

# LEGAL AID COMMISSION (AMENDMENT) ACT 1990 No. 68

NEW SOUTH WALES



## TABLE OF PROVISIONS

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2. Commencement
3. Amendment of Legal Aid Commission Act 1979 No. 78

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**LEGAL AID COMMISSION (AMENDMENT) ACT 1990 No. 68**

**NEW SOUTH WALES**



**Act No. 68, 1990**

An Act to amend the Legal Aid Commission Act 1979 to make further provision with respect to the recovery of costs from persons granted legal aid and to validate certain matters; and for other purposes.  
[Assented to 20 November 1990]

*Legal Aid Commission (Amendment) 1990*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Legal Aid Commission (Amendment) Act 1990.

**Commencement**

2. This Act commences on the date of assent.

**Amendment of Legal Aid Commission Act 1979 No. 78**

3. The Legal Aid Commission Act 1979 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 34B:

After section 34A, insert:

**Commission can require security for costs etc.**

34B. (1) The power of the Commission to impose conditions on the grant or provision of legal aid to a person extends to authorise the imposition of a condition requiring the person:

- (a) to provide, or to enter into an agreement to provide, security to the satisfaction of the Commission for the payment of amounts payable or which may become payable by the person to the Commission under this Act; and
- (b) to pay any expenses incurred by the Commission by way of stamp duty, registration fees and other disbursements in connection with the provision of any such security or the entering into of any such agreement.

(2) The Commission is empowered to take such action as may be necessary or expedient for or in connection with the due enforcement of any such security or agreement.

*Legal Aid Commission (Amendment) 1990*

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SCHEDULE 1—AMENDMENTS—*continued*

(3) If a condition is imposed under subsection (1) (b), the person must pay the required amount in such manner and within such time as the Commission directs and it may be recovered by the Commission from the person as a debt in a court of competent jurisdiction.

(4) To remove any doubt, it is declared that the amounts payable by a person to the Commission under this Act include any interest payable in respect of those amounts under section 71A.

(2) Section 47 (**Payment of costs awarded against legally assisted persons**):

(a) From section 47 (1), omit “and (4)” wherever occurring, insert instead “, (4) and (4A)”.

(b) After section 47 (4), insert:

(4A) If a court or tribunal makes an order as to costs against a legally assisted person on the basis that the person did not accept an offer of compromise made in proceedings (being an offer made in accordance with rules of court or an offer of a prescribed kind):

(a) the Commission may decline to pay the whole, or such part as it determines, of those costs to the extent that they are costs incurred by the party that made the offer after the day on which the offer was made; and

(b) the legally assisted person is liable for payment of any of those costs that the Commission has declined to pay.

(c) In section 47 (5) and (7), after “subsection (4)” wherever occurring, insert “or (4A)”.

(3) Section 48 (**Repayment of costs and expenses to Commission when legal aid terminated**):

(a) After section 48 (1), insert:

(1A) The amount required to be paid under subsection (1) must be paid in such manner, and within such time, as the Commission directs.

(b) In section 48 (2), after “subsection (1)”, insert “, and any interest payable in respect of the amount,”.

*Legal Aid Commission (Amendment) 1990*SCHEDULE 1—AMENDMENTS—*continued*(4) Section 56 (**Appeals**):

In section 56 (1) (c), after “47 (4)”, insert “or (4A)”.

(5) Section 71A (**Interest**):

At the end of section 71A (1) (b), insert:

; or

- (c) an amount or part of an amount payable by a person under section 48 (1) that is not paid by such date as may be specified in a direction under section 48 (1A).

(6) Schedule 8 (**Savings, transitional and other provisions**):

- (a) At the end of clause 1A (1), insert:

Legal Aid Commission (Amendment) Act 1990.

- (b) After Part 6, insert:

**PART 7—VALIDATION AND  
TRANSITIONAL PROVISIONS CONSEQUENTIAL  
ON THE ENACTMENT OF THE LEGAL  
AID COMMISSION (AMENDMENT) ACT 1990**

**Definition**

31. In this Part:

“**the amending Act**” means the Legal Aid Commission (Amendment) Act 1990.

**Validation of conditions and agreements concerning legal aid**

32. (1) This clause applies to a condition or agreement which was (or was purportedly) imposed or entered into under either of the former Acts or this Act, before the commencement of the amending Act, in connection with the provision of legal aid to a person and which:

- (a) in the case of a condition, required or purportedly required the person to grant a charge over property as security for the payment of certain amounts by the person in connection with the provision of that legal aid; or

SCHEDULE 1—AMENDMENTS—*continued*

- (b) in the case of an agreement, required or purportedly required the person to pay money to the Commission, the Legal Services Commission or the Legal Aid Committee of the Law Society of New South Wales in connection with the provision of that legal aid.
- (2) The following provisions apply to and in respect of the conditions and agreements to which this clause applies and any charges arising or purportedly arising from those conditions:
- (a) the conditions, agreements and charges are validated;
  - (b) the due enforcement or purported enforcement of any such charge or agreement, and the recovery of money pursuant to that enforcement, before the commencement of the amending Act is validated;
  - (c) any such enforcement and recovery are authorised to be continued or commenced and proceeded with after the commencement of the amending Act, up to the limit imposed by subclause (3).
- (3) Any such agreement or charge is not to be enforced after the commencement of the amending Act so as to recover more than the sum of:
- (a) the costs, assessed as between solicitor and client, of the legal services provided to the person as a legally assisted person; and
  - (b) any disbursements (including barrister's fees) and out-of-pocket expenses incurred in or in connection with the provision of those services; and
  - (c) any expenses of the kind referred to in section 34B (1) (b) and payable under the agreement or charge; and
  - (d) any interest payable under the agreement or charge in respect of the amounts referred to in paragraphs (a)-(c).
- (4) The validations effected by this clause are to be considered to have taken effect as from the time of the action or purported action to which they relate.

*Legal Aid Commission (Amendment) 1990*

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SCHEDULE 1—AMENDMENTS—*continued*

**Transitional—offers of compromise**

33. The amendments made by the amending Act to section 47 of this Act extend to proceedings begun before the commencement of the amending Act, but do not apply to offers of compromise made before that commencement.

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[*Minister's second reading speech made in—  
Legislative Assembly on 10 October 1990  
Legislative Council on 14 November 1990*]



FIRST PRINT

## LEGAL AID COMMISSION (AMENDMENT) BILL 1990

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Legal Aid Commission Act 1979 so as:

- (a) to make it clear that the Legal Aid Commission is authorised to impose a condition on the grant or provision of legal aid that requires the legally assisted person to provide or agree to provide security to the Commission for the payment of any amount for which the person may become liable to the Commission under the Act and to pay the Commission's expenses in connection with the security or agreement;
  - (b) to empower the Commission to decline to pay certain legal costs that a legally assisted person has been ordered to pay as a result of the person not accepting an offer of compromise made in legal proceedings (the legally assisted person is then liable to pay those costs);
  - (c) to extend the provision that requires interest to be paid on certain amounts due to the Commission so that it will also apply to amounts that become due when legal aid is terminated before proceedings are concluded (interest is currently payable on similar amounts that become due to the Commission when legal aid continues through to the conclusion of the proceedings);
  - (d) to validate conditions (similar to those referred to in (a)) imposed before the commencement of the proposed Act on grants of legal aid whereby legally assisted persons were required to charge property with the payment of money for the provision of legal aid (also validated are the charges over property and agreements to pay money which resulted from those conditions);
  - (e) to validate certain agreements entered into before the commencement of the proposed Act under which legally assisted persons agreed to repay amounts expended in connection with the provision of legal aid to the person;
  - (f) to enact a transitional provision which extends the operation of the amendment described in (b) above to proceedings begun before, but not offers of compromise made before, the commencement of the proposed Act.
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*Legal Aid Commission (Amendment) 1990*

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on the date of assent.

Clause 3 gives effect to the Schedule of amendments to the Legal Aid Commission Act 1979 (Schedule 1).

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**SCHEDULE 1—AMENDMENTS**

Schedule 1 makes the amendments described above.

The amendment described in (a) above is made by Schedule 1 (1).

The amendment described in (b) above is made by Schedule 1 (2) and (4).

The amendment described in (c) above is made by Schedule 1 (3) and (5).

The amendments described in (d)-(f) above are made by Schedule 1 (6).

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FIRST PRINT

**LEGAL AID COMMISSION (AMENDMENT) BILL 1990**

**NEW SOUTH WALES**

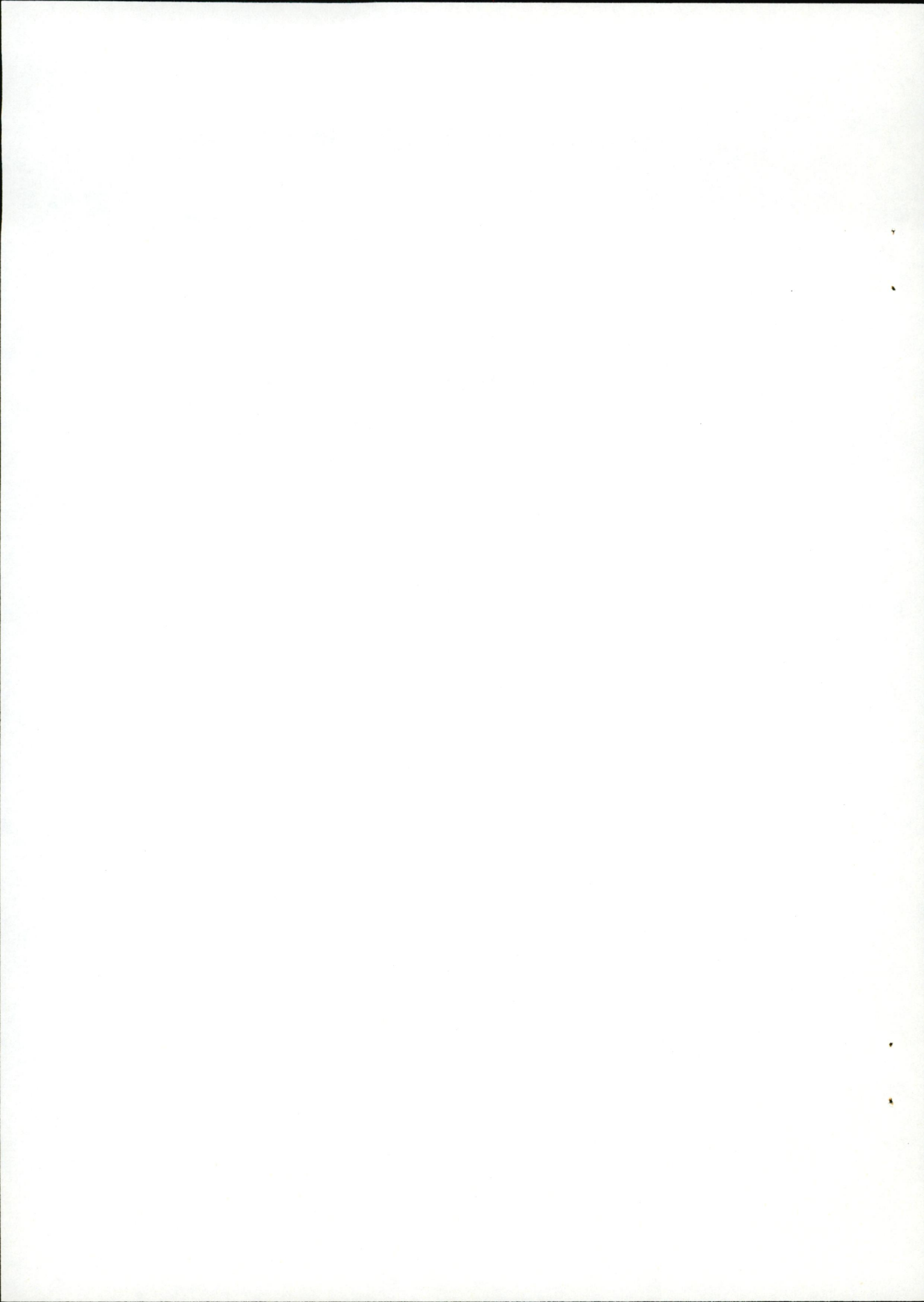


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2. Commencement
3. Amendment of Legal Aid Commission Act 1979 No. 78

**SCHEDULE 1—AMENDMENTS**

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**LEGAL AID COMMISSION (AMENDMENT) BILL 1990**

NEW SOUTH WALES



No.       , 1990

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**A BILL FOR**

An Act to amend the Legal Aid Commission Act 1979 to make further provision with respect to the recovery of costs from persons granted legal aid and to validate certain matters; and for other purposes.

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*Legal Aid Commission (Amendment) 1990*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Legal Aid Commission (Amendment) Act 1990.

**Commencement**

2. This Act commences on the date of assent.

**Amendment of Legal Aid Commission Act 1979 No. 78**

3. The Legal Aid Commission Act 1979 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

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- (a) to provide, or to enter into an agreement to provide, security to the satisfaction of the Commission for the payment of amounts payable or which may become payable by the person to the Commission under this Act; and
- (b) to pay any expenses incurred by the Commission by way of stamp duty, registration fees and other disbursements in connection with the provision of any such security or the entering into of any such agreement.

(2) The Commission is empowered to take such action as may be necessary or expedient for or in connection with the due enforcement of any such security or agreement.

*Legal Aid Commission (Amendment) 1990*

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SCHEDULE 1—AMENDMENTS—*continued*

(3) If a condition is imposed under subsection (1) (b), the person must pay the required amount in such manner and within such time as the Commission directs and it may be recovered by the Commission from the person as a debt in a court of competent jurisdiction.

(4) To remove any doubt, it is declared that the amounts payable by a person to the Commission under this Act include any interest payable in respect of those amounts under section 71A.

(2) Section 47 (**Payment of costs awarded against legally assisted persons**):

(a) From section 47 (1), omit “and (4)” wherever occurring, insert instead “, (4) and (4A)”.

(b) After section 47 (4), insert:

(4A) If a court or tribunal makes an order as to costs against a legally assisted person on the basis that the person did not accept an offer of compromise made in proceedings (being an offer made in accordance with rules of court or an offer of a prescribed kind):

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(b) the legally assisted person is liable for payment of any of those costs that the Commission has declined to pay.

(c) In section 47 (5) and (7), after “subsection (4)” wherever occurring, insert “or (4A)”.

(3) Section 48 (**Repayment of costs and expenses to Commission when legal aid terminated**):

(a) After section 48 (1), insert:

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*Legal Aid Commission (Amendment) 1990*

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SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 56 (**Appeals**):

In section 56 (1) (c), after “47 (4)”, insert “or (4A)”.

(5) Section 71A (**Interest**):

At the end of section 71A (1) (b), insert:

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(6) Schedule 8 (**Savings, transitional and other provisions**):

- (a) At the end of clause 1A (1), insert:

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*Legal Aid Commission (Amendment) 1990*

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) in the case of an agreement, required or purportedly required the person to pay money to the Commission, the Legal Services Commission or the Legal Aid Committee of the Law Society of New South Wales in connection with the provision of that legal aid.
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  - (c) any such enforcement and recovery are authorised to be continued or commenced and proceeded with after the commencement of the amending Act, up to the limit imposed by subclause (3).
- (3) Any such agreement or charge is not to be enforced after the commencement of the amending Act so as to recover more than the sum of:
- (a) the costs, assessed as between solicitor and client, of the legal services provided to the person as a legally assisted person; and
  - (b) any disbursements (including barrister's fees) and out-of-pocket expenses incurred in or in connection with the provision of those services; and
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*Legal Aid Commission (Amendment) 1990*

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SCHEDULE 1—AMENDMENTS—*continued*

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