

South Australia

Statutes Amendment (Legal Assistance Costs) Act 2004

An Act to amend the *Criminal Law (Legal Representation) Act 2001* and the *Legal Services Commission Act 1977*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Legal Assistance Costs) Act 2004*.

2—Commencement

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

3—Amendment provisions

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

Section 4(1)—after the definition of *legal assistance* insert:

legal assistance costs means the costs of providing legal assistance to an assisted person (see section 5(2) of the LSC Act);

5—Amendment of section 6—Entitlement to legal assistance

Section 6(3), Examples, Example 1—delete the dot points and substitute:

- (a) to make payments in advance to the Commission towards legal assistance costs;
- (b) to indemnify the Commission in full for legal assistance costs.

6—Substitution of heading to Part 5

Heading to Part 5—delete the heading and substitute:

Part 5—Recovery of legal assistance costs

7—Substitution of heading to Part 5 Division 2

Heading to Part 5 Division 2—delete the heading to Division 2 and substitute:

Division 2—Recovery from financially associated persons

8—Amendment of section 13—Recovery from financially associated persons

- (1) Section 13(1)—delete "contribution for legal assistance from a person financially associated with a category 1 assisted person" and substitute:

the whole or a part of legal assistance costs from a person financially associated with a category 1 assisted person

- (2) Section 13(2)—delete "costs of providing legal assistance for the assisted person" and substitute:

payment of the legal assistance costs

- (3) Section 13(3)(a)—delete paragraph (a) and substitute:

- (a) providing for payment by the financially associated person of an amount that reflects the determination;

9—Amendment of section 14—Power to deal with assets

- (1) Section 14(2)(b)—delete "the costs of legal assistance" and substitute:

legal assistance costs

- (2) Section 14(3)—delete "the costs of legal assistance" and substitute:

legal assistance costs

10—Amendment of section 17—Periodic accounts and final accounts

- (1) Section 17(1)—delete "costs of the legal assistance" and substitute:

payment of the legal assistance costs

- (2) Section 17(2)—delete "cost of the legal assistance" and substitute:

legal assistance costs

11—Amendment of section 18—Reimbursement of Commission

- (1) Section 18(1)—delete "net cost of providing legal assistance for an assisted person" and substitute:

net amount of legal assistance costs

- (2) Section 18(6), definition of *net cost*—delete the definition and substitute:

net amount of legal assistance costs means the gross amount of legal assistance costs less the amount of any payments the Commission has received or has a reasonable prospect of recovering from the assisted person or a financially associated person.

Part 3—Amendment of *Legal Services Commission Act 1977*

12—Amendment of section 5—Interpretation

- (1) Section 5—after the definition of *the Commission* insert:

Commission practitioner means a legal practitioner employed by the Commission;

- (2) Section 5, definition of *legal costs*—delete the definition and substitute:

legal assistance costs means the costs of providing legal assistance to an assisted person (see also subsection (2));

- (3) Section 5—after the definition of *legal practitioner* insert:
- notional fees* means the fees that would be paid for professional legal work if the work were—
- (a) authorised by the Director to be performed; and
 - (b) performed by a legal practitioner who is not a Commission practitioner;
- (4) Section 5—after the definition of *restraining order* insert:
- scale* means the scale of fees for professional legal work determined by the Director under section 18C;
- (5) Section 5—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- (2) For the purposes of this Act, *legal assistance costs* are comprised of the following:
 - (a) in the case where the legal assistance is provided by a legal practitioner who is not a Commission practitioner—
 - (i) the fees determined in accordance with the scale plus interest (if any) on those fees; and
 - (ii) any disbursements and out-of-pocket expenses approved by the Director;
 - (b) in the case where the legal assistance is provided by a Commission practitioner—
 - (i) the notional fees determined in accordance with the scale; and
 - (ii) any disbursements and out-of-pocket expenses approved by the Director.

13—Amendment of section 18—Recovery of legal assistance costs from assisted persons

- (1) Section 18(1)—delete "on account of legal costs" and substitute:
- towards legal assistance costs
- (2) Section 18(2)—delete subsection (2) and substitute:
- (1a) An assisted person must indemnify the Commission in full for legal assistance costs if so stipulated by the Director in the conditions on which legal assistance is granted.
 - (2) The Director must, at the conclusion of the matter for which legal assistance was provided, give the assisted person written notice of the total amount payable by the assisted person to the Commission.
- (3) Section 18(3)—delete "of the costs"
- (4) Section 18(4)(a)—delete "due and"

14—Amendment of section 18A—Legal assistance costs may be secured by charge on land

- (1) Section 18A(1)—delete "legal costs" wherever occurring and substitute in each case:
legal assistance costs
- (2) Section 18A(1)—delete "by the assisted person"
- (3) Section 18A(3)—delete "legal costs" and substitute:
legal assistance costs
- (4) Section 18A(5)—delete "legal costs" and substitute:
legal assistance costs
- (5) Section 18A(5)—delete "by the assisted person"
- (6) Section 18A(6)—delete "on account of legal costs" and substitute:
towards legal assistance costs

15—Amendment of section 18B—Special provisions relating to property subject to restraining order

- (1) Section 18B(2)—delete "contributions" and substitute:
payments
- (2) Section 18B(2)—delete "the cost of legal assistance" and substitute:
legal assistance costs
- (3) Section 18B(2)—delete "to defray the costs of legal assistance" and substitute:
towards payment of legal assistance costs
- (4) Section 18B(3)—delete subsection (3) and substitute:
 - (3) Despite the preceding subsections, the liability of an assisted person to the Commission may be for the whole of the legal assistance costs and this liability may be secured by a charge on property subject to a restraining order.

16—Insertion of section 18C

After section 18B insert:

18C—Director to determine scale of fees for professional legal work

The Director must determine, in accordance with principles laid down by the Commission after consultation with the Law Society, a scale of fees for professional legal work in relation to the provision of legal assistance for assisted persons.

17—Amendment of section 19—Determination and payment of legal assistance costs to legal practitioners (other than Commission practitioners)

- (1) Section 19(1) to (3)—delete subsections (1) to (3) and substitute:
 - (1) A legal practitioner assigned to provide legal assistance for an assisted person is only entitled to be paid for professional legal work that the Director has authorised to be performed.
 - (2) The legal practitioner must provide the Commission with such accounts as the Director may require.
 - (2a) The Director must determine, in accordance with the scale, the fees for professional legal work performed by the legal practitioner.
 - (3) The legal practitioner may, within 1 month after receiving written notice of the determination of the Director, appeal against the determination to the Commission.
- (2) Section 19(5)(b)—delete "legal costs" and substitute:

legal assistance costs
- (3) Section 19(7)—delete subsection (7) and substitute:
 - (7) Despite the preceding subsections, the Commission may remunerate legal practitioners who have been assigned to provide legal assistance for assisted persons—
 - (a) by way of lump sum payments fixed in relation to the various categories of professional legal work; or
 - (b) on any other basis determined by the Commission after consultation with the Law Society.
 - (8) This section does not apply to Commission practitioners.

18—Amendment of section 23—Legal Services Fund

Section 23(2)(c)—delete paragraph (c) and substitute:

- (c) all money paid to, or recovered by, the Commission as legal assistance costs, or as payments towards legal assistance costs; and

19—Amendment of section 26—Commission and trust money

Section 26(2)—delete "on account of legal costs" and substitute:

as legal assistance costs, or as payments towards legal assistance costs

20—Substitution of section 29

Section 29—delete the section and substitute:

29—Provision of legal assistance by Commission practitioners

- (1) For the purposes of managing the provision of legal assistance to an assisted person by a Commission practitioner, the Commission—
 - (a) will be taken to be the legal practitioner retained by the person to act on the person's behalf; and

- (b) may require a Commission practitioner to provide legal assistance to the person; and
 - (c) must supervise the provision of legal assistance to the person by the Commission practitioner.
- (2) The Director is responsible for ensuring the provision of legal assistance to assisted persons by Commission practitioners is properly allocated and supervised.
- (3) If, in any proceedings—
 - (a) a document is required or permitted to be signed by the solicitor for an assisted person; and
 - (b) the document is signed by a Commission practitioner authorised for the purposes of paragraph (a) by the Commission,the document will be taken to have been signed by the assisted person's solicitor.
- (4) Despite subsection (1), for the purposes of Part 3 of the *Legal Practitioners Act 1981*, the legal practitioner for an assisted person is the Commission practitioner required by the Commission to provide legal assistance to the person.