

Legal Aid Commission Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Legal Aid Commission Act 1979* to make provision with respect to the performance of legal aid work by private legal practitioners and, in particular:

- (a) to arrange for the assignment of work on behalf of legally assisted persons through the establishment of panels of private legal practitioners, and
- (b) to require members of panels to enter into service provision agreements with the Legal Aid Commission of New South Wales (*the Commission*), and
- (c) to enable the Commission to audit private legal practitioners to whom work is assigned.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Legal Aid Commission Act 1979* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] amends section 12, by substituting paragraph (f), to restate the duties to be observed by the Commission in the assignment of legally aided work to private legal practitioners.

Schedule 1 [2] amends section 27 to make it clear that the Commission does not, and persons associated with the Commission do not, incur any liability because of:

- (a) the appointment of a private legal practitioner to carry out legally aided work, or
- (b) acts or omissions of private legal practitioners to whom work is assigned under the Act, or
- (c) an audit in respect of a private legal practitioner.

Schedule 1 [3] extends the circumstances in which the Commission may defer the payment of fees to a private legal practitioner in respect of legally aided work to include the conclusion of an official investigation into a matter concerning the assignment of work to, or the performance of work by, a private legal practitioner.

Schedule 1 [4] provides that the Commission may offset an amount payable by it to a private legal practitioner by any amount payable by the practitioner to it.

Schedule 1 [5] will enable private legal practitioners to remit cheques to the Commission in the same way as they can remit money.

Schedule 1 [6] inserts proposed Division 2 (Assignment of work through panels of private legal practitioners), comprising proposed sections 49–52B, into Part 3 of the Act.

Proposed section 49 authorises the Commission to assign work on behalf of legally assisted persons to private legal practitioners in accordance with proposed section 12 (f) and the proposed Division, but does not limit the ways in which work may be assigned.

Proposed section 50 enables the Commission to establish panels of private legal practitioners who have indicated their willingness to act for legally assisted persons.

Proposed section 51 provides for the appointment of private legal practitioners to panels. Applications are to be assessed by a selection committee comprising a nominee of the Council of the Law Society of New South Wales, a nominee of the Council of the New South Wales Bar Association and such other persons as may be appointed by the Commission. The Commission

cannot refuse to appoint an applicant, or suspend or remove a member of a panel, unless it gives written notice of its reasons and gives the private legal practitioner concerned a reasonable opportunity to be heard.

Proposed section 52 sets out the conditions that apply to members of panels, including the period of appointment and the requirement to enter into a service provision agreement with the Commission. The proposed section lists some of the matters for which a service provision agreement may provide.

Proposed section 52A requires the Commission to establish a monitoring committee, comprising a nominee of the Council of the Law Society of New South Wales, a nominee of the Council of the New South Wales Bar Association and such other persons as may be appointed by the Commission, for the purpose of monitoring service provision agreements. The proposed section sets out the process to be observed in dealing with a suspected breach of a service provision agreement and the action that may subsequently be taken.

Proposed section 52B enables the Commission to carry out audits of private legal practitioners to whom work has been assigned by the Commission. Prior notice is required to be given by the Commission and, so far as practicable, an audit is to be carried out at a time that is convenient to the private legal practitioner concerned. Safeguards are imposed to ensure that, if a member of staff of the Commission acts for another party in the same matter as that in relation to which the audit is carried out, information obtained in the course of the audit is not disclosed to that staff member. Legal professional privilege may not be claimed to prevent or limit an audit. Sanctions are imposed to deal with a private legal practitioner who fails or refuses to co-operate in the carrying out of an audit.

Schedule 1 [7] makes an amendment by way of statute law revision.

Schedule 1 [8] reduces the quorum at a meeting of a Legal Aid Review Committee (which comprises 3 members) from all of its members to 2 of its members.

Schedule 1 [9] enables the making of regulations of a savings or transitional nature that may be necessary or convenient as a consequence of the enactment of the proposed Act.