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## LETTER OF TRANSMITTAL

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The Honorable Clare Martin  
The Treasurer  
Parliament House  
DARWIN NT 0800

Dear Treasurer

### UTILITIES COMMISSION ANNUAL REPORT 2000-01

In accordance with the provisions of section 35 of the *Utilities Commission Act 2000*, I am pleased to provide to you the Annual Report of the Utilities Commission of the Northern Territory for the financial year 1 July 2000 to 30 June 2001.

This report includes information on the work carried out by the Commission under the Network Access Code during the 2000-01 financial year, as required under section 13(2) of the *Electricity Networks (Third Party Access) Act 2000*, and the activities of the Commission under the *Electricity Reform Act 2000*. This report therefore also serves as an annual report with respect to activities under these other Acts.

This report encompasses the activities of the Utilities Commission only. The Electricity Safety Regulator, who is located in the Department of Industries and Business, reports separately on that Regulator's activities under the *Electricity Reform Act 2000*.

I also draw your attention to section 35(2) of the *Utilities Commission Act 2000*, which requires that a copy of the report be tabled in the Legislative Assembly within six sitting days after you have received the report.

Yours sincerely



Alan Tregilgas  
Utilities Commissioner  
for the Utilities Commission  
28 September 2001



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## THE COMMISSION

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### **Establishing the Commission**

The Utilities Commission was established on 21 March 2000, on commencement of the *Utilities Commission Act 2000*.

The Commission's primary role is to regulate nominated segments of any industry in the Northern Territory designated as a "regulated industry" by relevant industry regulation Acts.

The Commission was established under legislation separate from the relevant industry regulation Acts to enable it to be given a regulatory role in industries that may be prescribed from time to time by the Government as regulated industries.

### **Membership of the Commission**

Currently, the Commission is comprised of a single member appointed to the position of Utilities Commissioner. The Act makes provision for the appointment of Associate Commissioners when deemed appropriate by the Regulatory Minister. A profile of the Utilities Commissioner is provided at Appendix 3.

### **Role of the Commission**

The Commission was established initially to play a regulatory role in the Territory's electricity supply industry market. Since that time, the Commission's functions have been expanded to include a regulatory role in the water and sewerage services industries.

The relevant industry regulation Acts applying to the electricity supply industry are:

- the *Electricity Reform Act 2000*; and
- the *Electricity Networks (Third Party Access) Act 2000*;

both of which commenced on 1 April 2000. In particular, the Territory's electricity network industry is declared to be a regulated industry (and the Commission assigned the role of regulator) by the *Electricity Networks (Third Party Access) Act 2000*, and the Territory's electricity supply industry more generally is declared to be a regulated industry under the *Electricity Reform Act 2000*.

These Acts, and associated regulations to the *Electricity Reform Act 2000* and *Utilities Commission Act 2000*, require and allow the Commission to undertake economic regulation of the Territory's electricity supply industry in both the competitive and monopoly sectors.

The relevant industry regulation Act applying to the water and sewerage services industries is the *Water and Sewerage Services Act 2000* which came into effect on 1 January 2001.

**Functions and powers under the *Utilities Commission Act 2000***

Section 2 of the *Utilities Commission Act 2000* sets out the objects of the Act, being “to create an economic regulatory framework for regulated industries that promotes and safeguards competition and fair and efficient market conduct or, in the absence of a competitive market, that promotes the simulation of competitive market conduct and the prevention of the misuse of monopoly power”.

The *Utilities Commission Act 2000* sets out the Commission’s main functions as well as the powers that the Commission may exercise in performing those functions. The key regulatory functions of the Commission in regulated industries (provided for in section 6 of the Act) include:

- to regulate prices charged by government monopoly businesses and regulated industries;
- to perform licensing functions;
- to develop, monitor and enforce compliance with, and promote improvement in, standards and conditions of service and supply;
- to make, and to monitor the operation of, codes and rules relating to the conduct or operations of a regulated industry or licensed entities; and
- to investigate and help resolve complaints relating to the conduct or operations of licensed entities.

In exercising its overall powers and carrying out its functions, the *Utilities Commission Act 2000* obliges the Commission to have regard to the need:

- to promote competitive and fair market conduct;
- to prevent the misuse of monopoly or market power;
- to facilitate entry into relevant markets;
- to promote economic efficiency;
- to ensure consumers benefit from competition and efficiency;
- to protect the interests of consumers with respect to reliability, quality and safety of services and supply;
- to facilitate the maintenance of the financial viability of the industry; and
- to ensure an appropriate return on regulated assets.

The *Utilities Commission Act 2000* only defines the Commission’s overall functions and powers. Specific responsibilities of the Commission with respect to a particular industry are only assigned to the Commission by provisions in relevant industry regulation Acts.

**Monopoly sectors**

The main functions of the Commission with regard to monopoly sectors of the electricity supply industry are:

- the issuing of licences to network providers, to retailers selling electricity to non-contestable (franchise) customers and to the

- power system controller – including the setting of licence conditions and monitoring compliance with licence conditions;
- regulating certain prices (notably electricity network access tariffs, out-of-balance energy prices and power system control charges);
- conciliating network access disputes and, where necessary, appointing an arbitrator to settle such disputes;
- approving certain technical codes, quality issues and associated protocols; and
- setting service/performance standards for suppliers to non-contestable customers, and reporting on compliance with those standards.

With respect to the water and sewerage industries, the Commission’s role is restricted to the issuing of licences and the approval of certain technical codes.

**Competitive sectors**

The main functions required of the Commission with regard to competitive sectors of the Territory’s electricity supply industry are:

- the issuing of licences to generators and to retailers selling electricity to contestable customers – including setting licence conditions and monitoring compliance with those conditions;
- the settling of disputes about the contestability status of end-use customers;
- investigating complaints from contestable customers against retailers and from licensed entities about the anti-competitive behaviour of other licensed entities; and
- monitoring industry/market developments in the Territory – annually reporting developments over the previous year and reporting on medium-term generation ‘supply’ versus ‘demand’ prospects.

**Independence of the Commission**

The Commission is a separate administrative unit established within the NT Treasury but it has specific statutory powers and undertakes its considerations independently of Treasury. The independence of the Commission from the Government, and from any government-owned business operating in industries regulated by the Commission, is achieved by provisions in the *Utilities Commission Act 2000* requiring that:

- the Commission not be subject to Ministerial direction in the performance of its regulatory functions; and
- members of the Commission be appointed for a fixed term and only subject to dismissal before the end of that term on account of misconduct or incapacity.

**Accountability  
of the  
Commission**

This independence does not deem the Commission unaccountable. There are several mechanisms in place in the *Utilities Commission Act 2000* that require consistent, effective and accountable regulation on the part of the Commission.

- The *Utilities Commission Act 2000* places certain requirements and obligations on the Commission with regard to the regulatory processes it adopts. These requirements aim to ensure regulatory accountability through transparency and public disclosure of regulatory processes as well as the basis of regulatory decisions and reasonable certainty and consistency over time of the outcomes of regulatory processes.
- The *Utilities Commission Act 2000* also provides that the Commission review any of its decisions at the request of an affected party. Such a review is to be decided within six weeks of the application being lodged with the Commission. The Commission must give the applicant – and any other person who joins as a party to the review – written notice of the Commission’s decision, and the reasons for the decision, at the time of the review.
- An affected person may subsequently appeal the outcome of such a review to the Supreme Court. Such appeals may only be made on the grounds that there has been bias, or that the facts on which the decision is based have been misinterpreted in a material respect.
- When deciding on determinations or approvals, or when making codes or rules under the *Utilities Commission Act 2000*, the Commission is required to consult with the Minister and representative bodies and participants in the regulated industry that the Commission considers appropriate.
- All decisions by the Commission are required to include a summary of the information on which the determination is based and a statement of the reasons for making the decision.
- Notice of the making, variation or revocation of determinations or approvals, or codes or rules, made by the Commission must be given to the Minister and to each licensed entity to which such decisions apply. Also, the Commission must ensure a notice is published in the Gazette and in a newspaper circulating generally in the Territory and that copies are available for inspection and purchase by members of the public.
- Under the *Utilities Commission Act 2000*, any information gained by the Commission that could affect the competitive position of a licensed entity or other person, or is commercially sensitive for some other reason, is to be treated as confidential information. Any person performing a function under the *Utilities Commission Act 2000*, or any relevant industry regulation Act, would be guilty of an offence were such information disclosed otherwise than as authorised under the Act.



**Resourcing of  
the Commission**

Besides the Commissioner, the Commission currently has the support of four staff including an Executive Officer, two Research Officers and an Administrative Officer. The organisation chart of the Commission is provided at Appendix 2.

When necessary, the Commission supplements these resources by engaging expert consultants on a short-term basis. Appendix 7 briefly outlines the consultants used by the Commission during the year.

The Government allocated a budget of \$541,500 in 2000-01 for the Commission, including an extra budget allocation of \$50,000 as a result of extra duties to be undertaken in the water and sewerage industries. Further details of expenditure during the 2000-01 financial year are provided at Appendix 6.

The Commission's statement of payments and receipts are audited as part of the yearly audit of Northern Territory Treasury.

**Cooperation  
with other  
regulatory  
bodies**

With a view to remaining up to date with national regulatory practices, the Commission regularly participates in working groups and discussions with other interstate and national regulatory bodies.

The Utilities Commissioner is a member of the Utility Regulators' Forum, which fosters understanding and cooperation among regulators operating in different jurisdictions and industries.

On 16 July 2001, the Regulatory Minister conferred on the Commission the additional function of providing regulatory services to other jurisdictional regulators, including on a fee-for-service basis. As a result, the Commission has entered into an agreement with the South Australian Independent Industry Regulator (SAIIR) to provide regulatory advice and assistance to SAIIR in its role as regulator for the AustralAsia Railway.



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## LICENSING

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### Electricity

Section 14(3) of the *Electricity Reform Act 2000* provides that a licence is required for:

- generation of electricity;
- owning or operating an electricity network;
- selling electricity; or
- system control over a power system.

### Part 3 licences

In March 2000, the Power and Water Authority (“PAWA”) was issued with four licences in the areas of:

- retail (expires 31 March 2005);
- networks (expires 30 June 2020);
- generation (expires 30 June 2010); and
- power system control (expires 30 June 2003).

In November 2000, PAWA purchased the Darwin-Katherine Transmission Line (“DKTL”). On 5 February 2001, the Commission approved a variation to PAWA’s network licence to include the DKTL.

### Section 113 licences

Section 113 of the *Electricity Reform Act 2000* provides that any person who held a current licence under the repealed *Electricity Act 1978* should be granted a licence subject to the same terms and conditions that applied under the repealed licence.

Under these provisions, in March 2000 NT Power Generation Pty Ltd (“NTPG”) was issued a single licence for the generation and sale of electricity to the Territory electricity market. This licence was due to expire on 25 June 2001.

On 23 May 2001, NTPG applied to the Commission for licences to generate and retail electricity under Part 3 of the Act. To allow time for due process (and consideration of the issues involved relating to the final terms and conditions of the replacement licences), on 25 June 2001 the expiry date of NTPG’s licence was extended to 31 October 2001.

The Commission is currently considering this application. Once approved, these licenses will contain conditions consistent with those previously issued to PAWA Generation and PAWA Retail.

### **Exemptions from holding a licence**

In June 2000, in accordance with section 87 of the *Electricity Reform Act 2000*, the Regulatory Minister approved extensions of certain exemptions from the requirement to hold a licence to operate in the electricity supply industry. These exemptions were due to expire in June 2001.

In October 2000, the King Ash Bay Fishing Club sought the Commission's advice as to their obligations under the Act with respect to the operation of some small diesel generators which supply and on-sell electricity. By generating and selling electricity on this basis, it was brought to the Commission's attention that some small operators may be in technical breach of the requirements of the Act. In accordance with section 87 of the Act and with Ministerial approval, on 21 November 2000 the Commission issued the Club with an exemption from the requirement to hold a licence on terms and conditions considered appropriate by the Commission.

The Commission has sought legal advice about the possibility of a general exemption from the need for small generators and sellers of electricity to hold a licence. To enable this and other options to be considered, as well as to enable the Commission to conclude negotiations with other exempted parties with a view to bringing them under the licensing regime, on 25 June 2001 the Regulatory Minister approved a six-month extension of all exemptions until 31 December 2001.

Parties currently exempt from holding a licence are listed on the Commission's website at [www.utilicom.nt.gov.au](http://www.utilicom.nt.gov.au).

### **Monitoring of licence conditions**

Licence holders are required to report annually to the Commission regarding aspects of their licence. In turn, the Commission is charged with the duty of monitoring compliance with these requirements.

With respect to 2000-01 only, the Commission has requested information separately for the purpose of monitoring compliance with its network pricing determinations and those required under the Ring-fencing Code.

For future annual returns, it is the Commission's intention to combine its annual information requirements into one annual return to reduce the scope for overlap and duplication between different information requests.

### **Water and Sewerage**

On 1 January 2001, the Commission was assigned a regulatory role in the water and sewerage industries with the passage of the *Water Supply and Sewerage Services Act 2000*.

Accordingly, the supply of water and sewerage services are to be licensed, with licences issued by the Commission being for defined (and gazetted) geographical areas.

The Act provides for a transitional period of 12 months from the commencement of the Act to make arrangements for the regime. Under this provision, PAWA is in effect exempt from holding a licence until 1 January 2002.<sup>1</sup> The Commission anticipates that PAWA will apply for licences to provide water and sewerage services in the Northern Territory well before the end of 2001.

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<sup>1</sup> The Commission also has the authority to issue partial exemptions however there has been no application for these exemptions.



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## MONOPOLY REGULATION

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The Commission is primarily a ‘monopoly authority’. The main purpose of its regulation of monopoly sectors of regulated industries is ensuring efficiency and competitive-like outcomes in those monopoly sectors. In addition, the Commission is expected to ensure that monopoly sectors do not impinge upon competition in upstream or downstream markets.

### PRICE REGULATION

One of the functions of the Commission is to ensure that regulated utilities that supply the public do so at reasonable prices, while at the same time ensuring that application of the regulatory arrangements does not jeopardise the financial viability of the regulated utilities.

### Electricity networks

#### Network prices

The Commission exercises its price control functions with respect to access to electricity networks in two ways. The first is by setting the maximum allowable revenue (or “revenue cap”) which PAWA is permitted to recover annually from operating its electricity networks, including by determining the maximum allowed rate of return on capital employed in those networks. Secondly, the Commission approves the schedule of tariffs proposed by PAWA to ensure that appropriate signals are sent regarding the allocation of resources between alternative uses and locations.

#### Network revenue cap

As prescribed in the Network Access Code, the Commission determined PAWA’s network revenue cap for the financial year 2001-02 by increasing the previous year’s revenue cap in line with both –

- the expected growth in the quantity of electricity transported annually over the electricity network (this being the factor which the Commission considered to be the main real-terms driver affecting the network provider’s costs); and
- inflation (as measured by the rate of change in the consumer price index)

and decreasing it by the efficiency gains factor (“X factor”) determined at the start of the regulatory period and covered in the Commission’s 1999-00 Annual Report.

#### Network tariffs

In approving PAWA’s network tariff schedule for 2001-02, the Commission noted that the Code requires the Commission to approve “proposed reference tariffs and charges”, not the “pricing schedule” to be published by PAWA. This gives PAWA the discretion

to present the approved tariffs and charges in the way that PAWA thinks most appropriate. However, the Code also gives the Commission the discretion, before it approves the reference tariffs and charges, to direct PAWA to modify the pricing schedules that PAWA proposes to publish.

Tariffs were submitted by PAWA for approval, consistent with the revenue cap determination. On 23 May 2001, the Commission approved PAWA's proposed reference tariffs and charges and was satisfied that the pricing schedule proposed for publication by PAWA was not inconsistent with the reference tariffs and charges approved under the Code.

**Darwin-  
Katherine  
Transmission  
Line**

Inclusion of DKTL within the current regulatory pricing regime cannot take effect until the Regulatory Minister prescribes the DKTL as part of the regulated network. Prescription of the DKTL has not yet taken place.

The Commission has published a provisional calculation of the increased revenue attributable to the DKTL, which will be formally ratified by the Commission once the DKTL's prescription takes place.

Likewise, DKTL-related access charges were also excluded from the reference tariffs and charges approved by the Commission. The Commission has flagged its intention, once the DKTL is prescribed, to approve a DKTL transmission tariff separate (unbundled) from the Northern grid's distribution tariffs.

**Retail prices**

**Non-  
contestable  
retail  
electricity  
prices**

Electricity prices for non-contestable customers, whether residential or commercial, continue to be controlled by Government. The Government exercises this control over prices via an Electricity Pricing Order ("EPO") made under section 44 of the *Electricity Reform Act 2000*.

The Commission participated in the drafting and promulgation of the first EPO, which took effect on 1 July 2000. As the Government has not authorised any change to prices since then, this pricing order will continue to have effect until superseded.

**Water and  
sewerage  
prices**

The *Water Supply and Sewerage Services Act 2000* provides for prices to be controlled by the Government via pricing orders, in a similar way to that which governs electricity prices for non-contestable customers.

In the absence of a Water and Sewerage Pricing Order promulgated under the new Act, the charges prescribed by the Minister under the previous legislation continue to apply.

Some pricing anomalies were identified in relation to the transitional period between the repeal of the Water Supply and Sewerage Act



1983 on 1 January 2001 and the implementation of the provisions of the new Act. On 19 March 2001, and following advice that these issues might be resolved by the granting of exemptions under section 26 of the new Act, the Commission with the Minister's approval granted such exemptions.

**Community  
service  
obligations**

Early in 2001, at the request of the then Minister, the Commission undertook a valuation of the community service obligations ("CSO's") provided by PAWA (especially those resulting from the Government's policies of uniform (franchise) retail tariffs across the Territory and a below-cost (franchise) retail price cap in Darwin).

As part of this process, the Commission retained the services of Ernst & Young to undertake a review of PAWA's cost allocations between lines of business and business segments, as appropriate cost allocation procedures underpin calculation of the CSO.

The funding of the remaining CSOs – and the role to be played by budget funding as opposed to acceptance of a below-par rate of return target – is a matter now under consideration by NT Treasury.

**Power system control charges**

**System  
control  
charges**

The *Electricity Reform Act 2000* requires the Commission to approve charges to be imposed by the power system controller before the system controller can impose and recover those charges.

On 13 June 2001, as no replacement charge had been submitted for approval, the system control charge approved by the Commission for the 2000-01 financial year continued to apply from 1 July 2001.

**Regulated electricity generation charges**

**Out of  
balance  
energy  
prices**

The Network Access Code applicable during 2000-01 required PAWA Generation to provide a statement to the Commission, as regulator, of its proposed out-of-balance energy prices.

As PAWA did not submit a schedule of such prices for the 2001-02 financial year for approval, on 13 June 2001 the prices determined by the Commission for the 2000-01 financial year were determined to continue to apply.

Revisions to the Network Access Code that took effect on 1 July 2001 supplanted the need for approved out-of-balance energy prices. The Commission's determination made under the superceded provisions of the Code therefore lapsed.

On 12 July 2001, the Commission subsequently determined various system imbalance prices to apply until new economic dispatch arrangements envisaged by revisions to the Network Access Code are in place and fully operational.

## QUALITY REGULATION

Economic regulation is not concerned with prices alone. All consumers deserve reasonable services at reasonable prices. A primary concern of the Commission is that returns allowed for in regulated prices are not inflated by reducing quality levels, which is economically the equivalent of a higher price.

### Electricity

#### Regulation of service quality

In accordance with section 92 of the *Electricity Reform Act 2000*, the Commission is required to establish base levels of service for non-contestable customers (i.e. the levels of service being provided immediately prior to 1 April 2000). In addition, the Commission has the responsibility to monitor licensees' compliance with standards of service in relation to non-contestable customers under various licensing conditions.

In conjunction with section 6 of the *Utilities Commission Act 2000*, which requires the Commission to have regard to the need to protect the interests of consumers with respect to reliability and quality of services and supply in regulated industries, these powers enable the Commission to monitor and report on the on-going standard of service to all customers whether they are franchise or contestable customers and to make interstate and international comparisons. Essentially, the Commission's overall responsibility is to ensure that an appropriate level of service is provided to all customers.

During 2000-01, the Commission made significant progress in its research and development of minimum standards of service for non-contestable customers. The Commission expects to publish its initial discussion paper by the end of 2001.

Generally, the discussion paper will canvass the broad issues of quality and aim to provide mechanisms which ensure that:

- service quality is not compromised by price regulations imposed on network businesses;
- price and service quality incentives remain in place for the benefit of both consumers and network providers;
- service quality is appropriately and effectively measured and monitored (throughout the regulatory control period) against set benchmarks and against peers nationally and internationally; and
- some form of rewards/sanctions are provided for network businesses, who over or under perform against service quality benchmarks.

## **Water and Sewerage**

Section 45 of the *Water Supply and Sewerage Services Act 2000* specifies some minimum standards of service a licensee must meet in providing water supply or sewerage services to customers. The Minister may, from time to time, specify the minimum standards of service, which must be at least equivalent to the planned levels of service for customers prevailing during the year before the commencement of the Act. Standards may include:

- water quality standards;
- standards of supply (including water pressure and flow); and
- reliability of service.

The Commission expects to shortly commence working with PAWA in order to advise the Minister on appropriate quality standards in the Territory's water and sewerage services industries.

## **CONDUCT REGULATION**

### **Access negotiation**

#### **Network access**

Under the Network Access Code, the Commission has the power to intervene in access disputes. No formal access disputes have yet arisen. However, the Commission has been active in using – and intends to continue to use – its 'good offices' with industry participants to facilitate access to infrastructure on timely and reasonable terms.

### **Ring-fencing**

The corporate integration and affiliation of monopoly and contestable businesses gives rise to the possibility that decisions could be made by a monopoly business in ways that may discriminate against a competitor of a related business in an upstream or downstream market, or financially or competitively advantage that related business.

Through the *Electricity Reform Act 2000*, the Government has empowered the Commission to require monopoly businesses to be kept separate – or 'ring-fenced' – from contestable businesses when issuing licences.

#### **Development of the Code**

In February 2000, the (then Interim) Commissioner provided PAWA with a document entitled "Draft Ring-Fencing Guidelines". Based on that document, the Commission published an interim ring-fencing code ("the Interim Code") in April 2000. The aim of the Interim Code was to provide guidance to PAWA and other industry participants about the conduct expected of vertically integrated participants in

the Territory's electricity supply industry, following the introduction of competition into that industry.

At that time however, the Commission recognised that:

- parties (including PAWA) had not had the opportunity to fully consider the Interim Code – although PAWA did have the benefit of the draft guidelines on which the Interim Code was based; and
- the Interim Code was largely specified in terms of 'targeted outcomes' – with the Commission leaving it to PAWA management in the first instance to propose the internal policies and procedures to achieve the specified outcomes.

The Commission therefore proposed that the Interim Code be in place only until a replacement code was developed through a public consultation process.

To commence the public consultation process, the Commission required PAWA to develop the policies, practices and procedures which PAWA considered would most cost-effectively give effect to the ring-fencing outcomes set out in the Interim Code. These were received by the Commission in early July 2000.

Later in July 2000, the Commission published its assessment that PAWA's response fell short of meeting the minimum requirements for the undertaking sought by the Commission. PAWA's response was judged to be closer to a broad statement of principles and intentions than to a set of detailed policies, practices and procedures.

In the circumstances, the Commission issued a draft replacement code ("the initial draft Code") derived from guidelines developed for the electricity supply industry by regulators in other jurisdictions (the Australian Competition and Consumer Council and the Queensland Competition Authority, for example), based on the 'National Gas Code' model.

Following its consideration of submissions received in response to the initial draft Code, in December 2000 the Commission issued a revised draft replacement Code together with detailed explanatory material dealing with the revisions that had been made to the initial draft Code.

When the Commission had had an opportunity to review submissions received in response to the revised draft Code, a final draft replacement ring-fencing Code ("final draft Code") was released in April 2001. The Code addressed some of the issues raised in the submissions and a number of additional matters which had come to the attention of the Commission as a result of the preparation of the revised draft.

The Commission then undertook a final round of consultations following the gazettal of the Utilities Commission Regulations in June 2001. Regulation 2 authorised the Commission to make a code with relating to ring-fencing in a regulated industry.

After the deadline for final submissions passed and the Regulatory Minister was consulted as required by section 24(4) of the *Utilities Commission Act 2000*, the Commission formally adopted the Code to take effect from 1 July 2001.

### **The Code**

The Code takes what can be described as an ex-ante or 'preventative approach' to regulation of the conduct of prescribed businesses, which identifies the potential for specific circumstances to arise and then seeks to reduce the risk that it will occur by providing appropriate incentives.

The Commission believes that a preventative approach is consistent with its objectives under the relevant regulation Acts, as it has a responsibility to ensure the maintenance of a competitive environment that will benefit consumers and therefore it has a responsibility to consider the potential for anti-competitive actions before they arise.

The Commission intends to use the next year or so to fine-tune the regulatory impacts of the Code, including – if necessary – making any necessary alterations of the Code.



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## COMPETITION OVERSIGHT

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Although the Commission is primarily concerned with the regulation of the monopoly sectors of the market, its charter goes beyond this. While the Commission cannot of itself foster or ensure competition, it seeks to ensure that it exercises its functions and powers so as to encourage efficient and effective competition in contestable sectors upstream and downstream from regulated monopoly sectors.

### Electricity retail

#### Extension of the contestability timetable

Commencing on 1 April 2000, certain customer classes became 'contestable' – that is, free to choose their supplier, whether PAWA or third party power suppliers.

During 2000-01, the Government announced the extension of the contestability timetable in the Territory electricity supply market to full retail contestability. Subject to a review and public benefit test in 2002, all consumers will be able to choose their supplier by April 2005.

The planned timetable for contestability to be gradually extended to lower consumption levels is as follows:

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<b>eligibility date</b>	<b>minimum annual consumption level at a single site</b>
1 April 2000 ("tranche 1")	4.00 GWh
1 October 2000 ("tranche 2")	3.00 GWh
1 April 2001 ("tranche 3")	2.00 GWh
1 April 2002 ("tranche 4")	0.75 GWh
1 April 2003 ("tranche 5")	0.16 GWh
1 April 2005 ("tranche 6")	0 GWh

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To ensure that consumers are able to make the most informed choice, legislation allows for a 'grace period'. This means that consumers need not exercise their right to choose immediately, but may remain on their existing supply arrangements and tariff schedule with PAWA for up to two years from the date on which they become contestable.

#### Contestable customers

During 2000-01, an additional 39 customer sites became contestable. There are now a total of 73 contestable customer sites, consuming around 583 GWh per annum, or 37% of the total electricity market in the Northern Territory.<sup>2</sup>

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<sup>2</sup> These figures are based on data provided by retailers for the 2000-01 year. Data was provided on a 'best endeavours' basis and may be subject to revision.

Details of the relative size of the contestable and non-contestable sectors of the market are summarised in the table below.

	<b>annual energy consumption GWh</b>	<b>number of customer sites</b>
<u>Contestable customers</u>		
Contracted customers	<u>196.1</u>	<u>25</u>
- Darwin-Katherine	159.7	22
- Rest of the Territory	36.4	3
Pre-contracted customers	<u>261.2</u>	<u>14</u>
- Darwin-Katherine	241.2	10
- Rest of the Territory	20.0	4
Grace period customers	<u>125.8</u>	<u>34</u>
- Darwin-Katherine	108.1	30
- Rest of the Territory	17.7	4
<u>Potentially contestable customers</u>		
From 1 April 2002 (tranche 4)	<u>119.7</u>	<u>137</u>
- Darwin-Katherine	96.0	112
- Rest of the Territory	23.6	25
From 1 April 2003 (tranche 5)	<u>136.5</u>	<u>459</u>
- Darwin-Katherine	104.0	344
- Rest of the Territory	32.5	115
Franchise customers	738.2	71,454
<b>TOTAL MARKET</b>	<b>1,577.4</b>	<b>72,123</b>

**Grace period customers**

To 30 June 2001, 9 of the first tranche of contestable customer sites had not concluded contracts with the retailer of their choice. It is anticipated that these customers will have contracts in place by the expiry of their grace period on 31 March 2002.

In some other jurisdictions in Australia, where contestability programs are further advanced than in the Territory, occasions have arisen where customers may face an increase in tariffs once they become contestable. This has resulted in a reluctance on the part of some customers to enter into contracts with suppliers. While these issues are not anticipated to impact on the electricity market in the Territory in the immediate future, as customers in the initial tranches are expected to be facing tariff reductions, the Commission will monitor developments in both the Territory and other



jurisdictions to ensure that appropriate protection for consumers is put in place.

**NT  
Government  
agencies**

NT Government agencies account for 5% of the total market and 13% of the currently contestable market, with 6 sites contestable in tranche 1, 3 sites in tranche 2 and 5 sites in tranche 3. Except for those sites owned by PAWA, as at 30 June 2001, no NT government agency had entered into a contract with a retailer – whether PAWA or NTPG – after achieving contestable status. Under ‘grace period’ arrangements, they continue to be supplied by PAWA.

The Department of Corporate & Information Services (DCIS), on behalf of contestable Government agencies, has recently issued an initial tender for the supply of electricity to three large government agency sites in Darwin. Following the successful completion of this tender, similar tenders will be issued for other contestable government agencies.

**Contracting of  
contestable  
customers**

In support of smooth operation of the contestable retail market, in 1999-00 the Commission put in place procedures aimed at:

- ensuring that contestable customers are known to all potential suppliers; and
- preventing retailers from signing up a contestable customer until a reasonable time had elapsed after all suppliers were made aware of the customer achieving contestability status.

These procedures continue to be in place and the Commission has not received any evidence to suggest that they are not operating efficiently and effectively.

**Contestable  
pricing**

The Commission has an obligation under section 48 of the *Electricity Reform Act 2000* to investigate complaints against any electricity entity made on the grounds that the entity is engaging in conduct that is contrary to the objects of that Act or the *Utilities Commission Act 2000*. Such objects include promoting efficiency and competition in the electricity supply industry.

In April 2001, NTPG wrote to the Commission requesting that it investigate aspects of PAWA’s pricing, pursuant to section 48 of the *Electricity Reform Act 2000*. In August, the Commission called a conference inviting the parties in order to assess the grounds of the complaint and to attempt to resolve the matter in accordance with section 48(2)(c) of the Act.

Subsequently, the Commission issued some “Contestable Pricing Guidelines” setting out its views on the types of pricing conduct that could give rise to a finding of ‘anti-competitive’ and/or ‘discriminatory’ conduct by the Commission under either the Ring-Fencing Code or the complaints provisions of the *Electricity Reform Act 2000*. The Commission has advised the parties concerned that it

intends to formally investigate the complaint made by NTPG against the requirements of the Commission's Contestable Pricing Guidelines

### **State of competition**

With a year having elapsed since the introduction of competition into the Territory's electricity supply industry, the Commission agreed to collaborate with a University of New England-sponsored survey of contestable (and soon to be contestable) customers. Survey forms were dispatched to customers in May 2001.

While a final report will not be available until March 2002, initial evaluation of the raw data and anecdotal evidence indicates that the majority of respondents believe that they are fairly well informed about the changes to the electricity market. A significant minority however, expressed the view that they were not very well informed. On this basis, the Commission is planning a series of sessions toward the end of the 2001 calendar year in order to provide further information to tranche 4 customers who will enter the contestable market on 1 April 2002.

### **Generation oversight**

The creation of competition in the Northern Territory electricity supply industry extends to the generation, as well as the retail, market. While the Commission acknowledges that economic regulation has no role to play where competition exists, PAWA particularly as a generator enjoys a position of economic strength such that it can behave to an appreciable extent independently of its competitors and customers. Additionally, the bilateral contracting arrangements in the Territory market require that generators have in place arrangements for stand-by facilities in case of generator failure. As the only current provider of stand-by generation facilities, PAWA enjoys considerable market power.

### **Ring-fencing**

In order to not to discourage the entry of new players into the market, the Commission included PAWA Generation as a prescribed business for the purposes of ring-fencing until such time as the Commission is satisfied that PAWA no longer has a substantial degree of market power in the market for the generation of electricity.

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## TECHNICAL REGULATION

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In the absence of a separate technical regulator in the Territory or a government department with similar functions, the Commission has been assigned certain technical regulation functions.

### Electricity

#### Technical Codes

#### *System Control Technical Code*

Section 38 of the *Electricity Reform Act 2000* requires the power system controller to prepare a System Control Technical Code (“the Technical Code”) and submit it for approval to the Commission. The Technical Code sets out the controller’s competitively neutral operating protocols, arrangements for system security and system dispatch, as well as arrangements for the interruption of supply.

During 2000-01, there were developments relating to ‘out of balance’ pricing arrangements resulting in the Commission conducting further discussion with the power system controller to ensure that the changes were reflected in the Technical Code.

‘Out of balance’ arrangements previously set PAWA Generation as the only generator to input electricity into a system that has lost capacity for short periods. The input of this supply was charged at prices set by the Commission. New ‘in balance’ arrangements see a heightened role for the power system controller in choosing the most efficient generator at any given time to perform supply balancing. The Commission believes this is an important step to allowing generators to compete on a level playing field.

A draft of the Technical Code has recently been circulated to industry stakeholders and is now going through an interactive, fine-tuning process. It is expected that the Technical Code will be published shortly.

#### *Network Technical Code*

Section 9 and Schedule 1 of the *Electricity Networks (Third Party Access) Code 2001* requires the network provider (PAWA) to publish a Network Technical Code and Network Planning Criteria, which must contain information set out in Schedule 2 of the Network Access Code. The Planning Criteria are now included in the Network Technical Code.

PAWA published the Network Technical Code in February 2000 and have resubmitted this Code to the Commission following recent amendment to the Network Access Code.

**Capacity  
Monitoring**

Section 45 of the *Electricity Reform Act 2000* requires the Commission to undertake an annual review of the prospective trends in the capacity and reliability of the Territory's power system relative to projected load growth, and to submit a report to the Regulatory Minister.

The Commission issued a draft of this power system review for comment to participants and other interested parties in August 2001. The report is expected to be forwarded to the Minister in October 2001.

**Water and Sewerage**

The *Water Supply and Sewerage Services Act 2000* requires a number of codes to be developed and published by PAWA, some of which require the Commission's approval. The codes to be approved by the Commission are:

- a metering code; and
- a trade waste code.

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## **FUTURE WORK PROGRAM**

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The coming year promises to be challenging for the Commission, in view of the number of major project priorities.

The main elements of the Commission's work program over the coming year are set out below.

### **Licensing**

- Expand the licensing regime to include (currently exempt) IPPs and those supplying electricity outside the regulated networks (eg Nhulunbuy and Jabiru).

*To ensure that all consumers have a chance to benefit from the new regulatory regime, it is important that all suppliers operating in the market are properly licensed and monitored.*

- Implement the water and sewerage licensing regime.

*The Commission is required to issue licences for water and sewerage service provision by 1 January 2002. In effectively implementing the licensing regime, the Commission will be considering compliance reporting procedures as well as ring-fencing related businesses.*

### **Monopoly regulation**

- Commence a review of the Network Access Code.

*Under the Code, a review is to be completed by 30 June 2003. For any amendments to have effect from 1 July, the review must be completed by around September 2002. The Commission will undertake considerable preparatory work for the review during 2001-02.*

- Approve detailed ring-fencing procedures.

*Under the Ring-Fencing Code, PAWA is required to draft various accounting, cost allocation and information procedures and submit them to the Commission for approval.*

- Develop pricing orders for the Minister's approval.

*In opening the Territory electricity supply market to competition, the Government remained involved in regulation of prices paid by non-contestable customers. During 2001-02, the Commission will give consideration to implementation of a formalised medium-term framework for pricing orders, with the Minister setting price paths and the Commission overseeing PAWA's pricing to make sure that it conforms to the requirements of the Minister's pricing order.*

- Develop electricity service standards applying to non-contestable electricity consumers.

*The Commission will be undertaking an extensive public consultation process to ensure that the most appropriate and effective service standards are implemented in the Territory. It is a statutory requirement that these electricity standards of service be no less than the standards existing prior to the introduction of competition.*

## **Competition oversight**

- Develop and promulgate 'grace period customer' guidelines.

*The initial tranche of contestable customers are approaching the end of their 'grace period' and are no longer guaranteed to remain on their current tariff schedule. The Commission will be looking to develop and implement guidelines to assist customers and suppliers through this transition.*

- Provide information to tranche 4 customers.

*Customers with annual electricity consumption between 750 MWh and 2 GWh (tranche 4) will become contestable on 1 April 2002 and it is the Commission's role to ensure these customers are informed about their rights and responsibilities as they consider exercising their choice of supplier.*

- Monitor contestable pricing.

*The Commission is concerned to ensure anti-competitive/discriminatory pricing conduct does not occur and that there is a fair allocation of the benefits of deregulation across tranches of customers and between customer groups.*

- Advise the Government regarding implementation of full retail contestability.

*As full retail contestability is implemented in other jurisdictions in Australia, the Commission will closely monitor developments in order to provide meaningful advice to the Government.*

## **Technical regulation**

- Develop economic dispatch arrangements for electricity generation, to replace the initial out-of-balance energy provisions.

*The Commission is required to consult with affected parties about the nature of practical and effective arrangements and to develop associated minimum generation capacity guidelines for licensed generators.*

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## APPENDICES

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## **APPENDIX 1**

### **STRATEGIC DIRECTION**

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**The Commission will strive to contribute to achieving the following policy outcomes:**

- the promotion and safeguarding of competition and fair and efficient market conduct in regulated industries in the Northern Territory; and
- where a competitive market is not possible and within the limits of powers granted to the Commission, stimulate competitive market conduct and prevent the misuse of market power.

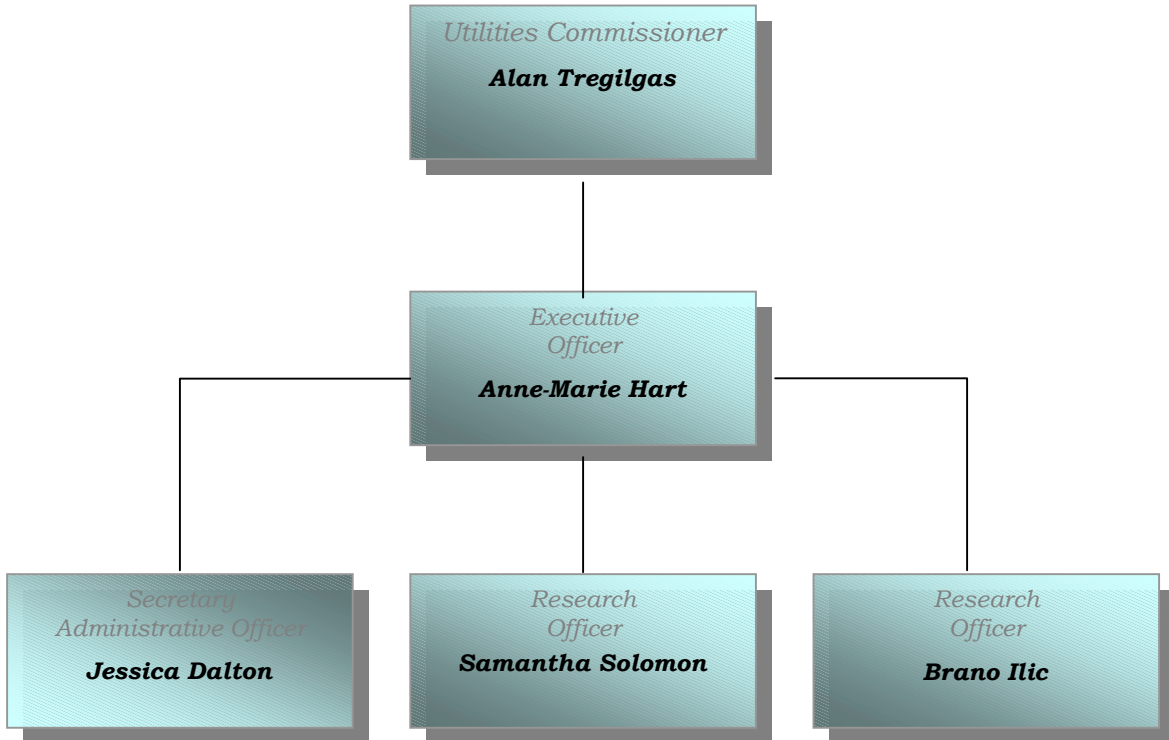
**With respect to its regulatory outputs, the Commission is committed to:**

- ensuring that investigations and industry reviews are of a high standard;
- consulting widely with stakeholders to ensure that any determinations and recommendations reflect the needs of the community, industry and economic reforms;
- maintaining an open relationship with industry stakeholders and the public with regard to reasons for decisions and regulatory processes;
- maintaining reasonable certainty over time with respect to the outcomes of its regulatory processes;
- ensuring the timeliness of its regulatory decisions; and
- remaining independent in order to appropriately balance competing stakeholder interests without undue political or vested interference.

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**APPENDIX 2**  
**ORGANISATIONAL CHART AS AT 30 JUNE 2001**

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## **APPENDIX 3**

### **COMMISSIONER'S PROFILE**

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Alan Tregilgas was appointed Utilities Commissioner for a four year term commencing on 1 April 2000. In this role, he is also an Associate Member of the Australian Competition and Consumer Commission and a member of the Utility Regulators' Forum.

Mr Tregilgas performs the role of Utilities Commissioner part time. He remains a senior associate with Access Economics, the Canberra-based economic consultancy group.

Mr Tregilgas is a former senior Commonwealth, South Australian and Northern Territory Treasury officer. He also spent four years in the early 1990s as a utilities analyst with the Standard & Poor's Ratings Group in Australia and the Asia/Pacific region. For two years in the mid-1980s, he represented Australia at the International Monetary Fund in Washington DC.

As an economic consultant since 1996, Mr Tregilgas has worked with Government agencies in six Australian jurisdictions, including the Northern Territory. He assisted the Territory Government during the 1998 strategic review of the Power and Water Authority. He has also advised both the Queensland Competition Authority and the South Australian Independent Industry Regulator.

Mr Tregilgas holds a first class honours degree in economics from the University of Adelaide and a masters degree in economics from the Flinders University of South Australia.

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## **APPENDIX 4 PUBLICATIONS**

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### **2000-01**

Ring-Fencing Code: Discussion Paper	July 2001
Contestable Customer Information Circular No 3	July 2001
Network Tariffs, 2000-01	September 2001
Update on NT's Electricity Reform Program	September 2000
Ring-Fencing Code: Revised draft replacement Code	September 2000
Regulatory Treatment of the DKTL: Issues Paper	February 2001
Regulatory Treatment of the DKTL: Position Paper	April 2001
Ring-Fencing Code: Final draft replacement Code	April 2001
Revenue Determinations Paper: 2001-02	May 2001

### **Post 2000-01**

Ring-Fencing Code: Final	July 2001
Power System Review: Draft	August 2001

Copies of all the Commission's publications are available from its website:  
<http://www.utilicom.nt.gov.au>

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**APPENDIX 5**  
**DETERMINATIONS AND APPROVALS**

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<b>Nature of decision</b>	<b>Type of decision</b>	<b>Effective period</b>	<b>Date of decision</b>
Network Pricing Principles Statement: First Regulatory Control Period	Approval	1 April 2000 to 30 June 2003	25 August 2000
Network Access Tariff	Approval	1 October 2000 to 30 June 2001	30 August 2000
Revenue Caps	Determination	1 July 2001 to 30 June 2002	18 May 2001
Network Access Tariff	Approval	1 July 2001 to 30 June 2002	23 May 2001
System Control Charges	Approval	1 July 2001 to 30 June 2002	13 June 2001
Out-of-Balance Energy Prices	Determination	1 July 2001 to 30 June 2002	13 June 2001

## APPENDIX 6

### EXPENDITURES

**NORTHERN TERRITORY UTILITIES COMMISSION**  
**EXPENDITURE BY CATEGORY OF COST**  
**FOR YEAR ENDED 30 JUNE 2001**

Category of Cost	1999-00 <sup>3</sup> \$000	2000-01 \$000
<b>PERSONNEL COSTS</b>	<b>230.3</b>	<b>295.2</b>
Salaries and related costs	226.0	285.3
Superannuation	4.3	9.9
<b>OPERATIONAL EXPENDITURE</b>	<b>218.1</b>	<b>234.9</b>
Consultants Fees	159.7	191.8
Motor Vehicle Expenses	8.4	11.1
Info Technology Services	4.3	10.2
Official Duty Fares	9.2	8.2
Other Plant & Equipment	2.4	4.0
Advertising	2.8	3.0
Training & Study Expenses	5.5	2.9
Document Production	1.9	1.3
Travelling Allowance	0.9	0.7
Office Req & Stationery	2.6	0.5
Recruitment & Relocation Expenses	0.0	0.7
Consumables/General Expenses	0.2	0.2
Library Services	0.4	0.2
Memberships & Subscriptions	0.0	0.1
Communications	0.6	0.0
Furniture & Fittings	19.3	0.0
<b>TOTAL EXPENDITURE</b>	<b>448.4</b>	<b>530.1</b>

RECEIPTS BY ACCOUNT <sup>4</sup>	1999-00 <sup>5</sup> \$000	2000-01 <sup>6</sup> \$000
<b>Fees and Charges</b>	<b>45.0</b>	<b>114.8</b>
Licence Fees	45.0	114.8
Licence Application Fees	4.0	2.0
<b>Total Revenue</b>	<b>49.0</b>	<b>116.8</b>

<sup>3</sup> Includes the Office of the Interim Commissioner from October 1999.

<sup>4</sup> Section 19 of the *Utilities Commission Act 2000* provides that, unless otherwise directed by the Treasurer, fees and other monies received by the Commission are paid into the Consolidated Revenue Account.

<sup>5</sup> Includes licence fees for 1 April to 30 June only.

<sup>6</sup> Includes full year.

**2000-01**

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## **APPENDIX 7**

### **CONSULTANTS**

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Section 14 of the *Utilities Commission Act 2000* authorises the Commission to engage consultants as it considers necessary and appropriate.

In 2000-01, the Commission used the services of the following consultants. The costs for the year totalled \$191,756.

**Greater  
than  
\$50,000**

#### **Morgan Buckley**

In June 2000, the Commission tendered for the provision of legal services through the Attorney-General's Department. The scope of the legal services required included general legal advice, commercial work, preparation of electricity licences and conduct of litigation, as well as specialised advice on legislative and policy development and change.

Morgan Buckley Lawyers, Darwin, in association with Minter Ellison Lawyers, Adelaide, were the successful tenderers. During 2000-01, the Commission received advice on the following matters:

- the scope of the Utilities Commission's functions and powers;
- development of the NT Electricity Ring-Fencing Code;
- issues arising from the definition of contestability;
- various licensing issues, including the development of licence conditions for water and sewerage industries; and
- arrangements for the on-supply of electricity.

**Greater  
than  
\$10,000  
but less  
than  
\$50,000**

#### **Ernst & Young**

In August 2000, the Commission tendered for the provision of accounting and technical services through the Department of Corporate & Information Services.

Ernst & Young, Darwin, were the successful tenderers. During 2000-01, the Commission received advice on the following matters:

- review of the PAWA's cost allocations across its regulated and non-regulated businesses;
- amendments to the Electricity Networks (Third Party Access) Code with respect to out-of-balance energy charges; and

- preparation of a review of the prospective trends in the capacity and reliability of the Territory's power system relative to projected load growth.

### **Independent Pricing and Regulatory Tribunal (IPART) of New South Wales**

A team from IPART was retained by the Commission in 1999-00 to assist in assessing pricing proposals put forward by PAWA. In the early months of 2000-01, IPART completed their assessment of the proposed pricing principles and schedules submitted by PAWA for approval by the Commission

**\$10,000  
and below**

### **East Cape Pty Ltd**

Philip Theaker of East Cape Pty Ltd was retained to assist the Commission consider issues arising on account of the absorption of the DKTL into regulated network tariffs following PAWA's purchase of the line.

Mr Theaker was part of the IPART team that earlier assisted the Commission with certain regulatory pricing issues.