

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON THE
NEW PARLIAMENT HOUSE

REPORT RELATING TO THE PRECINCTS OF
THE NEW PARLIAMENT HOUSE AND
THE PARLIAMENTARY ZONE

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(Thirty-fourth Parliament)

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REPORT RELATING TO THE
PRECINCTS OF THE NEW PARLIAMENT HOUSE
AND THE PARLIAMENTARY ZONE

1. The Joint Standing Committee on the New Parliament House has considered aspects relating to the definition of the Parliamentary precincts and the Parliamentary Zone. In this brief report, the Committee outlines the background to the issues involved, makes recommendations in respect of the precincts for the new Parliament House and for the Parliamentary Zone having identified the alternatives available to achieve these objectives. The report also contains an Appendix describing the arrangements existing in certain other Parliaments in Australia and overseas, and in the Australian High Court and Australian National Gallery.

Summary of recommendations

2. The Committee recommends:

- (a) that the area of the Parliamentary precincts for the new Parliament House be defined by legislation;
- (b) that the precincts of the Parliament, following the move to the new Parliament House, be defined as follows:

"The area bounded by and including the base of the retaining walls around the site contained within the inner kerb of Capital Circle together with that area of the upper surface of the Land Bridge between Capital Hill and the junctions of the 2 bridges across State Circle with the upper levels of the northern cutting of State Circle".

- (c) that legislation to be enacted declaring the area of the Parliamentary precincts should also make provision for the Parliament to declare that buildings temporarily occupied by the Parliament be considered part of the precincts, or in the case of buildings vacated by the Parliament, that those buildings not be considered part of the precincts. (In making this recommendation, the Committee specifically re-affirms the views expressed in its May 1984 report on the use of the Provisional Parliament House when vacated by the Parliament);
- (d) that legislation declaring the area of the Parliamentary precincts contain a schedule listing buildings affected, and that the schedule be subject to amendment by regulation;
- (e) that provision be made:
 - (i) for police obligation to take action, and for Crown obligation to prosecute for offences, within the precincts, at the direction of the Presiding Officers; and
 - (ii) for the application of public order legislation in specified areas of the House; and
- (f) that early action be taken to amend the Parliament Act 1974 to enlarge the Parliamentary Zone by including that area between Capital and State Circles not presently included in the zone.

The Justification for a Definition of the Parliamentary Precincts

3. There is no doubt that Parliament House is a property of the Commonwealth. The definition of the precincts as proposed in this paper would give clear expression to the power of the Presiding

Officers to manage that property on behalf of the Parliament of the Commonwealth, in association with but independent of the Executive Government which presumes to act for the Commonwealth in all matters. Given that at present there is no clear definition of the precincts, there are 3 major defects which require attention:

- (a) although the Houses have the undoubted power to take a person into custody and to commit a person to prison, and consequently to expel a person from the precincts, there is no clear legal obligation upon the police to carry out the orders of the Presiding Officers;
- (b) although persons may be prosecuted for criminal offences committed in the precincts, the Crown has the usual discretion as to prosecution of such offences, and is under no clear legal obligation to prosecute offences at the direction of the Presiding Officers; and
- (c) although there is no doubt that the ordinary law applies in the precincts according to its tenor, there appears to be some doubt, whether well-founded or not, about particular criminal offences in their application to Parliament House.

4. It is considered essential that the building in which the Parliament meets, and access points and adjoining areas necessary for its proper operation, should be under the control of the Parliament through its Presiding Officers.

5. In 1969 in its report on the alternative sites for the new Parliament House, the Joint Select Committee on the New and Permanent Parliament House noted that:

"Down through the years it has been an embarrassment to the Parliament to lack control or be unsure of the extent of its control over the area of land surrounding the building." ¹.

6. The Committee went on to observe that:

"At present various Commonwealth Departments are concerned with aspects of the Parliamentary area and several statutes have application to it. Over time, much correspondence has flowed between the Parliament and the Departments in the matters of traffic control, parking facilities, police activities, control of demonstrations, public access to the building, roadway design, etc. It is felt that many of the problems which have arisen could have been avoided by having the whole area placed under the control of the Parliament through its Presiding Officers. Senators and Members using their own cars in Canberra will, for instance, be aware of the difficulties of parking which have arisen from time to time." ².

7. The following year in its final report on the new Parliament House, the Joint Select Committee stated:

"The determination of the precise area which will form the Parliamentary grounds, and over which control will be exercised by the Parliament, through its Presiding Officers, is most important. It is believed that Parliament's authority over the area it at present regards as its property may rest on doubtful ground. This should certainly not be the case in a new building in which there should be a written specification of the

1. Joint Select Committee on the New and Permanent House, Report on the Alternative Sites of Capital Hill and the Camp Hill Area for the New and Permanent Parliament House, April 1969, Volume 1, p.12.

2. Ibid.

exact area that is being appropriated for Parliament's use, and formal title to it should be placed beyond doubt. In particular, the position of the Executive block needs to be carefully delineated and any unusual situations arising from occupancy of a roadway, etc., need to be clearly covered."³.

8. In a report in May 1978, the Senate Committee of Privileges called for legislation to define the boundaries. In October 1984 the Joint Select Committee on Parliamentary Privilege recommended that:

"the precincts of the present Parliament House and of the new Parliament House, be defined authoritatively".⁴.

9. As outlined in House of Representatives Practice:

"The circumstances in which the issue of parliamentary precincts becomes relevant are:

- . the exercise of authority by the House, and by the Speaker or the Serjeant-at-Arms in the name of the House, within the precincts of the House. For example, the House of Commons has treated as a contempt:
 - . misconduct by Members or strangers within the precincts, and
 - . service of legal process within the precincts;

3. Joint Select Committee on the New and Permanent Parliament House, Report on the Proposed Parliament House for the Parliament of the Commonwealth of Australia, March 1970, p.86.

4. Joint Select Committee on Parliamentary Privilege, Final Report, October 1984, p.142.

- . the sale of alcoholic refreshments within the precincts which is exempted from the operation of the licensing laws. In Parliament House the liquor laws of the Australian Capital Territory are specifically excluded in their application;
- . limitation of the powers of the police operating within the Parliament and its precincts, and
- . the application of security arrangements for the Parliament".⁵.

The Area of the Precincts

10. In its final report, the Joint Select Committee on the New and Permanent Parliament House tended to the view that the Executive block would not form part of the precincts of the new Parliament House. The location of the Executive area within the design of the new Parliament House and its proximity to part of the Parliamentary Library and other parliamentary areas may affect the possibility of the Executive area being divorced from the parliamentary areas and Parliamentary precincts.

11. Furthermore, any suggestion that parts only of the new Parliament House need be included in the precincts of the Parliament ignores the reality, and indicates little understanding, of the way the Parliament, its Members and its committees operate. The Committee believes that, on balance, the whole of the building and other areas of parliamentary usage should be included in the precincts.

12. Apart from the lack of a clear definition of the precincts of the present building, complicated by additions made to it, there is no clearly identifiable line which, de facto, can be recognised as the boundary of the precincts of the Parliament. There is not only a need to define the precincts but the boundary needs to be clearly identifiable and recognisable as such.

5. J.A. Pettifer, CBE (ed.), House of Representatives Practice, 1981, p.156.

13. The above ground structure of the new building is surrounded by "Parliament Drive". Beyond "Parliament Drive" are gardens, grounds, sporting facilities, walking paths, the ceremonial parade ground, parking areas, entrances to underground parking, and the goods receival area through which all goods must enter the building. There is also the possibility of the future construction of a child care centre within the grounds. All of these external facilities are enclosed within Capital Circle.

14. There appear to be 4 readily identifiable areas which could comprise the precincts of the Parliament. These areas are shown in diagram form at Appendix 1. In summary, they are the area enclosed within (1) the building line, (2) the inner kerb of Parliament Drive, (3) the inner kerb of Capital Circle together with the surfaces of the Land Bridges and (4) the inner kerb of State Circle. The first and second options suffer the disadvantage of excluding all of the external facilities to which reference has already been made, while the third and fourth options include all of these external facilities and can be readily identified and defined. The third option (Capital Circle) meets a number of necessary criteria, being:

- (a) visually definable;
- (b) administratively sound, and
- (c) representative of the interface between Parliament and the City of Canberra.

15. The fourth option (the area contained within State Circle) suffers from a number of disadvantages. The greatest difficulty would be caused by the fact that Capital Circle, one of the city's busiest roads, would be located within the Parliamentary precincts and therefore under the authority of the Presiding Officers. This would be undesirable and perhaps unworkable. Although the extension of the precincts to State Circle was

favoured by this Committee in the 32nd Parliament, it is now considered that this is not a viable option. Later in this Report, however, it is proposed that the area out to State Circle should be included within the Parliamentary Zone so that any developments in the area between Capital and State Circles must be approved by the Parliament.

16. It is recommended that the precincts of the new Parliament House be defined as follows:

"The area bounded by and including the base of the retaining walls around the site contained within the inner kerb of Capital Circle together with that area of the upper surface of the Land Bridge between Capital Hill and the junctions of the 2 bridges across State Circle with the upper levels of the northern cutting of State Circle."

Declaring the Precincts

17. Whilst various alternatives are possible, two major options emerge. These are:

- (a) the adoption of resolutions by both Houses of the Parliament; and
- (b) the enactment of legislation.

Arrangements for the definition of precincts in certain other Parliaments in Australia and overseas, and in other institutions, are summarised in Appendix 2.

18. The matter of delineation was considered by the Joint Select Committee on Parliamentary Privilege which reported in favour of legislation. In its final report, the Committee stated:

"The delineation of the precincts (both in the present Parliament House and in the new building) could be done either by statute, or by resolutions of the Houses. The difficulty with resolutions is that they would essentially be no more than the expression of opinions of the Houses, and accordingly delineation of the precincts by statute is preferable."⁶.

19. That Committee went on to propose that:

"Any delineation of the precincts by statute should contain a provision for variation in the future, and also some form of delegation for the Parliament, or the Presiding Officers, to be able to declare that a particular place is or is not to be considered a part of the precincts. This would obviate the necessity for amendment to any statute to cover, for example, the temporary occupation of another building for parliamentary purposes."⁷.

20. The Committee also invited attention to the doubt that exists as to the extent of the application of certain statutory provisions to the precincts of the Parliament. Whilst it is clear that the ordinary criminal law applies in the precincts, a fact recognised by that Committee, it recommended that:

- "(1) the areas of doubt concerning the application of particular laws within the precincts be clarified and resolved;
- (2) the precincts of the present Parliament House and of the new Parliament House, be defined authoritatively."⁸.

6. Joint Select Committee on Parliamentary Privilege, *op.cit.*, p.141.

7. *Ibid*, pp. 141-142.

8. *Ibid*, p.142

21. That Committee's recommendation for the definition of the precincts of the Parliament is in accord with a recommendation made by the Senate Committee of Privileges in May 1978. It is strongly supported in respect of the new Parliament House. The proposal for declarations by the Parliament and the Presiding Officers should overcome difficulties envisaged by the Parliament's occupation of East Block and the former Hotel Kurrajong. It is not considered appropriate for the Act to be varied other than by amendment.

22. Accordingly, it is recommended that:

- (a) the area of the Parliamentary precincts for the new Parliament House be defined by legislation;
- (b) the statute be drafted in consultation with representatives of the Parliamentary departments and the appropriate Executive departments to provide:
 - (i) for the Parliament to be able to declare that a particular place is or is not to be considered part of the precincts;
 - (ii) for the Presiding Officers to have the power of management of buildings in the precincts on behalf of the Parliament;
 - (iii) for an obligation on the police to remove any person from the precincts at the direction of the Presiding Officers;
 - (iv) for an obligation on the Crown to prosecute, at the direction of the Presiding Officers, any person for an offence committed in the precincts;

- (v) for the Public Order (Protection of Persons and Property) Act 1971 and related legislation to apply within the precincts; and
- (vi) for the foregoing provisions not to derogate from any power or immunity of the Houses, their members or their committees under section 49 of the Constitution.

The Parliamentary Zone

23. The Parliament Act 1974 not only determined Capital Hill as the site for the new Parliament House but also defined the Parliamentary Zone within which no building or other work is to be erected without the approval of both Houses of Parliament. The zone comprises the area within Capital Circle to its junctions with Commonwealth and Kings Avenues and thence along those avenues to their respective junctions with the southern edge of Lake Burley Griffin.

24. The purpose of declaring a Parliamentary Zone is clear - to ensure that Parliament is able to exercise control over the area so that no works are carried out or buildings erected which would detract from, be not in harmony with, or have adverse consequences upon, the Parliament building. Since the enactment, a number of proposals have come under the scrutiny of this Committee and been approved by both Houses.

25. The area between Capital and State Circles, other than that small part between Commonwealth and Kings Avenues, is not included in the Parliamentary Zone. It is of concern that this area, in such close proximity to the new building and forming part of its environment, has not been included. The Committee considers it essential that the Parliament should be in a position to prevent this area being put to some use which may not be in harmony with the new building and parliamentary purposes. A simple amendment to the Parliament Act 1974 would overcome this possibility and it is recommended:

That early action be taken to amend the 'Parliament Act 1974' to enlarge the Parliamentary Zone by including that area between Capital and State Circles not presently included in the zone.

26. At Appendix 3 are diagrams showing the existing and proposed Parliamentary Zones.



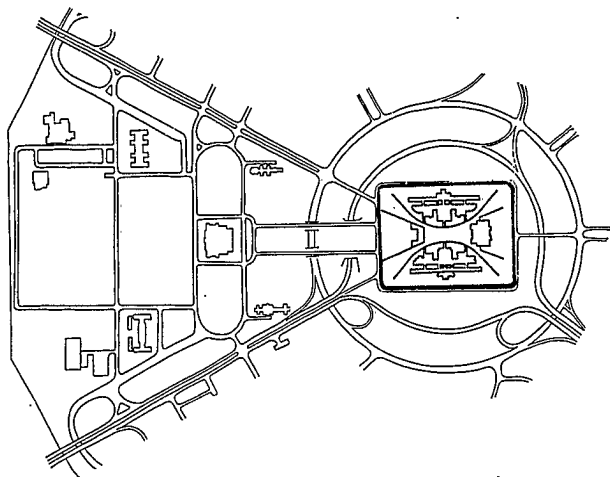
(H.A. JENKINS)

Speaker

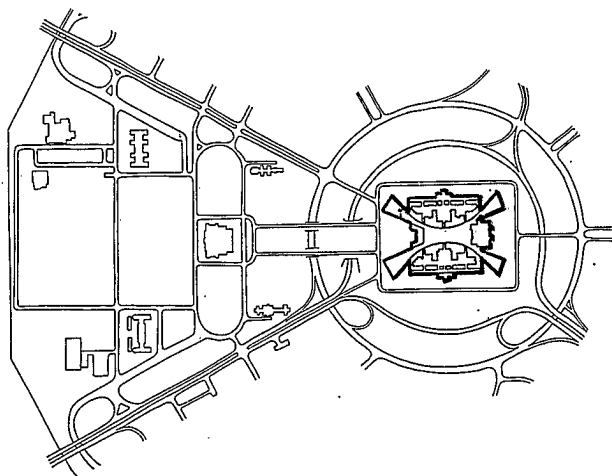
Joint Chairman

Canberra

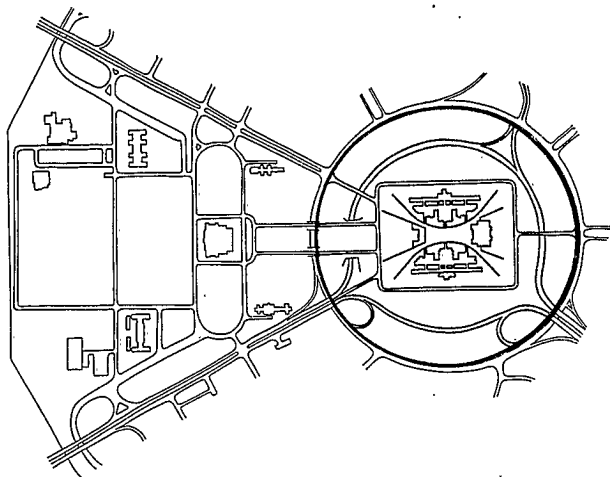
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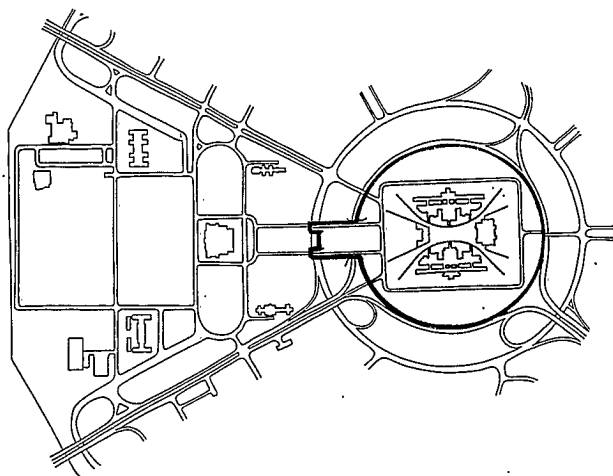
OPTION 2
PARLIAMENTARY PRECINCTS
(INNER KERB, PARLIAMENT DRIVE)



OPTION 1
PARLIAMENTARY PRECINCTS
(BUILDING LINE)



OPTION 4
PARLIAMENTARY PRECINCTS
(INNER KERB, STATE CIRCLE)



OPTION 3
PARLIAMENTARY PRECINCTS
(INNER KERB, CAPITAL CIRCLE AND
PART OF LAND BRIDGE)

ARRANGEMENTS IN CERTAIN OTHER PARLIAMENTS, THE
AUSTRALIAN HIGH COURT AND THE AUSTRALIAN
NATIONAL GALLERY

New South Wales

There is no definition of the precincts except for some abstract references in the constitution which are more concerned with what the House is, rather than where it is. Because the physical extent of the precincts is not defined it is not possible to exercise authority with any confidence.

The N.S.W. Joint Select Committee on Parliamentary Privilege in its final report of September 1985 has recommended -

"(1) That a statute be enacted physically defining the precincts of the Parliament and vesting their control in the Presiding officers. The Western Australian statutes would provide a useful starting point for such a statute. This statute would include provisions making it clear

(a) that the Presiding Officers have absolute authority over access to the precincts of the Parliament or any individual sections of those precincts;

(b) no law enforcement agency has any right to operate within the precincts of the Parliament without the express permission of the presiding Officers;

(c) the control of demonstrations within the Parliamentary precincts should be by the Parliamentary attendants and the police directed

by the Serjeant-at-Arms and Usher of the Black Rod using the delegated powers of the Presiding Officers.

(2) A number of civil provisions need be made with respect to members of the New South Wales Police Force within the precincts of the Parliament. These would be:

(a) The conducting by the Parliament, in conjunction with an officer delegated by the Commissioner of Police, of an induction course on the institution of Parliament and its privileges for officers whose duties will bring them to be part of the patrol of the Parliamentary precincts during Parliamentary Sittings;

(b) the control of such police while they are within the precincts by the Serjeant-at-Arms and Usher of the Black Rod under delegated authority from the Presiding Officers; and

(c) firearms should not be carried by members of the Police Force within the precincts of the Parliament".

Victoria

Precincts have not been defined by statute or statutory rule. The precincts have been interpreted as including the buildings proper, steps, carriageways, collonades and gardens but this view has not been tested in the courts. There has been some concern over recent years in relation to the police acting on behalf of the Parliament, particularly on the steps. Control is exercised by the Presiding Officers through the Serjeant-at-Arms and the Usher of the Black Rod.

There have been moves for some time to define the precincts and it is understood that the Parliament is interested in formalising the present arrangements.

South Australia

Precincts are defined by an Act of Parliament but powers within the precincts are not defined. Authority within the precincts is vested in the Presiding Officers and control is exercised by the Parliament through its contempt provisions.

There have been some problems with demonstrators on the steps of Parliament House and any action has been left to the discretion of the police. The Crown Solicitor has provided an opinion that the contempt powers could be used in relation to the steps but that it would be cumbersome and recommended specific amendment to the existing Police Offences Act.

Queensland

The situation in Queensland is not clearly defined, the grounds are a reserve under the Lands Act but no trustee has ever been appointed. It is "understood" that the Speaker has control over the House, buildings and grounds but specific powers are not defined.

The Criminal Code does give the Speaker certain powers over certain aspects of disturbance when the House is sitting and the Clerk exercises these powers when the House is not sitting. These amendments were made in response to specific circumstances following a legal case.

Western Australia

Precincts are defined by legislation. Control and management are expressed in rules and by-laws issued by the Joint House Committee and the Parliamentary Reserve Board. Powers are exercised by the Presiding Officers and the House Controller.

Tasmania

The precincts and authority of Parliament are also defined in an Act. Control of the grounds is vested in a House Committee which has the power to appoint a Controlling Officer and create rules of conduct. Monetary penalties are provided for contravention of the Act, although these are regarded as being out-of-date. Complaints under the Act can only be made by the Controlling Officer.

Northern Territory

The precincts are defined in a Schedule of the Legislative Assembly (Powers and Privileges) Act 1977. They can be altered by a resolution of the Assembly. The Speaker has control and management of the precincts and prosecutions are initiated by the Privileges Committee.

The precincts at present include only the grounds presently occupied by the Legislative Assembly Chamber, some offices and a carpark. Other buildings occupied by Members are not included in the precincts.

No problems have been experienced, although difficulties may arise in the transition from the present building to the new Legislative Assembly building.

United Kingdom

The House of Commons has exercised control over what it regards as its precincts since the 17th Century. There is no legislation and the precincts have been regarded as being any premises occupied corporately by Members for the purpose of their parliamentary duties.

The question of access to Parliament is dealt with at the commencement of each session when both Houses order that "the commissioner of police of the metropolis shall keep the streets leading to Parliament House free and open and ensure that no obstruction is permitted to hinder Lords and Members in approaching the House".

Canada

The precincts have been defined by tradition and practice rather than by legislation and there is no strict definition of parliamentary precincts. They are defined as the premises the Senate and the House of Commons occupy for the exercise of their parliamentary duties.

The powers exercised within the precincts are oriented toward enabling the Houses of Parliament to perform their legislative functions. The powers are related to section 18 of the Constitution Act 1867. The Canadian Parliament has defined its powers, privileges and immunities as those held by the British House of Commons at the time of the establishment of the federation (in 1867). This is contained in section 4 of the Senate and House of Commons Act (R.S.C. 1970 C.5-8).

Problems have been encountered with the service of legal documents and the interrogation and arrest of persons. Outside police forces can only enter the precincts with the permission of, or at the request of, the House or the Speaker. The criminal law of Canada applies within the precincts.

United States of America

The present precincts of the United States Congress are defined by Public Law 570, 79th Congress, and approved in 1946 but the precinct originally dates from 1793 and has been updated as needed. The boundaries are defined in terms of streets and roadways.

The Legislative Branch exercises sole authority over the precincts but police authority has been specifically defined as have certain responsibilities of the District of Columbia for roadway and utility services located within the precincts. The powers are defined by statute and are changed by Act of Congress, proposed changes having been considered by Congressional committees.

The Capitol Police Board, comprising the Serjeants-at-Arms and the Architect of the Capitol, makes traffic regulations and is responsible for all security, the latter being co-ordinated with Executive Branch security forces.

There have been legal challenges to statutory restrictions by persons who have felt the restrictions were unconstitutional, and this has meant that particular care is required in drafting proposed changes.

Israel

The precincts and authority of the Knesset are defined in an Act of the Knesset. Authority is vested in the Chairman of the Knesset who is able to take any measure which appears to him to be necessary for the maintenance of order and security.

High Court of Australia

The precincts of the High Court have been defined and rules covering conduct have been made under the High

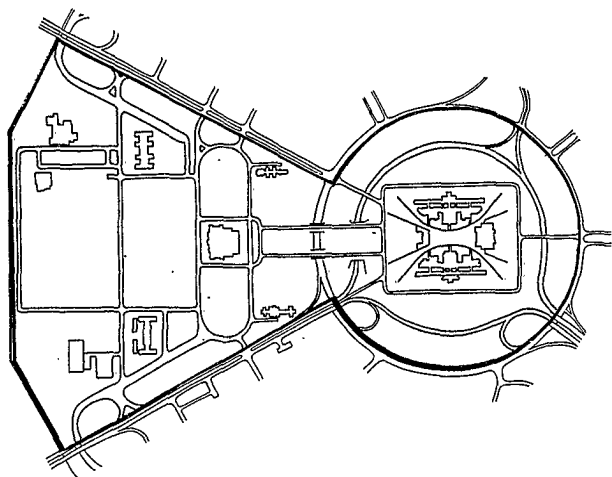
Court of Australia Act 1979, and directions relating thereto issued in the Commonwealth of Australia Gazette.

The Act makes provision for the precincts to be altered by Proclamation. This makes allowance for any difficulties which may occur in the future should the operations of the High Court require extension of the present premises. A similar provision exists to enable the Clerk of the High Court to alter regulations covering the conduct of persons within the precincts.

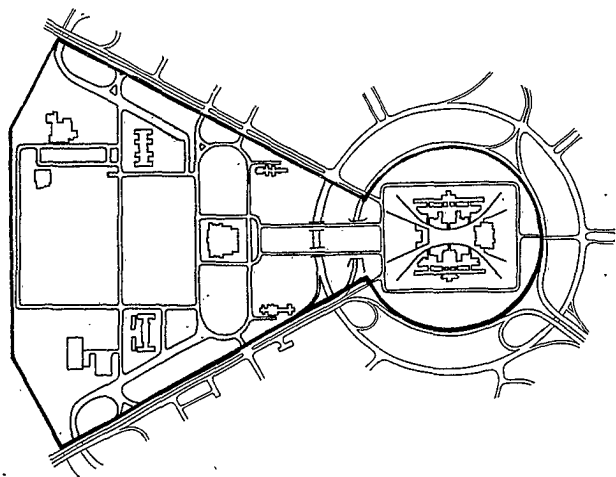
Authority is vested in the Clerk of the High Court and the directions comprehensively deal with the conduct of persons and the powers to deal with offenders.

National Gallery

Regulations made under the National Gallery Act 1975 define the "Gallery building" and "Gallery land", provide for the powers of security officers in the building and on the gallery land, and lay down a monetary penalty for offences.



PROPOSED PARLIAMENTARY ZONE



EXISTING PARLIAMENTARY ZONE