



# Legislative Council

## Legal Aid Commission Amendment

### Bill Hansard - Extract

18/06/2002

#### Second Reading

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.31 p.m.]: I move:

That this bill be now read a second time.

The Legal Aid Commission provides legal aid services to socially and economically disadvantaged people throughout the State. It works in partnership with private lawyers who represent more than half of all legally assisted people in case matters. In 2000-01 approximately \$37.8 million was paid to private lawyers by the commission, and 57 per cent of the commission's casework was assigned to private lawyers. In August 2000 an independent consultant was retained by the commission to review the operation of its grants function. The consultant's report was presented to the commission in December 2000 and it contained a number of recommendations designed to streamline processes and achieve efficiencies in the determination of grants, and to respond to perceived problems of fairness and equity in the method of assigning grants to private practitioners. The commission has made substantial progress in implementing the report's recommendations, but there are a number that require legislative amendment. These recommendations are that the commission implement panel arrangements for private practitioners, develop service level agreements and practice standards with private solicitors and in-house practitioners, and establish an audit and professional standards function for the Grants Division.

The objective of the Legal Aid Commission Amendment Bill is to enable the commission to implement these recommendations and thereby improve the delivery of legal aid services to the community. The bill provides that the commission may establish panels of suitably qualified and experienced private practitioners to act on behalf of legally assisted people. The bill requires the commission to be open about the establishment criteria for these panels, such as where the panels will operate, and what type of matters they will handle. It is envisaged that the panels will be implemented in a staged process, commencing with the Children's Court panel and followed by panels for child representation in the Family Court, State care proceedings, general family law and eventually all types of legal matters. The Legal Aid Commission intends to issue an expression of interest document that will contain information about the selection criteria that private practitioners must meet in order to be appointed to a panel for a term of two years. These criteria will normally include demonstrated knowledge or specialist accreditation in a particular field of law.

Applications for appointment to panels will be assessed by a selection committee. The bill provides that the selection committee will include a nominee of the Law Society, a nominee of the Bar Association, and such other persons as may be appointed by the commission. I am advised by the commission that the other members of the selection committee are likely to be a nominee of the Grants Division of the commission and another person, not necessarily a lawyer, with relevant expertise. After the selection committee assesses an application for appointment to a panel it will make a recommendation to the commission as to whether, in its opinion, the applicant is a suitable person for appointment to the panel or panels for which he or she has applied. It is anticipated that, generally, panels will not be restricted in size and the majority of interested practitioners who apply will be appointed. Appointments to panels will apply to specific individuals and not to firms. However, it will be possible for firms to have a number of solicitors appointed to the same panel or other panels. Should a panellist leave a firm, it will be possible for an expression of interest addressing all relevant criteria to be submitted by another solicitor of the firm, for possible inclusion on the panel for the balance of its term. The commission plans to implement a program of conferences and education programs to assist private practitioners to acquire the necessary skills and knowledge for admission to panels.

The commission is obliged by section 12 of the Legal Aid Commission Act 1979 to observe a number of duties in respect of the provision of legal aid, such as ensuring that legal aid is provided in the most effective, efficient and economical manner. Section 12 (f) of the Act currently requires the commission to ensure, so far as is reasonably practicable, that a legally assisted person obtains the services of the lawyer of his or her choice. In order to preserve the principle of lawyer of choice as far as possible, while accommodating the need to establish panels so that legal aid may be provided more effectively and efficiently, the bill will insert a new section 12 (f). The new section will require the commission to take into account not only any choice expressed by the legally assisted person for a particular private practitioner, but also that persons' interests, and the need to distribute work fairly and reasonably among private legal practitioners. In addition, the commission will be required to ensure that the principles by which it determines the assignment of legal aid work are publicly available.

The bill also provides that before work is allocated to a legal practitioner who has been appointed to a panel, the practitioner must enter into a service provision agreement with the commission. A service provision agreement will contain the terms by which the relationship between the Legal Aid Commission and private practitioners will be conducted. Under this agreement, the practitioner will be obliged to comply with commission practice standards and to provide regular written reports on the progress of matters. Practitioners will also be required to participate in a rostered duty lawyer service, and to submit, from time to time, to an audit of legal aid files. A breach of a service

provision agreement may result in a practitioner being asked to show cause why he or she should not be suspended or removed from a panel. To ensure fairness and transparency, the bill provides for the establishment of a monitoring committee, which will include nominees of the Law Society and the Bar Association, to monitor service provision agreements.

After being provided with written notice of an apparent breach of a service provision agreement, a practitioner may be directed to provide a written response to the monitoring committee by way of explanation. To ensure procedural fairness, it is important that practitioners be given a reasonable opportunity to be heard in respect of apparent breaches. If a practitioner is found to have breached a service provision agreement, the monitoring committee will be able to make a recommendation to the commission to the effect that the practitioner should either be removed from a panel, or that no work should be assigned to that person for a period of up to two years, or that no further action should be taken. The commission will not be able to refuse to appoint a legal practitioner to a panel, or suspend or remove a practitioner from a panel—other than at the person's request—unless that person has been given written notice of its reasons and a reasonable opportunity to be heard. The only exception to this general rule will be those practitioners who are no longer entitled to practise because of disciplinary proceedings. These people will automatically be removed from panels.

The commission will deal with an in-house solicitor who fails to comply with practice standards and policies in accordance with its internal disciplinary procedures. Unlike private practitioners, in-house solicitors are subject to the requirements of a range of Acts, including the Public Sector Management Act, the Public Finance and Audit Act and the Independent Commission Against Corruption Act. The commission also intends to introduce a new performance management system that will further enhance supervision over the work of its employed solicitors. As I stated at the outset, the Legal Aid Commission paid more than \$37 million in the 2000-01 financial year to private practitioners to act on behalf of legally assisted people. Without question, this is a significant sum and it is quite appropriate for there to be adequate measures in place to ensure these funds are properly expended. While the Legal Aid Commission Act contains a number of provisions that oblige both practitioners and clients to notify of changes in means and circumstances, there is no specific audit power in the Act. The bill will remedy this deficiency by amending the Act to expressly confer on the commission a power to conduct audits.

The commission intends to establish audit protocols with the Law Society and the Bar Association, and the audit will normally be carried out by staff of the commission's Audit Branch. Safeguards are included in the bill to minimise the risk that if a member of the commission acts for another relevant party information obtained in the course of an audit is improperly disclosed to that staff member. For example, it will be open to the commission to contract an external person to conduct audits. It is anticipated that audits will be both random and targeted, and the bill provides that practitioners will be given advance written notice of the purpose and scope of audits. As far as practicable, audits will be carried out at times that are convenient to practitioners.

The main purpose of the audits will be to verify claims and certifications made by practitioners during the application and account-payment processes. The bill provides that the commission may require a practitioner to produce for inspection files, records and documents relating to an assigned matter and to give the commission such other information as is reasonable for the purpose of the audit. The commission will be required to reimburse practitioners for photocopying and other such reasonable out-of-pocket expenses incurred as a consequence of audits. The proposed auditing power will be an important risk management tool for the commission as it moves towards greater reliance on the use of the internet and email for lodging legal aid applications and processing payments to practitioners. The commission needs to have the means of verifying that claims made during the application and account-payment processes are accurate, so that it can ensure that legal aid funds are being expended appropriately.

The conduct of audits will also have an educative role. If breaches of service agreements, practices standards or relevant policies are detected, these will be notified in writing to the practitioner concerned, and he or she will be required to undertake any necessary remedial action. A failure by a practitioner to comply with a request for a file audit or a refusal to co-operate may result in termination of the services of that practitioner, his or her removal from a panel, or the commission refusing the practitioner payment. The Legal Aid Commission Act confers a broad immunity on the commission for any acts and omissions done in good faith. The proposed amendments will make it clear that the commission will not be vicariously liable for the acts or omissions of panellists, and that the existing immunity provision will extend to the appointment, suspension, removal of practitioners from panels, the assignment of work to private practitioners, and the conduct of audits in respect of private practitioners.

The bill also makes a number of miscellaneous minor amendments to enable the operation of the Act to be more efficient. The bill provides that the commission may offset an amount payable by it to a legal practitioner by any amount the practitioner owes the commission; and allows practitioners to remit cheques to the commission in the same way as they can remit money. The bill also reduces the quorum required for a meeting of the Legal Aid Review Committee, which comprises three members, from all of its members to two of its members. The main benefits of the proposed panel and auditing arrangements are that they will provide a transparent and accountable system for referral of legal aid work to private practitioners; provide a process to evaluate the expertise and competencies of practitioners who want to act for legally assisted people; establish an agreed level of service delivery standards for legal aid clients; provide a process of appropriate quality control and risk management; and permit the commission to streamline applications for legal aid and payments to private legal practitioners.

For more than 20 years the commission has continually explored and adopted ways of more effectively providing information, assistance and legal representation to those members of our community who are most socially and economically disadvantaged. The establishment of panels, service agreements, and practice standards and effective monitoring of these arrangements through proper audit processes, continues the commission's

commitment to continuous improvement. I commend the bill to the House.