

**REVISED**

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**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**LEGAL AID AMENDMENT BILL 2005**

**EXPLANATORY STATEMENT**

Circulated by authority of  
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## LEGAL AID AMENDMENT BILL 2005

### Overview of Bill

The Legal Aid Amendment Bill 2005 (the Bill) makes a number of amendments to the *Legal Aid Act 1977* (the Act) to improve the way in which the Legal Aid Commission (the Commission) may provide legal assistance. The amendments in the Bill will provide the Commission with more options in respect of the level of assistance, and clarify a number of matters affecting the performance by the Commission of its functions.

### Financial Implications

The Bill does not contain any financial implications.

### Details of the Bill

**Amendments 1, 2 and 3** are formal requirements that respectively refer to the name of the Act, the commencement provisions and declare that it is the *Legal Aid Act 1977* that is being amended.

**Amendment 4** omits the definitions of *legal aid committee* and *member of a legal aid committee*. The provisions relating to legal aid committees are repealed by later amendments in the Bill.

**Amendment 5** omits the reference to a commissioner nominated by the Attorney-General for the Commonwealth to represent him or her. The position of the Commonwealth nominated commissioner is no longer required.

**Amendment 6** is a technical amendment to renumber the section consequential on amendment 5.

**Amendment 7** omits the interpretative provision which states that a reference in section 7 to the chief executive officer includes any person acting in the office of the chief executive officer. This provision is unnecessary as section 220 of the *Legislation Act 2001* provides this as a matter of interpretation.

**Amendment 8** inserts a new provision in section 12 so that the Commission may determine guidelines to be applied in deciding the nature and extent of legal assistance to be provided in a matter or proceeding or any part of a matter or proceeding.

**Amendment 9** is a technical amendment to renumber the section consequential on amendment 8.

**Amendment 10** omits the interpretative provision that provides that a reference in section 13 to the assistant executive officer or the chief executive officer includes a person acting in those respective offices. This provision is unnecessary as section 220 of the *Legislation Act 2001* provides this as a matter of interpretation.

**Amendment 11** omits part 3 of the Act. Part 3 provides for the establishment and functions of legal aid committees. Legal aid committees are no longer used and these redundant provisions are omitted accordingly.

**Amendment 12** omits the interpretative provision that provides that the section applies to a person acting in the office of a statutory officer of the commission in like manner to the actual statutory officer. This provision is unnecessary as section 220 of the *Legislation Act 2001* provides this as a matter of interpretation.

**Amendment 13** is a technical amendment to renumber the section consequential on amendment 12.

**Amendment 14** omits the interpretative provision which states that a reference in section 23 to the chief executive officer includes any person acting in the office of the chief executive officer. This provision is unnecessary as section 220 of the *Legislation Act 2001* provides this as a matter of interpretation.

**Amendment 15** substitutes two new sections for section 25(1). The substantive effect of the amendment is to add minor legal assistance to the types of legal assistance for which an application need not be in writing. This amendment is consequential on amendment 21 which inserts new section 30A.

**Amendment 16** is a technical amendment to renumber the section consequential on amendment 15.

**Amendment 17** substitutes new sections 26 and 27.

Section 26 specifies the way in which applications for legal assistance must be decided. The substantive changes to section 26 are as follows:

- the references to matters being decided by a legal aid committee are omitted as a consequence of the amendments made in amendment 11;
- provision for the commission to decide an application is included in section 26(1)(c);
- provision is included for the commission to give directions about the types of applications that must be decided by the commission; and
- the requirement to apply any relevant guidelines in deciding an application is made explicit by section 26(2).

Section 27 provides for the ending or changing of legal assistance. The substantive changes to section 27 are as follows:

- the references to matters being decided by a legal aid committee are omitted as a consequence of the amendments made in amendment 11;
- the original decision maker under section 26 must make any subsequent decision to end or change the approved legal assistance.

**Amendment 18** substitutes two new sections for section 28(1). The substantive effect of the amendment is to treat minor legal assistance in the same way as duty lawyer services or legal advice. That is, minor legal assistance may be provided without an application under section 25.

**Amendment 19** is a technical amendment to renumber the section consequential on amendment 19.

**Amendment 20** substitutes new section 28A(1). The substantive change is to omit the reference to matters being decided by a legal aid committee as a consequence of the amendments made in amendment 11.

**Amendment 21** inserts new section 30A to provide the commission with a specific power to provide minor legal assistance in accordance with guidelines issued by the commission. The commission may charge for the provision of such assistance.

**Amendment 22** inserts substitutes new section 31A(1) to clarify that notification to the Registrar-General of a charge on land need not be for a specified amount but may simply be an amount payable to the commission.

**Amendment 23** substitutes new section 32(1). The substantive change is to omit the reference to legal aid committees as a consequence of the amendments made in amendment 11.

**Amendment 24** omits section 32(11) which provides for referral of certain accounts to a legal aid committee. This provision is omitted as a consequence of the amendments made in amendment 11.

**Amendment 25** is a technical amendment to renumber the section consequential on amendment 24.

**Amendment 26** inserts new section 32AA. The intention of new section 32AA is to ensure that the commission has greater control over its liabilities by requiring private legal practitioners to invoice for services to the commission within six months after the day the matter is finalised. The new section also provides that the commission is not obliged to pay for legal services provided by a private legal practitioner before an application for legal assistance is made. The commission may pay for such services where the legal practitioner has given notice that the person intends to apply for legal assistance.

**Amendment 27** substitutes new section 34(2). The substantive change is to omit the reference to legal aid committees as a consequence of the amendments made in amendment 11.

**Amendment 28** omits the reference to a legal aid committee as a consequence of the amendments made in amendment 11.

**Amendment 29** omits the reference to a legal aid committee as a consequence of the amendments made in amendment 11.

**Amendment 30** omits the reference to a legal aid committee as a consequence of the amendments made in amendment 11.

**Amendment 31** omits the reference to a legal aid committee as a consequence of the amendments made in amendment 11.

**Amendment 32** is a technical amendment to renumber the section consequential on amendment 31.

**Amendment 33** omits the reference to a legal aid committee as a consequence of the amendments made in amendment 11.

**Amendment 34** omits section 53 which provides for the appointment of an acting president of the commission. The Act currently provides for the appointment of an acting president and acting statutory officers of the commission, but does not provide for acting commissioners other than the president. While there are comprehensive provisions for the appointment of persons to act in a position under the *Legislation Act 2001*, the presence of specific provisions in the Act suggests a contrary intention to the application of those general provisions. To remove any doubt as to the ability of the minister to appoint an acting commissioner, the Bill omits provisions of section 53 and section 62 that provide for acting appointments to be made, so that it is clear that the general provisions in the *Legislation Act 2001* apply and that acting appointments made be made in respect of all statutory provisions under the Act.

**Amendment 35** omits the interpretative provision that provides a reference in section 54 to the president or a commissioner includes a person acting in those respective offices. This provision is unnecessary as section 220 of the *Legislation Act 2001* provides this as a matter of interpretation.

**Amendment 36** omits the interpretative provision that provides a reference in section 55 to the president includes a person acting in that office. This provision is unnecessary as section 220 of the *Legislation Act 2001* provides this as a matter of interpretation.

**Amendment 37** substitutes new section 62. Similar to amendment 34, the substantive change is to omit those provisions relating to acting appointments so that it is clear that the general provisions in the *Legislation Act 2001* will apply.

**Amendment 38** omits part 9 of the Act as a consequence of amendment 11. Part 9 sets out administrative provisions relating to legal aid committees and is no longer required.

**Amendment 39** omits the reference to a legal aid committee as a consequence of the amendments made in amendment 11.

**Amendment 40** omits the reference to a legal aid committee as a consequence of the amendments made in amendment 11.

**Amendment 41** omits the reference to a person acting in the office of chief executive officer. This provision is unnecessary as section 220 of the *Legislation Act 2001* provides this as a matter of interpretation.

**Amendment 42** omits the reference to a person acting in the office of chief executive officer. This provision is unnecessary as section 220 of the *Legislation Act 2001* provides this as a matter of interpretation.

**Amendment 43** is a transitional provision to ensure that members of former legal aid committees continue to be bound by secrecy obligations under the Act.