

EXPLANATORY STATEMENT

ISSUED UNDER THE AUTHORITY OF THE MINISTER FOR THE ARTS,
TOURISM AND TERRITORIES

A.C.T. Self-Government (Consequential Provisions) Act 1988

A.C.T. Self-Government (Consequential Provisions) Regulations (Amendment)

1989 No. 395

Subsection 31(1) of the A.C.T. Self-Government (Consequential Provisions) Act 1988 provides that the Governor-General may make regulations making provision (including provision by way of modifications of an Act) in relation to any matter arising from, connected with or consequential upon the establishment of the Territory as a body politic under the Crown.

The Regulations provide for the modification of the following Acts:

Australian Bureau of Statistics Act 1975

Australian Wine & Brandy Corporation Act 1980

Automotive Industry Authority Act 1984

Dairy Produce Act 1986

Fishing Industry Research and Development Act 1987

Home and Community Health Care Act 1985

Petroleum Retail Marketing Act 1984

Public Service Act 1922

States Grants (Nature Conservation) Act 1974

States and Northern Territory Grants (Rural Adjustment) Act 1988

Urban and Regional Development (Financial Assistance) Act 1974

The details of the Regulations and the purpose of the Regulations are in the attachment. Most of the Regulations modify the principal Acts to place the ACT in the same position as the States and the Northern Territory.

ATTACHMENT

Details of the A.C.T. Self-Government (Consequential Provisions) Regulations (Amendment)

Regulation 1 provides that the Regulations shall be taken to have commenced on 11 May 1989 the date of Self-Government in the Australian Capital Territory.

Regulation 2 provides that the following modifications to the Acts are inserted in Schedule 1 of the ACT Self-Government (Consequential Provisions) Regulations:

Australian Bureau of Statistics Act 1975

Subsection 19(3) is modified to provide that the Minister shall appoint to the Australian Statistics Advisory Council one and only one person nominated by the Chief Minister of the Australian Capital Territory. The Premiers of each State and the Chief Minister of the Northern Territory may nominate one and only one person to be appointed to this council.

This modification places the Australian Capital Territory in the same position as the States and the Northern Territory in the application of this Act.

Australian Wine & Brandy Corporation Act 1980

Subsection 40(9) is modified to provide that in section 40 the definition of "Parliament" includes the Legislative Assembly of the Australian Capital Territory and that the definition of "State" includes the Australian Capital Territory (presently "Parliament" includes the Legislative Assembly of the Northern Territory and "State" includes the Northern Territory).

This modification places the Australian Capital Territory in the same position as the States and the Northern Territory in the application of this Act.

Automotive Industry Authority Act 1984

Subsection 25(5) is modified to provide that a reference to "State" in section 25 includes a reference to the Australian Capital Territory (presently a reference to "State" includes the Northern Territory).

This modification places the Australian Capital Territory in the same position as the States and the Northern Territory in the application of this Act.

Dairy Produce Act 1986

Subsection 36(5) is modified to provide that the definition of "Parliament" includes the Legislative Assembly of the Australian Capital Territory and that the definition of "State" includes the Australian Capital Territory (presently "Parliament" includes the Legislative Assembly of the Northern Territory and "State" includes the Northern Territory).

This modification places the Australian Capital Territory in the same position as the States and the Northern Territory in the application of this Act.

Fishing Industry Research and Development Act 1987

Section 4 (the Interpretation Section) is modified to provide that for the purpose of this Act the definition of:

- "Parliament" includes in relation to the Australian Capital Territory the Legislative Assembly of the Australian Capital Territory (presently in relation to the Northern Territory the Legislative Assembly of the Northern Territory is included).
- "State" includes a reference to the Australian Capital Territory (presently a reference to the Northern Territory is included).

This modification places the Australian Capital Territory in the same position as the States and the Northern Territory in the application of this Act.

Home and Community Health Care Act 1985

Subsection 3(4) is modified to provide that a reference to "State" in section 3 includes a reference to the Australian Capital Territory. A reference to "State" includes the Northern Territory.

This modification will allow the Commonwealth to make an agreement with the Australian Capital Territory in accordance with this Act, in the same way it can make an agreement with any of the States or the Northern Territory.

Clause 34 of the Schedule to the Act (the Agreement) is modified to provide that a reference in this clause to "the Department nominated by the State Minister" includes, in the case of the Australian Capital Territory, the administrative unit of the Australian Capital Territory Administration nominated by the Australian Capital Territory Minister.

This modification places the Australian Capital Territory in the same position as the States by taking into account its different administrative structure.

Petroleum Retail Marketing Act 1984

Subsection 7(4) is modified to provide that a reference in section 7 to "State" includes the Australian Capital Territory. A reference to "State" includes the Northern Territory.

This modification places the Australian Capital Territory in the same position as the States and Northern Territory. In particular, an authority of the Australian Capital Territory is in the same position as an authority of a State for the purposes of the Act.

Section 7 is modified by the addition of subsection 7(5). This provides that a reference to a law of the Commonwealth or a law of a Territory in subsection 7(4) does not include a reference to an enactment within the meaning of the A.C.T. Self-Government Act 1988, the A.C.T. Self-Government Act 1988, the Canberra Water Supply (Googong Dam) Act 1974 and certain sections of the Australian Capital Territory (Planning and Land Management) Act 1988.

This modification has the effect of excluding as "an authority of the Commonwealth" while including as "an authority of a State" authorities or bodies established under these laws. The authorities established under these laws are in essence authorities of the Australian Capital Territory.

Public Service Act 1922

Subsection 7(1) (paragraph (b) of the definition of "Commonwealth authority") is modified by exempting as Commonwealth authorities those authorities established by an enactment within the meaning of the Australian Capital Territory (Self-Government) Act 1988 (presently authorities established under laws of the Northern Territory are also exempt).

This is done for consistency with the A.C.T. Self-Government (Consequential Provisions) Act 1988 which amends this definition in paragraph 7(1)(a) of the Act.

Paragraphs 22B(14)(b) and 22C(13)(b) are omitted. These referred to the Commonwealth Teaching Service which no longer exists.

Subsection 87(1) (an interpretation section) is modified to provide that a reference to "Commonwealth office" includes an office or appointment (other than an office of an Australian Capital Territory Minister) the holder of which is appointed by the Australian Capital Territory Executive or by an Australian Capital Territory Minister under an Australian Capital Territory enactment.

Paragraph 87(2)(c) is omitted. This amendment excludes reference to employment as a member of the Commonwealth Teaching Service, which no longer exists.

Paragraph 87(2)(j) is modified to provide that a reference in Part IV of the Act to employment by a Commonwealth authority does not include employment by the Public Service of the Australian Capital Territory (presently employment by a Commonwealth authority does not include employment by the Public Service of the Northern Territory).

Subsection 87(2) is modified by adding three paragraphs [(ka), (kb) and (kc)] so that a reference to employment by a Commonwealth authority includes:

- employment as a member of the Australian Capital Teaching service;
- employment by the Australian Capital Territory as a member of staff or a member of the Legislative Assembly of the Australian Capital Territory.

Paragraph 87J(2)(a) is omitted. This has the effect of deleting "employment as a member of the Commonwealth Teaching Service" from a reference to employment by a statutory authority.

The Act is modified by inserting a new Part IVA which deals with officers and employees who are engaged or employed by members of the Legislative Assembly of the Australian Capital Territory.

In Part IVA, section 87ZH (the interpretation section) provides that certain terms have a specific meaning, relating to the Australian Capital Territory.

Section 87ZI (the section titled: Rights of Officers) provides that an officer employed by a member of the Legislative Assembly upon termination of that employment has certain rights to apply for re-integration into the Australian Capital Territory Public Service.

Subsection 87ZI(1) provides the manner and the period in which an officer can apply for a determination under this section.

Subsections 87ZI(2)-87ZI(5) provides the method of dealing with applications made by an officer for a determination. Upon receiving an application it must be referred to a Re-Integration Assessment Committee. The Committee inquires into the application having regard to the Public Service position previously held by the officer, the officer's length of service, the duties performed by the officer and other relevant factors. The Committee must determine the classification of and the salary to be paid to the officer.

Section 87ZJ (the section titled: Rights of Employees) provides that an employee, engaged as a consultant by a Minister or employed by an Assembly member will be treated as though leave without pay has been taken. However if the employee was employed for a fixed term or to complete a fixed task, employment will be taken to have ceased when the term has expired or the task has been completed.

States Grants (Nature Conservation) Act 1974

Section 3 of the States Grants (Nature Conservation) Act 1974 is modified by inserting a definition of "State" which includes a reference to the Australian Capital Territory.

This modification will permit the Commonwealth to make grants to the Australian Capital Territory. Under this Act, the Commonwealth funds approved conservation programs in the States.

States and Northern Territory Grants (Rural Adjustment) Act 1988

Section 3 (the Interpretation section) is modified to provide that a reference to "State" in the Act includes a reference to the Australian Capital Territory (presently a reference to "State" includes the Northern Territory). This modification places the Australian Capital Territory in the same position as the States and the Northern Territory in relation to this Act.

The Schedule to the Act (the proforma "Agreement") is modified to provide that:

- The introductory Recital to the Agreement includes the Australian Capital Territory (presently it includes the States and the Northern Territory). This modification makes it clear that the Australian Capital Territory may become a party to the Agreement.
- Recital (C) is modified by including the Australian Capital Territory (presently it includes the States and the Northern Territory). This modification outlines the assistance that will flow to the Australian Capital Territory as a party to the Agreement.
- Recital (D) is modified by including the Australian Capital Territory (presently it includes the States and the Northern Territory). This modification gives the Commonwealth, the authority to execute the agreement with the Australian Capital Territory and the ability to provide the Australian Capital Territory with financial assistance.

- Sub-clause 1(1) is modified to provide that in the Agreement the term "State" includes the Australian Capital Territory (presently it includes the Northern Territory), unless the term is used in such a manner so as not to include the Australian Capital Territory.
- Sub-clause 1(3) is modified by naming the Australian Capital Territory as a party to the Agreement. It also provides that the Agreement may come into force between the Commonwealth and the Australian Capital Territory irrespective of whether it comes into force between the Commonwealth and the other States or the Commonwealth and the Northern Territory.
- Sub-clause 3(1) is modified to provide that a reference to:
 - "farm enterprise" includes an enterprise carried on by a primary producer within any rural industry in the Australian Capital Territory (presently such a reference includes such enterprises in the States and the Northern Territory).
 - "farmer" includes a person engaged in a rural industry in the Australian Capital Territory (presently such a reference includes such a person in the States and the Northern Territory).

These modifications are necessary to prevent any doubt that may arise in relation to the applicability of these clauses to the Australian Capital Territory, given sub-clause 1(1) of the Agreement.

Urban and Regional Development (Financial Assistance) Act 1974

Section 3 is modified by inserting a definition to "State" and by providing a definition of "State" which includes the Australian Capital Territory.

This modification will make the Australian Capital Territory capable of benefiting in the same way as the States can from Commonwealth funding of approved programs under this Act.