

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

ARTS, ENVIRONMENT AND TERRITORIES LEGISLATION
AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

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



**ARTS, ENVIRONMENT AND TERRITORIES LEGISLATION
AMENDMENT BILL 1993**

GENERAL OUTLINE

The main purpose of the Arts, Environment and Territories Legislation Amendment Bill 1993 is to make various minor improvements to the A.C.T. self-government legislation, which are the result of a review of the legislation conducted in 1992, 3 years after self-government. Some more important changes are being examined and could be included in a separate Bill at a later date.

The Bill also:

- . Amends the A.C.T. self-government legislation to ensure that, during the transitional period before the A.C.T. establishes its own public service, the Commonwealth's COMCARE system applies to the A.C.T. Fire Brigade and to staff of the members of the Legislative Assembly, as it does to other A.C.T. Government employees.

- . Ensures that an 'eligible Judge', when exercising the power to issue search warrants under the enforcement provisions of the *World Heritage Properties Conservation Act 1983*, has the same immunity from legal action as a Justice of the High Court has in proceedings in that Court.

- . Makes various minor corrections and drafting improvements to other legislation relating to arts, environment and territories.

FINANCIAL IMPACT STATEMENT

The additional cost of the extension of COMCARE benefits to the A.C.T. Fire Brigade and Legislative Assembly members' staff has already been budgeted for as the legislation had originally been intended to cover these staff.

The Bill has no other financial implications.

**ARTS, ENVIRONMENT AND TERRITORIES LEGISLATION
AMENDMENT BILL 1993**

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1: Short title

1. This clause cites the short title of the Bill.

Clause 2: Commencement

2. This clause provides that the amendments to the *A.C.T Self-Government (Consequential Provisions) Act 1988*, which deal with the application of COMCARE to A.C.T. Government employees, commence retrospectively to ACT self-government (11 May 1989) in the case of the A.C.T. Fire Brigade, and to the commencement of the legislation providing separately for staff of members of the Legislative Assembly (14 November 1989) in that case. This will ensure that these staff, who were intended to be covered by COMCARE continuously since self-government, are entitled to benefits for the intervening period. The remainder of the Bill commences on Royal Assent.

**PART II - AMENDMENTS TO THE A.C.T SELF-GOVERNMENT
(CONSEQUENTIAL PROVISIONS) ACT 1988**

Clause 3: Principal Act

3. 'Principal Act' in this part means the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

Clause 4: Transitional application of Commonwealth Employees
Rehabilitation and Compensation Act

4. Section 22 of the Principal Act applies the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* to the 'Territory staff' i.e. ACT Government employees, other than statutory authority employees, during the transitional period, from self-government until the ACT establishes its own separate public service. Through an oversight the Commissioner, Deputy Commissioner and members of the A.C.T. Fire Brigade, who are employed under the *A.C.T. Fire Brigade (Administration) Act 1974* and not by an A.C.T. statutory authority, were omitted from the definition of 'Territory staff'. Persons employed since 14 November 1989 under the *A.C.T. Legislative Assembly (Members' Staff) Act 1989* are in a similar position. This clause includes both in the definition of 'Territory staff'.

PART 3 - AMENDMENTS OF ACTS

Clause 5: Amendments of Acts

5. The Schedule lists 9 Acts amended by the Bill.

SCHEDULE

A.C.T. Self-Government (Consequential Provisions) Act 1988

Repeals subsections 5(6) and (7), concerning minerals in Territory Land, and section 7, concerning Commonwealth Acts of Parliament that bind the Territory. These provisions are of a permanent nature and belong more logically in the Planning and Land Management, and Self-Government, Acts respectively, see below.

Australia Council Act 1975

Corrects sexist terminology in subsection 29(5), and a drafting error in subsection 29(9).

Australian Capital Territory (Electoral) Act 1988

Corrects drafting errors in subsection 18(3).

Australian Capital Territory (Planning and Land Management) Act 1988

Inserts into the Act a new section 31A, which ensures that while land in the ACT is Territory Land, all rights of the Commonwealth in relation to minerals in the land are vested in the Territory. This provision is removed from the Consequential Provisions Act, above.

Australian Capital Territory (Self-Government) Act 1988

These amendments partly implement the results of the review of the self-government legislation:

Section 3 (definition of 'elector of the Territory'): this amendment relates to section 67C, below.

Subsections 8(2) and (3): amended to give the Legislative Assembly power to determine the number of its members.

Section 10: amended to remove reference to expulsion of a member; the Assembly has no power to expel.

Subsection 13(3): amended to ensure that a member's resignation is tabled in the Assembly as soon as possible after its receipt.

Paragraphs 17(1) (a)-(c): amended to remove the requirement that the Assembly meet at least every 2 months; frequency of meetings will be left to the Assembly to determine.

Section 25 and subsection 26(3): Amended to enable the Assembly to pass laws dealing with the notification and commencement of laws it has passed. Until then section 25 continues to apply.

Subsections 34(3), (6), (7), (8) and (8A): are repealed, as they deal with the gradual transfer from the Commonwealth to the Territory of responsibility for the court system, legal profession and criminal law, which was completed on 1 July 1992.

Subsection 34(5): amended so that Schedule 5 contains the complete list of non-Federal laws in force in the Territory, made before self-government, that are not 'enactments' as defined in the Act, i.e. are still a Commonwealth responsibility.

Paragraphs 37(b) and (d): new paragraph (d) added to ensure that all prerogatives of the Crown in right of the Territory, that relate to matters in which the Territory is self-governing, vest in the Executive.

Section 38A: new section 38A inserted to ensure that where a Commonwealth Act vests powers in the Executive, the Assembly may provide by law for the allocation of the powers between members of the Executive (the ACT Ministers).

Paragraph 46(1) (d): new paragraph inserted to ensure that when a new Chief Minister is elected after a resolution of no confidence in the previous Chief Minister, the other Ministers lose office, leaving the new Chief Minister free to select a new Ministry.

Paragraph 59(2) (b): amended to omit reference to Schedule 3 and substitute Schedule 5, see parts of section 34 above.

Subsections 65(1) and (2): amended to ensure that the initiative of the Government in introducing legislation into the Assembly on financial matters is no greater or less than that of the Commonwealth Government under section 56 of the Constitution. The reference in the present section 65 to the 'object or effect' of a proposed law, and absence of reference to 'appropriation', suggests that section 65 covers proposals to increase the Territory's possible financial liabilities without actually appropriating public moneys. This is not intended.

Section 67C: amended to ensure that the section, by guaranteeing the vote in Assembly elections to a person who both is entitled to vote at House of Representatives elections for an ACT Electoral Division, and whose name is on the Commonwealth 'Roll of electors for the Territory', does not prevent the Assembly, when it legislates under section 67A to establish its own electoral system, from conferring the vote on other categories of persons if it wishes.

Section 69A: new section inserted to provide that a Commonwealth Act that binds each of the States also binds the Territory unless the Act expressly provides otherwise. This provision is removed from the Consequential Provisions Act, above.

Section 72: referred to the Governor-General's exercise of the Royal prerogative of mercy; repealed now that this prerogative in the Territory vests under section 37 in the Executive.

Subsections 73(2) and (3): new subsections inserted to enable the Assembly to make laws providing for the remuneration and allowances of members and officeholders of the Assembly, Ministers, Judges and Masters of the Supreme Court, Magistrates, and the Head and Associate Head of Administration. Until such provision is made determinations of the Commonwealth Remuneration Tribunal continue to apply.

Section 74: revised to remove the power to add items to Schedules 3 and 5 by regulation, which is no longer needed.

Schedule 3: repealed as a result of the amendment to section 34.

Australian Heritage Commission Act 1975

Corrects the citation of the *Remuneration Tribunal Act 1973* in subsections 14(3) and 45(6).

National Gallery Act 1975

Corrects a drafting error in subsection 4(1).

National Parks and Wildlife Conservation Act 1975

Corrects a drafting error in subparagraph 42(3)(b)(ii).

World Heritage Properties Conservation Act 1983

Inserts a new subsection 3B(4) to ensure that an 'eligible Judge', when exercising the power to issue search warrants under the enforcement provisions of the Act, has the same immunity from legal action as a Justice of the High Court has in proceedings in that Court.

