

# **Legal Aid Commission (Amendment) Act 1992**

**No. 38 of 1992**

## **TABLE OF PROVISIONS**

### *Section*

1. Purpose
2. Commencement
3. Principal Act
4. Constitution of Commission
5. Consequential amendment
6. Amendment of quorum
7. Conditions on grants of assistance
8. Fees paid to private practitioners
9. Interest not included in costs
10. Insertion of new sections to follow section 47 and repeal of section 48A
  - 47A. Costs may be charged on the land
  - 47B. Charges over transfer of Land Act land
  - 47C. Charges over land not under the Transfer of Land Act
  - 47D. Extinguishment of charge
  - 47E. Enforcement of the charge
11. Costs
12. Insertion of new section to follow section 48B—
  - 48C. Assignment of right to recover money to Commission
13. Transitional provisions—Commission
14. Transitional provision—Charges



No. 38 of 1992

## **Legal Aid Commission (Amendment) Act 1992**

[Assented to 16 June 1992]

**The Parliament of Victoria enacts as follows:**

### **1. *Purpose***

The purpose of this Act is to amend the **Legal Aid Commission Act 1978** to provide for—

- (a) changes to the membership of the Commission; and
- (b) charges to be taken out over land in respect of unpaid costs; and
- (c) interest to accrue on amounts owed by assisted persons; and
- (d) the assignment of rights to recover money to the Commission; and
- (e) the payments to be made to private legal practitioners acting for assisted persons; and

*Legal Aid Commission (Amendment) Act 1992*  
*Act No. 38/1992*

(f) other matters.

**2. Commencement**

This Act comes into operation on a day or days to be proclaimed.

No. 9245.  
Reprinted to  
61/1989.

**3. Principal Act**

In this Act, the **Legal Aid Commission Act 1978** is called the Principal Act.

**4. Constitution of Commission**

In section 4 of the Principal Act—

- (a) in sub-section (1)—
  - (i) for “ten” substitute “eleven”; and
  - (ii) in paragraph (e), for “one” substitute “two”; and
  - (iii) in paragraph (fa) for “Federation of Victorian Legal Centres” substitute “Federation of Community Legal Centres (Vic.) Inc.”; and
- (b) in sub-section (2), for “nine” substitute “ten”; and
- (c) in sub-section (4), after “sub-section (1)—” insert  
“(a) one shall be a person who has expertise in finance, commerce or investment; and”; and
- (d) in sub-section (7), for “Federation of Victorian Legal Centres” substitute “Federation of Community Legal Centres (Vic.) Inc.”.

**5. Consequential amendment**

In section 4A of the Principal Act—

- (a) in sub-section (3), for “each as the alternate member for the member” substitute “as the alternate member for each member”; and
- (b) in sub-section (5), for “the member” substitute “a member”.

**6. Amendment of quorum**

In section 8 (3) of the Principal Act, for "five" substitute "six".

**7. Conditions on grants of assistance**

In section 27 of the Principal Act—

(a) in sub-section (1) (a)—

- (i) after "pays to the Commission" insert "or as directed by the Commission"; and
- (ii) after "assistance" insert "and that the person is or may be required to pay interest on the specified amount or amount to be specified, upon any terms and conditions determined by the Commission"; and

(b) in sub-section (1) (b)—

- (i) after "to the Commission" insert "or as directed by the Commission"; and
- (ii) after "assistance" insert "and that the person is or may be required to pay interest on the payment or payments incurred or to be incurred, upon any terms and conditions determined by the Commission"; and

(c) in sub-section (1) (c), after "of the cost" insert " , and any interest payable on the whole or the part of the cost,"; and

(d) after sub-section (1A) insert—

"(1B) The Commission may not impose a condition under sub-section (1) requiring a person to pay a rate of interest which exceeds 70% of the rate fixed under section 2 of the **Penalty Interest Rates Act 1983**.

(1C) If the Commission has imposed a condition under sub-section (1) requiring a person to pay interest on any amount payable to the Commission, interest must not accrue until 30 days after the Commission has communicated to the assisted person under section 33—

*Legal Aid Commission (Amendment) Act 1992*  
*Act No. 38/1992*

- (a) its decision to impose a condition requiring the payment of the amount; and
  - (b) its decision to impose the condition requiring the payment of interest.
- (1D) If communication of one decision to impose a condition is given at a different time from the other, interest must not accrue until 30 days after the later communication.”.

**8. Fees paid to private practitioners**

In section 32 of the Principal Act, for sub-sections (2) and (2A) substitute—

- “(2) The Commission may determine scales of payments to be made to private practitioners for the performance of services on behalf of assisted persons.
- (2A) The payment to be made to a private practitioner for the performance of services on behalf of assisted persons is—
- (a) the amount payable under any applicable scale determined pursuant to sub-section (2); or
  - (b) in any matter for which an applicable scale has not been determined, an amount determined by the Commission.
- (2B) The Commission must consult with the Law Institute of Victoria and the Victorian Bar Council, as the case requires, before making a determination under sub-section (2).
- (2C) Despite sub-section (2A), the Commission may enter into an agreement with a private practitioner to undertake work on behalf of an assisted person for payments which are different from those determined by the Commission.”.

**9. Interest not included in costs**

In section 47 (2) of the Principal Act, after “moneys” insert “, other than interest,”.

**10. Insertion of new sections to follow section 47 and repeal of section 48A**

(1) After section 47 of the Principal Act insert—

**“47A. Costs may be charged on the land**

(1) If any amount required to be paid to the Commission by an assisted person is subject to a condition under section 27 (1) (c) (i), the Commission may secure the payment of that amount (including any unpaid interest) and any interest which may become due and unpaid on the whole or any part of that amount under this Act by taking out a charge over any land which is recovered or preserved for the assisted person in the proceedings.

(2) If—

(a) an amount required to be paid to the Commission by an assisted person has not been paid; and

(b) the assisted person is registered as the proprietor of an estate in fee simple, either solely or as a joint tenant or a tenant in common, in land under the **Transfer of Land Act 1958** or holds an estate in fee simple or an equity of redemption, either solely or as a joint tenant or a tenant in common, in land not under that Act; and

(c) the assisted person has refused or failed to pay the amount, within the time directed by the Commission, or to give a charge over the land to secure the payment of that amount—

the Commission may secure the payment of any amount which has not been paid (including any unpaid interest) and any interest which may become due and unpaid on the whole or any part of that amount under this Act by taking out a charge over that land.

*Legal Aid Commission (Amendment) Act 1992*  
*Act No. 38/1992*

- (3) A charge taken out by the Commission is to be for the benefit of the Legal Aid Fund.”

**“47B. Charges over Transfer of Land Act land**

- (1) If the Commission proposes to take out a charge over land under the **Transfer of Land Act 1958**, the Director must lodge with the Registrar of Titles a notice specifying the relevant Folio of the Register and the amount which has not been paid (including any interest) and the rate of any interest which may become due and unpaid on the whole or any part of that amount.
- (2) The Registrar of Titles must, subject to the provisions of Division 1 of Part V of the **Transfer of Land Act 1958**, record in the register a notice lodged by the Director and upon the recording of that notice the land becomes charged with the payment of the amount which has not been paid (including any interest) and any interest which may become due and unpaid on the whole or any part of that amount.
- (3) The charge may be registered without submission to the Registrar of any relevant certificate of title.”

**“47C. Charges over land not under the Transfer of Land Act**

- (1) If the Commission proposes to take out a charge over land which is not under the **Transfer of Land Act 1958**, the Director must sign a certificate describing the land charged and specifying the amount which has not been paid (including any interest) and the rate of any interest which may become due and unpaid on the whole or any part of that amount and register the certificate by delivering to the Registrar-General, a memorial of a certificate which complies with Part 1 of the **Property Law Act 1958**.

- (2) Upon the registration of the certificate the land becomes charged with the payment of the amount which has not been paid (including any interest) and any interest which may become due and unpaid on the whole or any part of that amount."

**"47D. Extinguishment of charge**

- (1) If the amount secured by the charge is paid, recovered or waived, the Director must sign a certificate stating this and—
  - (a) if the land is under the **Transfer of Land Act 1958** the certificate must be lodged with the Registrar of Titles; and
  - (b) if the land is not under the **Transfer of Land Act 1958** a memorial of the certificate which complies with Part 1 of the **Property Law Act 1958** must be lodged with the Registrar-General.
- (2) If the Registrar of Titles receives a certificate under sub-section (1) with respect to land under the **Transfer of Land Act 1958**, he or she must cancel any recording of the charge on any Folio of the Register.
- (3) If the Registrar-General receives a memorial of a certificate under sub-section (1) with respect to land not under the **Transfer of Land Act 1958** and the memorial complies with Part 1 of the **Property Law Act 1958**, he or she must register it, and the charge is extinguished on the registration of the certificate."

**"47E. Enforcement of the charge**

- (1) For the purpose of enforcing a charge to which section 47A (2) applies, the Commission may sell the land charged.
- (2) If the Commission intends to enforce the charge by selling the land it must serve notice of its intention to sell the land on the assisted person.



*Legal Aid Commission (Amendment) Act 1992*  
*Act No. 38/1992*

s. 10

- (3) The notice—
- (a) must be in writing; and
  - (b) must be served not less than 1 month before the intended sale; and
  - (c) must state—
    - (i) the amount owing at the date of the notice; and
    - (ii) that the sale will not proceed if payment is made within 1 month of the service of the notice; and
    - (iii) the address at which payment may be made.
- (4) If the land sold is under the **Transfer of Land Act 1958**, section 77 of that Act applies to the sale as if—
- (a) the charge were a registered mortgage; and
  - (b) the Commission were a mortgagee under such a mortgage; and
  - (c) the registered proprietor of the land were a mortgagor under such a mortgage; and
  - (d) the requirement relating to the giving of notice were deleted; and
  - (e) after sub-section (3) (a) there were inserted—
    - “(aa) Secondly, in the case of a charge under section 47A of the **Legal Aid Commission Act 1978**, in paying the money owing in respect of mortgages or charges ranking higher in priority than the charge, in order of their respective priorities;”;
  - (f) in sub-section (3), references to “secondly”, “thirdly” and “fourthly” were references to “thirdly”, “fourthly” and “fifthly” respectively.

- (5) If the land sold is not under the **Transfer of Land Act 1958** the Commission may convey a legal estate (free from encumbrances) in the land as if the charge were a first mortgage under which the legal estate vested in the Commission.
  - (6) Proceeds from the sale of land not under the **Transfer of Land Act 1958** must first be applied in the payment of encumbrances which ranked in priority to the Commission's interest at the time of the registration of the charge.
  - (7) For the purpose of enforcing a charge or registering an instrument connected with an enforcement of a charge—
    - (a) the Registrar of Titles may cancel the folio of the Register for the land charged and create a new folio;
    - (b) the Commission may require a person holding a document that is part of the chain of title for land not under the **Transfer of Land Act 1958** to produce it to the Commission.”.
- (2) Section 48A of the Principal Act is repealed.
  - (3) In section 27 (1) (c) (i) of the Principal Act, for “section 48A” substitute “section 47A (1).

## **11. Costs**

In section 48 of the Principal Act—

- (a) in sub-section (1) (a), omit “instituted by that person”; and
- (b) in sub-section (6), after paragraph (b) insert—

“; and

  - (c) pay interest on the reimbursement at any time and upon any terms and conditions determined by the Commission.”; and

*Legal Aid Commission (Amendment) Act 1992*  
*Act No. 38/1992*

(c) after sub-section (6) insert—

“(7) The Commission may not require the payment of interest under sub-section (6) (c) at a rate which exceeds 70% of the rate fixed under section 2 of the Penalty Interest Rates Act 1983.”.

**12. Insertion of new section to follow section 48B**

After section 48B of the Principal Act insert—

**“48C. Assignment of right to recover money to Commission**

(1) If—

- (a) an assisted person has a right to recover money in respect of any matter for which that person has been given assistance under this Act; and
- (b) the assisted person owes money in respect of that matter to the Commission; and
- (c) the assisted person has not recovered that money within a time which is, in the opinion of the Commission, reasonable—

that person must, within 21 days after the Commission has served a notice on him or her to do so, assign to the Commission those rights and remedies which he or she has in respect of the recovery of that money which are specified by the Commission in the notice.

- (2) A person who does not comply with a notice under sub-section (1) is to be taken to have assigned those rights and remedies to the Commission on the expiration of 21 days after the service of the notice.
- (3) The Commission must pay to the assisted person any amount of money recovered by the Commission through the exercise of a right or remedy assigned under this section which exceeds any money owing to the Commission

in respect of that matter and any of the costs to the Commission of recovering the money.”.

**13. *Transitional provisions—Commission***

- (1) Despite the coming into operation of section 4 of this Act, the Legal Aid Commission of Victoria as it is constituted on and from the coming into operation of that section is to be taken to be the same body as the Legal Aid Commission of Victoria as it was constituted immediately before the coming into operation of that section.
- (2) Despite the coming into operation of section 4(c) of this Act, the member of the Legal Aid Commission of Victoria holding office under section 4 (1) (b) of the Principal Act, to whom section 4 (4) (b) of that Act does not apply, immediately before the coming into operation of section 4, continues to hold office for the term of his appointment unless he resigns, or is removed from office under section 5 (3) of the Principal Act or his office becomes vacant through the operation of section 5 (4) of that Act.

**14. *Transitional provision—charges***

Section 48A of the Principal Act as in force immediately before the coming into operation of section 10 (2) of this Act, continues to apply to any charge created by it as if section 10 of this Act had not been enacted.

---

---

NOTES

1. *Minister's second reading speech—*

*Legislative Assembly: 30 April 1992*

*Legislative Council: 2 June 1992*

2. The long title for the Bill for this Act was “A Bill to amend the Legal Aid Commission Act 1978 and for other purposes.”.
3. Section headings appear in bold italics and are not part of the Act. (See Interpretation of Legislation Act 1984.)