Australian Capital Territory (Planning and Land Management) Act 1988

Act No. 108 of 1988 as amended

This compilation was prepared on 19 April 2011
taking into account amendments up to Act No. 5 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

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An Act to provide for the planning of the Australian Capital Territory and the management of land in that Territory, to repeal the *National Capital Development Commission Act 1957*, and for related purposes

Part I—Preliminary

1 Short title [*see* Note 1]

This Act may be cited as the *Australian Capital Territory (Planning and Land Management) Act 1988*.

2 Commencement [*see* Note 1]

(1) Sections 1, 2 and 55 commence on the day on which this Act receives the Royal Assent.

(2) The amendment of the *Seat of Government (Administration) Act 1910* contained in the Schedule commences on the day declared under section 57.

(3) The remaining provisions of this Act (including the other amendments in the Schedule) commence on a day or days to be fixed by Proclamation.

3 Location of definitions

(1) Section 4 contains definitions of expressions used throughout this Act (including Part X).

(2) Section 56 contains definitions of expressions used only in Part X.

(3) Some sections also contain, at the end, special definitions for the purposes of those sections.

4 Definitions for whole Act

In this Act, unless the contrary intention appears:

Assembly means the Legislative Assembly for the Australian Capital Territory established by the Self-Government Act.

Authority means the National Capital Authority established by this Act.

Chief Executive means the Chief Executive of the Authority referred to in section 45.

Commonwealth authority means:

(a) a body, whether corporate or not, established by or under a law of the Commonwealth other than the Self-Government Act;

(b) any other body, whether corporate or not, established by the Commonwealth;

(c) an office established by, or appointment made under, a law of the Commonwealth other than the Self-Government Act; or

(d) an appointment made by the Commonwealth.

Commonwealth Gazette means the *Commonwealth of Australia Gazette*.

Designated Area means an area of land specified in the Plan under section 10.

Note: Canberra Airport is not a Designated Area: see section 112A of the *Airports Act 1996*.

enactment has the same meaning as in the Self-Government Act.

Executive has the same meaning as in the Self-Government Act.

full-time member means:

(a) if there is a full-time Chairperson—the Chairperson; or

(b) if there is a part-time Chairperson—the Chief Executive.

Lands Acquisition Act means the Act for the time being in force relating to the acquisition of land by the Commonwealth and associated matters.

land includes water.

liability includes obligation.

management, in relation to land, includes care, control and maintenance.

member means a member of the Authority.

National Land has the meaning given by section 27.

Plan means the National Capital Plan prepared by the Authority under Part III.

Self-Government Act means the *Australian Capital Territory (Self-Government) Act 1988*.

Self-Government Day means the day on which the Assembly becomes empowered to make laws.

Territory has the same meaning as in the Self-Government Act.

Territory authority means:

(a) a body, whether corporate or not, established by or under an enactment;

(b) any other body, whether corporate or not, established by the Executive;

(c) an office established by, or appointment made under, an enactment; or

(d) an appointment made by the Executive or by a Minister as defined by the Self-Government Act.

Territory Gazette means the *Australian Capital Territory Gazette*.

Territory Plan means the plan referred to in section 25, and includes a stage or part of that plan.

Territory planning authority means the authority referred to in section 25.

Territory Land has the meaning given by section 28.

works includes:

(a) the construction, alteration, extension or demolition of buildings or structures;

(b) landscaping;

(c) tree-felling; or

(d) excavations;

but excludes anything done inside buildings or structures.

Part II—Establishment, functions and powers of authority

5 Establishment and name of Authority

The body known immediately before the commencement of this section as the National Capital Planning Authority is continued in existence with the new name, National Capital Authority.

Note: Section 25B of the *Acts Interpretation Act 1901* deals with the situation where a body changes its name.

6 Functions of the Authority

The functions of the Authority are:

(a) to prepare and administer a National Capital Plan;

(b) to keep the Plan under constant review and to propose amendments to it when necessary;

(c) on behalf of the Commonwealth, to commission works to be carried out in Designated Areas in accordance with the Plan where neither a Department of State of the Commonwealth nor any Commonwealth authority has the responsibility to commission those works;

(d) to recommend to the Minister the carrying out of works that it considers desirable to maintain or enhance the character of the National Capital;

(e) to foster an awareness of Canberra as the National Capital;

(f) with the approval of the Minister, to perform planning services for any person or body, whether within Australia or overseas; and

(g) with the Minister's approval, on behalf of the Commonwealth, to manage National Land designated in writing by the Minister as land required for the special purposes of Canberra as the National Capital.

7 Ministerial directions

(1) The Minister may give the Authority general directions in writing as to the performance of its functions.

(2) Particulars of any directions given in a financial year shall be included in the annual report of the Authority for that year.

8 Powers of Authority

Subject to this Act, the Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Part III—The National Capital Plan

Division 1—Object and effect of National Capital Plan

9 Object of Plan

The object of the Plan is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.

10 Matters to be covered in Plan

(1) The Plan may specify areas of land that have the special characteristics of the National Capital to be Designated Areas.

(2) The Plan:

(a) shall define the planning principles and policies for giving effect to the object of the Plan and, in particular, shall set standards for the maintenance and enhancement of the character of the National Capital and set general standards and aesthetic principles to be adhered to in the development of the National Capital;

(b) shall set out the general policies to be implemented throughout the Territory, being policies of:

(i) land use (including the range and nature of permitted land use); and

(ii) the planning of national and arterial road systems;

(c) may set out the detailed conditions of planning, design and development in Designated Areas and the priorities in carrying out such planning, design and development; and

(d) may set out special requirements for the development of any area (not being a Designated Area), being requirements that are desirable in the interests of the National Capital.

Note: This Part does not apply in relation to Canberra Airport: see section 112A of the *Airports Act 1996*.

11 Effect of Plan

(1) An enactment that is inconsistent with the Plan has no effect to the extent of the inconsistency, but an enactment shall be taken to be consistent with the Plan to the extent that it is capable of operating concurrently with the Plan.

(2) The Commonwealth, a Commonwealth authority, the Territory or a Territory authority shall not do any act that is inconsistent with the Plan.

12 Works in Designated Areas to be subject to Plan and approval by the Authority

(1) No works shall be performed in a Designated Area unless:

(a) the proposal to perform the works has been submitted to the Authority together with such plans and specifications as are required by the Authority;

(b) the Authority has approved the works in writing; and

(c) the works are in accordance with the Plan.

(2) Subsection (1) does not affect section 5 of the *Parliament Act 1974.*

13 Plan not to have retrospective effect

Where, immediately before the Plan comes into effect, it would be lawful to use any land in a particular way in the exercise of a right derived from an estate in that land, the Plan does not prevent the use of that land in that way during the term of that estate.

Division 2—Preparation of National Capital Plan

14 Draft Plan to be prepared

The Authority shall prepare a draft Plan in accordance with this Division.

15 Public consultation

(1) After preparing the draft Plan, the Authority shall:

(a) submit a copy to the Territory planning authority;

(b) by notice published in the *Commonwealth Gazette* and in the principal daily newspaper published and circulated in the Territory:

(i) state that the draft Plan has been prepared, and that copies will be available for public inspection at the places and times, and during the period, specified in the notice; and

(ii) invite interested persons to make written representations about the draft Plan within a reasonable period specified in the notice and specify the address to which the representations may be forwarded; and

(c) make the draft Plan available for inspection accordingly.

(2) The Authority shall:

(a) consult with the Territory planning authority about the draft Plan and have regard to any views expressed by it; and

(b) have regard to any representations made by the public;

and, if it thinks fit, may alter the draft Plan.

16 Certification of draft Plan

(1) After the Authority has:

(a) made the draft Plan available for public inspection;

(b) consulted with the Territory planning authority; and

(c) reported in writing to the Minister on the consultation and the views expressed by that authority;

the Authority may apply to the Minister to certify the draft Plan under this section while it is being further considered.

(2) After considering the report by the Authority, the Minister may, subject to subsection (3), declare, by written instrument, that the draft Plan is certified.

(3) If the Authority reports under subsection (1) that the Territory planning authority objects to the certification of the draft Plan, the Minister shall not act under subsection (2) except after consultation with the Executive.

(4) The certification remains in force for 6 months unless sooner revoked, but the Minister may, by written instrument, extend that period for one or more further periods of 6 months.

(5) The Minister shall cause a copy of each instrument to be laid before each House of the Parliament within 15 sitting days of that House after the instrument is made.

17 Effect of certification of draft Plan

So long as the draft Plan is certified, section 11 applies as if the Plan were in effect.

18 Submission to Minister for approval

The Authority shall submit the draft Plan to the Minister for approval, together with a written report on its consultations under section 15.

19 Minister's powers

(1) Subject to subsection (2), on receipt of the draft Plan submitted for approval, the Minister shall, after such consultation, if any, as the Minister thinks necessary:

(a) approve the draft Plan without alteration; or

(b) refer the draft Plan to the Authority with either or both of the following:

(i) directions to conduct further consultations;

(ii) suggested alterations.

(2) If the Authority reports under section 18 that the Territory planning authority objects to any aspect of the draft Plan, the Minister shall not act under subsection (1) except after consultation with the Executive.

20 Action on referral by Minister

If the Minister refers the draft Plan to the Authority, the Authority shall:

(a) reconsider the draft Plan;

(b) have any further consultations directed by the Minister and such other consultations as the Authority thinks necessary;

(c) consider any suggestions made by the Minister;

(d) if it thinks fit, alter the draft Plan; and

(e) re-submit the draft Plan to the Minister for approval;

and subsection 19(1) and, if necessary, this section, apply again.

20A Objections to re-submitted draft Plan

(1) If the Territory planning authority continues to object to any aspect of the draft Plan re-submitted to the Minister, the Authority must attach to the draft Plan a statement of its reasons for not accommodating the objection.

(2) If the Minister receives a statement from the Authority under subsection (1), the Minister, after consultation with the Executive, must give a written direction to the Authority:

(a) to disregard the objection; or

(b) to alter the draft Plan to accommodate the objection wholly or partly.

(3) A direction given by the Minister under subsection (2) must be published in the *Gazette* within 7 days after the Minister gives the direction.

(4) The Minister must cause a copy of each direction given under subsection (2) to be laid before each House of the Parliament within 6 sitting days of that House after the Minister gives the direction.

21 Publication and commencement of approved Plan

(1) Where the Minister approves the draft Plan, the Minister shall publish notice of the approval in the *Commonwealth Gazette* and specify the address where copies of the Plan may be inspected and bought.

(2) The Plan takes effect on publication of the notice of approval.

22 Parliamentary scrutiny of Plan

(1) The Plan shall be laid before each House of the Parliament within 6 sitting days of that House after the Plan has taken effect, and, if it is not so laid before each House of the Parliament, ceases to have effect.

(2) If either House of the Parliament, in pursuance of a motion of which notice has been given within 6 sitting days after the Plan has been laid before that House, passes a resolution disallowing the Plan or a part of the Plan, the Plan or part so disallowed thereupon ceases to have effect.

(3) If, before the end of 6 sitting days after notice of a motion to disallow the Plan or part of the Plan has been given in a House of the Parliament:

(a) the House of Representatives is dissolved or expires, or the Parliament is prorogued; and

(b) at the time of the dissolution, expiry or prorogation, as the case may be:

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

the Plan shall, for the purposes of subsection (2), be taken to have been laid before the first-mentioned House on the first sitting day of that House after the dissolution, expiry or prorogation, as the case may be.

(4) If:

(a) a part of the Plan (in this subsection called the ***later part***) is disallowed; and

(b) the later part amended or revoked another part of the Plan (in this subsection called the ***earlier part***) that was in effect immediately before the later part took effect;

the disallowance revives the earlier part from the date of the disallowance as if the later part had not taken effect.

23 Amendments of Plan

Amendments of the Plan shall be prepared in the same way as the Plan, and sections 14 to 22 (both inclusive) apply to amendments as if references in those sections to the Plan were references to amendments.

24 Plan may be prepared in stages or parts

The Plan may be prepared in separate stages or parts and, in such a case, sections 14 to 23 (both inclusive) apply as if references in those sections to the Plan were references to such a stage or part of the Plan.

Part IV—The Territory Plan

25 Territory Plan

(1) The Assembly shall, as soon as practicable, make laws providing for:

(a) establishing a Territory planning authority; and

(b) conferring functions on the authority, including the functions of:

(i) preparing and administering a plan in respect of land, not inconsistent with the National Capital Plan; and

(ii) keeping the plan under constant review and proposing amendments to it when necessary.

(2) The object of the plan is to ensure, in a manner not inconsistent with the National Capital Plan, the planning and development of the Territory to provide the people of the Territory with an attractive, safe and efficient environment in which to live and work and have their recreation.

(3) The plan:

(a) shall define the planning principles and policies for giving effect to the object of the plan; and

(b) may include the detailed conditions of planning, design and development of land and the priorities in carrying out such planning, design and development.

(4) The laws shall include provision for:

(a) the procedure for making the plan and amendments of the plan, including a procedure for ascertaining and considering the views of the public;

(b) public notification of any directions given to the Territory planning authority by the Executive;

(c) the procedures for just and timely review, without unnecessary formality, of appropriate classes of decisions on planning, design and development of land; and

(d) requiring the authority to:

(i) consult with the Authority about making the plan and any amendments; and

(ii) report in writing to the Executive on such consultations and the views expressed by the Authority.

(5) This section does not limit the power of the Assembly to make laws otherwise than under this section.

(6) In this section:

land does not include Designated Areas.

26 Territory Plan not to be inconsistent with National Capital Plan

The Territory Plan has no effect to the extent that it is inconsistent with the National Capital Plan, but the Territory Plan shall be taken to be consistent with the National Capital Plan to the extent that it is capable of operating concurrently with the National Capital Plan.

Part V—Land management

27 National Land

(1) The Minister may, by notice published in the *Commonwealth Gazette* declare specified areas of land in the Territory to be National Land.

(2) The Minister shall not declare an area to be National Land unless the land is, or is intended to be, used by or on behalf of the Commonwealth.

(3) If an Act vests the management (however described) of specified land in the Territory in a person or body, the land is National Land for the purposes of this Act.

(4) Subsection (3) does not apply to the vesting of an estate in land.

28 Territory Land

At any time when any land in the Territory is not National Land, that land is Territory Land for the purposes of this Act.

29 Administration of Territory Land

(1) The Executive, on behalf of the Commonwealth:

(a) has responsibility for the management of Territory Land; and

(b) subject to section 9 of the *Seat of Government (Administration) Act 1910*, may grant, dispose of, acquire, hold and administer estates in Territory Land.

(2) The Executive shall perform its functions under subsection (1) subject to enactment and in accordance with the principles:

(a) that new estates in Territory Land shall be granted only in accordance with procedures that are notified to the public; and

(b) that appropriate classes of decisions relating to the administration of estates in Territory Land shall be subject to just and timely review without unnecessary formality.

(3) The term of an estate in Territory Land granted on or after Self-Government Day shall not exceed 99 years or such longer period as is prescribed, but the estate may be renewed.

(4) The Authority may intervene in any proceedings for review of a decision relating to the administration of an estate in Territory Land.

30 Territory liable as manager of Territory Land

(1) Where, apart from this section, the Commonwealth would be liable in respect of an act done or omitted to be done by the Territory in the performance of its functions under section 29, the liability is vested in the Territory and ceases to be a liability of the Commonwealth.

(2) Where:

(a) a liability arises in respect of land at a time when it is Territory Land; and

(b) the liability arises from a covenant given by the Commonwealth at any time in its capacity as owner of the land;

the liability is vested in the Territory and ceases to be a liability of the Commonwealth.

31 Money in respect of land

(1) Where any money would, apart from this section, be payable to the Commonwealth in respect of any land in discharge of a liability existing at a time when the land is Territory Land, the money is payable to the Territory instead of the Commonwealth.

(2) Where any Territory Land that is not subject to a leasehold interest becomes National Land, the Commonwealth shall pay to the Territory an amount equal to the reasonable compensation that would be payable to the Territory under the Lands Acquisition Act if:

(a) immediately before the land became National Land, the Territory had been granted a leasehold interest in the land by the Commonwealth for the maximum term allowable under subsection 29(3);

(b) that interest was granted for any purpose for which a leasehold interest in that land could be granted;

(c) that interest was subject to any estate in the land existing immediately before it became National Land;

(d) subject to paragraph (c), the Territory was not bound by any express or implied covenants (including covenants to pay rent or rates) in relation to that interest; and

(e) when the land became National Land, that interest was acquired by the Commonwealth.

(3) Subsection (2) applies only to Territory Land that becomes National Land at any time after the first declaration of National Land.

31A Minerals in Territory Land

(1) In this section:

mineral means a naturally occurring substance or mixture of substances, whether in a solid, liquid or gaseous state.

(2) So long as any land in the Territory is Territory Land, all rights of the Commonwealth in relation to minerals in that land are vested in the Territory.

32 Application of Lands Acquisition Act to Territory Land

(1) The Lands Acquisition Act does not apply in relation to:

(a) anything done by or on behalf of the Commonwealth or a Commonwealth authority in respect of an interest in Territory Land while the interest is vested in the Commonwealth or a Commonwealth authority; or

(b) the acquisition (compulsory or not) of an estate in Territory Land by the Territory, whether acting on behalf of the Commonwealth or not.

(2) In subsection (1):

estate includes the interest of the Commonwealth in land in which no person other than the Commonwealth holds an estate.

Part VI—Constitution and meetings of authority

33 Constitution of Authority

(1) The Authority shall consist of a Chairperson and 4 other members, as provided by this section.

(2) The Chairperson may be appointed on a full-time or part-time basis.

(3) If the Chairperson is appointed on a full-time basis, the Chairperson shall also be the Chief Executive and there shall be 4 non-executive members.

(4) If the Chairperson is appointed on a part-time basis, there shall be a separate Chief Executive and 3 other non-executive members.

(5) The Chief Executive (if any) appointed under subsection (4) shall be appointed on a full-time basis.

(6) The non-executive members shall be appointed on a part-time basis.

(7) The members shall be appointed by the Governor-General, and hold office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Governor-General.

34 Vacancies not to invalidate actions of Authority

An act done by the Authority is not invalid merely because of a vacancy or vacancies in the membership of the Authority.

35 Remuneration

(1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

36 Period of appointment of members

(1) Subject to this Part, a member holds office for the period, not exceeding 5 years, specified in the instrument of appointment.

(2) A person appointed as a member is eligible for re-appointment.

37 Acting appointments

(1) The Minister may appoint a person to act as the full-time member during any period, or during all periods:

(a) when there is a vacancy in the office of that member, whether or not an appointment has previously been made to the office; or

(b) when that member is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

(2) Where there is, or is to be, a part-time Chairperson, the Minister may appoint a member to act as the Chairperson during any period, or during all periods:

(a) when there is a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or

(b) when the Chairperson is absent from Australia or is, for any other reason, unable to perform the duties of the office.

(3) The Minister may appoint a person to act as a non-executive member referred to in subsection 33(3) or (4) during any period, or during all periods:

(a) when there is a vacancy in the office of a non-executive member, whether or not an appointment has previously been made to the office; or

(b) when a non-executive member is acting as Chairperson, is absent from Australia or is, for any other reason, unable to perform the duties of the office.

(4) A person appointed to act during a vacancy shall not continue so to act for a continuous period of more than 12 months.

(5) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:

(a) the occasion for the appointment had not arisen;

(b) there was a defect or irregularity in or in connection with the appointment;

(c) the appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

38 Leave of absence

(1) A full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may:

(a) grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing; and

(b) grant a part-time member leave to be absent from a meeting or meetings of the Authority.

39 Outside employment

(1) A full-time member shall not engage in paid employment outside his or her duties except with the approval of the Minister.

(2) If a part-time member engages in paid employment that, in the opinion of the Minister, conflicts with the proper performance of his or her duties, the Minister may, in writing, direct the member to cease that employment.

40 Resignation of members

A member may resign by written instrument delivered to the Governor-General.

41 Termination of appointments

(1) The Governor-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) If:

(a) a member becomes bankrupt, applies to take the benefit of any law for relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;

(b) a full-time member is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months;

(c) a part-time member is absent, except on leave of absence granted under section 38, from 3 consecutive meetings of the Authority; or

(d) a member fails, without reasonable excuse, to comply with section 42;

the Governor-General may terminate the appointment of the member.

42 Disclosure of interests

(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Authority shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Authority.

(2) A disclosure shall be recorded in the minutes of the meeting and the member shall not, unless the Minister or the Authority otherwise determines:

(a) be present during any deliberation of the Authority with respect to that matter; or

(b) take part in any decision of the Authority with respect to that matter.

(3) For the purpose of making such a determination by the Authority in relation to a member who has made a disclosure, a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:

(a) be present during any deliberation of the Authority for the purpose of making the determination; or

(b) take part in making the determination.

43 Meetings

(1) The Authority shall hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chairperson:

(a) may convene a meeting at any time; and

(b) shall convene a meeting on receipt of a written request signed by not less than 2 other members.

(3) The Minister may convene a meeting at any time.

(4) The Chairperson shall preside at all meetings at which he or she is present.

(5) Where the Chairperson is not present at a meeting, the members present shall appoint one of their number to preside.

(6) At a meeting, 3 members constitute a quorum, but, subject to subsection (6A), one of them must be the full-time member.

(6A) If the full-time member is precluded from being present by section 42, then:

(a) if the full-time member is the Chairperson—any 3 members constitute a quorum; or

(b) if the full-time member is not the Chairperson—the Chairperson and any other 2 members constitute a quorum.

(7) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting.

(8) The person presiding at a meeting has a deliberative vote and, if necessary, also has a casting vote.

(9) The Authority shall keep minutes of its meetings.

44 Advisory committees

On the recommendation of the Authority, the Minister may appoint committees to give advice to the Authority or to assist it in the performance of its functions.

Part VII—Administration of authority

45 Chief Executive

There shall be a Chief Executive of the Authority, who shall be appointed as provided by section 33.

46 Functions of Chief Executive

The Chief Executive has the responsibility of managing the affairs of the Authority under the general directions of the Authority.

47 Staff of Authority

(1) The staff of the Authority shall be persons engaged under the *Public Service Act 1999.*

(2) For the purposes of the *Public Service Act 1999*:

(a) the Chief Executive and the APS employees assisting the Chief Executive together constitute a Statutory Agency; and

(b) the Chief Executive is the Head of that Statutory Agency.

(3) The Chief Executive may, on behalf of the Authority, arrange with a person:

(a) for the services of officers or employees of the person to be made available for the purposes of the Authority; or

(b) for the services of a member of the staff of the Authority to be made available for the purposes of the person.

48 Consultants

The Authority may engage such consultants as it thinks necessary.

49 Delegations

The Authority may delegate all or any of its powers under this Act to:

(a) the Chief Executive;

(b) a member of the staff of the Authority; or

(c) a person whose services have been made available under section 47.

50 Annual report

(1) As soon as practicable after each 30 June, the Authority shall prepare and submit to the Minister a report on its operations during the year ended on that date.

(2) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after receipt of the report by the Minister.

Part VIII—Miscellaneous

51 Commonwealth to indemnify Territory

(1) The Commonwealth shall indemnify the Territory, and keep the Territory indemnified, against any action, claim or demand brought or made against the Territory in respect of any act done or omitted to be done by or on behalf of the Commonwealth, being an action, claim or demand that, apart from this Act, could be brought or made against the Commonwealth.

(2) The indemnity extends to damages, expenses and costs arising from, connected with or consequential upon such an action, claim or demand.

(3) This section does not apply to an action, claim or demand in respect of a liability referred to in section 30.

52 Application of Acts Interpretation Act

Neither paragraph 46(1)(a) of the *Acts Interpretation Act 1901* nor paragraph 13(1)(a) or (b) of the *Legislative Instruments Act 2003* applies to:

(a) the Territory Plan; or

(b) an instrument made, granted or issued under paragraph 29(1)(b).

53 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may provide for:

(a) the charging and recovery of fees in relation to proposals submitted to the Authority for approval under this Act; and

(b) the remission, refund or waiver of those fees, or the exemption of persons from payment of those fees.

(3) The amount of a fee:

(a) must be reasonably related to the expenses incurred or to be incurred by the Authority in connection with the proposal in question; and

(b) must not be such as to amount to taxation.

Part IX—Repeals and amendments

54 Repeal of National Capital Development Commission Acts

The following Acts are repealed:
National Capital Development Commission Act 1957
National Capital Development Commission Act 1960
National Capital Development Commission Act 1975.

55 Consequential amendments

The Acts set out in the Schedule are amended as specified in the Schedule, but the amendments commence as provided by section 2.

Part X—Transitional provisions

Division 1—Preliminary

56 Definitions for this Part

In this Part:

commencing day means the day on which this Part commences.

Finance Minister means the Minister administering the *Financial Management and Accountability Act 1997*.

interim authority means the authority established by the *Interim Territory Planning Ordinance 1988* of the Territory.

National Capital Plan means the Plan prepared under Part III, and includes a stage or part of that Plan.

NCDC means the National Capital Development Commission established under the NCDC Act.

NCDC Act means the *National Capital Development Commission Act 1957*.

NCDC policy means a policy that:

(a) relates to the planning and development of the Territory; and

(b) has been established by the NCDC under the NCDC Act;

and includes a part of such a policy.

transition period means the period starting on the commencing day and ending on the day declared under section 57.

57 Declaration of end of transition period

(1) When the Governor-General is satisfied that the National Capital Plan sufficiently covers the Territory, the Governor-General shall, by Proclamation, declare that the transition period ends on a day specified in the Proclamation.

(2) The day specified shall not be later than 2 years after Self-Government Day.

(3) On the first sitting day of a House of the Parliament after the end of the transition period, the Minister shall cause to be laid before that House:

(a) a copy of the Proclamation; and

(b) a statement identifying the NCDC policies still in effect at the end of that period.

Division 2—Before establishment of Executive and Territory planning authority

58 Interim authority may take preliminary steps to prepare Territory plan

Until the Territory planning authority is established, the interim authority may take preliminary steps to prepare the Territory plan in accordance with section 25.

59 Procedures before establishment of Executive

(1) Until the establishment of the Executive on Self-Government Day:

(a) references in this Part to the Executive shall be read as references to the Minister;

(b) subsection 70(2) has no effect; and

(c) references in subsections 74(1) and 79(1) to the *Territory Gazette* shall be read as references to the *Commonwealth Gazette*.

(2) Section 78 does not apply to a draft variation submitted or re-submitted to the Minister under section 75 or 77 as affected by this section.

(3) Any steps taken under this Part by the Minister before Self-Government Day have effect on and after that Day as if they had been taken by the Executive.

60 Procedures before establishment of Territory planning authority

(1) Until the establishment of the Territory planning authority under section 25, references in this Part to the Territory planning authority shall be read as references to the interim authority.

(2) Any steps taken under this Part by the interim authority before the establishment of the Territory planning authority have effect after that establishment as if they had been taken by the Territory planning authority.

61 Application of Canberra Water Supply (Googong Dam) Act before establishment of Executive

(1) Until the establishment of the Executive on Self-Government Day:

(a) references in the *Canberra Water Supply (Googong Dam) Act 1974* to the Executive shall be read as references to the Minister;

(b) references in that Act to the Territory shall be read as references to the Commonwealth or a Commonwealth authority; and

(c) section 6A of that Act has no effect.

(2) Any steps taken under that Act by the Minister before Self-Government Day have effect on and after that Day as if they had been taken by the Executive.

Division 3—Continuation of NCDC policies

62 NCDC policies to continue in effect

Where:

(a) before the commencing day, an NCDC policy was in published form and had been notified in the *Commonwealth Gazette*; and

(b) the policy was in operation immediately before that day;

the policy continues in effect, subject to sections 65 and 66.

63 Administration of NCDC policies

(1) The Authority shall administer each NCDC policy to the extent that it relates to:

(a) Designated Areas; and

(b) any other functions of the Authority.

(2) The Territory planning authority shall administer each NCDC policy to the extent that it does not relate to the matters referred to in subsection (1).

64 Effect of NCDC policies during transition period

During the transition period, the Authority, the Territory or a Territory authority shall not do any act that is inconsistent with an NCDC policy while it is in effect under this Part.

65 Variation or revocation of NCDC policies during transition period

(1) During the transition period, an NCDC policy still in effect may be:

(a) revoked wholly or partly by the National Capital Plan; or

(b) varied under Division 4 or 5.

(2) If:

(a) a provision of the National Capital Plan (in this subsection called the ***revoking provision***) has revoked an NCDC policy or part of such a policy; and

(b) the revoking provision is disallowed under section 22;

the disallowance revives the policy, or the part of the policy, as the case may be, from the date of the disallowance as if the revoking provision had not taken effect.

66 NCDC policies after transition period

(1) If:

(a) at the end of the transition period, an NCDC policy, or part of such a policy, is still in effect;

(b) the policy, or that part of the policy, is such that it could be part of the National Capital Plan; and

(c) either House of the Parliament, within 6 sitting days of that House after the end of the transition period, passes a resolution that the policy, or that part of the policy, is to become part of the National Capital Plan;

the policy, or that part of the policy, becomes part of the National Capital Plan, and may be varied or revoked accordingly.

(2) On the day after the last day on which a resolution could be passed as described in paragraph (1)(c), an NCDC policy, or part of such a policy, that is still in effect and has not become part of the National Capital Plan under subsection (1) shall be taken to be part of the Territory Plan, and may be varied or revoked accordingly.

Division 4—Variation of NCDC policies by Authority

67 Variation of NCDC policies by Authority during transition period

(1) At any time during the transition period, the Authority may vary an NCDC policy if it considers that it is in the interests of the National Capital to do so.

(2) A variation by the Authority:

(a) shall relate to one or more particular blocks or sections of land in the Territory; and

(b) shall be made in accordance with this Division.

68 Public consultation

(1) After preparing a draft variation, the Authority shall:

(a) submit a copy to the Territory planning authority;

(b) by notice published in the *Commonwealth Gazette* and in the principal daily newspaper published and circulated in the Territory:

(i) state that the draft variation has been prepared, and that copies will be available for public inspection at the places and times, and during the period, specified in the notice; and

(ii) invite interested persons to make written representations about the draft variation within a reasonable period specified in the notice and specify the address to which the representations may be forwarded; and

(c) make the draft variation available for inspection accordingly.

(2) The Authority shall:

(a) consult with the Territory planning authority about the draft variation and have regard to any views expressed by it; and

(b) have regard to any representations made by the public;

and, if it thinks fit, may alter the draft variation.

69 Submission to Minister for approval

The Authority shall submit the draft variation to the Minister for approval, together with a written report on its consultations under section 68.

70 Minister's powers

(1) Subject to subsection (2), on receipt of the draft variation submitted for approval, the Minister shall, after such consultation, if any, as the Minister thinks necessary:

(a) approve the draft variation without alteration; or

(b) refer the draft variation to the Authority with either or both of the following:

(i) directions to conduct further consultations;

(ii) suggested alterations.

(2) If the Authority reports under section 69 that the Territory planning authority objects to any aspect of the draft variation, the Minister shall not act under subsection (1) except after consultation with the Executive.

71 Action on referral by Minister

If the Minister refers the draft variation to the Authority, the Authority shall:

(a) reconsider the draft variation;

(b) have any further consultations directed by the Minister and such other consultations as the Authority thinks necessary;

(c) consider any suggestions made by the Minister;

(d) if it thinks fit, alter the draft variation; and

(e) re-submit the draft variation to the Minister for approval;

and subsection 70(1) and, if necessary, this section, apply again.

72 Publication and commencement of approved variation

(1) Where the Minister approves the draft variation, the Minister shall publish notice of the approval in the *Commonwealth Gazette* and specify the address where copies of the variation may be inspected and bought.

(2) The variation takes effect on publication of the notice of approval.

Division 5—Variation of NCDC policies by Territory planning authority

73 NCDC policies may be varied by Territory planning authority

(1) At any time during the transition period, the Territory planning authority may vary an NCDC policy.

(2) A variation by the Territory planning authority:

(a) shall relate to one or more particular blocks or sections of land in the Territory; and

(b) shall be made in accordance with this Division.

(3) A variation has no effect to the extent that it is inconsistent with a variation made by the Authority under Division 4.

74 Public consultation

(1) After preparing a draft variation, the Territory planning authority shall:

(a) submit a copy to the National Capital Authority;

(b) by notice published in the *Territory Gazette* and in the principal daily newspaper published and circulated in the Territory:

(i) state that the draft variation has been prepared, and that copies will be available for public inspection at the places and times, and during the period, specified in the notice; and

(ii) invite interested persons to make written representations about the draft variation within a reasonable period specified in the notice and specify the address to which the representations may be forwarded; and

(c) make the draft variation available for inspection accordingly.

(2) The Territory planning authority shall:

(a) consult with the National Capital Authority about the draft variation and have regard to any views expressed by the last-mentioned Authority; and

(b) have regard to any representations made by the public;

and, if it thinks fit, may alter the draft variation.

75 Submission to Executive for approval

The Territory planning authority shall submit the draft variation to the Executive for approval, together with a written report on its consultations under section 74.

76 Executive's powers

After receipt of the draft variation submitted for approval, the Executive shall, after such consultation, if any, as the Executive thinks necessary:

(a) approve the draft variation without alteration; or

(b) refer the draft variation to the Territory planning authority with either or both of the following:

(i) directions to conduct further consultations;

(ii) suggested alterations.

77 Action on referral by Executive

If the Executive refers the draft variation to the Territory planning authority, the authority shall:

(a) reconsider the draft variation;

(b) have any further consultations directed by the Executive and such other consultations as the authority thinks necessary;

(c) consider any suggestions made by the Executive;

(d) if it thinks fit, alter the draft variation; and

(e) re-submit the draft variation to the Executive for approval;

and section 76 and, if necessary, this section, apply again.

78 Submission to Minister

(1) If the Executive approves the draft variation, the Executive shall submit it to the Minister.

(2) Within 14 days after receipt of the draft variation, the Minister may give a certificate in writing that, in the interests of the National Capital, it would be undesirable to approve the variation.

(3) If the Minister gives such a certificate within those 14 days, the Executive shall not proceed under section 79.

(4) If, at the end of those 14 days, the Minister has not given such a certificate, the Executive may proceed under section 79.

79 Publication and commencement of approved variation

(1) The Executive shall publish notice of the approval of the draft variation in the *Territory Gazette* and specify the address where copies of the variation may be inspected and bought.

(2) The variation takes effect on publication of the notice of approval.

Division 6—Plan of lay-out of the City of Canberra

80 Modification of section 12A of *Seat of Government (Administration) Act 1910*

Until the repeal of section 12A of the *Seat of Government (Administration) Act 1910*, that section has effect as if:

(a) after subsection (1) the following subsection were inserted:

"(1A) The Minister shall not act under subsection (1) except after consultation with the Australian Capital Territory Executive.";

(b) after subsection (2) the following subsection were inserted:

"(2A) The statement laid before each House of the Parliament under subsection (2) shall include any views expressed by the Australian Capital Territory Executive in consultations held under subsection (1A).";

(c) subsection (4) were amended by omitting "The Minister" and substituting "A prescribed body";

(d) the following subsection were added at the end:

"(5) In subsection (4):

prescribed body means:

(a) the Commonwealth;

(b) a Commonwealth authority as defined by the *Australian Capital Territory Planning and Land Management Act 1988*;

(c) a Territory authority as defined by that Act; or

(d) the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988*.".

Division 7—Transfers following repeal of NCDC Act

81 Transfer of persons employed by NCDC

For the purposes of the application of subsection 81B(3) of the *Public Service Act 1922* a person who, immediately before the repeal of the NCDC Act by this Act:

(a) was employed by the NCDC; and

(b) was an unattached officer for the purposes of the *Public Service Act 1922*;

shall be taken to have ceased, immediately before that repeal, to be a person appointed or employed under the *Public Service Act 1922*.

82 Contracts

Where, immediately before the repeal of the NCDC Act, a contract was subsisting and the NCDC was a party to the contract, the Commonwealth is substituted for the NCDC as a party to the contract.

83 Assets, rights and liabilities

(1) Subject to section 82, assets, rights and liabilities of the NCDC existing immediately before the repeal of the NCDC Act vest in a body or bodies specified in writing by the Minister.

(2) In specifying a body for the purposes of subsection (1), the Minister shall have regard to which body or bodies will perform the relevant functions of the NCDC after the repeal of the NCDC Act.

(3) In this section:

body includes the Commonwealth.

84 Court proceedings

Where:

(a) proceedings in a court by or against the NCDC were pending immediately before the repeal of the NCDC Act; and

(b) the proceedings concern a right or liability vested in the Commonwealth or another body, or both, under section 82 or 83;

the proceedings may be continued, subject to the direction of the court, by or against the Commonwealth, that other body, or both, as the case requires.

85 Transfer of appropriated money

(1) Where any money has been, or is, appropriated by an Appropriation Act for the purposes of the NCDC, the Act shall be taken to have appropriated, or to appropriate, the money for the purposes of the Department of Administrative Services as set out in Subdivision 6 of Division 805 in the relevant Schedule to that Act.

(2) The money shall be apportioned between any or all of the items of that Subdivision as the Finance Minister determines in writing.

(3) This section does not apply to:

(a) money drawn by the NCDC before the repeal of the NCDC Act; or

(b) money paid or payable at any time in discharge of expenditure incurred by the NCDC before the repeal of the NCDC Act.

(4) In this section:

Appropriation Act means an Act appropriating money for expenditure in respect of the financial year ending on 30 June 1989, and includes an Act appropriating money, by way of interim provision, for such expenditure.

Schedule—Consequential amendments

Section 55

Note:

The amendments made by this Schedule are incorporated in the current consolidations on ComLaw.

Canberra Water Supply (Googong Dam) Act 1974

Parliament House Construction Authority Act 1979
[repealed by Act No. 37, 1992, s. 4]

Public Works Committee Act 1969

Seat of Government (Administration) Act 1910

For access to the wording of the amendments made by this Schedule *see* Act No. 108, 1988.

Notes to the *Australian Capital Territory (Planning and Land Management) Act 1988*

Note 1

The *Australian Capital Territory (Planning and Land Management) Act 1988* as shown in this compilation comprises Act No. 108, 1988 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 1 October 2001 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Australian Capital Territory (Planning and Land Management) Act 1988	108, 1988	6 Dec 1988	*(a)*	
Arts, Environment, Tourism and Territories Legislation Amendment Act 1990	88, 1990	20 Nov 1990	Part 3 (ss. 5, 6): *(b)*	—
Australian Capital Territory (Planning and Land Management) Amendment Act 1990	104, 1990	18 Dec 1990	*(c)*	—
Arts, Sport, Environment, Tourism and Territories Legislation Amendment Act (No. 2) 1991	179, 1991	25 Nov 1991	25 Nov 1991	S. 3(2)
Arts, Sport, Environment and Territories Legislation Amendment Act 1992	21, 1992	10 Apr 1992	8 May 1992	—
Arts, Environment and Territories Legislation Amendment Act 1992	130, 1992	24 Oct 1992	24 Oct 1992	—
Arts, Environment and Territories Legislation Amendment Act 1993	6, 1994	18 Jan 1994	S. 5: Royal Assent *(d)*	—
Environment, Sport and Territories Legislation Amendment Act 1997	118, 1997	7 July 1997	Schedule 1 (items 1–4): 7 July 1997 *(e)*	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 141–143): 5 Dec 1999 (*see Gazette* 1999, No. S584) *(f)*	—
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch 1 (item 97) [*see* Table A]
Australian Capital Territory Legislation Amendment Act 2003	1, 2003	24 Feb 2003	25 Feb 2003	—
Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003	140, 2003	17 Dec 2003	S. 4 and Schedule 1 (item 10): *(g)*	S. 4 [*see* Table A]
Airports Amendment Act 2007	59, 2007	15 Apr 2007	Schedule 1: 13 May 2007 Remainder: Royal Assent	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 5 (items 18, 19): 19 Apr 2011	—

Act Notes

(a) Section 2 of the *Australian Capital Territory (Planning and Land Management) Act 1988* provides as follows:

2.(1) Sections 1, 2 and 55 commence on the day on which this Act receives the Royal Assent.

(2) The amendment of the *Seat of Government (Administration) Act 1910* contained in the Schedule commences on the day declared under section 57.

(3) The remaining provisions of this Act (including the other amendments in the Schedule) commence on a day or days to be fixed by Proclamation.

The date fixed in pursuance of subsection 2(2) was 12 March 1991 (*see Gazette* 1991, No. S62).

In pursuance of subsection 2(3) the date fixed for sections 25, 26, 28-32, 51 and 52 was 11 May 1989 (*see Gazette* 1989, No. S164); for the remaining sections the date fixed was 31 January 1989 (*see Gazette* 1989, No. S39).

(b) The *Australian Capital Territory (Planning and Land Management) Act 1988* was amended by Part 3 (sections 5 and 6) only of the *Arts, Environment, Tourism and Territories Legislation Amendment Act 1990*, subsection 2(3) of which provides as follows:

(3) Part 3 is taken to have commenced immediately after the commencement of section 55 of the *Australian Capital Territory (Planning and Land Management) Act 1989*.

Section 55 commenced on 31 January 1989 (*see Gazette* 1989, No. S39).

(c) 2. This Act is taken to have commenced immediately after the commencement of section 57 of the Principal Act.

Section 57 commenced on 31 January 1989 (*see Gazette* 1989, No. S39).

(d) The *Australian Capital Territory (Planning and Land Management) Act 1988* was amended by section 5 only of the *Arts, Environment and Territories Legislation Amendment Act1993*, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(e) The *Australian Capital Territory (Planning and Land Management) Act 1988* was amended by Schedule 1 (items 1–4) only of the *Environment, Sport and Territories Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.

(f) The *Australian Capital Territory (Planning and Land Management) Act 1988* was amended by Schedule 1 (items 141–143) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, ***commencing time*** means the time when the *Public Service Act 1999* commences.

(2) Subject to this section, this Act commences at the commencing time.

(g) Subsection 2(1) (items 2 and 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Act Notes

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
2. Sections 4 and 5	Immediately after the commencement of sections 3 to 62 of the *Legislative Instruments Act 2003*	1 January 2005
3. Schedule 1	Immediately after the commencement of sections 3 to 62 of the *Legislative Instruments Act 2003*	1 January 2005

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
S. 4	am. No. 118, 1997; No. 59, 2007
Part II	
S. 5	rs. No. 118, 1997
S. 6	am. No. 130, 1992
Part III	
Division 1	
Note to s. 10	ad. No. 59, 2007
Division 2	
S. 20A	ad. No. 21, 1992
Part V	
S. 31A	ad. No. 6, 1994
Part VI	
S. 36	am. No. 159, 2001
S. 38	rs. No. 179, 1991 am. No. 146, 1999
S. 41	am. No. 179, 1991
S. 43	am. No. 1, 2003
Part VII	
S. 47	am. No. 146, 1999
Part VIII	
S. 52	am. No. 140, 2003
S. 53	am. No. 21, 1992
Part IX	
S. 55	am. No. 88, 1990
Part X	
Division 1	
S. 56	am. No. 5, 2011
S. 57	am. No. 104, 1990
Division 5	
S. 74	am. No. 118, 1997
Division 7	
S. 85	am. No. 5, 2011

Table A

Table A

Application, saving or transitional provisions

Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001 (No. 159, 2001)

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003 (No. 140, 2003)

4 Transitional provisions

(1) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:

(a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and

(b) is expressed to require that instrument to be published as a statutory rule under the *Statutory Rules Publication Act 1903*;

any instrument so made is taken to be an instrument referred to in paragraph 6(b) of the *Legislative Instruments Act 2003* despite the repeal by this Act of the *Statutory Rules Publication Act 1903*.

(2) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:

(a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and

(b) is expressed to declare that instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*;

any instrument so made is taken to be an instrument referred to in subparagraph 6(d)(i) of the *Legislative Instruments Act 2003*

despite the repeal by this Act of section 46A of the *Acts Interpretation Act 1901*.

(3) If legislation that is in force immediately before the commencing day or that is introduced into the Parliament before that day but that commences on or after that day:

(a) authorised or authorises an instrument to be made in the exercise of a power delegated by the Parliament that adversely affects the rights of a person, or results in the imposition of liabilities on a person; and

(b) provided or provides that the instrument has effect, to the extent that it adversely affects those rights or results in the imposition of those liabilities, despite subsection 48(2) of the *Acts Interpretation Act 1901*, before the date of its notification in the *Gazette*;

that legislation is to be construed, on and after the commencing day or the day of its commencement, whichever last occurs, as if it had provided instead that the instrument, to the extent that it adversely affects those rights or results in the imposition of those liabilities, has effect, despite subsection 12(2) of the *Legislative Instruments Act 2003*, before its registration under that Act.

(4) If:

(a) legislation (the ***enabling legislation***) in force immediately before the commencing day:

(i) authorises the making of an instrument; and

(ii) does not declare such an instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* but nonetheless makes provision for its disallowance by the application, with or without modification, of the provisions of Part XII of that Act; and

(b) an instrument is made in the exercise of that authority on or after the commencing day; and

(c) the instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* or otherwise;

the enabling legislation has effect, on and after the commencing day, as if:

Table A

(d) it had declared such instruments to be disallowable instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*; and

(e) it had provided for such modifications of the operation of that section as are necessary to ensure that the effect of the applied provisions of Part XII of the *Acts Interpretation Act 1901* is preserved.

(5) In this section:

commencing day means the commencing day within the meaning of the *Legislative Instruments Act 2003.*