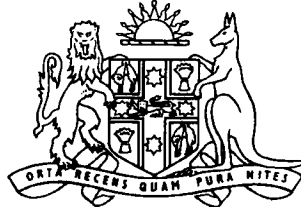


[Act 2000 No 98]



New South Wales

Legal Aid Commission Amendment Bill 2000

Explanatory note

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

Overview of Bill

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

- (a) to constitute a Board of the Legal Aid Commission and provide for its functions,
 - (b) to clarify the functions of the Chief Executive Officer of the Commission and to make provision with respect to the delegation of certain functions of the Chief Executive Officer,
 - (c) to allow applications for legal aid to be made in such manner and form as the Commission may approve,
 - (d) to make it clear that the existing prohibition on private legal practitioners demanding payment from legally assisted persons (being persons to whom legal aid is provided) in respect of legal aid work, except with the approval of the Commission, extends to demanding payment for disbursements incurred
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on behalf of legally assisted persons, and to prohibit any contracting out of the prohibition,

- (e) to allow the Commission to recover amounts payable to it by legally assisted persons for the provision of legal services as a debt even though the Commission has a retaining lien over certain documents to secure payment of those amounts,
- (f) to provide that certain conditions on grants of legal aid are not appealable,
- (g) to provide for the reconstitution and procedure of Legal Aid Review Committees,
- (h) to allow the Commission, with the approval of the Attorney General, to enter into agreements with the Commonwealth concerning the provision of legal aid,
- (i) to make miscellaneous minor and consequential amendments.

The Bill also amends the *Crimes (Sentencing Procedure) Act 1999* to allow the Commission to make recommendations to the Senior Public Defender as to the exercise of his or her functions in proceedings on applications for guideline judgments.

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 on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Legal Aid Commission Act 1979* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999*, the *Fair Trading Act 1987* and the *Public Sector Management Act 1988* set out in Schedule 2.

Schedule 1 Amendment of Legal Aid Commission Act 1979

Schedule 1 [1] inserts a formal provision concerning the status of notes in the *Legal Aid Commission Act 1979*.

Schedule 1 [2] inserts certain definitions into the Act.

Schedule 1 [3] makes a consequential amendment concerning definitions.

Schedule 1 [4]–[6] make consequential amendments. Schedule 1 [6] also omits a redundant provision (being section 8 (5) of the Act).

Schedule 1 [7] substitutes Division 3 of Part 2 (proposed sections 14–17) which deals with the management of the Legal Aid Commission.

Proposed section 14 constitutes a Board of the Commission. The Board is to consist of the Chief Executive Officer (currently referred to in the Act as the Managing Director) and 9 part-time members (currently referred to in the Act as part-time commissioners).

Proposed section 15 provides that the function of the Board is to establish the broad policies and strategic plans of the Commission.

Proposed sections 16 and 17 provide for the appointment and functions of the Chief Executive Officer (being functions that concern the day-to-day management of the affairs of the Commission).

Schedule 1 [8] amends section 23A of the Act to allow the Chief Executive Officer to delegate to more than one person certain of the Chief Executive Officer's functions under the Act that are required to be exercised by a practising solicitor. Schedule 1 [9], [10], [14] and [23] make consequential amendments.

Schedule 1 [12], [13], [24], [25], [28]–[30], [32], [34], [35], [37], [38] and [40] make amendments that are consequential on the amendments made by Schedule 1 [7]. In substituting section 69 of the Act, Schedule 1 [24] also omits redundant provisions regarding the delegation of functions.

Schedule 1 [15] amends section 31 of the Act to allow applications for legal aid to be made in such manner and form as the Commission may approve.

Schedule 1 [16] amends section 34 of the Act to make it clear that the Commission must notify an applicant for legal aid of the determination or redetermination of the application as soon as practicable, and no later than 14 days, after the application is determined or redetermined.

Schedule 1 [17] substitutes section 41 of the Act to make it clear that the prohibition imposed by that section on private legal practitioners demanding payment from legally assisted persons in respect of work assigned by the Commission, except with the approval of the Commission, extends to demanding payment for disbursements incurred on behalf of legally assisted persons.

Proposed section 41 also prohibits any contracting out of the prohibition.

Schedule 1 [18] omits section 46 (5) of the Act to allow the Commission to recover, as a debt, amounts payable to it by legally assisted persons in respect of the

costs and expenses of legal services provided to those persons even though the Commission has (under section 48 of the Act) a retaining lien over certain documents to secure the payment of those amounts.

Schedule 1 [19] provides for the reconstitution of Legal Aid Review Committees. Under proposed section 54, these Committees are each to consist of 3 members (rather than 5 members, as at present) appointed by the Board, of whom one is to be a person nominated by the Minister, one is to be a person nominated jointly by the Bar Association and the Law Society, and one is to be a person who is not a legal practitioner.

Schedule 1 [21] amends section 56 of the Act to prevent appeals being made in respect of the imposition of conditions on grants of legal aid that require the legal aid to be provided by private legal practitioners (which is defined in the Act to include bodies that provide community legal services), wholly or partly at the expense of the Commission. **Schedule 1 [20]** makes a consequential amendment.

Schedule 1 [22] substitutes section 58 of the Act to make it clear that in hearing and determining an appeal, a Legal Aid Review Committee is required to comply with the same policy guidelines that are required to be complied with by the person or body whose determination, variation or decision is the subject of the appeal.

Schedule 1 [26] amends section 72A of the Act to allow the Commission, with the approval of the Attorney General, to enter into agreements or arrangements with the Commonwealth for or with respect to the provision of legal aid. **Schedule 1 [11]** and **[27]** make consequential amendments.

Schedule 1 [31] and **[42]** make minor amendments by way of statute law revision.

Schedule 1 [33] substitutes clause 9 of Schedule 2, consolidating (without any substantive change) existing provisions of the Act concerning the effect of certain other Acts on members of the Board.

Schedule 1 [36] omits a redundant provision concerning presumptions.

Schedule 1 [39] makes a consequential amendment.

Schedule 1 [41] amends a definition.

Schedule 1 [43] substitutes clause 8 of Schedule 7 to provide that the quorum for a meeting of a Legal Aid Review Committee is all of its members.

Schedule 1 [44] amends clause 1A of Schedule 8 to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [45] inserts a new Part 11 into Schedule 8 (proposed clauses 54–57) containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act. In particular:

- (a) clause 55 provides that current part-time commissioners are to continue to hold office as part-time members of the Board (for the balance of their terms as part-time commissioners) on the commencement of the proposed provisions relating to the constitution of the Board, and
- (b) clause 56 provides that the current Managing Director is taken to be appointed as Chief Executive Officer (for the balance of his or her term of appointment as Managing Director) on the commencement of the proposed provisions relating to the appointment of the Chief Executive Officer, and
- (c) clause 57 provides that existing members of a Legal Aid Review Committee are to continue to hold that office until such time as the Committee is reconstituted in accordance with the proposed provisions relating to the reconstitution of Legal Aid Review Committees.

Schedule 2 Amendment of other Acts

Schedule 2.1 makes an amendment to the *Crimes (Sentencing Procedure) Act 1999* to allow the Legal Aid Commission to make recommendations to the Senior Public Defender as to the exercise of any function conferred on the Senior Public Defender, or on any of his or her nominees, in proceedings on applications for guideline judgments.

Schedule 2.2 makes an amendment to the *Fair Trading Act 1987* consequential on the amendments made by Schedule 1 [7].

Schedule 2.3 makes an amendment to the *Public Sector Management Act 1988* consequential on the amendments made by Schedule 1 [7].