

Utilities Regulation in the Australian Capital Territory

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Structure of the presentation

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1. A symbol of Federation – perspective on the ACT

BACKGROUND

- Construction of the national capital 1924 as an invention and has become a settled home for the nation and for its own community.
- The ACT has been self-governing since 1989
- It is a small island (4,067 square kilometres) in South eastern New South Wales.
- The city covers approximately 57% of the total area, the balance is a combination of rural industry and national park and open space.
- The population is 314,171 or about 1.6% of the national total
- On average the ACT has high retention rates for school students and for those going on to University, and a highly educated work force
- high average wages about (30% higher than the national average) but shares problems with other cities on youth unemployment, loss of unskilled work and lower full time work available than a decade ago.
- The weather is marked by cold winters and relatively mild Spring and Autumn and a hot summer, with high temperatures in January through March (high peaks in demand in winter and a spike in demand for electricity in summer)
- Canberra sits on the head waters of the Murrumbidgee so has little problem with availability of supplies of water
- The economy is about 40% public sector and 60% private sector employment (private sector is heavily public sector dependent).

2. The network and the suppliers in the ACT – who does what for whom and how.

The suppliers

- Historically the ACT has been supplied by monopolies in electricity, gas and water
 - Electricity supplied by a vertically integrated government owned monopoly – ACTEW (Australian Capital Territory Electricity and Water)
 - ◆ Government owned network infrastructure
 - ◆ Regulatory and service responsibilities for distribution and network retail
 - ◆ Operated under several different Acts, e.g. Electricity and Water Act, Electricity Supply Act, Energy and Water Charges Act and Regulations
 - ◆ Put on a commercial footing in 1990 and Corporatised in 1995 to increase the commercial focus and introduce greater market discipline and efficiency – shareholders remained wholly government
 - ◆ Responsibilities included residential and commercial supply and street lighting
 - ◆ Subject to Ministerial authorised prices up to 1996, after 1996 prices regulated by the independent regulator (E&WCC, IPARC, ICRC)
 - ◆ Change in ownership in 2000 to reduce risks arising from participation in national utility markets – joint venture with AGL creating a multi-utility of relatively modest size.
 - Gas supplied by a private sector publicly listed company – AGL (Australian Gas Light Company)
 - ◆ One of Australia's oldest companies headquartered in Sydney
 - ◆ A major player in utility services in Australia including provision and operation of gas transport pipelines, gas retailing
 - ◆ Diversified into water and electricity

- ◆ Supplier of gas in the ACT through wholly owned distribution pipelines subject to price and technical regulation since the early 1990's
- ◆ Change of ownership in 2000 to increase diversification of commercial risk across a number of utility markets and underwrite their market dominance in NSW.

➤ **Water and sewerage**

- ◆ Vertically integrate government owned monopoly – ACTEW
- ◆ Joint venture included water and sewerage services in the new multi-utility
- ◆ Greater commercial focus and discipline
- ◆ Assets remain wholly owned by ACT government

SUMMARY

- The provision of utility services has changed markedly in the past decade with an increasingly market orientation reflecting a strategic approach to managing emerging market risks and the development of more 'national' markets for electricity and gas.
- Water and sewerage remain natural monopolies with assets owned by government but the daily operations commercial driven
- Regulation has changed from being monopoly enterprise based, with oversight of some elements and policy by government agencies, to independent regulation of pricing, licensing and technical standards.
- Electricity has been the traditional source of energy, with gas being supplied only in the past fifteen to twenty years.
- Water and sewerage remain monopoly services, no distinction between distribution and retail except for licensing.

The Networks

ELECTRICITY

	1996	1997	1998	1999	2000	2001
Customers	124,715	126,730	129,652	131,601	133,860	135,591
Franchise domestic	114,778	116,129	117,690	118,986	115,655	122,664
Franchise other	11,952	11,876	11,962	12,615	18,205	12,000
Non-franchise	0	0	0	0	0	927
Mains (Km)						
132 kV	172	160	160	160	160	160
66kV	8	8	8	8	8	8
22kV	24	24	24	24	24	24
11kV	1370	1369	1370	1375	1355	1355
Low voltage	1300	1301	1301	1300	1300	1300

- Electricity is not generated in the ACT, except for small quantities generated from methane at the Territory's waste disposal sites, and a mini-hydro generator on the Murrumbidgee River. Most generated load is sourced from NSW generators
- There is a small amount of green power sold in the ACT by ActewAGL sourced from NSW, generally hydro, solar or wind generation.

GAS

	1996	1997	1998	1999	2000	2001
Customers						84,571
Mains (Km)						3520
Qty of gas supplied (TJ)						3665

- Gas is supplied to the ACT from the Moomba field through the main pipeline from Moomba-Sydney. The Moomba-Sydney pipeline is owned by Australian Pipelines Trust, in which AGL is a partner.
- The Eastern Gas Pipeline from Longford in Victoria to Sydney has a lateral line to the ACT which is yet to contestable supply gas to the ACT Market.

WATER AND SEWERAGE

	1996	1997	1998	1999	2000	2001
Water Customers	116,008	117,343	118,856	120,349	122,760	124,570
No of dams	4	4	4	4	4	4
Dam capacity (GL)	215.4	215.4	215.4	215.4	215.4	215.4
Reservoirs	43	44	44	44	44	44
Reservoir capacity (ML)	950	912	912	912	912	912
Length of mains (km)	2877	2895	2901	2907	2921	2933
Total consumption (ML)	53,254	61,810	73,009	60,361	57,929	62,834
Consumption/person/yr (kL)	174	187	220	182	175.5	185.6
Rainfall (mm)	645	676.6	438.6	688.6	666	618.2
Sewerage Customers	116,008	115,083	116,268	117,648	119,846	121,618
Length of mains (km)	2784	2806	2812	2817	2836	2852
Max daily load (ML)	182	152	138	235	137	151.4
Sewerage treat/pers/yr (KL)	105	109	101	106	105.2	97
Qty of sewerage treated (ML)	32,200	33,704	31,524	32,718	32,585	30,277

- The ACT is at the top end of the Murrumbidgee and Molonglo rivers so access to water supplies is not as vexed an issue as downstream, e.g. South Australia at the bottom end of the Murray-Darling System.
- Until recently the ACT had not sought to establish a cap for its water use, other states in the Murray-Darling system have caps on consumption to equitably share the resource among the users. The ACT has sought to establish a cap that will allow for growth in the Territory over 50 years.

3. Drivers for change – microeconomic reform and economic efficiency

NATIONAL COMPETITION POLICY

- signed by all governments in Australia in 1995, agreeing to reforms recommended by the Select Committee Inquiry chaired by Professor Hilmer
- the agreements contained microeconomic reforms in relation to government businesses and nationally significant infrastructure
 - ◆ restructuring of government monopolies to introduce efficiencies
 - ◆ price regulation for monopolies
 - ◆ review of legislation to remove anti-competitive regulation

- ◆ making government businesses competitively where they compete with private firms (removing net benefits of ownership)
- ◆ applying reforms across all levels of government, State and local government

- the Implementation Agreement also bound in reforms that had been pursued separately by the Council of Australian Governments (COAG), the ‘related reforms’ in electricity, gas, water and transport
 - ◆ competitive national market for electricity
 - ◆ competitive market for gas
 - ◆ bringing water into the regulatory net – providing for the environment, pricing water efficiently, moderating consumption, reforming water rights, introducing competition where appropriate.
- Incentive provided by access to a share of the economic benefits to be derived from reform (competition payments)
- Established an independent body to oversight progress on reform and recommend on payment of the competition payments from the Commonwealth

4. The Brave New World – the Utilities Act 2000

Before

- Before 2001, there was a multiplicity of legislation and regulation dealing with electricity, gas and water
 - Technical regulations dealing with the standard and suitability of physical infrastructure and the technical competence of persons undertaking installation and maintenance of utility infrastructure
 - Pricing regulation, including water rating, usually set by Ministerial authority based more on the needs of the utility suppliers than consumers
 - Supply obligations and consumer responsibilities determined by the utilities, moderated by general provisions of consumer protection and sale of goods law
 - National laws and Codes operating in electricity and gas markets since 1997 arising from the establishment of the electricity and gas national markets
 - Separate provision for water, electricity and gas
 - Policy indistinguishable from regulation
 - Service provision and regulation by the utility companies
 - Limited suppliers and no consumer choice
 - Non-transparent cross subsidies between residential customers and commercial customers
 - Indistinct community service obligations paid by government for policy ends no longer relevant or existing
 - Different licensing regimes (electricity no licence, gas required authorisation and water required licence to supply and to abstract)
 - Reporting requirements were inconsistent and in some cases non-existent
 - Reporting, compliance was often by exception rather than determined on consistent and universal lines.
 - Reporting points were diverse, some national some local.
- ActewAGL and the joint venture partners separately have been comparatively efficient and certainly have been effective in supplying customers. Over the past five years in particular they have responded to incentives to increase efficiency and have been leaders in environmental awareness.

After

- Utilities Act brought fundamental reform
 - Brought technical, pricing and consumer safety net arrangements into one law

- Established clear responsibilities for regulators – licence and compliance regulator, technical regulator and a new consumer compliance council
- Reduced duplication, confusion, and diversity of responsibilities – which lead to under regulation in critical areas of performance and a lack of transparency for consumers,
- Clear linkages with the National Electricity Law and Code and the Gas Law and Gas Code, containing obligations and responsibilities for utilities, consumers and regulators
- Provided for comparable licences for all utility services
- Provided for codes and standards of practice across a range of issues, with powers and processes for changing standards and other requirements
- Made day-to-day decision making transparent and removed it from political arena.

5. Structure of the Utilities Act 2000

- Makes the ICRC the principal regulatory authority under the Act and provides for:
 - Definition of utility services and customers
 - issuing licences, prohibition of the supply of utility services without a licence and exemption from the requirement to hold a licence under some circumstances
 - conditions for the issue of and exemption from some conditions of licences
 - Provides for the transfer, surrender, revocation of licences
 - Annual licence fees
 - Enforcement of compliance with licence conditions
 - Directions about accounts and records, annual compliance reporting and the supply of information
 - Publication of and access to licences
- The Act removes the need for inflexible regulations by providing for industry codes that are flexible (may be changed by the independent regulator rather than going through the legislative process)
 - Codes may set out practices, standards and other matters about the provision of a utility service (s55 of the Act)
 - Codes may deal with any or all of:
 - ◆ Network boundaries
 - ◆ Connections to a network
 - ◆ Utility service standards
 - ◆ The protection of customers and consumers
 - ◆ The metering of utility services
 - ◆ Provision of utility service generally and on a last resort basis
 - ◆ Termination of interruption of utility services
 - ◆ Disconnection
 - ◆ Arrangements between licensed distributors and suppliers concerning the use of a network
 - ◆ The development of a network
 - Codes may be varied by the ICRC
- Technical regulation in the Act consists of provision in Part 5 of the Act to develop and enforce technical codes
- The technical regulator may make a code in relation to :
 - Protecting network integrity
 - Protecting the health and safety of workers and operators of networks
 - Ensuring proper connection to premises (appropriate design and manufacturing standards apply)
 - protecting public and private property and the environment
 - providing for emergency planning

Part 6 of the Act deals with access to utility services, providing for the rights of customers:

- how applications may be made to utilities for connection

- the obligation of electricity, gas and water utilities to supply franchise customers
- the form of standard and negotiated customer contracts
- the passing on of electricity, gas and water costs (prohibition of persons passing on electricity, gas or water supplied under contract to others at a rate more than that which a utility would charge that customer)
- providing that utilities may charge a capital contribution charge to cover the cost of development or augmentation of infrastructure, and
- requiring utilities to supply persons who use or supply alternative energy services

Part 7 of the Act provides for network operations:

- powers to compulsorily acquire land for the purposes of providing a network service
- powers of entry to private property to install, maintain etc network assets
- requiring that damage to property be minimised and compensated for
- provision of notice of works, required entry to property and lopping trees
- notice to other utilities
- removal of waste
- restoration of land
- authorities for utility personnel

Part 8 reinforces the provisions in Part 7 by prohibiting persons from:

- interfering with network facilities
- contaminating water or sewerage networks
- installation of unauthorised network connections

Parts 8 and 9 refer to:

- powers of the Minister to appoint a controller under some circumstances
- ICRC and Technical regulatory inspectors

Parts 11 and 12 establish the Essential Service Consumer Council (ESCC) and provide it with appropriate powers to investigate complaints against utilities and utility accounts, nature of customer contracts and to make order in relation to customers unable to meet the commitments.

6. Structure of the ICRC

The ICRC is established under the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act) and has additional powers and responsibilities under the *Utilities Act 2000*

The ICRC's objectives in the ICRC Act, in relation to regulated industries, access regimes, competitive neutrality complaints and government-regulated activity, are to:

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

In addition the Utilities Act sets out objectives in relation to utilities:

- encourage safe, reliable, efficient and high quality utility services at reasonable prices
- minimise the potential for misuse of monopoly power in the provision of utility services
- promote competition in provision of utility services
- encourage long-term investment, growth and employment in utility service industries
- promote ecologically sustainable development in the provision of utility services
- protect the interests of customers
- ensure that advice given to ICRC by the council (ESCC), or the Chief Executive under Part 5 (Technical Regulation), is properly considered
- ensure that Government's programs about the provision of utility services are properly addressed

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

The ICRC's functions in relation to regulated industries are to:

- provide price directions
- provide recommendations about price regulation (influenced by obligations as the jurisdictional regulator under the National Electricity Code and the Gas Code)
- provide advice to the Minister about proposed access agreements
- arbitrate disputes about access to services under access regimes
- investigate and report on matters referred by the minister and other referring authorities
- any function conferred by a number of Acts and Regulations including the National Electricity (ACT) Law, Regulations and Code, the Gas Pipelines Access (ACT) Law, Regulations and Code

It has additional functions in the Act:

- investigating and reporting on competitive neutrality complaints
- investigating and reporting on government-regulated activities
- any incidental to the above

In terms of the ICRC's structure the Act directs that:

- the Commission comprises three commissioners, one of whom is appointed the Senior Commissioner
- any number of associate commissioners may be appointed for short periods to provide specialist input to particular inquiries
- the Commission has 7 permanent staff and uses consultants extensively to bring high level skills to bear on any issue.
- The ICRC is independent of Ministerial control
- It has powers to require information to be provided, subject to penalties including imprisonment
- It has powers in relation to confidential information

The ICRC has obligations outside the ICRC Act relating to the operation of the national electricity and gas codes, and has substantial relations with national and other State and Territory regulatory bodies – the Utility Regulators' Forum etc

7. Best practice – what does ICRC think best practice is in the ACT

- It is unclear what best practice in utility regulation actually is, if there is a defined best practice the Commission has not yet undertaken an assessment that would benchmark its performance.
- Perhaps best practice might best be defined by reference to regulatory outcomes
 - Is regulation sufficiently light handed
 - ◆ Reduces regulatory costs
 - ◆ Regulation that is transparent, accountable and regulatory processes accessible to all parties to the regulatory bargain
 - ◆ Minimises interference to those things that are necessary (demanded by legislation or by reference to efficiency)
 - ◆ Not seeking to second guess industry but to focus on the parameters within which or to which industry is to be responsive
 - Regulating consistent with the view that regulators should not manage utility businesses
 - Balancing economic, social, environmental and consumer interests with incentives for utilities to provide high quality services at efficient cost
 - ◆ Environmental sustainability
 - ◆ Pricing services to recognise risk
 - ◆ Providing regulated returns that reward investment and innovation
 - ◆ Pricing and regulatory decisions that seek to provide certainty to utilities and equity to consumers

- ◆ Promoting vigorous competitive markets or creating an equivalent set of incentives in a regulated market

Major issues going forward

- Review of the Utilities Act 2000 and the Independent Competition and Regulatory Commission Act 1997
 - Scheduled for later in 2002
 - Revision of elements that need clarification of intent and expression
 - removal of inconsistencies
 - making the Act more workable, decreasing the burden on the regulator
- Energy Markets Review and the role of the Energy Minister's Council
 - Commonwealth review that is looking at the next 15 years and how best to get there
 - Potentially far reaching impact on jurisdictional regulators with attendant costs and disruptions
 - Energy Minister's are seeking greater voice in electricity matters – is that risky?
- Single national regulator of electricity
 - Issues that has emerged recently
 - stimulated by increased interest in Ministers to have greater control over the national market
 - has some potential efficiency/consistency benefits but could have significant rigidities
 - question is how best to achieve consistent regulation and lessen the burden of regulation
- Greenhouse gas abatement policy impacts
 - Potential increases in cost
 - Potential for major shifts in energy policy and resource allocation
 - Incentives for investment in alternate energy sources (hydro, wind, solar, tidal)
- Development of benchmarking and nationally consistent performance measurement