

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

Legal Aid (Amendment) Ordinance 1984 No. 3

The purpose of this Ordinance is to amend the Legal Aid Ordinance 1977 ('the Principal Ordinance') to enable a person to be appointed to conduct an inquiry into the operations of the Legal Aid Commission (A.C.T.) ('the Commission') established under the Principal Ordinance. Provision is also made for the appointment of persons to assist in the conduct of an inquiry.

At its meeting on 25 January 1984 the Commission resolved to institute an independent inquiry into whether the business of the Legal Aid Office (the name under which the Commission performs its function under section 8 of the Principal Ordinance) has 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 Ordinance will facilitate the conduct of this inquiry.

The Principal Ordinance (sections 13 and 92) contains provisions designed to preserve the confidentiality of information concerning the affairs of persons who have applied for legal assistance, or to whom legal assistance is being or has been provided. For the purposes of an inquiry it is necessary that the person appointed to conduct it (and any persons assisting that person) have access to the records of

the Commission. The Ordinance makes provision for such access but also provides that the person appointed, and any person assisting that person, are to be subject to the confidentiality and secrecy provisions in relation to any information concerning the affairs of another person acquired by them in the course of conducting an inquiry.

Section 1 provides that the Ordinance may be cited as the Legal Aid (Amendment) Ordinance 1984.

Section 2 defines the 'Principal Ordinance' to mean the Legal Aid Ordinance 1977.

Section 3 inserts a new Part XI in the Principal Ordinance entitled 'Inquiry Relating to Affairs of Commission'.

Provisions contained in the new Part are as follows:

Section 84A contains definitions for the purposes of the new Part

Section 84B provides that the Commission, with the approval of the Attorney-General, or the Attorney-General may appoint a person to inquire into and report upon any matter relating to the operations of the Commission and the exercise of a power, the performance of a duty or function, by the Commission, or by any person, under the Ordinance.

Section 84C enables the person appointed to conduct an inquiry to be assisted by such persons as the Attorney-General approves.

3.

Section 84D permits, for the purpose of an inquiry, the person appointed to conduct it, or an assistant, to have access to all records and papers held by the Commission and to require relevant information to be produced.

Section 84E prevents the provisions of section 13 of the Principal Ordinance relating to solicitor and client privilege from operating so as to preclude an officer of the Commission complying with a request for information under the preceding section for the purposes of the inquiry. In the interests of the client, the section then applies these privileges as between the client and the person conducting the inquiry and his assistant.

Section 84F provides that the person nominated by the Chairman of the Commission to carry out an inquiry pursuant to a resolution adopted by the Commission on 25 January 1984 is deemed to have been appointed under sub-section 84B(1) of the Ordinance, that is, is deemed to have been appointed by the Commission with the Attorney-General's approval. The person so appointed is to inquire into and report on the matters specified in the Commission's resolution. This provision removed the need for the Commission to meet again before the inquiry began, and linked the inquiry to the Commission's resolution of 25 January 1984. Power is given for the Commission, with the Attorney-General's approval, to vary the matters to be inquired into.

4.

Section 4 applies the secrecy provisions in section 92 of the Principal Ordinance to a person appointed under the Ordinance to conduct an inquiry and any person assisting him. Provision is made, however, that the provisions of section 92 are not to prohibit a person so appointed from referring in his report to information acquired in the course of an inquiry if the reference does not reveal the identity of an applicant for legal assistance, a person to whom legal assistance is being or has been provided or any other party or prospective party to litigation.

Authorised by the Attorney-General

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