

1992
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Legal Aid (Amendment) Bill (No. 2) 1992

**A BILL
FOR**

An Act to amend the *Legal Aid Act 1977*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

- 5 1. This Act may be cited as the *Legal Aid (Amendment) Act (No. 2) 1992*.

Commencement

2. (1) This Act, other than paragraph 4 (b) and section 16, commences upon its notification in the *Gazette*.

(2) Paragraph 4 (b) and section 16 commence on 1 March 1993.

10 **Principal Act**

3. In this Act, "Principal Act" means the *Legal Aid Act 1977*.¹

Constitution of Commission**4. Section 7 of the Principal Act is amended—**

- (a) by omitting paragraph (1) (a) and substituting the following paragraphs:

5 “(a) a President;

 (ab) a Commissioner to represent the Minister;” and

- (b) by omitting paragraph (1) (g) and substituting the following paragraph:

10 “(g) a Commissioner who, in the opinion of the Minister, is a person who, by reason of qualifications, training or experience, will be able to afford specialist assistance to the Commission in the performance of its function.”.

Professional conduct by officers of Commission

- 15 5. Section 13 of the Principal Act is amended by omitting from subsection (2) “The” and substituting “Subject to the section 92AA, the”.

Determination of applications for legal assistance

6. Section 26 of the Principal Act is amended by omitting “either or both” from paragraph (3) (c) and substituting “all or any”.

Contribution towards costs and expenses

- 20 7. Section 31 of the Principal Act is amended—

- (a) by omitting from subsection (1) “either or both” and substituting “all or any”;

- (b) by adding at the end of subsection (1) the following paragraph:

25 “(c) a condition that the payment of an amount required to be paid by the person under this subsection, together with interest thereon, be secured by a charge under section 31A on land of the person.”;

- (c) by inserting after subsection (2) the following subsection:

30 “(2A) A direction under subsection (2) may require that an amount be paid to the Commission by the legally assisted person’s private legal practitioner out of moneys recoverable on behalf of the person.”; and

- (d) by adding at the end the following subsections:

 “(4) Where—

- (a) the Commission has directed that an amount be paid by the legally assisted person's private legal practitioner to the Commission out of moneys recoverable by the practitioner on behalf of the person;
- 5 (b) the Commission has notified the practitioner of its direction; and
- (c) the practitioner recovers an amount on behalf of the legally assisted person;
- the practitioner shall pay to the Commission—
- 10 (d) if the amount recovered is less than the amount referred to in paragraph (a)—an amount equal to the amount recovered; or
- (e) in any other case—an amount equal to the amount referred to in paragraph (a).
- 15 “(5) An amount payable by a private legal practitioner under subsection (4) is a debt due and payable to the Commission by the practitioner and recoverable in a court of competent jurisdiction.
- 20 “(6) An amount paid by or recovered from a legally assisted person's private legal practitioner under this section shall be taken, for the purposes of subsection (3), to have been paid by the legally assisted person.”.

Insertion

8. After section 31 of the Principal Act the following section is inserted:

25 Security for payment of contribution

“31A. (1) Where the provision of legal assistance is subject to the condition referred to in paragraph 31 (1) (c), the Chief Executive Officer may lodge with the Registrar of Titles for registration a notice specifying the land to be charged and certifying that an amount is payable by the proprietor of the land to the Commission under this Act.

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“(2) An amount payable to the Commission by a person in respect of whose land a notice under subsection (1) has been registered is a charge on the land.

“(3) The Registrar of Titles shall register a notice under subsection (1).

35 “(4) The Chief Executive Officer shall notify the assisted person in writing of the lodgment of a notice under subsection (1).

“(5) Subsection 48 (1B) of the *Real Property Act 1925* does not apply to a notice under subsection (1).

5 “(6) Subject to subsection (7), the Commission has the same power of sale over the land charged as a mortgagee who, under section 94 of the *Real Property Act 1925*, is entitled to sell the estate and interest of the mortgagor.

“(7) The Commission may not exercise its power of sale under subsection (6) unless—

- (a) where the Commission has issued a direction under subsection 31 (2)—the legally assisted person is in breach of that direction;
- 10 (b) at least 1 year before exercising the power the Commission has served on the legally assisted person a notice that—
 - (i) states the amount then due to the Commission by the person;
 - 15 (ii) demands payment of the amount payable to the Commission by the person; and
 - (iii) states that, unless that amount, together with interest thereon until the day of payment, is paid, the Commission may exercise its power of sale under the charge at the expiration of the period of 12 months after the date of service of the notice; and
 - 20 (c) at least 2 months before exercising the power the Commission has served on the legally assisted person and every other person who appears to have an interest in the land a notice that states—
 - 25 (i) the amount then due to the Commission by the legally assisted person; and
 - (ii) that, unless that amount together with interest thereon is paid within the period of 2 months after the date of service of the notice, the Commission may exercise its power of sale.
 - 30 “(8) Where—
 - (a) an amount equal to the amount secured by a charge under this section is paid;
 - (b) the Commission has exercised its power of sale under subsection (6); or
 - 35 (c) the Commission determines that the charge is no longer required;

the Chief Executive Officer shall lodge with the Registrar of Titles a notice discharging the land from any amount due to the Commission and notify the legally assisted person that he or she has done so.

- 5 “(9) Upon the lodgment of a notice under subsection (8) the Registrar of Titles shall make an entry in the Register Book noting that the land is discharged.

 “(10) In this section ‘land’ and ‘proprietor’ have the same respective meanings as they have in the *Real Property Act 1925*.”.

Entitlement of legally assisted persons to costs in proceedings

- 10 9. Section 33 of the Principal Act is amended by omitting from subsection (5) “3 months” and substituting “28 days”.

Reconsideration of a decision

10. Section 36 of the Principal Act is amended—

- (a) by inserting after subsection (1) the following subsections:

- 15 “(1A) Where a decision has been made under subsection 31 (2) that a legally assisted person’s private legal practitioner be directed to pay to the Commission an amount payable by the legally assisted person, the practitioner may, by notice in writing to the Commission, request that the decision be reconsidered.

- 20 “(1B) Subsection (1A) shall not be taken to limit the operation of subsection (1).”; and

- (b) by omitting subsection (4) and substituting the following subsections:

- 25 “(4) Subject to subsection (5), a request by a person for reconsideration or review of a decision (being a decision made after the commencement of this subsection) shall be made before the expiration of the period of 28 days after the person received notice of the decision or of the reconsidered decision (as the case may be).

- 30 “(5) Where the Commission is satisfied that the failure to make a request within the period specified in subsection (4) was due to a reasonable cause, it may extend that period by a further period not exceeding 28 days.

- 35 “(6) A person who applies for an extension of the period specified in subsection (4) shall specify the ground on which the application is made.”.

Establishment and constitution of Review Committees**11. Section 37 of the Principal Act is amended—**

- (a) by omitting from subsection (1) “Minister” and substituting “Chief Executive Officer”;
- 5 (b) by omitting paragraph (2) (c) and substituting the following paragraph:
- “(c) a person chosen in accordance with subsection (5).”;
- (c) by omitting subsections (3) and (4) and substituting the following subsections:
- 10 “(3) The member of a Review Committee referred to in paragraph (2) (a) shall be a private legal practitioner chosen by the Chief Executive Officer—
- (a) while a transitional panel for the purposes of this paragraph is in existence—from that panel; and
- 15 (b) thereafter—from a panel of not more than 9 private legal practitioners nominated by the Council of the Bar Association and approved by the Minister or, if the Council of the Bar Association fails to nominate such a panel within 30 days after the receipt by the Bar Association of a written request by the Minister to do so, a panel of private legal practitioners chosen by the Minister.
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- “(4) The member of a Review Committee referred to in paragraph (2) (b) shall be a private legal practitioner chosen by the Chief Executive Officer—
- 25 (a) while a transitional panel for the purposes of this paragraph is in existence—from that panel; and
- (b) thereafter—from a panel of not more than 9 private legal practitioners nominated by the Council of the Law Society and approved by the Minister or, if the Council of the Law Society fails to nominate such a panel within 30 days after the receipt by the Law Society of a written request by the Minister to do so, a panel of private legal practitioners chosen by the Minister.
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- “(5) The member of a Review Committee referred to in paragraph (2) (c) shall be a person chosen by the Chief Executive Officer—
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- (a) while a transitional panel for the purposes of this paragraph is in existence—from that panel; and
 - (b) thereafter—from a panel of not more than 9 persons (not being private legal practitioners or members, or officers, of the Commission) chosen by the Minister, each of whom has qualifications or experience relevant to the performance of the function of a Review Committee.

“(6) In this section a reference to a transitional panel for the purposes of a paragraph is a reference to a panel constituted—

- 10
- (a) for the purposes of paragraph (3) (a)—by the persons referred to in paragraphs 37 (2) (a) and 38 (3) (a) of this Act as in force immediately before the commencement of sections 11 and 12 of the *Legal Aid (Amendment) Act (No. 2) 1992*;
 - 15 (b) for the purposes of paragraph (4) (a)—by the persons referred to in paragraphs 37 (2) (b) and 38 (3) (b) of this Act as in force immediately before the commencement of sections 11 and 12 of the *Legal Aid (Amendment) Act (No. 2) 1992*; or
 - 20 (c) for the purposes of paragraph (5) (a)—by the persons referred to in paragraphs 37 (2) (c) and 38 (3) (c) of this Act as in force immediately before the commencement of sections 11 and 12 of the *Legal Aid (Amendment) Act (No. 2) 1992*;

25 being persons whose appointments were current immediately before that commencement.

“(7) A transitional panel for the purposes of paragraph (3) (a), (4) (a) or (5) (a) ceases to exist when—

- (a) its membership is reduced to less than 3; or
- 30 (b) the Minister approves or chooses a panel under paragraph (3) (b), (4) (b) or (5) (b), as the case requires.”.

Repeal

12. Section 38 of the Principal Act is repealed.

35 Insertion

13. After section 40 of the Principal Act the following section is inserted in Part VI:

Cessation of Committee

"40A. Except for the purpose of complying with a request under subsection 40 (4), a Review Committee ceases to exist upon complying with subsection 40 (3) in respect of each decision referred to it."

5 Limitation on contracts

14. Section 44 of the Principal Act is amended by omitting "\$50,000" and substituting "\$100,000".

Tenure of office

10 15. Section 48 of the Principal Act is amended by omitting "and the Commissioner referred to in subsection (2)".

Meetings

16. Section 54 of the Principal Act is amended by omitting from subsection (4) "5" and substituting "4".

Substitution

15 17. Section 58 of the Principal Act is repealed and the following section substituted:

Leave of absence

"58. (1) The Commission may grant leave of absence to a statutory officer of the Commission.

20 "(2) The Commission may delegate to the President its power to grant leave to the Chief Executive Officer.

"(3) The Commission may delegate to the Chief Executive Officer its power to grant leave to an Assistant Executive Officer.

25 "(4) Leave of absence under this section shall be granted on such terms and conditions as the Commission determines."

Acting appointments

18. Section 62 of the Principal Act is amended—

- 30 (a) by inserting in subsection (1) " , or to act as," after "in the office of"; and
- (b) by omitting subsections (2) to (6) (inclusive) and substituting the following subsections:

"(2) The Commission may delegate to the President its power to appoint a person to act in the office of Chief Executive Officer.

“(3) The Commission may delegate to the Chief Executive Officer its power to appoint a person to act as an Assistant Executive Officer.”.

Substitution

- 5 **19.** Sections 76, 77 and 78 of the Principal Act are repealed and the following sections substituted:

Membership of panel

- 10 “76. (1) A member of a panel referred to in section 37 (other than a transitional panel) holds membership for such period not exceeding 3 years as the Minister determines in writing and, subject to section 37, is eligible to be chosen as a member of a successive panel.

- 15 “(2) A member of a transitional panel holds membership until the expiration of the period of his or her appointment as a member or deputy of a member of a Review Committee that had effect immediately before the commencement of this section and, subject to section 37, is eligible to be chosen as a member of a successive panel.

Resignation from panel

“77. A member of a panel referred to in section 37 may resign by writing delivered to the Minister.

Removal from panel

20 “78. (1) The Minister may remove a person from a panel referred to in section 37 for misbehaviour or physical or mental incapacity.

“(2) If a member of a panel—

- 25 (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his or her creditors;
- (b) on 3 consecutive occasions, without giving prior advice to the Chief Executive Officer, fails to attend a meeting of a Review Committee of which he or she is a member; or
- 30 (c) fails to comply with section 81;

the Minister shall remove him or her from the panel.”.

Meetings of Review Committee

20. Section 80 of the Principal Act is amended—

- 35 (a) by omitting from subsection (2) all the words after “convened” and substituting “by the Chief Executive Officer”;

- (b) by omitting subsections (3) and (4) and substituting the following subsections:

5 “(3) At the first meeting of a Review Committee the members present shall elect one of their number to preside at meetings of the Committee.

 “(4) If, at a meeting of a Review Committee, the presiding member is not in attendance, the members present shall appoint one of their number to preside at that meeting.”; and

- (c) by adding at the end the following subsection:

10 “(8) At a meeting of a Review Committee a member chosen under paragraph 37 (2) (c) and another member constitute a quorum.”.

Secrecy

21. Section 92 of the Principal Act is amended—

- 15 (a) by adding at the end of paragraph (1) (a) “and”;
 (b) by omitting paragraph (1) (b); and
 (c) by omitting from subsection (3) “sections 39B, 47 and 97” and substituting “section 39B”.

Insertion

20 22. After section 92 of the Principal Act the following section is inserted:

General exceptions to secrecy provisions

25 “92AA. Sections 13 and 92 do not apply to the divulgence or communication of information, or the production of a document, concerning the affairs of a person—

- (a) for the purpose of facilitating the investigation or prosecution of an offence against this Act;
 (b) with the express or implied consent of that person; or
30 (c) in response to a summons under section 32 of the *Legal Practitioners Act 1970*.”.

Insertion

23. After section 95 of the Principal Act the following section is inserted—

Interest on amounts due to the Commission

5 "95A. (1) Where an amount is due and payable to the Commission under section 31, a further amount of interest for the period commencing when the first-mentioned amount becomes payable and ending when it is paid or judgment is entered in respect of it (whichever sooner happens) is due and payable to the Commission and may be recovered as a debt in a court of competent jurisdiction.

10 "(2) The amount of interest shall be calculated in the manner prescribed for the purposes of subsection 227B (2) of the *Magistrates Court (Civil Jurisdiction) Act 1982*."

Transitional

15 24. (1) The persons who, immediately before the commencement of paragraph 4 (a), were holding office under paragraph 7 (1) (a) of the Principal Act, continue to hold their respective offices under the Principal Act as in force immediately before the commencement of paragraph 4 (a) for the remainder of the period of their respective appointments under that Act.

(2) Subsection 36 (4) of the Principal Act as in force immediately before the commencement of section 10 continues to apply in respect of decisions made before that commencement.

20 (3) A Review Committee that, at the commencement of this section, had not given a decision in respect of a referral made to it before that commencement—

- (a) continues in office solely for the purpose of complying with section 40;
- 25 (b) is not capable of receiving any further referral; and
- (c) except for the purpose of complying with a request under subsection 40 (4), ceases to exist upon complying with subsection 40 (3) in respect of each decision referred to it.

NOTE

1. Ordinance No. 31, 1977 as amended to date. For previous amendments see Note 1 to Act No. 13, 1992 and see also Acts Nos. 13 and 23, 1992.