

Legal Aid Commission (Amendment) Bill

No.

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By Authority Jean Gordon Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 3 May 1989

(Brought in by Mr McCutcheon and Ms Kirner)

A BILL

to amend the *Legal Aid Commission Act* 1978 and for other purposes.

Legal Aid Commission (Amendment) Act 1989

The Parliament of Victoria enacts as follows:

Purpose

1. The purpose of this Act is to make miscellaneous amendments to the *Legal Aid Commission Act* 1978 to facilitate the operation of the Legal Aid Commission of Victoria.

Commencement

2. This Act comes into operation on a day or days to be proclaimed.

Principal Act

3. In this Act, the *Legal Aid Commission Act* 1978 is called the Principal Act.

No. 9245 as
amended by Nos.
9697, 9945,
10/1986,
16/1987
and 50/1988

Interpretation of "person"

4. In section 2 of the Principal Act—
(a) after "2." insert "(1)"; and
(b) at the end of the section insert—
(2) It is the intention of Parliament that in this Act
"person" includes a body corporate.'

Remuneration and allowances

5. (1) In section 4A (9) of the Principal Act, for “prescribed” substitute “fixed by the Governor in Council”.

(2) In section 21 of the Principal Act, for “prescribed” substitute “fixed by the Governor in Council”.

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Commission to indemnify Director etc.

6. After section 16 (3) of the Principal Act insert—

“(4) The Commission must indemnify the Director or an officer of the Commission against any liability incurred by him or her in respect of any negligent act or omission by the Director or officer in the course of the performance of his or her duties or in good faith in the purported performance of his or her duties.”.

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Legal aid review committees

7. In section 20 (1) (b) of the Principal Act, for “Director” substitute “Commission”.

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Application form

8. In section 23 (1) of the Principal Act, for “prescribed” (where secondly occurring) substitute “approved by the Commission”.

Referral panels

9. (1) In section 30 of the Principal Act—

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(a) In sub-section (4), for “A sole” substitute “Subject to sub-section (9A), a sole”; and

(b) after sub-section (4) insert—

“(4A) The inclusion of the name of a sole practitioner or firm of solicitors on a referral panel is made subject to the conditions determined by the Commission from time to time.”; and

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(c) in sub-section (5), after “(4)” insert “and have indicated in writing their acceptance of the conditions subject to which they are included on a referral panel”; and

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(d) in sub-section (6)—

(i) after “partners” insert “, participating employees”; and

(ii) after “panel” (where secondly occurring) insert “and the inclusion of those partners, participating employees and employee solicitors is subject to the conditions referred to in sub-section (4A)”;

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(e) in sub-section (7), after “panel” (where secondly occurring) insert “and the inclusion of those employee solicitors is subject to the conditions referred to in sub-section (4A)”;

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- (f) in sub-section (8)—
 - (i) after “remove” insert “, for a specified period or otherwise,”; and
 - (ii) in paragraph (d), for “member” substitute “partner, participating employee”; and
- (g) in sub-section (9) (a), for “members of the firm” substitute “partners or participating employees”; and
- (h) after sub-section (9) insert—

“(9A) During a period of removal under sub-section (8) the sole practitioner, firm of solicitors, partner, participating employee or employee solicitor (as the case may be) whose name has been removed is not eligible to give notice under sub-section (4).”; and
- (i) in sub-section (10)—
 - (i) for “member” (where first occurring) substitute “partner or participating employee”; and
 - (ii) for “any member of the firm or the member” substitute “any partner or participating employee of the firm or the partner or participating employee”; and
- (j) in sub-section (11), for “member” substitute “partner or participating employee”; and
- (k) in sub-section (12), after “wishes” insert “to”; and
- (l) in sub-section (15), for “member” substitute “partner, participating employee”; and
- (m) in sub-section (18), for “member” substitute “partner or participating employee”; and
- (n) in sub-section (19), for the definition of “Firm of solicitors” substitute—

“**Firm of solicitors**” means—

 - (a) a firm of practitioners engaged in practice as solicitors in partnership; or
 - (b) an incorporated practitioner within the meaning of the *Legal Profession Practice Act 1958*;

“**Participating employee**” has the same meaning as in the *Legal Profession Practice Act 1958*.”

Clarification of privilege

10. In section 31 of the Principal Act—

- (a) in sub-section (1)—
 - (i) for “sub-sections (3) and (4)” substitute “sub-section (3)”; and

- (ii) after “affected by” insert “the disclosure of information or”; and
- (b) sub-section (4) is repealed.

Fee to be paid to private practitioners

11. In section 32 of the Principal Act, for sub-sections (2), (2A) and (2B) substitute— 5

“(2) Subject to sub-section (3), the fee to be paid to a private practitioner for the performance of services on behalf of assisted persons is—

- (a) an amount equal to 80% of the lump sum fees fixed by the Commission for the performance of particular services on behalf of assisted persons, where the lump sum fees are equivalent to the fees ordinarily payable in respect of similar services provided to a person who is not an assisted person; or 10
- (b) an amount equal to 80% of the fees ordinarily payable in respect of similar services provided to a person who is not an assisted person, where the fees ordinarily payable are determined in accordance with a statutory rule; or 15
- (c) in any other case, an amount fixed by the Commission. 20

(2A) In determining an amount under sub-section (2) (a) or (c), the Commission must consult with the Law Institute of Victoria and the Bar Council as appropriate and must take into account the views of those bodies.”. 25

Reconsideration and review of decisions

12. (1) After section 34 (1) of the Principal Act insert—

“(1A) The Director may waive or extend the prescribed time in a particular case except where the request for reconsideration relates to a criminal trial or criminal appeal in the Supreme Court or the County Court.”. 30

(2) After section 35 (1) of the Principal Act insert—

“(1A) The Director may waive or extend the prescribed time in a particular case except where the request for review relates to a criminal trial or criminal appeal in the Supreme Court or the County Court.”. 35

(3) After section 36 (1) of the Principal Act insert—

“(1A) The Director may waive or extend the prescribed time in a particular case except where the request for review relates to a criminal trial or criminal appeal in the Supreme Court or the County Court.”. 40

Confidentiality

13. (1) In section 43 (1) of the Principal Act, after “assistance” (where twice occurring) insert “or the provision of legal assistance”.

5 (2) In section 43 (2) of the Principal Act, for “or the applicant for legal assistance” substitute “, the applicant for legal assistance or the assisted person”.

Reimbursement of costs paid by Commission

14. (1) In section 48 (4) of the Principal Act, for “Any” substitute “Subject to sub-section (6), any”.

10 (2) After section 48 (5) of the Principal Act insert—

“(6) If the Commission agrees to pay an amount in respect of costs under sub-section (2), the Commission may require the assisted person—

- 15 (a) to reimburse the Commission for the whole or part of the amount paid under sub-section (2); and
(b) to secure the reimbursement in any manner that the Commission thinks fit.”.

Commission to maintain trust account

20 15. (1) In section 16 of the Principal Act, at the end of the section insert—

“(5) The Commission, and not the Director, is a solicitor for the purposes of Part IV. of the *Legal Profession Practice Act 1958*.”.

25 (2) In section 41 (2) (d) of the Principal Act, after “moneys” insert “, other than money required to be paid into a trust account referred to in section 40 of the *Legal Profession Practice Act 1958*,”.

(3) After section 41 (6) of the Principal Act insert—

30 “(7) Money held by the Director before the commencement of section 15 of the *Legal Aid Commission (Amendment) Act 1989* for or on behalf of any person must on that commencement be paid to the Commission to be paid into a trust account in accordance with section 40 of the *Legal Profession Practice Act 1958*.

35 (8) On the commencement of section 15 of the *Legal Aid Commission (Amendment) Act 1989*, the Director must transfer to the Commission all accounting records relating to money referred to in sub-section (7).”.

