

BACKGROUND PAPER NO. 1

ACT SELF GOVERNMENT

**SUMMARY OF PRINCIPAL FEATURES
OF THE PROPOSED ACT GOVERNMENT**

7 JULY 1988

SUMMARY OF PRINCIPAL FEATURES OF THE PROPOSED ACT GOVERNMENT

1. POWERS OF THE ACT LEGISLATIVE ASSEMBLY (THE ASSEMBLY)

(a) Power of Assembly to Make Laws

The Assembly will have a general power to make laws for the peace, order and good government of the Territory, except for:

- . establishment and administration of courts;
- . the provision by the Australian Federal Police of police services in relation to the ACT;
- . legal practitioners; and
- . companies and securities.

The Assembly will have a criminal law making power in relation to transferred matters. The Attorney-General's Department will retain responsibility for criminal law legislation currently administered by that Department.

The Assembly will be able to make laws dealing with the planning, development and construction of land, in accordance with the National Capital Plan.

(b) Powers, Privileges and Immunities of the Assembly

The Assembly will be able to make laws with respect to its powers, privileges and immunities, but not so as to exceed the powers, privileges and immunities for the time being of the House of Representatives. ACT courts will determine the application of Assembly law for an offence against the Assembly.

(c) Disallowance of Assembly Laws and By-Laws

The Governor-General may disallow or recommend amendments to an Assembly law within 6 months of the law being made.

2. CONSTITUTION AND MEMBERSHIP OF THE ASSEMBLY

(a) The Assembly

The Assembly will consist of 17 members. The number of members may be varied by Commonwealth regulation at the Assembly's request.

(b) Oath or Affirmation

Assembly members will make an oath or affirmation of allegiance before the Chief Justice of the ACT Supreme Court or some person authorised by him/her.

(c) Term of Office of Member

Members will be elected for a 4 year fixed term.

(d) Disqualification of Members

A member will be disqualified if the member:

- . is no longer qualified to be a candidate;
- . is absent from 4 consecutive meetings without permission;
- . accepts payment for a service rendered in the Assembly other than receipt of salary and allowances as a member of the Assembly;
- . becomes a staff member of the Executive or a Statutory office holder under Assembly law.

3. PROCEDURE OF THE ASSEMBLY

(a) Meetings of the Assembly

The Assembly will be required to meet at least once every 2 months.

(b) Presiding Officer

The Assembly will elect a Presiding Officer. The Presiding Officer can not be Chief Minister or a Minister.

(c) Procedure at Meetings

A quorum of the Assembly will consist of 9 members. Matters will be decided by a majority vote with the Presiding member having a deliberative vote only. In the event of an equality of votes, the question is to fail.

(d) Minutes of Meetings

Minutes will be kept of Assembly and committee meetings.

(e) Standing Rules and Orders

The Assembly may make its own standing rules and orders for the conduct of its meetings.

4. ELECTION OF THE ASSEMBLY

The detailed provisions relating to the election of the Assembly will be set out in a Schedule to the Bill and will be based on the Commonwealth Electoral Act. The following matters are of particular significance.

(a) Single Electorate

The Territory is to consist of one single electorate from which the 17 members will be chosen.

(b) Times for General Election

The first general election of the Assembly will be held on a date specified by the Minister in the Gazette, with the second general election to be held on the third Saturday in February 1993 and subsequent general elections to be held every 4 years thereafter.

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(c) Qualifications of Electors

A person may vote at an Assembly election if the person's real place of living was within the ACT at some time within 3 months immediately before the election and is within the ACT on election day, and the person's name is on the Territory electoral roll.

(d) Qualification of Members

A person is not qualified to be elected as a member unless an Australian citizen and either an elector entitled to vote at an election or qualified to be on the electoral roll. The following persons are not qualified to be elected as members:

- . Head of Administration or a member of an ACT Statutory Authority, or persons holding a statutory appointment under Assembly law;
- . a person who is a member of the staff of the Executive or an ACT Statutory Authority;
- . persons convicted and under sentence for an offence carrying a maximum sentence of imprisonment of 5 years or longer.

(e) Nominations

Persons may be nominated for election to the Assembly either:

- . in a list of candidates nominated by a registered political party (see definition below); or
- . as an independent candidate.

The ballot paper will show the order in which candidates of political parties are to be elected.

(f) Registration

The Australian Electoral Commissioner will establish and maintain a Register to be known as the ACT Register of Political Parties. Any party having more than 2 members should be capable of being registered. (NB: For the purpose of electoral funding, it is proposed that a political party have at least 50 members.)

(g) Voting

Voting will be governed by the following principles:

- . voting shall be compulsory;
- . voting shall be by secret ballot;
- . a person shall not vote more than once at an election; and
- . an elector shall express a preference for one political party, one independent candidate only or for the party of choice in the order of preference of the candidates.

(h) Counting of Votes

The procedure for the counting of votes will be as follows:

- . the total number of votes received by each political party or independent candidate is divided by 1 and thereafter successively by increments of 1 until all 17 seats are filled;
- . seats are allocated sequentially according to the highest quotient of votes determined by the formula above;
- . candidates will be elected in the order for which preferences are expressed on the ballot paper; and
- . no groupings of political parties or independent candidates will be allowed for the purpose of the allocation of seats.

(i) Casual vacancies

Where a vacancy occurs in the office of a member, the Assembly will be required to choose a person to hold the office until the expiration of the vacated member's term. Where the vacated member was elected as a member of a particular political party, the Assembly must choose a member of that party nominated by that party. If there is no member of that party available, the vacancy shall be filled as if the vacated member was an independent. Where elected as an independent, the Assembly must choose another independent, defined as a person who has not been a member of a political party for the 12 months immediately preceding the vacancy.

(j) Election Funding

An Assembly law may provide for electoral funding for elections other than the first general election.

5. DISSOLUTION OF THE ASSEMBLY

(a) Resolution of Lack of Confidence

The Assembly may pass a resolution of no confidence in the Chief Minister and appoint a new Chief Minister. The Commonwealth Minister must call a special election if a new Chief Minister is not elected within 30 days. Such elections do not affect the timing of the next general election.

(b) Dismissal of Assembly by Governor-General

The Governor-General may dismiss the Assembly if in his/her opinion it is:

- . incapable of effectively performing its function; or

conducting its affairs in a grossly improper manner. The Governor-General will be required to then appoint a Commissioner who will exercise executive power in accordance with Assembly law until a new Assembly is in place. In this event the Commonwealth Minister must order a special election for a new Assembly, such elections to be held within 90 days of the dismissal. These elections will not affect the timing of the next general election unless held within 6 months before a general election is due, when it will replace that election.

6. LAWS OF THE ASSEMBLY

(a) Notification of Assembly Law

Notification of Assembly laws and by-laws will be in the ACT Government Gazette.

(b) Penalties

Assembly law may prescribe penalties.

(c) Crown may be Bound

The Commonwealth is not bound by Assembly law except as provided by Commonwealth regulations.

(d) Inconsistency with other Laws

Assembly law is subordinate to Commonwealth law in force in the ACT.

(e) Certain laws deemed to be Assembly Laws or By-Laws

All relevant existing law applicable in the ACT will continue in force as Assembly laws or by-laws.

(f) Powers of Governor-General to make Ordinances

The Governor-General continues to have the power to make ordinances in respect of matters for which the Assembly has legislative power.

(g) Manner and Form of Making Certain Assembly Laws

The Assembly can seek by referendum to entrench the manner and form of making an Assembly law or laws. If a majority of electors approve the proposal, an Assembly law will be of no force or effect unless it is made in such manner and form as described in the proposal accepted at the referendum.

7. THE AUSTRALIAN CAPITAL TERRITORY EXECUTIVE (THE EXECUTIVE)

(a) The Executive Power

The Executive will be responsible for the government of the Territory in respect of matters set out in a schedule to the Act and the execution and maintenance of Assembly laws.

(b) The Executive

A legal entity known as the 'Australian Capital Territory Executive' will be established and will have perpetual succession and a common seal and be capable of:

- . acquiring, holding and disposing of real and personal property;
- . suing and being sued in its own name; and
- . entering into contracts.

The Executive is to be constituted by the Chief Minister and 3 other Ministers. They will be required to make an oath or affirmation of allegiance before the Chief Justice of the ACT Supreme Court or some person authorised by him/her.

(c) Appointment of Chief Minister

The Chief Minister for the ACT will be appointed by the Assembly.

(d) Appointment of Deputy Chief Minister

The Chief Minister will appoint a Minister to be Deputy Chief Minister to act as Chief Minister when the Chief Minister is absent from duty or from Australia.

(e) Appointment of Ministers

Ministers are appointed by the Chief Minister from members of the Assembly. The number of Ministers may be varied by Commonwealth regulation at the Assembly's request. The Ministers will administer such matters as the Chief Minister allocates to them. The Ministers may be removed from ministerial office by the Chief Minister.

(f) Term of Office

The Chief Minister and Ministers hold office until the next appointment of a Chief Minister unless they earlier die, resign, cease to be qualified to be a member, or are removed from office.

(g) Vacancy in office of Chief Minister

If the office of Chief Minister becomes vacant, the Assembly is required to meet as soon as possible to appoint a new Chief Minister. In the interim period the Deputy Chief Minister will act as the Chief Minister.

(h) Vacancy in all offices of ACT Executive

If all offices of the ACT Executive become vacant, the Assembly is required to meet as soon as possible to appoint a new Chief Minister. In the interim period, the Commonwealth Minister may

exercise ACT executive powers necessary to meet any emergency circumstances.

8. ADMINISTRATION AND STAFF

(a) Head of Administration

Provision is made for a Head of Administration who will be appointed by the Chief Minister.

(b) Functions of Head of Administration

The Head of Administration should, under the Chief Minister, be responsible for:

- . providing all administrative support and staffing for the Executive and the Assembly;
- . implementing the policies and decisions of the Executive; and
- . performing such other functions as are conferred by Assembly law.

(c) Tenure of Head of Administration

The Head of Administration will be appointed on such terms and conditions as are determined by the Chief Minister in accordance with Assembly law.

(d) Acting Head of Administration

The Chief Minister may appoint an Acting Head of Administration.

(e) Delegation of Powers

The Head of Administration should be able, in accordance with Assembly law, to delegate any of his/her functions under the Act.

(f) Staff

The Head of Administration may employ persons, on behalf of the Executive, in accordance with Assembly law for the purpose of assisting the Head of Administration to carry out his/her responsibilities.

(g) Arrangements relating to staffing

The Head of Administration may enter into staff secondment arrangements with the Commonwealth, a State or Territory public service or other bodies.

9. FINANCE

(a) The Assembly and the Executive shall exercise the same general legislative and executive control over ACT municipal and territorial monies as do State and Northern Territory Governments.

(b) The Commonwealth Auditor-General will be the Executive's Auditor-General, unless otherwise provided by Assembly law.

(c) The principle shall be enshrined within the legislation that the ACT shall be treated in terms of Commonwealth/State financial relations as an equal partner with the States and the Northern Territory with respect to territorial and municipal functions transferred to the Assembly.

(d) The Commonwealth Grants Commission Act 1973, will be amended to guarantee access by the Executive to the Commission at the Executive's request and to ensure that the terms of reference provided to the Commonwealth Grants Commission by the Commonwealth in relation to ACT matters shall:

(i) be consistent with those for State inquiries; but

(ii) require account to be made of those matters which are peculiar to the ACT because of its position as national capital.

(e) Any municipal/territorial functions retained by the Commonwealth will be fully funded by the Commonwealth. The Commonwealth would increase its general revenue assistance to the ACT Budget by the nett cost of these functions if they are subsequently transferred to the ACT government.

(f) The additional recurrent costs of maintaining the Assembly, the Executive and associated staff will be included in Commonwealth assistance to the ACT government Budget.

(g) The Commonwealth will provide special 5 year financial arrangements to smooth the transition to Commonwealth/State/ municipal financial arrangements.

10. MISCELLANEOUS

(a) Trade and commerce between the ACT and the States and Northern Territory will be absolutely free.

(b) Remuneration and allowances for the Chief Minister, the Presiding Officer, a Minister, an Assembly member, the Head of Administration and statutory office holders will be determined by the Remuneration Tribunal.

(c) The Executive is to be required to consult with the Commonwealth on staffing and industrial questions relating to employees.

(d) There will be interim staffing arrangements to allow Commonwealth public servants to service the ACT government until its own staffing laws are in place.

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(e) The Commonwealth and the Executive will consult with the relevant peak unions regarding the initial terms and conditions for staff.

(f) Assembly laws made for the acquisition of property are to be on just terms.

(g) In respect of the exercise in the ACT of the Royal prerogative of mercy, the Commonwealth Minister, before tendering advice to the Governor-General, should be required to consult with the Chief Minister and should be required to consider any comments furnished by the Chief Minister.

11. ADMINISTRATIVE LAW PROCESSES

The ACT Assembly shall be able to enact its own administrative law. In the interim, Commonwealth law will be handed over in an appropriate modified form.