

STANDING COMMITTEE ON CLIMATE CHANGE,
ENVIRONMENT AND WATER
Report on Annual and Financial Reports 2010-2011

AUGUST 2012

Committee membership

Ms Meredith Hunter MLA	Chair
Ms Mary Porter MLA	Deputy Chair from 1 July 2011 (for all of this Inquiry) Member from 23 June 2011 to 1 July 2011 Deputy Chair from 12 December 2008 to 19 November 2009
Mr Zed Seselja MLA	Member

Participating Members of the Legislative Assembly for the ACT

Mrs Vicki Dunne MLA

Ms Caroline Le Couteur MLA

Mr Shane Rattenbury MLA

Secretariat

Secretary:	Ms Sam Salvaneschi
Research assistant:	Dr Michael Sloane
Business administrator:	Ms Lydia Chung

Contact information

Telephone:	02 6205 0136
Facsimile:	02 6205 0432
Post:	GPO Box 1020 CANBERRA ACT AUSTRALIA 2601
Email:	committees@parliament.act.gov.au
Website:	www.parliament.act.gov.au

Resolution of appointment

On 9 December 2008, the Legislative Assembly for the ACT established the 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 ... ¹

Terms of reference

On 22 September 2011, the Legislative Assembly for the ACT referred to its relevant standing committees the annual and financial reports for the calendar year 2011 and the financial year 2010-11 that were presented to the Assembly in accordance with the *Annual Reports (Government Agencies) Act 2004* (ACT).

The Assembly referred to the Standing Committee on Climate Change, Environment and Water the reports of the:

- Conservator of Flora and Fauna;
- Environment Protection Authority;
- Environment and Sustainable Development Directorate; and
- Office of the Commissioner for Sustainability and the Environment.²

¹ Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 2, 9 December 2008, p. 13

² Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 120, 22 September 2011, pp. 1532-1536

TABLE OF CONTENTS

Committee membership	i
Participating Members of the Legislative Assembly for the ACT	i
Resolution of appointment	ii
Terms of reference	ii
RECOMMENDATIONS	V
1 INTRODUCTION	1
Conduct of the inquiry	2
Purpose and intent of annual reports	3
2 OFFICE OF THE COMMISSIONER FOR SUSTAINABILITY AND THE ENVIRONMENT	5
Role of the Commissioner	5
Powers of the Commissioner to compel the production of documents and information	8
State of the Environment Report	11
Bushfire hazard reduction burns	13
Other matters discussed	14
3 ENVIRONMENT AND SUSTAINABLE DEVELOPMENT DIRECTORATE	17
Feed-in tariff	17
Proposed Basin Plan and <i>Think water, act water</i> strategy	20
Salt discharge from Lower Molonglo Water Quality Control Centre	24
Public servants and statutory authorities	25
Operation of the plastic bags ban	26
Energy policy and energy efficiency programs	28
Other matters discussed	33
4 ENVIRONMENT PROTECTION AUTHORITY	35
Monitoring of new property development sites	35
Review of the <i>Environment Protection Act 1997</i>	37
Monitoring of lake water quality	38

Complaint handling	39
Other matters discussed	41
5 CONSERVATOR OF FLORA AND FAUNA	43
The position holding the statutory office.....	43
Bushfire hazard reduction burns	44
Tree protection.....	46
APPENDIX A: WITNESSES AT THE PUBLIC HEARINGS .	49
APPENDIX B: TOPICS OF QUESTIONS TAKEN ON NOTICE AND SUPPLEMENTARY QUESTIONS	51

RECOMMENDATIONS

RECOMMENDATION 1

2.12 The Committee recommends that the ACT Minister for the Environment and Sustainable Development present to the Legislative Assembly, before the end of the Seventh Assembly:

- the ACT Commissioner for the Environment's *Expanded Role of the Office of the Commissioner for Sustainability and the Environment report* (2009) in full and the Government's response to it; and
- the Government's response to the ACT Commissioner for Sustainability and the Environment's *Report on an audit/assessment of ACT Government agencies' environmental performance reporting* (2010).

RECOMMENDATION 2

2.22 The Committee recommends that:

- the ACT Commissioner for Sustainability and the Environment seek legal advice on the full scope of the power provided by section 17 of the *Commissioner for Sustainability and the Environment Act 1993* (ACT); and
- the Act be amended to clarify the extent of the power, if there is any doubt that it enables the Commissioner to effectively compel ACT agencies to provide information the Commissioner needs to conduct investigations and resolve complaints.

RECOMMENDATION 3

3.18 The Committee recommends that the ACT Minister for Environment and Sustainable Development report to the Legislative Assembly, before the end of the Seventh Assembly, on the progress of the review of the *Think water, act water* strategy.

RECOMMENDATION 4

3.24 The Committee recommends that before the end of the Seventh Assembly, the Minister for the Environment and Sustainable Development update the Legislative Assembly on the outcome of the ACT Government's discussions with the Commonwealth Government on the \$80 million in Commonwealth funding that both Governments previously explored investing in a salt reduction project in the ACT.

RECOMMENDATION 5

3.36 The Committee recommends that the ACT Minister for the Environment and Sustainable Development:

RECOMMENDATION 6

3.43 The Committee recommends that the ACT Environment and Sustainable Development Directorate review whether its purchase of more GreenPower than it uses is the most effective and efficient way in which the Directorate can offset the greenhouse gas emissions that it produces.

RECOMMENDATION 7

3.51 The Committee recommends that the ACT Minister for the Environment and Sustainable Development presents to the Legislative Assembly, before the end of the Seventh Assembly, an update on how the ACT Government intends to assist owners of units/apartments to increase the energy efficiency of their dwellings.

RECOMMENDATION 8

4.9 The Committee recommends that the ACT Minister for the Environment and Sustainable Development publicly release the discussion paper on the review of the *Environment Protection Act 1997* (ACT) before the end of the Seventh Assembly.

RECOMMENDATION 9

4.19 The Committee recommends that the ACT Environment Protection Authority continue to monitor the progress of the mapping and management of ACT sites contaminated with asbestos and other hazardous materials.

RECOMMENDATION 10

5.13 The Committee recommends that the ACT Minister for the Environment and Sustainable Development ensure that appropriate procedures are established in the ACT Environment and Sustainable Development Directorate and throughout the ACT Public Service to:

RECOMMENDATION 11

5.16 The Committee recommends that the ACT Environment and Sustainable Development Directorate monitor the trends in increases and decreases in applications to undertake tree-damaging activities and determine the factors likely to be causing these trends.

1 INTRODUCTION

- 1.1 On 22 September 2011, the Legislative Assembly for the ACT (the Assembly) referred the annual and financial reports for 2010-2011 of all ACT government agencies to certain Assembly standing committees.³
- 1.2 The Assembly's Standing Committee on Climate Change, Environment and Water (the Committee) was referred⁴ the respective annual and financial reports of the:
 - Conservator of Flora and Fauna⁵ and Environment Protection Authority,⁶ reports annexed to the annual and financial report of the Environment and Sustainable Development Directorate;
 - Environment and Sustainable Development Directorate;⁷ and
 - Office of the Commissioner for Sustainability and the Environment.⁸
- 1.3 Accordingly, the Committee inquired into these reports. This report presents the Committee's consideration and assessment of those matters that were discussed during the Inquiry's public hearings.

³ Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 120, 22 September 2011, pp. 1532-1536. All Legislative Assembly Minutes of Proceedings are available under the 'Assembly business' link on the Assembly's website <<http://www.parliament.act.gov.au/assembly-business/index.asp?Category=1&assembly=7>>, accessed 2 June 2012.

⁴ Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 120, 22 September 2011, pp. 1532-1536.

⁵ ACT Environment and Sustainable Development Directorate (2011), *Annual Report 2010-11* (2011), pp. 354-357 <http://www.environment.act.gov.au/_data/assets/pdf_file/0006/233286/1027-ESDD_AnnualReport2011_web.pdf>, accessed 2 June 2012.

⁶ ACT Environment and Sustainable Development Directorate (2011), *Annual Report 2010-11* (2011), pp. 348-353 <http://www.environment.act.gov.au/_data/assets/pdf_file/0006/233286/1027-ESDD_AnnualReport2011_web.pdf>, accessed 2 June 2012.

⁷ ACT Environment and Sustainable Development Directorate (2011), *Annual Report 2010-11* (2011) <http://www.environment.act.gov.au/_data/assets/pdf_file/0006/233286/1027-ESDD_AnnualReport2011_web.pdf>, accessed 2 June 2012.

⁸ Office of the Commissioner for Sustainability and the Environment (2011) *Annual Report 2010-11* <http://www.environmentcommissioner.act.gov.au/_data/assets/pdf_file/0015/205125/OCSE_annual_report_2009-10_final.pdf>, accessed 2 July 2012.

Conduct of the inquiry

- 1.4 The Committee held public hearings on 3 November 2011 and 1 December 2011. During these hearings, it heard from the Minister for the Environment and Sustainable Development, officials of the Environment and Sustainable Development Directorate (the Directorate), and the three statutory office holders of the Conservator of Flora and Fauna, the Environment Protection Authority and the Commissioner for Sustainability and the Environment. A list of witnesses can be found at Appendix A.
- 1.5 As is permitted by the Assembly's Standing Order 235,⁹ the Committee gave leave to Members of the Assembly (MLAs) who are not members of the Committee to ask questions of witnesses at the hearings. These MLAs were Mrs Vicki Dunne, Ms Caroline Le Couteur and Mr Shane Rattenbury.
- 1.6 A schedule of the Inquiry's public hearings was posted on the Assembly website¹⁰ and the Committee Office also issued a media alert indicating where and when they were being held¹¹. The hearings were broadcast live via the Assembly's web-streaming facility.¹²
- 1.7 Archived recordings of the hearings can be accessed via the Assembly's Committees On Demand webpage.¹³
- 1.8 The Inquiry webpage holds the Hansard transcripts of the hearings; the witnesses' responses to questions that they took on notice during the hearings; their responses to supplementary questions submitted to them by the Committee after the hearings; and correspondence witnesses submitted to the

⁹ Legislative Assembly for the ACT, *Standing Orders and Continuing Resolutions of the Assembly*, May 2012, p. 52 <http://www.parliament.act.gov.au/downloads/standing-orders/standing_orders.pdf>, accessed 2 June 2012.

¹⁰ Legislative Assembly for the ACT 'Committee hearings schedule', accessible from the homepage of the Assembly's website <<http://www.parliament.act.gov.au>>, accessed 2 July 2012.

¹¹ Legislative Assembly for the ACT 'Media release: Assembly hearings for the week 28 November to 2 December 2011', issued 25 November 2011 and 'Media release: Assembly hearings for the week 31 October to 4 November 2011', issued 28 October 2011.

¹² Legislative Assembly for the ACT 'Webstreaming live' webpage, accessible from the homepage of the Assembly's website <<http://www.parliament.act.gov.au/live/index.htm>>, accessed 2 July 2012.

¹³ Legislative Assembly for the ACT 'Committees on Demand' webpage, accessible from the homepage of the Assembly's website <<http://committees.parliament.act.gov.au/>>, accessed 2 July 2012.

Committee clarifying evidence that they gave.¹⁴ Appendix B provides indexes of the topics covered by questions taken on notice and supplementary questions at each hearing.

- 1.9 The Committee met on 26 July 2012 and 2 August 2012 to discuss the Chair's Report on the Inquiry.¹⁵ The Committee adopted its report on 2 August 2012.¹⁶

Purpose and intent of annual reports

- 1.10 The requirements for ACT agencies' annual and financial reports are set out in the *Chief Minister's Annual Report Directions 2010-11*,¹⁷ a part of a notifiable instrument made under the *Annual Reports (Government Agencies) Act 2004* (ACT) and the *Financial Management Act 1996* (ACT).¹⁸
- 1.11 The Acts that respectively establish the Conservator of Flora and Fauna, the Environment Protection Authority, and the Office of the Commissioner for Sustainability and the Environment also contain specific requirements on what must be included in the respective annual reports of these statutory offices.¹⁹
- 1.12 The *Annual Reports (Government Agencies) Act 2004* requires all annual and financial reports to be presented to the Assembly, by the respective Ministers

¹⁴ Standing Committee on Climate Change, Environment and Water Inquiry into Annual and Financial Reports 2010-2011 webpage: <http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>, accessed 2 July 2012.

¹⁵ Legislative Assembly for the ACT Standing Committee on Climate Change, Environment and Water, Minutes of 26 July 2012, paragraph 3 and Minutes of 2 August 2012, paragraph 2.

¹⁶ Legislative Assembly for the ACT Standing Committee on Climate Change, Environment and Water, Minutes of 2 August 2012, paragraph 2.6. Minutes are available at the Committee Office of the Legislative Assembly.

¹⁷ Annual Reports (Government Agencies) Notice 2012 (No 1) Notifiable Instrument NI2012-293 (ACT) made under sections 9, 12 and 16 of the *Annual Reports (Government Agencies) Act 2004* (ACT) <<http://www.legislation.act.gov.au/ni/2012-293/default.asp>>, accessed 2 June 2012. The Notifiable Instrument came into effect on 7 June 2012.

¹⁸ *Financial Management Act 1996* (ACT), section 30D <<http://www.legislation.act.gov.au/a/1996-22/default.asp>>, accessed 2 June 2012.

¹⁹ *Nature Conservation Act 1980* (ACT), subsection 15(3) <<http://www.legislation.act.gov.au/a/1980-20/default.asp>>, accessed 2 June 2012; *Environment Protection Act 1997* (ACT), section 158A <<http://www.legislation.act.gov.au/a/1997-92/default.asp>>, accessed 2 June 2012; *Commissioner for Sustainability and the Environment Act 1993* (ACT), section 20 <<http://www.legislation.act.gov.au/a/1993-37/default.asp>>, accessed 2 June 2012.

responsible for them.²⁰ Consequently, they are public documents available for use by stakeholders, including educational and research institutions, the media and wider public.

- 1.13 For example, the Institute of Public Administration (ACT Division) runs an Annual Reports Awards competition which tests annual reports submitted to the competition for their accountability, transparency, and quality, and which reviews the content, presentation, tone and overall effectiveness of reports.²¹

²⁰ *Annual Reports (Government Agencies) Act 2004* (ACT), Part 4
<<http://www.legislation.act.gov.au/a/2004-8/default.asp>>, accessed 2 June 2012.

²¹ Institute of Public Administration (ACT Division) 'Annual Reports Awards' webpage
<<http://www.act.ipaa.org.au/Annual-Reports-Awards.html>>, accessed 2 July 2012.

2 OFFICE OF THE COMMISSIONER FOR SUSTAINABILITY AND THE ENVIRONMENT

Role of the Commissioner

- 2.1 As outlined in the 2009-10 Annual Report of the Office of the ACT Commissioner for Sustainability and the Environment (the Office), in late 2007, the Government announced that it intended to expand the then Commissioner for the Environment's role to explicitly include environmental sustainability matters.²²
- 2.2 The then ACT Minister for Environment, Climate Change and Water asked the Commissioner for the Environment, as the office was then called,²³ to consult widely on the legislative change needed to underpin this change.²⁴ The Commissioner submitted to the Minister her report on this on 24 September 2009.²⁵ It is entitled *Expanded Role of the Office of the Commissioner for Sustainability and the Environment*. The Office's 2009-10 Annual Report noted that the report had not yet been responded to by the Government.²⁶
- 2.3 The Committee recommended in its *Report on Annual and Financial Reports 2009-2010* that:

... the ACT Government expedite the government response to the report on the

²² Office of the Commissioner for Sustainability and the Environment (2010) *Annual Report 2009-10*, p. 2
<http://www.environmentcommissioner.act.gov.au/data/assets/pdf_file/0015/205125/OCSE_annual_report_2009-10_final.pdf>, accessed 2 July 2012.

²³ See the *Commissioner for the Environment Act 1993* (ACT) effective from 1 July 1993 to 30 June 2011
<<http://www.legislation.act.gov.au/a/1993-37/19930701-4490/pdf/1993-37.pdf>>, accessed 2 July 2012.

²⁴ Office of the Commissioner for Sustainability and the Environment (2010) *Annual Report 2009-10*, p. 2.

²⁵ Office of the Commissioner for Sustainability and the Environment (2010) *Annual Report 2009-10*, p. 2.

²⁶ Office of the Commissioner for Sustainability and the Environment (2010) *Annual Report 2009-10*, p. 2.

Expanded Role of the Office of the Commissioner for Sustainability and the Environment.²⁷

- 2.4 In presenting to the Assembly the Government's response to this recommendation, the Government stated:

...the ACT Government is considering both the report of [sic] the Expanded Role of the Commissioner, recommendations arising from the Governing the City State Report (the Hawke Review) and the Commissioner for the Environment's Tree investigation report.²⁸

- 2.5 The Committee notes that the Government presented the *Governing the City State: One ACT Government - One ACT Public Service* report on 15 February 2011²⁹ and announced reforms on the basis of it on 24 March 2011.³⁰ The Committee also notes that on 16 February 2012 the Government presented to the Assembly its response to the *Report on the investigation into the Government's tree management practices and the renewal of Canberra's urban forest* (2011),³¹ referred to in the above quote as the Tree investigation report.³²
- 2.6 In this Inquiry's public hearing of 3 November 2011, the Committee noted that the Government had still not presented to the Assembly a response to the *Expanded Role of the Office of the Commissioner for Sustainability and the Environment* report and asked the Commissioner for Sustainability and the Environment (the Commissioner) whether he had received any indication of

²⁷ Standing Committee on Climate Change, Environment and Water Report 5, *Report on Annual and Financial Reports 2009-2010*, May 2011, p. 29
<<http://www.parliament.act.gov.au/downloads/reports/CCEW05%20AR%2009-10.pdf>>, accessed 4 June 2011.

²⁸ ACT Government (2011) *Government response to the Standing Committee on Climate Change, Environment and Water Report No. 5: Report on Annual and Financial Reports 2009-10*, p. 5
<<http://www.parliament.act.gov.au/downloads/reports/7th%20CCEW05%20AR09.pdf>>, accessed 4 June 2011.

²⁹ Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 90, 15 February 2011, p. 1120.

³⁰ Mr Jon Stanhope MLA 'Media Release: Changes to ACT Public Service', issued 24 March 2011
<<http://info.cmcd.act.gov.au/archived-media-releases/mediacadc.html?v=10577&s=43>>, accessed 4 June 2011.

³¹ Office of the Commissioner for Sustainability and the Environment (2011) *Report on the investigation into the Government's tree management practices and the renewal of Canberra's urban forest*, February
<http://www.envcomm.act.gov.au/investigations/canberras_urban_forest>, accessed 2 July 2012.

³² Legislative Assembly for the ACT, *Debates – Weekly Hansard – Legislative Assembly*, 16 February 2012, pp. 353-356. All Legislative Assembly Debates are available under the 'Hansard' link on the Assembly's website <<http://www.hansard.act.gov.au/hansard/downyear.htm>>, accessed 4 June 2011.

when a response would be forthcoming. The Commissioner replied that:

I understand, in listening to some of the commentary, that the government is looking at a review of the Nature Conservation Act [1980 (ACT)] and the expanded role of the commissioner in a holistic sense, but we have had no direct response, no.³³

- 2.7 The Committee asked the Commissioner whether a copy of the report, which has not been publicly released, could be released to the Committee. The Commissioner took this question on notice. He later furnished the Committee with this written response:

Legal advice is currently being sought regarding this request. On receipt of the legal advice a further update will be provided to the Standing Committee on Climate Change, Environment and Water.

It has been the position of this Office to release reports, provided to the Minister, following their tabling by the Minister.³⁴

- 2.8 In a private meeting of the Committee on 31 May 2012, the Commissioner informed the Committee that he was awaiting further legal advice before making any decisions in relation to the release of the report to the Committee.³⁵
- 2.9 During its public hearing of 3 November 2011, the Committee discussed two reports that the Commissioner had provided to the Minister.
- 2.10 In this discussion, the Committee noted that while the Commissioner provided the *Report on an audit/assessment of ACT Government agencies' environmental performance reporting* to the Minister on 22 October 2010,³⁶ the Government had not presented it to the Assembly.³⁷ This report was subsequently tabled in the

³³ Mr Robert Neil, *Transcript of evidence*, 3 November 2011, p. 2.

³⁴ ACT Commissioner for Sustainability and the Environment's response to question no. 1 taken on notice at the Inquiry hearing of 3 November 2011. All questions taken on notice and supplementary questions and the answers to them are available on the Inquiry webpage <<http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>>, accessed 2 July 2012. Appendix B of this Report also provides indexes of all the questions taken on notice and supplementary questions arising from the Inquiry hearing of 3 November 2011 and the questions taken on notice arising from the Inquiry hearing of 1 December 2011.

³⁵ Legislative Assembly for the ACT Standing Committee on Climate Change, Environment and Water, Minutes of 31 May 2012, paragraph 3.

³⁶ Office of the Commissioner for Sustainability and the Environment (2011) *Annual Report 2010-11*, p. 4.

³⁷ *Transcript of evidence*, 3 November 2011, p. 9.

Assembly on 6 December 2011, a little over a month after the Committee's meeting with the Commissioner.³⁸ At the time of writing, the Government had not yet presented a response to the report to the Assembly.

- 2.11 In its meeting with the Commissioner, the Committee also noted that the Commissioner's *Report on the Investigation into the Government's tree management practices and the renewal of Canberra's urban forest* was presented to the Minister on 3 March 2011³⁹ and to the Assembly on 5 April 2011.⁴⁰ On 16 February 2012, the Government presented a response to this report to the Assembly.⁴¹

RECOMMENDATION 1

- 2.12 **The Committee recommends that the ACT Minister for the Environment and Sustainable Development present to the Legislative Assembly, before the end of the Seventh Assembly:**
- the ACT Commissioner for the Environment's *Expanded Role of the Office of the Commissioner for Sustainability and the Environment report* (2009) in full and the Government's response to it; and
 - the Government's response to the ACT Commissioner for Sustainability and the Environment's *Report on an audit/assessment of ACT Government agencies' environmental performance reporting* (2010).

Powers of the Commissioner to compel the production of documents and information

- 2.13 The Committee inquired about the Office of the Commissioner's dealings with government agencies when it is resolving complaints. The Office's annual

³⁸ Legislative Assembly for the ACT, *Debates – Weekly Hansard – Legislative Assembly*, 6 December 2012, p. 5725.

³⁹ Office of the Commissioner for Sustainability and the Environment (2011) *Annual Report 2010-11*, p. 5.

⁴⁰ Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 99, 5 April 2011, p. 1240 and *Transcript of evidence*, 3 November 2011, p. 10.

⁴¹ Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 135, 16 February 2012, p. 1753.

report lists as pending a December 2010 complaint about the removal of asbestos from a property development site in Kingston. It states that the Office is, 'Awaiting further information from the Environment and Sustainable Development Directorate.'⁴²

- 2.14 A Senior Manager of the Office (the Senior Manager) informed the Committee that this complaint was 'closed' after the publication of the annual report. She explained that resolving the complaint had entailed conducting several rounds of information-gathering from several ACT agencies.⁴³ In the following exchange, the Committee asked the Commissioner whether agencies are cooperative when the Office approaches them to resolve complaints:

Mr Neil: They are always cooperative but providing information in a timely manner is a little more difficult. As far as I am aware, there is no statutory requirement for a time to respond, other than a reasonable time.

THE CHAIR: I suppose that creates some issues for a statutory agency because obviously you have someone who has complained on the other end and who is hoping to receive some sort of timely response or feedback.

Mr Neil: Yes. So we would generally keep prompting the relevant department. I could make a decision as to what I thought was reasonable. It could be challenged of course. We are far better off getting the information.

THE CHAIR: But, as you say, there is no statutory requirement.

Mr Neil: There is no statutory time frame, no.

MR SESELJA: Are you satisfied that directorates are being sufficiently responsive to requests for information from the commission?

Mr Neil: No, not entirely.

MR SESELJA: Are there any particular areas where that is a concern, or is it across the board?

Mr Neil: I think it is probably across the board because the sorts of questions we ask generally are not about the run-of-the-mill activity that the directorates would normally have instant information on. So we have got to do a bit of questioning to get the information.⁴⁴

⁴² Office of the Commissioner for Sustainability and the Environment, *Annual Report 2010-11*, p. 17.

⁴³ Ms Sarah Burrows, *Transcript of evidence*, 3 November 2011, p. 13.

⁴⁴ Mr Robert Neil, *Transcript of evidence*, 3 November 2011, p. 14.

- 2.15 In the hearing, the Committee observed that while there may be no specified time-frame within which agencies are required to provide this information, section 17 of the *Commissioner for Sustainability and the Environment Act 1993* (ACT) empowers the Commissioner to obtain documents and information from government agencies.⁴⁵ The Committee asked whether this power had been deployed in the 'last couple of years'. A Senior Manager of the Office informed the Committee that, as far she was aware, it had not been.⁴⁶
- 2.16 The Commissioner took as a question on notice how he might use this power and provided this written response:
- This is currently being explored through a request for advice on the scope of the application of s.17 of the *Commissioner for the Environment Act 1993* in relation to responses by agencies and persons under s.15(7).⁴⁷
- 2.17 The Committee notes that this response limits the Commissioner's exploration of the power to subsection 15(7) of the Act. Subsection 15(7) requires the Commissioner to give a person or agency an opportunity to appear before the Commissioner or an authorised person, and to make any submission, before the Commissioner is critical of the person or agency in a report.
- 2.18 The Committee notes that the plain words of section 17 of the *Commissioner for the Environment Act 1993* make clear that it provides the Commissioner with a power to obtain information from persons and agencies in much wider circumstances than those envisaged by subsection 15(7) of the Act. Neither section 15, nor section 17, include any provision that circumscribes the section 17 power to the circumstances covered by subsection 15(7).
- 2.19 Consequently, it is not apparent to the Committee why the legal advice sought on this power was limited to the effect of the interaction of section 17 and subsection 15(7) of the Act.

⁴⁵ *Commissioner for Sustainability and the Environment Act 1993*, section 17.

⁴⁶ Ms Sarah Burrows, *Transcript of evidence*, 3 November 2011, p. 32.

⁴⁷ ACT Commissioner for Sustainability and the Environment's response to question no. 16 taken on notice at the Inquiry hearing of 3 November 2011. All questions taken on notice and supplementary questions and all answers to them are available on the Inquiry webpage <<http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>>, accessed 2 July 2012. Appendix B of this Report also provides indexes of all the questions taken on notice and supplementary questions arising from the Inquiry hearing of 3 November 2011 and the questions taken on notice arising from the Inquiry hearing of 1 December 2011.

- 2.20 In his written response to the Committee's question about the section 17 power, the Commissioner stated that 'On receipt of the legal advice a further update will be provided to the Standing Committee on Climate Change, Environment and Water.' The Commissioner provided this update in a private briefing to the Committee on 31 May 2012.⁴⁸
- 2.21 In it, he informed the Committee that he had sought and was waiting on further legal advice on how the Commissioner may use section 17. The Committee would certainly appreciate an update from the Commissioner once they receive this advice.

RECOMMENDATION 2

2.22 The Committee recommends that:

- the ACT Commissioner for Sustainability and the Environment seek legal advice on the full scope of the power provided by section 17 of the *Commissioner for Sustainability and the Environment Act 1993* (ACT); and
- the Act be amended to clarify the extent of the power, if there is any doubt that it enables the Commissioner to effectively compel ACT agencies to provide information the Commissioner needs to conduct investigations and resolve complaints.

State of the Environment Report

- 2.23 Section 20(b) of the *Commissioner for Sustainability and the Environment Act 1993* requires that an annual report prepared by the Commissioner must include details of:

... measures taken during the year by or for the Territory in relation to the implementation of any recommendation in a state of the environment report under section 19 or special report under section 21 ...⁴⁹

The Committee discussed several aspects of the details provided in the Office's

⁴⁸ Legislative Assembly for the ACT Standing Committee on Climate Change, Environment and Water, Minutes of 31 May 2012, paragraph 3.

⁴⁹ *Commissioner for Sustainability and the Environment 1993*, subsection 20(b).

annual report pursuant to this section.⁵⁰

2.24 The report lists the progress that has been made on implementing each of the recommendations contained in the *State of the Environment Report 2007*. The Committee sought to clarify whether the Office simply reported in this list the information given to it by an ACT government agency or whether the Office subjected this information to critical analysis. The Senior Manager stated, 'It is largely what the government has provided, but we also look a little bit beyond the information that is provided by the departments.'⁵¹

2.25 When the Committee questioned the Commissioner on whether he thought critically analysing the information provided by the government was part of the Commissioner's role, the Commissioner responded:

The comments provided by the directorates are taken at face value to start with. Where we would have any information to suggest that what is provided is incorrect, in the first instance we would go back to the director-general of that directorate. If we still thought it was incorrect, it would just be put in the state of the environment report or in our report to the minister.⁵²

2.26 The Committee also sought information on the budget for the production of the *State of the Environment Report 2011*. The Commissioner took this question on notice.⁵³

2.27 In the Commissioner's written response, he advised that this budget accumulates over the four-year period in which the state of the environment report is developed and that it was \$328,000 at the end of the 2009-10 financial year with an additional allocation of \$41,000 for the 2010-11 financial year. The Commissioner also advised that the total cost to produce the report is expected to be \$416,000.⁵⁴

⁵⁰ Office of the Commissioner for Sustainability and the Environment, *Annual Report 2010-11*, p. 22.

⁵¹ Ms Sarah Burrows, *Transcript of evidence*, 3 November 2011, p. 22.

⁵² Mr Robert Neil, *Transcript of evidence*, 3 November 2011, p. 22.

⁵³ Mr Robert Neil, *Transcript of evidence*, 3 November 2011, p. 24.

⁵⁴ ACT Commissioner for Sustainability and the Environment's response to question no. 9 taken on notice at the Inquiry hearing of 3 November 2011. All questions taken on notice and supplementary questions and all answers to them are available on the Inquiry webpage <<http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>>, accessed 2 July 2012. Appendix B of this Report also provides indexes of all the questions taken on

- 2.28 The Committee notes that the *State of the Environment Report 2011* was released on 19 April 2012⁵⁵ and presented to the Assembly on 1 May 2012⁵⁶.

Bushfire hazard reduction burns

- 2.29 The Committee discussed the Commissioner's response to a complaint concerning the effect on threatened species of a bushfire hazard reduction burn conducted by the ACT Territory and Municipal Services Directorate (TAMS) in the Mullangarri Grasslands Nature Reserve. The detail on this complaint in the Office's annual report includes the statement:

The timing of communication to the Commissioner about this complaint did not allow the Office to effectively address the complainant's concerns before the burn. It is recommended that this situation be avoided in future by TAMS ensuring a response is sent to the Commissioner well in advance of implementing any proposed action that is the subject of a complaint to the Commissioner.⁵⁷

- 2.30 The Committee sought to establish whether the issues that were raised by the hazard reduction burn had been resolved. The Commissioner advised the Committee that:

There has been a lot of work done on the hazard reduction and bushfire management. There has been a significant amount of work involved in trying to balance the needs for fire suppression and ecological outcomes. I am satisfied at the moment that that process is addressing this type of issue.⁵⁸

- 2.31 The Commissioner also informed the Committee that the TAMS bushfire operational plans now take into account ecological guidelines.⁵⁹

notice and supplementary questions arising from the Inquiry hearing of 3 November 2011 and the questions taken on notice arising from the Inquiry hearing of 1 December 2011.

⁵⁵ Office of the Commissioner for Sustainability and the Environment (2012) 'Media Release: ACT State of the Environment report released', 19 April
<http://www.environmentcommissioner.act.gov.au/_data/assets/pdf_file/0006/247497/FINAL_MEDIA_RELEASE_-_Canberrans_are_complacent_3_OCSE_120412.pdf>, accessed 12 June 2012.

⁵⁶ Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 145, 1 May 2012, pp. 1869-1870.

⁵⁷ Office of the Commissioner for Sustainability and the Environment, *Annual Report 2010-11*, p. 16.

⁵⁸ Mr Robert Neil, *Transcript of evidence*, 3 November 2011, p. 13.

⁵⁹ Mr Robert Neil, *Transcript of evidence*, 3 November 2011, p. 13.

2.32 The Committee noted that in his annual report, the Commissioner recommended that it is the role of the Conservator of Flora and Fauna to make decisions on whether to refer proposed hazard reduction burns to the Commonwealth under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).⁶⁰

2.33 The Committee sought to establish whether there is now a formal understanding between TAMS and the Conservator of Flora and Fauna that the Conservator will make decisions on whether an assessment warrants a referral under the EPBC Act. The Conservator is a statutory officer appointed under the *Nature Conservation Act 1980* (ACT).⁶¹ The question was taken on notice⁶² and the Commissioner provided the following written response:

The Fire Management Unit of Parks and Conservation Service [in TAMS] obtains ecological advice from the ecologists of the Conservation Planning and Research Unit (CPR) of the Environmental Sustainable Development Directorate prior to the commencement of any fire fuel reduction, regardless of the method to be used. CPR reviews the Bushfire Operational Plan to determine the conditions under which fuel management can occur in ecologically sensitive areas. This includes an assessment on whether the proposed works are likely to significantly impact on a matter of National Environmental Significance. A role for the Conservator as an independent assessor in this process would be supported.⁶³

2.34 The Committee subsequently discussed this matter with the Conservator of Flora and Fauna. This is detailed, below, at paragraphs 5.6 to 5.12, inclusive.

Other matters discussed

2.35 In this hearing, the Committee also questioned the Commissioner about the

⁶⁰ Office of the Commissioner for Sustainability and the Environment, *Annual Report 2010-11*, p. 16.

⁶¹ *Nature Conservation Act 1980* (ACT), section 7.

⁶² Mr Robert Neil, *Transcript of evidence*, 3 November 2011, p. 19.

⁶³ ACT Commissioner for Sustainability and the Environment's response to question no. 8 taken on notice at the hearing of 3 November 2011. All questions taken on notice and supplementary questions and all answers to them are available on the Inquiry webpage <<http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>>, accessed 2 July 2012.

following matters addressed by the annual report of the Office of the Commissioner for Sustainability and the Environment:

- the nature and effectiveness of the ‘What Can I do?’ campaign;⁶⁴
- the role of, and selection process for, the Young Ambassadors program;⁶⁵
- the cost of the 14 technical papers commissioned for the investigation into the Canberra Nature Park;⁶⁶
- the Office’s triple bottom-line report;⁶⁷
- the ACT statutory reduction targets for greenhouse gas emissions;⁶⁸ and
- the Office’s handling of complaints about air quality,⁶⁹ urban forest management,⁷⁰ waste build up at the Skippy Bin site in Parkwood;⁷¹ water re-use,⁷² commercial tours at Tidbinbilla,⁷³ and the Molonglo River corridor.⁷⁴

⁶⁴ *Transcript of evidence*, 3 November 2011, p. 4; see also Commissioner for Sustainability and the Environment’s response to question no. 2 taken on notice at the hearing of 3 November 2012. All questions taken on notice and supplementary questions and all answers to them are available on the Inquiry webpage <http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>, accessed 2 July 2012. Appendix B of this Report also provides indexes of all the questions taken on notice and supplementary questions arising from the Inquiry hearing of 3 November 2011 and the questions taken on notice arising from the Inquiry hearing of 1 December 2011.

⁶⁵ *Transcript of evidence*, 3 November 2011, pp 5-6; see also Commissioner for Sustainability and the Environment’s response to question no. 3 taken on notice at the hearing of 3 November 2012.

⁶⁶ *Transcript of evidence*, 3 November 2011, p. 6; see also Commissioner for Sustainability and the Environment’s response to question no. 4 taken on notice at the hearing of 3 November 2011.

⁶⁷ *Transcript of evidence*, 3 November 2011, p. 8.

⁶⁸ *Transcript of evidence*, 3 November 2011, pp. 30-31.

⁶⁹ *Transcript of evidence*, 3 November 2011, p. 15.

⁷⁰ *Transcript of evidence*, 3 November 2011, pp. 15-16.

⁷¹ *Transcript of evidence*, 3 November 2011, p. 17; see also Commissioner for Sustainability and the Environment’s response to question no. 6 taken on notice at the hearing of 3 November 2011.

⁷² *Transcript of evidence*, 3 November 2011, pp. 26-27; see also Commissioner for Sustainability and the Environment, Response to question no. 14 taken on notice at the hearing of 3 November 2011.

⁷³ *Transcript of evidence*, 3 November 2011, pp. 28; see also Commissioner for Sustainability and the Environment, Response to question no. 15 taken on notice at the hearing of 3 November 2011.

⁷⁴ *Transcript of evidence*, 3 November 2011, pp. 29.

3 ENVIRONMENT AND SUSTAINABLE DEVELOPMENT DIRECTORATE

Feed-in tariff

- 3.1 The Committee noted the following passage of the Directorate's annual report:

On 30 June 2011 the ACT Legislative Assembly passed amendments to the *Electricity Feed-in (Renewable Energy Premium) Act 2008* [ACT] to combine the closed micro and continuing medium components of the scheme with a view to providing an ongoing renewable energy generation industry in the ACT. The Government did not support this amendment. While outside the scope of this annual report it is advised that the reformed scheme opened on 12 July 2011 and was closed due to over-subscription the next day on 13 July 2011.⁷⁵

- 3.2 The Committee sought details on what had occurred both when the original micro scheme was closed and when the reformed scheme was opened on 12 July 2011 and closed a day later. The Directorate's Acting Executive Director of Policy (the Acting Executive Director) explained to the Committee:

With the first closure, there was a period of time when the commonwealth had announced what they were doing with its REC [Renewable Energy Certificate] certificates, which was basically the subsidy that they provided to purchasers of PV [photovoltaics, which convert solar radiation into direct current electricity]. They had announced the particular schedule and then they changed that. That caused a bit of a panic in the market. At about the same time, New South Wales abruptly closed their feed-in tariff, so there was a huge amount of supply in the country. There was panic in the market about whether they would be able to get in, and we were the available market.

So in that six weeks leading up to the first closure, as many applications arrived at ActewAGL [the utility that provides electricity, among other services to the ACT and region] distribution offices as used to arrive every quarter previously.

⁷⁵ ACT Environment and Sustainable Development Directorate, *Annual Report 2010-11*, p. 225 <http://www.environment.act.gov.au/data/assets/pdf_file/0006/233286/1027-ESDD_AnnualReport2011_web.pdf>, accessed 2 June 2012.

They had installers turning up to the counter with boxes of applications—200 to 300 at a time. By the time they worked through and made sure all of those applications were correct...it was extremely close to the 15 at that stage. So we had to draw the line at that point.

That then closed. There was then a subsequent round of amendments done through the Assembly to revamp and reopen that scheme. In the interim, the medium scheme component had not closed. So the medium scheme continued to tick over up until the 12th, when the new revamped scheme opened, which again led to another flood, and it had to close by lunchtime the following day. At that stage provision had already been made by the government, with the agreement of the Assembly, to recognise people who had, in good faith, entered into contracts, started their installations but had not put their paperwork in to ActewAGL, and there was a deadline that was set at that time. So that deadline has now passed. ActewAGL have done the calculations and are currently working their way through those connections.

The final figure will be very much dependent upon whether all of the medium-scale applications do go ahead, because they are a little bit more complicated than the household ones. They often rely on external finance and a number of them rely on finance from Europe...So they may not proceed but we know what the quantum will be if everything goes ahead...⁷⁶

- 3.3 The Committee sought further information on the capacity of the micro category of the feed-in tariff scheme and was provided on notice with the following advice:

As at 31 May 2011, the initial closure date of the micro category of the Feed-in Tariff Scheme, advice received from ActewAGL Distribution was that approximately 19MW [megawatts] of capacity had been committed in micro applications. Accordingly, 4MW of the medium category cap of the Scheme was allowed for at that time for transfer to the micro category cap.⁷⁷

- 3.4 The Committee also discussed the utilisation of the feed-in tariff scheme by the

⁷⁶ Mr Alan Traves, *Transcript of evidence*, 1 December 2011, pp. 62-63.

⁷⁷ Mr Andrew Barr MLA, in his capacity as Acting Minister for the Environment and Sustainable Development, Response to question no. 6 taken on notice at the hearing of 1 December 2011. All questions taken on notice and supplementary questions and all answers to them are available on the Inquiry webpage <<http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>>, accessed 2 July 2012.

Education and Training Directorate. The Acting Executive Director informed the Committee that approximately 105 ACT schools had accessed the scheme and that all of the relevant contracts had been entered into prior to the first closure in May 2011 and were lodged under the transition provisions that arose after that closure. The total capacity of these solar installations is just over one megawatt.⁷⁸

- 3.5 The Committee was concerned to establish whether schools in the ACT had been given special advice by the Directorate that enabled them to access the feed-in tariff scheme at the original higher rate, rather than at the lower rate that applied under the amended scheme.⁷⁹ This issue was raised on the basis of correspondence from the Acting Executive Director to the Education and Training Directorate in which he stated:

There is a window of opportunity for you to lodge your medium generator connection applications prior to any micro applications being eligible to be lodged. It will also allow you to claim the 75 per cent rate rather than the 66 per cent rate.⁸⁰

- 3.6 The Acting Executive Director responded that this advice was appropriate because the medium-scale category had not reached its cap and had not closed. He explained:

The legislation itself does not commence upon passage; it commences upon gazettal. At that stage, it took approximately four to five days for that to occur; so the scheme itself could not reopen until the 12th...

So during that period, the medium scheme remained in effect because that had not reached its cap and...because the new amendments had not taken effect, it kept on going...probably the email you are referring to was in response to an inquiry from education to say, "If we wanted to aggregate a number of our panels onto several schools rather than every school and we fell into the medium category, what would be the arrangements?" That is a question we answered for many proponents during this period.⁸¹

⁷⁸ Mr Alan Traves, *Transcript of evidence*, 1 December 2011, pp. 64.

⁷⁹ *Transcript of evidence*, 1 December 2011, p. 66.

⁸⁰ *Transcript of evidence*, 1 December 2011, p. 66.

⁸¹ Mr Alan Traves, *Transcript of evidence*, 1 December 2011, p. 67.

- 3.7 The Minister for the Environment and Sustainable Development said that while it is true that schools had been able to access the original higher feed-in tariff rate for the micro category, this was not because they were able to make applications in the period between the legislation amending the scheme passing through the Assembly and the legislation commencing. Rather, they were eligible for the higher rate because they had entered into contracts before the original scheme had closed.⁸²
- 3.8 In his summing up, the Minister underlined:
- ...So schools did not receive any beneficial or additional treatment in this regard. They were treated the same as any other consumer who had entered into a contract prior to the first closure and, therefore, were entitled to the feed-in price operating prior to the first closure.⁸³

Proposed Basin Plan and *Think water, act water* strategy

- 3.9 The Committee discussed the then recently released *Proposed Basin Plan*,⁸⁴ which proposed a sustainable diversion limit for the ACT of 40.5 gigalitres, a reversal of the recommendation in the previous *Guide to the proposed Basin Plan*⁸⁵ that the ACT's sustainable diversion limit be reduced by between 30 and 50 per cent.⁸⁶
- 3.10 The Minister stated that the diversion limit remained a matter for discussion between the ACT and the Commonwealth with regard to how the requirements of an increasing population would be met. He said that this would be addressed through an intergovernmental agreement. With respect to the timeframe, purpose and nature of that agreement, the Minister explained:

⁸² Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 69.

⁸³ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 67.

⁸⁴ Murray Darling Basin Authority (2011) *Proposed Basin Plan*, made in respect of section 43 of the Commonwealth *Water Act 2007* <http://download.mdba.gov.au/proposed/proposed_basin_plan.pdf>, published 28 November 2011.

⁸⁵ Murray Darling Basin Authority (2010) *Guide to the proposed Basin Plan* <<http://www.mdba.gov.au/bpkid/guide/>>, accessed 2 July 2012.

⁸⁶ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 43.

I believe we are close to agreement on this matter. But it is not yet clear and it is contingent on processes within the commonwealth government's control. So I would be reluctant to put a time frame on it at this point, except to say that the 40.5 SDL as proposed in the draft guide gives us real confidence around water security into the medium term. In the long term there is a need to finalise arrangements for growth to ensure that there is continued water security for growth in the long term, and that is what the purpose of the negotiations with the commonwealth are designed to achieve.⁸⁷

- 3.11 The Committee inquired into whether the sustainable diversion limit of 40.5 gigalitres would be subject to revision in the year 2015. The Minister advised that the Government had received assurances that the limit for the ACT would be maintained, but that the decision is not a matter that is within the ACT Government's control.⁸⁸
- 3.12 The Committee sought to establish what would become of the water credits the ACT had accumulated, when the new Basin plan came into effect. The Executive Manager of Water Policy explained that the ACT would maintain, until 2019, the credits it had accrued from not using a proportion of the diversion limit each year. He said that in 2019 all states and territories would lose their credits and start building them up again.⁸⁹ The Executive Manager also said that the ACT credits stood at around 120 to 130 gigalitres.
- 3.13 The Executive Manager of Water Policy also informed the Committee that any stormwater diversions that take place in the ACT will be counted under the proposed sustainable diversion limit because the limit is intended to capture all water that the ACT uses locally rather than returns to the Basin.⁹⁰
- 3.14 Finally, the Committee discussed the relationship between the Murray-Darling Basin Plan and the Government's *Think water, act water* strategy.⁹¹ The Minister gave the following overview of why he regarded the strategy and the *Proposed*

⁸⁷ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 44.

⁸⁸ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 45.

⁸⁹ Mr David Butt, *Transcript of evidence*, 1 December 2011, p. 45.

⁹⁰ Mr David Butt, *Transcript of evidence*, 1 December 2011, p. 45.

⁹¹ ACT (2004) *Think water, act water* <
http://www.thinkwater.act.gov.au/permanent_measures/the_act_water_strategy.shtml#strategy_documents>, accessed 14 July 2012.

*Basin Plan*⁹² as complementary:

...the draft plan and the principles underpinning the draft plan insofar as they affect the ACT confirm our existing policy directions, which are about reducing our reliance on potable water supply, diverting potable water use away from non-potable needs, such as irrigating playing fields, sports fields and so on, and continuing to achieve improvements in water efficiency inside buildings. Those are the issues that the draft plan confirms, and these policy settings will need to remain in place to achieve those outcomes in the longer term.⁹³

3.15 The Minister noted that the strategy was being reviewed in the hearing⁹⁴ and subsequently, elaborated on the stages of this review in this way:

As indicated to the Standing Committee, the review is being conducted in stages. These stages being:

- review and analysis of the Think water, act water Implementation Plan (Progress Report) to determine the performance outcomes of the current strategy;
- evaluation of existing strategic objectives, water saving targets and water reuse targets- this will determine where the ACT needs to be in an agreed policy timeframe in the context of water availability relative to projected climate change, levels of water use, infrastructure development and projected population growth; and
- the development of a revised strategy with an integrated approach to water planning and management, outlining measures to be put in place to enable strategic objectives to be realised within the agreed policy timeframe.

An independent assessment of the progress and performance of the strategy has been undertaken. This work is guiding the development of a revised strategy.

The revised strategy will also take into account recent local developments, updated research and any improved modelling, as well as external policy development and influencing factors such as the Murray-Darling Basin

⁹² Murray Darling Basin Authority (2011) *Proposed Basin Plan*, a legal instrument made under the Commonwealth *Water Act 2007* <<http://www.mdba.gov.au/draft-basin-plan>>, accessed 2 July 2012.

⁹³ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 47.

⁹⁴ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 48.

Agreement, the National Water Initiative Agreement and COAG [Council Of Australian Government] water reforms.⁹⁵

- 3.16 The Committee notes that the ACT Government issued the *Think water, act water* strategy in 2004 and that the Government commenced reviewing this strategy in 2009 and continues to do so in light of the Murray Darling Basin Authority's *Proposed Basin Plan*, released in late 2011, among other developments.⁹⁶
- 3.17 The Committee also observes that the Government's *Think water, act water 2009 Demand Management Report*, published last year, concludes that 'meeting the 2023 target of a 25 per cent reduction per capita will require increased savings, and investigation and evaluation of further water efficiency measures, if these savings are to be achieved in the most cost-effective way'.⁹⁷

RECOMMENDATION 3

- 3.18 **The Committee recommends that the ACT Minister for Environment and Sustainable Development report to the Legislative Assembly, before the end of the Seventh Assembly, on the progress of the review of the *Think water, act water* strategy.**

⁹⁵ Mr Andrew Barr MLA, in his capacity as Acting Minister for the Environment and Sustainable Development, Response to question taken on notice No. 2 at the hearing of 1 December 2011. All questions taken on notice and supplementary questions and answers to them are available on the Inquiry webpage

<<http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>>, accessed 2 July 2012. Appendix B of this Report also provides indexes of all the questions taken on notice and supplementary questions arising from the Inquiry hearing of 3 November 2011 and the questions taken on notice arising from the Inquiry hearing of 1 December 2011.

⁹⁶ ACT (2004) *Think water, act water Volume 1: Strategy for sustainable water resource management in the ACT*, p.3 <http://www.thinkwater.act.gov.au/documents/Vol1screen_000.pdf>, accessed 14 July 2011

⁹⁷ ACT (2011) *Think water, act water 2009 Demand Management Report*, pp.1 and 25 <http://www.thinkwater.act.gov.au/permanent_measures/documents/2009_DemandMgmtReport.pdf>, accessed 2 July 2012.

Salt discharge from Lower Molonglo Water Quality Control Centre

- 3.19 The Committee discussed the amount of salt that is discharged from the Lower Molonglo Water Quality Control Centre (the Centre) into the Molonglo and subsequently the Murrumbidgee.
- 3.20 The Minister explained that although salt discharge is an issue at the Centre, the seriousness of the problem varies depending on the amount of water that is used in the ACT and subsequently flows through the Centre. Although the total amount of salt discharged remains the same, it has less of an impact when it is diluted by higher water flows.⁹⁸
- 3.21 The Minister's answer was reinforced by a subsequent written response in which he detailed the levels of salt that the Centre is authorised to discharge under the *Environment Protection Act 1997* (ACT). This response states that, while the concentration of salt in the water discharged from the Centre has at times exceeded the authorised limits, the total amount of salt discharged has remained well under these limits.⁹⁹
- 3.22 The Committee questioned the Minister as to what had happened to funds that the Commonwealth had allocated to the ACT to address this problem of salt discharge. The Minister explained that:

The government did achieve in-principle agreement with the commonwealth through an existing Murray-Darling Basin grants program to spend up to \$80

⁹⁸ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 49.

⁹⁹ Mr Andrew Barr MLA, in his capacity as Acting Minister for the Environment and Sustainable Development, Response to question taken on notice no. 3 at the hearing of 1 December 2011. All questions taken on notice and supplementary questions and answers to them are available on the Inquiry webpage <http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>, accessed 2 July 2012. All questions taken on notice and supplementary questions and answers to them are available on the Inquiry webpage <http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>, accessed 2 July 2012. Appendix B of this Report also provides indexes of all the questions taken on notice and supplementary questions arising from the Inquiry hearing of 3 November 2011 and the questions taken on notice arising from the Inquiry hearing of 1 December 2011.

million on a salt reduction project for the territory, subject to the development of a satisfactory business plan.

The government engaged with the commonwealth and undertook detailed analysis around a series of possible strategies to reduce salt and develop business plans accordingly. None of those business plans demonstrated a sufficient cost benefit to justify the use of the money, and the commonwealth was not satisfied that any of those projects was able to demonstrate a reasonable cost-benefit analysis. Therefore both jurisdictions agreed that it was not feasible at this time to use the money for that purpose...¹⁰⁰

- 3.23 The Minister emphasised that the ACT Government maintains that the funds have nevertheless been allocated to the ACT for a water project of some kind and is in discussions with the Commonwealth about this.¹⁰¹

RECOMMENDATION 4

- 3.24 **The Committee recommends that before the end of the Seventh Assembly, the Minister for the Environment and Sustainable Development update the Legislative Assembly on the outcome of the ACT Government's discussions with the Commonwealth Government on the \$80 million in Commonwealth funding that both Governments previously explored investing in a salt reduction project in the ACT.**

Public servants and statutory authorities

- 3.25 The Committee expressed concern about the movement of senior public servants into statutory positions that may involve criticising and assessing the direction and implementation of government policies. As an example, the Committee cited the movement of Mr Neil from the Directorate into the position of the Commissioner for Sustainability and the Environment.¹⁰²
- 3.26 The Committee sought the Minister's view on whether he believed there are any difficulties inherent in asking a public servant to independently assess policies and programs that they previously had a hand in generating and/or

¹⁰⁰ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 50.

¹⁰¹ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 50.

¹⁰² *Transcript of evidence*, 1 December 2011, p. 42.

managing. The Minister responded:

...I think the directorate and other government agencies respond to that in the same professional manner. People have a job to do. That is accepted. It does not create conflicts or concerns to the best of my knowledge. We have a range of statutory office holders who sometimes perform dual roles as public servants, at other times do not but who move between a public service role and a statutory role. The key to handling that sort of situation is professionalism and an understanding of the roles. I think we have that in abundance...¹⁰³

Operation of the plastic bags ban

3.27 The Directorate's annual report notes that the Assembly enacted the *Plastic Shopping Bags Ban Act 2010* in December 2010 and that the legislation would come into effect on 1 July 2011, at which point there would be a four-month transition period followed by the ban coming into force on 1 November 2011.¹⁰⁴

3.28 The Act seeks to reduce the use of polyethylene bags with a thickness of less than 35 microns by restricting their distribution at the point of sale. The legislation states that a retailer commits an offence if:

- (a) the retailer supplies a plastic shopping bag to a customer of the retailer; and
- (b) the plastic shopping bag is supplied for the customer to carry goods bought, or to be bought, from the retailer.¹⁰⁵

3.29 The ban had been in effect for a month at the time the Committee discussed its operation with the Minister and the Directorate at the public hearing.

3.30 The Committee sought information on when the effectiveness of the ban would be evaluated and what performance indicators this evaluation would use. The Minister informed the Committee that the Government would monitor the ban over its first 12 months and that he anticipated there would be 'sufficient data' to 'make an analysis of the impact of the ban'. He also said that

¹⁰³ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 42.

¹⁰⁴ Environment and Sustainable Development Directorate, *Annual Report 2010-11*, pp. 7 and 221.

¹⁰⁵ *Plastic Bag Ban Act 2010* (ACT), subsection 7(1).

the performance indicators had not yet been determined, but would involve assessments of the overall volume of plastic bag use in the ACT, the quantity of plastic bags going to landfill, and the quantity of plastic bag litter.¹⁰⁶

- 3.31 The Minister stated that he believed the public reaction to the ban had been overwhelmingly positive and that many retailers and the Canberra Business Council supported the ban.¹⁰⁷
- 3.32 The Committee raised concerns that some retailers were offering bags that were described as compostable, but did not comply with the relevant Australian standard. Subsection 6(b)(i) of the *Plastic Shopping Bags Ban Act 2010* excludes biodegradable bags from the ban. The Minister responded that, although there are no officers exclusively dedicated to enforcing the Act, the Office of Regulatory Services undertakes proactive and reactive monitoring of retailers' compliance with it.¹⁰⁸
- 3.33 The Committee sought information as to what advice had been provided to retailers about suppliers of biodegradable bags that comply with the relevant Australian Standard. The Minister advised that the Directorate had made a decision not to recommend particular suppliers due to the legal risks of overlooking, and, therefore, not recommending some.¹⁰⁹ He said that, instead, members of the Plastic Bag Advisory Group were asked to direct retailers to websites that would enable them to determine what bags they would need to purchase to comply with the Act.¹¹⁰
- 3.34 Finally, the Committee raised concerns about the environmental impacts of the heavier plastic bags that retailers were providing instead of the now banned bags.¹¹¹
- 3.35 The Minister responded that the impact of these bags would be assessed as part of the ban evaluation, mentioned above. He also directed the attention of

¹⁰⁶ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 50.

¹⁰⁷ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 52.

¹⁰⁸ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 51.

¹⁰⁹ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 53.

¹¹⁰ Mr Alan Traves, *Transcript of evidence*, 1 December 2011, p. 53.

¹¹¹ *Transcript of evidence*, 1 December 2011, p. 54.

the Committee to a 2008 Commonwealth Environment Protection and Heritage Council report, *Plastic retail carry bag use*,¹¹² which found that the thicker reusable plastic bags had a smaller ecological footprint than the thinner disposable plastic bags.¹¹³

RECOMMENDATION 5

3.36 The Committee recommends that the ACT Minister for the Environment and Sustainable Development:

- establish arrangements for gathering data on the implementation of the *Plastic Shopping Bags Ban Act 2010* (ACT) in terms of environmental outcomes; and
- report on the progress of these arrangements before the end of the Seventh Assembly.

Energy policy and energy efficiency programs

3.37 The Committee discussed various aspects of the Government's energy policies and emissions reductions targets, including the then recently released *ACT sustainable energy policy: energy for a sustainable city*.¹¹⁴

3.38 The Committee noted that the Minister had ruled out deregulating retail electricity prices for the next two years and asked why he had decided to do so. The Minister responded:

The sustainable energy policy reflects the fact that, in the longer term, the government believes price deregulation is still the appropriate course of action, but only when it can be demonstrated that there will be a net benefit to consumers...In the short term we believe, based on all of the advice before us, including advice from the ICRC [Independent Competition and Regulatory

¹¹² Environment Protection and Heritage Council (2008) *Plastic retail carry bag use: 2006 and 2007 consumption*, 7 February
<http://www.ephc.gov.au/sites/default/files/PS_PBags_Hyder_Consulting_Bag_Use_%202006-07%20Consumption_200805.pdf>, accessed 2 July 2012.

¹¹³ Mr Simon Corbell MLA, Transcript of evidence, 1 December 2011.

¹¹⁴ Environment and Sustainable Development Directorate (2011) *ACT sustainable energy policy: energy for a sustainable city*, September
<http://www.environment.act.gov.au/_data/assets/pdf_file/0003/232284/EDS_ACT_Sustainable_Energy_Policy_FA_web_A.PDF>, accessed 2 July 2012.

Commission, an ACT statutory body], that any removal of the transitional franchise tariff for small electricity customers will result in an increase in the average price, the average tariff. That is not consistent with the overall objectives of our energy policy. It is not good for consumers. Whilst we believe in the longer term we will see the removal of the TFT [transitional franchise tariff], in the short term we do not believe that is the appropriate course of action.¹¹⁵

- 3.39 The Committee requested information on how much energy the feed-in tariff scheme would contribute towards meeting the Government's aim of deriving 15 per cent of the Territory's energy from renewable sources by 2012.
- 3.40 The Acting Executive Director of Policy stated that the micro and macro feed-in tariff schemes combined contribute around one per cent of total electricity use. He also stated that the current large-scale scheme will contribute around two per cent to the renewable energy target, providing a total of around three per cent, or one-fifth of the target.¹¹⁶ The Acting Executive Director explained that the remaining 12 per cent, or four-fifths of the 15 per cent target, will be met through purchases of GreenPower.¹¹⁷
- 3.41 In this connection, the Committee noted that the Directorate's annual report offers:
- To lead by example, the Directorate purchased a significant additional amount of renewable energy this year, increasing renewable electricity supply to 164 per cent in 2010–11. The Directorate purchased approximately 195,960 kWh [kilowatt hours] of renewable energy.¹¹⁸
- 3.42 The Committee inquired as to whether the figure of 164 per cent was correct and, if so, why the Directorate had purchased more electricity than it had actually used. The Minister explained that the Directorate had made this purchase of electricity from green power sources to offset the greenhouse gas emissions generated by the Directorate's use of other fossil fuel energy

¹¹⁵ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 70.

¹¹⁶ Mr Alan Traves, *Transcript of evidence*, 1 December 2011, p. 70.

¹¹⁷ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 71.

¹¹⁸ Environment and Sustainability Directorate (2011), *Annual Report 2010-11*, p 334.

sources:¹¹⁹

You pay a tariff based on the value of the generation of green power versus the value of the generation of non-green power. So DECCEW [the ACT Department of Environment, Climate Change, Energy and Water, which ceased to exist on 17 May 2011] chose to pay a tariff at a higher level to reflect the cost of green power, and they chose to pay that tariff for a certain amount of electricity. The surplus regarding what would be their electricity bill otherwise in terms of consumption was to offset the generation of greenhouse gas emissions to other parts of the directorate's activities, such as gas, use of gas, use of motor vehicles and so on.¹²⁰

RECOMMENDATION 6

3.43 **The Committee recommends that the ACT Environment and Sustainable Development Directorate review whether its purchase of more GreenPower than it uses is the most effective and efficient way in which the Directorate can offset the greenhouse gas emissions that it produces.**

3.44 The Committee also discussed the Outreach program, covered in the Directorate's annual report,¹²¹ and sought to establish how it differs from the Water and Energy Savings in the Territory (WEST) and WEST Plus programs, also covered by the report¹²².

3.45 The Minister explained:

... the government provided funding in the most recent budget of \$8 million over four years to provide an enhanced outreach program. This is designed to assist low income households to improve energy efficiency in their homes, to reduce greenhouse gas emissions and to also reduce the cost of utility bills.

The program is developed and delivered in consultation with a range of

¹¹⁹ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 75.

¹²⁰ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 76. The ACT Department of Environment, Climate Change, Energy and Water ceased on 17 May 2011, when the ACT Department of Environment and Sustainable Development came into being via the now repealed Notifiable Instrument Administrative Arrangements 2011 (No.1) NO2011-244 <<http://www.legislation.act.gov.au/ni/2011-244/20110517-47916/pdf/2011-244.pdf>>, accessed 2 July 2012.

¹²¹ Environment and Sustainability Directorate (2011), *Annual Report 2010-11*, p 243.

¹²² Environment and Sustainability Directorate(2011), *Annual Report 2010-11*, p 244.

community-based welfare organisations, such as Communities@Work, Belconnen Community Service, the Salvation Army, I think, and other similar non-government charitable organisations and has been built on the successful outreach trial which was run in 2009-10.

This program provides targeted assistance to low income households to take steps to reduce their energy use and, indeed, their water use as well. The purpose of the program is basically to recognise that low income households are particularly vulnerable to increases in utility costs...¹²³

3.46 The Minister also explained that the WEST and WEST Plus programs have a more restricted target group than the Outreach program, because they only offer assistance to low-income households that have been referred by the ACT Civil and Administrative Tribunal (ACAT).¹²⁴

3.47 The Minister provided the Committee with the following summary of the Outreach program, which had a budget of \$1.64 million in 2010-11:

In 2010-11 during the trial of the program, 895 low income households participated in the trial. Energy savings have been estimated at 920 megawatt hours. Greenhouse gas savings were approximately 800 tonnes of CO₂ equivalent, and their energy bill savings combined of around \$130,000.¹²⁵

3.48 In answer to a question taken on notice during the hearing, the Minister furnished the Committee the following summary of the Government's expenditure on the WEST and WEST Plus programs:

WEST Budget and Expenditure

Expenditure on WEST in 2010-11 was \$23,256.

The program budget for 2011-12 is \$54,000 (which includes \$34,000 from Housing ACT).

Projected savings to date for the WEST Program (based on a detailed analysis of the program in 2008-09) are:

- energy, 1,034 MWh;
- water, 6092 kL;

¹²³ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 72.

¹²⁴ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 74.

¹²⁵ Mr Simon Corbell MLA, *Transcript of evidence*, 1 December 2011, p. 73.

- greenhouse gas emissions 477 tonnes CO₂ [carbon dioxide] equivalent; and
- householder energy and water costs of \$98,000.

WEST Plus Budget and Expenditure

Expenditure on WEST Plus in 2010-11 was \$81,754.

This program and associated budget was merged with the Outreach Program in 2011-12.¹²⁶

- 3.49 Finally, the Committee discussed the present restrictions on the provision of Home Energy Advice Team (HEAT) services to those living in units and apartments. The Directorate took a question on notice about these restrictions and subsequently provided the following written answer:

Owners of unit titles are not eligible for the HEAT home energy audit and rebate. During the initial development of the program, it was decided that units and apartments would have limited ability to make changes to infrastructure such as shared walls and roof space. Consequently they would be unable to achieve the \$2,000 expenditure required to be eligible for the rebate.

The Environment and Sustainable Development Directorate is considering how it can assist owners of units/apartments under the HEAT program. This may involve a revised rebate scale which would allow these owners to be eligible to receive an energy audit, recommendations for energy efficiency improvements and a rebate under the program.¹²⁷

- 3.50 The Committee recognises that since this hearing the Assembly has enacted the *Energy Efficiency (Cost of Living) Improvement Act 2012* (ACT).¹²⁸ Nonetheless, it believes that the Assembly would benefit from an update on the Directorate's consideration of how the Government intends to assist

¹²⁶ Mr Andrew Barr MLA, in his capacity as Acting Minister for the Environment and Sustainable Development, Response to question taken on notice no. 7 at the hearing of 1 December 2011. All questions taken on notice and supplementary questions and answers to them are available on the Inquiry webpage

<<http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>>, accessed 2 July 2012. Appendix B of this Report also provides indexes of all the questions taken on notice and supplementary questions arising from the Inquiry hearing of 3 November 2011 and the questions taken on notice arising from the Inquiry hearing of 1 December 2011.

¹²⁷ Mr Andrew Barr MLA, in his capacity as Acting Minister for the Environment and Sustainable Development, Response to question taken on notice no. 13 at the hearing of 1 December 2011.

¹²⁸ *Energy Efficiency (Cost of Living) Improvement Act 2012* <<http://www.legislation.act.gov.au/a/2012-17/default.asp>>, accessed 2 July 2012.

owners of units/apartments via energy efficiency audits.

RECOMMENDATION 7

- 3.51 **The Committee recommends that the ACT Minister for the Environment and Sustainable Development presents to the Legislative Assembly, before the end of the Seventh Assembly, an update on how the ACT Government intends to assist owners of units/apartments to increase the energy efficiency of their dwellings.**

Other matters discussed

- 3.52 The Committee also discussed the following matters arising from the Directorate's annual report:
- delays in policy development and senior management changeover rate;¹²⁹
 - the Dickson, Lyneham and Gungahlin ponds;¹³⁰
 - the Kingston Foreshore and amendments to the *Lakes Act 1976 (ACT)*;¹³¹
 - the use of single-select procurement processes;¹³²
 - Throsby Catholic school and the Environment Protection and Biodiversity Conservation Act 1999 (Cth);¹³³
 - the activities of the ACT Flora and Fauna Committee, a body established by the *Nature Conservation Act 1980 (ACT)*;¹³⁴
 - the national e-waste recycling scheme;¹³⁵ and
 - the Government's review of the *Nature Conservation Act 1980*.¹³⁶

¹²⁹ *Transcript of evidence*, 1 December 2011, p. 34.

¹³⁰ *Transcript of evidence*, 1 December 2011, p. 36; Mr Andrew Barr MLA, in his capacity as Acting Minister for the Environment and Sustainable Development, Response to question taken on notice No. 1 at the hearing of 1 December 2011.

¹³¹ *Transcript of evidence*, 1 December 2011, p. 82.

¹³² *Transcript of evidence*, 1 December 2011, p. 84.

¹³³ *Transcript of evidence*, 1 December 2011, p. 88.

¹³⁴ *Transcript of evidence*, 1 December 2011, p. 87.

¹³⁵ *Transcript of evidence*, 1 December 2011, p. 56.

¹³⁶ *Transcript of evidence*, 1 December 2011, p. 81

4 ENVIRONMENT PROTECTION AUTHORITY

Monitoring of new property development sites

- 4.1 The Committee noted that, in its annual report, the Environment and Sustainable Development Directorate had listed, as environment protection activities, the:

authorisation and monitoring of significant development and infrastructure projects including:

- the ACTEW water security initiatives – Enlarged Cotter Dam, Cotter Pump Station and Murrumbidgee to Cotter pipeline;
- Gungahlin, Dunlop and Molonglo land developments including the North Weston Pond;
- Dickson and Lyneham wetland projects; and
- the Kingston Foreshore redevelopment.¹³⁷

- 4.2 The Committee sought information on whether property developers at construction sites in Gungahlin, Dunlop or Molonglo had breached the environment protection agreements that they are required to have with the Environment Protection Authority (EPA), an authority established by the *Environment Protection Act 1997* (ACT).¹³⁸ The EPA advised that, in general, developers comply well with these agreements, but that recent heavy rainfall had led to sediment run-off.¹³⁹
- 4.3 The EPA also advised that, although the lakes of the ACT provide a final buffer against sediment run-off into the Murrumbidgee River, the EPA does

¹³⁷ Environment and Sustainable Development Directorate (2011), *Annual Report 2010-11*, p. 229.

¹³⁸ *Environment Protection Act 1997* (ACT), section 11 <<http://www.legislation.act.gov.au/a/1997-92/default.asp>>, accessed 2 July 2012.

¹³⁹ Mr Daniel Walters, *Transcript of evidence*, 1 December 2011, p. 89.

not rely on this. Instead, it is the responsibility of developers to prevent sediment from escaping their construction sites.¹⁴⁰

- 4.4 In answer to a question taken on notice on this subject, the Acting Minister for the Environment and Sustainable Development provided the following information on regulatory action taken by the EPA against property developers in the reporting period:

The EPA has undertaken the following regulatory action:

Infringement notices

Issued to a developer in:

- Franklin for no stabilised access; and
- Weston for sediment on the road.

Warnings

- Verbal warning to developers in Casey for a sediment control dam which failed following a large storm event.
- Verbal warnings to developers in the Belconnen and Gungahlin areas to maintain sediment controls. Follow up inspections identified pollution controls had been rectified.
- Written warning to developers in Weston for a breach (i.e. not maintaining records) of an Environmental Authorisation condition.
- Written warning letters to a developer in Weston for non compliance with approved sediment and erosion control plans.¹⁴¹

- 4.5 This question taken on notice answer also refers generally to instances where sediment was released into downstream waterways during heavy rain:

Recent high rainfall events has [sic] caused sediment control ponds, which are constructed to EPA standards of 150 cm³ per ha [hectare], to overtop and

¹⁴⁰ Mr Daniel Walters, *Transcript of evidence*, 1 December 2011, p. 89.

¹⁴¹ Mr Andrew Barr MLA, in his capacity as Acting Minister for the Environment and Sustainable Development, Response to question taken on notice no. 12 at the hearing of 1 December 2012. All questions taken on notice and supplementary questions and answers to them are available on the Inquiry webpage <<http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>>, accessed 2 July 2012. Appendix B of this Report also provides indexes of all the questions taken on notice and supplementary questions arising from the Inquiry hearing of 3 November 2011 and the questions taken on notice arising from the Inquiry hearing of 1 December 2011.

discharge sediment laden water to downstream water bodies. Environment Protection Officers undertake routine inspections of the development sites ensuring the ponds are maintained at the 20% capacity, however, in the recent storm events these ponds have reached their capacity and overflowed.

As recently as 26 November 2011, developers who were constructing Coombs Pond B called the on-call Environment Protection Officer to seek permission to discharge some of the captured water in the pond to ensure the integrity of the dam wall. The water had flowed through from two sites upstream after sediment ponds had overtopped and caused damage to diversion drains, thus allowing water to be captured in the pond. The pond was not designed to be used as a sediment pond during the construction phase. The on-call officer attended the site and allowed the water level of the pond to be reduced to ensure the integrity of the dam wall. If the water had overtopped the dam wall, scouring will have caused the dam wall to fail which in turn *[sic]* would have potentially allowed more than 91,000m³ of sediment laden water to enter the Molonglo River.¹⁴²

Review of the *Environment Protection Act 1997*

- 4.6 The Environmental Protection Authority is established under the *Environmental Protection Act 1997* (ACT) and the Environment and Sustainable Development Directorate annual report mentions that a review of this Act has commenced.¹⁴³
- 4.7 The Committee sought further information on the nature and status of this review. The EPA answered that:

The review process has commenced. An IDC [inter-ACT directorates committee] was established, as is the normal process, in getting all the directorates involved to canvass the issues. We have developed a discussion paper. All the directorates have concurred with the issues. A lot of the

¹⁴² Mr Andrew Barr MLA, in his capacity as Acting Minister for the Environment and Sustainable Development, Response to question taken on notice No. 12 at the hearing of 1 December 2012. All questions taken on notice and supplementary questions and answers to them are available on the Inquiry webpage <<http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=1028>>, accessed 2 July 2012.

¹⁴³ Environment and Sustainable Development Directorate (2011), *Annual Report 2010-11*, p. 229.

discussion, as you would imagine, was about actual things rather than a discussion paper. So it was about: "Can we fix this? Can we do that?"...They will be matters considered through the actual review process.

The discussion paper was trying to highlight some of the aspects that need to be looked at...there are the objectives of the legislation and whether they are current. So the currency of the legislation...Are we meeting those objectives—looking at analysing that in detail. How does it work with other legislation? Is it complementary? Are there inconsistencies there?

You might remember there was a review done in 2003-04 which recommended some fairly relationship-based improvements, and a lot of those have been done. This one really is looking at the nuts and bolts of legislation and how we can improve it to make it work more efficiently and effectively. We are expecting that in early 2012 the discussion paper will come out.¹⁴⁴

- 4.8 The Committee notes that the discussion paper on changes to the *Environment Protection Act 1997* has not yet been released.

RECOMMENDATION 8

- 4.9 **The Committee recommends that the ACT Minister for the Environment and Sustainable Development publicly release the discussion paper on the review of the *Environment Protection Act 1997* (ACT) before the end of the Seventh Assembly.**

Monitoring of lake water quality

- 4.10 The Committee discussed the role of the EPA in monitoring the water quality of the ACT's lakes and what standards are applied when deciding whether to close the lakes. The Committee was particularly concerned to establish how the health guidelines for water quality had been set and whether different safety thresholds existed for different lakes.
- 4.11 The EPA informed the Committee that EPA inspectors monitor blue-green algae levels in all three of Canberra's lakes. The EPA advised that the EPA is

¹⁴⁴ Mr Daniel Walters, *Transcript of evidence*, 1 December 2011, p. 92.

the authority that closes the lakes under the *Lakes Act 1976* (ACT).¹⁴⁵ The EPA also said that the guidelines for recreational water quality have been developed by ACT Health in line with the relevant National Health and Medical Research Council guidelines.¹⁴⁶

Complaint handling

- 4.12 The EPA annual report includes a table that displays the number of complaints by category for the years 2008-09, 2009-10 and 2010-11.¹⁴⁷ The Committee discussed several categories, particularly light pollution, noise, other hazardous materials, and solid fuel heaters.
- 4.13 The Committee noted the upward trend in light pollution complaints from two in 2008-09 to 20 in 2009-10 and 32 in 2010-11 and sought further information about the substance of these complaints.¹⁴⁸ The EPA replied that, in general, the complaints related to security lighting on residential properties and that such cases are resolved by referring to the Australian Standard that governs how such lights should be positioned and shielded.¹⁴⁹
- 4.14 The Committee noted a slight decline in the number of noise complaints from 1,494 in 2008-09 to 1,375 in 2009-10 and 1,355 in 2010-11. The EPA explained that, as with light pollution complaints, most noise complaints were about noise generated in residential settings. Live music events generated a very small proportion of the complaints, contrary to popular belief, and the EPA worked with concert promoters to limit the volume of such events as far as possible.¹⁵⁰
- 4.15 The Committee considered the issue of how noise complaints will be handled

¹⁴⁵ Mr Daniel Walters, *Transcript of evidence*, 1 December 2011, pp. 93-94.

¹⁴⁶ Mr Daniel Walters, *Transcript of evidence*, 1 December 2011, pp. 93. ACT (2010) *ACT Guidelines for Recreation Water Quality* <<http://www.health.act.gov.au/health-services/population-health/health-protection-service/recreational-water-quality/>> and the National Health and Medical Research Council (2008) *Guidelines for Managing Risks in Recreational Water* <<http://www.nhmrc.gov.au/guidelines/publications/eh38>>, both accessed 2 July 2012.

¹⁴⁷ Environment and Sustainable Development Directorate (2011), *Annual Report 2010-11*, p. 231.

¹⁴⁸ Environment and Sustainable Development Directorate (2011), *Annual Report 2010-11*, p. 251.

¹⁴⁹ Mr Daniel Walters, *Transcript of evidence*, 1 December 2011, p. 90.

¹⁵⁰ Mr Daniel Walters, *Transcript of evidence*, 1 December 2011, p. 94.

with increasing urban infill, especially where residential buildings are constructed alongside already established and potentially noisy commercial properties. The EPA informed the Committee that, at present:

Pollution is always about the polluter; it is the responsibility of the person generating the noise. That does not mean we should not look in a broader planning context at what we put next to what. We are even looking at things like avoiding those conflicts if we can through the planning code. We work very closely with our planning colleagues at the really early stage to try and avoid those interactions.¹⁵¹

- 4.16 The Minister added that, in light of the Government's policy to increase urban infill:

... I think it is more appropriate that there is a balanced response, so looking at both noise mitigation by the polluter and measures to reduce noise impacts in construction standards... That is very much the approach the government is seeking to adopt as it looks at its planning policies and its noise pollution regulatory framework and so on...¹⁵²

- 4.17 The Committee sought further information on what forms of material were counted under the category 'other hazardous materials', noting that asbestos and pesticides constitute their own categories. The EPA stated that 'other hazardous materials' were largely drums and other containers of unidentifiable chemicals that had been dumped. He also noted that the reduction in this category reflected the effectiveness of TAMS's waste collection services.¹⁵³

- 4.18 The Committee asked the EPA if he was 'confident' that the ACT has established 'quite a comprehensive map of where contaminated sites are across the territory' or 'are there still a few surprises that crop up'? The EPA responded that:

The ACT has had fairly comprehensive legislation since 1999 for contaminated sites. There were significant programs, because of the sheep dips that they found, of getting all the data we had on landfills, which is becoming a vexed issue for the territory and its infill program. We have all the sites that have been found on

¹⁵¹ Mr Daniel Walters, *Transcript of evidence*, 1 December 2011, p. 95.

¹⁵² Mr Daniel Walters, *Transcript of evidence*, 1 December 2011, p. 95.

¹⁵³ Mr Daniel Walters, *Transcript of evidence*, 1 December 2011, pp. 96-97.

our records. The only one in recent times that was unexpected...was at Southwell park.

...

...[At Southwell Park] when they were digging out to put the irrigation in, they found asbestos there...With the old landfills we have, such as at Ainslie - we have got them all over the ACT from the commonwealth era...But we are aware of them and they have management plans. TAMS obviously are the land custodian in 90 per cent of the cases...¹⁵⁴

RECOMMENDATION 9

- 4.19 **The Committee recommends that the ACT Environment Protection Authority continue to monitor the progress of the mapping and management of ACT sites contaminated with asbestos and other hazardous materials.**
- 4.20 Finally, the Committee discussed the fluctuations in the number of complaints relating to solid fuel heaters, which fell from 54 in 2008-09 to 18 in 2009-10, but rose to 69 in 2010-11.¹⁵⁵ The EPA noted that a single smoking chimney can generate a large number of complaints and that spikes in complaints appear to coincide with cold winters. However, he added that, in general, government measures to encourage the replacement of solid fuel heaters appear to be improving air quality in the ACT.¹⁵⁶

Other matters discussed

- 4.21 The Committee also briefly discussed with the EPA plastic bags found in waterways.¹⁵⁷

¹⁵⁴ *Transcript of evidence*, 1 December 2011, pp. 97-98.

¹⁵⁵ Environment and Sustainable Development Directorate (2011), *Annual Report 2010-11*, p. 251.

¹⁵⁶ Mr Daniel Walters, *Transcript of evidence*, 1 December 2011, pp. 96-97.

¹⁵⁷ *Transcript of evidence*, 1 December 2011, p. 90.

5 CONSERVATOR OF FLORA AND FAUNA

The position holding the statutory office

- 5.1 The annual report of the ACT Conservator of Flora and Fauna (the Conservator) states:

In 2010–11 the Director-General of the Directorate David Papps held the office of the Conservator of Flora and Fauna. Established by the *Nature Conservation Act 1980* [ACT], the Conservator of Flora and Fauna has additional responsibilities under the *Planning and Development Act 2007* [ACT] and the *Tree Protection Act 2005* [ACT].¹⁵⁸

- 5.2 The Committee stated it understood that the Director-General of the Environment and Sustainable Development Directorate is no longer the person appointed to be the Conservator and asked who the appointee was now. The Acting Director-General informed the Committee that she was now the appointee, but that this may change when the structure of the Directorate is finalised. Although the office had previously been held by the Director-General, this was not thought appropriate once the Director-General became the chief planning executive,¹⁵⁹ because that position has the power to override the Conservator of Flora and Fauna.¹⁶⁰

- 5.3 The Committee sought further information on the rationale for placing the office with the Deputy Director-General. The Acting Director-General advised that:

It was determined where it sits in this particular instance because all the areas that provide advice to the conservator report through the ED policy to my position. So I have responsibility for conservator liaison and for our conservation and research area. Those two areas combined provide all the

¹⁵⁸ Environment and Sustainable Development Directorate (2011), *Annual Report 2010-11*, p. 354

¹⁵⁹ An appointment made under the *Planning and Development Act 2007* (ACT), section 21.

¹⁶⁰ Ms Penny Farnsworth, *Transcript of evidence*, 1 December 2011, pp. 98-99.

technical support to the Conservator of Flora and Fauna. So it follows a reporting line up.¹⁶¹

- 5.4 The Acting Director-General also informed the Committee that the role consumes about ten per cent of the Deputy Director-General's time, although it requires the full-time support of the Planning and Conservator Liaison Officer and advice supplied by the Directorate's conservation, planning and research units.
- 5.5 The Acting Director-General was asked what provisions had been made for when she was unavailable to be the Conservator. She stated that the '...the Executive Director of Regulation and Services, has been filling that role. He backfilled when I [the Acting Director-General's substantive position is Deputy Director-General] was overseas on extended leave, and he acted as deputy and as conservator in that period'.¹⁶² The Acting Director-General also advised that a lot of the functions of the Conservator are carried out through delegations.¹⁶³

Bushfire hazard reduction burns

- 5.6 As discussed, above, at paragraphs 2.29 to 2.34, inclusive, the Commissioner for Sustainability and the Environment recommended in the Office of the Commissioner's annual report, that the Conservator should determine when bushfire hazard reduction burns are referred to the Commonwealth under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act).¹⁶⁴ The Committee put this to the Conservator and the Planning and Conservator Liaison Officer.
- 5.7 In response, the Planning and Conservator Liaison Officer told the Committee:
- There is a fire ecologist that works for the conservation, planning and research area that has input into how hazard reduction is done, whether it is by burning or by manual fuel removal or grazing. She, in her reporting role, actually

¹⁶¹ Ms Penny Farnsworth, *Transcript of evidence*, 1 December 2011, p. 99.

¹⁶² Ms Penny Farnsworth, *Transcript of evidence*, 1 December 2011, p. 99.

¹⁶³ Ms Penny Farnsworth, *Transcript of evidence*, 1 December 2011, p. 100.

¹⁶⁴ *Transcript of evidence*, 1 December 2011, p. 100.

reports through to the conservator [of flora and fauna] as well. She looks at every area that has ecological values that requires hazard reduction.¹⁶⁵

5.8 The Planning and Conservator Liaison Officer commented:

That would possibly just be adding another level of bureaucracy, because the conservator would go to the fire ecologist who was involved right from the beginning. So it would be the same paperwork. It would just go through an extra couple of hands.¹⁶⁶

5.9 The Planning and Conservator Liaison Officer elaborated that the complaint about the burn in the Mullangarri Grasslands Nature Reserve, which gave rise to the Commissioner's recommendation, had come from a researcher concerned about the burn's effect on their research. The Officer stated the burn was carefully planned and did not impact on the research. She also stated that the burn was necessary for hazard reduction because people were moving into the newly established suburb of Franklin.¹⁶⁷

5.10 The Committee is concerned that the Conservator is not, in the final analysis, making the determination of whether to refer to the Commonwealth, under the EPBC Act, a burn or any other activity that has the potential to significantly impact on an ecological community in the ACT that is listed as endangered under national legislation.

5.11 The Commissioner gives an explanation of his recommendation that the Conservator make these determinations, alongside the recommendation itself, in the Office of the Commissioner's annual report. In that explanation, the Commissioner states that the Mullangarri Grasslands Nature Reserve is part of the Southern Tablelands Natural Temperate Grassland and a habitat of the Striped Legless Lizard and that, under the EPBC Act, both the Grassland and the Lizard are listed as endangered.¹⁶⁸

5.12 The Committee considers that the Conservator should be turning her/his mind

¹⁶⁵ Ms Helen McKeown, *Transcript of evidence*, 1 December 2011, p. 100.

¹⁶⁶ Ms Helen McKeown, *Transcript of evidence*, 1 December 2011, p. 101.

¹⁶⁷ Ms Helen McKeown, *Transcript of evidence*, 1 December 2011, p. 100.

¹⁶⁸ Office of the Commissioner for Sustainability and the Environment (2011), *Annual Report 2010-11*, p. 16.

to whether an activity warrants referral, under the EPBC Act, whenever it is reasonable to believe that the activity could adversely impact on an ecological community listed under the EPBC Act. Indeed, the Committee considers that this final decision-making must be performed by the Conservator and that it is inappropriate for a public servant who is not the Conservator to conduct it.

RECOMMENDATION 10

- 5.13 **The Committee recommends that the ACT Minister for the Environment and Sustainable Development ensure that appropriate procedures are established in the ACT Environment and Sustainable Development Directorate and throughout the ACT Public Service to:**
- **ensure activities that may impact on ecological communities listed under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) are routinely, fully referred to the ACT Conservator of Flora and Fauna; and**
 - **enable the Conservator, upon receiving these referrals, to decide whether to, in turn, refer them to the Commonwealth under the *Environment Protection and Biodiversity Conservation Act 1999*.**

Tree protection

- 5.14 The Committee received the following update on the number of trees currently listed on the Tree Register, from the Planning and Conservator Liaison Officer:

This month—because it does change—there are 19 individual trees provisionally registered, 13 groups of trees provisionally registered, 82 trees fully registered and 10 groups of trees fully registered...We can give you a total on both registered—that is, 101 individual trees and 23 groups of trees.¹⁶⁹

- 5.15 The Committee noted that there had been an increase from 1,561 to 1,857 applications to undertake tree-damaging activity between 2009-10 and 2010-11.¹⁷⁰ The Planning and Conservator Liaison Officer explained:

That could be because it started to rain; therefore trees started to grow. It could be that it was at the end of the drought...It does tend to go in cycles. Winter, of

¹⁶⁹ Ms Helen McKeown, *Transcript of evidence*, 1 December 2011, p. 101.

¹⁷⁰ Environment and Sustainable Development Directorate (2011), *Annual Report 2010-11*, p. 356.

course, is a quiet time. Spring comes and the trees start to grow and start getting more leaves and the number of applications does increase dramatically. It is also the time of year we start to get the storms and rain events.¹⁷¹

RECOMMENDATION 11

- 5.16 **The Committee recommends that the ACT Environment and Sustainable Development Directorate monitor the trends in increases and decreases in applications to undertake tree-damaging activities and determine the factors likely to be causing these trends.**

¹⁷¹ Ms Helen McKeown, *Transcript of evidence*, 1 December 2011, p. 101.

APPENDIX A: Witnesses at the Public Hearings

Public Hearing of Thursday, 3 November 2011

Office of the Commissioner for Sustainability and the Environment:

- Ms Sarah Burrows, Senior Manager; and
- Mr Robert Neil, Commissioner for Sustainability and the Environment.

Public Hearing of Thursday, 1 December 2011

Mr Simon Corbell MLA, Minister for the Environment and Sustainable Development

Environment and Sustainable Development Directorate:

- Mr David Butt, Executive Manager, Water Policy;
- Ms Penny Farnsworth, Acting Director-General and Conservator of Flora and Fauna;
- Ms Anita Hargreaves, Chief Financial Officer;
- Ms Ann Lyons Wright, Senior Manager, Regulation and Services, Program Implementation;
- Ms Helen McKeown, Planning and Conservator Liaison Officer, Nature Conservation Policy, Conservation Planning and Research;
- Mr Geoffrey Rutledge, Director, Corporate;
- Mr Alan Traves, Acting Executive Director, Policy; and
- Mr Daniel Walters, Environment Protection Authority and Acting Director, Environment Protection and Water Regulation.

APPENDIX B: Topics of Questions taken on notice and Supplementary questions

Questions Taken on Notice at the Public Hearing of 3 November 2011 by the Office of the Commissioner for Sustainability and the Environment

Question Number	Hansard Transcript Page Number	Question Taken On Notice
1	3	Can the Committee obtain a copy of the <i>Expanded Role of the Office of the Commissioner for Sustainability and the Environment</i> report?
2	3	a. What was the financial cost and time spent on the Office's <i>What can I do?</i> campaign ? b. What sort of media were used for the <i>What can I do?</i> campaign? c. Are the results of that campaign published anywhere? d. If they are not, can the Committee have a copy of them?
3	5	What was the process for selecting the Young Ambassadors?
4	7	How much did each of the fourteen reports and papers developed to assist the investigation into the Canberra Nature Park (nature reserves), Molongolo River Corridor (nature reserves), and Googong Foreshores (the Canberra Nature Park Investigation) cost the Office of the Commissioner to have completed?
5	9	Can the <i>Report on Audit/assessment of ACT Government Agencies Environmental Performance Reporting</i> be: a. made public? b. provided to the Committee?
6	18	a. Is the Skippy Bin site at Parkwood identified in the complaint at the bottom of page 14 of the Annual Report the same site involved in the recent Mitchell fire? b. What was communicated from the Commission to various government agencies in relation to that particular site? c. Why was the complaint closed?
7	19	How much of the solar feed-in-tariff is part of the 15% renewable target?

Questions Taken On Notice at the Public Hearing of 3 November 2011 by the Office of the Commissioner for Sustainability and the Environment (continued)

Question Number	Hansard Transcript Page Number	Question Taken On Notice
8	19	Regarding the hazard reduction burn at Mullangarri Nature Reserve, the Annual Report states that recommendations were made to the Territory and Municipal Services Directorate about the Conservator of Flora and Fauna making the decision as to whether an assessment warrants a referral under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth). Is there now a formal understanding with the Conservator that they will make these decisions, and make any warranted referrals?
9	24	a. How much money was originally allocated for the 2011 ACT State of the Environment Report? b. What was the additional allocation made for it this financial year? c. How much is it expected to cost to produce the Report?
10	25	How much of the reduction in total employee expenditure is accounted for by the transfer of the Commissioner's leave balance to the ACT Auditor-General's Office?
11	—	How much was the additional contractor in financial year 2009-10 paid and how long were they engaged for?
12	25	The Commission has reported approximately \$274,000 worth of contracts that have a value of over \$20,000. What is the total number and value of contracts under \$20,000?
13	25	How much did the Office spend in the financial year on advertising, consultancy and travel?
14	27	Will the <i>Water Reuse Innovation in the ACT</i> paper be released publicly?
15	28	Which of the recommendations from the Tidbinbilla complaint have been agreed to?
16	32	Under section 17 of the <i>Commissioner for the Environment Act 1993</i> (ACT), the Commissioner has the power to obtain certain information and documents within a certain period of time. Is that something that you could explore to get some of the responses and information that you are needing in order to carry out your role?

**Supplementary Questions to the Office of the Commissioner for Sustainability
and the Environment arising from the Public Hearing of 3 November 2011**

Question Number	Supplementary Question
1	Why has the ACT Government failed to respond to the Commissioner's report, dated September 2009, the work for which was initiated by the Government?
2	Why has the ACT Government failed to respond to the Commissioner's Report on An Audit/Assessment of ACT Government Agencies' Environmental Performance Reporting, submitted to the Minister on 22 October 2010?
3	Why has the ACT Government failed to respond to the Commissioner's Report on the Investigation into the Government's tree management practices and the renewal of Canberra's urban forest, submitted to the Minister on 3 March 2011?
4	The Minister for the Environment and Sustainable Development tabled the <i>Report on Canberra Nature Park (nature reserves), Molonglo River Corridor (nature reserves), and Googong Foreshores Investigation</i> in the Legislative Assembly on 25 October 2011. In his tabling speech, the Minister stated, "as is customary in responding to the commissioner's investigation reports, the government intends to respond as soon as possible." (a) Given the Government's record in relation to the three reports noted above, what time frame does the Government put on "as soon as possible"? (b) What are the main lessons coming from this investigation? (c) What does the Commissioner say are the most important issues to be addressed by the Government?

**Questions Taken On Notice at the Public Hearing of 1 December 2011 by
the Environment and Sustainable Development Directorate,
the Conservator of Flora and Fauna, and the Environment Protection Authority**

Question Number	Hansard Transcript Page Number	Subject Matter of Question Taken On Notice
1	36	Dickson, Lyneham and Gunghalin Ponds
2	48	<i>Think water, act water review</i>
3	49	Salt level discharge from Lower Molonglo Water Quality Control Centre
4	55	Recycling fluorescent light globes and tyres
5	58	National waste initiatives
6	63	Capacity of medium and micro feed-in tariff schemes
7	73	Energy efficiency outreach program
8	74	Macarthur House green power
9	81	<i>Weathering the Change Action Plan 2</i>
10	83	Weed project
11	84	Single-select procurement processes
12	89	Environment Protection Authority monitoring in Gungahlin, Dunlop and Molonglo
13	102	Home Energy Advice Team (HEAT) services in units and apartments
14	40	Renewable energy technology showcase

There were no supplementary questions arising from the hearing of 1 December 2011.

