

**South Australia**



**ANNO QUINQUAGESIMO PRIMO  
ELIZABETHAE II REGINAE  
A.D. 2002**

**LEGAL SERVICES COMMISSION (MISCELLANEOUS)  
AMENDMENT ACT 2002**

**No. 23 of 2002**

**[Assented to 31 October 2002]**

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

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**SUMMARY OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of s. 6—Constitution of Legal Services Commission
4. Amendment of s. 10—Functions of Commission
5. Amendment of s. 11—Principles on which Commission operates
6. Substitution of s. 13
  13. Delegation
7. Insertion of s. 14A
  - 14A. Director's power of delegation
8. Amendment of s. 15—Employment of legal practitioners and other persons by Commission
9. Amendment of s. 17—Application for legal assistance
10. Amendment of s. 27—Agreements between State and Commonwealth
11. Substitution of s. 29
  29. Provision of legal assistance by Commission—miscellaneous
12. Amendment of s. 31—Discipline of legal practitioner employed by Commission
13. Statute law revision amendments

**SCHEDULE**

*Statute Law Revision Amendments of Principal Act*

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

**Short title**

1. (1) This Act may be cited as the *Legal Services Commission (Miscellaneous) Amendment Act 2002*.

(2) The *Legal Services Commission Act 1977* is referred to in this Act as "the principal Act".

**Commencement**

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

**Amendment of s. 6—Constitution of Legal Services Commission**

3. Section 6 of the principal Act is amended—

(a) by striking out paragraph (b) of subsection (4);

(b) by striking out subsection (5).

**Amendment of s. 10—Functions of Commission**

4. Section 10 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (1);

(b) by striking out from subsection (1)(e) "local";

(c) by striking out paragraph (ha) of subsection (1);

(d) by inserting after subsection (2) the following subsection:

(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.

**Amendment of s. 11—Principles on which Commission operates**

5. Section 11 of the principal Act is amended by striking out paragraph (c).

**Substitution of s. 13**

6. Section 13 of the principal Act is repealed and the following section is substituted:

**Delegation**

13. (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.

(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.

#### **Insertion of s. 14A**

7. The following section is inserted after section 14 of the principal Act:

##### **Director's power of delegation**

14A. (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.

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

8. Section 15 of the principal Act is amended by striking out subsection (8) and substituting the following subsection:

(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.

#### **Amendment of s. 17—Application for legal assistance**

9. Section 17 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(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.

**Amendment of s. 27—Agreements between State and Commonwealth**

10. Section 27 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

(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.

**Substitution of s. 29**

11. Section 29 of the principal Act is repealed and the following section is substituted:

**Provision of legal assistance by Commission—miscellaneous**

29. (1) For the purposes of providing legal assistance to a person under this Act, 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 legal practitioner employed by the Commission to provide legal assistance to the person; and
- (c) must supervise the provision of legal assistance to the person by the legal practitioner.

(2) The Director is responsible for ensuring the provision of legal assistance to assisted persons by legal practitioners employed by the Commission 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 legal practitioner employed (and 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.

**Amendment of s. 31—Discipline of legal practitioner employed by Commission**

12. Section 31 of the principal Act is amended by inserting in paragraph (a) "or unsatisfactory" after "unprofessional".

**Statute law revision amendments**

13. The principal Act is further amended in the manner set out in the Schedule.

## SCHEDULE

*Statute Law Revision Amendments of Principal Act*

Long title	Strike out "; to repeal the Poor Persons Legal Assistance Act 1925-1976; to amend the Legal Practitioners Act 1936-1972;".
Section 2	Strike out this section.
Section 3	Strike out this section.
Section 4	Strike out this section.
Section 5	
definition of "the amended Act"	Strike out this definition.
definition of "the appointed day"	Strike out this definition.
definition of "the repealed Act"	Strike out this definition.
Section 6(1)	Strike out this subsection and substitute: (1) The <i>Legal Services Commission</i> is established.
Section 6(2)	Strike out "shall be" and substitute "is".
Section 6(2)(a)	Strike out "shall have" and substitute "has".
Section 6(2)(b)	Strike out "shall be" and substitute "is".
Section 6(2)(c)	Strike out "shall be" and substitute "is".
Section 6(2)(d)	Strike out "shall have" and substitute "has".
Section 6(3)	Strike out "shall be" and substitute "is".
Section 6(4)	Strike out "shall consist" and substitute "consists".
Section 6(4)(a)	Strike out "shall" and substitute "will". Strike out "for the State".
Section 6(4)(c)	Strike out "shall be a". Strike out "for the State".
Section 6(4)(d)	Strike out "shall be". Strike out "for the State".
Section 6(4)(e)	Strike out "shall be".
Section 6(4)(f)	Strike out "shall be an".
Section 6(4)(g)	Strike out "one shall be".
Section 7(1)	Strike out "shall hold" and substitute "holds". Strike out "his" and substitute "a". Strike out "shall be" and substitute "is".

- Section 7(3) Strike out this subsection and substitute:  
(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).
- Section 7(4) Strike out this subsection and substitute:  
(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.
- Section 8(1) Strike out "shall".
- Section 8(1a) Strike out "shall".
- Section 8(2) Strike out "shall be" and substitute "is".
- Section 8(3) Strike out "shall be" first occurring and substitute "is".  
Strike out "shall be entitled to" and substitute "has".
- Section 8(4) Strike out "shall" (twice occurring) and substitute, in each case, "will".  
After "he" insert "or she".
- Section 8(5) Strike out this subsection and substitute:  
(5) Subject to this Act, the Commission may conduct its business in a manner determined by the Commission.
- Section 9 Strike out "shall be" and substitute "is".
- Section 9A(1)(a) Strike out "shall" and substitute "must".  
Strike out "he" and substitute "the member".  
Strike out "his" and substitute "the".
- Section 9A(1)(b) Strike out "shall" and substitute "must".
- Section 9A(1) Strike out the penalty provision and substitute:  
Maximum penalty: \$1 250.
- Section 9A(2) Strike out "shall" and substitute "must".
- Section 9A(3) Strike out "Notwithstanding" and substitute "Despite".
- Section 9A(4)(b) Strike out "shall not be" and substitute "is not".
- Section 10(1) Strike out "shall" and substitute "will".
- Section 10(1)(c) Strike out this paragraph and substitute:  
(c) determine the criteria under which the legal assistance is to be granted; and.



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SCHEDULE

Section 10(2)	Strike out "upon" and substitute "under". Strike out "in pursuance of" and substitute "under". Strike out "shall" and substitute "must".
Section 10(2)(a)	Strike out "in pursuance of this Act".
Section 10(2)(b)	Strike out "of this subsection".
Section 11	Strike out "shall" and substitute "must".
Section 11(a)	Strike out "insure" and substitute "ensure".
Section 14(1)	Strike out "shall" and substitute "will".
Section 14(2) and (3)	Strike out these subsections and substitute: (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.
Section 14(4)	Strike out "shall be" and substitute "is".
Section 16	Strike out "shall" and substitute "will".
Section 17(2)	Strike out "of this section" twice occurring.
Section 17(3)	Strike out "shall" and substitute "must". Strike out "he" and substitute "the Director".
Section 17(4)	Strike out "after he receives notice of the decision of the Director upon the application" and substitute "after receiving notice of the Director's decision".
Section 17(5)	Strike out "upon" twice occurring and substitute, in each case, "on".
Section 17(6)(a)	Strike out "he receives" and substitute "receiving". Strike out "of this section".
Section 17(6)(b)	Strike out "he receives" and substitute "receiving". Strike out "upon" and substitute "on".
Section 17(7)	Strike out "Upon" and substitute "On". Strike out "of this section".
Section 18(1)	Strike out "shall" and substitute "must". Strike out "upon" and substitute "on".
Section 18(2)	Strike out "shall" and substitute "must". Strike out "him" and substitute "the assisted person".
Section 18(3)	Strike out "he receives" and substitute "receiving". Strike out "of this section".
Section 18(4)	Strike out "Upon" and substitute "On". Strike out "of this section".
Section 18(5)	Strike out "shall, in the absence of proof to the contrary, be" and substitute "is, in the absence of proof to the contrary,".
Section 19(1)	Strike out "shall" and substitute "must".
Section 19(2)	Strike out "shall" and substitute "will".
Section 19(3)	Strike out "he receives" and substitute "receiving".
Section 19(4)	Strike out "Upon" and substitute "On". Strike out "of this section".

Section 19(5)	Strike out "shall" and substitute "must".
Section 19(6)	Strike out "paragraph (a) of subsection (5) of this section" and substitute "subsection (5)(a)". Strike out "paragraph (b) of that subsection" and substitute "subsection (5)(b)".
Section 19(7)	Strike out "the foregoing provisions of this section" and substitute "subsection (5)". Strike out "upon" and substitute "on".
Section 20(1)	Strike out "shall" and substitute "may". Strike out "thereby" and substitute "for that reason".
Section 20(2)	Strike out "shall be" (first occurring) and substitute "is". Strike out "shall" (second occurring) and substitute "must".
Section 20(3)	Strike out "shall" and substitute "will".
Section 21(1)	Strike out this subsection and substitute: (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.
Section 21(2)	Strike out "of this section".
Section 22(1)(a)	Strike out "shall" and substitute "must".
Section 22(1)(b)	Strike out "he" and substitute "the practitioner".
Section 22(1)	Strike out "shall be deemed" and substitute "will be taken".
Section 22(2)	Strike out "of this section". Strike out "therefrom" and substitute "from the relationship". Strike out "he" and substitute "the practitioner".
Section 23(1)	Strike out this subsection and substitute: (1) The <i>Legal Services Fund</i> is established.
Section 23(2)	Strike out "shall consist" and substitute "consists".
Section 23(2)	Strike out "moneys" (wherever occurring) and substitute, in each case, "money".
Section 23(3)	Strike out "shall" and substitute "will".
Section 23(4)	Strike out "moneys" and substitute "money".
Section 24	Strike out "moneys" (wherever occurring) and substitute, in each case, "money".
Section 24(2)	Strike out "of this section". Strike out "hereby".
Section 24(3)	Strike out "general revenue of the State" and substitute "Consolidated Account".
Section 25(1)	Strike out "shall" and substitute "must".
Section 25(2)	Strike out this subsection.

