

Queensland



ANNO VICESIMO SEPTIMO

ELIZABETHAE SECUNDAE REGINAE

No. 23 of 1978

**An Act to establish the Legal Aid Commission of Queensland;  
to provide for legal assistance for persons throughout  
the State; to amend the Legal Assistance Act  
1965–1975; and for related purposes.**

[ASSENTED TO 2ND JUNE, 1978]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Legal Aid Act 1978*.
2. **Commencement.** (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;
- (b) appoint dates on which the provisions of this Act specified in the Proclamation shall come into operation.

(5) For the purposes of paragraph (b) of subsection (4) dates may be appointed in the one Proclamation or in different Proclamations.

**3. Arrangement of Act.** This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1–6);

PART II—ESTABLISHMENT AND FUNCTION OF LEGAL AID COMMISSION (ss. 7–14);

PART III—ESTABLISHMENT AND FUNCTIONS OF LEGAL AID COMMITTEES (ss. 15–17);

PART IV—OFFICERS OF COMMISSION (ss. 18–24);

PART V—PROVISION OF LEGAL ASSISTANCE BY COMMISSION (ss. 25–36);

PART VI—RECONSIDERATION AND REVIEW OF DECISIONS (ss. 37–41);

PART VII—FINANCES OF COMMISSION (ss. 42–49);

PART VIII—ADMINISTRATIVE PROVISIONS RELATING TO COMMISSION (ss. 50–63);

*Division 1—Commissioners;*

*Division 2—Officers of Commission;*

PART IX—ADMINISTRATIVE PROVISIONS RELATING TO LEGAL AID COMMITTEES (ss. 64–70);

PART X—ADMINISTRATIVE PROVISIONS RELATING TO REVIEW COMMITTEES (ss. 71–76);

PART XI—CONSULTATIVE COMMITTEES (ss. 77–79);

PART XII—MISCELLANEOUS (ss. 80–88);

PART XIII—TRANSITIONAL AND SAVINGS (ss. 89–100);

*Division 1—General;*

*Division 2—Transfer of Staff to Commission;*

SCHEDULE.

**4. Amendment of the Legal Assistance Act.** (1) The *Legal Assistance Act 1965–1975* is amended as and to the extent indicated in the Schedule.

(2) That Act as so amended may be cited as the *Legal Assistance Act 1965–1978*.

**5. Administration.** This Act shall be administered by the Minister.

**6. Interpretation.** (1) In this Act, unless the contrary intention appears—

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

“Bar Association” means the Bar Association of Queensland;

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

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- “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 Chairman of the Commission;
- “Commonwealth Legal Aid Commission” means the Commonwealth Legal Aid Commission established by the *Commonwealth Legal Aid Commission Act 1977* of the Commonwealth;
- “consultative committee” means a consultative committee established under Part XI;
- “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 connexion 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 1952-1974*;
- “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 legal assistance is provided under this Act;
- “Minister” means the Minister for Justice and Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act. The term includes any Minister of the Crown who is temporarily performing the duties of the Minister;
- “member of the staff of the Commission” means a person employed under section 21, 98 or 100;
- “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 1952-1974*;
- “previous Committee” means The Legal Assistance Committee of Queensland constituted under the *Legal Assistance Act 1965-1975*;
- “previous Fund” means The Legal Assistance Fund established under the *Legal Assistance Act 1965-1975*;
- “private legal practitioner” means a person who is practising on his 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 duly 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 his own account as a conveyancer whether alone or in partnership;

“produce” includes permit access to;

“Review Committee” means a Review Committee established under Part VI;

“solicitor” means a person duly 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 II—ESTABLISHMENT AND FUNCTION OF LEGAL AID COMMISSION

**7. Establishment of Commission.** (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;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property;
- (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 duly affixed.

**8. Constitution of Commission.** (1) Subject to subsection (2), the Commission shall be constituted by—

- (a) a Chairman;
- (b) a Commissioner nominated by the Minister;
- (c) a Commissioner nominated by the Committee or other governing body of the Bar Association;
- (d) two Commissioners nominated by the Council of the Law Society;
- (e) a Commissioner nominated by the Attorney-General of the Commonwealth; and

(f) a Commissioner nominated by the Minister who is in the opinion of the Minister an appropriate person to represent the interests of assisted persons:

(2) The Chairman and the other Commissioners shall be appointed by the Governor in Council and shall hold office on a part-time basis.

(3) The performance of the function, or the exercise of the powers, of the Commission is not affected by reason of there being a vacancy or vacancies in the membership of the Commission or the subsequent discovery of a defect in the nomination or appointment of a Commissioner.

(4) In the case of the Commissioner appointed pursuant to paragraph (e) of subsection (1) the Governor in Council may on the nomination of the Attorney-General of the Commonwealth appoint one 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 he is the deputy, entitled to attend that meeting and, when so attending has all the powers, functions and duties of a Commissioner but, in the event of the absence from a meeting of the Commission of that Commissioner, not more than one of those persons is entitled to attend that meeting at any one time.

**9. Function of Commission.** (1) The function of the Commission is to provide legal assistance in accordance with 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.

**10. Powers of Commission.** (1) The Commission may do all things necessary or convenient to be done for or in connexion 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 in accordance with section 33 (19) and (20) and shall pay any disbursements (including barristers' fees) and out-of-pocket expenses properly incurred by them.

(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) Notwithstanding 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 duties of the Commission as trustee under the *Trusts Act 1973*.

(6) The provisions of the *Trust Accounts Act 1973-1974* 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 1965-1978* 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 by reason 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 1965-1978*) 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.

**11. Duties of Commission.** (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;
- (b) ensure that its activities are carried on consistently with, and do not prejudice, the independence of the private legal profession;
- (c) liaise, co-operate 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;
- (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;
- (e) make maximum use of services which private legal practitioners offer to provide on a voluntary basis;
- (f) have regard to the recommendations of the Commonwealth Legal Aid Commission concerning the provision of legal assistance by the Commission—
  - (i) in or in connexion with a claim, right or proceeding involving a matter arising under a law of the Commonwealth;
  - (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;
- (g) liaise and co-operate with the Commonwealth Legal Aid Commission in the performance by that Commission of its functions and, in particular, provide to the Commonwealth Legal Aid Commission such statistics and other information as that Commission may reasonably require;
- (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;
- (i) subject to agreements or arrangements made between the Commonwealth and the State from time to time in that behalf determine priorities in the provision of legal assistance as between different classes of persons or classes of matters;

- (j) arrange for the provision of duty lawyer services at sittings in the State of such courts and tribunals as the Commission considers appropriate;
  - (k) endeavour to secure the services of language interpreters, marriage counsellors, welfare officers and other appropriate persons to assist legally assisted persons in connexion 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 programmes designed to promote an understanding by the public, and by sections of the public who have special needs in this respect, of their rights, powers, privileges and duties under the laws in force in the State.
- (3) Subject to and in accordance with any agreement or arrangement made between the Commonwealth and the State, the Commission may provide financial assistance to 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.

**12. Guidelines for allocation of work.** 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) the desirability of enabling a legally assisted person to obtain the services of the legal practitioner of his choice;
- (d) the desirability of maintaining the independence of the private legal profession; and
- (e) the desirability of enabling officers of the Commission to utilize and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work.

**13. Guidelines for provision of assistance.** 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;

- (b) in the application of section 29 for the purpose of determining whether legal assistance may be provided to a person under this Act;
- (c) in determining whether the granting of legal assistance to a person will be subject to either or both of the conditions mentioned in section 32 (1);
- (d) in determining the amount of costs or disbursements that will be required to be paid to the Commission under section 34 by a legally assisted person who has been successful in the proceeding in respect of which the legal assistance was provided; and
- (e) in determining the extent (if any) to which the Commission will pay costs awarded against a legally assisted person in any proceeding.

**14. Professional conduct by officers of Commission.** (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 his 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 his profession.

(2) The like privileges as those that arise from the relationship of client and solicitor acting in his professional capacity and in the course of his professional employment shall arise between 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 his own account in the State and retained by the person to act on his behalf; and
  - (ii) the members of the staff of the Commission shall be deemed 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 deemed to be a firm of solicitors lawfully practising in partnership in the State and retained by the person to act on his behalf; and
  - (ii) the members of the staff of the Commission shall be deemed to be employed by that firm.

PART III—ESTABLISHMENT AND FUNCTIONS OF LEGAL AID  
COMMITTEES

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

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

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

(3) The Commission may appoint as a member of a Legal Aid Committee one 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 his deputy, or may appoint other officers of the Commission to be his deputies, in relation to his 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 he is a legal practitioner and, where he is a solicitor, he 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 one deputy, one of the deputies, whose appointment relates to that Committee, is entitled to attend that meeting and, while so attending, shall be deemed 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 by reason 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.

**17. Functions of Committees.** (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 connexion with the performance of its functions.

PART IV—OFFICERS OF COMMISSION

**18. Director and Assistant Directors.** (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 he thinks fit to assist the Director in the performance of his functions under this Act.

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

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

**20. Duties of Director and Assistant Directors.** (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;

(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 he is pursuing, or proposes to pursue, in the exercise or discharge of his powers, authorities, duties 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.

**21. Staff of Commission.** (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 him 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 him to exercise or discharge his or its functions under this Act and such information may be given

notwithstanding any privilege arising between the officer of the Commission and a person for whom legal services are being performed by way of legal assistance pursuant to this Act.

(4) An officer of the Commission who fails in any respect to comply so far as he is able with a requirement made of him under subsection (3) is guilty of an offence.

Penalty: \$200.

**22. Delegation.** (1) The Director may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to another officer of the Commission any of his powers under this Act, other than this power of delegation.

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

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

**23. Rights of officers of Commission in respect of legal practice.** (1) A statutory officer of the Commission shall not perform any functions under this Act unless he holds a current practising certificate.

(2) A member of the staff of the Commission shall not perform any functions of a solicitor under this Act unless he 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 he would have if the Director were a solicitor lawfully practising on his 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.

(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 his 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 his 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* 1952-1974 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.

**24. Solicitor on the record.** 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 authorized in writing by the Director to sign documents on behalf of the Director for the purposes of this section, shall be deemed to be the signature of a solicitor for that party.

**PART V—PROVISION OF LEGAL ASSISTANCE BY COMMISSION**

**25. Bringing services of Commission to public notice.** 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 his duties, bring those services to the attention of the public or to the attention of particular persons.

**26. Application for legal assistance.** (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.

(2) The Commission may, in special circumstances, treat an application that does not comply with all the requirements of subsection (1) as having been duly 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 in accordance with subsections (1) and (3) and, where such a requirement is made, those subsections and sections 29 (1), (2) and (3), 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.

**27. Determination of applications for legal assistance.** (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 authorized 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;
- (b) the nature and extent of the legal assistance to be provided; and
- (c) whether the legal assistance is to be provided without charge or subject to either or both of the conditions referred to in subsection 32 (1).

(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.

(5) For the purpose of deciding an application for legal assistance, 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 Committee or officer considers desirable.

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

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

**28. Termination or variation of legal assistance.** A decision 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;
- (b) alter the nature or extent of the legal assistance;
- (c) make the provision of the legal assistance subject to a condition in accordance with section 32; or
- (d) alter a condition to which the provision of the legal assistance is subject in accordance with 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.

**29. Circumstances in which legal assistance may be provided.** (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 under this Act if, and only if—

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

(2) In the making of a decision whether a person is in need of legal assistance by reason that he is unable to afford the cost of obtaining from private legal practitioners the legal services in respect of which the legal assistance is sought, regard shall be had to all relevant matters, including the following matters:—

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

but, without limiting the generality of the preceding provisions of this section, the value of the interest of the person in the dwelling-house in which he resides shall not be taken into account as affecting the ability of the person to meet the cost of obtaining the legal services from private legal practitioners.

(3) In the making of a decision whether it is reasonable in all the circumstances to provide legal assistance to a person, regard shall be had to all relevant matters, including—

(a) the nature and extent of any benefit that may accrue to the person, to the public or to any section of the public from the provision of the assistance or of any detriment that may be suffered by the person, by the public or by any section of the public if the assistance is not provided; and

(b) in the case of assistance in relation to a proceeding in a court or before a tribunal—whether the proceeding is likely to terminate in a manner favourable to the person.

(4) Legal assistance shall not be provided under this Act to a person who is not ordinarily resident in the State unless 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.

(5) Legal assistance shall not be provided under this Act to a person in or in connexion with a review by a Review Committee under Part VI.

(6) 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 residence by the person in question or his family.

**30. Commission may assist person having interests adverse to the State etc.** 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 notwithstanding that the interests of that person are, or may be, adverse to the interests of the State or the Commonwealth, the interests of an authority or body established for a public purpose by 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.

**31. Legal advice and duty lawyer services.** (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 from time to time, without the prior authority of the Commission, a Legal Aid Committee or an officer of the Commission.

**32. Contribution towards costs and expenses.** (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 without charge or may be subject to either or both of the following conditions:—

- (a) a condition that the person pays to the Commission a contribution of a specified amount towards the cost to the Commission of providing the assistance;
- (b) a condition that the person makes a payment or payments to the Commission in respect of any out-of-pocket expenses incurred, or to be incurred, by the Commission in providing the assistance.

(2) An amount required to be paid by a legally assisted person under this section shall be paid in such manner and within such time as the Commission directs.

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

**33. Arranging for services of private legal practitioners.** (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 he is willing to act as a barrister, solicitor or conveyancer on behalf of legally assisted persons;
- (b) remove the name of a private legal practitioner from the lists maintained under that subsection; or
- (c) 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.

(3) The Commission shall not refuse to include the name of a private legal practitioner in the lists maintained under subsection (1), remove 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 or limitation; and

- (b) afforded the private legal practitioner a reasonable opportunity to be heard in relation to the proposed refusal, removal or limitation.

(4) Where the Commission has—

- (a) refused to include the name of a private legal practitioner in the lists maintained under subsection (1);
- (b) removed 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 him under subsection (3), apply to the Supreme Court, by way of originating summons, for an order directing the Commission to include his name in the lists, to restore his 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;
- (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 subsection (4), and subsection (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 any choice expressed by him 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 and their expertise in particular fields of law.

(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 any choice expressed by him 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 his partner or who is employed in his office.

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

- (a) to refuse instructions for good reason;
- (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 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 his agent, that practitioner shall be selected by the firstmentioned practitioner from the lists maintained under subsection (1).

(12) A private legal practitioner selected pursuant to subsection (7) in relation to a matter, if he 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 he 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 he 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 him, by the Commission, its officer or the Committee, as the case may be, for the purpose of performing its or his 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 he considers may assist the Commission, its officer or the Committee in the performance of its or his functions under this Act notwithstanding any privilege arising out of the relationship between the practitioner and his client.

(16) With respect to the disclosure or giving of any information or opinion pursuant to subsections (14) or (15) it shall be deemed that the legally assisted person or client concerned has waived any privilege or right that might preclude such disclosure or giving. No matter or thing done by a legal practitioner in good faith and without negligence pursuant to subsection (14) or (15) shall subject the legal practitioner concerned to any liability in respect thereof.

(17) Save as is in subsections (14), (15) and (16) provided, the relationship and, any privilege or other right arising out of the relationship between a private legal practitioner and his client shall not be affected by the fact that the legal practitioner is performing services for a legally assisted person pursuant to 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 he is entitled under section 10.

(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 Council of the Law Society and the Bar Association and shall take into account the views of those bodies.

(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 connexion 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) 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.

**34. Entitlement of legally assisted person to costs in proceedings.** (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 deemed to be liable to pay all professional costs ordinarily payable in respect of the legal services provided to him in or in connexion with that proceeding and any disbursements (including barristers' fees) and out-of-pocket expenses incurred in or in connexion with the provision of those services.

(2) The circumstance of a party to a proceeding being a legally assisted person does not affect the rights or liabilities of the legally assisted person or any other party to the proceedings, or affect the principles on which the discretion of a court or tribunal is ordinarily exercised, on the question of costs; and costs may be awarded in favour of or against a person receiving legal assistance as though he were not a legally assisted person but an order shall not be made by a court or tribunal in respect of costs incurred by an unassisted person in any proceedings in which apart from this Act, no order would be made for the payment of his costs.

(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 barrister's fees or otherwise) merely because the amount thereof has not been paid prior to the taxation.

(4) Where an amount is recoverable by a legally assisted person (whether in a proceeding or by virtue of a settlement or compromise) in respect of the matter in which the legal assistance was given, the person is liable to pay to the Commission an amount equal to so much of that amount as the Director, having regard to guidelines determined by the Commission in pursuance of paragraph (d) of section 13, 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 proceeding or matter in respect of which legal assistance was provided; and
- (b) any disbursements (including barrister's fees) and out-of-pocket expenses incurred in or in connexion with the provision of those services,

exceeds any amount, or the sum of any amounts, paid by the person to the Commission under section 32 in relation to the legal assistance.

(5) In determining the amount that a legally assisted person is liable to pay under subsection (4), the Director shall have regard to—

- (a) the amount actually recovered by the legally assisted person; and
- (b) any failure by the legally assisted person to take action to recover the amount recoverable, including any failure to comply with a direction of the Director under subsection (6).

(6) The Director may give directions to a legally assisted person requiring the person to take specified action to recover an amount that is recoverable by the person in respect of the matter in which legal assistance was given.

(7) Where an amount is recoverable by a legally assisted person (whether in a proceeding or by virtue of a settlement or compromise) in respect of the matter in which the legal assistance was given, the Director may, by writing under his hand, direct the legally assisted person to assign his right to recover the amount to the Commission within 21 days after the day on which the direction is given.

(8) Where a legally assisted person fails to comply with a direction under subsection (7) to assign to the Commission his right to recover an amount as referred to in that subsection, the legally assisted person shall be deemed to have assigned to the Commission his right to recover the amount at the expiration of the period referred to in that subsection and, for the purpose of recovering the amount, 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 action or other proceeding at law or in equity to recover the amount.

(9) The amount that a person is liable to pay to the Commission under subsection (4) is recoverable by the Commission by action in a court of competent jurisdiction as a debt due and payable to the Commission.

**35. Payment by Commission of costs awarded against legally assisted persons.** (1) Where—

- (a) legal assistance is provided under this Act to a person in relation to a proceeding (other than a cross-proceeding) instituted by that person in a court or before a tribunal; 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, in accordance with guidelines determined by the Commission in pursuance of paragraph (e) of section 13—

- (a) if the question whether legal assistance should be granted in relation to the proceeding was decided by an officer of the Commission—by a statutory officer of the Commission; or  
(b) if that question was decided by a Legal Aid Committee—by a Legal Aid Committee.

(3) Subject to subsection (4), the Commission shall pay so much (if any) of the amount requested to be paid as the statutory officer of the Commission or the Legal Aid Committee, as the case may be, 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 deemed to have been paid by the legally assisted person.

(6) Where a person is legally assisted in connexion 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.

**36. Notification of decisions.** (1) Where a decision in relation to the provisions of legal assistance or in relation to the making of any payment in respect of costs, including a decision reconsidering or reviewing a previous decision, is made by an officer of the Commission or by a Legal Aid Committee under this Act, the Commission shall, within 14 days after the decision is made, communicate the decision to the person who applied for the legal assistance or for the payment, as the case may be, and, in a case where the decision is a decision refusing to provide, or imposing a condition on the provision of legal assistance under this Act, the Commission, if requested to do so, shall 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 particulars of the right of the person to have the decision reconsidered and reviewed in accordance with 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 authorized by the person.

**PART VI—RECONSIDERATION AND REVIEW OF DECISIONS**

**37. Reconsideration of decisions.** (1) Where a decision, other than 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;
- (b) refusing to provide legal assistance under this Act of the nature, or to the extent, applied for;
- (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;
- (d) terminating 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; or
- (e) refusing to pay the whole or a part of any amount that the Commission has been requested to pay under section 35,

the person who applied for the legal assistance or for the payment may, by notice in writing to the Commission, request that the decision be reconsidered.

(2) Where a notice requesting that a decision be reconsidered is received by the Commission, the decision shall be reconsidered—

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

and may either be confirmed or varied.

(3) Where a decision is confirmed or varied following a reconsideration of the decision under subsection (2), the person who requested the reconsideration may, by notice in writing to the Commission, request the Commission to refer the decision, or the decision as varied, as the case may be, to a Review Committee for review and the Commission shall comply with any such request.

(4) 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.

**38. Establishment and Constitution of Review Committees.** (1) For the purposes of this Act, there shall be such Review Committees as the Commission, by resolution, establishes in accordance with this Part.

(2) A Review Committee shall consist of—

- (a) a private legal practitioner who is not a member of the Commission;
- (b) a Commissioner who is a legal practitioner or an officer of the Commission who is a legal practitioner and, where he 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

**39. Appointment of members of Review Committees.** (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 Chairman 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 paragraph (a) of section 38 (2)—a private legal practitioner;
- (b) in the case of a member referred to in paragraph (b) of section 38 (2)—a Commissioner who is a legal practitioner or an officer of the Commission who is a legal practitioner and, where he is a solicitor, the holder of a current practising certificate according as the member whose deputy is being appointed is a Commissioner or an officer of the Commission; and
- (c) in the case of a member referred to in paragraph (c) of section 38 (2)—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 deemed to be a member of the Review Committee.

(5) The performance of the function of a Review Committee is not affected by reason 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 his so acting has not arisen or that his appointment has ceased to have effect.

**40. Function of Review Committee.** The function of a Review Committee is to review decisions referred to the Committee under section 37 (3).

**41. Decision of Review Committee.** (1) A Review Committee that reviews a decision of an officer of the Commission or of a Legal Aid Committee referred to it under section 37 (3) (in this section referred to as a "primary decision") shall give a decision in writing—

- (a) confirming the primary decision;
- (b) varying the primary decision; or
- (c) setting aside the primary decision and making a decision in substitution for the primary decision.

(2) A primary decision as varied by a Review Committee, or a decision made by a Review Committee in substitution for a primary decision, shall, for the purposes of this Act (other than section 37 (3)), be deemed to be a decision made by the officer of the Commission who, or the Legal Aid Committee which, made the primary 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) The decision of a Review Committee shall be final and conclusive.

#### PART VII—FINANCES OF COMMISSION

**42. Establishment of Fund.** (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);
- (b) moneys paid to the Commission in pursuance of the *Legal Assistance Act 1965–1978* or any other Act;
- (c) moneys paid to the Commission, being moneys appropriated by Parliament for the purposes of the Commission;
- (d) moneys made available by the Commonwealth for the purpose of the provision of legal assistance;
- (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.

**43. Bank accounts.** (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 one 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 deemed 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.

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

- (a) in the discharge of obligations and liabilities of the Commission arising in or in connexion with the provision of legal assistance under this Act;
- (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;
- (c) in the payment of other remuneration and allowances payable under this Act;
- (d) in the discharge of obligations and liabilities of the Commission arising under Division 1 of Part XIII; and
- (e) for such other purposes as are necessary in order for the Commission to properly exercise and perform its powers and function under this Act.

**45. Investment.** 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 of the Commonwealth;
- (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;
- (e) with any dealer in the short term money market, approved by the Reserve Bank of Australia as an authorized 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.

**46. Power to borrow with approval of Minister.** 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.

**47. Estimates of Expenditure.** (1) The Commission shall prepare estimates, in such form as the Minister directs, of receipts and expenditure of the Commission for each financial year and, if the Minister so directs, for any other period specified by the Minister, and shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

(2) Moneys of the Commission (other than moneys held by the Commission on trust) shall not be expended otherwise than in accordance with estimates of expenditure approved by the Minister.

**48. Proper accounts to be kept by Commission.** The Commission shall cause to be kept, in such a manner as to disclose the true position in regard thereto 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 authorized 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.

**49. Audit and financial statement.** (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 pursuant to 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 1946-1975* 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 forthwith upon completion of the audit report to the Auditor-General the result thereof;
- (b) may require the Commission and any officer of the Commission to produce to him for his 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 him as he thinks fit;
- (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 he 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 him by the *Audit Act 1874-1968* or any Act passed in substitution therefor.

(6) The Commission and any other person to whom a requisition is directed pursuant to subsection (4) shall, so far as it or he is able, forthwith comply with the requisition so directed to it or him.

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

(8) The Auditor-General or, as the case may be, the person or persons appointed pursuant to 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. Penalty: \$200.

## PART VIII—ADMINISTRATIVE PROVISIONS RELATING TO COMMISSION

### *Division 1—Commissioners*

**50. Tenure of office.** Subject to this Division, a Commissioner holds office for such period, not exceeding—

(a) in the case of the Chairman of the Commission—five years; or

(b) in the case of a Commissioner other than the Chairman—three years,

as is specified in the instrument of his appointment, but is eligible for re-appointment.

**51. Remuneration and allowances.** A Commissioner shall be paid such remuneration and such allowances as may from time to time be fixed by the Governor in Council on the recommendation of the Minister.

**52. Qualifications for appointment as Chairman.** A person is not eligible for appointment as the Chairman of the Commission unless he 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 five years.

**53. Resignation.** A Commissioner may resign his office by writing under his hand delivered to the Minister.

**54. Removal from office.** (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 his creditors or makes an assignment of his remuneration for their benefit;

(b) is absent, except by leave of the Minister, from three consecutive meetings of the Commission;

- (c) is convicted of an indictable offence for which he is liable to be punished by imprisonment for 12 months or more; or
  - (d) fails to comply with his obligations under section 57,
- the Governor in Council may remove him from office.

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

- (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 Chairman is, or is expected to be, absent from duty or from the State or is, for any reason, unable to perform the duties of his 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 Chairman 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 Chairman of the Commission in accordance with paragraph (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 occurrence of the vacancy, whichever first happens.

(5) A person appointed to act in the office of Chairman of the Commission may resign his appointment by writing under his hand delivered to the Minister.

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

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

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

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

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

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

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

(6) If the Chairman of the Commission is not present at a meeting of the Commission, the Commissioners present shall elect one 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.

**57. Interests to be disclosed.** (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 he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest 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*

**58. Conditions of appointment.** (1) A statutory officer of the Commission holds office for such period, not exceeding five years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(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 from time to time determines with the approval of the Public Service Board.

(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.

**59. Resignation and removal from office.** (1) A statutory officer of the Commission may resign his office by writing under his 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;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (c) is convicted of an indictable offence for which he 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 him from office.

**60. Outside employment.** Except in the performance of the duties of his 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.

**61. Acting appointments.** (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 his 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 in accordance with paragraph (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 occurrence of the vacancy, whichever first happens.

(5) A person appointed to act in the office of a statutory officer of the Commission may resign his appointment by writing under his 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, he has all the rights, powers and privileges, and is subject to all the duties, of the statutory officer of the Commission.

(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 his appointment had not arisen or that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

**62. Terms and conditions generally.** (1) The terms and conditions of employment of members of the staff of the Commission are, subject to this Act, such as are from time to time determined by the Commission with the approval of the Public Service Board.

(2) The *Public Service Act* 1922–1976 does not apply to or in relation to officers of the Commission.

**63. Certain provisions of the Queensland Law Society Act 1952–1974 and The Costs Act of 1867 not to apply to officers of Commission.** Nothing in sections 10, 11, 11A and Part III of the *Queensland Law Society Act* 1952–1974 and *The Costs Act* of 1867 applies to or in relation to an officer of the Commission in his official capacity.

#### PART IX—ADMINISTRATIVE PROVISIONS RELATING TO LEGAL AID COMMITTEES

**64. Tenure of office.** A member of a Legal Aid Committee other than the Director holds office, subject to this Part, for a period of one year, but is eligible for re-appointment.

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

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

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

**67. Removal from office.** (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 his creditors;

(b) is absent, except by leave of the Chairman of the Committee from three consecutive meetings of the Committee;

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

(d) fails to comply with his obligations under section 70,  
the Commission may remove him from office.

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

(2) The Chairman 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, three members of the Committee constitute a quorum.

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

(5) If the Chairman 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 Chairman 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.

**69. Remuneration and allowances.** Members of a Legal Aid Committee shall be paid such remuneration and allowances in respect of the performance of their functions as are from time to time fixed by the Commission and approved by the Minister.

**70. Interests to be disclosed.** (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 he is not a director, shall as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest 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 X—ADMINISTRATIVE PROVISIONS RELATING TO REVIEW COMMITTEES**

**71. Tenure of office.** A member of a Review Committee holds office, subject to this Part, for a period of one year, but is eligible for re-appointment.

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

**73. Removal from office.** (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 his creditors;
- (b) is absent, except by leave of the Commission, from three consecutive meetings of the Review Committee;
- (c) is convicted of an indictable offence for which he is liable to be punished by imprisonment for 12 months or more; or
- (d) fails to comply with his obligations under section 76,

the Commission may remove him from office.

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

**75. Meetings of Review Committee.** (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 Chairman of the Committee or, if for any reason the Chairman is unavailable, by another member of the Committee.

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

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

(5) If the Chairman of a Review Committee is not present at a meeting of the Committee, the members present shall elect one 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.

**76. Interests to be disclosed.** (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 he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest 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 XI—CONSULTATIVE COMMITTEES

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

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

**78. Constitution of consultative committees.** (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;
- (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 one year, but are eligible for re-appointment.

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

**79. General provisions relating to consultative committees.** (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 from time to time fixed by the Commission and approved by the Minister.

## PART XII—MISCELLANEOUS

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

(2) The Commission has the same liability for acts or omissions by an officer of the Commission in the course of the performance of his duties as a master has for any acts or omissions by his servants.

(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 he 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.

**81. Secrecy.** (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 him by reason of his 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.

Penalty: \$1 000 or imprisonment for 6 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 he has the custody, or to which he has access, by virtue of his office or employment under or for the purposes of this Act or 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 him by reason 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.

**82. Commission to operate as "Legal Aid Office (Queensland)".**

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

(2) The *Business Names Act* 1962-1976 does not apply to or in relation to the Commission.

**83. Offence of misrepresentation.** (1) A person shall not—

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

Penalty: \$1 000 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 he is required by the Commission to furnish is guilty of an offence.

Penalty: \$1 000 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;
- (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 by reason 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 by reason 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 deemed to be such a certificate and to have been duly given.

**84. Proceedings under this Act.** (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 authorized by the Director to institute proceedings on behalf of the Commission.

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

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

(a) the constitution of the Commission;

(b) the authority of any 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.

**85. Certificate as to amounts owing to Commission.** (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 firstmentioned 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 deemed to be such a certificate and to have been duly given.

**86. Annual report and financial statement.** (1) The Commission shall, as soon as practicable after each 30th 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 pursuant to 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.

**87. Saving Act No. 3 of 1974.** Nothing in this Act affects the operation of the *Public Defence Act* 1974.

**88. Regulations.** 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 XIII—TRANSITIONAL AND SAVINGS

*Division 1—General*

**89. Interpretation.** 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.

**90. Transfer of rights and liabilities.** Upon the commencing day—

- (a) all rights and property that, immediately before the commencing day, were vested in the previous Committee are, by force of this section, vested in the Commission; and
- (b) the Commission is, by force of this section, liable to perform all the duties, and to discharge all the liabilities and obligations of the previous Committee that existed immediately before the commencing day.

**91. Transfer of moneys.** (1) Upon the commencing day—

- (a) any moneys that, immediately before the commencing day, were in the previous Fund shall, by force of this section, form part of the Legal Aid Fund established by section 42;
- (b) any moneys that immediately before the commencing day were for the time being invested pursuant to section 11 of the *Legal Assistance Act 1965–1975* shall by force of this section form part of the Legal Aid Fund established by section 42 and shall be deemed to be invested pursuant to section 45; and
- (c) any amounts that, immediately before the commencing day, were required to be paid out of the previous Fund, shall be paid out of the Legal Aid Fund established by section 42.

(2) Where under the provisions of any Act any moneys are required to be paid or applied to The Legal Assistance Fund established under the *Legal Assistance Act 1965–1975*, those moneys shall, on and after the commencing day, be payable to the Commission for the purposes of the Legal Aid Fund established by section 42.

**92. Contracts.** Any contract or other instrument subsisting immediately before the commencing day to which the previous Committee was a party has effect after the commencing day as if—

- (a) the Commission were substituted for the previous Committee as a party to the contract or other instrument; and
- (b) any reference in the contract or other instrument to the previous Committee were (except in relation to matters that occurred before the commencing day) a reference to the Commission.

**93. Previous Committee to continue for certain purposes.** (1) Notwithstanding the repeal of sections 5 to 8 of the *Legal Assistance Act 1965–1975*, the previous Committee, as constituted immediately before the commencing day, shall, for the purpose of complying with its obligations under subsection (2), continue in existence until it has complied with those obligations.

(2) As soon as practicable after the commencing day, the previous Committee shall—

- (a) pay to the Commission any moneys standing to the credit of the previous Fund;

- (b) deliver to the Commission any movable property (including files and other records) that is vested in the Commission in pursuance of paragraph (a) of section 90; and
- (c) prepare and furnish to the Minister a report on its operation during the period that—
  - (i) commenced at the expiration of the last period in respect of which that Committee prepared a report under section 14 of the *Legal Assistance Act* 1965–1975; and
  - (ii) ended immediately before the commencing day,
 together with a statement of accounts in respect of that period.

(3) Section 13 of the *Legal Assistance Act* 1965–1975 (notwithstanding the repeal thereof by this Act) has effect for the purposes of the preparation and furnishing of the report and statement of accounts referred to in subsection (2) in like manner as, before that repeal, that section had effect for the purposes of the preparation and furnishing of reports and statements of accounts referred to in sections 13 and 14 of the said *Legal Assistance Act*.

(4) The Commission shall provide the previous Committee with such clerical and other assistance as is reasonably required by that Committee to enable it to prepare the report and financial statements referred to in subsection (2) and is liable to pay and discharge any debts and liabilities incurred by that Committee in connexion with the preparation and furnishing of the report and financial statements.

**94. State may enter into agreements and arrangements.** (1) The State may from time to time 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;
- (b) the priorities to be observed in the provision of legal assistance as between classes of persons or classes of matters, or both;
- (c) the sharing of—
  - (i) the costs of establishing the Commission; and
  - (ii) operational costs incurred in the provision of legal assistance by the Commission;
- (d) the transfer to the staff of the Commission of persons who are eligible persons within the meaning of section 100;
- (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;
- (f) any matter incidental to a matter mentioned in paragraph (a), (b), (c), (d) or (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.

**95. Previous applications for legal aid.** (1) Where an application for legal aid made—

- (a) under the provisions of the *Legal Assistance Act* 1965–1975; or

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

had not been determined before the commencing day, the application shall be deemed to be an application for legal assistance duly made to the Commission on the commencing day.

- (2) Where—

- (a) the previous Committee; or
- (b) the Australian Legal Aid Office in the course of its operations in this State,

decided before the commencing day to grant legal aid to a person and the person was being, or about to be, provided with legal aid in accordance with that decision immediately before the commencing day, this Act has effect as if—

- (a) the grant of that legal aid were the provision of legal assistance under this Act; and
- (b) in a case where the grant of legal aid was subject to conditions—any legal assistance provided to the person under this Act were subject to the same conditions.

**96. Provisions in respect of legal aid being provided by private legal practitioner.** (1) Where, at or before the commencing day, a private legal practitioner is performing or has agreed to perform services on behalf of a person by way of legal aid—

- (a) under the *Legal Assistance Act 1965–1975*; or
- (b) in the course of the operations in this State of the Australian Legal Aid Office,

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

(2) Notwithstanding subsection (1), where pursuant to that subsection services originally performed or agreed to be performed by way of legal aid under the *Legal Assistance Act 1965–1975* or in the course of operations in this State of the Australian Legal Aid Office are performed by way of legal assistance under this Act, the private legal practitioner by whom those services are performed shall be entitled to receive from the Commission, in respect of those services, an amount not less than the sum of the amounts that he would have been entitled to receive if the services had been wholly performed under the *Legal Assistance Act 1965–1975* or, as the case may be, in the course of the operations in this State of the Australian Legal Aid Office.

**97. Provisions in respect to legal aid being provided by Commonwealth employees.** (1) Where, before the commencing day, the Australian Legal Aid Office is, through its staff in this State, performing services on behalf of a person by way of legal aid, then, as from the commencing day, those services shall, so far as is necessary, be performed on behalf of that person by the Commission through its staff.

(2) Upon the commencing day, the Director shall be deemed, by force of this section, to be the solicitor for a person in any proceeding in a court, or in any matter, in which an officer or employee in the Australian Legal Aid Office was acting in the course of the operations of the Australian Legal Aid Office in this State as the solicitor for that person immediately before the commencing day.

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*Division 2—Transfer of Staff to Commission*

**98. Previous Committee staff.** (1) On the commencing day—

(a) any legal practitioner who—

- (i) was immediately before that day employed on a full-time or part-time basis by the previous Committee; and
- (ii) has, before that day, indicated in writing to the Commission that he wishes to become an employee of the Commission; and

(b) any person who—

- (i) was, immediately before that day, employed by the previous Committee and engaged wholly or partly in the administration of the scheme of legal assistance administered by the Committee under the *Legal Assistance Act 1965–1975*; and
- (ii) has before that day indicated in writing to the Commission that he wishes to become an employee of the Commission,

shall become an employee of the Commission.

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

**99. Salary of former employees of previous Committee.** (1) In this section “transferred employee” means a person who becomes an employee of the Commission pursuant to section 98 (1).

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

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

**100. ALAO employees.** (1) Where an agreement or arrangement entered into pursuant to 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);
- (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 him pursuant to 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 him pursuant to 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 pursuant to subsection (3) or (4), the person shall, subject to any terms and conditions of employment relating to a reduction in salary by reason 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 pursuant to 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.

## SCHEDULE

### AMENDMENT OF THE LEGAL ASSISTANCE ACT 1965–1975

#### (Section 4 (1))

Provision Amended	Amendment
Section 2 .. .. .	Section 2 is amended by omitting the words “PART III—LEGAL ASSISTANCE;”.
Section 3 .. .. .	Section 3 is amended by— (a) omitting the definitions “Assisted person”, “Legal assistance”, “Scheme”, and “Year”; (b) omitting the definitions “Committee”, and “Fund” and substituting the following definitions:— ““Commission”—Legal Aid Commission of Queensland established by the <i>Legal Aid Act</i> 1978;

## SCHEDULE—continued

## AMENDMENT OF THE LEGAL ASSISTANCE ACT 1965-1975—continued

Provision Amended	Amendment
	<p>“Fund” or “Legal Aid Fund”—Legal Aid Fund established by the <i>Legal Aid Act 1978</i>;</p> <p>(c) omitting from the definitions “Guarantee Fund” and “Society” the words ““<i>The Queensland Law Society Acts, 1952 to 1963</i>”” and substituting in each case the words “the <i>Queensland Law Society Act 1952-1974</i>”.</p>
Section 4      ..      ..	Section 4 is amended by omitting the words “the Committee and”.
Sections 5-8 (inclusive)	Sections 5-8 (inclusive) are repealed.
Section 9      ..      ..	<p>Section 9 is amended by—</p> <p>(a) omitting from subsection (1) the word “Committee” and substituting the word “Commission”;</p> <p>(b) omitting subsection (2).</p>
Section 10      ..      ..	<p>Section 10 is amended by—</p> <p>(a) omitting the words ““<i>The Trust Accounts Acts, 1923 to 1959</i>,”” wherever occurring and substituting in each case the words “the <i>Trust Accounts Act 1973-1974</i>”;</p> <p>(b) in subsection (5), omitting the words “The Legal Assistance Fund” (where twice occurring) and substituting in each case the words “the Legal Aid Fund”;</p> <p>(c) in subsection (7)—</p> <p>(i) omitting the words ““<i>The Public Accountants Registration Acts, 1946 to 1963</i>,”” and substituting the words “the <i>Public Accountants Registration Act 1946-1975</i>”;</p> <p>(ii) omitting the word “Committee” and substituting the word “Commission”;</p> <p>(d) in subsection (10), omitting the words ““<i>The Queensland Law Society Acts, 1952 to 1963</i>,”” and substituting the words “the <i>Queensland Law Society Act 1952-1974</i>”.</p>
Sections 11-30 (inclusive)	Sections 11-30 (inclusive) are repealed.
Section 31      ..      ..	Section 31 is amended by omitting from subsection (1) the words “the Committee, or any local committee, or by”, the words “Committee or any local committee or of the” and the words “Committee, local committee,”.

SCHEDULE—*continued*AMENDMENT OF THE LEGAL ASSISTANCE ACT 1965–1975—*continued*

Provision Amended	Amendment
Section 32 .. ..	Section 32 is amended by— (a) omitting from subsection (2) the words ““ <i>The Justices Acts, 1886 to 1964.</i> ”” and substituting the words “the <i>Justices Act 1886–1977.</i> ”; (b) omitting from subsection (4) the word “Committee” and substituting the word “Commission”.
Section 33 .. ..	Section 33 is amended by omitting the words “one hundred pounds” and substituting the expression “\$200”.
Section 34 .. ..	Section 34 is amended by omitting subsection (3).
Schedule .. ..	The Schedule is amended by— (a) omitting clauses 1, 2, 6–10 (inclusive); (b) in clause 5 omitting the words “, the Committee, any local committee, and others” and substituting the words “and the Commission”.