

LEGAL AID ORDINANCE 1977

EXPLANATORY MEMORANDUM

CLAUSE 1 : SHORT TITLE

Sets out the short title of the Ordinance.

CLAUSE 2 : COMMENCEMENT

Provides for the provisions of the Ordinance to come into operation when the making of the Ordinance is notified in the Gazette and for the Attorney-General to appoint a day (defined in sub-clause 5(1) as the "commencing day") on which legal assistance is to be made available by the Commission. It also provides for the Legal Aid Ordinance 1972 to be repealed on the "commencing day".

CLAUSE 3 : REPEAL

The Legal Aid Ordinance 1972 will be repealed on the "commencing day".

CLAUSE 4 : ADMINISTRATION

Provides for the Ordinance to be administered by the Attorney-General.

CLAUSE 5 : INTERPRETATION

Sub-clause (1) defines certain terms for the purposes of the Ordinance.

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Sub-clause (2), which should be read in conjunction with sub-clause 31(1), is included to make it clear that a reference in the Ordinance to the provision of legal assistance is to be construed as a reference to the provision of legal services (including the giving of advice)-

- . without charge to the legally assisted person; or
- . subject to a contribution being made by the legally assisted person.

Sub-clause (3) deems the Jervis Bay Territory to be part of the Australian Capital Territory for the purposes of the Ordinance.

CLAUSE 6 : ESTABLISHMENT OF COMMISSION

Establishes the Legal Aid Commission as a body corporate.

CLAUSE 7 : CONSTITUTION OF COMMISSION

Sub-clause 7(1) provides for the composition of the Legal Aid Commission.

Sub-clause 7(2) specifies that the Director shall be, ex officio, a Commissioner.

Sub-clause 7(3) provides for the Chairman and the other Commissioners, other than the Director, to be appointed by the Governor-General on a part-time basis.

Sub-clause 7(4) ensures that the Commission may perform its function and exercise its powers notwithstanding a vacancy or vacancies in the membership of the Commission.

CLAUSE 8 : FUNCTION OF COMMISSION

Sets out the function of the Commission and the means whereby the function is to be fulfilled - by making available the services of private legal practitioners or salaried lawyers of the Commission.

CLAUSE 9 : POWERS OF COMMISSION

Provides for the Commission to have those necessary powers which are incidental to its operation.

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Sub-clause 9(1) enables the Commission to do all things necessary or convenient to be done in connection with the performance of its function.

Sub-clauses 9(2) and 9(3) provide for the payment by the Commission of disbursements, fees and out-of-pocket expenses properly incurred in respect of the provision of legal assistance.

Sub-clauses 9(4) and 9(8) relate to moneys held on trust by the Commission. It is not expected that the Commission will hold large sums on trust.

CLAUSE 10: DUTIES OF COMMISSION

States the matters the Commission is to have regard to in the performance of its function of providing legal assistance.

Paragraph 10(1)(a) requires the Commission to ensure that legal assistance is provided in the most effective, efficient and economical manner.

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Paragraph 10(1)(b) requires the Commission to carry out its function without prejudice to the independence of the private legal profession.

Paragraph 10(1)(c) requires the Commission to liaise and co-operate with the various Law Societies and other bodies in the Territory or elsewhere that are interested in legal aid.

Paragraph 10(1)(d) enables the Commission to liaise with the various Law Societies and Bar Associations in Australia to facilitate the use (eg., on an agency basis) of the services provided by private lawyers.

Paragraph 10(1)(e) obliges the Commission to make the maximum use of the services offered by private lawyers on a voluntary basis.

Paragraph 10(1)(f) requires the Commission to have regard to the recommendations of the Commonwealth Legal Aid Commission established under the Commonwealth Legal Aid Commission Act 1977 which was proclaimed to come into operation on 1 July 1977.

Paragraph 10(1)(g) requires the Commission to liaise and co-operate with the Commonwealth Legal Aid Commission and to provide the Commonwealth Commission with such statistics and other information as it may require.

Paragraph 10(1)(h) envisages the establishment of local offices in the Australian Capital Territory and a local office at Jervis Bay. The object is to permit the Commission to make the processes of the law available to people in their own communities or at major shopping centres.

Paragraph 10(1)(j) obliges the Commission to determine the priorities to be observed by Legal Aid Committees and salaried lawyers in providing legal assistance between different classes of people or different classes of matters.

Paragraph 10(1)(k) requires the Commission to provide duty lawyer services at courts and tribunals in the Territory. "Duty lawyer services" are defined in sub-clause 5(1).

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Paragraph 10(1)(1) makes it clear that the need for non-legal professional assistance is recognized and enables the assistance to be made available.

Paragraph 10(1)(m) enables the Commission to draw on the enthusiasm and social conscience of law students in its work. This will have the desirable object of giving to students experience of the operation of the law in "real life" situations.

Paragraph 10(2)(a) requires the Commission to draw to the attention of the Attorney-General desirable reforms of the law.

Paragraph 10(2)(b) requires the Commission to engage in public education in order to widen community understanding of the ways in which the laws affect the "man in the street".

Sub-clause 10(3) requires the Commission to have regard to the moneys available to the Commission.

CLAUSE 11: GUIDELINES FOR ALLOCATION OF WORK

States the principles to be applied by the Commission in determining guidelines for the allocation of work between salaried lawyers of the Commission and private legal practitioners.

CLAUSE 12: GUIDELINES FOR PROVISION OF ASSISTANCE

Provides for the Commission to determine and publish guidelines relating to the provision of legal assistance.

CLAUSE 13: PROFESSIONAL CONDUCT BY OFFICERS OF COMMISSION

This clause is directed to confirming the legal and ethical responsibilities of the lawyers of the Commission. It ensures that the relationship between them and their clients is basically the same as that between a private legal practitioner and his client.

CLAUSE 14: ESTABLISHMENT OF COMMITTEES

Provides for the establishment, by the Commission, of Legal Aid Committees.

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CLAUSE 15: CONSTITUTION OF COMMITTEES

Deals with the composition of Legal Aid Committees. Each Legal Aid Committee is to consist of the Director and 3 other members.

CLAUSE 16: FUNCTIONS OF COMMITTEES

Specifies the functions of Legal Aid Committees - which are mainly to decide applications for legal assistance coming before them.

CLAUSE 17: DIRECTOR AND ASSISTANT DIRECTORS

Provides for the appointment of a Director of Legal Aid, who is to be the chief executive officer of the Commission, and for the appointment of such numbers of Assistant Directors as are considered necessary.

CLAUSE 18: QUALIFICATIONS FOR APPOINTMENT

Specifies the qualifications for appointment of the Director and for the appointment of an Assistant Director.

CLAUSE 19: DUTIES OF ASSISTANT DIRECTORS

Provides for Assistant Directors to perform such duties as they are directed to perform by the Director of Legal Aid.

CLAUSE 20: STAFF OF COMMISSION

Provides for the employment of staff by the Commission. It also enables the Commission to make reciprocal arrangements with other legal aid commissions with respect to the transfer of staff between commissions.

CLAUSE 21: DELEGATION

Authorizes the Director to delegate any of his powers under the Ordinance to an Assistant Director or to a member of the staff of the Commission.

CLAUSE 22: RIGHTS OF OFFICERS OF COMMISSION IN RESPECT OF  
LEGAL PRACTICE

Ensures that in providing legal assistance in accordance with the Ordinance, qualified lawyers of the Commission will be able to practise and have a right of audience in courts and tribunals.

Sub-clause 22(1) provides that the Director and the Assistant Directors must hold current unrestricted practising certificates.

Sub-clause 22(2) provides that a member of the staff in order to perform the functions of a solicitor must hold a current practising certificate.

CLAUSE 23: SOLICITOR ON THE RECORD

Makes it clear that the Director (or a salaried lawyer of the Commission authorized by the Director) is the solicitor on the record for a person who is being provided legal services by a salaried lawyer of the Commission.

CLAUSE 24: BRINGING SERVICES OF COMMISSION TO PUBLIC NOTICE

Authorizes the Commission to make known to the community the legal assistance available through the Commission.

CLAUSE 25: APPLICATION FOR LEGAL ASSISTANCE

Deals with the form of application for legal assistance.

CLAUSE 26: DETERMINATION OF APPLICATIONS FOR LEGAL ASSISTANCE

Provides for the Commission to give directions as to the classes of cases in which legal

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assistance is to be decided by Legal Aid Committees and salaried lawyers of the Commission and sets out the matters to be taken into account by the Committees and salaried lawyers in granting legal assistance.

CLAUSE 27: TERMINATION OR VARIATION OF LEGAL ASSISTANCE

Enables a decision to provide legal assistance to be terminated or varied.

CLAUSE 28: CIRCUMSTANCES IN WHICH LEGAL ASSISTANCE MAY BE PROVIDED

Sets out the principles upon which applications for legal assistance are to be decided.

CLAUSE 29: COMMISSION MAY ASSIST PERSON HAVING INTERESTS ADVERSE TO THE COMMONWEALTH

Permits legal assistance to be provided to persons having interests adverse to the Commonwealth.

CLAUSE 30: LEGAL ADVICE AND DUTY LAWYER SERVICES

Provides that, subject to special circumstances determined by the Commission, legal advice and

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duty lawyer services are to be provided free of charge.

CLAUSE 31: CONTRIBUTION TOWARDS COSTS AND EXPENSES

Relates to the payment by a legally assisted person of a contribution towards the cost of providing legal assistance.

CLAUSE 32: ARRANGING FOR SERVICES OF PRIVATE LEGAL PRACTITIONERS

Requires the Commission to establish a panel of private legal practitioners willing to handle matters on referral from the Commission, provides procedures in relation to the exclusion and removal of the name of a private practitioner from such a panel, and deals with referral procedures and with the manner in which fees to be offered to private legal practitioners are to be determined.

CLAUSE 33: ENTITLEMENT OF LEGALLY ASSISTED PERSON TO COSTS IN PROCEEDINGS

Ensures that legally assisted persons retain their entitlements to orders for costs if they

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succeed in proceedings and would in the ordinary course be entitled to an order in their favour. There is no reason why an unassisted unsuccessful party should obtain an advantage at public expense because the successful party obtained legal assistance.

CLAUSE 34: PAYMENT BY COMMISSION OF COSTS AWARDED AGAINST  
LEGALLY ASSISTED PERSONS

Provides for payment by the Commission of costs of a successful unassisted person where an order is made against the assisted person and undue hardship would be suffered if the payment were not made.

CLAUSE 35: NOTIFICATION OF DECISIONS

Provides for notification of a decision to grant or refuse assistance, of the result of any review which may have been requested on or a decision as to payment of an unassisted person's costs.

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CLAUSE 36: RECONSIDERATION OF DECISIONS

Provides for the reconsideration by a Legal Aid Committee or a salaried lawyer of the Commission, of decisions made in respect of legal assistance and for the further review of decisions by a Review Committee.

CLAUSE 37: ESTABLISHMENT AND CONSTITUTION OF REVIEW COMMITTEES

Provides for the establishment by the Commission of Review Committees.

It also provides for the composition of Review Committees.

CLAUSE 38: APPOINTMENT OF MEMBERS OF REVIEW COMMITTEES

Provides for the appointment by the Commission of members of Review Committees.

CLAUSE 39: FUNCTION OF REVIEW COMMITTEE

Specifies that the function of a Review Committee is to review decisions referred to it under clause 36.

CLAUSE 40: DECISION OF REVIEW COMMITTEE

Permits a Review Committee to confirm, vary or set aside a decision referred to it.

CLAUSE 41: ESTABLISHMENT OF FUND

Provides for the establishment of a Legal Aid Fund to be controlled and administered by the Commission and specifies the moneys that are to comprise the Fund.

CLAUSE 42: BANK ACCOUNTS

Deals with the banking obligations of the Commission.

CLAUSE 43: PAYMENT OUT OF FUND AND INVESTMENT

Deals with the application of moneys in the Legal Aid Fund.

It also permits the Commission to invest moneys standing to the credit in the Fund in authorized trustee securities.

CLAUSE 44: CONTRACTS

Provides that the Commission shall not enter into a contract in excess of \$50,000 without the approval of the Attorney-General.

CLAUSE 45: ESTIMATES

Requires that the Commission prepare estimates of receipts and expenditure as directed by the Attorney-General.

CLAUSE 46: PROPER ACCOUNTS TO BE KEPT BY COMMISSION

Requires the Commission to keep proper financial records and to maintain adequate control over the assets of the Commission and the incurring of liabilities by the Commission.

CLAUSE 47: AUDIT

Is concerned with the inspection and auditing of the accounts and records of financial transactions of the Commission by an auditor approved by the Treasurer.

CLAUSE 48: TENURE OF OFFICE

Provides that the Chairman of the Commission is to hold office for up to 5 years and other Commissioners for up to 3 years. The Chairman and other Commissioners are eligible for re-appointment.

CLAUSE 49: REMUNERATION AND ALLOWANCES

Is concerned with the remuneration and allowances to be paid to Commissioners.

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CLAUSE 50: QUALIFICATIONS FOR APPOINTMENT

Specifies the qualifications for appointment as  
Chairman of the Commission.

CLAUSE 51: RESIGNATION

Makes provision for the resignation of Commissioners.

CLAUSE 52: REMOVAL FROM OFFICE

Sets out the circumstances in which Commissioners,  
other than the Director, may be removed from office.

CLAUSE 53: ACTING CHAIRMAN OF THE COMMISSION

Is concerned with the appointment of a person to  
act in the office of Chairman of the Commission.

CLAUSE 54: MEETINGS

Provides for the convening of meetings of the  
Commission, quorums, meeting procedures and the  
regulation and conduct of proceedings at meetings.

CLAUSE 55: INTEREST TO BE DISCLOSED

Relates to the disclosure by Commissioners of  
any pecuniary interest in matters under  
consideration by the Commission.

CLAUSE 56: CONDITIONS OF APPOINTMENT

Is concerned with the conditions of appointment of the Director and Assistant Directors of the Commission.

CLAUSE 57: REMUNERATION AND ALLOWANCES

Relates to remuneration and allowances for the Director and Assistant Directors.

CLAUSE 58: LEAVE OF ABSENCE

Authorizes the Commission to grant leave of absence to a statutory officer on such terms or conditions as it determines.

CLAUSE 59: RESIGNATION

Makes provision for the resignation of the Director or an Assistant Director.

CLAUSE 60: REMOVAL FROM OFFICE

Sets out the circumstances in which the Governor-General may remove the Director or Assistant Director from office.

CLAUSE 61: OUTSIDE EMPLOYMENT

Prohibits the Director or an Assistant Director engaging in paid employment unless the Commission approves.

CLAUSE 62: ACTING APPOINTMENTS

Is concerned with the appointment, termination of appointment, resignation and the duties, rights, powers and privileges of a person appointed to act in the place of the Director or of an Assistant Director.

CLAUSE 63: ELECTION TO BE EMPLOYED BY COMMISSION

Provides for staff of the A.C.T. Office of the Australian Legal Aid Office to be offered employment with the Commission and for their appointment following their election to accept employment.

CLAUSE 64: RATE OF REMUNERATION

Subject to certain provisions in relation to misconduct the rate of remuneration payable to staff electing to join the Commission will not be less than that to which they were entitled

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immediately before taking up that employment.  
Entitlement to increments is also preserved.

#### CLAUSES

##### 65-67: RELATE TO THE PRESERVATION OF EXISTING ENTITLEMENTS

These clauses provide for the recognition of prior service by the Commission, preservation of accrued recreation and sick leave, and preservation of terms and conditions of service enjoyed by the staff.

Long Service Leave, Maternity Leave, Superannuation and Compensation will be provided under the relevant Commonwealth legislation.

##### CLAUSE 68: TERMS AND CONDITIONS GENERALLY

Without detracting from the special terms and conditions provided in clauses 63-67 the Commission is empowered to determine the terms and conditions generally applicable to staff of the Commission with the approval of the P.S.B.

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CLAUSE 69: CERTAIN PROVISIONS OF LEGAL PRACTITIONERS

ORDINANCE NOT TO APPLY TO OFFICERS OF COMMISSION

Provides that certain provisions of the Legal Practitioners Ordinance do not apply to officers of the Commission.

CLAUSE 70: TENURE OF OFFICE

Fixes 1 year as the length of time a member of the Legal Committee may hold office, but allows for re-appointment of a member.

CLAUSE 71: CHAIRMAN, &c., OF COMMITTEE

Provides for the election of the Chairman of a Legal Aid Committee.

CLAUSE 72: RESIGNATION

Makes provision for the resignation of a member of a Legal Aid Committee.

CLAUSE 73: REMOVAL FROM OFFICE

Sets out the circumstances in which the Commission may remove from office a member of a Legal Aid Committee.

CLAUSE 74: MEETINGS OF COMMITTEE

Is concerned with the convening of meetings of a Legal Aid Committee, quorums, meeting procedures and the regulation and conduct of proceedings at meetings.

CLAUSE 75: INTERESTS TO BE DISCLOSED

Relates to disclosure by members of a Legal Aid Committee of any pecuniary interest in matters under consideration by the Committee.

CLAUSE 76: TENURE OF OFFICE

Fixes 1 year as the length of time a member of a Review Committee may hold office, but allows for re-appointment of a member.

CLAUSE 77: RESIGNATION

Makes provision for the resignation of a member of a Review Committee.

CLAUSE 78: REMOVAL FROM OFFICE

Sets out the circumstances in which the Commission may remove from office a member of a Review Committee.

CLAUSE 79: ALLOWANCES

Provides for the regulations to prescribe the allowances to be paid to a member of a Review Committee to meet his expenses.

CLAUSE 80: MEETINGS OF REVIEW COMMITTEE

Is concerned with the convening of meetings of a Review Committee, quorums, meeting procedures and the regulation and conduct of proceedings at meetings.

CLAUSE 81: INTERESTS TO BE DISCLOSED

Requires the disclosure by members of a Legal Aid Committee of any pecuniary interest in matters under consideration by the Committee.

CLAUSE 82: ESTABLISHMENT OF CONSULTATIVE COMMITTEES

Enables the Attorney-General to establish consultative committees to assist the Commission in the performance of its functions.

CLAUSE 83: CONSTITUTION OF CONSULTATIVE COMMITTEES

Stipulates the categories of persons from whom the members of consultative committees are to

be appointed, defines the term of office and provides for the resignation of members.

CLAUSE 84: GENERAL PROVISIONS RELATING TO CONSULTATIVE COMMITTEES

Provides that regulations may be made as to the convening of and the procedure to be followed at meetings of consultative committees and provides for the payment to a member of an allowance prescribed by regulations to meet his expenses.

CLAUSE 85: TRANSFER OF RIGHTS AND LIABILITIES

Provides that on the "commencing day" all rights and liabilities of the Legal Aid Committee established under the Legal Aid Ordinance 1972 shall be transferred to the Commission.

CLAUSE 86: TRANSFER OF MONEYS

Provides that on the "commencing day" all assets and liabilities of the Legal Aid Fund established under the Legal Aid Ordinance 1972 shall be transferred to the Legal Aid Fund established under clause 42.

CLAUSE 87: CONTRACTS

Provides that the Commission shall take over any contract or other instrument of the previous Committee as defined in sub-clause 5(1).

CLAUSE 88: PREVIOUS COMMITTEE TO CONTINUE FOR CERTAIN PURPOSES

Provides that following the repeal of the Legal Aid Ordinance 1972 the previous Committee shall remain in existence until it has discharged certain obligations. The Commission is required to provide such clerical and other assistance as is reasonably required for this purpose.

CLAUSE 89: PREVIOUS APPLICATIONS FOR LEGAL AID

Provides that applications for and decisions on legal assistance made under the Legal Aid Ordinance 1972 and are determined before the "commencing day" shall be regarded as having been made under this Ordinance.

CLAUSE 90: CHANGE OF SOLICITOR

Provides that upon the "commencing day" the Director of Legal Aid shall be deemed to be the

solicitor for a person for whom a solicitor of the Australian Legal Aid Office was acting before that day.

CLAUSE 91: LIABILITIES OF COMMISSION AND OF THE COMMONWEALTH

Provides that the Commissioners, the Director and Assistant Directors, members of the staff of the Commission, members of a Legal Aid Committee, a Review Committee or a Consultative Committee and legal practitioners providing services without charge under the Ordinance are indemnified against personal liability for any negligent act or omission in the course of the provision of legal services.

CLAUSE 92: SECRECY

Ensures the confidentiality of information disclosed to the Commission by clients and applicants for assistance. It prohibits disclosure of this information except where required for audit purposes or where a court directs that such disclosure is necessary in the interests of justice.

CLAUSE 93: EXEMPTION FROM FEES AND TAXATION

Exempts a legally assisted person from the payment of certain fees.

Also states that the Commission is not subject to Taxation imposed by the terms of an ordinance.

CLAUSE 94: COMMISSION TO OPERATE AS "LEGAL AID OFFICE (A.C.T.)"

Provides that the Commission shall function under the name "Legal Aid Office (A.C.T.)".

CLAUSE 95: FALSE OR MISLEADING STATEMENTS

Provides sanctions in the event that an applicant for legal assistance provides false or misleading information.

CLAUSE 96: CERTIFICATE AS TO AMOUNTS OWING TO COMMISSION

Relates to certification of amounts owing to the Commission.

CLAUSE 97: ANNUAL REPORT AND FINANCIAL STATEMENTS

Provides for the Commission to prepare an annual report on the operations of the Commission and for copies of the report to be tabled in

each House of the Parliament. A copy of each annual report is to be furnished to the Attorney-General, the Australian Capital Territory Legislative Assembly and to the Commonwealth Legal Aid Commission.

CLAUSE 98: REGULATIONS

Empowers the Attorney-General to make regulations not inconsistent with the Ordinance.

Attorney-General's Department

CANBERRA

23 June 1977