

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
Legal Aid (Amendment) Ordinance 1985

No. 1, 1985

On 25 January 1984, the Attorney-General, at the request of the Legal Aid Commission (A.C.T.) ("the Commission"), instituted an independent inquiry into whether the business of the Legal Aid Office (A.C.T.) (the name under which the Commission performs its function under section 8 of the Legal Aid Ordinance 1977) had been conducted in a manner consistent with the obligation of the Commission to provide legal assistance in the most effective, efficient and economical manner. The Inquiry, conducted by Mr F.C. Pryor, reported to the Attorney-General on 2 May 1984.

Following a consideration of the recommendations of the Report, legislative action was proposed with a view to:

- (i) clarifying the relationship between the officer in charge of the Legal Aid Office (A.C.T.) and the Commission; and
- (ii) establishing clear control of the officer in charge by the Commission in his management of the office.

On 11 October 1984 the Governor-General approved the Legal Aid (Amendment) Ordinance (No. 2) 1984 and the making of that Ordinance was notified in the Gazette on 19 October 1984. Section 2 of that Ordinance provides that it shall come into operation on such date as is fixed by the Minister of State for Territories by notice in the Gazette. Such date has not yet been fixed. The amendments to that Ordinance, effected by this Ordinance, will come into operation on the same date.

This Ordinance amends the Legal Aid (Amendment) Ordinance (No.2) 1984 to provide:

- . that the Chief Executive Officer of the Commission shall ex officio be a Commissioner of the Commission; and
- . for an appeal process with respect to the dismissal of a statutory officer of the Commission on the grounds set out in sub-section 60(1).

In accordance with Government policy, regarding the adoption of non-sexist terms in legislation, the opportunity has also been taken to change the title of the head of the Commission from "Chairman" to "President". The title of the heads of Legal Aid Committees and Review Committees has been changed from "Chairman" to "senior member".

Details of this Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Legal Aid (Amendment) Ordinance 1985.

Section 2 repeals section 7 of the Legal Aid (Amendment) Ordinance (No. 2) 1984 and;

- . amends section 53 of the Legal Aid Ordinance 1977 by omitting the word "Chairman" (of the Commission) wherever occurring and substituting the word "President";
- . re-enacts sub-section 60(1) of the Legal Aid Ordinance 1977 (in the same form as was inserted by the Legal Aid (Amendment) Ordinance (No.2) 1984) to provide that the Commission may remove a statutory officer of the Commission from office on the grounds of "inefficiency or incompetence" in addition to the existing grounds of misbehaviour or physical or mental incapacity;

- . adds sub-section 60(3), which provides that where a decision is made by the Commission under sub-section 60(1) to remove a statutory officer from office that the Commission shall give written notice to the statutory officer, which notice shall;
 - (i) state the findings of the Commission on any material questions of fact,
 - (ii) refer to the evidence on which the findings were based,
 - (iii) state the reasons for the decision;
- . adds sub-section 60(4) which provides that a notice given to a person under sub-section 60(3) shall inform the officer of the right to apply to the Administrative Appeals Tribunal for a review of the decision;
- . adds sub-section 60(5), which provides that the validity of a decision made under sub-section 60(1) shall not be affected by failure to comply with sub-section 60(4);
- . amends sub-section 71(1) of the Legal Aid Ordinance 1977 by omitting the word "Chairman" (of a Legal Aid Committee) and substituting the words "senior member"; and
- . inserts section 91B in the Legal Aid Ordinance 1977 which provides that application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commission under sub-section 60(1) removing a statutory officer of the Commission from office.

Section 3 inserts section 9A into the Legal Aid (Amendment) Ordinance (No. 2) 1984. This is a transitional provision which provides, in sub-sections (1), (2), and (3), that a person who was, immediately before the date of commencement of the Legal Aid (Amendment) Ordinance (No. 2) 1984, the Chairman of the Commission, the Chairman of a Legal Aid Committee or the Chairman of a Review Committee respectively shall be deemed to have been appointed as President of the Commission, elected as senior member of the Legal Aid Committee, or appointed as senior member of the Review Committee, as the case may be, and holds office, for the remainder of the period of his appointment under the Legal Aid Ordinance 1977.

Section 4 repeals the Schedule to the Legal Aid (Amendment) Ordinance (No. 2) 1984 and substitutes a new Schedule, thereby effecting a number of drafting amendments which are mainly consequential. However, those of substantive effect are as follows:

- . Sub-section 7(2) of the Legal Aid Ordinance 1977 which provided that the Director was an ex officio Commissioner of the Commission has been re-inserted with the omission of the word "Director" and the substitution of the words "Chief Executive Officer",
- . Sub-section 38(2) of the Legal Aid Ordinance 1977 has been amended by omitting the word "Chairman" (of a Review Committee) and substituting the words "senior member".
- . Sub-section 56(3) of the Legal Aid Ordinance 1977 formerly provided that;

"A statutory officer of the Commission holds office on such terms (if any) in respect of matters not provided for by this Ordinance as are determined by the Governor-General on the recommendation of the Commission."

The sub-section has been amended;

- (a) by omitting the words "(if any)" and
- (b) by omitting the words "the Governor-General on the recommendation of the Commission" and substituting the words "the Commission with the approval of the Attorney-General".

Section 59 of the Legal Aid Ordinance 1977 has been amended to provide that a statutory officer may resign his office by writing delivered to the Commission. The section formerly required the resignation to be delivered to the Governor-General.

Authorised by the Attorney-General
Ord 80/84