



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Vol. 370

CAPE TOWN, 19 APRIL 1996

No. 17131

KAAPSTAD, 19 APRIL 1996

OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 634.

19 April 1996

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It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet, wat hierby ter algemene inligting gepubliseer word:

No. 20 of 1996: Legal Aid Amendment Act, 1996.

No. 20 van 1996: Wysigingswet op Regshulp, 1996.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Legal Aid Act, 1969, so as to amplify the objects and powers of the Legal Aid Board; to make provision for a Legal Aid Guide; to determine guidelines for granting legal aid; and to provide for the appointment of additional members to the Legal Aid Board; to provide that the Legal Aid Act, 1969, shall apply throughout the Republic; to repeal corresponding laws in the former independent states; and to provide for matters connected therewith.

*(English text signed by the President.)
(Assented to 10 April 1996.)*

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 3 of Act 22 of 1969, as amended by section 1 of Act 47 of 1989

1. Section 3 of the Legal Aid Act, 1969 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of the following words:

“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—”; and

(b) by the insertion after paragraph (d) of the following paragraph:

“(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;”.

Insertion of sections 3A and 3B in Act 22 of 1969

2. The following sections are hereby inserted in the principal Act after section 3:

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“Legal Aid Guide

3A. (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. 5

(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. 10 15

(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. 20

Direction for legal aid by court in criminal matters

3B. (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— 25

- (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 30
- (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. 35

(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. 40

(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 45
- (iii) any other factor which in the opinion of the board should be taken into account.”

Amendment of section 4 of Act 22 of 1969, as amended by section 2 of Act 47 of 1989, section 1 of Act 1 of 1991 and section 9 of Act 139 of 1992

3. Section 4 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraph: 50

“(g) no more than six members appointed by the President in consultation with the Cabinet.”.

Amendment of section 5 of Act 22 of 1969

4. Section 5 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 5

“(2) The **[chairman]** chairperson of the board may at any time, and shall at the request in writing of not less than **[six]** 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.”.

Amendment of section 6 of Act 22 of 1969 10

5. Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The quorum at any meeting of the board shall be **[six]** eight members thereof.”.

Extension of application of Act 22 of 1969 15

6. The Legal Aid Act, 1969, shall apply throughout the Republic.

Repeal of laws and savings

7. (1) The laws referred to in the Schedule are hereby repealed to the extent indicated in the third column thereof.

(2) Any person on the fixed establishment of a Legal Aid Board established in terms of a law repealed by subsection (1) shall, without interruption of service, on the date of commencement of this Act, and subject to the conditions of employment and remuneration approved by the Minister of Justice in terms of section 8 of the principal Act, become an employee of the Legal Aid Board established by section 2 of the principal Act: Provided that the Board may recommend to the Minister concerned that a person retain in full or in part a particular term or condition of employment that is more favourable than any term or condition of employment determined in terms of section 8, if there are special circumstances which justify such retention: Provided further that any such retention of a more favourable term or condition of employment shall not continue for more than 12 months after the date of such recommendation. 20 25 30

(3) If, for the purposes of subsection (2)—

(a) the question arises whether any person performs functions pertaining to a Legal Aid Board; or

(b) any question arises in connection with the determination of conditions of employment or remuneration, 35

it shall be determined by the Minister of Justice.

(4) All assets, including funds and administrative records, rights, duties and liabilities which immediately prior to the commencement of this Act vested in a Legal Aid Board established in terms of a law repealed by subsection (1) shall, on the date of commencement of this Act, devolve upon the Legal Aid Board established by section 2 of the principal Act. 40

Short title and commencement

8. This Act shall be called the Legal Aid Amendment Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 45

SCHEDULE**Laws repealed by section 7**

No. and year of law	Short title	Extent of repeal
Act No. 22 of 1969	Legal Aid Act, 1969 (Ciskei)	The whole
Act No. 2 of 1973	Transkeian Legal Aid Act, 1973 (Transkei)	The whole
Act No. 39 of 1978	General Law Amendment Act, 1978 (Transkei)	Sections 12, 13, 14, 15, 16 and 17
Act No. 8 of 1982	Legal Aid Amendment Act, 1982 (Ciskei)	The whole
Act No. 13 of 1983	Legal Aid Act, 1983 (Venda)	The whole
Act No. 8 of 1988	Legal Aid Act, 1988 (Bophuthatswana)	The whole
Act No. 10 of 1988	General Law Amendment Act, 1988 (Bophuthatswana)	Section 5