FIRST PRINT

LEGAL AID COMMISSION (AMENDMENT) BILL 1987

NEW SOUTH WALES

EXPLANATORY NOTE

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

The object of this Bill is to amend the Legal Aid Commission Act 1979—

(a) to make provision in connection with the proposed merger of the Legal Aid Commission of New South Wales ("the Commission") and the Australian Legal Aid Office of the State ("the A.L.A.O."); and

(b) for other purposes.

Clause 1 specifies the short title of the proposed Act.

Clause 2 makes provision for the commencement of the proposed Act.

Clause 3 is a formal provision that gives effect to the Schedules of amendments.

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

Schedule 1 (1) inserts a definition of "Australian Legal Aid Office" in the Principal Act.

Schedule 1 (2) increases the number of commissioners of the Commission from 8 to 10.

Schedule 1 (3) provides that the additional part-time commissioners shall be nominated by the Attorney-General of the Commonwealth.

Schedule 1 (4) authorises the Commission to provide statistical and other information to the Commonwealth.

70205-10720(563) 19—

Schedule 1 (5) (a) clarifies the objective of the Commission in respect of the availability and accessibility of legal aid to disadvantaged persons throughout New South Wales. Schedule 1 (5) (b) and (c) require the Commission—

(a) to have regard to the need to provide its staff with a full range of professional legal work; and

(b) to have regard to the recommendations of the Commonwealth in respect of the provision of legal aid.

Schedule 1 (6) ensures that the privileges of the solicitor-client relationship in relation to legally assisted persons do not affect any matter necessary for the proper administration of any agreement or arrangement referred to in Schedule 1 (11).

Schedule 1 (7) extends the category of persons not prevented from receiving legal aid to a person—

(a) who is involved in an inquiry or investigation held outside New South Wales or established by a Commonwealth Minister of the Crown; or

(b) whose interests are, or may be, adverse to the interests of the Commonwealth or a statutory body representing the Commonwealth.

Schedule 1 (8) ensures that any determination of the Commission with respect to fees payable by it to private legal practitioners is subject to the requirements of any agreement or arrangement referred to in Schedule 1 (11).

Schedule 1 (9) provides that the Commission may decline to pay the costs of a legally assisted person where an order for costs is made against that person in proceedings under the Family Law Act 1975 of the Commonwealth.

Schedule 1 (10) enables money received from legal aid services provided in relation to A.L.A.O. matters transferred as a result of the merger to be paid into the Legal Aid Fund established under the Principal Act.

Schedule 1 (11) provides that the State may enter into agreements or arrangements with the Commonwealth (which are to be binding on the Commission) for or with respect to certain matters relating to the provision of legal aid and the merger. These include the operation of the Commission, the funding to be provided by the Commonwealth, priorities in the provision of legal aid, staffing matters, sharing of operational costs and the taking over of A.L.A.O. premises.

Schedule 1 (12) adjusts the quorum for meetings of the Commission.

Schedule 1 (13) inserts the following savings, transitional and other provisions into Schedule 8 to the Principal Act:

(a) Clause 19 is an interpretation provision.

(b) Clause 20 makes provision with respect to applications for legal aid made to the A.L.A.O. before the merger but not determined at that time, and matters being dealt with at the time of the merger (matters being dealt with at the time of the merger are to be finalised on the conditions imposed by, and the policies of, the A.L.A.O.).

(c) Clause 21 provides for the employment by the Commission of A.L.A.O. staff in accordance with an agreement or arrangement between the State and the Commonwealth.

(d) Clause 22 validates agreements or arrangements entered into, and things done, in anticipation of the proposed Act.

(e) Clause 23 preserves the appointment of existing part-time commissioners of the Commission.

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

Schedule 2 (1) is consequential on the amendment made by Schedule 2 (14).

Schedule 2 (2) and (3) (a) provide that information concerning applicants for legal aid or persons to whom legal aid has been granted may be disclosed for the purposes of research which is approved by the Commission so long as the identity of those applicants and persons is not disclosed to others.

Schedule 2 (3) (b) makes it clear that the prohibition against disclosing information concerning applicants for legal aid extends to persons to whom legal aid has been granted.

Schedule 2 (4) authorises the Commission to notify other parties to proceedings of an application for legal aid made after the proceedings have commenced.

Schedule 2 (5) enables the Commission to backdate grants of legal aid to the date on which the application or request was made for legal aid.

Schedule 2 (6) enables the Commission to recover all costs and expenses (and not only solicitors' costs) of providing legal services to legally assisted persons who have obtained legal aid by fraud or otherwise acted improperly.

Schedule 2 (7) enables the Commission to refuse to pay a private legal practitioner who is a party to any such fraud or improper conduct.

Schedule 2 (8) provides that the Commission (instead of the Director of the Commission) shall determine the liability of legally assisted persons to pay costs and expenses, if any, to the Commission. Under the Principal Act the Commission may delegate this function to the Director or to any member of staff of the Commission.

Schedule 2 (9) (a) clarifies the provision which specifies the maximum amount of the Commission's liability for payment of costs awarded against legally assisted persons in any one proceeding. The maximum amount is to apply separately to each party having a separate interest in the proceeding (instead of a single maximum amount being divided up among all the parties).

Schedule 2 (9) (b) makes it clear that the Commission is liable to pay only costs incurred by a person after legal aid is granted (even though an award for those and other costs is made after the grant of legal aid).

Schedule 2 (10) provides that debts owing to the Commission under section 48 of the Principal Act may be recovered in a court of competent jurisdiction.

Schedule 2 (11) extends from 7 to 28 days the period within which an appeal to a Legal Aid Review Committee (in respect of the provision of legal aid) must be lodged.

Schedule 2 (12) removes a provision that prevents a Legal Aid Review Committee from backdating the grant of an application for legal aid when an appeal against the refusal to grant the application is upheld.

Schedule 2 (13) is a minor amendment that consolidates a number of sections that give effect to a Schedule containing provisions of a savings and transitional nature.

Schedule 2 (14) authorises regulations to be made under the Principal Act.

Schedule 2 (15) provides that persons over 65 years of age are eligible for appointment to a Legal Aid Review Committee.

Schedule 2 (16) enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act and makes other consequential amendments.

LEGAL AID COMMISSION (AMENDMENT) BILL 1987

NEW SOUTH WALES

TABLE OF PROVISIONS

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LEGAL AID COMMISSION (AMENDMENT) BILL 1987

NEW SOUTH WALES

No. , 1987

A BILL FOR

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

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:

5 **Short title**

1. This Act may be cited as the "Legal Aid Commission (Amendment) Act 1987".

Commencement

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

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

Amendment of Act No. 78, 1979

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

SCHEDULE 1

(Sec. 3)

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

(1) Section 4 (**Interpretation**)—

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

Before the definition of "Bar Association", insert:

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

SCHEDULE 1—*continued*

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

(2) Section 7 (**Commissioners**)—

(a) Section 7—

Omit "8", insert instead "10".

(b) Section 7 (b)—

5 Omit "7", insert instead "9".

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

Section 8 (1) (b1)—

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

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

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

Section 10 (2) (g1)—

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

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

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

(a) Section 12 (b)—

Omit the paragraph, insert instead:

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

(b) Section 12 (h)—

Omit "and" where lastly occurring.

SCHEDULE 1—*continued*

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

(c) Section 12 (j), (k)—

After section 12 (i), insert:

(j) have regard to the desirability of enabling members of staff of the Commission to use and develop their expertise by undertaking, as far as is reasonably practicable, a full range of professional legal work; and

(k) have regard to any recommendations of officers or agencies of the Commonwealth concerned in the provision of legal aid.

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

Section 25 (4) (a)—

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

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

(a) Section 37 (1) (c)—

Omit "held in New South Wales".

(b) Section 37 (1) (c)—

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

(c) Section 37 (1) (d)—

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

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

Section 39 (5)—

After section 39 (4), insert:

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

SCHEDULE 1—*continued*

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

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

(a) Section 47 (4) (b)—

Omit "or" where lastly occurring.

5 (b) Section 47 (4) (c), (d)—

At the end of section 47 (4) (c), insert:

; or

(d) an action brought under the Family Law Act 1975 of the Commonwealth,

10 (10) Section 63 (**Payments into the Fund**)—

Section 63 (1) (d1)—

After section 63 (1) (d), insert:

(d1) money received by the Commission in respect of services performed or carried out under clause 20 of Schedule 8;

15 (11) Section 72A—

After section 72, insert:

Commonwealth/State agreement or arrangement

72A. (1) The State may from time to time enter into an agreement or arrangement with the Commonwealth for or with
20 respect to—

(a) the operation of the Commission;

(b) the money to be made available by the Commonwealth, or by the State and the Commonwealth, for the purposes of the provision of legal aid and other legal services;

25 (c) the priorities to be observed, in relation to money made available by the Commonwealth, in the provision of legal aid as between classes of persons, or classes of matters, or both;

SCHEDULE 1—*continued*

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

(d) the transfer to the staff of the Commission of all or any of the persons who are eligible persons within the meaning of clause 21 of Schedule 8;

(e) the sharing of the operational costs incurred in the provision of legal aid and other legal services by the Commission;

(f) the taking over, possession and use by the Commission of such office accommodation, furniture, records and equipment of the Australian Legal Aid Office as are appropriate to the functions and needs of the Commission; or

(g) any matter incidental to a matter mentioned in paragraph (a), (b), (c), (d), (e) or (f).

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

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

Omit "4", insert instead "6".

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

At the end of Schedule 8, insert:

PART 5

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS RELATING TO THE MERGER

Interpretation

19. In this Part—

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

SCHEDULE 1—*continued*

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

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

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

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

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

(4) Services—

(a) performed on or after the merger day by the Commission on behalf of a person under subclause (2); or

(b) carried out on or after the merger day by a private legal practitioner under subclause (3),

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

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

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

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

21. (1) In this clause—

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

SCHEDULE 1—*continued*

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

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

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

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

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

(4) If an eligible person who becomes a member of staff of the Commission under this clause continues to be a contributor for benefits under the Superannuation Act 1976 of the Commonwealth, the Commission shall make, as employer contributions in respect of the contributor, such payments as are specified in an agreement or arrangement under section 72A, to the person or authority, and at the times, specified in that agreement or arrangement.

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

Validation

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

Re-constitution of Commission

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

(a) the continuity of the Commission; or

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

SCHEDULE 2

(Sec. 3)

MISCELLANEOUS AMENDMENTS TO THE LEGAL AID COMMISSION ACT 1979

(1) Section 4 (**Interpretation**)—

Section 4 (1), definition of "regulation"—

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

"regulation" means a regulation made under this Act.

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

(a) Section 25 (4) (e)—

Omit "or" where lastly occurring.

(b) Section 25 (4) (f), (g)—

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

; or

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

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

(a) Section 26—

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

(b) Section 26—

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

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

(a) Section 34 (7A)—

After section 34 (7), insert:

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

SCHEDULE 2—*continued*

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

(b) Section 34 (8)—

After "subsection (6)", insert "or (7A)".

(5) Section 34A—

After section 34, insert:

5 **Date on which legal aid is granted**

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

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

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

Section 43 (1)—

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

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

Section 43A (2), (3)—

At the end of section 43A, insert:

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

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

SCHEDULE 2—*continued*

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

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

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

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

Section 46 (1)—

Omit "Director", insert instead "Commission".

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

(a) Section 47 (2)—

Omit the subsection, insert instead:

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

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

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

(b) Section 47 (3)—

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

SCHEDULE 2—*continued*

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

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

Section 48 (2)—

At the end of section 48, insert:

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

(11) Section 56 (**Appeals**)—

Section 56 (2) (a)—

Omit "7 days", insert instead "28 days".

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

Section 60 (1)—

Omit the subsection, insert instead:

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

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

Omit the sections, insert instead:

20 **Savings, transitional and other provisions**

73. Schedule 8 has effect.

(14) Section 76—

Before Schedule 1, insert:

SCHEDULE 2—*continued*

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

Regulations

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

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

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

(a) Clause 2 (**Age of member**)—

Omit the clause.

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

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

(ii) From clause 6 (h), omit "or".

(iii) Omit clause 6 (i).

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

(a) Part 1, heading—

Omit the heading, insert instead:

PART 1

INTERPRETATION

(b) Part 1A—

After Part 1, insert:

SCHEDULE 2—*continued*

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

PART 1A

SAVINGS AND TRANSITIONAL REGULATIONS

Regulations

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

Legal Services Commission (Amendment) Act 1985.

Legal Aid Commission (Amendment) Act 1987.

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

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

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.

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

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

(b) clause 21 of Part 5.

(c) Part 2—

Omit the Part.

(d) Part 3, heading—

Omit the heading, insert instead:

PART 3

LEGAL AID UNDER FORMER ACTS

(e) Part 4, heading—

Omit the heading, insert instead:

SCHEDULE 2—*continued*

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

PART 4

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

5 (f) Part 4, clause 18—

Omit the clause.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1987

LEGAL AID COMMISSION (AMENDMENT) ACT 1987
No. 9

NEW SOUTH WALES

TABLE OF PROVISIONS

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LEGAL AID COMMISSION (AMENDMENT) ACT 1987 No. 9

NEW SOUTH WALES

Act No. 9, 1987

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

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

Short title

1. This Act may be cited as the "Legal Aid Commission (Amendment) Act 1987".

Commencement

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

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

Amendment of Act No. 78, 1979

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

SCHEDULE 1

(Sec. 3)

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

(1) Section 4 **(Interpretation)**—

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

Before the definition of "Bar Association", insert:

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

SCHEDULE 1—*continued*

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

(2) Section 7 (**Commissioners**)—

(a) Section 7—

Omit "8", insert instead "10".

(b) Section 7 (b)—

Omit "7", insert instead "9".

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

Section 8 (1) (b1)—

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

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

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

Section 10 (2) (g1)—

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

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

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

(a) Section 12 (b)—

Omit the paragraph, insert instead:

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

(b) Section 12 (h)—

Omit "and" where lastly occurring.

SCHEDULE 1—*continued*

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

(c) Section 12 (j), (k)—

After section 12 (i), insert:

(j) have regard to the desirability of enabling members of staff of the Commission to use and develop their expertise by undertaking, as far as is reasonably practicable, a full range of professional legal work; and

(k) have regard to any recommendations of officers or agencies of the Commonwealth concerned in the provision of legal aid.

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

Section 25 (4) (a)—

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

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

(a) Section 37 (1) (c)—

Omit "held in New South Wales".

(b) Section 37 (1) (c)—

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

(c) Section 37 (1) (d)—

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

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

Section 39 (5)—

After section 39 (4), insert:

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

SCHEDULE 1—*continued*

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

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

(a) Section 47 (4) (b)—

Omit "or" where lastly occurring.

(b) Section 47 (4) (c), (d)—

At the end of section 47 (4) (c), insert:

; or

(d) an action brought under the Family Law Act 1975 of the Commonwealth,

(10) Section 63 (**Payments into the Fund**)—

Section 63 (1) (d1)—

After section 63 (1) (d), insert:

(d1) money received by the Commission in respect of services performed or carried out under clause 20 of Schedule 8;

(11) Section 72A—

After section 72, insert:

Commonwealth/State agreement or arrangement

72A. (1) The State may from time to time enter into an agreement or arrangement with the Commonwealth for or with respect to—

(a) the operation of the Commission;

(b) the money to be made available by the Commonwealth, or by the State and the Commonwealth, for the purposes of the provision of legal aid and other legal services;

(c) the priorities to be observed, in relation to money made available by the Commonwealth, in the provision of legal aid as between classes of persons, or classes of matters, or both;

SCHEDULE 1—*continued*

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

(d) the transfer to the staff of the Commission of all or any of the persons who are eligible persons within the meaning of clause 21 of Schedule 8;

(e) the sharing of the operational costs incurred in the provision of legal aid and other legal services by the Commission;

(f) the taking over, possession and use by the Commission of such office accommodation, furniture, records and equipment of the Australian Legal Aid Office as are appropriate to the functions and needs of the Commission; or

(g) any matter incidental to a matter mentioned in paragraph (a), (b), (c), (d), (e) or (f).

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

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

Omit "4", insert instead "6".

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

At the end of Schedule 8, insert:

PART 5

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS RELATING TO THE MERGER

Interpretation

19. In this Part—

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

SCHEDULE 1—*continued*

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

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

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

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

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

(4) Services—

(a) performed on or after the merger day by the Commission on behalf of a person under subclause (2); or

(b) carried out on or after the merger day by a private legal practitioner under subclause (3),

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

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

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

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

21. (1) In this clause—

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

SCHEDULE 1—*continued*

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

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

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

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

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

(4) If an eligible person who becomes a member of staff of the Commission under this clause continues to be a contributor for benefits under the Superannuation Act 1976 of the Commonwealth, the Commission shall make, as employer contributions in respect of the contributor, such payments as are specified in an agreement or arrangement under section 72A, to the person or authority, and at the times, specified in that agreement or arrangement.

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

Validation

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

Re-constitution of Commission

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

(a) the continuity of the Commission; or

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

SCHEDULE 2

(Sec. 3)

MISCELLANEOUS AMENDMENTS TO THE LEGAL AID COMMISSION ACT 1979

(1) Section 4 (**Interpretation**)—

Section 4 (1), definition of "regulation"—

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

"regulation" means a regulation made under this Act.

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

(a) Section 25 (4) (e)—

Omit "or" where lastly occurring.

(b) Section 25 (4) (f), (g)—

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

; or

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

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

(a) Section 26—

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

(b) Section 26—

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

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

(a) Section 34 (7A)—

After section 34 (7), insert:

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

SCHEDULE 2—*continued*

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

(b) Section 34 (8)—

After "subsection (6)", insert "or (7A)".

(5) Section 34A—

After section 34, insert:

Date on which legal aid is granted

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

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

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

Section 43 (1)—

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

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

Section 43A (2), (3)—

At the end of section 43A, insert:

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

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

SCHEDULE 2—*continued*

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

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

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

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

Section 46 (1)—

Omit "Director", insert instead "Commission".

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

(a) Section 47 (2)—

Omit the subsection, insert instead:

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

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

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

(b) Section 47 (3)—

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

SCHEDULE 2—*continued*

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

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

Section 48 (2)—

At the end of section 48, insert:

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

(11) Section 56 (**Appeals**)—

Section 56 (2) (a)—

Omit "7 days", insert instead "28 days".

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

Section 60 (1)—

Omit the subsection, insert instead:

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

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

Omit the sections, insert instead:

Savings, transitional and other provisions

73. Schedule 8 has effect.

(14) Section 76—

Before Schedule 1, insert:

SCHEDULE 2—*continued*

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

Regulations

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

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

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

(a) Clause 2 (**Age of member**)—

Omit the clause.

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

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

(ii) From clause 6 (h), omit "or".

(iii) Omit clause 6 (i).

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

(a) Part 1, heading—

Omit the heading, insert instead:

PART 1

INTERPRETATION

(b) Part 1A—

After Part 1, insert:

SCHEDULE 2—*continued*

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

PART 1A

SAVINGS AND TRANSITIONAL REGULATIONS

Regulations

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

Legal Services Commission (Amendment) Act 1985.

Legal Aid Commission (Amendment) Act 1987.

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

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

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.

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

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

(b) clause 21 of Part 5.

(c) Part 2—

Omit the Part.

(d) Part 3, heading—

Omit the heading, insert instead:

PART 3

LEGAL AID UNDER FORMER ACTS

(e) Part 4, heading—

Omit the heading, insert instead:

SCHEDULE 2—*continued*

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

PART 4

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

(f) Part 4, clause 18—

Omit the clause.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1987