



ANNO VICESIMO SEXTO

# ELIZABETHAE II REGINAE

A.D. 1977

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## No. 25 of 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.

[Assented to 12th May, 1977]

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

### PART I

### PART I

#### PRELIMINARY

1. This Act may be cited as the "Legal Services Commission Act, 1977". Short title.
  
2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.
  - (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.
  
3. This Act is arranged as follows:— Arrangement of Act.
  - PART I—PRELIMINARY
  - PART II—THE LEGAL SERVICES COMMISSION
  - PART III—DIRECTOR OF LEGAL SERVICES AND OTHER STAFF

## PART IV—LEGAL ASSISTANCE

## PART V—FINANCIAL PROVISIONS

## PART VI—MISCELLANEOUS

## SCHEDULE.

Repeal and  
transitional  
provision.

4. (1) The Acts referred to in Part I of the schedule to this Act are repealed.
- (2) The Acts referred to in Part II 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- (a) any order for assistance made by a judge under the repealed Act and in force immediately before the commencement of this Act, shall continue in force and be dealt with under the repealed Act in all respects as if this Act had not been enacted;
- (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 VI 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:
- “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:

“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:

“the statutory interest account” means the account entitled the ‘Statutory Interest Account’ maintained by the Law Society.

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## PART II

## PART II

## 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;

(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;

(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;

(b) one shall be a person appointed by the Governor on the nomination of the Attorney-General for the Commonwealth;

(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;

(d) three shall be persons appointed by the Governor on the nomination of the Attorney-General for the State;

(e) three shall be persons appointed by the Governor on the nomination of the Law Society;

and

(f) one shall be the Director.

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, except in the case of a member of the Commission appointed on the commencement of this Act who shall be appointed for a term not exceeding three years specified in the instrument of his appointment, and in either case a member 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;
- (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;
- (b) his term of office expires;
- (c) he resigns by written notice addressed to the Minister;
- (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.

8. (1) Five members of the Commission shall constitute a quorum of the Commission. Quorum, etc.

(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.

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

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

10. (1) The Commission shall—

- (a) establish an office to be called the “Legal Services Office”;
- (b) provide, or arrange for the provision of, legal assistance in accordance with this Act;

Functions of the Commission.

- (c) determine the criteria upon which legal assistance is to be granted in pursuance of this Act;
  - (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;
  - (e) establish such local offices and other facilities as the Commission considers necessary or desirable;
  - (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;
  - (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;
  - (h) co-operate and make reciprocal arrangements with persons administering schemes of legal assistance in other States of the Commonwealth or elsewhere;
  - (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;
  - (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 the 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) take into account the recommendations of any body established by the Commonwealth for the purpose of advising on matters pertaining to the provision of legal assistance;

(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 engage in the practice of the law as comprehensively as reasonably practicable.

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

Advisory and other committees.

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

Power of delegation.

- (a) the power to determine the criteria upon which legal assistance is to be granted;
- (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.

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PART III

## PART III

## 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) Subject to subsection (4) of this section, any such legal practitioner or other person shall be appointed, and shall hold office, upon terms and conditions determined by the Commission and approved by the Governor.

(4) Where a person who was, immediately before the commencement of this Act, a full-time officer or employee of the Law Society engaged in work related to the provision of legal assistance, becomes an officer or employee of the Commission immediately upon the commencement of this Act—

(a) he shall not thereby suffer any reduction in salary;

and

(b) his existing and accruing rights in respect of recreation leave, sick leave and long service leave shall continue in full force and effect as if that previous employment were employment with the Commission.

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## PART IV

## PART IV

## LEGAL ASSISTANCE

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.

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

17. (1) 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.

Application for legal assistance.

(2) The Director may, where he considers a matter to be of a minor nature, waive 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.

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.

Recovery of legal costs from assisted persons.

(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.

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 due to the legal practitioner and, in making that determination, shall have regard to the legal costs that would ordinarily have been recoverable by the legal practitioner in respect of the legal assistance provided by him if the assisted person had not been an assisted person.

(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.

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.

**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.

Duty to supply information.

(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.

**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,

Disclosure of information relating to 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 V

## PART V

## 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;

(b) all moneys paid to the Commission for the provision of legal assistance by the Government of the State or the Commonwealth;

(c) all moneys paid to, or recovered by, the Commission as legal costs for legal assistance;

(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 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 Com-  
mission is to  
deal with trust  
moneys.

26. The provisions of Division I and II of Part IV of the Legal Practitioners Act, 1936-1972, and of rules or regulations under those Divisions shall, with such modifications as may be prescribed, apply to the Commission in all respects as if the Commission were a legal practitioner.

## PART VI

## PART VI

## MISCELLANEOUS

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

Agreements  
between State  
and Common-  
wealth.

- (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, if made with the concurrence of the Commission, shall, to the extent that it involves matters within the purview of the Commission, be binding upon the Commission.

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.

Remission  
of fees.

(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 the Commission, or 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.

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

Right of  
audience.

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

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.

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

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

Proceedings.

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.

Annual report.

(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.

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

Regulations.

## THE SCHEDULE

## PART I

Poor Persons Legal Assistance Act, 1925

Poor Persons Legal Assistance Act Amendment Act, 1968

Poor Persons Legal Assistance Act Amendment Act, 1969

Act Affected	PART II How Amended	New Citation
Legal Practitioners Act, 1936-1972	<p>Section 3— By striking out from the item commencing "PART IV" the passage "Legal Assistance,".</p> <p>Section 6— By striking out the definition of "assisted person". By striking out the definition of "legal assistance". By striking out the definition of "the assistance fund".</p> <p>Heading to Part IV— By striking out the passage "LEGAL ASSISTANCE,".</p> <p>Section 24c— By striking out from subsection (5) the passage "assistance fund" and inserting in lieu thereof the passage "fund maintained by the Legal Services Commission".</p> <p>By striking out from subsection (6) the passage "assistance fund" and inserting in lieu thereof the passage "fund maintained by the Legal Services Commission".</p> <p>Sections 24e-24o (inclusive) and the heading thereto are repealed.</p> <p>Section 24p— By striking out from subsection (4) the passage "or the assistance fund".</p> <p>Section 24w— By striking out from subsection (1) the passage "from the assistance fund" and inserting in lieu thereof the passage "by way of legal assistance".</p> <p>Section 24y— By striking out from subsection (2) the passage ", the assistance fund".</p> <p>Section 24z— By striking out subparagraph (iii) and inserting in lieu thereof the following subparagraph:— (iii) the fund maintained by the Legal Services Commission; .</p> <p>Section 24za— By striking out from subsection (1) the passage ", the assistance fund". By striking out from subsection (2) the passage "the assistance fund,".</p> <p>Section 24zc— By striking out paragraph (c).</p> <p>Section 24zd— By striking out paragraphs (b) and (c).</p>	Legal Practitioners Act, 1936-1977
Local and District Criminal Courts Act Amendment Act, 1972	Section 40 is repealed.	
Statutes Amendment (Capital Punishment Abolition) Act, 1976	Sections 23 and 24 and the heading thereto are repealed	

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

W. R. CROCKER, Lieutenant-Governor