

Legal Aid Commission (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 states that the purpose of the Act is to amend the **Legal Aid Commission Act 1978**—

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

to facilitate the implementation of a civil litigation scheme to be known as the Law Aid Scheme.

Clause 2 provides for the commencement of various provisions of the Act.

Clause 3 defines “Principal Act” to mean the **Legal Aid Commission Act 1978**.

PART 2 —AMENDMENT OF THE LEGAL AID COMMISSION ACT 1978

Clause 4 amends the short title of the Principal Act to **Legal Aid Act 1978**.

Clause 5 omits various definitions in the Principal Act which relate to the operation and commencement of the former Commission, inserts new definitions relevant to Victoria Legal Aid (VLA) and redefines some existing definitions.

Clause 6 substitutes Part II of the Principal Act to establish Victoria Legal Aid in place of the Legal Aid Commission of Victoria.

A new section 3 establishes VLA as a body corporate and outlines features which accompany that status.

A new section 4 sets out the objectives of VLA.

A new section 5 provides that VLA does not represent the Crown.

A new section 6 defines the functions and powers of VLA

A new section 7 sets out the duties of VLA.

A new section 8 sets out the arrangements under which VLA may provide legal aid, and provides that VLA must determine guidelines in relation to the allocation of work between officers of VLA and private practitioners having regard to the matters set out in new section 8 (2).

A new section 9 provides that VLA must determine guidelines in relation to the provision of legal aid, having regard to funds available and relevant recommendations of the Commonwealth Commission (which is re-defined under clause 5 as the Attorney-General’s Department of the Commonwealth exercising its functions in respect of legal aid).

A new section 10 provides that VLA, may by instrument under its official seal, delegate to a director of VLA, an officer of VLA, a private practitioner, a legal aid

review committee or legal aid review committees generally, any power of VLA other than:

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

A new section 11 provides that there shall be a 5 member board of directors of VLA consisting of:

- a chairperson and a managing director both of whom are to be nominated by the Attorney-General after consultation with the Attorney-General of the Commonwealth;
- 2 directors to be nominated by the Attorney-General of the Commonwealth; and
- one other director nominated by the Attorney-General.

A new section 12 sets out the role of the board.

A new section 12A sets out the role of the managing director and his or her power of delegation.

A new section 12B provides that appointment of the chairperson and other directors of VLA shall be by the Governor in Council and that the **Public Sector Management Act 1992** does not apply to:

- a director of VLA (other than the managing director);
- the managing director except in accordance with Part 8 of that Act.

A new section 12C sets out the terms and conditions of appointed directors.

A new section 12D provides for the resignation and removal of appointed directors (other than the managing director), and vacancies in their office.

A new section 12E provides for the appointment of an acting chairperson and sets out the conditions of such an appointment.

A new section 12F provides for the appointment of an acting managing director and sets out the conditions of such an appointment.

Sub-section (1) sets out the circumstances in which an acting managing director may be appointed.

Sub-section (2) provides that appointment of an acting managing director may be made by the board if the period of appointment will not exceed 6 months, and sets out the circumstances in which the appointment of an acting managing director must be made by the Governor in Council.

A new section 12G governs validity of decisions of the board of VLA and provides that an act or decision of the board is not invalid merely because of certain irregularities in the appointment of a director, or vacancies in membership of the board.

A new section 12H sets out provisions concerning proceedings of the board.

A new section 12I enables directors of VLA to pass resolutions without meetings.

A new section 12J sets out the circumstances in which a director of VLA must disclose a direct or indirect pecuniary interest in a matter being considered, or to be considered, by the board of VLA.

A new section 12K provides for the establishment of a community consultative committee whose function is to make recommendations to the board in relation to any matter referred to it by the board. Section 12K (3) requires that the committee shall consist of not less than two members of whom one shall be nominated by the Federation of Community Legal Centres (Vic.) Inc. and one shall be a person representing the staff of VLA nominated by the staff. In addition to these members, the board may appoint any other person or persons to be members of the committee as it thinks fit.

A new section 12L sets out the terms and conditions of appointment of members of the community consultative committee.

A new section 12M permits the Minister to give written directions to the board of VLA after consultation with the Attorney-General of the Commonwealth. Sub-section (1) provides that the directions may concern the performance of the functions, or exercise of the powers of VLA, as well as the policies, priorities and guidelines of VLA. Sub-section (2) states that a direction must not relate to the grant of legal aid to any specific person.

A new section 12N sets out the reporting requirements of VLA.

PART 3 —LAW AID SCHEME

Clause 7 inserts a new Part VIA into the Principal Act.

A new section 40A sets out definitions for that Part.

A new section 40B grants immunity to a trustee of the Law Aid trust fund, or a member of the Law Aid Committee, for acts done or omitted to be done in good faith, in the performance or purported performance of duties in administering the trust fund.

A new section 40C permits the trustees to enter into a fee agreement with an assisted person or an applicant for litigation assistance under which the assisted person or applicant will be required to pay to the trustees, for payment into the trust fund, a fee of up to ten percent of any award or settlement (excluding costs) or market value of any property recovered, in the event of success in a legal proceeding in respect of which litigation assistance is or is to be provided.

A new section 40D allows for agreements to be made under which payment of fees to the trustees, or liability for payment of legal costs or barristers' fees, are contingent on the outcome of a proceeding.

A new section 40E provides that a practitioner who enters into an agreement referred to in new sections 40C or 40D (1), (2) or (3) shall not be guilty of misconduct.

A new section 40F preserves the confidentiality of information and documents received by the trustees, members of the Law Aid Committee, or employees or agents of the trustees, from or concerning an applicant for litigation assistance or an assisted person.

A new section 40G provides for the recovery of costs by or on behalf of an assisted person.

PART 4 — MISCELLANEOUS

Clause 8 inserts a new section 49A into the Principal Act concerning the jurisdiction of the Supreme Court and section 85 of the **Constitution Act 1975**.

Clause 9 sets out transitional provisions arising from the abolition of the Legal Aid Commission of Victoria and the establishment of VLA.

Clause 10 sets out consequential amendments to the Principal Act.

Clause 11 provides for amendments to other Acts.

Clause 12 is a transitional provision which applies to proposed applications for legal aid prepared before the commencement of clause 11 of the Bill.