

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Arts,
Sport, the Environment, Tourism and Territories,
Senator the Hon Graham Richardson)

AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) BILL 1988

OUTLINE

This Bill forms part of a package of legislation to provide self-government for the Australian Capital Territory. The Bill should be read in conjunction with the Australian Capital (Electoral) Bill 1988, and the Australian Capital Territory Planning and Land Management Bill 1988.

The Bill establishes the Australian Capital Territory (the Territory) as a body politic under the Crown. The body politic will consist of a Legislative Assembly (the Assembly) exercising legislative power and an Australian Capital Territory Executive (the Executive) exercising executive power as set out in the Bill.

The principal features of this Bill are as follows.

The Legislative Assembly will have 17 members who will be elected for a four year fixed term in accordance with the provisions of the Australian Capital Territory (Electoral) Bill 1988. Nine members will constitute a quorum.

The Executive will consist of a Chief Minister and 3 other Ministers appointed by the Chief Minister. The Chief Minister will be elected by the Assembly and there is provision for him or her to appoint one of the Ministers to be Deputy Chief Minister.

The Assembly will elect a Presiding Officer who will preside at meetings of the Assembly and have a deliberative vote only. The Assembly will be required to meet within 7 days after the result of a general election is declared and at least once every 2 months thereafter.

The Assembly will have power to make standing rules and orders governing the conduct of its business. Until otherwise provided by Assembly law, the Assembly will have the same powers, privileges and immunities as the House of Representatives with the exception that it may not imprison or fine a person.

In extraordinary circumstances, the Governor-General may dissolve the Assembly if the Assembly becomes incapable of effectively exercising its powers or is conducting its affairs in a grossly improper manner. The responsible Commonwealth Minister will be required in that event to call a general election and an appointed Commissioner will exercise the powers of the Executive in the interim. The Minister will be required to publish a statement of the reasons for the dissolution in the Gazette and then table the statement in the Parliament.

Subject to the exclusion of certain matters, the Assembly will have power to make laws for the peace, order and good government of the Territory. Most of the existing Ordinance law of the Territory will be continued in force as laws of the Assembly, capable of being amended or repealed by the Assembly.

All proposed laws passed by the Assembly will have to be notified in the Australian Capital Territory Gazette. A law will take effect upon notification or as otherwise provided by the law.

The Governor-General will be able to disallow an Assembly law within 6 months after the law is made.

Commonwealth Acts, Regulations and Ordinances will prevail over Assembly laws. The power of the Governor-General to make Ordinances under the Seat of Government (Administration) Act 1910 is not affected by this Bill.

Provision has been made to allow the entrenchment of Assembly laws by a referendum of electors. Once a law has been entrenched, it can only be amended or repealed in the manner approved by the electors.

The Executive is charged with the government of the Territory in respect of the matters listed in Schedule 4 to the Bill. This approach reflects that adopted in the Northern Territory Self-Government Act 1978. The Executive also has the responsibility of executing and maintaining Assembly laws and may exercise powers under an agreement with the Commonwealth, a State or other Territory.

The Chief Minister will be able to allocate portfolios to Ministers with such arrangements being published in the Australian Capital Territory Gazette.

Ministers may be dismissed by the Chief Minister and normally hold office until the election of a new Chief Minister.

Provision has been made allowing the election of a new Chief Minister where a resolution of no confidence has been passed in the existing Chief Minister. Such a resolution may only be passed if at last 7 days notice of motion has been given and at least a quorum of the Assembly support it.

The Chief Minister is empowered to appoint a Head of Administration and Associate Heads of Administration to advise the Executive and provide administrative support for the Executive. The Head of Administration will be responsible for the management of staff.

The Bill enables staff to be employed under terms and conditions established under Assembly law subject to continuing consultation with the Commonwealth on industrial and staffing matters.

Remuneration and allowances of members of the Assembly, Ministers, the Head of Administration and Associate Heads of Administration will be determined by the Commonwealth Remuneration Tribunal on the reference of the Minister for Industrial Relations.

The Territory will have its own Treasury and the capacity to raise revenue with the same powers of taxation as the States and the Northern Territory. All money received by the Territory will form the public money of Territory which will be regulated by Assembly law. Loans from the Commonwealth and other borrowings will be subject to the approval of the Commonwealth Minister for Finance and the Treasurer respectively.

The Bill requires financial relations between the Commonwealth and the Territory to be conducted on the same basis as relations between the Commonwealth and the States (and Northern Territory) having regard to the special circumstances arising from the existence of the National Capital and Seat of Government of the Commonwealth in the Territory.

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

FINANCIAL IMPACT STATEMENT

The Bill will not involve additional Commonwealth expenditures other than one-off establishment assistance to be agreed with the ACT Executive. Savings will accrue to the Commonwealth through separation of responsibilities of ACT administration from the Commonwealth system. In the longer term, the arrangements will allow Commonwealth funding to the ACT on a basis more directly comparable to that to the States.

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. It is intended to proclaim Parts III and VIII upon Royal Assent while the remaining provisions will be proclaimed to come into operation on the day fixed for the first meeting of the Legislative Assembly.

Clause 3 : Definitions

This clause provides definitions relating to the interpretation of the Bill.

Clause 4 : Meaning of day on which election held

This clause provides a definition for the purposes of clauses 15 and 47 of the Bill.

Clause 5 : Meaning of day on which result of election declared

This clause clarifies the meaning of the above phrase for the purposes of clause 16.

Clause 6 : Powers include functions and duties

This clause provides an expanded definition of 'powers' for the purposes of the Bill.

PART II - AUSTRALIAN CAPITAL TERRITORY

Clause 7 : Establishment of body politic

This clause establishes the Australian Capital Territory as a body politic under the Crown.

PART III - LEGISLATIVE ASSEMBLY

This Part deals with the constitution and procedures of the Assembly.

Division 1 - Constitution of Assembly

Clause 8 : Legislative Assembly

Sub-clause 8(1) establishes the Legislative Assembly for the Australian Capital Territory as the legislative arm of the body politic.

Sub-clause 8(2) provides for the membership of the Assembly.

Sub-clause 8(3) allows the regulations to vary the number of members of the Assembly at the request of the Assembly.

Clause 9 : Oath or Affirmation of Allegiance

Sub-clause 9(1) requires a member to make an oath or affirmation of allegiance to the Queen.

Sub-clause 9(2) provides for the administration of the oath or affirmation.

Clause 10 : Term of office of member

This clause deals with the term of office of members in their capacity as members of the Assembly. Other clauses deal specifically with the term of any other office they may hold as members (eg Minister).

Clause 11 : Presiding Officer of Assembly

Sub-clause 11(1) establishes the office of Presiding Officer of the Assembly and provides for election to that office.

Sub-clause 11(2) enables the Assembly to retitile the office of Presiding Officer.

Sub-clause 11(3) provides for the filling of a vacancy in the office of Presiding Officer.

Sub-clause 11(4) makes it clear that the Assembly may make, by its standing rules and orders, provision for the appointment of another person to preside at meetings of the Assembly in the absence of the Presiding Officer. [See sub-clauses 17(5) and 20(2)(b)]. However, a Minister may not be so appointed.

Clause 12 : Vacation of office by Presiding Officer

Sub-clause 12(1) makes provision for the term of office of the Presiding Officer. It should be read in conjunction with clause 11 dealing with the term of office of members.

Although his or her term of office as a member ceases on the polling day of a general election, the Presiding Officer continues in office as Presiding Officer until a new Presiding Officer is elected under paragraph 12(1)(a). An exception to this is if the Governor-

General has dissolved the Assembly under clause 15 and the Presiding Officer has ceased to be a member for that reason.

Paragraph 12(1)(d) provides that a special majority of members must vote to remove a Presiding Officer from office. The aim of this provision is to preserve the independence and standing of the Presiding Officer.

Sub-clause 12(2) allows the regulations to vary, at the request of the Assembly, the number of members required to remove the Presiding Officer.

Sub-clause 12(3) allows a person holding office as Presiding Officer to stand for re-election.

Clause 13 : Resignation of members

Sub-clause 13(1) enables a member to resign by delivering notice to an official authorised by the Assembly. A resignation may take effect upon delivery of the notice or at some time thereafter as specified in the notice. No acceptance by the official is required.

Sub-clause 13(2) allows the Presiding Officer to resign by delivering notice to an official authorised by the Assembly. No acceptance by the official is required.

Sub-clause 13(3) requires an official who receives a notice of resignation to table it at the next meeting of the Assembly.

Clause 14 : Disqualification of member

Sub-clause 14(1) sets out the circumstances in which a member loses his or her office as member. In particular, paragraph 14(1)(a) should be read in conjunction with clause 66(4).

Sub-clause 14(2) deals with conflict of interests where a member has a direct or indirect interest in a contract with the Territory or a Territory authority and a matter or question before the Assembly relates to that contract.

Sub-clause 14(3) leaves it to the Assembly to decide all questions regarding the application of sub-clause 14(2).

Clause 15 : Dissolution of Assembly by Governor-General

This clause enables the Governor-General in Council to dissolve the Assembly in extraordinary circumstances. It makes provision for the appointment of a Commissioner and the holding of a general election.

It defines the powers of the Commissioner who holds office until the first meeting of the Assembly after the general election. The Minister is required to publish a statement of the reasons for the dissolution in the Gazette and then table it before each House of the Parliament.

Division 2 - Procedure of Assembly

Clause 16 : Times of meetings

Sub-clauses 16(1) and 16(2) make provision for meetings of the Assembly.

Sub-clause 16(3) provides a mechanism to ensure that the requirements of sub-clause 16(1) are met where the Presiding Officer, for whatever reason, cannot convene a meeting of the Assembly. The responsible Commonwealth Minister may exercise the powers of the Presiding Officer for this purpose. In particular, this sub-clause enables the Commonwealth Minister to

convene the very first meeting of the Assembly which must be held within 14 days of the declaration of the first general election.

Clause 17 : Procedure at meetings

Sub-clause 17(1) provides a quorum for meetings of the Assembly.

Sub-clause 17(2) enables the regulations to vary the quorum at the request of the Assembly.

Sub-clause 17(3) provides that questions at meetings will be decided by a majority of votes but allows the standing rules and orders to require a special majority in appropriate cases.

Sub-clause 17(4) limits the member presiding at a meeting to a deliberative vote only (that is, there is no casting vote).

Sub-clause 17(5) provides that as a general rule, the Presiding Officer will preside at all meetings of the Assembly at which he or she is present. However, the standing rules and orders may provide that a deputy of the Presiding Officer may take his or her place [see sub-clause 20(2)] and may make other provision as to who is to preside at meetings of Committees of the Assembly.

Clause 18 : Resolution of no confidence in Chief Minister

This clause specifies certain requirements for a valid motion of no confidence in the Chief Minister and should be read in conjunction with sub-clauses 39(3), 45(c) and 47(2) which deal with the consequences of the passage of such a motion.

Clause 19 : Minutes of meetings

This requires the Assembly to keep a record of its meetings and make them available to the public.

However, sub-clause 19(3) does not require minutes of a Committee meeting held in private to be made public.

Clause 20 : Standing rules and orders

Sub-clause 20(1) enables the Assembly to determine standing rules and orders for the conduct of its business.

Sub-clause 20(2) enables the Assembly to establish an office of Deputy Presiding Officer able to perform all the powers of the Presiding Officer.

PART IV - POWERS OF LEGISLATIVE ASSEMBLY

Clause 21 : Power of Assembly to make laws

Sub-clause 21(1) gives the Assembly a general power to make laws for the peace, order and good government of the Territory.

Sub-clause 21(2) makes it clear that the legislative power of the Assembly extends to regulating the manner in which the Executive exercises its powers.

Clause 22 : Matters excluded from power to make laws

Sub-clause 22(1) specifies certain matters excluded from the legislative power of the Assembly.

Sub-clause 22(2) allows the making of regulations to omit or reduce the scope of excluded matters. It is envisaged that some of the excluded matters will be transferred from the Commonwealth to the Territory at a future date.

**Clause 23 : Powers, privileges and immunities of
Assembly**

This clause makes it clear that the Assembly has the power to make laws dealing with the privileges and immunities of the Assembly so long as they do not exceed at any given time the powers of the House of Representatives or of its Committees.

However, until the Assembly legislates under sub-clause 23(2), the powers of the Assembly and its Committees are to be the same as those of the House of Representatives and its Committees.

Sub-clause 23(4) prevents the Assembly itself from being able to imprison or fine a person for a breach of its privileges and immunities. While the Assembly may pass a law providing for such penalties, their enforcement will be a matter for the Courts.

Clause 24 : Notification of enactment

Sub-clause 24(1) requires each law passed by the Assembly to be notified in the Australian Capital Territory Gazette.

Sub-clause 24(2) provides that a law can only take effect if notified in the Gazette but may take effect upon the day of notification or at such other time (whether before or after the date of notification) as the law itself provides.

**Clause 25 : Special procedures for making certain
enactments**

This clause enables the enactment of an entrenching law placing restrictions on the manner and form of making particular Assembly laws. Amendments to, or the repeal

of, the entrenching law itself may be similarly restricted.

Sub-clause 25(2) requires the proposed entrenching law to be submitted to a referendum.

Sub-clause 25(3) provides that the entrenching law does not come into effect unless approved by a majority of electors at a referendum. However, this provision should be read subject to sub-clauses 25(5) and (6).

Sub-clause 25(4) ensures that an Assembly law which has been entrenched cannot be amended or repealed unless made in accordance with the approved method of entrenchment.

Sub-clauses 25(5) and (6) provide that an entrenching law cannot be brought into effect unless made or approved in accordance with the proposed method of entrenchment.

Clause 26 : Crown may be bound

This clause ensures that an Assembly law does not bind the Crown in right of the Commonwealth except as provided by the regulations.

Clause 27 : Inconsistency with other laws

This clause provides that laws of the Assembly are subordinate to Commonwealth Acts, regulations made under those Acts, Ordinances, regulations made under those Ordinances and to other Commonwealth instruments of a legislative character. However, an Assembly law may operate concurrently with Commonwealth laws.

Clause 28 : Judicial notice

This clause ensures that judicial notice is taken of Assembly laws and other instruments of a legislative character made under Assembly laws.

Clause 29 : Publication of enactments

This clause requires that Assembly laws and subordinate laws be published and made available for purchase by the public.

Clause 30 : Application of Statutory Rules Publication Act

This clause makes it clear that the Statutory Rules Publication Act 1903 does not apply in relation to Assembly laws and subordinate laws. The Assembly will make its own provision dealing with the notification and printing of statutory rules made under Assembly laws.

Clause 31 : Application of Acts Interpretation Act

This clause ensures that the Acts Interpretation Act 1901 does not apply to the interpretation of Assembly laws and subordinate laws and certain instruments. The Assembly will enact its own interpretation law.

Clause 32 : Certain laws converted into enactments

The purpose of this clause is to ensure that all legislation in force in the Territory other than Commonwealth Acts or those laws set out in Schedule 3 continue in force as laws of the Assembly.

Sub-clause 32(1) defines "law" for the purposes of this clause. It is intended that this clause also covers subordinate legislation made under a law.

Sub-clause 32(2) provides that certain Commonwealth Acts specified in Schedule 2 will become converted into Assembly law on the appropriate day.

Sub-clause 32(3) provides that, subject to sub-clause 32(4), all legislation in force in the Territory other than Commonwealth Acts will become converted into Assembly law on the appropriate day.

Sub-clause 32(4) provides that the ACT laws specified in Schedule 3 do not become converted into Assembly law. These laws continue to be administered by the Commonwealth.

Sub-clause 32(5) provides a mechanism to convert retained Commonwealth law into Assembly law at some future date.

Sub-clause 32(6) is necessary to ensure that any laws made after the passage of this Bill but before commencing day are not converted into Assembly law if they relate to matters to be retained by the Commonwealth.

Sub-clause 32(7) makes it clear that nothing in this clause affects the existing common law or the power of the Assembly to change the common law.

Clause 33 : Disallowance of enactments

This clause enables the Governor-General to disallow an Assembly law within 6 months after it is made.

Sub-clauses 33(3) and (4) allow the Governor-General to make recommendations to the Assembly concerning desired amendments to an Assembly law with a consequent extension to the period for disallowance.

Sub-clause 33(5) provides that upon publication in the Gazette, a disallowance has the same effect as a repeal. Accordingly, any action lawfully made under a disallowed law is not rendered illegal by the disallowance.

Sub-clause 33(6) provides that if a disallowed law amended or repealed a law previously in force, the disallowance revives the previous law (as it stood before the disallowed amendment or repeal) but only from the date of disallowance.

PART V - THE EXECUTIVE

Clause 35 : Australian Capital Territory Executive

This clause creates the Australian Capital Territory Executive as the executive arm of the body politic.

Clause 36 : General powers of Executive

This clause sets out the powers of the Executive and in particular provides that the Executive is to govern the Territory with respect to the matters listed in Schedule 4.

Clause 37 : Executive matters not limited by Schedule 4

This clause makes it clear that the matters listed in Schedule 4 are not mutually exclusive.

Clause 38 : Membership of Executive

Sub-clause 38(1) provides for the membership of the Executive. See also sub-clause 40(1) which provides for the number of Ministers.

Sub-clause 38(2) makes it clear that a vacancy in the membership of the Executive does not affect the exercise of the powers of the Executive.

Clause 39 : Chief Minister for the Territory

Sub-clause 39(1) provides for the election by the Assembly of the Chief Minister.

Sub-clause 39(2) makes provision for the filling of vacancies in the office of Chief Minister.

Sub-clause 39(3) requires the Assembly to elect a new Chief Minister if the members have passed a resolution of no confidence in the existing Chief Minister in accordance with the provisions of clause 18. It should be noted that the existing Chief Minister does not vacate his or her office until a new Chief Minister is elected and, accordingly this provision should be read in conjunction with clause 45.

Clause 40 : Ministers for the Territory

Sub-clause 40(1) limits the total number of Ministers to 4 and empowers the Chief Minister to appoint the 3 other Ministers.

Sub-clause 40(2) allows the regulations to vary the number of Ministers at the request of the Assembly.

Sub-clause 40(3) allows the Chief Minister to dismiss Ministers.

Clause 41 : Presiding Officer or deputy not to be a Minister

The purpose of this clause is to protect the independence of the office of Presiding Officer.

Clause 42 : Ministerial portfolios

This clause allows the Chief Minister to allocate governmental responsibility among Ministers and authorise Ministers to act on one another's behalf. Such arrangements must be published in the Australian Capital Territory Gazette.

Clause 43 : Deputy Chief Minister for the Territory

This clause makes provision for a Deputy Chief Minister who is able to act as the Chief Minister in the circumstances set out in sub-clause 43(2). The Deputy Minister may not, however, exercise the power of the Chief Minister to dismiss Ministers nor is the Chief Minister prevented from exercising his or her powers while absent from Australia.

Clause 44 : Resignation of Ministers

Sub-clause 44(1) enables the Chief Minister to resign by delivering written notice to the Presiding Officer. No acceptance by the Presiding Officer is required.

Sub-clause 44(2) deals with the manner of the resignation of Ministers other than the Chief Minister. No acceptance by the Chief Minister is required.

Clause 45 : Vacation of office of Ministers

This clause makes provision for the term of office of Ministers including the Chief Minister. It should be read in conjunction with clause 10 dealing with the term of office of members.

Although their term of office as member ceases on the polling day of a general election, Ministers continue in office as Ministers until a new Chief Minister is elected following the general election - see paragraph

45(c). An exception to this is if the Governor-General has dissolved the Assembly under clause 15 and Ministers have ceased to be members for that reason.

Paragraph 45(c) provides that all Ministers (including the Chief Minister) vacate their office when a new Chief Minister is elected. Where a general election is to be held, this provision enables Ministers to act as a 'caretaker' government until a new government is formed.

Both paragraphs 45(a) and (d) only affect the term of office as Minister, not as member.

Clause 46 : Vacancies in all Ministerial offices

The purpose of this clause is to ensure continuity of government in the extraordinary circumstance that all Ministerial offices are vacant at the same time. The Commonwealth Minister would exercise the powers of the Executive only if necessary to maintain essential services.

It should be noted that, in this circumstance, clause 39 provides for the Presiding Officer to call a meeting of the Assembly as soon as practicable to elect a new Chief Minister.

Clause 47 : Resolution of no confidence in Chief Minister

This clause requires the holding of an election of the Assembly where the members of the Assembly are unable to form a new government following a loss of confidence in the existing government headed by the current Chief Minister. This clause should be read in conjunction with clause 18 which sets out the prerequisites for a valid resolution of no confidence in the Chief Minister and clause 45 which enables the existing government to continue in office in a 'caretaker' role.

However, it should be noted that this provision does not apply if a general election would normally be due within 6 months of the date of the election required under this clause [see sub-clause 47(4)].

PART VI - ADMINISTRATION

Clause 48 : Head of Administration and Associate Heads of Administration

This clause creates the positions of Head of Administration and Associate Head of Administration as the senior positions in the public service of the Territory.

Clause 49 : Powers of Head of Administration

This clause sets out the powers and functions of the Head of Administration. The Head of Administration is to be the principal advisor to the Executive and generally is to have prime responsibility, under the Chief Minister, for the administrative functions of the body politic.

Clause 50 : Powers of Associate Heads of Administration

The purpose of this clause is to enable the establishment by the Chief Minister of separate units of administration headed by an Associate Head of Administration who would be responsible to a nominated Minister.

The Chief Minister is empowered to allocate functional responsibilities to each unit and is required to publish details of the approved arrangements in the Australian Capital Territory Gazette.

Clause 51 : Tenure of Head of Administration and Associate Heads of Administration

This clause empowers the Assembly to make a law setting the parameters under which the Chief Minister may determine the terms and conditions (other than remuneration and allowances) of the Head of Administration and an Associate Head of Administration.

Clause 52 : Acting Head of Administration and Associate Heads of Administration

This clause makes provision for the appointment of an acting Head of Administration or Associate Head of Administration when there is a vacancy in such an office or where an occupant is unable to perform the duties of the office. This clause should be read in conjunction with section 33A of the Acts Interpretation Act 1901.

Clause 53 : Staff

The purpose of this clause is to enable the Territory to establish its own public service under the general management of the Head of Administration. This ensures, consistent with the practice in the Westminster system of government, that there is no direct involvement by the Executive in the selection of staff.

It should be noted that interim staffing arrangements by provision of members of the Australian Public Service will be subsequently dealt with by supporting legislation.

Clause 54 : Delegations

The purpose of this clause is to allow the Assembly to determine the circumstances in which the Head of Administration and Associate Heads of Administration may delegate their powers to appropriate persons.

Clause 55 : Arrangements relating to staffing

This clause enables the Head of Administration to enter into secondment arrangements with the Australian Public Service, the Public Service of a State or Territory or other bodies.

Sub-clause 55(4) makes it clear that a seconded person is under the direct control of the Head of Administration whilst subject to the secondment arrangements.

PART VII - FINANCE

Clause 56 : Public money

Sub-clause 56(1) sets out the general principle that the public money of the Territory (defined in clause 3 to mean revenues, loans and other money received by the Territory) shall be available to defray the expenditure of the Territory.

Sub-clause 56(2) requires that the receipt, spending and control of public money of the Territory be regulated by Assembly law.

Clause 57 : Withdrawals of public money

Sub-clause 57(1) provides that public money of the Territory may not be issued or expended except as authorised by Assembly law. An exception to this arises in the circumstance where the Assembly has been

dissolved by the Governor-General under clause 15. Sub-clause 15(4) enables the Commissioner, with the authority of the Governor-General, to issue or expend public money of the Territory where no legislative authorisation exists if it is necessary to do so.

Sub-clause 57(2) provides that the public money of the Territory may be invested as provided for by Assembly law.

Clause 58 : Financial relations between Commonwealth and Territory

Sub-clause 58(1) states the principle that the Commonwealth shall in the conduct of its financial relations with the Territory treat the Territory as an equal partner with the States and the Northern Territory whilst recognising the Territory's special role as the National Capital and Seat of Government of the Commonwealth.

Sub-clause 58(2) provides that the Territory is not liable to bear any of the costs associated with functions relating to the Territory which are retained by the Commonwealth.

Clause 59 : Borrowing from Commonwealth

This clause enables the Minister for Finance to lend Commonwealth money to the Territory or to a Territory authority.

Clause 60 : Borrowing from persons other than Commonwealth

This clause enables the Territory or a Territory authority to borrow money from sources other than the Commonwealth with the approval of the Treasurer.

Clause 61 : Guarantee of borrowing

This clause enables the Treasurer, on behalf of the Commonwealth, to enter into a contract guaranteeing borrowings by the Territory or Territory authorities.

Clause 62 : Borrowing not otherwise permitted

This clause precludes the Territory or Territory authority from borrowing other than in accordance with Part VII.

Clause 63 : Guarantees by Executive

This clause precludes the Territory from making guarantees without the approval of the Treasurer where at the time the guarantee is made the amount guaranteed together with any amounts previously guaranteed is more than 10% of the total of the public money of the Territory.

Clause 64 : Proposal of money votes

Sub-clause 64(1) provides that only a Minister may propose a law, vote, resolution or question which has the object or effect of disposing of, or charging, any public money of the Territory.

Sub-clause 64(2) enables members of the Assembly to move amendments to monetary proposals made by a Minister but only to decrease or transfer the amount proposed.

PART VIII - ELECTIONS TO ASSEMBLY

The detail of the electoral system which will apply to elections for the Legislative Assembly is contained in the Australian Capital Territory (Electoral) Bill 1988.

Clause 65 : Election of members

This clause provides that the members of the Assembly shall be elected as provided by this Part and by the Australian Capital Territory (Electoral) Act 1988.

Clause 66 : Qualifications of candidates

Sub-clause 66(1) provides that the qualifications of candidates shall be those provided by Assembly law.

Sub-clause 66(2) provides that in the interim sub-clauses (3) and (4) regulate the matter.

Sub-clause 66(3) sets out the general rule 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.

Sub-clause 66(4), however, provides that a person is not qualified to take a seat as a member if:

- (a) the person holds a public office or appointment with the Commonwealth or a State or Territory (including the ACT) and is entitled to any remuneration or allowance in respect of the position (other than the reimbursement of expenses reasonably incurred). The Offices of member of the Assembly, Presiding Officer, Deputy Presiding Officer, Chief Minister and Minister are excluded from this prohibition; or
- (b) the person has been convicted and is under sentence for an offence punishable by imprisonment for 5 years or longer.

Clause 67 : Casual vacancies

The method adopted for filling casual vacancies is based upon the method used for filling Senate casual vacancies.

Sub-clause 67(2) provides that where a casual vacancy occurs in the office of an elected member (defined by Sub-clause 67(1) to mean a member other than a member chosen under the section to fill a casual vacancy) the Assembly shall choose a person qualified to be a candidate to hold the office for the rest of the term of the member last holding that office.

Sub-clause 67(3) provides that a person begins to hold office immediately after having been chosen to fill the vacancy.

Sub-clause 67(4) provides that if the member whose vacancy is being filled was elected as a member of a particular political party the Assembly must choose a member of that party nominated by that party.

Sub-clause 67(5) provides that if a person so chosen ceases to be a member of that party before taking the seat, the person shall be taken not to have been chosen. In this respect Sub-clause 67(8) provides that a person is not taken to cease to be a party member merely because the party ceases to exist or is de-registered.

Sub-clause 67(6) provides that if when elected the elected member was an independent, or if the elected member was elected as the member of a party which has no members available to be chosen, the Assembly must choose a person who has not been a member of a political party appearing on the ACT Register of Political Parties for the whole of the 12 months immediately preceding the time of being chosen.

Sub-clause 67(7) provides that if a person chosen under subsection (6) becomes a member of a registered party before taking the seat, the person shall be taken not to have been chosen.

PART IX - MISCELLANEOUS

Clause 68 : Trade and commerce to be free

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

Clause 69 : Validity of certain actions

Sub-clause 69(2) provides that the validity of actions of the offices listed in Sub-clause 69(1) (being the office of Chief Minister, Deputy Chief Minister, Minister, Presiding Officer, Deputy Presiding Officer, Head of Administration, Associate Head of Administration or Commissioner) 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 69(3) validates the proceedings of the Assembly or of a Committee of the Assembly where a person who sat as a member was in fact not a member.

Clause 70 : Staffing consultations

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

- (a) the staffing of the Territory and of Territory authorities;

- (b) the determination of terms and conditions of employment of a member of the staff or a person employed by a Territory authority; and
- (c) industrial questions relating to employees.

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

Clause 71 : Royal prerogative of mercy

This clause requires the Commonwealth Minister to consult with the Chief Minister and to consider comment given by the Chief Minister concerning the exercise of the Royal prerogative of mercy in relation to an offence against an Assembly law or subordinate law.

Clause 72 : Remuneration and allowances

This clause provides for the remuneration and allowances of the following offices:

- (a) Chief Minister;
- (b) Deputy Chief Minister;
- (c) member;
- (d) Minister;
- (e) Presiding Officer;
- (f) Deputy Presiding Officer;
- (g) Head of Administration;
- (h) Associate Head of Administration; and

(i) an office established by or under Assembly law.

Sub-clause 72(2) provides that the remuneration in respect of these offices will be determined by the Remuneration Tribunal if the Minister for Industrial Relations 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 Assembly law.

Sub-clause 72(3) provides that, subject to the Remuneration Tribunals Act 1973, the allowances in respect of services in an office, will be as specified by or under Assembly law.

Sub-clauses 72(4) and (5) clarify the position concerning the calculation of remuneration and allowances payable to a member of the Assembly. The Sub-clauses adopt the principles which apply to the calculation of allowances payable to a member of the House of Representatives (see section 5A of the Parliamentary Allowances Act 1952). Sub-clause (4) provides that where a member's term ends on the polling day for a general election and the person is re-elected at that general election, for the purposes of this clause the person shall be taken to have continued to serve in the office of member until the day on which the election of the person is declared. Sub-clause (5) provides that where a member's term ends because the Governor-General dissolves the Assembly, and the person is a candidate at the next general election then, for the purposes of this clause, the person shall be taken to have continued to serve in the office of member until the polling day for that general election or if the person is re-elected until the day on which the election of the person is declared.

SCHEDULE 1

This Schedule provides the form of the oath or affirmation to be made by members of the Assembly before they are able to take their seats. Clause 9 of the Bill refers.

SCHEDULE 2

This Schedule lists the Commonwealth Acts which are to become the responsibility of the Territory. By virtue of clause 32, these laws will become laws of the Legislative Assembly on the commencing day of self-government and will thereafter be subject to amendment or repeal by the Assembly.

SCHEDULE 3

This Schedule lists existing laws in force in the Territory (other than Acts) which are to be retained for administration by the Commonwealth. The Schedule is divided into three Parts: Ordinances; NSW Acts in force in the ACT; and Imperial Acts in force in the ACT.

It is envisaged that some of these laws will be transferred for administration by the Territory at a future date. For this reason, sub-clause 32(5) allows the making of regulations which may omit a law from this Schedule. In that event, the law in question will become an Assembly law.

SCHEDULE 4

This Schedule lists the matters concerning which the Executive has power to govern the Territory. In addition to the detailed list of particular matters, the Schedule refers to certain broad categories of matters in relation to which the Executive also has power. These categories include those matters in

respect of which the Assembly may make laws relating to the powers, privileges and immunities of the Assembly, making instruments under Assembly laws or subordinate laws, entering into and implementing agreement and arrangements with the Commonwealth, a State or the Northern Territory and matters incidental to the exercise of any power of the Executive.

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Arts,
Sport, the Environment, Tourism and Territories,
Senator the Hon Graham Richardson)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) BILL 1988

OUTLINE

This Bill forms part of a package of legislation to provide self-government for the Australian Capital Territory. The Bill should be read in conjunction with the Australian Capital (Electoral) Bill 1988, and the Australian Capital Territory Planning and Land Management Bill 1988.

The Bill establishes the Australian Capital Territory (the Territory) as a body politic under the Crown. The body politic will consist of a Legislative Assembly (the Assembly) exercising legislative power and an Australian Capital Territory Executive (the Executive) exercising executive power as set out in the Bill.

The principal features of this Bill are as follows.

The Legislative Assembly will have 17 members who will be elected for a four year fixed term in accordance with the provisions of the Australian Capital Territory (Electoral) Bill 1988. Nine members will constitute a quorum.

The Executive will consist of a Chief Minister and 3 other Ministers appointed by the Chief Minister. The Chief Minister will be elected by the Assembly and there is provision for him or her to appoint one of the Ministers to be Deputy Chief Minister.

The Assembly will elect a Presiding Officer who will preside at meetings of the Assembly and have a deliberative vote only. The Assembly will be required to meet within 7 days after the result of a general election is declared and at least once every 2 months thereafter.

The Assembly will have power to make standing rules and orders governing the conduct of its business. Until otherwise provided by Assembly law, the Assembly will have the same powers, privileges and immunities as the House of Representatives with the exception that it may not imprison or fine a person.

In extraordinary circumstances, the Governor-General may dissolve the Assembly if the Assembly becomes incapable of effectively exercising its powers or is conducting its affairs in a grossly improper manner. The responsible Commonwealth Minister will be required in that event to call a general election and an appointed Commissioner will exercise the powers of the Executive in the interim. The Minister will be required to publish a statement of the reasons for the dissolution in the Gazette and then table the statement in the Parliament.

Subject to the exclusion of certain matters, the Assembly will have power to make laws for the peace, order and good government of the Territory. Most of the existing Ordinance law of the Territory will be continued in force as laws of the Assembly, capable of being amended or repealed by the Assembly.

All proposed laws passed by the Assembly will have to be notified in the Australian Capital Territory Gazette. A law will take effect upon notification or as otherwise provided by the law.

The Governor-General will be able to disallow an Assembly law within 6 months after the law is made.

Commonwealth Acts, Regulations and Ordinances will prevail over Assembly laws. The power of the Governor-General to make Ordinances under the Seat of Government (Administration) Act 1910 is not affected by this Bill.

Provision has been made to allow the entrenchment of Assembly laws by a referendum of electors. Once a law has been entrenched, it can only be amended or repealed in the manner approved by the electors.

The Executive is charged with the government of the Territory in respect of the matters listed in Schedule 4 to the Bill. This approach reflects that adopted in the Northern Territory Self-Government Act 1978. The Executive also has the responsibility of executing and maintaining Assembly laws and may exercise powers under an agreement with the Commonwealth, a State or other Territory.

The Chief Minister will be able to allocate portfolios to Ministers with such arrangements being published in the Australian Capital Territory Gazette.

Ministers may be dismissed by the Chief Minister and normally hold office until the election of a new Chief Minister.

Provision has been made allowing the election of a new Chief Minister where a resolution of no confidence has been passed in the existing Chief Minister. Such a resolution may only be passed if at last 7 days notice of motion has been given and at least a quorum of the Assembly support it.

The Chief Minister is empowered to appoint a Head of Administration and Associate Heads of Administration to advise the Executive and provide administrative support for the Executive. The Head of Administration will be responsible for the management of staff.

The Bill enables staff to be employed under terms and conditions established under Assembly law subject to continuing consultation with the Commonwealth on industrial and staffing matters.

Remuneration and allowances of members of the Assembly, Ministers, the Head of Administration and Associate Heads of Administration will be determined by the Commonwealth Remuneration Tribunal on the reference of the Minister for Industrial Relations.

The Territory will have its own Treasury and the capacity to raise revenue with the same powers of taxation as the States and the Northern Territory. All money received by the Territory will form the public money of Territory which will be regulated by Assembly law. Loans from the Commonwealth and other borrowings will be subject to the approval of the Commonwealth Minister for Finance and the Treasurer respectively.

The Bill requires financial relations between the Commonwealth and the Territory to be conducted on the same basis as relations between the Commonwealth and the States (and Northern Territory) having regard to the special circumstances arising from the existence of the National Capital and Seat of Government of the Commonwealth in the Territory.

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

FINANCIAL IMPACT STATEMENT

The Bill will not involve additional Commonwealth expenditures other than one-off establishment assistance to be agreed with the ACT Executive. Savings will accrue to the Commonwealth through separation of responsibilities of ACT administration from the Commonwealth system. In the longer term, the arrangements will allow Commonwealth funding to the ACT on a basis more directly comparable to that to the States.

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. It is intended to proclaim Parts III and VIII upon Royal Assent while the remaining provisions will be proclaimed to come into operation on the day fixed for the first meeting of the Legislative Assembly.

Clause 3 : Definitions

This clause provides definitions relating to the interpretation of the Bill.

Clause 4 : Meaning of day on which election held

This clause provides a definition for the purposes of clauses 15 and 47 of the Bill.

Clause 5 : Meaning of day on which result of election declared

This clause clarifies the meaning of the above phrase for the purposes of clause 16.

Clause 6 : Powers include functions and duties

This clause provides an expanded definition of 'powers' for the purposes of the Bill.

PART II - AUSTRALIAN CAPITAL TERRITORY

Clause 7 : Establishment of body politic

This clause establishes the Australian Capital Territory as a body politic under the Crown.

PART III - LEGISLATIVE ASSEMBLY

This Part deals with the constitution and procedures of the Assembly.

Division 1 - Constitution of Assembly

Clause 8 : Legislative Assembly

Sub-clause 8(1) establishes the Legislative Assembly for the Australian Capital Territory as the legislative arm of the body politic.

Sub-clause 8(2) provides for the membership of the Assembly.

Sub-clause 8(3) allows the regulations to vary the number of members of the Assembly at the request of the Assembly.

Clause 9 : Oath or Affirmation of Allegiance

Sub-clause 9(1) requires a member to make an oath or affirmation of allegiance to the Queen.

Sub-clause 9(2) provides for the administration of the oath or affirmation.

Clause 10 : Term of office of member

This clause deals with the term of office of members in their capacity as members of the Assembly. Other clauses deal specifically with the term of any other office they may hold as members (eg Minister).

Clause 11 : Presiding Officer of Assembly

Sub-clause 11(1) establishes the office of Presiding Officer of the Assembly and provides for election to that office.

Sub-clause 11(2) enables the Assembly to retitle the office of Presiding Officer.

Sub-clause 11(3) provides for the filling of a vacancy in the office of Presiding Officer.

Sub-clause 11(4) makes it clear that the Assembly may make, by its standing rules and orders, provision for the appointment of another person to preside at meetings of the Assembly in the absence of the Presiding Officer. [See sub-clauses 17(5) and 20(2)(b)]. However, a Minister may not be so appointed.

Clause 12 : Vacation of office by Presiding Officer

Sub-clause 12(1) makes provision for the term of office of the Presiding Officer. It should be read in conjunction with clause 11 dealing with the term of office of members.

Although his or her term of office as a member ceases on the polling day of a general election, the Presiding Officer continues in office as Presiding Officer until a new Presiding Officer is elected under paragraph 12(1)(a). An exception to this is if the Governor-General has dissolved the Assembly under clause 15 and the Presiding Officer has ceased to be a member for that reason.

Paragraph 12(1)(d) provides that a special majority of members must vote to remove a Presiding Officer from office. The aim of this provision is to preserve the independence and standing of the Presiding Officer.

Sub-clause 12(2) allows the regulations to vary, at the request of the Assembly, the number of members required to remove the Presiding Officer.

Sub-clause 12(3) allows a person holding office as Presiding Officer to stand for re-election.

Clause 13 : Resignation of members

Sub-clause 13(1) enables a member to resign by delivering notice to an official authorised by the Assembly. A resignation may take effect upon delivery of the notice or at some time thereafter as specified in the notice. No acceptance by the official is required.

Sub-clause 13(2) allows the Presiding Officer to resign by delivering notice to an official authorised by the Assembly. No acceptance by the official is required.

Sub-clause 13(3) requires an official who receives a notice of resignation to table it at the next meeting of the Assembly.

Clause 14 : Disqualification of member

Sub-clause 14(1) sets out the circumstances in which a member loses his or her office as member. In particular, paragraph 14(1)(a) should be read in conjunction with clause 66(4).

Sub-clause 14(2) deals with conflict of interests where a member has a direct or indirect interest in a contract with the Territory or a Territory authority and a matter or question before the Assembly relates to that contract.

Sub-clause 14(3) leaves it to the Assembly to decide all questions regarding the application of sub-clause 14(2).

Clause 15 : Dissolution of Assembly by Governor-General

This clause enables the Governor-General in Council to dissolve the Assembly in extraordinary circumstances. It makes provision for the appointment of a Commissioner and the holding of a general election.

It defines the powers of the Commissioner who holds office until the first meeting of the Assembly after the general election. The Minister is required to publish a statement of the reasons for the dissolution in the Gazette and then table it before each House of the Parliament.

Division 2 - Procedure of Assembly

Clause 16 : Times of meetings

Sub-clauses 16(1) and 16(2) make provision for meetings of the Assembly.

Sub-clause 16(3) provides a mechanism to ensure that the requirements of sub-clause 16(1) are met where the Presiding Officer, for whatever reason, cannot convene a meeting of the Assembly. The responsible Commonwealth Minister may exercise the powers of the Presiding Officer for this purpose. In particular, this sub-clause enables the Commonwealth Minister to convene the very first meeting of the Assembly which must be held within 14 days of the declaration of the first general election.

Clause 17 : Procedure at meetings

Sub-clause 17(1) provides a quorum for meetings of the Assembly.

Sub-clause 17(2) enables the regulations to vary the quorum at the request of the Assembly.

Sub-clause 17(3) provides that questions at meetings will be decided by a majority of votes but allows the standing rules and orders to require a special majority in appropriate cases.

Sub-clause 17(4) limits the member presiding at a meeting to a deliberative vote only (that is, there is no casting vote).

Sub-clause 17(5) provides that as a general rule, the Presiding Officer will preside at all meetings of the Assembly at which he or she is present. However, the standing rules and orders may provide that a deputy of the Presiding Officer may take his or her place [see sub-clause 20(2)] and may make other provision as to who is to preside at meetings of Committees of the Assembly.

Clause 18 : Resolution of no confidence in Chief Minister

This clause specifies certain requirements for a valid motion of no confidence in the Chief Minister and should be read in conjunction with sub-clauses 39(3), 45(c) and 47(2) which deal with the consequences of the passage of such a motion.

Clause 19 : Minutes of meetings

This requires the Assembly to keep a record of its meetings and make them available to the public.

However, sub-clause 19(3) does not require minutes of a Committee meeting held in private to be made public.

Clause 20 : Standing rules and orders

Sub-clause 20(1) enables the Assembly to determine standing rules and orders for the conduct of its business.

Sub-clause 20(2) enables the Assembly to establish an office of Deputy Presiding Officer able to perform all the powers of the Presiding Officer.

PART IV - POWERS OF LEGISLATIVE ASSEMBLY

Clause 21 : Power of Assembly to make laws

Sub-clause 21(1) gives the Assembly a general power to make laws for the peace, order and good government of the Territory.

Sub-clause 21(2) makes it clear that the legislative power of the Assembly extends to regulating the manner in which the Executive exercises its powers.

Clause 22 : Matters excluded from power to make laws

Sub-clause 22(1) specifies certain matters excluded from the legislative power of the Assembly.

Sub-clause 22(2) allows the making of regulations to omit or reduce the scope of excluded matters. It is envisaged that some of the excluded matters will be transferred from the Commonwealth to the Territory at a future date.

Clause 23 : Powers, privileges and immunities of Assembly

This clause makes it clear that the Assembly has the power to make laws dealing with the privileges and immunities of the Assembly so long as they do not exceed at any given time the powers of the House of Representatives or of its Committees.

However, until the Assembly legislates under sub-clause 23(2), the powers of the Assembly and its Committees are to be the same as those of the House of Representatives and its Committees.

Sub-clause 23(4) prevents the Assembly itself from being able to imprison or fine a person for a breach of its privileges and immunities. While the Assembly may pass a law providing for such penalties, their enforcement will be a matter for the Courts.

Clause 24 : Notification of enactment

Sub-clause 24(1) requires each law passed by the Assembly to be notified in the Australian Capital Territory Gazette.

Sub-clause 24(2) provides that a law can only take effect if notified in the Gazette but may take effect upon the day of notification or at such other time (whether before or after the date of notification) as the law itself provides.

Clause 25 : Special procedures for making certain enactments

This clause enables the enactment of an entrenching law placing restrictions on the manner and form of making particular Assembly laws. Amendments to, or the repeal of, the entrenching law itself may be similarly restricted.

Sub-clause 25(2) requires the proposed entrenching law to be submitted to a referendum.

Sub-clause 25(3) provides that the entrenching law does not come into effect unless approved by a majority of electors at a referendum. However, this provision should be read subject to sub-clauses 25(5) and (6).

Sub-clause 25(4) ensures that an Assembly law which has been entrenched cannot be amended or repealed unless made in accordance with the approved method of entrenchment.

Sub-clauses 25(5) and (6) provide that an entrenching law cannot be brought into effect unless made or approved in accordance with the proposed method of entrenchment.

Clause 26 : Crown may be bound

This clause ensures that an Assembly law does not bind the Crown in right of the Commonwealth except as provided by the regulations.

Clause 27 : Inconsistency with other laws

This clause provides that laws of the Assembly are subordinate to Commonwealth Acts, regulations made under those Acts, Ordinances, regulations made under those Ordinances and to other Commonwealth instruments of a legislative character. However, an Assembly law may operate concurrently with Commonwealth laws.

Clause 28 : Judicial notice

This clause ensures that judicial notice is taken of Assembly laws and other instruments of a legislative character made under Assembly laws.

Clause 29 : Publication of enactments

This clause requires that Assembly laws and subordinate laws be published and made available for purchase by the public.

Clause 30 : Application of Statutory Rules Publication Act

This clause makes it clear that the Statutory Rules Publication Act 1903 does not apply in relation to Assembly laws and subordinate laws. The Assembly will make its own provision dealing with the notification and printing of statutory rules made under Assembly laws.

Clause 31 : Application of Acts Interpretation Act

This clause ensures that the Acts Interpretation Act 1901 does not apply to the interpretation of Assembly laws and subordinate laws and certain instruments. The Assembly will enact its own interpretation law.

Clause 32 : Certain laws converted into enactments

The purpose of this clause is to ensure that all legislation in force in the Territory other than Commonwealth Acts or those laws set out in Schedule 3 continue in force as laws of the Assembly.

Sub-clause 32(1) defines "law" for the purposes of this clause. It is intended that this clause also covers subordinate legislation made under a law.

Sub-clause 32(2) provides that certain Commonwealth Acts specified in Schedule 2 will become converted into Assembly law on the appropriate day.

Sub-clause 32(3) provides that, subject to sub-clause 32(4), all legislation in force in the Territory other than Commonwealth Acts will become converted into Assembly law on the appropriate day.

Sub-clause 32(4) provides that the ACT laws specified in Schedule 3 do not become converted into Assembly law. These laws continue to be administered by the Commonwealth.

Sub-clause 32(5) provides a mechanism to convert retained Commonwealth law into Assembly law at some future date.

Sub-clause 32(6) is necessary to ensure that any laws made after the passage of this Bill but before commencing day are not converted into Assembly law if they relate to matters to be retained by the Commonwealth.

Sub-clause 32(7) makes it clear that nothing in this clause affects the existing common law or the power of the Assembly to change the common law.

Clause 33 : Disallowance of enactments

This clause enables the Governor-General to disallow an Assembly law within 6 months after it is made.

Sub-clauses 33(3) and (4) allow the Governor-General to make recommendations to the Assembly concerning desired amendments to an Assembly law with a consequent extension to the period for disallowance.

Sub-clause 33(5) provides that upon publication in the Gazette, a disallowance has the same effect as a repeal. Accordingly, any action lawfully made under a disallowed law is not rendered illegal by the disallowance.

Sub-clause 33(6) provides that if a disallowed law amended or repealed a law previously in force, the disallowance revives the previous law (as it stood before the disallowed amendment or repeal) but only from the date of disallowance.

PART V - THE EXECUTIVE

Clause 35 : Australian Capital Territory Executive

This clause creates the Australian Capital Territory Executive as the executive arm of the body politic.

Clause 36 : General powers of Executive

This clause sets out the powers of the Executive and in particular provides that the Executive is to govern the Territory with respect to the matters listed in Schedule 4.

Clause 37 : Executive matters not limited by Schedule 4

This clause makes it clear that the matters listed in Schedule 4 are not mutually exclusive.

Clause 38 : Membership of Executive

Sub-clause 38(1) provides for the membership of the Executive. See also sub-clause 40(1) which provides for the number of Ministers.

Sub-clause 38(2) makes it clear that a vacancy in the membership of the Executive does not affect the exercise of the powers of the Executive.

Clause 39 : Chief Minister for the Territory

Sub-clause 39(1) provides for the election by the Assembly of the Chief Minister.

Sub-clause 39(2) makes provision for the filling of vacancies in the office of Chief Minister.

Sub-clause 39(3) requires the Assembly to elect a new Chief Minister if the members have passed a resolution of no confidence in the existing Chief Minister in accordance with the provisions of clause 18. It should be noted that the existing Chief Minister does not vacate his or her office until a new Chief Minister is elected and, accordingly this provision should be read in conjunction with clause 45.

Clause 40 : Ministers for the Territory

Sub-clause 40(1) limits the total number of Ministers to 4 and empowers the Chief Minister to appoint the 3 other Ministers.

Sub-clause 40(2) allows the regulations to vary the number of Ministers at the request of the Assembly.

Sub-clause 40(3) allows the Chief Minister to dismiss Ministers.

Clause 41 : Presiding Officer or deputy not to be a Minister

The purpose of this clause is to protect the independence of the office of Presiding Officer.

Clause 42 : Ministerial portfolios

This clause allows the Chief Minister to allocate governmental responsibility among Ministers and authorise Ministers to act on one another's behalf. Such arrangements must be published in the Australian Capital Territory Gazette.

Clause 43 : Deputy Chief Minister for the Territory

This clause makes provision for a Deputy Chief Minister who is able to act as the Chief Minister in the circumstances set out in sub-clause 43(2). The Deputy Minister may not, however, exercise the power of the Chief Minister to dismiss Ministers nor is the Chief Minister prevented from exercising his or her powers while absent from Australia.

Clause 44 : Resignation of Ministers

Sub-clause 44(1) enables the Chief Minister to resign by delivering written notice to the Presiding Officer. No acceptance by the Presiding Officer is required.

Sub-clause 44(2) deals with the manner of the resignation of Ministers other than the Chief Minister. No acceptance by the Chief Minister is required.

Clause 45 : Vacation of office of Ministers

This clause makes provision for the term of office of Ministers including the Chief Minister. It should be read in conjunction with clause 10 dealing with the term of office of members.

Although their term of office as member ceases on the polling day of a general election, Ministers continue in office as Ministers until a new Chief Minister is elected following the general election - see paragraph 45(c). An exception to this is if the Governor-General has dissolved the Assembly under clause 15 and Ministers have ceased to be members for that reason.

Paragraph 45(c) provides that all Ministers (including the Chief Minister) vacate their office when a new Chief Minister is elected. Where a general election is to be held, this provision enables Ministers to act as a 'caretaker' government until a new government is formed.

Both paragraphs 45(a) and (d) only affect the term of office as Minister, not as member.

Clause 46 : Vacancies in all Ministerial offices

The purpose of this clause is to ensure continuity of government in the extraordinary circumstance that all Ministerial offices are vacant at the same time. The Commonwealth Minister would exercise the powers of the Executive only if necessary to maintain essential services.

It should be noted that, in this circumstance, clause 39 provides for the Presiding Officer to call a meeting of the Assembly as soon as practicable to elect a new Chief Minister.

Clause 47 : Resolution of no confidence in Chief Minister

This clause requires the holding of an election of the Assembly where the members of the Assembly are unable to form a new government following a loss of confidence in the existing government headed by the current Chief Minister. This clause should be read in conjunction with clause 18 which sets out the prerequisites for a

valid resolution of no confidence in the Chief Minister and clause 45 which enables the existing government to continue in office in a 'caretaker' role.

However, it should be noted that this provision does not apply if a general election would normally be due within 6 months of the date of the election required under this clause [see sub-clause 47(4)].

PART VI - ADMINISTRATION

Clause 48 : Head of Administration and Associate Heads of Administration

This clause creates the positions of Head of Administration and Associate Head of Administration as the senior positions in the public service of the Territory.

Clause 49 : Powers of Head of Administration

This clause sets out the powers and functions of the Head of Administration. The Head of Administration is to be the principal advisor to the Executive and generally is to have prime responsibility, under the Chief Minister, for the administrative functions of the body politic.

Clause 50 : Powers of Associate Heads of Administration

The purpose of this clause is to enable the establishment by the Chief Minister of separate units of administration headed by an Associate Head of Administration who would be responsible to a nominated Minister.

The Chief Minister is empowered to allocate functional responsibilities to each unit and is required to publish details of the approved arrangements in the Australian Capital Territory Gazette.

Clause 51 : Tenure of Head of Administration and Associate Heads of Administration

This clause empowers the Assembly to make a law setting the parameters under which the Chief Minister may determine the terms and conditions (other than remuneration and allowances) of the Head of Administration and an Associate Head of Administration.

Clause 52 : Acting Head of Administration and Associate Heads of Administration

This clause makes provision for the appointment of an acting Head of Administration or Associate Head of Administration when there is a vacancy in such an office or where an occupant is unable to perform the duties of the office. This clause should be read in

conjunction with section 33A of the Acts Interpretation Act 1901.

Clause 53 : Staff

The purpose of this clause is to enable the Territory to establish its own public service under the general management of the Head of Administration. This ensures, consistent with the practice in the Westminster system of government, that there is no direct involvement by the Executive in the selection of staff.

It should be noted that interim staffing arrangements by provision of members of the Australian Public Service will be subsequently dealt with by supporting legislation.

Clause 54 : Delegations

The purpose of this clause is to allow the Assembly to determine the circumstances in which the Head of Administration and Associate Heads of Administration may delegate their powers to appropriate persons.

Clause 55 : Arrangements relating to staffing

This clause enables the Head of Administration to enter into secondment arrangements with the Australian Public Service, the Public Service of a State or Territory or other bodies.

Sub-clause 55(4) makes it clear that a seconded person is under the direct control of the Head of Administration whilst subject to the secondment arrangements.

PART VII - FINANCE

Clause 56 : Public money

Sub-clause 56(1) sets out the general principle that the public money of the Territory (defined in clause 3 to mean revenues, loans and other money received by the Territory) shall be available to defray the expenditure of the Territory.

Sub-clause 56(2) requires that the receipt, spending and control of public money of the Territory be regulated by Assembly law.

Clause 57 : Withdrawals of public money

Sub-clause 57(1) provides that public money of the Territory may not be issued or expended except as authorised by Assembly law. An exception to this arises in the circumstance where the Assembly has been dissolved by the Governor-General under clause 15.

Sub-clause 15(4) enables the Commissioner, with the authority of the Governor-General, to issue or expend public money of the Territory where no legislative authorisation exists if it is necessary to do so.

Sub-clause 57(2) provides that the public money of the Territory may be invested as provided for by Assembly law.

Clause 58 : Financial relations between Commonwealth and Territory

Sub-clause 58(1) states the principle that the Commonwealth shall in the conduct of its financial relations with the Territory treat the Territory as an equal partner with the States and the Northern Territory whilst recognising the Territory's special role as the National Capital and Seat of Government of the Commonwealth.

Sub-clause 58(2) provides that the Territory is not liable to bear any of the costs associated with functions relating to the Territory which are retained by the Commonwealth.

Clause 59 : Borrowing from Commonwealth

This clause enables the Minister for Finance to lend Commonwealth money to the Territory or to a Territory authority.

Clause 60 : Borrowing from persons other than Commonwealth

This clause enables the Territory or a Territory authority to borrow money from sources other than the Commonwealth with the approval of the Treasurer.

Clause 61 : Guarantee of borrowing

This clause enables the Treasurer, on behalf of the Commonwealth, to enter into a contract guaranteeing borrowings by the Territory or Territory authorities.

Clause 62 : Borrowing not otherwise permitted

This clause precludes the Territory or Territory authority from borrowing other than in accordance with Part VII.

Clause 63 : Guarantees by Executive

This clause precludes the Territory from making guarantees without the approval of the Treasurer where at the time the guarantee is made the amount guaranteed together with any amounts previously guaranteed is more than 10% of the total of the public money of the Territory.

Clause 64 : Proposal of money votes

Sub-clause 64(1) provides that only a Minister may propose a law, vote, resolution or question which has the object or effect of disposing of, or charging, any public money of the Territory.

Sub-clause 64(2) enables members of the Assembly to move amendments to monetary proposals made by a Minister but only to decrease or transfer the amount proposed.

PART VIII - ELECTIONS TO ASSEMBLY

The detail of the electoral system which will apply to elections for the Legislative Assembly is contained in the Australian Capital Territory (Electoral) Bill 1988.

Clause 65 : Election of members

This clause provides that the members of the Assembly shall be elected as provided by this Part and by the Australian Capital Territory (Electoral) Act 1988.

Clause 66 : Qualifications of candidates

Sub-clause 66(1) provides that the qualifications of candidates shall be those provided by Assembly law.

Sub-clause 66(2) provides that in the interim sub-clauses (3) and (4) regulate the matter.

Sub-clause 66(3) sets out the general rule 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.

Sub-clause 66(4), however, provides that a person is not qualified to take a seat as a member if:

- (a) the person holds a public office or appointment with the Commonwealth or a State or Territory (including the ACT) and is entitled to any remuneration or allowance in respect of the position (other than the reimbursement of expenses reasonably incurred). The Offices of member of the Assembly, Presiding Officer, Deputy Presiding Officer, Chief Minister and Minister are excluded from this prohibition; or
- (b) the person has been convicted and is under sentence for an offence punishable by imprisonment for 5 years or longer.

Clause 67 : Casual vacancies

The method adopted for filling casual vacancies is based upon the method used for filling Senate casual vacancies.

Sub-clause 67(2) provides that where a casual vacancy occurs in the office of an elected member (defined by Sub-clause 67(1) to mean a member other than a member chosen under the section to fill a casual vacancy) the Assembly shall choose a person qualified to be a candidate to hold the office for the rest of the term of the member last holding that office.

Sub-clause 67(3) provides that a person begins to hold office immediately after having been chosen to fill the vacancy.

Sub-clause 67(4) provides that if the member whose vacancy is being filled was elected as a member of a particular political party the Assembly must choose a member of that party nominated by that party.

Sub-clause 67(5) provides that if a person so chosen ceases to be a member of that party before taking the seat, the person shall be taken not to have been chosen. In this respect Sub-clause 67(8) provides that a person is not taken to cease to be a party member merely because the party ceases to exist or is de-registered.

Sub-clause 67(6) provides that if when elected the elected member was an independent, or if the elected member was elected as the member of a party which has no members available to be chosen, the Assembly must choose a person who has not been a member of a political party appearing on the ACT Register of Political Parties for the whole of the 12 months immediately preceding the time of being chosen.

Sub-clause 67(7) provides that if a person chosen under subsection (6) becomes a member of a registered party before taking the seat, the person shall be taken not to have been chosen.

PART IX - MISCELLANEOUS

Clause 68 : Trade and commerce to be free

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

Clause 69 : Validity of certain actions

Sub-clause 69(2) provides that the validity of actions of the offices listed in Sub-clause 69(1) (being the office of Chief Minister, Deputy Chief Minister,

Minister, Presiding Officer, Deputy Presiding Officer, Head of Administration, Associate Head of Administration or Commissioner) 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 69(3) validates the proceedings of the Assembly or of a Committee of the Assembly where a person who sat as a member was in fact not a member.

Clause 70 : Staffing consultations

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

- (a) the staffing of the Territory and of Territory authorities;
- (b) the determination of terms and conditions of employment of a member of the staff or a person employed by a Territory authority; and
- (c) industrial questions relating to employees.

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

Clause 71 : Royal prerogative of mercy

This clause requires the Commonwealth Minister to consult with the Chief Minister and to consider comment given by the Chief Minister concerning the exercise of the Royal prerogative of mercy in relation to an offence against an Assembly law or subordinate law.

Clause 72 : Remuneration and allowances

This clause provides for the remuneration and allowances of the following offices:

- (a) Chief Minister;
- (b) Deputy Chief Minister;
- (c) member;
- (d) Minister;
- (e) Presiding Officer;
- (f) Deputy Presiding Officer;
- (g) Head of Administration;
- (h) Associate Head of Administration; and

(i) an office established by or under Assembly law.

Sub-clause 72(2) provides that the remuneration in respect of these offices will be determined by the Remuneration Tribunal if the Minister for Industrial Relations 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 Assembly law.

Sub-clause 72(3) provides that, subject to the Remuneration Tribunals Act 1973, the allowances in respect of services in an office, will be as specified by or under Assembly law.

Sub-clauses 72(4) and (5) clarify the position concerning the calculation of remuneration and allowances payable to a member of the Assembly. The Sub-clauses adopt the principles which apply to the calculation of allowances payable to a member of the House of Representatives (see section 5A of the Parliamentary Allowances Act 1952). Sub-clause (4) provides that where a member's term ends on the polling day for a general election and the person is re-elected at that general election, for the purposes of this clause the person shall be taken to have continued to serve in the office of member until the day on which the election of the person is declared. Sub-clause (5) provides that where a member's term ends because the Governor-General dissolves the Assembly, and the person is a candidate at the next general election then, for the purposes of this clause, the person shall be taken to have continued to serve in the office of member until the polling day for that general election or if the person is re-elected until the day on which the election of the person is declared.

SCHEDULE 1

This Schedule provides the form of the oath or affirmation to be made by members of the Assembly before they are able to take their seats. Clause 9 of the Bill refers.

SCHEDULE 2

This Schedule lists the Commonwealth Acts which are to become the responsibility of the Territory. By virtue of clause 32, these laws will become laws of the Legislative Assembly on the commencing day of self-government and will thereafter be subject to amendment or repeal by the Assembly.

SCHEDULE 3

This Schedule lists existing laws in force in the Territory (other than Acts) which are to be retained for administration by the Commonwealth. The Schedule is divided into three Parts: Ordinances; NSW Acts in force in the ACT; and Imperial Acts in force in the ACT.

It is envisaged that some of these laws will be transferred for administration by the Territory at a future date. For this reason, sub-clause 32(5) allows the making of regulations which may omit a law from this Schedule. In that event, the law in question will become an Assembly law.

SCHEDULE 4

This Schedule lists the matters concerning which the Executive has power to govern the Territory. In addition to the detailed list of particular matters, the Schedule refers to certain broad categories of matters in relation to which the Executive also has power. These categories include those matters in respect of which the Assembly may make laws relating to the powers, privileges and immunities of the Assembly, making instruments under Assembly laws or subordinate laws, entering into and implementing agreement and arrangements with the Commonwealth, a State or the Northern Territory and matters incidental to the exercise of any power of the Executive.