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AUSTRALIAN CAPITAL TERRITORY COUNCIL BILL 1986

Date introduced: 19 March 1986
House: House of Representatives
Presented by: Hon. Gordon Scholes, M.P.,
Minister for Territories

DIGEST OF BILL

Purpose

To establish an Australian Capital Territory Council (the Council) to administer certain government functions in the Australian Capital Territory (ACT).

Background

Section 122 of the Constitution gives the Australian Parliament power to make laws for any Territory and gives Parliament virtually unrestricted sovereignty over Federal Territories. The ACT is a special instance of a Federal Territory as it recognised in sections 52(i) and 125 of the Constitution as Australia's seat of government. Section 125 of the Constitution especially directs that the seat of Government will be within a Territory vested in the Commonwealth. The Seat of Government (Acceptance) Act 1909 confirmed an agreement between the Commonwealth and the New South Wales Governments on the surrender of some 2358 square kilometres of land for the seat of government. As a result of its special status, the ACT has been the subject of direct control and administration by the Australian Government, especially as regards finance.

The Seat of Government (Administration) Act 1924 established a statutory corporation, the Federal Capital Commission (FCC), to plan, develop and administer the ACT. The FCC was widely criticised by Territory residents, who complained of the lack of local participation in government. The strains of the Depression, a reduction in development expenditure and the resignation of the Chairman led to the disbanding of the FCC in 1930. Administration of

the ACT became the responsibility of the Attorney-General and the Ministers for Home Affairs, Health and Works. In 1932 the functions of the Department of Home Affairs were transferred to the Department of the Interior. Responsibility for the ACT has, most recently, been transferred to the Minister for Territories.

The Advisory Council Ordinance 1930 provided for the establishment of a partly elected council to advise the Minister for Home Affairs on matters affecting the ACT including the creation, amendment or repeal of ordinances. When the Advisory Council Ordinance 1930 became law, it was generally understood that self-government would be granted within 12 months. However, self-government was not introduced and the Council carried on as an advisory body for some 44 years.

In 1957 the National Capital Development Commission (the NCDC) was established as a statutory authority to be responsible for the total planning and development of Canberra as the national capital. The NCDC is currently responsible to the Minister for Territories and continues to have considerable freedom in the carrying out of its functions.

A report presented to Parliament in May 1967 by the Minister for the Interior, titled Self-Government for the ACT - a Preliminary Assessment, concluded that self-government of the ACT was possible within the framework of the Constitution and was desirable. Similarly, a report titled Self-Government and Public Finance in the Australian Capital Territory, presented in December 1974, recommended that self-government be granted to the ACT.

In 1974 a unicameral House of Assembly was established. However, the House of Assembly had advisory powers only and largely took over the role of the defunct Advisory Council. The present House of Assembly has 18 part-time members and still exercises an advisory power only.

In its Advice to the Minister in 1984, the Task Force on Implementation of ACT Self-Government sets out the results of a 1978 referendum held on the issue of self-government. Of the ACT residents who voted, 63.75 per cent favoured the continuation of the arrangements then in operation for governing the ACT.

Main Provisions

The interpretation of words and phrases used in the Bill is dealt with in clause 3, which also expressly excludes the Jervis Bay Territory from the operation of the proposed Act.

Clause 5 establishes the Council while clause 6 gives the Council the function of governing the Territory with respect to 'prescribed matters'. Prescribed matters are listed in proposed Schedule 1 and include, amongst other things, community and municipal affairs, landlord and tenant, consumer affairs, public safety, taxation and workers' compensation. The Council will also have power to do all things necessary or incidental to its function (clause 7). The Council will also be given power to appoint people to conduct inquiries relating to the performance of a Council function (clause 8).

Proposed Division 2 of Part II (clauses 9-17) deals with the Constitution and Procedure of the Council. The Council will consist of 13 members who elect a Chairperson and Deputy Chairperson from amongst themselves. Seven members will be considered a quorum and meetings will generally be held in public. Some protection is afforded to members who make statements in good faith at meetings and hindering members performing their duties will be an offence.

Membership of the Council is dealt with in proposed Division 3 (clauses 18-21). Members other than the Chairperson will be part-time members. Provision is made for the disqualification of Members in certain circumstances and a Member must not be involved in Council debate in which the Member has a personal interest.

Proposed Division 4 deals with dissolution of the Council (clauses 22-24). The circumstances when the members of the Council will be dismissed are set out and provision is made for election of new members. Where the Governor-General dismisses all members, a Commissioner will be appointed to carry out the functions of the Council until the next general election.

Elections for the Council are dealt with in proposed Part III (clauses 25-36). The ACT is to be divided into electoral Districts and one member will be elected in each electoral District. Provision is also made for the

filling of casual vacancies. A person living in a District for three months prior to the election and who is on the electoral roll for the District is entitled to vote. An Australian citizen who is entitled to vote in the District may become a candidate for election in the District. The procedures for determining the Electoral Districts, which are each to contain, as nearly as is possible, the same number of electors, are to be found in proposed Schedule 3. Funding for Council elections, other than the first election, will be determined by the Council.

The legislative powers of the Council are dealt with in proposed Part IV (clauses 37-48) of the Bill. The Council has power to make laws relating to prescribed matters for the peace, order and good government of the Territory. The power to make laws with respect to industrial relations, establishing a Court or the planning of land use or development is expressly excluded. Proposed laws passed by the Council will be referred to the Attorney-General who may advise that the Council does not have the power to make the proposed law, or, where the proposed law concerns a Court, that the Attorney-General does not consent to the law. Clause 47 provides for the Governor-General to disallow a law within six months. The Governor-General will also be able to suggest amendments to the law in which case the time for disallowance is extended. A Notice of Disallowance published in the Gazette will have the effect of repealing the law. Where a disallowed law repealed or amended a previous law, that previous law will be revived from the date of publication of the Notice of Disallowance. The present Bill does not propose limiting the power of the Governor-General to make Ordinances under section 12 of the **Seat of Government (Administration) Act 1910**.

The Council is also empowered to make by-laws which are not inconsistent with Council laws and do not affect a Court. Councils laws may prescribe penalties and will not bind the Commonwealth Crown. A Council law will be of no effect to the extent it is inconsistent with an existing law of the Territory. The list of Ordinances set out in proposed Schedule 2 will be deemed to be Council laws if this Bill comes into force.

The management structure, administration and staff of the Council is covered by proposed Part V (clauses 49-58). The Council may establish committees on which the Chairperson of the Council must serve as a member. A Head of Administration, of less than 65 years of age, will be

appointed and will be responsible for the general working and business of the Council. The Council will be able to employ staff and, after consultation with the relevant Secretary of a Department, the services of members of the Australian Public Service may be made available to the Council. The Council will also be able to engage consultants.

Proposed Part VI concerns finance (clauses 59-69). Council money will be expended in the performance of the Council's functions. The Council will be able to borrow money from the Commonwealth, or from elsewhere with the Treasurer's approval. Funds may also be raised through dealings in securities, and dealings may be in foreign currency. The Commonwealth may guarantee a repayment of money borrowed by the Council. The Council may give security for a loan over any of its assets and the Commonwealth Auditor-General will be the Council's auditor.

Miscellaneous provisions are contained in proposed Part VII (clauses 70-78). Clause 70(1) provides for freedom of trade between the Territory and the States. Validity is given to certain acts of the Chairperson and Members of the Council where discrepancies may have cast doubt on the validity of the acts. Fines imposed under Council law are payable to the Council. The procedures for setting the remuneration and allowances payable to Council members, and those employed in relation to the Council, are set out in clause 76. The Chairperson may delegate his functions to another person. The Governor-General will be given power to make regulations.

For further information, if required, contact the Law and Government Group.

28 April 1986

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References

Joint Committee on the Australian Capital Territory, Self Government and Public Finance in the Australian Capital Territory, Australian Government Printing Service (AGPS), Canberra 1975.

Task Force on Implementation of ACT Self Government, Advice to the Minister for Territories and Local Government, AGPS, Canberra 1984.

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