



Australian Capital Territory

# **Legal Aid Act 1977**

**A1977-31**

**Republication No 23**

**Effective: 25 February 2011 – 20 September 2011**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Legal Aid Act 1977* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 25 February 2011. It also includes any commencement, amendment, repeal or expiry affecting the republished law to 25 February 2011.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Legal Aid Act 1977

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Australian Capital Territory

## Legal Aid Act 1977

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An Act relating to the provision of legal aid

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Legal Aid Act 1977*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*statutory interest account*—see the *Legal Profession Act 2006*, section 253.' means that the term 'statutory interest account' is defined in the section and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.



- (4) The Minister must present a copy of a direction under subsection (3) (a), together with a copy of the relevant funding agreement, to the Legislative Assembly no later than 15 sitting days after the day on which the direction is issued.

### **8A Funding agreements—application of Act**

- (1) If the Minister issues a direction under section 8 (3) (a), this Act applies in relation to the provision of legal assistance in a matter to which the relevant funding agreement applies, subject to subsection (2).
- (2) The following provisions of this Act apply, in relation to the provision of legal assistance in a matter to which a funding agreement applies, only to the extent to which the provisions are not inconsistent with the funding agreement:
  - (a) section 10 (1) (g) (Duties of commission);
  - (b) section 11 (Guidelines for allocation of work);
  - (c) section 12 (Guidelines for provision of assistance);
  - (d) part 5 (Provision of legal assistance by commission);
  - (e) part 6 (Reconsideration and review of decisions).

### **9 Powers of commission**

- (1) If the commission provides legal assistance by making available the services of officers of the commission, the commission shall pay any disbursements (including barristers' fees) and out-of-pocket expenses incurred in the course of providing that assistance.
- (2) If the commission provides legal assistance by arranging for the services of private legal practitioners, the commission shall, except if the services are provided on a voluntary basis, pay fees to those private legal practitioners for the performance of those services (being fees determined by the commission in accordance with section 31C (1) and (2)) and shall pay any disbursements (including

barristers' fees) and out-of-pocket expenses properly incurred by them.

- (3) The commission may accept money or other property on trust and may act as trustee of money or other property held by the commission on trust.
- (4) Notwithstanding anything contained in any other provision of this Act, but subject to subsection (6), any money or other property held by the commission on trust shall be dealt with in accordance with the functions of the commission as trustee under the *Trustee Act 1925*.
- (5) The provisions of the *Legal Profession Act 2006* about the keeping of accounts by solicitors in relation to money held by them on trust, and the audit of the accounts, do not apply in relation to money held by the commission on trust.
- (6) A regulation may make provision in relation to—
  - (a) the application to the commission, with any changes prescribed by regulation, of regulations made for the *Legal Profession Act 2006*, section 253 (Statutory deposits); and
  - (b) the investment by the commission of any amount held on trust by the commission.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def of *entity*).

## 10 Duties of commission

- (1) In the exercise of its functions, the commission shall—
  - (a) ensure that legal assistance is provided in the most effective, efficient and economical manner; and
  - (b) ensure that its activities are carried on consistently with, and do not prejudice, the independence of the private legal profession; and

- (c) liaise and cooperate with and, if the commission considers it desirable to do so, make reciprocal arrangements with, other legal aid commissions, professional bodies representing private legal practitioners and other bodies engaged or interested in the provision of legal assistance in the ACT or elsewhere; and
- (d) liaise with professional bodies representing private legal practitioners in order to facilitate the use, in appropriate circumstances, of services provided by private legal practitioners; and
- (e) make maximum use of services which private legal practitioners offer to provide on a voluntary basis; and
- (f) make the services of the commission available to people eligible for legal assistance by establishing such local offices as it considers appropriate and by making such other arrangements as it considers appropriate; and
- (g) determine priorities in the provision of legal assistance as between different classes of people or classes of matters; and
- (h) arrange for the provision of duty lawyer services at sittings in the ACT of such courts and tribunals as the commission considers appropriate; and
- (i) endeavour to secure the services of language interpreters, relationship counsellors, welfare officers and other appropriate people to assist legally assisted people in connection with matters in respect of which they are provided with legal assistance; and
- (j) encourage and permit law students to participate, so far as the commission considers it practicable and proper to do so, on a voluntary basis, under professional supervision, in the provision of legal assistance by officers of the commission.

- (2) The commission shall—
- (a) make recommendations to the Minister with respect to any reforms of the law the desirability for which has come to its attention in the course of the exercise of its functions; and
  - (b) initiate and carry out educational programs designed to promote an understanding by the public, and by sections of the public who have special needs in this respect, of their rights, powers, privileges and duties under the law in force in the ACT.
- (3) In the exercise of its functions, the commission shall have regard to the amount of money for the time being standing to the credit of the fund and of any money likely to be received by the commission for the purposes of the fund.

## **11 Guidelines for allocation of work**

The commission shall determine guidelines for the allocation of work between officers of the commission and private legal practitioners having regard to the following considerations:

- (a) the need for legal services to be readily available and easily accessible to disadvantaged people;
- (b) the need to make the most efficient use of the money available to the commission;
- (c) the desirability of enabling a legally assisted person to obtain the services of the legal practitioner of his or her choice;
- (d) the desirability of maintaining the independence of the private legal profession;
- (e) the desirability of enabling officers of the commission to utilise and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work.

**12 Guidelines for provision of assistance**

The Commission shall determine, and make known to the public, guidelines to be applied—

- (a) in the application of section 28 for the purposes of determining whether legal assistance may be provided to a person under this Act; and
- (b) in deciding the nature and extent of the legal assistance to be given in relation to a matter or proceeding or any part of a matter or proceeding; and
- (c) in determining whether the granting of legal assistance to a person will be subject to any of the conditions mentioned in section 31 (1); and
- (d) in determining the extent (if any) to which the commission will pay costs awarded against a legally assisted person in any proceeding; and
- (e) in determining the amount of costs or disbursements that will be required to be paid to the commission under section 33 by a legally assisted person who has been successful in the proceeding in respect of which the legal assistance was provided.

**13 Professional conduct by officers of commission**

- (1) An officer of the commission, when practising as, or exercising any of the functions of, a solicitor, or exercising a right of audience in a court or before a tribunal, under this Act—
  - (a) shall observe the same rules and standards of professional conduct and ethics as those that a private legal practitioner is, by law or the custom of the legal profession, required to observe in the practice of his or her profession; and



- (b) is subject to the same professional duties as those to which a private legal practitioner is subject, by law or the custom of the legal profession, in the practice of his or her profession.
- (2) Subject to section 92AA, the like privileges as those that arise from the relationship of client and solicitor acting in his or her professional capacity and in the course of his or her professional employment shall arise between a person who has applied for legal assistance, or to whom legal assistance is being provided, under this Act and a statutory officer of the commission who practises as, or exercises any of the functions of, a solicitor for the person under this Act.
- (3) For the application of subsection (1) in respect of an officer of the commission who is practising as, or exercising any of the functions of, a solicitor, or is exercising a right of audience in a court or before a tribunal, in the ACT on behalf of a legally assisted person—
- (a) if there are no assistant executive officers—
- (i) the chief executive officer shall be deemed to be a solicitor lawfully practising on his or her own account in the ACT and retained by the person to act on his or her behalf; and
- (ii) the members of the staff of the commission shall be deemed to be employed by the chief executive officer; or
- (b) if there is an assistant executive officer or there are assistant executive officers—
- (i) the chief executive officer and the assistant executive officer or assistant executive officers shall be deemed to be a firm of solicitors lawfully practising in partnership in the ACT and retained by the person to act on his or her behalf; and

**Part 2** Establishment and functions of legal aid commission

Section 13

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- (ii) the members of the staff of the commission shall be deemed to be employed by that firm.

## Part 3 Board of commission

### 14 Establishment of board of commission

A board of the commission is established.

### 15 Functions of board

The functions of the board are—

- (a) to determine the broad policies, priorities and strategies of the commission for the provision of legal assistance under this Act; and
- (b) to ensure that the commission's affairs are managed in accordance with this Act.

### 16 Constitution of board

- (1) The board consists of the following members (each of whom is a *commissioner*):
  - (a) the president of the commission;
  - (b) the chief executive officer;
  - (c) 5 other members of whom—
    - (i) 1 member represents the Minister; and
    - (ii) 1 member is chosen from a panel of not less than 3 people nominated by the council of the bar association; and
    - (iii) 1 member is chosen from a panel of not less than 3 people nominated by the council of the law society; and
    - (iv) 1 member is chosen from a panel of not less than 3 people nominated by the executive committee of the Council of Social Service of the Australian Capital Territory; and
    - (v) 1 member has expertise in financial management;

(d) 1 member who has qualifications, training or experience that will enable the member to give other specialist assistance to the commission in the exercise of its functions.

(2) The Minister must appoint the members of the board other than the chief executive officer.

(3) However, the Minister must only appoint a member mentioned in subsection (1) (d) if, in the opinion of the Minister, the commission requires specialist assistance in the exercise of its functions.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

*Note 3* Certain Ministerial appointments require consultation with a Legislative Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

(4) A person appointed as a member by the Minister is appointed on a part-time basis.

## Part 4 Officers of commission

### 17 Chief executive officer and assistant executive officers

- (1) There shall be a Chief Executive Officer of the commission who shall be charged with the management of the operations and affairs of the commission.

- (2) The commission must appoint a chief executive officer.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

- (3) The commission may appoint such assistant executive officers of the commission as it considers necessary to assist the chief executive officer in the exercise of the functions of the chief executive officer under this Act.

### 18 Qualifications for appointment

A person is not eligible for appointment as a statutory officer of the commission unless he or she is a legal practitioner who holds a current unrestricted practising certificate granted under the *Legal Profession Act 2006*.

### 19 Duties of assistant executive officers

An assistant executive officer must act in accordance with the chief executive officer's directions in relation to the management of the operations or affairs of the commission.

### 19A Statutory officers of the commission to give reports

A statutory officer of the commission must, if requested by the commission, give a report in writing to the commission about—

- (a) the exercise of the officer's functions under this Act; or
- (b) the policy the officer is pursuing, or proposes to pursue, in relation to the functions.

**19B Statutory officers of the commission to follow directions**

- (1) The commission may issue directions to a statutory officer of the commission in relation to—
  - (a) the exercise of the officer's functions under this Act; or
  - (b) the policy the officer is pursuing, or proposes to pursue, in relation to the functions.
- (2) A statutory officer of the commission who is given a direction under subsection (1) must comply with the direction.

**20 Staff of commission**

- (1) The commission may employ as members of the staff of the commission such people as it considers necessary to enable it to properly exercise its functions.
- (2) The commission, if it is practicable to do so, shall make reciprocal arrangements with other legal aid commissions for the purpose of facilitating the transfer of staff between the commission and any of those other legal aid commissions.

**21 Delegation**

The chief executive officer may delegate the chief executive officer's functions to another officer of the commission.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

**22 Rights of officers of commission in relation to legal practice**

- (1) A statutory officer of the commission shall not exercise any functions under this Act unless he or she holds a current unrestricted practising certificate.
- (2) A member of the staff of the commission shall not exercise any functions of a solicitor under this Act unless he or she holds a current practising certificate.
- (3) Subject to subsection (10), a statutory officer of the commission who holds a current unrestricted practising certificate is entitled to practise as a solicitor, and to exercise the functions of a solicitor, in the ACT and in any court of the Territory and has a right of audience in any court of the Territory.
- (4) Subject to subsection (10), a member of the staff of the commission who holds a current practising certificate has such rights to practise as a solicitor, and such rights to exercise the functions of a solicitor, in the ACT, and such rights of audience in any court of the Territory, as he or she would have if the chief executive officer were a solicitor lawfully practising on his or her own account in the ACT and the member of the staff were employed by that solicitor.
- (5) An officer of the commission who is a legal practitioner is entitled to practise as a barrister, and to exercise the functions of a barrister, in the ACT and in any court of the Territory.

- (6) In practising as a solicitor or exercising any of the functions of a solicitor under this section—
- (a) a statutory officer of the commission has all the rights and privileges of a solicitor practising on his or her own account; and
  - (b) a member of the staff of the commission has all the rights and privileges of a solicitor employed by a person practising as a solicitor on his or her own account.
- (7) In appearing in a proceeding in a court or before a tribunal, an officer of the commission has the same protection and immunity as a barrister has in appearing for a party in a proceeding in that court or before that tribunal if the officer is appearing for—
- (a) a legally assisted person; or
  - (b) a person to whom legal assistance is provided other than under this Act.
- (8) Subsections (1) to (7) have effect only for the purposes of the exercise by the commission of its functions.
- (9) Nothing in this section affects any right to practise as a solicitor or exercise the functions of a solicitor, or any right of audience in a court or before a tribunal, that an officer of the commission has apart from this section.
- (10) To remove any doubt, the *Legal Profession Act 2006*, chapter 4 (Complaints and discipline) applies to officers of the commission who are Australian legal practitioners within the meaning of that Act in the same way as it applies to other people who are Australian legal practitioners within the meaning of that Act.



**23 Legal practitioner on record**

If—

- (a) in any proceeding, a document is required or permitted to be signed by a legal practitioner for a party to the proceeding who is a legally assisted person; and
- (b) legal services are being provided to the legally assisted person in relation to the proceeding by an officer of the commission;

the signature of the chief executive officer, or of an officer of the commission authorised in writing by the chief executive officer to sign documents on behalf of the chief executive officer for this section, shall be deemed to be the signature of a legal practitioner for that party.

## **Part 5 Provision of legal assistance by commission**

### **24 Bringing services of commission to public notice**

The commission may, by public advertisement or otherwise, bring the services made available by the commission to the attention of the public and any officer of the commission may, in the course of the exercise of his or her functions, bring those services to the attention of the public or to the attention of particular people.

### **25 Application for legal assistance**

- (1) An application for legal assistance must be made in writing.

*Note* If a form is approved under s 99 for this provision, the form must be used (but see s (2)).

- (2) However, subsection (1) does not apply to legal assistance consisting of—
- (a) legal advice; or
  - (b) duty lawyer services; or
  - (c) minor legal assistance.
- (3) The commission may, in special circumstances, treat an application that is not in the form approved under section 99 (Approved forms) as having been properly made.
- (4) An applicant for legal assistance to which subsection (1) applies shall furnish to the commission such declarations, certificates and other documents as the commission requires for the purpose of enabling a decision to be made as to whether legal assistance should be granted in respect of the application.

- (5) If legal advice is being provided to a person under this Act and it appears to an officer of the commission that the legal advice required by the person is likely to be of a substantial or continuing nature, the officer may require the person to make an application for legal assistance in accordance with subsections (1) and (4) and, if such a requirement is made, those subsections and section 28 (1), (3) and (4), section 31 and section 35 (2) apply in relation to the application.
- (6) The commission may distribute to private legal practitioners application forms for completion by people wishing to apply for legal assistance.

## **26 Deciding applications for legal assistance**

- (1) Each application for legal assistance must be decided by—
  - (a) the chief executive officer; or
  - (b) an officer of the commission authorised by the chief executive officer; or
  - (c) if a direction under subsection (3) applies to the application—the commission.
- (2) Each application must be decided in accordance with this Act and, in particular—
  - (a) any direction by the Minister under section 8 to apply a funding agreement; and
  - (b) any guidelines by the commission under section 12; and
  - (c) the priorities decided under section 10 (1) (g).

*Note* Section 28 provides for circumstances in which legal assistance may be provided.

- (3) The commission must give, and make known to the public, directions about the particular kinds of application that must be decided by the commission.

- (4) For subsection (1), the decision maker may make any inquiries and obtain any reports and advice (including the opinion of counsel) that the decision maker considers appropriate.
- (5) The cost of making inquiries or obtaining reports or advice under subsection (4) is payable—
  - (a) if the decision maker under subsection (1) decides that the cost should be paid by the applicant—by the applicant; or
  - (b) in any other case—out of the fund.
- (6) If the application is approved, the decision maker must also decide, in accordance with guidelines under section 11 (Guidelines for allocation of work) and section 12 (Guidelines for provision of assistance)—
  - (a) whether the assistance is to be given by an officer of the commission or a private legal practitioner; and
  - (b) the nature and extent of the assistance to be given; and
  - (c) whether the assistance is to be given free, or on any of the conditions mentioned in section 31 (1) (Contribution towards costs and expenses).

## **27 Ending or changing legal assistance**

The decision maker under section 26 may, in relation to approved legal assistance—

- (a) end the assistance; or
- (b) change the nature or extent of the assistance; or
- (c) impose a condition under section 31 (1) (Contribution towards costs and expenses) on the giving of further assistance; or
- (d) change a condition imposed under section 31 (1) on the giving of further assistance.

**28 Circumstances in which legal assistance may be provided**

- (1) Subject to this section, and section 28A, legal assistance may be provided to a person under this Act only if—
  - (a) the person is in need of that legal assistance because the person cannot afford the cost of obtaining the assistance from private legal practitioners; and
  - (b) it is reasonable in all the circumstances to provide the legal assistance.
- (2) However, subsection (1) does not apply to legal assistance consisting of—
  - (a) legal advice; or
  - (b) duty lawyer services; or
  - (c) minor legal assistance.
- (3) In the making of a decision whether a person is in need of legal assistance by reason that he or she is unable to afford the cost of obtaining from private legal practitioners the legal services in respect of which the legal assistance is sought, regard shall be had to all relevant matters, including the following matters:
  - (a) the income of the person;
  - (b) the cash that is readily available to the person or can be made so available;
  - (c) the debts, liabilities and other financial obligations of the person;
  - (d) the cost of living;
  - (e) the cost of obtaining the legal services from private legal practitioners;

- (f) any other matter affecting the ability of the person to meet the cost of obtaining the legal services from private legal practitioners.
- (4) In the making of a decision whether it is reasonable in all the circumstances to provide legal assistance to a person, regard shall be had to all relevant matters, including—
  - (a) the nature and extent of any benefit that may accrue to the person, to the public or to any section of the public from the provision of the assistance or of any detriment that may be suffered by the person, by the public or by any section of the public if the assistance is not provided; and
  - (b) in the case of assistance in relation to a proceeding in a court or before a tribunal—whether the proceeding is likely to terminate in a manner favourable to the person.
- (5) Legal assistance shall not be provided under this Act to a person who is not ordinarily resident in the ACT unless the assistance relates to—
  - (a) a proceeding in a court, or before a tribunal, in the ACT; or
  - (b) a matter arising under the law in force in the ACT.
- (6) Legal assistance shall not be provided under this Act to a person in or in connection with a review by a review committee under part 6.
- (7) Legal assistance may be provided under this Act to a body corporate in special circumstances determined by the commission, but not otherwise.

**28A Legal assistance under the convention**

- (1) A person is entitled to legal assistance if—
  - (a) the person applies for legal assistance to obtain recognition or enforcement of a decision given in a proceeding in a contracting state in accordance with the convention; and

(b) the chief executive officer is satisfied that the person has received legal aid in accordance with the convention, article 1 for the proceeding.

(2) In this section:

*the convention* means the Convention on International Access to Justice adopted by the Fourteenth Session of the Hague Conference on Private International Law and signed at the Hague on 25 October 1980.

## **29 Legal assistance—interests adverse to Territory**

Legal assistance may be provided under this Act (including legal assistance provided by making available the services of officers of the commission) to a person in relation to any proceeding or matter notwithstanding that the interests of that person are, or may be, adverse to the interests of the Territory, the interests of an authority or body established for a public purpose by or under a Territory law or the interests of an incorporated company in which the Territory or such an authority or body has an interest.

## **30 Legal advice and duty lawyer services**

(1) Legal assistance provided under this Act, being legal assistance consisting of—

(a) legal advice, other than legal advice mentioned in section 25 (5); or

(b) the provision of duty lawyer services;

shall, subject to subsection (2), be provided without charge.

(2) In special circumstances determined by the commission, legal assistance to which subsection (1) applies may be provided subject to a condition that the person to whom the legal assistance is to be provided pays to the commission a fixed charge determined by the commission.

- (3) In special circumstances determined by the commission, legal assistance mentioned in subsection (1) shall not be provided to a person.

### **30A Minor legal assistance**

- (1) The commission may provide minor legal assistance to a person in accordance with guidelines under section 12.

**Example of minor legal assistance**

assistance with writing a letter or the completion of a form

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Minor legal assistance may be given subject to any of the following conditions:
- (a) that the person pays to the commission a contribution of a stated amount towards the cost to the commission of providing the assistance;
  - (b) that the person makes a payment or payments to the commission in relation to any out-of-pocket expenses incurred, or to be incurred, by the commission in providing the assistance.

### **31 Contribution towards costs and expenses**

- (1) The granting under this Act of an application by a person for legal assistance, other than legal assistance to which section 30 (1) applies, may be on the basis that the assistance will be provided without charge or may be subject to all or any of the following conditions:
- (a) a condition that the person pays to the commission a contribution of an amount towards the cost to the commission of providing the assistance;



- (b) a condition that the person makes a payment or payments to the commission in respect of any out-of-pocket expenses incurred, or to be incurred, by the commission in providing the assistance;
  - (c) a condition that the payment of an amount required to be paid by the person under this subsection, together with interest, be secured by a charge under section 31A on land of the person.
- (2) An amount required to be paid by a legally assisted person under this section—
- (a) may be varied by the commission after the grant of assistance because of a change to a relevant matter; and
- Note* Section 28 (3) mentions matters that may be considered relevant by the commission.
- (b) must be paid in the way that the commission directs.
- (3) A direction under subsection (2) (b) may require that an amount be paid to the commission by the legally assisted person's private legal practitioner out of money recoverable on behalf of the person.
- (4) If a person who is or has been a legally assisted person has not paid an amount payable by him or her to the commission under this section, the amount is recoverable by the commission by action in a court of competent jurisdiction as a debt due and payable to the commission.
- (5) If—
- (a) the commission has directed that an amount be paid by the legally assisted person's private legal practitioner to the commission out of money recoverable by the practitioner on behalf of the person; and
  - (b) the commission has notified the practitioner of its direction; and

(c) the practitioner recovers an amount on behalf of the legally assisted person;

the practitioner shall pay to the commission—

(d) if the amount recovered is less than the amount referred to in paragraph (a)—an amount equal to the amount recovered; or

(e) in any other case—an amount equal to the amount referred to in paragraph (a).

(6) An amount payable by a private legal practitioner under subsection (5) is a debt due and payable to the commission by the practitioner and recoverable in a court of competent jurisdiction.

(7) An amount paid by or recovered from a legally assisted person's private legal practitioner under this section shall be taken, for subsection (4), to have been paid by the legally assisted person.

### **31A Security for payment of contribution**

(1) If the provision of legal assistance is subject to the condition mentioned in section 31 (1) (c), the chief executive officer may lodge with the registrar-general for registration a notice certifying that an amount payable to the commission under section 31 is a charge on land stated in the notice.

(2) An amount payable to the commission by a person in respect of whose land a notice under subsection (1) has been registered is a charge on the land.

(3) The registrar-general shall register a notice under subsection (1).

(4) The chief executive officer shall notify the assisted person in writing of the lodgment of a notice under subsection (1).

(5) The *Land Titles Act 1925*, section 48 (2) does not apply to a notice under subsection (1).

- (6) Subject to subsection (7), the commission has the same power of sale over the land charged as a mortgagee who, under the *Land Titles Act 1925*, section 94, is entitled to sell the estate and interest of the mortgagor.
- (7) The commission may not exercise its power of sale under subsection (6) unless—
- (a) if the commission has issued a direction under section 31 (2)—the legally assisted person is in breach of that direction; and
  - (b) at least 1 year before exercising the power the commission has served on the legally assisted person a notice that—
    - (i) states the amount then due to the commission by the person; and
    - (ii) demands payment of the amount payable to the commission by the person; and
    - (iii) states that, unless that amount, together with interest until the day of payment, is paid, the commission may exercise its power of sale under the charge at the expiration of the period of 12 months after the date of service of the notice; and
  - (c) at least 2 months before exercising the power the commission has served on the legally assisted person and every other person who appears to have an interest in the land a notice that states—
    - (i) the amount then due to the commission by the legally assisted person; and
    - (ii) that, unless that amount together with interest is paid within the period of 2 months after the date of service of the notice, the commission may exercise its power of sale.

- (8) If—
- (a) an amount equal to the amount secured by a charge under this section is paid; or
  - (b) the commission has exercised its power of sale under subsection (6); or
  - (c) the commission determines that the charge is no longer required;

the chief executive officer shall lodge with the registrar-general a notice discharging the land from any amount due to the commission and notify the legally assisted person that he or she has done so.

- (9) On the lodgment of a notice under subsection (8) the registrar-general shall make an entry in the register noting that the land is discharged.
- (10) In this section:  
*proprietor*—see the *Land Titles Act 1925*, dictionary.

### **31B Arranging for services of private legal practitioners**

- (1) If the commission provides legal assistance to a person by arranging for the services of a private legal practitioner, the commission may only select a practitioner who is included in a panel established under section 31E(1) (a *listed practitioner*) to provide that assistance.
- (2) In selecting a listed practitioner to act for a legally assisted person, the principal considerations that the commission must take into account are the interests of the person and the person's preference (if any) for a particular listed practitioner.
- (3) The commission must, after taking into account the considerations mentioned in subsection (2), ensure that selection of a listed practitioner to provide legal assistance is made as equitably as possible having regard to—

- (a) the nature of the listed practitioner's legal practice; and
- (b) the practitioner's experience.

### **31C Fees for services of private legal practitioners**

- (1) The fees the commission pays for services provided by private legal practitioners to legally assisted people must as far as practicable—
  - (a) consist of fixed amounts for the performance of particular services; and
  - (b) be less than the ordinary professional cost of those services.
- (2) However, the commission must consult, and take into account the views of, the following bodies when determining the fees it will pay for services provided by private legal practitioners to legally assisted people:
  - (a) the council of the law society;
  - (b) the council of the bar association.

### **31D Record of services provided by private legal practitioners**

The commission must—

- (a) keep a record of the number and type of matters in which private legal practitioners provide services to legally assisted people under this Act; and
- (b) make the record available for inspection on request by the law society or bar association.

### **31E Panels of private legal practitioners**

- (1) The commission may establish panels of private legal practitioners to provide legal assistance in accordance with the commission's function under section 8 (2).

- (2) A panel may be established for matters generally, or particular kinds of matter, or matters before particular courts or tribunals, for which legal assistance may be granted under this Act.
- (3) A practitioner who wishes to be included in a panel established under this section must apply to the commission in a way approved by the commission.
- (4) The commission may—
  - (a) appoint practitioners to a panel in accordance with the criteria determined under subsection (5); and
  - (b) suspend, remove or exclude practitioners from a panel on the grounds determined under subsection (7) (b); and
  - (c) impose conditions on the reappointment of a practitioner who has been suspended, removed or excluded, which in the opinion of the commission are:
    - (i) appropriate under the circumstances; and
    - (ii) in keeping with the requirements determined under subsection (7) (c).
- (5) The commission may determine criteria for the appointment of practitioners to a panel.
- (6) Without limiting subsection (5), the criteria may include criteria about any of the following matters:
  - (a) a practitioner's skills, qualifications and experience;
  - (b) a practitioner's agreement to comply with the requirements stated by the commission in relation to any of the following:
    - (i) practice standards;
    - (ii) reporting and accountability;
    - (iii) compliance audits.

- (7) The commission may determine the following:
- (a) the period for which practitioners are appointed to a panel;
  - (b) the grounds on which a practitioner may be suspended, removed or excluded from a panel;
  - (c) the requirements, if any, for reappointment of a practitioner to a panel.
- (8) A determination by the commission under this section is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

### **31F Compliance audits**

- (1) The commission may, at any time, perform an audit (a *compliance audit*) of legal assistance provided by a private legal practitioner.
- (2) A compliance audit must not be performed unless the commission has given the practitioner written notice of—
- (a) the commission's intention to carry out the audit; and
  - (b) the scope of the audit.

### **32 Notice to practitioner about proposed decision**

Before making a decision about a private legal practitioner under section 31E (4) (b) or (c), the commission must—

- (a) give written notice to the practitioner setting out the reasons for the proposed decision; and
- (b) allow the practitioner a reasonable opportunity to be heard on the proposed decision.

### **32AA Payments to private legal practitioners**

- (1) This section applies if a private legal practitioner performs legal services in a matter for a legally assisted person under this Act.

- (2) The private legal practitioner must give the commission an invoice for the legal services provided in the matter.
- (3) The commission may issue directions about the giving of invoices.
- (4) The commission must pay the invoice in accordance with the fees decided under section 32.
- (5) If the private legal practitioner does not give the commission an invoice for the services in accordance with any directions issued under subsection (3), the commission is not obliged to pay the legal practitioner for the legal services.
- (6) The commission is not obliged to pay for legal services provided for a person before the person applies for legal assistance.
- (7) However, the commission may pay for legal services mentioned in subsection (6) if the legal practitioner has given the chief executive officer notice that the person intends to apply for legal assistance for the services.

**32A Prohibition of additional payments to private practitioners**

If a private legal practitioner performs, or has performed, legal services on behalf of a legally assisted person he or she shall not demand, take or accept payment for performing the services in respect of which the legally assisted person is receiving, or has received, legal assistance under this Act other than the payment or payments to which he or she is entitled under this Act.

**33 Entitlement of legally assisted people to costs in proceedings**

- (1) For the purposes of the making or enforcement of any order for costs, or the determination of any entitlement to costs, in a proceeding before a court or tribunal to which a legally assisted person is a party, that person shall be deemed to be liable to pay the ordinary professional costs of the legal services provided to him or



her in or in connection with that proceeding and any disbursements (including barristers' fees) and out-of-pocket expenses incurred in or in connection with the provision of those services.

- (2) If an amount is recoverable by a legally assisted person (whether in a proceeding or under a settlement or compromise) in respect of the matter in which the legal assistance was given, the person is liable to pay to the commission an amount equal to so much of that amount as the chief executive officer, having regard to guidelines determined by the commission under section 12 (e), determines but the amount so determined shall not exceed the amount by which the sum of—

- (a) the ordinary professional costs (including solicitor and client costs) of the legal services provided to the person in the proceeding or matter in respect of which legal assistance was provided; and
- (b) any disbursements (including barristers' fees) and out-of-pocket expenses incurred in or in connection with the provision of those services;

exceeds any amount, or the sum of any amounts, paid by the person to the commission under section 31 in relation to the legal assistance.

- (3) In determining the amount that a legally assisted person is liable to pay under subsection (2), the chief executive officer shall have regard to—
- (a) the amount actually recovered by the legally assisted person; and
  - (b) any failure by the legally assisted person to take action to recover the amount recoverable, including any failure to comply with a direction of the chief executive officer under subsection (4).

- (4) The chief executive officer may give directions to a legally assisted person requiring the person to take specified action to recover an amount that is recoverable by the person in respect of the matter in which legal assistance was given.
- (5) If an amount is recoverable by a legally assisted person (whether in a proceeding or under a settlement or compromise) in respect of the matter in which the legal assistance was given, the chief executive officer may, by signed writing, direct the legally assisted person to assign his or her right to recover the amount to the commission within 28 days after the day on which the direction is given.
- (6) If a legally assisted person fails to comply with a direction under subsection (5) to assign to the commission his or her right to recover an amount, the legally assisted person shall be deemed to have assigned to the commission his or her right to recover the amount at the expiration of the period during which any action by way of reconsideration or review may be taken under part 6 in relation to the decision to give the direction.
- (7) Subsection (6) does not apply if the decision to give the direction with which the legally assisted person has failed to comply has, under part 6, been—
  - (a) varied so that the direction is negated; or
  - (b) set aside and replaced with a decision in accordance with which the direction is negated.

- (8) If a right to recover an amount is assigned to the commission under a direction under subsection (5), or is to be deemed to be assigned to the commission in accordance with subsection (6), the commission shall, for the purpose of recovering the amount, stand in the place of the legally assisted person and may use the name of the legally assisted person and all remedies which would, but for the assignment or the operation of subsection (6), be available to the legally assisted person in any proceedings to recover the amount.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

### **34 Payment by commission of costs awarded against legally assisted people**

- (1) If—
- (a) legal assistance is provided under this Act to a person in relation to a proceeding (other than a cross-proceeding) instituted by that person in a court or before a tribunal; and
  - (b) the court or tribunal makes an order in the proceeding directing the legally assisted person to pay costs incurred by another party to the proceeding;

either the legally assisted person or that other party may request the commission to pay to that other party on behalf of the legally assisted person an amount representing the whole or a part of the costs that the legally assisted person was so directed to pay.

- (2) A request under subsection (1) must be decided by a statutory officer of the commission in accordance with guidelines determined by the commission under section 12 (d).
- (3) Subject to subsection (4), the commission shall pay so much (if any) of the amount requested to be paid as the statutory officer of the commission considers just and equitable for the commission to pay.

- (4) The commission shall not pay an amount in respect of costs incurred in a proceeding at first instance unless it appears to the commission that the person who made the request will suffer substantial hardship if that amount is not paid by the commission.
- (5) Any amount paid by the commission under this section shall be deemed to have been paid by the legally assisted person.

### **35 Notification of decisions**

- (1) If a decision in relation to the provision of legal assistance or in relation to the making of any payment in respect of costs, including a decision reconsidering or reviewing a previous decision, is made by the commission or an officer of the commission under this Act, the commission shall, with 14 days after the decision is made, communicate the decision to the person who applied for the legal assistance or for the payment, as the case may be, and, if the decision is a decision refusing to provide, or imposing a condition on the provision of, legal assistance under this Act, the commission, if requested to do so, shall cause to be furnished to the person a short statement of the reasons for the decision.
- (2) The communication to a person of a decision referred to in subsection (1), other than a decision in relation only to the provision of legal advice or duty lawyer services, shall be effected—
  - (a) if the matter to which the decision relates was dealt with on behalf of the person by a private legal practitioner—by giving to the private legal practitioner, or by sending to the private legal practitioner by post to the address of the private legal practitioner last known to the commission, a document setting out the terms of the decision and particulars of the right of the person to have the decision reconsidered and reviewed in accordance with section 36; and

- (b) in any other case—by giving such a document to the person or by sending such a document to the person—
  - (i) by post to the address of the person last known to the commission; or
  - (ii) in any other way authorised by the person.

## Part 5A Dispute resolution

### 35A Definitions—pt 5A

In this part:

*approved negotiation* means a program for dispute resolution that—

- (a) is approved by the commission; and
- (b) consists of a structured negotiation process; and
- (c) uses a convenor to assist parties to a dispute to settle the dispute.

*convenor* means a person to whom a dispute has been referred for approved negotiation.

*negotiation session* means a meeting that forms part of approved negotiation and includes steps to arrange or follow-up the meeting.

### 35B Power of commission to arrange approved negotiation

The commission may provide approved negotiation to all parties in a matter or proceeding if at least 1 party is receiving legal assistance from the commission for the matter or proceeding.

### 35C Expenses of dispute resolution

- (1) The commission may, to partly or fully meet the costs associated with approved negotiation in a matter or proceeding—
  - (a) use money available to the commission; or
  - (b) require a legally assisted person, or another party, in the matter or proceeding to partly or fully meet the costs.
- (2) An amount required to be paid under subsection (1) (b)—
  - (a) is a debt owing to the commission; and

(b) must be paid in the time and way stated by the commission.

*Note* If an amount is owing under a law to a person by another person, the person may recover the amount as a debt owing to the person in a court of competent jurisdiction (see Legislation Act, s 177). The commission is a person (see Legislation Act, s 160).

### 35D Confidentiality of negotiation

A convenor must not disclose information obtained in a negotiation session to a person who is not a party to the session (a *nonparticipant*) unless—

- (a) the person who provided the information to the convenor consents to the information being disclosed to the nonparticipant; or
- (b) the information is necessary for the provision or administration of legal assistance and is being disclosed to any of the following:
  - (i) the board;
  - (ii) the chief executive officer;
  - (iii) a committee established under this Act;
  - (iv) a member of the staff of the commission; or
- (c) the following apply:
  - (i) the information is necessary so that any party or parties to the session can be referred to another dispute resolution service (a *related service*) that may be able to assist in the resolution of the dispute between the parties, or in some other way;
  - (ii) all parties to the session consent to the information being disclosed to the related service; or

- (d) the disclosure of the information is reasonably necessary to prevent or minimise injury to a person or damage to property; or
- (e) the convenor is required to disclose the information under a law of the Territory or Commonwealth.

**35E Admissibility of evidence**

- (1) Evidence of anything said or done at a negotiation session, including a document prepared at or for the session, is not admissible in evidence in any proceeding in a court or tribunal unless the parties in attendance at the session consent to the admission of the evidence.
- (2) In this section:

*document* includes a copy of, or an extract from, a document.

**35F Protection of convenor from liability**

A convenor is not liable in a civil proceeding for anything done, or omitted to be done, honestly by the convenor—

- (a) in the exercise of a function under this part; or
- (b) in the reasonable belief that the act or omission was in the exercise of a function under this part.



## Part 6                      Reconsideration and review of decisions

### 36                      Reconsideration of decision

- (1) If a decision has been made—
- (a) refusing to treat an application for legal assistance that does not comply with all the requirements of section 25 (1) as having been duly made; or
  - (b) refusing to provide legal assistance under this Act; or
  - (c) refusing to provide legal assistance under this Act of the nature, or to the extent, applied for; or
  - (d) imposing a condition on the provision of legal assistance under this Act or varying adversely to a legally assisted person a condition so imposed; or
  - (e) requiring an applicant for legal assistance to pay expenses incurred by an officer of the commission in making inquiries, or obtaining, reports or advice, to decide an application for legal assistance; or
  - (f) terminating the provision of legal assistance under this Act; or
  - (g) altering the nature or extent of legal assistance provided to a person under this Act; or
  - (h) determining, under section 33 (2), an amount payable by a legally assisted person; or
  - (i) directing a legally assisted person to take specified action to recover an amount that is recoverable by that person in respect of a matter in which legal assistance was given; or

- (j) directing a legally assisted person to assign to the commission his or her right to recover an amount that is recoverable by him or her in respect of a matter in which legal assistance was given; or
- (k) refusing to pay the whole or part of any amount that the commission has been requested to pay under section 34; or
- (l) refusing to allow, under subsection (7), the period applied for by a person making application for a longer period within which to request the reconsideration or review of a decision to which that paragraph applies;

the legally assisted person, or the person who applied for legal assistance or for the payment, may, by notice in writing to the commission, request that the decision be reconsidered.

- (2) If a decision has been made under section 31 (2) that a legally assisted person's private legal practitioner be directed to pay to the commission an amount payable by the legally assisted person, the practitioner may, by notice in writing to the commission, request that the decision be reconsidered.
- (3) Subsection (2) shall not be taken to limit the operation of subsection (1).
- (4) If a notice requesting that a decision be reconsidered is received by the commission, the decision shall be reconsidered—
  - (a) if the decision was made by the commission—by the commission; or
  - (b) if the decision was made by an officer of the commission—by an appropriate officer of the commission in accordance with arrangements made or approved by the chief executive officer;and may either be confirmed or varied.

- (5) If a decision is confirmed or varied following a reconsideration of the decision under subsection (4), the person who requested the reconsideration may, by notice in writing to the commission, request the commission to refer the decision, or the decision as varied, as the case may be, to a review committee for review and the commission shall comply with any such request.
- (6) Subject to subsection (7), a request by a person for reconsideration or review of a decision (being a decision made after the commencement of this subsection) shall be made before the expiration of the period of 28 days after the person received notice of the decision or of the reconsidered decision (as the case may be).
- (7) If the commission is satisfied that the failure to make a request within the period specified in subsection (6) was due to a reasonable cause, it may extend that period by a further period not exceeding 28 days.
- (8) A person who applies for an extension of the period specified in subsection (6) shall specify the ground on which the application is made.

### **37 Establishment and constitution of review committees**

- (1) For this Act, there shall be such review committees as the chief executive officer establishes in accordance with this part.
- (2) A review committee shall consist of—
  - (a) a person chosen in accordance with subsection (3); and
  - (b) a person chosen in accordance with subsection (4); and
  - (c) a person chosen in accordance with subsection (5).

- (3) The member of a review committee referred to in subsection (2) (a) shall be a private legal practitioner chosen by the chief executive officer—
- (a) from a panel of not more than 9 private legal practitioners nominated by the council of the bar association and approved by the Minister; or
  - (b) if that council fails to nominate such a panel within 30 days after the receipt by the council of a written request by the Minister to do so—a panel of private legal practitioners chosen by the Minister.
- (4) The member of a review committee referred to in subsection (2) (b) shall be a private legal practitioner chosen by the chief executive officer—
- (a) from a panel of not more than 9 private legal practitioners nominated by the council of the law society and approved by the Minister; or
  - (b) if that council fails to nominate such a panel within 30 days after the receipt by the council of a written request by the Minister to do so—a panel of private legal practitioners chosen by the Minister.
- (5) The member of a review committee referred to in subsection (2) (c) shall be a person chosen by the chief executive officer from a panel of not more than 9 people (not being legal practitioners, members of the commission or officers of the commission) chosen by the Minister, each of whom has qualifications or experience relevant to the exercise of the function of a review committee.

### **39 Function of review committee**

- (1) The function of a review committee is to review decisions referred to the committee under section 36 (5).

- (2) In reviewing a decision of a kind specified in section 36 (1) (b) to (g), or a decision of 1 of those kinds as varied under section 36 (4), a review committee shall have regard to the amount of the funds available to the commission for the provision of legal assistance, the nature and extent of the legal assistance that has been provided from those funds and the nature and extent of the legal assistance that the commission is likely to be requested to provide in the future.

**39A Chief executive officer and person requesting review to have opportunity to be heard**

A review committee that reviews a decision referred to it under section 36 (5) shall not make a decision on the review unless it has afforded to the chief executive officer or another officer of the commission nominated by the chief executive officer, and to the person who requested the review, a reasonable opportunity—

- (a) to attend a meeting of the review committee; and
- (b) to address the review committee in relation to the review; and
- (c) to place before the committee any document relevant to the review.

**39B Power of review committees to obtain information and documents**

A review committee may request the chief executive officer or another officer of the commission to—

- (a) furnish to the committee any information known to him or her, or to which he or she has access, that relates to a decision being reviewed by the committee; or
- (b) produce to the committee any document in his or her custody or control that relates to a decision being reviewed by the committee; or

- (c) furnish to the committee any information relating to the amount of the funds available to the commission for the provision of legal assistance, the nature and extent of the legal assistance that has been provided from those funds and the nature and extent of the legal assistance that the commission is likely to be requested to provide in the future;

and the chief executive officer, or the officer, as the case may be, shall provide the information or produce the documents requested.

#### **40 Decision of review committee**

- (1) A review committee that reviews a decision of the commission or an officer of the commission referred to it under section 36 (5) (a *primary decision*) shall give a decision in writing—
- (a) confirming the primary decision; or
  - (b) varying the primary decision; or
  - (c) setting aside the primary decision and making a decision in substitution for the primary decision.
- (2) A primary decision as varied by a review committee, or a decision made by a review committee in substitution for a primary decision, shall, for this Act (other than section 36 (5)), be deemed to be a decision made by the person who, or the body which, made the primary decision.
- (3) A review committee shall cause a copy of its decision to be sent to the person who requested the review and to the commission.
- (4) A review committee shall, if requested to do so by the person who requested the review, cause a short statement in writing of the reasons for the decision to be sent to the person.
- (5) The decision of a review committee shall be final and conclusive.

**40A Cessation of committee**

Except for the purpose of complying with a request under section 40 (4), a review committee ceases to exist on complying with section 40 (3) in respect of each decision referred to it.

## Part 7 Finances of commission

### 41 Establishment of fund

- (1) There is established by this section a fund to be known as the legal aid fund.
- (2) Subject to subsection (4), the fund shall consist of—
  - (a) money paid to, or recovered by, the commission under this Act (other than money received or held by the commission on trust); and
  - (b) money paid to the commission out of a statutory interest account; and
  - (c) money paid to the commission, being money appropriated by the Legislative Assembly for the commission; and
  - (d) any other money paid to the commission for the purpose of the provision of legal assistance or otherwise for the fund; and
  - (e) income derived from the investment of money forming part of the fund.
- (3) The fund shall be controlled and administered by the commission.
- (4) Money paid to the commission, being money appropriated by the Legislative Assembly for the purpose of the provision of financial assistance to voluntary legal assistance organisations, does not form part of the fund.

### 42 Banking accounts

- (1) The commission may open and maintain an account or accounts with an approved financial institution or approved financial institutions in the ACT and shall maintain at all times at least 1 such account.
- (2) The commission shall pay all money received by it into an account referred to in this section.



- (3) Payment of money (other than money received or held by the commission on trust and money referred to in section 41 (4)) into an account referred to in this section shall be deemed to be payment of the money into the fund.
- (4) The commission shall ensure that any money received or held by the commission on trust is paid into an account that does not, or accounts that do not, contain any money of the commission not held on trust.
- (5) The commission shall ensure that money referred to in section 41 (4) is paid into an account that does not, or accounts that do not, contain money of the commission other than money referred to in that subsection.

- (6) In this section:

*approved financial institution* means the Reserve Bank of Australia or another financial institution approved by the Minister.

### **43 Application of fund**

- (1) Money in the fund shall be applied only—
  - (a) in the discharge of obligations and liabilities of the commission arising under this Act; and
  - (b) in the payment of remuneration and allowances payable under this Act.
- (2) Money in the fund derived from the following sources shall not be applied otherwise than for providing legal assistance in Territory matters:
  - (a) money appropriated by the Legislative Assembly for providing legal assistance in Territory matters;
  - (b) money paid to the commission under section 31 in relation to Territory matters for which legal assistance was partly funded under this Act;

- (c) money paid to the commission under section 33 (2) in relation to Territory matters for which legal assistance was provided under this Act;
  - (d) money paid to the commission out of a statutory interest account for the provision of legal assistance under this Act;
  - (e) any other money paid to the commission for providing legal assistance in Territory matters;
  - (f) income derived from the investment of money referred to in paragraphs (a) to (e).
- (3) Money standing to the credit of the fund may be invested by the commission in any manner in which trust funds may, for the time being, be invested under the *Trustee Act 1925*, but not otherwise.
- (4) In this section:

***Territory matter*** means a matter arising under a territory law, other than a law in relation to which a funding agreement is in force.

#### **44 Limitation on contracts**

The commission shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt of an amount exceeding \$100 000 or, if a higher amount is prescribed, that higher amount.

#### **45 Estimates of expenditure**

- (1) The commission shall prepare estimates, in such form as the Minister directs, of receipts and expenditure of the commission for each financial year and, if the Minister so directs, for any other period specified by the Minister, and shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

- (2) Money of the commission (other than money held by the commission on trust) shall not be expended otherwise than in accordance with estimates of expenditure approved by the Minister.

#### **46 Proper accounts to be kept by commission**

The commission shall cause to be kept proper accounts and records of the transactions and affairs of the commission (including transactions and affairs relating to money held by the commission on trust) and shall do all things necessary to ensure that all payments out of the fund or out of money held by the commission on trust are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the commission and over the incurring of liabilities by the commission.

#### **47 Audit**

- (1) The Auditor-General shall inspect and audit the accounts and records of the financial transactions of the commission and the records relating to the assets of, or in the custody of, the commission and shall draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his or her doing so.
- (2) The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).
- (3) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out under subsection (1).
- (4) In this section:

*assets* includes property held on trust.

*financial transactions* includes financial transactions involving or related to money or property held on trust.

## Part 8 Administrative provisions relating to commission

### Division 8.1 Commissioners

#### 48 Term of office

- (1) In this section:  
*commissioner* does not include the chief executive officer.
- (2) Subject to this division, a commissioner holds office for a period of not longer than—
  - (a) for the president of the commission—5 years; or
  - (b) for a commissioner other than the president—3 years.
- (3) The instrument of appointment must state the period for which a commissioner is appointed.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def of *appoint*).

#### 50 Qualifications for appointment

- (1) A person is not eligible for appointment as the president of the commission unless—
  - (a) he or she is or has been a judge; or
  - (b) he or she is a legal practitioner and has been for not less than 5 years.
- (2) A person is not eligible for appointment as a commissioner referred to in section 16 (1) (c) (iv) if he or she is a legal practitioner.

**51 Resignation**

A commissioner other than the chief executive officer may resign his or her office by signed writing delivered to the Minister.

**52 Removal from office**

- (1) The Minister may remove a commissioner other than the chief executive officer from office for misbehaviour or physical or mental incapacity.
- (2) If a commissioner other than the chief executive officer—
  - (a) becomes bankrupt or personally insolvent; or
  - (b) is absent, except by leave of the Minister, from 3 consecutive meetings of the commission; or
  - (c) fails to comply with his or her obligations under section 55;the Minister shall remove him or her from office.
- (4) Subsection (2) does not apply to a commissioner if he or she is a judge but, if a commissioner being a judge ceases to be a judge, the Minister may terminate his or her appointment.

**54 Meetings**

- (1) The commission shall hold such meetings as are necessary for the exercise of its functions.
- (2) The president of the commission may at any time convene a meeting of the commission.
- (3) The president of the commission, on receipt of a request in writing signed by 3 commissioners, shall convene a meeting of the commission.
- (4) At a meeting of the commission, 4 commissioners constitute a quorum.

- (5) The president of the commission shall preside at all meetings of the commission at which he or she is present.
- (6) If the president of the commission is not present at a meeting of the commission, the commissioners present shall elect 1 of their number to preside at that meeting and the person so elected shall preside accordingly.
- (7) Questions arising at a meeting of the commission shall be determined by a majority of the votes of the commissioners present and voting.
- (8) The commissioner presiding at a meeting of the commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (9) The commission may regulate the conduct of proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.

## **55 Interests to be disclosed**

- (1) A commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the commission, otherwise than as a member of, and in common with the other members of, an incorporated company which consists of more than 25 people and of which he or she is not a director, shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the commission.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the commission and the commissioner shall not be present during any deliberation of the commission with respect to that matter.

## **Division 8.2                      Officers of commission**

### **56                      Term of appointment of statutory officers**

A statutory officer of the commission must be appointed for a term of not longer than 7 years.

*Note*            A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

### **57                      Conditions of appointment**

A statutory officer of the commission holds office on the conditions (if any) about matters not provided for under this Act or another territory law that are determined by the commission with the approval of the Minister.

### **58                      Leave of absence**

The commission may grant leave of absence to a statutory officer of the commission on the terms decided by the commission.

### **59                      Resignation**

A statutory officer of the commission may resign his or her office by signed writing delivered to the commission.

### **60                      Removal from office**

- (1) The commission may remove a statutory officer of the commission from office for—
  - (a) misbehaviour or physical or mental incapacity; or
  - (b) inefficiency or incompetence.
- (2) If a statutory officer of the commission—
  - (a) becomes bankrupt or personally insolvent; or

- (b) is absent from duty, except on leave granted by the commission, for 14 consecutive days, or for 28 days in any period of 12 months;

the commission shall remove him or her from office.

### **60A Review of decision to remove from office**

- (1) This section applies to a decision (the *reviewable decision*) of the commission to remove a statutory officer from office under section 60.
- (2) The commission must give a reviewable decision notice to the statutory officer.

*Note 1* The person must also take reasonable steps to give a reviewable decision notice to any other whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

- (3) The following people may apply to the ACAT for review of the reviewable decision:
- (a) the statutory officer;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

### **61 Outside employment**

Except in the exercise of the functions of his or her office or with the approval of the commission, a statutory officer of the commission shall not engage in practice as a legal practitioner or engage in paid employment.



**68 Conditions of employment of staff**

- (1) The commission may determine the conditions of employment of the commission's staff.
- (2) The commissioner for public administration must approve the conditions before the commission determines them.
- (3) The conditions of employment of the commission's staff are as determined under this section.

**68A Personnel management**

- (1) The commission's powers in relation to employment matters must be exercised—
  - (a) without patronage, favouritism or unjustified discrimination; and
  - (b) with regard to the equal employment opportunity program for the commission.
- (2) For the selection of a person for employment for longer than 3 months or for promotion, the commission's powers must also be exercised in accordance with procedures that ensure that—
  - (a) all employees who are eligible have, as far as practicable, a reasonable opportunity to apply for selection; and
  - (b) the selection is made on the basis of an assessment of the relative suitability of the applicants having regard to—
    - (i) the type of functions to be exercised; and
    - (ii) the abilities, qualifications, experience, personal qualities and potential for development of each applicant that are relevant to the exercise of the functions.
- (3) For subsection (1) (b), the commission must—
  - (a) develop an equal employment opportunity program for the commission; and

- (b) review the program.
- (4) The commission must consult with each relevant staff organisation and other people the commission considers appropriate before developing or reviewing the equal employment opportunity program.
- (5) As soon as practicable after the development or review of the equal employment opportunity program, the commission must give the commissioner for public administration written particulars of the program.
- (6) The commissioner for public administration may give written guidelines to the commission about—
  - (a) the matters to be included in the equal employment opportunity program; and
  - (b) the development, implementation or review of the program.
- (7) The commission must take any action necessary to give effect to the equal employment opportunity program and to comply with any guidelines given under subsection (6).
- (8) The commission must give the Minister a written report about the operation of this section during each financial year.
- (9) In this section:  
***designated group*** means any of the following classes of people:
  - (a) members of the Aboriginal race of Australia or people who are descendants of indigenous inhabitants of the Torres Strait Islands;
  - (b) people who have migrated to Australia and whose first language is a language other than English, and their children;
  - (c) people with physical or mental disabilities;
  - (d) any other class of people declared by the regulations to be a designated group for this definition.

**employment** means—

- (a) appointment as a statutory officer of the commission under section 17; or
- (b) employment as a member of the staff of the commission under section 20.

**employment matter**, in relation to the commission, means—

- (a) the selection of people by the commission for employment or promotion; or
- (b) the transfer of employees; or
- (c) training and staff development for employees; or
- (d) the conditions of service of employees; or
- (e) any other matter related to the employment of people.

**equal employment opportunity program**, in relation to the commission, means a program designed to ensure that—

- (a) appropriate action is taken to eliminate unjustified discrimination against women and people in designated groups in relation to employment matters; and
- (b) measures are taken to enable employees who are women or people in designated groups to do the following as effectively as other people and to have equal opportunities with others in relation to other employment matters:
  - (i) to compete for employment, transfer or promotion;
  - (ii) to pursue careers.

**exercise**, of a power, includes making a report or recommendation in relation to the exercise of the power.

**promotion** means movement within the commission resulting in an employee doing work, and being paid, at a higher level than previously.

***relevant staff organisation*** means an organisation—

- (a) within the meaning of the *Workplace Relations Act 1996* (Cwlth); and
- (b) that people employed by the commission are eligible to join; and
- (c) that is a party to an industrial award that applies in relation to the salary payable for that employment.

***unjustified discrimination*** includes—

- (a) discrimination that is unlawful under the *Discrimination Act 1991*; and

- (b) unjustified discrimination on the ground of age or social origin;

but does not include—

- (c) discrimination that is essential for the effective exercise of the relevant functions, is not unlawful under the *Discrimination Act 1991* and is prescribed under the regulations; or
- (d) discrimination that is not unlawful under the *Discrimination Act 1991* and is in accordance with the equal employment opportunity program for the commission or with a program prescribed under the regulations.

## **69 Application of Legal Profession Act to commission etc**

The following provisions of the *Legal Profession Act 2006* do not apply in relation to the commission or an officer of the commission in the officer's official capacity:

- (a) division 3.1.3 (Investigations and external examinations);
- (b) part 3.2 (Costs disclosure and assessment);
- (c) part 3.3 (Professional indemnity insurance);

- (d) part 3.4 (Fidelity cover);
- (e) chapter 5 (External intervention).

### **Division 8.3                      Records management—legal services records**

#### **69A                      Definitions—div 8.3**

In this division:

*approved records management program* means a records management program approved under section 69C.

*director of territory records* means the person appointed under the *Territory Records Act 2002*, section 34 (Appointment of the director) to be the director of territory records.

*legal services record* means a record of the commission that relates to—

- (a) the provision of legal assistance to a person under part 5 (Provision of legal assistance by commission); or
- (b) a negotiation process conducted under part 5A (Dispute resolution).

*records management*, in relation to legal services records means the management of legal services records to meet the commission's operational needs.

#### **69B                      Records management—legal services records**

- (1) The commission must have an approved records management program for the management of its legal services records.
- (2) The program must include arrangements for the creation, keeping, protection, preservation, storage and disposal of, and access to, legal services records.

- (3) The commission must comply with its approved records management program for legal services records.

**69C Approval of records management program**

- (1) The chief executive officer may, in writing, approve a records management program for legal services records if the chief executive officer is satisfied that the program includes arrangements for the matters mentioned in section 69B (2).
- (2) If the chief executive officer approves a records management program, the chief executive officer must give a copy of the program to the director of territory records.

## Part 10                      Administrative provisions relating to review committees

### 76                      Membership of panel

A member of a panel referred to in section 37 holds membership for such period not exceeding 3 years as the Minister determines in writing and, subject to section 37, is eligible to be chosen as a member of a successive panel.

### 77                      Resignation from panel

A member of a panel referred to in section 37 may resign by writing delivered to the Minister.

### 78                      Removal from panel

- (1) The Minister may remove a person from a panel referred to in section 37 for misbehaviour or physical or mental incapacity.
- (2) If a member of a panel—
  - (a) becomes bankrupt or personally insolvent; or
  - (b) on 3 consecutive occasions, without giving prior advice to the chief executive officer, fails to attend a meeting of a review committee of which he or she is a member; or
  - (c) fails to comply with section 81;the Minister shall remove him or her from the panel.

### 79                      Allowances

Members of a review committee shall be paid such allowances for expenses in respect of the exercise of their functions as are prescribed.

**80 Meetings of review committee**

- (1) A review committee shall hold such meetings as are necessary for the exercise of its function.
- (2) Meetings of a review committee shall be convened by the chief executive officer.
- (3) At the first meeting of a review committee the members present shall elect 1 of their number to preside at meetings of the committee.
- (4) If, at a meeting of a review committee, the presiding member is not in attendance, the members present shall appoint 1 of their number to preside at that meeting.
- (5) Questions arising at a meeting of a review committee shall be determined by a majority of the votes of members of the review committee present and voting.
- (6) The member of a review committee presiding at a meeting of the review committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) A review committee may regulate the conduct of proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.
- (8) At a meeting of a review committee a member chosen under section 37 (2) (c) and another member constitute a quorum.

**81 Interests to be disclosed**

- (1) A member of a review committee who has a direct or indirect pecuniary interest in a matter considered or about to be considered by the review committee, otherwise than as a member of, and in common with the other members of, an incorporated company which consists of more than 25 people and of which he or she is not a director, shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the review committee.



- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the review committee and the member shall not be present during any deliberation of the review committee with respect to that matter.
- (3) A member of a review committee who made, or participated in the making of, a decision that is to be reviewed by the review committee shall not be present during any deliberation of the review committee with respect to that decision.

## Part 11 Consultative committees

### 82 Establishment of consultative committees

- (1) The Minister may establish such consultative committees as he or she thinks desirable to assist the commission in the exercise of its functions.
- (2) In deciding whether to establish a consultative committee to assist the commission to exercise its functions in a particular locality, the Minister shall take into account any representations received from any local community organisation or from people living, or carrying on a business, profession or trade, in that locality.

### 83 Constitution of consultative committees

- (1) Each consultative committee shall consist of—
  - (a) a person who is a member of the law society or a member of the bar association; and
  - (b) an officer of the commission; and
  - (c) such other people as the Minister considers appropriate.
- (2) In selecting people to be appointed as members of a consultative committee to assist the commission to exercise its functions in a particular locality, the Minister shall have regard to the desirability of selecting people living, or carrying on a business, profession or trade, in that locality.

- (3) The Minister must appoint the members of a consultative committee for a period of 1 year.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

*Note 3* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def of *appoint*).

#### **84 General provisions relating to consultative committees**

- (1) The regulations may make provision for and in relation to—
- (a) the convening of meetings of consultative committees; and
  - (b) the procedure (including provision with respect to quorums and voting) to be followed at such meetings.
- (2) Members of consultative committees shall be paid such allowances for expenses in respect of the exercise of their functions as are prescribed.

## Part 12 Inquiry relating to affairs of commission

### 84A Definitions for pt 12

In this part:

*assistant* means a person approved under section 84C.

*inquiry* means an inquiry conducted by a prescribed person under an appointment made or to be deemed to have been made under this part.

*prescribed matter* means any matter relating to—

- (a) the operations or affairs of the commission; or
- (b) the exercise by the commission of its functions under this Act; or
- (c) the exercise of a function by anyone under this Act.

*prescribed person* means a person appointed under section 84B.

### 84B Appointment of person to conduct inquiry

- (1) The commission, with the approval of the Minister, may, in writing, appoint a person to inquire into and report on such of the prescribed matters as are specified in the appointment.
- (2) The Minister may, in writing, appoint a person to inquire into and report on such of the prescribed matters as are specified in the appointment.
- (3) A report under this section shall be made—
  - (a) if the appointment of the prescribed person was made by the commission—to the commission and the Minister; and
  - (b) if the appointment of the prescribed person was made by the Minister—to the Minister.

**84C Assistants**

For the purpose of conducting an inquiry, the prescribed person may be assisted by such people as the Minister approves.

**84D Access to documents etc**

- (1) For the purpose of conducting an inquiry, the prescribed person or an assistant is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of or held by the commission.
- (2) The prescribed person or an assistant may make and retain copies of, or take extracts from, any accounts, records, documents or papers referred to in subsection (1).
- (3) The prescribed person or an assistant may require any person to furnish him or her with such information in the possession of the person or to which the person has access as the prescribed person or assistant considers necessary for the effective conduct of the inquiry.
- (4) A person who refuses or fails to comply with a requirement made of him or her under subsection (3) commits an offence.

Maximum penalty: 50 penalty units.

**84E Professional privilege**

- (1) Section 13 shall not be taken to preclude an officer of the commission from complying with a requirement made of him or her under section 84D (3).

- (2) If, in the course of an inquiry, the prescribed person or an assistant acquires information concerning the affairs of a person who has applied for legal assistance or to whom legal assistance is being or has been provided, the privileges that arise under section 13 (2) between that person and a statutory officer of the commission who practices as, or exercises any of the functions of, a solicitor for the person shall arise between that person and the prescribed person, or assistant, as the case requires.

## Part 13                      Miscellaneous

### 90                      Delegation by commission

The commission may delegate any of its functions under this Act to any of the following:

- (a) a committee of commissioners or committee of officers of the commission or both;
- (b) an officer of the commission;
- (c) any person providing services on behalf of the commission under this Act.

*Note*                      For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

### 91                      Liabilities of commission and Territory

- (1) The commission must indemnify an officer of the commission against any liability incurred by the officer for a negligent act or omission in the honest exercise or purported exercise of the officer's functions.
- (2) If a private legal practitioner provides any service without charge in connection with the provision of legal assistance under this Act, the commission shall indemnify him or her against any liability incurred by him or her for any negligent act or omission by him or her in the course of the provision of those services.
- (3) The commission has the same liability for acts or omissions by an officer of the commission in the exercise of the officer's functions as an employer has for any acts or omissions by the employer's employees.
- (4) A member of the commission, a review committee or a consultative committee is not liable for any act or omission of the member, commission, or committee of which he or she is a member, if the act

was done, or the omission occurred, in the honest exercise or purported exercise of the member's functions.

- (5) The Territory is responsible for the payment of any money owing by the commission but nothing in this subsection authorises a person to sue the Territory in respect of a claim against the commission or an officer of the commission.

## **91A Grants to voluntary legal assistance organisations**

- (1) In this section:

*voluntary legal assistance organisation* means a voluntary organisation that conducts a scheme for the provision of legal assistance in the ACT.

- (2) The commission may grant to a voluntary legal assistance organisation, on such terms and conditions as the commission thinks fit, a sum by way of financial assistance.
- (3) A grant under subsection (2) shall not be made except out of money appropriated by the Legislative Assembly for the purpose of the provision of financial assistance to voluntary legal assistance organisations.

## **92 Secrecy**

- (1) This section applies to—
  - (a) every person who is or has been a commissioner, an officer of the commission, a member of a review committee or a member of a consultative committee; and
  - (b) a person who is or has been a prescribed person or an assistant.
- (2) A person to whom this section applies shall not, either directly or indirectly, except for this Act or an inquiry—
  - (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person



acquired by him or her by reason of his or her office or employment under or for this Act or in the exercise of a function under this Act or in the course of an inquiry; or

- (b) produce to any person a document relating to the affairs of another person furnished for this Act or in the course of an inquiry.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subject to section 39B, a person to whom this section applies shall not be required to produce before a court any document relating to the affairs of another person of which he or she has the custody, or to which he or she has access, by virtue of his or her office or employment under or for this Act or in the exercise of a function under this Act, or to divulge or to communicate to any court any information concerning the affairs of another person obtained by him or her by reason of such an officer or employment or in the exercise of such a function.
- (4) Nothing in this section shall operate so as to prohibit a prescribed person from referring in a report furnished under part 12 (Inquiry relating to affairs of commission) to information acquired in the course of an inquiry if the reference does not reveal the identity of an applicant for legal assistance, a person to whom legal assistance is being or was provided or any other party or prospective party to litigation.
- (5) Subsection (3) does not apply if the court considers that it is necessary in the interests of justice that the document be produced or the information be divulged or communicated.
- (6) 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.

(7) In this section:

*assistant*—see section 84A.

*court* includes tribunal.

*inquiry*—see section 84A.

*prescribed person*—see section 84A.

### **92AA General exceptions to secrecy provisions**

Sections 13 and 92 do not apply to the divulgence or communication of information, or the production of a document, concerning the affairs of a person—

- (a) for the purpose of facilitating the investigation or prosecution of an offence against this Act; or
- (b) with the express or implied consent of that person; or
- (c) in response to a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41 (Powers in relation to witnesses etc) in relation to an application to the ACAT under the *Legal Profession Act 2006*.

### **92A Power of commission to obtain information or documents**

(1) Subject to subsection (2), if the commission requires an officer of the commission to—

- (a) furnish to the commission any information known to him or her or to which he or she has access; or
- (b) produce to the commission any document in his or her custody or control;

that is relevant to the provision of legal assistance under this Act, the officer shall comply with the requirement.

(2) Subsection (1) does not derogate from any privilege which arises under section 13 (2).

**93 Exemption from fees and taxes**

- (1) No fees are payable in respect of—
  - (a) the institution in a court or before a tribunal of a proceeding on behalf of a legally assisted person; or
  - (b) the filing or lodging of a document with a court or tribunal on behalf of a legally assisted person; or
  - (c) the service or execution by a member of the Australian Federal Police or by an officer of a court or tribunal of process on behalf of a legally assisted person; or
  - (d) the doing of any other act or thing in a proceeding in a court or before a tribunal on behalf of a legally assisted person.
- (2) The commission is not subject to taxation imposed by or under an Act.

**94 Commission to operate as Legal Aid ACT**

- (1) The commission shall exercise its functions under section 8 under the name of the Legal Aid ACT.
- (2) The *Business Names Act 1963* does not apply to or in relation to the commission.

**94A Application of Financial Management Act to commission**

- (1) The *Financial Management Act 1996*, section 55 (2) (Responsibilities of chief executive officers of territory authorities) applies to the commission subject to this Act.
- (2) The *Financial Management Act 1996*, part 9 (Governance of territory authorities) does not apply to the commission.

**95 False or misleading statements**

- (1) If—
- (a) a person is convicted of an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents) in respect of an application for legal assistance; and
  - (b) legal assistance under this Act was granted on that application; and
  - (c) the commission incurred expenses in providing that legal assistance;

the court may, in addition to imposing a penalty in respect of the offence, order the person to pay to the commission an amount equal to the amount of those expenses incurred by the commission.

- (2) For subsection (1), a certificate in writing signed by the chief executive officer certifying that the commission incurred expenses of an amount specified in the certificate in providing legal assistance on an application identified in the certificate is prima facie evidence of the matters stated in the certificate.

**95A Interest on amounts due to commission**

- (1) If an amount is due and payable to the commission under section 31, a further amount of interest for the period commencing when the firstmentioned amount becomes payable and ending when it is paid or judgment is entered in respect of it (whichever sooner happens) is due and payable to the commission and may be recovered as a debt in a court of competent jurisdiction.

- (2) The amount of interest must be worked out at the rate percentage per year as follows:
- (a) if the amount under section 31 is payable on or after 15 July 1992 but before the day mentioned in paragraph (b)—
    - (i) for 15 July 1992 to and including 14 January 1993—11.5%; and
    - (ii) for 15 January 1993 to and including 31 January 1994—10%; and
    - (iii) for 1 February 1994 to and including 31 July 1995—9%; and
    - (iv) for 1 August 1995 to and including 31 March 1997—10.75%; and
    - (v) for 1 April 1997 to and including 30 April 1998—9.55%; and
    - (vi) for 1 May 1998 to and including the day before the day mentioned in paragraph (b)—8.45%;
  - (b) if the amount under section 31 is payable on or after the day the *Court Procedures Act 2004* commences—at the rate applying under the rules under that Act applying in relation to the Supreme Court.

## **96 Certificate as to amounts owing to commission**

In any action against a person for the recovery of an amount payable to the commission under section 31 or 33, a certificate in writing signed by the chief executive officer certifying that the sum specified in the certificate was, at the date of the certificate, payable by the firstmentioned person to the commission under that section is prima facie evidence of the matters stated in the certificate.

**98            Superannuation**

- (1) Nothing in this Act authorises the provision of superannuation benefits to an officer of the commission otherwise than under—
- (a) the *Superannuation Act 1976* (Cwlth); or
  - (b) the *Superannuation Act 1990* (Cwlth); or
  - (c) the *Superannuation Act 2005* (Cwlth); or
  - (d) a superannuation scheme determined by the Minister.

- (2) A determination is a notifiable instrument.

*Note*        A notifiable instrument must be notified under the Legislation Act.

**99            Approved forms**

- (1) The commission may, in writing, approve forms for this Act.
- (2) If the commission approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*        For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note*        A notifiable instrument must be notified under the *Legislation Act 2001*.

**100          Regulation-making power**

The Executive may make regulations for this Act.

*Note*        Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Part 14

## Transitional—Justice and Community Safety Legislation Amendment Act 2009 (No 2)

### 101 Continuation of appointments

- (1) This section applies to a person appointed as a commissioner under section 7 (3) before the commencement day (a *former appointee*).
- (2) A former appointee whose period of office as a commissioner has not ended on the commencement day continues to hold office until the end of the period of office as if the former appointee were appointed under the corresponding provision of section 16 as in force on the commencement day.
- (3) In this section:  
*commencement day* means the day this section commences.

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACAT
- ACT
- bankrupt or personally insolvent
- Commonwealth
- document
- exercise
- function
- property
- reviewable decision notice
- sitting day
- State
- the Territory.

***approved records management program***, for division 8.3 (Records management—legal services records)—see section 69A.

***assistant***, for part 12 (Inquiry relating to affairs of commission)—see section 84A.

***assistant executive officer*** means an Assistant Executive Officer of the commission.

***bar association*** means the Bar Association of the Australian Capital Territory.

***board*** means the board of the commission established under section 14.

***chief executive officer*** means the Chief Executive Officer of the commission.



**commission** means the legal aid commission established by section 6.

**commissioner** means a member of the board appointed under section 16.

**consultative committee** means a consultative committee established under part 11.

**director of territory records**, for division 8.3 (Records management—legal services records)—see section 69A.

**duty lawyer services** means legal services provided by a legal practitioner attending at a proceeding of a court or tribunal, being legal services consisting of appearing on behalf of a person at, or giving legal advice to a person in connection with, the proceeding, otherwise than by prior arrangement with the person.

**fund** means the legal aid fund established by section 41.

**funding agreement** means an agreement between the Territory and the Commonwealth, a State or another Territory (*the other jurisdiction*) for the provision of legal assistance by the commission in matters arising under the laws of the other jurisdiction, if the agreement provides for the full funding of such assistance by the other jurisdiction, including funding of all overheads (including administrative overheads) involved in implementing the agreement.

**inquiry**, for part 12 (Inquiry relating to affairs of commission)—see section 84A.

**judge** means a judge of a federal court or of the Supreme Court of a State or Territory.

**law society** means the Law Society of the Australian Capital Territory.

**legal aid commission** means an authority established by or under a law of a State or Territory for the purpose of, or for purposes that include, the provision of legal assistance.

**legal assistance**—a reference to the provision of *legal assistance* is a reference to the provision of legal services (including the giving of legal advice) without charge to the person to whom the legal services are provided or subject to the making of a payment by that person that is less than the full cost of the provision of the legal services.

**legally assisted person** means a person to whom legal assistance is provided under this Act.

**legal services record**, for division 8.3 (Records management—legal services records)—see section 69A.

**member of a review committee** includes a deputy of a member of a review committee.

**member of the staff of the commission** means a person employed under section 20.

**officer of the commission** means a statutory officer of the commission or a member of the staff of the commission.

**practising certificate** means an unrestricted practising certificate, a restricted practising certificate or a barrister practising certificate under the *Legal Profession Act 2006*.

**prescribed matter**, for part 12 (Inquiry relating to affairs of commission)—see section 84A.

**prescribed person**, for part 12 (Inquiry relating to affairs of commission)—see section 84A.

**private legal practitioner** means a principal of a law practice under the *Legal Profession Act 2006*, section 9.

**produce** includes permit access to.

**records management**, for division 8.3 (Records management—legal services records)—see section 69A.

**review committee** means a review committee established under part 6.

***statutory interest account***—see the *Legal Profession Act 2006*, section 253.

***statutory officer of the commission*** means the chief executive officer or an assistant executive officer.

***tribunal*** includes an authority or person having power to require the production of documents or the answering of questions, but does not include a court.

***unrestricted practising certificate*** means an unrestricted practising certificate under the *Legal Profession Act 2006*.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Legal Aid Ordinance 1977* No 31 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

#### Legislation before becoming Territory enactment

##### **Legal Aid Act 1977 No 31**

notified 11 July 1977

s 3 commenced 3 July 1978 (s 2 (2) and Cwlth Gaz 1978 No S108)

remainder commenced 11 July 1977 (s 2 (1))

as amended by

##### **Legal Aid (Amendment) Ordinance 1978 No 29**

notified 26 September 1978

commenced 26 September 1978

##### **Ordinances Revision Ordinance 1978 No 46 sch 2**

notified 28 December 1978

commenced 28 December 1978

##### **Legal Aid (Amendment) Ordinance 1980 No 15**

notified 30 June 1980

commenced 30 June 1980 (s 3)

## Endnotes

3 Legislation history

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**Legal Aid (Amendment) Ordinance 1982 No 84**

notified 20 October 1982

commenced 11 December 1982 (s 2 and Cwlth Gaz 1982 No S242)

**Legal Aid (Amendment) Ordinance 1984 No 3**

notified 10 February 1984

commenced 10 February 1984

**Legal Aid (Amendment) Ordinance (No 2) 1984 No 55 (as am by Legal Aid (Amendment) Ordinance 1985 No 1)**

notified 19 October 1984

commenced 8 February 1985 (s 2 and Cwlth Gaz 1985 No S26)

**Legal Aid (Amendment) Ordinance 1985 No 1**

notified 24 January 1985

commenced 24 January 1985

*Note* This Act only amends the Legal Aid (Amendment) Ordinance (No 2) 1984 No 55.

**Legal Aid (Amendment) Ordinance 1986 No 63**

notified 21 October 1986

commenced 21 October 1986

**Administrative Arrangements (Consequential Amendments) Ordinance 1988 No 17 sch 2**

notified 22 April 1988

commenced 22 April 1988

**Legal Aid (Amendment) Ordinance 1988 No 41**

notified 20 July 1988

commenced 20 July 1988

**Self-Government (Consequential Amendments) Ordinance 1989 No 38 pt 2 div 15, sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S164)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

pt 2 div 15, sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S160)

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**Legislation after becoming Territory enactment**

as modified by

**Self-Government (Transitional Provisions) Regulations SL 1990 No 1**

notified 1 February 1990  
commenced 1 February 1990

as amended by

**Statutory Authorities (Audit Arrangements) Act 1990 No 25 pt 10**

notified 22 June 1990 (Gaz 1990 No S29)  
s 1, s 2 commenced 22 June 1990 (s 2 (1))  
pt 10 commenced 22 June 1990 (s 2 (2) and Gaz 1990 No S35)

**Legal Aid (Amendment) Act 1992 No 13**

notified 2 June 1992 (Gaz 1992 No S62)  
commenced 2 June 1992

**Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23**

notified 4 June 1992 (Gaz 1992 No S71)  
commenced 4 June 1992

**Legal Aid (Amendment) Act (No 2) 1992 No 53**

notified 18 September 1992 (Gaz 1992 No S158)  
s 4 (b), s 16 commenced 1 March 1993 (s 2 (2))  
remainder commenced 18 September 1992 (s 2 (1))

**Registrar-General (Consequential Provisions) Act 1993 No 64 sch 1**

notified 6 September 1993 (Gaz 1993 No S172)  
s 1, s 2 commenced 6 September 1993 (s 2 (1))  
sch 1 commenced 1 October 1993 (s 2 (2) and Gaz 1993 No S207)

**Real Property (Consequential Provisions) Act 1993 No 90 sch**

notified 17 December 1993 (Gaz 1993 No S258)  
s 1, s 2 commenced 17 December 1993 (s 2 (1))  
sch commenced 1 January 1994 (s 2 (2) and see Gaz 1993 No S270)

## Endnotes

3 Legislation history

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**Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994 No S250)

**Legal Practitioners (Amendment) Act 1994 No 76 sch**

notified 23 November 1994 (Gaz 1994 No S247)  
commenced 23 November 1994 (s 2)

**Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

**Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
commenced 18 December 1995 (s 2)

**Land Titles (Consequential Amendments) Act 1995 No 54 sch pt 1**

notified 20 December 1995 (Gaz 1995 No S313)  
commenced 20 June 1996 (s 2)

**Remuneration Tribunal (Consequential and Transitional Provisions) Act 1995 No 56 sch**

notified 20 December 1995 (Gaz 1995 No S313)  
sch commenced 21 December 1995 (s 2 and see Gaz 1995 No S315)

**Financial Management and Audit (Consequential and Transitional Provisions) Act 1996 No 26 sch pt 14**

notified 1 July 1996 (Gaz 1996 No S130)  
commenced 1 July 1996 (s 2)

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41 sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)  
commenced 24 September 1997 (s 2 as am by Act 2002 No 49 amdt 3.222)



**Financial Institutions (Removal of Discrimination) Act 1997 No 88 sch**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch commenced 31 December 1997 (s 2 (2) and Gaz 1997 No S442)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Legal Aid (Amendment) Act 1997 No 97**

notified 5 December 1997 (Gaz 1997 No S392)  
commenced 5 December 1997 (s 2)

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 218**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 218 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.32**

notified 5 September 2001 (Gaz 2001 No S65)  
commenced 5 September 2001 (s 2 (1))

**Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
amdt 3.222 commenced 24 September 1997 (s 2 (3))

*Note* This Act only amends the Remuneration Tribunal (Consequential Amendments) Act 1997 No 41.

**Statute Law Amendment Act 2003 A2003-41 sch 3 pt 3.15**

notified LR 11 September 2003  
s 1, s 2 commenced 11 September 2003 (LA s 75 (1))  
sch 3 pt 3.15 commenced 9 October 2003 (s 2 (1))

## Endnotes

3 Legislation history

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**Criminal Code (Theft, Fraud, Bribery and Related Offences)  
Amendment Act 2004 A2004-15 sch 2 pt 2.50**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.50 commenced 9 April 2004 (s 2 (1))

**Court Procedures (Consequential Amendments) Act 2004 A2004-60  
sch 1 pt 1.35**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.35 commenced 10 January 2005 (s 2 and see Court  
Procedures Act 2004 A2004-59, s 2 and CN2004-29)

**Legal Aid Amendment Act 2005 A2005-12**

notified LR 17 March 2005  
s 1, s 2 commenced 17 March 2005 (LA s 75 (1))  
remainder commenced 18 March 2005 (s 2)

**Financial Management Legislation Amendment Act 2005 A2005-52  
sch 1 pt 1.12**

notified LR 26 October 2005  
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))  
sch 1 pt 1.12 commenced 1 January 2006 (s 2 (2))

**Civil Unions Act 2006 A2006-22 sch 1 pt 1.20**

notified LR 19 May 2006  
s 1, s 2 commenced 19 May 2006 (LA s 75 (1))  
sch 1 pt 1.20 never commenced

*Note* Act repealed by disallowance 14 June 2006 (see Cwlth  
Gaz 2006 No S93)

**Legal Profession Act 2006 A2006-25 sch 2 pt 2.7**

notified LR 21 June 2006  
s 1, s 2 commenced 21 June 2006 (LA s 75 (1))  
sch 2 pt 2.7 commenced 1 July 2006 (s 2)

**Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.58**

notified LR 22 March 2007  
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))  
sch 3 pt 3.58 commenced 12 April 2007 (s 2 (1))

**Statute Law Amendment Act 2007 (No 2) A2007-16 sch 3 pt 3.22**

notified LR 20 June 2007

s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))

sch 3 pt 3.22 commenced 11 July 2007 (s 2 (1))

**Legal Profession Amendment Act 2007 A2007-28 sch 1 pt 1.2**

notified LR 28 September 2007

s 1, s 2 commenced 28 September 2007 (LA s 75 (1))

sch 1 pt 1.2 commenced 1 October 2007 (s 2)

**Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.16**

notified LR 15 May 2008

s 1, s 2 commenced 15 May 2008 (LA s 75 (1))

sch 1 pt 1.16 commenced 19 May 2008 (s 2 and CN2008-8)

**ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.63**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.63 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

**Justice and Community Safety Legislation Amendment Act 2009 (No 2) A2009-19 pt 9**

notified LR 1 September 2009

s 1, s 2 commenced 1 September 2009 (LA s 75 (1))

pt 9 commenced 29 September 2009 (s 2)

**Justice and Community Safety Legislation Amendment Act 2010 (No 2) A2010-30 sch 1 pt 1.14**

notified LR 31 August 2010

s 1, s 2 commenced 31 August 2010 (LA s 75 (1))

s 3 commenced 1 September 2010 (s 2 (1))

sch 1 pt 1.14 commenced 28 September 2010 (s 2 (2))

**Territory Records Amendment Act 2010 A2010-48 sch 1**

notified LR 25 November 2010

s 1, s 2 commenced 25 November 2010 (LA s 75 (1))

sch 1 commenced 26 November 2010 (s 2)

## Endnotes

4 Amendment history

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### Legal Aid Amendment Act 2011 A2011-5

notified LR 24 February 2011

s 1, s 2 commenced 24 February 2011 (LA s 75 (1))

remainder commenced 25 February 2011 (s 2)

## 4 Amendment history

### Name of Act

s 1 sub A2007-3 amdt 3.318

### Dictionary

s 2 om 2001 No 44 amdt 1.2614  
ins A2007-3 amdt 3.322

### Notes

s 3 om 2001 No 44 amdt 1.2614  
ins A2007-3 amdt 3.322

### Administration

s 4 om 1978 No 46 sch 2

### Interpretation for Act

s 5 am 1978 No 29 s 3; 1997 No 97 s 4  
defs reloc to dict A2007-3 amdt 3.321  
om A2007-3 amdt 3.322  
def **approved auditor** am 1978 No 29 s 3; 1989 No 38 sch 1  
om 1997 No 97 sch  
def **assistant director** om 1984 No 55 sch (as am by 1985  
No 1 s 4)  
def **commencing day** om A2007-3 amdt 3.319  
def **Commonwealth legal aid commission** om 1982 No 84  
s 4  
def **director** om 1984 No 55 sch (as am by 1985 No 1 s 4)  
def **legal aid committee** om A2005-12 s 4  
def **member of a legal aid committee** am 1984 No 55 sch (as  
am by 1985 No 1 s 4)  
om A2005-12 s 4  
def **previous committee** om 1997 No 97 sch  
def **previous fund** om 1997 No 97 sch  
def **remuneration tribunal** om 1997 No 41 sch 1  
def **repealed Act** om 1997 No 97 sch  
def **Territory matter** ins 1997 No 97 s 4  
om A2007-3 amdt 3.320

### Establishment and functions of legal aid commission

pt 2 hdg am 1997 No 97 sch

**Establishment of commission**

s 6 am A2007-16 amdt 3.75, amdt 3.76

**Constitution of commission**

s 7 am 1982 No 84 s 5; 1984 No 55 sch (as am by 1985 No 1 s 4);  
1986 No 63 s 3; 1988 No 17 sch 2; 1989 No 38 sch 1  
mod SL 1990 No 1 reg 2  
am 1992 No 53 s 4; 1997 No 97 sch; pars renum R7 LA;  
A2005-12 s 5, s 7; pars renum R11 LA (see A2005-12 s 6);  
A2007-16 amdt 3.77, amdt 3.102, amdt 3.105  
om A2009-19 s 34

**Functions of commission**

s 8 am 1997 No 97 s 5; A2007-16 amdt 3.78

**Funding agreements—application of Act**

s 8A ins 1997 No 97 s 6; A2007-16 amdt 3.79

**Powers of commission**

s 9 am 1994 No 76 sch; 1997 No 97 sch; 2001 No 56 amdt 3.442;  
A2006-25 amdt 2.11; A2007-16 amdts 3.80-3.82; ss renum  
R16 LA; A2009-19 s 35

**Duties of commission**

s 10 am 1982 No 84 s 6; 1988 No 17 sch 2; 1989 No 38 sch 1;  
1992 No 23 sch 1; 1997 No 97 s 7, sch; pars renum R7 LA;  
A2006-22 amdt 1.71 (A2006-22 rep before commenced by  
disallowance (see Cwltz Gaz 2006 No S93)); A2007-16  
amdt 3.102, amdt 3.105; A2008-14 amdt 1.41

**Guidelines for allocation of work**

s 11 am 1997 No 96 sch 1; A2007-16 amdt 3.105

**Guidelines for provision of assistance**

s 12 am 1997 No 97 s 8; A2005-12 s 8; pars renum R11 LA  
(see A2005-12 s 9)

**Professional conduct by officers of commission**

s 13 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1992 No 53 s 5;  
A2005-12 s 10; A2007-16 amdt 3.103, amdt 3.104

**Board of commission**

pt 3 hdg om A2005-12 s 11  
ins A2009-19 s 36

**Establishment of board of commission**

s 14 om A2005-12 s 11  
ins A2009-19 s 36

## Endnotes

### 4 Amendment history

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#### **Functions of board**

s 15 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1997 No 96 sch 1  
om A2005-12 s 11  
ins A2009-19 s 36

#### **Constitution of board**

s 16 om A2005-12 s 11  
ins A2009-19 s 36

#### **Chief executive officer and assistant executive officers**

s 17 sub 1984 No 55 s 4  
am A2007-16 amdt 3.83, amdt 3.102

#### **Qualifications for appointment**

s 18 am 1997 No 96 sch 1; A2006-25 amdt 2.12

#### **Duties of assistant executive officers**

s 19 sub 1984 No 55 s 4; A2007-16 amdt 3.84

#### **Statutory officers of the commission to give reports**

s 19A ins 1982 No 84 s 7  
sub 1984 No 55 s 4; A2007-16 amdt 3.85

#### **Statutory officers of the commission to follow directions**

s 19B ins 1982 No 84 s 7  
sub 1984 No 55 s 4; A2007-16 amdt 3.85

#### **Staff of commission**

s 20 am 1997 No 97 sch; A2007-16 amdt 3.101, amdt 3.105

#### **Delegation**

s 21 am 1984 No 55 sch (as am by 1985 No 1 s 4)  
sub A2007-16 amdt 3.86

#### **Rights of officers of commission in relation to legal practice**

s 22 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1994 No 76 sch; 1997 No 96 sch 1; 1997 No 97 sch; A2005-12 s 12; ss renum R11 LA (see A2005-12 s 13); A2006-25 amdt 2.13; A2007-16 amdts 3.101-3.103; A2011-5 s 4

#### **Legal practitioner on record**

s 23 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1997 No 96 sch 1; A2005-12 s 14

#### **Bringing services of commission to public notice**

s 24 am A2007-16 amdt 3.100, amdt 3.102, amdt 3.105

#### **Application for legal assistance**

s 25 am 2001 No 44 amdt 1.2615, amdt 1.2616; A2005-12 s 15; ss renum R11 LA (see A2005-12 s 16); A2007-16 amdt 3.105

**Deciding applications for legal assistance**

s 26 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1992 No 53 s 6  
sub A2005-12 s 17

**Ending or changing legal assistance**

s 27 am 1984 No 55 sch (as am by 1985 No 1 s 4)  
sub A2005-12 s 17

**Circumstances in which legal assistance may be provided**

s 28 am 1988 No 41 s 3; A2005-12 s 18; ss renum R11 LA  
(see A2005-12 s 19)

**Legal assistance under the convention**

s 28A ins 1988 No 41 s 4  
am A2005-12 s 20

**Legal assistance—interests adverse to Territory**

s 29 am 1989 No 38 s 26

**Minor legal assistance**

s 30A ins A2005-12 s 21

**Contribution towards costs and expenses**

s 31 am 1992 No 53 s 7; ss renum R7 LA; A2011-5 ss 5-7

**Security for payment of contribution**

s 31A ins 1992 No 53 s 8  
am 1993 No 64 sch 1; 1993 No 90 sch; 1995 No 54 sch;  
A2005-12 s 22; A2007-3 amdt 3.323

**Arranging for services of private legal practitioners**

s 31B ins A2009-19 s 37

**Fees for services of private legal practitioners**

s 31C ins A2009-19 s 37

**Record of services provided by private legal practitioners**

s 31D ins A2009-19 s 37

**Panels of private legal practitioners**

s 31E ins A2009-19 s 37

**Compliance audits**

s 31F ins A2009-19 s 37

**Notice to practitioner about proposed decision**

s 32 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1997 No 97 s 9;  
A2005-12 s 23, s 24; ss renum R11 LA (see A2005-12 s 25);  
A2007-16 amdt 3.105  
sub A2009-19 s 37

**Payments to private legal practitioners**

s 32AA ins A2005-12 s 26

## Endnotes

4 Amendment history

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am A2009-19 s 38, s 39; ss renum R20 LA

### **Prohibition of additional payments to private practitioners**

s 32A ins 1980 No 15 s 4

### **Entitlement of legally assisted people to costs in proceedings**

s 33 hdg am A2007-16 amdt 3.105  
s 33 am 1982 No 84 s 8; 1984 No 55 sch (as am by 1985 No 1 s 4);  
1992 No 53 s 9; ss renum R7 LA; A2007-16 amdt 3.87

### **Payment by commission of costs awarded against legally assisted people**

s 34 hdg am A2007-16 amdt 3.105  
s 34 am A2005-12 s 27, s 28

### **Notification of decisions**

s 35 am 1982 No 84 s 9; A2005-12 s 29

### **Dispute resolution**

pt 5A hdg ins A2009-19 s 40

### **Definitions—pt 5A**

s 35A ins A2009-19 s 40  
def **approved negotiation** ins A2009-19 s 40  
def **convenor** ins A2009-19 s 40  
def **negotiation session** ins A2009-19 s 40

### **Power of commission to arrange approved negotiation**

s 35B ins A2009-19 s 40

### **Expenses of dispute resolution**

s 35C ins A2009-19 s 40

### **Confidentiality of negotiation**

s 35D ins A2009-19 s 40

### **Admissibility of evidence**

s 35E ins A2009-19 s 40

### **Protection of convenor from liability**

s 35F ins A2009-19 s 40

### **Reconsideration of decision**

s 36 am 1982 No 84 s 10; 1984 No 55 sch (as am by 1985 No 1  
s 4); 1992 No 53 s 10; ss and pars renum R7 LA; A2005-12 s  
30, s 31; pars renum R11 LA (see A2005-12 s 32); A2007-3  
amdt 3.324

### **Establishment and constitution of review committees**

s 37 am 1982 No 84 s 11; 1988 No 17 sch 2; 1992 No 53 s 11;  
1997 No 97 sch; A2007-16 amdt 3.102, amdt 3.105



**Appointment of members of review committees**

s 38 am 1982 No 84 s 12; 1984 No 55 sch (as am by 1985 No 1 s 4); 1988 No 17 sch 2  
om 1992 No 53 s 12

**Function of review committee**

s 39 am 1982 No 84 s 13

**Chief executive officer and person requesting review to have opportunity to be heard**

s 39A ins 1978 No 29 s 4  
am 1982 No 84 s 14; 1984 No 55 s 6

**Power of review committees to obtain information and documents**

s 39B ins 1982 No 84 s 15  
am 1984 No 55 sch (as am by 1985 No 1 s 4)

**Decision of review committee**

s 40 am 1982 No 84 s 16; A2005-12 s 33

**Cessation of committee**

s 40A ins 1992 No 53 s 13

**Establishment of fund**

s 41 am 1978 No 29 s 5; 1989 No 38 sch 1

**Banking accounts**

s 42 am 1978 No 29 s 6; 1989 No 38 sch 1; 1997 No 88 sch;  
ss renum R7 LA

**Application of fund**

s 43 am 1978 No 29 s 7; 1997 No 97 s 10; 2001 No 56 amdt 3.442;  
ss renum R7 LA; A2007-3 amdt 3.325

**Limitation on contracts**

s 44 am 1988 No 17 sch 2; 1992 No 53 s 14

**Estimates of expenditure**

s 45 am 1988 No 17 sch 2

**Audit**

s 47 am 1988 No 17 sch 2  
sub 1990 No 25 s 12; 1996 No 26 sch pt 14  
am A2007-3 amdt 3.326

**Term of office**

s 48 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1986 No 63 s 4;  
1989 No 38 sch 1; 1992 No 53 s 15  
sub A2007-16 amdt 3.88

**Commissioners**

div 8.1 hdg (prev pt 8 div 1 hdg) renum R7 LA

## Endnotes

### 4 Amendment history

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#### **Remuneration and allowances**

s 49 am 1984 No 55 sch (as am by 1985 No 1 s 4)  
om 1997 No 41 sch 1

#### **Qualifications for appointment**

s 50 am 1982 No 84 s 17; 1984 No 55 sch (as am by 1985 No 1  
s 4); 1989 No 38 sch 1; 1997 No 96 sch 1; A2009-19 s 41,  
s 42

#### **Resignation**

s 51 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1988 No 17  
sch 2

#### **Removal from office**

s 52 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1986 No 63 s 5;  
1988 No 17 sch 2; 1989 No 38 sch 1; A2007-16 amdt 3.89;  
A2010-30 amdt 1.36

#### **Acting president of commission**

s 53 am 1984 No 55 s 6A, sch (as am by 1985 No 1 s 2, s 4); 1988  
No 17 sch 2; A2005-12 s 34

#### **Meetings**

s 54 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1992 No 53  
s 16; 1997 No 97 sch; A2005-12 s 35; A2007-16 amdt 3.102

#### **Interests to be disclosed**

s 55 am 1984 No 55 sch (as am by 1985 No 1 s 4); A2005-12 s 36;  
A2007-16 amdt 3.105

#### **Officers of commission**

div 8.2 hdg (prev pt 8 div 2 hdg) renum R7 LA

#### **Term of appointment of statutory officers**

s 56 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1988 No 17  
sch 2; 1997 No 97 s 11  
sub A2007-16 amdt 3.90

#### **Conditions of appointment**

s 57 om 1995 No 56 sch  
ins A2007-16 amdt 3.90

#### **Leave of absence**

s 58 sub 1992 No 53 s 17  
am A2007-16 amdt 3.91  
sub A2009-19 s 43

#### **Resignation**

s 59 am 1984 No 55 sch (as am by 1985 No 1 s 4)

**Removal from office**

s 60 am 1984 No 55 s 7, sch (as am by 1985 No 1 s 2, s 4); 1989 No 38 sch 1; 1994 No 60 sch 1; A2007-16 amdt 3.92; A2008-37 amdt 1.288; A2010-30 amdt 1.37

**Review of decision to remove from office**

s 60A ins 1989 No 38 sch 1  
am 1994 No 60 sch 1  
sub A2008-37 amdt 1.289

**Outside employment**

s 61 am 1997 No 96 sch 1; A2007-16 amdt 3.100, amdt 3.102

**Delegation of commission's power to appoint**

s 62 am 1992 No 53 s 18; ss renum R7 LA  
sub A2005-12 s 37  
am A2007-16 amdt 3.93  
om A2009-19 s 44

**Election to be employed by commission**

s 63 om 1997 No 97 sch

**Rate of remuneration**

s 64 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1989 No 38 sch 1  
om 1997 No 97 sch

**Prior service to be reckoned as employment with the commission**

s 65 om 1997 No 97 sch

**Accrued recreation leave**

s 66 om 1997 No 97 sch

**Special conditions of employment**

s 67 om 1997 No 97 sch

**Conditions of employment of staff**

s 68 am 1989 No 38 sch 1  
sub A2003-41 amdt 3.312

**Personnel management**

s 68A ins 1992 No 13 s 3  
sub A2003-41 amdt 3.313  
am A2007-16 amdt 3.100; A2009-19 s 45

**Application of Legal Profession Act to commission etc**

s 69 am 1980 No 15 s 5; 1994 No 76 sch  
sub 1997 No 97 s 12; A2006-25 amdt 2.14  
am A2007-28 amdt 1.2

**Records management—legal services records**

div 8.3 hdg ins A2010-48 amdt 1.1

## Endnotes

### 4 Amendment history

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#### **Definitions—div 8.3**

- s 69A ins A2010-48 amdt 1.1  
def **approved records management program** ins A2010-48  
amdt 1.1  
def **director of territory records** ins A2010-48 amdt 1.1  
def **legal services record** ins A2010-48 amdt 1.1  
def **records management** ins A2010-48 amdt 1.1

#### **Records management—legal services records**

- s 69B ins A2010-48 amdt 1.1

#### **Approval of records management program**

- s 69C ins A2010-48 amdt 1.1

#### **Administrative provisions relating to legal aid committees**

- pt 9 hdg om A2005-12 s 38

#### **Tenure of office**

- s 70 am 1984 No 55 sch (as am by 1985 No 1 s 4)  
om A2005-12 s 38

#### **Senior member etc of committee**

- s 71 am 1984 No 55 s 7A, sch (as am by 1985 No 1 s 2, s 4)  
om A2005-12 s 38

#### **Resignation**

- s 72 am 1984 No 55 sch (as am by 1985 No 1 s 4)  
om A2005-12 s 38

#### **Removal from office**

- s 73 am 1984 No 55 sch (as am by 1985 No 1 s 4)  
om A2005-12 s 38

#### **Meetings of committee**

- s 74 am 1984 No 55 sch (as am by 1985 No 1 s 4)  
om A2005-12 s 38

#### **Interests to be disclosed e**

- s 75 om A2005-12 s 38

#### **Membership of panel**

- s 76 am 1982 No 84 s 18  
sub 1992 No 53 s 19  
am 1997 No 97 sch

#### **Resignation from panel**

- s 77 am 1982 No 84 s 19; 1988 No 17 sch 2  
sub 1992 No 53 s 19

**Removal from panel**

s 78 am 1982 No 84 s 20; 1988 No 17 sch 2  
 sub 1992 No 53 s 19  
 am A2007-16 amdt 3.94; A2010-30 amdt 1.38

**Allowances**

s 79 am A2007-16 amdt 3.100, amdt 3.102

**Meetings of review committee**

s 80 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1992 No 53  
 s 20; A2007-16 amdt 3.102

**Interests to be disclosed**

s 81 am A2007-16 amdt 3.105

**Establishment of consultative committees**

s 82 am 1988 No 17 sch 2; 1997 No 97 sch; A2007-16 amdt 3.101,  
 amdt 3.102, amdt 3.105

**Constitution of consultative committees**

s 83 am 1988 No 17 sch 2; 1997 No 97 sch; A2007-16 amdt 3.95,  
 amdt 3.101, amdt 3.105

**General provisions relating to consultative committees**

s 84 am A2007-16 amdt 3.100, amdt 3.102

**Inquiry relating to affairs of commission**

pt 11A renum as pt 12 hdg

**Inquiry relating to affairs of commission**

pt 12 hdg **orig pt 12 hdg**  
 om 1997 No 97 sch  
**pres pt 12 hdg**  
 (prev pt 11A hdg) ins 1984 No 3 s 3  
 renum as pt 12 hdg A2007-3 amdt 3.327

**Definitions for pt 12**

s 84A ins 1984 No 3 s 3  
 def **assistant** ins 1984 No 3 s 3  
 def **inquiry** ins 1984 No 3 s 3  
 def **prescribed matter** ins 1984 No 3 s 3  
 am 1997 No 97 sch  
 sub A2007-16 amdt 3.96  
 def **prescribed person** ins 1984 No 3 s 3  
 am 1997 No 97 sch

**Appointment of person to conduct inquiry**

s 84B ins 1984 No 3 s 3  
 am 1988 No 17 sch 2

## Endnotes

### 4 Amendment history

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#### **Assistants**

s 84C ins 1984 No 3 s 3  
am 1988 No 17 sch 2; A2007-16 amdt 3.105

#### **Access to documents etc**

s 84D ins 1984 No 3 s 3  
am 1998 No 54 sch

#### **Professional privilege**

s 84E ins 1984 No 3 s 3  
am A2007-16 amdt 3.104

#### **Appointments for particular inquiry**

s 84F ins 1984 No 3 s 3  
am 1988 No 17 sch 2  
om 1997 No 97 sch

#### **Transfer of rights and liabilities**

s 85 om 1997 No 97 sch

#### **Transfer of moneys**

s 86 om 1997 No 97 sch

#### **Contracts**

s 87 om 1997 No 97 sch

#### **Previous Committee to continue for certain purposes**

s 88 om 1997 No 97 sch

#### **Previous applications for legal aid**

s 89 om 1997 No 97 sch

#### **Delegation by commission**

s 90 om 1984 No 55 sch (as am by 1985 No 1 s 4)  
ins A2009-19 s 46

#### **Payment for legal assistance provided before commencing day**

s 90A ins 1978 No 29 s 8  
am 1997 No 96 sch 1  
om 1997 No 97 sch

#### **Liabilities of commission and Territory**

s 91 am 1989 No 38 s 27, sch 1; A2005-12 s 39; A2007-16  
amdt 3.97, amdt 3.98

#### **Grants to voluntary legal assistance organisations**

s 91A ins 1978 No 29 s 9  
am 1989 No 38 sch 1

#### **Review of decision to remove statutory officer of commission from office**

s 91B ins 1985 No 1 s 7B (as am by 1985 No 1 s 2)  
om 1989 No 38 sch 1

**Secrecy**

s 92 am 1982 No 84 s 21; 1984 No 3 s 4; 1992 No 53 s 21; 1994 No 81 sch; ss renum R7 LA; A2005-12 s 40; A2007-3 amdt 3.328, amdt 3.329; A2007-16 amdt 3.102

**General exceptions to secrecy provisions**

s 92AA ins 1992 No 53 s 22  
am 1994 No 76 sch; A2006-25 amdt 2.15; A2008-37 amdt 1.290

**Power of commission to obtain information or documents**

s 92A ins 1982 No 84 s 22

**Exemption from fees and taxes**

s 93 am 1982 No 84 s 23

**Commission to operate as Legal Aid ACT**

s 94 hdg sub A2009-19 s 47  
s 94 am 1978 No 29 s 10; 1997 No 97 sch; A2007-16 amdt 3.101; A2009-19 s 48

**Application of Financial Management Act to commission**

s 94A ins A2005-52 amdt 1.149

**False or misleading statements**

s 95 am 1984 No 55 sch (as am by 1985 No 1 s 4); 1994 No 81 sch; A2004-15 amdt 2.109, amdt 2.110; ss renum R9 LA (see A2004-15 amdt 2.111); A2005-12 s 41

**Interest on amounts due to commission**

s 95A ins 1992 No 53 s 23  
am 1995 No 46 sch; A2004-60 amdt 1.171

**Certificate as to amounts owing to commission**

s 96 am 1984 No 55 sch (as am by 1985 No 1 s 4); A2005-12 s 42

**Annual report and financial statements**

s 97 am 1978 No 29 s 11; 1982 No 84 s 24; 1988 No 17 sch 2; 1989 No 38 sch 1  
om 1990 No 25 s 13

**Superannuation**

s 98 am 1997 No 97 s 13  
sub A2007-3 amdt 3.330; A2009-19 s 49

**Approved forms**

s 99 am 1988 No 17 sch 2; 1989 No 38 sch 1  
sub 2001 No 44 amdt 1.2617  
am A2007-16 amdt 3.99

**Regulation-making power**

s 100 ins 2001 No 44 amdt 1.2617

## Endnotes

4 Amendment history

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### **Transitional—Justice and Community Safety Legislation Amendment Act 2009 (No 2)**

pt 14 hdg ins A2005-12 s 43  
exp 18 March 2006 (s 101 (3))  
ins A2009-19 s 50

### **Continuation of appointments**

s 101 ins A2005-12 s 43  
exp 18 March 2006 (s 101 (3) (LA s 88 declaration applies))  
ins A2009-19 s 50

### **Dictionary**

dict ins A2007-3 amdt 3.331  
am A2008-37 amdt 1.291; A2009-19 s 51; A2010-30  
amdt 1.39  
def **approved records management program** ins A2010-48  
amdt 1.2  
def **assistant** ins A2007-3 amdt 3.331  
def **assistant executive officer** ins 1984 No 55 sch (as am by  
1985 No 1 s 4)  
reloc from s 5 A2007-3 amdt 3.321  
def **bar association** reloc from s 5 A2007-3 amdt 3.321  
def **board** ins A2009-19 s 52  
def **chief executive officer** ins 1984 No 55 sch (as am by  
1985 No 1 s 4)  
reloc from s 5 A2007-3 amdt 3.321  
def **commission** reloc from s 5 A2007-3 amdt 3.321  
def **commissioner** am 1984 No 55 sch (as am by 1985 No 1  
s 4)  
reloc from s 5 A2007-3 amdt 3.321  
sub A2009-19 s 53  
def **consultative committee** reloc from s 5 A2007-3  
amdt 3.321  
def **director of territory records** ins A2010-48 amdt 1.2  
def **duty lawyer services** am 1997 No 96 sch 1  
reloc from s 5 A2007-3 amdt 3.321  
def **fund** reloc from s 5 A2007-3 amdt 3.321  
def **funding agreement** ins 1997 No 97 s 4  
reloc from s 5 A2007-3 amdt 3.321  
def **inquiry** ins A2007-3 amdt 3.331  
def **judge** reloc from s 5 A2007-3 amdt 3.321  
def **law society** reloc from s 5 A2007-3 amdt 3.321  
def **legal aid commission** reloc from s 5 A2007-3 amdt 3.321  
def **legal assistance** ins A2007-3 amdt 3.331  
def **legally assisted person** reloc from s 5 A2007-3  
amdt 3.321  
def **legal services record** ins A2010-48 amdt 1.2



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- def **member of a review committee** reloc from s 5 A2007-3  
amdt 3.321
- def **member of the staff of the commission** am 1997 No 97  
sch  
reloc from s 5 A2007-3 amdt 3.321
- def **officer of the commission** reloc from s 5 A2007-3  
amdt 3.321
- def **practising certificate** sub A2006-25 amdt 2.8  
reloc from s 5 A2007-3 amdt 3.321  
sub A2007-28 amdt 1.3
- def **prescribed matter** ins A2007-3 amdt 3.331
- def **prescribed person** ins A2007-3 amdt 3.331
- def **private legal practitioner** reloc from s 5 A2007-3  
amdt 3.321  
sub A2011-5 s 8
- def **produce** reloc from s 5 A2007-3 amdt 3.321
- def **records management** ins A2010-48 amdt 1.2
- def **review committee** reloc from s 5 A2007-3 amdt 3.321
- def **statutory interest account** am 1994 No 76 sch  
sub A2006-25 amdt 2.9  
reloc from s 5 A2007-3 amdt 3.321
- def **statutory officer of the commission** sub 1984 No 55 sch  
(as am by 1985 No 1 s 4)  
reloc from s 5 A2007-3 amdt 3.321
- def **tribunal** reloc from s 5 A2007-3 amdt 3.321
- def **unrestricted practising certificate** sub A2006-25  
amdt 2.10  
reloc from s 5 A2007-3 amdt 3.321

## Endnotes

### 5 Earlier republications

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#### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1992 No 53	18 September 1992
2	Act 1993 No 90	31 January 1994
3	Act 1994 No 81	28 February 1995
4	Act 1996 No 26	1 July 1996
5	Act 1996 No 26	30 November 1996
6	Act 1997 No 97	31 December 1997
7	Act 2001 No 56	18 February 2002
7 (RI)	A2001-56 ‡	11 February 2003
8	A2003-41	9 October 2003
9	A2004-15	9 April 2004
10	A2004-60	10 January 2005
11*	A2005-12	18 March 2005
12	A2005-52	1 January 2006
13	A2005-52	19 March 2006
14	A2006-25	1 July 2006
15	A2007-3	12 April 2007
16	A2007-16	11 July 2007
17	A2007-28	1 October 2007
18	A2008-14	19 May 2008
19	A2008-37	2 February 2009

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<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
20*	A2009-19	29 September 2009
21	A2010-30	28 September 2010
22	A2010-48	26 November 2010

‡ includes retrospective amendments by A2002-49

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