

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ARTS, ENVIRONMENT, TOURISM AND TERRITORIES LEGISLATION
AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Arts, Sport,
the Environment, Tourism and Territories,
The Hon Ros Kelly MP)



**ARTS, ENVIRONMENT, TOURISM AND TERRITORIES LEGISLATION
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GENERAL OUTLINE

Amendments to the *Canberra Water Supply (Googong Dam) Act 1974* via the *Australian Capital Territory (Planning and Land Management) Act 1988* and the *Australian Film, Television and Radio School Act 1973* via the *Arts, Territories and Environment Legislation Amendment Act 1989* will rectify two minor technical errors.

The amendment to the *Australian Tourist Commission Act 1987* allows for the addition of one extra member to the Board of Directors of the Australian Tourist Commission. This will make possible a more broadly-based representation of persons with relevant skills, industry experience and background on the Board.

Amendments to the *National Gallery Act 1975* will permit the introduction by the Council of flexible, workable and responsible disposal mechanisms for works of art from the National Collection by removing the requirement that two independent experts be consulted as part of the disposal process.

The Bill amends the *National Parks and Wildlife Conservation Act 1975* to rectify administrative difficulties in dealing with certain offences under the Act.

Amendments to the *Protection of Movable Cultural Heritage Act 1986* will overcome operational difficulties that have arisen and make procedures involved in the heritage export controls scheme less onerous for the public collecting institutions.

Amendments to the *Public Lending Right Act 1985* will permit the Public Lending Right Committee to conduct its meetings by telephone conference, closed circuit television or other method of communication determined by the Committee, and will permit the Committee to exercise its powers without being affected by a vacancy in its membership.

Amendments to the *Seat of Government (Administration) Act 1910* will rectify a technical error that has resulted in the unintended loss of the Governor-General's Ordinance-making powers in respect of a number of ACT matters.

FINANCIAL IMPLICATIONS

There will be limited additional costs associated with the attendance of an extra Board member at meetings of the Australian Tourist Commission.

There will be a saving in costs associated with travel and sitting fees for the Public Lending Right Committee.

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PART 1 - PRELIMINARY

Clause 1: Short title

This clause provides that the Act may be cited as the *Arts, Environment, Tourism and Territories Legislation Amendment Act 1990*.

Clause 2: Commencement

This clause provides that Parts 1, 4, 5, 6, 7 and 8 commence on the day on which the Act receives Royal Assent. Part 2 is taken to have commenced immediately after section 6 of the *Arts, Territories and Environment Legislation Amendment Act 1989* commenced (19 June 1989). Part 3 is taken to have commenced immediately after section 55 of the *Australian Capital Territory (Planning and Land Management) Act 1989* commenced (6 December 1988). In Part 9, the new paragraph 12(1)(a) of the *Seat of Government (Administration) Act 1910* inserted by the Bill is taken to have commenced on 1 July 1990; the remainder of the Part is taken to have commenced immediately after section 32 of the *ACT Self-Government (Consequential Provisions) Act 1988* commenced (11 May 1989).

**PART 2 - AMENDMENT OF THE ARTS, TERRITORIES AND ENVIRONMENT
LEGISLATION AMENDMENT ACT 1989**

Clause 3: Principal Act

Clause 3 provides that the Principal Act is the *Arts, Territories and Environment Legislation Amendment Act 1989*.

Clause 4: Schedule 1

Clause 4 provides that Schedule 1 to the Principal Act is amended by omitting from paragraph (a) of the amendment to subsection 10(2) of the *Australian Film, Television and Radio School Act 1973* "second" and substituting "third". Subsection 10(2) will now read:

"Except as otherwise provided by this section, the student member holds office, subject to this Act, for a [instead of "the"] period of one year, and the term of office of the student member shall not commence before the expiration of the term of office of the member whose place he or she fills."

**PART 3 - AMENDMENT OF THE AUSTRALIAN CAPITAL TERRITORY
(PLANNING AND LAND MANAGEMENT) ACT 1988**

Clause 5: Principal Act

Clause 5 provides that the Principal Act is the *Australian Capital Territory (Planning and Land Management) Act 1988*.

Clause 6: Schedule

Clause 6 corrects an error in the Schedule to the Principal Act by omitting from the amendment of subsection 9(3) of the *Canberra Water Supply (Googong Dam) Act 1974* "Executive" and substituting "Executive may". Subsection 9(3) of the Act will now read:

"The Executive may, by its servants, agents or contractors, demolish, destroy or remove on or from land occupied in pursuance of subsection (1) any plant, machinery, equipment, goods, workshop, shed, building or road constructed, built, placed or erected on the land in pursuance of that subsection."

**PART 4 - AMENDMENT OF THE AUSTRALIAN TOURIST COMMISSION
ACT 1987**

Clause 7: Principal Act

Clause 7 provides that the Principal Act is the *Australian Tourist Commission Act 1987*.

Clause 8: Amendment of Section 12

Clause 8 amends subsection 12(e) of the Principal Act by omitting the number "5" and replacing it with "6". The effect of this amendment is to increase the size of the Board of Directors of the Australian Tourist Commission from nine to ten members.

The purpose of the amendment is to allow for an additional Board member, in order to achieve a better and more diverse mix of industry experience and relevant tourism marketing skills amongst the membership of the Board, and to provide for increased participation by suitably qualified persons who are representative of the wide diversity of interests within the tourism industry.

Subsection 12(e) of the Principal Act will now read:

"The Board of Directors consists of...6 [instead of "5"] other members."

PART 5 - AMENDMENTS OF THE NATIONAL GALLERY ACT 1975

Clause 9: Principal Act

Clause 9 provides that the Principal Act is the *National Gallery Act 1975*.

Clause 10: Disposal of works of art from national collection

Clause 10 amends section 9 of the Principal Act by omitting from subsection (1) "subsections (3) and (4)" and substituting "subsection (4)". It also amends section 9 by omitting subsection (3).

Subsection 9(3) required that, before disposal of a work of art, the Council of the Australian National Gallery (ANG) obtain reports from two independent experts on the importance of the work to the National Collection. The Council has found that this requirement can cause difficulties for the following reasons:

(i) Fees paid for such expert advice may exceed the value of the work under consideration for disposal; and

(ii) Expert advice is not always readily available particularly for international works and overseas opinions may be the only option. This can be time-consuming and expensive.

The Review of the ANG, considered by the Government in July 1989, proposed the development of procedures for disposal action which the Council has since developed and put in place. These procedures provide for a responsible, flexible and workable mechanism, and allow sufficient safeguards to protect works of art from wrongful disposal. The requirement that all disposals require Ministerial approval remains in the Act.

PART 6 - AMENDMENT OF THE NATIONAL PARKS AND WILDLIFE CONSERVATION ACT 1975

Clause 11: Principal Act

Clause 11 provides that the Principal Act is the *National Parks and Wildlife Conservation Act 1975*.

Clause 12: Repeal of section 67

Clause 12 repeals section 67 of the Principal Act. Section 67 provides that offences against the Act (which by virtue of subsection 3(1) of the Act includes regulations made under the Act) may be prosecuted summarily if the defendant consents, or upon indictment. By failing to appear in answer to a summons, a defendant can prevent the proceedings from being determined summarily.

Repeal of the section will mean that the distinction between summary and indictable offences will be determined by the Crimes Act 1914 instead of by the Principal Act. Thus, an offence against the Principal Act for which the specified penalty is imprisonment for more than 12 months will be an indictable offence while all other offences, including offences against the regulations, will be summary offences. As all courts operate under legislation that enables summary hearings to proceed in the absence of the defendant, the failure of a defendant to attend in a case involving an offence against the regulations will no longer prevent the hearing from proceeding.

Repeal of the section will also result in loss of the provision for protection against being punished more than once for the same offence. Such a provision in the Principal Act is unnecessary as subsection 4C(1) of the Crimes Act covers this requirement.

PART 7 - AMENDMENTS OF THE PROTECTION OF MOVABLE CULTURAL HERITAGE ACT 1986

Clause 13: Principal Act

Clause 13 provides that the Principal Act is the *Protection of Movable Cultural Heritage Act 1986*.

Clause 14: Interpretation

Clause 14 amends section 3 of the Principal Act by inserting in subsection (1) the definition of a "principal collecting institution". According to this definition a "principal collecting institution" means:

"a public art gallery, a public museum, a public library or public archives, established under a law of the Commonwealth, a State or a Territory."

Clause 15: Grants of permits in respect of particular objects

Clause 15 amends paragraph 10(5) (a) of the Principal Act by inserting "to export the Class B object concerned" after the word "permit". Section 10 is relatively lengthy and the purpose of this amendment is to clarify that these provisions apply only in respect of Class B objects.

Clause 16: Grant of general permits for certain institutions

Clause 16 inserts new section 10A into the Principal Act. This section allows principal collecting institutions to apply to the Minister for a permit to export any Class B object that is accessioned into the collection for which that institution is responsible. A specific condition imposed by the new section is that exportation of such an object is that it be on loan for research, public exhibition or a similar purpose.

Principal collecting institutions have criticised the Act for the imposition it places on them to apply for a permit to

export objects in their collections on loan to foreign collecting and research institutions for exhibition, research, curatorial work, etc., on the grounds that those collections are protected by Acts of either the Commonwealth, State or Territory Parliaments.

Additional safeguards are built into this provision in that the application for a permit must be made to the Minister in writing, and the Minister has the right to refuse to grant a permit, or to attach conditions to it. The Minister must also refer the application to the National Cultural Heritage Committee, which must then submit to the Minister a written report on the application. The Minister must consider the report and also specify in writing any reasons for refusing to grant a permit.

Clause 17: Permits

Clause 17 amends section 11 of the Principal Act to provide that new section 10A is referred to in that section after any reference to section 10 in section 11, wherever it occurs.

This amendment ensures that the same conditions that apply to permits granted under section 10 also apply to new section 10A as regards the requirements that the permits be in writing in the prescribed form, or, if no form is prescribed, in a form approved by the Minister; further, that the permit comes into force on the date on which it is signed and that it remains in force for an indefinite time, or for the amount of time specified in the permit.

Clause 18: Address for service of notices

Clause 18 inserts new section 13A into Division 1 of Part II of the Principal Act under the heading "Address for service of notices".

Subsection 13A(1) provides that a person applying for a permit under subsections 10 and 10A to export a cultural heritage object must specify an address in Australia for the purpose of Part II.

Subsection 13A(2) allows a person who has specified an address under subsection 13A(1) to provide the Minister with a different address, but the new address must still be within Australia.

Subsection 13A(3) provides that the last address specified by a person under this section will be taken to be that person's place of residence or business for the purpose of serving notices on the person under Division 1 of Part II.

Clause 19: Unlawful Imports

Clause 19 amends section 14 of the Principal Act in relation to exhibits from foreign collecting institutions. A foreign collecting institution is defined in new subsection 19(4) as: "...an institution outside Australia that is an art gallery, or a museum, or a library or archives."

The proposed amendment is designed to exclude all cultural heritage material temporarily imported into Australia under a loan agreement with a foreign government or a foreign collecting institution. The amendment will clarify the position under the Act for objects included in international touring exhibitions visiting Australia.

Clause 20: Functions of Committee

Clause 20 amends subsection 16(b) of the Principal Act by omitting "subsection 10(4)" and adding "subsections 10(4) and 10A(5)".

The purpose of this amendment is to ensure there is a reference to new subsection 10A(5), which was added by clause 16.

Clause 21: Constitution of Committee

Clause 21 amends subsection 17(1) of the Principal Act by inserting after it new subsection 17(1A).

The amendment of section 17(1)(c) as set out in new subsection 17(1A) provides for the Minister for Aboriginal Affairs' nominee to be

"a person of the Aboriginal race of Australia, or a descendant of an indigenous inhabitant of the Torres Strait Islands."

Clause 22: Administrative Appeals Tribunal

Clause 22 amends section 48 of the Principal Act by inserting in subsection 48(1)(b) "10A(7)(b)" after "10(5)(a)".

The purpose of this amendment is to include a decision by the Minister to impose a condition on a permit granted under new subsection 10A(7) (inserted by clause 16 of this Act) in the process of review before the Administrative Appeals Tribunal.

Subsection 48(1)(b) now reads:

"Application may be made to the Administrative Appeals Tribunal for a review of a decision by the Minister to impose a condition under paragraph 10(5)(a), 10A(7)(b) or 12(3)".

PART 8 - AMENDMENTS OF THE PUBLIC LENDING RIGHT ACT 1985

Clause 23: Principal Act

Clause 22 provides that the Principal Act is the *Public Lending Right Act 1985*.

Clause 24: Membership of Committee

Clause 24 provides that vacancies in the membership of the Public Lending Right Committee will not affect the Committee's functions and the exercise of its powers.

Clause 25: Conduct of meetings

Clause 25 inserts new sections 16A and 16B. Section 16A will enable Committee meetings to be conducted by telephone, closed circuit television or other method determined by the Committee. Members will thus no longer be required to be physically present together for a meeting to be convened.

New section 16B provides that a resolution will be taken to have been passed at a Committee meeting if a majority of the members entitled to vote constituted a quorum and agreed with the resolution without attending the meeting. This will permit the Committee to exercise its powers notwithstanding that members were not physically present at a meeting.

PART 9 - AMENDMENTS OF THE SEAT OF GOVERNMENT (ADMINISTRATION) ACT 1910

Clause 26: Principal Act

This clause provides that the Principal Act is the *Seat of Government (Administration) Act 1910*.

Clause 27: Ordinances

This clause amends section 12 of the Principal Act, which empowers the Governor-General to make Ordinances for the Australian Capital Territory on matters which have not, or not yet, become the responsibility of the ACT Legislative Assembly, in two ways:

(a) The Ordinance-making power under paragraph 12(1) (a) is limited, with effect from 1 July 1990, to making Ordinances with respect to the jurisdiction, practice and procedure of the existing Supreme Court of the Territory, rather than that of 'courts' as now. Responsibility for the Supreme Court is due to transfer to the ACT Legislative Assembly by 1 July 1992; responsibility for the other ACT courts transferred on 1 July 1990.

(b) An error in subsections 12(1B) and 12(1C) of the Principal Act is corrected. When section 12 was amended in 1988 as a result of ACT self-government, the intention was that the Commonwealth should retain Ordinance-making powers on all matters not immediately transferred to ACT control, and each power should either expire when the matter transferred, or be permanent if there were no current Commonwealth plans for it to transfer. As drafted, however, section 12 has caused the Ordinance-making power on two matters due to transfer by 1 July 1992 to expire on 1 July 1990:

'Courts' - paragraph 12(1) (a) of the Principal Act

'Evidence' - paragraph 12(1) (c)

Section 12 has also caused the Ordinance-making power under paragraph 12(1) (k) to expire on 1 July 1990. Paragraph 12(1) (k) provides for Ordinances on 'the subject-matter of laws specified in Schedule 3 to the *Australian Capital Territory (Self-Government) Act 1988*'. Of the laws specified in this Schedule as in force since 1 July 1990 (see section 12 of the *ACT Self-Government (Consequential Provisions) Act 1988*), one transfers to ACT control on 1 July 1992 - the *Evidence Ordinance 1971* (along with responsibility for the general subject of 'evidence'). There is no timetable for the transfer of the others:

Canberra Institute of the Arts Ordinance 1988

Classification of Publications Ordinance 1983

National Land Ordinance 1989

National Memorials Ordinance 1928

Police Pensions Ordinance 1958

Reserved Laws (Administration) Ordinance 1989

Reserved Laws (Interpretation) Ordinance 1989

Unlawful Assemblies Ordinance 1937

The new subsection 12(1B), and amendment to subsection 12(1C), of the Principal Act ensure that the power to make laws on the subject-matter of each of these laws expires by 1 July 1992 (the *Evidence Ordinance 1971*) or does not expire (the other Ordinances). Paragraph 12(1B) (a) will provide that paragraph 12(1) (k) expires entirely on 1 July 1992; however this is subject to subsection 12(1C), as amended by the Bill:

"(1C) Paragraph (1) (k) does not cease to have effect on and after 1 July 1992 in regard to any matter referred to in Schedule 5 to the *Australian Capital Territory (Self-Government) Act 1988* [the *Self-Government Act*]."

Schedule 5 specifies the laws of the ACT which are not intended to transfer to ACT control by 1 July 1992. If a law is specified in Schedule 3 to the *Self-Government Act*, as Schedule 3 was enacted or as it was amended by regulation before self-government day, 11 May 1989, the law may be added to Schedule 5 by regulation; see subsections 34(8) and (8A) of the *Self-Government Act*. The 8 laws listed above were added to Schedule 3 by regulation in 1989, and it is intended to add them to Schedule 5 by regulation.

