

A BILL

i n t i t u l e d

An Act to amend the Legal Aid Act 1971.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Legal Aid (Amendment) Act 2017.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 2

2. The Legal Aid Act 1971 [*Act 26*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) by inserting after the definition of “judge” the following definition:

‘ “legal aid” means legal aid services as provided in section 2A;’; and

(b) by inserting after the definition of “aided person” the following definition:

‘ “child” has the meaning assigned to it in the Child Act 2001 [*Act 611*];’.

New Part IA

3. The principal Act is amended by inserting after Part I the following Part:

“PART IA

LEGAL AID SERVICES

Legal aid services

2A. (1) The legal aid services given under this Act shall consist of the following:

- (a) legal aid in criminal cases as provided in Part III;
- (b) legal aid in civil actions as provided in Part IV;
- (c) legal advice as provided in Part V;
- (d) mediation services as provided in Part VA; and
- (e) legal companion services as provided in Part VB.

(2) The legal aid services referred to in subsection (1) may be given to the citizens of Malaysia only.

Registration fee

2B. (1) Any person who has qualified for legal aid under this Act shall be required to pay to the Director General of Legal Aid a registration fee as prescribed by the Minister.

(2) The registration fee paid under subsection (1) shall be expended for the purpose of administering the legal aid services.”.

Amendment of section 15

4. Section 15 of the principal Act is amended by substituting for paragraph 15(2)(b) the following paragraph:

“(b) he is satisfied that the applicant fulfills the criteria and means tests as prescribed by the Minister.”.

Amendment of section 16

5. Section 16 of the principal Act is amended by substituting for paragraph 16(1)(b) the following paragraph:

“(b) he is satisfied that the applicant fulfills the criteria and means tests as prescribed by the Minister.”.

Deletion of section 16B

6. The principal Act is amended by deleting section 16B.

Amendment of section 18

7. Subsection 18(1) of the principal Act is amended by substituting for the words “in a lump sum or by instalment” the words “of a sum as prescribed by the Minister for the purpose of administering the legal aid services”.

Amendment of section 29

8. Section 29 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “persons resident and present in” the words “citizens of”; and

(b) by substituting for subsection (4) the following subsection:

“(4) A person seeking legal advice shall apply to the Director General of Legal Aid and shall be required to satisfy the Director General of Legal Aid that he cannot afford to obtain the legal advice in the ordinary way.”.

New Part VB

9. The principal Act is amended by inserting after Part VA the following Part:

“PART VB**LEGAL COMPANION SERVICES****Provision of legal companion services**

29G. (1) Subject to this Part, legal companion services in relation to any proceedings of a description of offences specified in the Fifth Schedule may be provided to any person.

(2) The Minister may by order amend the Fifth Schedule.

Qualification for legal companion services

29H. (1) Any person is qualified to make an application to the Director General of Legal Aid for a legal companion service if—

(a) he is a child who is a victim of any offences as specified in the Fifth Schedule; and

(b) he is still a child at the time the proceedings is commenced in court.

(2) The Director General of Legal Aid may grant a legal aid certificate to an applicant who is entitled under this Part to legal companion service upon being satisfied that the applicant has fulfilled the requirements in subsection (1).

(3) Any person to whom a legal aid certificate is granted under subsection (2) may be required to pay to the Director General of Legal Aid a contribution of a sum as prescribed by the Minister.

(4) The contribution paid under subsection (3) shall be expended for the purpose of administering the legal aid services.

Legal companion services

29i. (1) A legal companion service may be given for the following purposes:

- (a) to advise the guardian, or protector of an aided person permitted under any written laws on legal matters;
- (b) to obtain relevant information relating to charges against any accused person in any criminal proceedings to which the aided person is the victim;
- (c) to accompany an aided person in any proceedings in court, and with leave of the court, to speak on behalf of an aided person, if necessary; and
- (d) to advise the guardian, or protector of an aided person permitted under any written law on any matter relating to any civil action that can be brought or instituted by an aided person, if any.

(2) The Director General of Legal Aid may at any time discontinue the legal companion services given to the aided person.”.

Amendment of section 32

10. Subsection 32(2) of the principal Act is amended—

- (a) in paragraph (ca), by deleting the word “and” at the end of the paragraph; and
- (b) by inserting after paragraph (ca) the following paragraph:

“(cb) to regulate the practice and procedure of legal companion services; and”.

New Fifth Schedule

11. The principal Act is amended by inserting after the Fourth Schedule the following Schedule:

“FIFTH SCHEDULE

[Subsection 29G(1)]

DESCRIPTION OF OFFENCES IN RESPECT OF WHICH
LEGAL COMPANION SERVICES MAY BE GIVEN

All sexual offences against a child provided in any written law.”.

Saving

12. Any application made or action commenced under the principal Act which is still pending before the coming into operation of this Act shall continue to be valid and shall be dealt with under the principal Act as if the principal Act had not been amended by this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Legal Aid Act 1971 (“Act 26”). The proposed amendments seek to strengthen the implementation aspects of the legal aid services towards providing a better service. In particular, these amendments seek to provide for the legal companion services for children who are victims of any offences as specified in the proposed Fifth Schedule.

2. *Clause 1* seeks to provide for the short title and commencement of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 26 to introduce new definitions of “legal aid” and “child”.

4. *Clause 3* seeks to introduce a new Part IA into Act 26. The proposed section 2A seeks to provide that the legal aid services may be given to the citizens of Malaysia only. The proposed section 2B seeks to require any person who has qualified for legal aid under Act 26 to pay to the Director General of Legal Aid a registration fee as prescribed by the Minister which shall be expended for the purpose of administering the legal aid services.

5. *Clauses 4* and *5* seek to amend paragraphs 15(2)(b) and 16(1)(b) of Act 26, respectively to empower the Minister to prescribe the criteria and means tests that the applicant has to fulfill in order to be granted with a legal aid certificate by the Director General of Legal Aid in connection with any civil proceedings or any other proceedings.

6. *Clause 6* seeks to delete section 16B of Act 26 to remove the requirement to pay to the Director General of Legal Aid a sum of two ringgit as registration fee. The deleted provision is redrafted in the proposed section 2B (*clause 3*) which provides that the sum of registration fee shall be as prescribed by the Minister.

7. *Clause 7* seeks to amend subsection 18(1) of Act 26 to empower the Minister to prescribe a sum of contribution required to be paid to the Director General of Legal Aid for the purpose of administering the legal aid services.

8. *Clause 8* seeks to amend section 29 of Act 26. *Subclause 8(a)* seeks to amend subsection 29(1) of Act 26 to limit the legal advice given on any matter specified in the Second, Third and Fourth Schedules to the citizens of Malaysia only. *Subclause 8(b)* seeks to amend subsection 29(4) of Act 26 to require a person who seeks legal advice to apply to the Director General of Legal Aid and satisfy the Director General of Legal Aid that he could not afford to obtain the legal advice in the ordinary way.

9. *Clause 9* seeks to introduce a new Part VB into Act 26 which deals with legal companion services.

The proposed section 29G seeks to provide that subject to the provisions of the proposed Part VB, legal companion services in relation to any proceedings of a description of offences specified in the proposed Fifth Schedule may be provided to any person and that the Minister may by order amend the Fifth Schedule.

The proposed section 29H seeks to provide that any person who is a child and is a victim of any offences as specified in the proposed Fifth Schedule and is still a child at the time the proceedings is commenced in court may apply for a legal companion service and be granted a legal aid certificate that the applicant is entitled to legal companion service. The proposed section 29H also seeks to require the applicant to whom a legal aid certificate is granted to pay to the Director General of Legal Aid a contribution of a sum as prescribed by the Minister which shall be expended for the purpose of administering the legal aid services.

The proposed section 29I seeks to provide for the purposes of a legal companion service which amongst others are to advise the guardian, or protector of an aided person permitted under any written law on legal matters, to obtain relevant information relating to charges against the accused person in any criminal proceedings to which the aided person is the victim and to accompany an aided person in any proceedings in court, and with leave of the court, to speak on behalf of an aided person. The proposed section 29I also empowers the Director General of Legal Aid to discontinue at any time the legal companion services given to the aided person.

10. *Clause 10* seeks to amend subsection 32(2) of Act 26 to empower the Minister to make regulations to regulate the practice and procedure of legal companion services.

11. *Clause 11* seeks to introduce a new Fifth Schedule into Act 26 to provide for the description of offences in respect of which legal companion services may be given.

12. *Clause 12* deals with saving provision.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U2)3077]