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## **TRANSCRIPT OF PROCEEDINGS**

### **INDUSTRY PANEL**

#### **MS M. HARTLEY, CHAIR**

### **REVIEW OF THE ICRC WATER AND SEWERAGE PRICE DIRECTION**

#### **CANBERRA**

**10.28 AM, FRIDAY, 25 JULY 2014**

*(Recording misses commencement of hearing.)*

5 MS HARTLEY: [Welcome to the directions] hearing for the Industry Panel. My name is Mary Anne Hartley. I'm the president of the Panel. And my Panel colleagues are Claire Thomas, who's at the far - my far left, and Sally Farrier next to her, are also present this morning, along with the person who keeps us in line and makes everything happen, our project director Mr Steve Martin, who's also at the table.

10 This is a directions hearing of the Industry Panel. As everyone here I think is aware, the Panel was established to conduct a review of the Independent Competition and Regulatory Commission's price direction for regulated water and sewerage services in the ACT for the period 1 July 2013 to 30 June 2019.

15 The review was triggered by a letter of application for review made by ACTEW Corporation Ltd on 26 September 2013. As foreshadowed in material that we have published, this hearing is for procedural matters only. The approach paper that we released at the end of June indicates  
20 that we intend to hold other public hearings as the review progresses, and they will deal with the substantive issues relating to the pricing direction.

25 Today is an open hearing, and it will be transcribed, and the transcript will be uploaded to the Panel's website in due course. I ask that everyone present ensures that they have completed the attendee list at the door and note, please, that that list will also be published on the website and may be included in the Panel's report.

30 In terms of procedure, you will see there's a microphone here that's been placed to enable any contributions to be made through that microphone, and I ask that everyone observe that. It's important because we want to ensure that there's a proper transcript of the whole of the proceedings of the Panel.

35 So I guess it also goes with the territory that anyone who is making a contribution, asking a question or whatever the contribution may be, that person should identify themselves before speaking.

40 So that the proceedings today are managed effectively, I also ask that any comments be made through me, as the Chair of the hearing, and of course would you also please ensure that your mobile phone are at least on silent mode if not off.

45 So I want to just, as a first step, to outline the agenda for today, and then proceed with the hearing. The first thing that I want to do is to provide

some context for the directions hearing. I will then discuss the written submissions that have been received in response to the Panel's approach paper.

5 We then wish to set a date for the receipt of a statement of facts and contentions by ACTEW and outline what's expected in that statement, and then set a date for any submissions that are to be made in response to the ACTEW statement or submissions on any other issues that any persons see as relevant, and we want to set some expectations for the format of those submissions.

10 I also propose to discuss briefly how we intend to deal with confidentiality issues, to mention the documents and information that the Panel proposes at least initially to rely upon. We want to hear views on the conduct of our first public hearing, which will relate to which issues are to be considered by the Panel, and then at the end the Panel proposes to issue formal directions.

15 So that's the agenda. In terms of preamble - in other words, what is the context for us being here - I think the starting point, which is a rather terrifying starting point in one respect, is that this is the first time there has been a review of a price direction under the Independent Competition and Regulatory Commission Act 1997. As such, the Panel has no precedent to guide the approach and processes that it will adopt in undertaking its review, although it's clear that the review must comply with the legislation.

20 So our approach paper has outlined the process that we intend to follow in conducting the review subject to any submissions that are made today. As noted in the paper, while the legislation allows the Panel to restrict who can be heard on matters that are the subject of review to eligible persons as defined in the Act, the Panel is minded to consider submissions from persons other than those established as eligible persons in the interests of ensuring that the review process is open and accessible.

25 Therefore the Panel wrote to ACTEW and those who had previously notified the ICRC of their intention to appear as a party to the review, inviting submissions ahead of and also to follow this directions hearing. The Panel will be making provision to hear submissions from the public during its review, though of course we're cognisant of the need to manage the review process in an efficient manner.

30 In particular, the Panel will, as required by the act, seek feedback from the ACT community in a public consultation process involving a public hearing and consideration of written submissions once it has released its

5 draft report. It will be at this stage that the implications of the Panel's investigations on the pricing of water and sewerage in the ACT will have become clear, and many people might think that that is an appropriate stage for them to have input, although there will be opportunity for input today and also at another public hearing to be scheduled before that final public hearing after the draft report has been provided.

10 I wanted to just make some early observations about achieving the Panel's objectives. A summary of the issues raised in the submission to the approach paper I will provide in a moment, but at the moment no arguments have been advanced by anyone that the Panel's initial view that the ACTEW application for review is not frivolous or vexatious, so unless there is some submission to that effect today, the Panel's initial view will stand, and that means that the review will proceed.

15 On the basis of the information available to it so far, it looks as if the review will involve consideration of multiple issues which will require the Panel to make careful judgements about trade-offs in reaching its final decision. The Panel sees it overriding objective as reaching the correct or preferable decision about the price review, the price direction, noting that this is a merits review.

20 The Panel is cognisant of the need to complete the review expeditiously, but an important principle for the Panel is that the pricing direction it ultimately adopts be robust and stand up to scrutiny. As such, the Panel intends to have regard to accepted, well-tested regulatory techniques.

25 To meet this objective, the Panel will clearly need access to appropriate information. We're cognisant of the key drivers of price in this context, namely demand, return on capital, operating expenditure and capital expenditure, and the need for appropriate information and data on all of these inputs.

30 The Panel also notes the implications of the interrelationships between different elements in the pricing direction. For example, a change in the length of the regulatory period will require a recalibration of certain parameters, if there were to be a change in the length of the regulatory period, and that in turn would require relevant information to undertake any recalibration.

35 Now, we have received a number of submissions in response to our approach paper, and I should start by thanking all of those who have made those submissions. We understand that being involved in processes such as these, particularly members of the public who are contributing, is a demand placed on people outside their routine lives, and we appreciate the

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input from everyone who has made a submission.

5 I just wanted to touch on the key themes that we have identified from those submissions, and indicate our response to those themes. So the first theme is what we have characterised as a justification for the review. So the submissions made in relation to that, and I'm not proposing to identify the makers of the submissions but really just concentrate on the information in them, one was a request about access to supporting documentation from ACTEW. A second was some questions about how 10 ACTEW proposes to substantiate its case and how will ACTEW's case be challenged. A third is that ACTEW's statement of facts and contentions will be based on information at the time of the original ICRC decision, but also that ACTEW will present some new evidence to address decisions included for the first time in the ICRC final report.

15 So our response to those issues is as follows. We propose to direct ACTEW to supply a statement of facts and contentions which will contain the supporting documentation of its reasons for requesting the review. Material provided to the Panel, that material and any other material, will be made available publicly save to the extent that that material is 20 identified as being confidential, and in a moment I'll deal with how the Panel proposes to manage requests in relation to confidential material.

25 After we receive ACTEW's statement of facts and contentions, members of the public will have an opportunity to make submissions in relation to that statement of facts and contentions.

30 In terms of new evidence, subject to the nature of that new evidence and to further submissions, the Panel will be open to receiving new evidence from ACTEW. Of course, subject to compliance with section 24N(3) of the Act, which does restrict the material or the issues on which the Panel is able to receive new matters.

35 The Panel considers that the matters raised in ACTEW's letter of application could potentially have a material impact on ACTEW's business, and are therefore worthy of further investigation. In view of the absence of submissions about this issue, we propose to conclude today that the application is not frivolous or vexatious unless someone persuades us to the contrary.

40 A second theme identified in the submissions is this, that there were issues about how ordinary ratepayers - these are issues relating to how to engage with the Panel. A question was asked about how would ordinary ratepayers provide input to the Panel, and there was an issue raised about 45 the need for closed sessions if required where confidential information is

involved.

5 Our response to those issues is as follows. The Panel welcomes members of the public participating in the review and notes that we will make available ample opportunity for that. For example, after the receipt of ACTEW's statement of facts and contentions, members of the public will have an opportunity to make submissions in response. The Panel will then conduct a public hearing of review issues, at which ratepayers and any other members of the public may speak.

10 The key opportunity, however, for members of the public to make an input will be in response to the Panel's draft report when the pricing implications of the review will become apparent. The Panel will seek submissions in response to its draft determination and will hold a public hearing at which members of the public may speak.

15 In terms of the way of engaging with the Panel, our clear preference is for submissions to be in writing, but we will make available an opportunity for people to make oral submissions.

20 Consistent with our charter, which we have also published, the Panel is committed to an open and transparent process. To that end we intend to publish all submissions and correspondence from interested parties on our website, and we intend to make all Panel hearings open to the public.

25 That said, we may agree to a request from ACTEW or any other party to the review to supply particular documents or information or to make oral submissions in support of any contention on an in-confidence basis providing we assess that the request for confidentiality is reasonable. As I'll mention in a moment, we've made provision for the way in which confidential information will be treated.

30 A third theme in the submissions made to us in response to the approach paper relates to timelines. There were a number of questions or submissions that more time was needed between the close of written submissions and any public hearing of review issues, and that submission we have embraced and adopted in terms of our proposed timeline.

35 We have also been asked whether the intended timeline allows sufficient time for consideration of alternative water and sewerage pricing structures. In relation to that issue, we are mindful of the need to resolve this matter expeditiously. This means that the scope of the issues that the review can consider must necessarily be limited to those that have the most material impact on stakeholders and on the immediate issues at hand.

40 So while there may be merit in examining alternative pricing structures in

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5 future price determinations, the Panel does not consider that the present review is an appropriate vehicle for embarking on wider pricing reforms. That review would be complex. It would require extensive consumer consultation and education, and as we see it, that is not practical within our proposed timeframe.

10 Further, we understand that the ICRC has foreshadowed a review of pricing structures in the future, and it would seem to us that is a more appropriate vehicle for that issue to be addressed.

15 Hearing of review issues is the next subject that has been touched on in some submissions. ACTEW advised that it does not propose to make lengthy oral submissions at the hearing of review issues. It does want advance warning of Panel questions before a hearing of review issues or an ability to take questions on notice, and an opportunity to review the transcript of the hearing.

20 Our response to those submissions is that we note all of the points. We will seek further feedback about the public hearing of review issues later this morning, but we will ensure that ACTEW has appropriate opportunity to consider all questions before being required to answer them, and as I foreshadowed earlier, all transcripts at all hearings will be transcribed. The transcripts will be made available on the Panel website.

25 Now, a number of important substantive issues - in other words, issues about questions that we will need or may need to determine - have been raised in a number of submissions. And we note in relation to those submissions that today we are dealing only with procedural matters, process, not any matters of substance.

30 However, all of the submissions, insofar as they contain matters of substance, will be held, and those submissions will be addressed when we come to the point of dealing with matters of substance, so no one need think that their careful submissions on issues of substance are not being attended to by the Panel. The question is the timing and when it's appropriate for us to respond, and we just at the moment want to ensure that there's a proper opportunity for input to process, and that our procedures are the subject of input from everyone involved.

40 So that's what I wanted to say about the submissions that have been made. At the end of today we propose to make formal directions to ACTEW about submitting a statement of facts and contentions. We expect that the statement of facts and contentions will include a full list of matters that are the subject of ACTEW's application for review, and potentially any other  
45 contentious matters raised on its behalf in submissions to the ICRC.

5 We also expect that the document will include the alternative form of  
price direction that ACTEW proposes, and in respect of each matters it's  
raised we expect that ACTEW would identify the evidence or submissions  
in support of any fact or contention which were before the ICRC when it  
made its price direction, and if ACTEW wishes to provide further  
evidence, the nature and the scope of that evidence, and the reasons why  
that evidence was not before the ICRC when it made its price direction.  
As presently advised, our proposal is that that statement will be submitted  
10 by 4 pm on 31 July.

15 Now, there will be an opportunity before we come to finalise those  
directions for everyone present to make contributions about that proposed  
direction. Then we propose to make directions in relation to other  
submissions. And the purpose of those submissions will be to identify the  
issues that others contend that the Panel needs to consider as part of its  
review.

20 For example, those submissions may either respond to issues raised in the  
ACTEW statement of facts and contentions and/or raise any other relevant  
matters that other parties or persons believe should be considered as part  
of the Panel's review.

25 Our preferred format for these submissions - and I'm now talking about  
submissions from any person other than ACTEW - is that the submissions  
propose alternative approaches with supporting evidence to the extent  
possible within the stipulated timeframe, and obviously we would desire  
that those alternative approaches be consistent with the current legislative  
framework.

30 Where relevant, we ask that those further submissions highlight the  
appropriate sections of the original pricing direction that the submission  
relates to. Where possible, we ask that the submissions be provided  
electronically, and obviously as succinct as possible is a desirable feature  
35 of those submissions. Our proposal is that those further submissions  
should be received by 4 pm on 15 August of this year.

40 At the end, we'll be putting up a slide with our proposed directions, so if  
people haven't been able to get the detail of all of that down, because it  
will all be there, and there will be an opportunity to consider it in its  
written form and respond in that way.

45 I want to just turn now briefly to the issue of confidentiality and talk about  
how we intend to deal with confidentiality, and I should say that our  
intended process is aligned with the process adopted by the ICRC in its

pricing investigations.

5 Our preference is to make all submissions publicly available on our website, unless the author of the submission identifies that all or part of the submission is confidential. If confidentiality is claimed in relation to any material, we prefer that that material be provided under separate cover and marked as “in-confidence”.

10 Having received a claim for confidentiality, the Panel will assess that claim and discuss appropriate steps to ensure that material deemed to be confidential will be protected while maintaining our commitment to openness and transparency.

15 Section 23 of the Act under which we operate provides that any final decision we make must be divided into confidential and non-confidential versions if appropriate, and we will obviously comply with that section of the Act.

20 Now, I’ve got two more matters to raise. One is to set out for you the documents that the Panel intends to have regard to at least initially during the review process. And if you believe there are other documents that you should consider we ask that those documents be identified and provided to us in a submission or in a letter in writing. So I don’t think I need to read to you each and every one of those dot points. They relate in part to the  
25 legal framework, the terms of reference that applied initially, various government policy statements, relevant public reports, the ACTEW application for review, pricing models, submissions that are made to us, public submissions that were made during the initial review process to the extent that they remain relevant, and of course decisions made by other  
30 utility regulators which are of assistance in identifying what is well tested and appropriate practice.

35 So now I just want to say something about our next hearing, which will be the public hearing of review issues. The purpose of that hearing will be to hear oral submissions on the written record relating to the ACTEW statement of contentions, issues and contentions, and any responses that have been received - or any submissions that have been received from others on that statement of facts and contentions or on other issues that are said to be issues that the Panel should consider.

40 We wish to approach the matter with as little formality as is appropriate, and we do not propose at the moment that the public hearing be a forum for the examination of witnesses. We note the information from ACTEW about its proposal for the conduct of the hearing, and that included that  
45 there should be at least a week between the close of written submissions

and the public hearing of review issues, and our response to that is we have incorporated that request in our adjusted timelines, which I'll come to in a moment.

5 We've noted that ACTEW does not propose to make lengthy oral  
submissions on matters included in its statement of facts and contentions,  
and as I've outlined before, we've also noted ACTEW's request that it  
have advance warning of questions from the Panel or other questions on  
10 notice. As a matter of fairness, that's clearly correct, and the Panel will  
ensure that there is appropriate opportunity for ACTEW to respond to any  
questions or issues that are raised.

15 And again, as I have previously outlined, ACTEW's request that it have  
an opportunity to review transcript will be met not only for ACTEW's  
benefit, but also because we wish anyone else involved with the process to  
have the opportunity to review transcript and to act accordingly on issues  
that they read about in the transcript.

20 We propose that the hearing of the review issues will be convened after  
we have had - we, the Panel, have had an ample opportunity to consider  
ACTEW's statement of facts and contentions. We provisionally have set  
a date of 29 August for that hearing, but that will need to be confirmed,  
because obviously we need to see what's involved in the submissions that  
are made to us.

25 So that proposed date is two weeks after the deadline for submissions in  
response to the ACTEW submissions or any other public submissions that  
are made, and I think at this stage it's now appropriate that I stop my  
rather lengthy opening comments, and open up first of all for any  
30 comments that anyone wishes to make about the timeline that I have just  
addressed, but also there is an opportunity for comment on any other  
issues that I have raised, or indeed any other issues that are relevant to the  
Panel's work.

35 I remind you that I ask any submissions to be made through the  
microphone on the floor, and I ask that any speaker identify themselves  
before proceeding to speak.

40 Well, there appears to be no restlessness in the audience, so I assume that  
therefore people are generally content with the procedures and processes  
as I have outlined them. Before we finally close, I'll offer another  
opportunity in case anyone is wanting to raise any issue, but I'll now put  
up on the screen the formal directions that we propose to make, subject to  
any last minute submissions that anyone wishes to make. I'll leave time  
45 for everyone to consider those. So this slide deals with the proposed

directions in relation to the ACTEW statement of facts and contentions, and then there'll be a further slide that relates to submissions to be made by anyone else.

5 So perhaps I might wait for an indication from ACTEW that it's satisfied that it's had an adequate opportunity to see those, and then when I've had that nod, I will move on to the second slide. Yes?

10 MS VIDLER: Is it the Panel's intention to provide the last two slides to the people attending this forum and this hearing?

MS HARTLEY: They'll be up on the website, yes.

15 MS VIDLER: Thank you.

MS HARTLEY: Do I have a nod?

MR KNOX: You do have a nod, Chair, thank you.

20 MS HARTLEY: Thank you. So that slide really summarises things that I raised in my opening comments. Having seen that now in writing as distinct from hearing it, are there any further matters that anyone wishes to raise? If not, then the Panel makes those formal directions, both in relation to its directions to ACTEW and its directions more generally, and we also note our finding that the ACTEW application is not frivolous or vexatious and that the review will proceed accordingly.

25 Thank you to everyone for attending. It's gratifying to see that there is interest in our work, and we look forward to the public hearing of the issues, which will be in late August if all goes according to our current proposals. So thank you very much for attending this morning. All of this will be uploaded on our website if not later today then on Monday.

30 Thank you very much. I close the hearing.

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**ADJOURNED**

**[11.04 pm]**