

1992

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

LEGAL AID (AMENDMENT) BILL 1992

EXPLANATORY MEMORANDUM

**Circulated by authority of
Terry Connolly, MLA
Attorney General,**

AUSTRALIAN CAPITAL TERRITORY**LEGAL AID (AMENDMENT) BILL 1992****OUTLINE**

This Bill amends the *Legal Aid Act 1977* to provide for equal opportunity in appointment and promotion of staff, and to ensure that these are based on the principle of merit. The Bill also requires that an equal opportunity program be established to ensure steps are taken to eliminate unlawful discrimination and to ensure women and people in minority groups have equal opportunity, along with others, to advance their careers with the Commission.

These amendments correspond to similar amendments being made to the establishing Acts of ACT public authorities as an integral part of the package of legislation which complements the passage of the *Discrimination Act 1991*.

The amendments are based on the equal opportunity provisions of the *Public Service Act 1922* and will therefore make the *Legal Aid Act 1977* consistent with the law applying in the rest of the ACT public sector.

Financial Considerations: There are no financial considerations involved.

FORMAL CLAUSES

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill, and definition of the Principal Act.

AMENDMENTS

Clause 3 Amends the Principal Act by inserting a section after Section 68, namely section 68A.

Section 68A contains new subsections (1) to (10):

Application of the Bill to the Commission's 'powers in relation to employment matters'

The key provisions of the Bill appear in subsections 68A(1) and 68A(2). These apply respectively

to the exercise of the Commission's 'powers in relation to employment matters'; and

in relation to selection of persons for engagement as employees of the Commission, and to selection for advancement with the Commission.

An 'employment matter' is defined in subsection 68A(10) and includes selection for engagement as an employee, selection for advancement with the Commission, transfer, training and staff development, conditions of service and any other matter related to the employment of persons by the Commission.

Prohibition of unjustified discrimination, patronage and favouritism

Paragraph 68A(1)(a) provides that decisions in relation to employment matters must be made without unjustified discrimination, patronage and favouritism. 'Unjustified discrimination' (defined in subsection 68A(10)) includes discrimination on the ground of age or social origin, and discrimination prohibited by the *Discrimination Act 1991*. According to subsection 68A(10) discrimination is permissible if:

- it is not unlawful under the *Discrimination Act 1991*, is essential for the effective performance of the work required and is prescribed; or
- it is not unlawful and is in accordance with an equal opportunity program for the Commission or other program established by the regulations.

Paragraph 68A(1)(b) provides that employment decisions must be made with regard to the equal opportunity program of the Commission.

An equal employment opportunity program is defined in subsection 68A(10) as a program designed to ensure that unjustified discrimination against designated groups such as Aboriginal people is eliminated and that such groups and women can have, along with others, equal opportunity for advancement and career development.

Application of Merit Based Principles to Employment Decisions

Subsection 68A(2) requires that decisions on the selection of persons for engagement by the Commission as employees and on selection for advancement with the Commission are made in accordance with procedures ensuring

- potential applicants, as far as is practicable, have a reasonable opportunity to apply for positions; and
- assessment is on the basis of merit, that is the relative suitability for the position, given the nature and requirements of the job, and the relevant abilities, qualifications, experience, personal qualities and potential for development of the applicant.

The legislation makes it clear that practicality and reasonableness are the benchmarks for required procedures. It is not the intention of the Bill to

impose impractical measures or unreasonable and unaffordable advertising and selection procedures as a requirement for appointment and advancement.

This subsection does not apply to temporary staff employed for a period of less than 3 months.

Subsection 68A(3) ensures that the Commission can also make reports or recommendations for carrying out of the principles established by this Act.

Equal opportunity program

Subsection 68A(4) requires the Commission to develop, after consultation with relevant staff organisations and other appropriate persons, an equal employment opportunity program.

A 'relevant staff organisation' is defined in subsection 68A(10) as an organisation within the meaning of the *Industrial Relations Act 1988* (C'th) of which employees of the Commission would be eligible for membership, and which is party to an award which covers employees of the Commission.

Subsections 68A(5),(6),(7) and (8) require the Commission to establish the program as soon as practicable, at least within 12 months of the commencement of this Act, to provide details of the program to the Head of Administration and to take any necessary action to give effect to the equal employment opportunity program. The Head of Administration may issue guidelines on the provisions, development, implementation or review of the program.

Measures adopted by the smaller statutory authorities in establishing equal employment opportunity programs will not have to be as extensive or complex as those of the larger authorities. Also EEO programs may be adapted to the particular nature and needs of the authority involved. Details can also be dealt with in the Guidelines as established by the Head of Administration.

Subsection 68A(9) requires the Commission to furnish to the Minister an annual report on the operation of the program.

Subsection 68A(10) is a definition section, establishing the meaning of the words "designated group"; "employment matter" referred to in subsection 68A(1); "equal employment opportunity program" referred to in subsections 68A(1), 68A(4) to 68A(8); "relevant staff organisation" referred to in subsection 68A(4); and "unjustified discrimination" referred to in subsection 68A(1).