

South Australia

LEGAL SERVICES COMMISSION ACT 1977

An Act to establish the Legal Services Commission; to provide for legal assistance for persons throughout the State; to repeal the Poor Persons Legal Assistance Act 1925-1976; to amend the Legal Practitioners Act 1936-1972; and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **30 December 2001**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

LEGAL SERVICES COMMISSION ACT 1977

being

Legal Services Commission Act 1977 No. 25 of 1977
[Assented to 12 May 1977]¹

as amended by

Legal Services Commission Act Amendment Act 1979 No. 37 of 1979 [Assented to 15 March 1979]²

Legal Services Commission Act Amendment Act 1983 No. 110 of 1983 [Assented to 22 December 1983]³

Legal Services Commission Act Amendment Act 1990 No. 22 of 1990 [Assented to 26 April 1990]⁴

Statutes Amendment (Attorney-General's Portfolio) Act 1995 No. 27 of 1995 [Assented to 27 April 1995]⁵

Legal Assistance (Restrained Property) Amendment Act 2001 No. 10 of 2001 [Assented to 12 April 2001]⁶

¹ Came into operation (except ss. 4, 10-13, 15-23, 26, 28-31 and Sched.) 4 May 1978: *Gaz.* 4 May 1978, p. 1541; ss. 10(1)(a), (c)-(k), 11-13, 15-23, 26, 28-31 came into operation 21 December 1978; ss. 4, 10(1)(b) and Sched. came into operation 30 January 1979: *Gaz.* 21 December 1978, p. 2305.

² Came into operation 15 March 1979: *Gaz.* 15 March 1979, p. 681.

³ Came into operation 22 December 1983: *Gaz.* 22 December 1983, p. 1722.

⁴ Came into operation 26 July 1990: *Gaz.* 26 July 1990, p. 397.

⁵ Came into operation 4 May 1995: *Gaz.* 4 May 1995, p. 1705.

⁶ **S. 5 came into operation 30 December 2001: *Gaz.* 13 December 2001, p. 5352.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Arrangement of Act
4. Repeal and transitional provision
5. Interpretation

PART 2 THE LEGAL SERVICES COMMISSION

6. Constitution of Legal Services Commission
7. Terms and conditions of office
8. Quorum, etc.
9. Allowances and expenses
- 9A. Disclosure of interest
10. Functions of the Commission
11. Principles upon which Commission operates
12. Advisory and other committees
13. Power of delegation

PART 3 THE DIRECTOR OF LEGAL SERVICES AND OTHER STAFF

14. The Director
15. Employment of legal practitioners and other persons by the Commission

PART 4 LEGAL ASSISTANCE

16. Legal assistance to be provided by the Commission and by private practitioners
17. Application for legal assistance
18. Recovery of legal costs from assisted persons
- 18A. Legal costs secured by charge
- 18B. Special provisions in relation to property subject to a restraining order
19. Payment of legal costs to practitioners providing legal assistance who are not employees of the Commission
20. Costs
21. Duty to supply information
22. Disclosure of information relating to legal assistance

PART 5 FINANCIAL PROVISIONS

23. The Legal Services Fund
24. Power to borrow with approval of Treasurer
25. Audit
26. Manner in which Commission is to deal with trust moneys

PART 6 MISCELLANEOUS

27. Agreements between State and Commonwealth
28. Remission of fees
29. Rights of audience, etc.
30. Legal practitioners employed by Commission bound by ethical standards of the profession
31. Legal practitioner employed by Commission subject to same discipline as practitioner in private practice
- 31A. Secrecy
32. Proceedings
33. Annual report
- 33A. Immunity of members
34. Regulations

THE SCHEDULE

**APPENDIX
LEGISLATIVE HISTORY**

Legal Services Commission Act 1977

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Legal Services Commission Act 1977*.

Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation made for the purposes of subsection (1) of this section, suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Arrangement of Act

3. This Act is arranged as follows:—

PART 1—PRELIMINARY

PART 2—THE LEGAL SERVICES COMMISSION

PART 3—DIRECTOR OF LEGAL SERVICES AND OTHER STAFF

PART 4—LEGAL ASSISTANCE

PART 5—FINANCIAL PROVISIONS

PART 6—MISCELLANEOUS

SCHEDULE.

Repeal and transitional provision

4. (1) The Acts referred to in Part 1 of the schedule to this Act are repealed.

(2) The Acts referred to in Part 2 of the schedule to this Act are amended and, as amended, may be cited as shown in that schedule.

(3) Notwithstanding the repeal and amendments effected by subsections (1) and (2) of this section—

- (a) any order for assistance made by a judge under the repealed Act and in force immediately before the commencement of this Act, shall continue in force and be dealt with under the repealed Act in all respects as if this Act had not been enacted; and
- (b) any decision to grant, or arrangement made by the Law Society for the provision of, legal assistance under the amended Act, which was in force immediately before the commencement of this Act, shall be deemed to be a decision or arrangement made by the Director under this Act; and
- (c) any general or special direction given by the Attorney-General as to the reduction, remission or postponement of fees due to the Crown, and in force under the amended Act immediately before the commencement of this Act, shall be deemed to be a direction under Part 6 of this Act and, subject to this Act, shall continue in force.

(4) The rights and liabilities of the Law Society in respect of the provision of legal assistance under the amended Act, as they existed immediately before the commencement of this Act, are transferred to and vest in, or attach to, the Commission.

(5) All assets of the Legal Assistance Fund established under the amended Act shall, upon the commencement of this Act be transferred by the Law Society to the Commission and shall become assets of the fund.

Interpretation

5. In this Act, unless the contrary intention appears—

"**the amended Act**" means the *Legal Practitioners Act 1936-1972* amended by this Act;

"**the appointed day**" means a day fixed by the Attorney-General, by notice published in the *Gazette*, as the appointed day for the purposes of this Act;

"**appointed member**" in relation to the Commission, means a member appointed by the Governor;

"**assisted person**" means a person for whom legal assistance is provided or arranged by the Commission;

"**the Commission**" means the Legal Services Commission established under this Act;

"**the Director**" means the person for the time being holding, or acting in, the office of Director of Legal Services under this Act;

"**the fund**" means the Legal Services Fund established under this Act;

"**the Law Society**" means the Law Society of South Australia Incorporated;

"**legal assistance**" means assistance in any matter affecting the rights or liberty of any person;

"**legal costs**" includes disbursements and any interest payable on account of legal costs;

"**legal practitioner**" means a person who is entitled to practise the profession of the law in this State;

"**the repealed Act**" means the *Poor Persons Legal Assistance Act 1925-1976* repealed by this Act;

"**restraining order**" means a restraining order under the *Criminal Assets Confiscation Act 1996*;

"**the statutory interest account**" means the account entitled the "**Statutory Interest Account**" maintained by the Law Society.

Legal Services Commission Act 1977

**PART 2
THE LEGAL SERVICES COMMISSION**

Constitution of Legal Services Commission

- 6.** (1) There shall be a commission entitled the "Legal Services Commission".
- (2) The Commission shall be a body corporate and—
- (a) shall have perpetual succession and a common seal; and
- (b) shall be capable of—
- (i) acquiring, dealing with, and disposing of, real and personal property; and
- (ii) acquiring or incurring any other rights or liabilities that may properly attach to a body corporate; and
- (c) shall be capable of suing and being sued; and
- (d) shall have the powers, functions and duties prescribed or imposed upon it by or under this Act.
- (3) The Commission is not an instrumentality of the Crown and shall be independent of the Government.
- (4) The Commission shall consist of the following members:—
- (a) one (the Chairman) shall be—
- (i) a person holding judicial office; or
- (ii) a legal practitioner of not less than five years standing,
- appointed by the Governor on the nomination of the Attorney-General for the State; and
- (b) two persons appointed by the Governor on the nomination of the Attorney-General for the Commonwealth; and
- (c) one shall be a person who is, in the opinion of the Attorney-General for the State, an appropriate person to represent the interests of assisted persons, appointed by the Governor on the nomination of the Attorney-General after consultation with the South Australian Council of Social Service Incorporated; and
- (d) three shall be persons appointed by the Governor on the nomination of the Attorney-General for the State; and
- (e) three shall be persons appointed by the Governor on the nomination of the Law Society; and
- (f) one shall be an employee of the Commission appointed by the Governor on the nomination of the employees of the Commission; and
- (g) one shall be the Director.

(5) The Governor may, on the nomination of the Attorney-General for the Commonwealth, appoint a person or persons to be a deputy or deputies of a member appointed on the nomination of the Attorney-General for the Commonwealth and a deputy of that member (or where there is more than one deputy of that member, one of those deputies) may act as a member of the Commission in the absence of that member.

Terms and conditions of office

7. (1) Subject to this Act, an appointed member of the Commission shall hold office for a term of three years, and at the expiration of his term of office shall be eligible for re-appointment.

(2) The Governor may remove an appointed member of the Commission from office for—

(a) mental or physical incapacity; or

(b) neglect of duty; or

(c) dishonourable conduct.

(3) The office of an appointed member of the Commission shall become vacant if—

(a) he dies; or

(b) his term of office expires; or

(c) he resigns by written notice addressed to the Minister; or

(d) he is absent, without leave of the Commission, from three consecutive meetings of the Commission; or

(e) he is removed from office by the Governor pursuant to subsection (2) of this section.

(4) Upon the office of an appointed member of the Commission becoming vacant, a person shall be appointed in accordance with this Act to the vacant office, but where the office of an appointed member of the Commission becomes vacant before the expiration of the term for which he was appointed, the person appointed in his place shall be appointed only for the balance of the term of his predecessor.

Quorum, etc.

8. (1) Subject to subsection (1a), five members of the Commission shall constitute a quorum of the Commission.

(1a) For the purposes of hearing an appeal against a decision of the Director, three members of the Commission shall constitute a quorum of the Commission.

(2) A decision carried by a majority of the votes cast by the members present at a meeting of the Commission shall be a decision of the Commission.

(3) Each member of the Commission shall be entitled to one vote on any matter arising for the decision of the Commission and, in the event of an equality of votes, the person presiding at the meeting shall be entitled to a second or casting vote.

(4) The Chairman shall preside at any meeting of the Commission at which he is present and, in the absence of the Chairman, the members present shall decide who is to preside at that meeting.

Legal Services Commission Act 1977

(5) Subject to this Act, the business of the Commission shall be conducted in such manner as the Commission determines.

Allowances and expenses

9. A member of the Commission shall be entitled to such allowances and expenses as may be determined by the Governor.

Disclosure of interest

9A. (1) A member of the Commission who is directly or indirectly interested in a transaction entered into by, or in the contemplation of, the Commission—

- (a) shall as soon as he becomes aware of the transaction, or the proposed transaction, disclose the nature of his interest to the Commission; and
- (b) shall not take part in any deliberations or decision of the Commission with respect to that transaction.

Penalty: One thousand dollars.

(2) A disclosure under this section shall be recorded in the minutes of the Commission.

(3) Notwithstanding subsection (1) or any other law, a legal practitioner who—

- (a) is, or is employed by, a member of the Commission; or
- (b) practises in partnership with a member of the Commission; or
- (c) is, or is employed by, a body corporate of which a member of the Commission is a director, shareholder or employee,

may be assigned to provide legal assistance under this Act, and where such an assignment is, or is to be, made in the ordinary course of the business of the Commission, and in accordance with the criteria ordinarily applied by the Commission, no disclosure is required under subsection (1) in respect of the assignment.

(4) Where a member makes a disclosure of interest in respect of a transaction or proposed transaction in accordance with this section or the transaction or proposed transaction is such that disclosure is not required—

- (a) the transaction is not void, or liable to be avoided, on any ground arising from the member's interest in the transaction; and
- (b) the member shall not be required to account for profits arising from the transaction.

Functions of the Commission

10. (1) The Commission shall—

- (a) establish an office to be called the "Legal Services Office"; and
- (b) provide, or arrange for the provision of, legal assistance in accordance with this Act; and
- (c) determine the criteria upon which legal assistance is to be granted in pursuance of this Act; and

- (d) conduct research with a view to ascertaining the needs of the community for legal assistance, and the most effective means of meeting those needs; and
- (e) establish such local offices and other facilities as the Commission considers necessary or desirable; and
- (f) initiate and carry out educational programmes to promote an understanding by the public (and especially those sections of the public who may have special needs) of their rights, powers, privileges and duties under the laws of the Commonwealth or the State; and
- (g) inform the public by advertisement or other means of the services provided by the Commission, and the conditions upon which those services are provided; and
- (h) co-operate and make reciprocal arrangements with persons administering schemes of legal assistance in other States and Territories of the Commonwealth or elsewhere; and
- (ha) co-operate with any body established by the Commonwealth for the purpose of the administration of legal aid and provide it with such statistical and other information as it may reasonably require; and
- (hb) where it is practicable and appropriate to do so, make use of the services of interpreters, marriage guidance counsellors and social workers for the benefit of assisted persons; and
- (i) encourage and permit law students to participate, so far as the Commission considers practicable and proper to do so, on a voluntary basis and under professional supervision, in the provision of legal assistance by the Commission; and
- (j) make grants to any person or body of persons carrying out work that will in the opinion of the Commission advance the objects of this Act; and
- (k) perform such other functions as the Attorney-General may direct.

(2) In determining the criteria upon which legal assistance is to be granted in pursuance of this Act, the Commission shall have regard to the principles—

- (a) that legal assistance should be granted in pursuance of this Act where the public interest or the interests of justice so require; and
- (b) that, subject to paragraph (a) of this subsection, legal assistance should not be granted where the applicant could afford to pay in full for that legal assistance without undue financial hardship.

(3) For the purposes of this Act, the Commission may acquire, deal with, and dispose of, real and personal property.

Principles upon which Commission operates

11. In the exercise of its powers and functions the Commission shall—

- (a) seek to insure legal assistance is provided in the most efficient and economical manner;
- (b) use its best endeavours to make legal assistance available to persons throughout the State;
- (c) have regard to the recommendations of any body established by the Commonwealth for the purpose of advising on matters pertaining to the provision of legal assistance;

Legal Services Commission Act 1977

- (d) have regard to the following factors:—
- (i) the need for legal assistance to be readily available and easily accessible to disadvantaged persons;
 - (ii) the desirability of enabling all assisted persons to obtain the services of legal practitioners of their choice;
 - (iii) the importance of maintaining the independence of the legal profession;
 - (iv) the desirability of enabling legal practitioners employed by the Commission to utilise and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work.

Advisory and other committees

12. The Commission may establish committees to advise or assist it in the performance of any of its functions.

Power of delegation

13. (1) The Commission may delegate to any person or committee any of its powers or functions under this Act other than—

- (a) the power to determine the criteria upon which legal assistance is to be granted; and
- (b) the power to hear and determine appeals; and
- (c) the power to expend moneys from the fund.

(2) Any such delegation shall be revocable at will and shall not derogate from the power of the Commission to act in any matter itself.

(3) A person shall not exercise, or participate in a decision to exercise, a power or function delegated pursuant to this section in relation to a transaction or proposed transaction in which he has a direct or indirect interest.

Penalty: One thousand dollars.

PART 3
THE DIRECTOR OF LEGAL SERVICES AND OTHER STAFF

The Director

14. (1) There shall be a Director of Legal Services.

(2) Subject to subsection (3) of this section, the Director shall be appointed by the Commission, and shall hold office upon terms and conditions determined by the Commission and approved by the Governor.

(3) The first appointment to the office of Director shall be made by the Governor upon terms and conditions determined by the Governor.

(4) The Director shall be responsible to the Commission for the provision of legal assistance in accordance with this Act.

Employment of legal practitioners and other persons by the Commission

15. (1) The Commission may employ such legal practitioners as it considers necessary or desirable for the purpose of providing legal assistance in accordance with this Act.

(2) The Commission may employ such other persons as it considers necessary or desirable for the administration of this Act.

(3) Persons employed by the Commission must be appointed on such terms and conditions as are from time to time determined by the Commission and approved by the Commissioner for Public Employment.

* * * * *

(8) The Commission—

(a) shall, where it is practicable to do so, make reciprocal arrangements with other bodies providing legal assistance; and

(b) may make reciprocal arrangements with other bodies,

for the purpose of facilitating the transfer of staff between the Commission and those bodies.

Legal Services Commission Act 1977

**PART 4
LEGAL ASSISTANCE**

Legal assistance to be provided by the Commission and by private practitioners

16. Legal assistance under this Act shall be provided—

- (a) by officers of the Commission; and
- (b) by legal practitioners assigned by the Commission for that purpose.

Application for legal assistance

17. (1) Subject to subsection (2) of this section, an application for legal assistance must—

- (a) be made to the Director in a manner and form determined by the Commission; and
- (b) be verified by the applicant by statutory declaration.

(2) An application for legal assistance may be made without formality or verification—

- (a) where the application is of a class exempted by the Commission from the provisions of subsection (1) of this section; or
- (b) where the Director considers the matter to which the application relates to be of a minor nature and waives compliance with subsection (1) of this section.

(3) The Director shall deal with an application for legal assistance in accordance with principles laid down by the Commission, and may grant, unconditionally or subject to such conditions as he thinks fit, or may refuse, the application.

(4) Where an application for legal assistance is refused by the Director, or granted subject to conditions, the applicant may, within fourteen days after he receives notice of the decision of the Director upon the application, appeal to the Commission against the decision.

(5) The Director may at any time, by notice in writing, impose conditions upon the continuance of the legal assistance, or vary or revoke any of the conditions upon which legal assistance is being provided.

(6) An assisted person may—

- (a) within fourteen days after he receives a notice under subsection (5) of this section; or
- (b) within fourteen days after he receives notice of refusal by the Director to vary or revoke a condition upon which legal assistance was granted,

appeal to the Commission against the decision of the Director.

(7) Upon an appeal under subsection (4) or (6) of this section, the Commission may affirm the decision of the Director, or vary it in such manner as it thinks fit.

Recovery of legal costs from assisted persons

18. (1) An assisted person shall make such payments (if any) to the Commission on account of legal costs as may be stipulated by the Director in the conditions upon which legal assistance is granted.

(2) The Director shall, at the conclusion of the matter for which legal assistance was provided, notify an assisted person in writing of the total amount due and payable by him on account of legal costs.

(3) An assisted person may, within one month after he receives a notice under subsection (2) of this section, appeal to the Commission against the amount of the costs specified in the notice.

(4) Upon an appeal under subsection (3) of this section, the Commission may—

(a) affirm the amount due and payable by the assisted person; or

(b) reduce the amount to such extent as it thinks fit.

(5) An amount due by an assisted person under this section may be recovered as a debt due to the Commission in any court of competent jurisdiction and, in any proceedings for the recovery of such an amount an apparently genuine document purporting to be signed by the Director or an officer of the Commission certifying that a specified amount is payable to the Commission in respect of the legal assistance provided shall, in the absence of proof to the contrary, be proof of the matter so certified.

Legal costs secured by charge

18A. (1) Where, pursuant to a condition on which legal assistance is granted, legal costs payable to the Commission by the assisted person are to be secured by a charge on land, the Director may lodge with the Registrar-General a notice (in a form approved by the Registrar-General) specifying the land to be charged and certifying that legal costs are to be charged on the land.

(2) Where a notice is lodged under subsection (1), the Registrar-General must register the notice by entering a memorandum of charge in the register book or register of Crown leases.

(3) If the land to be charged is not under the *Real Property Act 1886* a notice specifying the land to be charged and certifying that legal costs are to be charged on the land may be registered in the General Registry Office.

(4) Where a notice is lodged with the Registrar-General or registered in the General Registry Office under this section, the Director must inform the assisted person in writing of the action so taken.

(5) On the registration of a notice under this section, legal costs payable to the Commission by the assisted person are a charge on the land for the benefit of the fund.

(6) If any default is made in the payments on account of legal costs, the Commission has the same powers of sale over the land charged as are given by the *Real Property Act 1886* to a mortgagee under a mortgage in respect of which default has been made in the payment of principal.

(7) Where the amount secured by a charge registered under this section is paid or recovered or the Commission determines that such a charge is no longer required, the Director must—

(a) in the case of a charge on land under the *Real Property Act 1886*—request the Registrar-General to remove the charge;

(b) in the case of a charge on land not under the *Real Property Act 1886*—register a notice of the removal of the charge in the General Registry Office.

Legal Services Commission Act 1977

(8) The Registrar-General must, on receipt of a request for the removal of a charge on land under the *Real Property Act 1886*, register a memorandum of the removal of the charge in the register book or register of Crown leases.

(9) No stamp duty or fee is payable in respect of any notice lodged or action of the Registrar-General pursuant to this section.

Special provisions in relation to property subject to a restraining order

18B. (1) In deciding whether a person is eligible for legal assistance, the value of property subject to a restraining order is to be disregarded.

(2) In fixing contributions to be made by an assisted person towards the cost of legal assistance while the property remains subject to a restraining order, the property subject to the order is to be disregarded but this subsection does not prevent the Commission from applying for an order that provision be made out of such property (in addition to the contributions to be made by the assisted person) to defray the costs of legal assistance.

(3) An assisted person's liability to pay legal costs may be secured by a charge on property subject to a restraining order.

(4) If such a liability is secured on property subject to a restraining order and the property is later forfeited—

- (a) the property is automatically released from the charge; but
- (b) the Administrator (of forfeited property under the *Criminal Assets Confiscation Act 1996*) must pay to the Commission out of the forfeited property or the proceeds of its sale or conversion into money the lesser of—
 - (i) the amount secured by the charge at the time of the forfeiture;
 - (ii) the net proceeds of the forfeiture.

Payment of legal costs to practitioners providing legal assistance who are not employees of the Commission

19. (1) A legal practitioner whom the Commission has assigned to provide legal assistance for an assisted person shall render such accounts to the Commission as the Director may require.

(2) The Director shall determine, in accordance with principles laid down by the Commission after consultation with the Law Society, the legal costs appropriate to professional legal work performed by legal practitioners assigned to provide legal assistance for assisted persons.

(3) A legal practitioner may, within one month after he receives notice of a determination of the Director, appeal against the determination to the Commission.

(4) Upon an appeal under subsection (3) of this section, the Commission may affirm the determination of the Director or vary the determination as it thinks fit.

(5) The Commission shall at such times as it thinks fit (being not less than twice in any year) pay to legal practitioners who have been assigned to provide legal assistance for assisted persons—

- (a) the disbursements and out-of-pocket expenses approved by the Director; and
- (b) such proportion of the balance of the legal costs determined by the Director under this section as the Commission thinks fit.

(6) The Commission may make payments to a legal practitioner under paragraph (a) of subsection (5) of this section in respect of legal assistance without concurrently making a payment under paragraph (b) of that subsection in respect of that legal assistance.

(7) The Commission may, instead of remunerating legal practitioners in accordance with the foregoing provisions of this section—

- (a) remunerate them by way of lump sum payments fixed in relation to the various categories of professional legal work; or
- (b) remunerate them upon any other basis determined by the Commission after consultation with the Law Society.

Costs

20. (1) A court or tribunal in making an order for costs, or security for costs, in favour of, or against, an assisted person, shall not take into account the fact that that person is an assisted person and is thereby relieved wholly or in part from liability to pay costs.

(2) Where legal assistance has been provided for an assisted person the Commission shall be subrogated to the rights of the assisted person to costs in respect of that legal assistance and any such costs received or recovered by the assisted person or a legal practitioner engaged to provide the legal assistance shall be applied in accordance with the directions of the Commission.

(3) Where the Commission has instituted proceedings for the recovery of any amount in respect of legal costs, and the Commission is entitled to reimbursement of the costs of the proceedings, the costs shall be assessed in all respects as if a legal practitioner had acted for the Commission in the institution and conduct of the proceedings whether or not the Commission in fact engaged a legal practitioner so to act.

Duty to supply information

21. (1) A person who applies to the Commission for legal assistance and, with intent to deceive or mislead the Commission, withholds any relevant information that he is required by the Commission to furnish, or makes any statement or representation that is false or misleading in any material particular, shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(2) If the Commission has made a payment for the provision of legal assistance for a person who has been convicted of an offence against subsection (1) of this section, the Commission may recover the amount of that payment, as a debt due to the Commission from the convicted person, in any court of competent jurisdiction.

Disclosure of information relating to legal assistance

22. (1) A legal practitioner—

- (a) shall disclose to the Commission any information relating to the provision of legal assistance to assisted persons that the Commission may require; and
- (b) may disclose any such information that he considers relevant to the provision of legal assistance,

and the assisted person shall be deemed to have waived any right or privilege that might prevent such disclosure.

(2) Except as provided in subsection (1) of this section, the relationship of legal practitioner and client, and the privileges arising therefrom, are unaffected by the fact that he is acting for an assisted person.

**PART 5
FINANCIAL PROVISIONS**

The Legal Services Fund

23. (1) There shall be a fund entitled the "Legal Services Fund".

(2) The fund shall consist of—

- (a) all moneys payable to the fund by the Law Society from the statutory interest account; and
- (b) all moneys paid to the Commission for the provision of legal assistance by the Government of the State or the Commonwealth; and
- (c) all moneys paid to, or recovered by, the Commission as legal costs, or on account of legal costs, for legal assistance; and
- (d) the income and accretions arising from the investment of any of the moneys from the fund; and
- (e) any other moneys paid to the Commission for the purpose of enabling it to provide legal assistance.

(3) The fund shall be administered by the Commission and applied for the purpose of providing legal assistance in accordance with this Act and otherwise in the administration of this Act.

(4) The Commission may, with the approval of the Attorney-General, invest moneys from the fund, not immediately required for the purposes of this Act, in such manner as it thinks fit.

Power to borrow with approval of Treasurer

24. (1) The Commission may, with the approval of the Treasurer, borrow moneys for the purposes of enabling it to carry out its functions under this Act.

(2) Any liability incurred by the Commission under subsection (1) of this section is hereby guaranteed by the Treasurer.

(3) The Treasurer may, without any other authority than this section, pay out of the general revenue of the State any moneys required to satisfy any liability of the Treasurer arising by virtue of a guarantee under this section.

Audit

25. (1) The Auditor-General may at any time, and shall at least once in every calendar year, audit the accounts of the Commission.

(2) For the purpose of the audit, the Auditor-General shall have, and may exercise, in relation to the accounts of the Commission and the officers and employees of the Commission, the same powers as are vested by the *Audit Act* in the Auditor-General in relation to public accounts and accounting officers.

Manner in which Commission is to deal with trust moneys

26. (1) The provisions of Divisions 1 and 2 of Part 4 of the *Legal Practitioners Act 1936-1977* and of the rules and regulations under those Divisions, shall, with such modifications as may be prescribed, apply to the Commission as if it were a legal practitioner.

(2) The provisions referred to in subsection (1) of this section do not apply to moneys paid to the Commission in pursuance of this Act on account of legal costs.

**PART 6
MISCELLANEOUS**

Agreements between State and Commonwealth

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

- (a) the moneys to be made available by the Commonwealth, and the State, for the purpose of legal assistance;
- (b) the priorities to be observed in providing legal assistance;
- (c) any other matter relating to the Commission or the administration of this Act.

(2) Any such agreement or arrangement shall, to the extent that it involves matters within the purview of the Commission, be binding upon the Commission.

Remission of fees

28. (1) The Attorney-General may, by a special or general direction, reduce, remit or postpone, or provide for the conditional or unconditional reduction, remission or postponement of any fees that would, if no such direction were given, be payable to the Crown in connection with any act, transaction or matter arising in the course of professional legal work carried out for an assisted person.

(2) The Attorney-General may, by a special or general direction, require any officer in the employment of the State to supply free of cost, or for such fees as the Attorney-General fixes, to any legal practitioner acting for an assisted person, a certified or other copy of any document in the possession, custody or control of that officer, if that copy is required in connection with any professional legal work carried out for an assisted person.

(3) In this section "**document**" includes any transcript or notes of evidence or arguments in any court.

(4) Any general or special direction given under this section shall prevail over any other enactment or regulation inconsistent therewith.

(5) In this section—

"**assisted person**" means a person for whom legal assistance is provided or arranged—

- (a) by the Commission; or
- (b) by any prescribed agency.

Rights of audience, etc.

29. (1) Subject to any other Act, a legal practitioner employed by the Commission shall be entitled to appear on behalf of an assisted person before any court or tribunal.

(2) A legal practitioner employed by the Commission, and authorised by the Commission to act as a solicitor for assisted persons—

- (a) may act as solicitor for assisted persons in relation to the institution and conduct of proceedings in any court or tribunal; and

- (b) has the same rights, powers and privileges as a legal practitioner in private practice as a principal has in relation to his clients.

Legal practitioners employed by Commission bound by ethical standards of the profession

30. Nothing in this Act derogates from the duty of a legal practitioner employed by the Commission to observe the ethical principles and standards appropriate to the practice of the profession of the law.

Legal practitioner employed by Commission subject to same discipline as practitioner in private practice

31. A legal practitioner employed by the Commission—

- (a) incurs the same liability for unprofessional conduct as a legal practitioner in private practice; and
- (b) is subject to the same discipline as a legal practitioner in private practice.

Secrecy

31A. (1) This section applies to—

- (a) a member or former member of the Commission; or
- (b) an employee or former employee of the Commission; or
- (c) a member or former member of a committee established by the Commission; or
- (d) a person who is or has been engaged in duties relating to the audit of the accounts of the Commission.

(2) Subject to subsection (3), a person to whom this section applies shall not—

- (a) communicate directly or indirectly to any person information concerning the affairs of another person acquired by reason of his position, duties or functions under this Act; or
- (b) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: One thousand dollars or imprisonment for six months.

(3) Subsection (2) does not prevent the communication of information, or the production of documents, by a person to whom this section applies—

- (a) in the ordinary course of carrying out his duties or functions under this Act; or
- (b) in accordance with an authorisation of the person to whose affairs the information or documents relate; or
- (c) in accordance with the rules relating to discovery of documents; or
- (d) in accordance with a requirement or authorisation of a court, tribunal or body invested by law with judicial or quasi-judicial powers; or
- (e) in accordance with a requirement of a person who is by law invested with power to require disclosure of the information, or to require production of, or inspect, the documents; or

Legal Services Commission Act 1977

(f) in accordance with a requirement or authorisation of the Commission.

Proceedings

32. Proceedings for an offence against this Act shall be disposed of summarily.

Annual report

33. (1) The Commission shall, not later than the thirtieth day of September in each year, prepare and present to the Attorney-General a report upon the administration of this Act during the preceding financial year, together with the audited accounts of the Commission for that financial year.

(2) The Attorney-General shall cause the report, together with the audited accounts, to be laid before each House of Parliament as soon as practicable.

Immunity of members

33A. (1) A member of the Commission incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the member or the Commission of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a member lies instead against the Commission.

Regulations

34. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1) of this section, those regulations may prescribe the manner in which nominations are to be made in pursuance of this Act by the employees of the Commission.

Legal Services Commission Act 1977

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 5:	definition of "the appointed day" inserted by 37, 1979, s. 3 definition of "legal costs" substituted by 22, 1990, s. 3 definition of "restraining order" inserted by 10, 2001, s. 5(a)
Section 6(4):	amended by 37, 1979, s. 4(a); 22, 1990, s. 4(a)
Section 6(5):	inserted by 37, 1979, s. 4(b); amended by 22, 1990, s. 4(b)
Section 7(1):	substituted by 37, 1979, s. 5
Section 8(1):	amended by 110, 1983, s. 3(a)
Section 8(1a):	inserted by 110, 1983, s. 3(b)
Section 9A:	inserted by 110, 1983, s. 4
Section 10(1):	amended by 37, 1979, s. 6; 22, 1990, s. 5
Section 11:	amended by 37, 1979, s. 7
Section 13(3):	inserted by 110, 1983, s. 5
Section 15(3):	amended by 37, 1979, s. 8(a); substituted by 22, 1990, s. 6
Section 15(4):	repealed by 22, 1990, s. 6
Section 15(5) - (7):	inserted by 37, 1979, s. 8(b); repealed by 22, 1990, s. 6
Section 15(8):	inserted by 37, 1979, s. 8(b)
Section 17(1):	amended by 37, 1979, s. 9(a)
Section 17(2):	substituted by 37, 1979, s. 9(b)
Section 18A:	inserted by 22, 1990, s. 7
Section 18B:	inserted by 10, 2001, s. 5(b)
Section 19(2):	substituted by 37, 1979, s. 10(a)
Section 19(7):	inserted by 37, 1979, s. 10(b)
Section 23(2):	amended by 37, 1979, s. 11
Section 24(3):	amended by 37, 1979, s. 12
Section 26:	substituted by 37, 1979, s. 13
Section 27(2):	amended by 37, 1979, s. 14
Section 28(2):	amended by 37, 1979, s. 15(a)
Section 28(5):	inserted by 37, 1979, s. 15(b)
Section 29:	substituted by 37, 1979, s. 16
Section 31A:	inserted by 37, 1979, s. 17; substituted by 110, 1983, s. 6
Section 33A:	inserted by 27, 1995, s. 16
Section 34:	redesignated as s. 34(1) by 37, 1979, s. 18
Section 34(2):	inserted by 37, 1979, s. 18