



HUMAN RIGHTS &
DISCRIMINATION COMMISSIONER
ACT Human Rights Commission

Submission to the Review of Institutional Arrangements for ACTEW Corporation Ltd (ACTEW)

I note the Terms of Reference suggest the Review will, among other things, examine, and provide recommendations on, potential approaches which could:

- improve the existing arrangements and structures (both legal and regulatory) under which ACTEW operates;
- enhance the process of setting specific goals and objectives for ACTEW, including the potential prioritisation of commercial, social and environmental objectives; and
- enhance communication and accountability mechanisms operating between ACTEW and ACT Government Directorates

My submission will focus on the impact of human rights legislation in the ACT on all three of these considerations.

About the ACT Human Rights Commission

The Human Rights Commission is established under the *Human Rights Commission Act 2005* (the HRC Act). The Commission's role includes:

- promotion of the human rights and welfare of people living in the ACT by making recommendations to government and non-government agencies on legislation, policies, practices and services that affect vulnerable groups in the community;
- promotion of the rights of users of disability services, health services, services for children and young people and services for older people; and
- promotion of improvements in services for those groups.

The Commission handles complaints, and has a statutory oversight role, in respect of service provision to people with disabilities and their carers, older people, children and young people and their carers, and health consumers.

As Discrimination Commissioner, I handle all complaints of unlawful discrimination under the *Discrimination Act 1991*, which cover many areas of public life including employment, education and the provision of goods and services, such as the supply of gas, electricity and water. As Human Rights and Discrimination Commissioner, I promote the rights of people to be free from unlawful discrimination and promote human rights education in the community. I also advise government on the operation of the *ACT Human Rights Act 2004*.

As the Review's Issues Paper notes, ACTEW is subject to the provisions of the *Discrimination Act 1991*.

The Human Rights Act and ACTEW

Introduction

The ACT Human Rights Act creates a legislative basis for protecting certain internationally recognised human rights, drawn primarily from the International Covenant on Civil and Political Rights. In addition, in January this year, the economic, social and cultural right to education was added to the Act, but has a more limited application than the other existing rights.¹ All individuals (not corporations) in the ACT have rights, and public authorities (largely government) have the responsibility for respecting, protecting and fulfilling these rights.

These Civil and Political Rights include the following, of most relevance to the work of ACTEW

- Right to equality – expands and informs the anti-discrimination protection in the Discrimination Act (s.8);
- Right to life – may be relevant for example in relation to supply of clean water, or to those who rely on an uninterrupted power supply (s.9);
- Protection of the Family and Children (s.11); and
- Right to privacy (s.12)

Section 30, which applies to all rights including the right to education, states that all territory laws must be interpreted consistently with human rights. Section 28 provides that human rights may be limited, but only where the limits are reasonable, set by laws, and can be demonstrably justified in a free and democratic society.

ACT Public Authorities

Section 40(1) defines a public authority as including a number of things, including a territory authority, territory instrumentality and a functional public authority:

'(g) an entity whose functions are or include functions of a public nature, when it is exercising those functions for the Territory or a public authority (whether under contract or otherwise).'

Section 40A(1) further provides detail of what function of a public nature means. Several factors must be considered, but this a non-exhaustive list:

- (a) whether the function is conferred on the entity under a territory law;*
- (b) whether the function is connected to or generally identified with functions of government;*
- (c) whether the function is of a regulatory nature;*
- (d) whether the entity is publicly funded to perform the function;*
- (e) whether the entity performing the function is a company (within the meaning of the Corporations Act) the majority of the shares in which are held by or for the Territory.*

Similarly, s.40A(3) provides that certain non-exhaustive examples of functions are taken to be a public nature, including the provision of gas, electricity and water supply.

¹ The UK Human Rights Act 1998 also includes the right to education,

The Human Rights Act and ACTEW

Introduction

The ACT Human Rights Act creates a legislative basis for protecting certain internationally recognised human rights, drawn primarily from the International Covenant on Civil and Political Rights. In addition, in January this year, the economic, social and cultural right to education was added to the Act, but has a more limited application than the other existing rights.¹ All individuals (not corporations) in the ACT have rights, and public authorities (largely government) have the responsibility for respecting, protecting and fulfilling these rights.

These Civil and Political Rights include the following, of most relevance to the work of ACTEW

- Right to equality – expands and informs the anti-discrimination protection in the Discrimination Act (s.8);
- Right to life – may be relevant for example in relation to supply of clean water, or to those who rely on an uninterrupted power supply (s.9);
- Protection of the Family and Children (s.11); and
- Right to privacy (s.12)

Section 30, which applies to all rights including the right to education, states that all territory laws must be interpreted consistently with human rights. Section 28 provides that human rights may be limited, but only where the limits are reasonable, set by laws, and can be demonstrably justified in a free and democratic society.

ACT Public Authorities

Section 40(1) defines a public authority as including a number of things, including a territory authority, territory instrumentality and a functional public authority:

'(g) an entity whose functions are or include functions of a public nature, when it is exercising those functions for the Territory or a public authority (whether under contract or otherwise).'

Section 40A(1) further provides detail of what function of a public nature means. Several factors must be considered, but this a non-exhaustive list:

- (a) whether the function is conferred on the entity under a territory law;*
- (b) whether the function is connected to or generally identified with functions of government;*
- (c) whether the function is of a regulatory nature;*
- (d) whether the entity is publicly funded to perform the function;*
- (e) whether the entity performing the function is a company (within the meaning of the Corporations Act) the majority of the shares in which are held by or for the Territory.*

Similarly, s.40A(3) provides that certain non-exhaustive examples of functions are taken to be a public nature, including the provision of gas, electricity and water supply.

¹ The UK Human Rights Act 1998 also includes the right to education,

Any ambiguity about the human rights public authority status of the ActewAGL joint venture should also be clarified. I would recommend that the joint venture opt-in to become a public authority, or otherwise have its status clarified. It would be a poor outcome for the ACT community if entities could contract out of public authority human rights obligations by creating new corporate arrangements with private entities.
