range of issues and are the most difficult set of costs to measure. Three factors need to be considered when contemplating which environmental costs should be included:

- The interrelatedness of many environmental effects means that there is potential for double counting.
- There are inherent difficulties in measuring some environmental costs.
- The inclusion of some environmental costs may not be reasonable as they are not directly related to the provision of water-related services in the community for which prices are being set (in this case, the ACT community).

From a practical perspective, and taking into account these three factors, the ICRC opted to include in the ‘environmental costs’ those costs relating to the environmental flows within the river system from which the ACT draws its water. Specifically, this has meant that those costs arising from the altering of the timing and magnitude of downstream flows by the capture and retention in dams of water that is subsequently used in the ACT, and not returned by way of the Lower Molonglo Water Treatment Works, have been included as environmental costs.

As a proxy estimate of the value of those costs, the ICRC has relied upon the Murray–Darling Basin Commission’s estimate of the average downstream cost of maintaining or augmenting river flows to counter the effect of the abstraction of water for consumptive purposes. This estimate is based on the Murray–Darling Basin Commission’s calculation of the cost of returning the river to its pre-abstraction state of health.

It is readily acknowledged that this definition and use of a proxy for the environmental costs represents only part of the overall environmental cost of abstracting water for consumptive purposes. A broader interpretation of environmental costs would potentially include consideration of the impact of the abstraction of water on the wider ecosystem. The Murray–Darling Basin Commission’s estimates of cost reflect some of this ecosystem’s cost, in the sense that they include costs incurred in repairing the river where possible

or, at least, costs incurred to mitigate against further degradation of the ecosystem. Similarly, in the 'water supply cost' component of the WAC, the ICRC has included the actual costs incurred by the ACT Government in the maintenance and protection of the water catchment areas, particularly in the Cotter River system, which extend into wilderness areas of the ACT.

While sympathetic to the view that the inherent value of the ecosystem should be included in the calculation of the WAC, and therefore the price of water, the ICRC has been conscious of the measurement difficulties and the need to meet the measurability test. Therefore, the ICRC has for the moment accepted those costs that can be readily measured as a proxy for the overall environmental costs.

In terms of the scarcity value of water, the ICRC believes that there is a legitimate argument for the inclusion of this cost in the WAC. Water not used in the ACT flows downstream and potentially can be used for other economic activities, including irrigation. Thus, to the extent that it is abstracted in the ACT and not returned to the river system, there is a scarcity value created by its potential alternate use. This scarcity value passes both the reasonability and measurability tests, in that abstracted water can be readily seen as having alternate uses in the river system and attracts a value in terms of the traded prices of water. If a market system existed for the whole river system and the ACT community had to buy water rights, this is an approximation of the cost that it would have to pay.

For purposes of quantifying the scarcity value of the abstracted water, the ICRC has used the temporary trading value of water as obtained from market information on water trading downstream from the ACT. Temporary trading represents the current market price of water, incorporating the current estimate of the added value of alternate uses for the water, the scarcity value of the water at a particular point in time, and the market's assessment of the medium-term outlook for the availability of additional water.

The ICRC considered whether it should use the sales value of the transfer of permanent water entitlements as the basis for its estimate of the scarcity value of water. This effectively represents the price the market sets for the long-term value of the water, thus treating water as a capital asset. Use of the permanent value of the water would give greater stability to the WAC than the temporary entitlement price, which varies in response to short-term supply and demand factors. However, the ICRC concluded that the immediacy offered by the temporary traded price was more appropriate in

these circumstances, and therefore has adopted this approach to measuring the scarcity value.

Other policy considerations

In developing this methodology for calculating the WAC—and, in particular, in adopting the reasonability and measurability tests—the ICRC has considered a number of wider policy-related and legal issues. These are highlighted briefly below.

Cost recovery by water utility

Under the form of incentive price regulation used by the ICRC, a price path is developed on the basis of a projection of efficient costs for the regulated utility (including a return on capital) extending out over a period of up to five years (the ICRC is currently using a four-year price path). The use of this cost ‘building block’ approach, with a price path formula fitted to the cost projection to match projected revenue with projected costs, provides the incentive for the regulated entity to seek to improve its performance and keep a difference between the projected costs and the actual costs incurred.

Without discussing further the relative merits of this approach, it is premised on the fact that, at least for forward price path modelling purposes, the regulated entity is entitled to expect to recover only the actual costs (including a return on investment) that it is obliged to incur. There are a number of issues that this raises in relation to externalities and the appropriate pricing of water.

First, wider social or environmental costs are not included in this calculation unless the entity has actually been required to meet such costs. In the ACT we have partly addressed this issue by the use of the WAC, as discussed above.

Second, to the extent that much of the water capture, treatment and reticulation infrastructure has been wholly funded by public expenditures in the past, it is premised that the utility does not need to generate a rate of return on this investment because, in effect, the community has already paid for the assets involved (that is, they are sunk costs). There is merit in this argument.

The ICRC has addressed this by heavily discounting the value of pre-existing assets (or giving them no value at all for regulatory purposes), to reflect the fact that they have already been paid for. The ICRC still allows the recovery of maintenance and repair costs for assets, such as dams, which theoretically have an infinite life. The recovery of current maintenance and upkeep charges will ensure that each generation of consumers meets its appropriate share of the costs relating to retaining these assets in full working order.

However, concern is sometimes raised by those who argue that this approach fails to recognise the ‘true cost’ of water because it treats much of the cost of establishing the existing infrastructures as a sunk cost for pricing purposes (any new investment is of course fully included in the regulated asset base for pricing purposes).

Third, prices (and revenues) for water reticulation and supply activities conducted by the regulated entities cannot be increased to levels above the recovery of efficient costs. It is at this point that some confusion exists in the public debate on water pricing, because there are some who argue that the wider environmental and scarcity value issues should be included in the price captured by the regulated entity.

Rather than allow the regulated entity to capture these additional charges, the principle needs to be maintained that these entities are able to recover only efficient actual costs and an appropriate return on investment, and any additional charges reflecting externalities that are not paid for by the regulated entity should not be included in revenue retained by the regulated entity.

Again, the use of the WAC in the ACT helps to address this issue and provides a mechanism whereby consumers face prices that incorporate wider cost externalities, but the revenue thus raised is not retained by the monopoly utility service provider.

These issues are at the centre of much of the debate that is evident in the wider community, and reflect in part a misunderstanding of the methodology used in the determination of regulated prices, and the principles upon which that methodology is based. Ultimately, the objective of the regulator must be to ensure an appropriate balance between the regulated utility and consumers. Consumers should not be required to pay the regulated utility any more than the efficient price for the services being provided. The

regulated utility needs to recover at least the efficient costs that apply, in order to provide the regulated service at the standard and in the form required by the community.

It is not simply a matter of increasing prices being paid to regulated utilities in some arbitrary way to reflect what might be perceived to be the costs of externalities, or approving the payment of prices including estimates of the costs of environmental problems to a regulated utility when that utility is not responsible for expending revenue to rectify the environmental problems. At the same time, consumers should expect to pay a price which reflects the true cost of the water, including the externality costs.

Legal and policy issues

This brings us to the second point that arises from the methodology adopted in the ACT.

If these externality costs are to be identified and included in some form of charge, such as the WAC, then at a state (or territory) level that charge cannot be characterised as a ‘excise’. Constitutionally, the Government of the Commonwealth of Australia has sole power to apply ‘excises’ (that is, charges that go beyond the recovery of actual costs), and this restriction has been confirmed by decisions of the High Court. Therefore, any form of a WAC that is introduced by a state or territory government must reflect the actual costs that are incurred by the state or territory concerned.

As a consequence, the identification and quantification of the actual costs involved becomes a central part of any methodology used to set a WAC. The limitations on the taxing powers of the state governments also restrict any use of the WAC to increase water prices to levels that some would argue are desirable in order to achieve significant changes in water demand behaviour and thus address either long-term or short-term water availability issues, such as droughts (although the scarcity value concept used in the ACT in part seeks to address this issue).

While there are calls in some quarters for higher water prices as a means of changing consumption behaviour, there are those who publicly challenge the current prices as being too high, arguing that, among other things, all existing infrastructure should be treated as ‘sunk costs’ for pricing purposes and therefore prices should be lower than currently set. These legal and policy issues create an interesting quandary for the relevant regulator or government.

Clearly there are externalities and environmental costs which are not readily quantifiable but which are incurred by the economy. At the same time there are interest groups in the community who will challenge any attempt to recover these costs if they cannot be properly identified and quantified. The role of government is to address and resolve these conflicts in a way that is consistent with good regulatory pricing practice while being within the legislative powers that are available to the governments concerned.

Community reaction to the WAC

There was very little adverse community reaction to the WAC when it was introduced in the ACT in 1999. It replaced a pre-existing charge (the Environmental Works Charge) that had applied for the previous three years and was set at about the same level as the initial WAC charge. This lack of reaction was despite the WAC being clearly identified on consumers' accounts.

More recently there has been growing debate on aspects of the WAC. This debate reflects a general community concern about the availability of water that is growing as a consequence of the persistent drought in the ACT. Long-term certainty regarding water availability has become a politically sensitive issue. The community is primarily focusing upon the degree of security offered by the available water reserves, and links the payment of the WAC with the perceived responsibility of the government to ensure that access to water is maintained.

Business reaction has been generally muted although in recent submissions to the government there has been an emerging focus on the WAC, again reflecting frustrations with continuing water restrictions and the perceived need for government action to ensure water supply security. Comments from the water utility itself have been focused on practical implementation problems.

Media reporting has also been low key and generally supportive of the WAC, with greater attention being given to the longer term water security issues and the possible construction of a new dam. Conservation bodies have generally applauded the inclusion of environmental costs in water prices and the pricing signals this provides to encourage lower resource use. These groups would generally support higher prices as a means of reducing further the level of consumptive use in the ACT.

Consumer advocacy groups have argued that setting higher prices, for whatever reason, has a disproportionate impact on low-income families and individuals and that this is undesirable. This is a broader social policy question for government to resolve. Options include addressing the consumer welfare issues through the application of appropriate direct concessions. The Commission has sought to address this issue by restructuring tariffs to reflect more generally an increasing average cost outcome as consumption levels increase. However, the Commission is only too aware that this is a second-best outcome which does not address the circumstances of individual households. Even so, it is not possible to set different water prices for each and every household in the ACT.

The general community acceptance of the concept of the WAC reflects a community awareness and consciousness of the environmental impacts of water abstraction for consumptive purposes. This may be a mindset that is more typical of the ACT than other places in Australia. However, the emerging debate, heightened by the continuation of water restrictions and the ‘browning’ of Canberra, highlights the need to regularly and publicly review the WAC to ensure that it meets the reasonability and measurability tests discussed above.

Regular reviews and data quality assessments are major issues identified by the ICRC in its advice to government. Such reviews ensure that legal risks arising from the limitations on state and territory taxing powers are reduced, and that the WAC closely reflects actual cost movements. Data comprehensiveness, quality and availability ensure that all relevant costs are captured. To achieve this in other parts of Australia, data capture systems may need to be improved and data collection may need to be made simpler, quicker and more cost effective.

Some concluding observations

Having outlined the price regulatory arrangements in the ACT—and, in particular, the incorporation of an allowance for externalities in the prices that are paid for water by users—it is worth making some observations which have direct implications for future policy development in the area of water pricing.

The ACT has set a high standard for the regulation of water pricing and, since 1999, has pioneered nationally the development of a methodology for

the recovery of externality costs. The operation and implementation of the WAC is relatively straightforward and simple to apply and administer. It is applied to all users on a volumetric basis, although in its present form it has a single rate per kilolitre regardless of the volumes of water used. The methodology used in the ACT is now being considered by other jurisdictions, and may form the basis for a more consistent national approach.

It is generally accepted that the pricing of water should include an allowance for the cost of externalities arising from the abstraction of water for consumptive purposes. However, it is not desirable or economically efficient simply to add an arbitrary amount to water prices in an attempt to incorporate the cost of externalities in the prices charged. If consumer support is to be maintained and legal challenges avoided, a more systematic and defensible cost determination methodology needs to be agreed.

To this end, three points are worth noting. First, the measurement of externality costs, and their inclusion in water prices, should be based on nationally agreed valuation methods and principles. To avoid claims that charges such as the WAC, or even charges to recover the legitimate direct costs of the regulated utility, are simply another form of 'state tax', clear rules and guidelines need to be established. The guidelines should remove any confusion as to what is to be included in the measurement of externalities and in the resultant prices.

Second, allowances for externalities should not simply be included in the revenue recovered by the regulated utility if that utility is not itself responsible for the expenditure required to meet the costs incurred. This will simply inflate the profits of the regulated entity and result in inefficiencies in terms of the behaviour of that entity.

Third, to avoid lengthy court challenges based on the constitutional power of the states (and territories) to implement a charge which may be argued to be a tax, the recovery of externalities (where they are incorporated in some form of a WAC) should be undertaken at the federal level, with funds being allocated to the relevant state and territory governments using similar arrangements to those which currently apply to the allocation of revenue from petroleum and tobacco taxes. Potentially, this would provide the opportunity for the state, territory and federal governments to agree a rate of WAC that goes beyond the level readily justified by the costing information that can be assembled.

This may not represent a difficulty, if it is acknowledged that the externalities are greater than can be readily costed, or that there are wider social and economic reasons why the price of water should be increased to reflect perceived national interests. Ultimately, governments are influenced through the ballot box on questions such as the magnitude of taxes charged, and this itself may provide sufficient incentive for any national WAC rate to be kept within acceptable bounds.

The time for action on these issues is now. There is a wide acceptance in the community that water prices need to reflect all costs, not just those relating to the collection, treatment and reticulation of water. However, this issue needs to be considered at a national level and not left to individual state and territory governments. The ACT has set a good precedent, but is limited in terms of what it can do by the Constitution and by the need to ensure that ACTEW Corporation does not capture inappropriate monopoly rents. These issues of the measurement and capture of externalities, particularly those relating to environmental and scarcity values, can be addressed at a national level as part of the National Water Initiative.

Finally, consideration of the inclusion of externality costs in water pricing should not be seen as a simple response to the current drought-related water supply shortages. If community support for including this form of charge in water prices is to be maintained, there is a need to communicate the message that this is part of the process of dealing with Australia's longer term water issues, and that the pricing of water at its true cost is designed to encourage the consideration and adoption of appropriate reuse or conservation measures.

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1 Senior Commissioner's review

In this section of the Annual Report the Senior Commissioner assesses and reports on the overall performance of the Commission, identifying key achievements, issues and challenges addressed during the reporting year, providing high-level analysis of strategic performance, and discussing the outlook for the Commission for the coming year.

1.1 Overview of the Commission

The 2004–05 reporting period was the Commission's fifth year as a full-time statutory authority, following an initial four years as a part-time body with a single part-time commissioner. As previous annual reports have documented, the Commission has changed substantially since its inauguration in 1996. Its statutory scope has increased dramatically since 2000, through additional powers added to the *Independent Competition and Regulatory Commission Act 1997* and the enactment of the *Utilities Act 2000*. In that period the Commission has delivered significant price decisions for electricity network and retail services, and for water services and gas access prices.

Within the constantly changing rhythms of the Commission's five- to ten-year work cycles, the 2004–05 financial year has been the first since the start of the decade that has been relatively free of major new statutory changes or price inquiry processes. Not surprisingly, this has provided an ideal opportunity for the Commission to focus its energies and expertise on other of its important statutory responsibilities, including its watching role over the competitive neutrality principles intended to safeguard private sector businesses from being unduly prejudiced by government-owned enterprises. In this way the Commission has been able to transform potential challenges into substantial potential opportunities to benefit the ACT community. At the same time, the Commission has completed or initiated important work in respect of a utilities audit framework, industry code changes and greenfields infrastructure contestability, among many other matters.

Over the past year the Commission has been acutely aware of its responsibility to assure government that, as an independent statutory authority, the Commission is governed in accordance with emerging best practice in public administration. The Commission draws attention to the publication (included on its website at www.icrc.act.gov.au) of its guidelines

and information papers on information handling and licensing procedures. These documents are the fruit of substantial Commission effort and resources committed to ensuring that its guidance to the public is both helpful and comprehensive. The Commission regards these instruments as leading edge in administrative terms.

1.2 Major issues, challenges and achievements in 2004–05

During the year fees revenue fell somewhat as, within the natural cycles of the Commission's responsibilities, its primary focus moved away from utility price setting and toward a wider set of utilities' compliance, licensing and regulation issues.

Over the next several years, the Commission's pricing activities inevitably will swell again. The Commission will begin its next round of price reviews in 2006, with the early stages of both water and electricity network pricing. The anticipated transfer of responsibility for electricity network pricing to the Australian Energy Regulator, possibly in late 2006, could herald the start of a period of new opportunities for the Commission as it assumes additional responsibilities assigned by government, while expanding the exercise of its existing statutory roles. The Commission has also noted increasing levels of competition emerging in the gas and electricity markets over the past 12 months, evidenced through wide-ranging marketing by various retailers and reflecting a maturing of the relevant energy markets in the ACT.

Notable achievements were delivered or substantially advanced during 2004–05. In its most recent price determinations, for instance, the Commission indicated it would examine whether there might be benefits for the ACT community in introducing special incentive arrangements for both utility performance and service quality improvements. Following on from this undertaking, during the year the Commission produced an issues paper and a draft report on incentives carryover mechanisms and service quality incentives. These were highly technical albeit extremely useful contributions to the public debate. The Commission is continuing its review and a final report will be issued later in 2005.

The Commission also commenced a review of electricity metrology procedures. (The Commission is the jurisdictional metrology coordinator for the ACT under the National Electricity Code.) The review is considering

which, if any, of the recommendations of a joint jurisdictional review of metrology procedures, published in December 2004, might be agreed for application in the ACT. The Commission is also looking at the possible introduction of interval metering, which would allow time-of-use pricing for electricity, a product service already available in some other jurisdictions, which is part of the developing competitive framework for electricity supply. In reviewing the metrology arrangements, the Commission is conscious of the importance of creating a sense of certainty as we move towards a nationally regulated electricity market. The Commission thus is fully engaged to ensure that the ACT is properly prepared and positioned to move into the national regime without disruption or major unnecessary change.

1.3 Overview of Commission performance and financial results

The annual audit of the Commission's financial statements for the 2004–05 financial year resulted in an unqualified opinion. The Commission has maintained its unbroken record of unqualified opinions since it became subject to financial audit in 2000. In maintaining that record the Commission acknowledges the effort that Commission staff and the Audit Office make to maintain a strong commitment to the audit process and to the quality of the ongoing relationship between the Audit Office and the Commission. This is a significant governance issue for the Commission and is viewed as something of a litmus test for the Commission's management performance.

1.4 Outlook for the coming year

In considering the emergence of new national regulatory arrangements, the Commission has participated with other jurisdictions in developing an appropriate regulatory framework to be effective from late 2006 or early 2007. The transition from a state to a national framework is complex but the new national regulatory bodies, the Australian Energy Regulator and the Australian Energy Market Commission, are now established, beginning to attract resources and assuming their responsibilities. The Commission contributes, both through continuing membership of the Utility Regulators Forum and as an ACT agency, in helping to develop the new national arrangements to try to ensure that the resulting mechanisms provide the best possible outcomes for the community.

In previous annual reports and elsewhere the Commission has raised the issue of its future role. There is no doubt in the minds of the Commissioners and their supporting secretariat that there is a crucial and ultimately beneficial role for the Commission to play in protecting the interests of the wider community in the ACT. To this end, the existing statutory framework may need to be further revised to accommodate new roles and responsibilities. Dialogue on this issue will continue at a number of different levels within government so that an informed outcome can be achieved that will enable the Commission to continue to make its contribution to the delivery of good public policy.

Paul Baxter
Senior Commissioner

2 Commission performance

This section of the report describes the role and core functions of the Commission, including key contributions to community outcomes and services as established in the Commission’s statement of intent and corporate plan.

2.1 Key strategic achievements

The Commission is an independent statutory authority established under the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act) to be responsible for a range of economic regulatory services, including:

- providing directions on prices for industries declared to be regulated industries
- providing advice on industry matters referred by an ACT Government minister
- providing advice on access arrangements to monopoly infrastructure
- arbitrating access disputes
- providing advice on competitive neutrality complaints and on government-regulated activities.

The objectives of the Commission are defined in the ICRC Act and the *Utilities Act 2000* (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 s. 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.

In s. 3 of the Utilities Act those objectives are reinforced and others are added, 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 Essential Services Consumer Council or the chief executive under Part 5 (technical regulation) is properly considered
- to ensure the government's programs about the provision of utility services are properly addressed
- to give effect to directions of the minister under s. 19 (s. 19 directions may only be given to ensure the achievement of the objects set out in the subsections above).

The parameters under which the Commission operates are determined by the ICRC Act and the Utilities Act. The Acts variously describe 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 service.

Appendix 2 lists some of the other Acts and codes under which the Commission has obligations.

2.2 Overall performance

2.2.1 Highlights

In 2004–05 the Commission sought to implement the intentions of the Utilities Act and the ICRC Act to fully realise the government’s objectives. The Commission maintained its productivity across a range of activities consistent with its responsibilities.

These activities included but were not limited to:

- a review of access arrangements for the ActewAGL natural gas system in the ACT, Queanbeyan and surrounding areas
- an investigation into incentive mechanisms for ACTEW’s and ActewAGL’s operations
- a review of metrology (electricity metering) procedures
- the investigation of a number of competitive neutrality complaints
- the development of guidelines on accessing information held by the Commission (now on the Commission’s website), which provide due protection to confidential information provided to or maintained by the Commission.

Contact details for staff who can provide more information on the Commission’s activities and performance are provided in Appendix 3.

2.2.2 Summary of achievements

National Framework for Electricity and Gas Distribution and Retail Regulation

In August 2004, the Ministerial Council on Energy’s (MCE) Standing Committee of Officials released an issues paper on the National Framework

for Electricity and Gas Distribution and Retail Regulation. The issues paper was designed to provide a basis for public comment on the possible arrangements for regulation of gas and electricity once the Australian Energy Market Commission (AEMC) and Australian Energy Regulator (AER) begin operation. The Commission, being responsible for the regulation of both electricity and gas distribution in the ACT, made a submission on the issues paper in November 2004.

In the submission, the Commission expressed its view that it would be desirable to align not only the principles but also the process involved in electricity and gas distribution regulation. The Commission also agreed that there is a need to establish clear areas of responsibility between the AER and jurisdictional regulators and set the timeframes for the AER to take over the regulation of electricity and gas distribution and retail. The issues paper and full Commission submission can be found on the MCE website, www.mce.gov.au.

Review of National Competition Policy Reforms

In October 2004, the Productivity Commission released a discussion draft reviewing National Competition Policy Reforms, upon which the Commission provided a submission. The submission commented on issues relevant to the Commission's responsibilities in the ACT, including electricity and gas regulation, water pricing and water reform issues, passenger transport issues, consumer protection policy, competitive neutrality issues and the oversight of regulated infrastructure providers.

In the submission, the Commission stressed the need to clarify the arrangements relating to the introduction of the AEMC and AER and the opportunity for the Productivity Commission to contribute to the debate on water reforms to be undertaken under the National Water Initiative. The discussion draft, the full Commission submission and the final inquiry report, which was released in April 2005, can be found on the Productivity Commission website, www.pc.gov.au.

Review of access arrangements for ActewAGL natural gas system in ACT, Queanbeyan and Yarrowlunla

The Commission granted final approval for the Access Arrangement for the ActewAGL Gas Distribution System in the ACT and Greater Queanbeyan in November 2004. The access arrangement covers the terms and conditions under which ActewAGL must provide third parties with access to its natural

gas distribution system between 1 January 2005 and 30 June 2010. The final approval followed the release of an issues paper in April 2004, a draft decision in July 2004 and the final decision in October 2004.

The review was conducted in accordance with the National Third Party Access Code for Natural Gas Pipeline Systems, with the Commission's final decision resulting in a reduction in distribution charges of 4.3% in 2005 and tariffs increasing by inflation in subsequent years.

Copies of the issues paper, draft decision, final decision and final approval, together with all submissions received, can be found on the Commission's website, www.icrc.act.gov.au.

Incentive mechanisms

During 2004, the Commission completed reviews into ActewAGL's electricity and gas networks, as well as ACTEW's water and wastewater network. In completing these reviews, the Commission discussed with ACTEW and ActewAGL the possibility of introducing an efficiency carryover mechanism and/or a service incentive scheme. Both businesses committed to working with the Commission in an attempt to evaluate the benefits from the possible introduction of either an efficiency carryover mechanism and/or a service incentive scheme.

In March 2005 the Commission released a discussion paper on efficiency carryover mechanisms and service incentive schemes to provide additional incentives above those already provided by incentive regulation to achieve utility efficiencies. The Commission's discussion paper examined the efficacy of efficiency carryover mechanisms, the process by which financial benefits from improvements in efficiency could be shared between ActewAGL, ACTEW and customers, and the incentive effects of the Commission's current regulatory approach.

A service incentive scheme aims to create a link between service quality and revenues, potentially to improve the incentive for a regulated business to seek an efficient level of service. In this respect, the Commission's discussion paper catalogued the possible approaches to service incentive schemes, focusing on the complexity of these schemes and whether they achieve their stated goals. As pointed out in the discussion paper, the Commission notes that there are currently high levels of satisfaction with the services provided by ActewAGL and ACTEW.

The Commission envisages releasing its draft decision on whether or not to introduce either an efficiency carryover mechanism or service incentive scheme in September 2005.

Metrology

In February 2005, the Commission released an issues paper on metrology procedures in the ACT—that is, the rules governing the way electricity meters are provided and installed, and the way that electricity consumption is measured.

The issues paper was released following a national investigation conducted by regulators from New South Wales, Victoria, Queensland, South Australia, Tasmania and the ACT. The investigation, which was concluded in late 2004, made a series of recommendations relating to the development of an efficient nation-wide electricity market.

Submissions were received from a range of interested parties and the Commission expects to release a draft decision later in 2005. The joint jurisdictional review, issues paper and submissions received on the issues paper can be found on the Commission's website, www.icrc.act.gov.au.

Full retail contestability in energy markets

The ACT Government has progressively implemented full retail contestability (FRC) for both electricity and gas retail services. FRC allows customers the freedom to choose their electricity and gas retailers. Before contestability was introduced, ActewAGL supplied electricity and gas to all consumers within the ACT and, in the case of gas, within the surrounding region.

Electricity

FRC was introduced for electricity retail services from 1 July 2003. This gave customers using less than 100 megawatt hours of electrical energy per year the option of choosing their electricity supplier. The electricity retail market had been open since June 1998 for large customers using more than 160 megawatt hours per annum, and open since 1 July 2001 for customers using more than 100 megawatt hours per annum.

During 2004–05 there were approximately 145,000 electricity customers in the ACT and 13 retailers from which they might choose. In the first two years of contestability in the electricity retail market, approximately 2,500

small customers (less than 160 megawatt hours) elected to change to a retailer other than ActewAGL. This represents less than 2% of the electricity retail market. However, there is evidence to suggest that in the ACT a larger proportion of consumers have moved from standard customer contracts to negotiated contracts offered by ActewAGL. Figure 1 shows the number of customers who have changed their electricity and gas retailers.

As a comparison, 400,000 small New South Wales customers out of a total small customer base of approximately 2,600,000 have changed electricity retailers since FRC was introduced January 2002.³ This represents approximately 15% of small customers. FRC was introduced in Victoria in January 2002. Since its introduction, approximately 900,000 customers have changed retailers out of a total residential customer base of approximately 2,250,000 residential customers, representing approximately 40% of small customers.⁴ In South Australia, approximately 38% of small customers have transferred to alternative retailers since FRC was introduced in January 2003.⁵ This represents approximately 280,000 out of the total small customer base of 740,000.

Figure 2 shows electricity transfers as a percentage of the customer base for each of the ACT, New South Wales, Victoria and South Australia. It should be noted that the large increase in South Australian transfers in March 2004 reflects the impact of the South Australian Government's \$50 electricity transfer rebate for eligible concession card holders. The rebate expired on 13 August 2004.

Gas

FRC for gas services was introduced in the ACT on 1 January 2002, and during 2004–05 there were four gas retailers with approximately 94,000

³ NEMMCO, Retail transfer data (www.nemmco.com.au/data/ret_transfer_data.htm) and customer numbers from the Independent Pricing and Regulatory Tribunal report *NSW Electricity Distribution Pricing 2004/05 to 2008/09 Final Report*, June 2004.

⁴ NEMMCO, Retail transfer data (www.nemmco.com.au/data/ret_transfer_data.htm) and customer numbers from Essential Services Commission (ESC), *Electricity Distribution Price Review 2006–10 Draft Decision*, June 2005. It was assumed that approximately 95% of total electricity customers, taken from information on pp. 133–135, could be classified as small. This is consistent with the findings in the ESC report *Special Investigation: Review of the Effectiveness of Full Retail Competition for Electricity—Final report*, September 2002, p. 29.

⁵ Essential Services Commission of South Australia, *Completed Small Customer Electricity and Gas Transfers to Market Contracts*, June 2005.

residential gas customers in the ACT. Although FRC was introduced in the ACT in 2002, there were no switches made until April 2004. However, from April 2004 to 30 June 2005, approximately 2,570 small customers switched to a retailer other than ActewAGL. Figure 1 shows the total number of gas customers who have switched to a retailer other than ActewAGL.

As a comparison, approximately 130,000 gas customers in New South Wales out of a total of approximately 1,100,000 customers have transferred retailers since FRC was introduced in January 2002.⁶ This represents nearly 12% of the market. In Victoria, approximately 565,000 out of approximately 1,400,000 customers have completed a transfer since FRC was introduced in July 2002.⁷ This represents approximately 40% of the market. FRC was introduced for small gas customers in South Australia in July 2004. Since its introduction, around 90,000 small customers, representing approximately 25% of the small customer base of 365,000, have completed transfers to market contracts.⁸

Figure 3 shows gas transfers as a percentage of the customer base for each of the ACT, New South Wales, Victoria and South Australia.

Figure 1 identifies transferred electricity customers using less than 160 megawatt hours and less than 100 megawatt hours as well as gas customers who have changed retailers since FRC was introduced.

⁶ Information provided by the Gas Market Company.

⁷ Information available on the Vencorp website, www.vencorp.com.au.

⁸ Essential Services Commission of South Australia, *Completed Small Customer Electricity and Gas Transfers to Market Contracts*, June 2005.

Figure 1 ACT electricity and gas customers transferring to new retailers

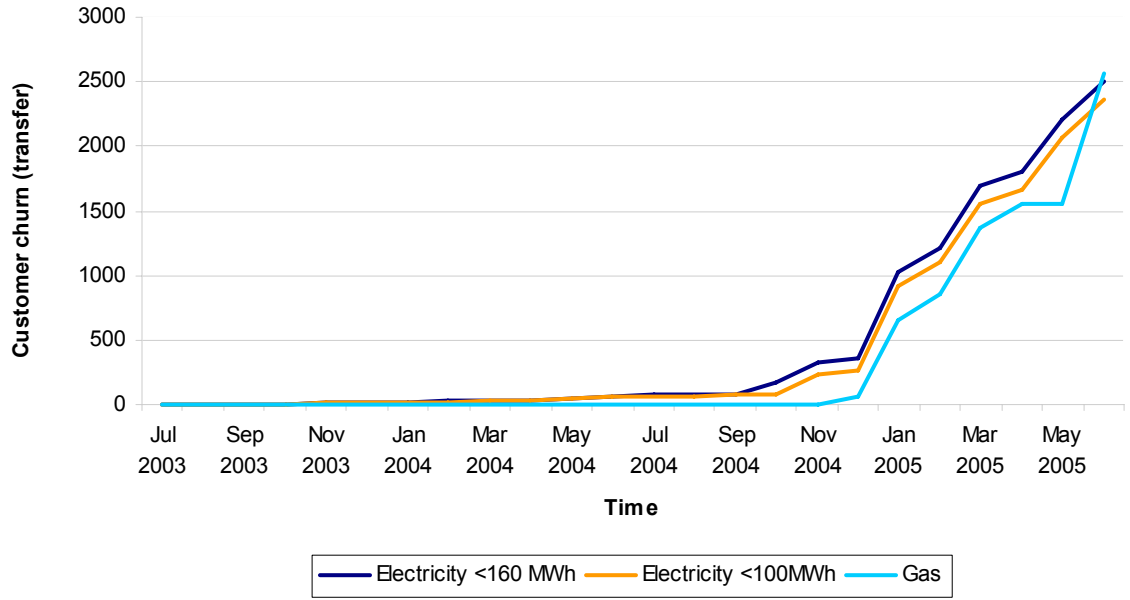


Figure 2 Electricity transfers—ACT, New South Wales, Victoria and South Australia

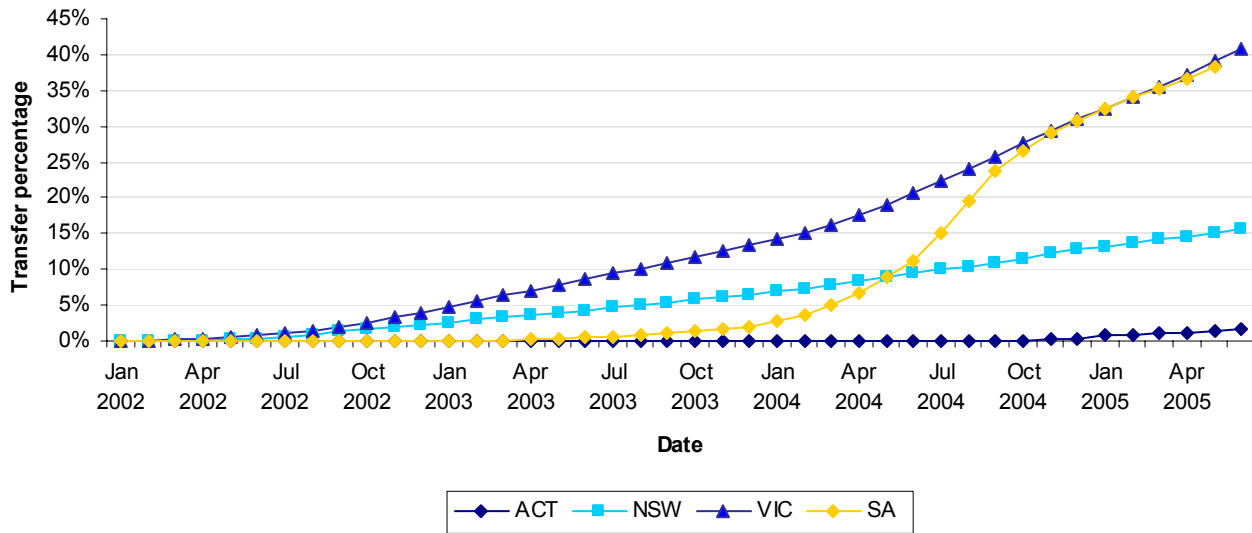
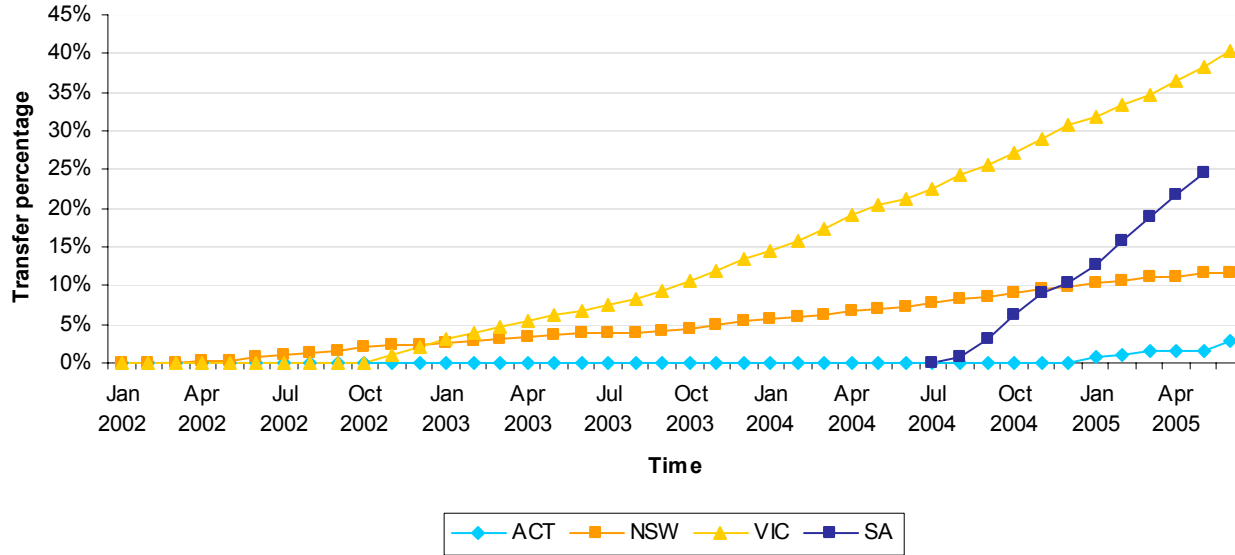


Figure 3 Gas transfers—ACT, New South Wales, Victoria and South Australia



Competitive neutrality complaints

Clause 3 of the Competition Principles Agreement, one of the three National Competition Policy Agreements signed by the ACT and other Australian governments in 1995, requires the territory to provide a mechanism to deal with competitive neutrality complaints. The ACT Government's Competitive Neutrality Statement in 1996 provided an initial mechanism operating from the then Office of Financial Management. In 2000, responsibility for inquiring into and providing advice on competitive neutrality complaints was transferred to the Commission.

The objective of competitive neutrality policy is to eliminate resource allocation distortions that arise out of government ownership of entities engaged in business activities. The Competition Principles Agreement calls for an appropriate level of corporatisation of government businesses, at least requiring such businesses to pay all Commonwealth, state and territory taxes, be financially independent in relation to government, and be subject to the same regulations as are private sector competitors. Further, the policy seeks to eliminate subsidisation of prices by moving to full cost recovery pricing. The Competition Principles Agreement, like all of the competition policy agreements, relies on the benefits of moving to a competitively neutral environment outweighing the associated costs.

The Commission received one formal submission in respect of a competitive neutrality complaint in 2003–04; at the end of the reporting year the submission was still being considered to establish whether the Commission would proceed with the matter.

Regulation and price control of utilities

The territory's utilities regulatory regime is constituted in the ICRC Act (which covers price control) and the Utilities Act (which covers non-pricing aspects of industry regulation, including technical issues).

The utility services covered by the regime are electricity, gas, water and sewerage. Regulatory responsibilities are divided between the ACT Planning and Land Authority (the Department of Urban Services before 30 June 2003), which regulates on technical issues; the Commission, which regulates on other industry issues, including pricing; and the Essential Services Consumer Council, which handles customer complaints and hardship claims from those unable to pay their bills.

In addition to price control, the Commission's regulatory responsibilities include the encouragement of an efficient, reliable and effective utilities industry, the promotion of competition and the minimisation of the potential for misuse of monopoly power, as well as some consumer protection and environmental issues. Regulatory instruments used to achieve these ends include licences, codes and associated guidelines.

2.2.3 Licensing issues

Licence application criteria

In late 2004 the Commission completed a comprehensive review of the technical and prudential criteria against which applications for utilities services licences are assessed. Detailed guidelines and a template for applications are now available to prospective applicants.

Licence applications

In 2004–05 the Commission received and approved an application from Powerdirect Pty Ltd for a licence to provide electricity supply services in the ACT. Powerdirect has yet to target the ACT market actively.

In June 2005, the Commission received an application from TRUenergy Pty Ltd (formerly TXU, formerly SPI) for a licence to provide gas supply services in the ACT. As at 30 June 2005, the application was still under consideration by the Commission.

Licence transfers

The Commission received two applications for the transfer of existing electricity supply licences during the reporting period. The licence held by Ergon Electricity (Victoria) Pty Ltd was transferred to its parent company Ergon Energy Pty Ltd, and the licence held by SPI Electricity Pty Ltd was transferred to SPI Retail Pty Ltd as part of the internal restructuring of that company preceding its sale to CLP International.

Licence variations

The Commission added new conditions to all utility services licences for the provision of electricity supply services issued under the Utilities Act, to give effect to the provisions of *the Electricity (Greenhouse Gas Emissions) Act 2004*.

The Commission also varied licences issued to providers of gas supply services, so that only licensees that are active in the ACT gas supply market are required to participate in the Gas Market Company's gas market scheme or an approved equivalent scheme.

Licensees as at 30 June 2005

Table 1 shows the utilities licences that had been issued as at 30 June 2005.

Table 1 Utilities licences granted as at 30 June 2005

Service	Licensees
Electricity distribution and connection	ActewAGL Distribution
Electricity supply	ActewAGL Retail AGL Electricity AGL Victoria Country Energy ENERGEX EnergyAustralia EnergyOne Ergon Energy Integral Energy Australia Origin Energy Electricity Powerdirect TRUenergy Yallourn Energy (trading as 'AusPower')
Gas transmission	East Australian Pipeline Ltd
Gas distribution and connection	ActewAGL Distribution
Gas supply	ActewAGL Retail Country Energy ENERGEX Retail EnergyAustralia
Water supply	ACTEW Corporation
Sewerage	ACTEW Corporation

Standard customer contracts

The Commission approved a number of variations to the standard customer contracts approved under the Utilities Act for the protection of franchise customers in the ACT.

ActewAGL's standard customer contract for gas connection and supply was amended to clarify which of the services available to customers under the

contract are provided by ActewAGL Retail, and which are provided by ActewAGL Distribution.

ActewAGL's standard customer contracts for electricity supply and for electricity connection and distribution were amended to clarify the distinction between distribution and connection services, and to ensure compliance with the *Privacy Act 1988* in the use and disclosure of personal information provided to ActewAGL by customers.

Licence fees

The Utilities Act enables the Commission to determine licence fees that will recover from licensees 'a reasonable contribution towards the costs incurred' in regulating utilities. For 2004–05 the total amount of licence fees determined by the Commission was \$1,531,100, of which \$642,000 was to recover the costs of the Commission, \$345,500 was to recover the costs of the technical regulator (ACT Planning and Land Authority) and \$543,600 was to recover the costs of the Essential Services Consumer Commission. It should be noted that the actual amount payable by the utilities was less than this amount, as determined fees were reduced by rebates applying from the previous financial year.

2.2.4 Industry codes and guidelines

Consumer Protection Code

In 2004–05 the Commission approved a number of variations to the Consumer Protection Code to allow greater flexibility in contracting arrangements for gas and electricity suppliers of large customers, to make specific provision for calculating customer accounts, and to address the issue of consumers' liability for consumption of utility services at premises where there is no contract for supply.

In its 2004–05 compliance report for licensed electricity, gas and water and sewerage utilities, the Commission noted a number of concerns in relation to utilities' compliance with, and reporting against, the performance standards prescribed by Schedule 1 of the Consumer Protection Code. The Commission also expressed concerns about the effectiveness of the current provisions for the payment of rebates to customers and consumers where performance standards are not met.

To address those concerns, the Commission has determined a suite of amendments to the Consumer Protection Code to make the standards more reliably measurable in future reporting periods, and to ensure that customers and consumers are adequately informed of their rights. These amendments have effect from 1 July 2005.

Electricity Customer Transfer Code

The Electricity Customer Transfer Code was introduced in 2003 with the opening of the electricity market to FRC. The code, which is intended to facilitate and regulate the transfer of electricity customers between electricity suppliers, was amended this year to make it clear that the informed consent provisions for transferring customers apply to all transferring customers, including those moving from a standard to negotiated customer contract with the incumbent retailer, ActewAGL. The code was also amended to expand the meaning of 'informed consent' to include consent given electronically in accordance with the *Electronic Transactions Act 2001*, bringing the ACT's practices in line with those in other parts of Australia. Corresponding amendments were made to the Consumer Protection Code.

2.2.5 Compliance and performance monitoring

Annual reports

The combined compliance and performance report for utility services for 2002–03 was released in July 2004. Subsequent compliance reports and performance reports are being published separately; the 2003–04 compliance report was released in March 2005. A separate performance report will be published later in 2005.

For the first time, when the 2003–04 compliance report was released, the technical regulator's report did not appear in the compliance report, because it was unavailable. It is intended that in future the technical regulator's report will be included in the compliance report, as it was in previous years.

On the basis of the annual reports submitted to it, the Commission formed the view that utility licensees are generally compliant with the requirements of the Utilities Act, industry codes and licence conditions. A small number of minor compliance problems were detected that relate mainly to licensees' misunderstanding of their obligations under the Consumer Protection Code, in particular. These matters have all been addressed.

Compliance audit framework

The Commission released a position paper in June 2005 outlining a proposed approach to the implementation of a compliance audit framework. This framework, which is intended to supplement and complement the existing reporting program and will assist in the verification of compliance data submitted to the Commission, will commence in 2005–06.

2.3 Human Rights Act

The Commission has nothing to report in respect of this section of the Chief Minister's Annual Report Directions 2004–2005.

2.4 Access to government strategy

The Commission observes the Access to ACT Government Strategy, launched in 2003, in letter and spirit, ensuring that members of the community who have a disability can readily access the Commission's services and facilities.

The Commission's action plan has included ensuring that its offices are easily accessible and its publications available in print and electronic media. For instance, in the ongoing information campaign which marked the introduction of FRC in electricity in 2003–04, a publication distributed across the territory was also converted into braille and, on request, made available in audio form.

2.5 Community engagement

The Commission consults and advises the community in relation to all inquiries referred to it. Public notices are published seeking input in relation to all references received for price and regulatory inquiries. Many issues raised in the granting of utility licences and approving of industry codes and standards are publicly notified, and many decisions are gazetted. Where public hearings are held, members of the public are invited to attend to make personal submissions.

As indicated in sections 2.2.2 and 3.1.3 of this annual report, the Commission devotes considerable time and effort to consulting with

industry, peak bodies and members of the public in the normal course of its activities.

2.6 Multicultural framework

Workplace diversity within the Commission is discussed in Section 3.1.4 of this annual report.

2.7 Aboriginal and Torres Strait Islander reporting

The Commission has nothing to report in respect of this section of the Chief Minister's Annual Report Directions 2004–2005.

2.8 ACT Women's Plan

The Commission has nothing to report in respect of this section of the Chief Minister's Annual Report Directions 2004–2005.

3 Management of the organisation

The purpose of this section is to provide a description of the structures and processes that the Commission had in place during the reporting year to implement the principles and objectives of organisational governance.

3.1 Managing our people

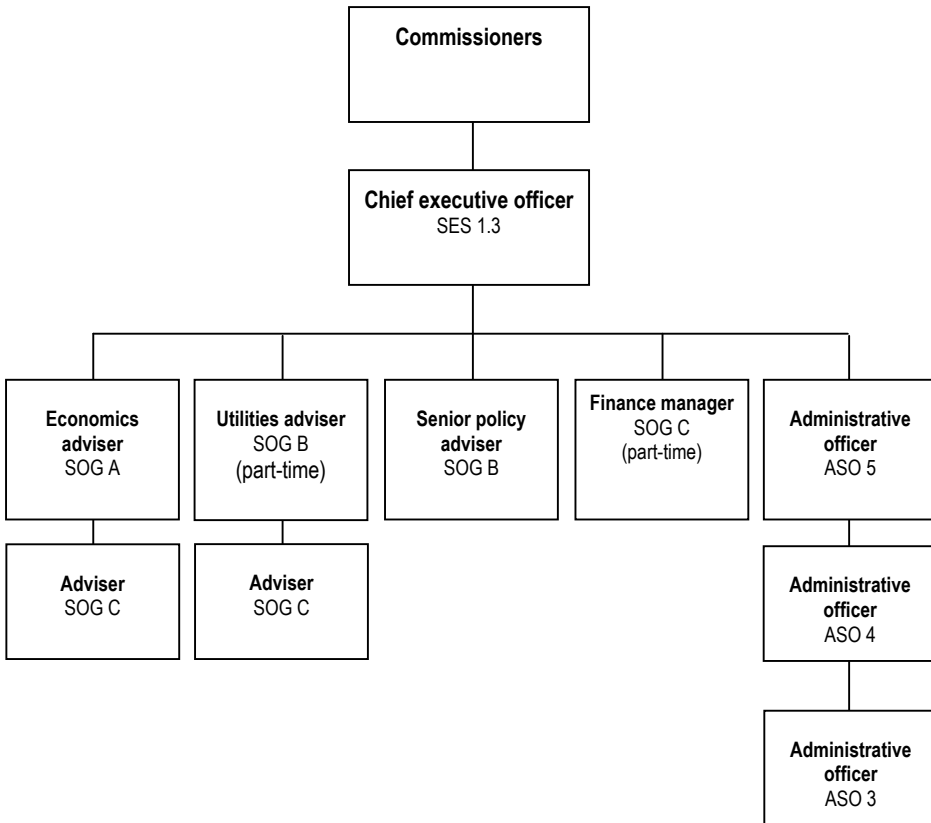
3.1.1 Human resources performance and analysis

As mentioned in previous annual reports, the Commission pursues best practice in its corporate governance and management but remains convinced that core staff numbers should not increase substantially. The Commission's continuing preferred approach to managing resources efficiently and effectively is to employ contract staff and consultants as needed (see Appendix 1 for details of such consultancies in 2004–05), while maintaining core permanent staff in critical disciplines such as economics, econometrics, administrative law and communications.

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 Commission continued to meet this challenge in 2004–05 and is proud of the achievements and productivity of its staff, whose performance continued to compare favourably to that of officers of other Australian regulators and other ACT Public Service agencies.

The Commission must re-emphasise, however, the constraints imposed by being a small organisation with few permanent staff, and is careful in its allocation of scarce human and financial resources. Such an operating model results in relatively high staff turnover, particularly as personnel are trained to a high level of individual competence and thus become highly attractive to other employers. The Commission's relatively small scale, however, provides opportunities for broad experience and substantial responsibility for outcomes.

Figure 4 Organisational chart 2004–05



ASO = Administrative Service Officer; SES = Senior Executive Service; SOG = Senior Officer Grade

3.1.2 Staffing profile

Figure 4 shows how the Commission was structured in 2004–05.

The Commissioners are:

- Paul Baxter, Senior Commissioner (appointed 1996; reappointed 2004)
- Professor Robin Creyke, Commissioner (appointed 2001)
- Peter McGhie, Commissioner (appointed 2001).

The chief executive officer is Ian Primrose CPA JP.

Remuneration of the Commissioners and the chief executive officer is determined by the ACT Remuneration Tribunal.

3.1.3 Culture and values

The Commission is committed to ensuring the government receives the best possible return from the resources it devotes to the Commission, through efficient and businesslike management of those resources and prudent management of the territory's financial risk. A key element of that prudent management involves ensuring staff are aware of the Commission's values and the ACT Public Service Code of Conduct, including processes to receive and deal with any allegations of potential breaches of the Code of Conduct. Commission staff meet regularly, both formally and informally, to discuss policies, resources and corporate objectives, and the Commissioners regularly receive reports on these activities and provide guidance on administrative policies and issues.

The Commission seeks to foster a culture of being 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. Regular meetings are conducted with representatives of utilities and other interested parties about issues and progress with inquiries. All documents generated by the Commission (except those deemed confidential to protect the legitimate interests or privacy of firms or individuals) are made available for public scrutiny. All documents published by the Commission are available in hard copy and in electronic form on the Commission's website, www.icrc.act.gov.au.

Table 2 EEO and equity composition of the Commission as at 30 June 2005

Level	Number	Gender		ATSI	Disability	NESB
		F	M			
Commissioners	3	1	2	–	–	–
SES 1.3	1	–	1	–	–	–
SOG A	1	–	1	–	–	–
SOG B	2	1	1	–	–	–
SOG C	2	1	1	–	–	–
ASO 5	1	1	–	–	–	–
ASO 4	1	1	–	–	–	–
ASO 3	1	1	–	–	–	–
Total	12	6	6	–	–	–

ASO = Administrative Service Officer; ATSI = Aboriginal or Torres Strait Islander background; NESB = non-English speaking background; SES = Senior Executive Service; SOG = Senior Officer Grade

Note: The table includes full-time permanent and part-time contract staff

3.1.4 Workplace diversity

The Commissioners remain most conscious of the importance of both equal employment opportunity (EEO) and cultural and linguistic diversity in determining the organisational health of the Commission. The Commission is an equal opportunity employer. Table 2 illustrates the EEO and equity composition of the Commission's staff as at 30 June 2005.

In 2004–05 the Commission's staff members comprised five females and five males. The gender distribution of the Commissioners remained unchanged at one female and two males. Overall, the Commission thus retained a good gender balance.

There were no constraints on people with disabilities joining the Commission; the criteria for employment with the Commission are suitable experience and relevant skills. The physical facilities in the building are not a barrier to people with disabilities and include lift access to all floors and open access to all facilities. The Commission's emergency procedures take into account the needs of people with disabilities.

3.1.5 Workplace health and safety

The Commission is committed to following sound occupational health and safety (OH&S) approaches to ensure that a safe, healthy and secure workplace is maintained. During 2004–05, the Commissioners considered

OH&S issues at their standing monthly meetings, and all office accommodation was monitored to ensure that any emerging risks were identified early and that appropriate action was taken to reduce or eliminate such risks. The Commission continued to implement and abide by OH&S policies applicable to all government agencies.

The Commission noted with satisfaction that, for the fifth year running, its workplace was free of compensation claims. OH&S is an important issue for the Commission, not only because the loss of a staff member could seriously weaken the Commission and be costly in terms of both replacement expense and time, but also because such a loss would represent the failure of the Commission's policy of ensuring a safe and healthy workplace. As well as being considered at the monthly meetings of Commissioners, OH&S issues and complaints are standing agenda items for regular staff meetings.

The Commission has two fully trained and certified first aid officers (one currently on maternity leave) and participates in fire safety and evacuation practices for tenants of Eclipse House, in which the Commission is situated. The Commission has a fire warden in the office.

3.1.6 Learning and development

As the major training activities during the reporting year, staff attended conferences and seminars on relevant industry regulatory issues. The Commission does not budget for any particular level of overall training expenditure as a proportion of general expenditure, but has an informal internal target of between 2% and 5% as a proportion of total wage- and salary-related overheads.

This was achieved largely as a result of a substantial contribution by the Commission to ACORE, the Australian Centre of Regulatory Economics at the Australian National University, under an arrangement which entitles the Commission to nominate suitable staff for relevant higher education opportunities in the disciplines of regulatory economics, policy and law. Two Commission staff members have already undertaken accredited ACORE courses. The Commission also continued to encourage staff to pursue other further education by supporting the Studies Assistance Program. As well, following on from a senior management training activity started in the previous reporting period, another senior staff member was

supported in undertaking the Take The LEAD public management program under the auspices of the Chief Minister's Department.

As far as possible, staff were allocated to deal with issues that interested them and would have a beneficial effect on their productivity and development. Staff were encouraged to contribute to the Commission's activities in a range of ways in order to maximise the benefits to the Commission and to provide variety and stimulation to the individuals. Regular staff meetings and discussions about issues were a means of providing developmental support for staff.

In addition, the Commission continued to be involved in informing the developing debate on regulatory issues in the broader community, including among various not-for-profit human services organisations. The Commission both sought ways to provide information on specific issues to the community and remained active in speaking at conferences and seminars.

3.1.7 Workplace relations

In 2004–05 there were no Australian Workplace Agreements applying to the Commission.

A new three-year government-wide certified agreement was reached with effect from 1 April 2004, and covers all the Commission's senior officer and administrative officer employees. The chief executive officer is employed under an executive contract, the terms and conditions of which are determined by the ACT Remuneration Tribunal, as is the remuneration of the Commissioners.

3.2 Governance

3.2.1 Internal accountability structures and processes

As set out in the ICRC Act, the three Commissioners are responsible for the governance of the Commission and the achievement of its objectives. During the reporting period, the Commissioners continued to oversee the governance of the Commission, including the application of principal Commission policies (such as those on OH&S, fraud control, financial control, internal audit and issues relating to administrative law obligations),

through formal monthly meetings. The board, which includes the chief executive officer as an ex-officio member, also oversees recruitment of staff to ensure that the quality of outputs remains at a high standard.

The Commission continued to pursue best practice in its corporate governance and management, including by implementing relevant recommendations on governance made by the Government Audit Office, and appropriate industry or public sector standards. The Commission also continued to implement best practice administrative arrangements.

The Commissioners remained committed to implementing the ACT Government's policy on independent regulation. During the year they participated as members of the national Utility Regulators Forum, and contributed to the development of the new national regulatory arrangements being introduced under the aegis of the MCE.

3.2.2 Strategic and organisational planning

The major corporate objectives of the Commission, as distinct from the Commission's statutory objectives as summarised in Section 2.1, 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 which 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 cashflow results for planning and reporting purposes
- to adopt high-standard operating practices to safeguard the environment and the 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 EEO.

The Commission's statutory objectives include the following:

- reviewing and where necessary amending industry codes
- further developing the compliance and performance reporting framework for utilities, including by initiating a program of audits for utilities
- regulating prices for regulated industries and monopoly and near-monopoly services
- promoting competition in markets, consistent with social and environmental sustainability
- maintaining an effective complaints mechanism for handling competitive neutrality complaints, as required by the National Competition Policy Agreements
- providing independent advice to the ACT Government on government-regulated activities in the territory.

The Commission advises on issues raised under terms of reference by referring authorities, including matters relating to regulated industries or industries in general, pricing for regulated industries, assessment and advice on access arrangements for regulated industries, competitive neutrality complaints as defined in the Competition Principles Agreement and set out in Schedule 1A of the ICRC Act, and government-regulated activities.

The Commission also has responsibilities in relation to the regulation of utility services supplied in the territory, as defined in the Utilities Act. Included in those responsibilities are obligations to report on compliance by licensees with their responsibilities under the Utilities Act, and determination of licence fees payable by licensees annually to recover the costs of operating the Essential Services Consumer Council and the technical regulator.

All determinations and advice developed by the Commission, and the processes by which those outputs are developed, remain accessible and transparent and include extensive provision of opportunities for public consultation.

3.2.3 Fraud prevention

The Commission's financial risk management practices, described below, are designed to prevent financial fraud.

In addition, for the purposes of contract tendering, members of the Commission's tender evaluation committees are required to complete declarations that they have no actual or perceived conflicts of interest in respect of any tenderer or panel member. Such documented declarations are retained on a registered file.

The Commission's probity adviser in respect of tendering and contracting is the deputy chief solicitor in the Government Solicitor's Office. The Commission's probity auditor is the Auditor-General. For audit purposes, the Commission has engaged the Auditor-General to conduct regular audits of the Commission's processes and records.

3.2.4 Risk management and internal audit arrangements

In 2002–03 the Commission engaged Deloitte Touche Tohmatsu to review its internal risk management controls. The aims of the review were to identify areas of risk and, if necessary, to implement a planned process for reducing the level of risk. The review of internal controls was also to develop an audit process to monitor aspects of the Commission's operations to ensure that risks were properly identified and controlled and that high-priority risks were reviewed more frequently than lesser risks. The review identified few high-priority risks, a position borne out by the reporting year just past.

The Commission continues to restrict control of financial transactions, invoicing, payments and banking to reduce fraud and mishandling of risk. Similar tight controls are applied to petty cash; no cash, other than petty cash, is kept in the Commission. There exist immediate lines of supervision of information to reduce risks such as use of information for private advantage or fraudulent purposes. The Commissioners maintain regular and frequent oversight of activities and principal transactions.

The Commission's capitalised assets consist mainly of furniture and fittings. Daily management is exercised over their use and maintenance. Cash assets are protected by separation of powers. Two individuals only are involved in cash handling and banking, and financial records are prepared by one person with direct oversight from the chief executive officer. The Commissioners receive monthly reports on financial performance, cash position, age of debtors and creditors, and performance against budget for the period and

year to date. All contracts are let and managed by the chief executive officer subject to the Commissioners' direction and control.

The handling, storage and retrieval of information is a high-risk area for the Commission. The Commissioners previously have drawn attention to risks inherent in the Commission's system for managing and accessing information. As pointed out in Section 3.2.6, information storage and retrieval systems therefore have been reformed to control those risks and make information more readily and reliably accessible.

To this end, the Commission implemented the requirements of the *Territory Records Act 2002* by creating and complying with the records management program which has formally applied since 1 July 2004. The program includes a records management policy and procedures, endorsed by the Director of Territory Records, 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 identifying who is responsible for each of the tasks in the record-keeping process. The chief executive officer has appointed one of the Commission's senior officers as records manager to oversee the implementation of the policy and procedures.

3.2.5 External scrutiny

As noted in last year's annual report, the Commission was considered, together with other ACT Government agencies, in the Auditor-General's report *Effectiveness of Annual Reporting* (Report No.1, 2003). The Auditor-General found that the Commission had complied with all the requirements of the Chief Minister's Annual Report Directions in 2003–04. Apart from a probity audit of the Commission's expert panel tendering and contracting arrangements, the Commission was not the subject of any reports by the Auditor-General during the year.

The Commission was available for scrutiny by the committees of the Legislative Assembly but was required to appear only by the Estimates Committee in relation to the Budget Estimates for the financial year 2004–05. The committee was satisfied that the Commission's estimates were satisfactory and its operations were appropriately conducted.

As mentioned in previous annual reports, the Commission had expected the Utilities Act and the ICRC Act to be reviewed in 2001–02, but that did not

eventuate. The review of the Utilities Act is now being undertaken by the Chief Minister's Department, with a final report expected later in 2005. At the end of the reporting year, no date was available for the start of a review of the ICRC Act. The Commission was not a subject of any other external reviews during the reporting year.

The Commission's unqualified audited financial statements for the year 2004–05 appear in Appendix 1.

3.2.6 Reports required by legislation

Freedom of information

Section 7 statement

In addition to the requirements of the *Public Interest Disclosure Act 1994* and the *Freedom of Information Act 1989*, the Commission is subject to requirements under both the ICRC Act and the Utilities Act to make public all decisions, submissions to inquiries, reports and draft reports and reasons for the Commission's decisions. The Commission's final reports on investigations on all issues relating to prices, access disputes, access arrangement proposals, and decisions on the issue and revocation of utility licences and application of conditions to utility licences, are all publicly available. Guidelines about information access and confidentiality are readily available on the Commission's website, www.icrc.act.gov.au.

Section 8 statement

In practice, on request, the Commission makes available any and all records except those containing genuine commercial-in-confidence information (in submissions made to the Commission by outside entities) and certain staff-in-confidence documents. The Commission makes information publicly available through published reports and its website, www.icrc.act.gov.au, and at the Commission's offices (Level 7, Eclipse House, 197 London Circuit, Civic).

The chief executive officer has appointed a senior officer among whose duties is a responsibility to attend to any outside information request in a prompt and thorough manner. The chief executive officer is the contact person for the purposes of freedom of information requests.

Section 79 statement

During the reporting year the Commission received no requests for information disclosure under the terms of the Freedom of Information Act.

Public interest disclosure

Like other government agencies, the Commission has various obligations under the Public Interest Disclosure Act. 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 procedures must include procedures 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 procedures must be available to the Commission's 'public officials' and to the public. Draft procedures were submitted to the Commissioners for approval in April 2004. In the 2003–04 reporting year the ACT Department of Treasury procedures were applied to cover the Commission.

The Commission received no public interest disclosure requests in 2004–05.

There were no incidents involving public interest disclosure during the reporting year.

Territory records

As mentioned in Section 3.2.4, 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 applied formally from 1 July 2004.

The program includes a records management policy and procedures, endorsed by the Director of Territory Records, 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 identifying who is responsible for each of the tasks in the record-keeping process.

Further, the chief executive officer has appointed one of the Commission's senior officers as records manager responsible for overseeing the policy and procedures.

3.2.7 Sustainability and Environment

Commissioner for Environment reporting

The Commission has neither made reports to nor received requests for information from the Commissioner for the Environment.

Ecologically sustainable development

During the reporting year the Commission continued to review its operations in support of the principles of ecologically sustainable development (ESD). In 2004–05 the review included consideration of options for waste minimisation, the use of 'green choice' electricity or at least some mix of traditionally generated and 'green choice' electricity, and more efficient power usage in relation to lights and computers.

The Commission, consistent with the government's 'no waste' policies, continued its commitment to producing zero waste by 2010 by attempting to reduce the amount of paper it uses and increase the proportion of its waste that is recycled. As part of its ongoing review the Commission aims to reuse paper products before recycling them. It is hoped that the impact of these policies will include a reduction in the space required for landfill and consequential reductions in greenhouse gases. Table 3 summarises the Commission's ESD priorities.

Table 3 Commission activities supporting ecologically sustainable development

Issue	Activity	Outcome
<i>Office practices</i>		
Energy use	Reducing reliance on electric lighting	Reduced energy consumption, leading to reduced greenhouse gas emissions
Consumables	Using recycled paper and other recycled consumables (such as printer toner)	Improved recycling practices, leading to reduced greenhouse gas emissions
Disposables	Recycling	Reduced impact on landfill, leading to reduced greenhouse gas emissions
<i>Service delivery</i>		
Inquiries	Considering social and environmental impacts, including the application of the precautionary principle	Promotion of sustainability and reflection of the real economic costs and the impact on social costs of market activity
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

Strategic Bushfire Management Plan and Bushfire Operational Plans

The Commission has nothing to report in respect of this section of the Chief Minister’s Annual Report Directions 2004–05.

4 Analysis of financial performance

This section provides an analysis of the Commission's financial performance against budget forecasts, to enable monitoring of the Commission's resources.

4.1 Agency financial results and analysis of financial performance

The following assessment of the Commission's financial performance has been reviewed by the Auditor-General and found to be consistent with the information contained in the financial statements for 2004–05.

4.1.1 Objectives

The Commission is responsible for regulating and advising government about monopoly and near-monopoly industries, and providing advice on competitive neutrality complaints and government-regulated activities under the ICRC Act. The Commission also licences utility service providers to operate in the territory, and establishes the industry compliance framework and ensures compliance with industry codes and guidelines under the Utilities Act.

The Commission's objectives are set out in full in s. 7 of the ICRC Act and s. 3 of the Utilities Act.

4.1.2 Risk management

The Commission has identified risk in several areas:

- delivery of advice from specialist consultants
- retention of and access to information
- OH&S and related risks to staff in the office.

These risks continue to be assessed as low and are actively managed by the Commission as a part of its operations. The Commission has, and

periodically will continue to have, risks assessed as part of its internal audit program.

The risks associated with non-performance of contracts for expert advice are considered low because the Commission manages and guides each consulting contract closely and continually during its course. The Commission has reduced contractual risk by establishing a panel of expert advisors for a period of five years, with each participating expert pre-assessed in terms of risks. There were no incidents of contract non-performance in 2004–05.

Risks arising from inappropriate treatment of information continue to be addressed by improvements in the policies in relation to use and disclosure of confidential information, care in relation to the publication of information on the website or in reports, and appropriate storage of information. The Commission is specifically addressing information management issues by compliance with the ACT Public Sector policies and practices on document description, handling and management. The Commission has a senior officer responsible for coordinating document management and has prepared and implemented a complying thesaurus and document disposal policy.

The Commission's Board receives monthly reports on OH&S risks and complaints. Those reports draw on reports to regular staff meetings, complaints raised with management and periodic reviews of physical risks in the office.

During 2004–05 there was a report of pain suffered by a staff member arising from use of information technology equipment. Case management was immediate and effective, and equipment was changed to reduce the risk of recurrence. In addition, early in 2004–05 an OH&S survey of the office was undertaken and appropriate changes were recommended and implemented. That was the only complaint in five years of operation.

4.1.3 Operating result

The following financial information is based on audited financial statements for 2003–04 and 2004–05, and the forward estimates contained in the 2004–05 and 2005–06 Budget Papers.

The operating result for 2004–05 was a deficit of \$0.104 million. This result was comparable to a forecast deficit of \$0.017 million. Higher than expected

costs of providing regulatory services under the Utilities Act and higher costs in supplies and services to the Commission contributed to this year-end result. Commission activities during 2003–04 allowed a greater level of cost recovery of expenses due to the number of reviews and inquiries undertaken, compared to 2004–05. This was reflected in the change in year-end results when comparing previous and current year results.

Figure 5 Statement of financial performance trends

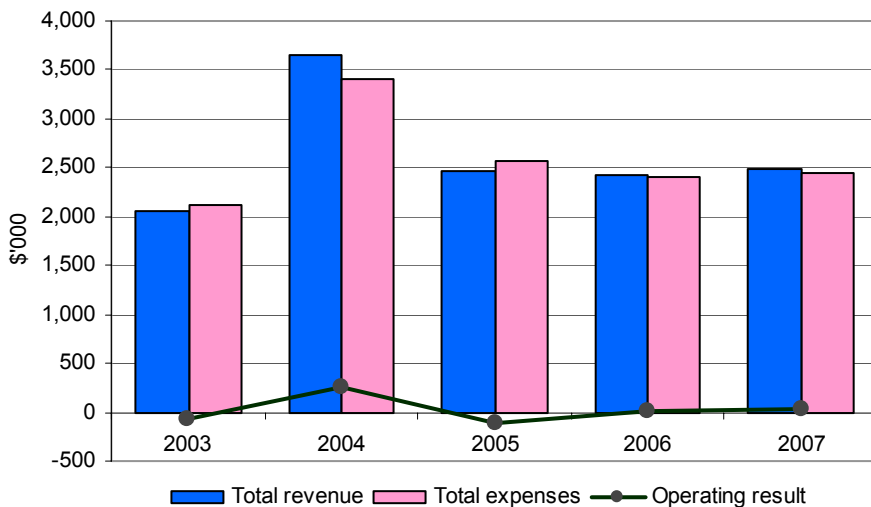


Figure 5 shows that the Commission’s aim is to recover its reasonable costs associated with its responsibilities under the ICRC Act and the Utilities Act.

4.1.4 Total revenue

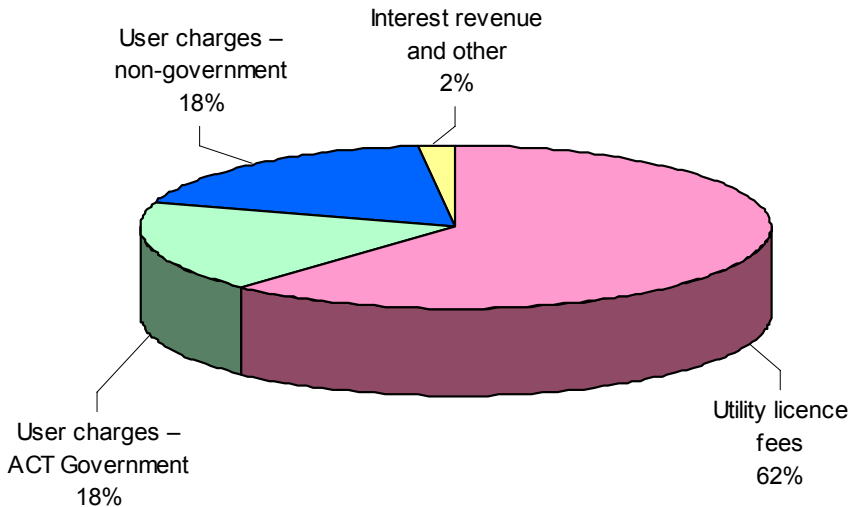
The Commission’s main source of income was from utilities licence fees. Utility licence fees for 2004–05 increased by 8% (\$0.119 million) to \$1.538 million. This accounted for 62% of Commission revenues in 2004–05 compared to 39% in 2003–04 (60% in 2002–03). In 2004–05 overall revenue decreased by \$1.199 million (33%) to \$2.465 million. The number of reviews and inquiries undertaken by the Commission reduced compared to previous years and this was reflected in total revenue. These user charges have been the Commission’s main source of income in past years.

User charges decreased from \$2.204 million in 2003–04 to \$0.884 million in 2004–05, a drop of \$1.32 million (60%). The budget had anticipated a fall in

user charges to \$1.332 million, which reflected the decrease in the number and costs of reviews and inquiries expected to be undertaken in 2004–05.

Interest revenue increased from \$0.027 million in 2003–04 to \$0.035 million in 2004–05, against a budget of \$0.014 million. This was a result of the higher level of cash reserves held at various times during the year, mainly due to the Commission’s debt recovery policy.

Figure 6 Components of revenue 2004–05



4.1.5 Total expenditure

Total expenditure for 2004–05 decreased by \$0.841 million (25%) to \$2.569 million. This reflects the decrease in revenues for the same period. The Commission is now mid-way through a period of reduced activity before the next cycle of regulatory reviews begins. Employee expenses increased by 14% over the previous year as a result of wage increases and promotion of staff to higher levels. Overall, employee and superannuation expenses totalled \$0.831 million compared to a budget of \$0.814 million.

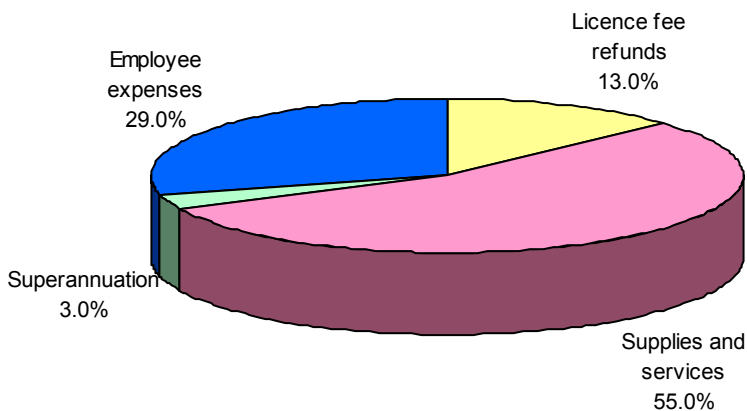
The cost of external consultants used by the Commission in the review process fell from \$1.393 million in 2003–04 to \$0.522 million in 2004–05. The Commission has implemented a number of initiatives to reduce this reliance on external consultants. One task was to employ a solicitor to

undertake incidental legal work in-house, reducing this area of expense considerably.

Licence fee refunds increased from \$0.244 million in 2003–04 to \$0.337 million in 2004–05. This reflects the commitment by the Commission and the other agencies involved in regulatory services in reducing compliance and regulatory costs to utility licence holders in the ACT.

The continual professional development of staff is an important factor in today's environment and one which the Commission fully recognises. Investment in staff development increased by 76% for the year from \$0.025 million to \$0.044 million.

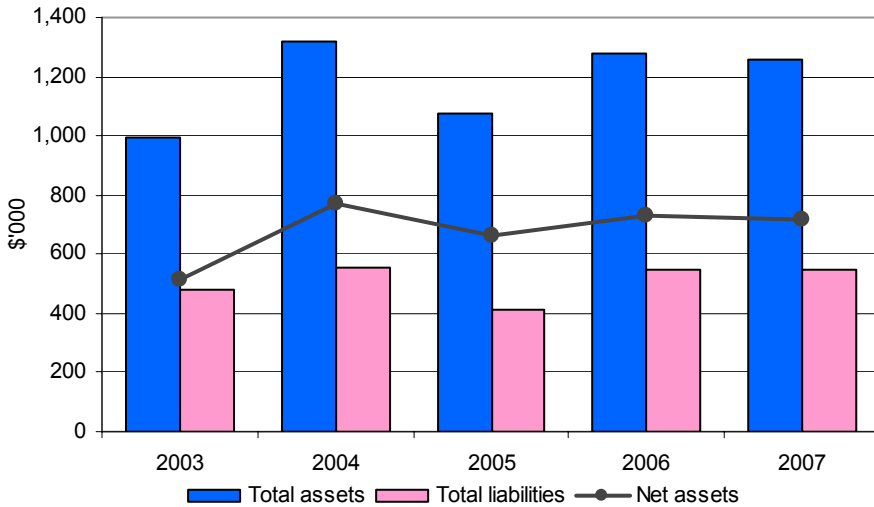
Figure 7 Components of expenditure 2004–05



4.1.6 Financial position

The Commission strives to maintain, through sound financial management and administrative practices, its ability to sustain its operations and meet its obligations under the ICRC Act and Utilities Act. The Commission's balance sheet reflects its overall ability to meet its debt obligations after allowing for current-year operating results..

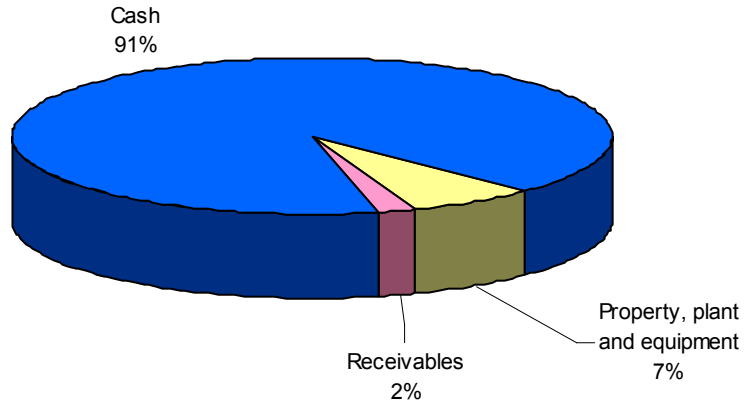
Figure 8 Summary statement of financial position 2004–05



The net asset position of the Commission was \$0.664 million at the year's end, a decrease of 13%. This decrease reflects the operating deficit of \$0.104 million for 2004–05. This compares with a budgeted net asset position of \$0.499 million.

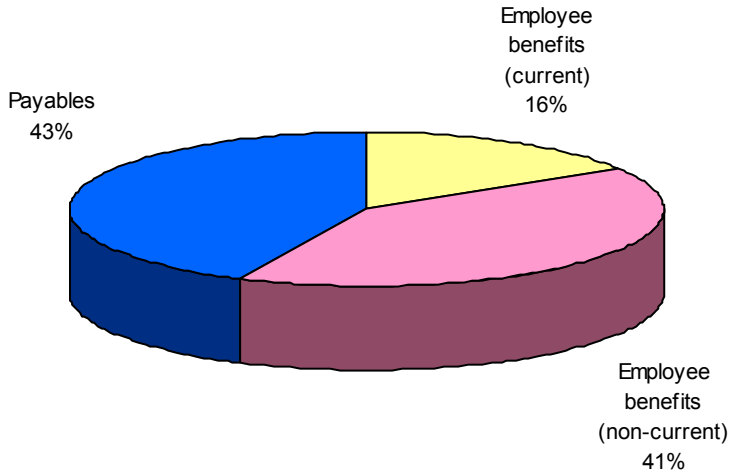
Cash reserves at 30 June 2005 were \$0.979 million compared to \$0.512 million at 30 June 2004, representing an increase of \$0.467 million or 91%. This was a result of a much lower than expected receivables amount outstanding at year end.

Figure 9 Components of total assets 2004–05



Total liabilities reduced by 25%, down from \$0.553 million in 2003–04 to \$0.414 million in 2004–05. This was less than the forecast figure of \$0.452 million. Payables decreased from \$0.377 million to \$0.175 million (54%) whilst total employee benefits increased from \$0.176 million to \$0.239 million (35%). The reduction in payables was predominantly the direct result of the reduced expenditure on external consultants. Employee benefits increased due to higher pay levels and less annual leave taken during 2004–05.

Figure 10 Components of total liabilities 2004–05



4.1.7 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 user charges to meet short-term debts. Table 4 indicates the liquidity of the Commission.

Table 4 Current ratio

Description	Prior year actual \$'000s 2003–04	Current year budget \$'000s 2004–05	Current year actual \$'000s 2004–05	Forward year budget \$'000s 2005-06	Forward year budget \$'000s 2006-07	Forward year budget \$'000s 2007-08
Current assets	1,230	873	1,000	1,215	1,209	1,242
Current liabilities	467	368	244	450	442	434
Current ratio	2.6:1	2.4:1	4.1:1	2.7:1	2.7:1	2.9:1

The Commission’s current ratio for the financial year is 4.1:1. This represents a favourable increase compared to the previous period. Whilst the

overall net asset position of the Commission has decreased, its ability to meet its debts when they fall due has increased.

The ‘financial assets to total liabilities’ ratio is an indicator of financial strength and represents the ability to meet current and recognised future obligations, from those assets capable of conversion to cash. The ratio is calculated as total assets less service delivery assets, divided by total liabilities. Financial assets include cash and receivables.

With an increase in the ratio compared to last year and a favourable result against budget, Table 5 indicates the Commission is well placed to meet its long-term funding requirements at this time.

Table 5 Financial assets to total liabilities ratio

Description	Prior year actual \$'000s 2003–04	Current year budget \$'000s 2004–05	Current year actual \$'000s 2004–05	Forward year budget \$'000s 2005–06	Forward year budget \$'000s 2006–07	Forward year budget \$'000s 2007–08
Total financial assets	1,230	873	1,000	1,215	1,209	1,242
Total liabilities	553	452	414	548	546	544
Financial assets to liabilities ratio	2.2:1	1.9:1	2.4:1	2.2:1	2.2:1	2.3:1

4.2 Asset management

The Commission has no physical assets except for furniture and fittings that have been capitalised. The Commission owns no real property and leases its office equipment. Thus, for the purposes intended by the Chief Minister’s Annual Report Directions, the Commission has no need for an asset management strategy.

The Commission manages its human and operating assets in accordance with the requirements of the ACT *Public Sector Management Act 1994* and accompanying standards, the policies promulgated by government, and the principles and practices that the Commissioners, sitting as a board of management, understand to represent best management practice.

The Commission's financial resources are managed in accordance with its statutory obligations, particularly the requirements of the *Financial Management Act 1996*. The Commission, to date, has been able to operate within the limits of its revenues and has not been required to raise debt capital or manage non-current liabilities of that nature. The Commission's non-current liabilities are confined predominantly to long-term employee benefits, superannuation and long service leave liabilities.

4.3 Capital works management

The Commission undertakes no capital works in general and undertook none in 2004–05. The capitalised assets on the Commission's balance sheet are made up of furniture and fittings acquired when the Commission's offices were established in 2000. Recent minor modifications to the Commission's office accommodation were funded from operating expenditure and not capitalised.

4.4 Procurement contracting principles and processes

In 2003 the Commission implemented arrangements, endorsed by the ACT Government Procurement Board, to govern the way in which it obtains economic, econometric, legal and associated services to assist in performing its varied functions. Appropriately qualified and experienced consultant firms were appointed to an expert panel, from which individual consultants may be chosen by means of a select tender process (sometimes at relatively short notice) to work on particular projects.

Generally, at least three consultants are requested to tender for any project of value greater than \$50,000. The panel currently comprises 19 consultants. The chief executive officer appointed one of the Commission's senior officers as manager responsible for overseeing the expert panel and tendering and contracting processes.

Details of consultants appointed to the expert panel, as well as approved rules for managing the panel, are publicly available on the Commission's website, www.icrc.act.gov.au. As required by government policy, the Commission also posts details of all contracts valued in excess of \$50,000 on the publicly accessible ACT Government Contracts Register. Appendix 1

provides details of the Commission's expenditure on contractor and consultant services in 2004–05.

The Commission recognises that over the five-year life of the expert panel it is possible that consultancy staff might change. In such cases the Commission will expect to be notified if staff changes are likely to impact on services for which the panel member has successfully tendered. Further, from time to time the Commission might seek services for which no appointed panel member is appropriately qualified and experienced, in which case the Commission may institute an additional tendering process in order to identify and, if possible, appoint suitable additional panel members.

In cases where a panel member has consistently failed to perform against the conditions of the contract and any attached schedules, the panel member may be liable to be removed from the panel. In such a case the Commission may institute actions to remove the consultant from the panel in accordance with the standard contract. For every addition or removal the Commission will subject the process to a probity audit to ensure the integrity of the process remains intact.

As mentioned above, members of the Commission's tender evaluation committees are required to complete declarations that they have no actual or perceived conflict of interest in respect of any tenderer or panel member. Such documented declarations are retained on a registered file. The Commission's probity adviser is the principal solicitor in the Government Solicitor's Office. The Commission's probity auditor is the Auditor-General.

The Commission's first probity audit was conducted by the Auditor-General's Office, on a fee-for-service basis, in the second half of 2003. The Auditor-General reported on 23 September 2003 that his office had determined the Commission had applied 'a thorough and considered approach' to its tendering and contracting process and was consistent with government procurement policies and guidelines 'in all material respects'.

Prior to the contract period for the expert panel ending in May 2008, the Commission will re-advertise (in a public tendering process) for tenders from consultants to constitute a new panel for the ensuing five years.

4.5 Government contractual debt (interest)

The Commission was not required to pay interest on contractual debt in 2004–05.

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AUDITOR-GENERAL

Australian Capital Territory



INDEPENDENT AUDIT REPORT

INDEPENDENT COMPETITION AND REGULATORY COMMISSION

To the Members of the ACT Legislative Assembly

Audit Opinion

In my opinion, the financial statements of the Independent Competition and Regulatory Commission for the year ended 30 June 2005:

- (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 Independent Competition and Regulatory Commission as at 30 June 2005 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 following information.

Responsibility for the Financial Statements

The Chief Executive Officer of the Independent Competition and Regulatory Commission is responsible for the financial statements. This includes responsibility for accounting policies and estimates used in the preparation of the financial statements and the maintenance of adequate accounting records and internal controls.

Contents of the Financial Statements

The financial statements are comprised of the Statement of Financial Performance, Statement of Financial Position, Statement of Cash Flows, Statement of Performance and accompanying notes.

The Auditor's Responsibility

My responsibility is to express an opinion on the financial statements as required by the *Financial Management Act 1996*.

The Audit Scope

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

Level 4, 11 Moore Street, Canberra ACT 2601 PO Box 275, Civic Square ACT 2608
Telephone: (02) 620 70833 Facsimile: (02) 620 70826
Office Email: actauditorgeneral@act.gov.au

I formed the audit opinion by performing procedures to assess whether, in all material respects, the financial statements present fairly, in accordance with the *Financial Management Act 1996*, Accounting Standards and other mandatory financial reporting requirements in Australia, a view that is consistent with my understanding of the financial position and performance of the Independent Competition and Regulatory Commission.

The nature of an audit is influenced by factors such as the use of professional judgement, selective testing, the inherent limitations of internal control and, in many cases, the availability of persuasive rather than conclusive evidence. Therefore, an audit cannot guarantee that all material misstatements have been detected.

My procedures included:

- (i) examining, on a test basis, evidence supporting the amounts and other disclosures in the financial statements; and
- (ii) evaluating accounting policies and significant accounting estimates used in the preparation of the financial statements.

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

My audit also did not involve the evaluation of the prudence of decisions made by the Independent Competition and Regulatory Commission.

Statement of Performance

My audit of the Statement of Performance included an assessment of whether reported performance measures are materially correct.

I have not expressed an opinion on the accuracy of explanations provided for variations between actual and budgeted performance due to the essential subjectivity of these explanations.

Independence

In conducting my audit, I followed applicable independence requirements of Australian professional ethical pronouncements.

Tu Pham
Auditor-General
5 August 2005

Statement of responsibility

**Independent Competition & Regulatory Commission
Financial Statements
For the Year Ended 30 June 2005**

Statement of Responsibility

In our opinion, the financial statements are presented in accordance with the Independent Competition & Regulatory Commission's accounts and records, and fairly reflect the financial operations and service performance of the Independent Competition & Regulatory Commission for the year ended 30 June 2005, and its financial position on that date.

1

Paul Baxter
Senior Commissioner
Independent Competition & Regulatory Commission

1 August 2005

Jan R Primrose
Chief Executive Officer
Independent Competition & Regulatory Commission

1 August 2005

Statement of financial performance

for the year ended 30 June 2005

	Note No.	Actual 2005 \$'000	Budget 2005 \$'000	Actual 2004 \$'000
Revenue from ordinary activities				
User charges—ACT Government	4	431	869	759
User charges—Non-ACT Government	4	453	463	1,445
Fees	5	1,538	1,025	1,419
Interest	6	35	14	27
Resources received free of charge	2(f)	8	—	6
Other income		—	—	8
Total revenue from ordinary activities		2,465	2,371	3,664
Expenses from ordinary activities				
Employee expenses	7	748	713	654
Superannuation expenses	8	83	101	72
Supplies and services	9	1,380	1,561	2,421
Prior year licence fee refund	10	337	—	244
Depreciation	11	13	13	13
Resources provided free of charge	2(f)	8	—	6
Total expenses from ordinary activities		2,569	2,388	3,410
Operating (deficit)/surplus from ordinary activities		(104)	(17)	254
Total changes in equity including those resulting from transactions with owners as owners		(104)	(17)	254

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

Statement of financial position

as at 30 June 2005

	Note No.	Actual 2005 \$'000	Budget 2005 \$'000	Actual 2004 \$'000
Current assets				
Cash	14	979	454	512
Receivables	15	21	419	718
Total current assets		1,000	873	1,230
Non-current assets				
Plant and equipment	16	78	78	91
Total non-current assets		78	78	91
Total assets		1,078	951	1,321
Current liabilities				
Payables	17	175	305	377
Employee benefits	18	69	63	90
Total current liabilities		244	368	467
Non-current liabilities				
Employee benefits	18	170	84	86
Total non-current liabilities		170	84	86
Total liabilities		414	452	553
Net assets		664	499	768
Equity				
Accumulated funds	19	664	499	768
Total equity		664	499	768

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

Statement of cash flows

for the year ended 30 June 2005

	Note No.	Actual 2005 \$'000	Budget 2005 \$'000	Actual 2004 \$'000
Cash flows from operating activities				
Receipts				
Fees		1,268	1,025	1,170
User charges—ACT Government		484	440	843
User charges—Non-ACT Government		990	890	1,212
Interest received		33	14	26
Other		134	83	22
Total receipts from operating activities		2,909	2,452	3,273
Payments				
Related to employees		686	728	625
Related to superannuation expenses		83	80	73
Related to supplies and services		1,563	1,552	2,531
Other		110	98	—
Total payments from operating activities		2,442	2,458	3,229
Net cash inflows/(outflows) from operating activities	23	467	(6)	44
Net increase/(decrease) in cash held		467	(6)	44
Cash at the beginning of the financial year		512	460	468
Cash at the end of the financial year	23	979	454	512

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

Notes to and forming part of the financial statements

For the year ended 30 June 2005

Note 1 Objectives of the Independent Competition and Regulatory Commission

The Independent Competition and Regulatory Commission (ICRC) has regulatory rather than commercial objectives, which are prescribed in section 7 of the *Independent Competition and Regulatory Commission Act 1997*. The Act provides the following objectives in relation to regulated industries, access regimes, competitive neutrality complaints and government-regulated activities:

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

In the *Utilities Act 2000*, the ICRC has certain objectives. Section 3 provides the following in respect to utility services:

- 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 service industries
- to promote ecologically sustainable development in the provision of utilities services
- to protect the interests of consumers
- to ensure the advice given to the ICRC by the council, or the Chief Executive under Part 5 (Technical Regulation), is properly considered
- to ensure that the government's programs about the provision of utility services are properly addressed

- to give effect to directions of the Minister under section 19.

Note 2 Summary of significant accounting policies

(a) Basis of accounting

The ICRC is classified as a Territory authority.

Subsection 59(3) of the *Financial Management Act 1996* and the Financial Management Guidelines require that a Territory authority's financial statements include:

- (i) a Statement of Financial Performance for the financial year
- (ii) a Statement of Financial Position at the end of the financial year
- (iii) a Statement of Cash Flows for the financial year
- (iv) a Statement of Performance for the financial year
- (v) a summary of the significant accounting policies adopted by the Territory authority for the financial year
- (vi) 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 financial year.

These general-purpose financial statements have been prepared in accordance with 'generally accepted accounting practice' as required by the Financial Management Act. The financial statements have been prepared to comply with:

- (i) Australian Accounting Standards
- (ii) Urgent Issues Group Abstracts
- (iii) Other authoritative pronouncements of the Australian Accounting Standards Board
- (iv) 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, except for certain assets which were valued in accordance with the (re)/valuation policies applicable to the Territory authority during the financial year.

The ICRC is an individual reporting entity.

(b) The reporting period

These financial statements report the financial performance and cash flows of the ICRC for the financial year ending 30 June 2005 and the financial position of the ICRC as at 30 June 2005.

(c) Comparative figures

Budget figures

Budget information for 2004–05 has been provided, presented in the Territory authority’s Statement of Intent and the amounts published in the ACT Budget Papers in 2004–05. The Financial Management Act requires the statements to facilitate a comparison with the Statement of Intent.

Prior year comparatives

Where necessary, the prior year comparatives have been amended to facilitate comparison with the current year presentation of financial information.

(d) Rounding

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

(e) Revenue recognition

Revenue is recognised in the Statement of Financial Performance when it is probable that the inflow, or other enhancement or saving in outflow, of future economic benefit has occurred and it can be measured reliably. This generally occurs when the ICRC controls the revenue. Control occurs when the revenue can be used for the achievement of the ICRC’s objectives.

Utilities licence fees

Under the *Utilities Act 2000* the Commission determines each year the licence fees for each utility providing services in the ACT. The Utilities Act also provides that the ICRC may recover an amount considered to be a reasonable contribution towards the cost of providing its services from utilities through these licence fees.

The Commission determines the licence fees by referring to the estimated cost of providing regulatory services in a year and allocating those costs to the utilities providing electricity, gas and water services. The fees are separated into network and retail services.

Where, in the previous year, the costs of regulatory services was less than the licence fees collected, the ICRC offsets the determined licence fee with a proportion of the unexpended balance of the fees collected in the previous year. Where in the previous year the costs of regulation are greater than the licence fees collected, either an additional licence fee will be determined or the shortfall shall be added to the licence fee payable in the succeeding year.

(f) Resources received and provided free of charge

Resources received free of charge are recorded as revenue and expenditure in the Statement of Financial Performance at their fair value. Goods and services received free of charge from ACT Government entities are recorded as resources received free of charge. The revenue is separately disclosed under resources received free of charge, with the expense being recorded in the line item to which it relates. Resources received free of charge from entities external to the ACT Government are recorded as donations. Services that are received free of charge are only recorded in the Statement of Financial Performance if they can be reliably measured and would have been purchased if not provided to the ICRC free of charge.

Resources provided free of charge are recorded at their fair value in the expense line items to which they relate.

(g) Taxation

ICRC activities are exempt from all forms of taxation except fringe benefits tax and goods and services tax.

(h) Current and non-current items

Assets and liabilities are characterised as either current or non-current in nature. The ICRC has a clearly identifiable operating cycle of 12 months. Therefore, assets and liabilities that will be realised as part of the normal operating cycle will be classified as current assets or current liabilities. Assets or liabilities not recognised as current are classified as non-current.

(i) Cash

For the purposes of the Statement of Cash Flows, cash includes cash at bank and deposits at call that are readily converted to cash and are used in the cash management function on a day-to-day basis, net of bank overdrafts. The definition of cash in relation to the Statement of Financial Position differs slightly, as it does not take into account bank overdrafts.

(j) Receivables

Trade debtors arise in the normal course of regulatory activities. Trade debtors are payable within 30 days after the issue of an invoice or the services have been provided under a contractual arrangement.

(k) Valuation of non-current assets

The ICRC accounts for plant and equipment on a cost basis in accordance with AASB 1041.

The ICRC capitalises all non-current physical assets with a value of \$5,000 or more.

(l) Depreciation of non-current assets

All non-current assets, having a limited useful life, are systematically depreciated/amortised over their useful lives in a manner that reflects the consumption of their service potential. Amortisation is used in relation to intangible and leased assets, while depreciation is applied to physical assets such as property, plant and equipment.

The value of leasehold improvements is amortised over the estimated useful life of each improvement, or the unexpired period of the relevant lease, whichever is shorter.

Depreciation for non-current assets is determined as follows:

<i>Class of asset</i>	<i>Depreciation method</i>	<i>Useful life (years)</i>
Plant and equipment	Straight line	10

Useful life commences when an asset is first acquired. When an asset is revalued, it is depreciated over the remaining useful life of that asset.

(m) Payables

Payables include creditors, accrued expenses and other creditors.

Creditors represent the amounts owing for goods and services received prior to the end of the reporting period that are unpaid at the end of the reporting period. Creditors include all unpaid invoices received relating to the normal operations of the ICRC.

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

Other creditors are those unpaid amounts that do not directly relate to the normal operations of the ICRC.

All amounts are measured at their nominal amount and are normally settled within 30 days after the ICRC receives an invoice.

(n) Employee benefits

Employee benefits include wages and salaries, annual leave and long service leave. These benefits accrue as a result of services provided by employees up to the reporting date that remain unpaid.

Wages and salaries, annual leave and long service leave to be taken in the next 12 months are measured based on the nominal amounts of remuneration anticipated to be paid when the leave is taken.

A long service leave liability is recognised for employees with 10 years or more service and employees with less than 10 years of required qualifying service. For employees with less than the 10 years of required qualifying service, the liability is calculated through a shorthand approach by recording 100% liability for employees with five or more years of service and 0% for employees with less than five years service. Use of this shorthand approach is an approximation process to recognise the probable liability to eventuate for officers with less than 10 years of service, when 10 years of service is achieved. The determination of current and non-current portions is based on a past history of payments and any specific known factors. The long service leave liability is measured at the present value of the estimated future cash outflows. Consideration is given, when making this estimate, to expected future wage and salary levels, experience of employee departures and periods of service.

(o) Superannuation

The ICRC makes a superannuation expense payment to the ACT Superannuation Unit each year to cover its superannuation liability. The superannuation expense is determined by the number of employees the ICRC has and the average salary of those employees. Each employee's total salary and any allowances for superannuation purposes are multiplied by a rate determined by the ACT Government's actuary. The rate for the Commonwealth Superannuation Scheme (CSS) is 28.9% and the rate for the Public Sector Superannuation Scheme (PSSS) is 15.1%.

The ICRC does not carry a superannuation liability in its Statement of Financial Position, as the ACT Superannuation Unit carries the superannuation liability of all agencies within the Territory. The ACT Superannuation Unit reimburses the Commonwealth for the emerging costs of benefits paid for the ACT Government Service after 1 July 1989.

The CSS and PSSS are defined benefit superannuation plans, meaning that the defined benefits received by employees of the ICRC are based on years of service and average final salary.

(p) Insurance

The ICRC has arranged, through the ACT Insurance Authority, to insure all major risks of the agency through external insurance providers. The excess payable, under this arrangement, varies depending on each class of insurance held by the ICRC.

(q) Leases

The ICRC has entered into operating leases.

Operating leases

In respect of operating leases, the lessor effectively retains substantially all of the risks and benefits incident to ownership of the leased items. Operating lease payments are charged to the Statement of Financial Performance on a basis which is representative of the pattern of benefits derived from the leased assets.

Note 3 Impact of adopting Australian Equivalents to International Financial Reporting Standards

Staff involved in the preparation of the ICRC's financial statements have familiarised themselves with the Australian Equivalents to International Financial Reporting Standards (AEIFRS) and assessed the impact of adopting AEIFRS. Based on this assessment, there will be no material impact on the ICRC's 2004–05 financial report had it been prepared using AEIFRS.

Note 4 User charges for goods and services

Under the *Independent Competition and Regulatory Commission Act 1997* and the *Utilities Act 2000*, the ICRC recovers the reasonable costs of service from those to whom the services are provided. User charges are revenues from government and non-government services, including appropriated funds made available subject to a purchase agreement with Department of Treasury, recovered costs of external services (consultants, etc) and costs recovered from utilities licence fees.

	2005 \$'000	2004 \$'000
Revenue from operating activities		
User charges—ACT Government		
Payments received for provision of services from Department of Treasury	408	398
Payments from government for services provided	23	361
Total user charges—ACT Government	<u>431</u>	<u>759</u>
User charges—non-ACT Government		
Inquiries	453	1,440
Consultancies	–	5
Total user charges—non-ACT Government	<u>453</u>	<u>1,445</u>
Total user charges for goods and services	<u><u>884</u></u>	<u><u>2,204</u></u>

Note 5 Fees

	2005 \$'000	2004 \$'000
Revenue from regulatory activities		
Fees	1,538	1,419
Total fees received	<u>1,538</u>	<u>1,419</u>

Note 6 Interest

	2005 \$'000	2004 \$'000
Revenue from outside operating activities		
Interest received from bank	35	27
<i>Total interest received from other sources</i>	<u>35</u>	<u>27</u>
Total interest received	<u>35</u>	<u>27</u>

Note 7 Employee expenses

	2005 \$'000	2004 \$'000
Wages and salaries	671	609
Long service leave expense	29	13
Annual leave expense	39	23
Fringe benefits tax expense	9	9
Total employee expenses	<u>748</u>	<u>654</u>

Note 8 Superannuation expenses

The ICRC makes payments on a fortnightly basis to the ACT Superannuation Unit for its portion of the Territory's annual superannuation liability.

The number of employees the ICRC has and the average salary of these employees determines the superannuation expense paid to the

Superannuation Unit. Note that the ICRC does not carry a superannuation liability. The superannuation liability of Territory authorities is reported in the ACT Superannuation Unit's financial statements.

	2005 \$'000	2004 \$'000
Superannuation contributions to ACT Superannuation Unit	83	72
Total superannuation expenses	83	72

Note 9 Supplies and services

	2005 \$'000	2004 \$'000
Leased equipment and charges	70	75
Professional services	522	1,393
Staff development	44	25
Travel and accommodation	22	24
Postages and printing	70	118
Fees to Commissioners	87	132
Advertising	8	15
Utilities Act—admin expenses	414	475
Other	143	164
Total supplies and services	1,380	2,421

Note 10 Prior year licence fee refund

	2005 \$'000	2004 \$'000
Licence fee rebate applied	337	244
Total licence fee rebate	337	244

Note 11 Depreciation

	2005 \$'000	2004 \$'000
Depreciation		
Plant and equipment	13	13
<i>Total depreciation</i>	<u>13</u>	<u>13</u>
Total depreciation	<u><u>13</u></u>	<u><u>13</u></u>

Note 12 Act of Grace payments

There were no Act of Grace payments made during the financial year pursuant to section 64 of the *Financial Management Act 1996*.

Note 13 Auditor's remuneration

	2005 \$'000	2004 \$'000
Audit services		
Audit fees paid to ACT Auditor-General's Office	6	6
Total auditor's remuneration	<u>6</u>	<u>6</u>

Note 14 Cash

	2005 \$'000	2004 \$'000
Cash at bank	979	512
Total cash	<u>979</u>	<u>512</u>

The ICRC held deposits at call throughout the year at a floating interest rate of 5.18% p.a. (4.9% p.a. in 2004).

Note 15 Receivables

	2005 \$'000	2004 \$'000
Current receivables		
Trade debtors	1	530
Accrued revenue	–	170
Accrued interest	5	3
GST refund	15	15
Total current receivables	21	718
Split of government/non-government receivables		
Receivable with other ACT Government entities:		
Accrued revenue	–	53
Trade debtors	1	–
Receivable with entities outside government:		
Trade debtors	–	530
Accrued interest	5	3
GST refund	15	15
Accrued revenue	–	117
Total current receivables	21	718
Ageing of receivables		
Receivables are aged as follows:		
Not overdue	20	188
Overdue for more than 60 days	1	530
Total	21	718

Note 16 Plant and equipment

Plant and equipment includes office furniture, fixtures and fittings.

	2005 \$'000	2004 \$'000
Plant and equipment		
Plant and equipment at cost	129	129
Accumulated depreciation	(51)	(38)
Total written down value of plant and equipment	<u>78</u>	<u>91</u>

	2005 \$'000	2004 \$'000
Reconciliation of plant and equipment	Total	Total
Carrying amount at beginning of financial year	91	104
Depreciation	(13)	(13)
Carrying amount at the end of the financial year	<u>78</u>	<u>91</u>

Note 17 Payables

	2005 \$'000	2004 \$'000
Current payables		
Trade creditors	68	243
Accrued expenses	107	134
Total current payables	<u>175</u>	<u>377</u>
Payables are aged as follows:		
Not overdue	175	135
Overdue for less than 30 days	–	146
Overdue for 30 to 60 days	–	50
Overdue for more than 60 days	–	46
Total payables	<u>175</u>	<u>377</u>
Split of government/non-government payables		
Payables with other ACT Government entities		
Trade creditors	41	36
Accrued expenses	97	120
<i>Total payables with other ACT Government entities</i>	<u>138</u>	<u>156</u>
Payables with entities outside ACT Government		
Trade creditors	25	206
Other creditors	1	1
Accrued expenses	11	14
<i>Total payables with entities outside ACT Government</i>	<u>37</u>	<u>221</u>
Total payables	<u>175</u>	<u>377</u>

Note 18 Employee benefits

	2005 \$'000	2004 \$'000
Current employee benefits		
Annual leave	61	85
Accrued wages and salaries	–	5
Long service leave	8	–
<i>Total current employee benefits</i>	69	90
Non-current employee benefits		
Annual leave	63	–
Long service leave	107	86
<i>Total non-current employee benefits</i>	170	86
Total employee benefits	239	176

Note 19 Equity

	2005 \$'000	2004 \$'000
Total equity at the end of the year		
Accumulated funds	664	768
Total equity	664	768
Accumulated funds		
Balance at the beginning of the financial year	768	514
Operating (deficit)/surplus	(104)	254
Balance at the end of the financial year	664	768

Note 20 Financial instruments

Terms and conditions of financial instruments

Outlined below are the terms and conditions of financial assets and liabilities held by the ICRC as at 30 June 2005.

Terms and conditions

Financial assets

Cash

The ICRC's bank accounts are held with the Commonwealth Bank of Australia as part of the whole-of-government banking arrangement.

Receivables

The ICRC has trading terms of 30 days for all trade debtors from the time the invoice is issued.

Financial liabilities

Payables

The ICRC normally settles its creditors within a 30 day period.

Interest rate risk

The effective weighted average interest rate risk is outlined below for the following financial assets and financial liabilities:

	Note	Fixed interest maturing in:					Total \$'000
		Floating interest rate \$'000	1 year or less \$'000	Over 1 to 5 years \$'000	More than 5 years \$'000	Non- interest bearing \$'000	
2005							
Financial assets							
Cash	14	979	–	–	–	–	979
Receivables	15	–	–	–	–	21	21
<i>Total financial assets</i>		979	–	–	–	21	1,000
Weighted average interest rate		5.18%					
Financial liabilities							
Payables	17	–	–	–	–	175	175
<i>Total financial liabilities</i>		–	–	–	–	175	175
Net financial assets/(liabilities)		979				(154)	825
2004							
Financial assets							
Cash	14	512	–	–	–	–	512
Receivables	15	–	–	–	–	718	718
<i>Total financial assets</i>		512	–	–	–	718	1,230
Weighted average interest rate		4.9%	–	–	–	–	–
Financial liabilities							
Payables	17	–	–	–	–	377	377
<i>Total financial liabilities</i>		–	–	–	–	377	377
Net financial assets		512	–	–	–	341	853

Net fair value of financial assets and liabilities

The net fair value of cash and cash equivalents is the carrying value recorded in the accounts of the ICRC.

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 ICRC's credit risk is limited to the fair value of the financial assets held by the agency.

A major proportion of the ICRC's receivables are from utilities licence holders, and therefore the Commissioners assess the credit risk of these as low.

Note 21 Related party disclosures

The names of the Commissioners and Executive who have held office during the financial year are:

- Paul Baxter (Senior Commissioner)
- Peter McGhie
- Robin Creyke
- Ian Primrose (Chief Executive Officer)

	Actual 2005 \$'000	Actual 2004 \$'000
Income paid, or otherwise made available, to commissioners and related parties in connection with the management of affairs of the Commission.	235	236
Income band	Number	Number
\$0–\$9,999	1	–
\$10,000–\$19,999	1	1
\$20,000–\$29,999	–	1
\$60,000–\$69,999	1	–
\$80,000–\$89,999	–	1
\$110,000–\$119,999	–	1
\$140,000–\$149,999	1	–
Total	4	4

Note 22 Commitments

	2005 \$'000	2004 \$'000
Operating leases		
Non-cancellable operating lease commitments are payable as follows:		
Within one year	63	56
Later than one year but not later than five years	51	59
Total operating lease commitments	<u>114</u>	<u>115</u>

Note 23 Cash flow reconciliation

	2005 \$'000	2004 \$'000
Reconciliation of cash at the end of the reporting period in the Statement of Cash Flows to the related items in the Statement of Financial Position		
Cash at bank	979	512
Cash at the end of the financial year as recorded on the Statement of Cash Flow	<u>979</u>	<u>512</u>
Reconciliation of operating (deficit)/surplus to the net cash inflow/(outflow) from operating activities		
Operating (deficit)/surplus	(104)	254
Add/(less) non-cash items		
Depreciation	13	13
Net cash before changes in operating assets and liabilities	<u>(91)</u>	<u>267</u>
Changes in operating assets and liabilities		
(Increase)/decrease in receivables	697	(299)
Increase/(decrease) in payables	(202)	56
Increase in employee benefits	63	20
Net changes in operating assets and liabilities	<u>558</u>	<u>(223)</u>
Net cash inflows from operating activities	<u>467</u>	<u>44</u>

Note 24 Events occurring after balance date

There were no events occurring after balance date.

Note 25 Utility licence fee adjustments

The *Utilities Act 2000* provides that the regulatory bodies in the ACT, the Commission, the Essential Services Consumer Council (ESCC) and the technical regulator, may recover the reasonable costs of providing their services from utilities through the licence fees. The Commission determines each year the licence fees for each utility providing 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 of regulation. Under the Commission's approved policy, adjustments are made to fees charged in the following year if the actual cost of regulation at the end of the financial year varies from the cost estimated at the beginning of the year.

Licence fees are calculated by reference to the weighted amount of regulatory activity for each utility (electricity, gas or water) and service (network or retail). The calculation also takes into account the difference between fixed and variable costs; the latter is based on the utility's share of the market.

External sources of labour and services

The table below shows the involvement of consultants and contractors in the Commission's operations during the financial year 2004–05. As described in Section 4.4 of the annual report, the Commission continued to use expert consultants to assist with the conduct of inquiries and other processes.

The approach adopted by the Commission provided low-cost access to bodies of significant relevant expertise otherwise unavailable to the Commission. The approach, in the Commission's case, provided a flexible and highly skilled workforce at an efficient cost. The skill base of the Commission was therefore, in a practical sense, wider than the Commission would otherwise have been able to afford, and provided opportunities for core staff members to expand their skills and experience through skills transfer.

Consultant/contractor^a	Service	Value (\$)^b
Blake Dawson Waldron	Provide advice on network price reviews	7,898
Clayton Utz	Provide advice on review of gas access arrangement	147,559
Corrs Chambers Westgarth	Provide legal analysis and advice	10,710
Dale Boucher	Provide legal supervisory advice	2,127
Exigency Consulting	Provide advice on utilities compliance report	10,000
KPMG	Provide advice on utilities compliance report	3,550
McLennan Magasanik Associates	Provide advice on review of gas access arrangement	43,803
PricewaterhouseCoopers	Provide advice on network price reviews; provide advice on taxi fares inquiry	192,768
Wordsworth Writing	Provide editing and design services	42,332

a Only contractors and consultants external to the ACT Government are included

b All figures are exclusive of goods and services tax and rounded to whole dollars

Appendix 2 Legislative and regulatory data reports

Legislation

The Commission has core responsibilities under the following legislation:

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

The Commission also has obligations under a range of other Acts and codes, including:

- *Financial Management Act 1996*
- *Annual Reports (Government Agencies) Act 1995*
- *Government Procurement Act 2001*
- *Public Access to Government Contracts Act 2000*
- National Electricity Code
- National Gas Code
- Public Sector Management Act 1990.

Advisory and consultative boards and committees

As part of its activities in 2004–05 the Commission convened a steering committee of community, business and government representatives to assist with its assessment of the utilities annual performance reports.

Service purchasing arrangements, community grants, assistance and sponsorship

The Commission undertook no activities in these categories in 2004–05.

Legislative Assembly Committee inquiries and reports

One Legislative Assembly committee report referred to the operations of the Commission in the 2004–05 financial year: Legislative Assembly of the ACT, *Estimates Committee Report: 2004–05 Budget*.

Government inquiries and reports

The Commission has nothing to report for the reporting period.

Reports by the Auditor-General

Please refer to Section 3.2.5 of the annual report for a discussion of the probity audit of the Commission conducted by the Auditor-General.

Reports by the Ombudsman

The Commission made no reports to the Ombudsman, and was referred no complaints or questions by the Ombudsman.

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/report	Contact name	Contact details
Staffing issues Overview of Commission performance Freedom of information	Ian Primrose	(02) 6205 0799 (02) 6207 5887 fax ian.primrose@act.gov.au www.icrc.act.gov.au
Reports 12, 14 and 15 of 2004 <i>Review of access arrangement for ActewAGL natural gas system in ACT, Queanbeyan and Yarrawluma</i> Report 3 of 2005 <i>Discussion paper—Incentive Mechanisms</i>	John Logan Simon Farnbach	(02) 6207 0694 (02) 6207 5887 fax john.logan@act.gov.au www.icrc.act.gov.au (02) 6207 0890 (02) 6207 5883 fax simon.farnbach@act.gov.au www.icrc.act.gov.au
Report 13 of 2004 <i>Compliance and performance report for 2002–03</i> Report 2 of 2005 <i>Compliance and performance report for 2003–04</i> Report 4 of 2005 <i>Position paper—Compliance and Audit Framework</i>	Susan Faulbaum	(02) 6205 2773 (02) 6207 5887 fax susan.faulbaum@act.gov.au www.icrc.act.gov.au
Report 1 of 2005 <i>Issues paper—Review of Metrology Procedures</i> Procurement Information management	Rod Woolley	(02) 6205 5460 (02) 6207 5887 fax rod.woolley@act.gov.au www.icrc.act.gov.au

Glossary and abbreviations

ACT	Australian Capital Territory
AEMC	Australian Energy Marketing Commission
AER	Australian Energy Regulator (established in July 2004)
Commission, the	Independent Competition and Regulatory Commission
competitive neutrality policy	policy to eliminate resource allocation distortions that arise out of government ownership of entities engaged in business activities
CPI	consumer price index
EEO	equal employment opportunity
ESD	ecologically sustainable development
FRC	full retail contestability
Freedom of Information Act	<i>Freedom of Information Act 1989</i>
ICRC Act	<i>Independent Competition and Regulatory Commission Act 1997</i>
MCE	Ministerial Council on Energy
NEMMCO	National Electricity Market Management Company
OH&S	occupational health and safety
price direction	statement issued by the Commission, setting price paths and revenue caps for a utility for a specified period of years
Public Interest Disclosure Act	<i>Public Interest Disclosure Act 1994</i>
revenue cap	upper limit on revenue, set by the Commission, to allow utility service providers to recover reasonable capital and operating costs
Utilities Act	<i>Utilities Act 2000</i>
utility services	electricity supply and network operations, gas supply and network operations and water and sewerage supply—in some cases, also includes public transport
WAC	water abstraction charge

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