

Gregory Parkhurst

From: Fiona Annetts
Sent: Tuesday, 4 February 2020 4:24 PM
To: Thomas Newton
Cc: Nikki Makin; Legal
Subject: Legal advice - ACT Ombudsman & ActewAGL [DLM=Sensitive:Legal]
Attachments: Legal Advice_jurisdiction of ActewAGL.pdf

Dear Tom and Nikki,

Thank you for your request for advice below. Apologies for the delay in getting back to you.

Please see attached our advice in response. We will also provide a copy to the ACT FOI team.

You are welcome to contact me if you have any queries.

Kind regards,

Fiona Annetts

A/g Senior Lawyer | Legal Team
Corporate Branch
COMMONWEALTH OMBUDSMAN
Phone: 07 3228 9917

Email: fiona.annetts@ombudsman.gov.au

Website: ombudsman.gov.au



Influencing systemic improvement in public administration

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From: Thomas Newton <Thomas.Newton@ombudsman.gov.au>
Sent: Friday, 17 January 2020 10:45 AM
To: Legal <legal@ombudsman.gov.au>
Cc: Nikki Makin <Nikki.Makin@ombudsman.gov.au>
Subject: Request for legal advice - ACT Ombudsman & ActewAGL [DLM=Sensitive:Legal]

Dear Legal Team

The Intake and Assessment Team (IAT) requests legal advice on the following issue.

Purpose

To clarify legal advice from 2013 about whether ActewAGL is within the ACT Ombudsman's jurisdiction.

Background

The IAT has recently received a complaint about how ActewAGL (<https://www.actewagl.com.au/>) has responded to a request for information under the *Freedom of Information Act 2016* (FOI Act). The complainant disputes ActewAGL's advice that it does not have responsibilities under the FOI Act. The Resolve reference for this approach is **2020-700118**.

The IAT informed this complainant on 15 January 2020 that ActewAGL was outside the jurisdiction of the Office and that it is unable to investigate his complaint. This advice is consistent with advice that has been provided in response to complaints about ActewAGL for many years. Notably, a Senior Legal Officer provided the following advice to an Investigation Officer in 2013 in relation to Resolve approach **2013-300046**:

Schedule 1 section 1.2

The complainant IAT is currently interacting with has not accepted our advice that ActewAGL is not a prescribed authority for the purposes of the *Ombudsman Act 1989*. On 17 January 2019, he cited the definition of 'prescribed authority' within the *Ombudsman Act 1989* and asked whether the Office had turned its mind to whether ActewAGL could be considered 'a territory-owned corporation or a subsidiary within the meaning of the *Territory-owned Corporations Act 1990*'. The complainant notes that ActewAGL is part of a subsidiary of Icon Water Limited, which is an unlisted public company owned by the ACT Government (<https://www.iconwater.com.au/About-Us/Who-are-we.aspx>).

Request for advice

We are seeking legal advice to clarify the following:

1. Having regard to the information outlined in the Background section of this request, is ActewAGL still considered to be outside the ACT Ombudsman's jurisdiction (including actions taken in relation to requests for information under the FOI Act)?

If the legal team considers that actions taken by ActewAGL (including actions taken in response to requests that purport to be made under the FOI Act) are outside the jurisdiction of the ACT Ombudsman, we would appreciate further information that can be provided to clarifying our previous advice to the complainant.

Nikki Makin (A/g Director, Intake and Assessment Team) has approved this request.

Thank you for your assistance.

Kind regards

Thomas Newton

A/g Assistant Director

COMMONWEALTH OMBUDSMAN

Phone: 08 7088 0608

Email: thomas.newton@ombudsman.gov.au

Website: ombudsman.gov.au



Influencing systemic improvement in public administration

Legal Advice – In Confidence

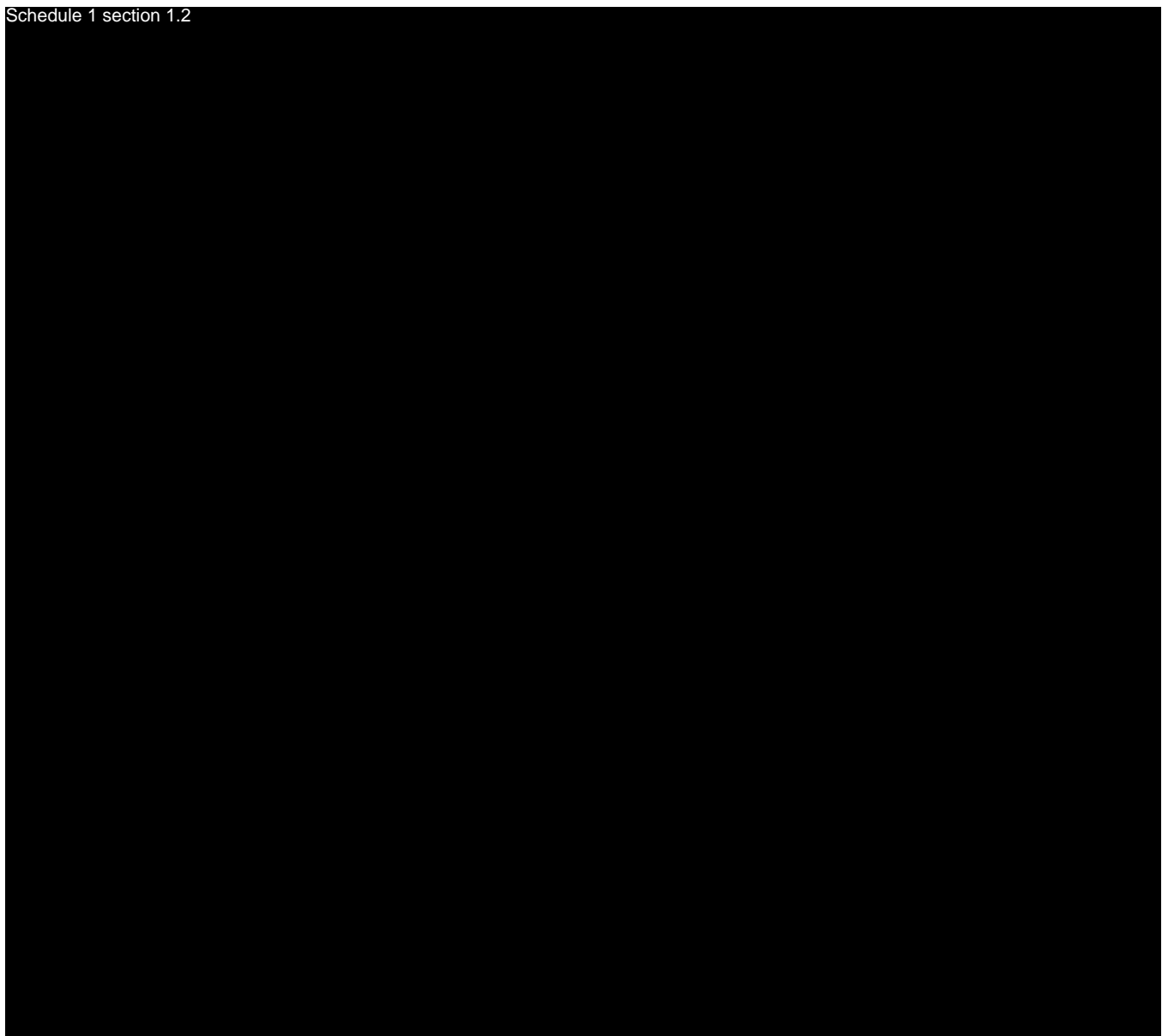
4 February 2020
Our ref: qA34477

Dear Tom,

Thank you for your request for advice dated 17 January 2020, about whether ActewAGL is within the ACT Ombudsman’s jurisdiction and if so, whether our Office could investigate a complaint about its response to a Freedom of Information request in complaint reference 2020-700118.

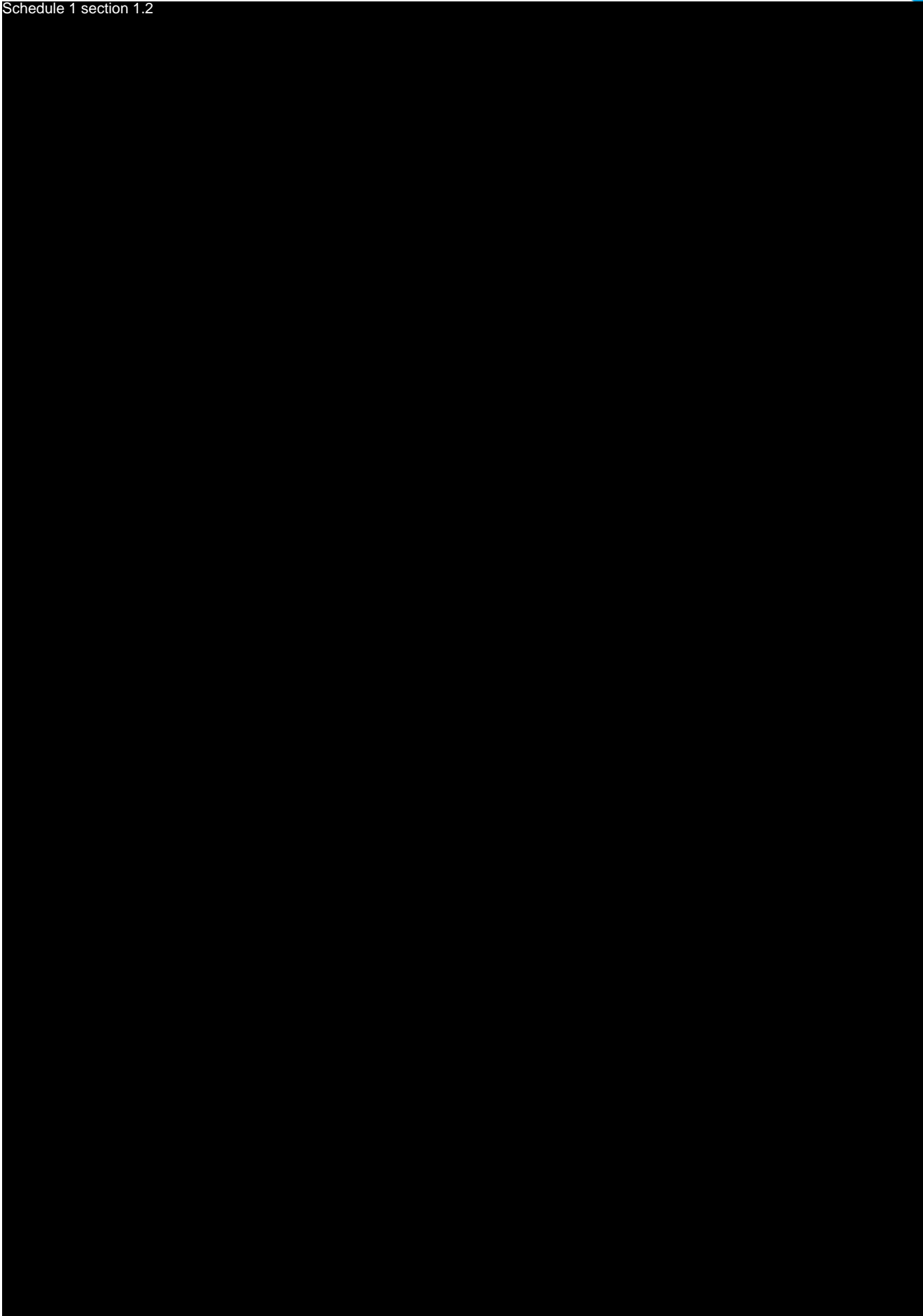
The short answer to your questions and the reasons for this view are outlined below.

Schedule 1 section 1.2



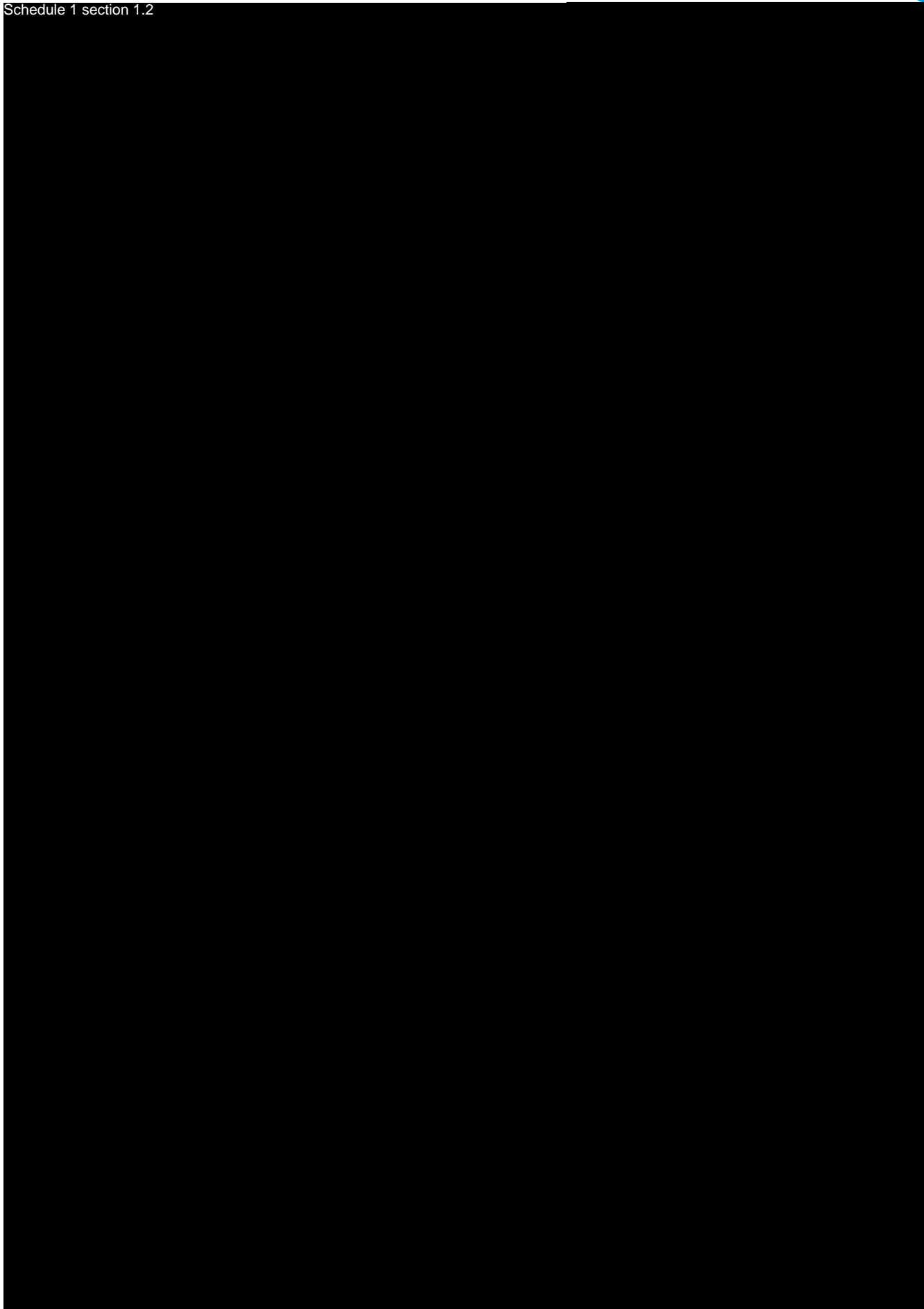


Schedule 1 section 1.2





Schedule 1 section 1.2



Legal Advice – In Confidence

3 February 2020

Our ref: qA34477 / 2020-700118


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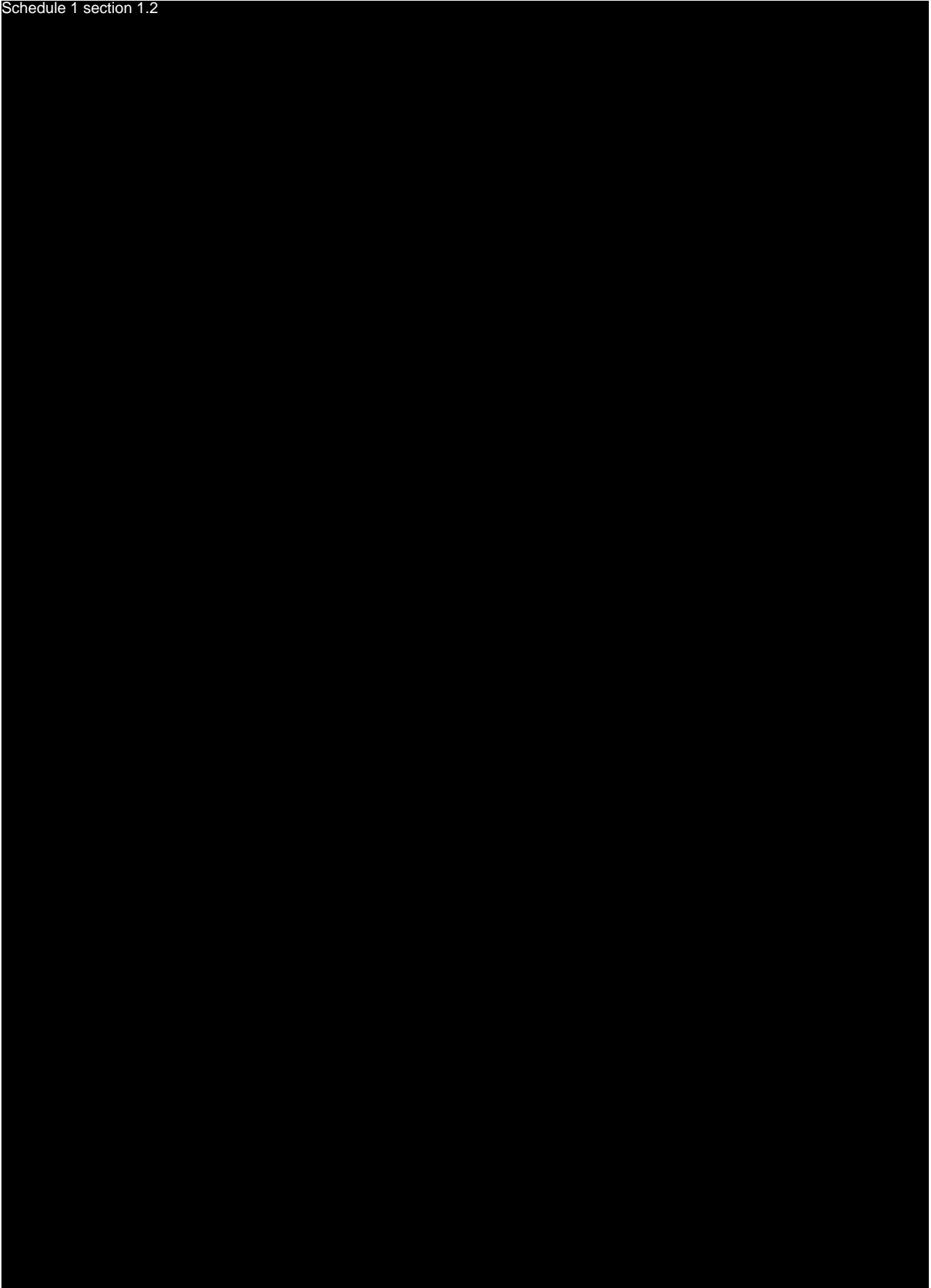
You have asked our team to consider whether actions taken by ActewAGL in relation to requests for information under the FOI Act are within jurisdiction.

We have detailed below our answer to your question and our reasons. We have also provided further information to inform your response to the complainant.

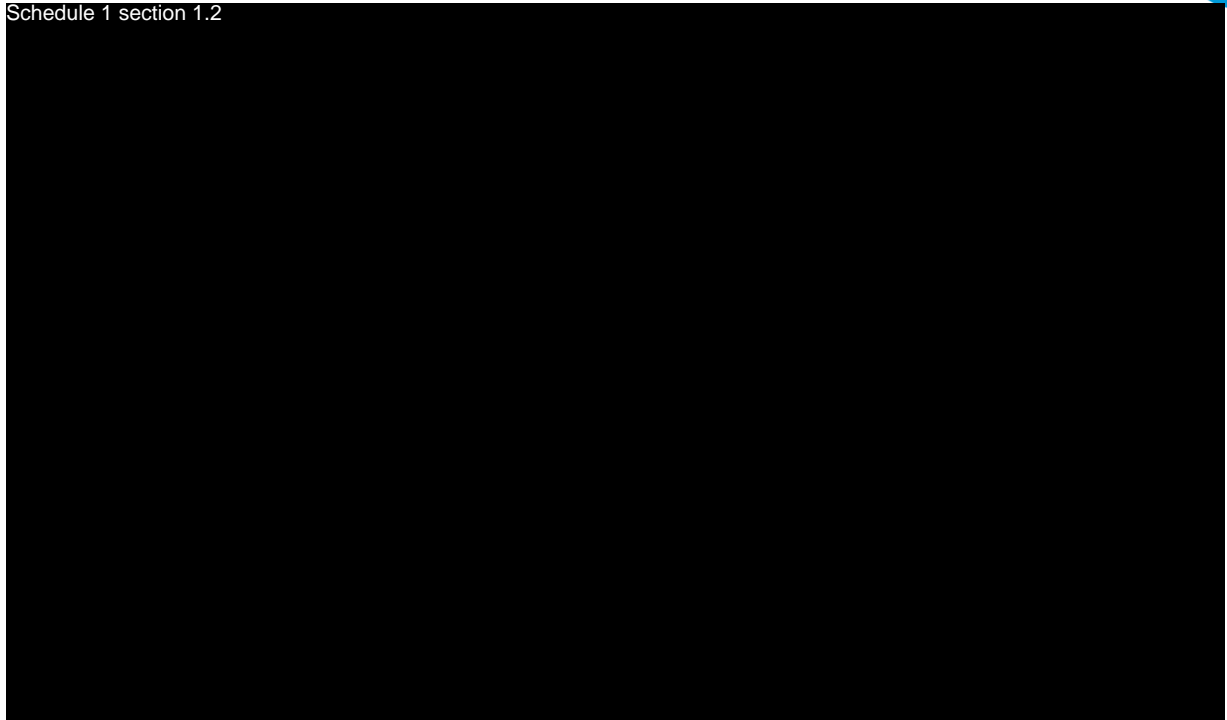
Schedule 1 section 1.2



Schedule 1 section 1.2



Schedule 1 section 1.2

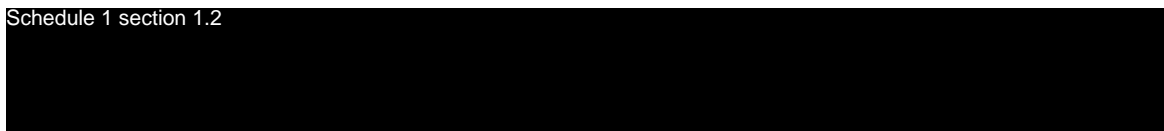


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ISSUE: Legal Advice stored on record 2013-300046

Previous advice: see A1656042 (7 August 2018)

Schedule 1 section 1.2



Research

2020-700118 – Incoming email – FOI reply from ActewAGL

States Evoenergy is not subject to the FOI Act

“...For clarity, neither of the ActewAGL partnerships are not subsidiaries of a territory-owned corporation...”

“...the ACT Government does not own or control either of the ActewAGL partnerships, they are a partner in each...”

Complainant states “...I have previously spoken with ACAT who advised that you do in fact have jurisdiction and responsibility concerning ‘administration’ of ACTEWAGL... ”

<https://www.actewagl.com.au/help-and-advice/legal/service-of-documents.aspx>

<https://abr.business.gov.au/ABN/View?id=83073025224>

<https://abr.business.gov.au/AbnHistory/View?id=24008552663>

For service on **ActerwAGL Distribution:**

Icon Distribution Investments Limited (ABN 83 073 025 224) – Australian Public Company

Jemena Networks (ACT) Pty Ltd (ABN 24 008 552 663) trading as ActewAGL Distribution (ABN 76 670 568 688) – Other Partnership

For service on **ActewAGL Retail:**

Icon Retail Investments Limited (ABN 23 074 371 207)

AGL ACT Retail Investments Pty Ltd (ABN 53 093 631 586) trading as ActewAGL Retail (ABN 46 221 314 841)

Evoenergy

Icon Distribution Investments Limited (ABN 83 073 025 224)

Jemena Networks (ACT) Pty Ltd (ABN 24 008 552 663) trading as Evoenergy (ABN 76 670 568 688)

Icon Water Limited (ABN 86 069 381 960) – Australian Public Company

<https://www.act.gov.au/browse/act-government/public-authorities-and-territory-owned-corporations>

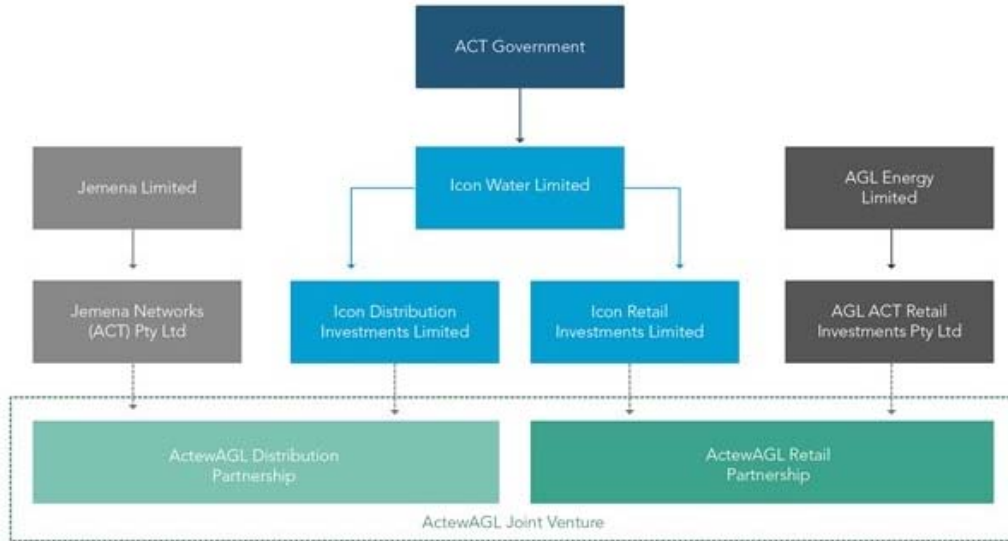
Icon Water Limited is a territory-owned corporation

<https://www.legislation.act.gov.au/View/a/1990-53/current/PDF/1990-53.PDF>

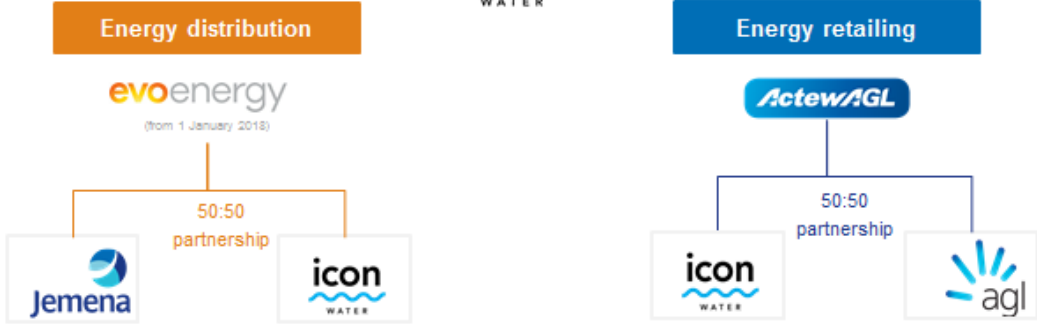
The board of ActewAGL governs the business of the ActewAGL Retail and ActewAGL Distribution partnerships on behalf of the partners. The Board is composed of two members appointed by SGSPAA, one by AGL and three by Icon Water Limited.

<https://www.actewagl.com.au/about-us/who-is-actewagl.aspx>

<https://www.iconwater.com.au/About-Us/Who-are-we.aspx>



Water and Sewerage Business



Gregory Parkhurst

From: Fiona Annetts
Sent: Wednesday, 5 February 2020 9:54 AM
To: Legal
Cc: Caitlin Christie
Subject: FW: Legal advice - ACT Ombudsman & ActewAGL [DLM=Sensitive:Legal]

From: Thomas Newton <Thomas.Newton@ombudsman.gov.au>
Sent: Wednesday, 5 February 2020 8:53 AM
To: Fiona Annetts <Fiona.Annetts@ombudsman.gov.au>
Cc: Nikki Makin <Nikki.Makin@ombudsman.gov.au>
Subject: RE: Legal advice - ACT Ombudsman & ActewAGL [DLM=Sensitive:Legal]

Hi Fiona

Many thanks for your assistance with this request – the advice you’ve provided is very helpful.

Kind regards,

Tom

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Sent: Tuesday, 4 February 2020 3:54 PM
To: Thomas Newton <Thomas.Newton@ombudsman.gov.au>
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Document 03

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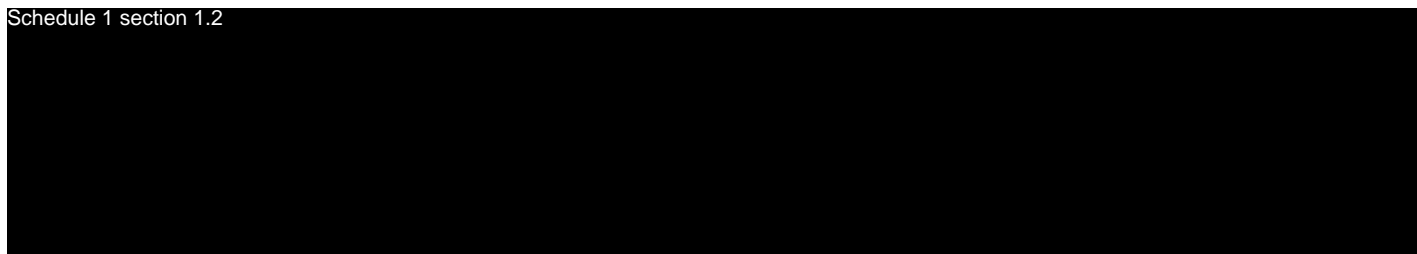
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Nikki Makin (A/g Director, Intake and Assessment Team) has approved this request.

Thank you for your assistance.

Kind regards

Thomas Newton

A/g Assistant Director

COMMONWEALTH OMBUDSMAN

Phone: 08 7088 0608

Email: thomas.newton@ombudsman.gov.au

Website: ombudsman.gov.au



Influencing systemic improvement in public administration

Gregory Parkhurst

From: Fiona Annetts
Sent: Wednesday, 5 February 2020 10:04 AM
To: ACTFOI; Suseela Durvasula; Cathy Milfull
Cc: Legal
Subject: Legal advice - ACT Ombudsman & ActewAGL [DLM=Sensitive:Legal]
Attachments: Legal Advice_jurisdiction of ActewAGL.pdf

Hi Suseela and Cathy,

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Given the impact on your operations and the fact that the complaint involved appears to have been referred to your team, I have attached our advice in the hope that it helps.

Happy to discuss.

Thanks,

Fiona Annetts

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Corporate Branch
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Schedule 1 section 1.2

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The complainant IAT is currently interacting with has not accepted our advice that ActewAGL is not a prescribed authority for the purposes of the *Ombudsman Act 1989*. On 17 January 2019, he cited the definition of ‘prescribed authority’ within the *Ombudsman Act 1989* and asked whether the Office had turned its mind to whether ActewAGL

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Nikki Makin (A/g Director, Intake and Assessment Team) has approved this request.

Thank you for your assistance.

Kind regards

Thomas Newton

A/g Assistant Director

COMMONWEALTH OMBUDSMAN

Phone: 08 7088 0608

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Website: ombudsman.gov.au



Influencing systemic improvement in public administration

Gregory Parkhurst

From: Fiona Annetts
Sent: Thursday, 6 February 2020 9:21 AM
To: Legal
Subject: FW: Legal advice - ACT Ombudsman & ActewAGL [DLM=Sensitive:Legal]

From: Suseela Durvasula <Suseela.Durvasula@ombudsman.gov.au>
Sent: Thursday, 6 February 2020 8:20 AM
To: Fiona Annetts <Fiona.Annetts@ombudsman.gov.au>
Cc: Cathy Milfull <Cathy.Milfull@ombudsman.gov.au>
Subject: RE: Legal advice - ACT Ombudsman & ActewAGL [DLM=Sensitive:Legal]

Hi Fiona
Thanks for this. We'll pass it on to the team for future reference.
Suseela

From: Fiona Annetts <Fiona.Annetts@ombudsman.gov.au>
Sent: Wednesday, 5 February 2020 10:04 AM
To: ACTFOI <ACTFOI@ombudsman.gov.au>; Suseela Durvasula <Suseela.Durvasula@ombudsman.gov.au>; Cathy Milfull <Cathy.Milfull@ombudsman.gov.au>
Cc: Legal <legal@ombudsman.gov.au>
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Nikki Makin (A/g Director, Intake and Assessment Team) has approved this request.

Thank you for your assistance.

Kind regards

Thomas Newton

A/g Assistant Director

COMMONWEALTH OMBUDSMAN

Phone: 08 7088 0608

Email: thomas.newton@ombudsman.gov.au

Website: ombudsman.gov.au



Influencing systemic improvement in public administration

Reference Number and Date lodged - 2020-700118

Complainant

Case Priority

5 - Cat 1

Street Address Case

POSTAL

STREET

Caller Phone Details

After Hours Phone

Business Phone

Mobile Phone

Fax

Email

Date of Birth

Organisation

Phone

Receipt Details

File Type:	Investigation-In-Confidence	Received Date:	6-Jan-20 10:51 AM
Case Type:	Non-AFP	Received By:	Web, Cases
How Received:	Internet	Registered Date:	6-Jan-20 11:01 AM
TimeSpent:	0(to date)	Registered By:	Web, Cases
Owned By:	Alberton, Ben	Status:	Closed
Team:	Public Contact		

Co Complainant

RoleHolder	Role	Comment
OOJ - Out of Jurisdiction	Agency	
[REDACTED]	Caller	
Kirk, Daniel	Agency Specialist	
Kirk, Daniel	Agency SAO	
Davis, Lhia-Clare	Last Action Assigned Officer	
	Contact	
	Contact	
	Contact	
	Contact	

Summary

Reference Number and Date lodged
 Key Issues and Key Dates
 Assessment
 OOJ ACTEWAGL is not a Federal Government agency.
 OOJ letter sent.
 Complaint closed.
 OBO

Consent to Transfer

*See complaint below

Summary of Online Complaint Form

Agency Details

An ACT Government Agency - ACTEWAGL

Complaint Lodged with Agency

Yes

Reference number and date lodged

19/0521

Consent to transfer

Yes

Complainant Company Name

Australian Risk Policy Institute

Complaint lodged on behalf of another person

No

Preferred contact method

Email

Details of Complaint

A. ACTEWAGL has repeatedly refused to answer an FOI request stating they are exempt;B. It appears from disallowable instruments that ACTEWAGL does have a responsibility under the Act; C. It appears the organisational design surrounding ACTEWAGL may have intentionally or inadvertently caused issues over FOI;D. It appears the organisational design surrounding ACTEWAGL may have intentionally or inadvertently caused issues over referrals to the Ombudsman and pursuit of other legal rights;E. ACTEWAGL website is arguably misleading about FOI;F. The FOI request made is a rightful request in the public interest and one which government should properly respond to as part owner;G. The question is also now in mind of legal obfuscation and wilful refusal to respond.

Desired Action or Outcome

Comply with the law.

Steps Taken to Resolve Complaint

Written on 1 September and 18 November 2019 and phoned on 21 October 2019. Will attach letters. Received a denial and dismissal.Also contacted ACAT which referred me 'back' to you having responsibility for non provision of information by ACT agencies.

PCT Action

ISSUES

Issues

Cause

Outcome

Actions

Action	Contact	Assign To	Due Date	Completed By	Completed	Status	Time
Case Ownership Changed	/	Papadakis, Caila	13-Jan-20 5:06 PM	Papadakis, Caila	13-Jan-20 5:06 PM		

Assigned to 'Gardiner, Maddie' by 'Papadakis, Caila'

Case Ownership Changed	/	Gardiner, Maddie	14-Jan-20 3:04 PM	Gardiner, Maddie	14-Jan-20 3:04 PM	
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Assigned to 'Web, Cases' by 'Gardiner, Maddie'

Case Ownership Changed	/	Leggett, Stephany - Intake	14-Jan-20 6:16 PM	Leggett, Stephany - Intake	14-Jan-20 6:16 PM	
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Assigned to 'Alberton, Ben' by 'Leggett, Stephany - Intake'

Category Changed from 0 to 1	/	Alberton, Ben	16-Jan-20 3:37 PM	Alberton, Ben	15-Jan-20 3:37 PM	0
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OOJ Referral	/	Alberton, Ben	17-Jan-20 3:59 PM	Alberton, Ben	15-Jan-20 4:28 PM	0
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2020-700118
OOJ Email
(1).doc

Case Closure	/	Alberton, Ben	16-Jan-20 4:29 PM	Alberton, Ben	15-Jan-20 4:29 PM	0
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New Email Arrived	/	Alberton, Ben	17-Jan-20 8:48 AM	Papadakis, Caila	16-Jan-20 8:48 AM	0
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2020-01-16T084441
email.eml

New Email Arrived	/	Papadakis, Caila	17-Jan-20 10:58 AM	Papadakis, Caila	16-Jan-20 11:55 AM	0
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2020-01-16T102522
email.eml

New Email Arrived	/	Newton, Thomas	20-Jan-20 10:04 AM	Newton, Thomas	31-Jan-20 5:15 PM	0
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Email from [REDACTED] received 17 January 2020:

Dear Caila

Can you kindly confirm that your advisory includes the following consideration?

The Ombudsman Act 1989. In its Dictionary, on page 75, states that a prescribed authority includes:

(e) a territory-owned corporation or a subsidiary within the meaning of the Territory-owned Corporations Act 1990.

That is, have you made the connection that ACTEWAGL is part of a subsidiary of Icon Water Limited?

Regards

[REDACTED]
2020-01-17T095622
email.eml

Telephone conversation	/	Newton, Thomas	31-Jan-20 10:49 AM	Newton, Thomas	31-Jan-20 5:26 PM	0
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with Caller

1. Called [REDACTED] on 30 January 2020 at 10:50am to acknowledge receipt of email and provide an update (noting that internal advice is being sought in relation to the ACT Ombudsman's jurisdiction). No answer or identifying voice message. No message left at this time.
2. Called [REDACTED] on 30 January 2020 at 5:10pm. No answer. No voice message left.
3. Called [REDACTED] on 31 January 2020 at 5:14pm. No answer. No voice message left.

Briefing	/	Newton,	14-Feb-20	Newton,	7-Feb-20	0
		Thomas	5:26 PM	Thomas	1:05 PM	

1. Currently in the process of seeking internal advice about whether complaint is within the ACT Ombudsman's jurisdiction (i.e. whether it is a prescribed authority or agency for the purposes of the Ombudsman Act 1989 or the Freedom of Information Act 2016), having regard to comments made by complainant about ActewAGL's relationship with Icon Water Limited. Referred request to Nikki Makin (A/g Director, Intake) for approval on 17 January 2020, request has been sent, and as at 31 January 2020 a response has not been received.
2. Discussed matter with Monda Scoltock (ACT Team) on 30 January 2020. Discussed actions taken given their relevance to ACT FOI team. Discussed that matter appears to be OOJ, but that a new approach would be opened and referred for its consideration anyway. See xref. ACT Team still interested in update about advice on jurisdiction.
3. Sent email update to complainant on 31 January 2020. Explained that additional comments are currently under consideration and that complainant will be contacted in due course.
4. Internal advice received on 4 February 2020 is that ActewAGL is not an agency under the Ombudsman Act 1989 or the Freedom of Information Act 2016 (FOI Act).
5. Discussed matter with Julie Le (ACT FOI team) on 7 February 2020. Confirmed that the ACT FOI team will take carriage of this matter and will make contact with [REDACTED] in due course. No further action required by CMEB.

Tom Newton

Investigation Officer

New Email	/	Alberton,	13-Feb-20	Alberton, Ben	17-Feb-20	0
Arrived		Ben	10:13 AM		10:42 AM	

2020-02-11T180433 email.eml

New Incoming Document	/	Alberton,	5-Mar-20	Alberton, Ben	5-Mar-20	0
Attached		Ben	8:14 AM		1:47 PM	

20200304 EMail 01. Email from [REDACTED]
01.msg [REDACTED]
20200304 EMail 02. Email from ACT
02.msg Ombudsman to
Commonwealth
Ombudsman re FOI
request

New Incoming Document	/	Alberton,	5-Mar-20	Alberton, Ben	5-Mar-20	0
Attached		Ben	8:16 AM		1:47 PM	

20200304 EMail 02.(a) Further email
from [REDACTED]

03.msg

Officer

Office:Adelaide

External References

Filename	Comments
Response from ACTEWAGL per ICON.jpg	SmartForm Import
submission.json	SmartForm Import
ARPI - FOI on ACTEWAGL - 18 November 2019.pdf	SmartForm Import
FOI Reply ACTEWAGL - 28 Nov 2019.jpg	SmartForm Import
receipt.pdf	SmartForm Import
ARPI - FOI on ACTEWAGL.pdf	SmartForm Import
form.xml	SmartForm Import
completed.txt	SmartForm Import
Response from ACTEWAGL per ICON (2).jpg	SmartForm Import
2020-700118 OOJ Email (1).doc	
2020-01-15T165903 email.eml	
2020-01-16T084441 email.eml	
20200116 EMail 01.msg	
2020-01-16T102522 email.eml	
20200116 EMail 02.msg	
2020-01-17T095622 email.eml	
20200131 EMail 01.msg	5. Email update sent to complainant on 31 January 2020
2020-02-11T180433 email.eml	
2020-02-13T160844 email.eml	
20200304 EMail 01.msg	01. Email from [REDACTED]
20200304 EMail 02.msg	02. Email from ACT Ombudsman to Commonwealth Ombudsman re FOI request
20200304 EMail 03.msg	02.(a) Further email from [REDACTED]

Cross References

Case	Comments
2020-100133	Original complaint to our office about this matter
2020-500405	

Additional Agency

Section ADD_AGENCY either doesnt exist or has no data or detail area properly defined

Closure Details

Closed On: 15-Jan-20 4:29 PM Closed By: Alberton, Ben

Security Level

50

Approach - 2020-500405

Complainant

[REDACTED]

Case Priority

6 - Cat 2

Street Address Case

POSTAL

[REDACTED]

STREET

Caller Phone Details

After Hours Phone

Business Phone

Mobile Phone

[REDACTED]

Fax

Email

[REDACTED]

Date of Birth

Organisation

Phone

Receipt Details

File Type:	Investigation-In-Confidence	Received Date:	30-Jan-20 11:52 AM
Case Type:	Non-AFP	Received By:	Newton, Thomas
How Received:	Email	Registered Date:	30-Jan-20 11:52 AM
TimeSpent:	0(to date)	Registered By:	Newton, Thomas
Owned By:	Le, Julie	Status:	Closed
Team:	ACT Strategy and FOI		

Co Complainant

RoleHolder	Role	Comment
OMB - Commonwealth Ombudsman	Agency	
[REDACTED]	Caller	
Kirk, Daniel	Agency Specialist	
Kirk, Daniel	Agency SAO	
O'Connor, Sean	Last Action Assigned Officer	

Summary

Following enquiries with ACAT (EWO) and the Legal team, response provided to caller. ACTEWAGL is outside the jurisdiction of OCO, ACT Ombudsman and EWO.

Reference number and date lodged

ACT-FOI related complaint

Approach linked to 2020-700118 and created on 30 January 2020 following conversation between Tom Newton (Early Res Team, CME) and Monda Scoltock (ACT Team).

Details of Complaint

Complainant previously contacted the ACT Ombudsman's Office about ActewAGL's advice to him that it is not subject to the FOI Act 2016 and its decision not to consider his request for information.

Intake (CME) informed the complainant that the matter is OoJ for the ACT Ombudsman. Complainant returned and advised that he believes the complaint is within the jurisdiction of the ACT Ombudsman, noting that he believes it is a prescribed authority within the meaning of the Ombudsman Act 1989 (noting his understanding that ActewAGL is part of a subsidiary of Icon Water Limited).

Desired Action or Outcome

As above

Steps taken to Resolve Complaint

As above

PCT Action

Tom Newton discussed matter with Monda Scoltock (ACT Team) on 30 January 2020 and agreed to create new approach and refer to ACT Team to consider whether any further actions by the ACT FOI Team are warranted / required.

Referred to Julie Le (ACT Team) for consideration

ISSUES

Issues

Cause

Outcome

Actions

Action	Contact	Assign To	Due Date	Completed By	Completed	Status	Time
Category Changed from 1 to 2	/	Newton, Thomas	31-Jan-20 11:54 AM	Newton, Thomas	30-Jan-20 11:54 AM	0	
Case Ownership Changed	/	Newton, Thomas	30-Jan-20 11:59 AM	Newton, Thomas	30-Jan-20 11:59 AM		
Assigned to 'Le, Julie' by 'Newton, Thomas'							
New Incoming Document Attached	/	Le, Julie	24-Feb-20 3:20 PM	Le, Julie	21-Feb-20 3:23 PM	0	
20200221 EMail 02.msg	02. Email received - advise from Energy and Water Ombudsman regarding their jurisdiction on this matter						
New Incoming Document Attached	/	Le, Julie	24-Feb-20 3:14 PM	Le, Julie	21-Feb-20 3:23 PM	0	
20200221 EMail 01.msg	01. Internal email - referral to ACT FOI team for consideration						

Case Closure /	Le, Julie	28-Feb-20 9:08 AM	Le, Julie	27-Feb-20 9:08 AM	0
New Incoming Document Attached /	Le, Julie	3-Mar-20 4:18 PM			0

20200302 EMail 01.msg 03. Email received - seeking additional advice and submitting FOI request for information our Office holds

Officer

Office:Canberra

External References

Filename	Comments
20200221 EMail 01.msg	01. Internal email - referral to ACT FOI team for consideration
20200221 EMail 02.msg	02. Email received - advise from Energy and Water Ombudsman regarding their jurisdiction on this matter
20200225 EMail 01.msg	02. Email sent - ACT FOI response to enquiry
Legal advice - ACT FOI - Jurisdiction of ActewAGL.pdf	01. Internal legal advise received from Legal team (Legal Advice – In Confidence)
20200302 EMail 01.msg	03. Email received - seeking additional advice and submitting FOI request for information our Office holds

Cross References

Case	Comments
2020-100133	Follow-up enquiry dealt with by ACT FOI team
2020-700118	

Additional Agency

Section ADD_AGENCY either doesnt exist or has no data or detail area properly defined

Closure Details

Closed On: 27-Feb-20 9:08 AM Closed By: Le, Julie

Security Level

50

Gregory Parkhurst

From: Ombudsman
Sent: Wednesday, 12 February 2020 10:13 AM
To: Julie Le
Cc: ACTFOI
Subject: FW: Commonwealth Ombudsman Complaint - 2020-700118 [REDACTED]
[SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Flagged

Hi team,

This relates to 2020-700118 and Resolve shows an internal briefing from Thomas N on 31 January 2020 indicating this was referred to the ACT FOI team.

Can I leave this with you?

Kind regards,

Caila Papadakis
Site Supervisor
COMMONWEALTH OMBUDSMAN
Phone: (03) 9667 2542
Email: caila.papadakis@ombudsman.gov.au
Website: ombudsman.gov.au



Influencing systemic improvement in public administration

From: [REDACTED]
Sent: Tuesday, 11 February 2020 6:04 PM
To: 'Ombudsman' <Ombudsman@ombudsman.gov.au>
Subject: RE: Commonwealth Ombudsman Complaint - 2020-700118 [REDACTED] [SEC=UNCLASSIFIED]

Dear Caila

I note I haven't received an acknowledgment nor reply to my email to you dated 17 January 2020.

Please advise me when I may expect to receive a reply.

Thank you

[REDACTED]

Dear Caila

Can you kindly confirm that your advisory includes the following consideration?

The *Ombudsman Act 1989*. In its Dictionary, on page 75, states that a prescribed authority includes:

(e) a territory-owned corporation or a subsidiary within the meaning of the Territory-owned Corporations Act 1990.

That is, have you made the connection that ACTEWAGL is part of a subsidiary of Icon Water Limited?

Regards

From: Ombudsman [<mailto:Ombudsman@ombudsman.gov.au>]
Sent: Thursday, 16 January, 2020 12:48 PM
To: [REDACTED]
Subject: Commonwealth Ombudsman Complaint - 2020-700118 [REDACTED] [SEC=UNCLASSIFIED]

Our ref: 2020-700118

Dear [REDACTED]

I refer to your email correspondence dated 16 January 2020 and your complaint about ActewAGL.

I apologise if our previous response to you did not address your questions.

Under the [Ombudsman Act 1989](#) (the Act), the ACT Ombudsman is authorised to investigate the actions of ACT Government agencies and prescribed authorities. A prescribed authority is defined on pages 74 and 75 of the Act. ACTEWAGL is not an agency or a prescribed authority within the meaning of the Act, the ACT Ombudsman cannot investigate complaints made about its actions.

We previously made a suggestion that you contact ACTEWAGL to seek further guidance in relation to your matter as we considered that it would be more suitably placed to provide you with a helpful referral. If this has not clarified your concerns, you may wish to consider seeking independent legal advice.

We are unable to assist you further with this matter.

Kind regards,

Caila P
Site Supervisor
ACT OMBUDSMAN
Phone: 1300 362 072
Website: ombudsman.act.gov.au



The Office of the Commonwealth Ombudsman acknowledges the traditional owners of country throughout Australia and their continuing connection to land, culture and community. We pay our respects to elders past and present.

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Gregory Parkhurst

From: Sean O'Connor
Sent: Monday, 17 February 2020 2:56 PM
To: Julie Le
Subject: FW: ACT Ombudsman - Seeking Energy and Water Ombudsman guidance [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Julie

ACAT has got back to me with their advice. It appears this might be OOJ for ACAT to consider as the Energy and Water Ombudsman. But please read below. If you would like follow-up on anything, let me know and I will follow-up with Allison.

Kind regards

Sean O'Connor
 Strategy Officer | ACT Strategy & FOI
 ACT OMBUDSMAN

From: ewcomplaints <ewcomplaints@act.gov.au>
Sent: Monday, 17 February 2020 12:48 PM
To: Sean O'Connor <Sean.OConnor@ombudsman.gov.au>
Subject: RE: ACT Ombudsman - Seeking Energy and Water Ombudsman guidance [SEC=UNCLASSIFIED]

UNCLASSIFIED

Good afternoon,

Our energy and water complaints sections jurisdiction is outlined in Part 12 of the Utilities Act 2000.

I have copied the table contained in section 172 of the Act which outlines ACAT's jurisdiction.

172 ACAT applications

A person (the complainant) mentioned in table 172, column 2 may apply to the ACAT in relation to a matter (the complaint) mentioned in column 3 in relation to the complainant.

column 1 item	column 2 complainant	column 3 complaint
1	consumer affected by contravention	contravention of customer contract, or customer retail contract or customer connection contract made under the <i>National Energy Retail Law (ACT)</i> , by a utility
2	consumer affected by contravention	contravention of an industry code dealing with utility service standards by a utility
3	consumer	a utility fails to provide a utility service to consumer or withdraws a utility service from consumer, and failure or withdrawal causes substantial hardship, or is likely to cause substantial hardship, to consumer
4	person affected by contravention	contravention of s 51 (Protection of personal information) by a utility

Document 09

column 1 item	column 2 complainant	column 3 complaint
5	person affected by contravention	contravention by a utility or a regulated utility of an obligation in relation to its network operations under this Act or the <i>Utilities (Technical Regulation) Act 2014</i>
6	person affected by act or omission	act or omission of an authorised person for a utility or regulated utility in relation to its network operations under this Act or the <i>Utilities (Technical Regulation) Act 2014</i>
7	person on whom charge imposed	capital contribution charge imposed under s 101

My recollection is that we have previously referred a lobby group who had a FOI complaint to seek advice from the ACT Ombudsman or from OAIC in relation to their FOI complaint as the lobby group did not fit the above criteria.

Kind regards,

Allison | Team Leader/Deputy Registrar | Energy & Water Section

Phone +61 2 6207 1740 | Fax + 61 2 6205 7739

ACT Civil and Administrative Tribunal

Level 4, 1 Moore Street, Canberra City 2601 | GPO Box 370 Canberra ACT 2601 | www.acat.gov.au

From: Taylor, Paul <Paul.Taylor@act.gov.au> **On Behalf Of** ACAT Tribunal

Sent: Monday, 17 February 2020 12:24 PM

To: ewcomplaints <ewcomplaints@act.gov.au>

Subject: FW: ACT Ombudsman - Seeking Energy and Water Ombudsman guidance [SEC=UNCLASSIFIED]

UNCLASSIFIED

From: Sean O'Connor <Sean.OConnor@ombudsman.gov.au>

Sent: Monday, 17 February 2020 11:39 AM

To: ACAT Tribunal <Tribunal@act.gov.au>

Subject: ACT Ombudsman - Seeking Energy and Water Ombudsman guidance [SEC=UNCLASSIFIED]

Good morning

We have received a complaint by someone in the ACT who has requested access to information from ActewAGL and they have refused to provide this information.

We have considered if this matter falls under the [ACT FOI Act](#) but ActewAGL appears outside of our jurisdiction.

We are wondering if a complaint about ActewAGL's refusal to provide information would be something you would consider in your role as the Energy and Water Ombudsman?

We just want to provide this person the correct pathway.

If you could please get back to me as soon as possible that would be fantastic.

Kind regards.

Sean O'Connor

Strategy Officer | ACT Strategy & FOI

ACT OMBUDSMAN

Phone: (02) 6276 3701

Email: sean.o'connor@ombudsman.gov.au

Website: <http://www.ombudsman.act.gov.au/>



I acknowledge the Traditional Custodians of the ACT. I acknowledge & respect their continuing culture and the contribution they make to the life of this city & region.



The Office of the Commonwealth Ombudsman acknowledges the traditional owners of country throughout Australia and their continuing connection to land, culture and community. We pay our respects to elders past and present.

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