

LEGAL AID COMMISSION.

No. 143 of 1976.

AN ACT to establish the Legal Aid Commission of Western Australia and for related purposes.

[Assented to 13th December, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Legal Aid Commission Act, 1976*.

Short title.

2. The provisions of this Act shall come into operation on such date or dates as is or are, respectively, fixed by proclamation.

Commencement.

Arrange-
ment.

3. This Act is divided into Parts as follows—

PART I.—PRELIMINARY.

PART II.—ESTABLISHMENT AND FUNCTIONS OF
THE LEGAL AID COMMISSION OF WESTERN
AUSTRALIA.

PART III.—THE DIRECTOR OF LEGAL AID AND THE
STAFF OF THE COMMISSION.

PART IV.—LEGAL AID COMMITTEES.

PART V.—PROVISION OF LEGAL ASSISTANCE.

*Division 1.—Provision of Legal Assistance by
Commission.*

*Division 2.—Legal Aid by Duty Counsel and
Legal Advice.*

Division 3.—Legal Aid Generally.

*Division 4.—Notification and Review of Deci-
sions Relating to Legal Aid.*

*Division 5.—Relationship between Practitioner
and Assisted Person.*

PART VI.—FINANCES OF COMMISSION.

*Division 1.—The Legal Aid Fund of Western
Australia.*

Division 2.—Estimates, Accounts and Audit.

PART VII.—LEGAL PRACTICE BY DIRECTOR AND
STAFF.

PART VIII.—MISCELLANEOUS.

PART IX.—AGREEMENTS WITH THE COMMON-
WEALTH.

PART X.—TRANSITIONAL PROVISIONS.

Division 1.—General.

Division 2.—Transfer of Staff to Commission.

4. (1) In this Act, unless the contrary intention appears— Interpreta-
tion.

“applicant” means a person who has made application for legal assistance under this Act;

“appointed day” means the day appointed by the Commission pursuant to section 13;

“assisted person” means a person to whom legal assistance is provided under this Act and “unassisted person” has the contrary meaning;

“Attorney General” means the Attorney General of the State;

“Chairman” means the Chairman of the Commission;

“Director” means the Director of Legal Aid appointed under section 18;

“Law Society” means The Law Society of Western Australia, a body incorporated under the Associations Incorporation Act, 1895;

“legal advice” means advice on matters of law given by a practitioner and includes assistance in preparing an application for legal aid and in furnishing information required in that connection;

“legal aid” means legal services, not confined to legal advice, performed by a practitioner or practitioners in the form of—

(a) representation in and in connection with proceedings;

(b) assistance ordinarily given by a solicitor or counsel or both in the steps preliminary or incidental to proceedings or in arriving at, or giving effect to, a compromise to avoid or terminate proceedings;

- (c) assistance in taking steps to assert a claim or resist a demand, where the question of taking, defending or being a party to any proceedings before a court or tribunal does not arise or has not then arisen; and
- (d) assistance in such matters, other than those mentioned in paragraphs (a), (b) and (c) of this interpretation, as the Commission may, from time to time, determine under the provisions of paragraph (e) of section 15;

“legal aid committee” means a legal aid committee established under section 24;

“legal assistance” means legal advice, legal aid or both of those services;

“member” means a member of the Commission and includes the Chairman;

“order for costs” means a judgment, order, decree, award or direction for the payment of the costs of one party to a proceeding by another or others, whether given or made in that proceeding or not;

“practitioner” has the same meaning as in the Legal Practitioners Act, 1893;

“private practitioner” means a certificated practitioner, within the meaning of the Legal Practitioners Act, 1893, who is practising on his own account whether alone or in partnership or who is an employee of a certificated practitioner who is so practising;

“Public Service Board” means the Public Service Board established by Part II of the Public Service Act, 1904;

“review committee” means a review committee established under section 50;

“section” means section of this Act;

“subsection” means a subsection of the section wherein the term is used;

“the Commission” means the Legal Aid Commission of Western Australia established under section 6;

“the Commonwealth Commission” means any commission, authority or body that may be established under an Act of the Parliament of the Commonwealth for the purposes that include monitoring and advising upon the provision of legal assistance generally throughout the Commonwealth;

“the Fund” means the Legal Aid Fund of Western Australia established by section 52;

“the staff” means the staff of the Commission.

(2) Every act, matter or thing that is required or permitted to be done under this Act by the Law Society may be done by the Council of the Law Society.

5. Nothing in this Act affects the operation of any other law of the State under which legal assistance may be provided. Other laws not affected.

PART II.—ESTABLISHMENT AND FUNCTIONS OF LEGAL AID COMMISSION OF WESTERN AUSTRALIA.

6. (1) For the purposes of this Act, there shall be established a commission by the name of the “Legal Aid Commission of Western Australia”. The Commission.

(2) The Commission—

(a) is a body corporate with perpetual succession and a common seal;

- (b) in its corporate name may acquire, hold and dispose of real and personal property;
- (c) may sue and be sued in its corporate name; and
- (d) may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon it by or under this Act.

(3) Where in any judicial proceedings, whether under this Act or not, a document is produced bearing a seal purporting to be the common seal of the Commission the court, tribunal or person before which or before whom those proceedings are brought shall in the absence of proof to the contrary presume that—

- (a) the seal is the common seal of the Commission; and
- (b) the seal was duly affixed.

Composition
of
Commission.

7. (1) The Commission shall consist of—

- (a) one person appointed by the Governor, on the nomination of the Attorney General, as a member and Chairman of the Commission;
- (b) six persons appointed by the Governor, as members of the Commission, of whom—
 - (i) four shall be appointed on the nomination of the Attorney General;
 - (ii) one (not being a practitioner) shall be appointed on the nomination of the Minister to whom the administration of the Consumer Affairs Act, 1971 is for the time being committed by the Governor; and
 - (iii) one shall be appointed on the nomination of the Attorney General of the Commonwealth to represent the Attorney General of the Commonwealth.

(2) The person appointed as Chairman of the Commission shall be a practitioner who has had, in this State or elsewhere, not less than seven years' experience as a legal practitioner.

(3) Of the persons appointed as members of the Commission pursuant to subparagraph (i) of paragraph (b) of subsection (1)—

- (a) one shall be a person (not being a practitioner) who has, in the opinion of the Attorney General, had administrative experience at a senior level; and
- (b) the remaining three shall be private practitioners and shall, where a panel of names has been submitted to the Attorney General by the Law Society in accordance with subsections (4) and (5), be nominated from that panel.

(4) Prior to the first occasion on which appointments are to be made to the offices of member referred to in paragraph (b) of subsection (3), and on each occasion thereafter when such an office becomes vacant, the Attorney General shall, in writing, request the Law Society to submit to him a panel containing the names of a number of private practitioners (being a number not fewer than twice the number of offices to be filled) willing to act as members of the Commission.

(5) Where the Law Society has been requested, pursuant to subsection (4), to submit a panel containing the names of a number of persons to the Attorney General, the Attorney General—

- (a) shall, if such a panel is submitted to him within thirty days of the Law Society receiving the request, nominate for appointment to the office of member one or more (as the case requires) of the private practitioners whose names appear on the panel; and

- (b) may, if default is made within that time in submitting such a panel to him, nominate for appointment to the office of member such private practitioner or private practitioners (as the case requires) as he thinks fit.

(6) The Governor may appoint as deputy of a member a person who would be eligible for appointment to the office of the member and who has been nominated in the manner in which the member was nominated.

(7) A person so appointed is, in the event of the absence from a meeting of the Commission of the member of whom he is the deputy, entitled to attend that meeting and, when so attending has all the powers, functions and duties of a member.

Tenure of
office.

8. (1) Subject to this Act, each member shall hold office for such period, not exceeding three years, as is specified in the instrument of his appointment, but it eligible for re-appointment.

(2) The Attorney General may grant leave of absence to a member on such terms as the Attorney General determines.

(3) A member may resign his office by writing signed by him and delivered to the Attorney General, but the resignation does not have effect until it is accepted by the Attorney General.

(4) The Governor may terminate the appointment of a member for inability, inefficiency or misbehaviour.

(5) If a member—

- (a) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;

- (b) becomes permanently incapable of performing his duties as a member;
- (c) absents himself, except on leave duly granted by the Attorney General, from three consecutive meetings of the Commission; or
- (d) in the case of a member holding an office referred to in paragraph (b) of subsection (3) of section 7, ceases to be a private practitioner,

the office of that member becomes vacant.

(6) Where the office of a member has become vacant otherwise than by effluxion of time, the Governor may appoint to the vacant office for the unexpired part of the term of the office which so became vacant a person who is eligible for appointment to that office and who has been nominated in the manner in which the member was nominated.

9. (1) The Commission shall hold such meetings at such times and places as are necessary to enable it to discharge its functions and duties under this Act and the Attorney General may at any time require the Chairman to convene a meeting of the Commission.

Meetings of
Commission.

(2) The Chairman shall preside at all meetings of the Commission at which he is present and where the Chairman is not present at a meeting of the Commission the members present shall appoint one of their number present to preside at the meeting.

(3) At a meeting of the Commission four members constitute a quorum.

(4) Any question arising at a meeting of the Commission shall be decided by a majority of the votes of the members present and voting.

(5) The member presiding at a meeting of the Commission has a deliberative vote, and in the event of an equality of votes, also has a casting vote.

(6) The Commission shall cause accurate minutes to be kept of its proceedings at its meetings.

(7) To the extent that it is not prescribed the Commission shall determine its own procedure.

(8) The Director shall, whenever he is available, attend all meetings of the Commission unless in special circumstances the Commission otherwise determines.

(9) The Director may, when attending a meeting of the Commission, participate in the discussion of any question arising at the meeting.

Validity
of acts of
Commission.

10. No act, proceeding or determination of the Commission shall be invalid on the ground only of any vacancy in the office of any member or of any defect in the appointment of any member or in the appointment of any deputy of a member.

Duties and
remuneration
of members.

11. (1) A member is not required to devote the whole of his time to the duties of his office.

(2) A member shall be paid such fees and allowances as may from time to time be fixed by the Governor.

Functions of
Commission.

12. (1) The functions of the Commission shall be—

(a) to provide legal assistance in accordance with this Act;

(b) to control and administer the Fund.

(2) Legal assistance may be provided by the Commission by making available the services of the Director and the staff or by arranging for the services of private practitioners to be made available wholly or partly at the expense of the Commission.

(3) Where the Commission provides legal assistance by way of legal aid in relation to proceedings that assistance may be provided in relation to—

(a) proceedings instituted or proposed to be instituted or which could be instituted—

(i) in the High Court of Australia, the Supreme Court or any other Court or tribunal established by or under a law of the Commonwealth or of the State; or

(ii) in any court or tribunal established by or under a law of another State or a Territory of the Commonwealth where, for reasons of convenience, or under arrangements made with a person or body providing legal aid in that State or Territory, it is in the opinion of the Commission desirable that legal aid be provided; or

(b) an appeal or proposed appeal to Her Majesty in Council.

13. The Commission may, with the approval of the Minister appoint a day, to be notified in the *Gazette* and in a daily newspaper circulating in the State, on which it will commence to provide legal assistance in accordance with this Act.

Appointed day.

14. (1) Where a private practitioner performs services by way of legal assistance under Division 3 of Part V of this Act the Commission shall—

Commission to pay fees, etc. to private practitioners providing legal assistance.

(a) pay to him for the performance of those services—

(i) the fee (if any) prescribed by the rules as the lump sum fee to be paid to a private practitioner whenever those services are performed on behalf of an assisted person; or

(ii) if no lump sum fee is so prescribed in relation to those services—such percentage as may be prescribed by the rules of the fees that would be payable to him in the ordinary course of practice and are approved by a legal aid committee; and

(b) reimburse him in respect of disbursements and out-of-pocket expenses properly incurred by him in performing those services.

(2) Where a private practitioner performs services by way of legal assistance under Division 2 of Part V of this Act the Commission shall pay to him for and in respect of the performance of those services such fees and expenses as the Commission determines.

(3) Before making any rule or determination for the purposes of this section the Commission shall ascertain and take into account the views of the Law Society.

Duties.

15. In the performance of its functions the Commission shall—

- (a) ensure that legal assistance is provided in the most effective, efficient and economical manner;
- (b) establish such local offices as it considers appropriate and generally use its best endeavours to make legal assistance available to persons throughout the State;
- (c) subject to agreements or arrangements made between the Commonwealth and the State from time to time in that behalf, determine or vary priorities in the provision of legal assistance as between classes of persons or classes of matters, or both;
- (d) take into account the recommendations of the Commonwealth Commission;

- (e) determine the matters or classes of matters (in addition to the matters mentioned in paragraphs (a), (b) and (c) of the interpretation "legal aid" in section 4) in respect of which legal services may be performed on behalf of assisted persons by way of legal aid;
- (f) determine guidelines to assist legal aid committees in the exercise of the power of delegation conferred on them by section 28;
- (g) determine guidelines to assist legal aid committees in making determinations for the purposes of section 38 having regard to—
 - (i) the importance of maintaining the independence of the private legal profession;
 - (ii) the desirability of an assisted person being entitled to select the practitioner whom he wishes to act for him;
 - (iii) the desirability of a salaried legal service being used where appropriate in the delivery of legal assistance services; and
 - (iv) the need for legal services to be readily available and easily accessible to disadvantaged people;
- (h) initiate and carry out educational programmes designed to promote an understanding by the public, and by sections of the public who have special needs in this respect, of their rights, powers, privileges and duties under the laws of the Commonwealth and of the State;
- (i) determine, having regard to funds available and taking into account any relevant recommendations of the Commonwealth Commission, guidelines to be observed by legal aid committees with respect to the

payment of costs and disbursements by an assisted person where proceedings are decided, compromised or resolved in his favour;

- (j) co-operate with persons administering other schemes of legal assistance in the State and elsewhere;
- (k) encourage and permit law students to participate, so far as the Commission considers it practicable and proper to do so, on a voluntary basis, under professional supervision, in the provision of legal assistance by the Director and the staff.

Powers of
Commission.

16. The Commission may do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

Trust
moneys.

17. (1) The Commission may accept moneys or other property on trust and may act as trustee of moneys or other property held by the Commission on trust.

(2) Subject to subsections (3) and (4), any moneys or other property held by the Commission upon trust shall be dealt with in accordance with the powers and duties of the Commission as trustee under the law of the State.

(3) The provisions of Part III of the Legal Contribution Trust Act, 1967 apply to and in relation to moneys held by the Commission on trust for persons who are or have been assisted persons.

(4) Any moneys held by the Commission on trust (other than moneys required to be deposited pursuant to Part III of the Legal Contribution Trust Act, 1967) may be invested by the Commission in any manner authorized by law for the investment of trust moneys and all moneys resulting from investments so made shall be paid to the credit of the Fund.

PART III.—THE DIRECTOR OF LEGAL AID
AND THE STAFF OF THE COMMISSION.

18. (1) A person shall be appointed to the office of Director of Legal Aid.

Director of
Legal Aid.

(2) A person is not eligible for appointment as Director unless he is a practitioner, or is qualified for admission as a practitioner, and has had, in this State or elsewhere, not less than five years experience as a legal practitioner.

(3) The following provisions apply to and in relation to the Director, that is to say—

- (a) he shall be appointed by the Governor on the recommendation of the Commission for a term not exceeding five years;
- (b) the conditions of his service shall be such as the Commission determines;
- (c) he shall be paid such remuneration and allowance or allowances as the Commission may from time to time determine;
- (d) he may be re-appointed, from time to time at the expiration of a term of office unless he has been removed from office by the Governor under paragraph (e) of this subsection;
- (e) he may, at any time, be removed from office by the Governor for disability, bankruptcy, neglect of duty or misconduct, or if he engages in any other remunerative employment; and
- (f) he may at any time resign his office by writing under his hand addressed to the Commission.

19. (1) The Director shall—

- (a) subject to the Commission, administer the scheme of legal assistance established by this Act;

Functions
and
powers of
Director.

(b) as and when required by or under this Act, provide legal services to assisted persons and arrange and supervise the provision of such services by practitioners who are members of the staff.

(2) The Director may do all things that are necessary or convenient to be done for or in connection with the performance of his functions.

Classification
and
appointment
of staff.

20. (1) The Commission may from time to time, after consultation with the Public Service Board, classify the positions to be held by members of the staff of the Commission and define the duties to be performed by the respective holders of those positions.

(2) Subject to this Act the Commission may, from time to time, employ as members of the staff of the Commission such practitioners and other persons as it considers fit to hold the positions mentioned in subsection (1).

Terms and
conditions of
employment.

21. (1) Subject to any relevant award or industrial agreement under the Industrial Arbitration Act, 1912, and subject to section 78 the terms and conditions of members of the staff, including the salary or wages payable, are such terms and conditions as the Commission, after consultation with the Public Service Board, determines.

(2) The Public Service Act, 1904 does not apply to or in relation to members of the staff.

Super-
annuation.

22. (1) For the purposes of the Superannuation and Family Benefits Act, 1938, and for those purposes only, the Commission is hereby declared to be a "department" within the meaning of that Act.

(2) As soon as practicable after it is established the Commission shall—

(a) enter into a proper written agreement with the Treasurer; and

- (b) make arrangements satisfactory to the Treasurer,

for the purposes, and in relation to the matters, referred to in paragraph (i) of the proviso to the interpretation "department" in section 6 of the Superannuation and Family Benefits Act, 1938.

23. (1) The Director may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a member of the staff any of his functions or powers under this Act, other than this power of delegation.

Delegation.

(2) A function or power so delegated, when performed or exercised by the delegate, shall, for the purposes of this Act be deemed to have been performed or exercised by the Director.

(3) A delegation under this section does not prevent the performance of a function or exercise of a power by the Director.

PART IV.—LEGAL AID COMMITTEES.

24. The Commission may establish such legal aid committees as it considers necessary for the purposes of Division 3 of Part V of this Act.

Establishment of legal aid committees

25. (1) A legal aid committee shall consist of such number of members as the Commission determines.

Constitution of legal aid committees.

(2) The members of a legal aid committee shall be private practitioners appointed by the Commission on the nomination of the Law Society.

(3) A member of a committee—

- (a) shall hold office for such period, not exceeding one year as is specified in the instrument of his appointment, but is eligible for re-appointment;

- (b) may be removed from office by the Commission for disability, neglect of duty or misconduct;
- (c) may resign his office by writing signed by him and delivered to the Chairman of the Commission, but the resignation does not have effect until it is accepted by the Chairman.

(4) The Commission shall appoint one of the members of a legal aid committee to be the chairman of that committee.

(5) The Director shall be *ex officio* a member of each legal aid committee.

(6) Where the Director is unable to attend a meeting of a legal aid committee he may, by notice in writing addressed to the chairman of that committee, nominate a practitioner who is a member of the staff to attend that meeting and the person so nominated may attend that meeting and, when so attending, has all the powers, functions and duties of a member of the committee.

Meetings of
legal aid
committees.

26. The rules may make provision for and in relation to—

- (a) the convening of meetings of legal aid committees;
- (b) the appointment or election of members of committees to preside at such a meeting in the absence of the chairman of the committee; and
- (c) the procedure (including provisions with respect to quorums and voting) to be followed at such a meeting.

Functions
and
powers of
legal aid
committees.

27. (1) Subject to the Commission a legal aid committee shall perform and exercise such functions and powers in relation to applications for legal aid, and in relation to the provision of legal aid, as are committed to or conferred on a legal aid committee under this Act.

(2) A committee may do all things that are necessary or convenient to be done for or in connection with the performance and exercise of its functions and powers.

28. (1) Subject to subsection (5) a legal aid committee may, in writing, either generally or as otherwise provided by the instrument of delegation delegate to the Director or a member of the staff any of its functions or powers under this Act. Delegation.

(2) Subject to paragraph (b) of subsection (4) of section 36 a person to whom a function or power is delegated under this section shall not delegate that function or power.

(3) A function or power so delegated, when performed or exercised by the delegate, shall, for the purposes of this Act, be deemed to have been performed or exercised by the legal aid committee.

(4) A delegation under this section does not prevent the performance of a function or exercise of a power by the legal aid committee.

(5) In making any delegation under this section a legal aid committee shall have regard to the guidelines determined by the Commission pursuant to paragraph (f) of section 15.

29. No act, proceeding or determination of a legal aid committee shall be invalid on the ground only of any vacancy in the office of any member of the committee or of any defect in the appointment of any member of the committee. Validity of acts of legal aid committees.

PART V.—PROVISION OF LEGAL ASSISTANCE.

Division 1.—Provision of Legal Assistance by Commission.

30. The Commission may, by published advertisement or otherwise, bring the services provided by the Commission to the attention of members of the public or of particular persons or classes of persons. Advertising of services.

Name or names to be used by Commission in providing services.

31. The services provided by the Commission may be advertised and provided under the name of the Commission or under such other name or names as the Attorney General may, on the recommendation of the Commission, approve.

Commission may assist persons in matters affecting the State, etc.

32. Legal assistance may be provided under this Act (including legal assistance involving the performance of legal services by the Director or practitioners who are members of the staff) to a person in relation to any matter notwithstanding that the interests of that person are, or may be, adverse to the interests of the State or the Commonwealth, the interests of an authority or body established for a public purpose by a law of the State or the Commonwealth or the interests of an incorporated company in which the State, the Commonwealth or such an authority or body has an interest.

Division 2.—Legal Aid by Duty Counsel and Legal Advice.

Provisions of legal advice and duty counsel services.

33. The Commission may provide legal assistance by way of—

(a) legal aid given by a practitioner acting as duty counsel at any court; or

(b) legal advice,

to any person.

Charges and payment to Fund.

34. (1) Legal assistance provided under this Division may be provided free of charge or on the payment by the assisted person of a fixed charge determined by the Commission.

(2) All charges paid to the Commission under this section shall be paid to the credit of the Fund.

Division 3.—Legal Aid Generally.

Interpretation.

35. In this Division—

“legal aid” does not include legal aid given by a practitioner acting as duty counsel at any court.

36. (1) An application for legal aid in respect of a matter shall be in writing in the form prescribed for use in relation to such a matter.

Application
for
legal aid.

(2) An application for legal aid may be lodged at any office of the Commission and—

(a) shall be referred by the Director to the legal aid committee that the Director considers to be appropriate having regard to the matter in respect of which legal aid is sought; and

(b) may, in accordance with the rules, be transferred to any other legal aid committee.

(3) Without limiting the generality of section 28 a legal aid committee may, pursuant to that section, delegate to the Director the power to consider applications for legal aid in respect of such class or classes of matters as is or are specified in the instrument of delegation.

(4) Where a person makes an application for legal aid in respect of a matter of a class specified in a delegation referred to in subsection (3)—

(a) the provisions of paragraphs (a) and (b) of subsection (2) shall not apply to that application;

(b) the application shall be considered by the Director or by an appropriate member of the staff in accordance with arrangements made or approved by the Director; and

(c) unless the context otherwise requires, a reference in this Act to a legal aid committee shall, as respects that application and the provision of legal aid to that person, be read and construed as a reference to the Director or that appropriate member of the staff, as the case may require.

Legal aid
committee to
consider
application.

37. (1) Where an application for legal aid is referred or transferred to a legal aid committee under this Act the committee shall consider the application and, subject to this section, decide whether legal aid should be provided to the applicant.

(2) Legal aid may be provided to a person under this Act if, and only if—

- (a) the person is in need of that legal aid by reason that he is unable to afford the full cost of obtaining from private practitioners the legal services in respect of which the legal aid is sought; and
- (b) it is reasonable in all the circumstances to provide the legal aid.

(3) In the making of a decision whether a person is in need of legal aid by reason that he is unable to afford the full cost of obtaining from private practitioners the legal services in respect of which the legal aid is sought, a legal aid committee shall have regard to all relevant matters including—

- (a) the income of the person;
- (b) the cash that is readily available to the person or can be made so available;
- (c) the debts, liabilities and other financial obligations of the person;
- (d) the cost of living in the locality where the person resides;
- (e) the cost of obtaining the legal services from private practitioners; and
- (f) any other matter affecting the ability of the person to meet the cost of obtaining the services from private practitioners.

(4) In deciding whether it is reasonable in all the circumstances to provide legal aid to a person in respect of a matter a legal aid committee shall have regard to all relevant matters including—

- (a) whether or not the matter relates to a problem the solution to which may be obtained by representation within the field of normal legal practice;
- (b) whether or not the matter is one in respect of which a practical or material benefit or gain may accrue to the person or a practical or material detriment or loss may be suffered by the person;
- (c) the likely cost to the Fund of providing the legal aid and whether or not the outlay of that cost is justified having regard to—
 - (i) the benefit or gain that may accrue to the person or the detriment or loss that may be suffered by the person in respect of the matter; and
 - (ii) the moneys for the time being available in the Fund for the provision of legal aid;
- (d) in the case of legal aid in relation to proceedings—
 - (i) whether or not the proceedings are likely to be determined in a manner favourable to the person; and
 - (ii) whether or not, in the ordinary course of practice, a client who was not in financial need of legal aid would, notwithstanding the possible costs of a litigation, be advised to take or defend the proceedings, as the case may be.

(5) Where, prior to the making of an application for legal aid, a private practitioner has already performed or partly performed legal services on behalf of the applicant in relation to a matter a

legal aid committee may, pursuant to subsection (1), decide that legal aid should be provided in relation to that matter and, in that event, any services so performed by that private practitioner on or after such date as the committee specifies (being a date not more than thirty days before the making of the application) shall be regarded as having been performed by way of legal aid under this Act.

Allocation of legal aid between private practitioners and staff.

38. (1) Where a legal aid committee decides that legal aid should be provided to an applicant it shall determine whether the legal services involved in providing that legal aid shall be performed by—

- (a) a private practitioner; or
- (b) the Director or a practitioner who is a member of the staff.

(2) In making a determination pursuant to subsection (1) a legal aid committee shall, so far as practicable, apply the guidelines determined by the Commission pursuant to paragraph (g) of section 15 and shall, in any event, have regard to the matters mentioned in subparagraphs (i), (ii), (iii) and (iv) of that paragraph.

Nature and conditions of legal aid.

39. (1) Where a legal aid committee decides that legal aid should be provided to an applicant—

- (a) the nature and extent of the legal aid to be provided shall also be decided by the committee; and
- (b) the committee may, having regard to the matters mentioned in subsection (3) of section 37, decide that the legal aid shall be provided free of charge or that it shall be provided subject to either or both of the following conditions, that is to say—
 - (i) a condition that, on demand by the Commission, the applicant shall pay to the Commission a contribution towards the cost of providing the legal aid;

- (ii) a condition that, on demand by the Commission, the applicant shall make a payment or payments to the Commission in respect of any out-of-pocket expenses incurred, or to be incurred, in providing the legal aid.

(2) Where legal aid is being provided to a person under this Act a legal aid committee may—

- (a) terminate the provision of that legal aid; or
- (b) in relation to the continued provision of that legal aid—impose a condition or further condition under paragraph (b) of subsection (1) or vary a condition imposed under that paragraph.

(3) If a person who is or has been an assisted person has not paid an amount payable by way of a contribution or payment under paragraph (b) of subsection (1), the amount is recoverable by the Commission by action in a court of competent jurisdiction as a debt due and payable to the Commission.

(4) A certificate of the Director that an amount is due and payable by way of a contribution or payment under paragraph (b) of subsection (1) is *prima facie* evidence that the amount stated in the certificate is due and payable to the Commission.

(5) Any amount paid or recovered under this section shall be paid to the credit of the Fund.

40. (1) Subject to the succeeding provisions of this section, where legal services are to be performed on behalf of an assisted person by a private practitioner, the assisted person is entitled to select the private practitioner from a panel of names of private practitioners prepared by the Commission pursuant to this section.

Assisted persons to have private practitioners of their choice.

(2) Where an assisted person does not wish to exercise his right to select a private practitioner pursuant to subsection (1) the legal aid committee that granted the assisted person's application shall, on his behalf, select a private practitioner from a panel of names prepared pursuant to this section.

(3) In selecting a private practitioner pursuant to subsection (2) the paramount consideration shall be the interests of the assisted person but, subject to those considerations, legal aid committees shall allocate work equitably amongst private practitioners named on panels prepared pursuant to this section.

(4) The selection of a private practitioner pursuant to subsection (1) or (2) does not—

- (a) affect the rights of a private practitioner to refuse instructions, to engage a private practitioner as agent or, on reasonable grounds, to entrust a matter or part of a matter to another private practitioner;
- (b) permit the selected private practitioner, if shown on the panel of names as a member of a firm, to act otherwise than in the name of the firm; or
- (c) permit the selected practitioner, if shown on the panel of names as an employee of a private practitioner or firm of private practitioners, to act otherwise than in the name of that private practitioner or firm.

(5) The Commission shall, out of those private practitioners who have notified it of their willingness to act for persons receiving legal aid, prepare and maintain panels of names of private practitioners for the purposes of this section and the panels may be so prepared as to give effect to the preferences expressed by practitioners for the several branches of the law, types of practice, courts, or areas of the State.

(6) Subject to subsection (7) the Commission may exclude or remove the name of a private practitioner from the panels of names prepared pursuant to this section or may include it with limitations as to the nature of the legal aid the practitioner is permitted to give.

(7) Before making any such exclusion, removal or limitation as is mentioned in subsection (6) in relation to a private practitioner the Commission shall—

- (a) give written notice to the private practitioner setting out its reasons for the proposed exclusion, removal or limitation; and
- (b) afford the private practitioner a reasonable opportunity to be heard and to show cause why the exclusion, removal or limitation should not be made.

(8) A private practitioner aggrieved by any such exclusion, removal or limitation as is mentioned in subsection (6) may, within six months after the receipt, in the ordinary course of post, of the notice mentioned in that subsection, apply to the Supreme Court, by way of originating summons, for an order setting aside the exclusion, removal or limitation; and the Supreme Court may, as it thinks fit,—

- (a) grant the application, subject to conditions or unconditionally;
- (b) postpone the making of an order with liberty to apply; or
- (c) dismiss the application,

and, subject to the right, hereby conferred, of the practitioner, where his application is dismissed, to make a further application, at any time after six months from the date of the dismissal, the decision of the Supreme Court is final and conclusive.

Private practitioners not to accept certain payments.

41. Where a private practitioner performs or has performed legal services on behalf of an assisted person he shall not accept any payment for performing those services other than the payment or payments to which he is entitled under section 14.

Disbursements in connection with legal aid.

42. Except where the Director considers that disbursements and out-of-pocket expenses should be made and met directly out of the Fund, a private practitioner performing legal services on behalf of an assisted person shall, in the first instance,—

(a) make all disbursements other than counsel fees; and

(b) meet all out-of-pocket expenses,

ordinarily incurred in or in connection with the performance of those services.

Costs for and against assisted persons.

43. (1) For the purpose of making any order for costs or the determination of any entitlement to costs in a proceeding before a court or tribunal to which an assisted person is a party, that person shall be deemed to be liable to pay the ordinary professional costs of the legal services provided to him in or in connection with that proceeding and any disbursements (including counsel fees) and out-of-pocket expenses incurred in or in connection with the provision of those services.

(2) The circumstances of a party to a proceeding being an assisted person does not affect the rights or liabilities of any other party to the proceeding, or affect the principles on which the discretion of a court or tribunal is ordinarily exercised, on the question of costs; and costs may be awarded against an assisted person as though he were not assisted.

Recovery of costs by Commission from successful assisted person.

44. (1) Where an amount is recoverable by a person who is or has been an assisted person—

(a) under an order for the payment of costs to the person made in proceedings arising out of a matter in which legal aid has been given; or

- (b) under the judgment or verdict given in proceedings referred to in paragraph (a) of this subsection or as a result of a settlement or compromise of such proceedings,

the person is liable to pay to the Commission so much of that amount as the Director, having regard to the guidelines determined by the Commission pursuant to paragraph (i) of section 15, determines but the amount so determined by the Director shall not exceed the amount by which the sum of—

- (c) the ordinary professional costs (including solicitor and client costs) of the legal services provided to the person in the proceedings or matter in respect of which legal aid was provided; and
- (d) any disbursements (including counsel fees) and out-of-pocket expenses incurred in or in connection with the provision of those services,

exceeds any amount or the sum of any amounts paid by or recovered from the person under section 39.

(2) If a person who is or has been an assisted person has not paid an amount payable pursuant to a determination made under this section the amount is recoverable by the Commission by action in a court of competent jurisdiction as a debt due and payable to the Commission.

(3) A certificate of the Director that an amount is due and payable pursuant to a determination made under this section is *prima facie* evidence that the amount stated in the certificate is due and payable to the Commission.

(4) Any amount paid or recovered under this section shall be paid to the credit of the Fund.

45. (1) Where a court or tribunal, having finally decided a proceeding in favour of an unassisted person, considers that an order for costs should be

Court may order Commission to pay costs awarded against assisted persons.

made against a party who is an assisted person and determines his liability in that regard, the court or tribunal may order that the whole or any part of the costs of the unassisted person be paid to him by the Commission; but such an order shall not be made,—

- (a) unless the proceeding is such that an order for costs would be made in favour of the unassisted person, if this section were not enacted;
- (b) in respect of costs incurred by the unassisted person at first instance, unless the proceeding was initiated by the assisted person at first instance; and
- (c) in any event, unless the court or tribunal is satisfied that—
 - (i) in all the circumstances of the case, it is just and equitable that the order should be made; and
 - (ii) the unassisted person would suffer undue financial hardship if the order were not made.

(2) Notice of intention to apply for an order pursuant to subsection (1) shall be given to the Director by or on behalf of the unassisted person and the Director shall have the right to be heard on the application.

(3) The provisions of subsection (1) relating to costs incurred at first instance apply to a court or tribunal whether sitting at first instance or on appeal or review.

(4) In this section a reference to costs is a reference to costs as between party and party, but the costs in respect of which an order may be made pursuant to subsection (1) include those of applying for the order.

(5) For the purposes of subsection (1) a proceeding is finally decided in favour of an unassisted person where—

- (a) no appeal lies against the decision in his favour;
- (b) an appeal lies against the decision with leave and the time limited for applications for leave expires without leave being granted; or
- (c) leave to appeal against the decision is granted or is not required and no appeal is brought within the time limited for appeal,

and where an appeal against the decision is brought out of time, the court determining the appeal, or any further appeal, in that proceeding may make an order for the repayment by the unassisted person to the Commission of the whole or any part of any sum previously paid to him, pursuant to this section, in respect of that proceeding.

(6) Where a court decides any proceeding in favour of an unassisted person and an appeal lies, with or without leave, against that decision, the court may, as it thinks fit, forthwith make, or refuse to make, an order pursuant to subsection (1), but an order so made shall not take effect—

- (a) where leave to appeal is required, unless and until the time limited for applications for leave to appeal expires without leave being granted;
- (b) where leave to appeal is granted or is not required, unless and until the time limited for appeal expires without an appeal being brought;
- (c) where an appeal is brought, until it is finally decided.

(7) Where a person receives legal aid in connection with part only of any proceeding, the reference in subsection (1) to the costs of the unassisted person in that proceeding is a reference to so much of those costs as is attributable to that part.

(8) The rules may—

- (a) prescribe the manner of determining what proceedings are or are not separate proceedings for the purposes of this section or have or have not been initiated by an assisted person;
- (b) modify the provisions of subsection (1) in their application to an unassisted person who is concerned in a proceeding in a fiduciary, representative or official capacity, only; and
- (c) regulate the procedure in connection with applications and orders made pursuant to subsection (1) and provide for the delegation of the powers of a court or tribunal to an officer of the court or tribunal.

*Division 4.—Notification and Review of Decisions
Relating to Legal Aid.*

Interpreta-
tion.

46. In this Division unless the contrary intention appears—

“decision” means—

- (a) a decision refusing to provide legal aid under this Act;
- (b) a decision refusing to provide legal aid under this Act of the nature or to the extent applied for;
- (c) a decision imposing a condition on the provision of legal aid under this Act or varying, adversely to an assisted person, a condition so imposed;

- (d) a decision terminating the provision of legal aid under this Act; or
- (e) a determination under section 44;

“legal aid” has the same meaning as it has in and for the purposes of Division 3 of this Part;

“person affected”, in relation to a decision, means—

- (a) in the case of a decision referred to in paragraph (a) or (b) of the interpretation “decision” in this section—the applicant;
- (b) in the case of a decision referred to in paragraph (c) of that interpretation—the applicant or assisted person, as the case may be;
- (c) in the case of a decision referred to in paragraph (d) or (e) of that interpretation—the assisted person;

“responsible authority” means—

- (a) in the case of a decision made by the Director—the Director;
- (b) in the case of a decision made by a legal aid committee—that legal aid committee.

47. (1) The responsible authority shall, within fourteen days of making a decision, communicate the decision to each person affected by the decision.

Notification
of decisions.

(2) The communication of a decision to a person affected by it shall be effected by—

- (a) giving to the person a document setting out the terms of the decision; or

- (b) sending such a document to the person—
 - (i) by post to the address of the person last known to the responsible authority; or
 - (ii) in any other way authorized by the person.

(3) The responsible authority may, of its own motion, and shall, if so requested by that person, provide a person affected by a decision with a short statement of the reasons for the decision.

Reconsideration
of decision.

48. (1) A person affected by a decision may, by notice in writing to the responsible authority, request the responsible authority to reconsider the decision.

(2) Upon receipt of a request under subsection (1) the responsible authority shall reconsider the decision and—

- (a) may confirm, vary or reverse the decision; and
- (b) shall, in a manner prescribed in subsection (2) of section 47, communicate the result of the reconsideration to the person by whom the request was made.

Review of
decisions.

49. (1) A person who has made a request under subsection (1) of section 48 and who is dissatisfied with the result of the reconsideration by the responsible authority may apply in writing to a review committee for a review of the matter.

(2) Upon receipt of an application under subsection (1) the review committee shall review the matter and—

- (a) may confirm, vary or reverse any decision of the responsible authority; and
- (b) shall, in a manner prescribed in subsection (2) of section 47, communicate its decision to the person by whom that application was made.

(3) The decision of a review committee is final and conclusive.

50. (1) The Commission may establish such review committees as it considers necessary for the purposes of section 49. Review committees.

(2) A review committee shall consist of three members of whom—

- (a) one shall be a private practitioner who is not a member of the Commission;
- (b) one shall be a practitioner who is a member of the Commission; and
- (c) one shall be a person whom the Commission considers to be suitable for membership of the committee and who is not a practitioner.

(3) A member of a review committee—

- (a) shall hold office for such period not exceeding one year as is specified in the instrument of his appointment, but is eligible for re-appointment;
- (b) may be removed from office by the Commission for disability, neglect of duty or misconduct;
- (c) may resign his office by writing signed by him and delivered to the Chairman of the Commission, but the resignation does not have effect until it is accepted by the Chairman.

(4) The Commission shall appoint one of the members of a review committee to be the chairman of that committee.

(5) A member of a review committee who holds office under paragraph (a) of subsection (2) shall not take part in the review of any matter in which he has a pecuniary interest.

(6) A member of a review committee who holds office under paragraph (b) of subsection (2) shall not take part in the review of any matter if he made, or was directly involved in the making of, the decision to which the matter relates.

(7) At a meeting of a review committee two members constitute a quorum.

(8) Where a matter is under review by a review committee the responsible authority that made the decision to which the matter relates shall render such assistance to the review committee as is necessary to ensure that all relevant information is brought to the attention of the review committee.

(9) The rules may make provision for and in relation to—

- (a) the convening of meetings of review committees;
- (b) the appointment of a member to preside at such a meeting in the absence of the chairman; and
- (c) the procedure (including provision with respect to voting) to be followed at such meetings.

(10) No act, proceeding or determination of a review committee shall be invalid on the ground only of any vacancy in the office of any member of the committee or of any defect in the appointment of any member of the committee.

Division 5.—Relationship Between Practitioner and Assisted Person.

Solicitor-client relationship to exist and be preserved.

51. (1) The relationship, and any privilege arising out of the relationship, between counsel or solicitor and client is not, and the rights of any of them are not, affected by the circumstance of a private practitioner giving his services in pursuance of this Act.

(2) The like privileges as those that arise from the relationship of client and solicitor acting in his professional capacity and in the course of his

professional employment shall arise between an applicant or assisted person and the Director or a practitioner who is a member of the staff when the Director or that practitioner practises as, or performs any of the functions of, a solicitor for the applicant or assisted person in pursuance of this Act.

PART VI.—FINANCES OF COMMISSION.

Division 1.—The Legal Aid Fund of Western Australia.

52. (1) A fund to be administered by the Commission and known as the Legal Aid Fund of Western Australia is hereby established. Legal Aid Fund.

(2) The Commission shall pay to the credit of the Fund, and the Fund shall consist of—

- (a) all moneys paid to the Commission pursuant to the Legal Contribution Trust Act, 1967 or any other Act;
- (b) all moneys resulting from investments made pursuant to subsection (4) of section 17 or section 53;
- (c) any moneys made available by the State and the Commonwealth or by one or other of them, for the purposes of legal assistance;
- (d) all gifts, bequests and donations made by any person to the Commission, but subject to any trusts declared in relation thereto;
- (e) any other moneys that may lawfully be paid to the Commission pursuant to the provisions of this Act other than moneys received by the Commission on trust.

53. The Commission may from time to time in consultation with the Treasurer of the State invest such portion of the Fund as is not immediately required for the purposes of this Act in such manner as it thinks fit. Investment of Fund.

Payment
out of
Fund.

54. Moneys in the Fund shall be applied only—
- (a) in the payment, in accordance with this Act, of amounts payable in or in connection with the provision of legal assistance;
 - (b) in the payment of the administrative costs and expenses incurred by the Commission in the provision of legal assistance, including—
 - (i) the costs and expenses of providing premises, furniture and equipment; and
 - (ii) salary, wages and other payments to or in respect of the Director and members of the staff; and
 - (c) for such other purposes as are necessary in order for the Commission to properly exercise and perform its powers, functions and duties under this Act.

Payments
may be
made by
allowance
or set-off.

55. Where a provision of this Act requires moneys to be paid to the credit of, or out of, the Fund, that requirement is satisfied by an allowance in account or otherwise or by a set-off; and a reference in this Act to payments or to moneys paid, payable or received shall be construed accordingly.

Division 2.—Estimates, Accounts and Audit.

Definition.

56. In this Division—

“financial year” means the period of twelve months ending on the thirtieth day of June.

Estimates.

57. The Commission shall prepare estimates in such form as the Attorney General directs, of expenditure of the Commission for each financial year and, if the Attorney General so directs, for any other period specified by the Attorney General, and shall submit estimates so prepared to the Attorney General not later than such date as the Attorney General directs.

58. (1) The Commission may open and maintain an account or accounts with a bank or banks and shall at all times maintain at least one such account.

Bank
accounts.

(2) The Commission shall deposit in separate bank accounts—

- (a) moneys comprised in the Fund pending their application under this Act, or their investment under section 53;
- (b) moneys received or held by the Commission on trust.

59. (1) The Commission shall maintain proper accounts and records of its transactions and affairs.

Accounts
to be
maintained.

(2) Separate accounts and records shall be maintained under subsection (1) in respect of each of the following classes of transactions and affairs—

- (a) transactions and affairs in relation to administrative matters;
- (b) transactions and affairs in relation to the provision of legal assistance; and
- (c) transactions and affairs in relation to money and other property received or held by the Commission on trust.

60. (1) As soon as practicable after the last day of each financial year the Commission shall prepare and furnish to—

Audit and
annual
report.

- (a) the Attorney General;
- (b) the Attorney General of the Commonwealth;
- (c) the Commonwealth Commission;
- (d) the Law Society;
- (e) the Legal Contribution Trust established by section 5 of the Legal Contribution Trust Act, 1967; and

- (f) the Barristers' Board constituted under the Legal Practitioners Act, 1893,

a report in writing of its operations during that financial year, together with full financial statements appertaining to the administration of the Fund.

(2) Before furnishing its report and the financial statements under subsection (1), the Commission shall submit the financial statements for examination and report by the Auditor General.

(3) The Attorney General shall cause the report of the Commission, the financial statements and the Auditor General's report thereon to be laid before each House of Parliament as soon as practicable after receiving them from the Commission.

(4) The Commission shall—

(a) whenever so required by the Attorney General;

(b) of its own motion as soon as practicable after the last day of each financial year,

cause the accounts and records maintained by it pursuant to paragraph (c) of subsection (2) of section 59 to be examined and audited by a company auditor appointed by the Commission and shall furnish a copy of the report of the company auditor to the Attorney General.

(5) A company auditor and a person employed by a company auditor shall not, except in the course of the report of the company auditor, disclose or communicate to any person any matter of which he is informed or that comes to his knowledge in the course of an examination and audit under subsection (4).

Penalty: Two hundred dollars.

(6) Where a company auditor commits an offence against subsection (5), he is, without affecting any penalty to which he may be liable under that subsection, guilty of conduct discreditable to an auditor, within the meaning of section 9 of the Companies Act, 1961.

(7) In subsections (4), (5) and (6) “company auditor” means a person who is a registered company auditor within the meaning ascribed to that expression by the Companies Act, 1961.

PART VII.—LEGAL PRACTICE BY DIRECTOR AND STAFF.

61. (1) Subject to the requirements of the Legal Practitioners Act, 1893 and the rules thereunder (including the requirements as to the holding of practice certificates) the Director or a member of the staff who is a practitioner shall, when acting in the discharge of his duties under this Act,—

Rights and obligations of Director and staff in respect of legal practice.

- (a) be entitled to practise as a practitioner and to perform the functions of a practitioner in the State and in any court in the State; and
- (b) have a right of audience before any court in the State, or before any tribunal in the State before which a practitioner has such a right.

(2) In practising as, or performing the functions of, a practitioner, or exercising any right of audience, in the discharge of his duties under this Act—

- (a) the Director has all the rights and privileges of a practitioner practising on his own account;
- (b) a member of the staff has all the rights and privileges that he would have if the Director was in practice on his own account and he was employed by him;
- (c) the Director or a member of the staff—
 - (i) shall observe the same rules and standards of professional conduct and ethics as those that a private practitioner is, by law or the custom of the legal profession, required to observe in the practice of his profession;

- (ii) is subject to the same professional duties, and has the same privileges, as those that a private practitioner has by law or the custom of the legal profession;
- (iii) is subject to the same disciplinary procedures and sanctions as those to which a private practitioner is subject.

(3) Nothing in this section affects any right to practise as, or perform the functions of, a practitioner, or any right of audience, that the Director or a practitioner who is a member of the staff has apart from this section.

(4) The provisions of Part V of the Legal Practitioners Act, 1893 do not apply to or in relation to the Director or a practitioner who is a member of the staff.

Solicitor on
the record.

62. (1) Where legal services are being performed on behalf of an assisted person by the Director or a practitioner who is a member of the staff and any signature by a practitioner acting for the assisted person is required or permitted for the purpose of any proceeding in which the assisted person is a party, or is required or wishes to file or produce any document, the signature of the Director followed by the title "Director of Legal Aid" shall be sufficient.

(2) The Director may delegate to any member of the staff who is a practitioner the power to sign his name for the purposes referred to in subsection (1) and any signature signed in pursuance of such a delegation shall be sufficient for those purposes.

PART VIII.—MISCELLANEOUS.

Liability
and
immunity.

63. (1) The Commission shall indemnify the Director or a member of the staff against any liability incurred by him for any negligent act or omission by him in the course of the performance of his duties or in good faith in the purported performance of those duties.

(2) The Commission is liable for any act or omission by the Director or a member of the staff in the course of the performance of his duties.

(3) No liability shall attach to a member, or the deputy of a member of, the Commission, or a member of a legal aid committee or review committee, for any act or omission by him, or by the Commission or committee, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties under this Act.

64. (1) This section applies to every person who is or has been a member, the deputy of a member, the Director, a member of the staff, a member of a legal aid committee or a member of a review committee. Secrecy.

(2) A person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act—

(a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his office or employment under or for the purposes of this Act; or

(b) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: One thousand dollars or imprisonment for three months.

(3) A person to whom this section applies shall not be required to produce before a court any document relating to the affairs of another person of which he has the custody, or to which he has access, by virtue of his office or employment under

or for the purposes of this Act, or to divulge or to communicate to any court any information concerning the affairs of another person obtained by him by reason of such an office or employment.

(4) This section does not apply in proceedings instituted for an offence against a person who has applied for legal assistance, being an offence in relation to a statutory declaration furnished in verification of his application for legal assistance.

(5) This section does not affect any law or any rule of practice or procedure relating to the discovery of documents in a proceeding in respect of which legal assistance is provided to a person under this Act.

(6) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to and
“production” has a corresponding meaning.

Offence of
misrepresenta-
tion.

65. (1) A person who, seeking or receiving legal assistance, with intent to deceive or mislead the Commission, the Director, a member of the staff, or a legal aid committee, withholds information required to be furnished under the rules or, in furnishing information so required, makes a statement or representation that is false in any material particular commits an offence.

Penalty: Two hundred dollars.

(2) The amount of any loss sustained by the Fund by reason of an offence against subsection (1) may, whether or not the offender has been prosecuted, be recovered by the Commission from the offender in a court of competent jurisdiction.

66. (1) Any proceeding instituted before a court— Proceedings under this Act.

- (a) for the recovery of any amount due to or recoverable by the Commission under this Act; or
- (b) for any offence against this Act or the rules,

may be instituted by the Director or by a member of the staff authorized by the Director to institute proceedings on behalf of the Commission.

(2) A person referred to in subsection (1) may appear on behalf of the Commission in any proceeding referred to in that subsection.

(3) In any proceeding referred to in subsection (1), no proof shall be required, until evidence is given to the contrary, of—

- (a) the constitution of the Commission;
- (b) the authority of any member of the staff to institute or appear in that proceeding; or
- (c) the appointment of the Director or any member of the staff.

67. (1) The Commission may with the approval of the Governor— Rules.

- (a) make rules for any purpose for which rules are contemplated or required by this Act; and
- (b) make all such other rules as the Commission considers to be necessary or convenient for giving full effect to the provisions of, and for the better and more efficient administration of, this Act.

(2) Without limiting the generality of subsection (1) the Commission may so make rules—

- (a) prescribing, for the purposes of section 14, the fees that are to be payable to private practitioners for performing services by way of legal assistance under Division 3 of Part V of this Act;
- (b) prescribing the mode of proof (including a requirement for the furnishing of statutory declarations) of, and the onus of proof in respect of, matters requiring to be proved for the purposes of this Act;
- (c) so as to require a matter or thing affected by the rules to be in accordance with a specified requirement or as approved by a specified person or body and so as to delegate to, or confer upon, a specified person or body a discretionary authority;
- (d) imposing a penalty not exceeding one hundred dollars for the breach of any of the rules; and
- (e) so as to require an application or other document made or furnished under or for the purposes of this Act to be verified by statutory declaration.

PART IX.—AGREEMENTS WITH THE
COMMONWEALTH.

State may
enter into
agreements
and
arrange-
ments.

68. The State may from time to time enter into an agreement or arrangement with the Commonwealth for or with respect to—

- (a) the moneys to be made available by the Commonwealth, or by the State and the Commonwealth, for the purposes of legal assistance;
- (b) the priorities to be observed in the provision of legal assistance as between classes of persons or classes of matters, or both;

- (c) the transfer to the staff of the Commission of persons who are Commonwealth employees within the meaning of section 77;
- (d) any matter incidental to a matter mentioned in paragraph (a), (b) or (c) of this section.

PART X.—TRANSITIONAL PROVISIONS.

Division 1.—General.

69. In this Part—

Definition.

“Australian Legal Aid Office” means that division of the Department of the Attorney General of the Commonwealth known as the Australian Legal Aid Office.

70. On and after the appointed day all outstanding rights and liabilities of the Law Society in connection with the provision of legal assistance pursuant to Part V of the Legal Contribution Trust Act, 1967 (including rights and liabilities relating to debts due and moneys payable to or by the Law Society) shall be rights and liabilities of the Commission and shall be enforceable by or against the Commission.

Certain rights and liabilities of Law Society to vest in Commission.

71. (1) In this section—

“Legal Assistance Fund” means the Legal Assistance Fund established pursuant to Part V of the Legal Contribution Trust Act, 1967.

Incorporation of moneys from Legal Assistance Fund.

(2) On the appointed day, or as soon as practicable thereafter, the Law Society shall pay to the Commission any moneys that, immediately before the appointed day, stood to the credit of the Legal Assistance Fund.

(3) Where under the provisions of any Act any moneys are required to be paid or applied to the Legal Assistance Fund for the purposes of Part V of the Legal Contribution Trust Act, 1967 those moneys shall, on and after the appointed day, be payable to the Commission.

(4) Where the application of any moneys referred to in subsection (2) or (3) through the Legal Assistance Fund would have been subject to any condition or restriction imposed by an Act, the application of those moneys by the Commission shall be subject to the same condition or restriction.

(5) Where, immediately before the appointed day, any moneys were for the time being invested pursuant to section 34 of the Legal Contribution Trust Act, 1967 that money shall, on and after the appointed day—

- (a) form part of the Fund; and
- (b) be deemed to be invested pursuant to section 53.

State
may make
arrange-
ments as to
premises, etc.

72. The State may make arrangements with the Law Society and the Commonwealth for the Commission to take over and have the possession and use of such office accommodation, furniture, records and equipment of the Law Society and the Australian Legal Aid Office, respectively, as is appropriate to the needs of the Commission.

Applications
for legal aid
granted
before
appointed
day.

73. Where, before the appointed day,—

- (a) an application for legal aid has been granted—
 - (i) under Part V of the Legal Contribution Trust Act, 1967; or
 - (ii) in the course of the operations in this State of the Australian Legal Aid Office; and
- (b) that legal aid has not been provided, or has yet to be completely provided,

then, as from the appointed day, that application shall be deemed to have been granted under this Act and, so far as is necessary, that legal aid shall be provided under this Act.

74. (1) Where, at or before the appointed day, a private practitioner is performing or has agreed to perform services on behalf of a person by way of legal aid—

Provisions
in respect
of legal
aid being
provided by
private
practitioner.

(a) under Part V of the Legal Contribution Trust Act, 1967; or

(b) in the course of the operations in this State of the Australian Legal Aid Office,

then as from the appointed day, that practitioner shall, so far as is necessary, perform those services on behalf of that person by way of legal aid under this Act.

(2) Notwithstanding subsection (1), where pursuant to that subsection services originally performed or agreed to be performed by way of legal aid under Part V of the Legal Contribution Trust Act, 1967 are performed by way of legal aid under this Act, the private practitioner by whom those services are performed shall be entitled to receive from the Commission, in respect of those services, an amount not less than the sum of the amounts that he would have been entitled to receive under paragraphs (a) and (b) of section 42 of the Legal Contribution Trust Act, 1967 if the services had been wholly performed under Part V of that Act.

75. (1) Where, before the appointed day, the Australian Legal Aid Office is, through its staff in this State, performing services on behalf of a person by way of legal aid, then, as from the appointed day, those services shall, so far as is necessary, be performed on behalf of that person by the Commission through its staff.

Provisions
in respect
to legal aid
being
provided by
Common-
wealth
employees.

(2) Notwithstanding any rule of court, it shall not be necessary for any notice of change of solicitor to be filed in consequence of subsection (1).

Division 2.—Transfer of Staff to Commission.

Law Society
staff.

76. (1) On the appointed day—

(a) any practitioner who—

(i) was immediately before that day, employed on a full-time basis by the Law Society under Part V of the Legal Contribution Trust Act, 1967; and

(ii) has, before that day, indicated in writing to the Commission that he wishes to become a member of the staff of the Commission; and

(b) any person who has been nominated in writing to the Commission by the Law Society and who was, immediately before that day, employed by the Law Society and engaged wholly or partly in the administration of the scheme of legal assistance administered by the Law Society under Part V of the Legal Contribution Trust Act, 1967,

shall become a member of the staff of the Commission.

(2) Where a person becomes a member of the staff pursuant to subsection (1) he retains his existing and accruing rights and for the purpose of determining those rights his service as an employee of the Law Society shall be taken into account as if it were service with the Commission.

Common-
wealth
employees.

77. (1) In this section—

“Commonwealth employee” means a person who—

(a) is employed either permanently or temporarily in the Australian Public Service constituted under the provisions of the Public Service Act 1922-1975 of the Parliament of the Commonwealth; and

- (b) performs duties in the Australian Legal Aid Office in a position located in the State.

(2) Where, in accordance with the terms of an agreement or arrangement between the State and the Commonwealth, a Commonwealth employee elects before the appointed day to become a member of the staff of the Commission, that Commonwealth employee shall, on the appointed day, become a member of the staff of the Commission.

(3) Where a Commonwealth employee becomes a member of the staff pursuant to subsection (2) he shall, to the extent provided for under an agreement or arrangement between the State and the Commonwealth, retain his existing and accruing rights and for the purpose of determining those rights his service as a Commonwealth employee shall, to the extent and in the manner provided for under that agreement or arrangement, be taken into account as if it were service with the Commission.

(4) Without limiting or otherwise affecting the application of any other provision of the Superannuation and Family Benefits Act, 1938 to a Commonwealth employee who becomes a member of the staff pursuant to subsection (2), the provisions of section 32A of that Act are expressly declared to be applicable in relation to such a Commonwealth employee and, for the purposes of that section, he shall be deemed to have been appointed as an employee within the meaning of that Act on the appointed day.

78. (1) In this section "transferred employee" means a person who becomes a member of the staff pursuant to subsection (1) of section 76 or subsection (2) of section 77.

Salary of former Commonwealth and Law Society employees.

(2) The salary or wages of a transferred employee shall not be less than the salary or wages to which he was entitled in the position that he held immediately before becoming a member of the staff.

(3) For the purposes of subsection (2), the salary or wages to which a transferred employee was entitled in the position that he held immediately before becoming a member of the staff shall be deemed to include such allowances as the Commission determines formed part of his salary or wages in that position.
