

1985

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

JUDICIARY AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by Authority of the
Honourable Lionel F. Bowen
Attorney-General)

OUTLINE

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The purpose of this Bill is to repeal s.69(3) of the Judiciary Act 1903.

Under s.69(3) a person charged with an offence against the laws of the Commonwealth may apply to a judge of the High Court or of a Supreme Court of a State for the appointment of counsel for his or her defence. If the judge certifies to the Attorney-General that the person is without adequate means to provide for his or her own defence, and that it is desirable in the interests of justice that an appointment of counsel be made, the Attorney-General may make arrangements for the defence. Those arrangements would normally be the provision of financial assistance to enable the person to retain solicitor and counsel.

The provision predates the present comprehensive nationwide system of legal aid delivery, which is the appropriate source of legal aid in all cases. The procedure under s.69(3) whereunder an applicant for legal aid can involve the courts in deciding the appropriateness or otherwise of a grant of legal aid is cumbersome, expensive and a duplication of functions now better performed by properly constituted legal aid bodies in all states and territories. Accordingly repeal of s.69(3) would rationalise the delivery of legal aid in Federal criminal matters.

Financial impact would be insignificant. All State and Territory legal aid bodies apply criteria very similar to those specified in s.69(3). Persons who might wish to seek assistance from the Attorney-General under s.69(3) would still be able to seek legal aid in the same way that the overwhelming majority of applicants in federal criminal matters do at present. An additional advantage would be that overburdened courts will no longer be using valuable time and resources in determining questions which may properly be determined by legal aid bodies.

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NOTES ON CLAUSES

Clauses 1 and 2

The first two clauses of the Bill provide for the short title and commencement of the legislation. The Bill will come into effect on the day it receives Royal Assent.

Clause 3

Section 69(3) of the Judiciary Act (1903) (the Principal Act) is repealed. The section does however continue to apply to any person who has already made an application under s.69(3) prior to the repeal of the provision.