

LEGAL AID COMMISSION.

No. 60 of 1977.

AN ACT to amend the Legal Aid Commission Act,
1976.

[Assented to 23rd November, 1977.]

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:—

1. (1) This Act may be cited as the *Legal Aid Commission Act Amendment Act, 1977.*

Short title
and citation.

(2) In this Act the Legal Aid Commission Act, 1976 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Legal Aid Commission Act, 1976-1977.

Section 3
amended.

2. Section 3 of the principal Act is amended—

- (a) by adding below the passage "*Division 5.—Relationship between Practitioner and Assisted Person.*" in the arrangement of Part V the passage "*Division 6.—Legal Assistance in respect of Commonwealth Matters.*" ; and
- (b) by inserting before the passage "PART VIII.—MISCELLANEOUS." the passage "PART VIIA.—CONSULTATIVE COMMITTEES."

Section 4
amended.

3. Subsection (1) of section 4 of the principal Act is amended—

- (a) by adding after the interpretation "Chairman" an interpretation as follows—

"consultative committee" means a consultative committee established under section 62A; ;
- (b) by adding after the interpretation "member" an interpretation as follows—

"officer of the Commission" means the Director or a member of the staff; ;
- (c) by adding after the interpretation "private practitioner" an interpretation as follows—

"public company" has the same meaning as in the Companies Act, 1961; ; and
- (d) by deleting the interpretation "the Commonwealth Commission" and substituting an interpretation as follows—

"the Commonwealth Commission" means the Commonwealth Legal Aid Commission established by the Commonwealth Legal Aid Commission Act 1977 of the Parliament of the Commonwealth; .

4. Section 7 of the principal Act is amended— Section 7
amended.

(a) by deleting the word “The” in line one of subsection (1) and substituting the passage “Subject to subsection (1a), the” ;

(b) by adding after subsection (1) a subsection as follows—

(1a) The Director shall be *ex officio* a member of the Commission. ;

(c) by adding after the word “attending” in line four of subsection (7) the passage “, is deemed to be a member and”; and

(d) by adding after subsection (7) a subsection as follows—

(8) In the case of the member appointed pursuant to subparagraph (iii) of paragraph (b) of subsection (1) the power conferred by subsection (6) extends to the appointment of two or more persons each as deputy of that member but, in the event of the absence from a meeting of the Commission of that member, not more than one of those persons is entitled to attend that meeting at any one time. .

5. Section 8 of the principal Act is amended by repealing subsection (6) and re-enacting that subsection as follows— Section 8
amended.

(6) This section does not apply to or in relation to the Director. .

6. Section 9 of the principal Act is amended by repealing subsections (8) and (9) and substituting a subsection as follows— Section 9
amended.

(8) Unless a majority of the other members present otherwise determine, the Director shall not be present at a meeting of the Commission during any deliberation with respect to a matter referred to in paragraph (b), (c), (d) or (e) of subsection (3) of section 18. .

Section 9A
added.

7. The principal Act is amended by adding after section 9 a section as follows—

Disclosure
of interests
of members.

9A. (1) Any member who has a direct or indirect pecuniary interest in any matter that is being considered or is about to be considered at a meeting of the Commission, otherwise than as a member or creditor of, and in common with the other members or creditors of, a public company of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to those present at the meeting.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Commission. .

Section 11
repealed
and
re-enacted.

8. The principal Act is amended by repealing section 11 and re-enacting that section as follows—

Duties and
remuner-
ation of
members.

11. (1) A member appointed pursuant to subsection (1) of section 7 is not required to devote the whole of his time to the duties of his office.

(2) The members appointed pursuant to subsection (1) of section 7, and their deputies, shall be paid such fees and allowances as may from time to time be fixed by the Governor. .

Section 14
amended.

9. Section 14 of the principal Act is amended—

(a) by deleting the word “Where” in line one of subsection (1) and substituting the passage “Subject to subsection (2b) of section 49, where” ;

(b) by deleting the words “by a legal aid committee” in the last line of subparagraph (ii) of paragraph (a) of subsection (1); and

(c) by adding after subsection (1) a subsection as follows—

(1a) In subparagraph (ii) of paragraph (a) of subsection (1) “approved” means—

(a) in a case where the decision to provide legal assistance was made by a legal aid committee (or by a review committee on the review of a decision of a legal aid committee)—approved by a legal aid committee;

(b) in a case where the decision to provide legal assistance was made by an officer of the Commission (or by a review committee on the review of a decision made by an officer of the Commission)—approved by the Director or by a member of the staff authorized by the Director in that behalf. .

10. Section 15 of the principal Act is amended—

Section 15
amended.

(a) by adding after the section designation “15.” the subsection designation “(1)”;

(b) by adding after paragraph (a) paragraphs as follows—

(aa) ensure that its activities are carried on consistently with, and do not prejudice, the independence of the private legal profession;

(ab) liaise with professional bodies representing private practitioners in order to facilitate the use, in appropriate circumstances, of services provided by private practitioners;

(ac) make maximum use of services that private practitioners offer to provide on a voluntary basis; ;

(c) by deleting paragraph (d) and substituting a paragraph as follows—

(d) liaise and co-operate with the Commonwealth Commission in the performance by that Commission of its functions and, in particular, provide to the Commonwealth Commission such statistics and other information as that Commission may reasonably require; ;

(d) as to paragraph (g)—

(i) by adding after the word “committees” in line two the words “and officers of the Commission”;

(ii) by deleting subparagraph (iii) and substituting a subparagraph as follows—

(iii) the desirability of enabling officers of the Commission to utilize and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work; ;

(e) as to paragraph (i)—

(i) by deleting the words “taking into account” in line two; and

(ii) by adding after the word “committees” in line five the words “and officers of the Commission”;

(f) by adding subsections as follows—

(2) The Commission shall make recommendations to the Attorney General with respect to any reforms of the law the desirability for which has come to its attention in the course of the performance of its functions.

(3) Subject to and in accordance with any agreement or arrangement made between the Commonwealth and the State in that behalf, the Commission may provide financial assistance to voluntary legal assistance bodies in the State in respect of the provision of legal assistance.

(4) Financial assistance under subsection (3) shall be provided out of moneys made available for that purpose by the State and the Commonwealth or by one or other of them. .

11. Section 19 of the principal Act is amended by adding after subsection (2) a subsection as follows—

Section 19
amended.

(3) Subject to the Legal Practitioners Act, 1893 the Director may have articled clerks articled to him. .

12. Section 20 of the principal Act is amended by adding after subsection (2) a subsection as follows—

Section 20
amended.

(3) The Commission, if it is practicable to do so, shall make reciprocal arrangements with legal aid commissions elsewhere in the Commonwealth for the purpose of facilitating the transfer of professionally qualified staff between the Commission and any of those legal aid commissions.

13. Section 21 of the principal Act is amended by deleting the passage "section 78" in line three of subsection (1) and substituting the passage "sections 76, 77 and 78".

Section 21
amended.

amended.

14. Section 25 of the principal Act is amended by repealing subsection (6) and substituting subsections as follows—

(6) The Director may, having first obtained the approval of the Commission, give notice in writing to the chairman of a legal aid committee nominating a practitioner who is a member of the staff to attend meetings of that committee in the place of the Director and may, by like notice, revoke such a nomination.

(7) A person nominated pursuant to subsection (6) in respect of a legal aid committee is entitled to attend all meetings of that committee other than those meetings that are attended by the Director and, when so attending, is deemed to be a member of the committee and has all the powers, functions and duties of a member of the committee.

(8) Where the Director is unable to attend a meeting of a legal aid committee and—

(a) there is not, for the time being, a person nominated pursuant to subsection (6) in respect of that committee; or

(b) the person for the time being nominated pursuant to subsection (6) in respect of that committee is also unable to attend that meeting,

the Director may, by notice in writing 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, is deemed to be a member of the committee and has all the powers, functions and duties of a member of the committee. .

15. The principal Act is amended by adding after section 26 a section as follows—

Section 26A
added.

26A. (1) Any member of a legal aid committee who has a direct or indirect pecuniary interest in any matter that is being considered or is about to be considered at a meeting of that committee, otherwise than as a member or creditor of, and in common with the other members or creditors of, a public company of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to those present at the meeting.

Disclosure
of interests
of members
of legal aid
committees.

(2) A disclosure under subsection (1) shall be mentioned in the record of the meeting of the legal aid committee. .

16. Section 28 of the principal Act is amended by deleting the passage "Subject to paragraph (b) of subsection (4) of section 36 a" in lines one and two of subsection (2) and substituting the word "A".

Section 28
amended.

17. The principal Act is amended by repealing section 36 and re-enacting that section as follows—

Section 36
repealed and
re-enacted.

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 and may be lodged at any office of the Commission.

Application
for legal aid.

(2) An application for legal aid shall, in accordance with the directions of the Commission, be decided by a legal aid committee, by the Director or by a member of the staff authorized by the Director to decide applications for legal aid.

(3) The Commission shall give directions as to—

(a) the classes of cases in which applications for legal aid shall be decided by a legal aid committee; and

- (b) the classes of cases in which such applications shall be decided by an officer of the Commission.

Section 37
amended.

18. Section 37 of the principal Act is amended—

- (a) by repealing subsection (1);
- (b) by adding after the word “committee” where it occurs—
 - (i) in line five of subsection (3); and
 - (ii) in line three of subsection (4),the words “or an officer of the Commission” in each case; and
- (c) by repealing subsection (5) and re-enacting that subsection as follows—

(5) Where, after legal services have been performed or partly performed by a private practitioner on behalf of a person in relation to a matter,—

- (a) that person makes an application for legal aid in relation to that matter; and
- (b) a legal aid committee or an officer of the Commission decides that legal aid should be provided in relation to that matter,

any services so performed or partly performed by that private practitioner on or after such date as the committee or officer 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. .

19. Section 38 of the principal Act is amended— Section 38 amended.

- (a) by repealing subsection (1) and re-enacting that subsection as follows—

(1) Where a legal aid committee or an officer of the Commission decides that legal aid should be provided to an applicant the committee or officer shall also decide whether the legal services involved in providing that legal aid shall be performed by—

- (a) a private practitioner; or
 (b) a practitioner who is an officer of the Commission. ; and

- (b) by adding after the word “committee” in line two of subsection (2) the words “or an officer of the Commission”.

20. Section 39 of the principal Act is amended— Section 39 amended.

- (a) as to subsection (1)—

(i) by adding after the word “committee” in line one the words “or an officer of the Commission”;

(ii) by adding after the word “committee” where it occurs—

(A) in the last line of paragraph (a); and

(B) in line one of paragraph (b), the words “or officer” in each case;

and

- (b) by repealing subsection (2) and re-enacting that subsection as follows—

(2) A decision to provide legal aid to a person under this Act may be varied at any time so as to—

- (a) terminate the provision of that legal aid;

- (b) alter the nature or extent of that legal aid;
- (c) impose a condition mentioned in paragraph (b) of subsection (1) on the provision of that legal aid or vary such a condition previously imposed on the provision of that legal aid,

and may be so varied—

- (d) in a case when the decision was made by a legal aid committee (or by a review committee on the review of a decision of a legal aid committee)—by a legal aid committee; or
- (e) in a case where the decision was made by an officer of the Commission (or by a review committee on the review of a decision of an officer of the Commission)—by the Director or by a member of the staff authorized by the Director to vary such decisions. .

Section 40
amended.

21. Section 40 of the principal Act is amended—

- (a) by deleting the words “legal services are to” in line two of subsection (1) and substituting the passage “it is determined pursuant to subsection (1) of section 38 that legal services shall” ;
- (b) by deleting the words “that granted the assisted person’s application” in line four of subsection (2) and substituting the words “or officer of the Commission by which or by whom the decision to provide legal aid to the assisted person was made”;

(c) as to subsection (3)—

(i) by deleting the words “those considerations” in line four and substituting the words “that consideration”; and

(ii) by adding after the word “committees” in line four the words “and officers of the Commission”; and

(d) by adding after subsection (8) a subsection as follows—

(9) A private practitioner who is a member, or the deputy of a member, of the Commission, a member of a legal aid committee, a member or substitute member of a review committee or a member of a consultative committee is, subject to this section, entitled to have his name included in a panel of names prepared pursuant to this section and is entitled to perform legal services by way of legal assistance under this Act. .

22. Section 46 of the principal Act is amended—

Section 46
amended.

(a) by adding after the word “for” in the last line of paragraph (b) of the interpretation “decision” the passage “or altering, adversely to an assisted person, the nature or extent of legal aid that is being provided to that person”;

(b) as to the interpretation “person affected”—

(i) by deleting the passage “or (b)” in line two of paragraph (a); and

(ii) by adding after the word “paragraph” in line two of paragraph (b) the passage “(b) or”; and

- (c) by deleting the interpretation “responsible authority” and substituting an interpretation as follows—

“responsible authority”, in relation to a decision, means the legal aid committee or officer of the Commission by which or by whom the decision was made. .

Section 49
amended.

23. Section 49 of the principal Act is amended by adding after subsection (2) subsections as follows—

(2a) A private practitioner who—

(a) has performed services by way of legal assistance under Division 3 of this Part; and

(b) is dissatisfied with a decision made by a legal aid committee or an officer of the Commission, acting pursuant to subparagraph (ii) of paragraph (a) of subsection (1) of section 14, in respect of the payment or payments to which he is entitled for performing those services,

may apply in writing to a review committee for a review of the matter.

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

(a) may confirm, vary or reverse any decision of the legal aid committee or officer of the Commission, as the case may be; and

(b) shall, in writing, communicate its decision to the Commission and to the private practitioner by whom that application was made,

and the Commission shall, in making payment to the private practitioner under section 14, give effect to the decision of the review committee. .

24. Section 50 of the principal Act is amended—

Section 50
amended.

(a) by repealing subsection (5) and substituting subsections as follows—

(5) Any member of a review committee who has a direct or indirect pecuniary interest in any matter that is being considered or is about to be considered at a meeting of that committee, otherwise than as a member or creditor of, and in common with the other members or creditors of, a public company of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to those present at the meeting.

(5a) A disclosure under subsection (5) shall be mentioned in the record of the meeting of the review committee and the member shall not be present during any deliberation of the review committee with respect to that matter. ;

(b) by repealing subsection (6) and substituting subsections as follows—

(6) A member of a review committee shall not be present during any deliberation of the review committee with respect to a matter if he made, or was directly involved in the making of, the decision to which the matter relates.

(7) Where a member of a review committee is prohibited by subsection (5a) or (6) from being present during any deliberation of the review committee with respect to a matter, the Commission may appoint a substitute member to attend

any meeting of the review committee at which that matter is deliberated and that substitute member is, when so attending, deemed to be a member of the review committee and has all the powers, functions and duties of such a member. ; and

- (c) by deleting the words "responsible authority that made the decision to which the matter relates" in lines two and three of subsection (8) and substituting the words "legal aid committee or officer of the Commission by which or by whom the decision to which that matter relates was made".

Heading and section 51A added.

25. The principal Act is amended by adding after section 51 a heading and section as follows—

Division 6.—Legal Assistance in respect of Commonwealth Matters.

Regard to be had to recommendations of Commonwealth Commission.

51A. In the exercise of any power or the performance of any function or duty under this Act in relation to the provision of legal assistance—

- (a) in or in connection with a claim, right or proceeding involving a matter arising under a law of the Commonwealth;
- (b) in a proceeding in a federal court or in a State court exercising federal jurisdiction; or
- (c) in respect of persons who are agreed by the Attorney General and the Attorney General of the Commonwealth to be persons in respect of whom the Commonwealth has a special responsibility,

the Commission, officers of the Commission, legal aid committees and review committees shall have regard to the recommendations of the Commonwealth Commission. .

26. The principal Act is amended by repealing section 58 and re-enacting that section as follows—

Section 58
repealed and
re-enacted.

58. (1) An account or accounts may be maintained at the Treasury on behalf of the Commission and, in addition, the Commission may open and maintain an account or accounts with a bank or banks.

Deposit of
moneys.

(2) The Commission shall pay all moneys received by it into an account referred to in this section.

(3) Payment of moneys (other than moneys received or held by the Commission on trust) into an account referred to in this section shall be deemed to be payment of those moneys to the credit of the Fund.

(4) The Commission shall ensure that any moneys received or held by the Commission on trust are paid into an account that does not, or accounts that do not, contain any moneys of the Commission not held on trust.

27. The principal Act is amended by adding after section 62 a heading and sections as follows—

Heading and
section 62A,
62B, 62C
and 62D
added.

PART VIIA.—CONSULTATIVE COMMITTEES.

62A. (1) The Attorney General may establish such consultative committees as he thinks desirable to assist the Commission in the performance of its function of providing legal assistance in accordance with this Act.

Establish-
ment of
consultative
committees.

(2) In deciding whether to establish a consultative committee the Attorney General shall take into account any representations received from the Commission and shall, in deciding whether to establish a consultative committee in respect of a particular locality, take into account any representations received from any local community organization or from persons living, or carrying on a business, profession or trade, in that locality.

Constitution
of consult-
ative com-
mittees.

62B. (1) A consultative committee shall consist of—

- (a) a person who is a member of the Law Society;
- (b) an officer of the Commission; and
- (c) such other persons as the Attorney General considers appropriate.

(2) A member of a consultative committee—

- (a) shall be appointed by the Attorney General;
- (b) shall hold office for such period, not exceeding two years, as is specified in the instrument of his appointment, but is eligible for re-appointment;
- (c) may resign his office by writing signed by him and delivered to the Attorney General.

(3) In selecting persons to be appointed as members of a consultative committee established in respect of a particular locality, the Attorney General shall have regard to the desirability of selecting persons living, or carrying on a business, profession or trade, in that locality.

Meetings of
consultative
committees.

62C. The rules may make provision for—

- (a) the convening of meetings of consultative committees;
- (b) the appointment or election of a member of a consultative committee to preside at meetings of the committee;
- (c) the procedure (including provision with respect to quorums and voting) to be followed at meetings of consultative committees.

62D. Members of consultative committees shall be paid such allowances for expenses in respect of the performance of their duties as may from time to time be fixed by the Governor. .

Allowances.

28. Subsection (3) of section 63 of the principal Act is amended by deleting the word "or" in line three and substituting the passage ", or a member or substitute member of a review committee".

Section 63
amended.

29. Subsection (1) of section 64 of the principal Act is amended by deleting the words "or a member of a review committee" in lines four and five and substituting the passage ", a member or substitute member of a review committee or a member of a consultative committee".

Section 64
amended.

30. Section 68 of the principal Act is amended—

Section 68
amended.

(a) by adding after paragraph (c) a paragraph as follows—

(ca) the sharing of—

(i) the costs of establishing the Commission; and

(ii) operational costs incurred in the provision of legal assistance by the Commission;

and

(b) by deleting the passage "or (c)" in line two of paragraph (d) and substituting the passage ", (c) or (ca)".
