

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 and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

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

### 5—Interpretation

- (1) In this Act, unless the contrary intention appears—

***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;

***Commission practitioner*** means a legal practitioner employed by the Commission;

***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 assistance costs*** means the costs of providing legal assistance to an assisted person (see also subsection (2));

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

**Legal Profession Reference Committee**—see section 11A;

**notional fees** means the fees that would be paid for professional legal work if the work were—

- (a) authorised by the Director to be performed; and
- (b) performed by a legal practitioner who is not a Commission practitioner;

**restraining order** means a restraining order under the *Criminal Assets Confiscation Act 2005*;

**scale** means the scale of fees for professional legal work determined by the Director under section 18C;

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

- (2) For the purposes of this Act, **legal assistance costs** are comprised of the following:
  - (a) in the case where the legal assistance is provided by a legal practitioner who is not a Commission practitioner—
    - (i) the fees determined in accordance with the scale plus interest (if any) on those fees; and
    - (ii) any disbursements and out-of-pocket expenses approved by the Director;
  - (b) in the case where the legal assistance is provided by a Commission practitioner—
    - (i) the notional fees determined in accordance with the scale; and
    - (ii) any disbursements and out-of-pocket expenses approved by the Director.

## Part 2—The Legal Services Commission

### 6—Constitution of Legal Services Commission

- (1) The *Legal Services Commission* is established.
- (2) The Commission is a body corporate and—
  - (a) has perpetual succession and a common seal; and
  - (b) is 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) is capable of suing and being sued; and
  - (d) has 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 is independent of the Government.

- (4) The Commission consists of the following members:
- (a) 1 (the Chairperson) will be—
    - (i) a person holding judicial office; or
    - (ii) a legal practitioner of not less than 5 years standing,  
appointed by the Governor on the nomination of the Attorney-General; and
  - (b) 3 persons of whom—
    - (i) at least 1 must have experience in financial management; and
    - (ii) at least 1 must, in the opinion of the Attorney-General, be an appropriate person to represent the interests of assisted persons,  
appointed by the Governor on the nomination of the Attorney-General; and
  - (c) the Director.
- (5) The Attorney-General must consult with the Law Society and the South Australian Bar Association Incorporated before making a nomination under subsection (4)(b)(ii).

### **7—Terms and conditions of office**

- (1) Subject to this Act, an appointed member of the Commission holds office for a term of three years, and at the expiration of a term of office is 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 becomes vacant if the appointed member—
- (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice addressed to the Minister; or
  - (d) is absent, without leave of the Commission, from three consecutive meetings of the Commission; or
  - (e) is removed from office by the Governor pursuant to subsection (2).
- (4) On the office of an appointed member becoming vacant, a person will be appointed in accordance with this Act to the vacant office, but where the office of an appointed member becomes vacant before the expiration of a term of appointment, the successor will be appointed only for the balance of the term.

### **8—Quorum etc**

- (1) Subject to this Act, 3 members of the Commission 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 is a decision of the Commission.

- (3) Each member of the Commission is 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 has a second or casting vote.
- (4) The Chairperson will preside at any meeting of the Commission at which he or she is present and, in the absence of the Chairperson, the members present will decide who is to preside at that meeting.
- (5) Subject to this Act, the Commission may conduct its business in a manner determined by the Commission.

## **9—Allowances and expenses**

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

### **9A—Disclosure of interest**

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

Maximum penalty: \$1 250.

- (2) A disclosure under this section must be recorded in the minutes of the Commission.
- (3) Despite 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 is not required to account for profits arising from the transaction.

## 10—Functions of Commission

- (1) The Commission will—
  - (b) provide, or arrange for the provision of, legal assistance in accordance with this Act; and
  - (c) determine the criteria under which the legal assistance is to be granted; 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 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
  - (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 under which legal assistance is to be granted under this Act, the Commission must have regard to the principles—
  - (a) that legal assistance should be granted where the public interest or the interests of justice so require; and
  - (b) that, subject to paragraph (a), legal assistance should not be granted where the applicant could afford to pay in full for that legal assistance without undue financial hardship.
- (2a) The Commission may from time to time, with the approval of the Attorney-General, 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 the Commission thinks fit.
- (3) For the purposes of this Act, the Commission may acquire, deal with, and dispose of, real and personal property.

## 11—Principles on which Commission operates

In the exercise of its powers and functions the Commission must—

- (a) seek to ensure 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;
- (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.

## 11A—Legal Profession Reference Committee

- (1) The Commission must establish a committee (the *Legal Profession Reference Committee*) to—
  - (a) advise the Commission in relation to—
    - (i) any matter referred to it by the Commission; or
    - (ii) any of the Commission's functions under the Act; or
  - (b) perform any other function assigned to the Committee by this Act.
- (2) The Legal Profession Reference Committee will consist of 7 members appointed by the Commission, of whom—
  - (a) 1 will be the Chairperson of the Commission; and
  - (b) 1 will be the Director; and
  - (c) 1 will be an employee of the Commission nominated by the Commission; and
  - (d) 2 will be nominated by the Law Society; and
  - (e) 2 will be nominated by the South Australian Bar Association Incorporated.
- (3) Members of the Legal Profession Reference Committee will hold office on such terms and conditions as the Commission thinks fit.
- (4) Subject to this Act and any directions of the Commission, the Legal Profession Reference Committee may determine its own procedures.

## 12—Advisory and other committees

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

## 12A—Appeals

- (1) An appeal against a decision of the Director under Part 4 must be heard by a panel of 3 persons as constituted by the Commission as follows:
  - (a) at least 1 person must be a member of the Commission (other than the Director); and
  - (b) depending on the number of members of the Commission under paragraph (a), may include up to 2 assessors selected by the Commission from the panel of assessors established under section 12B.
- (2) The presiding member of a panel hearing an appeal will be—
  - (a) if the constitution of the panel includes the Chairperson of the Commission—the Chairperson; or
  - (b) if the constitution of the panel does not include the Chairperson of the Commission—
    - (i) in the case of a panel that includes only 1 member of the Commission—that member; or
    - (ii) in the case of a panel that includes 2 or more members of the Commission—the member agreed by those members of the Commission.
- (3) A matter required to be decided by the panel will be decided according to the opinion of the majority of them but, if their opinions on the matter are equally divided, the question is to be decided according to the opinion of the presiding member.

## 12B—Panel of assessors

- (1) The Commission must establish a panel of persons who may sit as assessors consisting of persons who, in the opinion of the Commission, have appropriate qualifications and experience to hear appeals against decisions of the Director.
- (2) A member of the panel is to be appointed by the Commission for a term of office not exceeding 3 years and on conditions determined by the Commission and specified in the instrument of appointment.
- (3) A member of the panel is, on the expiration of a term of office, eligible for reappointment.
- (4) A member of the panel who has a personal or a direct or indirect interest in a matter before the Commission is disqualified from participating in the hearing of the matter.

## 13—Delegation

- (1) The Commission may, by instrument in writing, delegate a power or function under this Act—
  - (a) to a particular person or committee; or
  - (b) to the person for the time being occupying a particular position.
- (2) However, the Commission may not delegate—
  - (a) the power to determine the criteria under which legal assistance is to be granted; or



- (b) the power to hear and determine appeals.
  - (2a) To avoid doubt, subsection (2)(b) does not apply to, or in respect of, the inclusion of assessors on a panel hearing an appeal under section 12A.
  - (3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
  - (4) A delegation—
    - (a) may be absolute or conditional; and
    - (b) does not derogate from the power of the delegator to act in a matter; and
    - (c) is revocable at will.
  - (5) A person must not exercise, or participate in a decision to exercise, a power or function delegated under this section in relation to a transaction or proposed transaction in which the person has a direct or indirect interest.
- Maximum penalty: \$1 250.

### **Part 3—The Director of Legal Services and other staff**

#### **14—The Director**

- (1) There will be a Director of Legal Services.
- (2) The Director will be appointed by the Commission, and will hold office on terms and conditions determined by the Commission and approved by the Governor.
- (4) The Director is responsible to the Commission for the provision of legal assistance in accordance with this Act.

#### **14A—Director's power of delegation**

- (1) The Director may, by instrument in writing, delegate a power or function under this Act—
  - (a) to a particular person or committee; or
  - (b) to the person for the time being occupying a particular position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will.

#### **15—Employment of legal practitioners and other persons by Commission**

- (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 Sector Employment.
- (8) The Commission may make reciprocal arrangements with other bodies for the purpose of facilitating the transfer of staff between the Commission and those bodies.

## **Part 4—Legal assistance**

### **16—Legal assistance to be provided by the Commission and by private practitioners**

Legal assistance under this Act will be provided—

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

### **17—Application for legal assistance**

- (1) Subject to subsection (2), an application for legal assistance must be made to the Director in a manner and form determined by the Commission.
- (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); 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).
- (3) The Director must 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 the Director 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 receiving notice of the Director's decision, appeal to the Commission against the decision.
- (5) The Director may at any time, by notice in writing, impose conditions on the continuance of the legal assistance, or vary or revoke any of the conditions on which legal assistance is being provided.
- (6) An assisted person may—
  - (a) within fourteen days after receiving a notice under subsection (5); or
  - (b) within fourteen days after receiving notice of refusal by the Director to vary or revoke a condition on which legal assistance was granted,appeal to the Commission against the decision of the Director.
- (7) On an appeal under subsection (4) or (6), the Commission may affirm the decision of the Director, or vary it in such manner as it thinks fit.

### **18—Recovery of legal assistance costs from assisted persons**

- (1) An assisted person must make such payments (if any) to the Commission towards legal assistance costs as may be stipulated by the Director in the conditions on which legal assistance is granted.

- (1a) An assisted person must indemnify the Commission in full for legal assistance costs if so stipulated by the Director in the conditions on which legal assistance is granted.
- (2) The Director must, at the conclusion of the matter for which legal assistance was provided, give the assisted person written notice of the total amount payable by the assisted person to the Commission.
- (3) An assisted person may, within one month after receiving a notice under subsection (2), appeal to the Commission against the amount specified in the notice.
- (4) On an appeal under subsection (3), the Commission may—
  - (a) affirm the amount 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 is, in the absence of proof to the contrary, proof of the matter so certified.

#### **18A—Legal assistance costs may be secured by charge on land**

- (1) Where, pursuant to a condition on which legal assistance is granted, legal assistance costs payable to the Commission 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 assistance 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 assistance 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 assistance costs payable to the Commission are a charge on the land for the benefit of the fund (and the notice is, for the purposes of section 56 of the *Real Property Act 1886*, treated as if it were an instrument presented for registration at the time the notice was lodged).
- (6) If any default is made in the payments towards legal assistance 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 (and a sale by the Commission is, for the purposes of that Act, treated as if it were such a sale by a mortgagee).
- (6a) If the charged land is sold by a mortgagee or encumbrancee, the charge is, for the purposes of sections 135 and 135A of the *Real Property Act 1886*, to be treated as if it were an encumbrance referred to in those sections.

- (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.
- (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.

### **18B—Special provisions in relation to property subject to a restraining order**

- (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 payments to be made by an assisted person towards legal assistance costs 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) towards payment of legal assistance costs.
- (3) Despite the preceding subsections, the liability of an assisted person to the Commission may be for the whole of the legal assistance costs and this liability 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 2005*) 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.

### **18C—Director to determine scale of fees for professional legal work**

The Director must determine, in accordance with principles laid down by the Commission after consultation with the Legal Profession Reference Committee, a scale of fees for professional legal work in relation to the provision of legal assistance for assisted persons.

## **19—Determination and payment of legal assistance costs to legal practitioners (other than Commission practitioners)**

- (1) A legal practitioner assigned to provide legal assistance for an assisted person is only entitled to be paid for professional legal work that the Director has authorised to be performed.
- (2) The legal practitioner must provide the Commission with such accounts as the Director may require.
- (2a) The Director must determine, in accordance with the scale, the fees for professional legal work performed by the legal practitioner.
- (3) The legal practitioner may, within 1 month after receiving written notice of the determination of the Director, appeal against the determination to the Commission.
- (4) On an appeal under subsection (3), the Commission may affirm the determination of the Director or vary the determination as it thinks fit.
- (5) The Commission must 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 assistance costs determined by the Director under this section as the Commission thinks fit.
- (6) The Commission may make payments to a legal practitioner under subsection (5)(a) in respect of legal assistance without concurrently making a payment under subsection (5)(b) in respect of that legal assistance.
- (7) Despite the preceding subsections, the Commission may remunerate legal practitioners who have been assigned to provide legal assistance for assisted persons—
  - (a) by way of lump sum payments fixed in relation to the various categories of professional legal work; or
  - (b) on any other basis determined by the Commission after consultation with the Legal Profession Reference Committee.
- (8) This section does not apply to Commission practitioners.

## **20—Costs**

- (1) A court or tribunal in making an order for costs, or security for costs, in favour of, or against, an assisted person, may not take into account the fact that that person is an assisted person and is for that reason relieved wholly or in part from liability to pay costs.
- (2) Where legal assistance has been provided for an assisted person the Commission is 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 must 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 will 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.

## **21—Duty to supply information**

- (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 the person is required by the Commission to furnish, or makes any statement or representation that is false or misleading in any material particular, is guilty of an offence.

Maximum penalty: \$750.

- (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), 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.

## **22—Disclosure of information relating to legal assistance**

- (1) A legal practitioner—
  - (a) must 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 the practitioner considers relevant to the provision of legal assistance,

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

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

## **Part 5—Financial provisions**

### **23—Legal Services Fund**

- (1) The *Legal Services Fund* is established.
- (2) The fund consists of—
  - (a) all money payable to the fund by the Law Society from the statutory interest account; and
  - (b) all money paid to the Commission for the provision of legal assistance by the Government of the State or the Commonwealth; and
  - (c) all money paid to, or recovered by, the Commission as legal assistance costs, or as payments towards legal assistance costs; and
  - (d) the income and accretions arising from the investment of any of the money from the fund; and

- (e) any other money paid to the Commission for the purpose of enabling it to provide legal assistance.
- (3) The fund will 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 money from the fund, not immediately required for the purposes of this Act, in such manner as it thinks fit.

#### **24—Power to borrow with approval of Treasurer**

- (1) The Commission may, with the approval of the Treasurer, borrow money for the purposes of enabling it to carry out its functions under this Act.
- (2) Any liability incurred by the Commission under subsection (1) is guaranteed by the Treasurer.
- (3) The Treasurer may, without any other authority than this section, pay out of the Consolidated Account any money required to satisfy any liability of the Treasurer arising by virtue of a guarantee under this section.

#### **25—Audit**

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

#### **26—Commission and trust money**

- (1) Subject to subsection (2) and to such modifications as may be prescribed, the provisions of the *Legal Practitioners Act 1981* relating to trust money (within the meaning of that Act) apply to the Commission as if the Commission were a law practice.
- (2) The provisions referred to in subsection (1) do not apply in relation to money paid to the Commission under this Act as legal assistance costs, or as payments towards legal assistance costs.

### **Part 6—Miscellaneous**

#### **27—Agreements between State and Commonwealth**

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

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

## 28—Remission of fees

- (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) A general or special direction given under this section prevails over any inconsistent enactment or regulation.
- (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.

## 29—Provision of legal assistance by Commission practitioners

- (1) For the purposes of managing the provision of legal assistance to an assisted person by a Commission practitioner, the Commission—
  - (a) will be taken to be the legal practitioner retained by the person to act on the person's behalf; and
  - (b) may require a Commission practitioner to provide legal assistance to the person; and
  - (c) must supervise the provision of legal assistance to the person by the Commission practitioner.
- (2) The Director is responsible for ensuring the provision of legal assistance to assisted persons by Commission practitioners is properly allocated and supervised.
- (3) If, in any proceedings—
  - (a) a document is required or permitted to be signed by the solicitor for an assisted person; and
  - (b) the document is signed by a Commission practitioner authorised for the purposes of paragraph (a) by the Commission,the document will be taken to have been signed by the assisted person's solicitor.



- (4) Despite subsection (1), for the purposes of Part 3 of the *Legal Practitioners Act 1981*, the legal practitioner for an assisted person is the Commission practitioner required by the Commission to provide legal assistance to the person.

### **30—Legal practitioners employed by Commission bound by ethical standards of the profession**

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.

### **31—Discipline of legal practitioner employed by Commission**

A legal practitioner employed by the Commission—

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

### **31A—Secrecy**

- (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 (including the Legal Profession Reference Committee) established by the Commission; or
  - (ca) a member or former member of the panel of assessors established under section 12B; 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 must not—
- (a) communicate directly or indirectly to any person information concerning the affairs of another person acquired by reason of his or her 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.

Maximum penalty: \$1 250 or imprisonment for 6 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 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 disclosure 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
- (f) in accordance with a requirement or authorisation of the Commission.

### **33—Annual report**

- (1) The Commission must, not later than 30 September in each year, prepare and present to the Attorney-General a report on 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 must cause the report, together with the audited accounts, to be laid before each House of Parliament as soon as practicable.

### **33A—Immunity**

- (1) A member of the Commission or a member of the panel of assessors established under section 12B 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.

### **34—Regulations**

- (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.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Legal Services Commission Act 1977* repealed the following:

*Poor Persons Legal Assistance Act 1925*

*Poor Persons Legal Assistance Act Amendment Act 1968*

*Poor Persons Legal Assistance Act Amendment Act 1969*

### Legislation amended by principal Act

The *Legal Services Commission Act 1977* amended the following:

*Legal Practitioners Act 1936*

*Local and District Criminal Courts Act Amendment Act 1972*

*Statutes Amendment (Capital Punishment Abolition) Act 1976*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1977	25	<i>Legal Services Commission Act 1977</i>	12.5.1977	4.5.1978 ( <i>Gazette 4.5.1978 p1541</i> ) except ss 10(1)(a), (c)—(k), 11—13, 15—23, 26, 28—31—21.12.1978 and except ss 4, 10(1)(b) & Sch—30.1.1979 ( <i>Gazette 21.12.1978 p2305</i> )
1979	37	<i>Legal Services Commission Act Amendment Act 1979</i>	15.3.1979	15.3.1979 ( <i>Gazette 15.3.1979 p681</i> )
1983	110	<i>Legal Services Commission Act Amendment Act 1983</i>	22.12.1983	22.12.1983 ( <i>Gazette 22.12.1983 p1722</i> )
1990	22	<i>Legal Services Commission Act Amendment Act 1990</i>	26.4.1990	26.7.1990 ( <i>Gazette 26.7.1990 p397</i> )
1995	27	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1995</i>	27.4.1995	s 16—4.5.1995 ( <i>Gazette 4.5.1995 p1705</i> )
2001	10	<i>Legal Assistance (Restrained Property) Amendment Act 2001</i>	12.4.2001	s 5—30.12.2001 ( <i>Gazette 13.12.2001 p5352</i> )

## Legal Services Commission Act 1977—1.12.2016

### Legislative history

2002	23	<i>Legal Services Commission (Miscellaneous) Amendment Act 2002</i>	31.10.2002	22.12.2002 ( <i>Gazette 19.12.2002 p4735</i> ) except s 11—31.10.2004 (s 7(5) <i>Acts Interpretation Act 1915</i> )
2004	55	<i>Statutes Amendment (Legal Assistance Costs) Act 2004</i>	16.12.2004	Pt 3 (ss 12—20)—13.1.2005 ( <i>Gazette 13.1.2005 p69</i> )
2005	19	<i>Criminal Assets Confiscation Act 2005</i>	5.6.2005	Sch 1 (cll 8 & 9)—2.4.2006 ( <i>Gazette 16.2.2006 p578</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 82 (s 194)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
2011	38	<i>Legal Services Commission (Charges on Land) Amendment Act 2011</i>	6.10.2011	27.10.2011 ( <i>Gazette 27.10.2011 p4343</i> )
2013	44	<i>Legal Practitioners (Miscellaneous) Amendment Act 2013</i>	3.10.2013	Sch 2 (cll 3 & 4)—1.7.2014 ( <i>Gazette 5.6.2014 p2241</i> )
2013	47	<i>Statutes Amendment (Attorney-General's Portfolio No 2) Act 2013</i>	24.10.2013	Pt 6 (s 9)—17.5.2014 ( <i>Gazette 8.5.2014 p1630</i> )
<b>2016</b>	<b>25</b>	<b><i>Legal Services Commission (Miscellaneous) Amendment Act 2016</i></b>	<b>2.6.2016</b>	<b>1.12.2016 (<i>Gazette 1.12.2016 p4572</i>)</b>
2016	29	<i>Real Property (Electronic Conveyancing) Amendment Act 2016</i>	16.6.2016	Sch 1 (cl 1)—4.7.2016 ( <i>Gazette 30.6.2016 p2761</i> )

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 23/2002 s 13 (Sch)	22.12.2002
Pt 1		
<i>ss 2—4</i>	<i>deleted by 23/2002 s 13 (Sch)</i>	22.12.2002
s 5		
s 5(1)	s 5 redesignated as s 5(1) by 55/2004 s 12(5)	13.1.2005
<i>the amended Act</i>	<i>deleted by 23/2002 s 13 (Sch)</i>	22.12.2002
<i>the appointed day</i>	<i>inserted by 37/1979 s 3</i>	15.3.1979
	<i>deleted by 23/2002 s 13 (Sch)</i>	22.12.2002
Commission practitioner	inserted by 55/2004 s 12(1)	13.1.2005
<i>legal costs</i>	<i>substituted by 22/1990 s 3</i>	26.7.1990
	<i>deleted by 55/2004 s 12(2)</i>	13.1.2005
legal assistance costs	inserted by 55/2004 s 12(2)	13.1.2005
<b>Legal Profession Reference Committee</b>	<b>inserted by 25/2016 s 4</b>	<b>1.12.2016</b>
notional fees	inserted by 55/2004 s 12(3)	13.1.2005
<i>the repealed Act</i>	<i>deleted by 23/2002 s 13 (Sch)</i>	22.12.2002
restraining order	inserted by 10/2001 s 5(a)	30.12.2001

	amended by 19/2005 Sch 1 cl 8	2.4.2006
scale	inserted by 55/2004 s 12(4)	13.1.2005
s 5(2)	inserted by 55/2004 s 12(5)	13.1.2005
Pt 2		
s 6		
s 6(1)	substituted by 23/2002 s 13 (Sch)	22.12.2002
s 6(2) and (3)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 6(4) before substitution by 25/2016	amended by 37/1979 s 4(a)	15.3.1979
	amended by 22/1990 s 4(a)	26.7.1990
	amended by 23/2002 s 13 (Sch)	22.12.2002
	(b) deleted by 23/2002 s 3(a)	22.12.2002
<b>s 6(4)</b>	<b>substituted by 25/2016 s 5</b>	<b>1.12.2016</b>
s 6(5)	inserted by 37/1979 s 4(b)	15.3.1979
	amended by 22/1990 s 4(b)	26.7.1990
	deleted by 23/2002 s 3(b)	22.12.2002
<b>s 6(5)</b>	<b>inserted by 25/2016 s 5</b>	<b>1.12.2016</b>
s 7		
s 7(1)	substituted by 37/1979 s 5	15.3.1979
	amended by 23/2002 s 13 (Sch)	22.12.2002
s 7(3) and (4)	substituted by 23/2002 s 13 (Sch)	22.12.2002
s 8		
s 8(1)	amended by 110/1983 s 3(a)	22.12.1983
	amended by 23/2002 s 13 (Sch)	22.12.2002
	<b>substituted by 25/2016 s 6(1)</b>	<b>1.12.2016</b>
s 8(1a)	inserted by 110/1983 s 3(b)	22.12.1983
	amended by 23/2002 s 13 (Sch)	22.12.2002
	<b>deleted by 25/2016 s 6(2)</b>	<b>1.12.2016</b>
s 8(2) and (3)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 8(4)	amended by 23/2002 s 13 (Sch)	22.12.2002
	<b>amended by 25/2016 s 6(3)</b>	<b>1.12.2016</b>
s 8(5)	substituted by 23/2002 s 13 (Sch)	22.12.2002
s 9	amended by 23/2002 s 13 (Sch)	22.12.2002
s 9A	inserted by 110/1983 s 4	22.12.1983
s 9A(1)—(4)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 10		
s 10(1)	amended by 37/1979 s 6	15.3.1979
	amended by 22/1990 s 5	26.7.1990
	amended by 23/2002 ss 4(b), 13 (Sch)	22.12.2002
	(a) deleted by 23/2002 s 4(a)	22.12.2002
	(ha) deleted by 23/2002 s 4(c)	22.12.2002
s 10(2)	amended by 23/2002 s 13 (Sch)	22.12.2002

s 10(2a)	inserted by 23/2002 s 4(d)	22.12.2002
s 11	amended by 37/1979 s 7	15.3.1979
	amended by 23/2002 s 13 (Sch)	22.12.2002
	(c) deleted by 23/2002 s 5	22.12.2002
<b>s 11A</b>	<b>inserted by 25/2016 s 7</b>	<b>1.12.2016</b>
<b>s 12</b>	<b>amended by 25/2016 s 8</b>	<b>1.12.2016</b>
<b>ss 12A and 12B</b>	<b>inserted by 25/2016 s 9</b>	<b>1.12.2016</b>
s 13	amended by 110/1983 s 5	22.12.1983
	substituted by 23/2002 s 6	22.12.2002
<b>s 13(2a)</b>	<b>inserted by 25/2016 s 10</b>	<b>1.12.2016</b>
Pt 3		
s 14		
s 14(1)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 14(2)	substituted by 23/2002 s 13 (Sch)	22.12.2002
<i>s 14(3)</i>	<i>deleted by 23/2002 s 13 (Sch)</i>	22.12.2002
s 14(4)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 14A	inserted by 23/2002 s 7	22.12.2002
s 15		
s 15(3)	amended by 37/1979 s 8(a)	15.3.1979
	substituted by 22/1990 s 6	26.7.1990
	amended by 84/2009 s 194	1.2.2010
<i>s 15(4)</i>	<i>deleted by 22/1990 s 6</i>	26.7.1990
<i>s 15(5)—(7)</i>	<i>inserted by 37/1979 s 8(b)</i>	15.3.1979
	<i>deleted by 22/1990 s 6</i>	26.7.1990
s 15(8)	inserted by 37/1979 s 8(b)	15.3.1979
	substituted by 23/2002 s 8	22.12.2002
Pt 4		
s 16	amended by 23/2002 s 13 (Sch)	22.12.2002
s 17		
s 17(1)	amended by 37/1979 s 9(a)	15.3.1979
	substituted by 23/2002 s 9	22.12.2002
s 17(2)	substituted by 37/1979 s 9(b)	15.3.1979
	amended by 23/2002 s 13 (Sch)	22.12.2002
s 17(3)—(7)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 18		
s 18(1)	amended by 23/2002 s 13 (Sch)	22.12.2002
	amended by 55/2004 s 13(1)	13.1.2005
s 18(1a)	inserted by 55/2004 s 13(2)	13.1.2005
s 18(2)	amended by 23/2002 s 13 (Sch)	22.12.2002
	substituted by 55/2004 s 13(2)	13.1.2005
s 18(3)	amended by 23/2002 s 13 (Sch)	22.12.2002
	amended by 55/2004 s 13(3)	13.1.2005
s 18(4)	amended by 23/2002 s 13 (Sch)	22.12.2002

	amended by 55/2004 s 13(4)	13.1.2005
s 18(5)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 18A	inserted by 22/1990 s 7	26.7.1990
s 18A(1)	amended by 55/2004 s 14(1), (2)	13.1.2005
s 18A(3)	amended by 55/2004 s 14(3)	13.1.2005
s 18A(5)	amended by 55/2004 s 14(4), (5)	13.1.2005
	amended by 38/2011 s 4(1)	27.10.2011
	amended by 29/2016 Sch 1 cl 1	4.7.2016
s 18A(6)	amended by 55/2004 s 14(6)	13.1.2005
	amended by 38/2011 s 4(2)	27.10.2011
s 18A(6a)	inserted by 38/2011 s 4(3)	27.10.2011
s 18B	inserted by 10/2001 s 5(b)	30.12.2001
s 18B(2)	amended by 55/2004 s 15(1)—(3)	13.1.2005
s 18B(3)	substituted by 55/2004 s 15(4)	13.1.2005
s 18B(4)	amended by 19/2005 Sch 1 cl 9	2.4.2006
s 18C	inserted by 55/2004 s 16	13.1.2005
	<b>amended by 25/2016 s 11</b>	<b>1.12.2016</b>
s 19		
s 19(1)	amended by 23/2002 s 13 (Sch)	22.12.2002
	substituted by 55/2004 s 17(1)	13.1.2005
s 19(2)	substituted by 37/1979 s 10(a)	15.3.1979
	amended by 23/2002 s 13 (Sch)	22.12.2002
	substituted by 55/2004 s 17(1)	13.1.2005
s 19(2a)	inserted by 55/2004 s 17(1)	13.1.2005
s 19(3)	amended by 23/2002 s 13 (Sch)	22.12.2002
	substituted by 55/2004 s 17(1)	13.1.2005
s 19(4)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 19(5)	amended by 23/2002 s 13 (Sch)	22.12.2002
	amended by 55/2004 s 17(12)	13.1.2005
s 19(6)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 19(7)	inserted by 37/1979 s 10(b)	15.3.1979
	amended by 23/2002 s 13 (Sch)	22.12.2002
	substituted by 55/2004 s 17(3)	13.1.2005
	<b>amended by 25/2016 s 12</b>	<b>1.12.2016</b>
s 19(8)	inserted by 55/2004 s 17(3)	13.1.2005
s 20		
s 20(1)—(3)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 21		
s 21(1)	substituted by 23/2002 s 13 (Sch)	22.12.2002
s 21(2)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 22		
s 22(1) and (2)	amended by 23/2002 s 13 (Sch)	22.12.2002

s 23		
s 23(1)	substituted by 23/2002 s 13 (Sch)	22.12.2002
s 23(2)	amended by 37/1979 s 11	15.3.1979
	amended by 23/2002 s 13 (Sch)	22.12.2002
	amended by 55/2004 s 18	13.1.2005
s 23(3) and (4)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 24		
s 24(1) and (2)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 24(3)	amended by 37/1979 s 12	15.3.1979
	amended by 23/2002 s 13 (Sch)	22.12.2002
s 25		
s 25(1) and (2)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 26	substituted by 37/1979 s 13	15.3.1979
	substituted by 23/2002 s 13 (Sch)	22.12.2002
s 26(1)	amended by 44/2013 Sch 2 cl 3	1.7.2014
s 26(2)	amended by 55/2004 s 19	13.1.2005
Pt 6		
s 27		
s 27(1)	substituted by 23/2002 s 10	22.12.2002
s 27(1a)	inserted by 23/2002 s 10	22.12.2002
s 27(2)	amended by 37/1979 s 14	15.3.1979
	amended by 23/2002 s 13 (Sch)	22.12.2002
s 28		
s 28(2)	amended by 37/1979 s 15(a)	15.3.1979
s 28(4)	substituted by 23/2002 s 13 (Sch)	22.12.2002
s 28(5)	inserted by 37/1979 s 15(b)	15.3.1979
s 29	substituted by 37/1979 s 16	15.3.1979
	substituted by 23/2002 s 11	31.10.2004
	substituted by 55/2004 s 20	13.1.2005
s 31	amended by 23/2002 s 12	22.12.2002
	amended by 44/2013 Sch 1 cl 4	1.7.2014
s 31A	inserted by 37/1979 s 17	15.3.1979
	substituted by 110/1983 s 6	22.12.1983
<b>s 31A(1)</b>	<b>amended by 25/2016 s 13(1), (2)</b>	<b>1.12.2016</b>
s 31A(2)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 31A(3)	amended by 23/2002 s 13 (Sch)	22.12.2002
	amended by 47/2013 s 9	17.5.2014
s 32	<i>deleted by 23/2002 s 13 (Sch)</i>	22.12.2002
s 33		
s 33(1) and (2)	amended by 23/2002 s 13 (Sch)	22.12.2002
s 33A	inserted by 27/1995 s 16	4.5.1995
<b>s 33A(1)</b>	<b>amended by 25/2016 s 14</b>	<b>1.12.2016</b>
s 34		



s 34(1)	s 34 redesignated as s 34(1) by 37/1979 s 18	15.3.1979
s 34(2) before deletion by 25/2016	inserted by 37/1979 s 18	15.3.1979
	amended by 23/2002 s 13 (Sch)	22.12.2002
s 34(2)	deleted by 25/2016 s 15	1.12.2016
Sch	deleted by 23/2002 s 13 (Sch)	22.12.2002

## Transitional etc provisions associated with Act or amendments

### *Legal Services Commission (Charges on Land) Amendment Act 2011, Sch 1—Transitional provision*

The amendments to the *Legal Services Commission Act 1977* effected by section 4 of this Act apply, after the commencement of section 4, in relation to charged land whether the charge was created before or after that commencement.

### *Legal Services Commission (Miscellaneous) Amendment Act 2016, Sch 1*

#### 1—Transitional provision

- (1) Despite any other provision of the principal Act, a member of the Commission, other than the Chairman or the Director of the Commission, holding office immediately before the relevant day will cease to hold office on the relevant day and any contract of employment, agreement or arrangement relating to the office held by that member is terminated by force of this clause at the same time (and no right of action will arise against a Minister or the State on account of that termination).
- (2) In this clause—

*principal Act* means the *Legal Services Commission Act 1977*;

*relevant day* means the day on which this clause comes into operation.

## Historical versions

Reprint No 1—1.10.1991

Reprint No 2—4.5.1995

Reprint No 3—30.12.2001

Reprint No 4—22.12.2002

31.10.2004

13.1.2005

2.4.2006

1.2.2010

27.10.2011

17.5.2014

1.7.2014

4.7.2016