

Serial 258  
Legal Aid  
Mr Manzie

NORTHERN TERRITORY OF AUSTRALIA

LEGAL AID BILL 1990

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## NORTHERN TERRITORY OF AUSTRALIA

# A BILL for AN ACT

**relating to the provision of Legal Aid**

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### PART I - PRELIMINARY

#### 1. SHORT TITLE

This Act may be cited as the *Legal Aid Act 1990*.

#### 2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3. REPEAL

The *Legal Assistance Ordinance 1972* (No. 53, 1972) is repealed.

#### 4. INTERPRETATION

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

"assisted person" means a person to whom legal assistance is provided under this Act;

"Chairman" means the Chairman of the Commission and includes a person appointed under section 50 to act in the office of Chairman while so acting;

"Commission" means the Legal Aid Commission established by section 5;

"Commissioner" means a Commissioner of the Commission and includes the Chairman of the Commission;

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"court" includes a tribunal or person entitled to receive evidence on oath;

"current practising certificate" means an unrestricted practising certificate or restricted practising certificate in force under the *Legal Practitioners Act*;

"Director" means the Director of Legal Aid and includes a person appointed to act in the office of the Director;

"duty lawyer services" means legal services provided by a legal practitioner (whether or not an officer) attending at a proceeding of a court, 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;

"Law Society" means the Law Society of the Northern Territory;

"Legal Aid Committee" means a Legal Aid Committee established under section 14;

"Legal Aid Fund" means the Legal Aid Fund established by section 39;

"officer" means an employee within the meaning of the *Public Service Act* employed in the service of the Commission and holding a current practising certificate under the *Legal Practitioners Act*;

"private legal practitioner" means a person who is practising as a legal practitioner on his or her own account or in partnership;

"produce" includes permit access to;

"Review Committee" means a Review Committee established under Part VI.

(2) A reference in this Act to the provision of legal assistance shall be construed as a reference to the provision of legal services (including the giving of legal advice) without charge to the person to whom the legal assistance is provided with or without the making of a payment by the person.

PART II - ESTABLISHMENT AND FUNCTION  
OF LEGAL AID COMMISSION

5. ESTABLISHMENT OF COMMISSION

(1) There is established by this section a commission by the name of the Northern Territory Legal Aid Commission.

(2) The Commission -

- (a) is a body corporate;
- (b) shall have a common seal; and
- (c) is capable, in its corporate name, of acquiring holding and disposing of real (including leasehold) and personal property and of suing and being sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to a document and shall assume that it was duly affixed.

6. CONSTITUTION OF COMMISSION

(1) Subject to subsection (2), the Commission shall be constituted by -

- (a) a Chairman appointed by the Minister;
- (b) a Commissioner appointed by the Minister;
- (c) a Commissioner appointed by the Treasurer;
- (d) 2 Commissioners appointed by the Minister, one to represent community interests and one, on the nomination of the Law Society, to represent the private legal profession;
- (e) 2 Commissioners appointed by the Attorney-General of the Commonwealth; and
- (f) a Commissioner appointed by the Minister after having been elected by the staff of the Commission from amongst their number as prescribed.

(2) The Director shall, *ex officio*, be a Commissioner.

(3) The performance of the function, or the exercise of the powers, of the Commission is not affected by reason of there being a vacancy in the membership of the Commission.

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(4) The appointment of a Commissioner is not invalidated, and shall not be called in question, by reason of a defect or irregularity in connection with his or her nomination.

7. FUNCTION AND POWERS OF COMMISSION

(1) The function of the Commission is to provide legal assistance in accordance with this Act.

(2) The Commission has such powers as are necessary to enable it to perform its functions and exercise its powers.

(3) In the performance of its function, the Commission shall have regard to the amount of money for the time being standing to the credit of the Legal Aid Fund or the Contingency Legal Aid Fund and of any money likely to be received by the Commission for the purposes of the Funds.

8. DUTIES OF COMMISSION

In the performance of its function, the Commission shall -

- (a) ensure that legal assistance is provided in the most effective, efficient and economical manner;
- (b) ensure that its activities are carried on consistently with, and do not prejudice, the independence of the private legal profession;
- (c) liaise and co-operate with, and if the Commission considers it desirable to do so, make reciprocal arrangements with, professional bodies representing private legal practitioners and other bodies engaged or interested in the provision of legal assistance in the Territory or elsewhere;
- (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;
- (e) make maximum use of services which private legal practitioners offer to provide on a voluntary basis;
- (f) encourage and permit persons who are not legal practitioners 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; and

(g) provide officers and agencies of the Commonwealth or a State concerned in the provision of legal assistance with such statistical and other information as they reasonably require.

9. ARRANGEMENTS FOR PROVISION OF LEGAL ASSISTANCE BY COMMISSION

(1) Without limiting the generality of section 7, Legal assistance may be provided by the Commission by arranging for the services of a private legal practitioner to be made available at the expense of the Commission or by making available the services of officers.

(2) The Commission shall determine guidelines for the allocation of work between officers and private legal practitioners and make the guidelines available to them.

(3) Where the Commission provides legal assistance by making available the services of officers, the Commission shall pay disbursements and out-of-pocket expenses incurred in the course of providing that assistance.

(4) Where the Commission provides legal assistance by arranging for the services of private legal practitioners, the Commission shall, except where the services are provided on a voluntary basis, pay fees to the private legal practitioners for the performance of those services (being fees determined by the Commission in accordance with section 29 (8), (9) and (10)) and shall pay disbursements and out-of-pocket expenses properly incurred by them.

10. COMMISSION MAY HOLD MONEY ON TRUST

(1) The Commission may accept money or property on trust and may act as trustee of money or other property held by it on trust.

(2) The provisions of Part VII of the *Legal Practitioners Act* relating to the keeping of accounts by legal practitioners in respect of money held by them on trust, and the audit of such accounts, do not apply in relation to money held by the Commission on trust.

(3) Money held by the Commission on trust may be invested by the Commission in any manner in which trust funds may, for the time being, be invested under the *Trustee Act*, but not otherwise, and any money resulting from investments so made shall be paid to the credit of the Fund.

11. GUIDELINES FOR PROVISION OF ASSISTANCE

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

- (a) the application of section 25 for the purposes of determining whether legal assistance may be provided to a person under this Act;
- (b) determining the conditions subject to which assistance referred to in section 27(1)(a) or (b) will be granted;
- (c) determining the extent (if any) to which the Commission will pay costs awarded against a legally assisted person in a proceeding; and
- (d) determining the amount of costs or disbursements that will be required to be paid to the Commission under section 30 by a legally assisted person who has been successful in the proceeding in respect of which the legal assistance was provided.

12. PROFESSIONAL CONDUCT BY OFFICERS OF COMMISSION

(1) An officer, when practising as, or performing any of the functions of, a legal practitioner, in pursuance of 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) 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 an officer who practices as, or performs any of the functions of, a legal practitioner for the person in pursuance of this Act.

13. AGREEMENT BETWEEN COMMONWEALTH AND TERRITORY

(1) The Territory may enter into an agreement with the Commonwealth for or in relation to -

- (a) the operation of the Commission;
- (b) the money to be made available by the Commonwealth or by the Territory and the Commonwealth, for the purposes of the provision of legal assistance;
- (c) the priorities to be observed, in relation to money made available by the Commonwealth, in the provision of legal assistance as between classes of persons, or classes of matters, or both;
- (d) the sharing of the operational costs incurred in the provision of legal assistance and other legal services by the Commission; and
- (e) any matter incidental to a matter mentioned in paragraph (a), (b), (c) or (d).

(2) An agreement under subsection (1) shall, except in so far as it is inconsistent with this Act or the Regulations, be binding on the Commission.

PART III - ESTABLISHMENT AND FUNCTIONS OF  
LEGAL AID COMMITTEES

14. ESTABLISHMENT OF COMMITTEES

Subject to and in accordance with the Regulations, there shall be such Legal Aid Committees as the Commission establishes in accordance with this Part.

15. CONSTITUTION OF COMMITTEES

(1) Each Legal Aid Committee shall consist of the Director and 3 other members.

(2) The members of a Legal Aid Committee, other than the Director, shall be appointed by the Commission.

(3) The Commission shall appoint as a member of a Legal Aid Committee one person who is not a lawyer.

(4) The members of a Legal Aid Committee, other than the Director and the person appointed under subsection (3), shall be persons nominated by the Law Society.

(5) Subject to subsection (6), the Director may appoint another officer to be his or her deputy, or may appoint other officers to be his or her deputies, in relation to the Director's membership of Legal Aid Committees.

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(6) In the event of the absence of the Director from a meeting of a Legal Aid Committee, the deputy of the Director or, if there is more than one deputy, one of the deputies, is entitled to attend that meeting and, while so attending, shall be deemed to be a member of the Committee.

(7) The Commission may appoint a person to be the deputy of a member of a Legal Aid Committee other than the Director and, in the event of the absence of the member from a meeting of the Legal Aid Committee, the deputy is entitled to attend that meeting and, while so attending, shall be deemed to be a member of the Committee.

### 16. FUNCTIONS OF COMMITTEES

The functions of a Legal Aid Committee are to decide -

- (a) applications for legal assistance coming before the Committee; and
- (b) any other matters coming before the Committee under this Act.

## PART IV - STAFF OF COMMISSION

### 17. DIRECTOR

(1) The Minister shall appoint a person to be the Director of Legal Aid who shall be charged with carrying out the decisions of the Commission and the general administration of the service of the Commission.

(2) The Director shall -

- (a) be paid such salary, allowances and expenses; and
- (b) hold office on such terms and conditions,

as the Minister, with the advice of the Public Service Commissioner, determines.

(3) The Director, if he or she does not hold a current unrestricted practising certificate under the *Legal Practitioners Act*, shall be deemed to hold such a certificate.

### 18. ACTING DIRECTOR

(1) Where the Director is or is expected to be absent from duty or from the Territory or is, for any reason, unable to perform the duties of his or her office, or there is a vacancy in the office of the Director, the Chairman may appoint a person to act as the Director during the absence or until the vacancy is filled.

(2) A person appointed under subsection (1) to act in the office of the Director, if he or she does not hold a current practising certificate under the *Legal Practitioners Act*, shall be deemed to hold such a certificate.

19. STAFF OF COMMISSION

(1) The Commission is a prescribed authority within the meaning and for the purposes of the *Public Service Act*.

(2) All allowances and other expenses payable to the Director and other persons employed in the service of the Commission shall be paid out of the moneys of the Commission.

(3) An officer has all the rights, privileges and duties of a legal practitioner employed by a person who holds an unrestricted practising certificate under the *Legal Practitioners Act*.

20. SIGNATURE OF LEGAL PRACTITIONER

Where -

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

the signature of the Director or of an officer authorized in writing by the Director to sign documents on behalf of the Director for the purposes of this section shall be deemed to be the signature of a legal practitioner for that party.

PART V - PROVISION OF LEGAL ASSISTANCE  
BY COMMISSION

21. 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 may, in the course of the performance of his or her duties, bring those services to the attention of the public or to the attention of particular persons.

22. APPLICATION FOR LEGAL ASSISTANCE

(1) An application for legal assistance, other than legal assistance consisting of the giving of legal advice or the provision of duty lawyer services, shall -

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- (a) be made to the Commission in writing and shall be substantially in accordance with a form approved by the Commission; and
- (b) contain such information as is required by that form.

(2) The Commission may, in special circumstances, treat an application that does not comply with all the requirements of subsection (1) as having been duly made.

(3) 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.

(4) Where legal advice is being provided to a person under this Act and it appears to an officer 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 (3) and, where such a requirement is made, those subsections and section 25 (1), (2) and (3), 28 and 32 (2) apply in relation to the application.

(5) The Commission may distribute to private legal practitioners application forms for completion by persons applying for legal assistance.

23. DETERMINATION OF APPLICATION FOR LEGAL ASSISTANCE

(1) An application for legal assistance shall, in accordance with the directions of the Commission, be decided by a Legal Aid Committee, by the Director or by an officer authorized by the Director to decide applications for legal assistance.

(2) The Commission shall give directions as to the classes of cases in which -

- (a) applications for legal assistance are to be decided by a Legal Aid Committee; and
- (b) applications are to be decided by officers.

(3) Where a Legal Aid Committee or an officer decides to grant an application for legal assistance, the Committee or officer shall also decide, in accordance with guidelines determined by the Commission in pursuance of sections 9(2) and 11 -

- (a) whether the legal assistance should be provided by making available the services of a private legal practitioner or whether the legal

assistance should be provided by making available the services of an officer;

- (b) the nature and extent of the legal assistance to be provided; and
- (c) whether the legal assistance is to be provided without charge or subject to either or both of the conditions referred to in section 28 (1).

(4) The Director shall ensure that each Legal Aid Committee is provided with such assistance as it requires to enable it to perform its functions under this Act.

(5) For the purpose of deciding an application for legal assistance, a Legal Aid Committee or an officer may make such inquiries and obtain such advice (including the opinion of counsel) and reports as the Committee or officer considers desirable.

(6) The cost of making inquiries under subsection (5) or obtaining such advice or reports shall be paid -

- (a) if the Committee or officer so determines - by the applicant for the legal assistance; or
- (b) in any other case - out of the Fund.

#### 24. TERMINATION OR VARIATION OF LEGAL ASSISTANCE

A decision to provide legal assistance to a person under this Act may be varied at any time so as to -

- (a) terminate the provision of the legal assistance;
- (b) alter the nature or extent of the legal assistance;
- (c) make the provision of the legal assistance subject to a condition in accordance with section 28; or
- (d) alter a condition to which the provision of the legal assistance is subject in accordance with section 28,

and may be so varied -

- (e) in a case where the decision was made by a Legal Aid Committee - by such a Committee; or
- (f) in a case where the decision was made by an officer - by the Director or by an appropriate officer in accordance with arrangements made or approved by the Director.

25. CIRCUMSTANCES IN WHICH LEGAL ASSISTANCE MAY BE PROVIDED

(1) Subject to this section, legal assistance, other than legal assistance consisting of the giving of legal advice or the provision of duty lawyer services, may be provided to a person under this Act only if -

- (a) (i) the person is in need of assistance because the person is unable to afford the cost of obtaining from private legal practitioners the legal services in respect of which legal assistance is sought; and
- (ii) it is reasonable in all the circumstances to provide the legal assistance; or
- (b) pursuant to an agreement under section 13(1)(b) the Commonwealth agrees to reimburse the Territory the cost of providing legal assistance to the person.

(2) In making a decision whether a person is in need of legal assistance because the person 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 -

- (a) the income of the person and of each person associated with 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 a private legal practitioner; and
- (f) any other matter affecting the ability of the person to meet the cost of obtaining the legal services from a private legal practitioner.

(3) In making a decision whether it is reasonable in all the circumstances to provide assistance to a person, regard shall be had to all relevant matters, including -

- (a) the nature and extent of a benefit that may accrue to the person, to the public or to a 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 a

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 - whether the proceeding is likely to terminate in a manner favourable to the person.

(4) Legal assistance shall not be provided under this Act to a person who is not ordinarily resident in the Territory unless the assistance relates to -

(a) a proceeding in a court in the Territory; or  
(b) a matter arising under a law in force in the Territory.

(5) 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 VI.

(6) Legal assistance shall not be provided under this Act to a body corporate.

(7) A reference in subsection (2)(a) to a person who is associated with a person is a reference to -

(a) the person's spouse or *de facto* partner; or  
(b) a person who is financially responsible for, or who provides financial support to, that person.

26. COMMISSION MAY ASSIST PERSON HAVING INTEREST ADVERSE TO TERRITORY

Legal assistance may be provided under this Act to a person in relation to a proceeding or matter notwithstanding that the interests of the 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 law of the Territory or in the interests of a body corporate in which the Territory or such an authority or body has an interest.

27. 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 22(4); or  
(b) the provision of duty lawyer services,

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

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(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.

28. 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 27 (1) applies, may be on the basis that the assistance will be provided without charge or may be subject to a condition that the person -

- (a) pays to the Commission a contribution of a specified amount towards the cost to the Commission of providing the assistance; or
- (b) makes a payment to the Commission in respect of out-of-pocket expenses incurred, or to be incurred, by the Commission in providing the assistance.

(2) An amount required to be paid by an assisted person under this section shall be paid in such manner and within such time as the Commission directs.

(3) If a person who is or has been a legally assisted person has not paid an amount payable by the person to the Commission under this section, the amount is recoverable by the Commission as a debt due and payable to the Commission.

29. ARRANGING FOR SERVICES OF PRIVATE LEGAL PRACTITIONERS

(1) For the purpose of facilitating arrangements for the services of private legal practitioners to be made available to legally assisted persons, the Commission shall cause to be prepared and maintained, and to be made available to Legal Aid Committees, a list of private legal practitioners who have notified the Commission that they are willing to act as legal practitioners on behalf of legally assisted persons, whether generally, in particular classes of matters or in particular courts.

- (2) Subject to this section, the Commission may -
  - (a) refuse to include in the list maintained under subsection (1) the name of a private legal practitioner who has notified the Commission that he or she is willing to act as a legal practitioner on behalf of legally assisted persons;

- (b) remove the name of a private legal practitioner from the list maintained under subsection (1); or
- (c) include the name of a private legal practitioner in that list together with limitations as to the classes of matters in which the services of the private practitioner will be sought by the Commission for the purposes of this Act.

(3) The Commission shall not refuse to include the name of a private legal practitioner in the list maintained under subsection (1), remove the name of a private legal practitioner from that list or include in that list limitations as to the classes of matters in which the services of a private legal practitioner will be sought by the Commission for the purposes of this Act, unless the Commission has -

- (a) given written notice to the practitioner setting out the reasons for the proposed refusal, removal or limitation; and
- (b) afforded the practitioner a reasonable opportunity to be heard in relation to the proposed refusal, removal or limitation.

(4) Where the Commission has -

- (a) refused to include the name of a practitioner in the list maintained under subsection (1);
- (b) removed the name of a practitioner from that list; or
- (c) included in that list, in relation to a practitioner, a limitation as mentioned in subsection (2)(c),

the practitioner may, before the expiration of 28 days after receipt of the notice given to him under subsection (3), apply to the Supreme Court for an order directing the Commission to include his or her name in the list, to restore his or her name in the list or to remove the limitation, as the case may be.

(5) Where an application is made under subsection (4) to the Supreme Court, the Court may -

- (a) make the order applied for;
- (b) postpone the making of the order applied for with liberty to apply; or
- (c) dismiss the application,

and, subject to subsection (6), the decision of the Court is final and conclusive.

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(6) Where an application (including a further application made in pursuance of a previous application of this subsection) is dismissed, the applicant may, at any time after the expiration of 28 days after the date of the dismissal, make a further application for an order as mentioned in subsection (4), and subsection (5) applies in relation to any such further application.

(7) In selecting a private legal practitioner whose services may be sought to be made available to an assisted person in a particular case, the paramount considerations shall be the interest of the assisted person and any choice expressed by the person for the services of a particular practitioner but, subject to those considerations, work shall be allocated among the practitioners whose names are on the list maintained under subsection (11) in a manner that is equitable having regard to the nature of their legal practices and their expertise in particular fields of law.

(8) In determining the fees to be offered to private legal practitioners for the performance of services on behalf of assisted persons, the Commission shall consult the Law Society and shall take into account its views.

(9) Subject to subsection (8), the fees to be offered to private legal practitioners for the performance of services on behalf of assisted persons shall, so far as practicable, consist of fixed amounts in respect of the performance of particular services and be less than the ordinary professional cost of those services.

(10) The Director may, in such classes of cases as the Commission determines, refer to a Legal Aid Committee accounts from private legal practitioners in respect of fees, disbursements or out-of-pocket expenses in connection with the provision of legal assistance for the purpose of determining whether the amounts claimed are properly payable.

(11) The Commission shall maintain a record containing particulars of the number and type of matters dealt with by specified private legal practitioners under this Act and shall make the record available for inspection on request by the Law Society.

(12) The Commission may defer payment of fees payable by it to a private legal practitioner in connection with proceedings in respect of which legal assistance has been granted until -

(a) the Commission is satisfied that the practitioner has taken reasonable steps to recover party and party costs to which the assisted person is entitled;

- (b) the conclusion of any investigation in relation to an alleged -
  - (i) breach of this Act or the *Legal Practitioners Act* by the practitioner;
  - (ii) fraud or misrepresentation by the practitioner in relation to the provision of legal assistance or any such fraud or misrepresentation to which the practitioner is a party; or
  - (iii) improper action by the practitioner in bringing, defending or conducting proceedings in relation to which legal aid has been provided or any such action to which the practitioner is a party; or
- (c) the completion of any criminal or disciplinary proceedings commenced against the practitioner in respect of a matter referred to in paragraph (b).

(13) Without affecting any other power of the Commission to refuse payment of fees, the Commission may refuse to make a payment of fees to a private legal practitioner in connection with proceedings in respect of which legal assistance has been granted if an allegation referred to in subsection (12)(b) against the practitioner is substantiated in criminal or disciplinary proceedings.

#### 30. ENTITLEMENT OF ASSISTED PERSONS TO COSTS IN PROCEEDINGS

(1) For the purposes of the making or enforcement of an order for costs, or the determination of an entitlement to costs, in a proceeding before a court to which an assisted person is a party, the person shall be deemed to be liable to pay the ordinary professional costs of the legal services provided to the person or in connection with the proceeding and any disbursements and out-of-pocket expenses incurred in or in connection with the provision of those services.

(2) Where an amount is recoverable by an assisted person (whether in a proceeding or by virtue of 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 the amount as the Director, having regard to guidelines determined by the Commission in pursuance of section 11(d), determines.

(3) In determining the amount that an assisted person is liable to pay under subsection (2), the Director shall have regard to -

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- (a) the amount actually recovered by the assisted person; and
- (b) any failure by the assisted person to take action to recover the amount recoverable, including a failure to comply with a direction of the Director under subsection (4).

(4) The Director may give directions to an assisted person requiring the person to take specific 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 an assisted person (whether in a proceeding or by virtue of a settlement or compromise) in respect of the matter in which the legal assistance was given, the Director may, by writing signed by the Director, direct the 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) Where an assisted person fails to comply with a direction under subsection (5), the person shall be deemed to have assigned to the Commission his or her right to recover the amount at the expiration of the period referred to in that subsection and, for the purpose of recovering the amount, the Commission shall stand in place of the person and may use all the remedies and, if necessary, the name, of the person in any proceeding to recover the amount.

(7) The amount that a person is liable to pay to the Commission under subsection (2) is recoverable by the Commission as a debt due and payable to it.

31. PAYMENT BY COMMISSION OF COSTS AWARDED AGAINST ASSISTED PERSONS

- (1) Where -

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

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

(2) A request under subsection (1) shall be decided, in accordance with guidelines under section 11(c) -

- (a) if the question whether legal assistance should be granted in relation to the proceeding was decided by an officer - by an officer; or
- (b) if the question was decided by a Legal Aid Committee - by a Legal Aid Committee.

(3) Subject to subsection (4), the Commission shall pay so much (if any) of the amount requested to be paid as the officer or the Legal Aid Committee, as the case may be, 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 the amount is not paid by the Commission.

(5) An amount paid by the Commission under this section shall be deemed to have been paid by the assisted person.

### 32. NOTIFICATION OF DECISIONS

(1) Where a decision under this Act in relation to the provision of legal assistance or to the making of a payment in respect of costs, including a decision reconsidering or reviewing a previous decision, is made by an officer or by a Legal Aid Committee, the Commission shall, within 14 days after the decision is made, communicate the decision to the person who applied for the legal assistance or for the payment

(2) Where a decision referred to in subsection (1) 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.

(3) 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) where the matter to which the decision relates was dealt with on behalf of the person by a practitioner - by giving to the practitioner, or by sending to the practitioner by post to the address of the 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 33; and

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

PART VI - RECONSIDERATION AND REVIEW OF DECISIONS

33. RECONSIDERATION OF DECISIONS

- (1) Where a decision has been made -
  - (a) refusing to provide legal assistance under this Act;
  - (b) refusing to provide legal assistance under this Act of the nature, or to the extent, applied for;
  - (c) imposing a condition on the provision of legal assistance under this Act or varying adversely to a legally assisted person a condition so imposed;
  - (d) terminating the provision of legal assistance under this Act; or
  - (e) refusing to pay the whole or a part of an amount that the Commission has been requested to pay under section 31,

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

(2) Where a notice requesting that a decision be reconsidered is received by the Commission, the decision shall be reconsidered -

- (a) where the decision was made by a Legal Aid Committee - by the Committee; or
- (b) where the decision was made by an officer - by an appropriate officer in accordance with arrangements made or approved by the Director,

and may be confirmed or varied.

(3) Where a decision is confirmed or varied following a reconsideration under subsection (2), 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 the request.

(4) A request by a person for a reconsideration or review of a decision shall be made before the expiration of 3 months after the person received notice of the relevant decision or such longer period as the Commission, in special circumstances, allows.

34. ESTABLISHMENT AND CONSTITUTION OF REVIEW COMMITTEES

(1) Subject to and in accordance with the Regulations, there shall be such Review Committees as the Commission establishes in accordance with this Part.

(2) A Review Committee shall consist of -

(a) a private legal practitioner;

(b) an officer; and

(c) a person, (not being a private legal practitioner or an officer) who has qualifications or experience relevant to the performance of the function of a Review Committee.

35. APPOINTMENT OF MEMBERS OF REVIEW COMMITTEE

(1) The members of a Review Committee shall be appointed by the Commission.

(2) The Commission shall appoint a member of each Review Committee to be Chairman of that Committee.

(3) The Commission may appoint as a deputy a member of a Review Committee -

(a) in the case of a member referred to in section 34(2)(a) - a private legal practitioner;

(b) in the case of a member referred to in section 34(2)(b) - an officer; and

(c) in the case of a member referred to in section 34(2)(c) - a person (not being a private legal practitioner or an officer) who has qualifications or experience relevant to the performance of the function of a Review Committee.

(4) In the event of the absence of a member of a Review Committee from a meeting of the Review Committee, the deputy of the member is entitled to attend the meeting and while so attending shall be deemed to be a member.

36. FUNCTION OF REVIEW COMMITTEE

The function of a Review Committee is to review decisions referred to the Committee under section 33(3).

37. PERSON REQUESTING REVIEW TO HAVE OPPORTUNITY TO BE HEARD

A Review Committee that reviews a decision referred to in section 33(3) shall not make a decision on the review unless it has afforded to the person who requested the review a reasonable opportunity to -

- (a) attend a meeting of the Review Committee;
- (b) address the Review Committee in relation to the review; and
- (c) place before the Committee documents relevant to the review.

38. DECISION OF REVIEW COMMITTEE

(1) A Review Committee that reviews a decision of an officer or of a Legal Aid Committee referred to it under section 33(3) (in this section referred to as a "primary decision") shall give a decision in writing -

- (a) confirming the primary decision;
- (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 the purposes of this Act (other than section 33(3)), be deemed to be a decision made by the officer who, or the Legal Aid Committee 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 asked 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.

PART VII - FINANCES OF COMMISSION

39. ESTABLISHMENT OF LEGAL AID FUND

(1) There is established by this section a fund to be known as the Legal Aid Fund.

(2) 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);
- (b) money paid to the Commission, being money appropriated by the Parliament of the Territory or the Commonwealth for the purposes of the Commission;
- (c) other money paid to the Commission for the purposes of the provision of legal assistance or otherwise for the purposes of the Fund; and
- (d) income derived from the investment of money forming part of the Fund.

(3) The Legal Aid Fund shall be controlled and administered by the Commission.

#### 40. ESTABLISHMENT OF CONTINGENCY LEGAL AID FUND

(1) There is established by this section a fund to be known as the Contingency Legal Aid Fund.

(2) The Contingency Legal Aid Fund shall consist of money paid or lent to it by any person.

(3) The Contingency Legal Aid Fund shall be controlled and administered by the Commission.

#### 41. BANK ACCOUNTS

(1) The Commission may open and maintain an account or accounts with a bank in the Territory and shall maintain at all times at least one such account.

(2) The Commission shall pay all money received by it into an account referred to in this section.

(3) Payment of money into an account referred to in this section shall be deemed to be payment of the money into the Legal Aid Fund.

(4) The Commission shall ensure that all money received or held by the Commission on trust are paid into an account that does not contain any money of the Commission not held on trust.

#### 42. APPLICATION OF FUNDS

(1) Money in the Legal Aid Fund shall be applied only -

- (a) in the discharge of obligations and liabilities of the Commission arising under this Act;

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- (b) in the payment of remuneration and allowances payable under this Act; and
- (c) as a loan or payment to the Contingency Legal Aid Fund.

(2) Money in the Contingency Legal Aid Fund shall be applied only -

- (a) to provide legal assistance to bring or defend a civil proceeding; or
- (b) to repay money lent to the Legal Aid Fund together with interest, if any, charged on the money.

(3) Money standing to the credit of either 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*, but not otherwise.

43. 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.

44. 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 Legal Aid Fund, the Contingency Legal Aid Fund or out of money held by the Commission on trust are correctly made and properly authorized 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.

45. AUDIT AND ANNUAL REPORTS

Sections 67 and 68 of the *Financial Administration and Audit Act* apply to and in relation to the Commission as if the Commission were a prescribed statutory corporation within the meaning and for the purposes of those sections.

PART VIII - ADMINISTRATIVE PROVISIONS  
RELATING TO COMMISSION

46. TENURE OF OFFICE

Subject to this Part, a Commissioner other than the Director, holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

47. QUALIFICATIONS FOR APPOINTMENT

A person is not eligible for appointment as the Chairman of the Commission unless the person is -

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

48. RESIGNATION

A Commissioner, other than the Director, may resign office by writing signed by him or her delivered to the Minister.

49. REMOVAL FROM OFFICE

(1) The Minister may remove a Commissioner, other than the Director, from office for misbehaviour or physical or mental incapacity.

- (2) If a Commissioner, other than the Director -
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
  - (b) is absent, except by leave of the Commission, from 3 consecutive meetings of the Commission; or
  - (c) fails to comply with his or her obligations under section 52,

the Minister shall remove the Commissioner from office.

50. ACTING CHAIRMAN OF COMMISSION

(1) The Minister may appoint a Commissioner who is eligible for appointment as Chairman to act in the office of Chairman where -

- (a) there is a vacancy in the office, whether or not an appointment has previously been made to the office; or
- (b) the Chairman is, or is expected to be, absent from duty or from the Territory or is, for any reason, unable to perform the duties of his or her office.

(2) The Minister may at any time terminate an appointment under this section.

(3) A person appointed to act in the office of Chairman may resign the appointment by writing signed by him or her delivered to the Minister.

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

## 51. MEETINGS

(1) Subject to subsection (2), the Chairman shall call such meetings of the Commission as are necessary for the performance of the functions of the Commission.

(2) The Chairman shall call a meeting of the Commission if requested in writing to do so by 3 Commissioners.

(3) The Chairman shall preside at all meetings of the Commission at which he or she is present.

(4) If the Chairman is not present at a meeting of the Commission, the Commissioners present shall elect one of their number to preside at the meeting.

(5) At a meeting of the Commission -

- (a) 5 Commissioners constitute a quorum;
- (b) questions arising shall be determined by a majority of the votes of the Commissioners present and voting and in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote; and
- (c) subject to this Act, the Commission shall determine the procedure to be following at or in connection with the meeting.

(6) The Commission shall cause minutes to be kept of its meetings.

52. 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 persons 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 in relation to that matter.

PART IX - MISCELLANEOUS

53. DELEGATION

(1) The Commission, Minister or Director may, by instrument in writing, delegate to a person any of its or his or her powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purpose of this Act, be deemed to have been exercised or performed by the Commission, Minister or Director, as the case may be.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commission, Minister or Director.

54. LIABILITIES OF COMMISSION

(1) The Commission has the same liability for acts or omissions by an officer in the course of the performance of the officer's duties as a master has for acts or omissions of his or her servants.

(2) A member of the Commission, of a Legal Aid Committee or of a Review Committee is not liable for any act or omission of the member, of the Commission, or of the Committee of which he or she is a member, if the act was done, or the omission occurred, in good faith in the performance of a function under this Act.

55. FALSE OR MISLEADING STATEMENTS

(1) A person shall not -

(a) make, whether orally or in writing, a false or misleading statement in connection with, or in support of, an application for legal assistance; or

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(b) furnish to the Commission in connection with an application for legal assistance a document that is false or misleading in a material particular.

Penalty: \$2,000.

(2) Where -

(a) a person is convicted of an offence against subsection (1) in respect of an application for legal assistance;

(b) legal assistance under this Act was granted on the application; and

(c) the Commission incurred expenses in providing the 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.

(3) For the purposes of subsection (2), a certificate in writing signed by the Director, or by a person acting in the office of Director, 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.

56. CERTIFICATE AS TO AMOUNTS OWING TO COMMISSION

In an action against a person for the recovery of an amount payable to the Commission under section 28 or 30, a certificate in writing signed by the Director, or by a person acting in the office of Director, certifying that the amount specified in the certificate was, at the date of the certificate, payable by the first-mentioned person to the Commission under that section is *prima facie* evidence of the matters stated in the certificate.

57. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act, prescribing matters -

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

PART X - TRANSITIONAL

58. DEFINITIONS

In this Part -

"Australian Legal Aid Office" means that part of the Community Affairs Division of the Attorney-General's Department of the Commonwealth that is designated the Australian Legal Aid Office and that operates in the Territory;

"eligible person" means a person employed in the Australian Legal Aid Office.

59. LEGAL AID PROVIDED BY AUSTRALIAN LEGAL AID OFFICE

(1) An application for legal aid made to the Australian Legal Aid Office which has not been determined immediately before the commencement of this Act shall be deemed to be an application under section 22.

(2) Where, before the commencement of this Act, the Australian Legal Aid Office was performing services on behalf of a person by way of legal aid, then, as from that commencement, the services shall, so far as is necessary, continue to be performed on behalf of the person by the Commission.

(3) A private legal practitioner who, immediately before the commencement of this Act, was acting for a person in a matter in the course of the operations of the Australian Legal Aid Office shall, in respect of that matter, be deemed to be a private legal practitioner to whom the Commission has assigned work under this Act.

(4) Services -

- (a) performed on or after the commencement of this Act by the Commission on behalf of a person under subsection (2); or
- (b) carried out on or after the commencement of this Act by a private legal practitioner under subsection (3).

shall, notwithstanding anything to the contrary in this Act, be performed or carried out subject to any conditions attached to, and the policies of the Australian Legal Aid Office in relation to, the performance or carrying out of the services before that commencement.

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(5) For the purposes of subsection (4), the Commission shall be deemed to stand in the place of and shall have all or any of the rights, duties and obligations of the Australian Legal Aid Office in respect of the performance or carrying out of the services referred to in that subsection before the commencement of this Act.

(6) On and from the commencement of this Act, the Director shall be deemed to be the solicitor for a person in any proceeding in a court, or in any other matter, in which an officer or employee of the Australian Legal Aid Office was acting in the course of the operations of that Office as the solicitor for the person immediately before that commencement.

60. TRANSFER OF AUSTRALIAN LEGAL AID OFFICE STAFF TO COMMISSION

(1) Where an agreement between the Territory and the Commonwealth under section 13 so requires, eligible persons shall be -

- (a) appointed and employed as employees within the meaning of the *Public Service Act* employed in accordance with that agreement; and
- (b) so appointed and employed under such terms and conditions and shall retain such rights as are specified in that agreement.

(2) Subsection (1) has effect notwithstanding anything to the contrary in the *Public Service Act*.

(3) An eligible person who becomes an employee under this section may, within the period of 3 months after becoming such an employee, make an election to contribute to the Northern Territory Government and Public Authorities Employees Superannuation Fund pursuant to the *Superannuation Act*.

61. VALIDATION

An agreement entered into before the commencement of this Act, and anything done before that commencement in accordance with any such agreement, that would have been valid if entered into or done after that commencement is validated.

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