

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Legal Aid Amendment Bill 2005

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(Attorney-General)

Legal Aid Amendment Bill 2005

A Bill for

An Act to amend the *Legal Aid Act 1977*

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

1 **1 Name of Act**

2 This Act is the *Legal Aid Amendment Act 2005*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

5 *Note* The naming and commencement provisions automatically commence on
6 the notification day (see Legislation Act, s 75 (1)).

7 **3 Legislation amended**

8 This Act amends the *Legal Aid Act 1977*.

9 **4 Interpretation for Act**
10 **Section 5, definitions of *legal aid committee* and *member***
11 ***of a legal aid committee***

12 *omit*

13 **5 Constitution of commission**
14 **Section 7 (1) (c)**

15 *omit*

16 **6 Section 7 (1)**

17 *renumber paragraphs when Act next republished under Legislation*
18 *Act*

19 **7 Section 7 (6)**

20 *omit*

1	8	Guidelines for provision of assistance
2		New section 12 (ab)
3		<i>insert</i>
4		(ab) in deciding the nature and extent of the legal assistance to be
5		given in relation to a matter or proceeding or any part of a
6		matter or proceeding; and
7	9	Section 12
8		<i>renumber paragraphs when Act next republished under Legislation</i>
9		<i>Act</i>
10	10	Professional conduct by officers of commission
11		Section 13 (4)
12		<i>omit</i>
13	11	Establishment and functions of legal aid committees
14		Part 3
15		<i>omit</i>
16	12	Rights of officers of commission in relation to legal
17		practice
18		Section 22 (8)
19		<i>omit</i>
20	13	Section 22
21		<i>renumber subsections when Act next republished under Legislation</i>
22		<i>Act</i>
23	14	Legal practitioner on record
24		Section 23 (2)
25		<i>omit</i>

1 **15 Application for legal assistance**
2 **Section 25 (1)**

3 *substitute*

- 4 (1) An application for legal assistance must be made in writing.

5 *Note* If a form is approved under s 99 for this provision, the form must be
6 used (but see s (2)).

- 7 (1A) However, subsection (1) does not apply to legal assistance
8 consisting of—

- 9 (a) legal advice; or
10 (b) duty lawyer services; or
11 (c) minor legal assistance.

12 **16 Section 25**

13 *renumber subsections when Act next republished under Legislation*
14 *Act*

15 **17 Sections 26 and 27**

16 *substitute*

17 **26 Deciding applications for legal assistance**

- 18 (1) Each application for legal assistance must be decided by—

- 19 (a) the chief executive officer; or
20 (b) an officer of the commission authorised by the chief executive
21 officer; or
22 (c) if a direction under subsection (3) applies to the application—
23 the commission.

- 24 (2) Each application must be decided in accordance with this Act and,
25 in particular—

- 1 (a) any direction by the Minister under section 8 to apply a
2 funding agreement; and
- 3 (b) any guidelines by the commission under section 12; and
- 4 (c) the priorities decided under section 10 (1) (g).
- 5 *Note* Section 28 provides for circumstances in which legal assistance may be
6 provided.
- 7 (3) The commission must give, and make known to the public,
8 directions about the particular kinds of application that must be
9 decided by the commission.
- 10 (4) For subsection (1), the decision maker may make any inquiries and
11 obtain any reports and advice (including the opinion of counsel) that
12 the decision maker considers appropriate.
- 13 (5) The cost of making inquiries or obtaining reports or advice under
14 subsection (4) is payable—
- 15 (a) if the decision maker under subsection (1) decides that the cost
16 should be paid by the applicant—by the applicant; or
- 17 (b) in any other case—out of the fund.
- 18 (6) If the application is approved, the decision maker must also decide,
19 in accordance with guidelines under section 11 (Guidelines for
20 allocation of work) and section 12 (Guidelines for provision of
21 assistance)—
- 22 (a) whether the assistance is to be given by an officer of the
23 commission or a private legal practitioner; and
- 24 (b) the nature and extent of the assistance to be given; and
- 25 (c) whether the assistance is to be given free, or on any of the
26 conditions mentioned in section 31 (1) (Contribution towards
27 costs and expenses).

1 **27** **Ending or changing legal assistance**

2 The decision maker under section 26 may, in relation to approved
3 legal assistance—

- 4 (a) end the assistance; or
5 (b) change the nature or extent of the assistance; or
6 (c) impose a condition under section 31 (1) (Contribution towards
7 costs and expenses) on the giving of further assistance; or
8 (d) change a condition imposed under section 31 (1) on the giving
9 of further assistance.

10 **18** **Circumstances in which legal assistance may be**
11 **provided**
12 **Section 28 (1)**

13 *substitute*

14 (1) Subject to this section, and section 28A, legal assistance may be
15 provided to a person under this Act only if—

- 16 (a) the person is in need of that legal assistance because the person
17 cannot afford the cost of obtaining the assistance from private
18 legal practitioners; and
19 (b) it is reasonable in all the circumstances to provide the legal
20 assistance.

21 (1A) However, subsection (1) does not apply to legal assistance
22 consisting of—

- 23 (a) legal advice; or
24 (b) duty lawyer services; or
25 (c) minor legal assistance.

19 Section 28

renumber subsections when Act next republished under Legislation Act

**20 Legal assistance under the convention
Section 28A (1)**

substitute

- (1) A person is entitled to legal assistance if—
- (a) the person applies for legal assistance to obtain recognition or enforcement of a decision given in a proceeding in a contracting state in accordance with the convention; and
 - (b) the chief executive officer is satisfied that the person has received legal aid in accordance with the convention, article 1 for the proceeding.

21 New section 30A**30A Minor legal assistance**

- (1) The commission may provide minor legal assistance to a person in accordance with guidelines under section 12.

Example of minor legal assistance

assistance with writing a letter or the completion of a form

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Minor legal assistance may be given subject to any of the following conditions:
- (a) that the person pays to the commission a contribution of a stated amount towards the cost to the commission of providing the assistance;

- 1 (b) that the person makes a payment or payments to the
2 commission in relation to any out-of-pocket expenses incurred,
3 or to be incurred, by the commission in providing the
4 assistance.

5 **22 Security for payment of contribution**
6 **Section 31A (1)**

7 *substitute*

- 8 (1) If the provision of legal assistance is subject to the condition
9 mentioned in section 31 (1) (c), the chief executive officer may
10 lodge with the registrar-general for registration a notice certifying
11 that an amount payable to the commission under section 31 is a
12 charge on land stated in the notice.

13 **23 Arranging for services of private legal practitioners**
14 **Section 32 (1)**

15 *substitute*

- 16 (1) The commission must keep a list of private legal practitioners who
17 have told the commission that they are willing to act for legally
18 assisted people—
19 (a) generally; or
20 (b) in particular kinds of matters; or
21 (c) in particular courts or before particular tribunals.

22 **24 Section 32 (11)**

23 *omit*

24 **25 Section 32**

25 *renumber subsections when Act next republished under Legislation*
26 *Act*

26 New section 32AA

after section 32, insert

32AA Payments to private legal practitioners

- (1) This section applies if a private legal practitioner performs legal services in a matter for a legally assisted person under this Act.
- (2) The legal practitioner must give an invoice for the services to the commission within 6 months after the day the matter is finalised.
- (3) The commission must pay the invoice in accordance with the fees decided under section 32.
- (4) If the private legal practitioner does not give the commission an invoice for the services in accordance with subsection (2), the commission is not obliged to pay the legal practitioner for the legal services.
- (5) The commission is not obliged to pay for legal services provided for a person before the person applies for legal assistance.
- (6) However, the commission may pay for legal services mentioned in subsection (5) if the legal practitioner has given the chief executive officer notice that the person intends to apply for legal assistance for the services.

**27 Payment by commission of costs awarded against legally assisted persons
Section 34 (2)**

substitute

- (2) A request under subsection (1) must be decided by a statutory officer of the commission in accordance with guidelines determined by the commission under section 12 (c).

1 **28 Section 34 (3)**

2 *omit*

3 or the legal aid committee, as the case may be,

4 **29 Notification of decisions**
5 **Section 35 (1)**

6 *omit*

7 commission, an officer of the commission or a legal aid committee

8 *substitute*

9 commission or an officer of the commission

10 **30 Reconsideration of decision**
11 **Section 36 (1) (e)**

12 *substitute*

13 (e) requiring an applicant for legal assistance to pay expenses
14 incurred by an officer of the commission in making inquiries,
15 or obtaining, reports or advice, to decide an application for
16 legal assistance; or

17 **31 Section 36 (4) (b)**

18 *omit*

19 **32 Section 36 (4)**

20 *renumber paragraphs when Act next republished under Legislation*
21 *Act*

- 1 **33** **Decision of review committee**
2 **Section 40 (1)**
- 3 *omit*
- 4 commission, an officer of the commission or a legal aid committee
- 5 *substitute*
- 6 commission or an officer of the commission
- 7 **34** **Acting president of commission**
8 **Section 53**
- 9 *omit*
- 10 **35** **Meetings**
11 **Section 54 (10)**
- 12 *omit*
- 13 **36** **Interests to be disclosed**
14 **Section 55 (3)**
- 15 *omit*
- 16 **37** **Section 62**
- 17 *substitute*
- 18 **62** **Delegation of commission's power to appoint**
- 19 (1) The commission may delegate to the president its power to appoint a
20 person to act in the office of chief executive officer.
- 21 (2) The commission may delegate to the chief executive officer its
22 power to appoint a person to act as an assistant executive officer.
- 23 *Note 1* For the making of delegations and the exercise of delegated functions,
24 see the Legislation Act, pt 19.4.
- 25 *Note 2* For the making of appointments (including acting appointments), see
26 the Legislation Act, pt 19.3.

1 **38 Administrative provisions relating to legal aid committees**
2 **Part 9**

3 *omit*

4 **39 Liabilities of commission and Territory**
5 **Section 91 (4)**

6 *omit*

7 of a legal aid committee,

8 **40 Secrecy**
9 **Section 92 (1)**

10 *omit*

11 a member of a legal aid committee,

12 **41 False or misleading statements**
13 **Section 95 (2)**

14 *omit*

15 , or by a person acting in the office of chief executive officer,

16 **42 Certificate as to amounts owing to commission**
17 **Section 96**

18 *omit*

19 , or by a person acting in the office of chief executive officer,

43 **New part 14***insert***Part 14** **Transitional****101** **Secrecy—members of former legal aid committee**

- (1) Despite the amendment of this Act by the *Legal Aid Amendment Act 2004* (the *amending Act*), the Act, section 92 as in force immediately before the commencement of the amending Act continues to apply to a person who has been a member of a legal aid committee.
- (2) Subsection (1) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (3) This part expires 1 year after the day the amending Act commences.

Endnotes**1** **Presentation speech**

Presentation speech made in the Legislative Assembly on 2005.

2 **Notification**

Notified under the Legislation Act on 2005.

3 **Republications of amended laws**For the latest republication of amended laws, see www.legislation.act.gov.au.