

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN CAPITAL TERRITORY (OPEN GOVERNMENT, PROBITY AND
CITIZEN'S RIGHTS) BILL 1988

EXPLANATORY MEMORANDUM

OUTLINE

The Bill forms part of a package of three Bills designed to address matters which are either not dealt with at all in the Government's ACT self-government package or are dealt with inadequately.

The Bill is based on the proposition that open government, probity and citizen's rights in the Capital Territory are of fundamental concern to the residents of that Territory, and are matters which should be assured to those residents during the present time of constitutional development in that Territory.

They are also matters which Australian citizens as a whole can reasonably expect to be assured will apply in the community forming the population of the National Capital.

Such assurances would arise from this Parliament passing the present Bill.

The Bill brings together, in convenient and readily accessible form, the key elements of concern to citizens generally.

The principal features of the Bill are set out hereunder.

PART II - OPEN GOVERNMENT

The Part contains provisions relating to three fundamental areas of administrative law and practice, namely:

- (i) freedom of information;
- (ii) review of administrative decisions; and
- (iii) access to an ombudsman.

It also ensures that such standard practices as open meetings, publication of minutes of meetings, etc are followed.

The Part also introduces in subclause 11(2) the important new concept of Legislative Reference Centres. Under this proposal, residents of the Territory will be guaranteed right of convenient access, not just formal access, to Territory legislation of concern to them.

PART III - PROBITY IN GOVERNMENT

Division I of this Part provides for the creation of an entity which, so far is known, reflects a new concept of how probity in governmental processes can be effectively pursued. It is based on the notion that courts have expertise and independence in establishing the facts of matters of potentially grave concern, and in delivering findings relating to such matters.

In this regard, the proposals recognise the advantage to the legislature of being able to readily call upon a body with appropriate expertise. The proposals do not remove from the legislature the right or obligation to make the final decisions required.

The associated definition of "corrupt conduct" by a member of the legislature is based, in large part, on recent legislative developments in New South Wales.

Division 2 of the Part deals with conflicts of interest, and places these provisions with associated and analogous provisions with which they rightly belong.

Division 3 of the Part recognises that financial audit is not simply a procedural matter but is integral to:

- (i) probity in overall governmental processes; and
- (ii) accountability to the wider community with respect to such processes.

PART IV - CIVIL RIGHTS

The Part is in large part based on highly regarded and highly successful legislation which has operated in Canada for some twenty or more years.

Civil rights are also seen as including protection against the acquisition of property on other than just terms.