

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented and read a first time, 8 November 1988)

(SENATOR JENKINS)

A B I L L

FOR

An Act to provide for open government in the Australian Capital Territory, to protect the probity of that government and to establish fundamental rights of persons in the Australian Capital Territory

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I - PRELIMINARY

5 Short title

1. This Act may be cited as the Australian Capital Territory (Open Government, Probity and Citizen's Rights) Act 1988.

2 **Australian Capital Territory (Open Government,
 Probity and Citizen's Rights) No. , 1988**

Commencement

2. This Act shall come into operation on the day on which section 21 of the Australian Capital Territory (Self-Government) Act 1988 comes into operation.

Interpretation

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3 In this Act, unless the contrary intention appears:

"committee" means a committee of the Territory legislature;

"corrupt conduct", in relation to a member, means conduct of the member that is corrupt conduct under section 15;

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"Court of Surveillance" means the Court established by section 12;

"enactment" has the same meaning as it has in the Australian Capital Territory (Self-Government) Act 1988;

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"member" means a member of the Territory legislature;

"Supreme Court" means the Supreme Court of the Australian Capital Territory;

"Territory" means the body politic known as the Australian Capital Territory;

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"Territory authority" means a body, whether corporate or not;

(a) established by or under an enactment; or

(b) otherwise established by the Australian Capital Territory Executive;

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5 "Territory legislature" means the Legislative Assembly
for the Australian Capital Territory or other
legislative body (not being the Governor-General
or the Parliament of the Commonwealth) having
power to make laws for the peace, order and good
government of the Territory.

Objects

4. The objects of this Act are to ensure:

(a) that the people in the Territory have:

10 (i) access to information concerning the
government of the Territory; and

(ii) rights to seek reviews of administrative
decisions;

(b) open government in the Territory;

15 (c) probity in the administration and government of
the Territory; and

(d) that people in the Territory enjoy certain
fundamental rights.

PART II - OPEN GOVERNMENT

20 Freedom of information

5. The Territory legislature shall make provision, as soon
as practicable after the commencement of this section, and
shall thereafter maintain provision, by enactment, for
giving to members of the public rights of access to official
25 documents of the government of the Territory and of its
agencies not less favourable to members of the public than

Minutes of meetings

9. (1) The Territory legislature shall cause minutes of its meetings to be kept.

5 (2) A copy of any minutes so kept shall, on request made by a person, be made available for inspection by the person or, on payment of such fee (if any) as is fixed by or under an enactment, be supplied to the person.

Notification of laws of the Territory legislature

10 (1) Where a proposed law has been passed by the Territory legislature, it shall be notified forthwith in the Gazette.

(2) Where a proposed law is notified in the Gazette, it takes effect upon the date of notification or, if the proposed law otherwise provides, as so provided.

15 (3) The production of the Gazette containing the notification of an enactment shall, in all Courts, be evidence that the law has been made.

(4) In this section, "Gazette" means the Government Gazette of the Territory.

20 **Legislative reference centres**

11. (1) The Australian Capital Territory Executive shall publish copies of all enactments and subordinate laws and make them available for purchase by the public.

25 (2) The Territory legislature shall, as soon as practicable after the commencement of this section, make provision, by enactment, for the establishment of reference centres in the Territory (which may include libraries and government offices) where copies of all enactments, or of a class of enactments, may be inspected and copied.

PART III - PROBITY IN GOVERNMENT

Division 1 - Court of Surveillance

Establishment of Court of Surveillance

12. (1) There shall be a Court of Surveillance for the Territory.

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(2) Until the Territory legislature otherwise provides:

(a) the Supreme Court shall be the Court of Surveillance for the Territory; and

(b) the jurisdiction of the Court of Surveillance shall be exercised by a single Judge of the Supreme Court.

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Jurisdiction of Court of Surveillance

13. The Court of Surveillance has jurisdiction to hear and determine questions referred to it by the Territory legislature:

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(a) under section 14; or

(b) under subsection 17(4).

Corrupt conduct may be referred to court

14. The Territory legislature may, by resolution, refer to the Court of Surveillance the question whether a member has committed certain conduct specified or referred to in the resolution and, if the court finds that the member has committed that conduct, whether it constitutes corrupt conduct.

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Meaning of corrupt conduct

15. (1) For the purpose of this Act, but subject to subsection (5), "corrupt conduct", in relation to a member, is:

- 5 (a) any conduct of the member that adversely affects, or that could adversely affect, either directly or indirectly, the honest and impartial exercise of his or her functions as a member;
- 10 (b) any conduct of the member that constitutes or involves the dishonest or partial exercise of his or her functions as a member;
- (c) any conduct of the member that constitutes or involves a breach of public trust; or
- 15 (d) any conduct of the member that involves the misuse of information or material that he or she acquired in the exercise of his or her functions as a member, whether or not for his or her benefit or the benefit of any other person.

20 (2) Conduct committed by a person who was not, when the conduct was committed, a member may constitute corrupt conduct of a member if, after the person becomes a member, it affects, in a manner set out in subsection (1), the functions of the person as a member.

25 (3) Conduct of a member may constitute corrupt conduct notwithstanding that it occurs outside the Territory or outside Australia.

30 (4) Subject to subsection (5), conduct of a member comprising a conspiracy or attempt to commit or engage in conduct of a kind that would constitute corrupt conduct of the member constitutes, of itself, corrupt conduct for the purposes of this Act.

(5) Conduct does not constitute corrupt conduct for the purposes of this Act unless it could:

- (a) involve the commission of an offence under a law in force in the Territory; or
- (b) constitute grounds for termination of the services of the member.

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(6) For the purposes of subsection (5), conduct could involve the commission of an offence notwithstanding that a prosecution for the offence can no longer be instituted or continued.

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(7) Conduct comprising a conspiracy or attempt referred to in subsection (4) is not excluded by subsection (5) in a case where, if the conspiracy or attempt had been brought to fruition by further conduct, the further conduct could involve or constitute an offence or grounds referred to in subsection (5).

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Practice and procedure

16. Until the Territory legislature otherwise provides, the practice and procedure of the Court of Surveillance shall be as prescribed by rules of court made under the Australian Capital Territory Supreme Court Act 1933 and, to the extent not so prescribed, as directed by a Judge of the Supreme Court.

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Division 2 - Conflicts of Interest

Conflict of interest

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17. (1) A member who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or of a Territory authority under which goods or services are to be supplied to the Territory or to a

Territory authority shall declare that interest and shall not vote on a question in a meeting of the Territory legislature, or of a committee, where the question relates directly or indirectly to that contract.

5 (2) A contravention of subsection (1) does not affect the validity of anything done by the Territory legislature, or by a committee, as the case may be.

 (3) Subject to subsection (4), a question concerning the application of subsection (1) shall be decided by the
10 Territory legislature.

 (4) The Territory legislature may refer to the Court of Surveillance the question whether a member is, or has been, a party to, or has had a direct or indirect interest in, a contract made by or on behalf of the Territory or of a
15 Territory authority under which goods or services were to be, or are to be, supplied to the Territory or to a Territory authority and, if it does so, it shall give its decision under subsection (3) in relation to the member consistently with the Court's answer to that question.

20 Division 3 - Financial Accountability

Functions of Auditor-General

18. (1) The Auditor-General for the Territory shall have such functions in relation to the accounts and financial statements of the Territory or of a Territory authority as
25 are provided by an enactment.

 (2) In subsection (1), "accounts", in relation to the Territory or a Territory authority, means:

 (a) accounts and records relating to financial transactions of the Territory or Territory
30 authority; and

- (c) as to such other matters arising out of the audit, or the report on financial statements, by that person as the Auditor-General for the Commonwealth considers should be reported.

5 **PART IV - CIVIL RIGHTS**

Citizen's rights and freedoms

22. (1) The people of the Territory have, and shall continue to have, the following human rights and fundamental freedoms:

- 10 (a) the right of each individual to life, liberty, security of the person and enjoyment of property;
- (b) the right of each individual not to be deprived of any right referred to in paragraph (a) except by due process of law;
- 15 (c) the right of each individual to equality before the law and to the protection of the law;
- (d) freedom of religion;
- (e) freedom of speech;
- (f) freedom of assembly and association; and
- 20 (g) freedom of the press.

(2) The people of the Territory have, and shall continue to have, the rights and freedoms set out in subsection (1) without any discrimination on the ground of race, national origin, colour, religion, gender, marital status or sexual preference.

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Laws to be read subject to section 22

23. An enactment shall, unless it expressly states that it shall operate notwithstanding section 22, be so construed and applied as not to abrogate, abridge or infringe, or to authorise the abrogation, abridgement or infringement of any of the rights or freedoms set out in section 22 and, without limiting the generality of the foregoing, shall not be construed or applied so as:

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(a) to authorise or effect the arbitrary detention, imprisonment or exile of any person;

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(b) to impose or authorise the imposition of cruel and unusual treatment or punishment;

(c) to deprive a person who has been arrested or detained:

(i) of the right to be informed promptly of the reason for the arrest or detention;

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(ii) of the right to retain and instruct a lawyer without delay; or

(iii) of the remedy, by way of, or in the nature of, habeas corpus, for determining the validity of the detention and for obtaining his or her release if the detention is unlawful;

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(d) to authorise a court, tribunal, commission, board or other authority to compel a person to give evidence if the person is denied the services of a lawyer, protection against self-incrimination or other constitutional safeguards;

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- (e) to deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his or her rights or obligations;
- 5 (f) to deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal or of the right to be released from
- 10 custody on reasonable bail without just cause; or
- (g) to deprive a person of the right to the assistance of an interpreter in any proceedings before a court, commission, board or tribunal in which the person is a party or witness if the person does
- 15 not understand and speak the language in which the proceedings are conducted.

Acquisition of property to be on just terms

24. The power of the Territory legislature to make laws does not extend to the making of laws with respect to the

20 acquisition of property otherwise than on just terms.

