

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN CAPITAL TERRITORY (PLANNING AND LAND MANAGEMENT)  
AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Arts, Sport,  
the Environment, Tourism and Territories,  
The Hon Ros Kelly MP)

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**GENERAL OUTLINE**

The purpose of the Bill is to correct a possibly anomalous situation which has arisen under the Australian Capital Territory (Planning and Land Management) Act 1988 (the 'Planning Act').

On Self-Government Day, 11 May 1989, the 'transition period' as defined in the Planning Act commenced. In this period the pre-self-government planning regime, mainly consisting of National Capital Development Commission policies, remains in force. The Governor-General is empowered to end the transition period on a day to be specified by Proclamation under section 57 of the Act. The prerequisite for this Proclamation is that the National Capital Plan is in force, and sufficiently covers the Territory.

Subsection 57(2) of the Act provides that:

'The day specified shall not be later than one year after Self-Government Day'.

The one year period referred to has expired. The National Capital Plan has not yet come into force. For this reason a Proclamation specifying a day 'not later than one year after Self-Government Day' was not made. It is considered that the requirement in subsection 57(2) is directory, not mandatory, in the sense that, although the Act directs that the transition period be ended within a certain time, this does not override the necessity of ending it by Proclamation, nor of satisfying the essential prerequisite of the Proclamation, that a National Capital Plan should be in force. The transition period not having been ended by Proclamation within the time directed, it must necessarily continue until it can be so ended.

It is however arguable that subsection 57(2) of the Planning Act has the effect of ending the transition period automatically at the expiry of the one year period, in the event that the period was not ended deliberately by Proclamation by then. The Planning Act operates on the premise that the National Capital Plan, the Territory Plan and other measures are the immediate and permanent substitutes, after the end of the transition period, for the NCDC policies etc. which continue in force only during the transition period. If section 57 of the Act creates a situation where the transition period ends at a time when the permanent planning instruments are not in force, the provisions of the Act generally become unworkable. The Bill ensures that this situation will not be taken to have arisen.

#### **FINANCIAL IMPLICATIONS**

The Bill has no financial implications.

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**NOTES ON CLAUSES**

**Clause 1: Short title**

Cites the short title of the Bill, and defines the 'Principal Act' as the Australian Capital Territory (Planning and Land Management) Act 1988.

**Clause 2: Commencement**

Provides that the Bill will be taken to have commenced immediately after the commencement of section 57 of the Principal Act.

**Clause 3**

Amends section 57 of the Principal Act so that the relevant parts read:

'57(1) When the Governor-General is satisfied that the National Capital Plan sufficiently covers the Territory, the Governor-General shall, by Proclamation, declare that the transition period ends on a day specified in the Proclamation.

(2) The day specified shall not be later than two years [not 'one year' as now] after Self-Government Day.'

Self-Government Day was 11 May 1989. The day specified will thus need to be not later than 11 May 1991.

