
Legal Aid (Amendment) Ordinance 1982

No. 84 of 1982

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 13 October 1982.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

N. A. BROWN
Minister of State for Communications
for and on behalf of the Attorney-General

An Ordinance to amend the *Legal Aid Ordinance 1977*

Short title

1. This Ordinance may be cited as the *Legal Aid (Amendment) Ordinance 1982*.¹

Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice published in the *Gazette*.

Principal Ordinance

3. In this Ordinance, "Principal Ordinance" means the *Legal Aid Ordinance 1977*.²

Interpretation

4. Section 5 of the Principal Ordinance is amended by omitting from sub-section (1) the definition of "Commonwealth Legal Aid Commission".

Constitution of Commission

5. Section 7 of the Principal Ordinance is amended by omitting paragraphs (1) (c) to (g) (inclusive) and substituting the following paragraphs:

- “(c) a Commissioner being a member of the Australian Capital Territory House of Assembly nominated by that Assembly;
- (d) a Commissioner chosen from a panel of not less than 3 persons nominated by the Council of the Bar Association;
- (e) a Commissioner chosen from a panel of not less than 3 persons nominated by the Council of the Law Society;
- (f) a Commissioner chosen from a panel of not less than 3 persons nominated by the Executive Committee of the Council of Social Service of the Australian Capital Territory; and
- (g) 2 other Commissioners, each of whom is, in the opinion of the Governor-General, a person who, by reason of his qualifications, training or experience, will be able to afford specialist assistance to the Commission in the performance of its function.”

Duties of Commission

6. Section 10 of the Principal Ordinance is amended—

- (a) by omitting paragraph (1) (f); and
- (b) by omitting from paragraph (1) (g) “Commission” (wherever occurring) and substituting “Council”.

7. After section 19 of the Principal Ordinance the following sections are inserted:

Statutory officers of the Commission to furnish reports

“19A. A statutory officer of the Commission shall, if requested by the Commission to do so, furnish a report in writing to the Commission with respect to the policy he is pursuing, or proposes to pursue, in the exercise of his powers, or the performance of his duties or functions, under this Ordinance.

Statutory officers of the Commission to follow directions

“19B. The Commission may issue directions to a statutory officer of the Commission in relation to the policy he is to pursue in the exercise of his powers, or the performance of his duties or functions, under this Ordinance and the statutory officer shall observe and carry out the directions given.”.

Entitlement of legally assisted persons to costs in proceedings

8. Section 33 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (5) “21 days” and substituting “3 months”; and
- (b) by omitting sub-section (6) and substituting the following sub-sections:

“(6) Where a legally assisted person fails to comply with a direction under sub-section (5) to assign to the Commission his right to recover

an amount, the legally assisted person shall be deemed to have assigned to the Commission his right to recover the amount at the expiration of the period during which any action by way of reconsideration or review may be taken under Part VI in relation to the decision to give the direction.

“(6A) Sub-section (6) does not apply where the decision to give the direction with which the legally assisted person has failed to comply has, under Part VI, been—

- (a) varied so that the direction is negated; or
- (b) set aside and replaced with a decision in accordance with which the direction is negated.

“(6B) Where a right to recover an amount is assigned to the Commission in pursuance of a direction under sub-section (5), or is to be deemed to be assigned to the Commission in accordance with sub-section (6), the Commission shall, for the purpose of recovering the amount, stand in the place of the legally assisted person and may use the name of the legally assisted person and all remedies which would, but for the assignment or the operation of sub-section (6), be available to the legally assisted person in any proceedings to recover the amount.”

Notification of decisions

9. Section 35 of the Principal Ordinance is amended by omitting from sub-section (1) “an officer of the Commission or by” and substituting “the Commission, an officer of the Commission or”.

Reconsideration of decisions

10. Section 36 of the Principal Ordinance is amended —

- (a) by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) Where a decision has been made—

- (a) refusing to treat an application for legal assistance that does not comply with all the requirements of sub-section 25 (1) as having been duly made;
- (b) refusing to provide legal assistance under this Ordinance;
- (c) refusing to provide legal assistance under this Ordinance of the nature, or to the extent, applied for;
- (d) imposing a condition on the provision of legal assistance under this Ordinance or varying adversely to a legally assisted person a condition so imposed;
- (e) requiring an applicant for legal assistance to pay the expenses incurred by a Legal Aid Committee, or by an officer of the Commission, in making inquiries, or obtaining advice or reports, for the purpose of deciding an application for legal assistance;

- (f) terminating the provision of legal assistance under this Ordinance;
- (g) altering the nature or extent of legal assistance provided to a person under this Ordinance;
- (h) determining, under sub-section 33 (2), an amount payable by a legally assisted person;
- (j) directing a legally assisted person to take specified action to recover an amount that is recoverable by that person in respect of a matter in which legal assistance was given;
- (k) directing a legally assisted person to assign to the Commission his right to recover an amount that is recoverable by him in respect of a matter in which legal assistance was given;
- (l) refusing to pay the whole or part of any amount that the Commission has been requested to pay under section 34; or
- (m) refusing to allow, under paragraph (4) (b), the period applied for by a person making application for a longer period within which to request the reconsideration or review of a decision to which that paragraph applies,

the legally assisted person, or the person who applied for legal assistance or for the payment, may, by notice in writing to the Commission, request that the decision be reconsidered.

“(2) Where a notice requesting that a decision be reconsidered is received by the Commission, the decision shall be reconsidered—

- (a) in a case where the decision was made by the Commission—by the Commission;
- (b) in a case where the decision was made by a Legal Aid Committee—by such a Committee; or
- (c) in a case where the decision was made by an officer of the Commission—by an appropriate officer of the Commission in accordance with arrangements made or approved by the Director,

and may either be confirmed or varied.”; and

- (b) by omitting sub-section (4) and substituting the following sub-section:

“(4) A request by a person for reconsideration or review of a decision shall be made—

- (a) in the case of a decision of the kind specified in paragraph (1) (k)—before the expiration of the period of 3 months after the person received notice of the relevant decision; or
- (b) in any other case—before the expiration of the period of 3 months after the person received notice of the relevant decision or such longer period as the Commission, in special circumstances, before or after the expiration of that period, allows.”.

Establishment and constitution of Review Committees

11. Section 37 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “Commission” and substituting “Attorney-General”; and
- (b) by omitting sub-section (2) and substituting the following sub-sections:

“(2) A Review Committee shall consist of—

- (a) a person chosen in accordance with sub-section (3);
- (b) a person chosen in accordance with sub-section (4); and
- (c) a person (not being a private legal practitioner or a member, or an officer, of the Commission) who has qualifications or experience relevant to the performance of the function of a Review Committee.

“(3) The member of a Review Committee referred to in paragraph (2) (a) shall be a private legal practitioner chosen by the Attorney-General from a panel of not less than 3 private legal practitioners nominated by the Council of the Bar Association or, if the Council of the Bar Association fails to nominate such a panel within 30 days after the receipt by the Bar Association of a written request by the Attorney-General to do so, a private legal practitioner chosen by the Attorney-General.

“(4) The member of a Review Committee referred to in paragraph (2) (b) shall be a private legal practitioner chosen by the Attorney-General from a panel of not less than 3 private legal practitioners nominated by the Council of the Law Society or, if the Council of the Law Society fails to nominate such a panel within 30 days after the receipt by the Law Society of a written request by the Attorney-General to do so, a private legal practitioner chosen by the Attorney-General.”

Appointment of members of Review Committees

12. Section 38 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “Commission” and substituting “Attorney-General”;
- (b) by omitting from sub-section (2) “Commission” and substituting “Attorney-General”; and
- (c) by omitting sub-section (3) and substituting the following sub-section:

“(3) The Attorney-General may appoint as a deputy of a member of a Review Committee—

- (a) in the case of a member referred to in paragraph 37 (2) (a)—a private legal practitioner chosen by the Attorney-General from a panel of not less than 3 private legal practitioners nominated by the Council of the Bar Association or, if the Council of the Bar Association fails to nominate such a panel within 30 days

after the receipt by the Bar Association of a written request by the Attorney-General to do so, a private legal practitioner chosen by the Attorney-General;

- (b) in the case of a member referred to in paragraph 37 (2) (b)—a private legal practitioner chosen by the Attorney-General from a panel of not less than 3 private legal practitioners nominated by the Council of the Law Society or, if the Council of the Law Society fails to nominate such a panel within 30 days after the receipt by the Law Society of a written request by the Attorney-General to do so, a private legal practitioner chosen by the Attorney-General; and
- (c) in the case of a member referred to in paragraph 37 (2) (c)—a person (not being a private legal practitioner or a member, or an officer, of the Commission) who has qualifications or experience relevant to the performance of the function of a Review Committee.”.

Function of Review Committee

13. Section 39 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:

“(2) In reviewing a decision of a kind specified in paragraphs 36 (1) (b) to (g) (inclusive), or a decision of one of those kinds as varied under sub-section 36 (2), a Review Committee shall have regard to the amount of the funds available to the Commission for the provision of legal assistance, the nature and extent of the legal assistance that has been provided from those funds and the nature and extent of the legal assistance that the Commission is likely to be requested to provide in the future.”.

Director and person requesting review to have opportunity to be heard

14. Section 39A of the Principal Ordinance is amended by omitting “the person who requested the review” and substituting “the Director or another officer of the Commission nominated by the Director, and to the person who requested the review,”.

15. After section 39A of the Principal Ordinance the following section is inserted:

Power of Review Committees to obtain information and documents

“39B. A Review Committee may request the Director or another officer of the Commission to—

- (a) furnish to the Committee any information known to him, or to which he has access, that relates to a decision being reviewed by the Committee;
- (b) produce to the Committee any document in his custody or control that relates to a decision being reviewed by the Committee; or

- (c) furnish to the Committee any information relating to the amount of the funds available to the Commission for the provision of legal assistance, the nature and extent of the legal assistance that has been provided from those funds and the nature and extent of the legal assistance that the Commission is likely to be requested to provide in the future,

and the Director, or the officer, as the case may be, shall provide the information or produce the documents requested.”.

Decision of Review Committee

16. Section 40 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “an officer of the Commission or of” and substituting “the Commission, an officer of the Commission or”; and
- (b) by omitting from sub-section (2) “officer of the Commission who, or the Legal Aid Committee which” and substituting “person who, or the body which”.

Qualifications for appointment

17. Section 50 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (2) “, (d) or (g)” and substituting “or (f)”; and
- (b) by adding at the end thereof the following sub-section:

“(3) A person is not eligible for appointment as a Commissioner referred to in paragraph 7 (1) (g) where, if he were so appointed, each of the Commissioners referred to in that paragraph would be a person who is enrolled as a barrister, as a solicitor, or as a barrister and solicitor, of a court, whether in the Territory or elsewhere.”.

Tenure of office

18. Section 76 of the Principal Ordinance is amended by omitting “a period of 1 year” and substituting “such period, not exceeding 3 years, as is specified in the instrument of his appointment”.

Resignation

19. Section 77 of the Principal Ordinance is amended by omitting “Commission” and substituting “Attorney-General”.

Removal from office

20. Section 78 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “Commission” and substituting “Attorney-General”; and
- (b) by omitting from sub-section (2) “Commission” (twice occurring) and substituting “Attorney-General”.

Secrecy

21. Section 92 of the Principal Ordinance is amended by inserting in sub-section (3) "39B," before "47".

22. After section 92 of the Principal Ordinance the following section is inserted:

Power of Commission to obtain information or documents

"92A. (1) Subject to sub-section (2), if the Commission requires an officer of the Commission to—

- (a) furnish to the Commission any information known to him or to which he has access; or
- (b) produce to the Commission any document in his custody or control, that is relevant to the provision of legal assistance under this Ordinance, the officer shall comply with the requirement.

"(2) Sub-section (1) does not derogate from any privilege which arises under sub-section 13 (2)."

Exemption from fees and taxes

23. Section 93 of the Principal Ordinance is amended by omitting from paragraph (1) (c) "Police Force of the Territory" and substituting "Australian Federal Police".

Annual report and financial statements

24. Section 97 of the Principal Ordinance is amended by omitting sub-section (2) and substituting the following sub-section:

"(2) The Commission shall cause a copy of the report and financial statements of the Commission to be furnished to the Australian Capital Territory House of Assembly."

Continuance of Review Committee

25. The Review Committee established under Part VI of the Principal Ordinance, as constituted immediately before the commencement of this Ordinance, is continued in existence until it has completed the review of any decisions referred to it under sub-section 36 (3) before the commencement of this Ordinance.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 20 October 1982.
2. Ordinance No. 31, 1977 as amended by Nos. 29 and 46, 1978; No. 15, 1980.