

WESTERN AUSTRALIA

LEGAL AID COMMISSION AMENDMENT ACT 1992

No. 73 of 1992

AN ACT to amend the *Legal Aid Commission Act 1976*

[Assented to 11 December 1992.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Legal Aid Commission Amendment Act 1992*.

Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Legal Aid Commission Act 1976** is referred to as the principal Act.

[* *Reprinted as approved 14 August 1987.*

For subsequent amendments see 1991 Index to Legislation of Western Australia, p. 113.]

Section 14 amended

4. (1) Section 14 (1) of the principal Act is amended by inserting after "Subject to" the following —

“ subsection (1a) and ”.

(2) After section 14 (1) of the principal Act the following subsection is inserted —

“ (1a) A private practitioner who performs services by way of legal assistance under Division 3 of Part V may enter into an agreement with the Director to receive —

(a) payment for the performance of those services; or

(b) reimbursement in respect of disbursements and out-of-pocket expenses that are properly incurred by the practitioner in performing those services and are approved; or

- (c) both payment of the kind mentioned in paragraph (a) and reimbursement of the kind mentioned in paragraph (b),

on such basis and in such circumstances as the Director determines, and if such an agreement is entered into the practitioner is entitled to receive payment or reimbursement, or both, from the Commission under the agreement and not under subsection (1). ”.

(3) Section 14 (1a) of the principal Act is amended by deleting “(1a) In subsection (1) (a) (ii) and (b)” and substituting the following —

“ (1b) In subsections (1) and (1a) ”.

(4) Section 14 (3) of the principal Act is amended by deleting “this section” and substituting the following —

“ subsection (1) or (2) ”.

Section 15 amended

5. (1) Section 15 (1) (d) of the principal Act is deleted and the following paragraph is inserted —

“ (d) liaise and co-operate with relevant agencies of the Commonwealth having functions relating to legal assistance; ”.

(2) Section 15 (1) (i) of the principal Act is deleted and the following paragraph is inserted —

“ (i) determine guidelines to be observed by legal aid authorities and review committees in performing their functions under sections 37, 39, 44, 48, 49 and 49A; ”.

Section 18 amended

6. Section 18 (3) (c) is amended by inserting before “he” the following —

“ subject to the *Salaries and Allowances Act 1975*, ”.

Section 38 amended

7. Section 38 (1) of the principal Act is amended by deleting “an applicant therefor” and substituting the following —

“ a person under this Act ”.

Section 39 amended

8. (1) Section 39 (1) of the principal Act is amended by deleting “an applicant” and substituting the following —

“ a person under this Act ”.

(2) Section 39 (1) (b) of the principal Act is amended —

(a) by deleting “applicant” wherever it occurs and substituting, in each case, the following —

“ assisted person ”;

(b) in subparagraph (i) by inserting after “Commission”, in the second place where it occurs, the following —

“ , or arrange for the Commission to be paid, ”;

(c) in subparagraph (ii) by inserting after “make” the following —

“ or arrange ”;

- (d) by deleting “or” after subparagraph (ii); and
- (e) after subparagraph (iii) by deleting the full stop and substituting a semi-colon and inserting the following subparagraphs —

- “ (iv) without limiting subparagraph (iii), a condition that the payment of the whole or any part of the cost of providing the legal aid is to be secured by a charge on land registered under section 44A;
 - (v) a condition that if the assisted person receives an amount under the judgment or verdict in proceedings arising out of a matter in respect of which the legal aid is provided or as a result of a settlement or compromise of such proceedings, the assisted person shall, on demand by the Commission, pay to the Commission an amount determined by the Director.
- ”.

(3) After section 39 (1) of the principal Act the following subsection is inserted —

- “ (1a) A condition of the kind mentioned in subsection (1) (b) (v) may be imposed and enforced notwithstanding section 63 (1) of the *Legal Practitioners Act 1893*.
- ”.

Section 41 amended

9. Section 41 of the principal Act is amended —

- (a) by inserting after the section designation “41.” the subsection designation “(1)”;

- (b) by deleting “14” and substituting the following —

“ 14 (1) or under an agreement under section
14 (1a) ”;

and

- (c) by inserting the following subsection —

“ (2) Notwithstanding subsection (1) a private practitioner may accept other payments in respect of legal services performed for an assisted person if acceptance of the payments is approved by the Director and any conditions imposed by the Director in relation to the approval are complied with. ”.

Section 42 amended

10. Section 42 of the principal Act is amended —

- (a) by inserting after the section designation “42.” the subsection designation “(1)”; and

- (b) by inserting the following subsection —

“ (2) Nothing in subsection (1) authorizes disbursements or out-of-pocket expenses to be met directly from the Fund unless the private practitioner would have been entitled to reimbursement in respect of them under section 14 (1) or under an agreement under section 14 (1a). ”.

Section 44A inserted

11. After section 44 of the principal Act the following section is inserted —

“ **Registration of charge to secure costs of legal aid**

44A. (1) If, under section 39 (1) (b) (iv), legal aid is granted subject to a condition that legal costs payable to the Commission by the assisted person are to be secured by a charge on land registered under this section the Director shall deliver a memorial to the relevant official, specifying the land to be charged and certifying that legal costs are to be charged on the land.

(2) A memorial shall be in a form approved by the relevant official.

(3) The relevant official, on receipt of a memorial delivered under subsection (1) and on payment of the appropriate fee, shall register the memorial and endorse or note accordingly the relevant registers or records in respect of the piece of land concerned.

(4) Where a memorial is delivered under subsection (1) the Director shall inform the assisted person in writing of the action so taken.

(5) Where the relevant official has registered the memorial and endorsed or noted the relevant registers or records, the legal costs payable to the Commission by an assisted person are a charge on the land for the benefit of the Fund.

(6) If any default is made in respect of the payment of the legal costs, the Commission has the same powers of sale over the land charged as are given by the *Transfer of Land Act 1893* to a mortgagee under a mortgage in respect of which default has been made in the payment of principal.

(7) Where the amount secured by a charge registered under this section is paid or recovered, or the Commission determines that such a charge is no longer required, the Director shall request the relevant official to remove the charge.

(8) The relevant official shall, on receipt of a request referred to in subsection (7), remove the charge in the relevant registers or records.

(9) No stamp duty is payable in respect of any action of a relevant official pursuant to this section.

(10) In this section —

“legal costs” means the whole or part of the cost of providing the legal aid;

“relevant official” means —

- (a) in the case of land which is under the operation of the *Transfer of Land Act 1893*, the Registrar of Titles;
- (b) in the case of land which is alienated from the Crown but which is not under the operation of the *Transfer of Land Act 1893*, the Registrar of Deeds and Transfers; or
- (c) in the case of land which is under the operation of the *Land Act 1933*, the chief executive officer of the department principally assisting the Minister administering that Act in the administration of that Act.

”.

Section 45A inserted

12. After section 45 of the principal Act the following section is inserted —

“ Guidelines to be observed

45A. A legal aid authority shall observe guidelines determined by the Commission under section 15 (1) (i). **”.**

Section 49 amended

13. (1) Section 49 (2a) of the principal Act is amended —

(a) by deleting “A” and substituting the following —

“ Subject to subsection (5), a ”; and

(b) in paragraph (b) by deleting “under section 14 (1)”.

(2) Section 49 (5) of the principal Act is amended by inserting after “Commission” the following —

“ or to in relation to any determination made by the Director under an agreement under section 14 (1a) as to the basis on which or the circumstances in which a private practitioner is entitled to receive payment, or reimbursement, or both **”.**

Section 50 amended

14. After section 50 (8) of the principal Act the following subsection is inserted —

“ (8a) A review committee shall observe guidelines determined by the Commission under section 15 (1) (i). **”.**

Section 50B inserted

15. After section 50A of the principal Act the following section is inserted —

“ Private practitioners to report to Commission

50B. (1) Subject to this Act, if a private practitioner performs services by way of legal assistance on behalf of an assisted person under Division 3 the practitioner shall report to the Commission —

- (a) at the completion of the period of legal assistance; and
- (b) every 6 months during the continuation of the period of legal assistance, if the period of legal assistance continues for more than 6 months.

(2) Without limiting section 63A, the Director may at any time, either of his own motion or at the request of the Commission or a legal aid committee or a review committee, request a private practitioner referred to in subsection (1) to report to the Commission and the practitioner shall so report within 14 days of the date of the request or within such longer period as the Director allows.

(3) A report made under this section by the private practitioner shall state clearly and precisely —

- (a) the legal services provided to the assisted person;
- (b) the progress of the matter to the date of the report;

- (c) any facts which might affect the grant of legal assistance including but not limited to changes in the assisted person's financial circumstances; and
- (d) any other information required by the Commission. ”.

Section 51A amended

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

“ any relevant agency of the Commonwealth having functions relating to legal assistance ”.

Section 65 amended

17. (1) Section 65 (1) of the principal Act is amended —

- (a) by deleting “or a legal aid committee,” and substituting the following —

“ a legal aid committee or a review committee, ”;

and

- (b) by deleting “\$200.” and substituting the following —

“ \$5 000. ”.

(2) Section 65 (2) of the principal Act is repealed and the following subsections are substituted —

“ (2) A person who, with intent to deceive or mislead the Commission, the Director, a member of the staff, a legal aid committee or a review committee

makes a statement or representation that is false in any material particular commits an offence.

Penalty: \$5 000.

(3) The amount of any loss sustained by the Fund by reason of an offence under this section may, whether or not the offender has been prosecuted, be recovered by the Commission from the offender in a court of competent jurisdiction.

”.