



New South Wales

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.

First print



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New South Wales

Legal Aid Commission Amendment Bill 2002

No. , 2002

A Bill for

An Act to amend the *Legal Aid Commission Act 1979* with respect to the performance of legal aid work by private legal practitioners; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Legal Aid Commission Amendment Act 2002</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Legal Aid Commission Act 1979 No 78	7
The <i>Legal Aid Commission Act 1979</i> is amended as set out in Schedule 1.	8 9

Schedule 1 Amendments

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(Section 3)

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[1] Section 12 Duties to be observed in the provision of legal aid

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Omit section 12 (f). Insert instead:

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- (f) ensure, if work is assigned to a private legal practitioner, that the assignment is made in accordance with principles determined from time to time by the Commission and after consideration of the following:
 - (i) the interests of the legally assisted person,
 - (ii) any choice expressed by the legally assisted person for a particular private legal practitioner,
 - (iii) the fair and reasonable distribution of work among private legal practitioners who are appointed to the relevant panel under Division 2 of Part 3,

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and that the principles so determined by the Commission are publicly notified or available on request,

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[2] Section 27 Immunity

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Insert at the end of the section:

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- (2) No liability attaches to or is incurred by the Commission, the Chief Executive Officer, a member of staff of the Commission, a member of the Board, a member of a committee established under this Act or a person acting under the direction of any of them because of anything done, or omitted to be done, by a private legal practitioner to whom work is assigned under this Act.
- (3) In this section, a reference to an act or omission includes (but is not limited to) a reference to anything done or omitted to be done in respect of:
 - (a) the appointment of a private legal practitioner to, or the suspension or removal of a private legal practitioner from, a panel under Division 2 of Part 3, or

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	(b) the assignment of work to a private legal practitioner, or	1
	(c) an audit in respect of a private legal practitioner.	2
[3]	Section 43A Payment of costs to private legal practitioners	3
	Insert after section 43A (1) (b) (iii):	4
	(iv) any matter concerning the assignment of work to, or the performance of work by, the practitioner as a member of a panel established under Division 2 of Part 3, or	5 6 7 8
[4]	Section 43A (4)	9
	Insert after section 43A (3):	10
	(4) The Commission may reduce an amount payable by the Commission to a private legal practitioner by an amount payable by the private legal practitioner to the Commission.	11 12 13
[5]	Section 44 Direction as to payment of certain money to the Commission	14 15
	Insert after section 44 (5):	16
	(6) In this section, <i>money</i> includes a cheque.	17
[6]	Part 3, Division 2	18
	Insert after Division 1:	19
Division 2	Assignment of work through panels of private legal practitioners	20 21
49	Assignment of work	22
	Without limiting the ways in which the Commission may assign work on behalf of legally assisted persons to private legal practitioners in accordance with section 12 (f), the Commission may assign work in accordance with this Division.	23 24 25 26

50	Panels of private legal practitioners	1
(1)	The Commission may establish panels of suitably qualified and experienced legal practitioners in private practice who have notified the Commission that they are willing to act as legal practitioners for legally assisted persons.	2 3 4 5
(2)	A body, whether incorporated or unincorporated, which provides community legal services is not eligible to be included in a panel, unless the Commission otherwise determines.	6 7 8
(3)	A panel may be established according to such criteria as the Commission determines, and publicly notifies or makes available on request, which may include (but are not limited to):	9 10 11 12
(a)	matters generally, or matters of a particular type or class, or	13 14
(b)	a specified jurisdiction, or	15
(c)	a specified area of the State.	16
51	Application for appointment to panel	17
(1)	A legal practitioner in private practice may apply to the Commission for appointment to one or more panels.	18 19
(2)	The Commission is to establish a selection committee under this Act, comprising a nominee of the Law Society, a nominee of the Bar Association and such other persons as may be appointed by the Commission.	20 21 22 23
(3)	All matters relating to the membership and procedure of a selection committee are to be determined by the Commission after consultation with the Law Society and the Bar Association.	24 25 26 27
(4)	An application is to be assessed by the selection committee which, after its assessment is made, is to recommend to the Commission whether, in its opinion, the applicant is a suitable person to be appointed to the panel or panels for which the person has applied.	28 29 30 31 32
(5)	The Commission may not:	33
(a)	refuse to appoint a legal practitioner to a panel for which the legal practitioner has made application, or	34 35

(b)	suspend or remove a legal practitioner from a panel, otherwise than at the legal practitioner's request,	1 2
	unless the Commission has given written notice to the legal practitioner of its reasons and has given the legal practitioner a reasonable opportunity to be heard in relation to the proposed refusal or removal.	3 4 5 6
(6)	If, as a consequence of disciplinary proceedings taken against a legal practitioner, the legal practitioner is prevented from practising as a legal practitioner, the legal practitioner, if he or she is a member of a panel, is taken to have been removed from the panel.	7 8 9 10 11
52	Conditions applying to members of panels	12
(1)	The appointment of a legal practitioner to a panel is for 2 years (or such other term as may be specified by the regulations), unless the legal practitioner is sooner removed from the panel at his or her request or in accordance with this Division.	13 14 15 16
(2)	A legal practitioner in private practice may re-apply under section 51 for appointment to a panel.	17 18
(3)	Before work may be assigned to a legal practitioner who is appointed to a panel, the practitioner must enter into a service provision agreement with the Commission.	19 20 21
(4)	Without limiting the matters for or with respect to which a service provision agreement may make provision, a service provision agreement may make provision for or with respect to the following matters:	22 23 24 25
(a)	the terms on which the legal practitioner is to provide legal services to a legally assisted person or to legally assisted persons,	26 27 28
(b)	practice standards, and compliance with practice standards,	29 30
(c)	the provision of regular written reports on the progress of an allocated matter,	31 32
(d)	audits under section 52B,	33
(e)	participation in a rostered duty lawyer service.	34
(5)	Appointment to a panel does not confer an entitlement to work.	35

52A	Breach of service provision agreement	1
(1)	The Commission is to establish a monitoring committee under this Act, comprising a nominee of the Law Society, a nominee of the Bar Association and such other persons as may be appointed by the Commission, for the purpose of monitoring service provision agreements.	2 3 4 5 6
(2)	All matters relating to the membership and procedure of a monitoring committee are to be determined by the Commission after consultation with the Law Society and the Bar Association.	7 8 9 10
(3)	If a legal practitioner appears to have breached a service provision agreement, the Commission or the monitoring committee may give written notice to the legal practitioner of the apparent breach and direct the legal practitioner to provide a written response to the monitoring committee by way of explanation.	11 12 13 14 15 16
(4)	After a legal practitioner has provided a written response to the monitoring committee or, after having been given a reasonable opportunity to provide a written response to the monitoring committee, has failed to do so, the monitoring committee may recommend to the Commission:	17 18 19 20 21
	(a) that the legal practitioner be removed from the panel, or	22
	(b) that no work be assigned to the legal practitioner for a period of between 3 months and 2 years, or	23 24
	(c) that no further action be taken.	25
(5)	A recommendation under subsection (4) may be made unconditionally or subject to conditions.	26 27
(6)	On receipt of a recommendation from the monitoring committee, the Commission is to determine what action (if any) should be taken in respect of it.	28 29 30
52B	Audits	31
(1)	The Commission may, at any time, in relation to any work assigned by the Commission to a legal practitioner (an <i>assigned matter</i>), carry out an audit of the legal practitioner, or cause such an audit to be carried out, in respect to any one or more of the following:	32 33 34 35 36

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Schedule 1 Amendments

- (a) claims for payment, 1
 - (b) compliance with practice standards, 2
 - (c) compliance with the terms and conditions of a service provision agreement, 3
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 - (d) compliance with the Commission's guidelines, policies and delegations, 5
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 - (e) substantial or unresolved complaints concerning service delivery. 7
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- (2) An audit cannot be carried out until after written notice of the intention to carry out the audit is given to the legal practitioner concerned. The written notice must state the purpose and scope of the audit. 9
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- (3) So far as practicable, an audit is to be carried out at a time that is convenient to the legal practitioner concerned, having regard to the needs of his or her practice. 13
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- (4) If an assigned matter comprises a matter in which a member of staff of the Commission acts for a party, an audit is to be carried out by: 16
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- (a) a person who is not a member of the staff of the Commission, or 19
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 - (b) a member of the staff of the Commission who does not work in close and regular association with the member of staff of the Commission who acts for the party, 21
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- and any information or document obtained in connection with the audit must not be divulged by the auditor or any other person to the member of staff of the Commission who acts for the party if that information or document might unfairly prejudice the interests of any other party. 24
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- (5) The relationship between a private legal practitioner and a legally assisted person does not operate to prevent or limit an audit under this section. 29
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- (6) For the purposes of an audit, the Commission, or a person appointed by the Commission, may: 32
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- (a) require a legal practitioner to produce for inspection any files, records or documents relating to an assigned matter, and 34
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(b)	make copies of, or take extracts or notes from, any such files, records or documents, and	1 2
(c)	require a legal practitioner to provide the Commission, or person, with such assistance and facilities as may be reasonably necessary to enable the Commission, or person, to exercise the functions under this section, and	3 4 5 6
(d)	require a legal practitioner to give the Commission, or person, such other information as is reasonably necessary for the purposes of the audit.	7 8 9
(7)	If a record relating to an assigned matter:	10
(a)	is not in writing, or	11
(b)	is written in a language other than English, or	12
(c)	is not decipherable on sight,	13
	a requirement under subsection (6) (a) to produce the record is a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, in English and decipherable on sight, that contains all the information in the record.	14 15 16 17 18
(8)	The Commission must reimburse a legal practitioner for disbursements, such as photocopying, and any other out-of-pocket expenses reasonably incurred by the legal practitioner as a consequence of an audit.	19 20 21 22
(9)	Except in proceedings under Part 10 of the <i>Legal Profession Act 1987</i> , the production of a file, record, document or statement, or the giving of information, under this section does not subsequently affect any legal professional privilege to which, but for subsection (5), the file, record, document, statement or information would be subject.	23 24 25 26 27 28
(10)	The regulations may make provision for or with respect to audits under this section.	29 30
(11)	If a private legal practitioner fails or refuses to co-operate in the carrying out of an audit under this section, the Commission may do any one or more of the following:	31 32 33
(a)	terminate the services of the practitioner in relation to any work assigned by the Commission to the practitioner,	34 35 36

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Schedule 1 Amendments

(b)	remove the practitioner from a panel to which the practitioner is appointed,	1 2
(c)	refuse to pay to the practitioner any money payable by the Commission to the practitioner.	3 4
(12)	Nothing in section 12 (i) or section 25 prevents or restricts the carrying out of an audit under this section.	5 6
[7]	Section 72 Proceedings for offences	7
	Omit “section 26, 32 or 41” from section 72 (2).	8
	Insert instead “section 26 or 32”.	9
[8]	Schedule 7 Constitution and procedure of Legal Aid Review Committees	10 11
	Omit “all of its members” from clause 8 (1).	12
	Insert instead “2 members”.	13
[9]	Schedule 8 Savings, transitional and other provisions	14
	Insert at the end of clause 1A (1):	15
	<i>Legal Aid Commission Amendment Act 2002</i>	16