

LEGAL AID COMMISSION.

No. 126 of 1982.

AN ACT to amend the Legal Aid Commission Act 1976-1982.

[Assented to 10 December 1982.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Legal Aid Commission Amendment Act 1982*. Short title and citation.

(2) In this Act the Legal Aid Commission Act 1976-1982 is referred to as the principal Act. No. 143 of 1976, amended by Acts Nos. 60 of 1977, 8 and 113 of 1978, 106 of 1979 and 10 of 1982.

(3) The principal Act as amended by this Act may be cited as the Legal Aid Commission Act 1976-1982.

Section 3
repealed.

2. Section 3 of the principal Act is repealed.

Section 4
amended.

3. Section 4 of the principal Act is amended in subsection (1) by—

(a) inserting, after the definition of “legal aid”, the following definition—

“ “legal aid authority” means a legal aid committee, the Director or a member of the staff authorized under section 36 (2); ” ;

(b) deleting “, 1904” in the definition of “Public Service Board” and substituting the following—

“ 1978 ” ; and

(c) deleting the definition of “the Commonwealth Commission” and substituting the following definition—

“ “the Commonwealth Council” means the Commonwealth Legal Aid Council established under section 4 of the Commonwealth Legal Aid Act 1977, as amended, of the Parliament of the Commonwealth; ” .

Section 12
amended.

4. Section 12 of the principal Act is amended in subsection (2) by deleting “wholly or partly at the expense of” and substituting the following—

“ at no expense to, or wholly or partly at the expense of, ” .

5. Section 15 of the principal Act is amended— Section 15
amended.

(a) in subsection (1) by deleting—

(i) in paragraph (d) “the Commonwealth Commission” in the two places where it occurs and substituting in each case the following—

“ the Commonwealth Council ” ;

(ii) in paragraph (d) “that Commission” in the two places where it occurs and substituting in each case the following—

“ the Commonwealth Council ” ;

(iii) in paragraph (g) “committees and officers of the Commission” and substituting the following—

“ authorities ” ;

(iv) in paragraph (i) “the Commonwealth Commission” and substituting the following—

“ the Commonwealth Council ” ; and

(v) in paragraph (i) “committees and officers of the Commission” and substituting the following—

“ authorities ” ;

and

(b) by inserting, after subsection (1), the following subsection—

“ (1a) Whenever this Act confers a power, or imposes a duty, on the Commission to make a determination or to give a direction, that power or duty shall be deemed, unless the contrary intention appears, to include a power—

(a) to revoke the determination or direction;

- (b) to revoke the determination or direction and substitute therefor a fresh determination or direction; or
- (c) to vary the determination or direction. ” .

Section 21
amended.

6. Section 21 of the principal Act is amended—

- (a) in subsection (1) by deleting “or industrial agreement under the Industrial Arbitration Act, 1912,” and substituting the following—

“ under the Industrial Arbitration Act 1979 ” ; and

- (b) in subsection (2) by deleting “, 1904” and substituting the following—

“ 1978 ” .

Section 25
amended.

7. Section 25 of the principal Act is amended in subsection (8) by deleting “Chairman” and substituting the following—

“ chairman ” .

Section 36
amended.

8. Section 36 of the principal Act is amended—

- (a) by repealing subsection (2) and substituting the following subsection—

“ (2) Subject to subsection (4), an application for legal aid shall, in accordance with the directions of the Commission under subsection (3), be decided by a legal aid committee, by the Director or by a member of the staff authorized by the Director to decide applications for legal aid. ” ;

- (b) in subsection (3) by deleting “an officer of the Commission” in paragraph (b) and substituting the following—

“ the Director or by a member of the staff authorized by the Director under subsection (2) ” ; and

- (c) by inserting, after subsection (3), the following subsection—

“ (4) The Commission may, notwithstanding anything in this section, at any time itself refuse any application for legal aid. ” .

9. Section 37 of the principal Act is amended— Section 37
amended.

- (a) in subsection (3) by deleting “committee or an officer of the Commission” and substituting the following—

“ authority ” ;

- (b) in subsection (4) by deleting—

- (i) “committee or an officer of the Commission shall” and substituting the following—

“ authority shall, subject to any direction given and in force under subsection (4a), ” ;
and

- (ii) “all relevant matters” and substituting the following—

“ all relevant factors ” ;

- (c) by inserting, after subsection (4), the following subsection—

“ (4a) The Commission may, having regard to the amount of the moneys in the Fund available for the provision of legal assistance and to the financial

commitments of the Commission from time to time, direct that a legal aid authority shall not under subsection (4) have regard to any factor specified in that direction in deciding whether it is reasonable in all the circumstances to provide legal aid to a person in a matter of a class specified in that direction. ” ; and

(d) in subsection (5) by deleting—

(i) in paragraph (b) “committee or an officer of the Commission” and substituting the following—

“ authority ” ; and

(ii) “committee or officer” and substituting the following—

“ legal aid authority ” .

Section 38
amended.

10. Section 38 of the principal Act is amended—

(a) in subsection (1) by deleting “Where a legal aid committee or an officer of the Commission decides that legal aid should be provided to an applicant the committee or officer shall also decide” and substituting the following—

“ If a legal aid authority decides that legal aid should be provided to an applicant therefor, the legal aid authority shall determine ” ; and

(b) in subsection (2) by deleting “committee or an officer of the Commission” and substituting the following—

“ authority ” .

11. Section 39 of the principal Act is amended— Section 39
amended.

- (a) in subsection (1) by deleting—
- (i) “committee or an officer of the Commission” and substituting the following—
“ authority ” ;
 - (ii) “committee or officer” in paragraph (a) and substituting the following—
“ legal aid authority ” ;
 - (iii) “committee or officer” in paragraph (b) and substituting the following—
“ legal aid authority ” ;
 - (iv) “a contribution towards” in subparagraph (i) of paragraph (b) and substituting the following—
“ the whole or any part of ” ;
- (b) in subsection (2) by—
- (i) deleting “or” at the end of paragraph (d);
 - (ii) deleting the full stop at the end of paragraph (e) and substituting a semi-colon; and
 - (iii) inserting, after paragraph (e), the following paragraphs—
 - “ (f) in a case where the decision was made under section 49A (2)—by the legal aid authority which made the original decision in the matter reviewed; or
 - (g) in any case—by the Commission. ” ;
- (c) in subsection (3) by deleting “contribution or”; and
- (d) in subsection (4) by deleting “contribution or”.

Section 40
amended.

12. Section 40 of the principal Act is amended—

- (a) by inserting, after subsection (1), the following subsection—

“ (1a) If an assisted person exercises his right to select a private practitioner under subsection (1) and the legal aid authority by which the decision to provide legal aid to the assisted person was made considers that the selection so made is not in the interests of the assisted person, that legal aid authority may set aside the selection so made and select on behalf of that assisted person another private practitioner from a panel of names prepared under this section. ” ;

- (b) in subsection (2) by deleting “committee or officer of the Commission by which or by whom” and substituting the following—

“ authority by which ” ;

- (c) in subsection (3) by—

- (i) inserting before “(2)” the following—

“ (1a) or ” ; and

- (ii) deleting “committees and officers of the Commission” and substituting the following—

“ authorities ” ; and

- (d) in subsection (4) by—

- (i) inserting, after “subsection (1)”, the following—

“ , (1a) ” ;

- (ii) deleting “rights of a” in paragraph (a) and substituting the following—

“ rights of the selected ” ; and

- (iii) inserting, after “permit the selected” in paragraph (c), the following—
 “ private ” .

13. Section 46 of the principal Act is amended— Section 46 amended.

- (a) in the definition of “decision” by—
- (i) deleting “or” at the end of paragraph (d); and
 - (ii) inserting, after paragraph (d), the following paragraph—
 “ (da) a decision under section 40 (1a); or ” ;
- (b) in the definition of “person affected” by inserting, after paragraph (c), the following paragraph—
 “ (d) in the case of a decision referred to in paragraph (da) of that interpretation—the assisted person or the private practitioner whose selection is set aside under section 40 (1a). ” ; and
- (c) by deleting the definition of “responsible authority”.

14. Section 47 of the principal Act is amended by inserting, after subsection (3), the following subsection— Section 47 amended.

- “ (4) In this section—
 “responsible authority”, in relation to a decision made by—
- (a) a legal aid committee, means the legal aid committee;
 - (b) an officer of the Commission, means the officer of the Commission; or

(c) the Commission, means the Commission. ” .

Section 48
repealed and
substituted.

15. Section 48 of the principal Act is repealed and the following section is substituted—

Reconsideration
of
decision.

“ 48. (1) A person affected by a decision may by notice in writing to the Director request that the decision be reconsidered.

(2) On receiving a request made under subsection (1), the Director shall, if the decision to which that request relates was made by—

- (a) a legal aid committee, refer that decision to a legal aid committee;
- (b) the Director, himself reconsider that decision or refer that decision to a member of the staff or to a legal aid committee;
- (c) a member of the staff, himself reconsider that decision or refer that decision to a member of the staff or to a legal aid committee; or
- (d) the Commission, refer that decision to the Commission,

for reconsideration.

(3) When a decision is referred under subsection (2) to a legal aid committee or member of the staff or to the Commission for reconsideration, the legal aid committee or member of the staff or the Commission, as the case requires, shall reconsider the decision.

(4) On reconsidering a decision under subsection (2) or (3), a legal aid committee or officer of the Commission or the Commission, as the case requires—

- (a) may confirm, vary or reverse the decision; and

- (b) shall, in the manner prescribed in section 47 (2), communicate the result of the reconsideration to the person by whom the relevant request was made under subsection (1).

(5) Notwithstanding anything in this section, a legal aid committee or officer of the Commission or the Commission, as the case requires, may refuse to reconsider a decision if the relevant request was not received by the Director within 28 days from the day on which the decision was communicated to the person by whom that request was made under subsection (1), and shall, if it or he so refuses, communicate that refusal to that person in the manner prescribed by section 47 (2). ” .

16. Section 49 of the principal Act is amended— Section 49 amended.

- (a) by repealing subsections (1) and (2) and substituting the following subsections—

“ (1) Subject to subsection (5), when a decision has been reconsidered under section 48, the person who made the request as a result of which the decision was so reconsidered may apply in writing to a review committee for a review of the matter concerned.

(2) On receiving an application made under subsection (1), a review committee shall, subject to subsection (4), review the matter to which that application relates and on so doing—

- (a) may confirm, vary or reverse any decision relating to the matter concerned; and
- (b) shall, in the manner prescribed in section 47 (2), communicate its decision to the person by whom that application was made. ” ;

(b) in paragraph (b) of subsection (2a) by deleting “committee or an officer of the Commission” and substituting the following—

“ authority ” ;

(c) in paragraph (a) of subsection (2b) by deleting “committee or officer of the Commission, as the case may be” and substituting the following—

“ authority ” ;

(d) in subsection (3) by inserting, before “final and conclusive”, the following—

“ , subject to section 49A, ” ; and

(e) by inserting, after subsection (3), the following subsections—

“ (4) A review committee may refuse to review the matter to which an application made under subsection (1) relates if it did not receive that application within 28 days from the day on which the result of the reconsideration concerned was communicated to the applicant, and shall, if it so refuses, communicate that refusal to the applicant in the manner prescribed by section 47 (2).

(5) This section does not apply to or in relation to decisions made by the Commission. ” .

Section 49A
inserted.

17. The principal Act is amended by inserting, after section 49, the following section—

Reopening
of decision
of review
committee.

“ 49A. (1) The Commission may, if the circumstances under which the decision of a review committee was made have since changed in a material respect or if material information which was not before a review committee when it made a decision is available or if the Commission considers that there

is any other special reason why the decision of a review committee should not be allowed to stand, set aside the decision of the review committee and remit the matter to which that decision relates to a review committee for decision afresh.

(2) If a matter has been remitted under subsection (1) to a review committee for decision afresh, the review committee shall decide the matter afresh and in so doing—

(a) may confirm, vary or reverse the decision set aside under that subsection; and

(b) shall, in the manner prescribed in section 47 (2), communicate its fresh decision to the person by whom the relevant application under section 49 (1) was made.

(3) A decision made under subsection (2) is final and conclusive. ” .

18. Section 50 of the principal Act is amended— Section 50 amended.

(a) in paragraph (b) of subsection (2) by deleting “is” and substituting the following—

“ may be ” ; and

(b) in subsection (8) by deleting “committee or officer of the Commission by which or by whom” and substituting the following—

“ authority by which ” .

19. Section 51A of the principal Act is amended Section 51A amended. by deleting “the Commonwealth Commission” and substituting the following—

“ the Commonwealth Council ” .

20. Section 60 of the principal Act is amended in subsection (1) by deleting paragraph (c) and substituting the following paragraph—

“ (c) the Commonwealth Council; ” .

Section 63
repealed and
substituted.

21. Section 63 of the principal Act is repealed and the following section is substituted—

Liability and
immunity.

“ 63. (1) The Commission shall indemnify—

(a) the Director or a member of the staff against any liability incurred by him for any negligent act or omission by him in the course of the performance of his duties or in good faith in the purported performance of his duties; or

(b) a private practitioner who performs services by way of legal assistance under Division 2 of Part V of this Act against any liability incurred by him for any negligent act or omission by him in the course of the performance of those services or in good faith in the purported performance of those services.

(2) The Commission is liable for any act or omission by—

(a) the Director or a member of the staff in the course of the performance of his duties; or

(b) a private practitioner in the course of the performance by him of services by way of legal assistance under Division 2 of Part V of this Act.

(3) No liability shall attach to a member, or the deputy of a member, of the Commission, or a member of a legal aid committee, or a member or substitute member of a review

committee, for any act or omission by him, or by the Commission or committee, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties under this Act. ” .

22. Section 64 of the principal Act is amended in paragraph (c) of the definition of “administrative information” in subsection (2b) by deleting “or reviewed under section 49” and substituting the following—

Section 64
amended.

“ , reviewed under section 49 or dealt with under section 49A ” .
