



Australian Capital Territory

Legal Aid Amendment Act 2005

A2005-12

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Australian Capital Territory

Legal Aid Amendment Act 2005

A2005-12

An Act to amend the *Legal Aid Act 1977*

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

2004 043B2

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

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

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the *Legal Aid Act 1977*.

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

omit

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

omit

6 Section 7 (1)

renumber paragraphs when Act next republished under Legislation Act

7 Section 7 (6)

omit

**8 Guidelines for provision of assistance
New section 12 (ab)**

insert

- (ab) in deciding the nature and extent of the legal assistance to be given in relation to a matter or proceeding or any part of a matter or proceeding; and

9 Section 12

renumber paragraphs when Act next republished under Legislation Act

**10 Professional conduct by officers of commission
Section 13 (4)**

omit

**11 Establishment and functions of legal aid committees
Part 3**

omit

**12 Rights of officers of commission in relation to legal
practice
Section 22 (8)**

omit

13 Section 22

renumber subsections when Act next republished under Legislation Act

**14 Legal practitioner on record
Section 23 (2)**

omit

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

substitute

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

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

- (1A) However, subsection (1) does not apply to legal assistance consisting of—
- (a) legal advice; or
 - (b) duty lawyer services; or
 - (c) minor legal assistance.

16 Section 25

renumber subsections when Act next republished under Legislation Act

17 Sections 26 and 27

substitute

26 Deciding applications for legal assistance

- (1) Each application for legal assistance must be decided by—
- (a) the chief executive officer; or
 - (b) an officer of the commission authorised by the chief executive officer; or
 - (c) if a direction under subsection (3) applies to the application— the commission.
- (2) Each application must be decided in accordance with this Act and, in particular—

-
- (a) any direction by the Minister under section 8 to apply a funding agreement; and
 - (b) any guidelines by the commission under section 12; and
 - (c) the priorities decided under section 10 (1) (g).

Note Section 28 provides for circumstances in which legal assistance may be provided.

- (3) The commission must give, and make known to the public, directions about the particular kinds of application that must be decided by the commission.
- (4) For subsection (1), the decision maker may make any inquiries and obtain any reports and advice (including the opinion of counsel) that the decision maker considers appropriate.
- (5) The cost of making inquiries or obtaining reports or advice under subsection (4) is payable—
 - (a) if the decision maker under subsection (1) decides that the cost should be paid by the applicant—by the applicant; or
 - (b) in any other case—out of the fund.
- (6) If the application is approved, the decision maker must also decide, in accordance with guidelines under section 11 (Guidelines for allocation of work) and section 12 (Guidelines for provision of assistance)—
 - (a) whether the assistance is to be given by an officer of the commission or a private legal practitioner; and
 - (b) the nature and extent of the assistance to be given; and
 - (c) whether the assistance is to be given free, or on any of the conditions mentioned in section 31 (1) (Contribution towards costs and expenses).

27 Ending or changing legal assistance

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

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

18 Circumstances in which legal assistance may be provided
Section 28 (1)

substitute

- (1) Subject to this section, and section 28A, legal assistance may be provided to a person under this Act only if—
 - (a) the person is in need of that legal assistance because the person cannot afford the cost of obtaining the assistance from private legal practitioners; and
 - (b) it is reasonable in all the circumstances to provide the legal assistance.
- (1A) However, subsection (1) does not apply to legal assistance consisting of—
 - (a) legal advice; or
 - (b) duty lawyer services; or
 - (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;

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

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

substitute

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

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

substitute

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

24 Section 32 (11)

omit

25 Section 32

renumber subsections when Act next republished under Legislation 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).

28 Section 34 (3)

omit

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

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

omit

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

substitute

commission or an officer of the commission

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

substitute

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

31 Section 36 (4) (b)

omit

32 Section 36 (4)

renumber paragraphs when Act next republished under Legislation Act

**33 Decision of review committee
Section 40 (1)**

omit

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

substitute

commission or an officer of the commission

**34 Acting president of commission
Section 53**

omit

**35 Meetings
Section 54 (10)**

omit

**36 Interests to be disclosed
Section 55 (3)**

omit

37 Section 62

substitute

62 Delegation of commission's power to appoint

- (1) The commission may delegate to the president its power to appoint a person to act in the office of chief executive officer.
- (2) The commission may delegate to the chief executive officer its power to appoint a person to act as an assistant executive officer.

Note 1 For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Note 2 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

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

omit

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

omit

of a legal aid committee,

**40 Secrecy
Section 92 (1)**

omit

a member of a legal aid committee,

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

omit

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

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

omit

, 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 17 February 2005.

2 Notification

Notified under the Legislation Act on 17 March 2005.

3 Republications of amended laws

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

I certify that the above is a true copy of the Legal Aid Amendment Bill 2005, which was passed by the Legislative Assembly on 15 March 2005.

Clerk of the Legislative Assembly

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