

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

(Presented pursuant to leave granted and read 1^o, 14 May 1981)

(ATTORNEY-GENERAL, SENATOR DURACK)

No. 88

A BILL

FOR

An Act to amend the *Commonwealth Legal Aid Commission Act 1977*

5 BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Commonwealth Legal Aid Commission Amendment Act 1981*.

10 (2) The *Commonwealth Legal Aid Commission Act 1977*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.

Amendment of title

15 3. The title to the Principal Act is amended by omitting "Establish a Commonwealth Legal Aid Commission and for Related Purposes" and substituting "provide for the establishment of a Commonwealth Legal Aid Council, to provide for the transfer of certain Commonwealth employees to legal aid commissions of States and Territories, and for related purposes".

Short title

4. Section 1 of the Principal Act is amended by omitting “*Commission*”.

Interpretation

5. Section 3 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section: 5

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

‘appointed’ includes re-appointed;

‘Chairman’ means the Chairman of the Council;

‘Council’ means the Commonwealth Legal Aid Council established
under section 4; 10

‘Judge’ means a Judge of a federal court or of the Supreme Court
of a State or Territory;

‘legal aid commission’ means—

(a) in relation to a State—an authority established by or
under a law of the State for purposes that include the
provision of legal assistance in respect of Common-
wealth matters; and 15

(b) in relation to a Territory—an authority established
by or under a law of that Territory for the purpose of
providing legal assistance; 20

‘member of the Council’ includes the Chairman.”;

(b) by omitting sub-section (3); and

(c) by omitting from sub-section (4) “or financial” (wherever occurring).

6 Parts II and III of the Principal Act are repealed and the following
Parts are substituted: 25

**“PART II—ESTABLISHMENT AND FUNCTIONS OF
COMMONWEALTH LEGAL AID COUNCIL**

Establishment and constitution of Council

“4. (1) The Attorney-General may establish a Commonwealth Legal Aid
Council. 30

“(2) The Council shall consist of—

(a) a Chairman;

(b) 2 members appointed after consultation between the Attorney-General
and the Attorneys-General of the States in which legal aid commissions
have been established; 35

(c) a member appointed after consultation between the Attorney-General
and the Law Council of Australia;

- (d) a member appointed after consultation between the Attorney-General and the Australian Council of Social Service; and
- (e) 2 other members.

5 “(3) The Chairman and the other members of the Council shall be appointed by the Attorney-General to hold office on a part-time basis.

“(4) The performance of the functions, or the exercise of the powers, of the Council is not affected by reason of there being a vacancy or vacancies in the membership of the Council.

Functions of Council

10 “5. The functions of the Council are—

- (a) to ascertain, and keep under review, the extent of the need for legal assistance in Australia and, in particular, the need for legal assistance in respect of Commonwealth matters and to make recommendations from time to time to the Attorney-General as to the most effective, economical and desirable means of satisfying that need;
- 15 (b) to advise, and make recommendations to, the Attorney-General, either of its own motion or upon request made by the Attorney-General, concerning—
 - 20 (i) the provision by the Commonwealth of financial assistance in respect of the cost of providing legal assistance; and
 - (ii) the effectiveness of arrangements for the application of financial assistance provided by the Commonwealth in respect of the cost of providing legal assistance; and
- 25 (c) to advise, and make recommendations to, the Attorney-General, upon request made by the Attorney-General, concerning any other matter relating to the provision of legal assistance.

“PART III—ADMINISTRATIVE PROVISIONS RELATING TO COUNCIL

Tenure of office

30 “6. Subject to this Part, a member of the Council holds office for such period, not exceeding—

- (a) in the case of the Chairman—7 years; or
- (b) in the case of a member of the Council other than the Chairman—3 years,

35 as is specified in the instrument of his appointment, but is eligible for re-appointment.

Qualifications for appointment

“7. (1) A person is not eligible for appointment as Chairman unless—

- (a) he is or has been a Judge; or

- (b) he is enrolled as a barrister, as a solicitor, as a barrister and solicitor or as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory and has been so enrolled for a period of not less than 5 years.

“(2) A person is not eligible for appointment as a member of the Council other than the Chairman unless, in the opinion of the Attorney-General, the person is suitable for appointment as such a member by reason that he has qualifications or knowledge relating to, or has had experience relating to, the needs of persons requiring legal assistance. 5

Remuneration and allowances 10

“8. (1) A member of the Council shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

“(2) A member of the Council shall be paid such allowances as are prescribed. 15

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Resignation

“9. A member of the Council may resign his office by writing under his hand delivered to the Attorney-General. 20

Removal from office

“10. (1) The Attorney-General may remove a member of the Council from office for misbehaviour or physical or mental incapacity.

“(2) If a member of the Council—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or 25
- (b) is absent, except by leave of the Attorney-General, from 3 consecutive meetings of the Council,

the Attorney-General may remove him from office. 30

“(3) Where the Attorney-General is satisfied that a member of the Council has, without reasonable excuse, contravened or failed to comply with section 13, the Attorney-General shall remove that member of the Council from office.

“(4) Sub-sections (2) and (3) do not apply to the Chairman if he is a Judge, but, if the Chairman being a Judge ceases to be a Judge, the Attorney-General may remove him from office. 35

Acting Chairman

“11. (1) The Attorney-General may appoint a person (including a member of the Council) who is eligible for appointment as Chairman to act in the office of Chairman—

- 5 (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairman is, or is expected to be, absent from Australia, or is, for any other reason, unable to perform the duties of his office,
- 10 but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) A person acting in the office of Chairman holds office on such terms and conditions as the Attorney-General determines.

“(3) The Attorney-General may at any time terminate an appointment under this section.

“(4) Where a person is acting in accordance with paragraph (1) (b) and the office becomes vacant while the person is so acting, that person may continue so to act until the Attorney-General otherwise directs, the vacancy is filled or a period of 12 months elapses from the occurrence of the vacancy, whichever first happens.

“(5) A person appointed to act in the office of Chairman may resign his appointment by writing under his hand delivered to the Attorney-General.

“(6) The validity of anything done by a person acting in the office of Chairman shall not be called in question on the ground that the occasion for his appointment had not arisen or that the appointment has ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Meetings of Council

“12. (1) The Chairman or the Attorney-General may convene meetings of the Council.

30 “(2) The Council shall cause records to be kept of its meetings.

“(3) In this section, ‘Chairman’ includes a person acting in the office of Chairman.

Disclosure of interests by members of Council

35 “13. (1) A member of the Council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

“(2) A disclosure under sub-section (1) shall be recorded in the record of the meeting of the Council and the member of the Council shall not—

- (a) be present during any deliberation of the Council with respect to that matter; or
- (b) take part in any decision of the Council with respect to that matter. 5

“(3) In this section, ‘member of the Council’ includes a person acting in the office of Chairman.”.

Interpretation

7. Section 20 of the Principal Act is amended by omitting “an Ordinance” from paragraph (b) of the definition of “statutory office” and substituting “a law”. 10

Reports

8. Section 33 of the Principal Act is amended by omitting from sub-section (1) “Commission” (wherever occurring) and substituting “Council”.

NOTE

- 1. No. 80, 1977.



