

Act No. 9

LEGAL AID COMMISSION (AMENDMENT) BILL 1987

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—

- (a) to make provision in connection with the proposed merger of the Legal Aid Commission of New South Wales ("the Commission") and the Australian Legal Aid Office of the State ("the A.L.A.O."); and
- (b) for other purposes.

Clause 1 specifies the short title of the proposed Act.

Clause 2 makes provision for the commencement of the proposed Act.

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

SCHEDULE 1—AMENDMENTS TO THE LEGAL AID COMMISSION ACT 1979 RELATING TO THE MERGER

Schedule 1 (1) inserts a definition of "Australian Legal Aid Office" in the Principal Act.

Schedule 1 (2) increases the number of commissioners of the Commission from 8 to 10.

Schedule 1 (3) provides that the additional part-time commissioners shall be nominated by the Attorney-General of the Commonwealth.

Schedule 1 (4) authorises the Commission to provide statistical and other information to the Commonwealth.

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Schedule 1 (5) (a) clarifies the objective of the Commission in respect of the availability and accessibility of legal aid to disadvantaged persons throughout New South Wales. Schedule 1 (5) (b) and (c) require the Commission—

- (a) to have regard to the need to provide its staff with a full range of professional legal work; and
- (b) to have regard to the recommendations of the Commonwealth in respect of the provision of legal aid.

Schedule 1 (6) ensures that the privileges of the solicitor-client relationship in relation to legally assisted persons do not affect any matter necessary for the proper administration of any agreement or arrangement referred to in Schedule 1 (11).

Schedule 1 (7) extends the category of persons not prevented from receiving legal aid to a person—

- (a) who is involved in an inquiry or investigation held outside New South Wales or established by a Commonwealth Minister of the Crown; or
- (b) whose interests are, or may be, adverse to the interests of the Commonwealth or a statutory body representing the Commonwealth.

Schedule 1 (8) ensures that any determination of the Commission with respect to fees payable by it to private legal practitioners is subject to the requirements of any agreement or arrangement referred to in Schedule 1 (11).

Schedule 1 (9) provides that the Commission may decline to pay the costs of a legally assisted person where an order for costs is made against that person in proceedings under the Family Law Act 1975 of the Commonwealth.

Schedule 1 (10) enables money received from legal aid services provided in relation to A.L.A.O. matters transferred as a result of the merger to be paid into the Legal Aid Fund established under the Principal Act.

Schedule 1 (11) provides that the State may enter into agreements or arrangements with the Commonwealth (which are to be binding on the Commission) for or with respect to certain matters relating to the provision of legal aid and the merger. These include the operation of the Commission, the funding to be provided by the Commonwealth, priorities in the provision of legal aid, staffing matters, sharing of operational costs and the taking over of A.L.A.O. premises.

Schedule 1 (12) adjusts the quorum for meetings of the Commission.

Schedule 1 (13) inserts the following savings, transitional and other provisions into Schedule 8 to the Principal Act:

- (a) Clause 19 is an interpretation provision.
- (b) Clause 20 makes provision with respect to applications for legal aid made to the A.L.A.O. before the merger but not determined at that time, and matters being dealt with at the time of the merger (matters being dealt with at the time of the merger are to be finalised on the conditions imposed by, and the policies of, the A.L.A.O.).

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- (c) Clause 21 provides for the employment by the Commission of A.L.A.O. staff in accordance with an agreement or arrangement between the State and the Commonwealth.
- (d) Clause 22 validates agreements or arrangements entered into, and things done, in anticipation of the proposed Act.
- (e) Clause 23 preserves the appointment of existing part-time commissioners of the Commission.

SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE LEGAL AID
COMMISSION ACT 1979

Schedule 2 (1) is consequential on the amendment made by Schedule 2 (14).

Schedule 2 (2) and (3) (a) provide that information concerning applicants for legal aid or persons to whom legal aid has been granted may be disclosed for the purposes of research which is approved by the Commission so long as the identity of those applicants and persons is not disclosed to others.

Schedule 2 (3) (b) makes it clear that the prohibition against disclosing information concerning applicants for legal aid extends to persons to whom legal aid has been granted.

Schedule 2 (4) authorises the Commission to notify other parties to proceedings of an application for legal aid made after the proceedings have commenced.

Schedule 2 (5) enables the Commission to backdate grants of legal aid to the date on which the application or request was made for legal aid.

Schedule 2 (6) enables the Commission to recover all costs and expenses (and not only solicitors' costs) of providing legal services to legally assisted persons who have obtained legal aid by fraud or otherwise acted improperly.

Schedule 2 (7) enables the Commission to refuse to pay a private legal practitioner who is a party to any such fraud or improper conduct.

Schedule 2 (8) provides that the Commission (instead of the Director of the Commission) shall determine the liability of legally assisted persons to pay costs and expenses, if any, to the Commission. Under the Principal Act the Commission may delegate this function to the Director or to any member of staff of the Commission.

Schedule 2 (9) (a) clarifies the provision which specifies the maximum amount of the Commission's liability for payment of costs awarded against legally assisted persons in any one proceeding. The maximum amount is to apply separately to each party having a separate interest in the proceeding (instead of a single maximum amount being divided up among all the parties).

Schedule 2 (9) (b) makes it clear that the Commission is liable to pay only costs incurred by a person after legal aid is granted (even though an award for those and other costs is made after the grant of legal aid).

Schedule 2 (10) provides that debts owing to the Commission under section 48 of the Principal Act may be recovered in a court of competent jurisdiction.

Schedule 2 (11) extends from 7 to 28 days the period within which an appeal to a Legal Aid Review Committee (in respect of the provision of legal aid) must be lodged.

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Schedule 2 (12) removes a provision that prevents a Legal Aid Review Committee from backdating the grant of an application for legal aid when an appeal against the refusal to grant the application is upheld.

Schedule 2 (13) is a minor amendment that consolidates a number of sections that give effect to a Schedule containing provisions of a savings and transitional nature.

Schedule 2 (14) authorises regulations to be made under the Principal Act.

Schedule 2 (15) provides that persons over 65 years of age are eligible for appointment to a Legal Aid Review Committee.

Schedule 2 (16) enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act and makes other consequential amendments.
