

LEGAL SERVICES COMMISSION BILL, 1979

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:—

Consumer Protection (Legal Services Commission) Amendment Bill, 1979;

Defamation (Legal Services Commission) Amendment Bill, 1979;

Legal Practitioners (Legal Services Commission) Amendment Bill, 1979;

Public Defenders (Legal Services Commission) Amendment Bill, 1979;

Statutory and Other Offices Remuneration (Legal Services Commission) Amendment Bill, 1979;

Suitors' Fund (Legal Services Commission) Amendment Bill, 1979.

The object of this Bill is to constitute the Legal Services Commission of New South Wales and to define its functions.

Part I of the proposed Act contains clauses 1–5. The Part contains provisions relating to the short title, the commencement, the arrangement and the interpretation of the proposed Act. Clause 5 provides for the repeal of the enactments listed in Schedule 1. Those enactments include the Legal Assistance Act, 1943, and the Legal Practitioners (Legal Aid) Act, 1970.

Part II of the proposed Act contains clauses 6–28 and deals with the establishment, powers, staffing and administration of the Legal Services Commission of New South Wales.

Division 1 provides for the constitution of the Commission. It is to be a statutory corporation which represents the Crown. It is to consist of 7 part-time commissioners appointed by the Minister (1 of whom is appointed as Chairman) and 1 full-time commissioner appointed by the Minister who is the Deputy Chairman. The part-time commissioners include representatives of the Minister, the New South Wales Bar Association, the Law Society of New South Wales, the Labor Council of New South Wales, consumer and community welfare interests and agencies voluntarily providing legal services. The term of office of part-time commissioners, other than the Chairman,

is 3 years and the term of office of the Chairman is 5 years. The term of office of the Deputy Chairman is 7 years. Clause 9 and Schedules 2 and 3 contain further provisions relating to the constitution and membership of the Commission and the procedures to be adopted at meetings of the Commission.

Division 2 specifies the functions of the Commission. Clause 10 states that the principal function of the Commission is to provide legal services including legal aid, in accordance with the proposed Act. Under clause 11, the Commission may provide legal aid through the use of the services of the private profession, officers of the Commission or the Public Defenders. Clause 12 specifies the duties to be observed by the Commission in the provision of legal aid.

Division 3 relates to the statutory officers of the Commission, being the Deputy Chairman, Public Solicitor, Deputy Public Solicitor and Referrals Director. Clauses 14-22 and Schedules 4 and 5 provide for their appointment, the terms and conditions under which they hold office, the functions they are to exercise and the preservation of certain rights in respect of them.

Division 4 provides for the appointment and employment, under the Public Service Act, 1902, of the members of staff of the Commission.

Division 5 contains miscellaneous provisions with respect to the Commission and officers and committees of the Commission. Clause 24 provides that an officer of the Commission shall not perform the functions of a solicitor unless he holds a current practising certificate. Clause 25 provides that certain relationships arising under the proposed Act constitute, or have the same privileges as, a solicitor-client relationship. Clause 26 prohibits the disclosure of certain information obtained by an officer of the Commission by virtue of his office. Clause 27 provides an immunity from liability for things done bona fide in execution of the proposed Act. Clause 28 specifies the persons who constitute the solicitor on the record where an officer of the Commission acts, in relation to court proceedings, on behalf of a legally assisted person.

Part III of the proposed Act contains clauses 29-60 and deals with the provision of legal aid.

Division 1 deals generally with the provision of legal aid. It specifies the persons who may apply for legal aid and the form of applications. Clause 32 makes it an offence to submit an application knowing it to be false in any material particular. Clause 33 specifies the powers of the Commission in dealing with applications and clause 34 provides for the determination of applications. The Commission is empowered to vary determinations. Clause 35 provides for the imposition of means tests. The Division also specifies the circumstances in which the Commission may require applicants to make a monetary contribution to the costs of legal representation. It makes provision for the determination by the Commission of the fees to be paid by it to private legal practitioners to whom work is assigned by the Commission. The Division also makes provision for the payment and recovery of costs and other money in proceedings involving legally assisted persons.

Division 2 enables the Commission to establish Legal Aid Committees which may exercise the functions of the Commission relating to the determination of applications for legal aid. Clauses 50 and 51 and Schedule 6 contain provisions relating to the constitution and membership of Legal Aid Committees and the procedures to be adopted at meetings of Legal Aid Committees.

Division 3 enables the Commission to establish Legal Aid Review Committees. Clauses 54 and 55 and Schedule 7 contain provisions relating to the constitution and membership of Legal Aid Review Committees and the procedures to be adopted at meetings of Legal Aid Review Committees.

Division 4 enables the making of appeals to Legal Aid Review Committees by applicants dissatisfied with determinations relating to the provision of legal aid and specifies the functions of those Committees on the hearing of those appeals. Clause 60 provides that the decision of a Legal Aid Review Committee on an appeal is final.

Part IV of the proposed Act contains clauses 61–67 and deals with the finances of the Commission. Clause 62 requires the Commission to establish and administer a “Legal Aid Fund”. Clause 63 specifies the money which is to be paid into the Fund and clause 64 specifies the money which may be paid out of the Fund. The Part confers on the Commission certain powers of investment. It requires the Commission to keep proper accounts and records in relation to its operations and provides for the auditing of the accounts by the Auditor-General.

Part V of the proposed Act contains clauses 68–74 which relate to miscellaneous matters. The Part contains provisions enabling the Commission to establish consultative or advisory committees and to delegate its functions. Clause 72 relates to proceedings for offences. Clauses 73 and 74 and Schedule 8 contain savings, transitional and other provisions relating to the constitution of the Commission, the provision of legal aid and other matters.

Division 2 for the 1950s. The 1950s were a period of rapid growth for the Division, and it was during this time that the Division established its reputation as a leading authority in the field of international law.

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LEGAL SERVICES COMMISSION BILL, 1979

No. , 1979.

A BILL FOR

An Act to constitute the Legal Services 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.

[MR F. J. WALKER—18 *April*, 1979.]

See also Consumer Protection (Legal Services Commission) Amendment Bill, 1979; Defamation (Legal Services Commission) Amendment Bill, 1979; Legal Practitioners (Legal Services Commission) Amendment Bill, 1979; Public Defenders (Legal Services Commission) Amendment Bill, 1979; Statutory and Other Offices Remuneration (Legal Services Commission) Amendment Bill, 1979; Suitors' Fund (Legal Services Commission) Amendment Bill, 1979.

Legal Services Commission.

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

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PART I.

PRELIMINARY.

1. This Act may be cited as the "Legal Services Commission Short title. Act, 1979".

2. (1) Except as provided by subsections (2) and (3), this Commence-
10 Act shall commence on the date of assent to this Act. ment.

(2) Part I (sections 1, 2 and 5 excepted), Part II, Part IV and Part V (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.

15 (3) Section 5, Part III 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.

20 **3.** This Act is divided as follows :—

Arrange-
ment.

PART I.—PRELIMINARY—ss. 1–5.

PART II.—LEGAL SERVICES COMMISSION OF NEW SOUTH WALES—ss. 6–28.

Legal Services Commission.

DIVISION 1.—*Constitution of the Commission*—ss. 6–9.

DIVISION 2.—*Functions of the Commission*—ss. 10–13.

DIVISION 3.—*Statutory Officers of the Commission*—ss. 14–22.

5 DIVISION 4.—*Members of Staff of the Commission*—s. 23.

DIVISION 5.—*Miscellaneous*—ss. 24–28.

PART III.—PROVISION OF LEGAL AID—ss. 29–60.

DIVISION 1.—*General*—ss. 29–48.

DIVISION 2.—*Legal Aid Committees*—ss. 49–52.

10 DIVISION 3.—*Legal Aid Review Committees*—ss. 53–55.

DIVISION 4.—*Appeals in respect of the Provision of Legal Aid*—ss. 56–60.

PART IV.—FINANCE—ss. 61–67.

PART V.—MISCELLANEOUS—ss. 68–74.

15 SCHEDULE 1.—REPEALS.

SCHEDULE 2.—PROVISIONS RELATING TO THE CONSTITUTION AND MEMBERSHIP OF THE COMMISSION.

SCHEDULE 3.—PROVISIONS RELATING TO MEETINGS OF THE COMMISSION.

20 SCHEDULE 4.—GENERAL PROVISIONS RELATING TO THE STATUTORY OFFICERS OF THE COMMISSION.

SCHEDULE 5.—PROVISIONS RELATING TO THE PRESERVATION OF RIGHTS OF CERTAIN PERSONS ON THEIR APPOINTMENT AS STATUTORY OFFICERS OF THE COMMISSION.

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SCHEDULE 6.—PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS OF LEGAL AID COMMITTEES.

Legal Services Commission.

SCHEDULE 7.—PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS OF LEGAL AID REVIEW COMMITTEES.

5 SCHEDULE 8.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

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

“Bar Association” means the Council of the New South Wales Bar Association;

10 “Commission” means the Legal Services Commission of New South Wales constituted under this Act;

15 “commissioner” means a person who is appointed or who holds office under this Act as a commissioner and includes, where an alternate commissioner is acting during the absence or illness of a commissioner, that alternate commissioner;

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

20 “Deputy Public Solicitor” means the person appointed under section 16 (1) as the Deputy Public Solicitor;

“functions” includes powers, authorities and duties;

“Law Society” means the Council of the Law Society of New South Wales;

“legal aid” means legal aid under this Act;

25 “Legal Aid Committee” means a Legal Aid Committee established under this Act;

“Legal Aid Review Committee” means a Legal Aid Review Committee established under this Act;

30 “legally assisted person” means a person to whom legal aid is provided;

Legal Services Commission.

“member of staff of the Commission” means a person appointed and employed as referred to in section 23 (1) or appointed as referred to in section 23 (2);

5 “officer of the Commission” means a statutory officer of the Commission or a member of staff of the Commission;

“practising certificate” means a practising certificate issued under section 70 of the Legal Practitioners Act, 1898;

“private legal practitioner” means a person who is practising in New South Wales—

10 (a) as a barrister on his own account; or

(b) as a solicitor, whether on his own account or in partnership or as an associate or employee of another solicitor,

15 and includes a body, whether incorporated or unincorporated, which provides legal services and is staffed by persons wholly or predominantly on a voluntary basis;

“Public Defender” means a person who holds office as a Public Defender under the Public Defenders Act, 1969;

20 “Public Solicitor” means the person appointed under section 15 (1) as Public Solicitor;

“Referrals Director” means the person appointed under section 18 (1) as Referrals Director of the Commission;

25 “statutory officer of the Commission” means the Deputy Chairman, Public Solicitor, Deputy Public Solicitor or Referrals Director.

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

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

Legal Services Commission.

PART II.

LEGAL SERVICES COMMISSION OF NEW SOUTH WALES.

DIVISION 1.—*Constitution of the Commission.*

6. (1) There is hereby constituted a corporation under the
5 corporate name of the “Legal Services Commission of New South
Wales”. Constitu-
tion of the
Commission.

(2) The Commission, during the period of 12 months
commencing on the day appointed and notified under section
2 (3), shall, in the exercise of its functions (except in relation
10 to the contents of any advice, report or recommendation made
by it), be subject to the control and direction of the Minister.

(3) The Commission is, for the purposes of any Act, a
statutory body representing the Crown.

7. The Commission shall consist of 7 commissioners appointed
15 by the Minister as part-time commissioners and the Deputy
Chairman who shall be a full-time commissioner. Commis-
sioners.

8. (1) The part-time commissioners shall consist of— Part-time
commis-
sioners.

- (a) a person appointed by the Minister as Chairman of the
Commission;
- 20 (b) a person appointed to represent the Minister;
- (c) a person nominated by the Bar Association;
- (d) a person nominated by the Law Society;
- (e) a person nominated by the Labor Council of New South
Wales;
- 25 (f) a person who, in the opinion of the Minister, is a
representative of consumer and community welfare
interests; and
- (g) a person who, in the opinion of the Minister, is a
30 representative of such bodies, whether incorporated or
unincorporated, as provide legal services and are staffed
by persons wholly or predominantly on a voluntary basis.

(2) Where, for the purposes of subsection (1), a nomina-
tion of a person for appointment as a part-time commissioner is
not made within the time or in the manner specified by the

Legal Services Commission.

Minister in a notice in writing given to the body entitled to make the nomination, the Minister may appoint any person to be a part-time commissioner instead of the person required to be appointed on that nomination.

5 (3) The Minister shall, before making an appointment of a person referred to in subsection (1) (f) or (g)—

(a) cause to be published such advertisements, inviting applications from persons to apply for appointment as part-time commissioners, in such form and manner as the Minister directs; and
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(b) take into consideration any such applications received by him.

(4) Where, by or under any Act, provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, that provision does not operate to disqualify him from holding that office and also the office of a part-time commissioner or from accepting and retaining any remuneration or travelling or subsistence allowance payable to a part-time commissioner under Schedule 2.
15

(5) The office of a part-time commissioner shall not, for the purposes of any Act, be deemed to be an office or place of profit under the Crown.
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9. (1) Schedule 2 has effect with respect to the constitution and membership of the Commission.

25 (2) Schedule 3 has effect with respect to the meetings of the Commission.

Provisions relating to the constitution, membership and meetings of the Commission.

DIVISION 2.—Functions of the Commission.

10. (1) The principal function of the Commission is to provide legal services, including legal aid, in accordance with this Act.
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Functions of the Commission.

(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
35

Legal Services Commission.

- (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—
 - 5 (i) different persons or different classes of persons; and
 - (ii) different matters or different classes of matters;
- (c) specify the persons who or committees which may—
 - 10 (i) determine applications for legal aid or such classes or descriptions of applications for legal aid as may be specified by the Commission;
 - (ii) vary determinations of any applications referred to in subparagraph (i); and
 - 15 (iii) determine any other matter or thing specified by the Commission relating to the provision or administration of legal aid;
- (d) specify principles, including the imposition of means tests, to be applied in determining applications for legal aid;
- 20 (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;
- 25 (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;
- (h) give assistance and make grants, on such terms and conditions as it thinks fit, to persons or bodies within
30 New South Wales for the provisions by those persons or bodies of legal aid;

Legal Services Commission.

- 5 (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;
- 10 (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;
- 15 (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
- 20 (n) make reports and recommendations to the Minister on such matters relating to the functions of the Commission as he 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.
- 25 (4) The Commission may do all such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of its functions.

Legal Services Commission.

11. Legal aid may be provided by the Commission by such means as it may determine, including any one or more of the following means :—

Provision
of legal
aid.

- 5 (a) by arranging for the services of private legal practitioners to be made available, wholly or partly at the expense of the Commission;
- (b) by making available the services of officers of the Commission; or
- 10 (c) by arranging for the services of the Public Defenders to be made available.

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

Duties
to be
observed
in the
provision
of legal
aid.

- (a) ensure that legal aid is provided in the most effective, efficient and economical manner;
- 15 (b) have regard to the need for legal aid to be readily available and easily accessible to those persons to whom it may be provided;
- (c) ascertain and keep under review community needs in relation to legal aid;
- 20 (d) liaise with professional bodies representing private legal practitioners and, where appropriate, use the services of private legal practitioners in the provision of legal aid;
- (e) determine the allocation of legal aid services between officers of the Commission and private legal practitioners and the principles on which private legal practitioners are to be offered or refused matters on assignment;
- 25 (f) ensure, so far as is reasonably practicable, that a legally assisted person obtains the services of the lawyer of his choice;
- 30 (g) ensure, by the assignment of appropriate work, the maintenance of the offices of the Public Solicitor and the Public Defenders;

Legal Services Commission.

- (h) ensure the co-ordination of legal aid services and the avoidance of any unnecessary duplication in the provision of legal aid services; and
- 5 (i) ensure that, except where otherwise expressly provided by this Act, nothing is done by the Commission or its officers which may interfere with the relationship between a solicitor acting in his professional capacity and his client.

10 **13.** (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. Annual report.

15 (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 him of the report.

DIVISION 3.—Statutory Officers of the Commission.

20 **14.** (1) The Minister may appoint a person who is a barrister admitted by, or a solicitor of, the Supreme Court to be the Deputy Chairman of the Commission. Deputy Chairman.

(2) The Deputy Chairman shall be the chief executive officer of the Commission.

25 **15.** (1) The Minister may appoint a person who is a solicitor of the Supreme Court and who holds a current practising certificate to be the Public Solicitor. Public Solicitor.

Legal Services Commission.

(2) The Public Solicitor—

- (a) shall administer the provision of legal services by the staff of the Commission; and
- 5 (b) shall have and may exercise such other functions as are conferred or imposed on him by or under this or any other Act.

16. (1) The Minister may appoint a person who is a solicitor of the Supreme Court and who holds a current practising certificate to be the Deputy Public Solicitor.

10 (2) The Deputy Public Solicitor shall act for the Public Solicitor during the absence or illness of the Public Solicitor and shall, while he so acts, exercise the functions of the Public Solicitor.

15 (3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising the Deputy Public Solicitor to act in the place of the Public Solicitor, and all acts or things done or omitted or suffered to be done by the Deputy Public Solicitor while so acting shall have the same consequences as if they had been done or omitted or suffered to be done by the
20 Public Solicitor.

17. (1) The Public Solicitor and the Deputy Public Solicitor shall, for the purposes of—

- (a) exercising their functions under this Act; and
- 25 (b) applying for, being issued with and holding a practising certificate,

be deemed to be solicitors who for the time being are engaged in the practice of their profession on their own account.

Deputy
Public
Solicitor.

Nature of
office of
Public
Solicitor
and Deputy
Public
Solicitor.

Legal Services Commission.

(2) Section 70 (3) of the Legal Practitioners Act, 1898, shall not apply to the issue of a practising certificate to the Public Solicitor or Deputy Public Solicitor.

18. (1) The Minister may appoint a person who is a barrister admitted by, or a solicitor of, the Supreme Court to be the Referrals Director of the Commission. Referrals Director.

(2) The Referrals Director—

- (a) shall administer the assignment of work from the Commission to private legal practitioners; and
- 10 (b) shall have and may exercise such other functions as are conferred or imposed on him by or under this Act.

19. A statutory officer of the Commission shall devote the whole of his time to the duties of his office. Full-time appointments.

20. Schedule 4 has effect generally with respect to the statutory officers of the Commission. General provisions relating to the statutory officers of the Commission.

21. Schedule 5 has effect with respect to the preservation of rights of certain persons on their appointment as statutory officers of the Commission. Preservation of rights of certain persons.

22. The Public Solicitor and the Referrals Director may attend meetings of the Commission and have a right to be heard at those meetings. Right of attendance and hearing at meetings of the Commission.

*Legal Services Commission.*DIVISION 4.—*Members of Staff of the Commission.*

23. (1) Except as provided in subsection (2), such officers and employees as may be necessary for the performance of the functions of the Commission may be appointed and employed 5 under and subject to the Public Service Act, 1902.

Appointment of members of staff of the Commission.

(2) The Commission may, with the approval of the Public Service Board and on such terms and conditions as may be approved by that Board, appoint persons to be members of staff of the Commission for such purposes as may be approved by that 10 Board.

(3) The maximum term for which a person may be appointed by the Commission under subsection (2) is 3 years, but he is eligible for further appointment under that subsection.

(4) A member of staff of the Commission referred to in 15 subsection (2) is not, in his capacity as such, an officer within the meaning of the Public Service Act, 1902, but if the terms and conditions on which he is appointed so provide, any specified provisions of that Act or the regulations thereunder, whether with or without specified modifications, apply to and in respect of him 20 as if he were an employee within the meaning of that Act.

DIVISION 5.—*Miscellaneous.*

24. An officer of the Commission shall not perform any functions of a solicitor under this Act unless he holds a current practising certificate.

Performance of functions of solicitor.

25. (1) The relationship arising by virtue of this Act between a solicitor, whether the solicitor is an officer of the Commission or a private legal practitioner 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 30 acting in his professional capacity and in the course of his professional employment and his own client.

Solicitor-client relationship.

Legal Services Commission.

(2) The like privileges as those which arise from the relationship of a solicitor acting in his professional capacity and in the course of his professional employment and his own client shall arise between the Commission or a committee established 5 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 established under this Act or an officer of the Commission is not required to divulge to any 10 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—

- 15 (a) the conduct of any matter necessary for the proper administration of this Act;
- (b) proceedings for an offence connected with the administration of legal aid;
- (c) any disciplinary proceedings under the Legal Practitioners Act, 1898;
- 20 (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; or
- 25 (f) the exercise by the Auditor-General of his functions under this Act or any other law.

26. A commissioner, a member of a committee established under this Act or an officer of the Commission shall not, except in the circumstances referred to in section 25 (4) (a), (b), (c), Disclosure of certain information prohibited.

Legal Services Commission.

(d), (e) or (f) divulge any information or document (including an application for legal aid) obtained by virtue of his office concerning an applicant for legal aid.

Penalty : \$1,000 or imprisonment for 6 months.

5 27. No matter or thing done or omitted or suffered to be done Immunity.
by the Commission, a committee established under this Act or an
officer of the Commission shall, if the matter or thing was done or
omitted or suffered to be done bona fide for the purpose of
executing this Act, subject the Commission, the committee or the
10 officer to any action, liability, claim or demand whatsoever.

28. 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 a legally assisted person; and
- 15 (b) legal aid is being provided to the legally assisted person
in relation to the proceeding by an officer of the
Commission,

Solicitor
on the
record.

the signature of the Public Solicitor, or of an officer of the Com-
mission who is a solicitor and who, pursuant to a written authority
20 given generally or specially by the Public Solicitor, is authorised
to sign documents on behalf of the Public Solicitor for the purposes
of this section, shall be deemed to be the signature of the solicitor
for that party.

PART III.

PROVISION OF LEGAL AID.

25

DIVISION 1.—General.

29. (1) In this Part, "application" means an application for
legal aid made to the Commission. Interpretation:
Pt. III.

Legal Services 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;
 - 5 (b) to the Commission includes, in relation to the exercise of a function referred to in section 10 (2) (c) (i), (ii) or (iii), any person who or committee which the Commission has, pursuant to section 10 (2) (c), specified as being a person who or committee which may exercise that function;
 - 10 (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 private legal practitioner; and
 - 15 (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. (1) Except to such extent, if any, as the Commission may otherwise determine in accordance with subsection (2), legal aid shall be provided by the Commission in accordance with this Part. Provision of legal aid.

(2) The Commission may, from time to time, determine 20 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), 25 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.

Legal Services Commission.

31. (1) A person may apply to the Commission for legal aid. Application for legal aid.

(2) Nothing in subsection (1) prevents a person from making an application on behalf of another person.

(3) An application shall be made in writing and shall be in accordance, or substantially in accordance, with a form approved by the Commission for the purpose.

(4) The Commission may, where it is of the opinion that there are special circumstances, treat an application that does not comply with subsection (3) as having been duly made.

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

Penalty : \$1,000 or imprisonment for 6 months.

15 33. On receipt of an application, the Commission may— Powers of the Commission in respect of application.

(a) make such inquiries as it thinks fit as to the means and circumstances of the applicant;

(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;

20 (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;

25 (e) take such steps as may be necessary to conserve the interests of the applicant pending the determination of his application; and

Legal Services Commission.

(f) defray expenses incidental to any of the matters referred to in paragraphs (a)–(e) from money available to the Commission or require the applicant to meet those expenses.

5 34. (1) The Commission shall determine an application by granting the application unconditionally or subject to conditions or by refusing the application. Determination of application.

(2) The Commission shall give notice to the applicant of the determination of his application within 14 days after the 10 determination is made.

(3) A notice given under subsection (2), except where—

(a) the application relates to proceedings in a court of petty sessions with respect to a criminal offence and is granted unconditionally; or

15 (b) the application relates to proceedings in a court of petty sessions with respect to a criminal offence 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),

20 shall be in writing.

(4) Where a person or committee specified by the Commission pursuant to section 10 (2) (c) grants an application subject to conditions or refuses an application, other than an application referred to in subsection (3) (b), the person or 25 committee shall, in the notice given under subsection (2), inform the applicant that he has a right of appeal to a Legal Aid Review Committee against the determination by the person or committee of his application.

(5) Where a person or committee referred to in subsection 30 (4) grants an application subject to conditions or refuses an application, other than an application referred to in subsection (3) (b), the person or committee shall record the reasons for the determination of the application.

Legal Services Commission.

35. (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 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.

Means test.

(2) A means test determined by the Commission for the purposes of subsection (1) shall be determined having regard to the ability of an applicant or an applicant of the class or description of applicants in respect of whom the means test is determined to meet the ordinary professional cost of the legal services sought by the applicant.

(3) For the purposes of subsection (1), special circumstances shall 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.

36. (1) In granting an application, the Commission—

Monetary contribution by applicant.

(a) may require 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; and

(b) may determine the maximum amount the applicant will 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.

Legal Services Commission.

(2) An amount required to be paid under subsection (1) shall be paid in such manner 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 from the person as a debt in a court of competent jurisdiction.

37. (1) Nothing prevents the Commission from granting an application made by—

Applica-
tions by
certain
persons.

- 10 (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;
- 15 (c) a person involved in an inquiry or investigation held in New South Wales, 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; or
- 20 (d) a person whose interests are, or may be, adverse to the Crown or a statutory body representing the Crown.

(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.

25 **38.** (1) The determination of an application granting legal aid to a person may, at any time, be varied by the Commission so as to—

Variation
of grant
of legal
aid.

- (a) terminate the provision of the legal aid;
- (b) alter the nature or extent of the legal aid;

Legal Services Commission.

- (c) make the provision of the legal aid subject to a condition or an additional condition; or
- (d) alter a condition to which the provision of the legal aid is subject.

5 (2) Where a determination 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.

10 (3) Where a determination 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 14 days after the variation is made to each solicitor acting for each party to
15 any proceedings to which that person is a party or, where no solicitor acts on behalf of a party, to the party himself.

(4) Where a determination is varied under subsection (1) by a person or committee specified by the Commission pursuant to section 10 (2) (c) in a way which adversely affects the
20 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 has a right of appeal to a Legal Aid Review Committee against the variation.

25 (5) Where a determination is varied as referred to in subsection (4), the person or committee making the variation shall record the reasons for the variation of the determination.

30 **39.** (1) The Commission shall determine the fees to be paid by it to private legal practitioners to whom work is assigned by the Commission.

Fees in respect of assigned matters.

Legal Services Commission.

(2) In determining the fees referred to in subsection (1), the Commission shall consult with and take into account the views of—

- 5 (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
10 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.

40. (1) For the purpose of assisting in the determination of
15 costs of which the Commission has agreed to pay a proportion to a private legal practitioner to whom work has been assigned by the Commission, the Commission may require the private legal practitioner to tax a bill of costs under the Legal Practitioners Act, 1898, in relation to that work as if the Commission, and not the
20 legally assisted person on whose behalf the work was done, were the client of the private legal practitioner.

Taxation of costs.

(2) No objection shall be made under this or any other Act or law to the taxation of a bill of costs relating to work done on behalf of a legally assisted person on the basis that the costs
25 were not incurred by the legally assisted person but were incurred by another person on his behalf.

41. A private legal practitioner shall not, except with the approval of the Commission, demand or receive any payment from a legally assisted person or any other person on behalf of a
30 legally assisted person in respect of the work assigned by the Commission to the private legal practitioner on behalf of the legally assisted person.

Demand or receipt of certain payments prohibited.

Legal Services Commission.

42. 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 were not a legally assisted person.

Discretion of court or tribunal as to costs.

43. (1) Where, on the application of the Commission, it appears to a court or to a tribunal which may make an order as to costs that—

Payment of costs by certain legally assisted persons.

- 10 (a) a person has obtained legal aid by fraud or misrepresentation; or
- (b) a legally assisted person has acted improperly in bringing or defending any proceedings or in the conduct of any proceedings,

15 the court or tribunal may order the person to pay to the Commission the costs of the solicitor who acted for him.

(2) Where an order is made under subsection (1), the costs shall be taxed as if the person ordered to pay them were not a legally assisted person.

20 44. (1) The Commission may, by notice in writing, direct a legally assisted person or a private legal practitioner 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.

Direction as to payment of certain money to the Commission.

25 (2) A person to whom a direction is given under subsection (1) shall comply with the terms of the direction.

(3) The Commission shall account to a legally assisted person referred to in subsection (1) and any private legal practitioner so referred to in respect of money paid to it under subsection (1).

30

Legal Services Commission.

(4) The Commission may, in respect of money paid to it by a legally assisted person or a private legal practitioner under subsection (1)—

- 5 (a) deduct any amount payable to it under this Act by the person; and
- 10 (b) offset the amount of any fees payable by it to any private legal practitioner in connection with the proceedings in which the money was recovered against any other money held by the practitioner in relation to the same proceedings.

45. (1) Where—

Recovery
of money.

- 15 (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
20 reasonable, to recover the money, the Commission may, by notice in writing, direct the person to assign his 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.

25 (2) Where a legally assisted person fails to comply with a notice given to him 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
30 this subsection, have been able to do or suffer in order to recover that money.

Legal Services Commission.

46. (1) Except as provided by subsection (2), a legally assisted person shall not be liable to make any payment to the Commission or a private legal practitioner in respect of the costs and expenses of the legal services provided to him as a legally assisted person in excess of the amount of the contribution, if any, determined by the Commission under section 36 (1) (a) in respect of the provision of those legal services.

Liability of legally assisted person to pay costs and expenses.

(2) Where, as a consequence of the provisions of legal services to a legally assisted person, the person receives money in excess of the amount of \$500 or such other amount as the Commission may from time to time determine, the person shall, if directed by the Commission, pay to it—

- (a) an amount determined by the Commission which shall not exceed the amount by which the sum of—
 - (i) the ordinary professional costs (including solicitor and client costs) of the legal services; and
 - (ii) any expenses incurred in respect of the provision of the legal services,
- exceeds any amount, or the sum of any amounts, paid by the person to the Commission pursuant to section 36 (1) (a) in respect of the provision of the legal services; or
- (b) an amount equal to 25 per cent of the money received by the person in excess of the amount of \$500 or such other amount as the Commission may from time to time determine,

whichever is the lesser.

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

Legal Services Commission.

47. (1) Where a court or tribunal makes an order as to costs against a legally assisted person—

Payment of costs awarded against legally assisted persons.

- 5 (a) except as provided by subsections (2), (3) and (4), the Commission shall pay the whole of those costs; and
- (b) except as provided by subsections (3) and (4), the legally assisted person shall not be liable for the payment of the whole or any part of those costs.

10 (2) The Commission shall not, in respect of the costs of any one proceeding, pay an amount in excess of \$5,000 or such other amount as the Commission may from time to time determine.

(3) The Commission shall not be liable to pay any costs incurred by or on behalf of a person while he was not a legally assisted person and that person shall be liable for the payment of those costs.

15

(4) Where a court or tribunal makes an order as to costs against a legally assisted person in respect of—

- 20 (a) an appeal, or an application for a new trial, made on the ground that money awarded to the legally assisted person is inadequate; or
- (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,

25 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.

30 (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), 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 specified by the Commission pursuant to section 10 (2) (c), the person or

Legal Services Commission.

committee shall, in a notice given under subsection (5), inform the legally assisted person that he has a right of appeal to a Legal Aid Review Committee against the decision.

(7) Where a person or committee referred to in subsection (6) declines the payment of costs under subsection (4), 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. Where proceedings are conducted on behalf of a legally assisted person by an officer of the Commission and the person ceases, before the conclusion of those proceedings, to be a legally assisted person—

- 15 (a) the person shall be liable to pay to the Commission—
- (i) costs, assessed as between solicitor and client, in respect of work done by the officer of the Commission; and
 - (ii) expenses incurred by the Commission,
- 20 on behalf of the person before he ceased to be a legally assisted person; and
- (b) the Commission shall have a lien on any document held by it in connection with those proceedings in order to secure the payment of those costs and expenses.

25 **DIVISION 2.—Legal Aid Committees.**

49. The Commission may establish one or more Legal Aid Committees. Establishment of Legal Aid Committees.

50. (1) A Legal Aid Committee shall consist of 5 members appointed by the Commission. Members.

Legal Services Commission.

(2) Of the members—

- (a) one shall be a commissioner;
- (b) one shall be a person nominated by the Bar Association;
- 5 (c) two shall be persons nominated by the Law Society;
and
- (d) one shall be a person who is not a legal practitioner.

51. Schedule 6 has effect with respect to the constitution, membership and meetings of a Legal Aid Committee.

Provisions relating to the constitution, membership and meetings of a Legal Aid Committee.

52. (1) A Legal Aid Committee shall determine applications or matters relating to applications delegated or referred to it by the Commission or an officer of the Commission so authorised by the Commission.

Function.

(2) Where an application or matter referred to in subsection (1) is delegated or referred to a Legal Aid Committee by an officer of the Commission, the officer shall inform the Committee of the reasons for so delegating or referring the application or matter.

DIVISION 3.—Legal Aid Review Committees.

53. The Commission may establish one or more Legal Aid Review Committees.

Establishment of Legal Aid Review Committees.

54. (1) A Legal Aid Review Committee shall consist of 5 members appointed by the Commission.

Legal Services Commission.

(2) Of the members—

- (a) one shall be appointed as Chairman of the Legal Aid Review Committee;
- (b) one shall be a person nominated by the Bar Association;
- 5 (c) one shall be a person nominated by the Law Society;
- (d) one shall be a person who is not a legal practitioner;
and
- (e) one shall be a person nominated by the Minister.

10 **55.** Schedule 7 has effect with respect to the constitution, membership and meetings of a Legal Aid Review Committee.

Provisions relating to the constitution, membership and meetings of a Legal Aid Review Committee.

DIVISION 4.—Appeals in respect of the Provision of Legal Aid.

56. (1) An applicant or legally assisted person dissatisfied Appeals with—

- 15 (a) the determination, by a person or committee specified by the Commission pursuant to section 10 (2) (c), of an application under section 34 (1), other than an application referred to in section 34 (3) (b);
- (b) the variation, by such a person or committee, of a determination under section 38 (1); or
- 20 (c) a decision, by such a person or committee, to decline payment of the whole or any part of costs under section 47 (4),

may appeal to a Legal Aid Review Committee.

Legal Services Commission.

(2) An appeal shall be lodged with the Commission in writing in accordance, or substantially in accordance, with the form approved by the Commission for the purpose and shall be so lodged within—

- 5 (a) a period of 7 days after the date on which notice of the determination, variation or decision in respect of which the appeal is brought was given to the appellant; or
- (b) such longer period as a Legal Aid Review Committee may, where it is of the opinion that there are special
10 circumstances, allow.

57. Where it appears to a court or tribunal, on any information before it— **Adjournment of certain proceedings.**

- (a) that a party to any proceedings before the court or tribunal—
- 15 (i) has appealed, in accordance with section 56, to a Legal Aid Review Committee and that the appeal has not been determined; or
- (ii) intends to appeal, in accordance with section 56, to a Legal Aid Review Committee and that such
20 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
- 25 (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.

Legal Services Commission.

58. A Legal Aid Review Committee shall, for the purposes of hearing and determining an appeal, have the functions and discretions which 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.

Functions of a Legal Aid Review Committee on an appeal.

59. (1) A Legal Aid Review Committee shall 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.

Determination of appeal.

(2) A Legal Aid Review Committee shall give notice, in writing, of its determination of an appeal to the appellant and to the Commission.

(3) A Legal Aid Review Committee shall record its reasons for the determination of an appeal.

60. (1) A determination or an order of a Legal Aid Review Committee under section 59 (1) in respect of an appeal—

Effect and implementation of determination or order.

(a) shall have effect from the date thereof; and

(b) 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 private legal practitioner in respect of an applicant whose appeal to a Legal Aid Review Committee has been upheld.

Legal Services Commission.

PART IV.

FINANCE.

61. In this Part—

5 “financial year”, in relation to the Commission, means the year ending on 30th June;

Interpre-
tation:
Pt. IV.

“Fund” means the Legal Aid Fund established under section 62.

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

Legal Aid
Fund.

10 **63.** (1) There shall be paid into the Fund—

Payments
into the
Fund.

(a) all amounts applied under subsection (2) of section 44A of the Legal Practitioners Act, 1898, for the purpose set out in paragraph (a) of that subsection;

15 (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);

20 (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);

25 (g) money recovered by the Commission under section 45 (2);

(h) amounts paid to the Commission pursuant to a direction under section 46 (2) or recovered by it under section 46 (3);

Legal Services Commission.

- (i) money received by the Commission pursuant to a liability under section 48 (a);
- (j) penalties recovered pursuant to this Act; and
- 5 (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.

64. There may be paid out of the Fund—

Payments
out of
the Fund.

- 10 (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;
- 15 (c) fees payable to private legal practitioners 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;
- 20 (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
- 25 (h) all other amounts required or authorised by this Act to be paid out of the Fund.

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

Invest-
ment.

- (a) in any manner in which trustees are for the time being authorised to invest trust funds; or

Legal Services Commission.

(b) in any securities approved by the Treasurer on the recommendation of the Minister.

66. (1) The Commission shall keep proper accounts and Accounts. records in relation to all of its operations.

5 (2) As soon as practicable after each financial year, the Commission shall prepare and submit to the Minister for presentation to Parliament, as part of the report required under section 13, a statement of accounts, together with the Auditor-General's certificate given under this section in relation to the statement.

10 (3) The statement of accounts shall be in a form approved by the Auditor-General, shall include such information as is requested by him and shall exhibit a true and fair view of the financial position and transactions of the Commission.

(4) The Commission shall, as soon as practicable after 15 the end of the financial year to which a statement of accounts relates, transmit the statement to the Auditor-General for verification and certification.

(5) The Auditor-General's certificate shall state that he 20 has audited the accounts of the Commission relating to the relevant financial year, shall indicate whether the statement of accounts complies with subsection (3) and shall set forth any qualifications subject to which the certificate is given.

(6) Nothing in this section prevents the alteration of the 25 statement of accounts, with the approval of the Auditor-General, after its receipt by him and before its submission to the Minister.

67. The Commission shall, on or before 31st May in each Financial year, prepare estimates of its income and expenditure for the estimates. following financial year.

Legal Services Commission.

PART V.

MISCELLANEOUS.

68. (1) The Commission may establish standing or special Consultative committees.
5 mission 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
10 appropriate.

(3) The Commission shall appoint one of the members of a consultative committee established under subsection (1) to be chairman of the committee and any such committee may, subject to subsection (4) and to any directions of the Commission,
15 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. (1) The Commission may, by instrument in writing, Delegation.
20 delegate—

(a) to an officer of the Commission; or

(b) to a committee established under this Act, other than a committee established under section 68,

the exercise or performance of such of the functions (other than
25 this power of delegation) conferred or imposed on the Commission by or under this or any other Act as may be specified in the instrument of delegation and may, by such an instrument, revoke wholly or in part any such delegation.

(2) A statutory officer of the Commission may, by
30 instrument in writing, delegate—

(a) to an officer of the Commission; or

Legal Services Commission.

(b) to a committee established under this Act, other than a committee established under section 68,

the exercise or performance of such of the functions (other than this power of delegation) conferred or imposed on the statutory
5 officer by or under this or any other Act as may be specified in the instrument of delegation and may, by such an instrument, revoke wholly or in part any such delegation.

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

(4) A delegation under this section may be made subject to such conditions or such limitations as to the exercise of any
15 of the functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(5) Notwithstanding any delegation made under this section, the person who made the delegation may continue to exercise all or any of the functions delegated.

20 (6) Any act or thing done or omitted or suffered to be done by a delegate while acting in the exercise of a delegation under this section shall be deemed to have been done or omitted or suffered to be done by the person who made the delegation.

(7) An instrument purporting to be signed by a delegate
25 of the Commission or a statutory officer of the Commission in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Commission or a statutory officer of the Commission, as the case may require, and, until the contrary is proved,
30 shall be deemed to be an instrument signed by a delegate of the Commission or a statutory officer of the Commission, as the case may require, under this section.

Legal Services Commission.

70. (1) The Commission may determine that the interest of a commissioner, a statutory officer of the Commission 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. Determination of pecuniary interests.

5 (2) A determination made by the Commission under subsection (1) shall be final and conclusive.

71. (1) Where, under this Act, notice in writing is required to be given to a person by the Commission, the notice may be given— Notices.

10 (a) in the case of a person other than a corporation—

(i) by delivering it to him; or

15 (ii) by delivering it, or by sending it by prepaid post, addressed to him at the address, if any, specified by him for the giving of notices under this Act, or, where no such address is specified, at his usual place of abode or his 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—

20 (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

25 (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.

30 (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.

Legal Services Commission.

72. Proceedings for an offence against this Act may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone. Proceedings for offences.

73. Parts 1 and 2 of Schedule 8 have effect.

Savings, transitional and other provisions relating to the constitution of the Commission.

5 74. Part 3 of Schedule 8 has effect.

Savings, transitional and other provisions relating to the provision of legal aid and other matters.

Legal Services Commission.

SCHEDULE 1.

Sec. 5.

REPEALS.

Column 1.		Column 2.	
5	Year and number of Act.	Short title of Act.	
		Extent of repeal.	
	1918, No. 36	Poor Persons Legal Remedies Act, 1918. . .	The whole Act.
	1943, No. 17	Legal Assistance Act, 1943	The whole Act.
	1947, No. 30	Legal Assistance (Amendment) Act, 1947. .	The whole Act.
10	1953, No. 7	Legal Assistance (Amendment) Act, 1953. .	The whole Act.
	1957, No. 63	Legal Assistance (Amendment) Act, 1957. .	The whole Act.
	1959, No. 20	Suitors' Fund (Amendment) Act, 1959 . .	Sections 1 (3) and 4.
	1961, No. 29	Industrial Arbitration (Basic Wage) Amendment Act, 1961.	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.
15			
20	1964, No. 37	Industrial Arbitration (Amendment) Act, 1964.	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.
25	1964, No. 42	Legal Assistance (Amendment) Act, 1964. .	The whole Act.
	1967, No. 86	Industrial Arbitration (Basic Wage) Amendment Act, 1967.	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.
30			
	1970, No. 10	Legal Assistance and Suitors' Fund (Amendment) Act, 1970.	Section 2.
35	1970, No. 37	Legal Practitioners (Legal Aid) Act, 1970.	The whole Act.
	1970, No. 52	Supreme Court Act, 1970	So much of the Second Schedule as amended Act No. 17, 1943, and Act No. 37, 1970.
40	1970, No. 60	Minors (Property and Contracts) Act, 1970	So much of the First Schedule as amended Act No. 17, 1943.
	1972, No. 41	Supreme Court (Amendment) Act, 1972. .	So much of the Second Schedule as relates to Act No. 17, 1943, and Act No. 37, 1970.
45			
	1974, No. 39	Legal Aid (Miscellaneous Provisions) Act, 1974.	The whole Act.
	1974, No. 62	Legal Practitioners and Other Acts (Amendment) Act, 1974.	Section 10.
50	1975, No. 15	Legal Practitioners (Legal Aid) Amendment Act, 1975.	The whole Act.
	1976, No. 4	Statutory and Other Offices Remuneration Act, 1975.	So much of Schedule 5 as amended Act No. 17, 1943.
55			

Legal Services Commission.

SCHEDULE 2.

Sec. 9 (1).

PROVISIONS RELATING TO THE CONSTITUTION AND MEMBERSHIP OF THE COMMISSION.

1. In this Schedule—

Interpretation:

5 "Chairman" means the person appointed as referred to in section 8 Sch. 2.
(1) (a) as Chairman of the Commission;

"commissioner" does not include the Deputy Chairman.

10 2. A person who is of or above the age of 65 years shall not be appointed as a commissioner (other than the Chairman) or to act in the office of a commissioner or the Deputy Chairman under clause 5. Age of commissioner.

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

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

20 4. Each commissioner 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. Remuneration of and allowances for commissioners.

25 5. (1) The Minister may at any time appoint, as an alternate commissioner to act during the absence or illness of a commissioner (other than the Chairman), a person who holds the same qualification, if any, and is nominated in the same manner, if any, as the person for whom he is the alternate commissioner. Alternate commissioners.

(2) The Minister may at any time appoint a person to act as an alternate for the Deputy Chairman during the absence or illness of the Deputy Chairman.

30 (3) An alternate commissioner shall have and may exercise, while acting as a commissioner, the functions, as such a commissioner, of the person for whom he is the alternate commissioner.

*Legal Services Commission.*SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE CONSTITUTION AND MEMBERSHIP OF THE COMMISSION—*continued.*

5 (4) An alternate for the Deputy Chairman shall have and may exercise, while acting as the Deputy Chairman, the functions of the Deputy Chairman.

10 (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 commissioner or the Deputy Chairman, 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 commissioner or the Deputy Chairman, as the case may be.

15 6. The Minister may remove a commissioner from office for inability, misbehaviour or failure to comply with the terms and conditions of his appointment. Removal from office.

7. A commissioner shall be deemed to have vacated his office—

Vacation of office.

- (a) if he dies;
- 20 (b) if he resigns his office by writing under his hand addressed to the Minister and the Minister accepts his resignation;
- (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- 25 (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- 30 (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
- 35 (f) if he is absent from 3 consecutive meetings of the Commission of which reasonable notice has been given to him, unless on leave granted to him by the Commission;

Legal Services Commission.

SCHEDULE 2—*continued.*

PROVISIONS RELATING TO THE CONSTITUTION AND MEMBERSHIP OF THE COMMISSION—*continued.*

- 5 (g) if, at any meeting of the Commission at which he is present and at which any matter in which he 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 is not a director) is being or about to be considered by the Commission—
- 10 (i) he fails, as soon as practicable after the relevant facts have come to his knowledge, to disclose to the meeting his interest in the matter; or
- (ii) he takes part in the consideration or discussion of, or votes on any question with respect to, the matter;
- 15 (h) if he is removed from office by the Minister; or
- (i) except in the case of the Chairman, upon his attaining the age of 65 years.
8. (1) On the occurrence of a vacancy in the office of a commissioner, the Minister may appoint a person to the vacant office for the balance of his predecessor's term of office. Filling of casual vacancy.
- 20 (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 commissioner whose office has become vacant was qualified and nominated.

25

SCHEDULE 3.

Sec. 9 (2).

PROVISIONS RELATING TO MEETINGS OF THE COMMISSION.

1. In this Schedule, "Chairman" means the person appointed as referred to in section 8 (1) (a) as Chairman of the Commission. Interpretation:
Sch. 3.

Legal Services Commission.

SCHEDULE 3—*continued.*

PROVISIONS RELATING TO MEETINGS OF THE COMMISSION—*continued.*

2. (1) The Chairman may, at any time, convene a meeting of the Commission. Convening
of meetings.
- 5 (2) The Chairman, on receipt of a request in writing signed by 3 commissioners, shall convene a meeting of the Commission.
3. At a meeting of the Commission, 4 commissioners constitute a quorum. Quorum.
- 10 4. (1) Any duly convened meeting of the Commission at which a quorum is present shall be competent to transact any business of the Commission. Meetings.
- (2) Questions arising at a meeting of the Commission shall be determined by a majority of votes of the commissioners present and voting.
- 15 5. The procedure for the calling of, and for the conduct of business at, meetings of the Commission shall be as determined by the Commission. General
procedure.
6. The Chairman shall preside at all meetings of the Commission which he is present. Chairman
to preside.
7. (1) In the absence of the Chairman at any meeting of the Commission, the Deputy Chairman shall preside as chairman at that meeting. Absence of
Chairman.
- 20 (2) Where both the Chairman and the Deputy Chairman are absent from any meeting of the Commission, the commissioners present shall appoint one of their number to preside as chairman at that meeting.
- 25 8. The commissioner presiding at a meeting of the Commission shall have a deliberative vote and, in the event of an equality of votes, shall also have a second or casting vote. Presiding
commis-
sioner's
vote.

Legal Services Commission.

SCHEDULE 3—*continued.*

PROVISIONS RELATING TO MEETINGS OF THE COMMISSION—*continued.*

9. (1) The Commission shall cause full and accurate minutes to be kept of its proceedings at meetings. Minutes of meetings.
- 5 (2) The Commission shall submit a copy of the minutes of a meeting of the Commission to the Minister within 14 days after the date on which the meeting is held.
10. The Commission 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 Commission determines. Public information.
11. In proceedings by or against the Commission, no proof shall be required (until evidence is given to the contrary) of— Presump-tions.
- 15 (a) the constitution of the Commission;
- (b) the due making of any resolution of the Commission;
- (c) the appointment of any commissioner; or
- (d) the presence of a quorum at any meeting of the Commission.

SCHEDULE 4.

Sec. 20.

GENERAL PROVISIONS RELATING TO THE STATUTORY OFFICERS OF THE COMMISSION.

20

1. A person who is of or above the age of 65 years shall not be appointed as a statutory officer of the Commission. Age of statutory officer.
2. (1) The Deputy Chairman shall, subject to this Act, be appointed for such term, not exceeding 7 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as Deputy Chairman. Term of office of statutory officer.
- (2) A statutory officer of the Commission, other than the Deputy Chairman, shall, subject to this Act, hold office until he attains the age of 65 years.

*Legal Services Commission.*SCHEDULE 4—*continued.*GENERAL PROVISIONS RELATING TO THE STATUTORY OFFICERS OF THE
COMMISSION—*continued.*

3. A statutory officer of the Commission is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975. Remuneration of statutory officers.
4. The Minister may remove a statutory officer of the Commission from office for inability, misbehaviour or failure to comply with the terms and conditions of his appointment. Removal from office.
- 10 5. A statutory officer of the Commission shall be deemed to have vacated his office— Vacation of office.
- (a) if he dies;
- (b) if he resigns his office by writing under his hand addressed to the Minister and the Minister accepts his resignation;
- 15 (c) if he engages (whether in New South Wales or elsewhere) during his term of office in any paid employment outside the duties of his office;
- (d) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- 20 (e) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- 25 (f) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
- 30 (g) if he absents himself from duty for a period of more than 14 consecutive days, except on leave granted by the Commission;
- (h) if, being the Deputy Chairman, he is absent from 3 consecutive meetings of the Commission of which reasonable notice has been given to him, unless on leave granted to him by the Commission;
- 35

Legal Services Commission.

SCHEDULE 4—*continued.*

GENERAL PROVISIONS RELATING TO THE STATUTORY OFFICERS OF THE COMMISSION—*continued.*

- 5 (i) if, being the Deputy Chairman, Public Solicitor or Referrals Director, at any meeting of the Commission at which he is present and at which any matter in which he 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 is not a director) is being or about to be considered by the Commission—
- 10 (i) he fails, as soon as practicable after the relevant facts have come to his knowledge, to disclose to the meeting his interest in the matter; or
- 15 (ii) he takes part in the consideration or discussion of, or, being the Deputy Chairman, votes on any question with respect to, the matter;
- (j) if, being the Public Solicitor or Deputy Public Solicitor, he ceases to be a solicitor of the Supreme Court or to hold a current practising certificate;
- 20 (k) if he is removed from office by the Minister; or
- (l) upon his attaining the age of 65 years.

SCHEDULE 5.

Sec. 21.

PROVISIONS RELATING TO THE PRESERVATION OF RIGHTS OF CERTAIN PERSONS ON THEIR APPOINTMENT AS STATUTORY OFFICERS OF THE COMMISSION.

- 25 1. In this Schedule—
- “first appointed day” means the day appointed and notified under section 2 (2);
- 30 “second appointed day” means the day appointed and notified under section 2 (3);
- “statutory body” means the Commission and any body declared under clause 7 to be a statutory body for the purposes of this Schedule;

Interpretation: Sch. 5.

*Legal Services Commission.*SCHEDULE 5—*continued.*PROVISIONS RELATING TO THE PRESERVATION OF RIGHTS OF CERTAIN PERSONS ON THEIR APPOINTMENT AS STATUTORY OFFICERS OF THE COMMISSION—*continued.*

- 5 “superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.
2. Subject to clause 3 and to the terms of his appointment, where a statutory officer of the Commission was, immediately before his appointment as a statutory officer of the Commission— Preservation of rights—generally.
- 10 (a) an officer of the Public Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- 15 (d) a person in respect of whom provision was made by any Act that he retain any rights accrued or accruing to him as an officer or employee,
- he—
- (e) shall retain any rights accrued or accruing to him as such an officer, contributor or person;
- 20 (f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a statutory officer of the Commission; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,
- 25 as if he had continued to be such an officer, contributor or person during his service as a statutory officer of the Commission, and—
- (h) his service as a statutory officer of the Commission shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and
- 30 (i) he shall be deemed to be an officer or employee and the Commission shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute
- 35 under this clause.

*Legal Services Commission.*SCHEDULE 5—*continued.*PROVISIONS RELATING TO THE PRESERVATION OF RIGHTS OF CERTAIN PERSONS ON THEIR APPOINTMENT AS STATUTORY OFFICERS OF THE COMMISSION—*continued.*

- 5 3. (1) A statutory officer of the Commission who, but for this subclause, would be entitled under clause 2 to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme shall not be so entitled upon his becoming (whether upon his appointment as a
10 statutory officer of the Commission or at any later time while he is such an officer) a contributor to any other superannuation scheme, and the provisions of clause 2 (i) cease to apply to or in respect of him and the Commission in any case where he becomes a contributor to such another superannuation scheme. Consequence of becoming contributor to another superannuation scheme.
- 15 (2) Subclause (1) of this clause does not prevent the payment to a statutory officer of the Commission upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.
- 20 4. A statutory officer of the Commission shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act. Restrictions on entitlement to benefit.
- 25 5. Where, at any time between the first appointed day and the second appointed day, a person is, at the same time, the holder of an office under the Legal Assistance Act, 1943, and a statutory officer of the Commission, he shall, in so far as he exercises any function under the Legal Assistance Act, 1943, or this Act— Certain persons holding 2 offices simultaneously.
- 30 (a) be deemed not to be in breach of any requirement under either Act that he devote the whole of his time to the duties of his office; and
- (b) be deemed, for the purposes of both Acts, not to have engaged in any paid employment or practice outside the duties of his office.
6. (1) In this clause, "retiring age" means, in relation to a person who was, immediately before his appointment as a statutory officer of the Commission— Reappointment to former employment in certain cases.
- 35 (a) the Commissioner for Legal Aid Services within the meaning of the Legal Assistance Act, 1943, or the Public Solicitor within the meaning of that Act—the age of 65 years;

*Legal Services Commission.*SCHEDULE 5—*continued.*PROVISIONS RELATING TO THE PRESERVATION OF RIGHTS OF CERTAIN PERSONS ON THEIR APPOINTMENT AS STATUTORY OFFICERS OF THE COMMISSION—*continued.*

- 5 (b) an officer of the Public Service—the age of 60 years; and
- (c) an officer or employee of a statutory body—the age at which officers or employees (being officers or employees of the class to which that person belonged immediately before his appointment as a statutory officer of the Commission), as the case may
- 10 be, of that statutory body are entitled to retire.

(2) A person who ceases to be a statutory officer of the Commission, otherwise than pursuant to clause 5 (paragraph (b) excepted) of Schedule 4, shall, if he has not attained the retiring age, be entitled to be appointed, where, immediately before his appointment as a statutory officer of the

15 Commission he was—

- (a) the Commissioner for Legal Aid Services within the meaning of the Legal Assistance Act, 1943, or the Public Solicitor within the meaning of that Act—to some office in the Public Service not lower in salary;
- 20 (b) an officer of the Public Service—to some office in the Public Service not lower in classification and salary; or
- (c) an officer or employee of a statutory body—to some office in the service of that body not lower in classification and salary,

than that which he held immediately before his appointment as a statutory

25 officer of the Commission.

7. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

Declarations of statutory bodies.

Legal Services Commission.

SCHEDULE 6.

Sec. 51.

PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS OF LEGAL AID COMMITTEES.

1. In this Schedule—

- 5 "Committee" means a Legal Aid Committee;
- "member" means a member of a Committee.

Interpretation:
Sch. 6.

2. A person (other than the person appointed as referred to in section 8 (1) (a) as Chairman of the Commission) who is of or above the age of 65 years shall not be appointed as a member or to act in the office of a member under clause 4.

Age of member.

3. A member shall, subject to this Act, be appointed for such term, not exceeding 2 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as a member.

Term of office of member.

4. (1) The Commission may at any time appoint, as an alternate member to act during the absence or illness of a member, a person who holds the same qualification, if any, and is nominated in the same manner, if any, as the person for whom he is the alternate member.

Alternate members.

(2) An alternate member shall have and may exercise, while acting as a member, the functions, as such a member, of the person for whom he is the alternate member.

(3) 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, 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.

5. The Commission may, for any cause which to it seems sufficient, remove a member from office.

Removal from office.

6. A member shall be deemed to have vacated his office—

- 30 (a) if he dies;

Vacation of office.

Legal Services Commission.

SCHEDULE 6—*continued.*PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
OF LEGAL AID COMMITTEES—*continued.*

- 5 (b) if he resigns his office by writing under his hand addressed to the Commission;
- (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- 10 (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- 15 (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
- 20 (f) if he is absent from 3 consecutive meetings of the Committee of which reasonable notice has been given to him, unless on leave granted to him by the Committee;
- (g) if, at any meeting of the Committee at which he is present and at which any matter in which he 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 is not a director) is being or about to be considered by the Committee—
- 25 (i) he fails, as soon as practicable after the relevant facts have come to his knowledge, to disclose to the meeting his interest in the matter; or
- 30 (ii) he takes part in the consideration or discussion of, or votes on any question with respect to, the matter;
- (h) if he is removed from office by the Commission; or
- 35 (i) except in the case of the person appointed as referred to in section 8 (1) (a) as Chairman of the Commission, upon his attaining the age of 65 years.

7. (1) On the occurrence of a vacancy in the office of a member, the Filling Commission may appoint a person to the vacant office for the balance of of casual his predecessor's term of office. vacancy.

Legal Services Commission.

SCHEDULE 6—*continued.*

PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
OF LEGAL AID COMMITTEES—*continued.*

5 (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 whose office has become vacant was qualified and nominated.

8. (1) The members of a Committee shall elect a Chairman of the Chairman
Committee and a Deputy Chairman of the Committee from among their and Deputy
10 number. Chairman.

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

(3) In the absence of the Chairman of a Committee at any meeting of the Committee, the Deputy Chairman of the Committee shall preside as
15 chairman at that meeting.

(4) Where both the Chairman and Deputy Chairman of a Committee are absent from any meeting of the Committee, the members present shall appoint one of their number to preside as chairman at the meeting.

9. The procedure for the calling of, and for the conduct of business at, Procedure.
20 meetings of a Committee shall be as determined by the Commission.

SCHEDULE 7.

Sec. 55.

PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
OF LEGAL AID REVIEW COMMITTEES.

1. In this Schedule—

25 "Committee" means a Legal Aid Review Committee;
"member" means a member of a Committee.

Interpre-
tation:
Sch. 7.

*Legal Services Commission.*SCHEDULE 7—*continued.*PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
OF LEGAL AID REVIEW COMMITTEES—*continued.*

2. A person (other than the person appointed as referred to in section 5 (8) (1) (a) as Chairman of the Commission) who is of or above the age of 65 years shall not be appointed as a member or to act in the office of a member under clause 4. Age of member.
3. A member shall, subject to this Act, be appointed for such term, not exceeding 2 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as a member. Term of office of member.
4. (1) The Commission may at any time appoint, as an alternate member to act during the absence or illness of a member, a person who holds the same qualification, if any, and is nominated in the same manner, if any, as the person for whom he is the alternate member. Alternate members.
- 15 (2) An alternate member shall have and may exercise, while acting as a member, the functions, as such a member, of the person for whom he is the alternate member.
- 20 (3) 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, 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.
- 25 5. The Commission may, for any cause which to it seems sufficient, remove a member from office. Removal from office.
6. A member shall be deemed to have vacated his office—
- (a) if he dies; Vacation of office.
- (b) if he resigns his office by writing under his hand addressed to the Commission;
- 30 (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

*Legal Services Commission.*SCHEDULE 7—*continued.*PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
OF LEGAL AID REVIEW COMMITTEES—*continued.*

- 5 (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- 10 (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
- 15 (f) if he is absent from 3 consecutive meetings of the Committee of which reasonable notice has been given to him, unless on leave granted to him by the Committee;
- 20 (g) if, at any meeting of the Committee at which he is present and at which any matter in which he 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 is not a director) is being or about to be considered by the Committee—
- 25 (i) he fails, as soon as practicable after the relevant facts have come to his knowledge, to disclose to the meeting his interest in the matter; or
- (ii) he takes part in the consideration or discussion of, or votes on any question with respect to, the matter;
- (h) if he is removed from office by the Commission; or
- 30 (i) except in the case of the person appointed as referred to in section 8 (1) (a) as Chairman of the Commission, upon his attaining the age of 65 years.

7. (1) On the occurrence of a vacancy in the office of a member, the Commission may appoint a person to the vacant office for the balance of his predecessor's term of office. Filling
of casual
vacancy.

35 (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 whose office has become vacant was qualified and nominated.

Legal Services Commission.

SCHEDULE 7.—*continued.*

PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS OF LEGAL AID REVIEW COMMITTEES—*continued.*

5 8. (1) The Chairman of a Committee shall preside at all meetings of the Committee at which he is present. Chairman and Deputy Chairman.

(2) The members of a Committee shall elect a Deputy Chairman of the Committee from among their number.

(3) In the absence of the Chairman of a Committee at any meeting of the Committee, the Deputy Chairman of the Committee shall preside as 10 chairman at that meeting.

(4) Where both the Chairman and Deputy Chairman of a Committee are absent from any meeting of the Committee, the members present shall appoint one of their number to preside as chairman at that meeting.

9. The procedure for the calling of, and for the conduct of business at, 15 meetings of a Committee shall be as determined by the Commission. Procedure.

SCHEDULE 8.

Secs. 73, 74.

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

PART 1.

20 1. (1) In this Schedule— Interpretation: Sch. 8. "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;

25 "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.

*Legal Services Commission.*SCHEDULE 8—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

PART 2.

2. The Commission—

- 5 (a) may, with the approval of the Public Service Board, make such arrangements with the Law Society as may be acceptable to the Commission, the Public Service Board and the Law Society for the appointment and employment, as members of staff of the Commission, of such members of staff of the Law Society as are, at any time between the first appointed day and the second appointed day, employed by the Law Society in the administration of the Legal Practitioners (Legal Aid) Act, 1970; and
- 10
- (b) may make such arrangements with the Law Society as may be acceptable to the Commission and the Law Society for the use or acquisition of such property of the Law Society as is, at any time between the first appointed day and the second appointed day, used by the Law Society in the administration of that Act.
- 15

Transfer of certain Law Society staff and property.

3. Nothing in section 63 (1) (a) requires the Law Society to pay into the Legal Aid Fund established under section 62 any amount referred to in section 63 (1) (a) before the second appointed day.
- 20

Payment of certain money by Law Society.

PART 3.

4. 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. 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.
- 25
6. 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).
- 30

Undetermined applications for legal aid.

Persons in receipt of legal aid under the former Acts.

Terms and conditions in certificates issued under the former Acts.

*Legal Services Commission.*SCHEDULE 8—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

7. 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.

Assignment of work to private legal practitioners.

8. (1) In this clause—

Transfer of money in Law Society's Fund.

10 "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 sub-clause (2) of this clause into the Commission's Fund.

(4) On and from the second appointed day—

20 (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;

30 (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

35 (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.

Legal Services Commission.

SCHEDULE 8—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

9. The reference in section 43 (1) (a) to legal aid includes a reference to legal aid obtained under either of the former Acts. Legal aid obtained by fraud or misrepresentation under the former Acts.

5 10. The reference in section 48 (a) to the officer of the Commission includes a reference to the Public Solicitor within the meaning of the Legal Assistance Act, 1943, or a solicitor employed in the office of that Public Solicitor. Commission's lien.

10 11. (1) 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 (not being a provision specified or described in an order made by the Minister and published in the Gazette) to— Construction of certain references in other Acts, etc.

15 (a) the Commissioner for Legal Aid Services within the meaning of the Legal Assistance Act, 1943, shall be construed as a reference to the Deputy Chairman;

(b) the Public Solicitor within the meaning of the Legal Assistance Act, 1943, shall be construed as a reference to the Public Solicitor within the meaning of section 4 (1) of this Act; and

20 (c) the Legal Aid Manager of the Law Society shall be construed as a reference to the Referrals Director.

25 (2) An order referred to in subclause (1) of this clause shall take effect or be deemed to have taken effect on and from the second appointed day whether the order was published in the Gazette before, on or after the second appointed day.

Legal Services Commission.

SCHEDULE 8—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

12. 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.
- Continuation of certain provisions.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1979

[\$1.20]

LEGAL SERVICES COMMISSION ACT, 1979, No. 78

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 78, 1979.

An Act to constitute the Legal Services 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. [Assented to, 16th May, 1979.]

See also Consumer Protection (Legal Services Commission) Amendment Act, 1979; Defamation (Legal Services Commission) Amendment Act, 1979; Legal Practitioners (Legal Services Commission) Amendment Act, 1979; Public Defenders (Legal Services Commission) Amendment Act, 1979; Statutory and Other Offices Remuneration (Legal Services Commission) Amendment Act, 1979; Suitors' Fund (Legal Services Commission) Amendment Act, 1979.

Legal Services Commission.

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

PART I.

PRELIMINARY.

Short title. 1. This Act may be cited as the "Legal Services Commission Act, 1979".

**Commence-
ment.** 2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Part I (sections 1, 2 and 5 excepted), Part II, Part IV and Part V (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 III 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.

**Arrange-
ment.** 3. This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1-5.

PART II.—LEGAL SERVICES COMMISSION OF NEW SOUTH WALES—ss. 6-28.

Legal Services Commission.

DIVISION 1.—*Constitution of the Commission*—ss. 6–9.

DIVISION 2.—*Functions of the Commission*—ss. 10–13.

DIVISION 3.—*Statutory Officers of the Commission*—ss. 14–22.

DIVISION 4.—*Members of Staff of the Commission*—s. 23.

DIVISION 5.—*Miscellaneous*—ss. 24–28.

PART III.—PROVISION OF LEGAL AID—ss. 29–60.

DIVISION 1.—*General*—ss. 29–48.

DIVISION 2.—*Legal Aid Committees*—ss. 49–52.

DIVISION 3.—*Legal Aid Review Committees*—ss. 53–55.

DIVISION 4.—*Appeals in respect of the Provision of Legal Aid*—ss. 56–60.

PART IV.—FINANCE—ss. 61–67.

PART V.—MISCELLANEOUS—ss. 68–74.

SCHEDULE 1.—REPEALS.

SCHEDULE 2.—PROVISIONS RELATING TO THE CONSTITUTION AND MEMBERSHIP OF THE COMMISSION.

SCHEDULE 3.—PROVISIONS RELATING TO MEETINGS OF THE COMMISSION.

SCHEDULE 4.—GENERAL PROVISIONS RELATING TO THE STATUTORY OFFICERS OF THE COMMISSION.

SCHEDULE 5.—PROVISIONS RELATING TO THE PRESERVATION OF RIGHTS OF CERTAIN PERSONS ON THEIR APPOINTMENT AS STATUTORY OFFICERS OF THE COMMISSION.

SCHEDULE 6.—PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS OF LEGAL AID COMMITTEES.

Legal Services Commission.

SCHEDULE 7.—PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS OF LEGAL AID REVIEW COMMITTEES.

SCHEDULE 8.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpre-
tation.

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

“Bar Association” means the Council of the New South Wales Bar Association;

“Commission” means the Legal Services Commission of New South Wales constituted under this Act;

“commissioner” means a person who is appointed or who holds office under this Act as a commissioner and includes, where an alternate commissioner is acting during the absence or illness of a commissioner, that alternate commissioner;

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

“Deputy Public Solicitor” means the person appointed under section 16 (1) as the Deputy Public Solicitor;

“functions” includes powers, authorities and duties;

“Law Society” means the Council of the Law Society of New South Wales;

“legal aid” means legal aid under this Act;

“Legal Aid Committee” means a Legal Aid Committee established under this Act;

“Legal Aid Review Committee” means a Legal Aid Review Committee established under this Act;

“legally assisted person” means a person to whom legal aid is provided;

Legal Services Commission.

“member of staff of the Commission” means a person appointed and employed as referred to in section 23 (1) or appointed as referred to in section 23 (2);

“officer of the Commission” means a statutory officer of the Commission or a member of staff of the Commission;

“practising certificate” means a practising certificate issued under section 70 of the Legal Practitioners Act, 1898;

“private legal practitioner” means a person who is practising in New South Wales—

(a) as a barrister on his own account; or

(b) as a solicitor, whether on his own account or in partnership or as an associate or employee of another solicitor,

and includes a body, whether incorporated or unincorporated, which provides legal services and is staffed by persons wholly or predominantly on a voluntary basis;

“Public Defender” means a person who holds office as a Public Defender under the Public Defenders Act, 1969;

“Public Solicitor” means the person appointed under section 15 (1) as Public Solicitor;

“Referrals Director” means the person appointed under section 18 (1) as Referrals Director of the Commission;

“statutory officer of the Commission” means the Deputy Chairman, Public Solicitor, Deputy Public Solicitor or Referrals Director.

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

Legal Services Commission.

PART II.

LEGAL SERVICES COMMISSION OF NEW SOUTH WALES.

DIVISION 1.—*Constitution of the Commission.*

Constitu-
tion of the
Commission.

6. (1) There is hereby constituted a corporation under the corporate name of the "Legal Services Commission of New South Wales".

(2) The Commission, during the period of 12 months commencing on the day appointed and notified under section 2 (3), shall, in the exercise of its functions (except in relation to the contents of any advice, report or recommendation made by it), be subject to the control and direction of the Minister.

(3) The Commission is, for the purposes of any Act, a statutory body representing the Crown.

Commis-
sioners.

7. The Commission shall consist of 7 commissioners appointed by the Minister as part-time commissioners and the Deputy Chairman who shall be a full-time commissioner.

Part-time
commis-
sioners.

8. (1) The part-time commissioners shall consist of—

- (a) a person appointed by the Minister as Chairman of the Commission;
- (b) a person appointed to represent the Minister;
- (c) a person nominated by the Bar Association;
- (d) a person nominated by the Law Society;
- (e) a person nominated by the Labor Council of New South Wales;
- (f) a person who, in the opinion of the Minister, is a representative of consumer and community welfare interests; and
- (g) a person who, in the opinion of the Minister, is a representative of such bodies, whether incorporated or unincorporated, as provide legal services and are staffed by persons wholly or predominantly on a voluntary basis.

(2) Where, for the purposes of subsection (1), a nomination of a person for appointment as a part-time commissioner is not made within the time or in the manner specified by the

Legal Services Commission.

Minister in a notice in writing given to the body entitled to make the nomination, the Minister may appoint any person to be a part-time commissioner instead of the person required to be appointed on that nomination.

(3) The Minister shall, before making an appointment of a person referred to in subsection (1) (f) or (g)—

(a) cause to be published such advertisements, inviting applications from persons to apply for appointment as part-time commissioners, in such form and manner as the Minister directs; and

(b) take into consideration any such applications received by him.

(4) Where, by or under any Act, provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, that provision does not operate to disqualify him from holding that office and also the office of a part-time commissioner or from accepting and retaining any remuneration or travelling or subsistence allowance payable to a part-time commissioner under Schedule 2.

(5) The office of a part-time commissioner shall not, for the purposes of any Act, be deemed to be an office or place of profit under the Crown.

9. (1) Schedule 2 has effect with respect to the constitution and membership of the Commission.

(2) Schedule 3 has effect with respect to the meetings of the Commission.

Provisions relating to the constitution, membership and meetings of the Commission.

DIVISION 2.—Functions of the Commission.

10. (1) The principal function of the Commission is to provide legal services, including legal aid, in accordance with this Act.

Functions of the Commission.

(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

Legal Services Commission.

- (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) specify the persons who or committees which may—
 - (i) determine applications for legal aid or such classes or descriptions of applications for legal aid as may be specified by the Commission;
 - (ii) vary determinations of any applications referred to in subparagraph (i); and
 - (iii) determine any other matter or thing specified by the Commission relating to the provision or administration of legal aid;
- (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;
- (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 provisions by those persons or bodies of legal aid;

Legal Services Commission.

- (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 he 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.

Legal Services Commission.

Provision
of legal
aid.

11. 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 private legal practitioners to be made available, wholly or partly at the expense of the Commission;
- (b) by making available the services of officers of the Commission; or
- (c) by arranging for the services of the Public Defenders to be made available.

Duties
to be
observed
in the
provision
of legal
aid.

12. 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 those persons to whom it may be provided;
- (c) ascertain and keep under review community needs in relation to legal aid;
- (d) liaise with professional bodies representing private legal practitioners and, where appropriate, use the services of private legal practitioners in the provision of legal aid;
- (e) determine the allocation of legal aid services between officers of the Commission and private legal practitioners and the principles on which private legal practitioners are to be offered or refused matters on assignment;
- (f) ensure, so far as is reasonably practicable, that a legally assisted person obtains the services of the lawyer of his choice;
- (g) ensure, by the assignment of appropriate work, the maintenance of the offices of the Public Solicitor and the Public Defenders;

Legal Services Commission.

- (h) ensure the co-ordination of legal aid services and the avoidance of any unnecessary duplication in the provision of legal aid services; and
- (i) ensure that, except where otherwise expressly provided by this Act, nothing is done by the Commission or its officers which may interfere with the relationship between a solicitor acting in his professional capacity and his client.

13. (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. ^{Annual report.}

(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 him of the report.

DIVISION 3.—Statutory Officers of the Commission.

14. (1) The Minister may appoint a person who is a barrister admitted by, or a solicitor of, the Supreme Court to be the Deputy Chairman of the Commission. ^{Deputy Chairman.}

(2) The Deputy Chairman shall be the chief executive officer of the Commission.

15. (1) The Minister may appoint a person who is a solicitor of the Supreme Court and who holds a current practising certificate to be the Public Solicitor. ^{Public Solicitor.}

Legal Services Commission.

(2) The Public Solicitor—

- (a) shall administer the provision of legal services by the staff of the Commission; and
- (b) shall have and may exercise such other functions as are conferred or imposed on him by or under this or any other Act.

Deputy
Public
Solicitor.

16. (1) The Minister may appoint a person who is a solicitor of the Supreme Court and who holds a current practising certificate to be the Deputy Public Solicitor.

(2) The Deputy Public Solicitor shall act for the Public Solicitor during the absence or illness of the Public Solicitor and shall, while he so acts, exercise the functions of the Public Solicitor.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising the Deputy Public Solicitor to act in the place of the Public Solicitor, and all acts or things done or omitted or suffered to be done by the Deputy Public Solicitor while so acting shall have the same consequences as if they had been done or omitted or suffered to be done by the Public Solicitor.

Nature of
office of
Public
Solicitor
and Deputy
Public
Solicitor.

17. (1) The Public Solicitor and the Deputy Public Solicitor shall, for the purposes of—

- (a) exercising their functions under this Act; and
- (b) applying for, being issued with and holding a practising certificate,

be deemed to be solicitors who for the time being are engaged in the practice of their profession on their own account.

Legal Services Commission.

(2) Section 70 (3) of the Legal Practitioners Act, 1898, shall not apply to the issue of a practising certificate to the Public Solicitor or Deputy Public Solicitor.

18. (1) The Minister may appoint a person who is a barrister admitted by, or a solicitor of, the Supreme Court to be the Referrals Director of the Commission. Referrals Director.

(2) The Referrals Director—

- (a) shall administer the assignment of work from the Commission to private legal practitioners; and
- (b) shall have and may exercise such other functions as are conferred or imposed on him by or under this Act.

19. A statutory officer of the Commission shall devote the whole of his time to the duties of his office. Full-time appointments.

20. Schedule 4 has effect generally with respect to the statutory officers of the Commission. General provisions relating to the statutory officers of the Commission.

21. Schedule 5 has effect with respect to the preservation of rights of certain persons on their appointment as statutory officers of the Commission. Preservation of rights of certain persons.

22. The Public Solicitor and the Referrals Director may attend meetings of the Commission and have a right to be heard at those meetings. Right of attendance and hearing at meetings of the Commission.

Legal Services Commission.

DIVISION 4.—Members of Staff of the Commission.

Appoint-
ment of
members
of staff
of the
Commission.

23. (1) Except as provided in subsection (2), such officers and employees as may be necessary for the performance of the functions of the Commission may be appointed and employed under and subject to the Public Service Act, 1902.

(2) The Commission may, with the approval of the Public Service Board and on such terms and conditions as may be approved by that Board, appoint persons to be members of staff of the Commission for such purposes as may be approved by that Board.

(3) The maximum term for which a person may be appointed by the Commission under subsection (2) is 3 years, but he is eligible for further appointment under that subsection.

(4) A member of staff of the Commission referred to in subsection (2) is not, in his capacity as such, an officer within the meaning of the Public Service Act, 1902, but if the terms and conditions on which he is appointed so provide, any specified provisions of that Act or the regulations thereunder, whether with or without specified modifications, apply to and in respect of him as if he were an employee within the meaning of that Act.

DIVISION 5.—Miscellaneous.

Perform-
ance of
functions
of solicitor.

24. An officer of the Commission shall not perform any functions of a solicitor under this Act unless he holds a current practising certificate.

Solicitor-
client
relation-
ship.

25. (1) The relationship arising by virtue of this Act between a solicitor, whether the solicitor is an officer of the Commission or a private legal practitioner 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 his professional capacity and in the course of his professional employment and his own client.

Legal Services Commission.

(2) The like privileges as those which arise from the relationship of a solicitor acting in his professional capacity and in the course of his professional employment and his own client shall arise between the Commission or a committee 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 established under this Act or an officer 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;
- (b) proceedings for an offence connected with the administration of legal aid;
- (c) any disciplinary proceedings under the Legal Practitioners Act, 1898;
- (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; or
- (f) the exercise by the Auditor-General of his functions under this Act or any other law.

26. A commissioner, a member of a committee established under this Act or an officer of the Commission shall not, except in the circumstances referred to in section 25 (4) (a), (b), (c),

Disclosure of certain information prohibited.

Legal Services Commission.

(d), (e) or (f) divulge any information or document (including an application for legal aid) obtained by virtue of his office concerning an applicant for legal aid.

Penalty : \$1,000 or imprisonment for 6 months.

Immunity.

27. No matter or thing done or omitted or suffered to be done by the Commission, a committee established under this Act or an officer of the Commission shall, if the matter or thing was done or omitted or suffered to be done bona fide for the purpose of executing this Act, subject the Commission, the committee or the officer to any action, liability, claim or demand whatsoever.

Solicitor
on the
record.

28. 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 a legally assisted person; and
- (b) legal aid is being provided to the legally assisted person in relation to the proceeding by an officer of the Commission,

the signature of the Public Solicitor, or of an officer of the Commission who is a solicitor and who, pursuant to a written authority given generally or specially by the Public Solicitor, is authorised to sign documents on behalf of the Public Solicitor for the purposes of this section, shall be deemed to be the signature of the solicitor for that party.

PART III.

PROVISION OF LEGAL AID.

DIVISION 1.—General.

Inter-
pretation:
Pt. III.

29. (1) In this Part, “application” means an application for legal aid made to the Commission.

Legal Services 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) to the Commission includes, in relation to the exercise of a function referred to in section 10 (2) (c) (i), (ii) or (iii), any person who or committee which the Commission has, pursuant to section 10 (2) (c), specified as being a person who or committee which may exercise that function;
- (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 private legal practitioner; 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. (1) Except to such extent, if any, as the Commission may otherwise determine in accordance with subsection (2), legal aid shall be provided by the Commission in accordance with this Part. Provision of legal aid.

(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.

Legal Services Commission.

Application
for legal
aid.

31. (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 shall be made in writing and shall be in accordance, or substantially in accordance, with a form approved by the Commission for the purpose.

(4) The Commission may, where it is of the opinion that there are special circumstances, treat an application that does not comply with subsection (3) as having been duly made.

False
application.

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

Penalty : \$1,000 or imprisonment for 6 months.

Powers of
the
Commission
in respect
of applica-
tion.

33. 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;
- (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;
- (e) take such steps as may be necessary to conserve the interests of the applicant pending the determination of his application; and

Legal Services Commission.

- (f) defray expenses incidental to any of the matters referred to in paragraphs (a)–(e) from money available to the Commission or require the applicant to meet those expenses.

34. (1) The Commission shall determine an application by granting the application unconditionally or subject to conditions or by refusing the application. Determination of application.

(2) The Commission shall give notice to the applicant of the determination of his application within 14 days after the determination is made.

(3) A notice given under subsection (2), except where—

- (a) the application relates to proceedings in a court of petty sessions with respect to a criminal offence and is granted unconditionally; or
- (b) the application relates to proceedings in a court of petty sessions with respect to a criminal offence 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) Where a person or committee specified by the Commission pursuant to section 10 (2) (c) grants an application subject to conditions or refuses an application, other than an application referred to in subsection (3) (b), the person or committee shall, in the notice given under subsection (2), inform the applicant that he has a right of appeal to a Legal Aid Review Committee against the determination by the person or committee of his application.

(5) Where a person or committee referred to in subsection (4) grants an application subject to conditions or refuses an application, other than an application referred to in subsection (3) (b), the person or committee shall record the reasons for the determination of the application.

Legal Services Commission.

Means
test.

35. (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 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) shall be determined having regard to the ability of an applicant or an applicant of the class or description of applicants in respect of whom the means test is determined to meet the ordinary professional cost of the legal services sought by the applicant.

(3) For the purposes of subsection (1), special circumstances shall 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.

Monetary
contribution by
applicant.

36. (1) In granting an application, the Commission—

- (a) may require 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; and
- (b) may determine the maximum amount the applicant will 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.

Legal Services Commission.

(2) An amount required to be paid under subsection (1) shall be paid in such manner 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 from the person as a debt in a court of competent jurisdiction.

37. (1) Nothing prevents the Commission from granting an application made by—

Applications by certain persons.

- (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 held in New South Wales, 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; or
- (d) a person whose interests are, or may be, adverse to the Crown or a statutory body representing the Crown.

(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. (1) The determination of an application granting legal aid to a person may, at any time, be varied by the Commission so as to—

Variation of grant of legal aid.

- (a) terminate the provision of the legal aid;
- (b) alter the nature or extent of the legal aid;

Legal Services Commission.

- (c) make the provision of the legal aid subject to a condition or an additional condition; or
- (d) alter a condition to which the provision of the legal aid is subject.

(2) Where a determination 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 determination 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 14 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 himself.

(4) Where a determination is varied under subsection (1) by a person or committee specified by the Commission pursuant to section 10 (2) (c) 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 has a right of appeal to a Legal Aid Review Committee against the variation.

(5) Where a determination is varied as referred to in subsection (4), the person or committee making the variation shall record the reasons for the variation of the determination.

Fees in
respect of
assigned
matters.

39. (1) The Commission shall determine the fees to be paid by it to private legal practitioners to whom work is assigned by the Commission.

Legal Services 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.

40. (1) For the purpose of assisting in the determination of costs of which the Commission has agreed to pay a proportion to a private legal practitioner to whom work has been assigned by the Commission, the Commission may require the private legal practitioner to tax a bill of costs under the Legal Practitioners Act, 1898, in relation to that work as if the Commission, and not the legally assisted person on whose behalf the work was done, were the client of the private legal practitioner. Taxation of costs.

(2) No objection shall be made under this or any other Act or law to the 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 behalf.

41. A private legal practitioner shall not, except with the approval of the Commission, demand or receive any payment from a legally assisted person or any other person on behalf of a legally assisted person in respect of the work assigned by the Commission to the private legal practitioner on behalf of the legally assisted person. Demand or receipt of certain payments prohibited.

Legal Services Commission.

Discretion of court or tribunal as to costs.

42. 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 were not a legally assisted person.

Payment of costs by certain legally assisted persons.

43. (1) Where, on the application of the Commission, it appears to a court or to a tribunal which may make an order as to costs that—

- (a) a person has obtained legal aid by fraud or misrepresentation; or
- (b) a legally assisted person has acted improperly in bringing or defending any proceedings or in the conduct of any proceedings,

the court or tribunal may order the person to pay to the Commission the costs of the solicitor who acted for him.

(2) Where an order is made under subsection (1), the costs shall be taxed as if the person ordered to pay them were not a legally assisted person.

Direction as to payment of certain money to the Commission.

44. (1) The Commission may, by notice in writing, direct a legally assisted person or a private legal practitioner 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) A person to whom a direction is given under subsection (1) shall comply with the terms of the direction.

(3) The Commission shall account to a legally assisted person referred to in subsection (1) and any private legal practitioner so referred to in respect of money paid to it under subsection (1).

Legal Services Commission.

(4) The Commission may, in respect of money paid to it by a legally assisted person or a private legal practitioner 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 private legal practitioner in connection with the proceedings in which the money was recovered against any other money held by the practitioner in relation to the same proceedings.

45. (1) Where—

**Recovery
of money.**

- (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 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 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.

Legal Services Commission.

Liability
of legally
assisted
person to
pay costs
and
expenses.

46. (1) Except as provided by subsection (2), a legally assisted person shall not be liable to make any payment to the Commission or a private legal practitioner in respect of the costs and expenses of the legal services provided to him as a legally assisted person in excess of the amount of the contribution, if any, determined by the Commission under section 36 (1) (a) in respect of the provision of those legal services.

(2) Where, as a consequence of the provisions of legal services to a legally assisted person, the person receives money in excess of the amount of \$500 or such other amount as the Commission may from time to time determine, the person shall, if directed by the Commission, pay to it—

(a) an amount determined by the Commission which shall not exceed the amount by which the sum of—

(i) the ordinary professional costs (including solicitor and client costs) of the legal services; and

(ii) any expenses incurred in respect of the provision of the legal services,

exceeds any amount, or the sum of any amounts, paid by the person to the Commission pursuant to section 36 (1) (a) in respect of the provision of the legal services; or

(b) an amount equal to 25 per cent of the money received by the person in excess of the amount of \$500 or such other amount as the Commission may from time to time determine,

whichever is the lesser.

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

Legal Services Commission.

47. (1) Where a court or tribunal makes an order as to costs against a legally assisted person—

Payment of costs awarded against legally assisted persons.

(a) except as provided by subsections (2), (3) and (4), the Commission shall pay the whole of those costs; and

(b) except as provided by subsections (3) and (4), 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, in respect of the costs of any one proceeding, pay an amount in excess of \$5,000 or such other amount as the Commission may from time to time determine.

(3) The Commission shall not be liable to pay any costs incurred by or on behalf of a person while he was not a legally assisted person and that person shall be liable for the payment 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; or

(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,

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.

(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), 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 specified by the Commission pursuant to section 10 (2) (c), the person or

Legal Services Commission.

committee shall, in a notice given under subsection (5), inform the legally assisted person that he has a right of appeal to a Legal Aid Review Committee against the decision.

(7) Where a person or committee referred to in subsection (6) declines the payment of costs under subsection (4), 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.

Commis-
sion's lien.

48. Where proceedings are conducted on behalf of a legally assisted person by an officer of the Commission and the person ceases, before the conclusion of those proceedings, to be a legally assisted person—

(a) the person shall be liable to pay to the Commission—

(i) costs, assessed as between solicitor and client, in respect of work done by the officer of the Commission; and

(ii) expenses incurred by the Commission,

on behalf of the person before he ceased to be a legally assisted person; and

(b) the Commission shall have a lien on any document held by it in connection with those proceedings in order to secure the payment of those costs and expenses.

DIVISION 2.—*Legal Aid Committees.*

Establish-
ment of
Legal Aid
Committees.

49. The Commission may establish one or more Legal Aid Committees.

Members.

50. (1) A Legal Aid Committee shall consist of 5 members appointed by the Commission.

Legal Services Commission.

(2) Of the members—

- (a) one shall be a commissioner;
- (b) one shall be a person nominated by the Bar Association;
- (c) two shall be persons nominated by the Law Society;
and
- (d) one shall be a person who is not a legal practitioner.

51. Schedule 6 has effect with respect to the constitution, membership and meetings of a Legal Aid Committee.

Provisions relating to the constitution, membership and meetings of a Legal Aid Committee.

52. (1) A Legal Aid Committee shall determine applications or matters relating to applications delegated or referred to it by the Commission or an officer of the Commission so authorised by the Commission.

Function.

(2) Where an application or matter referred to in subsection (1) is delegated or referred to a Legal Aid Committee by an officer of the Commission, the officer shall inform the Committee of the reasons for so delegating or referring the application or matter.

DIVISION 3.—Legal Aid Review Committees.

53. The Commission may establish one or more Legal Aid Review Committees.

Establishment of Legal Aid Review Committees.

54. (1) A Legal Aid Review Committee shall consist of 5 Members. members appointed by the Commission.

Legal Services Commission.

(2) Of the members—

- (a) one shall be appointed as Chairman of the Legal Aid Review Committee;
- (b) one shall be a person nominated by the Bar Association;
- (c) one shall be a person nominated by the Law Society;
- (d) one shall be a person who is not a legal practitioner; and
- (e) one shall be a person nominated by the Minister.

Provisions relating to the constitution, membership and meetings of a Legal Aid Review Committee.

55. Schedule 7 has effect with respect to the constitution, membership and meetings of a Legal Aid Review Committee.

DIVISION 4.—*Appeals in respect of the Provision of Legal Aid.*

Appeals.

56. (1) An applicant or legally assisted person dissatisfied with—

- (a) the determination, by a person or committee specified by the Commission pursuant to section 10 (2) (c), of an application under section 34 (1), other than an application referred to in section 34 (3) (b);
- (b) the variation, by such a person or committee, of a determination under section 38 (1); or
- (c) a decision, by such a person or committee, to decline payment of the whole or any part of costs under section 47 (4),

may appeal to a Legal Aid Review Committee.

Legal Services Commission.

(2) An appeal shall be lodged with the Commission in writing in accordance, or substantially in accordance, with the form approved by the Commission for the purpose and shall be so lodged within—

- (a) a period of 7 days after the date on which notice of the determination, variation or decision in respect of which the appeal is brought was given to the appellant; or
- (b) such longer period as a Legal Aid Review Committee may, where it is of the opinion that there are special circumstances, allow.

57. Where it appears to a court or tribunal, on any information before it— Adjourn-
ment of
certain
proceedings.

- (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 Committee and that the appeal has not been determined; or
 - (ii) intends to appeal, in accordance with section 56, to a Legal Aid Review Committee 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.

Legal Services Commission.

Functions
of a Legal
Aid Review
Committee
on an
appeal.

58. A Legal Aid Review Committee shall, for the purposes of hearing and determining an appeal, have the functions and discretions which 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.

Determina-
tion of
appeal.

59. (1) A Legal Aid Review Committee shall 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 Committee shall give notice, in writing, of its determination of an appeal to the appellant and to the Commission.

(3) A Legal Aid Review Committee shall record its reasons for the determination of an appeal.

Effect and
implemen-
tation of
determina-
tion or
order.

60. (1) A determination or an order of a Legal Aid Review Committee under section 59 (1) in respect of an appeal—

- (a) shall have effect from the date thereof; and
- (b) 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 private legal practitioner in respect of an applicant whose appeal to a Legal Aid Review Committee has been upheld.

Legal Services Commission.

PART IV.

FINANCE.

61. In this Part—

“financial year”, in relation to the Commission, means the year ending on 30th June;

“Fund” means the Legal Aid Fund established under section 62.

Interpre-
tation:
Pt. IV.

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

Legal Aid
Fund.

63. (1) There shall be paid into the Fund—

- (a) all amounts applied under subsection (2) of section 44A of the Legal Practitioners Act, 1898, for the purpose set out in paragraph (a) of that subsection;
- (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);
- (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 direction under section 46 (2) or recovered by it under section 46 (3);

Payments
into the
Fund.

Legal Services Commission.

- (i) money received by the Commission pursuant to a liability under section 48 (a);
- (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.

**Payments
out of
the Fund.**

64. 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 private legal practitioners 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.

**Invest-
ment.**

65. 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

Legal Services Commission.

(b) in any securities approved by the Treasurer on the recommendation of the Minister.

66. (1) The Commission shall keep proper accounts and **Accounts.** records in relation to all of its operations.

(2) As soon as practicable after each financial year, the Commission shall prepare and submit to the Minister for presentation to Parliament, as part of the report required under section 13, a statement of accounts, together with the Auditor-General's certificate given under this section in relation to the statement.

(3) The statement of accounts shall be in a form approved by the Auditor-General, shall include such information as is requested by him and shall exhibit a true and fair view of the financial position and transactions of the Commission.

(4) The Commission shall, as soon as practicable after the end of the financial year to which a statement of accounts relates, transmit the statement to the Auditor-General for verification and certification.

(5) The Auditor-General's certificate shall state that he has audited the accounts of the Commission relating to the relevant financial year, shall indicate whether the statement of accounts complies with subsection (3) and shall set forth any qualifications subject to which the certificate is given.

(6) Nothing in this section prevents the alteration of the statement of accounts, with the approval of the Auditor-General, after its receipt by him and before its submission to the Minister.

67. The Commission shall, on or before 31st May in each **Financial** year, prepare estimates of its income and expenditure for the **estimates.** following financial year.

Legal Services Commission.

PART V.

MISCELLANEOUS.

Consulta-
tive com-
mittees.

68. (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 chairman 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).

Delegation.

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

(a) to an officer of the Commission; or

(b) to a committee established under this Act, other than a committee established under section 68,

the exercise or performance of such of the functions (other than this power of delegation) conferred or imposed on the Commission by or under this or any other Act as may be specified in the instrument of delegation and may, by such an instrument, revoke wholly or in part any such delegation.

(2) A statutory officer of the Commission may, by instrument in writing, delegate—

(a) to an officer of the Commission; or

Legal Services Commission.

(b) to a committee established under this Act, other than a committee established under section 68,

the exercise or performance of such of the functions (other than this power of delegation) conferred or imposed on the statutory officer by or under this or any other Act as may be specified in the instrument of delegation and may, by such an instrument, revoke wholly or in part any such delegation.

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

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

(5) Notwithstanding any delegation made under this section, the person who made the delegation may continue to exercise all or any of the functions delegated.

(6) Any act or thing done or omitted or suffered to be done by a delegate while acting in the exercise of a delegation under this section shall be deemed to have been done or omitted or suffered to be done by the person who made the delegation.

(7) An instrument purporting to be signed by a delegate of the Commission or a statutory officer of the Commission in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Commission or a statutory officer of the Commission, as the case may require, and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Commission or a statutory officer of the Commission, as the case may require, under this section.

Legal Services Commission.

Determina-
tion of
pecuniary
interests.

70. (1) The Commission may determine that the interest of a commissioner, a statutory officer of the Commission 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.

Notices.

71. (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 him; or

(ii) by delivering it, or by sending it by prepaid post, addressed to him at the address, if any, specified by him for the giving of notices under this Act, or, where no such address is specified, at his usual place of abode or his 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.

Legal Services Commission.

72. Proceedings for an offence against this Act may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone. Proceedings for offences.

73. Parts 1 and 2 of Schedule 8 have effect.

Savings, transitional and other provisions relating to the constitution of the Commission.

74. Part 3 of Schedule 8 has effect.

Savings, transitional and other provisions relating to the provision of legal aid and other matters.

Legal Services Commission.

Sec. 5.

SCHEDULE 1.

REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
1918, No. 36	Poor Persons Legal Remedies Act, 1918. . .	The whole Act.
1943, No. 17	Legal Assistance Act, 1943	The whole Act.
1947, No. 30	Legal Assistance (Amendment) Act, 1947. . .	The whole Act.
1953, No. 7	Legal Assistance (Amendment) Act, 1953. . .	The whole Act.
1957, No. 63	Legal Assistance (Amendment) Act, 1957. . .	The whole Act.
1959, No. 20	Suitors' Fund (Amendment) Act, 1959 . . .	Sections 1 (3) and 4.
1961, No. 29	Industrial Arbitration (Basic Wage) Amendment Act, 1961.	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	Industrial Arbitration (Amendment) Act, 1964.	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	Legal Assistance (Amendment) Act, 1964. . .	The whole Act.
1967, No. 86	Industrial Arbitration (Basic Wage) Amendment Act, 1967.	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	Legal Assistance and Suitors' Fund (Amendment) Act, 1970.	Section 2.
1970, No. 37	Legal Practitioners (Legal Aid) Act, 1970.	The whole Act.
1970, No. 52	Supreme Court Act, 1970	So much of the Second Schedule as amended Act No. 17, 1943, and Act No. 37, 1970.
1970, No. 60	Minors (Property and Contracts) Act, 1970	So much of the First Schedule as amended Act No. 17, 1943.
1972, No. 41	Supreme Court (Amendment) Act, 1972. . .	So much of the Second Schedule as relates to Act No. 17, 1943, and Act No. 37, 1970.
1974, No. 39	Legal Aid (Miscellaneous Provisions) Act, 1974.	The whole Act.
1974, No. 62	Legal Practitioners and Other Acts (Amendment) Act, 1974.	Section 10.
1975, No. 15	Legal Practitioners (Legal Aid) Amendment Act, 1975.	The whole Act.
1976, No. 4	Statutory and Other Offices Remuneration Act, 1975.	So much of Schedule 5 as amended Act No. 17, 1943.

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SCHEDULE 2.

Sec. 9 (1).

PROVISIONS RELATING TO THE CONSTITUTION AND MEMBERSHIP OF THE COMMISSION.

1. In this Schedule—

Interpretation:

“Chairman” means the person appointed as referred to in section 8 (1) (a) as Chairman of the Commission;

“commissioner” does not include the Deputy Chairman.

2. A person who is of or above the age of 65 years shall not be appointed as a commissioner (other than the Chairman) or to act in the office of a commissioner or the Deputy Chairman under clause 5.

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

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

4. Each commissioner 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.

5. (1) The Minister may at any time appoint, as an alternate commissioner to act during the absence or illness of a commissioner (other than the Chairman), a person who holds the same qualification, if any, and is nominated in the same manner, if any, as the person for whom he is the alternate commissioner.

(2) The Minister may at any time appoint a person to act as an alternate for the Deputy Chairman during the absence or illness of the Deputy Chairman.

(3) An alternate commissioner shall have and may exercise, while acting as a commissioner, the functions, as such a commissioner, of the person for whom he is the alternate commissioner.

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE CONSTITUTION AND MEMBERSHIP OF THE COMMISSION—*continued.*

(4) An alternate for the Deputy Chairman shall have and may exercise, while acting as the Deputy Chairman, the functions of the Deputy Chairman.

(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 commissioner or the Deputy Chairman, 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 commissioner or the Deputy Chairman, as the case may be.

Removal
from
office.

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

Vacation
of office.

7. A commissioner shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if he resigns his office by writing under his hand addressed to the Minister and the Minister accepts his resignation;
- (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
- (f) if he is absent from 3 consecutive meetings of the Commission of which reasonable notice has been given to him, unless on leave granted to him by the Commission;

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SCHEDULE 2—*continued.*

PROVISIONS RELATING TO THE CONSTITUTION AND MEMBERSHIP OF THE COMMISSION—*continued.*

- (g) if, at any meeting of the Commission at which he is present and at which any matter in which he 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 is not a director) is being or about to be considered by the Commission—
- (i) he fails, as soon as practicable after the relevant facts have come to his knowledge, to disclose to the meeting his interest in the matter; or
 - (ii) he takes part in the consideration or discussion of, or votes on any question with respect to, the matter;
- (h) if he is removed from office by the Minister; or
- (i) except in the case of the Chairman, upon his attaining the age of 65 years.

8. (1) On the occurrence of a vacancy in the office of a commissioner, the Minister may appoint a person to the vacant office for the balance of his predecessor's term of office. Filling of casual vacancy.

(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 commissioner whose office has become vacant was qualified and nominated.

SCHEDULE 3.

Sec. 9 (2).

PROVISIONS RELATING TO MEETINGS OF THE COMMISSION.

1. In this Schedule, "Chairman" means the person appointed as referred to in section 8 (1) (a) as Chairman of the Commission. Interpretation:
Sch. 3.

Legal Services Commission.

 SCHEDULE 3—*continued.*

 PROVISIONS RELATING TO MEETINGS OF THE COMMISSION—*continued.*

- Convening of meetings.** 2. (1) The Chairman may, at any time, convene a meeting of the Commission.
- (2) The Chairman, on receipt of a request in writing signed by 3 commissioners, shall convene a meeting of the Commission.
- Quorum.** 3. At a meeting of the Commission, 4 commissioners constitute a quorum.
- Meetings.** 4. (1) Any duly convened meeting of the Commission at which a quorum is present shall be competent to transact any business of the Commission.
- (2) Questions arising at a meeting of the Commission shall be determined by a majority of votes of the commissioners present and voting.
- General procedure.** 5. The procedure for the calling of, and for the conduct of business at, meetings of the Commission shall be as determined by the Commission.
- Chairman to preside.** 6. The Chairman shall preside at all meetings of the Commission at which he is present.
- Absence of Chairman.** 7. (1) In the absence of the Chairman at any meeting of the Commission, the Deputy Chairman shall preside as chairman at that meeting.
- (2) Where both the Chairman and the Deputy Chairman are absent from any meeting of the Commission, the commissioners present shall appoint one of their number to preside as chairman at that meeting.
- Presiding commissioner's vote.** 8. The commissioner presiding at a meeting of the Commission shall have a deliberative vote and, in the event of an equality of votes, shall also have a second or casting vote.

Legal Services Commission.

SCHEDULE 3—*continued.*

PROVISIONS RELATING TO MEETINGS OF THE COMMISSION—*continued.*

9. (1) The Commission shall cause full and accurate minutes to be kept of its proceedings at meetings. Minutes of meetings.

(2) The Commission shall submit a copy of the minutes of a meeting of the Commission to the Minister within 14 days after the date on which the meeting is held.

10. The Commission 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 Commission determines. Public information.

11. In proceedings by or against the Commission, no proof shall be required (until evidence is given to the contrary) of— Presump-tions.

- (a) the constitution of the Commission;
- (b) the due making of any resolution of the Commission;
- (c) the appointment of any commissioner; or
- (d) the presence of a quorum at any meeting of the Commission.

SCHEDULE 4.

Sec. 20.

GENERAL PROVISIONS RELATING TO THE STATUTORY OFFICERS OF THE COMMISSION.

1. A person who is of or above the age of 65 years shall not be appointed as a statutory officer of the Commission. Age of statutory officer.

2. (1) The Deputy Chairman shall, subject to this Act, be appointed for such term, not exceeding 7 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as Deputy Chairman. Term of office of statutory officer.

(2) A statutory officer of the Commission, other than the Deputy Chairman, shall, subject to this Act, hold office until he attains the age of 65 years.

Legal Services Commission.

SCHEDULE 4—*continued.*GENERAL PROVISIONS RELATING TO THE STATUTORY OFFICERS OF THE COMMISSION—*continued.*

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|-------------------------------------|---|
| Remuneration of statutory officers. | 3. A statutory officer of the Commission is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975. |
| Removal from office. | 4. The Minister may remove a statutory officer of the Commission from office for inability, misbehaviour or failure to comply with the terms and conditions of his appointment. |
| Vacation of office. | 5. A statutory officer of the Commission shall be deemed to have vacated his office— <ul style="list-style-type: none"> (a) if he dies; (b) if he resigns his office by writing under his hand addressed to the Minister and the Minister accepts his resignation; (c) if he engages (whether in New South Wales or elsewhere) during his term of office in any paid employment outside the duties of his office; (d) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; (e) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; (f) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable; (g) if he absents himself from duty for a period of more than 14 consecutive days, except on leave granted by the Commission; (h) if, being the Deputy Chairman, he is absent from 3 consecutive meetings of the Commission of which reasonable notice has been given to him, unless on leave granted to him by the Commission; |

Legal Services Commission.

SCHEDULE 4—*continued.*

GENERAL PROVISIONS RELATING TO THE STATUTORY OFFICERS OF THE
COMMISSION—*continued.*

- (i) if, being the Deputy Chairman, Public Solicitor or Referrals Director, at any meeting of the Commission at which he is present and at which any matter in which he 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 is not a director) is being or about to be considered by the Commission—
 - (i) he fails, as soon as practicable after the relevant facts have come to his knowledge, to disclose to the meeting his interest in the matter; or
 - (ii) he takes part in the consideration or discussion of, or, being the Deputy Chairman, votes on any question with respect to, the matter;
- (j) if, being the Public Solicitor or Deputy Public Solicitor, he ceases to be a solicitor of the Supreme Court or to hold a current practising certificate;
- (k) if he is removed from office by the Minister; or
- (l) upon his attaining the age of 65 years.

SCHEDULE 5.

Sec. 21.

PROVISIONS RELATING TO THE PRESERVATION OF RIGHTS OF CERTAIN
PERSONS ON THEIR APPOINTMENT AS STATUTORY OFFICERS OF THE
COMMISSION.

1. In this Schedule—

“first appointed day” means the day appointed and notified under section 2 (2);

“second appointed day” means the day appointed and notified under section 2 (3);

“statutory body” means the Commission and any body declared under clause 7 to be a statutory body for the purposes of this Schedule;

Interpreta-
tion: Sch. 5.

Legal Services Commission.

 SCHEDULE 5—*continued.*

 PROVISIONS RELATING TO THE PRESERVATION OF RIGHTS OF CERTAIN
 PERSONS ON THEIR APPOINTMENT AS STATUTORY OFFICERS OF THE
 COMMISSION—*continued.*

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

Preservation of rights—generally.

2. Subject to clause 3 and to the terms of his appointment, where a statutory officer of the Commission was, immediately before his appointment as a statutory officer of the Commission—

- (a) an officer of the Public Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act that he retain any rights accrued or accruing to him as an officer or employee,

he—

- (e) shall retain any rights accrued or accruing to him as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a statutory officer of the Commission; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer, contributor or person during his service as a statutory officer of the Commission, and—

- (h) his service as a statutory officer of the Commission shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and
- (i) he shall be deemed to be an officer or employee and the Commission shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute under this clause.

*Legal Services Commission.*SCHEDULE 5—*continued.*PROVISIONS RELATING TO THE PRESERVATION OF RIGHTS OF CERTAIN PERSONS ON THEIR APPOINTMENT AS STATUTORY OFFICERS OF THE COMMISSION—*continued.*

3. (1) A statutory officer of the Commission who, but for this subclause, would be entitled under clause 2 to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme shall not be so entitled upon his becoming (whether upon his appointment as a statutory officer of the Commission or at any later time while he is such an officer) a contributor to any other superannuation scheme, and the provisions of clause 2 (i) cease to apply to or in respect of him and the Commission in any case where he becomes a contributor to such another superannuation scheme.

Consequence of becoming contributor to another superannuation scheme.

(2) Subclause (1) of this clause does not prevent the payment to a statutory officer of the Commission upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.

4. A statutory officer of the Commission shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Restrictions on entitlement to benefit.

5. Where, at any time between the first appointed day and the second appointed day, a person is, at the same time, the holder of an office under the Legal Assistance Act, 1943, and a statutory officer of the Commission, he shall, in so far as he exercises any function under the Legal Assistance Act, 1943, or this Act—

Certain persons holding 2 offices simultaneously.

- (a) be deemed not to be in breach of any requirement under either Act that he devote the whole of his time to the duties of his office; and
- (b) be deemed, for the purposes of both Acts, not to have engaged in any paid employment or practice outside the duties of his office.

6. (1) In this clause, "retiring age" means, in relation to a person who was, immediately before his appointment as a statutory officer of the Commission—

Reappointment to former employment in certain cases.

- (a) the Commissioner for Legal Aid Services within the meaning of the Legal Assistance Act, 1943, or the Public Solicitor within the meaning of that Act—the age of 65 years;

Legal Services Commission.

 SCHEDULE 5—*continued.*

 PROVISIONS RELATING TO THE PRESERVATION OF RIGHTS OF CERTAIN
 PERSONS ON THEIR APPOINTMENT AS STATUTORY OFFICERS OF THE
 COMMISSION—*continued.*

- (b) an officer of the Public Service—the age of 60 years; and
- (c) an officer or employee of a statutory body—the age at which officers or employees (being officers or employees of the class to which that person belonged immediately before his appointment as a statutory officer of the Commission), as the case may be, of that statutory body are entitled to retire.

(2) A person who ceases to be a statutory officer of the Commission, otherwise than pursuant to clause 5 (paragraph (b) excepted) of Schedule 4, shall, if he has not attained the retiring age, be entitled to be appointed, where, immediately before his appointment as a statutory officer of the Commission he was—

- (a) the Commissioner for Legal Aid Services within the meaning of the Legal Assistance Act, 1943, or the Public Solicitor within the meaning of that Act—to some office in the Public Service not lower in salary;
- (b) an officer of the Public Service—to some office in the Public Service not lower in classification and salary; or
- (c) an officer or employee of a statutory body—to some office in the service of that body not lower in classification and salary,

than that which he held immediately before his appointment as a statutory officer of the Commission.

Declarations
of
statutory
bodies.

7. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

Legal Services Commission.

SCHEDULE 6.

Sec. 51.

PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
OF LEGAL AID COMMITTEES.

1. In this Schedule—
 “Committee” means a Legal Aid Committee;
 “member” means a member of a Committee. Interpre-
tation:
Sch. 6.

2. A person (other than the person appointed as referred to in section 8 (1) (a) as Chairman of the Commission) who is of or above the age of 65 years shall not be appointed as a member or to act in the office of a member under clause 4. Age of
member.

3. A member shall, subject to this Act, be appointed for such term, not exceeding 2 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as a member. Term of
office of
member.

4. (1) The Commission may at any time appoint, as an alternate member to act during the absence or illness of a member, a person who holds the same qualification, if any, and is nominated in the same manner, if any, as the person for whom he is the alternate member. Alternate
members.

 (2) An alternate member shall have and may exercise, while acting as a member, the functions, as such a member, of the person for whom he is the alternate member.

 (3) 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, 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.

5. The Commission may, for any cause which to it seems sufficient, remove a member from office. Removal
from
office.

6. A member shall be deemed to have vacated his office—
 (a) if he dies; Vacation
of office.

*Legal Services Commission.*SCHEDULE 6—*continued.*PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
OF LEGAL AID COMMITTEES—*continued.*

- (b) if he resigns his office by writing under his hand addressed to the Commission;
- (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
- (f) if he is absent from 3 consecutive meetings of the Committee of which reasonable notice has been given to him, unless on leave granted to him by the Committee;
- (g) if, at any meeting of the Committee at which he is present and at which any matter in which he 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 is not a director) is being or about to be considered by the Committee—
 - (i) he fails, as soon as practicable after the relevant facts have come to his knowledge, to disclose to the meeting his interest in the matter; or
 - (ii) he takes part in the consideration or discussion of, or votes on any question with respect to, the matter;
- (h) if he is removed from office by the Commission; or
- (i) except in the case of the person appointed as referred to in section 8 (1) (a) as Chairman of the Commission, upon his attaining the age of 65 years.

**Filling
of casual
vacancy.**

7. (1) On the occurrence of a vacancy in the office of a member, the Commission may appoint a person to the vacant office for the balance of his predecessor's term of office.

Legal Services Commission.

SCHEDULE 6—*continued.*

PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
OF LEGAL AID COMMITTEES—*continued.*

(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 whose office has become vacant was qualified and nominated.

8. (1) The members of a Committee shall elect a Chairman of the Chairman
Committee and a Deputy Chairman of the Committee from among their and Deputy
number. Chairman.

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

(3) In the absence of the Chairman of a Committee at any meeting
of the Committee, the Deputy Chairman of the Committee shall preside as
chairman at that meeting.

(4) Where both the Chairman and Deputy Chairman of a Committee
are absent from any meeting of the Committee, the members present shall
appoint one of their number to preside as chairman at the meeting.

9. The procedure for the calling of, and for the conduct of business at, Procedure.
meetings of a Committee shall be as determined by the Commission.

SCHEDULE 7.

Sec. 55.

PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
OF LEGAL AID REVIEW COMMITTEES.

1. In this Schedule—

“Committee” means a Legal Aid Review Committee;

“member” means a member of a Committee.

Interpre-
tation:
Sch. 7.

Legal Services Commission.

 SCHEDULE 7—*continued.*

 PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
 OF LEGAL AID REVIEW COMMITTEES—*continued.*

- Age of member. 2. A person (other than the person appointed as referred to in section (8) (1) (a) as Chairman of the Commission) who is of or above the age of 65 years shall not be appointed as a member or to act in the office of a member under clause 4.
- Term of office of member. 3. A member shall, subject to this Act, be appointed for such term, not exceeding 2 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as a member.
- Alternate members. 4. (1) The Commission may at any time appoint, as an alternate member to act during the absence or illness of a member, a person who holds the same qualification, if any, and is nominated in the same manner, if any, as the person for whom he is the alternate member.
- (2) An alternate member shall have and may exercise, while acting as a member, the functions, as such a member, of the person for whom he is the alternate member.
- (3) 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, 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.
- Removal from office. 5. The Commission may, for any cause which to it seems sufficient, remove a member from office.
- Vacation of office. 6. A member shall be deemed to have vacated his office—
- (a) if he dies;
 - (b) if he resigns his office by writing under his hand addressed to the Commission;
 - (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

Legal Services Commission.

SCHEDULE 7—*continued.*PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
OF LEGAL AID REVIEW COMMITTEES—*continued.*

- (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
- (f) if he is absent from 3 consecutive meetings of the Committee of which reasonable notice has been given to him, unless on leave granted to him by the Committee;
- (g) if, at any meeting of the Committee at which he is present and at which any matter in which he 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 is not a director) is being or about to be considered by the Committee—
 - (i) he fails, as soon as practicable after the relevant facts have come to his knowledge, to disclose to the meeting his interest in the matter; or
 - (ii) he takes part in the consideration or discussion of, or votes on any question with respect to, the matter;
- (h) if he is removed from office by the Commission; or
- (i) except in the case of the person appointed as referred to in section 8 (1) (a) as Chairman of the Commission, upon his attaining the age of 65 years.

7. (1) On the occurrence of a vacancy in the office of a member, the Commission may appoint a person to the vacant office for the balance of his predecessor's term of office. Filling
of casual
vacancy.

(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 whose office has become vacant was qualified and nominated.

Legal Services Commission.

SCHEDULE 7—*continued.*PROVISIONS RELATING TO THE CONSTITUTION, MEMBERSHIP AND MEETINGS
OF LEGAL AID REVIEW COMMITTEES—*continued.*

Chairman
and Deputy
Chairman.

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

(2) The members of a Committee shall elect a Deputy Chairman of the Committee from among their number.

(3) In the absence of the Chairman of a Committee at any meeting of the Committee, the Deputy Chairman of the Committee shall preside as chairman at that meeting.

(4) Where both the Chairman and Deputy Chairman of a Committee are absent from any meeting of the Committee, the members present shall appoint one of their number to preside as chairman at that meeting.

Procedure.

9. The procedure for the calling of, and for the conduct of business at, meetings of a Committee shall be as determined by the Commission.

Secs. 73,
74.

SCHEDULE 8.

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

PART 1.

Interpre-
tation:
Sch. 8.

1. (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.

Legal Services Commission.

SCHEDULE 8—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

PART 2.

2. The Commission—

- (a) may, with the approval of the Public Service Board, make such arrangements with the Law Society as may be acceptable to the Commission, the Public Service Board and the Law Society for the appointment and employment, as members of staff of the Commission, of such members of staff of the Law Society as are, at any time between the first appointed day and the second appointed day, employed by the Law Society in the administration of the Legal Practitioners (Legal Aid) Act, 1970; and
- (b) may make such arrangements with the Law Society as may be acceptable to the Commission and the Law Society for the use or acquisition of such property of the Law Society as is, at any time between the first appointed day and the second appointed day, used by the Law Society in the administration of that Act.

Transfer of certain Law Society staff and property.

3. Nothing in section 63 (1) (a) requires the Law Society to pay into the Legal Aid Fund established under section 62 any amount referred to in section 63 (1) (a) before the second appointed day.

Payment of certain money by Law Society.

PART 3.

4. 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. 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. 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).

Undetermined applications for legal aid.

Persons in receipt of legal aid under the former Acts.

Terms and conditions in certificates issued under the former Acts.

Legal Services Commission.

SCHEDULE 8—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

Assign-
ment of
work to
private
legal prac-
titioners.

7. 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.

Transfer
of money
in Law
Society's
Fund.

8. (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 sub-clause (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.

Legal Services Commission.

SCHEDULE 8—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

9. The reference in section 43 (1) (a) to legal aid includes a reference to legal aid obtained under either of the former Acts. Legal aid obtained by fraud or misrepresentation under the former Acts.

10. The reference in section 48 (a) to the officer of the Commission includes a reference to the Public Solicitor within the meaning of the Legal Assistance Act, 1943, or a solicitor employed in the office of that Public Solicitor. Commission's lien.

11. (1) 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 (not being a provision specified or described in an order made by the Minister and published in the Gazette) to— Construction of certain references in other Acts, etc.

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

(2) An order referred to in subclause (1) of this clause shall take effect or be deemed to have taken effect on and from the second appointed day whether the order was published in the Gazette before, on or after the second appointed day.

Legal Services Commission.

SCHEDULE 8—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

Continuation of certain provisions.

12. 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.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
*By Deputation from
His Excellency the Governor.*

*Government House,
Sydney, 16th May, 1979.*