

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**ADMINISTRATION (INTERSTATE AGREEMENTS)
(AMENDMENT) BILL 1998**

EXPLANATORY MEMORANDUM

Circulated by authority of

**Kate Carnell MLA
Chief Minister**

Administration (Interstate Agreements) (Amendment) Bill 1998

Outline

This is an amending Bill. It amends the Administration (Interstate Agreements) Act 1997, referred to in the amending Bill as the Principal Act. The Principal Act provides for Ministers to inform and consult with other Members of the Legislative Assembly about interstate agreements which may require legislation.

The amending Bill addresses those matters in the Principal Act which could affect the legal efficacy of the Administration (Interstate Agreements) Act 1997.

Revenue/Cost Implications

The amending Bill has nil revenue and cost implications.

Formal Clauses

Clauses 1, 2 and 3 are formal requirements. They refer to the short title of the Bill, commencement and the definition of the Principal Act. The amendments will commence on the gazettal of the Bill.

Long Title

Clause 4, replaces the long title of the Principal Act with a more relevant description. The existing long title suggests that the obligations of a Minister arise only at the time of entering into an interstate agreement. The provisions of the Act actually require a Minister to inform Members of the Legislative Assembly as early as practicable about any prospective negotiations in relation to interstate agreements.

Object

Clause 5, in amending section 3 of the Principal Act

- removes the phrase “negotiated between governments” from the Object. The phrase is not required in view of the definition of “interstate agreement” at section 4 of the Principal Act [**clause 5(a)**], and
- adds to the end of section 3, the words “and shall be construed accordingly”, to give further efficacy to the Object by requiring courts to interpret the Principal Act as a whole by having regard to its expressed Object [**clause 5(b)**].

Interpretation

Clause 6, amends section 4 of the Principal Act by omitting the definition for “negotiation”. The existing definition of “negotiation” is not required as “negotiation” for the purposes of the Principal Act is clearly interpreted as that between a Minister and another government or its representative.

Heading to Part II

Clause 7, amends the heading by removing the words, “INTERSTATE AGREEMENTS”
The existing heading reproduces a term which is generic to the Principal Act.

Notification of negotiations

Clause 8, repeals section 6 of the Principal Act and substitutes a new section. The use of mixed tenses in the existing section 6 could create timing difficulties in relation to compliance by a Minister.

The existing section provides an obligation for a Minister to notify Members of the Legislative Assembly when the Minister “accepts an invitation to join in” a negotiation or when the Minister has commenced a negotiation. The obligations for the Minister would be to notify Members “prior to the meeting” about the “proposed negotiations” and about the position the Minister “intends to take”

The Bill distinguishes between a negotiation and a proposed negotiation. The Bill provides for compliance as soon as practicable in the circumstances of the particular case and to comply (even after a negotiation is under way) until discharged.

Consultation regarding agreements

Clause 9, repeals section 7 of the Principal Act and substitutes a new section.

The existing section 7 seeks to give rise to an obligation when negotiations have “commenced”, and to consult with a relevant Assembly Standing Committee about matters “to be considered” at the negotiations

The Bill provides for the Minister to consult the relevant standing committee of the Legislative Assembly as soon as practicable and to oblige the Minister to take account of the recommendation of the standing committee at the negotiation.

Procedure before entering into agreements

Clause 10, amends section 8 of the Principal Act:

- by omitting in subsection (1) the unnecessary words expressly linking it to section 10 of the Principal Act [**clause 10(a)**];
- by omitting from subsection (1) the words, “agree to” and replacing them with “enter into” The amendment will keep the Principal Act consistent in its language about entering into agreements [**clause 10(b)**], and
- by omitting from subsection (2) “entering” and substituting the words, “considering whether to enter”, allows for the Minister to consider the recommendations of the relevant standing committee as part of the decision making process about the interstate agreement [**clause 10(c)**]

Urgent or extraordinary negotiations

Clause 11, amends section 10 of the Principal Act:

- by replacing the references to specific paragraphs in sections 6, 7 and 8 with references to the actual sections **[clause 11(a)]**, and
- by omitting the words “reasonably possible” and replacing them with the words “possible or reasonable” to more clearly state the obligation to comply in an urgent situation **[clause 11(b)]**.

Discharge of requirements

Clause 12, amends section 11 of the Principal Act by omitting in subsection (2) the remainder of the sentence after the word “only” The remainder of subsection (2) is repetitive