



ANNO VICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1979

No. 37 of 1979

An Act to amend the Legal Services Commission Act, 1977.

[Assented to 15th March, 1979]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Legal Services Commission Act Amendment Act, 1979".

(2) The Legal Services Commission Act, 1977, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Legal Services Commission Act, 1977-1979".

Commence-
ment.

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

Amendment of
principal Act,
s. 5—
Interpretation.

3. Section 5 of the principal Act is amended by inserting after the definition of "the amended Act" the following definition:—

"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:.

Amendment of
principal Act,
s. 6—
Constitution
of Legal
Services
Commission.

4. Section 6 of the principal Act is amended—

(a) by striking out paragraph (f) of subsection (4) and the word "and" immediately preceding that paragraph and inserting in lieu thereof the following paragraphs:—

(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.;

and

(b) by inserting after subsection (4) the following subsection:—

(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 the 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.

5. Section 7 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

Amendment of principal Act, s. 7—
Terms and conditions of office.

(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.

6. Section 10 of the principal Act is amended—

Amendment of principal Act, s. 10—
Functions of the Commission.

(a) by inserting after the word “States” in paragraph (h) of subsection (1) the passage “and Territories”;

and

(b) by inserting after paragraph (h) of subsection (1) the following paragraphs:—

(ha) co-operate with the Legal Aid Commission of the Commonwealth and provide it with such statistical and other information as it may reasonably require;

(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;

7. Section 11 of the principal Act is amended—

Amendment of principal Act, s. 11—
Principles upon which Commission operates.

(a) by striking out from paragraph (c) the passage “take into account” and inserting in lieu thereof the passage “have regard to”;

and

(b) by striking out subparagraph (iv) of paragraph (d) and inserting in lieu thereof the following subparagraph:—

(iv) the desirability of enabling legal practitioners employed by the Commission to utilize and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work.

8. Section 15 of the principal Act is amended—

Amendment of principal Act, s. 15—
Employment of legal practitioners by the Commission.

(a) by striking out from subsection (3) the passage “subsection (4) of”;

and

(b) by inserting after subsection (4) the following subsections:—

(5) Where, in accordance with the terms of an agreement or arrangement between the State and the Commonwealth, a Commonwealth employee accepts before the appointed day an offer of employment with the Commission, that Commonwealth employee shall, on the appointed day, become an employee of the Commission.

(6) Where a Commonwealth employee becomes an employee of the Commission pursuant to subsection (5) of this section he shall, to the extent provided for under an agreement or arrangement between the State and the Commonwealth, retain his existing and accruing rights and for the purpose of determining those rights his service as a Commonwealth employee shall, to the extent and in the manner provided for under that agreement or arrangement, be taken into account as if it were service with the Commission.

(7) In this section—

“Commonwealth employee” means a person who—

(a) is employed on a permanent basis in the Australian Public Service constituted under the provisions of the *Public Service Act 1922-1975* of the Parliament of the Commonwealth;

and

(b) performs duties in the Australian Legal Aid Office in a position located in the State.

(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.

Amendment of
principal Act,
s. 17—
Application for
legal assistance.

9. Section 17 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “An application” and inserting in lieu thereof the passage “Subject to subsection (2) of this section, an application”;

and

(b) by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(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.

10. Section 19 of the principal Act is amended—

- (a) by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(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.;

and

- (b) by inserting after subsection (6) the following subsection:—

(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.

Amendment of principal Act, s. 19—

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

11. Section 23 of the principal Act is amended by inserting after the passage “as legal costs” in paragraph (c) of subsection (1) the passage “, or on account of legal costs,”.

Amendment of principal Act, s. 23—
The Legal Services Fund.

12. Section 24 of the principal Act is amended by inserting after the passage “any moneys” in subsection (3) the passage “required to satisfy any liability of the Treasurer”.

Amendment of principal Act, s. 24—
Power to borrow with approval of Treasurer.

13. Section 26 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 26 of principal Act and enactment of section in its place.

26. (1) The provisions of Divisions I and II of Part IV 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.

Manner in which Commission is to deal with trust moneys.

(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.

14. Section 27 of the principal Act is amended by striking out from subsection (2) the passage “, if made with the concurrence of the Commission,”.

Amendment of principal Act, s. 27—
Agreements between State and Commonwealth.

Amendment of
principal Act,
s. 28—
Remission
of fees.

15. Section 28 of the principal Act is amended—

(a) by striking out from subsection (2) the passage “the Commission, or”;

and

(b) by inserting after subsection (4) the following subsection:—

(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.

Repeal of
s. 29 of
principal Act
and enactment
of section in
its place.

Rights of
audience, etc.

16. Section 29 of the principal Act is repealed and the following section is enacted and inserted in its place:—

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 authorized 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.

Enactment of
s. 31a of
principal Act.

Secrecy.

17. The following section is enacted and inserted in the principal Act after section 31 thereof:—

31a. (1) This section applies—

(a) to every person who is or has been—

(i) a member of the Commission;

(ii) an employee of the Commission;

or

(iii) a member of any committee established by the Commission;

or

(b) a person who has been engaged in duties relating to the audit of the accounts of the Commission.

(2) A person to whom this Act applies shall not, either directly or indirectly, except for the purposes of this Act—

(a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person

acquired by him by reason of his office or employment under or for the purposes of this Act or in the performance of a function 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) Where a court or tribunal considers that it is necessary in the interests of justice that information be divulged or communicated, or a document produced, to the court or tribunal, it may exempt any person to whom this section applies from the provisions of subsection (2) of this section to such extent as is necessary to enable that person to divulge or communicate that information or to produce that document to the court or tribunal.

(4) This section does not affect any law or any rule of practice or procedure relating to the discovery of documents in a proceeding in respect of which legal assistance is provided to a person under this Act.

18. Section 34 of the principal Act is amended by inserting after the present contents (which are hereby designated subsection (1) thereof) the following subsection:—

Amendment of
principal Act,
s. 34—
Regulations.

(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.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor