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Legal Aid and Advice (Amendment) Bill

Bill No. 42/2018.

Read the first time on 1 October 2018.

A BILL

intituled

An Act to amend the Legal Aid and Advice Act (Chapter 160 of the 2014 Revised Edition) and to make consequential amendments to the Legal Profession Act (Chapter 161 of the 2009 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Legal Aid and Advice (Amendment) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 2

2. Section 2 of the Legal Aid and Advice Act (called in this Act the principal Act) is amended —

(a) by deleting the words “referred to in Part I of the First Schedule” in the definition of “court” and substituting the words “mentioned in section 5(1) or (1A)”;

(b) by deleting the definition of “Grant of Aid” and substituting the following definition:

““Grant of Aid” means a document issued under section 8 stating that legal aid is granted to a person (whether on a provisional basis or otherwise);”;

(c) by inserting, immediately after the definition of “judge”, the following definition:

““legal advice” has the meaning given by section 20;”.

Amendment of section 3

3. Section 3 of the principal Act is amended —

(a) by deleting subsections (3) and (4) and substituting the following subsections:

“(3) The Director of Legal Aid may —

(a) appoint such number of public officers of such qualifications and experience as the Director of Legal Aid considers appropriate, for the purpose of assisting him, and the Deputy Directors and Assistant Directors of Legal Aid in

carrying out any of their duties under this Act; and

(b) assign to those appointed public officers such duties as the Director of Legal Aid considers appropriate for the purpose mentioned in paragraph (a).

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(4) Despite any other written law, for the purposes of this Act, the following persons have the right to appear and plead in all courts of justice in Singapore according to the law in force in those courts:

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(a) the Director and every Deputy Director or Assistant Director of Legal Aid;

(b) a public officer who is appointed under subsection (3), and is assigned under that subsection any duty that requires the public officer to appear and plead in those courts.”; and

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(b) by inserting, immediately after the words “Legal Aid” in the section heading, the word “, etc.”.

Amendment of section 4

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4. Section 4 of the principal Act is amended by inserting, immediately after subsection (1), the following subsection:

“(1A) The Director may appoint a solicitor to a panel mentioned in subsection (1) for a term of 3 years, or such longer or shorter period as the Director may specify in any particular case, beginning on such date as the Director may specify in the solicitor’s letter of appointment.”.

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Amendment of section 5

5. Section 5 of the principal Act is amended by deleting subsection (1) and substituting the following subsections:

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“(1) Subject to this Part, legal aid may be given to a citizen or permanent resident of Singapore in relation to any civil

proceedings mentioned in Part I of the First Schedule (not being any proceedings mentioned in Part II of that Schedule).

(1A) Despite subsection (1), the Director may authorise the giving of legal aid to a citizen or permanent resident of Singapore in relation to any proceedings mentioned in Part II of the First Schedule, if the Director is satisfied that those proceedings are, or are likely to be, related to any civil proceedings mentioned in that subsection.

(1B) In deciding whether any proceedings mentioned in Part II of the First Schedule are, or are likely to be, related to any civil proceedings mentioned in subsection (1), the Director may consider —

(a) whether a court has ordered, or may order, that the proceedings mentioned in Part II of the First Schedule, and the civil proceedings mentioned in subsection (1), be consolidated or tried at the same time, on the ground that some common question of fact arises in both proceedings; and

(b) any other circumstances that may be specified in any regulations made under this Act.”.

Amendment of section 6

6.—(1) Section 6 of the principal Act is amended —

(a) by inserting, immediately after subsection (1), the following subsection:

“(1A) An application for legal aid must be —

(a) made in the form and manner required by the Director; and

(b) accompanied by any documents and information required by the Director.”;

(b) by deleting the words “sections 8(2)(b) and 9(1)” in subsection (3)(b) and substituting the words “section 8(2)(b)”;

(c) by deleting the words “shall, upon attaining the age of 21 years, make a fresh application under subsection (1) for legal aid in his own right to the Director” in subsection (5) and substituting the words “must give to the Director, within the prescribed time after the aided person attains 21 years of age, and in the form and manner required by the Director, a written consent to continue receiving legal aid”; and

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(d) by inserting, immediately after subsection (5), the following subsection:

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“(6) Every aided person who gives a written consent under subsection (5) is deemed to have made a fresh application for legal aid in that person’s own right.”.

(2) Section 6(3) of the principal Act, as amended by subsection (1)(b), is amended —

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(a) by deleting “8(2)(a)” in paragraph (a) and substituting the words “8(1)(b) or (2)(c)”; and

(b) by deleting the words “section 8(2)(b) or in the Second Schedule” in paragraph (b) and substituting the words “section 8(1)(a) or (2)(b)”.

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Amendment of section 8

7. Section 8 of the principal Act is amended —

(a) by deleting subsections (1) and (2) and substituting the following subsections:

“(1) The Director may approve an application for legal aid, and issue a Grant of Aid to an applicant in connection with any proceedings, if —

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(a) the Director is of the opinion that the applicant satisfies the prescribed means criteria; and

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(b) either of the following applies:

(i) in any case where those proceedings are prescribed proceedings or belong to a prescribed class of proceedings — the Director is of the opinion that the applicant has reasonable grounds for taking, defending, continuing or being a party to those proceedings;

(ii) in any other case — a board (consisting of the Director and not fewer than 2 solicitors on an appropriate panel of solicitors maintained under section 4) is of the opinion that the applicant has reasonable grounds for taking, defending, continuing or being a party to those proceedings.

(2) Pending the determination of an application under subsection (1), the Director may despite that subsection approve an application for legal aid, and issue a Grant of Aid on a provisional basis to an applicant in connection with any proceedings, if the Director is of the opinion that the applicant —

(a) requires legal aid as a matter of urgency;

(b) is likely to satisfy the prescribed means criteria; and

(c) is likely to have reasonable grounds for taking, defending, continuing or being a party to those proceedings.”; and

(b) by deleting subsection (4) and substituting the following subsections:

“(4) Despite any provision of this Act (including any regulations made under this Act), the Minister may —

(a) authorise the Director to issue a Grant of Aid to any person in connection with any proceedings, if the Minister is of the opinion that it is in the public interest that legal aid be granted to the person in that connection; and 5

(b) direct the Director to approve an application for legal aid, and issue a Grant of Aid under subsection (1) or (2) to an applicant, even though the Director is of the opinion that the applicant does not satisfy, or is not likely to satisfy, the prescribed means criteria, if the Minister is of the opinion that it is just and proper that legal aid be granted to the applicant. 10 15

(5) For the purposes of subsection (4)(b), the Minister may authorise any person (including a panel of persons), with such qualifications and experience as the Minister considers appropriate in relation to assessing the financial circumstances of an applicant, to exercise the power under that subsection. 20

(6) An authorisation under subsection (5) —

(a) may be subject to such conditions and restrictions as the Minister may specify in writing; and 25

(b) does not prevent the Minister from exercising the power under subsection (4)(b).

(7) Once an authorisation is made under subsection (5), the Minister must — 30

(a) cause a copy of the authorisation to be given to the authorised person; and

(b) without delay cause to be published a notice of the making and giving of the authorisation in the *Gazette*.”. 35

Repeal of section 9

8. Section 9 of the principal Act is repealed.

Amendment of section 10

5 9. Section 10 of the principal Act is amended by deleting subsections (3) and (4) and substituting the following subsections:

“(3) Where a notification under subsection (2) is filed in a court in respect of any proceedings, the following apply unless the court (before which those proceedings are pending) orders otherwise:

10 (a) all steps in those proceedings are stayed for a period of 14 days after the date on which the notification is filed;

15 (b) during that period, the time fixed by or under any written law, for doing any act or taking any step in those proceedings, does not run.

(4) The period mentioned in subsection (3)(a) may be reduced or extended by an order of the court.”.

Amendment of section 12

10. Section 12 of the principal Act is amended —

20 (a) by inserting, immediately after the words “any proceedings to which the Grant of Aid relates” in subsection (4)(b), the words “, and of any other document in connection with those proceedings as may be prescribed”;

25 (b) by deleting the words “sections 9 and 13” in subsection (5) and substituting the words “sections 13 and 22A”; and

(c) by deleting the words “section 9(2)” in subsection (6)(a) and substituting the words “section 22A(3)”.

Amendment of section 13

30 11. Section 13(2) of the principal Act is amended by deleting the words “section 9(1)” in paragraph (b) and substituting the words “section 22A(1)”.

Amendment of section 14

12. Section 14 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) Where it appears to a court that any of the circumstances mentioned in subsection (3) exists in relation to an aided person, the court may order the aided person to pay the costs of all or any of the following persons: 5

(a) the Director; 10

(b) the solicitor who acted for the aided person;

(c) the other party.”;

(b) by deleting subsection (3) and substituting the following subsection:

“(3) For the purposes of subsection (1), the circumstances are as follows: 15

(a) the Grant of Aid issued to the aided person has been obtained by fraud or misrepresentation;

(b) the aided person acted improperly in bringing or defending any legal proceedings, or in the conduct of those proceedings.”; and 20

(c) by deleting the words “or (3)” in subsections (4) and (6).

Amendment of section 16 25

13. Section 16 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

“(1) Where an aided person is entitled to costs in any proceedings to which the aided person is a party — 30

(a) the court must make, in favour of the aided person, such order for costs as the court would have made in favour of a person who is not an aided person; and

5 (b) where costs follow the event, the aided person is entitled to the same costs as a person who is not an aided person.

(1A) Subsection (1) does not apply to any costs against another aided person.”;

10 (b) by deleting subsections (4) and (5); and

(c) by deleting the words “subsections (1), (2), (3) and (4)” in subsection (6) and substituting the words “subsections (1), (1A), (2) and (3)”.

Amendment of section 17

15 **14.** Section 17 of the principal Act is amended —

(a) by deleting the words “, a notification in a prescribed form” in subsection (1) and substituting the words “, a notification of the making of the application;”; and

20 (b) by deleting subsections (2) and (3) and substituting the following subsections:

“(2) Where a notification under subsection (1) is filed in respect of any proceedings, the following apply unless the court (before which those proceedings are pending) orders otherwise:

25 (a) all steps in those proceedings are stayed for a period of 14 days after the date on which the notification is filed;

30 (b) during that period, the time fixed by or under any written law, for doing any act or taking any step in those proceedings, does not run.

(3) Despite subsection (2), the filing of the notification under subsection (1) does not prevent any of the following:

- (a) the making of an interlocutory order for an injunction, or for the appointment of a receiver, a manager or a receiver and manager; 5
- (b) the making of an order to prevent the lapse of a caveat against dealings with land;
- (c) the making of any other order which, in the opinion of the court, is necessary to prevent an irremediable injustice; 10
- (d) the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect an order mentioned in paragraph (a), (b) or (c), unless the court orders otherwise. 15

(4) The period mentioned in subsection (2)(a) may be reduced or extended by an order of the court.”.

Amendment of section 18

15. Section 18 of the principal Act is amended —

- (a) by inserting, immediately after the words “in respect of that matter” in subsection (1), the words “within the prescribed time”;
- (b) by inserting, immediately after subsection (1), the following subsection: 25
 - “(1A) Despite subsection (1), the Director may consider a fresh application for legal aid that is made outside the prescribed time mentioned in that subsection, if — 30
 - (a) the aided person filed a notice of appeal in respect of the proceedings mentioned in

that subsection before making that application; or

(b) the Director is of the opinion that there are extenuating circumstances for not making that application by that prescribed time.”; and

(c) by inserting, immediately after the words “any proceedings” in subsection (2), the words “to which a Grant of Aid relates”.

Amendment of section 20

16. Section 20 of the principal Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

“(2) Any legal advice under subsection (1) may consist of any of the following:

(a) oral advice, by the Director or a solicitor whose name is on an appropriate panel of solicitors maintained under section 4, on any matter that may result in any proceedings for which legal aid may be given;

(b) advice and assistance in preparing legal documents for purposes that are not related to any proceedings for which legal aid may be given;

(c) any other matter that may be prescribed, but does not include any advice, assistance or other matter in respect of any law that is not the law of Singapore.”; and

(b) by deleting the words “questions on which” in subsection (3) and substituting the words “matters for which”.

New section 22A

17. The principal Act is amended by inserting, immediately after section 22, the following section:

“Contributions

22A.—(1) The Director may require a person to make one or more contributions, in a lump sum or by instalments, in respect of any matter for which an application for legal aid or legal advice has been made by that person. 5

(2) Where an application mentioned in subsection (1) is made on behalf of a minor by the minor’s guardian, a reference in subsection (1) to a person is a reference to — 10

(a) in any case where the minor is unmarried and the guardian is a relative (within the meaning of section 6(4)) of the minor — both the guardian and the minor; and 15

(b) in any other case — the minor only.

(3) Unless the regulations made under this Act otherwise provide, any sum remaining unpaid on account of a person’s contribution, in respect of any matter for which legal aid has been granted, is a first charge on any property that is recovered or preserved for that person in the proceedings connected to the matter, in favour of any fund established under this Act. 20

(4) For the purposes of subsection (3), a reference to any property recovered or preserved for a person in any proceedings includes a reference to both of the following: 25

(a) the person’s rights under any settlement or compromise to avoid, or to end, those proceedings;

(b) any sums recovered by the person as damages or costs under an order made in the person’s favour in those proceedings (other than any sums payable to the Director under section 14 or 16). 30

(5) The charge under subsection (3) does not prevent a court from allowing any damages or costs mentioned in subsection (4)(b) that are recovered by a person to be set off against any damages or costs awarded against that person, in any case where a solicitor's lien for costs would not prevent the court from allowing that set off.

(6) The Director may, in the Director's discretion, reduce any contribution, or waive or refund the whole or any part of any contribution, that a person is required to pay under subsection (1).”.

Amendment of section 23

18. Section 23 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) The Minister may make regulations for prescribing all matters that this Act requires or permits to be prescribed, or that are necessary or expedient for carrying out or giving effect to this Act.”;

(b) by deleting sub-paragraph (i) of subsection (2)(e) and substituting the following sub-paragraph:

“(i) a person is issued a Grant of Aid on a provisional basis;”;

(c) by deleting the word “and” at the end of subsection (2)(e)(iii);

(d) by inserting, immediately after paragraph (e) of subsection (2), the following paragraph:

“(ea) provide for the period when a Grant of Aid issued on a provisional basis is in force, and for matters relating to the lapse or extension of such Grant of Aid; and”;

(e) by deleting the word “prescribe” in subsection (2)(f) and substituting the words “provide for”; and

(f) by inserting, immediately after subsection (4), the following subsection:

“(4A) The powers conferred by this section do not extend to any matter for which Rules of Court or Family Justice Rules may be made under section 19.”.

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Repeal of section 24

19. Section 24 of the principal Act is repealed.

Amendment of First Schedule

20. The First Schedule to the principal Act is amended —

(a) by deleting the Schedule reference and substituting the following Schedule reference:

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“Section 5(1), (1A) and (1B)”; and

(b) by deleting the Part heading of Part II and substituting the following Part heading:

“PROCEEDINGS FOR WHICH LEGAL AID IS
GENERALLY NOT GIVEN”.

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Repeal of Second Schedule

21. The Second Schedule to the principal Act is repealed.

Saving and transitional provisions

22.—(1) Every application for legal aid that is pending immediately before the date of commencement of section 7 must be treated as if made under the principal Act as amended by that section (called in this section the Amended Act).

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(2) A board constituted for the purposes of section 8(1) of the principal Act as in force immediately before the date of commencement of section 7 must be treated as if it were a board constituted for the purposes of section 8(1)(b)(ii) of the Amended Act.

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(3) An opinion formed by a board under section 8(2)(a) of the principal Act as in force immediately before the date of

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commencement of section 7, in connection with any proceedings must be treated as if it were —

(a) in any case where those proceedings are prescribed proceedings or belong to a prescribed class of proceedings mentioned in section 8(1)(b)(i) of the Amended Act — an opinion formed on that date by the Director; or

(b) in any other case — an opinion formed on that date by a board constituted for the purposes of section 8(1)(b)(ii) of the Amended Act.

(4) Where the Director is satisfied, before the date of commencement of section 7, of the matters mentioned in section 8(2)(b)(i) and (ii) of the principal Act as in force immediately before that date, the applicant is deemed to have satisfied, on that date, the prescribed means criteria mentioned in section 8(1)(a) of the Amended Act.

(5) Any authorisation of the Minister under section 8(4) of the principal Act as in force immediately before the date of commencement of section 7 is deemed to be an authorisation of the Minister under section 8(4)(a) of the Amended Act.

(6) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

Consequential amendments to Legal Profession Act

23. The Legal Profession Act (Cap. 161) is amended —

(a) by deleting the word “and” at the end of section 29(2)(b);

(b) by deleting paragraph (c) of section 29(2) and substituting the following paragraphs:

“(c) the Director, a Deputy Director or an Assistant Director of Legal Aid to appear and plead in those courts under the provisions of the Legal Aid and Advice

Act (Cap. 160) or the International Child Abduction Act (Cap. 143C); and

(d) a public officer mentioned in section 3(4)(b) of the Legal Aid and Advice Act to appear and plead in those courts under the provisions of that Act.”; and

(c) by deleting paragraph (c) of section 34(1) and substituting the following paragraphs:

“(c) the Director, a Deputy Director or an Assistant Director of Legal Aid acting in the course of the duties of the Director, Deputy Director or Assistant Director of Legal Aid (as the case may be) under the provisions of the Legal Aid and Advice Act or the International Child Abduction Act;

(ca) a public officer mentioned in section 3(4)(b) of the Legal Aid and Advice Act acting in the course of that public officer’s duties under that Act;”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Legal Aid and Advice Act (Cap. 160) for the following main purposes:

- (a) to change how the means of an applicant is assessed for the purposes of determining whether a Grant of Aid should be issued to the applicant, and to confer new powers on the Director of Legal Aid (including any Deputy Director or Assistant Director of Legal Aid) (the Director) and the Minister in relation to the issue of a Grant of Aid;
- (b) to empower the Director of Legal Aid to appoint certain public officers to assist the Director of Legal Aid, Deputy Directors and Assistant Directors of Legal Aid in carrying out any of their duties under the Act (including appearing and pleading in all courts of justice in Singapore);

- (c) to expand the scope of legal aid to include certain proceedings under Part II of the First Schedule;
- (d) to expand the scope of legal advice to include advice and assistance in preparing certain legal documents.

The Bill also makes consequential amendments to sections 29(2) and 34(1) of the Legal Profession Act (Cap. 161).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 —

- (a) to make an amendment to the definition of “court” that is consequential to the amendment of section 5 by clause 5;
- (b) to delete and substitute the definition of “Grant of Aid”, due to the amendment of section 8 by clause 7; and
- (c) to insert a new definition of “legal advice” to clarify its meaning in the Act.

Clause 3 amends section 3 to provide for the new section 3(3) and (4).

The new section 3(3) empowers the Director of Legal Aid to appoint public officers for the purpose of assisting the Director of Legal Aid, Deputy Directors and Assistant Directors of Legal Aid in carrying out any of their duties under the Act. The Director of Legal Aid may assign to those appointed public officers such duties as the Director of Legal Aid considers appropriate for the purpose mentioned in the new section 3(3)(a).

The new section 3(4) re-enacts the existing section 3(3) with amendments. The amendments concern the right of certain public officers appointed by the Director of Legal Aid to appear and plead in all courts of justice in Singapore according to the law in force in those courts. It is envisaged that the Director of Legal Aid may appoint any public officer whom the Director of Legal Aid considers has suitable qualifications and experience to appear and plead in all courts of justice in Singapore (even though that public officer is not a qualified person under the Legal Profession Act).

The existing section 3(4) (which deems the Director and every Deputy Director or Assistant Director of Legal Aid to be public servants within the meaning of the Penal Code (Cap. 224)) is deleted because each of these individuals is already a public servant within the meaning of section 21(1)(h) of the Penal Code.

Clause 4 amends section 4 by inserting a new subsection (1A) to provide for the term of a solicitor appointed to a panel by the Director.

Clause 5 re-enacts the existing section 5(1) to clarify the existing policy that legal aid may only be given to a citizen or permanent resident of Singapore in

relation to any civil proceedings mentioned in Part I of the First Schedule (not being any proceedings mentioned in Part II of that Schedule).

Clause 5 also inserts a new section 5(1A) and (1B). With the new section 5(1A), legal aid may also be given in relation to any proceedings mentioned in Part II of the First Schedule, but only if the Director is satisfied that those proceedings are, or are likely to be, related to any civil proceedings mentioned in the new section 5(1).

Clause 6 amends section 6 —

- (a) to allow the Director to administratively specify the form of an application for legal aid, and the documents and information required for that application;
- (b) to make amendments consequential to the amendment of section 8 by clause 7, and the repeal of section 9 by clause 8; and
- (c) to simplify the process for a person to continue receiving legal aid after attaining 21 years of age, by allowing the person to give to the Director a written consent to continue the proceedings concerned (instead of submitting a fresh application for legal aid, as is the present case).

Clause 7 amends section 8 primarily to change how the means of an applicant is assessed for the purposes of a Grant of Aid, and to confer new powers on the Director and the Minister in relation to the issue of a Grant of Aid.

Clause 7(a) amends section 8(1) and (2) to remove the assessment of an applicant's means by reference to the existing criteria of disposable capital and disposable income, and to provide for an applicant's means to be assessed by reference to the new means criteria to be prescribed in regulations made under the Act.

Clause 7(a) further amends section 8(1) to confer on the Director a new power to determine whether an applicant has reasonable grounds for taking, defending, continuing or being a party to proceedings, where those proceedings are prescribed proceedings or belong to a prescribed class of proceedings. At present, such power is only conferred on a board consisting of the Director and not fewer than 2 solicitors on an appropriate panel of solicitors maintained under section 4.

Clause 7(a) also amends section 8(2) to transfer to the Act the existing power of the Director in the Legal Aid and Advice Regulations (Rg 1) to issue a "Provisional Grant of Aid" (but with changes due to the amendment of section 8(1) by the same clause). It is envisaged that the period when such Grant of Aid is in force, that it may lapse or be extended, and other related operational details, will continue to be set out in regulations made under the Act.

Clause 7(b) inserts a new section 8(4)(b) to confer a new power on the Minister to direct the Director to approve an application for legal aid, and issue a Grant of Aid to an applicant, even though the Director is of the opinion that the applicant does not satisfy, or is not likely to satisfy, the prescribed means criteria, if the Minister is of the opinion that it is just and proper that legal aid be granted to the applicant.

Clause 7(b) also inserts the new section 8(5), (6) and (7) to deal with matters concerning the Minister's authorisation of persons to exercise the Minister's power under the new section 8(4)(b). Once an authorisation is made, the Minister must, amongst other matters, without delay cause to be published a notice of the making and giving of the authorisation in the *Gazette*.

Clause 8 repeals section 9 (which is re-enacted with amendments as the new section 22A).

Clause 9 re-enacts section 10(3) and (4) with editorial changes to improve its readability.

Clause 10 amends section 12 to provide that an aided person may be supplied with copies of other documents, in addition to the judge's notes of evidence. The documents concerned will be prescribed in regulations made under the Act.

Clause 10 also amends section 12 to make amendments consequential to the repeal of section 9 and its re-enactment as the new section 22A.

Clause 11 amends section 13(2) to make an amendment consequential to the repeal of section 9 and its re-enactment as the new section 22A.

Clause 12 re-enacts section 14(1) and (3) with editorial changes to improve its readability. Other consequential amendments are made to section 14 due to the re-enactment of section 14(1) and (3).

Clause 13 re-enacts section 16(1) (with editorial changes) as the new section 16(1) and (1A) to improve its readability, and deletes redundant provisions. Other consequential amendments are made to section 16 due to such re-enactment and deletion.

Clause 14 amends section 17(1) to remove the requirement for the notification of an application for legal aid to be in a form prescribed in regulations made under the Act.

Clause 14 also re-enacts section 17(2) and (3) (with editorial changes) as the new section 17(2), (3) and (4) to improve its readability.

Clause 15 amends section 18(1) to provide that an aided person who wishes to file a notice of appeal must submit a fresh application within the prescribed time, unless the aided person has already filed the notice of appeal, or the Director is of the opinion that there are extenuating circumstances for not making the fresh application by that prescribed time.

Clause 16 amends section 20(2) to clarify that the scope of legal advice includes advice and assistance on certain legal documents. It is envisaged that the scope of such advice and assistance will be further defined or restricted by regulations made under the Act.

Clause 16 further makes a consequential amendment to section 20(3) due to the amendment of section 20(2).

Clause 17 inserts a new section 22A, which is a re-enactment of the repealed section 9, but with amendments —

- (a) to clarify that the Director has the power to require contributions for legal advice; and
- (b) to improve the readability of similar provisions in the repealed section 9.

Clause 18 amends section 23 —

- (a) to re-enact section 23(1) with editorial changes and to insert a new section 23(4A), to improve the readability of section 23;
- (b) to amend section 23(2)(e) to clarify that regulations can make provision for matters concerning a Grant of Aid issued on a provisional basis;
- (c) to insert a new section 23(2)(ea) to provide for the period when a Grant of Aid issued on a provisional basis is in force, and for matters relating to the lapse or extension of such Grant of Aid; and
- (d) to amend section 23(2)(f) to clarify that the forms to be used under the Act may, but need not, be prescribed in regulations made under the Act.

Clause 19 repeals section 24 due to the repeal of the Second Schedule by clause 21.

Clause 20 makes amendments to the First Schedule that are consequential to the amendment of section 5 by clause 5.

Clause 21 repeals the Second Schedule as the means criteria for legal aid will be prescribed in regulations made under the Act.

Clause 22 sets out the saving and transitional provisions, which primarily extend the amendment of section 8 by clause 7 to applications for legal aid that are pending immediately before the date of commencement of clause 7 (the commencement date). For the purposes of any pending application —

- (a) a board constituted before the commencement date must be treated as if it were a board constituted for the amended section 8;

- (b) an opinion formed before the commencement date, that there were reasonable grounds for the applicant taking, defending, continuing or being a party to the proceedings, must be treated as that of the Director or the board (depending on the nature of proceedings in question);
- (c) if the Director was satisfied before the commencement date that the requirements as to disposable capital and disposable income were satisfied by the applicant, then the applicant is deemed to have satisfied the new prescribed means criteria; and
- (d) if the Minister had authorised the giving of legal aid in the public interest before the commencement date, that authorisation is preserved.

Clause 23 makes amendments to sections 29(2) and 34(1) of the Legal Profession Act that are consequential to the insertion of the new section 3(4) of the Legal Aid and Advice Act by clause 3.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
