

1997
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Legal Aid (Amendment) Bill 1997

A BILL

FOR

An Act to amend the *Legal Aid Act 1977*

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

Short title

1. This Act may be cited as the *Legal Aid (Amendment) Act 1997*.

5 **Commencement**

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

3. In this Act, "Principal Act" means the *Legal Aid Act 1977*.¹

10 **Interpretation**

4. Section 5 of the Principal Act is amended—

(a) by inserting in subsection (1) the following definitions:

5 “ ‘funding agreement’ means an agreement between the Territory and the Commonwealth, a State or another Territory (‘the other jurisdiction’) for the provision of legal assistance by the Commission in matters arising under the laws of the other jurisdiction, where the agreement provides for the full funding of such assistance by the other jurisdiction, including funding of all overheads (including administrative overheads) involved in implementing the agreement;

10 ‘Territory matter’ means a matter arising under a law of the Territory, other than a law in relation to which a funding agreement is in force;”;

(b) by omitting subsection (3).

Functions of Commission

15 5. Section 8 of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsection:

“(1) The Commission shall provide legal assistance in Territory matters in accordance with this Act.”; and

20 (b) by adding at the end the following subsections:

“(3) Where a funding agreement is in force—

(a) the Minister may direct the Commission to apply the agreement; and

25 (b) the Commission shall comply with the Minister’s direction.

“(4) The Minister shall cause a copy of a direction under paragraph (3) (a), together with a copy of the relevant funding agreement, to be laid before the Legislative Assembly within 15 sitting days after the day on which the direction is issued.”.

30 Insertion

6. After section 8 of the Principal Act the following section is inserted:

Funding agreements—application of the Act

35 “8A. (1) Where the Minister issues a direction under paragraph 8 (3) (a), this Act applies in relation to the provision of legal assistance in a matter to which the relevant funding agreement applies, subject to subsection (2).

“(2) The following provisions of this Act only apply in relation to the provision of legal assistance in a matter to which a funding agreement applies to the extent to which those provisions are not inconsistent with the funding agreement:

- 5 (a) paragraph 10 (1) (j);
 (b) sections 11 and 12;
 (c) Parts V and VI.

Duties of Commission

- 10 7. Section 10 of the Principal Act is amended by omitting paragraph (1) (g).

Guidelines for the provision of assistance

8. Section 12 of the Principal Act is amended by omitting from paragraph (b) “either or both” and substituting “any”.

Arranging for services of private legal practitioners

- 15 9. Section 32 of the Principal Act is amended by omitting subsections (4), (5) and (6).

Application of Fund

10. Section 43 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- 20 “(1A) Moneys in the Fund derived from the following sources shall not be applied otherwise than for the purposes of providing legal assistance in Territory matters:
- (a) moneys appropriated by the Legislative Assembly for the purposes of providing legal assistance in Territory matters;
- 25 (b) moneys paid to the Commission under section 31 in relation to Territory matters for which legal assistance was partly funded under this Act;
- (c) moneys paid to the Commission under subsection 33 (2) in relation to Territory matters for which legal assistance was provided under this Act;
- 30 (d) moneys paid to the Commission out of a Statutory Interest Account for the provision of legal assistance under this Act;
- (e) any other moneys paid to the Commission for the purposes of providing legal assistance in Territory matters;
- 35 (f) income derived from the investment of moneys referred to in paragraphs (a) to (e) (inclusive).”.

Conditions of appointment

11. Section 56 of the Principal Act is amended by omitting subsection (2).

Substitution

5 12. Section 69 of the Principal Act is repealed and the following section substituted:

Application of Legal Practitioners Act to officers of the Commission

10 “69. The following provisions of the *Legal Practitioners Act 1970* do not apply in relation to an officer of the Commission in his or her official capacity:

- (a) Part IX;
- (b) Division 7 of Part XI;
- (c) Parts XII, XIII, XIV and XV.”.

15 **Superannuation**

13. (1) Section 98 of the Principal Act is amended by adding at the end “or under the *Superannuation Act 1990* of the Commonwealth”.

20 (2) If, before the date of commencement of this Act, superannuation benefits had been provided to an officer of the Commission under the *Superannuation Act 1990* of the Commonwealth, those benefits are to be taken to be authorised despite section 98 of the Principal Act as in force at the time of their provision.

Formal and consequential amendments

14. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 14

FORMAL AND CONSEQUENTIAL AMENDMENTS

Subsection 5 (1) (definition of “member of the staff of the Commission”)—

5 Omit “or 63”.

Subsection 5 (1) (definitions of “approved auditor”, “previous Committee”, “previous Fund” and “repealed Act”)—

Omit the definitions.

Subsections 9 (7) and (8)—

10 Omit “Division 7”, substitute “Division 8”.

Paragraphs 37 (3) (a) and (b)—

Omit the paragraphs, substitute the following paragraphs:

15 “(a) from a panel of not more than 9 private legal practitioners nominated by the Council of the Bar Association and approved by the Minister; or

(b) if that Council fails to nominate such a panel within 30 days after the receipt by the Council of a written request by the Minister to do so—a panel of private legal practitioners chosen by the Minister.”.

Paragraphs 37 (4) (a) and (b)—

20 Omit the paragraphs, substitute the following paragraphs:

“ (a) from a panel of not more than 9 private legal practitioners nominated by the Council of the Law Society and approved by the Minister; or

25 (b) if that Council fails to nominate such a panel within 30 days after the receipt by the Council of a written request by the Minister to do so—a panel of private legal practitioners chosen by the Minister.”.

Subsection 37 (5)—

Omit all the words after “chosen”, substitute:

30 “by the Chief Executive Officer from a panel of not more than 9 persons (not being legal practitioners, members of the Commission or officers of the Commission) chosen by the Minister, each of whom has qualifications or experience relevant to the performance of the function of a Review Committee”.

SCHEDULE—continued

Subsections 37 (6) and (7)—

Omit the subsections

Sections 63 to 67 (inclusive)—

Repeal the sections.

5 **Subsection 76 (1)—**

Omit “(other than a transitional panel)”.

Subsection 76 (2)—

Omit the subsection.

Section 84A (definition of “prescribed person”)—

10 Omit the definition, substitute the following definition:

“ ‘prescribed person’ means a person appointed under section 84B.”.

Section 84F—

Repeal the section.

Part XII—

15 Repeal the Part.

Further amendments—

The following provisions of the Principal Act are amended by omitting “function” and substituting “functions”:

20 Part II (heading), paragraph 7 (1) (g), subsections 7 (4), 9 (1) and 10 (1), paragraph 10 (2) (a), subsections 10 (3), 20 (1), 22 (9), 54 (1), 82 (1) and (2) and 83 (2), section 84A (definition of “prescribed matter”, paragraph (b)) and subsection 94 (1).

NOTE

Principal Act

1. Reprinted as at 30 November 1996 See also Act No 41, 1997