

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
LEGAL AID (AMENDMENT) ORDINANCE 1982

84 of 1982

GENERAL OUTLINE

This Ordinance provides for amendments to the Legal Aid Ordinance 1977 (the Principal Ordinance) in relation to the following matters:

- (a) The composition of the Commission;
- (b) The review of decisions;
- (c) The Commission's control over policy;
- (d) The Commission's right to obtain information from its officers; and
- (e) Changes to be made as a consequence of the abolition of the Commonwealth Legal Aid Commission and its replacement by the Commonwealth Legal Aid Council.

The Composition of the Commission

The total membership of the reconstituted Commission will continue to be the Chairman and eight other members (section 7 of the Principal Ordinance as amended by section 5). Four of its members will be appointed upon the basis of nominations from interested bodies in the Australian Capital Territory (the House of Assembly, the Law Society, the Bar Association and the Council of Social Service), one member will be nominated by the Attorney-General (as his representative) and the Director of Legal Aid will be a member ex officio. The remaining two members will be nominated by the

Government; they have replaced one of the two members nominated by the Law Society and a member nominated by the House of Assembly but not being a member of the House of Assembly.

Bodies other than the House of Assembly entitled to nominate members will each submit a panel of not less than three persons (from whom a Commissioner will be chosen) instead of a single nominee.

At present, the Commission is composed almost entirely of members appointed in the capacity of representative of an interested party, the only exceptions being the Chairman and, to a lesser extent, the Director of Legal Aid. This representation-type Commission has not worked satisfactorily in practice and changes have been necessary in order to provide a Commission better fitted to carrying out its tasks.

Under the re-structuring of the Commission contained in section 5 of the Ordinance, the representational element is balanced by the appointment of members having expertise that will assist the Commission to function more effectively. This has resulted from the substitution of the two members not subject to outside nomination for the two members previously nominated by interested bodies as mentioned above and from the selection of members from panels submitted by the Law Society, the Bar Association and the Council of Social Service. Moreover, specific provision has been made requiring that the two members not subject to outside nomination shall be persons who, in the opinion of the Governor-General, will, by reason of their qualifications, training or experience, be able to afford specialist assistance to the Commission in the performance of its function (section 5).

In order to maintain the guarantee in section 50 of the Principal Ordinance that at least three Commissioners shall not be lawyers, the Ordinance provides, in the amendment of that section made in section 17, that one of the two additional members nominated on the basis of having special expertise shall not be a lawyer.

The Review of Decisions

The Administrative Review Council has drawn attention to the fact that the review provisions in Part VI of the Principal Ordinance do not extend to some decisions which should be subject to review. The Ordinance provides for such decisions to be subject to review (sub-sections (1) and (2) of section 36 of the Principal Ordinance, as amended by section 10).

The Council has also pointed out that the Review Committees, as constituted under the Principal Ordinance, lack independence from the persons making the decisions in as much as section 38 requires that -

- (a) they be appointed by the Commission, and
- (b) one of their members be an officer of the Commission.

The Ordinance provides (sections 11 and 12) for all members of a Review Committee to be appointed by the Attorney-General rather than by the Commission.

The Ordinance also provides for the membership of a Review Committee to be as follows:

- (a) one private practitioner selected from a panel nominated by the Law Society;

- (b) one private practitioner selected from a panel nominated by the Bar Association;
- (c) one person who is neither a private practitioner nor an officer or member of the Commission and who has relevant qualifications or experience.

The maximum term of appointment for members of a Review Committee is to be extended from 1 year to 3 years (section 76 of the Principal Ordinance as amended by section 18).

The following amendments are consequential upon the changes affecting a Review Committee:

- (a) A Review Committee is to be able to obtain relevant information and documents from the Commission and is to have regard to the funds available to the Commission (amendment of section 39 of the Principal Ordinance by section 13 and new section 39B inserted in the Principal Ordinance by section 15).
- (b) The Director of Legal Aid or another officer of the Commission is to have a right of audience before a Review Committee (new section 39A inserted in the Principal Ordinance by section 14).
- (c) The existing provisions in section 33(6) for an automatic assignment of an assisted person's right to recover costs are amended to ensure that such an assignment does not take effect until after any possible review process is complete (section 8).

The Commission's Control over Policy

In view of the Commission's responsibilities under the Principal Ordinance, particularly under section 10 (Duties of Commission), section 11 (Guidelines for allocation of work) and section 12 (Guidelines for provision of assistance), it is desirable that there be no doubt as to the Commission's power to exercise effective control over its policies. Section 7 accordingly inserts sections 19A and 19B in the Principal Ordinance to make it clear that the Commission is able to obtain reports from its statutory officers on the policies they are pursuing or proposing to pursue and to give directions to such officers in regard to policy matters. This will clarify the position, in this respect, with regard to the three statutory officers (the Director and two Assistant Directors). As the other officers are clearly subject to direction by the Director, a similar amendment in relation to them is unnecessary.

The Commission's Right to Obtain Information from its Officers

The solicitor-client privileges which arise by virtue of section 13(2) of the Principal Ordinance have led to uncertainty in regard to the Commission's right to obtain information from its officers.

It is desirable that the Commission have the right to obtain information and documents from its officers subject only to those privileges. Section 22, accordingly provides, by the insertion of section 92A in the Principal Ordinance, for the Commission to have that right.

Consequences of the Abolition of the Commonwealth Legal Aid Commission

The Commonwealth Legal Aid Commission has been replaced by the Commonwealth Legal Aid Council. Since the Council does not have the function of making recommendations

to State and Territory Commissions, paragraph (f) of section 10(1) of the Principal Ordinance is no longer appropriate. Section 6 omits the paragraph. The requirement in section 97(2) of the Principal Ordinance that a copy of the Commission's report and financial statements be furnished to the Commonwealth Legal Aid Commission is omitted for the same reason. The requirement in paragraph (g) of section 10(1) of the Principal Ordinance for liaison and co-operation with the Commonwealth Legal Aid Commission will be appropriate for the Council and is amended accordingly.

SECTION NOTES

Section 1	Title
Section 2	Commencement on a date to be fixed by the Minister.
Section 3	Meaning of 'Principal Ordinance'.
Section 4	Definition of Commonwealth Legal Aid Commission omitted.
Section 5	Reconstitution of Commission - see above under heading 'The Composition of the Commission'.
Section 6	Consequential provisions re replacement of Commonwealth Legal Aid Commission by Commonwealth Legal Aid Council - see above under heading 'Consequences of the Abolition of the Commonwealth Legal Aid Commission'.
Section 7	Commission's right to control policies of statutory officers - see above under heading 'The Commission's Control over Policy'.
Section 8	Consequential amendment of automatic assignment of assisted persons' right to recover costs - see above under heading 'The Review of Decisions'.
Section 9	Consequential upon amendment of section 36(2)(a) of the Principal Ordinance by <u>section 10</u>

- Section 10 Additional classes of decisions to be subject to review - see above under heading 'The Review of Decisions'. Paragraphs (a), (e), (g), (h), (j), (k) and (m) of section 36(1) of the Principal Ordinance, as amended, are new.
- Sections 11 and 12 Reconstitution of Review Committees - see above under heading 'The Review of Decisions'. Appointment of Committee to be by Attorney-General rather than by the Commission.
- Section 13 Review Committee to have regard to available funds.
- Section 14 Consequential to section 11.
- Section 15 Review Committee to be able to obtain information and documents from Commission.
- Section 16 Consequential to section 10.
- Section 17 Legal practitioners not to be eligible to be nominated by the House of Assembly, or by the Council of Social Service, or as more than one of the two persons nominated on the basis of their special expertise.
- Section 18 Tenure of Review Committee members - maximum term increased from 1 year to 3 years.
- Section 19 Consequential to section 11.
- Section 20 Consequential to section 11.

- Section 21 The non-disclosure requirements of section 92(3) of the Principal Ordinance are made subject to the right of a Review Committee under the new section 39B (inserted in the Principal Ordinance by section 15) to obtain information.
- Section 22 Provides for the Commission to be able to obtain information or documents from its officers subject to any privilege under section 13(2) of the Principal Ordinance.
- Section 23 Consequential upon establishment of Australian Federal Police.
- Section 24 Consequential upon abolition of Commonwealth Legal Aid Commission.
- Section 25 Transitional provision re Review Committee.

76/81 Authorised by the Minister of State for Communications acting for and on behalf of the Attorney-General