

1987

THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

THE SENATE

COMMONWEALTH LEGAL AID AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,

the Honourable Lionel Bowen, M.P.)

COMMONWEALTH LEGAL AID AMENDMENT BILL 1987

GENERAL OUTLINE

The purpose of the Bill is to replace the Commonwealth Legal Aid Council with two advisory bodies - a National Legal Aid Representative Council and a National Legal Aid Advisory Committee.

Both bodies will be advisory in character. The Council, as a broadly based representative body, will provide a forum for opinions and advice on general legal aid issues, while the Committee will be able to provide ongoing advice on particular issues either of its own motion or upon ministerial request.

Membership of the Council will comprise representatives of the principal legal aid delivery agencies and of other major legal aid interest groups including legal aid consumers. The Committee will consist of persons chosen because of their expertise in legal aid or in matters related to the Commonwealth's involvement in legal aid.

Financial Impact Statement

The Bill has minimal impact on Government expenditure. The only impact arises from the costs associated with meetings of the Council and the Committee which are estimated not to exceed \$80,000 in a full year.

NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for the Act to be cited as the "Commonwealth Legal Aid Amendment Act 1987".

Clause 2 - Commencement

The Bill is to come into operation on the date on which it receives Royal Assent.

Clause 3 - Title

The clause amends the title of the Principal Act.

Clause 4 - Interpretation

This clause amends a number of definitions of words and expressions in sub-section 3(1) of the Principal Act. It includes several additional definitions for the purposes of the legislation.

Clause 5 - Parts II and III

This clause repeals Parts II and III of the Principal Act, which concern the Commonwealth Legal Aid Council, and substitutes new Parts II, III & IIIA. Part II deals with the establishment and functions of the National Legal Aid Representative Council, Part III contains provisions dealing with the establishment and functions of the National Legal Aid Advisory Committee and Part IIIA sets out the administrative provisions relating to the Council and the Committee.

PART II - ESTABLISHMENT AND FUNCTIONS OF NATIONAL LEGAL AID
REPRESENTATIVE COUNCIL

(a) Establishment and Constitution of Council

Sub-section 4 empowers the responsible Minister to establish a National Legal Aid Representative Council.

Sub-section 5(1) provides that the Council shall consist of -

- . the Chairperson and Director of each legal aid commission;
- . the Chairperson of the National Legal Aid Advisory Committee;
- . 2 persons appointed after consultation between the Minister and the Law Council of Australia;
- . 2 persons who are, in the opinion of the Minister, representative of community legal centres;
- . 1 person appointed after consultation between the Minister and the Australian Council of Social Service;
- . an employee of the Australian Legal Aid Office; and
- . a person employed by the Commonwealth to administer legal assistance.

Other provisions of section 5 provide that -

- . the Chairperson and the other members of the Council are to be appointed by the Minister to hold office on a part-time basis;

- . the Minister may appoint a member of the Council as its Chairperson for 12 months, the Council being able to make a recommendation to the Minister as to the appointment of Chairpersons subsequent to the first one; and
- . a member may be appointed for up to 3 years, and subsequently re-appointed.

(b) Functions of Council

Section 6 sets out the functions of the Council. The Council may advise and make recommendations to the Minister on -

- . the extent of the need for legal assistance in Australia and cost-effective ways of meeting that need;
- . the effectiveness of delivery methods;
- . reforms to substantive law or other changes which may affect the cost of legal assistance;
- . the level of Commonwealth funds provided for legal assistance;
- . the effectiveness of the arrangements for the application of Commonwealth funds towards the provision of legal assistance;
- . the funding of community legal centres;
- . community legal education; and
- . any other matter relating to the provision of legal assistance.

PART III - ESTABLISHMENT OF NATIONAL LEGAL AID ADVISORY
COMMITTEE

(a) Establishment and Constitution of Committee

Section 7 empowers the Minister to establish a National Legal Aid Advisory Committee.

Section 8 provides that -

- . the Committee consists of 7 members appointed by the Minister to hold office on a part-time basis, the Minister having power to appoint one of them as the Chairperson;
- . the Committee members are to be appointed on the basis of their knowledge of or experience in legal assistance or matters related to the Commonwealth's involvement in legal assistance; and
- . members are to hold office for up to 3 years and may be reappointed.

(b) Functions of Committee

Section 9 sets out the functions of the Committee. These provisions are in similar terms to those of section 6, concerning the functions of the Council. The section differs, however, in that specific provision is made for the Committee to advise and make recommendations to the Minister upon request as well as of its own motion.

PART IIIA - ADMINISTRATIVE PROVISIONS

(a) Interpretation

Section 10 provides for the word "member" to mean a Council member or Committee member in this Part.

(b) Remuneration and Allowances

Section 11 is a standard provision which provides that a member is to be paid such remuneration as determined by the Remuneration Tribunal, or otherwise such remuneration and allowances as are prescribed.

(c) Resignation

Section 12 provides that a member may resign by notice in writing delivered to the Minister.

(d) Termination of Appointment

Section 13 is a standard provision to the effect that the Minister may remove a member from office -

- . for misbehaviour or physical or mental incapacity;
- . if he or she becomes bankrupt or commits an act of bankruptcy; or
- . if he or she is absent without the leave of the Minister from, in the case of the Council, one meeting, and in the case of the Committee, 3 consecutive meetings.

(e) Meetings of Council

Section 14 provides for -

- . the Council to meet annually;
- . the Council to meet on such other occasions as are approved by the Minister;

- . the Chairperson under direction from the Minister, or the Minister himself, to convene a meeting of the Council; and
- . related matters such as the chairing of meetings, the quorum, and decisions in relation to questions at meetings.

(f) Meetings of Committee

Section 15 deals with Committee meetings. It provides for -

- . the Committee to meet as often as is necessary to perform its functions efficiently, but at least twice a year; and
- . the convening and chairing of meetings, the quorum and the determination of issues at meetings.

(g) Acting Chairperson of Committee

Section 16 authorises the Minister to appoint and terminate the appointment of an Acting Chairperson.

(h) Disclosure of Interests by Members

Section 17 is a standard provision to the effect that a member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting shall, as soon as possible after the relevant facts have come to that person's knowledge, disclose the nature of the interest at a meeting. Such a disclosure is required to be recorded in the record of the meeting and the member making the disclosure may not be present during the deliberations with respect to the matter or take part in any decision concerning it.

When a determination is made by the Council or the Committee in relation to a member who has made a disclosure, that person may not be present or take part in any discussion or decision.

Clause 6 - Repeal of section 33

Neither the Council nor the Committee will be required to provide an annual report to Parliament.

