

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN CAPITAL TERRITORY COUNCIL BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Territories,
the Hon Gordon Scholes MP)

AUSTRALIAN CAPITAL TERRITORY COUNCIL BILL 1986

OUTLINE

The purpose of the Bill is to establish an Australian Capital Territory Council (the Council) with the function of governing the Australian Capital Territory (ACT) with respect to specified municipal and territorial matters. The Council will have formal legislative and executive powers over these matters. The Council will also administer other functions that are conferred on it by the Commonwealth. The Jervis Bay Territory is a separate Commonwealth territory and is not affected by this Bill.

The principal features of the Bill are as follows.

The Council will be a body corporate consisting of 13 members, 12 of whom will be part-time together with a full-time Chairperson.

The Council will elect its Chairperson and may establish standing or ad hoc Committees. The Chairperson will be the Council's chief executive officer with the power to act on behalf of the Council, subject to the direction and control of the Council.

The Council will be required to meet in public but may meet in private if it considers it necessary or desirable in the public interest to do so. 7 members will constitute a quorum and the member presiding at a meeting of Council will have a deliberative vote only.

The Council will have power to make standing orders governing procedures at meetings and to establish inquiries relevant to its functions. Members will have protection for statements made in good faith during the course of meetings of the Council (or of its Committees) or in publications of the Council.

Members of the Council will be elected for a four year fixed term from 13 single member electorates by optional preferential voting. The provisions of the **Commonwealth Electoral Act 1918** will apply to the conduct of Council elections, subject to necessary modifications. Only residents of the ACT will be eligible to vote and stand for Council elections.

The first Council election will be held on a date specified by the Minister. Subsequent elections will be held on the first Saturday in March of every fourth year. Provision is made for an election to be held if the Council expresses a lack of confidence in the Chairperson and does not, within 30 days, either pass a resolution of confidence or elect a new Chairperson.

In extraordinary circumstances, the Governor-General may dissolve the Council if the Council becomes incapable of effectively exercising its powers or is conducting its affairs in a grossly

improper manner. The Governor-General will be able to order an election and will appoint a Commissioner to oversee the affairs of the Council in the interim.

The Council will have its own Treasury and the capacity to enact its own audit laws. Loans from the Commonwealth and other borrowings will be subject to the approval of the Minister for Finance and the Treasurer respectively. The Council may guarantee borrowings by other persons and organisations subject to the approval of the Treasurer.

The Bill provides that the Commonwealth Auditor-General shall audit the accounts of the Council and of Council authorities.

Subject to certain limitations concerning the planning of land use and the development of land, industrial relations and the courts, the Council will have legislative power over those matters listed in Schedule 1, the subject matter of the Commonwealth laws (listed in Schedule 2) to be transferred to the Council and other matters which may be dealt with by Council Law under the provisions of this legislation.

All proposed laws passed by the Council will be forwarded to the Commonwealth Attorney-General. If, in his or her opinion, the law is beyond the Council's legislative power, the Attorney General will be required to issue a certificate to that effect within 2 months. If such a certificate is not issued, the proposed law is to be notified in the Gazette. It will come into effect on Gazettal or as otherwise provided for in the law. If the Attorney-General certifies that the proposed law is beyond the Council's power, it will be returned to the Council. The Council may re-submit the proposed law with amendments or seek to have Schedule I amended to bring the proposed law within power. The Governor-General will be able to disallow a Council law within 6 months after the law is made.

Provision has also been made so that, where a Council law so provides, the Chairperson may make by-laws not inconsistent with Council laws. By-laws are subject to disallowance by the Council and the Governor-General.

Council Laws will be subordinate to Commonwealth Acts, Regulations and Ordinances. The power of the Governor-General to make Ordinances under the **Seat of Government (Administration) Act 1910** is not affected by this Bill.

The Bill establishes the office of Head of Administration who is to be appointed by the Council. The Head of Administration is to be responsible, under the Chairperson, for the day to day business of the Council including the management of the staff of the Council's Administration.

The Bill enables the Council to employ staff under its own terms and conditions but subject to continuing consultation with the

Commonwealth on industrial and staffing matters. The Council's interim staffing arrangements are provided for in the Australian Capital Territory Council (Consequential Provisions) Bill.

Remuneration and allowances for Council members and the Council's senior statutory office holders (including the Head of Administration) will be determined by the Commonwealth Remuneration Tribunal on the reference of the Special Minister of State.

Provision has also been made so that trade and commerce between the ACT and the States (including the Northern Territory) will be absolutely free. However, this provision will not bind the Commonwealth.

The Council will have appropriate revenue raising powers. It will have the same powers of taxation as the States and the Northern Territory excluding taxes with respect to debits and credits made to accounts kept with financial institutions.

Commonwealth funding levels will be guaranteed for the first two years to maintain per capita real standards at the time of transfer provided the ACT maintains its per capita real revenue effort at the time of transfer. For the following three years funding levels will be agreed with the Council to move to financial arrangements consistent with Commonwealth, State and local government financial arrangements and principles of fiscal equalisation.

The Council will have the right to apply to the Commonwealth Grants Commission for periodic reviews of its financial arrangements with the Commonwealth.

There will be one-time establishment and election costs which will be met by the Commonwealth as well as short-term increases in recurrent costs (until administrative and staffing arrangements are integrated) which will be kept to a minimum.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 : Short title

This clause cites the short title of the Act.

Clause 2 : Commencement

This clause provides for commencement of the Act. Sub-clause 6(1) [functions of Council], clause 8 [Inquiries], sub-clauses 57(2) to (4) [Arrangements relating to staffing], 43(1) [Certain laws deemed to be Council Laws or by-laws], and clause 75 [Fines to be payable to Council] are to come into operation on a date to be fixed by Proclamation.

Sub-clause 57(1) is to come into operation on the day fixed under sub-clause 7(5) of the Australia Capital Territory Council (Consequential Provisions) Bill 1986.

Other provisions will come into operation on Royal Assent.

Clause 3 : Interpretation

This clause provides definitions and other provisions relating to the interpretation of the Act.

Clause 4 : Jervis Bay Territory

This clause provides that this Act does not apply in relation to the Jervis Bay Territory.

PART II - AUSTRALIAN CAPITAL TERRITORY COUNCIL

This Part establishes the Council as a body corporate and provides for its powers and functions, membership, executive, procedures, privileges and the circumstances in which the Council may be dissolved.

Division 1 - Establishment, functions and powers of Council

Clause 5 : Establishment of Council

This clause establishes the Australian Capital Territory Council as a body corporate.

Clause 6 : General functions of Council

This clause sets out the Council's executive authority. The Council is to:

- (1) govern the ACT with respect to prescribed matters; and
- (2) carry out other functions which are vested in it by a law in force in the Territory or by an arrangement with the Commonwealth.

Prescribed matters are the matters set out in Schedule 1, the subject-matter of laws specified in Schedule 2, or a matter specified elsewhere in the Act.

Clause 7 : General powers of Council

This clause gives the Council power to do all things which are necessary or convenient for the performance of its functions or incidental to the exercise of its powers.

Clause 8 : Inquiries

Sub-clause 8(1) provides that the Council may appoint a person or persons to conduct an inquiry relevant to its functions.

Sub-clause 8(2) allows a Council Law to be made dealing with the conduct of inquiries subject to the constraints set out in sub-clauses 8(3) to (5).

Division 2 - Constitution and Procedure of Council

Clause 9 : Number of members

Sub-clause 9(1) provides that the Council is to have 13 members until that number is changed by the regulations.

Sub-clause 9(2) provides that the Council's operations are not to be affected by a vacancy on the Council.

Clause 10 : Chairperson and Deputy Chairperson

Sub-clause 10(1) provides that the first order of business of the Council after a general election is the election of a Chairperson and Deputy Chairperson.

Sub-clause 10(2) requires that, if the office of Chairperson or Deputy Chairperson is vacant, the first order of business of the Council after the vacancy occurs is the election of a Chairperson or Deputy Chairperson.

Sub-clause 10 (3) provides that before the Council can remove and replace a person holding office as Chairperson, a

resolution of lack of confidence in that person must be passed.

Sub-clause 10(4) provides for the term of office of the Chairperson and Deputy Chairperson. They hold office until:

- (a) the end of their term of office as a member (see clause 18);
- (b) they resign their office;
- (c) they cease to be members;
- (d) in the case of the Chairperson, he or she is removed from office by the Council; or
- (e) in the case of the Deputy Chairperson, after he or she is removed from office by the Council or after a new Chairperson is elected.

Sub-clause 10(5) allows persons who have held office as Chairperson or Deputy Chairperson to be eligible for re-election.

Clause 11 : Acting Chairperson

Sub-clause 11(1) provides for the Deputy Chairperson to act as Chairperson when the office of Chairperson is vacant or the Chairperson is absent from duty or from the ACT or is unable to perform the duties of Chairperson.

Sub-clause 11(2) enables the Council to elect a member to act as Chairperson if the office of Deputy Chairperson is vacant or the Deputy Chairperson is unable to act.

Sub-clauses 11(3) to (7) make provision consequent upon an acting arrangement.

Clause 12 : Procedure at meetings

Sub-clause 12(1) provides that a quorum for a meeting of the Council is 7 members except as otherwise provided by the regulations.

Sub-clause 12(2) provides that questions arising at Council meetings will be decided by a majority of votes.

Sub-clause 12(3) provides that the member presiding at a meeting of the Council has a deliberative vote only. If there is an equality of votes, the question is to pass in the negative.

Clause 13 : Meetings generally to be in public

Sub-clauses 13(1) and (2) provide for the Council to meet in public except where the Council is of the opinion that it is necessary or desirable in the public interest to meet in private.

Sub-clause 13(3) allows a Committee of the Council to meet in public or private at the discretion of the Committee.

This provision will allow the Council or a Committee to consider in private confidential information such as information relating to an appointment or contract.

Clause 14 : Minutes of meetings

This clause requires the Council to keep minutes of its meetings and make copies of the minutes available for inspection or purchase.

Clause 15 : Protection of members etc

This clause sets out the Council's privileges.

Sub-clause 15(1) provides that no suit lies against a member of the Council in respect of statements made in good faith during the course of meetings of the Council or its Committees. Statements made in good faith in any Council publication are also protected.

Sub-clause 15(2) ensures that existing legal protections are not affected.

Sub-clause 15(3) provides that a member will not be liable for jury service.

Sub-clause 15(4) prohibits Court documents from being served where a meeting of the Council or of a Committee is in progress.

Clause 16 : Obstruction etc

Sub-clause 16(1) makes it an offence for a person to hinder or obstruct a member of the Council, or a member of the staff, in the performance of their functions or duties, or to interrupt meetings of the Council or of its Committees.

Sub-clause 16(2) provides that the Council has no inherent power to institute proceedings for contempt of Council.

Clause 17 : Standing rules and orders

This clause enables the Council to make standing rules and orders for the conduct of its meetings, subject to the limitations specified elsewhere in the Act (for example, the quorum provisions of clause 12).

Division 3 - Membership of Council

Clause 18 : Term of office of member

This clause provides that the term of office of a member commences at the end of the day on which the declaration of the election of the member is declared. If the member is the Chairperson or Deputy Chairperson, the term of office ends at the commencement of the first meeting of the Council held after the next general election [paragraph 18(a)]. The term of office of other members ends on the day on which the next general election is held [paragraph 18(b)].

Clause 19 : Members to be part-time

This clause provides that members other than the Chairperson are to be part-time. The status of such members may be changed by the regulations.

Clause 20 : Resignation of members

This clause enables a member to resign by writing signed and delivered to the Head of Administration.

Clause 21 : Disqualification of members

Sub-clause 21(1) provides that a member vacates office if the member:

- (a) is no longer qualified to be a candidate for election (Clause 32 deals with the qualification of candidates for election);
- (b) is absent from four consecutive meetings without the Council's permission;
- (c) takes, or agrees to take, any payment for service rendered in the Council other than payment as a member; or
- (d) becomes a staff member of the Council or of a Council authority.

Sub-clause 21(2) deals with conflict of interests. It provides that a member is not to take part in Council proceedings if the proceedings relate to a Council contract (or that of a Council authority) in which the member has a direct or indirect interest. Under sub-clause 21(3), questions relating to the application of this provision are to be decided by the Council and any contravention of the provision is not to affect the validity of anything done by the Council.

Division 4 - Dissolution of Council

Clause 22 : Resolution of lack of confidence

Sub-clause 22(1) allows the Council to pass a resolution of lack of confidence in the Chairperson on 24 hours' notice. The Council may then, within 30 days, elect another Chairperson or pass a resolution of confidence in the existing Chairperson.

If the period of 30 days expires before the Council takes either of these steps, the Minister must call a general election within 90 days of the expiry of that period unless the Governor-General has dismissed the members of the Council.

The Council which is elected at the general election will serve out the remainder of the four year fixed term (see clause 29).

Sub-clauses 22(2) and (3) prohibit the holding of an election under this clause during the period of 6 months before the normal four year general election is due to be held.

Clause 23 : Dismissal of Council by Governor-General

Sub-clause 23(1) enables the Governor-General in Council to dismiss the members of the Council where the Council is:

- (a) incapable of effectively performing its functions or
- (b) conducting its affairs in a grossly improper manner.

This will allow the Governor-General to dismiss the Council in extraordinary circumstances.

Sub-clauses 23(2) and (3) provide that, following the dismissal of the Council, a Commissioner shall be appointed by the Governor-General to perform all the functions of the Council and Chairperson other than the power to make laws. The Governor-General may give directions to the Commissioner who will not be able to issue or expend Council money except in accordance with Council law unless authorised to do so by the Governor-General.

Sub-clause 23(2) also enables the Governor-General to order a general election following the dismissal of the Council. (See also clause 29).

Sub-clause 23(5) provides that the Commissioner holds office until the first meeting of the Council after the next general election.

Clause 24 : Termination of distribution into Districts

Sub-clause 24(1) provides that where an early election is ordered under sub-clauses 22(1) or 23(2), any electoral distribution that is in progress is automatically terminated.

Sub-clause 24(2) provides that where the distribution concerned was being held because regulations changed the number of members of the Council, the regulations are void.

Sub-clause 24(3) will ensure that if the ACT had not been distributed for a period of 8 years and a distribution in progress was terminated by the holding of an early election, a distribution is to commence forthwith after the Council's first meeting following the early election.

This clause will avoid the uncertainty which would be associated with conducting an election campaign while the ACT is being distributed into Electoral Districts. It also clarifies the situation where an early election is to be held but new electoral boundaries resulting from a change in membership of the Council have not been drawn under the redistribution process specified in Schedule 3.

PART III - ELECTION OF COUNCIL

This Part deals with Council elections. It provides for the holding of general elections and by-elections, deals with the qualifications of electors and candidates and sets out the principles to be observed for voting at elections. It is to be read in conjunction with Schedule 3 (Electoral Districts) and clause 73 (which applies the provisions of the **Commonwealth Electoral Act 1918** to Council elections).

Clause 25 : Interpretation

This clause provides for the interpretation of this Part.

Clause 26 : Election of members

This clause provides that members shall be elected as provided in this Part.

Clause 27 : Electoral Districts

Sub-clause 27(1) provides that the ACT is to be distributed into Electoral Districts and that one member is to be elected from each District [sub-clause 9(1) provides that initially there are to be 13 members].

Sub-clause 27(2) brings Schedule 3 into operation for the purposes of this Part. The Schedule provides for the procedures to be followed for distributing the ACT into Districts.

Clause 28 : Rolls

This clause provides that there is to be a Roll of electors for each District.

Clause 29 : Times for general elections

This clause provides that the Minister is to specify a day for the holding of the first general election [Sub-clause 29(2)].

The second general election is to be held on the first Saturday in March 1991 [sub-clause 29(3)] and subsequent general elections are to be held on the first Saturday in March in the fourth year after the last general election is held [sub-clause 29(4)].

Sub-clause 29(6) defines these fixed term elections as "ordinary elections".

However, other elections may be held as follows.

First, an early election may be held under clause 22 if a motion of no confidence is passed in the Chairperson and the motion is not overturned or another Chairperson elected within 30 days. Early elections under clause 22 will not affect the holding of the next ordinary election [sub-clause 29(1)].

Secondly, a general election may be ordered by the Governor-General after the Council has been dismissed under clause 23. If such an election is held within 6 months before an ordinary election is due to be held, the newly elected Council will serve the remainder of the term of the old Council together with the following four year term [sub-clause 29(5)].

Clause 30 : Casual vacancies

Sub-clause 30(1) provides that a by-election is to be held to fill a vacancy left by a member where the vacancy occurs more than 90 days before the day on which the next general election is due to be held.

Sub-clause 30(2) provides that an election to fill a casual vacancy is to be held within 90 days of the vacancy occurring.

Sub-clauses 30(3) and (4) provide that by-elections are not to be held where an early election is being held under clause 22 or where the Governor-General dismisses the Council.

Clause 31 : Qualifications of electors

This clause provides that a person is entitled to vote at a Council election for a District if:

- (a) the person's real place of living was within that District within 3 months immediately before the date of the election and is within the ACT on the day of the election;
- (b) the person's name is on the Roll for that District on that day; and
- (c) the person would be entitled to vote at an election for the House of Representatives for a Division that included the whole or part of that District.

Expressions used in this clause have the same meaning as in the **Commonwealth Electoral Act 1918**. Accordingly, "real place of living" means the place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place.

Paragraph 31(c) also enables certain British subjects, whose right to vote at House of Representatives elections has been preserved under the Commonwealth Electoral Act, to vote at Council elections.

Clause 32 : Qualifications of candidates

Paragraphs 32(a) and (b) provide that a person who is an Australian citizen and is an elector or is qualified to become an elector is qualified to be a candidate.

However, paragraphs 32(d) and (e) provide that persons who are members of the staff of the Council or of a Council authority, or who have been convicted and are under sentence for an offence punishable by imprisonment for five years or longer, are not qualified to be candidates. Paragraph 32(c) also provides that the Head of Administration or a member of a Council authority is not qualified to be a candidate.

Clause 33 : Voting at elections

This clause sets out the principles that are to apply to voting at elections. These principles will be observed in the regulations which will provide for the detail of voting at elections [See clause 73]. The principles are:

- (a) voting shall be compulsory;
- (b) voting shall be by secret ballot;

(c) a person shall not vote more than once at an election;

(d) optional preferential voting will apply.

Clause 34 : Election funding

This clause provides that a Council Law may provide for electoral funding for elections other than the first general election.

Electoral funding for the first general election will be provided for by the Commonwealth in accordance with the provisions of Division 3 of Part XX of the **Commonwealth Electoral Act 1918** (subject to any necessary modifications made by the regulations under clause 73).

Clause 35 : Decisions under Schedule 3 final and conclusive etc

This clause exempts the distribution and redistribution process specified in Schedule 3 from the operation of the **Administrative Decisions (Judicial Review) Act 1977**. It will be possible, however, for relevant decisions to be challenged in the High Court or another Court if the High Court refers the matter to that Court.

Clause 36 : Improper influence

This clause makes it an offence to improperly seek to influence a member of a Distribution Committee or an augmented Electoral Commission in the performance of duties under Schedule 3.

PART IV - LEGISLATIVE POWERS OF COUNCIL

This Part sets out the Council's law making powers and the procedures to be followed for making laws and by-laws. It provides for the disallowance of Council laws and by-laws by the Governor-General and clarifies the status of Council laws in relation to Commonwealth Acts, Regulations and Ordinances.

Clause 37 : Powers of Council to make laws

Sub-clause 37(1) enables the Council to make laws for the peace, order and good government of the ACT with respect to prescribed matters. "Prescribed matters" is defined in clause 3.

Sub-clause 37(2) provides that laws made by the Council shall not be described or entitled as Acts or Ordinances. It is envisaged that the Council's laws will be described as "Laws of the Australian Capital Territory Council", thus avoiding confusion with Commonwealth law.

Sub-clause 37(3) ensures that the Council's law making power does not extend to laws with respect to industrial relations (other than laws determining the conditions of employment of its employees or as otherwise specified in Schedule 2) or the establishment of a court.

Sub-clause 37(4) provides that the Council has no power to make laws dealing with the planning of land use or the development of land except as prescribed in the regulations.

Sub-clause 37(5) ensures that prescribed matters are not to be taken to be mutually exclusive.

Clause 38 : Procedure for making Council Laws

This clause provides that proposed Council laws are to be forwarded to the Attorney-General who is to examine them to see if they are outside the Council's power and to ensure that, if they affect the jurisdiction practice or procedure of a Court, they do so in an acceptable way.

Sub-clause 38(1) requires all proposed Council laws to be submitted to the Attorney-General.

Sub-clause 38(2) requires the Attorney-General to issue a certificate in respect of each proposed Council law as soon as practicable and, in any event, not later than two months, after receipt of the proposed law. The certificate is to state that:

- (a) in the opinion of the Attorney-General the Council does not have power to make the proposed law, or if the proposed law affects the jurisdiction, practice or procedure of a Court, that the Attorney-General does not consent to the proposed law; or
- (b) the Attorney-General does not propose to issue a certificate as set out in (a) above.

Sub-clause 38(3) provides that if the Attorney-General issues a certificate as described in (b) above, the proposed law is to be notified in the Gazette.

Sub-clause 38(4) provides that a proposed law takes effect on the date of notification in the Gazette or, if another date is specified by or under the law, on that other date. This will enable laws to have prospective or retrospective effect, as the case requires.

Sub-clause 38(5) provides that if the Attorney-General certifies that a proposed law is beyond the Council's power (or that the Attorney-General does not consent to the proposed law in its affect on the jurisdiction of a Court), the proposed law is to be returned to the Council together

with reasons in writing for the issue of the certificate. The Attorney-General may give the Council suggestions as to amendments which could be made to the proposed law to allow the Attorney-General to refrain from issuing a certificate under (a) above. The Council may also request the Commonwealth to amend the scope of the matters specified in Schedule 1.

Sub-clause 38(6) provides that, where the Attorney-General returns a proposed law to the Council, the Council shall consider the reasons and suggestions (if any) given by the Attorney-General and may re-submit the proposed law, with amendments, to the Attorney-General. If a proposed law is re-submitted it is to be considered again by the Attorney-General in accordance with the same procedures.

Sub-clause 38(7) provides that if the Attorney-General does not issue a certificate within two months after receiving a proposed law, the Attorney-General is to be deemed to have issued a certificate as set out in (b) above.

Sub-clause 38(8) prevents the application of section 13 of the **Administrative Decisions (Judicial Review) Act 1977** to the giving of reasons under paragraph 38(5)(a).

Clause 39 : By-laws

Sub-clause 39(1) allows Council Laws to enable the Chairperson to make by-laws. This will give the Council some flexibility in its legislation as by-laws will be able to deal with matters of detail.

Sub-clause 39(5) provides that Council Laws may not authorize the making of legislative instruments other than by-laws unless the instrument determines terms and conditions of employment. By-laws made by the Chairperson are subject to disallowance by the Governor-General under clause 47.

Sub-clause 39(2) provides that by-laws are not to be inconsistent with Council Laws and are not to affect the jurisdiction, practice or procedure of a court.

Sub-clause 39(3) requires by-laws to be notified in the Gazette and provides for their commencement.

Sub-clause 39(4) prohibits by-laws being retrospective if the rights or liabilities of persons other than the Council are adversely affected.

Sub-clause 39(6) allows the Council to provide that by-laws may be disallowed by the Council.

Clause 40 : Penalties

This clause provides that a Council Law may prescribe penalties and that a by-law may, if so empowered by Council Law, prescribe pecuniary penalties.

Clause 41 : Crown may be bound

This clause provides that a Council Law does not bind the Crown in right of the except as provided by the regulations.

Clause 42 : Inconsistency with other laws

This clause provides that Council Laws and by-laws are subordinate to other Commonwealth laws in force in the ACT. Accordingly, Council Laws will be subordinate to Commonwealth Acts, regulations made under those Acts, ACT Ordinances, regulations made under those Ordinances and other instruments of a legislative character such as Conciliation and Arbitration Commission awards. However, a Council law will have effect to the extent to which that law is capable of operating concurrently with such laws.

Clause 43 : Certain laws deemed to be Council Laws or by-laws

Sub-clause 43(1) enables Commonwealth laws specified in Schedule 2 to be transferred to the Council to administer as Council laws (or as by-laws in the case of Commonwealth delegated legislation). The date of transfer being the date specified in the Schedule.

Sub-clause 43(2) provides that once a law is specified in Schedule 2, the law may be amended by Council Law or repealed at any time but any amendments made before the date of transfer will not come into effect until that date. This will allow the Council to effect any necessary amendments to laws which are to become its responsibility.

Sub-clause 43(3) is a technical provisions which provides that a reference to a law specified in Schedule 2 includes a reference to legislation which has amended that law.

Sub-clause 43(4) ensures that, where the Council repeals a law specified in Schedule 2, the Council retains law making power with respect to the subject matter of the repealed law.

Clause 44 : Application of Acts Interpretation Act

This clause provides that paragraph 46(a) of the **Acts Interpretation Act 1901** does not apply in relation to a Council Law. Paragraph 46(a) is to the effect that where an Act allows the making of legislative instruments the instruments are to be treated as Acts and subject to the

Acts Interpretation Act 1901. If this paragraph applied to Council Laws, the Council could be precluded from introducing interpretation provisions for its own laws which were contrary to the **Acts Interpretation Act 1901.**

Clause 45 : Publication of Council Laws and by-laws

This clause requires the Council to publish Council Laws and by-laws and make them available for purchase by the public.

Clause 46 : Application of Statutory Rules Publication Act

This clause provides that Council Laws and by-laws shall not be taken to be statutory rules for the purposes of the **Statutory Rules Publication Act 1903** and that sub-sections 5(3), (3A) and (3C) of that Act apply to Council laws. The Act provides for the printing, numbering, and sale of statutory rules and for the incorporation of amendments in reprints of the statutory rules. The sub-sections of that Act which are to apply to Council laws set out that if an Act requires statutory rules to be published or notified in the Gazette, a notice in the Gazette that the rules have been made and of the place or places where copies of them may be purchased is sufficient compliance with that requirement. They also provide that statutory rules are to be available for purchase as soon as practicable after notice has been published in the Gazette.

Clause 47 : Disallowance of Council Laws and by-laws

Sub-clause 47(1) read with sub-clause 47(6) provides that the Governor-General may disallow a Council law within 6 months of the law being made. By virtue of sub-clause 47(7), a law includes a Council by-law, a legislative instrument determining terms and conditions of employment or part of a law.

Sub-clause 47(2) enables the Governor-General to recommend amendments to the Council within 6 months of a law being made. If the Governor-General recommends such an amendment, sub-clause 47(3) extends the time within which the law may be disallowed for a period of 6 months after the date of the recommendation.

Sub-clauses 47(4) and 47(5) provide that a disallowance is to have the same effect as the repeal of a law except that, if the disallowed law amended or repealed a law previously in force, the disallowance revives the previous law.

Clause 48 : Powers of the Governor-General to make Ordinances

This clause preserves the power of the Governor-General to make Ordinances in respect of matters for which the Council has legislative power.

**PART V - MANAGEMENT STRUCTURE, ADMINISTRATION
AND STAFF OF COUNCIL**

This part provides for the Council to appoint Committees, defines the relationship between the Chairperson and the Council and creates the office of Head of Administration. This Part also provides for the Council's staff.

Division 1 - Committees

Clause 49 : Committees of Council

Sub-clause 49(1) provides that the Council may establish standing or ad hoc Committees for the conduct of its business.

Sub-clause 49(2) enables the Council in establishing a Committee to appoint members to the Committee, appoint a Chairperson of the Committee, specify the terms of reference of the Committee, and determine the quorum of the Committee.

Sub-clause 49(3) provides that the Chairperson of the Council is ex officio a member of each Committee and if present at a meeting of a Committee, he or she may preside at that meeting.

Sub-clause 49(4) provides that a member of a Committee may resign by writing signed and delivered to the Chairperson of the Council.

Division 2 - Chairperson

Clause 50 : Chairperson as chief executive officer

Sub-clause 50(1) provides that the Chairperson is the chief executive officer of the Council and is subject to the direction of the Council.

Sub-clause 50(2) allows the Chairperson to act on behalf of, or in the name of, the Council subject to any limitations provided by Council Law.

Sub-clause 50(3) prohibits the Chairperson from making a Council Law.

Clause 51 : Chairperson on full-time basis

This clause provides that the Chairperson holds office on a full-time basis and may not engage in outside employment without the approval of the Council.

Division 3 - Head of Administration

Clause 52 : Head of Administration

Sub-clause 52(1) provides that there is to be a Head of Administration appointed by the Council.

Sub-clause 52(2) prohibits a person who has attained the age of 65 years from being appointed to that office or from continuing in office.

Clause 53 : Duties of Head of Administration

This clause provides that the Head of Administration is, under the Chairperson, responsible for the general working and business of the Council including the management of the Council's staff. The Head of Administration's relationship with the Chairperson is similar to that between the Secretary to a Department and the Minister of that Department.

Clause 54 : Tenure of Head of Administration

Sub-clause 54(1) provides that the term of office of the Head of Administration is to be specified in the instrument of appointment and is not to exceed 7 years. The Head of Administration is eligible for re-appointment.

Sub-clause 54(2) provides that Council Law is to provide for the terms and conditions of the Head of Administration. However, remuneration and allowances for the Head of Administration will be determined by the Remuneration Tribunal in accordance with clause 76.

Clause 55 : Acting Head of Administration

Sub-clause 55(1) enables the Council to appoint an acting Head of Administration during a vacancy in that office or whenever the Head of Administration is absent from duty or unable to perform duty. However, no person is permitted to act in that office continuously for a period exceeding 12 months.

Sub-clause 55(2) together with sub-clause (1) enables standing acting appointments.

Sub-clause 55(3) enables the Council to determine the terms and conditions of acting appointees (other than remuneration and allowances) and to terminate such appointments.

Sub-clause 55(4) provides that a person other than staff acting as Head of Administration shall be paid the same remuneration and allowances as are payable to the Head of Administration.

Sub-clause 55(5) provides that where an acting Head of Administration is a staff member of the Council, he or she is to be paid such an amount as is necessary to bring his or her salary and allowances to the level payable to the Head of Administration.

Sub-clause 55(6) ensures that, where a vacancy occurs in the office of Head of Administration when a person is acting in that office, that person may continue to so act.

Sub-clause 55(7) provides that a person appointed to act as Head of Administration may resign his or her appointment.

Sub-clause 55(8) ensures that the acting Head of Administration is able to exercise all the powers of the Head of Administration.

Division 4 - Staff etc

This Division will provide the basis for the Council's long term staffing arrangements.

This Division should be considered in conjunction with clause 7 of the ACT Council (Consequential Provisions) Bill 1986. Under that clause, staff will be made available to the Council under the Public Service Act with the Head of Administration having the powers of a Secretary of a Department in relation to the branch of the Australian Public Service which is working for the Council. Such an arrangement will continue until the Council employs all its staff under its own laws.

Clause 56 : Staff

This clause provides that the Council may employ persons in accordance with Council Law and for this purpose, may establish statutory offices. This clause should be read in conjunction with clause 74 which provides for continuing consultation with the Commonwealth in this matter.

Clause 57 : Arrangements relating to staffing

Sub-clauses 57(1) to (3) enable the Council to enter into secondment arrangements with the Australian Public Service, the Public Service of a State or Territory, or other bodies.

Sub-clause 57(4) provides that whilst a seconded person is performing services for the Council, the person is to act in accordance with the directions of the Head of Administration.

Clause 58 : Consultants

This clause allows the Council to engage consultants on such terms and conditions as are determined by the Council.

PART VI - FINANCE

This Part provides for the Council's control over its money and prescribes the conditions under which the Council may borrow from the Commonwealth and from other sources.

The Part also provides for the Commonwealth Auditor-General to audit the accounts of the Council and Council authorities.

Clause 59 : Interpretation

This clause provides for interpretation.

Clause 60 : Council money

This clause requires the Council to enact laws to control Council money (meaning revenues, loans and other monies received by the Council - see definition of "Council money" in clause 3). In particular Council money:

- (a) is to be available for the performance of the functions of the Council;
- (b) in respect of its receipt, expenditure and control is to be regulated by or under Council Law;
- (c) may not be issued or expended except as authorised by Council Law; and
- (d) may be invested as provided for by Council Law.

Clause 61 : Borrowing from Commonwealth

This clause provides that the Minister for Finance may lend Commonwealth money to the Council at rates of interest and on terms and conditions determined by that Minister.

Clause 62 : Borrowings otherwise than from the Commonwealth

Sub-clause 62(1) provides that the Council may borrow money from sources other than the Commonwealth or raise money other than by borrowing with the approval of the Treasurer. Under sub-clause 60 (2) "raising money" does not include raising revenues.

Sub-clause 62(2) provides that the Council may borrow money or raise money otherwise than by borrowing by dealing with securities.

Sub-clause 62(3) provides that borrowings and other moneys raised may be in currency other than Australian currency.

Sub-clause 62(4) provides that the Treasurer's approval may, under sub-clause 62(1), be given for a particular transaction or a class of transactions.

Sub-clause 62(5) provides that the Treasurer's approval shall be in writing.

Sub-clauses 62(6), (7) and (8) deal with interpretation.

Clause 63 : Guarantee of borrowing

Sub-clause 63(1) provides that the Treasurer may, on behalf of the Commonwealth, enter into a contract guaranteeing Council borrowings (including raising money otherwise than by borrowing).

Sub-clause 63(2) provides that the Treasurer may determine that such Council borrowings are guaranteed by the Commonwealth.

Sub-clause 63(3) provides that a contract referred to in sub-clause 63(1) and a determination referred to in sub-clause 63(2) may relate to a particular transaction or a class of transactions.

Sub-clause 63(4) provides that a contract may allow proceedings under the contract to be taken in the Courts, or a specified Court, of a foreign country and may waive the Commonwealth's immunity from suit.

Clause 64 : Council may give security

This clause provides that the Council may give security over its assets for the repayment of the Council's borrowings, other moneys raised or for the payment to the Commonwealth of amounts the Commonwealth may become liable to pay as a result of any guarantee of Council borrowings by the Commonwealth.

Clause 65 : Borrowing not otherwise permitted

This clause precludes the Council from borrowing other than in accordance with Part VI.

Clause 66 : Guarantees by Council

This clause precludes the Council from guaranteeing borrowings (or other moneys raised) by other organisations or individuals without the approval of the Treasurer.

Clause 67 : Proposal of money votes

Sub-clause 67(1) provides that only the Chairperson may propose any Council Law, vote, resolution or question the object or effect of which is to dispose of or charge any Council money.

Sub-clause 67(2) enables amendments to be made to monetary proposals made by the Chairperson but only to decrease or transfer the amount proposed. This provides for appropriate budget processes to be followed by the Council.

Clause 68 : Auditor-General

This clause provides that the Commonwealth Auditor-General shall be the Auditor-General for the Council and for each Council authority.

Clause 69 : Laws relating to audit

This clause requires the Auditor-General to audit and inspect the accounts of the Council and of each Council authority in accordance with Council Law. However by virtue of Clause 12 of the ACT Council (Consequential Provisions) Bill 1986, the Audit Act 1901 will apply initially. This will allow the Council time to pass appropriate audit laws.

PART VII - MISCELLANEOUS

Clause 70 : Trade and Commerce to be free

This clause provides that trade, commerce and intercourse between the ACT and the States, and between the ACT and the Northern Territory, shall be absolutely free. The clause does not bind the Commonwealth.

Clause 71 : Acquisition of property to be on just terms

This clause prevents the Council from making laws with respect to the acquisition of property otherwise than on just terms.

Clause 72 : Validity of certain actions

Sub-clause 72(1) provides that the validity of actions of the Chairperson, Deputy Chairperson, Head of Administration or a person purporting to act in those offices is not to be questioned on the ground that the appointment or election of the person was defective.

Sub-clause 72(2) validates the proceedings of the Council or of a Committee where a person who sat as a member of the Council was in fact not a member.

Clause 73 : Application of Electoral Act

This clause provides that, with the exception of Division 3 of Part XX of the **Commonwealth Electoral Act 1918** (which deals with election funding and is to apply to the first Council election only) and the provisions dealing with electoral distributions (which are dealt with in Part III and Schedule 3 of the Bill), the provisions of the **Commonwealth Electoral Act 1918** are to apply to Council elections subject to any modifications made by the regulations.

Clause 74 : Staffing consultation

This clause requires the Council to consult with the Commonwealth concerning:

- (a) the staffing of the Council and of its authorities; and
- (b) the determination of industrial questions and the terms and conditions of employment of staff of the Council and of its authorities.

Continuing consultations are envisaged at such times and in such manner as are agreed between the Council and the Minister.

Clause 75 : Fines etc to be payable to Council

This clause provides that fines, penalties and other forfeitures under a Council Law are payable to the Council unless otherwise provided by Council Law.

Clause 76 : Remuneration and allowances

This clause provides for the remuneration and allowances of the:

- (a) Chairperson;
- (b) Deputy Chairperson;
- (c) a member of Council;
- (d) Chairperson of a Committee of Council;
- (e) Head of Administration; and
- (f) persons appointed to statutory offices established by the Council.

Sub-clause 76(1) provides that the remuneration in respect of these offices will be determined by the Remuneration Tribunal if the Special Minister of State has, by notice

given under the **Remuneration Tribunals Act 1973**, referred the question of remuneration to the Tribunal. However, if an office is not referred to the Tribunal or if no determination of the Tribunal is in force, the remuneration will be as specified by or under Council Law.

Sub-clause 76(2) provides that, subject to the **Remuneration Tribunals Act 1973**, the allowances of officers will be as specified by or under Council Law.

Clause 77 : Delegation by Chairperson

This clause enables the Chairperson to delegate any of his or her powers and functions under the Act other than the power of delegation or the power to make by-laws.

Clause 78 : Regulations

Sub-clause 78(1) enables the Governor-General to make regulations for the purposes of the Act. The regulations may deal with matters permitted by the Act to be prescribed by the regulations or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. The regulations may also amend Schedules 1 and 2.

Sub-clause 78(2) precludes the inclusion of an Act in Schedule 2 by the regulations.

SCHEDULE 1

This Schedule sets out the legislative powers of the Council. The Schedule may be amended by the regulations (see clause 78). By virtue of sub-clause 6(1), the Council has executive authority in respect of the matters listed in this Schedule.

SCHEDULE 2

This Schedule specifies existing Commonwealth laws that are to become the responsibility of the Council. By virtue of clause 43, the specified laws will be deemed to be Council Laws on and after the day the Council assumes executive responsibility for these laws under sub-clause 6(1). Sub-clause 43(2) will allow the Council to amend or repeal transferred laws.

It should be noted that by virtue of clause 3, the subject matter of a law specified in this Schedule is a "prescribed matter" for the purposes of the Act. In some cases, Schedule 2 supplements the matters listed in Schedule 1. The Schedule may be amended by the regulations (see clause 78).

The Schedule is divided into three Parts.

Part I lists ACT Ordinances to be transferred to the Council.

Part II lists Commonwealth Acts to be transferred to the Council.

Part III lists NSW Acts (currently in force in the ACT) to be transferred to the Council.

SCHEDULE 3

ELECTORAL DISTRICTS

This Schedule deals with the determination of the boundaries of Electoral Districts for Council elections. It is based on the provisions of Part IV of the **Commonwealth Electoral Act 1918** subject to necessary modifications.

Clause 1: Interpretation

This clause provides definitions for the purposes of Schedule 3. In particular, it provides that expressions used in the Schedule have the same meanings as they do in the **Commonwealth Electoral Act 1918**.

Clause 2: Monthly ascertainment of enrolment etc

This clause sets up a mechanism for measuring, on a monthly basis, the extent of enrolment inequality within the ACT.

Clause 3: Times at which distributions are to commence

This clause provides for the timing of electoral distributions.

Sub-clause 3(1) provides that an electoral distribution commences whenever the Electoral Commission so directs by notice in the Gazette.

Sub-clause 3(2) provides that a direction shall be made when:

- (a) Part III of the Act commences;
- (b) regulations are made altering the number of Council members;
- (c) the statements published under clause 2 show that more than one-third of Districts deviate from the average District enrolment by more than 10% for a period of more than two months (see also sub-clause 3(6)); and
- (d) eight years have expired since the ACT was last distributed.

Sub-clause 3(3) provides that a direction under (c) or (d) shall not be made if the ACT is already undergoing a distribution or within a period of one year prior to a Council general election.

Sub-clause 3(4) suspends a distribution in progress (because 8 years had elapsed since the last distribution) where a determination of the boundaries would be made within a period of 12 months prior to a Council general election until immediately after the first meeting of the Council following the general election.

Sub-clause 3(5) provides that where a distribution is required because regulations alter the number of Council members, any distribution already underway is terminated.

Clause 4: Distribution Committee

This clause establishes a Distribution Committee which is appointed by the Electoral Commission.

Sub-clause 4(2) provides that the Committee shall consist of the Electoral Commissioner, the Commonwealth Surveyor-General and a third person to be appointed by the Governor-General.

Sub-clause 4(3) enables a deputy of the Commonwealth Surveyor-General to be appointed where the Surveyor-General is unavailable.

Sub-clauses 4(4), (5) and (6) contain provisions to deal with vacancies or changes in the membership of the Committee.

Clause 5: Procedures at meetings of Distribution Committee etc

This clause makes provision for the procedures to be adopted at meetings of the Distribution Committee and the manner of its operation.

Clause 6: Suggestions and comments relating to distribution

This clause provides that the Distribution Committee is to invite suggestions relating to the distribution of the ACT and comments on those suggestions prior to making a proposed distribution of the ACT. Suggestions must be lodged within 30 days of the required Gazette notice and comments on the suggestions must be lodged within 14 days of the end of the suggestion period.

Clause 7: Quota

This clause provides for the calculation of a quota to be used as the basis for the distribution of the ACT. The quota is ascertained by dividing the number of electors enrolled in the ACT by the number of members of the Council.

Clause 8: Proposed Distribution

This clause sets out the criteria to be adopted by the Distribution Committee in making a proposed distribution of the ACT into Districts.

Sub-clause 8(2) provides that the number of proposed Districts equals the number of Council members.

Sub-clause 8(3) provides that the distribution proposed by the Distribution Committee:

- (a) is to endeavour to ensure that, 4 years after the distribution, there is an equal number of electors enrolled in each proposed District; and
- (b) is to give due consideration to -
 - (i) community of interests within the District, including economic, social and regional interests;
 - (ii) means of communication and travel within the District;
 - (iii) the trend of population changes within ACT;
 - (iv) the physical features and area of the District; and
 - (v) existing District boundaries,

and subject thereto, the quota of electors for the ACT is to be the basis for a proposed distribution. However, the Distribution Committee may adopt a margin of allowance no greater than 10% where necessary.

Clause 9: Reasons for proposed distribution

This clause provides that the Distribution Committee shall give written reasons for a proposed distribution. A dissenting member may give written reasons for his or her disagreement.

Clause 10: Notice of proposed distribution

This clause provides that details of the proposed distribution (including district maps setting out the names of those districts), copies of any comments which were lodged on earlier suggestions, detailed descriptions of boundaries, and the reasons given under clause 9 are to be made available for public perusal by the Distribution Committee. The Committee is also required to invite written objections against the proposed distribution.

Clause 11: Objections against proposed distribution

This clause provides that a person or organisation may lodge a written objection against a proposed distribution within 14 days of the proposed distribution being publicized in accordance with clause 10.

Clause 12: Augmented Electoral Commission

Sub-clause 12(1) establishes a body to be called the augmented Electoral Commission to consider objections made by persons or organizations against a proposed distribution made by the Distribution Committee.

Sub-clause 12(2) provides that the augmented Electoral Commission consists of the members of the Distribution Committee plus the two members of the Electoral Commission who were not on the Distribution Committee.

Sub-clauses 12(3) and (4) make provisions concerning the effect of vacancies in the membership of the augmented Electoral Commission on its functions.

Clause 13: Proceedings at meeting of augmented Electoral Commission etc

This clause makes provision for the procedures to be adopted at meetings of the augmented Electoral Commission and the manner of its operation.

Clause 14: Consideration of objections

Sub-clause 14(1) requires the augmented Electoral Commission to consider all objections lodged against the proposed distribution.

Sub-clause 14(2) provides that the augmented Electoral Commission must consider all such objections within six weeks.

Sub-clause 14(3) requires that the augmented Electoral Commission to hold an inquiry into an objection unless the objection:

- (a) deals with matters which were covered in an earlier suggestion or comment; or
- (b) is vexatious or frivolous.

Sub-clauses 14(4) to (9) make provision concerning the holding of inquiries by the augmented Electoral Commission. In particular, a single inquiry may be held into a number of objections, the inquiry shall be held in public, an objector and any person who, or organisation that, lodged a suggestion or comment to the Distribution Committee may make submissions to an inquiry, and the augmented Electoral Commission has the power to control the format of submissions and the conduct of inquiries.

Clause 15: Distribution of the Territory

This clause provides for the final distribution of the Territory into Districts by the augmented Electoral Commission.

Sub-clause 15(1) requires the augmented Electoral Commission to make a final determination of the boundaries and names of the Districts of the Territory by notice published in the Gazette.

Sub-clause 15(2) provides that such determination shall be made as soon as practicable after the augmented Electoral Commission has considered the objections. The determination remains in force until altered by a subsequent distribution.

Sub-clause 15(3) requires the determination to distribute the Territory into Districts equal in number to the number of members of Council.

Sub-clause 15(4) requires the augmented Electoral Commission, in making a determination, to consider the same criteria which were required to be considered by the Distribution Committee in making the proposed distribution.

Sub-clause 15(5) provides that a distribution does not take effect until the next general election following the distribution. By-elections held prior to the next general election are to use those Districts in force prior to the distribution.

Clause 16: Reasons for determination made by augmented Electoral Commission

This clause provides that the augmented Electoral Commission shall give reasons in writing for the determination it makes. A dissenting member may give written reasons for his or her disagreement.

Clause 17: Copies of certain documents to be forwarded to Minister etc

Sub-clause 17(1) requires the Electoral Commission to forward the following documents relating to the determination to the Minister:

- copies of the suggestions and comments lodged with the Distribution Committee;
- the Distribution Committee's proposed distribution and reasons;
- objections lodged against the proposed distribution; and
- the augmented Electoral Commission's determination and reasons.

Sub-clause 17(2) requires the Minister to table these documents in both Houses of Parliament and, except in the case of the first distribution, forward copies to the Chairperson who is to table these documents before the Council.