

2001

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LEGISLATIVE ASSEMBLY (LEGAL ASSISTANCE) BILL 2001

EXPLANATORY MEMORANDUM

Circulated by authority of

**BILL STEFANIAK MLA
ATTORNEY-GENERAL**

LEGISLATIVE ASSEMBLY (LEGAL ASSISTANCE) BILL 2001

BACKGROUND

Circumstances can arise in which a Member of the Legislative Assembly might become involved in legal proceedings as a result of actions arising from the Member's duty as a Member or as a Minister. While it is more probable that this would occur in the case of a Minister, it is possible for it to occur in the case of other Members.

In March 1997 the Legislative Assembly Standing Committee on Legal Affairs tabled the Report of its Inquiry into Guidelines for Assistance to Members for Legal Proceedings. The Report contained a number of recommendations for the development of a statutory scheme for the provision of legal assistance to Members, under certain circumstances. The statutory scheme was to be supported by guidelines. This Bill provides the framework of the scheme while the details will be contained in Regulations to be made under the Act after the Bill is passed.

SUMMARY

The Bill authorises the provision of legal assistance by the Territory to Ministers and Members of the Legislative Assembly in accordance with approved guidelines. Legal proceedings to which the Bill applies are those connected with the official duties of the Minister or Member of the Legislative Assembly. Guidelines contained in Regulations will set out the circumstances in which legal assistance may be authorised and the ways in which legal assistance may be provided.

Provisions in the Bill specify that applications for legal assistance must be made to the Attorney-General. In making a decision on an application the Attorney-General must consult with 1 other Minister. There are provisions to ensure that none of the Ministers involved in the decision making process is the applicant for assistance.

Decisions made under the provisions of the Bill are not appropriate for review under the *Administrative Decisions (Judicial Review) Act 1989*. However, to maintain transparency of decision making, the deciding Minister must make a statement about each application setting out a summary of the facts and circumstances, the Ministers consulted, the decision reached and the reasons for that decision. A copy of that statement has to be given to the applicant and a copy must be tabled in the legislative Assembly within 6 sitting days after it is signed.

REVENUE/COST IMPLICATIONS

There are no cost implications. While there may be expenses associated with provision of legal assistance to Ministers and Members of the Legislative Assembly, these are irregular and unpredictable. The Bill does not introduce a new source of costs but formalises what has previously been an informal process for provisions of legal assistance.

SUMMARY OF CLAUSES

Formal Clauses

Clauses 1,2 and 3 are formal clauses. They set out the name of the Bill and its object as well as providing for its commencement.

Definition

Clause 4 provides for a dictionary at the end of the Bill to contain definitions of certain words and phrases used in the Bill.

Clause 5 provides for notes to be used in the Bill to explain references in the Bill more clearly.

Clause 6 describes what kinds of legal proceedings are covered by the provisions of the Bill. Only legal proceedings which relate to something which happens in the course of a person's official duties as a Minister or Member of the Legislative Assembly or to the person's use in the course of those duties of a Territory vehicle are sufficiently connected with the person's official duties to be covered by the Bill.

Guidelines for deciding about the provision of legal assistance

Clause 7 provides for regulations to be made setting guidelines for decisions about when and how legal assistance is to be provided. The guidelines can indicate what sort of conditions can be imposed in relation to legal assistance. They can also set procedures for making applications and decisions on applications for assistance. Clause 10 provides that the Minister deciding on the application must do so in accordance with the approved guidelines.

Applications

Clause 8 sets out how an application for legal assistance is to be made. The application itself must be in writing and set out all the relevant information about the legal proceedings and the circumstances leading to the proceedings being started. Some information about the timing of steps in the legal proceedings is also required.

An application must be made to the Attorney-General. However, if the applicant is the Attorney-General there is provision for the application to be made to another Minister.

Making a decision on an application

Clauses 9, 10 and 11 deal with making a decision on an application.

The Attorney-General will normally decide on an application. However, there are provisions to ensure that a decision is not made by a Minister who has an interest in the application. Clause 9 requires an application to be referred to another Minister if the deciding Minister is, or becomes, unavailable to make a decision. It sets out that a Minister is unavailable to make a decision if he or she has a financial interest in the outcome of the application or there is some other reason to prevent proper decision making.

Clause 10 requires the deciding Minister to consult with 1 other Minister before making a decision on an application. There is a preference order of Ministers to be consulted provided they are available.

Clause 11 allows the deciding Minister to ask the applicant to provide additional information about the application. The deciding Minister may also defer making a decision until more information is available.

Legal assistance cannot be given if the deciding Minister is satisfied that the applicant became involved in the legal proceedings or became subject to an award of damages or a penalty in legal proceedings because of doing something that was unreasonable or not in good faith. Nor can legal assistance be given if the deciding Minister is satisfied that the applicant has, in some significant way, not complied with the approved guidelines.

Clause 11 also provides that the deciding Minister must make a decision in accordance with the approved guidelines. Approved guidelines will be contained in regulations.

Provision is made in clause 11 for a further application to be made if an application is refused. A further application can only be made if it includes additional information of which the applicant was unaware and could not have been aware when making the original application.

Notification of decisions

As the nature of the issues involved in providing legal assistance to Ministers and Members of the Legislative Assembly is likely to be politically sensitive it is not appropriate for the decisions to be subject to outside review. Instead, clause 12 provides for the deciding Minister to make a statement setting out a summary of the facts relating to the application, which Ministers were consulted, the decision reached and the reasons for the decision. A copy of the statement is to be given to the applicant. Another copy is to be presented to the Legislative Assembly within 6 sitting days after the deciding Minister signs it. In this way the decisions made under this Bill will be subject to the scrutiny of the Legislative Assembly.

Clause 20 amends the *Administrative Decisions (Judicial Review) Act 1989* by excluding decisions under the Bill or the guidelines from its operation.

Provision of legal assistance

Clause 13 commits the Territory to provide legal assistance authorised by the deciding Minister. That Minister is given the function of deciding how the legal assistance is to be provided and any conditions which are to apply. One way in which legal assistance may be provided is through the Government Solicitor providing advice to or acting on behalf of the applicant.

Clause 13 also allows for a decision to provide legal assistance to be varied or revoked. In reconsidering a decision the deciding Minister must comply with the provisions of clauses 10, 11 and 12. That means that in reconsidering a decision there must be the same consultation and notification as if the decision was an original one. A decision made on reconsideration must comply with the guidelines.

Recovery by the Territory

Clauses 14 and 15 allow the Territory to recover part of the cost of legal assistance provided to a Minister or Member of the Legislative Assembly. The object is to allow the costs of legal assistance to be reimbursed to the Territory out of amounts which become payable as a result of the legal proceedings for which the assistance was given. Clause 14 applies to amounts owing to the Minister or Member who received the assistance while clause 15 applies to amounts paid to that Minister or Member.

Clause 16 provides for the Territory to require the recipient of legal assistance to take action to recover an amount owing to him or her for costs or damages as a result of the legal proceedings. It allows the Territory to take action to recover that amount if the person who received the legal assistance does not do so.

Duties in relation to legal assistance

Clause 17 imposes a duty on applicants for legal assistance to assist the deciding Minister in relation to the application. Recipients of legal assistance are to assist the Territory in recovering money owed to them in respect of the legal proceedings.

Regulations

Clause 18 provides for regulations to be made by the Executive.

Limitation on Territory liability

Clause 19 limits the liability of the Territory so that it is only liable to an applicant and not to any person claiming through the applicant. This excludes Territory liability to the family or trustees of an applicant. If the applicant has insurance or some other form of indemnity or is entitled to a contribution from another person in

relation to the legal proceedings, the Territory's liability to the applicant is reduced by the amount which can be recovered from that other source.

Amendment of the *Administrative Decisions (Judicial Review) Act 1989*

Clause 20 excludes decisions under the Bill or the guidelines from the operation of the Act. The issues decided are not suitable for public review by an outside tribunal. Instead the reasons for the decision on each application are presented to the Legislative Assembly under clause 12.

Dictionary

The dictionary contains definitions of particular words and phrases used in the Bill. Clause 4 makes it part of the Bill.