

[Act 1997 No 50]



New South Wales

# Legal Aid Commission Amendment Bill 1997

## Explanatory note

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

### Overview of Bill

The objects of this Bill are:

- (a) to vary the constitution of the Legal Aid Commission (the Commission) (in particular, to remove the representatives of the Commonwealth Attorney-General), and
- (b) to vary the provision relating to the Commission's right to enter into arrangements with the Commonwealth concerning the provision of legal aid, and
- (c) to allow application fees to be charged in relation to appeals to Legal Aid Review Committees, and
- (d) to provide that an appeal may not be made against the imposition of a condition on a grant of legal aid if the condition is to the effect that the aid sought is to be provided by the Commission in-house or by Public Defenders.

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\* Amended in committee—see table at end of volume.

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## 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 most of the proposed Act on a day or days to be appointed by proclamation. However, the savings and transitional provisions (with the exception of 2 subclauses) commence on the date of assent to the proposed Act, and the provisions removing the Commonwealth Attorney-General's representatives from the Commission commence 7 days after that date.

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

## Variation of constitution of Commission

Schedule 1 [ 1 ] repeals and re-enacts section 8 (1) (b), and Schedule 1 [2] repeals section 8 (1) (b1).

At present, section 8 (1) (b) provides that one part-time commissioner is to be a person appointed to represent the Minister, and section 8 (1) (b1) provides that 2 of the other part-time commissioners are to be persons nominated by the Attorney-General of the Commonwealth to represent that Attorney-General.

Section 8 (1) (b), as re-enacted, replaces those 3 persons with 3 other persons who, in the opinion of the Minister, possess skills or experience that would benefit the Commission. The Commonwealth will no longer have any representatives on the Commission.

Schedule 1 [3] and [6] make amendments consequential on the constitution of the Commission as a body without Commonwealth representation. Schedule 1 [4] and [5] are consequential on Schedule 1 [6].

At present, section 72A (Commonwealth/State agreement or arrangement) allows the State to enter into agreements and arrangements with the Commonwealth for or with respect to the specific matters relating to legal aid that are set out in section 72A (1). Schedule 1 [11] repeals and re-enacts that subsection so as to allow the State to enter into agreements and arrangements with the Commonwealth for or with respect to the provision of legal aid in general.

## **Appeals to Legal Aid Review Committee**

**Schedule 1 [8]** amends section 56 (Appeals) so as to require the payment of a fee for an appeal to a Legal Aid Review Committee. Schedule 1 [10] empowers the Commission to determine the fee, and to waive or reduce it as it sees fit.

**Schedule 1 (9)** makes a further amendment to section 56 to provide that an appeal may not be made against the imposition of a condition on a grant of legal aid if the condition is to the effect that the aid sought is to be provided by the Commission in-house or by arranging for the services of the Public Defenders to be available. **Schedule 1 [7]** makes a consequential amendment.

## **Savings and transitional provisions**

Schedule 1 [12] amends Schedule 8 (Savings, transitional and other provisions) so as to enable the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [13] further amends Schedule 8 by inserting specific savings and transitional provisions consequent on that enactment.