

Legislative Council—No 29

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South Australia

**Criminal Law (Legal Representation)
(Reimbursement of Commission) Amendment
Bill 2020**

A BILL FOR

An Act to amend the *Criminal Law (Legal Representation) Act 2001*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Criminal Law (Legal Representation) Act 2001*

- 4 Amendment of section 4—Interpretation
- 5 Substitution of section 18
 - 18 Reimbursement of Commission

Schedule 1—Transitional provisions etc

- 1 Application
 - 2 Case management plans
 - 3 Expensive Criminal Cases Funding Agreement
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Criminal Law (Legal Representation) (Reimbursement of Commission) Amendment Act 2020*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law (Legal Representation) Act 2001*

4—Amendment of section 4—Interpretation

15 (1) Section 4(1), definition of *assisted person*—delete the definition and substitute:
assisted person means a person for whom legal assistance of a kind mandated under section 6(1) or (1a) is, or has been, provided;

- (2) Section 4(1), definition of *legal assistance costs*—delete the definition and substitute:

legal assistance costs, in respect of an assisted person, means all costs of providing legal assistance to the person in relation to the relevant trial (see section 5(2) of the LSC Act) regardless of whether the costs were incurred before or after the person became an assisted person and includes the costs of providing—

- (a) legal assistance of a kind mandated under section 6(1) and (1a); and
- (b) all other legal assistance (other than prescribed legal assistance) which the person was eligible for and provided with under the LSC Act for matters related to and preliminary or ancillary to the trial, including (without limitation) committal proceedings under Part 5 Division 3 of the *Criminal Procedure Act 1921*;

- (3) Section 4(1)—after the definition of *LSC Act* insert:

prescribed legal assistance means—

- (a) legal assistance provided to a person for the purposes of an appeal against conviction or sentence; and
- (b) legal assistance of a kind prescribed by the regulations;

- (4) Section 4—after subsection (2) insert:

- (3) For the purposes of the definition of *associated proceedings*, proceedings may be preliminary or ancillary to a trial whether or not the matter actually proceeds to trial.

5—Substitution of section 18

Section 18—delete the section and substitute:

18—Reimbursement of Commission

- (1) The Commission is entitled to be reimbursed by the Treasurer in respect of the costs of providing legal assistance for a criminal case involving 1 or more assisted persons if—
 - (a) the case is subject to a case management plan approved by the Attorney-General under the *Expensive Criminal Cases Funding Agreement*; and
 - (b) the Commission complies with the approved case management plan.
- (2) The amount the Commission is entitled to be reimbursed under subsection (1) is the amount by which the net amount of legal assistance costs for the case exceeds the relevant funding cap.
- (3) A case management plan may relate to a criminal case that is comprised of more than 1 trial if the trials are related trials and the Attorney-General is satisfied, in the circumstances of the case, that it is appropriate for the trials to be combined under a single case management plan.

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- (4) Despite the requirements of subsection (3), a retrial arising out of a trial may, in any case, be included in a case management plan as part of the criminal case of the first trial.
- (5) Subject to subsection (3), if a case management plan complies with the criteria for approval fixed in the *Expensive Criminal Cases Funding Agreement*, the Attorney-General must approve the case management plan.
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- (6) If the Commission, after making reasonable attempts to reach agreement with the Attorney-General on a case management plan, fails to obtain the Attorney-General's approval, the Commission may, by notice in writing to an assisted person to whom the case management plan relates, withdraw legal assistance for that person.
- (7) The Commission must, in each of its annual reports, publish the text of the *Expensive Criminal Cases Funding Agreement* as in force at the end of the year to which the report relates.
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- (8) In this section—

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Expensive Criminal Cases Funding Agreement means the agreement between the Commission and the Attorney-General governing the approval of case management plans for the purposes of this section and includes that agreement as amended from time to time;

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funding cap means an amount fixed as the funding cap for criminal cases by the Commission for a particular financial year (which may vary according to the circumstances to which it is expressed to apply);

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net amount of legal assistance costs in respect of a criminal case subject to a case management plan, means the gross amount of legal assistance costs for each assisted person to whom the case management plan relates less the amount of any payments the Commission has received or has a reasonable prospect of recovering from each assisted person (whether under this Act or the LSC Act) or a financially associated person;

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related trials—trials are *related trials* if the charges the subject of each trial are founded on the same facts or form, or are a part of, a series of offences of the same or a similar character (whether or not relating to the same accused person).

Schedule 1—Transitional provisions etc

1—Application

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- (1) The amendments to the *Criminal Law (Legal Representation) Act 2001* enacted by this Act apply in respect of a criminal case commenced before or after the commencement of this Act and irrespective of whether, before that commencement—
- (a) legal assistance of a kind mandated under section 6(1) or (1a) of the *Criminal Law (Legal Representation) Act 2001* had been provided for the case; or

(b) a case management plan had been approved for the case by the Attorney-General under the *Expensive Criminal Cases Funding Agreement*.

- 5 (2) However, if, at the commencement of this Act, the Legal Services Commission has been reimbursed, in whole or part, under section 18 of the *Criminal Law (Legal Representation) Act 2001* in respect of a criminal case, any further entitlement to reimbursement in respect of the case is to be determined under the *Criminal Law (Legal Representation) Act 2001* as in force before that commencement.

2—Case management plans

10 A case management plan approved by the Attorney-General in respect of a criminal case for the purposes of section 18 of the *Criminal Law (Legal Representation) Act 2001* as in force immediately before the commencement of this Act is, after that commencement, taken to be a case management plan approved by the Attorney-General in respect of that criminal case for the purposes of section 18 of the *Criminal Law (Legal Representation) Act 2001* (as substituted by this Act).

15 3—Expensive Criminal Cases Funding Agreement

20 The *Expensive Criminal Cases Funding Agreement* as in force under section 18 of the *Criminal Law (Legal Representation) Act 2001* immediately before the commencement of this Act continues as the *Expensive Criminal Cases Funding Agreement* in force under section 18 of the *Criminal Law (Legal Representation) Act 2001* after that commencement.