

Queensland



ANNO TRICESIMO QUINTO

ELIZABETHAE SECUNDAE REGINAE



**No. 3 of 1986**

**An Act to amend the Legal Aid Act 1978 in certain particulars**

[ASSENTED TO 6TH MARCH, 1986]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

**1. Short title and citation.** This Act may be cited as the *Legal Aid Act Amendment Act 1986*.

(2) In this Act the *Legal Aid Act 1978* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Legal Aid Act 1978-1986*.

**2. Amendment of s. 6. Interpretation.** Section 6 of the Principal Act is amended by inserting in subsection (1), after the definition "Assistant Director", the following definition:—

““bank” means—

- (a) a bank as defined by section 5 of the Banking Act 1959 of the Commonwealth as amended and in force for the time being;
- or
- (b) a bank constituted under a law of a State or a Territory of the Commonwealth;”.

**3. Amendment of s. 27. Determination of applications for legal assistance.** Section 27 of the Principal Act is amended by—

(a) inserting after subsection (4) the following subsections:—

“(4A) Notwithstanding subsection (1), the Commission may direct that—

(a) a prescribed application or prescribed applications;

or

(b) a prescribed decision or prescribed decisions,  
be referred to it for its consideration and the application or decision, as the case may be, shall thereupon be deemed to be referred accordingly.

(4B) Where a matter is referred to the Commission pursuant to subsection (4A), the Commission may, notwithstanding subsection (1)—

(a) in a case to which paragraph (a) of subsection (4A) applies—

(i) grant the application for legal assistance and determine—

(A) the nature and extent of the legal assistance to be provided;

(B) whether the legal assistance is to be provided without charge or subject to either or both of the conditions referred to in section 32 (1);  
and

(C) whether the legal assistance is to be provided by making available the services of a private

legal practitioner or by making available the services of an officer of the Commission;

- (ii) refuse to provide legal assistance of the nature, or to the extent, applied for;

or

- (iii) refuse to provide legal assistance;

- (b) in a case to which paragraph (b) of subsection (4A) applies—

- (i) suspend the provision of the legal assistance pending the completion of such investigations in respect of the matter as the Commission deems appropriate;

- (ii) terminate the provision of legal assistance;

- (iii) alter the nature or extent of the legal assistance;

- (iv) make the provision of the legal assistance subject to either or both of the conditions referred to in section 32 (1);

or

- (v) alter a condition to which the provision of the legal assistance is subject in accordance with section 32 (1).

(4C) A decision of the Commission pursuant to subsection (4B) shall not be varied except by the Commission and shall not be subject to review under Part VI.

(4D) In subsection (4A)—

“prescribed application” means an application for legal assistance under this Act made—

- (a) by a specified person or a person who is a member of a specified class of person; or

- (b) in relation to a specified matter or a matter included in a specified class or kind of matter;

“prescribed decision” means a decision to provide legal assistance under this Act—

- (a) to a specified person or a person who is a member of a specified class of person; or

- (b) in relation to a specified matter or a matter included in a specified class or kind of matter.

(4E) (a) For the purposes of subsection (4A) or (4D), a direction may be given generally or in relation to a particular case.

(b) For the purposes of the definitions “prescribed application” and “prescribed decision” in subsection (4D) and without limiting the generality thereof, matters may be specified according to the nature or extent of the legal assistance applied for or that is being or may be provided, as the case may be.

(c) In subsection (4D), “specified” means specified by a direction of the Commission for the purposes of that subsection.”;

(b) in subsection (5)—

(i) inserting after the words “legal assistance,” the words “the Commission,”;

(ii) inserting after the words “reports as the” the word “Commission,”.

(c) inserting in paragraph (a) of subsection (6) after the words “if the” the word “Commission,”.

**4. Amendment of s. 28. Termination or variation of legal assistance.** Section 28 of the Principal Act is amended by—

(a) omitting the words “A decision to provide” and substituting the expression “(1) A decision (being a decision by a Legal Aid Committee or an officer of the Commission) to provide”;

(b) adding at the end thereof the following subsection:—

“(2) Where a decision to provide legal assistance is brought before a Legal Aid Committee, the Director or an appropriate officer of the Commission with a view to the possible exercise of powers conferred by this section on such Committee, Director or appropriate officer, as the case may be, the Committee, Director or appropriate officer may, if it or he considers it proper so to do, suspend the provision of the legal assistance pending the completion of such investigations in respect of the matter as the Committee, Director or appropriate officer, as the case may be, deems appropriate.”.

**5. Amendment of s. 29. Circumstances in which legal aid may be provided.** Section 29 of the Principal Act is amended by inserting after subsection (2) the following subsection:—

“(2A) Notwithstanding anything in subsection (2), if the Commission, in the special circumstances of the case, is of the opinion that, having regard to the value of the interest of the person in the dwelling house in which he resides and such other matters referred to in subsections (1), (2) and (3) as may be relevant, it is not reasonable to provide legal assistance to a person in terms of his application, the Commission may deal with the application or any decision thereon to provide legal assistance as if it were a matter referred to the Commission pursuant to paragraph (a) or (b) of section 27 (4A) and a decision of the Commission under this subsection shall not be varied except by the Commission and shall not be subject to review under Part VI.”.

**6. New s. 29A.** The Principal Act is amended by inserting after section 29 the following section:—

“**29A. Provision of legal assistance in terms of Convention.**

(1) Notwithstanding anything in section 29, where moneys have

been made available by the Commonwealth to the Commission to enable the Commission to perform in the State any of the obligations of the Commonwealth under the Convention it is competent to the Commission to provide legal assistance for that purpose from those moneys.

(2) This section has no application until the Convention is ratified by the Commonwealth.

(3) In this section—

“the Convention” means the Convention on International Access to Justice adopted by the Hague Conference on Private International Law at its fourteenth session and includes that Convention as subsequently amended by an amendment that is accepted and ratified by the Commonwealth.”

**7. Amendment of s. 34. Entitlement of legally assisted person to costs in proceedings.** Section 34 of the Principal Act is amended by—

(a) in subsection (4)—

(i) omitting the words “Where an amount is” and substituting the words “Where an amount of money or other property of whatever nature and description (both real and personal) is, or both an amount of money and other such property are,”;

(ii) inserting after the words “so much of that amount” the words “of money or so much of the amount of the money value of that property or so much of the sum of the amount of that money and the amount of the money value of that property, as the case may be,”;

(b) in subsection (5)—

(i) inserting in paragraph (a) after the word “amount” the words “of money or the money value of the other property or both the amount of money and the money value of the other property, as the case may be.”;

(ii) omitting in paragraph (b) the word “amount” and substituting the words “moneys or other property or both the moneys and other property”;

(c) inserting after subsection (5) the following subsections:—

“(5A) The amount that a legally assisted person is liable to pay to the Commission under subsection (4) shall, until payment, be a first charge in favour of the Commission on the amount of money or other property, or both the amount of money and other property, actually recovered by or on behalf of the legally assisted person in respect of the matter in which the legal assistance was given.

(5B) The Commission may enforce the charge created by subsection (5A) in any manner which would be available if the charge had been given *inter partes*.

(5C) All conveyances and acts done to defeat, or operating to defeat, the charge created by subsection (5A) shall, except in the case of a transfer or conveyance to a bona fide purchaser for value without notice, be void as against the Commission.

(5D) Where an amount of money or other property that is, or both an amount of money and other property that are, recoverable by a legally assisted person in a matter in which the legal assistance is given comes into the possession or control of a solicitor acting on behalf of the legally assisted person in that matter, the solicitor shall retain possession or control of such money or property or money and property until the Director has made a determination under subsection (4) and has notified the solicitor in writing thereof or until the Director consents otherwise in writing.

(5E) Where a legally assisted person is liable to pay to the Commission an amount of money under subsection (4) and the solicitor for the assisted person has in his possession or control moneys recovered by or on behalf of the assisted person in the matter in which he was legally assisted, the solicitor shall pay to the Commission out of such moneys, or so far as they may extend, the amount which the legally assisted person is so liable to pay and the receipt of the Commission shall constitute a discharge to the solicitor in respect of moneys paid to the Commission under this subsection.”;

(d) omitting in subsection (6) the words “that is” and substituting the words “of money or other property that is, or both an amount of money and other property that are,”;

(e) in subsection (7)—

(i) omitting the words “amount is” and substituting the words “amount of money or other property is, or both an amount of money and other property are,”;

(ii) inserting after the words “the amount” the words “of money or other property or both the amount of money and other property, as the case may be,”;

(f) in subsection (8)—

(i) inserting after the words “an amount” the words “of money or other property, or both an amount of money and other property, as the case may be,”;

(ii) inserting after the words “the amount” (wherever occurring) the words “of money or other property, or both the amount of money and other property, as the case may be,”.

**8. Amendment of s. 35. Payment by Commission of costs awarded against legally assisted persons.** Section 35 of the Principal Act is amended by—

(a) omitting in paragraph (a) of subsection (1) the words “(other than a cross-proceeding) instituted by that person in a court or before

a tribunal” and substituting the words “in a court or before a tribunal to which that person is a party”;

(b) omitting subsection (2) and substituting the following subsection:—

“(2) A request under subsection (1) shall be decided by the Director in accordance with guidelines determined by the Commission.”;

(c) omitting in subsection (3) the words “statutory officer of the Commission or the Legal Aid Committee, as the case may be,” and substituting the word “Director”.

**9. Amendment of s. 36. Notification of decisions.** Section 36 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(1) Where a decision in relation to—

(a) the provision of legal assistance to a person;

(b) the amount that a legally assisted person is liable to pay to the Commission under section 34 (4);

or

(c) a request made by a person to the Commission pursuant to section 35 in respect of the payment of costs,

including a decision reconsidering or reviewing a previous decision, is made under this Act, the Director shall, within 14 days after the decision is made, communicate the decision to that person and shall, if requested to do so, cause to be furnished to the person a short statement of the reasons for the decision.”;

(b) in paragraph (a) of subsection (2)—

(i) inserting after the words “decision and” the words “, where the decision was made by a Legal Aid Committee or an officer of the Commission,”;

(ii) omitting the words “reconsidered and” and substituting the words “reconsidered or”;

(c) adding at the end thereof the following subsections:—

“(3) Where a legally assisted person becomes a party to proceedings or a party to proceedings becomes a legally assisted person, the solicitor for the legally assisted person shall forthwith serve all other parties with notice in a form approved by the Commission that the person is a legally assisted person and shall, if at any time thereafter any other person becomes a party to the proceedings, forthwith serve such a notice upon that person.

(4) A notice required to be served under subsection (3) may be served either—

- (a) by serving it personally on the person required to be served or that person's solicitor;
- (b) by sending it by pre-paid post addressed—
  - (i) to the person required to be served at his place of residence or business; or
  - (ii) to that person's solicitor at his place of business, last known to the person by whom it is sent;
 or
- (c) if served together with any process of a court, by any mode of service authorized by rules of court for service of that process.”.

**10. Repeal of and new s. 37.** The Principal Act is amended by repealing section 37 and substituting the following section:—

**“37. Reconsideration of decisions.** (1) Subject to section 41A (3), where a decision, other than a decision of the Commission pursuant to section 27 (4B) or 29 (2A) or a decision in relation only to the provision of legal advice or duty lawyer services to which section 31 relates, has been made—

- (a) refusing to provide legal assistance under this Act;
  - (b) refusing to provide legal assistance under this Act of the nature, or to the extent, applied for;
  - (c) imposing a condition on the provision of legal assistance under this Act or varying adversely to a legally assisted person a condition so imposed;
- or
- (d) terminating or suspending the provision of legal assistance under this Act or altering adversely to a legally assisted person, the nature or extent of legal assistance that is being provided to that person,

the person who applied for the legal assistance may, by notice in writing to the Commission—

- (e) in a case where the decision was made, in the first instance, by a Legal Aid Committee—request that the decision be referred to a Review Committee for review;
- or
- (f) in a case where the decision was made by an officer of the Commission—request that the decision be reconsidered by a Legal Aid Committee.



(2) Subject to section 41A (3), where a decision has been made by the Director—

(a) determining the amount that a legally assisted person is liable to pay to the Commission under section 34 (4);

or

(b) refusing to pay the whole or any part of any amount that a person has, pursuant to section 35, requested the Commission to pay,

that person may, by notice in writing to the Commission, request that the decision be referred to a Review Committee for review.

(3) Where a notice requesting that a decision (being a decision to which subsection (1) (e) or (2) relates) be reviewed is received by the Commission, the Commission shall comply with the request.

(4) Where a notice requesting that a decision (being a decision to which subsection (1) (f) relates) be reconsidered is received by the Commission, the decision shall be reconsidered by—

(a) a Legal Aid Committee;

or

(b) where a statutory officer of the Commission is of the opinion that a Legal Aid Committee cannot within the time available reconsider the decision, by a statutory officer of the Commission,

in accordance with arrangements made or approved by the Director.

The Legal Aid Committee that, or the statutory officer of the Commission who, reconsiders the decision may—

(i) confirm that decision;

(ii) vary that decision;

or

(iii) set aside that decision and substitute its own decision for that decision.

(5) Where a decision of an officer of the Commission is reconsidered under subsection (4), the person who requested the reconsideration may, by notice in writing to the Commission, request the Commission to refer—

the decision confirmed or the decision as varied upon the reconsideration;

or

the decision substituted for the decision the subject of the reconsideration,

to a Review Committee for review and the Commission shall comply with any such request.

(6) A request by a person for a reconsideration or review of a decision shall be made before the expiration of 3 months after the person received notice of the relevant decision or such longer period as the Commission, in special circumstances, allows."

**11. Amendment of s. 40. Function of Review Committee.** Section 40 of the Principal Act is amended by inserting after the expression "section 37 (3)" the expression "or (5)".

**12. Amendment of s. 41. Decision of Review Committee.** Section 41 of the Principal Act is amended by—

(a) omitting subsections (1) and (2) and substituting the following subsection:—

"(1) A Review Committee that reviews a decision referred to it under section 37 (3) or (5) shall, in writing—

(a) confirm that decision;

(b) vary that decision;

or

(c) set aside that decision and substitute its own decision for that decision.";

(b) omitting from subsection (5) the word "The" and substituting the expression "Subject to section 41A, the".

**13. New section 41A.** The Principal Act is amended by inserting the following section after section 41:—

**"41A. Review by Commission.** (1) Notwithstanding any other provision of this Act, where a decision has been made under this Act by an officer of the Commission, a Legal Aid Committee or a Review Committee in respect of an application for legal assistance, the Commission may, of its own motion, make a determination—

(a) confirming that decision;

(b) varying that decision;

or

(c) setting aside that decision and substituting its own decision for that decision.

(2) A determination of the Commission made pursuant to subsection (1) shall be final and conclusive.

(3) It is not competent—

(a) to a Legal Aid Committee to review a decision of an officer of the Commission;

or

(b) to a Review Committee to review a decision of an officer of the Commission or of a Legal Aid Committee,

in respect of an application for legal assistance where a determination has been made by the Commission pursuant to subsection (1) in respect of that decision.

(4) The Commission may exercise the power given to it by this section in such cases and on such occasions as to it seem appropriate and this section shall not be construed as requiring the Commission to exercise that power in any particular case.”

**14. Amendment of s. 45. Investment.** Section 45 of the Principal Act is amended by—

(a) omitting the word “Moneys” and substituting the expression, “(1) Moneys”;

(b) inserting after paragraph (d) the following paragraph:—

“(da) in or on the security of authorized bills of exchange;”;

(c) adding at the end thereof the following subsection:—

“(2) In this section—

“authorized bills of exchange” means bills of exchange which are payable on demand or not more than 200 days from the date on which they are acquired by the Commission and which if bought for value by the Commission would give the Commission as holder in due course a right of recourse against a bank for an amount equal to the face value of the bills.”.

**15. Repeal of section 47 and substitution of new sections.** The Principal Act is amended by repealing section 47 and substituting the following sections:—

“**47. Budget of Commission.** (1) The Commission shall before the commencement of each financial year adopt and present to the Minister a budget showing its estimates of its revenue, including moneys to be made available by the Commonwealth, and expenditure in respect of that financial year.

(2) A budget of the Commission shall be of no force or effect until it is approved by the Minister.

(3) The Minister may amend a budget of the Commission in such a way as he thinks reasonable and shall amend it where necessary and in any item so that it shall as nearly as possible balance for the financial year to which it relates having regard to the moneys that are or may be paid to the Commission in pursuance of any Act, appropriated by Parliament for the purposes of the Commission or made available to the Commission by the Commonwealth for the purpose of the provision of legal assistance and to any other revenues or moneys available to or reasonably expected by the Commission for that financial year.

(4) When the Minister has approved of a budget of the Commission, the budget as approved, whether or not it has been amended pursuant to subsection (3), shall be binding upon the Commission.

(5) If in the opinion of the Minister the circumstances so require, the Minister may direct the Commission to adopt and present to the Minister as soon as is reasonably practicable, a supplementary budget showing its estimates of its revenue and expenditure in respect of such remaining part of a financial year as is specified in the direction.

(6) The provisions of this section and section 47A apply with all necessary modifications to a supplementary budget and, upon its approval by the Minister, the supplementary budget shall, as from the commencement of the part of the financial year to which it relates, be and become the budget of the Commission and this section and section 47A shall be read and construed accordingly.

(7) This section, as in force at any time after the commencement of the *Legal Aid Act Amendment Act 1986*, applies in relation to the first financial year of the Commission that commences after that commencement and in relation to subsequent financial years.

(8) The provisions of section 47 as in force before the commencement of the *Legal Aid Act Amendment Act 1986* shall, notwithstanding the repeal thereof, continue to apply in relation to a financial year that commenced before that commencement.

**47A. Observance of budget.** (1) Subject to subsection (2), the Commission shall confine its disbursements throughout a financial year within the items and amounts contained in its budget for that financial year as approved by the Minister.

(2) If, during any financial year, it appears to the Commission that in the circumstances that have arisen it is proper that the Commission make a disbursement in that financial year that was not provided for in the budget (as approved) for that financial year or that exceeds the amount estimated in respect of that disbursement in the budget (as approved) for that financial year, the Commission may make the disbursement or excess disbursement if the Commission, prior to making such disbursement or excess disbursement—

(a) passes a resolution approving that the disbursement or excess disbursement be made;

and

(b) ensures that the budget as approved by the Minister will not then be exceeded in total by the disbursement or excess disbursement.

(3) Nothing in section 47 or this section operates to prevent the disbursement by the Commission of moneys made available

by the Commonwealth to the Commission to meet any shortfall between—

the estimated expenditure in the budget for a financial year,

and

the actual expenditure in that year,

in respect of the provision of legal assistance, the cost of which the Commonwealth has undertaken to meet in accordance with arrangements made with the Commission.”.

**16. Amendment of s. 77. Establishment of consultative committees.** Section 77 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:—

“(2) A consultative committee established pursuant to subsection (1) may be established to operate generally or it may be restricted in relation to functions or locality or in relation to both functions and locality.”.

**17. Amendment of s. 81. Secrecy.** Section 81 of the Principal Act is amended by inserting after subsection (2) the following subsections:—

“(2A) Nothing in subsection (2) precludes a person from producing a document, or divulging or communicating information, to The Statutory Committee of the Queensland Law Society Incorporated or either of the bodies known as the Barristers’ Board or The Solicitors’ Board or, with the consent of the Minister, to any other person or body of persons where, in the opinion of the Commission, it is in the public interest that the document be produced or the information be divulged or communicated.

(2B) The Commission may direct that the production of a document or the divulging or communicating of information pursuant to subsection (2A) be subject to such conditions (if any) as the Commission thinks appropriate in the circumstances and imposes and without limiting the generality hereof conditions may be imposed restricting the use that may be made of the document produced or the information divulged or communicated to protect the anonymity of any legally assisted person, or person who has applied for legal assistance, to whom the document or information in question relates.

(2C) The Minister may direct the Commission to impose, pursuant to subsection (2B), such conditions upon the production of a document or the divulging or communicating of information as to him seem desirable and the Commission shall comply with that direction.

(2D) A person to whom a document is produced or information is divulged or communicated pursuant to subsection (2A) shall comply with any condition imposed under subsection (2B).

Penalty: \$1 000 or imprisonment for 3 months.”.

**18. Amendment of s. 83. Offence of misrepresentation.** Section 83 of the Principal Act is amended by adding at the end thereof the following subsection:—

“(8) A prosecution for an offence against subsection (1) or (2) may be instituted at any time within 12 months after the commission of the offence or within 12 months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.”.