

AUSTRALIAN CAPITAL TERRITORY
LEGAL PRACTITIONERS ORDINANCE (NO. 2) 1975

EXPLANATORY MEMORANDUM

The purpose of this Ordinance is to amend the Legal Practitioners Ordinance of the Australian Capital Territory so as to:

- create a statutory office of Director of Legal Aid for the Australian Capital Territory;
- define the functions of the Director;
- establish the right of the Director to act for persons in the Territory;
- provide for the appointment of barristers and solicitors to assist the Director;
- establish the right of those barristers and solicitors to appear in court; and
- make appropriate provisions to facilitate the operation of the Director's Office.

The effect of the Ordinance will be to give a specific entitlement to the Director of Legal Aid to act, in his official capacity, as a solicitor for members of the public who seek legal advice and assistance from the Australian Legal Aid Office.

Section 4 of the amending Ordinance inserts a new Part 1D (new sections 6C to 6K) in the Principal Ordinance to achieve this purpose. The Director of Legal Aid, who must be a barrister and solicitor, will be appointed by the Governor-General. He will be empowered to appoint barristers and solicitors to assist him in the performance of his functions. It is intended that the Director, and the persons appointed by him will be officers of the Public Service.

New section 6F establishes the right of the Director to act as solicitor for persons in legal proceedings or other matters in the Territory and gives the Director and the barristers and solicitors assisting him the right of audience in any court of the Territory.

New section 6G permits the Director to act for any person having an interest adverse to Australia. The purpose of this section is to make it clear that the Director may lawfully act for a person in these circumstances even if the Director is an employee of the Australian Government.

New section 6J excludes the application of the provisions of the Principal Ordinance relating to Practising Certificates (Part IIIA), Trust Moneys and Trust Accounts (Part VII), the Fidelity Fund (Part VIII), Appointment of Receivers (Part IX) and Costs (Part X).

These provisions are not appropriate, having regard to the fact that the officers of the Australian Legal Aid Office are employed under the Public Service Act. As barristers and solicitors they will, however, remain subject to the discipline of the Supreme Court. The financial transactions of the Office will be subject to the provisions of the Audit Act.

The purpose of new section 6K is to establish, as between the Director and a person employed under section 6E, the same relationship as exists between an employee solicitor and his principal in the ordinary course of practice.