

FIRST PRINT

LEGAL AID COMMISSION (AMENDMENT) BILL 1992

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 to remove the requirement that the chief executive of the Legal Aid Commission be a practising solicitor.

The title of the chief executive of the Commission is changed from Director of the Legal Aid Commission to Managing Director of the Legal Aid Commission.

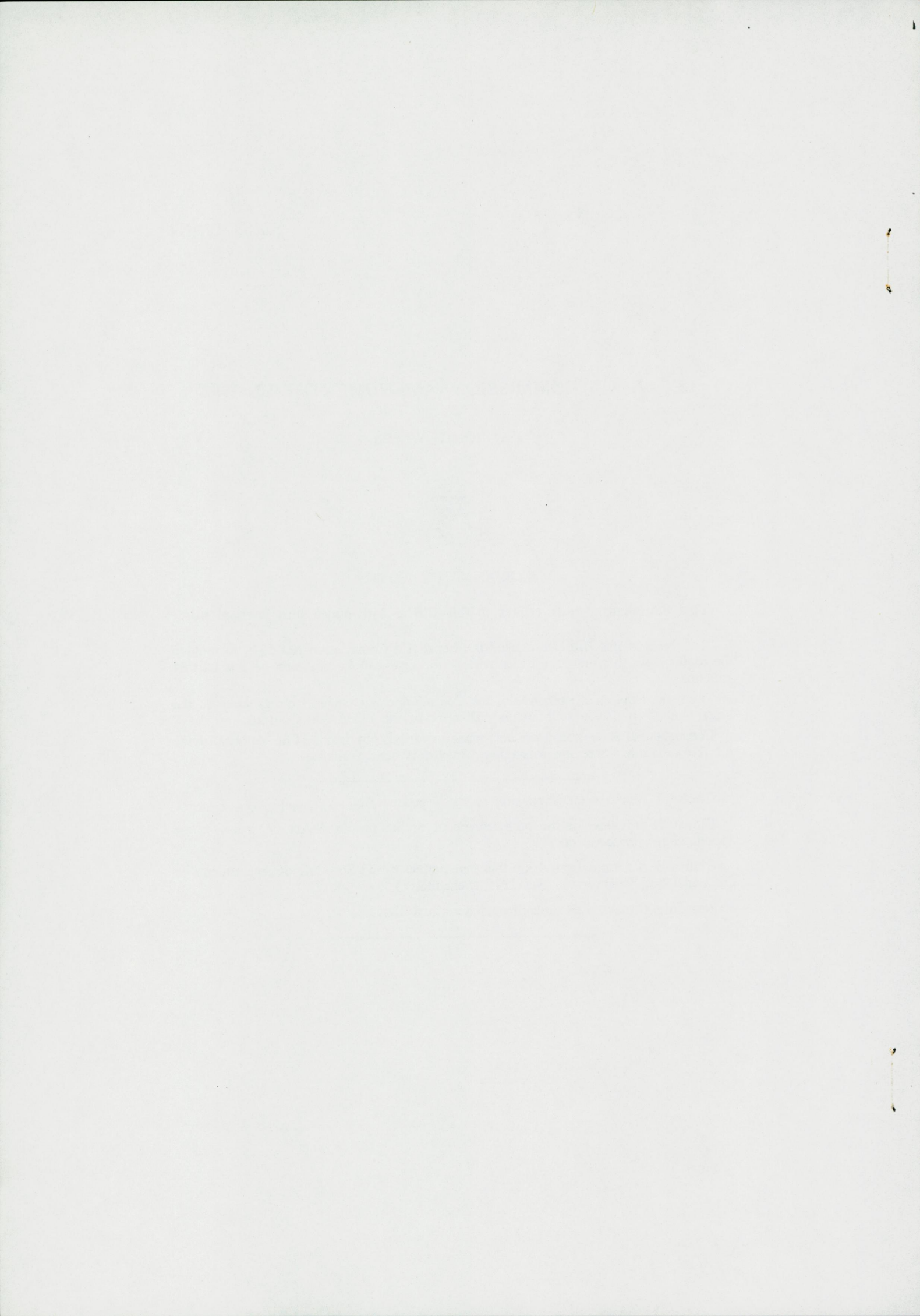
Consequential amendments are also made to various provisions of the Act to provide for the situation where the Managing Director is not a solicitor.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Legal Aid Commission Act 1979 (Schedule 1).

Schedule 1 makes the amendments described above.



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TABLE OF PROVISIONS

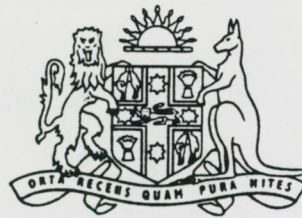
1. Short title
2. Commencement
3. Amendment of Legal Aid Commission Act 1979 No. 78

SCHEDULE 1—AMENDMENTS



LEGAL AID COMMISSION (AMENDMENT) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Legal Aid Commission Act 1979 to make further provision with respect to the qualifications for appointment as chief executive officer of the Legal Aid Commission; and for other purposes.

Legal Aid Commission (Amendment) 1992

The Legislature of New South Wales enacts:

Short title

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

5 Commencement

2. This Act commences on a day to be appointed by proclamation.

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 4 (**Definitions**):

(a) From section 4 (1), omit the definition of "Director".

(b) Insert in section 4 (1), in alphabetical order:

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"Managing Director" means the person appointed under section 14 (1) as Managing Director of the Commission;

(2) Section 7 (**Commissioners**):

From section 7 (a), omit "as Director", insert instead "as Managing Director".

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(3) The whole Act (except clauses 13 (1) and 20 (6) of Schedule 8):

Omit "the Director" and "The Director", wherever occurring, insert instead "the Managing Director" and "The Managing Director", respectively.

(4) Part 2, Division 3, heading:

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Omit "Director", insert instead "Managing Director".

(5) Section 14 (**Managing Director**):

Omit section 14 (1), insert instead:

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(1) The Minister may appoint a person to be the Managing Director of the Commission. The person appointed may be, but is not required to be, a barrister or solicitor.

Legal Aid Commission (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (6) Section 23A:
 Before section 24, insert:
Appointment of solicitor to be solicitor practising on own account 5
 23A. (1) If the Managing Director does not hold a current practising certificate, the Managing Director is to appoint a person to exercise the functions that would be exercisable by the Managing Director under sections 24, 28 and 64A if he or she held a current practising certificate. 10
 (2) The person appointed must be a member of staff of the Commission who is a solicitor of appropriate seniority and experience and who holds a current practising certificate.
- (7) Section 24 (**Performance of functions of solicitor**):
 After section 24 (2), insert: 15
 (2A) If the Managing Director does not hold a current practising certificate, a reference in subsection (2) to the Managing Director is to be read as a reference to the member of staff appointed for the time being under section 23A.
- (8) Section 28 (**Solicitor on the record**): 20
 At the end of section 28, insert:
 (2) If the Managing Director does not hold a current practising certificate, a reference in subsection (1) to the Managing Director is to be read as a reference to the member of staff appointed for the time being under section 23A. 25
- (9) Section 64A:
 Omit the section, insert instead:
Trust account
 64A. (1) A trust account is to be established called the Legal Aid Commission Trust Account. 30
 (2) The person responsible for the administration of the Account is the Managing Director or, if the Managing Director does not hold a current practising certificate, the member of staff appointed for the time being under section 23A. 35

Legal Aid Commission (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

5 (3) All money received for or on behalf of any legally assisted person by the Managing Director, or a member of staff of the Commission, when acting as a solicitor on behalf of the person is to be held in the Account by the person responsible for the administration of the Account.

(4) Part 6 of the Legal Profession Act 1987 applies to the Account.

10 (10) Schedule 8 (Savings, transitional and other provisions):

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

Legal Aid Commission (Amendment) Act 1992.

(b) After clause 33, insert:

15 **PART 8—TRANSITIONAL PROVISIONS
CONSEQUENT ON THE ENACTMENT OF THE
LEGAL AID COMMISSION (AMENDMENT) ACT
1992**

Continuation of trust account

20 34. (1) The trust account maintained for the purposes of section 64A before the commencement of the Legal Aid Commission (Amendment) Act 1992 is, on that commencement, taken to be established for the purposes of section 64A as substituted by that Act.

25 (2) The trust account maintained for the purposes of section 64A after the commencement of the Legal Aid Commission (Amendment) Act 1992 is a continuation of the trust account maintained for the purposes of that section before that commencement.

References to Director

30 35. (1) On and from the commencement of the Legal Aid Commission (Amendment) Act 1992, a reference in any other Act or in any instrument made under any Act or in an instrument of any other kind, to the Director of the Legal Aid Commission is taken to be a reference to the Managing Director.

35 (2) On and from the commencement of the Legal Aid Commission (Amendment) Act 1992, references in clauses 13 (1) and 20 (6) to the Director are taken to be references to

Legal Aid Commission (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

the Managing Director, unless the Managing Director does not hold a current practising certificate, in which case they are taken to be references to the member of staff appointed for the time being under section 23A.

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Existing Director

36. A person holding office as Director of the Commission immediately before the commencement of the Legal Aid Commission (Amendment) Act 1992 is, on that commencement, taken to have been appointed as Managing Director of the Commission under section 14 (1) as substituted by that Act.

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LEGAL AID COMMISSION (AMENDMENT) ACT 1992 No. 91

NEW SOUTH WALES



TABLE OF PROVISIONS

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

SCHEDULE 1—AMENDMENTS

LEGAL AID COMMISSION (AMENDMENT) ACT 1992 No. 91

NEW SOUTH WALES



Act No. 91, 1992

**An Act to amend the Legal Aid Commission Act 1979 to make further provision with respect to the qualifications for appointment as chief executive officer of the Legal Aid Commission; and for other purposes.
[Assented to 2 December 1992]**

Legal Aid Commission (Amendment) Act 1992 No. 91

The Legislature of New South Wales enacts:

Short title

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

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Legal Aid Commission Act 1979 No. 78

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

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 4 (Definitions):

(a) From section 4 (1), omit the definition of "Director".

(b) Insert in section 4 (1), in alphabetical order:

"Managing Director" means the person appointed under section 14 (1) as Managing Director of the Commission;

(2) Section 7 (Commissioners):

From section 7 (a), omit "as Director", insert instead "as Managing Director".

(3) The whole Act (except clauses 13 (1) and 20 (6) of Schedule 8):

Omit "the Director" and "The Director", wherever occurring, insert instead "the Managing Director" and "The Managing Director", respectively.

(4) Part 2, Division 3, heading:

Omit "Director", insert instead "Managing Director".

(5) Section 14 (Managing Director):

Omit section 14 (1), insert instead:

(1) The Minister may appoint a person to be the Managing Director of the Commission. The person appointed may be, but is not required to be, a barrister or solicitor.

SCHEDULE 1—AMENDMENTS—*continued*

(6) Section 23A:

Before section 24, insert:

Appointment of solicitor to be solicitor practising on own account

23A. (1) If the Managing Director does not hold a current practising certificate, the Managing Director is to appoint a person to exercise the functions that would be exercisable by the Managing Director under sections 24, 28 and 64A if he or she held a current practising certificate.

(2) The person appointed must be a member of staff of the Commission who is a solicitor of appropriate seniority and experience and who holds a current practising certificate.

(7) Section 24 (**Performance of functions of solicitor**):

After section 24 (2), insert:

(2A) If the Managing Director does not hold a current practising certificate, a reference in subsection (2) to the Managing Director is to be read as a reference to the member of staff appointed for the time being under section 23A.

(8) Section 28 (**Solicitor on the record**):

At the end of section 28, insert:

(2) If the Managing Director does not hold a current practising certificate, a reference in subsection (1) to the Managing Director is to be read as a reference to the member of staff appointed for the time being under section 23A.

(9) Section 64A:

Omit the section, insert instead:

Trust account

64A. (1) A trust account is to be established called the Legal Aid Commission Trust Account.

(2) The person responsible for the administration of the Account is the Managing Director or, if the Managing Director does not hold a current practising certificate, the member of staff appointed for the time being under section 23A.

Legal Aid Commission (Amendment) Act 1992 No. 91

SCHEDULE 1—AMENDMENTS—*continued*

(3) All money received for or on behalf of any legally assisted person by the Managing Director, or a member of staff of the Commission, when acting as a solicitor on behalf of the person is to be held in the Account by the person responsible for the administration of the Account.

(4) Part 6 of the Legal Profession Act 1987 applies to the Account.

(10) Schedule 8 (Savings, transitional and other provisions):

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

Legal Aid Commission (Amendment) Act 1992.

(b) After clause 33, insert:

**PART 8—TRANSITIONAL PROVISIONS
CONSEQUENT ON THE ENACTMENT OF THE
LEGAL AID COMMISSION (AMENDMENT) ACT
1992**

Continuation of trust account

34. (1) The trust account maintained for the purposes of section 64A before the commencement of the Legal Aid Commission (Amendment) Act 1992 is, on that commencement, taken to be established for the purposes of section 64A as substituted by that Act.

(2) The trust account maintained for the purposes of section 64A after the commencement of the Legal Aid Commission (Amendment) Act 1992 is a continuation of the trust account maintained for the purposes of that section before that commencement.

References to Director

35. (1) On and from the commencement of the Legal Aid Commission (Amendment) Act 1992, a reference in any other Act or in any instrument made under any Act or in an instrument of any other kind, to the Director of the Legal Aid Commission is taken to be a reference to the Managing Director.

(2) On and from the commencement of the Legal Aid Commission (Amendment) Act 1992, references in clauses 13 (1) and 20 (6) to the Director are taken to be references to

Legal Aid Commission (Amendment) Act 1992 No. 91

SCHEDULE 1—AMENDMENTS—*continued*

the Managing Director, unless the Managing Director does not hold a current practising certificate, in which case they are taken to be references to the member of staff appointed for the time being under section 23A.

Existing Director

36. A person holding office as Director of the Commission immediately before the commencement of the Legal Aid Commission (Amendment) Act 1992 is, on that commencement, taken to have been appointed as Managing Director of the Commission under section 14 (1) as substituted by that Act.

[*Minister's second reading speech made in—
Legislative Council on 18 November 1992
Legislative Assembly on 24 November 1992*]