

# Legal Aid Commission Act 1979 No 78

[1979-78]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Legal Services Commission Act 1979

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Legal Aid Commission Act 1979 No 78



New South Wales

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# Legal Aid Commission Act 1979 No 78



New South Wales

An Act to constitute the Legal Aid Commission of New South Wales and to define its functions; and to repeal the *Poor Persons Legal Remedies Act 1918*, the *Legal Assistance Act 1943*, the *Legal Practitioners (Legal Aid) Act 1970* and certain other enactments.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Legal Aid Commission Act 1979*.

### 2 Commencement

- (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.
- (2) Part 1 (sections 1, 2 and 5 excepted), Part 2, Part 4 and Part 5 (section 74 excepted) 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.
- (3) Section 5, Part 3 and section 74 shall commence on such day, being later than the day appointed and notified under subsection (2), as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

**approved panel policies and guidelines** means the policies and guidelines approved, from time to time, by the Board under section 55.

**associate** of a law practice has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

**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.

**Bar Association** means the Council of the New South Wales Bar Association.

**Board** means the Board of the Commission constituted under section 14.

**Chief Executive Officer** means the Chief Executive Officer of the Commission.

**Commission** means the Legal Aid Commission of New South Wales constituted under this Act.

**de facto partner** of a person means the other party to a de facto relationship with the person.

**Note—**

“De facto relationship” is defined in section 21C of the [Interpretation Act 1987](#).

**functions** includes powers, authorities and duties.

**law practice** has the same meaning as in the [Legal Profession Uniform Law \(NSW\)](#).

**Law Society** means the Council of the Law Society of New South Wales.

**legal aid** means legal aid under this Act and includes, in relation to a person who is a patient within the meaning of the [Mental Health Act 2007](#), aid provided to the patient in respect of any matter, whether of a legal nature or not.

**Legal Aid Review Panel** means a Legal Aid Review Panel established under section 54.

**legally assisted person** means a person to whom legal aid is provided.

**panel** means a Legal Aid Review Panel.

**Public Defender** means a person who holds office as a Public Defender under the [Public Defenders Act 1995](#).

**regulation** means a regulation made under this Act.

- (2) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that duty.

## 5 Repeals

Each Act specified in Column 1 of Schedule 1 is, to the extent specified opposite that Act in Column 2 of Schedule 1, repealed.

## Part 2 Constitution and management of Legal Aid Commission

## **Division 1 Constitution of the Commission**

### **6 Constitution of the Commission**

- (1) There is hereby constituted a corporation under the corporate name of the “Legal Aid Commission of New South Wales”.
- (2) (Repealed)
- (3) The Commission is, for the purposes of any Act, a statutory body representing the Crown.

### **7-9 (Repealed)**

## **Division 2 Functions of the Commission**

### **10 Functions of the Commission**

- (1) The principal function of the Commission is to provide legal aid and other legal services in accordance with this Act.
- (2) The Commission in the exercise of its principal function may—
  - (a) determine—
    - (i) the persons or classes of persons in respect of whom legal aid may be granted, and
    - (ii) the matters or classes of matters in respect of which legal aid may be granted,
  - (b) determine priorities in the provision of legal aid as between—
    - (i) different persons or different classes of persons, and
    - (ii) different matters or different classes of matters,
  - (c) (Repealed)
  - (d) specify principles, including the imposition of means tests, to be applied in determining applications for legal aid,
  - (e) specify the circumstances, if any, in which contributions shall be paid by legally assisted persons and the means of calculating any such contributions,
  - (f) establish and conduct such local offices as it considers appropriate,
  - (g) liaise and co-operate with persons engaged or interested in the provision, in New South Wales or elsewhere, of legal aid otherwise than under this Act,
  - (g1) (Repealed)



- (h) give assistance and make grants, on such terms and conditions as it thinks fit, to persons or bodies within New South Wales for the provision by those persons or bodies of legal aid,
  - (i) enter into agreements for the provision of legal aid to citizens of New South Wales in proceedings outside New South Wales with bodies which exercise, outside New South Wales, functions similar to those of the Commission,
  - (j) bring to the attention of the public, by publishing advertisements or otherwise, the services provided by the Commission,
  - (k) collect and publish information in respect of the functions of the Commission and in respect of other schemes of legal aid provided in New South Wales,
  - (l) undertake research into all aspects of legal aid including the investigation and assessment of different methods of financing and providing legal aid,
  - (m) initiate and carry out educational programmes designed to promote an understanding by the public, or by sections of the public, of their rights, powers, privileges and duties under the laws of New South Wales, and
  - (n) make reports and recommendations to the Minister on such matters relating to the functions of the Commission as the Minister requests or as the Commission considers appropriate.
- (3) The Commission may exercise such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) The Commission may do all such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of its functions.
- (5) Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Commission to exercise its functions.

**Note—**

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services the Commission makes use of) may be referred to as officers or employees, or members of staff, of the Commission. Section 47A of the [Constitution Act 1902](#) precludes the Commission from employing staff.

## **11 Provision of legal aid**

- (1) Legal aid may be provided by the Commission by such means as it may determine, including any one or more of the following means—
- (a) by arranging for the services of law practices to be made available, wholly or partly at the expense of the Commission,
  - (b) by making available the services of the Chief Executive Officer or members of

staff of the Commission, or

(c) by arranging for the services of the Public Defenders to be made available.

(2) Nothing in this Act prevents the Commission from providing, to a patient within the meaning of the *Mental Health Act 2007*, aid in respect of any matter, whether of a legal nature or not, by arranging for the services of persons approved by the Commission, whether or not the services are provided by a law practice.

(3) Except as provided by subsection (2), this Act applies to and in respect of the provision of legal aid by a person approved by the Commission under that subsection in the same manner as it applies to and in respect of the provision of legal aid by a law practice.

### **11A Provision of legal advice only**

To remove any doubt, it is declared that the giving of legal advice to a person constitutes the giving of legal aid if the person is given legal advice and no other form of legal aid. However, Part 3 does not apply to the giving of that advice.

### **12 Duties to be observed in the provision of legal aid**

In respect of the provision of legal aid, the Commission shall—

- (a) ensure that legal aid is provided in the most effective, efficient and economical manner,
- (b) have regard to the need for legal aid to be readily available and easily accessible to disadvantaged persons throughout New South Wales,
- (c) ascertain and keep under review community needs in relation to legal aid,
- (d) liaise with professional bodies representing law practices and, where appropriate, use the services of law practices in the provision of legal aid,
- (e) determine the allocation of legal aid services between the Chief Executive Officer or members of staff of the Commission and law practices and the principles on which law practices are to be offered or refused matters on assignment,
- (f) ensure, if work is assigned to a law practice, that the assignment is made in accordance with procedures determined from time to time by the Commission in accordance with Division 2 of Part 3,
- (g) ensure, by the assignment of appropriate work, the maintenance of the office of the Public Defenders,
- (h) ensure the co-ordination of legal aid services and the avoidance of any unnecessary duplication in the provision of legal aid services,

- (i) ensure that, except where otherwise expressly provided by this Act, nothing is done by the Commission, the Chief Executive Officer or members of staff of the Commission which may interfere with the relationship between a solicitor acting in the solicitor's professional capacity and the solicitor's client, and
- (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.
- (k) (Repealed)

### **13 Annual report**

- (1) The Commission shall, as soon as practicable after 30th June in each year, prepare and forward to the Minister a report of its work and activities for the year ending on that date and shall include in the report a review of all other legal aid services available in New South Wales.
- (2) The Minister shall lay the report, or cause it to be laid, before each House of Parliament as soon as practicable after the receipt by the Minister of the report.

## **Division 3 Management of Commission**

### **14 Constitution of Board**

- (1) There is to be a Board of the Commission.
- (2) The Board is to consist of—
  - (a) the Chief Executive Officer, and
  - (b) 9 part-time members, appointed by the Minister, of whom—
    - (i) one is to be a person appointed as Chairperson of the Board (in and by the instrument of appointment as member or by a subsequent instrument executed by the Minister), and
    - (ii) one is to be a person nominated by the Bar Association, and
    - (iii) one is to be a person nominated by the Law Society, and
    - (iv) one is to be a person nominated by Unions NSW, and
    - (v) 3 are to be persons who, in the opinion of the Minister, possess skills or experience that would benefit the Board, and
    - (vi) one is to be a person who, in the opinion of the Minister, represents consumer and community welfare interests, and

- (vii) one is to be a person who, in the opinion of the Minister, represents such bodies, whether incorporated or unincorporated, as provide community legal services.
- (3) If a nomination for the purposes of subsection (2) (b) (ii), (iii) or (iv) is not received within the time or in the manner specified by the Minister by notice in writing given to the body entitled to make such a nomination, the Minister may appoint any person to be a part-time member of the Board instead of the person required to be appointed on that nomination.
- (4) Before appointing a person referred to in subsection (2) (b) (vi) or (vii), the Minister must—
  - (a) cause to be published such advertisements (inviting applications from persons to apply for appointment as part-time members of the Board) in such form and manner as the Minister directs, and
  - (b) take into consideration any such applications received by the Minister.
- (5) Schedule 2 has effect with respect to the membership of the Board.
- (6) Schedule 3 has effect with respect to the procedure of the Board.

## **15 Function of Board**

The Board has the function of establishing the broad policies and strategic plans of the Commission.

## **16 Chief Executive Officer**

- (1) There is to be a Chief Executive Officer of the Commission.
- (2) The Chief Executive Officer is to be appointed by the Minister. The person so appointed may be, but is not required to be, a barrister or solicitor.
- (3) Schedule 3A contains provisions relating to the Chief Executive Officer.

## **17 Functions of Chief Executive Officer**

- (1) The Chief Executive Officer—
  - (a) is responsible for the day-to-day management of the affairs of the Commission (including managing financial and human resources and the provision of legal aid and other legal services) subject to, and in accordance with, the broad policies and strategic plans established by the Board and any general directions the Board may issue in connection with those policies and plans, and
  - (b) has and may exercise such other functions as are conferred or imposed on the Chief Executive Officer by or under this or any other Act or law.

- (2) Any act, matter or thing done in the name of, or on behalf of, the Commission by or with the authority of the Chief Executive Officer is taken to have been done by the Commission.

**18-22 (Repealed)**

**Division 4 Members of staff of the Commission**

**23 (Repealed)**

**Division 5 Miscellaneous**

**23A Appointment of solicitor to be solicitor practising on own account**

- (1) If the Chief Executive Officer does not hold a current Australian practising certificate, the Chief Executive Officer is to appoint one or more persons to exercise the functions that would be exercisable by the Chief Executive Officer under sections 24, 28 and 64A if he or she held a current Australian practising certificate.
- (2) A person so appointed must be a member of staff of the Commission who is a solicitor of appropriate seniority and experience and who holds a current Australian practising certificate.

**24 Performance of functions of solicitor**

- (1) The Chief Executive Officer or a member of staff of the Commission shall not perform any functions of a solicitor under this Act unless the Chief Executive Officer or member of staff holds a current Australian practising certificate.
- (2) In practising as, or performing the functions of, a solicitor under this Act—
- (a) the Chief Executive Officer 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 Chief Executive Officer and each member of staff of the Commission—
    - (i) shall observe the same rules and standards of professional conduct and ethics as those that an Australian legal practitioner is, by law or the custom of the legal profession, required to observe in the practice of that profession, and
    - (ii) are subject to the same professional duties as those to which an Australian legal practitioner is subject by law or the custom of the legal profession in the practice of that profession.
- (2A) If the Chief Executive Officer does not hold a current Australian practising certificate, a reference in subsection (2) to the Chief Executive Officer is to be read as a reference

to the relevant member of staff appointed for the time being under section 23A.

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

## **25 Solicitor-client relationship**

(1) The relationship arising by virtue of this Act between a solicitor, whether the solicitor is the Chief Executive Officer or a member of staff of the Commission or from a law practice to whom work is assigned under this Act, and an applicant for legal aid or a person to whom legal aid is granted shall be the relationship as between a solicitor acting in the solicitor's professional capacity and in the course of the solicitor's professional employment and the solicitor's own client.

(1A) The relationship that arises as referred to in subsection (1) between a solicitor and a person who is an applicant for legal aid or who is a person to whom legal aid is granted arises only in the context of functions performed by the solicitor in the course of acting for the person as solicitor. That relationship does not arise therefore in the course of the exercise of functions under this Act in arranging for a law practice to act on behalf of the person.

(2) The like privileges as those which arise from the relationship of a solicitor acting in the solicitor's professional capacity and in the course of the solicitor's professional employment and the solicitor's own client shall arise between the Commission or a committee or panel established under this Act and an applicant for legal aid or a person to whom legal aid is granted.

(3) Without affecting the generality of subsection (1) or (2), the Commission, a committee or panel established under this Act, the Chief Executive Officer or a member of staff of the Commission is not required to divulge to any person or court any information or document (including an application for legal aid) relating to the administration of legal aid.

(4) Nothing in subsection (1), (2) or (3) applies in respect of—

(a) the conduct of any matter necessary for the proper administration of this Act (including an agreement or arrangement referred to in section 72A),

(b) proceedings for an offence connected with the administration of legal aid,

(c) any disciplinary proceedings under the *Legal Profession Uniform Law (NSW)*,

(d) any proceedings by which the Commission is seeking to recover money from a person in respect of whom legal aid has been granted,

(e) an investigation or inquiry under the *Ombudsman Act 1974*,

(f) the exercise by the Auditor-General of his or her functions under this Act or any other law,

- (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,
  - (h) the divulging of information to a person concerning an application for legal aid made by or on behalf of the person (including such matters as the basis for the refusal of any such application),
  - (i) the divulging of information to a person to whom legal aid has been granted concerning the administration of the grant of legal aid,
  - (j) the divulging of information for the purpose of facilitating the conduct of alternative dispute resolution under Part 3A,
  - (k) the divulging of information obtained from a person, with the consent of that person, or
  - (l) the divulging, with the consent of the Commission, to any court or tribunal of information or a document concerning any of the following matters—
    - (i) whether or not an application for legal aid has been made by a particular person,
    - (ii) whether such an application was granted or refused,
    - (iii) the grounds on which such an application was granted or refused (including information as to the means of the applicant),
    - (iv) whether a person has appealed against the refusal of such an application.
- (5) The Commission, a committee or panel established under this Act, the Chief Executive Officer or a member of staff of the Commission is not required to divulge to any person, court or tribunal the identity of a person from whom the Commission, the committee or panel, the Chief Executive Officer or the member of staff receives information concerning—
- (a) a breach or alleged breach of a condition on which legal aid has been granted or provided, or
  - (b) a breach or alleged breach of a requirement of this Act or the regulations (for example, a failure to notify the Commission of a change in the means or circumstances of a legally assisted person as required under section 38A (1)), or
  - (c) the commission or alleged commission of an offence in connection with the administration of legal aid.
- (6) For the purposes of this section—

- (a) an applicant for legal aid includes a person who requests legal advice but no other form of legal aid, and
- (b) a person to whom legal aid is granted includes a person to whom that advice is given, and
- (c) an application for legal aid includes a request for that advice.

## **26 Divulging of certain information prohibited**

- (1) A person engaged in the administration of this Act must not divulge any information or document (including an application for legal aid) obtained in connection with the administration of legal aid.

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

- (2) This section does not prevent the divulging of information or a document if the information or document is divulged—
  - (a) in connection with the administration of legal aid, or
  - (b) as referred to in section 25 (4).
- (3) This section does not limit the operation of section 25. Consequently, a member of the Board, a member of a committee or panel established under this Act, the Chief Executive Officer or a member of staff of the Commission cannot be required to divulge any information or document merely because the divulging of the information or document is not prohibited by this section.
- (4) For the purposes of this section, an application for legal aid includes a request for legal advice but no other form of legal aid.

## **27 Immunity**

- (1) An act or omission of—
  - (a) the Commission, the Chief Executive Officer or a member of staff of the Commission, or
  - (b) the Board or a member of the Board, or
  - (c) a committee or panel established under this Act or a member of such a committee or panel, or
  - (d) a person acting under the direction of a person or body referred to in paragraph (a), (b) or (c),

does not subject the Commission, the Chief Executive Officer, a member of staff, a member of the Board, a member of the committee or panel or a person so acting to



any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of executing this Act.

- (2) No liability attaches to or is incurred by the Commission, the Chief Executive Officer, a member of staff of the Commission, a member of the Board, a member of a committee or panel established under this Act or a person acting under the direction of any of them because of anything done, or omitted to be done, by a law practice (including an associate of a law practice) to whom work is assigned under this Act.
- (3) In this section, a reference to an act or omission includes (but is not limited to) a reference to anything done or omitted to be done in respect of—
  - (a) the engagement of a law practice for the provision of legal aid, or
  - (b) the assignment of work to a law practice, or
  - (c) an audit in respect of a law practice.

## **28 Solicitor on record**

- (1) Where—
  - (a) in any proceeding, a document is required or permitted to be signed by a solicitor for a party to a proceeding who is an applicant for legal aid or a legally assisted person, and
  - (b) the Chief Executive Officer or a member of staff of the Commission is taking steps to conserve the interests of the applicant pending the determination of the application or is providing legal aid to the legally assisted person in relation to the proceeding,

the signature of the Chief Executive Officer, or of a member of staff of the Commission who is a solicitor and who, pursuant to a written authority given generally or specially by the Chief Executive Officer, is authorised to sign documents on behalf of the Chief Executive Officer for the purposes of this section, shall be deemed to be the signature of the solicitor for that party.

- (2) If the Chief Executive Officer does not hold a current Australian practising certificate, a reference in subsection (1) to the Chief Executive Officer is to be read as a reference to the relevant member of staff appointed for the time being under section 23A.

## **Part 3 Provision of legal aid**

### **Division 1 General**

#### **29 Definition**

- (1) In this Part, **application** means an application for legal aid made to the Commission.

(2) In this Part, a reference—

- (a) to an applicant for legal aid is a reference to a person on whose behalf legal aid is sought,
- (b) (Repealed)
- (c) to the ordinary professional cost of a legal service is a reference to the usual cost of the legal service if provided by a law practice, and
- (d) in relation to an application, to a party to proceedings, includes a reference to a person who, in the opinion of the Commission, may become a party to proceedings.

### **30 Provision of legal aid**

- (1) Except to such extent, if any, as the Commission may otherwise determine in accordance with subsection (2) or (4), legal aid shall be provided by the Commission in accordance with this Part.
- (2) The Commission may, from time to time, determine that legal aid in respect of such matters or classes of matters as the Commission determines shall be provided by the Commission on such terms and conditions as the Commission determines, and that legal aid may be provided accordingly.
- (3) Without limiting the generality of subsection (2), the terms and conditions referred to in that subsection may include terms and conditions that the legal aid shall be provided without charge, without means tests or other tests and without the necessity for compliance with such formal or procedural requirements of this Part as the Commission may determine.
- (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.

### **31 Application for legal aid**

- (1) A person may apply to the Commission for legal aid.
- (2) Nothing in subsection (1) prevents a person from making an application on behalf of another person.
- (3) An application is to be made in the manner and form approved by the Commission.
- (4) (Repealed)

### **32 False application**

A person shall not make an application knowing that it is false in any material particular.

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

### **33 Powers of Commission in respect of application**

- (1) On receipt of an application, the Commission may—
  - (a) make such inquiries as it thinks fit as to the means and circumstances of the applicant and of each person who is associated with the applicant for the purposes of any means test under section 35,
  - (b) require the applicant to furnish such information, in addition to the information furnished in the application, and produce such books or documents as the Commission specifies,
  - (c) require the applicant to attend personally,
  - (d) refer the application or any matter relating to or arising from the application to a person (including a barrister or solicitor) nominated by the Commission for investigation, report or advice, and
  - (e) take such steps as may be necessary to conserve the interests of the applicant pending the determination of the application.
  - (f) (Repealed)
- (2) The Commission may defray expenses incidental to any of the matters referred to in subsection (1) from money available to the Commission or require the applicant to meet those expenses. A requirement that the applicant meet those expenses may be imposed at any time after receipt of the application but not later than the making of a determination in respect of the person under section 46.
- (3) An amount required to be paid under subsection (2) must be paid in such manner, and within such time, as the Commission directs.
- (4) The Commission may recover an amount payable to it under subsection (2), and any interest payable in respect of the amount, as a debt in a court of competent jurisdiction.

### **34 Determination of application**

- (1) The Commission shall determine an application by granting the application unconditionally or subject to conditions or by refusing the application. The Commission may at any time redetermine an application that has been refused.
- (2) The Commission shall give notice to the applicant of the determination or

redetermination of the application as soon as practicable (and in any case not later than 14 days) after the determination or redetermination is made.

- (3) A notice given under subsection (2), except where—
- (a) the application relates to proceedings in the Local Court with respect to a criminal offence, or to such other proceedings as the Commission may from time to time determine, and is granted unconditionally, or
  - (b) the application relates to proceedings in the Local Court with respect to a criminal offence, or to such other proceedings as the Commission may from time to time determine, and is refused wholly or partly on the ground that the applicant fails to satisfy such means test as is determined by the Commission for the purposes of section 35 (1),
- shall be in writing.
- (4) If there is a right of appeal to a Legal Aid Review Panel against a determination or redetermination of an application—
- (a) the notice required under subsection (2) must inform the applicant of that right, and
  - (b) the reasons for the determination or redetermination are to be recorded.
- (4A) Subsection (4) does not apply in respect of any condition of the kind referred to in section 56 (1AA) that is imposed on the grant.
- (5) (Repealed)
- (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 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 from a law practice, the solicitor shall advise the Commission in writing, within 7 days of giving notice under that subsection, that notice has been given.
- (7A) If an application for legal aid is made after the commencement of the proceedings to which the application relates, the Commission may give notice to the other parties, if any, to the proceedings of the receipt of the application.
- (8) A notice given under subsection (6) or (7A)—
- (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.

**34A Date on which legal aid is granted**

- (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.

**34B Commission can require security for costs etc**

- (1) The power of the Commission to impose conditions on the grant or provision of legal aid to a person extends to authorise the imposition of a condition requiring the person—
- (a) to provide, or to enter into an agreement to provide, security to the satisfaction of the Commission for the payment of amounts payable or which may become payable by the person to the Commission under this Act, and
- (b) to pay any expenses incurred by the Commission by way of stamp duty, registration fees and other disbursements in connection with the provision of any such security or the entering into of any such agreement.
- (2) The Commission is empowered to take such action as may be necessary or expedient for or in connection with the due enforcement of any such security or agreement.
- (3) If a condition is imposed under subsection (1) (b), the person must pay the required amount in such manner and within such time as the Commission directs and it may be recovered by the Commission from the person as a debt in a court of competent jurisdiction.
- (4) To remove any doubt, it is declared that the amounts payable by a person to the Commission under this Act include any interest payable in respect of those amounts under section 71A.

**34C Certain arrangements do not amount to imposition of condition, or variation, of legal aid**

The determination of a lump sum fixed amount as the amount to be paid to a law practice as fees for the legal services to be provided by the law practice to a legally assisted person does not of itself constitute the imposition of a condition on, or a variation of, the grant of legal aid.

### **35 Means test**

- (1) The Commission shall not, unless it is of the opinion that there are special circumstances relating to the property or means of the applicant or otherwise, grant an application unless the applicant, and each person who is associated with the applicant, satisfies such means test or other test as is determined by the Commission in respect of applicants generally or the class or description of applicants to which the applicant belongs and is applicable as at the date on which the application was made.
- (2) A means test determined by the Commission for the purposes of subsection (1) is to be determined having regard to the ability of—
  - (a) applicants generally or applicants of the class or description of applicants in respect of whom the means test is determined, and
  - (b) persons associated with such applicants,to meet the ordinary professional cost of the legal services sought by the applicant.
- (3) For the purposes of subsection (1), special circumstances may include—
  - (a) that the applicant is a party to proceedings as a member of an unincorporated association, or
  - (b) that the applicant is a party to—
    - (i) proceedings relating to environmental matters,
    - (ii) a relator suit, or
    - (iii) a test case.
- (4) For the purposes of any means test determined under this section, a reference to a person who is associated with an applicant is a reference to such of the following persons or classes of persons as are specified by the means test as being associated with the applicant—
  - (a) the applicant's spouse or the applicant's de facto partner,
  - (b) any person who is financially responsible for, or who provides financial support to, the applicant,
  - (c) if the applicant is a corporation, any person whose financial interests will, in the opinion of the Commission, be directly and beneficially affected if the proceedings in respect of which legal aid is granted to the applicant are successful,
  - (d) if the applicant is applying as a member of an unincorporated association, any other member of the association whose financial interests will, in the opinion of the Commission, be directly and beneficially affected if the proceedings in respect

of which legal aid is granted to the applicant are successful, and

- (e) if the applicant is applying for legal aid in respect of proceedings under Chapter 3 of the *Succession Act 2006*, any other person whose interests will, in the opinion of the Commission, be beneficially affected if legal aid is granted to the applicant.

### **36 Monetary contribution by applicant**

- (1) In granting an application, the Commission may do either or both of the following—
  - (a) impose a condition that requires the applicant to pay such amount to the Commission by way of contribution to the costs and expenses of the legal services sought by the applicant as the Commission determines,
  - (b) determine the maximum amount the applicant will, subject to section 47, be required to pay to the Commission towards the costs and expenses of a party to any proceedings brought by or against the applicant if, in relation to those proceedings, the party obtains an order for costs against the applicant.
- (2) An amount required to be paid under subsection (1) 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 fails to pay an amount payable under subsection (1), the Commission may recover the amount, and any interest payable in respect of the amount, from the person as a debt in a court of competent jurisdiction.

### **37 Applications by certain persons**

- (1) Nothing prevents the Commission from granting an application made by—
  - (a) a party to proceedings where legal aid has been granted to another party to the same proceedings,
  - (b) a corporation if the Commission is of the opinion that the legal aid granted will protect the interests of other persons who are eligible for legal aid,
  - (c) a person involved in an inquiry or investigation, being an inquiry or investigation established by or under an Act, an Imperial Act or an Act of the Parliament of the Commonwealth or by a Minister of the Crown for New South Wales or the Commonwealth, or
  - (d) a person whose interests are, or may be, adverse to the Crown in right of New South Wales or of the Commonwealth or a statutory body representing the Crown in right of New South Wales or of the Commonwealth.
- (2) Where the Commission grants an application pursuant to subsection (1) (a), a solicitor employed by the Commission shall not act for more than one party to the same

proceedings if to do so would create a conflict of interests.

### **38 Variation of grant of legal aid**

- (1) The grant of legal aid to a person may, at any time, be varied by the Commission so as to—
  - (a) terminate the provision of the legal aid,
  - (b) alter the nature or extent of the legal aid,
  - (c) make the provision of the legal aid subject to a condition or an additional condition (including a condition of the kind referred to in section 36 (1) (a)), or
  - (d) alter a condition (including a condition of the kind referred to in section 36 (1) (a)) to which the provision of the legal aid is subject.
- (1AA) The Commission may at any time redetermine the variation of a grant that terminates the provision of legal aid.
- (1A) In the exercise of its power to vary such a grant, the Commission may—
  - (a) make such inquiries as it thinks fit as to the means and circumstances of the legally assisted person and of each person who would be associated with the legally assisted person for the purposes of any means test under section 35 were the legally assisted person still an applicant for legal aid,
  - (b) require the legally assisted person to furnish such information, and to produce such books or documents, as the Commission specifies,
  - (c) require the legally assisted person to attend personally, and
  - (d) refer any matter relating to or arising from the legal services provided to the legally assisted person under the grant to a person (including a barrister or solicitor) nominated by the Commission for investigation, report or advice.
- (2) Where a grant is varied under subsection (1), the Commission shall give notice, in writing, of the variation within 14 days after the variation is made to the person in respect of whom the variation is made and the solicitor acting on behalf of that person.
- (3) Where a grant is varied under subsection (1) so as to terminate the provision of legal aid to a person, the Commission shall, in addition to the requirements of subsection (2), give notice, in writing, of the variation within 35 days after the variation is made to each solicitor acting for each party to any proceedings to which that person is a party or, where no solicitor acts on behalf of a party, to the party.
- (4) Where a grant is varied under subsection (1) by a person or committee acting in pursuance of a delegation or authorisation under section 69 in a way which adversely



affects the person in respect of whom the variation is made, the person or committee making the variation shall, in the notice given under subsection (2), inform the person in respect of whom the variation is made that he or she has a right of appeal to a Legal Aid Review Panel against the variation.

- (5) Where a grant is varied as referred to in subsection (4), the person or committee making the variation shall record the reasons for the variation of the grant.
- (6) If a grant is varied under subsection (1) (c) or (d) so as to impose or vary a condition of the kind referred to in section 36 (1) (a), the amount required to be paid must be paid in such manner, and within such time, as the Commission directs. The Commission may recover the amount, and any interest payable in respect of the amount, as a debt in a court of competent jurisdiction.

### **38A Notification of changes**

- (1) Where—
  - (a) a legally assisted person or a law practice 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
  - (b) the change is of such a nature that the legally assisted person or law practice, 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 law practice, 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.

### **39 Fees in respect of assigned matters**

- (1) The Commission shall determine the fees to be paid by it to law practices to whom work is assigned by the Commission.
- (2) In determining the fees referred to in subsection (1), the Commission shall consult with and take into account the views of—
  - (a) the Bar Association in respect of fees to be paid to barristers, and
  - (b) the Law Society in respect of fees to be paid to solicitors.
- (3) The fees referred to in subsection (1) shall, so far as practicable, consist of fixed amounts determined in respect of particular legal services.

- (4) A fee determined under subsection (1) in respect of a legal service shall be less than the ordinary professional cost of the legal service.
- (5) In determining fees under subsection (1), the Commission is subject to the requirements of any agreement or arrangement under section 72A.

#### **40 Assessment of costs**

- (1) To assist in the determination of costs of which the Commission has agreed to pay a proportion to a law practice to whom work has been assigned by the Commission, the Commission has the same rights to require the law practice to have a bill of costs assessed or taxed in relation to that work as it would have if the Commission (and not the legally assisted person on whose behalf the work was done) were the client of the law practice.
- (1A) In addition, a person who is required to pay an amount under section 46 (1) has the same rights to require the law practice who provided legal services to the person as a legally assisted person to have a bill of costs assessed or taxed in relation to the work done by the law practice on behalf of that person as the person would have if the person were not a legally assisted person.
- (2) No objection shall be made under this or any other Act or law to the assessment or taxation of a bill of costs relating to work done on behalf of a legally assisted person on the basis that the costs were not incurred by the legally assisted person but were incurred by another person on his or her behalf.

#### **41 Demand for or receipt of certain payments prohibited**

- (1) Despite any Act or law to the contrary, a law practice is not entitled to charge or recover from a legally assisted person any amount—
  - (a) by way of costs in respect of work assigned by the Commission to the law practice on behalf of that person, or
  - (b) by way of disbursements incurred on behalf of that person in connection with that work,except with the approval of the Commission.
- (2) A provision of any agreement (whether in writing or not and whether entered into before or after the commencement of this section)—
  - (a) under which the operation of this section is excluded, modified or restricted, or
  - (b) which has the effect of excluding, modifying or restricting the operation of this section,is void.

#### **42 Discretion of court or tribunal as to costs**

A court or tribunal which may order the payment of costs in proceedings before it shall, where a legally assisted person is a party to any such proceedings, make an order as to costs in respect of the legally assisted person as if he or she were not a legally assisted person.

#### **43 Payment of costs in cases of fraud and improper behaviour**

- (1) A court or tribunal may, on the application of the Commission, order a person who is or was a legally assisted person to pay to the Commission any money paid or 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 law practice who acted for the person, party and party costs and expenses under section 33) if the court or tribunal is satisfied that—
  - (a) the legal aid was obtained by fraud or misrepresentation, or
  - (b) the legally assisted person has acted improperly in bringing, defending or conducting any proceedings with which the legal aid is concerned.
- (2) Such an application can be made to the court or tribunal that is hearing or has heard any proceedings with which the legal aid is concerned or to any other court of competent jurisdiction either during or after the conclusion of the proceedings. However, an application can only be made to a court or tribunal that can make an order as to costs.
- (3) When an order is made under this section, the costs are to be assessed as if the person ordered to pay them were not a legally assisted person.

#### **43A Payment of costs to law practices**

- (1) The Commission may defer payment of any fees payable by it to a law practice in connection with proceedings in respect of which legal aid has been granted—
  - (a) until the Commission is satisfied that the law practice has taken reasonable steps to recover any party and party costs to which the legally assisted person is entitled, or
  - (b) until the conclusion of any official investigation in relation to—
    - (i) any alleged breach of this Act or the regulations by the law practice,
    - (ii) any alleged fraud or misrepresentation by the law practice in relation to the provision of legal aid or any such fraud or misrepresentation to which the law practice is a party, or
    - (iii) any alleged improper action by the law practice in bringing, defending or conducting any proceedings in relation to which legal aid has been provided or

any such action to which the law practice is a party, or

(iv) any matter concerning the assignment of work to, or the performance of work by, the law practice, or

(c) until the completion of any criminal or disciplinary proceedings commenced against the law practice in respect of a matter referred to in paragraph (b).

(1A) A reference in subsection (1) (b) to an official investigation includes a reference to an investigation conducted by or under the authority of the Commission, but only if the Commission has given written notice to the law practice concerned that the investigation is to be or is being conducted.

(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 to a law practice in connection with proceedings in respect of which legal aid has been granted if any allegation referred to in subsection (1) (b) against the law practice is substantiated in any criminal or disciplinary proceedings.

(2A) The power of the Commission to defer or refuse to make a payment to a law practice under this section applies only to the payment of fees in connection with the proceedings in respect of which legal aid has been granted and to which subsection (1) relates.

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

(4) The Commission may reduce an amount payable by the Commission to a law practice by an amount payable by the law practice to the Commission.

(5) A reference to a law practice in this section includes a reference to an associate of a law practice.

#### **43B Payment of money by certain law practices**

(1) This section applies to a law practice against whom an allegation referred to in section 43A (1) (b) (i) or (ii) is substantiated in any criminal or disciplinary proceedings.

(2) A court or tribunal may, on the application of the Commission, order a law practice to repay to the Commission the whole, or part, of any money paid by the Commission to the law practice in connection with proceedings for which legal aid has been granted and to which the allegation relates.

(3) Such an application can be made to the court or tribunal that is hearing or has heard any proceedings with which the legal aid is concerned or to any other court of competent jurisdiction either during or after the conclusion of the proceedings.

However, an application can only be made to a court or tribunal that can make an order as to costs.

- (4) A reference to a law practice in this section includes a reference to an associate of a law practice.

#### **44 Direction as to payment of certain money to the Commission**

- (1) The Commission may, by notice in writing, direct a legally assisted person or a law practice acting for such a person to pay to the Commission the whole, or such part as is determined by the Commission and specified in the notice, of any money recovered by or on behalf of the person in any proceedings in respect of which legal aid was granted to the person.
- (2) An amount required to be paid under subsection (1) must be paid in such manner, and within such time, as the Commission directs.
- (3) The Commission shall account to a legally assisted person referred to in subsection (1) and any law practice so referred to in respect of money paid to it under subsection (1).
- (4) The Commission may, in respect of money paid to it by a legally assisted person or a law practice under subsection (1)—
- (a) deduct any amount payable to it under this Act by the person, and
  - (b) offset the amount of any fees payable by it to any law practice in connection with the proceedings in which the money was recovered against any other money held by the law practice in relation to the same proceedings.
- (5) The Commission may recover an amount payable to it under subsection (1), and any interest payable in respect of the amount, as a debt in a court of competent jurisdiction.
- (6) In this section, **money** includes a cheque.

#### **45 Recovery of money**

- (1) Where—
- (a) a court or tribunal has made an order directing the payment of money (whether or not being or including an order as to costs) in favour of a legally assisted person, or
  - (b) money is otherwise recoverable by a legally assisted person (whether or not in a proceeding or by virtue of a settlement or compromise),

and the person fails, within such time as the Commission thinks reasonable, to recover the money, the Commission may, by notice in writing, direct the person to assign his

or her right to recover the money, or such part of it as is specified in the notice, to the Commission within a period of 21 days after the date of the notice.

- (2) Where a legally assisted person fails to comply with a notice given to him or her under subsection (1), the person shall be deemed, at the expiration of the period referred to in subsection (1), to have assigned to the Commission the right to recover the money in respect of which the notice is given and the Commission may do and suffer all such things as the person could, but for this subsection, have been able to do or suffer in order to recover that money.
- (3) The Commission must account to the legally assisted person in respect of money recovered by it under this section.

#### **46 Liability of legally assisted person to pay costs and expenses**

- (1) When legal services have been provided to a legally assisted person, the Commission is to determine the amount, if any, payable to the Commission by the person in respect of the costs and expenses of those legal services (including expenses under section 33). More than one such determination can be made in respect of the person and can be made at or after the conclusion of the matter for which legal services were provided or, if legal aid is terminated during the course of the matter, at or after the termination. A determination can be varied by a later determination.
- (2) The amount payable under subsection (1) shall not exceed the amount by which the sum of—
  - (a) the costs of the legal services provided, and
  - (b) any disbursements 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).
- (2A) An amount required to be paid under subsection (1) must be paid in such manner, and within such time, as the Commission directs.
- (3) The Commission may recover an amount payable to it under subsection (1), and any interest payable in respect of the amount, as a debt in a court of competent jurisdiction.
- (4) For the purposes of subsection (2), a reference to costs is a reference to costs assessed as if the legally assisted person were not a legally assisted person.
- (5) (Repealed)

#### **47 Payment of costs awarded against legally assisted persons**

- (1) Where a court or tribunal makes an order as to costs against a legally assisted person—
  - (a) except as provided by subsections (2), (3), (3A), (4) and (4A), the Commission shall pay the whole of those costs, and
  - (b) except as provided by subsections (3), (3A), (4) and (4A), the legally assisted person shall not be liable for the payment of the whole or any part of those costs.
- (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.
- (3) The Commission shall not be liable to pay any costs incurred by or on behalf of a person 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) and that person shall be liable for the payment of those costs.
- (3A) Where a court or tribunal makes an order as to costs against a legally assisted person in respect of proceedings for a criminal offence in which the legally assisted person was the accused person, the legally assisted person shall be liable for the payment of the whole of those costs.
- (4) Where a court or tribunal makes an order as to costs against a legally assisted person in respect of—
  - (a) an appeal, or an application for a new trial, made on the ground that money awarded to the legally assisted person is inadequate,
  - (b) an action in which the legally assisted person is successful against one or more, but not all, of the other parties to the action,
  - (b1) an action in which the legally assisted person is successful after having been unsuccessful in interlocutory proceedings related to the action,
  - (c) an action heard and determined pursuant to an order under section 42 of the *Civil Procedure Act 2005*,
  - (d) an action brought under the *Family Law Act 1975* of the Commonwealth, or
  - (e) an action brought under the *Child Support (Assessment) Act 1989* of the Commonwealth,

the Commission may decline to pay the whole, or such part as it determines, of those costs and those costs or that part which the Commission has declined to pay shall be paid by the legally assisted person.

- (4A) If a court or tribunal makes an order as to costs against a legally assisted person on the basis that the person did not accept an offer of compromise made in proceedings (being an offer made in accordance with rules of court or an offer of a prescribed kind)—
- (a) the Commission may decline to pay the whole, or such part as it determines, of those costs to the extent that they are costs incurred by the party that made the offer after the day on which the offer was made, and
  - (b) the legally assisted person is liable for payment of any of those costs that the Commission has declined to pay.
- (5) The Commission shall give notice, in writing, to a legally assisted person, the whole or part of whose costs it has, under subsection (4) or (4A), declined to pay, of the decision to decline payment of the costs within 14 days after the decision is made.
- (6) Where a decision to decline to pay the whole or part of any costs is made by a person or committee acting in pursuance of a delegation or authorisation under section 69, the person or committee shall, in a notice given under subsection (5), inform the legally assisted person that he or she has a right of appeal to a Legal Aid Review Panel against the decision.
- (7) Where a person or committee referred to in subsection (6) declines the payment of costs under subsection (4) or (4A), the person or committee shall record the reasons for the decision to decline the payment.
- (8) Any amount paid by the Commission under this section shall be deemed to have been paid by the legally assisted person on whose behalf it is paid.

#### **48 Commission has lien on certain documents**

- (1) To secure the payment of costs in respect of work done by the Chief Executive Officer or a member of staff of the Commission, and expenses incurred by the Commission, on behalf of a legally assisted person, the Commission has a lien on any document held by it in connection with proceedings conducted on behalf of the person by the Chief Executive Officer or member of staff.
- (2) The law relating to the waiver of a solicitor's lien applies to the Commission's lien in the same manner as it would apply if the person in respect of whom the Commission's lien is exercised were not a legally assisted person.

## **Division 2 Assignment of work to law practices**



#### **49 Assignment of work**

- (1) The Commission is to determine the procedure for engaging law practices for the provision of legal aid, which may relate to, without limitation—
  - (a) the eligibility criteria of law practices, or
  - (b) the matters for which a law practice may be engaged, which may include (but are not limited to)—
    - (i) matters generally, or matters of a particular type or class, or
    - (ii) matters in a specified jurisdiction, or
    - (iii) matters in a specified area of the State, or
  - (c) the manner in which work is to be distributed to law practices, having regard to the interests of the legally assisted person or any choice expressed by the legally assisted person for a particular law practice.
- (2) A law practice that provides community legal services is not eligible to be engaged by the Commission for the provision of legal aid, unless the Commission otherwise determines.
- (3) A law practice that has been engaged by the Commission for the provision of legal aid does not have an entitlement to be given work.

#### **50 Audits**

- (1) The Commission may, in respect of any work assigned by the Commission to a law practice, carry out an audit of the law practice, or cause an audit to be carried out, in accordance with arrangements made between the Commission and the law practice when the law practice was engaged by the Commission for the provision of legal aid.
- (2) For the purposes of an audit under subsection (1), the Commission, or a person appointed by the Commission, may—
  - (a) require a law practice to produce for inspection any files, records or documents relating to an assigned matter, and
  - (b) make copies of, or take extracts or notes from, any such files, records or documents, and
  - (c) require a law practice to provide the Commission, or person, with such assistance and facilities as may be reasonably necessary to enable the Commission, or person, to exercise the functions under this section, and
  - (d) require a law practice to give the Commission, or person, such other information as is reasonably necessary for the purposes of the audit.

- (3) The relationship between a law practice and a legally assisted person does not operate to prevent or limit an audit conducted under this section.
- (4) Except in proceedings under Chapter 5 of the *Legal Profession Uniform Law (NSW)*, the production of a file, record, document or statement, or the giving of information, under this section does not subsequently affect any legal professional privilege to which, but for subsection (3), the file, record, document, statement or information would be subject.
- (5) The regulations may make provision for or with respect to audits under this section.
- (6) Nothing in section 12(i) or 25 prevents or restricts the carrying out of an audit under this section.

#### **51-52B (Repealed)**

### **Division 3 Legal Aid Review Panels**

#### **53 Approval of persons as members of pool**

- (1) The Board must approve a pool of persons to act as members of Legal Aid Review Panels.
- (2) The persons approved as members of the pool must be Australian legal practitioners.
- (3) The Board may, at any time, remove a member from the pool.

#### **54 Establishment of Legal Aid Review Panels**

- (1) The Board may, from time to time and in accordance with approved panel policies and guidelines, establish the following to hear and determine appeals in relation to the provision of legal aid—
  - (a) for an appeal raising a complex question of law or policy—a Legal Aid Review Panel comprising at least 2 members from the pool,
  - (b) otherwise—a Legal Aid Review Panel comprising 1 member from the pool.
- (2) For the purpose of hearing and determining an appeal, a Legal Aid Review Panel must comply with approved panel policies and guidelines.

#### **55 Board may approve policies and guidelines for panels**

- (1) The Board may, from time to time, approve policies and guidelines about the following—
  - (a) the procedure for the approval of persons as members of the pool,
  - (b) the method of establishing a Legal Aid Review Panel, including what constitutes an appeal raising a complex question of law or policy,

(c) the operation and procedures of panels, including the way in which panels must hear and determine appeals.

(2) Approved panel policies and guidelines must be published on the website of Legal Aid NSW.

## **Division 4 Appeals in respect of the provision of legal aid**

### **56 Appeals**

(1) An applicant or legally assisted person may appeal against the following decisions made by a person or committee under this Act—

(a) the determination or redetermination of an application for legal aid,

(b) a decision to vary a grant of legal aid, including the redetermination of a variation of a grant of legal aid,

(c) a decision to decline payment of the whole or part of costs awarded against the legally assisted person.

(2) An appeal may not be made against a decision in the following circumstances—

(a) if the application—

(i) relates to proceedings in the Local Court in relation to a criminal offence, and

(ii) is refused wholly or partly on the ground the applicant fails to satisfy the means test determined by the Commission under section 35(1),

(b) if the application relates to proceedings in the Local Court in relation to a criminal offence and the applicant is dissatisfied because the applicant must pay a contribution towards the costs and expenses of the legal services sought by the applicant,

(c) a decision to impose a condition on a grant of legal aid with the effect the Commission will provide the legal aid by—

(i) making available the services of the Chief Executive Officer or members of the staff of the Commission, or

(ii) arranging for the services of the Public Defenders to be made available, or

(iii) arranging for the services of law practices to be made available, wholly or partly at the expense of the Commission,

(d) the circumstances prescribed by the regulations.

(3) An appeal made against a decision to refuse or terminate the provision of legal aid lapses if, after the appeal is lodged, the Commission makes a decision to provide the

legal aid on a redetermination of the matter.

- (4) An appeal must be lodged with the Commission—
- (a) in the approved form, and
  - (b) no later than 21 days after notice of the decision being appealed is received by the appellant.

### **57 Adjournment of certain proceedings**

Where it appears to a court or tribunal, on any information before it—

- (a) that a party to any proceedings before the court or tribunal—
  - (i) has appealed, in accordance with section 56, to a Legal Aid Review Panel and that the appeal has not been determined, or
  - (ii) intends to appeal, in accordance with section 56, to a Legal Aid Review Panel and that such an appeal is competent,
- (b) that the appeal or intention to appeal is bona fide and not frivolous or vexatious or otherwise intended to improperly hinder or improperly delay the conduct of the proceedings, and
- (c) that there are no special circumstances that prevent it from doing so,

the court or tribunal shall adjourn the proceedings to such date on such terms and conditions as it thinks fit.

### **58 Functions of a Legal Aid Review Panel on an appeal**

For the purposes of hearing and determining an appeal, a Legal Aid Review Panel—

- (a) has the functions and discretions that the person or body whose determination, variation or decision is the subject of the appeal had in respect of the matter the subject of the appeal, and
- (b) is required to comply with any policy guidelines with which that person or body was required to comply in respect of the matter the subject of the appeal.

### **59 Determination of appeal**

- (1) A Legal Aid Review Panel must determine an appeal made to it and in so doing may make such order with respect to the matter the subject of the appeal as it thinks fit.
- (2) A Legal Aid Review Panel must give notice, in writing, of its determination of an appeal to the appellant and to the Commission.
- (3) A Legal Aid Review Panel must record its reasons for the determination of an appeal.

## **60 Effect and implementation of determination or order**

- (1) A determination or order of a Legal Aid Review Panel 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.
- (2) Nothing in subsection (1) prevents the assignment of work to a law practice in respect of an applicant whose appeal to a Legal Aid Review Panel has been upheld.

## **Part 3A Alternative dispute resolution**

### **60A Purpose of Part**

- (1) The purpose of this Part is to enable the Commission to arrange for matters to be dealt with by alternative dispute resolution.
- (2) This Part does not prevent the parties to proceedings or proposed proceedings from agreeing to and arranging for alternative dispute resolution of any matter otherwise than in accordance with this Part.

### **60B Definitions**

In this Part—

**alternative dispute resolution** includes conferencing.

**conferencing** means a structured negotiation process that takes place in course of a program approved by the Commission and in which the convenor assists the parties to a dispute to settle the dispute.

**conferencing session** means a meeting at which conferencing takes place and, in sections 60D and 60E, includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.

**convenor** of a conferencing session means the person to whom a matter has been referred for conferencing under this Part.

### **60C Powers of Commission in respect of alternative dispute resolution**

- (1) The Commission may arrange for a matter, or any aspect of a matter, to be dealt with by alternative dispute resolution if the Commission considers it appropriate to do so. The Commission may do so before or after the determination of an application for legal aid in respect of the matter.
- (2) Without limiting the powers of the Commission under section 33, the Commission may require an applicant for legal aid or a person to whom legal aid is granted to participate in such alternative dispute resolution procedures as may be specified by the Commission.

- (3) The Commission may defray expenses incidental to alternative dispute resolution from money available to the Commission or require (whether before or after the application for legal aid is determined) the applicant or person to whom legal aid is granted to meet those expenses.
- (4) An amount required to be paid under subsection (3) must be paid in such manner, and within such time, as the Commission directs.
- (5) The Commission may recover an amount payable to it under subsection (3), and any interest payable in respect of the amount, as a debt in a court of competent jurisdiction.

#### **60D Defamation**

- (1) The same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to—
  - (a) a conferencing session, or
  - (b) a document or other material sent to or produced to the convenor of a conferencing session, or sent to the Commission, for the purpose of enabling a session to be arranged, or
  - (c) a document or other material prepared by the convenor of a conferencing session in the course of, or as a result of, the session.
- (2) The privilege conferred by subsection (1) extends only to a publication made—
  - (a) at a conferencing session, or
  - (b) as provided by subsection (1) (b) or (c), or
  - (c) as provided in section 60F.

#### **60E Admissibility of evidence**

- (1) Evidence of anything said or of any admission made in a conferencing session is not admissible in any proceedings before any court, tribunal or body.
- (2) A document prepared for the purposes of, or in the course of, or as a result of, a conferencing session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.
- (3) Subsections (1) and (2) do not apply with respect to any evidence or document—
  - (a) if the persons in attendance at, or identified during, the conferencing session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or

- (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 60F (c).

#### **60F Secrecy**

The convenor of a conferencing session may disclose information obtained in connection with a conferencing session in any one or more of the following circumstances only—

- (a) with the consent of the person from whom the information was obtained,
- (b) to the Commission, a committee or panel established under this Act, the Chief Executive Officer or a member of staff of the Commission in connection with the administration of legal aid,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to a person or damage to property,
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a conferencing session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the conferencing session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

#### **60G Immunity for convenors of conferencing sessions**

No matter or thing done or omitted to be done by the convenor of a conferencing session subjects the convenor to any action, liability, claim or demand if the matter or thing was done or omitted in good faith for the purposes of a conferencing session under this Part.

### **Part 4 Finance**

#### **61 Definitions**

In this Part—

***financial year***, in relation to the Commission, means the year ending on 30 June.

***Fund*** means the Legal Aid Fund established under section 62.

#### **62 Legal Aid Fund**

The Commission shall establish and administer a fund, to be called the “Legal Aid Fund”.

#### **63 Payments into Fund**

- (1) Except as provided by section 64A, there shall be paid into the Fund—

- (a) all amounts paid out of the Public Purpose Fund maintained under section 48 of the *Legal Profession Uniform Law Application Act 2014* for the purpose of supplementation of the Legal Aid Fund,
  - (b) any money appropriated by Parliament for the purposes of the Fund,
  - (c) any money received by the State of New South Wales from the Commonwealth for the purposes of legal aid,
  - (d) amounts paid to the Commission under section 36 (1) (a) or (b) or recovered by it under section 36 (3),
  - (d1) money received by the Commission in respect of services performed or carried out under clause 20 of Schedule 8,
  - (e) money received by the Commission by way of payment of party and party costs,
  - (f) money received by the Commission pursuant to a direction under section 44 (1),
  - (g) money recovered by the Commission under section 45 (2),
  - (h) amounts paid to the Commission pursuant to a determination under section 46 (1) or recovered by it under section 46 (3),
  - (i) (Repealed)
  - (j) penalties recovered pursuant to this Act, and
  - (k) the interest from time to time accruing from the investment of the Fund.
- (2) There may be paid into the Fund money, other than money referred to in subsection (1), which may lawfully be paid into the Fund.
- (3) The Commission shall maintain a separate account or accounts in the Fund for money—
- (a) received for or on behalf of a legally assisted person by a law practice 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.

#### **64 Payments out of the Fund**

There may be paid out of the Fund—



- (a) all charges, costs and expenses incurred by the Commission in the exercise of its functions under this Act,
- (b) costs and expenses incurred in respect of applications for legal aid,
- (c) fees payable to law practices to whom work is assigned by the Commission,
- (d) disbursements incurred on behalf of legally assisted persons,
- (e) subject to section 47, costs awarded against legally assisted persons,
- (f) money referred to in section 63 (1) (f) which is payable by the Commission to legally assisted persons,
- (g) money granted by the Commission in respect of legal aid schemes administered by other persons, and
- (h) all other amounts required or authorised by this Act to be paid out of the Fund.

#### **64A Trust account**

- (1) A trust account is to be established called the Legal Aid Commission Trust Account.
- (2) The person responsible for the administration of the Account is the Chief Executive Officer or, if the Chief Executive Officer does not hold a current Australian practising certificate, the relevant member of staff appointed for the time being under section 23A.
- (3) All money received for or on behalf of any legally assisted person by the Chief Executive Officer, or a member of staff of the Commission, when acting as a solicitor on behalf of the person is to be held in the Account by the person responsible for the administration of the Account.
- (4) Part 4.2 of the *Legal Profession Uniform Law (NSW)* applies to the Account.

#### **65 Investment**

Any money in the Fund which is not immediately required for the purposes of the Fund may be invested by the Commission—

- (a) in any manner in which trustees are for the time being authorised to invest trust funds, or
- (b) in any securities approved by the Treasurer on the recommendation of the Minister.

#### **66 (Repealed)**

#### **67 Financial estimates**

The Commission shall, on or before 31 May in each year, prepare estimates of its income

and expenditure for the following financial year.

## **Part 5 Miscellaneous**

### **68 Consultative committees**

- (1) The Commission may establish standing or special consultative committees for the purpose of advising the Commission in the exercise of its functions under this Act.
- (2) The members of a consultative committee established under subsection (1) shall be appointed by the Commission on such terms and conditions as the Commission may determine and shall consist of such persons as the Commission considers appropriate.
- (3) The Commission shall appoint one of the members of a consultative committee established under subsection (1) to be chairperson of the committee and any such committee may, subject to subsection (4) and to any directions of the Commission, regulate its procedure in such manner as it thinks fit.
- (4) The Commission may specify the number of persons who shall constitute a quorum of a consultative committee established under subsection (1).

### **69 Delegation**

The Commission may, by instrument in writing, delegate the exercise of such of the functions of the Commission (other than this power of delegation) as are specified in the instrument to any of the following—

- (a) a committee comprised of members of the Board, including the Chief Executive Officer or a member of the Board nominated by the Chief Executive Officer,
- (b) a member of staff of the Commission,
- (c) a person for the time being holding or acting in a specified position in the staff establishment of the Commission,
- (d) any person (including a law practice) of whose services the Commission makes use pursuant to this or any other Act.

**Note—**

Section 49 of the [Interpretation Act 1987](#) contains general provisions relating to the delegation of functions.

### **70 Determination of pecuniary interests**

- (1) The Commission may determine that the interest of a member of the Board or a member of a committee established under this Act is or is not a direct or indirect pecuniary interest for the purposes of this Act.
- (2) A determination made by the Commission under subsection (1) shall be final and

conclusive.

## **71 Notices**

- (1) Where, under this Act, notice in writing is required to be given to a person by the Commission, the notice may be given—
  - (a) in the case of a person other than a corporation—
    - (i) by delivering it to the person, or
    - (ii) by delivering it, or by sending it by prepaid post, addressed to the person at the address, if any, specified by the person for the giving of notices under this Act, or, where no such address is specified, at the person's usual place of abode or the person's place of business, being the usual place of abode or place of business last known to the Commission, or
  - (b) in the case of a corporation—
    - (i) by leaving it at the place of business, or registered office, of the corporation with a person apparently in the service of the corporation and apparently not less than 16 years of age, or
    - (ii) by delivering it, or by sending it by prepaid post, addressed to the corporation at the address, if any, specified by the corporation for the giving of notices under this Act, or, where no such address is specified, at the registered office of the corporation or its place of business last known to the Commission.
- (2) Notice shall, in respect of a notice sent by prepaid post in accordance with subsection (1) (a) (ii) or (b) (ii), be deemed to have been given at the time at which the notice would be delivered in the ordinary course of post.

## **71A Interest**

- (1) Interest at the prescribed rate is payable on—
  - (a) an amount or part of an amount payable by a person under section 33 (2) that is not paid by such date as may be specified in a direction under section 33 (3), or
  - (a1) an amount or part of an amount payable by a person under section 36 (1) that is not paid by such date as may be specified in a direction under section 36 (2), or
  - (b) an amount or part of an amount payable by a person under section 38 (1) (c) or (d) that is not paid by such date as may be specified in a direction under section 38 (6), or
  - (b1) an amount or part of an amount payable by a person under section 44 (1) that is not paid by such date as may be specified in a direction under section 44 (2), or

- (b2) an amount or part of an amount payable by a person under section 46 (1) that is not paid by such date as may be specified in a direction under section 46 (2A), or
- (c) an amount or part of an amount payable by a person under section 48 (1) that is not paid by such date as may be specified in a direction under section 48 (1A), or
- (d) an amount or part of an amount payable by a person under section 60C (3) that is not paid by such date as may be specified in a direction under section 60C (4).

(2) In this section—

**prescribed rate** means—

- (a) a rate equivalent to 50 per cent of the rate prescribed for the purposes of section 101 of the *Civil Procedure Act 2005*, or
- (b) if some other rate is prescribed by the regulations, that other rate.

## **72 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) Proceedings for an offence arising under section 26 or 32 may be commenced at any time within 2 years after the offence was allegedly committed.

## **72A Agreements or arrangements with Commonwealth**

- (1) The State, or the Commission with the approval of the Attorney General, may from time to time enter into an agreement or arrangement with the Commonwealth for or with respect to the provision of legal aid.
- (1A) The matters for which any such agreement or arrangement may provide include (but are not limited to) the following—
  - (a) the money to be made available by the Commonwealth, or (in the case of an agreement or arrangement between the State and the Commonwealth) by the State and the Commonwealth, for the purposes of the provision of legal aid and other legal services,
  - (b) the priorities to be observed, in relation to money made available by the Commonwealth, in the provision of legal aid and other legal services.
- (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.

## **73 Savings, transitional and other provisions**

Schedule 8 has effect.

**74, 75 (Repealed)****76 Regulations**

- (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 5 penalty units.

**Schedule 1 Repeals**

(Section 5)

<b>Column 1</b>	<b>Column 2</b>	
<b>Year and number of Act</b>	<b>Short title of Act</b>	
	<b>Extent of repeal</b>	
1918 No 36	<a href="#">Poor Persons Legal Remedies Act 1918</a>	The whole Act
1943 No 17	<a href="#">Legal Assistance Act 1943</a>	The whole Act
1947 No 30	<a href="#">Legal Assistance (Amendment) Act 1947</a>	The whole Act
1953 No 7	<a href="#">Legal Assistance (Amendment) Act 1953</a>	The whole Act
1957 No 63	<a href="#">Legal Assistance (Amendment) Act 1957</a>	The whole Act
1959 No 20	<a href="#">Suitors' Fund (Amendment) Act 1959</a>	Sections 1 (3) and 4
1961 No 29	<a href="#">Industrial Arbitration (Basic Wage) Amendment Act 1961</a>	So much of the First Schedule as amended Act No 17, 1943 and so much of the Second Schedule as refers to Act No 17, 1943
1964 No 37	<a href="#">Industrial Arbitration (Amendment) Act 1964</a>	So much of the First Schedule as amended Act No 17, 1943 and so much of the Second Schedule as refers to Act No 17, 1943
1964 No 42	<a href="#">Legal Assistance (Amendment) Act 1964</a>	The whole Act
1967 No 68	<a href="#">Industrial Arbitration (Basic Wage) Amendment Act 1967</a>	So much of the First Schedule as amended Act No 17, 1943 and so much of the Second Schedule as refers to Act No 17, 1943
1970 No 10	<a href="#">Legal Assistance and Suitors' Fund (Amendment) Act 1970</a>	Section 2
1970 No 37	<a href="#">Legal Practitioners (Legal Aid) Act 1970</a>	The whole Act

1970 No 52	<a href="#">Supreme Court Act 1970</a>	So much of the Second Schedule as amended Act No 17, 1943 and Act No 37, 1970
1970 No 60	<a href="#">Minors (Property and Contracts) Act 1970</a>	So much of the First Schedule as amended Act No 17, 1943
1972 No 41	<a href="#">Supreme Court (Amendment) Act 1972</a>	So much of the Second Schedule as relates to Act No 17, 1943 and Act No 37, 1970
1974 No 39	<a href="#">Legal Aid (Miscellaneous Provisions) Act 1974</a>	The whole Act
1974 No 62	<a href="#">Legal Practitioners and Other Acts (Amendment) Act 1974</a>	Section 10
1975 No 15	<a href="#">Legal Practitioners (Legal Aid) Amendment Act 1975</a>	The whole Act
1976 No 4	<a href="#">Statutory and Other Offices Remuneration Act 1975</a>	So much of Schedule 5 as amended Act No 17, 1943

## Schedule 2 Membership of Board

(Section 14 (5))

### 1 Definitions

In this Schedule—

**Chairperson** means the person appointed as referred to in section 14 (2) (b) (i) as Chairperson of the Board.

**member** of the Board does not include the Chief Executive Officer.

### 2 (Repealed)

### 3 Term of office of member of the Board

(1) A member of the Board (other than the Chairperson) shall, subject to this Act, be appointed for such term, not exceeding 3 years, as is specified in the instrument of his or her appointment and shall, if otherwise qualified, be eligible for reappointment as a member of the Board.

(2) The Chairperson shall, subject to this Act, be appointed for such term, not exceeding 5 years, as is specified in the instrument of his or her appointment and shall, if otherwise qualified, be eligible for reappointment as Chairperson.

### 4 Remuneration of and allowances for members of the Board

Each member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him or her.

## **5 Alternate members of the Board**

- (1) The Minister may at any time appoint, as an alternate member of the Board to act during the absence or illness of a member of the Board (other than the Chairperson), a person who holds the same qualification, if any, and is nominated in the same manner, if any, as the person for whom he or she is the alternate member of the Board.
- (2) The Minister may at any time appoint a person to act as an alternate for the Chief Executive Officer during the absence or illness of the Chief Executive Officer.
- (3) An alternate member of the Board shall have and may exercise, while acting as a member of the Board, the functions, as such a member of the Board, of the person for whom he or she is the alternate member of the Board.
- (4) An alternate for the Chief Executive Officer shall have and may exercise, while acting as the Chief Executive Officer, the functions of the Chief Executive Officer.
- (5) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the office of a member of the Board or the Chief Executive Officer, and all things done or omitted or suffered to be done by that person while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted or suffered to be done by that member of the Board or the Chief Executive Officer, as the case may be.

## **6 Removal from office**

The Minister may remove a member of the Board from office for inability, misbehaviour or failure to comply with the terms and conditions of his or her appointment.

## **7 Vacation of office**

A member of the Board shall be deemed to have vacated his or her office—

- (a) if he or she dies,
- (b) if he or she resigns his or her office by writing under his or her hand addressed to the Minister and the Minister accepts his or her resignation,
- (c) if he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
- (d) if the member becomes a mentally incapacitated person,
- (e) if he or she is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so

punishable,

- (f) if the member is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Board or unless the member is excused by the Board for having been absent from those meetings,
- (g) if, at any meeting of the Board at which he or she is present and at which any matter in which he or she has a direct or indirect pecuniary interest (otherwise than as a member of, and in common with the other members of, a corporation which consists of more than 25 persons and of which he or she is not a director) is being or about to be considered by the Board—
  - (i) he or she fails, as soon as practicable after the relevant facts have come to his or her knowledge, to disclose to the meeting his or her interest in the matter, or
  - (ii) he or she takes part in the consideration or discussion of, or votes on any question with respect to, the matter, or
- (h) if he or she is removed from office by the Minister.
- (i) (Repealed)

## **8 Filling of casual vacancy**

- (1) On the occurrence of a vacancy in the office of a member of the Board, the Minister may appoint a person to the vacant office for the balance of his or her predecessor's term of office.
- (2) A person appointed under subclause (1) of this clause shall be a person who holds the same qualification, if any, and is nominated in the same manner, if any, as the member of the Board whose office has become vacant was qualified and nominated.

## **9 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member of the Board.
- (2) If by or under any Act provision is made—
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member of the Board or from accepting and retaining any remuneration payable to the person under this Act as a member of the Board.



## Schedule 3 Procedure of Board

(Section 14 (6))

### 1 Definition

In this Schedule, **Chairperson** means the Chairperson of the Board.

### 2 Convening of meetings

- (1) The Chairperson may, at any time, convene a meeting of the Board.
- (2) The Chairperson, on receipt of a request in writing signed by 3 members of the Board, shall convene a meeting of the Board.

### 3 Quorum

At a meeting of the Board, 6 members of the Board constitute a quorum.

### 4 Meetings

- (1) Any duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board.
- (2) Questions arising at a meeting of the Board shall be determined by a majority of votes of the members of the Board present and voting.

### 5 General procedure

The procedure for the calling of, and for the conduct of business at, meetings of the Board shall be as determined by the Board.

### 6 Chairperson to preside

The Chairperson shall preside at all meetings of the Board at which he or she is present.

### 7 Absence of Chairperson

- (1) In the absence of the Chairperson at any meeting of the Board, the Chief Executive Officer shall preside as chairperson at that meeting.
- (2) Where both the Chairperson and the Chief Executive Officer are absent from any meeting of the Board, the members of the Board present shall appoint one of their number to preside as chairperson at that meeting.

### 8 Presiding member's vote

The member of the Board presiding at a meeting of the Board shall have a deliberative vote and, in the event of an equality of votes, shall also have a second or casting vote.

## **9 Minutes of meetings**

- (1) The Board shall cause full and accurate minutes to be kept of its proceedings at meetings.
- (2) The Board shall submit a copy of the minutes of a meeting of the Board to the Minister with reasonable promptness after the meeting is held.

## **10 Public information**

The Board shall publish such of its decisions as, in its opinion, are of sufficient importance to warrant publication and shall make copies of those decisions available to the public in such manner as the Board determines.

## **11 (Repealed)**

# **Schedule 3A Provisions relating to Chief Executive Officer**

(Section 16 (3))

## **1 Term of office**

The Chief Executive Officer holds office for such term, not exceeding 5 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **2 Full-time office**

The office of Chief Executive Officer is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.

## **3 Employment and remuneration**

- (1) The employment of the Chief Executive Officer is (subject to this Schedule) to be governed by a contract of employment between the Chief Executive Officer and the Minister.
- (2) The following provisions of or made under the [Government Sector Employment Act 2013](#) relating to the employment of Public Service senior executives apply to the Chief Executive Officer (but in the application of those provisions a reference to the employer of any such executive is to be read as a reference to the Minister)—
  - (a) provisions relating to the band in which an executive is to be employed,
  - (b) provisions relating to the contract of employment of an executive,
  - (c) provisions relating to the remuneration, employment benefits and allowances of an executive,
  - (d) provisions relating to the termination of employment of an executive.

#### 4 Vacancy in office

- (1) The office of Chief Executive Officer becomes vacant if the holder—
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) is removed from office under clause 3.
- (2) If the office of Chief Executive Officer becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### 5 Chief Executive Officer not Public Service employee

The office of Chief Executive Officer is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that office (except as provided by clause 3).

### Schedules 4-7 (Repealed)

### Schedule 8 Savings, transitional and other provisions

(Sections 73, 74)

## Part 1 Interpretation

### 1 Definitions

- (1) In this Schedule—

**first appointed day** means the day appointed and notified under section 2 (2).

**former Acts** means the [Legal Assistance Act 1943](#) and the [Legal Practitioners \(Legal Aid\) Act 1970](#).

**second appointed day** means the day appointed and notified under section 2 (3).

- (2) A reference in this Schedule to legal aid under either of the former Acts includes a reference to legal assistance under the *Legal Assistance Act 1943*.

## **Part 1A Savings and transitional regulations**

### **1A Regulations**

- (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*

*Legal Aid Commission (Amendment) Act 1989*

*Legal Aid Commission (Amendment) Act 1990*

*Legal Aid Commission (Amendment) Act 1992*

*Legal Aid Commission Amendment Act 1996*

*Legal Aid Commission Amendment Act 1997*

*Legal Aid Commission Amendment Act 2000*

*Legal Aid Commission Amendment Act 2002*

- (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.

## Part 2

### 2, 3 (Repealed)

## Part 3 Legal aid under former Acts

### 4 Undetermined applications for legal aid

An application for legal aid under either of the former Acts which has not been determined immediately before the second appointed day shall be deemed to be an application under section 31.

### 5 Persons in receipt of legal aid under the former Acts

A person who was in receipt of legal aid under either of the former Acts immediately before the second appointed day or who has received legal aid under either of the former Acts at any time before the second appointed day shall be deemed to be a legally assisted person.

### 6 Terms and conditions in certificates issued under the former Acts

A term or condition in a certificate granted under the [Legal Assistance Act 1943](#), or issued under the [Legal Practitioners \(Legal Aid\) Act 1970](#), being a certificate in force immediately before the second appointed day, shall be deemed to be a condition subject to which legal aid is granted and which has been imposed by the Commission under section 34 (1).

### 7 Assignment of work to private legal practitioners

A private legal practitioner who, immediately before the second appointed day, acted for a person who was in receipt of legal aid under either of the former Acts immediately before the second appointed day shall be deemed to be a private legal practitioner to whom the Commission has assigned work under this Act.

### 8 Transfer of money in Law Society's Fund

(1) In this clause—

**Commission's Fund** means the Legal Aid Fund established under section 62.

**Law Society's Fund** means the Legal Aid Fund established under section 15 of the [Legal Practitioners \(Legal Aid\) Act 1970](#).

(2) The Law Society shall, on the second appointed day, pay to the Commission all money then standing to the credit of the Law Society's Fund.

(3) The Commission shall pay the money received by it under subclause (2) of this clause into the Commission's Fund.

(4) On and from the second appointed day—

- (a) all proceedings commenced before that day by the Law Society for the recovery of money payable into the Law Society's Fund and which are pending immediately before that day shall be deemed to be proceedings pending on that day by the Commission for the recovery of money payable into the Commission's Fund and all proceedings so commenced by any person against the Law Society for the recovery of money payable out of the Law Society's Fund and which are pending immediately before that day shall be deemed to be proceedings pending on that day by that person against the Commission for the recovery of money payable out of the Commission's Fund,
- (b) all debts, moneys and claims, liquidated and unliquidated, that, immediately before that day, were due or payable by, or recoverable against, the Law Society and payable out of the Law Society's Fund shall be debts due and moneys payable by and claims recoverable against the Commission and payable out of the Commission's Fund, and
- (c) all liquidated and unliquidated claims for which the Law Society would, but for the enactment of this Act, have been liable shall be liquidated and unliquidated claims for which the Commission shall be liable.

#### **9 Legal aid obtained by fraud or misrepresentation under the former Acts**

The reference in section 43 (1) (a) to legal aid includes a reference to legal aid obtained under either of the former Acts.

#### **10, 11 (Repealed)**

#### **12 Continuation of certain provisions**

The provisions of sections 3 (8) (a) and 3A (6) of the [Legal Assistance Act 1943](#) shall, notwithstanding the repeal of that Act, continue to apply after the date of repeal of that Act in favour of the persons in respect of whom they applied immediately before that date.

### **Part 4 Savings, transitional and other provisions consequent on enactment of [Legal Services Commission \(Amendment\) Act 1985](#)**

#### **13 Construction of certain references**

- (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,

(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*.

#### **14 Continuity of body corporate**

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*.

#### **15 Continuation of appointment of existing part-time commissioners**

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.

#### **16 Existing statutory officers**

- (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.

## 17 Costs and expenses

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

## 18 (Repealed)

## Part 5 Savings, transitional and other provisions relating to the merger

### 19 Definition

In this Part—

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

### 20 Legal aid provided by ALAO

- (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) 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*.
- (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.

## 21 Transfer of ALAO staff to Commission

- (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.

- (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 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*.

## 22 Validation

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.

### **23 Re-constitution of Commission**

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.

## **Part 6 Savings, transitional and other provisions consequent on the enactment of the *Legal Aid Commission (Amendment) Act 1989***

### **24 Definition**

In this Part—

**amending Act** means the *Legal Aid Commission (Amendment) Act 1989*.

### **25 Appeals**

- (1) Section 56, as in force immediately before the commencement of this clause, applies to determinations made under section 34 before that commencement as if the amending Act had not been enacted.
- (2) An appeal against a determination made under section 34 before the commencement of this clause, whether lodged before or after that commencement, is to be dealt with as if the amending Act had not been enacted.

### **26 Means tests**

Any determination made, as referred to in section 35, before the commencement of this clause (being a determination that could have been made had that section, as amended by the amending Act, been in force when the determination was made), and anything done or omitted as a consequence of such a determination, has the same effect as if that section, as so amended, had then been in force.

### **27 Interest on unpaid contributions**

- (1) Interest under section 71A is not payable in respect of any period occurring before the commencement of this clause.
- (2) Interest under section 71A is payable in respect of any period occurring after the commencement of this clause on amounts that have become unpaid before that commencement and on amounts that become unpaid after that commencement.

### **28 Variation of grant of legal aid**

Section 38, as amended by the amending Act, applies in relation to a variation of a determination under that section whether the determination was made before or after the

commencement of this clause.

### **29 Payment of costs to private legal practitioners**

Section 43A, as amended by the amending Act, applies to the payment of fees in respect of work performed by a private legal practitioner before or after the commencement of this clause.

### **30 Proceedings for offences**

Section 72 (2) does not apply to proceedings for an offence arising under section 26, 32 or 41 that was allegedly committed before the commencement of this clause.

## **Part 7 Validation and transitional provisions consequent on the enactment of the [Legal Aid Commission \(Amendment\) Act 1990](#)**

### **31 Definition**

In this Part—

**the amending Act** means the [Legal Aid Commission \(Amendment\) Act 1990](#).

### **32 Validation of conditions and agreements concerning legal aid**

- (1) This clause applies to a condition or agreement which was (or was purportedly) imposed or entered into under either of the former Acts or this Act, before the commencement of the amending Act, in connection with the provision of legal aid to a person and which—
  - (a) in the case of a condition, required or purportedly required the person to grant a charge over property as security for the payment of certain amounts by the person in connection with the provision of that legal aid, or
  - (b) in the case of an agreement, required or purportedly required the person to pay money to the Commission, the Legal Services Commission or the Legal Aid Committee of the Law Society of New South Wales in connection with the provision of that legal aid.
- (2) The following provisions apply to and in respect of the conditions and agreements to which this clause applies and any charges arising or purportedly arising from those conditions—
  - (a) the conditions, agreements and charges are validated,
  - (b) the due enforcement or purported enforcement of any such charge or agreement, and the recovery of money pursuant to that enforcement, before the commencement of the amending Act is validated,
  - (c) any such enforcement and recovery are authorised to be continued or commenced

and proceeded with after the commencement of the amending Act, up to the limit imposed by subclause (3).

- (3) Any such agreement or charge is not to be enforced after the commencement of the amending Act so as to recover more than the sum of—
  - (a) the costs, assessed as between solicitor and client, of the legal services provided to the person as a legally assisted person, and
  - (b) any disbursements (including barrister's fees) and out-of-pocket expenses incurred in or in connection with the provision of those services, and
  - (c) any expenses of the kind referred to in section 34B (1) (b) and payable under the agreement or charge, and
  - (d) any interest payable under the agreement or charge in respect of the amounts referred to in paragraphs (a)–(c).
- (4) The validations effected by this clause are to be considered to have taken effect as from the time of the action or purported action to which they relate.

### **33 Transitional—offers of compromise**

The amendments made by the amending Act to section 47 of this Act extend to proceedings begun before the commencement of the amending Act, but do not apply to offers of compromise made before that commencement.

## **Part 8 Transitional provisions consequent on the enactment of the [Legal Aid Commission \(Amendment\) Act 1992](#)**

### **34 Continuation of trust account**

- (1) The trust account maintained for the purposes of section 64A before the commencement of the [Legal Aid Commission \(Amendment\) Act 1992](#) is, on that commencement, taken to be established for the purposes of section 64A as substituted by that Act.
- (2) The trust account maintained for the purposes of section 64A after the commencement of the [Legal Aid Commission \(Amendment\) Act 1992](#) is a continuation of the trust account maintained for the purposes of that section before that commencement.

### **35 References to Director**

- (1) On and from the commencement of the [Legal Aid Commission \(Amendment\) Act 1992](#), a reference in any other Act or in any instrument made under any Act or in an instrument of any other kind, to the Director of the Legal Aid Commission is taken to be a reference to the Managing Director.

- (2) On and from the commencement of the *Legal Aid Commission (Amendment) Act 1992*, references in clauses 13 (1) and 20 (6) to the Director are taken to be references to the Managing Director, unless the Managing Director does not hold a current practising certificate, in which case they are taken to be references to the member of staff appointed for the time being under section 23A.

### **36 Existing Director**

A person holding office as Director of the Commission immediately before the commencement of the *Legal Aid Commission (Amendment) Act 1992* is, on that commencement, taken to have been appointed as Managing Director of the Commission under section 14 (1) as substituted by that Act.

## **Part 9 Transitional provisions consequent on enactment of *Legal Aid Commission Amendment Act 1996***

### **37 Definition**

In this Part—

**amending Act** means the *Legal Aid Commission Amendment Act 1996*.

### **38 Variation of certain grants of legal aid**

An amendment made to section 38 by Schedule 4 [9], [10] or [11] of the amending Act extends to a grant of legal aid made in respect of a person before the commencement of the amendment but only if legal aid in respect of the person has not ceased to be provided at that commencement.

### **39 Assessment of costs**

An amendment made to section 40 by the amending Act extends to work that was assigned to a private legal practitioner before the commencement of the amendment and for which a bill of costs was not provided before that commencement.

### **40 Payment of costs in cases of fraud and improper behaviour**

Section 43, as substituted by the amending Act, extends to costs and expenses provided to a person as a legally assisted person before the section was substituted.

### **41 Official investigations into allegations against private legal practitioners**

Section 43A (1A), as inserted by the amending Act, extends to an official investigation commenced but not completed before the commencement of the subsection.

### **42 Deferral or refusal of payment of certain fees to private legal practitioners**

Section 43A (2A), as inserted by the amending Act, extends to fees incurred by the Commission before the commencement of the subsection.

#### **43 Orders for recovery of money from certain private legal practitioners**

Section 43B, as inserted by the amending Act, extends to money paid by the Commission to a private legal practitioner before the commencement of the section.

#### **44 Recovery of certain money**

Section 44 (5), as inserted by the amending Act, does not apply to a direction given before the commencement of the subsection.

#### **45 Costs and expenses**

The amendment made to section 46 by the amending Act extends to legal services provided to a legally assisted person before the commencement of the amendment but only if a determination under section 46 (as in force immediately before that commencement) has not been made in respect of those services.

#### **46 Orders for payment of costs awarded against legally assisted persons**

Section 47 (4) (b1) or (e), as inserted by the amending Act, does not apply to an order for costs made before the commencement of the paragraph.

#### **47 Existing delegations**

Section 69 (10), as inserted by the amending Act, extends to a delegation made before the commencement of the subsection.

#### **48 Interest**

Section 71A (1) (b1), as inserted by the amending Act, does not apply to a direction given before the commencement of the paragraph.

### **Part 10 Provisions consequent on enactment of [Legal Aid Commission Amendment Act 1997](#)**

#### **49 Definition**

In this Part—

**the amending Act** means the [Legal Aid Commission Amendment Act 1997](#).

#### **50 Commissioners cease to hold office**

- (1) A person holding the office of commissioner under section 8 (1) (b1) immediately before the repeal of that paragraph by the amending Act ceases to hold that office on that repeal.
- (2) On and from the repeal of section 8 (1) (b1), and until the commencement of Schedule 1 [1] to the amending Act—

- (a) a reference in section 7 to 10 commissioners is taken to be a reference to 8 commissioners, and
- (b) section 7 (b) is to be construed as if the figure 9 were the figure 7, and
- (c) a reference in clause 3 of Schedule 3 to 6 commissioners is taken to be a reference to 5 commissioners.

#### **51 No compensation for loss of office**

A person who ceases to hold office as provided by clause 50 is not entitled to any remuneration or compensation because of the loss of the office concerned.

#### **52 Determination of application**

Section 34 (4A), as inserted by the amending Act, does not apply to a determination or a redetermination made, but not notified to the applicant, before the commencement of this clause.

#### **53 Appeals**

The amendments made to section 56 by Schedule 1 [8] to the amending Act do not apply in respect of a determination or redetermination of an application for legal aid, or in respect of a variation or redetermination of a variation of a grant of legal aid, being a determination, redetermination or variation made (and whether or not notified to the applicant) before the commencement of those amendments.

### **Part 11 Provisions consequent on enactment of [Legal Aid Commission Amendment Act 2000](#)**

#### **54 Definition**

In this Part—

***amending Act*** means the [Legal Aid Commission Amendment Act 2000](#).

#### **55 Commissioners**

- (1) A person who held office as a part-time commissioner immediately before the commencement of Schedule 1 [7] to the amending Act is taken, on that commencement, to be appointed as a part-time member of the Board under section 14 for the balance of his or her term of office as part-time commissioner.
- (2) A reference in any Act (including provisions of this Act as continued in force by clause 57) or instrument to a commissioner of the Commission is taken to be a reference to a member of the Board.

## **56 Managing Director**

- (1) The person appointed as Managing Director immediately before the commencement of Schedule 1 [7] to the amending Act is taken, on that commencement, to be appointed as Chief Executive Officer under section 16 for the balance of his or her term of appointment as Managing Director.
- (2) A reference in any Act (including provisions of this Act as continued in force by clause 57) or instrument to the Managing Director of the Commission is taken to be a reference to the Chief Executive Officer of the Commission.

## **57 Legal Aid Review Committees**

- (1) The substitution of section 54 by Schedule 1 [19] to the amending Act does not affect a Legal Aid Review Committee in existence immediately before the commencement of that item. Until such time as the Committee is reconstituted in accordance with section 54 (as substituted by the amending Act)—
  - (a) the members of the Committee continue to hold office as such as if that section had not been substituted, and
  - (b) the substitution of clause 8 of Schedule 7 by Schedule 1 [43] to the amending Act has no effect in relation to that Committee.
- (2) A member of a Legal Aid Review Committee referred to in subclause (1) is eligible (if otherwise qualified) to be reappointed as a member of a Committee that is reconstituted in accordance with section 54 (as amended by the amending Act).
- (3) On the day that a Committee is reconstituted in accordance with section 54 (as substituted by the amending Act), any person who held office as a member of the Committee immediately before that day—
  - (a) ceases to hold that office, and
  - (b) is not entitled to any remuneration or compensation because of the loss of that office.
- (4) This clause ceases to have effect on the commencement of this schedule, Part 13.

## **Part 12 Provision consequent on enactment of [Justice Legislation Amendment Act \(No 2\) 2019](#)**

### **58 Existing service provision agreements**

- (1) A service provision agreement between the Commission and a private legal practitioner under section 52, in force immediately before the repeal of that section by the amending Act, remains in force until whichever of the following occurs first or is the earliest—



- (a) the agreement terminates in accordance with the terms of the agreement,
  - (b) the Commission notifies the practitioner of the termination of the service provision agreement,
  - (c) the Commission engages the practitioner, or the law practice of which the practitioner is an associate, to provide legal aid in accordance with procedures determined under Division 2 of Part 3 of this Act, as substituted by the amending Act,
  - (d) 1 October 2021.
- (2) Compensation is not payable by the Commission for any loss suffered by a person because of the operation of this clause.
- (3) In this clause—

**amending Act** means the *Justice Legislation Amendment Act (No 2) 2019*.

## **Part 13 Provisions consequent on enactment of *Institutions Legislation Amendment Act 2024***

### **59 Definition**

In this part—

**amending Act** means the *Institutions Legislation Amendment Act 2024*.

### **60 Legal Aid Review Committees**

- (1) This Act, as in force immediately before the commencement of the amending Act, Schedule 1, continues to apply to—
- (a) a Legal Aid Review Committee in existence immediately before the substitution (the **Committee**), and
  - (b) a decision made by the Committee, and
  - (c) a hearing commenced, but not yet determined by, the Committee.
- (2) Each member of the Committee continues to hold office as a member of the Committee until whichever of the following occurs first—
- (a) the Board approves a pool of persons to act as members of Legal Aid Review Panels under section 53, as substituted by the amending Act,
  - (b) 1 December 2024.
- (3) A member of a Committee is eligible, if otherwise qualified, to be approved to act as a member of a Legal Aid Review Panel.

- (4) A person who, under this clause, ceases to hold office as a member of the Committee is not entitled to remuneration or compensation because of the loss of office.

**61 Savings provision**

This Act, as in force immediately before the commencement of the amending Act, Schedule 1, continues to apply to the following—

- (a) a hearing commenced, but not yet determined, immediately before the commencement,
- (b) a determination or redetermination made immediately before the commencement, including an appeal against the determination or redetermination,
- (c) an appeal lodged, but not yet determined, immediately before the commencement.