

**LEGAL AID COMMISSION (AMENDMENT) ACT 1987**  
**No. 9**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Act No. 78, 1979

SCHEDULE 1—AMENDMENTS TO THE LEGAL AID COMMISSION ACT 1979  
RELATING TO THE MERGER

SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE LEGAL AID  
COMMISSION ACT 1979

---

**LEGAL AID COMMISSION (AMENDMENT) ACT 1987 No. 9**

NEW SOUTH WALES



**Act No. 9, 1987**

An Act to amend the Legal Aid Commission Act 1979 to make provision for the merger of the Legal Aid Commission of New South Wales and the Australian Legal Aid Office of the State, and for other purposes. [Assented to 27 March 1987]

*Legal Aid Commission (Amendment) 1987*

---

**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 Aid Commission (Amendment) Act 1987".

**Commencement**

**2. (1)** Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

**(2)** Schedule 1 (2)–(10) and (12), and section 3 in its application to those provisions, shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

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

**3.** The Legal Aid Commission Act 1979 is amended in the manner set forth in Schedules 1 and 2.

---

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE LEGAL AID COMMISSION ACT 1979  
RELATING TO THE MERGER

(1) Section 4 (**Interpretation**)—

Section 4 (1), definition of "Australian Legal Aid Office"—

Before the definition of "Bar Association", insert:

"Australian Legal Aid Office" means that part of the Community Affairs Division of the Attorney-General's Department of the Commonwealth that is designated the Australian Legal Aid Office and that operates in New South Wales;

*Legal Aid Commission (Amendment) 1987*

---

SCHEDULE 1—*continued*

AMENDMENTS TO THE LEGAL AID COMMISSION ACT 1979  
RELATING TO THE MERGER—*continued*

(2) Section 7 (**Commissioners**)—

(a) Section 7—

Omit “8”, insert instead “10”.

(b) Section 7 (b)—

Omit “7”, insert instead “9”.

(3) Section 8 (**Part-time commissioners**)—

Section 8 (1) (b1)—

After section 8 (1) (b), insert:

(b1) 2 persons nominated by the Attorney-General of the Commonwealth;

(4) Section 10 (**Functions of the Commission**)—

Section 10 (2) (g1)—

After section 10 (2) (g), insert:

(g1) provide officers and agencies of the Commonwealth concerned in the provision of legal aid with such statistical and other information as they may reasonably require;

(5) Section 12 (**Duties to be observed in the provision of legal aid**)—

(a) Section 12 (b)—

Omit the paragraph, insert instead:

(b) have regard to the need for legal aid to be readily available and easily accessible to disadvantaged persons throughout New South Wales;

(b) Section 12 (h)—

Omit “and” where lastly occurring.

*Legal Aid Commission (Amendment) 1987*

---

SCHEDULE 1—*continued*

AMENDMENTS TO THE LEGAL AID COMMISSION ACT 1979  
RELATING TO THE MERGER—*continued*

(c) Section 12 (j), (k)—

After section 12 (i), insert:

- (j) have regard to the desirability of enabling members of staff of the Commission to use and develop their expertise by undertaking, as far as is reasonably practicable, a full range of professional legal work; and
- (k) have regard to any recommendations of officers or agencies of the Commonwealth concerned in the provision of legal aid.

(6) Section 25 (**Solicitor-client relationship**)—

Section 25 (4) (a)—

After “Act”, insert “(including an agreement or arrangement between the State and the Commonwealth under section 72A)”.

(7) Section 37 (**Applications by certain persons**)—

(a) Section 37 (1) (c)—

Omit “held in New South Wales”.

(b) Section 37 (1) (c)—

After “Minister of the Crown”, insert “for New South Wales or the Commonwealth”.

(c) Section 37 (1) (d)—

After “Crown” wherever occurring, insert “in right of New South Wales or of the Commonwealth”.

(8) Section 39 (**Fees in respect of assigned matters**)—

Section 39 (5)—

After section 39 (4), insert:

(5) In determining fees under subsection (1), the Commission is subject to the requirements of any agreement or arrangement under section 72A.

*Legal Aid Commission (Amendment) 1987*

---

SCHEDULE 1—*continued*

AMENDMENTS TO THE LEGAL AID COMMISSION ACT 1979  
RELATING TO THE MERGER—*continued*

- (9) Section 47 (**Payment of costs awarded against legally assisted persons**)—
- (a) Section 47 (4) (b)—  
Omit “or” where lastly occurring.
- (b) Section 47 (4) (c), (d)—  
At the end of section 47 (4) (c), insert:  
; or  
(d) an action brought under the Family Law Act 1975 of the Commonwealth,
- (10) Section 63 (**Payments into the Fund**)—  
Section 63 (1) (d1)—  
After section 63 (1) (d), insert:  
(d1) money received by the Commission in respect of services performed or carried out under clause 20 of Schedule 8;
- (11) Section 72A—  
After section 72, insert:  
**Commonwealth/State agreement or arrangement**  
72A. (1) The State may from time to time enter into an agreement or arrangement with the Commonwealth for or with respect to—
- (a) the operation of the Commission;
- (b) the money to be made available by the Commonwealth, or by the State and the Commonwealth, for the purposes of the provision of legal aid and other legal services;
- (c) the priorities to be observed, in relation to money made available by the Commonwealth, in the provision of legal aid as between classes of persons, or classes of matters, or both;

*Legal Aid Commission (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LEGAL AID COMMISSION ACT 1979  
RELATING TO THE MERGER—*continued*

- (d) the transfer to the staff of the Commission of all or any of the persons who are eligible persons within the meaning of clause 21 of Schedule 8;
- (e) the sharing of the operational costs incurred in the provision of legal aid and other legal services by the Commission;
- (f) the taking over, possession and use by the Commission of such office accommodation, furniture, records and equipment of the Australian Legal Aid Office as are appropriate to the functions and needs of the Commission;  
or
- (g) any matter incidental to a matter mentioned in paragraph (a), (b), (c), (d), (e) or (f).

(2) Any such agreement or arrangement shall, except in so far as it is inconsistent with this Act or the regulations, be binding on the Commission.

- (12) Schedule 3 (**Provisions relating to meetings of the Commission**), clause 3—

Omit “4”, insert instead “6”.

- (13) Schedule 8 (**Savings, transitional and other provisions**)—

At the end of Schedule 8, insert:

## PART 5

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS RELATING TO  
THE MERGER**Interpretation**

19. In this Part—

“merger day” means the day appointed and notified under section 2 (2) of the Legal Aid Commission (Amendment) Act 1987.

*Legal Aid Commission (Amendment) 1987*

---

SCHEDULE 1—*continued*

AMENDMENTS TO THE LEGAL AID COMMISSION ACT 1979  
RELATING TO THE MERGER—*continued*

**Legal aid provided by A.L.A.O.**

20. (1) An application for legal aid made to the Australian Legal Aid Office which has not been determined immediately before the merger day shall be deemed to be an application under section 31.

(2) Where, before the merger day, the Australian Legal Aid Office was performing services on behalf of a person by way of legal aid, then, as from that day, the services shall, so far as is necessary, continue to be performed on behalf of the person by the Commission.

(3) A private legal practitioner who, immediately before the merger day, was acting for a person in a matter in the course of the operations of the Australian Legal Aid Office shall, in respect of that matter, be deemed to be a private legal practitioner to whom the Commission has assigned work under this Act.

(4) Services—

- (a) performed on or after the merger day by the Commission on behalf of a person under subclause (2); or
- (b) carried out on or after the merger day by a private legal practitioner under subclause (3),

shall, notwithstanding anything to the contrary in this Act, be performed or carried out subject to any conditions attached to, and the policies of the Australian Legal Aid Office in relation to, the performance or carrying out of the services before the merger day.

(5) For the purposes of subclause (4), the Commission shall be deemed to stand in the place of and shall have all or any of the rights, duties and obligations of the Australian Legal Aid Office in respect of the performance or carrying out of the services referred to in that subclause before the merger day.

(6) On and from the merger day, the Director shall be deemed to be the solicitor for a person in any proceeding in a court, or in any other matter, in which an officer or employee of the Australian Legal Aid Office was acting in the course of the operations of that Office as the solicitor for the person immediately before that day.

**Transfer of A.L.A.O. staff to Commission**

21. (1) In this clause—

“eligible person” means an officer employed in the Australian Legal Aid Office in New South Wales within the meaning of section 21 of the Commonwealth Legal Aid Act 1977 of the Commonwealth.



*Legal Aid Commission (Amendment) 1987*

---

SCHEDULE 1—*continued*

AMENDMENTS TO THE LEGAL AID COMMISSION ACT 1979  
RELATING TO THE MERGER—*continued*

(2) Where an agreement or arrangement between the State and the Commonwealth under section 72A so requires, eligible persons—

(a) shall be appointed and employed as members of staff of the Commission in accordance with that agreement or arrangement; and

(b) shall be so appointed and employed under such terms and conditions and shall retain such rights as are specified in that agreement or arrangement.

(3) Subclause (2) has effect notwithstanding anything to the contrary in the Public Service Act 1979.

(4) If an eligible person who becomes a member of staff of the Commission under this clause continues to be 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 specified in an agreement or arrangement under section 72A, to the person or authority, and at the times, specified in that agreement or arrangement.

(5) An eligible person who becomes a member of staff of the Commission under this clause may, within the period of 3 months after becoming such a member, make an election to contribute to the State Public Service Superannuation Fund pursuant to section 12 (7) of the State Public Service Superannuation Act 1985.

**Validation**

22. Any agreement or arrangement entered into before the commencement of section 72A, and anything done before that commencement in accordance with any such agreement or arrangement, that would have been valid if entered into or done after that commencement is validated.

**Re-constitution of Commission**

23. Nothing in the Legal Aid Commission (Amendment) Act 1987 affects—

(a) the continuity of the Commission; or

(b) the appointment of a part-time commissioner who was holding office immediately before the merger day.

---

## SCHEDULE 2

(Sec. 3)

MISCELLANEOUS AMENDMENTS TO THE LEGAL AID  
COMMISSION ACT 1979(1) Section 4 (**Interpretation**)—

Section 4 (1), definition of “regulation”—

At the end of section 4 (1), insert:

“regulation” means a regulation made under this Act.

(2) Section 25 (**Solicitor-client relationship**)—

## (a) Section 25 (4) (e)—

Omit “or” where lastly occurring.

## (b) Section 25 (4) (f), (g)—

At the end of section 25 (4) (f), insert:

; or

(g) the carrying out by a person of any research approved by the Commission, being research carried out in a manner that ensures that the identity of an applicant for legal aid or a person to whom legal aid is granted is not disclosed to other persons.

(3) Section 26 (**Disclosure of certain information prohibited**)—

## (a) Section 26—

Omit “(a), (b), (c), (d), (e) or (f)”.

## (b) Section 26—

After “legal aid” where secondly occurring, insert “or a person to whom legal aid is granted”.

(4) Section 34 (**Determination of application**)—

## (a) Section 34 (7A)—

After section 34 (7), insert:

(7A) If an application for legal aid is made after the applicant has commenced proceedings, the Commission may give notice to the other parties, if any, to the proceedings of the receipt of the application.

*Legal Aid Commission (Amendment) 1987*

---

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE LEGAL AID  
COMMISSION ACT 1979—*continued*

(b) Section 34 (8)—

After “subsection (6)”, insert “or (7A)”.

(5) Section 34A—

After section 34, insert:

**Date on which legal aid is granted**

34A. (1) The Commission may, when granting an application for legal aid, determine that the application shall be deemed to have been granted at any time on or after the date on which the request for legal aid was made, whether or not an application for legal aid was duly made on that date.

(2) The Commission shall be deemed always to have had the power conferred by this section.

(6) Section 43 (**Payment of costs by certain legally assisted persons**)—

Section 43 (1)—

Omit “the costs of the solicitor who acted for him”, insert instead “any money payable by the Commission as the costs and expenses of the legal services provided to the person as a legally assisted person (including the fees of the legal practitioner who acted for the person, party and party costs and expenses under section 33)”.

(7) Section 43A (**Payment of costs to private legal practitioners**)—

Section 43A (2), (3)—

At the end of section 43A, insert:

(2) Without affecting any other power of the Commission to refuse payment of any fees, the Commission may refuse to make a payment of any fees payable by it to a private legal practitioner in connection with proceedings in respect of which legal aid was granted if the private legal practitioner was a party to—

(a) any fraud or misrepresentation by which the legally assisted person obtained legal aid; or

*Legal Aid Commission (Amendment) 1987*

---

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE LEGAL AID  
COMMISSION ACT 1979—*continued*

(b) any improper action by the legally assisted person in bringing or defending any proceedings or in the conduct of any proceedings.

(3) A private legal practitioner is a party to any fraud or misrepresentation or to any improper action if the practitioner becomes aware of any such fraud, misrepresentation or improper action and fails to notify the Commission promptly of that fact.

(8) Section 46 (**Liability of legally assisted person to pay costs and expenses**)—

Section 46 (1)—

Omit “Director”, insert instead “Commission”.

(9) Section 47 (**Payment of costs awarded against legally assisted persons**)—

(a) Section 47 (2)—

Omit the subsection, insert instead:

(2) The Commission shall not pay an amount in excess of \$5,000 (or such other amount as the Commission may from time to time determine)—

(a) except as provided by paragraph (b), in respect of any one proceeding; or

(b) in respect of each party in any one proceeding, being a party who has, in the opinion of the Commission, a separate interest in the proceeding.

(b) Section 47 (3)—

Omit “while he was not a legally assisted person”, insert instead “in respect of a period during which that person was not a legally assisted person (even though those costs were ordered to be paid at a time when that person was a legally assisted person)”.

*Legal Aid Commission (Amendment) 1987*

---

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE LEGAL AID  
COMMISSION ACT 1979—*continued*

(10) Section 48 (**Repayment of costs and expenses to Commission when legal aid terminated**)—

Section 48 (2)—

At the end of section 48, insert:

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

(11) Section 56 (**Appeals**)—

Section 56 (2) (a)—

Omit “7 days”, insert instead “28 days”.

(12) Section 60 (**Effect and implementation of determination or order**)—

Section 60 (1)—

Omit the subsection, insert instead:

(1) A determination or order of a Legal Aid Review Committee under section 59 in respect of an appeal shall be deemed to be the final decision of the person or body whose determination, variation or decision was the subject of the appeal and shall be given effect to accordingly.

(13) Sections 73, 74, 75 (**Savings, transitional and other provisions**)—

Omit the sections, insert instead:

**Savings, transitional and other provisions**

73. Schedule 8 has effect.

(14) Section 76—

Before Schedule 1, insert:

SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE LEGAL AID  
COMMISSION ACT 1979—*continued***Regulations**

76. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding \$500.

(15) Schedule 7 (**Provisions relating to the constitution, membership and meetings of Legal Aid Review Committees**)—(a) Clause 2 (**Age of member**)—

Omit the clause.

(b) Clause 6 (**Vacation of office**)—

(i) At the end of clause 6 (g), insert “or”.

(ii) From clause 6 (h), omit “or”.

(iii) Omit clause 6 (i).

(16) Schedule 8 (**Savings, transitional and other provisions**)—

## (a) Part 1, heading—

Omit the heading, insert instead:

## PART 1

## INTERPRETATION

## (b) Part 1A—

After Part 1, insert:

*Legal Aid Commission (Amendment) 1987*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE LEGAL AID  
COMMISSION ACT 1979—*continued*

## PART 1A

## SAVINGS AND TRANSITIONAL REGULATIONS

**Regulations**

1A. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Legal Services Commission (Amendment) Act 1985.

Legal Aid Commission (Amendment) Act 1987.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned 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 in the Gazette; 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 in the Gazette.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule, except—

(a) clauses 16 and 17 of Part 4; and

(b) clause 21 of Part 5.

(c) Part 2—

Omit the Part.

(d) Part 3, heading—

Omit the heading, insert instead:

## PART 3

## LEGAL AID UNDER FORMER ACTS

(e) Part 4, heading—

Omit the heading, insert instead:

*Legal Aid Commission (Amendment) 1987*

---

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE LEGAL AID  
COMMISSION ACT 1979—*continued*

PART 4

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS CONSEQUENT  
ON ENACTMENT OF LEGAL SERVICES COMMISSION (AMENDMENT)  
ACT 1985

- (f) Part 4, clause 18—  
Omit the clause.

---