

2001

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

## **Legislative Assembly (Legal Assistance) Bill 2001**

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## **Legislative Assembly (Legal Assistance) Bill 2001**

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### **A Bill for**

An Act to provide for the provision of legal assistance to Ministers and members of the Legislative Assembly in relation to certain legal proceedings, and for related purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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1999 034

## **1 Name of Act**

This Act is the *Legislative Assembly (Legal Assistance) Act 2001*.

## **2 Commencement**

5 This Act commences on a day fixed by the Minister by notice in the Gazette.

*Note 1* The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

10 *Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Interpretation Act 1967*, s 10C (1)).

15 *Note 3* If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

## **3 Object**

20 The object of this Act is to authorise the provision of legal assistance, in accordance with the approved guidelines, to Ministers and members of the Legislative Assembly in relation to legal proceedings connected with their official duties.

## **4 Dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act.

25 *Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

## 5 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

## 5 6 Legal proceedings connected with the official duties

This Act applies to a legal proceeding that results from, or involves, an incident arising out of, or happening in the course of—

- (a) a person's official duties as a Minister or member; or
- (b) a person's use, for the purposes of or in connection with his or her official duties as a Minister or member, of a Territory motor vehicle.

## 7 Approved guidelines

- (1) The regulations may approve guidelines with respect to the provision of legal assistance to a person in relation to a legal proceeding to which this Act applies.
- (2) Without limiting subsection (1), the approved guidelines may make provision about the following matters:
  - (a) the circumstances in which, and conditions subject to which, the provision of legal assistance may be provided;
  - (b) circumstances restricting or preventing the authorisation of legal assistance;
  - (c) the procedures for making—
    - (i) an application; or
    - (ii) a decision about an application;
  - (d) the ways in which legal assistance may be provided;
  - (e) incidental or ancillary matters.

## **8 Applications**

- (1) An application must—
- (a) be in writing; and
  - (b) set out the material facts and circumstances; and
  - 5 (c) fully disclose any involvement of the Minister or member in the incident; and
  - (d) state the time by which any procedural step is required to be taken in any legal proceeding; and
  - (e) be signed; and
  - 10 (f) be accompanied by all documents relevant to the application.
- (2) For subsection (1) (f)—
- (a) a document may be provided by way of a legible copy of the document; or
  - 15 (b) if it is not practicable to provide the document or a legible copy of it—it is sufficient if the application contains a statement of the nature, contents and location of the document and the reason that the document or a legible copy of it cannot be provided.
- (3) An application must be made to the Attorney-General.
- 20 (4) However, if the Attorney-General is the applicant, the application must be made to—
- (a) the Chief Minister; or
  - (b) if the Chief Minister is the Attorney-General—another Minister.

## **9 Referral of applications**

- (1) If the deciding Minister in relation to an application is, or becomes, unavailable to decide the application, the application must be referred to another Minister.

(2) The application must not be referred to a Minister who is unavailable to decide the application.

(3) For this section, a Minister is unavailable to decide an application if the Minister—

- 5 (a) has a financial interest (whether direct or indirect) in any decision that may be made about the application; or
- (b) cannot, for another reason, fully decide the application.

#### **10 Making a decision—consultative procedures**

10 (1) Before making a decision about an application, the deciding Minister must consult with 2 other Ministers as follows:

- (a) if the Chief Minister is available to be consulted—1 of the Ministers consulted must be the Chief Minister;
- (b) if the Treasurer is not the Chief Minister, and is available to be consulted—1 of the Ministers consulted must be the Treasurer;
- 15 (c) if only 1 Minister is consulted under paragraphs (a) and (b)—another Minister who is available to be consulted must be consulted;
- (d) if no Minister is consulted under paragraphs (a) and (b)—2 other Ministers who are available to be consulted must be consulted.
- 20

(2) However, if 2 other Ministers are not available to be consulted, the Minister (if any) who is available to be consulted must be consulted.

(3) For this section, a Minister is not available to be consulted if the Minister—

- 25 (a) has a financial interest (whether direct or indirect) in any decision that may be made about the application; or
- (b) is, for another reason, unavailable to be consulted about the application.

## **11 Making a decision—additional provisions**

- (1) The deciding Minister may ask the applicant to provide, orally or in writing, any additional information that the Minister reasonably requires to make a decision about the application.
- 5     (2) The deciding Minister may defer making a decision about an application, or some aspect of an application, if the Minister considers it reasonable to defer doing so until—
- (a) the outcome of the legal proceeding to which the application relates, or some part of the proceeding, is known; or
- 10     (b) additional information is available.
- (3) The deciding Minister must not authorise the provision of legal assistance if the Minister is satisfied, on reasonable grounds, that the applicant became—
- (a) a party to the legal proceeding; or
- 15     (b) subject to the award of damages, or the imposition of a fine or other penalty, in the legal proceeding;
- because of, or partly because of, an act or omission of the applicant that was unreasonable, or that was not done or omitted to be done honestly.
- 20     (4) The deciding Minister must not authorise the provision of legal assistance if the Minister is satisfied, on reasonable grounds, that the applicant has failed to comply, in a material respect, with the approved guidelines.
- 25     (5) The deciding Minister must make a decision in accordance with the approved guidelines.
- (6) If an application in relation to a matter is refused, the applicant may make a further application in relation to the matter only if the further application discloses material facts or circumstances that the applicant—
- 30     (a) was not aware of when the applicant made the previous application; and



- (b) could not reasonably have discovered before making the previous application.

## 12 Notification of decisions

- 5 (1) When a Minister makes a decision about an application, or some aspect of an application, the Minister must make and sign a statement that sets out—
  - (a) a summary of the material facts and circumstances; and
  - (b) the Ministers or Minister consulted about the application; and
  - (c) the decision; and
  - 10 (d) the reasons for the decision.
- (2) If—
  - (a) the statement relates to the first decision about the application; and
  - (b) a decision about any part of the application has been deferred;
  - 15 the statement must state that fact and the reason for the deferral.
- (3) A copy of the statement must be—
  - (a) given to the applicant as soon as practicable; and
  - (b) presented to the Legislative Assembly within 6 sitting days after the day it is signed.

## 20 13 Provision of legal assistance

- (1) If a Minister makes a decision to authorise the provision of legal assistance to an applicant, the Territory must provide the legal assistance.
- 25 (2) The deciding Minister has the function of deciding the way in which the legal assistance is to be provided to the applicant.
- (3) For subsection (2), the Minister must take into account the information provided by the applicant, any other information

available to the Minister and any legal advice provided to the Territory by the government solicitor or another lawyer.

- 5 (4) In making a decision authorising the provision of legal assistance, the deciding Minister may specify conditions applying to the provision of the legal assistance.
- (5) With the written consent of the deciding Minister, the government solicitor may provide legal advice to, and act in a legal proceeding for, the applicant by way of provision (in whole or in part) of the legal assistance.
- 10 (6) If, after making a decision authorising the provision of legal assistance, the deciding Minister becomes aware of further facts or circumstances that would, or might, have affected the Minister's decision, the following provisions apply:
- (a) the Minister must reconsider the decision;
- 15 (b) after doing so, the Minister may make a decision—
- (i) to vary or revoke the decision; or
- (ii) to specify conditions, or to vary, add to or revoke existing conditions, applying to the provision of legal assistance;
- 20 (c) before reconsidering the decision the Minister must comply with section 10 (Making a decision—consultative procedures);
- (d) sections 10, 11 (Making a decision—additional provisions) and 12 (Notification of decisions) apply, as far as practicable, for paragraphs (b) and (c) and, in that application of those sections, a reference to a decision is taken to be a reference to a reconsideration or, as the case may require, a decision under this subsection.
- 25 (7) If the deciding Minister is unavailable, another Minister may exercise a function under subsection (5) or (6).

#### **14 Recovery by the Territory from person liable to recipient**

- 30 (1) This section applies if a person (the *liable person*) has a liability to a recipient.

- (2) If this section applies, the Territory may, by notice signed by a Minister and served on the liable person, require the liable person to pay to the Territory, in the way and within the time stated in the notice, the amount stated in the notice (the *stated amount*).
- 5 (3) The stated amount must not be more than the lesser of—
- (a) the total amount of the liability of the liable person to the recipient on the day before the notice is signed (the *operative day*); and
- 10 (b) whichever of the following amounts applies or, if both amounts apply, the total of those amounts:
- (i) if an amount of legal assistance has been paid, on or before the operative day, to the recipient—that amount;
- 15 (ii) if the legal representation has been provided, on or before the operative day, for the recipient by way of legal assistance—an amount equal to the cost of the legal representation.
- (4) On being served with the notice, the liable person must pay the stated amount to the Territory in accordance with the notice and, if the liable person fails to do so, the Territory may recover any unpaid
- 20 part of the stated amount from the liable person as a debt payable to the Territory.
- (5) If, after the operative day and before the notice is served on the liable person, the liable person pays an amount to the recipient in respect of the liable person's liability to the recipient, the amount payable under subsection (4) is reduced by the amount of the
- 25 payment.
- (6) The amount of the liable person's liability to the recipient is reduced to the extent that the Territory receives payment of, or recovers, the stated amount (or part of the stated amount) from the liable person.

30 **15 Recovery by the Territory from recipient**

- (1) If a person (the *recipient*) receives a payment (the *payment*) otherwise than under this Act in relation to costs or damages, and

legal assistance is provided to the recipient in relation to the costs or damages (or any part of them), the Territory may recover from the recipient an amount equal to the lesser of—

- (a) the amount of the payment; and
- 5 (b) whichever of the following amounts applies or, if both amounts apply, the total of those amounts:
  - (i) if an amount of legal assistance has been paid to the recipient—that amount;
  - 10 (ii) if legal assistance has been provided for the recipient by way of legal representation—an amount equal to the cost of the legal representation.
- (2) For subsection (1), the following provisions apply:
  - (a) it is immaterial whether the recipient received the payment before or after the legal assistance was provided;
  - 15 (b) the Territory's right of recovery is subject to anything to the contrary in—
    - (i) the decision under which the legal assistance was provided; or
    - (ii) the approved guidelines.

20 **16 Territory may require legal action to be taken**

- (1) If legal assistance has been provided to a person (the *recipient*) in relation to costs or damages, and another person has a liability to the recipient in relation to the costs or damages (or any part of them), the Territory may, by notice signed by a Minister and served on the  
25 recipient, require the recipient to take legal action against the other person, in the way stated in the notice, in relation to that liability.
- (2) The Territory must indemnify the recipient in relation to legal costs (including disbursements and expenses) reasonably incurred by the recipient in taking legal action in accordance with the notice.
- 30 (3) If the recipient fails to comply with the notice, the Territory may—

- (a) take legal action, in the name of the recipient, in accordance with the notice; or
- (b) recover from the recipient, as a debt payable to the Territory, the amount that, if the amount recoverable by the recipient in the legal action had been paid to the recipient, the Territory could have recovered from the recipient under section 15 (1).
- (4) If a legal action is brought under this section by the recipient, or by the Territory in the name of the recipient, the government solicitor may act in the action for the recipient or for the Territory in the name of the recipient and, if the government solicitor acts under this subsection, the *Government Solicitor Act 1989*, section 5 (3) applies.

#### **17 Duties of applicants for, and recipients of, legal assistance**

- (1) It is the duty of a person who makes an application to give all reasonable assistance to the deciding Minister in relation to the application.
- (2) It is the duty of a person to whom legal assistance has been provided to give all reasonable assistance to the Territory in relation the preparation of a notice under section 14 (2) or the preparation and conduct of a legal action under section 14 (4) or 16 (3) (a).

#### **18 Limitations on liability of the Territory**

- (1) The Territory has no liability under this except to an applicant.
- (2) The Territory is not liable under this Act to an applicant if, and to the extent that, the applicant is entitled to indemnity or contribution, in the matter to which the application relates, from a person other than—
  - (a) the Territory; or
  - (b) a person for whose liability in the matter the Territory is legally responsible.
- (3) This section applies despite any other provision of this Act.

- (4) The definition of *liability* in the dictionary does not apply in relation to this section.

## **19 Regulation-making power**

- (1) The Executive may make regulations for this Act.
- 5 (2) The regulations may make provision about the application of the consultative procedures mentioned in sections 10 and 13 (6) (c) (the *consultative provisions*) if no Minister is available to be consulted as required by the consultative provisions.
- 10 (3) The consultative provisions apply subject to any provision of the regulations under subsection (2).

## **20 Amendment of Administrative Decisions (Judicial Review) Act 1989, schedule 1**

*insert at the end*

- 15 This Act does not apply to decisions under the *Legislative Assembly (Legal Assistance) Act 2001*.
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## Dictionary

(see s 4)

**application** means an application for legal assistance.

5 **approved guidelines** means the guidelines approved by the regulations.

**board of inquiry** means—

- (a) a board appointed under the *Inquiries Act 1991*; or
- 10 (b) any other entity (other than a court or a royal commission) established under the law of the Territory, the Commonwealth or a State, to inquire into, or report on, particular matters;

and includes anyone constituting the board or other entity.

**costs**, in relation to a legal proceeding, means legal costs (including disbursements and expenses) in the proceeding.

15 **court** means the High Court or a court of, or a tribunal established by or under the law of, the Territory, the Commonwealth, a State or a foreign country.

**damages** includes compensation.

20 **deciding Minister**, in relation to an application, means the Minister to whom the application is made or, for the time being, referred.

**legal assistance**, for an applicant, means—

- (a) payment for, or provision of, legal representation or legal advice for the applicant in relation to a legal proceeding; or
- 25 (b) payment to the applicant of all or part of the costs incurred, or that may be incurred, by the applicant in relation to a legal proceeding or the provision of legal advice; or
- (c) payment to the applicant of all or part of the damages awarded against, or fine or other penalty imposed on, the applicant in a legal proceeding;

and includes an agreement or arrangement to provide any such assistance.

***legal proceeding*** means—

- 5 (a) a proceeding (including an interlocutory proceeding and appeal proceeding) in a court; or
- (b) an inquiry or hearing by a royal commission or board of inquiry; or
- (c) an arbitration, mediation or other dispute resolution process.

10 ***liability*** means liability to pay an amount to, or to indemnify, a recipient in relation to costs or damages for which legal assistance has been provided to the recipient.

***member*** means a member of the Legislative Assembly, and includes a former member.

***Minister*** includes a former Minister.

15 ***payment***—a payment to a person includes a payment for a person, and a payment received by a person includes a payment received for a person.

20 ***royal commission*** means a royal commission established under the law of the Territory, the Commonwealth or a State, and includes anyone constituting the commission.

***State*** includes another Territory.

***Territory motor vehicle*** means a motor vehicle owned or leased, by the Territory or a Territory authority or instrumentality.