

**LEGAL AID COMMISSION (AMENDMENT) ACT 1989  
No. 137**

**NEW SOUTH WALES**



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**LEGAL AID COMMISSION (AMENDMENT) ACT 1989**  
**No. 137**

**NEW SOUTH WALES**



**Act No. 137, 1989**

An Act to amend the Legal Aid Commission Act 1979 with respect to applications for legal aid, payment of fees to private legal practitioners and certain other matters. [Assented to 12 October 1989]

*Legal Aid Commission (Amendment) 1989*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Legal Aid Commission (Amendment) Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Legal Aid Commission Act 1979 No. 78**

3. The Legal Aid Commission Act 1979 is amended as set out in Schedules 1 and 2.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 33 (**Powers of Commission in respect of application**):

After "applicant" in section 33 (a), insert "and of each person who is associated with the applicant for the purposes of any means test under section 35".

(2) Section 35 (**Means test**):

(a) After "the applicant" where secondly occurring in section 35 (1), insert ", and each person who is associated with the applicant,".

(b) Omit section 35 (2), insert instead:

(2) A means test determined by the Commission for the purposes of subsection (1) is to be determined having regard to the ability of:

(a) applicants generally or applicants of the class or description of applicants in respect of whom the means test is determined; and

(b) persons associated with such applicants, to meet the ordinary professional cost of the legal services sought by the applicant.

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SCHEDULE 1 - AMENDMENTS - *continued*

- (c) After section 35 (3), insert:
- (4) For the purposes of any means test determined under this section, a reference to a person who is associated with an applicant is a reference to such of the following persons or classes of persons as are specified by the means test as being associated with the applicant:
    - (a) the applicant's spouse or the applicant's de facto partner within the meaning of the De Facto Relationships Act 1984;
    - (b) any person who is financially responsible for, or who provides financial support to, the applicant;
    - (c) if the applicant is a corporation, any person whose financial interests will, in the opinion of the Commission, be directly and beneficially affected if the proceedings in respect of which legal aid is granted to the applicant are successful;
    - (d) if the applicant is applying as a member of an unincorporated association, any other member of the association whose financial interests will, in the opinion of the Commission, be directly and beneficially affected if the proceedings in respect of which legal aid is granted to the applicant are successful; and
    - (e) if the applicant is applying for legal aid in respect of proceedings under the Family Provision Act 1982, any other person whose interests will, in the opinion of the Commission, be beneficially affected if legal aid is granted to the applicant.
- (3) Section 36 (**Monetary contribution by applicant**):
- (a) After "manner" in section 36 (2), insert ", and within such time,".
  - (b) After "the amount" in section 36 (3), insert ", and any interest payable in respect of the amount,".

SCHEDULE 1 - AMENDMENTS - *continued*

(4) Section 38 (**Variation of grant of legal aid**):

(a) After section 38 (1), insert:

(1A) In the exercise of its power to vary such a determination, the Commission may:

- (a) make such inquiries as it thinks fit as to the means and circumstances of the legally assisted person and of each person who would be associated with the legally assisted person for the purposes of any means test under section 35 were the legally assisted person still an applicant for legal aid;
- (b) require the legally assisted person to furnish such information, and to produce such books or documents, as the Commission specifies;
- (c) require the legally assisted person to attend personally; and
- (d) refer any matter relating to or arising from the legal services provided to the legally assisted person under the determination to a person (including a barrister or solicitor) nominated by the Commission for investigation, report or advice.

(b) From section 38 (3) omit "14 days", insert instead "35 days".

(5) Section 43A (**Payment of costs to private legal practitioners**):

Omit section 43A (1) and (2), insert instead:

(1) The Commission may defer payment of any fees payable by it to a private legal practitioner in connection with proceedings in respect of which legal aid has been granted:

- (a) until the Commission is satisfied that the practitioner has taken reasonable steps to recover any party and party costs to which the legally assisted person is entitled; or
- (b) until the conclusion of any official investigation in relation to:
  - (i) any alleged breach of this Act or the regulations by the practitioner;

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SCHEDULE 1 - AMENDMENTS - *continued*

- (ii) any alleged fraud or misrepresentation by the practitioner in relation to the provision of legal aid or any such fraud or misrepresentation to which the practitioner is a party; or
    - (iii) any alleged improper action by the practitioner in bringing, defending or conducting any proceedings in relation to which legal aid has been provided or any such action to which the practitioner is a party; or
  - (c) until the completion of any criminal or disciplinary proceedings commenced against the practitioner in respect of a matter referred to in paragraph (b).
    - (2) Without affecting any other power of the Commission to refuse payment of any fees, the Commission may refuse to make a payment of any fees to a private legal practitioner in connection with proceedings in respect of which legal aid has been granted if any allegation referred to in subsection (1) (b) against the practitioner is substantiated in any criminal or disciplinary proceedings.
- (6) **Section 46 (Liability of legally assisted person to pay costs and expenses):**
- (a) After section 46 (2), insert:
    - (2A) An amount required to be paid under subsection (1) must be paid in such manner, and within such time, as the Commission directs.
  - (b) After "subsection (1)" in section 46 (3), insert ", and any interest payable in respect of the amount,".
- (7) **Section 56 (Appeals):**
- (a) From section 56 (1) (a), omit ", other than an application referred to in section 34 (3) (b)".
  - (b) After section 56 (1), insert:
    - (1A) Such an appeal may not be made in respect of the determination of an application under section 34 (1):

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) if the application has been refused as referred to in section 34 (3) (b); or
- (b) if the application relates to proceedings in a Local Court with respect to a criminal offence and the applicant is dissatisfied because he or she is required to pay a contribution towards the costs and expenses of the legal services sought by the applicant.

(8) Section 71A:

After section 71, insert:

**Interest**

71A (1) Interest at the prescribed rate is payable on:

- (a) an amount or part of an amount payable by a person under section 36 (1) that is not paid by such date as may be specified in a direction under section 36 (2); or
- (b) an amount or part of an amount payable by a person under section 46 (1) that is not paid by such date as may be specified in a direction under section 46 (2A).

(2) In this section:

"prescribed rate" means:

- (a) a rate equivalent to 50 per cent of the rate prescribed for the purposes of section 39 (1) of the Local Courts (Civil Claims) Act 1970; or
- (b) if some other rate is prescribed by the regulations, that other rate.

(9) Section 72:

Omit section 72, insert instead:

**Proceedings for offences**

72. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence arising under section 26, 32 or 41 may be commenced at any time within 2 years after the offence was allegedly committed.

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SCHEDULE 1 - AMENDMENTS - *continued*

(10) Schedule 8 (**Savings, transitional and other provisions**):

(a) At the end of clause 1A (1), insert:

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(b) After Part 5, insert:

**PART 6 - SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS CONSEQUENT ON THE ENACTMENT  
OF THE LEGAL AID COMMISSION  
(AMENDMENT) ACT 1989**

**Definition**

24. In this Part:

"amending Act" means the Legal Aid Commission  
(Amendment) Act 1989.

**Appeals**

25. (1) Section 56, as in force immediately before the commencement of this clause, applies to determinations made under section 34 before that commencement as if the amending Act had not been enacted.

(2) An appeal against a determination made under section 34 before the commencement of this clause, whether lodged before or after that commencement, is to be dealt with as if the amending Act had not been enacted.

**Means tests**

26. Any determination made, as referred to in section 35, before the commencement of this clause (being a determination that could have been made had that section, as amended by the amending Act, been in force when the determination was made), and anything done or omitted as a consequence of such a determination, has the same effect as if that section, as so amended, had then been in force.

**Interest on unpaid contributions**

27. (1) Interest under section 71A is not payable in respect of any period occurring before the commencement of this clause.

(2) Interest under section 71A is payable in respect of any period occurring after the commencement of this clause on



**SCHEDULE 1 - AMENDMENTS - *continued***

amounts that have become unpaid before that commencement and on amounts that become unpaid after that commencement.

**Variation of grant of legal aid**

28. Section 38, as amended by the amending Act, applies in relation to a variation of a determination under that section whether the determination was made before or after the commencement of this clause.

**Payment of costs to private legal practitioners**

29. Section 43A, as amended by the amending Act, applies to the payment of fees in respect of work performed by a private legal practitioner before or after the commencement of this clause.

**Proceedings for offences**

30. Section 72 (2) does not apply to proceedings for an offence arising under section 26, 32 or 41 that was allegedly committed before the commencement of this clause.

**SCHEDULE 2 - AMENDMENTS BY WAY OF  
STATUTE LAW REVISION**

(Sec. 3)

- (1) Section 23 (**Appointment of members of staff of the Commission**):
  - (a) Omit "Public Service Act 1979" wherever occurring, insert instead "Public Sector Management Act 1988".
  - (b) From section 23 (2) omit "Public Service Board", insert instead "Public Service Industrial Relations Authority".
  - (c) From section 23 (2) omit "that Board" wherever occurring, insert instead "that Authority".
- (2) Section 34 (**Determination of application**):

From section 34 (3) (a) and (b) omit "proceedings in a court of petty sessions with respect to a criminal offence or such other proceedings as the Commission may from time to time determine" wherever occurring, insert instead "proceedings in a Local Court with respect to a criminal offence, or to such

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SCHEDULE 2 - AMENDMENTS BY WAY OF STATUTE LAW  
REVISION - *continued*

other proceedings as the Commission may from time to time determine,".

(3) Section 64A (Director's trust account):

Omit section 64A (3), insert instead:

(3) Part 6 of the Legal Profession Act 1987 applies to the trust account established under this section.

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[*Minister's second reading speech made in -  
Legislative Assembly on 25 July 1989  
Legislative Council on 9 August 1989*]