

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

Legal Aid (Amendment) Ordinance (No. 2) 1984

No 55, 1984

On 25 January 1984, the Attorney-General, at the request of the Legal Aid Commission (A.C.T.) ("the Commission"), instituted an independent inquiry into whether the business of the Legal Aid Office (A.C.T.) (the name under which the Commission performs its function under section 8 of the Principal Ordinance) had 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 Inquiry, conducted by Mr F. C. Pryor, reported to the Attorney-General on 2 May 1984.

Certain of the Recommendations of the Report have been accepted by the Commission and implemented by administrative action.

Following on consideration of other recommendations made by the Inquiry, the purpose of this proposed Ordinance is to amend the Legal Aid Ordinance 1977 ("the Principal Ordinance") with a view to;

- (i) Clarifying the relationship between the officer in charge of the Legal Aid Office (A.C.T.) and the Commission
- (ii) Establishing clear control of the officer in charge by the Commission in his management of the office.

Section 1 provides that the Ordinance may be cited as the Legal Aid (Amendment) Ordinance (No. 2) 1984.

Section 2 provides that the Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories and Local Government by notice in the Gazette.

Section 3 defines the "Principal Ordinance" to mean the Legal Aid Ordinance 1977.

Section 4 repeals section 17 of the Principal Ordinance and substitutes a new section 17. The former section 17 provided for the appointment, by the Governor-General, on the nomination of the Commission, of a Director of Legal Aid ("the Director") and a number of Assistant Directors. The Director was the chief executive officer of the Commission. The new section 17 establishes the statutory position of Chief Executive Officer who is specifically charged with the management of the operations and affairs of the Commission. The Chief Executive Officer is to be appointed by the Commission and the Commission may also appoint such Assistant Executive Officers as it considers necessary to assist the Chief Executive Officer in his functions. Unlike the former Director, the Chief Executive Officer is not a member of the Commission (see Section 8).

Section 5 repeals Sections 19, 19A, 19B of the Principal Ordinance and substitutes new sections.

Section 19 provides that an Assistant Executive Officer shall perform such duties in relation to the management of the operations or affairs of the Commission as the Chief Executive Officer directs.

Section 19A provides that a statutory officer of the Commission shall, if requested by the Commission report to the Commission with respect to -

- . the exercise of that officer's powers, or the performance of that officer's duties or functions,
- . the policy that officer is pursuing, or proposes to pursue, in connection with those powers, duties or functions.

Section 19B provides that the Commission may issue directions to a statutory officer of the Commission in relation to -

- . the exercise of that officer's powers, or the performance of the officer's duties or functions, or
- . the policy that officer is to pursue in connection with those powers, duties or functions,

and further that the statutory officer shall observe and carry out those directions.

Section 6 amends section 39A of the Principal Ordinance. Section 39A relates to the review of decisions regarding the provision of legal assistance and provides that a Review Committee shall allow the Chief Executive Officer an opportunity to be heard when considering a matter referred to the Committee.

Section 7 omits sub-section 60(1) of the Principal Ordinance and substitutes a new sub-section which provides that the Commission (formerly the Governor-General) may remove a statutory officer and adds "inefficiency" and "incompetence" to the previous grounds of misbehaviour or physical or mental incapacity.

Section 8 effects a number of amendments, which are mainly consequential. However, those of more substantive effect are as follows:

- . Sub-section 7(2) of the Principal Ordinance which provided that the Director was an ex officio member of the Commission is omitted.
- . Sub-section 56(3) has been amended by omitting the words "(if any)". The new section will now provide that a statutory officer will hold office on terms and conditions in respect of matters not otherwise provided for in the Principal Ordinance as are determined by the Governor-General on the recommendation of the Commission.
- . Section 59, and Sub-section 60(2) are amended to provide that a statutory officer may tender his resignation to the Commission (formerly to the Governor-General) and that a statutory officer may be removed by the Commission (formerly by the Governor-General) for bankruptcy, or absence without leave.

Section 9 is a transitional provision which provides that upon the date of commencement of this Ordinance the Chief Executive Officer shall be deemed to be the solicitor for a person in any proceeding in a court, or in any matter, in which the Director was acting as the solicitor for that person immediately before that date.

Section 10 is a savings provision which preserves as valid and effectual any certificates, documents or decisions made by a statutory officer prior to the proposed amendments.

Pursuant to the provisions of the Principal Ordinance the Director was empowered to certify as to monies due to the Commission and to make decisions on grants of legal assistance. This section will preserve any decisions made by the Director prior to the position being abolished by Section 4 of the amending Ordinance.

Authorised by the Attorney-General

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