

Legislative Assembly for the Australian Capital Territory



**Standing Committee on Justice and
Community Safety**

**(incorporating the duties of a
Scrutiny of Bills and Subordinate
Legislation Committee)**

SCRUTINY REPORT NO. 13 OF 1998

8 December 1998

TERMS OF REFERENCE

- (1) A Standing Committee on Justice and Community Safety be appointed (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee).
- (2) The Committee will consider whether:
 - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
 - (i) meet the objectives of the Act under which it is made;
 - (ii) unduly trespass on rights previously established by law;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
 - (b) the explanatory statement meets the technical or stylistic standards expected by the Committee.
 - (c) clauses of bills introduced in the Assembly:
 - (i) do not unduly trespass on personal rights and liberties;
 - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
 - (d) the explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of four members.
- (4) If the Assembly is not sitting when the Committee is ready to report on Bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing and circulation.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) The foregoing provisions of the resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

MEMBERS OF THE COMMITTEE

Mr Paul Osborne, MLA (Chair)
Mr John Hargreaves, MLA (Deputy Chair)
Mr Trevor Kaine, MLA
Mr Harold Hird, MLA

Legal Advisor: Mr Peter Bayne
Secretary: Mr Tom Duncan
Assistant Secretary (Scrutiny of Bills and
Subordinate Legislation): Ms Celia Harsdorf

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

BILLS

Bills - No Comment

The Committee has examined the following Bills and offers no comment on them.

ACTEW (Transfer Scheme) Bill 1998

This is a Bill for an Act to facilitate the sale and transfer of certain assets of ACTEW bodies. The Act would also enable the government to enter into contractual arrangements for the operation and management of “public assets” (such as are declared to be such by the Minister) which will continue to be held in public ownership.

Crimes (Amendment) Bill (No. 7) 1998

This Bill would amend provisions of the *Crimes Act 1900* which would be necessary to be made if the Mental Health (Treatment and Care) (Amendment) Bill 1998 becomes law. Section 428A of the Act would be repealed, thus lifting the sunset clause on Part XIA of the Act relating to unfitness to plead, mentally dysfunctional offenders and the defence of mental illness.

Custodial Escorts (Consequential Provisions) Bill 1998

This Bill would amend provisions of a number of Acts which would be necessary to be made if the Custodial Escorts Bill 1998 becomes law. These amendments are designed to ensure that persons appointed as escorts will be able to perform escort functions for the purposes of the amended Acts. The amendments would also enable an escort to be licensed to carry and use a firearm.

Land (Planning and Environment) (Amendment) Bill (No. 2) 1998

This Bill would amend section 247 of the *Land (Planning and Environment) Act 1991* to:

- require the relevant planning authority to give notice to each person who objected to the grant of a development approval of an application made to the authority to amend the approval in a ‘minor’ way;
- enable a person to whom a notice is given to make a submission to the relevant authority;
- oblige the authority to have regard to any such submissions;
- restrict the grounds upon which a minor amendment may be approved; and
- require the authority to notify each person who objected to the grant of the approval of any amendment made under section 247.

This Bill would also amend section 276 of the Act to the effect that any person who objected to the grant of a development approval under section 237 may apply to the Administrative Appeals Tribunal for a review of the decision to grant the approval. This amendment would delete the provision in paragraph 276 (1) (b) that the interests of the person seeking review must be “substantially and adversely affected” by the decision.

Milk Authority (Amendment) Bill (No. 2) 1998

This Bill would amend the *Milk Authority Act 1971* in ways which are designed to accommodate the fact that the Part IV Conduct Rules of the *Trade Practices Act 1974* (Cth) of the Commonwealth apply to government business activities. Thus, the major regulatory functions of the ACT Milk Authority are transferred from that Authority to the Treasurer and to the Minister for Urban Services. In addition, the sunset provisions for exemption of existing Milk Authority deeds would be extended to 31 December 1999.

Motor Traffic (Amendment) Bill (No. 5) 1998

This Bill would amend the *Motor Traffic Act 1936* in various ways which in the main relate to:

- the power and performance capabilities of motorcycles ridden by novice riders
- multi-bay parking meters;
- the cancellation of a licence or a registration when payment has been made by a cheque which is subsequently dishonoured;
- the alignment of the scope of the power of the Registrar of Motor Vehicles to refuse to renew or to cancel a licence with those grounds upon which the Registrar could have refused to grant the licence;
- provision for a stay of a decision of the Registrar to cancel, suspend or not renew the registration of a motor vehicle where there is an appeal;
- provision to permit demerit points accrued by an unlicensed person to be applied to their licence record; and
- foot-crossings controlled by traffic lights.

Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1998

This Bill would amend the *Motor Traffic (Alcohol and Drugs) Act 1977* to enable a court to impose imprisonment for offences in relation to refusing to provide a breath sample, refusing a blood test, and driving under the influence on intoxicating liquor or a drug. Provisions to this effect were inadvertently omitted by the *Motor Traffic (Alcohol and Drugs) (Amendment) Act 1997*.

Territory Owned Corporations (Amendment) Bill (No. 2) 1998

This Bill would amend the *Territory Owned Corporations Act 1990* to the effect of requiring the government of the day - prior to its appointing a director of a Territory owned corporation - to consult with (and have regard to the advice of) a standing committee of the Legislative Assembly nominated by the Speaker, or, where there is no such nomination, the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.

Traffic (Amendment) Bill 1998

This Bill would amend the *Traffic Act 1937*, which provides the laws for non-motorised traffic, to insert provisions to allow “marked foot-crossings”.

Bills - Comment

The Committee has examined the following Bills and offers these comments on them.

Custodial Escorts Bill 1998

This is a Bill for an Act which would enable the Administrator under the *Remand Centres Act 1976* to appoint a person as an escort, and then to provide for circumstances in which an escort may take custody of and detain a person. A police officer may give custody of a person to an escort so that the person may be brought before a court in circumstances where the person has been refused bail. A court may give directions to an escort. An escort may use such force as is necessary and reasonable, and may, if regulations permit, make a personal search of a person in custody.

Paragraph 2 (c) (iv) - inappropriate delegation of legislative power

Clause 10 of the Bill enables regulations to be made in relation to the search by an escort of a person in custody. Given the intrusion on personal liberty which a personal search entails, and the possible consequences in terms of criminal liability of the person searched, the Committee raises the question whether the extent of a power to make a personal search should be provided for in the Act, and not in regulations.

Mental Health (Treatment and Care) (Amendment) Bill 1998

This Bill would amend the *Mental Health (Treatment and Care) Act 1994* in various ways. The Explanatory Memorandum is a full and careful statement of the nature of these changes against the background of the Act. The major elements of the Bill which are of direct relevance to the work of this Committee are:

- the repeal of sections 26 to 29 of the Act and their replacement by provisions which state the kinds of mental health orders which may be made by the Mental Health Tribunal in relation to a person. The two basic types of order are (i) a psychiatric treatment order, and (ii) a community care order. In addition, the Tribunal may make a restriction order to accompany either of the two primary orders. Proposed new section 28 indicates how these orders might operate;
- proposed new section 29 states the role of a custodian in relation to a person subject to a mental health order;
- proposed new section 32A states the terms under which a person who is subject to a mental health order may be detained where the person does not comply with the order;
- proposed new section 36A enables the Supreme Court to make a preventive detention order in relation to a person;
- proposed amendments to section 37 of the Act amplify the extent of the power to detain a person in an emergency, and similar provision is made by a proposal to amend section 41 in relation to the involuntary detention of a person; and
- the Bill would insert a new Part XI of the Act to create a scheme for the appointment of official visitors of mental health facilities.

Paragraph 2 (c) (i) - undue trespass on personal rights and liberties

These amendments bear on the extent to which those who suffer from a mental dysfunction or a mental illness may be deprived of their personal liberty. It was beyond the capacity of the Committee, in the time available, to undertake a full review of all the ways in which such restrictions may be imposed, and then to make some assessment of those restrictions against human rights standards. The Committee understands however that the ACT Discrimination Commissioner has made a review of the Bill.

There is one particular aspect of the Bill that deserves comment from the Committee. The Explanatory Memorandum states that proposed new section 36A, which would enable the Supreme Court to make a preventive detention order in relation to a person, may be used “where the person has not been charged with (a) criminal offence and cannot be defined as mentally ill...”. The Explanatory Memorandum goes on to state that the test is whether the person “poses a significant risk to the community”.

This explanation is both an under- and over-statement of the power of the Supreme Court. Under proposed section 36A(5), the Supreme Court must be satisfied that the person is mentally dysfunctional or mentally ill. But these terms are very broadly defined and may not constitute a significant barrier to the power of the Court. On the other hand, the test is not whether the person “poses a significant risk to the community”. It is whether the Supreme Court is satisfied that “there are reasonable grounds for believing that, by reason of that dysfunction or illness, the person poses an unacceptable risk to the community”.

The Committee raises the question whether this test is too broad. There is no statement as to how the Court is to determine whether a risk is unacceptable. It is presumably because the person constitutes some danger to the community, but this is not stated. It is to be noted that there is no requirement that the risk must be significant. (If it were stated that the person must constitute some danger, there would then arise the issue as to how the extent of this danger would be assessed, and by whom.)

Much more fundamental questions are raised by this power to order preventive detention. What justification is there for detaining a person who, as the Explanatory Memorandum notes, is not subject to

any criminal charge, and who, as proposed section 36A(5) states, is not amenable to any form of treatment, care or support under this Act?

There is a question here whether this provision meets the standards of Article 9 of the ICCPR, which prohibits “arbitrary detention”. Other kinds of rights - including the right to be treated equally under the law, and the right not to be subject to cruel or unusual punishment - may be said to be implicated.

This proposal has raised much public debate in other jurisdictions where a similar provision has been introduced. (A relevant reference is S Gerull and W Lucas, *Sentencing Violent Offenders: Sentencing, Psychiatry and Law Reform* (AIC, Canberra, 1993).

The Committee draws this matter to the attention of the Legislative Assembly, and suggests that this and other issues which arise under these amendments require more extensive consideration. To facilitate this process, it would be necessary to extend the sunset clause of the present Act.

Victims of Crime (Financial Assistance) (Amendment) Bill 1998

This Bill would amend the *Criminal Injuries Compensation Act 1983* (‘the Act’) in ways which would change substantially the character of the scheme relating to the compensation of victims of crime. That Act would be re-named as the ‘*Victims of Crime (Financial Assistance) Act 1983*’.

The current scheme

To appreciate the extent of the change proposed, it is best to start with an outline of the major elements of the scheme under the Act.

Subsection 5 (1) vests in a court a discretion to award compensation to a person who sustains a “prescribed injury”. Such an injury is one sustained by the person “as a result of the criminal conduct of another person” (or in the course of assisting a police officer): subsection 2 (1). (Section 5 also permits compensation to be awarded to another person where the victim dies, and to a person who sustains “prescribed property damage”. The law applicable in these cases will not be addressed.)

Section 6 provides for the kinds of compensation which may be awarded. It includes “an amount that will reasonably compensate [the person who has sustained the “prescribed injury”] for pain or suffering resulting from the injury”: paragraph 6 (1) (c). But the amount awarded must not in the aggregate exceed \$50,000: subsection 7 (1).

The scope of the discretion vested in a court in relation to a decision to make an award, and then to fix its amount, is governed by section 15. A determination of whether there is a “prescribed injury” is made by the court “on the balance of probabilities”: section 8.

Thus, an award may be made in respect of the “the criminal conduct of another person” even though that person has not been convicted of any offence in relation to that conduct. The Act does to some extent reflect a policy that in such cases an award may be refused if the criminal conduct was not reported to a police officer: section 20.

The liability to pay any award of compensation is placed on the Territory: section 27. There is provision for recovery of an award from the “offender”, being a person who is convicted of an offence in circumstances where the award was made in relation to criminal conduct which constituted or formed an element of the offence: section 29A.

The proposed scheme

(Unless made otherwise clear, a reference here to sections of the Act should be understood as a reference to what the Bill proposes to be a section of the Act were the Bill to be passed.)

The scheme would distinguish between four kinds of applicants for an award - the primary victim, a person responsible for the maintenance of a primary victim, a person related to the primary victim (a “related victim”), and “an eligible property owner”. The law applicable in the latter three cases will not be addressed. Except in the last mentioned category, entitlement depends on whether there has been a primary victim.

Subsection 10 (1) would vest in a court a discretion to award financial assistance to a primary victim who sustains a criminal injury. By subsection 9 (1), a primary victim is a person “who is injured as a direct result of” “violent crime committed against him or her”, or, as result of assisting a police officer. (It should be noted that by subsection 9 (2), a police officer who is injured as a result of assisting a police officer cannot be a primary victim).

The concept of a “violent crime” is defined in section 3, which in turn refers to various crimes stated in the *Crimes Act 1900*. The offences are, generally speaking, the major offences against the person and sexual offences. In addition, regulations may prescribe other offences.

Subsection 10 (1) also states the kinds of financial assistance which may be awarded. It does not include a provision equivalent to existing paragraph 6 (1) (c) of the Act in relation to pain or suffering. Instead, it provides that if the victim is entitled to special assistance under subsection 10 (2), he or she may be awarded “special assistance for or on [her or his] behalf ... in an amount of \$30,000”.

By subsection 10 (2), special assistance for a primary victim may only be awarded by the court if

- “(a) the criminal injury is an extremely serious injury; and
- (b) the victim has obtained such assistance from the victims services scheme as is reasonably available, unless the person is physically incapable of benefiting from the scheme”.

The concept of an “extremely serious injury” is defined in section 11.

It must also be appreciated that by section 14 a primary victim is eligible for assistance under the victims services scheme, which is a scheme provided for in the *Victims of Crime Act 1994*. That Act would also be amended by this Bill (see below).

(Drafting problem. Subsection 10 (1) appears to read as if any award of special assistance must be in the amount of \$30,000. The discretion appears to relate only to whether to make an award of special assistance at all. Section 30 does state the considerations relevant in determining whether or not to award financial assistance, and as to the amount of the financial assistance. But the discretion - in section 10 (1) aided by section 30 - as to the amount might be read as limited to choosing which of the items (a) to (d) in subsection 10 (1) may be awarded. There may not be a discretion to vary the amount of \$30,000.)

The scheme proposed reflects the other major elements of the existing scheme as outlined above. There are some additional matters of significance.

First, financial assistance may not be awarded unless a report of a violent crime “is made to a police officer” This disqualification applies where the primary victim is such by virtue that a violent crime was committed against him or her: see sections 12 and 17. *(Drafting problem.* It is not clear just when the report must be made to the police officer. This is more of a problem under the Bill than it is under section 20 of the existing Act because the disqualifications in sections 12 and 17 are mandatory.)

Secondly, the Bill proposes amendments to the *Victims of Crime Act 1994* to provide for the establishment of a victims services scheme; (see further below).

Thirdly, the Bill would amend section 437 of the *Crimes Act 1900* by inserting a new subsection 437 (1A) under which a person who has suffered loss or incurred expense by reason of the commission of an offence may apply court for a reparations order.

Finally, the effect of Part VI of the Bill, if enacted, would be that major elements scheme proposed by the Bill for compensation to victims of crime would apply to any application for compensation made under the existing *Criminal Injuries Compensation Act 1983*.

Paragraph 2 (c) (i) - undue trespass on personal rights and liberties

Is the Bill an undue trespass on rights?

The public debate surrounding this Bill illustrates the problematic nature of rights arguments.

On the one hand, it may be argued that the *Criminal Injuries Compensation Act 1983* created a right to compensation against the State (the Territory) and that the Bill reduces the content of that right. If seen only as a matter of financial award, the Bill does reduce the amount of an award. Looking at the Bill in this way does however leave out of account the proposal for a victims services scheme. But there is no question that the amount of financial compensation would be affected by these proposals.

On the other hand, it may be argued that those injured through the criminal acts of others have no right to compensation against the Territory. (Some would say that in substance any such right is against those who provide the Territory with its money, being, primarily, Commonwealth and Territory taxpayers.) There is no parallel in the common law for any such right, and it is very difficult to find such a right stated in any international rights document. It might indeed be argued that the creation of such a right is discriminatory, on the basis that there are many kinds of injury (such as, for example, 'acts of God'), which may not be the basis for a claim against the Territory, or indeed against anyone else. Those who suffer harm through the criminal acts of others are, albeit in many cases only in theory, able to claim compensation against the perpetrator of the criminal conduct which has caused injury.

The Committee does not express a view on the general issue of whether the Bill may be seen as a reduction of the content of any right to obtain compensation against the Territory in respect of injury caused by criminal conduct.

The retrospective operation of the amendments

As noted above, the effect of Part VI of the Bill, if enacted, would be that major elements scheme proposed by the Bill for compensation to victims of crime would apply to any application for compensation made after 23 June 1998 under the existing *Criminal Injuries Compensation Act 1983*.

The Bill will thus effect a retrospective reduction of any right to obtain compensation against the Territory in respect of injury caused by criminal conduct. In this context, it is less difficult to seek of a 'right'. There is now a right to apply for compensation and to have it assessed in terms of the existing Act. This right would be reduced by the amendments.

The presentation speech of the Attorney-General points out, however, that it was on 23 June 1998 - being the date from which the policies of the amendments would apply to applications made under the existing Act - that the government announced, as part of the 1998/99 Budget, that it proposed to amend the existing Act to limit financial assistance to victims of crime.

The Committee draws this matter to the attention of the Legislative Assembly.

Restitution awards

A more particular issue arises with respect to the provisions of the Bill which enable the Territory to obtain restitution of the amount of an award from a person who has been convicted of an offence (the defendant), which is related to the criminal conduct which was the basis for the award; (see proposed new sections 52 to 61). It appears that the only issue of substance to be decided in relation to the making of an order for restitution is whether the person has been convicted of a related crime; (see subsection 55 (2)).

It may be argued that if a defendant is to be made liable to make restitution of the amount of an award under the Act, he or she should be given the opportunity (in natural justice) to make submissions as to the amount of that award prior to that award being made. Under the proposals of the Bill, it appears that no such opportunity will ever arise, unless proposed subsection 57 (1) is taken to permit the court to take into account a submission from a defendant to the effect that the award was too high or should not have been made at all.

Paragraph 2 (c) (iv) - inappropriate delegation of legislative power

Clause 9 of the Bill proposes amendments to the *Victims of Crime Act 1994* to provide for the establishment of a victims services scheme. The sections to be inserted into that Act would not however create the scheme. Rather, the detail of the scheme, including the “conditions for eligibility for the scheme”, and the “different levels of service for different categories of victim, or for victims in different circumstances”, would be prescribed by regulation. The regulations would also establish a Victims Assistance Board.

Given the significance of the victims services scheme to the operation of the scheme for compensation of those injured by criminal conduct, the Committee raises the question whether the extent of a power to make a personal search should be provided for in the Act, and not in regulations.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

The Committee has examined the following subordinate legislation and offers no comment:

Subordinate Law No. 32 of 1998 being the Land (Planning and Environment) Regulations (Amendment) made under the *Land (Planning and Environment) Act 1991* amend the Principal Regulations primarily to the effect of requiring the Minister to increase by 25% the change of use charge for the variation of a service station lease where, as a result of the variation, the lease ceases to be a service station lease.

Subordinate Law No. 34 of 1998 being the Liquor Regulations (Amendment) made under the *Liquor Act 1975* amends regulation 11 of the Principal Regulations to the effect of declaring a certain public place in accordance with subsection 84 (3) of the Act. The place is in the vicinity of Exhibition Park and applies during the period of the Summerfests.

Determination No. 236 of 1998 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* appoints a specified person as Chairperson of the Optometrists Board.

Determination No. 237 of 1998 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* appoints a specified person as a member of the Optometrists Board.

Determination No. 238 of 1998 made under subsection 3 (1) of the *Environment Protection Act 1997* is an accreditation of the ACT Commercial Waste Industry Code of Practice. The Code is set out in a Schedule to the Determination.

Determination No. 241 of 1998 made under section 4 of the *Public Place Names Act 1989* amends Determination Nos 8 of 1993, 46 of 1993 and 109 of 1993 by omitting street names in the Division of Ngunnawal and inserting other names in their stead.

Determination No. 243 of 1998 made under section 4 of the *Public Place Names Act 1989* determines the names of certain public places (being certain streets) in the Division of Nicholls.

Determination No. 246 of 1998 made under subsection 68 (1) of the *Consumer Credit (Administration) Act 1996* appoints a specified person to act as a member and as Chairperson of the Credit Tribunal.

Determination No. 247 of 1998 made under subsection 68 (1) of the *Consumer Credit (Administration) Act 1996* appoints a specified person to act as a member and as Chairperson of the Credit Tribunal.

Determination No. 248 of 1998 made under subsection 101 (1) of the *Land (Planning and Environment) Act 1991* appoints a specified person as Chairperson of ACT Heritage Council.

Determination No. 249 of 1998 made under section 32 of the *Health and Community Care Services Act 1996* revokes Determination No. 200 of 1998 and determines fees and charges payable for the purposes of the Act.

Determination No. 251 of 1998 made under subsection 112 (1) of the *Residential Tenancies Act 1997* appoints a specified person as President of the Residential Tenancies Tribunal.

Determination No. 252 of 1998 made under subsection 113 (1) of the *Residential Tenancies Act 1997* appoints a specified person to act as President of the Residential Tenancies Tribunal.

Determination No. 253 of 1998 made under subsection 112 (5) of the *Residential Tenancies Act 1997* appoint specified persons to be a member of the Residential Tenancies Tribunal for the purpose of hearing particular cases.

The Committee has examined the following subordinate legislation and offers these comments:

Determination No. 240 of 1998 made under 11A of the *Ambulance Service Levy Act 1990* determines fees payable for the provision of ambulance services.

The Committee notes that the text of the Determination does not indicate the source of the power to make the Determination. The title to the Act is specified in the heading of the Determination, but it is desirable to specify the legislative source in the text of the Determination.

Determination No. 244 of 1998 made under section 63 of the *Tenancy Tribunal Act 1994* appoints a specified person as Acting President of the Tenancy Tribunal.

Determination No. 245 of 1998 made under section 63 of the *Tenancy Tribunal Act 1994* appoints a specified person as Acting President of the Tenancy Tribunal.

Section 63 of the Act allows for the appointment of a Magistrate as “the Acting President”. On the face of it, there is a problem with both Determination Nos 244 and 245 in that each purports to appoint a Magistrate as the Acting President.

Other instruments

Variation to the Territory Plan No. 105 changes the policies in the Territory Plan that apply to the historic Mugga Mugga property in Symonston. Before the Committee was a document of approval of this variation made by the Executive purportedly in accordance with paragraph 26 (1) (a) of the ‘Land Act’.

Variation to the Territory Plan No. 63 amends some of the provisions relating to the control and definition of home occupation and home business use under the Territory Plan. Before the Committee was a

document of approval of this variation made by the Executive purportedly in accordance with paragraph 26 (1) (a) of the 'Land Act'.

The Committee has pointed out on other occasions that the relevant head of power according to which the Executive may make variations to the Territory Plan is paragraph 26 (1) (a) of the *Land (Planning and Environment) Act 1991*. It is acknowledged that this Act is referred to in the heading of the document approved by the Executive. It is, however, at least misleading for the text of the variation to refer to the 'Land Act'.

Paul Osborne, MLA
Chair

December 1998