

Western Australia

Legal Aid Commission Act 1976

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Legal Aid Commission Act 1976

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Western Australia

Legal Aid Commission Act 1976

**An Act to establish the Legal Aid Commission of Western Australia
and for related purposes.**

Part I — Preliminary

1. Short title

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

2. Commencement

The provisions of this Act shall come into operation on such date or dates as is or are, respectively, fixed by proclamation¹.

[3. *Repealed by No. 126 of 1982 s. 2.*]

4. Interpretation

(1) In this Act, unless the contrary intention appears —

“**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 13²;

“**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;

“**certificated practitioner**” has the same meaning as in the *Legal Practice Act 2003*;

“**Chairman**” means the Chairman of the Commission;

“**consultative committee**” means a consultative committee established under section 62A;

“**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*³;

“**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 section 15(1)(e);

“legal aid authority” means a legal aid committee, the Director or a member of the staff authorised under section 36(2);

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

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

“Legal Practice Board” means the Board established by section 6 of the *Legal Practice Act 2003*;

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

“officer of the Commission” means the Director or a member of the staff;

“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;

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“practitioner” means a legal practitioner as defined in the *Legal Practice Act 2003*;

“private practitioner” means a certificated practitioner who is —

- (a) practising on his or her own account whether alone or in partnership;
- (b) an employee of a certificated practitioner who is so practising; or
- (c) an employee or officer of an incorporated legal practice (as defined in the *Legal Practice Act 2003*);

“public company” has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

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

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

“the Commonwealth Council” means the Commonwealth Legal Aid Council established under section 4 of the *Commonwealth Legal Aid Act 1977*⁴, as amended, of the Parliament of the Commonwealth;

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

“The Legal Practice Board” means the Board constituted under Part I of the *Legal Practitioners Act 1893*;

“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.

[Section 4 amended by No. 60 of 1977 s. 3; No. 10 of 1982 s. 28; No. 126 of 1982 s. 3; No. 90 of 1986 s. 4; No. 32 of 1994 s. 19; No. 10 of 2001 s. 221; No. 65 of 2003 s. 47(2); No. 74 of 2003 s. 75(2).]

5. Other laws not affected

Nothing in this Act affects the operation of any other law of the State under which legal assistance may be provided.

Part II — Establishment and functions of Legal Aid Commission of Western Australia

6. The Commission

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

7. Composition of Commission

- (1) Subject to subsection (1a), 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) 7 persons appointed by the Governor, as members of the Commission, of whom —
 - (i) 4 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) 2 shall be appointed on the nomination of the Attorney General of the Commonwealth to represent the Attorney General of the Commonwealth.
- (1a) The Director shall be *ex officio* a member of the Commission.
- (2) The person appointed as Chairman of the Commission shall be a practitioner who has had, in this State or elsewhere, not less than 7 years' experience as a legal practitioner.
- (3) Of the persons appointed as members of the Commission pursuant to subsection (1)(b)(i) —
 - (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) 2 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 subsection (3)(b), 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

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number of persons to the Attorney General, the Attorney General —

- (a) shall, if such a panel is submitted to him within 30 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, is deemed to be a member and has all the powers, functions and duties of a member.
- (8) In the case of each member appointed pursuant to subsection (1)(b)(iii) the power conferred by subsection (6) extends to the appointment of 2 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.

[Section 7 amended by No. 60 of 1977 s. 4; No. 90 of 1986 s. 5.]

8. Tenure of office

- (1) Subject to this Act, each member shall hold office for such period, not exceeding 3 years, as is specified in the instrument of his appointment, but is eligible for reappointment.

- (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 3 consecutive meetings of the Commission; or
 - (d) in the case of a member holding an office referred to in section 7(3)(b), ceases to be a private practitioner,the office of that member becomes vacant.
- (6) This section does not apply to or in relation to the Director.
[Section 8 amended by No. 60 of 1977 s. 5; No. 8 of 1978 s. 2.]

9. Meetings of Commission

- (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.
- (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.

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- (3) At a meeting of the Commission 4 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) 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 section 18(3)(b), (c), (d) or (e).

[Section 9 amended by No. 60 of 1977 s. 6.]

9A. Disclosure of interests of members

- (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 interests 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 9A inserted by No. 60 of 1977 s. 7.]

10. Validity of acts of Commission

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.

11. Duties and remuneration of members

- (1) A member appointed pursuant to section 7(1) is not required to devote the whole of his time to the duties of his office.
- (2) The members appointed pursuant to section 7(1), and their deputies, shall be paid such fees and allowances as may from time to time be fixed by the Governor.

[Section 11 inserted by No. 60 of 1977 s. 8.]

12. Functions of Commission

- (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 at no expense to, or 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 proceedings instituted or proposed to be instituted or which could be instituted —
 - (a) 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
 - (b) 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

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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.

[Section 12 amended by No. 126 of 1982 s. 4; No. 90 of 1986 s. 6.]

13. Appointed day

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 ².

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

- (1) Subject to subsection (1a) and section 49(2b) and to Part 13 Division 3 of the *Legal Practice Act 2003*, where a private practitioner performs services by way of legal assistance under Division 3 of Part V the Commission shall —
 - (a) pay to him for the performance of those services —
 - (i) a fee determined in accordance with a scale of fees prescribed in the rules; or
 - (ii) if the services are not services to which a scale of fees so prescribed relates — 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;
 - and
 - (b) reimburse him in respect of disbursements and out-of-pocket expenses that are properly incurred by him in performing those services and are approved.
- (1a) A private practitioner who performs services by way of legal assistance under Division 3 of Part V may enter into an agreement with the Director to receive —
 - (a) payment for the performance of those services; or

- (b) reimbursement in respect of disbursements and out-of-pocket expenses that are properly incurred by the practitioner in performing those services and are approved; or
- (c) both payment of the kind mentioned in paragraph (a) and reimbursement of the kind mentioned in paragraph (b),

on such basis and in such circumstances as the Director determines, and if such an agreement is entered into the practitioner is entitled to receive payment or reimbursement, or both, from the Commission under the agreement and not under subsection (1).

- (1b) In subsections (1) and (1a) “**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 the 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 authorised by the Director in that behalf.
- (2) Where a private practitioner performs services by way of legal assistance under Division 2 of Part V 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 subsection (1) or (2) the Commission shall ascertain and take into account the views of the Law Society.

[Section 14 amended by No. 60 of 1977 s. 9; No. 113 of 1978 s. 4; No. 90 of 1986 s. 7; No. 65 of 1987 s. 45; No. 73 of 1992 s. 4; No. 65 of 2003 s. 47(3).]

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15. Duties

- (1) In the performance of its functions the Commission shall —
- (a) ensure that legal assistance is provided in the most effective, efficient and economical manner;
 - (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;
 - (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) liaise and cooperate with relevant agencies of the Commonwealth having functions relating to legal assistance;
 - (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 authorities 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 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;
 - (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 guidelines to be observed by legal aid authorities and review committees in performing their functions under sections 37, 39, 44, 48, 49 and 49A;
 - (j) cooperate 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.
- (1a) Whenever this Act confers a power, or imposes a duty, on the Commission to make a determination or to give a direction, that power or duty shall be deemed, unless the contrary intention appears to include a power —

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- (a) to revoke the determination or direction;
 - (b) to revoke the determination or direction and substitute therefor a fresh determination or direction; or
 - (c) to vary the determination or direction.
- (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.

[Section 15 amended by No. 60 of 1977 s. 10; No. 126 of 1982 s. 5; No. 73 of 1992 s. 5.]

16. Powers of Commission

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

16A. Reciprocal arrangements for legal assistance

The Commission may enter into an agreement or arrangement with a body administering a scheme of legal assistance or otherwise providing legal assistance in a Territory or another State of the Commonwealth with respect to the provision of legal assistance by the Commission and that body on a reciprocal basis.

[Section 16A inserted by No. 113 of 1978 s. 5.]

16B. Delegation

- (1) The Commission may, in writing, either generally or otherwise as provided by the instrument of delegation, delegate to a member, a legal aid committee, the Director or a member of the staff any of its functions or powers under this Act, other than this power of delegation.
- (2) Notwithstanding section 23 or 28, a function or power delegated under this section shall not be further delegated.
- (3) A function or power so delegated may be performed or exercised by the delegate in accordance with the instrument of delegation and, when performed or exercised by the delegate, shall, for the purposes of this Act, be deemed to have been performed or exercised by the Commission.

[Section 16B inserted by No. 90 of 1986 s. 8.]

17. Trust moneys

- (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 authorised by law for the investment of trust moneys and all moneys resulting from investments so made shall be credited to the Fund.

Legal Aid Commission Act 1976

Part II Establishment and functions of Legal Aid Commission of Western
Australia

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[Section 17 amended by No. 49 of 1996 s. 64.]

Part III — The Director of Legal Aid and the staff of the Commission

18. Director of Legal Aid

- (1) A person shall be appointed to the office of 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 5 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 5 years;
 - (b) the conditions of his service shall be such as the Commission determines;
 - (c) subject to the *Salaries and Allowances Act 1975*, he shall be paid such remuneration and allowance or allowances as the Commission may from time to time determine;
 - (d) he may be reappointed, 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);
 - (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 without the approval of the Commission; and
 - (f) he may at any time resign his office by writing under his hand addressed to the Commission.

[Section 18 amended by No. 8 of 1978 s. 3; No. 73 of 1992 s. 6.]

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19. Functions and powers of Director

- (1) The Director shall —
 - (a) subject to the Commission, administer the scheme of legal assistance established by this Act;
 - (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.
- (3) Subject to the *Legal Practice Act 2003* the Director may have articled clerks articled to him.

[Section 19 amended by No. 60 of 1977 s. 11; No. 65 of 2003 s. 47(4).]

20. Classification and appointment of staff

- (1) The Commission may from time to time, after consultation with the Minister for Public Sector Management⁵, 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).
- (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.

[Section 20 amended by No. 60 of 1977 s. 12.]

21. Terms and conditions of employment

- (1) Subject to any relevant award under the *Industrial Relations Act 1979*⁶, and subject to sections 76, 77 and 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 Minister for Public Sector Management⁵, determines.
- (2) Part 3 of the *Public Sector Management Act 1994* does not apply to or in relation to members of the staff.

[Section 21 amended by No. 60 of 1977 s. 13; No. 126 of 1982 s. 6; No. 32 of 1994 s. 19.]

22. Superannuation

- (1) For the purposes of the *Superannuation and Family Benefits Act 1938*⁷, 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*⁷.

[22A. Repealed by No. 32 of 1994 s. 19.]

23. Delegation

- (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.

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- (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.

[Section 23 amended by No. 90 of 1986 s. 9.]

Part IV — Legal aid committees

24. Establishment of legal aid committees

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

25. Constitution of legal aid committees

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

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- (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.

- (9) When a meeting of a legal aid committee has been convened and there is difficulty in obtaining a quorum at that meeting, the Director may in writing appoint a member or members of any other legal aid committee to attend that meeting for the purpose of constituting a quorum thereat.
- (10) A person appointed pursuant to subsection (9) to attend a meeting of a legal aid committee is entitled to attend that meeting and is, when so attending, deemed to be a member of the legal aid committee and has all the powers, functions and duties of a member of the legal aid committee.

[Section 25 amended by No. 60 of 1977 s. 14; No. 106 of 1979 s. 2; No. 126 of 1982 s. 7.]

26. Meetings of legal aid committees

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.

26A. Disclosure of interests of members of legal aid committees

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

[Section 26A inserted by No. 60 of 1977 s. 15.]

27. Functions and powers of legal aid committees

- (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.

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28. Delegation

- (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.
- (2) 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) repealed]*
- (5) In making any delegation under this section a legal aid committee shall have regard to the guidelines determined by the Commission pursuant to section 15(1)(f).

[Section 28 amended by No. 60 of 1977 s. 16; No. 90 of 1986 s. 10.]

29. Validity of acts of legal aid committees

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.

Part V — Provision of legal assistance

Division 1 — Provision of legal assistance by Commission

30. Advertising of services

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.

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

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.

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

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

33. Provisions of legal advice and duty counsel services

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.

34. Charges and payment to Fund

- (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 credited to the Fund.

[Section 34 amended by No. 49 of 1996 s. 64.]

Division 3 — Legal aid generally

35. Interpretation

In this Division —

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

36. Application for legal aid

- (1) An application for legal aid in respect of a matter shall be in writing in the form approved by the Commission for use in relation to such a matter and may be lodged at any office of the Commission.
- (2) Subject to subsection (4), an application for legal aid shall, in accordance with the directions of the Commission under subsection (3), be decided by a legal aid committee, by the Director or by a member of the staff authorised 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 the Director or by a member of the staff authorised by the Director under subsection (2).
- (4) The Commission may, notwithstanding anything in this section, at any time itself refuse any application for legal aid.

[Section 36 inserted by No. 60 of 1977 s. 17; amended by No. 126 of 1982 s. 8; No. 90 of 1986 s. 11.]

37. Provision of legal aid

[(1) repealed]

- (2) Subject to subsection (4c), 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 authority shall have regard to all relevant matters including —
 - (a) where the person is a child for whom the CEO has parental responsibility under the *Children and Community Services Act 2004*, to the resources of the Department that are capable of being applied for the provision of legal aid to the person;
 - (b) the cash that is readily available to the person or can be made so available;
 - (ba) moneys or other financial resources —
 - (i) in which the person has any legal or equitable interest;

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Part V Provision of legal assistance

Division 3 Legal aid generally

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- (ii) over which the person has any direct or indirect control; or
 - (iii) to which the person has, or could reasonably be expected to have, access;
 - (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.
- (3a) 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 authority shall not have regard —
 - (a) where, under the *Child Welfare Act 1947*, the person is —
 - (i) a child under the guardianship of the Director-General; or
 - (ii) a child placed under the control of the Department,
to the resources of the Department that are capable of being applied for the provision of legal aid to the person;
 - (b) in any case, including the case of a person referred to in paragraph (a), to the resources of any department, instrumentality or agency of the Crown, in right of the State or the Commonwealth, that are capable of being applied for the provision of legal aid to the person.
- (3b) In subsection (3a)(a) —

“CEO”, “child” and “Department” have the meaning given to those terms in section 3 of the *Children and Community Services Act 2004*.

- (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 authority shall, subject to any direction given and in force under subsection (4a), have regard to all relevant factors 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;
 - (ii) the moneys for the time being standing to the credit of the Fund for the provision of legal aid; and
 - (iii) the number, nature and relative merits of other applications for legal aid that have been made, or are reasonably expected to be made;
 - (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.

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- (4a) The Commission may, having regard to the amount of the moneys standing to the credit of the Fund available for the provision of legal assistance and to the financial commitments of the Commission from time to time, direct that a legal aid authority shall not under subsection (4) have regard to any factor specified in that direction in deciding whether it is reasonable in all the circumstances to provide legal aid to a person in a matter of a class specified in that direction.
- (4b) In deciding under subsection (2) whether to provide legal aid to a person, a legal aid authority may have regard to, and may refuse to provide legal aid because of, the apparent financial circumstances and standard of living of the person.
- (4c) Where —
- (a) in relation to proceedings in a state that is a Contracting State within the meaning of the Convention on International Access to Justice (signed at The Hague on 25 October 1980), a person makes application under this Act for legal assistance for the purpose of a matter to which Article 13 of that Convention applies; and
 - (b) a legal aid authority is satisfied that, in accordance with Article 1 of that Convention, the person has been granted or has received legal aid for those proceedings,
- legal aid shall, notwithstanding any other provision of this Act, be provided to the person for that purpose in accordance with Article 13 of that Convention.
- (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 authority 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 legal aid authority specifies (being a date not more than 30 days before the making of the application) shall be regarded as having been performed by way of legal aid under this Act.

[Section 37 amended by No. 60 of 1977 s. 18; No. 126 of 1982 s. 9; No. 90 of 1986 s. 12; No. 49 of 1996 s. 64; No. 34 of 2004 s. 251.]

38. Allocation of legal aid between private practitioners and staff

- (1) If a legal aid authority decides that legal aid should be provided to a person under this Act, the legal aid authority shall determine 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.
- (2) In making a determination pursuant to subsection (1) a legal aid authority shall, so far as practicable, apply the guidelines determined by the Commission pursuant to paragraph (g) of section 15(1) and shall, in any event, have regard to the matters mentioned in subparagraphs (i), (ii), (iii) and (iv) of that paragraph.

[Section 38 amended by No. 60 of 1977 s. 19; No. 126 of 1982 s. 10; No. 90 of 1986 s. 13; No. 73 of 1992 s. 7.]

39. Nature and conditions of legal aid

- (1) Where a legal aid authority decides that legal aid should be provided to a person under this Act —
 - (a) the nature and extent of the legal aid to be provided shall also be decided by the legal aid authority; and
 - (b) the legal aid authority may, having regard to the matters mentioned in section 37(3), decide that the legal aid

shall be provided free of charge or that it shall be provided subject to such conditions as the legal aid authority considers appropriate and, without limiting the generality of the foregoing, may be provided subject to all or any of the following conditions, that is to say —

- (i) a condition that, on demand by the Commission, the assisted person shall pay to the Commission, or arrange for the Commission to be paid, the whole or any part of the cost of providing the legal aid;
- (ii) a condition that, on demand by the Commission, the assisted person shall make or arrange 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;
- (iii) a condition that, on demand by the Commission, the assisted person shall grant and execute a mortgage, bill of sale, debenture, charge or other security over land or other property to secure the payment of the whole or any part of the cost of providing the legal aid;
- (iv) without limiting subparagraph (iii), a condition that the payment of the whole or any part of the cost of providing the legal aid is to be secured by a charge on land registered under section 44A;
- (v) a condition that if the assisted person receives an amount under the judgment or verdict in proceedings arising out of a matter in respect of which the legal aid is provided or as a result of a settlement or compromise of such proceedings, the assisted person shall, on demand by the Commission, pay to the Commission an amount determined by the Director.

- (1a) A condition of the kind mentioned in subsection (1)(b)(v) may be imposed and enforced notwithstanding section 227(1) of the *Legal Practice Act 2003*.
- (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 subsection (1)(b) 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;
 - (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 authorised by the Director to vary such decisions;
 - (f) in a case where the decision was made under section 49A(2) — by the legal aid authority which made the original decision in the matter reviewed; or
 - (g) in any case — by the Commission.
- (3) Without limiting the rights of the Commission under a security referred to in subsection (1)(b)(iii), if a person who is or has been an assisted person has not paid an amount payable by way of a payment under subsection (1)(b)(i) or (ii), 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 payment under subsection (1)(b)(i) or (ii) 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 credited to the Fund.

[Section 39 amended by No. 60 of 1977 s. 20; No. 126 of 1982 s. 11; No. 90 of 1986 s. 14; No. 73 of 1992 s. 8; No. 49 of 1996 s. 64; No. 65 of 2003 s. 47(5).]

40. Assisted persons to have private practitioners of their choice

- (1) Subject to the succeeding provisions of this section, where it is determined pursuant to section 38(1) that legal services shall 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.
- (1a) If an assisted person exercises his right to select a private practitioner under subsection (1) and the legal aid authority by which the decision to provide legal aid to the assisted person was made considers that the selection so made is not in the interests of the assisted person, that legal aid authority may set aside the selection so made and select on behalf of that assisted person another private practitioner from a panel of names prepared under this section.
- (2) Where an assisted person does not wish to exercise his right to select a private practitioner pursuant to subsection (1) the legal aid authority by which the decision to provide legal aid to the assisted person was made 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 (1a) or (2) the paramount consideration shall be the interests of the assisted person but, subject to that consideration, legal aid authorities 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), (1a) or (2) does not —
- (a) affect the rights of the selected private practitioner to refuse instructions, to engage a private practitioner as agent or, on reasonable grounds, to entrust a matter or part of matter to another private practitioner;
 - (b) permit the selected private practitioner, if shown on the panel of names as a member of a firm or director of an incorporated legal practice, to act otherwise than in the name of the firm or incorporated legal practice; or
 - (c) permit the selected private practitioner, if shown on the panel of names as an employee of a private practitioner or firm of private practitioners or an officer or employee of an incorporated legal practice, to act otherwise than in the name of that private practitioner, firm or incorporated legal practice.
- (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.
- (6a) In making an exclusion, removal or limitation of a private practitioner under subsection (6) the Commission may have regard to any order or finding of fact relating to that practitioner made under Part IV of the *Legal Practitioners Act 1893* by The Legal Practice Board or by the Court of Appeal.

- (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 6 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 6 months from the date of the dismissal, the decision of the Supreme Court is final and conclusive.
- (8a) Where, under subsection (6), the Commission has excluded or removed the name of a private practitioner from a panel of names prepared pursuant to this section the Commission may, by notice in writing to the practitioner, direct that he cease to perform legal services under this Act —
- (a) with respect to a particular matter;
 - (b) on behalf of a particular assisted person; or
 - (c) on behalf of assisted persons generally.

- (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.

[Section 40 amended by No. 60 of 1977 s. 21; No 126 of 1982 s. 12; No. 90 of 1986 s. 15; No. 65 of 2003 s. 47(6); No. 74 of 2003 s. 75(4); No. 45 of 2004 s. 37.]

41. Private practitioners not to accept certain payments

- (1) 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(1) or under an agreement under section 14(1a).
- (2) Notwithstanding subsection (1) a private practitioner may accept other payments in respect of legal services performed for an assisted person if acceptance of the payments is approved by the Director and any conditions imposed by the Director in relation to the approval are complied with.

[Section 41 amended by No. 73 of 1992 s. 9.]

42. Disbursements in connection with legal aid

- (1) Except where the Director considers that those disbursements and out-of-pocket expenses should be made and met directly out of moneys standing to the credit 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,

approved in accordance with section 14 and incurred in or in connection with the performance of those services.

- (2) Nothing in subsection (1) authorises disbursements or out-of-pocket expenses to be met directly from moneys standing to the credit of the Fund unless the private practitioner would have been entitled to reimbursement in respect of them under section 14(1) or under an agreement under section 14(1a).

[Section 42 amended by No. 90 of 1986 s. 16; No. 73 of 1992 s. 10; No. 49 of 1996 s. 64.]

43. Costs for and against assisted persons

- (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.

44. Recovery of costs by Commission from successful assisted person

- (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) 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 section 15(1)(i), 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 approved in accordance with section 14 and 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 credited to the Fund.

[Section 44 amended by No. 90 of 1986 s. 17; No. 49 of 1996 s. 64.]

44A. Registration of charge to secure costs of legal aid

- (1) If, under section 39(1)(b)(iv), legal aid is granted subject to a condition that legal costs payable to the Commission by the assisted person are to be secured by a charge on land registered

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under this section the Director shall deliver a memorial to the relevant official, specifying the land to be charged and certifying that legal costs are to be charged on the land.

- (2) A memorial shall be in a form approved by the relevant official.
- (3) The relevant official, on receipt of a memorial delivered under subsection (1) and on payment of the appropriate fee, shall register the memorial and endorse or note accordingly the relevant registers or records in respect of the piece of land concerned.
- (4) Where a memorial is delivered under subsection (1) the Director shall inform the assisted person in writing of the action so taken.
- (5) Where the relevant official has registered the memorial and endorsed or noted the relevant registers or records, the legal costs payable to the Commission by an assisted person are a charge on the land for the benefit of the Fund.
- (6) If any default is made in respect of the payment of the legal costs, the Commission has the same powers of sale over the land charged as are given by the *Transfer of Land Act 1893* to a mortgagee under a mortgage in respect of which default has been made in the payment of principal.
- (7) Where the amount secured by a charge registered under this section is paid or recovered, or the Commission determines that such a charge is no longer required, the Director shall request the relevant official to remove the charge.
- (8) The relevant official shall, on receipt of a request referred to in subsection (7), remove the charge in the relevant registers or records.
- (9) No stamp duty is payable in respect of any action of a relevant official pursuant to this section.
- (10) In this section —
 “legal costs” means the whole or part of the cost of providing the legal aid;

“relevant official” means —

- (a) in the case of land which is under the operation of the *Transfer of Land Act 1893* or *Land Administration Act 1997*, the Registrar of Titles; or
- (b) in the case of land which is alienated from the Crown but which is not under the operation of the *Transfer of Land Act 1893*, the Registrar of Deeds and Transfers.

[Section 44A inserted by No. 73 of 1992 s. 11; amended by No. 31 of 1997 s. 63.]

45. Court may order Commission to pay costs awarded against assisted person

- (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 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

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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.

45A. Guidelines to be observed

A legal aid authority shall observe guidelines determined by the Commission under section 15(1)(i).

[Section 45A inserted by No. 73 of 1992 s. 12.]

**Division 4 — Notification and review of decisions
relating to legal aid**

46. Interpretation

In this Division unless the contrary intention appears —

“**decision**” means —

- (a) a decision refusing to provide legal aid under this Act;

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- (b) a decision refusing to provide legal aid under this Act of the nature or to the extent applied for or altering, adversely to an assisted person, the nature or extent of legal aid that is being provided to that person;
- (ba) a decision refusing to approve, in accordance with section 14, any disbursement or out-of-pocket expense for which such approval is sought;
- (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;
- (da) a decision under section 40(1a); or
- (e) a determination under section 44;

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

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

- (a) in the case of a decision referred to in paragraph (a) of the interpretation “decision” in this section — the applicant;
- (b) in the case of a decision referred to in paragraph (b), (ba) or (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;
- (d) in the case of a decision referred to in paragraph (da) of that interpretation — the assisted person or the private practitioner whose selection is set aside under section 40(1a).

[Section 46 amended by No. 60 of 1977 s. 22; No. 126 of 1982 s. 13; No. 90 of 1986 s. 18.]

47. Notification of decisions

- (1) The responsible authority shall, within 14 days of making a decision, communicate the decision to each person affected by the decision.
- (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 authorised 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.
- (4) In this section —

“responsible authority”, in relation to a decision made by —

 - (a) a legal aid committee, means the legal aid committee;
 - (b) an officer of the Commission, means the officer of the Commission; or
 - (c) the Commission, means the Commission.

[Section 47 amended by No. 126 of 1982 s. 14.]

48. Reconsideration of decision

- (1) A person affected by a decision may by notice in writing to the Director request that the decision be reconsidered.
- (2) On receiving a request made under subsection (1), the Director shall, if the decision to which that request relates was made by —
 - (a) a legal aid committee, refer that decision to a legal aid committee;

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- (b) the Director, himself reconsider that decision or refer that decision to a member of the staff or to a legal aid committee;
 - (c) a member of the staff, himself reconsider that decision or refer that decision to a member of the staff or to a legal aid committee; or
 - (d) the Commission, refer that decision to the Commission, for consideration.
- (3) When a decision is referred under subsection (2) to a legal aid committee or member of the staff or to the Commission for reconsideration, the legal aid committee or member of the staff or the Commission, as the case requires, shall reconsider the decision.
- (4) On reconsidering a decision under subsection (2) or (3), a legal aid committee or officer of the Commission or the Commission, as the case requires —
- (a) may confirm, vary or reverse the decision; and
 - (b) shall, in the manner prescribed in section 47(2), communicate the result of the reconsideration to the person by whom the relevant request was made under subsection (1).
- (5) Notwithstanding anything in this section, a legal aid committee or officer of the Commission or the Commission, as the case requires, may refuse to reconsider a decision if the relevant request was not received by the Director within 28 days from the day on which the decision was communicated to the person by whom that request was made under subsection (1), and shall, if it or he so refuses, communicate that refusal to that person in the manner prescribed by section 47(2).

[Section 48 inserted by No. 126 of 1982 s. 15.]

49. Review of decisions

- (1) Subject to subsection (5), when a decision has been reconsidered under section 48, the person who made the request as a result of which the decision was so reconsidered may apply in writing to a review committee for a review of the matter concerned.
- (2) On receiving an application made under subsection (1), a review committee shall, subject to subsection (4), review the matter to which that application relates and on so doing —
 - (a) may confirm, vary or reverse any decision relating to the matter concerned; and
 - (b) shall, in the manner prescribed in section 47(2), communicate its decision to the person by whom that application was made.
- (2a) Subject to subsection (5), a private practitioner who —
 - (a) has performed services by way of legal assistance under Division 3; and
 - (b) is dissatisfied with a decision made by a legal aid authority in respect of the payment or payments to which the private practitioner 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 authority; and
 - (b) shall, in writing, communicate its decision to the Commission and to the private practitioner by whom that application was made,

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

- (3) The decision of a review committee is, subject to section 49A, final and conclusive.
- (4) A review committee may refuse to review the matter to which an application made under subsection (1) relates if it did not receive that application within 28 days from the day on which the result of the reconsideration concerned was communicated to the applicant, and shall, if it so refuses, communicate that refusal to the applicant in the manner prescribed by section 47(2).
- (5) This section does not apply to or in relation to decisions made by the Commission or to or in relation to any determination made by the Director under an agreement under section 14(1a) as to the basis on which or the circumstances in which a private practitioner is entitled to receive payment, or reimbursement, or both.

[Section 49 amended by No. 60 of 1977 s. 23; No. 113 of 1978 s. 6; No. 126 of 1982 s. 16; No. 73 of 1992 s. 13.]

49A. Reopening of decision of review committee

- (1) The Commission may, if the circumstances under which the decision of a review committee was made have since changed in a material respect or if material information which was not before a review committee when it made a decision is available or if the Commission considers that there is any other special reason why the decision of a review committee should not be allowed to stand, set aside the decision of the review committee and remit the matter to which that decision relates to a review committee for decision afresh.
- (2) If a matter has been remitted under subsection (1) to a review committee for decision afresh, the review committee shall decide the matter afresh and in so doing —

- (a) may confirm, vary or reverse the decision set aside under that subsection; and
 - (b) shall, in the manner prescribed in section 47(2), communicate its fresh decision to the person by whom the relevant application under section 49(1) was made.
- (3) A decision made under subsection (2) is final and conclusive.
[Section 49A inserted by No. 126 of 1982 s. 17.]

50. Review committees

- (1) The Commission may establish such review committees as it considers necessary for the purposes of section 49.
- (2) A review committee shall consist of 3 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 may be 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 reappointment;
 - (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.

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- (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.
- (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.
- (6a) 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.
- (6b) When a meeting of a review committee has been convened and there is difficulty in obtaining a quorum at that meeting, the Director may, subject to subsection (2), in writing appoint a member or members of any other review committee to attend that meeting for the purpose of constituting a quorum thereat.
- (6c) A person appointed pursuant to subsection (6b) to attend a meeting of a review committee is entitled to attend that meeting and is, when so attending, deemed to be a member of the review committee and has all the powers, functions and duties of a member of the review committee.

- (7) At a meeting of a review committee 2 members constitute a quorum.
- (8) Where a matter is under review by a review committee the legal aid authority by which the decision to which that matter relates was made, 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.
- (8a) A review committee shall observe guidelines determined by the Commission under section 15(1)(i).
- (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.

[Section 50 amended by No. 60 of 1977 s. 24; No. 8 of 1978 s. 4; No. 106 of 1979 s. 3; No. 126 of 1982 s. 18; No. 73 of 1992 s. 14.]

Division 5 — Relationships between Commission, practitioner and assisted person

50A. Rights and privileges generally

Subject to this Act, where a private practitioner selected pursuant to section 40 performs services on behalf of an assisted person the respective rights, privileges and obligations of the Commission, the assisted person and the private practitioner shall be similar to those that would be applicable if the

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Division 5 Relationships between Commission, practitioner and assisted person

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relationship between the Commission and the assisted person was that of solicitor and client and the relationship between the Commission and the private practitioner was that of instructing solicitor and agent.

[Section 50A inserted by No. 113 of 1978 s. 8.]

50B. Private practitioners to report to Commission

- (1) Subject to this Act, if a private practitioner performs services by way of legal assistance on behalf of an assisted person under Division 3 the practitioner shall report to the Commission —
 - (a) at the completion of the period of legal assistance; and
 - (b) every 6 months during the continuation of the period of legal assistance, if the period of legal assistance continues for more than 6 months.
- (2) Without limiting section 63A, the Director may at any time, either of his own motion or at the request of the Commission or a legal aid committee or a review committee, request a private practitioner referred to in subsection (1) to report to the Commission and the practitioner shall so report within 14 days of the date of the request or within such longer period as the Director allows.
- (3) A report made under this section by the private practitioner shall state clearly and precisely —
 - (a) the legal services provided to the assisted person;
 - (b) the progress of the matter to the date of the report;
 - (c) any facts which might affect the grant of legal assistance including but not limited to changes in the assisted person's financial circumstances; and
 - (d) any other information required by the Commission.

[Section 50B inserted by No. 73 of 1992 s. 15.]

51. Solicitor-client relationship to exist and be preserved

- (1) Subject to this Act, 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.

[Section 51 amended by No. 113 of 1978 s. 9.]

**Division 6 — Legal assistance in respect
of Commonwealth matters**

[Heading inserted by No. 60 of 1977 s. 25.]

51A. Regard to be had to recommendations of relevant Commonwealth agency

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

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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 any relevant agency of the Commonwealth having functions relating to legal assistance.

[Section 51A inserted by No. 60 of 1977 s. 25; amended by No. 126 of 1982 s. 19; No. 73 of 1992 s. 16.]

Part VI — Finances of Commission

Division 1 — The Legal Aid Fund of Western Australia

52. Legal Aid Fund

- (1) A fund to be administered by the Commission and known as the Legal Aid Fund of Western Australia is hereby established.
- (2) The Commission shall credit to 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 section 17(4) 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, other than moneys made available by the Commonwealth for the purposes of Part IXA;
 - (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.

[Section 52 amended by No. 48 of 1984 s. 3; No. 49 of 1996 s. 64.]

53. Investment of Fund

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.

54. Payment out of Fund

Moneys standing to the credit of 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.

[Section 54 amended by No. 49 of 1996 s. 64.]

55. Payments may be made by allowance or set-off

Where a provision of this Act requires moneys to be credited or charged to 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.

[Section 55 amended by No. 49 of 1996 s. 64.]

Division 2 — Estimates, accounts and audit

56. Application of *Financial Administration and Audit Act 1985*

- (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and

reporting of statutory authorities apply to and in respect of the Commission and its operations.

- (2) A copy of the annual report of the Commission and the opinion of the Auditor General in relation to the financial statements of the Commission shall be furnished to —
- (a) the Attorney General;
 - (b) the Attorney General of the Commonwealth;
 - (c) the Commonwealth Council;
 - (d) the Law Society;
 - (e) the Legal Contribution Trust established by section 5 of the *Legal Contribution Trust Act 1967*; and
 - (f) the Legal Practice Board,

at the same time as they are submitted to the Minister.

[Section 56 inserted by No. 98 of 1985 s. 3; amended by No. 65 of 2003 s. 47(8); No. 74 of 2003 s. 75(3).]

[57. Repealed by No. 98 of 1985 s. 3.]

58. Deposit of moneys

- (1) An account or accounts, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, 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.
- (2) All moneys received by the Commission shall be —
- (a) credited to (in the case of an account maintained at the Treasury); or
 - (b) paid into and placed to the credit of (in the case of an account maintained at a bank),

an account referred to in this section.

- (3) The payment or crediting of moneys (other than moneys received or held by the Commission on trust or for the purposes of Part IXA) into or to 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 or credited to an account that does not, or accounts that do not, contain any moneys of the Commission not held on trust.

[Section 58 inserted by No. 60 of 1977 s. 26; amended by No. 48 of 1984 s. 4; No. 49 of 1996 s. 56 and 64.]

59. Accounts to be maintained

[(1) repealed]

- (2) Separate accounts and records shall be maintained 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;
 - (c) transactions and affairs in relation to money and other property received or held by the Commission on trust; and
 - (d) transactions and affairs in relation to legal assistance provided pursuant to Part IXA.

[Section 59 amended by No. 48 of 1984 s. 5; No. 98 of 1985 s. 3.]

[60. Repealed by No. 98 of 1985 s. 3.]

Part VII — Legal practice by Director and staff

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

- (1) Subject to the requirements of the *Legal Practice Act 2003* 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, —
 - (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;

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- (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 10 of the *Legal Practice Act 2003* do not apply to or in relation to the Director or a practitioner who is a member of the staff.

[Section 61 amended by No. 65 of 2003 s. 47(9), (10).]

62. Solicitor on the record

- (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 authorise any member of the staff who is a practitioner to sign documents for the purposes referred to in subsection (1) and the signature of a person so authorised followed by the words "on behalf of the Director of Legal Aid" or "for Director of Legal Aid" shall be sufficient for those purposes.

[Section 62 amended by No. 113 of 1978 s. 10.]

Part VIIA — Consultative committees

[Heading inserted by No. 60 of 1977 s. 27.]

62A. Establishment of consultative committees

- (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.
- (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.

[Section 62A inserted by No. 60 of 1977 s. 27.]

62B. Constitution of consultative committees

- (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 2 years, as is specified in the instrument of his appointment, but is eligible for reappointment;
 - (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

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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.

[Section 62B inserted by No. 60 of 1977 s. 27.]

62C. Meetings of consultative committees

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.

[Sections 62C inserted by No. 60 of 1977 s. 27.]

62D. Allowances

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.

[Section 62D inserted by No. 60 of 1977 s. 27.]

Part VIII — Miscellaneous

63. Liability and immunity

- (1) The Commission shall indemnify —
 - (a) 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 his duties; or
 - (b) a private practitioner who performs services by way of legal assistance under Division 2 of Part V against any liability incurred by him for any negligent act or omission by him in the course of the performance of those services or in good faith in the purported performance of those services.
- (2) The Commission is liable for any act or omission by —
 - (a) the Director or a member of the staff in the course of the performance of his duties; or
 - (b) a private practitioner in the course of the performance by him of services by way of legal assistance under Division 2 of Part V.
- (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 a member or substitute member of a 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.

[Section 63 inserted by No. 126 of 1982 s. 21.]

63A. Director may require practitioner to supply information

- (1) The Director may, either of his own motion or at the request of the Commission or a legal aid committee or a review committee, require a private practitioner who is performing or

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has performed services under this Act on behalf of an assisted person, to furnish to the Director —

- (a) information as to the performance of those services; or
 - (b) information disclosed to the private practitioner by the assisted person in the course of or with respect to the performance of those services.
- (2) Without limiting the generality of section 40(6), the failure of a private practitioner to comply with a requirement made by the Director pursuant to subsection (1) shall be a ground for the removal of his name from the panel of names prepared pursuant to that section.

[Section 63A inserted by No. 113 of 1978 s. 11.]

64. Secrecy

- (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 or acting member of a legal aid committee, a member, substitute member or acting member of a review committee or a member of a consultative committee.
- (2) Subject to subsections (2a) and (2c), 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: \$1 000.

- (2a) Notwithstanding anything contained in subsection (2), the Director may —
- (a) disclose any administrative information to any person; or

- (b) with the approval of the Chairman or the Commission, disclose any information referred to in subsection (2), other than administrative information, to any person if —
 - (i) the person to whom that information relates has in writing consented to that disclosure and waived legal professional privilege in respect thereof; or
 - (ii) that disclosure is necessary to correct or refute a statement made by the person to whom that information relates.

(2b) In subsection (2a) —

“administrative information” means —

- (a) the date or purpose of any application for legal aid and how that application was made;
- (b) the date on which any application for legal aid was received by the Commission or on which that application was considered;
- (c) the date on which any decision was reconsidered under section 48, reviewed under section 49 or dealt with under section 49A;
- (d) whether or not any application for legal aid has been granted;
- (e) if an application for legal aid has been granted, whether or not it has been granted subject to any conditions;
- (f) the conditions, if any, subject to which an application for legal aid has been granted;
- (g) the name of the practitioner by whom the legal services involved in providing the legal aid concerned are to be, are being or have been performed; or

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- (h) such information, other than information referred to in paragraphs (a) to (g), as may be specified in the rules;

“**disclose**” includes disclose by producing any relevant document and “**disclosure**” shall be construed accordingly.

- (2c) Notwithstanding anything contained in subsection (2), a person to whom this section applies may, with the approval of the Chairman or the Commission, disclose any information referred to in subsection (2) to The Legal Practice Board for the purposes of the *Legal Practitioners Act 1893* and, in construing this subsection, “**disclose**” includes disclose by producing any relevant document.
- (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, unless, under subsection (2a) or (2c), that document has been produced or that information has been disclosed to any person.
- (4) This section does not apply —
- (a) 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 or an offence against section 65(1);
 - (b) in proceedings instituted under section 65(2); or
 - (c) in an inquiry by the Legal Practice Board, or in proceedings before the Supreme Court, under the *Legal Practice Act 2003*.
- (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.

[Section 64 amended by No. 60 of 1977 s. 29; No. 113 of 1978 s. 12; No. 106 of 1979 s. 4; No. 126 of 1982 s. 22; No. 90 of 1986 s. 19; No. 78 of 1995 s. 147; No. 65 of 2003 s. 47(12); No. 74 of 2003 s. 75(4).]

65. Offence of misrepresentation

(1) A person who, seeking or receiving legal assistance, with intent to deceive or mislead the Commission, the Director, a member of the staff, a legal aid committee or a review 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: \$5 000.

(2) A person who, with intent to deceive or mislead the Commission, the Director a member of the staff, a legal aid committee or a review committee makes a statement or representation that is false in any material particular commits an offence.

Penalty: \$5 000.

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

[Section 65 amended by No. 73 of 1992 s. 17.]

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66. Proceedings under this Act

- (1) Any proceedings instituted before a court —
 - (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 authorised 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. Rules

- (1) The Commission may with the approval of the Governor —
 - (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, scales of fees to be used in determining the fees that are to be payable to private practitioners for performing services by way of legal assistance under Division 3 of Part V;

- (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 \$100 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.

[Section 67 amended by No. 113 of 1978 s. 13.]

Part IX — Agreements with the Commonwealth

68. State may enter into agreements and arrangements

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;
- (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;
- (d) any matter incidental to a matter mentioned in paragraph (a), (b), (c) or (ca).

[Section 68 amended by No. 60 of 1977 s. 30.]

Part IXA — Recovery abroad of maintenance

[Heading inserted by No. 48 of 1984 s. 6.]

68A. Interpretation

In this Part, unless the contrary intention appears —

“**authorised person**” means a person appointed under the regulations to be an authorised person;

“**Convention**” means the Convention on the Recovery Abroad of Maintenance referred to in section 111 of the *Family Law Act 1975*, as amended, of the Commonwealth;

“**regulations**” means the *Family Law Regulations*, as amended, made under the *Family Law Act 1975*, as amended, of the Commonwealth.

[Section 68A inserted by No. 48 of 1984 s. 6.]

68B. Legal assistance for recovery abroad of maintenance

- (1) Where the State enters into an agreement or arrangement with the Commonwealth for or with respect to moneys to be made available by the Commonwealth to the Commission to enable the Commission to perform in the State any of the obligations of Australia under the Convention, the Commission shall provide legal assistance for that purpose from those moneys.
- (2) Part V, other than Division 1 of that Part, does not apply to the provision of legal assistance pursuant to subsection (1).
- (3) Moneys paid to the Commission pursuant to subsection (1) shall not form part of the Fund but shall be paid by the Commission into a separate account and shall be applied only for the purpose of providing legal assistance under this Part.

[Section 68B inserted by No. 48 of 1984 s. 6.]

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68C. The Director as an authorised person

The Director may be appointed an authorised person and when so acting has and may exercise all the powers and, subject to the regulations, may perform all the functions of an authorised person under the regulations.

[Section 68C inserted by No. 48 of 1984 s. 6.]

Part X — Transitional provisions

Division 1 — General

69. Interpretation

In this Part —

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

On and after the appointed day² 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*⁸ (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.

71. Incorporation of moneys from Legal Assistance Fund

(1) In this section —

“**Legal Assistance Fund**” means the Legal Assistance Fund established pursuant to Part V of the *Legal Contribution Trust Act 1967*⁸.

(2) On the appointed day², or as soon as practicable thereafter, the Law Society shall pay to the Commission any moneys that, immediately before the appointed day², 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*⁸ those moneys shall, on and after the appointed day², 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 day², any moneys were for the time being invested pursuant to section 34 of the *Legal Contribution Trust Act 1967*⁸ that money shall, on and after the appointed day² —
 - (a) form part of the Fund; and
 - (b) be deemed to be invested pursuant to section 53.

72. State may make arrangements as to premises, etc.

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.

73. Application for legal aid granted before appointed day

Where, before the appointed day², —

- (a) an application for legal aid has been granted —
 - (i) under Part V of the *Legal Contribution Trust Act 1967*⁸; 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 day², 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. Provisions in respect of legal aid being provided by private practitioner

- (1) Where, at or before the appointed day ², a private practitioner is performing or has agreed to perform services on behalf of a person by way of legal aid —
- (a) under Part V of the *Legal Contribution Trust Act 1967* ⁸;
or
 - (b) in the course of the operations in this State of the Australian Legal Aid Office,

then as from the appointed day ², 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* ⁸ 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 section 42(a) and (b) of the *Legal Contribution Trust Act 1967* ⁸ if the services had been wholly performed under Part V of that Act.

75. Provisions in respect of legal aid being provided by Commonwealth employees

- (1) Where, before the appointed day ², 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 ², those services shall, so far as is necessary, be performed on behalf of that person by the Commission through its staff.
- (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

76. Law Society staff

- (1) On the appointed day² —
- (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*⁸; 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*⁸,

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.

77. Commonwealth employees

- (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*⁹ 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 day² to become a member of the staff of the Commission, that Commonwealth employee shall, on the appointed day², 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*⁷ 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 day².

78. Salary of former Commonwealth and Law Society employees

- (1) In this section “**transferred employee**” means a person who becomes a member of the staff pursuant to section 76(1) or section 77(2).
- (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

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Division 2 Transfer of staff to Commission

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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.

Notes

¹ This is a compilation of the *Legal Aid Commission Act 1976* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Legal Aid Commission Act 1976</i>	143 of 1976	13 Dec 1976	17 Jun 1977 (see s. 2 and <i>Gazette</i> 17 Jun 1977 p. 1812)
<i>Legal Aid Commission Act Amendment Act 1977</i>	60 of 1977	23 Nov 1977	23 Nov 1977
<i>Legal Aid Commission Act Amendment Act 1978</i>	8 of 1978	15 May 1978	15 May 1978
<i>Legal Aid Commission Act Amendment Act (No. 2) 1978</i>	113 of 1978	12 Dec 1978	Act other than s. 4 and 13: 12 Dec 1978 (see s. 2(1)); s. 4 and 13: 31 Aug 1979 (see s. 2(2) and <i>Gazette</i> 31 Aug 1979 p. 2601)
<i>Legal Aid Commission Act Amendment Act 1979</i>	106 of 1979	17 Dec 1979	17 Dec 1979
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Legal Aid Commission Amendment Act 1982</i>	126 of 1982	10 Dec 1982	10 Dec 1982
Reprint of the <i>Legal Aid Commission Act 1976</i> approved 2 Mar 1983 (includes amendments listed above)			
<i>Legal Aid Commission Amendment Act 1984</i>	48 of 1984	5 Sep 1984	12 Oct 1984 (see s. 2 and <i>Gazette</i> 12 Oct 1984 p. 3255)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Legal Aid Commission Amendment Act 1986</i>	90 of 1986	10 Dec 1986	23 Jan 1987 (see s. 2 and <i>Gazette</i> 23 Jan 1987 p. 179)
Reprint of the <i>Legal Aid Commission Act 1976</i> as at 14 Aug 1987 (includes amendments listed above)			

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Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987</i> Pt. XVIII	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and <i>Gazette</i> 12 Feb 1988 p. 397)
<i>Acts Amendment (Public Service) Act 1987</i> s. 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Legal Aid Commission Amendment Act 1992</i>	73 of 1992	11 Dec 1992	23 Mar 1993 (see s. 2 and <i>Gazette</i> 23 Mar 1993 p. 1815)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Sentencing (Consequential Provisions) Act 1995</i> s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Financial Legislation Amendment Act 1996</i> s. 56 and 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 38	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
Reprint of the <i>Legal Aid Commission Act 1976</i> as at 5 Mar 1999 (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act 2001</i> s. 221	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 47 ¹⁰	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 75	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Children and Community Services Act 2004</i> s. 251	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
Reprint 4: The <i>Legal Aid Commission Act 1976</i> as at 20 May 2005 (includes amendments listed above)			

^{1a} On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 75 ¹¹	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

- ² Appointed day 17 April 1978; see *Gazette* 17 March 1978 p. 800.
- ³ Repealed by the *Associations Incorporation Act 1987*.
- ⁴ Repealed by the *Statute Stocktake Act 1999* s. 3 of the Commonwealth (No. 118 of 1999).
- ⁵ Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).
- ⁶ See *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984* s. 88(2).
- ⁷ Repealed by the *State Superannuation Act 2000*.
- ⁸ Part V of the *Legal Contribution Trust Act 1967* was repealed by the *Legal Contribution Trust Act Amendment Act 1976* s. 6.
- ⁹ Repealed by the *Public Employment (Consequential and Transitional) Amendment Act 1999* s. 3(1) of the Commonwealth (No. 146 of 1999).
- ¹⁰ The amendment in s. 47(7) and (11) cannot be done as the section to be amended has already been amended by the *Statutes (Repeals and Minor Amendments) Act 2003* s. 75(4).
- ¹¹ On the date as at which this reprint was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 had not come into operation. It reads as follows:

“
75. Various provisions repealed
 The provisions listed in the Table to this section are repealed.

Table of provisions repealed

Act	Provision
.....
<i>Legal Aid Commission Act 1976</i>	s. 22
.....

”