

ARTHUR ROBINSON & HEDDERWICKS  
LIBRARY

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

LAW AND JUSTICE LEGISLATION AMENDMENT BILL 1991

EXPLANATORY MEMEORANDUM

(Circulated by authority of the Attorney-General,  
the Honourable Michael Duffy MP)



9 780644 210720

(i)

TABLE OF CONTENTS

	Page
General Outline	1
Financial Impact Statement	3
Notes on Clauses	4
Clause 1 - Short title	4
Clause 2 - Commencement	4
Clause 3 - Application and savings	4
Part 2 - Amendments to the Australian Security Intelligence Organization Act 1979	5
Part 3 - Amendments to the Trade Practices Act 1974	6

**SCHEDULE**

**AMENDMENTS OF OTHER ACTS**

<u>Acts Interpretation Act 1901</u>	8
<u>Administrative Appeals Tribunal Act 1975</u>	8
<u>Australian Capital Territory Supreme Court Act 1933</u>	8
<u>Bills of Exchange Act 1909</u>	9

(ii)

<u>Commonwealth Legal Aid Act 1977</u>	10
<u>Family Law Act 1975</u>	11
<u>Federal Court of Australia Act 1975</u>	11
<u>Statutory Declarations Act 1959</u>	11
<u>Law Officers Act 1964</u>	12

LAW AND JUSTICE LEGISLATION AMENDMENT BILL 1991

OUTLINE

1. This Bill makes amendments of a minor policy nature to legislation within the Attorney-General's portfolio and also makes some minor technical amendments to legislation.

2. The most significant amendments to be made by the Bill will -

- (i) remove the requirement in the Administrative Appeals Tribunal Act 1975, the Family Law Act 1975 and the Federal Court of Australia Act 1976 that the Attorney-General approve the estimates of the Administrative Appeals Tribunal, the Family Court of Australia and the Federal Court of Australia before monies appropriated by Parliament can be spent. These provisions are not necessary, as the Tribunal and the courts operate under the Department of Finance Ledger System whereby the funds appropriated are controlled and released by the Department of Finance in accordance with validated claims submitted by each agency. Such claims must be in accordance with Finance Regulations and Directions. The issue of funds is also in accordance with the running cost splits separately identified in the Budget papers;
- (ii) As this rigid control mechanism is currently in place there is no further requirement for the courts and the Tribunal to seek the Attorney-Generals's separate approval to expend appropriated funds;

- (iii) amend the Australian Capital Territory Supreme Court Act 1933 to permit interchangeability of the exercise of powers between the Master and the Registrar during the course of the winding-up of a company;
- (iv) make some minor changes to the Australian Security Intelligence Organization Act 1979 to facilitate administration and to place the Australian Capital Territory on the same basis as a State, and take account of changes to other legislation;
- (v) amend the Bills of Exchange Act 1909 to remove the provision for adding three extra days, called 'days of grace', to the maturity date of a bill of exchange that is not payable on demand;
- (vi) amend the Commonwealth Legal Aid Act 1977, firstly, to abolish the National Legal Aid Representative Council, and secondly, to enable a further member to be appointed to the National Legal Aid Advisory Committee;
- (vii) amend the Statutory Declarations Act 1959 to simplify the processes for witnessing statutory declarations, provide a more accessible service to members of the public and business community by broadening the categories of persons able to witness statutory declarations, and remove the requirement for the Attorney-General, or his delegate, to appoint Commissioners for Declarations;
- (viii) amend the Trade Practices Act 1974 to empower the Trade Practices Commission to make charges and impose fees in certain areas of its activities.
- (ix) amend the Law Officers Act 1964 to ensure that a Solicitor-General who has served at least 7 years in that office will receive a pension unless he or she is removed from office for misbehaviour.

FINANCIAL IMPACT STATEMENT

3. The proposed amendments will not have a significant financial impact.

4. The proposed amendments to the Commonwealth Legal Aid Act 1977 are expected to lead to savings of the order of \$15,000 per year.

5. The amendments will authorise the Trade Practices Commission to make charges for the supply of material published by it in the course of carrying out its functions or exercising its powers. It is estimated that this will result in revenue of \$33,000 per year.

6. The amendments also have an indirect financial impact in that they will enable the making of regulations which will permit the Trade Practices Commission to make charges in relation to prescribed activities and in respect of prescribed discretionary services. Activities or services which could be prescribed pursuant to these provisions include seminars or workshops arranged by the Commission, or the provision of Commission speakers at functions arranged by other bodies. The amendments would also enable regulations to be made prescribing fees in respect of the making of an authorisation application or the giving of a notification of exclusive dealing conduct under the Trade Practices Act.

NOTES ON CLAUSES

PART I - INTRODUCTORY

Clause 1 - Short title

7. This clause provides for the Act to be cited as the Law and Justice Legislation Amendment Act 1991.

Clause 2 - Commencement

8. This clause provides for the commencement of the Act.

9. Pursuant to subclause 2(2), but subject to subclause 2(3), the amendments to the Statutory Declarations Act 1959 will commence on proclamation. This is necessary in order to enable regulations to be made to give effect to the new provisions. Subclause 2(3) provides that these amendments will commence, if they are not proclaimed to commence within a period of 6 months after the Act receives Royal Assent, on the first day after the end of that period.

10. The amendments to all other Acts will commence on the 28th day after the day on which the Act receives Royal Assent.

Clause 3 - Application and savings

11. This clause provides for the application, savings and transitional provisions related to the amendments being made by this Bill. The effect of these provisions are described in paragraphs 12 to 14 below.

The Australian Capital Territory Supreme Court Act 1933

12. Subclause 3(1) of the Bill provides that the amendment to section 35A of the Australian Capital Territory Supreme Court Act 1933 will apply from the date of commencement to any order in force under the present section 35A of that Act.

The Bills of Exchange Act 1909

13. Subclause 3(2) of the Bill will provide that the amendment of section 19 of the Act made by the Bill will not apply to bills of exchange and promissory notes in existence before the commencement of the amendment.

Amendment of the Statutory Declarations Act 1959

14. Subclause 3(3) of the Bill is a savings provision which will ensure that statutory declarations, made before the commencement of these proposed amendments to the Statutory Declarations Act, continue to have effect. Subclause 3(4) of the Bill will preserve the appointments of persons who, immediately before the commencement of these amendments, held an appointment as a Commissioner for Declarations, so that those persons continue to hold that appointment and may witness statutory declarations during the Attorney-General's pleasure.

PART 2 - AMENDMENTS TO THE AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION ACT 1979

15. Clause 4 of the Bill defines the Principal Act to mean the Australian Security Intelligence Organization Act 1979.

16. Clause 5 will amend provisions of the Australian Security Intelligence Organization Act 1979 to:

- (a) clarify ASIO's functions in relation to politically-motivated violence by including acts that are offences under the Crimes (Hostages) Act 1989 within the definition of the term "politically motivated violence";
- (b) place the Australian Capital Territory in the same position as the States and the Northern Territory



in relation to the performance of functions by ASIO; and

- (c) make it clear that a copy of a warrant or of a revocation of a warrant may be certified by a Deputy Director-General.

#### Sections 27 and 27A - Inspection of Postal Articles

17. Clauses 6 and 7 would make proposed amendments to sections 27 and 27A of the Act to require the Director-General of Security or a Deputy Director-General to certify and send to Australia Post a copy of each warrant authorising the inspection or copying of the contents of articles in the course of the post. Similarly, the Director-General or a Deputy Director-General will be required to certify and send to Australia Post a copy of each revocation of a warrant.

#### PART 3 - AMENDMENTS TO THE TRADE PRACTICES ACT 1974

18. Clause 10 of the Bill defines the Principal Act to mean the Trade Practices Act 1974.

19. Clause 11 of the Bill will insert a new section 171A into this Act which will enable the Trade Practices Commission to make charges.

20. The first category of charges that the amendments will authorise are those relating to the supply of material published by the Commission in the course of carrying out its functions or exercising its powers (proposed paragraph 171A(1)(a)). In addition, the amendments will enable the Commission to make charges for permitting a person to attend or take part in a prescribed activity arranged by or on behalf of the Commission for the purpose of carrying out any of its functions (proposed paragraph 171A(1)(b)). Activities which could be prescribed pursuant to this provision include, for example, workshops organised by the Commission.

21. The Commission will also be authorised to make charges where it provides a discretionary service for a person (proposed subsection 171A(2)). The concept of a 'discretionary service' is defined in the proposed subsection 171A(3) as the doing of a prescribed act by the Commission that the Commission has power to do but is not required to do under any law and is done at a person's request. Acts which may be prescribed under this provision would include, for example, the provision of a speaker at seminars organised by bodies other than the Commission.

22. Section 172 of the Trade Practices Act provides that the Governor-General may make regulations prescribing various matters. Clause 12 of the Bill will insert proposed paragraph 172(1)(d) into the Act to enable the making of regulations prescribing the fees payable to the Commission on making a prescribed application or giving a prescribed notice to the Commission under the Trade Practices Act or the Trade Practices Regulations. The Act makes provision for persons to apply, on public benefit grounds, for authorisation of certain conduct which would otherwise contravene the Act. The Act also allows for the notification of certain exclusive dealing conduct which provides, from the time of lodgment, immunity from the exclusive dealing provisions of the Act until such protection is revoked by the Commission.

23. Clause 13 of the Bill will provide that any charge or fee paid to the Trade Practices Commission before the commencement of this clause of the Bill is to be taken to have been payable under the Trade Practices Act.

SCHEDULE

AMENDMENTS OF OTHER ACTS

24. The Schedule provides that the following Acts are amended as set out below.

ACTS INTERPRETATION ACT 1901

25. An amendment will insert subsection 25B(1A) into the Act to provide that, where a law of a State or Territory alters the name of a body or of an office, a reference in a Commonwealth Act or an instrument made under a Commonwealth Act to the body or office by its former name shall be construed as a reference to the body or office by its new name.

26. Another amendment will insert section 33B into the Act to allow members of statutory bodies to participate at board meetings by telephone, closed-circuit television and other electronic means of communication.

ADMINISTRATIVE APPEALS TRIBUNAL ACT 1975

27. Section 24U of this Act, which requires that the estimates of the Administrative Appeals Tribunal be submitted to, and approved by, the Attorney-General before monies appropriated by the Parliament can be spent, will be repealed.

AUSTRALIAN CAPITAL TERRITORY SUPREME COURT ACT 1933

28. Subsections 35A(1) and 35A(2) of this Act will be repealed, and new subsections substituted. The provisions to be repealed authorise the Supreme Court of the Australian Capital Territory to direct the Master or the Registrar of the Court to exercise the Court's powers in subsequent proceedings relating to the winding-up of a company. The section appears to restrict the Court's power to list subsequent proceedings

so that a particular winding-up proceeding can be listed only before either the Master or the Registrar, but not both.

29. Proposed subsection 35A(1) will provide that the Court, when making an order for the winding-up of a company, may direct that new subsection 35A(2) applies to the winding-up.

30. Proposed paragraph 35A(2)(a) will provide that, if the court gives a direction under new subsection 35A(1), proceedings for and in relation to the winding-up must be taken before the Master or the Registrar. This will allow such proceedings to be taken before either one or other of those officers, interchangeably.

31. Proposed paragraph 35A(2)(b) will provide that the Master and the Registrar have all the powers of the Court in relation to the winding-up. Proposed paragraph 35A(2)(c) will provide that the Master or the Registrar is able to refer to the Court any matter in relation to the winding-up that he or she thinks proper to be determined by the Court.

32. Proposed paragraph 35A(2)(d) will provide that any order, decree or direction of the Master or the Registrar, made or given in relation to the winding-up, may be appealed to the Court.

#### BILLS OF EXCHANGE ACT 1909

33. The effect of paragraph 19(a) of this Act is that, where a bill of exchange is not payable on demand, the day on which it falls due is determined by adding three days (called days of grace) to the time of payment as fixed by the bill, except where the bill itself does not otherwise provide. Under this provision, a bill becomes due and payable on the last day of grace or, if that day is not a business day, on the next succeeding business day.

34. Section 19 will be amended by omitting paragraph 19(a) with its reference to the days of grace. Proposed subsection 19(1) will provide that a bill that is not payable on demand will be payable on the last day of the time of payment fixed by the bill. Proposed subsection 19(2) will pick up those paragraphs of the present section 19 which will not be repealed and which set out the rules to be applied in working out the time of payment.

35. The amendment will bring this Act into line with similar provisions under United Kingdom and New Zealand law.

COMMONWEALTH LEGAL AID ACT 1977

36. The title of this Act will be amended to omit reference to the National Legal Aid Representative Council ("the Council") which is being abolished by the repeal of Part II of the Act.

37. Subsection 3(1) will be amended by omitting the definition of "Council", "Council Chairperson" and "Council Member".

38. Part II, which established the Council, will be repealed.

39. Subsection 8(1) will be amended to allow for the appointment of one additional member to the National Legal Aid Advisory Committee ("the Committee").

40. The heading to Part IIIA, dealing with administrative provisions relating to the Council and the Committee, will be omitted. Those provisions of the former Part IIIA that will continue to be relevant to the Committee will be subsumed under Part III which deals with the Committee.

41. The interpretation provision defining "member", contained in Section 10, will be repealed as redundant, following the abolition of the Council.

42. Sections 11 and 12 and subsections 13(1) and (2) will be amended to make a specific reference to Committee members.

43. Paragraphs 13(3)(a) and (b), which deal with the termination of appointment of the Council Chairperson and Council members, will be repealed.

44. Section 14, which deals with meetings of the Council, will be repealed.

45. Subsections 17(1), (2) and (3) will be amended to make a specific reference to Committee members.

46. Consequential amendments will be made to subsection 17(1) following abolition of the Council.

47. The definitions in subsection 17(4) will no longer be required after the abolition of the Council so that the subsection will be repealed.

48. Subsection 18(1), which deals with the provision of annual reports by the Council, will be repealed, and a consequential amendment made to subsection 18(3).

#### FAMILY LAW ACT 1975

49. Section 38V of this Act, which requires that the estimates of the Family Court of Australia be submitted to, and approved by, the Attorney-General before monies appropriated by Parliament can be spent, will be repealed.

#### FEDERAL COURT OF AUSTRALIA ACT 1976

50. Section 18V of this Act, which requires that the estimates of the Federal Court of Australia be submitted to, and approved by the Attorney-General before monies appropriated by Parliament can be spent, will be repealed.

#### STATUTORY DECLARATIONS ACT 1959

51. The definitions of "Commissioner for Affidavits" and "Commissioner for Declarations" will be omitted. New definitions, for the purposes of the proposed section 8, will

be provided in the regulations to be prescribed under the proposed section 14.

52. The amendment to section 7 will make a plain English drafting change.

53. Section 8, which prescribes the categories of persons before whom a statutory declaration may be made, will be repealed and a new section substituted, which will provide that a statutory declaration must be in the form provided in the Schedule to the Act and be made before a person prescribed in regulations. Regulations for this purpose will be made in anticipation of the commencement of this provision.

54. Section 9, which provides that the Attorney-General may appoint persons to be Commissioners for Declarations, will be repealed. The amendment will remove the requirement for the Attorney-General or his delegate to make individual appointments as Commissioner for Declarations. The appointments of all current Commissioners for Declarations are preserved, during the Attorney-General's pleasure, by the savings provisions in subclause 3(3) and (4) of the Bill .

55. A new section 14 will be inserted, which will enable the Governor-General to make such regulations as are required or permitted by the Act or are necessary or convenient to give effect to the Act. In particular, this provision will enable regulations to be made to specify the classes of persons able to witness statutory declarations under the proposed section 8 of the Act.

#### LAW OFFICERS ACT 1964

56. Subsection 16(4) is to be omitted and replaced by 2 new subsections. Proposed subsection 16(4) will provide that a pro-rated pension will be payable to a Solicitor-General who has served in the office of Solicitor-General for an aggregate period of seven years and who ceases to hold office, after the commencement of the provision, otherwise than if the Solicitor-General is removed from office for misbehaviour.

The amount of the pro-rated pension is calculated by reference to subsections 16(5) to 16(9) of the Law Officers Act. A pension will not be payable under this section if the Solicitor-General is entitled to a pension under the provisions of the Judges Pensions Act 1968 because of subsection 16(1) of the Law Officers Act.

57. Proposed subsection 16(4A) will provide that a person who is in receipt of a pro-rated pension, because of the operation of subsection 16(8), who is appointed as Solicitor-General shall cease to receive that pension. This provision will avoid the payment of two pensions to a Solicitor-General who serves a second, discontinuous term of office after having attained the age of 60.