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Robyn Webb
Chief Parliamentary Counsel
Dated 11 April 2022



TASMANIA

LEGAL AID COMMISSION ACT 1990

No. 42 of 1990

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LEGAL AID COMMISSION ACT 1990

No. 42 of 1990

**An Act to establish a Legal Aid Commission to administer
the granting of legal aid**

[Royal Assent 20 December 1990]

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

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

2. Commencement

The provisions of this Act commence on a day to
be proclaimed.

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3. Interpretation

In this Act, unless the contrary intention appears

—

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

chairperson means the chairperson of the Commission and includes a person appointed to act in the office of chairperson;

Commission means Tasmania Legal Aid constituted under section 4;

Commissioner means a Commissioner of the Commission and includes the chairperson;

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

current practising certificate means a practising certificate in force under the *Legal Profession Act 1993*;

Director means the Director of the Commission appointed under section 8 and includes a person appointed to act in the office of the Director;

Fund means the Legal Aid Fund established under section 35;

guidelines means guidelines issued by the Commission under section 27;

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Law Society means The Law Society of Tasmania continued under the *Legal Profession Act 2007*;

legal aid means the provision of legal assistance and legal services;

Legal Aid Committee means a Legal Aid Committee established under section 12;

legal assistance means any legal work or legal advice provided to a person;

legal practitioner means an Australian legal practitioner;

legal services includes services consisting of appearing on behalf of a person, or giving legal advice to a person, in connection with a proceeding of a court otherwise than by prior arrangement with the person;

officer means a State Service officer or State Service employee employed in the office of the Commission and who is a legal practitioner;

private legal practitioner means a person who is practising as a legal practitioner;

regulations means regulations made under this Act;

Review Committee means a Review Committee established under section 30.

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PART 2 – LEGAL AID COMMISSION

4. Constitution of Commission

- (1) There is constituted by this Act a body corporate with the corporate name of Tasmania Legal Aid.
- (2) The Commission –
 - (a) has perpetual succession; and
 - (b) shall have a common seal; and
 - (c) may take proceedings, and be proceeded against, in its corporate name; and
 - (d) may purchase, acquire, hold and dispose of property; and
 - (e) may do and be subject to all other things that corporations may by law do and be subject to and that are necessary for, or incidental to, the purpose for which it was constituted; and
 - (f) has the functions imposed, and the powers conferred, on it by this or any other Act.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to a document and until the contrary is established, shall presume that it was duly affixed.

5. Membership of Commission

- (1) The Commission consists of 5 Commissioners appointed by the Minister of whom –
 - (a) one is a person appointed as the chairperson of the Commission; and
 - (b) one is the Director; and
 - (c) one is a person with substantial experience and expertise in financial management; and
 - (d) one is a person with experience in business or government operations; and
 - (e) one is a person nominated by the Law Society.
- (2) A person is not eligible for appointment as the chairperson of the Commission unless the person is –
 - (a) a former judge or a former magistrate; or
 - (b) an Australian lawyer of at least 5 years' standing as an Australian legal practitioner.
- (3) Schedule 1 has effect with respect to the membership of the Commission.
- (4) Schedule 2 has effect with respect to the meetings of the Commission.

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6. Functions of Commission

- (1) The functions of the Commission are as follows:
- (a) to provide legal aid in accordance with this Act;
 - (b) to liaise and co-operate with, and to make reciprocal arrangements with, professional bodies representing private legal practitioners and other bodies engaged or interested in the provision of legal aid;
 - (c) to liaise with professional bodies representing private legal practitioners to facilitate the use of services provided by private legal practitioners;
 - (d) to make maximum use of services which private legal practitioners offer to provide on a voluntary basis;
 - (e) to 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 and under professional supervision, in the provision of legal aid;
 - (f) to provide agencies of the Commonwealth or another State or Territory of the Commonwealth concerned in the provision of legal aid with such statistical and other information as they may reasonably require;

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- (g) to ascertain the most efficient, economical and effective means of maximizing rights and remedies under the law in Tasmania;
 - (h) to perform such other functions as the Minister may direct.
- (2) In the performance of its functions, the Commission shall –
- (a) have regard to the amount of money standing to the credit of the Fund and any other money likely to be received for the purposes of that Fund; and
 - (b) ensure that legal aid is provided in the most effective, efficient and economical manner; and
 - (c) ensure that its activities are carried on consistently with, and do not prejudice, the independence of the private legal profession.

7. Powers of Commission

- (1) The Commission has such powers as are necessary to enable it to perform its functions and exercise its powers.
- (2) The Commission may make recommendations to the Minister with respect to any reforms of the law it considers desirable.
- (3) This section does not empower the Commission to appoint any person as an employee or officer.

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8. Director of Legal Aid

- (1) Subject to and in accordance with the *State Service Act 2000*, a Director of the Commission is to be appointed.
- (2) A person appointed as Director of the Commission shall be an Australian lawyer.
- (3) If the person appointed as Director does not hold a current practising certificate, the person is deemed to hold such a certificate for the period during which the person holds office as Director.
- (4) The Director shall –
 - (a) perform all the duties imposed on the Director under this Act or regulations; and
 - (b) carry out all instructions from, and the decisions of, the Commission.

9. Acting Director

- (1) Where –
 - (a) the Director is absent from duty or from the State; or
 - (b) the Director is unable to perform the duties of the office; or
 - (c) there is a vacancy in the office of the Director –

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the Secretary of the Department may appoint a person who is an Australian lawyer to act as the Director during the absence or until the vacancy is filled.

- (2) If the person appointed to act in the office of the Director does not hold a current practising certificate, the person is deemed to hold such a certificate for the period during which the person acts in that office.

10. Staff of Commission

- (1) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed or employed to assist the Commission in the performance of its functions or the exercise of its powers.
- (2) The Secretary of the Department, at the request of the Commission, may provide it with State Service officers and State Service employees employed in the Department.

10A. Superannuation

The Commissioner is an employee for the purposes of the *Public Sector Superannuation Reform Act 2016*.

11. Professional conduct of officers

- (1) An officer, when practising as, or performing any of the functions of, a legal practitioner, in pursuance of this Act –

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- (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 the legal profession; and
 - (b) is subject to the same professional duties as those to which a private legal practitioner is, by law or the custom of the legal profession, subject.
- (2) The same privileges as those that arise from the relationship of client and legal practitioner acting in a professional capacity and in the course of professional employment shall arise –
- (a) between a person who has applied for legal aid, or to whom legal aid is being provided, and an officer who practices as, or performs any of the functions of, a legal practitioner for the person under this Act; and
 - (b) between a private legal practitioner and the Commission in relation to services provided by the private legal practitioner for a person under this Act.

PART 3 – LEGAL AID COMMITTEES

12. Establishment of Legal Aid Committees

The Commission may establish such Legal Aid Committees as it considers necessary for the purposes of this Act.

13. Constitution of Legal Aid Committees

- (1) A Legal Aid Committee consists of 4 members of whom –
 - (a) one is the Director; and
 - (b) one is a person, appointed by the Commission, who is not a legal practitioner; and
 - (c) 2 are persons, nominated by the Law Society and appointed by the Commission, who are legal practitioners.
- (2) The Commission shall appoint a member of a Legal Aid Committee as chairperson of that Legal Aid Committee.
- (3) The Director may appoint an officer to be the Director's deputy as a member of a Legal Aid Committee.
- (4) The deputy of the Director appointed is entitled to attend a meeting of the Legal Aid Committee in the absence of the Director from that meeting and while so attending is deemed to be a member of that Legal Aid Committee.

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- (5) The Commission may appoint a person as a deputy of a member referred to in subsection (1)(b).
- (6) The Commission may appoint a legal practitioner nominated by the Law Society as a deputy of a member referred to in subsection (1)(c).
- (7) The deputy of a member appointed under subsection (5) or (6) is entitled to attend a meeting of a Legal Aid Committee in the absence of the member from that meeting and while so attending is deemed to be a member of the Legal Aid Committee.

14. Functions and powers of Legal Aid Committees

- (1) The functions of a Legal Aid Committee are –
 - (a) to decide on applications for legal aid coming before the Committee; and
 - (b) to decide on any other matters coming before the Committee under this Act; and
 - (c) to provide advice to private legal practitioners in relation to services provided by them to an assisted person.
- (2) In the performance of its functions, a Legal Aid Committee may require a private legal practitioner to submit such reports or documents in relation to services provided to an assisted person as it considers necessary.

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15. Provision of legal aid

- (1) The Commission may provide legal aid 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 an officer.
- (2) The Commission shall issue directions for the allocation of work between officers and private legal practitioners.
- (3) In issuing directions under subsection (2), the Commission shall have regard to the desirability of enabling officers to engage in the practice of the law as comprehensively as reasonably practicable.
- (4) Where the Commission provides legal aid by arranging for the services of a private legal practitioner, the Commission shall, except where the services are provided on a voluntary basis, pay fees and disbursements to the private legal practitioner for the performance of those services.

16. Applications for legal aid

- (1) A person who wishes to apply for legal aid shall make an application to the Commission in a manner determined by the Commission.
- (2) An applicant for legal aid shall provide the Commission with such declarations, certificates

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and other documents as the Commission requires to enable it to make a decision as to whether legal aid should be granted in respect of the application.

- (3) The Commission may distribute to private legal practitioners application forms for completion by persons applying for legal aid.

17. Determination of applications

- (1) An application for legal aid shall be decided by a Legal Aid Committee, by the Director or by an officer authorized by the Director for the purpose, according to directions of the Commission.
- (2) The Commission shall give directions as to the classes of cases in which –
 - (a) applications for legal aid are to be decided by a Legal Aid Committee; and
 - (b) applications are to be decided by an officer.
- (3) Where a Legal Aid Committee or an officer decides to grant an application for legal aid, the Legal Aid Committee or officer shall also decide, in accordance with guidelines issued –
 - (a) whether the legal aid should be provided by making available the services of a private legal practitioner or by making available the services of an officer; and

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- (b) the nature and extent of the legal aid to be provided; and
 - (c) whether the legal aid is to be provided free of charge or subject to any of the conditions referred to in section 21(1); and
 - (d) whether legal aid is to be provided subject to such conditions as may be considered appropriate.
- (4) The Director shall ensure that a Legal Aid Committee is provided with such assistance as it requires for the purpose of the performance of its functions under this Act.
- (5) For the purpose of deciding an application for legal aid, a Legal Aid Committee or an officer may make such inquiries and obtain such advice and reports as the Committee or officer considers desirable.
- (6) The cost of making inquiries or obtaining such advice or reports shall be paid –
- (a) if the Legal Aid Committee or officer so determines – by the applicant for the legal aid; or
 - (b) in any other case – out of the Fund.

18. Termination or variation of legal aid

- (1) A decision to provide legal aid may be varied at any time so as to –

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- (a) terminate the provision of the legal aid;
or
 - (b) alter the nature or extent of the legal aid;
or
 - (c) make the provision of the legal aid
subject to a condition in accordance with
section 21; or
 - (d) alter a condition to which the provision
of the legal aid is subject in accordance
with section 17 (3) (e) or 21.
- (2) A decision to provide legal aid may be varied –
- (a) in a case where the decision was made by
a Legal Aid Committee – by that Legal
Aid Committee; or
 - (b) 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.

19. Circumstances in which legal aid may be provided

- (1) Subject to subsection (2A), the Commission may
provide legal aid to a person only if –
- (a) the person is unable to afford the cost of
obtaining from private legal practitioners
the legal assistance or legal services in
respect of which legal aid is sought; or
 - (ab)

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- (b) it is reasonable in all the circumstances to provide the legal aid.
- (2) In making a decision whether a person should be provided with legal aid, the Commission shall have regard to all relevant matters, including –
- (a) the income of the person and of each person associated with the person; and
 - (b) the cash that is readily available to the person or can be made so available; and
 - (c) the debts, liabilities and other financial obligations of the person; and
 - (d) the cost of living; and
 - (e) the cost of obtaining legal assistance or legal services from a private legal practitioner; and
 - (f) any other matter affecting the ability of the person to meet the cost of obtaining legal assistance or legal services from a private legal practitioner; and
 - (g) the nature and extent of a benefit that may accrue to the person or to the public from the provision of legal aid; and
 - (h) the nature and extent of any detriment that may be suffered by the person or by the public if legal aid is not provided; and
 - (i) in the case of legal aid relating to a proceeding in a court – whether the

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proceeding is likely to terminate in a manner favourable to the person; and

(j) limitations on the person's right to cross-examine a witness or person under section 8A of the *Evidence (Children and Special Witnesses) Act 2001*.

(2A) The Commission is to provide legal aid to a person in accordance with section 8A of the *Evidence (Children and Special Witnesses) Act 2001* if a judge makes an order under that section directing that an unrepresented defendant be given assistance under this Act.

(3) Legal aid shall not be provided to a person who is not ordinarily resident in the State except if the legal aid relates to –

(a) a proceeding in a court in the State; or

(b) a matter arising under a law in force in the State.

(4) A reference in subsection (2)(a) to a person who is associated with a person is a reference to –

(a) the spouse or partner of the person; or

(b) a person who is financially responsible for, or who provides financial support to, that person.

(5) For the purpose of subsection (4),

partner means the person with whom a person is in a personal relationship, within the meaning of the *Relationships Act 2003*.

20. Legal aid for certain persons

Legal aid may be provided to a person in relation to a proceeding or matter notwithstanding that the interests of the person may be adverse –

- (a) to the interests of the State; or
- (b) to the interests of an authority or body established for a public purpose by or under a law of the State; or
- (c) to the interests of a body corporate in which the State or such an authority or body has an interest.

21. Contributions towards costs and expenses

(1) The Commission may provide to a person legal aid either free of charge or on condition that the person contributes towards the cost of providing that legal aid by –

- (a) paying a specified amount; or
- (b) paying an amount equal to a specified percentage of that cost; or
- (c) giving such security as and when the Commission requires.

(2) Any amount payable by an assisted person under this section –

- (a) shall be paid in such manner, within such period and at such times as the Commission determines; and

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- (b) is recoverable by the Commission as a debt due to the Commission.

22. Services of private legal practitioners

- (1) The Commission shall keep a list of private legal practitioners who have notified that they are willing to act, either generally or in particular classes of matters or courts, as legal practitioners on behalf of an assisted person.
- (2) The Commission shall make available to a Legal Aid Committee the list kept under subsection (1).
- (3) Subject to subsection (4), the Commission may –
 - (a) refuse to include in the list kept under subsection (1) the name of a private legal practitioner who has notified the Commission that he or she is willing to act on behalf of any assisted persons; or
 - (b) remove the name of a private legal practitioner from that list; 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 legal practitioner will be sought.
- (4) The Commission shall not –
 - (a) refuse to include the name of a private legal practitioner in the list kept under subsection (1); or

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- (b) remove the name of a private legal practitioner from that list; or
- (c) include in that list limitations as to the classes of matters in which the services of a private legal practitioner will be sought –

unless the Commission has –

- (d) given written notice to the private legal practitioner setting out the reasons for the proposed refusal, removal or limitation; and
- (e) given the private legal practitioner a reasonable opportunity to provide a written submission or to address the Commission in relation to the proposed refusal, removal or limitation.

(5) Where the Commission has –

- (a) refused to include the name of a private legal practitioner in the list kept under subsection (1); or
- (b) removed the name of a private legal practitioner from that list; or
- (c) included in that list, in relation to a private legal practitioner, a limitation as mentioned in subsection (3)(c) –

the private legal practitioner may, within 28 days after receipt of the notice given to him under

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subsection (4)(d), apply to the Supreme Court for an appropriate order.

- (6) A private legal practitioner who makes an application to the Supreme Court shall forward a copy of that application to the Commission.
- (7) The Commission may appear before the Supreme Court in the hearing of an application.
- (8) In determining an application, the Supreme Court may –
 - (a) make the order applied for; or
 - (b) make any order it considers appropriate; or
 - (c) postpone the making of an order with liberty to apply; or
 - (d) dismiss the application.

23. Allocation of work

- (1) Subject to subsection (2), the Commission shall allocate work among the private legal practitioners whose names are on the list kept under section 22(1) –
 - (a) in a manner that is equitable; and
 - (b) with regard to the nature of their legal practices.

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- (2) In determining to whom work should be allocated in a particular case, the paramount considerations are –
 - (a) the interest of the assisted person; and
 - (b) any choice expressed by the assisted person for a particular private legal practitioner.
- (3) The Commission shall keep a record of the number and type of matters dealt with by specified private legal practitioners under this Act.
- (4) The Commission shall make available the record kept under subsection (3) for inspection on request by the Law Society.

24. Fees and costs

- (1) In determining the fees payable to private legal practitioners for the provision of legal assistance or legal services to assisted persons, the Commission shall consult the Law Society and shall take into account its views.
- (2) The fees payable to private legal practitioners for the provision of legal assistance or legal services to assisted persons shall, so far as practicable, be less than the ordinary professional cost of providing such legal assistance or legal services.
- (3) The Director may refer to a Legal Aid Committee an account from a private legal practitioner in respect of the provision of legal

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assistance or legal services to determine whether any amounts claimed in the account are properly payable.

- (4) The Commission may defer payment of fees payable by it to a private legal practitioner in connection with proceedings in respect of which legal aid has been granted –
- (a) until the conclusion of any investigation in relation to –
 - (i) an alleged breach of this Act or the *Legal Profession Act 2007* by the private legal practitioner in relation to the provision of services; or
 - (ii) an alleged fraud or misrepresentation by the private legal practitioner in relation to the provision of services; or
 - (iii) an alleged improper action by the private legal practitioner in bringing, defending or conducting proceedings in relation to the provision of legal assistance or legal services to assisted persons; or
 - (b) until the completion of any criminal or disciplinary proceedings commenced against the private legal practitioner in respect of any matter referred to in paragraph (a).

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- (5) The Commission may refuse to pay fees to a private legal practitioner in connection with proceedings in respect of which legal aid has been granted if an allegation referred to in subsection (4)(a) against the practitioner is substantiated in criminal or disciplinary proceedings.

25. Entitlement of assisted persons to costs

- (1) An assisted person who is successful in any proceeding is liable to pay the ordinary professional costs of any legal aid provided and any disbursements and expenses incurred in connection with the provision of the legal aid.
- (2) The Director may direct that an assisted person take specific action to recover an amount by way of costs that is recoverable by that person in respect of the matter in which legal aid was given.
- (3) An assisted person who is entitled to recover an amount by way of costs in respect of any matter in which legal aid is given shall pay to the Director –
- (a) an amount equal to that amount; or
 - (b) such other lesser amount as the Director, in accordance with the guidelines, determines.
- (4) In determining an amount under subsection (3)(b), 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; and
 - (c) any failure by the assisted person to comply with a direction of the Director under subsection (2).
- (5) The Commission may recover as a debt due and payable to it any amount an assisted person is liable to pay to it under subsection (3).
- (6) If an assisted person is entitled to recover an amount by way of costs in respect of any matter in which legal aid is given, the Director may, by notice in writing, direct that the assisted person, within 28 days after receipt of the notice, assign to the Commission his or her rights to recover the amount.
- (7) An assisted person who fails to comply with a direction under subsection (6) is deemed to have assigned to the Commission any right to recover an amount at the end of the period referred to in that subsection.
- (8) Where an assisted person is deemed to have assigned to the Commission any right to recover an amount, the Commission, for the purposes of recovering the amount –
- (a) shall stand in the place of the assisted person; and

- (b) may use any of the remedies available to the assisted person; and
- (c) may use the name of the assisted person.

26. Costs awarded against assisted persons

(1) Where –

- (a) legal aid is provided to a person in relation to a 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 –

- (a) in accordance with the guidelines; and
- (b) by an officer, if the question whether legal aid should be granted in relation to the proceeding was decided by an officer; or
- (c) by a Legal Aid Committee, if the question was decided by a Legal Aid Committee.

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- (3) An amount paid by the Commission under this section is deemed to have been paid by the assisted person.

27. Guidelines

The Commission shall issue guidelines to be applied in –

- (a) determining whether legal aid is to be provided to a person; and
- (b) determining the conditions subject to which legal aid is to be provided; and
- (c) determining the extent to which the Commission shall pay costs awarded against an assisted person; and
- (d) determining the amount of costs or disbursements required to be paid under section 25 by an assisted person.

28. Notification of decisions

- (1) The Commission shall notify a person and the legal practitioner acting on behalf of that person of any decision made by a Legal Aid Committee or an officer in respect of that person in relation to –
- (a) the provision of legal aid; or
 - (b) the making of a payment for costs.

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- (2) A notification shall be made in writing within 14 days after the decision is made.
- (3) The Commission, at the request of a person, shall provide written reasons for any decision to which a notification relates.

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PART 5 – REVIEW COMMITTEES

29. Requests for review

- (1) A person may, by notice in writing, request the Commission to refer a decision made by an officer or a Legal Aid Committee to a Review Committee.
- (2) A request made by a person under subsection (1) shall be made –
 - (a) within a period of 14 days after the person receives a notice referred to in section 28(2); or
 - (b) within such longer period as the Commission may determine.

30. Establishment of Review Committees

The Commission may establish such Review Committees as it thinks necessary for the purposes of this Act.

31. Constitution of Review Committee

- (1) A Review Committee consists of 3 members appointed by the Commission of whom –
 - (a) one is a private legal practitioner; and
 - (b) one is an officer; and
 - (c) one is a person who is not a private legal practitioner nor an officer but who has

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qualifications or experience relevant to the performance of the function of a Review Committee.

- (2) The Commission shall appoint a member of a Review Committee as chairperson of that Review Committee.
- (3) The Commission may appoint as a deputy of a member of a Review Committee –
 - (a) a private legal practitioner, in the case of a member referred to in subsection (1)(a); or
 - (b) an officer, in the case of a member referred to in subsection (1)(b); or
 - (c) a person who is not a private legal practitioner nor an officer but who has qualifications and experience relevant to the performance of the function of a Review Committee, in the case of a member referred to in subsection (1)(c).
- (4) The deputy of a member appointed under subsection (3) is entitled to attend a meeting of a Review Committee in the absence of the member from that meeting and while so attending is deemed to be a member of that Review Committee.

32. Function of Review Committee

The function of a Review Committee is to review any decision referred to it under section 29.

33. Hearing

- (1) A Review Committee shall not make a decision relating to a review unless the person requesting the review has been given a reasonable opportunity to –
 - (a) provide a written submission to the Review Committee in relation to the review; and
 - (b) place before the Review Committee any document relevant to the review.
- (2) A Review Committee may, at the request of a person, permit the person to attend and address the Review Committee in relation to the review.

34. Decision of Review Committee

- (1) After reviewing a decision a Review Committee may –
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and substitute another decision in its place.

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- (2) Subject to subsection (6), the decision of a Review Committee is final.
- (3) A Review Committee shall notify the Commission and the person requesting the review of its decision.
- (4) A notification shall be made in writing within 14 days after the decision is made.
- (5) The Commission, at the request of a person, shall provide written reasons for any decision to which a notification relates.
- (6) A person whose circumstances in relation to a matter change after a Review Committee has made a decision under this section may apply again under section 16 for legal aid in respect of that matter.

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PART 6 – FINANCES OF COMMISSION

35. Legal Aid Fund

- (1) There is established a fund to be known as the Legal Aid Fund.
- (2) The Fund shall consist of –
 - (a) any money paid to, or recovered by, the Commission under this Act (other than money received or held by the Commission on trust); and
 - (b) any money appropriated by the Parliaments of the Commonwealth and the State for the purposes of this Act; and
 - (c) any other money paid to the Commission for the provision of legal aid; and
 - (d) any income derived from the investment of any money forming part of the Fund.
- (3) The Fund shall be administered by the Commission.

36. Application of Fund

Money in the Fund shall be applied only –

- (a) in the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Commission under this Act; and

- (b) in the payment of salaries, remuneration, allowances and expenses payable under this Act.

37. Authorised deposit-taking institution accounts

- (1) The Commission shall open and maintain at least one account in an authorised deposit-taking institution in this State.
- (2) The Commission shall pay any money received by it into the account referred to in subsection (1).
- (3) Payment of money into the account referred to in subsection (1) is deemed to be a payment of money into the Fund.
- (4) The Commission shall ensure that any money received or held by it on trust is paid into an account that does not contain any money of the Commission not held on trust.

38. Investment of funds

The Commission may invest any money standing to the credit of the Fund in any of the ways referred to in section 5 of the *Trustee Act 1898*.

39. Money held on trust

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

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- (2) The Commission may invest any money held by it on trust in any of the ways referred to in section 5 of the *Trustee Act 1898*.

40. Accounts

- (1) The Commission shall keep proper accounts and records in relation to its transactions.
- (2)

41.

42. Estimates of expenditure

- (1) The Commission shall –
 - (a) as soon as practicable after the day on which this Act commences, submit to the Minister an estimate of the expenditure and revenue of the Commission for the period commencing on that day and ending on the next following 30 June; and
 - (b) no later than 31 May in each subsequent year, submit to the Commonwealth Minister and the Minister an estimate of the expenditure and revenue of the Commission during the financial year beginning on the next following 1 July.

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- (2) The Minister may require the Commission to provide such further details as the Minister considers necessary.
- (3) The funds of the Commission, other than money held on trust, shall not be expended otherwise than in accordance with estimates approved by the Minister.

PART 7 – MISCELLANEOUS

43. Publicity of services

The Commission and its officers may publicize any of its services by any means the Commission considers appropriate.

44. Signature of legal practitioner

Where –

- (a) in a proceeding, a document is required 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 an officer authorized by the Director for that purpose is deemed to be the signature of a legal practitioner for that party.

45. Establishment of consultative committees

- (1) The Minister may establish such consultative committees as the Minister thinks fit to assist the Commission in the performance of its functions.
- (2) In deciding whether to establish a consultative committee in a particular locality, the Minister shall take into account any representations

received from a local community organization or from persons living, or carrying on a business, profession or trade, in the locality.

46. False or misleading statements

- (1) A person shall not make a statement or representation orally or in writing, or provide a document, in relation to an application for legal aid, knowing or believing that the statement, representation or document is false or misleading.

Penalty: Fine not exceeding 50 penalty units.

- (2) Where –
- (a) a person is convicted of an offence under subsection (1); and
 - (b) legal aid was granted; and
 - (c) the Commission incurred expenses in providing the legal aid –

a 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.

47. Certificates

A certificate signed by the Director certifying that –

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- (a) the Commission incurred expenses of an amount specified in the certificate in relation to an application for legal aid; and
- (b) the amount specified in the certificate was, at the date of the certificate, payable by a person under section 21(1) or 25(3)

—
is evidence of the matters so specified.

48. Annual reports

On or before 31 October in each financial year, the Commission shall provide the Minister with a report on its activities and financial matters relating to the previous financial year ending on 30 June.

49. Immunity of members

No action lies against a member of the Commission, of a Legal Aid Committee, of a Review Committee or of a consultative committee in respect of any act done or omission made by that member in good faith and in the performance or purported performance of any function imposed by this Act.

50. Delegation by Commission or Director

- (1) The Commission or the Director may, by instrument in writing, delegate to a person specified in the instrument the performance or

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exercise of such functions and powers under this Act (other than this power of delegation) as are specified in the instrument, and may, by instrument in writing, revoke wholly or in part any such delegation.

- (2) A function or power the performance or exercise of which has been delegated under this section may, while the delegation remains unrevoked, be performed or exercised from time to time in accordance with the terms of the delegation.
- (3) A delegation under this section may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument.
- (4) Notwithstanding any delegation under this section, the Commission or the Director may continue to perform or exercise all or any of the functions or powers delegated.
- (5) Any act or thing done by, or to, a delegate of the Commission or the Director while acting in the exercise of a delegation under this section has the same force and effect as if the act or thing had been done by, or to, the Commission or the Director and is deemed to have been done by, or to, the Commission or the Director.
- (6) An instrument purporting to be signed by a delegate of the Commission or the Director in the capacity as such a delegate shall, in all courts and before all persons acting judicially, be received in evidence as if it were an instrument

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executed by the Commission or the Director and, until the contrary is proved, is deemed to be an instrument signed by a delegate of the Commission or the Director under this section.

- (7) Where the exercise of a power by the Commission or the Director is dependent on the opinion or belief of the Commission or the Director, a delegate of the Commission or the Director under this section may, in exercising that power, act on the delegate's own opinion or belief.

51. Exemption from duty, &c.

- (1) The Commission, a legal practitioner or an assisted person is exempted from the payment of any duty, fee or charge imposed under any Act relating to any action, matter, transaction or proceeding in respect of which legal aid is provided.
- (2) Where costs are awarded to an assisted person in any proceedings –
- (a) those costs are deemed to include any duty, fee or charge that would, but for subsection (1), have been payable; and
 - (b) the assisted person is deemed to have paid or incurred that duty, fee or charge for the purposes of any taxation of costs, award of costs or the recovery of costs.

52. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding one penalty unit for each day during which the offence continues.

53. Transitional and savings provisions

Schedule 3 has effect with respect to transitional and savings provisions.

53A. Validation of appointments

A person purported to have been appointed under section 7 by the Commission is taken to have been appointed under section 10 subject to and in accordance with the *State Service Act 2000*.

53B. Savings and transitional provisions

The savings and transitional provisions in Schedule 4 have effect.

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53C. Further savings and transitional provisions

The savings and transitional provisions in Schedule 5 have effect.

54. Administration of Act

Until an order is made under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

SCHEDULE 1 – MEMBERSHIP OF COMMISSION

Section 5(3)

1. Term of office

A Commissioner, other than the Director, holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment and is eligible for re-appointment.

2. Provisions relating to Commissioners

Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of the time to the duties of that office under that Act, that provision shall not operate to disqualify that holder from holding that office and also the office of a Commissioner.

3. Remuneration

A Commissioner is entitled to be paid such remuneration and allowances as the Minister may determine.

4. Vacation of office

- (1) The office of a Commissioner, other than the Director, becomes vacant if the Commissioner –
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an

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assignment of remuneration or estate for their benefit; or

- (b) is absent from 3 consecutive ordinary meetings of the Commission of which reasonable notice has been given, unless the Commissioner is excused by the Minister from attending those meetings; or
- (c) becomes unable to perform competently the duties of the office; or
- (d) is convicted in Tasmania of a crime or an offence which is punishable by imprisonment for 12 months or more, or is convicted outside Tasmania of an offence which, if committed in Tasmania, would be a crime or an offence so punishable; or
- (e) resigns from office and the Minister accepts the resignation; or
- (f) is removed from office by the Minister under subclause (2); or
- (g) dies during the term of office.

- (2) The Minister may remove a Commissioner from office for misbehaviour or incompetence.

5. Filling of casual vacancies

- (1) If the office of a Commissioner becomes vacant, the Minister may, subject to subclause (2),

appoint a person to the vacant office for the remainder of that Commissioner's term of office.

- (2) A person appointed under subclause (1) shall be a person nominated by the person who, or the body, which nominated the Commissioner whose vacant office is to be filled by that appointment.

6. Acting chairperson

- (1) The Minister may appoint a Commissioner who is eligible for appointment as chairperson to act in the office of chairperson where –
- (a) there is a vacancy in the office, whether or not an appointment has previously been made to the office; or
 - (b) the chairperson is absent from duty or from the State or is for any reason unable to perform the duties of office.
- (2) The Minister may at any time terminate an appointment under this section.
- (3) A person appointed to act in the office of chairperson may resign from office by writing delivered to the Minister.
- (4) The validity of anything done by a person acting in the office of chairperson shall not be called in question on the ground that the occasion for the appointment had not arisen, that the appointment had ceased to have effect or that the occasion to act had not arisen or had ceased.

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7. Validity of proceedings, &c.

- (1) Any act or proceeding of the Commission or of any person acting pursuant to any direction of the Commission is not invalidated or prejudiced by reason only of the fact that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the membership of the Commission.
- (2) All acts and proceedings of the Commission or of any person acting pursuant to any direction of the Commission are, notwithstanding the subsequent discovery of any defect in the appointment of any Commissioner or that any person was disqualified from acting as, or incapable of being, a Commissioner, as valid as if the Commissioner had been duly appointed and was qualified to act as, or capable of being, a Commissioner, and as if the Commission had been fully constituted.

8. Presumptions

In any proceedings by or against the Commission, unless evidence is given to the contrary, no proof is required of –

- (a) the constitution of the Commission; or
- (b) any resolution of the Commission; or
- (c) the appointment of any Commissioner;
or

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- (d) the presence of a quorum at any meeting of the Commission.

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SCHEDULE 2 – MEETINGS OF COMMISSION

Section 5(4)

1. Convening of meetings

- (1) The chairperson shall convene such meetings of the Commission as are necessary for the performance of the functions of the Commission.
- (2) In addition to convening meetings under subclause (1), the chairperson shall convene a meeting of the Commission when requested in writing to do so by 2 other Commissioners.

2. Procedure at meetings

- (1) The quorum at any duly convened meeting of the Commission is 3 Commissioners.
- (2) Questions arising at a duly convened meeting of the Commission are to be determined by a majority of the votes of the Commissioners present.
- (3) In the event of an equality of votes at a meeting of the Commission, the person presiding at the meeting has a casting vote in addition to a deliberative vote.

3. Chairperson

- (1) The chairperson or acting chairperson of the Commission shall preside at all meetings of the Commission.

- (2) If the chairperson or acting chairperson is not present at a meeting of the Commission, a Commissioner elected by the Commissioners present shall preside at that meeting.

4. Minutes

The Commission shall cause full and accurate minutes to be kept of its proceedings at meetings.

5. General procedure

Subject to this Schedule, the procedure for the calling of, and for the conduct of business at, meetings of the Commission is as determined by the Commission.

6. Disclosure of interests

- (1) A Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to that Commissioner's knowledge, disclose the nature of that interest at a meeting of the Commission.
- (2) A disclosure shall be recorded in the minutes of the meeting of the Commission and the Commissioner shall not, unless the Commission otherwise determines –

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- (a) be present during any deliberation of the Commission with respect to that matter;
or
- (b) take part in any decision of the Commission with respect to that matter.

**SCHEDULE 3 – TRANSITIONAL AND SAVINGS
PROVISIONS**

Section 53

1. Interpretation

In this Schedule –

approved scheme means an approved scheme as defined in the *Legal Assistance Act 1962*;

Australian Legal Aid Office means that part of the Attorney-General's Department of the Commonwealth that is designated the Australian Legal Aid Office and that operates in Tasmania;

eligible person means a person employed in the Australian Legal Aid Office immediately before the commencement of this Act.

2. Application for legal aid

An application for legal aid made to the Australian Legal Aid Office or under an approved scheme which has not been determined immediately before the commencement of this Act is deemed to be an application under section 16.

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3. Any services performed by legal aid office

Any services being performed by the Australian Legal Aid Office or pursuant to an approved scheme on behalf of a person by way of legal aid or legal assistance immediately before the commencement of this Act shall, on that commencement, be performed by the Commission.

4. Private legal practitioner

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 or of an approved scheme is, on the commencement of this Act, deemed to be a private legal practitioner to whom the Commission has assigned work under this Act in respect of that matter.

5. Services to be performed or carried out subject to certain conditions

- (1) Any services –
- (a) performed on or after the commencement of this Act by the Commission on behalf of a person under clause 3; or
 - (b) carried out on or after the commencement of this Act by a private legal practitioner under clause 4 –

shall be performed or carried out subject to any conditions attached to, and the policies of the Australian Legal Aid Office or an approved scheme in relation to, the performance or carrying out of the services before that commencement.

- (2) For the purposes of subclause (1), the Commission is deemed to stand in the place of and to have all the rights, duties and obligations of the Australian Legal Aid Office or the Law Society in respect of the performance or the carrying out of the services referred to in that subclause before the commencement of this Act.

6. Director deemed to be solicitor

On and from the commencement of this Act, the Director is 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.

7. Staff of Australian Legal Aid Office

- (1) An eligible person who, immediately before the commencement of this Act, was employed in the Australian Legal Aid Office, shall on that day become an employee within the meaning of the *Tasmanian State Service Act 1984*.

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- (2) A person who becomes an employee within the meaning of the *Tasmanian State Service Act 1984* under subclause (1) may, within 3 months after becoming such an employee, elect to become a contributor under the *Retirement Benefits Act 1982*.

8. Transfer of assets and liabilities

- (1) On the commencement of this Act, any assets vested in or liabilities incurred by the Australian Legal Aid Office or under an approved scheme is transferred to and vests in the Commission.
- (2) Any instrument made for the purposes of subclause (1) is exempted from the payment of any duty, fee or charge imposed under any Act in relation to such an instrument.

**SCHEDULE 4 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 53B

1. Interpretation

In this Schedule –

commencement day means the day on which the *Legal Aid Commission Amendment Act 2016* commences;

former Act means this Act as in force immediately before the commencement day.

2. Continuation of certain existing appointments

- (1) The Commissioner who, immediately before the commencement day, was the chairperson referred to in section 5(1)(a) of the former Act is, on and after the commencement day, taken to have been appointed as the chairperson under section 5(1)(a) for the remainder of his or her term of appointment on the same terms and conditions as were applicable immediately before the commencement day.
- (2) The Commissioner who, immediately before the commencement day, was the Director referred to in section 5(1)(b) of the former Act is, on and after the commencement day, taken to have been appointed as the Director under section 5(1)(b) for the remainder of his or her term of appointment on the same terms and conditions as

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were applicable immediately before the commencement day.

- (3) The Commissioner who, immediately before the commencement day, was the person with substantial experience and expertise in financial management referred to in section 5(1)(d) of the former Act is, on and after the commencement day, taken to have been appointed as a Commissioner under section 5(1)(c) for the remainder of his or her term of appointment on the same terms and conditions as were applicable immediately before the commencement day.
- (4) The Commissioner who, immediately before the commencement day, was the person referred to in section 5(1)(d) of the former Act who is not the person referred to in subclause (3) is, on and after the commencement day, taken to have been appointed as a Commissioner under section 5(1)(d) for the remainder of his or her term of appointment on the same terms and conditions as were applicable immediately before the commencement day.
- (5) The Commissioner who, immediately before the commencement day, was the person referred to in section 5(1)(e) of the former Act who was most recently appointed as a Commissioner under that section is, on and after the commencement day, taken to have been appointed as a Commissioner under section 5(1)(e) for the remainder of his or her term of appointment on the same terms and

conditions as were applicable immediately before the commencement day.

3. Termination of certain existing appointments

The term of appointment of the following Commissioners ceases on the commencement day:

- (a) the 2 Commissioners who, immediately before the commencement day, were the 2 persons referred to in section 5(1)(c) of the former Act;
- (b) the Commissioner who, immediately before the commencement day, was not the person most recently appointed as a Commissioner under section 5(1)(e) of the former Act;
- (c) the Commissioner who, immediately before the commencement day, was the person referred to in section 5(1)(f) of the former Act;
- (d) the Commissioner who, immediately before the commencement day, was the person referred to in section 5(1)(g) of the former Act.

**SCHEDULE 5 – FURTHER SAVINGS AND
TRANSITIONAL PROVISIONS**

Section 53C

1. Interpretation

In this Schedule –

commencement day means the day on which the *Justice and Related Legislation (Miscellaneous Amendments) Act 2022* commences;

former Act means this Act as in force immediately before the commencement day.

2. References to Legal Aid Commission of Tasmania, &c.

- (1) If, in any proceedings commenced before the commencement day, a reference is made to Tasmania Legal Aid, that reference is taken to be a reference to the Legal Aid Commission of Tasmania as constituted under the former Act.
- (2) On and after the commencement day, a reference in any legislation, contract, agreement, document or proceedings to the Legal Aid Commission of Tasmania, the Legal Aid Commission or the Tasmanian Legal Aid Commission is to be taken to be a reference to Tasmania Legal Aid.

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NOTES

The foregoing text of the *Legal Aid Commission Act 1990* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 18 March 2022 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Legal Aid Commission Act 1990</i>	No. 42 of 1990	1.1.1991
<i>Legal Aid Commission Amendment Act 1994</i>	No. 40 of 1994	25.8.1994
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Financial Institutions (Miscellaneous Amendments) Act 1996</i>	No. 62 of 1996	1.1.1997
<i>Mental Health (Consequential Amendments) Act 1996</i>	No. 32 of 1996	1.11.1999
<i>Financial Sector Reform (Tasmania) (Miscellaneous Amendments) Act 1999</i>	No. 74 of 1999	1.1.2000
<i>Superannuation (Miscellaneous and Consequential Amendments) Act 2000</i>	No. 103 of 2000	13.12.2000
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2005</i>	No. 65 of 2005	15.12.2005
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Audit (Consequential Amendments) Act 2008</i>	No. 50 of 2008	1.3.2009
		1.7.2010
<i>Evidence (Children and Special Witnesses) Amendment Act 2013</i>	No. 63 of 2013	1.3.2014
<i>Legal Aid Commission Amendment Act 2016</i>	No. 37 of 2016	7.10.2016

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Act	Number and year	Date of commencement
<i>Public Sector Superannuation Reform (Consequential and Transitional Provisions) Act 2016</i>	No. 54 of 2016	31.3.2017
<i>Statutory Appointments (Miscellaneous Amendments) Act 2017</i>	No. 36 of 2017	19.9.2017
<i>Evidence (Children and Special Witnesses) Amendment Act 2020</i>	No. 26 of 2020	1.3.2021
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2022</i>	No. 2 of 2022	18.3.2022

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 68 of 1994, s. 3 and Sched. 1, No. 86 of 2000, Sched. 1, No. 66 of 2007, Sched. 1, No. 36 of 2017, s. 10 and No. 2 of 2022, Sched. 1
Section 4	Amended by No. 2 of 2022, Sched. 1
Section 5	Amended by No. 37 of 2016, s. 4 and No. 36 of 2017, s. 11
Section 6	Amended by No. 36 of 2017, s. 12
Section 7	Amended by No. 40 of 1994, s. 4
Section 8	Amended by No. 86 of 2000, Sched. 1 and No. 36 of 2017, s. 13
Section 9	Amended by No. 36 of 2017, s. 14
Section 10	Amended by No. 40 of 1994, s. 5 Substituted by No. 86 of 2000, Sched. 1
Section 10A	Inserted by No. 103 of 2000, Sched. 1 Amended by No. 65 of 2005, Sched. 1 Subsection (3A) inserted by No. 65 of 2005, Sched. 1 Amended by No. 65 of 2005, Sched. 1 Subsection (6) omitted by No. 65 of 2005, Sched. 1 Substituted by No. 54 of 2016, s. 62
Section 13	Amended by No. 36 of 2017, s. 15
Section 16	Amended by No. 37 of 2016, s. 5
Section 19	Amended by No. 45 of 2003, Sched. 1, No. 63 of 2013, s. 19 and No. 26 of 2020, s. 21
Section 24	Amended by No. 68 of 1994, s. 3 and Sched. 1 and No. 66 of 2007, Sched. 1
Section 37	Amended by No. 62 of 1996, s. 3 and Sched. 1 and No. 74 of 1999, Sched. 2
Section 40	Amended by No. 50 of 2008, Sched. 2
Section 41	Repealed by No. 50 of 2008, Sched. 2 Amended by No. 50 of 2008, Sched. 1
Section 53A	Inserted by No. 17 of 1996, s. 30 Amended by No. 86 of 2000, Sched. 1

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Provision affected	How affected
Section 53B	Inserted by No. 37 of 2016, s. 6
Section 53C	Inserted by No. 2 of 2022, Sched. 1
Schedule 1	Amended by No. 32 of 1996, Sched. 1
Schedule 2	Amended by No. 37 of 2016, s. 7
Schedule 4	Inserted by No. 37 of 2016, s. 8
Schedule 5	Inserted by No. 2 of 2022, Sched. 1