

# **COMMONWEALTH LEGAL AID COMMISSION ACT 1977**

**No. 80 of 1977**

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# COMMONWEALTH LEGAL AID COMMISSION ACT 1977

**No. 80 of 1977**

An Act to Establish a Commonwealth Legal Aid Commission and for related purposes.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

## PART I—PRELIMINARY

- Short title.      1. This Act may be cited as the *Commonwealth Legal Aid Commission Act 1977*.<sup>1</sup>
- Commence-  
ment.            2. This Act shall come into operation on a date to be fixed by Proclamation.
- Interpret-  
ation.           3. (1) In this Act, unless the contrary intention appears—  
“Chairman” means the Chairman of the Commission;  
“Commission” means the Commonwealth Legal Aid Commission established by section 4;  
“Commissioner” means a Commissioner of the Commission and includes the Chairman and the Deputy Chairman;  
“Deputy Chairman” means the Deputy Chairman of the Commission;  
“Judge” means a Judge of a federal court or of the Supreme Court of a State or Territory;  
“legal aid commission” means—  
    (a) in relation to a State—an authority established by or under a law of the State for purposes that include the provision of legal assistance in respect of Commonwealth matters; and  
    (b) in relation to a Territory—an authority established by or under an Ordinance of that Territory for the purpose of providing legal assistance.
- (2) A reference in this Act to the provision of legal assistance shall be read as 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 those services.

(3) A reference in this Act to the provision of financial assistance shall be read as a reference to the provision of financial assistance in respect of the cost of obtaining legal services.

(4) In this Act, a reference to the provision of legal or financial assistance in respect of a Commonwealth matter shall be read as a reference to the provision of legal or financial assistance—

- (a) in or in connexion with a claim, right or proceeding involving a matter arising under a law of the Commonwealth;
- (b) in a proceeding in a federal court or in a State court exercising federal jurisdiction; or
- (c) in any other case where it is within the power of the Parliament to provide for the giving of legal or financial assistance.

## PART II—ESTABLISHMENT AND FUNCTIONS OF COMMONWEALTH LEGAL AID COMMISSION

4. There is established by this section a Commission by the name of the Commonwealth Legal Aid Commission.

Establish-  
ment of  
Commission.

5. (1) The Commission shall be constituted by—

Constitution  
of Com-  
mission.

- (a) a Chairman;
- (b) a Deputy Chairman;
- (c) 2 Commissioners nominated by the Attorney-General;
- (d) 2 Commissioners nominated by the Attorneys-General of the States in which legal aid commissions have been established;
- (e) a Commissioner nominated by the Law Council of Australia; and
- (f) a Commissioner nominated by the Australian Council of Social Service.

(2) The Chairman, the Deputy Chairman and the other Commissioners shall be appointed by the Governor-General, the Deputy Chairman being appointed to hold office on a full-time basis and the Chairman and the other Commissioners being appointed to hold office on a part-time basis.

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

Functions of  
Commission.**6. The functions of the Commission are—**

- (a) to ascertain, and keep under review, the extent of the need for legal assistance in Australia and, in particular, the need for legal assistance in respect of Commonwealth matters and to make recommendations from time to time to the Attorney-General as to the most effective, economical and desirable means of satisfying that need;
- (b) to make recommendations to the Attorney-General and to legal aid commissions of States and Territories concerning the provision of legal assistance by those legal aid commissions in respect of Commonwealth matters and, in particular, to make recommendations as to—
  - (i) the manner in which legal assistance should be provided in respect of Commonwealth matters;
  - (ii) the criteria to be applied in determining whether legal assistance should be provided to a person in respect of a Commonwealth matter;
  - (iii) the extent of any contributions to be required to be paid by a person to whom legal assistance is provided in respect of a Commonwealth matter; and
  - (iv) the priorities to be observed in the provision of legal assistance in respect of Commonwealth matters as between different classes of persons or different classes of matters;
- (c) to collect and publish statistics concerning the operation of schemes for the provision of legal assistance in Australia;
- (d) to report to the Attorney-General upon the functioning of legal aid commissions of States and Territories including the accessibility of those commissions to persons requiring legal assistance and the effectiveness and economy of the provision of legal assistance by those commissions;
- (e) to furnish to the Attorney-General such reports as the Attorney-General requires concerning the functioning and effectiveness of other schemes for the provision of legal assistance, being schemes that operate, whether wholly or partly, with financial assistance from the Commonwealth;
- (f) to liaise and co-operate with, and to make recommendations to, the Attorney-General concerning the co-ordination of the operations of, legal aid commissions of States and Territories and other bodies providing, or interested in the provision of, legal assistance;
- (g) to undertake research into all aspects of legal assistance including new methods of financing and providing legal assistance;
- (h) to advise the Attorney-General as to the educational programs that would be effective in promoting an understanding by the public, or by sections of the public that have special needs in this

respect, of their rights, powers, privileges and duties under laws in force in Australia;

- (j) as requested by the Attorney-General, to report to the Attorney-General as to the provision by the Commonwealth of financial assistance to legal aid commissions of States and Territories;
- (k) to determine applications for the provision of legal or financial assistance by the Commonwealth in Commonwealth matters in which the Commission is authorized to do so by an Act other than this Act or is directed to do so by the Attorney-General;
- (l) to advise the Attorney-General on the provision of legal assistance or financial assistance in any Commonwealth matter referred by the Attorney-General for advice; and
- (m) to advise the Attorney-General as to such other matters relating to the provision of legal assistance as the Attorney-General requests or the Commission considers appropriate.

7. The Commission may do all things necessary or convenient to be done for or in connexion with the performance of its functions. Powers of Commission.

### PART III—ADMINISTRATIVE PROVISIONS RELATING TO COMMISSION

8. Subject to this Part, a Commissioner holds office for such period, Tenure of office. not exceeding—

- (a) in the case of the Chairman or the Deputy Chairman—7 years; or
- (b) in the case of a Commissioner other than the Chairman or the Deputy Chairman—3 years,

as is specified in the instrument of his appointment, but is eligible for re-appointment.

9. (1) A person is not eligible for appointment as the Chairman of the Commission unless— Qualifications for appointment.

- (a) he is or has been a Judge; or
- (b) he is enrolled as a barrister, as a solicitor, or as a barrister and solicitor 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.

(2) A person is not eligible for appointment as the Deputy Chairman unless he is enrolled as a barrister, as a solicitor, or as a barrister and solicitor 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.

Remuner-  
ation and  
allowances.

10. (1) A Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A Commissioner shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973.

(4) If a person who is a Judge is the Chairman, he is not, while he receives remuneration or allowances as a Judge, entitled to remuneration or allowances, as the case may be, under this section.

Resignation.

11. A Commissioner may resign his office by writing under his hand delivered to the Governor-General.

Removal  
from office.

12. (1) The Governor-General may remove a Commissioner from office for misbehaviour or physical or mental incapacity.

(2) If—

(a) a Commissioner 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) a Commissioner fails to comply with his obligations under section 18; or

(c) the Deputy Chairman is absent from duty, except on leave of absence granted by the Attorney-General, for 14 consecutive days or for 28 days in any 12 months,

the Governor-General may remove him from office.

(3) Sub-section (2) does not apply to the Chairman of the Commission if he is a Judge, but, if the Chairman being a Judge ceases to be a Judge, the Governor-General may remove him from office.

Deputies of  
Com-  
missioners.

13. (1) The Governor-General may appoint persons as deputies of the Commissioners other than the Chairman and the Deputy Chairman.

(2) A person is not eligible for appointment as the deputy of a Commissioner unless he is nominated for appointment as the deputy of that Commissioner in the same manner as the Commissioner was nominated for appointment as a Commissioner.

(3) In the event of the absence of a Commissioner from a meeting of the Commission—

(a) the deputy of that Commissioner is entitled to attend the meeting; and

(b) while so attending shall be deemed to be a Commissioner.

(4) A deputy of a Commissioner shall be paid such allowances as are prescribed in respect of his attendance at meetings of the Commission.

**14.** (1) The Attorney-General may appoint a person who is eligible for appointment as the Deputy Chairman to act in the office of Deputy Chairman— Acting Deputy Chairman.

- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Deputy Chairman is, or is expected to be, absent from duty or from Australia or is, for any reason, unable to perform the duties of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) A person acting in the office of Deputy Chairman holds office on such terms and conditions as the Attorney-General determines.

(3) The Attorney-General may at any time terminate an appointment under this section.

(4) Where a person is acting in the office of Deputy Chairman in accordance with paragraph (1) (b) and the office becomes vacant while that person is so acting, that person may continue so to act until the Attorney-General otherwise directs, the vacancy is filled or a period of 12 months elapses from the occurrence of the vacancy, whichever first happens.

(5) A person appointed to act in the office of Deputy Chairman may resign his appointment by writing under his hand delivered to the Attorney-General.

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

**15.** The Attorney-General may grant leave of absence to the Deputy Chairman on such terms and conditions as to remuneration or otherwise as the Attorney-General determines. Leave of absence.

**16.** Where the Deputy Chairman was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928* applied— Preservation of rights.

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and

- (c) the *Officers' Rights Declaration Act* 1928 applies as if this Act and this section had been specified in the Schedule to that Act.

Meetings.

17. (1) The Commission shall hold such meetings as are necessary for the performance of its functions.

(2) The Chairman or the Deputy Chairman may at any time convene a meeting of the Commission.

(3) At a meeting of the Commission, 5 Commissioners constitute a quorum.

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

(5) If the Chairman is not present at a meeting of the Commission but the Deputy Chairman is present at the meeting, the Deputy Chairman shall preside at that meeting.

(6) If neither the Chairman nor the Deputy Chairman is present at a meeting of the Commission, the Commissioners present shall elect one 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.

(10) In this section, a reference to the Deputy Chairman shall, if there is a person acting in the office of Deputy Chairman, be read as a reference to the person so acting.

Interests to  
be disclosed.

18. (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 is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(2) A disclosure under sub-section (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.



19. (1) The staff necessary to assist the Commission shall be persons employed under the *Public Service Act 1922*. Staff of Commission.

(2) The Deputy Chairman of the Commission has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922* so far as those powers relate to the branch of the Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Public Service.

(3) For the purposes of sub-sections 25 (5) and (6) of the *Public Service Act 1922*, the Deputy Chairman shall be deemed to be a Permanent Head.

(4) In this section, "Deputy Chairman" includes an acting Deputy Chairman.

#### PART IV—TRANSFER OF CERTAIN PERSONS EMPLOYED BY THE COMMONWEALTH TO LEGAL AID COMMISSIONS OF THE STATES AND TERRITORIES

20. In this Part, unless the contrary intention appears—

"applied provisions of the *Public Service Act 1922*" means sections 50 and 50A, sub-section 52 (1) and sections 53, 53A and 92 of that Act or, if those sections are, for the purposes of section 23 of this Act, modified by regulations made under that Act, those sections as so modified;

Interpretation.

"approved legal aid commission" means—

- (a) a legal aid commission of a State in relation to which an arrangement under sub-section 21 (1) is in force; or
- (b) a legal aid commission of the Australian Capital Territory or of the Northern Territory;

"approved statutory office" means—

- (a) a statutory office of a State in relation to which an arrangement under sub-section 21 (1) is in force; or
- (b) a statutory office of the Australian Capital Territory or of the Northern Territory;

"Board", "Division", "employee" and "officer" have the same respective meanings as they have in the *Public Service Act 1922*;

"Re-appointments Review Committee" means a Re-appointments Review Committee constituted in accordance with section 28;

"statutory office" means—

- (a) in relation to a State—an office established by or under a law of a State for purposes connected with the provision of legal assistance in that State; and
- (b) in relation to the Australian Capital Territory or the Northern Territory—an office established by or under an

Ordinance of that Territory for purposes connected with the provision of legal assistance in that Territory,  
but does not include an office in the Public Service of a State or such a Territory.

Arrange-  
ments with  
States.

**21.** (1) Subject to this section, the Commonwealth may make arrangements with a State with respect to the making of offers of employment as members of the staff of a legal aid commission of the State, or as the holders of statutory offices connected with the provision of legal assistance in the State, to officers employed in the Australian Legal Aid Office in the State and with respect to the terms and conditions of employment that will be applicable to officers who accept those offers.

(2) Arrangements shall not be made under sub-section (1) unless the terms and conditions of employment that will be applicable to an officer who accepts an offer of employment made to him under the arrangements comply with the following requirements:—

- (a) the officer shall, upon becoming engaged in that employment, be entitled to be paid salary at a rate not less than the rate at which salary was payable to him in respect of the office in the Australian Public Service held by him immediately before the date on which he becomes engaged in that employment;
- (b) the officer shall retain such rights (if any) in respect of leave of absence for recreation and leave of absence on account of illness as have accrued to him immediately before he becomes engaged in that employment;
- (c) the officer shall be entitled to a period or periods of long service leave in respect of that employment, and payment in lieu of long service leave shall be made to and in relation to the officer in respect of that employment, in accordance with the provisions of the *Long Service Leave (Commonwealth Employees) Act 1976* (being that Act as in force immediately before he becomes engaged in that employment) as if that employment were employment in the Australian Public Service, unless, within 3 months after he becomes engaged in that employment, he elects, in writing, for those entitlements to be determined otherwise; and
- (d) the officer shall, if he is an eligible employee for the purposes of the *Superannuation Act 1976* immediately before he becomes engaged in that employment, be exempted from liability to contribute for superannuation benefits otherwise than under that Act in respect of that employment unless, within 3 months after he becomes engaged in that employment, he elects, in writing, to contribute for those other benefits.

(3) An arrangement with a State under sub-section (1) shall make provision for and in relation to—

- (a) the provision of superannuation benefits under the *Superannuation Act 1976* in respect of eligible persons employed as members of the staff of a legal aid commission of the State, or as the holders of statutory offices connected with the provision of legal assistance in the State, being eligible persons who do not elect to contribute for superannuation benefits otherwise than under that Act; and
- (b) the provision, in respect of eligible persons employed as set out in paragraph (a), of benefits similar to the benefits provided under the *Maternity Leave (Australian Government Employees) Act 1973*.

(4) A reference in sub-section (1) to an officer who is employed in the Australian Legal Aid Office shall be read as including a reference to a person who holds, but is not performing the duties of, an office in the Australian Legal Aid Office.

(5) For the purposes of paragraph (2) (a), an unattached officer, or an employee, who is performing duty in the Australian Legal Aid Office—

- (a) shall be deemed to be the holder of an office in the Australian Public Service; and
- (b) shall be deemed to be entitled to be paid salary in respect of that office at a rate equal to the rate at which salary is payable to him as an unattached officer or as an employee, as the case may be.

(6) In this section, unless the contrary intention appears—

“eligible person” includes an approved person;

“officer” includes employee.

**22. (1)** Where an officer or employee becomes employed as a member of the staff of an approved legal aid commission, or as the holder of an approved statutory office, in accordance with the terms of an offer of employment made to him under an arrangement referred to in sub-section 21 (1)—

Eligible persons and approved persons.

- (a) he ceases to be an officer or employee at the expiration of the day immediately preceding the day on which he becomes so employed; and
- (b) he becomes, upon becoming so employed—
  - (i) in the case of an officer—an eligible person; or
  - (ii) in the case of an employee—an approved person,
 for the purposes of this Part.

(2) Where an officer or employee becomes employed as a member of the staff of an approved legal aid commission of the Australian Capital Territory in accordance with the terms of an offer of employment

made to him by that commission, or becomes employed as the holder of an approved statutory office of that Territory—

- (a) he ceases to be an officer or employee at the expiration of the day immediately preceding the day on which he becomes so employed; and
- (b) he becomes, upon becoming so employed—
  - (i) in the case of an officer—an eligible person; or
  - (ii) in the case of an employee—an approved person,
 for the purposes of this Part.

(3) Where an officer or employee who is transferred to the Public Service of the Northern Territory under section 84A of the *Public Service Act* 1922 becomes, upon being so transferred, employed as a member of the staff of an approved legal aid commission of that Territory, or as the holder of an approved statutory office of that Territory, he becomes, upon becoming so employed—

- (a) in the case of an officer—an eligible person; or
- (b) in the case of an employee—an approved person,

for the purposes of this Part.

(4) An eligible person continues to be an eligible person, and an approved person continues to be an approved person, for the purposes of this Part until he ceases to be employed as a member of the staff of an approved legal aid commission or as the holder of an approved statutory office or until he attains the age of 65 years, whichever first occurs.

Right to  
re-enter  
Australian  
Public  
Service by  
way of  
transfer or  
promotion.

**23.** (1) Sections 50 and 50A, sub-section 52 (1) and sections 53, 53A and 92 of the *Public Service Act* 1922 apply, subject to this section and to such modifications (if any) as are prescribed by regulations made under that Act, in relation to an eligible person as if the person—

- (a) were an officer;
- (b) were the holder of an office in the Division of the Australian Public Service in which he was included immediately before he ceased to be an officer, being an office—
  - (i) subject to paragraph (ii)—the classification of which is equivalent, or as nearly as possible equivalent, to the classification of the office held by him immediately before he ceased to be an officer; or
  - (ii) if he was an unattached officer immediately before he ceased to be an officer—having such classification as the Board considers appropriate having regard to the designation and salary, or limits of salary, applicable to him immediately before he ceased to be an officer; and
- (c) had the same seniority as he had immediately before he ceased to be an officer.

(2) Subject to sub-section (7), where an eligible person commences to perform the duties of an office in the Australian Public Service to which he has been transferred or promoted under the applied provisions of the *Public Service Act 1922*—

- (a) he shall be deemed to have been re-appointed to the Australian Public Service as an officer on the day on which he commences to perform those duties; and
- (b) he is entitled to be paid salary and allowances as the holder of that office from and including that day, and not otherwise.

(3) Subject to sub-sections (4) and (5), where an eligible person who has been transferred or promoted to an office in the Australian Public Service under the applied provisions of the *Public Service Act 1922*—

- (a) does not commence to perform the duties of the office within a period of 30 days after notice of the transfer or promotion is published in the *Gazette*; or
- (b) notifies the Board, in writing, before the expiration of that period, that he declines the transfer or promotion,

the transfer or promotion, as the case may be, is of no force or effect.

(4) Where an eligible person is transferred or promoted to an office in the Australian Public Service under the applied provisions of the *Public Service Act 1922*, the Board may, on application made to it, in writing, by the person before the expiration of the period of 30 days after notice of the transfer or promotion is published in the *Gazette*, determine that sub-section (3) shall have effect in relation to the transfer or promotion as if the reference in that sub-section to a period of 30 days were a reference to such longer period as is specified in the determination.

(5) Where—

- (a) an eligible person is transferred or promoted under the applied provisions of the *Public Service Act 1922*;
- (b) at the time when notice of the transfer or promotion is published in the *Gazette*, the person is absent from his employment on leave granted before that time; and
- (c) the Board has not made a determination under sub-section (4) in relation to the transfer or promotion,

references in sub-section (3) to a period of 30 days after notice of the transfer or promotion is published in the *Gazette* shall be read as references to a period of 30 days after the expiration of the period of the leave so granted to him.

(6) Where—

- (a) a transfer or promotion of an eligible person to an office in a Department of the Australian Public Service is, by force of sub-section (3), of no force or effect; and

(b) the Board is satisfied that—

- (i) the person will become available to perform the duties of the office within a reasonable time;
- (ii) he had reasonable grounds for not commencing to perform the duties of the office before the transfer or promotion became of no force or effect; and
- (iii) it is reasonable, in all the circumstances, to do so,

the Board may notify the Permanent Head of the Department that the office is an office to which this section applies, and a transfer or promotion of another person to fill the vacancy shall not then be made under the *Public Service Act* 1922, or under the applied provisions of the *Public Service Act* 1922, without the approval of the Board.

(7) Subject to sub-section (8), where an eligible person who has been provisionally promoted under the applied provisions of the *Public Service Act* 1922 to an office in the Australian Public Service, or has appealed under those provisions against the provisional promotion of another person to such an office, ceases to be an eligible person before the provisional promotion is confirmed or cancelled—

- (a) those provisions continue to apply to and in relation to that promotion or appeal as if he had not ceased to be an eligible person; and
- (b) if he commences to perform the duties of the office as a result of his having been promoted to the office, or of his provisional promotion to the office having been confirmed—
  - (i) he shall be deemed to have been re-appointed to the Australian Public Service as an officer on the day immediately following the day on which he ceased to be an eligible person and to have been on leave of absence from the Australian Public Service without pay from the day on which he is to be deemed to have been so re-appointed until he commences to perform the duties of the office; and
  - (ii) the period during which he is to be deemed to have been on leave of absence without pay shall form part of his period of service under the *Public Service Act* 1922 for all purposes of that Act and of the *Long Service Leave (Commonwealth Employees) Act* 1976.

(8) Sub-section (7) does not apply to an eligible person who ceases to be such a person upon the termination of his employment by reason of his misconduct or by reason of the annulment of his appointment while he is a probationary employee.

(9) Notice of the transfer of an eligible person to fill a vacant office in the Australian Public Service under the applied provisions of the *Public Service Act* 1922 shall be published in the *Gazette*.

24. (1) A person may, while he is, or subject to sub-section (3), after he ceases to be, an eligible person, make application to the Board for re-appointment to the Australian Public Service on the ground that a prescribed condition of re-appointment has been fulfilled in relation to him.

Application  
for re-  
appointment  
to Australian  
Public  
Service.

(2) The prescribed conditions of re-appointment in relation to a person are—

- (a) that his employment in an approved statutory office is to be, or has been, terminated, otherwise than on the ground of his invalidity, before the expiration of the term for which he was appointed;
- (b) that his employment in an approved statutory office has been terminated upon the expiration of the term for which he was appointed and he has not been—
  - (i) re-appointed, or offered re-appointment, to that office;
  - (ii) appointed, or offered appointment to, another approved statutory office; or
  - (iii) employed, or offered employment, as a member of the staff of an approved legal aid commission;
- (c) that his employment as a member of the staff of an approved legal aid commission is to be, or has been, terminated otherwise than on the ground of his invalidity; and
- (d) that his opportunities for advancement within the staff of an approved legal aid commission have been adversely affected by reason of a reduction in, or alteration to, the functions or activities of the commission.

(3) A person is not entitled to make application under sub-section (1) if he has attained the age of 65 years or if his employment is to be, or had been, terminated by the annulment of his appointment while he is or was a probationary employee.

(4) An application by a person under sub-section (1)—

- (a) shall be in writing;
- (b) shall be made within 30 days, or within such further period as the Board allows, after the day on which his appointment is terminated or, if his application is on the ground that the condition in paragraph (2) (d) has been fulfilled in relation to him, the day on which the reduction in, or alteration of, the functions of the commission occurs;
- (c) shall specify the condition that he alleges has been fulfilled in relation to him and, if the condition specified by him is the condition in paragraph (2) (a) or (c), state whether his employment is to be terminated, or was terminated, on the ground of his misconduct;

(d) shall specify the kind of employment in the Australian Public Service in which he seeks to be engaged; and

(e) if—

(i) he has been provisionally promoted to an office in the Australian Public Service, or has appealed against the provisional promotion of another person to such an office, under the applied provisions of the *Public Service Act 1922*; and

(ii) the provisional promotion has not been confirmed or cancelled,

shall set out particulars of the provisional promotion or of the appeal, as the case may be.

(5) The Board shall refer an application made to it under this section to a Re-appointments Review Committee.

(6) The Re-appointments Review Committee to which an application under sub-section (1) is referred shall inquire into the application and—

(a) if it is satisfied that a prescribed condition of re-appointment has been fulfilled in relation to the applicant—determine that the applicant is eligible for re-appointment to the Australian Public Service and that he be offered re-employment in a specified Division with a specified designation at a specified salary, or at a specified salary within specified limits of salary; and

(b) if it is not so satisfied—determine that the applicant is not eligible for re-appointment to the Australian Public Service.

(7) Where the Re-appointments Review Committee that inquires into an application under sub-section (1) is satisfied that the employment of the applicant was terminated on the ground of his misconduct, it shall not determine that he is eligible for re-appointment to the Australian Public Service unless it is satisfied that, if the applicant had committed that misconduct while employed as an officer in the Australian Public Service, it is likely that he would not have been dismissed from the Australian Public Service.

(8) In making a determination under sub-section (6), the Re-appointments Review Committee shall have regard to—

(a) the Division in which the applicant was included;

(b) the designation applicable to the applicant; and

(c) the salary, or limits of salary, applicable to the applicant,

immediately before he ceased, or last ceased, to be an officer.



(9) The Re-appointments Review Committee that inquires into an application referred to it under sub-section (1) may, under sub-section (6)—

- (a) determine that the applicant is eligible for re-appointment to the Australian Public Service whether or not the applicant is eligible for appointment to that Service under section 34 of the *Public Service Act 1922*; and
- (b) determine that the applicant be offered re-employment in a specified Division whether or not he has the prescribed educational qualifications for appointment to that Division.

(10) A determination of a Re-appointments Review Committee shall be reduced to writing and a copy of the determination shall be furnished to the Board.

(11) Where a Re-appointments Review Committee determines under sub-section (6) that an applicant is not eligible for re-appointment to the Australian Public Service, the Board shall, as soon as practicable after it receives a copy of the determination, furnish a copy of the determination to the applicant.

25. (1) Where a Re-appointments Review Committee determines, under sub-section 24 (6), that an applicant is eligible for re-appointment to the Australian Public Service, the Board shall, as soon as practicable after it receives a copy of the determination, furnish a copy of the determination to the applicant together with an offer, in writing, to re-appoint the applicant to the Australian Public Service in a specified Department as an unattached officer in the Division, with the designation and at the salary, or at the salary within the limits of salary, specified in the determination.

Re-appoint-  
ment to  
Australian  
Public  
Service.

(2) The Board shall set out in an offer of re-appointment referred to in sub-section (1) particulars of the nature of the duties on which the applicant will be engaged if he accepts the offer and the place where he should report for duty.

(3) Where a person who has received an offer of re-appointment under sub-section (1) reports for duty at the place specified in the offer within 21 days, or within such further period as the Board allows, after he receives the offer, he shall be deemed to have been re-appointed to the Australian Public Service under this section as an unattached officer on the day immediately following the day on which his employment as a member of the staff of the relevant approved legal aid commission or as the holder of the relevant approved statutory office, as the case may be, was terminated and to have been on leave of absence from the Australian Public Service without pay from the day on which he is to be deemed to have been so appointed until he reports for duty in that Service.

(4) The period during which a person is, by virtue of sub-section (3), deemed to have been on leave of absence from the Australian Public Service without pay shall form part of his period of service under the *Public Service Act 1922* for all purposes of that Act and of the *Long Service Leave (Commonwealth Employees) Act 1976*.

(5) Where a person who has received an offer of re-appointment under sub-section (1) does not take up duty in the Australian Public Service in accordance with the offer within the period of 21 days, or within such further period as the Board allows, after he receives the offer, the person ceases to be entitled to be re-employed in the Australian Public Service under this section.

Re-  
appointment  
in special cir-  
cumstances.

**26.** (1) Notwithstanding any other provision of this Part or any provisions of the *Public Service Act 1922*, the Board may re-appoint an eligible person to the Australian Public Service if it is satisfied that there are special circumstances justifying it in doing so.

(2) An eligible person who is re-appointed under sub-section (1) shall be re-appointed—

- (a) as an unattached officer in the Division in which he was included when he ceased, or last ceased, to be an officer;
- (b) with the same designation as he had immediately before he ceased, or last ceased, to be an officer or, if there is no longer such a designation, with such designation as the Board considers appropriate; and
- (c) at the salary payable to the holder of an office having that designation or, if a range of salary is applicable to that office, at such salary within that range as the Board considers appropriate.

Rights of  
officers upon  
re-appoint-  
ment.

**27.** (1) This section applies to an eligible person who is re-appointed to the Australian Public Service—

- (a) by reason of his transfer or promotion to an office in the Australian Public Service under the applied provisions of the *Public Service Act 1922*;
- (b) in accordance with an offer of re-appointment made to him under sub-section 25 (1); or
- (c) under section 26.

(2) Where a person to whom this section applies is re-appointed to the Australian Public Service, there shall be ascertained, in a manner determined by the Board, the period (if any) of leave of absence for recreation and the period (if any) of leave of absence on account of illness that is applicable to the person on re-appointment and, if such a period is applicable to him, he shall be credited with that period.

(3) Subject to sub-section (4), the seniority of a person to whom this section applies is the seniority that he had immediately before he last ceased to be an officer.

(4) Where a person to whom this section applies who is included in the Third Division was, immediately before he last ceased to be an officer, included in the Fourth Division, he shall, for the purpose of determining his seniority, be deemed to have entered the Third Division—

- (a) on the day on which he entered, or last entered, the Fourth Division; or
- (b) on the day that is 2 years before the day on which he is re-appointed as an officer,

whichever is the later day.

(5) The Board shall determine whether a person to whom this section applies is to be treated as having been re-appointed to the Australian Public Service on probation or without probation.

(6) Where a person to whom this section applies is to be treated as having been re-appointed to the Australian Public Service on probation, sub-sections 47 (2), (6), (7), (8), (9), (10), (11) and (12) of the *Public Service Act* 1922 apply in relation to him subject to such modifications (if any) as the Board determines, but the other sub-sections of that section do not apply in relation to him.

**28. (1)** A Re-appointments Review Committee shall consist of a Chairman and 2 other members, who shall be appointed by the Board. Constitution  
of, and  
inquiries by,  
Committees.

(2) The Chairman of a Re-appointments Review Committee shall be—

- (a) in the case of an application by an applicant whose employment has been, or, in the opinion of the Board, may have been, terminated on the grounds of his misconduct—a person who holds the office of Chairman of an Appeal Board referred to in section 55 of the *Public Service Act* 1922; or
- (b) in any other case—a person who holds an office of Chairman of a Promotions Appeal Committee referred to in section 50 of that Act.

(3) One of the members of a Re-appointments Review Committee shall be an officer appointed by the Board on the nomination of—

- (a) the organization, within the meaning of the *Conciliation and Arbitration Act* 1904, that the applicant would be eligible to join if he were engaged in the kind of employment in which he seeks to be engaged; or
- (b) if there are 2 or more such organizations—the organization the membership of which includes the larger or largest number of officers engaged in that kind of employment.

(4) The Chairman of a Re-appointments Review Committee, while acting as such, is not subject to direction by any person or authority under the *Public Service Act 1922*.

(5) A decision of the majority of the members of a Re-appointments Review Committee shall be deemed to be a determination of the Committee.

(6) An officer of the Australian Public Service shall be granted leave of absence from his normal duties without loss of pay while acting as a member of a Re-appointments Review Committee.

(7) On an inquiry by a Re-appointments Review Committee into an application referred to it under sub-section 24 (5)—

- (a) the procedure of the Committee is, subject to this Act and the regulations in force under the *Public Service Act 1922*, within the discretion of the Committee;
- (b) the Committee is not bound to act in a formal manner and is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks just; and
- (c) the Committee shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms.

(8) An inquiry by a Re-appointments Review Committee shall be conducted in private.

(9) At an inquiry by a Re-appointments Review Committee, the applicant may—

- (a) appear personally or be represented by any person, other than counsel, a solicitor or a paid agent;
- (b) make such oral or written submissions as he desires; and
- (c) tender certificates, documentary evidence and statutory declarations.

Delegation  
by Board.

**29. (1)** The Board may, either generally or as otherwise provided by the instrument of delegation, by instrument under the hands of the members, or of a majority of the members, of the Board, delegate to a member of the Board or to an officer any of its powers under this Part, including its powers under the applied provisions of the *Public Service Act 1922* in relation to eligible persons, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Part, be deemed to have been exercised by the Board.

(3) A delegation under this section does not prevent the exercise of a power by the Board.

30. Section 97 of the *Public Service Act* 1922<sup>2</sup> is amended by inserting after sub-section (1) the following sub-sections:—

Amendment  
of *Public  
Service Act*  
1922.

“(1A) The Board may, with the approval of the Governor-General, make regulations, not inconsistent with Part IV of the *Commonwealth Legal Aid Commission Act* 1977, prescribing all matters which are required or permitted by that Part to be prescribed by regulations made under this Act, or which are necessary or convenient to be prescribed for carrying out or giving effect to that Part and, in particular—

- (a) making provision for and in relation to the payment of allowances to eligible persons who are transferred or promoted to offices in the Australian Public Service under the applied provisions of the *Public Service Act* 1922; and
- (b) prescribing matters necessary or convenient to be prescribed in relation to the application of the applied provisions of the *Public Service Act* 1922 to eligible persons.

“(1B) In sub-section (1A), expressions defined for the purposes of Part IV of the *Commonwealth Legal Aid Commission Act* 1977 have the same respective meanings as they have in that Part.”.

31. (1) Section 3 of the *Superannuation Act* 1976<sup>3</sup> is amended by inserting after paragraph (e) of the definition of “eligible employee” in sub-section (1) the following paragraph:—

Super-  
annuation.

“(ea) a person to whom section 14A applies;”.

(2) After section 14 of the *Superannuation Act* 1976 the following section is inserted:—

“14A. (1) This section applies to a person (other than a person included in a class of persons specified in the regulations as a class of persons to which this section does not apply) who ceases to be an eligible employee and, immediately after so ceasing, becomes an eligible person, or an approved person, for the purposes of Part IV of the *Commonwealth Legal Aid Commission Act* 1977.

Persons  
employed as  
members of  
the staff of  
Legal Aid  
Com-  
missions.

“(2) This section ceases to apply to a person upon his ceasing to be an eligible person, or an approved person, for the purposes of Part IV of the *Commonwealth Legal Aid Commission Act* 1977 or at such other time as is fixed by or under the regulations in relation to the person or a class of persons in which the person is included.

“(3) The regulations may make provision for modifying this Act, or a provision of this Act specified in the regulations, in the application of this Act or that provision to and in relation to a person to whom this section applies, or to and in relation to a prescribed class of persons to whom this section applies.

“(4) Nothing in this section authorizes the making of regulations modifying this Act, or a provision of this Act, in a manner that would impose obligations on a State or on an authority of a State that is an approved legal aid commission for the purposes of Part IV of the *Commonwealth Legal Aid Commission Act* 1977 that are inconsistent with the terms of an arrangement entered into under section 21 of that Act between the Commonwealth and that State.”.

## PART V—MISCELLANEOUS

Limitation  
on provision  
of legal  
assistance  
under certain  
Acts.

**32.** (1) Where an agreement has been entered into by the Commonwealth and a State in relation to the provision of legal assistance in that State in respect of Commonwealth matters, the Governor-General may, by Proclamation, declare that the prescribed provisions cease to have effect in relation to that State after the date on which the Proclamation is published and those sections accordingly cease so to have effect.

(2) The Governor-General may, by Proclamation, declare that the prescribed provisions cease to have effect in relation to an internal Territory after the date on which the Proclamation is published and those provisions accordingly cease to have effect.

(3) In this section, a reference to the prescribed provisions shall be read as a reference to section 105 of the *Re-establishment and Employment Act* 1945, section 8 of the *Interim Forces Benefits Act* 1947 and subsections 117 (3) and (4) of the *Family Law Act* 1975.

Reports.

**33.** (1) The Commission shall, as soon as practicable after 30 June in each year, prepare and furnish to the Attorney-General a report of the operations of the Commission during that year.

(2) The Attorney-General shall cause a copy of each report furnished to him under this section to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

Regulations.

**34.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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## NOTES

1. Act No. 80, 1977; assented to 16 June 1977.
2. Act No. 21, 1922, as amended. For previous amendments *see* Act No. 46, 1924; No. 41, 1928; No. 19, 1930; No. 21, 1931; No. 72, 1932; No. 38, 1933; Nos. 45 and 46, 1934; No. 72, 1936; No. 41, 1937; No. 72, 1939; No. 88, 1940; No. 5,

## NOTES—continued

1941; No. 19, 1943; Nos. 11, 29 and 43, 1945; No. 16, 1946; Nos. 1, 38, 52 and 84, 1947, Nos. 35 and 75, 1948; Nos. 51 and 80, 1950; Nos. 46 and 48, 1951; No. 22, 1953; No. 63, 1954; No. 18, 1955; Nos. 13 and 39, 1957; No. 11, 1958; Nos. 17 and 105, 1960; Nos. 2 and 75, 1964; Nos. 47 and 85, 1966; Nos. 2 and 115, 1967; Nos. 59, 114 and 120, 1968; No. 6, 1972; Nos. 21, 71, 73 and 209, 1973; No. 59, 1974; No. 40, 1975; Nos. 193 and 194, 1976; and No. 6, 1977.

3. Act No. 31, 1976, as amended. For previous amendments *see* Act No. 51, 1976.