

Legal Aid Commission (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 3 May 1995

(Brought in by Mrs Wade and Mr Gude)

A BILL

to amend the **Legal Aid Commission Act 1978** and to make consequential amendments to other Acts and for other purposes.

Legal Aid Commission (Amendment) Act 1995

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is to amend the **Legal Aid Commission Act 1978**—

- (a) to replace the Commission with a statutory corporation to be known as Victoria Legal Aid and to make consequential amendments to other Acts;

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

- (b) to facilitate the implementation of a civil litigation assistance scheme to be known as the Law Aid Scheme.

2. Commencement

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

1

3. Principal Act

1

In this Act, the Legal Aid Commission Act 1978 is called the Principal Act.

No. 9245.
R printed to
No. 61/1989
and
subsequently
amended by
Nos 38/1992,
14/1994 and
31/1994.

PART 2—AMENDMENT OF THE LEGAL AID COMMISSION ACT 1978

4. Amendment of title of Act

2

In section 1 (1) of the Principal Act, omit “Commission”.

5. Definitions

In section 2 (1) of the Principal Act—

- (a) omit the definitions of “chairman”, “commencing day”, “Commission”, “Director”, “officer of the Commission” and “previous committee”;
- (b) insert the following definitions—
 - “board” means the board of directors of VLA established under section 11;

2

30

“chairperson” means the chairperson of the board;

“managing director” means the managing director of the board appointed under section 12B;

“VLA” means Victoria Legal Aid established under section 3;’;

(c) in the definition of “assisted person”, after “Act” **insert** “, except Part VIA”;

(d) in the definition of “Commonwealth Commission”, for “the Commonwealth Legal Aid Commission established by the Commonwealth Legal Aid Commission Act 1977 of the Commonwealth” **substitute** “the Attorney-General’s Department of the Commonwealth exercising its functions in respect of legal aid;”;

(e) in the definition of “legal aid” in paragraph (c), for “10” **substitute** “6, 7 or 8”.

6. Substitution of Part II

For Part II of the Principal Act **substitute**—

‘PART II—VICTORIA LEGAL AID

3. Establishment

(1) There is established a body by the name “Victoria Legal Aid”.

(2) VLA—

(a) is a body corporate with perpetual succession;

(b) has an official seal;

(c) may sue and be sued;

(d) may acquire, hold and dispose of real and personal property;

- (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the seal of VLA affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The official seal of VLA must be kept in such custody as VLA directs and must not be used except as authorised by VLA. 1

4. Objectives

The objectives of VLA are—

- (a) to provide legal aid in the most effective, economic and efficient manner; 1
- (b) to manage its resources to make legal aid available at a reasonable cost to the community and on an equitable basis throughout the State;
- (c) to provide to the community improved access to justice and legal remedies; 2
- (d) to pursue innovative means of providing legal aid directed at minimising the need for individual legal services in the community. 2

5. VLA not to represent the Crown

VLA does not represent the Crown.

6. Functions and powers

- (1) The functions of VLA are— 3
- (a) to provide legal aid in accordance with this Act;
- (b) to control and administer the Fund.

(2) VLA may—

- (a) in co-operation with a government department or body concerned with social service or social welfare, arrange measures and take steps that may be conducive to meeting the need for legal aid in the community;
- (b) enter into arrangements from time to time with a body or person with respect to any investigation, study or research that, in the opinion of VLA, is necessary or desirable for the purposes of this Act;
- (c) make recommendations to or through the Attorney-General with respect to any reforms of the law the desirability for which has come to its attention in the course of performing its functions;
- (d) initiate and carry out educational programs designed to promote an understanding by the public, and by sections of the public who have special needs in this respect, of their rights, powers, privileges and duties under the laws in force in the State;
- (e) undertake research into all aspects of legal aid including new methods of financing and providing legal aid;
- (f) subject to and in accordance with any agreement or arrangement made between the Commonwealth and the State, provide financial assistance to voluntary legal aid bodies in the State in respect of the provision of legal aid;
- (g) do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

7. Duties of VLA

In performing its functions, VLA must—

- (a) ensure that legal aid is provided in the most effective, efficient and economical manner and in a manner which dispels fear and distrust;
- (b) establish any local offices that it considers appropriate and generally use its best endeavours to make legal aid available throughout the State; 1
- (c) subject to and in accordance with the agreements and arrangements made between the Commonwealth and the State from time to time in that behalf— 1
 - (i) determine or vary priorities in the provision of legal aid as between classes of persons and classes of matters or both;
 - (ii) have regard to the recommendations of the Commonwealth Commission concerning the provision of legal aid by VLA— 2
 - (A) in or in connection with a claim, right or proceeding involving a matter arising under a law of the Commonwealth; or 2.
 - (B) in a proceeding in a federal court or in a State court exercising federal jurisdiction; or 3.
 - (C) in respect of persons who are agreed by the Attorney-General and the Attorney-General of the Commonwealth to be persons in respect of whom 3.

the Commonwealth has a special responsibility;

(iii) liaise and co-operate with the Commonwealth Commission in the performance by that Commission of its functions and, in particular, provide to the Commonwealth Commission such statistics and other information as that Commission may reasonably require;

(d) determine the matters or classes of matters in respect of which legal services may be performed on behalf of assisted persons by way of legal aid;

(e) co-operate and, if VLA considers it desirable to do so, make reciprocal arrangements with other legal aid commissions, professional bodies representing private practitioners and other bodies engaged or interested in the provision of legal aid in the State or elsewhere;

(f) liaise with professional bodies representing private practitioners in order to facilitate the use, in appropriate circumstances, of services provided by private practitioners;

(g) make maximum use of services which private practitioners offer to provide on a voluntary basis;

(h) endeavour to secure the services of interpreters, marriage counsellors, welfare officers and other appropriate persons to assist in connection with matters in respect of which legal aid is provided;

- (i) inform the public of the services provided by VLA and the conditions on which those services are provided;
- (j) encourage and permit law students to participate, so far as VLA considers it practicable and proper to do so, on a voluntary basis and under professional supervision in the provision of legal aid; 1
- (k) have regard to the amount of money for the time being standing to the credit of the Fund and the amount of money likely to be received by VLA for the purposes of the Fund. 1

8. Arrangements and guidelines for allocation of legal aid work

- (1) Legal aid may be provided by VLA—
 - (a) by making available the services of officers of VLA; 2
 - (b) by arranging for the services of private practitioners to be made available;
 - (c) by making available and by arranging both the services referred to in paragraphs (a) and (b). 2.
- (2) VLA must determine guidelines in relation to the allocation of work between officers of VLA and private practitioners having regard to— 3i
 - (a) the need for legal assistance services to be readily available and easily accessible to disadvantaged people;
 - (b) the desirability of an assisted person being entitled to select a practitioner of his or her choice; 3:

- (c) the need for appropriate use to be made of the services capable of being provided by officers of VLA;
- (d) the importance of maintaining the independence of the private legal profession;
- (e) the need for the Fund to be used effectively and efficiently.

9. *Guidelines for provision of legal aid*

VLA must determine, having regard to funds available and relevant recommendations of the Commonwealth Commission, guidelines in relation to the provision of legal aid and, in particular, guidelines to be applied in—

- (a) the application of section 24 for the purpose of determining whether legal assistance may be provided to a person under this Act;
- (b) the application of section 26 (2) for the purpose of determining whether a person requiring legal advice should be required to make an application for legal assistance;
- (c) determining whether the providing of legal assistance to a person will be subject to all or any of the conditions referred to in section 27 (1);
- (d) determining the amount of costs or disbursements that will be required to be paid to VLA by an assisted person if the proceeding in respect of which the legal assistance was provided is decided, compromised or results in the person's favour;
- (e) determining the extent, if any, to which VLA will pay costs awarded

against a legally assisted person in a proceeding.

10. *Delegation*

VLA may, by instrument under its official seal, delegate to—

- (a) a director of VLA;
- (b) an officer of VLA;
- (c) a private practitioner;
- (d) a legal aid review committee;
- (e) legal aid review committees generally— 10

any power of VLA, other than—

- (f) the powers referred to in sections 7 (c) (i) and (d), 8 (2) and 9; and
- (g) subject to section 12A (c) (ii), this power of delegation. 15

11. *Board of directors*

There shall be a board of directors of VLA consisting of—

- (a) a chairperson nominated by the Attorney-General after consultation with the Attorney-General of the Commonwealth; 20
- (b) a managing director nominated by the Attorney-General after consultation with the Attorney-General of the Commonwealth; 25
- (c) 2 directors nominated by the Attorney-General of the Commonwealth; 30
- (d) a director nominated by the Attorney-General.

12. *Role of board*

(1) The board of VLA—

(a) is responsible for the management of the affairs of VLA and ensuring that it achieves its objectives ; and

(b) may exercise the powers of VLA.

(2) Without limiting sub-section (1), it is the role of the board—

(a) to determine the policies, priorities and strategies of VLA; and

(b) to deal with any matters in accordance with guidelines issued by the board under sub-section (3); and

(c) to ensure that VLA performs its functions and exercises its powers in an effective, efficient and economical manner.

(3) The board may issue guidelines specifying matters or classes of matter relating to the provision of legal aid that it requires to be referred to it for decision.

12A. *Role of managing director*

The managing director—

(a) has control of the day to day administration of the affairs of VLA in accordance with the policies, priorities and strategies determined by the board and any directions given to the managing director by the board;

(b) may exercise any power delegated to him or her by the board;

(c) subject to directions of the board, may, by instrument, delegate to an officer of VLA—

- (i) any power of the managing director under this Act, other than this power of delegation; or
- (ii) any power delegated to the managing director by VLA.

12B. Appointment of directors

- (1) The chairperson and other directors of VLA shall be appointed by the Governor in Council. 10
- (2) The **Public Sector Management Act 1992** (including Part 9) does not apply to a director of VLA (other than the managing director) in respect of the office of director. 15
- (3) The **Public Sector Management Act 1992** (including Part 9) does not apply to the managing director in respect of the office of managing director (except in accordance with Part 8). 20

12C. Terms and conditions of appointment

- (1) A director of VLA shall be appointed for such term as is specified in the instrument of appointment, not exceeding—
 - (a) 5 years in the case of the managing director; and 25
 - (b) 3 years in any other case.
- (2) A director of VLA is eligible for re-appointment.
- (3) A director of VLA (other than the managing director) holds office, subject to this Part, on such terms and conditions as are specified in the instrument of appointment. 30

(4) A director of VLA holds office—

- (a) on a full-time basis in the case of the managing director; and
- (b) on a part-time basis in any other case.

12D. *Vacancies, resignations, removal from office*

(1) The office of a director of VLA (other than the managing director) becomes vacant if the director—

- (a) without the board's approval, fails to attend 3 consecutive meetings of the board; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (c) is convicted of an indictable offence or an offence which, if committed in Victoria, would be an indictable offence.

(2) A director of VLA (other than the managing director) may resign by writing delivered to the Attorney-General for transmission to the Governor in Council.

(3) The Governor in Council may remove a director of VLA (other than the managing director), or all such directors, from office.

(4) If a director of VLA (other than the managing director)—

- (a) is convicted of an offence relating to his or her duties as a director; or

(b) fails, without reasonable excuse, to
comply with section 12J—

the director must be removed from office
by the Governor in Council.

12E. Acting chairperson

- (1) The Governor in Council may appoint a
person nominated by the
Attorney-General after consultation with
the Attorney-General of the
Commonwealth to act as chairperson— 10
 - (a) during a vacancy in the office; or
 - (b) during any period or all periods
when the chairperson is absent from
duty or from the State or is for any
other reason unable to perform the 15
duties of his or her office.
- (2) While so acting, the person appointed
under sub-section (1) has all the powers
and may perform all the functions and
duties conferred by this Act or any other 20
Act on the chairperson.
- (3) An appointment under sub-section (1) is
on the terms and conditions determined
by the Governor in Council but in the case
of an appointment to act during a vacancy, 25
must not be for a period of more than 12
months.
- (4) A person appointed under sub-section (1)
may resign by writing delivered to the
Attorney-General for transmission to the 30
Governor in Council.
- (5) The Governor in Council may at any
time terminate an appointment under
sub-section (1).
- (6) If a person is acting as chairperson in 35
accordance with sub-section (1) (b) and

the office of chairperson becomes vacant while he or she is so acting, the appointment continues until—

- (a) it is terminated by the Governor in Council; or
- (b) the vacancy is filled; or
- (c) the expiration of 12 months after the date on which the vacancy occurred—

whichever first occurs.

12F. *Acting managing director*

(1) A person may be appointed to act as managing director—

- (a) during a vacancy in the office; or
- (b) during any period or all periods when the managing director is absent from duty or from the State or is for any other reason unable to perform the duties of his or her office.

(2) An appointment under sub-section (1)—

- (a) may be made by the board if the period of appointment is to be for not more than 6 months;
- (b) must be made by the Governor in Council if—
 - (i) the period of appointment is to be for more than 6 months; or
 - (ii) it is a re-appointment of an acting managing director which will result in that person holding an appointment under sub-section (1) for a continuous period of more than 6 months.

(3) An appointment under sub-section (1) must be on terms and conditions not more

favourable than those applying to the managing director.

- (4) While so acting, the person appointed under sub-section (1) has all the powers and may perform all the functions and duties conferred by this Act or any other Act on the managing director.
- (5) The **Public Sector Management Act 1992** (including Part 9) does not apply to the acting managing director in respect of the office of acting managing director (except in accordance with Part 8). 10

12G. *Validity of decisions*

- (1) An act or decision of the board of VLA is not invalid merely because of— 15
 - (a) a defect or irregularity in, or in connection with, the appointment of a director; or
 - (b) a vacancy in the membership of the board, including a vacancy arising from the failure to appoint an original director. 20
- (2) Anything done by or in relation to a person purporting to act as chairperson or as a director is not invalid merely because— 25
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or 30
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

12H. *Proceedings of board*

- (1) Subject to sub-section (2), meetings of the board of VLA shall be held at such times and places as the board determines.
- (2) The chairperson may at any time convene a meeting but must do so when requested by a director.
- (3) Three directors constitute a quorum of the board.
- (4) A question arising at a meeting shall be determined by a majority of votes of directors present and voting on that question and, if voting is equal, the person presiding has a casting, as well as a deliberative, vote.
- (5) The board must ensure that minutes are kept of each of its meetings.
- (6) Subject to this Part, the board may regulate its own proceedings.

12I. *Resolutions without meetings*

- (1) If all the directors of VLA for the time being (other than a director who is absent from Australia when the other directors sign) sign a document containing a statement that those directors are in favour of a resolution in terms set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last director to sign signs the document.
- (2) If a resolution is, under sub-section (1), taken to have been passed at a meeting of the board, each director must be advised

as soon as practicable and given a copy of the terms of the resolution.

- (3) For the purposes of sub-section (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, shall be taken to constitute one document. 5

12J. *Disclosure of interests*

- (1) If—
 - (a) a director of VLA has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the board; and 10
 - (b) the interest could conflict with the proper performance of the director’s duties in relation to the consideration of the matter— 15

the director, as soon as practicable after the relevant facts come to the director’s knowledge, must disclose the nature of the interest at a meeting of the board. 20
- (2) A disclosure under sub-section (1) must be recorded in the minutes of the meeting and, unless the board otherwise determines, the director— 25
 - (a) must not be present during any deliberation of the board in relation to the matter; and
 - (b) must not take part in any decision of the board in relation to the matter. 30

12K. *Community consultative committee*

- (1) There shall be established a community consultative committee.
- (2) The function of the committee is to make recommendations to the board in relation 35

to any matter referred to the committee by the board.

- (3) The committee must consist of not less than 2 members of whom—

(a) one shall be a person nominated by the Federation of Community Legal Centres (Vic.) Inc.; and

(b) one shall be a person representing staff of VLA nominated by the staff—

and any other person or persons who may be appointed by the board to be members of the committee.

- (4) If the Federation of Community Legal Centres (Vic.) Inc. or the staff of VLA do not within one month after receiving a request in writing from the board to submit a nomination for the purposes of this section, submit a nomination, the board may appoint a person whom the board considers appropriate and that person shall be deemed to have been nominated by the Federation of Community Legal Centres (Vic.) Inc. or the staff of VLA, as the case may be.

- (5) Subject to directions of the board, the committee may regulate its own procedure.

12L. *Terms and conditions of appointment to committee*

- (1) A member of the community consultative committee holds office for the period, not exceeding 3 years, specified in the instrument of appointment and is eligible for re-appointment.

- (2) The board may in the instrument of appointment of a member of the

committee specify terms and conditions of appointment.	
(3) The board may remove a member of the committee from office at any time.	
(4) A member may resign his or her office in writing given to the board.	5
(5) A member of the committee is entitled to be paid any fees for attendance at meetings of the committee and allowances that are determined by the board in relation to that member.	10
12M. <i>Attorney-General may give directions to the board</i>	
(1) The Attorney-General, after consultation with the Attorney-General of the Commonwealth, may give to the board written directions in relation to—	15
(a) the performance of the functions or exercise of the powers of VLA;	
(b) the policies, priorities or guidelines of VLA, including priorities in the funding of legal aid.	20
(2) A direction under sub-section (1) must not relate to the grant of legal aid to any specific person.	25
(3) The board must comply with any direction given under sub-section (1).	
(4) A direction has effect when written notice of the direction is received by the managing director.	30
(5) The Attorney-General must cause a copy of a direction given under this section to be tabled in each House of the Parliament within 10 sitting days of the House after notice of the direction is given.	35

12N. Report

- (1) VLA must each September furnish to the Attorney-General a report of the proceedings of VLA during the year ending on 30 June of that year together with the audited financial statements in respect of that year.
- (2) The Attorney-General must cause the report and the audited financial statements to be laid before both Houses of Parliament as soon as practicable after receipt or, if Parliament is not then sitting, as soon as practicable after the next meeting of Parliament.
- (3) Subject to sub-section (4) but despite any other provision in this Act, VLA—
- (a) may at any time furnish to the Attorney-General any report it considers necessary; and
- (b) must provide without delay to the Attorney-General any information that the Attorney-General may require in relation to any matter dealt with by VLA.
- (4) VLA is not required to provide information of the kind referred to in section 43 unless the assisted person concerned consents to the provision of the information.’.

PART 3—LAW AID SCHEME

7. Insertion of new Part VI_A

After Part VI of the Principal Act insert—

‘PART VIA—LAW AID SCHEME

40A. *Definitions*

In this Part—

“**assisted person**” means a person to whom litigation assistance is provided under and in accordance with the trust deed; 5

“**committee**” means the Law Aid Committee to be established under the trust deed; 10

“**trust fund**” means the trust fund to be established by the trust deed;

“**trust deed**” means the Law Aid Deed of Trust entered or to be entered into by the Law Institute of Victoria, the Victorian Bar Council and the trustees for the purpose of establishing a trust fund to provide litigation assistance to parties in civil proceedings; 15 20

“**trustees**” means the trustees named in the trust deed or the trustees for the time being of the trust fund.

40B. *Immunity*

No action lies against a trustee or a member of the committee in respect of any thing done or omitted to be done in good faith by the trustee or member in the performance or purported performance of his or her duties in administering the trust fund. 25 30

40C. *Fee agreement*

- (1) Despite any other law to the contrary, the trustees may enter into an agreement with an assisted person or an applicant for litigation assistance under which the assisted person or applicant is required to pay to the trustees, for payment into the trust fund, a fee, which is dependent on the result of, or payable only in the event of success in, a legal proceeding in respect of which the assistance is or is to be provided.
- (2) A fee referred to in sub-section (1) may be expressed as a percentage, not exceeding 10 per cent, of—
- (a) the award or settlement, excluding costs; or
 - (b) the market value of any property that may be recovered—
- in the legal proceeding.

40D. *Contingent payments*

- (1) Despite any other law to the contrary, a person in his or her capacity as trustee or member of the committee or employee or agent of the trustees may enter into an agreement with the assisted person under which payment of a fee to the trustees is contingent on the outcome of the proceeding.
- (2) Despite any other law to the contrary, a solicitor who is acting for an assisted person in a legal proceeding in respect of which litigation assistance is provided to that person may enter into an agreement with the assisted person under which liability for payment of legal costs to the

solicitor is contingent on the outcome of the proceeding.	
(3) Despite any other law to the contrary, a solicitor who is acting for an assisted person in a legal proceeding in respect of which litigation assistance is provided to that person, may enter into a fees agreement within the meaning of section 67 of the Supreme Court Act 1986 with a barrister under which liability for payment to the barrister is contingent on the outcome of the proceeding.	5 10
(4) Nothing in this section permits a solicitor who is acting for an assisted person in a legal proceeding in respect of which litigation assistance is provided to that person—	15
(a) to enter into an agreement with the assisted person; or	
(b) to enter into a fees agreement within the meaning of section 67 of the Supreme Court Act 1986 with a barrister—	20
under which the amount payable to the solicitor or barrister is calculated by reference to the amount of the award or settlement or the value of any property that may be recovered in the legal proceeding.	25
40E. Misconduct not to include agreements	30
Despite section 2B of the Legal Profession Practice Act 1958 , a practitioner who enters into an agreement referred to in section 40C or 40D (1), (2) or (3) is not guilty of misconduct.	35

40F. Certain information not to be revealed

Any—

(a) communication between the trustees,
or the members of the committee or
an employee or agent of the trustees,
and an applicant for litigation
assistance from the trust fund or an
assisted person; or

(b) document in the possession of the
trustees or the committee or an
employee or agent of the trustees
concerning the affairs of an applicant
for litigation assistance from the trust
fund or an assisted person—

is privileged from production or
disclosure in the same way and to the
same extent as if it were a privileged
communication between practitioner and
client.

40G. Recovery of costs

(1) A court may make in favour of an assisted
person any order for costs that it may
otherwise make, even though no amount
has been paid or is or will be payable for
costs by the assisted person in whose
favour the order is made or that the costs
so ordered are in excess of the total
amount paid or payable for costs by the
assisted person.

(2) All costs payable under the terms of—

(a) a judgment or order; or

(b) settlement of an action or claim—

to a person who has received litigation
assistance in the obtaining of the
judgment, order or settlement (except any
portion of the costs that may be for
services rendered or disbursements paid

for that person before litigation assistance was provided) are payable to the trustees.	
(3) The trustees are entitled to exercise in the name of the assisted person referred to in sub-section (2) all rights and remedies in relation to the recovery of the costs referred to in that sub-section which that person would be entitled to exercise if the person were not an assisted person.	5
(4) If—	10
(a) a person is liable to pay costs payable under this section to the trustees; and	
(b) the trustees or the solicitor acting for the assisted person gives notice to the person referred to in paragraph (a), or the solicitor acting for that person, of the rights of the trustees in relation to the costs—	15
the person is not discharged from liability by reason only of making a payment in respect of costs to a person other than the trustees or the solicitor for the assisted person.	20
(5) On the taxation of costs payable to an assisted person under the terms of—	25
(a) a judgment or order; or	
(b) settlement of an action or claim—	
no item shall be disallowed merely because the assisted person, by reason of being an assisted person, is under no obligation to pay, wholly or partly, for the service to which the item relates or, in the case of a disbursement (whether for counsel’s fees or otherwise) merely because the amount has not been paid before the taxation.’.	30
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PART 4—MISCELLANEOUS

8. *Insertion of new section 49A*

After section 49 of the Principal Act **insert**—

“49A. Supreme Court—limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action of a kind referred to in section 30 (17) or 40B.”.

9. *Transitional provision—abolition of LACV*

(1) In this section—

“appointed day” means the day on which section 6 comes into operation;

“VLA” has the same meaning as in the Principal Act;

“former body” means the Legal Aid Commission of Victoria established under section 3 of the Principal Act as in force immediately before the appointed day.

(2) On the appointed day—

(a) the former body shall be abolished and the members of the former body shall go out of office; and

(b) the Director of Legal Aid shall go out of office; and

(c) all rights, property and assets that, immediately before that day, were vested in the former body are, by force of this sub-section, vested in VLA; and

(d) all debts, liabilities and obligations of the former body existing immediately before that day shall become, by force of this sub-section, debts, liabilities and obligations of VLA; and

- (e) VLA shall, by force of this sub-section, be substituted as a party to any proceedings pending in any court to which the former body was a party immediately before that day; and
 - (f) VLA shall, by force of this sub-section, be substituted as a party to any arrangement or contract entered into by or on behalf of the former body as a party and in force immediately before that day; and 5
 - (g) all officers or employees of the former body immediately before that day shall become, by force of this sub-section, officers or employees (as the case requires) of VLA; and 10
 - (h) any reference to the former body in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document whatsoever shall, so far as it relates to any period after that day and if not inconsistent with the context or subject-matter, be construed as a reference to VLA. 15 20
- (3) A person transferred to VLA under sub-section (2) (g) is to be regarded as—
- (a) having been employed by VLA with effect from the appointed day; and
 - (b) having been so employed on the same terms and conditions as those that applied to the person, immediately before the appointed day, as an officer or employee of the former body; and 25
 - (c) having accrued an entitlement to benefits, in connection with that employment by VLA, that is equivalent to the entitlement that the person had accrued, as an officer or employee of the former body, immediately before the appointed day. 30
- (4) The service of a person referred to in sub-section (3) as an officer or employee of VLA is to be regarded for all purposes as having been continuous with the service of the person, immediately before the 35

appointed day, as an officer or employee of the former body.

(5) A person referred to in sub-section (3) is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer or employee of the former body because of this Act.

(6) Nothing in this section prevents—

(a) any of the terms and conditions of employment of a person referred to in sub-section (2) from being altered by or under any law, award or agreement with effect from any time after the appointed day;

(b) a person referred to in sub-section (2) from resigning or being dismissed at any time after the appointed day in accordance with the then existing terms and conditions of his or her employment by VLA.

(7) Section 43 of the Principal Act continues to apply to—

(a) any document or information received by the former body or an officer of the former body or by a legal aid review committee or legal aid appeal committee or by a delegate of the former body or a person employed by the delegate before the appointed day; and

(b) any information or document supplied by the former body before the appointed day.

10. Consequential amendments

The Principal Act is amended as follows—

(a) sections 13 and 14 are **repealed**;

(b) in section 15—

(i) for sub-sections (1) and (2) **substitute**—

“(1) VLA may employ any officers and employees necessary for the purposes of this Act.

- (2) VLA must consult with the Secretary to the Department of Justice on the terms and conditions of employment of officers and employees.”;
- (ii) sub-sections (2A) and (3) are **repealed**;
- (iii) in sub-section (4), for “the Commission” (wherever occurring) **substitute** “VLA”;
- (c) in section 16 (1)—
 - (i) for “The Director or an officer of the Commission” **substitute** “VLA or an officer of VLA”;
 - (ii) for “or exercising” **substitute** “or an officer of VLA exercising”;
- (d) in section 16 (2)—
 - (i) for “the Director or a member of staff of the Commission” **substitute** “a member of staff of VLA”;
 - (ii) in paragraph (a), for “the Director” **substitute** “VLA”;
 - (iii) in paragraph (b), for “the Commission” **substitute** “VLA”;
- (e) in section 16 (3), for “The Director or an officer of the Commission” **substitute** “An officer of VLA”;
- (f) in section 16 (4)—
 - (i) for “the Commission” (wherever occurring) **substitute** “VLA”;
 - (ii) for “the Director or an officer” **substitute** “an officer”;
 - (iii) for “the Director or officer” **substitute** “the officer”;
- (g) in section 16 (5), for “The Commission, and not the Director,” **substitute** “VLA”;
- (h) in section 17, for “the signature of the Director, or of an officer of the Commission authorized by the Director to sign documents on behalf of the Director” **substitute** “the signature of an officer

of VLA authorised by the board to sign documents on behalf of VLA”;

(i) in section 18, for “The Commission” **substitute** “VLA”;

(j) in section 19—

(i) for “chairman of the Commission” **substitute** “chairperson of the board”;

(ii) for “the Commission” (wherever occurring) **substitute** “VLA”;

(k) in sections 19A and 20, for “the Commission” (wherever occurring) **substitute** “VLA”;

(l) in section 23, for “the Commission” (wherever occurring) **substitute** “VLA”;

(m) in section 24—

(i) for “the Commission” (wherever occurring) **substitute** “VLA”;

(ii) in sub-section (5), for “10 (1) (g)” **substitute** “7 (e)”;

(n) in section 26, for “the Commission” **substitute** “VLA”;

(o) in section 27, for “the Commission” (wherever occurring) **substitute** “VLA”;

(p) in section 28—

(i) for “the Commission” (wherever occurring) **substitute** “VLA”;

(ii) for “section 10” **substitute** “sections 8 and 9”;

(q) in section 30—

(i) in sub-section (17), for “member of the Commission” **substitute** “director of the board”;

(ii) for “the Commission” (wherever else occurring) **substitute** “VLA”;

(iii) in sub-section (9) for “the Commission’s” **substitute** “VLA’s”;

- (r) in section 31—
 - (i) for “the Director” (wherever occurring) **substitute** “VLA”;
 - (ii) for “the Commission” (wherever occurring) **substitute** “VLA”;
- (s) in sections 32 and 33, for “the Commission” (wherever occurring) **substitute** “VLA”;
- (t) in section 34 (1) and (2)—
 - (i) for “the Commission” (wherever occurring) **substitute** “VLA”;
 - (ii) **omit** “or the Director” (wherever occurring);
- (u) in section 34 (1A), for “The Director” **substitute** “VLA”;
- (v) in section 35 (1), (2) and (2A)—
 - (i) for “the Commission” (wherever occurring) **substitute** “VLA”;
 - (ii) **omit** “, the Director”;
- (w) in section 35 (1A), for “The Director” **substitute** “VLA”;
- (x) in section 36—
 - (i) for “the Commission” (wherever occurring) **substitute** “VLA”;
 - (ii) for “The Director” **substitute** “VLA”;
- (y) in section 38—
 - (i) in sub-section (2) (a), for “member of the Commission” **substitute** “director of the board”;
 - (ii) in sub-section (3) (c), for “chairman of the Commission” **substitute** “chairperson of the board”;
 - (iii) for “the Commission” (wherever else occurring) **substitute** “VLA”;
- (z) in sections 39 and 40, for “the Commission” (wherever occurring) **substitute** “VLA”;

(za) in section 41—

(i) in sub-section (3) (b), for “chairman, the acting chairman and other members and alternate members of the Commission” **substitute** “directors of the board, the acting chairperson and acting managing director, the members of the community consultative committee”;

(ii) in sub-section (3) (c) (ii), **omit** “the Director and”;

(iii) for “the Commission” (wherever else occurring) **substitute** “VLA”;

(iv) sub-sections (7) and (8) are **repealed**;

(zb) in section 43 (1)—

(i) for “member of the Commission or” **substitute** “director of the board or a member of the community consultative committee or a member”;

(ii) for “the Commission” (wherever else occurring) **substitute** “VLA”;

(zc) in section 43 (2)—

(i) for “member of the Commission or” **substitute** “director of the board or a member of the community consultative committee or a member”;

(ii) for “the Commission” (wherever else occurring) **substitute** “VLA”;

(zd) in section 43 (3)—

(i) for “the Commission” (where first occurring) **substitute** “VLA”;

(ii) for “member of the Commission” **substitute** “director of the board”;

(ze) in section 43 (4) and (5), for “the Commission” (wherever occurring) **substitute** “VLA”;

(zf) in sections 45, 46, 47 and 47A, for “the Commission” (wherever occurring) **substitute** “VLA”;

- (zg) in section 47B and 47C—
 - (i) for “the Commission” (wherever occurring) **substitute** “VLA”;
 - (ii) for “the Director” (wherever occurring) **substitute** “VLA”;
- (zh) in section 47C (1), for “sign” **substitute** “seal”;
- (zi) in section 47D, for “the Director must sign” **substitute** “VLA must seal”;
- (zj) in section 47E—
 - (i) for “the Commission” (wherever occurring) **substitute** “VLA”;
 - (ii) in sub-section (4) (e) **omit** “Commission”;
 - (iii) for “the Commission’s” **substitute** “VLA’s”;
- (zk) in section 48, for “the Commission” (wherever occurring) **substitute** “VLA”;
- (zl) in section 48B—
 - (i) for “Director” **substitute** “managing director”;
 - (ii) for “the Commission” **substitute** “VLA”;
- (zm) in section 48C, for “the Commission” (wherever occurring) **substitute** “VLA”;
- (zn) in section 49, for “the Commission” (wherever occurring) **substitute** “VLA”.

11. *Amendment of other Acts* 25

- (1) In the **Legal Profession Practice Act 1958**—
 - (a) in section 38N (1) (b) (ii), for “sub-paragraph” **substitute** “sub-paragraph”;
 - (b) in section 53 (4) (f), **omit** “Commission”;
 - (c) in section 98 (3), after “practitioner” **insert** “or Victoria Legal Aid established under the **Legal Aid Act 1978**”.

(2) In the **Appeal Costs Act 1964**—

(a) in section 13 (3A), for “Part I of the **Legal Aid Act 1969**” substitute “the **Legal Aid Act 1978**”;

(b) in section 18 (6)—

(i) for “**Legal Aid Commission Act 1978**” (wherever occurring) substitute “**Legal Aid Act 1978**”;

(ii) for “the Legal Aid Commission” (wherever else occurring) substitute “Victoria Legal Aid”;

(c) in section 21 (2)—

(i) for “**Legal Aid Commission Act 1978**” substitute “**Legal Aid Act 1978**”;

(ii) for “the Legal Aid Commission” substitute “Victoria Legal Aid”.

(3) In the **Crimes Act 1958**—

(a) in section 360A—

(i) for “the Legal Aid Commission of Victoria” (wherever occurring) substitute “Victoria Legal Aid”;

(ii) for “**Legal Aid Commission Act 1978**” substitute “**Legal Aid Act 1978**”;

(b) in the Sixth Schedule, in clause 4 (2A) (a), for “the Legal Aid Commission” substitute “Victoria Legal Aid”.

(4) In the **Evidence Act 1958**—

(a) in section 21D—

(i) in the definition of “applicant”, for paragraph (a) (ii) substitute—

“(ii) to Victoria Legal Aid for legal assistance under the **Legal Aid Act 1978**; or”;

- (ii) in the definition of “legal aid body”, for “the Legal Aid Commission” **substitute** “Victoria Legal Aid”;
 - (iii) **omit** the definition of “Legal Aid Commission”;
 - (iv) after the definition of “private practitioner” **insert—**
“**Victoria Legal Aid**” means Victoria Legal Aid established under the **Legal Aid Act 1978.**”;
- (b) in section 21E (3), for paragraph (b) **substitute—**
“(b) to Victoria Legal Aid for legal assistance under the **Legal Aid Act 1978.**”;
- (c) in section 21H—
 - (i) for “the **Legal Aid Commission Act 1978**” **substitute** “the **Legal Aid Act 1978**”;
 - (ii) for “the Legal Aid Commission” (wherever occurring) **substitute** “Victoria Legal Aid”.
- (5) In section 64 (c) of the **Intellectually Disabled Persons’ Services Act 1986**, for sub-paragraph (v) **substitute—**
“(v) Victoria Legal Aid;”.
- (6) In section 19 (c) of the **Mental Health Act 1986**, for sub-paragraph (v) **substitute—**
“(v) Victoria Legal Aid;”.
- (7) In the **Legal Aid Commission (Amendment) Act 1989—**
 - (a) in section 8, for “the Commission” **substitute** “VLA”;
 - (b) in section 12, for “The Director” (wherever occurring) **substitute** “VLA”.

12. *Transitional—Evidence Act*

Division 6 of Part I of the **Evidence Act 1958** as amended by section 11 of this Act applies to a proposed application for legal aid prepared before the commencement of section 11.

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