



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2017-2018

(Reference: [Appropriation Bill 2017-2018 and Appropriation \(Office of the Legislative Assembly\) Bill 2017-2018](#))

Members:

MR A WALL (Chair)
MS B CODY (Deputy Chair)
MR A COE
MS C LE COUTEUR
MR M PETTERSSON

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 3 JULY 2017

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Secretary to the committee:
Mrs N Kosseck (Ph 620 50435)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

APPEARANCES

Icon Water Limited	1046
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Amended 20 May 2013

The committee met at 9.35 am.

Appearances:

Gentleman, Mr Mick, Minister for Police and Emergency Services, Minister for the Environment and Heritage, Minister for Planning and Land Management and Minister for Urban Renewal

Icon Water Limited

Knox, Mr John, Managing Director

Sachse, Mr Sam, General Manager, Finance

Breaden, Ms Jane, General Manager, Business Services

THE CHAIR: Good morning, and welcome to day 12 of the public hearings of the Select Committee on Estimates 2017-2018. Today is a recall day; we have invited back Icon Water in relation to budget statements B. This is a follow-on from the committee's hearing on 20 June.

For any questions taken on notice from today's session, could you please clearly state, "I will take that on notice." It makes it easier to find it in the minutes. Before we kick off, could everyone please acknowledge that they are familiar with the pink privilege statement that is in front of them and are aware of its implications?

Mr Gentleman: Yes.

THE CHAIR: Minister, do you have a further opening statement?

Mr Gentleman: Yes, just to advise the committee on the role of shareholders. Icon Water Ltd, or Icon Water, operates as an independent corporation under the direction of a board of directors and under the management of an executive management team. Icon Water is regulated by the Corporations Act 2000—that is a commonwealth act—and is subject to further accountability requirements under the Territory-owned Corporations Act 1990, including the requirement of shareholders to be ministers. The shareholders must first consult with the public accounts committee before appointing a director. Shareholders do not generally become involved in the internal affairs of Icon Water unless stipulated in the Territory-owned Corporations Act.

For instance, the company must submit an annual statement of corporate intent for the shareholders to consider, obtain the prior written approval of the shareholder to acquire or dispose of a main undertaking, and keep the shareholders informed of significant events. Icon Water stands ready to answer questions from the committee.

THE CHAIR: Thank you. This is probably directed to Mr Knox, following on from our hearing a couple of weeks ago with regard to the service agreement between Icon Water and ActewAGL. What was the process by which those agreements came about? When Icon split out, who approached whom, and what was the tenor of the discussions to enter into those agreements for the period given?

Mr Knox: It is a little difficult for me to comment on behalf of ACTEW Corporation, because I was not there. We are relying upon historical records. Broadly speaking,

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around 1 July 2012 and some time prior to—I cannot give you an exact date—there were discussions engaged in with regard to the roll back of the services between the two parties and appropriate representatives. I would imagine that it would have been initiated through both boards, and also through owner discussions, but that is about as much insight as I have specifically on the matter.

THE CHAIR: What reporting and auditing then exists of the service agreements?

Mr Knox: Every quarter there is reporting that occurs between the two bodies. They come to meet. There are two separate bodies, one for the customer services and one for the back-office shared services. Those committees meet. They have a governance arrangement. There is a standard reporting of KPIs that is scheduled under the terms and conditions of the contract, and those KPIs and any other matters are discussed in those forums.

THE CHAIR: Where do those reports go? Are they reported back to government at any level or is it purely internal?

Mr Knox: No, purely internal.

THE CHAIR: Who compiles the report? Is it just done collaboratively between Icon and ActewAGL, or is there a third party involved?

Mr Knox: No, the onus is on ActewAGL to prepare the report, and then Icon Water essentially are the reviewers of the information provided, notwithstanding if there are any other matters they wish to raise at the table in those meetings as well.

THE CHAIR: In terms of the cost of these agreements, I do not have the transcript in front of me, but, from memory, with the two components, customer services was—

Mr Knox: Approximately \$7 million, I think we used in the previous discussion.

THE CHAIR: What was back office?

Mr Knox: Approximately \$20 million. In citing the cost of those agreements, it depends whether or not we are talking about numbers when they were executed or numbers today. Figuratively, they are in that order of magnitude.

THE CHAIR: What are the numbers today?

Mr Knox: The exact numbers?

Mr Sachse: They would be circa the \$20 million and the \$7 million we have previously discussed.

THE CHAIR: Surely, you can put a finer point on what the actual figure is?

Mr Knox: I can, actually. Could I take it on notice? I will continue to scan my papers and come back to it, if I may?

THE CHAIR: That would be fine. Also, Mr Knox, what are the increases going forward and how are they built into the contract?

Mr Knox: Yes.

THE CHAIR: Whether they are a percentile increase or otherwise.

Mr Knox: Yes.

MR COE: Could you please provide how much has been paid each year for those contracts and how much is scheduled to be paid for each year going forward?

Mr Knox: Certainly. I will take that on notice.

THE CHAIR: With regard to the review of the contract and reporting, what are the built-in KPIs for the services that ActewAGL are providing to Icon?

Mr Knox: Built-in KPIs? Traditionally, they are around contact centre KPIs with regard to what period of time calls are taken in, and the like. On a help desk, from the technology side, there are similar types of KPIs.

Mr Sachse: Including requirements on making sure our critical infrastructure or IT systems are available at a high level of time during the year.

MR COE: What financial penalties are built into the contract for under performance or non-performance of the KPIs?

Mr Knox: Mr Coe, there are no financial penalties with regards to it. Like most contracts, there is a breach clause which allows matters to be escalated. They are taken up through the appropriate channels for arbitration and any dispute-type resolution procedures if triggered.

MR COE: How is it that you would sign a contract worth \$300 million and not have financial penalties for underperformance? This must be the only contract in the government that does not have a financial penalty for non-performance.

Mr Knox: Mr Coe, the contracts were negotiated at that point in time between both parties. My understanding is that financial penalties were not the appropriate driver to put in. As I said, there are appropriate escalation matters, and certainly there is a great deal of focus on making sure that the services are appropriate both within ActewAGL and to Icon Water, a service orientation.

MR COE: Was this contract put in place just to give a free kick to ActewAGL?

Mr Knox: Mr Coe, I do not think that is an appropriate question. It is not about a free kick at all.

MR COE: It is an appropriate question, and I am curious to know what the answer is.

Mr Knox: It is not. As I mentioned, in 2000 the operations and maintenance were

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rolled back to ACTEW Corporation. At that point in time these services had been provided for approximately 12 years and a lot of the technology was heavily meshed. There was an operational technology database that looked after an energy company as well as a water company. People were paid under the same enterprise bargaining agreement. Meters were read by the same companies. There was a substantially and intimately woven fabric between the utilities of electricity, gas and water. In order to separate those you would have incurred substantial restructuring costs. Then you would have had to have gone out to market and asked, “Well, who in the market is capable of providing these?”

MR COE: Are there not hundreds of utility companies around Australia that manage to do just this?

Mr Knox: But the concept, as I explained, is that when the rollback was done the owners were very adamant there would not be material disadvantage to the existing organisation. They wanted to keep it whole.

MR COE: That is the key point. That is the free kick then, isn't it?

Mr Knox: No, it is not a free kick; it is not being materially disadvantaged. The services were essentially picked up—

MR COE: What do you mean by “material disadvantage to ActewAGL”?

Mr Knox: To keep the organisation whole, from a synergy—

MR COE: But what is Icon Water's mandate to ActewAGL—

Mr Knox: It does not have a mandate, Mr Coe.

MR COE: so they do not have material disadvantage?

Mr Knox: Because it is a half owner and the services were already in situ. The concept of the services being rolled back; it was never entertained that they would be taken out to market because they were so heavily meshed. It was essentially migrated to an arm's-length agreement for the continuation of the services. It would be insane to try to separate technology systems, HR systems and all the rest of it, to incur substantial restructuring costs and then to go out to market and have no confidence around whether or not some of those services can be provided. There would be a lead time associated with that, and any new investor would have to start up those services, so they would be sunk costs as opposed to the establishment. Most importantly, there would be risk as well.

MR COE: Have you established any of this or is this just hearsay?

Mr Knox: It is not hearsay.

MR COE: Have you actually gone out to market? Have you actually done a piece of research to establish whether it is viable to go to a cheaper operator?

Mr Knox: No, we are not under an obligation to go out to market. An agreement was made to continue to optimise the synergies across the group. It made a lot of sense to continue with those services that were in situ at that point in time to have a seamless transfer.

THE CHAIR: What due diligence was done to establish that decision? It seems there was a decision to take the convenient option to enter into two service agreements with ActewAGL going forward with Icon separated out as opposed to doing some due diligence and looking in the marketplace as to what options existed.

Mr Knox: I cannot comment. I cannot comment on that.

THE CHAIR: Why not, Mr Knox?

Mr Knox: Because I was in ActewAGL at the time, as I indicated, and ACTEW Corporation had a mandate that they were keen—and the owners had discussed it—to preserve the synergies for the group. That was the underlying concept of the rollback of the services: that we would continue with those services, it would be moved to arm's length, the costings would be reviewed, advisers would be engaged, and it would be a materially substantial contract for the period of the services.

MR COE: Mr Knox, on one hand you are saying that you are unable to comment on a lot of this but on the other you seem to also have a reasonable degree of knowledge about what happened in 2012.

Mr Knox: I cannot comment, Mr Coe, on whether people had discussions around whether it should go out to market because I was not in ACTEW Corporation at the time.

MR COE: Did anyone to your knowledge in ActewAGL or in Icon Water or in then ACTEW Corporation receive any bonuses either directly or indirectly related to this contract being signed?

Mr Knox: I will comment on ACTEW Corporation, because that is within the remit of the Assembly; what occurs in ActewAGL is a matter for ActewAGL. I asked the director of human resources to go back as a result of the last estimates and review the files as to whether anyone had received bonuses for the execution of the contract, and the answer is no, they did not.

MR COE: And what about ActewAGL?

Mr Knox: I am not prepared to answer that, Mr Coe. It is a matter for ActewAGL.

MR COE: I am asking the question: did anybody to your knowledge in ActewAGL—

Mr Knox: Mr Coe—

MR COE: Would you please hear me out?

Mr Knox: Yes, certainly.

MR COE: It goes to the responsibilities of this committee and to the Assembly if people have made financial gain on the back of an ACT government contract that did not go to tender and where there were no expressions of interest. I am asking—

Mr Gentleman: Mr Coe, I just point out to you—

MR COE: I am asking, minister: did anybody to your knowledge or to the knowledge of any witness receive any financial benefit as a result of this contract being signed with Icon Water or ACTEW Corporation?

Mr Gentleman: Mr Coe, I point out for the record that it is not a government entity; this is a private corporation. I pointed that out in my opening comments.

MR COE: I am still asking the question.

Mr Gentleman: Yes, but you have said a number of times now, “in relation to a government entity”. It is not a government entity.

MR COE: I think you will find it is. It is a government entity. The sheer fact that you are before us today, minister, suggests that the government is accountable, and you are accountable as the acting minister. So the question remains: did anybody in ActewAGL receive a bonus as a result of this contract being signed?

Mr Knox: Mr Coe, I apologise if there are optics of evasion, but the reality is we are not a government business so we are not obligated to answer the question that you are asking.

MR COE: I am asking the question—

Mr Knox: You can continue to ask it, but I will not be answering it.

MR COE: And it will be perceived as being evasive if you do not. I am asking the question: to your knowledge, did anybody at ActewAGL get a bonus as a result of either of these agreements being put in place?

Mr Knox: Mr Coe, as I said before, we are not obligated to answer the question. We are not a government entity.

MR COE: Do you know the answer to this question?

Mr Knox: I am not going to answer the question, Mr Coe, because that is a matter for ActewAGL, not for Icon Water.

MR COE: Who is the other half owner of ActewAGL?

Mr Knox: There are two other owners in ActewAGL: the 50 per cent owner of the poles and wires—the distribution partnership—is Jemena; and the retail side is AGL.

MR COE: Do Jemena or AGL have an agreement in place with ActewAGL for the

delivery of shared services?

Mr Knox: By default they are the counterparties to these contracts as half owners.

MR COE: Is ActewAGL providing shared services to Jemena or AGL?

Mr Sachse: Some very small services are provided to the other partners. It is more around the income tax. Given that both ActewAGL Distribution and ActewAGL retail are partnerships, they provide some very small income tax preparation to those partners.

MR COE: So when you said there is a commitment by ACTEW Corporation or Icon to not have a material disadvantage to ActewAGL, what subsidy or free kick or agreement was put in place by the other owner or owners so that they are making the same contribution as the ACT taxpayer?

Mr Knox: Mr Coe, I cannot follow your logic as to the concept of a free kick and subsidisation and any other references. As I have discussed, the conversation was to keep synergies within the business. Between the two organisations way back—I am talking 10 or 12 years ago—there were some 1,600 to 1,700 employees in this organisation. Economies of scale are critical to operating within the ACT to make sure we have an efficient cost base for both energy customers as well as water customers.

MR COE: Are we getting \$27 million worth of value this year out of these two agreements?

Mr Knox: Mr Coe, the agreement provides services that are critical to the day-to-day operations of Icon Water and ActewAGL.

MR COE: But are we getting \$27 million worth of value?

Mr Knox: I think it is a very subjective question, Mr Coe. As I mentioned previously, there are KPIs that warrant the service and that are used for reporting the service, and Icon Water is quite pleased with the services.

THE CHAIR: Mr Knox, to come back to Mr Coe's previous question of whether performance bonuses or incentives were paid within ActewAGL on the signing of these contracts, I draw your attention to the privilege statement, of which you have indicated that you are aware. It states:

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

Will you answer the question: were bonuses or incentives paid within ActewAGL for the signing of that contract?

Mr Knox: As I mentioned, I believe the question is outside the remit of the Assembly, but I am happy to take it on notice and seek legal advice to that effect. As we have discussed, we are not a government agency; ActewAGL matters are for ActewAGL. I

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am not here to comment on what occurs in ActewAGL; that is not within my responsibility of attending this Assembly.

MR COE: What auditing has taken place of either of these two agreements?

Mr Knox: With regards to the general review of operating expenses within Icon Water and services provided, reviews are done more broadly across the organisation. For example, we have an array of internal audit services that pick up whole heaps of things. Most of those services are reviewed through ActewAGL. That is the mandate they provide. They have their own regime of reviewing their operating cost base. As you would be aware through the energy business, there has been substantial restructuring as a result of the AER determinations.

MR COE: Why would it just be on ActewAGL to monitor this contract given it is \$27 million of outgoings for Icon Water? Surely you would have an internal audit committee, or even an external audit, that has reviewed this?

Mr Knox: I cannot recall there being an internal or an external audit of the services.

MR COE: Why would there not be an audit of this contract given the size of it?

Mr Knox: Mr Coe, I rely upon the respective audit committees of both organisations to broadly cover the governance of both organisations.

MR COE: Do you sit on the audit committee?

Mr Knox: I do not sit on the audit committee of Icon Water, but I can attend it as required and present to it.

MR COE: Do you sit on the audit committee of ActewAGL?

Mr Knox: No, I do not sit on the audit committee of ActewAGL.

MR COE: So who are the members of the audit committee for Icon?

Mr Knox: At the moment all the audit committee members are close to the entire board, with the exception of the chair, Ms Caird. All other members of the Icon Water board are on the committee.

MR COE: You are on the board, though, are you not?

Mr Knox: Yes, I am.

MR COE: As a voting member?

Mr Knox: I am not on the audit committee. All the other—

MR COE: All the others?

Mr Knox: Yes.

MR COE: Has the management or the executive ever recommended to the board or the audit committee that contracts over a certain size should be looked into by the audit committee?

Ms Breaden: To my recollection, no, there has not been a general recommendation that contracts over a certain size be looked at by the audit committee. Our internal audit program is set on an annual financial year basis. It is a risk-based program in that we look at all of the matters that might be audited by the program in the next financial year. We look at key controls, key risks and key issues, and then we prioritise the numerous things that could be audited. We then identify those that are most important for our organisation to audit in that coming financial year. For the coming financial year, for example, the services are not included in the audit program because they have not made it on that basis of risk assessment.

MR COE: Has management or the executive ever nominated issues that should be looked at by the audit committee?

Ms Breaden: Every year management puts forward an audit program for the subsequent coming financial year about the topics that should be audited.

MR COE: So it is management initiated rather than audit committee or board initiated?

Ms Breaden: Yes, it is management initiated, but we always take into account any feedback from the board about matters of concern to them.

MR COE: For instance, what issues have been put forward to the audit committee for the 2017-18 financial year?

Ms Breaden: Ones that come to mind include a review of our work health and safety strategy and the effectiveness of implementing that strategy and some of our major strategic projects. That is all I can think of.

MR COE: The shared services that are provided through this agreement include IT, and human resources. What else?

Mr Sachse: Economic regulation.

MR COE: Yes.

Mr Sachse: Property and security.

MR COE: Looking at those four items—IT, human resources, economics and property management—none of those has gone before the audit committee?

Ms Breaden: I can give you an example. Similar to what Mr Knox said in that when ActewAGL conduct internal audits—they might do an internal audit of a payroll, for example—the results of that audit impact on us as well. Recently we completed a review of IT security. Some of those IT security services are provided by

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ActewAGL, and for some of our operational technology we have our own internal responsibilities for IT security. From an audit perspective it is somewhat seamless in that we go and look at a subject and, whether or not those services are provided by ActewAGL internally or by another third party, we look at that particular subject.

MR COE: So ActewAGL does an internal audit and they provide the internal audit results to Icon?

Ms Breden: No, we have members of our board who are on the internal audit committee of ActewAGL.

MR COE: Then do Jemena and AGL also have members on the internal audit committee for ActewAGL?

Ms Breden: I believe they do. I say “believe” because I am not totally familiar with the membership of ActewAGL’s internal audit committee, but I expect that they would have Jemena members.

Mr Knox: Yes, they have members.

MR COE: So what Icon board members are also members of the ActewAGL internal audit committee?

Mr Knox: Ms Caird is the chair of the audit committee, and periodically Ms Lilley has attended.

MR COE: So under confidentiality agreements and their fiduciary responsibilities, are they allowed to pass on the workings of the internal audit committee in ActewAGL to management of Icon?

Ms Breden: No, they do not.

Mr Knox: No.

MR COE: Right, so what—

Ms Breden: And if they did, they would discuss it with their ActewAGL colleagues first.

MR COE: The comment was made earlier that, in effect, there is some assurance because Icon have representatives on the ActewAGL internal audit committee and, whilst the information does not come back through the audit reports, by having one or two members of that committee that is, in effect, the involvement Icon has. But if they cannot pass on that information to Icon, what is the advantage for Icon Water?

Ms Breden: As I said, they would speak to their ActewAGL colleagues first. I would expect our Icon Water directors on ActewAGL would not remain silent if they saw issues at the ActewAGL end that impacted on us. They would take appropriate action to get permissions and have discussions at the ActewAGL end so they could bring that information back—

MR COE: Is there not an inherent conflict of interest? ActewAGL obviously want to do as well as they possibly can out of a contract and extract as much value as possible out of that contract, whereas Icon are, of course, looking for the same outcome, albeit from a different perspective? Is there no competitive tension in these two service agreements?

Mr Knox: As far as an efficient cost base is concerned, as I mentioned, both ActewAGL and Icon Water are subject to regulatory review. We are very focused on our cost base, and that is ultimately what is assessed by the ICRC. Our internal control and our frameworks are also annually audited by the ACT Auditor-General and their contract auditors as well.

If there are matters in the ActewAGL audit committee with regards to anything, they are then raised and a full brief is provided by that audit committee back to the board, on which Icon Water has representatives. Those Icon Water board members then provide a brief back to the Icon Water board.

MR COE: How can you say that you are concentrating on your cost base when you also have an agreement where there will be no material disadvantage to ActewAGL?

Mr Knox: Sorry, Mr Coe, I have lost your entire argument on this.

MR COE: I am not making an argument; I am asking a simple question.

Mr Knox: I really do not understand the question.

MR COE: How can you say you are trying to minimise your cost base when at the same time you have an agreement in place not to leave another entity materially worse off?

Mr Knox: It is not an agreement—

Mr Sachse: That “materially not worse off” was agreed at the start. Since that time, as John said, ActewAGL have a big incentive to drive down cost. They have the AER setting regulating it, and we all know what has happened to electricity distribution companies over the past couple of years. They have a big incentive to drive down cost, and Icon Water shares in the benefit of those reduced costs over a period of time.

MR COE: What is the format of that agreement that is in place about material disadvantage? Where is that documented?

Mr Knox: It does not state anywhere in the agreement about “material disadvantage”.

MR COE: But where is that documented? Where is an arrangement or an agreement between Icon and ActewAGL that neither will be materially worse off—

Mr Knox: It does not say that in the agreement, Mr Coe.

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MR COE: I am not asking about the agreement; I am asking: where does it say that? Where is that stipulated? You have stressed that you have both have an agreement that there be no material disadvantage. I want to know where that agreement is documented.

Mr Knox: I will take it on notice, Mr Coe.

MR COE: But do you—

Mr Gentleman: Mr Chairman, we might take any further questions on notice. Icon Water has come back today on a call-back, but we all have other duties. In fact, I have a meeting due right now.

MR COE: Can I ask just one question?

THE CHAIR: A final question, Mr Coe. We did start five minutes late, minister, and we will wrap up shortly.

MR COE: Will you be providing the two agreements to the committee?

Mr Knox: No, I will not, Mr Coe.

MR COE: And why is that?

Mr Knox: Because we are not an ACT government directorate. We are not an agency. As the minister outlined before, we are not obligated to list these on the shared services ACT government register. There are commercially sensitive clauses. We need the authority of the other partners, and Icon Water will not be providing a copy of the contracts.

MR COE: The cost base of this was \$300 million or thereabouts. Has that been factored in by the ICRC in its determination of water prices by Icon Water?

Mr Knox: The services provided by ActewAGL and the cost incurred by Icon Water for the provision of those services constitute a percentage of our operating cost base, which has been submitted to the ICRC for review.

THE CHAIR: I have a final question, Mr Knox. When you appeared before the committee on the 20th, a question put to you was whether the Icon representatives on the ActewAGL board are paid a directors fee. Are you able to clarify that now?

Mr Knox: I have taken the question on notice.

THE CHAIR: That concludes this public hearing for the recall day of estimates. Any questions that have been taken on notice in this session are due back within five days to the committee secretariat, day one being tomorrow. We will adjourn before commencing our in camera hearing.

The committee adjourned at 10.05 am.