

*The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth...*¹

Introduction

- 1.1 Annual reports of the National Capital Authority (NCA) stand referred to the Joint Standing Committee on the National Capital and External Territories for any inquiry the Committee may wish to make, in accordance with a schedule tabled in the House by the Speaker.² Accordingly, on 26 March 2003, the Committee resolved to use the Authority's Annual Report for 2001-02 as the basis for conducting an inquiry and reporting on the role of the National Capital Authority.³ On 31 March 2004, the Committee extended the inquiry to incorporate a review of the National Capital Authority's Annual Report for 2002-03.⁴
- 1.2 The annual reports of the National Capital Authority provide details of the operations of the organisation for the years ended 30 June 2002 and 30 June 2003 respectively. The structure of the Authority's annual

1 Section 125, *The Commonwealth of Australia Constitution Act 1900* (Cth).

2 Section 2, Committee's Resolution of Appointment, 2002.

3 The National Capital Authority Annual Report 2001-02 was tabled in the House on 12 November 2002.

4 The National Capital Authority Annual Report 2002-03 was tabled in the House on 4 November 2003.

reports addresses the following three outputs as well as other reporting requirements:

- Output 1: Review, amendment and administration of the National Capital Plan and national land.
- Output 2: Culture and awareness strategies and programs for the national capital.
- Output 3: Asset and land management, and capital enhancement services.⁵

1.3 The National Capital Authority's outputs contribute to the Transport and Regional Services portfolio outcome. The government's outcome for this portfolio is 'a better transport system for Australia and greater recognition and opportunities for local, regional and territory communities'.⁶

Background

1.4 Australia's national capital experienced a significant change in 1989 when self-government was introduced in the Australian Capital Territory. The Federal Government established the National Capital Authority to manage the Commonwealth's continuing interest in Canberra as Australia's national capital.⁷ The Authority was given responsibility for managing national land and associated assets required for the special purposes of the capital.

1.5 The National Capital Authority was established by, and operates under, the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). The Act is administered by the Minister for Territories, Local Government and Roads, and the Authority is accountable to parliament.

1.6 The Committee's inquiry has been regarded as a timely one, due to what one submission described as "the deterioration of National Capital planning and development".⁸ Despite the introduction of self-

5 National Capital Authority, Annual Report 2001-02, p 9.

6 National Capital Authority, Annual Report 2001-02, p 2.

7 The National Capital Authority was previously known as the National Capital Planning Authority (see Table 1.1).

8 Odgers, Submissions, p 37. See also, for example, Wright, B., ACT's planning stuck in mid-1960s, *The Canberra Times*, 22 April 2003, p 11, who stated that a review of planning arrangements in Canberra was 'way past due', and Smith, Transcript, 19 September 2003, p 241.

government some fifteen years ago, there appears to remain a large degree of uncertainty, at least among ordinary citizens, about the areas for which the NCA has statutory planning responsibilities.⁹ The ambiguity arising from the dual-planning regime continues to create confusion and frustration for planners, developers and residents.¹⁰

- 1.7 The likelihood of confusion and conflict resulting from the dual-planning arrangement was foreseen shortly after the advent of self-government, when Senator Margaret Reid anticipated some of the very issues which formed the basis for the Committee's inquiry:

...the ACT Government and the people of Canberra have concerns arising out of the dual planning system...the concerns are two-fold really – the additional costs that the National Capital Plan may impose upon the Territory, particularly the way in which it restricts land use, and the confusion which seems to be in existence created by a dual planning system.

ACT business has to contend with the concepts of the National Land and the Territory Land, land in Designated Areas and land subject to special requirements. Maybe it is because it is so new that it is still causing this confusion and it will all become clear, but I believe there are some grey areas and there are some areas which the Commonwealth has attempted to retain which I believe is not justified.

Contending with planning authorities, I am sure all would realise, can be complicated in the best of circumstances, but where there are two bodies answerable to two different governments in a city the size of Canberra, I think it is confusing.¹¹

- 1.8 What appeared to be growing tensions between the National Capital Authority and the ACT Government,¹² together with mounting frustrations over the lack of clarity regarding the Territory and

9 See, for example, Darbyshire, Submissions, p 72, who stated that for some areas “we have had difficulty finding out the responsible jurisdiction”.

10 See, for example, Macdonald, E., *Developers slate dual controls*, *The Canberra Times*, 17 October 2003, p 2.

11 Senate *Hansard*, 6 December 1990, p 5123.

12 See, for example, Royal Australian Institute of Architects, Submissions, p 415, whose members were stated to have had personal experience of ‘the adversarial environment that sometimes exists between the NCA and PALM’. See also Planning Institute of Australia (ACT), Submissions, p 54, and Housing Industry Association, Submissions, p 102.

Commonwealth's planning responsibilities¹³, were driving factors behind the Committee's inquiry. The Authority's intervention in the Gungahlin Drive Extension issue - which resulted in the new ACT Labor Party being unable to fulfil its election promise¹⁴ - heightened tensions between the two and incited a series of public exchanges between the ACT Chief Minister and the then Minister for Regional Services, Territories and Local Government.¹⁵ However, the Committee has taken the opportunity to address a diverse range of issues relating to the overall functioning of the National Capital Authority, as evidenced by the broadness of the inquiry's Terms of Reference.

Table 1.1 History of the Commonwealth's Role in ACT Planning

Era	Planning Body	Function
1921-1924	Federal Capital Advisory Committee	To advise the Minister of Home Affairs on the construction of Canberra and to review the Griffin plan
1925-1930	Federal Capital Commission	To construct and administer Canberra
1938-1957	National Capital Planning and Development Committee	Advisory body to the Minister of the Interior to safeguard the Griffin plan and maintain high aesthetic and architectural standards worthy of a national capital
1958-1989	National Capital Development Commission	To plan, develop and construct Canberra as Australia's national capital
1989-Present Day	National Capital Planning Authority and National Capital Authority	To ensure that Canberra is planned in accordance with its national significance

Source National Capital Authority website: www.nationalcapital.gov.au/history.htm

13 See, Downie, G., Govt urged to challenge NCA, *The Canberra Times*, 4 January 2003.

14 See Downie, G., Promise built on shaky ground caves in, *The Canberra Times*, 4 January 2003.

15 See, for example, The Hon. W. Tuckey, MP, Stanhope 'undermines city's status', *The Canberra Times*, 17 March 2003, p 3, and McLennan, D, Stanhope tells Feds: keep out of our business, *The Canberra Times*, 10 August 2002,

The Griffin Legacy Project

1.9 On 14 November 2002, the National Capital Authority launched the *Griffin Legacy* project, a study to appraise the continuing relevance and vitality of Walter Burley Griffin's original plan to contemporary Canberra. According to the Authority, the study will involve determining what has survived, been modified or discarded in the period since the plan was gazetted in 1923, and what has continuing value and relevance.¹⁶ The Authority states that in order to ensure that the integrity of Griffin's intentions is sustained:

...it is necessary to return to the original design to establish Griffin's planning intentions, both physical and philosophical; to establish a validated benchmark of what constitutes the Griffin Plan. We need to be clear about what of Griffin's vision has been developed, what remains to be developed, what needs to be retained, what no longer has continuing relevance, what elements can change, what elements should be considered inviolate and to reignite the philosophy of innovation in Canberra's planning.¹⁷

1.10 According to the NCA, outcomes of the Griffin Legacy project will include:

- strategic planning and development initiatives, which may lead to future amendment to the National Capital Plan;
- Griffin Legacy Research Archive – a compendium of Walter Burley Griffin plans and documents which will be used for promoting the study of the National Capital's rich planning heritage; meeting international interest in the work of Burley Griffin and Marion Mahoney Griffin; and which will serve as a publicly accessible collection for research purposes; and
- publication promoting the planning and development of Canberra in accordance with its national significance.¹⁸

16 National Capital Authority, *The Griffin Legacy*, Available online at <http://www.nationalcapital.gov.au/projects/griffin/index.htm>. Accessed 12 September 2003.

17 National Capital Authority, *The Griffin Legacy*, Available online at <http://www.nationalcapital.gov.au/projects/griffin/index.htm>. Accessed 12 September 2003.

18 National Capital Authority, Annual Report 2002-03, p 25.

- 1.11 The NCA also states that the Griffin Legacy will have a direct influence on the National Capital Plan – the statutory document which provides a general policy framework for land use and planning in the Territory – in two ways:
- It is expected to form one of a series of documents that provide a context for the policy content of the National Capital Plan. Other such documents already being prepared will deal with the concept of National Significance and symbolism.
 - It is expected to directly influence amendments to the National Capital Plan, especially the policies on Urban Design, Main Avenues and Approach Routes, Heritage, Landscape and Environment.¹⁹
- 1.12 The Committee is looking forward to the findings of the Griffin Legacy study, and trusts that the strategic planning and development initiatives which arise from the project will be instrumental in reaffirming the NCA's focus toward the integral elements of the Griffin Plan and those areas which are undoubtedly significant to Canberra's interest as the national capital. In addition to providing the foundation for a review of the National Capital Plan, the Committee believes that the Griffin Legacy Project will help to clarify the importance of the Authority's responsibilities in upholding the city's national significance.

The Issues

- 1.13 The issues which the Committee has undertaken to consider regarding what role the National Capital Authority should perform in the ACT are similar to those raised by Mr Bruce Wright in his report *Impacts of Systems of Governance on Federal Capitals*, which asked:

How best to balance the conflicting interests? How to protect the interests of the nation without undue impact on residents and their local governments? How to ensure that the nation and the city each pay an appropriate share of the costs of the capital and the city? What powers and responsibilities should

19 National Capital Authority, *The Griffin Legacy*, Available online at <http://www.nationalcapital.gov.au/projects/griffin/index.htm>. Accessed 12 September 2003.

each level of government carry in the interests of democracy, efficiency and accountability?²⁰

1.14 The Committee received evidence addressing a wide range of issues relating to the role and operations of the NCA, particularly where the Authority's actions have impacted to the detriment of the ACT community. The Committee notes with some concern that these issues appear to have contributed to increasingly strained relations between the ACT and Commonwealth governments, culminating in a number of public disputes being played out in the local media. While the Committee accepts that the existence of two planning regimes with overlapping responsibilities inevitably results in buck passing and the politics of blame, the Committee has sought to recommend a series of measures which it hopes will lead to a more transparent and effective planning process and ensure that the NCA is accountable for its actions. Some of the key issues examined in the Committee's report include:

- the NCA's active role in promotions and the question of whether this is detracting from its important planning role;
- the relevance of the National Capital Plan and the question of whether, in its current state, the plan fulfils its statutory objective to ensure Canberra and the Territory are planned in accordance with their national significance;
- the planning relationship between the Commonwealth and the Territory.
- the lack of clarity in the planning process resulting from 'grey areas' of jurisdiction between the Commonwealth and Territory planning authorities which have overlapping responsibilities under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth);
- the NCA's management of Designated Areas and the impact of NCA decisions on ACT Government policies;
- the NCA's management of land and assets, including its responsibilities regarding the National Carillon and Lake Burley Griffin;
- employment location policies in the National Capital Plan which have seen rapid commercial development at Canberra Airport and

20 Wright, B., 1998, *The Impact of Systems of Governance on Federal Capitals*, p 6.

have been criticised for having a deleterious impact on Civic and the other town centres; and

- the NCA's approach to community consultation.

Role of the Committee

- 1.15 It is the function of the Federal Parliament to participate in developing law and policy, to scrutinise government action and public administration and to inquire into matters of public interest on behalf of all Australians. A system of Federal parliamentary committees facilitates the work of the Parliament. A Resolution of Appointment, passed by the House of Representatives on 14 February 2002 and by the Senate on 15 February 2002, is the source of authority for the establishment and operations of the Joint Standing Committee on the National Capital and External Territories.²¹ The Committee is appointed to inquire into and report to both Houses of Parliament, in an advisory role, on a range of matters.
- 1.16 While the Committee was established in 1993, a Joint Standing Committee on the Australian Capital Territory has been appointed in each Parliament since 1956. In 1992, the Joint Standing Committee on the Australian Capital Territory changed its name to the Joint Standing Committee on the National Capital, to emphasise the significant change in the focus of the Committee's work which occurred following the introduction of self-government in the ACT in 1989. At the beginning of the 37th Parliament in 1993, the Committee changed its name to reflect its additional focus on Australia's external territories – inquiries for which were previously dealt with by other Committees.
- 1.17 The Committee has produced eight reports in relation to the national capital so far:
- *City Hill: Review of the draft master plan*, August 1993;
 - *Report on the proposal for pay parking in the Parliamentary Zone*, June 1994;
 - *King George V Memorial*, May 1995;

21 By convention, where the Resolution of Appointment is silent, joint committees follow Senate committee procedures to the extent that such procedures differ from those of the House.

- *Draft Amendment no. 12 (Russell) of the National Capital Plan*, May 1995;
- *Draft Amendment no. 14 (Broadacre areas) to the National Capital Plan*, October 1995;
- *A right to protest*, May 1997;
- *Striking the right balance: Draft Amendment 39 National Capital Plan*, October 2002; and
- *Not a town centre: The proposal for pay parking in the Parliamentary Zone*, October 2003.

Referral of Works and Draft Amendments

1.18 The Committee believes that the current process, whereby draft amendments to the National Capital Plan and proposed works in the Parliamentary Zone are usually referred to the Committee for its consideration before being presented to Parliament, may be enhanced. While, at present, the Minister for Territories, Local Government and Roads generally refers draft amendments to the National Capital Plan and proposed works in the Parliamentary Zone to the Committee, there is no formal requirement for the Minister to do so under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). The Committee believes it is appropriate that this process now be formalised.

Recommendation 1

1.19 **That the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) be amended to include a requirement for all draft amendments to the National Capital Plan and proposed works in the Parliamentary Zone to be referred to this Committee for its consideration.**

Conduct of the Inquiry

1.20 The Annual Report of the National Capital Authority for 2001-02 was tabled in the House of Representatives on 12 November 2002 and

stands referred to the Committee for inquiry if the Committee so wishes. Accordingly, on 26 March 2003 the Committee resolved to conduct an inquiry and report on the role of the National Capital Authority.

- 1.21 Under the Committee's Resolution of Appointment, the period during which an inquiry concerning an annual report may be commenced by the Committee shall end on the day on which the next annual report of that department or authority is presented to the House. Having noted this, on 31 March 2004, the Committee agreed to extend the inquiry to incorporate a review of the Annual Report of the National Capital Authority for 2002-03, which was tabled in the House of Representatives on 4 November 2003.
- 1.22 The inquiry was advertised in both *The Canberra Times* and *The Australian* and media releases were issued to relevant sections of the media for each of the Committee's public hearings. The inquiry also generated significant publicity in *The Canberra Times* shortly after its commencement and throughout the evidence gathering process.²²
- 1.23 55 submissions and 24 exhibits were received to the inquiry and these are listed at Appendix A and Appendix B respectively. 75 witnesses gave evidence during six public hearings conducted in Canberra between June 2003 and March 2004. A list of the witnesses and organisations represented at these hearings is at Appendix C.

Structure of the Report

- 1.24 The Committee's report is divided into nine chapters:
- Chapter Two examines recent changes to ACT planning legislation which have had significant implications for relationship between the Territory and Commonwealth planning Authorities. This Chapter also looks at the Canberra Plan – a new strategic plan developed by the Territory Government to guide development of the ACT over the coming generation – and the need for an integrated planning approach between the relevant ACT and Commonwealth Authorities.

22 At least 10 articles referring to the Committee's inquiry appeared in *The Canberra Times* between April and October 2003.

- Chapter Three looks at the role and functions of the National Capital Authority under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). In particular, this chapter looks at the dual character of Canberra due to its status as the national capital as well as the NCA's increasing focus toward fostering an awareness of Canberra as the national capital.
- Chapter Four analyses the planning framework which guides development in the ACT. This chapter also looks at the planning relationship between the Commonwealth and Territory planning authorities, both at the statutory and non-statutory levels.
- Chapter Five examines the effectiveness of the dual-planning system and looks at a range of options to achieve a more integrated planning system.
- Chapter Six looks at specific matters which have been brought to the Committee's attention regarding the National Capital Authority's management of Designated Areas, land and assets.
- Chapter Seven canvasses the issue of employment location policies and the controversy arising from recent commercial developments at the Brindabella Business Park at Canberra Airport.
- Chapter Eight addresses the issue of consultation processes adopted by the NCA.

