

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ARTS, SPORT, ENVIRONMENT AND TERRITORIES

LEGISLATION AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

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

**ARTS, SPORT, ENVIRONMENT AND TERRITORIES LEGISLATION
AMENDMENT BILL 1991**

GENERAL OUTLINE

Seven Acts administered by the Department of the Arts, Sport, the Environment, Tourism and Territories are amended by this Bill.

The amendments are mainly to make the administration of various Government programs more efficient and cost effective.

An amendment to the *Australian Capital Territory (Planning and Land Management) Act 1988* introduces a Ministerial power of direction in relation to the National Capital Plan. The NCPA will also be empowered to charge for planning and associated approvals.

Amendments to the *Australian Sports Drug Agency Act 1990* will widen the category of persons and bodies who are entitled to be notified of the failure by a competitor to provide a sample, and also expand and clarify the category of persons or bodies who may be notified of a negative test result. Other amendments will ensure the notification of international anti-doping arrangements in the regulations, exempt the Agency from tax and enable it to delegate a number of its powers to its employees.

Amendments to the *Environment Protection (Sea Dumping) Act 1981* and the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* will facilitate the giving of evidence by analysts, and overcome any potential gaps in evidence in judicial proceedings.

Amendments to the *National Parks and Wildlife Conservation Act 1975* will enable a park or reserve declared under the Act to be managed as a botanic garden, and insert three new international agreements into the Schedule of the Act.

The amendments to the *Norfolk Island Act 1979* ensure that the Acting Administrator and the Deputy Administrator are able to exercise the powers of the Administrator while the latter is absent from duty (for example, on recreation leave), without being physically absent from the Territory.

Under the amendment to the *Protection of Movable Cultural Heritage Act 1986*, members of the Protection of Movable Cultural Heritage Committee will be able to approve recommendations and reports relating to applications for permits without the need to convene a meeting, by signing a document or documents containing a statement that they all agree to that recommendation or report.

FINANCIAL IMPLICATIONS

The amendment relating to the setting of fees in the Australian Capital Territory (Planning and Land Management) Act will permit cost recovery in respect of the granting of approvals under the Act. Other parts of the Bill will streamline administration with resulting small cost savings.

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NOTES ON CLAUSES

Clause 1: Short title

1. The Act may be cited as the *Arts, Sport, Environment, and Territories Legislation Amendment Act 1991*.

Clause 2: Amendments of Acts

2. Amendments to 7 Acts are set out in the Schedule.

The Schedule

Amendments to:

Australian Capital Territory (Planning and Land Management) Act 1975

3. New subsection 20A will empower the Minister, in the case of a continuing objection by the Territory planning authority to any aspect of the draft Territory Plan, to direct the National Capital Planning Authority either to disregard the objection, or to alter the draft Plan to accommodate the objection, in whole or in part.
4. New subsection 53(2) will allow regulations to be made enabling the NCPA to charge fees for planning and associated approvals, including providing for remission, refund, waiver and exemption from payment of these fees.
5. New subsection 53(3) will require the fees fixed under subsection 53(2) to be reasonably related to the NCPA's expenses incurred or to be incurred in granting an approval, and they cannot be of a level that would amount to taxation.

Australian Sports Drug Agency Act 1990

6. Insertion of definition of 'anti-doping agreement' in subsection 2(1), new paragraph 17(1)(d) and new section 66A will require that any international anti-doping arrangements that the Commonwealth enters into be listed in regulations made for the purpose of these provisions. It will also be required that the Agency notify the relevant authority of the country with which the Commonwealth has signed an anti-doping agreement of the entering of a competitor's name on the Register of Defaulting Competitors established under section 11 of the Act.

7. Insertion of definition of 'negative test result' in subsection 2(1), new section 17A, new subsection 18(2A) and amendment to subsection 18(3): the effect of these amendments is to clarify the meaning of a negative test result, to provide for an expanded list of those who must be notified of a negative test result, and empowers the Minister to request the Agency in writing to supply to the Minister in writing the name of a competitor who has returned a negative test result.

8. These amendments relate to the fact that in many instances sports organisations require confirmation of a negative test result prior to the ratification of records or the award of medals. Organisations which contract with the Agency for the conduct of drug testing also require confirmation that testing has taken place to fulfil contractual obligations. The Act also requires the Agency to report the results of tests to designated persons or organisations.

9. Amendments to subparagraphs 12(3)(b)(iii) and (iv) will also ensure that at the time a competitor is required to provide a sample for testing, that competitor will be fully advised of who will be notified if the competitor returns a negative test result, or refuses to provide a sample for testing.

10. New section 65A will provide the Agency with the standard taxation exemptions granted to Commonwealth statutory authorities.

11. New paragraph 70(1)(c) will entitle the Agency to delegate any or all of its powers under the Act (with exception of those under sections 38, 47, 49, 50 and 51, and subsection 55(1)) to an employee of the Agency. The employee to whom any such power or powers has been delegated remains subject to any directions given by the Agency under subsection 70(2).

12. The Agency comprises a small, specialised group of expert staff. It is appropriate that some of the powers of the Agency be delegated to any employee or employees of the Agency that the Agency selects, to ensure the efficient performance of the Agency's functions. To confine delegations to categories of staff defined in the Act is not feasible, and unnecessary.

Environment Protection (Sea Dumping) Act 1981 and Wildlife Protection (Regulation of Exports and Imports) Act 1982

13. New subsection 39(2) of the Environment Protection (Sea Dumping) Act 1981 and new subsection 75(2) of the Wildlife Protection (Regulation of Exports and Imports) Act 1982 will facilitate the giving of evidence by analysts appointed by the Minister under subsection 39(1) of the Sea Dumping Act and subsection 75(1) of the Wildlife Protection Act respectively, as well as overcoming any potential gaps in evidence in judicial proceedings.

National Parks and Wildlife Conservation Act 1975

14. Insertion of definition of 'botanic garden' in section 3 and new paragraph 11(8)(ca) will enable a park or reserve declared under the Act to be managed as a botanic garden in accordance with the object of increasing the knowledge, appreciation and enjoyment of the plant heritage of Australia by establishing as an integrated resource a collection of living and herbarium specimens of Australian and related plants for study, interpretation, conservation and display.

15. Insertion of three additional international agreements in the Schedule to the Act: section 69 of the Act provides for the Governor-General to make regulations for and in relation to giving effect to an international agreement specified in the Schedule. There are now three additional agreements to be included: the Convention on Conservation of Nature in the South Pacific, signed at Apia (Western Samoa) on 12 June 1976; the Convention on the Conservation of Migratory Species of Wild Animals, signed at Bonn on 23 June 1979; and the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment, signed at Canberra on 20 October 1986.

Norfolk Island Act 1979

16. New subsection 8(1), amended subsection 8(2), new paragraph 9(2)(a), new subparagraph 9(2)(b)(ii) and amended subsection 9(3) will permit the Acting Administrator or the Deputy Administrator to exercise the powers of the Administrator when the Administrator is absent from duty, for example, on recreation leave, without necessarily being absent from the Territory.

Protection of Movable Cultural Heritage Act 1986

17. New section 21B will empower the National Cultural Heritage Committee to approve a recommendation or report under section 10 or 10A without the need to convene a meeting. To do so, all members of the Committee (other than those who are precluded from taking part because of an interest in the matter as specified in section 20) must sign a document detailing the terms of the relevant recommendation or report. Two or more documents containing identical terms may be signed by different members at different times, and the recommendation or report will be deemed to have been made on the date of the signing of the last of such documents.

18. The new provision is framed to ensure that all of the members of the Committee who are eligible to consider the relevant application agree to proceed in the specified manner. If any member of the Committee declined to sign the required document, it would not be possible to grant the permit out of session, and the application would not be able to be considered until the next meeting of the Committee.

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