

1990

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

INTERIM PLANNING BILL 1990

EXPLANATORY MEMORANDUM

Circulated by Authority of the Chief Minister

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THE INTERIM PLANNING BILL 1990

Section 25 of the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) provides that the Legislative Assembly shall, as soon as practicable, make laws providing for the establishment of a Territory planning authority and for that authority to prepare and administer a plan in respect of Territory land.

The Interim Planning Bill 1990 (the proposed Bill) provides for the establishment of the Australian Capital Territory Planning Authority, the appointment of the Chief Planner for the Australian Capital Territory and details the procedure for making and varying the Territory Plan. The proposed Bill also provides that the plan may be prepared in separate stages or parts. The proposed Bill will repeal part of the provisions of the Interim Territory Planning Act 1988.

As the Planning Authority established under the proposed Bill will replace the Interim Territory Planning Authority, the proposed Bill will have no effect on income or expenditure.

The provisions of the proposed Bill are detailed in the Attachment.

ATTACHMENT

INTERIM PLANNING BILL 1990

The Bill contains six Parts. Part I deals with preliminary matters.

Clause 1 provides that the Bill may be cited as the Interim Planning Act 1990.

Clause 2 deals with the commencement of the Bill.

Subclause 2(1) provides that clauses 1 and 2 will commence on the day that the Bill is notified in the Gazette.

Subclause 2(2) provides that the remaining clauses in the Bill will commence on the day specified as the end of the transition period under the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) (the Commonwealth Planning Act) in the Proclamation of the Governor-General under section 57 of that Act.

Clause 3 binds the Crown.

Clause 4 defines certain terms for the purposes of the Bill.

Clause 5 will enable the Authority to introduce the Plan in stages or parts.

Subclause 5(1) provides that unless the contrary intention appears a reference to the Plan is to be read as including a reference to a stage or part of the Plan.

Subclause 5(2) provides that unless the contrary intention appears a reference to a draft Plan is to be read as including a reference to:

- (a) a draft stage or part of the Plan; or
- (b) a provision of a draft Plan or of a draft stage or part of the Plan.

Part II of the Bill imposes an obligation on the Authority to prepare the Territory Plan and identifies the object and effect of the Plan.

Clause 6 imposes an obligation on the Authority to prepare the Plan.

Subclause 6(1) provides that the Authority shall prepare the Plan and variations to the Plan.

Subclause 6(2) provides that the Authority may prepare the Plan in separate stages or parts.

Clause 7 identifies the object of the Plan and deals with planning principles and policies in relation to the Plan.

Subclause 7(1) identifies the object of the Plan in that the Plan is to ensure, in a manner not inconsistent with the National Capital Plan established under section 19 of the Commonwealth Planning Act, that the planning and development of the Territory provides the residents of the Territory with an attractive, safe and efficient environment in which to live, work and engage in recreational activities.

Subclause 7(2) specifies that the Plan shall set out the planning principles and policies for giving effect to the object identified in subclause 7(1).

Subclause 7(3) provides that for the purpose of giving effect to the object of the Plan, and the principles and policies referred to in subclause 7(2), the Plan may provide for the following matters:

Proposed paragraph 7(3)(a) provides that the Plan may set out specific objectives and policies.

Proposed paragraph 7(3)(b) provides that the Plan may specify the purposes for which land may be used.

Proposed paragraph 7(3)(c) provides that the Plan may identify land for the purposes of Division 4 of Part III and specify the principles and policies for its development. Division 4 of Part III provides for the variation of the Plan in relation to defined land.

Proposed paragraph 7(3)(d) provides that the Plan may provide for other matters relevant to the exercise of the powers of the Territory, the Executive, a Minister or a Territory authority under a Territory law, and matters relevant to the administrative review of such powers.

Proposed paragraph 7(3)(e) provides that the Plan may provide for matters which are otherwise necessary or convenient.

Clause 8 provides that the Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act, that is inconsistent with the Plan.

Clause 9 provides for the interim effect of draft Plan variations.

Subclause 9(1) provides that during a specified period the Territory, the Executive, a Minister or a Territory authority shall not do any act or approve the doing of any act that is inconsistent with the Plan or would be inconsistent with the Plan if it were varied in accordance with the draft variation. The specified period is whichever is the shorter of either the period defined in subclause 9(2) or the period specified in the notice of the draft Plan variation under clause 13.

Subclause 9(2) provides that the "defined period" referred to in subclause 9(1) is the period commencing on the date the draft Plan variation is notified in the Gazette under clause 13 and terminating on the day before whichever of the following dates, with respect to the draft Plan, applies in the given case:

- the date it comes into effect;
- the date it is rejected by the Legislative Assembly; or
- the date it is withdrawn under proposed paragraph 16(1)(c), 20(a) or 22(4)(b).

Subclause 9(3) provides that this clause does not apply during the period of the deferral of the draft variation under proposed paragraph 16(1)(b) or 20(a).

Part III of the Bill consists of four Divisions and deals with the establishment of the Territory Plan. Division 1 deals with preliminary matters.

Clause 10 specifies that in Part III of the Bill a variation to the Plan is dealt with in the same manner as is the Plan.

Subclause 10(1) provides that Part III of the Bill applies to a variation to the Plan in the same manner as it applies to the Plan.

Subclause 10(2) provides that Part III of the Bill applies to a draft variation to the Plan in the same manner as it applies to a draft Plan.

Division 2 of Part III deals with the preparation of a draft Plan.

Clause 11 provides that Division 2 of Part III does not apply in relation to a variation of the Plan under Division 4.

Clause 12 provides that when preparing a draft Plan, the Authority shall consider any recommendation submitted by the Conservator of Wildlife who is appointed under section 7 of the Nature Conservation Act 1980 (the Conservator).

Clause 13 identifies the notification process of a draft Plan for ensuring public consultation in respect of a draft Plan.

Subclause 13(1) provides that before submitting a draft Plan to the Executive, the Authority shall publish in the Gazette and in a daily newspaper which is published and circulated in the Territory, a notice including the matters listed in proposed paragraphs 13(1)(a) to (c).

Proposed paragraph 13(1)(a) provides that the notice must state that copies of the draft Plan and the background papers are available for public inspection during a specified period and at specified places. The specified period may not be less than 21 days.

The term "background papers" is defined in clause 4, in relation to a draft Plan, as meaning -

- (a) an explanatory statement;
- (b) a copy of any relevant direction of the Executive, and any recommendation of the Conservator referred to in clause 12;
- (c) a statement by the Authority giving reasons for any inconsistency between the draft Plan, and any relevant direction of the Executive or recommendation of the Conservator;
- (d) any other documents which the Authority has designated in writing as background papers, or which are considered by the Authority to be necessary or useful in explaining the draft Plan.

Proposed paragraph 13(1)(b) provides that the notice must invite interested persons to submit written comments about the draft Plan to the Authority within a period of not less than 21 days. The address of the Authority must be specified.

Proposed paragraph 13(1)(c) provides that for a draft Plan variation, the notice must state the effect of clause 9 and specify for the purposes of proposed paragraph 9(1)(b), the maximum period during which the draft Plan variation is to have an interim effect. The period is not to exceed 1 year.

Subclause 13(2) provides that the Authority shall make copies of the draft Plan and the background papers available for public inspection during office hours, during the period and at the places, specified in the notice.

Subclause 13(3) provides that subclauses 13(1) and 13(2) do not apply if the Authority considers that a draft Plan variation has the sole purpose of correcting a formal error in the Plan. However, the Authority shall, in such a case, obtain such information about the public attitude to the draft variation as is reasonable in the circumstances. A "formal error" is defined in clause 4 as meaning a clerical error, an error arising from an accidental slip or omission or a defect of form.

Clause 14 provides that the Authority shall consult with the National Authority about a draft Plan, before submitting it to the Executive.

Clause 15 specifies that copies of any comments about a draft Plan are to be available for public inspection.

Subclause 15(1) provides that before submitting a draft Plan to the Executive, the Authority shall publish a notice in a daily newspaper which is published and circulated in the Territory. The notice shall state that copies of any written comments about the draft Plan received from the National Authority, or submitted pursuant to the public

invitation in subclause 13(1), or submitted otherwise, are available for public inspection within a specified period at specified places. The specified period shall be at least 21 days from the date of the notice.

Subclause 15(2) provides that the Authority shall make copies of any comments referred to in subclause 15(1), available for public inspection. Such comments shall be available during office hours, at the places and during the period specified in the notice.

Clause 16 provides for the revision, deferral or withdrawal of the draft Plan after consultation.

Subclause 16(1) provides that once the period specified in the notice inviting public comment under subclause 13(1), has expired, the Authority may revise the draft Plan, defer the submission of the draft Plan to the Executive, or withdraw the draft Plan. Any deferral will be until a specified date or until the occurrence of a specified event. Any deferral or withdrawal shall be by notice published in the Gazette.

Subclause 16(2) provides that a notice deferring or withdrawing a draft Plan variation shall include a statement of the effect of clause 9 in relation to that deferral or withdrawal.

Subclause 16(3) provides that in revising, deferring or withdrawing a draft Plan under subclause 16(1), the Authority shall consider any written comments about the draft Plan received from any person or from the National Authority.

Subclause 16(4) provides that the Authority may revise the draft Plan to correct any formal error, at any time before the submission or re-submission of the draft Plan to the Executive. This power is in addition to the Authority's power under subclause 16(1).

Subclause 16(5) provides that where a draft Plan that was deferred by a notice under subclause 16(1) the Authority shall publish in the Gazette a further notice on the date specified in the notice under subclause 16(1), or as soon as practicable after the occurrence of the event specified in the notice under subclause 16(1). This notice shall state, that the draft Plan is revived and in the case of a draft Plan variation shall state the effect of clause 9 in relation to the revival of the draft variation.

Division 3 of Part III deals with approval of the draft Plan by the Executive and consideration of the draft Plan by the Legislative Assembly.

Clause 17 provides for the interpretation and application of the Division.

Clause 18 provides that after the expiration of the period specified in the notice under subclause 13(1), the Authority shall submit a draft Plan to the Executive for approval. The draft Plan shall be accompanied by the background papers; a written summary of each written comment about the draft Plan submitted pursuant to the invitation in the relevant notice under subclause 13(1) or otherwise; and a written report, about the Authority's consultation with the National Authority.

Clause 19 provides for the powers of the Executive in relation to a draft Plan.

Subclause 19(1) identifies the action the Executive is to take on receipt of a draft Plan submitted or resubmitted for approval. The Executive shall take action under either proposed paragraph 19(1)(a) or 19(1)(b).

Proposed paragraph 19(1)(a) provides that the Executive shall approve the draft Plan in the form in which it is submitted.

Proposed paragraph 19(1)(b) provides that in the alternative the Executive shall return the draft Plan to the Authority together with any or all of the following written directions:

- to conduct further specified consultation;
- to consider any relevant public report;

- to consider any revision suggested by the Executive;
- to revise the draft Plan in a specified manner;
- to defer by notice published in the Gazette the resubmission of the draft Plan, until a specified date or until the occurrence of a specified event;
- to withdraw the draft Plan by a notice published in the Gazette.

Subclause 19(2) provides that any notice withdrawing or deferring a draft Plan variation shall state the effect of clause 9 in relation to that withdrawal or deferral.

Clause 20 identifies the actions the Authority should take in the event that the Executive returns a draft Plan under proposed paragraph 19(1)(b).

Proposed paragraph 20(a) provides that the Authority shall comply with any Executive direction.

Proposed paragraph 20(b) provides that if the Executive gives a direction to conduct further consultation, to consider any relevant public report or to consider any revision suggested by the Executive, then the Authority shall, if it thinks fit, revise the draft Plan, and resubmit the draft Plan to the Executive together with a written report about the Authority's compliance with the Executive's directions and about any revision under subclause 16(4). Subclause 16(4) allows the Authority to revise the draft Plan to correct any formal errors.

Proposed paragraph 20(c) provides that if the Executive gives a direction to revise the draft Plan in a specified manner, the Authority shall re-submit the revised draft Plan together with a written report about any revision of the draft Plan under subclause 16(4).

Clause 21 identifies the action the Authority shall take where it defers a draft Plan in compliance with an Executive direction under proposed paragraph 19(1)(b). The action must be taken on the date specified in the notice of deferral or where applicable, within a reasonable time after the occurrence of the event specified in that notice.

Proposed paragraph 21(a) provides that the Authority shall publish in the Gazette and in a daily newspaper which is published and circulated in the Territory, a notice stating;

- that the draft Plan is revived;
- in the case of a draft Plan variation, the effect of clause 9 in relation to the revival; and
- the effect of any revision made under subclause 16(4).

Proposed paragraph 21(b) provides that the Authority shall resubmit the draft Plan to the Executive.

Clause 22 provides for the consideration of a Plan by the Legislative Assembly.

Subclause 22(1) provides that the Authority shall lay a Plan before the Assembly within 6 sitting days of its approval by the Executive. The Authority shall submit with the Plan, the following documents relating to the Plan:

- the background papers;
- a copy of the summaries and the report referred to in clause 18 about the Authority's consultation with the public and the National Authority;
- a copy of any direction given under proposed paragraph 19(1)(b);
- a copy of any relevant public report referred to in proposed paragraph 19(1)(b);
- a copy of any report regarding a Plan made under proposed paragraph 20(c).

Subclause 22(2) provides that, if the Legislative Assembly has not, within 6 sitting days of a Plan being tabled, passed a resolution rejecting the Plan, then the Minister shall publish a notice in the Gazette. The notice shall specify the date or dates of commencement of the Plan or various provisions of the Plan, and the place or places where copies of the Plan may be inspected or purchased. The date of commencement of the Plan or any provision of it shall be on or after the date of the notice.

Subclause 22(3) provides that a Plan does not come into effect if the Legislative Assembly has passed a resolution rejecting the Plan within 6 sitting days after the Plan is laid before the Assembly.

Subclause 22(4) provides that if the Assembly rejects only part of a Plan, the Executive shall, with respect to each remaining provision, publish in the Gazette, either a notice specifying the date of commencement of the provision and the place or places where copies may be inspected or purchased; or a notice withdrawing the provision. The date of commencement of any provision shall be on or after the date of the notice.

Subclause 22(5) provides that the Minister shall make copies of a Plan, or any relevant provision of a Plan, available for inspection or purchase during office hours at the places and times specified in the notice under subclause 22(2) or paragraph 22(4)(a).

Clause 23 provides that the Plan or a provision the Plan comes into effect on the date specified in the notice under subclause 22(2) or 22(4).

Division 4 of Part III deals with variation of the Plan in relation to defined land.

Clause 24 provides that for the purposes of Division 4 the term "defined land" means land identified in the Plan pursuant to proposed paragraph 7(3)(c).

Clause 25 provides for variation to the Plan with respect to defined land.

Subclause 25(1) provides that upon approval of the subdivision of a parcel of defined land, the Authority shall vary the Plan to specify the purposes for which that land may be used. Such specification shall be made by notice in the Gazette.

Subclause 25(2) provides that a notice under subclause 25(1) shall include a map of the relevant parcel or part of a parcel of land, showing the purposes for which identified parts of that land may be used.

Subclause 25(3) provides that a variation of the Plan under subclause 25(1) shall maintain consistency with both the relevant subdivision including any conditions subject to which the subdivision is approved and the principles and policies specified in the Plan for the development of the relevant defined land.

Subclause 25(4) provides that a variation of the Plan under subclause 25(1) takes effect from the date of its publication in the Gazette, or from such later date as is specified in the notice under that subsection.

Part IV consists of two divisions and deals with the Australian Capital Territory Planning Authority.

Division 1 of Part IV deals with the establishment, constitution, functions and powers of the Authority.

Clause 26 provides that the Australian Capital Territory Planning Authority is established by this Bill.

Clause 27 provides that the Authority is constituted by the Chief Planner appointed under clause 36 of this Bill.

Clause 28 provides that the Authority is an agent of the Crown.

Clause 29 identifies the functions of the Authority.

Subclause 29(1) provides that the functions of the Authority are:

- (a) to prepare and administer the Plan;
- (b) to keep the Plan under constant review and to propose variations to it where necessary;
- (c) to perform any other functions required by this Bill, any other law of the Territory, or any law of the Commonwealth; and
- (d) with the written approval of the Minister, to perform planning services for any person or body. Such a person or body may be within Australia or overseas.

Subclause 29(2) provides that the Authority shall perform its functions in accordance with any directions given by the Executive under subclause 30(1).

Subclause 29(3) provides that the Authority shall comply with any directions given by the Executive under subclause 30(2).

Clause 30 provides that the Executive may give policy directions to the Authority.

Subclause 30(1) provides that the Executive may give general directions to the Authority about the policies and objectives the Authority should pursue in the performance of its functions. Such directions shall be in writing.

Subclause 30(2) provides that the Executive may give the Authority general directions to review the Plan, or to review any specified parts of the Plan. Such directions shall be in writing.

Subclause 30(3) provides that the Minister shall publish in the Gazette within 14 days, the particulars of any directions given under subclause 30(1) or 30(2).

Subclause 30(4) provides that any directions not published in accordance with subclause 30(3), cease to have effect from the expiration of the 14th day after they are given.

Subclause 30(5) provides that the Authority shall publish particulars of any directions it has been given in a financial year in its annual report for that year.

Subclause 30(6) provides that clause 30 does not apply in relation to a direction given under clause 19. Clause 19 provides that the Executive may give directions to the

Authority to act in a specified way in relation to a submitted or resubmitted draft Plan.

Clause 31 identifies the general powers of the Authority.

Subclause 31(1) provides that the Authority has power to do all things necessary or convenient to be done in connection with the performance of its functions.

Subclause 31(2) provides that the Authority may enter into contracts on behalf of the Territory, for the purpose of the performance of its functions.

Subclause 31(3) provides that the Authority shall not enter into a contract involving the payment or receipt by the Authority of an amount exceeding \$100,000, unless it has the approval of the Minister.

Clause 32 provides that the Authority shall prepare and submit to the Minister a report of its operations during the year ending on 30 June.

Clause 33 provides that the Authority may delegate all or any of its powers to a public servant or to the holder of an office established by or under an Act. Such a delegation shall be made by instrument.

Clause 34 provides that the Authority is to be assisted by public servants in the performance of its functions.

Clause 35 provides that anything done by or in relation to the Authority is not invalid because there is a defect or irregularity in, or in connection with, the appointment of the Chief Planner, or because that appointment has ceased to have effect.

Division 2 of Part IV deals with matters concerning the Chief Planner for the Australian Capital Territory.

Clause 36 deals with the appointment of the Chief Planner.

Subclause 36(1) provides that the Minister shall appoint a person to be Chief Planner for the Australian Capital Territory. Such an appointment shall be made by instrument.

Subclause 36(2) provides that the Chief Planner holds office for such period as is specified in the instrument of appointment. The period of appointment shall not exceed 5 years.

Subclause 36(3) provides that in respect of matters not provided for by this Bill the Chief Planner holds office on such terms and conditions as are determined by the Minister in writing.

Subclause 36(4) provides that a retiring Chief Planner is eligible for re-appointment.

Clause 37 deals with the position of acting Chief Planner.

Subclause 37(1) provides that the Minister may appoint a public servant to act as Chief Planner during a vacancy in the office of Chief Planner, whether or not an appointment has previously been made to the office. The Minister may also appoint an acting Chief Planner during any period, or all periods when the Chief Planner is absent from duty or from the Territory or, for any other reason is unable to perform the functions of the Office. Any such appointment shall be by instrument and shall not continue for more than 12 months.

Subclause 37(2) provides that anything done by or in relation to a person purporting to act as Chief Planner is not invalid because

- the occasion for the appointment had not arisen;
- there is a defect or irregularity in connection with the appointment;
- the appointment had ceased to have effect; or
- the occasion to act had not arisen or had ceased.

Subclause 37(3) provides that a person who is acting as Chief Planner shall continue to be paid the remuneration and allowances payable to him or her as a public servant but shall also be paid the following remuneration and allowances:

- so much of any remuneration payable to the Chief Planner as exceeds the remuneration that continues to be paid to him or her as a public servant;
- so much of any allowance paid to the Chief Planner as exceeds the corresponding allowance that continues to be paid to him or her as a public servant; and
- any allowance which is payable to the Chief Planner in respect of which there is no corresponding allowance otherwise payable to him or her as a public servant.

Clause 38 provides for the payment of remuneration and allowances to the Chief Planner.

Subclause 38(1) provides that the Chief Planner shall be paid such remuneration and allowances as are prescribed.

Subclause 38(2) provides that subclause 38(1) does not apply

- if there is a subsisting determination relating to remuneration to be paid to the Chief Planner, or
- if there is a subsisting determination relating to an allowance of that kind to be paid to the Chief Planner.

Subclause 38(3) provides that the reference to a "determination" in subclause 38(2) means a determination of the Remuneration Tribunal of the Commonwealth.

Subsection 38(4) provides that clause 38 does not apply where the Chief Planner is the Head of Administration or an Associate Head of Administration. In practice this refers to a Chief Planner who is also the Secretary of a Department.

Clause 39 provides that the Minister may, by writing, grant leave of absence to the Chief Planner on specified terms and conditions as to remuneration or otherwise.

Clause 40 deals with the disclosure by the Chief Planner of his or her pecuniary interests.

Subclause 40(1) provides that the Chief Planner shall give written notice to the Minister of all his or her direct or indirect pecuniary interests. Such notice must be provided by the Chief Planner upon his or her appointment and on each subsequent 30 June.

Subclause 40(2) provides that the Chief Planner shall give written notice to the Minister of any direct or indirect pecuniary interest in a matter, which he or she has or acquires, if, to her or his knowledge that matter is being considered or is about to be considered by the Authority.

Clause 41 deals with other employment, remuneration and business interests of the Chief Planner.

Subclause 41(1) provides that the Chief Planner shall not accept or engage in any of the activities listed in the following paragraphs, without the written permission of the Minister.

Proposed paragraph 41(1)(a) provides that the Chief Planner shall not accept or continue to hold an office in or under the Government of the Commonwealth, another Territory or a State, or in or under any public or municipal corporation.

Proposed paragraph 41(1)(b) provides that the Chief Planner shall not accept or continue to hold, or discharge the duties of, or be employed in, a paid office in connection with any business. This applies whether the business is carried on by any corporation, company, firm or individual.

Proposed paragraph 41(1)(c) provides that the Chief Planner shall not engage in or undertake any business, whether as principal or agent.

Proposed paragraph 41(1)(d) provides that the Chief Planner shall not engage or continue in the private practice of any profession, occupation or trade. In addition the Chief Planner shall not enter into any employment, whether remunerative or not, with any person, company or firm who or which is so engaged.

Proposed paragraph 41(1)(e) provides that the Chief Planner shall not act as a director of a company or incorporated society, otherwise than in accordance with the requirements of the duties of her or his office as Chief Planner or as a public servant.

Proposed paragraph 41(1)(f) provides that the Chief Planner shall not accept or engage in any remunerative employment other than in connection with the duties of her or his office as Chief Planner or as a public servant.

Subclause 41(2) provides that nothing in clause 41 is to be taken to prohibit the Chief Planner from becoming a member or shareholder of any incorporated company, or of any company or society of persons.

Clause 42 provides that the Chief Planner may resign office by writing signed by her or him and delivered to the Minister.

Clause 43 deals with the termination of the appointment of the Chief Planner.

Subclause 43(1) provides that the Minister may terminate the appointment of the Chief Planner for misbehaviour or physical or mental incapacity.

Subclause 43(2) provides that the Minister shall terminate the appointment of the Chief Planner, if he or she:

- becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- contravenes clause 40 or 41 without reasonable excuse;
- is absent without leave of the Minister for 14 consecutive days or 28 days in any 12 months.

Part V of the Bill deals with miscellaneous matters.

Clause 44 provides for the delegation of powers.

Clause 44 provides that the Executive may delegate any or all of its powers or functions under this Bill, to any specified Minister or Ministers. Any such delegation shall be made by instrument. This subclause does not empower the Executive to delegate the power to make regulations.

Clause 45 provides that the Executive may make regulations prescribing matters required or permitted by this Bill to be prescribed, or matters necessary or convenient to be prescribed for carrying out or giving effect to this Bill. Such regulations shall not be inconsistent with this Bill.

Part VI of the Bill deals with the repeal of existing legislation and with transitional provisions.

Clause 46 is an interpretation clause for the purposes of Part VI.

Clause 47 repeals sections 3 to 17 (inclusive) of the Interim Territory Planning Act 1988.

Clause 48 provides for the continuation of legal proceedings involving the Interim Territory Planning Authority (the interim authority) established by the Interim Territory Planning Act 1988.

Subclause 48(1) provides that where a cause of action by or against the interim authority had arisen but proceedings in respect of that cause of action had not been instituted before the date of commencement of this Bill (the commencement date), proceedings may be instituted by or against the Authority.

Subclause 48(2) provides that where proceedings by or against the interim authority had been instituted in a court, tribunal, commission or other body, but had not been completed before the commencement date, those proceedings may be continued by or against the Authority.

Subclause 48(3) provides that each party in any proceedings instituted or continued pursuant to this clause, has the

same rights and is subject to the same obligations, as if the Authority were the interim authority and the proceedings had been continued by or against the interim authority.

Clause 49 provides that, on and after the commencement date, the Authority takes all the rights, privileges, obligations and liabilities held by the interim authority immediately before that date.

Clause 50 provides for the continuation of any contract or agreement entered into by the interim authority which was in force immediately before the commencement date. Such a contract or agreement continues in force and has effect, on and after the commencement date, as if the Authority were substituted for the interim authority as a party to the contract or agreement, and as if any reference to the interim authority in the contract or agreement, were a reference to the Authority. With respect to references to the interim authority in the contract or agreement, this clause only applies to matters which occurred on or after the commencement date.

Clause 51 deals with variations to the NCDC policy. The term "NCDC policy" is defined in Part X of the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) as a policy that relates to the planning and development of the Australian Capital Territory, and which has been established by the National Capital Development Commission (NCDC) under the National Capital Development Commission Act 1957 (Cth). The term also refers to part of such a policy.

Subclause 51(1) provides that clause 51 applies in relation to an area of land that is within the terms specified in proposed paragraphs 51(1)(a),(b) and (c).

Proposed paragraph 51(1)(a) refers to area of land where a part of the Plan affecting that area is in substantially the same terms as an NCDC policy.

Proposed paragraph 51(1)(b) refers to an area of land where, before the commencement date, the interim authority had submitted a copy of a draft Plan of the NCDC policy referred to in proposed paragraph 51(1)(a), to the National Authority and had published a notice inviting interested persons to make written representations about the draft Plan within the period specified in the notice. Such a notice must have been published in the Gazette and in the principal daily newspaper which is published and circulated in the Territory.

Proposed paragraph 51(1)(c) refers to a declaration by the Executive that this section is to apply in relation to that area. Such a declaration must be by instrument.

Subclause 51(2) provides that were clause 51 applies in relation to an area of land, the relevant draft variation to the NCDC policy is, for the purposes of Part III in its application in relation to that area -

- (a) to be taken to be a draft variation to the part of the Plan corresponding to that policy, being a draft variation that is notified in accordance with clause 13, and in relation to which the National Authority has been consulted in accordance with clause 14; and
- (b) not to have any effect under clause 9.

Subclause 51(3) specifies that where -

- (a) clause 51 applies to a draft variation to an NCDC policy in relation to an area of land; and
- (b) before the commencement of this Act, that draft variation was submitted to the Executive for approval;

that draft variation is, in its application in relation to that area, to be taken to be a draft variation to the part of the Plan corresponding to that policy which has been submitted to the Executive in accordance with clause 18.

Subclause 51(4) provides that a notice under proposed paragraph 51(1)(c) is a disallowable instrument for the purpose of section 10 of the Subordinate Laws Act 1989. This means that the instrument will be of no effect if it fails to satisfy the notification, tabling and retrospectivity requirements under section 10 of the Subordinate Laws Act and that it is subject to scrutiny and disallowance by the Legislative Assembly.

Subclause 51(5) provides that in this clause the term "NCDC policy" has the same meaning as in Part X of the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth).