

STANDING COMMITTEE ON CLIMATE CHANGE,
ENVIRONMENT AND WATER

Report on Annual and Financial Reports 2007–2008

MARCH 2009

Report 1

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Acknowledgments

The Committee thanks the Minister for Climate Change, Environment and Water, Mr Simon Corbell MLA, the ACT Commissioner for Sustainability and the Environment, Dr Maxine Cooper, and departmental and agency officers, for assisting the inquiry and for providing their time and expertise as witnesses at public hearings.

The Committee also thanks the Chief Executive of the Canberra Institute of Technology (CIT), Dr Colin Adrian, and CIT staff, for hosting the Committee's visit on 18 March 2009.

Resolution of Appointment

On 9 December 2008, the ACT Legislative Assembly agreed by resolution to establish general purpose standing committees to inquire into and report on matters referred to it by the Assembly or considered by the committee to be of concern to the community, including:

- (f) a **Standing Committee on Climate Change, Environment and Water** to examine matters related to climate change policy and programs, water and energy policy and programs, provision of water and energy services, conservation, environment and ecological sustainability.

The Assembly agreed that each standing committee can consider and make use of the evidence and records of the relevant standing committee appointed during the previous Assembly.¹

Terms of Reference

On 11 December 2008 the ACT Legislative Assembly referred the annual and financial reports for the calendar year 2008 and the financial year 2007–2008 to Assembly standing committees, in accordance with a schedule. The reports, and parts of reports, as presented to the Assembly pursuant to the *Annual Reports (Government Agencies) Act 2004*, referred to the Standing Committee on Climate Change, Environment and Water were:

- Office of the ACT Commissioner for Sustainability and the Environment
- Animal Welfare Authority
- Conservator of Flora and Fauna
- Environmental Protection Agency (sic)²

On 12 February 2009, the Assembly amended that resolution, and as a result, the following additional matters were referred to the Standing Committee on Climate Change, Environment and Water:

- Sustainability and environmental policy coordination
- Sustainability programs and projects

The former referrals of those parts of the annual and financial report of the Department of Territory and Municipal Services dealing with the Conservator of Flora and Fauna, and the Animal Welfare Authority, were withdrawn and referred to the Standing Committee on Planning, Public Works and Territory and Municipal Services.³

¹ Legislative Assembly for the ACT, *Minutes of Proceedings No 2*, 9 December 2008, pp15–18, accessible at <<http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP02.pdf>>

² *Minutes of Proceedings No 4*, 11 December 2008, pp47–50, accessible at <<http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP04.pdf>>

³ *Minutes of Proceedings No. 7*, 12 February 2009, pp88–89, accessible at <<http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP07.pdf>>

TABLE OF CONTENTS

Committee membership	i
Secretariat	i
Acknowledgments.....	i
Resolution of Appointment.....	ii
Terms of Reference.....	ii
RECOMMENDATIONS	V
1 INTRODUCTION	1
Purpose and intent of annual reports.....	2
2 CLIMATE CHANGE, ENERGY AND WATER ISSUES	3
Role of the Department of Environment, Climate Change, Energy and Water	3
Committee comments	5
Energy issues	6
Energy efficiency in government buildings	7
Operation of the Energy Efficiency Fund	8
Canberra Institute of Technology, Bruce Campus site visit.....	9
Committee comments	10
Feed-in tariff legislation	12
Solar farm	12
Water issues.....	13
Water security	13
Toilet Smart program	13
Bore licences	14
Water re-use	16
Environment grants and consultancies.....	16
3 ENVIRONMENT PROTECTION AUTHORITY	19
Complaints.....	19
Noise management.....	19
Summernats Car Festival	23
4 OFFICE OF THE COMMISSIONER FOR SUSTAINABILITY AND THE ENVIRONMENT	25
The role of Commissioner.....	25
Complaint resolution: Chifley – Gum tree.....	26
Committee comments	28
Operation of the <i>Tree Protection Act 2005</i> (ACT)	29
Lowland Native Grasslands Investigation.....	35
Implementation of Sustainable Transport Plan.....	35
Compliance with Annual Reports Directions	36
Legislative Assembly committee inquiries and reports.....	36

Assembly as 'client' or 'stakeholder'	39
State of the Environment Report 2007	39
Proposed nomination of the ACT as a UNESCO Biosphere Reserve	40
5 CONCLUSIONS	45
APPENDIX A: LIST OF WITNESSES	47
APPENDIX B: LEGISLATIVE ASSEMBLY COMMITTEE RECOMMENDATIONS	49
APPENDIX C: EXTRACT: THIRD INTERNATIONAL BIOSPHERE CONFERENCE AND FIELD TRIP REPORT	53
APPENDIX D: QUESTIONS TAKEN ON NOTICE AND SUPPLEMENTARY QUESTIONS	57

RECOMMENDATIONS

RECOMMENDATION 1

2.6 The Committee recommends that a network of ACT Government officials with responsibility for implementing sustainability initiatives in ACT Government agencies be convened, if one does not yet exist.

RECOMMENDATION 2

2.7 The Committee recommends that permission be sought from the Commonwealth's Government Agency Environmental Network (GAEN) for an ACT Government official to attend GAEN meetings as an observer.

RECOMMENDATION 3

2.8 The Committee recommends that the ACT Government consider hosting an initial meeting of a national network of state and territory representatives with responsibility for the sustainability of agency operations, with a view to establishing a virtual state and territory network on an ongoing basis.

RECOMMENDATION 4

2.25 The Committee recommends that the ACT Government consider whether the Energy Efficiency Fund currently supports the installation of video-conferencing facilities in selected ACT Government agencies as a greenhouse gas emission reduction measure, and if not, whether the program should be broadened to permit such use.

RECOMMENDATION 5

3.9 The Committee recommends that the Environment Protection Authority monitor air quality in residential areas close to 'burn out' events at the Summernats Car Festival and make that information publicly available.

RECOMMENDATION 6

4.17 The Committee recommends that staff in the Office of the ACT Commissioner for Sustainability and the Environment, and the ACT Planning and Land Authority, undertake training in the operation of the *Human Rights Act 2004* (ACT) and in particular, the potential role of the Act in relation to environmental issues, including tree management.

RECOMMENDATION 7

4.34 The Committee recommends that legal advice provided to the Department in 2008 concerning the operation of the Tree Protection Act be provided to the Committee.

RECOMMENDATION 8

4.39 The Committee recommends that the Auditor-General review the Department of Territory and Municipal Service's administration of the *Tree Protection Act 2005* (ACT).

RECOMMENDATION 9

4.40 The Committee recommends that in future annual and financial reports, the Department of Territory and Municipal Services provide accurate analyses of its performance, including variances and performance shortfalls.

RECOMMENDATION 10

4.41 The Committee recommends that the Minister for Territory and Municipal Services develop a communications strategy for the *Tree Protection Act 2005* (ACT) so that the statutory objectives of the scheme can be better met.

RECOMMENDATION 11

4.42 The Committee recommends that future declarations and maps showing built up urban areas and tree management precincts under the Tree Protection Act include sufficient information to enable householders to identify the status of their suburb.

RECOMMENDATION 12

4.49 The Committee is of the view that the use of public transport, and ACTION bus services in particular, should be encouraged, consistent with the Sustainable Transport Plan for the ACT.

RECOMMENDATION 13

4.53 The Committee recommends that in future annual reports, the Office of the ACT Commissioner for Sustainability and the Environment comply with the Chief Minister's Annual Report Directions concerning the reporting of Legislative Assembly committee inquiries and reports.

RECOMMENDATION 14

4.58 The Committee recommends that if the role and functions of the Office of the ACT Commissioner for Sustainability and the Environment are

expanded, that adequate resources are provided to enable the Office to perform its functions.

RECOMMENDATION 15

4.63 The Committee recommends that if the Minister for the Environment, Water and Climate Change cannot table the Government's response to the ACT Commissioner for Sustainability and the Environment's State of the Environment Report in the March 24–26 sitting, he explain to the Assembly during that sitting why the response has been delayed.

RECOMMENDATION 16

4.69 The Committee is of the view that it would be beneficial, in relation to further consideration of the proposed nomination of the ACT as a UNESCO Biosphere Reserve, for the Office of the Commissioner for Sustainability and the Environment to hold a stakeholder forum on 5 June 2009 (World Environment Day), to further discuss with a wide range of stakeholders the proposed nomination of the ACT as a UNESCO Biosphere Reserve.

RECOMMENDATION 17

4.73 The Committee recommends that the Minister for the Environment, Climate Change and Water table in the Legislative Assembly during the May sitting period, the ACT Government's response to the report of the former Standing Committee on Planning and Environment in relation to the proposed nomination of the ACT as a UNESCO Biosphere Reserve (Report 30, Sixth Assembly).

RECOMMENDATION 18

4.74 The Committee recommends that the Minister for the Environment, Water and Climate Change table in the Legislative Assembly an ACT Government response to the report entitled *Third International Biosphere Conference and Field Trips Report (Spain, Canada, USA)*, at the same time as it tables its response to the report of the former Standing Committee on Planning and Environment on the proposed nomination of the ACT as a UNESCO Biosphere Reserve (Report 30, Sixth Assembly).

1 INTRODUCTION

- 1.1 On 11 December 2008 the ACT Government's annual and financial reports for 2007–2008 were tabled in the ACT Legislative Assembly and referred to standing committees for inquiry and report. As noted in the terms of reference on page ii, the referral was amended on 12 February 2009.
- 1.2 The Standing Committee on Climate Change, Environment and Water considered the following reports for this inquiry:
 - the annual report of the Office of the ACT Commissioner for Sustainability and the Environment for 2007–08; and the
 - Environmental Protection Authority.

The Committee also considered those parts of the annual and financial report 2007–08 lodged for the Department of Territory and Municipal Services that dealt with sustainability and environmental policy coordination, and sustainability programs and projects
- 1.3 To assist with the assessment process, and to clarify issues, the Committee held public hearings on 5 and 18 February 2009, and visited the Bruce campus of the Canberra Institute of Technology on 18 March 2009. Mrs Vicki Dunne MLA participated in the public hearings for this inquiry, alongside the members of the Climate Change, Environment and Water Committee. The list of witnesses who met with the Committee is at Appendix A.
- 1.4 This report presents the Committee's assessment of issues raised in the reports, and parts of reports referred, focusing particularly on some of the matters discussed during the Committee's public hearings for this inquiry. This report does not summarise each issue discussed at the hearings however. Full transcripts of the evidence taken by the Committee can be accessed via the Legislative Assembly's website,⁴ or by contacting the Assembly Committee Office.

⁴ <<http://www.hansard.act.gov.au/hansard/2009/comms/default.htm>>

Purpose and intent of annual reports

- 1.5 The 2007–10 *Chief Minister's Annual Reports Directions*⁵ sets out agency reporting requirements for annual and financial reports. Annual and financial reports are key accountability documents concerning management performance. They reflect on the agencies' performance, achievements and outcomes for the reporting year. They are also a concise way of accounting for the expenditure of public monies.
- 1.6 Agencies account for management performance through Ministers to the Legislative Assembly and the wider community. Since annual reports are tabled in the Assembly, they are historical documents on the public record, and are available for use by stakeholders, including educational and research institutions, the media and the public. Annual and financial reports are also key reference documents, and documents for internal management.⁶
- 1.7 The inquiry process provides an opportunity for Assembly Members to seek clarification about issues raised in annual reports.
- 1.8 Other stakeholders may also review agency annual reports. For example, the Institute of Public Administration (ACT Division) runs an Annual Reports Awards competition which tests submitted annual reports for their accountability, transparency, and quality, and which reviews the content, presentation, tone and overall effectiveness of the report.⁷

⁵ Chief Minister's Department, *Chief Minister's Annual Report Directions 2007–2010*, <http://www.cmd.act.gov.au/__data/assets/pdf_file/0003/2793/annual_report_directions07-10.pdf>

⁶ *Chief Minister's 2007–2010 Annual Report Directions*, p3

⁷ see the Institute of Public Administration Australia website <<http://www.act.ipaa.org.au/>>

2 CLIMATE CHANGE, ENERGY AND WATER ISSUES

Role of the Department of Environment, Climate Change, Energy and Water

- 2.1 The Committee's public hearing on 5 February 2009 included an explanation of the mechanics of establishing the new Department of the Environment, Climate Change, Energy and Water, and its role. The key points included that:
- the role of the Department is to meet the challenge of climate change for the Territory; to help ensure that Canberra becomes fully sustainable; to stimulate the 'green economy'; to encourage innovation and investment in renewable energy; to protect the Territory's environment and water resources through policy development, and to help Canberra become the 'solar capital' of Australia;
 - the Department would have a central agency role in 'driving a greater focus by other government agencies' to deliver sustainability outcomes. The Department would set whole-of-government directions;
 - the Department would be formally established from 1 March 2009, with a staff complement of 89.8FTEs, including 16 additional staff recruited following provision of 2008 appropriation funding;
 - the Department expected to receive \$10.4 million in appropriated funds over four years, to enable the discharge of its functions. \$2 million had been transferred under section 16 of the *Financial Management Act* to establish the Department, with the Department of Territory and Municipal Services assisting with transitional account management. Commonwealth program funding would also be provided to the Department;
 - \$100,000 was appropriated to cover the capital cost of refurbishing the Macarthur House Annexe, where the Department would be located, to create an office for the Chief Executive;
 - \$1.6 million was appropriated to cover the cost of the relocation of part of

the ACT Department of Education and Training to 220 Northbourne Avenue;⁸ and

- branches and teams from the Department of Territory and Municipal Services had been moved across to the Department, including sustainability and environment policy coordination; environment protection (excluding trees and heritage and the Conservator of Flora and Fauna); sustainability programs and projects (excluding the NOWaste area); and the energy efficiency projects team. The new department also has a ministerial and corporate branch; strategic finance area; and the office of the chief executive, which includes the chief executive, an executive assistant and an executive officer; and
- the Department is establishing its governance infrastructure including business plans.⁹

2.2 The Minister advised that a decision had been taken to retain land management within a single agency, and Parks Conservation and Lands would remain with the Department of Territory and Municipal Services. This arrangement was intended to avoid confusion about custodianship responsibilities, and allowed for a more uniform approach to be taken on issues such as fire fuel and conservation management.¹⁰ The new department was committed to maintaining the good working relationship that it enjoyed with the Department of Territory and Municipal Services, and would endeavour to negotiate and state each department's recommended positions in ministerial briefs.

⁸ In the December 2008 supplementary appropriation, the Department of Environment, Climate Change, Energy and Water, and the Office of Commissioner for Sustainability and the Environment, were appropriated \$1 987 000 for the net cost of providing outputs, and \$100 000 as a capital injection: *Appropriation Act 2008–2009 (No 2)*

⁹ As announced by media release: Simon Corbell MLA (2008), 'Media Release: New Climate Change Department gets priority funding', 9 December 2008; Legislative Assembly for the Australian Capital Territory (2009), Standing Committee on Climate Change, Environment and Water, *Transcript of Evidence*, 5 February 2009, pp1-2, 4, 13, 36–39, accessible at <http://www.hansard.act.gov.au/hansard/2009/comms/default.htm>

¹⁰ *Transcript of Evidence*, 5 February 2009, p4

Committee comments

- 2.3 The ACT Government released its progress report on the implementation of its *Weathering the Change: ACT Climate Change Strategy* in July 2008. That report said that a consultant was developing guidelines for agencies' Sustainability Action Plans to promote carbon neutrality in government buildings and agency operations.
- 2.4 The Committee is aware that at the Commonwealth level, a Government Agency Environmental Network (GAEN) meets to discuss progress in Commonwealth sustainability in its operations, including energy efficiency. GAEN discusses 'green' buildings, environment management systems, 'green' procurement and sustainable office management, 'green' information technology, stakeholder engagement and national policy development and reporting. The Australian National Audit Office has noted that the group 'is assisting to accelerate the dissemination of innovation and good practice throughout the public sector'.¹¹
- 2.5 The Committee is not aware of an equivalent network amongst ACT Government agencies, and has been advised that the GAEN has not had an ACT Government official attend its meetings. A spokesperson said that the GAEN had grown very large, and that it had encouraged the Department of Environment, Water, Heritage and the Arts, without success, to form a similar network for state and territory government agencies. The secretariat advised that the GAEN would be willing to have an ACT Government representative attend GAEN meetings as an observer.¹²

RECOMMENDATION 1

- 2.6 **The Committee recommends that a network of ACT Government officials with responsibility for implementing sustainability initiatives in ACT Government agencies be convened, if one does not yet exist.**

¹¹ Australian National Audit Office (2009), *ANAO Audit Report No 25 2008–09: Green Office Procurement and Sustainable Office Management*, Canberra, p51

¹² Personal communication, G. Derham, Assistant Director, Climate Change and Sustainable Development, Department of Defence, 24 February 2009

RECOMMENDATION 2

- 2.7 **The Committee recommends that permission be sought from the Commonwealth's Government Agency Environmental Network (GAEN) for an ACT Government official to attend GAEN meetings as an observer.**

RECOMMENDATION 3

- 2.8 **The Committee recommends that the ACT Government consider hosting an initial meeting of a national network of state and territory representatives with responsibility for the sustainability of agency operations, with a view to establishing a virtual state and territory network on an ongoing basis.**

Energy issues

- 2.9 Policy and program development in relation to energy efficiency is a key issue in the ACT Labor–ACT Greens' October 2008 Parliamentary Agreement for the Seventh Assembly. Commitments include to:
- legislate a greenhouse gas reduction target for the ACT, following an inquiry by this Climate Change Committee;
 - call for expressions of interest by the end of 2008 for the development of a renewable energy plant capable of producing sufficient power for at least 10,000 Canberra homes, and provide at least \$30 million in assistance in 2009–10 budget to ensure the development of the plant;
 - provide an energy efficient makeover for Canberra households, so that within 10 years all houses rated lower than 3 stars for energy efficiency would be at least 3 stars;
 - provide \$500,000 to assist leveraging Commonwealth funding and facilitating participation by ACT house owners in energy efficiency improvements;
 - adopt a timetable for the purchase of 100% renewable electricity by the ACT Government, with the present level of 23% being raised to 30% immediately, with 10% increases each subsequent year;
 - development of an energy policy for the ACT that is consistent with the legislated greenhouse gas emissions target, and which includes a renewable

energy target of at least 15% by 2012, and 25% by 2020. A draft interim energy policy was to be issued in December 2008, with a final policy completed by December 2009;

- mandate passive solar orientation for all new residential homes and subdivisions, and legislating for improved solar access rights; and
- ensure that the Solar Feed-in Tariff is implemented as fast as possible in advance of the legislated timetable, and by 1 March 2009 at the latest.¹³

2.10 Minister Corbell's office advised that the draft Interim Energy Policy would be released for public comment in the first quarter of 2009. Further work on the draft policy needed to be done to take account of the Commonwealth's Carbon Pollution Reduction Scheme, announced in December 2008, and to incorporate additional and broader actions aimed at achieving carbon neutrality across the Territory. Cabinet also had to consider the policy, and public consultation had to occur.¹⁴

Energy efficiency in government buildings

- 2.11 In response to a question regarding reductions in energy and water use in government buildings, the Minister advised that section 158A of the *Environment Protection Act 1997* requires ACT Government agencies to report on ecologically sustainable development in their annual report. That section requires agencies to report on the impact of their activities on the environment; the actions taken to minimise that impact; and mechanisms for reviewing and increasing the effectiveness of those measures.¹⁵
- 2.12 Mr Corbell advised that agencies are required to, and were provided with training to enable them to enter their resource-use data into the web-based data collection tool called the On-line System for Comprehensive Activity Reporting (OSCAR). OSCAR enables reporting against 20 quantitative indicators (including transport, stationary energy, electricity, natural gas,

¹³ accessible at <<http://www.actlabor.com.au/Documents/Documents/alp-greens-agreement.pdf>>

¹⁴ M. Boogs, Chief of staff, Office of Minister Corbell MLA (2009), email communication dated 10 February 2009

¹⁵ Minister for the Environment, Climate Change and Water, Simon Corbell MLA, Response from to question taken on notice, 'Reductions in energy and water use in government buildings', 20 February 2009

transport and energy, fuel sales, waste, industrial processes, water use, greenhouse and waste, agriculture and forestry).¹⁶

- 2.13 The OSCAR database had been developed for use within the former Australian Greenhouse Office's Greenhouse Challenge program, and for reporting under the National Pollutant Inventory. It standardises the calculation of greenhouse gas emissions to produce comparable data sets regarding environmental performance for whole industry and government sectors. OSCAR stores all the necessary conversion factors to automatically convert energy, fuel, waste and materials consumption data into greenhouse gas emissions in quantities of carbon dioxide equivalent (CO₂e).
- 2.14 The Minister advised that 2007–08 was the first reporting year for ACT Government agencies under OSCAR, providing the basis for comparison in future.¹⁷

Operation of the Energy Efficiency Fund

- 2.15 Minister Corbell advised that the ACT Government was placing a high priority on energy issues in the face of increasing environmental pressures and climate change, and following the change of government at Commonwealth level.¹⁸
- 2.16 During the first year of its *Weathering the Change: ACT Climate Change Strategy*, the government had established a \$1 million revolving, interest-free Energy Efficiency Loan Fund to enable government agencies (other than ACT Schools and ACT Housing) to access funds to make energy efficiency improvements in their operations. Loans could be approved for works that 'deliver measurable savings in energy use and/or significant reductions in agency greenhouse gas emissions; and generate sufficient

¹⁶ *Transcript of Evidence*, 5 February 2009, p32

¹⁷ Minister for the Environment, Climate Change and Water, Response to question taken on notice, 'Reductions in energy and water use in government buildings', 20 February 2009

¹⁸ *Transcript of Evidence*, 5 February 2009, p2

savings to repay the loan amount in no more than 3 years.¹⁹

- 2.17 Only three applications to the fund had been made by government agencies during the 2007–08 reporting year, totalling about \$138,000. The CIT had been provided with \$113,000 for co-generation, solar hot water and system upgrades. Bruce Stadium had sought \$15,000 for energy audits. ‘Extensive’ audits were also being undertaken at the Canberra Stadium and Manuka oval, with a view to possible later upgrades.²⁰

Canberra Institute of Technology, Bruce Campus site visit

- 2.18 The Committee accepted an invitation to visit the Canberra Institute of Technology’s Bruce campus, to see the on-ground impact of the operation of the Energy Efficiency Fund, and other sustainability initiatives. The site visit occurred on 18 March 2009.
- 2.19 The CIT had drawn down funds from the ACT Government’s Energy Efficiency Loan Fund for:
- connecting the building heating reticulation pipe system to the gas co-generation plant, and
 - installing a solar hot water collection system and storage tank which replaced the mains-electricity supplied hot water system.
- 2.20 The Committee was shown the CIT’s building monitoring systems and metering equipment for monitoring energy usage, and reducing energy consumption. Energy usage for 2007 was down 1.5 per cent from 2006, and natural gas consumption was down 11 per cent from 2006. The CIT attributed this to having connected their building heating reticulation pipe system to the gas co-generation plant, and the installation of a solar hot water collection system and storage tank. This had replaced the mains-electricity supplied hot water system.

¹⁹ Department of Territory and Municipal Services, ‘Energy Efficiency Fund – Operating Framework’, accessible at
http://www.tams.act.gov.au/live/sustainability_programs_and_projects/climate/current_act_initiatives/energy_efficiency_fund

²⁰ *Transcript of Evidence*, 5 February 2009, p9

- 2.21 The CIT also advised the Committee that in 2010, new purpose built horticulture facilities at the Bruce Campus would demonstrate use of the state-of-the-art, water efficient plantings, efficient water management and recycling processes, and carbon neutrality. The horticultural facility would collect and divert storm water run-off into a large retention pond; would have its new buildings sited so that in future they could use solar power, and that low energy lighting would be installed throughout.

Committee comments

- 2.22 The Committee was impressed with the sustainability improvements made to the Bruce CIT campus, and its sustainability training initiatives, and it will discuss these in more detail in its report on ACT greenhouse gas reduction targets for the ACT. The Committee notes in the context of this inquiry, that applications to the Energy Efficiency Fund have been few, considering that buildings provide many opportunities for energy efficiency gains.
- 2.23 The ACT 2007 State of the Environment Report says that nearly 73% of the Territory's greenhouse gas emissions are generated by stationary energy consumption for heating, cooling and powering buildings, followed by 22.8% from transport fuels.²¹ The Intergovernmental Panel on Climate Change's 4th Assessment Report also identified buildings as having the single largest potential of any sector to reduce projected emissions, at nearly 30% by 2020. Other reports estimate that significant emissions and cost savings can be delivered through sustainability reforms in the building sector.²² The Committee will also explore this issue more fully in its report on ACT greenhouse gas emission reduction targets.
- 2.24 As a preliminary comment however, the Committee considers that it may be beneficial if the Fund could be used for the installation of video-conferencing facilities in government departments and agencies. In the Committee's view, if video conferencing and audio technologies were more

²¹ The 2007 ACT State of the Environment Report greenhouse gas emissions indicator is accessible at <http://www.envcomm.act.gov.au/soe/2007actreport/indicators07/greenhouse07>

²² Australian National Audit Office (2009), *ANAO Audit Report No 25 2008–09: Green Office Procurement and Sustainable Office Management*, Canberra, p111 and the reports cited therein

commonly used for communicating, including for meetings and conferences, significant amounts of greenhouse gas emissions and travel expenses might be saved.

RECOMMENDATION 4

- 2.25 **The Committee recommends that the ACT Government consider whether the Energy Efficiency Fund currently supports the installation of video-conferencing facilities in selected ACT Government agencies as a greenhouse gas emission reduction measure, and if not, whether the program should be broadened to permit such use.**

Energy efficiency in public and private housing

- 2.26 Minister Corbell advised the Committee that the ACT Government had committed \$20 million over 10 years to encourage energy efficiency improvements in government housing.
- 2.27 The Water and Energy Savings in the Territory program (the WEST program) also assists low-income earners and pensioners to cut energy and water use and upgrade their living property. Under that program, public housing tenants agree to an audit, following which advice is provided on how the house could become more energy and cost efficient through improvements such as better curtains and blinds, external shading, draft excluders, weather seals, low-flow showerheads, efficient hot-water systems and improved wall and ceiling insulation.²³
- 2.28 In response to a question taken on notice, the Minister advised that the WEST program involves interventions in the households of clients of the Energy and Water Consumer Council (EWCC),²⁴ to reduce those households' energy and water consumption and costs. The program provides a domestic energy audit, household education, and some minor refit work (usually replacement shower heads, light bulbs and window coverings, and draught reduction).

²³ *Transcript of Evidence*, 5 February 2009, p2

²⁴ previously the ACT Essential Services Consumer (ESCC)

- 2.29 The Minister advised that the program operates as a partnership between the EWCC; the YWCA (as project manager); Energy Strategies Pty Ltd (as commercial technical specialists); and Government funding partners including Housing ACT, the ACT Department of the Environment, Climate Change, Energy and Water, and the Commonwealth Department of Environment, Water, Heritage and the Arts.
- 2.30 Since the program began in 2003, it has worked with about 60 low-income households that the ESCC had referred each year.²⁵
- 2.31 In relation to the ACT Energy Wise and Home Energy Advice Team programs which provide energy audits in homes, the Minister advised the Committee that a company called Energy Strategies had been selected as the preferred tenderer through an open tender process in 2006. That contract was extended during 2007–08 through a Letter of Agreement, in accordance with ACT procurement policies and guidelines. Other companies had not been asked to tender, as the select tender process involved an extension of an existing contract.²⁶

Feed-in tariff legislation

- 2.32 Minister Corbell describes the feed-in tariff legislation as ‘the most advanced feed-in tariff scheme in the country’, and expected that it would commence operation by 1 March 2009.²⁷

Solar farm

- 2.33 Minister Corbell provided an update to the Committee on the Government’s tender process for the proposed ACT solar farm. The farm is intended to provide power to at least 10,000 homes. The project was being administered out of the Chief Minister’s Department so as to maintain continuity in the project and prevent delays arising from staffing issues. The relevant area within the Chief Minister’s Department was reporting to

²⁵ Minister for the Environment, Climate Change and Water, Response to question taken on notice, ‘WEST Program’, 20 February 2009

²⁶ Minister for the Environment, Climate Change and Water, Response to question taken on notice, ‘Energy Strategies’, 20 February 2009

²⁷ *Transcript of Evidence*, 5 February 2009, p3

Minister Corbell and advising him on progress.

- 2.34 Minister Corbell said that a first stage expression of interest process in February 2009 would involve a detailed consultation with potential project proponents. The Government would advise that it was prepared to provide assistance, in a form to be negotiated, to the value of about \$30 million. The Government would consider the solar technologies proposed in the tender process, and not restrict the range.
- 2.35 The formal documentation for the request for tender would be provided to industry following the initial consultations (probably before the end of June 2009), and after the initial consultation was complete. The Government had not selected preferred sites for the farm.²⁸

Water issues

Water security

- 2.36 Minister Corbell advised the Committee that the ACT Government had announced a range of water security measures, including the enlargement of the Cotter Dam from four to 78 gegalitres. The Minister expected that decisions would be made during 2009 on two water projects, following an investigation of the installation of infrastructure to increase the volume of water transferred from the Murrumbidgee River to the Googong Dam, and whether water might be purchased from the Tantangara Dam.
- 2.37 No ACT Government decision had been taken in relation to whether or not to approve the next stage of a demonstration water purification plant, but a decision would be made 'in due course'.²⁹

Toilet Smart program

- 2.38 Minister Corbell advised the Committee that the ACT Government's Toilet Smart program had assisted with the replacement of 2,200 single-flush toilets in 2008, and the target to June 2009 was a replacement of another

²⁸ *Transcript of Evidence*, 5 February 2009, pp7–8

²⁹ *Transcript of Evidence*, 5 February 2009, p14

2,000 single-flush toilets.

- 2.39 The program provides a \$100 rebate to householders upgrading to more water efficient toilets. Savings of about seven or eight litres of water per full flush, or savings of about 36,000 litres per year are expected with each upgrade. Pensioner concession card holders can have their toilet replaced for free. Accredited master plumbers are authorised to access the program, which uses toilets ranging in price from \$390 to \$898. The rebate is \$100 irrespective of the type of toilet installed.³⁰

Bore licences

- 2.40 In response to questions from Mr Seselja MLA, the Minister for the Environment, Climate Change and Water provided information about the issuance of bore licences in the ACT since 1998.
- 2.41 During 2007, 408 ML of groundwater was extracted through bores. Data on extraction during 2008 was not yet available. Licences to extract groundwater had been issued to the Arboretum on 27 December 2006 and the Alexander Maconochie Centre on 28 November 2007.
- 2.42 Mr Corbell advised that 58 licences to extract groundwater from urban residential leases had been issued between 1998 and 2005, but that a moratorium on new groundwater use was imposed in August 2005. The *Water Resources Act 2007* had later prohibited the issue of new licences to extract groundwater from urban residential leases.
- 2.43 Mr Corbell MLA advised that 148 licences permitted the extraction of groundwater, as indicated in Table 1.³¹

³⁰.*Transcript of Evidence*, 5 February 2009, pp10–11

³¹ Minister for the Environment, Climate Change and Water, Response to question taken on notice, 'Water Management – Bore Licences', 20 February 2009

Table 1: The location, type and volumes of groundwater extraction:

Water Management Area	Type/Use	Number	Min volume ML	Max volume ML
Central Molonglo	Urban residential	54	0.5	2
	Rural	25	1	33
	Parks and Sports Grounds	14	1	12
	Commercial	4	2	81
Ginninderra	Urban residential	2	0.5	2
	Rural	2	0.5	10
	Commercial	4	0.5	16
Gudgenby	Rural	6	4	5
Lower Molonglo	Urban residential	2	0.5	1
	Rural	4	2	28
	Parks and Sports Grounds	4	1	6
	Commercial	2	7	149
Naas	Rural	1		2
Paddy's	Rural	3	1	13
Tuggeranong	Rural	2	0.5	2
	Parks and Sports Grounds	1		30
	Commercial	1		15
Upper Murrumbidgee	Rural	16	2	12
	Parks and Sports Grounds	1		8

- 2.44 Minister Corbell advised that all applications for water use, both surface and groundwater, were assessed against the criteria in the *Water Resources Act 2007*. Applicants are required to hold a Water Access Entitlement (water right) for the appropriate Water Management Area, the amount of water to be taken must be reasonable, and the intended use must be consistent with the Territory Plan. Applicants must also have lawful access

to extraction site, which must not be an urban residential block.³²

Water re-use

2.45 The Minister also advised that the Canberra International Airport had entered into an Environment Protection Agreement with the Environment Protection Authority for the re-use of treated effluent at the Airport in toilets, air-cooling towers and for irrigation. The Agreement is in accordance with Water Reuse for Irrigation Environment Protection Policy (1999) which was developed in consultation with ACT Health. The treatment plant is still in the commissioning phase and is not yet fully operational.³³

Environment grants and consultancies

2.46 Mr Seselja MLA asked the Minister for the Environment, Climate Change and Water to provide details about a couple of ACT Environment Grants issued in 2007–08. The information provided in response³⁴ was that:

- The Concerned Residents for West Kambah Inc (CROWK), a community group which aims to develop a more sustainable local community, had received an ACT Environment Grant of \$17,280 in the 2007–08 funding round. The funding was for six community meetings. Minister Corbell provided details of the budget for the project. This was as indicated in Table 2.

Table 2: CROWK project budget:

Item	ACT Environment Grant \$	Other Contributions \$	Total
Program planning	0	1,200	1,200
Equipment Hire (inc all weather display boards)	6,000	2,400	8,400
Professional design assistance	0	1,280	1,280

³² Minister for the Environment, Climate Change and Water, Response to question taken on notice, 'Water Management – Bore Licences', 20 February 2009

³³ Minister for the Environment, Climate Change and Water, Response to question taken on notice, 'Environment Protection Agreement', 20 February 2009

³⁴ Minister for the Environment, Climate Change and Water, Response to question taken on notice, 'Environment Grants', 20 February 2009

Printing	1,900	2,000	3,900
Project coordination (48hrs @ \$20/hr)	1,000	0	1,000
Office administration expenses	1,500	1,200	2,700
Catering	1,080	120	1,200
Advertising	3,580	1,500	5,080
Professional Facilitator	0	4,000	4,000
Event organisation by volunteers	0	1,800	1,800
Project summary forum	1,020	2,400	3,420
Final report preparation and distribution	1,200	0	1,200
	17,280	17,900	35,180

- The Australian Network for Plant Conservation Inc (ANPC) received an ACT Environment Grant of \$14,035 in the 2007–08 funding round to convene workshops on 22 and 23 November 2007 to identify plants of grassy ecosystems in the ACT region. 172 participants worked with over 20 specialist botanists to learn more about identifying plants in the nationally threatened grassy ecosystems in the ACT. Minister Corbell advised that expenditure on the project was as in [Table 3](#).

Table 3: ANPC project budget

Item	ACT Environment Grant \$	Other Contributions \$	Total
Salaries and administrative support	5,000	5,000	10,000
Promotional materials	61	0	61
Communications	0	500	500
Equipment hire	368	0	368
Vehicle hire	2,000	0	2,000
Catering	2,700	2,298	4,998
Printing	0	300	300
Specialist tutors	2,800	7,500	10,300
Project evaluation and	500	700	1,200

18 STANDING COMMITTEE ON CLIMATE CHANGE, ENVIRONMENT AND WATER

reporting			
Field equipment and consumables	606	840	1,446
	14,035	17,138	31,173

3 ENVIRONMENT PROTECTION AUTHORITY

- 3.1 The annual report of the Environment Protection Authority is an annexed report in the Department of Territory and Municipal Services' Annual Report 2007–08.³⁵

Complaints

Noise management

- 3.2 The Committee notes that on 25 February 2009 the Assembly referred to the Standing Committee on Planning, Public Works and Territory and Municipal Services a new inquiry on live music and events. The inquiry's terms of reference provide for a review of occupancy legislation, options to encourage the provision of community bollards for bill posters in town and group centres, and how building codes for residential and business development in commercial zones could be amended to ensure sound insulation and physical security are appropriate to co-location with live cultural events. The reporting date for the inquiry is the first sitting day in October 2009. In view of this inquiry, this Committee decided not to make substantive comment in relation to the information it sought from Minister Corbell regarding noise complaints. The Committee does, however, provide the information received below.
- 3.3 Noise management has been an issue of multiple stakeholder concern, particularly in the district of Canberra Central.³⁶ In response to a question, Minister Corbell advised that during the reporting year 2007–08, a total of 1389 complaints had been made in relation to 286 separate incidents. Table 4 provides details on the noise complaints by district.

³⁵ Vol 1, pp226–232

³⁶ Districts in the ACT are established pursuant to the operation of the *Districts Act 2002 (ACT)*.

Table 4: Initial noise complaints by district

Incident Type	Number	District
air conditioner/fans/heaters noise	6	Belconnen
air conditioner/fans/heaters noise	10	Canberra Central
air conditioner/fans/heaters noise	3	Gungahlin
air conditioner/fans/heaters noise	4	Tuggeranong
air conditioner/fans/heaters noise	1	Weston Creek
air conditioner/fans/heaters noise	4	Woden Valley
alarms noise	1	Gungahlin
alarms noise	1	Tuggeranong
amplified music noise	34	Belconnen
amplified music noise	34	Canberra Central
amplified music noise	25	Gungahlin
amplified music noise	2	Jerrabomberra
amplified music noise	50	Tuggeranong
amplified music noise	4	Weston Creek
amplified music noise	9	Woden Valley
building work noise	2	Other
building work noise	8	Belconnen
building work noise	20	Canberra Central
building work noise	3	Gungahlin
building work noise	1	Jerrabomberra
building work noise	5	Tuggeranong
building work noise	3	Weston Creek
building work noise	1	Woden Valley
garden maintenance or improvement noise	2	Belconnen
garden maintenance or improvement noise	2	Canberra Central
garden maintenance or improvement noise	2	Gungahlin

garden maintenance or improvement noise	1	Tuggeranong
noise others*	1	Ridgeway Qbn
noise others*	10	Belconnen
noise others*	15	Canberra Central
noise others*	4	Gungahlin
noise others*	1	Jerrabomberra
noise others*	1	Majura
noise others*	12	Tuggeranong
noise others*	2	Weston Creek
noise others*	2	Woden Valley
total initial complaints	286	

- 3.4 Minister Corbell advised that 19 infringement notices had been issued between 1 July 2007 and 30 June 2008. In addition, six final notices had been issued in relation to infringement notices that had not been paid within the statutory time period. Most notices related to excessive noise and water pollution emanating from building sites, and nine noise and eight water first notices had been issued. There was one air related notice in relation to illegal burning off, and a Lakes notice had been issued in relation to the illegal use of the water ski area at Molonglo Reach.
- 3.5 Two environment protection orders had been issued during the reporting year for ongoing breaches of the noise zone standard: one to the Venue nightclub in Erindale and one for an air conditioner in Hughes.³⁷
- 3.6 Table 5 provides information about the types of noise complaint received by suburb for the Canberra Central District, which includes the City. Only initial complaints are reported, rather than each complaint received, as many initial complaints result in subsequent complaints.

³⁷ Minister for the Environment, Climate Change and Water, Response to question taken on notice, 'Enforcement activities', 20 February 2009

Table 5: Initial Noise Complaints Canberra Central

Incident Type	Number	Suburb
air conditioner/fans/heaters noise	2	City
air conditioner/fans/heaters noise	1	Deakin
air conditioner/fans/heaters noise	1	Forrest
air conditioner/fans/heaters noise	1	Fyshwick
air conditioner/fans/heaters noise	1	Griffith
air conditioner/fans/heaters noise	1	Red Hill
air conditioner/fans/heaters noise	2	Watson
air conditioner/fans/heaters noise	1	Yarralumla
amplified music noise	4	Ainslie
amplified music noise	1	Barton
amplified music noise	5	Braddon
amplified music noise	2	City
amplified music noise	1	Deakin
amplified music noise	1	Dickson
amplified music noise	2	Downer
amplified music noise	1	Griffith
amplified music noise	1	Hackett
amplified music noise	1	Kingston
amplified music noise	3	Lyneham
amplified music noise	2	Narrabundah
amplified music noise	4	O'connor
amplified music noise	1	Parkes
amplified music noise	3	Turner
amplified music noise	2	Watson
building work noise	2	Braddon
building work noise	1	Campbell
building work noise	3	City

building work noise	1	Downer
building work noise	1	Forrest
building work noise	2	Griffith
building work noise	5	Kingston
building work noise	1	Narrabundah
building work noise	1	O'connor
building work noise	1	Red Hill
building work noise	2	Watson
garden maintenance or improvement noise	1	Kingston
garden maintenance or improvement noise	1	Lyneham
noise others	1	Ainslie
noise others	1	Barton
noise others	2	Braddon
noise others ³⁸	1	City
noise others	3	Deakin
noise others	2	Dickson
noise others	1	Downer
noise others	1	Kingston
noise others	1	Lyneham
noise others	1	Narrabundah
noise others	1	Yarralumla

Summernats Car Festival

- 3.7 The Committee was advised that in relation to Summernats Car Festival in 2009, the ACT Government had received eight complaints – six related to noise and two related to air quality. The Committee was advised that there was no ACT air quality standard applicable to occasional smoke from

³⁸ One of the 15 'Noise Other' complaints in Canberra Central, one related to the use of a commercial street sweeping machine

‘burn-outs’ at the festival.³⁹

- 3.8 The Committee notes however, that the National Environment Protection Measure for Ambient Air Quality (Air NEPM) specifies standards and goals for ambient levels of its criteria air pollutants, i.e. carbon monoxide, nitrogen dioxide, photochemical oxidants (as ozone), sulphur dioxide, and lead and particles (as PM10), and that the ACT does have the capacity to monitor air quality,⁴⁰ with a view to considering possible remedial actions. The Committee also notes that a 2005 cost-benefit analysis of the Summernats Car Festival is publicly available.⁴¹

RECOMMENDATION 5

- 3.9 **The Committee recommends that the Environment Protection Authority monitor air quality in residential areas close to ‘burn out’ events at the Summernats Car Festival and make that information publicly available.**

³⁹ *Transcript of Evidence*, 5 February 2009, p26

⁴⁰ ACT Commissioner for the Environment, State of the Environment Report 2007 – Air Quality, <<http://www.envcomm.act.gov.au/soe/2007actreport/airquality07>>

⁴¹ Australian Capital Territory, Chief Minister's Department (2005), *Summernats 2005: Review and Cost-Benefit Analysis*, Canberra : Chief Minister's Dept.

4 OFFICE OF THE COMMISSIONER FOR SUSTAINABILITY AND THE ENVIRONMENT

The role of Commissioner

4.1 The Commissioner's Annual Report states:

In August 2007 former Commissioner Stinson submitted his review (henceforth referred to as the Stinson Review (2007)) into the role of the Commissioner for the Environment. Based on the Stinson Review (2007), the Government decided to create a full-time Commissioner's role and increase resources for the Office.⁴²

4.2 The Commissioner is currently developing recommendations to Government in relation to a further possible expansion of her role, while continuing to operate under the *Commissioner for the Environment Act 1993* (ACT). The Commissioner's review complements the earlier Stinson Review.

4.3 The Commissioner noted that she was developing the communications and awareness-raising role of her office, and had employed a communications officer. The Commissioner had promoted the findings of the State of the Environment report, and had established a reference group to help refine her role and disseminate the report's findings to a wide range of social sectors. She was developing a communications program at the time of the hearing, which includes, amongst other activities, radio interviews to promote the work of her office.⁴³ The Commissioner advised the Committee about the members of the Reference Group, the website listing for which is:

- Ms Charlie (Charlotte) Wood – youth member
- Mr Michael Galluzo – President of Reconciliation ACT

⁴² Commissioner for Sustainability and the Environment (2008), *Annual Report 2007–08*, p3; see also p5

⁴³ *Transcript of Evidence*, 18 February 2009, pp48–49, 55

- Ms Maiy Azize – Youth Coalition of the ACT
- Mr Darro Stinson – former Commissioner
- Dr Rosemary Purdie – former Commissioner
- Dr Joe Baker – former Commissioner
- Professor Brian Roberts – Chair, former ACT’s Sustainable Expert Reference Group
- Professor Val Brown – visiting Professor at the Fenner School, ANU
- Mr David Marshall – Chair, ACT Tourism Advisory Council
- Professor Will Steffan –Head, Climate Change School, ANU
- Mr Phil Lown – CEO, ACT Division of General Practitioners; and
- Ms Chris Faulks – CEO, Canberra Business Council.⁴⁴

4.4 The Commissioner advised the Committee that she was concerned to address issues in a way which included socio-economic perspectives, and that she was reaching out to younger Canberrans who may not yet regard sustainability and greenhouse gas emissions as high priority concerns.⁴⁵

Complaint resolution: Chifley – Gum tree

4.5 The Committee discussed in a public hearing, and sought further information from the Minister for the Environment, Climate Change and Water about a formal complaint dealt with by the Office of Commissioner for Sustainability and the Environment (OCSE), noted on page 10 of the 2007–08 Annual Report, entitled 'Chifley – Gum tree (December 2007)'.

4.6 The Department of Disability, Housing and Community Services (DHCS) and the Department of Territory and Municipal Services (TAMS) advised through the Minister, that the complaint had been resolved by agreement that the tree would be retained, and that DHCS would install a gutter guard and awning/pergola. Further, DHCS indicated they would arrange and cover the costs for any cleaning of the gutter guard.

4.7 The Committee queried whether the Human Rights Unit in the ACT Department of Justice and Community Safety, or the Human Rights

⁴⁴ ACT Commissioner for Sustainability and the Environment, Refinement of the expanded role of the Office of the Commissioner for Sustainability and the Environment: Reference group, <http://www.environmentcommissioner.act.gov.au/investigations_and_consultation/role_of_the_office/referencegroup>

⁴⁵.*Transcript of Evidence*, 18 February 2009, p49

Commission, had had any involvement in resolving this complaint, and whether the Commission had provided any training to the OCSE and ACT Planning and Land Authority (ACTPLA) in relation to environment-related human rights.

- 4.8 Minister Corbell advised the Committee that the Human Rights Commission has not had any involvement in resolving the complaint, and had not provided training to the OCSE and ACTPLA in relation to environment-related human rights.
- 4.9 Minister Corbell advised that in September 2008 the Commissioner wrote to the Chief Executives of the ACT Planning and Land Authority, the Department of Territory and Municipal Services (TaMS) and DHCS, suggesting that it could be beneficial to have the ability under legislation to be able to overtly consider the needs of a people with a mobility disability when making decisions regarding tree protection. In October 2008, TaMS responded that this can be done through section 21 of the *Tree Protection Act 2005*, in particular through the Disallowable Instrument – *Tree Protection (Approval Criteria) Determination 2006 (2)* at Schedule 1.1(b).
- 4.10 The Committee notes that the *Human Rights Act 2004* (ACT) was not apparently referred to in the initial query, or in TaMS's response, even though that Act applies to the interpretation of *all* ACT legislation.
- 4.11 The then Chief Executive of TaMS undertook to review the current tree damaging approval criteria for its specificity to persons who have mobility and other disabilities. The Department is currently progressing that work.
- 4.12 The Commissioner's view was that it may be that ACTPLA should only approve a house designed for people with a mobility disability if the design of the outdoor access was such that any pathways were well clear of a tree deemed worthy of protection, or if there were physical barriers that would prevent the debris of the tree from falling on any pathways. If this was not possible then a decision, in the very early planning stages, should be made to either retain the tree and not have a house for people with mobility disadvantage or vice versa.
- 4.13 In October 2008 ACTPLA responded and identified two potential opportunities for their officers to provide input to mitigate similar future

situations, namely:

- at the pre-application stage where awareness of such a situation could assist in the identification of more appropriate locations for adaptable units, and/or
- at the Development Assessment (DA) stage where officers could impose conditions on the approval, to ensure that the siting of adaptable units were not negatively impacted by litter from a regulated tree.⁴⁶

4.14 The Chief Executive undertook to bring the issue to the attention of development assessments officers so they could provide appropriate input.

4.15 The difficulties in obtaining housing for people with disabilities was acknowledged, and it was suggested that potential tree issues between Departments might best be resolved before properties were purchased and tenants housed in them.

Committee comments

4.16 Having considered this explanation from the various departments involved in this issue, the Committee is concerned that the matter took more than 12 months to resolve, and that neither the Commissioner for Human Rights or the JACS Human Rights Unit was involved in the resolution of the complaint. The various interactions noted above make no reference to the *Human Rights Act 2004* (ACT). The Committee is concerned that an understanding of the operation of the Human Rights Act may have assisted in a quicker resolution of this issue for the complainant.

RECOMMENDATION 6

4.17 **The Committee recommends that staff in the Office of the ACT Commissioner for Sustainability and the Environment, and the ACT Planning and Land Authority, undertake training in the**

⁴⁶ A regulated tree is a living tree (other than a registered tree or a palm tree) that is on leased land within a tree management precinct and—(a) is 12m or more high; or (b) has a trunk with a circumference of 1.5m or more, 1m above natural ground level; or (c) has 2 or more trunks and the total circumference of all the trunks, 1m above natural ground level, is 1.5m or more; or (d) has a canopy 12m or more wide. A tree is not a regulated tree if it is a pest plant under the *Pest Plants and Animals Act 2005*.

operation of the *Human Rights Act 2004* (ACT) and in particular, the potential role of the Act in relation to environmental issues, including tree management.

Operation of the *Tree Protection Act 2005* (ACT)

- 4.18 During the Commissioner's appearance before the Committee on 18 February 2009, the Committee discussed the Commissioner's view that the 'strategic intent' of the Tree Protection Act had not yet been met. The Commissioner said, consistent with her understanding of the state of the legislation in December 2008:

The strategic intent of the tree legislation was ultimately to have a tree register, and the trees on the tree register were the ones that really required a focus of the community in terms of any tree damaging activities. It may also be that in some developing areas some tree protection might cover that particular area. But for the rest of Canberra it would therefore lift the current tree requirements so that you did not have to put in an application; you could use your own analysis as to what you wanted to do with the tree on your particular block.

To my knowledge the tree register has not been significantly populated, and to my knowledge the trees on the tree register are mainly heritage trees, not individual trees, and those heritage trees are already covered by the heritage legislation. This was my knowledge around about December, when I had another tree issue that we looked into, so I think there could be a bit further in terms of energy put into populating the tree register to try and achieve the strategic intent of that legislation.⁴⁷

- 4.19 The Committee notes that the objects of the Act (section 3) are:
- (a) to protect individual trees in the urban area that have exceptional qualities because of their natural and cultural heritage values or their contribution to the urban landscape; and
 - (b) to protect urban forest values that may be at risk because of unnecessary loss or degradation; and
 - (c) to protect urban forest values that contribute to the heritage

⁴⁷ *Transcript of Evidence*, 18 February 2009, p58

significance of an area; and

- (d) to ensure that trees of value are protected during periods of construction activity; and
- (e) to promote the incorporation of the value of trees and their protection requirements into the design and planning of development; and
- (f) to promote a broad appreciation of the role of trees in the urban environment and the benefits of good tree management and sound arboricultural practices.

4.20 Whilst the Act can apply within all built up urban areas declared in writing by the Minister to be built up urban areas, it only applies to protected trees or regulated trees within tree management precincts.

4.21 The Act establishes:

- an ACT Tree Register for the protection of individual trees of exceptional value (registered trees), and
- Tree Management Precincts (for regulated trees).

4.22 The Commissioner for Sustainability and Environment, in her evidence to the Committee, noted that the ACT Tree Register had not been significantly populated. The Register is managed by the Conservator of Flora and Fauna. Trees are registrable if they meet criteria prescribed in the Tree Protection (Criteria for Registration and Cancellation of Registration) Determination 2006, disallowable instrument DI 2006-56. The criteria include that the trees are of particular importance to the community because of the natural or cultural heritage value, their landscape and aesthetic value, or their scientific value.

4.23 The intent of the Act is that Tree Management Precincts would operate on an interim basis, pending the effective use of the ACT Tree Register.

4.24 The Act creates quite a complex scheme for the protection of trees in the ACT. It applies to Territory land declared to a built-up urban area by the responsible minister, and not trees on unleased land unless they have been entered on the ACT Tree Register. The Act does not apply to trees on

national land.⁴⁸ The Act requires applications and assessments of tree damaging activities for regulated or registered trees on leased land.

- 4.25 The *Tree Protection Act 2005* (ACT), effective from 29 March 2006, repealed the former *Tree Protection (Interim Scheme) Act 2001* (ACT). Under the 2005 Act, the built up urban areas in each district under the *Districts Act 2002* were taken to be tree management precincts for a two-year transitional period, i.e. from 29 March 2006 to 29 March 2008.⁴⁹ Heritage trees on the heritage register were also taken to be registered under the 2005 Act, but again only during the transitional period.⁵⁰
- 4.26 The criteria under which tree management precincts could be declared were specified in a disallowable instrument in March 2006. The Minister could declare an area of leased land as a Tree Management Precinct if:
- the Minister is satisfied that a significant threat to the urban forest values exists or is likely to exist in the near future (for example, due to existing or projected high levels of development activity; or in an area of low or reducing level of tree canopy cover); or
 - the area is entered on the Heritage Register under the *Heritage Act 2004*; or
 - the area is a new estate development that is subject to construction activity.⁵¹

In declaring an area to be a Tree Management Precinct, the Minister could also have regard to the broader strategic planning objectives of the Territory Plan and associated urban planning by the ACT Planning and Land Authority.

⁴⁸ An overview of the Tree Protection Act by Rod Griffiths is in the ACT Environmental Defenders' Office *Environmental Law Handbook* (2nd ed) (in press).

⁴⁹ See *Tree Protection Act 2005*, Part 15, ss117, 119, 123

⁵⁰ *Tree Protection Act 2005*, section 118

⁵¹ Pursuant to section 38 of the Act, a disallowable instrument was made: the Tree Protection (Criteria for Tree Management Precincts) Determination 2006 (No 1) DI2006—58

- 4.27 No new tree management precincts were declared between March 2006 and August 2008. Built up urban areas were declared in 2007,⁵² but not tree management precincts.
- 4.28 On 5 August 2008 the Minister declared 'leased land, within the built up urban areas as declared from time to time under section 7(2) of the Tree Protection Act 2005, to be a Tree Management Precinct'.⁵³
- 4.29 The effectiveness of this August 2008 declaration is not entirely beyond doubt. It is presumed to operate prospectively as a matter of statutory interpretation as neither the enabling Act nor the declaration expressly provides for retrospective operation. Similarly, by virtue of the operation of the *Human Rights Act 2004* (ACT) there is presumption against the operation of legislation retrospectively. To be effective, the Minister must have been satisfied that the criteria as specified in 2006 had been met.
- 4.30 On 17 February 2009 the Tree Protection (Build-up Urban Areas) Declaration 2009 (No 1) NI2009–62 was made, and this is likely to have effectively created ACT tree management precincts, again provided the 2006 criteria were satisfied.
- 4.31 This means that between the end of March 2008 and 7 August 2008, the Tree Register was the primary mechanism for protecting trees in the ACT, even though, as the Commissioner for the Environment noted in the public hearing, the register had not been effectively populated. The Committee understands that due to their statutory timeframes, limited staffing, the difficulties the Department has experienced in integrating data in the Heritage Register with the Tree Protection Register, and administrative restructures and office relocations, the work done by the small tree protection team in the Department of Territories and Municipal Services was disrupted for some months in 2007 and 2008. The Committee was advised that staff turnover had also been high.

⁵² The Tree Protection (Built-up Urban Areas) Declaration 2007 (No 1) NI2007–246 replaced the Tree Protection (Built-up Urban Areas) Declaration 2006 (No 1) NI2007–58

⁵³ Tree Protection (Tree Management Precincts) Determination 2008 (No 1) NI2008–330

- 4.32 The annual report for the Department says that the Conservator made decisions on 1888 applications for tree damaging activities in 2007–08, of which 270 were declined.⁵⁴ The Committee understands that following consideration of legal advice in relation to the expiry of the Act's two-year transition period, and what was seen by the Department of Territory and Municipal Service as an 'administrative oversight', in 2008 the Department invited about 300 people to resubmit their applications for tree damaging activities.
- 4.33 A substantial number of the activities approved in 2007–08 may have been undertaken in the absence of effective statutory regulation. It may also be that those 270 applicants, who had their applications declined, were amongst the 300 or so contacted to re-submit their applications, in view of the Department's understanding that tree management precincts had not been properly declared between March 2008 and August 2008. Any administrative review and compliance activities relating to decisions or actions taken under the Act in relation to regulated trees between 29 March 2008 and 7 August 2008 may also have lacked a sound basis.

RECOMMENDATION 7

- 4.34 **The Committee recommends that legal advice provided to the Department in 2008 concerning the operation of the Tree Protection Act be provided to the Committee.**
- 4.35 The Committee notes that the difficulties with the operation of the Tree Protection Act were not disclosed in the Department's annual report, contrary to the Chief Minister's Directions that agency performance include an explanation of significant variances and performance shortfalls 'including the reasons for the result and what the agency plans to do in response, to the extent that the situation is within their control'.⁵⁵

⁵⁴ Department of Territory and Municipal Services 2008, *Annual Report 2007–2008*, Vol 1, p225.

⁵⁵ Chief Minister's Department, *Chief Minister's Annual Report Directions 2007–2010*, <http://www.cmd.act.gov.au/__data/assets/pdf_file/0003/2793/annual_report_directions07-10.pdf>, p18

- 4.36 The Committee notes that while there have been many subordinate instruments made to give effect to the Tree Protection Act, and many tree protection decisions are the subject of administrative review litigation, there seems to have been relatively little communications activity explaining the operation of the legislation to stakeholders. This also warrants redress.
- 4.37 The Committee also notes as a minor issue, that the statutory declarations of built-up urban areas are divided into Parts, listings districts and suburbs, but that suburbs are not individually listed. For stakeholders unfamiliar with Canberra's suburbs, this may make interpretation difficult, particularly in relation to new development areas.
- 4.38 The Committee suggests that given the complex nature of the legislation, it would be beneficial to have the legislation undergo an independent review, and that the Auditor-General may be well placed to conduct that review.

RECOMMENDATION 8

- 4.39 **The Committee recommends that the Auditor-General review the Department of Territory and Municipal Service's administration of the *Tree Protection Act 2005* (ACT).**

RECOMMENDATION 9

- 4.40 **The Committee recommends that in future annual and financial reports, the Department of Territory and Municipal Services provide accurate analyses of its performance, including variances and performance shortfalls.**

RECOMMENDATION 10

- 4.41 **The Committee recommends that the Minister for Territory and Municipal Services develop a communications strategy for the *Tree Protection Act 2005* (ACT) so that the statutory objectives of the scheme can be better met.**

RECOMMENDATION 11

- 4.42 **The Committee recommends that future declarations and maps**

showing built up urban areas and tree management precincts under the Tree Protection Act include sufficient information to enable householders to identify the status of their suburb.

Lowland Native Grasslands Investigation

- 4.43 The Commissioner for Sustainability and the Environment advised the Committee on 18 February 2009 that she was finalising the recommendations in her study of ‘around 50’ ACT lowland grassland sites.
- 4.44 The report is required to be tabled in the Legislative Assembly within 15 sitting days of its receipt by the Minister.⁵⁶

Implementation of Sustainable Transport Plan

- 4.45 The Committee notes the important discussion in the Commissioner’s annual report about the implementation of the Sustainable Transport Plan. The Committee is concerned, however, that the report includes the following paragraph:

In developing measures for a better transport system and the assessment of progress toward more sustainable transport systems we need to understand that public transport is not necessarily more efficient than personal transport. Such an assumed efficiency would not necessarily be the case where, for example, public transport includes a bus carrying a single passenger and personal transport includes a car carrying a large family or group.⁵⁷

- 4.46 The Commissioner’s latest State of the Environment Report (SoE) recognises the importance of addressing transport planning and practices, including through education and behavioural change. In the 2007 SoE report, the Commissioner reported that 22.8% of the ACT’s greenhouse gas emissions were generated by Canberrans’ use of motor vehicles; the second highest source of emissions after the 72.2% emitted due to heavy

⁵⁶ *Transcript of Evidence*, 18 February 2009, p56; section 22, *Commissioner for the Environment Act 1993* (ACT)

⁵⁷ Commissioner for Sustainability and the Environment Australian Capital Territory, *Annual Report 2007–2008*, p17

consumption of electricity (and gas) to heat, cool and light buildings. The 2004 *Sustainable Transport Plan for the ACT* also notes that more than 60% of journeys to work were taken by Canberrans as drivers, with less than 10% travelling as a passenger (i.e. car pooling).

- 4.47 The report of the inquiry by the former Standing Committee on Planning and Environment into ACTION bus services discussed in some detail the need for life-cycle analyses and recognition of the externalities of private car use. These externalities including urban congestion, fuel consumption, road infrastructure costs, transport-related ill health, injuries and accident-related deaths, decreased staff punctuality, and the health and employment costs associated with these.
- 4.48 The Committee noted that for an average, commonly-driven car, about four people on a bus would have the same emissions per passenger as a single occupancy driver, so the public policy aim should be to develop incentives to maximise public transport use, rather than to suggest that private car use in some circumstances may be more sustainable.⁵⁸

RECOMMENDATION 12

- 4.49 **The Committee is of the view that the use of public transport, and ACTION bus services in particular, should be encouraged, consistent with the Sustainable Transport Plan for the ACT.**

Compliance with Annual Reports Directions

Legislative Assembly committee inquiries and reports

- 4.50 The *Chief Minister's Annual Report Directions 2007–2010*⁵⁹ require that agencies include in their annual reports a schedule of completed inquiries by Legislative Assembly committees that relate to the operations of the agency. The Directions provide further, that agencies should provide

⁵⁸ ACT Legislative Assembly (2007), Standing Committee on Planning and Environment, *ACTION Buses and The Sustainable Transport Plan: Report 29*, pp20–23, accessible at <<http://www.parliament.act.gov.au/downloads/reports/29peACTIONBus.pdf>>

⁵⁹ section B.3, p19
<http://www.cmd.act.gov.au/__data/assets/pdf_file/0003/2793/annual_report_directions07-10.pdf>

details on the implementation of the recommendations that Assembly committees have made, when those had been accepted by the Government of the day. The schedule should indicate, for each Committee report:

- the name of the committee, the report number and title, and the date the report was tabled in the Legislative Assembly;
- details of the recommendations of the report that have been accepted, either in whole or in part, by the Government; and
- a summary of action to date, either completed or in progress (including milestones completed), in implementing these recommendations.

- 4.51 The annual report of the ACT Commissioner for Sustainability and the Environment does not report on Assembly committee recommendations pertaining to the Office for the reporting year, where agreed to by the ACT Government. Section B.3 refers only to the October 2007 Report 30 of the Standing Committee on Planning and Environment, entitled: *The Proposed Nomination of the ACT as a UNESCO Biosphere Reserve*, in relation to which there has not yet been a government response, indicating acceptance or otherwise.
- 4.52 Various other committee reports did, however, include recommendations of relevance to the Office of the ACT Commissioner for Sustainability and the Environment during the reporting period of 1 July 2007 to 30 June 2008, and the ACT Government accepted those recommendations. Those reports and relevant recommendations are noted in Appendix B.

RECOMMENDATION 13

- 4.53 **The Committee recommends that in future annual reports, the Office of the ACT Commissioner for Sustainability and the Environment comply with the Chief Minister's Annual Report Directions concerning the reporting of Legislative Assembly committee inquiries and reports.**
- 4.54 As noted above, the Committee is concerned that the Commissioner's annual report does not adequately reference reports of the ACT Legislative Assembly. The Stinson Review contributed to the ACT Government's decision to increase funding to the Office, but various Assembly Committees had also recommended that those resources be increased. In

the Standing Committee on Planning and Environment's *Report on Annual Reports 2004–05*, the Committee noted that the Office had been hampered in its ability to perform its statutory functions due to inadequate resourcing. That Committee recommended that increased funding be provided.⁶⁰ The Committee recommended in its report on the 2005–06 annual and financial reports that the Office be allocated an additional permanent position at an appropriately senior level, following its consideration of evidence about the difficulties the Office had experienced because of its reliance on short term contract staff.⁶¹ The Committee had also recommended that additional functions and resources be conferred on the Office in the context of the proposed nomination of the ACT as a UNESCO Biosphere Reserve.⁶²

- 4.55 A 2004 review of the Office had also recommended that additional resources be allocated to the Office.⁶³
- 4.56 The Committee is aware that the Commissioner's function in relation to the regional state of the environment report is funded by local governments in the ACT Capital Region. The Committee notes that the Commissioner has advised that she does not anticipate a repeat of the delays in delivering her outputs in future years, given that she has put an appropriate system and framework in place, had remedied procurement irregularities, and had resolved some staffing issues.⁶⁴
- 4.57 The Committee notes that although a review of the role of the office is underway at the time of this inquiry,⁶⁵ it is nevertheless concerned that

⁶⁰ Standing Committee on Planning and Environment, *Report on Annual and Financial Reports 2004–2005*, Report 19, November 2005, p11–12

⁶¹ Standing Committee on Planning and Environment, *Report on Annual and Financial Reports 2005–2006*, Report 26, April 2007, p11–12. This recommendation was noted in the Department of Territory and Municipal Services Annual Report 2007–08, Canberra, p75

⁶² Rec 11, ACT Legislative Assembly, Standing Committee on Planning and Environment (2007), *The Proposed Nomination of the ACT as a UNESCO Biosphere Reserve*, Report 30, 2007, p45

⁶³ Department of Urban Services, *Review of the Office of Commissioner for the Environment, Final Report*, ACT Government, Canberra, 2004

⁶⁴ *Transcript of Evidence*, 18 February 2009, pp53, 54

⁶⁵ Office of the Commissioner for Sustainability and the Environment, 'Refinement of the expanded role of the Office of the Commissioner for Sustainability and the Environment, Public consultation paper: September 2008', accessible on 13 January 2009 at <http://www.environmentcommissioner.act.gov.au/investigations_and_consultation/role_of_the_office/role_public_consultation_paper>.

while additional resources have been provided to the Office to overcome existing shortfalls, the responsibilities of the Office may be further expanded in future in relation to public reporting about catchment management issues, and biosphere reserve functions. There is a risk that the Commissioner may be unable to meet community expectations and fulfil her statutory roles unless all functions are appropriately resourced.

RECOMMENDATION 14

- 4.58 **The Committee recommends that if the role and functions of the Office of the ACT Commissioner for Sustainability and the Environment are expanded, that adequate resources are provided to enable the Office to perform its functions.**

Assembly as ‘client’ or ‘stakeholder’

- 4.59 The Commissioner for the Environment’s annual report refers to the Minister and Assembly as ‘clients’ and ‘stakeholders’,⁶⁶ which does not appropriately represent the functions of the Assembly and the ACT Executive in the exercise of their parliamentary, governance and oversight functions. While this may be a description of the relationship which is commonly used, the Office is established by Assembly legislation, and is *responsible* and *accountable* to the Assembly through the portfolio Minister in relation to its operations. To describe the Minister and the Assembly as clients or stakeholders inappropriately casts a business, service-provider aspect to the relationship between the Office, the portfolio Minister and the Assembly.

State of the Environment Report 2007

- 4.60 Sub-section 19(3) of the *Commissioner for the Environment Act 1993* provides, in effect, that the Minister must, within 6 months after the day of receiving a state of the environment report, present to the Legislative Assembly a statement that sets out the response of the government to the report; or a statement that sets out the reasons for not presenting such a response to the Assembly.

⁶⁶ Commissioner for Sustainability and the Environment (2008), *Annual Report 2007–08*, Canberra, p3

- 4.61 The Committee notes that the Minister for the Environment advised the Assembly on 11 December 2008 that due to the ACT election in 2008 and consequent changes in ministerial responsibilities, the Government would not respond within six months to the Commissioner's report which had been tabled in the Legislative Assembly on 7 August 2008, but would respond during the first sitting period in 2009. Mr Corbell also noted that the report contained 18 major and 60 minor recommendations which would require 'comprehensive consideration by the government'.⁶⁷ However, the Government response had not been tabled by the end of the third sitting period in 2009 (i.e. by 26 February 2009).
- 4.62 In response to a question from the Committee, the Minister's office advised that the Department of the Environment, Climate Change, Energy and Water was continuing to prepare the report for the consideration of government. By 3 March 2009 the Minister had not yet seen a draft copy but had asked the Department to provide him with a draft as soon as possible.

RECOMMENDATION 15

- 4.63 **The Committee recommends that if the Minister for the Environment, Water and Climate Change cannot table the Government's response to the ACT Commissioner for Sustainability and the Environment's State of the Environment Report in the March 24–26 sitting, he explain to the Assembly during that sitting why the response has been delayed.**

Proposed nomination of the ACT as a UNESCO Biosphere Reserve

- 4.64 The Committee discussed the proposed nomination of the ACT as a UNESCO Biosphere Reserve at some length.
- 4.65 The former Standing Committee on Planning and Environment had recommended that the ACT Government be represented at the Third World Congress on Biosphere Reserves.⁶⁸ The Chief Executive, Department

⁶⁷ Legislative Assembly for the ACT: 2008-2009 Week 1 Hansard (11 December), p342

⁶⁸ Rec 2, Standing Committee on Planning and Environment (2007), *The Proposed Nomination of the ACT as a UNESCO Biosphere Reserve*, Report 30, p12

of Territory and Municipal Services, and the Commissioner for the Environment had both attended the conference in Spain, and visited several UNESCO Biosphere Reserves, at a cost to the ACT Government of \$39,217.35 (with flights \$28,385.12 and expenses \$10,832.23).⁶⁹ The Committee notes that the cost for each official compares well with the \$24,000 allocated to each Member of the Legislative Assembly for study trip purposes each Assembly.

- 4.66 The Commissioner noted in oral evidence that her trip had involved visits to several UNESCO Biosphere Reserves, where she found significant diversity amongst urban and non-urban Biosphere Reserves. They were local products tailored to local needs, including marketing, economic development and tourism. There was a trend to focussing more on urban areas, and the impact of urban areas on natural systems, ‘with a key focus on sustainability issues’, and there was a clear integration of economic and social issues with protection of the environment.⁷⁰
- 4.67 Mr Seselja MLA asked for a copy of the report on the trip, which had been given to the Minister for the Environment, Water and Climate Change, Mr Stanhope MLA, in March 2008. The report⁷¹ was provided to the Committee on 26 February 2009, and authorised for publication on 4 March 2009. The executive summary of the report is at Appendix C. A copy of the report can be obtained from the Legislative Assembly’s Committee Office.
- 4.68 The Committee considers that the report’s recommendation concerning the holding of a public forum on World Environment Day in 2008 ‘to share information from the trip, canvass interest in progressing further with a biosphere, identify community (including business) champions and provide further advice to the ACT Government’,⁷² merits support.

⁶⁹ Minister for the Environment, Climate Change and Water, Response to question taken on notice, ‘Biosphere Reserve’, 20 February 2009

⁷⁰ *Transcript of Evidence*, 18 February 2009, pp50–51

⁷¹ M. Cooper and M. Zissler (2008), *Third International Biosphere Conference and Field Trips Report (Spain, Canada, USA)*, Office of the Commissioner for Sustainability and the Environment 2008 and Department of Territory and Municipal Services, Canberra

⁷² Cooper and Zissler (2008), *Third International Biosphere Conference and Field Trips Report (Spain, Canada, USA)*, p6

RECOMMENDATION 16

- 4.69 **The Committee is of the view that it would be beneficial, in relation to further consideration of the proposed nomination of the ACT as a UNESCO Biosphere Reserve, for the Office of the ACT Commissioner for Sustainability and the Environment to hold a stakeholder forum on 5 June 2009 (World Environment Day), to further discuss with a wide range of stakeholders the proposed nomination of the ACT as a UNESCO Biosphere Reserve.**
- 4.70 With respect to the possible role of the Office of the Commissioner for Sustainability and the Environment in relation to the possible nomination of the ACT as a Biosphere Reserve, the Commissioner said in evidence that there had been some thought that her Office could bring stakeholders together, in a cooperative approach to sustainability. Dr Cooper said that the website of her Office might become an important component for networking stakeholders.⁷³ This issue is further explored in the Commissioner's report on her biosphere reserves study trip.
- 4.71 The Committee awaits with interest the ACT Government's response to the report of the former Standing Committee on Planning and Environment which recommended that the nomination of the ACT as a UNESCO Biosphere Reserve proceed. The Committee notes that the ACT Government's response is long overdue. The provision of timely responses to Legislative Assembly Committee reports is a matter of serious concern. In December 2008 the Assembly adopted a temporary standing order for the *seventh* Assembly, which provides:

**Request for explanation concerning government response to
Committee report 254A**

If a government response to a committee report has not been tabled within three months of the presentation of the report, the Chair of the committee may without notice:

- (a) ask the relevant Minister for such an explanation or a statement in relation to the government response to the committee report; and

⁷³ *Transcript of Evidence*, 18 February 2009, p51

(b) the Chair may, at the conclusion of the explanation or statement, move without notice 'That the Assembly takes note of the explanation'.

In the event that the Minister does not provide an explanation or statement to the satisfaction of the Chair, that Chair may, without notice, move a motion with regard to the Minister's failure to provide a government response, or an explanation or a statement.⁷⁴

- 4.72 Whilst this order does not apply retrospectively, the ACT Government does have a commitment that responses to committee reports should be tabled in the Assembly within three months, or an explanation provided.⁷⁵

RECOMMENDATION 17

- 4.73 **The Committee recommends that the Minister for the Environment, Climate Change and Water table in the Legislative Assembly during the May sitting period, the ACT Government's response to the report of the former Standing Committee on Planning and Environment in relation to the proposed nomination of the ACT as a UNESCO Biosphere Reserve (Report 30, Sixth Assembly).**

RECOMMENDATION 18

- 4.74 **The Committee recommends that the Minister for the Environment, Water and Climate Change table in the Legislative Assembly an ACT Government response to the report entitled *Third International Biosphere Conference and Field Trips Report (Spain, Canada, USA)*, at the same time as it tables its response to the report of the former Standing Committee on Planning and Environment on the proposed nomination of the ACT as a UNESCO Biosphere Reserve (Report 30, Sixth Assembly).**

⁷⁴ Temporary standing order 254A, Legislative Assembly of the ACT, Minutes of Proceedings No 2, 9 December 2008, p50, accessible at <<http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP02.pdf>>

⁷⁵ Chief Minister's Department (2004) *Handbook for ACT Government Officials on Participation in Assembly and Other Inquiries*, Cabinet Office June, p20, accessible at <http://www.cmd.act.gov.au/__data/assets/pdf_file/0010/1603/hbkassembly_inq.pdf>

5 CONCLUSIONS

- 5.1 The Committee has suggested that there was room for improvement in the annual report of the Commissioner for Sustainability and the Environment, and for greater transparency and disclosure in the annual report of the Department of Territory and Municipal Services, in relation to the administration of the *Tree Protection Act* 2005.
- 5.2 The Committee reiterates the importance of ACT Government annual and financial reports including an appropriate recognition of the role of ACT Legislative Assembly committees, and the Assembly, in relation to Territory governance.
- 5.3 The Committee reflected on the comments made by the Minister for the Environment, Climate Change and Water, during the public hearing of 5 February 2009, that the Conservator of Flora and Fauna would be appearing before the Standing Committee on Planning, Public Works and Municipal Services during its annual and financial reports inquiry,⁷⁶ but decided to pursue the issue of the administration of the Tree Protection Act as a matter arising from the evidence of the Commissioner for Sustainability and the Environment. The Committee thanks the Commissioner for her comments, and is of the view that the administration of the Act is a matter warranting further independent examination.

Ms Meredith Hunter
Chair
March 2009

⁷⁶ *Transcript of Evidence*, 5 February 2009, p31

APPENDIX A: List of witnesses

On 5 February 2009 the following witnesses attended the Committee's public hearing on the annual and financial report of the Department of Territory and Municipal Services, and responded to Members' questions:

Title	Full name	Position	Branch/Division	Department/Agency
Ms	Catherine Hudson	Acting Chief Executive Officer	Office of the Chief Executive	Department of the Environment Climate, Energy and Water
Ms	Anita Hargreaves	Acting Chief Finance Officer	Finance	Environment, Climate, Energy and Water
Ms	Penny Farnsworth	Acting Executive Director		Environment, Climate, Energy and Water
Mr	Geoffrey Rutledge	Acting Director	Ministerial and Corporate	Environment, Climate, Energy and Water
Mr	Paul Lewis	Director	Programs	Environment, Climate, Energy and Water
Mr	David Butt	Director	Policy	Environment, Climate, Energy and Water
Mr	Robert Neil	Director	Environment Protection	Environment, Climate, Energy and Water
Mr	Rob Thorman	Director	Feed in Tariff	Environment, Climate, Energy and Water
Ms	Ronis Chapman	Manager	Manager, Climate Change Implementation and Reporting Unit	Environment, Climate, Energy and Water

On 18 February 2009 the following witness attended the Committee's public hearing on the annual and financial report of the Commissioner for Sustainability and the Environment:

- Dr Maxine Cooper, Commissioner, Office of the ACT Commissioner for Sustainability and the Environment

APPENDIX B: Legislative Assembly Committee recommendations

This appendix includes a summary of the recommendations made by ACT Legislative Assembly committees during the reporting year, that were accepted by the ACT Government, and which should have been noted in the annual and financial report of the Office of the Commissioner for Sustainability and the Environment, for 2007–08.

Report name	Committee	Recommendation	Government response	Implementation of Government response
Appropriation Bill 2007–2008 (No 2), Report 12, December 2007	Standing Committee on Public Accounts	Recommendation 6 The Committee recommends that the ACT Government ensure that any additional responsibilities allocated to the Commissioner for the Environment be matched with adequate resources in addition to funding provided in this Appropriation Bill and ensure that funding is provided to allow the Commissioner to properly carry out their responsibilities. Recommendation 7 The Committee recommends that the ACT Government accelerates its consideration of the Planning and Environment Committee's report on the UNESCO Biosphere Reserve to ensure that it considers all the proposed roles for the	6: noted. The expanded role of the Office would be refined and clarified following the Government-led consultation on the Office. That process would identify the legislative changes required to formally encompass the Commission's role and better define resourcing requirements, enhancing the already substantial commitment made by the Government in Appropriation Bill 2007–08	The ACT Government had in fact accepted recommendations of several Legislative Assembly Committees, and the Stinson Review, that additional resourcing be provided to the Office. In the Appropriation Act 2007-2008 (No 2) A2007 an additional \$449,000 was provided to the Department of Territories and Municipal Services for enterprise and municipal services. The annual report for the Department reports on the

		Commissioner for the Environment in a single process.	(No 2). 7: noted: The Government was preparing its response in March 2008 and would address the recommendation that additional functions be allocated to the Office to encompass the Biosphere proposal. In addition to that response, the review of the role of the Commissioner would provide recommendations in relation to the Commissioner's role in relation to the possible biosphere nomination and related policy implementation. ⁷⁷	supplementary appropriation as providing an additional \$449,000 for the Office, taking its 07–08 budget to \$889,000. ⁷⁸ The later report of the review of the Office had not been released as at February 2008.
Variation to the Territory Plan No 285: Block 17 Section 102 Symonston Extension of	Standing Committee on Planning and Environment	Recommendation 6 In relation to ongoing management of remaining grasslands in the area, the Committee recommends that the government take into consideration the	The Government agreed that once the investigation into the ACT's Lowland Native Grasslands is completed	Investigation into the ACT's Lowland Native Grasslands had not been completed as at

⁷⁷ Treasurer, Mr Jon Stanhope MLA, Tabling statement and Government response to the Standing Committee on Public Accounts on the Appropriation Bill 2007–2008 (No 2), tabled 4 March 2008, accessible at <
<http://www.parliament.act.gov.au/committees/index1.asp?committee=56&inquiry=733&category=19>>

⁷⁸ Department of Territory and Municipal Services (2008), *Annual Report 2007–08*, Volume 2, p134

Broadacre 10E Area Specific Policy, Report No 32, February 2008		findings of the Commissioner for Sustainability and the Environment's investigation into the ACT's Lowland Native Grasslands when it is completed.	those findings would be taken into consideration by the ACT Government in relation to the ongoing management of remaining grasslands in the area. ⁷⁹	February 2008.
Appropriation Bill 2008-2009 Volume 1 – Report, JUNE 2008	Select Committee on Estimates 2008–2009	Recommendation 50 The Committee recommends that the State of the Environment report be released by the Minister for the Environment by the end of July 2008.	Agreed in principle. The Commissioner had advised that her intention was to submit the State of the Environment Report to the Minister for the Environment, Water and Climate Change by early July 2008. ⁸⁰	The ACT State of the Environment Report is accessible on the Commissioner for the Environment's website, and was tabled in the Assembly on 7 August 2008

⁷⁹ Minister for Planning, Mr Andrew Barr MLA, Tabling statement: Variation No 285 to the Territory Plan, Block 17 Section 102 Symonston, Changes to NUZ 1 Broadacre Zone Development Table, tabled 1 April 2008

⁸⁰ Mr Jon Stanhope MLA, Government Response to the Select Committee on Estimates 2008–2009, tabled 26 June 2008, accessible at <<http://www.parliament.act.gov.au/downloads/reports/6th%20Estimates%2008-09.pdf>>

APPENDIX C: Extract: Third International Biosphere Conference and Field Trip Report

The following is an extract – the executive summary – of the report entitled: M. Cooper and M. Zissler (2008), *Third International Biosphere Conference and Field Trips Report (Spain, Canada, USA)*, Office of the Commissioner for Sustainability and the Environment 2008 and Department of Territory and Municipal Services, Canberra

Executive summary

The Chief Minister, Minister for the Environment, Water and Climate change, Jon Stanhope, supported the recommendation of the ACT Standing Committee on Planning and Environment, chaired by Mr Mick Gentleman, in its report – *The Proposed Nomination of the ACT as a UNESCO Biosphere Reserve*, Report 30, October 2007 – that ACT representatives should attend the Third International Congress of Biosphere Reserves. Mr Mike Zissler, CEO, Territory and Municipal Services and Dr Maxine Cooper, Commissioner for Sustainability and the Environment, attended the Congress. Three biospheres were also visited: Spain – Sierra del Rincon; Canada, Ontario – Niagara Escarpment; USA, California, San Francisco – Golden Gate.

In 1974 a UNESCO's Man and the Biosphere (MAB) Taskforce initiated the concept of biosphere reserves. In 1976 the reserve network was launched. As at the closure of the Madrid Congress, there were 531 biosphere sites in 105 countries. Australia has fourteen biosphere reserves.

Biosphere reserves are established to promote and demonstrate a balanced relationship between humans and the biosphere. Unlike World Heritage listing, each reserve retains full sovereignty. Participation is voluntary and offers the opportunity for being part of the world network. It is very likely that parts of the ACT region would easily fulfil the criteria for becoming a biosphere reserve. However, it is important to have:

- the community (including business) passionately driving the agenda, and working with all stakeholders (including, and especially, government) to become a biosphere
- a governance arrangement that ensures the community (and business) own the biosphere concept, accept responsibilities and are willing to work towards achieving biosphere goals concurrently with government agencies
- goals for the biosphere reserve: these need to be developed at an early stage

with the strong involvement of the community

- a clear understanding of the areas that are to be part of the biosphere
- gains made and value added, to what already exists, from becoming a biosphere. If this is not done, becoming a biosphere is unlikely to secure community support and it may even engender hostility
- integration with what already exists and not an imposition of an unnecessary level of planning, administration, and other factors.

Consideration is being given to part of the ACT region becoming a World Heritage site. This needs to be considered in advancing any biosphere proposal. It is possible to have the same area covered by both World Heritage listing and also be a biosphere.

Biosphere reserves have traditionally been focused on natural areas; however, in more recent times the role of urban centres has received attention. The more overt linking of the biosphere concept to urban areas has emerged at the same time as a greater emphasis is placed on the concept of sustainable development. If parts of the ACT were to become a biosphere it appears that such a step could reinforce and further promote the ACT's sustainable development agenda.

One of many options that could be canvassed is the possibility of having an 'ACT Life Web' (working title only) biosphere. Core areas of an this (sic) could include Namadgi National Park, Tidbinbilla, Jedbinbilla, Lower Cotter Catchment and key parts of the Canberra Nature Park that are of particular high ecological value (e.g. Goorooyaroo, Black Mountain, Mt Ainslie).

One of the key goals would be to maintain these areas and provide opportunities for them to adapt and flourish under climate change pressures by ensuring, for example that there were connections/corridors linking these areas, thereby forming a web across the region. These physical corridors/webs could consist of public and private lands. The physical webs could be supported by links with community groups and an electronic website that linked various local and international communities. The ACT could become a model for urban biospheres that focus on sustainable development. If an emphasis is to be given to sustainable development then the reserve aspect of the term needs to be de-emphasised. The term biosphere reserve has strong international ownership so it will not be changed under the UNESCO program; this issue was gently canvassed at the Congress.

An ACT biosphere could also link with the IUCN proposal to have a major link from the Alps to the Atherton Tableland as a means of fostering and promoting best practice management for protecting ecosystems and species. Parts of Kosciusko Park are already a biosphere reserve.

There is an opportunity for the ACT to develop strategic alliances to source information, and also importantly to share information, regarding biospheres. The

greatest benefit may be gained if such alliances are limited in numbers and targeted to areas where local businesses and universities may already have, or wish to have, a relationship. Additionally, given the likelihood that if the ACT were part of a biosphere it would probably have an urban component, the ACT delegates at the Congress participated and chaired some urban biosphere sessions.

There is an opportunity for the ACT to be part of an ongoing group focusing on urban biospheres.

The financial and administrative demands of applying to become a biosphere, and for on-going arrangements, will need to be determined.

As biospheres are very flexible entities and can be tailored according to a jurisdiction's needs, the Commonwealth may be able to provide some guidance on performance indicators for biospheres, ways to monitor progress etc. It may also be able to resolve the issue of why Australia is part of the Asian biosphere cluster and not the Pacific cluster.

The Commonwealth's support for the national biospheres needs to be clarified. It was not represented at the Congress and it does not appear that this program has been actively pursued over the past decade in Australia. Many countries have a national biosphere network. Australia does not have one. The Commonwealth could establish such a network. It appears that there are no special funds for biospheres. Given their importance it may be worth exploring if some Commonwealth funds could be allocated specifically for biospheres to assist in those areas advancing particularly innovative sustainable development practices.

A forum could be held to share information from the trip, canvass interest in progressing further with a biosphere, identify community (including business) champions and provide further advice to the ACT Government. Members from other biospheres could be invited. A representative from the Commonwealth could also be invited to provide a national perspective.

This major forum could be held to celebrate this year's world environment day (5 June), the theme for which is fostering low-carbon economies. Prior to the forum there could be sessions with various community (including business) groups to secure ownership.

APPENDIX D: Questions taken on notice and supplementary questions

The following table lists the questions taken on notice during the hearing and lodged as supplementary questions following the public hearings. Responses have been incorporated in the report, but they may also be obtained separately from the Committee Office on request.

Member asking Q	Topic	Question	Respondent
Mr Seselja MLA	biosphere reserve	What was the cost of the Chief Executive, TAMS and the Commissioner for the Environment to attend the International Biosphere Conference in Spain?	Minister for the Environment, Climate Change and Water
Mrs Dunne MLA	carbon sequestration audit	What was the aim and outcomes of the project? What elements of carbon sequestration was the study looking at? What was the scope of works that the consultant took up? Would it be possible to provide a copy of the brief to the consultant to the Committee?	Minister for the Environment, Climate Change and Water
Mr Seselja MLA	reductions in energy and water use in government buildings	What are the reductions in energy and water use in government buildings?	Minister for the Environment, Climate Change and Water
Mrs Dunne MLA	energy strategies	Why was the Energy Strategies contract a select tender? What was the process undertaken for the selection of Energy Strategies? Who were the other companies that were asked to submit a tender?	Minister for Environment, Climate Change, and Water
Mr Seselja MLA	environment grants	Concerned Residents of Kambah – What was the money spent on (in as much detail as is available) and who are the people that it was granted to? Australian Network for Plants – What was the money spent on (in as much detail as is available) and who are the people that it was granted to?	Minister for the Environment, Climate Change and Water

Member asking Q	Topic	Question	Respondent
Mr Seselja MLA	water management – bore licence	How many licences have been issued to private residences since 1998? How many bore licences have been issued, what types, from what areas and for what volumes? How are applications for use of bore water assessed? How much water is being removed from the bores? When were the licences for the prison and Arboretum issued?	Minister for the Environment, Climate Change and Water
Mr Seselja MLA	environment protection enforcement	What is the breakdown in terms of type of enforcement activities? What action was taken (i.e. the number of on-the-spot fines, the number of other enforcement actions)? Where are the noise complaints coming from (i.e. are most of the noise complaints coming from the city, or are they coming from other parts)?	Minister for the Environment, Climate Change and Water
Mr Seselja MLA	environment protection agreement	On Page 228, Environment Protection Agreement, Wastewater Re-Use. What does this agreement relate to?	Minister for the Environment, Climate Change and Water
Mrs Dunne MLA	west program	Who are the target audience for the WEST program? How many people is the WEST program targeted at?	Minister for the Environment, Climate Change and Water
Mr Seselja MLA	biosphere report	page 6 of the report talks about the biosphere visit to Spain and that a report of the findings was provided to the minister in March 2008. Are you able to make that report available to us?	Commissioner for Sustainability and the Environment
Chair (Ms Meredith Hunter MLA)	state of the environment (SoE) report indicators	Are the indicators used in the report the same ones that have been used in previous reports? What kinds of changes to the indicators might you be expecting if they are reviewed? Why are these indicators being reviewed in consultation with CMD rather than with the new Environment Department? Are these the kind of indicators that could be used (or are used) to form the basis of sustainability reporting across government?	Commissioner for Sustainability and the Environment

Member asking Q	Topic	Question	Respondent
Chair (Ms Meredith Hunter MLA)	SoE outcomes	You state that following the release of the SOE report the Office will work to “encourage behavioural and policy changes in key areas” - what is being proposed?	Commissioner for Sustainability and the Environment
Chair (Ms Meredith Hunter MLA)	progress on implementing SoE report recommendations: indoor air quality	Indoor Air quality: One of the recommendations mentioned in the Annual report that was to be followed up in the SOE report was about indoor air quality. Have you got any updates about how these recommendations might be progressing?	Commissioner for Sustainability and the Environment
Chair (Ms Meredith Hunter MLA)	grasslands and kangaroos	Have you received any indication from TAMS about progress on the Grassland management plan for the Belconnen site and other sites?	Commissioner for Sustainability and the Environment
Chair (Ms Meredith Hunter MLA)	assessing government policies	In the annual report an assessment is made of the implementation of Government policies on climate change, the <i>Weathering the Change Strategy</i> , and the <i>Sustainable Transport Plan</i> . Do you foresee that as the Commissioner your role could expand to critique the underlying policies put in place by the Government in terms of their effectiveness, or is this a role you see lying elsewhere?	Commissioner for Sustainability and the Environment
Chair (Ms Meredith Hunter MLA)	community engagement	Who are the stakeholders involved in the consultation on the Grasslands investigation? And the other seven reference groups held throughout the year?	Commissioner for Sustainability and the Environment
Chair (Ms Meredith Hunter MLA)	green power	What is the proportion of Green Power that the office subscribes to?	Commissioner for Sustainability and the Environment
Chair	waste and recycling	What progress has the office made on developing a waste reduction system and recycling?	Commissioner (as above)

