

House of Representatives

Supplementary Order Paper

Tuesday, 11 June 2013

Legal Assistance Amendment Bill

Proposed amendments

Hon Judith Collins, in Committee, to move the following amendments:

Clause 7: new section 10(2)

In *clause 7, new section 10(2)*, replace “thresholds” (line 28 on page 10) with “maximum level”.

New clauses 8 and 9

After *clause 7* (after line 13 on page 11), insert:

8 Decision on application for legal aid

Section 16 is amended by adding the following subsection:

“(5) This section is subject to **section 16A**.”

9 New section 16A inserted

The following section is inserted after section 16:

“16A Use of automated electronic systems for certain grants of legal aid

“(1) The Commissioner may use an automated electronic system to grant legal aid to a natural person if—

“(a) the person requires the grant for proceedings in respect of an offence punishable by a maximum term of imprisonment of not less than 6 months; and

“(b) neither the income nor the disposable capital of that person exceeds the relevant maximum level prescribed in the regulations.

“(2) A grant made in the manner authorised by **subsection (1)** is, for the purposes of this Act, taken to have been made by the Commissioner.

- “(3) Where an error is made in a grant of legal aid made in the manner authorised by **subsection (1)**, the Commissioner may cancel or correct the grant.
- “(4) **Subsection (2)** is subject to **subsection (3)**.
- “(5) A grant made in the manner authorised by **subsection (1)** is not subject to any of the conditions referred to in section 18.
- “(6) Every grant made in the manner authorised by **subsection (1)** must state a maximum grant, which must be the amount prescribed under **subsection (7)**.
- “(7) The Commissioner may from time to time, by notice in the *Gazette*, specify the amount of the maximum grant for any grant made in the manner authorised by **subsection (1)**.
- “(8) A notice under **subsection (7)** is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.”

Clause 9A: new section 18(7)

In *clause 9A*, after *new section 18(7)(c)* (after line 26 on page 11), insert:

- “(ca) a grant made in the manner authorised by **section 16A(1)**; or

Clause 13B

In *clause 13B*, after the heading (after line 18 on page 21), insert, as *subclause (1)*:

- (1) Section 52(2) is amended by inserting the following paragraph after paragraph (d):
- “(da) any decision to depart from, or to refuse to depart from, fees prescribed by regulations under **section 114(1)(cc)**.”.

Clause 17: new section 99(4)

In *clause 17*, after *new section 99(4)(a)* (after line 27 on page 23), insert:

- “(ab) where a claim or part of a claim is for, or is determined by the Commissioner to be for, work of a kind for which a fee is prescribed by regulations pursuant to **section 114(1)(ca)** or authorised pursuant to **section 114(1)(cc)**, so much of that claim as exceeds the fee so prescribed or authorised; and

Clause 19

Before *clause 19(1)* (before line 26 on page 24), insert:

- (1AA) Section 114(1) is amended by inserting the following paragraphs after paragraph (c):
- “(ca) prescribing fees, whether by specifying amounts or providing for 1 or more methods of calculating amounts,

for items of work undertaken by providers for the purposes of proceedings (other than victims' claims proceedings) described in the regulations, which fees may differ depending on factors stated in the regulations, including, without limitation, 1 or more of the following:

“(i) the subject matter of the proceeding:

“(ii) the court or tribunal in which the proceeding or an application or a matter in the proceeding is to be determined:

“(cb) exempting, in accordance with subsection (8), any class of proceeding from any specified regulation made under **paragraph (ca)**:

“(cc) providing for the Commissioner to authorise fees that depart from the fees prescribed under **paragraph (ca)** if, and only if, criteria prescribed under **paragraph (cd)** apply:

“(cd) prescribing criteria for the purposes of any authorisation that the Commissioner is empowered to give under **paragraph (cc)**:”.

Clause 23

After *clause 23(3A)* (after line 20 on page 26), insert:

- (3B) Until the commencement of section 41 of the Legislation Act 2012, **section 16A(8)** of the principal Act, as inserted by **section 9** of this Act, must be read as if it declared that a notice under **section 16A(7)** of the principal Act is subject to the Regulations (Disallowance) Act 1989, but not to the Acts and Regulations Publication Act 1989.

Explanatory note

This Supplementary Order Paper amends the Legal Assistance Amendment Bill to—

- permit grants of legal aid to be made by an automated electronic system where an applicant, without an income or disposable capital in excess of the relevant maximum level, requires the aid for a case that involves an offence punishable by a term of imprisonment of not less than 6 months. Every grant made in that manner will be subject to a standard maximum amount to be prescribed by the Legal Services Commissioner by notice in the *Gazette*, but will not be subject to any other conditions:
- confirm that the Governor-General may make regulations to prescribe fees, including by methods that include hourly rates or fixed fees, for items of work undertaken by providers for the purposes of proceedings (other than victims' claims proceedings) described in the regulations; the regulations may exempt classes of proceeding from those fees and may

also authorise the Commissioner to allow departures if prescribed criteria are met:

- require the Commissioner to decline any claim by a lawyer for work that exceeds any fee prescribed by or authorised under regulations that apply to that work:
 - clarify that a decision on the part of the Commissioner not to allow a departure from a prescribed fee is subject to review in accordance with the Legal Services Act 2011.
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