



New South Wales

Institutions Legislation Amendment Bill 2023

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make amendments to the following Acts relating to institutions in the State—

- (a) *Legal Aid Commission Act 1979*,
- (b) *Legal Profession Uniform Law Application Act 2014*,
- (c) *Personal Injury Commission Act 2020*,
- (d) *Royal Institute for Deaf and Blind Children Act 1998*.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Legal Aid Commission Act 1979 No 78

Schedule 1[5] substitutes the *Legal Aid Commission Act 1979*, Part 3, Division 3 to enable the Board of the Legal Aid Commission (the **Board**) to establish Legal Aid Review Panels to hear and determine appeals about the provision of legal aid. The Board may approve policies and guidelines about the procedure for the approval of members of a pool of persons to act as members of Legal Aid Review Panels and the method of establishing a Legal Aid Review Panel. **Schedule 1[1]–[4], [8] and [9]** make consequential amendments. **Schedule 1[7]** updates the language of a provision.

Schedule 1[6] substitutes the *Legal Aid Commission Act 1979*, section 56 to provide for the decisions against which an applicant or legally assisted person may or may not appeal and the way in which an appeal must be lodged with the Legal Aid Commission.

Schedule 1[10] makes savings and transitional arrangements in relation to continuing an existing Legal Aid Review Committee for no longer than 1 year, or until the Board approves a pool of persons to act as members of Legal Aid Review Panels, and saving existing hearings, determinations and appeals.

Schedule 2 Amendment of Legal Profession Uniform Law Application Act 2014 No 16

Schedule 2[1] expands the NSW Admission Board's delegation power to a member of the staff of the Board and a person or class of persons prescribed by the regulations. The Board's existing power to delegate to a committee of the Board is also expanded to allow a committee exercising delegated functions to subdelegate the functions to a subcommittee of the committee.

Proposed section 20B provides that the Board may, by a rule made under the *Legal Profession Uniform Law Application Act 2014*, section 21A(2)(a) or by determination, establish committees to assist the Board in the exercise of the Board's functions.

Proposed section 20C provides that the Board may employ staff in the Public Service under the *Government Sector Employment Act 2013*.

Schedule 2[3] expands the Board's power to make rules in relation to the discipline of students-at-law to include a power to make rules enabling the Board to establish a scheme for the investigation of misconduct by students-at-law and the discipline of students-at-law found to have engaged in misconduct. The Board may also make rules in relation to the internal review of decisions made by the Board and committees of the Board. **Schedule 2[2]** makes a consequential amendment.

Schedule 2[4] provides that the Board may make rules about fees in relation to the exercise of the Board's functions, other than a function for which a fee is already prescribed by legal profession legislation. The Board may also make rules about the waiver, postponement, reduction or refund, in whole or in part, of fees payable to the Board.

Schedule 2[5] makes it clear that a provision of legal profession legislation that prescribes a fee prevails, to the extent of an inconsistency, over a rule that specifies a fee.

Schedule 2[6] allows the rules to apply, adopt or incorporate a document as in force at a particular time or as in force from time to time.

Schedule 2[7] requires the rules to be published in the Gazette and on a website maintained by the Board.

Schedule 2[8] enables the Board to approve forms for use in connection with the Board's functions.

Schedule 2[9] transfers, from the regulations to the *Legal Profession Uniform Law Application Act 2014*, a requirement for the Crown Solicitor to maintain a trust account with an authorised deposit-taking institution, within the meaning of the *Banking Act 1959* of the Commonwealth. The Attorney General may give directions to the Crown Solicitor about the keeping of records in relation to the trust account and the procedures the Crown Solicitor must follow in maintaining the account. The proposed amendment also contains savings and transitional provisions.

Schedule 2[10] enables the regulations made under the *Legal Profession Uniform Law Application Act 2014* to authorise a registrar to determine costs, subject to the maximum costs prescribed by the regulations. The proposed amendment also provides that the regulations may fix costs by adopting costs set out in an instrument made under another Act, including reasonable costs for travel and sustenance and other discretionary costs.

Schedule 3 Amendment of Personal Injury Commission Act 2020 No 18

Schedule 3[1] extends the maximum term of an Acting Deputy President of the Personal Injury Commission from 12 months to 3 years.

Schedule 3[2] allows the Attorney General to appoint the President, a Deputy President or a principal member of the Personal Injury Commission to be an Acting Division Head during the absence of a Division Head or a vacancy in the office of a Division Head.

Schedule 4 Amendment of Royal Institute for Deaf and Blind Children Act 1998 No 6

Schedule 4[6] changes the name of the Royal Institute for Deaf and Blind Children to NextSense (the *Institute*). **Schedule 4[1]–[3], [5] and [7]** make consequential amendments, including to change the name of the Act from the *Royal Institute for Deaf and Blind Children Act 1998* to *NextSense Act 1998*.

Schedule 4[9] amends the object of the Institute. **Schedule 4[4]** makes a consequential amendment.

Schedule 4[10] makes it clear that the Institute has the functions necessary or convenient to enable it to achieve its object. **Schedule 4[8]** makes a consequential amendment.

Schedule 4[11] makes changes to the term of office of directors of the Board of the Institute, in particular to remove the current requirement for one-third of the directors to retire by rotation each year and to introduce fixed 3-year terms of office. **Schedule 4[12]** inserts consequential amendments of a savings and transitional nature.



New South Wales

Institutions Legislation Amendment Bill 2023

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New South Wales

Institutions Legislation Amendment Bill 2023

No , 2023

A Bill for

An Act to amend various Acts relating to institutions in New South Wales.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Institutions Legislation Amendment Act 2023*.

3

2 Commencement

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This Act commences as follows—

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- (a) for Schedule 2[9] and [10]—on a day or days to be appointed by proclamation,
- (b) otherwise—on the date of assent to this Act.

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Schedule 1	Amendment of Legal Aid Commission Act 1979	1
	No 78	2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4(1)—	4
	<i>approved panel policies and guidelines</i> means the policies and guidelines approved, from time to time, by the Board under section 55.	5
	<i>panel</i> means a Legal Aid Review Panel.	6
[2] Section 4(1), definition of “Legal Aid Review Committee”		8
	Omit the definition. Insert instead—	9
	<i>Legal Aid Review Panel</i> means a Legal Aid Review Panel established under section 54.	10
[3] Sections 25(2), (3) and (5), 26(3), 27(1) and (2) and 60F(b)		12
	Insert “or panel” after “committee” wherever occurring.	13
[4] Sections 34(4), 38(4), 47(6), 57(a)(i) and (ii), 58 and 60(1) and (2)		14
	Omit “Legal Aid Review Committee” wherever occurring.	15
	Insert instead “Legal Aid Review Panel”.	16
[5] Part 3, Division 3		17
	Omit the division. Insert instead—	18
Division 3	Legal Aid Review Panels	19
53 Approval of persons as members of pool		20
(1)	The Board must approve a pool of persons to act as members of Legal Aid Review Panels.	21
(2)	The persons approved as members of the pool must be Australian legal practitioners.	23
(3)	The Board may, at any time, remove a member from the pool.	24
54 Establishment of Legal Aid Review Panels		26
(1)	The Board may, from time to time and in accordance with approved panel policies and guidelines, establish the following to hear and determine appeals in relation to the provision of legal aid—	27
(a)	for an appeal raising a complex question of law or policy—a Legal Aid Review Panel comprising at least 2 members from the pool,	28
(b)	otherwise—a Legal Aid Review Panel comprising 1 member from the pool.	29
(2)	For the purpose of hearing and determining an appeal, a Legal Aid Review Panel must comply with approved panel policies and guidelines.	30
55 Board may approve policies and guidelines for panels		31
(1)	The Board may, from time to time, approve policies and guidelines about the following—	32
(a)	the procedure for the approval of persons as members of the pool,	33

(b)	the method of establishing a Legal Aid Review Panel, including what constitutes an appeal raising a complex question of law or policy,	1
		2
(c)	the operation and procedures of panels, including the way in which panels must hear and determine appeals.	3
		4
(2)	Approved panel policies and guidelines must be published on the website of Legal Aid NSW.	5
		6
[6]	Section 56	7
	Omit the section. Insert instead—	8
	56 Appeals	9
(1)	An applicant or legally assisted person may appeal against the following decisions made by a person or committee under this Act—	10
		11
(a)	the determination or redetermination of an application for legal aid,	12
(b)	a decision to vary a grant of legal aid, including the redetermination of a variation of a grant of legal aid,	13
		14
(c)	a decision to decline payment of the whole or part of costs awarded against the legally assisted person.	15
		16
(2)	An appeal may not be made against a decision in the following circumstances—	17
		18
(a)	if the application—	19
(i)	relates to proceedings in the Local Court in relation to a criminal offence, and	20
		21
(ii)	is refused wholly or partly on the ground the applicant fails to satisfy the means test determined by the Commission under section 35(1),	22
		23
		24
(b)	if the application relates to proceedings in the Local Court in relation to a criminal offence and the applicant is dissatisfied because the applicant must pay a contribution towards the costs and expenses of the legal services sought by the applicant,	25
		26
		27
		28
(c)	a decision to impose a condition on a grant of legal aid with the effect the Commission will provide the legal aid by—	29
		30
(i)	making available the services of the Chief Executive Officer or members of the staff of the Commission, or	31
		32
(ii)	arranging for the services of the Public Defenders to be made available, or	33
		34
(iii)	arranging for the services of law practices to be made available, wholly or partly at the expense of the Commission,	35
		36
(d)	the circumstances prescribed by the regulations.	37
(3)	An appeal made against a decision to refuse or terminate the provision of legal aid lapses if, after the appeal is lodged, the Commission makes a decision to provide the legal aid on a redetermination of the matter.	38
		39
		40
(4)	An appeal must be lodged with the Commission—	41
(a)	in the approved form, and	42
(b)	no later than 21 days after notice of the decision being appealed is received by the appellant.	43
		44

[7] Section 59 Determination of appeal	1
Omit “Committee shall” wherever occurring in section 59(1)–(3).	2
Insert instead “Panel must”.	3
[8] Schedule 7 Constitution and procedure of Legal Aid Review Committees	4
Omit the schedule.	5
[9] Schedule 8 Savings, transitional and other provisions	6
Insert after clause 57(3)—	7
(4) This clause ceases to have effect on the commencement of this schedule, Part 13.	8 9
[10] Schedule 8, Part 13	10
Insert after Part 12—	11
Part 13 Provisions consequent on enactment of Institutions Legislation Amendment Act 2023	12 13
59 Definition	14
In this part—	15
<i>amending Act</i> means the <i>Institutions Legislation Amendment Act 2023</i> .	16
60 Legal Aid Review Committees	17
(1) This Act, as in force immediately before the commencement of the amending Act, Schedule 1, continues to apply to—	18 19
(a) a Legal Aid Review Committee in existence immediately before the substitution (the <i>Committee</i>), and	20 21
(b) a decision made by the Committee, and	22
(c) a hearing commenced, but not yet determined by, the Committee.	23
(2) Each member of the Committee continues to hold office as a member of the Committee until whichever of the following occurs first—	24 25
(a) the Board approves a pool of persons to act as members of Legal Aid Review Panels under section 53, as substituted by the amending Act,	26 27
(b) 1 December 2024.	28
(3) A member of a Committee is eligible, if otherwise qualified, to be approved to act as a member of a Legal Aid Review Panel.	29 30
(4) A person who, under this clause, ceases to hold office as a member of the Committee is not entitled to remuneration or compensation because of the loss of office.	31 32 33
61 Savings provision	34
This Act, as in force immediately before the commencement of the amending Act, Schedule 1, continues to apply to the following—	35 36
(a) a hearing commenced, but not yet determined, immediately before the commencement,	37 38

- (b) a determination or redetermination made immediately before the commencement, including an appeal against the determination or redetermination, 1
2
3
- (c) an appeal lodged, but not yet determined, immediately before the commencement. 4
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Schedule 2	Amendment of Legal Profession Uniform Law Application Act 2014 No 16	1
		2
[1] Sections 20A–20C		3
	Omit section 20A. Insert instead—	4
20A	Delegation of functions of NSW Admission Board	5
(1)	The NSW Admission Board may delegate any of the Board’s functions under the <i>Legal Profession Uniform Law (NSW)</i> or this Act, other than this power of delegation and the power to make rules under this division, to—	6
	(a) a committee of the Board, or	9
	(b) a member of the Board, or	10
	(c) a member of the staff of the Board, or	11
	(d) a person, or a class of persons, prescribed by the regulations.	12
(2)	A committee of the Board may subdelegate any of the Board’s functions delegated to the committee to a subcommittee of the committee.	13
		14
20B	Committees of NSW Admission Board	15
(1)	The NSW Admission Board may establish and dissolve committees to assist the Board in the exercise of the Board’s functions.	16
		17
(2)	A committee may be established or dissolved by—	18
	(a) a rule made under section 21A(2)(a), or	19
	(b) a determination made by the NSW Admission Board.	20
(3)	The NSW Admission Board may determine the procedure of a committee.	21
(4)	A committee may act—	22
	(a) in an advisory capacity, or	23
	(b) as delegate of the Board.	24
(5)	The members of a committee do not need to be members of the Board.	25
20C	Staff of NSW Admission Board	26
	Persons may be employed in the Public Service under the <i>Government Sector Employment Act 2013</i> to enable the Board to exercise the Board’s functions.	27
		28
	Note— See the <i>Government Sector Employment Act 2013</i> , section 59.	29
[2] Section 21A NSW Admission Board Rules		30
	Omit “, and the discipline of,” from section 21A(1)(b).	31
[3] Section 21A(1)(c1) and (c2)		32
	Insert after section 21A(1)(c)—	33
(c1)	the discipline of students-at-law, including enabling the NSW Admission Board to establish a scheme for—	34
	(a) the investigation of misconduct by students-at-law, and	35
	(b) the discipline of students-at-law found to have engaged in misconduct, and	36
		37
		38
(c2)	the internal review of decisions made by the NSW Admission Board and committees of the Board, and	39
		40

[4] Section 21A(1)(e) and (f)	1
Insert at the end of section 21A(1)(d)—	2
, and	3
(e) fees in relation to the exercise of functions of the Board, other than a function for which a fee is already prescribed by legal profession legislation, and	4 5 6
(f) the waiver, postponement, reduction or refund, in whole or in part, of the fees.	7 8
[5] Section 21A(1A)	9
Insert after section 21A(1)—	10
(1A) A provision of legal profession legislation that prescribes a fee prevails, to the extent of an inconsistency, over a rule that specifies a fee.	11 12
[6] Section 21A(3)(d)	13
Insert after section 21A(3)(c)—	14
(d) apply, adopt or incorporate a document as in force at a particular time or as in force from time to time.	15 16
[7] Section 21A(5)	17
Omit the subsection. Insert instead—	18
(5) The rules must be published—	19
(a) in the Gazette, and	20
(b) on a website maintained by the Board.	21
[8] Section 21B	22
Insert after section 21A—	23
21B NSW Admission Board—approved forms	24
The NSW Admission Board may approve forms for use in connection with the Board’s functions.	25 26
[9] Section 44A	27
Insert after section 44—	28
44A Crown Solicitor’s Trust Account	29
(1) The Crown Solicitor must establish and maintain a trust account with an ADI (the <i>Crown Solicitor’s Trust Account</i>).	30 31
(2) The Attorney General may, by order, give directions to the Crown Solicitor about—	32 33
(a) the records the Crown Solicitor must keep in relation to the Crown Solicitor’s Trust Account, and	34 35
(b) the procedures the Crown Solicitor must follow in maintaining the Crown Solicitor’s Trust Account.	36 37
(3) An account established, or taken to have been established, under the <i>Legal Profession Uniform Law Application Regulation 2015</i> , clause 14 is taken to have been established under this section.	38 39 40

- (4) A direction made by the Attorney General under the *Legal Profession Uniform Law Application Regulation 2015*, clause 14(2) is taken to be a direction under subsection (2). 1
2
3

[10] Section 59 Local regulations to provide for fixed costs 4

Insert after section 59(2)— 5

- (3) Without limiting subsection (1), the local regulations may— 6
 - (a) authorise a registrar to determine costs, subject to maximum costs prescribed by the local regulations, and 7
8
 - (b) fix costs by adopting costs set out in an instrument made under another Act, including reasonable costs for travel and sustenance and other discretionary costs. 9
10
11

Schedule 3	Amendment of Personal Injury Commission Act 2020 No 18	1
		2
[1] Schedule 2 Provisions relating to members of Commission		3
Omit “12 months” from clause 8(5). Insert instead “3 years”.		4
[2] Schedule 2, clause 9A		5
Insert after clause 9—		6
9A Acting Division Head		7
(1) If a Division Head is absent from duty, the Minister may appoint the President, a Deputy President or a principal member to be an Acting Division Head during the absence of the Division Head.		8 9 10
(2) The Minister may make an appointment—		11
(a) for a particular absence, or		12
(b) for any absence that occurs from time to time.		13
(3) An Acting Division Head has the functions of the Division Head and anything done by an Acting Division Head in the exercise of the functions has effect as if it had been done by the Division Head.		14 15 16
(4) In this clause—		17
<i>absence from duty</i> includes a vacancy in the office of a Division Head.		18

Schedule 4	Amendment of Royal Institute for Deaf and Blind Children Act 1998 No 6	1
		2
[1] Long title		3
	Omit the long title. Insert instead—	4
	An Act to provide for matters relating to NextSense.	5
[2] Section 1 Name of Act		6
	Omit “ <i>Royal Institute for Deaf and Blind Children Act 1998</i> ”.	7
	Insert instead “ <i>NextSense Act 1998</i> ”.	8
[3] Section 3 Definitions		9
	Omit section 3(1), definition of <i>Institute</i> . Insert instead—	10
	<i>Institute</i> means NextSense, formerly known as—	11
	(a) the Royal New South Wales Institute for Deaf and Blind Children, and	12
	(b) the Royal Institute for Deaf and Blind Children.	13
[4] Section 3(2)		14
	Omit the subsection.	15
[5] Part 2, heading		16
	Omit the heading. Insert instead—	17
	Part 2 NextSense	18
[6] Section 4 Continuation of Institute under new name		19
	Omit “of the “Royal Institute for Deaf and Blind Children”” from section 4(1).	20
	Insert instead “of “NextSense””.	21
[7] Section 4(2)		22
	Omit “The Royal Institute for Deaf and Blind Children”. Insert instead “NextSense”.	23
[8] Section 6, heading		24
	Omit the heading. Insert instead—	25
	6 Object and functions	26
[9] Section 6(1)		27
	Omit the subsection. Insert instead—	28
	(1) The object of the Institute is to provide support and services to the following—	29
	(a) persons living with hearing or vision loss,	30
	(b) the families of persons living with hearing or vision loss,	31
	(c) persons or bodies involved in providing care, support or other services to persons with hearing or vision loss.	32
		33
[10] Section 6(3)		34
	Insert after section 6(2)—	35

(3)	The Institute has the functions necessary or convenient to enable it to achieve its object.	1 2
[11]	Schedule 1 Provisions relating to directors	3
	Omit clause 4. Insert instead—	4
4	Term of office of directors	5
(1)	The term of office of a director—	6
(a)	starts on the director’s election, and	7
(b)	ends immediately before the third annual general meeting of the Institute following the director’s election.	8 9
(2)	Subject to subclause (3), a member may not hold office as a director for more than 3 terms, whether or not consecutive.	10 11
(3)	The Board may, by resolution, declare that a member who has held office for 3 terms is eligible for re-election for a fourth term.	12 13
[12]	Schedule 3 Savings and transitional provisions	14
	Insert after Part 1—	15
Part 2	Provisions consequent on enactment of Institutions Legislation Amendment Act 2023	16 17
6	Transitional provision—term of office of existing directors	18
(1)	This clause applies to a person holding office as a director immediately before the substitution of Schedule 1, clause 4 by the <i>Institutions Legislation Amendment Act 2023</i> .	19 20 21
(2)	The person may continue to hold the office until immediately before the third annual general meeting of the Institute following the annual general meeting at which the person was last elected.	22 23 24
7	Transitional provision—previous terms of office	25
(1)	A term of office as director that ended before the substitution of Schedule 1, clause 4 by the <i>Institutions Legislation Amendment Act 2023</i> must not be taken into account for Schedule 1, clause 4(2), as substituted.	26 27 28
(2)	For a person to whom clause 6 applies, the term of office commencing at the annual general meeting at which the person was last elected must be taken into account for Schedule 1, clause 4(2), as substituted.	29 30 31