



# Australian Capital Territory (Self-Government) Act 1988

**No. 106 of 1988**

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# Australian Capital Territory (Self-Government) Act 1988

No. 106 of 1988

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## An Act to provide for the Government of the Australian Capital Territory, and for related purposes

[Assented to 6 December 1988]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Australian Capital Territory (Self-Government) Act 1988*.

#### Commencement

2. (1) Section 1 and this section commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

### **Definitions**

3. In this Act, unless the contrary intention appears:

- “Assembly” means the Legislative Assembly for the Australian Capital Territory established by section 8;
- “Associate Head of Administration” means a person appointed under subsection 49 (2);
- “borrowing”, in relation to the Territory or a Territory authority, includes raising money or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining credit in a transaction forming part of the day-to-day operations of the Territory or Territory authority;
- “casual vacancy” means a vacancy in the membership of the Assembly occurring otherwise than because of section 10 or 16;
- “Chief Minister” means the Chief Minister elected under section 40;
- “commencing day” means the day on which section 22 commences;
- “Commissioner” means a Commissioner appointed under section 16;
- “*Commonwealth Gazette*” means the *Commonwealth of Australia Gazette*;
- “Commonwealth Minister” means the Minister of State administering this Act, and has the additional meaning given by section 19A of the *Acts Interpretation Act 1901*;
- “Deputy Chief Minister” means the Deputy Chief Minister appointed under section 44;
- “Deputy Presiding Officer” means the person (if any) elected under subsection 21 (2);
- “elector of the Territory” means a person who, under the *Australian Capital Territory (Electoral) Act 1988*, is entitled to vote at a general election;
- “enactment” means:
- (a) a law (however described or entitled) made by the Assembly under this Act; or
  - (b) a law, or part of a law, that is an enactment because of section 34;
- “Executive” means the Australian Capital Territory Executive established by section 36;
- “general election” means a general election of members of the Assembly;
- “Head of Administration” means the person appointed under section 49;
- “meeting” means a meeting of the Assembly;
- “member” means a member of the Assembly;
- “Minister” means the Chief Minister or a Minister appointed under section 41;
- “Presiding Officer” means the officer elected under section 11, by whatever title determined by the Assembly;

“public money of the Territory” means revenues, loans and other money received by the Territory;

“public servant” means a member of the public service;

“public service” means the service referred to in section 54;

“resolution of no confidence” means a resolution passed in accordance with section 19;

“subordinate law” means an instrument of a legislative nature (including a regulation, rule or by-law) made under an enactment;

“Territory”:

(a) when used in a geographical sense, means the Australian Capital Territory; and

(b) when used in any other sense, means the body politic established by section 7;

“Territory authority”:

(a) except in Part VII—means a body, whether corporate or not:

(i) established by or under enactment; or

(ii) otherwise established by the Executive; or

(b) in Part VII—means a body corporate established for a public purpose by or under enactment and having power to borrow money;

“Territory Gazette” means the *Australian Capital Territory Gazette*.

#### **Meaning of day on which election held**

4. A reference in this Act to the day on which an election has been, is, or is to be, held, is a reference to the polling day for that election.

#### **Meaning of day on which result of election declared**

5. Where the results of a general election are declared on different days, a reference in this Act to the day on which the result of the election is declared is a reference to the last of those days.

#### **Powers includes functions and duties**

6. In this Act, unless the contrary intention appears:

(a) a reference to powers includes a reference to functions or duties; and

(b) a reference to the exercise of powers includes a reference to the performance of functions or duties.

## **PART II—AUSTRALIAN CAPITAL TERRITORY**

#### **Establishment of body politic**

7. The Australian Capital Territory is established as a body politic under the Crown by the name of the Australian Capital Territory.

**PART III—LEGISLATIVE ASSEMBLY**

***Division 1—Constitution of Assembly***

**Legislative Assembly**

**8. (1)** There shall be a Legislative Assembly for the Australian Capital Territory.

**(2)** Subject to subsection (3), the Assembly shall consist of 17 members.

**(3)** The regulations may fix a different number of members for the purpose of subsection (2), but regulations shall not be made for that purpose except in accordance with a resolution passed by the Assembly.

**Oath or Affirmation of Allegiance**

**9. (1)** A member shall, before taking his or her seat, make and subscribe an oath or affirmation in accordance with the form in Schedule 1.

**(2)** The oath or affirmation shall be made before the Chief Justice of the Supreme Court of the Australian Capital Territory or some person authorised by the Chief Justice.

**(3)** This section has effect subject to any enactment.

**Term of office of member**

**10.** The term of office of a member duly elected begins at the end of the day on which the election of the member is declared and, unless sooner ended by resignation, disqualification or expulsion, or by dissolution of the Assembly, ends on the polling day for the next general election.

**Presiding Officer of Assembly**

**11. (1)** At the first meeting of the Assembly after a general election, the members present shall, before any other business, elect one of their number to be the Presiding Officer of the Assembly.

**(2)** The title of the Presiding Officer shall be determined by the Assembly.

**(3)** If there is a vacancy in the office of Presiding Officer (not because of a dissolution of the Assembly), then:

**(a)** if the vacancy happens at a meeting, the members present shall, before any further business, elect one of their number to be the Presiding Officer; or

**(b)** if the vacancy happens at any other time, at the next meeting the members present shall, before any other business, elect one of their number to be the Presiding Officer.

**(4)** This section does not prevent the Assembly from appointing a person to preside at meetings in the absence of the Presiding Officer, but a person holding office as a Minister shall not be so appointed.

**Vacation of office by Presiding Officer**

- 12. (1)** A person holding office as Presiding Officer vacates the office:
- (a) immediately before a Presiding Officer is elected at the first meeting of the Assembly after a general election;
  - (b) when the person resigns office as Presiding Officer;
  - (c) when the person ceases to be a member of the Assembly (not because of a general election); or
  - (d) when an absolute majority of the members of the Assembly vote in favour of the person's removal from office.

(2) A person who has vacated the office of Presiding Officer may be re-elected.

**Resignation of members**

**13. (1)** A member may resign office as a member by written notice delivered to a person authorised by the Assembly to receive it.

(2) The Presiding Officer may resign office as Presiding Officer by written notice delivered to a person authorised by the Assembly to receive it.

(3) The person receiving a notice of resignation shall arrange for it to be laid before the Assembly at the next meeting of the Assembly.

**Disqualification of member**

- 14. (1)** A member vacates office if the member:
- (a) at any time after the beginning of the first meeting of the Assembly after a general election, is not qualified to take a seat as a member;
  - (b) is absent without the permission of the Assembly from:
    - (i) such number of consecutive meetings as is specified by enactment for the purposes of this subparagraph; or
    - (ii) if no such enactment is in force—4 consecutive meetings of the Assembly; or
  - (c) takes or agrees to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly, otherwise than under section 73.

(2) A person who has vacated an office of member may be re-elected.

**Conflict of Interest**

**15. (1)** A member of the Assembly who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract.

(2) A question concerning the application of subsection (1) shall be decided by the Assembly, and a contravention of that subsection does not invalidate anything done by the Assembly.



**Dissolution of Assembly by Governor-General**

- 16. (1)** If, in the opinion of the Governor-General, the Assembly:
- (a) is incapable of effectively performing its functions; or
  - (b) is conducting its affairs in a grossly improper manner;
- the Governor-General may dissolve the Assembly.
- (2)** Where the Assembly is dissolved:
- (a) the Governor-General:
    - (i) shall appoint a Commissioner for the purposes of this section; and
    - (ii) may, at any time, give directions to the Commissioner about the exercise of the powers of the Executive; and
  - (b) a general election shall be held on a day specified by the Commonwealth Minister by notice published in the *Commonwealth Gazette*, being not earlier than 36 days, nor later than 90 days, after the dissolution of the Assembly.
- (3)** The Commonwealth Minister shall not specify a day that is the polling day for an election of the Senate or a general election of the House of Representatives.
- (4)** The Commissioner:
- (a) shall exercise all the powers of the Executive in accordance with any directions given by the Governor-General; and
  - (b) if it is necessary to issue or spend public money of the Territory when not authorised to do so by or under enactment—may do so with the authority of the Governor-General.
- (5)** The Commissioner shall be paid such remuneration and allowances as are determined by the Governor-General.
- (6)** Unless sooner terminated by the Governor-General, the term of office of the Commissioner ceases at the beginning of the first meeting of the Assembly held after the next general election.
- (7)** The powers of the Governor-General under this section shall be exercised by Proclamation.
- (8)** The Commonwealth Minister shall cause a statement of the reasons for the dissolution to be:
- (a) published in the *Commonwealth Gazette* as soon as practicable after the day of the dissolution; and
  - (b) laid before each House of the Parliament within 15 sitting days of that House after the day of the dissolution.
- (9)** The Head of Administration shall not be appointed as a Commissioner under this section.

**Division 2—Procedure of Assembly**

**Times of meetings**

17. (1) Subject to subsection (3), the Assembly shall meet:

- (a) within 7 days after the result of a general election is declared;
- (b) within 7 days after a written request for a meeting, signed by such number of members as is fixed by enactment, is delivered to the Presiding Officer; and
- (c) at least once every 2 months.

(2) The Presiding Officer shall, by notice published in the *Territory Gazette*, convene a meeting when it is necessary to do so to comply with subsection (1).

(3) If the Presiding Officer is required by subsection (2) to convene a meeting within a particular period and:

- (a) the office of Presiding Officer is vacant, whether or not a person has been previously elected to the office; or
- (b) the Presiding Officer is unable, or refuses or fails, to convene a meeting within that period;

the Commonwealth Minister shall, by notice published in the *Commonwealth Gazette*, convene the meeting within that period or, if that is not practicable, within 7 days after that period.

**Procedure at meetings**

18. (1) At a meeting of the Assembly, a quorum is formed by an absolute majority of the members.

(2) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting, unless a special majority is required by the standing rules and orders.

(3) The member presiding at a meeting has a deliberative vote only, and, if the votes on a question are equal, the question shall pass in the negative.

(4) Subject to subsection 15 (1) and to the standing rules and orders, the Presiding Officer shall preside at all meetings of the Assembly at which he or she is present.

**Resolution of no confidence in Chief Minister**

19. A resolution of no confidence in the Chief Minister has no effect unless:

- (a) it affirms a motion that is expressed to be a motion of no confidence in the Chief Minister;
- (b) at least one week's notice of the motion has been given in accordance with the standing rules and orders; and
- (c) the resolution is passed by at least the number of members necessary to be a quorum.

**Minutes of meetings**

20. (1) The Assembly shall cause minutes to be kept of meetings.
- (2) A copy of any minutes so kept shall, on request made by a person:
- (a) be made available for inspection by the person; or
  - (b) be supplied to the person on payment of such fee (if any) as is fixed by or under enactment.
- (3) Subsection (2) does not apply to minutes of a committee meeting held in private.

**Standing rules and orders**

21. (1) Subject to this Act, the Assembly may make standing rules and orders with respect to the conduct of business.
- (2) Without limiting the generality of subsection (1), standing rules and orders may be made:
- (a) for the election of a deputy (however titled) to the Presiding Officer; and
  - (b) conferring on that deputy such powers as are specified in the rules and orders (including powers of the Presiding Officer under this Act).

**PART IV—POWERS OF LEGISLATIVE ASSEMBLY**

**Power of Assembly to make laws**

22. (1) Subject to this Part, the Assembly has power to make laws for the peace, order and good government of the Territory.
- (2) The power to make laws extends to the power to make laws with respect to the exercise of powers by the Executive.

**Matters excluded from power to make laws**

23. (1) Subject to this section, the Assembly has no power to make laws with respect to:
- (a) the acquisition of property otherwise than on just terms;
  - (b) the establishment of courts;
  - (c) the provision by the Australian Federal Police of police services in relation to the Territory;
  - (d) the raising or maintaining of any naval, military or air force;
  - (e) the coining of money;
  - (f) the admission of persons to practice as legal practitioners or regulating the practice of persons so admitted;
  - (g) the classification of materials for the purposes of censorship; or
  - (h) the matters that are the subject of the laws in force in the Territory relating to:
    - (i) companies;

- (ii) close corporations;
- (iii) foreign companies;
- (iv) the acquisition of shares in bodies corporate; and
- (v) the regulation of the securities industry and the futures industry.

(2) The regulations may omit any of the paragraphs in subsection (1) or reduce the scope of any of those paragraphs.

(3) If, immediately before 1 July 1990, paragraph (1) (b) applies to the establishment of magistrates courts or coroners courts, it ceases so to apply on and from that date.

(4) Paragraph (1) (b) ceases to have effect in any form on 1 July 1992 unless sooner omitted by the regulations.

#### **Powers, privileges and immunities of Assembly**

**24. (1)** In this section:

“powers” includes privileges and immunities, but does not include legislative powers.

(2) Without limiting the generality of section 22, the Assembly may also make laws:

- (a) declaring the powers of the Assembly and of its members and committees, but so that the powers so declared do not exceed the powers for the time being of the House of Representatives or of its members or committees; and
- (b) providing for the manner in which powers so declared may be exercised or upheld.

(3) Until the Assembly makes a law with respect to its powers, the Assembly and its members and committees have the same powers as the powers for the time being of the House of Representatives and its members and committees.

(4) Nothing in this section empowers the Assembly to imprison or fine a person.

#### **Notification of enactment**

**25. (1)** Where a proposed law has been passed by the Assembly, the Chief Minister, or another person authorised by enactment to do so, shall notify the proposed law in the *Territory Gazette*.

(2) Where a proposed law is notified in the *Territory Gazette*, it takes effect upon the day of notification or, if the proposed law otherwise provides, as so provided.

**Special procedures for making certain enactments**

26. (1) The Assembly may pass a law (in this section called the “entrenching law”) prescribing restrictions on the manner and form of making particular enactments (which may include enactments amending or repealing the entrenching law).

(2) The entrenching law shall be submitted to a referendum of the electors of the Territory as provided by enactment.

(3) If a majority of the electors approve the entrenching law, it shall be notified in the *Territory Gazette*, and takes effect as provided by subsection 25 (2).

(4) While the entrenching law is in force, an enactment to which it applies has no effect unless made in accordance with the entrenching law.

(5) If an entrenching law includes the requirement (however expressed) that an enactment or enactments be passed by a specified majority of the members (in this subsection called a “special majority”), the same requirement shall be taken to apply to the entrenching law, so that it must be passed by:

- (a) that special majority; or
- (b) if it specifies different special majorities for different enactments—the highest of those special majorities.

(6) If an entrenching law passed by the Assembly:

- (a) includes the requirement (however expressed) that an enactment or enactments be submitted to a referendum of the electors of the Territory; and
- (b) includes provision (however expressed) that, to have effect, the referendum is to be passed by a specified majority of the electors (in this subsection called a “special majority”);

the same requirement shall be taken to apply to the entrenching law, so that the reference in subsection (3) to a majority of the electors shall be taken to be a reference to:

- (c) that special majority; or
- (d) if the entrenching law specifies different special majorities for different enactments—the highest of those special majorities.

**Crown may be bound**

27. Except as provided by the regulations, an enactment does not bind the Crown in right of the Commonwealth.

**Inconsistency with other laws**

28. (1) A provision of an enactment has no effect to the extent that it is inconsistent with a law defined by subsection (2), but such a provision shall be taken to be consistent with such a law to the extent that it is capable of operating concurrently with that law.

(2) In this section:

“law” means:

- (a) a law in force in the Territory (other than an enactment or a subordinate law); or
- (b) an award, order or determination, or any other instrument of a legislative character, made under a law falling within paragraph (a).

### **Avoidance of application of enactments to Parliament**

29. (1) In this section:

“enactment” includes a part of an enactment;

“Parliamentary precincts” means the precincts defined by subsection 3 (1) of the *Parliamentary Precincts Act 1988*.

(2) If either House of the Parliament passes a resolution declaring that an enactment made after the commencing day does not apply:

- (a) to that House;
- (b) to the members of that House; or
- (c) in the Parliamentary precincts;

the resolution has effect according to its tenor and the enactment does not apply accordingly.

(3) A resolution under subsection (2):

- (a) does not have effect in respect of the application of an enactment on a day before the day on which the resolution is passed; and
- (b) has effect, to the extent that the enactment ceases to apply, as if the enactment were repealed by another enactment.

### **Judicial notice**

30. All courts, judges and persons acting judicially shall take judicial notice of enactments and subordinate laws.

### **Publication of enactments**

31. The Executive shall publish copies of enactments and subordinate laws and make them available for purchase by the public.

### **Application of Statutory Rules Publication Act**

32. Enactments and subordinate laws shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*.

### **Application of Acts Interpretation Act**

33. Paragraph 46 (a) of the *Acts Interpretation Act 1901* does not apply to:

- (a) an enactment;
- (b) a subordinate law; or

- (c) an instrument required by this Act to be published in the *Territory Gazette*.

**Certain laws converted into enactments**

**34. (1)** In this section:

“Imperial Act” has the same meaning as in the *Imperial Acts Application Ordinance 1986* of the Territory;

“law” includes a provision of a law.

(2) A law specified in Schedule 2 shall be taken to be an enactment, and may be amended or repealed accordingly.

(3) Subsection (2) does not apply to the *Australian Capital Territory Evidence (Temporary Provisions) Act 1971* or the *Australian Capital Territory Supreme Court Act 1933* until after 1 July 1992 or until regulations amend Schedule 3 in the manner referred to in subsection (7), whichever sooner occurs.

(4) A law (other than a law of the Commonwealth) that, immediately before the commencing day:

(a) was in force in the Territory; and

(b) was an Ordinance, an Act of the Parliament of New South Wales or an Imperial Act;

shall be taken to be an enactment, and may be amended or repealed accordingly.

(5) Subsection (4) does not apply to a law specified in Schedule 3.

(6) The regulations may amend Schedule 3 by omitting a law from that Schedule and, in such a case, the law shall be taken to be an enactment, and may be amended or repealed accordingly.

(7) If, before 1 July 1992, the regulations do not amend Schedule 3 by omitting all the laws in Schedule 3, other than those referred to in Schedule 5, then, on and after that date, those laws shall be taken to be enactments and may be amended or repealed accordingly.

(8) Until the commencing day, the regulations may amend Schedule 3 by adding a law to that Schedule.

(9) This section does not limit the power of the Assembly to make laws with respect to the common law.

**Disallowance of enactments**

**35. (1)** In this section:

“enactment” includes a part of an enactment.

(2) Subject to this section, the Governor-General may by written instrument disallow an enactment within 6 months after it is made.

(3) A written instrument referred to in subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(4) The Governor-General may, within 6 months after an enactment is made, recommend to the Assembly any amendments of the enactment, or of any other enactment, that the Governor-General considers to be desirable as a result of considering the enactment.

(5) Where the Governor-General so recommends any amendments, the time within which the Governor-General may disallow the enactment is extended for 6 months after the date of the recommendation.

(6) Upon publication in the *Commonwealth Gazette* of notice of the disallowance of an enactment, the disallowance has, subject to subsection (7), the same effect as a repeal of the enactment.

(7) If a provision of a disallowed enactment amended or repealed an enactment that was in force immediately before the commencement of that provision, the disallowance revives the previous enactment from the date of publication of the notice of disallowance as if the disallowed provision had not been made.

(8) For the purposes of this section, an enactment shall be taken to be made when it is notified in the *Territory Gazette* under this Part.

## **PART V—THE EXECUTIVE**

### **Australian Capital Territory Executive**

36. There shall be an Australian Capital Territory Executive.

### **General powers of Executive**

37. The Executive has the responsibility of:

- (a) governing the Territory with respect to matters specified in Schedule 4;
- (b) executing and maintaining enactments and subordinate laws; and
- (c) exercising such other powers as are vested in the Executive by or under a law in force in the Territory or an agreement or arrangement between the Territory and the Commonwealth, a State or another Territory.

### **Executive matters not limited by Schedule 4**

38. A matter specified in Schedule 4 does not limit the generality of any other matter specified in that Schedule.

### **Membership of Executive**

39. (1) The members of the Executive are the Chief Minister and such other Ministers as are appointed by the Chief Minister.

(2) The exercise of the powers of the Executive is not affected merely because of a vacancy or vacancies in the membership of the Executive.



### **Chief Minister for the Territory**

**40. (1)** At the first meeting of the Assembly after a general election, the members present shall, after electing a Presiding Officer and before any other business, elect one of their number to be the Chief Minister for the Territory.

**(2)** If there is a vacancy in the office of Chief Minister (not because of a dissolution of the Assembly), then:

- (a)** if the vacancy happens at a meeting, the members present shall elect one of their number to be the Chief Minister; or
- (b)** if the vacancy happens at any other time, the Presiding Officer shall, by notice published in the *Territory Gazette*, convene a meeting as soon as practicable and, at the meeting, the members present shall elect one of their number to be the Chief Minister.

**(3)** If a resolution of no confidence in the Chief Minister is passed, the members present shall elect one of their number to be the Chief Minister.

### **Ministers for the Territory**

**41. (1)** Subject to subsection (2), the Chief Minister shall appoint 3 Ministers for the Territory from among the members of the Assembly.

**(2)** The regulations may fix a different number of Ministers for the purpose of subsection (1), but regulations shall not be made for that purpose except in accordance with a resolution passed by the Assembly.

**(3)** A Minister may be dismissed from office at any time by a person holding office as Chief Minister at that time.

### **Presiding Officer or Deputy Presiding Officer not to be a Minister**

**42.** The person for the time being holding office as Presiding Officer or Deputy Presiding Officer is not eligible to be a Minister.

### **Ministerial portfolios**

**43. (1)** A Minister shall administer such matters relating to the powers of the Executive as are allocated to that Minister from time to time by the Chief Minister.

**(2)** The Chief Minister may authorise a Minister or Ministers to act on behalf of the Chief Minister or any other Minister.

**(3)** The Chief Minister shall publish particulars of such arrangements in the *Territory Gazette*.

### **Deputy Chief Minister for the Territory**

**44. (1)** The Chief Minister shall appoint one of the Ministers to be Deputy Chief Minister for the Territory.

**(2)** The Deputy Chief Minister shall act as Chief Minister at any time when there is a vacancy in the office of Chief Minister or the Chief Minister

is absent from duty or from Australia or is, for any other reason, unable to exercise the powers of Chief Minister.

(3) While the Deputy Chief Minister is acting as Chief Minister, he or she shall exercise all the powers of the Chief Minister other than the dismissal of a Minister.

(4) The exercise of the powers of the Chief Minister by the Deputy Chief Minister during the absence of the Chief Minister from Australia does not affect the exercise of a power by the Chief Minister.

### **Resignation of Ministers**

45. (1) The Chief Minister may resign office as Chief Minister by written notice delivered to the Presiding Officer.

(2) Any other Minister may resign office as Minister by written notice delivered to the Chief Minister.

### **Vacation of office by Ministers**

46. (1) A person holding office as Minister vacates the office:

- (a) when the person resigns the office;
- (b) when the person ceases to be a member (not because of a general election);
- (c) immediately before a Chief Minister is elected after:
  - (i) the next general election; or
  - (ii) the passing of a resolution of no confidence in the first-mentioned person as Chief Minister; or
- (d) in the case of a person appointed as a Minister other than the Chief Minister—when the person is dismissed from office by the Chief Minister.

(2) A person who has vacated an office of Minister may be re-elected or re-appointed.

### **Vacancies in all Ministerial offices**

47. (1) If:

- (a) at any time after the election of a Chief Minister, all the Ministerial offices (including the office of Chief Minister) have become vacant; and
- (b) it is necessary to exercise powers of the Executive for the purpose of maintaining the provision and control of essential services;

the Commonwealth Minister may exercise those powers for that purpose until a Chief Minister is elected.

(2) Subsection (1) does not apply where the vacancies result from a dissolution of the Assembly.

### **Resolution of no confidence in Chief Minister**

**48. (1)** In this section:

“pre-election year” means the calendar year before the calendar year in which a general election (other than an election under section 16) is due to be held or would be due to be held but for subsection 10 (7) of the *Australian Capital Territory (Electoral) Act 1988*.

**(2)** If:

- (a)** on a particular day, the Assembly passes a resolution of no confidence in the Chief Minister;
- (b)** the Assembly does not, within the period of 30 days after that day, elect a Chief Minister; and
- (c)** the Governor-General does not, within that period of 30 days, dissolve the Assembly under section 16;

a general election shall be held on a day specified by the Commonwealth Minister by notice published in the *Commonwealth Gazette*, being not earlier than 36 days, nor later than 90 days, after the end of that period of 30 days.

**(3)** The Commonwealth Minister shall not specify a day that is the polling day for an election of the Senate or a general election of the House of Representatives.

**(4)** An election shall not be held under subsection (2) if the election would be required to be held on any day after the third Saturday in August in a pre-election year and before the third Saturday in February in the next calendar year.

## **PART VI—ADMINISTRATION**

### **Head of Administration and Associate Heads of Administration**

**49. (1)** There shall be a Head of Administration, who shall be appointed by the Chief Minister.

**(2)** The Chief Minister may appoint such Associate Heads of Administration as he or she considers necessary.

### **Powers of Head of Administration**

**50.** The Head of Administration:

- (a)** shall advise the Executive on the management of the public service as a whole;
- (b)** in relation to the administrative unit of the public service under his or her control:
  - (i)** shall be responsible, under the Chief Minister, for its general working and for all its business; and
  - (ii)** shall advise the Chief Minister on all matters relating to the unit; and

- (c) shall exercise the powers conferred on the Head of Administration by or under enactment.

**Powers of Associate Heads of Administration**

51. An Associate Head of Administration shall, in relation to the administrative unit of the public service under his or her control:

- (a) be responsible, under the appropriate Minister, for its general working and for all its business; and
- (b) advise that Minister on all matters relating to the unit.

**Tenure of Head of Administration and Associate Heads of Administration**

52. Subject to section 73, the Head of Administration and an Associate Head of Administration hold office on terms and conditions determined by the Chief Minister under enactment.

**Acting Head of Administration and Associate Heads of Administration**

53. (1) In this section:

“Head of Administration” includes an Associate Head of Administration.

(2) The Chief Minister may appoint a person to act as Head of Administration during any period, or during all periods:

- (a) when there is a vacancy in the office of the Head of Administration, whether or not an appointment has previously been made to the office; or
- (b) when the Head of Administration is absent from duty or from the Territory or is, for any other reason, unable to exercise the powers of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(3) A person, other than a public servant, who is acting as Head of Administration shall be paid the same remuneration and allowances as are payable to the Head of Administration.

(4) A public servant who is acting as Head of Administration shall continue to be paid the remuneration and allowances payable to him or her as a public servant, but shall also be paid:

- (a) so much of any remuneration payable to the Head of Administration as exceeds the remuneration that so continues to be paid;
- (b) so much of any allowance payable to the Head of Administration as exceeds the corresponding allowance that so continues to be paid; and
- (c) if an allowance is payable to the Head of Administration in respect of which there is no corresponding allowance payable to the member—that allowance.

**Public service**

**54. (1)** There shall be a public service for the conduct of the public administration of the Government of the Territory.

**(2)** The Chief Minister shall, from time to time, by notice in the *Territory Gazette*:

- (a)** divide the public service into administrative units; and
- (b)** place each Head of Administration in control of one or more of those units.

**(3)** Subject to this section, the constitution and operations of the public service shall be as provided by enactment.

**(4)** In this section:

“Head of Administration” includes an Associate Head of Administration.

**Delegations**

**55. (1)** The Assembly may make laws providing for the delegation of powers of the Head of Administration and of the Associate Heads of Administration.

**(2)** Subsection (1) extends to the sub-delegation by Associate Heads of Administration of powers delegated to them by the Head of Administration.

**Arrangements relating to staffing**

**56. (1)** The Head of Administration may arrange with the Secretary of a Department of the Australian Public Service for the services of officers or employees in the Department to be made available to the Head of Administration.

**(2)** The Head of Administration may enter into an arrangement with the appropriate authority of a State or Territory for the services of officers or employees of the Public Service of the State or Territory, or of a body established for a public purpose by or under a law of the State or Territory, to be made available to the Head of Administration.

**(3)** The Head of Administration may arrange with a body (other than a body referred to in subsection (2)) for the services of officers or employees of the body to be made available to the Head of Administration.

**(4)** While a person is performing services under an arrangement under this section, the person shall perform those services in accordance with the directions of the Head of Administration and not otherwise.

**PART VII—FINANCE**

**Public money**

**57. (1)** The public money of the Territory shall be available for the expenditure of the Territory.

(2) The receipt, spending and control of public money of the Territory shall be regulated as provided by enactment.

**Withdrawals of public money**

58. (1) Subject to subsection 16 (4), no public money of the Territory shall be issued or spent except as authorised by enactment.

(2) The public money of the Territory may be invested as provided by enactment.

**Financial relations between Commonwealth and Territory**

59. (1) The Commonwealth shall conduct its financial relations with the Territory so as to ensure that the Territory is treated on the same basis as the States and the Northern Territory, while having regard to the special circumstances arising from the existence of the national capital and the seat of government of the Commonwealth in the Territory.

- (2) The Territory is not liable to bear the cost, or part of the cost, of:
- (a) any power of the Commonwealth relating to a matter referred to in section 23;
  - (b) administering a law, or a provision of a law, referred to in Schedule 3; or
  - (c) any other power of the Commonwealth, or of a Commonwealth authority, relating to the Territory.

**Borrowing from Commonwealth**

60. The Minister for Finance may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the Territory or to a Territory authority on such terms and conditions as that Minister determines in writing.

**Borrowing from persons other than Commonwealth**

61. (1) The Territory or a Territory authority may, with the approval of the Treasurer, borrow money from persons other than the Commonwealth on terms and conditions specified in, or consistent with, the approval.

- (2) Money may be borrowed wholly or partly in foreign currency.
- (3) An approval shall be given in writing.

**Guarantee of borrowing**

62. (1) The Treasurer may, on behalf of the Commonwealth, enter into a contract guaranteeing the performance by the Territory or a Territory authority of obligations incurred by it under section 61.

(2) If the Treasurer determines in writing that obligations incurred by the Territory or a Territory authority under section 61 are guaranteed by the Commonwealth, the obligations are, by force of this subsection, guaranteed by the Commonwealth.

- (3) A contract under subsection (1) may include:
- (a) a provision agreeing that proceedings under the contract may be taken in courts of a foreign country; or
  - (b) a provision waiving the immunity of the Commonwealth from suit in courts of a foreign country.

**Borrowing not otherwise permitted**

63. The Territory or a Territory authority shall not borrow money except under this Part.

**Guarantees by Territory**

64. (1) The Territory shall not make a guarantee to which this section applies except with the approval of the Treasurer and in accordance with such conditions (if any) as are determined by the Treasurer in writing.

(2) This section applies to a guarantee of the discharge of an obligation if, at the time when the guarantee is made, the amount guaranteed, together with the total of the amounts (if any) previously guaranteed, is more than 10% of the total amount of public money of the Territory received by the Territory during the previous financial year.

(3) In the case of a guarantee of the discharge of an obligation other than the payment of money, the amount of the guarantee, for the purposes of subsection (2), is the amount of the consideration for that obligation.

**Proposal of money votes**

65. (1) An enactment, vote, resolution or question (any of which is in this section called a "proposal") the object or effect of which is to dispose of or charge any public money of the Territory shall not be proposed in the Assembly except by a Minister.

(2) Subsection (1) does not prevent a member other than a Minister from moving an amendment to a proposal made by a Minister unless the object or effect of the amendment is to increase the amount of public money of the Territory to be disposed of or charged.

**PART VIII—ELECTIONS TO ASSEMBLY**

**Election of members**

66. The members shall be elected as provided by this Part and by the *Australian Capital Territory (Electoral) Act 1988*.

**Qualifications of candidates**

67. (1) The qualifications of a person to be elected and take a seat as a member shall be as provided by enactment.

(2) Until provision is made, the following subsections have effect.

(3) Subject to subsection (4), a person is qualified to be elected and take a seat as a member if the person is:

- (a) at least 18 years old;
  - (b) an Australian citizen; and
  - (c) either:
    - (i) an elector entitled to vote at a general election; or
    - (ii) a person qualified to become such an elector.
- (4) A person is not qualified to take a seat as a member if:
- (a) the person:
    - (i) holds an office or appointment (other than a prescribed office or appointment) under a law of the Commonwealth (including this Act) or a law of a State or Territory (including an enactment); or
    - (ii) not being the holder of any office or appointment under such a law, is employed by the Commonwealth, by a State or Territory, by a body, whether corporate or not, established by such a law, or by a Territory authority;  
and the person is entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in respect of the office, appointment or employment;
  - (b) the person is of unsound mind; or
  - (c) has been convicted and is under sentence for an offence punishable under the law of the Commonwealth or of a State or Territory by imprisonment for 5 years or longer.
- (5) In subparagraph (4) (a) (i):  
“prescribed office or appointment” means the office of member, Presiding Officer, Deputy Presiding Officer, Chief Minister, Deputy Chief Minister or Minister.

### **Casual vacancies**

**68. (1)** In this section:

“elected member” means a member other than a person chosen under this section to fill a casual vacancy;

“registered party” has the meaning given by the *Australian Capital Territory (Electoral) Act 1988*.

(2) Where a casual vacancy occurs in the office of an elected member, the Assembly shall choose a person who is qualified to be elected and take a seat as a member to hold the vacant office as a member for the rest of the term of the member who last held that office.

(3) Subject to this section, a person begins to hold office immediately after being so chosen.

(4) If, when the elected member was elected, the name of the member appeared on the ballot paper as a candidate of a registered party, the person chosen to fill the office shall be a member of that party nominated by that party.



(5) If a person chosen under subsection (4) as a member of a party ceases to be a member of that party before taking his or her seat, the person shall be taken not to have been chosen.

(6) If:

- (a) when the elected member was elected, the name of the member appeared on the ballot paper as an independent candidate; or
- (b) in a case to which subsection (4) applies, there is no member of the relevant party available to be chosen;

the person to be chosen to fill the office shall be a person who, throughout the period of 12 months immediately preceding the time of being chosen, has not been a member of a registered party.

(7) If a person chosen under subsection (6) becomes a member of a registered party before taking his or her seat, the person shall be taken not to have been chosen.

(8) For the purposes of subsection (5), a person shall not be taken to cease to be a member of a registered party merely because the party ceases to exist or is removed from the register.

## **PART IX—MISCELLANEOUS**

### **Trade and commerce to be free**

69. (1) Subject to subsection (2), trade, commerce and intercourse between the Territory and a State, and between the Territory and the Northern Territory or the Jervis Bay Territory, shall be absolutely free.

(2) Subsection (1) does not bind the Commonwealth.

### **Validity of certain actions**

70. (1) In subsection (2):

“office” means the office of Chief Minister, Deputy Chief Minister, Minister, Presiding Officer, Deputy Presiding Officer, Head of Administration, Associate Head of Administration, or Commissioner.

(2) Anything done by or in relation to a person who has been elected or appointed to an office, or a person purporting to act in an office, under this Act is not invalid on the ground that:

- (a) the occasion for the election or appointment had not arisen;
- (b) there was a defect or irregularity in connection with the election or appointment;
- (c) the election or appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

(3) Anything done by or in relation to a person who has purported to sit or vote as a member at a meeting of the Assembly or of a committee is not invalid on the ground that the person:

- (a) was not duly elected or chosen; or

(b) had vacated office as a member.

### **Staffing consultations**

**71. (1)** In subsection (2):

“employee” means:

- (a) a public servant; or
- (b) a person employed by a Territory authority;

“industrial question” has the same meaning as in section 70A of the *Conciliation and Arbitration Act 1904*.

(2) The Territory shall, at such times, and in such manner, as are determined by or under an agreement between the Executive and the Commonwealth Minister, hold consultations with the Commonwealth concerning matters relating to, or likely to affect:

- (a) staffing of the Territory and of Territory authorities;
- (b) the determination of terms and conditions of employment of employees; and
- (c) industrial questions relating to employees.

### **Royal prerogative of mercy**

**72.** Before tendering any advice to the Governor-General in respect of the exercise of the Royal prerogative of mercy in relation to an offence against an enactment or subordinate law, the Commonwealth Minister shall consult with the Chief Minister and consider any comments given by the Chief Minister.

### **Remuneration and allowances**

**73. (1)** In this section:

“office” means any of the following offices:

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

(2) A person shall, in respect of services in an office, be paid such remuneration as is determined by the Remuneration Tribunal, but, if no such determination is in force, shall be paid such remuneration as is specified by or under enactment.

(3) In respect of services in an office, a person shall, subject to the *Remuneration Tribunals Act 1973*, be paid such allowances as are specified by or under enactment.

**(4) Where:**

- (a) the term of office of a person as member ends on the polling day for a general election; and
- (b) the person is re-elected at that general election;

then, for the purposes of this section, 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.

**(5) Where:**

- (a) the term of office of a person as member ends because the Assembly is dissolved under section 16; and
- (b) the person is a candidate at the next general election;

then, for the purposes of this section, 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.

**Regulations**

**74.** The Governor-General may make regulations, not inconsistent with this Act:

- (a) prescribing matters:
    - (i) required or permitted by this Act to be prescribed; or
    - (ii) necessary or convenient to be prescribed for carrying out or giving effect to this Act;
  - (b) amending Schedule 3 as provided by section 34; and
  - (c) adding further matters to Schedule 4.
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**SCHEDULE 1**

Section 9

**OATH**

I, *A.B.*, swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law: So help me God!

**AFFIRMATION**

I, *A.B.*, solemnly affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law.

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**SCHEDULE 2**

Section 34

**COMMONWEALTH ACTS AND PROVISIONS TO BECOME ENACTMENTS**

*Commonwealth Functions (Statutes Review) Act 1981, Part II*

*Commonwealth Teaching Service Act 1972*

*Removal of Prisoners (Australian Capital Territory) Act 1968*

*Australian Capital Territory Evidence (Temporary Provisions) Act 1971*

*Australian Capital Territory Supreme Court Act 1933.*

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**SCHEDULE 3**

Section 34

**LAWS AND PROVISIONS NOT TO BECOME ENACTMENTS**

**PART 1**

**ORDINANCES OF THE TERRITORY**

*Administration and Probate Ordinance 1929, sections 71, 73 and 74*

*Children's Services Ordinance 1986, Parts III and X*

*Companies Auditors and Liquidators Disciplinary Board Ordinance 1982*

*Coroners Ordinance 1956*

*Corporate Affairs Commission Ordinance 1980*

*Courts (Hire-purchase Agreements) Ordinance 1963*

*Criminal Injuries Compensation Ordinance 1983*

*Crimes Ordinances and Crimes Amendment Ordinances (various)*

*Enforcement of Public Interests Ordinance 1973*

**SCHEDULE 3—continued**

*Foreign Judgments (Reciprocal Enforcement) Ordinance 1954*  
*Imperial Acts (Substituted Provisions) Ordinance 1986, Schedule 2, Parts 16, 17, 20 and 21*  
*Judgment Creditors Remedies Ordinance 1933*  
*Judiciary (Stay of Proceedings) Ordinance 1933*  
*Juries Ordinance 1967*  
*Legal Practitioners Ordinance 1970*  
*Limitation Ordinance 1985*  
*Magistrates Court Ordinance 1930*  
*Magistrates Court (Civil Jurisdiction) Ordinance 1982*  
*Notaries Public Ordinance 1984*  
*Ordinances Revision (Companies Amendments) Ordinance 1982*  
*Police Ordinance 1927*  
*Sheriff Ordinance 1934*  
*Small Claims Ordinance 1974*  
*Supreme Court Ordinance 1952*  
*The Commercial Banking Company of Sydney Limited (Merger) Ordinance 1982*  
*The Commercial Bank of Australia Limited (Merger) Ordinance 1982*

**PART 2**

**ACTS OF THE PARLIAMENT OF NEW SOUTH WALES  
IN FORCE IN THE TERRITORY**

Arrest on Mesne Process Act 1902  
Crimes Act 1900  
Judgment Creditors' Remedies Act 1901  
Life, Fire and Marine Insurance Act 1902  
Lunacy Act 1898, sections 65, 66 and 67  
Piracy Punishment Act 1902

**PART 3**

**IMPERIAL ACTS IN FORCE IN THE TERRITORY**

Australian Courts Act	(1828) 9 Geo. 4 c. 83
British Law Ascertainment Act	(1859) 22 and 23 Vic. c. 63
Courts (Colonial) Jurisdiction Act	(1874) 37 and 38 Vic. c. 27
Demise of the Crown	(1760) 1 Geo. 3 c. 23
Evidence by Commission Act	(1859) 22 Vic. c. 20
Evidence by Commission Act	(1885) 48 and 49 Vic. c. 74
Foreign Tribunals Evidence Act	(1856) 19 and 20 Vic. c. 113
Merchant Shipping Act	(1894) 57 and 58 Vic. c. 60
Naval Prize Act	(1864) 27 and 28 Vic. c. 25
Naval Prize (Procedure) Act	(1916) 6 and 7 Geo. 5 c. 2

**SCHEDULE 3—continued**

Offences at sea	(1536) 28 Hen. 8 c. 15
Piracy	(1698) 11 Will. 3 c. 7
Piracy	(1717) 4 Geo. 1 c. 11
Piracy	(1721) 8 Geo. 1 c. 24
Piracy	(1744) 18 Geo. 2 c. 30
Prize Act	(1939) 2 and 3 Geo. 6 c. 65
Prize Courts Act	(1894) 57 and 58 Vic. c. 39
Prize Courts Act	(1915) 5 and 6 Geo. 5 c. 57
Prize Courts (Procedure) Act	(1914) 4 and 5 Geo. 5 c. 13
Set-off of debts	(1729) 2 Geo. 2 c. 22
Set-off of debts	(1735) 8 Geo. 2 c. 24
Slavery Abolition Act	(1833) 3 and 4 Will. 4 c. 73
Slave Trade Act	(1824) 5 Geo. 4 c. 113
Slave Trade Act	(1843) 6 and 7 Vic. c. 98
Slave Trade Act	(1873) 36 and 37 Vic. c. 88
Territorial Waters Jurisdiction	(1878) 41 and 42 Vic. c. 73

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**SCHEDULE 4**

Section 37

**MATTERS CONCERNING WHICH THE EXECUTIVE HAS POWER  
TO GOVERN THE TERRITORY**

Remuneration, allowances and other entitlements in respect of services of members of the Assembly, the Chief Minister, the Deputy Chief Minister, Ministers, the Presiding Officer, the Deputy Presiding Officer, the Head of Administration, Associate Heads of Administration and the holders of offices established by or under Assembly Law

Territory insurance

Territory banking

Taxation

Provision of rural, industrial and home finance credit and assistance

The public service

Legal aid

Correctional and remand services

Private law

Administration of estates and trusts

Civil liberties and human rights

Inquiries and administrative reviews (including matters relating to a Territory Ombudsman)

Markets and marketing

Consumer affairs

Sales and leases of goods, supply of services, and security interests in or over goods

Control of prices and of rents

**SCHEDULE 4—continued**

Industry, including primary production  
Regulation of businesses, professions, trades and callings (excluding the legal profession)  
Tourism  
Printing and publishing  
Industrial relations (including training and apprenticeship and workers' compensation and compulsory insurance)  
Occupational health and safety  
Exploration for, and recovery of, minerals in any form, whether solid, liquid or gaseous  
Territory Land as defined in the *Australian Capital Territory (Planning and Land Management) Act 1988*  
Use, planning and development of land  
Civil aviation  
Regulation of transport on land and water (including traffic control, carriers, roads, tunnels and bridges, vehicle registration and compulsory third party insurance, driver licensing and road safety)  
Environment protection and conservation (including parks, reserves and gardens and preservation of historical objects and areas)  
Flora and fauna  
Fire prevention and control  
Water resources  
Use and supply of energy  
Public utilities  
Public works  
Registration of instruments  
Registration of births, deaths and marriages  
Local government  
Housing  
Public health  
Public safety  
Education  
Territory Archives  
Welfare services  
Territory museums, memorials, libraries and art galleries  
Scientific research  
Recreation, entertainment and sport  
Community, cultural and ethnic affairs  
Gambling  
Liquor  
Firearms, explosives and hazardous and dangerous substances

**SCHEDULE 4—continued**

Civil defence and emergency services  
Territorial censorship, except classification of materials  
Landlord and tenant  
Co-operative societies  
The Public Trustee and the Youth Advocate  
Matters in respect of which the Assembly may make laws under section 24  
Matters in respect of which powers or authorities are expressly conferred on the Chief Minister, the Deputy Chief Minister, a Minister, the Head of Administration, an Associate Head of Administration or a member of the staff by or under any law in force in the Territory (including an enactment or subordinate law) or an agreement or arrangement referred to in paragraph 37 (c)  
Matters provided for by or under a law made by the Assembly under another Act that expressly provides for the making of such a law  
Making instruments under enactments or subordinate laws  
Matters arising under instruments made under enactments or subordinate laws  
Entering into, and implementing, agreements and arrangements with the Commonwealth, a State or the Northern Territory  
Matters incidental to the exercise of any power of the Executive

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**SCHEDULE 5**

Section 34

**LAWS AND PROVISIONS OTHER THAN THOSE THAT SHALL  
BECOME ENACTMENTS**

**PART 1—ORDINANCES OF THE TERRITORY**

*Companies Auditors and Liquidators Disciplinary Board Ordinance 1982*  
*Corporate Affairs Commission Ordinance 1980*  
*Ordinances Revision (Companies Amendments) Ordinance 1982*  
*The Commercial Banking Company of Sydney Limited (Merger) Ordinance 1982*  
*The Commercial Bank of Australia Limited (Merger) Ordinance 1982*

**PART 2—ACTS OF THE PARLIAMENT OF NEW SOUTH WALES  
IN FORCE IN THE TERRITORY**

**Life, Fire and Marine Insurance Act 1902**



**SCHEDULE 5—continued**

**PART 3—IMPERIAL ACTS IN FORCE IN THE TERRITORY**

<b>Demise of the Crown</b>	(1760) 1 Geo. 3 c. 23
<b>Naval Prize Act</b>	(1864) 27 and 28 Vic. c. 25
<b>Naval Prize (Procedure) Act</b>	(1916) 6 and 7 Geo. 5 c. 2
<b>Prize Act</b>	(1939) 2 and 3 Geo. 6 c. 65
<b>Prize Courts Act</b>	(1894) 57 and 58 Vic. c. 39
<b>Prize Courts Act</b>	(1915) 5 and 6 Geo. 5 c. 57
<b>Prize Courts (Procedure) Act</b>	(1914) 4 and 5 Geo. 5 c. 13
<b>Territorial Waters Jurisdiction</b>	(1878) 41 and 42 Vic. c. 73.

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*[Minister's second reading speech made in—  
House of Representatives on 19 October 1988  
Senate on 7 November 1988]*