

**LEGAL SERVICES COMMISSION (AMENDMENT) ACT, 1985,  
No. 86**

New South Wales



ANNO TRICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 86, 1985.**

An Act to amend the Legal Services Commission Act, 1979, to reconstitute the Legal Services Commission of New South Wales, and for other purposes. [Assented to, 4th June, 1985.]

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See also Statutory and Other Offices Remuneration (Legal Services Commission) Amendment Act, 1985.

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

1. This Act may be cited as the "Legal Services Commission (Amendment) Act, 1985".

**Commencement.**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal Act.**

3. The Legal Services Commission Act, 1979, is referred to in this Act as the Principal Act.

**Amendment of Act No. 78, 1979.**

4. The Principal Act is amended in the manner set forth in Schedule 1.

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## SCHEDULE 1.

(Sec. 4.)

## AMENDMENTS TO THE PRINCIPAL ACT.

## (1) Long title—

Omit “Legal Services Commission of New South Wales”, insert instead “Legal Aid Commission of New South Wales”.

## (2) Section 1—

Omit “Legal Services Commission Act, 1979”, insert instead “Legal Aid Commission Act, 1979”.

## (3) Section 3—

Omit the section.

## (4) (a) Section 4 (1), definition of “Commission”—

Omit “Legal Services Commission of New South Wales”, insert instead “Legal Aid Commission of New South Wales”.

## (b) Section 4 (1), definitions of “Deputy Chairman”, “Deputy Public Solicitor”, “officer of the Commission”, “Public Solicitor”, “Referrals Director”, “statutory officer of the Commission”—

Omit the definitions.

## (c) Section 4 (1), definition of “Director”—

Before the definition of “functions”, insert:—

“Director” means the person appointed under section 14 (1) as Director of the Commission;

## (d) Section 4 (1), definition of “Legal Aid Committee”—

Omit the definition.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 4 (1), definition of “private legal practitioner”—

Omit “legal services and is staffed by persons wholly or predominantly on a voluntary basis”, insert instead “community legal services”.

(5) Part II, heading—

Omit “LEGAL SERVICES COMMISSION OF NEW SOUTH WALES.”, insert instead “LEGAL AID COMMISSION OF NEW SOUTH WALES.”.

(6) (a) Section 6 (1)—

Omit “Legal Services Commission of New South Wales”, insert instead “Legal Aid Commission of New South Wales”.

(b) Section 6 (2)—

Omit the subsection.

(7) Section 7—

Omit the section, insert instead:—

**Commissioners.**

7. The Commission shall consist of 8 commissioners, of whom—

(a) 1 shall be the person holding office or acting as Director; and

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) 7 shall be appointed by the Minister as part-time commissioners.

(8) Section 8 (1) (g)—

Omit “legal services and are staffed by persons wholly or predominantly on a voluntary basis”, insert instead “community legal services”.

(9) (a) Section 10 (1)—

Omit “legal services, including legal aid.”, insert instead “legal aid and other legal services”.

(b) Section 10 (2) (c)—

Omit the paragraph.

(10) Section 11 (b)—

Omit “officers”, insert instead “the Director or members of staff”.

(11) (a) Section 12 (e)—

Omit “officers”, insert instead “the Director or members of staff”.

(b) Section 12 (g)—

Omit “offices of the Public Solicitor and”, insert instead “office of”.

(c) Section 12 (i)—

Omit “or its officers”, insert instead “, the Director or members of staff of the Commission”.

(12) Part II, Division 3—

Omit the Division, insert instead:—

DIVISION 3.—*Director of the Commission.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

**Director.**

14. (1) The Minister may appoint a person who is a solicitor of the Supreme Court and who holds a current practising certificate to be the Director of the Commission.

(2) The Director—

(a) is responsible, as the chief executive officer of the Commission, for the management of the affairs of the Commission subject to and in accordance with any directions of the Commission; and

(b) shall have and may exercise such other functions as are conferred or imposed on the Director by or under this or any other Act.

**Provisions relating to Director.**

15. (1) The Director shall devote the whole of his or her time to the duties of the office of Director.

(2) Schedule 4 has effect with respect to the Director.

**Preservation of certain rights of Director.**

16. Schedule 5 has effect with respect to the preservation of the rights of certain persons on appointment as Director.

(13) Section 23—

Omit “Public Service Act, 1902” wherever occurring, insert instead “Public Service Act, 1979”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(14) Section 24—

Omit the section, insert instead:—

**Performance of functions of solicitor.**

24. (1) The Director or a member of staff of the Commission shall not perform any functions of a solicitor under this Act unless the Director or member of staff holds a current practising certificate.

(2) In practising as, or performing the functions of, a solicitor under this Act—

(a) the Director has all the functions of a solicitor practising on the solicitor's own account;

(b) a member of staff of the Commission has all the functions of a solicitor employed by a person practising as a solicitor on the person's own account; and

(c) the Director and each member of staff of the Commission—

(i) 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 that profession; and

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(ii) are 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 that profession.

(3) Nothing in this section affects the operation of section 25.

(15) (a) Sections 25 (3), 26, 27—

Omit “or an officer” wherever occurring, insert instead “, the Director or a member of staff”.

(b) Sections 25 (1), 48—

Omit “an officer” wherever occurring, insert instead “the Director or a member of staff”.

(16) Section 27—

Omit “or the officer”, insert instead “, the Director or the member of staff”.

(17) (a) Section 28 (b)—

Omit “by an officer”, insert instead “by the Director or a member of staff”.

(b) Section 28—

Omit “Public Solicitor” wherever occurring, insert instead “Director”.

(c) Section 28—

Omit “of an officer” insert instead “of a member of staff”



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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(18) Section 29 (2) (b)—

Omit the paragraph.

(19) (a) Section 30 (1)—

Omit “subsection (2)”, insert instead “subsection (2) or (4)”.

(b) Section 30 (4)—

After section 30 (3), insert:—

(4) Where the Commission determines in accordance with subsection (2) to provide legal aid in the form of a grant of money for specified purposes, sections 34 (6)–(8), 41 and 47 do not apply to the provision of the legal aid if the Commission, in the terms and conditions on which that legal aid is provided, so determines.

(20) (a) Section 34 (3) (a), (b)—

After “criminal offence” wherever occurring, insert “or such other proceedings as the Commission may from time to time determine”.

(b) Section 34 (6)–(8)—

After section 34 (5), insert:—

(6) As soon as practicable after the commencement of proceedings (not being proceedings with respect to a criminal offence), a solicitor acting on behalf of a legally assisted person

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

shall give notice to the other parties, if any, to the proceedings of the fact that the solicitor is acting for a legally assisted person.

(7) Where the solicitor referred to in subsection (6) is a private legal practitioner, the solicitor shall advise the Commission in writing, within 7 days of giving notice under that subsection, that notice has been given.

(8) A notice given under subsection (6)—

(a) shall be in writing;

(b) shall contain a reference to the effect of section 47; and

(c) may be given in any manner authorised for the service of process in the proceedings to which the notice relates.

(21) Sections 34 (4), 38 (4), 47 (6), 56 (1) (a)—

Omit “specified by the Commission pursuant to section 10 (2) (c)” wherever occurring, insert instead “acting in pursuance of a delegation or authorisation under section 69”.

(22) Section 35 (3)—

Omit “shall include”, insert instead “may include”.

(23) Section 38A—

After section 38, insert:—

**Notification of changes.**

38A. (1) Where—

(a) a legally assisted person or a private legal practitioner representing a legally assisted person becomes aware of a change in the means or circumstances of the legally assisted person or in any other matter relating to the grant of legal aid to the legally assisted person; and

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) the change is of such a nature that the legally assisted person or private legal practitioner, as the case may be, ought reasonably to suspect that the Commission might terminate the provision of legal aid or alter the nature or extent of the legal aid,

the legally assisted person or private legal practitioner, as the case may be, shall forthwith notify the Commission in writing of the change.

(2) Subsection (1) has effect notwithstanding any privilege that may arise from the relationship between a solicitor acting in a professional capacity and the solicitor's own client.

(24) Section 43A—

After section 43, insert:—

**Payment of costs to private legal practitioner.**

43A. The Commission may defer payment of any fees payable by it to a private legal practitioner in connection with proceedings in respect of which legal aid was granted until such time as it is satisfied that the practitioner has taken reasonable steps to recover any party and party costs to which the legally assisted person is entitled.

(25) Section 46—

Omit the section, insert instead:—

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

**Liability of legally assisted person to pay costs and expenses.**

46. (1) The Director shall—

- (a) at the conclusion of a matter for which legal services were provided to a legally assisted person; or
- (b) where a legally assisted person ceases to be a legally assisted person,

whichever first occurs, determine the amount, if any, payable to the Commission by the person in respect of the costs and expenses of the legal services provided to the person as a legally assisted person.

(2) The amount payable under subsection (1) shall not exceed the amount by which the sum of—

- (a) the costs, assessed as between solicitor and client, of the legal services provided; and
- (b) any disbursements (including barrister's fees) and out-of-pocket expenses incurred in or in connection with the provision of those services.

exceeds any amount, or the sum of any amounts, paid by the legally assisted person to the Commission under section 36 (1) (a).

(3) The Commission may recover an amount payable to it under subsection (1) as a debt in a court of competent jurisdiction.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) For the purposes of subsection (2), a reference to costs, assessed as between solicitor and client, or to barrister's fees is a reference to costs or fees assessed as if the legally assisted person were not a legally assisted person.

(5) This section does not apply in respect of proceedings to which section 48 applies.

(26) Section 48 (a) (i)—

Omit "the officer", insert instead "the Director or member of staff".

(27) Part III, Division 2 (sections 49–52)—

Omit the Division.

(28) (a) Section 63 (1)—

Omit "There", insert instead "Except as provided by section 64A, there".

(b) Section 63 (1) (h)—

Omit "direction under section 46 (2c) (a)", insert instead "determination under section 46 (1)".

(c) Section 63 (3), (4)—

After section 63 (2), insert:—

(3) The Commission shall maintain a separate account or accounts in the Fund for money—

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(a) received for or on behalf of a legally assisted person by a private legal practitioner when acting as a solicitor on behalf of the person; or

(b) otherwise payable to a legally assisted person, not being money payable into the trust account referred to in section 64A.

(4) Interest from time to time accruing from the investment of money in a separate account referred to in subsection (3) does not form part of that separate account and is not payable to the legally assisted person concerned.

(29) Section 64A—

After section 64, insert:—

**Director's trust account.**

64A. (1) The Director shall establish and administer a trust account, to be called the "Director of the Legal Aid Commission's Trust Account".

(2) All money received for or on behalf of any legally assisted person by the Director or a member of staff of the Commission when acting as a solicitor on behalf of the person shall be held by the Director in the trust account established under subsection (1).

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) The provisions of Part VII of the Legal Practitioners Act, 1898, apply to the trust account established under subsection (1) as if that account were an account established under section 41 (1) of the Legal Practitioners Act, 1898.

(30) Section 69—

Omit the section, insert instead:—

**Delegation.**

69. (1) The Commission may, by instrument in writing, delegate to—

- (a) the Director;
- (b) a committee comprised of commissioners, including the Director or a commissioner nominated by the Director;
- (c) a member of staff of the Commission;
- (d) a person for the time being holding or acting in a specified position in the staff establishment of the Commission; or
- (e) any person (including a private legal practitioner) of whose services the Commission makes use pursuant to this or any other Act,

the exercise of such of the functions of the Commission (other than this power of delegation) as are specified in the instrument.

(2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time by the delegate in accordance with the terms of the delegation.

(3) Without limiting the operation of subsection (2), a function the exercise of which has been delegated under this section to the Director may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by—

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (a) a member of staff of the Commission;
- (b) a person for the time being holding or acting in a specified position in the staff establishment of the Commission; or
- (c) any person (including a private legal practitioner) of whose services the Commission makes use pursuant to this or any other Act,

as authorised by instrument in writing by the Director in that behalf either generally or in a particular case or class of cases.

(4) A delegation or authorisation under this section may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of delegation or authorisation.

(5) Notwithstanding any delegation under this section, the Commission may continue to exercise any function delegated.

(6) Any act or thing done or suffered by a delegate acting in the exercise of a delegation under this section, or by a person duly authorised in that behalf by the Director under this section, has the same force and effect as it would have if it had been done or suffered by the Commission and shall be deemed to have been done or suffered by the Commission.



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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) The Commission may, by instrument in writing, revoke wholly or in part any delegation under this section, and the Director may, by instrument in writing, revoke wholly or in part any authorisation under this section.

(8) An instrument purporting to have been signed by a person in his or her capacity as a delegate of the Commission, or as a person authorised under this section, shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Commission and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the Commission or by a person duly authorised under this section, as the case may be.

(9) In subsection (8), a reference to a delegate includes a reference to the chairperson of a committee to which the exercise of a function has been delegated under subsection (1).

(31) Section 70 (1)—

Omit “, a statutory officer of the Commission”.

(32) Section 75—

After section 74, insert:—

*Legal Services Commission (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Savings, transitional and other provisions relating to the reconstitution of the Commission, etc.**

75. Part 4 of Schedule 8 has effect.

(33) (a) Schedule 2, clauses 1, 2, 5—

Omit “Deputy Chairman” wherever occurring, insert instead “Director”.

(b) Schedule 2, clause 9—

After clause 8, insert:—

**Public Service Act, 1979.**

9. The Public Service Act, 1979, does not apply to or in respect of the appointment of a commissioner and a commissioner is not, as a commissioner, subject to that Act.

(34) Schedule 3, clause 7—

Omit “Deputy Chairman” wherever occurring, insert instead “Director”.

(35) (a) Schedule 4, heading—

Omit “STATUTORY OFFICERS OF THE COMMISSION”, insert instead “DIRECTOR”.

(b) Schedule 4, clause 1—

Omit “a statutory officer of the Commission”, insert instead “the Director”.

(c) Schedule 4, clause 2 (1)—

Omit “Deputy Chairman” wherever occurring, insert instead “Director”.

(d) Schedule 4, clause 2 (2)—

Omit the subclause.

(e) Schedule 4, clauses 3, 5—

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

Omit "A statutory officer of the Commission" wherever occurring, insert instead "The Director".

(f) Schedule 4, clause 4—

Omit "a statutory officer of the Commission", insert instead "the Director".

(g) Schedule 4, clause 5 (1) (h)—

Omit ", being the Deputy Chairman,".

(h) Schedule 4, clause 5 (1) (i)—

Omit ", being the Deputy Chairman, Public Solicitor or Referrals Director,".

(i) Schedule 4, clause 5 (1) (i) (ii)—

Omit " or, being the Deputy Chairman," insert instead "or".

(j) Schedule 4, clause 5 (1) (j)—

Omit ", being the Public Solicitor or Deputy Public Solicitor,".

(k) Schedule 4, clause 5 (3)—

Omit "Deputy Chairman", insert instead "Director".

(l) Schedule 4, clause 6—

After clause 5, insert:—

**Public Service Act, 1979.**

6. The Public Service Act, 1979, does not apply to or in respect of the appointment of the Director and the Director is not, as Director, subject to that Act.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(36) (a) Schedule 5, heading—

Omit "THEIR APPOINTMENT AS STATUTORY OFFICERS OF THE COMMISSION", insert instead "APPOINTMENT AS DIRECTOR".

(b) Schedule 5, clause 1, definitions of "first appointed day", "second appointed day"—

Omit the definitions.

(c) Schedule 5, clauses 2, 3, 6—

Omit "a statutory officer of the Commission" wherever occurring, insert instead "the Director".

(d) Schedule 5, clauses 3, 4—

Omit "A statutory officer of the Commission" wherever occurring, insert instead "The Director".

(e) Schedule 5, clause 3 (1)—

Omit "such an officer", insert instead "the Director".

(f) Schedule 5, clause 5—

Omit the clause.

(g) Schedule 5, clause 6 (1) (a)—

Omit the paragraph.

(h) Schedule 5, clause 6 (2) (a)—

Omit the paragraph.

(37) Schedule 6—

Omit the Schedule.

(38) Schedule 7, clause 4 (4), (5)—

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

After clause 4 (3), insert:—

(4) For the purposes of this clause, the Commission may appoint 1 or more persons to act as an alternate member during the absence or illness of a member.

(5) Where 2 or more persons are appointed to act in the place of a single member, the Commission shall specify the person who shall be entitled to act as the alternate member on any particular occasion.

(39) (a) Schedule 8, clauses 10, 11—

Omit the clauses.

(b) Schedule 8, Part 4—

After Part 3, insert:—

PART 4.

**Construction of certain references.**

13. (1) On and from the commencement of the Legal Services Commission (Amendment) Act, 1985, a reference in a provision of any other Act or of any regulation, by-law or other statutory instrument or of any other document, whether of the same or of a different kind—

(a) to the Legal Services Commission of New South Wales (however expressed) shall be construed as a reference to the Legal Aid Commission of New South Wales;

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) to the Deputy Chairman, the Public Solicitor, the Deputy Public Solicitor or the Referrals Director, shall be construed as a reference to the Director within the meaning of section 4 (1) of this Act; and

(c) to the Commissioner for Legal Aid Services or the Public Solicitor within the meaning of the Legal Assistance Act, 1943, or the Legal Aid Manager of the Law Society, shall be construed as a reference to the Director within the meaning of section 4 (1) of this Act.

(2) Subclause (1) does not apply to any determination under the Statutory and Other Offices Remuneration Act, 1975.

**Continuity of body corporate.**

14. The Legal Aid Commission of New South Wales as constituted under this Act, as amended by the Legal Services Commission (Amendment) Act, 1985, is a continuation of, and the same legal entity as, the Legal Services Commission of New South Wales constituted under this Act, as in force immediately before the commencement of the Legal Services Commission (Amendment) Act, 1985.

**Continuation of appointment of existing part-time commissioners.**

15. Nothing in the Legal Services Commission (Amendment) Act, 1985, affects the appointment of a part-time commissioner who was holding office immediately before the commencement of that Act.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

**Existing statutory officers.**

16. (1) A person who, immediately before the commencement of the Legal Services Commission (Amendment) Act, 1985 (in this clause referred to as “the prescribed day”), held office as a statutory officer of the Commission (other than as the Deputy Chairman of the Commission) shall cease to hold office as such on the prescribed day.

(2) The person who, immediately before the prescribed day, held office as the Deputy Chairman of the Commission shall, on and from that day, be deemed to be appointed as Director of the Commission for the balance of the term for which the person was appointed as Deputy Chairman of the Commission.

(3) The person referred to in subclause (2) shall, if otherwise qualified, be eligible for re-appointment as Director of the Commission.

(4) A person who, immediately before the prescribed day, held office as a statutory officer of the Commission (other than the Deputy Chairman of the Commission) and who ceases to hold that office on that day by reason of the operation of subclause (1) shall be entitled to be appointed to some position in the Public Service.

**Costs and expenses.**

17. Nothing in the Legal Services Commission (Amendment) Act, 1985, affects the liability under section 46 of this Act of a legally assisted person to make any payment in respect of the costs and expenses of legal services provided to the person, as

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

such a person, as a consequence of legal aid granted to the person before the commencement of that Act.

**Regulations.**

18. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the Legal Services Commission (Amendment) Act, 1985.

(2) A provision made under subclause (1) may take effect as from the commencement of the Legal Services Commission (Amendment) Act, 1985, or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations made under this clause so provide, have effect notwithstanding any other clause of this Part (clauses 16 and 17 excepted).

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