

2010

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

LEGAL AID AMENDMENT BILL 2010

EXPLANATORY STATEMENT

Presented by
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Overview of Bill

This Bill introduces a brief suite of amendments to improve the drafting of the *Legal Aid Act 1977*. The amendments in this Bill ensure that officers of Legal Aid ACT receive the same statutory protections when they appear on behalf of interstate clients, update a definition, and clarify the Commission's powers to assess contributions.

These amendments will not alter the way Legal Aid ACT operates to assist the community. Rather, they ensure that the legislation remains easy to interpret and up-to-date with changes in related legislation, and that Legal Aid ACT's statutory empowerments and rights are not brought into dispute only because of the drafting of the legislation.

Human rights impact

These amendments do not substantively alter the rights of individuals under the *Legal Aid Act 1977*.

Clause Notes

Clause 1 Name of Act

This clause states the title of the Act as the Legal Aid Amendment Bill 2010.

Clause 2 Commencement

This clause sets out the commencement date for the Act, which is the day after its notification.

Clause 3 Legislation amended

This clause states that the Act amends the *Legal Aid Act 1977*.

Clause 4 Section 22(7)

Section 22 of the Act governs the rights of officers of the commission in relation to legal practice. Currently, section 22(7) affords officers of the commission the same protection and immunity as is given to barristers when representing a legally assisted person in a proceeding before a court or tribunal in the ACT.

The amended section 22(7) extends this immunity to allow officers of the commission to represent people who are being provided with legal assistance by organisations outside of the ACT, but have engaged Legal Aid ACT to assist in the Territory.

Clause 5 Section 31(1)(a)

This clause removes the phrase “a specified” from section 31. This a drafting change to avoid doubt about whether the initial assessment of a person’s need for legal assistance, and the corresponding contribution, may be varied as the person’s case continues. The provision has already been interpreted this way, and the change to the legislation will not result in any change in practice.

Clause 6 Section 31(2)

This clause re-drafts subsection 31(2) to provide a clearer explanation of how the Commission assesses contributions from legally assisted persons. A note is included to refer to the defined list of matters (in section 28(3) of the Act) that can be considered by the Legal Aid Commission in deciding whether a person is eligible for assistance.

Legal aid is only available if a person cannot afford to pay for the whole cost of legal representation. The determination of eligibility is made in accordance with section 28 of the Act, which directs the Commission to consider a person’s income, costs, and any other matter affecting the person’s ability to pay. If a legally assisted person’s ability to pay changes during the course of a grant of assistance, the Commission adjusts its contribution requirements accordingly.

There will be no change in the practical operation of the assessment of contributions.

Clause 7 Section 31(3)

This clause updates a reference concerning payment methods, to reflect the new drafting of section 31(2). The Commission’s power to direct payment as it chooses is now in section 31(2)(b).

Clause 8 Dictionary, definition of *private legal practitioner*

Currently, the Act defines a *private legal practitioner* as “a person who is practising as a barrister, as a solicitor, or as a barrister and solicitor, on his or her own account or in partnership”. This definition reflects terms describing members of the legal profession that have been made anachronistic by the *Legal Profession Act 2006*.

This definition is amended to refer to the definition of a *principal* under section 9 of the *Legal Profession Act 2006*. The different kinds of practice arrangements established and regulated in the Territory under the *Legal Profession Act 2006* will now be formally recognised in the *Legal Aid Act 1977*.