

LEGAL AID ACT 22 OF 1969

[ASSENTED TO 14 MARCH 1969] [DATE OF COMMENCEMENT: 26 MARCH 1969]
(English text signed by the State President)

as amended by

Legal Aid Amendment Act 56 of 1971
General Law Amendment Act 102 of 1972
Legal Aid Amendment Act 47 of 1989
Legal Aid Amendment Act 1 of 1991
General Law Amendment Act 139 of 1992
Legal Aid Amendment Act 20 of 1996

ACT

To provide for legal aid for indigent persons and for that purpose to establish a Legal Aid Board and to define its functions; and to provide for other incidental matters.

1 Definitions

In this Act, unless the context otherwise indicates-
'board' means the Legal Aid Board referred to in subsection 2;
'Minister' means the Minister of Justice.

2 Establishment of Legal Aid Board

There is hereby established a board to be known as the Legal Aid Board, which shall be a body corporate, capable of suing and being sued in its corporate name and of performing, subject to the provisions of this Act, all such acts as are necessary for or incidental to the carrying out of its objects, the exercise of its powers and the performance of its functions.

3 Objects and general powers of board

The objects of the board shall be to render or make available legal aid to indigent persons and to provide legal representation at State expense as contemplated in the Constitution, and to that end the board shall, in addition to any other powers vested in it by this Act, have power-

[S. 3 amended by s. 1 (a) of Act No. 20 of 1996, with effect from 17 October 1997.]

- (a) to obtain the services of legal practitioners;
- (b) to purchase or otherwise acquire or to hold or alienate any movable property or, with the approval of the Minister acting in consultation with the Minister of Finance, any immovable property;
- (c) to hire or let any movable or immovable property;
- (d) to fix conditions subject to which legal aid is to be rendered, including conditions in accordance with which any rights in respect of costs recovered or recoverable in any legal proceedings or any dispute in respect of which the aid is rendered, shall be

ceded to the board, and conditions relating to the payment of contributions to the board by persons to whom legal aid is rendered;
[Para. (d) substituted by s. 1 of Act 47 of 1989.]

(dA) to provide, subject to section 3A (3), legal representation at State expense as contemplated in section 25 (1) (c) and (3) (e), read with section 33 (2), of the Constitution, where substantial injustice would otherwise result;
[Para. (dA) inserted by s. 1 (b) of Act 20 of 1996, with effect from 1 May 2002]
(e) to do all such things and perform all such functions as may be necessary for or incidental to the attainment of the objects of the board.

3A Legal Aid Guide

- (1) (a) Subject to the provisions of this Act and in order to attain its objects and to exercise its powers referred to in section 3 (d) and (dA), the board shall, in consultation with the Minister, include particulars of the scheme under which legal aid is rendered or made available and the procedure for its administration in a guide called the Legal Aid Guide.
(b) The provisions of the Legal Aid Guide shall be binding upon the board, its officers and employees.
- (2) The board shall, in addition to the submission of its annual report as contemplated in section 9 (11), submit the Legal Aid Guide at least once every year to the Minister and the Minister shall forthwith cause the Legal Aid Guide to be tabled in the National Assembly and the Senate for ratification, and pending such ratification the Legal Aid Guide then in operation shall continue to apply.
- (3) Whenever the board considers an application for the rendering of legal aid, other than a matter referred to the board in terms of section 3B (1), and whether the application is made in terms of section 25 (1) (c) or (3) (e) of the Constitution or otherwise, the board shall apply the provisions of the Legal Aid Guide.

3B Direction for legal aid by court in criminal matters

- (1) Before a court in criminal proceedings directs that a person be provided with legal representation at State expense, the court shall-
 - (a) take into account-
 - (i) the personal circumstances of the person concerned;
 - (ii) the nature and gravity of the charge on which the person is to be tried or of which he or she has been convicted, as the case may be;
 - (iii) whether any other legal representation at State expense is available or has been provided; and
 - (iv) any other factor which in the opinion of the court should be taken into account; and
 - (b) refer the matter for evaluation and report by the board.
- (2) (a) If a court refers a matter under subsection (1) (b), the board shall, subject to the provisions of the Legal Aid Guide, evaluate and report on the matter.

(b) The report in question shall be in writing and be submitted to the registrar or the clerk of the court, as the case may be, who shall make a copy thereof available to the court and the person concerned.

(c) The report shall include-

- (i) a recommendation whether the person concerned qualifies for legal representation;
- (ii) particulars relating to the factors referred to in subsection (1) (a) (i) and (iii); and
- (iii) any other factor which in the opinion of the board should be taken into account.

[Paras 3A and 3B inserted by s. 2 of Act No. 20 of 1996 with effect from 1 May 2002.]

4 Constitution of board

(1) The board shall consist of-

- (a) a judge of the Supreme Court of South Africa appointed by the Minister;
- (b) one practising advocate and four practising attorneys, nominated by the General Council of the Bar of South Africa and the Association of Law Societies of the Republic of South Africa, respectively, and appointed by the Minister;
- (c) the Director-General: Justice;
- (d) the State Attorney
- (e) a member appointed by the Minister by virtue of his knowledge and experience in the field of legal aid or any other field which in the opinion of the Minister will be to the advantage of the board;
- (f) three members nominated by the members referred to in paragraphs (a), (b), (c), (d) and (e) by reason of the fact that in the opinion of the members making the nominations they can further the aims of the board and appointed by the Minister.
- (g) no more than six members appointed by the President in consultation with the Cabinet.

[Sub-s. (1) amended by s. 2 of Act 47 of 1989 and substituted by s. 1 (a) of Act 1 of 1991.]

(1A) (a) The members of the board referred to in paragraphs (a), (b), (c), (d) and (e) of subsection (1) may co-opt one or more persons who in their opinion have the appropriate knowledge and experience, as associated members of the board for such period as the board may determine.

(b) An associated member may attend meetings of the board only by invitation of the chairman.

(c) An associated member may take part in the proceedings of the board during meetings and perform the functions assigned to him by the board, but may not vote on any matter and shall not be taken into account for the purpose of the constitution of a quorum in terms of section 6 (1).

[Sub-s. (1A) inserted by s. 1 (b) of Act 1 of 1991.]

(2) (a) The Minister may appoint a person to serve as an alternate in the stead of any member referred to in paragraph (b) or (e) of subsection (1), during such member's absence from any meeting of the board, if such person is qualified to be appointed as such member and has been nominated in the same manner as such member.

[Para. (a) substituted by s. 9 of Act 139 of 1992.]

(b) If any member of the board referred to in paragraph (c) or (d) of subsection (1) is unable for any reason to attend any meeting of the board, he may designate any officer in his department or office or, with the approval of the Minister, any other person to represent him at such meeting.

[Para. (b) substituted by s. 2 (c) of Act 47 of 1989 and by s. 1 (c) of Act 1 of 1991.]

(3) (a) The appointed members of the board and their alternates shall hold office for such period, not exceeding three years, as the Minister may at the time of the appointment determine.

(b) Any member of the board or his alternate whose term of office has expired, shall be eligible for re-appointment.

(c) The Minister may, if in his opinion there are good reasons for doing so, at any time terminate the period of office of any appointed member or his alternate.

(4) No decision taken by the board or act performed under the authority of the board shall be invalid merely by reason of a vacancy on the board or the fact that any person not entitled to sit as a member sat as a member at the time the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the required majority of members present at the time, who were entitled to sit as members.

(5) The member referred to in subsection (1) (a) or in his absence the member referred to in section (1) (c) or his representative shall preside at any meeting of the board: Provided that if both those members and the said representative are absent from any meeting of the board, a chairman elected by the members present from among themselves, shall preside at such meeting.

(6) The board shall out of its funds pay to a member of the board or his alternate, not being in the full-time service of the State, such remuneration and allowances and afford him such transport facilities in respect of his services as such a member or alternate as the Minister in consultation with the Minister of Finance may determine.

5 Meetings of board

(1) The meetings of the board shall be held at such times and places as the board may determine.

(2) The chairperson of the board may at any time, and shall at the request in writing of not less than eight members of the board, convene a special meeting of the board, to be held at such time and place as he or she may determine.

[Sub-s. (2) substituted by s. 4 of Act 20 of 1998.]

6 Quorum and procedure

(1) The quorum at any meeting of the board shall be eight members thereof.

[Sub-s. (1) substituted by s. 5 of Act 20 of 1996.]

(2) Any decision at any meeting of the board shall be by majority of votes of the members present, and in the event of an equality of votes in regard to any matter, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote.

7 Delegation of powers of board

The board may delegate to any member, officer or agent of the board or to any officer in the public service any of its powers, but shall not thereby be divested of any power which it may so have delegated, and may amend or withdraw any decision by a member, officer or agent.

8 Officers and agents of board

The board may, with the consent or in accordance with the general instructions of the Minister acting in consultation with the Minister of Finance, appoint on such conditions and at such remuneration as may be approved by the Minister so acting, officers or agents to assist it in the performance of its functions.

8A Recovery of costs by board

(1) Whenever in any judicial proceedings or any dispute in respect of which legal aid is rendered to a litigant or other person by the board, costs become payable to such litigant or other person in terms of a judgment of the court or a settlement or otherwise, it shall, subject to the powers of the board referred to in section 3 with regard to the fixing of conditions, be deemed that such litigant or other person has ceded his rights to such costs to the board.

(2) If a litigant or person referred to in subsection (1) or his legal representative or the board has, at any time before payment of the costs deemed in terms of subsection (1) to be ceded to the board, whether before or after such costs become payable, given the person by whom the costs are to be paid at his last known address and the registrar or clerk of the court concerned notice in writing that legal aid is being or has been rendered, the board may proceed in its own name to have such costs taxed and to recover them, without being substituted on the record of the judicial proceedings concerned, if any, for the said litigant.

(3) The costs referred to in subsection (1) shall be calculated and the bill of costs concerned, if any, shall be taxed as if the litigant or person to whom legal aid was rendered, had obtained the services of the legal representative acting on his behalf in the proceedings or dispute concerned, without the aid of the board.

[S. 8A inserted by s. 24 of Act 102 of 1972 and substituted by s. 3 of Act 47 of 1989.]

9 Finances of board

(1) The funds of the board shall consist of-

(a) moneys appropriated by Parliament in order to enable the board to perform its functions;

(b) moneys received from any other source.

(2) The board shall, subject to the provisions of subsections (3) and (5), utilize its funds for defraying expenses in connection with the performance of its functions.

(3) The board may receive donations, bequests or contributions from any person and shall utilize moneys so acquired for such purpose and in accordance with such conditions as the donors, testators or contributors may determine.

(4) The board shall deposit all moneys received by it in an account opened by it with a banking institution registered under the Banks Act, 1965 (Act 23 of 1965).

(5) The board shall invest any moneys not required for immediate use or as a reasonable operating balance, with the Corporation for Public Deposits or in such other manner as the Minister may in consultation with the Minister of Finance determine.

[Sub-s. (5) substituted by s. 4 (a) of Act 47 of 1989.]

(6) The board may utilize any balance of its moneys remaining at the end of the financial year of the board concerned, for any expenses in connection with the performance of its functions.

(7) The financial year of the board shall terminate on the thirty- first day of March in each year.

(8) The board shall cause proper records of all its financial transactions, assets and liabilities to be kept.

(9) The accounts of the board shall be audited by the Auditor-General.

[Sub-s. (9) substituted by s. 4 (b) of Act 47 of 1989.]

(10) The board shall furnish the Minister with such information as he may call for from time to time in respect of the activities and financial position of the board, and shall in addition submit to the Minister an annual report, including a balance sheet and statement of income and expenditure certified by the Auditor-General.

[Sub-s. (10) substituted by s. 4 (c) of Act 47 of 1989.]

(11) The Minister shall lay the said report upon the Table in Parliament within fourteen days after receipt thereof, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within fourteen days after the commencement of the next ensuing ordinary session.

[Sub-s. (11) substituted by s. 4 (d) of Act 47 of 1989.]

9A.....

[S. 9A inserted by s. 1 of Act 56 of 1971 and repealed by s. 2 of Act 1 of 1991.]

10 Short title

This Act shall be called the Legal Aid Act, 1969.