

1997
THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY

Canberra Cultural Authority Bill 1997

EXPLANATORY MEMORANDUM

**Circulated by the authority of
Gary Humphries MLA
Minister for Arts and Heritage**



ACT GOVERNMENT

Canberra Cultural Authority Bill 1997

OUTLINE

The objective of this Bill is to establish the Canberra Cultural Authority. The principal function of the Authority is to manage cultural activities in the Territory.

The Bill sets out the functions, powers, membership and staffing of the Authority. Other significant provisions deal with the financial, accountability and reporting arrangements for the Authority. The Authority is subject to the *Financial Management Act 1996* (Part VIII) which sets out financial provisions dealing with Territory corporations. The Bill enables the Authority to prepare annual business plans.

Revenue Cost Implications

The Bill will not impact on the 1997/8 Budget.

DETAILS OF THE BILL

PART I PRELIMINARY

Short title, Commencement, Interpretation These are formal provisions

PART II CORPORATE STATUS

Division 1 Establishment, functions and powers

Establishment This provision establishes the Canberra Cultural Authority.

The law does not include a number of provisions sometimes associated with the establishment of a corporation by statute. A reference to perpetual succession has not been included because there are no corporators and the term is therefore meaningless. (The *Second Corporate Law Simplification Bill Exposure Draft 1995* proposes omitting reference to perpetual succession.)

While some Acts establishing corporations provide for the corporation to give directions about custody and use of the common seal, these are essentially matters of internal management that do not need to be provided for in the Act. The reader is also referred to section 150 of the *Evidence Act 1995* of the Commonwealth.

Functions The principal function of the Authority is to manage cultural activities in the Territory. Other functions of the Authority are set out in this provision. In particular, attention is drawn to the power of the Authority to undertake activities in co-operation with other persons (such as the owner of Mugga Mugga Historic Property) where appropriate for discharging its other functions.

Powers This clause provides that the Authority has the necessary power to discharge its functions. In addition, it has the legal capacity of a natural person.

Some Acts establishing statutory corporations provide that the body may sue and be sued; many provide that the body may acquire, hold and dispose of real and personal property; some provide that the body may enter into contracts. None of these provisions is strictly necessary because these are inherent powers of a corporation at common law (see *Halsbury's Laws of Australia*, vol 7, para 120-20 to 120-40). It is not

necessary to expressly confer power to enter into contracts or to deal with real and personal property or to provide for delegation to an agent. These are all things that a "person" may do. The *Second Corporate Law Simplification Bill Exposure Draft 1995* also proposes omitting references to holding land and to being able to sue.

Advisory committees

This clause allows the creation of advisory committees.

Companies, partnerships and joint ventures

This clause prevents the Authority entering into certain transactions concerning other legal entities without the general or particular approval of the Minister.

Division 2 Membership

Constitution This clause provides for membership of the Authority.

Chairperson and Deputy Chairperson

This clause provides for the appointment of the Chairperson and Deputy Chairperson of the Authority.

Appointed members This clause provides that the terms and conditions of members of the Authority referred to in clause 8(1)(a) are those set out in the Schedule.

Division 3 Meetings

Convening Meetings This clause makes provision for convening meetings of the Authority

Procedure This clause makes provision for procedure at meetings of the Authority. Provision for other matters sometimes included in legislation (such as the creation of sub-committees) is not included because they are internal matters which do not require legislation. The Committee may hold a meeting by telephone or video link.

Quorum Four members constitute a quorum at a meeting of the Authority.

Disclosure of interest This clause requires the disclosure of direct or indirect pecuniary or personal interests of appointed members of the Authority.

PART III CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS**Division 1 Chief Executive Officer**

Office and office holder

This clause provides for the office of the Chief Executive Officer.

Role

This clause provides that, subject to and in accordance with the directions of the Authority, the Chief Executive Officer shall manage the affairs of the Authority.

Division 2 Staff and consultants

Staff

Staff of the Authority must be employed under the *Public Sector Management Act 1994*. In effect, the Chief Executive Officer would have the powers of a Chief Executive in relation to that staff. This clause is intended to be read in conjunction with section 24 of the *Public Sector Management Act 1994*.

Consultants

The Authority may engage consultants.

PART IV MANAGEMENT

Interpretation

This is a formal provision

Management focus

Members of the Authority are required to discharge the functions of the Authority in accordance with sound business practice and the Authority's business plan.

Business plans

The business plan must contain financial information in the Authority's statement of intent (prepared under the *Financial Management Act 1996*) together with longer term strategic planning information.

Development of business plans

In preparing a business plan, the Authority shall have regard to the Minister's views. This provision is intended to be subject to other provisions in the law, including those dealing with Ministerial directions.

Modification of business plans

In modifying a business plan, the Authority shall have regard to the Minister's views. This provision is subject to other provisions in the law, including those dealing with Ministerial directions.

Application of Part VIII of the Financial Management Act 1996

Part VIII of the *Financial Management Act 1996* applies to the Authority. Accordingly there is no need for the provision to provide for financial reporting, investment or borrowings. Having regard to the functions of the proposed Authority, no special financial powers are required. Subclause (2) is included to avoid an inference from the specific terms of subclause (1). Under the terms of the *Auditor-General Act 1996* the accounts of the Authority would be audited by the Auditor-General. It is not necessary to make specific provision in the Bill for this purpose.

PART V MISCELLANEOUS

Provision of information

This clause provides that the Authority shall furnish to the Minister such information relating to its operations as the Minister requires.

Ministerial directions The Minister may give general or particular directions to the Authority. The Territory shall pay the reasonable cost of the Authority complying with the direction. Details of directions must be presented to the Assembly.

Quarterly reports This clause makes provision for quarterly reports to the Minister.

Annual report This clause makes provision for material to be included in an annual report. The Authority is a "public authority" for the purposes of the *Annual Reports (Government Agencies) Act 1995*.

Regulations Standard provision is made for the making of regulations.

Vesting of assets This clause makes transitional provision for the transfer of assets to the Authority. Interests in or occupancy of land will be vested in the Authority in accordance with the ordinary law by way of lease or license.

Development of first business plan

This clause makes transitional provision for the development of the first business plan.

Schedule 1

The schedule provides for designated locations.

Schedule 2

The schedule provides for the appointment and terms and conditions of members referred to in clause 8(1)(a). Members may be appointed for up to 3 years after the Minister has considered the appointees' suitability. Provision is also made for

- entitlement for remuneration of appointed members of the Authority;
- resignation of appointed members of the Authority,
- the termination of appointment of appointed members of the Authority, and
- acting appointments while the office is vacant or an appointed member is unavailable.