



New South Wales

Legal Aid Commission Amendment Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Legal Aid Commission Act 1979* as follows:

- (a) to constitute a Board of the Legal Aid Commission and provide for its functions,
- (b) to clarify the functions of the Chief Executive Officer of the Commission and to make provision with respect to the delegation of certain functions of the Chief Executive Officer,
- (c) to allow applications for legal aid to be made in such manner and form as the Commission may approve,
- (d) to make it clear that the existing prohibition on private legal practitioners demanding payment from legally assisted persons (being persons to whom legal aid is provided) in respect of legal aid work, except with the approval of the Commission, extends to demanding payment for disbursements incurred

on behalf of legally assisted persons, and to prohibit any contracting out of the prohibition,

- (e) to allow the Commission to recover amounts payable to it by legally assisted persons for the provision of legal services as a debt even though the Commission has a retaining lien over certain documents to secure payment of those amounts,
- (f) to provide that certain conditions on grants of legal aid are not appealable,
- (g) to provide for the reconstitution and procedure of Legal Aid Review Committees,
- (h) to allow the Commission, with the approval of the Attorney General, to enter into agreements with the Commonwealth concerning the provision of legal aid,
- (i) to make miscellaneous minor and consequential amendments.

The Bill also amends the *Crimes (Sentencing Procedure) Act 1999* to allow the Commission to make recommendations to the Senior Public Defender as to the exercise of his or her functions in proceedings on applications for guideline judgments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Legal Aid Commission Act 1979* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999*, the *Fair Trading Act 1987* and the *Public Sector Management Act 1988* set out in Schedule 2.

Schedule 1 Amendment of Legal Aid Commission Act 1979

Schedule 1 [1] inserts a formal provision concerning the status of notes in the *Legal Aid Commission Act 1979*.

Schedule 1 [2] inserts certain definitions into the Act.

Schedule 1 [3] makes a consequential amendment concerning definitions.

Schedule 1 [4]–[6] make consequential amendments. Schedule 1 [6] also omits a redundant provision (being section 8 (5) of the Act).

Schedule 1 [7] substitutes Division 3 of Part 2 (proposed sections 14–17) which deals with the management of the Legal Aid Commission.

Proposed section 14 constitutes a Board of the Commission. The Board is to consist of the Chief Executive Officer (currently referred to in the Act as the Managing Director) and 9 part-time members (currently referred to in the Act as part-time commissioners).

Proposed section 15 provides that the function of the Board is to establish the broad policies and strategic plans of the Commission.

Proposed sections 16 and 17 provide for the appointment and functions of the Chief Executive Officer (being functions that concern the day-to-day management of the affairs of the Commission).

Schedule 1 [8] amends section 23A of the Act to allow the Chief Executive Officer to delegate to more than one person certain of the Chief Executive Officer's functions under the Act that are required to be exercised by a practising solicitor. Schedule 1 [9], [10], [14] and [23] make consequential amendments.

Schedule 1 [12], [13], [24], [25], [28]–[30], [32], [34], [35], [37], [38] and [40] make amendments that are consequential on the amendments made by Schedule 1 [7]. In substituting section 69 of the Act, Schedule 1 [24] also omits redundant provisions regarding the delegation of functions.

Schedule 1 [15] amends section 31 of the Act to allow applications for legal aid to be made in such manner and form as the Commission may approve.

Schedule 1 [16] amends section 34 of the Act to make it clear that the Commission must notify an applicant for legal aid of the determination or redetermination of the application as soon as practicable, and no later than 14 days, after the application is determined or redetermined.

Schedule 1 [17] substitutes section 41 of the Act to make it clear that the prohibition imposed by that section on private legal practitioners demanding payment from legally assisted persons in respect of work assigned by the Commission, except with the approval of the Commission, extends to demanding payment for disbursements incurred on behalf of legally assisted persons.

Proposed section 41 also prohibits any contracting out of the prohibition.

Schedule 1 [18] omits section 46 (5) of the Act to allow the Commission to recover, as a debt, amounts payable to it by legally assisted persons in respect of the

costs and expenses of legal services provided to those persons even though the Commission has (under section 48 of the Act) a retaining lien over certain documents to secure the payment of those amounts.

Schedule 1 [19] provides for the reconstitution of Legal Aid Review Committees. Under proposed section 54, these Committees are each to consist of 3 members (rather than 5 members, as at present) appointed by the Board, of whom one is to be a person nominated by the Minister, one is to be a person nominated jointly by the Bar Association and the Law Society, and one is to be a person who is not a legal practitioner.

Schedule 1 [21] amends section 56 of the Act to prevent appeals being made in respect of the imposition of conditions on grants of legal aid that require the legal aid to be provided by private legal practitioners (which is defined in the Act to include bodies that provide community legal services), wholly or partly at the expense of the Commission. **Schedule 1 [20]** makes a consequential amendment.

Schedule 1 [22] substitutes section 58 of the Act to make it clear that in hearing and determining an appeal, a Legal Aid Review Committee is required to comply with the same policy guidelines that are required to be complied with by the person or body whose determination, variation or decision is the subject of the appeal.

Schedule 1 [26] amends section 72A of the Act to allow the Commission, with the approval of the Attorney General, to enter into agreements or arrangements with the Commonwealth for or with respect to the provision of legal aid. **Schedule 1 [11]** and **[27]** make consequential amendments.

Schedule 1 [31] and **[42]** make minor amendments by way of statute law revision.

Schedule 1 [33] substitutes clause 9 of Schedule 2, consolidating (without any substantive change) existing provisions of the Act concerning the effect of certain other Acts on members of the Board.

Schedule 1 [36] omits a redundant provision concerning presumptions.

Schedule 1 [39] makes a consequential amendment.

Schedule 1 [41] amends a definition.

Schedule 1 [43] substitutes clause 8 of Schedule 7 to provide that the quorum for a meeting of a Legal Aid Review Committee is all of its members.

Schedule 1 [44] amends clause 1A of Schedule 8 to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [45] inserts a new Part 11 into Schedule 8 (proposed clauses 54–57) containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act. In particular:

- (a) clause 55 provides that current part-time commissioners are to continue to hold office as part-time members of the Board (for the balance of their terms as part-time commissioners) on the commencement of the proposed provisions relating to the constitution of the Board, and
- (b) clause 56 provides that the current Managing Director is taken to be appointed as Chief Executive Officer (for the balance of his or her term of appointment as Managing Director) on the commencement of the proposed provisions relating to the appointment of the Chief Executive Officer, and
- (c) clause 57 provides that existing members of a Legal Aid Review Committee are to continue to hold that office until such time as the Committee is reconstituted in accordance with the proposed provisions relating to the reconstitution of Legal Aid Review Committees.

Schedule 2 Amendment of other Acts

Schedule 2.1 makes an amendment to the *Crimes (Sentencing Procedure) Act 1999* to allow the Legal Aid Commission to make recommendations to the Senior Public Defender as to the exercise of any function conferred on the Senior Public Defender, or on any of his or her nominees, in proceedings on applications for guideline judgments.

Schedule 2.2 makes an amendment to the *Fair Trading Act 1987* consequential on the amendments made by Schedule 1 [7].

Schedule 2.3 makes an amendment to the *Public Sector Management Act 1988* consequential on the amendments made by Schedule 1 [7].



New South Wales

Legal Aid Commission Amendment Bill 2000

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New South Wales

Legal Aid Commission Amendment Bill 2000

No. , 2000

A Bill for

An Act to amend the *Legal Aid Commission Act 1979* in relation to the constitution of the Board of the Legal Aid Commission and Legal Aid Review Committees, the management of the Commission and legal assistance arrangements between the Commission and the Commonwealth; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Legal Aid Commission Amendment Act 2000</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Legal Aid Commission Act 1979 No 78	7
The <i>Legal Aid Commission Act 1979</i> is amended as set out in Schedule 1.	8 9
4 Amendment of other Acts	10
Each Act referred to in Schedule 2 is amended as set out in that Schedule.	11 12

Schedule 1	Amendment of Legal Aid Commission Act 1979	1
		2
	(Section 3)	3
[1]	Section 3	4
	Insert after section 2:	5
	3 Notes	6
	Notes included in this Act are explanatory notes and do not form part of this Act.	7
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[2]	Section 4 Definitions	9
	Insert in alphabetical order in section 4 (1):	10
	<i>Board</i> means the Board of the Commission constituted under section 14.	11
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	<i>Chief Executive Officer</i> means the Chief Executive Officer of the Commission.	13
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[3]	Section 4 (1), definitions of “commissioner” and “Managing Director”	15
	Omit the definitions.	16
[4]	The whole Act (except Schedule 8 and in provisions omitted or amended by this Act)	17
	Omit “Managing Director”. Insert instead “Chief Executive Officer”.	18
		19
[5]	Part 2, heading	20
	Omit the heading. Insert instead:	21
	Part 2 Constitution and management of Legal Aid Commission	22
		23
[6]	Sections 7–9	24
	Omit the sections.	25

[7] Part 2, Division 3 (sections 14 and 15)	1
Omit the Division. Insert instead:	2
Division 3 Management of Commission	3
14 Constitution of Board	4
(1) There is to be a Board of the Commission.	5
(2) The Board is to consist of:	6
(a) the Chief Executive Officer, and	7
(b) 9 part-time members, appointed by the Minister, of whom:	8
(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	9
(ii) one is to be a person nominated by the Bar Association, and	10
(iii) one is to be a person nominated by the Law Society, and	11
(iv) one is to be a person nominated by the Labor Council of New South Wales, and	12
(v) 3 are to be persons who, in the opinion of the Minister, possess skills or experience that would benefit the Board, and	13
(vi) one is to be a person who, in the opinion of the Minister, represents consumer and community welfare interests, and	14
(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.	15
(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.	16
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(4)	Before appointing a person referred to in subsection (2) (b) (vi) or (vii), the Minister must:	1
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(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	3
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(b)	take into consideration any such applications received by the Minister.	7
		8
(5)	Schedule 2 has effect with respect to the membership of the Board.	9
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(6)	Schedule 3 has effect with respect to the procedure of the Board.	11
		12
15	Function of Board	13
	The Board has the function of establishing the broad policies and strategic plans of the Commission.	14
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16	Chief Executive Officer	16
(1)	There is to be a Chief Executive Officer of the Commission.	17
(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.	18
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(3)	The employment of the Chief Executive Officer is subject to Part 2A of the <i>Public Sector Management Act 1988</i> , but is not subject to Part 2 of that Act.	21
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17	Functions of Chief Executive Officer	24
(1)	The Chief Executive Officer:	25
(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	26
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	(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.	1 2 3
	(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.	4 5 6 7
[8]	Section 23A Appointment of solicitor to be solicitor practising on own account	8 9
	Omit “a person” from section 23A (1). Insert instead “one or more persons”.	10 11
[9]	Section 23A (2)	12
	Omit “The person appointed”. Insert instead “A person so appointed”.	13
[10]	Section 24 Performance of functions of solicitor	14
	Omit “the member of staff” from section 24 (2A). Insert instead “the relevant member of staff”.	15 16
[11]	Section 25 Solicitor-client relationship	17
	Omit “between the State and the Commonwealth under” from section 25 (4) (a). Insert instead “referred to in”.	18 19 20
[12]	Section 26 Divulging of certain information prohibited	21
	Omit “a commissioner” from section 26 (3). Insert instead “a member of the Board”.	22 23

[13] Section 27	1
Omit the section. Insert instead:	2
27 Immunity	3
An act or omission of:	4
(a) the Commission, the Chief Executive Officer or a member of staff of the Commission, or	5
(b) the Board or a member of the Board, or	7
(c) a committee established under this Act or a member of such a committee, or	8
(d) a person acting under the direction of a person or body referred to in paragraph (a), (b) or (c),	10
does not subject the Commission, the Chief Executive Officer, a member of staff, a member of the Board, a member of the committee 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.	12
[14] Section 28 Solicitor on record	17
Omit “the member of staff” from section 28 (2).	18
Insert instead “the relevant member of staff”.	19
[15] Section 31 Application for legal aid	20
Omit section 31 (3) and (4). Insert instead:	21
(3) An application is to be made in the manner and form approved by the Commission.	22
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[16] Section 34 Determination of application	24
Omit “within 14 days” from section 34 (2).	25
Insert instead “as soon as practicable (and in any case not later than 14 days)”.	26
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[17] Section 41	1
Omit the section. Insert instead:	2
41 Demand for or receipt of certain payments prohibited	3
(1) Despite any Act or law to the contrary, a private legal practitioner is not entitled to charge or recover from a legally assisted person any amount:	4
(a) by way of costs in respect of work assigned by the Commission to the private legal practitioner on behalf of that person, or	5
(b) by way of disbursements incurred on behalf of that person in connection with that work,	6
except with the approval of the Commission.	7
(2) A provision of any agreement (whether in writing or not and whether entered into before or after the commencement of this section):	8
(a) under which the operation of this section is excluded, modified or restricted, or	9
(b) which has the effect of excluding, modifying or restricting the operation of this section,	10
is void.	11
[18] Section 46 Liability of legally assisted person to pay costs and expenses	12
Omit section 46 (5).	13
[19] Sections 54 and 55	14
Omit the sections. Insert instead:	15
54 Members	16
(1) A Legal Aid Review Committee is to consist of 3 members appointed by the Board, of whom:	17
(a) one is to be a person nominated by the Minister, and	18

(b)	one is to be a person nominated jointly by the Bar Association and the Law Society, and	1 2
(c)	one is to be a person who is not a legal practitioner.	3
(2)	One of the members is, in and by the relevant instrument of appointment or in and by a subsequent instrument, to be appointed as Chairperson of the Committee.	4 5 6
55	Provisions relating to constitution and procedure of Legal Aid Review Committees	7 8
	Schedule 7 has effect with respect to the constitution and procedure of Legal Aid Review Committees.	9 10
[20]	Section 56 Appeals	11
	Omit “either of the following means” from section 56 (1AA).	12
	Insert instead “any of the following means”.	13
[21]	Section 56 (1AA) (c)	14
	Insert after section 56 (1AA) (b):	15
(c)	by arranging for the services of private legal practitioners to be made available, wholly or partly at the expense of the Commission.	16 17 18
[22]	Section 58	19
	Omit the section. Insert instead:	20
58	Functions of a Legal Aid Review Committee on an appeal	21
	For the purposes of hearing and determining an appeal, a Legal Aid Review Committee:	22 23
(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	24 25 26 27
(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.	28 29 30

[23] Section 64A Trust account	1
Omit “the member of staff” from section 64A (2).	2
Insert instead “the relevant member of staff”.	3
[24] Section 69	4
Omit the section. Insert instead:	5
69 Delegation	6
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:	7
(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,	8
(b) a member of staff of the Commission,	9
(c) a person for the time being holding or acting in a specified position in the staff establishment of the Commission,	10
(d) any person (including a private legal practitioner) of whose services the Commission makes use pursuant to this or any other Act.	11
Note. Section 49 of the <i>Interpretation Act 1987</i> contains general provisions relating to the delegation of functions.	12
[25] Section 70 Determination of pecuniary interests	23
Omit “commissioner” from section 70 (1).	24
Insert instead “member of the Board”.	25
[26] Section 72A Agreements or arrangements with Commonwealth	26
Insert “, or the Commission with the approval of the Attorney General,” after “The State” in section 72A (1).	27
[27] Section 72A (1A) (a)	29
Insert “(in the case of an agreement or arrangement between the State and the Commonwealth)” after “or”.	30
	31

[28] Schedule 2, heading	1
Omit the heading. Insert instead:	2
 Schedule 2 Membership of Board	3
(Section 14 (5))	4
 [29] Schedule 2, clauses 1 and 7 (g)	5
Omit “Commission” wherever occurring. Insert instead “Board”.	6
 [30] Schedule 2, clauses 3–8	7
Omit “commissioner” and “commissioners” wherever occurring (including in headings to clauses).	8
Insert instead “member of the Board” and “members of the Board”, respectively.	9
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 [31] Schedule 2, clause 7 (d)	12
Omit the paragraph. Insert instead:	13
(d) if the member becomes a mentally incapacitated person,	14
 [32] Schedule 2, clause 7 (f)	15
Omit the paragraph. Insert instead:	16
(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,	17
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[33] Schedule 2, clause 9	1
Omit the clause. Insert instead:	2
9 Effect of certain other Acts	3
(1) Part 2 of the <i>Public Sector Management Act 1988</i> does not apply to or in respect of the appointment of a member of the Board.	4 5 6
(2) If by or under any Act provision is made:	7
(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	8 9 10
(b) prohibiting the person from engaging in employment outside the duties of that office,	11 12
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.	13 14 15 16
[34] Schedule 3, heading	17
Omit the heading. Insert instead:	18
Schedule 3 Procedure of Board	19
(Section 14 (6))	20
[35] Schedule 3, clause 1	21
Omit the clause. Insert instead:	22
1 Definition	23
In this Schedule, <i>Chairperson</i> means the Chairperson of the Board.	24 25
[36] Schedule 3, clause 11	26
Omit the clause.	27

[37] Schedule 3	1
Omit “Commission” wherever occurring. Insert instead “Board”.	2
[38] Schedule 3	3
Omit “commissioner”, “commissioner’s” and “commissioners” wherever occurring (including in headings to clauses).	4
Insert instead “member of the Board”, “member’s” and “members of the Board”, respectively.	5
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[39] Schedule 7, heading	8
Omit the heading. Insert instead:	9
 Schedule 7 Constitution and procedure of Legal Aid Review Committees	10
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(Section 55)	12
 [40] Schedule 7	13
Omit “Commission” wherever occurring. Insert instead “Board”.	14
[41] Schedule 7, clause 1	15
Insert “and includes, where an alternate member is acting during the absence or illness of a member, that alternate member” after “Committee” in the definition of <i>member</i> .	16
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[42] Schedule 7, clause 6 (d)	19
Omit the paragraph. Insert instead:	20
(d) if the member becomes a mentally incapacitated person,	21
[43] Schedule 7, clause 8	22
Omit the clause. Insert instead:	23
 8 Quorum	24
(1) The quorum for a meeting of a Committee is all of its members.	25
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(2) The Chairperson of a Committee is to preside at all meetings of the Committee.	1 2
[44] Schedule 8 Savings, transitional and other provisions	3
Insert at the end of clause 1A (1):	4
<i>Legal Aid Commission Amendment Act 2000</i>	5
[45] Schedule 8, Part 11	6
Insert after Part 10:	7
Part 11 Provisions consequent on enactment of Legal Aid Commission Amendment Act 2000	8 9
54 Definition	10
In this Part:	11
<i>amending Act</i> means the <i>Legal Aid Commission Amendment Act 2000</i> .	12 13
55 Commissioners	14
(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.	15 16 17 18 19 20
(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.	21 22 23 24
56 Managing Director	25
(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.	26 27 28 29 30

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- (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. 1
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- 57 Legal Aid Review Committees** 5
- (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): 6
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- (a) the members of the Committee continue to hold office as such as if that section had not been substituted, and 12
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- (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. 14
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- (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). 17
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- (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: 22
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25
- (a) ceases to hold that office, and 26
- (b) is not entitled to any remuneration or compensation because of the loss of that office. 27
28

Schedule 2 Amendment of other Acts	1
(Section 4)	2
2.1 Crimes (Sentencing Procedure) Act 1999 No 92	3
Section 38 Senior Public Defender may intervene	4
Insert after section 38 (4):	5
(5) The Legal Aid Commission may make recommendations to the Senior Public Defender as to the exercise of any function conferred or imposed on the Senior Public Defender, or on any nominee of the Senior Public Defender, under this section.	6 7 8 9
2.2 Fair Trading Act 1987 No 68	10
Section 14 Assignment to solicitor of case of assisted person	11
Omit “Director” from section 14 (1) (a).	12
Insert instead “Chief Executive Officer”.	13
2.3 Public Sector Management Act 1988 No 33	14
Schedule 1 Departments	15
Omit “* Managing Director of the Commission” from the matter relating to the Legal Aid Commission.	16 17
Insert instead “* Chief Executive Officer of the Commission”.	18