

Queensland



# LEGAL AID ACT 1978

**Reprinted as in force on 9 December 1992  
(includes amendments up to Act No. 68 of 1992)**

**Reprint No. 2**

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the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This Act is reprinted as at 9 December 1992. As required by section 5 of the *Reprints Act 1992*, it—

- shows the law as amended by all amendments that commenced before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the *Reprints Act 1992*, the reprint includes, in a suitable place, a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- omit unnecessary referential words as permitted by section 41 of that Act.

**Also see Endnotes for—**

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**



# LEGAL AID ACT 1978

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# LEGAL AID ACT 1978

[as amended by all amendments that commenced before 9 December 1992<sup>2</sup>]

**An Act to establish the Legal Aid Commission of Queensland; to provide for legal assistance for persons throughout the State and for related purposes**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Legal Aid Act 1978*<sup>3-8</sup>.

### Commencement

2.(1) The Minister may, by notice in the Gazette, appoint a day as the day on which legal assistance is to commence to be made available under this Act.

(2) Section 4 shall come into operation on the commencing day.

(3) Subject to subsections (1) and (2), the respective provisions of this Act shall come into operation on the day or days fixed in that behalf by proclamation.

(4) Subject to subsections (1) and (2), the Governor may by proclamation—

- (a) appoint a date on which this Act shall come into operation; or
- (b) appoint dates on which the provisions of this Act specified in the proclamation shall come into operation.

(5) For the purposes of subsection (4)(b) dates may be appointed in the one proclamation or in different proclamations.

**Interpretation**

**6.(1)** In this Act—

**“Assistant Director”** means an Assistant Director of Legal Aid appointed under section 18;

**“bank”** means—

- (a) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth as amended and in force for the time being; or
- (b) a bank constituted under a law of a State or a Territory of the Commonwealth;

**“Bar Association”** means the Bar Association of Queensland;

**“barrister”** means a person properly admitted as a barrister of the Supreme Court whose name is currently enrolled on the Roll of Barristers of that Court;

**“chief executive”** means the chief executive of the department;

**“commencing day”** means the day appointed under section 2(1);

**“Commission”** means the Legal Aid Commission of Queensland established by section 7;

**“Commissioner”** means a Commissioner of the Commission and includes the President of the Commission;

**“consultative committee”** means a consultative committee established under Part 11;

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

**“duty lawyer services”** means legal services provided by a barrister or solicitor attending at a proceeding of a court or tribunal, being legal services consisting of appearing on behalf of a person at, or giving legal advice to a person in connection with, the proceeding, otherwise than by prior arrangement with the person;

**“Fund”** means the Legal Aid Fund established by section 42;

**“Law Society”** means the Queensland Law Society Incorporated a body incorporated under the *Queensland Law Society Act 1952*;

**“Legal Aid Committee”** means a Legal Aid Committee established under section 15;

**“legal practitioner”** means a barrister or a solicitor;

**“legally assisted person”** means a person to whom (including a corporation to which) legal assistance is provided under this Act;

**“member of the staff of the Commission”** means a person employed under section 21, 98 or 100;

**“National Legal Aid Advisory Committee”** means the National Legal Aid Advisory Committee established under section 7 of the *Commonwealth Legal Aid Act 1977* of the Commonwealth as amended;

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

**“practising certificate”** means a practising certificate issued under the *Queensland Law Society Act 1952*;

**“prescribed criminal proceeding”** means—

- (a) a criminal proceeding before any court or tribunal except—
  - (i) a Magistrates Court; and
  - (ii) a Children’s Court exercising jurisdiction other than that conferred by section 29 of the *Children’s Services Act 1965*;or
- (b) a proceeding before a justice taking an examination of witnesses in relation to an indictable offence punishable upon conviction by imprisonment for a term exceeding 14 years; or
- (c) any other proceeding, not being a civil proceeding, that the Commission determines;

**“private legal practitioner”** means a person who is practising on the person’s own account as a barrister, or as a solicitor whether alone or in partnership, and, for the purposes of any provision of this Act relating to the provision of legal assistance by making the services of a private legal practitioner available to legally assisted persons, includes a person properly admitted as a conveyancer of the Supreme Court whose name is currently enrolled on the Roll of Conveyancers of that Court and who is practising on the person’s own account as a conveyancer whether alone or in partnership;

**“produce”** includes permit access to;

**“Review Committee”** means a Review Committee established under Part 6;

**“solicitor”** means a person properly admitted as a solicitor of the Supreme Court whose name is currently enrolled on the Roll of Solicitors of that Court;

**“statutory officer of the Commission”** means the Director or an Assistant Director;

**“tribunal”** includes an authority or person having power to require the production of documents or the answering of questions, but does not include a court.

(2) A reference in this Act to the provision of legal assistance shall be construed as a reference to the provision of legal services (including the giving of legal advice) without charge to the person to whom the legal services are provided or subject to the making of a payment by that person that is less than the full cost of the provision of the services.

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

## **PART 2—ESTABLISHMENT AND FUNCTION OF LEGAL AID COMMISSION**

### **Establishment of Commission**

7.(1) There is established by this section a Commission by the name of the Legal Aid Commission of Queensland.

(2) The Commission—

- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) may acquire, hold and dispose of real and personal property; and

(d) may enter into such agreements and arrangements as it considers desirable for the purposes of this Act; and

(e) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to any document and shall presume that it was properly affixed.

(4) The Commission is—

(a) a unit of the public sector within the meaning of the *Public Sector Management Commission Act 1990*; and

(b) a unit of public administration within the meaning of the *Criminal Justice Act 1989* and the *Electoral and Administrative Review Act 1989*; and

(c) a statutory body within the meaning of the *Financial Administration and Audit Act 1977*.

## **Constitution of Commission**

8.(1) The Commission is constituted by—

(a) 2 Commissioners nominated by the Council of the Law Society; and

(b) a Commissioner nominated by the Committee or other governing body of the Bar Association; and

(c) a Commissioner nominated by the Minister; and

(d) a Commissioner, nominated by the Minister, who is, in the opinion of the Minister, an appropriate person to represent the interests of legally assisted persons; and

(e) a Commissioner, nominated by the Minister, who is a person who is—

(i) a registered company auditor within the meaning of the Corporations Law; or

(ii) a member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants; and

- (f) a Commissioner nominated by the Queensland Association of Independent Legal Services; and
- (g) 2 Commissioners nominated by the Attorney-General of the Commonwealth, at least 1 of whom shall be resident in Queensland; and
- (h) the Director, who shall be a Commissioner because of office; and
- (i) a Commissioner nominated as prescribed by regulation to represent all officers of the Commission.

**(2)** The Governor in Council—

- (a) shall appoint the Commissioners (excluding the Director); and
- (b) shall appoint 1 of the Commissioners as the President of the Commission, on the nomination of the Minister.

**(2A)** All appointments shall be on a part-time basis.

**(3)** The appointment of a person as a Commissioner is not invalid merely because of a defect or irregularity in relation to the appointment.

**(4)** In the case of any Commissioner appointed under subsection (1)(g) who is not a resident of Queensland the Governor in Council may on the nomination of the Attorney-General of the Commonwealth appoint 1 or more persons each as deputy of that Commissioner and a person so appointed is in the event of the absence from a meeting of the Commission of the Commissioner of whom the person is the deputy, entitled to attend that meeting and, when so attending has all the powers and functions of a Commissioner but, in the event of the absence from a meeting of the Commission of that Commissioner, not more than 1 of those persons is entitled to attend that meeting at any 1 time.

**(5)** The Director may appoint a deputy to act in the Director's place as a Commissioner.

**(6)** A person so appointed in the event of the absence of the Director from a meeting of the Commission is entitled to attend that meeting and, when so attending, has all the powers and functions of a Commissioner.

**Function of Commission**

**9.(1)** The function of the Commission is to provide legal assistance under this Act.

**(2)** Legal assistance may be provided by the Commission by arranging for the services of private legal practitioners to be made available at the expense of the Commission or by making available the services of officers of the Commission.

**Powers of Commission**

**10.(1)** The Commission may do all things necessary or convenient to be done for or in connection with the performance of its function.

**(2)** Where the Commission provides legal assistance by making available the services of officers of the Commission, the Commission shall pay any disbursements (including barristers' fees) and out-of-pocket expenses incurred in the course of providing that assistance.

**(3)** Where the Commission provides legal assistance by arranging for the services of private legal practitioners, the Commission shall, except where the services are provided on a voluntary basis, pay fees to those private legal practitioners for the performance of those services (being fees determined by the Commission under section 33(19) and (20)) and shall pay any disbursements (including barristers' fees) and out-of-pocket expenses properly incurred by them.

**(3A)** For the purposes of subsection (3), the Commission may pay private legal practitioners by authorising them to retain contributions made to them by legally assisted persons under this Act.

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

**(5)** Despite anything contained in any other provision of this Act, but subject to subsection (7), any moneys or other property held by the Commission upon trust shall be dealt with in accordance with the powers and functions of the Commission as trustee under the *Trusts Act 1973*.

**(6)** The provisions of the *Trust Accounts Act 1973* relating to the keeping of accounts by solicitors in respect of moneys held by them upon trust, and

the audit of such accounts, do not apply in relation to moneys held by the Commission upon trust.

(7) The provisions of section 10 of the *Legal Assistance Act 1965* apply to and in relation to moneys held by the Commission upon trust for persons who are or have been legally assisted persons and, in the application of those provisions because of this subsection, a reference in those provisions to a solicitor shall be read as a reference to the Commission.

(8) Moneys held by the Commission upon trust (other than moneys required to be deposited with the Law Society in pursuance of section 10 of the *Legal Assistance Act 1965*) may be invested by the Commission in any manner in which trust funds may, for the time being, be invested under the *Trusts Act 1973* but not otherwise, and any moneys resulting from investments so made shall be paid to the credit of the Fund.

### **Delegation by Commission**

**10A.(1)** The Commission, either generally or otherwise as provided by the instrument of delegation, by writing under its seal, may delegate—

- (a) to the Director; or
- (b) to a committee of 1 or more Commissioners;

any of its powers under this Act, except this power of delegation.

(2) A delegation of a power may be made subject to conditions or absolutely and shall not prejudice the making by the Commission of other delegations of the same power.

(3) A power so delegated shall be exercised in accordance with the instrument of delegation and when so exercised shall be taken to be exercised by the Commission.

(4) A delegation of power is revocable at the will of the Commission and does not prevent the exercise of the power by the Commission.

(5) The Commission may rescind or vary any decision made in the exercise of a power delegated under this section.



**Fees Committee**

**10B.(1)** There is established a subcommittee of the Commission, to be known as the Fees Committee, to make recommendations to the Commission on fees to be paid to private legal practitioners for services performed on behalf of legally assisted persons.

**(2)** Before making a recommendation the Fees Committee shall consult the Council of the Law Society and the Committee or other governing body of the Bar Association and shall take into account the views of those bodies.

**(3)** The Fees Committee is constituted by—

- (a) the Commissioner nominated as such because of being registered as a public accountant, who shall be the presiding officer of the Fees Committee; and
- (b) a Commissioner nominated as such by the Council of the Law Society; and
- (c) the Commissioner nominated as such by the Committee or other governing body of the Bar Association; and
- (d) the Director; and
- (e) the Commissioner nominated as such by the Minister under section 8(1)(c); and
- (f) a Commissioner nominated as such by the Attorney-General of the Commonwealth and nominated as a member of the Fees Committee by the Attorney-General of the Commonwealth.

**(4)** The presiding officer may at any time convene a meeting of the Fees Committee.

**(5)** At a meeting of the Fees Committee, 4 members constitute a quorum.

**(6)** If the presiding officer is not present at a meeting of the Fees Committee, the members present shall elect 1 of their number to preside at that meeting.

**(7)** Questions arising at a meeting shall be determined by a majority of the votes of the members present and voting.

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

(9) The Fees Committee may regulate the conduct of proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.

### **Duties of Commission**

**11.(1)** In the performance of its function, the Commission shall—

- (a) ensure that legal assistance is provided in the most effective, efficient and economical manner; and
- (b) ensure that its activities are carried on consistently with, and do not prejudice, the independence of the private legal profession; and
- (c) liaise, cooperate and, if the Commission considers it desirable to do so, make reciprocal arrangements with other legal aid commissions, professional bodies representing private legal practitioners and other bodies engaged or interested in the provision of legal assistance in the State or elsewhere; and
- (d) liaise with professional bodies representing private legal practitioners in order to facilitate the use, in appropriate circumstances, of services provided by private legal practitioners; and
- (e) make maximum use of services which private legal practitioners offer to provide on a voluntary basis; and
- (f) have regard to the recommendations of the National Legal Aid Advisory Committee concerning the provision of legal assistance by the Commission—
  - (i) in or in connection with a claim, right or proceeding involving a matter arising under a law of the Commonwealth; or
  - (ii) in a proceeding in a federal court or in a State court exercising federal jurisdiction; or
  - (iii) in respect of persons who are agreed by the Minister and the Attorney-General of the Commonwealth to be persons in respect of whom the Commonwealth has a special responsibility; and
- (g) liaise and cooperate with the National Legal Aid Advisory

Committee in the performance by that committee of its functions and, in particular, provide to it such statistics and other information as it may reasonably require; and

- (h) make the services of the Commission available to persons eligible for legal assistance by establishing such local offices as it considers appropriate and by making such other arrangements as it considers appropriate; and
- (i) subject to agreements or arrangements made between the Commonwealth and the State in that behalf determine priorities in the provision of legal assistance as between different classes of persons or classes of matters; and
- (j) arrange for the provision of duty lawyer services at sittings in the State of such courts and tribunals as the Commission considers appropriate; and
- (k) endeavour to secure the services of language interpreters, marriage counsellors, welfare officers and other appropriate persons to assist legally assisted persons in connection with matters in respect of which they are provided with legal assistance; and
- (l) 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 officers of the Commission.

**(2) The Commission shall—**

- (a) make recommendations to the Minister 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 function; and
- (b) initiate and carry out educational programs 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 in force in the State.

**(3)** Subject to and under any agreement or arrangement made between the Commonwealth and the State, the Commission may provide financial assistance to community legal centres and voluntary legal aid bodies in the State in respect of the provision of legal assistance.

(4) In the performance of its function, the Commission shall have regard to the amount of moneys for the time being standing to the credit of the Fund and of any moneys likely to be received by the Commission for the purposes of the Fund.

### **Appearance by Commission to assist Court**

#### **11A.(1) Where—**

- (a) a person is acquitted of a charge of an offence or discharged in respect of an offence in a proceeding; and
- (b) the Attorney-General refers a point of law arising out of that proceeding to the Court of Appeal for its consideration and opinion under section 669A(2) of the Criminal Code; and
- (c) no appearance is made by or on behalf of the person mentioned in paragraph (a) in the Court of Appeal upon that reference;

the Commission may appear on its own behalf upon the reference and provide such assistance to the Court by way of argument as the Court thinks fit.

(2) In providing the assistance the Commission is taken to be performing its function.

### **Guidelines for allocation of work**

**12.** The Commission shall determine guidelines for the allocation of work between officers of the Commission and private legal practitioners having regard to the following considerations—

- (a) the need for legal services to be readily available and easily accessible to disadvantaged persons;
- (b) the need to make the most efficient use of the moneys available to the Commission;
- (c) in relation to proceedings other than prescribed criminal proceedings—the desirability of enabling a legally assisted person, so far as is practicable, to obtain the services of the legal practitioner of the person's choice;
- (d) the desirability of maintaining the independence of the private

legal profession;

- (e) the desirability of enabling officers of the Commission to utilise and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work.

### **Guidelines for provision of assistance**

**13.** The Commission shall determine, and make known to the public, guidelines to be applied—

- (a) in the application of section 26(4) for the purpose of determining whether a person requiring legal advice should be required to make an application for legal assistance; and
- (b) in the application of section 29 for the purpose of determining whether legal assistance may be provided to a person under this Act; and
- (c) in determining whether the granting of legal assistance to a person will be subject to conditions referred to in section 32(1) and (2) and the nature of the conditions; and
- (d) in determining the amount of costs or disbursements or interest that will be required to be paid to the Commission under section 34A(1) and (3); and
- (e) in determining the extent (if any) to which the Commission will pay costs awarded against a legally assisted person in any proceeding.

### **Professional conduct by officers of Commission**

**14.(1)** An officer of the Commission, when practising as, or performing any of the functions of, a solicitor, or exercising a right of audience in a court or before a tribunal, in pursuance of this Act—

- (a) shall observe the same rules and standards of professional conduct and ethics as those that a private legal practitioner is, by law or the custom of the legal profession, required to observe in the practice of the officer's profession; and

- (b) is subject to the same professional duties as those to which a private legal practitioner is subject, by law or the custom of the legal profession, in the practice of the officer's profession.

(2) The like privileges as those that arise from the relationship of client and solicitor acting in a professional capacity and in the course of professional employment shall arise between a person who has applied for legal assistance, or to whom legal assistance is being provided, under this Act and a statutory officer or a member of the staff of the Commission when that statutory officer or member practises as, or performs any of the functions of, a solicitor for the person in pursuance of this Act.

(3) For the purposes of the application of subsection (1) in respect of an officer of the Commission who is practising as, or performing any of the functions of, a solicitor, or is exercising a right of audience in a court or before a tribunal, in the State on behalf of a legally assisted person—

- (a) if there are no Assistant Directors—
  - (i) the Director shall be deemed to be a solicitor lawfully practising on the Director's own account in the State and retained by the person to act on the person's behalf; and
  - (ii) the members of the staff of the Commission shall be taken to be employed by the Director; or
- (b) if there is an Assistant Director or there are Assistant Directors—
  - (i) the Director and the Assistant Director or Assistant Directors shall be taken to be a firm of solicitors lawfully practising in partnership in the State and retained by the person to act on the person's behalf; and
  - (ii) the members of the staff of the Commission shall be taken to be employed by that firm.

### **PART 3—ESTABLISHMENT AND FUNCTIONS OF LEGAL AID COMMITTEES**

**Establishment of Committees**

**15.** For the purposes of this Act, there shall be such Legal Aid Committees as the Commission, by resolution, establishes under this Part.

**Constitution of Committees**

**16.(1)** Each Legal Aid Committee shall consist of the Director and such number of appointed members (not being less than 3 in number) as the Commission, by resolution, appoints.

**(2)** The Director shall be, because of office, a member of each Legal Aid Committee.

**(3)** The Commission may appoint as a member of a Legal Aid Committee 1 person who is not a legal practitioner.

**(4)** The members of a Legal Aid Committee, other than the Director and any person appointed under subsection (3), shall be private legal practitioners.

**(5)** Subject to subsection (6), the Director may appoint another officer of the Commission to be the Director's deputy, or may appoint other officers of the Commission to be the Director's deputies, in relation to the Director's membership of Legal Aid Committees or of a specified Legal Aid Committee or specified Legal Aid Committees.

**(6)** An officer of the Commission is not eligible to be appointed as the deputy, or as a deputy, of the Director under subsection (5) unless the officer is a legal practitioner and, where the officer is a solicitor, the officer holds a current practising certificate.

**(7)** In the event of the absence of the Director from a meeting of a Legal Aid Committee, the deputy of the Director, or, if there is more than 1 deputy, 1 of the deputies, whose appointment relates to that Committee, is entitled to attend that meeting and, while so attending, shall be taken to be a member of the Committee.

**(8)** The performance of the functions, or the exercise of the powers, of a Legal Aid Committee is not affected because of there being a vacancy or vacancies in the membership of the Committee or the subsequent discovery of a defect in the appointment of a member or in the case of the Director, of a deputy of the Director.

### **Functions of Committees**

**17.(1)** The functions of a Legal Aid Committee are—

- (a) to decide applications for legal assistance coming before the Committee; and
- (b) to decide any other matters coming before the Committee under this Act.

**(2)** A Legal Aid Committee may do all things necessary or convenient to be done for or in connection with the performance of its functions.

## **PART 4—OFFICERS OF COMMISSION**

### **Director and Assistant Directors**

**18.(1)** There shall be a Director of Legal Aid.

**(2)** The Director shall be appointed by the Governor in Council.

**(3)** The Governor in Council may appoint such number of Assistant Directors of Legal Aid as the Governor in Council thinks fit to assist the Director in the performance of the Director's functions under this Act.

**(4)** The Director and the Assistant Directors shall be persons nominated by the Commission.

**(5)** The Commission shall designate 1 of the Assistant Directors as Public Defender.

### **Qualifications for appointment**

**19.** A person is not eligible for appointment as a statutory officer of the Commission unless the person is a legal practitioner, or is entitled to admission as a legal practitioner, and has had, in this State or elsewhere, not less than 5 years experience as a legal practitioner.



**Duties of Director and Assistant Directors**

**20.(1)** The Director who shall be the chief executive officer of the Commission shall—

- (a) subject to the Commission, administer the scheme of legal assistance established by this Act; and
- (b) be responsible to the Commission for the provision of legal services to assisted persons as and when required by or under this Act and the arrangement and supervision of the provision of such services by legal practitioners who are members of the staff of the Commission.

**(2)** The Director shall, as and when required by the Commission furnish reports with respect to the policy the Director is pursuing, or proposes to pursue, in the exercise or discharge of the Director's powers and functions under this Act.

**(3)** The Commission may issue directions to the Director on matters of policy and the Director shall observe and carry out the directions given.

**(4)** An Assistant Director shall perform such duties in relation to the management of the affairs of the Commission as the Director directs.

**Staff of Commission**

**21.(1)** The Commission may employ as members of the staff of the Commission such persons as it considers necessary to enable it to properly perform its function.

**(2)** Members of the staff of the Commission shall be under the direction of the Director and shall perform such duties as may be assigned by the Director.

**(3)** The Commission, a Legal Aid Committee or a statutory officer of the Commission may require an officer of the Commission to furnish it or the statutory officer with such information in the possession of the officer or to which the officer has access relevant to provision of legal assistance to any person under this Act or, where legal services are being provided by the Commission to a legally assisted person, relevant to the claim, proceeding or matter in respect of which the legal assistance is being provided as the Commission, the Legal Aid Committee or, as the case may be, the statutory

officer of the Commission considers necessary for the purposes of enabling it or the statutory officer to exercise or discharge the statutory officer's or its functions under this Act and such information may be given despite any privilege arising between the officer of the Commission and a person for whom legal services are being performed by way of legal assistance under this Act.

### **Delegation**

**22.** The Director may delegate the Director's powers under this Act to an officer of the Commission.

### **Rights of officers of Commission in respect of legal practice**

**23.(1)** A statutory officer of the Commission shall not perform any functions under this Act unless the statutory officer is a legal practitioner and, if a solicitor, unless the statutory officer holds a current practising certificate.

**(2)** Subject to subsection (5), a member of the staff of the Commission shall not perform any functions of a solicitor under this Act unless the person holds a current practising certificate.

**(3)** Subject to subsections (1) and (10), a statutory officer of the Commission is entitled to practise as a solicitor, and to perform the functions of a solicitor, in the State and in any court of the State and has a right of audience in any court of the State.

**(4)** Subject to subsection (10), a member of the staff of the Commission who holds a current practising certificate has such rights to practise as a solicitor, and such rights to perform the functions of a solicitor, in the State, and such rights of audience in any court of the State, as the person would have if the Director were a solicitor lawfully practising on the Director's own account in the State and the member of the staff were employed by that solicitor.

**(5)** Subject to subsection (11), an officer of the Commission whose name is on the Roll of Barristers of the Supreme Court is entitled to practise as a barrister, and to perform the functions of a barrister, in the State and in any court of the State.

**(5A)** An officer mentioned in subsection (5) is entitled to exercise right

of audience as both barrister and solicitor in any court of the State.

(6) In practising as a solicitor or performing any of the functions of a solicitor in pursuance of this section—

- (a) a statutory officer of the Commission has all the rights and privileges of a solicitor practising on the solicitor's own account; and
- (b) a member of the staff of the Commission has all the rights and privileges of a solicitor employed by a person practising as a solicitor on the person's own account.

(7) In appearing for a legally assisted person in a proceeding in a court or before a tribunal in pursuance of this section, an officer of the Commission has the same protection and immunity as a barrister has in appearing for a party in a proceeding in that court or before that tribunal.

(8) The preceding provisions of this section have effect only for the purposes of the performance by the Commission of its function.

(9) Nothing in this section affects any right to practise as a barrister or solicitor or perform the functions of a barrister or solicitor, or any right of audience in a court or before a tribunal, that an officer of the Commission has apart from this section.

(10) Section 6 of the *Queensland Law Society Act 1952* applies to and in relation to officers of the Commission who are solicitors within the meaning of that Act in like manner as it applies to and in relation to other persons who are solicitors within the meaning of that Act.

(11) The provisions of any law, written or unwritten, relating to the conduct of barristers apply to officers of the Commission who are barristers within the meaning of those provisions in like manner as they apply to any other persons who are barristers within the meaning of those provisions.

### **Solicitor on the record**

#### **24.(1) Where—**

- (a) in any proceeding, a document is required or permitted to be signed by a solicitor for a party to the proceeding who is a legally assisted person; and
- (b) legal services are being provided to the legally assisted person in

relation to the proceeding by an officer of the Commission;  
the signature of the Director, or of an officer of the Commission authorised in writing by the Director to sign documents on behalf of the Director for the purposes of this section, shall be taken to be the signature of a solicitor for that party.

(2) For the purposes of this section, it is sufficient if the Director or officer signs a document with the words ‘Legal Aid Office (Qld)’.

(3) In any proceedings, a document purporting to be signed under this section shall be taken to be so signed by a person authorised to do so, unless the contrary is proved.

## **PART 5—PROVISION OF LEGAL ASSISTANCE BY COMMISSION**

### **Bringing services of Commission to public notice**

**25.(1)** The Commission may, by public advertisement or otherwise, bring the services made available by the Commission to the attention of the public and any officer of the Commission may, in the course of the performance of the officer’s duties, bring those services to the attention of the public or to the attention of particular persons.

(2) A justice taking an examination of witnesses in relation to a charge of an indictable offence shall advise the defendant of the availability of legal assistance under this Act and of the requirements prescribed with respect to an application for that assistance—

- (a) if the examination is a prescribed criminal proceeding—before starting to take the examination; and
- (b) in every case—upon committal of the defendant for trial or sentence.

### **Application for legal assistance**

**26.(1)** An application for legal assistance, other than legal assistance

consisting of the giving of legal advice or the provision of duty lawyer services—

- (a) shall be made to the Commission in writing and shall be substantially in accordance with a form approved by the Commission; and
- (b) shall contain such information as is required by that form; and
- (c) in the case of an application for legal assistance in respect of a prescribed criminal proceeding, shall be made—
  - (i) if the proceeding is to be heard after the applicant's committal to a sittings of a court or tribunal—not less than 14 days before the commencement of the sittings; and
  - (ii) if the application is made pursuant to a recommendation made by a court or tribunal under section 36A that the applicant be provided legal assistance—not more than 14 days after the recommendation; and
  - (iii) in any other case—not less than 14 days before the commencement date of the proceeding.

(2) The Commission may, in special circumstances, treat an application that does not comply with all the requirements of subsection (1) as having been properly made.

(3) An applicant for legal assistance to which subsection (1) applies shall furnish to the Commission such declarations, certificates and other documents as the Commission requires for the purpose of enabling a decision to be made as to whether legal assistance should be granted in respect of the application.

(4) Where legal advice is being provided to a person under this Act and it appears to an officer of the Commission or a private legal practitioner that the legal advice required by the person is likely to be of a substantial or continuing nature, the officer or legal practitioner may require the person to make an application for legal assistance under subsections (1) and (3) and, where such a requirement is made, those subsections and sections 29(1) to (5) and (8), 32 and 36(2) apply in relation to the application.

(5) The Commission may distribute to private legal practitioners application forms for completion by persons wishing to apply for legal assistance.

**Determination of applications for legal assistance**

**27.(1)** An application for legal assistance shall, in accordance with the directions of the Commission, be decided by a Legal Aid Committee, by the Director or by another officer of the Commission authorised by the Director to decide applications for legal assistance.

**(2)** The Commission shall give directions as to—

- (a) the classes of cases in which applications for legal assistance are to be decided by a Legal Aid Committee; and
- (b) the classes of cases in which such applications are to be decided by officers of the Commission.

**(3)** Where a Legal Aid Committee or an officer of the Commission decides to grant an application for legal assistance, the Committee or officer shall also decide, in accordance with guidelines determined by the Commission in pursuance of sections 12 and 13—

- (a) whether the legal assistance should be provided by making available the services of a private legal practitioner or whether the legal assistance should be provided by making available the services of an officer of the Commission; and
- (b) the nature and extent of the legal assistance to be provided; and
- (c) any conditions referred to in section 32(1) and (2) to which the provision of the legal assistance shall be subject.

**(4)** The Director shall ensure that each Legal Aid Committee is provided with such assistance as it requires for the purpose of the performance of its functions under this Act.

**(4A)** Despite subsection (1), the Commission may direct that—

- (a) a prescribed application or prescribed applications; or
- (b) a prescribed decision or prescribed decisions;

be referred to it for its consideration and the application or decision, as the case may be, shall on the making of the direction be taken to be referred accordingly.

**(4B)** Where a matter is referred to the Commission under subsection (4A), the Commission may, despite subsection (1)—

- (a) in a case to which subsection (4A)(a) applies—

- (i) grant the application for legal assistance and determine—
  - (A) the nature and extent of the legal assistance to be provided; and
  - (B) any conditions referred to in section 32(1) and (2) to which the provision of the legal assistance shall be subject; and
  - (C) whether the legal assistance is to be provided by making available the services of a private legal practitioner or by making available the services of an officer of the Commission; or
- (ii) refuse to provide legal assistance of the nature, or to the extent applied for; or
- (iii) refuse to provide legal assistance; or
- (b) in a case to which subsection (4A)(b) applies—
  - (i) suspend the provision of the legal assistance pending the completion of such investigations in respect of the matter as the Commission deems appropriate; or
  - (ii) terminate the provision of legal assistance; or
  - (iii) alter the nature or extent of the legal assistance; or
  - (iv) make the provision of the legal assistance subject to any conditions referred to in section 32(1) and (2); or
  - (v) alter any condition to which the provision of the legal assistance is subject.

**(4C)** A decision of the Commission under subsection (4B) shall not be varied except by the Commission and shall not be subject to review under Part 6.

**(4D)** In subsection (4A)—

**“prescribed application”** means an application for legal assistance under this Act made—

- (a) by a specified person or a person who is a member of a specified class of person; or
- (b) in relation to a specified matter or a matter included in a specified

class or kind of matter;

**“prescribed decision”** means a decision to provide legal assistance under this Act—

- (a) to a specified person or a person who is a member of a specified class of person; or
- (b) in relation to a specified matter or a matter included in a specified class or kind of matter.

(4E) For the purposes of subsection (4A) or (4D), a direction may be given generally or in relation to a particular case.

(4F) For the purposes of the definitions **“prescribed application”** and **“prescribed decision”** in subsection (4D) and without limiting the generality of this subsection, matters may be specified according to the nature or extent of the legal assistance applied for or that is being or may be provided, as the case may be.

(4G) In subsection (4D)—

**“specified”** means specified by a direction of the Commission for the purposes of that subsection.

(5) For the purpose of deciding an application for legal assistance, the Commission, a Legal Aid Committee or an officer of the Commission may make such inquiries and obtain such advice (including the opinion of counsel) and reports as the Commission, Committee or officer considers desirable.

(6) The cost of making such inquiries or obtaining such advice or reports shall be paid—

- (a) if the Commission, Committee or officer so determines—by the applicant for the legal assistance; or
- (b) in any other case—out of the Fund.

### **Termination or variation of legal assistance**

**28.(1)** A decision (being a decision by a Legal Aid Committee or an officer of the Commission) to provide legal assistance to a person under this Act may be varied at any time so as to—

- (a) terminate the provision of the legal assistance; or



- (b) alter the nature or extent of the legal assistance; or
- (c) make the provision of the legal assistance subject to a condition under section 32; or
- (d) alter a condition to which the provision of the legal assistance is subject under section 32;

and may be so varied—

- (e) in a case where the decision was made by a Legal Aid Committee—by such a Committee; or
- (f) in a case where the decision was made by an officer of the Commission—by the Director or by an appropriate officer of the Commission in accordance with arrangements made or approved by the Director.

(2) Where a decision to provide legal assistance is brought before a Legal Aid Committee, the Director or an appropriate officer of the Commission with a view to the possible exercise of powers conferred by this section on such Committee, Director or appropriate officer, as the case may be, the Committee, Director or appropriate officer may, if it or the Director or the appropriate officer considers it proper so to do, suspend the provision of the legal assistance pending the completion of such investigations in respect of the matter as the Committee, Director or appropriate officer, as the case may be, deems appropriate.

### **Circumstances in which legal assistance may be provided**

**29.(1)** Subject to this section, legal assistance, other than legal assistance consisting of the giving of legal advice or the provision of duty lawyer services, may be provided to a person (the “**applicant**”) only if—

- (a) the applicant is in need of the legal assistance because of the applicant’s inability to afford the cost of obtaining from private legal practitioners the legal services for which legal assistance is sought; and
- (b) it is reasonable in all the circumstances to provide the legal assistance.

(2) In deciding whether the applicant is in need of legal assistance because of inability to afford the cost of obtaining legal services from private practitioners, regard must be had to all relevant matters, including—

- (a) subject to subsection (5), the applicant's assets and income; and
- (b) the cash that is, or can be made, readily available to the applicant; and
- (c) the applicant's debts, liabilities and other financial obligations; and
- (d) the cost of living in the locality where the applicant resides; and
- (e) the ability of—
  - (i) the applicant's spouse or de facto spouse; and
  - (ii) any person of whom the applicant is a dependant; and
  - (iii) any spouse or de facto spouse of any person of whom the applicant is a dependant;

to assist the applicant to obtain legal services from private legal practitioners having regard to all relevant matters (including those mentioned in paragraphs (a) to (d)) that would be relevant if the spouse or other person were the applicant for legal assistance; and

- (f) the cost of obtaining the legal services from private legal practitioners; and
- (g) any other matter affecting the ability of the person to meet the cost of obtaining legal services from private legal practitioners.

(3) If the applicant is a corporation, in addition to the matters to which regard must be had under this section that are relevant and applicable to a corporation, regard must be had to the matters that would be relevant if the application for legal assistance were made on behalf of the persons who are the directors and members of the corporation.

(4) Guidelines determined for the purposes of this section under section 13 may provide for the exemption of a corporation or class of corporation from consideration of the additional matters mentioned in subsection (3).

(5) If the applicant is an individual, the value of any interest the applicant may have in the dwelling house in which the applicant resides must be disregarded in determining the applicant's ability to afford the cost of obtaining the legal services from private legal practitioners.

(6) Despite subsection (5), if the Commission, in special circumstances, determines that it is not reasonable to provide legal assistance to the applicant, having regard to—

- (a) the value of the applicant's interest in the dwelling house in which the applicant resides; and
- (b) other matters mentioned in this section that may be relevant;

the Commission may deal with the application or any decision made on the application to provide legal assistance as if it were a matter referred to the Commission under section 27(4A)(a) or (b).

(7) A decision of the Commission under subsection (6)—

- (a) may be varied only by the Commission; and
- (b) is not subject to review under Part 6.

(8) In deciding whether it is reasonable in all the circumstances to provide legal assistance to the applicant, regard must be had to all relevant matters, including—

- (a) the nature and extent of—
  - (i) any benefit that may accrue to the applicant, to the public or to any section of the public from the provision of the assistance; and
  - (ii) any detriment that may be suffered by the applicant, by the public or by any section of the public if the assistance is not provided; and
- (b) subject to paragraph (c), in the case of assistance in relation to a proceeding in a court or before a tribunal—whether the proceeding is likely to end in a way favourable to the applicant; and
- (c) the desirability of an accused person in a prescribed criminal proceeding consisting of—
  - (i) the trial or sentence of the applicant on a charge of an indictable offence; or
  - (ii) a proceeding before a justice taking an examination of witnesses in relation to an indictable offence with which the applicant is charged;

being represented by a legal practitioner, whether or not the proceeding is likely to end in a way favourable to the applicant; and

- (d) any recommendation made by a court or tribunal under section 36A.

(9) If the applicant is not ordinarily resident in the State, legal assistance may only be provided if the assistance relates to—

- (a) a proceeding in a court, or before a tribunal, in the State; or  
(b) a matter arising under the law in force in the State.

(10) Legal assistance must not be provided to the applicant in, or in connection with, a review by a Review Committee under Part 6.

(11) In this section—

**“dwelling house”** means the building or structure, or part of the building or structure, used for the purpose or principally for the purpose of a residence by the applicant or the applicant’s family.

### **Provision of legal assistance in terms of Convention**

**29A.(1)** Despite anything in section 29, where moneys have been made available by the Commonwealth to the Commission to enable the Commission to perform in the State any of the obligations of the Commonwealth under the Convention it is competent to the Commission to provide legal assistance for that purpose from those moneys.

(2) This section has no application until the Convention is ratified by the Commonwealth.

(3) In this section—

**“the Convention”** means the Convention on International Access to Justice adopted by the Hague Conference on Private International Law at its fourteenth session and includes that Convention as subsequently amended by an amendment that is accepted and ratified by the Commonwealth.

**Commission may assist person having interests adverse to the State etc.**

**30.** Legal assistance may be provided under this Act (including legal assistance provided by making available the services of officers of the Commission) to a person in relation to any proceeding or matter even though 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 or under 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.

**Legal advice and duty lawyer services**

**31.(1)** The Commission may provide legal assistance under this Act by way of—

- (a) legal advice, other than legal advice mentioned in section 26(4); or
- (b) the provision of duty lawyer services;

to any person.

**(2)** Legal assistance to which subsection (1) applies may be provided free of charge or subject to a condition that the person to whom the legal assistance is to be provided pays to the Commission a fixed charge determined by the Commission.

**(3)** In special circumstances determined by the Commission legal assistance mentioned in subsection (1) shall not be provided to a person.

**(4)** Where the Commission arranges for the services of private legal practitioners to be made available for the provision of legal assistance consisting of legal advice to which subsection (1)(a) relates, then, if the Commission so determines, such legal advice may be given by a private legal practitioner whose name appears upon a list maintained under section 33 to such persons or classes of persons, in such circumstances and subject to such terms and conditions as the Commission determines, without the prior authority of the Commission, a Legal Aid Committee or an officer of the Commission.

### **Conditions imposed with respect to grant of legal assistance**

**32.(1)** The granting under this Act of an application by a person for legal assistance, other than legal assistance to which section 31(1) applies, may be on the basis that the assistance will be provided subject to such conditions as the Commission thinks fit, or in a case where a Legal Aid Committee or officer of the Commission makes the decision to grant the application, as that Committee or officer thinks fit.

**(2)** Without limiting the generality of subsection (1), conditions imposed under that subsection may include—

- (a) conditions under which legal assistance may be terminated; and
- (b) conditions under which, if a specified event happens, the legally assisted person may be required to pay to the Commission the whole or part of the expense incurred by the Commission in providing assistance; and
- (c) conditions requiring the legally assisted person to contribute to the expense or a specified kind of expense incurred or to be incurred by the Commission in providing the assistance; and
- (d) conditions requiring that any property shall be charged or made security for the payment to the Commission of any moneys that the legally assisted person is or may become liable to pay to it.

**(3)** If under a condition to which the provision of legal assistance to a person is subject, a contribution required to be made by the person is given by or on the person's behalf to a solicitor acting on the person's behalf, the solicitor shall deal with the contribution in accordance with directions issued by the Commission.

**(4)** A condition imposed with respect to the provision of legal assistance may be enforced against a person who is or has been a legally assisted person in any court of competent jurisdiction by action as if it were a condition of a contract entered by that person and any charge or security given under a condition may be enforced in any manner that would be available if the charge or security had been given *inter partes*.

**(5)** Section 84 applies in relation to proceedings authorised by subsection (4) as it applies to proceedings for the recovery of any amount due to or recoverable by the Commission under this Act.

**(6)** Without limiting this section, if under a condition to which the

provision of legal assistance is subject a contribution is payable by a legally assisted person to a solicitor acting on the person's behalf, that solicitor with the consent of the Director, may take proceedings in the solicitor's own name to recover the contributions so payable.

### **Arranging for services of private legal practitioners**

**33.(1)** For the purpose of facilitating the making of arrangements for the services of private legal practitioners to be made available to legally assisted persons, the Commission shall cause to be prepared and maintained, and to be made available to Legal Aid Committees, lists of private legal practitioners who have notified the Commission that they are willing to act as barristers, solicitors or conveyancers on behalf of legally assisted persons, whether generally, in particular classes of matters or in particular courts or before particular tribunals.

**(2)** Subject to this section, the Commission may—

- (a) refuse to include in the lists maintained under subsection (1) the name of a private legal practitioner who has notified the Commission that the legal practitioner is willing to act as a barrister, solicitor or conveyancer on behalf of legally assisted persons; or
- (b) remove the name of a private legal practitioner from the lists maintained under that subsection; or
- (c) suspend the name of a private legal practitioner from the lists maintained under subsection (1) for a period determined by the Commission, either generally or with respect to any specified classes of matters; or
- (d) include the name of a private legal practitioner in the lists together with limitations as to the classes of matters in which the services of that private legal practitioner will be sought by the Commission for the purposes of this Act.

**(2A)** It shall be competent to the Commission under subsection (2) to—

- (a) refuse to include in the lists maintained under subsection (1) the name of a private legal practitioner because the legal practitioner is the partner of a private legal practitioner whose name it has refused to include in, or removed or suspended from, the lists; or

- (b) remove the name of a private legal practitioner from the lists maintained under subsection (1) because the legal practitioner is the partner of a private legal practitioner whose name it has removed from the lists; or
- (c) suspend the name of a private legal practitioner from the lists maintained under subsection (1) for a period either generally or with respect to any specified classes of matters because the legal practitioner is the partner of a private legal practitioner whose name has been likewise suspended from the lists for that period.

**(3)** The Commission shall not refuse to include the name of a private legal practitioner in the lists maintained under subsection (1), remove or suspend the name of a legal practitioner from those lists, or include in those lists limitations as to the classes of matters in which the services of a private legal practitioner will be sought by the Commission for the purposes of this Act, unless the Commission has—

- (a) given written notice to the private legal practitioner setting out the reasons for the proposed refusal, removal, suspension or limitation; and
- (b) afforded the private legal practitioner a reasonable opportunity to be heard in relation to the proposed refusal, removal, suspension or limitation.

**(3A)** The Commission shall determine procedures applicable in relation to hearings afforded to private legal practitioners under subsection (3)(b) and may replace or vary those procedures.

**(3B)** Upon being requested by any private legal practitioner to do so, the Commission shall inform the legal practitioner of the procedures applicable.

**(4)** Where the Commission has—

- (a) refused to include the name of a private legal practitioner in the lists maintained under subsection (1); or
- (b) removed or suspended the name of a private legal practitioner from those lists; or
- (c) included in those lists, in relation to a private legal practitioner, a limitation as mentioned in subsection (2)(c);

the private legal practitioner may, before the expiration of 6 months after



receipt of the notice given to the legal practitioner under subsection (3), apply to the Supreme Court, by way of originating summons, for an order directing the Commission to include the legal practitioner's name in the lists, to restore the legal practitioner's name in the lists, or to remove the limitation, as the case may be.

(5) Where an application is made to the Supreme Court under subsection (4), the Court may—

- (a) make the order applied for; or
- (b) postpone the making of the order applied for with liberty to apply; or
- (c) dismiss the application;

and, subject to subsection (6), the decision of the Court is final and conclusive.

(6) Where an application (including a further application made in pursuance of a previous application of this subsection) is dismissed, the applicant may, at any time after the expiration of 6 months after the date of the dismissal, make a further application for an order as mentioned in subsections (4) and (5) applies in relation to any such further application.

(7) In selecting a private legal practitioner whose services are to be sought to be made available to a legally assisted person in a particular case, the paramount considerations shall be the interests of the legally assisted person and in relation to a proceeding other than a prescribed criminal proceeding, so far as is practicable, any choice expressed by the legally assisted person for the services of a particular private legal practitioner but, subject to those considerations, work shall be allocated among the private legal practitioners whose names are on the lists maintained under subsection (1) in a manner that is equitable having regard to the nature of their legal practices.

(8) Where a private legal practitioner who is a solicitor is performing services for a legally assisted person and it appears to the practitioner that the proper conduct of the matter requires the services of a barrister, such barrister shall be selected by the practitioner from the lists maintained under subsection (1) having due regard to the interests of the legally assisted person and in relation to a proceeding other than a prescribed criminal proceeding, so far as is practicable, any choice expressed by the legally assisted person for the services of a particular barrister.

**(9)** A private legal practitioner performing services on behalf of a legally assisted person shall not entrust the conduct of any part of the matter to another person save—

- (a) a private legal practitioner whose name is on the lists maintained under subsection (1); or
- (b) a person who is the legal practitioner's partner, or who is employed in the legal practitioner's office;

not being in either case a person who the Commission has refused to include in, or has removed or suspended from, the list maintained under subsection (1).

**(10)** The selection of a private legal practitioner under subsection (7) does not affect the right of the practitioner—

- (a) to refuse instructions for good reason; or
- (b) subject to subsection (11), to engage a private legal practitioner as agent; or
- (c) subject to subsection (9), to entrust a matter or part of a matter to another private legal practitioner on reasonable grounds.

**(11)** Except where there is good reason to the contrary, where a private legal practitioner who is performing legal services in respect of any matter for a legally assisted person entrusts the conduct of any such services to another such practitioner in the State as agent, that practitioner shall be selected by the first legal practitioner from the lists maintained under subsection (1).

**(12)** A private legal practitioner selected under subsection (7) in relation to a matter, if the legal practitioner is shown on a list maintained under subsection (1) as a member of a firm, shall act in that matter in the name of the firm.

**(13)** Without prejudice to the right of a legal practitioner to give up a matter for good reason, a private legal practitioner may give up a matter in which the legal practitioner is performing services on behalf of a legally assisted person, if in the practitioner's opinion, the legally assisted person has required the matter to be conducted unreasonably so as to incur an unjustifiable expense to the Fund or has required unreasonably that the matter be continued.

**(14)** A private legal practitioner who has been selected to perform, is performing, or has performed services for a legally assisted person in respect of any matter, shall disclose to the Commission, an officer of the Commission or to an appropriate Legal Aid Committee such information that is within the practitioner's knowledge or to which the legal practitioner has access relevant to the provision of services by way of legal assistance to that person or concerning the progress and disposal of that matter as is considered necessary, and is required of the legal practitioner, by the Commission, its officer or the Committee, as the case may be, for the purpose of performing functions under this Act.

**(15)** A private legal practitioner may give to the Commission, an officer of the Commission or to a Legal Aid Committee such information or opinion as the legal practitioner considers may assist the Commission, its officer or the Committee in the performance of functions under this Act despite any privilege arising out of the relationship between the practitioner and the legal practitioner's client.

**(16)** With respect to the disclosure or giving of any information or opinion under subsection (14) or (15) it shall be taken that the legally assisted person or client concerned has waived any privilege or right that might preclude such disclosure or giving.

**(16A)** No matter or thing done by a legal practitioner in good faith and without negligence under subsection (14) or (15) shall subject the legal practitioner concerned to any liability in respect of these subsections.

**(17)** Subject to subsections (14) to (16A), the relationship and, any privilege or other right arising out of the relationship between a private legal practitioner and the legal practitioner's client shall not be affected by the fact that the legal practitioner is performing services for a legally assisted person under this Act.

**(18)** Where services are performed by a private legal practitioner for a legally assisted person, the legal practitioner shall not accept any payment in respect of the performance of those services other than the payment or payments to which the legal practitioner is entitled under section 10.

Maximum penalty—50 penalty units or imprisonment for 6 months.

**(19)** In determining the fees to be paid to private legal practitioners for the performance of services on behalf of legally assisted persons the Commission shall consult the Fees Committee established under section

10B and shall take into account the recommendations of the Committee.

(20) Subject to subsection (19) the fees to be paid to private legal practitioners for the performance of services on behalf of legally assisted persons shall be such fees as the Commission in its discretion shall determine.

(21) The Director may, in such classes of cases as the Commission determines, refer to a Legal Aid Committee any accounts from private legal practitioners in respect of fees, disbursements (including barristers' fees) or out-of-pocket expenses in connection with the provision of legal assistance for the purpose of determining whether the amounts claimed are properly payable.

(22) The Commission shall maintain a record containing particulars of the number and type of matters dealt with by specified private legal practitioners under this Act and shall make the record available for inspection on request by the Law Society or Bar Association.

(23) The Commission, in arranging for the services of private legal practitioners to be made available to legally assisted persons, may determine such procedures to be observed by the legal practitioners as the Commission considers necessary to ensure that legal assistance is provided in the most effective, efficient and economical way.

(24) In this section a reference to performance of services for a legally assisted person includes, where such services are performed by a solicitor, acting indirectly for such person as agent for such person's solicitor.

### **Entitlement of legally assisted person to costs in proceedings**

**34.(1)** For the purposes of the making or enforcement of any order for costs, or the determination of any entitlement to costs, in a proceeding before a court or tribunal to which a legally assisted person is a party, or on the taxation of costs payable to the legally assisted person under the terms of any such order or determination, that person shall be taken to be liable to pay all professional costs ordinarily payable in respect of the legal services provided to the person in or in connection with that proceeding and any disbursements (including barristers' fees) and out-of-pocket expenses incurred in or in connection with the provision of those services.

(2) The fact that a party to a proceeding is a legally assisted person does

not affect—

- (a) the rights or liabilities of the party or another party to the proceeding; or
- (b) the discretion of a court or tribunal to make an order in relation to costs.

*Example 1—*

Judgment is given in favour of a legally assisted person against an unassisted person—a costs order may be made in favour of the legally assisted person as though the first person were not a legally assisted person.

*Example 2—*

Judgment is given against a legally assisted person in favour of an unassisted person—a costs order may be made in favour of the unassisted person as though the first person were not a legally assisted person.

(3) On the taxation of costs payable under the terms of any judgment, order or settlement of a proceeding or claim to a legally assisted person, no item shall be disallowed in the case of a disbursement (whether for barristers' fees or otherwise) merely because the amount has not been paid before the taxation.

### **Entitlement of Commission to repayment of costs of legal assistance**

**34A.(1)** Where in respect of any matter in relation to which legal assistance has been provided under this Act to a person, the person's ownership of or entitlement to property is preserved, or the person is entitled to recover property, because of a judgment in proceedings or a settlement or compromise, the person shall be liable to pay to the Commission an amount equal to so much of the money value of the property as the Director, having regard to guidelines determined by the Commission under section 13(d), determines, but the amount so determined shall not exceed the amount by which the sum of—

- (a) the ordinary professional costs (including solicitor and client costs) of the legal services provided to the person in the matter in respect of which legal assistance has been provided; and
- (b) any disbursements (including barristers' fees) and out-of-pocket expenses incurred in connection with the provision of those

services;

exceeds the amount of the money value of any contribution made by the person to the Commission under conditions to which the provision of the legal assistance was subject.

(2) In determining the amount that a legally assisted person is liable to pay under subsection (1) the Director shall have regard to—

- (a) the money value of the property in respect of which the person's ownership or entitlement is preserved, or which is actually recovered, because of the judgment, settlement, or compromise in question; and
- (b) any failure by the legally assisted person to take action to recover property recoverable because of the judgment, settlement or compromise in question, including any failure to comply with a direction given to the person by the Director under subsection (7).

(3) The Commission may determine that interest shall be payable on an amount that a legally assisted person is liable to pay to the Commission under subsection (1) while it or part of it remains unpaid and where it does so the interest shall—

- (a) commence to be payable by the legally assisted person 30 days after communication of the determination to the person; and
- (b) be payable at the rate for the time being prescribed under section 73 of the *Common Law Practice Act 1867* in respect of a judgment of a court of record.

(4) Any amount outstanding of the amount that a person is liable to pay to the Commission under subsections (1) and (3)—

- (a) may be recovered by the Commission by action as for a debt in any court of competent jurisdiction; and
- (b) shall until payment be a first charge in favour of the Commission on any property such as is referred to in subsection (1) in respect of which the person's ownership or entitlement is preserved, or which is actually recovered, because of the judgment or settlement or compromise in question.

(4A) The Commission may enforce a charge created by the operation of section 4(b) in any manner that would be available if the charge had been

given inter partes.

**(4B)** Except in the case of a transfer or conveyance to a genuine purchaser for value without notice, all conveyances and acts done to defeat, or purporting to operate so as to defeat, such a charge shall be void as against the Commission.

**(5)** Where property actually recovered by a legally assisted person in respect of the matter in which the person was legally assisted comes into the possession or control of a solicitor acting on behalf of the person, the solicitor shall retain possession or control of the property until the Director has made a determination under subsection (1) and has notified the solicitor in writing of the Director's determination or until the Director consents otherwise in writing.

**(6)** If—

- (a) a legally assisted person is liable to pay to the Commission an amount under this section; and
- (b) the solicitor for the person is in possession of an amount actually recovered by the person in the matter in which the person was legally assisted;

the solicitor must pay to the Commission the amount mentioned in paragraph (b) or the part of that amount necessary to discharge the amount the legally assisted person is liable to pay.

**(6A)** The Commission's receipt for an amount paid to it by a solicitor under subsection (6) constitutes a discharge to the solicitor for the amount.

**(7)** The Director may give directions to a legally assisted person requiring the person to take action specified in the directions to ensure that property such as is referred to in subsection (1), that the legally assisted person is entitled to recover because of the judgment, settlement or compromise in question, is actually recovered by the person.

**(8)** If a legally assisted person refuses or fails to comply with directions given under subsection (7), the director may by writing under the Director's hand direct the person to assign the person's right to recover the property in question to the Commission within 21 days after the day on which the direction is given.

**(9)** If a legally assisted person fails to comply with a direction under subsection (8), the legally assisted person shall be taken to have assigned to

the Commission the person's right to recover the property in question at the expiration of the period referred to in that subsection and afterwards for the purpose of recovering the property, the Commission shall stand in place of the legally assisted person and may use all the remedies and, if necessary, the name of the legally assisted person in any proceeding whatsoever.

(10) In this section—

- (a) a reference to a legally assisted person includes a reference to a person to whom legal assistance is provided under this Act but who, before finalisation of the matter in relation to which legal assistance is provided, stops receiving legal assistance; and
- (b) an ex gratia payment made to a legally assisted person in relation to a matter for which legal assistance has been provided to the person is taken to be an amount recovered by the person in relation to the matter.

(11) In this section—

“**judgment**” includes order.

### **Variation of requirements with respect to payment to Commission**

**34B.(1)** In a case where the Director considers it appropriate to do so having regard to the personal circumstances of a person liable to pay to the Commission an amount of money under section 34A, the Director may enter into an agreement with the person under which—

- (a) the person is permitted to use the amount or part of the amount to acquire a property in which to reside and the payment of the amount to the Commission is postponed; and
- (b) the person having been so permitted to use the amount or part of the amount to acquire a property in which to reside, is permitted to dispose of that property and acquire instead of that property another property in which to reside and the payment of the amount or part of the amount to the Commission is further postponed; and
- (c) the person is permitted in any other case to postpone the payment of the amount to the Commission for a stipulated period or to pay the amount or part of the amount by instalments of stipulated



amounts over a stipulated period.

(2) In a case where the Director considers it is appropriate to do so having regard to the personal circumstances of a person by whom or on whose behalf there is paid any amount the person is liable to pay under section 34A(1) and (3), the Director may enter into an agreement with the person under which—

- (a) the amount or part of the amount so paid is paid back to that person by the Director for a stipulated purpose; and
- (b) the amount so paid back is paid again to the Commission by the person under stipulations of the agreement.

(2A) Moneys in the Fund paid to a person under this subsection shall be taken to have been applied for a purpose within the meaning of section 44(d).

(3) The Commission may determine guidelines to be applied in connection with the entering into of agreements by the Director under this section, and where it does so, agreements entered into by the Director under this section shall be under the guidelines.

(4) Before entering into an agreement with a person under this section under which a person is permitted to use an amount that has been paid to the Commission or that the person is liable to pay to the Commission for the purpose of acquiring a property in which to reside, the Director shall be satisfied that a charge or other appropriate and adequate form of security subsists or is provided for, either under this Act or other provision of law or by provision contained in the agreement, for better assuring the payment of any outstanding amount the person is liable to pay the Commission under section 34A or the agreement.

### **Payment by Commission of costs awarded against legally assisted persons**

**35.(1)** Where—

- (a) legal assistance is provided under this Act to a person in relation to a proceeding in a court or before a tribunal to which that person is a party; and

- (b) the court or tribunal makes an order in the proceeding directing the legally assisted person to pay costs incurred by another party to the proceeding;

either the legally assisted person or that other party may request the Commission to pay to that other party on behalf of the legally assisted person an amount representing the whole or a part of the costs that the legally assisted person was so directed to pay.

(2) A request under subsection (1) shall be decided by the Director in accordance with guidelines determined by the Commission.

(3) Subject to subsection (4), the Commission shall pay so much (if any) of the amount requested to be paid as the Director considers just and equitable for the Commission to pay.

(4) The Commission shall not pay an amount in respect of costs incurred in a proceeding at first instance unless it appears to the Commission that the person who made the request will suffer substantial hardship if that amount is not paid by the Commission.

(5) Any amount paid by the Commission under this section shall be taken to have been paid by the legally assisted person.

(6) Where a person is legally assisted in connection with part only of any proceeding, the reference in this section to the costs of the other party in that proceeding is a reference to so much of those costs as is attributable to that part.

### **Notification of decisions**

**36.(1)** Where a decision in relation to—

- (a) the provision of legal assistance to a person; or
- (b) the amount that a legally assisted person is liable to pay to the Commission under of section 34A(1); or
- (c) the amount of any interest that a legally assisted person is liable to pay to the Commission under of section 34A(3); or
- (d) a request made by a person to the Commission under section 35 in respect of the payment of costs;

including a decision reconsidering or reviewing a previous decision, is made

under this Act, the Director shall, within 14 days after the decision is made, communicate the decision to that person and shall, if requested to do so, cause to be furnished to the person a short statement of the reasons for the decision.

(2) The communication to a person of a decision referred to in subsection (1), other than a decision in relation only to the provision of legal advice or duty lawyer services, shall be effected—

- (a) in a case where the matter to which the decision relates was dealt with on behalf of the person by a private legal practitioner—by giving to the private legal practitioner, or by sending to the private legal practitioner by post to the address of the private legal practitioner last known to the Commission, a document setting out the terms of the decision and, where the decision was made by a Legal Aid Committee or an officer of the Commission, particulars of the right of the person to have the decision reconsidered or reviewed under section 37; and
- (b) in any other case—by giving such a document to the person or by sending such a document to the person—
  - (i) by post to the address of the person last known to the Commission; or
  - (ii) in any other way authorised by the person.

(3) Where a legally assisted person becomes a party to proceedings or a party to proceedings becomes a legally assisted person, the solicitor for the legally assisted person shall immediately serve all other parties with notice in a form approved by the Commission that the person is a legally assisted person and shall, if at any time afterwards any other person becomes a party to the proceedings, immediately serve such a notice upon that person.

(4) A notice required to be served under subsection (3) may be served either—

- (a) by serving it personally on the person required to be served or that person's solicitor; or
- (b) by sending it by pre-paid post addressed—
  - (i) to the person required to be served at the person's place of residence or business; or

- (ii) to that person's solicitor at the solicitor's place of business; last known to the person by whom it is sent; or
- (c) if served together with any process of a court, by any mode of service authorised by rules of court for service of that process.

### **Power of court or tribunal to recommend legal assistance**

**36A.(1)** The court or tribunal in or before which a person appears in any prescribed criminal proceeding, if it is of the opinion that special circumstances exist, may recommend that the person be provided legal assistance under this Act.

**(2)** An application by such a person for legal assistance shall be made under section 26 and shall be dealt with under the provisions of this Part relating to applications for legal assistance generally.

## **PART 6—RECONSIDERATION AND REVIEW OF DECISIONS**

### **Reconsideration of decisions**

**37.(1)** Subject to section 41A(3), where a decision, other than a decision of the Commission under section 27(4B), 29(2A) or 34A(3) or a decision in relation only to the provision of legal advice or duty lawyer services to which section 31 relates, has been made—

- (a) refusing to provide legal assistance under this Act; or
- (b) refusing to provide legal assistance under this Act of the nature, or to the extent, applied for; or
- (c) imposing a condition on the provision of legal assistance under this Act or varying adversely to a legally assisted person a condition so imposed; or
- (d) terminating or suspending the provision of legal assistance under this Act or altering adversely to a legally assisted person, the nature or extent of legal assistance that is being provided to that

person;

the person who applied for the legal assistance may, by notice in writing to the Commission—

- (e) in a case where the decision was made, in the first instance, by a Legal Aid Committee—request that the decision be referred to a Review Committee for review; or
- (f) in a case where the decision was made by an officer of the Commission—request that the decision be reconsidered by a Legal Aid Committee.

(2) Subject to section 41A(3), where a decision has been made by the Director—

- (a) determining the amount that a legally assisted person is liable to pay to the Commission under section 34A(1); or
- (b) refusing to pay the whole or any part of any amount that a person has, under section 35, requested the Commission to pay;

that person may, by notice in writing to the Commission, request that the decision be referred to a Review Committee for review.

(3) Where a notice requesting that a decision (being a decision to which subsection (1)(e) or (2) relates) be reviewed is received by the Commission, the Commission shall comply with the request.

(4) Where a notice requesting that a decision (being a decision to which subsection (1)(f) relates) be reconsidered is received by the Commission, the decision shall be reconsidered by—

- (a) a Legal Aid Committee; or
- (b) where a statutory officer of the Commission is of the opinion that a Legal Aid Committee cannot within the time available reconsider the decision, by a statutory officer of the Commission;

in accordance with arrangements made or approved by the Director.

(4A) The Legal Aid Committee that, or the statutory officer of the Commission who, reconsiders the decision may—

- (i) confirm that decision; or
- (ii) vary that decision; or

- (iii) set aside that decision and substitute its own decision for that decision.

(5) Where a decision of an officer of the Commission is reconsidered under subsections (4) and (4A), the person who requested the reconsideration may, by notice in writing to the Commission, request the Commission to refer—

- (a) the decision confirmed or the decision as varied upon the reconsideration; or
- (b) the decision substituted for the decision the subject of the reconsideration;

to a Review Committee for review and the Commission shall comply with any such request.

(6) A request by a person for a reconsideration or review of a decision shall be made before the expiration of 3 months after the person received notice of the relevant decision or such longer period as the Commission, in special circumstances, allows.

### **Establishment and constitution of Review Committees**

**38.(1)** For the purposes of this Act, there shall be such Review Committees as the Commission, by resolution, establishes under this Part.

**(2)** A Review Committee shall consist of—

- (a) a private legal practitioner who is not a member of the Commission; and
- (b) a Commissioner who is a legal practitioner or an officer of the Commission who is a legal practitioner and, where the Commissioner or officer is a solicitor, the holder of a current practising certificate; and
- (c) a person, not being a private legal practitioner, a Commissioner or an officer of the Commission, who has qualifications or experience relevant to the performance of the function of a Review Committee.

**Appointment of members of Review Committees**

**39.(1)** The members of a Review Committee shall be appointed by the Commission.

**(2)** The Commission shall appoint a member of each Review Committee to be President of that Committee.

**(3)** The Commission may appoint as a deputy of a member of a Review Committee—

- (a) in the case of a member referred to in section 38(2)(a)—a private legal practitioner; and
- (b) in the case of a member mentioned in section 38(2)(b)—a Commissioner, or officer of the Commission, who is—
  - (i) a legal practitioner; and
  - (ii) if the Commissioner or officer is a solicitor—the holder of a current practising certificate; and
- (c) in the case of a member referred to section 38(2)(c)—a person, not being a private legal practitioner, a Commissioner or an officer of the Commission, who has qualifications or experience relevant to the performance of the function of a Review Committee.

**(4)** In the event of the absence of a member of a Review Committee from a meeting of the Review Committee, the deputy of that member is entitled to attend the meeting and, while so attending, shall be taken to be a member of the Review Committee.

**(5)** The performance of the function of a Review Committee is not affected because of there being a vacancy in the membership of the Committee or the subsequent discovery of a defect in the appointment of a member or a deputy of a member.

**(6)** The validity of anything done by a person as a deputy of a member of a Review Committee shall not be called in question on the ground that the occasion for the person so acting has not arisen or that the person's appointment has ceased to have effect.

### **Function of Review Committee**

**40.** The functions of a Review Committee are—

- (a) to review decisions referred to the Review Committee under section 37(3) or (5); and
- (b) to bring to the notice of the Commission through the Director any matter arising before the Review Committee or coming to its knowledge that it considers is a proper matter to bring to the Commission's notice and to make such recommendations with respect to the matter as it considers appropriate.

### **Decision of Review Committee**

**41.(1)** A Review Committee that reviews a decision referred to it under section 37(3) or (5) shall, in writing—

- (a) confirm that decision; or
- (b) vary that decision; or
- (c) set aside that decision and substitute its own decision for that decision.

**(3)** A Review Committee shall cause a copy of its decision to be sent to the person who requested the review and to the Commission.

**(4)** A Review Committee shall, if requested to do so by the person who requested the review, cause a short statement in writing of the reasons for the decision to be sent to the person.

**(5)** Subject to section 41A, the decision of a Review Committee shall be final and conclusive.

### **Review by Commission**

**41A.(1)** Despite any other provision of this Act, where a decision has been made under this Act by an officer of the Commission, a Legal Aid Committee or a Review Committee in respect of an application for legal assistance, the Commission may, of its own motion, make a determination—

- (a) confirming that decision; or



- (b) varying that decision; or
- (c) setting aside that decision and substituting its own decision for that decision.

(2) A determination of the Commission made under subsection (1) shall be final and conclusive.

(3) It is not competent—

- (a) to a Legal Aid Committee to review a decision of an officer of the Commission; or
- (b) to a Review Committee to review a decision of an officer of the Commission or of a Legal Aid Committee;

in respect of an application for legal assistance where a determination has been made by the Commission under subsection (1) in respect of that decision.

(4) The Commission may exercise the power given to it by this section in such cases and on such occasions as to it seem appropriate and nothing in this Act shall be construed as—

- (a) conferring upon any person a right to appeal to the Commission in relation to any decision made under this Act, or to have referred to the Commission any decision made under this Act, for the purpose of the Commission exercising its power under this section; or
- (b) imposing upon the Commission a duty to consider the exercise of, or to exercise, its power under this section in any particular case.

## **PART 7—FINANCES OF COMMISSION**

### **Establishment of Fund**

**42.(1)** There is established by this section a fund to be known as the Legal Aid Fund.

(2) The Fund shall consist of—

- (a) moneys paid to, or recovered by, the Commission under this Act (other than moneys received or held by the Commission upon trust); and
- (b) moneys paid to the Commission in pursuance of the *Legal Assistance Act 1965* or any other Act; and
- (c) moneys paid to the Commission, being moneys appropriated by Parliament for the purposes of the Commission; and
- (d) moneys made available by the Commonwealth for the purpose of the provision of legal assistance; and
- (e) any other moneys paid to the Commission for the purpose of the provision of legal assistance or otherwise for the purposes of the Fund; and
- (f) income derived from the investment of moneys forming part of the Fund.

(3) The Fund shall be controlled and administered by the Commission.

### **Bank accounts**

**43.(1)** The Commission may open and maintain an account or accounts with a bank or banks in the State and shall maintain at all times at least 1 such account.

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

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

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

### **Application of Fund**

**44.** Moneys in the Fund shall be applied only—

- (a) in the discharge of obligations and liabilities of the Commission arising in or in connection with the provision of legal assistance under this Act; and
- (b) in the payment of 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) salaries, wages and other payments to or in respect of the Director and other officers of the Commission; and
- (c) in the payment of other remuneration and allowances payable under this Act; and
- (d) for such other purposes as are necessary in order for the Commission to properly exercise and perform its powers and function under this Act.

**Return in respect of moneys held in trust where person beneficially entitled not identified or located**

**44A.(1)** Not later than the last day of October in each year the Commission shall lodge with the chief executive a return in writing setting out particulars of all moneys held by it on the last day of September in the year in question in trust for persons whom the Commission cannot identify or locate.

**(2)** The return shall provide information in respect of each case as to the circumstances under which the moneys came into the hands of the Commission and steps taken by it to identify or locate the person for whom the moneys are held in trust.

**(3)** The Minister, if satisfied a person for whom moneys are held in trust by the Commission cannot be identified or located and that reasonable efforts have been made by the Commission to identify or locate the person, may authorise the Commission to transfer the moneys from the account wherein they are held in trust to the Fund.

**(4)** Moneys so transferred pursuant to the Minister's authorisation shall be applied under the provisions of this Act relating to the application of moneys in the Fund.

(5) If a person for whom moneys transferred to the Fund under subsection (3) were held in trust by the Commission subsequently requests payment of the money from the Commission, it shall pay to the person from the Fund an amount equivalent to the amount that had been held in trust for the person before its transfer to the Fund.

### **Investment**

**45.(1)** Moneys standing to the credit of the Fund that are not immediately required for the purposes of this Act may be invested by the Commission in the following manner—

- (a) in any of the government securities of the Commonwealth or of any of the States;
- (b) on any interest bearing term deposit in any bank;
- (c) on deposit in any savings bank;
- (d) on the security of a certificate of deposit issued by any bank;
- (da) in or on the security of authorised bills of exchange;
- (e) with any dealer in the short term money market, approved by the Reserve Bank of Australia as an authorised dealer, who has established lines of credit with that bank as a lender of last resort;
- (f) in any other investment or class of investment approved by the Minister in writing.

(2) In this section—

**“authorised bills of exchange”** means bills of exchange which are payable on demand or not more than 200 days from the date on which they are acquired by the Commission and which if bought for value by the Commission would give the Commission as holder in due course a right of recourse against a bank for an amount equal to the face value of the bills.

### **Power to borrow with approval of Minister**

**46.** The Commission may, with the approval of the Minister, borrow moneys for the purpose of enabling it to carry on its functions under this Act.

**Budget of Commission**

**47.(1)** The Commission shall before the commencement of each financial year adopt and present to the Minister a budget showing its estimates of its revenue, including moneys to be made available by the Commonwealth, and expenditure in respect of that financial year.

**(2)** A budget of the Commission shall be of no force or effect until it is approved by the Minister.

**(3)** The Minister may amend a budget of the Commission in such a way as the Minister thinks reasonable and shall amend it where necessary and in any item so that it shall as nearly as possible balance for the financial year to which it relates having regard to the moneys that are or may be paid to the Commission in pursuance of any Act, appropriated by Parliament for the purposes of the Commission or made available to the Commission by the Commonwealth for the purpose of the provision of legal assistance and to any other revenues or moneys available to or reasonably expected by the Commission for that financial year.

**(4)** When the Minister has approved of a budget of the Commission, the budget as approved, whether or not it has been amended under subsection (3), shall be binding upon the Commission.

**(5)** If in the opinion of the Minister the circumstances so require, the Minister may direct the Commission to adopt and present to the Minister as soon as is reasonably practicable, a supplementary budget showing its estimates of its revenue and expenditure in respect of such remaining part of a financial year as is specified in the direction.

**(6)** The provisions of this section and section 47A apply with all necessary modifications to a supplementary budget and, upon its approval by the Minister, the supplementary budget shall, as from the commencement of the part of the financial year to which it relates, be and become the budget of the Commission and this section and section 47A shall be read and construed accordingly.

**Observance of budget**

**47A.(1)** Subject to subsection (2), the Commission shall confine its disbursements throughout a financial year within the items and amounts contained in its budget for that financial year as approved by the Minister.

(2) If, during any financial year, it appears to the Commission that in the circumstances that have arisen it is proper that the Commission make a disbursement in that financial year that was not provided for in the budget (as approved) for that financial year or that exceeds the amount estimated in respect of that disbursement in the budget (as approved) for that financial year, the Commission may make the disbursement or excess disbursement if the Commission, before making such disbursement or excess disbursement—

- (a) passes a resolution approving that the disbursement or excess disbursement be made; and
- (b) ensures that the budget as approved by the Minister will not then be exceeded in total by the disbursement or excess disbursement.

(3) Nothing in section 47 or this section operates to prevent the disbursement by the Commission of moneys made available by the Commonwealth to the Commission to meet any shortfall between—

- (a) the estimated expenditure in the budget for a financial year; and
- (b) the actual expenditure in that year;

in respect of the provision of legal assistance, the cost of which the Commonwealth has undertaken to meet in accordance with arrangements made with the Commission.

### **Proper accounts to be kept by Commission**

48. The Commission shall cause to be kept, in such a manner as to disclose the true position in regard to the accounts and to enable the accounts to be conveniently and properly audited, proper accounts and records of the transactions and affairs of the Commission (including transactions and affairs relating to moneys held by the Commission upon trust) and shall do all things necessary to ensure that all payments out of the Fund or out of moneys held by the Commission upon trust are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission.

**Audit and financial statement**

**49.(1)** The accounts and records of financial transactions of the Commission (including transactions relating to moneys held by the Commission upon trust) and records relating to assets of, or in the custody of, the Commission shall be audited at least once in each year by the person or persons appointed under this section.

**(2)** The Auditor-General may appoint a person who holds, or persons each of whom holds, a certificate of registration as a public accountant under the *Public Accountants Registration Act 1946* or an officer or officers of the Department of the Auditor-General to be the auditor or auditors for the Commission.

**(3)** Remuneration payable by the Commission in respect of each audit shall be as fixed by the Auditor-General.

**(4)** An auditor appointed under this section—

- (a) shall examine the accounts and records of the Commission and shall immediately upon completion of the audit report to the Auditor-General the result; and
- (b) may require the Commission and any officer of the Commission to produce to the auditor for the auditor's examination such accounts, records, documents and papers of the Commission as in the auditor's opinion are relevant to the audit of the Commission's accounts and may make such extracts of the accounts, records, documents and papers of the Commission produced to the auditor as the auditor thinks fit; and
- (c) may require from the Commission and any officer of the Commission such information and explanations in the possession or within the knowledge of the Commission or officer or to which it or the officer has access as the auditor considers necessary for the purposes of the audit of the Commission's accounts.

**(5)** The Auditor-General shall in respect of an audit of the Commission's accounts and records have the powers conferred on the Auditor-General by the *Audit Act 1874* or any Act passed in substitution for that Act.

**(6)** The Commission and any other person to whom a requisition is directed under subsection (4) shall, so far as it or the person is able,

immediately comply with the requisition so directed to it or the person.

(7) The Commission shall, as soon as practicable after 30 June in each year, prepare a financial statement in such form as the Minister approves and including the certificate given under subsection (8).

(8) The Auditor-General or, as the case may be, the person or persons appointed under subsection (2) shall certify whether the accounts and records of the transactions and affairs of the Commission have been properly kept and whether the financial statement referred to in subsection (7)—

- (a) is in agreement with such accounts and records; and
- (b) in the opinion of the person or persons so certifying fairly sets out the financial transactions for the period to which they relate and shows a true and fair view of the state of affairs at the close of the period to which they relate.

(9) A person who contravenes subsection (6) is guilty of an offence.

Maximum penalty—4 penalty units.

## **PART 8—ADMINISTRATIVE PROVISIONS RELATING TO COMMISSION**

### *Division 1—Commissioners*

#### **Tenure of office**

**50.(1)** A Commissioner, other than the Director, holds office for the period (not longer than 3 years in any case) specified in the instrument of appointment.

(2) A person who holds or has held office as Commissioner is eligible for reappointment.



**Remuneration and allowances**

**51.** A Commissioner, other than the Director, shall be paid such remuneration and such allowances as may be fixed by the Governor in Council on the recommendation of the Minister.

**Qualifications for appointment as President**

**52.** A person is not eligible for appointment as the President of the Commission unless the person is a barrister or a solicitor, or is entitled to be admitted to practise as a barrister or a solicitor, and has engaged in practice as a barrister or a solicitor, or a barrister and solicitor, in this State or elsewhere, for a period of not less than 5 years.

**Resignation**

**53.** A Commissioner, other than the Director, may resign office by writing under the Commissioner's hand delivered to the Minister.

**Removal from office**

**54.(1)** The Governor in Council may remove a Commissioner from office for misbehaviour or physical or mental incapacity.

**(2)** If a Commissioner—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b) is absent, except by leave of the Minister, from 3 consecutive meetings of the Commission; or
- (c) is convicted of an indictable offence for which the Commissioner is liable to be punished by imprisonment for 12 months or more; or
- (d) fails to comply with obligations under section 57;

the Governor in Council may remove the Commissioner from office.

**(3)** Subsections (1) and (2) do not apply to a Commissioner who is also the Director.

**Acting President of the Commission**

**55.(1)** The Minister, after consultation with the Commission, may appoint a person who is eligible for appointment as President of the Commission to act in the office of President—

- (a) during a vacancy in the office whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all the periods, when the President is, or is expected to be, absent from duty or from the State or is, for any reason, unable to perform the duties of office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

**(2)** A person acting in the office of President of the Commission holds office on such terms and conditions as the Minister determines.

**(3)** The Minister may at any time terminate an appointment under this section.

**(4)** Where a person is acting in the office of President of the Commission under subsection (1)(b) and the office becomes vacant while that person is so acting, that person may continue to so act until the Minister otherwise directs, the vacancy is filled or a period of 12 months elapses from the happening of the vacancy, whichever first happens.

**(5)** A person appointed to act in the office of President of the Commission may resign the person's appointment by writing under the person's hand delivered to the Minister.

**(6)** Whilst a person is acting in the office of President in pursuance of an appointment under subsection (1), the person has all the rights, powers and privileges and is subject to all the duties, of the President of the Commission.

**(7)** The validity of anything done by a person acting in the office of President of the Commission shall not be called in question on the ground that the occasion for the appointment had not arisen or that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

## **Meetings**

**56.(1)** The Commission shall hold such meetings as are necessary for the performance of its function.

**(2)** The President of the Commission may at any time convene a meeting of the Commission.

**(3)** The President of the Commission, on receipt of a request in writing signed by 3 Commissioners, shall convene a meeting of the Commission.

**(4)** At a meeting of the Commission, 4 Commissioners constitute a quorum.

**(5)** The President of the Commission shall preside at all meetings of the Commission at which the President is present.

**(6)** If the President of the Commission is not present at a meeting of the Commission, the Commissioners present shall elect 1 of their number to preside at that meeting and the person so elected shall preside accordingly.

**(7)** Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present and voting.

**(8)** The Commissioner 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.

**(9)** The Commission may regulate the conduct of proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.

## **Interests to be disclosed**

**57.(1)** A Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission otherwise than as a member of, and in common with the other members of, an incorporated company which consists of more than 25 persons and of which the Commissioner is not a director, shall, as soon as possible after the relevant facts have come to the Commissioner's knowledge, disclose the nature of the interest at a meeting of the Commission.

**(2)** A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Commission and the Commissioner shall not be present during any deliberation of the Commission with respect to that matter.

## ***Division 2—Officers of Commission***

### **Conditions of appointment**

**58.(1)** A statutory officer of the Commission holds office for such period, not longer than 5 years, as is specified in the instrument of the officer's appointment, but is eligible for reappointment.

**(2)** A statutory officer of the Commission holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor in Council on the recommendation of the Commission.

**(3)** A statutory officer of the Commission shall be paid such remuneration and such allowances as the Commission determines with the approval of the chief executive.

**(4)** The Commission may grant leave of absence to a statutory officer of the Commission upon such terms and conditions as to remuneration or otherwise as the Commission determines.

### **Resignation and removal from office**

**59.(1)** A statutory officer of the Commission may resign the office by writing under the officer's hand delivered to the Commission.

**(2)** The Governor in Council may remove a statutory officer of the Commission from office for misbehaviour or physical or mental incapacity.

**(3)** If a statutory officer of the Commission—

- (a)** is absent from duty, except on leave granted by the Commission, for 14 consecutive days, or for 28 days in any period of 12 months; or
- (b)** becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (c)** is convicted of an indictable offence for which the officer is liable to be punished by imprisonment for 12 months or more; or

- (d) engages in practice as a barrister or solicitor, or engages in paid employment, in contravention of section 60;

the Governor in Council may remove the officer from office.

### **Outside employment**

**60.** Except in the performance of the duties of office or with the approval of the Commission, a statutory officer or a member of the staff of the Commission who is a legal practitioner shall not engage in practice as a barrister or solicitor or engage in paid employment.

### **Acting appointments**

**61.(1)** The Commission may appoint a person who is eligible for appointment as a statutory officer of the Commission to act in the office of a statutory officer of the Commission—

- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the statutory officer of the Commission is, or is expected to be, absent from duty or from the State, or is, for any reason, unable to perform the duties of office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

**(2)** A person acting in the office of a statutory officer of the Commission holds office on such terms and conditions as the Commission determines.

**(3)** The Commission may at any time terminate an appointment under this section.

**(4)** Where a person is acting in the office of a statutory officer of the Commission under subsection (1)(b) and the office becomes vacant while that person is so acting, that person may continue to act until the Commission otherwise directs, the vacancy is filled or a period of 12 months elapses from the happening of the vacancy, whichever first happens.

(5) A person appointed to act in the office of a statutory officer of the Commission may resign the appointment by writing under the person's hand delivered to the Commission.

(6) While the appointment of a person to act in the office of a statutory officer of the Commission is in force, the person has all the rights, powers and privileges, and is subject to all the duties, of the statutory officer of the Commission.

(6A) A person appointed to act in the office of the Director, while the appointment is in force, shall be a Commissioner.

(7) The validity of anything done by a person acting in the office of a statutory officer of the Commission shall not be called in question on the ground that the occasion for the appointment had not arisen or that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

### **Terms and conditions generally**

62.(1) The terms and conditions of employment of members of the staff of the Commission are, subject to this Act, such as are determined by the Commission with the approval of the chief executive.

(2) The *Public Service Management and Employment Act 1988* does not apply to or in relation to officers of the Commission.

### **Certain provisions of the Queensland Law Society Act 1952 and the Costs Act 1867 not to apply to officers of Commission**

63. Nothing in sections 10 to 11A and Part 3 of the *Queensland Law Society Act 1952* and the *Costs Act 1867* applies to or in relation to an officer of the Commission in the officer's official capacity.

## **PART 9—ADMINISTRATIVE PROVISIONS RELATING TO LEGAL AID COMMITTEES**

### **Tenure of office**

**64.** A member of a Legal Aid Committee other than the Director holds office, subject to this Part, for a period of 1 year, but is eligible for reappointment.

### **President etc. of Committee**

**65.(1)** The Commission shall appoint 1 of the members of a Legal Aid Committee other than the Director to be the President of the Committee.

**(2)** The Commission shall appoint 1 of the members of a Legal Aid Committee (other than the Director and the member appointed as President) to preside at meetings of the Committee at which the President is not present.

### **Resignation**

**66.** A member of a Legal Aid Committee other than the Director may resign office by writing under the member's hand delivered to the Commission.

### **Removal from office**

**67.(1)** The Commission may remove a member of a Legal Aid Committee other than the Director from office for misbehaviour or physical or mental incapacity.

**(2)** If a member of a Legal Aid Committee other than the Director—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with creditors; or
- (b) is absent, except by leave of the President of the Committee from 3 consecutive meetings of the Committee; or

(c) is convicted of an indictable offence for which the member is liable to be punished by imprisonment for 12 months or more; or

(d) fails to comply with obligations under section 70;

the Commission may remove the member from office.

### **Meetings of Committee**

**68.(1)** A Legal Aid Committee shall hold such meetings as are necessary for the performance of its functions.

**(2)** The President of a Committee or the member of a Legal Aid Committee appointed under section 65(2) may at any time convene a meeting of the Committee.

**(3)** At a meeting of a Legal Aid Committee, 3 members of the Committee constitute a quorum.

**(4)** The President of a Legal Aid Committee shall preside at all meetings of the Committee at which the President is present.

**(5)** If the President of a Legal Aid Committee is not present at a meeting of the Committee, the member appointed under section 65(2) shall preside or if both the President of a Committee and the member so appointed are not present at a meeting of the Committee, the person appointed to preside at the meeting by the members present at the meeting from among their number shall preside accordingly.

**(6)** Questions arising at a meeting of a Legal Aid Committee shall be determined by a majority of the votes of members of the Committee present and voting.

**(7)** The member of a Legal Aid Committee presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

**(8)** A Legal Aid Committee may regulate the conduct of proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.

### **Remuneration and allowances**

**69.** Members of a Legal Aid Committee shall be paid such remuneration



and allowances in respect of the performance of their functions as are fixed by the Commission and approved by the Minister.

### **Interests to be disclosed**

**70.(1)** A member of a Legal Aid Committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee, otherwise than as a member of, and in common with other members of, an incorporated company which consists of more than 25 persons and of which the member is not a director, shall as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the member's interest at a meeting of the Committee.

**(2)** A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Committee and the member shall not be present during any deliberation of the Committee with respect to that matter.

## **PART 10—ADMINISTRATIVE PROVISIONS RELATING TO REVIEW COMMITTEES**

### **Tenure of office**

**71.** A member of a Review Committee holds office, subject to this Part, for a period of 1 year, but is eligible for reappointment.

### **Resignation**

**72.** A member of a Review Committee may resign office by writing under the member's hand delivered to the Commission.

### **Removal from office**

**73.(1)** The Commission may remove a member of a Review Committee from office for misbehaviour or physical or mental incapacity.

**(2)** If a member of a Review Committee—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with creditors; or
- (b) is absent, except by leave of the Commission, from 3 consecutive meetings of the Review Committee; or
- (c) is convicted of an indictable offence for which the member is liable to be punished by imprisonment for 12 months or more; or
- (d) fails to comply with obligations under section 76;

the Commission may remove the member from office.

### **Remuneration and allowances**

**74.** Members of a Review Committee shall be paid such remuneration and allowances in respect of the performance of their function as are fixed by the Commission and approved by the Minister.

### **Meetings of Review Committee**

**75.(1)** A Review Committee shall hold such meetings as are necessary for the performance of its function.

**(2)** Meetings of a Review Committee shall be convened by the President of the Committee or, if for any reason the President is unavailable, by another member of the Committee.

**(3)** At a meeting of a Review Committee 2 members constitute a quorum.

**(4)** The President of a Review Committee shall preside at all meetings of the Review Committee at which the President is present.

**(5)** If the President of a Review Committee is not present at a meeting of the Committee, the members present shall elect 1 of their number to preside at that meeting and the member so elected shall preside accordingly.

**(6)** Questions arising at a meeting of a Review Committee shall be determined by a majority of the votes of members of the Review Committee present and voting.

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

(8) A Review Committee may regulate the conduct of proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.

### **Interests to be disclosed**

**76.(1)** A member of a Review Committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Review Committee, otherwise than as a member of, and in common with other members of, an incorporated company which consists of more than 25 persons and of which the member is not a director, shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the member's interest at a meeting of the Review Committee.

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

(3) A member of a Review Committee who made, or participated in the making of, a decision that is to be reviewed by the Review Committee shall not be present during any deliberation of the Review Committee with respect to that decision.

## **PART 11—CONSULTATIVE COMMITTEES**

### **Establishment of consultative committees**

**77.(1)** The Minister may establish such consultative committees as the Minister thinks desirable to assist the Commission in the performance of its function.

(2) A consultative committee established under subsection (1) may be established to operate generally or it may be restricted in relation to functions or locality or in relation to both functions and locality.

### **Constitution of consultative committees**

**78.(1)** Each consultative committee shall consist of—

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

(2) In selecting persons to be appointed as members of a consultative committee to assist the Commission to perform its function in a particular locality, the Minister shall have regard to the desirability of selecting persons living, or carrying on a business, profession or trade, in that locality.

(3) Members of a consultative committee shall be appointed by the Minister and, subject to subsection (4), shall hold office for a period of 1 year, but are eligible for reappointment.

(4) A member of a consultative committee may resign office by writing under the member's hand delivered to the Minister.

### **General provisions relating to consultative committees**

**79.(1)** The regulations may make provision for and in relation to—

- (a) the convening of meetings of consultative committees; and
- (b) the procedure (including provision with respect to quorums and voting) to be followed at such meetings.

(2) Members of consultative committees shall be paid such allowances for expenses in respect of the performance of their duties as are fixed by the Commission and approved by the Minister.

## **PART 12—MISCELLANEOUS LIABILITIES OF**

## COMMISSION

### Liabilities of Commission

**80.(1)** The Commission shall indemnify an officer of the Commission against any liability incurred by the officer for any negligent act or omission by the officer in the course of the performance of the officer's duties or in good faith in the purported performance of those duties.

**(2)** The Commission has the same liability for acts or omissions by an officer of the Commission in the course of the performance of the officer's duties as an employer has for any acts or omissions by the employer's employees.

**(3)** A member of the Commission, of a Legal Aid Committee, of a Review Committee or of a consultative committee is not liable for any act or omission of the member, of the Commission, or of the committee of which the person is a member, if the act was done, or the omission occurred, in good faith in the performance or purported performance of any function under this Act.

### Secrecy

**81.(1)** This section applies to—

- (a) every person who is or has been a Commissioner, an officer of the Commission, a member of a Legal Aid Committee, a member of a Review Committee or a member of a consultative committee; and
- (b) any person who has performed any function under section 49 or 86.

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

- (a) make a record of, or divulge or communicate to any person, or make use of any information concerning the affairs of another person acquired by the first person because of the first person's office or employment under or for the purposes of this Act, or in the performance of a function under this Act; or

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

Maximum penalty—20 penalty units or imprisonment for 6 months.

**(2A)** Nothing in subsection (2) precludes a person from producing a document, or divulging or communicating information, to—

- (a) the Bar Association of Queensland; or
- (b) the Barristers' Board constituted under a Rule of Court made under the *Supreme Court Act 1921*; or
- (c) the Statutory Committee of the Queensland Law Society Incorporated; or
- (d) the Queensland Law Society Incorporated; or
- (e) the Solicitors Disciplinary Tribunal established under the *Queensland Law Society Act 1952*; or
- (f) the Solicitors' Board constituted under a Rule of Court made under the *Supreme Court Act 1921*; or
- (g) a legal practitioner or other person appointed to chair a legal aid conference convened by the Director with a view to the resolution of a dispute involving a person who has applied for legal assistance or been granted legal assistance; or
- (h) in accordance with guidelines determined by the Commission, any person to whom the document or information is required to be produced or given pursuant to a lawfully issued search warrant; or
- (i) with the consent of the Minister, any other person or body of persons if, in the opinion of the Commission, it is in the public interest that the document be produced or the information be divulged or communicated.

**(2B)** The Commission may direct that the production of a document or the divulging or communicating of information under subsection (2A) be subject to such conditions (if any) as the Commission thinks appropriate in the circumstances and imposes and without limiting the generality hereof conditions may be imposed restricting the use that may be made of the document produced or the information divulged or communicated to protect the anonymity of any legally assisted person, or person who has applied for

legal assistance, to whom the document or information in question relates.

(2C) The Minister may direct the Commission to impose, under subsection (2B), such conditions upon the production of a document or the divulging or communicating of information as to the Minister seem desirable and the Commission shall comply with that direction.

(2D) A person to whom a document is produced or information is divulged or communicated under subsection (2A) shall comply with any condition imposed under subsection (2B).

Maximum penalty—20 penalty units or imprisonment for 3 months.

(3) Subject to sections 49 and 86 or in the course of proceedings under this Act, 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 the first person has the custody, or to which the first person has access, because of the first person's office or employment under or for the purposes of this Act or in the performance of a function under this Act, or to divulge or to communicate to any court any information concerning the affairs of another person obtained by the first person because of such an office or employment or in the performance of such a function.

(4) Subsection (3) does not apply if the court considers that it is necessary in the interests of justice that the document be produced or the information be divulged or communicated.

(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.

### **Commission to operate as ‘Legal Aid Office (Queensland)’**

82.(1) The Commission shall perform its function under this Act under the name of the ‘Legal Aid Office (Queensland)’.

(2) The *Business Names Act 1962* does not apply to or in relation to the Commission.

### **Offence of misrepresentation**

**83.(1)** A person shall not—

- (a) make, whether orally or in writing, a false or misleading statement in connection with, or in support of, an application for legal assistance; or
- (b) furnish to the Commission in connection with an application for legal assistance a document that is false or misleading in a material particular.

Maximum penalty—20 penalty units or imprisonment for 6 months.

**(2)** A person who applies to the Commission for legal assistance or is receiving from the Commission legal assistance and, with intent to deceive or mislead the Commission, withholds any relevant information that the person is required by the Commission to furnish is guilty of an offence.

Maximum penalty—20 penalty units or imprisonment for 6 months.

**(3)** Where—

- (a) a person is convicted of an offence against subsection (1) or (2) in respect of an application for legal assistance; and
- (b) legal assistance under this Act was granted on that application; and
- (c) the Commission incurred expense in providing that legal assistance;

the court may, in addition to imposing a penalty in respect of the offence, order the person to pay to the Commission an amount equal to the amount of the expense so incurred by the Commission.

**(4)** Where the Commission incurred expense in providing or continuing to provide legal assistance for a person because of an offence against this section by that person the Commission may, whether or not the offender has been prosecuted, recover an amount equal to the amount of the expense incurred by the Commission from the offender in a court of competent jurisdiction as a debt due and payable to the Commission but the same such amount is not recoverable both under subsection (3) and under this subsection.

**(5)** For the purposes of subsection (3), a certificate in writing signed by



the Director certifying that the Commission incurred expense of an amount specified in the certificate in providing legal assistance on an application certified in the certificate is *prima facie* evidence of the matters stated in the certificate.

(6) For the purposes of subsection (4), a certificate in writing signed by the Director certifying that the Commission incurred expense of an amount specified in the certificate in providing, or continuing to provide, legal assistance to a person specified in the certificate because of an offence committed, or alleged to have been committed against subsection (1) or (2) by that person identifying the person and offence is *prima facie* evidence that expense of that amount was so incurred.

(7) For the purpose of this section, a document purporting to be a certificate referred to in subsection (5) or (6) shall unless the contrary is proved, be taken to be such a certificate and to have been properly given.

(8) A prosecution for an offence against subsection (1) or (2) may be instituted at any time within 12 months after the commission of the offence or within 12 months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

### **Proceedings under this Act**

**84.(1)** Any proceeding 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;

may be instituted by the Director or by an officer of the Commission 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; or
- (b) the authority of any officer of the Commission to institute or appear in that proceeding; or

- (c) the appointment of the Director or any other officer of the Commission.

### **Certificate as to amounts owing to Commission**

**85.(1)** In any action against a person for the recovery of an amount payable to the Commission under section 32 or 34, a certificate in writing signed by the Director certifying that the sum specified in the certificate was, at the date of the certificate, payable by the first mentioned person to the Commission under that section is prima facie evidence of the matters stated in the certificate.

(2) For the purposes of this section, a document purporting to be a certificate referred to in subsection (1) shall, unless the contrary is proved, be taken to be such a certificate and to have been properly given.

### **Annual report and financial statement**

**86.(1)** The Commission shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of the operations of the Commission during the year that ended on that date, together with the financial statement prepared by it under section 49(7).

(2) The Minister shall cause a copy of the report and the financial statement of the Commission to be laid before the Legislative Assembly as soon as practicable after their receipt by the Minister.

### **Regulations**

**88.** The Governor in Council may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **PART 13—TRANSITIONAL AND SAVINGS**

### ***Division 1—General***

#### **Interpretation**

**89.** In this Part—

**“Australian Legal Aid Office”** means that division of the Attorney-General’s Department of the Commonwealth that is designated the Australian Legal Aid Office.

#### **State may enter into agreements and arrangements**

**94.(1)** The State may enter 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; and
- (b) the priorities to be observed in the provision of legal assistance as between classes of persons or classes of matters, or both; and
- (c) the sharing of—
  - (i) the costs of establishing the Commission; and
  - (ii) operational costs incurred in the provision of legal assistance by the Commission; and
- (d) the transfer to the staff of the Commission of persons who are eligible persons within the meaning of section 100; and
- (e) the taking over possession and use by the Commission of such office accommodation, furniture, records and equipment of the Australian Legal Aid Office as is appropriate to the functions and needs of the Commission; and
- (f) any matter incidental to a matter mentioned in paragraphs (a) to (e).

(2) Any such agreement or arrangement shall, to the extent that it involves matters within the purview of the Commission, be binding on the Commission.

### ***Division 2—Transfer of staff to Commission***

#### **ALAO employees**

**100.(1)** Where an agreement or arrangement entered into under section 94(1)(d) so requires the Commission shall, by notice in writing addressed to a person who is an eligible person on the date, or dates, specified in, or arranged in accordance with, provisions in that behalf of such an agreement or arrangement, offer the person employment as a member of the staff of the Commission.

(2) A notice to a person under subsection (1)—

- (a) shall include particulars of the proposed employment and otherwise conform with the requirements in that behalf of the agreement or arrangement referred to in subsection (1); and
- (b) may be given by sending the notice by post to the address of the person last known to the Commission.

(3) Where an eligible person accepts, before the commencing day, an offer of employment as a member of the staff of the Commission made to the person under subsection (1), the Commission shall employ the person in the position to which the offer relates in accordance with particulars set out in respect of the position with effect from the commencing day.

(4) Where an eligible person accepts, on or after the commencing day, an offer of employment as a member of the staff of the Commission made to the person under subsection (1), the Commission shall employ the person in the position to which the offer relates in accordance with particulars set out in respect of the position with effect from the day on which the person so accepts.

(5) Where an eligible person becomes a member of the staff of the Commission under subsection (3) or (4), the person shall, subject to any terms and conditions of employment relating to a reduction in salary because of—

- (a) the transfer of a member of the staff of the Commission to a position of lower classification; or
- (b) misconduct, inefficiency or incapacity;

be employed on terms and conditions provided for in the agreement or arrangement referred to in subsection (1), or any other agreement or arrangement entered into under section 94(1)(d), and on the terms and conditions determined by the Commission for the purposes of section 62 so far as those terms and conditions are not inconsistent with and not less favourable than those provided for in any such agreement or arrangement.

(6) Where an officer of the Commission employed under this section is a contributor for benefits under the *Superannuation Act 1976* of the Commonwealth the Commission shall make as employer contributions in respect of the contributor, such payments as are agreed in an agreement or arrangement made in pursuance of section 94 in relation to the matter referred to in subsection (1)(d) of that section or a matter incidental to that matter, to the person or authority and at times specified in the agreement or arrangement.

(7) In this section—

**“eligible person”** means a person who holds an office, or who is performing duties, in the Australian Legal Aid Office in Queensland and includes a person within that description who is for the time being on leave.

(8) If an eligible person is appointed a statutory officer of the Commission the provisions of subsections (5) and (6) shall where the context permits apply with respect to that person.

## ENDNOTES

### 1 Index to Endnotes

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### 2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation before 9 December 1992. Future amendments of the *Legal Aid Act 1978* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

### 3 List of legislation

#### **Legal Aid Act 1978 No. 23**

date of assent 2 June 1978

s 4 commenced 3 December 1979 (see s 2(2) and notice pubd Gaz 15 September 1979 p 278)

remaining provisions commenced 13 August 1979 (proc pubd Gaz 11 August 1979 p 1904)

as amended by—

#### **Legal Aid Act Amendment Act 1986 No. 3**

date of assent 6 March 1986

commenced on date of assent

#### **Public Service Management and Employment Act 1988 No. 52 s 44 Sch 3 (as amended by Act 1989 No. 103 s 3 Sch)**

date of assent 12 May 1988

commenced 18 July 1988 (proc pubd Gaz 16 July 1988 p 2876)

**Legal Aid Act Amendment Act 1989 No. 73**

date of assent 24 August 1989

ss 1–2 commenced on date of assent

remaining provisions commenced 21 September 1989 (proc pubd Gaz 23 September 1989 p 735)

**Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 Sch**

date of assent 25 October 1989

commenced on date of assent

**Legal Aid Act Amendment Act 1990 No. 6**

date of assent 5 April 1990

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 1990 (proc pubd Gaz 28 April 1990 p 2636)

**Public Service (Administrative Arrangements) Act (No 2) 1990 No. 80 s 3 Sch 1**

date of assent 14 November 1990

commenced on date of assent

**Public Accountants Registration (Repeal and Consequential Amendments) Act 1990 No. 85 s 5 Sch 2**

date of assent 29 November 1990

commenced 1 January 1991 (see s 2(3))

**Legal Aid Act Amendment and Public Defence Act Repeal Act 1991 No. 3 Pt 2**

date of assent 6 March 1991

commenced 28 March 1991 (proc pubd Gaz 23 March 1991 p 1761)

**Juvenile Justice Act 1992 No. 44 s 235 Sch 3 (as amended by Act 1992 No. 48 s 207 Sch)**

date of assent 19 August 1992

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force

**Statute Law (Miscellaneous Provisions) Act 1992 No. 68 s 3 Sch 2**

date of assent 7 December 1992

amd 16 not yet proclaimed into force

remaining provisions commenced on date of assent

## 4 List of annotations

### Key to abbreviations in list of annotations

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
prev	=	previous
pres	=	present

Provisions not included in reprint, or amended by  
amendments not included in reprint, are underlined

**Long title** amd 1992 No. 68 s 3 Sch 2

### Arrangement of Act

**s 3** om (see s 36 RA)

### Amendment of the Legal Assistance Act

**s 4** om (see s 40 RA)

### Administration

**s 5** om 1992 No. 68 s 3 Sch 2

### Interpretation

**s 6(1)** def **“bank”** ins 1986 No. 3 s 2  
 def **“chief executive”** ins 1992 No. 68 s 3 Sch 2  
 def **“Commissioner”** amd 1990 No. 6 s 11  
 def **“Commonwealth Legal Aid Commission”** om 1991 No. 3 s 2.3(a)  
 def **“Director-General”** ins 1990 No. 80 s 3 Sch 1  
 om 1992 No. 68 s 3 Sch 2  
 def **“legally assisted person”** amd 1989 No. 73 s 3  
 def **“Minister”** sub 1990 No. 80 s 3 Sch 1  
 om 1992 No. 68 s 3 Sch 2  
 def **“National Legal Aid Advisory Committee”** ins 1991 No. 3 s 2.3(b)  
 def **“prescribed criminal proceeding”** ins 1991 No. 3 s 2.3(c)  
amd 1992 No. 44 s 235 Sch 3  
 def **“previous Committee”** om (see s 39 RA)  
 def **“previous Fund”** om (see s 39 RA)

### Establishment of Commission

**s 7(4)** ins 1991 No. 3 s 2.4

### Constitution of Commission

**s 8(1)** sub 1990 No. 6 s 4(a)  
 amd 1990 No. 85 s 5 Sch 2; 1991 No. 3 s 2.5(1)(a); 1992 No. 68 s 3 Sch 2



- s 8(2) sub 1990 No. 6 s 4(a)  
amd 1991 No. 3 s 2.5(1)(b)  
s 8(3) sub 1992 No. 68 s 3 Sch 2  
s 8(4) amd 1989 No. 73 s 4(1)(c)  
s 8(5) sub 1991 No. 3 s 2.5(1)(c)  
s 8(6) om 1991 No. 3 s 2.5(1)(c)

**Powers of Commission**

- s 10(3) amd 1989 No. 73 s 5; 1989 No. 103 s 3 Sch

**Delegation by Commission**

- s 10A ins 1989 No. 73 s 6

**Fees Committee**

- s 10B ins 1990 No. 6 s 5

**Duties of Commission**

- s 11(1) amd 1991 No. 3 s 2.6(a)  
s 11(3) amd 1991 No. 3 s 2.6(b)

**Appearance by Commission to assist Court**

- s 11A ins 1991 No. 3 s 2.7

**Guidelines for allocation of work**

- s 12 amd 1991 No. 3 s 2.8

**Guidelines for provision of assistance**

- s 13 amd 1989 No. 73 s 7

**Director and Assistant Directors**

- s 18(5) ins 1991 No. 3 s 2.9

**Qualifications for appointment**

- s 19 amd 1991 No. 3 s 2.10

**Staff of Commission**

- s 21(4) om 1991 No. 3 s 2.11

**Delegation**

- s 22 sub 1992 No. 68 s 3 Sch 2

**Rights of officers of Commission in respect of legal practice**

- s 23(1) amd 1991 No. 3 s 2.12(a)  
s 23(2) amd 1991 No. 3 s 2.12(b)  
s 23(5) amd 1991 No. 3 s 2.12(c)  
s 23(5A) sub 1992 No. 68 s 3 Sch 2

**Solicitor on the record**

- s 24(1) amd 1991 No. 3 s 2.13(a)  
s 24(2) ins 1991 No. 3 s 2.13(b)  
s 24(3) ins 1991 No. 3 s 2.13(b)

**Bringing services of Commission to public notice**

- s 25(1) amd 1991 No. 3 s 2.14(a)  
s 25(2) ins 1991 No. 3 s 2.14(b)

**Application for legal assistance**

- s 26(1) amd 1991 No. 3 s 2.15
- s 26(4) amd 1992 No. 68 s 2 Sch 3

**Determination of applications for legal assistance**

- s 27(3) amd 1989 No. 73 s 8(a)
- s 27(4A) ins 1986 No. 3 s 3(a)
- s 27(4B) ins 1986 No. 3 s 3(a)  
amd 1989 No. 73 s 8(b)
- s 27(4C) ins 1986 No. 3 s 3(a)
- s 27(4D) ins 1986 No. 3 s 3(a)
- s 27(4E) ins 1986 No. 3 s 3(a)
- s 27(5) amd 1986 No. 3 s 3(b)
- s 27(6) amd 1986 No. 3 s 3(c)

**Termination or variation of legal assistance**

- s 28(1) amd 1986 No. 3 s 4(a)
- s 28(2) ins 1986 No. 3 s 4(b)

**Circumstances in which legal assistance may be provided**

- s 29(2) amd 1989 No. 73 s 9; 1991 No. 3 s 2.16(a)
- s 29(2A) ins 1986 No. 3 s 5
- s 29(3) amd 1991 No. 3 s 2.16(b)
- s 29 sub 1992 No. 68 s 3 Sch 2

**Provision of legal assistance in terms of Convention**

- s 29A ins 1986 No. 3 s 6

**Conditions imposed with respect to grant of legal assistance**

- s 32 sub 1989 No. 73 s 10

**Arranging for services of private legal practitioners**

- s 33(2) amd 1989 No. 73 s 11(a)
- s 33(2A) ins 1989 No. 73 s 11(b)
- s 33(3) amd 1989 No. 73 s 11(c)
- s 33(3A) ins 1989 No. 73 s 11(d)
- s 33(4) amd 1989 No. 73 s 11(e)
- s 33(7) amd 1989 No. 73 s 11(f); 1991 No. 3 s 2.17(a)
- s 33(8) amd 1991 No. 3 s 2.17(b)
- s 33(9) amd 1989 No. 73 s 11(g)
- s 33(10) amd 1989 No. 103 s 3 Sch
- s 33(18) amd 1989 No. 73 s 11(h)
- s 33(19) sub 1990 No. 6 s 6
- s 33(23) orig s 33(23) renum s 33 (24) 1991 No. 3 s 2.17(c)  
pres s 33(23) ins 1991 No. 3 s 2.17(c)
- s 33(24) orig s 33(23) renum s 33(24) 1991 No. 3 s 2.17(c)

**Entitlement of legally assisted person to costs in proceedings**

- s 34(2)–(2A) sub 1992 No. 68 s 3 Sch 2
- s 34(4)–(9) om 1989 No. 73 s 12

**Entitlement of Commission to repayment of costs of legal assistance**

- s 34A ins 1989 No. 73 s 13  
s 34A(6)–(6A) sub 1992 No. 68 s 3 Sch 2  
s 34(10)–(12) sub 1992 No. 68 s 3 Sch 2

**Variation of requirements with respect to payment to Commission**

- s 34B ins 1989 No. 73 s 13

**Payment by Commission of costs awarded against legally assisted persons**

- s 35(1) amd 1986 No. 3 s 8(a)  
s 35(2) sub 1986 No. 3 s 8(b)  
s 35(3) amd 1986 No. 3 s 8(c)

**Notification of decisions**

- s 36(1) sub 1986 No. 3 s 9(a)  
amd 1989 No. 73 s 14  
s 36(2) amd 1986 No. 3 s 9(b)  
s 36(3) ins 1986 No. 3 s 9(c)  
s 36(4) ins 1986 No. 3 s 9(c)

**Power of court or tribunal to recommend legal assistance**

- s 36A ins 1991 No. 3 s 2.18

**Reconsideration of decisions**

- s 37 sub 1986 No. 3 s 10  
s 37(1) amd 1989 No. 73 s 15(a)  
s 37(2) amd 1989 No. 73 s 15(b)

**Appointment of members of Review Committees**

- s 39(2) amd 1990 No. 6 s 11  
s 39(3)(b) sub 1992 No. 68 s 3 Sch 2

**Function of Review Committee**

- s 40 sub 1989 No. 73 s 16

**Decision of Review Committee**

- s 41(1) sub 1986 No. 3 s 12(a)  
s 41(2) om 1986 No. 3 s 12(a)  
s 41(5) amd 1986 No. 3 s 12(b)

**Review by Commission**

- s 41A ins 1986 No. 3 s 13  
s 41A(4) amd 1989 No. 73 s 17

**Application of Fund**

- s 44 amd 1991 No. 3 s 2.19

**Return in respect of moneys held in trust where person beneficially entitled not identified or located**

- s 44A ins 1989 No. 73 s 18  
s 44A(1) amd 1990 No. 80 s 3 Sch 1; 1992 No. 68 s 3 Sch 2

**Investment**

- s 45(1) amd 1986 No. 3 s 14(a)(b)  
s 45(2) ins 1986 No. 3 s 14(c)

**Budget of Commission**

- s 47 sub 1986 No. 3 s 15  
s 47(7) om 1991 No. 3 s 2.20  
s 47(8) om 1991 No. 3 s 2.20

**Observance of budget**

- s 47A ins 1986 No. 3 s 15

**Audit and financial statement**

- s 49(9) amd 1991 No. 3 s 2.21  
s 49 om 1992 No. 68 s 3 Sch 2

**Tenure of office**

- s 50 sub 1990 No. 6 s 7  
s 50(1) amd 1991 No. 3 s 2.22

**Remuneration and allowances**

- s 51 amd 1989 No. 73 s 20; 1990 No. 6 s 8; 1991 No. 3 s 2.23

**Qualifications for appointment as President**

- prov hdg amd 1990 No. 6 s 11  
s 52 amd 1990 No. 6 s 11

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- s 53 amd 1989 No. 73 s 21; 1990 No. 6 s 9; 1991 No. 3 s 2.24

**Removal from office**

- s 54(3) sub 1990 No. 6 s 10  
amd 1991 No. 3 s 2.25

**Acting President of the Commission**

- prov hdg amd 1990 No. 6 s 11  
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s 55(2) amd 1990 No. 6 s 11  
s 55(4) amd 1990 No. 6 s 11  
s 55(5) amd 1990 No. 6 s 11  
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**Meetings**

- s 56(2) amd 1990 No. 6 s 11  
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s 56(5) amd 1990 No. 6 s 11  
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- s 61(6) amd 1989 No. 73 s 23; 1991 No. 3 s 2.26

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- s 62(1) amd 1989 No. 73 s 24(a); 1992 No. 68 s 3 Sch 2  
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**Meetings of Committee**

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**s 68(4)** amd 1990 No. 6 s 11

**s 68(5)** amd 1990 No. 6 s 11

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**s 75(2)** amd 1990 No. 6 s 11

**s 75(4)** amd 1990 No. 6 s 11

**s 75(5)** amd 1990 No. 6 s 11

**Establishment of consultative committees**

**s 77(2)** sub 1986 No. 3 s 16

**Secrecy**

**s 81(2)** amd 1991 No. 3 s 2.27(a)

**s 81(2A)** sub 1989 No. 73 s 25(a)

amd 1991 No. 3 s 2.27(b)

**s 81(2B)** ins 1986 No. 3 s 17

amd 1989 No. 73 s 25(b)

**s 81(2C)** ins 1986 No. 3 s 17

**s 81(2D)** ins 1986 No. 3 s 17

amd 1991 No. 3 s 2.27(c)

**Offence of misrepresentation**

**s 83(1)** amd 1991 No. 3 s 2.28(a)

**s 83(2)** amd 1991 No. 3 s 2.28(b)

**s 83(8)** ins 1986 No. 3 s 18

**Saving Act No. 3 of 1974**

**s 87** om 1991 No. 3 s 2.29

**Transfer of rights and liabilities**

**s 90** om 1991 No. 3 s 2.30

**Transfer of moneys**

**s 91** om 1991 No. 3 s 2.30

**Contracts**

**s 92** om 1991 No. 3 s 2.30

**Previous Committee to continue for certain purposes**

**s 93** om 1991 No. 3 s 2.30

**Previous applications for legal aid**

**s 95** om 1991 No. 3 s 2.31

**Provisions in respect of legal aid being provided by private legal practitioner**  
**s 96** om 1991 No. 3 s 2.31

**Provisions in respect to legal aid being provided by Commonwealth employees**  
**s 97** om 1991 No. 3 s 2.31

**Previous Committee staff**  
**s 98** om (see s 38 RA)

**Salary of former employees of previous Committee**  
**s 99** om (see s 38 RA)

**AMENDMENT OF THE LEGAL ASSISTANCE ACT 1965**  
**Sch** om (see s 40 RA)

## **5 Table of corrected minor errors**

### TABLE OF CORRECTED MINOR ERRORS under section 7(1)(j) of *Reprints Act 1992*

Section	Description
s 33(17)	om 'subsections (14) to (16A) provided,' ins 'subsections (14) to (16A),'
s 34(3)	om 'barrister's fees', ins 'barristers' fees'
s 34A(1)(b)	om 'barrister's fees', ins 'barristers' fees'
s 34B(2A)	om 'section 44(e)' ins 'section 44(d)'
s 85(2)	om 'cerificate', ins 'certificate'

**6 Table of renumbered provisions**TABLE OF RENUMBERED PROVISIONS  
under section 43 of *Reprints Act 1992*

Original	Renumbered as
8(2) (second sentence)	8(2A)
8(5) (second sentence)	8(6)
10(3) (second sentence)	10(3A)
11A (first sentence)	11A(1)
11A (second sentence)	11A(2)
23(5) (second sentence)	23(5A)
27(4E)(a)	27(4E)
27(4E)(b)	27(4F)
27(4E)(c)	27(4G)
29(2) (second sentence)	29(2A)
29(2) (third sentence)	29(2B)
29(2) (fourth sentence)	29(2C)
29(2A)	29(2D)
32(5) (second sentence)	32(6)
33(3A) (second sentence)	33(3B)
33(16) (second sentence)	33(16A)
34(2) (second sentence)	34(2A)
34A(4) (second sentence)	34A(4A)
34A(4) (third sentence)	34A(4B)
34A(6) (second sentence)	34A(6A)
34A(10)(a)(b)	34A(12)
34A(10)(c)	34A(10)
34A(10)(d)	34A(11)
34B(2) (second sentence)	34B(2A)
37(4) (second sentence)	37(4A)
61(6) (second sentence)	61(6A)

## **7 Transitional and savings provisions**

**Section 2.5(2), (3) of Act No 3 of 1991 provides—**

(2) The commencement of this section is not taken to affect the appointment of any Commissioner other than the Public Defender.

(3) The appointment of the Commissioner referred to in paragraph (i) of section 8(1) of the Principal Act as amended by this section may be made for the first time at any time after regulations referred to therein are made.

Subsection (3) of section 8 of the Principal Act applies pending the appointment.

## **8 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see s 5(c) *Reprints Act 1992*).

**Section 235 Sch 3 of Act No. 44 of 1992 reads as follows—**

**Section 6(1) (definition “prescribed criminal proceeding”, subparagraph (a)(ii)—**

*omit, insert—*

‘(ii) the Childrens Court exercising jurisdiction other than the jurisdiction conferred by the *Juvenile Justice Act 1992* in relation to an indictable offence;’.

**Section 3 Sch 2 (in so far as it amends section 49) of Act No. 68 of 1992 reads as follows—**

**16. Section 49—**

*omit.*