

REVIEW OF AUDITOR-GENERAL'S REPORT No. 2 OF 2014:
THE WATER AND SEWERAGE PRICING PROCESS

STANDING COMMITTEE ON PUBLIC ACCOUNTS

FEBRUARY 2015

REPORT 7

COMMITTEE MEMBERSHIP

Mr Brendan Smyth MLA	Chair from 6 June 2013 Member to 6 June 2013
Ms Mary Porter AM MLA	Deputy Chair
Ms Nicole Lawder MLA	Member from 8 August 2013
Ms Meegan Fitzharris MLA	Member from 10 February 2015
Ms Yvette Berry MLA	Member from 5 August 2014 to 10 February 2015
Dr Chris Bourke MLA	Member to 5 August 2014
Mr Zed Seselja MLA	Chair to 6 June 2013
Mr Alistair Coe MLA	Member from 6 June to 8 August 2013

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RESOLUTION OF APPOINTMENT

The Legislative Assembly for the ACT appointed the Standing Committee on Public Accounts on 27 November 2012.

Specifically the resolution of 27 November 2012 establishing the Standing Committees of the 8th Assembly, as it relates to the Public Accounts Committee states:

- (1) The following general purpose standing committees be established and each committee inquire into and report on matters referred to it by the Assembly or matters that are considered by the committee to be of concern to the community:
 - (a) a Standing Committee on Public Accounts to:
 - (i) examine:
 - (A) the accounts of the receipts and expenditure of the Australian Capital Territory and its authorities; and
 - (B) all reports of the Auditor-General which have been presented to the Assembly;
 - (ii) report to the Assembly any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed;
 - (iii) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question; and
 - (iv) examine matters relating to economic and business development, small business, tourism, market and regulatory reform, public sector management, taxation and revenue;¹

TERMS OF REFERENCE

The Committee's terms of reference were to examine the Audit report and report to the Legislative Assembly.

¹ ACT Legislative Assembly, *Minutes of Proceedings*, No. 2, 27 November 2012, pp. 24–27.

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RECOMMENDATIONS

RECOMMENDATION 1

- 2.22** The Committee recommends that ACT Government directorates and agencies should ensure complete compliance in accordance with the reporting requirements as prescribed under Section C.5—Auditor-General and Ombudsman's reports—of the 2013–14 Annual Report Directions.

RECOMMENDATION 2

- 3.8** The Committee recommends that the Treasurer inform the ACT Legislative Assembly by the last sitting day in May 2015 on progress regarding the Review of the ACT's Water and Sewerage Pricing Framework.

RECOMMENDATION 3

- 3.19** The Committee recommends that the ACT Government report to the ACT Legislative Assembly, by the last sitting day in October 2015, on the progress and effectiveness of the Government's implementation of the recommendations, made in Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*. This should include: (i) a summary of action to date, either completed or in progress (including milestones completed); and (ii) the proposed action (including timetable), for implementing recommendations (or parts thereof), where action has not yet commenced.

RECOMMENDATION 4

- 3.3** The Committee recommends that the Treasurer inform the ACT Legislative Assembly by the last sitting day in May 2015 on progress regarding the Industry Panel's consideration of the ACTEW Corporation's application for a review of the price direction of 26 June 2013 for regulated water and sewerage services for the period from 1 July 2013 to 30 June 2019.

RECOMMENDATION 5

- 3.5** The Committee recommends that the ACT Government ensure that the reporting timeframe for the review of the ACT's Water and Sewerage Pricing Framework permit consideration of the outcomes of an evaluation of the current review process and suitability of the provisions under Part 4C of the *Independent Competition and Regulatory Commission Act 1997* (post reporting by the Industry Panel).

1 INTRODUCTION AND CONDUCT OF INQUIRY

- 1.1 The Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process* (the Audit report) was presented to the ACT Legislative Assembly on 2 April 2014.
- 1.2 In accordance with the resolution of appointment of the Standing Committee on Public Accounts (the Committee) the Audit report was referred to the Committee for examination.
- 1.3 The Audit report presented:
...the results of a performance audit that examined the governance and administrative arrangements for the regulatory review of water and sewerage prices in the ACT.²

TERMS OF REFERENCE

- 1.4 The Committee's terms of reference were to examine the Audit report and report to the Legislative Assembly.

CONDUCT OF INQUIRY

- 1.5 On 3 April 2014 the Committee received a briefing from the Auditor-General in relation to the Audit report.
- 1.6 As noted earlier, under its resolution of appointment, the Committee examines all reports of the Auditor-General which have been presented to the Legislative Assembly. Specifically, its resolution of appointment requires the Committee to 'inquire into and report' on all reports of the Auditor-General which have been presented to the Assembly. The Committee has established procedures for its examination of these reports pursuant to the Assembly resolution.³
- 1.7 In accordance with these procedures, the Committee resolved on 13 November 2014 to conclude its consideration of the Audit report with a summary report.
- 1.8 The Committee met on 26 February 2015 to discuss the Chair's draft report which was adopted on 26 February 2015.

² ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, p. 1.

³ http://www.parliament.act.gov.au/in-committees/standing_committees/Public-Accounts/pac/referral

STRUCTURE OF THE REPORT

1.9 The Committee's report is primarily divided into three sections:

- Chapter 1—Introduction and conduct of inquiry
- Chapter 2—Audit background and findings
- Chapter 3—Committee comment

ACKNOWLEDGEMENTS

1.10 The Committee thanks those who contributed to its inquiry including the Auditor-General.

2 AUDIT BACKGROUND AND FINDINGS

2.1 This chapter presents an overview of the background to, and key findings of, the Audit.

AUDIT BACKGROUND AND OBJECTIVE

2.2 The objective of the Audit was to provide:

...an independent opinion to the Legislative Assembly on the efficiency and effectiveness of the processes for the regulatory review of water and sewerage prices in the ACT. To do this, the Audit office considered:

- roles and responsibilities of key entities involved in the regulatory review of water and sewerage prices in the ACT, specifically the ICRC⁴ and ACTEW⁵;
- administrative processes for undertaking the regulatory review of water and sewerage prices in the ACT; and
- communication protocols between key entities involved in the regulatory review of water and sewerage prices in the ACT, specifically the ICRC and ACTEW.

ACTEW's cooperation in the water and sewerage pricing process was also considered.⁶

AUDIT CONCLUSIONS

2.3 The Audit report contained the following audit conclusions drawn against the Audit objectives:

- **Administrative and communication processes associated with the 2013 water and sewerage pricing process**—have been ineffective and inefficient. In particular, the process has been characterised by poor communication and a poor relationship between the ICRC and ACTEW.
- **Invalidity of pricing direction**—while the ICRC advised that it sought to approach the 2013 process from 'first principles', this was not supported by effective stakeholder communication. Assertions made by the ICRC about ACTEW reflect the poor relationship between the two organisations. Furthermore, Queen's Counsel, Mr Peter Hanks advises that '...the Price Direction made by the ICRC...is invalid' because the terms of reference issued by the Treasurer was insufficient. The issues identified in this audit indicate that

⁴ Independent Competition and Regulatory Commission (ICRC)

⁵ ACTEW Corporation Limited—a Territory owned Corporation

⁶ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, p. 3.

there is a need for the water and sewerage price setting framework in the ACT to be reviewed.

- **Release of information in the course of the water and sewerage pricing process**—assertions made by the ICRC that ACTEW deliberately withheld information from the ICRC in the course of the water and sewerage pricing process, including that ‘whilst it was in possession of the information, ACTEW did not want to release the information and be responsible for influencing the outcome of the upcoming election’ are not supported by evidence. Accordingly, the ICRC’s view that ‘the actions or inactions of ACTEW [*posed*] a threat to the public interest’ is also not supported.
- **Different expectations about nature of information to be released**—there was a difference in the expectations of the ICRC and ACTEW with respect to the nature of the information to be provided by ACTEW as part of the water and sewerage pricing process. This difference in expectations was never satisfactorily resolved between the ICRC and ACTEW. Assumptions underpinning the different entities’ expectations and understanding of the processes, were also never effectively communicated.
- **Compelling provision of information**—the ICRC sought to compel the provision of information from ACTEW through the use of a legal notice under the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act). ACTEW did not have the information, as requested by the ICRC in the legal notice. The legal notice issued by the ICRC required that ACTEW provide this information by amending its main submission to the ICRC for the investigation. ACTEW fundamentally disagreed with the ICRC’s request that it provide the information by amending its main submission to the investigation. While ACTEW was unwilling to provide the information by amending its main submission, ACTEW consistently advised the ICRC that it was willing to provide the ICRC with other data and information that would assist the Commission to undertake its investigation. ACTEW’s proposed approach was not acceptable to the Commission.
- **Conflicts in roles of Treasurer and voting shareholder**—there are conflicts in the roles of the Treasurer in the setting of water and sewerage prices in the ACT. The Treasurer is a voting shareholder of ACTEW and is also the Minister responsible for water and sewerage price setting policy. As part of the 2013 water and sewerage price setting process, the Treasurer set the terms of reference for the investigation and provided submissions to the ICRC on behalf of the Government. While there are practices that mitigate the risk of adverse effects due to the conflicts in roles, such conflicts remain. Given the importance of the roles it would be prudent to further mitigate (and if possible) eliminate the conflicts in roles.
- **Conflict in roles undertaken by ICRC CEO**—there is a conflict in the roles undertaken by the ICRC Chief Executive Officer (CEO). The ICRC CEO has undertaken the roles of Chief Executive Officer and General Counsel (or Chief General Counsel) for the organisation as

part of the 2013 water and sewerage price setting process. Adopting the title of General Counsel (or Chief General Counsel) infers that the advice given is 'independent' of the role of CEO. The CEO does not have sufficient independence to act as the General Counsel (or Chief General Counsel) and should not assume this role.⁷

AUDIT FINDINGS

2.4 The Audit provided key findings to support its conclusions. The main elements of these findings—across five Audit themes—are outlined below:

GOVERNANCE AND ADMINISTRATIVE ARRANGEMENTS FOR WATER AND SEWERAGE PRICING IN THE ACT

2.5 Various government entities are involved in the water and sewerage pricing process. These include:

- ACTEW Corporation Limited—which is the sole supplier of water and sewerage services to the ACT;
- the ICRC—which sets the maximum prices that ACTEW may charge for providing water and sewerage services;
- the former Chief Minister and Treasury Directorate—which advises the Treasurer in relation to water and sewerage pricing policy and provides submissions and responses to the ICRC for the purposes of its investigation into pricing;
- the Chief Minister and Treasurer—these are the two voting shareholders of ACTEW; the Treasurer is also the Minister responsible for the ICRC Act, which sets the framework for the water and sewerage pricing process; and
- the Environment and Sustainable Development Directorate and the Commerce and Works Directorate—which are indirectly involved.⁸

2.6 The CEO of the ICRC has taken on the role of General Counsel for the organisation. The Audit found:

...a poor understanding in the ICRC with respect to internal roles and responsibilities for the provision of legal advice.⁹

⁷ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, pp. 4–5.

⁸ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, pp. 1; 6.

⁹ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, p. 7.

LEGISLATIVE REQUIREMENTS FOR WATER AND SEWERAGE PRICING

- 2.7 On 13 October 2011 the Treasurer issued terms of reference for a water and sewerage price investigation. However, the terms of reference did not specify a regulatory period. Subsequent legal advice was that this made the price direction determined by the ICRC to be invalid.¹⁰
- 2.8 The ICRC produced a draft report and proposed price direction in February 2013. Various participants in the water and sewerage pricing process made different interpretations and assumptions about the content of this document and the extent to which it needed to reflect the requirements of the ICRC Act. The ICRC produced a final report in June 2013 which included 'a range of additional commentary and findings specifically on ACTEW and its governance arrangements'. This additional material was not related to the setting of water and sewerage prices and was not required by the terms of reference for the investigation.¹¹

THE 2013 WATER AND SEWERAGE PRICING INVESTIGATION

- 2.9 The matters to be taken into account by the ICRC in a water and sewerage pricing investigation are determined by the ICRC Act and the terms of reference for the investigation. A range of objectives need to be taken into account. There is a 'lack of documented principles for setting water and sewerage prices, including policy guidance on the relative weight or merit of the objectives'.¹²
- 2.10 For the 2013 water and sewerage price investigation, the ICRC took a 'first principles' approach that differed from previous approaches used in the ACT, differed from what was initially planned, and from approaches applied by other regulators in Australia. The ICRC's final report and price direction, produced in June 2013, represented a significant shift from the price direction included in its draft report.¹³
- 2.11 The ICRC did not identify and test its potential conclusions until its draft report and proposed price direction was produced in February 2013. Communication and consultation for the 2013 water and sewerage pricing process was poor. Due to the late production of key reports, the timeframes for stakeholder consultation were compressed.¹⁴
- 2.12 The Audit also found 'an absence of detailed project planning documentation associated with the investigation'.¹⁵

¹⁰ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, p. 7.

¹¹ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, pp. 7; 8.

¹² ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, p. 8.

¹³ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, pp. 8; 9.

¹⁴ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, pp. 10; 11.

¹⁵ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, p. 11.

ICRC ASSERTIONS ABOUT THE NON-PROVISION OF INFORMATION BY ACTEW

- 2.13 In August 2012, the ICRC claimed that ACTEW's main submission to the water and sewerage pricing investigation, provided in July 2012, lacked information on some issues and requested that ACTEW amend its main submission and provide the information required. ACTEW disagreed. The ICRC sought to compel ACTEW to provide the information requested, but ACTEW did not do so. Offers by ACTEW to provide additional assistance and information were not taken up by the ICRC. The ICRC asserted that ACTEW did not provide the information requested as this may impact on the outcome of an upcoming ACT election. Different views were held by ACTEW and the ICRC about the impact of caretaker conventions. ACTEW and ICRC also had different views about the appropriateness and timing of the release of a community consultation paper by the ICRC during the caretaker period.¹⁶

THE EFFICIENCY AND EFFECTIVENESS OF THE WATER AND SEWERAGE PRICING PROCESS

- 2.14 The ICRC invoiced ACTEW for over \$2.36M for its costs for conducting the pricing process—approximately 70 per cent more than it charged for its 2008 investigation. ACTEW asserted that it incurred additional costs of over \$3.96M through participating in the review process. In total, the cost of the process was approximately \$6.3M.¹⁷
- 2.15 The Audit found that a budget was not set for the water and sewerage pricing process and that having 'a budget may encourage more effective communication processes'.¹⁸

AUDIT RECOMMENDATIONS

- 2.16 The Audit made one overall recommendation and seven other recommendations to address the Audit findings. Of the seven specific recommendations—five were directed at the Government and two were directed to the ICRC. As noted in the Audit report—the Government and the ICRC provided specific comments on these recommendations, while ACTEW provided an overall response and 'Noted' each of the recommendations.
- 2.17 A summary of the recommendations is provided in the table below.

¹⁶ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, pp. 11; 12; 13.

¹⁷ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, pp. 14; 15.

¹⁸ ACT Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*, April 2014, p. 15.

Table 2.1—Summary of Audit report recommendations and broad coverage

Recommendation number and broad coverage	Government position ¹⁹	ICRC position ²⁰	ACTEW position ²¹
Overall recommendation —The ACT Government should review the water and sewerage price setting framework including legislative, governance and administrative arrangements.	Agreed	Not agreed	Noted
R1 —The ACT should review the Treasurer’s responsibilities and implement mechanisms to further mitigate (and if possible eliminate) conflicts in roles with respect to the water and sewerage pricing process.	Noted	Not agreed	Noted
R2 —The ICRC Chief Executive Officer should not undertake the role of General Counsel for the ICRC.	Noted	Not agreed	Noted
R3 —The ACT Government should address the issues associated with the potential invalidity of the current price direction.	Agreed	Not agreed	Noted
R4 —The ACT Government should review and amend the <i>Independent Competition and Regulatory Commission Act 1997</i> to clarify the relationship between Part 3 (Investigations) and Part 4 (Price directions) of the Act	Agreed	Agreed in-part	Noted
R5 —The ACT Government, in consultation with key stakeholders, should develop a set of principles for the conduct of water and sewerage pricing investigations in the ACT.	Agreed	Not agreed	Noted
R6 —The ICRC, for all future water and sewerage pricing review investigations, should develop and implement—(a) detailed internal procedural guidance; and (b) rigorous project planning, monitoring and reporting procedures.	Noted	Agreed in-part	Noted
R7 —The ACT Government should provide more detailed guidance to ACT Government entities, specifically territory-owned corporations and statutory authorities, on protocols during the caretaker period.	Agreed	No comment	Noted

¹⁹ Government position as outlined in the Audit report—2 April 2014, pp. 16–22.

²⁰ ICRC position as outlined in the Audit report—2 April 2014, pp. 16–22.

²¹ ACTEW Corporation position as outlined in the Audit report—2 April 2014, pp. 12–22.

COMPLIANCE WITH 2013–14 ANNUAL REPORT DIRECTIONS

- 2.18 The Annual Report Directions for 2013–14 required Directorates and agencies to respond to the recommendations made in relevant Auditor-General's reports using a specified template. Compliance in reporting on the Audit report was assessed by examining relevant Directorate's annual reports for 2013–14. Responses of relevant agencies subject to the Audit are summarised below.
- 2.19 ACTEW noted all eight recommendations of the Audit report. The overall recommendation was agreed by the Government. ACTEW stated that the remaining seven recommendations were matters for action either by the Government or the ICRC.²²
- 2.20 In response to the overall recommendation, the ICRC was of the view that the conclusions and findings presented in the Audit report did not constitute a sound basis on which to institute a review. In relation to the overall recommendation and recommendations 1, 3, 4, 5 and 7 the Commission stated that implementation and outcomes of these were a matter for the Government. The Commission did not implement recommendation 2, while it indicated that implementation of recommendation 6 was ongoing.²³
- 2.21 The Chief Minister and Treasury Directorate (CMTD) stated that it agreed with various recommendations, though it did not refer to specific recommendations by number.²⁴ In the Committee's view, CMTD did not comply with the reporting requirements as prescribed under Section C.5—Auditor-General and Ombudsman's reports—of the 2013–14 Annual Report Directions.

Recommendation 1

- 2.22 The Committee recommends that ACT Government directorates and agencies should ensure complete compliance in accordance with the reporting requirements as prescribed under Section C.5—Auditor-General and Ombudsman's reports—of the 2013–14 Annual Report Directions.**

²² ACTEW Corporation Ltd. (2014) *2013–14 Annual Report*, p. 35.

²³ ICRC. (2014) *2013–14 Annual Report*, p. 18.

²⁴ CMTD. (2014) *2013–14 Annual Report*, (Vol. 1), p. 61.

3 COMMITTEE COMMENT

3.1 The Audit considered:

- the efficiency and effectiveness of the processes for the regulatory review of water and sewerage prices in the ACT; and
- ACTEW's cooperation with the ICRC in the water and sewerage pricing process for 2013–19.

PROCESSES FOR THE REGULATORY REVIEW OF WATER AND SEWERAGE PRICES IN THE ACT

3.2 Overall, the Audit recommended that the Government should review the water and sewerage price setting framework including legislative, governance and administrative arrangements. The Government agreed with this overarching recommendation and stated:

...that it would introduce improvements to the independent price regulation framework taking into account the Territory's legislative, governance and administrative arrangements.²⁵

3.3 In its response to the Audit report—the ICRC's view as to the overall recommendation was:

It will be apparent from the material presented in this response that the Commission does not consider that the conclusions and findings presented in the audit report constitute a sound basis on which to institute a review. Moreover, it would be premature to institute a review before the industry panel has made a decision on ACTEW's application for a review of the price direction. Given the controversy that has surrounded the Commission's introduction of a system of biennial recalibrations for the prices of water and sewerage services, it would be useful to allow the price to run through its first recalibration, scheduled to begin in November 2014.²⁶

3.4 As to specific recommendations relating to the independent price regulation framework and which are a matter for the Government:

The Government agreed with—: (a) the need for more clarity around reviewing and amending the *Independent Competition and Regulatory Commission Act 1997* to clarify the relationship between Part 3 (Investigations) and Part 4 (Price directions) of the Act;

²⁵ CMTD. (2014) *2013–14 Annual Report*, (Vol. 1), p. 62.

²⁶ ICRC. (2014) *Report on ACT Auditor-General's Office Performance Audit Report—The Water and Sewerage Pricing Process*, Report 3 of 2014, April, p. viii.

and (b) that, in consultation with key stakeholders, it should develop a set of principles for the conduct of water and sewerage pricing investigations in the ACT. The Government has advised that it is continuing to develop appropriate administrative arrangements for the review of the water and sewerage pricing framework. The review of these arrangements is expected to be undertaken during the second half of 2014.²⁷

3.5 The review of the water and sewerage pricing framework to be led by Mr Peter Grant PSM was announced on 25 November 2014. The Treasurer commented:

I am pleased to announce the commissioning of a review into the ACT's Water and Sewerage Pricing Framework.

The review, which will examine the current process for setting regulated water and sewerage prices in the ACT, is part of the Government's response to the ACT Auditor-General's Performance Audit Report, The Water and Sewerage Pricing Process (Report No. 2/2014).

...

I am convinced that Mr Grant will bring a new and independent perspective in considering potential improvements of the pricing framework and will deliver recommendations for a flexible and responsive pricing structure for water and sewerage in the ACT.²⁸

3.6 As to the terms of reference for the Review:

The review will examine the current framework for water and sewerage pricing in the ACT and within this context, provide comments, and recommendations on:

- the governance and administrative arrangements for the provision of independent pricing for regulated water and sewerage services in the Territory, including consideration of both the current model and other potential options;
- all relevant legislation related to the pricing framework for regulated water and sewerage services, in particular the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act);
- whether the ACT would benefit from a set of principles for conducting pricing investigations for regulated water and sewerage services, and outline the principles to be included; and
- any other matters considered relevant to improving the pricing framework.

²⁷ CMTD. (2014) *2013–14 Annual report*, (Vol. 1), p. 62.

²⁸ Mr Andrew Barr MLA. (2014) Media release: 'Review of Water and Sewerage Pricing Framework announced', 25 November.

The review will also consider other possible frameworks for the determination of water and sewerage prices in the Territory.²⁹

- 3.7 The Committee understands the call for submissions closed on 12 December 2014.³⁰ According to the Review of the ACT's Water and Sewerage Pricing Framework—Issues Paper, the final report of the Review is foreshadowed to be provided to the Government in February 2015.³¹

Recommendation 2

- 3.8 The Committee recommends that the Treasurer inform the ACT Legislative Assembly by the last sitting day in May 2015 on progress regarding the Review of the ACT's Water and Sewerage Pricing Framework.**

- 3.9 The Audit report also recommended that the Government address issues associated with the potential invalidity of the current price direction. The Government agreed to this recommendation advising that:

...to remove any doubt it would introduce appropriate legislation to ensure the validity of the price directions, although it noted that, in its view, the Terms of Reference ensure the validity of the price direction.³²

- 3.10 On 8 May 2014 the Legislative Assembly subsequently passed the *Independent Competition and Regulatory Commission (Water and Sewerage Price Direction) Act 2014*³³, which according to the Government:

...addressed the potential invalidity of the price direction, therefore ensuring that this issue was adequately resolved.³⁴

- 3.11 The Auditor-General also recommended that the Government provide more detailed guidance to government entities, specifically territory-owned corporations and statutory authorities, on protocols during the caretaker period. The Government agreed to this recommendation noting that as part of the routine process to be conducted before the 2016 election, it will consider what changes are required to the *Guidance on Caretaker Conventions* in relation to territory-owned corporations and statutory authorities.

²⁹ Review of the ACT's Water and Sewerage Pricing Framework—Issues Paper, November 2014, p. 4.

³⁰ Review of the ACT's Water and Sewerage Pricing Framework—Issues Paper, November 2014, p. 3.

³¹ Review of the ACT's Water and Sewerage Pricing Framework—Issues Paper, November 2014, pp. 2–3.

³² CMTD. (2014) *2013–14 Annual report*, (Vol. 1), p. 62.

³³ ACT Legislative Assembly, *Minutes of Proceedings*, No. 55, 8 May 2014, p. 582.

³⁴ CMTD. (2014) *2013–14 Annual report*, (Vol. 1), p. 62.

3.12 The Government has also advised that this process will also consider:

...the benefits that are to be gained from increased opportunities for training or consultation between Territory Owned Corporations and Statutory Authorities and the relevant staff within the Chief Minister, Treasury and Economic Development Directorate that are responsible for the administration of the caretaker provisions.³⁵

3.13 The Committee notes that as part of its report on 2011–12 annual reports it also recommended:

...that in preparation for the 2016 ACT General Election, the Commissioner for Public Administration should review the ACT Government's Guidance on Caretaker Conventions to determine whether specific sections detailing the application of the Conventions to arm's length government enterprises and agencies is required.³⁶

3.14 The Committee notes that two recommendations are specific to the ICRC—recommendation 2 and 6. In its 2013–14 annual report the Commission advised that it did not implement recommendation 2 and that implementation of recommendation 6 was ongoing.³⁷ Further, the Commission expressed the view that in response to the overall Audit recommendation, it did not consider that the conclusions and findings presented in the Audit report constituted a sound basis on which to institute a review. In relation to the overall recommendation and recommendations 1, 3, 4, 5 and 7 the Commission stated that implementation and outcomes of these were a matter for the ACT Government.³⁸

3.15 In its response to the Audit report³⁹—the ICRC expressed a number of reservations with respect to the Audit and its findings—including that:

- it had a number of concerns relating to the audit objective and process;
- there were shortcomings in the analysis and evidence offered in support of the conclusion that the administrative and communications processes associated with the 2013 water and sewerage services and pricing process were inefficient and ineffective;
- the analysis of communication and relationships with stakeholders as noted in the audit report had a number of serious shortcomings;
- that the depiction of unfolding events in regard to the matter of provision of information in ACTEW's main submission 'may seriously mislead the reader about the Commission's role in the events and the significance of the occurrences described'⁴⁰; and

³⁵ CMTD. (2014) *2013–14 Annual report*, (Vol. 1), p. 62.

³⁶ Recommendation 8—PAC Report on 2011–12 annual reports.

³⁷ ICRC. (2014) *2013–14 Annual Report*, p. 18.

³⁸ ICRC. (2014) *2013–14 Annual Report*, p. 18.

³⁹ ICRC. (2014) *Report on ACT Auditor-General's Office Performance Audit Report—The Water and Sewerage Pricing Process*, Report 3 of 2014, April.

⁴⁰ ICRC. (2014) *Report on ACT Auditor-General's Office Performance Audit Report—The Water and Sewerage Pricing Process*, Report 3 of 2014, April, p. vii.

- the Commission is of the view that 'there are no conflicts in the roles played by the Treasurer in providing references to the Commission, or the CEO of the Commission in acting as General Counsel to the Commission'⁴¹.

3.16 Further detail on these aspects, and other matters, is detailed in the Commission's *Report on ACT Auditor-General's Office Performance Audit Report—The Water and Sewerage Pricing Process*.⁴²

3.17 As to ACTEW's response to the Audit—the Managing Director told the Committee:

Certainly from our perspective, the Auditor-General's report discussed a review of, in general, the economic regulation framework and the act. They are being addressed, I understand, by government. With regard to any of the other observations, I guess we were very relieved, and not surprised, that any allegations were unfounded with regard to withholding information. From our perspective, it is just making sure the communications, relationships and all the rest of it are appropriately and professionally managed moving forward with the ICRC.⁴³

3.18 The Committee has carefully considered the progress in relation to agreed recommendations post presentation of the Audit report. The Committee notes that work against each of the agreed recommendations has taken place, with some completed, close to completion or underway.

Recommendation 3

3.19 The Committee recommends that the ACT Government report to the ACT Legislative Assembly, by the last sitting day in October 2015, on the progress and effectiveness of the Government's implementation of the recommendations, made in Auditor-General's Report No. 2 of 2014: *The Water and Sewerage Pricing Process*. This should include: (i) a summary of action to date, either completed or in progress (including milestones completed); and (ii) the proposed action (including timetable), for implementing recommendations (or parts thereof), where action has not yet commenced.

⁴¹ ICRC. (2014) *Report on ACT Auditor-General's Office Performance Audit Report—The Water and Sewerage Pricing Process*, Report 3 of 2014, April, p. vii.

⁴² ICRC. (2014) *Report on ACT Auditor-General's Office Performance Audit Report—The Water and Sewerage Pricing Process*, Report 3 of 2014, April.

⁴³ Mr John Knox, Inquiry into 2013–14 Annual reports, *Transcript of evidence*, 10 November 2014, p. 67.

APPLICATION FOR REVIEW OF PRICING DETERMINATION

- 3.20 The Committee notes that the timing of the Audit coincided with the ICRC Regulatory Review and Pricing Determination. Subsequent to the announcement of the pricing determination ACTEW made an application seeking a review by the industry panel on the price direction for regulated water.
- 3.21 The ACTEW Corporation has made an application for a review by an industry Panel of the Price Direction of 26 June 2013 for regulated water and sewerage services for the period from 1 July 2013 to 30 June 2019. The application for review is pursuant to Part 4C of the *Independent Competition and Regulatory Commission Act 1997*.⁴⁴
- 3.22 The Price Direction for regulated water and sewerage services of 26 June 2013—(commencing 1 July 2013) increased water prices by 5 per cent and reduced sewerage prices by 18 per cent in the 2013–14 financial year. The ICRC was of the view that:
- ...the change in ACTEW’s regulatory arrangements established by the June 2013 price direction will allow for greater transparency in the determination of future water and sewerage prices in the Territory and better align prices with the efficient cost of providing those services.⁴⁵
- 3.23 The key aspects of ACTEW’s primary concern with the price direction and final report include—the decision to:
- adopt a firm-specific cost of capital
 - set the rate of return on equity below the level that the Final report determined should be the lower bound for this parameter, to achieve target price outcomes, and
 - adopt a regulatory model under which all key elements of the building block revenue model will be reset every two years.⁴⁶
- 3.24 The Treasurer appoints the three member industry panel and reasonable costs for the appeal are borne by the body seeking the review, in this case—ACTEW. The ICRC Act does not specify a timeframe for completion of a review pursuant to Part 4C and the process will test the legislation.⁴⁷ The appointment of the industry panel was announced in April 2014.
- 3.25 As to progress on the Review, the ICRC Senior Commissioner told the Committee on 10 November 2014:
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⁴⁴ PAC Inquiry into 2011–12 Annual reports, *Transcript of evidence*, 3 December 2013, pp. 133–135.

⁴⁵ ICRC. (2013) *2012–13 Annual report*, p. 1.

⁴⁶ Correspondence from ACTEW Managing Director to Senior Commissioner, ICRC, 26 September 2013, p. 2.

⁴⁷ PAC Inquiry into 2011–12 Annual reports, *Transcript of evidence*, 3 December 2013, pp. 129–131.

We have had various requests from the panel over the period since they have been established, and we have complied with those requests. When they were set up first of all we gave them all our report templates and media templates and various other materials to get them started. Most of our documentation is in the public domain; so they have been downloading it directly from our website.

They asked for all the confidential submissions that had been made to the inquiry, and we provided a package of those. They subsequently requested our terms of reference for contract documents for the technical contractor that helped us with the water review, and we provided that. There have been a range of requests, some large some small, over the period that they have been operating. We have simply provided the material they sought.⁴⁸

- 3.1 As previously mentioned, the Government announced a review of the ACT's Water and Sewerage Pricing Framework on 25 November 2014 with a final report foreshadowed to be provided to government in February 2015.
- 3.2 The Committee notes the ICRC's view that 'it would be premature to institute a review before the industry panel has made a decision on ACTEW's application for a review of the price direction'.⁴⁹

Recommendation 4

- 3.3 **The Committee recommends that the Treasurer inform the ACT Legislative Assembly by the last sitting day in May 2015 on progress regarding the Industry Panel's consideration of the ACTEW Corporation's application for a review of the price direction of 26 June 2013 for regulated water and sewerage services for the period from 1 July 2013 to 30 June 2019.**
- 3.4 The Committee notes that since the enactment of the ICRC Act, the current application for a review is the first time such an application has been made pursuant to Part 4C of the Act. Furthermore, the Act does not specify a timeframe for completion of a review pursuant to Part 4C. The Committee is of the view that the outcomes of an evaluation of this review process and suitability of the provisions under Part 4C for such a process should be considered as part of the review of the Water and Sewerage Pricing Framework.

⁴⁸ Mr Malcolm Gray, Inquiry into 2013–14 Annual reports, *Transcript of evidence*, 10 November 2014, pp. 80–81.

⁴⁹ ICRC. (2014) *Report on ACT Auditor-General's Office Performance Audit Report—The Water and Sewerage Pricing Process*, Report 3 of 2014, April, p. viii.

Recommendation 5

- 3.5 The Committee recommends that the ACT Government ensure that the reporting timeframe for the review of the ACT's Water and Sewerage Pricing Framework permit consideration of the outcomes of an evaluation of the current review process and suitability of the provisions under Part 4C of the *Independent Competition and Regulatory Commission Act 1997* (post reporting by the Industry Panel).**

CONCLUSION

- 3.6 The Committee notes that differing views were expressed by some stakeholders as to the findings of the Audit and the basis for these findings. Notwithstanding, the Committee recognises that no area of public administration should be exempt from independent examination at any time. It is realistic to expect that the governance and administration of the processes for the regulatory review of water and sewerage prices should be efficient and, as is the case with other areas of public administration, capable of continuous improvement.
- 3.7 Accordingly, the Committee is of the view that the Audit has been important in assessing the governance and administrative underpinnings of the regulatory review of water and sewerage prices in the ACT. When taken together, these processes support the outcome of the regulatory review which is a pricing determination for regulated water.
- 3.8 Given the significance of the pricing determination for a range of stakeholders—in particular, consumers, it is important that these processes are efficient and effective and that parties to the Review process work cooperatively in an environment based on mutual respect.
- 3.9 Furthermore, adherence to due process to ensure that appropriate and transparent decisions have been made, and can be made, with respect to the administration of these processes is a fundamental aspect of good governance.
- 3.10 The Committee has made **five** recommendations in relation to its inquiry into Auditor-General's report No. 2 of 2014: *The Water and Sewerage Pricing Process*.

Brendan Smyth MLA

Chair

26 February 2015

