

LEGAL AID COMMISSION (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Legal Aid Commission Act 1979 so as:

- (a) to enable the Legal Aid Commission, when assessing an applicant's eligibility for legal aid, to take into account the means of certain persons who are associated with the applicant; and
 - (b) to enable the Commission to take certain action and to impose certain requirements when reviewing the continued eligibility for legal aid of a legally assisted person; and
 - (c) to empower the Commission to defer payment of fees to a private legal practitioner who is under investigation, or who is the subject of proceedings, for improper conduct; and
 - (d) to allow the Commission to refuse payment of fees to a private legal practitioner who is found guilty of improper conduct; and
 - (e) to remove the right of appeal of an applicant for legal aid against a determination that the applicant pay a contribution towards the costs of the legal services sought by the applicant in cases where the application relates to proceedings in a Local Court with respect to a criminal offence; and
 - (f) to extend the time within which proceedings for certain offences may be commenced; and
 - (g) to enable interest to be charged on amounts unpaid by a person to whom legal aid has been provided; and
 - (h) to make consequential amendments, to effect statute law revision and to validate certain actions of the Commission.
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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the Schedules of amendments.

SCHEDULE 1 - AMENDMENTS

Means test

Schedule 1 (2) amends section 35 so as to enable the Legal Aid Commission, in assessing an applicant's eligibility for legal aid, to take into account the means of certain persons associated with the applicant. Depending on the nature of the application, those persons may include the applicant's spouse or de facto partner, any person who is financially responsible for or who provides financial assistance to the applicant and certain other persons whose interests may be beneficially affected if legal aid is granted to the applicant.

Schedule 1 (10) (b) inserts proposed clause 26 into Schedule 8. The proposed clause validates such means tests determined by the Commission before the commencement of the proposed Act as would be valid if determined after the commencement of the amendments made by Schedule 1 (2).

Variation of grant of legal aid

Schedule 1 (4) (a) amends section 38 so as to enable the Commission, when reviewing the continued eligibility for legal aid of a legally assisted person, to make inquiries concerning the person and his or her associates, to require information from the person, to require the attendance of the person and to arrange for the investigation of any matter relating to legal aid provided to the person.

Schedule 1 (4) (b) further amends section 38 so as to extend, from 14 days to 35 days, the time within which the Commission must notify the parties to proceedings of a variation of a grant of legal aid to a party to those proceedings.

Legal Aid Commission (Amendment) 1989

Payment of costs to private legal practitioners

Schedule 1 (5) amends section 43A so as to empower the Commission to defer payment of fees to a private legal practitioner pending the conclusion of an investigation into:

- (a) any alleged breach of the Act or the regulations under it; or
- (b) any fraud, misrepresentation or improper action in relation to the provision of legal aid or the conduct of proceedings,

and pending the completion of any proceedings in connection with such matters.

If any such matter is substantiated, the Commission will be able to refuse payment of the fees.

Appeals

Schedule 1 (7) amends section 56 so as to remove the right of appeal of an applicant for legal aid against a determination that the applicant be required to pay a contribution towards the costs of the legal services sought by the applicant in cases where the application relates to proceedings in a Local Court with respect to a criminal offence.

Interest on monetary contributions

Schedule 1 (8) inserts a new section 71A into the Act so as to enable the Commission to charge interest on unpaid contributions required to be paid by a legally assisted person and on other amounts required to be paid by persons in connection with the provision of legal aid by the Commission.

Proceedings for offences

Schedule 1 (9) substitutes section 72 so as to allow proceedings for an offence under section 26 (Disclosure of certain information prohibited), 32 (False application) or 41 (Demand for or receipt of certain payments prohibited) to be commenced up to 2 years after the offence is committed.

Savings and transitional provisions

Schedule 1 (10) amends Schedule 8 so as to enact certain savings and transitional provisions consequent on the enactment of the proposed Act.

Legal Aid Commission (Amendment) 1989

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

Schedule 2:

- (a) converts references to the Public Service Act 1979, courts of petty sessions and the Legal Practitioners Act 1898 to references to the Public Sector Management Act 1988, Local Courts and the Legal Profession Act 1987, respectively; and
 - (b) makes certain consequential amendments.
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