

2002

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

PLANNING AND LAND BILL 2002

EXPLANATORY MEMORANDUM

Circulated by authority of the
Minister for Planning
Mr Simon Corbell MLA

PLANNING AND LAND BILL 2002

Outline

The *Planning and Land Bill 2002* provides for planning and the development of land, and for other purposes. It provides for the establishment of:

- the Planning and Land Authority;
- the Planning and Land Council;
- the office of Chief Planning Executive;
- the Land Development Agency;
- the Land Agency Board; and
- the office of Chief Executive Officer of the Land Development Agency.

The Planning and Land Authority will assume responsibility for many of the functions managed under the *Land (Planning and Environment) Act 1991* (the “Land Act”). In particular, the Authority has the following general functions:

- administration of the Territory plan;
- maintenance of the ACT digital cadastral database;
- granting and administration of Crown leases;
- management of certain unleased Territory land, including the granting of licences in some circumstances;
- regulation of the building industry; and
- determination of development applications.

The Authority is also to have a role in policy relating to, and regulation of, the land development function.

Many of the functions of the Authority are to be performed by the Chief Planning Executive, who constitutes the Authority.

The Bill also provides for the establishment of the Planning and Land Council, the function of which is to provide advice on planning policy and leasehold administration issues.

The Bill provides for the land development function to be managed and, where appropriate, performed by the Land Development Agency. The land agency is constituted by the land agency board.

The land agency has the following general functions:

- the development of land;
- the carrying out of works on land;
- the carrying out of strategic or complex urban projects; and
- the sale of land.

The land agency may grant leases in some cases, as delegate of the Planning and Land Authority.

The Chief Executive Officer of the land agency has responsibility for management of the day-to-day affairs of the agency.

Financial Implications

The estimated cost of the Authority and the Council would be funded from the 2002-03 Budget and the transfer of funds in connection with the transfer of functions to the Authority.

The costs of the establishment of the land agency and its board are expected to be offset by the absorption of the existing land development agencies.

The Budget impact of increased Government involvement in land development for the forward years is expected to be strongly positive after an initial requirement to inject resources.

CLAUSE NOTES

CHAPTER 1 – PRELIMINARY

Clauses 1 and 2 – Name of Act and commencement – are machinery provisions that specify the name of the Act and provide for the commencement of its provisions.

Clause 3 – Dictionary – the Dictionary at the end of the Act is a part of the Act.

Clause 4 – Notes – notes in the Act are explanatory and not part of the Act.

Clause 5 - Object of Act – sets out the way in which the Act aims to provide a planning and land management system that contributes to the orderly and sustainable development of the Territory:

- a) consistently with the social, environmental and economic needs of people of the ACT; and
- b) in accordance with sound financial principles.

CHAPTER 2 – THE AUTHORITY AND CHIEF PLANNING EXECUTIVE

PART 2.1 – The Authority

Clause 6 - Establishment of Authority – the Planning and Land Authority is established as a body corporate. It must have a seal. The authority is an agent of the Territory. The authority is constituted by the chief planning executive (appointed under Part 2.4).

Clause 7 - Territory bound by actions of the authority – the Territory is bound by things done by the chief planning executive in exercising a function of the authority in the name of, or for, the authority.

PART 2.2 – Functions of the authority

Clause 8 - Authority functions – lists the functions of the authority. The authority is to:

- a) administer the Territory plan;
- b) “assess”, or review, the plan and propose amendments to it;
- c) plan for, and regulate, the development of land;
- d) advise on planning and land policy, including the broad spatial planning framework for the Territory;
- e) maintain the digital cadastral database;
- f) make available land information, whether generated by the authority or acquired from another source;
- g) grant, administer (manage), vary and end (terminate, acquire or accept surrender of) leases on behalf of the Executive;

- h) grant licences of unleased Territory land;
- i) approve or refuse applications for approval to undertake development;
- j) regulate the building industry;
- k) make orders under Part 6 of the Land Act;
- l) provide planning services within or outside the ACT;
- m) review its own decisions;
- n) provide support to the planning and land council established under Chapter 3.

Other functions may be given to the Authority under this Act or another Territory law or Commonwealth law.

The authority must perform its functions in a way that has regard to (takes into consideration) “sustainable development” (defined in clause 73).

Clause 9 - Authority to comply with directions – the authority is to comply with any direction given under this Act or another Territory law, and with the statement of planning intent (clause 13).

Clause 10 - Asking council’s advice – the authority may ask for the advice of the planning and land council, in relation to the exercise of any function, at any time. However, this clause makes it clear that the authority must ask for the advice of the council in two circumstances:

- before performing a function that is prescribed by the regulations; or
- before exercising a function in circumstances that are prescribed under the regulations.

PART 2.3 – Operations of authority

Clause 11 - Ministerial directions to authority – the Minister may give written directions to the authority:

- a) about general policies to be followed by the authority; or
- b) requiring the authority to revise the Territory Plan, or any part of it.

Subclause (2) requires the Minister, before giving a direction, to tell the authority about the proposed direction, and allow the authority an opportunity to comment on the proposed direction. The Minister must consider any comments made by the authority about the proposed direction.

A copy of the direction is to be presented in the Legislative Assembly within 6 sitting days after it is made. If this requirement is not met, the direction is taken to have been revoked.

Clause 12 - Assembly may recommend directions – the Legislative Assembly may recommend that the Minister give the authority a direction as stated in a resolution. The Minister must consider the recommendation and either give the direction or refuse to give it.

Subclause (3) provides that, following a recommendation of the Assembly, the Minister may give a direction in accordance with that resolution or as modified by the Minister.

Clause 13 - Statement of planning intent – the Minister may give the authority a written statement (a “statement of planning intent”) that sets out the main principles that are to govern planning and land development in the ACT. A copy of the statement must be presented in the Legislative Assembly within 6 sitting days after it has been given to the authority.

Clause 14 - Provision of planning services to others – ministerial approval – the authority may provide planning services to somebody other than the Territory only if the Minister gives written approval.

Clause 15 - Reports by authority to Minister – the authority must give the Minister a report, or information about its operations, if it is required by the Minister, and in the form required by the Minister. The requirements under this clause are in addition to any other provisions about the provision of information by the authority.

Clause 16 - Authority’s annual report – an annual report of the authority, given under section 8 of the *Annual Reports (Government Agencies) Act 1995*, must include a copy of any direction given under clause 11 and a statement by the authority about action taken by it to give effect to that direction.

Clause 17 - Delegations – the authority may delegate its functions to any public servant who is an authority staff member. The authority may also delegate to the land agency the function of granting leases on behalf of the Executive.

PART 2.4 – The chief planning executive

Clause 18 - Appointment of chief planning executive – the Executive must appoint a person to the position of Chief Planning Executive, but must first consult with the planning and land council. The appointment must not be for a term exceeding 5 years, but the person may be reappointed. An appointment under this clause is a notifiable instrument.

Clause 19 - Chief planning executive's employment conditions – the conditions of employment for the chief planning executive are to be agreed between the chief planning executive and the Executive, but are subject to any determination of the Remuneration Tribunal.

Clause 20 - Functions of the chief planning executive – the chief planning executive may exercise other functions given under this Act or another Territory law.

Clause 21 - Suspension or ending of chief planning executive's appointment – the Executive may suspend the chief planning executive because of misbehaviour, or for physical or mental incapacity, provided that incapacity affects the person's performance of authority functions. The Executive may also suspend the chief planning executive's appointment if that person is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for at least 1 year.

Subclause (5) provides that the chief planning executive is entitled to be paid salary and expenses while suspended.

Subclause (4) provides that a suspension ends if:

- a) the Minister does not comply with the requirement under subclause (2) to present a statement to the Assembly – at the end of the last day for presenting that statement; or
- b) the Assembly does not resolve to require the Executive to end the chief planning executive's appointment - at the end of the last day for pass that resolution.

Subclause (2) requires the Minister to present to the Legislative Assembly a statement of reasons for the suspension. That must be done on the first sitting day after the suspension occurs. Subclause (3) allows the Assembly 7 sitting days to resolve to require the Executive to end the chief planning executive's appointment. If such a resolution is passed, the Executive must end the person's appointment.

PART 2.5 – Authority staff and consultants

Clause 22 - Authority staff and consultants – the staff of the authority are to be employed under the *Public Sector Management Act 1994*. Therefore, in relation to staff members, the chief planning executive has all the powers of a chief executive under that Act, and has responsibility for the management of the affairs of the authority.

Clause 23 - Authority consultants – the authority may engage consultants, but may not enter into a contract of employment under this clause.

CHAPTER 3 – THE COUNCIL

PART 3.1 – Establishment, constitution and functions

Clause 24 - Establishment of council – the Planning and Land Council is established.

Clause 25 - Constitution of council – the council consists of a chairperson, a deputy chairperson and from 3 to 5 other members. A person may not be appointed as a member of the council if they are:

- a) the chief planning executive; or
- b) a member of the staff of the authority; or
- c) the chief executive officer of the land agency.

Subclause (3) provides that the deputy chairperson acts in the position of the chairperson during all vacancies in the position and when the chairperson cannot exercise the functions of the position.

Clause 26 - Functions of council – while the council may provide advice at any time, this clause makes it clear that the council must advise on matters arising under this Act if asked by the Minister or the authority. Other functions may be given to the council under this Act or another Territory law.

PART 3.2 – Council membership

Clause 27 - Council members – council members are to be appointed by the Minister, who must try to ensure that the members represent the following disciplines and areas of expertise - urban economics, community and social planning, urban and regional planning, environmental management, land development, public policy or public law, urban design, transport planning, public administration.

Council members may not be appointed for a term longer than 4 years.

Clause 28 - Ending of council members' appointments – the Minister may end the appointment of a council member for misbehaviour or for physical or mental incapacity (provided that incapacity affects the performance of the person's functions as a member of the council). A member may also be dismissed if the member:

- (i) becomes bankrupt, applies to benefit under a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (ii) is absent from 3 consequent meetings of the council, unless the member is on approved leave; or

- (iii) contravenes the requirements for the disclosure of interests by council members; or
- (iv) commits an offence, in Australia or overseas, punishable by imprisonment for at least 1 year.

A member may also be dismissed if the Minister is of the view that the member's ability to function as a member of the council is affected by an interest disclosed under clause 35.

Clause 29 - Calling council meetings – the council is to meet at the times and places decided by the chairperson. The chairperson must ensure that all members are given notice of meetings.

Subclause (3) requires the chairperson to ensure that, as far as is practicable, the council meets at least monthly.

Clause 30 - Council meetings – sets out several requirements for the conduct of council meetings, including:

- (1) the chairperson presides at all meetings;
- (2) if the Act does not set out a procedure in relation to something, the council may decide its own procedure;
- (3) if the members agree, rather than requiring members to be physically present at all council meetings, a meeting may be held by any method of communication that allows members to participate without being in each other's presence – subclause (4) makes it clear that, in those circumstances, a member is taken to be present at a meeting.

Clause 31 - Council resolutions – a resolution of the council is valid, even if not passed at a council meeting, if notice of the resolution was given under procedures decided by the council, and if all the members agree in writing to the resolution.

Clause 32 - Minimum number for council meetings – at least 4 members must be present at a council meeting in order for the council's business to be conducted.

Clause 33 - Voting at council meetings – questions arising at a council meeting may be decided by a majority of votes of the members present and voting. Subclause (2) provides that, if votes on a question are equally divided, the chairperson's decision is the decision of the council.

Clause 34 - Minutes of council proceedings – the council must keep minutes of its proceedings at meetings. Subclause (2) requires the chairperson to ensure that each meeting of the council considers the minutes of its previous meeting.

Clause 35 - Disclosure of interests by council members – deals with a council member's duty to disclose certain interests. A council member who has a "relevant interest" in an issue that is, or will be, before the council must disclose that interest to

the council - “relevant interest” is defined in subclause (4). The disclosure must be made as soon as practicable after the facts of the issue have come to that member’s knowledge.

Under subclause (2) the disclosure must be recorded in the council’s minutes and, unless the council decides otherwise, the member having the interest must not be present when the council considers the issue, and must not take part in making a decision on that issue.

Under subclause (3), any ‘other member’ having a relevant interest (in the issue that has been disclosed) may not take part in the council’s decision under subclause (2) (on whether to allow the member who disclosed the interest to take part in the council’s consideration of the issue). The ‘other member’ may not be present when the council is considering its decision under subclause (2).

Clause 36 - Reporting of disclosed interests to Minister – the council chairperson must report to the Minister about the disclosure of an interest under clause 35 within 10 days of that disclosure. The report must include details of the nature of the interest and any decision of the council about the disclosure.

Subclause (2) requires the chairperson to give the Minister, by 31 July in each year, a statement setting out information given to the Minister under this clause during the previous financial year. The Minister must, within 14 days after receiving a statement, give the statement to the relevant committee of the Legislative Assembly.

CHAPTER 4 – THE LAND AGENCY

Part 4.1 – Establishment and functions of land agency

Clause 37 - Establishment of land agency – the Land Development Agency (the “land agency”) is established. It is a corporation, and must have a seal.

Clause 38 - Functions of land agency – the land agency’s functions are to:

- a) to develop land; and
- b) to carry out works for the development and enhancement of land; and
- c) to undertake strategic and complex urban development projects.

The agency may also exercise any other function given to it by this Act or another Territory law. Subclause (3) provides that they may be exercised:

- a) alone; or
- b) through subsidiaries or joint ventures (including partnerships); or
- c) by holding shares in, or other securities of, corporations.

Subclause (4) requires the land agency to perform its functions:

- a) in accordance with the urban management objectives set out in the Territory Plan;
- and

- b) in accordance with sound business practice; and
- c) in a way that gives effect to the agency's business plan, as accepted by the Minister.

Clause 39 - Land agency functions to be exercised in accordance with directions – the agency must comply with directions given to it under this Act or another Territory law.

Clause 40 - Limitations on land agency's formation of corporations – the land agency requires the Executive's prior written approval to deal in shares, debentures or other securities of a corporation, or to form, or be involved in the formation of, a corporation. Any approval must relate only to a particular corporation, and may be subject to conditions.

Subclause (3) provides that, if the agency has any dealings in corporations, as described in this clause, the agency must tell the Minister.

The Minister must, within 6 sitting days of being told about the agency's action, prepare a statement about the action and present the statement to the Legislative Assembly. The Minister may omit any commercially sensitive material from the statement, but must advise the Assembly of the general nature of that omitted material.

Clause 41 - Limitations on land agency's participation in joint ventures and trusts – the prior written approval of the Executive is required before the agency may take part in a joint venture or trust. That approval may be a general approval, or may relate to a particular venture, and it may be given subject to conditions and restrictions. The agency is to tell the Minister when a joint venture or a trust has been entered into.

The Minister must, within 6 sitting days after the joint venture or trust agreement is entered into, prepare a statement setting out the details of the joint venture or trust and present the statement to the Legislative Assembly. The Minister may omit any commercially sensitive material from the statement, but must advise the Assembly of the general nature of that omitted material.

Clause 42 - Controlling interest in corporations, joint ventures or trusts in which land agency has an interest - if the land agency can control the activities of a corporation, joint venture or trust, it must ensure that the auditor-general is appointed as the auditor for the corporation or joint venture, and that the corporation, joint venture or a trustee for the trust does not do anything that the agency itself may not do.

Subclause (2) states that, if the agency has an interest that is not a controlling interest, the agency must try to ensure that the auditor-general is appointed as the auditor.

PART 4.2 – Management of land agency

Division 4.2.1 – Introductory concepts

Clause 43 - Meaning of *business plan* for pt 4.2 – the term “business plan” is explained – it is a document that complies with clause 44.

Division 4.4.2 – Land agency business plans

Clause 44 - Contents of land agency business plans – a land agency business plan for a financial year must contain:

- a) a copy of the statement of intent – defined in subclause (2); and
- b) a description of the undertakings that the land agency is likely to be involved in during the current and next 2 financial years; and
- c) a description of the land agency’s business strategies for the current and next 2 financial years; and
- d) other information or material that the Minister has asked, in writing, the agency to include in the business plan.

Clause 45 - Preparation, acceptance and presentation of business plans – the regulations may prescribe how and when business plans are to be developed, varied or accepted by the Minister. A business plan must be presented to the Legislative Assembly within 5 sitting days of being accepted by the Minister.

Division 4.2.3 – Land agency financial provisions

Clause 46 - Proceeds of lease sale – the proceeds of the sale of a lease of land are the income of the land agency.

Clause 47 - Payment of funds to the Territory – the Treasurer may direct the land agency to pay to the Territory the amount stated in, or calculated according to, the direction. The direction may also relate to how and when such a payment is to be made, and to the conditions relating to the payment.

Subclause (3) requires the Treasurer, in giving a direction, to have regard to the land agency’s income and expenditure, its ability to exercise its functions, and the requirement that the Territory obtain a reasonable return from the development and disposal of land.

Clause 48 - Liability for Territory taxes – the land agency is not exempted from liability for tax under any other Territory law.

Clause 49 - Guarantees by land agency – the land agency must not guarantee the payment of money, or the performance of an obligation, unless the Treasurer approves. That approval may be subject to conditions.

Division 4.2.4 - General

Clause 50 - Land agency to give information to the Ministers – the land agency must give the Minister or the Treasurer the information about its operations that the Minister or the Treasurer requires.

The agency must tell the Minister promptly about any circumstances that, in the view of the board, may significantly affect any objective set out in a statement of intent that is in the business plan, or the financial viability or operating ability of the agency, or any corporation, joint venture or trust in which the agency has an interest.

Clause 51 - Ministerial directions to land agency - the Minister may give written directions to the land agency:

- a) about general policies and objectives to be followed by the agency; or
- b) about principles that are to apply to the exercise of its functions.

Subclause (2) requires the Minister, before giving a direction, to tell the land agency about the proposed direction, and allow the agency an opportunity to comment on the proposed direction. The Minister must consider any comments made by the agency about the proposed direction.

A direction is a notifiable instrument, and must be notified within 14 days after it is made. If this requirement is not met, the direction is taken to have been revoked at the end of the 14 days.

Clause 52 - Territory to compensate land agency for cost of complying with directions – the Territory must pay to the land agency its reasonable net costs of complying with a direction under clause 51. Subclause (2) provides that the amount payable is the amount agreed between the land agency and the Treasurer or, if no agreement is reached, the amount decided by the Chief Minister.

Clause 53 - Committees – the land agency board must establish an audit committee, and may establish any other committee. Land agency board members, and other people, may be appointed to a committee, but the chief executive officer must not be appointed. The chairperson of the audit committee must be a land agency board member.

The procedures of a committee are as decided by the land agency board, and if the board does not decide, the procedures are decided by the committee.

Clause 54 - Land agency's annual report - an annual report of the land agency must include a copy of any direction given under clause 51 and a statement by the agency about action taken by it to give effect to that direction.

Clause 55 - Delegations by the land agency – the land agency may delegate its functions, including functions that have been delegated to it by the authority, to the chief executive officer.

PART 4.3 – Membership of land agency and its board

Clause 56 - Constitution of land agency – the land agency consists of the land agency board.

Clause 57 - Land agency board – the land agency board consists of a chairperson, a deputy chairperson and from 3 to 5 other members. The chief planning executive, authority staff members, and the chief executive officer must not be appointed as members of the board.

Subclause (3) provides that the land agency deputy chairperson acts in the position of the chairperson during vacancies in the position and when the chairperson cannot exercise the functions of the position.

Clause 58 - Appointment of land agency board members – board members are appointed by the Minister, who must try to ensure that the members represent the following disciplines and areas of expertise – land development, economics, public law, finance or accounting, public administration.

Board members may not be appointed for a term longer than 4 years.

Clause 59 - Honesty, care and diligence of land agency board members – members of the board must, when exercising their functions, exercise the degree of honesty, care and diligence that should be exercised by a director of a corporation in relation to the affairs of their corporation.

Clause 60 - Ending of land agency board members' appointments – the Minister may end the appointment of a board member for misbehaviour or for physical or mental incapacity (provided that incapacity affects the performance of the person's functions as a member of the board). The member may also be dismissed if the member:

- (i) becomes bankrupt, applies to benefit under a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (ii) is absent from 3 consequent meetings of the agency, unless the member is on approved leave; or
- (iii) contravenes the requirements of clause 59 or 67, relating to the disclosure of interests by board members; or
- (iv) commits an offence, in Australia or overseas, punishable by imprisonment for at least 1 year.

A member's appointment may also be ended if, in the Minister's view, the member's ability to function as a member is affected by an interest disclosed under clause 67.

PART 4.4 – Meetings of land agency board

Clause 61 - Calling land agency board meetings – the land agency board is to meet when and where the chairperson decides. The chairperson must ensure that all members of the board have notice of meetings, and that the board meets, as far as practicable, at least monthly.

Clause 62 - Procedure at land agency board meetings - sets out several requirements for the conduct of board meetings, including:

- (1) the chairperson presides at all meetings;
- (2) if the Act does not set out a procedure in relation to something, the board may decide its own procedure;
- (3) if the members agree, rather than requiring members to be physically present at all board meetings, a meeting may be held by any method of communication that allows members to participate without being in each other's presence – subclause (4) makes it clear that, in those circumstances, a member is taken to be present at a meeting.

Clause 63 - Land agency board resolutions - a resolution of the board is valid, even if not passed at a board meeting, if notice of the resolution was given under procedures decided by the board, and if all the members agree in writing to the resolution.

Clause 64 - Minimum number for land agency board meetings – at least 4 members must be present at a board meeting in order for the board's business to be conducted.

Clause 65 - Voting at land agency board meetings – questions arising at a board meeting may be decided by a majority of votes of the members present and voting. Subclause (2) provides that, if votes on a question are equally divided, the chairperson’s decision is the decision of the board.

Clause 66 - Minutes of land agency board proceedings – the board must keep minutes of its proceedings at meetings.

Subclause (2) requires the chairperson to ensure that each meeting of the board considers the minutes of the previous meeting.

Clause 67 - Disclosure of interests by land agency board members - deals with a board member’s duty to disclose certain interests. A board member who has a “relevant interest” in an issue that is, or will be, before the board must disclose that interest to the agency - “relevant interest” is defined in subclause (4). The disclosure must be made as soon as practicable after the facts of the issue have come to that member’s knowledge.

Under subclause (2) the disclosure must be recorded in the agency’s minutes and, unless the agency decides otherwise, the member having the interest must not be present when the agency considers the issue, and must not take part in making a decision of the agency on that issue.

Under subclause (3), any ‘other member’ having a relevant interest (in the issue that has been disclosed) may not take part in the agency’s decision under subclause (2) (on whether to allow the member who disclosed the interest to take part in the agency’s consideration of the issue). The ‘other member’ may not be present when the agency is considering its decision under subclause (2).

Clause 68 - Reporting of disclosed interests to Minister - the agency chairperson must report to the Minister about the disclosure of an interest under clause 67 within 10 days of that disclosure. The report must include details of the nature of the interest and any decision of the agency about the disclosure.

Subclause (2) requires the chairperson to give the Minister, by 31 July in each year, a statement setting out information given to the Minister under this clause during the previous financial year. The Minister must, within 14 days after receiving a statement, give the statement to the relevant committee of the Legislative Assembly.

PART 4.5 – Land agency chief executive officer, staff and consultants

Division 4.5.1 – Land agency chief executive officer

Clause 69 - Appointment of chief executive officer – the agency must appoint a person to be the chief executive officer. Under subclause (2), the conditions of employment for the chief executive officer are to be agreed between the chief executive officer and the land agency, but are subject to any determination of the Remuneration Tribunal.

Subclause (3) provides that an agreement for the appointment of the chief executive officer may only be entered into after consulting the Minister. Similarly, the chief executive officer's appointment may only be ended by the land agency after consulting the Minister.

Clause 70 - Functions of chief executive officer – the chief executive officer must manage the affairs of the land agency on its behalf. Subclause (2) provides for other functions to be given to the chief executive officer by the land agency board.

Subclause (3) requires the chief executive officer to act in accordance with any direction given by the land agency board.

Division 4.5.2 – Land agency staff and consultants

Clause 71 - Land agency staff – the staff of the agency are to be employed under the *Public Sector Management Act 1994*.

Clause 72 - Land agency consultants – the land agency may engage consultants, but may not enter into a contract of employment under this clause.

CHAPTER 5 – MISCELLANEOUS

Clause 73 - Meaning of *sustainable development* – the term is defined in detail in this clause, principally for the purposes of its use in clause 5 (Object of Act).

Clause 74 - Abuse of position – an official must not, dishonestly and with improper intention:

- a) exercise a function or an influence that an official has because of that official's position; or
- b) fail to exercise a function that the official has because of his or her position; or
- c) use information gained because of the officer's position.

A maximum penalty of imprisonment for 5 years applies.

Subclause (2) defines “improper intention” for the purposes of subclause (1).

Subclause (3) defines “official” and “position”.

Clause 75 - Review of Act – The Minister is required to review the operation and effectiveness of the Act as soon as practicable after 31 December 2007.

Subclause (2) provides that the Minister, in undertaking that review, must have regard to:

- a) the effectiveness of the operations of the entities established by the Act; and
- b) the need for the continued existence of those entities; and
- c) the need for the continuation of the Act.

Subclause (3) requires the Minister to also consider any other matter that the Minister considers relevant to the review of the Act.

The Minister is required, under subclause (4), to prepare a report based on the review and present it to the Assembly as soon as practicable.

Clause 76 - Regulation-making power – the Executive may make regulations for the Act.

Dictionary – the dictionary at the end of the Bill, provided for by clause 3, provides definitions of words and expressions used in the Bill.