

## CHAPTER 7:16

### LEGAL AID ACT

*Act 18/1996, 22/2001 (s. 4), 5/2014 (s.33); S.I 262/2006.*

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**AN ACT to provide for the granting of legal aid to indigent persons; to provide for the establishment and functions of a Legal Aid Directorate and a Legal Aid Fund; to provide for the imposition of levies on legal practitioners for the benefit of the Legal Aid Fund; to repeal the Legal Assistance and Representation Act [Chapter 9:13]; to amend section 87 of the Legal Practitioners Act [Chapter 27:07]; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement: 1st January, 2003.]

## PART I

### PRELIMINARY

#### 1 Short title and date of commencement

This Act may be cited as the Legal Aid Act [*Chapter 7:16*].

[Short title amended by s.i. 262 of 2006]

#### 2 Interpretation

In this Act—

“aided person” means a person who is granted legal aid in terms of this Act;

“court” includes any court or tribunal before which a legal practitioner may represent a client;

“Director” means the Director of the Legal Aid Directorate referred to in section *four*;

“Fund” means the Legal Aid Fund established by section *fourteen*;

“law officer” means a person referred to in paragraph (*b*) of subsection (1) of section four, whose duties consist wholly or mainly in providing an aided person with services normally provided by a legal practitioner to his client;

“Legal Aid Directorate” means the Legal Aid Directorate established by section *three*;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act.

## PART II

### LEGAL AID DIRECTORATE

#### 3 Establishment and functions of Legal Aid Directorate

(1) There is hereby established a Legal Aid Directorate consisting of the Director and law officers and other persons referred to in section *four*.

(2) Subject to this Act, the functions of the Legal Aid Directorate shall be—

(*a*) to provide legal aid to persons who are eligible for such aid in connection with any criminal, civil or other related matter;

(*b*) to do all things necessary to promote the provision of legal aid under this Act;

(*c*) to do any other thing that the Legal Aid Directorate may be required or permitted to do by or under this Act or any other enactment.

(3) The Minister may set up branches of the Legal Aid Directorate in such places as he may direct.

#### 4 Director, law officers and staff of Legal Aid Directorate

(1) There shall be—

(*a*) a Director of the Legal Aid Directorate; and

(*b*) such law officers and other persons as are necessary for carrying out the functions of the Legal Aid Directorate;

whose offices shall be public offices and form part of the Public Service.

(2) A person shall not be qualified for appointment as Director under subsection (1) unless he is registered as a legal practitioner under the Legal Practitioners Act [*Chapter 27:07*].

(3) The functions of the Director may be exercised and performed by him in person or by any other person acting in accordance with his general or specific directions.

(4) Except as otherwise provided in this Act, in the exercise of his functions under this Act, the Director shall not be subject to the direction or control of any other person or authority.

#### 5 Minister may give policy directions to Director

(1) Subject to subsection (2), the Minister may give the Director such directions of a general character relating to the directions to the policy he is to observe in the exercise of his functions as the Minister considers to be requisite in the national interest.

(2) Before giving the Director a direction in terms of subsection (1), the Minister shall inform him, in writing, of the proposed direction and the Director shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, his views on the proposal and the possible effect it may have on the Fund and the resources of the Directorate.

(3) The Director shall, with all due expedition, comply with any direction given to him in terms of subsection (1).

#### 6 Right of audience of law officers

(1) In any matter in which the provision of legal aid is granted in terms of this Act, a law officer shall—

(*a*) have the right of audience in any court;

- (b) have the right to issue out summons or process or commence, carry on or defend any proceedings in any court in the name of an aided person;
- (c) have the right to instruct or assist an aided person to issue out summons or process or to commence, carry on or defend any proceedings in any court:

in the same manner and to the same extent as a registered legal practitioner, notwithstanding that the law officer is not so registered.

(2) This section shall not be construed as derogating from any other law relating to the right of audience of a person who is not registered as a legal practitioner.

### PART III

#### PROVISION OF LEGAL AID

#### 7 Application for legal aid

(1) Any person may apply to the Director in the prescribed form for legal aid in terms of this Act.

(2) Subject to this Act, the Director shall, on receipt of an application in terms of subsection (1), consider the application and—

(a) grant the application and provide legal aid to the applicant, if he is satisfied that—

- (i) the applicant is eligible in terms of section *eight* to receive legal aid; and
- (ii) the resources of the Directorate and the Legal Aid Fund will be sufficient to provide the legal aid required;

or

(b) if he is not satisfied that the applicant is eligible in terms of section *eight* to receive legal aid, reject his application;

and shall notify the applicant forthwith of his decision.

(3) Before granting legal aid to an applicant in terms of subsection (2), the Director may require the applicant—

- (a) to furnish such additional information as the Director considers necessary for the purposes of verifying any matter alleged in the application or for ascertaining the applicant's means;
- (b) to appear personally before the Director to answer any questions which the Director may put to him in connection with the application or in regard to the assessment of his means.

(4) The Director may at any time reconsider any decision made in terms of subsection (2) concerning the eligibility of any person to receive legal aid.

#### 8 Eligibility for legal aid

Subject to this Act, a person shall be eligible for legal aid under this Act if, in the Director's opinion—

- (a) he has insufficient means to obtain the services of a legal practitioner on his own account; and
- (b) he has reasonable grounds for initiating, carrying on, defending or being a party to the proceedings for which he applies for legal aid; and
- (c) he is in need of or would benefit from the services provided in terms of this Act in respect of the proceedings for which he seeks legal aid.

#### 9 Assessment of means

(1) In assessing the means of any person for the purposes of this Act, the Director shall take into account the income and property of the applicant, excluding—

- (a) the dwelling house of the applicant; and
- (b) necessary beds, bedding and clothing of the applicant or any member of his family; and
- (c) necessary furniture of the applicant, other than beds, and household utensils in so far as they do not exceed in value such sum as may be prescribed; and
- (d) tools and implements necessarily used by the applicant in his trade or occupation; and
- (e) food and drink necessary to meet the needs of the applicant and members of his family for one month.

(2) The Director shall make due allowances for such other commitments as may be prescribed.

#### 10 Legal aid at instance of court or Prosecutor-General

(1) If it appears to a judge or magistrate or to the Prosecutor-General that—

- (a) it is desirable in the interests of justice that legal aid should be provided to a person who is or will be a party to any civil or criminal proceedings before the Supreme Court, the High Court or a magistrate court, as the case may be; and
- (b) the person may have insufficient means to obtain the services of a legal practitioner on his own account;

the judge or magistrate or the Prosecutor-General, as the case may be, may recommend to the Director that the person should be provided with legal aid and, where the State is or will be a party to the proceedings concerned, may recommend that a legal practitioner in private practice be engaged in terms of section *twelve*.

(2) Where a recommendation has been made to him in terms of subsection (1), the Director shall forthwith assess the means of the person concerned and, if he is satisfied that—

- (a) the person has insufficient means to obtain the services of a legal practitioner on his own account; and
- (b) the resources of the Legal Aid Fund will be sufficient to provide the legal aid required;

he shall provide the person with legal aid.

### **11 Nature of legal aid**

(1) Legal aid provided in terms of this Act shall include the doing of anything that may properly be done by a legal practitioner for or in the interests of his client.

(2) The nature of legal aid provided to a person in any particular case shall be in the discretion of the Director, taking into account the needs of the person concerned and the resources of the Directorate and the Legal Aid Fund.

### **12 Assignment of legal practitioner**

(1) Where—

- (a) the Director is of the opinion that it is in the interests of justice for the services of a legal practitioner in private practice to be engaged; or
- (b) a judge or magistrate or the Prosecutor-General, in recommending the granting of legal aid to a person in terms of section *ten*, recommends that the person be represented by a legal practitioner in private practice;

the Director may engage a legal practitioner in private practice to act in the matter.

(2) The engagement of a legal practitioner in terms of subsection (1) shall be upon such conditions, including conditions as to his fees and expenses, as may be prescribed.

(3) The Director may at any time dispense with the services of a legal practitioner engaged in terms of subsection (1).

(4) If a court before which a legal practitioner appears is of the opinion that higher fees than those prescribed are justified having regard to the complexity of the matter or the duration of the proceedings, the court may authorize the payment of such higher fees as it considers appropriate.

(5) Any fees and expenses payable in terms of this section shall be paid out of the Legal Aid Fund.

### **13 Termination of legal aid**

The Director may at any time, for any sufficient reason, terminate legal aid granted under this Act:

Provided that he shall not terminate legal aid granted on the recommendation of a judge or a magistrate or the Prosecutor-General in terms of section *ten* without the leave of the judge or magistrate or the Prosecutor-General, as the case may be.

## **PART IV**

### **FINANCIAL PROVISIONS**

### **14 Legal Aid Fund**

(1) There shall be a fund to be known as the Legal Aid Fund.

(2) The Legal Aid Fund shall consist of—

- (a) moneys appropriated for the purpose by Parliament; and
- (b) any contributions made in terms of section *fifteen*; and
- (c) any deductions made in terms of section *sixteen*; and
- (d) any levies paid to the Legal Aid Fund in terms of regulations referred to in paragraph (f) of subsection (2) of section *twenty-four*; and
- (e) any other moneys that may vest in or accrue to the Legal Aid Fund, whether through the provision of legal aid or otherwise.

(3) The Legal Aid Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions.

(4) The Fund shall be applied to—

- (a) meeting any fees and expenses arising from the engagement of legal practitioners in terms of section *twelve*; and
- (b) costs and expenses necessarily incurred in the provision of legal aid in terms of this Act; and
- (c) any other purpose which the Minister considers to be in the interests of the provision of legal aid in terms of this Act.

### **15 Contributions towards legal aid**

The Director may, in granting legal aid to any person under this Act, require the aided person to contribute to the cost of that legal aid to an extent which, in the opinion of the Director, is just and reasonable having regard to the means of the person concerned.

## 16 Deductions from awards

The Director shall, for the benefit of the Legal Aid Fund, deduct from—

- (a) any damages awarded to an aided person by a court; and
- (b) any amounts payable to an aided person pursuant to a settlement negotiated with assistance provided in terms of this Act;

such amounts as may be prescribed.

## 17 Costs awarded to aided persons

(1) Where a court awards costs to an aided person, the costs shall, subject to subsection (3), accrue to the Legal Aid Fund.

(2) For the purpose of receiving any costs payable under subsection (1), the Director may take all such steps and pursue all such remedies as would have been taken by the aided person to whom such costs were awarded, and any expenses incurred in taking such steps or pursuing such remedies shall be recovered by the Director on behalf of the Legal Aid Fund.

(3) Where a court awards costs to an aided person, the Director may authorize a refund to the aided person of any contributions made by the aided person in terms of section *fifteen*.

## 18 Costs not to be awarded against aided persons

Notwithstanding any other law, a court shall not award costs against an aided person.

## PART V

### GENERAL

## 19 Parties to submit to arbitration in certain cases

Where—

- (a) all the parties to a case apply for legal aid in terms of this Act; and
- (b) the Director considers that the matter is of a nature that can properly be the subject of arbitration;

the Director may require the parties to submit the case to arbitration as a condition of granting legal aid.

## 20 Aided person may dispense with legal aid

Notwithstanding anything to the contrary contained in this Act, an aided person may at any time dispense with legal aid granted to him under this Act.

## 21 Legal aid not to affect legal practitioner and client relationship

(1) The relationship between a legal practitioner and his client, any rights, privileges and obligations arising from that relationship, shall not be affected by the fact that the client is an aided person and the legal practitioner has been engaged to represent him in terms of section *twelve*.

(2) A law officer who has been assigned to provide legal aid to an aided person shall be entitled to the same rights and privileges, and be subject to the same obligations, in relation to the aided person's affairs as a legal practitioner in relation to his client's affairs.

## 22 Appeals

Any person who is aggrieved by a decision of the Director in terms of this Act may, within thirty days of being notified of the decision, appeal to the Minister, who may give such decision or direction as he thinks fit.

## 23 Offences and penalties

Any person who—

- (a) obtains or attempts to obtain legal aid to which he is not entitled, knowing he is not entitled to it; or
- (b) in, or in connection with, any application in term of section *seven*, makes a statement which he knows to be false or does not believe on reasonable grounds to be true;

shall be guilty and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section amended by Act 22 of 2001]

## 24 Regulations

(1) The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations in terms of subsection (1) may provide for—

- (a) assessing the means of persons applying for legal aid;
- (b) cases in which legal aid shall and shall not be granted in terms of this Act;
- (c) the functions of law officers in regard to the provision of legal aid to aided persons;
- (d) the manner in which cases are assigned to legal practitioners in terms of section *twelve*;
- (e) requiring legal practitioners to make themselves available for engagement in terms of section *twelve*, subject to such conditions as may be prescribed;

- (f) after consultation with Law Society, the imposition and collection of a levy on legal practitioners for the benefit of the Legal Aid Fund; and
- (g) the imposition of interest and additionally, or alternatively, a surcharge if a levy referred to in paragraph (f) is not paid within the time prescribed.

## **25 Repeal of Cap 9:13 and savings**

- (1) Subject to subsection (2), the Legal Assistance and Representation Act [*Chapter 9:13*] is repealed.
- (2) Notwithstanding the repeal of the Legal Assistance and Representation Act [*Chapter 9:13*]—
  - (a) any statutory instrument which was made in terms of that Act and which was in force immediately before the date of commencement of this Act shall, on and after that date, continue to have the same effect, mutatis mutandis, as if it had been made in terms of this Act;
  - (b) anything done or commenced or any decision made in terms of that Act which, immediately before the date of commencement of this Act had or was capable of acquiring effect shall continue to have or be capable of acquiring, as the case may be, effect as if it had been done, commenced or made in terms of this Act.